

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer Kahalu'u Beach Club LLC
Address 78-6842 Ali'i Drive, Suite 22B, Kailua-Kona, Hawaii 96740
Project Name(*) The Beach Villas at Kahalu'u
Address 6721 Ali'i Drive, Kailua-Kona, Hawaii 96740

Registration No. 5069 Effective date: March 8, 2004
Expiration date: April 8, 2005

Preparation of this Report:

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

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

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

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

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

Type of Report:

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

X FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[x] No prior reports have been issued.
[] This report supersedes all prior public reports.
[] This report must be read together with

SUPPLEMENTARY: (pink) This report updates information contained in the:
[] Preliminary Public Report dated:
[] Final Public Report dated:
[] Supplementary Public Report dated:

And [] Supersedes all prior public reports
[] Must be read together with
[] This report reactivates the public report(s) which expired on

(*) Exactly as named in the Declaration
This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

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

Summary of Changes from Earlier Public Reports:

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

No prior reports have been issued by the developer.

Changes made are as follows:

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General Information on Condominiums

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

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

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

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

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

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

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

Operation of the Condominium Project

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

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

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: Kahalu'u Beach Club LLC Phone: (808) 324-5965
Name* (Business)
78-6842 Ali'i Drive, Suite 22B
Business Address
Kailua-Kona, Hawaii 96740

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

See Exhibit A attached to this Condominium Public Report.

Real Estate Broker*: SFC Realty Corporation, Phone: (808) 324-5965
Name dba Big Island Timeshare Resale Company (Business)
78-6842 Ali'i Drive
Business Address
Kailua-Kona, Hawaii 96740

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

General Contractor*: U.S. Pacific Construction, Inc. Phone: (808) 540-0777
Name (Business)
1001 Bishop Street, Suite 1250
Business Address
Honolulu, Hawaii 96813

Condominium Managing Agent*: SFC Realty Corporation Phone: (808) 324-5965
Name (Business)
78-6842 Ali'i Drive
Business Address
Kailua-Kona, Hawaii 96740

Attorney for Developer: Charles E. Pear, Jr./Stacey Hee Phone: (808) 529-7300
McCorriston Miller Mukai MacKinnon LLP (Business)
Name
P.O. Box 2800
Business Address
Honolulu, HI 96803-2800

* 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. 2004-029098
Book _____ Page _____
 Filed - Land Court: Document No. _____

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

Not applicable.

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. 3706
 Filed - Land Court Condo Map No. _____

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

Not applicable.

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. 2004-029099
Book _____ Page _____
 Filed - Land Court: Document No. _____

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

Not applicable.

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

The House Rules for this condominium are:

Proposed Adopted Developer does not plan to adopt House Rules

E. **Changes to Condominium Document.** 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>N/A</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.

The developer has reserved various rights under the condominium documents. See Exhibit I for examples of the developer's reserved rights. Generally, the developer may exercise these reserved rights during the "development period" of the project; however, some reserved rights continue past this. The development period is the period starting on February 11, 2004 (the date that the Declaration was recorded) and ending on the earlier of (i) December 31, 2014, or (ii) the date when the developer records a document giving up all of the developer's reserved rights.

Some of the developer's reserved rights are or may be necessary or helpful to developing the project in phases. Even so, the exercise of the developer's reserved rights is not limited to the development of the project in phases except to the extent that the declaration expressly states otherwise.

The developer may exercise the developer's reserved rights separately or in one or more combinations and at one or more times. The developer has no duty to exercise the developer's reserved rights. For example, the developer has no duty to develop any new phases of the project. Conversely, the use of these rights on one occasion does not limit or otherwise affect the developer's right to use them again from time to time.

The developer may use the developer's reserved rights without being required to obtain the approval, consent, or joinder of anyone else, and without having to give notice to anyone else. This includes, but is not limited to, the Association, any apartment owner, any lender, or any other interested person.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

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

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

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

Lease Term Expires: _____ Rent Renegotiation Date(s): _____

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

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

For Sub-leaseholds:

- Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is: Canceled Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

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

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

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

Lease Term Expires: _____ Rent Renegotiation Date(s): _____

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

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

Other:

IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

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

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

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

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

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

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease a new lease of the land with the lessee (apartment owner). The developer may lease 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: 6721 Ali'i Drive Tax Map Key (TMK): (3) 7-8-14-86
Kailua-Kona, Hawaii 96740

Address TMK is expected to change because _____

Land Area: 33,964 [X] square feet [] acre(s) Zoning: Hotel-Resort
(V-1.25)

Fee Owner: Kahalu'u Beach Club LLC
 Name
78-6842 Ali'i Drive, Suite 22B
 Address
Kailua-Kona, Hawaii 96740

Lessor: Not Applicable.
 Name
 Address

C. **Buildings and Other Improvements**

1. New Building(s)
 Conversion of Existing Building(s)
 Both New Building(s) and Conversion
2. Number of Buildings: 2 Floors Per Building: Building A – 3 floors
Building B- 1 floor
 Exhibit _____ contains further explanations.
3. Principal Construction Material:
 Concrete Hollow Tile Wood
 Other: wood, concrete, hollow tile blocks, gypsum board, aluminum and glass
4. Uses Permitted by Zoning:

	<u>No. of Apts.</u>	<u>Uses Permitted By Zoning</u>	
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Commercial	<u>1</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Hotel	<u>9</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Timeshare	<u>9</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other:	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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

* Yes No

*The Declaration provides that the resort apartments may be occupied and used (i) as a permanent or temporary residence or (ii) for hotel or transient vacation rental purposes or (iii) in a fractional ownership plan or in a time share plan if the Developer creates the plan or authorizes or consents to this use in a recorded document. With respect to the commercial apartment, the Declaration provides that the commercial apartments are established with the intent that business be conducted in them. Accordingly, the commercial apartment may be operated and used for any purpose permitted by law. For example, the commercial apartment may be used as an administrative office, bar, liquor store and other retail store, sales and marketing office, and activity desk or office.

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: See Section 9.1G of the Bylaws

Number of Occupants:

Other: See Condominium Declaration and Bylaws, especially section 9.1 of the Bylaws regarding use restrictions. Copies of the Declaration and Bylaws have been filed with the Real Estate Commission and are available upon request.

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 1 (Building A) Stairways: 1 (Building A) Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>(Identify)</u>
Type A <u>(one-bedroom)</u>	<u>3</u>	<u>1/2</u>	<u>565</u>	<u>132*</u>	
Type B <u>(two-bedroom)</u>	<u>3</u>	<u>2/2</u>	<u>781</u>	<u>135*</u>	
Type C <u>(three-bedroom)</u>	<u>3</u>	<u>3/2</u>	<u>964</u>	<u>135*</u>	
<u>Commercial</u>	<u>1</u>	<u>0</u>	<u>142</u>		

Total Number of Apartments: 10

* Approximate area of the lanai.

***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. All floor area figures are approximate.

Boundaries of Each Apartment: See Exhibit B.

Permitted Alterations to Apartments: See Exhibit C.

Apartments Designated for Owner-Occupants Only: Not Applicable.

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has elected to provide the information in a published announcement or advertisement.

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

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 _____

as follows: All parts of the condominium project except for the apartments, including those parts of the project designated in the Declaration as limited common elements, are common elements.

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

There are no limited common elements in this project.

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

described in Exhibit D

as follows:

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

described in Exhibit 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 F described the encumbrances against the title contained in the title report dated February 19, 2004 and issued by Old Republic Title Corporation.

Blanket Liens:

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

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

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

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit of Developer Defaults or Lien is foreclosed Prior to Conveyance</u>
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Mortgage dated December 30, 2003, recorded in the Bureau of Conveyances of the State of Hawaii on January 2, 2004 as Document No. 2004-000577.

Assignment of Rents and Leases dated January 2, 2004, recorded in the Bureau of Conveyances of the State of Hawaii on January 2, 2004 as Document No. 2004-000578.

Lender (mortgagee) has priority over a buyer's rights under a sales contract, and has a right to terminate sales contracts upon foreclosure of its mortgage before an apartment sale is closed. If there is a foreclosure, or a deed in place of foreclosure, the lender (new owner of the condominium) can choose to cancel the sales contract or to take the seller's place under the buyer's sales contract and complete the sale. If the sales contract is canceled, the buyer will get its money back but nothing more.

F. Construction Warranties:

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

1. Building and Other Improvements: None.

2. Appliances: None.

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

Construction of Phase 1 of The Beach Villas at Kahalu'u condominium project will begin in or around December of 2003 and is expected to be completed on or about September 1, 2004.

Construction has not begun on any other phases and none has been planned at this time. See Section H of this Public Report, below, for an explanation of the developer's right and obligation to develop future phases.

H. **Project Phases:**

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

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

Phasing. The developer plans to develop the project in stages. Each stage is called a "phase" or an "increment". Each phase may include apartments and other improvements. The developer has no obligation to build any phase beyond Phase 1. The developer can develop the phases in any order that it wishes. It can also develop more than one phase at a time or divide a phase into separate smaller phases. For example, the developer might decide to develop Phase 2 in two phases and possibly as two separate buildings. The developer may also change its plan of development without the consent or approval of anyone else.

Merger. The developer reserves the right to develop one or more adjacent condominiums on any adjacent parcel and to merge any adjacent condominium with the project pursuant to the Declaration of Merger dated February 3, 2004, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-029097. The developer may do this more than once and at any time before the "development period" ends. The developer may only merge the project and any adjacent condominium in accordance with the terms of and subject to the conditions to merger stated in the Declaration of Merger. The "development period" is defined in the Declaration as the period starting on the date that this declaration is recorded and ending on the earlier of (i) December 31, 2014, or (ii) the date when the developer records a document giving up all of the developer's reserved rights.

Additions. See Exhibits C and I to this Public Report.

V. MISCELLANEOUS

A. Sale 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. Not Applicable.

Specimen Sales Contract. (for sale of time share interests)
Exhibit H contains a summary of the pertinent provisions of the sales contract

Escrow Agreement dated February 9, 2004 (for sale of time share interests)
Exhibit H contains a summary of the pertinent provisions of the Escrow Agreement.

Other: Vacation Ownership Deed; Buyer's Certification

B. Buyer's Right to Cancel Sales Contract:

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

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

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

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

- A) The Developer delivers to the buyer a copy of:
 - 1) Either the Contingent Final Public Report **OR** the Supplementary Public Report which has superseded the Contingent 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.

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

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. The Condominium Property Regime law (Chapter 514A, HRS) and the Administrative Rules (Chapter 107) are available online. Please refer to the following sites:

Website to access official copy of laws: www.capitol.hawaii.gov
Website to access unofficial copy of laws: www.hawaii.gov/dcca/hrs
Website to access rules: www.hawaii.gov/dcca/har

This Public Report is part of Registration No. 5069 filed with the Real Estate Commission on April 10, 2003.

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

YELLOW paper stock WHITE paper stock PINK paper stock

C. **Additional Information Not Covered Above**

A Special Management Area Use Permit (SMA 382) was issued by the Planning Commission of the County of Hawaii. This permit allows the development of an 18 +/- unit condominium project and related uses on the property. A copy of this permit is on file with the Hawaii Real Estate Commission and available for inspection by purchasers and prospective purchasers. The property is subject to this permit. Purchasers and/or the owners association must comply with these permits on an ongoing basis.

- 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- 1.6].
- E. The developer hereby certifies that all 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.

KAHALU'U BEACH CLUB LLC



SCOTT F. CHURCH
Its Managing Member

February 3, 2004
Date

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

**Kahalu'u Beach Club LLC
a Hawaii limited liability company
Managers and Members**

Members

Scott F. Church

James L. Louis

Barry B. Bradley

Derrol E. Estrella

Managers

This is a member-managed limited liability company, therefore, there are no managers.

Exhibit B

Apartment Boundaries

RESORT APARTMENTS. The resort apartments consist of an apartment interior and a lanai.

RESORT APARTMENTS INTERIOR BOUNDARIES. The boundaries of the apartment interior consist of the interior surface of the perimeter walls, windows and window frames, doors and door frames, floors, and ceilings.

THINGS THAT ARE PART OF THE RESORT APARTMENTS. These things are part of each resort apartment:

- All of the walls and partitions that are not load-bearing and that are located inside of the apartment's boundaries.
- All movable glass lanai doors and the door frames.
- All doors and door frames located inside of the apartment's boundaries.
- The decorated or finished surfaces of all walls, panels, windows and window frames, doors and their door frames, floors and ceilings that make up the boundaries of the apartment interior.
- All fixtures originally installed in the apartments and all replacements of those fixtures.

THINGS THAT ARE NOT PART OF THE RESORT APARTMENTS. These things are not part of the resort apartments:

- The undecorated or unfinished surfaces of the boundary walls.
- The decorated or finished surfaces of the outside walls of the building that separate the lanai from the apartment interior.
- Any windows and window frames that separate the lanai from the apartment interior.
- Any railings or support posts, and any other walls or other improvements enclosing the lanai, including the decorated or finished surface of them.
- Any load-bearing walls or columns inside of the apartment. However the decorated or finished surfaces of load-bearing walls or columns located inside of the apartment interior are part of the apartment.
- The foundations, footings, girders, beams, floor slabs, supports, floors and ceilings surrounding each resort apartment.
- Any pipes, wires, vents, shafts, ducts, conduits or other utility service lines or enclosed spaces for wiring, pipes, air exhaust or air conditioning running through or otherwise located within an apartment if they are used for or serve the common elements or more than one apartment.

All of these things are Common Elements. This is so regardless of the net living areas listed in this Condominium Final Public Report and the way in which they were measured.

LANAI BOUNDARIES. The lanai boundaries consist of these things:

- The decorated or finished surfaces of the outside walls of the building that separate the lanai from the apartment interior;
- The outside surface of any doors, door frames, windows and window frames that separate the lanai from the apartment interior; and
- The interior decorated surface of any railings or support posts, and any other walls or other improvements enclosing the lanai.

COMMERCIAL APARTMENTS

COMMERCIAL APARTMENT INTERIOR BOUNDARIES. The boundaries of the apartment interior consist of: (i) the exterior decorate or finished surface of all perimeter walls, windows and window frames, doors and door frames, and (ii) the interior surface of the perimeter floor and ceiling. If the condominium map does not use walls or other physical improvements to mark the boundaries of the apartment, then the boundary will consist of an imaginary vertical plane in the location shown by a line drawn on the condominium map. A commercial apartment includes any crawl space or plenum between the “ceiling” and any acoustic tiles or other ceiling system.

1) THINGS THAT ARE PART OF THE COMMERCIAL APARTMENT. These things are part of the commercial apartment:

- All of the walls and partitions that are not load-bearing and that are located inside of the apartment’s boundaries.
- All boundary walls and panels (including the interior and exterior decorated surfaces of those walls and panels).
- All movable lanai doors and the door frames.
- All doors and door frames located inside of the apartment’s boundaries.
- All boundary windows and window frames, doors and their door frames.
- The inner decorated or finished surface of the floors and ceilings.
- All fixtures originally installed in the apartment and all replacements of those fixtures.

2) THINGS THAT ARE NOT PART OF THE COMMERCIAL APARTMENT. These things are not part of the commercial apartments:

- Any load-bearing walls or columns inside of the apartment. However the decorated or finished surfaces are part of the apartment.
- The foundations, footings, girders, beams, floor slabs, supports, floors and ceilings surrounding each commercial 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 an apartment if they are used for or serve the common elements or more than one apartment.
- All of these things are Common Elements. This is so regardless of the net living areas listed in this Condominium Final Public Report and the way in which they were measured.

Exhibit C

Alterations to Apartment

1. ADDITIONS OR CHANGES WITHIN AN APARTMENT OR LIMITED COMMON ELEMENT.

Each owner has the right to make any of the following changes, additions and improvements solely within the owner's apartment or within any limited common element that the owner controls:

- The owner may install, maintain, remove and rearrange partitions and other structures from time to time within the apartment or limited common element.
- The owner may finish, change or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors or walls as appropriate for the use of the apartment or limited common element. This right does not extend to plumbing, electrical or other fixtures that are general common elements.
- The owner may decorate, paint, repaint, wallpaper or otherwise change the appearance of the walls, floors and ceilings of the apartment or limited common element.
- The owner may tile, finish, carpet, re-carpet, and install, change, or remove other flooring in the apartment or limited common element.
- The owner may install, change, or remove the ceiling system of a commercial apartment or its limited common elements.
- The owner may make "nonmaterial structural additions to the common elements" as that term is used in §514A-89 of the Hawaii Revised Statutes (Condominium Property Act).

The developer's reserved rights include the right to do any or all of these things with respect to any apartment that the developer owns or the limited common elements of an apartment that it owns.

2. CHANGES BETWEEN APARTMENTS AND/OR LIMITED COMMON ELEMENTS. The owner of an apartment has the right and an easement to do these things:

- It can change or remove all or any part of any common element wall, floor, or ceiling that separates the apartment from its limited common elements.
- It can install windows, doors, stairways and other improvements in any opening that it makes.
- It can seal hallways or other openings.
- It can make other reasonable changes or additions.

The developer's reserved rights include the right to do the same things with respect to any commercial apartment that it owns.

3. CHANGES BETWEEN TWO APARTMENTS. The owner of two (2) apartments which are separated by a common element that is a wall, floor or a ceiling, or whose limited common elements are separated from each other by a common element that is a wall, floor or ceiling, has the right and an easement to do these things:

- It can change or remove all or part of the intervening wall, floor and/or ceiling.
- It can install windows, doors, stairways and other improvements in such opening or openings in the intervening common element.
- It can seal hallways or other openings.

- It can make other reasonable changes or additions.

However, the owner may do the things listed above only if:

- The structural integrity of the building will not be adversely affected,
- The finish of the remaining common element improvements are restored to substantially the same condition they were in before the change or removal, and
- All construction activity is completed within a reasonable time after it begins. If there is a delay for reasons beyond the control of the owner or developer or their contractors, the construction activity must be completed in the additional time reasonably needed to finish it by working on it diligently.

The developer's reserved rights include the right to do the same things with respect to any two (2) apartments that it owns.

4. REDESIGNATION OF LIMITED COMMON ELEMENTS. The owner of any two (2) apartments has the right to change the designation of the limited common elements that go with those apartments so that all or any part of one apartment's limited common elements now will be appurtenant either to the other apartment or to both of the apartments. The owner cannot do this without the written consent of each lender who has a mortgage on either apartment. The developer's reserved rights include the right to do the same things with respect to any two (2) apartments that it owns.

5. SUBDIVISION OF APARTMENT. The owner of an apartment can subdivide the apartment to create two or more apartments. In connection with this subdivision, an owner can designate which limited common elements of the subdivided apartment will be appurtenant to the apartments resulting from the subdivision and convert parts of the existing apartment to common element status to facilitate the subdivision.

6. CONSOLIDATION OF APARTMENTS. An owner who owns any two (2) or more adjacent apartments may consolidate the apartments into a single apartment. In connection with this consolidation, the owner may make any common element walls between the apartments part of the apartment or its limited common elements. This does not apply, however, to load-bearing walls. The common interest of the newly created apartment will be equal to the sum of the common interests of the apartments being consolidated.

7. LIMITS ON OWNER ALTERATIONS. An owner is not authorized to do any of the following:

- Any work or change by an owner or the developer that would not be consistent with a first-class vacation ownership resort.
- Any work or change by an owner or the developer that would jeopardize the soundness or safety of any part of the project, or reduce the value of it.
- Any work or change by an owner (other than the developer) that would materially change the uniform external appearance of the project without the consent of the board and, during the development period, the developer.
- Restore or replace the project or any building or other structure on it,
- Construct any new building or other structure on it, or
- Make any structural change or addition to its apartment that is different in any material respect from the condominium map, unless pursuant to an amendment of the Declaration.

8. REQUIRED ALTERATIONS. The board of directors of the Association may require that an owner or the developer make changes within an apartment or limited common element as needed to comply with the fire code and all other laws that apply to the project.

Exhibit D

Limited Common Elements

1. LIMITED COMMON ELEMENTS - GENERALLY

All parts of the condominium except the apartments are called "*common elements*". Some common elements, called "*limited common elements*", are designated and set aside for the exclusive use of certain apartments. Except as otherwise specifically provided in the Declaration, those apartments have the exclusive right (in legal terms, an "*exclusive easement*") to use the Limited Common Elements set aside for their use. These Common Elements are Limited Common Elements:

A. MAILBOXES. Each apartment has the exclusive right to use the mailbox having the same number as the apartment.

2. RESORT LIMITED COMMON ELEMENTS. "*Resort limited common elements*" are limited common elements appurtenant to all of the resort apartments.

A. THINGS THAT ARE RESORT LIMITED COMMON ELEMENTS. Except as provided below, all common elements contained in or that are part of the building containing a resort apartment are limited common elements of that resort apartment. This includes, for example, the following common elements to the extent that they are located within the building containing an owner's resort apartments:

i. All lobby areas, stairways, elevators, corridors, hallways, elevator lobby areas, entrances, entry ways and exits of the building, all storage rooms, maintenance rooms, elevator machine rooms, mechanical rooms, electrical rooms and housekeeping closets so long as they are not located within an apartment or its limited common elements.

ii. Any sprinkler system, fire prevention, or other safety equipment.

iii. The structural components of the building. This includes, among other things, all foundations, footings, floor slabs, girders, beams, supports, apartment boundary and load-bearing walls and columns (except for the finishes on them), and roofs.

B. THINGS THAT ARE NOT RESORT LIMITED COMMON ELEMENTS. The following common elements are not resort limited common elements.

i. The pool, pool deck, jacuzzi, shower area and barbeque area.

ii. The trash rooms.

iii. The maintenance room, elevator machine room (if any), mechanical rooms and electrical rooms.

3. COMMERCIAL LIMITED COMMON ELEMENTS. "*Commercial limited common elements*" are limited common elements appurtenant to all of the commercial apartments. Initially this consists of only one apartment.

A. THINGS THAT ARE COMMERCIAL LIMITED COMMON ELEMENTS. Except for those areas that are not part of the commercial apartment, commercial limited common elements include, for example, the following common elements to the extent that they are appurtenant to all of the commercial apartments.

i. The structural components of the building containing the commercial apartment. This includes, among other things, all foundations, footings, floor slabs, girders, beams, supports, apartment boundary and load-bearing walls and columns (except for the finishes on them and except as otherwise provided for the walls separating commercial apartments), and roofs.

ii. All of the following so long as they are not located within an apartment or its limited common elements: all stairways, hallways, entrances, entry ways and exits of the building containing the commercial apartment, all storage rooms, maintenance rooms, elevator machine rooms, mechanical rooms, electrical rooms, and trash rooms.

iii. All other apparatus and installations existing for common use that serve only the building containing the commercial apartment.

Exhibit E

Common Interest

Except as otherwise provided by law or in the Declaration or elsewhere in the Bylaws, the common expenses will be charged to the owners in proportion to the common interests appurtenant to their respective apartments.

COMMON INTEREST FOR EACH APARTMENT. Each apartment comes with an undivided percentage interest, called the "*common interest*", in all common elements and for all other purposes, including voting. Except as otherwise provided in the Declaration, an apartment and its common interest cannot be separated. In legal terms, the common interest is "appurtenant to" the apartment.

The initial common interest for each apartment is as follows:

Apartment Number	Common Interest (%)
101	8.5125%
102	11.1871%
103	13.0557%
201	8.5125%
202	11.1871%
203	13.0557%
301	8.5125%
302	11.1871%
303	13.0557%
1	1.7341%

Except as otherwise provided by law or in the Declaration or the Bylaws of the Association of Apartment Owners of The Beach Villas at Kahalu'u, the common profits of the project will be distributed among, and the common expenses will be charged to the apartment owners, including the developer, in proportion to the common interest appurtenant to their apartments.

ADJUSTMENTS TO COMMON INTEREST.

When new apartments are created, the developer has the right to reallocate the common interests among the existing apartments and the new apartments. This includes the right to change the common interests of existing apartments. Each apartment will have an appurtenant undivided percentage interest in the common elements of the project. In the event that new apartments are added to the project, an apartment's common interest may be adjusted or recalculated by the developer. The undivided percentage interest appurtenant to a particular apartment will be based on the following fraction:

$$\frac{\text{The net living area of that apartment}}{\text{The sum of the net living areas for all apartments in the project.}}$$

The percentage common interest appurtenant to an apartment is equal to the result of this fraction, rounded as provided in section 25.3 of the declaration. Note that the term "net living area" is not limited to the area of an apartment that is suitable for occupancy. Rather the Hawaii Condominium Regulations use the term "net living area" to refer to the floor area of an apartment.

Exhibit F

Encumbrances on Title

1. All unpaid real property taxes.
2. Title to all minerals and metallic mines reserved to the State of Hawaii
3. Easement A for future Road Widening purposes over and across Lot 1-A of Makolea Subdivision and being more particularly described in the Condominium Declaration.
4. The Alta/ACSM Land Title Survey map prepared by Chrystal Thomas Yamasaki, Registered Professional Land Surveyor, Certificate No. LS-4331, on April 22, 2003 and revised December 18, 2003, discloses the following:
 - a. The CRM retaining wall along the Easterly property line protruding into the subject property.
 - b. A Transformer Vault on a Concrete pad at the Southwesterly corner of the property.
 - c. A "pad-mounted gear" on a concrete slab at the Southwesterly corner of the property.
 - d. 9 posts at the Southwesterly corner of the property.
5. Mortgage dated December 30, 2003, recorded in the Bureau of Conveyances of the State of Hawaii on January 2, 2004 as Document No. 2004-000577. *
6. Assignment of Rents and Leases dated December 30, 2003, recorded in the Bureau of Conveyances of the State of Hawaii on January 2, 2004 as Document No. 2004-000578. *
7. Notice of Time Share Plan dated February 3, 2004, recorded in the Bureau of Conveyances of the State of Hawaii on February 11, 2004 as Document No. 2004-029096.
8. Declaration of Merger of Condominium Phases of The Beach Villas at Kahalu'u dated February 3, 2004, recorded in the Bureau of Conveyances of the State of Hawaii on February 11, 2004 as Document No. 2004-029097.
9. Declaration of Condominium Property Regime of The Beach Villas at Kahalu'u dated February 3, 2004, recorded in the Bureau of Conveyances of the State of Hawaii on February 11, 2004 as Document No. 2004-029098.
10. Bylaws of the Association of Apartment Owners of The Beach Villas at Kahalu'u dated February 3, 2004, recorded in the Bureau of Conveyances of the State of Hawaii on February 11, 2004 as Document No. 2004-029099.
11. The Beach Villas at Kahalu'u Declaration of Covenants, Conditions, Easements and Restrictions for Vacation Ownership dated February 3, 2004, recorded in the Bureau of Conveyances of the State of Hawaii on February 11, 2004 as Document No. 2004-029100 (the "Time Share Declaration"), the Articles of Incorporation of The Beach Villas at Kahalu'u Vacation Owners Association (a copy attached to the Time Share Declaration), (iii) the Bylaws of The Beach Villas at Kahalu'u Vacation Owners Association (a copy is attached to the Time Share Declaration), and (iv) any rules and regulations adopted under the other vacation plan documents.
12. Collateral Assignment of Developer's Rights dated December 30, 2003, recorded in the Bureau of Conveyance of the State of Hawaii on February 19, 2004 as Document No. 2004-033968. *
13. 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 in said Condominium Map.

* Apartments will be conveyed to a buyer free and clear of these items.

Exhibit G

**The Beach Villas at Kahalu'u
2004 Budget for the Association of Apartment Owners (condominium association)**

	Per unit, Per month				
	Monthly	1-Bedroom	2-Bedroom	3-Bedroom	
Expenses					
• Security	\$12,000	\$1,000	\$85.63	\$113.15	\$134.56
• Facilities/Landscaping	\$43,200	\$3,600	\$308.26	\$407.34	\$484.40
• Administration	\$6,000	\$500	\$42.81	\$56.57	\$67.28
• Utilities/Cable	\$18,000	\$1,500	\$128.44	\$169.72	\$201.83
• Insurance	\$6,000	\$500	\$42.81	\$56.57	\$67.28
<i>Subtotal Expenses</i>	\$85,200	\$7,100	\$607.95	\$803.36	\$955.35
Reserve Contributions	\$9,000	\$750	\$64.22	\$84.86	\$100.92
Management Fees	\$6,000	\$500	\$42.81	\$56.57	\$67.28
Audit	\$2,500	\$208	\$23.15	\$23.15	\$23.15
Total Expenses & Reserves	\$102,700	\$8,558	\$738	\$968	\$1,147

I, SCOTT F. CHURCH, as agent for SFC Realty Corporation, the condominium managing agent for The Beach Villas at Kahalu'u condominium project, hereby certify that the estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.


Signature

Scott F. Church, Manager
Name

Pursuant to Section 514A-83.6, H.R.S., the developer has completed a reserve study.

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

Exhibit H

Summary of Escrow Agreement and Purchase Agreement

Copies of the specimen purchase agreement, and buyer's certification, and the executed escrow agreement have been submitted as part of the registration. The Escrow Agreement is dated February 9, 2004, and identifies Old Republic Title & Escrow of Hawaii as the escrow agent for the handling of purchase money for sales of time share interests in the project.

It is incumbent upon purchasers and prospective purchasers to read these documents with care. The escrow agreement establishes how the proceeds from the sale of time share interests are placed into escrow, as well as the retention and disbursement of these funds. The specimen purchase agreement also determines the time for and the amount of payments on the purchase price, and for the payment of all closing costs.

ESCROW AGREEMENT

When a buyer signs a purchase agreement, the buyer also adopts the escrow agreement, just as if the buyer had signed it. Buyers should make time to read the escrow agreement. It contains the developer's and buyer's instructions for the handling of the buyer's funds, notes and loan documents, and for closing the buyer's purchase.

Some of the key provisions of the escrow agreement may be summarized as follows:

DEFINITIONS.

"Blanket liens" are certain kinds of encumbrances as defined in the Hawaii Time Share Law (Chapter 514E, H.R.S.) that affect two or more vacation ownership interests. For example, a mortgage on vacation ownership interests is a blanket lien.

"Closing" refers to completing the sale of a vacation ownership interest. This normally includes recording the buyer's vacation ownership deed and any mortgage that the buyer signs, and payment to the developer of all sums due under the buyer's purchase agreement.

"Funds" means money.

"Loan Documents" means any "purchase money contract" as defined in the Time Share Law. In general, purchase money contract refers to things like a promissory note, an agreement of sale, or other contract in which the buyer agrees to repay a loan made to finance the buyer's purchase of a vacation ownership interest and made to the buyer by the developer or by a lender that is (i) affiliated with the developer or (ii) to whom the developer referred the buyer. A buyer's contract documents and vacation ownership deed are not loan documents.

"Notes" means any "negotiable instrument" as defined in the Time Share Law. A check is an example of a negotiable instrument. A "negotiable instrument" generally is a document that the developer could give to someone else who could then force the buyer to keep his or her promise to pay free from any claim or defense that the buyer might have against the developer.

DEPOSIT OF FUNDS.

Hawaii Law requires that: (a) buyer's funds, notes, and loan documents be put in escrow before closing and that the buyer's funds be refunded if the buyer cancels; (b) buyer's funds must be refunded in the other circumstances described later; and (c) closing cannot occur until the buyer is protected from blanket liens. The developer or the sales agent must give each buyer's funds, notes and loan documents to the escrow agent to hold in this account. But, as permitted by Hawaii Law, the developer or any sales agent may initially hold all notes (such as buyer's check) and loan documents (a) that are payable to the escrow agent, or (b) that are not negotiable instruments, until: (1) the seven-day cancellation period expires; and (2) the expiration of any longer period stated in the purchase agreement in which a buyer may cancel.

RELEASE OF BUYER'S FUNDS.

No matter what else the contract documents say, the escrow agent may not release the buyer's funds, notes or loan documents to the developer or a sales agent, or to someone else for the benefit of the developer or a sales agent, until the last of these events occurs:

1. The Hawaii Real Estate Commission has issued an effective date for a Final Public Report on the Condominium.

2. If the offer and sale is made partly or entirely in Hawaii:
 - a. The buyer's sales contract "has become binding, and the requirements of sections 514A-40, 514A-39.5 and 514A-63 have been met" as that phrase is used in section 514A-65 of the Condominium Property Act.
 - b. The escrow agent has received a copy of a receipt for disclosure statement signed by the buyer whose funds are being released; and
 - c. The seven-day cancellation period under section 514E-8, HRS, expires as to the buyer whose funds are being released; and
 - d. The escrow agent has received a sworn statement from the developer as to the buyer whose funds are being released. The statement must be dated no earlier than five days after the seven-day cancellation period has expired.

CLOSING CONDITIONS.

The escrow agent will close the sale on the closing date if all of the "closing conditions" listed in the Escrow Agreement (including the following, among others) have happened:

1. The escrow agent has not received a valid notice of cancellation from the developer or from the buyer; and
2. The escrow agent has received enough money to pay the purchase price stated on the buyer's purchase agreement less (i) any credits allowed by the developer and (ii) the amount of any loan made by the developer to the buyer; and
3. The escrow agent has received all necessary closing documents; and
4. All requirements set by developer or anyone else loaning money to the buyer for the purchase have been met, provided that escrow agent is notified of those requirements in writing; and
5. The buyer's unit is included in the Plan if it isn't already; and
6. The County of Hawaii has issued a temporary or permanent certificate of occupancy for the buyer's unit; and
7. A title insurance company authorized to do business in Hawaii is committed to issue, after the buyer's vacation ownership deed is recorded, a policy of title

insurance on the buyer's vacation ownership interest; and

8. As to each existing blanket lien, (i) the escrow agent is prepared to record or can confirm that someone else has already recorded a release of the buyer's vacation ownership interest from the blanket lien, or (ii) in the case of mechanics' or materialmens' lien, the buyer's title policy includes an attachment (in legal terms, an "endorsement") providing coverage against such liens; and
9. The requirements for release of the buyer's funds, as described above, have been met or will be met when the buyer's vacation ownership deed is recorded.

FUNDS IN ESCROW.

The escrow agreement provides that any interest earned on funds in escrow will belong to the developer.

REFUNDS.

The escrow agent will refund the buyer's funds (without interest) if and only if:

1. The offer and sale is made wholly or partly in Hawaii and either the buyer or the developer gives a valid notice of cancellation during the Seven-Day Cancellation Period under Section 514E-8, H.R.S.
2. The buyer gives a valid notice of cancellation under Section 514A-63 of the Condominium Property Act.
3. (i) The developer gives notice to the escrow agent that the buyer has used any right to cancel that the buyer has under the purchase agreement (except the right to under paragraphs 1 or 2, above); or (ii) The buyer gives notice to the escrow agent that the buyer has exercised any right to cancel that the buyer has under the purchase agreement (except the right to under paragraphs 1 or 2, above). If the developer instructs the escrow agent to do so, the escrow agent will refund the buyer's funds.

CANCELLATION BECAUSE THE BUYER DEFAULTS.

If the buyer defaults and the developer cancels the buyer's purchase agreement then the buyer's funds will be delivered as provided in the buyer's purchase agreement. If the purchase agreement provides that the buyer's funds are to be paid to the developer as liquidated damages, then before doing so the escrow agent must give the buyer notice, by registered or certified mail, stating that the developer has declared that the buyer is in default. If the escrow agent receives an objection from

the buyer within thirty (30) days after sending the notice to the buyer, then the escrow agent may deposit the buyer's funds in court. Otherwise, the escrow agent may pay the buyer's funds to the developer.

PROTECTION OF THE ESCROW AGENT.

The escrow agreement contains various protections for the escrow agent such as the following:

- If there is any dispute or conflicting claims, the escrow agent may deposit the buyer's funds with a court, which would then resolve the dispute or conflict.
- Both the developer and the buyer agree to protect and pay (or, in legal terms, "indemnify") the escrow agent for losses it suffers as a result of performing its duties. But this indemnity does not include losses due to the escrow agent's negligence or misconduct.

PURCHASE AGREEMENT

1. The buyer's certification is part of the purchase agreement.
2. The purchase agreement is a legally binding agreement between the buyer and developer. Under the purchase agreement, the buyer promises to buy the vacation ownership interest from the developer, and the developer promises to sell the vacation ownership interest to the buyer, under certain terms and conditions.
3. The purchase agreement specifies the apartment number, its unit type, the reservation right, the use right, and the frequency of reservation and use applicable to the vacation ownership interest purchased by the buyer. The purchase agreement also specifies the amount and time for payment of the purchase price, closing costs, and financing terms for any amounts of the purchase price which are financed by the buyer.
4. The developer must pick the day for the closing. That date is called the "closing date". It must occur within 90 days after satisfaction of the closing conditions. The developer, however, can postpone the closing if it wishes to do so. Neither the developer nor the escrow agent has to give the buyer notice of the closing date.
5. The escrow agent may not close until the "closing conditions" stated in the escrow agreement have been met. These are discussed above.

6. Buyers must pay the cash balance on the date shown on the first page of the purchase agreement. If the developer is financing the buyer's purchase, then the buyer must begin making monthly payments on the loan starting on the date stated in the purchase agreement. Until the closing the buyer must make these payments to the escrow agent. Payments made before closing will be applied first to interest on the cash balance and then to reduce the cash balance.
7. If buyer defaults, the developer can (a) cancel the purchase agreement, or (b) enforce it, or (c) do anything else permitted by the contract or by law. If the developer decides to cancel, then it may keep all amounts paid by the buyer. If the event of a dispute, the losing party must pay the winner's cost and expenses, including legal fees.
8. Things not written in the purchase agreement or buyer's certification are not part of the agreement, no matter what anyone says.
9. Any lawsuit or other legal proceedings will be handled in Hawaii and without a jury.
10. The developer is making no warranties. Everything is being sold "as is".
11. Each buyer will be a member of The Beach Villas at Kahalu'u Vacation Ownership Plan. The plan is located in The Beach Villas at Kahalu'u condominium and each buyer will belong to the Association of Apartment Owners of The Beach Villas at Kahalu'u (the condominium association).
12. Ownership and use of the vacation ownership interest are subject to the vacation plan documents and the condominium documents (the "important documents"). By signing the purchase agreement, each buyer accepts and approves of such documents and the escrow agreement. A buyer's rights and duties as an owner are defined, limited and governed by the important documents. In addition, the important documents could change under certain circumstances. By signing the purchase agreement, each buyer agrees to keep all of its promises in the purchase agreement even though some or all of the important documents may change after the purchase agreement is signed. However, the buyer does not give up its right to cancel under I.R.S. § 514A-63(a) of the Condominium Property Act.
13. The developer has arranged for Interval International, Inc. (II) of Miami, Florida, to make

its exchange program available to Owners in the plan. A buyer will have access to II's exchange program so long as the buyer is a member of the plan and the developer's contract with II remains in effect. While the developer expects that its relationship with II will continue, there is no assurance that it will do so for any particular time period.

14. In addition to the initial purchase price for the vacation ownership interest, buyers must pay the regular and any special assessments charged by the association and the condominium association. These fees are used to pay the cost of operating and maintaining those associations or the properties that they manage. *Buyers must pay these fees in full before they can make a reservation or use or exchange their use rights.* Buyers must pay the fees whether or not they use a unit in any particular year. These fees may be increased subject to the limits in the governing documents.

Exhibit I

Summary of Developer's Reserved Rights

The developer's reserved rights under the condominium documents include, among others, the right:

- ❖ To create new apartments in any new buildings and improvements constructed on the land or on any adjacent parcel added into the condominium (section 18);
- ❖ To create new apartments and/or common elements from the limited common elements of an apartment (section 18);
- ❖ To design, develop, construct and add new buildings and improvements on the land of the condominium or on any adjacent parcel and to merge any condominium on any adjacent parcel with the condominium (sections 19 and 21);
- ❖ To add into the condominium any "adjacent parcel" and any improvements located on the adjacent parcel (section 20);
- ❖ To develop the adjacent parcel condominiums and to merge any adjacent condominiums with the project pursuant to the Declaration of Merger.
- ❖ To change the condominium as needed or helpful to comply with law or with certain governmental permits, approvals or zoning requirements;
- ❖ To divide any apartment into two or more adjacent apartments or between an apartment and its limited common elements;
- ❖ To change or remove any wall, floor or ceiling between two adjacent apartments or between an apartment and its limited common elements;
- ❖ To create, grant, accept or otherwise deal (i) with any easements over, under, across or through the common elements, or (ii) easements in favor of the condominium or its land;
- ❖ To enter the condominium and to permit its employees, agents, contractors, and so on, to do so; and
- ❖ To make noise, dust, vibrations and do other annoying things when using these or other reserved rights of the developer.

THIS IS ONLY A SUMMARY OF CERTAIN DEVELOPER'S RESERVED RIGHTS. THE NATURE AND EXTENT OF ALL OF THE DEVELOPER'S RESERVED RIGHTS IS DESCRIBED IN AND GOVERNED BY THE CONDOMINIUM DOCUMENTS.

B. When an apartment owner or any other interested person acquires an apartment or any other interest in the project, he or she automatically does each of these things:

- 1) He or she takes his or her interest in the project subject to the developer's reserved rights, and each and every exercise and/or assignment of them.
- 2) He or she acknowledges, approves, consents to, agrees to and accepts:
 - The developer's reserved rights and its use of them from time to time;
 - That this may change the project;
 - That this may result in the recalculation of the common interest of some or all Apartments in some cases; and

- That the developer can file and/or record any and all documents that the developer deems necessary or convenient to the use of its rights. This includes, but it is not limited to, amendments to some or all of the condominium documents.

3) He or she agrees, promptly after being asked to do so, to join in, consent to, sign (and have notarized if asked), deliver, and record all documents and do all other things that the developer in its sole discretion determines to be necessary or convenient to the use of the developer's reserved rights or to accomplish the purposes for which those rights were reserved (as determined by the developer).

4) He or she appoints the developer as his or her attorney-in-fact to join in, consent to, sign, have notarized, deliver and record all documents and to do all things on his, her or its behalf. This means that the developer can act in the place of the owner or other interested person. The developer can do anything that they could do, and they ratify, accept and confirm anything that the developer does using this power of attorney.

- ❖ This power of attorney appointment is permanent. It cannot be revoked and will not be affected by the disability of the owner or any other interested person who gives it.
- ❖ The developer can let someone else act in its place as a substitute attorney-in-fact.
- ❖ Each owner and every other interested person gives the developer this power of attorney whether or not it expressly says so in any deed, mortgage, or other document by which he or she obtained an interest in the Project.
- ❖ The developer has the power to do only the things stated or intended by the condominium documents (as determined by the developer). This includes, however, the power to do anything else that the developer deems necessary or convenient to accomplish the stated or intended goal and anything incidental to it. Ambiguities must be resolved in favor of giving, not denying, the developer the power to act.