

CONDOMINIUM PUBLIC REPORT

Prepared &
issued by:

Developer Kahalu'u Beach Club LLC
Address 78-216 Makolea Street, #32, Kailua-Kona, Hawaii 96740
Project Name(*) The Beach Villas at Kahalu'u
Address 78-6721 Ali'i Drive, Kailua-Kona, Hawaii 96740

Registration No. 5069

Effective date: March 2, 2005
Expiration date: April 2, 2006

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: The Developer may not as yet have created the condominium but has filed with
(yellow) 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.

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

 X **SECOND** This report updates information contained in the:
SUPPLEMENTARY: [] Preliminary Public Report dated: _____
(pink) [x] Final Public Report dated: March 8, 2004
 [x] Supplementary Public Report dated: October 22, 2004

And [x] 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:

The changes listed below are changes that have been made since the issuance of the Final Public Report.

1. Square footage and Common Interest. The condominium map was revised due to changes in the dimensions and floor plans of the apartments. The changes to the dimensions of the apartments resulted in changes in the net living area of the apartments. Given that the common interest for each apartment is based on the net living area of that apartment, the common interest for all of the apartments in The Beach Villas at Kahalu'u condominium project has changed. These changes are reflected in a document called "First Amendment to the Declaration of Condominium Property Regime of the Beach Villas at Kahalu'u" recorded on August 19, 2004 with the Bureau of Conveyances of the State of Hawaii as Document No. 2004-171555. A copy of this First Amendment is on file with the Real Estate Commission.

2. Removal of Units from Time Share Plan. Initially, the nine (9) resort apartments covered by the Final Public Report effective March 8, 2004 were submitted to The Beach Villas at Kahalu'u Vacation Ownership Plan ("Time Share Plan") pursuant to the document called "The Beach Villas at Kahalu'u Declaration of Covenants, Conditions, Easements and Restrictions for Vacation Ownership (A Vacation Ownership Plan in The Beach Villas at Kahalu'u a Fee Simple Condominium)" recorded in the Bureau of Conveyances of the State of Hawaii on February 11, 2004 as Document No. 2004-029100. The developer subsequently decided to remove all nine (9) resort apartments in the Project from the Plan and sell the nine (9) resort apartments as individual resort apartments (whole units).

The developer removed Unit Nos. 101, 102, 103, 301, 302 and 303 of The Beach Villas at Kahalu'u condominium project from the Time Share Plan pursuant to those documents called "Declaration of Removal" recorded on August 19, 2004 in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-171556, and "Withdrawal of Units from Notice of Time Share Plan" recorded on November 29, 2004 in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-240332. The developer removed Units 201, 202 and 203 pursuant to those documents called "Declaration of Removal" recorded on January 25, 2005 in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-014310, and "Withdrawal of Units from Notice of Time Share Plan" recorded on January 25, 2005 in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-014311. A copy of these Declarations of Removal and Withdrawals of Units from Notice of Time Share Plan are on file with the Real Estate Commission.

3. Escrow Company. The escrow company remains the same, however a new escrow agreement for whole unit sales was executed on October 19, 2004 and a copy of this Escrow Agreement has been filed with the Real Estate Commission.

4. Management Company. A new management company has been retained and a copy of the Management Agreement has been filed with the Real Estate Commission.

5. Date of Completion. The estimated date of completion of construction of the condominium project has been changed. Construction of Phase 1 of The Beach Villas at Kahalu'u condominium project has begun and is now expected to be completed on or about January 31, 2005.

6. Developer's Contact Information. The address and the phone number for Kahalu'u Beach Club LLC, the developer and the fee owner, has changed. The new contact information is as follows: 78-216 Makolea Street, #32, Kailua-Kona, Hawaii 96740, Phone (808) 322-9433.

TABLE OF CONTENTS

	Page
Preparation of this report	1
Expiration Date of Reports	1
Type of Report	1
Disclosure Abstract	2
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information on Condominiums	4
Operation of the Condominium Project	4
I. PERSONS CONNECTED WITH THE 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: Managers and Members	
EXHIBIT B: Apartment Boundaries	
EXHIBIT C: Alterations to Apartments	
EXHIBIT D: Limited Common Elements	
EXHIBIT E: Common Interest	
EXHIBIT F: Encumbrances on Title	
EXHIBIT G: Estimated Initial Maintenance Fees and Budget	
EXHIBIT H: Summary of Escrow Agreement and Sales Contract	
EXHIBIT I: Summary of Developer's Reserved Rights	
EXHIBIT J: Copy of SMA Permit	

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) 322-9433
Name* (Business)
78-216 Makolea Street, #32
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, dba Big Island Phone: (808) 324-5965
Name Timeshare Resale Company (Business)
78-6842 Ali'i Drive, Suite 22B
Business Address
Kailua-Kona, Hawaii 96740

Escrow: Old Republic Title & Escrow of Hawaii, Ltd. 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*: Maryl Realty, Inc. Phone: (808) 331-8200
Name (Business)
75-1000 Henry Street, Suite 200
Business Address
Kailua-Kona, Hawaii 96740

Attorney for Developer: Charles E. Pear, Jr./Stacey Hee Phone: (808) 529-7300
McCorrison 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]:

First Amendment to the Declaration of Condominium Property Regime dated August 19, 2004, recorded in the Bureau of Conveyances as Document No. 2004-171555.

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]:

First Amendment to the Declaration of Condominium Property Regime dated August 19, 2004, recorded in the Bureau of Conveyances as Document No. 2004-171555.

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 at any time prior to the time such rights expire.

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: 78-6721 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
78-216 Makolea Street, #32
 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: 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 type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other:	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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

*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. In addition, the Declaration specifically provides that the resort apartments may be placed 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 A1 <u>(one-bedroom)</u>	<u>1</u>	<u>1 / 1</u>	<u>609.86</u>	<u>115.41</u>	<u>lanai</u>
Type A2 <u>(one-bedroom)</u>	<u>2</u>	<u>1 / 2</u>	<u>609.86</u>	<u>115.41</u>	<u>lanai</u>
Type B <u>(two-bedroom)</u>	<u>3</u>	<u>2 / 2</u>	<u>831.06</u>	<u>140.72</u>	<u>lanai</u>
Type C <u>(three-bedroom)</u>	<u>3</u>	<u>3 / 2</u>	<u>1033.5</u>	<u>140.90</u>	<u>lanai</u>
<u>Commercial</u>	<u>1</u>	<u>0</u>	<u>207</u>		

Total Number of Apartments: 10 apartments

***Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.** The apartment includes the interior of the apartment and the lanai area.

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. All apartments were designed and constructed for hotel or resort use and the Project is located in an area designated by the County of Hawaii for hotel and resort use.

~~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>	_____	_____
Structures	<u> x </u>	_____	_____
Lot	<u> x </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 designated 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 January 25, 2005 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.**

[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 of Developer Defaults or Lien is foreclosed **Prior to Conveyance**

Mortgage recorded in the Bureau of Conveyances of the State of Hawaii on January 2, 2004 as Document No. 2004-000577, as amended.

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

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:

Developer makes no warranties, express or implied, about the Project, the apartments or any consumer products or anything else installed in the apartments or on the Project. This includes but is not limited to warranties of merchantability, habitability, workmanlike construction, fitness for a particular use or sufficiency of design. **EVERYTHING IS BEING SOLD "AS IS" AND WITH ALL DEFECTS, WHETHER VISIBLE OR HIDDEN, AND WHETHER KNOWN OR NOT.**

1. Building and Other Improvements:

The Construction Contract provides that "if, within one year after the date of Substantial Completion of Work or designated portion thereof or after the date for commencement of warranties established under [the Construction Contract], or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the right to require correction by the Contractor and to make a claim for breach of warranty."

If the buyer gives the developer written notice of a condition to which a warranty made in the Construction Contract may apply promptly after buyer discovers it and before the applicable warranty period has expired (and before the developer accepts the condition), the developer will forward buyer's notice to the contractor together with a notice from the developer asking the contractor to make the correction. However, the developer is not making any warranty of its own or joining in the contractor's warranty or guaranteeing that the contractor will fix any defects or honor its warranty. The developer is simply trying to pass on the benefit of the contractor's limited warranty to the buyer. It should be noted that the developer will lose the right to have Work (as such capitalized term is defined in the Construction Contract) corrected if, during the applicable warranty period, it fails to notify the contractor and give the contractor an opportunity to make the correction. Further, the Seller does not warrant that the Construction Contract will not be amended in a manner that may change the warranty provision quoted above. See Construction Contract and Sales Contract on file with the Real Estate Commission for further details.

2. Appliances:

To the extent that such assignment is permitted, the developer will assign any manufacturer's or dealer's warranties covering any furnishings, fixtures and appliances that are part of the Apartment for the unexpired term, if any, at the close of escrow. It should be noted that the developer is merely attempting to pass through to buyer any such manufacturer's or dealer's warranties. The developer is not, however, adopting any such warranties or acting as co-warrantor with respect to any furnishings, fixtures or appliances. The terms of the manufacturers' or dealers' written warranties shall be available for buyer's examination at the developer's sales office.

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 has begun and is expected to be completed on or about January 31, 2005.

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 February 11, 2004 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.

Exhibit H contains a summary of the pertinent provisions of the sales contract

Escrow Agreement dated October 19, 2004

Exhibit H contains a summary of the pertinent provisions of the Escrow Agreement.

Other: _____

B. Buyer's Right to Cancel Sales Contract:

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

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

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

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: Declaration of Merger, Sales Contract, Form of Apartment Deed and SMA Permit No. 382.

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 a condominium project and related uses on the property. The property is subject to this permit. Buyers and/or the owners association must comply with this permit on an ongoing basis. A copy of this permit has been attached as Exhibit J to this Public Report.

- 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]. (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 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



Its Managing Member

2-24-05

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 the Declaration 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 decorated 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 the Declaration and the way in which they were measured.

Exhibit C

Alterations to Apartments

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 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 in sections 2 & 3 of this Exhibit 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 apartment:

i. All of the following so long as they are not located within an apartment or its limited common elements: 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, the maintenance room, elevator machine room, mechanical rooms and electrical rooms, if any.

3. LIMITED COMMON ELEMENTS OF APARTMENT NO. 1. Except as described in the portion of Exhibit B dealing with the Commercial Apartments, the following common elements are limited common elements of Apartment No. 1

A. The structural components of Building B (the building containing Apartment No. 1). 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. 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 Building B, all storage rooms, maintenance rooms, elevator machine rooms, mechanical rooms, electrical rooms, and trash rooms.

C. All other apparatus and installations existing for common use that serve only Building B and that serve more than one commercial apartment or the common elements of Building B.

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 – Type	Common Interest (%)
101 – Type A1	8.2218%
102 – Type B	11.0162%
103 – Type C	13.3132%
201 – Type A2	8.2218%
202 – Type B	11.0162%
203 – Type C	13.3132%
301 – Type A2	8.2218%
302 – Type B	11.0162%
303 – Type C	13.3132%
1 – Commercial Apt.	2.3464%

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. *

Withdrawal of Units from Notice of Time Share Plan recorded in the Bureau of Conveyances of the State of Hawaii on November 29, 2004 as Document No. 2004-240332 (as to Units 101, 102, 103, 301, 302 and 303). *

Withdrawal of Units from Notice of Time Share Plan recorded in the Bureau of Conveyances of the State of Hawaii on January 25, 2005 as Document No. 2005-014311 (as to Units 201, 202 and 203). *
8. Declaration of Merger of Condominium Phases of The Beach Villas at Kahalu'u 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 recorded in the Bureau of Conveyances of the State of Hawaii on February 11, 2004 as Document No. 2004-029098, as amended by First Amendment to Declaration of Condominium Property Regime of The Beach Villas at Kahalu'u recorded as Document No. 2004-171555.
10. Condominium Map No. 3706 filed in the Bureau of Conveyances of the State of Hawaii.
11. Bylaws of the Association of Apartment Owners of The Beach Villas at Kahalu'u recorded in the Bureau of Conveyances of the State of Hawaii on February 11, 2004 as Document No. 2004-029099.
12. Declaration of Covenants, Conditions, Easements and Restrictions for the Beach Villas at Kahalu'u Vacation Ownership Plan recorded on February 11, 2004 as Document No. 2004-029100. *

Declaration of Removal recorded on August 19, 2004 as Document No. 2004-171556 (Affects Units 101, 102, 103, 301, 302 and 303). *

Declaration of Removal recorded on January 25, 2005 as Document No. 2005-014310 (Affects Units 201, 202 and 203). *
13. Collateral Assignment of Developer's Rights recorded in the Bureau of Conveyance of the State of Hawaii on February 19, 2004 as Document No. 2004-033968. *
14. Grant of Perpetual Easement recorded in the Bureau of Conveyances of the State of Hawaii on January 18, 2005 as Document 2005-014310.
15. 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.

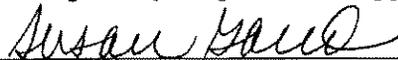
* Apartments will be conveyed to a buyer free and clear of these items.

Exhibit G

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

Expenses	Yearly	Monthly				Comm'l
	Totals	Total	1 Bdrm	2 Bdrm	3 Bdrm	Building
Electricity	\$5,400	\$450	\$37	\$50	\$60	\$11
Water	\$5,700	\$475	\$39	\$52	\$63	\$11
Sewer Services	\$4,550	\$379	\$31	\$42	\$50	\$9
TV Cable	\$0	\$0	\$0	\$0	\$0	\$0
Telephone	\$420	\$35	\$3	\$4	\$5	\$1
Housekeeping	\$600	\$50	\$4	\$6	\$7	\$1
Building	\$2,156	\$180	\$15	\$20	\$24	\$4
Landscape Contract	\$540	\$45	\$4	\$5	\$6	\$1
Grounds, Mat'l's and Supp (pt)	\$21,000	\$1,750	\$144	\$193	\$233	\$41
Elevator Maintenance	\$0	\$0	\$0	\$0	\$0	\$0
Plumbing	\$720	\$60	\$5	\$7	\$8	\$1
Pool Maint, Supp, Daily Testing	\$5,340	\$445	\$37	\$49	\$59	\$10
Pest Control	\$1,428	\$119	\$10	\$13	\$16	\$3
Refuse	\$3,540	\$295	\$24	\$32	\$39	\$7
Fire Extinguisher	\$504	\$42	\$3	\$5	\$6	\$1
Office & Administration	\$600	\$50	\$4	\$6	\$7	\$1
Bank Charges	\$187	\$16	\$1	\$2	\$2	\$0
Mailing / Copies	\$295	\$25	\$2	\$3	\$3	\$1
Taxes & Licenses	\$120	\$10	\$1	\$1	\$1	\$0
Management Service	\$6,000	\$500	\$41	\$55	\$67	\$12
Association Mtg Expense	\$240	\$20	\$2	\$2	\$3	\$0
Legal Fees	\$660	\$55	\$5	\$6	\$7	\$1
Audit /' Public Acctg	\$480	\$40	\$3	\$4	\$5	\$1
Security Services	\$6,000	\$500	\$41	\$55	\$67	\$12
Insurance	\$16,860	\$1,405	\$116	\$155	\$187	\$33
AOAO Rsserves (75%)	\$7,200	\$600	\$49	\$66	\$80	\$14
Contingency	\$900	\$75	\$6	\$8	\$10	\$2
	\$91,440	\$7,620	\$627	\$839	\$1,014	\$179

I, Susan Gand, as 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

 Susan Gand

 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 Sales Contract

Copies of the specimen sales contract and the executed escrow agreement have been submitted as part of the registration. The Escrow Agreement is dated October 19, 2004, and identifies Old Republic Title & Escrow of Hawaii, Ltd. as the escrow agent.

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

ESCROW AGREEMENT

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 and for closing the buyer's purchase.

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

DEPOSIT OF FUNDS.

The developer or the sales agent must deliver all payments from a buyer to the escrow agent to hold in an escrow account.

Any interest earned on funds held by the escrow agent under the escrow agreement shall accrue to the credit of the developer, unless the buyer requests that a separate account be established. The fee charged by the escrow agent to set up this separate account for the buyer is set forth in the escrow agreement.

RELEASE OF BUYER'S FUNDS.

No disbursement of a buyer's funds shall be made by the escrow agent unless an until (a) the Real Estate Commission has issued an effective date for the Supplementary Condominium Public Report that supersedes the Final Public Report, (b) a copy of that Supplementary Condominium Public Report, and any additional Supplementary Condominium Public Report(s) amending such Public Report (if any) shall be delivered to the subject Purchaser; provided that if an effective date for a Supplementary Condominium Public Report that supersedes all prior public reports on the Project is issued then only that superseding Supplementary Condominium Public Report (together with any additional Supplementary Public Reports amending the superseding Supplementary Public Report) will be delivered to the Purchaser, and (c) the buyer acknowledges receipt of same and waives buyer's right to cancel the sales contract or is deemed to have acknowledged receipt of same and

to have waived buyer's right to cancel the sales contract pursuant to Section 514A-62 of the Hawaii Revised Statutes.

Generally, the buyer's funds being held by the escrow agent may not be disbursed until after completion of construction of the condominium project as evidenced by the developer obtaining and providing to the escrow agent a copy of the Certificate of Substantial Completion of the project issued by the project's architect and the temporary or permanent Certificate of Occupancy issued by the County of Hawaii for the project.

However, in certain instances, the escrow agent may disburse funds held in escrow prior to the completion of construction of the project to pay the developer, the developer's contractor, or the developer's mortgagee, to pay for construction costs of the buildings and other improvements and fixtures in such amounts and at such times and in proportion to the valuation of the work completed by said contractor in accordance with the terms of the contractor's construction contract with the developer.

CLOSING.

The escrow agent shall not close the sale of a apartment, until the escrow agent has received all of the following:

1. The executed conveyance document for the apartment;
2. Receipt for Supplementary Public Report signed by the buyer or the buyer is deemed to have signed a receipt;
3. All necessary releases of any construction loan mortgage and related security interests relating to or affecting the apartment;
4. A commitment to issue a title policy at closing;

5. The full amount of the purchase price for the apartment; and

6. The buyer's share of the closing costs.

REFUNDS.

A buyer shall be entitled to the return of the buyer's funds, with interest to the extent provided in the sales contract, if any one of the following occurs:

1. The developer and the buyer instruct the escrow agent in writing to return the buyer's funds to the buyer; or

2. The developer notifies the escrow agent that the developer has decided to exercise its option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided for in the sales contract or otherwise available to developer with respect to which, in accordance with the sales contract, the buyer is entitled to a return of funds deposited with the escrow agent; or

3. The buyer has exercised such buyer's right to cancel the sales contract pursuant to Section 514A-62 of the Hawaii Revised Statutes; or

4. The buyer has exercised such buyer's right to rescind the sales contract pursuant to Section 514A-63 of the Hawaii Revised Statutes.

BUYER'S DEFAULT.

If a buyer is notified by the escrow agent that the developer has demanded payment of an amount due under the sales contract and the buyer fails to make such payment to the escrow agent on or before the due date or if such buyer fails to satisfy any obligation or requirement being handled by the escrow agent, the escrow agent will notify the developer of any such failure on the part of the buyer.

The developer may then notify the escrow agent that it has terminated the sales contract in accordance with the terms of the sales contract. Thereafter, the escrow agent shall treat all funds in accordance with the terms of the sales contract. For example, if the developer is entitled to keep the buyer's deposit under the sales contract then the escrow agent shall treat all funds buyer paid on account of such buyer's sales contract as funds of the developer, and not as funds of such buyer.

FEES

The escrow and title fees charged by the escrow agent are set forth in the escrow agreement.

PROTECTION OF THE ESCROW AGENT.

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

1. The escrow agent shall not have any liability for acting in accordance with the escrow agreement and shall not be responsible for the validity or sufficiency of any sales contract or other documents received by it.

2. If any dispute or difference shall arise or if any conflicting demand shall be made upon the escrow agent, the escrow agent shall not be required to determine the same or take any action. The escrow agent may await settlement of the controversy by final appropriate legal proceedings or otherwise as it may require, or the escrow agent may file a suit in interpleader in any court having jurisdiction in the matter, for the purpose of having the respective rights of the parties adjudicated and may deposit with the court any or all monies held pursuant to the sales contract. Upon institution of such interpleader suit or other action, depositing such money with the court, and giving notice of such suit or action to the parties thereto by personal service or in accordance with the order of the court, the escrow agent shall be fully released and discharged from all further obligations hereunder with respect to the monies so deposited.

3. The buyer agrees to pay the escrow agent on demand and to indemnify and hold harmless the escrow agent from and against all costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of every kind and nature reasonably suffered or incurred in connection with or arising out of the escrow agreement.

SALES CONTRACT

1. The sales contract is a legally binding agreement between the buyer and developer. Under the sales contract, the buyer agrees to buy and the seller agrees to sell the Apartment specified in the sales contract located in THE BEACH VILLAS AT KAHALU'U condominium project, the undivided interest in the common elements and appliances and furnishings listed in the sales contract, under certain terms and conditions.

2. The sales contract specifies the apartment number, floor plan type, number of bedrooms and bathrooms, net interior floor area, area of the lanai (if any), net living area and common interest for the apartment purchased by the buyer, along with any furniture and/or fixtures that are included. The

sales contract also specifies the amount and time for payment of the purchase price and closing conditions.

3. Buyer will receive and should read a copy of the Supplementary Condominium Public Report delivered to Buyer pursuant to Section 3(c) of the general terms and conditions of the sales contract. Buyer will also be provided with a copy and given the opportunity to read the Declaration of Condominium Property Regime of The Beach Villas at Kahalu'u and all amendments thereto, the By-Laws of the Association of Apartment Owners, the House Rules for The Beach Villas at Kahalu'u and the form of Apartment Deed covering the apartment being purchased by the buyer. A buyer's rights and duties as an owner are defined, limited and governed by these documents.
4. Among other things, the sales contract sets forth the purchase price, method of payment of the purchase price for the apartment, the conditions that must be fulfilled prior to closing and the requirements for buyer's obtaining financing for the purchase of the apartment.
5. Seller, as the developer, may develop the Project in stages. Each stage is called a "phase" or an "increment". Each phase may include apartments and other improvements. The development and construction of some phases may be commenced after Phase 1 of the Project has been completed. Seller and its representatives, licensees, and invitees, have an easement over, under and upon the Project and all of its parts, to create and cause noise, dust, soot, smoke, odors, surface water runoff, vibrations, and other nuisances or hazards in connection with (a) the exercise of the easements it has reserved under the Declaration, or (b) the exercise of the seller's reserved rights or any other rights of seller as described in the Declaration. Given this, buyer understands that these activities may result in noise, dust, soot, smoke, odors, surface water runoff, vibrations and other nuisances and hazards, and buyer consents to this activity, and gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions that he or she may have, now or in the future, against seller and/or its representatives, licensees, invitees, successors and assigns. Buyer will be assuming the risk of any property damage, personal injury or loss in property value which may arise out of or from these activities.
6. Buyer understands, acknowledges and accepts that seller and its representatives, licensees, and invitees has the exclusive right, and an exclusive easement in favor of seller and its representatives, licensees, and invitees, to conduct marketing and sales activities on the common elements (including but not limited to the limited common elements) and from any apartment owned by seller. This right includes, but it is not limited to, the right: (a) to permit purchasers and prospective purchasers and their family members and guests, to come onto the Project through the common elements intended for access to and from any nearby roads, streets or highways; (b) to permit purchasers and prospective purchasers to park motor vehicles in any unassigned parking stalls; (c) to show the Project (including, but not limited to, model apartments) to purchasers and prospective purchasers (who will have a right of ingress and egress for these purposes); (d) to use apartments owned or leased by seller as model apartments, sales, management, and/or administrative offices; and (e) to use banners, signs or other extensive sales displays and activities at the Project. This easement applies to activities conducted in connection with the initial sale or resale of any apartment, time share interests, and/or fractional ownership interests in the Project and any project on the Adjacent Parcel (as such capitalized term is more particularly defined in the Declaration). Buyer understands, acknowledges and accepts that these easements and the use of them may result in increased traffic, noise, and related inconveniences.
7. Seller has made no representations, warranties or assurances to buyer that the apartments are included within any particular school district. Buyer is responsible for determining the availability of schools and the same are subject to change by the applicable school district.
8. Neither seller nor any of its authorized agents, representatives or employees has made any representations, warranties or promises concerning any view, present or future, that may be enjoyed from all or any portion of the apartment or the project.
9. Any sum estimated for real estate taxes or insurance affecting the apartment or project may increase or decrease depending upon fluctuation of real property taxes or insurance rates.
10. Buyer has been provided with an estimate of the monthly maintenance charges and assessments against the apartment. Buyer is aware that such amounts are only estimates and are subject to future change for various reasons, and buyer accepts and

approves any such changes. BUYER AGREES THAT ESTIMATED MAINTENANCE FEE AMOUNTS ARE NOT INTENDED TO BE AND DO NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY BY SELLER, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF SUCH ESTIMATES.

11. After the sales contract has been signed, the buyer shall have the right to rescind the sales contract only if there is a material change in the condominium project which directly, substantially and adversely affects the use or value of (i) the Apartment or appurtenant limited common elements, or (ii) amenities of the Project available for buyer's use; provided that such material changes shall not include any changes, additions, deletions or modifications made pursuant to the terms of the Condominium Declaration.
12. If any material change is made to the condominium project after issuance of the Supplementary Public Report that is not provided for in the Condominium Declaration, the seller will provide the buyer with written notice (i) describing the material change and containing a provision for buyer's written approval or acceptance of the change, (ii) advising buyer that buyer has the right to rescind the sales contract within thirty (30) calendar days after delivery of the notice, and (iii) further advising buyer that if buyer does not act within the 30-day period, buyer will be deemed to have approved and accepted the material change. After receipt of the notice of material change, buyer may rescind this Agreement by giving notice of rescission to seller by the earlier of (i) thirty (30) calendar days after the date of delivery of the notice to buyer, or (ii) ninety (90) calendar days after buyer has accepted or occupied the Apartment (only if the notice of material change is delivered within sixty (60) calendar days after buyer's occupancy or acceptance of the Apartment). If buyer does not give seller notice of such rescission or approval of the material change within this time period, buyer will be deemed to have approved the change and waived buyer's right of rescission.
13. Buyer shall be in default under the purchase agreement if (i) buyer fails to furnish seller satisfactory evidence of buyer's ability to pay the purchase price; or (ii) buyer fails to furnish to seller the binding loan commitment letter by the date specified in the sales contract; (iii) buyer fails to furnish seller satisfactory evidence of buyer's ability to pay the purchase price in cash; or (iv) buyer fails

to execute and return the receipt and notice of right to cancel in connection with buyer's receipt of a copy of the effective Public Report(s) as provided in the sales contract. If buyer is in default under the sales contract for any of these reasons, then seller (and in some cases, but not all, the buyer) may have the option to terminate the sales contract. The sales contract sets forth terms by which it may be terminated.

14. Buyer will also be in default under the sales contract if (i) buyer fails to make any payment when due under the sales contract; or (ii) buyer fails to perform any other obligation or undertaking required of buyer under the sales contract for fifteen (15) calendar days after seller gives written notice to buyer of such failure. If buyer is in default for either of these reasons, the parties understand and agree that in view of seller's financial commitments and the nature of the real estate market in Hawaii, that the injury to seller will be uncertain as to nature and amount and difficult to ascertain. As a reasonable estimate of seller's damages resulting from any such default, the parties agree that the sums paid by buyer under the sales contract together with all accrued interest may be given to seller as liquidated damages. If seller does not elect to retain as liquidated damages the sums previously paid by buyer under the sales contract, then seller may pursue any other remedies permitted at law or in equity, including but not limited to specific performance of the sales contract.
15. Seller does not make any warranties, however the sales contract sets forth a procedure pursuant to which the seller will try to pass on the benefit of certain warranties to the buyer. This procedure requires that the buyer promptly notify the seller of any conditions to which a warranty may apply. Buyer should carefully read the sales contract to determine the types of conditions that may be covered by such warranties.
16. The sales contract shall not be construed as a present transfer of any interest in an apartment, but rather is an agreement to transfer in the future. Buyer acknowledges that seller has entered into an agreement a lender in order to cover construction costs. The maximum outstanding principal amount, the term and the interest rate are specified in the sales contract. To secure the loan, seller granted the lender security interests covering seller's interest in the Project, and the land underlying the Project. Buyer acknowledges and agrees that all security interests obtained by the lender in connection with such loan, as well as any extensions, renewals and

modifications of the security interests, shall be and remain at all times, until the final closing.

17. The sales contracts provides that BUYER INTENTIONALLY WAIVES, RELINQUISHES AND SUBORDINATES THE PRIORITY OR SUPERIORITY OF ANY LIEN OR OTHER LEGAL OR EQUITABLE INTEREST ARISING UNDER THE SALES CONTRACT IN FAVOR OF THE LIEN OR CHARGE ON THE PROJECT OR THE SECURITY INTERESTS OF LENDER, INCLUDING BUT NOT LIMITED TO ANY LIEN, MORTGAGE OR OTHER CHARGE SECURING A LOAN MADE TO FINANCE THE ACQUISITION OF THE LAND AND THE COSTS OF CONSTRUCTION AND OTHER COSTS DURING SUCH CONSTRUCTION AND ANY AND ALL ADVANCES THEREFOR, WHETHER CONTRACTUAL OR VOLUNTARY, UNTIL THE FINAL CLOSING AND DELIVERY BY SELLER OF AN APARTMENT DEED TO BUYER.

Buyer agrees to execute any further documentation or subordination agreement required by lender and irrevocably appoints seller as buyer's attorney-in-fact to execute any such instrument on behalf of buyer, should buyer fail or refuse to deliver the same within ten (10) calendar days after request is made. In addition, buyer also consents to seller's assignment to Lender, as security, of seller's interests in the sales contract and buyer's deposits with escrow, and agrees that in the event lender (or its successors in interest) acquires seller's interest therein pursuant to said assignment, that buyer will, at the lender's option, perform to, attorn to and recognize the lender (and its successors in interest, if any) as seller under the sales contract.

Buyer further understands and agrees that prior to the consummation of the sales contract and delivery of an Apartment Deed to buyer, the lender has the right under certain circumstances to foreclose its mortgage and/or enforce its other remedies under the loan documents or the law, and buyer agrees in such connection that the rights of buyer under the sales contract are purely contractual in nature, enforceable only against seller and its legal successors and assigns and not against the real property improvements and/or appurtenances thereto which are the subject of said mortgage or other loan documents.

Buyer agrees that buyer need not be named a party defendant or plaintiff in any cause of action or suit by the lender to foreclose and/or otherwise enforce

its rights under its mortgage or other loan documents, nor does buyer have any right to be served with process in connection with such action or to be notified of the pendency of such action.

18. Buyer also consents to seller's assignment to a lender, as security, of seller's interests in the sales contract and buyer's deposits with Escrow, and agrees that in the event Lender (or its successors in interest) acquires seller's interest therein pursuant to said assignment, that buyer will, at Lender's option, perform to, attorn to and recognize Lender (and its successors in interest, if any) as seller under the sales contract. Buyer further understands and agrees that prior to the consummation of the sales contract and delivery of an Apartment Deed to buyer, each Lender has the right under certain circumstances to foreclose its mortgage and/or enforce its other remedies under the loan documents or the law, and buyer agrees in such connection that the rights of buyer under the sales contract are purely contractual in nature, enforceable only against seller and its legal successors and assigns and not against the real property improvements and/or appurtenances thereto which are the subject of said mortgage or other loan documents. Buyer agrees that buyer need not be named a party defendant or plaintiff in any cause of action or suit by such Lender to foreclose and/or otherwise enforce its rights under said mortgage or other loan documents, nor does buyer have any right to be served with process in connection with such action or to be notified of the pendency of such action.

19. Seller unconditionally covenants and agrees that construction of the apartment shall be completed within two (2) years of the date that the sales contract becomes a binding contract between buyer and seller; provided, however, this two (2) year period will be extended for any period of time during which seller is actually and necessarily delayed in completing construction of the apartment, but only if the delay is caused by fire, earthquake, acts of God, the elements, war or civil disturbance, strikes or other disturbances, government legislation or controls, or economic controls making it impossible to obtain the necessary labor or materials, or other matters or conditions legally supportable under Hawaii law as being beyond the control of seller and which cause completion of construction of the apartment within said two (2) year period to be impossible.

20. Any lawsuit or other legal proceedings will be handled in Hawaii.

Exhibit I

Summary of Developer's Reserved Rights

A. 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.

Exhibit J

John K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Airport Street, Room 109 - H2A, Hawaii 96720-4252
(808) 941-8288 Fax (808) 941-9615

CERTIFIED MAIL
Z 179 517 406

APR 24 1998

Robert G. Nespor, AIA
P.O. Box 9003
Kailua-Kona, HI 96745

Dear Mr. Nespor:

Special Management Area Use Permit Application (SMA 98-1)
Applicant: Kahalu'u Beach Partnership
Request: Allow the Development of a 27-Unit Condominium and Related Uses
Tax Map Key: 7-8-14:86 and 87

The Planning Commission at its duly held public hearing on April 17, 1998, voted to approve the above-referenced application. Special Management Area Use (SMA) Permit No. 382 is hereby issued to allow the development of a 27-unit condominium project and related uses. The property is located on the southeast corner of the Ali'i Drive and Makolea Street intersection, across from Kahalu'u Beach Park, Kahalu'u, North Kona, Hawaii.

Approval of this request is based on the following:

The purpose of Chapter 205A, Hawaii Revised Statutes (HRS) and Special Management Area Rules and Regulations of the County of Hawaii, is to preserve, protect, and where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

The development of the approximately 27-unit condominium project will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and elimination of planning options. The project consists of a three story building, approximately 27-unit condominium and other related facilities. The proposed project is located mauka of

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Alii Drive approximately 400 feet from the shoreline. The property was graded and bulldozed. The flora on the subject property is sparse, consisting of one monkey pod tree, (*samanea saman*), koa-haole (*leucaena leucocephala*), castor bean (*ricinus communis*) and various weeds. There are no known rare or endangered plant life or animal species on the property or in its immediate vicinity. Therefore, there would be no adverse impact to recreational and visual resources, access to and along the shoreline nor coastal ecosystems. The proposed development would not impact the immediate adjacent properties as the subject property is surrounded by resort, condominiums, single family residences and vacant lands.

The proposed development is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. According to the applicant, the proposed project will be hooked up to the County of Hawaii's Keauhou Wastewater Treatment Plant. Any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements. Any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing regulations. With these precautionary measures in place, the proposed development is not anticipated to have any substantial adverse effects on the coastal resources or environment. Likewise, the potential of finding rare or endangered animal life is not anticipated.

An archaeological reconnaissance survey was conducted by Paul Rosendahl, in September 1986. "The archaeological reconnaissance survey revealed the project area had previously been entirely bulldozed, as evidenced by large uprooted tree trunks and scraped and scarred basalt boulders mounded together. A sparse surface scatter of weathered marine shell midden was present, but this material was disturbed, or secondary, context as a result of the bulldozing activity....Based on the findings of the reconnaissance survey, it is our opinion that the limited archaeological remains identified within the Keauhou Circle K Project Site of minimal significance in terms of potential scientific research, interpretive, and/or cultural value. We believe that the data recovered constitutes adequate and sufficient recovery of archaeological data present, and that no additional archaeological field work is necessary or justified." On January 20, 1995, a site visit was conducted by the Historic Preservation Division. The site inspection revealed, "Past developments along Alii Drive (makai) and Makolea Road (north), and a condominium mauka of the parcels have encroached on the parcels. In the past, some grading and placing of fill in the parcels has occurred. In Parcel 86 there is the collapsed remains of a historic house and what appears to be a community rubbish dump. No other structures or features were noted in the subject parcels. However, across Makolea Road, in parcel TMK: 7-8-14:47, a lava tube containing stacked stone features and human remains, has been recorded. The lava tube had been sealed by ceiling fall in Parcel 47, so the run of the lava tube could not be mapped. It appeared however, that the tube may run under Makolea Road towards the two subject parcels. We request that if a lava tube is encountered during any grubbing or grading work on the subject parcels, that work in the area of the exposed tube be halted and the Historic Preservation Division office be contacted immediately." Conditions of approval to ensure the review and approval of the Department of Land and Natural Resources, Historic Preservation Division have been included. The establishment of buffer zones, interim protection measures needs to be established. These mitigative

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measures will satisfy the SMA objective to "Protect, preserve and where desirable restore significant historic and cultural resources."

The proposed development is consistent with the County General Plan and Zoning Code. The proposed project does conform to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area for Urban Expansion. This designation allows for high and medium density uses which includes activities such as those proposed. The proposed development will compliment the following goals, policies and standards of the Land Use and Housing Elements of the General Plan:

LAND USE

- o Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- o Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhood, community, region and County.
- o The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

HOUSING

- o Attain safe, sanitary, and livable housing for the residents of the County of Hawaii.
- o Attain a diversity of socio-economic housing mix throughout the different parts of the County.
- o Maintain a housing supply which allows a variety of choice.
- o Develop better places to live in Hawaii County by creating viable communities with decent housing and suitable living environments for our people.
- o Improve and maintain the quality and affordability of the existing housing stock.
- o Seek sufficient production of new affordable rental and fee-simple housing in the County in a variety of sizes to satisfactorily accommodate the needs and desires of families and individuals.
- o Ensure that housing is available to all persons regardless of age, sex, marital status, ethnic background and income.

ECONOMIC

- o Provide residents with opportunities to improve their quality of life.

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- o Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- o The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

The proposed development would also compliment the following Courses of Action in North Kona:

- o Since the lands in this district are sloped, the County shall encourage the use of cluster and planned unit developments which can take advantage of the topography.
- o Aid and encourage the development of a wide variety of housing for this area to attain a diversity of socio-economic housing mix.

The proposed condominium development will add to the housing inventory for the district of North Kona. Thus, it is determined that the purpose and provision of this type of housing development in this district will be implementing the General Plan's Housing Element. This condominium will be in harmony with the character of the surrounding neighborhood, and will result in an intensity of land utilization no higher than, and standards of open space at least as high as permitted or as otherwise specified for the district in which this proposed condominium development occurs.

Based on the above findings, it is determined that the proposed development and related improvements will not have any substantial adverse impacts on the surrounding area, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management and Rule No. 9 of the Planning Commission relating to the Special Management Area.

Approval of this request is subject to the following conditions. Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Construction of the proposed development and related improvements shall be completed within five (5) years from the effective date of this permit. This time period shall include the securance of Final Plan Approval from the Planning Director for the proposed development. Plans shall identify structures, fire protection measures, paved and striped parking stalls and driveway, landscaping and other improvements associated with the proposed use.
3. Access, roadway and any drainage improvements shall be constructed in a manner meeting with the approval of the Department of Public Works.
4. Sewer lines shall be constructed to connect to the Keauhou Wastewater Treatment Plant system in a manner meeting with the approval of the Department of Public Works.

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5. A scaled and detailed buffering plan shall also be included in the plans to be submitted for Final Plan Approval to ensure that construction activity will not disturb the Makolea Trail. Plans shall show the location and details of the construction barrier (including height and type of materials) and any other proposed mitigating measures. This plan shall also be reviewed and approved by the Department of Land and Natural Resources, Historic Preservation Division, with a copy of such approval submitted with the plans for Final Plan approval.
6. Should any lava tube, or remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
7. Before construction or any land alteration activities occurs within the subject property, the property boundary adjacent to the historic Makole'a Trail shall be measured, staked, and roped with a continuous flagline by a registered surveyor in accordance with the approved buffering plan by DLNR-HPD. The Planning Department shall be notified to conduct a site inspection of the subject property to verify the location of the flagline prior to commencing any construction or land alteration activities and subsequently, after completion of the development. The flagline shall be left in place for the duration of construction activities within the subject property.
8. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
9. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.

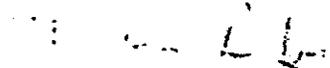
Robert G. Nespor, AIA
Page 6

- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



Kevin M. Balog, Chairman
Planning Commission

Lkahal01.PC

cc: Kahalu'u Beach Partnership /
Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
Office of State Planning, CZM Program (w/Background)
Department of Land and Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu
Corporation Counsel
Ms. Susan R. C. Johnson

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