

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer MARK ANDREW TERRY
Address 10041 Hanley Circle, Anchorage, AK 99507

Project Name (\*): MALEKA KAI
Project Address: 73-1247 Lihau Street, Kailua-Kona, HI 96740

Registration No. 5198
(Conversion)

Effective date: June 7, 2004
Expiration date: July 7, 2005

Preparation of this Report:

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

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

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

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

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

Type of Report:

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

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

X SUPPLEMENTARY: (pink) This report updates information contained in the:
[ ] Preliminary Public Report dated:
[X] Final Public Report dated: October 31, 2003
[ ] Supplementary Public Report dated:

And [ ] Supersedes all prior public reports
[X] Must be read together with the Final Public Report issued on October 31, 2003
[ ] This report reactivates the public report(s) which expired on

(\* ) Exactly as named in the Declaration
This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.
FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104

**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 Declaration of Condominium Property Regime of Maleka Kai and the Condominium Map for this Project were amended by instrument dated March 26, 2004, recorded as Document No. 2004-077278 to correct an error that was made on the Condominium Map as to the numbering of the units on the Site Plan and as to the floor plan for the loft portion of Unit 1, the description of Unit 1 and the designation of the limited common element land area this is appurtenant to each unit as set forth in Exhibit "B" to the Declaration as well as the easements that are described in Section E of the Declaration.

The changes made affect information contained on pages 1, 2, 5, 6, 12, 14, 15, 19, 21, Exhibits D & F of the Final Public Report issued on October 31, 2003 and those pages and exhibits are replaced by the corresponding pages and exhibits that are a part of this Supplemental Public Report.

**SPECIAL ATTENTION**

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

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

2. Facilities and improvements normally associated with County approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for, and services such as County street maintenance and trash collection will not be available for interior roads and driveways.

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: MARK ANDREW TERRY Phone: (907) 346-4098  
Name\* (Business)

10041 Hanley Circle, Anchorage, AK 99507  
Business Address

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

N/A

Real Estate Broker\*: COLDWELL BANKER ALOHA PROPERTIES Phone: (808) 987-6774  
Name (Business)

75-170 Hualalai Rd., Suite C-216  
Kailua-Kona, HI 96740  
Business Address

Escrow: TITLE GUARANTY ESCROW SERVICES, INC. Phone: (808) 329-6666  
Name (Business)

75-179 Hualalai Rd., Suite C-210  
Kailua-Kona, HI 96740  
Business Address

General Contractor\*: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name (Business)

\_\_\_\_\_  
Business Address

Condominium Managing Agent\*: Self-Managed by Association of Apartment Owners Phone: \_\_\_\_\_  
Name (Business)

Attorney for Developer: WALLACE H. GALLUP, JR. Phone: (808) 329-5014  
Name (Business)

75-5591 Palani Road, Suite 3007  
Kailua-Kona, Hawaii 96740  
Business Address

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. 2003-192248  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court Document Number \_\_\_\_\_

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

By instrument dated March 26, 2004, recorded in said Bureau as Document No. 2004-077278

- 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. 3635  
 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]:

By instrument dated March 26, 2004, recorded in said Bureau as Document No. 2004-077278

- 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. 2003-192249  
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]:

7. Parking Stalls:

Total Parking Stalls: 4

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	
Assigned (for each unit)	2: Unit 1 1: Unit 2	1: Unit 2					<u>4</u>
Guest							
Unassigned							
Extra for Purchase							
Other:							
Total Covered & Open	<u>4</u>		<u>0</u>		<u>0</u>		<u>4</u>

\*Unit 1 has a two-car garage and Unit 2 has a one-car garage with ample space within the limited common element appurtenant to Unit 2 for at least one additional regular open parking stall. Buyers are encouraged to find out which stalls will be available for their use.

Commercial parking garage permitted in condominium project.

Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities.

There are no recreational or common facilities.

Swimming pool                       Storage Area                       Recreation Area

Laundry Area                       Tennis Court                       Trash Chute/Enclosure(s)

Other: \_\_\_\_\_

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

There are no violations.                       Violations will not be cured.

Violations and cost to cure are listed below:                       Violations will be cured by \_\_\_\_\_  
(Date)

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

Based on a report prepared by an independent registered architect or engineer, it is the Developer's opinion that all structural components and electrical installations material to the use and enjoyment of the condominium units are presently sound and appear to be in satisfactory working condition. However, NO REPRESENTATIONS OR WARRANTIES OF ANY KIND ARE MADE AS TO THE EXPECTED USEFUL LIFE OF THE STRUCTURAL COMPONENTS AND MECHANICAL AND ELECTRICAL INSTALLATIONS MATERIAL TO THE USE AND ENJOYMENT OF THE CONDOMINIUM UNITS.

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

There are no limited common elements in this project.

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

described in Exhibit "D".

as follows:

NOTE: Land area appurtenant to each unit is not a legally subdivided lot.

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. 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" describes the encumbrances against the title contained in the title report dated May 21, 2004, and issued by Title Guaranty of Hawaii, Incorporated

Blanket Liens:

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

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

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. Buyer's interest will be affected only if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit If Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Tax Lien	Buyer's interest is subject and subordinate to such lien (Buyer's interest can be terminated and deposit refunded, less escrow cancellation fees).

**F. Construction Warranties:**

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

1. Building and Other Improvements:

NONE

2. Appliances:

NONE

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

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

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)

Website to access unofficial copy of laws: [www.hawaii.gov/dcca/hrs](http://www.hawaii.gov/dcca/hrs)

Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

This Public Report is Registration No. 5198 filed with the Real Estate Commission on September 23, 2003.

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

MARK ANDREW TERRY

Printed Name of Developer

By  4/28/04  
 MARK ANDREW TERRY Date  
 Developer

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 "D"

LIMITED COMMON ELEMENTS

The units shall have appurtenant thereto easements for the exclusive use of certain limited common elements as follows:

**PRIVATE LAND AREA OR YARD.** Certain land area of the project, located as shown on the condominium map and designated thereon as limited common element, together with all improvements thereon, is appurtenant to and for the exclusive use of each unit as designated on the condominium map.

<u>Unit No.</u>	<u>Yard No.</u>	<u>Area</u>
1	1	0.536 acres as shown on the Condominium Map.
2	2	0.503 acres as shown on the Condominium Map.

**NOTE:** The boundaries of the yard area appurtenant to each unit, as shown on the Condominium Map **do not** represent County-approved subdivided lots. Such boundaries serve only to delineate the limited common element yard area appurtenant to each unit.

**WATERLINES AND WATER-METERS.** Each unit is served by a separate waterline and county water-meter and each such waterline and water-meter shall be for the exclusive use of the unit to which it is attached.

**CESSPOOLS AND SEWERLINES.** Each unit is served by a cesspool and sewer line which is located on the limited common element yard area which is appurtenant to the unit and is for the exclusive use of the unit to which it is attached.

END EXHIBIT "D"

EXHIBIT "F"

ENCUMBRANCES AGAINST TITLE

1. For information regarding real property taxes as may be due and owing, reference is made to the Director of Finance, County of Hawaii.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Access Easement A-1, over and across Lot 21-B, in favor of Lot 21-A and Lot 21-C of the subdivision of Lot 21 of the Akahipuu Homesteads, and being more particularly described in Deed dated January 19, 1990, and recorded in said Bureau as Document No. 90-011312.
4. Covenants, conditions and restrictions set forth in DEED dated April 9, 1980, recorded in Liber 14721 at Page 574.
5. Grant to HAWAIIAN ELECTRIC LIGHT COMPANY, INC., a Hawaii corporation and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, now known as VERIZON HAWAII, INC., dated October 1, 1990, recorded in said Bureau as Document No. 91-062180, granting a perpetual right and easement to construct, reconstruct, repair, maintain and operate pole and wire lines and/or underground lines.
6. Declaration of Condominium Property Regime of "MALEKA KAI" Condominium Project dated July 14, 2003, recorded in said Bureau as Document No. 2003-192248 as amended by instrument dated March 26, 2004, recorded in said Bureau as Document No. 2004-077278.
7. Condominium Map No. 3635, as amended by instrument dated March 26, 2004, recorded in said Bureau as Document No. 2004-077278.
8. Bylaws of the Association of Unit Owners of "MALEKA KAI" Condominium Project dated July 14, 2003, recorded in said Bureau as Document No. 2003-192249.
9. Tax Lien by Department of Taxation, State of Hawaii, dated January 2, 2004, recorded in said Bureau as Document No. 2004-004195.

END EXHIBIT "F"