CONCURRING OPINION BY NAKAMURA, C.J.

I concur in the result reached by the majority, but write separately to explain my analysis of the appeal by the Association of Apartment Owners of Pacific Monarch, Inc. (AOAO) of the Circuit Court's entry of declaratory judgment that Clarence O. Furuya and Lona Lum Furuya (collectively, the "Furuyas") "are not obligated to pay 'additional rent' arising from their ownership of the 106 Parking Stalls to the [AOAO] under Section IV, 1A of the Conveyance Document, after April 26, 2014[.]"

At issue in this appeal is the interpretation of a condominium conveyance document (Conveyance Document), which conveyed Apartment No. 3206, an exclusive easement to use 106 parking stalls (Parking Stalls) appurtenant to Apartment No. 3206, an undivided interest in the common elements, and an undivided interest in a 75-year ground lease. The Conveyance Document provides in Section IV. 1. that the apartment owner shall pay specific amounts of annual rent for the first thirty-five years. It further provides in Section IV. 1A that the apartment owner shall pay specific amounts of additional monthly rent for the first thirty-five years based on his ownership and use of the Parking Stalls. However, while Section IV. 1. provides a specific method for determining the annual rent for the subsequent forty years, Section IV. 1A. does not state whether additional monthly rent for the Parking Stalls is owed, or provide a method for determining any such rent, for the subsequent forty years that begins on April 27, 2014.

Section IV. 1A. of the Conveyance Document is therefore silent on whether the owner of Apartment No. 3206 is obligated to pay additional rent for the Parking Stalls after April 26, 2014. I do not interpret this silence as indicating that the original parties to the Conveyance Document affirmatively intended that no additional rent would be owed on the Parking Stalls after April, 26, 2014. Indeed, in my view, the most reasonable inference to

be drawn from the Conveyance Document is that the parties intended that some additional rent would be owed for the remaining forty-year period. I draw this inference based on the following factors: (1) the Conveyance Document imposes a monthly rent charge for the first thirty-five years with respect to the Parking Stalls; (2) the amount of the monthly rent charge imposed by the Conveyance Document increases over time -- $2.50 per stall for the first ten years, $3.50 per stall for the next ten years, $4.50 per stall for the next ten years, and $5.50 per stall for the last five years; (3) the owner of Apartment No. 3206 is not the sole owner of the Parking Stalls, but the Parking Stalls are limited common elements which are included in the common elements, and the Conveyance Document only conveys an undivided 0.5107 percent undivided interest, "as tenant in common with Developer, its successors and assigns, in and to the Common Elements of the Project (exclusive of the Land)"; and (4) my belief that it is unlikely that a party who is able to charge rent for the use of the party's property, and has imposed a rent obligation for thirty-five years, would permit the same property to be used rent free for the ensuing forty years. See Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 110, 839 P.2d 10, 25 (1992) ("Where the language of a contract is 'susceptible of two constructions, one of which makes it fair, customary and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not likely enter into, the interpretation which makes a fair, rational and probable contract must be preferred.'" (citation omitted)).

Nevertheless, while I believe the original parties to the Conveyance Document intended that additional rent for the Parking Stalls would be owed during the forty-year period after April 26, 2014, they failed to provide any contractual basis for determining the amount of that rent. I disagree with the AOAO's argument that the Conveyance Document should be interpreted as

applying the method for determining annual rent for the subsequent forty-year period set forth in Section IV. 1. to determine the additional rent for the Parking Stalls after April 26, 2014. The method for determining annual rent set forth in Section IV. 1. is wholly incompatible with the determination of rent for the Parking Stalls and cannot be intelligibly applied to determine the rent for the Parking Stalls. In my view, because the Conveyance Document is silent regarding the payment of rent for the Parking Stalls after April 26, 2014, and does not provide a method for determining such rent, the Conveyance Document does not establish an obligation on the part of the Furuyas to pay additional rent with respect to the Parking Stalls after April 26, 2014. On this basis, I concur in the majority's decision to affirm the Circuit Court's entry of declaratory judgment that the Furuyas are not obligated to pay additional rent for the Parking Stalls under Section IV. 1A. of the Conveyance Document after April 26, 2014.

Under my analysis, the Conveyance Document would not preclude the AOAO from seeking recovery, with respect to the Furuyas' use of the Parking Stalls after April 26, 2014, based on principles of quantum meruit or unjust enrichment. "The basis of recovery on quantum meruit is that a party has received a benefit from another which it is unjust for him to retain without paying therefor." Maui Aggregates, Inc. v. Reeder, 50 Haw. 608, 610, 446 P.2d 174, 176 (1968); see Ventura v. Titan Sports, Inc., 65 F.3d 725, 730 (8th Cir. 1995) ("[I]f an existing contract does not address the benefit for which recovery is sought, quantum meruit is available regarding those items about which the contract is silent."). "[A] claim for unjust enrichment requires only that a plaintiff prove that he or she 'conferred a benefit upon' the opposing party and that the 'retention of that benefit would be unjust.'" Durette v. Aloha Plastic Recycling, Inc., 105 Hawaiʻi 490, 504, 100 P.3d 60, 74 (2004) (citation and brackets omitted).

However, the AOAO did not argue on appeal that it is entitled to seek recovery based on principles of quantum meruit or unjust enrichment. Therefore, I do not reach the question of whether the AOAO would be entitled to seek recovery under these principles.