



**REAL ESTATE COMMISSION  
STATE OF HAWAII**  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
1010 Richards Street  
P. O. Box 3469  
Honolulu, Hawaii 96801

**CONDOMINIUM PUBLIC REPORT**

on

MAUI ISANA RESORT  
Kihei, Maui, Hawaii

Registration No. 1940

Issued: May 24, 1988  
Expires: June 24, 1989

**Report Purpose:**

This report is based on information and documents submitted by the developer to the Real Estate Commission as of May 6, 19 88 and is issued by the Commission for informational purposes only. It represents neither approval nor disapproval of the project. Buyers are encouraged to read this report carefully.

**Type of Report:**

- PRELIMINARY:**      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 when complete information is filed.  
(yellow)
  
- FINAL:**                      The developer has legally created a condominium and has filed complete information with the Commission.  
(white)  
  - Supersedes all prior public reports
  - Must be read together with \_\_\_\_\_
  
- SUPPLEMENTARY:**      Updates information contained in the  
(pink)  
  - Prelim. Public Report dated \_\_\_\_\_
  - Final Public Report dated \_\_\_\_\_
  - Supp. Public Report dated \_\_\_\_\_
  
- And  Supersedes all prior public reports
- Must be read together with \_\_\_\_\_
  
- This report reactivates the \_\_\_\_\_  
public report(s) which expired on \_\_\_\_\_

**Disclosure Abstract: Separate Disclosure Abstract on this condominium project:**

Required                       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.

There were no prior public reports issued on this Project.

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## GENERAL INFORMATION ON CONDOMINIUMS

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of Hawaii's "Horizontal Property Act" (Chapter 514A, Hawaii Revised Statutes) must be followed.

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 they 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 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.

Some condominium projects are leasehold. This means that the land or the land, 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 owner/tenant) 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. The 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.

### 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 a vote of the owners. Some of these actions may significantly impact the quality of life for all 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 vitally important to all apartment owners that the transition from developer to owner control be accomplished in an orderly manner and in a spirit of cooperation.



I. PEOPLE CONNECTED WITH THE PROJECT

Developer: Marine Planning International, Inc. Phone: (808) 874-8828  
Name (Business)  
1325 South Kihei Road, Room 214  
Business Address  
Kihei, Maui, Hawaii 96753

Names of officers or general partners of developers who are corporations or partnerships:

President/Treasurer: Haruo Kurokawa  
Vice-President/Secretary: Shuw-Luan Chang

Real Estate Sales Agent: Edwin S. Higashiguchi dba East Gate Realty Phone: (808) 244-7160  
Name (Business)  
1371 Lower Main Street, Suite 4  
Business Address  
Wailuku, Maui, Hawaii 96793

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 244-7924  
Name (Business)  
2103 Wells Street, Suite C  
Business Address  
Wailuku, Maui, Hawaii 96793

Managing Agent: Oihana Property Management and Sales, Inc. Phone: (808) 244-7684  
Name (Business)  
840 Alua Street, Suite 202  
Business Address  
Wailuku, Maui, Hawaii 96793

Attorney for Developer: Foley, Maehara, Judge & Nip  
Name (Attn: Messrs. Eric T. Maehara and Wesley Y.S. Chang)  
737 Bishop Street, Suite 2700  
Business Address  
Honolulu, Hawaii 96813

**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 Horizontal Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners.

- A. Declaration of Horizontal 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 – Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed – Land Court – Document Number \_\_\_\_\_

Amendment date(s) and recording/filing information:

- 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 Conveyance Condo Map No. \_\_\_\_\_  
 Filed – Land Court Condo Map No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

- 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 way in which meetings will be conducted, and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

Proposed  
 Recorded – Bureau of Conveyances – Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed – Land Court – Document Number \_\_\_\_\_

Amendment date(s) 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 individual apartments. House rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais, keeping of pets, and occupancy limits. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial house rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed       Adopted

Developer does not plan to adopt house rules.

E. Changes to Condominium Documents

Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. Apartment Owners: Minimum percentage of apartment owners who 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>Not Applicable</u>

The percentages for individual condominium projects may be more than the minimum set by law.

2. Developer: The developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws, or House Rules:

See Exhibit A

The Condominium Statute (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to 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.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- Fee Simple: Individual apartments and the underlying land will be in fee simple.
- Leasehold or Subleasehold: Individual apartments and the underlying land will be leasehold.

The leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (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.

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.

Individual Apartments in Fee Simple, Underlying Land in Leasehold or Subleasehold:

The 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; or (2) convey the building(s) and improvements to the lessor, often at a specified price.

Exhibit \_\_\_\_\_ contains further explanations.

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:

For Subleaseholds: Not Applicable

- Buyer's sublease may be cancelled if the master lease between the sublessor and fee owner is  
 Cancelled  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 cancelled or foreclosed.

**B. Underlying Land:**

Address: 515 South Kihei Road Tax Map Key: 3-9-001-043  
Kihei, Maui, Hawaii 96753 (TMK) (2nd Division)

Address  TMK is expected to change because \_\_\_\_\_

Land Area: 95,195  square feet  acre(s)  
or 2.185 acres Zoning: H-1 (65,896 sq. ft.)  
H-M (29,299 sq. ft.)

Fee Owner: Marine Planning International, Inc.

name  
1325 South Kihei Road, Room 214  
address  
Kihei, Maui, Hawaii 96753

Sublessor: 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. Buildings: 5 Floors Per Building: 4 buildings with 2 floors each  
1 building with 6 floors  
 Exhibit B contains further explanations.

3. Principal Construction Material:

- Concrete  Hollow Tile  Wood  
 Other \_\_\_\_\_

4. Permitted Uses:

	<u>No. of Apts.</u>		<u>No. of Apts.</u>
<input checked="" type="checkbox"/> Commercial	<u>3</u>	<input type="checkbox"/> Industrial	_____
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Agricultural	_____
<input checked="" type="checkbox"/> Residential <del>Residential</del> Hotel	<u>50</u>	<input type="checkbox"/> Recreational	_____
<input type="checkbox"/> Other:	_____		_____

5. Special Use Restrictions:

The Declaration, Bylaws, and House Rules may contain restrictions on the use and occupancy of apartments. Restrictions for this condominium project include but are not limited to:

No livestock, poultry, rabbits, or other animals whatsoever

Pets: without the prior written consent of the Board of Directors

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

Other: See Exhibit C

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Total Apartments	<u>53</u>		1 (Bldg. A)	
			2 (Bldg. B)	
Elevators	<u>1 (Bldg. C)</u>	Stairways	2 (Bldg. C - internal)	
			2 (Bldg. D)	Trash Chutes <u>1 (Bldg. C)</u>
			2 (Bldg. E - internal)	

<u>Apt. Type</u>	<u>Qty</u>	<u>BR/Bath</u>	<u>Net Living Area*</u>	<u>Lanai/Patio</u>
<u>See Exhibit D</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>

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

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

**Boundaries of Each Apartment:**

The interior surface of the perimeter walls, floors and ceilings of each of the fifty-three (53) apartments of the Project, excluding lanais and any other areas not fully enclosed.

**Permitted Alterations to Apartments:**

See Exhibit E

7. Parking Stalls:

Total Parking Stalls: 106

	Regular		Compact		Tandem		TOTAL
	covered	open	covered	open	covered	open	
Assigned (for individual units)		<u>64</u>		<u>17*</u>			<u>81</u>
Guest Unassigned		<u>11</u>		<u>14</u>			<u>25</u>
Extra Available for Purchase							
Other:							
Total Covered & Open	<u>75</u>		<u>31</u>				

Each apartment will have the exclusive use of at least one (1) parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

Commercial parking garage permitted in condominium project.

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

\* Includes two (2) numbered stalls for handicapped parking

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool / spa

Storage Area

Recreation Area

Laundry Area

Tennis Court

Trash Chute (Bldg. C only)

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

9. Present Condition of Improvements

(For conversions of residential apartments in existence for five years):

a. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations

Not Applicable

b. Compliance with Building Code and Municipal Regulations; Cost to Cure Violations

Not Applicable

10. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>x</u>	_____	_____
Structures	<u>None</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 intended to be used by all apartment owners. They are owned jointly by all apartment owners.

Exhibit   G   describes the common elements.

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 are:

described in Exhibit   G  

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 often 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.

Exhibit   H   describes the common interests for each apartment.

as follows:

E. Encumbrances Against Title: An encumbrance is a claim against or a liability on the property.

Exhibit I describes the encumbrances against the title contained in the title report dated March 17, 1988.

Blanket Liens:

A blanket lien is a mortgage on a condominium project that secures a construction loan. It 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 prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest If Developer Defaults</u>
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There is no blanket lien as of the date of submission of this Preliminary Condominium Public Report. Developer intends, however, to obtain a construction loan, which said loan will be disclosed in the Final Public Report for this Project.

F. Management of the Common Elements: The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a managing agent to assist the Association in managing the condominium project.

Initial Managing Agent: When the developer or the developer's affiliate is the initial managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial managing agent for this condominium is:

not affiliated with the Developer.

the Developer or the Developer's affiliates.

other \_\_\_\_\_

**G. Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, your apartment may be liened and sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided to each apartment.

Exhibit   J   contains a schedule of maintenance fees and maintenance fee disbursements.

**H. Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

- |   |  |
|---|--|
| <input type="checkbox"/> Electricity    | <input checked="" type="checkbox"/> Television Cable |
| <input checked="" type="checkbox"/> Gas | <input checked="" type="checkbox"/> Water & Sewer    |
| <input type="checkbox"/> Other _____    |  |

**I. 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:**

The closing of the sale of the apartment shall constitute the assignment by Developer to the Buyer of any and all warranties given the Developer by the Contractor for the Project and by any subcontractors or materialmen, including the Contractor's guarantee of materials and workmanship against faulty or deficient materials and installation for a period of one (1) year after "substantial completion" of the apartment, as defined in the construction contract for the Project, and the benefit of such warranties shall accrue to the Buyer on closing without further instruments or documents.

**2. Appliances:**

Warranties on appliances furnished with an apartment shall run in favor of each Buyer directly from the respective manufacturer thereof. The duration and expiration dates of said appliance warranties will vary depending upon the type of appliance, the terms of the warranty and the dates of installation and/or first use. There are no other warranties, express or implied, with respect to the apartments or the appliances in the Project or any common element of anything installed therein.

J. Status of Construction and Estimated Completion Date:

Construction of the Project commenced in January, 1988.  
The estimated completion date is February 28, 1989.

K. Project Phases:

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

Summary of Developer's Present Plans for Future Development:

Not Applicable

L. Sales Documents Filed with the Real Estate Commission:

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

[x] Notice to Owner Occupants

[x] Specimen Sales Contract

Exhibit  K  contains a summary of the pertinent provisions of the sales contract.

[x] Escrow Agreement dated  April 15 , 1988

Exhibit  L  contains a summary of the pertinent provisions of the escrow agreement.

[x] Other  Specimen Apartment Deeds and other documents as listed on the Notice of Intention dated April 15 , 1988.

**IV. ADDITIONAL INFORMATION NOT COVERED ABOVE**

**Buyer's Right to Cancel Sales Contract:**

**A. Rights Under the Condominium Statute:**

**Preliminary Report:** Sales made by the Developer 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.

**Final Report, Supplementary Report to a Final Report:** Sales made by the Developer are binding if:

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

1. There is a material change in the condominium which directly, substantially, and adversely affects (a) the use or value of the buyer's apartment or its limited common elements; or (b) the amenities available for buyer's use; and
2. 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.

**B. Rights Under the Sales Contract:**

Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the condominium. These include but are not limited to the:

1. Condominium Public Reports issued by the Hawaii Real Estate Commission.
2. Declaration of Horizontal Property Regime and Condominium Map.
3. Bylaws of the Association of Apartment Owners.
4. House Rules.
5. Escrow Agreement.
6. Hawaii's Condominium Law (Chapter 514A, HRS, as amended; Hawaii Administrative Rules, Chapter 16-107, adopted by the Real Estate Commission).
7. Other \_\_\_\_\_

If these documents are not in final form, the buyer should ask to see the most recent draft.

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Law (Chapter 514A, HRS and Hawaii Administrative Rules Chapter 16-107) are available at the Department of Commerce and Consumer Affairs.

This Public Report is a part of Registration No. 1940 filed with the Real Estate Commission on April 21, 1988.

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

yellow paper stock                       white paper stock                       pink paper stock

**Expiration Date of Reports.** Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the date of issuance unless a Supplementary Public Report is issued or unless the Commission issues an order extending the effective period for the report.

Supplementary Public Reports expire on the expiration date given on the front of the report.



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GLORIA DAMRON, Chairman  
REAL ESTATE COMMISSION  
STATE OF HAWAII

**Distribution:**

Bureau of Conveyances  
Department of Finance, County of Maui  
Planning Department, County of Maui  
Federal Housing Administration  
Escrow Agent

## EXHIBIT "A"

### DEVELOPER'S RESERVED RIGHTS TO CHANGE CONDOMINIUM DOCUMENTS

The following provisions in the Declaration and the apartment sales contracts, as indicated, reflect those rights which the Developer has reserved to change the Declaration, Condominium Map, By-Laws or House Rules:

#### I. DECLARATION

Paragraph S. The Developer may, at any time prior to the recordation of an Apartment Deed in the Bureau of Conveyances of the State of Hawaii demising an apartment to a party not a signatory to the Declaration, amend the Declaration and the By-Laws in any manner as Developer may deem fit. Notwithstanding the foregoing and notwithstanding the sale and conveyance of any of the apartments, the Developer may amend the Declaration to file the "as built" verified statement (with plans, if so applicable) required by Section 514A-12, Hawaii Revised Statutes, as amended, (1) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed fully and accurately depict the layout, location, numbers and dimensions of the apartments as built, or (2) so long as plans filed therewith involve only immaterial changes to the layout, location, numbers and dimensions of the apartments as built.

#### II. APARTMENT SALES CONTRACTS

The Developer has filed two (2) specimen sales contracts with the Hawaii Real Estate Commission as follows: (1) Deposit Receipt and Sales Contract For Owner-Occupants As Required By Act 189 and (2) Deposit Receipt and Sales Contract. Developer, as "Seller" under both sales contracts, has reserved the right to modify the Declaration, By-Laws and Exhibits, and the Apartment Deed, as may be required by law, any title insurance company or any institutional mortgagee.

EXHIBIT "B"

DESCRIPTION OF BUILDINGS

The Project will consist of five (5) buildings designated as Buildings A through E, respectively, and containing a total of fifty-three (53) apartments (hereinafter referred to as the "apartments"). As the Project is viewed from Kihei Road, the Buildings have been designated alphabetically in a clockwise fashion, with Building A situate on the lower left corner of the Project (at approximately seven o'clock), Building B on the left side of the Project (at approximately nine o'clock), Building C on the back portion of the Project (at approximately twelve o'clock), and Building D situate on the right side of the Project (at approximately three o'clock), and Building E situate on the lower right corner of the Project (at approximately five o'clock). The Buildings will be constructed principally of concrete block, concrete, wood, metal and relating building materials on a concrete slab foundation. There will be one hundred six (106) parking stalls in the Project. None of the Buildings has any basement.

Building A will be a two-story structure and will include Commercial Apartment 1, Commercial Apartment 2, men's and women's restrooms and pool equipment room on the ground floor, and two (2) apartments on the second floor.

Building B will also be a two-story structure and will include four (4) apartments on the ground floor and four (4) apartments on the second floor.

Building C will be a six-story structure and will include six (6) apartments on the ground floor and six (6) apartments each on the second through sixth floors of the Building.

Building D will be a two-story structure and will include two (2) apartments each on the ground floor and second floor.

Building E will be a two-story structure and will include Commercial Apartment 3 on the ground and second floors.

EXHIBIT "C"

USE RESTRICTIONS FOR APARTMENTS  
AND PROJECT COMMON ELEMENTS

The following provisions in the Declaration, By-Laws and House Rules, as indicated contain restrictions on the use of the apartments and the common elements of the Project:

I. DECLARATION

Paragraph J. Commercial Apartment 1 shall be used for any lawful purpose, including general office use and related purposes. Commercial Apartment 2 shall be used for any lawful purpose, including retail and use of goods, merchandise, clothing and other items. Commercial Apartment 3 shall be used for any lawful purpose, including the operation of a restaurant and related purposes. The Residential Apartments shall be occupied and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests and may be utilized for long-term or transient rentals, including vacation rentals, but specifically excluding timesharing plans. Subject to the foregoing limitations, the owners of the apartments shall have the absolute right to rent or lease the same subject to the limitations, restrictions, covenants and conditions of the Declaration.

II. BY-LAWS

Article VIII, Section 1(D). No owner shall use or keep anything on the grounds or any other common elements which would in any way hinder the full use and enjoyment thereof by any other owner or occupant.

Article VIII, Section 2.

(A) No owner or occupant of an apartment shall post any advertisement, bill, poster, or other sign on or about the Project without the prior written approval of the Board of Directors of the Association of Apartment Owners (the "Board").

(B) All owners and occupants shall exercise extreme care about causing or permitting noises that may disturb other occupants.

(C) No owner or occupant shall permit any child residing or visiting with him to loiter or play in the stairways, corridors or parking areas or other areas of the Project not intended for such use.

(D) No garbage, refuse or trash of any kind shall be thrown, placed or kept on any common element other than the disposal facilities provided for such purposes.

(E) Nothing shall be allowed, done, or kept in any apartment or common element which will cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance maintained by or for the Board with respect thereto, nor shall any noxious or offensive activity or nuisance be made or suffered thereon.

(F) No owner or occupant shall place, store or maintain on walkways, roadways, grounds or other common elements any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.

(G) No owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of such owner's or occupant's apartment or the Project nor alter or remove any furniture of the common elements.

(H) Except in those cases where construction or alterations are permitted by the Declaration, no owner or occupant shall erect or place in the Project any building or structure including fences and walls, nor make any additions or structural alterations to or exterior changes of any common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications including detailed plot plan, prepared by a licensed architect if so required by the Board and approved by the Board and a majority of the apartment owners as defined in the By-Laws (or such larger percentage required by law or the Declaration) including all owners of apartments thereby directly affected where such additions, alterations to or exterior changes are made to any limited common elements of the Project.

(I) No owner or occupant, without the prior written approval of the Board, shall erect, place or maintain any television or other antennas on said Project visible from any point outside of the Project.

(J) No livestock, poultry, rabbits, pets or other animals of any kind, shall be allowed or kept in any part of the Project without the prior written consent of the Board.

### III. HOUSE RULES

#### SECTION A. RULES PERTAINING TO APARTMENTS

1. Visible Aesthetics. Except for any of the following items provided with the apartment by the Developer, no awning, venetian blinds, window guards, radio or television antenna or planters shall be attached to or hung from the exterior of any building or protrude through the walls, windows

or roof thereof, and no notice, advertisement, bill, poster, illumination or other sign shall be inscribed or posted on or about the Project, unless approved in writing by the Board of Directors or the Managing Agent, nor shall anything be projected from any windows of the Project without similar approval. If a person wishes to change the draperies originally provided with the apartment, the side of all draperies or curtains placed against the windows or doors or openings facing toward the exterior of the building shall be as nearly identical in color to those originally provided as practical.

2. Nameplates. Nameplates and names of the owners may be displayed only in the form and at such places as are approved by the Board.

3. Noise. All noises from whatever source shall be discriminately controlled so that they do not disturb or annoy other residents of the building. All residents shall maintain quiet between the hours of 8:30 p.m. and 7:00 a.m. daily except on Fridays, Saturdays and nights preceding holidays when the quiet hours shall begin at 12:00 midnight. Excessive noise at any time should be reported to the Resident Manager, Board of Directors or Managing Agent for appropriate action.

4. Lanais. All plants shall be placed in containers so as to prevent the dripping of water or soil onto other apartments or the common elements. Care should be taken in scrubbing lanais so as to prevent water from running down the exterior of the building. Garments, rugs, mops or other objects shall not be dusted or shaken from lanais, windows, stairways or the fire escape areas of the buildings or cleaned by beating or sweeping on any exterior part of the buildings. Dust, rubbish, or litter shall not be swept or thrown from any apartment or any other room of the buildings into any entry way or other parts of the premises. Furthermore, nothing shall be thrown or emptied by occupants or their guests out of windows or doors into any part of the buildings or the Project. Textile items, such as towels, bathing apparel and clothing, brooms, mops or cartons shall not be placed on lanais or passages or in windows so as to be in view from the outside of the building or from the apartment above. No shoes, go-aheads, dry cleaning, etc., shall be allowed to remain in view at any entry way or apartment above. No fires or open flame shall be permitted on any apartment lanai.

5. Pets. No livestock, poultry, rabbits, or other animals whatsoever, shall be allowed or kept in any part of the Project without the prior written consent of the Board.

6. Rubbish. Explosives or waste of flammable nature, and other refuse or waste materials which may create an unpleasant odor, discharge noxious or flammable gases or vapors, or pose any hazard to health or property shall not be deposited in the garbage collection areas. Rubbish is to be bound in

reasonable bundles, placed in plastic bags, and deposited by the residents in the garbage collection areas.

7. Guests. The apartment occupant is responsible at all times for the reasonable conduct of the occupant's guests. Any guest who will be residing in the building for a week or more should be registered with the Resident Manager and Managing Agent.

8. Air Conditioning. All air conditioning units must be approved by the Association prior to installation to insure that the voltage requirements are compatible with the electrical system of the Project. All air conditioners shall be equipped with appropriate drip pans to prevent the accumulation or dripping of water on lanais and thus prevent the possibility of water damage or irritation to other apartments.

#### SECTION B. COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

1. Surfboards and Bicycles. Surfboards and bicycles shall be stored only in the apartments and not in any common element of the Project.

2. Protection of Common Areas. Furniture, furnishings and equipment for the common elements have been provided for the safety, comfort and convenience of all residents and guests of the residential apartments and therefore, shall not be altered, extended, removed or transferred to other areas without permission from the Managing Agent.

3. Access. The grounds, walkways, stairways, building entrances, driveways, and other similar common elements shall be used strictly for ingress and egress from the parking and apartment areas, and must be at all times kept free from obstructions.

4. Litter. Waste receptacles are provided for use in the common elements.

5. Children. An apartment resident shall be responsible for the conduct of his children at all times, insuring that their behavior is neither offensive to any occupant of the building nor damaging to any portion of common elements.

6. Landscaping. None of the Project's landscaping is to be removed, picked, or transplanted by any residents or guests.

7. Recreational Facilities. Each unit owner will abide by the Rules and Regulations for the swimming pool and other recreational facilities which are a part of the Project.

## SECTION C. GENERAL

1. Hazards. Nothing shall be allowed, done or kept in any apartment unit or common areas of the Project which would overload or impair the floors, walls or roofs thereof, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association, nor shall any noxious or offensive activity or nuisance be made or suffered thereon. WATERBEDS ARE EXPRESSLY PROHIBITED IN THIS PROJECT. No occupant shall use or permit to be brought into the building or common areas anything deemed extra hazardous to life, limb or property, such as gasoline, kerosene, or other combustibles of like nature, nor any gunpowder, fireworks or other explosives. The throwing of firecrackers and the explosion of any fireworks anywhere on the grounds or within any building is expressly prohibited.

2. Rentals. Subject to the terms of the Declaration and the By-Laws of the Association, an apartment owner may lease his apartment or make it available to friends, but the person or persons leasing, renting or living in the apartment shall abide by the House Rules, and the owner shall assume responsibility for the occupants' conduct. The owner must notify the Resident Manager or Manager of the names and length of anticipated occupancy of all such occupants, and must register them in person with the Resident Manager or Manager. Each such occupant shall in writing, on a form provided by the Resident Manager or Manager, acknowledge that he has read and understands, and agrees to abide by, the House Rules, as they may be amended from time to time.

## SECTION D. VEHICLES

1. Car Washing. Washing, cleaning or polishing of cars and motorcycles shall be permitted only in the parking areas.

2. Parking Stalls. No personal items, such as lumber, furniture or crates shall be stored in the parking stalls.

3. Movement of Vehicles. Vehicles shall travel at no more than five (5) miles per hour while in the Project. Drivers are expected to observe traffic signs for the safety of all.

4. Access. No vehicle belonging to an apartment owner or to a member of the family, a guest, tenant or employee of an apartment owner shall be parked in such manner as to impede or prevent ready access to any entrance or to any exit from the Project by another vehicle.

5. Nuisance. No major repairs to automobiles or motorcycles are permitted in the Project. No racing of motors is permitted, and all automobiles and motorcycles must be equipped with quiet mufflers. All cars parked in the parking areas must

be in operating condition with current vehicle license and safety stickers required by law.

THE DECLARATION, BY-LAWS AND HOUSE RULES CONTAIN OTHER USE PROVISIONS IN ADDITION TO THOSE STATED ABOVE. PROSPECTIVE OWNERS SHOULD READ AND UNDERSTAND ALL OF THE USE RELATED PROVISIONS CONTAINED IN THE AFORESAID DOCUMENTS.

EXHIBIT "D"

DESCRIPTION OF APARTMENTS

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area*</u>	<u>Lanai/Patio</u>
Commercial Apt 1	1		434	0
Commercial Apt 2	1		1943	0
Commercial Apt 3	1		4789	0
A-201	1	2/2	1149	165
A-202	1	3/3	1347	165
B-101, B-103, B-201, B-203	4 (1 each)	1/1	624	114
B-102, B-104, B-202, B-204	4 (1 each)	1/1	578	114
C-101, C-106, C-201, C-206, C-301, C-306, C-401, C-406, C-501, C-506, C-601, C-606	12 (1 each)	2/2	857	82
C-102, C-105, C-202, C-205, C-302, C-305, C-402, C-405, C-502, C-505, C-602, C-605	12 (1 each)	1/1	581	72
C-103, C-203, C-204, C-303, C-304, C-403, C-404, C-503, C-504, C-603, C-604	11 (1 each)	1/1	569	72
C-104	1	1/1	569	72
D-101, D-102, D-201, D-202	4 (1 each)	2/2	894	78

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

## EXHIBIT "E"

### PERMITTED ALTERATIONS TO APARTMENTS

The Declaration and By-Laws permit alterations to the apartments as follows:

#### I. DECLARATION

Paragraph K. The owner of any Commercial Apartment shall have the right at any time and from time to time, at such owner's sole cost and expense and without the consent or joinder of the Board of Directors of the Association of Apartment Owners (hereinafter referred to as the "Board") or any other person or group, to install, maintain, remove and rearrange partitions and other structures from time to time within such owner's apartment, and may paint, paper, panel, plaster, tile, finish and do such other work on the interior surfaces of the ceilings, floors and walls within any such apartment and may finish, alter or substitute any plumbing, electrical or other fixtures attached to said ceilings, floors and walls as shall be appropriate for the utilization of such apartment; provided, that such plumbing and electrical alterations and/or substitutions shall not adversely interfere with the use and enjoyment of the common elements by the other owners. The owner of a Commercial Apartment shall have the right, if such apartment shall be divided by a common element which is a wall, at any time, and from time to time, to alter or remove all or portions of the intervening wall so long as such alteration or removal shall not interfere with the use or enjoyment of any other apartment if the structural integrity of the Project is not thereby affected and if the finish of the common element then remaining is restored to the condition substantially comparable to that of the common element prior to such alterations; provided, that any alteration of a common element shall be performed under the supervision of a licensed architect. Prior to commencing any alteration of a common element, such owner shall present to the Board the signed statement of a professional engineer certifying that all requisite building or other permits have been obtained and that the proposed alteration will not affect the structural integrity of the Project and shall secure a performance and payment bond naming as obligees such owner, the mortgagee of the apartment and collectively the owners and mortgagees of all other apartments, as their interests may appear, in a penal sum of not less than one hundred percent (100%) of the cost of the construction, guaranteeing completion of construction free and clear of all mechanics' and materialmen's liens. Upon the completion of any alteration which results in a change in the Project as depicted in the Condominium File Plan, said owner shall have the right to and shall, in connection with the alteration, execute and file an amendment to the Declaration and said Condominium File Plan to accurately describe and depict said alteration; provided,

however, that any such amendment shall be at the altering owner's sole cost and expense.

Except as otherwise provided in the Declaration or in the By-Laws, no apartment owner will, without the prior written consent of the Board, make any structural alterations within such owner's apartment or make any alterations in or additions to the exterior of the building or to any other portion or portions of the common elements.

## II. BY-LAWS

Article XIII, Section 5(A). Additions, alterations, repairs or improvements to the common or limited common elements of the Project may be made only by or at the direction of the Board, except as provided for in the Declaration. No owner of an apartment may, except with the written permission of the Board, make any alteration, addition, repair or improvement to any of the common elements including, without limitation, common or limited common elements within, encompassing or adjacent to such owner's apartment, except as provided for in the Declaration or if such addition, alteration, repair or improvement shall be required by law.

Article XIII, Section 6. No apartment owner shall do any work which could jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament, nor may any apartment owner add any material structure or excavate any additional basement or cellar, without in every such case the consent of seventy-five percent (75%) of the apartment owners, together with the consent of all apartment owners whose apartments or limited common elements appurtenant thereto are directly affected, being first obtained. Except as may be otherwise provided in the By-Laws or in the Declaration, no owner shall install any solar energy devices or make any addition or alteration in or to such owner's apartment which may affect the common elements or change the exterior appearance of the Project, without the prior written consent thereto of the Board. The Board shall have the obligation to answer any written request by an apartment owner for approval of a proposed addition or alteration in such owner's apartment within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board to the proposed addition or alteration.

EXHIBIT "F"

PARKING

The assigned parking stalls are limited common elements for exclusive use of the owners of the apartments to which they are assigned. The unassigned parking stalls are general common elements for guest parking.

Guests, licensees and invitees (long-term or transient users) of owners or their tenants may use the guest parking stalls on a first-come, first-served basis. Said use is a revocable, non-exclusive privilege that the Board of Directors may revoke or limit either for failure to comply with rules and regulations relating to vehicles or parking, or for orderly administration of the Project in the discretion of the Board of Directors.

The Horizontal Property Act (Chapter 514A, Hawaii Revised Statutes) provides that owners shall have the right to change the designation of parking stalls which are appurtenant to their respective apartments by amendment of the Declaration and the respective apartment deeds involved, which said amendment need only be signed and approved by the owners of the apartments whose parking stalls are being changed and their respective mortgagees, if any.

The House Rules contain specific provisions about vehicles and parking, which owners should thoroughly understand. The provisions concern requirements and restrictions on vehicle registration by residents with the Board of Directors or Resident Manager, washing vehicles, storage of personal items in parking stalls, and avoidance of access problems caused by vehicles. The House Rules also address particular problems such as tow-away for unauthorized parking and operation of vehicles while in the Project. Nuisances created by repairs, maintenance, noise and improper or unsafe vehicle operating conditions are prohibited. Owners will be held responsible for violations of parking rules by their lessees, renters or guests.

Parking space designations are as follows:

<u>Apartment</u>	<u>Designated Parking Space</u>
Commercial Apartment 1	91
Commercial Apartment 2	94-98
Commercial Apartment 3	1-12, 13-16, 18, 99-106
A-201	90
A-202	89
B-101	85
B-102	84
B-103	83

Apartment

Designated Parking Space

B-104	82
B-201	81
B-202	80
B-203	79
B-204	78
C-101	77
C-102	76
C-103	75
C-104	33
C-105	35
C-106	37
C-201	74
C-202	73
C-203	72
C-204	39
C-205	41
C-206	43
C-301	71
C-302	70
C-303	69
C-304	45
C-305	49
C-306	50
C-401	68
C-402	67
C-403	66
C-404	51
C-405	52
C-406	53
C-501	65
C-502	64
C-503	63
C-504	54
C-505	55
C-506	56
C-601	62
C-602	61
C-603	60
C-604	57
C-605	58
C-606	59
D-101	31
D-102	29
D-201	17
D-202	19

EXHIBIT "G"

DESCRIPTION OF COMMON ELEMENTS  
AND LIMITED COMMON ELEMENTS

I. COMMON ELEMENTS

The common elements include the limited common elements described below and all portions of the land and improvements of the Project other than the apartments, including the buildings, the land on which the buildings are located and all common elements mentioned in the Declaration and the Horizontal Property Act which are actually constructed on said land.

The common elements shall include but are not limited to:

1. The land described in Exhibit "A" to the Declaration.
2. All foundations, columns, girders, beams, floor slabs, supports, unfinished perimeter and load-bearing walls (except for the inner decorated surfaces within each apartment), roofs, stairways, walkways, entrances and exits of said buildings.
3. The Project sign at the entrance to the Project, and lobby, waiting and reception areas on the ground floor of the Project.
4. The men's and women's restrooms located on the ground floor of the Project.
5. All yards, grounds, landscaping, refuse and like facilities.
6. All driveways, loading areas, ramps, parking area entryways and exitways, and the one hundred six (106) parking stalls as designated on the Condominium Map.
7. The swimming pool/spa, swimming pool/spa deck areas, pool filtration system and pool equipment room.
8. All elevators, elevator lobbies, electrical transformer boxes and rooms, storage rooms, trash chutes, trash rooms, all central and appurtenant installations for services such as power, lights, telephone, gas, hot and cold water lines, television lines, sewage disposal and other utilities (including all pipes, ducts, wires, cables and conduits used in connection therewith, whether located in common areas or in apartments), and all tanks, pumps, motors, fans, ducts and other apparatus and installations existing for, or in the buildings for common use.

9. All corridors, lobby areas, elevators, elevator lobbies, elevator and electrical rooms, and stairways situate within the Project.

10. Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, and normally in common use and which are not part of any apartment.

## II. LIMITED COMMON ELEMENTS

Certain parts of the common elements (hereinafter referred to as the "limited common elements"), are set aside and reserved for the exclusive use of certain apartments, which apartments shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements set aside and reserved are as follows:

1. Each apartment shall have appurtenant to and for the exclusive use of each apartment the lanai immediately adjacent to said apartment.

2. The trash chute, trash room, elevator, elevator lobby, elevator and electrical rooms, situate in Building C will be appurtenant to and for the exclusive use of the Residential Apartments.

3. The swimming pool/spa, swimming pool/spa deck areas, pool filtration system and the pool equipment room shall be appurtenant to and for the exclusive use of the Residential Apartments.

4. The stage area situate between Building A and Building E shall be appurtenant to and for the exclusive use of the Residential Apartments and Commercial Apartment 2.

5. Each apartment shall have appurtenant to and for the exclusive use of each apartment the parking space(s) designated in Exhibit "B" to the Declaration.

6. Each apartment shall have appurtenant to and for the exclusive use of each apartment one (1) mailbox located on the Project grounds, containing the same number as the number of the apartment.

EXHIBIT "H"

COMMON INTEREST FOR EACH APARTMENT

Each apartment shall have appurtenant thereto an undivided percentage interest (hereinafter referred to as the "common interest") in all common elements of the Project and in all common profits and expenses of the Project and for all other purposes including voting. The common interest appurtenant to each apartment is set forth in paragraph D.1. to the Declaration.

The common interest and easements shall not be separated from the apartment to which they appertain and shall be deemed to be conveyed, leased or encumbered with such apartment even though such interest or easements are not expressly mentioned or described in the conveyance or other instrument. The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by said Horizontal Property Act.

The percentage common interest for each apartment is as follows:

<u>Apt. No.</u>	<u>Percentage Common Interest</u>
Commercial Apt 1	1.029%
Commercial Apt 2	4.612%
Commercial Apt 3	11.367%
A-201	2.727%
A-202	3.197%
B-101, B-103, B-201, B-203	1.481%
B-102, B-104, B-202, B-204	1.372%
C-101, C-106, C-201, C-206, C-301, C-306, C-401, C-406, C-501, C-506, C-601, C-606	2.034%
C-102, C-105, C-202, C-205, C-302, C-305, C-402, C-405, C-502, C-505, C-602, C-605	1.379%

<u>Apt. No.</u>	<u>Percentage Common Interest</u>
C-103, C-104, C-203, C-204, C-303, C-304, C-403, C-404, C-503, C-504, C-603, C-604	1.351%
D-101, D-102, D-201, D-202	2.122%

EXHIBIT "I"

ENCUMBRANCES AGAINST PROJECT LAND TITLE

The Project land is all of that certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 12,983 to Tadashi Yasutomi) situate, lying and being at Waiakoa, District of Kula, Island and County of Maui, State of Hawaii, being Lot Number 21 of the "Waiakoa House Lots", a portion of the Government Land of Waiakoa.

Being all of the land conveyed to Marine Planning International, Inc., a Hawaii corporation, by Deed dated March 9, 1987, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 20514 at Page 623.

SUBJECT, HOWEVER, to the following:

1. Any and all real property taxes that may be due and owing, refer to Director of Finance, County of Maui.

EXHIBIT "J"

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE DISBURSEMENTS

<u>Building</u>	<u>Apartment No.</u>	<u>Estimated Monthly Maintenance Fees Per Apartment</u>	<u>Estimated Annual Maintenance Fees Per Apartment</u>
A	Commercial Apt 1	\$ 55.00	\$ 660.00
A	Commercial Apt 2	250.00	3,000.00
E	Commercial Apt 3	611.00	7,332.00
A	A-201	220.00	2,640.00
A	A-202	258.00	3,096.00
B	B-101, B-103, B-201, B-203	119.00	1,428.00
B	B-102, B-104, B-202, B-204	111.00	1,332.00
C	C-101, C-106, C-201, C-206, C-301, C-306, C-401, C-406, C-501, C-506, C-601, C-606	164.00	1,968.00
C	C-102, C-105, C-202, C-205, C-302, C-305, C-402, C-405, C-502, C-505, C-602, C-605	111.00	1,332.00
C	C-103, C-104, C-203, C-204, C-303, C-304, C-403, C-404, C-503, C-504, C-603, C-604	109.00	1,308.00
D	D-101, D-102, D-201, D-202	171.00	2,052.00



# OIHANA PROPERTY MANAGEMENT & SALES, INC.

□ 840 Alua Street, Suite #202 • Wailuku, Hawaii 96793-1442

Administration: (808) 244-7684  
Accounting: 244-7491

## ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS MAUI ISANA RESORT 53 UNIT CONDOMINIUM

<u>DISBURSEMENTS</u>	<u>MONTHLY</u>	<u>ANNUAL</u>
AUTO ALLOWANCE	50.	600.
MAINTENANCE & REPAIRS	140.	1,680.
SUPPLIES & EQUIPMENT	155.	1,860.
ELEVATOR MAINTENANCE	225.	2,700.
POOL SUPPLIES	140.	1,680.
GROUNDS MAINTENANCE	200.	2,400.
REFULSE COLLECTION	80.	960.
PEST CONTROL	75.	900.
CABLE T. V.	500.	6,000.
TELEPHONE	50.	600.
ELECTRIC	580.	6,960.
GAS (BARBEQUES)	40.	480.
WATER/SEWER	1,200.	14,400.
MANAGEMENT	520.	6,240.
SALARIES & WAGES	1,900.	14,400.
PAYROLL TAXES	104.	1,248.
TDI/WORKERMAN'S COMP.	185.	2,220.
HEALTH INSURANCE	78.	936.
FIRE/LIABILITY INSURANCE	385.	4,620.
FLOOD INSURANCE	415.	4,980.
TAX FILING	15.	180.
PAYROLL PREPARATION	23.	276.
CONTINGENCY RESERVE	500.	6,000.
ASSOCIATION MEETING EXPENSE	25.	300.
MISCELLANEOUS	20.	240.
<b>TOTAL</b>	<b>\$7,605.</b>	<b>\$91,260.</b>

I Dick Weaver, CPM hereby certify that the above estimates of initial maintenance fee assessments were prepared in accordance with generally accepted accounting principles.

Dated: February 19, 1988

  
Dick Weaver, CPM

EXHIBIT "K"

SUMMARY OF PERTINENT PROVISIONS OF SALES CONTRACT

The Developer has filed two (2) specimen sales contracts with the Hawaii Real Estate Commission as follows: (1) Deposit Receipt and Sales Contract for Owner-Occupants As Required By Act 189 (hereinafter referred to as the "Owner-Occupant DROA") and (2) Deposit Receipt and Sales Contract (hereinafter referred to as the "DROA"). The terms of both the Owner-Occupant DROA and the DROA are substantially similar. The Owner-Occupant DROA, however, contains an additional provision addressing statutory requirements applicable to sales transactions involving "owner-occupants" as defined in the Horizontal Property Act.

Among other provisions contained therein, the Owner-Occupant DROA and the DROA (hereinafter sometimes collectively referred to as the "Agreement") contain the following common provisions:

1. The Agreement shall not be binding upon or enforceable against the buyer thereunder (hereinafter referred to as the "Buyer") until:

(1) A true copy of the Real Estate Commission's Final Public Report on the Project has been delivered to Buyer, either personally or by certified mail with return receipt requested, together with a true copy of all other public reports on the Project, if any, issued prior to the date of such delivery and not previously delivered to Buyer;

(2) Buyer has been given an opportunity to read the reports; and

(3) Buyer (i) executes the form of the receipt and notice set forth in Section 514A-62 of the Hawaii Revised Statutes, as amended; and (ii) waives Buyer's right to cancel; provided, however, that if Buyer does not execute and return the receipt and notice within thirty (30) days from the date of delivery of such reports, or if the subject apartment (hereinafter referred to as the "Apartment") is conveyed to Buyer prior to the expiration of such thirty-day period, Buyer shall be deemed to have accepted for the reports and to have waived Buyer's right to cancel.

Unless such right has previously been waived pursuant to subparagraph (1), (2) or (3) above, Buyer shall have the right to cancel the Agreement at any time prior to the earlier of (1) the conveyance of the Apartment to Buyer or (2) midnight of the thirtieth (30th) day following the date of delivery of the Final Public Report to Buyer, and, upon any such cancellation, shall be

entitled to a prompt and full refund of all monies paid, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00).

2. Any interest on Buyer's funds deposited in escrow shall accrue to the benefit of the Developer (hereinafter referred to as the "Seller").

3. Buyer shall not be entitled to possession of the Apartment until Buyer is notified in writing by Seller of the "Closing Date", which date shall be a date specified by Seller in a written notice given to Buyer; provided, however, that Seller agrees to give Buyer at least ten (10) days prior written notice of the Closing Date. Upon the Closing Date, Buyer must complete all payments set forth in the Agreement, and execute all documents not already executed which are necessary to close, prior to taking actual possession of the Apartment. Keys will not be issued to Buyer and Buyer shall not occupy, rent or lease the Apartment until these conditions are fulfilled. In addition to any other remedy Seller may have, if Buyer fails to make Payment B as provided in the Agreement, Buyer shall be liable for the cost of maintenance, real property taxes and the one percent (1%) a month late charge described in the Agreement as of the Closing Date notwithstanding that closing has not occurred.

4. The estimated completion date of the Project, stated to be on or before March 13, 1989, is an approximate date given to the best of Seller's information and belief, and recognizes that the date of actual completion may be prior or subsequent to the estimated completion date. The Project shall, in any event, be completed on or before two (2) years from the date of Buyer's execution of the Agreement.

5. Buyer shall in no event take possession of the Apartment prior to the Closing Date and full compliance by Buyer with the terms of the Agreement. Violation of this provision shall be deemed a material breach of contract, and Buyer agrees that Seller shall have the right to remove Buyer from the premises by any lawful means. Delivery of actual possession of the Apartment to Buyer shall be made on or after the Closing Date, subject to the right of Seller to delay Buyer's moving in for a reasonable time to promote the orderly occupation of the Project. Buyer may not receive actual possession of the Apartment until Buyer has made all the payments under the Agreement and until after Buyer has commenced to pay maintenance, real property taxes and monthly payments with respect to Buyer's mortgage, if any. The delivery of actual possession shall be made to apartment purchasers in the order of and according to the dates on which they executed their respective sales contracts. If Buyer fails to confirm the date of delivery of actual possession within five (5) days after notification thereof, Seller, at Seller's sole election, may assign the date for Buyer's taking actual possession to the purchaser next in order

of preference. Buyer agrees not to move furniture or belongings into Buyer's Apartment except in accordance with a moving-in schedule established by Seller, or the Managing Agent, to promote the orderly occupation of the Project.

6. Seller intends to preclose by having all documents necessary for closing executed prior thereto and deposited with escrow. At any time after the date of the Agreement, and within five (5) days after receiving written notice from Seller, mortgagee or the escrow agent, Buyer agrees to execute an apartment deed (hereinafter referred to as the "Apartment Deed") and such other documents as are required to effect transfer of title and to complete financing arrangements.

7. Risk of loss to the Apartment and percentage interest in the common elements shall be borne by Seller until the sooner of the Closing Date or the date Buyer takes possession, and thereafter, such risk of loss shall be borne by Buyer. No taking by eminent domain of an easement or other limited right or of a portion of the common elements which does not substantially interfere with the use and enjoyment of the common elements shall be deemed grounds for cancellation of the Agreement.

8. Buyer agrees that Seller may employ a responsible and competent corporation for the management, operation and maintenance of the Project. The Seller's Disclosure Abstract includes an estimate of monthly maintenance fees for the Apartment which estimated budget was prepared in accordance with generally accepted accounting principles, Buyer acknowledges and agrees that such estimates are only estimates and 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.

9. Seller reserves the right to modify the Declaration of Horizontal Property Regime for the Project (hereinafter referred to as the "Declaration"), By-Laws and Exhibits, and the Apartment Deed, as may be required by law, any title insurance company or any institutional mortgagee.

Seller further reserves the right to make minor changes in the Apartment and other apartments and in the common elements or limited common elements but, except as provided in the Declaration, no changes shall be made which substantially affect the physical location or design of the Apartment.

10. Notwithstanding the foregoing paragraph:

(a) If there is a material change in the Project which adversely affects the use or value of (1) Buyer's Apartment or appurtenant limited common elements, or (2) those amenities of the Project available for Buyer's use, Buyer shall have the right

to rescind the sale made under the Agreement and to receive a prompt and full refund of any monies paid.

(b) A Buyer's right of rescission under subparagraph (a) above shall be waived upon (1) delivery to Buyer, either personally or by registered or certified mail, return receipt requested, of a disclosure document which describes the material change and contains a provision for Buyer's written approval or acceptance of such change, and (2) Buyer's written approval or acceptance of the material change, or the lapse of ninety (90) days since Buyer has accepted the Apartment, or the occupancy of the Apartment by Buyer; provided, however, that if Buyer does not rescind the Agreement or execute and return the written approval or acceptance of such change as provided in the disclosure document within thirty (30) days from the date of delivery of such disclosure document Buyer shall be deemed to have approved and accepted such change; provided, further, that the deemed approval and acceptance shall be effective only if at the time of delivery of the disclosure document, Buyer is notified in writing of the fact that Buyer will be deemed to have approved and accepted the change upon Buyer's failure to act within the thirty (30) day period; provided, further, that if, prior to delivery of such disclosure document, ninety (90) days have lapsed since Buyer has accepted the Apartment, or Buyer has occupied the Apartment, then Buyer's right of rescission under subparagraph (a) above shall not be waived unless Buyer shall execute the written approval or acceptance of such change as provided in the disclosure document within thirty (30) days from the date of delivery of such disclosure document or Buyer is deemed to have approved and accepted such change as set forth above. A copy of the form of disclosure document shall be delivered to the Real Estate Commission prior to delivery to Buyer.

11. Buyers are required to perform under the Agreement strictly on time. If, however, Buyer shall default in any payment when required or fail to perform any other obligations required of Buyer under the Agreement and shall fail to cure such default within ten (10) days after receipt of written notice thereof from Seller, Seller may, at Seller's option, pursue any remedy in law or equity for specific performance, or otherwise, and all costs, including court costs and reasonable attorneys' fees, incurred by reason of default by Buyer shall be borne by Buyer.

12. If Buyer, or any one (1) or more of the Buyers, if there is more than one (1) Buyer listed on the Agreement, should die prior to closing, Seller reserves the right to return Buyer's payments without interest and less escrow or cancellation costs and the Agreement shall then be deemed to have been cancelled and both Seller and Buyer shall be released from all obligations and liability thereunder.

13. All terms and provisions of the Agreement and all of Buyer's right, title and interest thereunder are subject and subordinate to the lien of any mortgage heretofore or hereafter made by Seller, as mortgagor, to any institutional lender, as mortgagee, for the purpose of securing the repayment of the construction loan described in the Agreement which has or will be made by said lender to Seller, and to all advances heretofore and hereafter made thereon, and all payments or expenses heretofore and hereafter made or incurred pursuant to the terms thereof or incidental thereto or to protect the security thereof, without the execution of any further instrument by Buyer in order to effectuate the subordination. In confirmation of such subordination, Buyer agrees to promptly execute and deliver any instrument that the holder of such mortgage or its successors in interest may require to evidence such subordination, and Buyer hereby irrevocably appoints Seller the attorney-in-fact of Buyer to execute and deliver any such instrument on behalf of Buyer, should Buyer refuse or fail to do so within five (5) days after request is made.

14. Buyer agrees that until such time as the Apartment Deed is delivered to Buyer and until the election of the Board of Directors and the Officers of the Association of Apartment Owners, Seller reserves the right to exercise all of the powers of said Association and of Buyer as a member thereof, including voting, and to exercise all of the powers of the said Board and Officers of the said Association.

15. Buyer acknowledges and agrees that Seller and all entities, persons and agents related to or affiliated with Seller, have no program at this time, nor is any program planned or contemplated, to offer a rental service of any kind to the owners of condominium apartments, either individually or in any form of pooling arrangements, nor have any representations been made by Seller or its agents as to the feasibility of renting the condominium apartments. Purchasers of condominium apartments who desire to rent their apartments must therefore make their own rental arrangements. Buyer acknowledges receipt of written notice that use of the apartments for time-sharing is specifically prohibited in the Project.

16. Buyer acknowledges and agrees that neither Seller nor its agents have made any representation regarding either economic benefits to be derived from rentals or tax treatment of any purchaser of a condominium apartment. Seller, and its agents, recommend that Buyer consult Buyer's own attorney, accountant or other tax counsel for advice regarding appropriate tax treatment.

17. Seller and its agents reserve the right to maintain on the Project until the sale of the last apartment all models, sales offices and advertising signs and banners, if any, and lighting in connection therewith together with the right of

ingress and egress and transient parking therefor through the common elements.

18. The estimated closing-related amounts Buyer must pay in addition to the purchase price are set forth in the Agreement on the first page thereof.

19. Notwithstanding anything in the Agreement to the contrary, the Agreement shall not be binding unless executed by Seller, and upon execution by Seller the Agreement shall be automatically binding in accordance with its terms. If executed by Seller, the Agreement shall nevertheless not be construed as a present transfer of any interest in the Apartment, but rather as an agreement to transfer the Apartment and its undivided appurtenant common interest in the common elements free and clear of liens except as described by the Declaration. Buyer specifically agrees that prior to such date, Seller shall have the right (i) to mortgage the land and improvements to secure repayment of a loan for the construction of improvements and/or any other purpose and that such mortgage or mortgages shall have priority over any and all interests whatsoever that Buyer may have acquired by the Agreement; and (ii) to insure the work in progress for its own account.

20. The Agreement shall not be assignable by Buyer without the prior written consent of Seller, which may be withheld for any reason or granted upon such terms and conditions (including the imposition of a consent fee) as Seller may in its discretion determine. Any unauthorized assignment by Buyer shall be void and of no force and effect.

In addition to the foregoing provisions, the Owner-Occupant DROA contains Buyer's representation and warranty to Seller that Buyer intends to become an owner-occupant of the Apartment on completion of the Project. Buyer agrees that the Owner-Occupant DROA shall be conditioned upon Buyer obtaining adequate financing, or a commitment for adequate financing, within forty-five (45) calendar days following the end of the ten (10) calendar day period after the date on which the first public report is issued by the Real Estate Commission on the Project. If, for any reason, such financing or commitment is not obtained, Seller shall cancel the Owner-Occupant DROA. If during the ten (10) calendar day period following the issuance of the first Public Report for the Project by the Real Estate Commission, Buyer indicates by written notice to Seller that Buyer desires to cancel the Owner-Occupant DROA on account of hardship circumstances such as serious illness of Buyer or a member of Buyer's family, job or military transfer, unforeseeable change in marital status, or the birth of a child, which causes Buyer to be unable to purchase the Apartment, or if Buyer indicates an intent not to become an owner-occupant of such Apartment, Seller shall cancel the Owner-Occupant DROA.

Upon cancellation of the Owner-Occupant DROA, Seller shall cause the escrow agent to refund to Buyer all monies paid without interest, less any escrow cancellation fee and other costs incurred by Seller in processing the Owner-Occupant DROA.

It is incumbent on buyers and prospective buyers to read both the Owner-Occupant DROA and the DROA, if applicable, with care before execution. It is a formal legal document whose terms and conditions should be clearly understood by the buyers.

EXHIBIT "L"

SUMMARY OF PERTINENT PROVISIONS OF ESCROW AGREEMENT

A Condominium Escrow Agreement dated April 15, 1988 (hereinafter referred to as the "Escrow Agreement") was executed by and between Marine Planning International, Inc., as Developer, and Title Guaranty Escrow Services, Inc., as Escrow Agent.

Amongst other provisions contained therein, the Escrow Agreement provides:

1. That Developer shall deliver to Escrow Agent an executed copy of any sales contract entered into by Developer for the sale of any condominium unit in the Project, together with the initial deposit required to be paid under such sales contract.

2. That Developer shall pay Escrow Agent any monies received by Developer from purchasers under any sales contract; that such monies shall be deposited by Escrow Agent in an interest-bearing account or accounts at a federally insured bank, savings and loan association or other financial institution; and that any interest earned on such monies deposited with Escrow Agent shall accrue to the credit of Developer. (The Escrow Agreement governs Developer's right to accrued interest or escrowed monies only as between Escrow Agent and Developer. A purchaser's right, if any, to interest earned on escrowed monies is governed by his sales contract with Developer).

3. That no disbursements from escrowed monies shall be made, other than refunds provided for in the Escrow Agreement, until certain conditions are satisfied. In general, these conditions concern:

(a) The issuance of a Final Public Report on the Project by the Real Estate Commission;

(b) If applicable, delivery to and acknowledgment of receipt of appropriate public reports by a purchaser, and delivery to Escrow Agent of a written opinion by Developer or Developer's attorney stating that the purchaser's sales contract has become effective;

(c) Delivery to Escrow Agent of a written opinion by Developer or Developer's attorney stating that certain statutory requirements have been met; and

(d) A written waiver of any option reserved in any sales contract to cancel such sales contract.

4. That, subject to the provisions of the preceding paragraph, disbursements by Escrow Agent shall be made upon completion of each of the buildings of the Project and upon receipt by Escrow Agent of satisfactory evidence that any mechanics' and materialmen's liens or notices thereof have been cleared or sufficient funds have been set aside to cover such claims.

5. That a purchaser shall be entitled to a return of his funds and Escrow Agent shall pay such funds to purchaser, without interest, if any one of the following has occurred:

(a) Developer and the purchaser shall have requested Escrow Agent in writing to return to purchaser the funds of purchaser held hereunder by Escrow Agent; or

(b) Developer shall have notified Escrow Agent of Developer's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Developer; or

(c) With respect to a purchaser whose funds were obtained prior to the issuance of the Final Public Report, the purchaser has exercised his right to cancel the sales contract pursuant to Section 514A-62, Hawaii Revised Statutes, as amended; or

(d) A purchaser has exercised his right to rescind the contract pursuant to Section 514A-63, Hawaii Revised Statutes, as amended.

(e) In any of the foregoing events, Escrow Agent shall, upon the occurrence of the event described in subparagraph (a) or (b) above or upon receipt of a written request for a refund from purchaser upon the occurrence of an event described in subparagraph (c) or (d) above, unless the purchaser has waived or has been deemed to have waived the right to a refund, pay the purchaser's funds to said purchaser (less a cancellation fee of Escrow Agent of not less than TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) per unit or a cancellation fee commensurate with the work done by Escrow Agent prior to such cancellation, whichever fee is greater) and thereupon the sales contract and any conveyance document theretofore delivered to Escrow Agent shall be returned to Developer and shall be deemed no longer held under the Escrow Agreement; provided, however, that no refund shall be made to a purchaser at purchaser's request prior to receipt by Developer of written notice from Escrow Agent of its intent to make such refund.

(f) Notwithstanding any other provision in the Escrow Agreement to the contrary, Escrow Agent further agrees to make refunds to purchasers, in accordance with Part VI, Chapter 514A, Hawaii Revised Statutes, out of the funds then on deposit with Escrow Agent, if the Developer and purchaser shall so

request in writing and any one of the following events has occurred:

(i) no sales contract has been offered to the purchaser who has been placed on the Developer's reservation list of owner-occupant applicants; or

(ii) purchaser has been unable to obtain adequate financing, or a commitment for adequate financing, for his unit within thirty (30) calendar days following the end of the ten (10) calendar day period during which the Developer is limited to selling to owner-occupant; or

(iii) the purchaser desires to cancel the contract on account of hardship circumstances such as those set forth in Section 514A-104(1), Hawaii Revised Statutes; or

(iv) the purchaser indicates an intent not to become an owner-occupant of such unit.

Except for cancellations under subparagraph (i) above, Escrow Agent may deduct from any such refund made to a purchaser a cancellation fee as set forth above.

6. That Escrow Agent shall give each purchaser entitled to a return of his funds notice thereof by registered, certified or regular mail, postage prepaid addressed to such purchaser at purchaser's address shown on the sales contract or any address later made known in writing to Escrow Agent by such purchaser. If such purchaser shall not have claimed such refund within sixty (60) days, Escrow Agent shall deposit such funds into a special account in a bank or other depository selected by Escrow Agent, in the name of Developer, as trustee for the benefit of such purchaser. After notifying purchaser of all such facts at purchaser's address as described above and delivering all pertinent documents to Developer, Escrow Agent shall thereupon be released from any further duties or liability under the Escrow Agreement with respect to such funds and such purchaser.

7. That if Developer terminates any sales contract in accordance with the terms thereof and provides to Escrow Agent copies of all such notices of termination sent to the purchaser, Escrow Agent shall thereafter treat all funds of the purchaser paid on account of his sales contract as funds of Developer and not as funds of the purchaser. Thereafter, such funds shall be free of the escrow established by the Escrow Agreement and shall be held by Escrow Agent for the account of Developer. Upon written request by Developer, Escrow Agent shall pay such sums to Developer, less any escrow cancellation fee, and shall return to Developer the sales contract of such purchaser and any other documents theretofore delivered by Developer to Escrow Agent. Other documents theretofore delivered to Escrow Agent in connection with the purchase of the unit specified in such sales

contract shall be returned to the person from whom, or entity from which, such documents were received, and Escrow Agent shall thereupon be released from any further duties or liability under the Escrow Agreement with respect to such funds and such purchaser.

8. That in consideration of Escrow Agent acting as escrow holder under the Escrow Agreement, Escrow Agent is relieved from all liability for acting in accordance with the terms thereof, notwithstanding a notice to the contrary by Developer or any purchaser or third person. Escrow Agent shall not be responsible for the validity or sufficiency of any sales contracts or other documents received by it and shall be entitled for all purposes to assume that the same have been signed by the persons whose signatures purport to be thereon and that any written certification or instruments from Developer are true and accurate. If any dispute or difference shall arise or if any conflicting demand shall be made upon Escrow Agent, Escrow Agent shall not be required to determine the same or take any action in the premises, but Escrow Agent may await settlement of the controversy by final appropriate legal proceedings or otherwise as it may require, or 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 hereunder. Upon institution of such interpleader suit or other action, depositing such money with the court, and giving notice thereof to the parties thereto by personal service or in accordance with the order of the court, Escrow Agent shall be fully released and discharged from all further obligations under the Escrow Agreement with respect to the monies so deposited. Developer and purchasers agree to pay Escrow Agent on demand and to indemnify and hold Escrow Agent harmless 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, including, but not limited to, all costs and expenses incurred in connection with the interpretation of the Escrow Agreement or with respect to any interpleader or other proceeding, and excluding all of the foregoing which is the result of any act or omission by Escrow Agent or its agents which is not generally accepted in the Honolulu business community as a reasonable business practice. Upon payment thereof, Developer and purchasers will be subrogated to Escrow Agent's right to judgment for such costs, damages, etc., against third persons.