

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer 17th FAIRWAY VILLAS AT WAIKOLOA LLC
Address 220 S. King Street, Suite 2170, Honolulu, Hawaii 96813
Project Name(\*): 17th FAIRWAY VILLAS AT WAIKOLOA
Address: 68-3888 Lua Kula Street, Waikoloa, Hawaii 96738

Registration No. 5244

Effective date: January 13, 2004
Expiration date: October 13, 2004

Preparation of this Report:

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

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

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

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

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

Type of Report:

- PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report.
CONTINGENT FINAL: (green) The developer has legally created a condominium and has filed information with the Commission for this report which EXPIRES NINE (9) MONTHS after the above effective date.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
SUPPLEMENTARY: (pink) This report updates information contained in the: Preliminary Public Report dated: Final Public Report dated: Supplementary Public Report dated:
And Supersedes all prior public reports. Must be read together with This report reactivates the public report(s) which expired on

(\* ) Exactly as named in the Declaration
This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.

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

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

**Summary of Changes from Earlier Public Reports:**

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

No prior reports have been issued by the developer.

Changes made are as follows:

**SPECIAL ATTENTION**

The Project is a condominium project, not a subdivision. The land area appurtenant to each apartment is a limited common element and does not represent a legally subdivided lot. The lines on the Condominium Map showing the boundaries of the land areas are for illustration purposes only and are not intended as and should not be construed as formal subdivision lines.

The effective date for the Developer's Contingent Final Public Report was issued before the Developer submitted to the Real Estate Commission: the executed and recorded deed or master lease for the project site; the executed construction contract for the project; the building permit; satisfactory evidence of sufficient funds to cover the total project cost; or satisfactory evidence of a performance bond issued by a surety licensed in the State of not less than one hundred per cent of the cost of construction, or such other substantially equivalent or similar instrument or security approved by the Commission. Until the Developer submits each of the foregoing items to the Commission, all Purchaser deposits will be held by the escrow agent in a federally-insured, interest-bearing account at a bank, savings and loan association, or trust company authorized to do business in the State. If the Developer does not submit each of the foregoing items to the Commission and the Commission does not issue an effective date for the Final Public Report before the expiration of the Contingent Final Public Report, then:

- (1) The Developer will notify the Purchaser thereof by certified mail; and
- (2) Either the Developer or the Purchaser shall thereafter have the right under Hawaii law to rescind the Purchaser's sales contract. In the event of a rescission, the Developer shall return all of the Purchaser's deposits together with all interest earned thereon, reimbursement of any required escrow fees, and, if the Developer required the Purchaser to secure a financing commitment, reimburse any fees the Purchaser incurred to secure that financing commitment.

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## **General Information On Condominiums**

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

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

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

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

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

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

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

## **Operation of the Condominium Project**

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

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

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: 17<sup>th</sup> Fairway Villas at Waikoloa LLC Phone: (808) 537-5976  
Name\* (Business)  
220 S. King Street, Suite 2170  
Business Address  
Honolulu, Hawaii 96813

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

Towne Development of Hawaii, Inc. - see attached page 5A for names of officers and directors  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker\*: Golden Triangle Real Estate Phone: (808) 329-1667  
Name (Business)  
75-5865 Walua Road #F-1  
Business Address  
Kailua-Kona, Hawaii 96740

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 521-0211  
Name (Business)  
235 Queen Street  
Business Address  
Honolulu, Hawaii 96813

General Contractor\*: Larry R. Smith Construction, Inc. Phone: (808) 322-8820  
Name (Business)  
77-6500 Akai Street  
Business Address  
Kailua-Kona, Hawaii 96740

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

Attorney for Developer: Rush Moore Craven Sutton Morry & Beh A Limited Liability Law Partnership, LLP Phone: (808) 521-0400  
Name (Business)  
737 Bishop Street, Suite 2400  
Business Address  
Honolulu, Hawaii 96813

\* For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

Towne Development of Hawaii, Inc. (Member) - Officers and Directors

| <u>Name</u>             | <u>Title</u>                 |
|-------------------------|------------------------------|
| John K. Tsui            | Chairman                     |
| Christopher L. Lau      | President                    |
| Gerald Stein            | Executive Vice President     |
| Arthur W. Wigchers, Jr. | Executive Vice President     |
| James F. Janz           | Senior Vice President        |
| Richard H. Lachmann     | Senior Vice President        |
| Alison Vasconcellos     | Senior Vice President        |
| James B. Young          | Vice President and Secretary |
| Stephan J. Chevalier    | Vice President and Treasurer |
| Robert Danley           | Vice President and Director  |
| Robert E. Braun         | Vice President               |
| Takeshi Matsukata       | Vice President               |
| Douglas M. Tonokawa     | Vice President               |
| Mark S. Madigan         | Assistant Secretary          |
| Sandra J. Delisle       | Assistant Secretary          |
| Joseph J. Zilber        | Director                     |

**II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

Proposed  
 Recorded - Bureau of Conveyances: Document No. 2003-264227  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

First Amendment of Declaration of Condominium Property Regime of 17<sup>th</sup> Fairway Villas at Waikoloa and Condominium Map No. 3677 dated December 19, 2003, recorded as Document No. 2003-283909.

Second Amendment of Declaration of Condominium Property Regime of 17<sup>th</sup> Fairway Villas at Waikoloa dated December 31, 2003, recorded as Document No. 2004-002427.

B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

Proposed  
 Recorded - Bureau of Conveyances Condo Map No. 3677  
 Filed - Land Court Condo Map No. \_\_\_\_\_

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

First Amendment of Declaration of Condominium Property Regime of 17<sup>th</sup> Fairway Villas at Waikoloa and Condominium Map No. 3677 dated December 19, 2003, recorded as Document No. 2003-283909.

C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

Proposed  
 Recorded - Bureau of Conveyances: Document No. 2003-264228  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The House Rules for this condominium are:

Proposed       Adopted       Developer does not plan to adopt House Rules

E. **Changes to Condominium 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 common interest which must vote for or give written consent to changes:

|                             | <u>Minimum<br/>Set by Law</u> | <u>This Condominium</u>     |
|-----------------------------|-------------------------------|-----------------------------|
| Declaration (and Condo Map) | 75%*                          | <u>75%</u>                  |
| Bylaws                      | 65%                           | <u>65%</u>                  |
| House Rules                 | ---                           | <u>By majority of Board</u> |

\* The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

2. **Developer:**

No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

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

See Exhibit "A"



Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

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

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

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

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

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

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

B. Underlying Land:

Address: 68-3888 Lua Kula Street Tax Map Key (TMK): (3) 6-8-003-009  
Waikoloa, Hawaii 96738

Address  TMK is expected to change because individual CPR numbers may  
be assigned to each unit.

Land Area: 5.147  square feet  acre (s) Zoning: Multiple-Family  
Residential (RM-1.5)

Fee Owner: 17<sup>th</sup> Fairway Villas at Waikoloa LLC  
 Name  
220 S. King Street, Suite 2170  
 Address  
Honolulu, Hawaii 96813

Lessor: N/A  
 Name  
 \_\_\_\_\_  
 Address  
 \_\_\_\_\_

**C. Buildings and Other Improvements:**

1.  New Building(s)  
 Conversion of Existing Building(s)  
 Both New Building(s) and Conversion
2. Number of Buildings: 27 Floors Per Building 2  
 Exhibit "B" contains further explanations.

3. Principal Construction Material:  
 Concrete  Hollow Tile  Wood  
 Other glass, stucco

4. Uses Permitted by Zoning

|                                                 | <u>No. of<br/>Apts.</u> | <u>Use Permitted By Zoning</u>          |                             |
|-------------------------------------------------|-------------------------|-----------------------------------------|-----------------------------|
| <input checked="" type="checkbox"/> Residential | <u>27</u>               | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Commercial             | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Mix Res/Comm           | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Hotel                  | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Timeshare              | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Ohana                  | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Industrial             | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Agricultural           | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Recreational           | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Other:                 | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |

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

5. Special Use Restrictions:

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

Pets: Permitted with restrictions, among other things, a reasonable number

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

Other: See Declaration and By-Laws, generally

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: None                      Stairways: One                      Trash Chutes: None

| <u>Apt. Type</u> | <u>Quantity</u> | <u>BR/Bath.</u> | <u>Net Living Area (sf)*</u> | <u>Net Other Area (sf)</u> | <u>(Identify)</u> |
|------------------|-----------------|-----------------|------------------------------|----------------------------|-------------------|
| _____            | <u>27</u>       | <u>3 / 2 ½</u>  | <u>See Exhibit "C"</u>       | _____                      | _____             |
| _____            | _____           | _____           | _____                        | _____                      | _____             |
| _____            | _____           | _____           | _____                        | _____                      | _____             |
| _____            | _____           | _____           | _____                        | _____                      | _____             |

Total Number of Apartments: 27

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

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

Boundaries of Each Apartment:

See Exhibit "D"

Permitted Alterations to Apartments:

See Exhibit "E"

Apartments Designated for Owner-Occupants Only:

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

7. Parking Stalls:

|                             |                 |                 |                 |                 |                 |
|-----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Total Parking Stalls:       | <u>64</u>       |                 |                 |                 |                 |
|                             | <u>Regular</u>  |                 | <u>Compact</u>  |                 | <u>Tandem</u>   |
|                             | Covered         | Open            | Covered         | Open            | TOTAL           |
| Assigned<br>(for each unit) | <u>2</u>        | <u>        </u> | <u>        </u> | <u>        </u> | <u>54</u>       |
| Guest                       | <u>        </u> | <u>10</u>       | <u>        </u> | <u>        </u> | <u>10</u>       |
| Unassigned                  | <u>        </u> |
| Extra for Purchase          | <u>        </u> |
| Other: _____                | <u>        </u> |
| Total Covered & Open        | <u>64</u>       | <u>        </u> | <u>0</u>        | <u>0</u>        | <u>64</u>       |

Each apartment will have the exclusive use of at least 2 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 "D" contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

- There are no recreational or common facilities.  
 Swimming pool                       Storage Area                       Recreation Area  
 Laundry Area                       Tennis Court                       Trash Chute/Enclosure(s)  
 Other: \_\_\_\_\_

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

- There are no violations                       Violations will not be cured.  
 Violations and cost to cure are listed below:  Violations will be cured by \_\_\_\_\_  
(Date)

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

Not applicable

11. Conformance to Present Zoning Code

- a.  No variances to zoning code have been granted.  
 Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, 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>      | <u>          </u>     | <u>          </u> |
| Structures | <u>  x  </u>      | <u>          </u>     | <u>          </u> |
| Lot        | <u>  x  </u>      | <u>          </u>     | <u>          </u> |

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

- described in Exhibit   "F"   .  
 as follows:

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 use them, as described in the Declaration, 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 used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit \_\_\_\_\_.

as follows:

each apartment shall have an undivided 1/27 fractional interest (3.70370+ percentage interest).

- E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit "H" describes the encumbrances against the title contained in the title report dated November 17, 2003 and issued by Title Guaranty of Hawaii, Incorporated.

**Blanket Liens:**

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

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

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

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

| <u>Type of Lien</u> | <u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed <b>Prior to Conveyance</b></u>                                      |
|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Mortgage            | Buyer's contract will be canceled and Buyer's deposit will be returned, less Escrow cancellation fee. Buyer may lose all rights to acquire the Apartment. |

**F. Construction Warranties:**

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

1. Building and Other Improvements:

The Developer will convey each apartment by an Apartment Deed with a warranty of title. The Developer will provide each buyer with a ten year Home Builder's Limited Warranty, PWC FORM NO. 117 Rev. 05/02, a copy of which will be provided to each buyer upon the execution of a sales contract for an apartment in the condominium project. Other than the foregoing, the Developer will make no other warranties, express or implied, about any apartment, the condominium project or anything installed or contained in them. This includes, but is not limited to, warranties of merchantability, habitability, workmanlike construction, fitness for a particular use or purpose or for sufficiency of design.

2. Appliances:

See Section F.1 above.

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

Construction of the Project began in November 2003 and is estimated to be completed by February 28, 2005.

H. **Project Phases:**

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

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

Not applicable.



## V. MISCELLANEOUS

### A. Sales Documents Filed With the Real Estate Commission:

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

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit "J" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated December 26, 2003.  
Exhibit "K" contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

### B. Buyer's Right to Cancel Sales Contract:

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

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

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

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

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

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

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

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:

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

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P. O. Box 541, Honolulu, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 5244 filed with the Real Estate Commission on December 2, 2003.

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

YELLOW paper stock     WHITE paper stock     PINK paper stock     GREEN paper stock

C. **Additional Information Not Covered Above**

Waikoloa Community Association

The Project is subject to the terms, provisions, conditions and restrictions of that certain Declaration of Protective Covenants dated May 27, 1971, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 7577, Page 66, as it has been or may be amended and supplemented (the "Waikoloa Declaration"). All apartment owners, their tenants, families, servants and guests, and any other persons who may in any manner use the Project, shall be bound by and comply strictly with the Waikoloa Declaration and the Articles of Incorporation, By-Laws and any duly adopted rules and regulations of the Waikoloa Village Association. See Exhibit "L" for a summary of the pertinent provisions of the Waikoloa Declaration.

Any charges assessed by the Waikoloa Village Association pursuant to the Waikoloa Declaration shall be separate from the maintenance fees assessed by the Association of Apartment Owners of the Project and shall be payable directly by the apartments owners to the Waikoloa Village Association. The charges assessed by the Waikoloa Village Association are currently \$500.00 per unit.

Golf Course

The Project adjoins the Waikoloa Village Golf Course (the "Golf Course") and is subject to nuisances, disturbances and hazards related to use of the Golf Course. Persons using the Golf Course may cause golf balls to come upon the Project, including without limitation the Apartment and the limited common elements appurtenant to the Apartment, and persons using or working at the Golf Course shall be permitted to enter upon the Project, including without limitation the limited common elements appurtenant to the Apartment, to seek and retrieve golf balls; provided, however, that if there are any fences, walls or hedges separating the Project from the Golf Course such persons may enter upon the Project only at the access points provided in the fences, walls or hedges. The Developer, the Association or any other apartment owner in the Project (unless they are users of the Golf Course) shall not be liable in any manner or under any circumstances for any property damage, bodily injury or death resulting from golf balls entering the Project from the Golf Course or by any persons entering upon the Project to seek and retrieve golf balls. Purchasers will assume all risk arising from the location of the Golf Course next to the Project and from any property damage, bodily injury or death arising out of or in connection with the use of the Golf Course, including without limitation golf balls entering upon the Project. Purchasers will also indemnify and hold harmless the Developer, the Association and all other owners of apartments in the Project (unless they are users of the Golf Course) and their respective affiliates, officers, directors, members, managers, employees and agents from any actions, liabilities, claims, losses, damages, costs, expenses and attorneys' fees arising out of any claims made by, through or under purchasers in connection with property damage, personal injury or death arising from the use of the Golf Course.

Mold and Mildew

Microorganisms, including, but not limited to, mold, mildew, spores, or any other form of fungi or bacteria ("Microorganisms"), occur naturally in the environment and may be present, during or after construction, in the indoor air and/or on the interior surfaces of the apartments, including, without limitation to, cavities, attics, windows, foundations, floor slabs, and/or on the exterior surfaces of the apartments, or any part thereof. Concentration of moisture in the apartments may result from cooking, showering or similar activities inside the apartments, the outside atmosphere, and/or the design, construction means and methods, and/or the building materials used in the construction of the apartments. This moisture may cause the growth, release, discharge, dispersal or presence of Microorganisms which, at certain levels, can cause deterioration of building materials, damage to property, health hazards, personal injuries and/or other irritant effects, such as, without limitation to, skin irritation, respiratory problems and/or allergic reactions. Likewise, concentrations of chemicals released from household furnishings, appliances, mechanical equipment, personal possessions or building materials may, at certain levels, create health hazards and/or other irritant effects, such as, without limitation to, skin irritation, respiratory problems and allergic reactions. Because Microorganisms occur naturally in the environment, Developer cannot eliminate the possibility that Microorganisms may grow in, on or about the apartments. Buyers may minimize these effects by proper utilization and maintenance of heating, cooling, dehumidification or ventilation equipment, interior maintenance and cleaning and exterior maintenance, such as, but not limited to, proper grading, landscaping, painting and caulking. Each buyer will acknowledge that the buyer has been informed of the effects of Microorganisms and chemicals, and each buyer will assume all risk of damage, personal injury or destruction of or injury to property that may arise as a result of or be in any way connected with the indoor air quality or the presence of Microorganisms or chemicals in, on or about the apartments.

Each buyer will also release and discharge, and agree to indemnify and defend, Developer and its successors and assigns, construction manager, contractors, subcontractors, material suppliers and the officers, employees, agents of each of them, from and against any and all claims, obligations, demands, damages, causes of action, liabilities, losses and expenses, including reasonable attorneys' and expert fees, whether now known or hereafter known, foreseen or unforeseen, that the buyer or any occupant of the apartment had, has, or may have in the future, in law or in equity (the "claim"), that are attributable to (1) bodily injury, sickness, emotional distress, disease, death or any other personal injury or adverse health effects, or (2) injury to or destruction of tangible personal property, including loss of the use thereof arising out of or relating to, or in any way connected with, indoor air quality, moisture, or the growth, release, discharge, dispersal or presence of any Microorganisms or chemicals in the air or on the interior surfaces of the apartment including, without limitation to, wall cavities, the attic, windows and the basement, or on the exterior surfaces of the apartment or on any part thereof, whether or not the claim is caused by, in whole or in part, any act or omission of Developer, its construction manager, contractors, subcontractors or material suppliers, in the construction of the Project, including, but not limited to, Developer's or its construction manager's, contractors', subcontractors' or material suppliers' construction means and methods, material selection and installation, and/or design services, if any. Developer makes no express or implied warranty of habitability, merchantability, fitness for a particular purpose or good workmanship as to building materials and/or construction means and methods with regard to indoor air quality or the presence of Microorganisms or chemicals in, on or about the apartments.

#### Easements

- (a) The Private Yards appurtenant to Apartment Nos. 20, 21, 22, 23, 24, 25, 26 and 27 shall be subject to Easement A for utility purposes as described in Exhibit "H" to this report and shown on the Condominium Map.
- (b) The Private Yard appurtenant to Apartment No. 27 shall be subject to Easement B for electrical vault purposes as described in Exhibit "H" to this report and shown on the Condominium Map.
- (c) The Private Yards appurtenant to Apartment Nos. 26 and 27 shall be subject to Easement "1" for drainage purposes as shown on the Condominium Map.
- (d) The Private Yard appurtenant to Apartment No. 20 shall be subject to Easement "2" for drainage purposes as shown on the Condominium Map.
- (e) The Private Yards appurtenant to Apartment Nos. 13 and 14 shall be subject to Easement "3" for drainage purposes as shown on the Condominium Map.
- (f) The Private Yards appurtenant to Apartment Nos. 6 and 7 shall be subject to Easement "4" for drainage purposes as shown on the Condominium Map.
- (g) The Private Yard appurtenant to Apartment No. 1 shall be subject to Easement "5" for waterline purposes as shown on the Condominium Map.
- (h) The Private Yards appurtenant to the Apartments shall be subject to the building setback line (also identified as the golf course setback) as shown on the Condominium Map.
- (i) Persons using the Golf Course may cause golf balls to come upon the Project, including without limitation the Apartments and the limited common elements appurtenant to the Apartments. Persons using or working at the Golf Course shall have the right to enter upon the Project, including without limitation the Private Yards appurtenant to the Apartments, for the sole purpose of seeking and retrieving golf balls; provided, however, that if there are any fences, walls or hedges separating the Project from the golf course such persons may enter upon the Project only at the access points provided in the fences, walls or hedges.

- D. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

17<sup>th</sup> Fairway Villas at Waikoloa LLC  
Printed Name of Developer

By: Richard H. Lachmann 1/9/04  
Duly Authorized Signatory\* Date

Richard H. Lachmann

Vice President of Towne Development of Hawaii, Inc.  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Hawaii

Planning Department, County of Hawaii

***\*Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner; Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.***

EXHIBIT "A"

DEVELOPER'S RESERVED RIGHTS

1. The Developer reserves the right to conduct extensive sales activities on the Project for the sale of apartments in the Project, and for the sale of apartments in other projects developed by Developer on property located near or adjacent to the Project, including without limitation, the use of model apartments, sales and management offices, and extensive sales displays and activities until the date of the closing of the sale of the last unsold apartment in the Project or in such other projects (see Section 4.14 of the Declaration).

2. The Developer reserves an easement over and upon the Project as may be reasonably necessary for the completion of the development and construction of the Project and the correction of defects in the Project. (See Section 4.16 of the Declaration).

3. The Developer reserves the right, for itself and its successors and assigns, at any time prior to December 31, 2010, to designate and to grant to any public utility or governmental authority or other entity rights-of-way and other easements which are for the sole benefit of the Project, for the benefit of lands located near or adjacent to the Project, or which do not materially and adversely interfere with the use, nor materially and adversely impair the value of the Project or any apartment in it, over, across, under and through the common elements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage, refuse collection, and other public services and utilities, and rights to enter for the purpose of installing, repairing, altering and removing such lines and facilities and of trimming any trees in the way thereof; provided that in connection with the installation, maintenance, repair, alteration or removal of any such lines and facilities pursuant to rights-of-way and other easements granted hereunder, the Declarant or its successors or assigns, as applicable, must require that the common elements be restored promptly at the expense of the party owning and exercising such easement right; provided, further, that the Association of Apartment Owners, through the Board of Directors, and with the consent and agreement of the holders of any then existing easements affected thereby, is authorized to grant, convey, transfer, cancel, relocate and otherwise deal with any and all such public services and utilities easements now or hereafter located on or affecting the Project without requiring any consideration therefor. To the extent that joinder of any apartment owner and lien holder or other person who may have any interest in the Project, any apartment or the land of the Project may be required in order to validate any act or thing done pursuant to the foregoing reservation, such joinder shall be accomplished by a power of attorney from each of the owners, lien holders or other such parties. The acquiring or acceptance of ownership in an apartment or of a lien covering an apartment or any other interest in the Project or the land of the Project shall constitute a grant of such power of attorney and the grant, being coupled with an interest, shall be irrevocable and shall not be affected by the disability of the party granting such power. (See Section 4.17 of the Declaration).

4. The Developer reserves the right to amend the Declaration (see Section 21 of the Declaration), without the consent or joinder of the Association or the persons then owning or leasing the apartments or their mortgages, as follows:

a. From time to time, after completion of construction of the buildings of the Project, pursuant to the provisions of Section 514A-12, Hawaii Revised Statutes, to record verified statements of a registered architect or professional engineer certifying that the final plans of the buildings theretofore filed or being filed simultaneously with such amendments fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built.

b. To change the number of each type of apartment in the Project; provided, however, that this right shall apply only to apartments that are not yet built or are owned by the Developer.

c. To make changes to the Project and the Project drawings and/or specifications; provided that such changes do not violate applicable laws and codes and do not constitute a material change to any apartment not owned by the Developer.

d. To satisfy any requirement of the Department of Veterans' Affairs ("VA") or the Federal Housing Administration ("FHA") which the Developer deems necessary or convenient.

e. To such extent and with such language as may be requested by the FHA, VA, Federal Home Loan Mortgage Corporation or Federal National Mortgage Association, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of an apartment in the Project.

EXHIBIT "B"

BUILDINGS OF THE PROJECT

There are twenty-seven (27) separate condominium apartments in the Project situated in twenty-seven (27) buildings without basements. All of the buildings are single-family residences with two-car garages.

EXHIBIT "C"

SCHEDULE OF APARTMENTS

| <u>Apartment<br/>Number</u> | <u>Net Living Area<br/>(square feet)</u> | <u>Lanai Area<br/>(square feet)</u> | <u>Entry Area<br/>(square feet)</u> | <u>Garage Area<br/>(square feet)</u> | <u>Total Area<br/>(square feet)</u> |
|-----------------------------|------------------------------------------|-------------------------------------|-------------------------------------|--------------------------------------|-------------------------------------|
| 1                           | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 2                           | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 3                           | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 4                           | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 5                           | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 6                           | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 7                           | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 8                           | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 9                           | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 10                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 11                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 12                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 13                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 14                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 15                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 16                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 17                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 18                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 19                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 20                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 21                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 22                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 23                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 24                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 25                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 26                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |
| 27                          | 1,258                                    | 266                                 | 60                                  | 371                                  | 1,955                               |

EXHIBIT "D"

BOUNDARIES OF APARTMENTS

Each apartment consists of an entire building. The boundaries of each apartment consists of the exterior surfaces of the perimeter walls, roofs and eaves and the bottom surfaces of the foundations, floors and/or footings of each apartment, as applicable, and includes any lanais, entry areas, gutters, downspouts and railings attached to and a part of the building. Each building includes a garage with two (2) parking spaces.

EXHIBIT "E"

PERMITTED ALTERATIONS TO APARTMENTS

Section 15 of the Declaration provides as follows:

Except as otherwise provided by applicable law, restoration or replacement of the Project or any building or other structure thereof or construction of any additional building or other structure or structural alteration or addition thereto different in any material respect from the Condominium Map shall be undertaken by the Association or any Apartment Owners only pursuant to an amendment of this Declaration, duly executed by or pursuant to a vote of at least seventy-five percent (75%) of the Apartment Owners and in accordance with complete plans and specifications therefor first approved in writing by the Board, and promptly upon completion of such restoration, replacement, construction, alteration or addition the Association shall duly record or file of record such amendment together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer; PROVIDED, HOWEVER, that notwithstanding any provision in this Declaration to the contrary other than the provisions of Section 21 below, any alterations or additions to an Apartment or of certain Apartments, or within a limited common element appurtenant to and for the exclusive use of an Apartment or of certain Apartments, including without limitation any landscaping, trees, fence or wall, shall require only the written approval thereof, including the Apartment Owner's plans therefor, by the institutional holders of mortgages covering such Apartment (if the mortgagees require such approval), the Board, and all other Apartment Owners thereby directly affected (as determined by said Board), and such alterations or additions may be undertaken without an amendment to this Declaration or filing of a complete set of floor plans of the Project as so altered; provided, however, the garage that is a part of each Apartment shall not be altered and shall always be used for the parking of vehicles.

The Association and Apartment Owners shall obtain any required building permits for any construction, restoration or replacement, and shall observe all applicable laws and building setback lines.

Non-material additions to the common elements shall require approval only by the Board and by sixty-five percent (65%) of the Apartment Owners, together with the consent of all other Apartment Owners thereby directly affected (as determined by the Board). For so long as a statutory definition of "non-material structural additions to the common elements" shall be prescribed by Section 514A-89 of the Act, as it may be amended from time to time or by any substitute or successor statute, said statutory definition shall be applied in interpreting the foregoing sentence.

EXHIBIT "F"

COMMON ELEMENTS

1. The Land of the Project in fee simple.
2. All yards, grounds, landscaping, fences and walls, if any.
3. All roads, ten (10) guest parking stalls, sidewalks and driveways.
4. Mailboxes.
5. Trash disposal areas.
6. All pipes, wires, cables, ditches, conduits, ducts, water meters, electrical equipment, and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one apartment for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any.
7. Any and all other apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use.

EXHIBIT "G"

LIMITED COMMON ELEMENTS

1. The Private Yards under and surrounding each of the apartments, including without limitation any uncovered concrete slabs, walkways and driveways, as shown on the Condominium Map, and any trees, shall be appurtenant to the respective apartments, but excluding any water line, sewer line or drain line located on, in or under such Private Yards that serves more than one apartment or the common elements. Portions of the boundary between two adjoining Private Yards may be marked by a fence as originally erected between the two Private Yards. The Private Yards are not legally subdivided lots and the boundary lines between adjoining Private Yards are not intended and should not be construed to be property lines of legally subdivided lots.

2. The water lines, sewer lines or drain lines located in or under the Private Yard of an apartment which serve only that apartment shall be appurtenant to such apartment.

3. The walkway located between any two Apartments shall be appurtenant to and for the exclusive use of such apartment.

4. One (1) mailbox shall be appurtenant to and for the exclusive use of each apartment.

EXHIBIT "H"

ENCUMBRANCES AGAINST TITLE

The following are the encumbrances against title to the land of the Project, identified as Tax Map Key No. (3) 6-8-003-009.

1. For Real Property taxes that may be due and owing reference is made to the Office of the Tax Assessor, County of Hawaii.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Grant to Hawaii Electric Light Company, Inc. dated August 14, 1979, recorded in said Bureau of Conveyances in Liber 13956, Page 449, granting a perpetual non exclusive right and easement of access, and for electric utility purposes over and across the following described "easement area":

- (1) EASEMENT "A" (10 feet wide, area 7,536 square feet) for utility purposes, more particularly described as follows:

All of that certain parcel of land (being portion(s) of the land(s) described and covered by Royal Patent Number 5671, Land Commission Award Number 8521-B, Apana 1 to G. D. Hueu) situate, lying and being on the southwesterly side of Lua-Kula Street at Waikoloa, District of South Kohala, Island and County of Hawaii, State of Hawaii, being EASEMENT "A" (10 feet wide) for utility purposes, same being a portion of Lot 114 of the "WAIKOLOA VILLAGE UNIT 1-A", File Plan No. 1188, and thus bounded and described:

Beginning at the northwest corner of this Easement on the southwesterly side of Lua-Kula Street, being also the northwest corner of Lot 114 of Waikoloa Village Unit 1-A, File Plan No. 1188, the coordinates of which referred to Government Survey Triangulation Station "PUU HINAI" being 10,169.76 feet north and 4,983.02 feet west and running by azimuths measured clockwise from true South:

Along the southwesterly side of Lua-Kula Street, on a curve to the left with a radius of 530.00 feet, the chord azimuth and distance being:

- |    |      |     |     |        |                                                                                                                                                          |
|----|------|-----|-----|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 330° | 15' | 24" | 50.35  | feet;                                                                                                                                                    |
| 2. | 341° | 42' | 41" | 731.19 | feet along remainder of Lot 114 of Waikoloa Village Unit 1-A, File Plan No. 1188;                                                                        |
| 3. | 74°  | 44' | 01" | 10.01  | feet along remainder of Lot 114 of Waikoloa Village Unit 1-A, File Plan No. 1188;                                                                        |
| 4. | 161° | 42' | 41" | 780.01 | feet along Lot 110 of Waikoloa Village Unit 1-A, File Plan No. 1188 to the point of beginning and containing an area of 7,536 square feet, more or less. |

- (2) EASEMENT "B" (area 319 square feet) for electrical vault purposes, more particularly described as follows:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 5671, Land Commission Award Number 8521-B, Apana 1 to G. D. Hueu) situate, lying and being on the southwesterly side of Lua-Kula Street at Waikoloa, District of South Kohala, Island and County of Hawaii, State of Hawaii, being EASEMENT "B" for electrical vault purposes, same being a portion of Lot 114 of the "WAIKOLOA VILLAGE UNIT 1- A", File Plan No. 1188, and thus bounded and described:

Along the southwesterly side of Lua-Kula Street, on a curve to the left with a radius of 530.00 feet, the chord azimuth and distance being:

- |    |      |     |     |       |                                                                                                                                                                       |
|----|------|-----|-----|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 313° | 48' | 31" | 16.00 | feet;                                                                                                                                                                 |
| 2. | 43°  | 48' | 31" | 20.00 | feet along remainder of Lot 114, of Waikoloa Village Unit 1-A, File Plan No. 1188;                                                                                    |
| 3. | 133° | 48' | 31" | 16.00 | feet along remainder of Lot 114 of Waikoloa Village Unit 1-A, File Plan No. 1188;                                                                                     |
| 4. | 223° | 48' | 31" | 20.00 | feet along remainder of Lot 114, of Waikoloa Village Unit 1-A, File Plan No. 1188, to the point of beginning and containing an area of 319 square feet, more or less. |

4. Declaration of Protective Covenants dated May 27, 1971, recorded as aforesaid in Liber 7577, Page 66, as amended and/or supplemented by instruments recorded as aforesaid in Liber 7577, Page 94, Liber 8026, Page 291, Liber 8306, Page 196, Liber 9360, Page 369, Liber 9794, Page 32, Liber 9956, Page 597, Liber 10701, Page 5, Liber 10706, Page 490, Liber 13453, Pages 142 and 147, Liber 13588, Page 658, Liber 13904, Page 310, Liber 14266, Page 453, Liber 15016, Page 403, Liber 18999, Page 418, Liber 19199, Page 37, Liber 20893, Page 418, Liber 21761, Page 582, Liber 22070, Page 414, Liber 22127, Page 733, Liber 22361, Page 1, Liber 22791, Page 30, Liber 23172, Pages 387 and 414, Liber 23182, Page 398, Liber 23806, Page 238, as Document No. 90-029591, as Document No. 91-077792 (Joinders recorded as Documents Nos. 91-077793, 91-077794 and 91-077795), and as Document No. 96-013206.

5. Real Property Mortgage and Financing Statement dated August 11, 1994, recorded as aforesaid as Document No. 94-133213, in favor of First Hawaiian Bank, a Hawaii corporation, as amended and confirmed by instrument dated February 23, 1998, effective September 30, 1997, recorded as aforesaid as Document No. 98-028506, and by instrument dated October 5, 1998, recorded as aforesaid as Document No. 98-157718, and by instrument dated January 27, 2000, recorded as aforesaid as Document No. 2000-012638, and as amended and restated by Amendment to and Complete Restatement of Real Property Mortgage and Financing Statement (September 1, 2000), dated effective as of September 1, 2000, recorded as Land Court Document No. 2661562, and also recorded as aforesaid as Document No. 2000-153906, and as assumed and amended by Assumption of and Amendment to Real Property Mortgage dated August 29, 2003, recorded as aforesaid as Document Nos. 2003-190684 and 2003-190685.

6. Declaration of Condominium Property Regime of 17<sup>th</sup> Fairway Villas at Waikoloa dated November 24, 2003, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2003-264227, and Condominium Map No. 3677 filed in the Bureau of Conveyances of the State of Hawaii, as amended by instrument dated December 19, 2003, recorded as aforesaid as Document No. 2003-283909, and by instrument dated December 31, 2003, recorded as aforesaid as Document No. 2004-002427.

7. By-Laws of the Association of Apartment Owners of 17<sup>th</sup> Fairway Villas at Waikoloa dated November 24, 2003, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2003-264228.

8. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

9. Any unrecorded leases and matters arising from or affecting the same.

END OF EXHIBIT "H"

EXHIBIT "I"

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

| <u>Apartment</u>                                                                                              | <u>Monthly Fee</u> x 12 months = <u>Yearly Total</u> |
|---------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| 1, 2, 3, 4, 5, 6, 7, 8,<br>9, 10, 11, 12, 13, 14, 15, 16,<br>17, 18, 19, 20, 21, 22, 23, 24,<br>25, 26 and 27 | \$255.00 x 12 months = \$3,060.00                    |

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

**Estimate of Maintenance Fee Disbursements:**

|                                                          | <u>Monthly Fee</u> x 12 months = <u>Yearly Total</u> |
|----------------------------------------------------------|------------------------------------------------------|
| Utilities and Services                                   |                                                      |
| Electricity                                              |                                                      |
| <input checked="" type="checkbox"/> common elements only | \$ 675.00 x 12 months = \$ 8,100.00                  |
| <input type="checkbox"/> common elements and apartments  |                                                      |
| Refuse Collection                                        | \$1,000.00 x 12 months = \$12,000.00                 |
| Water and Sewer                                          | \$1,350.00 x 12 months = \$16,200.00                 |
| Maintenance, Repairs and Supplies                        |                                                      |
| Grounds                                                  | \$2,700.00 x 12 months = \$32,400.00                 |
| Management                                               |                                                      |
| Management Fee                                           | \$ 520.00 x 12 months = \$ 6,240.00                  |
| Insurance                                                | \$ 270.00 x 12 months = \$ 3,240.00                  |
| Reserves                                                 | \$ 270.00 x 12 months = \$ 3,240.00                  |
| Audit Fees                                               | \$ 100.00 x 12 months = \$ 1,200.00                  |
| <br>TOTAL                                                | <br>\$6,885.00 x 12 months = \$82,620.00             |

I, Richard H. Lachmann, as agent for/and/or employed by 17<sup>th</sup> Fairway Villas at Waikoloa LLC, the developer for the 17<sup>th</sup> Fairway Villas at Waikoloa condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.



Signature



Date

The Developer has not conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

EXHIBIT "J"

SUMMARY OF SALES CONTRACT

A copy of the form of Condominium Sales Agreement ("Sales Contract") has been submitted to the Real Estate Commission and is available for inspection at the Developer's office. The following is a summary of some of the provisions of the Sales Contract. ALL BUYERS AND PROSPECTIVE BUYERS SHOULD CAREFULLY READ THE SALES CONTRACT IN FULL SINCE THIS SUMMARY IS NOT INTENDED TO BE A COMPLETE DESCRIPTION OF THE PROVISIONS OF THE SALES CONTRACT.

1. The Sales Contract does not become a binding contract until the Effective Date occurs. Until the Effective Date, the Sales Contract is only a reservation for the Apartment and is not legally binding on either Buyer or Developer. The Effective Date of the Sales Contract shall be the date on which all of the following conditions are fulfilled:

(a) A copy of the Contingent Final Condominium Public Report or the Final Condominium Public Report covering the Apartment is mailed or otherwise delivered to Buyer;

(b) Buyer has waived or be deemed to have waived Buyer's right to terminate the Sales Contract pursuant to Hawaii Revised Statutes, Section 514A-62, as amended; and

(c) The Sales Contract has been accepted by Developer through execution of the Sales Contract by Developer's officers or designated agents.

2. If the Apartment covered by a particular Sales Contract is an Owner-Occupant Designated Apartment, and Buyer has executed an affidavit stating Buyer's intent to become an owner-occupant of the Apartment, then Buyer agrees when signing the Sales Contract that Buyer will occupy the Apartment as Buyer's principal residence. Any such Buyer shall be required to reaffirm his or her intent to be an owner-occupant no earlier than the Buyer's receipt of the Final Public Report and no later than the Closing Date. Failure to sign the reaffirmation upon the reasonable request of Developer shall constitute a default under the Sales Contract by such Buyer and Developer shall have the remedies provided in the Sales Contract.

3. Section G.3 of the Sales Contract provides as follows:

Home Builder's Limited Warranty. THE TEN YEAR HOME BUILDER'S LIMITED WARRANTY (THE "HOME BUILDER'S LIMITED WARRANTY"), THE FORM OF WHICH IS ATTACHED TO THIS AGREEMENT, IS THE SOLE AND ONLY WARRANTY, EITHER EXPRESS OR IMPLIED, THAT BUYER SHALL RECEIVE FROM SELLER WITH RESPECT TO THE APARTMENT OR THE PROJECT. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES BEING GIVEN BY SELLER TO BUYER, AND BUYER SPECIFICALLY WAIVES TO THE FULL EXTENT ALLOWED BY LAW ANY IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE APARTMENT AND BUYER'S INTEREST IN ALL COMMON ELEMENTS OR ANY PERSONAL PROPERTY OR FIXTURES BEING PROVIDED TO BUYER BY SELLER AS PART OF THE APARTMENT AND BUYER'S INTEREST IN ALL COMMON ELEMENTS. BUYER HAS BEEN GIVEN A COPY OF THE HOME BUILDER'S LIMITED WARRANTY, PWC FORM NO. 117 REV. 05/02. BUYER HAS ALSO BEEN GIVEN THE HOME BUILDER'S LIMITED WARRANTY ACKNOWLEDGMENT OF RECEIPT AND AGREEMENT TO READ AND UNDERSTAND ("ACKNOWLEDGMENT"), WHICH ACKNOWLEDGMENT BUYER HAS EXECUTED CONTEMPORANEOUSLY WITH THIS AGREEMENT. AT CLOSING, BUYER SHALL RECEIVE FROM SELLER A HOMEOWNER'S MANUAL WHICH SHALL FURTHER EXPLAIN THE HOME BUILDER'S LIMITED WARRANTY PROGRAM. IN ADDITION TO

SELLER'S OBLIGATION TO CORRECT CONSTRUCTION DEFECTS IN ACCORDANCE WITH THE HOME BUILDER'S LIMITED WARRANTY, THE HOMEOWNER'S MANUAL SHALL CONTAIN SELLER'S CUSTOMER SERVICE PROGRAM. THIS CUSTOMER SERVICE PROGRAM PROVIDES FOR THE REPAIR, IF APPLICABLE, BY SELLER DURING THE FIRST YEAR OF THE HOME BUILDER'S LIMITED WARRANTY OF MINOR PROBLEMS IN THE APARTMENT THAT MIGHT NOT RISE TO THE LEVEL OF A CONSTRUCTION DEFECT UNDER THE HOME BUILDER'S LIMITED WARRANTY.

4. Buyer agrees that all payments required by the Sales Contract will be deposited with Escrow and that all checks will be made payable to Escrow. Buyer also agrees that any money that Buyer deposits with Escrow may be deposited together with other buyers' money in a federally insured interest bearing account, and that Escrow may distribute the money in this account according to an Escrow Agreement between Developer and Escrow. Buyer also agrees that all the interest earned from the funds deposited by buyers will be credited to Developer, except that if a Sales Contract is executed pursuant to a Contingent Final Public Report all interest earned from the funds deposited by Buyer shall be credited to Buyer's account unless and until a Final Public Report is issued before the expiration of the Contingent Final Public Report.

In case Buyer is late in making payments to Escrow, the late payment will bear interest at the rate of one percent (1%) per month until paid.

5. All taxes, assessments, and charges of any kind assessable against the Apartment or the land of the Project will be prorated as of the Closing Date. This means that Buyer will have to pay Buyer's share of these taxes and assessments at the Closing Date. In addition, Buyer will be responsible for paying all closing costs in connection with the purchase of the Apartment, including all costs related to any mortgages, all notary fees, recording fees, escrow fees, title insurance, conveyance taxes and fees, and preparation of the Apartment Deed to Buyer.

6. In addition to all other funds due, Buyer must deposit with Escrow at Preclosing a nonrefundable "start-up" fee for the Condominium Association. This start-up fee is an initial contribution to the Association common expenses reserve. The minimum amount of the start-up fee will be equal to two (2) months of estimated assessments for common expenses. Also, Buyer must deposit with Escrow the amount of the Initiation Assessment required under the Declaration of Covenants, Conditions and Restrictions of Waikoloa Village, which constitutes a non-refundable "start-up" fee for the Waikoloa Village Association. These amounts are separate from the purchase price and closing costs for the Apartment.

7. Buyer may not assign Buyer's rights under the Sales Contract without the prior written consent of Developer. Under no circumstances may Buyer assign Buyer's rights to the agreement after the Preclosing or the Closing Date. If Buyer attempts to assign the agreement without Developer's written consent, Buyer shall be in default under the Sales Contract.

8. The Developer may, at its option, preclose the sale of Apartments by requiring the Buyer to deliver all documents necessary for closing and certain funds to Escrow up to sixty (60) days prior to the closing date. Buyer will have ten (10) days notice of such preclosing. Buyer must deposit all funds other than the proceeds of Buyer's first mortgage loan or the balance of the purchase price for a cash sale with Escrow, including the advanced payment for a maintenance assessment fund. Buyer must also sign all documents required for closing.

9. Buyer shall not be able to occupy the Apartment until the Closing Date for the sale of the Apartment. Developer or Escrow will notify Buyer of when the Closing Date will take place. Buyer will not be able to take occupancy until all payments required by the Sales Contract have been made. Keys will not be issued for the Apartment unless all payments have been made. If Buyer attempts to take occupancy of the Apartment prior to the Closing Date, then Buyer will be in default of the Sales Contract, and Developer has the right to remove Buyer from the Apartment using any lawful means.

10. Buyer agrees to accept an Apartment as suitable for occupancy even if there are defects or damage

to the Apartment, as long as Developer promises to repair these defects within a reasonable time after Buyer takes occupancy. If Buyer wrongfully refuses to take occupancy of a defective Apartment, Buyer may have to bear the cost of Developer's costs in any resulting legal action. Developer will notify Buyer that the Apartment is ready for inspection prior to occupancy. Buyer then has fifteen (15) days from the date Buyer receives notification to inspect the Apartment. If Buyer does not inspect the Apartment within this time, Developer may appoint an appropriate person to inspect the Apartment on Buyer's behalf and decide if it is acceptable.

11. The Developer reserves the right, and Buyer authorizes the Developer, to change the Project and modify the condominium map and any other condominium documents as may be required by law, any title insurance company, or institutional mortgage lender or governmental agency, and may change the style and format of the documents; provided that such changes shall not (1) constitute a material change, (2) render unenforceable Buyer's mortgage loan commitment, (3) increase Buyer's percentage share of common expenses, or (4) increase the total purchase price. The Developer also reserves the right, without the approval of the Association or apartment owners, to (1) make any changes to the Common Elements for any reason, including but not limited to reasons related to financial feasibility or aesthetics, (2) increase or decrease the thickness of any foundation, wall, column or floor slab resulting in the dimensions of Buyer's Apartment thus affected becoming smaller or larger or resulting in a building height or elevation different from those shown on the condominium map or stated in the Declaration, (3) make changes relating to aesthetic considerations, (4) make changes necessary to correct any previous design errors or shortcomings, or (5) make changes to the Project plans and/or specifications and corresponding changes to the Project so long as such changes do not violate applicable laws and codes, and Buyer hereby specifically approves all such changes. The Developer may vary the type of window glass (reflective, gray or other) and install different types of glass throughout the Project to achieve the best combination of energy savings and aesthetics.

12. Developer will complete construction so that Buyer may occupy the Apartment within two (2) years of the Effective Date of the Sales Contract. However, this two (2) year period may be extended if construction is delayed by any matters beyond Developer's control.

13. By signing the Sales Contract, Buyer represents that Buyer is financially capable of paying the purchase price for the Apartment. Buyer also represents that any financial data he has given Developer is accurate. If Buyer does not notify Developer that Buyer's financial situation has changed as of the Closing Date, Developer will assume that the information Developer has is accurate. If the Developer discovers that any important financial data provided to Developer is not accurate and Buyer failed to notify Developer of this inaccuracy, Developer has the right to cancel the Sales Contract.

If Buyer intends to finance the purchase of an Apartment, Buyer must apply for financing and inform Developer of the name and address of the lending institution within five (5) days of Developer's acceptance of the Sales Contract or, if the Sales Contract is a reservation, from the Effective Date of the Sales Contract. Buyer agrees to do everything possible and/or necessary to successfully obtain the loan. Within fifty-five (55) days of Developer's acceptance of the Sales Contract or, if the Sales Contract is a reservation, from the Effective Date of the Sales Contract, Buyer must deliver to Developer a written, unqualified loan commitment that is reasonably acceptable to Developer signed by the lending institution agreeing to make the loan to Buyer.

If Buyer tries in good faith and with diligent effort to obtain financing but is unsuccessful in doing so, then either Developer or Buyer may cancel the Sales Contract upon written notice to the other party. If the Sales Contract is cancelled in this manner, Buyer is entitled to a refund from Escrow of Buyer's money, without interest and minus any costs incurred by Developer, Escrow, or any lending institution in processing the Sales Contract or the Buyer's loan application(s).

If Buyer does not apply for and do everything possible and/or necessary to successfully obtain the loan, then Developer may cancel the Sales Contract upon written notice to Buyer and Developer may keep all money previously paid by Buyer and any interest earned.

If Buyer is making a cash purchase of an Apartment, Buyer must provide proof to Developer within ten (10)

days after Developer accepts the Sales Contract that Buyer is financially capable of making all payments under the Sales Contract. Developer has the option to terminate the Sales Contract if Developer determines at any time that Buyer is unable to make the required payments. If the Sales Contract is cancelled in this manner, Buyer is entitled to a refund from Escrow of Buyer's money, without interest and less escrow charges, the cost of any credit reports and all other costs incurred by Developer. Developer will give Buyer notice of any such cancellation.

14. As long as the Sales Contract is only a reservation, it may be terminated for any reason and at any time at the option of either Buyer or Developer, by giving written notice of termination to the other party. In the event of a termination, the Developer will instruct Escrow to refund all payments previously made by Buyer, without interest. Additionally, if the Buyer is terminating the Sales Contract pursuant to Hawaii Revised Statutes, Section 514A-63, as amended, then Escrow shall deduct an escrow cancellation fee and all costs incurred by Developer, escrow, or any lending institution in processing the Sales Contract or loan application.

Notwithstanding anything in the Sales Contract to the contrary, if the Sales Contract is executed pursuant to a Contingent Final Public Report, then if Buyer exercises Buyer's right to rescind the Sales Contract pursuant to H.R.S. 514A-64.5, Developer shall cause Escrow to refund to Buyer all sums previously paid by Buyer, with interest, and shall reimburse Buyer any required escrow fees paid by Buyer and, if Developer required Buyer to secure a financing commitment, any fees Buyer incurred to secure that financing

15. If Buyer defaults, Developer may cancel the Sales Contract by notifying Buyer in writing. If the cancellation occurs after the Effective Date of the Sales Contract, the Developer may keep any amounts previously paid by Buyer as liquidated damages to compensate Developer for its damages. In addition, Developer may also pursue any other legal remedy for Buyer's default.

If Developer defaults after the Effective Date of the Sales Contract, Buyer's only remedy is to cancel the Sales Contract and have all of Buyer's money refunded.

17. Developer has the option to cancel the Sales Contract if unanticipated delays in construction cause the cost of development to increase to the point where the Project is no longer economically feasible for the Developer. In this case, Developer may cancel the Sales Contract and refund Buyer's money in the same way as for a cancellation due to lack of sales described above.

18. By entering into the Sales Contract, Buyer acknowledges that Buyer has never received any information or representations from Developer or any of Developer's agents regarding rental income from the Apartment or other economic or tax benefits that Buyer may receive from ownership of the Apartment. The Buyer further agrees that he or she will not participate in any rental pool for the renting of the Apartment. Buyer may be required to sign documents which satisfy the Developer that no such representations have been made.

19. The Developer may have made one or more construction loans to finance construction of the Project. Any rights which a Buyer may possess under a Sales Contract for one of the Apartments in the Project are subject to and subordinate to the rights of the lender(s) of the construction loan(s).

20. Any dispute between Developer and Buyer arising out of or relating to the Sales Contract or the Apartment, or the construction, development or management of the Project or the sale of any Apartment or the use or occupancy of any Apartment, or any other aspect of the relationship between Developer and Buyer regarding the Project shall be resolved by mandatory arbitration.

21. Buyer accepts the following conditions as well as any inconvenience or annoyance which Buyer may experience as a result of such conditions and expressly waives any rights, claims or actions which he might otherwise have against Developer or third parties as a result of such circumstances:

(a) Construction activity by Developer or other apartment owners may continue at the Project after Buyer has occupied the Apartment and this activity may result in noise, dust, surface water run off,

vapors, odors, vibration, traffic congestion, or other nuisances or annoyances to Buyer and may limit Buyer's access to portions of the Project.

(b) Sales activities, including the use of model apartment units, sign and extensive sales displays and other activities for the sale of apartments developed in the Project, and for the sale of apartments in projects developed by Developer on property near or adjacent to the Project, will continue in the Project, and the parking spaces in the Project may be used for parking for prospective purchasers and other business invitees of Seller until the earlier to occur of (i) December 31, 2010, or (ii) the sale of the last unsold apartment in the Project or in such other projects. If Developer's mortgage lender shall acquire any portion of the Project, the lender may continue such use until all the apartments have been sold and closed.

(c) Developer reserves the right for itself, its employees, agents, sales representatives, business invitees and prospective purchasers to utilize the common elements for ingress and egress to such parking spaces and model apartments and in order to show the common elements to prospective purchasers.

22. The Project adjoins the Waikoloa Village Golf Course (the "Golf Course") and is subject to nuisances, disturbances and hazards related to use of the Golf Course. Buyer understands and agrees that (a) persons using the Golf Course may cause golf balls to come upon the Project, including without limitation the Apartment and the limited common elements appurtenant to the Apartment, and (b) persons using or working at the Golf Course shall be permitted to enter upon the Project, including without limitation the limited common elements appurtenant to the Apartment, to seek and retrieve golf balls; provided, however, that if there are any fences, walls or hedges separating the Project from the Golf Course such persons may enter upon the Project only at the access points provided in the fences, walls or hedges. Buyer agrees that Developer, the Association or any other apartment owner in the Project (unless they are users of the Golf Course) shall not be liable in any manner or under any circumstances for any property damage, bodily injury or death resulting from golf balls entering the Project from the Golf Course or by any persons entering upon the Project to seek and retrieve golf balls. Buyer assumes all risk arising from the location of the Golf Course next to the Project and from any property damage, bodily injury or death arising out of or in connection with the use of the Golf Course, including without limitation golf balls entering upon the Project. Buyer shall indemnify and hold harmless Developer, the Association and all other owners of apartments in the Project (unless they are users of the Golf Course) and their respective affiliates, officers, directors, members, managers, employees and agents from any actions, liabilities, claims, losses, damages, costs, expenses and attorneys' fees arising out of any claims made by, through or under Buyer in connection with property damage, personal injury or death arising from the use of the Golf Course.

23. Buyer acknowledges that it has been informed that microorganisms, including, but not limited to, mold, mildew, spores, or any other form of fungi or bacteria ("Microorganisms"), may be present in the Apartment and that Microorganisms, at certain levels, can cause deterioration of building materials, damage to property, health hazards, personal injuries and/or other irritant effects, such as, without limitation to, skin irritation, respiratory problems and/or allergic reactions. Concentrations of chemicals released from household furnishings, appliances, mechanical equipment, personal possessions or building materials may, at certain levels, create health hazards and/or other irritant effects, such as, without limitation to, skin irritation, respiratory problems and allergic reactions. Because Microorganisms occur naturally in the environment, Developer cannot eliminate the possibility that Microorganisms may grow in, on or about the Apartment. Buyer releases and agrees to indemnify and defend Developer and its successors and assigns, construction manager, contractors, subcontractors, material suppliers and the officers, employees, agents of each of them, from and against any and all claims, obligations, demands, damages, causes of action, liabilities, losses and expenses, including reasonable attorneys' and expert fees, whether now known or hereafter known, foreseen or unforeseen, that Buyer or any occupant of the Apartment had, has, or may have in the future, in law or in equity (the "claim"), that are attributable to (1) bodily injury, sickness, emotional distress, disease, death or any other personal injury or adverse health effects, or (2) injury to or destruction of tangible personal property, including loss of the use thereof arising out of or relating to, or in any way connected with, indoor air quality, moisture, or the growth, release, discharge, dispersal or presence of any Microorganisms or any chemicals in the indoor air or on the interior surfaces of the Apartment including, without limitation to, wall cavities, the attic, windows and the basement, or on the exterior surfaces of the Apartment or on any part thereof.

EXHIBIT "K"

SUMMARY OF ESCROW AGREEMENT

A copy of the Escrow Agreement between the Developer and Title Guaranty Escrow Services, Inc. ("Escrow"), has been submitted to the Real Estate Commission and is available for inspection at the Developer's office. The following is a summary of some of the provisions of the Escrow Agreement.

NOTE: ALL BUYERS AND PROSPECTIVE BUYERS SHOULD READ THE ESCROW AGREEMENT AND ALL AMENDMENTS IN FULL AS THIS SUMMARY DOES NOT CONTAIN A COMPLETE DESCRIPTION OF ALL PROVISIONS IN THE ESCROW AGREEMENT. THIS SUMMARY IS INTENDED ONLY TO GIVE A BRIEF DESCRIPTION OF SOME OF THE ITEMS CONTAINED IN THE ESCROW AGREEMENT, AND DOES NOT ALTER OR AMEND THE ESCROW AGREEMENT IN ANY MANNER.

1. A signed copy of each sales contract for an Apartment in the Project must be given to Escrow.
2. All purchasers who are to be owner-occupants as defined in Section 514A-103, Hawaii Revised Statutes, must submit an affidavit to Escrow affirming their owner-occupant status. The affidavit setting forth the purchasers' intent to be owner-occupants must be reaffirmed no earlier than their receipt of the final public report but no later than the closing of escrow for the Apartment and all prospective owner-occupants must submit the reaffirmed affidavit and proof of receipt of the final public report to Escrow.
3. All money received by the Developer from buyers under sales contracts for apartments in the Project must be given to Escrow. Escrow, in accordance with written instructions from the Developer, shall deposit all money so received in accounts at a federally insured bank, savings and loan association or other financial institution which pays interest on deposits. Any interest earned on funds deposited into Escrow will accrue to the credit of the Developer unless otherwise provided and except that for any sales contract entered into pursuant to a Contingent Final Public Report any interest earned on funds deposited into Escrow will accrue to the credit of the buyer.
4. Escrow may not make any disbursements of funds until certain conditions, including the issuance of a Final Public Report of the Project by the Real Estate Commission, have been met.
5. Under certain conditions, a buyer shall be entitled to a refund. Escrow shall pay this refund to the buyer without interest less a reasonable escrow cancellation fee. However, no escrow cancellation fee will be deducted from refunds to individuals on the Developer's owner-occupant reservation list to whom no Sales Contract was ever offered.
6. If a buyer fails to claim a refund for a cancelled sales contract, Escrow shall deposit the refund in a special account in a bank or other depository selected by Escrow, in the name of the Developer as trustee for the benefit of the buyer. Escrow will then attempt to notify the buyer about the refund.
7. If a buyer is to make a payment under a sales contract directly to Escrow, Escrow shall promptly give the buyer notice of the amount and due date of the payment. If the buyer fails to make a payment to Escrow in a timely manner, Escrow will notify Developer. If the Developer subsequently notifies Escrow in writing that Developer has terminated the sales contract and provides Escrow with copies of all notices of termination sent to the buyer, Escrow will then treat any funds the buyer has already paid as though they belong to the Developer. Upon written request by the Developer, Escrow will pay all such sums to Developer minus any escrow cancellation fee.

EXHIBIT "L"

Summary of Waikoloa Declaration

The land of the Project is subject to the Declaration of Protective Covenants dated May 27, 1971, made by Boise Cascade Home & Land Corporation, as Declarant, and First Hawaiian Bank, as Trustee, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 7577, Page 66, as amended and supplemented, governing the Waikoloa Village development. The Declaration of Protective Covenants is intended to enhance and protect the value, desirability and attractiveness of Waikoloa Village.

NOTE: ALL BUYERS AND PROSPECTIVE BUYERS SHOULD CAREFULLY READ THE DECLARATION OF PROTECTIVE COVENANTS IN FULL SINCE THIS SUMMARY IS NOT INTENDED TO BE A COMPLETE DESCRIPTION OF THE PROVISIONS OF THE DECLARATION OF PROTECTIVE COVENANTS.

The Declaration of Protective Covenants establishes the Waikoloa Village Association, a non-profit corporation, to operate and maintain the Common Areas of Waikoloa Village. Each owner of an apartment in the Project will be a member of the Waikoloa Village Association. Each deed of an apartment in the Project will be subject to the Declaration of Protective Covenants and by accepting a deed, the apartment owner agrees to pay the charges imposed by the Waikoloa Village Association and to observe and comply with all of the provisions of the Declaration of Protective Covenants. If any charges are not paid, the Waikoloa Village Association shall have a lien upon the condominium apartment until the charges have been paid in full. The Board of Directors of the Waikoloa Village Association may foreclose the lien and collect the amount of unpaid charges plus interest, costs and attorney's fees. Any lien for unpaid charges shall be junior to any properly recorded first mortgage from and after the date of recording of the mortgage. The Board of Directors may also suspend the apartment owner's voting privileges and right to use the Common Areas of Waikoloa Village.

The Declaration of Protective Covenants contains provisions regarding use and maintenance of property that is a part of Waikoloa Village, signs, animals, vehicle parking, garbage and refuse disposal, removal of trees, television and radio antennae, laundry drying facilities, ditches and swales, subdivision, drilling and mining. The Declaration of Protective Covenants establishes a 3-member Environmental Control Committee which must approve the construction of any improvements.

The Waikoloa Village Association may provide refuse collection and disposal and other services of the type normally supplied by governmental agencies or public utility companies and may levy charges against all members benefitted from such services, which charges shall be added to the annual charges.

Each apartment owner shall pay to Waikoloa Water Co., Inc. charges for water and Waikoloa Sanitary Sewer Co., Inc. for sewer services. Any such charges may, but need not, be paid by the Waikoloa Village Association and added to the annual charges. If offered to the Waikoloa Village Association, the Waikoloa Village Association shall accept all of the capital stock of Waikoloa Water Co., Inc. and Waikoloa Sanitary Sewer Co., Inc. and thereafter cause the company or companies to carry out functions and operations of supplying water and sewer services for Waikoloa Village.

Additional property may be annexed to Waikoloa Village and made subject to the Declaration of Protective Covenants by the Declarant, or its successors and assigns, by recording a Supplemental Declaration describing the additional property.

The provisions of the Declaration of Protective Covenants shall remain in effect until January 1, 1995, and for each 10-year period thereafter unless and until, prior to the expiration of the then current 10-year period, there shall be recorded in the Bureau of Conveyances of the State of Hawaii either (i) a instrument signed by a majority of the then owners of record of all property subject to the Declaration of Protective Covenants agreeing to change the

covenants of the Declaration of Protective Covenants, or (ii) a certified signed by the Secretary of the Waikoloa Village Association attesting to the affirmative vote to effect such an amendment by a majority of such owners at a duly held meeting of the Association, with a copy of such amendment attached thereto.