# CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer: Waipouli Beach Resorts, LLC
Business Address: 4-820 Kuhio Highway, Suite 4, Kapaa, Kauai, Hawaii 96746

Project Name(*): WAIPOULI BEACH RESORT dba Waipouli Beach Resort Spa (report covers Phase I consisting of 29 of 204 apartments) **
Address: 4-820 Kuhio Highway, Kapaa, Kauai, Hawaii 96746

Registration No. 5408

Effective date: September 29, 2008
Expiration date: October 29, 2009

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. A Final Public Report will be issued by the developer when complete information is filed.

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

_X_ **THIRD *** SUPPLEMENTARY: (pink)** This report updates information contained in the:
- [ ] Preliminary Public Report dated: _____
- [ ] Final Public Report dated: _____
- [X] Supplementary Public Report dated: August 14, 2006

And
- [X] Supersedes all prior public reports
- [ ] Must be read together with _____
- [ ] This report reactivates the _____ public report(s) which expired on _____

(*)Exactly as named in the Declaration

** The entire condominium project described in the Declaration contains a total of 204 apartments. However, this Third Supplementary Public Report shall, for marketing and sales purposes, cover only 29 of the 204 apartments as follows: A101-107 (inclusive), A201-207 (inclusive), A301-306 (inclusive), A401-406 (inclusive), Pool Bar, Snack Bar, Spa. The Developer has obtained separate Supplementary Public Reports for the remaining 175 apartments in the Project.

*** The First Supplementary Report (Reg. No. 5408, Effective Date February 16, 2005) amended the Contingent Final Report (Reg. No. 5408, Effective Date July 19, 2004). The Final Public Report (Reg. No. 5408, Effective Date April 19, 2005) superseded the Contingent Final and Supplementary Public Reports. The Second Supplementary Report (Reg. No. 5408, Effective Date August 14, 2006) superseded the Final Public Report. This Third Supplementary Report, in turn, supersedes the Second Supplementary Public Report.

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.

FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104/0107

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

[ ] Required and attached to this report [X] 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.

[X] Changes made to the Supplementary Public Report, are as follows:

1. Page 1 and Section I. The Developer's address has changed.
2. Section I. The Broker's address has changed.
3. Section I. was amended to reflect a new Condominium Managing Agent.
4. Section II.A. was amended to reflect the recordation of the Clarification Amendment to Declaration of Condominium Property Regime of Waipouli Beach Resort and Corrective Amendment to Amended and Restated Condominium Map ("Clarification Amendment").
5. Section II.B. was amended to reflect the filing of the amendment to Condominium Map.
6. Section III.E. and Exhibit "G" were revised to reflect changes in the updated title report.
7. SectionV.C.1 was updated to reflect County of Kauai final approval of the subdivision/withdrawal of the Cultural Preserve Land Area, Restaurant Land Area and the Highway Dedication Land Area.
8. Section V.C.9 was updated to reflect termination of the Outrigger Lease of Commercial Apartment C-5.
9. Exhibit "D" was updated to reflect changes in the Clarification Amendment.
10. Exhibit "H" was replaced with the revised, updated budget.
11. Exhibit "M" was replaced with the revised map.

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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 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: Waipouli Beach Resorts, LLC
Name*
4-820 Kuhio Highway, Suite 4
Business Address
Kapaa, Kauai, Hawaii 96746

Phone (808) 652-0425
(Business)

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):

Christopher Singleton, Manager

Real Estate Broker*: Waipouli Beach Resort Realty LLC dba Waipouli Beach Realty **
Name
4-820 Kuhio Highway, Suite 4
Business Address
Kapaa, Hawaii 96746

Phone: (808) 652-9779
(Business)

Escrow: Old Republic Title And Escrow of Hawaii, Ltd.
Name
733 Bishop Street, Suite 2700
Business Address
Honolulu, Hawaii 96813

Phone: (808) 566-0100
(Business)

General Contractor*: Unlimited Construction Services, Inc.
Name
4176 Hoala Street
Business Address
Lihue, Kauai, Hawaii 96766

Phone: (808) 651-6002
(Business)

Condominium Managing Agent*: Certified Management, Inc.
Name
3179 Koapaka Street
Business Address
Honolulu, Hawaii 96819-5199

Phone: (808) 836-0911
(Business)

Attorney for Developer: Imanaka Kudo & Fujimoto
Name
745 Fort Street, 17th Floor
Business Address
Honolulu, Hawaii 96813
Attn: Mitchell A. Imanaka

Phone: (808) 521-9500
(Business)

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

** The developer has a financial ownership interest in the real estate brokerage firm selling the Project. In such ownership capacity, however, developer will not be acting as a real estate sales person or real estate broker for the Project.

## 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 _____
Book_____ Page_____
[X] Filed - Land Court: Document No. 3124205

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

First Amendment to Declaration of Condominium Property Regime of Waipouli Beach Resort dated February 1, 2005, recorded in said Office as Document No. 3226301.

Second Amendment to Declaration of Condominium Property Regime of Waipouli Beach Resort and Amended and Restated Condominium Map dated July 5, 2006, recorded in said Office as Document No. 3452034.

Clarification Amendment to Declaration of Condominium Property Regime of Waipouli Beach Resort and Corrective Amendment to Amended and Restated Condominium Map dated April 1, 2008, recorded in said Office as Document No. 3747969.

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._____
[X] Filed - Land Court Condo Map No. 1642

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

Second Amendment to Declaration of Condominium Property Regime of Waipouli Beach Resort and Amended and Restated Condominium Map dated July 5, 2006, recorded in said Office as Document No. 3452034.

Clarification Amendment to Declaration of Condominium Property Regime of Waipouli Beach Resort and Corrective Amendment to Amended and Restated Condominium Map dated April 1, 2008, recorded in said Office as Document No. 3747969.

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. _____
Book_____ Page_____
[X] Filed - Land Court: Document No. 3124206

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

First Amendment to Bylaws dated May 23, 2006 recorded in said Office as Document No. 3435500.

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 requirement 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 [X] 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:

| | Minimum Set by Law | This Condominium |
|---|---|---|
| Declaration (and Condo Map) | 75%* | 75% |
| Bylaws | 65% | 67% |
| House Rules | --- | By majority of the Board of Directors |

* 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.

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

SEE ATTACHED EXHIBIT A. PLEASE READ WITH CARE. DEVELOPER'S RESERVED RIGHTS INCLUDE NOT COMPLETING ALL PHASES AND THE RECREATIONAL AMENITIES.

## III. THE CONDOMINIUM PROJECT

A. **Interest to be Conveyed to Buyer:**

[X] Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.

[ ] Leasehold or Sub-leasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

**Leases for individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.**

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires:_____ Rent Renegotiation Date(s): _____

Lease Rent Payable: [ ] Monthly [ ] Quarterly
[ ] Semi-Annually [ ] Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per: [ ] Month [ ] Year

For Sub-leaseholds:

[ ] Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:
[ ] Canceled [ ] Foreclosed

[ ] As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

[ ] Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Subleasehold:

**Leases for underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires:_____ Rent Renegotiation Date(s): _____

Lease Rent Payable: [ ] Monthly [ ] Quarterly
[ ] Semi-Annually [ ] Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per [ ] Month [ ] Year

[ ] Other:

## IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

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

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

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

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

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

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease 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: 4-820 Kuhio Highway
Kapaa, Kauai, Hawaii 96746

Tax Map Key (TMK): (4) 4-3-008-001

[ ] Address [X] TMK is expected to change because each apartment will be assigned a separate CPR number

Land Area: 551,731 [X] square feet [ ] acre(s) Zoning: RR-10 (resort district) and Open

Fee Owner: Waipouli Beach Resorts, LLC
Name

Lessor: n/a
Name

Business Address

C. **Buildings and Other Improvements:**

1. [X] New Building(s)
[ ] Conversion of Existing Building(s)
[ ] Both New Building(s) and Conversion

2. Number of Buildings: 12 Floors Per Building 1 - 4
Four (4) one-story buildings; six (6) four-story buildings; two (2) mixed two-story and four-story buildings.

[X] Exhibit D contains further explanations.

3. Principal Construction Material:

[X] Concrete [ ] Hollow Tile [X] Wood

[X] Other: steel and glass

4. Uses Permitted by Zoning:

| | No. of Apts. | Use Permitted By Zoning | | No. of Apts. | Use Permitted By Zoning |
|---|---|---|---|---|---|
| [X] Residential | 190 | [X]Yes [ ]No | [ ] Ohana | ____ | [ ]Yes [ ]No |
| [X] Commercial | 8* | [X]Yes [ ]No | [ ] Industrial | ____ | [ ]Yes [ ]No |
| [ ] Mix Res/Comm | ____ | [ ]Yes [ ]No | [ ] Agricultural | ____ | [ ]Yes [ ]No |
| [X] Hotel | 6** | [X]Yes [ ]No | [ ] Recreational | ____ | [ ]Yes [ ]No |
| [ ] Timeshare | ____ | [ ]Yes [ ]No | [ ] Other:_____ | ____ | [ ]Yes [ ]No |

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?

[X] Yes [ ] No

* Spa Commercial Apartment, Snack Bar Commercial Apartment, Pool Bar Commercial Apartment, Commercial Apartment 1 ("C-1"), Commercial Apartment 2 ("C-2"), Commercial Apartment 3 ("C-3"), Commercial Apartment 4 ("C-4") and Commercial Apartment 5 ("C-5"), as further depicted on the condominium map.

** Unit numbers E101, E102, E201, E202, E302, E402 are the designated hotel units.

Note: Although Waipouli Beach Resort condominium project is comprised of a total of 204 apartments, this Third Supplementary Public Report only covers Phase I, those 29 apartments identified on page 1 hereof. The Developer has obtained separate Supplementary Public Reports for the remaining 175 apartments in the Project.

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:

[X] Pets: Household pets will be permitted to be kept within the Project in limited number and size, as further described in the House Rules.

[ ] Number of Occupants: _____

[X] Other: See House Rules for additional limitations and/or restrictions; Exhibit N contains a summary of additional disclosures regarding the Project.

[ ] There are no special restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 6 Stairways: 12 Trash Chutes: 0

| Apt. Type | Quantity | BR/Bath | Net Living Area (sf)* | Net Other Area (sf) | (Identify) |
|---|---|---|---|---|---|
| See Exhibit "D" | | | | | |
| | | | | | |
| | | | | | |

Total Number of Apartments: 204 resort, hotel and commercial, only 29 of which are offered for sale by this Public Report.

***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 "B"

Permitted Alterations to Apartments:

See Exhibit "C"

Apartments Designated for Owner-Occupants Only: n/a

7. Parking Stalls:

Total Parking Stalls: 438

| | Regular Covered | Regular Open | Compact Covered | Compact Open | Tandem Covered | Tandem Open | TOTAL |
|---|---|---|---|---|---|---|---|
| Assigned (for each Unit) | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Guest | 0 | 106 | 0 | 0 | 0 | 0 | 106 |
| Unassigned * | 0 | 204 | 0 | 0 | 0 | 0 | 204 |
| Extra for Purchase | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Other** | 0 | 128 | 0 | 0 | 0 | 0 | 128 (subject to possible withdrawal) |
| Total Covered & Open: | 0/438 | | 0/0 | | 0/0 | | 438 |

* Each apartment will have the right to use one (1) unassigned common element uncovered parking stall. Such common element parking stalls shall be determined and administered by the Managing Agent through a parking program. Some of the guest stalls may also be used by Owners at the discretion of the Association and Management Company.

** There are ten (10) public parking stalls, numbered P1 through P10 on the Condominium Map for use by public beachgoers. There are also one hundred eighteen (118) parking stalls, numbered R1 through R118 on the Condominium Map. These stalls, as well as the ten (10) public parking stalls are located on the Restaurant Land Area and may eventually be subdivided and withdrawn from the Project in accordance with the Declaration. The public parking and restaurant parking stalls are included in the count above under "other". Stalls R83 through R86 (inclusive) and stalls 258 through 261 (inclusive) are handicap stalls.

[ ] Commercial parking garage permitted in condominium project.

[X] 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.

[X] Swimming Pools [ ] Storage Area [X] Recreation Area – spa, snack bar, pool bar*

[ ] Laundry Areas [ ] Tennis Court [ ] Trash Enclosure(s)

[X] Other: Cultural Preserve Land Area **

* These recreational facilities are Commercial Apartments.

** Purchasers will have a license from Developer to utilize the Cultural Preserve Land Area until subdivision and withdrawal (if done) of such area.

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

[X] 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):

n/a

11. Conformance to Present Zoning Code

a. [ ] No variances to zoning code have been granted.

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

Special Management Area Use Permit (SMA (U)-2003-1); Project Development Use Permit (U-2002-9), Class W Zoning Permit (Z-IV-2003-8) issued on March 22, 2003 by Kauai Planning Commission.

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.

| | Conforming | Non-Conforming | Illegal |
|---|---|---|---|
| Uses | X | | |
| Structures | X | | |
| Lot | X | | |

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:

[X] described in Exhibit "E".

[ ] 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.

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

[X] described in Exhibit "F" attached.

[ ] 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:

[X] described in Exhibit "D" attached.

[ ] as follows:

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

Exhibit "G" describes the encumbrances against title contained in the title report dated September 3, 2008 and issued by Old Republic Title And Escrow of Hawaii, Ltd.

Blanket Liens:

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

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

[X] There are blanket liens which may affect title to the individual apartments. *

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

| Type of Lien | Effect on Buyer's Interest and Deposit if Developer Defaults Or Lien is Foreclosed **Prior to Conveyance** |
|---|---|

* The developer has obtained one or more loan(s) to finance construction of the Project. The loans are secured by a mortgage, which will be released as to the apartment being conveyed. If there is a default and foreclosure of the mortgage prior to conveyance, the buyer may lose the right to buy the Apartment, but will receive his/her deposit back.

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 does not make any warranties for the Project, but merely intends to pass on any warranties made to it by the general contractor (or any other contractor or subcontractors) for the Project to correct any work found to be defective within the applicable warranty period. Typically, a general contractor will provide a warranty for work found to be defective within one-year after the date of substantial completion of the project.

2. Appliances:

The developer will pass on the manufacturer's warranties made to it, if any, on any appliances included as part of the apartment being conveyed.

Note (as to 1 and 2 above): Except as provided above, Developer disclaims any implied warranty of habitability, any implied warranty of merchantability, any implied warranty of fitness for a particular purpose or use, any implied warranty of workmanship and any other express or implied warranties, with respect to the apartments, the project, the common elements thereof, or as to any appliances and furnishings contained within the apartments or the project.

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

The project is completed.

H. **Project Phases:**

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

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

The Developer has separated the apartments planned for the Project into separate groups, or phases. One group, the first phase, is covered by this Third Supplementary Public Report. Remaining phases are covered by multiple Supplementary Public Reports in order to accommodate changing construction and/or marketing strategies.

The Developer has registered the Project in eight (8) or more separate marketing and construction phases. However, the Developer may develop more or less than eight (8) phases in accordance with its reserved right in the Declaration to do so. This Third Supplementary Public Report covers the first phase of 29 apartments of the 204 total apartments in the entire project. Also, in accordance with the Developer's reserved rights in the Declaration, of which a summary is attached as Exhibit "A", there is no guaranty that the phases not covered under this Third Supplementary Public Report, or the recreational amenities, or any other improvement in the Project will be developed.

## IV. CONDOMINIUM MANAGEMENT

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

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

The initial condominium managing agent for this project, named on page five (5) of this report, is:

[X] not affiliated with the Developer [ ] the Developer or the Developer's affiliate.
[ ] self-managed by the Association of Apartment Owners [ ] other_____

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

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

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

Exhibit ___"H"___ contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change). Note that the maintenance fee does not include any use fees charged to owners that may be the result of any license between the Developer and the Association for the use of certain facilities.

**THE AMOUNTS SET FORTH IN SAID EXHIBIT H ARE ESTIMATES ONLY AND MAY CHANGE FOR REASONS BEYOND THE CONTROL OF THE DEVELOPER. SUCH ESTIMATES ARE NOT INTENDED TO BE AND DO NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY BY THE DEVELOPER, INCLUDING BUT NOT LIMITED TO ANY REPRESENATION OR WARRANTY AS TO THE ACCURACY OF SUCH ESTIMATES. SUCH MAINTENANCE FEES MAY ALSO CHANGE UPON THE CONVEYANCE OF THE CULTURAL PRESERVE LAND AREA TO THE ASSOCIATION, AS DESCRIBED IN SECTION V.C.1 HEREIN AND IN THE DECLARATION.**

C. **Utility Charges for Apartments:**

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

[ ] None [X] Electricity (_X_ Common Elements Only ____ Common Elements and Apartments)

[X] Gas (_X_ Common Elements Only _____Common Elements and Apartments)

[X] Water [X] Sewer [ ] Television Cable

[X] Other: _____phone system (excluding long distance phone charges)*; trash collection services

* The telephone system will be operated under one centralized system by the Management Company. Each owner will be assessed equally for the use of the system through such Owners maintenance fees. Long distance phone charges will be billed separately to each apartment owner.

## 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

[X] Specimen Sales Contract
Exhibit __I__ contains a summary of the pertinent provisions of the sales contract.

[X] Escrow Agreement dated ___March 26, 2004_____.

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

[X] Other: Apartment Deed, Exhibit __K__ contains a summary of the pertinent provisions of the apartment deed.

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

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 given 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. The Condominium Property Regime law (Chapter 514A, HRS) and the Administrative Rules (Chapter 107) are available online. Please refer to the following sites:

Website to access official copy of laws: www.capitol.hawaii.gov
Website to access unofficial copy of laws: www.hawaii.gov/dcca/hrs
Website to access rules: www.hawaii.gov/dcca/har

This Public Report is a part of Registration No. 5408 filed with the Real Estate Commission on July 1, 2004

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

[ ] YELLOW paper stock [ ] WHITE paper stock [X] PINK paper stock

C. **Additional Information Not Covered Above**

1. Subdivision and Withdrawal. The developer has received County of Kauai final approval for subdivision of the Property and withdrawing the Cultural Preserve Land Area, Restaurant Land Area and the Highway Dedication Land Area from the Project. Such areas are depicted in the Condominium Map and on the attached Exhibit M and the developer's right to perform such subdivision and withdrawal is described in the Declaration. Once the subdivision is recorded, such withdrawal will reduce the area of the land underlying the Project, as set forth in the Declaration. The Developer intends to dedicate the Highway Dedication Land Area to the County of Kauai or another government agency. The developer intends to lease or convey the Restaurant Land Area to a third party for the construction and operation of a restaurant. Such area also includes parking stalls R1 through R118 and Public Shoreline Access Parking Stalls P1 through P10, as depicted on the Condominium Map. The developer also reserves the right in the Declaration to, in its sole discretion, convey the Cultural Preserve Land Area to the Association or to another third party or governmental agency. Currently, these areas are Limited Common Elements to Commercial Apartment 4.

   In the event the Cultural Preserve Land Area is conveyed to the Association, the Cultural Preserve Land Area will likely become a common element of the Project, and consequently, the responsibility for the care and maintenance of the Cultural Preserve Land Area shall be transferred to the Association and the cost of such care and maintenance shall be borne and shared by all Apartment Owners of the Project in proportion to each owner's common interest.

   Construction of improvements in these areas may take longer than construction of the Apartments in the Project. As such, purchasers should be aware that there may be some noise and construction activity on the project after occupancy.

2. Commercial Apartments. The developer owns the eight (8) Commercial Apartments in the Project, including Commercial Apartments 1 through 5 ("C-1" through "C-5" on the Condominium Map), the Spa Commercial Apartment, the Snack Bar Commercial Apartment, and the Pool Bar Commercial Apartment, as further depicted in the Condominium Map. The developer may, at its sole discretion, either a) operate the Commercial Apartments it owns to provide services to Owners in the Project, their invitees, guests and tenants for revenue generating purposes and may retain any compensation paid to the owner by any vendors operating services in such area; b) convey the Commercial Apartments to the association or another third party upon condominiumization pursuant to its right to do so in accordance with the declaration; or c) lease out the Commercial Apartment.

   Patrons of Commercial Apartments 1, 2, and 3 as such Owner's invitees, guest and tenants have an easement to access and utilize the pools and pool decks and any accompanying services provided thereon.

   The developer intends to lease Commercial Apartment 5 ("C-5") to Managing Agent together with all of the Limited Common Elements appurtenant thereto for use in its management and administration of the Project. Developer also intends to lease certain Limited Common Element Service Areas appurtenant to Commercial Apartment 4 ("C-4"), as set forth in the Declaration and as depicted on the Condominium Map, to the Managing Agent for maintenance purposes.

3. Public Access. Since the Project abuts the beach, the public will have access easements through portion(s) of the Project and will be allowed to utilize ten (10) designated public parking stalls, labeled P1 through P10 on the Condominium Map, in the Project for beach access. Developer also intends to create a public bicycle path along the perimeter of the Project. Apartment Owners are aware that the public's exercise of its access rights to the beach and use of the bicycle path may produce some noise and nuisance.

   The public will also be allowed through the Project to access and patronize the Commercial Apartments on the Project.

4. Special Management Area Permit. The project is located within a Special Management Area under Hawaii Revised Statutes, Chapter 205A, Part II, which generally requires that certain types of development may require application and issuance of a Special Management Area use permit. The County of Kauai issued such permit (SMA(U)-2003-1) for the Project, which permits construction of the Project. Such permit will be available for review upon request.

5. Department of Transportation Encroachment. There is a Department of Transportation ("DOT") easement abutting Uhelekawawa Stream located on the South side of the Project for maintenance of the stream. As a result, the easement encroaches onto the Project and the DOT's use of such easement may produce some noise and nuisance at the Project.

6. Construction and Marketing in Phases. The Developer, for registration purposes, has separated the total apartments in the Project into groups covered by multiple Final Public Reports in order to accommodate changing construction and/or marketing strategies. This Third Supplementary Report covers only Phase I, those 29 apartments enumerated on page 1. The Developer filed public report packets in eight (8) separate phases. However, the Developer may develop more or less than eight (8) phases in accordance with its reserved right in the Declaration to do so. This Third Supplementary Public Report covers only the first phase. **The Developer also makes no guaranty or warranty that all of the currently-planned buildings or the recreational amenities, as defined in the Declaration and as depicted on the Condominium Map, or the improvements in the Project, will be developed at all.** Purchasers should thus be aware that all of the apartments in the Project, as described in the Project documents, will be closing at different times (depending on the final number selected by Developer to be constructed), in phases over a period of time coinciding with the decision to construct, the obtaining of building permits, financing, bonds and issuance of building permits for each phase.

**The Developer hereby discloses that although separate Final Public Reports and/or Supplementary Public Reports are issued for each phase of the Project, all 204 apartments, or lesser number actually constructed, still legally comprise a single condominium project. In other words, the act of separating the various apartments into different marketing and sales phases does not create separate and distinct condominium projects, but only creates separate "projects" for public report purposes. Accordingly, the common elements described in Exhibit "D" attached serve each of the 204 apartments.**

7. Developer to Pay Actual Costs of Project. The Developer hereby discloses that it shall initially assume the actual common expenses of the Project, pursuant to Section 514A-15 of the Hawaii Revised Statutes, from the date upon which certificates of occupancy are issued for the respective apartments of the Project. Accordingly, no apartment owner shall be obligated to pay his or her respective share of the common expenses until the Developer files a written statement ("Notification") with the Real Estate Commission of the State of Hawaii ("Commission") notifying the Commission and all apartment owners of the Project that, after a date certain ("Transition Date"), each apartment owner shall thereafter be obligated to pay for the respective share of common expenses allocated to said owner's apartment. The Notification shall be filed with the Commission at least thirty (30) days prior to the Transition Date, and a copy of said amendment shall be delivered to each of the apartment owners whose maintenance expenses were assumed by the Developer.

8. Common Element Parking Stalls. Parking stalls numbers 1 through 310, as labeled on the Condominium Map, are Common Elements. Each Owner will have the right to utilize one (1) unassigned parking stall. The Managing Agent will be responsible for the management and administration of the parking stalls and the maintenance for such stalls.

9. Various Lease and Other Leases. Developer, as Owner of Apartment C-5 in the Project, may enter into a lease for such Apartment and its appurtenant limited common elements. A hotel manager or hospitality operator may in turn provide the hospitality services, as well as other registration and recreation services at the Project. The Developer, on behalf of the Association also entered into certain leases with various vendors for maintenance and refuse collection, use and maintenance of a PBX phone system, pool furniture, and lobby furniture. The lease fees are incorporated into the estimated project budget. The condominium managing agent has available copies of such leases affecting the Association in its office for review by owners.

D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The developer is required to make this declaration for issuance of an effective date for a final public report.)

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

WAIPOULI BEACH RESORTS, LLC, a Hawaii limited liability company

By _____
CHRISTOPHER SINGLETON
Its Manager

"Developer"

SEP 09 2008
Date

Distribution:

Department of Finance, County of Kauai
Planning Department, County of Kauai

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"**

**RIGHTS RESERVED BY DEVELOPER**

Among other rights, the Developer will have the following reserved rights with respect to the Project which are more particularly set forth in the Declaration. Capitalized terms have the same meaning ascribed to such terms in the Declaration.

A. **RESERVED RIGHT TO GRANT EASEMENTS.** Developer does hereby reserve the right unto itself, its successors and assigns, to and until December 31, 2023 and in accordance with Article XVIII of the Declaration, to delete, cancel, relocate, realign, reserve, designate, grant and receive any and all easements and rights of way over, under and on the common elements (including the limited common elements), or involving adjacent parcels of land, as necessary or desirable in Developer's sole discretion, including, but not limited to, easements and/or rights of way for utilities, fire lane access, retention ponds (if any), maintenance of and access to the Cultural Preserve Land Area, maintenance of and access to the Restaurant Land Area and Highway Dedication Land Area, a security guard station (if any), sanitary and storm sewers, cable television, refuse disposal, driveways, beach public parking areas such as, but not limited to the Public Parking Area, other parking areas and driveways, and access rights as to adjacent parcels of land, access rights for construction and related construction activity in the Project, and public access right to the beach area abutting the Project, provided, however, that such easements and/or rights of way shall not be located on or within any existing structure of the Project and shall not be exercised so as to unreasonably disturb, impair or interfere with the normal use and enjoyment of the Project by the apartment owners; and provided that Developer shall have the right to negotiate and agree to such terms with respect to such easements and rights of way as the Developer deems appropriate in its sole discretion.

B. **RESERVED RIGHT TO ALTER, SUBDIVIDE AND CONSOLIDATE APARTMENTS.** Developer does hereby reserve the right unto itself, its successors and assigns, to and until December 31, 2023, as provided in Article XIX of the Declaration, without obtaining the approval of any party with an interest in the Project, including any other owner and/or mortgagee, to alter the floor plan of any apartment which it owns at any time provided that the common interest appurtenant to the apartment shall not change; cause the subdivision of any apartment which it owns at any time to create two (2) or more apartments provided that the total common interest appurtenant to the newly-created apartments shall equal the common interest appurtenant to the original apartment; and convert certain portions of any existing apartment to common element status to facilitate any subdivision, provided that the total common interest appurtenant to the newly-created apartments shall equal the common interest appurtenant to the original apartment. Furthermore, if Developer is the owner of any two (2) apartments separated by a party wall, floor, or ceiling, Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other owner and/or mortgagee, to consolidate two (2) or more apartments that are separated and to alter or remove all or portions of the intervening wall, floor, or ceiling at the Developer's expense, provided that the structural integrity of the Project is not affected; the finish of the common element remaining is restored to a condition substantially compatible to the common element prior to such alteration; and all necessary construction activity shall be completed within a reasonable amount of time, subject to delays beyond the control of Developer. The Developer shall further have the right to convert that area between apartments to an apartment for so long as such apartments shall remain consolidated or shall continue to be commonly used or owned.

Developer does hereby further reserve unto itself the right to amend the Declaration and Condominium Map to effect any subdivision or consolidation of apartments and/or alteration to the floor plans of any apartments which Developer owns at any time or times prior to December 31, 2023, as provided in Article XIX of the Declaration, and Developer may, without being required to obtain the consent or joinder of any apartment owner, lienholder or other persons, execute and file amendments to the Declaration and Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers or privileges herein reserved to Developer.

C. **RESERVED RIGHT TO MODIFY PROJECT TO COMPLY WITH LAW.** Developer does hereby further reserve the right unto itself, to and until December 31, 2023, to effect such modifications to apartments and common elements in the Project and/or to execute, file and deliver any amendments to the Declaration, the Condominium Map, the Bylaws and/or House Rules, as may be necessary or required by

Developer, in its sole discretion, to effect compliance by the Project, the Association or by the Developer, with laws which apply to the Project, including, without limitation, the Fair Housing Act, as amended, 42 U.S.C. §§3601 et seq. ("FHA") and the Americans with Disabilities Act, as amended, § 2 U.S.C. §§ 12101 et seq., including any and all rules and regulations promulgated thereunder ("ADA"). The right to effect modifications to apartments and common elements in the Project as provided in this paragraph shall be exercised in accordance with Article XX of the Declaration.

D. **RESERVED RIGHT TO CONVERT LIMITED COMMON ELEMENTS TO APARTMENTS.** Developer does hereby further reserve the right to and unto itself, to and until December 31, 2023, to convert the limited common elements appurtenant to an apartment or apartments owned by the Developer, or any portion thereof, into a separate apartment of the Project without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee. Such right shall also be accompanied by the right of the Developer or designate certain common elements or limited common elements of the Project as limited common elements appurtenant to the newly-created apartment; provided that there is no material adverse affect on the remainder of the Project and by the right to execute, file and deliver any amendments to the Declaration and to the Condominium Map, as may be required to effect the same. Said reserved right shall be exercised in accordance with Article XXI of the Declaration.

E. **RESERVED RIGHT TO RECHARACTERIZE AND REDESIGNATE LIMITED COMMON ELEMENTS.** Developer does hereby further reserve the right unto itself, to and until December 31, 2023, to amend the Declaration to redesignate and recharacterize all or a portion of certain limited common elements as may be appurtenant to certain apartments owned by Developer, to another Apartment or Apartments owned by the Developer, and to execute, file and deliver any amendments to the Declaration and to the Condominium Map, as may be required to effect the same. Said reserved right shall be exercised in accordance with Article XXII of the Declaration.

F. **RESERVED RIGHT TO UTILIZE COMMERCIAL APARTMENTS AND LIMITED COMMON ELEMENTS APPURTENANT THERETO.** The owner of the Commercial Apartments shall have the reserved right, but shall have no obligation, to operate, convey, sell, lease and/or utilize all or any part of the limited common elements that are appurtenant to such apartment, for any purpose permitted by law, including, without limitation, providing services and amenities conducive to a first-class resort destination and to contract with various providers of goods and services to provide such goods and services to the Project, and may retain any compensation paid to the Developer in consideration of the Developer permitting any such vendor to utilize space in the Project. Said reserved right shall be exercised in accordance with Article XXIII of the Declaration.

G. **RESERVED RIGHT TO LEASE OR TRANSFER COMMERCIAL APARTMENTS.** Developer does hereby further reserve the right to and unto itself, as the owner of certain commercial apartments, to and until December 31, 2023, to transfer ownership of such commercial apartments to the Association of Apartment Owners of Waipouli Beach Resort ("Association") and to redesignate limited common elements appurtenant to such apartments to apartments owned by the Association and to the extent necessary or required to amend the Declaration and Condominium Map to effect the same. Upon such transfer, Association shall accept ownership of such commercial apartment(s) together with any appurtenant limited common element(s) and all maintenance and management costs associated therewith. Developer reserves the right to retain management control over such areas, unless such right was otherwise delegated to the Association at the time of such transfer. Said reserved right shall be exercised in accordance with Article XXIV of the Declaration.

H. **RESERVED RIGHT REGARDING LAND USE PERMITS.** Developer does hereby further reserve unto itself, to and until December 31, 2023, to amend the Declaration, to enter into any agreements, to grant easements and to do all things necessary and convenient to satisfy the requirements of any land use permits pertaining to the Project, including, without limitation, Special Management Area Permit No. SMA(U)-2003-1, Project Development Use Permit No. U-2003-9, and Class IV Zoning Permit No. 2-IV-2003-8, and to execute, file and deliver any and all documents necessary to effect the same, including, but not limited to, any amendments to the Declaration and to the Condominium Map and any grant of easements over the land underlying the Project for access or other purposes. This right shall be exercised as provided in and in accordance with Article XXV of the Declaration.

I. **RESERVED RIGHT TO SUBDIVIDE AND WITHDRAW LAND, AND CONVEY LAND AND/OR APARTMENTS.** Developer does hereby further reserve unto itself the right, to and until December 31, 2023, to subdivide and/or withdraw from the operation of the Declaration the Highway Dedication Land Area, and/or Restaurant Land Area, and/or Cultural Preserve Land Area, as defined in the Declaration and as designated in the Condominium Map in accordance with Article XXVI of the Declaration. In connection with such right, Developer shall have the further reserved right to enter and go upon the land to do all things necessary or proper to effectuate such subdivision and withdrawal of portions of the land, including, without limitation, making surveys to undertake a reasonable realignment of boundaries of the land, and to facilitate the granting, reserving, adding, deletion, reception, realignment and/or relocating of easements and/or rights of ways and/or licenses for utilities, fire land access, retention ponds, a security guard station, sanitary and storm sewers, cable television, refuse disposal, driveways, beach public parking areas, other parking areas and driveways, access rights as to adjacent parcels of land, and of all other required easements; and to enter into any joint development agreement as may be required to permit Developer to pursue its development of either parcel of land. Upon the exercise of these rights, Developer shall, without being required to obtain the consent or joinder of any apartment owner or lienholder, execute and file in the Land Court, a petition for subdivision, and an amendment to the Declaration and Condominium Map. The filing of the amendment to the Declaration and the Condominium Map shall effectuate such withdrawal, without any further consent or joinder of any party. The Developer shall have the right to execute, deliver and file a deed of the subdivided and withdrawn area (including any Apartment) upon filing of the amendment aforesaid.

J. **RESERVED RIGHT TO SUBSTITUTE DESCRIPTION OF THE LAND.** In the event Developer decides to subdivide the land as described herein and in Article XXVI of the Declaration, upon completion of the subdivision and the filing of the appropriate documents and instruments with Land Court in order to effect the legal subdivision of the property, Developer will have the reserved right to identify and substitute for the Land referenced in Exhibit "A" attached hereto and in the Declaration, a description of two or more subdivided lots which shall comprise the Land, or if one such lot will be withdrawn, a description of the remaining lot under the Project, as provided in and in accordance with Article XXVII of the Declaration. Accordingly, Developer will have the right to effect an amendment to the Declaration and to this Apartment Deed set forth in Exhibit "A" and in the Declaration a new description which will describe such subdivided lot. The approximate area of the separate legal lot is depicted on the site plan of the Condominium Map, and is currently designated as Highway Dedication Land Area, Restaurant Land Area and Cultural Preserve Land Area, as defined by the Declaration, the land area of either of which may constitute the land for purposes of the Declaration upon such amendment being filed.

K. **RESERVED RIGHT TO ADD ADDITIONAL LAND TO THE PROJECT; ASSOCIATION'S RIGHT TO ACT ON BEHALF OF APARTMENT OWNERS.** Developer does hereby further reserve unto itself, to and until December 31, 2023, the right to do all things necessary and proper to facilitate the subdivision of those certain parcels of land located within the Project, defined herein and identified and depicted on the Condominium Map as the Highway Dedication Land Area and/or the Restaurant Land Area and/or the Cultural Preserve Land Area (collectively "Subdivided Parcels") and to execute, deliver and record all instruments and documents, including any deed, necessary or desirable to effect the transfer of title to any or all of the Subdivided parcels. This right shall be exercised as provided in and in accordance with Article XXVIII of the Declaration.

L. **RESERVED RIGHT TO CONSTRUCT THE PROJECT IN PHASES.** Grantor does hereby further reserve unto itself, its successors and assigns, the right, to and until December 31, 2023 (or such other date as may be established by the Grantor in its sole discretion), to construct the Project in two or more phases. In connection with such right, Grantor shall also have the right to amend the description of any apartment or buildings described in the Declaration at any time until such time as the Apartment Deed has been recorded in said Office covering such apartment. This right to construct the Project in two or more phases shall be exercised in accordance with Article XXIX of the Declaration.

M. **RESERVED RIGHT TO DEVELOP AND CONSTRUCT OR NOT TO DEVELOP AND CONSTRUCT BUILDINGS AND/OR RECREATIONAL AMENITIES AT A LATER TIME OR NOT AT ALL.** Grantor does hereby reserve unto itself, its successors and assigns, to and until December 31, 2023 (or such other date as may be established by the Grantor in its sole discretion), the right to, at any time and from time to time complete construction of all buildings, improvements and the recreational amenities in the Project. The Grantor does not represent or warrant that all buildings, improvements or the recreational amenities described in the

Condominium Map will be developed, nor shall anything herein require the Grantor to develop all of the buildings, improvements, or the recreational amenities described in the Condominium Map. Grantor shall also have the accompanying right to enter upon the Project and use the property and any common elements, and do all things reasonably necessary, desirable or useful for designing, developing and constructing or completing any buildings, improvements or the recreational amenities connecting the same to utility installations of the Project as then constituted, and selling any apartments created in any building. The reserved right to develop and construct buildings, improvements and the recreational amenities at a later time shall be exercised in accordance with Article XXX of the Declaration.

N. **RESERVED RIGHT TO CONDUCT SALES ACTIVITIES** Developer does hereby further reserve the right unto itself, its brokers, sales agents and other related persons, to conduct extensive sales activities at the Project and from any apartment owned by the Developer until the earlier to occur of 1) eighty-four (84) months from the date of the recording in said Office of the first apartment deed conveying and apartment in the Project; or 2) the closing of the sale of the last unsold apartment in the Project. In the event the Developer is unable to sell all of the apartments within the 84-month period, the Developer shall have the right to conduct sales activities on the Project until the closing of the last unsold apartment of the Project. This right shall be exercised as provided in and in accordance with Article XXXI of the Declaration.

O. **RESERVED RIGHT TO CONVERT PARKING STALLS TO COMMON ELEMENTS AND TO RECORD PARKING STALL AMENDMENT.** Developer does hereby reserve the right in accordance with Article XXXII of the Declaration, to and until December 31, 2023, to convert and redesignate any parking stalls that are appurtenant to any of the apartments that it owns from limited common elements to common elements of the Project. Developer shall also have the reserved right (but not the obligation) to record and instrument ("Parking Stall Assignment Summary Amendment"), which lists all parking stalls that have been assigned and which identifies the apartment to which each parking stall was assigned or reassigned.

P. **ASSIGNMENT OF RESERVED RIGHTS.** Notwithstanding anything stated herein to the contrary, the rights reserved to the Developer herein shall be fully and freely assignable by the Developer in whole or in part, and Owner and every apartment owner in the Project and all holders of liens affecting any of the apartments and each and every other party acquiring an interest in the Project or any part thereof, by acquiring such apartment, lien or other interest, consents to any such assignment by Developer, and, to the extent designated by the Developer, agrees to recognize any assignee as the "Developer" under this Apartment Deed. This right shall be exercised as provided in and in accordance with Article XXXIII of the Declaration.

* * * * *

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL OF THE RIGHTS RESERVED BY THE DEVELOPER UNDER THE CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF SUCH RESERVED RIGHTS, PURCHASER SHOULD REFER TO THE CONDOMINIUM DECLARATION TO DETERMINE THE ACTUAL RIGHTS RESERVED BY THE DEVELOPER. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE CONDOMINIUM DECLARATION, THE CONDOMINIUM DECLARATION WILL CONTROL.

**EXHIBIT "B"**

**BOUNDARIES OF EACH APARTMENT**

Capitalized terms have the same meaning ascribed to such terms in the Declaration.

**A. RESORT AND HOTEL APARTMENTS.** The respective Apartments shall not be deemed to include: (a) the perimeter or party walls from the undecorated or unfinished interior surfaces outward, (b) the floors and ceilings surrounding each Apartment from the undecorated or unfinished surfaces outward, (c) the perimeter doors, door frames, windows and window frames and all exterior hardware associated therewith, from the undecorated or unfinished interior surfaces outward, (d) the interior load-bearing walls and columns, if any, from the undecorated or unfinished surfaces inward, (e) any pipes, shafts, ducts, pumps, conduits, wires or other utility or service lines that are utilized for or serve more than one Apartment, the same being deemed Common Elements as hereinafter provided, or (f) any areas designated as Limited Common Elements. Each Apartment shall be deemed to include: (i) all of the walls and partitions that are not load-bearing within its perimeter or party walls, (ii) all pipes, shafts, ducts, pumps, conduits, wires and other utility or service lines running through such Apartment that are utilized for and serve only that Apartment, (iii) the interior decorated or finished surfaces of all walls, floors and ceilings surrounding each Apartment inward and all of the improvements and air space located therein, (iv) the interior decorated or finished surfaces of any doors, door frames, windows or window frames, and (v) all appliances, interior hardware, and fixtures installed therein, and replacements therefor.

**B. COMMERCIAL APARTMENT 1, COMMERCIAL APARTMENT 2, COMMERCIAL APARTMENT 3, COMMERCIAL APARTMENT 4 AND COMMERCIAL APARTMENT 5.** The Commercial Apartment 1, Commercial Apartment 2, Commercial Apartment 3, Commercial Apartment 4 and Commercial Apartment 5 shall not be deemed to include: (a) the perimeter or party walls from the undecorated or unfinished interior surfaces outward, (b) the floors and ceilings surrounding each Apartment from the undecorated or unfinished surfaces outward, (c) the perimeter doors, door frames, windows and window frames and all exterior hardware associated therewith, from the undecorated or unfinished interior surfaces outward, (d) the interior load-bearing walls and columns, if any, from the undecorated or unfinished surfaces inward, (e) any pipes, shafts, ducts, pumps, conduits, wires or other utility or service lines that are utilized for or serve more than one Apartment, the same being deemed Common Elements as hereinafter provided, or (f) any areas designated as Limited Common Elements. Each Apartment shall be deemed to include: (i) all of the walls and partitions that are not load-bearing within its perimeter or party walls, (ii) all pipes, shafts, ducts, pumps, conduits, wires and other utility or service lines running through such Apartment that are utilized for and serve only that Apartment, (iii) the interior decorated or finished surfaces of all walls, floors and ceilings surrounding each Apartment inward and all of the improvements and air space located therein, (iv) the interior decorated or finished surfaces of any doors, door frames, windows or window frames, and (v) all appliances, interior hardware, and fixtures installed therein, and replacements therefor.

**C. SPA COMMERCIAL APARTMENT, POOL BAR COMMERCIAL APARTMENT AND SNACK BAR COMMERCIAL APARTMENT.** The Spa Commercial Apartment, Pool Bar Commercial Apartment and Snack Bar Commercial Apartment shall be deemed to include the entire structure of said Apartment as depicted on the Condominium Map, including, without limitation, (i) the perimeter walls, all the walls and partitions which are within the perimeter walls and the decorated or finished surfaces thereof, (ii) the interior load-bearing walls and columns (if any) and the decorated or finished surfaces thereof, (iii) the roof, including the decorated or finished surfaces thereof, (iv) the perimeter doors, door frames, windows and window frames and the decorated or finished surfaces thereof, (v) the foundation and all supporting members, (vi) the floors and the ceilings of each Apartment and the decorated or finished surfaces thereof, (vii) the air space located between the walls, floors and ceilings noted above, (viii) any pipes, shafts, vents, ducts, pumps, wires, conduits, other utility or service lines running through an Apartment, or utility meters, which are utilized for and serve only that Apartment, (ix) all appliances and fixtures installed in an Apartment, and replacements therefor, (x) any roof or awning and the undecorated or decorated or finished surfaces thereof, any such lanai or patio, and (xi) the stairway connecting the first and second floors of an Apartment, if any. The respective Apartments shall also be deemed to include any pipes, wires, conduits or other utility or service lines or meters which are located within, under or upon the Apartment and which serve that Apartment.

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE DESCRIPTION OF THE BOUNDARIES OF EACH APARTMENT. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL DESCRIPTION OF SUCH BOUNDARIES, PURCHASER SHOULD REFER TO THE CONDOMINIUM DECLARATION TO DETERMINE THE ACTUAL DESCRIPTION. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE CONDOMINIUM DECLARATION, THE CONDOMINIUM DECLARATION WILL CONTROL.

**EXHIBIT "C"**

**PERMITTED ALTERATIONS TO APARTMENTS**

Capitalized terms have the same meaning ascribed to such terms in the Declaration.

**A. GENERAL PROVISIONS.** Except as otherwise expressly provided in the Declaration to the contrary, restoration or replacement of the Project or any portion thereof or construction of any additional improvement or structural alteration or addition to any improvement, different in any material respect from the Condominium Map of the Project, shall be undertaken by the Association or any Apartment Owner only pursuant to an amendment of the Declaration in accordance with Article XIII of the Declaration, duly executed pursuant to the provisions thereof, accompanied by the written consent of the holders of all mortgage liens affecting any of the Apartments involved, and in accordance with complete plans and specifications therefor first approved in writing by the Board. Promptly upon completion of such restoration, replacement or construction, the Association or Owner, as the case shall be, shall duly file such amendment, together with a complete set of floor plans of the Project as so altered, certified as built by a State of Hawaii registered architect or professional engineer.

**B. ADDITIONS OR ALTERATIONS SOLELY WITHIN AN APARTMENT OR LIMITED COMMON ELEMENT.** Notwithstanding anything to the contrary contained herein, each Owner of an Apartment shall have the right at any time and from time to time at such Owner's sole cost and expense, and without the necessity of the consent or joinder of any other Apartment Owner, but with notice to the Association and with prior written approval of the Board, to make any of the following alterations solely within the Apartment or Limited Common Element which such Owner controls: to install, maintain, remove and rearrange partitions and other structures from time to time within such Apartment or Limited Common Element, to finish, alter or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors and walls as shall be appropriate for the utilization of such Apartment or Limited Common Element by such Owner or the tenants or lessees thereof, and to tile (subject to acoustical transfer considerations), re-carpet, and do or cause to be done such work on the floors of any Apartment or Limited Common Element; provided, however, that nothing contained in this paragraph shall authorize any work or alteration which would be inconsistent with a first-class resort destination, jeopardize the soundness or safety of any part of the Project, reduce the value thereof, materially adversely affect any other Apartment or Limited Common Element, materially alter the uniform external appearance of the Project, materially increase the transfer of sounds, noise, air or smoke to other Apartments or Common Elements, materially affect or impair any easement or rights of any of the other Apartment Owners, materially interfere with or deprive any non-consenting Owner of the use or enjoyment of any part of the Common Elements or affect the Common Elements shared with any other Apartment in any way; subject, however, to the exclusive use of the Limited Common Elements. Owner must secure all necessary State of Hawaii and/or County of Kauai permits prior to any alteration. The Board will have the right to form an architectural review committee, and to establish such procedures as it deems appropriate to process any Owner-initiated request for modifications or alterations of Apartments. Further, nothing in this paragraph shall prohibit the Board from effecting such changes within an Apartment or Limited Common Element, or to require same, in order that the buildings of the Project may continue to comply with applicable law, including any fire code requirements.

**C. APARTMENT OWNERS TO EXECUTE AMENDMENT DOCUMENTS IN CERTAIN CASES.** In the event that any change or alteration of an Apartment pursuant to and in compliance with Article XII, Section B of the Declaration shall alter the depiction of the particular Apartment on the Condominium Map or the description thereof, as set forth herein , then the Owner of such Apartment shall amend the Declaration and/or the Condominium Map to set forth such approved change or alteration, which amendment(s) may be executed by the Owner of the affected Apartment or Apartments and by no other party, and such shall become effective upon the filing thereof in said Land Court. The provisions of Article XIII of the Declaration notwithstanding, such amendment shall not require the consent or joinder of the Owner of any other Apartment or any other person or entity, other than any mortgagee of such Apartment or Apartments which are changed or altered (if the mortgagee requires such consent or joinder). Every Apartment Owner and all holders of liens affecting any of the Apartments of the Project and each and every other party acquiring an interest in the Project or any part thereof, by acquiring such Apartment, lien or other interest, consents to and agrees that he shall, if required by law or by any such Owner who shall have changed or altered an Apartment as aforesaid, join in, consent to, execute, deliver and file all instruments and documents necessary or desirable to effect the amendment of the Declaration and/or the

Condominium Map; and appoints such Owner and his assigns his attorney-in-fact with full power of substitution to execute, deliver and file such documents and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such party.

* * * * *

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL RESTRICTIONS ON ALTERATIONS TO APARTMENTS CONTAINED IN THE PROJECT DOCUMENTS. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF RIGHTS AND OBLIGATIONS UNDER THE PROJECT DOCUMENTS, PURCHASER MUST REFER TO THE DECLARATION, BYLAWS AND HOUSE RULES TO DETERMINE THE PURCHASER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE PROJECT DOCUMENTS, THE PROJECT DOCUMENTS WILL CONTROL.

EXHIBIT "D"

**Apartment Numbers, Apartment Types, Number of Bedrooms and Bathrooms, Approximate Net Living Square Footages, Approximate Net Lanai Square Footages, Percentage Common Interest**

| Apartment Number[1] | Apartment Type | Bedrooms/ Bathrooms | Approximate Net Living Square Footages[2] | Approximate Net Lanai Square Footages[3] | Percentage Common Interest[4] |
|---|---|---|---|---|---|
| A101 | C | 1/2 | 824 | 75 | 0.375433% |
| A102 | D | 2/3 | 1158 | 154 | 0.527611% |
| A103 | D | 2/3 | 1158 | 154 | 0.527611% |
| A104 | D | 2/3 | 1158 | 154 | 0.527611% |
| A105 | BR | 1/2 | 823 | 75 | 0.374977% |
| A106 | D | 2/3 | 1158 | 154 | 0.527611% |
| A107 | E2R | 2/3 | 1414 | 439 | 0.644250% |
| A201 | C | 1/2 | 824 | 75 | 0.375433% |
| A202 | D | 2/3 | 1158 | 154 | 0.527611% |
| A203 | D | 2/3 | 1158 | 154 | 0.527611% |
| A204 | D | 2/3 | 1158 | 154 | 0.527611% |
| A205 | BR | 1/2 | 823 | 75 | 0.374977% |
| A206 | D | 2/3 | 1158 | 154 | 0.527611% |
| A207 | E2R | 2/3 | 1414 | 439 | 0.644250% |
| A301 | C | 1/2 | 824 | 75 | 0.375433% |
| A302 | D | 2/3 | 1158 | 154 | 0.527611% |

[1] The letter in each Resort Apartment and Hotel Apartment Number indicates the building in which such Apartment is located (i.e. Buildings A, B, C, D, E, F, G and H). The first number in each Resort Apartment and Hotel Apartment Number indicates the floor on which such Apartment is located. All Apartments described in this Exhibit are Resort Apartments, except for Apartments E101, E102, E201, E202, E302 and E402 which are all Hotel Apartments and which are all identified as such with an "*" after the Apartment Number, and except for Apartments C-1, C-2, C-3, C-4, C-5, Snack Bar, Pool Bar, and Spa which are all Commercial Apartments and which are all identified as such with an "**" after the Apartment Number. The Commercial Apartments are depicted on the Condominium Map.

[2] The approximate net square footage of each Resort Apartment and Hotel Apartment in the Project was determined by measuring the area between the interior surface of the perimeter walls of each Apartment.

[3] Each Resort Apartment and Hotel Apartment has adjacent to it lanai area(s) in approximately the aggregate size described in this Exhibit. The lanais are limited common elements appurtenant to the Resort Apartment or Hotel Apartment to which they abut. Specifics on use and control of the lanais are set forth in the Declaration, Bylaws, House Rules, and other Project documents.

[4] The percentage common interest attributable to each Apartment was calculated by dividing the net living square footage of each such Apartment by the total net living square footage of all Resort, Hotel and Commercial Apartments within the Project, rounding the quotient to the nearest 8th decimal place, and multiplying the result by 100. In order to permit the common interest for all Apartments to equal exactly hundred percent (100%), the common interest attributable to C-1 was decreased by 0.000031%.

| Apartment Number[1] | Apartment Type | Bedrooms/ Bathrooms | Approximate Net Living Square Footages[2] | Approximate Net Lanai Square Footages[3] | Percentage Common Interest[4] |
|---|---|---|---|---|---|
| A303 | D | 2/3 | 1158 | 154 | 0.527611% |
| A304 | D | 2/3 | 1158 | 154 | 0.527611% |
| A305 | BR | 1/2 | 823 | 75 | 0.374977% |
| A306 | D | 2/3 | 1158 | 154 | 0.527611% |
| A401 | C | 1/2 | 824 | 75 | 0.375433% |
| A402 | D | 2/3 | 1158 | 154 | 0.527611% |
| A403 | D | 2/3 | 1158 | 154 | 0.527611% |
| A404 | D | 2/3 | 1158 | 154 | 0.527611% |
| A405 | BR | 1/2 | 823 | 75 | 0.374977% |
| A406 | D | 2/3 | 1158 | 154 | 0.527611% |
| B101 | D | 2/3 | 1158 | 154 | 0.527611% |
| B102 | D | 2/3 | 1158 | 154 | 0.527611% |
| B103 | F | 2/3 | 1155 | 124 | 0.526244% |
| B104 | D | 2/3 | 1158 | 154 | 0.527611% |
| B201 | D | 2/3 | 1158 | 154 | 0.527611% |
| B202 | D | 2/3 | 1158 | 154 | 0.527611% |
| B203 | F | 2/3 | 1155 | 124 | 0.526244% |
| B204 | D | 2/3 | 1158 | 154 | 0.527611% |
| B301 | D | 2/3 | 1158 | 154 | 0.527611% |
| B302 | D | 2/3 | 1158 | 154 | 0.527611% |
| B303 | F | 2/3 | 1155 | 124 | 0.526244% |
| B304 | D | 2/3 | 1158 | 154 | 0.527611% |
| B401 | D | 2/3 | 1158 | 154 | 0.527611% |
| B402 | D | 2/3 | 1158 | 154 | 0.527611% |
| B403 | F | 2/3 | 1155 | 124 | 0.526244% |
| B404 | D | 2/3 | 1158 | 154 | 0.527611% |
| C101 | D | 2/3 | 1158 | 154 | 0.527611% |
| C102 | DR | 2/3 | 1158 | 154 | 0.527611% |
| C103 | D | 2/3 | 1158 | 154 | 0.527611% |
| C104 | DR | 2/3 | 1158 | 154 | 0.527611% |
| C105 | D | 2/3 | 1158 | 154 | 0.527611% |
| C106 | B | 1/2 | 823 | 75 | 0.374977% |
| C201 | D | 2/3 | 1158 | 154 | 0.527611% |
| C202 | DR | 2/3 | 1158 | 154 | 0.527611% |
| C203 | D | 2/3 | 1158 | 154 | 0.527611% |
| C204 | DR | 2/3 | 1158 | 154 | 0.527611% |
| C205 | D | 2/3 | 1158 | 154 | 0.527611% |
| C206 | B | 1/2 | 823 | 75 | 0.374977% |
| C301 | D | 2/3 | 1158 | 154 | 0.527611% |
| C302 | DR | 2/3 | 1158 | 154 | 0.527611% |
| C303 | D | 2/3 | 1158 | 154 | 0.527611% |
| C304 | DR | 2/3 | 1158 | 154 | 0.527611% |
| C305 | D | 2/3 | 1158 | 154 | 0.527611% |
| C306 | B | 1/2 | 823 | 75 | 0.374977% |

| Apartment Number[1] | Apartment Type | Bedrooms/ Bathrooms | Approximate Net Living Square Footages[2] | Approximate Net Lanai Square Footages[3] | Percentage Common Interest[4] |
|---|---|---|---|---|---|
| C401 | D | 2/3 | 1158 | 154 | 0.527611% |
| C402 | DR | 2/3 | 1158 | 154 | 0.527611% |
| C403 | D | 2/3 | 1158 | 154 | 0.527611% |
| C404 | DR | 2/3 | 1158 | 154 | 0.527611% |
| C405 | D | 2/3 | 1158 | 154 | 0.527611% |
| C406 | B | 1/2 | 823 | 75 | 0.374977% |
| D101 | BR | 1/2 | 823 | 75 | 0.374977% |
| D102 | DR | 2/3 | 1158 | 154 | 0.527611% |
| D103 | DR | 2/3 | 1158 | 154 | 0.527611% |
| D104 | G | 2/3 | 1465 | 154 | 0.667487% |
| D105 | B | 1/2 | 823 | 75 | 0.374977% |
| D201 | D | 2/3 | 1158 | 154 | 0.527611% |
| D202 | BR | 1/2 | 823 | 75 | 0.374977% |
| D203 | D | 2/3 | 1158 | 154 | 0.527611% |
| D204 | DR | 2/3 | 1158 | 154 | 0.527611% |
| D205 | D | 2/3 | 1158 | 154 | 0.527611% |
| D206 | DR | 2/3 | 1158 | 154 | 0.527611% |
| D207 | D | 2/3 | 1158 | 154 | 0.527611% |
| D208 | G | 2/3 | 1465 | 154 | 0.667487% |
| D209 | D | 2/3 | 1158 | 154 | 0.527611% |
| D210 | B | 1/2 | 823 | 75 | 0.374977% |
| D301 | D | 2/3 | 1158 | 154 | 0.527611% |
| D302 | BR | 1/2 | 823 | 75 | 0.374977% |
| D303 | D | 2/3 | 1158 | 154 | 0.527611% |
| D304 | DR | 2/3 | 1158 | 154 | 0.527611% |
| D305 | D | 2/3 | 1158 | 154 | 0.527611% |
| D306 | DR | 2/3 | 1158 | 154 | 0.527611% |
| D307 | D | 2/3 | 1158 | 154 | 0.527611% |
| D308 | G | 2/3 | 1465 | 154 | 0.667487% |
| D309 | D | 2/3 | 1158 | 154 | 0.527611% |
| D310 | G | 2/3 | 1465 | 154 | 0.667487% |
| D311 | D | 2/3 | 1158 | 154 | 0.527611% |
| D312 | B | 1/2 | 823 | 75 | 0.374977% |
| D401 | D | 2/3 | 1158 | 154 | 0.527611% |
| D402 | BR | 1/2 | 823 | 75 | 0.374977% |
| D403 | D | 2/3 | 1158 | 154 | 0.527611% |
| D404 | DR | 2/3 | 1158 | 154 | 0.527611% |
| D405 | D | 2/3 | 1158 | 154 | 0.527611% |
| D406 | DR | 2/3 | 1158 | 154 | 0.527611% |
| D407 | D | 2/3 | 1158 | 154 | 0.527611% |
| D408 | G | 2/3 | 1465 | 154 | 0.667487% |
| D409 | D | 2/3 | 1158 | 154 | 0.527611% |
| D410 | G | 2/3 | 1465 | 154 | 0.667487% |
| D411 | D | 2/3 | 1158 | 154 | 0.527611% |

| Apartment Number[1] | Apartment Type | Bedrooms/ Bathrooms | Approximate Net Living Square Footages[2] | Approximate Net Lanai Square Footages[3] | Percentage Common Interest[4] |
|---|---|---|---|---|---|
| D412 | B | 1/2 | 823 | 75 | 0.374977% |
| E101* | A | 1/1 | 323 | 72 | 0.147166% |
| E102* | A | 1/1 | 323 | 72 | 0.147166% |
| E103 | D | 2/3 | 1158 | 154 | 0.527611% |
| E104 | B | 1/2 | 823 | 75 | 0.374977% |
| E105 | D | 2/3 | 1158 | 154 | 0.527611% |
| E106 | B | 1/2 | 823 | 75 | 0.374977% |
| E201* | A | 1/1 | 323 | 72 | 0.147166% |
| E202* | A | 1/1 | 323 | 72 | 0.147166% |
| E203 | D | 2/3 | 1158 | 154 | 0.527611% |
| E204 | B | 1/2 | 823 | 75 | 0.374977% |
| E205 | D | 2/3 | 1158 | 154 | 0.527611% |
| E206 | B | 1/2 | 823 | 75 | 0.374977% |
| E301 | D | 2/3 | 1158 | 154 | 0.527611% |
| E302* | A | 1/1 | 323 | 72 | 0.147166% |
| E303 | D | 2/3 | 1158 | 154 | 0.527611% |
| E304 | B | 1/2 | 823 | 75 | 0.374977% |
| E306 | B | 1/2 | 823 | 75 | 0.374977% |
| E401 | D | 2/3 | 1158 | 154 | 0.527611% |
| E402* | A | 1/1 | 323 | 72 | 0.147166% |
| E404 | B | 1/2 | 823 | 75 | 0.374977% |
| E406 | B | 1/2 | 823 | 75 | 0.374977% |
| F101 | C | 1/2 | 824 | 75 | 0.375433% |
| F102 | DR | 2/3 | 1158 | 154 | 0.527611% |
| F103 | D | 2/3 | 1158 | 154 | 0.527611% |
| F104 | DR | 2/3 | 1158 | 154 | 0.527611% |
| F201 | C | 1/2 | 824 | 75 | 0.375433% |
| F202 | DR | 2/3 | 1158 | 154 | 0.527611% |
| F203 | D | 2/3 | 1158 | 154 | 0.527611% |
| F204 | DR | 2/3 | 1158 | 154 | 0.527611% |
| F301 | C | 1/2 | 824 | 75 | 0.375433% |
| F302 | DR | 2/3 | 1158 | 154 | 0.527611% |
| F303 | D | 2/3 | 1158 | 154 | 0.527611% |
| F304 | DR | 2/3 | 1158 | 154 | 0.527611% |
| F401 | C | 1/2 | 824 | 75 | 0.375433% |
| F402 | DR | 2/3 | 1158 | 154 | 0.527611% |
| F403 | D | 2/3 | 1158 | 154 | 0.527611% |
| F404 | DR | 2/3 | 1158 | 154 | 0.527611% |
| G101 | E2 | 2/3 | 1414 | 439 | 0.644250% |
| G102 | DR | 2/3 | 1158 | 154 | 0.527611% |
| G103 | B | 1/2 | 823 | 75 | 0.374977% |
| G104 | DR | 2/3 | 1158 | 154 | 0.527611% |
| G105 | D | 2/3 | 1158 | 154 | 0.527611% |
| G106 | DR | 2/3 | 1158 | 154 | 0.527611% |

* See explanation in footnote 1 of this Exhibit

| Apartment Number[1] | Apartment Type | Bedrooms/ Bathrooms | Approximate Net Living Square Footages[2] | Approximate Net Lanai Square Footages[3] | Percentage Common Interest[4] |
|---|---|---|---|---|---|
| G107 | CR | 1/2 | 824 | 75 | 0.375433% |
| G201 | E2 | 2/3 | 1414 | 439 | 0.644250% |
| G202 | DR | 2/3 | 1158 | 154 | 0.527611% |
| G203 | B | 1/2 | 823 | 75 | 0.374977% |
| G204 | DR | 2/3 | 1158 | 154 | 0.527611% |
| G205 | D | 2/3 | 1158 | 154 | 0.527611% |
| G206 | DR | 2/3 | 1158 | 154 | 0.527611% |
| G207 | CR | 1/2 | 824 | 75 | 0.375433% |
| G301 | E2 | 2/3 | 1414 | 439 | 0.644250% |
| G302 | DR | 2/3 | 1158 | 154 | 0.527611% |
| G303 | B | 1/2 | 823 | 75 | 0.374977% |
| G304 | DR | 2/3 | 1158 | 154 | 0.527611% |
| G305 | D | 2/3 | 1158 | 154 | 0.527611% |
| G306 | DR | 2/3 | 1158 | 154 | 0.527611% |
| G307 | CR | 1/2 | 824 | 75 | 0.375433% |
| G401 | E2 | 2/3 | 1414 | 439 | 0.644250% |
| G402 | DR | 2/3 | 1158 | 154 | 0.527611% |
| G403 | B | 1/2 | 823 | 75 | 0.374977% |
| G404 | DR | 2/3 | 1158 | 154 | 0.527611% |
| G405 | D | 2/3 | 1158 | 154 | 0.527611% |
| G406 | DR | 2/3 | 1158 | 154 | 0.527611% |
| G407 | CR | 1/2 | 824 | 75 | 0.375433% |
| H101 | E | 2/3 | 1414 | 439 | 0.644250% |
| H102 | DR | 2/3 | 1158 | 154 | 0.527611% |
| H103 | D | 2/3 | 1158 | 154 | 0.527611% |
| H104 | DR | 2/3 | 1158 | 154 | 0.527611% |
| H105 | D | 2/3 | 1158 | 154 | 0.527611% |
| H106 | DR | 2/3 | 1158 | 154 | 0.527611% |
| H107 | BR | 1/2 | 823 | 75 | 0.374977% |
| H201 | E | 2/3 | 1414 | 439 | 0.644250% |
| H202 | DR | 2/3 | 1158 | 154 | 0.527611% |
| H203 | D | 2/3 | 1158 | 154 | 0.527611% |
| H204 | DR | 2/3 | 1158 | 154 | 0.527611% |
| H205 | D | 2/3 | 1158 | 154 | 0.527611% |
| H206 | DR | 2/3 | 1158 | 154 | 0.527611% |
| H207 | BR | 1/2 | 823 | 75 | 0.374977% |
| H301 | D | 2/3 | 1158 | 154 | 0.527611% |
| H302 | DR | 2/3 | 1158 | 154 | 0.527611% |
| H303 | D | 2/3 | 1158 | 154 | 0.527611% |
| H304 | DR | 2/3 | 1158 | 154 | 0.527611% |
| H305 | BR | 1/2 | 823 | 75 | 0.374977% |
| H306 | DR | 2/3 | 1158 | 154 | 0.527611% |
| H401 | D | 2/3 | 1158 | 154 | 0.527611% |
| H402 | DR | 2/3 | 1158 | 154 | 0.527611% |

| Apartment Number[1] | Apartment Type | Bedrooms/ Bathrooms | Approximate Net Living Square Footages[2] | Approximate Net Lanai Square Footages[3] | Percentage Common Interest[4] |
|---|---|---|---|---|---|
| H403 | D | 2/3 | 1158 | 154 | 0.527611% |
| H404 | DR | 2/3 | 1158 | 154 | 0.527611% |
| H405 | BR | 1/2 | 823 | 75 | 0.374977% |
| H406 | DR | 2/3 | 1158 | 154 | 0.527611% |
| C-1** | --- | 0/0 | 1270 | --- | 0.578609% |
| C-2** | --- | 0/0 | 1270 | --- | 0.578640% |
| C-3** | --- | 0/0 | 1270 | --- | 0.578640% |
| C-4**[5] | --- | 0/0 | 1059 | --- | 0.482504% |
| C-5** | --- | 0/0 | 1456 | --- | 0.663386% |
| Snack Bar** | --- | 0/0 | 352 | --- | 0.160379% |
| Pool Bar** | --- | 0/0 | 1235 | --- | 0.562694% |
| Spa** | --- | 0/0 | 460 | --- | 0.209586% |
| | | | | | |
| | | **TOTAL** | **219480** | | **100.000000%** |

Location of Apartments.

a. Building A

Twenty-six (26) Resort Apartments are located in Building A as the same are depicted on the Condominium Map. Building A is comprised of four (4) floors with seven (7) Resort Apartments on each of floors one and two, and six (6) Resort Apartments on each of floors three and four.

b. Building B

Sixteen (16) Resort Apartments are located in Building B as the same are depicted on the Condominium Map. Building B is comprised of four (4) floors with four (4) Resort Apartments on each floor.

c. Building C

Twenty-four (24) Resort Apartments are located in Building C as the same are depicted on the Condominium Map. Building C is comprised of four (4) floors with six (6) Resort Apartments on each floor.

d. Building D

Thirty-nine (39) Resort Apartments and five (5) Commercial Apartments (i.e. C-1, C-2, C-3, C-4 and C-5) are located in Building D as the same are depicted on the Condominium Map. Building D is comprised of four (4) floors. There are five (5) Resort Apartments and five (5) Commercial Apartments (i.e. Apartments C-1, C-2, C-3, C-4 and C-5) on floor one, ten (10) Resort Apartments on floor two, and twelve (12) Resort Apartments on each of floors three and four.

[5] C-4 has appurtenant to it, as limited common elements, parking stalls R1 through R118, inclusive, and parking stalls P1 through P10, inclusive, all as depicted on the Condominium Map.

** See explanation in footnote 1 of this Exhibit

e. Building E

Fifteen (15) Resort Apartments and six (6) Hotel Apartments (i.e. Apartments E101, E102, E201, E202, E302 and E402) are located in Building E as the same are depicted on the Condominium Map. Building E is comprised of four (4) floors. There are four (4) Resort Apartments and two (2) Hotel Apartments (i.e. Apartments E101 and E102) on floor one, four (4) Resort Apartments and two (2) Hotel Apartments (i.e. Apartments E201 and E202) on floor two, four (4) Resort Apartments and one (1) Hotel Apartment (i.e. Apartment E302) on floor three, and three (3) Resort Apartments and one (1) Hotel Apartment (i.e. Apartment E402) on floor four.

f. Building F

Sixteen (16) Resort Apartments are located in Building F as the same are depicted on the Condominium Map. Building F is comprised of four (4) floors with four (4) Resort Apartments on each floor.

g. Building G

Twenty-eight (28) Resort Apartments are located in Building G as the same are depicted on the Condominium Map. Building G is comprised of four (4) floors with seven (7) Resort Apartments on each floor.

h. Building H

Twenty-six (26) Resort Apartments are located in Building H as the same are depicted on the Condominium Map. Building H is comprised of four (4) floors with seven (7) Resort Apartments on each of floors one and two, and six (6) Resort Apartments on each of floors three and four.

i. Snack Bar

The Snack Bar Commercial Apartment is deemed to include the entire structure marked "Snack Bar" on the Condominium Map (as more particularly defined herein) at the location depicted on the Condominium Map.

j. Pool Bar

The Pool Bar Commercial Apartment is deemed to include the entire structure marked "Pool Bar" on the Condominium Map (as more particularly defined herein) at the location depicted on the Condominium Map.

k. Spa

The Spa Commercial Apartment is deemed to include the entire structures marked "Spa" on the Condominium Map (as more particularly defined herein) at the location(s) depicted on the Condominium Map.

Layout of Apartments.

i. Apartment Type "A"

All type "A" Apartments are "studio" apartments and have the number of bedroom(s) and

bathroom(s) indicated in the table above, an entry area and a heater and a/c area, all as depicted on the Condominium Map. Type "AR" is a reverse layout of Type "A".

ii. Apartment Types "B" and "BR"

All type "B" and type "BR" Apartments have the number of bedroom(s) and bathroom(s) indicated in the table above, one (1) bedroom closet, an entry area, a washer/dryer and heater area, an a/c area, one (1) kitchen and one (1) living room, all as depicted on the Condominium Map. Type "BR" is a reverse layout of Type "B".

iii. Apartment Types "C" and "CR"

All type "C" and type "CR" Apartments have the number of bedroom(s) and bathroom(s) indicated in the table above, one (1) bedroom closet, an entry area, a heater area, a washer/dryer area, an a/c area, one (1) kitchen and one (1) living room, all as depicted on the Condominium Map. Type "CR" is a reverse layout of Type "C".

iv. Apartment Types "D" and "DR"

All type "D" and type "DR" Apartments have the number of bedroom(s) and bathroom(s) indicated in the table above, two (2) bedroom closets, one (1) bathroom closet, an entry area, a heater and washer/dryer area, an a/c area, one (1) kitchen and one (1) living room, all as depicted on the Condominium Map. Type "DR" is a reverse layout of Type "D".

v. Apartment Type "E"

All type "E" Apartments have the number of bedroom(s) and bathroom(s) indicated in the table above, one (1) bedroom closet, one (1) bathroom closet, one (1) hallway closet, an entry area and side closet, a heater area, a washer/dryer area, an a/c area, one (1) kitchen and one (1) living room, all as depicted on the Condominium Map.

vi. Apartment Type "E2" and "E2R"

All type "E2" and type "E2R" Apartments have the number of bedroom(s) and bathroom(s) indicated in the table above, one (1) bedroom closet, one (1) bathroom closet, one (1) hallway closet, an entry area and side closet, a heater area, a washer/dryer area, an a/c area, one (1) kitchen and one (1) living room, all as depicted on the Condominium Map. Type "E2R" is a reverse layout of Type "E2".

vii. Apartment Type "F"

All type "F" Apartments have the number of bedroom(s) and bathroom(s) indicated in the table above, two (2) bedroom closets, one (1) hallway closet, an entry area, a heater area, a washer/dryer area, an a/c area, one (1) kitchen and one (1) living room, all as depicted on the Condominium Map. Type "F" does not have a reverse layout type.

viii. Apartment Type "G"

All type "G" Apartments have the number of bedroom(s) and bathroom(s) indicated in the table above, two (2) bedroom closets, one (1) bathroom closet, an entry area, a heater and washer/dryer area, an a/c area, one (1) kitchen and one (1) living room, all as depicted on the Condominium Map. Type "G" does not have a reverse layout type.

Parking Stall Assignments.

Each Resort, Hotel and Commercial Apartment will have the right to use one (1) unassigned parking stall in the Project. The Managing Agent will be responsible for maintaining and administering such parking stalls.

Commercial Apartment C-4 has appurtenant to it, as limited common elements, parking stalls R1 through R118, inclusive, and parking stalls P1 through P10, inclusive, all as depicted on the Condominium Map.

Accessible Rooms.

Pursuant to ADA requirements, two (2) units will have roll in showers and five (5) units will have bathtubs with grab bars. These units will also be equipped to accommodate the hearing impaired.

## EXHIBIT "E"

## COMMON ELEMENTS

Capitalized terms have the same meaning ascribed to such terms in the Declaration.

One freehold estate is hereby designated in the remaining portions of the Project, which do not constitute Apartments, herein called the "Common Elements," including specifically but not limited to:

A. The Land in fee simple and any appurtenances thereto as described on Exhibit "A" of the Declaration subject, however, to the reserved right of the Developer to subdivide and withdraw a portion of the Project as set forth in Article XXVI of the Declaration;

B. The Building Structure, including, without limitation, all perimeter or party walls and the undecorated or unfinished surfaces thereof, any load-bearing walls and columns, and the undecorated or unfinished surfaces thereof, all structural components such as foundations, concrete sidewalks and curbs, floor slabs, columns, girders, beams, supports, halls, corridors, elevators, escalators, exterior stairs and stairways, main walls, roofs and ceilings that are not a part of the Apartment;

C. All perimeter doors, door frames, windows, window frames, and all exterior hardware associated therewith, and the undecorated or unfinished interior surfaces thereof; whether at the perimeter of a Building Structure or at the perimeter of an Apartment that are not a part of the Apartment;

D. All yards, grounds and landscaping, including, but not limited to the Cultural Preserve Land Area, Restaurant Land Area and all trash enclosures within the Project;

E. All roads, driveways, access lanes, paved areas, ramps, loading dock areas and walkways within the Project, including, but not limited to, that certain driveway area, as designated on the Condominium Map and the Highway Dedication Land Area; provided that parking stalls 1 through 310, as labeled on the Condominium Map, shall be administered by the Managing Agent for and on behalf of the Association;

F. The Pool, River Pools, deck areas, bridges and all other amenities and improvements to the common spaces and landscaping in the recreational facilities area (that are not designated as Apartments);

G. The porte cochere, trash areas, loading or delivery docks, guardhouse, if any, and any lanais, walkways, driveways, service areas (labeled as "Service A1", "Service A4", etc. on the Condominium Map), hallways, elevators, stairways, walkways and storage rooms;

H. All cables, conduits, ducts, sewer lines, electrical equipment, wiring, pipes, catch basins and other central and appurtenant transmission facilities and installations over, under and across the Project that serve more than one Apartment for services such as power, light, water, gas, sewer, storm water, refuse, cable television and television signal distribution;

I. All unimproved areas, maintenance, mechanical, electrical, storage areas, elevators, stairwells and hallways and other similar areas that are not part of an Apartment;

J. All other apparatus and installations existing for common use, such as tanks, pumps, motors, fans, air-conditioning units including fan coil equipment located within an Apartment, compressors, ducts, shafts, vents, water heating and distribution equipment, fire suppression equipment and other such installations and apparatus; and

K. All other parts of the Project necessary or convenient to its existence, maintenance and safety of the Project used in common.

**EXHIBIT "F"**

**LIMITED COMMON ELEMENTS**

Capitalized terms have the same meaning ascribed to such terms in the Declaration.

The Limited Common Elements are hereby designated, set aside and reserved for the exclusive use of certain Apartments, and such Apartments shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements as set forth herein. The costs and expenses of every description pertaining to the Limited Common Elements, including, but not limited to, the costs of maintenance, repair, replacement, improvement or additions to the Limited Common Elements ("Costs"), shall be charged to the Owner of the Apartment to which the Limited Common Element shall be appurtenant, unless otherwise stated herein, and if there is more than one Apartment to which the Limited Common Element shall be appurtenant, then in proportion to the Common Interest appurtenant to each of the respective Apartments, unless a different calculation method is adopted pursuant to Articles III and IX of the Declaration. Limited Common Elements that are appurtenant to more than one Apartment, if any, shall be managed and maintained by the Association, acting by and through the Managing Agent, on behalf of the Owners of such Apartments. In any event that a dispute shall arise between Owners of Apartments to which a particular Limited Common Element shall be appurtenant with respect to the management and/or maintenance thereof, such dispute shall be resolved by the Managing Agent (acting for and on behalf of the Association), which shall be the sole arbiter with respect to such matters. The Owners of the Commercial Apartments may build upon and/or alter any Limited Common Element which is appurtenant to the Commercial Apartment, may change the use of such Limited Common Element, may lease or license out any such Limited Common Element, and, in the event that any revenues are generated from such Limited Common Element or improvements thereon or uses thereof, the Owner or Owners of the Commercial Apartment shall be entitled to such revenues, and no other Owner shall have any right thereto.

A. **RESORT AND HOTEL APARTMENTS.** Each Resort and Hotel Apartment shall have appurtenant thereto, as a Limited Common Element (a) one or more lanai(s), as depicted in said Condominium Map, the total areas of which area identified in said Exhibit "D" herein; and (b) an assigned mailbox located in the "Lobby", as depicted on said Condominium Map. Such mailbox shall be labeled with the same number as the Apartment to which it is a Limited Common Element.

B. **COMMERCIAL APARTMENTS.** The various Commercial Apartments described below shall have appurtenant thereto, as Limited Common Elements, the following areas:

1. **Commercial Apartment 5.** Commercial Apartment 5 shall have as Limited Common Elements appurtenant thereto the "Receiving Dock" and any other loading docks adjacent to Building D; and those certain Service Areas, labeled and depicted as Service A2, A3, A6, A7, A9, A10, A11, A13, A14, D1, D2, D3, E2, E3, E4, G2, G3, G4, G6, G7, G8, G10, G11, G12, H2, H4, H5, H7, H8, H10, and the "Lobby Desk", all as depicted and described in the Condominium Map.

2. **Commercial Apartment 4.** Commercial Apartment 4 shall have as Limited Common Elements appurtenant thereto the lobby area, as designated on the Condominium Map as "Lobby", excluding the "Lobby Desk" as depicted and described in the Condominium Map, but including, without limitation, (i) all of the walls and partitions that are not load-bearing within its perimeter or party walls, (ii) all pipes, shafts, ducts, pumps, conduits, wires and other utility or service lines running through such Apartment that are utilized for and serve only that Apartment, (iii) the interior decorated or finished surfaces of all walls, floors and ceilings surrounding each Apartment inward and all of the improvements and air space located therein, (iv) the interior decorated or finished surfaces of any doors, door frames, windows or window frames, and (v) all appliances, interior hardware, and fixtures installed therein, and replacements therefore; the "porte cochere"; the Highway Dedication Land Area, the Restaurant Land Area and the Cultural Preserve Land Area; and Service D4 all as depicted on the Condominium Map.

3. **Snack Bar Commercial Apartment.** The Snack Bar Commercial Apartment, shall have as a Limited Common Elements appurtenant thereto any and all lanai areas and/or lounging areas adjacent to and

servicing the Snack Bar Commercial Apartment that are not a part of a Commercial Apartment, depicted as the cross-hatched area surrounding such Apartment in the Condominium Map.

4. **Pool Bar Commercial Apartment.** The Pool Bar Commercial Apartment, shall have as a Limited Common Elements appurtenant thereto any and all lanai areas and/or lounging areas adjacent to and servicing the Pool Bar Commercial Apartment that are not a part of a Commercial Apartment, depicted as the cross-hatched area surrounding such Apartment in the Condominium Map.

5. **Spa Commercial Apartment.** The Spa Commercial Apartment, shall have as a Limited Common Elements appurtenant thereto any and all lanai areas and/or lounging areas adjacent to and servicing the Spa Commercial Apartment that are not a part of a Commercial Apartment, depicted as the cross-hatched area surrounding such Apartment in the Condominium Map.

**EXHIBIT "G"**

**ENCUMBRANCES AGAINST TITLE**

1. Taxes and assessments, general and special, which are a lien, whether due, payable, delinquent or otherwise. For further information, check with the County tax assessor.

2. As to the portion of the land herein described bordering on the ocean:

   The effect of Sections 205A-41 to 205A-49, inclusive, Hawaii Revised Statutes, as now or hereafter amended, pertaining to shoreline setbacks.

   Any adverse claim of the State of Hawaii based upon the contention that some portion of the land hereinafter described lies seaward of the line of vegetation, pursuant to the ruling of County vs. Sotomura (1973) 55 H. 176, 517 P. 2d 57.

3. EASEMENT "A"

   For : Roadway purposes
   As shown on Map 3
   As set forth by Land Court Order No. 20844 filed January 17, 1963

4. EASEMENT "B"

   For : Drainage canal purposes
   As shown on Map 3
   As set forth by Land Court Order No. 20844 filed January 17, 1963

5. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

| | | |
|---|---|---|
| Instrument | : | GRANT OF EASEMENT |
| Granted To | : | STATE OF HAWAII |
| For | : | An easement over said Easement "A" and Easement "B" |
| Dated | : | October 25, 1962 |
| Recorded | : | January 17, 1963 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 302148 |

DEED dated January 25, 1982, recorded January 27, 1982, filed as Land Court Document No. 1102032, recorded in Book 16128 at Page 1, STATE OF HAWAII remises, releases and quitclaims unto the COUNTY OF KAUAI, a body corporate and politic in the State of Hawaii, all of its right, title and interest in Easements A and B.

6. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

| | | |
|---|---|---|
| Instrument | : | GRANT OF EASEMENT |
| Granted To | : | GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, a Hawaii corporation, now known as VERIZON HAWAII INC., and CITIZENS UTILITIES COMPANY, a Delaware corporation, whose interest is now held by KAUAI ISLAND UTILITY CO-OP |
| For | : | A perpetual right and easement to build, construct, rebuild, reconstruct, repair, maintain and operate guy wires, anchor, and associated appliances and equipment, etc., for the transmission and distribution of electricity |
| Dated | : | July 2, 1993 |
| Recorded | : | January 10, 1994 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 2106816 |

ASSIGNMENT OF TRANSMISSION LINE AND ELECTRICAL EASEMENTS

| | | |
|---|---|---|
| Dated | : | November 1, 2002 |
| Recorded | : | October 31, 2002 in the Bureau of Conveyances, State of Hawaii, as Document No. 2002-194846, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 2856272 |
| Assignor | : | CITIZENS COMMUNICATIONS COMPANY, formerly known as Citizens Utilities Company, a Delaware corporation, and successor-in-interest to Kauai Electric Company, Limited |
| Assignee | : | KAUAI ISLAND UTILITY CO-OP, a Hawaii cooperative association |

7. Matters as contained or referred to in an instrument

| | | |
|---|---|---|
| Entitled | : | LIMITED WARRANTY DEED |
| Dated | : | September 17, 2003 |
| Recorded | : | September 17, 2003 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 2994682 |
| Which, among other things, provides | : | Conditions on which the disclosure of an unrecorded Disposition Agreement between Grantor and Grantee dated December 2001, conditions regarding the condition of the conveyed property and that the conveyance is subject to the following and other matters: A 0.926 acre historic preserve area and archaeological sites. |

8. Condominium Map No. 1642, filed in the Bureau of Conveyances, State of Hawaii.

9. Matters in an instrument that, among other things, contain or provide for easements, assessments, liens and their subordination; provisions relating to partition, restrictions on severability of component interest, covenants, conditions and restrictions, provision that no violation thereof and no enforcement of any lien provided for therein shall defeat or render invalid the lien of a mortgage or deed of trust made in good faith and for value, but omitting and covenants or restrictions if any, based upon race color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

Entitled : Declaration of Condominium Property Regime
Recorded : June 17, 2004 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3124205

Said Declaration was amended by the following instruments:

| DATE: | RECORDED DATE: | DOCUMENT NO.: |
|---|---|---|
| February 1, 2005 | February 1, 2005 | 3226301 |
| July 5, 2006 | July 12, 2006 | 3452034 |
| April 1, 2008 | May 15, 2008 | 3747969 |

Liens and charges for upkeep and maintenance as provided in the above mentioned Covenants, Conditions and Restrictions, if any, where no notice thereof appears on record.

For information regarding the current status of said liens and/ or assessments
Contact : ASSOCIATION OF APARTMENT OWNERS OF WAIPOULI BEACH RESORT

10. By-Laws of the Association of Apartment Owners of WAIPOULI BEACH RESORT, recorded June 17, 2004 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3124206.

AMENDMENT thereof by instrument:
Recorded : June 1, 2006 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3435500

11. Encroachments and any other matters as shown on survey map and surveyor's report prepared by Dennis M. Esaki, Licensed Professional Land Surveyor, Certificate No. 4383, with Esaki Surveying and Mapping, Inc., dated January 31, 2007.

Said survey discloses among other things, (a) Archaeological Report "Long-Term Preservation Plan for a cultural preserve (site 50-30-08-1836) at the WAIPOULI BEACH RESORT", May 2002 and (b) Designation of a "Proposed Cultural Preserve".

12. Agreement for : WAIVER, RELEASE AND INDEMNITY (BUILDING PERMIT)
Executed By : WAIPOULI BEACH RESORTS, LLC, a Hawaii limited liability company, "APPLICANT"
and Between : DEPARTMENT OF WATER, COUNTY OF KAUAI, "DEPARTMENT OF WATER"

On the terms, covenants and conditions contained therein,

Dated : February 16, 2005
Recorded : May 16, 2005 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3268830

13. Financing Statement (UCC-1) as follows:

Debtor : WAIPOULI BEACH RESORTS, LLC
Mailing Address : 30001 Golden Lantern, Laguna Niguel, CA 92677
Secured Party : BANK OF HAWAII, EQUIPMENT LEASING DIVISION
Recorded : January 17, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-007961

AMENDMENT thereof by instrument:
Recorded : March 10, 2008 in the Bureau of Conveyances, State of Hawaii, as Document No. 2008-035964

14. Mortgage to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof, with power of sale and assignment of rents.

Amount : $25,400,000.00
Mortgagor : WAIPOULI BEACH RESORTS, LLC, a Hawaii limited liability company
Mortgagee : FREMONT INVESTMENT & LOAN, a California industrial bank
Recorded : February 9, 2007 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3558496

The mortgagee's interest under said mortgage was assigned to iSTAR FM LOANS LLC, a Delaware limited liability company, by instrument,

Dated : June 29, 2007
Recorded : August 6, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-140329, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3638736
Returned to
Address : 2727 East Imperial Highway, Brea, CA 92821

Affects this and other property.

NOTE: The foregoing assignment was re-recorded on January 17, 2008 in the Bureau of Conveyances, State of Hawaii, as Document No. 2008-007843, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3702902.

AMENDMENT thereof by instrument:

| | | |
|---|---|---|
| Recorded | : | March 19, 2008 in the Bureau of Conveyances, State of Hawaii, as Document No. 2008-043187, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3724046 |

15. ASSIGNMENT OF RENTS (AND LEASES)

| | | |
|---|---|---|
| Dated | : | February 9, 2007 |
| Recorded | : | February 9, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-025593 |
| Borrower | : | WAIPOULI BEACH RESORTS, LLC, a Hawaii limited liability company |
| Lender | : | FREMONT INVESTMENT & LOAN, a California industrial bank |

The record beneficial interest under said Assignment as a result of the last recorded assignment thereof is,

| | | |
|---|---|---|
| Vested In | : | iSTAR FM LOANS LLC, a Delaware limited liability company |
| By Assignment From | : | FREMONT INVESTMENT & LOAN, a California industrial bank |
| Dated | : | June 29, 2007 |
| Recorded | : | August 6, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-140329, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3638736 |
| Returned to Address | : | 2727 East Imperial Highway, Brea, CA 92821 |

Affects this and other property.

NOTE: The foregoing assignment was re-recorded on January 17, 2008 in the Bureau of Conveyances, State of Hawaii, as Document No. 2008-007843, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3702902.

AMENDMENT thereof by instrument:

| | | |
|---|---|---|
| Recorded | : | March 19, 2008 in the Bureau of Conveyances, State of Hawaii, as Document No. 2008-043187, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3724046 |

16. UNRECORDED LEASE, as amended, by and between WAIPOULI BEACH RESORTS, LLC, a Hawaii limited liability company, and OUTRIGGER HOTELS HAWAII, a Hawaii limited partnership, as disclosed by instrument dated February 9, 2007, recorded February 9, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-025594.

Subordination, Assignment, Nondisturbance and Attornment Agreement (Lease Agreement)

| | | |
|---|---|---|
| Dated | : | February 9, 2007 |
| Recorded | : | February 9, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-025594 and 2007-025595 |
| Borrower | : | WAIPOULI BEACH RESORTS, LLC, a Hawaii limited liability company |
| Lender | : | FREMONT INVESTMENT & LOAN, a California industrial bank |
| Tenant | : | OUTRIGGER HOTELS HAWAII, a Hawaii limited partnership |

The record beneficial interest under said Assignment as a result of the last recorded assignment thereof is,

| | | |
|---|---|---|
| Vested In | : | iSTAR FM LOANS LLC, a Delaware limited liability company |
| By Assignment From | : | FREMONT INVESTMENT & LOAN, a California industrial bank |
| Dated | : | June 29, 2007 |
| Recorded | : | August 6, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-140329, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3638736 |
| Returned to Address | : | 2727 East Imperial Highway, Brea, CA 92821 |

Affects this and other property.

NOTE: The foregoing assignment was re-recorded on January 17, 2008 in the Bureau of Conveyances, State of Hawaii, as Document No. 2008-007843, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3702902.

17. Financing Statement (UCC-1) as follows:

| | | |
|---|---|---|
| Debtor | : | WAIPOULI BEACH RESORTS, LLC |
| Mailing Address | : | 6748 Waipouli Road, Kapaa, HI 96746 |
| Secured Party | : | FREMONT INVESTMENT & LOAN |
| Recorded | : | February 9, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-025596 |

NOTE: With reference to Financing Statement (UCC-1) shown above as 2007-025596, a Financing Statement Change (UCC-2) was recorded October 2, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-174798 which, among other things, provides change of name to iSTAR FINANCIAL INC.

NOTE: With reference to Financing Statement (UCC-1) shown above as 2007-025596, a Financing Statement Change (UCC-2) was recorded November 13, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-198304 which, among other things, provides change of name to iSTAR FM LOANS LLC

NOTE: With reference to Financing Statement (UCC-1) shown above as 2007-025596, a Financing Statement Change (UCC-2) was recorded December 20, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-219144 which, among other things, provides an assignment to iSTAR FM LOANS LLC

Affects this and other property.

**EXHIBIT "H"**

ESTIMATED ANNUAL COMMON EXPENSES

CERTIFICATE

I, the undersigned, duly sworn on oath, depose and affirm as follows:

1. That I am the Senior Vice President, Project Development of Certified Management, Inc., a Hawaii corporation, designated by the Developer of the Waipouli Beach Resort AOAO condominium project (the "Project") to act as the Managing Agent for the management and administration of the Project.

2. That I hereby certify that the breakdown of the annual maintenance charges and the monthly estimated cost for each apartment in the Project, as set forth in Exhibit "A" attached hereto and hereby incorporated herein by reference, were determined pursuant to a reserve study conducted in accordance with Section 514A-83.6 of the Hawaii Revised Statutes and Chapter 107 of the Hawaii Administrative Rules, and are reasonable estimates commencing September 1, 2008, based on generally accepted accounting principles.

DATED: Honolulu, Hawaii, this 10th day of September, 2008.

Douglas Mattos
Senior Vice President, Project Development

Subscribed and sworn to before me
this 10th day of September, 2008.

Typed or Printed Name: Candace MT Villarmia
Notary Public, State of Hawaii

My commission expires: 07/09/2012

Document Date: 9/10/08 # Pages: 3
Notary Name: Candace M Villarmia First Circuit
Doc. Description: 2008. Budget
Notary Signature Date 9/10/08

CANDACE M. T. VILLARMIA
NOTARY PUBLIC
No. 2000-340
STATE OF HAWAII

651271.1

CERTIFIED MANAGEMENT, INC.

PROJECT NUMBER: 607

MONTHLY BUDGET ANALYSIS FOR: Waipouli Beach Resort

Approved budget to be effective on: September 1, 2008

Prepared By: Certified Management, Inc. Board Approved Date: July 26, 2008

| | | 2007 Budget | Actual Monthly Average | Proposed 2008 Budget | Approved 2008 Budget |
|---|---|---|---|---|---|
| REVENUE: | CHANGE-Fees, Dues, & Receipts = | | 0.0% | 14.3% | 0.0% |
| 40100 | FEES, DUES & RECEIPTS | 0 | 0 | 289,934 | 253,709 |
| 40100&40200 | TAXABLE INCOME | 0 | 0 | 16,567 | 8,000 |
| TOTAL REVENUES | | $0 | $0 | $306,501 | $261,709 |
| EXPENSES: | | | | | |
| | OPERATING EXPENSES: | | | | |
| 70100 | WAGES AND SALARIES | 0 | 0 | 90,961 | 64,410 |
| 70200 | EMPLOYEE BENEFITS | 0 | 0 | 0 | 0 |
| 70300 | ADMINISTRATIVE COSTS | 0 | 0 | 3,408 | 4,425 |
| 70320 | PETTY CASH REIMBURSEMENTS | 0 | 0 | 300 | 300 |
| 70350 | BAD DEBT EXPENSE | 0 | 0 | 2,500 | 4,000 |
| 70800 | PROPERTY MANAGEMENT | 0 | 0 | 1,980 | 1,980 |
| 70900 | LEGAL | 0 | 0 | 2,000 | 4,000 |
| 71100 | OTHER PROFESSIONAL | 0 | 0 | 650 | 3,680 |
| 71200 | ELECTRICITY | 0 | 0 | 44,951 | 30,182 |
| 71300 | WATER | 0 | 0 | 7,973 | 3,718 |
| 71350 | SEWER | 0 | 0 | 14,332 | 7,624 |
| 71400 | TELEPHONE | 0 | 0 | 9,525 | 6,664 |
| 71500 | GAS | 0 | 0 | 8,668 | 11,421 |
| 71600 | TELEVISION | 0 | 0 | 3,766 | 3,766 |
| 71700 | EXTERMINATING | 0 | 0 | 1,500 | 1,339 |
| 71800 | RUBBISH REMOVAL | 0 | 0 | 3,544 | 3,544 |
| 71900 | SECURITY | 0 | 0 | 3,224 | 3,224 |
| 72000 | CUSTODIAL | 0 | 0 | 700 | 969 |
| 72100 | MAINTENANCE | 0 | 0 | 34,097 | 35,763 |
| 72120 | SUPPLIES | 0 | 0 | 600 | 1,032 |
| 72150 | ELEVATOR | 0 | 0 | 2,714 | 2,714 |
| 72200 | AMENITIES | 0 | 0 | 5,100 | 6,474 |
| 72300 | VEHICLE COSTS | 0 | 0 | 50 | 0 |
| 72500 | TAXES | 0 | 0 | 300 | 300 |
| 72700 | INSURANCE | 0 | 0 | 46,745 | 17,432 |
| TOTAL OPERATING EXPENSES: | | $0 | $0 | $289,787 | $238,960 |
| | NON-OPERATING EXPENSES: | | | | |
| 73000 | CAPITAL EXPENSE | 0 | 0 | 0 | 665 |
| 78000 | DEPRECIATION EXPENSE | 0 | 0 | 0 | 5,370 |
| TOTAL NON-OPERATING EXPENSES: | | $0 | $0 | $0 | $6,035 |
| TOTAL EXPENSES | | $0 | $0 | $289,787 | $244,995 |
| NET INCOME | | $0 | $0 | $16,714 | $16,714 |
| | RESERVE FUND TRANSFERS: | | | | |
| 37290-499 | TRANSFER CLEARING-FROM RESERVES | 0 | 0 | 0 | 0 |
| 37290-799 | TRANSFER CLEARING-TO RESERVES | 0 | 0 | 16,714 | 16,714 |
| NET RESERVE TRANSFERS | | $0 | $0 | ($16,714) | ($16,714) |
| NET INCOME & NET RESERVE TRANSFERS | | $0 | $0 | ($0) | ($0) |

NOTE: The budgeted revenues and expenses are based on accrual-basis accounting.

CERTIFIED MANAGEMENT, INC.

PROJECT NUMBER: 607

MAINTENANCE FEE ANALYSIS FOR: Waipouli Beach Resort

Approved budget to be effective on: September 1, 2008

Prepared By: Certified Management, Inc.

Board Approved Date: July 26, 2008

| Unit Type | PerCent Common Interest | Number Of Units | Maint Fee Per Unit | Total Maint Fee (Unit Type) | Other Fees Per Unit | Special Assess Per Unit | Total Spc Assess (Unit Type) | Total Amount Per Unit |
|---|---|---|---|---|---|---|---|---|
| A | 0.147166 | 6 | 373.37 | 2,240.24 | | - | - | 373.37 |
| B | 0.374977 | 20 | 951.35 | 19,027.01 | | - | - | 951.35 |
| BR | 0.374977 | 12 | 951.35 | 11,416.20 | | - | - | 951.35 |
| C | 0.375433 | 8 | 952.51 | 7,620.06 | | - | - | 952.51 |
| CR | 0.375433 | 4 | 952.51 | 3,810.03 | | - | - | 952.51 |
| D | 0.527611 | 80 | 1,338.60 | 107,087.73 | | - | - | 1,338.60 |
| DR | 0.527611 | 48 | 1,338.60 | 64,252.64 | | - | - | 1,338.60 |
| E | 0.644250 | 2 | 1,634.52 | 3,269.04 | | - | - | 1,634.52 |
| E2 | 0.644250 | 4 | 1,634.52 | 6,538.08 | | - | - | 1,634.52 |
| E2R | 0.644250 | 2 | 1,634.52 | 3,269.04 | | - | - | 1,634.52 |
| F | 0.526244 | 4 | 1,335.13 | 5,340.51 | | - | - | 1,335.13 |
| G | 0.667487 | 6 | 1,693.47 | 10,160.85 | | - | - | 1,693.47 |
| UNIT C1 | 0.578609 | 1 | 1,467.98 | 1,467.98 | | - | - | 1,467.98 |
| UNIT C2 | 0.578640 | 1 | 1,468.06 | 1,468.06 | | - | - | 1,468.06 |
| UNIT C3 | 0.578640 | 1 | 1,468.06 | 1,468.06 | | - | - | 1,468.06 |
| UNIT C4 | 0.482504 | 1 | 1,224.16 | 1,224.16 | | - | - | 1,224.16 |
| UNIT C5 | 0.663386 | 1 | 1,683.07 | 1,683.07 | | - | - | 1,683.07 |
| SNACK BAR | 0.160379 | 1 | 406.90 | 406.90 | | - | - | 406.90 |
| POOL BAR | 0.562694 | 1 | 1,427.61 | 1,427.61 | | - | - | 1,427.61 |
| SPA | 0.209586 | 1 | 531.74 | 531.74 | | - | - | 531.74 |
| TOTALS | 100.0000% | 204 | | 253,709.00 | - | - | - | |

**EXHIBIT "I"**

**SUMMARY OF PURCHASE AGREEMENT**

The specimen Waipouli Beach Resort A Fee Simple Condominium Project Purchase Agreement ("Agreement") contains, among other things, the following terms and conditions (which may be modified or otherwise limited by provisions which are not summarized hereinbelow):

A. The Seller (Developer) has engaged Old Republic Title and Escrow of Hawaii, Ltd. ("Escrow") to handle Purchaser's funds and to close the transaction in accordance with the terms of the Agreement. All payments to be made under the Agreement shall be paid by Purchaser to Escrow pursuant to the Escrow Agreement.

B. The Purchaser specifically acknowledges and agrees that the Declaration contains reservations of certain rights in favor of Seller, the Association and other owners and contains certain other provisions to which the Purchaser consents.

C. Closing shall occur following the issuance of a certificate of occupancy by the County of Kauai covering the Apartment and Purchaser's receipt of written notice from Seller specifying the date of closing. In no event shall the "Closing Date" be sooner than ten (10) calendar days after Purchaser receives written notice of the "Closing Date" from Seller. On the Closing Date, Seller and Purchaser shall be required to perform their respective obligations to purchase and sell the Apartment under this Agreement. On the Closing Date, Seller and Purchaser shall be required to perform their respective obligations to purchase and sell the Apartment under the Agreement. The parties agree that the Closing Date may be extended by Seller in its sole discretion. All payments that have not been previously made during the preclosing period shall be due and payable in full on the Closing Date, and, if not paid on said date due to Purchaser's failure to act in a diligent manner in order for said payment to be made on said date, then such nonpayment shall result in a default under the Agreement. In the event of failure of Purchaser to actually close on the Closing Date scheduled by Seller, and in the event Seller waives its right to claim a default as provided in this paragraph and in Section C.1.d. of the Agreement, Purchaser agrees to pay, in addition to all other amounts due, a late charge of one percent (1%) per month, based on the amount of the total Purchase Price, prorated on a daily basis, to accrue commencing on the Closing Date and continuing until all payments required under the Agreement, together with such late charges, are paid. Seller's failure to exercise any right or remedy under the Agreement shall not constitute a waiver of any of such defaults or of any of such rights, including, without limitation, the right to cancel the Agreement, and will not constitute a modification of the Agreement. Escrow shall not file Purchaser's Apartment Deed until Escrow has received a certificate from a title company authorized to do business in the State of Hawaii and approved by Seller stating that, upon filing of such Apartment Deed, the Apartment is free and clear of all liens, encumbrances and assessments whatsoever other than those permitted by law and the Agreement. Real property taxes, maintenance fees, and other prorations shall be made, and risk of loss shall transfer from Seller to Purchaser on the Closing Date. Purchaser expressly acknowledges that on the Closing Date, the construction of the other apartments and portions of the common elements of the Project may not be fully completed, and that such circumstances shall not in any way affect Purchaser's obligations to make the required payments and close this sale.

D. The Purchase Price does not include closing costs which include, among other things, the escrow fee, cost of a preliminary title report, cost of preparation of the Apartment Deed, real property tax and other prorations, all acknowledgment fees, conveyance taxes, title insurance, if requested by Purchaser, cost of any lender's title insurance, appraisal fees, costs for drafting of any notes and mortgages, all filing costs or fees, loan fees, credit report costs and all other applicable mortgage costs, all of which the Purchaser shall be responsible to pay at Closing. Purchaser shall also pay a start-up fee equal to two (2) months of the estimated maintenance fee and two (2) months of estimated reserves. All such additional sums are due and payable to escrow in cash or by cashier's check during the preclosing period, which is the 30-day period prior to the scheduled Closing Date, along with the balance of the Purchase Price.

E. If Purchaser, after the delivery by Seller of a copy of the Contingent Final Public Report, Final Public Report and/or any Supplementary Public Report for the Project, either personally or by registered or certified mail with return receipt requested, shall fail to execute the receipt and notice ("Receipt and Notice Form") advising Purchaser of Purchaser's right to cancel the Agreement, the delivery of which is required by Hawaii Revised Statutes

Section 514A-62, as amended, within thirty (30) days of Purchaser's receipt of the Receipt and Notice Form, Seller may, at its option: (i) cancel the Agreement upon ten (10) days' written notice to Purchaser of such cancellation, and, upon such cancellation, Seller shall cause Escrow to refund to Purchaser all payments previously made by Purchaser without interest; or (ii) elect (by its failure to give said written notice of cancellation) to treat such failure as a deemed receipt ("Deemed Receipt") of such Public Report(s), and as a waiver by Purchaser of Purchaser's right to cancel the Agreement. The conveyance of the Apartment to the Purchaser within the 30-day period referenced above shall also be treated as a Deemed Receipt of the Public Report(s) and as a waiver by Purchaser of Purchaser's right to cancel the Agreement.

F. **Once Purchaser has submitted a Prequalification Letter and Preapproval Letter to Seller pursuant to the schedule set forth in Section C.1.d of the Agreement, the purchase and sale of the Apartment under the Agreement is not subject to Purchaser obtaining a loan to fund any part or all of the Purchase Price.** Purchaser understands that Purchaser is responsible to pay the full amount of the Purchase Price and all other amounts due by the terms of the Agreement when due whether or not purchaser obtains a loan.

G. Purchaser agrees that it will not assign the Agreement, or sell the Apartment, or advertise the Apartment for sale prior to closing under the Agreement, and any assignment or sale attempted by purchaser prior to closing without Seller's prior written consent is void. Notwithstanding the foregoing, Purchaser may with the prior approval of Seller, assign the Agreement for estate planning purposes; provided that upon any such assignment, Purchaser shall remain liable under the Agreement, and shall be responsible to perform all of the obligations of the "Purchaser" under the Agreement. Seller may, without any consent of Purchaser, freely assign Seller's interests therein.

H. Purchaser shall not be entitled to possession of the Apartment as the owner thereof until Purchaser has completed all required payments and has executed all documents relating to the purchase, and Purchaser has performed the remaining terms and conditions of the Agreement which are to be performed as of the Closing.

I. Seller may use funds deposited with Escrow to pay for certain construction and other expenses of the Project prior to closing of the sale. Purchaser acknowledges and agrees that, upon issuance of an effective date for the Final Public Report, Seller is authorized to use Purchaser's deposits in Escrow for the construction of the Project and for other expenses of the Project, as set forth in the Escrow Agreement and in accordance with Hawaii statutory requirements pertaining to the use of purchasers' funds prior to closing.

J. Notices to either party may be delivered personally or mailed by certified mail, or express mail, return receipt requested.

K. The Purchaser acknowledges that Purchaser has entered into the Agreement without any reference or representation by Seller or any salesperson that the Seller, or any managing agent of the Project or anyone else affiliated with the Seller will provide, directly or indirectly, any services relating to the rental or sale or management of the Apartment purchased.

L. The laws of the State of Hawaii shall govern all matters with respect to the Agreement.

M. Purchaser has examined and approved the estimate of monthly maintenance charges for the Project as shown in the Public Report. Purchaser is aware that such amounts are only estimates and may change for reasons beyond the control of Seller, and Purchaser hereby specifically accepts and approves any such changes.

* * * * *

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE PURCHASE AGREEMENT. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF PURCHASER'S RIGHTS AND OBLIGATIONS UNDER THE PURCHASE AGREEMENT, PURCHASER MUST REFER TO THE PURCHASE AGREEMENT TO DETERMINE PURCHASER'S ACTUAL RIGHTS AND OBLIGATIONS.

IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE PURCHASE AGREEMENT, THE PURCHASE AGREEMENT WILL CONTROL.

**EXHIBIT "J"**

**SUMMARY OF ESCROW AGREEMENT**

The Escrow Agreement for the Project dated March 26, 2004 ("Agreement") between Old Republic Title and Escrow of Hawaii, Ltd. ("Escrow") and Waipouli Beach Resorts, LLC contains the following provisions (which may be modified or otherwise limited by provisions which are not summarized hereinbelow):

A. As and when Seller shall enter into a purchase agreement for the conveyance of an apartment or other interest in the Project ("Purchase Agreement"), it shall require the payments of deposits due thereunder to be promptly made to Escrow, and shall deliver an executed copy of the Purchase Agreement to Escrow together with the address of the Purchaser. Seller shall also promptly pay over to Escrow all monies (including checks) received by Seller from or on behalf of the Purchasers, including those received on any Purchase Agreement, and all payments made on loan commitments from lending institutions on account of any apartment in the Project, other than funds received from interim financing.

B. Escrow shall receive, deposit and hold in separate escrow accounts and disburse as set forth in the Agreement: (a) all payments received by it under Purchase Agreements, (b) such sums received by it under the Agreement from or for the account of Seller, and (c) all sums received by it from any other source with respect to the Project. All funds and instruments received from Purchasers or prospective Purchasers shall be held by Escrow in accordance with the provisions contained in Chapter 514A of the Hawaii Revised Statutes. All monies received by Escrow hereunder shall be deposited, within a reasonable time of the receipt by Escrow and in reasonably convenient and practical sums, in a trust fund with a bank, savings and loan or trust company authorized to do business in the State of Hawaii, located in the City and County of Honolulu under an escrow arrangement, and shall be held in immediately available funds in accordance with the terms of the Agreement. Any interest earned on funds delivered to Escrow under the Agreement shall accrue to the credit of Seller.

C. Notwithstanding anything in the Agreement to the contrary, Escrow shall make no disbursements of Purchasers' funds or proceeds from the sale of apartments in the Project (including any payments made on loan commitments from lending institutions), except by way of refunds thereof as provided in the Agreement, until Seller has received issuance of a Final Public Report and such Purchaser is given a copy of the Final Public Report and shall have signed the required Receipt and Notice of Right to Cancel or are deemed to have receipted for the public report and to have waived their right to cancel, and stating further that no subsequent events have occurred which would give the Purchasers the right to rescind, the Purchase Agreements have "become binding" and "the requirements of Sections 514A-40, 514A-39.5 and 514A-63" of the Hawaii Revised Statutes have been met, as said phrases are used in Section 514A-65, Hawaii Revised Statutes, and further that the requirements of Section 514A-62 of the Hawaii Revised Statutes have been met.

D. Purchaser's funds may be used for construction and other allowable expenses enumerated in the Agreement and defined below prior to closing, provided that all the requirements in provision C. above have been met. If funds are to be used for construction prior to closing, the funds shall be distributed by Escrow upon the submission of bills and upon direction to do so from Seller and Seller's lender from time to time to pay for: (a) construction costs of the buildings and improvements in proportion to the valuation of the work completed by the contractor in accordance with the contract documents, as certified by a registered architect or engineer and approved for payment by the Seller's construction lender; (b) architectural, engineering, and interior design service fees in proportion to the services performed within each phase of services, as approved by the Seller's construction lender; (c) the costs of purchasing furnishings and fixtures for the apartments, as approved by the Seller's construction lender; (d) finance and legal fees, and other incidental expenses of constructing the apartments or developing the Project, as approved by the Seller's construction lender; and (e) such other costs incurred in connection with the construction of the improvements of the Project as Seller's construction lender may approve. Any funds remaining shall not be disbursed until construction of the Project has been completed (or until construction of the particular apartment being conveyed has been completed to the extent that the Condominium Property Act permits such disbursement) and Escrow receives satisfactory evidence that all mechanics' and materialmen's liens have been cleared (or, to the extent permitted by the Condominium Property Act, have been dealt with in such a fashion as to avoid non-compliance with Section 514A-18 of the Condominium Property Act), unless sufficient funds have been set aside for any bonafide dispute.

E. Each Purchaser shall be entitled to a return of his or her funds, without interest, and Escrow shall pay such funds to such Purchaser, promptly after request for return by the Purchaser if one of the following has occurred:

(1) Escrow receives a written request from Seller to return to the Purchaser the funds of the Purchaser then being held by Escrow;

(2) Seller notifies Escrow in writing of Seller's exercise of the option to rescind the Purchase Agreement pursuant to any right of rescission stated therein or otherwise available to Seller;

(3) The conditions providing for a refund under Section 514A-62 or under Section 514A-63 of the Hawaii Revised Statutes (as amended on the date upon which the Purchase Agreement becomes binding and effective) have been met.

Upon the cancellation of any Purchase Agreement as specified above, Escrow shall be entitled to a cancellation fee of not less than $25.00 per Apartment or a cancellation fee commensurate with the services rendered by Escrow prior to such cancellation, plus all costs incurred by Escrow, which shall be paid by the Purchaser.

F. Except as otherwise provided by law, Escrow shall give each purchaser entitled to a return of his or her funds notice thereof by mail, addressed to such purchaser at his address shown on the Purchase Agreement. After having sent Seller written notice of the foregoing acts, Escrow shall thereupon be released from further liability hereunder with respect to such funds and such purchaser. Escrow shall comply with all requirements concerning the escheating of funds under Chapter 523A, Hawaii Revised Statutes, as amended.

G. Seller shall give notice in writing to Escrow of the occurrence of each event that creates an obligation on the part of any Purchaser to make any payment to Escrow pursuant to the Sales Contract entered into by such Purchaser, and the amount of and due date for such payment. Upon receipt of any such notice, Escrow shall promptly give such Purchaser notice of the amount and due date of such payment. If such Purchaser fails to make such payment to Escrow on or before the due date thereof or if such Purchaser fails to satisfy any obligation or requirement being handled by Escrow, Escrow shall promptly notify Seller of any such failure on the part of such Purchaser. If Seller subsequently certifies in writing to Escrow that Seller has terminated the Purchase Agreement in accordance with the terms thereof and provides to Escrow copies of all such notices of termination sent to such Purchaser, Escrow shall thereafter treat all funds of such Purchaser paid on account of such Purchaser's Purchase Agreement as funds of Seller and not as funds of such Purchaser. Such funds shall be free of the escrow established by this Agreement and shall be held by Escrow for the account of Seller. Upon written request by Seller, Escrow shall pay such sums to Seller, less any escrow cancellation fee, shall return to Seller any partially executed conveyance documents that had been theretofore delivered to Escrow by Seller and shall hold all other documents theretofore delivered to Escrow in connection with such Purchaser's purchase of an Apartment for any applicable statutory period. Upon completion of the foregoing, Escrow shall thereupon be released from any further duties or liability hereunder to Seller with respect to such funds and such Purchaser.

* * * * *

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE ESCROW AGREEMENT. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE ESCROW AGREEMENT, PURCHASER MUST REFER TO THE ESCROW AGREEMENT TO DETERMINE PURCHASER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE ESCROW AGREEMENT, THE ESCROW AGREEMENT WILL CONTROL.

**EXHIBIT "K"**

**SUMMARY OF DEED FORM**

Capitalized terms have the same meaning ascribed to such terms in the Apartment Deed.

The specimen Apartment Deed, Encumbrances and Reservations of Rights With Special Power of Attorney for Waipouli Beach Resort ("Deed" or "Apartment Deed") contains, among others, the following provisions (which may be modified or otherwise limited by provisions which are not summarized hereinbelow):

A. The premises conveyed comprise a portion of the Waipouli Beach Resort condominium property regime ("Project") situate at Waipouli and Kawaiahau, County of Kauai, State of Hawaii.

B. The Grantor is the lawful Owner of the fee simple interest in the real property and the rights to be transferred to the Grantee; the same are free and clear of and from all encumbrances except as identified in the Deed and except for the lien of real property taxes not yet by law required to be paid; the Grantor has good right and title to sell and convey said real property in the manner set forth in the Deed; and the Grantor will WARRANT AND DEFEND the same unto the Grantee forever against the lawful claims and demands of all persons, except as mentioned in the Deed.

C. Grantee acknowledges that should the Grantor exercise its reserved rights to subdivide and/or withdraw certain portions of the land underlying the condominium project (as depicted in Exhibit "M" attached hereto), the land area under the Project will be reduced. The new land area will be captured in an amendment to declaration, replacing the current land description.

D. Grantee agrees and consents to the exercise by Grantor of any of its reserved rights set forth in the Deed and in the Declaration, and Grantee agrees to sign such documents and do such things as may be required to permit Grantor to exercise those reserved rights, including the signing, delivering and filing of all documents which may be necessary. Grantee appoints Grantor as Grantee's "attorney-in-fact" which means that Grantor can act for Grantee or on Grantee's behalf, with "full power of substitution," which means that someone else may take Grantor's place to sign, deliver and file all documents and to do all things on Grantee's behalf, which grant of authority, being coupled with an interest, which means that the Grantor has an interest beyond just in the power Grantee is giving, the power of attorney cannot be revoked by Grantee for the term of the reserved rights, and the power of attorney will not be affected by Grantee's disability.

E. Grantee agrees, for the benefit of all other Owners of the other Apartments in the Project, to at all times observe, perform, comply with and abide by all of the covenants, agreements, obligations, conditions and other provisions set forth in the Declaration the Bylaws and the House Rules as any of the same exist or may hereafter be amended in accordance with law, and accepts and approves of the Declaration, Bylaws and House Rules.

* * * * *

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE APARTMENT DEED. WHILE A GRANTEE CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE APARTMENT DEED, GRANTEE MUST REFER TO THE APARTMENT DEED TO DETERMINE GRANTEE'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE APARTMENT DEED, THE APARTMENT DEED WILL CONTROL.

## EXHIBIT "L"

## SPECIAL USE RESTRICTIONS

Capitalized terms have the same meaning ascribed to such terms in the Declaration.

A. **APARTMENTS.** The Apartments in the Project shall be occupied and used only for purposes that are consistent with, and appropriate to, a first-class resort destination. Accordingly, the Apartments may be used for hotel, transient vacation rental purposes or commercial use (for those Apartments designated herein as a Commercial Apartments) or other uses permitted by law, the Declaration and the Bylaws that are consistent with a first-class resort destination; provided that time share plans, programs and use. as defined by Hawaii Revised Statutes, Chapter 514E, as amended, are expressly prohibited at the Project. No business activity involving visitation by members of the public shall be conducted from any Resort or Hotel Apartment. Specifically, but without limitation to the generality of the foregoing, no "open houses" or similar activity providing the sale of an Apartment shall be permitted at the Project or at any Apartment, other than those Apartments owned by the Developer. The Commercial Apartments may be used for any purpose permissible by law, the Declaration or the Bylaws, including, but not limited to, administrative offices, management offices, the provision of concierge services, storage, sales and marketing offices, activity desks, food and beverage services, spa and/or recreational services. The Owners of the Commercial Apartments may enter into such agreements as such Owners deem appropriate to utilize such Apartment to provide services to Owners, including, but not limited to, reservations, check in/out services, concierge services, real estate sales, interior unit maintenance, housekeeping services, recreational services, commercial spa services and food and beverage services. Each Owner shall also have the right to use one (1) unassigned parking stall as designated by the Managing Agent. The parking program will be managed and administered by the Managing Agent.

B. **OWNERS' RIGHT TO LEASE APARTMENTS AND LIMITED COMMON ELEMENTS.** The Owners of the respective Apartments shall have the absolute right, without obtaining the consent or joinder of any other Owners, to lease or grant licenses with respect to such Apartments and the Limited Common Elements appurtenant thereto. All lease or rental agreements must be in writing and will be subject to the provisions of the Act, the Declaration and the Bylaws; provided that any Owner engaging in leasing activity shall comply with the provisions of Section 521-43(f) of the Hawaii Revised Statutes, or any successor provision.

C. **OWNERS' RIGHT TO SELL.** The Owners of the respective Apartments, including the Owner(s) of the Commercial Apartments, shall have the absolute right, without obtaining the consent or joinder of any other Owners, to sell or otherwise transfer such Apartments subject to all provisions of the Act, the Declaration and the Bylaws.

D. **OWNERS' RIGHT TO MORTGAGE.** The Owners of the respective Apartments shall have the absolute right, without obtaining the consent or joinder of any other Owners, to mortgage or otherwise transfer an interest in their respective Apartments as security for the repayment of a loan, subject to all provisions of the Act, the Declaration and the Bylaws.

E. **PROHIBITION ON ACTIVITIES THAT MAY JEOPARDIZE THE PROJECT.** No Apartment Owner shall do or suffer or permit to be done anything on any Apartment or appurtenant Limited Common Element or elsewhere on the Project that: (1) will injure the reputation of the Project, (2) will jeopardize the safety or soundness of the Project, (3) will create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants, (4) will reduce the value of the Project, (5) would be inappropriate for a first-class resort destination, (6) will result in the cancellation of insurance applicable to the Project or adversely affect the right of recovery thereunder or result in reputable companies refusing to provide insurance as required or permitted by the Bylaws, or (7) will increase the rate of insurance applicable to the Apartments or the contents thereof, or to the Project. Notwithstanding the foregoing, Developer may, through the exercise of any of its reserved rights herein, inadvertently cause one or more of the above.

F. **CHANGES TO BUILDING STRUCTURES AND APARTMENTS.** The Board shall have the right to change the exterior appearance of any Building Structure. No change shall be made which shall result in an appearance which is inconsistent with a first-class resort destination. The Board may delegate the foregoing

responsibility to the Managing Agent. Except for the Owners of the Commercial Apartments, which shall have the right to change the appearance of such Apartment and any Limited Common Elements appurtenant thereto without the consent of the Board or Managing Agent, no Owner of an Apartment shall, without the prior written consent of either the Board or the Managing Agent or without first obtaining any requisite government permits or approvals, change or cause a change to the exterior appearance of an Apartment or Limited Common Element in any manner.

G. **OWNERS TO MAINTAIN APARTMENTS AND LIMITED COMMON ELEMENTS IN GOOD ORDER.** The Owner of an Apartment shall keep the interior of his or her Apartment and all appliances, plumbing, electrical and other fixtures and appurtenances constituting a part of the Apartment and the Limited Common Elements appurtenant thereto in good order and repair, and in a condition consistent with a first-class resort destination. Decisions on repairs or modifications to the Limited Common Elements shall be made by the Owners of Apartments to which such Limited Common Elements are appurtenant, subject to the provisions of Article VI, Section F of the Declaration, and subject to any additional provisions stated in the Bylaws.

H. **USE OF COMMON ELEMENTS.** Subject to the reserved rights of the Developer contained in the Declaration, each Apartment Owner may use the Common Elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other Apartment Owners, subject always to:

1. The right of the Board, upon the approval of the Owners of seventy-five percent (75%) of the Common Interest, to change the use of the Common Elements that are not also designated Limited Common Elements;

2. The right of the Board, on behalf of the Association, to lease or otherwise use for the benefit of the Association those Common Elements not actually used by any of the Apartment Owners for an originally intended special purpose and that are not also designated Limited Common Elements, as determined by the Board; provided, that unless the approval of the Owners of seventy-five percent (75%) of the Common Interest is obtained, any such lease shall not have a term exceeding five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) days' written notice;

3. The right of the Board to lease or otherwise use for the benefit of the Association those Common Elements not falling within Article VI, Section H.2 of the Declaration, which are not also designated Limited Common Elements, upon obtaining: (a) the approval of the Owners of seventy-five percent (75%) of the Common Interest, including all directly affected Owners, and (b) the approval of all mortgagees of record which hold mortgages on Apartments with respect to which owner approval is required by (a) above, if such lease or use would be in derogation of the interest of such mortgagees; and

4. The exclusive use of the Limited Common Elements as provided herein. Notwithstanding anything provided to the contrary, or from which a contrary intent may be inferred, neither the Board nor the Association shall have any right to change the use of or lease or otherwise use any Limited Common Element without the prior written consent of the Owners of all Apartments to which such Limited Common Element is appurtenant. The Owners of at least seventy-five percent (75%) of the Common Interests which are appurtenant to Apartments to which any particular Limited Common Element shall be appurtenant shall have the right to change the use of a particular Limited Common Element.

I. **DEVELOPER'S RIGHT TO USE.** Notwithstanding anything provided herein to the contrary, as long as there are unsold Apartments in the Project, Developer shall have the right to use any Apartment which it owns and any Limited Common Elements appurtenant thereto for promotional purposes, and shall have the right to have guests stay in such Apartments for any length of time; provided that such guests shall abide by and be subject to all of the provisions of the Declaration, Bylaws and House Rules. The Developer may grant license rights to the Limited Common Element appurtenant to any Apartment owned by the Developer to the Association or to a third party to the extent permissible under the law. Additionally, the Developer will have the right to utilize Apartments which it owns or any Limited Common Element which is appurtenant to any Apartment which it owns as sales offices or as a place which is utilized to provide services to the Owners or other occupants of the Project, to the extent such use or uses are permitted under applicable law.

J. **LAND USE PERMITS**. The Project will be subject to any additional conditions and/or use requirements set forth in that certain SMA Permit SMA(U)-2003-1, Project Development Use Permit U-2003-9 and Class IV Zoning Permit Z-IV-2003-8, issued by the County of Kauai Planning Commission dated March 25, 2003, and any subsequent permits issued.

**K. ADA ACCESSIBLE APARTMENTS.** The Project contains six (6) apartments designed and constructed to meet the standards set by the Americans with Disabilities Act, 42 U.S.C. §§12181 et seq. ("ADA"). No Owner of an ADA accessible apartment shall structurally modify or alter such apartment without the prior written approval of the Developer. As it pertains to the ADA apartments, this Section K shall be superior to and supersede any other provision in the Declaration allowing for the alteration of an Apartment, including, without limitation, any additions or alterations permitted by Article XII.B. of the Declaration.

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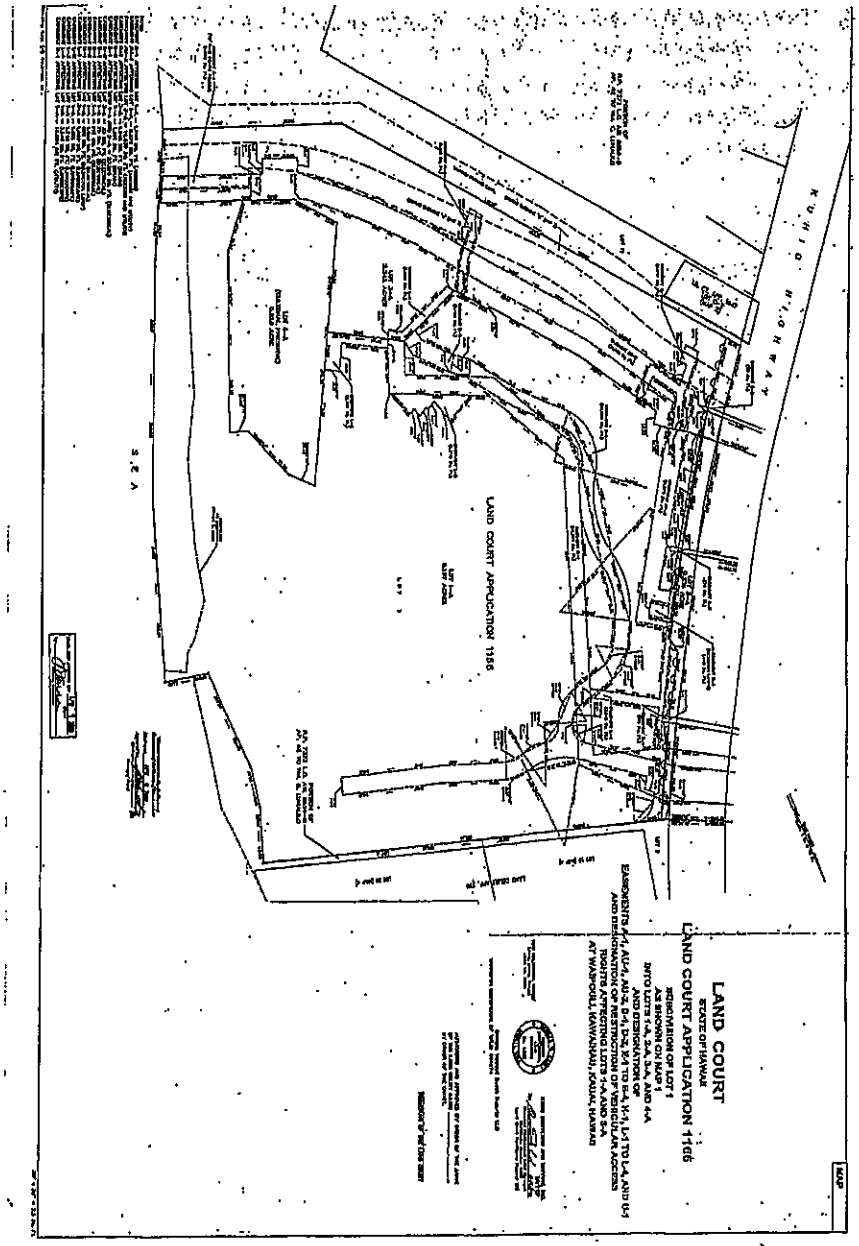
THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL USE RESTRICTIONS CONTAINED IN THE DECLARATION, BYLAWS , HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF SUCH USE RESTRICTIONS, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE PROJECT TO DETERMINE ALL OF THE USE RESTRICTIONS THAT MAY APPLY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE DECLARATION, BYLAWS, HOUSE RULES OR OTHER DOCUMENTS OF THE PROJECT, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT "M"**

**MAP OF PROPOSED SUBDIVISION**


LAND COURT
STATE OF HAWAII
LAND COURT APPLICATION 1166
SUBDIVISION OF LOT 1
INTO LOTS 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, 1-J, 1-K, 1-L, 1-M, 1-N, 1-P, 1-Q, 1-R, 1-S, 1-T, 1-U, 1-V, 1-W, 1-X, 1-Y, 1-Z, 1-AA, 1-BB, 1-CC, 1-DD, 1-EE, 1-FF, 1-GG, 1-HH, 1-JJ, 1-KK, 1-LL, 1-MM, 1-NN, 1-PP, 1-QQ, 1-RR, 1-SS, 1-TT, 1-UU, 1-VV, 1-WW, 1-XX, 1-YY, 1-ZZ, 1-AAA, 1-BBB, 1-CCC, 1-DDD, 1-EEE, 1-FFF, 1-GGG, 1-HHH, 1-JJJ, 1-KKK, 1-LLL, 1-MMM, 1-NNN, 1-PPP, 1-QQQ, 1-RRR, 1-SSS, 1-TTT, 1-UUU, 1-VVV, 1-WWW, 1-XXX, 1-YYY, 1-ZZZ, 1-AAAA, 1-BBBB, 1-CCCC, 1-DDDD, 1-EEEE, 1-FFFF, 1-GGGG, 1-HHHH, 1-JJJJ, 1-KKKK, 1-LLLL, 1-MMMM, 1-NNNN, 1-PPPP, 1-QQQQ, 1-RRRR, 1-SSSS, 1-TTTT, 1-UUUU, 1-VVVV, 1-WWWW, 1-XXXX, 1-YYYY, 1-ZZZZ, 1-AAAAA, 1-BBBBB, 1-CCCCC, 1-DDDDD, 1-EEEEE, 1-FFFFF, 1-GGGGG, 1-HHHHH, 1-JJJJJ, 1-KKKKK, 1-LLLLL, 1-MMMMM, 1-NNNNN, 1-PPPPP, 1-QQQQQ, 1-RRRRR, 1-SSSSS, 1-TTTTT, 1-UUUUU, 1-VVVVV, 1-WWWWW, 1-XXXXX, 1-YYYYY, 1-ZZZZZ, 1-AAAAAA, 1-BBBBBB, 1-CCCCCC, 1-DDDDDD, 1-EEEEEE, 1-FFFFFF, 1-GGGGGG, 1-HHHHHH, 1-JJJJJJ, 1-KKKKKK, 1-LLLLLL, 1-MMMMMM, 1-NNNNNN, 1-PPPPPP, 1-QQQQQQ, 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## EXHIBIT "N"

## ADDITIONAL DISCLOSURES IN PURCHASE AGREEMENT

The following are some items that should be considered by a purchaser or that a purchaser may have objections to, which are included in the Purchase Agreement. Purchaser should carefully consider each of the following items before submitting an offer to purchase the Apartment.

1. Airflow and Wind. Air flow in, around and through the building in which the Apartment is located, the Project, and the Apartment resulting in smoke (from tobacco or other smoking substances), barbeque odors, other cooking odors, perfumes, and other odors being transmitted to the Apartment or the Project and wind or wind-related noises or nuisances that may result therefrom.

2. Building Operations. Noises, odors, chemical odors or fumes from building operations, including janitorial, maid, elevator and mechanical equipment operations, and landscape maintenance, repair and replacement activity.

3. Neighbors. Neighbors, including adjacent apartment owners, their guests and invitees, whether existing below, above or on the side of the Apartment and their respective behaviors and idiosyncrasies, whether occurring in an apartment or the common areas of the Project.

4. Adjacent Properties. Nuisances arising from adjacent commercial properties, retail and/or resort and their respective operational issues, such as trash pickup, deliveries, guests, tenants, clients and invitees, and any construction work they may perform from time to time.

5. Public Bicycle Path. Seller intends to develop a bicycle path, portions of which may be located within the Project site. Purchaser should be aware that such bicycle path use may cause some additional noise and nuisance at the Project.

6. Traffic. Nuisances arising from traffic, including noise, dust, sounds (alarms, engines, screeching tires, etc.), and exhaust fumes. The Project is located across the street from a one-story shopping center. Purchasers should be aware that as such, there may times when there may be higher traffic near the entrance of the Project.

7. Natural Occurrences. Earthquakes, tsunamis, volcanic ash or haze, whales and other animals, insects, pestilence, drought, and other natural occurrences.

8. Salt Air. Purchaser should be aware that the Project is located on the oceanfront. As such, the salt air may cause premature rusting and/or corroding of fixtures and/or personal property located in the Project. Such exposure to salt, water and sand from the ocean may also increase the amount of maintenance required in future years.

9. Public Easements and Beach. Purchaser acknowledges that the Apartment is in a building abutting a public beach. As such, the building is exposed to salt, water and sand from the ocean, which may increase the amount and nature of maintenance required in future years. Although security systems exist within the Project, the beach area is not covered by such systems, and is subject to patrol by local law enforcement agencies, and not by the Seller, the Association or any private security service. Access to the beach from adjoining beach areas cannot be physically restricted by law. Based upon these factors, there can be no guarantee of security with respect to activities on the beach, and Seller has no control over noise emanating from the public's usage of the beach. Purchaser also acknowledges that there will be a paved pedestrian public access path located along a section of the Project to provide for such beach access for the public, as required by law.

10. Subdivision and Withdrawal. Seller intends to subdivide and withdraw the Limited Common Element Cultural Preserve Land Area, Restaurant Land Area and Highway Dedication Land Area from the Project. The Condominium Map and Exhibit "M" herein further delineates and describes the areas to be subdivided and withdrawn and the Declaration further describes the Seller's right to perform such subdivision and withdrawal. Upon subdivision and withdrawal, the developer reserves the right in the declaration to, in its sole discretion, convey the Cultural Preserve Land Area, the Restaurant Area and/or the Highway Dedication Land Area to the Association, the State of Hawaii or to a third party.

11. Condominium Living. All of the resort/hotel apartment buildings of the Project are multi-storied. As such, there are other apartments located adjacent to, above and/or below the Apartment. While the apartments are insulated, there is some possibility of sound transmission, smells, smoke, and other possible nuisances between apartments.

12. Construction Deflection. During the course of construction of the building, certain floors may subject to a small degree of "deflection" from construction and settling. Deflection is a condition whereby a floor is not perfectly flat. Deflection is typical in concrete construction. In this instance, such deflection, if not treated, might be noticeable to some people. Much of the practical effect of deflection can be mitigated through the use of floor coverings.

13. Concrete and Drywall. Minor cracking, flaking or discoloration of concrete or drywall within the building floors, walls, ceilings and/or soffits, driveways and walkways will be covered under the contractor's standard one-year warranty, and Seller is not responsible to correct such deficiencies.

14. Restrictions on Use. The Project is subject to the Declaration of Condominium Property Regime of Waipouli Beach Resort, the Bylaws of the Association of Apartment Owners of Waipouli Beach Resort, and the House Rules, as amended (collectively the "Restrictions"). FOR INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS REGARDING, AMONG OTHER THINGS, THE USE, DECORATION AND OWNERSHIP OF YOUR APARTMENT AND THE PROJECTS COMMON ELEMENTS (i.e., amenities), YOU SHOULD READ THE RESTRICTIONS. There are also other restrictions that may apply. Please refer to this condominium public report for particulars.

15. Accuracy of Information. The information in this Agreement and in the documents for the Project was collected from sources deemed to be reliable. Seller has made every effort to obtain the most recent and accurate information; however, Seller cannot be responsible for changes brought about by third parties.

16. Non-standard Construction Upgrades. No changes of any kind will be made, except for those on the standard Upgrades price list. Structural changes are not permitted, and other customizing is subject to the rules and regulations of the Association. No changes of any kind by individual owners shall be permitted in the common corridors and public areas.

17. Insurance. It is the Purchaser's responsibility to determine if any type of insurance is required for the Apartment, and it is the Association's responsibility to determine if any type of insurance is required for the common elements of the Project. If any insurance is required, the Purchaser and/or the Association is responsible for obtaining same.

18. Dimensions. Purchaser is aware that dimensions and locations in the Apartment and the building and common areas are approximate only, and there may be minor adjustments to those dimensions and locations.

19. Variance in Prices. The apartments within the Project have been priced individually. Some apartments, while appearing fundamentally equivalent to other apartments in the Project, nonetheless are priced differently based on, but not limited to, apartment size, the floor on which

the apartment is located, views from the apartment, and the date the apartment was purchased. It is within Seller's sole discretion to price the apartments it owns and to change the prices of the apartments prior to the Purchase Agreement becoming binding.

20. Potential Future Development. No representation or warranty is made by Seller or its representatives or agents regarding the presence or absence of any view or scene from any portion of the building in which the Apartment is located. Any such view or scene may be changed, blocked or interfered with.

21. Cultural Preserve Land Area. Purchaser acknowledges that there is a historical/cultural preserve located within the Project, which shall be maintained in accordance with the guidelines provided to the Seller from the State Historic Preservation Division, the Kauai Island Burial Counsel, and Kauai Historic Preservation Review Commission. The Purchaser will have a license from the Seller to use and enjoy the facility until subdivision and possible withdrawal (if done) of such area.

22. Stream Maintenance. The State of Hawaii Department of Transportation ("DOT") currently has an easement over the adjoining lot on the south side of the Project to maintain Uhelekawawa Stream. Such easement, however, encroaches onto the Project. Purchasers acknowledge that the DOT's use of the maintenance easement may cause possible noise and nuisance at the Project.

23. Other Issues Discovered; Representations and Warranties. Purchaser acknowledges that the price of the Apartment has taken into account the disclosures contained in the Purchase Agreement.

24. Representations or Warranties. Purchaser acknowledges that no broker or salesperson has the authority to make any representation or warranty regarding the Apartment, the building or this transaction, other than as set forth in the Purchase Agreement.