

FIRST SUPPLEMENTARY CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer SunStone Waikoloa LLC
Address 1001 Bishop Street, Suite 1240
Honolulu, Hawaii 96813

Project Name(\*): THE WAIKOLOA BEACH VILLAS
Address: Waikoloa Beach Drive, Waikoloa, Hawaii

Registration No. 5521
Effective date: October 10, 2006
Expiration date: November 10, 2007

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.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[X] SUPPLEMENTARY: (pink) This report updates information contained in the: Preliminary Public Report dated: Final Public Report dated: August 15, 2005 for Registration No. 5521 Supplementary Public Report dated: 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
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

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

Required and attached to this report

Not Required - Disclosures covered in this report.

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

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

No prior reports have been issued by the developer.

Changes made are as follows:

1. Title Report. Section III.E references an updated Preliminary Title Report, dated July 5, 2006 (amended July 14, 2006), prepared by Hawaii Escrow & Title, Inc.
2. Status of Construction and Date of Completion or Estimated Date of Completion. Section III.G has been amended and updated to clarify that the Project is anticipated to be completed by approximately August 2007.
3. Declaration Amendment. Section II.A includes the recording information for the Second Amendment to Declaration of Condominium Property Regime of The Waikoloa Beach Villas, dated September 12, 2006, recorded as Document No. 2006-167401, which amends the Declaration to clarify that the term "residential purposes" includes transient lodging as and to the extent permitted by applicable laws and ordinances. The reference to "residential purposes" in Section III.C.5 has been updated to reflect this clarification in definition. The Amendment also corrects a typographical error in Section L.1.
4. Summary of Encumbrances on Title. Exhibit F has been amended to reflect items on the updated Preliminary Title Report, referenced in item 1, above, and the Declaration Amendment in item 3, above. Revisions to Exhibit F include:
  - a. Updating any and all applicable taxes for the fiscal year 2006-2007, for Tax Map Key: (3)6-9-008-013, Island and County of Hawaii.
  - b. Deletion of water rights, claims or title to water, whether or not shown by the Public Records.
  - c. Additional Charge Mortgage dated May 2, 2006 in favor of American Savings Bank, recorded May 5, 2006 as Document No. 2006-084338
  - d. Amendment to and Confirmation of Subordination Agreement dated May 1, 2006, recorded May 5, 2006 as Document No. 2006-084339
  - e. Easement in favor of Hawaii Electric Light Company, Inc. and Hawaiian Telcom, Inc. for utility purposes, dated June 15, 2006, recorded June 20, 2006 as Document No. 2006-113260.
  - f. Second Amendment to Declaration of Condominium Property Regime of The Waikoloa Beach Villas, dated September 12, 2006, recorded as Document No. 2006-167401.
5. Budget and Estimate of Initial Maintenance Fees. A notation has been included on the Estimate of Maintenance Fee Disbursements and the Estimate of Initial Maintenance Fees in Exhibit G indicating that there are no significant changes to this item for 2006.
6. Summary of Sales Contracts. Exhibit H has been revised to indicate that, instead of using a Project Completion Addendum for certain of the Sales Contracts as referenced in the prior reports, two forms of Sales Contracts may be used, one of which will require, for certain Apartments at the discretion of the Developer, the Developer to complete construction of the Apartment covered thereby within two years after the effective date of the Sales Contract.

7. Developer's Reserved Rights. Exhibit J has been revised to delete reference to a Developer's reserved right to add apartments, to be consistent with the Declaration.
8. Estimated Costs to Complete Construction. The estimated costs to complete construction have been revised to reflect remaining costs as of August 2006.

**SPECIAL ATTENTION SHOULD BE GIVEN TO THE SUMMARY OF RIGHTS RESERVED TO THE DEVELOPER (EXHIBIT J)**

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## **General Information On Condominiums**

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

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

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

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

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

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

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

## **Operation of the Condominium Project**

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

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

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: SunStone Waikoloa LLC Phone: (808) 523-9881  
Name\* Name\* (Business)  
1001 Bishop Street, Pauahi Tower, Suite 1240  
Business Address  
Honolulu, Hawaii 96813

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

SunStone ML LLC  
Curtis D. DeWeese (manager)

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Real Estate Broker: SunStone Realty LLC Phone: (808) 523-9881  
Name (Business)  
1001 Bishop Street, Pauahi Tower, Suite 1240  
Business Address  
Honolulu, Hawaii 96813

Escrow: Hawaii Escrow and Title, Inc. Phone: (808) 532-2977  
Name (Business)  
700 Bishop Street, Suite 1600  
Business Address  
Honolulu, Hawaii 96813

General Contractor\*: SunStone Builders LLC Phone: (808) 523-9881  
Name (Business)  
1001 Bishop Street, Pauahi Tower, Suite 1240  
Business Address  
Honolulu, Hawaii 96813

Condominium Managing Agent\*: Hawaiiana Management Company Phone: (808) 593-9100  
Name (Business)  
711 Kapiolani Boulevard, 7<sup>th</sup> Floor  
Business Address  
Honolulu, Hawaii 96813

Attorney for Developer: (Scott D. Radovich) Phone: (808) 792-4200  
Schneider Tanaka Radovich Andrew & Tanaka, LLLC (Business)  
Name  
1100 Alakea Street, Suite 2100  
Business Address  
Honolulu, Hawaii 96813

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

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

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

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

The Declaration for this condominium is:

Proposed  
 Recorded - Bureau of Conveyances: Document No. 2004-229226  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

- o Amendment to Declaration of Condominium Property Regime of The Waikoloa Beach Villas, dated December 14, 2004, recorded as Document No. 2004-258563.
- o Second Amendment to Declaration of Condominium Property Regime of The Waikoloa Beach Villas, dated September 12, 2006, recorded as Document No. 2006-167401.

- 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 Condominium Map No. 3884  
 Filed - Land Court Condominium Map No. \_\_\_\_\_

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

- C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the 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. 2004-229227  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The House Rules for this condominium are:

Proposed                       Adopted                       Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents**

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

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>Majority Vote of Directors, if adopted</u>

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

2. **Developer:**

- No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.
- Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

[See Exhibit J to this public report]

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

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 the 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 Sub-leasehold:

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements 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 Waikoloa Beach Drive, Waikoloa, Hawaii Tax Map Key: (3) 6-9-08-13 (por.)

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

Land Area: 13.695  square feet  acre(s) Zoning: RM-4/Open

Fee Owner: SunStone Waikoloa LLC  
 Name  
1001 Bishop Street, Suite 1240  
 Address  
Honolulu, Hawaii 96813

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

**C. Buildings and Other Improvements:**

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

2. Number of Buildings: 16 Floors Per Building 2 (w/ loft) / 3  
 Exhibit A contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other steel, glass, and other building materials

4. Uses Permitted by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted By Zoning</u>	
<input checked="" type="checkbox"/> Residential	<u>120</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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

5. Special Use Restrictions:

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

[ X ] Pets: No pets allowed, except as may be permitted by the rules and regulations of the Waikoloa Beach Resort Association.

[ X ] Number of Occupants: No more than two permanent residents per bedroom, excluding children under five years; no more than three permanent residents per bedroom including children under five years; and otherwise only in accordance with applicable laws. Permanent residence is defined as residence of twenty-six consecutive days or more.

[ X ] Other: Apartments shall be used for residential purposes only (which may include transient lodging as and to the extent permitted by applicable laws and ordinances); no "time-sharing" permitted.

[ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 12 (1 elevator/8-plex building) Stairways: 32 (2 stairways per building) Trash Chutes: \_\_\_\_\_

<u>Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>Identify</u>
<u>Plan 1</u>	<u>8</u>	<u>3/3</u>	<u>1874</u>	<u>346</u>	<u>Exterior lanai/storage area</u>
<u>Plan 1 (without family room/den option)**</u>	<u>**</u>	<u>3/3</u>	<u>1762</u>	<u>346</u>	<u>Exterior lanai/storage area</u>
<u>Plan 2</u>	<u>8</u>	<u>2/2</u>	<u>1103</u>	<u>172</u>	<u>Exterior lanai/storage area</u>
<u>Plan 3</u>	<u>8</u>	<u>2/2</u>	<u>1460</u>	<u>125</u>	<u>Exterior lanai/storage area</u>
<u>Plan 4</u>	<u>24</u>	<u>3/3</u>	<u>1725</u>	<u>451</u>	<u>Exterior lanai/storage area</u>
<u>Plan 4 (without family room/den option)**</u>	<u>***</u>	<u>3/3</u>	<u>1633</u>	<u>451</u>	<u>Exterior lanai/storage area</u>
<u>Plan 5</u>	<u>72</u>	<u>2/2</u>	<u>1209</u>	<u>203</u>	<u>Exterior lanai/storage area</u>
Total Number of Apartments:			<u>120</u>		

\* Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls and includes all of the walls and partitions within its perimeter walls, whether load-bearing or non-load-bearing.

\*\* Construction option alternative to Apartment Plan 1; apartments will be appropriately designated by amendment to the condominium declaration.

\*\*\* Construction option alternative to Apartment Plan 4; apartments will be appropriately designated by amendment to the condominium declaration.

The floor areas shown are approximate only.

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. The areas of the apartments are likely to vary somewhat. Even apartments of the same type may differ in their actual areas. The Developer makes no representations or warranties whatsoever as to the floor area of any particular apartment.

**Boundaries of Each Apartment:** Each Apartment includes all walls, columns and partitions which are not load-bearing within the Apartment's perimeter walls, the inner decorated or finished surfaces of all walls, floors, ceilings, doors, door frames and window frames along the perimeters, all windows along the perimeters, the air space within the perimeter, the lanais, if any, shown on the Condominium Map to the inner decorated or finished surfaces of the perimeter walls of such lanais and to the interior edge of the exterior railings or other boundaries of such lanais, all fixtures originally installed in the Apartment, and all pipes, plumbing (including water heaters), air conditioning units (if any), wires, conduits and other utility or service lines and facilities servicing only the Apartment. The Apartments shall not include the undecorated or unfinished surfaces of the perimeter party or non-party walls, the undecorated or unfinished surfaces of the doors, door frames and window frames along the perimeters, the interior load-bearing columns, girders, beams and walls, the undecorated or unfinished surfaces of the floors and ceiling surrounding each Apartment, the exterior edge of the exterior railings or other exterior boundaries of the lanais, if any, shown on the Condominium Map, the entry area outside the entry door of each apartment, as shown the Condominium Map, or any pipes, shafts, wires, conduits or other utility or service lines running through an Apartment which are utilized for or serve more than one Apartment, all of which are deemed common elements as provided in the condominium declaration.

**Permitted Alterations to Apartments:** Alterations or additions solely within an apartment or within a limited common element appurtenant to and for the exclusive use of an apartment shall require the written approval of the Board of Directors, all apartment owners directly affected, as determined by the Board of Directors, first mortgage lien holders of such an Apartment (if required) and appropriate government agencies. Any alteration or addition different in any material respect from the Condominium Map shall be commenced only pursuant to an amendment to the condominium declaration, as provided in Section L of the condominium declaration. The Developer may make certain alterations as provided in Section L of the condominium declaration. See Exhibit J to this public report.

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

7. Parking Stalls:

Total Parking Stalls:	<u>170</u>						
	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	TOTAL
Assigned	<u>120</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>120</u>
Guest**	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Unassigned	<u>0</u>	<u>48*</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>48</u>
Extra for Purchase	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Other: <u>loading zone</u>	<u>0</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>
Total Covered & Open:	<u>170</u>		<u>0</u>		<u>0</u>		<u>170</u>

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

\* Six are oversized for the handicapped (stalls numbered 8(H), 9(H), 10(H), 147(H), 148(H), 149(H)).

\*\* The Developer has reserved the right to designate parking stalls not otherwise designated as limited common elements to be appurtenant to and for the exclusive use of any apartment in the Project, or as guest parking stalls for the Project. See Exhibit J to this public report.

Commercial parking garage permitted in condominium project.

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

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool

Storage Area

Recreation Area

Laundry Area

Tennis Court

Trash Chute/Enclosure(s)

Other: Exercise Room; Pump Room

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

There are no violations.

Violations will not be cured.

Violations and cost to cure are listed below:

Violations will be cured by \_\_\_\_\_

(Date)

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

(Not Applicable.)

11. Conformance to Present Zoning Code

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

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

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

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>    X    </u>	<u>          </u>	<u>          </u>
Structures	<u>    X    </u>	<u>          </u>	<u>          </u>
Lot	<u>    X    </u>	<u>          </u>	<u>          </u>

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

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

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

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

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

described in Exhibit     C    .

as follows:

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

There are no limited common elements in this project.

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

described in Exhibit  D .

as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit  E .

as follows:

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

Exhibit  F  describes the encumbrances against the title contained in the title report dated  July 5, 2006  (amended July 14, 2006) and issued by  Hawaii Escrow & Title, Inc.

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.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage(s) and related security interests	The Buyer's contract will be subject to cancellation and the Buyer may not be able to purchase the apartment, but all deposits made by the Buyer will be refunded, less escrow cancellation fee.

**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:

Each apartment owner will be provided with a 10 year homebuilder's limited warranty program as part of the purchase price for the apartment. A copy of the warranty program is attached as Exhibit K to this public report.

2. Appliances:

The Developer makes no warranties itself. However, the Developer will attempt to assign to each apartment owner the benefit of any manufacturer's or dealer's warranties covering the appliances in his or her apartment. Each apartment owner shall have the direct benefit of any such warranties that are assigned, if the Developer's attempted assignment is successful and binding. Such warranties, if available, will expire at different times, depending on the date of manufacture, sale, or installation of the appliances.

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

Construction has begun, and is anticipated to be completed by approximately August 2007.

**H. Project Phases:**

The developer  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):

Incremental Development. The Developer has reserved the right (but is not obligated), without being required to obtain the consent or joinder of any other person who may have an interest in the Project or in any apartment, to develop the apartments in increments on a building-by-building basis. See Exhibit J of this public report for further information concerning incremental development.



## V. MISCELLANEOUS

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

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

Notice to Owner Occupants

Specimen Sales Contract

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

Escrow Agreement dated October 13, 2004

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

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

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

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

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

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

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

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

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

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

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

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

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

This Public Report is a part of Registration No. 5521 filed with the Real Estate Commission on November 12, 2004.

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**C. Additional Information Not Covered Above**

As disclosed in the Declaration and in Exhibit D to this Report, all elevators providing access to upper floor apartments in Buildings E, F, G, H, I, J, K, L, M, N, O, and P and all related equipment and utilities are limited common elements appurtenant to, collectively, all apartment(s) so served in Buildings E, F, G, H, I, J, K, L, M, N, O, and P (being the apartments located above the ground level) (the "Elevator Apartments"). These elevators are hereby designated and set aside for the exclusive use of the Elevator Apartments only, and such Elevator Apartments shall have appurtenant thereto exclusive easements for the use of the elevators. Section 1.1(b) of the Declaration provides, "Each Apartment Owner shall be charged all costs and expenses (including, but not limited to, maintenance, repair, replacement, additions and improvements) of each limited common element appurtenant to his or her Apartment. If a limited common element is appurtenant to two or more Apartments, all of such costs and expenses shall be charged to and divided among each of the Owners of such Apartments in the proportion that the common interest appurtenant to each Apartment bears to the total common interest of all such Apartments." Purchasers of Elevator Apartments should be aware that costs and expenses associated with the elevators will be charged to and divided among each of the Owners of the Elevator Apartments in this manner.

- 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.

SunStone Waikoloa LLC  
Printed Name of Developer

By:   
Duly Authorized Signatory\*

9/12/06  
Date

Curtis D. DeWeese, Manager  
Print Name and Title of Person Signing Above

Distribution:  
Department of Finance, County of Hawaii  
Planning Department, County of Hawaii

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

**EXHIBIT A**

DESCRIPTION OF BUILDINGS

The Project shall contain 4 two-story (with loft) and 12 three-story residential apartment buildings. Building Type A (two-story building with loft) shall contain six apartments and Building Type B (three-story building) shall contain eight apartments. The Project shall also contain two "Recreation Buildings" which shall contain no apartments. Within each of the Recreation Buildings there shall be two restrooms, a pump room, an exercise room, a storage room and a lanai. The Project shall also contain 32 garage buildings, eight of which shall contain 3-car garages and 24 of which shall contain 4-car garages. None of the buildings shall have a basement. The buildings shall be constructed principally of concrete, wood, steel, glass and related building materials.

Each apartment building is identified on the Condominium Map by a capital letter designation. The following is a list of all of the Project's apartment buildings by building type and letter designation:

<u>Building</u>	<u>Building Type</u>
A	A
B	A
C	A
D	A
E	B
F	B
G	B
H	B
I	B
J	B
K	B
L	B
M	B
N	B
O	B
P	B

**EXHIBIT B**

PARKING STALLS

1. Parking Stalls:

Each apartment shall have appurtenant to it, as a limited common element, the exclusive right to use the parking stall designated below, located as shown on the Condominium Map.

APT. #	STALL #
A-1	A20
A-2	A21
A-3	A18
A-4	A19
A-22	A22
A-23	A17
B-1	B4
B-2	B5
B-3	B2
B-4	B3
B-22	B6
B-23	B1
C-1	C154
C-2	C155
C-3	C152
C-4	C153
C-22	C156
C-23	C151
D-1	D142
D-2	D143
D-3	D140
D-4	D141
D-22	D144
D-23	D139
E-1	E130
E-2	E129
E-3	E128
E-4	E127
E-22	E132
I-3	I93
I-4	I92
I-22	I97

APT. #	STALL #
E-23	E133
E-32	E131
E-33	E134
F-1	F123
F-2	F124
F-3	F121
F-4	F122
F-22	F125
F-23	F120
F-32	F126
F-33	F119
G-1	G115
G-2	G116
G-3	G113
G-4	G114
G-22	G117
G-23	G112
G-32	G118
G-33	G111
H-1	H104
H-2	H105
H-3	H102
H-4	H103
H-22	H106
H-23	H101
H-32	H107
H-33	H100
I-1	I99
I-2	I98
M-1	M64
M-2	M65
M-3	M62

APT. #	STALL #
I-23	I94
1-32	I96
I-33	I95
J-1	J88
J-2	J89
J-3	J86
J-4	J87
J-22	J90
J-23	J85
J-32	J91
J-33	J84
K-1	K80
K-2	K81
K-3	K78
K-4	K79
K-22	K82
K-23	K77
K-32	K83
K-33	K76
L-1	L75
L-2	L74
L-3	L69
L-4	L68
L-22	L73
L-23	L70
L-32	L72
L-33	L71

APT. #	STALL #
M-4	M63
M-22	M66
M-23	M61
M-32	M67
M-33	M60
N-1	N50
N-2	N51
N-3	N48
N-4	N49
N-22	N52
N-23	N47
N-32	N53
N-33	N46
O-1	O42
O-2	O41
O-3	O36
O-4	O35
O-22	O40
O-23	O37
O-32	O39
O-33	O38
P-1	P31
P-2	P32
P-3	P29
P-4	P30
P-22	P33
P-23	P28
P-32	P34
P-33	P27

Note: The Developer has reserved the right, by amendment to the condominium declaration in accordance with Section T.2 of the condominium declaration, to convey or otherwise designate any parking stall not designated as a limited common element to be appurtenant to and/or for the exclusive use of any apartment in the project, or to be used as a guest parking stall for the Project.

## EXHIBIT C

### COMMON ELEMENTS

The common elements of the Project shall specifically include, but are not limited to, the following:

1. The land described in Exhibit "A" to the condominium declaration, in fee simple.
2. All structural components, such as foundations, girders, columns, beams, floor slabs, supports, main walls, load-bearing walls, floors, ceilings (except the inner or decorated surfaces of such walls, floors and ceilings), roofs, exterior stairs and stairways, landings, railings (except lanai/ railings), entrances and exits of the buildings and/or apartments, and other building appurtenances.
3. All yards, grounds, gardens, planters, plants, landscaping, refuse facilities and recreational facilities.
4. All sidewalks, pathways, retaining walls, entry gates, entry monuments, driveways, roads, parking areas, parking stalls and garages.
5. The entry area outside the entry door of each Apartment, as shown on the Condominium Map.
6. All ducts, electrical equipment, transformers, wiring, pipes and other central and appurtenant transmissions facilities and installations over, under and across the Project which are utilized by or serve more than one apartment for services such as power, light, water, gas, sewer, telephone and radio and television signal distribution, if any.
7. All areas, rooms, spaces, structures, housings, chutes, shafts or facilities of the Project within or outside of the buildings, which are for common use or which serve more than one apartment, such as electrical, maintenance, service, security, machine, mechanical and equipment rooms and the equipment, machinery and facilities therein.
8. The "Recreation Buildings" and related amenities, including restrooms, pool and other facilities, located as shown on the Condominium Map.
9. All the benefits, if any, inuring to the land or to the Project from all easements, if any, shown on the Condominium Map or listed in Exhibit "A" to the condominium declaration, including, but not limited to, that certain Grant of Easement dated August 25, 2004, recorded August 25, 2004 as Document No. 2004-174522, as amended by Correction Grant of Easement, dated August 25, 2004, recorded November 5, 2004 as Document No. 2004-224020, and as may be further amended and/or supplemented.
10. Any and all apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use.
11. All other parts of the Project which are not included in the definition of an Apartment.

## EXHIBIT D

### LIMITED COMMON ELEMENTS

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

1. Parking Stalls:

Each apartment shall have appurtenant to it, as a limited common element, the exclusive right to use the parking stall(s) as designated on Exhibit B to this public report.

2. Garages:

The air space within the perimeter walls and the ceiling of each garage area surrounding one or more parking stalls, and the interior surfaces of such perimeter walls and ceiling, and the fixtures, if any, originally installed in such garage area, are limited common elements appurtenant to the apartment(s) to which the parking stall(s) therein are appurtenant.

3. Entries:

The entry area outside the entry door of each apartment, as shown on the Condominium Map, is a limited common element appurtenant to that apartment.

4. Mailboxes:

Each mailbox bearing the same identification as an apartment is a limited common element appurtenant to that apartment.

5. Elevators:

All elevators providing access to upper floor apartments in Buildings E, F, G, H, I, J, K, L, M, N, O, and P and all related equipment and utilities are limited common elements appurtenant to, collectively, all apartment(s) so served in Buildings E, F, G, H, I, J, K, L, M, N, O, and P.

**EXHIBIT E**

COMMON INTERESTS

COMMON INTERESTS

Type and Number of Apartments	Apartment Number	Undivided Common Interest of Each Apartment
Plan 1 (8)	A-1, A-4, B-1, B-4, C-1, C-4, D-1, D-4	.0113 (1.13%)
Plan 2 (8)	A-2, A-3, B-2, B-3, C-2, C-3, D-2, D-3	.0067 (.67%)
Plan 3 (8)	A-22, A-23, B-22, B-23, C-22, C-23, D-22, D-23	.0089 (.89%)
Plan 4 (24)	E-1, E-4, F-1, F-4, G-1, G-4, H-1, H-4, I-1, I-4, J-1, J-4, K-1, K-4, L-1, L-4, M-1, M-4, N-1, N-4, O-1, O-4, P-1, P-4	.0105 (1.05%)
Plan 5 (72)	E-2, E-3, E-22, E-23, E-32, E-33, F-2, F-3, F-22, F-23, F-32, F-33, G-2, G-3, G-22, G-23, G-32, G-33, H-2, H-3, H-22, H-23, H-32, H-33, I-2, I-3, I-22, I-23, I-32, I-33, J-2, J-3, J-22, J-23, J-32, J-33, K-2, K-3, K-22, K-23, K-32, K-33, L-2, L-3, L-22, L-23, L-32, L-33, M-2, M-3, M-22, M-23, M-32, M-33, N-2, N-3, N-22, N-23, N-32, N-33, O-2, O-3, O-22, O-23, O-32, O-33, P-2, P-3, P-22, P-23, P-32, P-33	.0074 (.74%)

EXHIBIT F

ENCUMBRANCES AGAINST TITLE

1. ANY AND ALL APPLICABLE TAXES FOR THE FISCAL YEAR 2006-2007, FOR TAX MAP KEY: (3) 6-9-008-013, ISLAND AND COUNTY OF HAWAII.
2. ASSESSMENTS:  
ASSESSMENTS OR CHARGES LEVIED BY MUNICIPAL OR GOVERNMENTAL AUTHORITY OR IMPOSED BY ANY OTHER LAWFULLY CONSTITUTED BODY AUTHORIZED BY STATUTE TO ASSESS, LEVY AND COLLECT THE SAME, IF ANY.
3. TITLE TO ALL MINERALS AND METALLIC MINES RESERVED TO THE STATE OF HAWAII.
4. COVENANTS, CONDITIONS AND RESTRICTIONS, BUT OMITTING ANY 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 CHAPTER 42, SECTION 3607 OF THE UNITED STATES CODE OR (B) RELATES TO HANDICAP BUT DOES NOT DISCRIMINATE AGAINST HANDICAPPED PERSONS, AS SET FORTH IN THE DECLARATION FOR WAIKOLOA BEACH RESORT,  
DATED : APRIL 1, 1980  
RECORDED/FILED : APRIL 23, 1980  
DOCUMENT NO. : IN LIBER 14670, PAGE 531

SAID DECLARATION WAS AMENDED AND/OR SUPPLEMENTED BY THE FOLLOWING INSTRUMENTS:

<u>DATED</u>	<u>RECORDED/FILED</u>	<u>LIBER</u>	<u>PAGE</u>
APRIL 1, 1980	APRIL 23, 1980	14670	607
DECEMBER 30, 1980	JANUARY 21, 1981	15297	147
JUNE 10, 1981	JULY 7, 1981	15676	497
OCTOBER 29, 1985	NOVEMBER 13, 1985	19071	562
DECEMBER 20, 1985	DECEMBER 20, 1985	19166	388
DECEMBER 9, 1985	DECEMBER 20, 1985	19166	392
DECEMBER 20, 1985	DECEMBER 20, 1985	19166	412
JUNE 1, 1986	AUGUST 26, 1986	19792	339
MAY 1, 1989	MAY 16, 1989	23187	750
AUGUST 24, 1989	AUGUST 31, 1989	23588	784
OCTOBER 25, 1989	OCTOBER 26, 1989	23806	164
SEPTEMBER 8, 1989	DECEMBER 18, 1989	24007	530

<u>DATED</u>	<u>RECORDED/FILED</u>	<u>DOCUMENT NO.</u>
MAY 21, 1990	MAY 21, 1990	90-074294*
OCTOBER 15, 2001	OCTOBER 25, 2001	2001-168808* (AMENDMENT TO DOCUMENT NO. 90-074294)
MAY 24, 1990	MAY 24, 1990	90-077240
AUGUST 7, 1990	AUGUST 7, 1990	90-120680
SEPTEMBER 27, 1990	SEPTEMBER 27, 1990	90-150228
OCTOBER 9, 1991	DECEMBER 5, 1991	91-166876
MARCH 12, 1993	MARCH 16, 1993	93-041631
MARCH 12, 1993	MARCH 16, 1993	93-041633
MARCH 12, 1993	MARCH 16, 1993	93-041635
MARCH 12, 1993	MARCH 16, 1993	93-041637
MARCH 12, 1993	MARCH 16, 1993	93-041639
APRIL 1, 1993	APRIL 28, 1993	93-067585
NOVEMBER 3, 1993	DECEMBER 8, 1993	93-203157
MARCH 27, 2000	MARCH 31, 2000	2000-042859
FEBRUARY 2, 2001	FEBRUARY 14, 2001	2001-020530
APRIL 4, 2001	APRIL 4, 2001	2001-048450
JUNE 6, 2001	JUNE 6, 2001	2001-085464
JUNE 28, 2001	JULY 2, 2001	2001-101573
AUGUST 25, 2004	AUGUST 25, 2004	2004-174518
AUGUST 25, 2004	AUGUST 25, 2004	2004-174520

SUPPLEMENTAL DECLARATION (ASSIGNING DECLARANT'S RIGHTS),  
 BY AND BETWEEN : TRANSCONTINENTAL DEVELOPMENT CO., A TEXAS  
 PARTNERSHIP, "ASSIGNOR" AND WAIKOLOA DEVELOPMENT  
 CO., A HAWAII LIMITED PARTNERSHIP, "ASSIGNEE"  
 DATED : MAY 1, 1989  
 RECORDED/FILED : MAY 12, 1989  
 DOCUMENT NO. : IN LIBER 23179, PAGE 433

5. COVENANTS, CONDITIONS AND RESTRICTIONS, BUT OMITTING ANY 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 CHAPTER 42, SECTION 3607 OF THE UNITED STATES CODE OR (B) RELATES TO HANDICAP BUT DOES NOT DISCRIMINATE AGAINST HANDICAPPED PERSONS, AS SET FORTH IN THE DECLARATION FOR WAIKOLOA BEACH RESORT CONFERENCE,  
 DATED : APRIL 1, 1980  
 RECORDED/FILED : APRIL 23, 1980  
 DOCUMENT NO. : IN LIBER 14670, PAGE 631

SAID DECLARATION WAS AMENDED AND/OR SUPPLEMENTED BY THE FOLLOWING INSTRUMENTS:

<u>DATED</u>	<u>RECORDED/FILED</u>	<u>LIBER</u>	<u>PAGE</u>
APRIL 1, 1980	APRIL 23, 1980	14670	674
DECEMBER 20, 1985	DECEMBER 20, 1985	19166	426
DECEMBER 20, 1985	DECEMBER 20, 1985	19166	434
DECEMBER 20, 1985	DECEMBER 20, 1985	19166	438
DECEMBER 20, 1985	DECEMBER 20, 1985	19166	448
JUNE 1, 1986	AUGUST 26, 1986	19792	344
MAY 1, 1989	MAY 16, 1989	23187	757
AUGUST 24, 1989	AUGUST 31, 1989	23588	788
OCTOBER 25, 1989	OCTOBER 26, 1989	23806	168
SEPTEMBER 8, 1989	DECEMBER 18, 1989	24007	521

  

<u>DOCUMENT NO.</u>		
MAY 21, 1990	MAY 21, 1990	90-074295*
OCTOBER 15, 2001	OCTOBER 25, 2001	2001-168809* (AMENDMENT TO DOCUMENT NO. 90-074295)
MAY 24, 1990	MAY 24, 1990	90-077241
AUGUST 7, 1990	AUGUST 7, 1990	90-120681
SEPTEMBER 27, 1990	SEPTEMBER 27, 1990	90-150230
MAY 1, 1995	MAY 5, 1995	95-060406
MAY 1, 1998	SEPTEMBER 17, 1998	98-138993
MARCH 27, 2000	MARCH 31, 2000	2000-042860
FEBRUARY 2, 2001	FEBRUARY 14, 2001	2001-020529
APRIL 4, 2001	APRIL 4, 2001	2001-048451
JUNE 28, 2001	JULY 2, 2001	2001-101574
AUGUST 25, 2004	AUGUST 25, 2004	2004-174521

SUPPLEMENTAL DECLARATION (ASSIGNING DECLARANT'S RIGHTS),  
 BY AND BETWEEN : TRANSCONTINENTAL DEVELOPMENT CO., A TEXAS  
 PARTNERSHIP, "ASSIGNOR" AND TRANSCONTINENTAL  
 DEVELOPMENT (HAWAII) CO., A HAWAII LIMITED PARTNERSHIP,  
 "ASSIGNEE"  
 DATED : DECEMBER 27, 1990  
 RECORDED/FILED : NOVEMBER 22, 1991  
 DOCUMENT NO. : 91-160953

6. EASEMENT "S-2" (15 FEET WIDE), FOR SANITARY SEWER PURPOSES, AS SHOWN ON FILE PLAN NO. 1712.
7. AN EASEMENT AFFECTING A PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN, IN FAVOR OF : WAIKOLOA RESORT UTILITIES, INC., A HAWAII CORPORATION  
 FOR : SANITARY SEWER PURPOSES OVER EASEMENT "S-2"

- DATED : MARCH 25, 1981  
RECORDED/FILED : APRIL 23, 1981  
DOCUMENT NO. : IN LIBER 15498, PAGE 135
- SAID : EASEMENT, WAS AMENDED  
BY INSTRUMENT DATED : JUNE 9, 1981  
RECORDED/FILED : AUGUST 3, 1981  
DOCUMENT NO. : IN LIBER 15735, PAGE 406
8. EASEMENT "W-3" (5 FEET WIDE), FOR IRRIGATION WATER PURPOSES, AS SHOWN ON FILE PLAN NO. 1712.
9. AN EASEMENT AFFECTING A PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN, IN FAVOR OF : TRANSCONTINENTAL DEVELOPMENT CO., A TEXAS PARTNERSHIP QUALIFIED TO DO BUSINESS IN HAWAII  
FOR : IRRIGATION WATER PURPOSES OVER EASEMENT "W-3"  
DATED : JUNE 9, 1981  
RECORDED/FILED : JULY 16, 1981  
DOCUMENT NO. : IN LIBER 15695, PAGE 677
- SAID EASEMENT WAS ASSIGNED,  
TO : WAIKOLOA DEVELOPMENT CO., A HAWAII LIMITED PARTNERSHIP  
DATED : OCTOBER 9, 1989  
RECORDED/FILED : OCTOBER 17, 1989  
DOCUMENT NO. : IN LIBER 23772, PAGE 481
10. COVENANTS, CONDITIONS AND RESTRICTIONS, BUT OMITTING ANY 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 CHAPTER 42, SECTION 3607 OF THE UNITED STATES CODE OR (B) RELATES TO HANDICAP BUT DOES NOT DISCRIMINATE AGAINST HANDICAPPED PERSONS, AS SET FORTH IN CERTIFICATE OF CONDITIONS,  
DATED : JULY 10, 1990  
RECORDED/FILED : AUGUST 8, 1990  
DOCUMENT NO. : 90-121581  
RE : RECLASSIFICATION OF THE PROPERTY FROM THE AGRICULTURE DISTRICT TO THE URBAN DISTRICT
11. AN EASEMENT AFFECTING A PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN, IN FAVOR OF : WAIKOLOA RESORT UTILITIES, INC., A HAWAII CORPORATION DOING BUSINESS AS WEST HAWAII UTILITY COMPANY  
FOR : GRANTING A PERPETUAL EASEMENT FOR THE CONSTRUCTION, INSTALLATION, REINSTALLATION, MAINTENANCE, REPAIR AND REMOVAL OF UTILITY POLE LINES AND/OR UNDERGROUND UTILITY LINES AND APPURTENANCES, ETC., OVER, UNDER, UPON, ACROSS AND THROUGH EASEMENT "W-3"  
DATED : FEBRUARY 19, 1998  
RECORDED/FILED : MARCH 5, 1998  
DOCUMENT NO. : 98-028924
12. DESIGNATION OF EASEMENT "1", FOR LANDSCAPING PURPOSES, AS SHOWN ON FILE PLAN 2376.
13. AN EASEMENT AFFECTING A PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN, IN FAVOR OF : WAIKOLOA RESORT ASSOCIATION, A HAWAII NONPROFIT CORPORATION  
FOR : A NONEXCLUSIVE EASEMENT FOR LANDSCAPING PURPOSES OVER, UNDER ACROSS, ALONG, UPON AND THROUGH EASEMENT "1"  
DATED : AUGUST 25, 2004  
RECORDED/FILED : AUGUST 25, 2004  
DOCUMENT NO. : 2004-174519

14. COVENANTS, CONDITIONS AND RESTRICTIONS, BUT OMITTING ANY 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 CHAPTER 42, SECTION 3607 OF THE UNITED STATES CODE OR (B) RELATES TO HANDICAP BUT DOES NOT DISCRIMINATE AGAINST HANDICAPPED PERSONS, AS SET FORTH IN INSTRUMENT,  
DATED : AUGUST 25, 2004  
RECORDED/FILED : AUGUST 25, 2004  
DOCUMENT NO. : 2004-174522

15. A MORTGAGE TO SECURE AN INDEBTEDNESS OF THE AMOUNT STATED HEREIN AND ANY OTHER AMOUNTS PAYABLE UNDER THE TERMS THEREOF,  
DATED : AUGUST 25, 2004  
AMOUNT : \$20,000,000.00  
MORTGAGOR : SUNSTONE WAIKOLOA LLC, A HAWAII LIMITED LIABILITY COMPANY  
MORTGAGEE : AMERICAN SAVINGS BANK, F.S.B., A FEDERAL SAVINGS BANK  
RECORDED/FILED : AUGUST 25, 2004  
DOCUMENT NO. : 2004-174524  
  
LOAN NO. : NONE

SAID MORTGAGE, AMONG OTHER PROVISIONS, CONTAINS A PROVISION RE: THE SALE OR TRANSFER OF ALL OF ANY PORTION OF LANDS ENCUMBERED BY SAID MORTGAGE, THAT ALL SUMS SECURED THEREBY MAY BECOME IMMEDIATELY DUE AND PAYABLE UNLESS THE PROVISIONS CONTAINED THEREIN ARE SATISFIED.

ADDRESS OF THE MORTGAGEE AS PER DOCUMENT:

P.O. BOX 2300  
HONOLULU, HI 96804-2300

16. A FINANCING STATEMENT COVERING THE LAND UNDERLYING THE PROJECT AND CERTAIN PERSONAL PROPERTY THEREIN DESCRIBED,  
DEBTOR : SUNSTONE WAIKOLOA LLC  
SECURED PARTY : AMERICAN SAVINGS BANK, F.S.B.  
RECORDED/FILED : AUGUST 25, 2004  
DOCUMENT NO. : 2004-174525

17. A MORTGAGE TO SECURE AN INDEBTEDNESS OF THE AMOUNT STATED HEREIN AND ANY OTHER AMOUNTS PAYABLE UNDER THE TERMS THEREOF,  
DATED : AUGUST 1, 2004  
AMOUNT : \$6,000,000.00  
MORTGAGOR : SUNSTONE WAIKOLOA LLC, A HAWAII LIMITED LIABILITY COMPANY  
MORTGAGEE : ZILBER LTD., A DELAWARE CORPORATION  
RECORDED/FILED : AUGUST 25, 2004  
DOCUMENT NO. : 2004-174526  
  
LOAN NO. : NONE

SAID MORTGAGE, AMONG OTHER PROVISIONS, CONTAINS A PROVISION RE: THE SALE OR TRANSFER OF ALL OF ANY PORTION OF LANDS ENCUMBERED BY SAID MORTGAGE, THAT ALL SUMS SECURED THEREBY MAY BECOME IMMEDIATELY DUE AND PAYABLE UNLESS THE PROVISIONS CONTAINED THEREIN ARE SATISFIED.

ADDRESS OF THE MORTGAGEE AS PER DOCUMENT:

710 N. PLANKINTON AVENUE, SUITE 1200  
MILWAUKEE, WI 53203

SUBORDINATION AGREEMENT, SUBORDINATING THE SUBJECT MATTERS REFERRED TO IN THIS PARAGRAPH, BY THE PROVISIONS CONTAINED THEREIN,  
EXECUTED BY : AMERICAN SAVINGS BANK, F.S.B., A FEDERAL SAVINGS BANK  
AND ZILBER LTD., A DELAWARE CORPORATION

DATED : AUGUST 25, 2004  
RECORDED/FILED : AUGUST 25, 2004  
DOCUMENT NO. : 2004-174529  
SUBORDINATED TO : MORTGAGE SHOWN IN ITEM NO. 15 AND 22

AMENDMENT TO AND CONFIRMATION OF SUBORDINATION AGREEMENT,  
DATED : MAY 1, 2006  
RECORDED/FILED : MAY 5, 2006  
DOCUMENT NO. : 2006-084339

18. A FINANCING STATEMENT COVERING THE LAND UNDERLYING THE PROJECT AND CERTAIN PERSONAL PROPERTY THEREIN DESCRIBED,  
DEBTOR : SUNSTONE WAIKOLOA LLC  
SECURED PARTY : ZILBER, LTD.  
RECORDED/FILED : AUGUST 25, 2004  
DOCUMENT NO. : 2004-174527

19. MATTERS AS SHOWN ON CONDOMINIUM MAP NO. 3884, FILED IN THE BUREAU OF CONVEYANCES.

20. COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, AGREEMENTS, OBLIGATIONS, PROVISIONS AND EASEMENTS, BUT OMITTING ANY 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 CHAPTER 42, SECTION 3607 OF THE UNITED STATES CODE OR (B) RELATES TO HANDICAP BUT DOES NOT DISCRIMINATE AGAINST HANDICAPPED PERSONS, AS SET FORTH IN THE DECLARATION OF CONDOMINIUM PROPERTY REGIME OF THE WAIKOLOA BEACH VILLAS,  
DATED : OCTOBER 25, 2004  
RECORDED/FILED : NOVEMBER 12, 2004  
DOCUMENT NO. : 2004-229226

SAID DECLARATION WAS AMENDED,  
BY INSTRUMENT DATED : DECEMBER 14, 2004  
RECORDED/FILED : DECEMBER 22, 2004  
DOCUMENT NO. : 2004-258563

BY INSTRUMENT DATED : SEPTEMBER 12, 2006  
RECORDED/FILED : SEPTEMBER 12, 2006  
DOCUMENT NO. : 2006-167401

21. BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF THE WAIKOLOA BEACH VILLAS,  
DATED : NOVEMBER 12, 2004  
RECORDED/FILED : NOVEMBER 12, 2004  
DOCUMENT NO. : 2004-229227

22. AN ADDITIONAL CHARGE MORTGAGE, TO SECURE AN INDEBTEDNESS OF THE AMOUNT STATED HEREIN AND ANY OTHER AMOUNTS PAYABLE UNDER THE TERMS THEREOF,  
DATED : MAY 2, 2006  
AMOUNT : \$5,000,000.00  
MORTGAGOR : SUNSTONE WAIKOLOA LLC, A HAWAII LIMITED LIABILITY COMPANY  
MORTGAGEE : AMERICAN SAVINGS BANK, F.S.B., A FEDERAL SAVINGS BANK  
RECORDED/FILED : MAY 5, 2006  
DOCUMENT NO. : 2006-084338

23. AN EASEMENT AFFECTING A PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN, IN FAVOR OF : HAWAII ELECTRIC LIGHT COMPANY, INC., A HAWAII CORPORATION AND HAWAIIAN TELCOM, INC., ALSO A HAWAII CORPORATION  
FOR : UTILITY PURPOSES

DATED : JUNE 15, 2006  
RECORDED/FILED : JUNE 20, 2006  
DOCUMENT NO. : 2006-113260

24. ANY AND ALL EASEMENTS ENCUMBERING THE APARTMENT HEREIN MENTIONED, AND/OR THE COMMON INTEREST APPURTENANT THERETO, AS CREATED BY OR MENTIONED IN SAID DECLARATION, AND/OR IN SAID APARTMENT DEED, AND/OR AS DELINEATED ON SAID CONDOMINIUM MAP.

**EXHIBIT G**

**ESTIMATE OF INITIAL MAINTENANCE FEES\***

The Waikoloa Beach Villas		
<b>Apartment Type</b>	<b>Monthly Fee (per apt.)</b>	<b>Yearly Total (per apt.)</b>
Plan 1	\$879.14	\$10,549.68
Plan 2	\$521.26	\$6,255.12
Plan 3	\$692.42	\$8,309.04
Plan 4	\$816.90	\$9,802.80
Plan 5	\$575.72	\$6,908.64

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

\*Includes Waikoloa Beach Resort Master Association assessments.

Developer's Explanation Regarding Replacement Reserve Figure

In arriving at the figure for "Reserves," as set forth in this Exhibit G to the Condominium Public Report, the developer did not conduct a reserve study in accordance with HRS § 514A-83.6 or HAR § 16-107-65. The figure is an estimate prepared by Hawaiiiana Management Company, based on reasonable projections of reserve requirements.

SunStone Waikoloa LLC,  
a Hawaii limited liability company

By: 

Name: Curtis D. DeWeese  
Its: Manager

Date: 9/12/06

WAIKOLOA BEACH VILLAS - 120 UNITS

Estimate of Maintenance Fee Disbursements for Waikoloa Beach Villas

Utilities and Services:	Monthly	Yearly
Electricity (Common Elements only)	\$ 4,200.00	\$ 50,400.00
Gas:	100.00	1,200.00
Refuse Collection:	3,000.00	36,000.00
Telephone:	425.00	5,100.00
Water and Sewer:	8,000.00	96,000.00
Maintenance and Supplies:		
Building:	2,000.00	24,000.00
Grounds:	16,500.00	198,000.00
Management:		
Management Fee:	2,125.00	25,500.00
Payroll and Taxes:	13,000.00	156,000.00
Office Expenses:	1,000.00	12,000.00
Insurance:	6,000.00	72,000.00
Reserves:	11,500.00	138,000.00
Taxes & Govt Assessments:	150.00	1,800.00
Audit Fee:	300.00	3,600.00
Other (contingency, pool, pest control):	9,500.00	114,000.00
<b>TOTAL:</b>	<b>\$ 77,800.00</b>	<b>\$ 933,600.00</b>

NANCY T. RONEY, as agent for and employed by Hawaiiana Management Company, LTD the managing agent for the Waikoloa Beach Villas condominium project, hereby certified that the above estimates of initial maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

*Nancy T. Roney*  
Signature

AUG 03 2005  
Date

Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves," the Developer has conducted a reserve study in accordance with 514-A-86-86.6 HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to 514-A-83.6, HRS, a new association created after January 1, 1993 need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

46110229530.1

*There are no significant changes for the next year.*  
Signed on behalf of NANCY RONEY  
*DW Noyes* 8/29/06

## EXHIBIT H

### SUMMARY OF SALES CONTRACT

The Deposit Receipt, Reservation and Sales Agreements (the "Sales Contract") contains the price and other terms and conditions under which a purchaser will agree to buy an apartment in the Project. Among other things, the Sales Contract states:

- (a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of an apartment.
- (b) That the purchaser acknowledges having received and read a public report (either preliminary, contingent or final) for the Project prior to signing the Sales Contract.
- (c) That the Developer makes no representations concerning rental of an apartment, income or profit from an apartment, or any other economic benefit to be derived from the purchase of an apartment.
- (d) That the Sales Contract may be subordinate to the lien of a construction lender.
- (e) That the purchaser's money will be held in escrow, under the terms of the Escrow Agreement.
- (f) Requirements relating to the purchaser's financing of the purchase of an apartment.
- (g) That the apartment and the Project will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.
- (h) That the Developer itself makes no warranties regarding the apartment, the Project or anything installed or contained in the apartment or the Project. The Developer will provide, at closing, a warranty in the form referenced in the Sales Contract.
- (i) That the Project will be subject to ongoing construction and sales activities which may result in certain annoyances to the purchaser.
- (j) That the purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
- (k) That the Developer has reserved certain rights and powers relating to the Project and the purchaser acknowledges and consents to the exercise of such rights and powers.
- (l) That except under certain circumstances, as set forth in the Sales Contract, all interest on deposits toward the purchase price shall be the property of the Developer.
- (m) That in the event of a default by the purchaser under the Sales Contract, all sums paid by the purchaser under the Sales Contract shall belong to the Developer as liquidated damages, and the Developer may, in addition to such damages, pursue any other remedy, including specific performance, permitted by law or equity.

Certain of the Sales Contracts may include, at the discretion of the Developer for compliance with applicable exemptions from registration requirements under the Interstate Land Sales Full Disclosure Act, as described in Code of Federal Regulations (C.F.R.) sections 1710.5 and 1710.6, a provision which will require the Developer to complete construction of the Apartments covered thereby within two years after the effective date of the Sales Contract.

In the event of a default by the Developer under the Sales Contract, the buyer shall be entitled to remedies available to it at law or in equity.

The Sales Contract contains various other important provisions relating to the purchase of an apartment in the Project. Purchasers and prospective purchasers should carefully read the specimen Sales Contract on file with the Real Estate Commission.

## EXHIBIT I

### SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement sets up an arrangement under which the deposits a purchaser makes pursuant to a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

- (a) Escrow will let the purchaser know when payments are due.
- (b) Escrow will arrange for the purchaser to sign all necessary documents.
- (c) Except under certain circumstances as set forth in the Sales Contract, all interest on deposits toward the purchase price shall be the property of the Developer.
- (d) The purchaser will be entitled to a refund of his or her funds deposited with Escrow, upon written request by purchaser to Escrow, if the purchaser exercises purchaser's right to cancel or rescind the Sales Contract pursuant to the Hawaii Condominium Act, as set forth in the Sales Contract (less a cancellation fee commensurate with the work done by Escrow prior to such cancellation, up to a maximum of \$250.00).
- (e) No disbursements of funds held in Escrow shall be made to the Developer until certain conditions, as set forth in the Escrow Agreement and in accordance with the Hawaii Condominium Act, have been fulfilled, including delivery of a copy of the Final Public Report to the purchaser and waiver (or deemed waiver) of the purchaser's right to cancel the Sales Contract. Under certain circumstances, in accordance with the Condominium Property Act and as described in the Escrow Agreement, the purchaser's funds may be disbursed to the Developer to pay for construction and other costs of the Project.
- (f) Upon a default by the purchaser under the Sales Contract, and the Developer's termination of the Sales Contract as a result of such default, all funds of the purchaser deposited with Escrow shall be treated as funds of the Developer and not as funds of the purchaser, and shall be disbursed to the Developer upon request by the Developer.

The Escrow Agreement contains various other important provisions and establishes certain charges with which a purchaser should be familiar. Purchasers and prospective purchasers should carefully read the signed Escrow Agreement on file with the Real Estate Commission.

## EXHIBIT J

- A. Upon completion of the Project, the Developer may amend the Declaration and the Condominium Map (if necessary) to file an "as built" statement required by Section 514A-12 of the Condominium Property Act.
- B. Until all of the apartments have been sold, the Developer may amend the Declaration, the Bylaws, and/or the Condominium Map to make such amendments as may be required by law, by the Real Estate Commission, by the title insurance company, by a mortgage lender, or by any governmental agency (including the VA, HUD, FNMA, and/or FHLMC), provided that no such amendments change the common interest appurtenant to an apartment or substantially change the design, location, or size of an apartment.
- C. Until all of the apartments have been sold and the "as built" statement is filed, the Developer may amend the Declaration and the Condominium Map to (i) reflect alterations in any apartment which has not been sold; and (ii) reflect minor changes in any apartment or in the common elements which do not affect the physical location, design, or size of any apartment which has been sold.
- D. Upon completion of construction of the Project, the Developer will record an amendment to the Declaration to identify the specific Plan 1 and Plan 4 apartments as constructed with or without the optional family room/den.
- E. The Developer may amend the Declaration to designate parking stalls not otherwise designated as limited common elements to be appurtenant to and for the exclusive use of any apartment in the Project, or for use as guest stalls for the Project.
- F. The Developer has reserved the right to make the following alterations in the Project:
1. To make alterations in the Project (and, if appropriate, to amend the Declaration and the Condominium Map accordingly) which change the floor plan of, change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any Apartment and/or the limited common elements appurtenant thereto, in the Project which is not sold and the conveyance thereof Recorded; and
  2. To make other alterations in the Project (and, if appropriate, to amend the Declaration and the Condominium Map accordingly) which make minor changes in any Apartment in the Project or in the common elements which do not affect the physical location, design, or size of any Apartment which has been sold and the conveyance thereof Recorded.
- G. RESERVATION TO DESIGNATE/GRANT ARCHAEOLOGICAL SITE PRESERVATION EASEMENTS
- The Developer has reserved the right to designate, grant, convey, cancel, relocate or otherwise deal with an easement or easements, exclusive or otherwise, for the maintenance and preservation of such portions of the Project land affected by archaeological sites, if any.
- H. RESERVATION TO DEVELOP INCREMENTALLY
- The Developer has reserved the right, but is not obligated, to construct, sell, and convey the apartments in the Project incrementally on a building-by-building basis. Upon the completion of each building, the Developer may obtain a certificate of occupancy for the apartments in such building or cluster and thereupon transfer ownership of the apartments to apartment purchasers. In connection with this incremental development, the Developer has the right to enter upon the Project premises with employees, agents, and contractors for all purposes reasonably necessary for or useful to constructing and completing all increments to the Project.
- The Developer also has the right, at the discretion of the Developer, to change the apartment floor plan, or create one or more new apartment floor plans, for any or all of the apartments in an increment, and in connection therewith to amend the Declaration and the Condominium Map to reflect such changes in apartment floor plan(s) and make appropriate revisions to the common interests appurtenant to any or all apartments in the Project to reflect resulting changes in floor area.
- See Section O of the Declaration for details regarding the Developer's right to develop the Project in increments.

# HOME BUILDER'S LIMITED WARRANTY

Administered by Professional Warranty Service Corporation

Throughout this **HOME BUILDER'S LIMITED WARRANTY**, referred to hereinafter as the "**LIMITED WARRANTY**", the words "**YOU**" and "**YOUR**" refer to the **HOMEOWNER** and **HOMEOWNERS ASSOCIATION**. The words "**WE**", "**US**" and "**OUR**" refer to the **BUILDER**. The other words and phrases which appear in boldface uppercase type also have special meaning. Refer to the Section X, Definitions, so that **YOU** will understand the terminology applicable to this **LIMITED WARRANTY**.

This **LIMITED WARRANTY** establishes an agreed method for determining when a **CONSTRUCTION DEFECT** exists and a clear understanding of **OUR** responsibilities for remedying any such **CONSTRUCTION DEFECT**. This **LIMITED WARRANTY** also helps distinguish a **CONSTRUCTION DEFECT** that is **OUR** responsibility from those minor imperfections that can reasonably be expected in a **HOME** or the **COMMON ELEMENTS** or result from normal wear and tear or are routine **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** maintenance responsibilities.

This **LIMITED WARRANTY** contains the procedures **YOU** must use to notify **US** of a condition in **YOUR HOME** or the **COMMON ELEMENTS** which **YOU** believe may constitute a **CONSTRUCTION DEFECT**. In the event a condition occurs in the **HOME** or the **COMMON ELEMENTS** that **YOU** believe may constitute a **CONSTRUCTION DEFECT**, **YOU** agree to submit any request for warranty performance under this **LIMITED WARRANTY**. Based on the information **YOU** provide, and where **WE** deem it necessary information obtained from **OUR** onsite investigation inspection and/or testing of the **HOME** or the **COMMON ELEMENTS**, **WE** will determine whether **WE** agree with **YOU** that the condition constitutes a **CONSTRUCTION DEFECT**. If **WE** determine that the condition reported by **YOU** is a **CONSTRUCTION DEFECT**, **WE** will remedy the condition in accordance with the remedies prescribed in this **LIMITED WARRANTY**. **WE** will make this determination in accordance with Section III, **OUR Coverage Obligations**, contained in this **LIMITED WARRANTY**.

If **WE** determine that a condition does not constitute a **CONSTRUCTION DEFECT** that is **OUR** responsibility and therefore deny **YOUR** request for warranty performance, **YOU** have the right to initiate binding arbitration that will irrevocably determine whether the condition constitutes a **CONSTRUCTION DEFECT** that is **OUR** responsibility. If this binding arbitration determines that the condition does constitute a **CONSTRUCTION DEFECT** that is **OUR** responsibility, **WE** will resolve the problem in accordance with the remedies prescribed in this **LIMITED WARRANTY**. The arbitrator will make a determination based on the language contained in Section III, **OUR Coverage Obligations**.

Enclosed with this **LIMITED WARRANTY** is a Limited Warranty Validation Form. The Limited Warranty Validation Form provides the dates on which the warranty coverage period begins and expires. It is important that this form is retained with the **LIMITED WARRANTY**. Liability under this **LIMITED WARRANTY** is limited to the amount shown on the Limited Warranty Validation Form.

All express or implied warranties other than this **LIMITED WARRANTY**, including any oral or written statement or representation made by **US** or any other person, and any implied warranty of habitability, merchantability or fitness, are hereby disclaimed by **US** and are waived by **YOU**. In addition, **YOU** waive the right to seek damages or other legal or equitable remedies from **US**, **OUR** subcontractors, agents, vendors, suppliers, design professionals and materialmen, under any other common law or statutory theory of liability, including but not limited to negligence and strict liability. **YOUR** only remedy in the event of a **CONSTRUCTION DEFECT** in or to the **HOME** or the **COMMON ELEMENTS** or to the real property on which the **HOME** or the **COMMON ELEMENTS** is situated is the coverage provided to **YOU** under this **LIMITED WARRANTY**. There may be instances where an additional **PWC** administered Builder's Limited Warranty is issued together with this **LIMITED WARRANTY**. If both of these warranties are issued to **YOU**, **YOU** agree to request warranty performance under either warranty relative to warrantable issues on the **HOME** or the **COMMON ELEMENTS**. **YOU** may not collect twice relative to the same defect and amounts paid or expended by **US** for warranty performance under either warranty will reduce the limit of liability remaining under both warranties simultaneously.

**WE** have contracted with **PWC** for certain administrative services relative to this **LIMITED WARRANTY**. **PWC's** sole responsibility is to provide administrative services. Under no circumstances or conditions is **PWC** responsible for fulfilling **OUR** obligations under this **LIMITED WARRANTY**.

If any provision of this **LIMITED WARRANTY** is determined to be unenforceable, such a determination will not affect the remaining provisions. If this **LIMITED WARRANTY** or any provision herein is determined to be unenforceable as to a **HOMEOWNERS ASSOCIATION** or a specific **HOMEOWNER**, such a determination will not affect the enforceability of this **LIMITED WARRANTY** or such provision as to any other **HOMEOWNERS ASSOCIATION** or any other **HOMEOWNER**. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this **LIMITED WARRANTY**.

## I. Coverage Limit

The amount shown on the Limited Warranty Validation Form is **OUR** limit of liability. It is the most **WE** will pay or expend for all covered **CONSTRUCTION DEFECTS** regardless of the number of requests for warranty performance made against this **LIMITED WARRANTY**. Once **OUR** limit of liability has been paid, no further requests for warranty performance can be made against this **LIMITED WARRANTY** or any other **PWC** administered Builder's Limited Warranty issued for the **HOME** or the **COMMON ELEMENTS**.

## II. Warranty Coverage

Coverage under this **LIMITED WARRANTY** is expressly limited to **CONSTRUCTION DEFECTS** which occur during the **WARRANTY PERIOD** indicated on the Limited Warranty Validation Form and are reported by **YOU** in accordance with the notification requirements of Section VII, **Procedure to Request US To Perform Under This LIMITED WARRANTY**.

**Coverage** During the **WARRANTY PERIOD** indicated on the Limited Warranty Validation Form that is attached to and made part of this **LIMITED WARRANTY**, **WE** warrant the **HOME** and the **COMMON ELEMENTS** will be free of **CONSTRUCTION DEFECTS**. To be eligible for coverage **WE** must receive written notice from **YOU** of the alleged **CONSTRUCTION DEFECT** as soon as it is reasonably possible after **YOU** have become aware or should have become aware of a **CONSTRUCTION DEFECT** but in no event later than thirty (30) days after the expiration of the coverage.

## III. OUR Coverage Obligations

All notices of alleged **CONSTRUCTION DEFECTS**, and complaints under this **LIMITED WARRANTY** must be made by **YOU** in writing. Telephonic or face-to-face discussion will not protect **YOUR** rights under this **LIMITED WARRANTY** (see Section VII, **Procedure to Request US To Perform Under This LIMITED WARRANTY**).

In the event **YOU** allege a **CONSTRUCTION DEFECT** occurs during the **WARRANTY PERIOD**, upon receiving written notice from **YOU**, **WE**, or a third party designated by **US** or acting on **OUR** behalf, will inspect, investigate and/or test (including destructive testing) the alleged **CONSTRUCTION DEFECT** to determine if a **CONSTRUCTION DEFECT** exists. Upon confirmation of a **CONSTRUCTION DEFECT**, **WE**, or a third party designated by **US** or acting on **OUR** behalf, will (1) repair or replace the **CONSTRUCTION DEFECT**, (2) pay to **YOU** the actual amount it would cost **US** to repair or replace the **CONSTRUCTION DEFECT** or (3) **PAY** to **YOU** an amount equal to the diminution in fair market value caused by the **CONSTRUCTION DEFECT**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** authorized representative's sole option.

**WE** will have been considered to have breached this **LIMITED WARRANTY** only if **WE** fail to resolve a **CONSTRUCTION DEFECT** in accordance with the terms and conditions of this **LIMITED WARRANTY**.

**A. Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined**

In the event YOU believe that a flaw in the HOME or the COMMON ELEMENTS constitutes a CONSTRUCTION DEFECT, the following factors will be considered by US in determining whether the condition constitutes a CONSTRUCTION DEFECT. Should either YOU or WE elect to initiate binding arbitration, these factors will be considered by the arbitrator in rendering a decision:

1. Any performance standards or guidelines or other documents or manuals that contain OUR building standards, that were provided to YOU at or prior to closing on the HOME, or in the case of the HOMEOWNERS ASSOCIATION, prior to transferring title to all the COMMON ELEMENTS. Absent such standards, the Residential Construction Performance Guidelines published by the National Association of Home Builders, in effect at the time of closing on the HOME, or in the case of the HOMEOWNERS ASSOCIATION, at the time of transferring title to all the COMMON ELEMENTS shall apply. Absent a specific standard in the documents identified above, building practices and standards in use in the region of the country in which the HOME or the COMMON ELEMENTS are located shall apply;
2. Consideration as to whether the magnitude of the flaw or imperfection:
  - materially affects the structural integrity of the HOME or COMMON ELEMENTS; or
  - has an obvious and material negative impact on the appearance of the HOME or COMMON ELEMENTS; or
  - jeopardizes the life or safety of the occupants; or
  - results in the inability of the HOME or the applicable COMMON ELEMENTS to provide the functions that can reasonably be expected in such a HOME or COMMON ELEMENT.
3. Consideration as to whether a condition is the result of normal wear and tear (conditions that are normal wear and tear, or are caused by normal wear and tear are not CONSTRUCTION DEFECTS);
4. Consideration as to whether the condition was caused by, or in any way resulted from, the failure of the HOMEOWNER or HOMEOWNERS ASSOCIATION to perform normal or routine maintenance (any condition that is determined to be a HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance issue, or any condition that results from improper or inadequate HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance, is not a CONSTRUCTION DEFECT);
5. Consideration as to whether the condition was caused by the HOMEOWNER or HOMEOWNERS ASSOCIATION or their representatives, other than US, after the HOMEOWNER took possession of the HOME or the COMMON ELEMENTS (WE and YOU conducted a walk through inspection just prior to closing on the HOME. Damage that was caused by YOU or YOUR representatives is not a CONSTRUCTION DEFECT, for example, a large, visible scratch on marble tile in the entry foyer that was not noted in the walk through inspection, but was reported after furniture was moved into the HOME, will not be considered a CONSTRUCTION DEFECT);
6. Recognition that any condition resulting directly or indirectly from or worsened by changes, additions, alterations or other actions or omissions by the HOMEOWNER or HOMEOWNERS ASSOCIATION or their agents, other than US, will not be considered a CONSTRUCTION DEFECT (this includes changes to the topography, drainage or grade of the property);
7. Any Exclusions contained in this LIMITED WARRANTY.

## IV. Homeowner Maintenance Obligations

Maintenance of the **HOME** and the **COMMON ELEMENTS** is **YOUR** responsibility. All homes and common elements require periodic maintenance to prevent premature deterioration, water intrusion and to ensure adequate performance of the **SYSTEMS**. **WE** will make a "Homeowner Maintenance Manual" or similar publication available to **YOU** upon request. Whether from this document or others that are readily available to **YOU**, **YOU** must understand and perform the maintenance that the **HOME** and **COMMON ELEMENTS** require. As stated in other sections of this **LIMITED WARRANTY**, **WE** are not responsible for **HOME** or **COMMON ELEMENTS** maintenance issues or for damage that results from **YOUR** failure to maintain the **HOME** or the **COMMON ELEMENTS**.

## V. Coverage Limitations

When **WE** or a third party designated by **US** or acting on **OUR** behalf, repair or replace a **CONSTRUCTION DEFECT** the repair or replacement will include the repair or replacement of only those surfaces, finishes and coverings that were damaged by the **CONSTRUCTION DEFECT** that were part of the **HOME** or the **COMMON ELEMENTS** when title was first transferred by **US**. Surfaces, finishes and coverings that require repair or replacement in order for **US** or a third party designated by **US** to repair or replace **CONSTRUCTION DEFECTS** will be repaired or replaced. The extent of the repair and replacement of these surfaces, finishes or coverings will be to approximately the same condition they were in prior to the **CONSTRUCTION DEFECT**, but not necessarily to a like new condition.

When repairing or replacing surfaces, finishes and coverings, the repair or replacement will attempt to achieve as close a match with the original surrounding areas as is reasonably possible, but an exact match cannot be guaranteed due to such factors as fading, aging and unavailability of the same materials.

In the case where a **CONSTRUCTION DEFECT** exists and the **HOME** is rendered uninhabitable and the **CONSTRUCTION DEFECT** is repaired or replaced, the repair or replacement shall include the reasonable cost of the **HOMEOWNER'S** alternative shelter until the **HOME** is made habitable.

## VI. Exclusions

A. This **LIMITED WARRANTY** does not cover:

1. Any **CONSTRUCTION DEFECTS** or other damages resulting, either directly or indirectly, from the following causes or occurring in the following situations:

- a. Fire;
- b. Lightning;
- c. Explosion;
- d. Riot and Civil Commotion;
- e. Smoke;
- f. Hail;
- g. Aircraft;
- h. Falling Objects;
- i. Vehicles;
- j. Floods;
- k. Earthquake;
- l. Landslide or mudslide originating on property other than the site of the **HOME** or the **COMMON ELEMENTS** or other property developed by the **BUILDER**;
- m. Mine subsidence or sinkholes;

- n. Changes in the underground water table not reasonably foreseeable by the **BUILDER**;
  - o. Volcanic eruption; explosion or effusion;
  - p. Wind including:
    - (i). Gale force winds;
    - (ii). Hurricanes;
    - (iii). Tropical storms;
    - (iv). Tornadoes;
  - q. Insects, animals or vermin;
  - r. Changes of the grading of the ground by anyone other than **US** or **OUR** agents, or subcontractors which results in surface drainage towards the **HOME** or other improper drainage or permits water to pond or become trapped in localized areas against the foundation or otherwise;
  - s. Changes, additions, or alterations made to the **HOME** or the **COMMON ELEMENTS** by anyone after the **WARRANTY PERIOD** begins, except those made or authorized by **US**;
  - t. Any defect in material or workmanship supplied by anyone other than **US** or **OUR** agents, or subcontractors;
  - u. Improper maintenance, negligence or improper use of the **HOME** or the **COMMON ELEMENTS** by **YOU** or anyone other than **US** that results in rot, dry rot, moisture, rust, mildew or any other damage;
  - v. Dampness or condensation due to **YOUR** failure to maintain adequate ventilation;
  - w. Damage resulting from the weight and/or performance of any type of waterbed or other furnishings which exceeds the load-bearing design of the **HOME** or the **COMMON ELEMENTS**;
  - x. Normal wear and tear or normal deterioration of materials;
  - v. Economic damages due to the **HOME'S** or the **COMMON ELEMENTS'** failure to meet consumer expectations.
2. Any costs arising from, or any **CONSTRUCTION DEFECT** resulting from the actual, alleged or threatened discharge, dispersal, release or escape of **POLLUTANTS**. **WE** will not cover costs or expenses arising from the uninhabitability of the **HOME** or the **COMMON ELEMENTS** or health risk due to the proximity of **POLLUTANTS**. **WE** will not cover costs, or expenses resulting from the direction of any governmental entity to test, clean-up, remove, treat, contain or monitor **POLLUTANTS**;
  3. Any costs arising from, or any **CONSTRUCTION DEFECT** resulting from the effects of electromagnetic fields (**EMF's**) or radiation;
  4. Any damage to personal property that does not result from a **CONSTRUCTION DEFECT**;
  5. Any "**CONSEQUENTIAL OR INCIDENTAL DAMAGES**";
  6. Any damage to **CONSUMER PRODUCTS**;
  7. Any **CONSTRUCTION DEFECT** as to which **YOU** have not taken timely and reasonable steps to protect and minimize damage after **WE** or **OUR** authorized representative have provided **YOU** with authorization to prevent further damage;
  8. Any damage to the extent it is incurred after or as a result of **YOUR** failure to notify **US** in a reasonably timely manner after **YOU** have become aware or should have become aware of the **CONSTRUCTION DEFECT** or condition causing such damage;
  9. Any costs or obligations paid or incurred by **YOU** in violation of Section VII. C. below;
  10. Any non-conformity with local building codes, regulations or requirements that has not resulted in a **CONSTRUCTION DEFECT**. While **WE** acknowledge **OUR** responsibility to build in accordance with applicable building codes, this **LIMITED WARRANTY** does not cover building code violations in the absence of a **CONSTRUCTION DEFECT**;

11. Any deviation from plans and specifications that has not resulted in a **CONSTRUCTION DEFECT**.
- B. OUR LIMITED WARRANTY** does not cover any **CONSTRUCTION DEFECT** which would not have occurred in the absence of one or more of the excluded events or conditions listed in Exclusions, Section VI. A.1 a. – A.1.q., A.2. or A.3. above, regardless of:
1. the cause of the excluded event or condition; or
  2. other causes of the loss or damage; or
  3. whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage.

## **VII. Procedure to Request US To Perform Under This LIMITED WARRANTY**

If **YOU** become aware of a condition that **YOU** believe is a **CONSTRUCTION DEFECT** under this **LIMITED WARRANTY**, **YOU** have the following responsibilities:

### **A. Notification**

**YOU** must notify **US** in writing as soon as it is reasonably possible after **YOU** have become aware or should have become aware of a **CONSTRUCTION DEFECT**, but in no event may **YOUR** written notice of a **CONSTRUCTION DEFECT** or **YOUR** written request for warranty performance be postmarked or received by **US** later than thirty (30) days after this **LIMITED WARRANTY** has expired.

If the written notice is postmarked or received by **US** more than thirty (30) days after the expiration of this **LIMITED WARRANTY**, **WE** shall have no obligation to remedy the **CONSTRUCTION DEFECT**. In order to establish a record of timely notification, **WE** recommend that written notice should always be sent by Certified Mail, return receipt requested.

### **B. Cooperate With US**

**YOU** must give **US** and any third parties acting on **OUR** behalf reasonable help in inspecting, investigating, testing (including destructive testing), monitoring, repairing, replacing or otherwise correcting an alleged **CONSTRUCTION DEFECT**. Help includes, but is not limited to, granting reasonable access to the **HOME** or **COMMON ELEMENTS** for the forgoing purposes. If **YOU** fail to cooperate or provide such reasonable access to the **HOME** or **COMMON ELEMENTS**, **WE** will have no obligation to do any of the foregoing.

### **C. Do Not Make Voluntary Payments**

**YOU** agree not to make any voluntary payments or assume any obligations or incur any expenses for the remedy of a condition **YOU** believe is a **CONSTRUCTION DEFECT** without prior written approval from **US**, or other parties authorized to act on **OUR** behalf. **WE** will not reimburse **YOU** for costs incurred where **YOU** did not obtain prior written approval.

However, **YOU** may incur reasonable expenses in making repairs in an **EMERGENCY CONDITION** without prior written approval, provided the repairs are solely for the protection of the **HOME** or **COMMON ELEMENTS** from further damage or to prevent an unsafe living condition and provided **YOU** notify **US** as soon as is reasonably possible. To obtain reimbursement for repairs made during an **EMERGENCY CONDITION**, **YOU** must provide **US** with an accurate written record of the repair costs.

#### **D. Sign A Release**

When **WE** or a third party designated by **US** or acting on **OUR** behalf have completed repairing, replacing or paying **YOU** as to any **CONSTRUCTION DEFECTS** or other related damage to the **HOME** or the **COMMON ELEMENTS** covered by this **LIMITED WARRANTY**, **YOU** must sign a full release of **OUR** obligation for the **CONSTRUCTION DEFECTS**. The release shall be applicable to the **CONSTRUCTION DEFECTS** and shall not prevent **YOU** from notifying **US** should **YOU** become aware of a subsequent **CONSTRUCTION DEFECT**.

#### **E. If YOU Disagree With US**

If **YOU** believe **WE** have not responded to **YOUR** request for warranty performance to **YOUR** satisfaction or in a manner that **YOU** believe this **LIMITED WARRANTY** requires, **YOU** may provide written notice to **PWC** requesting Mediation. Upon **PWC's** receipt of written notice from **YOU**, **PWC** may review and mediate **YOUR** request by communicating with **YOU**, **US**, and any other individuals or entities that **PWC** believes may possess relevant information. If after forty-five (45) days, **PWC** is unable to successfully mediate **YOUR** request for warranty performance, or at any earlier time when **PWC** determines that **YOU** and **WE** are at an impasse, **PWC** will notify **YOU** that **YOUR** request for warranty performance remains unresolved and that **YOU** may elect to initiate Binding Arbitration. Binding Arbitration as described in the following section is the sole remedy for the resolution of disputes between **YOU** and **US** as set forth in the following section.

### **VIII. Binding Arbitration Procedure**

Any disputes between **YOU** and **US**, or parties acting on **OUR** behalf, including **PWC**, related to or arising from this **LIMITED WARRANTY**, the design or construction of the **HOME** or the **COMMON ELEMENTS** or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS** will be resolved by binding arbitration. Binding arbitration shall be the sole remedy for resolving any and all disputes between **YOU** and **US**, or **OUR** representatives. Disputes subject to binding arbitration include, but are not limited to:

- A. Any disagreement that a condition in the **HOME** or the **COMMON ELEMENTS** is a **CONSTRUCTION DEFECT** and is therefore covered by this **LIMITED WARRANTY**;
- B. Any disagreement as to whether a **CONSTRUCTION DEFECT** has been corrected in compliance with this **LIMITED WARRANTY**;
- C. Any alleged breach of this **LIMITED WARRANTY**;
- D. Any alleged violation of consumer protection, unfair trade practice, or any other statute;
- E. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and any other claims arising in equity or from common law;
- F. Any dispute concerning the issues that should be submitted to binding arbitration;
- G. Any dispute concerning the timeliness of **OUR** performance and/or **YOUR** notifications under this **LIMITED WARRANTY**;
- H. Any dispute as to the payment or reimbursement of the arbitration filing fee;
- I. Any dispute as to whether this **LIMITED WARRANTY**, or any provision hereof, including, but not limited to any waiver hereunder, is unenforceable;
- J. Any other claim arising out of or relating to the sale, design or construction of **YOUR HOME** or the **COMMON ELEMENTS**, including, but not limited to any claim arising out of, relating to or based

on any implied warranty or claim for negligence or strict liability not effectively waived by this **LIMITED WARRANTY**.

The arbitration shall be conducted by Construction Arbitration Services, Inc., or such other reputable arbitration service that **PWC** shall select, at its sole discretion, at the time the request for arbitration is submitted. The rules and procedures of the designated arbitration organization, that are in effect at the time the request for arbitration is submitted, will be followed. A copy of the applicable rules and procedures will be delivered to **YOU** upon request.

This arbitration agreement shall be governed by the United States Arbitration Act (9 U.S.C. §§ 1 – 16) to the exclusion of any inconsistent state law, regulation or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

Each party shall bear its own attorneys fees and costs (including expert costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between **YOU** and **US**. This filing fee shall be no more than the amount charged by the arbitration service to **PWC** for each arbitration. Contact **PWC** to determine the arbitration filing fee in effect at the time an arbitration is being requested. The arbitrator shall, as part of any decision, award to the party prevailing at the arbitration any applicable filing fees or other arbitration fees paid by that party.

The process for **YOU** to initiate arbitration is described below.

**Step 1** **YOU complete a Binding Arbitration Request Form and mail it to PWC along with the appropriate arbitration filing fee.** A Binding Arbitration Request Form is attached to this **LIMITED WARRANTY**. **YOUR** Binding Arbitration Request Form must be received no later than ninety (90) days after this **LIMITED WARRANTY** expires. **YOU** must still notify **US** of an alleged **CONSTRUCTION DEFECT** as soon as it is reasonably possible after **YOU** have become aware or should have become aware of the **CONSTRUCTION DEFECT**, but in no event later than thirty (30) days after expiration of this **LIMITED WARRANTY**. Please Note that while **YOU** have thirty (30) days after this **LIMITED WARRANTY** expires to notify **US** and ninety (90) days after it expires to file for arbitration, this time period does not extend the **WARRANTY PERIOD** for **CONSTRUCTION DEFECTS**. Additionally, no investigation, inspection, testing, repair, replacement, or payment, nor any promise of same by **US** under this **LIMITED WARRANTY**, nor any dispute resolution efforts, shall extend the term of this **LIMITED WARRANTY** or extend or toll any statutes of limitations or any of **YOUR** rights or remedies.

**Step 2** **PWC Will Arrange the Arbitration Proceeding.** The arbitrator or arbitration organization will notify **YOU** of the time, date and location of the arbitration hearing. Most often the hearing will be conducted at the **HOME** or the **COMMON ELEMENTS** or some other location that is agreeable to all the parties to the dispute. In scheduling the hearing the arbitrator will set a time and date that is reasonably convenient to all the parties.

**Step 3** **The Arbitration Hearing.** The parties at the arbitration hearing will include the arbitrator, **YOU**, **US** and/or a third party designated by **US** or acting on **OUR** behalf. Any party to the proceeding may be represented at the hearing. All persons who are parties to the arbitration, as well as representatives and witnesses, are entitled to attend hearings.

After evidence is presented by **YOU**, **US** or **OUR** representatives, a decision will be rendered by the arbitrator. The decision is final and binding on **YOU** and **US**. The arbitrator first will determine whether any claimed or alleged **CONSTRUCTION DEFECT** exists and whether it is **OUR** responsibility. Second, if the arbitrator finds **US** responsible for a **CONSTRUCTION DEFECT**, the arbitrator will determine the scope of any repair or replacement, **OUR** cost of any such repair or replacement, and the diminution in fair market value, if any, caused by such **CONSTRUCTION DEFECT**. Based upon the arbitrator's decision, **WE** shall choose whether **WE** shall (1) repair, replace the **CONSTRUCTION DEFECT**, (2) pay to **YOU** the actual amount it would cost **US** to repair or replace the **CONSTRUCTION DEFECT** or (3) **PAY** to **YOU** an amount equal to the diminution in fair market value caused by

the **CONSTRUCTION DEFECT**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** authorized representative's sole option. In addition, the arbitrator shall render a decision resolving any other disputed matters or issues related to or arising from this **LIMITED WARRANTY**, the design or construction of the **HOME** or the **COMMON ELEMENTS** or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS**.

**Step 4** **OUR Arbitration Performance Obligations**. **WE** will comply with the arbitrator's decision no later than 60 days from the date of the award or other such date as may be specified or allowed in the decision. However, delays caused by circumstances beyond **OUR** or **OUR** representative's control shall be excused.

**Step 5**. **If YOU believe WE Have Failed To Comply With The Award**. **YOU** should contact **PWC** at its mailing address specified in this **LIMITED WARRANTY** if **YOU** believe **WE** have not complied with the arbitrator's award. **PWC** will mediate this dispute and if it cannot be resolved, will advise **YOU** that a compliance inspection arbitration is available to determine whether **WE** have performed adequately under the original arbitration award. **PWC** will communicate these findings to both **US** and **YOU**. If it is determined that **WE** have not properly performed, **WE** will be obligated to immediately comply.

**PWC's** sole responsibility is to administer this **LIMITED WARRANTY** on **OUR** behalf and as such **PWC** assumes no other liabilities in connection with this **LIMITED WARRANTY**. Under no condition or circumstance is **PWC** responsible for fulfilling any of **OUR** obligations under this **LIMITED WARRANTY**.

## **IX. General Conditions**

### **A. Separation of This LIMITED WARRANTY From The Contract Of Sale**

This **LIMITED WARRANTY** is separate and independent of the contract between **YOU** and **US** for the construction and/or sale of the **HOME** or transfer of the **COMMON ELEMENTS**. The provisions of this **LIMITED WARRANTY** shall in no way be restricted or expanded by anything contained in the construction and/or sales contract or other documents between **YOU** and **US**.

### **B. Transfer to Subsequent HOMEOWNERS**

This **LIMITED WARRANTY** will transfer to new owners of the **HOME** for the remainder of the **WARRANTY PERIOD**. **YOU** agree to provide this **LIMITED WARRANTY** to any subsequent purchaser of the **HOME** as a part of the contract of sale of the **HOME**. **OUR** duties under this **LIMITED WARRANTY** to the new **HOMEOWNER** will not exceed the limit of liability then remaining, if any.

### **C. Transfer of Manufacturer's Warranties**

**WE** assign to **YOU** all the manufacturer's warranties on all appliances, fixtures and items of equipment that **WE** installed in the **HOME**. Should an appliance or item of equipment malfunction **YOU** must follow the procedures set forth in that manufacturer's warranty to correct the problem. **OUR** obligation under this **LIMITED WARRANTY** is limited to the workmanlike installation of such appliances and equipment. **WE** have no obligation for appliances and equipment defined as **CONSUMER PRODUCTS**.

### **D. Recovery Rights**

If **WE** or a third party designated by **US** or acting on **OUR** behalf repairs, replaces or pays **YOU** as to a **CONSTRUCTION DEFECT**, or other related damage to the **HOME** or the **COMMON ELEMENTS** covered by this **LIMITED WARRANTY**, **WE** are entitled, to the extent of **OUR** payment, to take over **YOUR** related rights of recovery from other people and organizations, including but not limited to, other warranties and insurance. **YOU** have an obligation not to make it harder for **US** to enforce these rights. **YOU** agree to sign any papers, deliver them to **US**, and do anything else that is necessary to help **US** exercise **OUR** rights.

## E. General Provisions

1. If any provision of this **LIMITED WARRANTY** is determined to be unenforceable, such a determination will not affect the remaining provisions. If this **LIMITED WARRANTY** or any provision herein is determined to be unenforceable as to a **HOMEOWNERS ASSOCIATION** or a specific **HOMEOWNER**, such a determination will not affect the enforceability of this **LIMITED WARRANTY** or such provision as to any other **HOMEOWNERS ASSOCIATION** or any other **HOMEOWNER**. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this **LIMITED WARRANTY**.
2. This **LIMITED WARRANTY** and the binding arbitration process are binding on **YOU** and **US**. It is also binding on **YOUR** and **OUR** heirs, executors, administrators, successors, and assigns, subject to paragraph B of the **General Conditions**.
3. As may be appropriate, the use of the plural in this **LIMITED WARRANTY** includes the singular, and the use of one gender includes all genders.

## X. Definitions

**BUILDER** means the individual, partnership, corporation or other entity which participates in the Warranty Program administered by the Professional Warranty Service Corporation and provides **YOU** with this **LIMITED WARRANTY**. Throughout this document the **BUILDER** is also referred to as "**WE**", "**US**" and "**OUR**".

**COMMON ELEMENTS** means the property as specified in the recorded Covenants, Conditions and Restrictions as common area and any other property as to which the **HOMEOWNERS ASSOCIATION** has standing under the law to make a claim. This may include, but is not limited to, streets, slopes, the structure or components of enclosure or other parts of the **HOME**, corridors, lobbies, vertical transportation elements, rooms, balconies, clubhouses or other spaces that are for the common use of the residents of the development in which the **HOME** is located. **SYSTEMS** serving two or more **HOMES**, and the outbuildings that contain parts of such **SYSTEMS** are also included in this definition.

**CONSEQUENTIAL OR INCIDENTAL DAMAGES** means any loss or injury other than:

- A. **OUR** cost to correct a **CONSTRUCTION DEFECT** including the correction of those surfaces, finishes and coverings damaged by the **CONSTRUCTION DEFECT**;
- B. **OUR** cost of repair or replacement of furniture, carpet or personal property damaged by the **CONSTRUCTION DEFECT**. Should replacement be necessary, **OUR** obligation is limited to replacement with items providing the same function and quality and that are readily available at the time the item is being replaced.
- C. **OUR** costs of removal or replacement in order to repair or replace a **CONSTRUCTION DEFECT**;
- D. The reasonable cost of the **HOMEOWNER'S** alternative shelter where the **HOME** is uninhabitable due to a **CONSTRUCTION DEFECT** or where the **HOME** is rendered uninhabitable by the repair of the **CONSTRUCTION DEFECT**.

Diminished fair market value is considered "**CONSEQUENTIAL OR INCIDENTAL DAMAGE**" and is excluded under this **LIMITED WARRANTY** unless **WE** elect this remedy in lieu of the repair, replacement or other payment as to a **CONSTRUCTION DEFECT**.

**CONSTRUCTION DEFECT(S)** means a flaw in the materials or workmanship used in constructing the **HOME** that:

- materially affects the structural integrity of the **HOME** or the **COMMON ELEMENTS**; or
- has an obvious and material negative impact on the appearance of the **HOME** or the **COMMON ELEMENTS**;

or

- jeopardizes the life or safety of the occupants; or
- results in the inability of the **HOME** or the applicable **COMMON ELEMENTS** to provide the functions that can reasonably be expected in a residential dwelling.

**WE** and any arbitrator assigned to rule relative to a **CONSTRUCTION DEFECT** will consider both this definition and

Section III – A. (Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined) in determining the existence of a CONSTRUCTION DEFECT. A flaw is a CONSTRUCTION DEFECT if either WE or an arbitrator conducting a binding arbitration hearing declares the flaw to be a CONSTRUCTION DEFECT. OUR obvious and visible failure to complete the construction of the HOME or COMMON ELEMENTS, or any portion of the HOME or COMMON ELEMENTS, is not a CONSTRUCTION DEFECT.

**CONSUMER PRODUCT** means any item of equipment, appliance or other item defined as a CONSUMER PRODUCT in the Magnuson-Moss Warranty Act (15 U.S.C. §. 2301, et seq.) Examples of Consumer Products include, but are not limited to dishwasher, garbage disposal, gas or electric cook-top, range, range hood, refrigerator or refrigerator/freezer combination, gas oven, electric oven, microwave oven, trash compactor, garage door opener, clothes washer and dryer, hot water heater and thermostat.

**EMERGENCY CONDITION** means an event or situation that creates the imminent threat of damage to the HOME or COMMON ELEMENTS, or results in an unsafe living condition due to a CONSTRUCTION DEFECT that YOU (or as applicable, the HOMEOWNERS ASSOCIATION) become aware of at a point in time other than OUR normal business hours and YOU were unable to obtain OUR or OUR authorized representative's prior written approval to initiate repairs to stabilize the condition or prevent further damage.

**HOME** means a single family residence either attached or detached covered by this LIMITED WARRANTY or a condominium or cooperative unit in a multi-unit residential structure/building covered by this LIMITED WARRANTY.

**HOME BUILDER'S LIMITED WARRANTY** means only this express warranty document provided to YOU by US.

**HOMEOWNER** means the first person(s) to whom a HOME (or a unit in a multi-unit residential structure/building) is sold, or for whom such HOME is constructed, for occupancy by such person or such person's family, and such person's(s') successors in title to the HOME, or mortgagees in possession and any representative of such person(s) who has standing to make a claim on that person(s) behalf, including any class representative or HOMEOWNERS ASSOCIATION making a claim in a representative capacity.

**HOMEOWNERS ASSOCIATION** means a profit or nonprofit corporation, unincorporated association, organization, partnership, assessment district, limited liability company, limited liability partnership or other entity of any kind that owns, manages, maintains, repairs, administers, or is otherwise responsible for and has standing to make a claim as to any part of the COMMON ELEMENTS.

**POLLUTANTS** means all solid, liquid, or gaseous irritants or contaminants. The term includes, but is not limited to, petroleum products, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, radon gas, and waste materials, including materials to be recycled.

**PWC** means Professional Warranty Service Corporation which administers the warranty program in which WE participate. As such, PWC assumes no other liabilities in connection with this LIMITED WARRANTY. The PWC mailing address is:

Professional Warranty Service Corporation  
P.O. Box 800      Annandale, VA 22003-0800

**SYSTEMS** means the following:

- (a) Plumbing system - gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; and water, gas and sewer services piping and their extensions to the tie-in of a public utility connection or on-site well and sewage disposal system.
- (b) Electrical system - all wiring, electrical boxes, switches, outlets, and connections up to the public utility connection.
- (c) Heating, Cooling, and Ventilation system - all duct-work; steam, water and refrigerant lines; and registers, connectors, radiation elements and dampers.

**WARRANTY PERIOD** shall commence on the date the title to the HOME is transferred to the first HOMEOWNER. Notwithstanding anything to the contrary set forth in this LIMITED WARRANTY, the WARRANTY PERIOD for the COMMON ELEMENTS of an individual structure/building commences on the date the title for the first HOME in the structure/building is transferred to the first HOMEOWNER or as concerns clubhouses or outbuildings or other COMMON ELEMENTS not part of the HOME the date the title to these structures is transferred to the

**HOMEOWNERS ASSOCIATION.** The dates the **WARRANTY PERIOD** begins and ends are indicated on the Limited Warranty Validation Form which is attached to and made part of this **LIMITED WARRANTY**.

**WE, US, OUR** means the **BUILDER**.

**YOU, YOUR** means the **HOMEOWNER** and the **HOMEOWNERS ASSOCIATION**.

**BINDING ARBITRATION REQUEST FORM**

Dear Homeowner (Homeowners Association):

Prior to requesting binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY, you should have sent your builder a clear and specific written request outlining the situation or condition that you are herein submitting to binding arbitration. If you have taken this step and believe the builder has not properly responded in accordance with the HOME BUILDER'S LIMITED WARRANTY, fill out this form and send it to PWC along with the arbitration filing fee. Be sure to attach a copy of all pertinent correspondence between you and your builder relative to the issue.

The information you need to fill out this form can be found on the Limited Warranty Validation Form. However, if you do not know the answers to any questions, write "Don't Know." Please do not leave any item blank.

Your name: \_\_\_\_\_

Address: \_\_\_\_\_

CITY

STATE

ZIP

Home Phone:(\_\_\_\_\_) \_\_\_\_\_

Business Phone:(\_\_\_\_\_) \_\_\_\_\_

LIMITED WARRANTY #: \_\_\_\_\_

Date Warranty Period begins: \_\_\_\_\_

Builder's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Describe the dispute that you wish to submit to binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY. If the dispute is relative to a construction defect please include information on when the construction defect(s) first occurred or when you first noticed the construction defect. (Attach additional sheets, if necessary).

I/we are hereby requesting PWC to initiate a binding arbitration to resolve the dispute described herein above.

Signature

Date

Signature

Date

INSTRUCTIONS: Photo-copy this form and complete the fields.

Obtain the required arbitration filing fee by contacting PWC at 1-800/850-2799.

Send this Binding Arbitration Request Form and the arbitration filing fee to:

**PROFESSIONAL WARRANTY SERVICE CORPORATION**

**P. O. BOX 800**

**ANNANDALE, VIRGINIA 22003-0800**

# SUBSEQUENT HOME BUYER ACKNOWLEDGMENT AND TRANSFER

Any coverage remaining under the HOME BUILDER'S LIMITED WARRANTY applicable to the home specified on the Limited Warranty Validation Form is transferred to the subsequent homeowner. Any obligations under the HOME BUILDER'S LIMITED WARRANTY to any subsequent homeowner shall not exceed the limit of liability remaining at the time of transfer, if any.

The undersigned home buyer(s) hereby acknowledge and agree:

I/we acknowledge that I have reviewed, understand and agree to all the terms of the HOME BUILDER'S LIMITED WARRANTY document (PWC Form No. 117)

I/we understand and acknowledge that Professional Warranty Service Corporation ("PWC") is not the warrantor of the HOME BUILDER'S LIMITED WARRANTY.

I/we understand that I/we am responsible for the maintenance of the home including maintenance of the grade of the land surrounding the home, and that the builder shall not be responsible for any defect of damage to the home which is the result of my/our failure to maintain the home.

I/we acknowledge and agree to the Binding Arbitration Procedure contained in the HOME BUILDER'S LIMITED WARRANTY.

Signature(s) of Subsequent Home Buyer(s): \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

Print above name(s): \_\_\_\_\_

Re-issuance of the Limited Warranty Validation Form with the name(s) of the new Home Buyer(s) is not necessary for you to receive the coverage remaining under the HOME BUILDER'S LIMITED WARRANTY. Upon receipt of this signed form, PWC will update its records to reflect the name(s) of the new homeowner(s). If you want PWC to issue another Limited Warranty Validation Form with your name(s) on the form, please check the box below and send a check in the amount of \$20.00 made payable to "PWC" with your submission of this form.

YES, re-issue the Limited Warranty Validation Form in the above name(s)  (check box) Initial \_\_\_\_\_

Address of Home: \_\_\_\_\_

Limited Warranty No.: \_\_\_\_\_

INSTRUCTIONS: Photo-copy this form. Provide information requested, sign, fill in Limited Warranty # in the space provided (this number is provided on the Limited Warranty Validation Form), and provide a telephone number where you can be reached (\_\_\_\_\_) \_\_\_\_\_. If you want the Limited Warranty Validation Form reissued in your name, enclose your check to PWC in the amount of \$20.00 (check box above and initial). To reach PWC by phone, call: 1-800/850-2799.

Mail this form and a photocopy of applicable settlement/closing documents indicating transfer of title, to:

PROFESSIONAL WARRANTY SERVICE CORPORATION P.O. BOX 800 ANNANDALE, VA 22003-0800

HOME BUILDER'S LIMITED WARRANTY  
(Acknowledgement of Receipt and Agreement to Read and Understand)

I/we hereby certify that on, or prior to, the date of this Agreement, I/we have received a copy of the Home Builder's Limited Warranty (PWC Form No. 117 Rev. 05/02) which commences on the date the title for the home is transferred to the first homeowner and expires ten years from the date the title for the home is transferred to the first homeowner. I/we agree that, prior to closing/settlement on the home to which this Agreement relates, I/we will read the Home Builder's Limited Warranty in its entirety and will contact the builder with any questions I/we have about my/our or the builder's duties, rights and obligations under the Home Builder's Limited Warranty or the coverage, limits or exclusions contained therein.

I/we understand that I/we may contact Professional Warranty Service Corporation (PWC), which acts as the warranty administrator, to discuss these issues.

I/we understand that I/we have the right to have the Home Builder's Limited Warranty and any and all other documents related to my/our purchase of the home reviewed by an attorney of my/our choosing at my/our sole expense. This review does not allow the purchaser to alter the terms of the warranty, delay or cancel the closing on the contracted home.

I/we agree that my/our failure to read the Home Builder's Limited Warranty and to obtain any needed assistance in understanding the Home Builder's Limited Warranty document shall not in any way change my/our or the builder's rights, duties or obligations under this Home Builder's Limited Warranty.

Property Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Home Buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Home Buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Home Buyer

\_\_\_\_\_  
Date