

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer KE KAILANI DEVELOPMENT LLC
Business Address 1099 Alakea Street, Ste 1601, Honolulu HI 96813

Project Name (\*): Ke Kailani Phase I
Address: 68-1029, 68-1031, 68-1033, 68-1035 Ke Kailani Drive

Kohala Coast, HI 96743
Registration No. 5583
Effective date: December 4, 2008
Expiration date: January 4, 2010

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.
SUPPLEMENTARY: (pink) This report updates information contained in the:
Final Public Report dated: September 27, 2006

(\* ) 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.

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

[ ] Required and attached to this report [x] Not Required - Disclosures covered in this report.

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

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

[ ] No prior reports have been issued by the developer.

[x] Changes made are as follows: All changes are reflected in this Report.

**A. Section I, page 5.**

- The business phone number of Developer is (808) 521-6200.
- The sole member of Ke Kailani Development LLC is Michael Fuchs of New York, New York, as set forth in Schedule A, page 5a.
- The current Condominium Managing Agent is Certified Management, Inc., 75-169 Hualalai Road, Kailua-Kona, Hawaii 96740; (808) 329-6063.
- The current attorney for Developer is Edward E. Case, Of Counsel, Bays Deaver Lung Rose & Holma, 1099 Alakea Street, 16<sup>th</sup> Floor, Honolulu, Hawaii 96813; (808) 523-9000.

**B. Section III.E, page 14.** The title report issued by Title Guaranty of Hawaii Incorporated is dated July 22, 2008.

**C. Section V, page 19.** This Public Report is part of Registration No. 5583 filed with the Real Estate Commission on September 27, 2006.

**D. Exhibit A, pages 26 and 29.** Pages 26 and 29 of Exhibit A have been revised to update the name of the firm Bays Deaver Lung Rose & Holma and insert the Notary Certification pursuant to Hawaii Administrative Rules Section 5-11-8.

**E. Exhibit H Part B, page 37.**

- The Mortgage, Security Agreement and Financing Statement made by Ke Kailani Development LLC dated July 31, 2006 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-144291 in the amount of \$28,372,500.00 has been amended by instrument dated Effective as of February 15, 2007, recorded in said Bureau as Document No. 2007-031133, which decreased the principal sum to \$25,602,500.00 and made an additional loan in the principal amount of \$26,490,000.00.
- The Financing Statement made by Ke Kailani Development LLC, as Debtor, and Bank of Hawaii, as Agent, as secured party was recorded on August 7, 2006, in the Bureau as Document No. 2006-144294.

**F. Exhibit I, pages 38-39.** Initial Maintenance Fees and Maintenance Fee Disbursements have been updated as set forth in Exhibit I.

G. First Amendment to Declaration of Condominium Property Regime of Ke Kailani Condominium Project dated August 31, 2006, and recorded in the Bureau on September 18, 2006, as Document No. 2006-170717.

H. Second Amendment to Declaration of Condominium Property Regime and First Amendment To and Restatement of Condominium Map No. 4278 to Create and Include Phase II in the Ke Kailani Condominium Project dated November 9, 2006, and recorded in the Bureau on November 9, 2006, as Document No. 2006-205607.

I. Third Amendment to Declaration of Condominium Property Regime and Second Amendment To and Restatement of Condominium Map No. 4278 to Create and Include Phase III in the Ke Kailani Condominium Project, dated November 9, 2006, and recorded in the Bureau on November 9, 2006 as Document No. 2006-205608.

J. Fourth Amendment to the Declaration of Condominium Property Regime of Ke Kailani, dated September 8, 2008, recorded in the Bureau on September 9, 2008 as Document No. 2008-141706.

K. First Amendment to By-Laws of Association of Villa Owners of Ke Kailani With Respect To Part VI of Chapter 514B, HRS, dated September 19, 2006, and recorded in the Bureau on September 19, 2006 as Document No. 2006-171708.

L. Second Amendment to Bylaws of the Association of Villa Owners of Ke Kailani Condominium dated September 8, 2008, recorded in the Bureau on September 9, 2008 as Document No. 2008-141705.

M. Supplement to the Condominium Documents for the Ke Kailani Condominium with Respect to Part VI of Chapter 514B, HRS, dated February 22, 2007, and recorded in the Bureau on February 23, 2007 as Document No. 2007-034293.

**N. Mauna Lani Resort and Ke Kailani Community Associations, Mauna Lani Resort and Ke Kailani Community CC&Rs, and Association Dues.** The project is within the Mauna Lani Resort and Ke Kailani Community developments and is also subject to Covenants, Conditions and Restrictions ("CC&Rs") for each of these developments. Pursuant to these CC&Rs, each Villa Owner will also be a member of and must pay monthly dues to each of the Mauna Lani Resort Association and the Ke Kailani Community Association. The monthly dues are now estimated at \$109.26 and \$1,146.53, respectively. The Mauna Lani Resort Association monthly dues of \$109.26 have been incorporated into the Ke Kailani Community Association monthly dues of \$1,146.53 and paid by Villa Owners as part of the Ke Kailani Community Association monthly dues. These estimates are, of course, not guaranteed and are subject to change and increase over time.

The Developer's Final Report expired on October 27, 2007. Pursuant to Section 16-107-19, Hawaii Administrative Rules, sales contracts executed during the period that the Public Report was not in effect may be rescinded at the option of the Purchaser and all monies refunded to the Purchaser. The Purchaser's right to rescind under this rule shall be void thirty (30) days after receipt of written notification of these rights from the Developer or his real estate agent.

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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: KE KAILANI DEVELOPMENT LLC Phone: (808) 521-6200  
 Name\* 1099 Alakea Street, Suite 1601  
 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):  
See Schedule A

Real Estate Broker\*: Ke Kailani Realty LLC Phone: (808) 885-6044  
 Name 65-1227 A Opelo Road, Ste 1  
 Business Address Kamuela, Hawaii 96743

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 887-6027  
 Name 65-1230 Mamalahoa Hwy, Ste F101  
 Business Address Kamuela, Hawaii 96743

General Contractor\*: Tinguely Development, Inc. Phone: (808) 329-8775  
 Name P.O. Box 9013  
 Business Address Kailua-Kona, Hawaii 96740

Condominium Managing Agent\*: Certified Management, Inc. Phone: (808) 329-6063  
 Name 75-169 Hualalai Road  
 Business Address Kailua-Kona, Hawaii 96740

Attorney for Developer: Edward E. Case, Esq., Of Counsel Phone: (808) 523-9000  
Bays Deaver Lung Rose & Holma  
 Name 1099 Alakea Street, 16th Floor  
 Business Address Honolulu, Hawaii 96813

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

## SCHEDULE A

Ke Kailani Development LLC is a member-managed LLC. William L. Beaton is the Chief Executive Officer of Ke Kailani Development LLC. The sole member of Ke Kailani Development LLC is Michael Fuchs of New York, New York.

**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. 2006-119582  
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]: **See Schedule B**

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

The Condominium Map for this condominium project is:

Proposed  
 Recorded - Bureau of Conveyances Condo Map No. 4278  
 Filed - Land Court Condo Map No. \_\_\_\_\_

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

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. 2006-119583  
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]: **First Amendment to Bylaws of Association of Villa Owners of Ke Kailani With Respect to Part VI of Chapter 514B, HRS, recorded on September 19, 2006 at the Bureau of Conveyances as Document No. 2006-171708,**

**Second Amendment to Bylaws of the Association of Villa Owners of Ke Kailani Condominium dated September 8, 2008, recorded in the Bureau on September 9, 2008 as Document No. 2008-141705.**

## SCHEDULE B

### **A. Amendments to Declaration of Condominium Property Regime:**

First Amendment to Declaration of Condominium Property Regime of Ke Kailani Condominium Project dated August 31, 2006, and recorded in the Bureau on September 18, 2006, as Document No. 2006-170717;

Second Amendment to Declaration of Condominium Property Regime and First Amendment To and Restatement of Condominium Map No. 4278 to Create and Include Phase II in the Ke Kailani Condominium Project dated November 9, 2006, and recorded in the Bureau on November 9, 2006, as Document No. 2006-205607;

Third Amendment to Declaration of Condominium Property Regime and Second Amendment To and Restatement of Condominium Map No. 4278 to Create and Include Phase III in the Ke Kailani Condominium Project, dated November 9, 2006, and recorded in the Bureau on November 9, 2006 as Document No. 2006-205608;

Fourth Amendment to the Declaration of Condominium Property Regime of Ke Kailani, dated September 8, 2008, recorded in the Bureau on September 9, 2008 as Document No. 2008-141706.

### **B. Restatement to Condominium Map:**

Second Amendment to Declaration of Condominium Property Regime and First Amendment To and Restatement of Condominium Map No. 4278 to Create and Include Phase II in the Ke Kailani Condominium Project dated November 9, 2006, and recorded in the Bureau on November 9, 2006, as Document No. 2006-205607;

Third Amendment to Declaration of Condominium Property Regime and Second Amendment To and Restatement of Condominium Map No. 4278 to Create and Include Phase III in the Ke Kailani Condominium Project, dated November 9, 2006, and recorded in the Bureau on November 9, 2006 as Document No. 2006-205608.

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>67%**</u>
House Rules	—	<u>By the Board of Directors of the Association</u>

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

2. **Developer:**

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

\*\* Fourth Amendment to Declaration of Condominium Party Regime of Ke Kailani dated September 8, 2008, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-141706.



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: Lot 1 of the "Mauna Lani Resort South Course Subdivision No. 4" as shown on File Plan No. 2347 filed in the Bureau of Conveyances of the State of Hawaii. Tax Map Key (TMK): (3) 6-8-022-040

Effective date: \_\_\_\_\_  
 Address  TMK is expected to change because property has been subdivided.

Land Area: 8.14  square feet  acre(s) Zoning: Multi-Family Residential RM-3 and RM-4

Fee Owner: KE KAILANI DEVELOPMENT LLC  
Name

Lessor: N/A  
Name  
Business 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: 2 Floors Per Building: 2  
 Exhibit \_\_\_\_\_ contains further explanations.

3. Principal Construction Material:

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

4. Uses Permitted by Zoning:

	No. of <u>Apts.</u>	<u>Use Permitted By Zoning</u>	
<input checked="" type="checkbox"/> Residential	<u>4</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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

5. Special Use Restrictions:

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

Pets: See Exhibit B

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

Other: See Exhibit B

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: \_\_\_\_\_ Stairways: \_\_\_\_\_ Trash Chutes: \_\_\_\_\_

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>(Identify)</u>
<u>A</u>	<u>2</u>	<u>3/3-1/2</u>	<u>3,121</u>	<u>593</u>	<u>Garage</u>
				<u>834</u>	<u>Lanais</u>
				<u>17</u>	<u>Mech Rms</u>
<u>C</u>	<u>2</u>	<u>3/3-1/2</u>	<u>3,121</u>	<u>593</u>	<u>Garage</u>
				<u>834</u>	<u>Lanais</u>
				<u>17</u>	<u>Mech Rms</u>

Total Number of Apartments: 4

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

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

Boundaries of Each Apartment: See Exhibit C

Permitted Alterations to Apartments: See Exhibit D

Apartments Designated for Owner-Occupants Only:

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

7. Parking Stalls:

Total Parking Stalls: 16

	<u>Regular Covered Open</u>	<u>Compact Covered Open</u>	<u>Tandem Covered Open</u>	TOTAL
Assigned (for each unit)	_____	_____	_____	_____
Guest	<u>8</u>	_____	_____	<u>8</u>
Unassigned	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____
Other: <u>Garage</u>	<u>8</u>	_____	_____	<u>8</u>
Total Covered & Open:	<u>16</u>	_____	_____	<u>16</u>

Each apartment will have the exclusive use of at least 2 parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

- Commercial parking garage permitted in condominium project.  
 Exhibit \_\_\_\_\_ 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/Enclosures

Other: Owners of apartments are entitled to use the Oceanfront Grotto, Park, Kipuka Entry, Park and jogging path located outside the boundaries (and therefore the common areas) of the condominium project, but within the Ke Kailani subdivision (the "Subdivision") where the condominium project is located.

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): N/A

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   E  .

as follows:

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

There are no limited common elements in this project.

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

described in Exhibit F.

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 G.

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 H describes the encumbrances against the title contained in the title report dated July 22, 2008 and issued by Title Guaranty of Hawaii Incorporated

Blanket Liens:

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

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

[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>
Mortgages	These liens are superior to the interests of the buyers of apartments, and foreclosure of the lien would foreclose buyer's interest. If a buyer's interest is foreclosed, the buyer's deposit will be returned, less any 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:

Developer will assign all construction, manufacturer and vendor warranties for the buildings and other improvements given by or to the contractor. The nature and extent of such warranties are not yet known.

2. Appliances:

Developer will assign all appliance and vendor warranties for fixtures installed in the apartments. The nature and extent of such warranties are not yet known.

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

Construction will commence in July, 2006 and will be completed in 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):

The project will be developed in phases pursuant to the developer's reserved rights. The first phase will consist of 4 apartments located in Buildings 1 and 2 and covered by this Public Report on Phase I. The present phasing plan is for Phases II and III to consist of 4 apartments. There may be additional Phases, but they have not yet been determined. Each Phase will be covered by a separate Public Report. Upon the addition of each subsequent Phase, the common interest appurtenant to each apartment in Phase I will be revised. There is no guarantee, representation, warranty or other assurance that proposed Phase II, proposed Phase III or any other proposed Phase will be developed, or if and when Phases II and III are developed, that the Project will be as described in this Exhibits B-3, or that proposed Phase II or proposed Phase III or any other proposed Phase will be similar to Phase I or to the Current Phasing Plan or any Subsequent Phasing Plan.



V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

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

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit J contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated February 1, 2005  
Exhibit K contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

B. Buyer's Right to Cancel Sales Contract:

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

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

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

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

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

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

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

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

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

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

- 1. Fourth Amendment to the Mauna Lani Resort Association Declaration of Covenants and Restrictions dated January 8, 1987, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 1432988, and recorded in said Bureau in Liber 20284, Page 384, as amended from time to time ("Mauna Lani CC&Rs").
- 2. Declaration of Protective Covenants, Conditions and Restrictions for Ke Kailani recorded in said Bureau as Document No. 2005-2001116 ("Ke Kailani CC&Rs").

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

Website to access official copy of laws: [www.capitol.hawaii.gov](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. 5583 filed with the Real Estate Commission on September 27, 2006.

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**C. Additional Information Not Covered Above:**

1. Continuing Construction Activity. Construction activity by Developer and/or the owners of lots in the Subdivision may continue after the apartments have been conveyed to buyers, and such activity may result in noise, dust or other annoyances to buyers and may limit buyer's access to portions of the Subdivision.

2. Continuing Sales Activities.

(a) Under the terms of the Declaration, Developer and its representatives, licensees, and invitees have the right and an easement to conduct extensive sales activities on the common elements (including, but not limited to, the limited common elements) and from any apartment owned or leased by Developer. This right reserved by the Developer includes, but it is not limited to, the right to do the following:

(i) to permit purchasers and prospective purchasers and their family members and guests, to come onto the condominium project through the common elements intended for access to and from any nearby roads, streets or highways;

(ii) to permit purchasers and prospective purchasers to park motor vehicles in any unassigned parking stalls;

(iii) to show the condominium project (including, but not limited to, model apartments) to purchasers and prospective purchasers (who will have a right of ingress and egress for these purposes);

(iv) to use apartments owned or leased by Developer as model apartments, sales, management, and/or administrative offices;

(v) subject to the Mauna Lani CC&Rs, to use banners, signs or other extensive sales displays and activities at the condominium project; and

(vi) to engage in activities in connection with the initial sale of any apartment in the condominium project, and any apartment in any new condominium project constructed by Developer on adjacent land and which Developer may merge with the condominium project.

(b) Buyer waives, releases and discharges any rights, claims or actions buyer may have, against Developer and its representatives, licensees, invitees, successors and assigns and arising from or with respect to the exercise of these rights reserved by Developer described in Section 2(a) above.

3. Developer's Easement for Noise, Dust, Etc.

(a) Under the terms of the Declaration, Developer and its representatives, licensees, and invitees have the right and an easement over, under and upon the condominium project and all of its parts, to create and cause noise, dust, soot, smoke, odors, surface water runoff, vibrations, and other nuisances or hazards in connection with the following:

(i) the exercise of the rights and easements reserved to Developer under the Declaration;

(ii) the development, construction and/or sale of any new apartments in the condominium project and/or on an adjacent parcel as provided in the Declaration;

(iii) the right to convert the use of common elements and to designate limited common elements; and

(iv) the exercise of "Developer's Reserved Rights" or any other rights of Developer as described in the Declaration.

(b) Under the Declaration, buyers are deemed to:

(1) understand, acknowledge and accept that these activities may result in noise, dust, soot, smoke, odors, surface water runoff, vibrations and other nuisances and hazards;

(2) consent to such activities;

(3) waive, release and discharge any rights, claims or actions that buyer may have, now or in the future, against Developer and/or its representatives, licensees, invitees, successors and assigns; and

(4) assume the risk of any property damage, personal injury or loss in property value which may arise out of or from these activities.

4. Developer's Easements for Access Under the Declaration. Under the Declaration, Developer and its representatives, licensees, invitees (including, without limitation, any governmental officials that Developer may invite), successors and assigns, have reserved under the Declaration an easement over, under and upon the condominium project, including, without limitation, the common elements, limited common elements, and any apartment, as may be reasonably necessary or convenient to complete any improvements and to correct any defects and other punch list items in the common elements or any apartment or to the exercise of any of the other Developer's Reserved Rights under the Declaration. The easement to complete improvements in the project or correct defects or punch list items ends, as to any particular phase or increment of the condominium project, sixty (60) months after the later to occur of the following:

(a) the recording of the first deed for an apartment in that increment or phase of the condominium project;

or

(b) the "date of completion" (as such quoted term is used in Chapter 507, Part II, Hawaii Revised Statutes) of the apartments to be completed or corrected.

5. Developer's Reserved Right to Utilize Common Elements. Under the Declaration, Developer reserves the right, for itself, its representatives, licensees and invitees, to utilize the common elements for the exercise of any of Developer's Reserved Rights under the Declaration, for access to parking spaces and model apartments within the condominium project, and in order to show the common elements to prospective purchasers.

6. Developer's Reserved Right to Grant Easements Under the Declaration.

(a) Developer reserves the right to grant to any public or governmental authority rights-of-way and other easements which are for the sole benefit of the condominium project, or which do not materially and adversely interfere with the use, nor materially and adversely impair the value, of the condominium project or any apartment, over, across, under and through the common elements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and other public services and utilities, and rights to enter the condominium project for the purpose of installing, repairing, altering and removing such lines and facilities and of trimming any trees in the way thereof.

(b) Developer reserves the right to grant an easement to owners of other lots in the Subdivision to use the roadway within the condominium project for ingress and egress.

7. Golf Course. The condominium project is located in the vicinity of a golf course currently known as the Mauna Lani South Golf Course (the "Golf Course"). Each apartment is subject to an easement permitting the owners and operators of the Golf Course, and persons permitted by such owners and operators to use the Golf Course (collectively, "Golfers"), to conduct golf-related activities, including, without limitation, golf play, golf tournaments, and other events on and in the vicinity of the Golf Course, and in connection therewith to subject each apartment to all nuisances, effects and consequences incidental thereto. The owners and operators of the Golf Course and Golfers shall be permitted to cause golf balls unintentionally to land within the condominium project; and Golfers are permitted at reasonable times and in a reasonable manner to enter the condominium project to seek and retrieve errant golf balls, except that Golfers may only enter walled or fenced areas of the condominium project with the permission of the owner thereof, or if the owner shall not be present, the occupant thereof. Under the Declaration each buyer is deemed to have agreed to the following:

(a) that the location of the buyer's apartment with respect to the Golf Course may result in nuisances, disturbances or hazards to persons and property in the Condominium project, including, without limitation, the buyer's apartment, as a result of the Golf Course, and resort operations thereon, and to have determined that the benefits to the apartment owner outweigh the risks associated therewith;

(b) to assume all risks arising from the proximity of the buyer's apartment to the Golf Course, including, without limitation, the risk of property damage, bodily injury or death arising out of or in connection with the use of golf carts, stray golf balls, or other activities incidental to the Golf Course and resort operations thereon; and

(c) to indemnify and hold harmless Developer and its Affiliates and the owner and operator of the Golf Course, and their respective officers, directors, employees, agents, successors and assigns, from any actions, liabilities, claims, losses, damages, costs and expenses, including, without limitation, attorneys' fees, arising out of any claims made by, through or under buyer in connection with the maintenance, operation and/or use of the Golf Course.

8. Continuing Resort Activities. The condominium project is a part of the Mauna Lani Resort area. Resort-related activities, such as golf tournaments, luaus, concerts and other outdoor music performances or broadcasts, outdoor cocktail parties and other public events, may result in nuisances to persons or property on or about the condominium project.

9. Future Development. Other parts of the Mauna Lani Resort and the Waikoloa Resort adjacent to the condominium project may be developed in the future. As a result, persons and property on or about the condominium project may be exposed to noise, dust, traffic, odors, vibrations and other construction-related nuisances or disturbances.

10. Covenants, Conditions and Restrictions to Which the Project is Subject.

(a) Subdivision. The condominium project is located within the Subdivision. The condominium project and buildings will be subject to the Ke Kailani CC&Rs, which impose restrictions on use and occupancy of the apartments. The Ke Kailani CC&Rs are superior to the Declaration. If there is a conflict between the Ke Kailani CC&Rs and the Declaration, the Ke Kailani CC&Rs will control. Owners of apartments are subject to the following requirements and have the following rights under the Ke Kailani CC&Rs:

(i) All residents of apartments must become members of and are required to pay dues to the Ke Kailani Community Association (the "Ke Kailani Association") which was formed pursuant to the Ke Kailani CC&Rs. Initially, the monthly dues are estimated to be \$1,146.53. The Ke Kailani Association is required to prepare an annual budget covering its estimated common expenses for each year. The budget will include all of the following:

(1) a statement of estimated revenue and expenses on an accrual basis;

(2) the amount of the total cash reserves held by the Association for the purpose of replacement and major repairs of the common areas of the Subdivision, and for contingencies;

(3) an itemized estimate of the remaining life of, and the methods of funding to defray repair or replacement of or additions to, major components of the common areas of the Subdivision for which the Ke Kailani Association is responsible;

(4) a general statement setting forth the procedures used by the Association in the calculation and establishment of reserves to defray the costs of future repair, replacement or additions to the common areas for which the Association is responsible.

(ii) Members of the Association are permitted to use the common areas of the Subdivision, and such common areas are maintained by the Ke Kailani Association at the expense of its members.

(b) Mauna Lani Resort. The condominium project is located within the Mauna Lani Resort. The land within Mauna Lani Resort, including the land upon which the condominium project is located, is subject to the Mauna Lani CC&Rs (which are recorded). The condominium project also is subject to the Mauna Lani CC&Rs, which impose restrictions on use and occupancy of the apartments. The Mauna Lani CC&Rs are superior to the Ke Kailani CC&Rs and the Declaration, and if there is a conflict between the Mauna Lani CC&Rs and the Declaration, the Mauna Lani CC&Rs will control. All buyers of property within Mauna Lani Resort are members of and are required to pay dues to the Mauna Lani Resort Association, which was formed pursuant to the Mauna Lani CC&Rs. Initially the monthly dues are estimated to be \$109.26 per apartment.

11. **Common Interest Set Forth in Title Report.** The title report described in Section 1.12, page 5 above sets forth the common interest for each of twelve (12) Villas. Unless and until Phase II is complete, the common interest for all Villas then in the Condominium shall be as follows:

Apartment	Type	Common Interest
1A	A	25.00%
1C	C	25.00%
2A	A	25.00%
2C	C	25.00%
		100.00%

If and when Phase II is complete, the common interest for all Villas then in the Condominium shall be adjusted as follows, provided that there are no further recorded amendments to the Condominium Declaration affecting the adjustment of the common interests appurtenant to such Villas. Upon the completion of Phase II, the common interest for the Villas in both Phases I and II shall be adjusted accordingly:

Apartment	Type	Common Interest
1A	A	12.5311%
1C	C	12.5311%
2A	A	12.5311%
2C	C	12.5311%
3A	A	12.5311%
3B	B	12.2823%
4A	A	12.5311%
4C	C	12.5311%
		100.00%

Upon the completion of Phase III, the common interest for the Villas in Phases I, II and III shall be adjusted accordingly:

Apartment	Type	Common Interest
1A	A	8.361%
1C	C	8.361%
2A	A	8.361%
2C	C	8.361%
3A	A	8.361%
3B	B	8.195%
4A	A	8.361%
4C	C	8.361%
5A	A	8.361%
5C	C	8.361%
6A	A	8.361%
6B	B	8.195%
		100.00%

CHAPTER 672E, HAWAII REVISED STATUTES, EFFECTIVE JULY 1, 2004, CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED YOUR HOME OR FACILITY. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

- 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.

KE KAILANI DEVELOPMENT LLC

Printed Name of Developer

By: William L. Beaton 8/8/08  
 Duly Authorized Signatory\* Date

William L. Beaton, Chief Executive Officer

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Hawaii

Planning Department, County of Hawaii

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

## EXHIBIT A

### Developer's Reserved Rights And Developer's Future Development Plans

I. **Developer' Reserved Rights.** The Developer grants, reserves to and preserves for itself, and its successors and assigns the easements and other rights (the "**Developer's Reserved Rights and Easements**" or simply the "**Reserved Rights**") in and with respect to the Property and Project as described in Section 19 and elsewhere in the Declaration and in the Bylaws. Each of the Reserved Rights: is granted, shall be reserved and preserved and may be exercised over the entire term of the Development Period, which expires June 27, 2027, unless with respect to any particular Reserved Right, an earlier termination date is expressly stated; may be exercised separately or in combinations with one or some or all of the Reserved Rights and at one or more times; includes the right to do anything necessary or convenient, including without limitation the right to use each such Reserved Right in conjunction with any one or more of the other Reserved Rights; and may be exercised and transferred without any further notice to or the consent or joinder of anyone else. The Developer has the right, but not the obligation, to exercise any of the Reserved Rights. By way of example and not limitation, the Developer shall not be obligated to create any New Villas, build any New Improvements, subdivide any of the Land, delete any of the Land, annex any Adjacent Parcel, or merge the Project with any Adjacent Condominium. Conversely, the Developer's exercise of any of such rights on any occasion shall not limit or otherwise affect the Developer's right to utilize any such right from time to time.

All Villas and their appurtenant Common Interests and all Common and Limited Common Elements are subject to each and every one of the Reserved Rights. By acquiring any interest in the Property or the Project, each Owners shall be deemed conclusively and absolutely: to consent to each of the Reserved Rights and to each exercise and each transfer of each such Rights; and to authorize the Developer, as such Owner's Representative and/or attorney-in-fact and/or otherwise on such Owner's behalf and without any further authorization from such Owner, to join in and execute such Documents as the Developer may deem necessary or convenient to evidence further and give each such consent. Specifically, if and when any Villa Owner or other Interested Person acquires any Villa or any other interest in the Project, such Villa Owner or Interested Person shall be deemed to have conclusively agreed to the following:

(1) to have taken such Owner's interest in the Villa or Project subject to the Reserved Rights, and each and every exercise and/or assignment of them;

(2) to have acknowledged, approved, and agreed that: (a) the Developer shall possess and may from time to time exercise the Developer's Reserved Rights; (b) the exercise of any of the Reserved Rights may result in the recalculation of the Common Interest of some or all Villas; and (c) the Developer can file and/or record any and all documents that the Developer deems necessary or convenient to the exercise of such rights, including, but not limited to, amendments to some or all of the Condominium Documents, subject only to such express and explicit limitations as are stated in the Condominium Documents;

(3) to have appointed the Developer as such Owner's or Person's attorney-in-fact to join in, consent to, sign, have notarized, deliver and record all documents and to do all other acts and things on his, her or its behalf, and to do all things necessary or desirable to exercise the Reserved Rights and to make and confirm the agreements, consents, waivers and releases of such Owner or Person contained in the Condominium Declaration. Such appointment shall be deemed to have been made pursuant to a durable power of attorney, with full power of substitution, and shall not be affected by any disability of such Owner or other Interested Person. The term "documents" include refers to all documents and instruments of any kind including acknowledgements, agreements, consents, waivers, releases and discharges of each Owner as stated in the Declaration, as well as deeds and other conveyance instruments; powers of attorney; grants of easements; amendments to the Condominium Documents; and applications to governmental agencies or authorities; as well as such acknowledgements, agreements, consents, waivers, releases and discharges themselves;

(4) to have agreed that such Owner or Person, promptly upon request therefor made by the Developer from time to time, shall join in, consent to, execute (and if requested, acknowledge before a notary public), deliver, and record a power of attorney in favor of the Developer, including without limitation a power of attorney in the attached form, and all other documents, and do all other acts and things, which the Developer, in its sole discretion, determines to be necessary for or convenient to each and every exercise of the Developer's Reserved Rights or to accomplish

the purposes for which such Rights were reserved and preserved. The Developer shall not use the power of attorney to do any of the following: (a) to waive or release any right of any Owner under the Condominium Property Act which permits such Villa Owner to cancel the purchase of a Villa; (b) to mortgage such Villa; or (c) to otherwise encumber any Villa unless this Declaration expressly permits the Developer to do so.

By acquiring any interest in a Villa, each Villa Owner and other Interested Person shall be also conclusively deemed to have acknowledged and agreed that all of the activities resulting from any exercise of the Reserved Rights above may result in traffic, noise, dust, soot, smoke, odors, surface water runoff, vibrations and other inconveniences, nuisances and hazards, and with respect thereto: to have consented to such activities; to have waived any rights, claims, or actions that such Owner or Person may have, either at the time of such acquisition or at any time thereafter, against the Developer and/or its Representatives, licensees, invitees, successors and assigns; and to have released and discharged Developer and its Representatives, licensees, invitees, successors and assigns from any and all such rights, claims, and actions. Each Villa Owner and every other Interested Person by accepting any interest in any Villa also: agrees to stay out of the Undeveloped Land Area and any specifically fenced area thereof and to comply with all other rules and regulations that the Developer may establish for the Undeveloped Land Area; accepts that from time to time there may be construction and other activities ongoing within the Undeveloped Land Area which may detract from the appearance of the Project; and waives and releases any rights, claims or actions such Villa Owner may have arising from or with respect to the foregoing as against the Developer and its Representatives, licensees and invitees.

The Reserved Rights include the following rights and easements as stated in Section 19 of the Declaration, and Buyers are encouraged to read this Section of the Declaration carefully:

- To change the Project or a Villa prior to Recording a First Deed.
- To modify easements and grant additional easements.
- For sales activities.
- To complete Improvements and correct defects.
- For traffic, noise, dust, etc.
- To use and control the Undeveloped Land Area.
- To create New Villas.
- To design, develop, build, add to and complete New Improvements.
- To subdivide and consolidate the Land.
- To withdraw Undeveloped Land Area from the Project.
- To annex Adjacent Land and Improvements.
- To build Adjacent Condominium Projects and to merge them with the Project.
- To change the Project to comply with law.
- To amend the Condominium and other Documents.
- To transfer one or more of the Reserved Rights.

II. **Developer's Future Development Plans.** The Developer's present plan includes Phases II and III, each containing four (4) Villas. The Developer may add additional Phases but has not yet determined or established them. If Phase II is developed as presently planned, the Villas in Project would be described as follows:

Villa	Type	Common Interest	Rooms	Net Living Area	Covered Lanai	Garage	Mechanical
1A	A	12.5311%	10 ½	3,121	834	593	17
1C	C	12.5311%	10 ½	3,121	834	593	17
2A	A	12.5311%	10 ½	3,121	834	593	17
2C	C	12.5311%	10 ½	3,121	834	593	17
5A	A	12.5311%	10 ½	3,121	834	593	17
5C	C	12.5311%	10 ½	3,121	834	593	17
6A	A	12.5311%	10 ½	3,121	834	593	17
6B	B	12.2823%	10 ½	3,059	846	593	17
		100.00%					

If Phases II and III are developed as presently planned, the Villas in Project would be described as follows:

Villa	Type	Common Interest	Rooms	Net Living Area	Covered Lanai	Garage	Mechanical
1A	A	8.361%	10 ½	3,121	834	593	17
1C	C	8.361%	10 ½	3,121	834	593	17
2A	A	8.361%	10 ½	3,121	834	593	17
2C	C	8.361%	10 ½	3,121	834	593	17
3A	A	8.361%	10 ½	3,121	834	593	17
3B	B	8.195%	10 ½	3,059	834	593	17
4A	A	8.361%	10 ½	3,121	834	593	17
4C	C	8.361%	10 ½	3,121	834	593	17
5A	A	8.361%	10 ½	3,121	834	593	17
5C	C	8.361%	10 ½	3,121	834	593	17
6A	A	8.361%	10 ½	3,121	834	593	17
6B	B	8.195%	10 ½	3,059	846	593	17
		100.00%					

The Common Interests for the Villa are subject to adjustment each time an additional Phase containing a New Villa is added to the Project. There is no guarantee, representation, warranty or other assurance that proposed Phase II, proposed Phase III or any other proposed Phase will be developed, or if and when Phases II and III are developed, that the Project will be as described above, or that proposed Phase II or proposed Phase III or any other proposed Phase will be similar to Phase I or to the phase plan described above.

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: Mail  Pickup

Bays, Deaver, Lung, Rose & Holma (EEC)  
1099 Alakea Street, 16<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
Tel.: (808) 523-9000

Tax Map Key:

This document contains \_\_\_\_\_ pages.

### SPECIAL POWER OF ATTORNEY

#### KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_, being the owner (the "Owner") of Villa No. \_\_\_\_\_ in the Ke Kailani Condominium Project (the "Project"), whose residence and post office address is \_\_\_\_\_, does hereby appoint **KE KAILANI DEVELOPMENT LLC ("KKD")**, the principal place of business and post office address of which is \_\_\_\_\_, as the Owner's true and lawful attorney, for Owner in Owner's name, place and stead and for Owner's use and benefit to act for Owner in connection with the rights reserved (the "**Reserved Rights**") by KKD as the Declarant and Developer of the under, and as more fully set forth in, that certain Declaration of Condominium Property Regime of Ke Kailani and Creation of Phase I dated June 27, 2006, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-119582, as the same may be lawfully amended from time to time (the "**Declaration**"), and the By-Laws of the Association of Villa Owner of Ke Kailani Condominium dated June 27, 2006, and recorded in said Bureau as Document No. 2006-119583, as the same may be lawfully amended from time to time (the "**By-Laws**"). The Project is depicted on Condominium Map No. 4278 as the same may be lawfully amended from time to time (the "**Condominium Map**"). The Declaration, the By-Laws and the Condominium Map are sometimes called the "**Condominium Documents**." Terms that are used herein with capitalized initial letters shall have the meaning given to them in the Condominium Documents. All relevant provisions of the Condominium Documents with respect to the "**Reserved Rights**" are incorporated herein and made a part of this Special Power of Attorney.

Without limiting the generality of the foregoing appointment and grant of powers of attorney, the Owner does hereby grant to KKD the full power to sign, execute, acknowledge, convey, deliver, and set over all documents and instruments and otherwise to do all acts and things necessary or convenient for any and all transactions in connection with the following Reserved Rights:

1. **RESERVED RIGHT TO MODIFY EASEMENTS AND GRANT ADDITIONAL EASEMENTS.** KKD's rights to modify any easements and grant additional easements in accordance with Section 19.3 of the Declaration.
2. **RESERVED RIGHTS AND EASEMENTS FOR SALES ACTIVITIES.** KKD's rights and easements to conduct, within the Undeveloped Land Area and/or the Common Elements and from any Villa (including, but not limited to, its Limited Common Elements) owned and/or leased by the Declarant, extensive promotion of the Project and extensive sales activities in connection with the initial sale as well as resale of any Villa in the Project, including any New Villa and any Villa in any Adjacent Condominium Project, in accordance with Section 19.4 of the Declaration.
3. **RESERVED RIGHTS AND EASEMENTS TO COMPLETE IMPROVEMENTS AND CORRECT DEFECTS.** KKD's rights and easements over, under and upon the Project, including, without limitation, the Common Elements, Limited Common Elements, and all Villas, as may be reasonably necessary or convenient to complete any Improvements and correct any defects and other punch list items in the Common Elements, Limited Common Elements, or any Villa, or for the exercise of any of the other Reserved Rights, in accordance with Section 19.5 of the Declaration.
4. **RESERVED RIGHTS AND EASEMENT FOR NOISE, DUST, ETC.** KKD's rights and easements over, under and upon the Project and each and all of its parts, to create and cause noise, dust, soot, smoke, odors, surface water runoff, vibrations, and other nuisances or hazards in connection with the exercise of any and all of the Reserved Rights, in accordance with Section 19.6 of the Declaration.
5. **RESERVED RIGHTS AND EASEMENTS TO CONTROL AND USE THE UNDEVELOPED LAND AREA.** KKD's rights and easements of control over the Undeveloped Land Area and the exclusive right and an exclusive easement to use the Undeveloped Land Area for any lawful purpose, in accordance with Section 19.7 of the Declaration.
6. **RESERVED RIGHTS AND EASEMENTS TO CREATE NEW VILLAS.** KKD's rights and easements to create one or more New Villas in the Project and to designate Limited Common Elements appurtenant to any New Villa at any time and from time to time before the Development Period ends, in accordance with Section 19.8 of the Declaration.
7. **RESERVED RIGHTS AND EASEMENTS TO DESIGN, DEVELOP, BUILD, ADD TO, AND COMPLETE NEW IMPROVEMENTS.** KKD's rights and easements to design, develop, build, add, and complete New Improvements on the Land, in accordance with Section 19.9 of the Declaration.
8. **RESERVED RIGHTS TO SUBDIVIDE AND CONSOLIDATE THE LAND.** KKD's rights and easements to subdivide the Land and/or to consolidate and resubdivide the Land with any one or more Adjacent Parcels, in accordance with Section 19.10 of the Declaration.
9. **RESERVED RIGHT TO WITHDRAW UNDEVELOPED LAND AREA FROM THE PROJECT.** KKD's rights and easements to withdraw and delete from the Project all or any part of the Undeveloped Land Area, in accordance with Section 19.11 of the Declaration.
10. **RESERVED RIGHTS AND EASEMENT TO ANNEX LAND AND IMPROVEMENTS.** KKD's rights and easements to change the Project by annexing any or all interests in any Adjacent Parcel and Improvements located on such Adjacent Parcel into the Project, in accordance with Section 19.12 of the Declaration.
11. **RESERVED RIGHT TO BUILD ADJACENT CONDOMINIUM PROJECTS AND TO MERGE THEM WITH THE PROJECT.** KKD's rights to develop one or more Adjacent Condominium Projects on any Adjacent Parcel and to merge any Adjacent Condominium Project with the Project, in accordance with Section 19.13 of the Declaration.

12. **RESERVED RIGHT TO CHANGE THE PROJECT TO COMPLY WITH LAW.** KKD's rights to change the Villas, the Common Elements, the Limited Common Elements, and/or to amend the Condominium Documents as required to comply with any laws that apply to the Project, the Association, or the Declarant, in accordance with Section 19.14 of the Declaration.

13. **RESERVED RIGHTS TO AMEND THE CONDOMINIUM AND OTHER DOCUMENTS.** KKD's rights and easements to amend the Condominium Documents and other documents as is permitted or required by any other part or Section of the Declaration, in accordance with Section 19.15 of the Declaration.

14. **TRANSFER OF RESERVED RIGHTS.** KKD's right to transfer and assign from time to time any one or more of its Reserved Rights in accordance with Section 19.16 of the Declaration.

This appointment and grant of powers of attorney by the Owner to KKD includes the power to substitute for KKD the transferee of any of the Reserved Rights. The Owner agrees and consents to each such substitution by KKD, and agrees to recognize the transferee as "KKD" under this document.

It may be necessary to recalculate the common interests appurtenant to the Villas in the Condominium upon the exercise of certain of KKD's reserved rights set forth above. The right of KKD to recalculate common interests and the method by which the common interests will be recalculated are set forth in Section 6 of the Declaration.

WITH FULL POWER to sign, execute, acknowledge, convey, deliver and set over all documents and instruments and do all other acts and things necessary or convenient for any and all transactions in connection with any or all of the foregoing, including, without limitation, any and all amendments to the aforesaid Condominium Documents or to any deed, and any and all grants, deletions, relocations, realignments, reservations or acceptance of any easement, license and/or right-of-way.

GIVING AND GRANTING UNTO \_\_\_ attorney full power, authority and discretion to do and perform all and every act and thing whatsoever which it may deem necessary or proper to accomplish the foregoing, all as fully for all intents and purposes as \_\_\_ might or could do if \_\_\_ was personally present; and \_\_\_ hereby ratifies and confirms all that \_\_\_ said attorney lawfully do or cause to be done by virtue of these presents.

[END OF DOCUMENT. SIGNATURE PAGE IMMEDIATELY FOLLOWS.]

IN WITNESS WHEREOF, the undersigned has executed these presents this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

) SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me appeared \_\_\_\_\_, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to executed such instrument in such capacity.

\_\_\_\_\_  
Name of Notary: \_\_\_\_\_

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

**Notary Certification**

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

{Name of Notary} \_\_\_\_\_ Circuit

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

**END OF EXHIBIT A**

**EXHIBIT B**  
**Special Use Restrictions**

1. Pets. No livestock, poultry, or other animals whatsoever shall be allowed or kept in any part of Ke Kailani, except dogs, cats, or other typical household pets such as guinea pigs, rabbits, fishes, or birds, may be kept by buyers. Except for fishes and birds, no more than two (2) pets per apartment shall be allowed without the express consent of the Board of Directors of the Association, which consent shall not be unreasonably withheld.

2. Limitations on Business, Trade or Professional Use. Except for such home office use as may be allowed or permitted under the applicable zoning ordinance, and subject to the provisions of the Declaration which permits the Developer to do otherwise, the apartments are subject to the following restrictions:

(a) The apartments and their limited common elements shall not be used to carry on any business, trade or profession;

(b) The apartments and their limited common elements shall not be used for sales of any articles or goods; and

(c) No apartment owner, lessee, tenant or other occupant of an apartment shall bring clients, customers or other business invitees onto the condominium project on a regular basis for business purposes.

3. Restrictions on Right to Sell, Lease or Rent. Apartment rentals shall be subject to the provisions of the Declaration, the By-laws of the Association of Villa Owners of Ke Kailani Condominium, the Ke Kailani CC&Rs, the By-laws of the Ke Kailani Community Association, the Mauna Lani CC&Rs (the "Project Documents"), and applicable law. Apartment owners may not rent their apartments as a transient vacation rental for rental periods of less than seven (7) days. Any lease or rental agreement of an apartment shall provide that it shall be subject in all respects to the provisions of the Project Documents, and that the failure of the lessee or tenant to comply with the terms thereof shall constitute a default under such lease or rental agreement.

4. Landscaping of Limited Common Elements.

(a) The Developer reserves an easement over, under, and above the limited common element land areas appurtenant to the apartments for the installation and maintenance of landscaping, including grasses, trees, shrubs, other vegetation, and natural and artificial landscaping elements and materials.

(b) Landscaping in the limited common element land areas shall be installed and maintained by the Association as a Common Expense. Apartment owners shall not install or maintain landscaping within an apartment's limited common element land area except in compliance with the Design Requirements and Design Guidelines for the Subdivision, and/or any landscaping guidelines adopted by Developer, and no such installation or maintenance shall materially interfere with installation or maintenance of landscaping in the limited common element land areas by the Association. Any landscaping installed by buyers in the limited common element land areas shall be first approved by the Ke Kailani Design Committee and shall not exceed six (6) feet in height. To the extent permitted, landscaping installed by a buyer shall be maintained by the buyer.

5. Prohibition Against Time Share Use. No apartment owner, lessee, tenant, occupant, or other interested person may, directly or indirectly, use the condominium project or any part thereof for bed and breakfast establishments; boarding facilities, rooming, or lodging houses; multiple-family dwellings other than Villas; group living facilities; the promotion or sale of time share or interval ownership interests, interests in any fractional ownership plan, or sale, transfer or contribution to any membership club or plan; or for the operation of a tour or activity desk or any other business that directly or indirectly promotes the sale of time share or interval ownership interests, interests in a fractional ownership plan, or interests in a membership club or plan.

**END OF EXHIBIT B**

**EXHIBIT C**  
**Boundaries of Apartments**

**Part 1: General Description of Apartments (called Villas)**

Each Villa with an "A" or a "C" floor plan includes three separate structures as follows: A "Main House" containing, among other things, the Great Room, and on the first floor Master Suite # 1 and Master Bath # 1 and on the second floor Master Suite # 2 and Master Bath # 2; a "Guest Cottage" containing, among other things, Bedroom # 3 and Bath # 3; and a "Garage" with storage area. Each Villa with a "B" floor plan includes two separate structures and does not have a separate Guest Cottage, as follows: A "Main House" containing, among other things, the Great Room, and on the first floor Master Suite # 1 and Master Bath # 1 and Bedroom # 3 and Bath # 3 and on the second floor Master Suite # 2 and Master Bath # 2; and a "Garage" with storage area. A party wall separates the Main House and the Garage of the two Villas located in the same building. [Note that the term "Guest Cottage" as used above is merely descriptive of the fact that Villas with an "A" or "C" floor plan have a third bedroom and bath under a separate roof, and does not mean that a "guest cottage" is permitted under the applicable land use law.]

**Part 2: Boundaries of Apartments (Villas)**

Each Villa is comprised of and bounded by the following:

- (a) The interior unfinished surfaces of the perimeter and party walls, doors, ground floors and roofs of the Main House, Guest Cottage (if applicable) and Garage comprising such Villa and the spaces bounded by such walls, doors, ground floors and roofs;
- (b) All windows and window frames, louvers (if any), and shutters (if any);
- (c) All walls and partitions which are not load-bearing and which are within the perimeter or party walls of the Villa;
- (d) All movable lanai doors and their door frames;
- (e) The lanais shown on the Condominium Map to the inner decorated or finished surfaces of the exterior perimeter walls of such lanais, and to the interior edge of the exterior fence or other improvement bounding such lanais; and
- (f) All fixtures originally installed therein."

**END OF EXHIBIT C**

**EXHIBIT D**  
**Permitted Alterations to Apartments**

1. Alterations Without Board of Directors or Association Approval. Each owner of an apartment shall have the right, without Board of Directors or Association approval or consent, to make any alteration, addition, change or improvement solely within an apartment owned by such owner (or in the case of the Developer, by the Developer), provided that no such alteration, addition, change or improvement adversely affects the structural integrity of such apartment. This right includes, but is not limited to, the following:

(a) Installing, maintaining, removing and rearranging partitions and other walls from time to time within such owner's apartment;

(b) Finishing, changing or substituting any plumbing, electrical or other fixtures attached to the ceilings, floors or walls of such owner's apartment;

(c) Decorating, painting, repainting, wallpapering or otherwise changing the appearance of the walls, floors and ceilings of such owner's apartment;

(d) Tiling, finishing, carpeting, re-carpeting, and installing, changing, or removing other flooring in such owner's apartment; and

(e) Making such changes, additions and improvements to such owner's apartment or limited common elements to facilitate handicapped accessibility within such owner's apartment or limited common element.

2. Changes Subject to Board of Directors Approval. The following changes, additions, and improvements may be made by the owner thereof subject only to the approval of the Board of Directors, which approval shall not be unreasonably withheld or delayed:

(a) The owner of any two apartments separated by a common element wall, floor, or ceiling, or whose limited common elements are separated from each other or from such apartments by a common element fence, hedge, or similar landscaping element, may change or remove all or part of the intervening common element, and install doors, stairways and other improvements in such opening or openings in the intervening common element, to seal hallways or other openings, and make other reasonable changes or additions; provided, however, that any such change or removal shall not adversely affect the structural integrity of the other apartments or limited common elements of the building in which such apartment is situated. Before the Developer or any other owner terminates its common ownership of any two apartments, the Developer or such owner shall restore the common element wall, floor, ceiling, hallway and/or other openings to substantially the same condition as before any change thereto or removal thereof, unless the new owner thereof agrees in writing to accept such change or removal in writing and to assume full responsibility for like restoration upon the termination of the common ownership of any two apartments in the future.

(b) Any owner who owns any two adjacent apartments may do any of the following:

(i) consolidate such apartments into a single apartment;

(ii) make any common element walls, floors or ceilings between such apartments part of such apartments or their limited common elements; and

(iii) change the designation of the limited common elements appurtenant to such apartments so that one or more limited common elements appurtenant to one apartment shall be appurtenant to the other apartment or to both of the apartments; subject, however, to the prior written consent of each Lender holding a recorded mortgage encumbering either apartment.

(c) The common interest of the newly created apartment will be equal to the sum of the common interests of the apartments which were consolidated.

**END OF EXHIBIT D**

**EXHIBIT E**  
**Description of Common Elements**

The common elements of the condominium project consist of the following:

1. The Land in fee simple; provided, however, that the Land is subject to change from time to time pursuant to the exercise of the Reserved Rights).
2. All roadways, including shoulder areas, rights of way and Landscaping in roadway areas, and driveways;
3. All yards, grounds, trees, gardens, Landscaping and refuse facilities not located within the Limited Common Element Land Area appurtenant to a Villa;
4. All Limited Common Elements to one or more of the Villas; and
5. Any and all other apparatus and installations existing for common use by more than one Villa, and any and all other parts of the Project necessary or convenient to its existence, maintenance or safety, or normally in common use or not included within the limits of ownership of each Villa."

**END OF EXHIBIT E**

**EXHIBIT F**  
**Description of Limited Common Elements**

The Limited Common Elements appurtenant solely to each apartment ("Villa") consist of the following:

1. The Limited Common Element Land Area identified by the same number as such Villa on the Condominium Map as well as the pool, whirlpool spa and water features located within such Limited Common Element Land Area, including, without limitation, all pumps, filters, pipes, and other equipment connected to or relating to the pool, whirlpool spa or water feature.
2. The driveway leading to the Garage of any such Villa.
3. Such Villa's trash enclosure and mechanical room.
4. Such Villa's sewer system, grinder pumps and related equipment.
5. Any chute, flue, wire, or any other fixture that lies outside the designated boundaries of such Villa and serves only that Villa.
6. All exterior perimeter walls and the exterior fences or other improvement bounding the lanais of such Villa (excluding the inner decorated or finished surfaces thereof which are part of such Villa).
7. All perimeter non-party walls of the Main House, Guest Cottage (if applicable) and Garage of such Villa (excluding the interior finished or decorated surfaces thereof which are part of such Villa).
8. All the foundations, columns, girders, beams, ground floor slabs, supports, ground floors and roofs of the Main House, Guest Cottage (if applicable) and Garage supporting and/or surrounding each Villa (excluding the interior finished or decorated surface thereof which are part of such Villa).
9. An exclusive easement for the use of one (1) mailbox located in the common areas of the Subdivision, bearing the same number as such Villa. No Villa Owner shall construct or install a mailbox at the Villa or arrange for mail delivery at any other location in the Project other than the mailbox located in the common areas of the Subdivision.

The Limited Common Elements appurtenant to two or more Villas consist of the following:

1. The party wall between the two (2) Villas in the same Building, and the exterior extension thereof separating the Limited Common Element Land Areas of those Villas shall be a Limited Common Element appurtenant to both of such Villas.
2. Any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust, or air conditioning which are utilized for or serve two or more Villas, whether or not running through or otherwise located within a Villa, shall be Limited Common Elements appurtenant to such Villas."

**END OF EXHIBIT F**

## EXHIBIT G

Apartment	Type	Common Interest
1A	A	8.361%
1C	C	8.361%
2A	A	8.361%
2C	C	8.361%
3A	A	8.361%
3B	B	8.195%
4A	A	8.361%
4C	C	8.361%
5A	A	8.361%
5C	C	8.361%
6A	A	8.361%
6B	B	8.195%
		100.00%

NOTE: APARTMENTS 1A, 1C, 2A AND 2C ARE LOCATED IN PHASE I;  
APARTMENTS 3A, 3B, 4A, AND 4C ARE LOCATED IN PHASE II;  
APARTMENTS 5A, 5C, 6A, AND 6B ARE LOCATED IN PHASE III.

However, there is no guarantee, representation, warranty or other assurance that proposed Phase II, proposed Phase III or any other proposed Phase will be developed, or if and when Phases II and/or III are developed, that the Project will be as described above, or that proposed Phase II or proposed Phase III or any other proposed Phase will be similar to Phase I or to the phase plan described above. For example, the Developer may determine to develop some but not all of the Phase II or Phases III Units or to develop each of Phases II or III in two or more separate increments of one, two or three Units per increment. The Common Interests for each Villa are subject to adjustment each time an additional Phase (or increment of a Phase) containing a New Villa is added to the Project.

END OF EXHIBIT G

**EXHIBIT H**  
**Encumbrances Against Title**

**Part A. Permitted Encumbrances**

The following now encumber title to the land, will remain as encumbrances on the title to a Villa conveyed to the Buyer, and together with such other encumbrances as may be placed on the title that do not materially and adversely affect the use or value of a Villa, are sometimes called the "Permitted Encumbrances."

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Certificate dated April 22, 1986, recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau") in Liber 19452, Page 724, made by MAUNA LANI RESORT, INC., a Hawaii corporation, regarding reclassification of the land described herein from the Agricultural and Conservation districts to the Urban district.
3. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Declaration of Covenants and Restrictions (Mauna Lani Resort Association) dated June 3, 1982, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 1120889, recorded in said Bureau in Liber 16425, Page 203, as the same are and may hereafter be lawfully amended. Said Declaration was amended and restated by instrument dated January 8, 1987, filed as Land Court Document No. 1432988, recorded in Liber 20284 at Page 384, and was amended and/or supplemented by instruments dated August 13, 1982, filed in said Office as Land Court Document No. 1129996, recorded in said Bureau in Liber 16545, Page 345, dated May 22, 2002, recorded in said Bureau as Document No. 2002-101491, and dated February 2, 2005, filed in said Office as Land Court Document No. 3228828, recorded in said Bureau as Document No. 2005-026122. Said above Declaration, as amended by the First, Second and Third Amendments, was amended in its entirety by the Fourth Amendment dated January 8, 1987, shown above. In the event of any conflict between the terms and conditions contained in the Declaration, or the First, Second and Third Amendments, and this Fourth Amendment, the Fourth Amendment shall be controlling. The foregoing includes, but is not limited to, matters relating to Association liens which may be superior to certain mortgages.  
  
By Designation of Declarant and Co-Declarant of The Mauna Lani Resort Association Declaration of Covenants and Restrictions and Acceptance dated March 10, 1998, effective January 30, 1998, filed in said Office as Land Court Document No. 2445165, recorded in said Bureau as Document No. 98-033812, Mauna Lani Service, Inc., a Hawaii corporation, is designated as Declarant, and Mauna Lani Resort (Operation), Inc., a Hawaii corporation, is designated as Co-Declarant.
4. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Limited Warranty Deed dated June 6, 2002, recorded in said Bureau as Document No. 2002-101498.
5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Declaration of Protective Covenants, Conditions and Restrictions for Ke Kailani dated October 4, 2005, recorded in said Bureau as Document No. 2005-201116. The foregoing includes, but is not limited to, matters relating to restrictions on use, further subdivision, consolidation and timesharing.
6. The Declaration of Condominium Property Regime of Ke Kailani and Creation of Phase I dated July 27, 2006, recorded at the Bureau on June 28, 2006, as Document No. 2006-119582, as amended by a First Amendment dated August 31, 2006 and recorded in the Bureau on September 18, 2006 as Document No. 2006-170717, as amended by a Second Amendment dated November 9, 2006 and recorded in the Bureau on November 9, 2006 as Document No. 2006-205607, as amended by a Third Amendment dated November 9, 2006 and recorded in the Bureau on November 9, 2006 as Document No. 2006-205608, as amended by a Fourth Amendment dated September 8, 2008 and recorded in the Bureau on September 9, 2008 as Document No. 2008-141706, the By-Laws of the Association of Villa Owners of Ke Kailani Condominium, recorded in said Bureau on June 28, 2006, as Document No. 2006-119583, as amended by a First Amendment dated September 19, 2006 and recorded in the Bureau on September 19, 2006 as Document No. 2006-171708, as amended by a Second Amendment dated September 8, 2008 and recorded in the Bureau on September 9, 2008 as Document No. 2008-141705, Supplement to the Condominium Documents for the Ke Kailani Condominium With Respect to Part VI of Chapter 514B, HRS, dated February 22, 2007, and recorded in the Bureau on February 23, 2007 as Document No. 2007-034293, and the Condominium Map recorded on June 28, 2006 as Map No. 4278, as the same may be lawfully amended from time to time, including without limitation as amended pursuant to the Developer's Reserved Rights so as to create additional Phases of the Project.

### **Part B. Blanket Liens**

The title is also presently encumbered by the following blanket liens which must be released with respect to each Villa on or before the conveyance of that Villa to a Buyer:

**A.** Mortgage, Security Agreement and Financing Statement made by Ke Kailani Development LLC, a Hawaii limited liability company, as Mortgagor, and Bank of Hawaii, a Hawaii corporation, as Agent for Bank of Hawaii, Central Pacific Bank, and Finance Factors, Limited, dated July 31, 2006, recorded in said Bureau as Document No. 2006-144291, in the amount of \$28,372,500.00 – covers the land described herein, besides other land.

Note: The above Mortgage was amended by instrument dated Effective as of February 15, 2007, recorded in said Bureau as Document No. 2007-031133, which decreased the principal sum to \$25,602,500.00, and an additional loan was made in the principal amount of \$26,490,000.00.

**B.** The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Assignment of Sales Contracts and Sale Proceeds dated July 31, 2006, recorded in said Bureau as Document No. 2006-144292, made by Ke Kailani Development LLC, a Hawaii limited liability company, "Assignor", and Bank of Hawaii, a Hawaii corporation, as Agent for Bank of Hawaii, Central Pacific Bank, and Finance Factors, Limited, "Assignee" to secure the repayment of that certain Note in the principal amount of \$28,372,500.00 – covers the land described herein, besides other land.

**C.** Financing Statement made by Ke Kailani Development LLC, as Debtor, and Bank of Hawaii, as Agent, as secured party recorded on August 7, 2006, in the Bureau as Document No. 2006-144294.

**END OF EXHIBIT H**

EXHIBIT I

INITIAL MAINTENANCE FEES  
AND  
MAINTENANCE FEE DISBURSEMENTS  
PROJECT INCLUDES 4 APARTMENTS

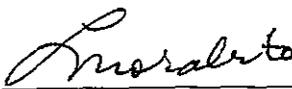
Initial Maintenance Fees:

Apartment	Common Interest	Monthly Fee	Fee x 12 Months = Yearly Total
1A	25%	\$2,692.25	\$32,307.00
1C	25%	\$2,692.25	\$32,307.00
2A	25%	\$2,692.25	\$32,307.00
2C	25%	\$2,692.25	\$32,307.00
	100%		

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

Revenue	Monthly Fee x 12 months	Yearly Total
Maintenance Fees	10,624	127,488
<b>Utilities</b>		
Electricity	180	2160
Television	285	3420
Water	500	6000
Sewer	\$184	\$2,208
<i>Subtotal Utilities</i>	\$ 1149	\$13788
<b>Repairs and Maintenance</b>		
Building	\$240	\$2,880
Supplies	\$40	\$480
Pool and Spa Maintenance	1200	14400
Landscaping	\$ 3200	38400
Pest Control	\$ 40	480
Rubbish Removal	\$ 0	\$0
<i>Subtotal Repairs and Maintenance</i>	\$ 4720	56400
<b>Administrative</b>		
Audit and Tax Fees	\$292	\$3504
Management Fee	\$417	\$5,004
Accounting Fee		\$0
Legal	\$84	\$1,008
Office Supplies	\$20	\$240
Insurance	\$3774	\$45288
	\$4587	\$55,044
<i>Subtotal Administrative</i>		
Reserves	\$168	\$2,016
<b>Total Expenses</b>	<b>\$10,624</b>	<b>127488</b>

I, Linda Morabito, as agent  
for/and/or  
employed by Certified  
Management, Inc., the  
condominium managing agent/developer for the Ke Kailani condominium project,  
hereby certify that  
the above initial maintenance fee assessments and maintenance fee disbursements  
were prepared in accordance with generally accepted accounting principles.

  
\_\_\_\_\_  
Signature

8-6-08  
\_\_\_\_\_  
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 §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16,

Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514A-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.

**END OF EXHIBIT I**

**EXHIBIT J**  
**Summary of Pertinent Provisions of the Sales Contract**

1. Sales Contract is Non-Binding. If at the time of execution of a Sales Contract by a buyer and the Developer the Real Estate Commission of the State of Hawaii (the "Commission") has not issued an effective date for the Final Public Report, such Sales Contract shall not be legally binding upon either the buyer or the Developer.

2. When Sales Contract Will Become Binding. Upon the occurrence of all of the following, a Sales Contract will become a binding contract:

(a) the Commission shall have issued an effective date for a Final Public Report or Contingent Final Report;

(b) the buyer under such Sales Contract shall have received for or be deemed to have received for a Final Public Report and Supplementary Public Report; and

(c) the buyer under such Sales Contract shall have waived or be deemed to have waived the buyer's right to cancel such Sales Contract as more particularly provided in §514A-62 of the Hawaii Revised Statutes, as amended.

3. Termination of Sales Contract. Prior to the time a Sales Contract becomes a binding Sales Contract as provided in Section 2 above, it may be terminated at any time, with or without cause, at the option of a buyer or the Developer, by written notice of such termination delivered to the other party to the Sales Contract. In the event of the termination of a Sales Contract, the Developer shall cause Escrow to refund all payments previously made thereunder by the buyer under such Sales Contract, without interest, unless the buyer has elected to have interest accrue to the benefit of the buyer under Section 9.2.2 of the General Terms of the Sales Contract, and neither the buyer nor the Developer shall have any other or further liability under such Sales Contract or with respect to the condominium project; provided, however, that if a buyer terminates a Sales Contract, then, Escrow shall deduct from the refund to the buyer the escrow cancellation fee and all costs, up to a maximum of Two Hundred Fifty Dollars (\$250), incurred by the Developer, Escrow, or any lending institution in processing a Sales Contract or the loan application. If the Developer terminates a Sales Contract, then, the Developer shall pay any and all escrow cancellation fees and costs.

4. Failure of Buyer to Execute Receipt and Notice. If a buyer fails to execute and return the Receipt and Notice of Right to Cancel within thirty (30) calendar days after the delivery to the buyer of a copy of the Final Public Report, then, the Developer may, at the Developer's sole option, terminate the buyer's Sales Contract. Upon such termination, the Developer shall cause Escrow Agent to refund to the buyer all payments previously made by the buyer (without interest and regardless of whether buyer has elected to have interest accrue to the buyer under Section 9.2.2 of the Sales Contract), and less Escrow Agent's cancellation fee, and the Developer shall have no further liability under the Sales Contract.

5. Effect of Issuance of Final Public Report on Buyer's Termination Rights. If a Sales Contract is entered by a buyer into after the issuance of the Final Public Report or Contingent Final Report, then, it shall be a fully binding contract between buyer and the Developer upon acceptance by the Developer, provided that the buyer thereunder has received for or is deemed to have received for the Final Public Report and has waived or is deemed to have waived the buyer's right to cancel the Sales Contract as more particularly provided in §514A-62 of the Hawaii Revised Statutes.

6. Qualifying for Purchase. Each buyer shall submit to the Developer, within twenty (20) days after receipt by the buyer of written notice that a Sales Contract entered into by the buyer has been accepted by the Developer, a bank or brokerage statement, in form and content sufficient to provide proof of funds in the amount of the purchase price for the apartment which is the subject of the Sales Contract, and/or any other financial data reasonably requested by the Developer. The Developer shall have ten (10) days after receipt of such financial data to notify buyer of its acceptance or rejection of said financial data. If the Developer rejects such financial data, the Developer may, in its sole discretion, terminate the Sales Contract and cause Escrow Agent to refund to buyer all amounts paid pursuant to the Sales Contract, without interest and regardless of whether buyer has elected to have interest accrue to the benefit of buyer pursuant to Section 9.2.2 of the Sales Contract, less the cost of any credit report, cancellation fees of Escrow Agent, if any, and other costs incurred by the Developer in reviewing such financial statement.

7. Credit Inquiries. Each buyer under a Sales Contract authorizes the Developer to make credit inquiries about the buyer, including, but not limited to, obtaining credit reports on the buyer and verifying by any legal means any financial information submitted to the Developer.

8. Confirmation of Financial Ability: Developer's Option to Terminate.

(a) Buyers are required to submit to Seller within ten (10) days of the date of Seller's acceptance of a Sales Contract, evidence of proof of funds in the amount of the Purchase Price, and/or any other financial data reasonably satisfactory to

Seller. Satisfactory evidence of proof of funds means the statements of a bank, brokerage or other institutional depository evidencing deposit of sufficient funds to the pay the full amount of the Purchase Price.

(b) Seller shall have fifteen (15) days after receipt of a buyer's proof of funds to notify the buyer of the Developer's acceptance or rejection of such proof as adequate to proceed with the sale of the apartment to the buyer. If such proof of funds is not produced by the buyer as requested by the Developer or Developer rejects such proof of funds because it is not adequate to Developer, Developer may, in its sole discretion, terminate the Sales Contract and cause Escrow Agent to refund to the buyer all amounts paid by the buyer pursuant to the Sales Contract (without interest, regardless of whether the buyer has elected to have interest accrue for the benefit of the buyer pursuant to Section 9.2.2 of said Sales Contract), less the cost of any credit report, cancellation fees of Escrow Agent, if any, and other costs incurred by the Developer in reviewing such financial statement. Each buyer shall represent and warrant to the Developer that the financial data to be submitted to the Developer or any prospective mortgagee shall be true and accurate. The Developer shall have the right to cancel a Sales Contract if any material discrepancy between the financial data submitted by the buyer to the Developer and buyer's actual financial condition is discovered.

(c) The Developer is authorized to make credit inquiries about any buyer entering into a Sales Contract including, but not limited to, obtaining credit reports on buyer and verifying by any legal means any financial information submitted to the Developer.

(d) Each buyer is required to submit to the Developer within ninety (90) calendar days prior to the estimated Closing Date, such written evidence as the Developer may reasonably request from the buyer's bankers or accountants or other persons to reconfirm that the buyer is still able to pay the Purchase Price in cash or has a binding commitment for financing.

(e) If the Developer, in its sole discretion, after reviewing the written evidence referenced to in Section 8(c) that the buyer above, is not satisfied as to a buyer's continued ability to make such cash payments or has a binding commitment for financing, and if the Developer determines that the buyer has not acted in good faith or otherwise complied with the requirements of the Sales Contract entered into by the buyer, then, and in such event, the buyer shall be in default under said Sales Contract, and the Developer may then cancel Escrow, terminate the Sales Contract, and exercise its remedies for breach of the Sales Contract.

(f) If the Developer determines that a buyer does not have the continued ability to make cash payments of the Purchase Price, but has at all times acted in good faith in seeking to fully comply with the buyer's obligations, then, the Developer shall have the right and option to cancel the Sales Contract entered into by the buyer upon written notice to the buyer, but upon such cancellation, the Developer shall direct Escrow Agent to refund to the buyer, (without interest, unless buyer has elected to have interest accrue for the benefit of the buyer pursuant to Section 9.2.2 of the Sales Contract) all sums paid by the buyer under the Sales Contract, less any cancellation fees of Escrow Agent and any other actual expenses incurred by the Developer by reason of the buyer entering into the Sales Contract.

#### 9. Interest on Funds Deposited with Escrow Agent.

(a) All interest on a buyer's deposits shall accrue to the benefit of the Developer unless the buyer elects to have interest accrue to it pursuant to Section 9.2.2 of the Sales Contract entered into by the buyer.

(b) If a buyer elects to have interest accrue to the benefit of the buyer, all funds received by Escrow Agent may be deposited into an interest bearing account or accounts in a federally insured bank or savings and loan institution selected by the Developer, in its sole discretion, with its principal place of business in Honolulu, Hawaii.

(c) If a buyer elects to have interest accrue to the benefit of the buyer, then, the buyer shall pay all costs and expenses of Escrow Agent incurred or charged for the purpose of opening, maintaining and closing such interest bearing account or accounts, including, but not limited to, a fee of Twenty-Five Dollars (\$25) for each such account.

(d) Except as provided in Sections 4 and 6 of this Exhibit J above, and 11(c) of this Exhibit J below, all interest earned from an account or accounts under which interest accrues for a buyer's benefit shall be credited to the buyer's account from the date of the Developer's acceptance of the Sales Contract entered into by the buyer; provided, however, that no interest shall be credited to the buyer for the period prior to the Developer's acceptance of the Sales Contract, or on funds held by Escrow Agent for less than sixty (60) calendar days after the Developer's acceptance of the Sales Contract.

#### 10. Default; Liquidated Damages; Delays in Closing.

(a) Default by Buyer. A buyer shall be in default under a Sales Contract entered into by the buyer if any of the following occurs:

(i) Such buyer fails to make a payment when due; or

(ii) Such buyer fails to furnish to the Developer satisfactory evidence of the buyer's ability to pay the purchase price, as required in Section 7 of this Exhibit J above; or

(iii) Such buyer fails to execute and return the receipt and notice of right to cancel in connection with the buyer's receipt of a copy of the Final Public Report within the time period required by §514A-62, Hawaii Revised Statutes; or

(iv) Such buyer fails to perform any other obligation required under the Sales Contract and such failure continues for fifteen (15) days after the Developer gives written notice to the buyer of such failure.

(b) Default by Buyer Prior to Sales Contract Becoming Binding. If a buyer defaults before a Sales Contract entered into by the buyer becomes a binding contract in accordance with §514A-62, Hawaii Revised Statutes, the Developer may, at the Developer's option, terminate the Sales Contract by written notice to the buyer, and the following shall apply:

(i) all deposits made under the Sales Contract shall be refunded or the check returned to the buyer (without interest, unless the buyer elected to have interest accrue to it pursuant to Section 9.2.2. of the Sales Contract), less any cancellation fee imposed by Escrow Agent and any other actual expenses incurred by the Developer by reason of the buyer having signed the Sales Contract; and

(ii) all costs, including, without limitation, reasonable attorneys' fees, incurred by reason of the default by the buyer shall be paid by the buyer promptly upon the Developer's demand therefor.

(c) Default by Buyer After Sales Contract Becomes Binding; Developer's Liquidated Damages. If a buyer defaults after a Sales Contract entered into by the buyer becomes a binding contract in accordance with §514A-62, Hawaii Revised Statutes, then, the Developer may at its option terminate the Sales Contract. As a reasonable estimate of the Developer's damages resulting from any such default occurring after the Sales Contract becomes a binding contract, the deposits previously made by the buyer under the Sales Contract together with all accrued interest thereon (regardless of whether the buyer has elected to have interest accrued to it pursuant to Section 9.2.2 of the Sales Contract) shall become, at the Developer's option, the sole property of the Developer as liquidated damages.

(d) Default by Developer; Developer's Cure Rights. If the Developer shall fail to perform any obligation required of the Developer under a Sales Contract prior to Closing, including the obligation to execute promptly all documents necessary to close, the buyer shall notify the Developer in writing by certified or registered mail of such default. The Developer shall have fifteen (15) days after the date of the notice to cure such default. If the Developer does not cure the default within such fifteen (15) day period, the buyer may elect, at the buyer's sole discretion, to either terminate the Sales Contract, or seek specific performance. Such buyer shall give written notice of buyer's election to the Developer.

(e) Buyer's Remedies. If a buyer elects to terminate the Sales Contract entered into by the buyer as a consequence of the Developer's default, the full amount of the buyer's deposits and all interest actually accrued thereon shall be paid to the buyer as the buyer's sole and exclusive remedy, and the Developer shall be released and discharged from any further obligation under the Sales Contract. If the buyer seeks specific performance of the Sales Contract, the buyer shall not be entitled to recover any damages from the Developer in such action.

#### 11. Buyer's Rescission Rights.

(a) Basis for Rescission. After a Sales Contract has become binding as provided therein, the buyer shall have the right to rescind the Sales Contract only if there is a material change in the condominium project which directly, substantially and adversely affects the use or value of

(i) the apartment being sold under the Sales Contract or such apartment's appurtenant limited common elements, or

(ii) the amenities of the condominium project available for the buyer's use; *provided, however,* that any such material change shall not include any changes, additions, deletions or modifications (including, without limitation, any merger of the condominium project) made by the Developer pursuant to Developer's Reserved Rights.

#### (b) Waiver of Buyer's Rescission Rights.

(i) If any material change is made to the condominium project after issuance of a Final Public Report or Contingent Final Report that is not provided for in the Declaration, the Developer shall give to each buyer, either personally or by registered or certified mail, return receipt requested, written notice

(1) describing the material change and containing a provision for the buyer's written approval or acceptance of such change,

(2) advising the buyer that the buyer has the right to rescind the Sales Contract within thirty (30) calendar days after delivery of such notice, and

(3) further advising the buyer that if the buyer does not act within such 30 days, the buyer will be deemed to have approved and accepted such material change.

(ii) After receipt of any notice of any material change, the buyer may rescind the Sales Contract by giving notice of rescission to the Developer by the earlier of thirty (30) calendar days after the date of delivery of the notice to the buyer, or ninety (90) calendar days after the buyer has accepted or occupied such apartment (but only if such notice of material change is delivered within sixty (60) calendar days after the buyer's occupancy or acceptance of the apartment).

(iii) If the buyer does not give the Developer notice of such rescission or approval of such material change within such 30- or 90-day time period, as applicable, the buyer will be deemed to have approved the change described in said notice and waived the buyer's right of rescission.

12. Cancellation in the Event of Buyer's Death. If a buyer, or, if there is more than one buyer, any one or more of the buyers, dies prior to Closing, the Developer reserves the right to return all deposits paid under the Sales Contract entered into by the buyer or buyers (without interest, unless the buyer or buyers have elected to have interest accrue for the benefit of the buyer or buyers, less Escrow's cancellation fee), whereupon the Sales Contract shall be deemed to have been canceled and both Developer and Buyer shall be released from all obligations and liabilities under the Sales Contract.

**END OF EXHIBIT J**

**EXHIBIT K**  
**Summary of Pertinent Provisions of the Escrow Agreement**

1. Sales Contracts to be Deposited in Escrow. When the Developer enters into a Sales Contract, the Developer will deliver an executed copy of the Sales Contract to Escrow.

2. Receipt of Funds by Escrow.

(a) Deposits by Developer. The Developer will deposit with Escrow any monies received by the Developer from each buyer under a Sales Contract.

(b) Escrow's Responsibilities. Escrow will receive and hold in escrow and disburse as set forth in the Escrow Agreement the following:

- (i) all payments made by the Developer under Sales Contracts to the extent received by Escrow;
- (ii) all funds from any lending institution disbursed pursuant to a mortgage loan made to a buyer for the purchase of an apartment; and
- (iii) all sums received by Escrow from any other source on account of the sale to a buyer of an apartment.

3. Deposit of Escrowed Funds. In accordance with written instructions from the Developer, Escrow will deposit all funds received by it, within a reasonable time of such receipt by Escrow and in reasonably convenient sums, in trust accounts at a federally insured bank, savings and loan association or trust company authorized to do business in the State of Hawaii under an escrow arrangement.

4. Interest on Escrowed Funds. Any interest earned on deposits shall accrue to the credit of the Developer unless buyer elects, pursuant to Section 9.2.2 of the Sales Contract entered into by the buyer, to cause interest on the buyer's deposits to accrue for the benefit of the buyer. If the buyer so elects, all Deposits received by Escrow may be deposited into an interest bearing account or accounts in a federally insured bank or savings and loan institution selected by the Developer, in its sole discretion, provided that such bank or savings and loan institution's principal place of business shall be located in Honolulu, Hawaii. Buyer shall pay all costs and expenses of Escrow incurred or charged for the purpose of opening, maintaining and closing such interest bearing account or accounts, including, but not limited to, a fee of Twenty-Five Dollars (\$25.00), for each such account.

5. Conditions to be Satisfied Prior to Disbursement. No disbursement of funds held by Escrow shall be made unless and until all of the following conditions have been satisfied, which may occur before closing of the sale of an apartment to a buyer:

(a) Supplementary Public Report. The Real Estate Commission shall have issued an effective date for the "Supplementary Public Report" for the condominium project, and buyer is given a copy of the Supplementary Public Report and acknowledges receipt of same or is deemed to have acknowledged receipt of same.

(b) Buyer's Rescission Rights. The Developer or the Developer's attorney shall have delivered a written opinion to Escrow stating that the requirements of HRS Sections 514A-62 and 514A-63, as amended, have been satisfied.

(c) Developer's Cancellation Rights. The Developer shall have given Escrow a written waiver of any option reserved in any Sales Contract to cancel the Sales Contract.

6. Disbursement of Buyer's Funds. Subject to the provisions of Section 5 above, upon the Developer's written instructions, Escrow may disburse funds held in escrow to pay the following:

(a) Construction Costs. To the Developer, the Developer's general contractor, or the Developer's mortgagee, if any, as specified by the Developer, for construction costs of the buildings and other improvements and fixtures of the condominium project in such amounts and at such times and in proportion to the valuation of the work completed by said general contractor in accordance with the terms of said general contractor's construction contract with the Developer, as certified by a registered architect or professional engineer and as approved by the mortgagee loaning funds to the Developer for the construction of the condominium project, if any, or a financially disinterested person who shall be designated in writing by the Developer and such Developer's mortgagee, if any, and who shall certify to Escrow in writing that such person is a "financially disinterested person".

(b) Other Expenses. To other persons for architectural, engineering, finance and legal fees and other incidental expenses of the condominium project (but not selling expenses or brokerage fees relating to sales of any apartment) to the extent approved by the Developer's mortgagee or a financially disinterested person.

7. Disbursement of Balance. The balance of funds held by Escrow may be disbursed in accordance with the directions of the Developer and the Developer's mortgagee, if any, or of a financially disinterested person, only upon completion of the condominium project's buildings being constructed by the Developer's general contractor, or forty-six (46) days after the filing of the affidavit of publication of the notice of completion of construction of the condominium project in the office of the Clerk of the Third Circuit Court of the State of Hawaii, a copy of which shall have been delivered to Escrow; provided, however, that if any notice of a mechanic's or materialmen's lien has been filed, said funds shall be disbursed only when all such mechanics' or materialmen's liens have been released and/or sufficient funds have been set aside to cover the claims for which any notice of lien have been filed.

8. Return of Funds and Documents.

(a) Escrow's Obligations to Return Funds. A buyer shall be entitled to a return of funds held by Escrow, and Escrow shall pay such funds to the buyer, with interest to the extent provided in the Sales Contract to which the buyer is a party, if any one of the following shall have occurred:

(i) The Developer and the buyer shall have instructed Escrow in writing to return such funds to the buyer; or

(ii) The Developer has notified Escrow of the Developer's exercise of the option to cancel or rescind the Sales Contract entered into by the buyer pursuant to any right of cancellation or rescission provided for in the Sales Contract, or otherwise available to the Developer, pursuant to which the buyer is entitled in accordance with the Sales Contract to a return of funds deposited by the buyer with Escrow; or

(iii) With respect to any buyer whose funds were obtained prior to the issuance of the Final Public Report or Contingent Final Public Report, if the buyer has exercised the buyer's right to cancel the Sales Contract entered into by the buyer pursuant to HRS Section 514A-62; or

(iv) The buyer has exercised the buyer's right to rescind the Sales Contract entered into by the buyer pursuant to HRS Section 514A-63.

9. Cancellation Fee; Cancellation of Sales Contract. Upon the occurrence of any event described in Section 8(a)(i) or 8(a)(ii) above or upon receipt of a written request for a refund from any buyer upon the occurrence of any event described in Section 8(a)(iii) or 8(a)(iv) above, and unless the buyer has waived or has been deemed to have waived the buyer's right to a refund, Escrow shall deliver to the buyer all funds received from the buyer, less, if so specified in the Sales Contract entered into by the buyer, a cancellation fee to Escrow of Two Hundred Fifty Dollars (\$250.00) per apartment which is the subject matter of the Sales Contract. Upon such payment, said Sales Contract shall be deemed cancelled and any partially executed conveyance document theretofore delivered to Escrow shall be returned to the Developer; provided, however, that no refund shall be made to any buyer prior to Escrow giving the Developer written notice of Escrow's intention to make such refund.

10. Buyer's Default.

(a) Sums Payable by Buyer Under Sales Contract. The Developer shall give notice in writing to Escrow of the occurrence of each event that creates an obligation on the part of any buyer to make any payment to Escrow pursuant to the terms of a Sales Contract entered into by the buyer, and the amount of and due date for such payment. Upon receipt of any such notice, Escrow shall promptly give the buyer notice of the amount and date on which such required payment is due.

(b) Failure of Buyer to Make Required Payment. If a buyer fails to make any required payment to Escrow on or before the date on which it is due or if the buyer fails to satisfy any obligation or requirement being handled by Escrow, Escrow shall promptly notify the Developer of any such failure on the part of the buyer. If the Developer (i) subsequently certifies in writing to Escrow that the Developer has terminated the Sales Contract into which the buyer entered in accordance with the terms thereof, and (ii) provides to Escrow a copy of the notice of termination sent to the buyer, Escrow shall thereafter treat all funds of the buyer paid on account of the buyer's Sales Contract as the property of the Developer, and not as the property of the buyer. Such funds shall be free of the escrow established by the Sales Contract and Escrow Agreement and shall be held by Escrow for the account of the Developer.

(c) Disbursement of Funds; Delivery to Buyer Upon Termination of Sales Contract. Upon the written request of the Developer:

- escrow cancellation fee;
- (i) Escrow shall pay to the Developer the funds referred to in Section 10(b) above, less any
  - (ii) shall return to the Developer any partially executed conveyance documents theretofore delivered to Escrow by the Developer; and
  - (iii) shall hold all other documents theretofore delivered to Escrow in connection with the buyer's purchase of an apartment for any applicable statutory period.

**END OF EXHIBIT K**