

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer Maui Beach Resort Limited Partnership
Address 3350 Lower Honoapiilani Road, Suite 105, Lahaina, Hawaii 96761
Project Name (\*): Honua Kai Condominium (Building SE-C)
Address: Lot 4, Kaanapali North Beach Subdivision, Kaanapali, Maui, Hawaii

Registration No. 5747

Effective date: July 28, 2006
Expiration date: August 28, 2007

Preparation of this Report:

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

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

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

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

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

Type of Report:

- PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
SUPPLEMENTARY: (pink) This report updates information contained in the:
And

(\* ) Exactly as named in the Declaration

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

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

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

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

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

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

No prior reports have been issued by the developer.

Changes made are as follows:

See **Exhibit A** attached hereto and made a part hereof.

## TABLE OF CONTENTS

	Page
Preparation of this Report	1
Expiration Date of Reports	1
Type of Report	1
Disclosure Abstract	2
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information On Condominiums	4
Operation of the Condominium Project	4
I. PERSONS CONNECTED WITH THE PROJECT	
Developer	5
Attorney for Developer	
General Contractor	
Real Estate Broker	
Escrow Company	
Condominium Managing Agent	
II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS	
A. Declaration	6
B. Condominium Map (File Plan)	6
C. Bylaws	6
D. House Rules	7
E. Changes to Condominium Documents	7
III. THE CONDOMINIUM PROJECT	
A. Interest to be Conveyed to Buyer	8
B. Underlying Land	9
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	13
E. Encumbrances Against Title	14
F. Construction Warranties	15
G. Status of Construction	16
H. Project Phases	16
IV. CONDOMINIUM MANAGEMENT	
A. Management of the Common Elements	17
B. Estimate of Initial Maintenance Fees	17
C. Utility Charges for Apartments	17
V. MISCELLANEOUS	
A. Sales Documents Filed With the Real Estate Commission	18
B. Buyer's Right to Cancel Sales Contract	18
C. Additional Information Not Covered Above	20
D. Signature of Developer	21
EXHIBIT A:	SUMMARY OF CHANGES FROM CONTINGENT FINAL PUBLIC REPORT
EXHIBIT B:	LIST OF AUTHORIZED SIGNATORIES FOR DEVELOPER'S GENERAL PARTNER
EXHIBIT C:	RIGHTS RESERVED BY DEVELOPER
EXHIBIT D:	PHASING OF PROJECT
EXHIBIT E:	PARKING STALLS
EXHIBIT F:	COMMON ELEMENTS AND LIMITED COMMON ELEMENTS
EXHIBIT G:	COMMON INTEREST
EXHIBIT H:	ENCUMBRANCES AGAINST TITLE
EXHIBIT I:	ESTIMATE OF INITIAL MAINTENANCE FEES AND ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS
EXHIBIT J:	SUMMARY OF SALES CONTRACTS
EXHIBIT K:	SUMMARY OF ESCROW AGREEMENT
EXHIBIT L:	TERMS OF LIMITED WARRANTY
EXHIBIT M:	MAUI COUNTY PLANNED DEVELOPMENT APPROVAL

### **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: Maui Beach Resort Limited Partnership Phone: 866-678-1310  
 Name\* (Business)  
3350 Lower Honoapiilani Road, Suite 105  
Lahaina, Hawaii 96761  
 Business Address

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):

Northwest Maui Corporation, General Partner. See Exhibit B for a list of authorized signatories for Developer's general partner.

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Real Estate Broker\*: Playground Destination Properties Inc. Phone: 866-678-1310  
 Name (Business)  
3350 Lower Honoapiilani Road, Suite 105  
 Business Address  
Lahaina, Hawaii 96761

Escrow Fidelity National Title & Escrow of Hawaii, Inc. Phone: 808-661-4960  
 Name (Business)  
181 Lahainaluna Road - Suite E  
 Business Address  
Lahaina, Hawaii 96761

General Contractor\*: LPIHGC, LLC Phone: 808-661-7906  
 Name (Business)  
3350 Lower Honoapiilani Road, Suite 105  
 Business Address  
Lahaina, Hawaii 96761

Condominium Managing Agent\*: Management Consultants of Hawaii Inc. Phone: 808-661-8795  
 Name (Business)  
727 Wainee Street, Suite 106  
 Business Address  
Lahaina, Hawaii 96761

Attorney for Developer: Eric A. James, Esq. Phone: 808-523-2500  
 Name (Business)  
Carlsmith Ball LLP, 1001 Bishop Street  
ASB Tower, Suite 2200  
Honolulu, Hawaii 96813  
 Business Address

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

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

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

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

The Declaration for this condominium is:

<input type="checkbox"/>	Proposed		
<input checked="" type="checkbox"/>	Recorded -	Bureau of Conveyances:	Document No. <u>2005-207370</u>
			Book _____ Page _____
<input checked="" type="checkbox"/>	Filed -	Land Court:	Document No. <u>3340058</u>

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

First Amendment to Declaration of Condominium Property Regime of Honua Kai, dated May 5, 2006, recorded in said Bureau as Document No. 2006-086974 and filed in Land Court as Document No. 3426175.

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:

<input type="checkbox"/>	Proposed		
<input checked="" type="checkbox"/>	Recorded -	Bureau of Conveyances	Condo Map No. <u>4093</u>
<input checked="" type="checkbox"/>	Filed -	Land Court	Condo Map No. <u>1747</u>

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

First Amendment to the Condominium Map of Honua Kai recorded in said Bureau as Condo Map No. 4093 and filed in Land Court as Condo Map No. 1747.

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:

<input type="checkbox"/>	Proposed		
<input checked="" type="checkbox"/>	Recorded -	Bureau of Conveyances:	Document No. <u>2005-207371</u>
			Book _____ Page _____
<input checked="" type="checkbox"/>	Filed -	Land Court:	Document No. <u>3340059</u>

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 the Honua Kai Condominium Association, Inc., dated May 5, 2006, recorded in said Bureau as Document No. 2006-086975 and filed in Land Court as Document No. 3426176.

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

The House Rules for this condominium are:

Proposed                       Adopted                       Developer does not plan to adopt House Rules

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

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

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

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

\*\*Please note that the provisions of the Bylaws may be amended by the vote or written consent of not less than sixty five percent (65%) of the Common Interest of the Owners of Residential Apartments and sixty five percent (65%) of the Common Interest of the Owners of Commercial 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 C**

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.
- Leasehold or Sub-leasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

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

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

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:      Monthly                      Quarterly  
                                   Semi-Annually              Annually

**Exhibit \_\_\_\_** contains a schedule of the lease rent for each apartment per:  Month  Year

For Sub-leaseholds:

- Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:      Canceled                      Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

- Individual Apartments in Fee Simple, Common Interest in the Underlying Land in Leasehold or Sub-leasehold:

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

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

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:      Monthly                      Quarterly  
                                   Semi-Annually              Annually

**Exhibit \_\_\_\_** contains a schedule of the lease rent for each apartment per:  Month  Year

[ ] Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

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

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

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

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

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

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

**B. Underlying Land:**

Address: Lot 4, Kaanapali North Beach Tax Map Key (TMK): 2-4-4-14-6  
Subdivision 2-4-4-14-8  
Kaanapali, Maui, Hawaii

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

Land Area: 39,846\* [ ] square feet [✓] acre(s) Zoning: 2-4-4-14-6: H-2 Hotel, H-M Hotel,  
R-3 Residential;  
2-4-4-14-8: H-2 Hotel,  
R-3 Residential  
\*\*Planned Development

\*Please note that the Declaration and Condominium Map reflect all 709 Apartments which Developer currently intends to develop in the Project. Pursuant to Developer's reserved rights under Section 8.07 of the Declaration, Developer has elected to develop and register the Project in phases, the phase covered under this Final Public Report being comprised of 54 Apartments located in Building SE-C in the Hokulani Enclave. Developer currently intends to develop the Project in ten (10) phases. Please see **Exhibit D** for further explanation. Developer has obtained separate final public reports on (i) 195 Apartments in Building SE-A in the Hokulani Enclave, and (ii) 76 Apartments in Building SE-B in the Hokulani Enclave. Developer has elected to proceed with the construction of Buildings SE-A and SE-B in the Hokulani Enclave. Developer has also obtained separate preliminary public reports on (i) 24 Apartments in TH-1 (Buildings 1-6) in the Luana Enclave, and (ii) 28 Apartments in TH-2 (Buildings 7-13) in the Luana Enclave. Developer has not made

a decision whether to proceed with constructing TH-1 and TH-2 in the Luana Enclave. Please be advised that there is no guaranty that the other Apartments will be developed. See Sections 8.07, 8.08, 8.09, 8.12 and 8.13 of the Declaration.

\*\*The Developer applied and received approval for a Planned Development through the County of Maui Planning Commission. The Planned Development is a zoning designation which allows the Developer to develop the land of the Project in various ways. The Planned Development does not affect the use of apartments in the Hokulani Enclave, nor does it impose any restrictions or obligations on owners of apartments in the Hokulani Enclave. See attached **Exhibit M** for details.

Fee Owner: Maui Beach Resort Limited Partnership  
 Name  
3350 Lower Honoapiilani Road, Suite 105  
Lahaina, Hawaii 96761  
 Address

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

C. **Buildings and Other Improvements:**

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

2. Number of Buildings: 1\* Floors Per Building: 7 floors  
 **Exhibit** \_\_\_\_\_ contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other: plaster finish, acrylic stucco and metal

4. Uses Permitted by Zoning:

		No. of Apts.	<u>Use Permitted By Zoning</u>	
<input checked="" type="checkbox"/>	Residential	<u>54**</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 checked="" type="checkbox"/>	Hotel	<u>54**</u>	<input checked="" 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

\*Please note that the Declaration and Condominium Map reflect all 709 Apartments which Developer currently intends to develop in the Project. Pursuant to Developer's reserved rights under Section 8.07 of the Declaration, Developer has elected to develop and register the Project in phases, the phase covered under this Final Public Report being comprised of 54 Apartments located in Building SE-C in the Hokulani Enclave. Developer currently intends to develop the Project in ten (10) phases. Please see **Exhibit D** for further explanation. Developer has obtained separate final public reports on (i) 195 Apartments in Building SE-A in the Hokulani Enclave, and (ii) 76 Apartments in Building SE-B in the Hokulani Enclave. Developer has elected to proceed with the construction of Buildings SE-A and SE-B in the Hokulani Enclave. Developer has also obtained separate preliminary public reports on (i) 24 Apartments in TH-1 (Buildings 1-6) in the Luana Enclave, and (ii) 28 Apartments in TH-2 (Buildings 7-13) in the Luana Enclave. Developer has not made a decision whether to proceed with constructing TH-1 and TH-2 in the Luana Enclave. Please be advised that there is no guaranty that the other Apartments will be developed. See Sections 8.07, 8.08, 8.09, 8.12 and 8.13 of the Declaration.

\*\*Please note that both residential and hotel uses are permitted for the Residential Apartments.

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: The raising, breeding or keeping of animals, livestock, or poultry of any kind is prohibited within the Project; provided, however, an Owner or Guest of an Owner of an Apartment may keep dogs, cats or other usual common household pets within such Owner's Apartment.

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

Other: Section 4.03(a) of the Declaration provides that (i) **Residential Apartments may be occupied and used only as permanent or vacation residences for the Owners and Guests, including for transient vacation rental periods of less than 30 days;** (ii) no Owner shall lease its Residential Apartment for a term longer than 60 days without the prior written consent of the Association; and (iii) no Owner shall conduct any business, professional, occupation or trade from its Residential Apartment.

Section 4.03(b) of the Declaration prohibits the use of Residential Apartments, and Section 4.04(b) of the Declaration prohibits the use of Commercial Apartments, in each case, for the purpose of timesharing.

Section 4.03(h) of the Declaration prohibits Owners of Residential Apartments, and Section 4.04(c) of the Declaration prohibits Owners of Commercial Apartments, in each case, from subdividing, separating or "locking-off" his or her Apartment into any number of dwelling Apartments.

Section 4.03(i) of the Declaration allows an Owner to use its Residential Apartment as its private office, on the condition that the Owner does not invite others to its Residential Apartment to conduct business. The Association and Developer may use one Residential Apartment owned or leased by it as a management office for the Project.

Section 4.04(d) of the Declaration prohibits Owners of Commercial Apartments and their Guests from using any Limited Common Element that is appurtenant exclusively to one or more Residential Apartments.

Subject to the rights of the Owner of Konea Commercial Apartment NC 5 as set forth in Section 6.12 of the Declaration, Section 4.04(i) of the Declaration prohibits Owners of Commercial Apartments and their Guests from using any swimming pool located in the Project.

Section 6.12 of the Declaration allows the Owner of Konea Commercial Apartment NC 5 to sell one hundred twenty (120) memberships ("Paid Guest Memberships") and issue five (5) complimentary memberships ("Complimentary Guest Memberships" and together with the Paid Guest Memberships, "Guest Memberships") in the fitness club to persons who are not Owners ("Guest Member"). Each Guest Membership will allow up to four (4) family members or Guests of the Guest Member to use the Common Elements of the Project. The holders of Paid Guest Memberships will be required to pay a use fee for such Paid Guest Membership.

Section 5.02(b) of the Bylaws requires that Owners shall exercise care about causing or permitting excessive noise that may disturb other Owners or occupants; however, Commercial Apartment Owners are not prohibited from using their Apartments for uses permitted under the Declaration.

Section 5.02(i) of the Bylaws prohibits Owners from operating "roller lounges" on or about the 150 foot setback shoreline area.

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators:   0  

Stairways:   1  

Trash Chutes:   0  

Apt. Type <sup>†</sup>	Quantity	BR/Bath	Net Living Area (sf)*	Net Other Area (sf)	(Identify)
B1a	7	1/1	695	150	Lanai/ Garden Area
C1	35	2/2	1,100	235	Lanai/ Garden Area
D2-R	5	3/3	2,265	560	Lanai/ Garden Area
D2a-R	5	3/3	2,225	560	Lanai/ Garden Area
E1-R	1	4/4	2,650	3,200	Lanai
E1a-R	1	4/4	2,650	3,200	Lanai
Total Number of Apartments:			54**		

\*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.

<sup>†</sup>Please note that the following Apartments listed below differ in size from the Apartment types in the above chart:

Apartment Type B1a. Hokulani Residential Apartment SR144 has an extended garden area with net floor area of approximately 460 square feet and raised ceilings in the living room/dining room and bedroom.

Apartment Type C1. Hokulani Residential Apartment SR145 has an extended garden area with net floor area of approximately 665 square feet. Hokulani Residential Apartment SR146 has an extended garden area with net floor area of approximately 765 square feet. Hokulani Residential Apartment SR147 has an extended garden area with net floor area of approximately 650 square feet. Hokulani Residential Apartment SR148 has an extended garden area with net floor area of approximately 650 square feet. Hokulani Residential Apartment SR149 has an extended garden area with net floor area of approximately 700 square feet. Hokulani Residential Apartments SR145, SR146, SR147, SR148 and SR149 also have raised ceilings in the living room/dining room and bedrooms.

Apartment Type D2-R. Hokulani Residential Apartment SR151 has an extended garden area with net floor area of approximately 1005 square feet and raised ceilings in the living room/dining room and bedrooms.

Apartment Type D2-Ra. Hokulani Residential Apartment SR150 has an extended garden area with net floor area of approximately 1050 square feet and raised ceilings in the living room/dining room and bedrooms.

Apartment Type E1a-R. Hokulani Residential Apartment SR750 has vaulted ceilings in the living room/dining room.

\*\*Please note that the Declaration and Condominium Map reflect all 709 Apartments which Developer currently intends to develop in the Project. Pursuant to Developer's reserved rights under Section 8.07 of the Declaration, Developer has elected to develop and register the Project in phases, the phase covered under this Final Public Report being comprised of 54 Apartments located in Building SE-C in the Hokulani Enclave. Developer currently intends to develop the Project in ten (10) phases. Please see **Exhibit D** for further explanation. Developer has obtained separate final public reports on (i) 195 Apartments in Building SE-A in the Hokulani Enclave, and (ii) 76 Apartments in Building SE-B in the Hokulani Enclave. Developer has elected to proceed with the construction of Buildings SE-A and SE-B in the Hokulani Enclave. Developer has also obtained separate preliminary public reports on (i) 24 Apartments in TH-1 (Buildings 1-6) in the Luana Enclave, and (ii) 28 Apartments in TH-2 (Buildings 7-13) in the Luana Enclave. Developer has not made a decision whether to proceed with constructing TH-1 and TH-2 in the Luana Enclave. Please be advised that there is no guaranty that the other Apartments will be developed. See Sections 8.07, 8.08, 8.09, 8.12 and 8.13 of the Declaration.

**Boundaries of Each Apartment:** As set forth in Section 3.02(b) of the Declaration, each Apartment consists of the improvements, fixtures and space located within the undecorated or unfinished surfaces of each building's perimeter walls, interior load-bearing walls, floors and ceilings. Purchasers should review the Declaration Section 3.02(b) for a full description of what is and what is not included in each Apartment.

**Permitted Alterations to Apartments:** Generally, alterations to Apartments are permitted only with the prior approval of the Project's Board of Directors. All purchasers should review the restrictions, requirements and conditions for Apartment alterations which are contained in Section 4.08 of the Declaration and Section 10.04 of the Bylaws.

**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 not elected to provide the information in a published announcement or advertisement because of the Project's intended hotel use.

7. Parking Stalls:

Total Parking Stalls:	<u>28</u>						
	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>TOTAL</u>
Assigned* (for each unit)	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>
Guest	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Unassigned	<u>14</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>14</u>
Extra for Purchase	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Other: **	<u>12</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>12</u>
Total Covered & Open:	<u>28</u>		<u>0</u>		<u>0</u>		<u>28</u>

Residential Apartments SR 150, 151, 250, 251, 350, 351, 450, 451, 550, 551, 650 and 750 will have the exclusive use of at least 1 parking stall(s) in a parking zone as described in Exhibit C to the Declaration and as shown on the Condominium Map. The balance of the Apartments that do not have an assigned parking stalls or parking zones have the right to use any parking stall in the parking areas located within the Project. Buyers are encouraged to find out which stall(s) will be available for their use.

\*Only applies to the Restaurant Apartment.

\*\*A total of 12 parking stalls have been designated for inclusion in specific identified parking zones for the use of Residential Apartments SR 150, 151, 250, 251, 350, 351, 450, 451, 550, 551, 650 and 750.

Commercial parking garage permitted in condominium project.

Exhibit E 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<sup>†</sup>                       Recreation Area

Laundry Area                       Tennis Court                       Trash Chute/Enclosure(s)

Other North Park A, Shoreline

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

<sup>†</sup> Only certain Residential Apartments shall have as a Limited Common Element storage lockers as shown on the Condominium Map and designated for the use of such Residential Apartments on Exhibit C to the Declaration.

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	✓	_____	_____
Structures	✓	_____	_____
Lot	✓	_____	_____

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

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

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

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

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

described in **Exhibit F**.

as follows:

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

There are no limited common elements in this project.

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

described in **Exhibit 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 effective July 5, 2006, and issued by Fidelity National Title Insurance Company.

Blanket Liens:

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

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

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

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

Type of Lien

Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance

The Project is subject to two mortgages made by the Developer in connection with two mezzanine loans. Developer intends to record a mortgage securing the construction loan for the Project. The mortgages are described in Section III.E above (Encumbrances Against Title) and Exhibit H attached to this Public Report. All mortgages will be partially released as to each apartment being offered for sale under this Public Report upon the closing of each sale and the recording of the apartment deed, if not sooner.

None. The mortgages will be subordinate to the sales contracts executed prior to recordation of such mortgages at the Bureau of Conveyances and Land Court. Any sales contracts executed after the recordation of such mortgages will be subordinate to such mortgages. If the Developer defaults or the lien of the mortgage(s) is foreclosed prior to conveyance, pursuant to Section D.41 of the Sales Contract, a buyer's sole remedy in the event of a default by Developer is to terminate the Sales Contract and seek the return of his or her deposits and any other amounts paid by buyer to Developer under the Sales Contract. No other party shall be deemed responsible to any buyer for completion of the Project in the event the Developer is unable to do so.

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 shall provide purchasers a limited one year warranty for the Apartment from the closing date of the sale of such Apartment on the terms and conditions as set forth on **Exhibit L** attached hereto and made a part hereof.

2. Appliances:

Developer shall assign, without recourse, any manufacturer's or dealer's warranties covering the furnishings and appliances in the Apartment on the terms and conditions as set forth on **Exhibit L** attached hereto and made a part hereof.

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

Site work for the Project has commenced. Construction of the Project's buildings is expected to commence July of 2006 and the Project is currently expected to be completed in December 31, 2008. Please note that these dates are estimates and are subject to change.

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):

1. Under Section 8.07 of the Declaration, Developer has elected to develop and register the Project in phases, the phase covered under this Final Public Report being comprised of 54 Apartments located in Building SE-C in the Hokulani Enclave. Developer currently intends to develop the Project in ten (10) phases. Please see **Exhibit D** for further explanation. Developer has obtained separate final public reports on (i) 195 Apartments in Building SE-A in the Hokulani Enclave, and (ii) 76 Apartments in Building SE-B in the Hokulani Enclave. Developer has elected to proceed with the construction of Buildings SE-A and SE-B in the Hokulani Enclave. Developer has also obtained separate preliminary public reports on (i) 24 Apartments in TH-1 (Buildings 1-6) in the Luana Enclave, and (ii) 28 Apartments in TH-2 (Buildings 7-13) in the Luana Enclave. Developer has not made a decision whether to proceed with constructing TH-1 and TH-2 in the Luana Enclave. Please be advised that there is no guaranty that the other Apartments will be developed. See Sections 8.07, 8.08, 8.09, 8.12 and 8.13 of the Declaration.

2. Under Section 8.11 of the Declaration, Developer has reserved the right, but is under no obligation, to add certain areas to the Project from time to time.

IV. CONDOMINIUM MANAGEMENT

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

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

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

not affiliated with the Developer\*  the Developer or Developer's affiliate  
 self-managed by the Association of Apartment Owners  Other: \_\_\_\_\_

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

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

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

**Exhibit I** contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

Please note that maintenance fees shown on **Exhibit G** have been computed for the Apartments in Building SE-C based upon the assumption that Buildings SE-A and SE-B, which are covered by separate public reports. Please refer to **Exhibit D** for further explanation.

C. **Utility Charges for Apartments:**

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

None  Electricity (  Common Elements only \_\_\_ Common Elements & Apartments)  
 Gas (  Common Elements only \_\_\_ Common Elements & Apartments)  
 Water  Sewer  Television Cable  
 Other garbage disposal \_\_\_\_\_

\*Please note that Developer intends to enter into a Property Management Agreement with an affiliate ("Affiliate Managing Agent"). It is uncertain which affiliate of the Developer will become the Managing Agent. In addition to property management services under this proposed Property Management Agreement, the Affiliate Managing Agent intends to provide valet service, room service (during certain hours of the day) and/or food and beverage service in the swimming pool and lobby areas (during certain hours of the day), subject to necessary liquor license requirements. The Affiliate Managing Agent will assume all of the costs and expenses of providing these services and will retain all income from such services in addition to its base property management fee. Under this proposed Property Management Agreement, the Affiliate Managing Agent will provide Owners in residence and Guests of Owners in residence the license to use the temporary fitness room in the Hokulani Enclave free of charge. The temporary fitness room will be located in Hokulani Commercial Apartment SC 1 until such time as the Konea Enclave is completed. Thereafter, the fitness room will be located in Konea Commercial Apartment NC 5. Under this proposed Property Management Agreement, all Owners and Guests shall have the right to use the spa in the Konea Enclave at published rates once the spa is built.

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 July 8, 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: Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach, dated December 6, 2000, recorded on December 6, 2000 at the Bureau of Conveyances of the State of Hawaii ("Bureau") as Document No. 2000-170917 and at the Office of the Assistant Registrar of the Land Court of the State of Hawaii ("Office") as Document No. 2668967; Designation of Successor Declarant and Assignment of Declarant's Rights and Interests Under Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach, dated November 22, 2002, recorded on January 28, 2003 at the Bureau as Document No. 2003-015949 and the Office as Document No. 2885398; Supplemental Declaration to Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach, dated August 5, 2003, recorded on August 5, 2003 at the Bureau as Document No. 2003-162023 and the Office as Document No. 2972191; Special Management Area Permit No. SM1 2004/0017 for the project approved on February 22, 2005 by the Maui Planning Commission; Short Form of Settlement Agreement of February 2, 2005 dated June 13, 2005, recorded on May 17, 2006 at the Bureau as Document No. 2006-093201 and the Office as Document No. 3426176; Step 1 Planned Development Approval and Amendment to the Kaanapali Recreation Plan (Docket No. PD1 2004/0001) approved by the Maui Planning Department; Step 2 Planned Development Application for the Proposed Honua Kai Resort, North Beach Park and Related Improvements (PD2 2004/0005) approved on February 22, 2005 by the Maui Planning Department; and Step 3 Planned Development Approval for the 700 Unit, Honua Kai Resort Project consisting of the Phase I Site Improvements (PD3 2005/0008) approved on December 13, 2005 by the Maui Planning Department.

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. 5747 filed with the Real Estate Commission on July 22, 2005.

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

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C. **Additional Information Not Covered Above**

Items 1 through 9, below, are from the Special Management Area Permit No. SM1 2004/0017 for the Project approved on February 22, 2005 by the Maui Planning Commission. In addition to these specific conditions, the entire permit which is on file with the Maui Planning Department should be carefully reviewed.

Please note that:

1. The pump station and all on-site wastewater facilities will be privately owned and maintained.
2. The final drainage plan will be in accordance with the Drainage Master Plan for Kaanapali North Beach Subdivision, the County of Maui drainage standards and the West Maui Watershed Owner's Manual. Onsite and offsite retention and detention basin improvements will be privately owned and maintained.
3. A coastal engineering company will be retained by Developer to develop a coastal management plan for the sand dunes area. The plan will be developed in coordination with the State Department of Land and Natural Resources and the University of Hawaii Sea Grant Program. A copy of this plan will be filed with the Maui Department of Planning, State Department of Land and Natural Resources and the University of Hawaii Sea Grant Program prior to issuance of a certificate of occupancy of apartments in the Hokulani Enclave and the Luana Enclave.
4. Developer will participate with the North Beach Subdivision Master Association to conduct bi-annual water quality monitoring surveys for construction projects in the North Beach subdivision.
5. One hundred (100) parking stalls will be reserved for employee parking.
6. Developer will file annual reports with the Maui Planning Commission on the disbursement of the funds in the Settlement Agreements with Charles D. Fox III and The West Maui Preservation Association for its information.

As set forth in the Unilateral Agreement relating to the SMA Permit, dated June 13, 2005, recorded on August 26, 2005 at the Bureau of Conveyances as Document No. 2005-170923, the three conditions which run with the land are:

7. The Project will connect to and utilize Maui County's reclaimed water system once it becomes available;
8. Developer shall participate in a Hawksbill and Green Turtle monitoring program with the U.S. Fish and Wildlife Service;
9. Developer shall construct North Park and a public lateral access walkway ("Improvements") within the 150 foot shoreline setback area when the Project is constructed. These Improvements shall be privately owned and maintained but shall be open to the public and completed prior to the issuance of the Certificate of Occupancy for Phase 1 of the Project, unless the Improvements are covered by a bond.

Developer has recorded in the Bureau of the Conveyances of the State of Hawaii and filed in the Land Court of the State of Hawaii the Memorandum of Settlement Agreement relating to the Settlement Agreement with The West Maui Preservation Association. As disclosed in Section 5.11 of the Declaration, under the Settlement Agreement, each buyer shall pay to the Honua Kai West Maui Community Trust a transfer fee of 0.25% of the sales price of his or her Apartment payable on the transfer of title.

Please also note that portions of the Project site are in a flood zone and tsunami inundation area. There is also a one hundred fifty (150) foot shoreline setback on the Project site.

References in the Condominium Map to "LCE" mean Limited Common Element.

The Developer recently obtained financing in the form of mezzanine debt. The mezzanine loans will be subordinate to the construction loan (see page 15). The Developer used the proceeds of the mezzanine loans to pay off the loan used to acquire the land for the Project.

Pursuant to the Developer's reserved rights under Section 8.04 of the Declaration, the Developer currently intends to amend the Declaration and Bylaws to take advantage of the recodified condominium law, Hawaii Revised Statutes Chapter 514B.

Developer does not intend to use buyers' funds to pay for construction costs until the closing of the construction loan.

- 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.

Maui Beach Resort Limited Partnership  
Printed Name of Developer

By: Northwest Maui Corporation,  
its General Partner

By Paul Woodward  
Duly Authorized Signatory\*

June 29/06  
Date

Paul Woodward, Vice President  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Maui

Planning Department, County of Maui

**\*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

### SUMMARY OF CHANGES FROM CONTINGENT FINAL PUBLIC REPORT

Pursuant to the Developer's reserved rights under Article VIII of the Declaration, the Developer has made the following changes since the issuance of the Contingent Final Public Report.

1. The Developer has elected to proceed with the construction of Buildings SE-A and SE-B in the Hokulani Enclave.
2. The First Amendments to the Declaration, Bylaws and Condominium Map have been recorded at the Bureau of Conveyances and filed in the Land Court.
3. The Developer disclosed its approval for a Planned Development from the County of Maui Planning Commission.
4. The Developer disclosed its mezzanine loan.
5. The estimate of initial maintenance fees has been updated to note that the maintenance fees shown on **Exhibit G** are based also upon the assumption that Buildings SE-A and SE-B in the Hokulani Enclave will be developed.
6. The disclosure in the Contingent Final Public Report regarding gas service in certain apartments in the Hokulani Enclave was deleted. As previously disclosed, the Developer intended to revise the Bylaws to reflect the utility charges for gas service for certain apartments in the Hokulani Enclave. The Developer recently recorded the First Amendment to the Bylaws which describes the utility charges for gas service for certain apartments in the Hokulani Enclave.
7. **Exhibit B** has been updated to reflect the current list of authorized signatories for Developer's general partner.
8. **Exhibit E** has been updated to specify that the Limited Common Element of each Apartment in the Luana Enclave will be the interior of the assigned garage parking stall.
9. **Exhibit F** has been updated to reflect the three additional swimming pools in the Luana Enclave, the deletion of a garden area as a Limited Common Element from the Luana Enclave, and the addition of the basement of the Restaurant Apartment.
10. An updated title report has been filed with the Real Estate Commission. Please see **Exhibit H** for an updated listing of the encumbrances against title.
11. **Exhibit M** regarding the Maui County Planned Development approval has been added.
12. The following is a summary of all changes made to the Declaration, which affect only the Luana Enclave and the Restaurant Apartment (i.e., no changes to the Hokulani Enclave):
  - a. The Declaration was revised to reflect the deletion of one building in the Luana Enclave: (i) the Condominium will consist of twenty-five (25) separate buildings; (ii) the Luana Enclave will consist of eighteen (18) buildings; and (iii) the Luana Enclave will be constructed with a wood frame with stucco and composite siding.
  - b. The Declaration was revised to reflect several changes to the Restaurant Apartment: (i) the Restaurant Apartment will contain a basement, and (ii) the Restaurant Apartment will be constructed with a wood frame.

- c. Due to the reduction in the number of buildings in the Luana Enclave, the number of Apartments designated in the Condominium has been reduced from seven hundred thirteen (713) to seven hundred nine (709).
- d. The Restaurant Apartment will be deemed to include all elevators installed in the Restaurant Apartment.
- e. The Common Elements of the Condominium will include all outdoor showers in the apartments in the Luana Enclave, and three swimming pools in the Luana Enclave.
- f. Entry courtyards in the Luana Enclave have been added as a Limited Common Element of the Luana Enclave.
- g. Garden areas in the Luana Enclave have been deleted as a Limited Common Element of the Luana Enclave.
- h. Covered lanais in the Luana Enclave, including appurtenant flooring and lighting fixtures adjoining the Apartment, have been added as a Limited Common Element to each Apartment within the Luana Enclave.
- i. Outdoor showers in the Luana Enclave, including appurtenant flooring and lighting adjoining the Apartment, have been added as a Limited Common Element to each Apartment on the first floor within the Luana Enclave.
- j. Stairwells in the Luana Enclave, appurtenant to each Apartment on the second floor within the Luana Enclave, have been added as a Limited Common Element to each such Apartment.
- k. A basement located below the ground level of the Restaurant Apartment has been added as a Limited Common Element of the Restaurant Apartment.
- l. References to Apartments in the Luana Enclave as "A", "B", "C" and "D", in describing the Limited Common Elements of each Apartment's parking stall, have been deleted and the description has been modified to clarify that the interior of each Apartment's garage parking stall and outdoor parking will be a Limited Common Element of each such Apartment.
- m. Repair or replacement of the stairwells and outdoor showers in the Luana Enclave will be administered by the Association, with costs of repair or replacement allocated to the Owner of the Apartment or the or to the Residential Apartment Owners in the Luana Enclave in accordance with the Bylaws.
- n. Exhibit A, the property description, has been updated.
- o. Exhibit C has been updated to reflect the revised list of apartments in the Luana Enclave.
- p. Exhibit D has been updated to reflect the revised description of apartment types/layouts for the apartments in the Luana Enclave.

13. The following is a summary of the revisions made to the Bylaws:

- a. The list of Limited Common Elements within the Luana Enclave, subject to repair by the Association at the expense of the Owners of the Residential and Commercial Apartments in the Luana Enclave, has been modified, deleting the reference to garden areas and adding the courtyards, outdoor showers, entry gardens, stairwells and outdoor parking stalls located in the courtyards.

- b. The list of Limited Common Elements of the Restaurant Apartment has been modified to include the basement of the Restaurant Apartment.
- c. The description of repair and maintenance responsibilities of each Owner in the Luana Enclave with respect to parking has been revised to specify that such responsibilities will apply to the interior of each parking garage assigned to each Owner.
- d. As previously disclosed, a new Section 5.05 of the Bylaws has been added, describing which Apartments will receive gas service and how the cost of gas service will be paid by the Association and billed to each of the Gas Apartments as an expense. The new Section 5.05 also describes how costs of maintenance and repair of the gas lines and facilities will be performed by the Association and allocated to the Owners of the Gas Apartments.
- e. The Owner of the Restaurant Apartment will no longer be responsible to the Association for any of the Common Expenses in the Hukulani Enclave related to (i) garbage disposal and hauling and (ii) the maintenance, repair, and replacement of the refuse system.

EXHIBIT B

LIST OF AUTHORIZED SIGNATORIES FOR DEVELOPER'S GENERAL PARTNER

NORTHWEST MAUI CORPORATION

Officers

Drew Stotesbury	President
John E. Currie	Vice President and Chief Financial Officer
David S. Greenfield	Vice President
David D. Kleinkopf	Vice President and Assistant Secretary
Steve Sammut	Vice President
Paul Woodward	Vice President
William B. Fox	Vice President
L. Phillip Bond	Vice President
Mig Layne	Vice President
Brian Powell	Vice President
Eric Gerlach	Vice President
John Morley	Vice President
Russ Friesen	Vice President
Craig Watters	Vice President
Ross J. Meacher	Corporate Secretary

## EXHIBIT C

### RIGHTS RESERVED BY DEVELOPER

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

(A) As set forth in Section 8.01 (Improvements) of the Declaration, Developer reserves for itself the right but not the obligation to construct any Improvements shown on the Condominium Map and telephone lines and systems and fiber optic or other computer network lines and systems, together with related facilities and equipment that Developer desires to construct, install or maintain on the Common Elements.

(B) As set forth in Section 8.02 (Reservation of Power to Grant Easements) of the Declaration, Developer may exercise a non-exclusive right to grant from time to time within the Common Elements, including without limitation the roadways, parking areas, parking stalls and walkways in the Project, (i) easements and right-of-ways over, under and across the Common Elements for pedestrian and vehicular access, parking, utilities, sanitary and storm sewers, drains, cable television and other utility services, and (ii) the right to relocate, realign or cancel the same, provided that such easements, their use, relocation, realignment or cancellation shall not materially impair or interfere with the use of any Apartment.

(C) As set forth in Section 8.03 (Reservation for Sales Offices and Models) of the Declaration, Developer reserves for itself the right but not the obligation to maintain sales offices, management offices and models within any Apartment owned or leased by Developer.

(D) As set forth in Section 8.04 (Recodification of the Act) of the Declaration, Developer reserves the right to make, at any time prior to the recordation of a Deed for the last Apartment in the Project, amendments to the Declaration or the Bylaws in order to derive the benefit of changes in the law governing condominiums in Hawaii, Chapter 514A, Hawaii Revised Statutes ("Act"), that give Developer more rights than currently permitted under the Act.

(E) As set forth in Section 8.05 (Required Amendments) of the Declaration, Developer reserves the right to make, at any time prior to the recordation of a Deed for the last Apartment in the Project, amendments to the Declaration, the Bylaws, or the Condominium Map that are required by law, by the Real Estate Commission, by a title insurance company, by a mortgage lender, or by any governmental agency (including the Veteran's Administration, U.S. Department of Housing and Urban Development and/or the Federal Home Loan Mortgage Corporation), provided that such amendments shall not change the Common Interest appurtenant to an Apartment or substantially change the design, location or size of any Apartment for which a Deed has been recorded.

(F) As set forth in Section 8.06 (Reserved Right to Combine Adjoining Condominium Units) of the Declaration, Developer, as an Owner of adjoining Apartments, may, with the consent of any mortgagee of such Apartments and at Developer's sole expense, exercise its reserved right to alter or remove all or portions of the non-structural or load bearing portion of the intervening wall which separates such Apartments if the structural integrity of the Project is not thereby affected and if any Common Elements affected are restored to a condition comparable to that of the Common Elements prior to such alteration of such Common Elements. Developer may install in and attach to such opening or openings in such wall, doors and other service devices and may remove and retain ownership of the items so installed. Upon termination of the common ownership of such adjoining Apartments, any intervening wall which has been altered or removed pursuant to the foregoing provisions shall be restored at Developer's sole expense to substantially the condition which existed prior to such alteration or removal, if the new Owner or Owners do not consent to such alteration.

(G) As set forth in Section 8.07 (Reserved Right to Construct the Condominium in Phases) of the Declaration, Developer reserves the right to construct the Project in two or more phases. For further explanation, please refer to **Exhibit D** of this Final Public Report.

(H) As set forth in Section 8.08 (Declarant's Option to Develop the Restaurant Apartment in Phases and Subdivide) of the Declaration, Developer has reserved the right to (i) develop the Restaurant Apartment in phases and (ii) subdivide the Restaurant Apartment (the "original Apartment") into any number of separate Apartments, creating walls, partitions, doors, foyers, corridors or vestibules between the resulting Apartments, and allocating any Limited Common Elements appurtenant to the original Apartment to the resulting Apartments. As part of such reserved right Developer may make adjustments to the Common Interest and amend the Declaration, Bylaws and Condominium Map in the exercise of its reserved rights under Section 8.08 of the Declaration. Developer is under no obligation to construct the Restaurant Apartment unless such Apartment is covered under a Final Condominium Public Report and Developer may amend the description of any Apartment described in the Declaration at any time prior to obtaining a Final Condominium Public Report covering such Apartment.

(I) As set forth in Section 8.09 (Reserved Right to Reduce or Increase the Total Number of Buildings and/or Apartments and to Reconfigure Apartments in the Condominium) of the Declaration, Developer reserves the right, but shall not be obligated to, at any time prior to December 31, 2025 to reduce or increase the total number of buildings and/or Apartments comprising the Project or reconfigure the interior space of any such Apartment as shown on the Condominium Map until such time as a Deed has been recorded in the Bureau of Conveyances of the State of Hawaii and the Office of the Assistant Registrar of the Land Court of the State of Hawaii conveying such Apartment(s). As part of such reserved right Developer may make adjustments to the Common Interest and amend the Declaration, Bylaws and Condominium Map in the exercise of its reserved rights under Section 8.09 of the Declaration.

(J) As set forth in Section 8.10 (Reserved Right to Construct, Reconstruct, Reconfigure and Relocate Parking Areas in the Condominium) of the Declaration, Developer may, but is under no obligation to, from time to time and at any time up to but not later than December 31, 2025 construct, reconstruct, reconfigure or relocate parking areas in the Project. In the event that Developer exercises its right under Section 8.10 of the Declaration, Developer shall provide temporary, replacement parking to Owners for the duration of any displacement. In such event, Developer shall provide at least as many parking stalls as were displaced.

(K) As set forth in Section 8.11 (Declarant's Option to Add Area) of the Declaration, Developer but is under no obligation to, from time to time and at any time up to but not later than December 31, 2025 to add all or any portion of additional areas to the Project. Exhibit D to the Declaration lists the additional areas that may be added to the Project.

(L) As set forth in Section 8.12 (Declarant's Option to Subdivide and Withdraw Areas) of the Declaration, Developer may but is under no obligation to, from time to time and at any time up to but not later than December 31, 2025 to subdivide and withdraw from the Project all or any portion of the Project in one or more increments.

(M) As set forth in Section 8.13 (Declarant's Option to Subdivide Any Unit Owned by Declarant) of the Declaration, Developer shall have the right, but not the obligation, to subdivide any Apartment it owns into any number of separate Apartments creating walls, partitions, doors, foyers, corridors or vestibules between the resulting Apartments, and allocating any Limited Common Elements appurtenant to the original Apartment to the resulting Apartments. As part of such reserved right Developer may make adjustments to the Common Interest and amend the Declaration, Bylaws and Condominium Map in the exercise of its reserved rights under Section 8.13 of the Declaration. Developer is under no obligation to construct any Apartments unless such Apartment is covered under a Final Condominium Public Report and Developer may amend the description of any Apartment described in the Declaration at any time prior to obtaining a Final Condominium Public Report covering such Apartment.

(N) As set forth in Section 8.14 (Reserved Right to Install Signal Reception Device) of the Declaration, Developer has reserved the right at any time prior to December 31, 2025 to install any signal reception device anywhere in the Project without the approval of the Board of Directors of the Association.

(O) As set forth in Section 8.15 (Right to Enter into Agreements with Adjoining Landowners Regarding Drainage) of the Declaration, Developer reserves the right to do all things necessary or convenient to exercise its rights under and to satisfy the requirements of the Letter Agreement, dated August 1, 2005, between Kaanapali Development Corp. and Developer that apply to the Condominium.

(P) As set forth in Section 8.16 (Freight Elevator) of the Declaration, Developer and its agents, employees, contractors, licensees, successors and assigns have the right to use any freight elevator in the Project as necessary for the distribution of fixtures, furniture and equipment during the construction of Hokulani Enclave and Konea Enclave.

(Q) As set forth in Section 8.19 (Rights Transferable) of the Declaration, Developer may transfer any right reserved to Developer in this Declaration in accordance with the terms and conditions of the Section 514A of the Hawaii Revised Statutes.

(R) As set forth in Section 8.20 (Enforcement of Restrictions on Lock-Offs and the Number of Residential Apartments) of the Declaration, Developer and The West Maui Preservation Association have the right to enforce the prohibition on the locking off of Apartments and the restriction barring the construction of more than 700 Residential Apartments in the Project.

(S) As set forth in Section 8.21 (Obligations Transferable) of the Declaration, Developer may assign to the Association any obligation to be performed or condition to be observed by Developer under: the SMA Permit; the Settlement Agreement; the Unilateral Agreement with the County of Maui contemplated by the SMA Permit; any easement benefiting or burdening the Project, including, without limitation, the easements described in Exhibit A to the Declaration; any agreements regarding the use, operation, maintenance and repair of any storm water drainage facilities that serve the Project or that were otherwise entered into in connection with the development of the Project; and any other agreements regarding the use, operation, maintenance and repair of any other facilities that serve the Project or that were otherwise entered into in connection with the development of the Project. The Association shall assume, perform and observe any such obligation assigned by Developer.

(T) As set forth in Section 9.03(e)(i) (Amendments) of the Declaration, Developer has reserved the right to amend the Declaration to file the "as built" verified statement (with plans, if applicable) required by Section 514A-12 of the Act, so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed fully and accurately depict the layout, location, Apartment numbers and dimensions of the Apartments as built, or so long as any plans filed therewith involve only non-material changes to the layout, location, Apartment numbers and dimensions of the Apartments as built.

(U) As set forth in Section 9.03(e)(ii) (Amendments) of the Declaration, Developer has reserved the right to amend the Declaration to assign or change, from time to time, the assignments of individual parking stalls to individual Apartments for which a Deed has not been recorded, which assignments or changes in assignments shall be accomplished by an amendment to the Declaration.

**EXHIBIT D**  
**PHASING OF PROJECT**

Pursuant to Section 8.07 of the Declaration, Developer has reserved the right to develop the Project in phases, with the phase being covered under this Final Public Report being comprised of 54 Apartments located in Building SE-C in the Hokulani Enclave. Developer has obtained (i) separate final public reports on (a) 195 Apartments in Building SE-A, (b) 54 Apartments in Building SE-C in the Hokulani Enclave and (c) 76 Apartments in Building SE-B in the Hokulani Enclave and (ii) separate preliminary public reports on (a) 24 Apartments in TH-1 (Buildings 1-6) in the Luana Enclave and (b) 28 Apartments in TH-2 (Buildings 7-13) in the Luana Enclave. Developer has not made a decision whether to proceed with constructing TH-1 and TH-2 in the Luana Enclave. Developer is under no obligation to construct any Apartments in the Project unless such Apartments are covered under a Final Condominium Public Report and Developer may amend the description of any Apartment described in the Declaration at any time prior to obtaining a Final Condominium Public Report covering such Apartment. As part of such development in phases:

(A) Developer may file separate Preliminary, Contingent Final and/or Final Public Reports for any phase of the Project with the Real Estate Commission of the State of Hawaii.

(B) The site work and improvements for the Project will be undertaken in phases. The site improvements in future phases are not integral to those earlier built.

(C) Each Apartment's share of the Common Expenses shall be calculated from time to time based on the number of Apartments which have been constructed. Each Apartment's share of the Common Expenses shall be calculated based on a fraction, the numerator of which shall be such Apartment's Common Interest set forth in Exhibit C to the Declaration and the denominator of which shall be the aggregate Common Interest set forth in Exhibit C to the Declaration of all Apartments for which a Certificate of Occupancy has been issued.

For Building SE-C of the Hokulani Enclave, each Apartment's share of the Common Expenses following the issuance of a Certificate of Occupancy for such Apartments shall be as follows (assuming that Buildings SE-A and SE-B are built at the same time):

<u>Apartment No.</u>	<u>Common Interest</u>	<u>Share of Common Expenses</u>
SR 144	0.0835%	0.1951%
SR 145	0.1322%	0.3088%
SR 146	0.1322%	0.3088%
SR 147	0.1322%	0.3088%
SR 148	0.1322%	0.3088%
SR 149	0.1322%	0.3088%
SR 150	0.2675%	0.6246%
SR 151	0.2723%	0.6358%
SR 244	0.0835%	0.1951%
SR 245	0.1322%	0.3088%
SR 246	0.1322%	0.3088%
SR 247	0.1322%	0.3088%
SR 248	0.1322%	0.3088%
SR 249	0.1322%	0.3088%
SR 250	0.2675%	0.6246%
SR 251	0.2723%	0.6358%
SR 344	0.0835%	0.1951%
SR 345	0.1322%	0.3088%
SR 346	0.1322%	0.3088%
SR 347	0.1322%	0.3088%
SR 348	0.1322%	0.3088%

<u>Apartment No.</u>	<u>Common Interest</u>	<u>Share of Common Expenses</u>
SR 349	0.1322%	0.3088%
SR 350	0.2675%	0.6246%
SR 351	0.2723%	0.6358%
SR 444	0.0835%	0.1951%
SR 445	0.1322%	0.3088%
SR 446	0.1322%	0.3088%
SR 447	0.1322%	0.3088%
SR 448	0.1322%	0.3088%
SR 449	0.1322%	0.3088%
SR 450	0.2675%	0.6246%
SR 451	0.2723%	0.6358%
SR 544	0.0835%	0.1951%
SR 545	0.1322%	0.3088%
SR 546	0.1322%	0.3088%
SR 547	0.1322%	0.3088%
SR 548	0.1322%	0.3088%
SR 549	0.1322%	0.3088%
SR 550	0.2675%	0.6246%
SR 551	0.2723%	0.6358%
SR 644	0.0835%	0.1951%
SR 645	0.1322%	0.3088%
SR 646	0.1322%	0.3088%
SR 647	0.1322%	0.3088%
SR 648	0.1322%	0.3088%
SR 649	0.1322%	0.3088%
SR 650	0.3186%	0.7439%
SR 744	0.0835%	0.1951%
SR 745	0.1322%	0.3088%
SR 746	0.1322%	0.3088%
SR 747	0.1322%	0.3088%
SR 748	0.1322%	0.3088%
SR 749	0.1322%	0.3088%
SR 750	0.3186%	0.7439%

As Certificates of Occupancy are issued for additional Apartments in the Project, the shares of Common Expenses for the foregoing Apartments will be adjusted to reflect the additional Apartments.

(D) In order to carry out the provisions of or exercise the rights, powers or privileges reserved in Section 8.07 of the Declaration, Developer may file amendments to the Declaration, Bylaws and/or Condominium Map for the Project to describe any changes to the Apartments or Common Elements therein described at any time, notwithstanding the lease, sale or conveyance of any or all of the Apartments in the Project, and Developer may execute, file and deliver any such amendment to the Declaration, Bylaws and/or the Condominium Map for the Project and to such Deeds as may have been issued, and any and all other instruments necessary or desirable.

**EXHIBIT E**  
**PARKING STALLS\***

(A) Pursuant to Section 3.05(a)(v)(1) of the Declaration, Residential Apartment Nos. SR 101-104, 201-204, 301-304, 401-404, 501-504, and 601-604 in the Hokulani Enclave ("the Hokulani Enclave Building B Residential Apartments"), collectively, shall have as a Limited Common Element parking stalls as shown on the Condominium Map and designated for the use of such Residential Apartments on Exhibit C to the Declaration. Residential Apartment Nos. SR 150, 151, 250, 251, 350, 351, 450, 451, 550, 551, 650 and 750 in the Hokulani Enclave ("the Hokulani Enclave Building C Residential Apartments"), collectively, shall have as a Limited Common Element parking stalls as shown on the Condominium Map and designated for the use of such Residential Apartments on Exhibit C to the Declaration. Residential Apartments in the Hokulani Enclave (other than the Hokulani Enclave Building B and C Residential Apartments) shall have as a Limited Common Element the right, on an unassigned basis, to use one parking stall in Buildings SE-A, SE-B and SE-C of the Hokulani Enclave.

(B) Pursuant to Section 3.05(a)(v)(2) of the Declaration, Residential Apartments in the Konea Enclave shall have as a Limited Common Element the right, on an unassigned basis, to use one parking stall in Buildings NE-A, NE-B and NE-C of the Konea Enclave.

(C) Pursuant to Section 3.05(a)(v)(3) of the Declaration, each Apartment in the Luana Enclave shall have as a Limited Common Element the interior of the garage parking stall assigned to such Apartment as shown on the Condominium Map.

(D) Pursuant to Section 3.05(a)(v)(4) of the Declaration, Hokulani Commercial Apartment SC 1 shall have as a Limited Common Element eighteen (18) parking stalls as shown on the Condominium Map and designated for the use of such Commercial Apartment on Exhibit C of the Declaration.

(E) Pursuant to Section 3.05(a)(v)(5) of the Declaration, each of Hokulani Commercial Apartment SC 2, Hokulani Commercial Apartment SC 3, Hokulani Commercial Apartment SC 4, Hokulani Commercial Apartment SC 5, and Hokulani Commercial Apartment SC 6 and Konea Commercial Apartment NC 1, Konea Commercial Apartment NC 2, Konea Commercial Apartment NC 3, Konea Commercial Apartment NC 4, and Konea Commercial Apartment NC 5 shall have as a Limited Common Element one (1) parking stall as shown on the Condominium Map and designated for the use of such Commercial Apartment on Exhibit C to the Declaration.

(F) Pursuant to Section 3.05(a)(v)(6) of the Declaration, the Restaurant Apartment shall have as a Limited Common Element two (2) parking stalls as shown on the Condominium Map and designated for the use of such Commercial Apartment on Exhibit C to the Declaration.

(G) Pursuant to Section 3.05(a)(v)(7) of the Declaration, all Apartments in the Hokulani Enclave, the Konea Enclave and the Luana Enclave have the right to use parking stalls in parking lots located within the Project on a non-exclusive basis.

(H) Pursuant to Section 4.13 of the Declaration, all Owners and Guests have the right to use any parking stall in any of the parking lots located within the Project.

\*Please note that the Declaration and Condominium Map reflect all 709 Apartments which Developer currently intends to develop in the Project. Pursuant to Developer's reserved rights under Section 8.07 of the Declaration, Developer has elected to develop and register the Project in phases, the phase covered under this Final Public Report being comprised of 54 Apartments located in Building SE-C in the Hokulani Enclave. Developer currently intends to develop the Project in ten (10) phases. Please see **Exhibit D** for further explanation. Developer has obtained separate final public reports on (i) 195 Apartments in Building SE-A in the Hokulani Enclave, and (ii) 76 Apartments in Building SE-B in the Hokulani Enclave. Developer has elected to proceed with the construction of Buildings SE-A and SE-B in the Hokulani Enclave. Developer has also obtained separate preliminary public reports on (i) 24 Apartments in TH-1 (Buildings 1-6) in the Luana Enclave, and (ii) 28 Apartments in TH-2 (Buildings 7-13) in the Luana Enclave. Developer has not made a decision whether to proceed with constructing TH-1 and TH-2 in the Luana Enclave. Please be advised that there is no guaranty that the other Apartments will be developed. See Sections 8.07, 8.08, 8.09, 8.12 and 8.13 of the Declaration.

## EXHIBIT F

### COMMON ELEMENTS AND LIMITED COMMON ELEMENTS\*

As set forth in Section 3.04 of the Declaration, the Common Elements of the Project include:

1. The Property, in fee simple, and any and all easements and appurtenances thereto.
2. Except for the following Improvements located within the Restaurant Apartment, all unfinished, undecorated portions of all perimeter (including party) walls and interior load-bearing walls, the undecorated or unfinished surfaces of floors and ceilings, all structural components, foundations, floor slabs, columns, girders, beams, supports, shafts, ceilings and spaces between the ceiling and the floor slab or roof above, all outdoor showers, lanais, garden areas, patios, decks, porches and porte cocheres, including but not limited to, lanai slabs and railings, roofs, exterior surfaces of the buildings, including any paint or coating thereon, any doors or panels along the perimeter walls, all shutters, awnings, cranks, frames, windows and window or sliding door hardware.
3. All grounds, planters, landscaping, courtyards, ponds and other water features.
4. All bridges, roadways, parking areas, driveways, ramps, corridors, stairways, walkways, loading bays and loading areas.
5. All air conditioning equipment or apparatus, ducts, pumps, valves, sewer lines, drain lines, electrical equipment, cables, wiring, chutes, pipes, shafts, wires, conduits or other utility or service lines which are utilized for or serve any Common Element or more than one Apartment and other central and appurtenant transmission facilities over, under and across the Project which serve any Common Element or more than one Apartment for services such as power, light, water, gas, sewer, refuse, telephone and radio and cable television signal distribution.
6. Except for the following Improvements that serve only the Restaurant Apartment, any utility systems, mechanical systems, sprinkler systems, exhaust and ventilation systems, water heating systems, recycling and refuse systems, drainage facilities, roofs, facades, courtyards, pools, hot tubs, spas, recreational facilities, stoops, exits, entrances, elevators, waiting areas, lobbies, laundry facilities, restrooms, libraries, storage lockers, walkways, and other areas and Improvements.
7. The South Pool, the North Pool, the Center Pool and three swimming pools in the Luana Enclave.
8. The Improvements in North Park and Shoreline areas.
9. The storm water retention basin.
10. Any and all other apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use.

As set forth in Section 3.05 of the Declaration, the Limited Common Elements of the Project include:

1. Limited Common Elements of the Hokulani Enclave.
  - (A) Limited Common Elements of the Residential and Commercial Apartments.
    - (1) Building Structures. The following structures and facilities shall be Limited Common Elements appurtenant to the Residential and Commercial Apartments within the Hokulani Enclave: (i) the foundations, perimeter walls and roofs of such Apartments; (ii) the undecorated or unfinished surfaces of the perimeter walls of such Apartments; (iii) the undecorated or unfinished surface of the floors and ceilings surrounding each Apartment; (iv) any pipes, shafts, ducts, pumps, valves, wires, conduits or other utility or service lines serving multiple Apartments in the Hokulani Enclave; and (v) any doors or panels along the perimeter walls of such Apartment.

(2) Windows. The following window and window and door hardware shall be Limited Common Elements appurtenant to the Residential and Commercial Apartments within the Hokulani Enclave: any shutters, awnings, window boxes, windows, cranks, frames, doors and sliding door hardware (including card locks and entry doors) located at the boundaries of the Apartments.

(3) Various Systems. The following systems shall be Limited Common Elements appurtenant to the Residential and Commercial Apartments within the Hokulani Enclave: any utility systems, mechanical systems, sprinkler systems, exhaust and ventilation systems, recycling and refuse systems, drainage facilities, roofs, facades, courtyards, hot tubs, spas, recreational facilities, stoops, exits, entrances, elevators, waiting areas, laundry facilities, restrooms, libraries, storage lockers, corridors, stairwells, walkways, loading bays, loading storage areas and other areas and improvements that are designed to serve the Apartments in the Hokulani Enclave.

(4) Service Lines. The following service lines shall be Limited Common Elements appurtenant to the Residential and Commercial Apartments within the Hokulani Enclave: all air conditioning equipment or apparatus, ducts, pumps, valves, sewer lines, drain lines, electrical equipment, cables, wiring, chutes, pipes, shafts, wires, conduits or other utility or service lines which are utilized for or serve only Apartments in the Hokulani Enclave and other central and appurtenant transmission facilities over, under and across the Project which serve only Apartments in the Hokulani Enclave for services such as power, light, water, gas, sewer, refuse, telephone and radio and cable television signal distribution.

(5) Lanais. Each Residential and Commercial Apartment not located on the ground floor within the Hokulani Enclave shall have as a Limited Common Element the covered and uncovered lanais, including appurtenant flooring and lighting fixtures adjoining the Apartment, as shown on the Condominium Map.

(6) Garden Area. Each Residential and Commercial Apartment on the ground floor within the Hokulani Enclave and Hokulani Commercial Apartment SC1 shall have as a Limited Common Element the garden area as shown on the Condominium Map.

(7) Miscellaneous. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other structural component, any portion of a utility or mechanical system or any fixture lies partially within and partially outside of the designated boundaries of an Apartment in the Hokulani Enclave, any portion thereof serving only that Apartment in the Hokulani Enclave is a Limited Common Element allocated solely to that Apartment in the Hokulani Enclave, and any portion thereof serving all of the other Apartments in the Hokulani Enclave or any portion of the Limited Common Elements is a part of the Limited Common Elements of the Hokulani Enclave. Nonstructural walls located wholly within an Apartment in the Hokulani Enclave are Limited Common Elements allocated to the Apartments in which they are located.

(B) Limited Common Elements of Hokulani Commercial Apartment SC 1. Hokulani Commercial Apartment SC 1 shall have as a Limited Common Element the open area surrounding Hokulani Commercial Apartment SC 1 as shown on the Condominium Map.

(C) Limited Common Elements of Hokulani Commercial Apartment SC 4. Hokulani Commercial Apartment SC 4 shall have as a Limited Common Element: (i) two (2) operations facility areas located in the basement level as shown on the Condominium Map; (ii) one (1) linen operations area located on the ground level as shown on the Condominium Map; (iii) three (3) maintenance storage areas located on the ground level as shown on the Condominium Map; (iv) one (1) security operations area located on the ground level as shown on the Condominium Map; (v) two (2) front desk operation areas located on the ground level as shown on the Condominium Map; (vi) one (1) service area on the ground level as shown on the Condominium Map; (vii) two (2) lobby operations areas located on the ground level as shown on the Condominium Map; (viii) three (3) pool operation areas located on the ground level as shown on the Condominium Map; (ix) linen chute located on the second through tenth levels as shown on the Condominium Map; and (x) two (2) service rooms on the second through tenth levels as shown on the Condominium Map.

(D) Limited Common Elements of Hokulani Commercial Apartment SC 7. Hokulani Commercial Apartment SC 7 shall have as a Limited Common Element one (1) storage area on the ground level as shown on the Condominium Map.

(E) Limited Common Elements - Storage Lockers. Certain Hokulani Residential Apartments shall have as a Limited Common Element storage lockers on the ninth level as shown on the Condominium Map and designated for the use of such Residential Apartments on Exhibit C to the Declaration.

2. Limited Common Elements of the Konea Enclave.

(A) Limited Common Elements of the Residential and Commercial Apartments.

(1) Building Structures. The following structures and facilities shall be Limited Common Elements appurtenant to the Residential and Commercial Apartments within the Konea Enclave: (i) the foundations, perimeter walls and roofs of such Apartments; (ii) the undecorated or unfinished surfaces of the perimeter walls of such Apartments; (iii) the undecorated or unfinished surface of the floors and ceilings surrounding each Apartment; (iv) any pipes, shafts, ducts, pumps, valves, wires, conduits or other utility or service lines serving multiple Apartments in the Konea Enclave; and (v) any doors or panels along the perimeter walls of such Apartment.

(2) Windows. The following window and window and door hardware shall be Limited Common Elements appurtenant to the Residential and Commercial Apartments within the Konea Enclave: any shutters, awnings, window boxes, windows, cranks, frames, doors and sliding door hardware (including card locks and entry doors) located at the boundaries of the Apartments.

(3) Various Systems. The following systems shall be Limited Common Elements appurtenant to the Residential and Commercial Apartments within the Konea Enclave: any utility systems, mechanical systems, sprinkler systems, exhaust and ventilation systems, recycling and refuse systems, drainage facilities, roofs, facades, courtyards, hot tubs, spas, recreational facilities, stoops, exits, entrances, elevators, waiting areas, laundry facilities, restrooms, libraries, storage lockers, corridors, stairwells, walkways, loading bays, loading storage areas and other areas and improvements that are designed to serve the Apartments in the Konea Enclave.

(4) Service Lines. The following service lines shall be Limited Common Elements appurtenant to the Residential and Commercial Apartments within the Konea Enclave: all air conditioning equipment or apparatus, ducts, pumps, valves, sewer lines, drain lines, electrical equipment, cables, wiring, chutes, pipes, shafts, wires, conduits or other utility or service lines which are utilized for or serve only Apartments in the Konea Enclave and other central and appurtenant transmission facilities over, under and across the Project which serve only Apartments in the Konea Enclave for services such as power, light, water, gas, sewer, refuse, telephone and radio and cable television signal distribution.

(5) Lanais. Each Residential and Commercial Apartment not located on the ground floor within the Konea Enclave shall have as a Limited Common Element the covered and uncovered lanais, including appurtenant flooring and lighting fixtures adjoining the Apartment, as shown on the Condominium Map.

(6) Garden Area. Each Residential and Commercial Apartment on the ground floor within the Konea Enclave shall have as a Limited Common Element the garden area as shown on the Condominium Map.

(7) Miscellaneous. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other structural component, any portion of a utility or mechanical system or any fixture lies partially within and partially outside of the designated boundaries of an Apartment in the Konea Enclave, any portion thereof serving only that Apartment in the Konea Enclave is a Limited Common Element allocated solely to that Apartment in the Konea Enclave, and any portion thereof serving all of the other Apartments in the Konea Enclave or any portion of the Limited Common Elements is a part of the Limited Common Elements of the Konea Enclave. Nonstructural walls located wholly within an Apartment in the Konea Enclave are Limited Common Elements allocated to the Apartments in which they are located.

(B) Limited Common Elements of Konea Commercial Apartment NC 1. Konea Commercial Apartment NC 1 shall have as a Limited Common Element the restaurant terrace on the ground level as shown on the Condominium Map.

(C) Limited Common Elements of Konea Commercial Apartment NC 4. Konea Commercial Apartment NC 4 shall have as a Limited Common Element: (i) service area on the basement level as shown on the Condominium Map; (ii) security operations on the ground level as shown on the Condominium Map; (iii) two service areas on the

ground through the tenth levels as shown on the Condominium Map; and (iv) luggage storage on the ground level as shown on the Condominium Map.

3. Limited Common Elements of the Luana Enclave.

(A) Building Structures. The following structures and facilities shall be Limited Common Elements appurtenant to the Apartments within the Luana Enclave: (i) the foundations, perimeter walls and roofs of such Apartments; (ii) the undecorated or unfinished surfaces of the perimeter walls of such Apartments; (iii) the undecorated or unfinished surface of the floors and ceilings surrounding each Apartment; (iv) any pipes, shafts, ducts, pumps, valves, wires, conduits or other utility or service lines serving multiple Apartments in the Luana Enclave; and (v) any doors or panels along the perimeter walls of such Apartment.

(B) Windows. The following window and window and door hardware shall be Limited Common Elements appurtenant to the Apartments within the Luana Enclave: any shutters, awnings, window boxes, windows, cranks, frames, doors and sliding door hardware (including card locks and entry doors) located at the boundaries of the Apartments.

(C) Various Systems. The following systems shall be Limited Common Elements appurtenant to the Apartments within the Luana Enclave: any utility systems, mechanical systems, sprinkler systems, exhaust and ventilation systems, recycling and refuse systems, drainage facilities, roofs, facades, courtyards, hot tubs, spas, recreational facilities, stoops, exits, entrances, elevators, waiting areas, laundry facilities, restrooms, libraries, storage lockers, entry courtyards, corridors, stairwells, walkways, and other areas and Improvements that are designed to serve the Apartments in the Luana Enclave.

(D) Service Lines. The following service lines shall be Limited Common Elements appurtenant to the Apartments within the Luana Enclave: all ducts, pumps, valves, sewer lines, drain lines, electrical equipment, cables, wiring, chutes, pipes, shafts, wires, conduits or other utility or service lines which are utilized for or serve only Apartments in the Luana Enclave and other central and appurtenant transmission facilities over, under and across the Project which serve only Apartments in the Luana Enclave for services such as power, light, water, gas, sewer, refuse, telephone and radio and cable television signal distribution.

(E) Air Conditioning. Each Apartment shall have as a Limited Common Element the air conditioning unit including, without limitation, any controls, valves, piping, vents, ducts, compressor, fan, refrigerant coil and piping, condensate drain pan and piping, filters and other related equipment and apparatus, serving such Apartment as shown on the Condominium Map.

(F) Lanais. Each Apartment within the Luana Enclave shall have as a Limited Common Element the covered lanais, including appurtenant flooring and lighting fixtures adjoining the Apartment, as shown on the Condominium Map.

(G) Outdoor Shower. Each Apartment located on the first floor within the Luana Enclave shall have as a Limited Common Element the outdoor showers, including appurtenant flooring and exterior lighting adjoining the Apartment as shown on the Condominium Map.

(H) Stairwell. Each Apartment located on the second floor within the Luana Enclave shall have as a Limited Common Element the stairwell appurtenant to such Apartment as shown on the Condominium Map.

(I) Miscellaneous. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other structural component, any portion of a utility or mechanical system or any fixture lies partially within and partially outside of the designated boundaries of an Apartment in the Luana Enclave, any portion thereof serving only that Apartment in the Luana Enclave is a Limited Common Element allocated solely to that Apartment in the Luana Enclave, and any portion thereof serving all of the other Apartments in the Luana Enclave or any portion of the Limited Common Elements is a part of the Limited Common Elements of the Luana Enclave. Nonstructural walls located wholly within an Apartment in the Luana Enclave are Limited Common Elements allocated to the Apartments in which they are located.

4. Limited Common Elements of the Restaurant Apartment.

The Restaurant Apartment shall have as a Limited Common Element: (i) the open area surrounding the Restaurant Apartment as shown on the Condominium Map; (ii) garbage/storage room located on the basement level of the Hokulani Enclave as shown on the Condominium Map; (iii) the storage area located on the ground level of the Hokulani Enclave as shown on the Condominium Map; and (iv) the basement located below the ground level of the Restaurant Apartment as shown on the Condominium Map.

5. Limited Common Elements - Parking.

(A) Residential Apartments in the Hokulani Enclave. Residential Apartment Nos. SR 101-104, 201-204, 301-304, 401-404, 501-504, and 601-604 in the Hokulani Enclave ("the Hokulani Enclave Building B Residential Apartments"), collectively, shall have as a Limited Common Element parking stalls as shown on the Condominium Map and designated for the use of such Residential Apartments on Exhibit C to the Declaration. Residential Apartment Nos. SR 150, 151, 250, 251, 350, 351, 450, 451, 550, 551, 650 and 750 in the Hokulani Enclave ("the Hokulani Enclave Building C Residential Apartments"), collectively, shall have as a Limited Common Element parking stalls as shown on the Condominium Map and designated for the use of such Residential Apartments on Exhibit C to the Declaration. Residential Apartments in the Hokulani Enclave (other than the Hokulani Enclave Building B and C Residential Apartments) shall have as a Limited Common Element the right, on an unassigned basis, to use one parking stall in Buildings SE-A, SE-B and SE-C of the Hokulani Enclave.

(B) Residential Apartments in the Konea Enclave. Residential Apartments in the Konea Enclave shall have as a Limited Common Element the right, on an unassigned basis, to use one parking stall in Buildings NE-A, NE-B and NE-C of the Konea Enclave.

(C) Luana Enclave. Each Apartment in the Luana Enclave shall have as a Limited Common Element the garage parking stall and the outdoor parking stall assigned to such Apartment as shown on the Condominium Map.

(D) Hokulani Commercial Apartment SC 1. Hokulani Commercial Apartment SC 1 shall have as a Limited Common Element eighteen (18) parking stalls as shown on the Condominium Map and designated for the use of such Commercial Apartment on Exhibit C to the Declaration.

(E) Hokulani Commercial Apartments SC 2, 3, 4, 5 and 6 and Konea Commercial Apartments NC 1, 2, 3, 4, and 5. Each of Hokulani Commercial Apartment SC 2, Hokulani Commercial Apartment SC 3, Hokulani Commercial Apartment SC 4, Hokulani Commercial Apartment SC 5, and Hokulani Commercial Apartment SC 6 and Konea Commercial Apartment NC 1, Konea Commercial Apartment NC 2, Konea Commercial Apartment NC 3, Konea Commercial Apartment NC 4, and Konea Commercial Apartment NC 5 shall have as a Limited Common Element one (1) parking stall as shown on the Condominium Map and designated for the use of such Commercial Apartment on Exhibit C to the Declaration.

(F) Restaurant Apartment. The Restaurant Apartment shall have as a Limited Common Element two (2) parking stalls as shown on the Condominium Map and designated for the use of such Commercial Apartment on Exhibit C to the Declaration.

\*Please note that the Declaration and Condominium Map reflect all 709 Apartments which Developer currently intends to develop in the Project. Pursuant to Developer's reserved rights under Section 8.07 of the Declaration, Developer has elected to develop and register the Project in phases, the phase covered under this Final Public Report being comprised of 54 Apartments located in Building SE-C in the Hokulani Enclave. Developer currently intends to develop the Project in ten (10) phases. Please see **Exhibit D** for further explanation. Developer has obtained separate final public reports on (i) 195 Apartments in Building SE-A in the Hokulani Enclave, and (ii) 76 Apartments in Building SE-B in the Hokulani Enclave. Developer has elected to proceed with the construction of Buildings SE-A and SE-B in the Hokulani Enclave. Developer has also obtained separate preliminary public reports on (i) 24 Apartments in TH-1 (Buildings 1-6) in the Luana Enclave, and (ii) 28 Apartments in TH-2 (Buildings 7-13) in the Luana Enclave. Developer has not made a decision whether to proceed with constructing TH-1 and TH-2 in the Luana Enclave. Please be advised that there is no guaranty that the other Apartments will be developed. See Sections 8.07, 8.08, 8.09, 8.12 and 8.13 of the Declaration.

**EXHIBIT G**  
**COMMON INTEREST**

The Common Interest for the Apartments in Building SE-C of the Hukulani Enclave of the Project set forth in the Declaration are as follows:

<u>Apartment No.</u>	<u>Common Interest</u>	<u>Apartment No.</u>	<u>Common Interest</u>
SR 144	0.0835%	SR 544	0.0835%
SR 145	0.1322%	SR 545	0.1322%
SR 146	0.1322%	SR 546	0.1322%
SR 147	0.1322%	SR 547	0.1322%
SR 148	0.1322%	SR 548	0.1322%
SR 149	0.1322%	SR 549	0.1322%
SR 150	0.2675%	SR 550	0.2675%
SR 151	0.2723%	SR 551	0.2723%
SR 244	0.0835%	SR 644	0.0835%
SR 245	0.1322%	SR 645	0.1322%
SR 246	0.1322%	SR 646	0.1322%
SR 247	0.1322%	SR 647	0.1322%
SR 248	0.1322%	SR 648	0.1322%
SR 249	0.1322%	SR 649	0.1322%
SR 250	0.2675%	SR 650	0.3186%
SR 251	0.2723%	SR 744	0.0835%
SR 344	0.0835%	SR 745	0.1322%
SR 345	0.1322%	SR 746	0.1322%
SR 346	0.1322%	SR 747	0.1322%
SR 347	0.1322%	SR 748	0.1322%
SR 348	0.1322%	SR 749	0.1322%
SR 349	0.1322%	SR 750	0.3186%
SR 350	0.2675%		
SR 351	0.2723%		
SR 444	0.0835%		
SR 445	0.1322%		
SR 446	0.1322%		
SR 447	0.1322%		
SR 448	0.1322%		
SR 449	0.1322%		
SR 450	0.2675%		
SR 451	0.2723%		

Notwithstanding the foregoing Common Interest percentages, pursuant to Section 8.07 to the Declaration, Common Expenses shall be calculated from time to time based on the number of Apartments which have been constructed. Please refer to **Exhibit D** for further explanation.

## EXHIBIT H

### ENCUMBRANCES AGAINST TITLE

The following are the encumbrances against title to the Project that are contained in the title report effective July 5, 2006 and issued by Fidelity National Title Insurance Company:

1. Real property taxes which may be due and owing. Reference is made to the tax assessor's office, County of Maui.
2. Claims arising out of rights customarily and traditionally exercised for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
3. As to Lots 103 and 104 only:
  - (A) Reservation in favor of the State of Hawaii of all mineral or metallic mines of every description; said reservation, however, being subject to that certain covenant that neither the State of Hawaii nor persons authorized by it will enter, occupy or use the said land for the exercise of the reserved mineral and mining rights for a period of 75 years from January 1, 1960, as contained in that certain instrument dated January 29, 1960, recorded in said Bureau in Liber 3822, Page 37.
  - (B) Shoreline setbacks: "Shoreline setbacks established pursuant to the laws of the State of Hawaii, or any political subdivision thereof, and any ordinances, rules or regulations adopted or promulgated by any governmental authority pursuant to such laws."
  - (C) Seaward boundary: "Determination of the seaward boundary of the land described herein pursuant to the laws of the State of Hawaii."
  - (D) Private Water System Agreement dated October 2, 1991 recorded in said Bureau as Document No. 91-136263, by and between Amfac Property Investment Corp., a Hawaii corporation, Tobishima Pacific, Inc., a Hawaii corporation and the Department of Water Supply of the County of Maui.

Said Agreement was amended by instrument dated October 14, 1992, recorded in said Bureau as Document No. 92-169921.

(The foregoing Agreement and amendment were not noted on said Land Court Certificate of Title referred to herein.)
  - (E) Terms, provisions, covenants, conditions and reservations as contained in that certain Unilateral and Irrevocable Declaration of Perpetual Rights and Uses and Perpetual Restrictions (North Beach Shoreline Setback Area) dated December 29, 1998 (effective December 14, 1998), recorded in said Office as Document No. 2513420, and also recorded in said Bureau as Document No. 99-005138.

The foregoing was amended by instrument dated December 6, 2000, recorded in said Office as Document No. 2668965, and also recorded in said Bureau as Document No. 2000-170916 (re: Exhibit "B" attached to said Unilateral and Irrevocable Declaration of Perpetual Rights and Uses and Perpetual Restrictions (North Beach Shoreline Setback Area) is deleted in its entirety and replaced with the new Exhibit "B" attached thereto (Easement 258, affecting Lot 102, as shown on Map 86 of Land Court Application 1744).
  - (F) Reservations of the State of Hawaii, as set forth in Land Court Order No. 138359, recorded in said Office on May 8, 2000.
  - (G) As to Lot 103: Easement "259", as shown on Map 86, for shoreline setback purposes, as set forth by Land Court Order No. 138359, recorded in said Office on May 8, 2000.

(H) As to Lot 104: Easement "260", as shown on Map 86, for shoreline setback purposes, as set forth by Land Court Order No. 138359, recorded in said Office on May 8, 2000.

4. As to Lots 10-B-2-A and 10-B-2-B only:

(A) Covenants, conditions and restrictions as set forth in Declaration dated December 5, 1968, recorded in said Office as Document No. 462012, and also recorded in said Bureau in Liber 6338, Page 26.

(B) Private Water System Agreement dated October 2, 1991, recorded in said Bureau as Document No. 91-136263, by and between: Amfac Property Investment Corp., a Hawaii corporation, Tobishima Pacific, Inc., a Hawaii corporation, and the Department of Water Supply of the County of Maui.

Said Agreement was amended by instrument dated October 14, 1992, recorded in said Bureau as Document No. 92-169921.

(The foregoing Agreement and amendment was not noted on said Land Court Certificate of Title referred to herein.)

(C) Designation of Easement "N", as shown on Map 16, for shoreline setback purposes, as set forth by Land Court Order No. 136941, recorded in said Office on November 19, 1999.

(D) As to Lot 10-B-2-B: Terms, provisions, covenants, conditions and reservations, as contained in that certain Unilateral and Irrevocable Declaration of Perpetual Rights and Uses and Perpetual Restrictions (North Beach Shoreline Setback Area), dated December 29, 1998 (effective December 14, 1998), recorded in said Office as Document No. 2513420, and also recorded in said Bureau as Document No. 99-005138.

The foregoing was amended by instrument dated December 6, 2000, recorded in said Office as Document No. 2668965, and also recorded in said Bureau as Document No. 2000-170916 (re: Exhibit "B" attached to said Unilateral and Irrevocable Declaration of Perpetual Rights and Uses and Perpetual Restrictions (North Beach Shoreline Setback Area) is deleted in its entirety and replaced with the new Exhibit "B" attached thereto (Easement 258, affecting Lot 102, as shown on Map 86 of Land Court Application 1744.)

(E) As to Lot 10-B-2-A: Designation of Easement "P", as shown on Map 16, for future park purposes, as set forth by Land Court Order No. 136941, recorded in said Office on November 19, 1999.

5. As to that land situate at Honokowai, Lahaina, County and Island of Maui, State of Hawaii, containing an area of 28.061 acres, more or less:

(A) Reservation of all mineral or metallic mines of every description to the Hawaiian Government; said reservation, however, being subject to that certain covenant that neither the State of Hawaii nor persons authorized by it will enter, occupy or use the said land for the exercise of the reserved mineral and mining rights for a period of 75 years from January 1, 1960, as contained in that certain instrument dated January 29, 1960, recorded in said Bureau in Liber 3822, Page 37.

(B) Covenants, conditions and restrictions as set forth in Land Patent Grant Number S 15,081 dated January 16, 1973.

(C) Limitation of abutter's rights of vehicle access into and from Honoapiilani Highway, Federal Aid Project No. RF 030 1 (5), as set forth by (a) Deed dated April 19, 1976, recorded in said Bureau in Liber 11410, Page 496, and (b) Final Order of Condemnation, filed in the Circuit Court of the Second Circuit, State of Hawaii, on May 12, 1982, recorded in said Bureau in Liber 16367, Page 390.

(D) Lease of right of way as granted in instrument dated October 13, 1967, recorded in said Bureau in Liber 5893, Page 226, in favor of Maui Electric Company, Limited and GTE Hawaiian Telephone Company (now known as Hawaiian Telcom), for rights of way, each 25 feet in width, for utility purposes. (Term: 35 years from the date of the instrument and thereafter from year to year until terminated.)

(E) Easement dated May 14, 1987, in favor of the County of Maui, recorded in said Bureau in Liber 21637, Page 634, for pipeline purposes.

(F) Setback (40 feet wide), for building purposes along Honoapiilani Highway, as shown on subdivision Map prepared by Masumi Fukushima, Licensed Professional Land Surveyor with Austin, Tsutsumi & Associates, Inc., dated May 21, 1999.

(G) Designation of Easement "D-1" (150 feet wide), for shoreline setback purposes, as shown on subdivision Map prepared by Masumi Fukushima, Licensed Professional Land Surveyor with Austin, Tsutsumi & Associates, Inc., dated May 21, 1999.

(H) Designation of Easement "D-2", for future park purposes, as shown on subdivision Map prepared by Masumi Fukushima, Licensed Professional Land Surveyor with Austin, Tsutsumi & Associates, Inc., dated May 21, 1999.

6. Subdivision Agreement (Large Lots) dated August 6, 1990 recorded in said Office Document No. 1756822, and also recorded in said Bureau as Document No. 90-127827.

7. Covenants, conditions and restrictions as set forth in Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, recorded in said Office as Document No. 2668967, and also recorded in said Bureau as Document No. 2000-170917.

Supplemental Declaration to Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated August 5, 2003, recorded in said Office as Document No. 2972191, and also recorded in said Bureau as Document No. 2003-162023.

First Amendment to By-Laws of Kaanapali North Beach Master Association, Inc., dated September 17, 2003, recorded in said Office as Document No. 3036052, and also recorded in said Bureau as Document No. 2003-267151.

Designation of Successor Declarant and Assignment of Declarant's Rights and Interests under Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated effective August 26, 2003, recorded in said Office as Document No. 2983238, and also recorded in said Bureau as Document No. 2003-180662, by and between Kaanapali Development Corp., a Hawaii corporation, and NB Lot 3, LLC, a Delaware limited liability company.

8. Covenants, conditions and restrictions as set forth in Declaration of Covenants, Conditions and Restrictions Joinder dated December 6, 2000, recorded in said Office as Document No. 2668974, and also recorded in said Bureau as Document No. 2000-170918.

The foregoing was amended by instrument dated January 31, 2003, recorded in said Office as Document No. 2887174, and also recorded in said Bureau as Document No. 2003-018974.

9. Covenants, conditions and restrictions as set forth in Unilateral Declaration of Restrictions, Joinder Agreement (North Beach Unit Count and Drainage) dated February 15, 2001, recorded in said Office as Document No. 2683897, and also recorded in said Bureau as Document No. 2001-022448.

10. Rights, if any, granted to Kaanapali Development Corp., Amfac Hawaii, LLC, and SVO Pacific, Inc. and their permitted successors and assigns, under that certain unrecorded License and Right of Entry Agreement dated May 21, 2002, to access and use the property for the purpose of conducting certain water quality monitoring activities; as contained in letter dated August 5, 2003, to Title Guaranty of Hawaii, Inc.

11. Encroachments or any other matters as shown on survey map prepared by Erik S. Kaneshiro, Land Surveyor, with Austin Tsutsumi & Associates, Inc., dated November 18, 2004, revised December 17, 2004, June 27, 2006 and June 30, 2006.

12. Covenants, conditions and restrictions as set forth in Limited Warranty Deed and Reservation of Rights dated August 5, 2003, recorded in said Office Document No. 2972192 and also recorded in said Bureau as Document No. 2003-162024.
  13. Short Form of Settlement Agreement of February 2, 2005, dated June 13, 2005, recorded on May 17, 2006 in said Office as Document No. 3429952, and also recorded in said Bureau as Document No. 2006-093201.
  14. Grant of Easement and Agreement (Access, Entry Feature and Landscaping) dated August 5, 2003, recorded in said Office as Document No. 2972193, also recorded in said Bureau as Document No. 2003-162025, by and between NB Lot 3, LLC, a Delaware limited liability company, as Grantor, and Maui Beach Resort Limited Partnership, a Delaware limited partnership, as Grantee; as amended and restated by Amended and Restated Grant of Easement and Agreement (Access, Entry Feature and Landscaping) dated as of September 28, 2005, recorded in said Office as Document No. 3333451, also recorded in said Bureau as Document No. 2005-196560, by and between SVO Pacific, Inc., a Florida corporation, and Maui Beach Resort Limited Partnership, a Delaware limited partnership.
  15. Covenants, conditions and restrictions as set forth in Declaration of Restrictions (Lot 4 Unit Count) dated August 5, 2003, recorded in said Office as Document No. 2972197.
  16. Unilateral Agreement relating to the SMA Permit, dated June 13, 2005, recorded on August 26, 2005 at said Bureau as Document No. 2005-170923.
  17. Grant of Easement (Parking Purposes) dated September 28, 2005, recorded in said Office as Document No. 3333452, and also recorded in said Bureau as Document No. 2005-196561, by and between SVO Pacific, Inc., a Florida corporation, and Maui Beach Resort Limited Partnership, a Delaware limited partnership.
  18. Grant of Easement and Agreement (Fire Lane Access Purposes) dated as of September 28, 2005, recorded in said Office as Document Nos. 3333453 and 3333454, and also recorded in said Bureau as Document Nos. 2005-196562 and 2005-196563, by and between SVO Pacific, Inc., a Florida corporation, and Maui Beach Resort Limited Partnership, a Delaware limited partnership.
  19. Declaration of Covenants, Conditions and Restrictions dated as of September 28, 2005, recorded in said Office as Document No. 3333455, and also recorded in said Bureau as Document No. 2005-196564, by and between SVO Pacific, Inc., a Florida corporation, and Maui Beach Resort Limited Partnership, a Delaware limited partnership.
  20. Declaration of Condominium Property Regime of Honua Kai Condominium dated October 12, 2005 recorded on October 12, 2005 in said Office as Document No. 3340058 and also recorded in said Bureau as Document No. 2005-207370.
- The foregoing was amended by instrument recorded in said Office as Document No. 3426175, and also recorded in said Bureau as Document No. 2006-086974.
21. Bylaws of the Honua Kai Condominium Association, Inc. recorded on October 12, 2005 in said Office as Document No. 3340059 and also recorded in said Bureau as Document No. 2005-207371.
  22. Condominium Map No. 1747 recorded in said Office and in said Bureau as Condominium File Plan No. 4093.
  23. First Amendment to Declaration of Condominium Property Regime of Honua Kai, dated May 5, 2006, recorded in said Bureau as Document No. 2006-086974 and filed in Land Court as Document No. 3426175.
  24. First Amendment to the Condominium Map of Honua Kai recorded in said Bureau as Condo Map No. 4093 and filed in Land Court as Condo Map No. 1747.
  25. First Amendment to Bylaws of the Honua Kai Condominium Association, Inc., dated May 5, 2006, recorded in said Bureau as Document No. 2006-086975 and filed in Land Court as Document No. 3426176.

26. Mortgage dated June 30, 2006, recorded in said Office as Document No. 3447606, and also recorded in said Bureau as Document No. 2006-121905, executed by Maui Beach Resort Limited Partnership, a Delaware limited partnership, in favor of Solara Funding Company, a Delaware corporation.

27. Financing Statement recorded in said Bureau on June 30, 2006 as Document No. 2006-121906, executed by Maui Beach Resort Limited Partnership in favor of Solara Funding Company.

28. Assignment of Leases and Rents recorded in said Bureau on June 30, 2006 as Document No. 2006-121907, executed by Maui Beach Resort Limited Partnership, a Delaware limited partnership, to Solara Funding Company, a Delaware corporation.

29. Mortgage dated June 30, 2006, recorded in said Office as Document No. 3447607, and also recorded in said Bureau as Document No. 2006-121908, executed by Maui Beach Resort Limited Partnership, a Delaware limited partnership, in favor of New York State Teachers' Retirement System, a public pension system created and existing pursuant to Article 11 of the Education Law of the State of New York.

30. Financing Statement recorded in said Bureau on June 30, 2006 as Document No. 2006-121909, executed by Maui Beach Resort Limited Partnership in favor of New York State Teachers' Retirement System.

31. Assignment of Leases and Rents recorded in said Bureau on June 30, 2006 as Document No. 2006-121910, executed by Maui Beach Resort Limited Partnership, a Delaware limited partnership, to New York State Teachers' Retirement System.

32. Developer intends to record a mortgage securing a construction loan in the amount of approximately \$338,200,000.00 in conjunction with the construction of Buildings SE-A, SE-B and SE-C.

EXHIBIT I

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

<u>Unit No.</u>	<u>Monthly Maint Fee</u>	<u>Annual Maint Fee</u>
SR 144	\$664.80	\$7,977.60
SR 145	\$1,052.23	\$12,626.76
SR 146	\$1,052.23	\$12,626.76
SR 147	\$1,052.23	\$12,626.76
SR 148	\$1,052.23	\$12,626.76
SR 149	\$1,052.23	\$12,626.76
SR 150*	\$2,128.32	\$25,539.84
SR 151*	\$2,166.48	\$25,997.76
SR 244	\$664.80	\$7,977.60
SR 245	\$1,052.23	\$12,626.76
SR 246	\$1,052.23	\$12,626.76
SR 247	\$1,052.23	\$12,626.76
SR 248	\$1,052.23	\$12,626.76
SR 249	\$1,052.23	\$12,626.76
SR 250*	\$2,128.32	\$25,539.84
SR 251*	\$2,166.48	\$25,997.76
SR 344	\$664.80	\$7,977.60
SR 345	\$1,052.23	\$12,626.76
SR 346	\$1,052.23	\$12,626.76
SR 347	\$1,052.23	\$12,626.76
SR 348	\$1,052.23	\$12,626.76
SR 349	\$1,052.23	\$12,626.76
SR 350*	\$2,128.32	\$25,539.84
SR 351*	\$2,166.48	\$25,997.76
SR 444	\$664.80	\$7,977.60
SR 445	\$1,052.23	\$12,626.76
SR 446	\$1,052.23	\$12,626.76
SR 447	\$1,052.23	\$12,626.76
SR 448	\$1,052.23	\$12,626.76
SR 449	\$1,052.23	\$12,626.76
SR 450*	\$2,128.32	\$25,539.84
SR 451*	\$2,166.48	\$25,997.76
SR 544	\$664.80	\$7,977.60
SR 545	\$1,052.23	\$12,626.76
SR 546	\$1,052.23	\$12,626.76
SR 547	\$1,052.23	\$12,626.76
SR 548	\$1,052.23	\$12,626.76
SR 549	\$1,052.23	\$12,626.76
SR 550*	\$2,128.32	\$25,539.84
SR 551*	\$2,166.48	\$25,997.76
SR 644	\$664.80	\$7,977.60
SR 645	\$1,052.23	\$12,626.76
SR 646	\$1,052.23	\$12,626.76
SR 647	\$1,052.23	\$12,626.76
SR 648	\$1,052.23	\$12,626.76
SR 649	\$1,052.23	\$12,626.76

<u>Unit No.</u>	<u>Monthly Maint Fee</u>	<u>Annual Maint Fee</u>
SR 650*	\$2,534.83	\$30,417.96
SR 744	\$664.80	\$7,977.60
SR 745	\$1,052.23	\$12,626.76
SR 746	\$1,052.23	\$12,626.76
SR 747	\$1,052.23	\$12,626.76
SR 748	\$1,052.23	\$12,626.76
SR 749	\$1,052.23	\$12,626.76
SR 750*	\$2,534.83	\$30,417.96

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

\*Apartments receiving gas service (see budget on next page for cost of gas service for all Hokuani Enclave apartments on a monthly and annual basis).

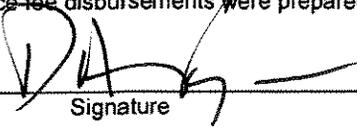
**HONUA KAI - HOKULANI ENCLAVE - BUILDINGS A, B & C  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS**

	MONTHLY	YEARLY Total
<b>OPERATING EXPENSES</b>		
UTILITIES	323u	
Cable T.V.	8,559.00	102,708.00
Electricity - Tower Enclaves	52,305.00	627,660.00
Electricity - Common Areas	0.00	0.00
Gas - Tower Enclaves - Pools	3,884.00	46,608.00
Gas - * for Certain Residential Condominium Units	1,820.00	21,840.00
Gas Reimbursement - * 52 Residences	-1,820.00	-21,840.00
Water - Potable	7,697.00	92,364.00
Sewer	8,559.00	102,708.00
Communications	634.00	7,608.00
Water - Irrigation	14,810.00	177,720.00
TOTAL UTILITIES	96,448.00	1,157,376.00
<b>PAYROLL</b>		
Salaries & Wages-Admin.	8,100.00	97,200.00
Salaries & Wages-Maintenance	17,160.00	205,920.00
Salaries & Wages-Watchmen	18,806.00	225,672.00
Salaries & Wages - Utility	13,346.00	160,152.00
Salaries & Wages - Pools & Water Features	7,800.00	93,600.00
Payroll - Bonus	975.00	11,700.00
Pension Plan	953.00	11,436.00
Medical Insurance	8,107.00	97,284.00
Insurance-Workers Compensation	4,891.00	58,692.00
Insurance-TDI	639.00	7,668.00
Payroll Preparation Fees	250.00	3,000.00
Payroll Taxes	8,612.00	103,344.00
TOTAL PAYROLL	89,639.00	1,075,668.00
<b>MAINTENANCE EXPENSE</b>		
Air Conditioning R&M	5,870.00	70,440.00
Building R&M	7,484.00	89,808.00
Elevator R&M (Non-contract Services)	317.00	3,804.00
Equipment R&M	257.00	3,084.00
Equipment Rental	38.00	456.00
Grounds Materials	732.00	8,784.00
Painting & Waterproofing	1,056.00	12,672.00
Pool R&M	1,613.00	19,356.00
Water Feature R&M	1,613.00	19,356.00
Recreation Amenity R&M	300.00	3,600.00
Sewer Cleaning	403.00	4,836.00
Air Conditioning(Contract)	1,200.00	14,400.00
Window Clean/Caulk(Contract)	2,080.00	24,960.00
Elevator(Contract)	4,167.00	50,004.00
Fire Sprinkler/ Extinguisher Service (Contract)	140.00	1,680.00
Ground Service(Contract)	34,000.00	408,000.00
Vehicle Gate Service (Contract)	250.00	3,000.00
Parking & Parking Structure Maintenance	200.00	2,400.00
Tree Trimming	1,314.00	15,768.00

Pest Control(Contract)	1,268.00	15,216.00
Refuse Collection(Contract)	5,730.00	68,760.00
TOTAL MAINTENANCE	70,032.00	840,384.00
ADMINISTRATIVE EXPENSES		
Accounting & Audit Service	281.00	3,372.00
Auto / Golf Cart Expense	400.00	4,800.00
Dues, Education and Subscriptions	200.00	2,400.00
Legal	1,000.00	12,000.00
Office & Admin.	1,500.00	18,000.00
AOAO Meeting Expense	45.00	540.00
Outside Services	90.00	1,080.00
Property Management	5,706.00	68,472.00
Security Supplies & Equipment	300.00	3,600.00
Taxes-State Income	75.00	900.00
Taxes-Gross Excise Tax	35.00	420.00
Taxes-Federal Income	100.00	1,200.00
Computer/Supplies	200.00	2,400.00
Uniform Replacement	243.00	2,916.00
TOTAL ADMINISTRATION	10,175.00	122,100.00
OTHER EXPENSES		
Insurance-Property Incl. Hurricane	23,942.00	287,304.00
Comprehensive General Liability (CGL)	3,750.00	45,000.00
Umbrella Liability	1,667.00	20,004.00
Directors & Officers Liability	333.00	3,996.00
Boiler & Machinery Insurance	417.00	5,004.00
Fidelity Insurance	167.00	2,004.00
Flood Insurance	2,084.00	25,008.00
Off-Site Drainage Maintenance	1,667.00	20,004.00
Dune, Park & Wetland Management	5,000.00	60,000.00
Sewage Lift Station	250.00	3,000.00
North Beach Association Fees	4,200.00	50,400.00
TOTAL OTHER EXPENSES	43,477.00	521,724.00
TOTAL OPERATING EXPENSES	309,771.00	3,717,252.00
RESERVES*†		
Replacement Reserves	15,489.00	185,868.00
Capital Improvement Reserves	15,489.00	185,868.00
TOTAL RESERVES	30,978.00	371,736.00
TOTAL EXPENDITURES	340,749.00	4,088,988.00

† The Developer advises the Association to conduct a reserve study once the Association is formed.

I, David A. Ferguson, employed by Management Consultants of Hawaii, Inc., the condominium managing agent for the Honua Kai Condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
\_\_\_\_\_  
Signature

*July 27, 2006*  
\_\_\_\_\_  
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-86.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. Developer discloses that no reserve study has been conducted in accordance with §514A-86.6, HRS, and replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules.

Pursuant to §514A-86.6, 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.

## EXHIBIT J

### SUMMARY OF SALES CONTRACTS

There are two types of specimen Sales Contracts: one for Residences and one for Suites. The type of Sales Contract to be executed by Purchasers depends on whether a Residence or Suite Apartment is purchased. The Residence Sales Contract and the Suite Sales Contract are almost identical, except that the Residence Sales Contract gives the Purchaser the option to purchase a furniture package. The Suite Sales Contract includes a furniture package in the Purchase Price of the Suite Apartment.

#### Residence Sales Contract

The specimen Residence Sales Contract, filed with the Commission, provides for, among other things, a description of the Apartment to be sold, the purchase price, the closing costs, the time, manner and place of payment, the Purchaser's obligations regarding financing, the Seller's warranties and disclaimers regarding the Condominium Map and the Project, and the remedies of the Seller and of the Purchaser in the event of a default under the Residence Sales Contract.

Among other provisions the specimen Residence Sales Contract provides:

1. That the Residence Sales Contract shall be binding when (i) a true copy of the Contingent Final Public Report (or Final Public Report, if applicable) together with a Receipt Form required by Hawaii Revised Statutes Section 514A-62 is delivered to the Purchaser, (ii) the Purchaser has an opportunity to read the report(s), and (iii) a Deemed Acceptance of such report(s) by the Purchaser shall have occurred.
2. The Seller has entered into an Escrow Agreement with Fidelity National Title & Escrow of Hawaii, Inc. ("Escrow"), covering the deposit with the Escrow of all funds paid by the Purchaser under the Residence Sales Contract and the disbursement of the funds by Escrow.
3. The Residence Sales Contract requires the Purchaser to pay the Total Purchase Price by a series of payments prior to Closing, as follows: Purchaser shall make an initial payment when Purchaser signs the Residence Sales Contract. Purchaser shall make a second deposit by June 30, 2006 with the balance due four (4) days prior to closing.
4. The Residence Sales Contract provides that all deposits will be held in Escrow in interest bearing accounts with all income derived from said account, and all interest paid thereon, credited to the account of Developer; provided however, if the Real Estate Commission does not issue an effective date for a final public report for the Project by the date on which the Project's contingent final report expires and the Purchaser rescinds the Residence Sales Contract, Developer shall refund Purchaser's deposit and any interest earned thereon, escrow fees and other related charges. Purchaser understands that the Escrow Agreement provides that Purchaser's Deposits may be disbursed to Developer prior to closing to pay costs of developing and constructing the Apartment and the Project.
5. The Residence Sales Contract provides that closing costs and expenses shall be allocated as follows: Purchaser shall pay the premium for the Title Policy, and any additional costs relating to the issuance of an extended coverage policy (including a lender's policy), the cost of drafting of any revisions or addenda to the Residence Sales Contract in addition to those addenda listed in Section C.3 of the Residence Sales Contract, if any, the cost of obtaining Purchaser's consents, if any, Purchaser's notary fees, all recording fees, Escrow fees, any mortgage fees, conveyance taxes, and Hawaii General Excise Tax. Seller shall pay the cost of drafting of conveyance documents and Seller's notary fees. The Residence Sales Contract also provides that at Closing Purchaser shall pay (a) one (1) month's maintenance fee for the Project's Owner's Association, and (b) a non-refundable, non-transferable start-up fee to the Project's Owner's Association in the amount equal to three (3) months' maintenance fee assessments. These start-up fees are one-time assessments at Closing and are not advance payments of common expenses or assessments, and shall be in addition to the normal monthly assessments.
6. The Residence Sales Contract provides that Seller shall complete construction of the Project so as to permit normal occupancy of the Apartment covered by the Residence Sales Contract within thirty six (36)

months from the date that the Purchaser executes the Residence Sales Contract and no later than December 31, 2009; provided, however, that such thirty six (36) month period shall be extended for any period of time during which Seller is actually and necessarily delayed in beginning or completing construction if such delay is caused by fire, earthquake, act of God, the elements, war or civil disturbances, litigation, strikes or other labor disturbances, or economic controls making it impossible to obtain the necessary labor or materials, or any other matter or condition beyond Seller's control.

7. The Residence Sales Contract gives the Purchaser the option to purchase a furniture package.

8. The Residence Sales Contract provides that it may not be assigned by Purchaser, in whole or in part, and any attempted assignment of the Residence Sales Contract is void and of no legal effect.

9. The Residence Sales Contract provides that any dispute by or between Seller and Purchaser arising out of or incident to the Residence Sales Contract, or the development or management of the Project, the sale of the Apartment or the use or occupancy thereof, or any other aspect of the relationship between Seller and Purchaser regarding the Project which is raised or otherwise asserted after Closing shall be submitted to mediation and, if necessary, to arbitration in accordance with the terms, conditions and procedures set forth in the Residence Sales Contract. The Residence Sales Contract also provides that any dispute by or between Seller and Purchaser arising out of or incident to the Residence Sales Contract that is raised or otherwise asserted before Closing need not be submitted to arbitration, and Seller and Purchaser shall be free to pursue such dispute, as otherwise provided herein, in proceedings in a court of competent jurisdiction, provided that any judicial proceedings initiated shall be conducted in Honolulu, Hawaii.

The foregoing is only a summary of some of the key terms of the Residence Sales Contract. It is incumbent upon a prospective Purchaser to read the full text of the Residence Sales Contract with care.

#### Suite Sales Contract

The specimen Suite Sales Contract, filed with the Commission, provides for, among other things, a description of the Apartment to be sold, the purchase price, the closing costs, the time, manner and place of payment, the Purchaser's obligations regarding financing, the Seller's warranties and disclaimers regarding the Condominium Map and the Project, and the remedies of the Seller and of the Purchaser in the event of a default under the Suite Sales Contract.

Among other provisions the specimen Suite Sales Contract provides:

1. That the Suite Sales Contract shall be binding when (i) a true copy of the Contingent Final Public Report (or Final Public Report, if applicable) together with a Receipt Form required by Hawaii Revised Statutes Section 514A-62 is delivered to the Purchaser, (ii) the Purchaser has an opportunity to read the report(s), and (iii) a Deemed Acceptance of such report(s) by the Purchaser shall have occurred.

2. The Seller has entered into an Escrow Agreement with Fidelity National Title & Escrow of Hawaii, Inc. ("Escrow"), covering the deposit with the Escrow of all funds paid by the Purchaser under the Suite Sales Contract and the disbursement of the funds by Escrow.

3. The Suite Sales Contract requires the Purchaser to pay the Total Purchase Price by a series of payments prior to Closing, as follows: Purchaser shall make an initial payment when Purchaser signs the Suite Sales Contract. Purchaser shall make a second deposit by June 30, 2006 with the balance due four (4) days prior to closing.

4. The Suite Sales Contract provides that all deposits will be held in Escrow in interest bearing accounts with all income derived from said account, and all interest paid thereon, credited to the account of Developer; provided however, if the Real Estate Commission does not issue an effective date for a final public report for the Project by the date on which the Project's contingent final report expires and the Purchaser rescinds the Suite Sales Contract, Developer shall refund Purchaser's deposit and any interest earned thereon, escrow fees and other related charges. Purchaser understands that the Escrow Agreement provides that Purchaser's Deposits may be disbursed to Developer prior to closing to pay costs of developing and constructing the Apartment and the Project.

5. The Suite Sales Contract provides that closing costs and expenses shall be allocated as follows: Purchaser shall pay the premium for the Title Policy, and any additional costs relating to the issuance of an extended coverage policy (including a lender's policy), the cost of drafting of any revisions or addenda to the Suite Sales Contract in addition to those addenda listed in Section C.3 of the Suite Sales Contract, if any, the cost of obtaining Purchaser's consents, if any, Purchaser's notary fees, all recording fees, Escrow fees, any mortgage fees, conveyance taxes, and Hawaii General Excise Tax. Seller shall pay the cost of drafting of conveyance documents and Seller's notary fees. The Suite Sales Contract also provides that at Closing Purchaser shall pay (a) one (1) month's maintenance fee for the Project's Owner's Association, and (b) a non-refundable, non-transferable start-up fee to the Project's Owner's Association in the amount equal to three (3) months' maintenance fee assessments. These start-up fees are one-time assessments at Closing and are not advance payments of common expenses or assessments, and shall be in addition to the normal monthly assessments.

6. The Suite Sales Contract provides that Seller shall complete construction of the Project so as to permit normal occupancy of the Apartment covered by the Suite Sales Contract within thirty six (36) months from the date that the Purchaser executes the Suite Sales Contract and no later than December 31, 2009; provided, however, that such thirty six (36) month period shall be extended for any period of time during which Seller is actually and necessarily delayed in beginning or completing construction if such delay is caused by fire, earthquake, act of God, the elements, war or civil disturbances, litigation, strikes or other labor disturbances, or economic controls making it impossible to obtain the necessary labor or materials, or any other matter or condition beyond Seller's control.

7. The Suite Apartments include a furniture package in the purchase price of a Suite Apartment.

8. The Suite Sales Contract provides that it may not be assigned by Purchaser, in whole or in part, and any attempted assignment of the Suite Sales Contract is void and of no legal effect.

9. The Suite Sales Contract provides that any dispute by or between Seller and Purchaser arising out of or incident to the Suite Sales Contract, or the development or management of the Project, the sale of the Apartment or the use or occupancy thereof, or any other aspect of the relationship between Seller and Purchaser regarding the Project which is raised or otherwise asserted after Closing shall be submitted to mediation and, if necessary, to arbitration in accordance with the terms, conditions and procedures set forth in the Suite Sales Contract. The Suite Sales Contract also provides that any dispute by or between Seller and Purchaser arising out of or incident to the Suite Sales Contract that is raised or otherwise asserted before Closing need not be submitted to arbitration, and Seller and Purchaser shall be free to pursue such dispute, as otherwise provided herein, in proceedings in a court of competent jurisdiction, provided that any judicial proceedings initiated shall be conducted in Honolulu, Hawaii.

The foregoing is only a summary of some of the key terms of the Suite Sales Contract. It is incumbent upon a prospective purchaser to read the full text of the Suite Sales Contract with care.

## EXHIBIT K

### SUMMARY OF ESCROW AGREEMENT

A copy of the executed Escrow Agreement for the Project between Fidelity National Title & Escrow of Hawaii, Inc. ("Escrow") and Developer has been filed with the Commission. The Escrow Agreement provides for the deposit of the funds of a purchaser of an Apartment (a "Purchaser") pursuant to the Reservation Agreement or Sales Contract and also provides for the retention or disbursement of the funds. The Escrow Agreement specifically permits the disbursement of Purchaser's funds under a Sales Contract prior to closing, subject to certain conditions, to pay for certain Project costs, including costs of constructing the Project's buildings, fixtures and other improvements, Developer's architectural, engineering, finance and legal fees, and other incidental expenses of the Project (excluding marketing expenses and brokerage fees relating to the sales of Apartments).

In the event that the Reservation Agreement or Hawaii Revised Statutes Chapter 514A entitle a Purchaser to a refund of Purchaser's Deposits held by Escrow, Escrow, upon instruction from Purchaser, will refund Purchaser's deposits.

Purchasers will compensate Escrow based on each unit bought in the Project. Escrow can arrange for the issuance of title insurance policies. A fee schedule is contained in the Escrow Agreement which purchasers may review.

By law the total amount of such cancellation fees shall not exceed Two Hundred Fifty and No/100 Dollars (\$250.00) so long as the cancellation occurs prior to the time the Sales Contract becomes effective (following issuance of the Final Public Report). Under the Escrow Agreement no disbursement of funds can be made to Developer until the Sales Contract becomes effective under the provisions of Chapter 514A, Hawaii Revised Statutes.

It is incumbent upon a prospective Purchaser to read the executed Escrow Agreement with care.

## EXHIBIT L

### TERMS OF LIMITED WARRANTY

(a) Developer warrants that all material incorporated in and made a part of the Apartment shall be new as of the date of installation and shall remain free from defect in workmanship or quality for a period of one year from the date of closing of the sale of an Apartment to a Purchaser. Developer represents that Developer will cause to be remedied, by repair or replacement, any structural defects in the Apartment which appear within one year after the date of closing of the sale of an Apartment and which result from faulty material or workmanship, provided that Purchaser gives Developer written notice of any such defect within 10 days after Purchaser's discovery of the defect. Any such notice shall be addressed to Developer at the address set forth in the warranty claim forms. Purchaser's sole remedy (in lieu of all remedies implied by law or otherwise) against Developer in connection with such defects shall be to require Developer to correct the defect in material or workmanship.

(b) The limited warranty does not extend or relate to any items of tangible personal property in the Apartment (whether or not such property is attached to or installed in the Apartment) including, without limitation, any oven, cooktop, oven hood and fan, trash compactor, garbage disposal, microwave, dishwasher, refrigerator, garage door openers, jet tubs, sprinkler systems, security system and alarm, hot water heaters and components of the heating system. Developer will assign to Purchaser at the closing of the sale of an Apartment any unexpired warranties Developer has received from the manufacturers of such tangible personal property, to the extent such warranties are assignable. Developer shall not be responsible for the performance of any such manufacturer under the manufacturer's warranties.

(c) WITH RESPECT TO ANY FIRE, ALARM, OR OTHER LIFE SAFETY OR SECURITY SYSTEM INSTALLED IN OR SERVICING THE BUILDINGS OR THE APARTMENT, DEVELOPER'S LIABILITY UNDER THIS LIMITED WARRANTY SHALL BE LIMITED TO THE COST OF CORRECTING ANY DEFECTIVE WORKMANSHIP OR REPLACING ANY DEFECTIVE MATERIALS IN SUCH SYSTEMS.

(d) WITH REGARD TO ANY APPLIANCES OR OTHER ITEMS OF TANGIBLE PERSONAL PROPERTY, DEVELOPER DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(e) EXCEPT AS STATED IN SECTION (a) OF THIS LIMITED WARRANTY, DEVELOPER MAKES NO WARRANTY OR REPRESENTATION OF ANY NATURE, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF WORKMANLIKE CONSTRUCTION, HABITABILITY, DESIGN, CONDITION, OR THE PROPERTY UNDERLYING THE PROJECT OR THE APARTMENT OR OTHER IMPROVEMENTS CONSTITUTING THE PROJECT, AND DEVELOPER HEREBY EXPRESSLY DISCLAIMS ANY SUCH REPRESENTATIONS OR WARRANTIES.

(f) DEVELOPER SPECIFICALLY DISCLAIMS, AND PURCHASER SPECIFICALLY RELEASES DEVELOPER FROM, ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES TO ANY PERSON IN THE APARTMENT OR ANY OTHER REAL OR PERSONAL PROPERTY RESULTING FROM A DEFECT. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO PURCHASER.\*

(g) Purchaser hereby acknowledges and accepts such disclaimers and agrees to waive any and all rights Purchaser may have by virtue of the representations and warranties disclaimed. Except as otherwise provided in this limited warranty, Purchaser assumes the risk of damage occurring within the Apartment after the closing of the sale of an Apartment regardless of the cause.

(h) With respect to any appliances finally determined by a court to be within this limited warranty described herein, all implied warranties are limited in duration to the period of this written warranty. This includes, without limitation, the implied warranties of merchantability and fitness and habitability if created or recognized in Hawaii. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Purchaser.\*

(i) On all other appliances, whether or not warranted by manufacturers, all implied warranties are expressly disclaimed and do not apply, including, without limitation, the implied warranties of merchantability and fitness and habitability as created and recognized under Hawaii law.

(j) This limited warranty gives you specific legal rights, and you may have other rights which vary from state to state.\*

(k) The provisions of this Limited Warranty shall survive the closing of the sale of an Apartment.

\*NOTE: This limited warranty has been prepared to comply with the disclosure requirements of the Federal Magnuson-Moss Warranty -- Federal Trade Improvement Act (15 U.S.C.S. § 2301-2312, as amended). The sentences indicated by asterisks are required by regulations promulgated by the Federal Trade Commission (16 CFR § 700.1-703.8).

MAUI COUNTY PLANNED  
DEVELOPMENT APPROVAL

BEFORE THE MAUI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In The Matter Of The Application Of )  
) **DOCKET NO. PD1 2004/0001**  
**STEVE SEWALL**, on behalf of ) (Steve Sewall, on behalf of  
**MAUI BEACH RESORT** ) Maui Beach Resort Limited  
**LIMITED PARTNERSHIP** ) Partnership)  
) (CMS)  
To Obtain Step 1 Planned Develop- )  
ment Approval of the Proposed )  
700 unit Resort Development )  
consisting of 72 two-story 3-bedroom )  
townhouses and 628 hotel units )  
consisting of studio, one -, two- and )  
three-bedroom units and ancillary )  
improvements on Lot 4 of the )  
Kaanapali Resort on approximately )  
39.84 acres and Approval of Revisions )  
to the Kaanapali Recreation Plan for )  
the 4.74 acre North Beach Park at )  
Maui Tax Map Key 4-4-014:006 and )  
008, Kaanapali, Lahaina, Maui, Hawaii )

**THE APPLICATION**

This matter arises from an application for Step 1 Planned Development Approval and Amendment to the Kaanapali Recreation Plan filed on January 7, 2004. The application was filed pursuant to Chapter 19.32, Maui County Code, 1980 as amended; by Mr. Steve Sewall, on behalf of Maui Beach Resort Limited Partnership, ("Applicant"); on approximately 39.84 acres of land (Lot 4) and 4.74 acres of land for the North Beach Park in the Urban District, situated at Kaanapali, Lahaina, Island and County of Maui, identified as Maui Tax Map Key No. 4-4-014:006 and 008 ("Property")

**PURPOSE OF THE APPLICATION**

The Applicant is requesting Step 1 Planned Development Approval for the proposed 700 unit resort development and revision to the Kaanapali Recreation Plan involving the North Beach Park.

## **APPLICABLE REGULATIONS**

### **Planned Development Step I Approval**

Standards for reviewing a Step I Planned Development Application are found in Title 19 Zoning, Chapter 19.32 Planned Development, Section 19.32.030 Standards of development as follows:

(1) The development shall meet all the construction standards and requirements of the various governmental agencies.

(2) Not less than twenty percent of the total area of the tract shall be common protected open space, integrated with the lot layout and street system in order to maximize its park-like effect. Common protected open space shall mean open space to be owned in common by the individual owners within the development and maintained in open space for their common use and enjoyment.

(3) Each building and structure shall be individually designed by a registered architect to conform with the intent of the planned development.

(4) Landscaping of the entire development, including along streets, within lots and in the open spaces shall be provided.

(5) Adequate recreational and community facilities shall be provided.

(6) Provision shall be made for adequate and continuing management of all open spaces and community facilities to insure proper maintenance and policing. Documents to said effect shall be required.

Further, pursuant to Section 19 32.040 Reduction of lot areas and mixed land uses, approval may be granted by the planning commission to reduce the minimum lot area, allow greater building densities, and mixed land uses as follows:

(1) If the development is to be subdivided, the minimum lot size may be reduced twenty percent from that required for that particular district; provided, that the minimum lot width shall not be reduced.

(2) In residential planned development, including duplex zone, with minimum tract area of three acres, combining of no more than three dwelling units in a single structure shall be permitted. Only a single, interior-located common club facility shall be permitted. There shall be no increase in the overall dwelling unit density.

(3) In residential planned development, including duplex zone, within minimum tract area of ten acres, combining of no more than five dwelling units in a single structure shall be permitted. Two interior-located common club facilities shall be permitted. Overall dwelling unit density may be increased ten percent.

(4) In residential planned development, including duplex zone, with minimum tract area of thirty acres, combining of no more than eight dwelling units in a single structure shall be permitted. Four interior-located club or community facilities shall be permitted. Overall dwelling unit density may be increased fifteen percent.

(5) Apartment, hotel, business and industrial planned developments shall be permitted in their respective districts. For such planned developments with minimum tract area of ten acres, the overall permitted floor area may be increased ten percent; and for minimum tract area of thirty acres, the overall permitted floor area may be increased fifteen percent.

(6) Overall dwelling unit density shall be determined by dividing the total number of dwelling units by the net land area. Net land area shall be total lot area minus the area of dedicated streets and other dedicated areas. Base dwelling unit densities upon which any bonus shall be applied, shall be as follows:

R-3 residential district	4.36 units/acre
R-2 residential district	5.81 units/acre
R-1 residential district	7.26 units/acre
D-2 duplex district	8.72 units/acre
D-1 duplex district	11.62 units/acre
RR1 Rural residential dist.	4.36 units/acre
RR2 Rural residential dist.	2.00 units/acre

Permitted dwelling unit densities for other zoning districts not specified above shall be based upon the allowable densities within the districts.

(7) Planned developments proposed on lands including more than one zoning district may permit a mixture of uses, densities and/or dwelling units; provided, that the total density and/or dwelling units of the planned development shall not exceed the combined allowable densities of each of the zones.

## GENERAL DESCRIPTION

### Description of the Property

1. The Property which is approximately 39.84 acres is located on Lot 4 of the Kaanapali North Beach Development and the 4.74 acre North Beach Park located at Maui Tax Map Key 4 4-014:006 and 008, Kaanapali, Lahaina, Maui, Hawaii. (See attached Map, *Exhibit "1"*)
2. Land Use Designations --
  - a. State Land Use District -- Urban
  - b. West Maui Community Plan --  Hotel and Park (North Beach Park)
  - c. County Zoning -- R-3 Residential (4.8 acres), HM Hotel (9.3 acres) and H-2 Hotel (21 acres including shoreline easement) (*Exhibit "2"*)
  - d. Other -- Within the Special Management Area and subject to the Shoreline Setback Rules

**3. Surrounding Uses –**

- North –** Lower Honoapiilani Highway, North Beach Park and beyond the park site is the Mahana, Embassy Suites and Kaanapali Shores properties
- East –** Honoapiilani Highway and former sugarcane lands
- South –** Vacant 26.7 acre hotel property
- West –** Ocean

- 4. The subject property is currently undeveloped and occupied by kiawe, koa haole and scrub vegetation.**
- 5. The subject application does not involve an action that triggers compliance to Chapter 343, Hawaii Revised Statutes, relating to Environmental Impact Statements.**

**Existing Services**

- 1. Water – Kaanapali Resort is served by a privately owned water utility which is independent of the County system.**
- 2. Sewers – Kaanapali Resort is within the service area of the county's Lahaina Wastewater Reclamation Facility. Kaanapali Resort has a reserved capacity allocation at the Facility which should be able to meet the future sewage demands of the project.**
- 3. Drainage – The Drainage Master Plan Kaanapali North Beach (Mauka and Makai) prepared by Sato and Associates, Inc. dated April 2000 did a regional analysis of drainage in the area. According to the study drainage in the area is divided into the following subareas:**

- Mauka Drainage area (2226.3 acres)**
- Southern Drainage area (17 acres)**
- North Beach Subdivision II area (88.61 acres)**

**The proposed Drainage Master Plan identified several options in order to provide additional storage capacity needed due to development. The following options were identified:**

- A. Golf Course - An 18-hole 180 acre golf course could retain approximately 200 acre-feet of storm water runoff. In addition to providing large areas to design a variety of retention systems, golf courses also do not generate additional runoff volumes, unlike most other developments.**

- B. Restore 18-inch Drain pipe to Honokowai Channel - An 18-inch pipe previously routed Drainage Area 1 gulch storm water runoff into Honokowai Stream until later 1987. During the construction of the Honokowai Stream Channel in 1987, the 18-inch pipe was removed. The capacity of the 18-inch pipe is approximately 22 cfs of storm water runoff or approximately 21.82 acre-ft. (950,400 cf) of storm water volume, based on a 24-hour storm. Reinstallation of the pipe may be feasible if there is sufficient capacity within the channel. Indications are that there is sufficient capacity.

The restoration of the 18-pipe would be done in conjunction with an appropriately designed and adequately sized desiltation basin. (See *Exhibit "3"*)

- C. Store Increase on Development Site - This option involves storing the increase in storm water runoff resulting from the development within the developed site. On-site retention basins, underground infiltration piping (subdrain) system, or surface ponding area some methods to be considered. All retention basins and subsurface infiltration systems shall be designed to allow easy access for regular maintenance of accumulated sediments.
- D. Mauka Borrow/Retention Site - A borrow/retention site could be located and designed to supply soil fill material for developments while also providing additional storm water storage capacity. The borrow site should be constructed in the Mauka Drainage Areas to intercept and retain Area 1's storm water runoff before it reaches Honoapiilani Highway. All retention systems shall be designed to allow easy access for regular maintenance. (*Exhibit "4"*)
- E. Create Retention Basins Throughout the Project Area - There are abandoned irrigation reservoirs within the North Beach Mauka area. These abandoned irrigation reservoirs could be modified and/or expanded to increase storm water runoff storage capacity and be used as retention basins. In addition, new retention basins can be developed. All retention systems shall be designed to allow easy access for regular maintenance.

Based on the assumed Land Use Scenario (zoning), the Drainage Master Plan identifies an increase of 197.82 acre-ft (8,616,998 cf) of storm water runoff storage capacity will be required for the Study Area's ultimate development to maintain conditions equal to or better than those in existence in July 1988. As each development occurs the Drainage Master Plan shall be implemented incrementally to maintain conditions equal to or better than those in existence in July 1988.

The Drainage Plan will include one or more of the following

- Golf Course;
- Restoration of a 18-inch drain pipe to Honokowai Channel;
- Storing Increased Storm Water Runoff within the Developed Sites; and
- Construction of Borrow/Retention Sites on the mauka side of Honoapiilani Highway.

In planning for drainage for the project the applicant is reviewing the recommendations of the Drainage Master Plan and proposes to comply with the drainage requirements of the County of Maui. In addition, the applicant proposes to use the more stringent guidelines of the West Maui Watershed Owner's Manual prepared by the West Maui Watershed Management Advisory Committee.

4. Roadways, Curbs, Gutters and Sidewalks – Access to the project site is from Honoapiilani Highway which is a four lane State roadway. Regional roadway improvements required during the North Beach Subdivision approvals were completed. Development of the subdivision required construction of the fourth lane on Honoapiilani Highway between the Kaanapali Parkway and Honokowai Stream.

#### **BRIEF HISTORY**

1. On July 19, 1988 the Maui Planning Commission approved a Special Management Area Permit and Shoreline Setback Variance for the North Beach Subdivision.
2. On December 14, 1998 the Decision and Order from the Maui Planning Commission approving a Special Management Area Permit (SM1 970006) for the Kaanapali Ocean Resort was served on the parties. Construction of the Kaanapali Ocean Resort, a 280 unit time share project, was recently completed.

#### **DESCRIPTION OF THE PROPOSED DEVELOPMENT**

Intrawest, on behalf of Maui Beach Resort Limited Partnership, is requesting Step 1 Planned Development Approval in order to develop a 700 unit project located on Lot 4 (TMK 4-4-014:006) within the Kaanapali North Beach Subdivision. The project will consist of approximately 72 two-story, three-bedroom townhouses and 628 hotel units consisting of studio, one-, two- and three-bedroom units. The project includes ancillary improvements, such as swimming pool and spa, fitness center, beach club with restaurant, poolside bar and grill, and convenience retail space. (*Exhibit "5"*)

The conceptual site plan proposes to re-adjust the hotel zoning boundaries in order to locate a 12-story building to the south side of the site to preserve views for neighboring properties located to the north of the project site. The siting of the buildings will provide buildings of four to eight stories to the north and 12 stories to the south. The re-adjustment of the boundaries allows the development to lower the scale of development along Honoapiilani Highway with two-story townhouses. No increase in densities will result from the re-adjustment of the zoning boundaries.

No work is proposed in the 150 ft. shoreline easement, except a lateral shoreline walkway mauka of the coastal sand dunes and mauka-makai beach walkways will be provided for public and guest use in order to facilitate pedestrian access to the beach and along the shoreline mauka of the dune.

In addition, the applicant is requesting an amendment to the Kaanapali Recreation Plan relating to the North Beach Park. (*Exhibit "6"*) The applicant proposes to consolidate and re-subdivide the North Beach Park site with an adjacent 1.5 acre R-3 Residential parcel. The adjacent property owner will be given the subdivided lot adjacent to Lower Honoapiilani Highway and the reconfigured 4.74 acre parcel adjacent to the shoreline will be developed as the North Beach Park. (*Exhibit "7"*)

The applicant proposes to develop the North Beach Park in conjunction with the planned development. The park will provide parking for 100 vehicles and restrooms, showers and picnic facilities similar to Kahekili Park.

It is anticipated that the project will be constructed in five phases to meet market demand. The first phase is the "South enclave" (12 story building) located at the south end of the site consisting of approximately 320 units and associated parking. The first phase will also include the construction of the North Beach park, and supporting buildings, swimming pool and spa, fitness center, beach club building with restaurant, poolside bar and grill, as well as walkway in the shoreline easement. Thereafter it is anticipated that approximately 100 units per year will be constructed.

Construction of the first phase is anticipated to begin in April 2005 and take two years to construct with each subsequent phase taking 18 months. Completion of the project is anticipated to occur within eight years from SMA approval.

## **ANALYSIS**

### **Kaanapali North Beach Subdivision Restrictions:**

Previous approvals for the Kaanapali North Beach Subdivision and Kaanapali

Ocean Resort set restrictions on Kaanapali North Beach. A partial summary of the restrictions are as follows:

1. Limited the total number of units for the subdivision including Kaanapali Ocean Resort to ~~1,250~~ which may include 487 lock off units. If the lock off units exceed 487 units then the main unit and lock off unit shall be counted as two units and included in the total unit count. ~~To date 280 units were built at the Kaanapali Ocean Resort.~~ This project proposes 700 units while the expansion of the Kaanapali Ocean Resort on Lot 2 proposes another 258 units which will add an additional 958 units, excluding lock off units. Further the existing Kaanapali Ocean Resort contained 225 lock off units and the proposed expansion on Lot 2 will include an additional 258 lock off units which will total 487 lock off units. If lock off units are utilized in the Intrawest project, these units will be included in the 1,950 total units allowed in the North Beach Subdivision. Excluding lock off units, with these two proposed project there is a balance of 712 units for the North Beach Subdivision.
2. The Kaanapali Recreation Plan identifies the development of two park sites in the Kaanapali North Beach Subdivision. Kahekili Park on the south side of the subdivision has been construction. The North Beach Park still needs to be constructed. As part of this project the applicant proposes to develop the North Beach Park.
3. Shoreline Lateral Access - The subject property contains a 2.8 acre shoreline easement which will be developed to provide public lateral shoreline access through the property from the proposed North Beach Park.
4. Design Manual and Master Plan for Kaanapali Beach Resort North Beach, Revised October 2003 – The design manual sets forth guidelines for land use, access and circulation, site planning, architectural design, landscape design, and signage for the North Beach Subdivision, as well as guidelines for physical and spacial elements for parks developments and beach access for the public use areas, landscaping, landscape irrigation, lighting, and signage. The applicant proposes to meet these design guidelines.

#### **Step 1 Planned Development:**

Pursuant to Section 19.32.020 the applicant is requesting Step 1 Planned Development Approval. Step 1 Approval requires the applicant to submit a request in writing, stating the location, size and brief description of the planned development. The applicant has submitted the required information for consideration by the Commission. The Commission shall reject or tentatively

approve the request.

Further, the subject property contains multiple zoning districts (R-3 Residential District, H-M Hotel and H-2 Hotel). Pursuant to Section 19.32.040(G) "on lands including more than one zoning district may permit a mixture of uses, densities and/or dwelling units; provided that the total density and/or dwelling units of the planned development shall not exceed the combined allowable densities of each of the zones. The proposed planned development meets the mixed use densities as follows:

Zoning/Acres	Allowed Density	Allowed Units/ Floor Area	Proposed Units/ Floor Area
R-3 Residential/4.8 Acres	4.36 units/acre	20.8 units	0 units
H-M Hotel/0.3 acres	Lot Coverage 30%		18% coverage
	FAR 100%	405,136 sq.ft.	110,000 sq.ft.
H-2 Hotel/ 18.2 Acres	Lot Coverage 35%		19.4% coverage
	FAR 150%	1,189,270 sq.ft.	778,600 sq.ft.
Shoreline Easement 2.8 acres	N/A	N/A	N/A
North Beach Park 4.74 acres	N/A	N/A	N/A

Although the planned development process allows increased densities and reduced lot areas, the applicant is not seeking any increased densities or reduced lot areas. The proposed densities is actually less than what is permitted by the zoning districts.

The applicant proposes to comply with Section 19.32.030 Standards of Development as follows:

1. The development shall meet all the construction standards and requirements of the various governmental agencies.
2. Not less than 20 percent of the total area (35.1 acres) shall be common open space. A minimum of approximately 7 acres in common open space will be required. During the Step 2 Planned Development process common open spaces shall be identified in the sketch plan.
3. Each building and structure shall be individually designed by a registered architect to conform with the intent of the planned development.
4. Landscaping shall be provided within the entire development, including

along streets, within the lots and open spaces.

5. Adequate recreational and community facilities shall be provided. The applicant proposes to provide a swimming pool and spa, fitness center, beach club with restaurant, poolside bar and grill, and convenience retail space as their recreational and community facilities..
6. Provisions shall be made for adequate and continuing management of all open spaces and community facilities to insure proper maintenance and policing. Such provisions will be reviewed during the Step 2 and Step 3 Planned Development process.

If Step 1 Planned Development Approval is obtained the applicant will then be able to prepare applications for Step 2 Planned Development Approval. Pursuant to Section 19.32.020(B) after obtaining tentative approval, the applicant shall confer with the planning director, the director of public works and the director of water supply and proceed to prepare a sketch plan of the development, showing among other things, a preliminary proposal of drainage, streets, utilities, grading, landscaping, open spaces, lots, land uses, recreational and community facilities, buildings and structures, and programming. The Commission shall review the sketch plan for conformance with the standards of development and reject or tentatively approve the sketch plan.

Step 3 Planned Development Approval involves the preparation of a unified site and building program which includes, among other things, construction plans in accordance with Title 18; site plan showing grading, landscaping, protected open spaces, location of each building and structure; building plan of each building and structure; and the financing and timing program. The Commission shall review the unified site and building program, and upon approval, the applicant may proceed to finalize the planned development.

The subject property is also located within the Special Management Area (SMA) and an SMA Application will be filed in conjunction with the Step 2 Planned Development Application.

### **Design Manual:**

A partial summary of key elements of the Design Manual to be considered by the applicant are as follows:

#### ***Building Massing and Configuration.***

Building massing shall be designed to enable each Building Project to avail itself of the views to the greatest extent possible while protecting the views from other Building Projects and key public areas.

The North Beach Subdivision Land Use Concept Plan envisions the use of medium scale buildings which are articulated both horizontally and vertically to reduce their apparent mass. To minimize the massing of the buildings from the beach the surrounding roadways, pathways, and parks, the buildings where possible, should be designed with the lowest elements around the perimeter and the highest elements in the center of the site. Taller buildings are encouraged to use lower scaled building elements at the base to reduce the apparent height.

**Views:**

The building massing should be optimized to reduce the bulk of the buildings while providing guest rooms with a view to the ocean to the extent practicable. The placement of the buildings should ensure that adequate view corridors are provided between structures to provide views of the ocean from mauka lands.

The conceptual site plan identifies view corridors in the attached *Exhibit "8"*.

**Plan Articulation:**

Building plan forms shall be staggered or stepped to reduce the apparent bulk of the buildings. A complex of interconnected or well sited building elements which, in turn, create landscape open spaces is encouraged.

**Kaanapali Recreation Plan:**

The applicant is requesting an amendment to the Recreation Plan pertaining to the North Beach Park to include the revised site plan for the North Beach Park. The applicant proposes to consolidate the current park site with the adjacent residential property (TMK 4-4-001:010) and to re-subdivide the consolidated parcel into two lots where the adjacent owner is given an approximate 1.5 acre site adjacent to Lower Honoapiilani Highway and the more usable 4.74 acre parcel adjacent to the shoreline is left for the North Beach Park. (See *Exhibit "7"*)

**CONCLUSION OF LAW**

The proposed project meets the requirements for Step 1 Planned Development Approval.

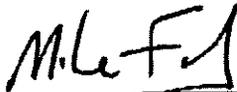
**RECOMMENDATION**

Pursuant to the foregoing the Maui Planning Department recommends approval of the Step 1 Planned Development and amendment to the Kaanapali Recreation Plan pertaining to the reconfigured North Beach Park. Step 1 Planned Development Approval is subject to the following conditions:

1. That Step 2 Planned Development Application shall be filed within one year of this approval.
2. That in addition to the requirements identified in Chapter 19.32, the Sketch Plan shall include provisions for lateral shoreline access and appropriate view studies identifying view corridors and appropriate mitigative measures. In addition to ocean views the study should include views from the shoreline and North Beach Park areas that may be impacted.
3. That the Sketch Plan shall identify how the project complies with the Design Manual and Master Plan for Kaanapali Beach Resort North Beach, revised October 2003. In addition the Sketch Plan shall identify and incorporate energy saving measures within the project.
4. That the North Beach Park shall be processed and developed concurrently with the proposed Planned Development.

In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's Report and Recommendation prepared for the February 10, 2004 meeting as its Findings of Fact, Conclusion of Law and Decision and Order and to authorize the Director of Planning to transmit said written Decision and Order on behalf of the Planning Commission.

APPROVED:



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MICHAEL W. FOLEY  
Director of Planning

BEFORE THE MAUI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In The Matter Of The Application Of )  
 ) DOCKET NO. PD3 2005/0008  
MR. STEVE SEWALL, on ) (Mr. Steve Sewall, on behalf of Intrawest)  
Behalf of INTRAWEST ) (CMS)  
 )  
To Obtain Step 3 Planned Develop- )  
ment Approval for the 700 Unit )  
Honua Kai Resort Project Consisting )  
of the Phase 1 Site Improvements )  
Including Mass Grading; Foundation )  
and Building Plans for the South )  
Enclave; Surcharge and Stockpiling )  
for the North Enclave; South Pool, )  
Cabanas and Towel Kiosk; and )  
Shoreline Improvements and Phase 1 )  
Landscaping On 34.8 Acres of Land )  
at Maui Tax Map Key 4-4-014:006, )  
Kaanapali, Maui, Hawaii )

MAUI PLANNING DEPARTMENT'S REPORT AND RECOMMENDATION  
TO THE MAUI PLANNING COMMISSION  
DECEMBER 13, 2005 MEETING

DEPARTMENT OF PLANNING  
COUNTY OF MAUI  
250 S. HIGH STREET  
WAILUKU, MAUI, HI. 96793

(Step 3 Planned Development)  
(K:\WP\_DOCS\PLANNING\SM1\2004\17\_HonuaKai\PD320050008\DraftPD3DeptReport.wpd)

BEFORE THE MAUI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In The Matter Of The Application Of )  
 ) DOCKET NO. PD3 2005/0008  
 MR. STEVE SEWALL, on ) (Mr. Steve Sewall, on behalf of Intrawest)  
 Behalf of INTRAWEST ) (CMS)  
 )  
 To Obtain Step 3 Planned Develop- )  
 ment Approval for the 700 Unit )  
 Honua Kai Resort Project Consisting )  
 of the Phase 1 Site Improvements )  
 Including Mass Grading; Foundation )  
 and Building Plans for the South )  
 Enclave; Surcharge and Stockpiling )  
 for the North Enclave; South Pool, )  
 Cabanas and Towel Kiosk; and )  
 Shoreline Improvements and Phase 1 )  
 Landscaping On 34.8 Acres of Land )  
 at Maui Tax Map Key 4-4-014:006, )  
 Kaanapali, Maui, Hawaii )

**THE APPLICATION**

This matter arises from an application for a Step 3 Planned Development Application filed on November 15, 2005. The application was filed pursuant to Chapter 19.32, Maui County Code, 1980 as amended; by Mr. Steve Sewall, on behalf of Intrawest, ("Applicant"); on lands in the Urban District, situated at Kaanapali, Island and County of Maui, identified as Maui Tax Map Key No. 4-4-014:006 ("Property").

**PURPOSE OF THE APPLICATION**

The Applicant is requesting Step 3 Planned Development Approval of construction drawings for the Phase 1 site improvements including mass grading; foundation and building plans for the South Enclave; surcharge and stockpiling for the North Enclave; South pool, cabanas and towel kiosk; and shoreline improvements and Phase 1 landscaping for the 700 unit Honua Kai Resort Development.

## **APPLICABLE REGULATIONS**

### **Planned Development Step 3 Approval**

Pursuant to Section 19.32.020(C), Maui County Code, upon approval of the sketch plan, the owner shall proceed to prepare a unified site and building program which shall include, among other things, construction plans in accordance with Title 18, site plan showing grading, landscaping, protected open spaces, location of each building and structure; building plan of each building and structure; and the financing and timing program. The Commission shall review the unified site plan and building program, and upon approval, the owner may proceed to finalize the planned development.

## **GENERAL DESCRIPTION**

### **Description of the Property**

1. The Property which is approximately 34.8 acres is located in the Kaanapali North Beach Subdivision makai of Honoapiilani Highway and Lower Honoapiilani Road at Maui Tax Map Key 4-4-014:006, Kaanapali, Lahaina, Maui, Hawaii. (*Exhibit "1"*)
2. Land Use Designations –
  - a. State Land Use District – Urban
  - b. West Maui Community Plan – Hotel, Open Space, and Park
  - c. County Zoning – R-3 Residential, H-M Hotel and H-2 Hotel
  - d. Other – Within the Special Management Area
3. Surrounding Uses –
  - North -- Lower Honoapiilani Road and Honokowai Shopping Center, vacant Nunes property, Mahana Condominium, Embassy Suites, and Kaanapali Shores Condominium
  - East -- Honoapiilani Highway and County Wastewater Facility
  - South -- Lot 3 of the Kaanapali North Beach Subdivision
  - West -- Ocean
4. The subject application does not involve an action that triggers compliance to Chapter 343, Hawaii Revised Statutes, relating to Environmental Impact Statements.

## **BRIEF HISTORY OF APPLICATION**

1. On February 10, 2004 the Maui Planning Commission granted tentative approval for Step 1 Planned Development and revised the Recreation Plan to include the proposed re-configuration of the North Beach Park and the 10 acre Open Space area on Lot 3. (*Exhibit "2"*)
2. On February 22, 2005 the Maui Planning Commission granted Step 2 Planned Development Approval and a Special Management Area (SMA) Use Permit for the portion of the development, including the access roadway to the North Beach Park, unaffected by land use changes. (*Exhibit "3"*)
3. On June 14, 2005 the Maui Planning Commission granted Step 3 Planned Development Approval for the Surcharge for the South Enclave and Temporary Sales Trailers and Pavilion. (*Exhibit "4"*)

## **DESCRIPTION OF THE DEVELOPMENT**

The applicant is requesting Step 3 Planned Development Approval to prepare the site for development. The applicant proposes to prepare the lot by doing the surcharge (pre-load) and stockpiling for the North Enclave which consists of placing fill material for the building pads and compacting of the fill. Also included is the construction plans for the South Enclave; Phase 1 site improvements including mass grading; South pool, cabanas, and towel kiosk; and shoreline improvements and Phase 1 landscaping. (*Exhibit "5"*)

The plans consist of construction plans which includes the Phase 1 Site Plan, Mass Grading and Engineering Plans, Surcharge and Stockpiling for North Enclave, Shoreline Improvements and Phase 1 Landscaping, South Enclave Construction and South pool, cabanas and towel kiosk. (The full construction plans are available for review)

## **ANALYSIS**

In accordance with Section 19.32.020 (C) the applicant has submitted the unified site and building program for the site development which consists of construction drawings. The applicant has also indicated that financing remains the same and a revised timing program has been submitted for the project. The Maui Beach Resort Limited Partnership has invested cash equity in both land and development costs to and will be obtaining third-party construction financing. All financing will be secured with presale contracts to the condominium units.

The current phasing or timing of the project is as follows:

<b>Phase</b>	<b>Start</b>	<b>Complete</b>
Phase 1a surcharge of south enclave (Approved by Commission)	Dec 15, 2005	Mar 15, 2006
Phase 1b move surcharge from south to north enclave	Mar 15, 2006	Apr 15, 2006
Phase 2a excavation and foundations for south enclave	Mar 15, 2006	June 15, 2006
Phase 2b construction of south enclave	June 15, 2006	Oct 15, 2008
Phase 2c shoreline setback work	May 15, 2007	July 15, 2008
Phase 2d Lower Honoapillani Road Widening	May 15, 2007	July 15, 2008
Phase 2e North Park - western portion	May 15, 2007	July 15, 2008
Phase 2f North Park- eastern portion (Nunes land swap)	July 15, 2007	Sept 15, 2008
Phase 3a Town Homes - first two clusters 52 units	Nov 15, 2006	Aug 15, 2008
Phase 3b Town Homes - last cluster of 20 units	June 15, 2009	Nov 15, 2010
Phase 4a excavation and foundations for north enclave	Jan 15, 2007	April 15, 2007
Phase 4b construction of north enclave	April 15, 2007	Mar 15, 2011

Phases 1b, 2a, 2b, and 2c are the subject of the Planned Development Step 3 request. Phase 1a was the initial site development (surcharge) for the South Enclave which was approved by the Commission on June 14, 2005.

The construction plans for the Phase 2 development are essentially in accordance with sketch plans approved by the Commission.

On April 14, 2005 a preliminary compliance report for the project was approved by the Planning Department.

**CONCLUSION OF LAW**

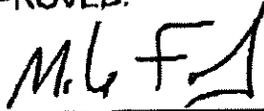
The proposed project meets the requirements for Step 3 Planned Development Approval.

**RECOMMENDATION**

Pursuant to the foregoing the Maui Planning Department recommends approval of the Step 3 Planned Development Application.

In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's Report and Recommendation prepared for the December 13, 2005 meeting as its Findings of Fact, Conclusion of Law and Decision and Order and to authorize the Director of Planning to transmit said written Decision and Order on behalf of the Planning Commission.

APPROVED:

Handwritten signature of Michael W. Foley in black ink, consisting of the initials 'M.W.F.' followed by a stylized flourish.

---

MICHAEL W. FOLEY  
Director of Planning

ALAN M. ARAKAWA  
Mayor

MICHAEL W. FOLEY  
Director

VAYNE A. BOTEILHO  
Deputy Director



MAR 03 2005

COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

February 25, 2005

Mr. Steve Sewall  
Intrawest  
999 West Hastings Street, Suite 900  
Vancouver, BC, Canada  
V6C 2W2

Dear Mr. Sewall:

RE: Special Management Area Use Permit and Step 2 Planned Development Applications for the Proposed Honua Kai Resort, North Beach Park and Related Improvements at TMK: 4-4-014:006 and 008 and 4-4-001:010, Kaanapali, Lahaina, Maui, Hawaii (SM1 2004/0017) (PD2 2004/0005)

At its regular meeting on February 22, 2005 the Maui Planning Commission (Commission) acknowledged the withdrawal of the Petitions to Intervene and the submittal of the Settlement Agreements. After due deliberation, the Commission voted to grant Step 2 Planned Development approval, and approval of the following "other mitigation measures" as fulfillment of Condition No. 7 of the 1988 SMA/SSV Approval and Condition No. cc of the 1996 SMA approval:

As represented by the applicant, the following traffic related improvements totaling \$2.5 million may be implemented, as determined by the County of Maui and State Department of Transportation, in conjunction with the Honua Kai Resort project:

1. Sequencing to existing traffic signals on Honoapiilani Highway through the Lahaina corridor as determined by a traffic study to model traffic flow and as approved by the Department of Transportation.
2. Regional roadway improvements for "fair share" contribution towards the following:
  - a. Left turn lane from Lower Honoapiilani Road to the North park access and right turn lane out from the park access to the Lower Honoapiilani Road.

- b. Right turn lane from Lower Honoapiilani Road to Honoapiilani Highway with acceleration lane.
3. Mill Street Collector Road traffic studies and road design fees from Keawe Street to Aholo Road.

Further, the Commission voted to bifurcate the Special Management Area Use Permit application. The Commission deferred the portion of the development affected by the land use changes for the North Beach Park (mauka portion), and approved the unaffected portions of the development, including the access roadway to the North Beach Park, subject to the following conditions:

**STANDARD CONDITION:**

1. That construction of the proposed project shall be initiated by **February 28, 2007**. Initiation of construction shall be determined as construction of offsite improvements or issuance of a grading, foundation or building permit and construction of the improvements, whichever occurs first. Failure to comply within this two (2) year period will automatically terminate this Special Management Area Use Permit unless a time extension is requested no later than ninety (90) days prior to the expiration of said two (2) year period. The Planning Director shall review and approve a time extension request but may forward said request to the Planning Commission for review and approval.
2. That the construction of the project shall be completed within eight (8) years after the date of its initiation. Failure to complete construction of this project will automatically terminate the subject Special Management Area Use Permit. A time extension shall be requested no later than ninety (90) days prior to the completion deadline. The Planning Director shall review and approve a time-extension request but may forward said request to the Planning Commission for review and approval.
3. The permit holder or any aggrieved person may appeal to the Planning Commission any action taken by the Planning Director on the subject permit no later than ten (10) days from the date the Director's action is reported to the Commission.

4. That final construction shall be in accordance with preliminary plans received on **June 16, 2004** and revised plans received on **February 4, 2005**.
5. That appropriate measures shall be taken during construction to mitigate the short term impacts of the project relative to soil erosion from wind and water, ambient noise levels, traffic disruptions, and construction waste.
6. That the subject Special Management Area Use Permit shall not be transferred without prior written approval in accordance with §12-202-17(d) of the Special Management Area Rules of the Maui Planning Commission. However, in the event that a contested case hearing preceded issuance of said Special Management Area Use Permit, a public hearing shall be held upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.
7. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Special Management Area Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Special Management Area Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of **ONE MILLION AND NO/100 DOLLARS (1,000,000.00)** naming the County of Maui as an additional named insured, insuring and defending the applicant and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. Proof of a policy naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the decision and order.
8. That full compliance with all applicable governmental requirements shall be rendered.

9. That the applicant shall submit plans regarding the location of any construction related structures such as, but not limited to trailers, sheds, equipment and storage areas and fencing to be used during the construction phase to the Maui Planning Department for review and approval.
10. That the applicant shall submit to the Planning Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Special Management Area Use Permit. A preliminary report shall be reviewed and approved by the Planning Department prior to issuance of the grading, building or foundation permit, whichever occurs first. A final compliance report shall be submitted to the Planning Department for review and approval prior to issuance of a Certificate of Occupancy for each phase of the development .
11. That the applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining the Special Management Area Use Permit. Failure to so develop the property may result in the revocation of the permit.
12. That appropriate energy conservation measures shall be incorporated into the project, which may include but not limited to, energy conserving building materials, solar water heaters, heat conversion systems, state of the art air conditioning systems, photo voltaic systems, etc.

**PROJECT SPECIFIC CONDITIONS:**

13. That the applicant shall be responsible for all required infrastructural improvements, as required by Maui County Code, and rules and regulations, including but not limited to water source and system improvements for both domestic and fire protection, drainage improvements, traffic related improvements, wastewater system improvements, and utility upgrades. Said improvements may be phased and constructed concurrently with each phase of the development and shall be completed prior to issuance of a certificate of occupancy for each phase of construction, unless improvements are bonded by the developer.

14. That the proposed pump station and all on-site wastewater facilities for the development shall be privately owned and maintained. (Recommended by DPWEM)
15. That the final drainage plan shall be in accordance with the Drainage Master Plan for Kaanapali North Beach Subdivision, the County of Maui drainage standards and the West Maui Watershed Owner's Manual prepared by the West Maui Watershed Management Advisory Committee. The plan shall accommodate the overflow from Honokowai Stream which could send water through the Lahaina Highways Baseyard and Lahaina Wastewater Reclamation Facility. Further, all onsite and offsite retention and detention basins shall be privately owned and maintained. (Recommended by DPWEM and NRCS)
16. As represented, the applicant shall be responsible for regional traffic mitigation measures within the West Maui Community Plan region to fulfill previous SMA conditions. Said measures shall be reviewed and approved by the County of Maui Department of Public Works and Environmental Management and the State Department of Transportation.
17. That the applicant shall initiate a supplemental or updated Traffic Impact Analysis Report (TIAR) after completion of Phase A (ph I + II, South Building and 24 townhouses) of the development for review and approval by the Department of Transportation (DOT) and the Department of Public Works and Environmental Management (DPWEM). Recommended mitigation measures as determined by the DOT and DPWEM shall be incorporated into the project development. (Recommended by DOT)
18. That during all ground altering construction activities archaeological monitoring shall be conducted in accordance with the approved archaeological monitoring plan reviewed and approved by the State Historic Preservation Division (SHPD).
19. That the applicant shall use "best practices" in Crime Prevention Through Environmental Design (CPTED), whenever possible, in developing the project. In CPTED the design and building of structures, landscaping, and lighting are interwoven to increase surveillance, limit accessibility, and increase opportunities for apprehension resulting in a decrease in the likelihood of crime. (Recommended by Police)

20. That a copy of the approved National Pollutant Discharge Elimination System (NPDES) permit shall be filed with the Planning Department and the Department of Public Works and Environmental Management prior to approval of the grading permit.
21. That an appropriate Best Management Practices (BMPs) plan shall be reviewed and approved by the Department of Public Works and Environmental Management. Said plan shall address impacts associated with erosion, contaminants, and construction waste. The approved plan shall be filed with the Maui Planning Department.
22. That should a Noise permit be required by the Department of Health, a copy of said permit shall be remitted to the Planning Department to be kept on file.
23. That the Applicant shall comply fully with the Department of Health standards regarding dust control and rodent control.
24. That the project shall connect to and utilize the County's reclaimed water system once it becomes available.
25. As represented, the applicant shall contributed \$2.34 million of which \$1.2 to \$1.4 million has been granted to Maui Economic Concerns of the Community, Inc. in order to provide affordable housing as agreed with the Department of Housing and Human Concerns. (Recommended by DHHC)
26. That a coastal management plan shall be developed for the dune areas with some discussion of management of the dunes and coastal system. Said plan shall be developed in coordination with the Department of Land and Natural Resources (DLNR) and the University of Hawaii Sea Grant Program (UH, HSGP). A copy of the management plan shall be filed with the Department of Planning, DLNR and UH, HSGP.
27. That the applicant shall participate with other North Beach Subdivision developers in the bi-annual water quality monitoring surveys for construction projects in the North Beach Subdivision. Said bi-annual surveys shall continue until 18 months after the completion of construction.

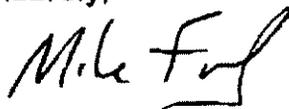
Mr. Steve Sewall  
February 25, 2005  
Page 7

28. As represented, the applicant shall participate in a Hawksbill and Green Turtle monitoring program with the U.S. Fish and Wildlife Service.
29. That the applicant shall construct the North Beach Park and public lateral access walkway within the 150 ft. shoreline setback area concurrent with the Honua Kai Resort development. Said improvements shall be privately owned and maintained but shall be open to the public and shall be completed prior to issuance of the Certificate of Occupancy for Phase 1 of the development, unless said improvements are bonded.
30. Condition No.(s) 24, 28, and 29 shall run with the land and shall be set forth in an unilateral agreement recorded by the applicant with the Bureau of Conveyances within 60 days from the date of receipt of this decision. A copy of the recorded unilateral agreement shall be filed with the Director of Planning and the Director of Public Works and Environmental Management within 10 days of recordation.
31. That as represented, 100 parking stalls shall be reserved for employee parking (As amended by Commission).
32. That an annual report shall be filed with the Maui Planning Commission on the disbursement of the funds in the Settlement Agreements for their information. (As amended by Commission)

Further, the Commission adopted the Department Report and Recommendation prepared for the November 9, 2004 and February 22, 2005 meeting as its Decision and Order. Parties to proceedings before the commission may obtain judicial review of decision and orders issued by the commission in the manner set forth in Chapter 91-14, Hawaii Revised Statutes.

Thank you for your cooperation. If additional clarification is required, please contact Ms. Colleen Suyama, Staff Planner, of my office at 270-7735.

Sincerely,



MICHAEL W. FOLEY  
Planning Director

Mr. Steve Sewall  
February 25, 2005  
Page 8

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cc: Clayton Yoshida, AICP, Planning Program Administrator  
Aaron Shinmoto, P.E., Planning Program Administrator (2)  
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Glenn Correa, Director, Department of Parks and Recreation  
Thomas Phillips, Chief, Maui Police Department  
Rodney Hiraga, Department of Transportation  
Peter T. Young, Department of Land and Natural Resources  
Ed Matsubayashi, Department of Health, Maui  
U.S. Fish and Wildlife Service  
Project File  
General File  
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