# CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer: Diamond Pacific Homes, LLC
Address: 1600 Specht Point Drive, Suite F, Fort Collins, CO 80525

Project Name(*): THE VILLAS AT PUALI (Report covers 6 of 104 apartments designated as Phase I-C) **
Address: 4261 Puhi Road, Lihue,Kauai, Hawaii 96766

Registration No. 5875

Effective date: January 13, 2006
Expiration date: February 13, 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. A Final Public Report will be issued by the developer when complete information is filed.

X **FINAL: (white)** The developer has legally created a condominium and has filed complete information with the Commission.

[ ] No prior reports have been issued.
[X] This report supersedes all prior public reports. ***
[ ] This report must be read together with _____

___ **SUPPLEMENTARY: (pink)** This report updates information contained in the:

[ ] Preliminary Public Report dated: _____
[ ] Final Public Report dated: _____
[ ] Supplementary Public Report dated: _____

And [ ] Supersedes all prior public reports
[ ] Must be read together with _____
[ ] This report reactivates the _____

(*)Exactly as named in the Declaration

** The entire condominium project described in the Declaration contains a total of 104 apartments. On September 24, 2003, the Commission issued an effective date for a Preliminary Public Report (Reg. No. 5179) covering the entire Project or 104 apartments. On April 27, 2005, the Commission issued an effective date for a Contingent Final Public Report (Reg. No. 5637) covering only Phase I, consisting of 40 of the 104 apartments. Such report was supplemented by Supplementary Public Report (Reg. No. 5637) issued July 13, 2005. On November 30, 2005, the Commission issued an effective date for a Final Public Report for Phase I-A (Reg. No. 5831) covering only 18 of the 40 apartments covered by the Contingent Final Public Report (Reg. No. 5637). On December 15, 2005, the Commission issued an effective date for a Final Public Report for Phase I-B (Reg. No. 5854) covering only 8 of the 40 apartments covered by the Contingent Final Public Report (Reg. No. 5637). This Final Public report covers the following 6 of those same 40 apartments: Apartment Nos. 33 through 38 (inclusive) which is designated as Phase I-C. The Developer shall obtain, for marketing and sales purposes, one or more separate Contingent Final Public Reports or Final Public Reports for the remaining apartments of the Project. As each separate phase is filed, the number of apartments covered by the Preliminary Public Report will be accordingly reduced.

*** The 6 apartments covered by this report were originally covered by the public reports issued under Reg. No. 5637.

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 [X] Not Required - Disclosures covered in this report.

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

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

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

[ ] Changes made are as follows:

**Special Notes**

The 6 apartments covered by this Final Public Report are: Apartment Nos. 33 through 38 (inclusive).

On September 24, 2003 the Commission issued an effective date for a Preliminary Public Report (Reg. No. 5179) on the Project consisting of 104 apartments. On April 27, 2005, the Commission issued an effective date for a Contingent Final Public Report (Reg. No. 5637) covering Phase I, consisting of only 40 of the 104 apartments. On November 30, 2005, the Commission issued an effective date for a Final Public Report for Phase I-A (Reg. No. 5831) covering only 18 of the 40 apartments covered by the Contingent Final Public Report (Reg. No. 5637). On December 15, 2005, the Commission issued an effective date for a Final Public Report for Phase I-B (Reg. No. 5854) covering only 8 of the 40 apartments covered by the Contingent Final Public Report (Reg. No. 5637). This report covers 6 of the 40 apartments covered by the Contingent Final Public Report (Reg. No. 5637) and is designated as Phase I-C.

The Developer will continue to take non-binding reservations under the Preliminary Public Report (No. 5179) for the remaining 64 apartments, which remaining apartments will also eventually be filed as separate "phases" for public report purposes. The completion date for all of the 104 apartments is now estimated to be November 1, 2006. Additional, separate Contingent Final Public Reports or Final Public Reports will be issued on the remaining apartments of the Project. As each phase is filed, the number of apartments covered by the Preliminary Public Report will be accordingly reduced.

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## General Information On Condominiums

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

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

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

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

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

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

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

## Operation of the Condominium Project

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

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

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

## I. PERSONS CONNECTED WITH THE PROJECT

Developer: Diamond Pacific Homes, LLC
Name*
1600 Specht Point Drive, Suite F
Business Address
Fort Collins, CO 80525

Phone 970-407-9551
(Business)

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

Managing Member: Matt Deal
1600 Specht Point Drive
Suite F
Fort Collins, CO 80525

Real Estate Broker*: All Islands, Inc. dba Century 21 All Islands
Name
5-4280 Kuhio Hwy.
Business Address
Princeville, Kauai, Hawaii 96722

Phone: (808) 826-7211
(Business)

Escrow: Island Title Corporation
Name
1132 Bishop Street, Suite 400
Business Address
Honolulu, Hawaii 96813

Phone: (808) 531-0261
(Business)

General Contractor*: Diamond Pacific Homes, LLC
Name
1600 Specht Point Drive, Suite F
Business Address
Fort Collins, Colorado 80525

Phone: (970) 407-9551
(Business)

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

Phone: (808) 836-0911
(Business)

Attorney for Developer: Imanaka Kudo & Fujimoto
Name
745 Fort Street, Suite 1700, Hawaii Tower
Business Address
Honolulu, Hawaii 96813
Attn: Mitchell A. Imanaka, Esq.

Phone: (808) 521-9500
(Business)

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

## II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS

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

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

The Declaration for this condominium is:

[ ] Proposed
[ ] Recorded -Bureau of Conveyances: Document No _____
Book_____Page_____
[X] Filed - Land Court: Document No. 3245975

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 the Villas at Puali dated September 21, 2005, recorded at said Office as Document No. 3340629.

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

The Condominium Map for this condominium project is:

[ ] Proposed
[ ] Recorded - Bureau of Conveyances Condo Map No. _____
[X] Filed - 1703

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

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

The Bylaws for this condominium are:

[ ] Proposed
[ ] Recorded -Bureau of Conveyances: Document No. _____
Book_____Page_____
[X] Filed - Land Court: Document No. 3245976

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

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

The House Rules for this condominium are:

[ ] Proposed [X] Adopted [ ] Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents**

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

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

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

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

2. Developer:

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

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

See attached Exhibit A

## III. THE CONDOMINIUM PROJECT

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

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

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

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

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

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

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

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

For Sub-leaseholds:

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

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

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

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

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

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

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: 4261 Puhi Road,
Lihue, Kauai, Hawaii 96766

Tax Map Key (TMK) : (4) 3-3-003-039

[ ] Address [X] TMK is expected to change because Developer has obtained final subdivision approval from the County of Kauai Planning Department and anticipates land court recordation of the subdivision map later this year. See Section C.1 on Page 20.

Land Area: 15.000 [ ] square feet [X] acre(s) R-20, residential (County)
Urban (State)

Fee Owner: Diamond Pacific Homes, LLC
Name
1600 Specht Point Drive, Suite F
Address
Fort Collins, CO 80525

Lessor: n/a
Name

Address

C. **Buildings and Other Improvements:**

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

2. Number of Buildings: 3 (2 units per building) Floors Per Building 1-2 2 single-story and 4 two-story units

[ ] Exhibit _____ contains further explanations.

3. Principal Construction Material:

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

[X] Other Light wood framing on slab on grade

4. Uses Permitted by Zoning:

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

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

[X] Yes [ ] No

* Although the Project is comprised of a total of 104 apartments, this report only covers those 6 apartments identified on page 1 hereof. The Developer has obtained a separate Contingent Final Public Report (Reg.No. 5637) which covered 40 apartments, a Final Public Report (Reg. No. 5831) which covered 18 apartments and a Final Public Report (Reg. No. 5854) which covered 8 apartments. The Developer shall obtain one or more separate Contingent Final or Final Public Reports for the remaining 64 apartments in the Project. As each separate phase is filed, the number of apartments covered by the Preliminary Public Report (Reg. No. 5179) will be accordingly reduced.

5. Special Use Restrictions:

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

[X] Pets: Pets are permitted as set forth in the House Rules. Certified seeing eye dogs, signal dogs and service dogs for physically impaired persons are permitted.

[ ] Number of Occupants:_____

[X] Other: See House Rules and Design Guidelines for additional limitations and/or restrictions.

[ ] There are no special restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 4 * Trash Chutes: 0

| Apt. Type** | Quantity | BR/Bath | Net Living Area (sf)*** | Net Other Area (sf) | (Identify) |
|---|---|---|---|---|---|
| | 6 | | | | |
| | | | | | |
| See Exhibit D | | | | | |
| | | | | | |

Total Number of Apartments: 104 ****

*** All of the two-story units have an interior stairway.**

**** Also See Exhibit D for further details.**

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

****** Although the Project is comprised of a total of 104 apartments, this report only covers those 6 apartments identified on page 1 hereof. The Developer has obtained a separate Contingent Final Public Report (Reg.No. 5637) which covered 40 apartments, a Final Public Report (Reg. No. 5831) which covered 18 apartments and a Final Public Report (Reg. No. 5854) which covered 8 apartments. This report covers 6 of those 40 apartments. The Developer anticipates obtaining one or more separate Contingent Final or Final Public Reports for the remaining 64 apartments in the Project. As each separate phase is filed, the number of apartments covered by the Preliminary Public Report (Reg. No. 5179) will be accordingly reduced.**

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

Boundaries of Each Apartment:

see Exhibit B

Permitted Alterations to Apartments:

see Exhibit C

Apartments Designated for Owner-Occupants Only:

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 will provide the information in a published announcement.

7. Parking Stalls:

Total Parking Stalls: 208* (entire project)

| | Regular Covered | Regular Open | Compact Covered | Compact Open | Tandem Covered | Tandem Open | TOTAL |
|---|---|---|---|---|---|---|---|
| Assigned (2 for each unit) * | 12 | | | | | | 12 |
| Guest ** | | | | | | | |
| Unassigned | | | | | | | |
| Extra Purchase | | | | | | | |
| Other: | | | | | | | |
| Total Covered & Open: | 12 | | 0 | | 0 | | 12 |

* Each apartment will have the exclusive use of 2 parking stall(s). The first floor of each apartment consists of a two-car garage which is a part of the apartment and is not a common element. There will be 12 assigned stalls for the 6 apartments covered under this report.

** Guests may park in the driveways of the apartments upon receiving permission of the owners of the Apartment. The streets throughout the Project will be dedicated to the County of Kauai. At such time, guests may utilized street parking.

[ ] Commercial parking garage permitted in condominium project.

[ ] Exhibit_____ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

[X] There are no recreational or common facilities.

[ ] Swimming Pools [ ] Storage Area [ ] Recreation Area

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

[ ] Other: _____

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

[X] There are no violations. [ ] Violations will not be cured.

[ ] Violations and cost to cure are listed below: [ ] Violations will be cured by _____ (Date)

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

Not Applicable

11. Conformance to Present Zoning Code

a. [X] 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.

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

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

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

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

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

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

[X] described in Exhibit E. *

[ ] as follows:

* Note that all roadways and sidewalks are currently designated as common elements. It is the intent of the developer to dedicate such roadways and sidewalks to the County of Kauai. Further note that such dedication may affect the amount of maintenance fees allocated to the individual unit owners.

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

[ ] There are no limited common elements in this project.

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

[X] described in Exhibit F.

[ ] as follows:

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

[X] described in Exhibit D.

[ ] as follows:

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

Exhibit G describes the encumbrances against the title contained in the title report dated December 13, 2005, and issued by Island Title Corporation.

Blanket Liens:

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

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

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

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

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

* The developer has obtained three loans to finance construction of the project.

1) Mortgage dated September 30, 2004, recorded in the Office of the Registrar of the Land Court of the State of Hawaii as Document No. 3175304 in the amount of $5,200,000.00; 2) Second Mortgage dated October 5, 2004, recorded in said Office as Document No. 3175306 in the amount of $2,308,000.00; and 3) Third Mortgage dated September 22, 2005, recorded in said Office as Document No. 3332658 in the amount of $3,986,000.00.

The loans are secured by a first, second and third mortgage, which will be a "blanket lien" on the entire project, including all apartments. Upon conveyance of an apartment to a buyer, the mortgage will be released as to the apartment being conveyed. If there is a default and foreclosure of the mortgage prior to conveyance, the buyer may lose the right to buy the apartment, but will receive his or her deposit back.

F. **Construction Warranties:**

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

1. Building and Other Improvements:

The Project shall have the warranties as set forth in the attached Exhibit "H" and that certain Limited Warranty Addendum. Exhibit "H" only provides a general overview of such warranties and the purchaser should carefully read and review the Limited Warranty Addendum accompanying the Purchase Contract.

2. Appliances:

Range, microwave (optional), water heater, dishwasher, and garbage disposals will be warrantied with manufacturer's warranty.

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

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

The Construction of the Project has commenced. The 6 apartments covered by this report have been substantially completed.

H. **Project Phases:**

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

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

The Developer has separated the apartments covered by the Preliminary Public Report (Reg. No. 5179) for the Project into separate groups, or phases. One group is covered by this report. Remaining phases will be covered by multiple Contingent Final or Final Public Reports in order to accommodate changing construction and/or marketing strategies. As each separate phase is filed, the number of apartments covered by the Preliminary Public Report will be accordingly reduced.

In accordance with Article XXVI of the Declaration, the Developer intends to register the Project in three (3) or more separate marketing and construction phases. However, the Developer may develop more or less than three (3) phases in accordance with its reserved right in the Declaration to do so, or may not phase the Project at all. This report covers the 8 apartments of the 104 total apartments in the entire project. Also, in accordance with the Developer's reserved rights in the Declaration, of which a summary is attached as Exhibit "A", there is no guaranty that the phases not covered under this report or any other improvement in the Project will be developed.

## IV. CONDOMINIUM MANAGEMENT

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

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

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

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

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

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, your apartment may be liened and 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. Maintenance fees may also decrease upon the developer's subdivision of the property and dedication of the roadways and sidewalks to the County of Kauai. Those certain Apartments with shared limited common element driveways, as described in the Declaration, the attached Exhibit F and depicted on the Condominium Map, may also be charged additional fees (which may or may not be considered in the overall maintenance fees) for the maintenance and upkeep of such shared driveways.

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

**THE AMOUNTS SET FORTH IN SAID EXHIBIT I ARE ESTIMATES ONLY AND MAY CHANGE FOR REASONS BEYOND THE CONTROL OF THE DEVELOPER. SUCH ESTIMATES ARE NOT INTENDED TO BE AND DO NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY BY THE DEVELOPER, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF SUCH ESTIMATES.**

A PRELIMINARY RESERVE STUDY HAS BEEN UNDERTAKEN BY THE DEVELOPER AS SET FORTH IN EXHIBIT I.

C. **Utility Charges for Apartments:**

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

[ ] None [X] Electricity* (X Common Elements Only _____Common Elements and Apartments)
[ ] Gas (___ Common Elements Only _____Common Elements and Apartments)
[X] Water** (X Common Elements Only _____Common Elements and Apartments)
[ ] Sewer [ ] Television Cable
[X] Other: Refuse Collection

*Each unit will be billed separately for the electricity used within said unit (electricity used for lighting, water heating, cooking and the operation of the various appliances of the unit); each Owner will be responsible for setting up own account.

**Each unit will also be billed separately for the water consumption attributable to that unit; each Owner will be responsible for setting up own account.

## V. MISCELLANEOUS

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

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

[ ] Notice to Owner Occupants

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

[X] Escrow Agreement dated August 25, 2003 and First Amendment dated August 20, 2004.

Exhibit __K__ contains a summary of the pertinent provisions of the escrow agreement and amendment.

[X] Other Specimen Apartment Deed. Exhibit L contains a summary of the pertinent provisions of the apartment deed.

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

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

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

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

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

A) The Developer delivers to the buyer a copy of:
   1) Either the Final Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
   2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;

B) The buyer is given an opportunity to read the report(s); **AND**

C) One of the following has occurred:
   1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
   2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
   3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

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

A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**

B) The buyer has not waived the right to rescind.

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

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

A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
B) Declaration of Condominium Property Regime, as amended.
C) Bylaws of the Association of Apartment Owners, as amended.
D) House Rules, if any.
E) Condominium Map, as amended.
F) Escrow Agreement.
G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
H) Other: Design Guidelines, Form of Shared Appreciation Agreement, County of Kauai Ordinance No. PM-2005-372.

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

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

This Public Report is a part of Registration No. 5875 filed with the Real Estate Commission on January 3, 2006.

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

C. **Additional Information Not Covered Above**

1. Subdivision. The developer has received final subdivision approval from the County of Kauai to subdivide the property into fifty-five (55) lots. Fifty-two (52) lots shall contain a total of 104 condominium units, or two (2) units per lot. In addition, the developer will subdivide and withdraw out of the Project several roadway lots which will be dedicated to the County of Kauai, as described in 2. below. The condominium map delineates and demarks the boundaries of the subdivided lots.

2. Dedication of Common Element Roadways and Sidewalks. The developer intends to dedicate the common element roadways and sidewalks to the County of Kauai. **By way of this public report, the Declaration, Deed and Purchase Contract, the Apartment Owner is deemed to have received sufficient notice in accordance with Hawaii Revised Statutes §501-196, as amended, that such common element roadways and sidewalks will be dedicated to the County of Kauai upon final subdivision approval. The Apartment Owner is also aware that in the event further notice to the Apartment Owner is required, the Apartment Owner will, by execution of the Deed, designate the Association as its agent to receive such notices required by §501-196, as amended.** Such dedication may also change the amount of maintenance fees paid by the individual apartment owners.

3. Developer as General Contractor. The developer is also acting as the project's General Contractor and has a current Hawaii contractor's license.

4. Limited Common Element Yard Areas and Private Yard Areas. Each Apartment shall have appurtenant to it as a Limited Common Element the yard area as described on the Condominium Map and in the Declaration. In the Condominium Map, the yard area that is a limited common element appurtenant to the Apartment is that area extending around each Apartment as labeled on the Condominium Map filed concurrently with and as described in the Declaration. The yard area is labeled with the same apartment number to which such yard area is appurtenant. The Association in the manner determined by the Design Committee, shall landscape and maintain the yard area. Each Apartment Owner will be assessed for such maintenance in the manner set forth in the Declaration.

   The Private Yard area ("Private Yard") is that certain area adjacent each Apartment as described in Exhibit "A" to the Design Guidelines. The purpose of the Private Yard is to allow each Apartment Owner the opportunity to install and maintain his/her own personal garden area. Gardens may be ornamental, and/or consist of fruit or vegetable plants. Owners may establish their yard areas by notifying the Design Committee in writing of their intention to do so. After so notifying the Design Committee as provided for in the House Rules, maintenance within the yard area shall be the responsibility of the Apartment Owner. Weeds shall be prevented and the area shall be maintained in a neat and well kept fashion. In the event an Apartment Owner has declared a Private Yard and neglects, in the sole opinion of the Design Committee, to maintain the yard area in the manner provided for herein, the Association shall have the right, at the direction of the Design Committee, to maintain the yard area and the Apartment Owner shall pay the cost of said maintenance. An Apartment Owner may return a Private Yard to the care of the Association upon written notice. The Association shall have the right to return the Private Yard to compliance with the general landscaping scheme of The Villas, which cost shall be paid by the Apartment Owner. Privacy fences may be installed around the Private Yard, but are not required. Privacy fences shall be no more than three feet tall and shall be a two rail mortise and tenon construction painted to match the exterior color of the Apartment. The Design Committee reserves the right to establish more particular specifications from time to time.

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

6. Construction and Marketing in Phases. The Developer, for registration purposes, will be separating the total apartments in the Project, which were filed under Preliminary Public Report (Reg. No. 5179), issued on September 24, 2003, into groups covered by multiple Contingent Final or Final Public Reports in order to accommodate changing construction and/or marketing strategies. This report covers only those 6 apartments enumerated on page 1. As each separate phase is filed, the number of apartments covered by the Preliminary Public Report will be accordingly reduced. The Developer intends to file public report packets in three (3) separate phases. However, the Developer may develop more or less than three (3) phases in accordance with its reserved right in the Declaration to do so, or may not phase the Project at all. The Developer also makes no guaranty or warranty that all of the currently-planned buildings as depicted on the Condominium Map, or the improvements in the Project, will be developed at all. Purchasers should thus be aware that all of the apartments in the Project, as described in the Project documents, will be closing at different times (depending on the final number selected by Developer to be constructed), but rather, will be closing in phases over a period of time coinciding with the decision to construct, the obtaining of building permits, financing, bonds and issuance of building permits for each phase.

The Developer hereby discloses that although separate Contingent Final or Final Public Reports will be issued for each phase of the Project, all 104 apartments, or lesser number actually constructed, still legally comprise a single condominium project. In other words, the act of separating the various apartments into different marketing and sales phases does not create separate and distinct condominium projects, but only creates separate "phases" for public report purposes. Accordingly, the common elements described in Exhibit "D" attached serve each of the 104 apartments.

7. County of Kauai's First Option to Purchase and Use and Developer's Shared Appreciation Program. As a condition of rezoning, the County of Kauai ("County") has imposed anti-speculation covenants as to ninety (90) Apartments in the Project, specifically a seven (7) year right of first option to purchase in favor of the County. In support of the County's intent to prevent speculation as to apartments in the Project, the developer has also implemented a shared appreciation program affecting these ninety (90) apartments. THE APARTMENT DEED AND PURCHASE CONTRACT, AS AMENDED, PROVIDE THAT IF PURCHASER SELLS OR TRANSFERS AN APARTMENT WITHIN SEVEN (7) YEARS FROM THE DATE OF CLOSING, THE COUNTY WILL HAVE A FIRST OPTION TO PURCHASE THE APARTMENT AT THE PURCHASE PRICE ESTABLISHED BY THE COUNTY IN THE MANNER DESCRIBED ON EXHIBIT "N" ATTACHED HERETO. PURCHASERS ARE FURTHER ADVISED THAT THE COUNTY MAY INTERPRET THE RENTAL OF AN APARTMENT TO BE A SALE OR TRANSFER TRIGGERING THE COUNTY'S FIRST OPTION TO PURCHASE. THE COUNTY'S FIRST OPTION TO PURCHASE IS GOVERNED BY COUNTY OF KAUAI ORDINANCE NO. PM-2005-372 SET FORTH IN EXHIBIT "N" ATTACHED HERETO. IF THE COUNTY DOES NOT EXERCISE SUCH FIRST OPTION TO PURCHASE RIGHT, DP HOMES WILL BE ENTITLED TO SHARED APPRECIATION INTEREST FOR A PERIOD OF SEVEN (7) YEARS FOLLOWING INITIAL CLOSING OF THE APARTMENT, AS DETERMINED BY THE SHARED APPRECIATION SCHEDULE SET FORTH ON EXHIBIT "N" ATTACHED HERETO. PURCHASER ALSO AGREES IN HIS PURCHASE CONTRACT TO EXECUTE ANY NECESSARY AGREEMENTS RELATED TO PURCHASER'S PARTICIPATION IN THE COUNTY'S RIGHT OF FIRST OPTION TO PURCHASE AND THE DEVELOPER'S SHARED APPRECIATION PROGRAMS AS PART OF CONSIDERATION FOR THE PURCHASE OF THE APARTMENT AND AS A CONDITION OF CLOSING IN ACCORDANCE WITH SECTION 26 OF THE PURCHASE CONTRACT. PURCHASER SHOULD INQUIRE AS TO WHETHER THE APARTMENT PURCHASER INTENDS TO PURCHASE IS SUBJECT TO THE COUNTY'S RIGHT OF FIRST OPTION TO PURCHASE AND/OR THE DEVELOPER'S SHARED APPRECIATION PROGRAM PRIOR TO EXECUTION OF THE PURCHASE CONTRACT. THE ATTACHED EXHIBIT "N" SUMMARIZES THE DETAILS OF EACH PROGRAM. PURCHASERS SHOULD MAKE CAREFUL REVIEW OF THEIR PURCHASE CONTRACT TO DETERMINE WHETHER THEIR APARTMENT IS SUBJECT TO THESE PROGRAMS.

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.

DIAMOND PACIFIC HOMES, LLC
a Hawaii limited liability company

By _____
MATT DEAL
Its Managing Member

DEC 29 2005
_____
Date

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

## EXHIBIT "A"

## RIGHTS RESERVED BY DEVELOPER

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

A. **RESERVED RIGHT TO GRANT EASEMENTS AND DESIGNATE PRIVATE YARD AREAS.** This right is set forth at Article XX of the Declaration. The Developer will have, among other things, the right until December 31, 2023, to delete, cancel, relocate, realign, reserve, designate, grant and receive easements over, under, through, across and upon the Common Elements (including the Limited Common Elements) of the Project. Developer shall also have the right to designate and redesignate the size, area and location of the Limited Common Element Private Yard Areas.

B. **RESERVED RIGHT TO MODIFY PROJECT TO COMPLY WITH LAW.** This right is set forth at Article XXI of the Declaration. The Developer will have the right until December 31, 2023 to effect all modifications to Apartments and common elements in the Project to ensure full compliance by the Project, the Association and the Developer with laws which apply to the Project.

C. **RESERVED RIGHT TO CONDUCT SALES ACTIVITIES.** This right is set forth in Article XXII of the Declaration. The Developer will have the right until December 31, 2023 to conduct extensive sales activities at the Project and from any Apartment owned by Developer.

D. **RESERVED RIGHT TO SUBDIVIDE AND WITHDRAW LAND.** This right is set forth in Article XXIII of the Declaration. The Developer will have the right, to and until December 31, 2023, to subdivide the Land and to create separate parcels of Land ("Subdivided Parcels") and withdraw certain roadway and sidewalk parcels as necessary for dedication to the County of Kauai. In connection with such right, Developer shall further have the reserved right to enter and go upon the Land to do all things necessary and proper to effectuate such subdivision and withdrawal of Land.

E. **RESERVED RIGHT TO DEDICATE COMMON ELEMENT ROADWAYS AND SIDEWALKS.** The Developer shall have the reserved right to and until December 31, 2023, to dedicate the Common Element roadways and sidewalks to the County of Kauai, State of Hawaii, or to any other local, state, or federal governmental or quasi-governmental entity upon final approval of subdivision of the Land pursuant to Article XXIV of the Declaration.

F. **RESERVED RIGHT TO CORRECT DEFECTS.** The Developer shall have the reserved right to and until December 31, 2023 to correct construction defects pursuant to Article XXV of the Declaration in accordance with the provisions of Article XXVII of the Declaration.

G. **RESERVED RIGHT TO CONSTRUCT THE PROJECT IN PHASES.** Developer does hereby further reserve the right unto itself, its successor and assigns, to and until December 31, 2023 to construct the Project in two or more phases. Developer shall have no obligation to build an Apartment or a building in the Project unless such Apartment has been registered under a Final Public Report. In connection with such right, Developer shall also have the right to amend the description of an Apartment or a building described in the Declaration at any time until such time as the Apartment Deed for such Apartment has been recorded in the Office. The right to construct the Project in two or more phases shall be exercised in accordance with Article XXVI of the Declaration.

H. **RESERVED RIGHT TO DEVELOP AND CONSTRUCT OR NOT TO DEVELOP AND CONSTRUCT BUILDINGS AT A LATER TIME OR NOT AT ALL.** Developer does hereby reserve unto itself, its successors and assigns, to and until December 31, 2023, the right to, at any time and from time to time complete construction of all buildings and other improvements in the Project. The Developer does not represent or warrant that all buildings and/or improvements described in the Condominium Map will be developed, nor shall anything herein require the Developer to develop all of the buildings or improvements depicted in the Condominium Map. Developer shall also have the accompanying right to enter upon the property and use the property and any Common Elements, and do all

things reasonably necessary, desirable or useful for designing, developing and constructing or completing any buildings, connecting the same to utility installations of the Project as then constituted, and selling any Apartments created in any building. The reserved right to develop and construct buildings or other improvements at a later time or not at all shall be exercised in accordance with Article XXVII of the Declaration.

I. **RESERVED RIGHT TO CONSTRUCT PRIVACY FENCES, DRIVEWAYS, MAILBOX STRUCTURES.** Developer does hereby reserve unto itself, its successors and assigns, to and until December 31, 2023, the right to construct and maintain privacy fences (if any), driveways, or mailbox structures anywhere within the Project, including, without limitation, within any Limited Common Element area of the Project; provided that the construction of such privacy fences (if any), driveways, or mailbox structures shall not adversely impact or impair the square footage of any Apartment in the Project. Such reserved right shall be exercised in accordance with Article XXVIII of the Declaration.

J. **RESERVED RIGHT TO ALTER THE NUMBER OF APARTMENTS AND/OR BUILDINGS IN THE PROJECT.** Developer does hereby reserve unto itself, its successors and assigns, to and until December 31, 2023, to reduce or increase the number of Apartments in the Project, notwithstanding anything provided to the contrary, and except as otherwise provided by law. Developer shall further reserve the accompanying right to record and file amendments to the Declaration and Condominium Map describing the revised description of the Apartments that comprise the Project and the undivided fractional common interest appurtenant to the Apartments as a result of the reduction or increase in the total number of Apartments. The reserved right to alter the number of Apartments and/or buildings in the Project shall be exercised in accordance with Article XXIX of the Declaration.

K. **ASSIGNMENT OF RESERVED RIGHTS.** Pursuant to Article XXXI of the Declaration, the rights reserved by the Developer are fully assignable by the Developer in whole or in part.

Each and every party acquiring an interest in the Project, by such acquisition, consents to Developer's exercise of its reserved rights and to the execution, delivery and recording (if necessary) of any and all documents necessary to effect these rights, including any amendment or amendments of the Declaration and the Condominium Map; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns such party's attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and do such other things on his behalf, which grant of such power, being coupled with an interest is irrevocable for the term of these reserved rights, and shall not be affected by the disability of such party or parties.

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

**EXHIBIT "B"**

**BOUNDARIES OF EACH APARTMENT**

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

Each Apartment shall be deemed to include (a) all the walls and partitions and posts, if any, within its perimeter or party walls or the undecorated or unfinished surfaces of such walls and posts, (b) all pipes, ducts, conduits, wires and other utility or service lines running through such Apartment which are utilized for and serve only that Apartment, (excluding those pipes, ducts, conduits, wires and lines in the common wall described in Section D.3 of the Declaration), if any (c) the outer decorated or finished surfaces of all perimeter walls and the finished or unfinished surface of the walls separating an Apartment and an air space adjacent to two (2) apartments, inward, (d) the exterior decorated or finished surfaces of any doors, door frames or window frames inward, (e) all windows, (f) the foundation, the garage floor slab, floors and roofs and all of the space located between said foundation and roofs; provided, however, that no Apartment Owner shall modify any portion of an Apartment without first obtaining the Board's prior approval if such modification will or is likely to affect the structural integrity of the building in which the Apartment is located, (g) all cranks and other window hardware, (h) all appliances and fixtures installed therein, and replacements therefor, and (i) the two-car garage located on the ground floor of each Apartment, including the garage door and the automatic garage door mechanism; provided, however, that no owner may paint the garage door or exterior walls of the Apartment, doors or frames a color other than the original color without first obtaining the Board's prior written approval, (j) any lanai or covered porch of the Apartment, (k) the stairway connecting the first and second floors of certain two-story Apartments, (l) the exhaust ducts for the bathrooms of each Apartment and the dryer vent cap and any other utility appurtenance attached to the exterior surface, wall, roof or floor of each Apartment meant to service that Apartment.

The respective Apartments shall not be deemed to include: (i) the four (4) inch air space separating two (2) adjacent Apartments, and (ii) any pipes, ducts, conduits, wires or other utility or service lines which are utilized for or serve more than one Apartment.

**EXHIBIT "C"**

**PERMITTED ALTERATIONS TO APARTMENTS**

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

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

B. **ADDITIONS OR ALTERATIONS SOLELY WITHIN AN APARTMENT** Notwithstanding anything to the contrary contained herein, each Owner of an Apartment shall have the right at any time and from time to time at such Owner's sole cost and expense, and without the necessity of the consent or joinder of any other Apartment Owner, to make any of the following alterations solely within the Owner's Apartment: to install, maintain, remove and rearrange partitions (including the party wall between two Apartments owned by the same Owner) and other structures from time to time within such Apartment, to finish, alter or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors and walls as shall be appropriate for the utilization of such Apartment by such Owner or the tenants or lessees thereof, and to tile, finish, re-carpet, and do or cause to be done such work on the floors of any Apartment; provided, however, that nothing contained in this paragraph shall jeopardize the soundness or safety of any part of the Project, reduce the value thereof, materially adversely affect any other Apartment, materially alter the uniform external appearance of the Project, materially affect or impair any easement or rights of any of the other Apartment Owners or materially interfere with or deprive any non-consenting Owner of the use or enjoyment of any part of the Common Elements subject, however, to the exclusive use of the Limited Common Elements. Further, nothing in this paragraph shall prohibit the Board from effecting or prohibiting such changes within an Apartment, or to require the same, in order that the buildings of the Project may continue to comply with applicable law, including any fire code requirements.

In addition, notwithstanding anything to the contrary contained herein, each Owner of an Apartment shall have the right at any time and from time to time at such Owner's sole cost and expense, and without the necessity of the consent or joinder of any other Apartment Owner, to reconfigure the interior of an Apartment to conform with one of the various interior apartment layouts ("Option Area") as identified on and depicted on the Map.

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

behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such party.

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

**EXHIBIT "D"**

**Apartment Numbers, Apartment Types, Number of Bedrooms and Bathrooms, Approximate Net Garage, Covered Porch, Lanai and Living Square Footages and Fractional Common Interest**

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

**Only the following 6 Apartments are covered by this report: 33 through 38.**

| Apartment Number | Apartment Type | Bedrooms/ Bathrooms[1] | Approximate Net Garage Square Footage | Approximate Net Covered Porch/Net Lanai Square Footages | Approximate Net Living Square Footage[2] | Fractional Common Interest[3] |
|---|---|---|---|---|---|---|
| 1 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 2 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 3 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 4 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 5 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 6 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 7 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 8 | A2 | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 9 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 10 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 11 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 12 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 13 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 14 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 15 | A2R | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 16 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 17 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 18 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 19 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 20 | AR | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 21 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 22 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 23 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 24 | A2 | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 25 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 26 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 27 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 28 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 29 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 30 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 31 | A2R | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 32 | AR | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 33 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 34 | AR | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 35 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |

| Apartment Number | Apartment Type | Bedrooms/ Bathrooms[1] | Approximate Net Garage Square Footage | Approximate Net Covered Porch/Net Lanai Square Footages | Approximate Net Living Square Footage[2] | Fractional Common Interest[3] |
|---|---|---|---|---|---|---|
| 36 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 37 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 38 | AR | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 39 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 40 | A2 | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 41 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 42 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 43 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 44 | AR | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 45 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 46 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 47 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 48 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 49 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 50 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 51 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 52 | A2 | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 53 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 54 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 55 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 56 | A2 | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 57 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 58 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 59 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 60 | A2 | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 61 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 62 | AR | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 63 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 64 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 65 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 66 | AR | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 67 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 68 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 69 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 70 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 71 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 72 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 73 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 74 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 75 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 76 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 77 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 78 | AR | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 79 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 80 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |

| Apartment Number | Apartment Type | Bedrooms/ Bathrooms[1] | Approximate Net Garage Square Footage | Approximate Net Covered Porch/Net Lanai Square Footages | Approximate Net Living Square Footage[2] | Fractional Common Interest[3] |
|---|---|---|---|---|---|---|
| 81 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 82 | AR | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 83 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 84 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 85 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 86 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 87 | A | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 88 | A2 | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 89 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 90 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 91 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 92 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 93 | A2R | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 94 | AR | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 95 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 96 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 97 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 98 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 99 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 100 | AR | 3/2 | 484 | 144/90 | 1392 | 1/104 |
| 101 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 102 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 103 | B | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| 104 | BR | 3/2.5 | 430 | 97.7/100 | 1392 | 1/104 |
| | | | | | | 104/104 |

[1] The Developer is offering various optional layouts for Apartment types A, AR, A2, A2R. Such layouts include two (2) bedrooms and area increases in the master bath and/or living area. Some options also include replacing the dining room with a den. All of the various layouts are depicted in the Condominium Map.

Currently, all Apartment Types have a kitchen, living room, a two-car garage, one (1) covered porch, one (1) lanai and three (3) bedrooms. Apartment Types A, AR, A2 and A2R each also have a dining room and two (2) bathrooms and Apartment Types B and BR have two and one-half (2.5) bathrooms. Apartment Types B and BR also have nooks. Apartment Types A, AR, A2 and A2R are all one-story apartments and Apartment Types B and BR are all two-story apartments.

[2] The Approximate Net Living Square Footage of the Apartment is calculated based on the area from the exterior surface of the perimeter walls and the foundation and the exterior surface of the roof of the Apartment, including the wall and space between the walls connected to the Apartment located on such Apartment's side of the four inch air space between two (2) Apartments, inward. Such area, however, does not include the four (4) inch airspace located between two Apartments. The Approximate Net Square Footage of the Apartment, as defined in the Declaration, is the total of the Approximate Net Garage Square Footage, Approximate Net Covered Porch Square Footage, Approximate Net Lanai Square Footage and the Approximate Net Living Square Footage.

[3] The common interest of each Apartment is calculated as a fractional interest of one (1) Apartment over the total number of Apartments, or one-hundred four (104), as to 1/104th interest. Such fractional interest calculates to approximately .96153 percent (.96153%+). Note that the maintenance fees will be calculated based on a common interest of 1/104.

**EXHIBIT "E"**

**COMMON ELEMENTS**

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

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

1. The Land in fee simple and any appurtenances thereto;

2. All perimeter or party walls and the undecorated or unfinished surfaces of such walls, any load-bearing walls and chase walls, and the undecorated or unfinished surfaces of such walls, all structural components such as foundations, concrete sidewalks and curbs, floors, garage floor slabs, beams, supports, roofs and the ceiling located immediately below the roof, the undecorated or unfinished surfaces of said ceiling and the space located between the roof and said ceiling;

3. All perimeter doors (other than the garage door, which is a part of the Apartment), exterior door frames and window frames and the undecorated or unfinished surfaces thereof;

4. All landscaping and all trash enclosures within the Project;

5. All roads, driveways, access lanes, paved areas, ramps, loading areas, walkways and parking stalls designated for visitors or disabled persons within the Project;

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

7. All unimproved areas and other similar areas which are not part of an Apartment;

8. All other apparatus and installations existing for common use, such as fans, ducts, vents, fire suppression equipment and other such installations and apparatus;

9. All flood lights and other similar lighting devices, whether attached or unattached to the exterior of the buildings within the Project;

10. The mailboxes assigned to each apartment in the Project; and

11. All other parts of the Project necessary or convenient to its existence, maintenance and safe operation, or normally in common use.

**EXHIBIT "F"**

**LIMITED COMMON ELEMENTS**

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

Certain parts of the Common Elements, herein called the "Limited Common Elements," are hereby designated, set aside and reserved for the exclusive use of certain Apartments, and such Apartments shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements as set forth herein. The costs and expenses of every description pertaining to the Limited Common Elements, including, but not limited to, the costs of maintenance, repair, replacement, improvement or additions to the Limited Common Elements, shall be charged to the Owner of the Apartment to which the Limited Common Element shall be appurtenant. If there is more than one Apartment to which the Limited Common Element shall be appurtenant, such as in Sections D.2 and D.3 of the Declaration, then the cost and expense of every description pertaining to the Limited Common Elements shall be charged to each Owner of the Apartment sharing in the Limited Common Elements in proportion to each Owner's use of the shared Limited Common Element, which shall be deemed equal to the use of all other Owner's sharing in said Limited Common Elements, unless determined otherwise by the Board. The costs and expenses of maintaining the yard area described in Section D.1 shall be the responsibility of the Association. The Project shall have the following Limited Common Elements:

1. Each Apartment shall have as a Limited Common Element appurtenant to such Apartment, the yard area described by the metes and bounds description on said Condominium Map, which also includes the land area underlying such Apartment, the driveway improvements in such yard areas (excluding the shared driveway areas, which shall be Limited Common Elements appurtenant to the Apartments sharing in the use of such driveways as described in II.D.2 of the Declaration), and two (2) inches of the four (4) inch air space located between two (2) adjacent Apartments as depicted on said Condominium Map measured from the limit of the Apartment adjacent to such air space, outward towards the neighboring Apartment, such that each Apartment shall enjoy two (2) inches of such four (4) inch air space located between the Apartments. Such yard area is further identified on said Condominium Map by the same numerical designation assigned to the Apartment to which the yard area is appurtenant (i.e., the yard area of Apartment no. 9 is identified on the Condominium Map as "Yard Area 9"). Within each yard area, there may also be designated by the Developer in the Developer's sole discretion, a section where the Apartment Owner will be allowed to maintain and design its own yard area, subject to the Design Guidelines and House Rules ("Private Yard Area"). Each Owner will be responsible for the cost and maintenance of such Private Yard Area in accordance with the Design Guidelines and House Rules. The cost of maintenance of any sprinkler or irrigation system running through the Limited Common Element yard areas or Private Yard Areas shall be borne by the Association. The cost of the water servicing such system, however, shall be borne by the Apartment Owner in proportion to such Owner's use.

2. The following Apartments shall have as Limited Common Elements the shared driveway area appurtenant to certain Apartments and shared by and between such Apartments as follows:

a. Apartments 9, 10, 11 and 12 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #1)".

b. Apartments 15, 16, 17 and 18 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #2)".

c. Apartments 21, 22, 23, 24, 25 and 26 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #3)".

d. Apartments 31 and 32 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #4)".

e. Apartments 33 and 34 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #5)".

f. Apartments 39 and 40 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #6)".

g. Apartments 41 and 42 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #7)".

h. Apartments 43 and 44 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #8)".

i. Apartments 45 and 46 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #9)".

j. Apartments 47, 48, 49 and 50 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #10)".

k. Apartments 67, 68, 69 and 70 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #11)".

l. Apartments 71 and 72 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #12)".

m. Apartments 73, 74, 75 and 76 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #13)".

n. Apartment 84 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #13-b)".

o. Apartments 85 and 86 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #14)".

p. Apartments 89, 90 and 91 shall have appurtenant thereto as Limited Common Elements the driveway identified on the Condominium Map as "L.C.E. (Dwy #15)".

3. Each Apartment shall share as a Limited Common Element with an adjoining Apartment all pipes, ducts, conduits, wires and other utility or service lines which may be located within the four (4) inch air space located between the walls of such Apartment and the Apartment immediately connected thereto in the same building that services both Apartments, if any.

**EXHIBIT "G"**

**ENCUMBRANCES AGAINST TITLE**

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. Easement "478" (8,180 square feet, more or less), as set forth by Land Court Order No. 124059, Map 134, filed on April 18, 1996.

3. Covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions set forth in that certain Limited Warranty Deed dated September 27, 2004, recorded in said Office as Document No. 3175303, to which reference is hereby made, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c) or Section 515-6, Hawaii Revised Statutes.

4. Real Property Mortgage, Security Agreement, Assignment of Rents; Fixture Filing; and Financing Statement dated September 30, 2004, made by and between Diamond Pacific Homes, LLC, a Hawaii limited liability company, as Mortgagor and Central Pacific Bank, a Hawaii corporation, as Mortgagee, recorded in said Office as Document No. 3175304.

First Amendment of Real Property Mortgage; Security Agreement; Assignment of Rents; Fixture Filing; and Financing Statement; and First Amendment of Assignment of Net Sales Proceeds dated December 7, 2005, recorded in said Office as Document No. 3365783.

5. Assignment of Net Sales Proceeds dated September 30, 2004, recorded in said Office as Document No. 3175305.

6. Second Mortgage, Security Agreement and Financing Statement dated October 5, 2004, made by and between Diamond Pacific Homes, LLC, a Hawaii limited liability company, as Mortgagor, MKA Real Estate Opportunity Fund I, LLC, a California limited liability company, as Mortgagee, and Matt Deal, individually, Parkside Homes, LLC, a Colorado limited liability company, Parkside Homes of Wyoming, LLC, a Wyoming limited liability company, and Mauka Makai Land Company, LLC, a Colorado limited liability company, as Guarantors, recorded in said Office as Document No. 3175306.

Subordination and Intercreditor Agreement dated September 30, 2004, recorded in said Office as Document Nos. 3175307 and 3175308.

First Amendment of Subordination and Intercreditor Agreement and Consent dated December 7, 2005 recorded in said Office as Document No. 3365784.

7. Financing Statement recorded on October 5, 2004 at the Bureau of Conveyances of the State of Hawaii as Document No. 2004-204882.

8. Condominium Map No. 1703, filed in said Office.

9. Declaration of Condominium Property Regime of The Villas at Puali dated January 24, 2005, filed in said Office as Document No. 3245975.

First Amendment to Declaration of Condominium Property Regime of The Villas at Puali dated September 21, 2005, filed in said Office as Document No. 3340629.

10. Bylaws of the Association of Apartment Owners of The Villas at Puali dated January 24, 2005, filed in said Office as Document No. 3245976.

11. Waiver, Release and Indemnity Agreement dated March 17, 2005 made by and between Diamond Pacific Homes, LLC, a Hawaii LLC, and Department of Water, County of Kauai, a political subdivision of the State of Hawaii, recorded at said Bureau as Document No. 2005-067837.

12. Grant of Easement dated May 12, 2005 in favor of Kauai Island Utility Company, a cooperative association formed pursuant to the provisions of Chapter 421C of the Hawaii Revised Statutes recorded in said Office as Document No. 3292754 for Right of Entry and incidental purposes.

13. Mortgage dated September 22, 2005, made by and between Diamond Pacific Homes, LLC, a Hawaii limited liability company, as Mortgagor, MKA Real Estate Opportunity Fund I, LLC, a California limited liability company, as Mortgagee, recorded in said Office as Document No. 3332658.

**EXHIBIT "H"**

**CONSTRUCTION WARRANTIES**

A. Diamond Pacific Homes, LLC warrants its materials and workmanship to be of good quality for the ordinary and reasonable use of residential habitation for the period of EXACTLY ONE YEAR commencing on the day of Closing.

B. Diamond Pacific Homes, LLC warrants that the plumbing, electrical system, and air conditioning system (if applicable) will be free from installation, workmanship or operating defects for a period of EXACTLY TWO YEARS commencing on the day of Closing.

C. Diamond Pacific Homes, LLC warrants that the Apartment will be free from a Major Structural Defect for a period of EXACTLY FIVE YEARS (or such period as may be specified in the case of a VA or FHA guaranteed loan) commencing on the day of Closing. A "Major Structural Defect" is actual physical damage to the load-bearing components of the Apartment caused by the failure of such component to the extent the Apartment becomes unsafe or untenantable. The load-bearing components are (i) the foundation footings and walls, (ii) beams, girders, floor joists and lintels, (iii) columns, (iv) walls which support floors, roofs or other structural members, and (v) roof framing systems to the extent that each of these items is integral to the structural frame or foundation of the Apartment. In the case of an Apartment originally purchased with VA/FHA insured financing, the roof sheathing is also warranted.

D. Damages to the Apartment directly resulting from the defect or failure of, or the repair of a defective or failed, item covered by the Warranty as provided for in this Section shall also be deemed to be covered by this Warranty.

E. No repair, replacement or payment by Diamond Pacific Homes, LLC will serve to extend the Warranty Term.

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

THE VILLAS AT PUALI
Estimated Annual Common Expense

| | Monthly | Annual |
|---|---|---|
| **Utilities and Services** | | |
| Water | $80.00 | $960.00 |
| **Maintenance, Repairs, and Supplies** | | |
| Building | $1,250.00 | $15,000.00 |
| Grounds | $1,250.00 | $15,000.00 |
| Landscape Contract | $10,000.00 | $120,000.00 |
| **Management** | | |
| Management Fee | $676.00 | $8,112.00 |
| Accounting Fees | $292.00 | $3,504.00 |
| Office Expenses | $125.00 | $1,500.00 |
| **Insurance** | $8,667.00 | $104,004.00 |
| **Reserves*** | $2,279.18 | $27,350.20 |
| **TOTAL** | $24,619.18 | $295,430.20 |

I, SUNSHINE RUIZ, as agent and employed by CERTIFIED MANAGEMENT, INC., the condominium managing agent for the developer, for the condominium project THE VILLAS AT PUALI hereby certify that the above estimates of initial product fee and assessments and product fee disbursements were prepared in accordance with generally accepted accounting principles.

Sunshine Ruiz

Sunshine Ruiz
Account Executive, Kauai District Office

13-Aug-03
Date

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

The $2,279.18 reserves amount noted above was calculated using a per cent funded plan and willl be funded by Start-Up fees in an amount equivalent to two (2) months of product fees. The "Start-up fees" will be collected from each purchaser, at closing. This is a one-time payment to be made by each purchaser; provided that the Association will collect additional amounts in the future to fund the reserves.

* I, Sunshine Ruiz, hereby certify that a reserve study has not been conducted to support the Reserve line item set forth above, as there is insufficient information available to conduct such study at this time. Although under Hawaii law a newly-formed association is not required to collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting, the association for this project will begin to collect reserve amounts upon closing of sales of apartments in the project based on the estimate set forth above. Purchasers should be aware that the amount collected for reserves may increase or decrease when the reserve study is conducted.

THE VILLAS AT PUALI
ESTIMATE OF INITIAL PRODUCT FEE
and
PRODUCT FEE DISTRIBUTION

**ESTIMATE OF INITIAL PRODUCT FEE**

| APARTMENT TYPE | Monthly Fee x 12 mos. | Yearly |
|---|---|---|
| 1 = .009615384615384 62 | $236.72 | $2,840.64 |

Each unit will be charged a maintenance fee of $236.72 per month.
$236.72 x 104 units = $24,619.00.00 total maintenance fees collected per month from all units.

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

[ ] Revised on _____

## ESTIMATE OF RESERVE ACCOUNTS

| Description | Annual Amount | Total Cost |
|---|---|---|
| Exterior Painting | $4,647.12 | $116,178.00 |
| (to be done approximately every 7 years) | | |
| Roofing | $22,703.08 | $567,577.00 |
| (to be done approximately every 25 years) | | |
| Totals | $27,350.20 | $683,755.00 |

**EXHIBIT "J"**

**SUMMARY OF PURCHASE CONTRACT AND AMENDMENT**

The specimen Villas at Puali Purchase Contract and Amendment, as applicable, ("Agreement") contains, among other things, the following terms and conditions (which may be modified or otherwise limited by provisions which are not summarized hereinbelow):

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

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

C. The "Closing Date" shall be the date (following the completion of the structure in which the Apartment is located) upon which Seller certifies to the Purchaser in writing that the Apartment is ready for occupancy. All payments shall be due and payable in full on the Closing Date, and, if not paid on said date due to Purchaser's failure to act in a diligent manner in order for said payment to be made on said date, then such nonpayment shall result in a default under the Agreement. If Purchaser, after the delivery by Seller of a copy of the Contingent Final Public Report for the Project, either personally or by registered or certified mail with return receipt requested, shall fail to execute an acknowledgement of receipt and waiver of Purchaser's right to cancel the Agreement (or shall fail to give his written approval or acceptance to any material change to the Project as requested by Seller pursuant to the provisions of Hawaii Revised Statutes Section 514A-63, as amended) within thirty (30) days of such receipt, Seller may at its option: (i) cancel the Agreement upon ten (10) days' written notice to Purchaser of such cancellation and upon such cancellation Seller shall cause Escrow to refund to Purchaser all payments previously made by Purchaser without interest; or (ii) elect (by its failure to give said written notice of cancellation) to treat such failure as a deemed acceptance ("Deemed Acceptance") of such Public Report and as a waiver of the right to cancel the Agreement (or as a Deemed Acceptance of such material change, as the case may be).

D. The Purchase Price does not include closing costs which include, among other things, the escrow fee, cost of a preliminary title report, cost of preparation of the Apartment Deed, real property tax and other prorations, all acknowledgment fees, conveyance taxes, title insurance, if requested by Purchaser, cost of any lender's title insurance, appraisal fees, costs for drafting of any notes and mortgages, all recording costs or fees, loan fees, credit report costs and all other applicable mortgage costs. Purchaser shall pay a start-up fee equal to two (2) months' of the estimated maintenance fee in advance. Purchasers should be aware that the purchase price for the Apartment may have increased since purchaser's execution of the Purchase Contract. Purchaser may be asked to sign an amendment to Purchase Contract reflecting such increase at the time their Purchase Contract becomes binding.

E. Purchaser agrees that it will not assign the Agreement to anyone. Seller may, without any consent of Purchaser, freely assign Seller's interests therein.

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

G. Notices to either party may be delivered personally or mailed.

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

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

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

K. If Purchaser is purchasing an Apartment that has been designated by the Seller as an owner-occupant apartment pursuant to Part VI of Chapter 514A of the Hawaii Revised Statutes, as amended, pertaining to sales to owner-occupants, Purchaser shall, upon receiving the disclosure statement informing the Purchaser that the Real Estate Commission has issued an effective date for the Final Public Report for the Project, reaffirm Purchaser's intent to be an owner-occupant. Purchaser's failure to execute the reaffirmation shall constitute a default under the Purchase Contract.

L. The Agreement, in accordance with Hawaii law, contains important notice and cure requirements Purchasers must follow before Purchasers file a lawsuit or other action for defective construction against the Contractor who designed, repaired or constructed the apartment. Purchaser should accordingly make careful review of Section 28(e) of the Agreement.

M. Purchaser should also make careful review of the warranties in that certain Limited Warranty Addendum and the loan and subordination provisions in that certain Lender's Required Addendum.

N. IF PURCHASER SELLS OR TRANSFERS AN APARTMENT WITHIN SEVEN (7) YEARS FROM THE DATE OF CLOSING, THE COUNTY OF KAUAI WILL HAVE A RIGHT OF FIRST OPTION TO PURCHASE THE APARTMENT PURSUANT TO KAUAI ORDINANCE NO. PM-2005-372 ("ORDINANCE") AT THE PURCHASE PRICE ESTABLISHED BY THE COUNTY IN ACCORDANCE WITH SUCH ORDINANCE. IF THE COUNTY DOES NOT EXERCISE SUCH RIGHT, DP HOMES WILL BE ENTITLED TO SHARED APPRECIATION INTEREST FOR A PERIOD OF SEVEN (7) YEARS FOLLOWING INITIAL CLOSING OF THE APARTMENT, AS DETERMINED BY THE SHARED APPRECIATION SCHEDULE IN EXHIBIT "N" HEREIN. PURCHASER ALSO AGREES TO EXECUTE ANY NECESSARY AGREEMENTS RELATED TO PURCHASER'S PARTICIPATION IN THE COUNTY'S RIGHT OF FIRST OPTION TO PURCHASE AND THE DEVELOPER'S SHARED APPRECIATION PROGRAMS AS PART OF CONSIDERATION FOR THE PURCHASE OF THE APARTMENT AND AS A CONDITION OF CLOSING IN ACCORDANCE WITH SECTION 26 OF THE AGREEMENT. THIS PROVISION SHALL SURVIVE CLOSING OF THE SALE OF THE APARTMENT. PURCHASER SHOULD INQUIRE AS TO WHETHER THE APARTMENT PURCHASER INTENDS TO PURCHASE IS SUBJECT TO THE COUNTY'S RIGHT OF FIRST OPTION TO PURCHASE AND/OR THE DEVELOPER'S SHARED APPRECIATION PROGRAM PRIOR TO EXECUTION OF THE AGREEMENT.

* * * * *

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

**EXHIBIT "K"**

**SUMMARY OF ESCROW AGREEMENT AND FIRST AMENDMENT**

The Villas at Puali Escrow Agreement dated August 25, 2003 and First Amendment dated August 20, 2004, (collectively, "Agreement") contains the following provisions (which may be modified or otherwise limited by provisions which are not summarized hereinbelow):

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

B. Escrow shall receive, deposit and hold in separate escrow accounts and disburse as set forth in the Agreement: (a) all payments received by it under Purchase Agreements, (b) such sums received by it under the Agreement from or for the account of Seller, and (c) all sums received by it from any other source with respect to the Project. Escrow shall not at any time commingle or permit the commingling of any Purchaser's funds with funds belonging to or held for the benefit of Seller. All funds and instruments received from Purchasers or prospective Purchasers shall be held by Escrow in accordance with the provisions contained in Chapter 514A of the Hawaii Revised Statutes. All monies received by Escrow hereunder shall be deposited, within a reasonable time of the receipt by Escrow and in reasonably convenient and practical sums, in a trust fund with a bank, savings and loan or trust company authorized to do business in the State of Hawaii under an escrow arrangement, and shall be held in immediately available funds in accordance with the terms the Agreement. All income derived from such accounts, and all interest paid thereon, shall be credited to the account of Developer, unless otherwise directed by Developer.

C. Escrow shall make no disbursements of Purchasers' funds or proceeds from the sale of apartments in the Project (including any payments made on loan commitments from lending institutions), except by way of refunds thereof as provided in the Agreement, until Escrow has received a letter from Seller stating that the Purchasers have signed the required Receipt and Notice of Right to Cancel or are deemed to have receipted for the public reports and to have waived their right to cancel, and stating further that no subsequent events have occurred which would give the Purchasers the right to rescind, the Purchase Agreements have "become effective" and "the requirements of Sections 514A-40, 514A-39.5 and 514A-63" of the Hawaii Revised Statutes have been met, as said phrases are used in Section 514A-65, Hawaii Revised Statutes, and further that the requirements of Section 514A-62 of the Hawaii Revised Statutes have been met. Further, no disbursements of Purchasers' funds shall be made until the affidavit of intent to become an owner-occupant required by Section 514A-104, Hawaii Revised Statutes, as amended, and approved and issued by the Real Estate Commission pursuant to Section 514A-104.5, Hawaii Revised Statutes, as amended, has been reaffirmed by the prospective owner-occupant of the respective residential unit.

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

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

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

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

Upon the return of said funds to the Purchaser as aforesaid, Escrow shall return to Seller such Purchaser's Purchase Agreement and any conveyancing documents theretofore delivered to Escrow pursuant to such Purchase Agreement; and thereupon the Purchaser shall no longer be obligated under the Purchase Agreement. Other documents delivered to Escrow relating to the sale of the apartment identified in such Purchase Agreement will be returned to the person from whom or entity from which they were received.

Upon the cancellation of any Purchase Agreement as specified above, Escrow shall be entitled to a $25.00 cancellation fee.

E. If the Purchaser fails to make any payment on or before the due date thereof or if the Purchaser does or fails to do any act which would constitute an event of default under the Purchase Agreement, Seller shall promptly give to such Purchaser and to Escrow, written notice of default. If Purchaser has failed to cure the default after the delivery of notice by Escrow and such default continues after the expiration of any grace period, Escrow shall so advise Seller. If Seller shall thereafter certify in writing to Escrow: (1) that Seller has elected to terminate the Purchase Agreement and has notified the Purchaser, or (2) that Purchaser is otherwise in default, then, and in either event, Escrow, subject to the provisions relating to dispute and conflicting demands set forth in paragraph 14 of the Agreement, shall thereafter treat all funds of the Purchaser paid under such Purchase Agreement, less Escrow's cancellation fee, as funds of Seller and not of the Purchaser. Thereafter, such funds shall be held free of the escrow established by the Agreement and shall be held by Escrow for the account of Seller. Upon written request by Seller, Escrow shall pay such funds to Seller or order and shall return to Seller the Purchase Agreement of such Purchaser and any other documents theretofore delivered to Escrow in connection with the purchase of the apartment specified in such Purchase Agreement shall be returned to the person from whom or entity from which such documents were received.

* * * * *

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

**EXHIBIT "L"**

**SUMMARY OF DEED FORM**

The specimen Limited Warranty Deed, Encumbrances, Covenants, Right of First Refusal and Shared Appreciation Restrictions and Reservation of Rights for The Villas at Puali ("Deed" or "Apartment Deed") contains among others, the following provisions (which may be modified or otherwise limited by provisions which are not summarized hereinbelow):

A. The premises conveyed comprises a portion of The Villas at Puali Condominium Property Regime situate at Puhi, Lihue, County of Kauai, State of Hawaii.

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

C. Grantee agrees and consents to the exercise by Grantor of any of its reserved rights set forth in the Condominium Declaration.

D. Grantee covenants and agrees, for the benefit of all other owners of the other apartments in the Project, to at all times observe, perform, comply with and abide by all of the covenants, agreements, obligations, conditions and other provisions set forth in the Condominium Declaration, the Bylaws and the House Rules as any of the same exist or may hereafter be amended in accordance with law and does accept and approve of the Declaration, Bylaws and Rules and Regulations.

E. Grantee covenants and agrees that Grantee takes sufficient notice in accordance with Hawaii Revised Statutes ("HRS") §501-196, as amended, that the Grantor will be dedicating the common element roadways and sidewalks in the Project to the County of Kauai upon subdivision pursuant to the Grantor's reserved right as stated herein. In the event further notice is required, Grantee covenants and agrees that the Association of Apartment Owners of The Villas at Puali shall hereby be designated as the Grantee's agent to receive any notice required by HRS §501-196, as amended.

F. Grantee acknowledges and consents that domestic water service will not be available until (1) the required construction improvements for the Project and Kaua'i County Subdivision No. S-2003-37 are completed and accepted by the County of Kaua'i, Department of Water, and (2) the Kapai'a Kaua'i Surface Water Treatment Plant ("SWTP") which will be providing water for the Project and Kaua'i County Subdivision No. S-2003-37 (and which is being constructed by Grove Farm Properties, Inc., or "Grove Farm"), has been constructed and made fully operational. Whether the SWTP is fully operational shall be determined by Section 8.b.i of that certain Water Treatment and Delivery Agreement dated February 19, 2004, and entered into between Grove Farm and the County of Kaua'i, Board of Water Supply.

G. For Lots 54 and 55 only: Grantee covenants and agrees that Lots 54 and 55 shall not be improved and shall remain open buffer spaces.

H. IF GRANTEE SELLS OR TRANSFERS AN APARTMENT WITHIN SEVEN (7) YEARS FROM THE DATE OF CLOSING, THE COUNTY OF KAUAI WILL HAVE A RIGHT OF FIRST OPTION TO PURCHASE THE APARTMENT PURSUANT TO, AND AT THE PURCHASE PRICE ESTABLISHED BY THE COUNTY IN KAUAI COUNTY ORDINANCE NO. PM-2005-372. IF THE COUNTY DOES NOT EXERCISE SUCH RIGHT, DP HOMES WILL BE ENTITLED TO SHARED APPRECIATION INTEREST FOR A PERIOD OF SEVEN (7) YEARS FOLLOWING INITIAL CLOSING OF THE APARTMENT, AS DETERMINED BY THE SHARED APPRECIATION SCHEDULE IN EXHIBIT "N" HEREIN. GRANTEE ALSO AGREES TO EXECUTE ANY NECESSARY AGREEMENTS RELATED TO PURCHASER'S PARTICIPATION IN THE

COUNTY'S RIGHT OF FIRST OPTION TO PURCHASE AND THE DEVELOPER'S SHARED APPRECIATION PROGRAMS AS PART OF CONSIDERATION FOR THE PURCHASE OF THE APARTMENT AND AS A CONDITION OF CLOSING IN ACCORDANCE WITH SECTION 26 OF THE PURCHASE CONTRACT. THIS PROVISION SHALL SURVIVE CLOSING OF THE SALE OF THE APARTMENT. GRANTEE SHOULD INQUIRE AS TO WHETHER THE APARTMENT GRANTEE INTENDS TO PURCHASE IS SUBJECT TO THE COUNTY'S RIGHT OF FIRST OPTION TO PURCHASE AND/OR THE DEVELOPER'S SHARED APPRECIATION PROGRAM PRIOR TO EXECUTION OF THE PURCHASE CONTRACT.

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

**EXHIBIT "M"**

**SUMMARY OF DESIGN GUIDELINES**

The Design Guidelines The Villas at Puali ("Design Guidelines") will apply, as applicable, to the Apartment and Limited Common Element yard area Improvements in the Project. Such Design Guidelines contain, among other things, the following terms and conditions (which may be modified or otherwise limited by the provisions not summarized below). Capitalized terms shall have the meanings ascribed to such terms in the Design Guidelines.

A. There shall be a Design Committee, the function of which shall be to oversee and exercise control over improvements, renovations, replacements or other modifications made to the Apartments of the Project, including the design, style and/or construction relating thereto, as applicable, and the landscaping plan and design for yard areas and Private Yard Areas of the Apartments of the Project, for the purpose of protecting and maintaining the standards, the visual character and the plan of the development of the Project. The Design Committee is concerned with all exterior house and yard designs and materials visible from the street, parks and neighboring Apartments. The Design Committee shall consist of not less than three (3) members, at least one of whom shall be an engineer or an architect licensed in the State of Hawaii who shall be designated the "Professional Member".

B. The Design Committee shall meet from time to time as is necessary to perform its duties hereunder. The vote or written consent of any two (2) members of the Design Committee shall constitute authority for the Design Committee to act, unless the unanimous vote or consent of its members is otherwise required by these Design Guidelines or any Design Committee Rules adopted by the Design Committee.

C. By unanimous vote of its members, the Design Committee may adopt, amend and repeal rules and regulation to be known as the "Design Committee Rules" for purposes set forth in the Design Guidelines.

D. The Developer shall be exempt from the Design Guidelines, the Design Committee Rules, if any, and any other guidelines, interpretations or standards established pursuant thereto; and the rights, powers and duties of the Design Committee shall not be deemed to limit or affect in any way the rights of the Developer to develop and make Improvements to real property owned by the Developer or to limit or affect the rights of persons or parties specifically exempted by the Developer in writing to develop and make Improvements to the property owned by such persons or parties.

E. Unless otherwise indicated herein or in the Design Committee Rules, no Improvement requiring Design Committee approval shall be commenced, erected or installed unless the Apartment Owner of any impacted Apartment or yard area, as appropriate, first obtains the approval of the Design Committee in the manner set forth in the Design Guidelines.

F. No approval by the Design Committee of any item submitted to the Design Committee shall in any manner constitute a representation, warranty or agreement by the Design Committee, the Developer, the Board, the Association, and their respective members, duly authorized representatives and attorneys, that such item (1) has been prepared free of defects or is of good workmanship or design, or will result in Improvements that are readily marketable or free of design or construction defects, (2) complies with applicable laws (including building code requirements) or (3) will result in the approval of the same by any governmental agency or subdivision thereof, or any other person.

G. The Design Committee shall have the right to amend the Design Guidelines from time to time, upon a majority vote of the Design Committee or a unanimous written consent of the members of the Design Committee for such amendment, provided that no amendment which shall adversely impact the Developer's rights hereunder or under any of the Project documents shall be effective without the Developer's prior written consent, which may be withheld in its sole discretion; and further provided that any amendment which pertains to Section IV.A, B and C of the Design Guidelines shall be subject to the vote of 75% of the owners interest of all Apartments

in the Project. Any amendment that will be contrary to any County of Kauai lot coverage regulations shall be strictly prohibited.

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

EXHIBIT "N"

## SUMMARY OF COUNTY'S RIGHT OF FIRST OPTION TO PURCHASE & SHARED APPRECIATION PROGRAM

In the event Purchaser enters into a contract to sell his/her apartment prior to seven (7) years from the date of Closing, as defined in the Purchase Contract, Purchaser may be subject to anti-speculation covenants with the County of Kauai ("County") and the developer ("DP Homes") as summarized herein.

**A. Right of First Option to Purchase.**

Pursuant to County of Kauai Ordinance No. PM-2005-372 ("Ordinance") for seven (7) years following the date of the initial sale to Purchaser, the County shall have the first option to purchase as to ninety (90) apartments in the Project offered for sale by the Purchaser. Purchaser should check with DP Homes as to which apartments in the Project are subject to the provisions herein. The County shall have the first option to purchase the Apartment at a price which shall be the lesser of:

a. A sum not exceed: (i) the original cost to the owner; (ii) the cost of any capital improvements added by the owner; and (iii) the greater of simple interest at the rate of three percent (3.0%) per annum or the percentage change in Consumer Price Index for the Metropolitan Honolulu area on the original cost to the owner from the date of the Closing and the cost of capital improvements added to the property by the owner from the time of installation of the capital improvement to the date of resale; or

b. The gross sale price on the resale, as estimated by a residential real estate appraiser licensed in the State of Hawaii, selected by the Purchaser from a list of qualified appraisers maintained by County, assigned by and paid by the County, less customary closing costs and sales commission.

**B. Shared Appreciation Program.**

If the County declines to exercise its first option to purchase during the requisite seven (7) year period, the Purchaser may transfer his apartment to another third party, provided that any *Net Appreciation* from such sale shall be shared with DP Homes on a progressive basis for a period of seven (7) years from Closing based on the following Shared Appreciation Schedule:

**Shared Appreciation Schedule**

| Years from Date of Closing to Date of Transfer | Shared Appreciation Percentage to be Paid to Purchaser | Shared Appreciation Percentage to be Paid to DP Homes |
|---|---|---|
| 0 to less than 1 year | 0.00% | 100.0% |
| 1 to less than 2 years | 10.0% | 90.0% |
| 2 to less than 3 years | 20.0% | 80.0% |
| 3 to less than 4 years | 35.0% | 65.0% |
| 4 to less than 5 years | 50.0% | 50.0% |
| 5 to less than 6 years | 80.0% | 20.0% |
| 6 to less than 7 years | 100.0% | 0.0% |

The *Net Appreciation* shall be the difference between the *Adjusted Sales Price* (the fair market value at the time of transfer, less any broker's commissions and closing costs incurred) and the *Initial Purchase Price* (the Total Purchase Price as set forth in Section 2 of the Purchase Contract, plus closing costs (excluding the start up fee and any prepaid maintenance fee), but not loan fees or costs, plus the actual documented costs of capital improvements made to the Apartment by Buyer after closing (as defined in Section 263 of the Internal Revenue Code of 1986, as amended).

DP Homes' *Shared Appreciation Interest*, shall be the product reached by multiplying the *Net Appreciation* by the *Shared Appreciation Percentage* to be paid to DP Homes as set forth in the Shared Appreciation Schedule above. By way of illustration, but not by way of limitation, if the Purchaser sells the Apartment within two and one half (2-1/2) years following Closing, DP Homes' Shared Appreciation Percentage is eighty percent (80%). If the Adjusted Sales Price of the Apartment is $400,000 and the Initial Purchase Price was $300,000, including closing costs, then the Net Appreciation is $100,000 and DP Homes' Shared Appreciation Interest is $80,000 and the Purchaser's Shared Appreciation Interest is $20,000.

A transfer shall include any transfer by way of sale, gift, exchange or otherwise (except a transfer or assignment of an interest in the Apartment as security for repayment of a debt), whether for fair and adequate consideration or not. A transfer of the Apartment shall also be deemed to have taken place upon any of the following occurrences:

i) When Purchaser sells or transfers the Apartment or any legal or beneficial right, title or ownership interest in the Apartment, including by way of an agreement of sale or lease with an option to purchase the Apartment;

ii) In the event Purchaser is divested of title or any interest in the Apartment, in any manner, voluntarily or involuntarily, including a judicial or non-judicial foreclosure sale.

The following actions shall <u>not</u> be deemed a transfer for shared appreciation purposes:

i) A transfer to the surviving joint tenant or tenant by the entirety by devise, through the laws of descent or by operation of law on the death of a joint tenant or a spouse;

ii) A transfer by devise or through the laws of descent to a family member;

iii) A transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the Purchaser's spouse or reciprocal beneficiary, as defined under Hawaii law, becomes an owner of the Apartment; or

iv) A transfer into an inter vivos trust in which the Purchaser is and remains the primary beneficiary and the Purchaser continues to occupy and use the Apartment.

v) A transfer including a provision for Purchaser to participate in any appreciation or gain on a subsequent transfer or sale of the Apartment.

IF WITHIN THE MEANING OF THE ORDINANCE, PURCHASER SELLS OR TRANSFERS HIS APARTMENT WITHIN SEVEN (7) YEARS FROM THE DATE OF CLOSING, THE COUNTY OF KAUAI WILL HAVE A RIGHT OF FIRST OPTION TO PURCHASE THE APARTMENT AT THE PURCHASE PRICE ESTABLISHED BY THE COUNTY IN THE MANNER DESCRIBED HEREIN. IF THE COUNTY DOES NOT EXERCISE SUCH RIGHT, DP HOMES WILL BE ENTITLED TO SHARED APPRECIATION INTEREST FOR A PERIOD OF SEVEN (7) YEARS FOLLOWING INITIAL CLOSING OF THE APARTMENT, AS DETERMINED BY THE SHARED APPRECIATION SCHEDULE ABOVE. PURCHASER SHALL ALSO EXECUTE ANY NECESSARY AGREEMENTS RELATED TO PURCHASER'S PARTICIPATION IN THE COUNTY'S RIGHT OF FIRST OPTION TO PURCHASE AND THE DEVELOPER'S SHARED APPRECIATION PROGRAMS AS PART OF CONSIDERATION FOR THE PURCHASE OF THE APARTMENT AND AS A CONDITION OF CLOSING IN ACCORDANCE WITH SECTION 26 OF THE PURCHASE CONTRACT. THIS PROVISION SHALL SURVIVE CLOSING OF THE SALE OF THE APARTMENT. PURCHASER SHOULD INQUIRE AS TO WHETHER THE APARTMENT PURCHASER INTENDS TO PURCHASE IS SUBJECT TO THE COUNTY'S RIGHT OF FIRST OPTION TO PURCHASE AND/OR THE DEVELOPER'S SHARED APPRECIATION PROGRAM PRIOR TO EXECUTION OF THE PURCHASE CONTRACT.

**A BILL FOR AN ORDINANCE**
**AMENDING ZONING CONDITION IN ORDINANCE NO. PM-303-94, RELATING TO ZONING DESIGNATION IN PUHI, KAUAI**
(Grove Farm Properties, Inc.; Diamond Pacific Homes, L.L.C.)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Ordinance No. PM-303-94 is hereby amended by amending Section 1 as follows:

"SECTION 1. The zoning designation for that certain area in Puhi, Kauai, identified as TMK: 3-3-02: Por. 1 and 3-3-03: Por. 1, as shown on Zoning Map ZM-P 400 and on the map attached hereto and incorporated herein as Exhibit ZA-94-10, is hereby amended from "Agriculture District (A)" to "Residential District (R-20)," subject to the following conditions:

[1. As represented by the applicant, the proposed housing project shall be sold and/or rented in accordance with affordable housing standards as administered by the County Housing Agency. The applicant shall also consider other special housing needs (i.e., elderly and /or handicapped housing) in the development of the housing project.

2. The proposed affordable housing project shall be used to satisfy the "60%" affordable housing requirement in the Lihue-Puhi Project District as set forth in Condition #1 in Ord. No. PM-206-90, as amended by Ord. No. PM-268-93.]

1. As represented by the Applicant, the base prices contained in all reservation contracts for the Villas at Puali project entered into before February 8, 2005 shall remain unchanged from the prices stated therein, unless an increase is necessitated by unreasonable delay due to fire; flood; earthquakes; acts of a public enemy or war; transportation embargoes; labor disruptions or strikes; severe weather conditions, including hurricanes; acts of God; the order of any court of competent jurisdiction; or extraordinary circumstances not under the control of the Applicant. In such event, the increase in price, if any, shall be based on the actual additional cost resulting from the delay or extraordinary circumstances. The Applicant shall be able to market all remaining units in the project, including units which fall out from those reservation contracts made before February 8, 2005, on the open market.

2. Except for the 14 residences to be conveyed to participants in Diamond Pacific Homes, LLC, the remaining residences shall be sold subject to anti-speculation covenants that for seven years the Kauai County Housing Agency shall have an option to purchase any unit offered for sale by the original purchaser. The purchase price to the Kauai County Housing Agency shall be calculated as follows: the lesser of (1) the owner's purchase price (including customary closing costs, but not including any costs relating to financing of the purchase) plus the greater of 3% per annum thereon from the original date of closing or the percentage change in the Consumer Price Index for the Metropolitan Honolulu area from the date of original sale to the time of

resale, plus the actual cost of capital improvements made to the residence by the owner plus the greater of 3% per annum thereon from the date of completion of such capital improvements or the percentage change in the Consumer Price Index for the Metropolitan Honolulu area from the date of completion of the capital improvements to the time of resale, or (2) the gross sales price on the resale less customary closing costs and commissions. If the Kauai County Housing Agency declines to exercise its option, then during the said seven year period, the owner may sell his residence, with any appreciation to be shared with the developer on a progressive basis as follows:

| Years Owned | % Of Gain To Owner |
|---|---|
| less than 1 | 0% |
| 1 to less than 2 | 10% |
| 2 to less than 3 | 20% |
| 3 to less than 4 | 35% |
| 4 to less than 5 | 50% |
| 5 to less than 6 | 80% |
| 6 to less than 7 | 100% |

3. The applicant shall consult and resolve all applicable conditions as recommended by the State Health Department, Fire Department, Water Department, Public Works Department, and the Office of State Planning.

4. The applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies)."

SECTION 2. If any provision of this ordinance, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 3. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Kaua'i County Code 1987, the brackets, bracketed material, and underscoring need not be included.

SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY: /s/ JOANN A. YUKIMURA
(By Request)

DATE OF INTRODUCTION:
**January 18, 2005**
Līhu'e, Kaua'i, Hawai'i
D:\My Documents\Word Docs\BILLS\2118d1.doc;ft/so

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2118, Draft 1, which was adopted on second and final reading by the Council of the County of Kauai at its meeting held on February 10, 2005, by the following vote:

| | | |
|---|---|---|
| FOR ADOPTION: | Furfaro, Iseri-Carvalho, Kaneshiro, Rapozo, Tokioka, Yukimura, Asing | TOTAL - 7, |
| AGAINST ADOPTION: | None | TOTAL - 0, |
| EXCUSED & NOT VOTING: | None | TOTAL - 0. |

Lihue, Hawaii
February 11, 2005

Peter A. Nakamura
County Clerk, County of Kauai

ATTEST:

Bill "Kaipo" Asing
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

February 15, 2005

Approved this 16th day of

February, 2005.

Bryan J. Baptiste
Mayor
County of Kauai

**THE VILLAS AT PUALI**

**SHARED APPRECIATION AGREEMENT**

**THIS AGREEMENT** made this ____ day of _____, 20_____, by and between **DIAMOND PACIFIC HOMES, LLC**, a Hawaii limited liability company, whose principal place of business and mailing address is 1600 Specht Point Drive, Suite F, Fort Collins, Colorado 80527 ("Seller"), and _____ _____whose address is _____ _____ ("Buyer").

W I T N E S S E T H:

**WHEREAS**, Seller and Buyer entered into that certain The Villas at Puali New Home Purchase Contract, attached hereto as Exhibit "A" and incorporated herein by reference, as may be amended from time to time ("Purchase Contract") for Apartment No. _____ (the "Apartment") in The Villas at Puali condominium project ("Project");

**WHEREAS**, to be consistent with and enforce the County of Kauai ("County") Ordinance No. PM-303-94, as amended by Ordinance No. PM-2005-372 ("Ordinance"), enacted with the intent of preventing speculation of apartments in the Project and keeping the Project affordable, Seller has enabled the Buyer to purchase the Apartment for a purchase price below current fair market value, provided that the Buyer grant a first option to purchase the Apartment to the County of Kauai, pursuant to the Ordinance and participates in Seller's shared appreciation program ("Shared Appreciation Program") as set forth herein;

**WHEREAS**, the parties desire to carry out that portion of the First Amendment to the Purchase Contract which provides that as part of the consideration for the purchase of the Apartment and as a condition of Closing, the Buyer shall execute this Shared Appreciation Agreement ("Agreement) in favor of the Seller at or prior to Closing, as set forth in the Purchase Contract;

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

1. **DEFINITIONS**. For the purpose of this Agreement, the parties agree that the following definitions shall apply:

a. "Adjusted Sales Price" shall mean the amount set forth, or which would be set forth, at line 401 "Contract Sales Price" on the HUD-1 Settlement Statement of the Apartment at the time of Transfer, less any broker's commissions and closing costs. In the event that the Apartment is Transferred in a transaction for less than fair market value, then the "Adjusted Sales Price" shall mean the fair market value of the Apartment, as determined by mutual agreement of the Buyer and Seller, or by appraisal in the event that the Buyer and Seller fail to agree as set forth in paragraph 5 herein, less any broker's commissions and closing costs actually incurred in the Transfer, as defined below.

b. "Initial Purchase Price" shall mean the Total Purchase Price as set forth in Section 2 of the Purchase Contract, plus closing costs (excluding the start up fee and any prepaid maintenance fee), but not loan fees or costs, plus the actual documented costs of capital improvements made to the Apartment by Buyer after closing (as defined in Section 263 of the Internal Revenue Code of 1986, as amended (the "Code")).

c. "Net Appreciation" shall mean the difference between the Adjusted Sales Price and the Initial Purchase Price. In computing Net Appreciation, fix-up or improvement expenses in connection with the sale of the Apartment, or any other or similar expenditures shall not be included in the Initial Purchase Price. By way of illustration, but not limitation, if the Adjusted Sales Price were $400,000.00 and the Initial Purchase Price were $300,000.00, the Net Appreciation would be $100,000.00.

d. "Shared Appreciation Interest" shall mean the product reached by multiplying the Net Appreciation by the Shared Appreciation Percentage, as set forth in the Shared Appreciation Schedule in Section 2 below. By way of illustration, but not by way of limitation, if the Buyer sells the Apartment within two and one-half (2-1/2) years following Closing, Seller's Shared Appreciation Percentage is eighty percent (80%). Thus, if the Adjusted Sales Price of the Apartment is $400,000.00 and the Initial Purchase Price was $300,000.00, then the Seller's Shared Appreciation Interest is $80,000.00 and the Buyer's Shared Appreciation Interest is $20,000.00.

e. "Shared Appreciation Term" shall mean that period of time commencing upon the date of recordation of the original transfer deed (the "Deed" conveying title from Seller to Buyer) until midnight of the day seven (7) years from said date.

f. "Transfer" shall include any transfer by way of sale, gift, exchange or otherwise (except a transfer or assignment of an interest in the Apartment as security for repayment of a debt), whether for fair and adequate consideration or not. A Transfer of the Apartment shall also be deemed to have taken place upon any of the following occurrences:

i) When Buyer sells or transfers the Apartment or any legal or beneficial right, title or ownership interest in the Apartment, including by way of an agreement of sale or lease with an option to purchase the Apartment;

ii) In the event Buyer is divested of title or any interest in the Apartment, in any manner, voluntarily or involuntarily, including a judicial or non-judicial foreclosure sale.

The following actions shall <u>not</u> be deemed a "Transfer" for shared appreciation purposes:

A. A transfer to the surviving joint tenant or tenant by the entirety by devise, through the laws of descent or by operation of law on the death of a joint tenant or a spouse;

B. A transfer by devise or through the laws of descent to a family member;

C. A transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the Buyer's spouse or reciprocal beneficiary, as defined under Hawaii law, becomes an owner of the Apartment; or

D. A transfer into an inter vivos trust in which the Buyer is and remains the primary beneficiary and the Buyer continues to occupy and use the Apartment; or

E. A transfer including a provision for Buyer to participate in any appreciation or gain on a subsequent transfer or sale of the Apartment.

In the event that a transfer pursuant to items i) through v) directly above occurs, the terms of this Agreement shall be binding upon the transferee and their successors, permitted assigns, heirs and legal representatives.

2. **BUYER'S AND SELLER'S SHARED APPRECIATION PERCENTAGE.** Buyer agrees to pay, without demand or notice, on the date of Transfer, Seller's Shared Appreciation Interest to be paid to Seller based on the Shared Appreciation Schedule below:

**Shared Appreciation Schedule**

| Years from Date of Closing to Date of Transfer | Shared Appreciation Percentage to be Paid to Buyer | Shared Appreciation Percentage to be Paid to Seller |
|---|---|---|
| 0 to less than 1 year | 0.00% | 100.0% |

| | | |
|---|---|---|
| 1 to less than 2 years | 10.0% | 90.0% |
| 2 to less than 3 years | 20.0% | 80.0% |
| 3 to less than 4 years | 35.0% | 65.0% |
| 4 to less than 5 years | 50.0% | 50.0% |
| 5 to less than 6 years | 80.0% | 20.0% |
| 6 to less than 7 years | 100.0% | 0.0% |

Nothing herein shall be construed as creating any partnership or agency relationship between the parties hereto.

3. **MORTGAGE PROTECTION**. The obligations under this Agreement are secured by a Mortgage, Security Agreement and Financing Statement; Fixture Filing of even date herewith (the "Mortgage"). Seller agrees that the Mortgage securing the obligations of Buyer under this Agreement shall be subordinate to the following:

a. The first mortgage, if any, which is being placed on the Apartment to enable the Buyer to finance the purchase of the Apartment ("First Mortgage");

b. Any mortgage in favor of a government entity;

c. Any mortgage recorded after the Mortgage, but only to the extent that such mortgage (in the aggregate with any prior recorded mortgages or other liens having priority over the Mortgage) secures an amount which is less than the Initial Purchase Price. Seller shall, upon any such Mortgagee's request, execute a Subordination Agreement in accordance with this Section.

Buyer promises and agrees to provide notice to Seller of the First Mortgage and to cause the holder of the First Mortgage to provide written notice to Seller of any default under the First Mortgage; provided further, however, if the First Mortgage is insured or held by FHA or FmHA, or guaranteed or held by Fannie Mae (FNMA) or Freddie Mac (FHLMC), the Buyer's failure to cause the holder of the First Mortgage to provide written notice to Seller of any default under the First Mortgage or any failure of the holder of the First Mortgage to provide such written notice shall not affect such holder's right under this Section.

Seller specifically subordinates any lien or contingent lien rights that that Seller may have under this Agreement and accompanying Mortgage to the lien of the First Mortgage. Any holder of the First Mortgage or any person who acquired legal title to the Apartment as a result of a foreclosure or a deed in lieu of foreclosure of the First Mortgage shall acquire legal title free of such lien or contingent lien rights that the Seller may have under this Agreement or accompanying Mortgage.

4. **NOTICE OF TRANSFER**. Buyer agrees to give Seller fourteen (14) calendar days advance prior written notice at the address set forth above of any intended Transfer from the date Buyer has reached an agreement or understanding for the Transfer of the Apartment, together with the specific terms of such Transfer. The Buyer shall pay the Seller's Shared Appreciation Interest on the date of such Transfer. If the Seller's Shared Appreciation Interest is not paid when due, interest on the Seller's Shared Appreciation Interest will accrue at the simple annual rate of twelve percent (12%) until paid. In addition, the Buyer will be entitled to reasonable attorney's fees and costs to enforce its rights hereunder.

5. **APPRAISAL**. In the event the fair market value must be determined by an appraisal or either party elects to determine the fair market value of the Apartment by appraisal, Seller shall select a panel of not less than three (3) appraisers, each of whom shall be licensed by the State of Hawaii as a residential real estate appraiser. The Buyer shall then have ten (10) calendar days from the receipt of the list to select an appraiser from the list. If the Buyer fails to select an appraiser within the ten (10) days, the Seller shall have the right to select an appraiser. The decision of the appraiser as to fair market value on the date of Transfer shall be final and binding on the parties. The fees of the appraiser shall be divided equally between the parties.

6. **TERMINATION**. The Seller's right to be paid a Shared Appreciation Interest will continue in full force and effect and will constitute a lien on the Apartment for the duration of the Shared Appreciation Term, subject to the provisions of Section 3 above, unless the following has been satisfied:

a. The Buyer has sold or transferred the Apartment; and

b. The Seller has been fully paid the Seller's Shared Appreciation and other amounts which the Buyer is obligated to pay Seller;

upon the occurrence of which Seller will sign and cause to be recorded a document which need only be signed by Seller and which acknowledges that the Buyer's obligation to pay the Seller's Shared Appreciation Interest has been fully satisfied and that this Agreement is being cancelled and the accompanying Mortgage is being released.

On the day immediately following the end of the Shared Appreciation Term the Buyer's obligation to pay the Seller's Shared Appreciation Interest shall automatically extinguish.

7. **DISPUTE RESOLUTION**. Any dispute by or between Seller and Buyer arising out of or incident to this Agreement shall be resolved in the following manner:

a. In the event of a dispute which the parties are unable to resolve between themselves, then, the parties shall agree:

(i) First, to participate in a mediation conducted by a mutually acceptable third party. Either, or both parties, may submit a list of possible mediators to the other party, from which list, or lists, the parties shall agree to a mediator. The mediator shall then convene a mediation wherein the parties shall attempt to resolve their differences. In the event the parties reach a successful conclusion, in whole or in part, the agreement thereby reached shall be reduced to writing by the mediator and the parties shall each sign it and it shall be binding upon the parties. Either party may enter the agreement with a court of competent jurisdiction for enforcement if necessary; or

(ii) Second, in the event mediation is unsuccessful or is not commenced within thirty days of the first request by a party, or is not completed within forty-five days of commencement, then to submit to arbitration conducted by the Dispute Prevention & Resolution, Inc., 1001 Bishop Street, Suite 1155, Honolulu, Hawaii 96813, modified as follows: (i) discovery shall be allowed in accordance with the Hawaii Revised Statutes for civil procedure; (ii) the prevailing side shall receive its reasonable attorneys' fees and expense of expert testimony. Damages shall be limited to actual damages and each party hereby irrevocably waives any right and claim to exemplary or punitive damages in any jurisdiction. The decision of the arbitrator(s) shall be final and binding as to all claims that were or could have been raised in the arbitration and may be enforced by appropriate action in a court of law and shall be subject to the appropriate provisions of the Hawaii Revised Statutes, as the same may be amended from time to time. Any dispute involving an amount greater than $25,000.00 shall be heard by a panel of three arbitrators, the decision of a majority of whom shall be final.

b. Any documents of assignment, lease or conveyance of any Apartment or other interest in the Project shall be deemed to incorporate those provisions for arbitration of disputes set forth in this Section, as if the same were fully set forth in any such document. Any person who is injured by reason of the fact that a dispute subject to the provisions of this arbitration provision is resolved other than by arbitration may recover as damages the cost and expense incurred by reason of the fact that the dispute was not submitted to arbitration for resolution.

c. Buyer acknowledges and agrees that this clause waives his/her right to pursue claims in a court of law, and the right to a jury trial. The arbitrator(s) shall include factual findings or legal reasoning. Your right to appeal is strictly limited.

8. **COUNTY OF KAUAI FIRST OPTION TO PURCHASE**. In a separate restriction, buyers of all apartments subject to this Agreement shall be subject to the Ordinance. If the County declines to exercise its rights under such Ordinance during the seven (7) year restriction period, Seller shall be entitled to a share of any appreciation from the resale of the Apartment. In the event there are any discrepancies between this Agreement and the Ordinance, the Ordinance shall control.

9. **GOVERNING LAW**. This Agreement shall be governed by the laws of the State of Hawaii.

10. **ASSIGNMENT**. Buyer shall not assign any of its rights or obligations under this Agreement without the prior written consent of Seller, which consent may be withheld in Seller's sole and absolute discretion. Seller may, at its sole discretion, assign its interest under this Agreement by an instrument in writing. No such assignment shall become effective unless accompanied by an assignment of Seller's interest in the Mortgage, duly filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

11. **ENTIRE AGREEMENT**. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements.

12. **COUNTERPARTS**. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

13. **SEVERABILITY**. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be thereby affected.

14. **SECTION HEADINGS**. Section headings are inserted only for convenience and reference and in no way define, limit, extend or describe the scope of intent of this Agreement or any provision hereof.

15. **NO PARTY DEEMED DRAFTER**. No party shall be deemed the drafter of this Agreement. If this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision hereof against any party as drafter.

16. **AMENDMENTS**. No amendment to this Agreement shall be effective unless evidenced by a writing executed and acknowledged by both parties hereto.

17. **NOTICE TO BUYERS**. THIS AGREEMENT PROVIDES THAT IF BUYER SELLS OR TRANSFERS THE APARTMENT WITHIN SEVEN (7) YEARS AFTER CLOSING, THE SELLER WILL BE ENTITLED TO BE PAID IMMEDIATELY A PERCENTAGE SHARE OF THE NET APPRECIATION IN THE APARTMENT. BUYER SHOULD CAREFULLY REVIEW THIS AGREEMENT TO DETERMINE WHEN A SALE OR TRANSFER OF THE APARTMENT HAS OR WILL BE DEEMED TO HAVE TAKEN PLACE. IF THE APARTMENT IS TRANSFERRED AND THE BUYER DOES NOT PAY THE SELLER'S SHARED APPRECIATION INTEREST AS SET FORTH HEREIN, THEN THE SELLER MAY TAKE LEGAL ACTION WHICH MAY RESULT IN THE FORECLOSURE SALE OF THE APARTMENT.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year first above written.

DIAMOND PACIFIC HOMES, LLC,
a Hawaii limited liability company

By_____
MATT DEAL
Its Managing Member

"Seller"

STATE OF _____

COUNTY OF _____

SS:

On this _____ day of _____, 20_____, before me appeared MATT DEAL, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

_____
Name: _____
Notary Public in and for said State
My commission expires: _____

_____

_____

"Buyer"

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this _____ day of _____, 20____, before me appeared _____, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

_____

Name: _____

Notary Public, State of Hawaii

My commission expires: _____

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this _____ day of _____, 20____, before me appeared _____, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

_____

Name: _____

Notary Public, State of Hawaii

My commission expires: _____

* * * * *

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS OF THE COUNTY'S FIRST OPTION TO PURCHASE AND SHARED APPRECIATION PROGRAMS. THE DETAILS IN THE AGREEMENTS ARE SUBJECT TO CHANGE PRIOR TO PURCHASER'S EXECUTION. WHILE A PURCHASER CAN RELY ON THE FOREGOING AS A GENERAL SUMMARY OF THE FIRST OPTION TO PURCHASE AND SHARED APPRECIATION PROGRAMS, PURCHASER MUST REFER TO THE PURCHASE CONTRACT, DEED AND AGREEMENTS REFERENCED HEREIN, AS MAY BE AMENDED FROM TIME TO TIME, TO DETERMINE PURCHASER'S ACTUAL RIGHTS REGARDING HIS/HER SPECIFIC APARTMENT AND OBLIGATIONS UNDER THESE ANTI-SPECULATION PROGRAMS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE AGREEMENT CONTAINED HEREIN, THE LANGUAGE IN THE AGREEMENTS WILL CONTROL.