

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer: Kapalua Bay, LLC
Business Address: 120 Kane Street, Kahului, Hawaii 96732
Project Name (*): KAPALUA BAY CONDOMINIUM
Address: 1 Bay Drive, Lahaina, Maui, Hawaii 96761

Registration No. 5900
Effective date: January 11, 2008
Expiration date: February 11, 2009

Preparation of this Report:

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

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

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

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

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

Type of Report:

- PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
SUPPLEMENTARY: (pink) This report updates information contained in the: Preliminary Report dated: Final Public Report dated: December 11, 2006
And: Supersedes all prior public reports. Must be read together with Final Public Report dated December 11, 2006

(*Exactly as named in the Declaration
This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at (808) 586-2643 to submit your request
FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104/0107

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

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

Summary of Changes from Earlier Public Reports:

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

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

[X] Changes made are as follows:

1. **FIRST AMENDMENT TO CONDOMINIUM DECLARATION** That certain First Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium ("First Amendment") dated November 3, 2006, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-208339. Such First Amendment reflects certain changes to the Project, including the following:
 - a. **COMMON EXPENSES.** The First Amendment clarified that Common Expenses include those costs necessary to maintain certain landscaped areas of the Bay Villas condominium project that are adjacent to the Project. It also clarifies that costs associated with the pool, Pool Bar, Pool Bar Grille and refuse may be allocated on the basis of occupancy and not necessarily Common Interests as the use of such areas and services may not be dependent upon apartment size.
 - b. **ELECTRICAL ROOM ACCESS EASEMENT.** An easement has been granted to Maui Land & Pineapple Company, Inc. ("MLP") to permit the transmission of electricity from that certain electrical room designated as room B112 in the Arrival Building of the Project to the Spa Parcel. The Association shall have the primary obligation to install, maintain and repair all equipment and machinery within room B112, including, without limitation, the switchgear and all such other machinery and equipment necessary to provide electrical service to the Spa Parcel. In no event shall such easement rights afford MLP or its guests, employees, consultants, contractors, licensees, successors and assigns, access to any other part of the Project, including, without limitation, the Common Elements, except those areas necessary for ingress to, and egress from, electrical room B112.
 - c. **EXHIBIT "B" TO DECLARATION.** Exhibit "B" to the Declaration was amended to reflect the substitution of Parking Stall No. 150S as a Limited Common Element appurtenant to Apartment No. 5603, to Parking Stall No. 113S. Accordingly, Apartment No. 5603 has as appurtenant Limited Common Elements, Parking Stall Nos. 149H and 113S.
 - d. **CONDOMINIUM MAP.** Sheets T4, T5, T6, 1.36, 1.40, 1.40a, 1.49, 1.50, 2.01, 2.02 and 3.11 of the Condominium Map were amended to reflect certain incidental changes to the layout of particular areas of the Project as detailed in the First Amendment, including, without limitation, the changes specifically discussed above.

A copy of such First Amendment and revised pages to the Condominium Map are available for review by Purchasers at the offices of the Developer and the Developer's sales agent upon request.

2. **SECOND AMENDMENT TO CONDOMINIUM DECLARATION.** That certain Second Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium ("Second Amendment") dated November 13, 2007, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2007-212730. Such Second Amendment reflects certain changes to the Project, including the following:
 - a. **CLARIFICATION OF CERTAIN LIMITED COMMON ELEMENT AREAS.** It has been clarified that the two (2) swimming pools adjacent to Building 6 of the Project are Limited Common Elements appurtenant to the General Store Commercial Apartment that is owned by the Developer. It is the intent of the Developer to allow use of such swimming pools exclusively to the owners of the Units in Building 6. Use of such pools by all Owners may be permitted in the future in the Developer's sole discretion, however, there is no guaranty that this will occur. It has been further clarified that Resort Apartment 1212 shall have the exclusive use of the landscaped yard area adjacent to such Apartment as a Limited Common Element.
 - b. **EXHIBIT "B" TO DECLARATION.** Exhibit "B" to the Declaration was amended to reflect the redesignation of parking stall assignments as to certain Apartments and to clarify optional floor plan layouts as to Resort Apartments 1101, 1201, 1301, 1401, 2101, 2201, 2301 and 2401. The redesignation of certain parking stall assignments has not reduced the number of stalls assigned to any Apartment.

- c. **CONDOMINIUM MAP.** Sheets T1, T2, T4, T6 1.01, 1.02, 1.29 through 1.35, 1.37, 1.38, 1.47, 1.48, 2.01, 2.02, 2.03, 2.04, 2.08 and 3.08 of the Condominium Map were amended to reflect certain incidental changes to the layout of particular areas of the Project as detailed in the Second Amendment, including, without limitation, the changes specifically discussed above. Also new sheet 1.21a has been added to the Condominium Map.

A copy of such Second Amendment and revised pages to the Condominium Map are available for review by Purchasers at the offices of the Developer and the Developer's sales agent upon request.

Special Notes

None

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

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

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

The Declaration for this condominium is:

<input type="checkbox"/>	Proposed		
<input checked="" type="checkbox"/>	Recorded -	Bureau of Conveyances:	Document No. <u>2006-083256</u>
			Book _____ Page _____
<input type="checkbox"/>	Filed -	Land Court:	Document No. _____

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

First Amendment to Condominium Property Regime of Kapalua Bay Condominium dated November 3, 2006, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-208339.

Second Amendment to Condominium Property Regime of Kapalua Bay Condominium dated November 13, 2007, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2007-212730.

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

The Condominium Map for this condominium project is:

<input type="checkbox"/>	Proposed		
<input checked="" type="checkbox"/>	Recorded -	Bureau of Conveyances Condo Map No. <u>4222</u>	
<input type="checkbox"/>	Filed -	Land Court Condo Map No. _____	

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

First Amendment to Condominium Property Regime of Kapalua Bay Condominium dated November 3, 2006, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-208339.

Second Amendment to Condominium Property Regime of Kapalua Bay Condominium dated November 13, 2007, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2007-212730.

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

The Bylaws for this condominium are:

<input type="checkbox"/>	Proposed		
<input checked="" type="checkbox"/>	Recorded -	Bureau of Conveyances:	Document No. <u>2006-083257</u>
			Book _____ Page _____
<input type="checkbox"/>	Filed -	Land Court:	Document No. _____

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

7. Parking Stalls:

Total Parking Stalls: 247

	<u>Regular</u>		<u>Compact</u>		<u>Accessible</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	_____	_____	_____	_____	_____	_____	_____
Guest	_____	_____	_____	_____	_____	_____	_____
<u>Unassigned</u>	<u>90</u>	<u>82</u>	<u>71</u>	<u>0</u>	<u>3</u>	<u>2</u>	<u>248</u>
Extra Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____						_____
Total Covered & Open	<u>172</u>		<u>71</u>		<u>5</u>		<u>248</u>

Each Resort Apartment sold as a whole unit shall have the exclusive use of two (2) parking stalls assigned to it as Limited Common Elements. Owners and users of all Resort Apartments sold as Club Units must park their vehicles using the valet service of the Project and may only self-park vehicles in the area designated as "Valet Parking" on the Condominium Map. All unassigned parking stalls located within or adjacent to Buildings 1, 2, 5 and 6 of the Project as shown on the Condominium Map shall be Limited Common Elements of the whole unit Resort Apartments that have been assigned parking, and shall be used on a non-exclusive basis by such whole unit Resort Apartment Owners and as parking for such whole unit Resort Apartment Owner's guests. There are also certain parking stalls that are appurtenant to the Commercial Apartments as Limited Common Elements as well as Public Parking stalls that shall remain Common Elements of the Project, as depicted on the Condominium Map.

Commercial parking garage permitted in condominium project.

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

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming Pool (excluding pools adjacent to Building 6) Storage Area Recreation Area

Laundry Areas Tennis Court Trash Chute/Enclosure(s)

Other: _____

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

There are no violations. Violations will not be cured.

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

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

Not Applicable

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

There are no limited common elements in this project.

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

described in Exhibit G. Note: The limited common elements shall be the sole responsibility of the owner(s) of the apartments to which such limited common element are appurtenant.

*Note: Land areas referred to herein are not legally subdivided lots.

as follows:

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

described in Exhibit E.

as follows:

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

Exhibit H describes the encumbrances against the title contained in the title report dated December 10, 2007 and issued by First American Title Company, Inc.

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

The Construction of the Project is anticipated to be completed in April of 2009, however, the Developer makes no guarantees in this regard. Accordingly, such completion date is subject to change and to any events of force majeure.

H. **Project Phases:**

The developer [] has [X] 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):

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: Any documents listed in Exhibit "H"; Special Management Area Use Permit dated December 19, 2005
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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. 5900 filed with the Real Estate Commission on January 31, 2006.

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

YELLOW paper stock

WHITE paper stock

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C. **Additional Information Not Covered Above**

1. **Officers and Directors of Developer:**

The names and addresses of the members of Kapalua Bay, LLC are as follows:

Sole Member of Kapalua Bay, LLC:	Kapalua Bay Holdings, LLC 120 Kane Street Kahului, Hawaii 96732
Managing Member of Kapalua Bay Holdings, LLC:	MLP KB Partner LLC 120 Kane Street Kahului, Hawaii 96732
Managing Member of MLP KB Partner LLC.:	Maui Land & Pineapple Company, Inc. 120 Kane Street Kahului, Hawaii 96732
Vice President of Maui Land & Pineapple Company, Inc.:	Ryan Churchill 120 Kane Street Kahului, Hawaii 96732

2. **Project in Flood Zone.** Buyers should be aware that according to Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) Community Panel No. 1500030138 B dated June 1, 1981, all proposed building structures within the Project are located within Zone C (an area of minimal flooding) with the exception of the Cliff House that is within Zone A4 (an area affected by a 100-year flood event with base flood elevation +18.0 feet msl.). Buyers should consult with their insurance agents and mortgagees, if any, for insurance requirements.
3. **SMA and Other Permits.** Buyers should be further aware that the Project falls within the shoreline set back area and shoreline management area, and as such, construction of improvements within such areas may require the approval of the County of Maui and/or other governmental agencies or departments. The Project is currently subject to Special Management Area Use Permit (SM1 2005/0004); Step 1 and Step 2 Planned Development Applications (PD1 2005/0003) (PD2 2005/0003); and Shoreline Setback Variance (SSV 2005/0002). Under the terms and conditions of the Special Management Area Use Permit, the developer is required to provide twenty (20) paved parking stalls to provide public parking for purposes of shoreline access. Such parking stalls are to be located on the Spa Parcel that is adjacent to, but not a part of, the Project. Accordingly, the responsibility for maintaining such parking stalls and any liability pertaining thereto shall not be the responsibility of the condominium association. For further details, refer to the Special Management Area Use Permit dated December 19, 2005.
4. **Resort Apartment 1205.** The landscaped yard area appurtenant to this Resort Apartment shall be more particularly described in the conveyance instrument to the first purchaser of such apartment or in a further amendment to the Condominium Map for the Project.

- 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.

KAPALUA BAY, LLC,
a Delaware limited liability company

By



RYAN CHURCHILL

Its PRESIDENT

November 13, 2007

Date

Distribution:

Department of Finance, County of Maui
Planning Department, County of Maui

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

EXHIBIT "E"

**APARTMENT NUMBER, APARTMENT TYPE, NUMBER OF BEDROOMS AND BATHROOMS,
BUILDING DESIGNATION, APPROXIMATE NET SQUARE FOOTAGE, APPROXIMATE BALCONY
AREA, COMMON INTERESTS AND PARKING STALL ASSIGNMENTS**

Apartment Number	Apartment Type	Number of Bedrooms/ Bathrooms/ Study*	Building Designation	Apprx. Net Square Footage**	Apprx. Balcony Area	Common Interests***	Parking Stall Assignments****
1101	R3-C	4/4.5/1	Building 1	4055	948	1.038436%	023S and 024S
1102	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	042S and 041S
1103	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	048H and 047S
1201	R3-C	4/4.5/1	Building 1	4055	948	1.038436%	021S and 022S
1202	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	025S and 026S
1203	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	013S and 014S
1204	R3-A2	3/3.5	Building 1	2789	661	0.714229%	044S and 043S
1205	R3-A	3/3.5	Building 1	2789	628	0.714229%	046S and 045S
1301	R3-C	4/4.5/1	Building 1	4055	948	1.038436%	019S and 020S
1302	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	029S and 030S
1303	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	009S and 010S
1304	R3-A2	3/3.5	Building 1	2789	661	0.714229%	040S and 039S
1305	R3-A	3/3.5	Building 1	2789	628	0.714229%	015S and 016S
1401	R3-C	4/4.5/1	Building 1	4055	948	1.038436%	017S and 018S
1402	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	031S and 032S
1403	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	001S and 002S
1404	R3-A2	3/3.5	Building 1	2789	661	0.714229%	027S and 028S
1405	R3-A	3/3.5	Building 1	2789	628	0.714229%	011S and 012S
1502	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	035S and 036S
1503	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	005S and 006H
1504	R3-A2	3/3.5	Building 1	2789	661	0.714229%	033S and 034S
1505	R3-A	3/3.5	Building 1	2789	628	0.714229%	007S and 008S
1604	R3-A2	3/3.5	Building 1	2789	661	0.714229%	037S and 038S
1605	R3-A	3/3.5	Building 1	2789	628	0.714229%	003S and 004S
2101	R3-C	4/4.5/1	Building 2	4055	948	1.038436%	099S and 083S
2103	R3-B	3/3.5/1	Building 2	2904	551	0.743679%	105S and 106S
2201	R3-C	4/4.5/1	Building 2	4055	948	1.038436%	098S and 082S
2202	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	073S and 072S
2203	R3-B	3/3.5/1	Building 2	2904	628	0.743679%	103S and 087H
2204	R3-A1	3/3.5	Building 2	2789	613	0.714229%	071S and 070S
2206	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	107S and 108S
2208	R3-A	3/3.5	Building 2	2789	628	0.714229%	104S and 069S
2301	R3-C	4/4.5/1	Building 2	4055	948	1.038436%	097S and 081S
2302	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	061H and 050H
2303	R3-B	3/3.5/1	Building 2	2904	628	0.743679%	102S and 086S
2304	R3-A1	3/3.5/1	Building 2	2789	613	0.714229%	068S and 057S
2306	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	109S and 110S
2308	R3-A	3/3.5	Building 2	2789	628	0.714229%	074S and 075S
2401	R3-C	4/4.5/1	Building 2	4055	948	1.038436%	096S and 080S
2402	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	062S and 051S
2403	R3-B	3/3.5/1	Building 2	2904	628	0.743679%	101S and 085S
2404	R3-A1	3/3.5	Building 2	2789	613	0.714229%	067S and 056C
2406	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	077S and 076S

Apartment Number	Apartment Type	Number of Bedrooms/ Bathrooms/ Study*	Building Designation	Apprx. Net Square Footage**	Apprx. Balcony Area	Common Interests***	Parking Stall Assignments****
2408	R3-A	3/3.5	Building 2	2789	628	0.714229%	079S and 078S
2502	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	063S and 052S
2503	R3-B	3/3.5/1	Building 2	2904	628	0.743679%	100S and 084S
2504	R3-A1	3/3.5	Building 2	2789	613	0.714229%	066S and 055C
2506	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	088C and 095S
2508	R3-A	3/3.5	Building 2	2789	628	0.714229%	089C and 094S
2602	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	064S and 053C
2604	R3-A1	3/3.5	Building 2	2789	613	0.714229%	065S and 054C
2606	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	090C and 093S
2608	R3-A	3/3.5	Building 2	2789	628	0.714229%	091C and 092S
2704	R3-A1	3/3.5	Building 2	2789	613	0.714229%	058S and 059H
2706	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	111S and 112S
3101	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3102	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3201	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3202	C3-B-ADA	3/3.5	Building 3	2019	553	0.517041%	---
3203	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3204	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3205	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3301	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3302	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3303	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3304	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3305	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3401	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3402	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3403	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3404	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3405	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3406	C3-A1	3/3.5	Building 3	2065	461	0.528821%	---
3501	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3502	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3503	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3504	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3505	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3506	C3-A1	3/3.5	Building 3	2065	461	0.528821%	---
3602	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3603	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3604	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3605	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3606	C3-A1	3/3.5	Building 3	2065	461	0.528821%	---
3704	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3705	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
4101	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4102	C2-A-ADA	2/2.5	Building 4	1774	554	0.454300%	---
4201	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4202	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4203	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4204	C2-A	2/2.5	Building 4	1774	554	0.454300%	---

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Apartment Number	Apartment Type	Number of Bedrooms/ Bathrooms/ Study*	Building Designation	Apprx. Net Square Footage**	Apprx. Balcony Area	Common Interests***	Parking Stall Assignments****
4205	C3-C-ADA	3/3.5	Building 4	2087	354	0.534455%	---
4301	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4302	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4303	C3-A-ADA	3/3.5	Building 4	2065	461	0.528821%	---
4304	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4305	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
4401	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4402	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4403	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4404	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4405	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
4406	C3-A1	3/3.5	Building 4	2065	461	0.528821%	---
4501	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4502	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4503	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4504	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4505	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
4506	C3-A1	3/3.5	Building 4	2065	461	0.528821%	---
4602	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4603	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4604	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4605	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
4606	C3-A1	3/3.5	Building 4	2065	461	0.528821%	---
4704	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4705	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
5101	R3-B	3/3.5/1	Building 5	2904	551	0.743679%	120S and 121S
5102	R3-A1	3/3.5	Building 5	2789	613	0.714229%	134S and 135S
5103	R3-B1	3/3.5/1	Building 5	2904	551	0.743679%	140C and 141C
5104	R3-A	3/3.5	Building 5	2789	551	0.714229%	146S and 147S
5201	R3-B	3/3.5/1	Building 5	2904	628	0.743679%	132S and 133S
5202	R3-A1	3/3.5	Building 5	2789	613	0.714229%	130S and 131S
5203	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	138C and 139C
5204	R3-A	3/3.5	Building 5	2789	628	0.714229%	144S and 145S
5301	R3-B	3/3.5/1	Building 5	2904	628	0.743679%	122S and 123S
5302	R3-A1	3/3.5	Building 5	2789	613	0.714229%	128S and 129S
5303	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	136S and 137S
5304	R3-A	3/3.5	Building 5	2789	628	0.714229%	142S and 143S
5401	R3-B	3/3.5/1	Building 5	2904	628	0.743679%	124S and 125S
5402	R3-A1	3/3.5	Building 5	2789	613	0.714229%	126S and 127S
5403	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	113S and 156S
5404	R3-A	3/3.5	Building 5	2789	628	0.714229%	155S and 154S
5501	R3-B	3/3.5/1	Building 5	2904	628	0.743679%	118S and 119S
5502	R3-A1	3/3.5	Building 5	2789	613	0.714229%	114S and 115S
5503	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	153S and 152C
5504	R3-A	3/3.5	Building 5	2789	628	0.714229%	151S and 150S
5602	R3-A1	3/3.5	Building 5	2789	613	0.714229%	116S and 117S
5603	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	149S and 148S
6101	R3-B	3/3.5/1	Building 6	2904	628	0.743679%	161S and 168S
6102	R3-A	3/3.5	Building 6	2789	628	0.714229%	169S and 170S

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Apartment Number	Apartment Type	Number of Bedrooms/Bathrooms/Study*	Building Designation	Apprx. Net Square Footage**	Apprx. Balcony Area	Common Interests***	Parking Stall Assignments****
6201	R3-B-ADA	3/3.5/1	Building 6	2904	628	0.743679%	171S and 172S
6202	R3-A	3/3.5	Building 6	2789	628	0.714229%	173S and 174S
6301	R3-B	3/3.5/1	Building 6	2904	628	0.743679%	162S and 163S
6302	R3-A	3/3.5	Building 6	2789	628	0.714229%	164S and 165S
6401	R3-B	3/3.5/1	Building 6	2904	628	0.743679%	166S and 167S
Beach Club CA	Commercial	NA	Building 1	6108	NA	1.564205%	---
General Store CA	Commercial	NA	Arrival Building	923	NA	0.236369%	---
Model Unit CA	Commercial	NA	Free Standing	2526	NA	0.646878%	---
Resale Space CA	Commercial	NA	Arrival Building	89	NA	0.022792%	---
Sales Gallery CA	Commercial	NA	Free Standing	8946	NA	2.290962%	---
Total				390491	84031	100.000000%	

* Resort Apartments 1101, 1201, 1301, 1401, 2101, 2201, 2301 and 2401 have a fourth bedroom indicated above that may be alternatively used as a media room. In the event that such fourth bedroom in any of these Apartments is converted to a media room, the number of bathrooms will remain unchanged.

** The approximate net square footage of each apartment as set forth above is measured from the interior surface of the apartment perimeter and party walls and includes all of the interior walls, columns, chase spaces and partitions within its perimeter walls. The areas shown are approximate only, and the Developer makes no representations or warranties whatsoever as to the area of any particular apartment. The areas for the balconies are computed from the outside surface of the apartment unit walls or exterior glass walls to the outside edge of the balcony structure.

*** The Common Interest for each Apartment was assigned by the Developer taking into account the net interior square footage ("net area") that each Apartment bears to the aggregate net area of all Apartments in the Project, however, the sum of .00002% was added to the Common Interest for the Beach Club Commercial Apartment to permit the total of the Common Interests to equal one hundred percent (100%).

**** Each Resort Apartment sold as a whole unit shall have the exclusive use of two (2) parking stalls assigned to it as Limited Common Elements. Owners and users of all Resort Apartments sold as Club Units must park their vehicles using the valet service of the Project and may only self-park vehicles in the area designated as "Valet Parking" on the Condominium Map. All unassigned parking stalls located within or adjacent to Buildings 1, 2, 5 and 6 of the Project as shown on the Condominium Map shall be Limited Common Elements of the whole unit Resort Apartments assigned parking above, and shall be used on a non-exclusive basis by such whole unit Resort Apartment Owners and as parking for such whole unit Resort Apartment Owners' guests. There are also certain parking stalls that are appurtenant to the Commercial Apartments as Limited Common Elements as well as Public Parking stalls that shall remain Common Elements of the Project, as depicted on the Condominium Map.

END OF EXHIBIT "E"

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EXHIBIT "G"

LIMITED COMMON ELEMENTS

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, and if there is more than one Apartment to which the Limited Common Element shall be appurtenant, then in proportion to the Common Interest appurtenant to each of the respective Apartments, unless a different method is adopted pursuant to Article IX of this Declaration. Limited Common Elements which are appurtenant to more than one Apartment shall be managed and maintained by the Managing Agent on behalf of the Owners of such Apartments. In any event that a dispute shall arise between Owners of Apartments to which a particular Limited Common Element shall be appurtenant with respect to the management and/or maintenance thereof, such dispute shall be resolved by the Managing Agent, which shall be the sole arbiter with respect to such matters. All of the Owners of Commercial Apartments to which a Limited Common Element is appurtenant, may build upon and/or alter any such Limited Common Element, may change the use of such Limited Common Element, may lease any Limited Common Element area, and, in the event that any revenues are generated from such Limited Common Element or improvements thereon or uses thereof, the Owner or Owners of the Commercial Apartment or Commercial Apartments to which such Limited Common Element is appurtenant shall be entitled to such revenues, and no other Owner shall have any right thereto.

1. **THE RESORT APARTMENTS.** The Resort Apartments shall have appurtenant thereto, as Limited Common Elements:

- a. All public areas of each Building in which a Resort Apartment shall exist, including hallways, stairwells, and housekeeping and laundry closets.
- b. The Building Structure of each Building in which a Resort Apartment is located.
- c. The balcony areas, if any, adjacent to specific Resort Apartments, as depicted on the Condominium Map and identified in Exhibit "B" attached hereto.
- d. All areas designated as Resort Apartment Limited Common Elements on the Condominium Map.
- e. Parking stalls, if any, identified in Exhibit "B" attached hereto.
- f. Any area identified on the Condominium Map as a "Resort Apartment Limited Common Element" even if not otherwise described in the foregoing narratives "a" through "e".

2. **BEACH CLUB COMMERCIAL APARTMENT.** The Beach Club Commercial Apartment, which is created with the intent that business be conducted in it, shall have appurtenant thereto, as Limited Common Elements, the following areas and such other areas as may be depicted on the Condominium Map as being "Commercial Apartment Limited Common Elements."

- a. The Building Structure of Building 1 (which is also a Limited Common Element appurtenant to Resort Apartments located in Building 1).
- b. All swimming pool areas immediately adjacent to Beach Club Commercial Apartment.

c. All landscaped, waterscaped and outdoor walkways and paved areas, whether open or covered, identified as Commercial Limited Common Elements on the Condominium Map or in this Declaration.

d. The Beach Shack depicted on the Condominium Map.

e. Any area identified on the Condominium Map as a Commercial Limited Common Element, even if not otherwise described in the foregoing narratives "a" through "d."

3. **SALES GALLERY COMMERCIAL APARTMENT.** The Sales Gallery Commercial Apartment, which is created with the intent that business be conducted in it, shall have appurtenant thereto, as Limited Common Elements, the areas immediately adjacent thereto and identified as Commercial Limited Common Element area on the Condominium Map.

4. **MODEL UNIT COMMERCIAL APARTMENT.** The Model Unit Commercial Apartment, which is created with the intent that business be conducted in it, shall have appurtenant thereto, as Limited Common Elements, the areas immediately adjacent thereto and identified as Commercial Limited Common Element area on the Condominium Map.

5. **GENERAL STORE COMMERCIAL APARTMENT.** The General Store Commercial Apartment, which is created with the intent that business be conducted in it, shall have appurtenant thereto, as Limited Common Elements, the two (2) Pool areas adjacent to Building 6 as depicted on the Condominium Map.

6. **RESORT APARTMENT 1205.** Resort Apartment 1205, shall have appurtenant thereto, as a Limited Common Element, the landscaped yard area adjacent to such Apartment as depicted on the Condominium Map."

END OF EXHIBIT "G"

EXHIBIT "H"

ENCUMBRANCES AGAINST TITLE

1. AS TO ITEM ONE (HOTEL PARCEL) ONLY (Lot A-4-A-1 described more particularly in Exhibit "A" to the Declaration):

- a. Real Property taxes which may be due and owing. Reference is made to the Real Property Tax Office, County of Maui.
- b. Title to all mineral and metallic mines reserved to the State of Hawaii.
- c. Shoreline setback lines as they may be established by the State Land Use Commission or by the various Counties pursuant to the Hawaii Revised Statutes.
- d. Designation of Easements "E-4" (20 feet wide) and "E-3-B" for Roadway purposes, shown on the survey plan (Certificate Map for "Kapalua Bay Hotel") prepared by George F. Newcomber, Registered Professional Land Surveyor, dated June 6, 1990.

(The portions of the foregoing easements that affect the land herein described are designated as Easements E-4-A, E-3-B-3 and E-3-B-4, as shown on the Kapalua Development (Large-Lot) Subdivision Map, dated September 2, 1999, and as shown on the ALTA/ACSM Land Title Survey dated April 10, 11, 13, 14 and May 12 and 15, 2006, last revised July 13, 2006, both maps prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.)

- e. A Grant of Easement dated May 7, 1976 for electrical and utility purposes, in favor of Maui Electric Company, Limited, and Hawaiian Telephone Company, now Hawaiian Telcom, Inc., recorded at said Bureau in Book 11443 at Page 479.

The foregoing was amended by instruments dated August 5, 1981, recorded at said Bureau in Book 16030 at Page 319, and dated August 21, 1985 recorded at said Bureau in Book 18998 at Page 100.

(By instrument dated August 21, 1985, recorded at said Bureau in Book 18998 at Page 100, the easements affecting a portion of the land herein described have been designated as Easements "U-3" and "U-5")

- f. Easement Grant and Cancellation dated July 20, 1978 for perpetual nonexclusive easements for Road access purposes over portions of the land described herein, said easements being designated as Easements "E-3-B", containing an area of 23,927 square feet, more or less, and easement "E-3-D", containing an area of 396 square feet, more or less, in favor of United States of America, recorded at said Bureau in Book 13033 at Page 766.

Subordination Agreement and Consent dated May 3, 1978, recorded at said Bureau in Book 13034 at Page 1, that certain easement granted by instrument recorded at said Bureau in Book 11443 at Page 479, was subordinated to said above easements "E-3-B" and "E-3-D".

(The portions of the foregoing easements that affect the land herein described are designated as Easements E-3-B-3, E-3-B-4 and Easement E-3-D, as shown on the Kapalua Development (Large-Lot) Subdivision Map, dated September 2, 1999, and as shown on the ALTA/ACSM Land Title Survey dated April 10, 11, 13, 14 and May 12 and 15, 2006, last revised July 12, 2006, both maps prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.)

- g. The terms and provisions contained in the Private Water System Agreement dated November 20, 1987 made by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation ("Owner"), The KBH Company, a California limited partnership, "Developer", and the County of Maui and its Department of Water Supply, "County", recorded at said Bureau in Book 21596 at Page 691.
- h. Footpath over the Northeasterly corner of the subject parcel which is used by the general public to get to and from the public beach, as noted on the survey map prepared by Bruce R. Lee, Registered Professional Land Surveyor, with Newcomber - Lee Land Surveyors, Inc., dated May 6, 2004, revised June 22, 2004.
- i. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515-6 of the Hawaii Revised Statutes, as contained in the Warranty Deed with Reservations and Covenants recorded August 31, 2004 at said Bureau as Document No. 2004-178884 (excluding the reservation of an "exclusive easement in gross to use, maintain, repair, renovate and replace the existing structures within the shoreline setback on the Property commonly referred to as the "Cliff House", together with a right of vehicular and pedestrian access to and from the "Cliff House" in locations acceptable to Grantee, terminated by that certain Termination of Warranty Deed Reservations recorded May 2, 2006 at said Bureau as Document No. as Document No. 2006-082347)
- j. Grant of Easement for Access Purposes for a perpetual non-exclusive easement for pedestrian and vehicular access to and from Honoapiilani Highway to the "Spa Parcel" (TMK (2) 4-2-004-027) over Easement A-4, in favor of Maui Land & Pineapple Company, Inc., a Hawaii corporation, recorded on May 2, 2006, recorded at said Bureau as Document No. 2006-082345.
- k. Grant of Easement for Pedestrian Access Purposes for a perpetual non-exclusive easement for pedestrian access to and from the "Spa Parcel" (TMK (2) 4-2-004-027) and the shoreline over Easement A-5, in favor of Maui Land & Pineapple Company, Inc., a Hawaii corporation, recorded on May 2, 2006, recorded at said Bureau as Document No. 2006-082346.

2. AS TO ITEM TWO (PARKING PARCEL) ONLY (Lot A-5-A-1 described more particularly in Exhibit "A" to Declaration):

- a. Real Property taxes which may be due and owing. Reference is made to the Real Property Tax Office, County of Maui.
- b. Title to all mineral and metallic mines reserved to the State of Hawaii.
- c. Easements as disclosed by Declaration of Horizontal Property Regime Bay Villas dated January 14, 1977 for ingress and egress purposes over and across Easement "E-4", containing an area of 9,951 square feet, more or less, and Easement "E-5", containing an area of 8 square feet, more or less, in favor of Lot A-6 (Bay Villas Condominium Project), recorded at said Bureau in Book 11975 at Page 242.

(The portion of the foregoing easements that affect the land herein described are designated as Easements E-4-B, as shown on the Kapalua Development (Large-Lot) Subdivision Map, and as shown on the ALTA/ACSM Land Title Survey dated April 10, 11, 12, 13, 14 and 15, 2006, last revised July 13, 2006, both maps prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.)

- d. Restriction of vehicular access into and from Lower Honoapiilani Road, as shown on the Kapalua Development (Large-Lot) Subdivision Map, dated September 2, 1999, prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.
 - e. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515-6 of the Hawaii Revised Statutes, as contained in the Warranty Deed with Reservations and Covenants recorded August 31, 2004 at said Bureau as Document No. 2004-178885.
3. AS TO ITEMS ONE (HOTEL PARCEL) AND TWO (PARKING PARCEL) (Lots A-4-A-1 and A-5-A-1):
- a. Grant of Easements for Shoreline Access and Recreational Use for a perpetual non-exclusive easement for pedestrian access over Easement A-1 and Easement A-2, in favor of Kapalua Resort Association, a nonprofit corporation, recorded on May 2, 2006 at said Bureau as Document No. 2006-082343.
 - b. Grant of Easement for Cliff House Access and for Recreational Use for perpetual easements to use the Cliff House for Permitted Cliff House Uses, in favor of Maui Land & Pineapple Company, Inc., a Hawaii corporation, recorded on May 2, 2006 at said Bureau as Document No. 2006-082344.
 - c. Grant of Easement for Waste Treatment Purposes for a sewage disposal system over Easement S-1 and Easement S-2, in favor of Kapalua Waste Treatment Company, Ltd., a Hawaii corporation, recorded May on 2, 2006 at said Bureau as Document No. 2006-082389.
 - d. Grant of Easements for Water Utility Purposes over Easement W-1 and W-2, in favor of Kapalua Water Company, Ltd., a Hawaii corporation, recorded on May 2, 2006 at said Bureau as Document No. 2006-082390.
 - e. Kapalua Bay Condominium Map No. 4222.
 - f. The terms and provisions contained in or incorporated by reference in the Declaration of Condominium Property Regime of Kapalua Bay Condominium, as may be amended. Said Declaration was recorded on May 3, 2006, at said Bureau as Document No. 2006-083256

The foregoing Declaration was amended by that certain instrument, recorded at said Bureau on November 15, 2006 as Document No. 2006-208339, and by that certain instrument recorded at said Bureau on December 10, 2007 as Document No. 2007-212730.
 - g. The terms and provisions contained in or incorporated by reference in the Bylaws of the Association of Apartment Owners of Kapalua Bay Condominium, as may be amended. Said Declaration was recorded on May 3, 2006, at said Bureau as Document No. 2006-083257.
 - h. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in The Kapalua Bay Vacation Ownership Project Declaration of Covenants, Conditions and Restrictions recorded June 19, 2006 at said Bureau as Document No. 2006-112198.

- i. The terms and provisions contained in the Notice of Initiation Fee recorded July 18, 2006 at said Bureau as Document No. 2006-131432.
- j. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515-6 of the Hawaii Revised Statutes, as contained in the Declaration of Covenants, Conditions and Restrictions with Limitations on Use (Kapalua Bay Condominium) recorded November 15, 2006 at said Bureau as Document No. 2006-208340.

4. AS TO ITEM THREE (THE SHOPS AT KAPALUA PARCEL):

- a. Real Property taxes which may be due and owing. Reference is made to the Real Property Tax Office, County of Maui.
- b. Title to all mineral and metallic mines reserved to the State of Hawaii.
- c. Grant of Easement dated May 7, 1976 for utility and incidental purposes, in favor of Maui Electric Company, Limited, and Hawaiian Telephone Company, now known as Hawaiian Telcom, Inc. recorded as Book 11443 at Page 479.

The foregoing was amended by those certain instruments dated August 5, 1981, recorded at said Bureau in Book 16030 at Page 319 and dated August 21, 1985, recorded at said Bureau in Book 18998 at Page 100.

(By instrument dated August 21, 2985, recorded at said Bureau in Book 18998 at Page 100, the easements affecting a portion of the land herein described have been designated as Easements "U-1", "U-2" and "U-4"

- d. The terms and provisions contained in the Agreement dated January 3, 1980, made by and between the County of Maui, Department of Water Supply and Kapalua Land Company, Ltd., recorded at said Bureau in Book 14491 at Page 112.
- e. The following easements, as shown on the survey map prepared by Reed M. Ariyoshi, dated January 14, 1999, revised on December 14, 1999, and as shown on the ALTA/ACSM Land Title Survey dated April 10, 11, 13, 14 and May 12 and 15, 2006, last revised July 13, 2006, both maps prepared by Reed M. Ariyoshi, Licensed Professional Land Survey Certificate No. 6597, but which have not been granted:
 - i. Easement "E-3-B-1"
 - ii. Easement "E-3-B-2"
- f. Limited restriction of vehicular access into and from Lower Honoapiilani Road, as shown on the Kapalua Development (Large-Lot) subdivision Map, dated September 2, 1999, prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.
- g. An unrecorded lease dated August 31, 2004, executed by Maui Land & Pineapple Company, Inc., a Hawaii corporation, as Lessor, and Kapalua Bay, LLC, a Delaware limited liability company, as Lessee, for a term set forth therein, as disclosed by a Short Form of Ground Lease (The Shops at Kapalua), recorded August 31, 2004, recorded at said Bureau as Document No. 2004-178886, as amended by that certain Ground Lessor Consent, Estoppel Certificate and Amendment dated July 14, 2005, recorded on July 14, 2006 at said Bureau as Document No. 2006-129744.

5. AS TO APARTMENTS ONE TWO AND THREE:

- a. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515-6 of the Hawaii Revised Statutes, as contained in the Declaration of Covenants and Restrictions dated December 29, 1976 recorded at said Bureau in Book 11922 at Page 26.

The foregoing was amended and/or supplemented by instruments recorded at said Bureau in Book 19005 at Page 629, in Book 12291 at Page 406, in Book 13502 at Page 442 and in Book 13796 at Page 741.

Said Declaration was amended and Restated by instrument recorded at said Bureau in Book 21185 at Page 173.

The foregoing amended and restated Declaration was amended and or supplemented by instruments recorded at said Bureau in Book 24012 at Page 17, as Document No. 90-049427, as Document No. 90-164621, as Document No. 91-067724, as Document No. 99-160407 and as Document No 2007-109432.

- b. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515-6 of the Hawaii Revised Statutes, as contained in the Declaration of Covenants, Conditions and Restrictions with Authorization of Time Share and Transient Vacation Rentals recorded August 31, 2004 at said Bureau as Document No. 2004-178883.
- c. The matters shown on the ALTA/ACSM Land Title Survey dated April 10, 11, 13, 14 and May 12 and 15, 2006, last revised July 13, 2006, prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597, to wit:
- i. Restriction of vehicular access, except where permitted, along Lower Honoapiilani Road.
 - ii. Existing chainlink fence (ownership unknown) encroached into TMK (2) 4-2-004-028 along the northerly boundary.
 - iii. Existing CRM wall encroaches into TMK (2) 4-2-004-028 along the easterly boundary.
 - iv. Existing guardrail and a concrete sidewalk that encroaches into TMK (4) 4-2-004-027 along easterly boundary and a CRM wall that encroaches into the adjoining roadway.
- d. A Mortgage to secure an original principal indebtedness of \$370,000,000.00, and any other amounts or obligations secured thereby.
Dated: July 14, 2006
Mortgagor: Kapalua Bay, LLC, a Delaware limited liability company
Mortgagee: Lehman Brothers Holdings Inc., a Delaware corporation
Recorded July 14, 2006 at said Bureau as Document No. 2006-129745

The foregoing Mortgage was amended by First Omnibus Amendment to Recorded Construction Loan Documents recorded February 7, 2007, recorded at said Bureau as Document No. 2007-023743.

- e. The Assignment of Leases and Rents in favor of Lehman Brothers Holdings Inc., a Delaware corporation, as additional security for the payment of the indebtedness in the amount of \$370,000,000.00, which was recorded July 14, 2006 at said Bureau as Document No. 2006-129746
- f. A Financing Statement:
Debtor: Kapalua Bay, LLC
Secured Party: Lehman Brothers Holdings Inc.
Recorded July 14, 2006 at said Bureau as Document No. 2006-129747
- g. A Financing Statement:
Debtor: Kapalua Bay, LLC
Secured Party: Lehman Brothers Holdings Inc.
Recorded July 14, 2006 at said Bureau as Document No. 2006-129748
- h. Rights of tenants, as tenants only, under unrecorded leases and/or rental agreements.

END OF EXHIBIT "H"

EXHIBIT "I"

BUDGETS

**ASSOCIATION OF APARTMENT OWNERS OF KAPALUA BAY
2008 CONDOMINIUM BUDGET (a)
(146 Apartments and 5 Commercial Units)**

	<u>Annual Total</u>	<u>Resort Club Apartments (62)</u>	<u>Resort Residential Apartments (56)</u>	<u>Resort ER Apartments (28)</u>	<u>Beach Club Commercial Unit</u>	<u>Sales Gallery Commercial Unit</u>	<u>General Store Commercial Unit</u>	<u>Resales Office Commercial Unit</u>	<u>Model Commercial Unit</u>
EXPENSES									
Accounting-Direct	\$ 9,141	\$ -	\$ 6,094	\$ 3,047	\$ -	\$ -	\$ -	\$ -	\$ -
Accounting-Shared	113,290	48,109	43,454	21,727	-	-	-	-	-
Activities	193,919	115,606	26,104	52,209	-	-	-	-	-
Administration-Direct	116,426	-	15,542	100,884	-	-	-	-	-
Administration-Shared	127,581	54,178	48,936	24,467	-	-	-	-	-
Audit Fee	16,463	6,800	6,142	3,071	110	208	55	11	66
Billing & Collections	837	-	837	-	-	-	-	-	-
Board of Directors	6,405	2,720	2,456	1,229	-	-	-	-	-
Cable Television	13,402	-	-	13,402	-	-	-	-	-
Concierge	1,345,609	914,390	-	431,219	-	-	-	-	-
Contingency	118,482	50,917	18,693	48,028	178	432	80	11	143
Electricity	207,276	85,617	77,331	38,666	1,381	2,624	691	138	828
Electricity - Units	669,103	431,406	-	237,697	-	-	-	-	-
Fees - Ancillary	350,303	327,924	74,050	148,099	-	-	-	-	-
Fees - Community Association	103,752	44,059	39,795	19,898	-	-	-	-	-
Fees - Golf	1,296,326	794,192	143,467	358,667	-	-	-	-	-
Front Desk	293,443	175,920	38,075	79,448	-	-	-	-	-
High Speed Internet	35,493	23,826	23,802	11,657	-	-	-	-	-
Housekeeping-Shared	63,798	26,352	-	11,901	425	808	212	43	266
Housekeeping-Direct	836,174	-	-	836,174	-	-	-	-	-
Human Resources-Direct	70,584	-	70,584	-	-	-	-	-	-
Human Resources-Shared	39,922	16,953	15,313	7,656	-	-	-	-	-
Income Tax	9,906	4,093	3,696	1,848	66	125	33	6	30
Insurance	796,448	272,715	340,543	159,803	4,541	12,534	1,893	183	4,236
Landscaping	307,548	130,603	117,963	58,982	-	-	-	-	-
Loss Prevention-Direct	53,870	-	53,870	-	-	-	-	-	-
Loss Prevention-Shared	449,686	185,746	167,771	83,895	2,996	5,692	1,498	300	1,786
Maintenance-Direct	202,256	-	-	202,256	-	-	-	-	-
Maintenance-Shared	458,554	157,016	196,068	92,007	2,614	7,216	1,090	105	2,436
Management Fee	1,087,891	467,511	171,638	440,984	1,637	3,967	736	104	1,314
Other Income	(30,955)	(12,786)	(11,549)	(5,774)	(206)	(392)	(104)	(23)	(124)
Pest Control	35,776	14,778	13,347	6,674	238	453	120	20	143
Pool Maintenance	223,972	133,522	30,150	60,300	-	-	-	-	-
Postage & Printing	1,476	-	1,476	-	-	-	-	-	-
Recovery of Start-Up	144,700	91,237	-	53,463	-	-	-	-	-
Refuse Collection	166,610	68,820	62,159	31,080	1,110	2,109	555	111	666
Reserves	473,622	162,175	202,510	95,000	2,701	7,453	1,126	109	2,518
Taxes - Property	830,492	-	-	830,492	-	-	-	-	-
Transportation	118,724	81,788	-	36,936	-	-	-	-	-
Water & Sewer	32,567	13,453	12,150	6,075	217	412	109	21	130
Water & Sewer - Units	376,151	252,967	-	123,184	-	-	-	-	-
TOTAL AOA EXPENSES	\$11,966,793	\$ 5,142,617	\$ 1,888,013	\$ 4,850,825	\$ 18,008	\$ 43,641	\$ 8,094	\$ 1,145	\$ 14,450
Residences R3-C			\$ 312,890	\$ -					
Residences All Other			\$ 1,575,123	\$ 4,850,825					
Residences R3-C Per Unit			\$ 39,111.25	\$ -					
Residences All Other Per Unit			\$ 32,815.06	\$ 173,243.75					

(a) This budget has been prepared on an accrual basis.

(b) The total cash reserves of the Association as of the date of this Budget is \$0. The total amount of estimated cash reserves, and the total amount to fund such reserves in 2008 is 473,622. The estimated cash reserves have been calculated on a cash flow basis by identifying each reserve component's estimated replacement cost and dividing it by its estimated useful life.

(c) The Association of Apartment Owners will provide services to the Cliff House on an as needed basis. The services provided will be reimbursed by the respective owner of the Cliff House. In addition, certain Common Expenses will be allocated to the Cliff House easement holder.

(d) The annual budget, prepared on an accrual basis, is allocated among Apartment Owners based on methodology adopted by the Managing Agent. Because expenses associated with Limited Common Elements (LCE's) are assessed against only the Apartments to which the LCE's are appurtenant, each Apartment's assessment cannot be computed simply by multiplying its percentage Common Interest by the total annual budget. Rather, the total assessments shown in columns two & three have been derived from allocation formulas for each line item. The Total from the second column is carried forward to the Vacation Ownership Budget under the line item "Condominium Association Assessment", and ultimately assessed against Owners of Resort Apartments that have been submitted to the plan of vacation ownership. The Total from the third column is payable by Kapalua Bay, LLC as Owner of certain Resort and Commercial Apartments.

Note Regarding Insurance Premium. The cost of insurance reflected above includes the premium for flood insurance coverage for the project.

Note Regarding Allocation of Maintenance Fees. Pursuant to Hawaii Revised Statutes Section 514A-15, as amended, or any successor provision, due to the mixed-use nature of this Project, charges and distributions may be apportioned in a fair and equitable manner as authorized by the Declaration. Accordingly, it is presently contemplated that the following methods of allocation will be used to distribute the expenses of the Project among the apartments: (1) Allocation on the basis of the common interest of each apartment in the Project; (2) Allocation on the basis of the general type of use of an apartment based on the following four categories: (i) the whole ownership residence apartments ("Residences") (41.3% allocation); (ii) the fractional apartments ("Fractionals") (37.3% allocation); (iii) the whole ownership apartments owned by Exclusive Resorts, LLC or an affiliate thereof ("ER Apartments") (16.7% allocation); and (iv) the commercial apartments (2.7% allocation); and (3) Allocation on the basis of the anticipated occupancy within apartments in the following three (3) categories: (i) Residences (59.6% allocation); (ii) the Fractionals (13.5% allocation); and (iii) the ER Apartments (26.9% allocation). The foregoing allocation methodologies as well as the indicated percentages may change over time to ensure that charges and distributions of the Project continue to be apportioned in a fair and equitable manner.

END OF EXHIBIT "I"

**EXHIBIT "I"
(Page 1 of 1)**