

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer: Kapalua Bay, LLC
Business Address: 870 Haliimaile Road, Makawao, Hawaii 96768
Project Name (*): KAPALUA BAY CONDOMINIUM
Address: 1 Bay Drive, Lahaina, Maui, Hawaii 96761

Registration No. 5900
Effective date: June 21, 2010
Expiration date: July 21, 2011

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.
THIRD SUPPLEMENTARY: (pink) This report updates information contained in the:
[X] Preliminary Report dated:
[X] Final Public Report dated:
[X] Supplementary Public Report dated: May 22, 2009
And [X] Supersedes all prior public reports.
[] Must be read together with
[] This report reactivates the public reports(s) which expired on

(*Exactly as named in the Declaration

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at (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 Not Required - Disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

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

No prior reports have been issued by the developer.

Changes made are as follows:

1. **FOURTH AMENDMENT TO CONDOMINIUM DECLARATION** That certain Fourth Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium and Apartment Deed ("Fourth Amendment") dated June 30, 2009, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 20009-107544-2009-107545. The Fourth Amendment revises Parking Stall designations for certain Parking Stalls to ensure that they are accurately and consistently referenced in both the Declaration and Condominium Map. The Developer and HI Maui Kapalua Bay, LLC also transferred certain Parking Stalls between the Apartments that they own pursuant to the Fourth Amendment.

A copy of such Fourth 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. **FIFTH AMENDMENT TO CONDOMINIUM DECLARATION** That certain Fifth Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium ("Fifth Amendment") dated February 11, 2010, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2010-022936. The Fifth Amendment revises the description of the real property underlying the Project by replacing the Exhibit "A" thereto, in order to reflect certain easements benefiting the Project. In conformance with Section 514A-12 of the Hawaii Revised Statutes, the Developer has also filed with the Fifth Amendment, the "as-built" statement of the architect for the Project as Exhibit "B" thereto.

A copy of such Fifth Amendment is available for review by Purchasers at the offices of the Developer and the Developer's sales agent upon request.

Special Notes

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 the following changes to the Project:
 - 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 the following changes to the Project:

- a. **CLARIFICATION OF CERTAIN LIMITED COMMON ELEMENT AREAS.** 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 has been further clarified that Resort Apartment 1205 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.

3. **THIRD AMENDMENT TO CONDOMINIUM DECLARATION.** That certain Third Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium ("Third Amendment") dated April 30, 2009, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2009-068617. Such Third Amendment reflects the following changes to the Project:

- a. **DEFINITIONS.** The defined term "General Common Elements – Reserved" was added to the Declaration for consistency with the Condominium Map and the defined term "Club Units" was revised to clarify that such term is meant to be interchangeable with the term "Timeshare Units" used in the Condominium Map.
- b. **CLARIFICATION OF CERTAIN LIMITED COMMON ELEMENT AREAS.** It has been clarified that (1) certain areas in the Arrival Building, originally identified as "Fractional Limited Common Elements" are to be designated as "General Common Elements – Reserved" and "Limited Common Elements"; (2) the landscaped yard area appurtenant to Resort Apartment 1205 has been more particularly depicted on the Condominium Map; (3) the Condominium Map has been further revised to more particularly depict areas that are Limited Common Elements to the Beach Club Commercial Apartment.
- c. **CLARIFICATIONS WITH RESPECT TO RENTALS OF RESORT APARTMENTS.** The Third Amendment clarifies that usage provided by Developer, The Ritz-Carlton Development Company, Inc. (a joint venture partner of the Developer) and The Ritz-Carlton Development Company, Inc.'s affiliates, to an Owner of additional days in Apartments submitted to a timeshare plan under Chapter 514E of the Hawaii Revised Statute, as amended, is not deemed a rental.
- d. **OPERATION OF A DESTINATION CLUB, VACATION OWNERSHIP PLAN OR TIMESHARE OR SIMILAR PROJECT.** The Third Amendment clarifies that The Ritz-Carlton Development Company, Inc. (a joint venture partner of the Developer) and The Ritz-Carlton Development Company, Inc.'s affiliates, may operate a destination club, vacation ownership program or timeshare or similar program in the Project, or use Apartments within the Project.
- e. **CLARIFICATIONS OF DEVELOPER'S RIGHT TO USE.** The Third Amendment clarifies that the Developer, The Ritz-Carlton Development Company, Inc. (a joint venture partner of the Developer) and The Ritz-Carlton Development Company, Inc.'s affiliates, may lease or rent Apartments which they own for promotional purposes and for sales, rental or leasing offices or places utilized to provide services to the Owners:
- f. **COLLECTION OF ASSOCIATION FEES.** It has been clarified that Condominium Association assessments that are levied against Apartments in a vacation ownership or timeshare plan may be delivered to the timeshare association or its designated managing agent as the agent for the timeshare owners.

- g. **OCEAN BAR.** The Ocean Bar has been more particularly identified on the Condominium Map and the detailed drawings of such structure are also depicted thereon. Conforming revisions to the Declaration have also been made to reflect the Ocean Bar.
- h. **CONDOMINIUM MAP.** The Condominium Map for the Project has been revised (including, without limitation, the addition of a new Sheet 4.00 and revisions to existing sheets T1, T2, T3, T4, T5, T6, 1.01, 1.02, 1.49, 1.50, 2.02, 2.03, 2.04, 2.05, 2.06, 3.08 and 3.11) to reflect the changes set forth in the Third Amendment, and a full and complete set of all sheets comprising such Condominium Map as heretofore amended, has been filed at the Bureau with the Third Amendment for ease of future reference, which complete set of Condominium Map sheets shall hereafter constitute Condominium Map No. 4222 of the Project.

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

- 4. **RESTRICTIONS ON USE OF COMMERCIAL APARTMENTS.** The developer has recorded that certain Declaration of Covenants, Conditions and Restrictions with Limitations on Use (Kapalua Bay Condominium) dated November 10, 2006, recorded at said Bureau as Document No. 2006-208340 ("Commercial Use Declaration") that further governs the use of Commercial Apartments within the Project. Purchasers of the Commercial Apartments will be bound by such Commercial Use Declaration and may be required to execute a joinder thereto as a condition of closing the acquisition of a Commercial Apartment. The Commercial Use Declaration limits the Commercial Apartments from being used for the following purposes: flea market; pawn shop; any establishment that offers illicit services under the guise of therapeutic massage; any establishment featuring explicitly-sexual, adults-only entertainment, including, without limitation, adult bookstore, video store, theater, or nude or semi-nude entertainment facility; a facility for the sale of paraphernalia for use with illicit drugs; pool hall; bars (other than any beverage facilities that may be located at the Beach Club Commercial Apartment or its Limited Common Elements); funeral parlor or mortuary; gambling facility or operation; dry cleaning plant or laundry plant; tattoo or piercing parlor; pest control; sales of automobile parts; sales of or operations related to firearms, explosives or weapons of any kind; any illegal activity or conduct; any conduct or activity creating flooding or other damage to the Condominium; and storage or use of dangerous, flammable, explosive, toxic, hazardous, or noxious materials (except as otherwise used incidentally in the conduct of commercial operations such as the use of cleaning products or fuel for lawn equipment).
- 5. **TIMESHARE, TRANSIENT VACATION RENTAL AND NON-EQUITY CLUB USE PERMITTED.** Purchasers are advised that timeshare, transient vacation rental and non-equity club membership use are expressly permitted in the Project. Accordingly, the Project will be comprised of multiple types of product in addition to the whole apartment ownership.
- 6. **THE KAPALUA CLUB.** The Kapalua Club is a non-proprietary, non-voting resort membership club located within the Kapalua resort community. The facilities of The Kapalua Club, which include golf, tennis, beach and swimming facilities among others, are owned by Maui Land & Pineapple Company, a Hawaii corporation (the "Kapalua Club Owner"). The Kapalua Club is operated by Kapalua Land Company, Ltd., also a Hawaii corporation (the "Operator"). **MEMBERSHIP IN THE KAPALUA CLUB DOES NOT NECESSARILY ENTITLE PURCHASERS TO USE ALL OF THE RESORT FACILITIES OF THE KAPALUA RESORT COMMUNITY. FURTHER, THE RESORT AMENITIES AND BENEFITS AVAILABLE FOR PURCHASER'S USE MAY CHANGE OVER TIME.** Various types of memberships are offered in The Kapalua Club. Memberships in The Kapalua Club are offered pursuant to, and are governed by a Membership Plan, Rules and Regulations and Membership Agreements (as any of the same may be amended from time to time, collectively, the "Membership Documents"). Each Owner of a Resort Apartment, excluding Owners of interests in Club Units and the Owner(s) of Apartments initially acquired by Exclusive Resorts ("Exclusive Resorts Apartments"), subject to approval for membership, is required to acquire at least a Gold Membership in The Kapalua Club and maintain a membership in The Kapalua Club for so long as the Kapalua Club Owner owns the Apartment. For initial purchasers of the Resort Apartments in question, the required membership fee is included in the purchase price of the Apartment. Subsequent purchasers of such Apartments are required to acquire and maintain at least a Gold Membership in The Kapalua Club and must pay the membership joining fee established by the Kapalua Club Owner and/or Operator at the time of the acquisition of the Apartment for the type of membership acquired, subject to approval for membership. A portion of such membership fee may be returned to a purchaser at the end of his membership subject to certain conditions. Accordingly, purchasers should refer to the Membership Documents for details as to the return of membership fees, upon membership termination, if any. The annual assessment levied by the Association against Owners of the subject Apartments will include the amount of dues payable for a Gold Membership in The Kapalua Club pursuant to the Membership Documents and will be reflected in the Project's budget. The Association has a lien on the Apartment of an Owner who fails to timely pay any assessment owed to the Association, subject to the rights of any mortgagee as to said Apartment. The Association shall, in the event of an Owner's failure to pay such Common Expenses, have all the remedies set forth in Article IX in the Declaration, including the right to enforce such lien by foreclosure. With respect to owners of interests in the Club Units, the Club Association will acquire and hold Ritz-Carlton Club, Kapalua Bay Memberships on behalf of such Club Unit Owners, who will be designated users thereunder, subject to approval for membership privileges. These memberships will be paid for by the Developer. The assessment payable by Owners of interests in the Club Units will include the dues and annual fees payable for the Ritz-Carlton Club, Kapalua Bay Memberships pursuant to the Membership Documents, which will be paid by the Club Association to The Kapalua Club. A Club Unit Owner's obligation to pay assessments to the Club Association shall be secured by a lien against such Owner's Club Interest in favor of the Club Association subject, however, to the rights of any mortgagee as to said Club Interest. The Club Association shall, in the event of a Club Unit Owner's failure to pay such assessments, have all remedies available by law, including, without limitation, the right to enforce such

lien by foreclosure. The initial purchaser(s) of the Exclusive Resorts Apartments is (are) eligible to acquire an Exclusive Resorts Membership for each Apartment so acquired. Pursuant to the Membership Documents, the Kapalua Club Owner and Operator, for themselves, and on behalf of their respective successors and assigns, have reserved the right to modify the Membership Documents, the right to modify, add to, alter or eliminate any of the facilities available for use by members of The Kapalua Club, as well as the right to terminate memberships subject to the terms of the Membership Documents, all as more particularly provided therein. The Kapalua Club Owner and/or Operator has the ability to establish from time to time, the dues, fees and charges payable by members in respect of membership in The Kapalua Club, except that with respect to Platinum and Gold Members, the dues for each year cannot be increased by more than fifteen percent (15%) over the prior year's dues. Notwithstanding the foregoing, however, the dues for Platinum and Gold Members can be increased by more than fifteen percent (15%) in any year where new "Club Facilities" (as defined in the Membership Documents) are opened for member use or for the year following the year in which new Club Facilities are opened for member use, as determined in the discretion of the Kapalua Club Owner and/or Operator. Dues increases with respect to the Ritz Carlton Club, Kapalua Bay Memberships are subject to the same limitation as prescribed above with respect to Memberships held by Platinum and Gold Members. Each Owner of a Resort Apartment entitled to enjoy membership privileges at The Kapalua Club, may enjoy such privileges subject to the terms of the Condominium Documents, Program Documents (as to Owners of interests in Club Units), Club Documents (as to Owners of interests in Club Units) and the Membership Documents. In the event of any conflict pertaining to membership in The Kapalua Club between the Membership Documents and any of the other documents listed above, the Membership Documents shall control. The covenants in the Declaration are intended to, and shall run with all Resort Apartments in the Project, in perpetuity.

7. **EASEMENTS.** Certain easements for access to the shoreline and for recreational purposes have been granted in favor of the public and the Kapalua Resort Association. Further, exclusive access in favor of MLP has been granted for access to, and recreational use of, the Cliff House located on the Project site, the expense of use and maintenance thereof being the responsibility of MLP. The Project site is also subject to an easement in favor of the Spa Parcel for access, parking and machine/utility room purposes and the Association has been granted an easement to utilize a portion of the Spa Parcel for office and other purposes. The easements encumbering the Project are reflected in Exhibit "H" hereto. Certain other easements and amendments to existing easements affecting the Project have been recorded and are reflected in Exhibit "H" attached hereto.
8. **SPA PARCEL.** Located immediately adjacent to the Project is a parcel of property owned, or to be owned, by MLP on which MLP intends to develop a spa. It is anticipated that Owners of Apartments in the Project, as members of the Kapalua Club, shall be permitted access to the Spa Parcel and will be entitled to discounts on spa treatments and products. For operational efficiency and convenience, certain back-of-house equipment serving the Project are located on the Spa Parcel.
9. **KAPALUA RESORT ASSOCIATION ENHANCEMENT ASSESSMENT.** Each Apartment in the Project will be subjected to the Kapalua Resort Declaration by means of a Fourth Amendment to Amended and Restated Declaration of Covenants and Restrictions (the "KRA Amended Declaration") that will be recorded in the Bureau prior to the recording of a purchaser's deed. The KRA Amended Declaration imposes additional covenants on Apartments in the Project which provide that upon the subsequent sale or transfer of an Apartment after the initial sale by the Developer, the transferor must pay an assessment ("Enhancement Fee") to the Kapalua Resort Association in the amount of one-half of one percent (0.5%) of the sales price paid for the Apartment (including improvements thereon). Accordingly, if a purchaser subsequently sells or transfers his Apartment, he will be responsible for paying the Enhancement Fee in connection with that sale or transfer. For example, if a purchaser resells his Apartment for two million dollars, as the seller, he will be required to pay the Kapalua Resort Association an Enhancement Fee in the amount of \$10,000. For Apartments purchased by Exclusive Resorts only, the Kapalua Resort Association has agreed to provide a one-time exemption to Exclusive Resorts from such Enhancement Fee on the initial resale of such Apartments. As detailed in the KRA Amended Declaration, certain other transfers are also exempt from the Enhancement Fee, such as a transfer to a spouse or living trust, or to a business entity that is wholly-owned by the transferor. Under the terms of the KRA Amended Declaration, this Enhancement Fee provides the Kapalua Resort Association with funds and reserves for purposes that the Kapalua Resort Association's board of directors deems appropriate, including without limitation, (a) additions, improvements, renovations, repair and replacement of the amenities and infrastructure within or that benefit Kapalua, (b) preservation and maintenance of natural areas, conservation areas, and the watershed within and surrounding Kapalua, (c) sponsorship of educational and cultural programs and activities, (d) programs and services that protect the environment, including recycling programs, (e) programs and activities that promote a sense of community, including recreational leagues, festivals and holiday celebrations, (f) social services, community outreach programs or other charitable causes, and (g) costs of administering the programs and activities that the Kapalua Resort Association's board deems appropriate to fund. Under the terms of the KRA Amended Declaration, the seller or transferor is responsible for paying the Enhancement Fee at the time the sale or transfer closes, although the Enhancement Fee may be collected and paid by an escrow agent that is handling the sale or transfer. If the Enhancement Fee is not paid, the KRA Amended Declaration provides that the unpaid Enhancement Fee shall be a lien on the property transferred that may be foreclosed by the Kapalua Resort Association. A copy of the KRA Amended Declaration will be provided to all purchasers upon request.
10. **USE OF MODEL UNIT COMMERCIAL APARTMENT AND SALES GALLERY COMMERCIAL APARTMENT BY ASSOCIATION OF APARTMENT OWNERS OF BAY VILLAS AND FUTURE CONVEYANCE.** The developer anticipates relocating onto the Project certain maintenance operations of the Association of Apartment Owners of Bay Villas ("Bay Villas Association"), currently housed in a building located on the land of the adjacent Bay Villas condominium project. It is anticipated that following the relocation of these operations, the existing Bay Villas' maintenance building will be demolished and replaced by landscaping to be installed by the developer. In conjunction with the installation of the landscaping, it is anticipated that the Bay Villas Association will grant an easement covering the landscaped area in favor of the developer and/or the Association and that the Association will at some point in the future be responsible for maintaining the landscaped area. The developer anticipates moving the Bay Villas Association's

maintenance shop operations into the Model Unit Commercial Apartment and initially moving the Bay Villas Association's maintenance garage operations into a temporary building to be located near the Project's tennis courts. At a later time, the developer plans to move the Bay Villas Association's maintenance garage operations into a commercial apartment that will be created by subdividing the Sales Gallery Commercial Apartment into two units. On or before the completion of the sales program at the Project, the developer anticipates conveying the Model Unit Commercial Apartment and the newly created commercial apartment (formerly a part of the Sales Gallery Commercial Apartment) to the Bay Villas Association. Notwithstanding the foregoing, the developer cannot guaranty with any degree of certainty, the precise timeframe within which the conveyance of the Model Unit Commercial Apartment and the newly created commercial apartment (formerly a part of the Sales Gallery Commercial Apartment) to the Bay Villas Association will occur, or whether such conveyance to the Bay Villas Association will ultimately transpire. Purchasers are hereby notified by this disclosure of the developer's anticipated future plans with respect to the relocation of certain maintenance operations of the Bay Villas Association, the proposed landscaping of a portion of the land of the Bay Villas project, and the ongoing maintenance expense of such landscaped area to the Association and the use of the Sales Gallery Commercial Apartment and the Model Unit Commercial Apartment.

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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: Kapalua Bay, LLC Phone (808) 669-5625
Name* (Business)
870 Haliimaile Road
Business Address
Makawao, Hawaii 96768

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

See Section V, Paragraph C hereof.

Real Estate Broker*: The Ritz-Carlton Development Company, Inc. Phone: (407) 206-6020
Name (Business)
6649 Westwood Boulevard
Business Address
Orlando, Florida 32821

Escrow: First American Title Company, Inc. Phone: (808) 536-3866
Name (Business)
1177 Kapiolani Boulevard
Business Address
Honolulu, Hawaii 96814

General Contractor*: Nordic/PCL Phone: (808) 541-9101
Name (Business)
1099 Alakea Street, Suite 1560
Business Address
Honolulu, Hawaii 96813

Condominium Managing Agent*: The Ritz-Carlton Development Company, Inc. Phone: (407) 206-6020
Name (Business)
6649 Westwood Boulevard, 3rd Floor
Business Address
Orlando, Florida 32821

Attorney for Developer: Imanaka Kudo & Fujimoto Phone: (808) 521-9500
Name (Business)
745 Fort Street Mall, 17th Floor
Business Address
Honolulu, Hawaii 96813
Attn: Mitchell A. Imanaka, Esq.

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

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

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

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

The Declaration for this condominium is:

| | | | |
|-------------------------------------|------------|------------------------|---------------------------------|
| <input type="checkbox"/> | Proposed | | |
| <input checked="" type="checkbox"/> | Recorded - | Bureau of Conveyances: | Document No. <u>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.

Third Amendment to Condominium Property Regime of Kapalua Bay Condominium dated April 30, 2009, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2009-068617.

Fourth Amendment to Condominium Property Regime of Kapalua Bay Condominium and Apartment Deed dated June 30, 2009, recorded at the Bureau of Conveyances of the State of Hawaii as Document Nos. 2009-107544-2009-107545.

Fifth Amendment to Condominium Property Regime of Kapalua Bay Condominium dated February 11, 2010, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2010-022936.

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.

Third Amendment to Condominium Property Regime of Kapalua Bay Condominium dated April 30, 2009, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2009-068617.

Fourth Amendment to Condominium Property Regime of Kapalua Bay Condominium and Apartment Deed dated June 30, 2009, recorded at the Bureau of Conveyances of the State of Hawaii as Document Nos. 2009-107544-2009-107545.

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

The Bylaws for this condominium are:

Proposed

Recorded - Bureau of Conveyances:

Document No. 2006-083257

Book _____ Page _____

Filed - Land Court:

Document No. _____

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

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and 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 Adopted Developer does not plan to adopt House Rules

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

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

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

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

2. **Developer:**

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

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

See attached Exhibit A

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

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

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

Leases for 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): _____

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: 1 Bay Drive
Lahaina, Maui, Hawaii 96761

Tax Map Key (TMK) : (2) 4-2-04: 028 and 029

Address TMK is expected to change because Not Applicable

Land Area: Approx. 21 acres square feet acre(s) Zoning: Hotel (H-M); Resort Commercial (B-R)

Fee Owner: Kapalua Bay, LLC
Name

Lessor: Not Applicable
Name

Address

C. **Buildings and Other Improvements:**

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

2. Number of Buildings: See Exhibit B Floors Per Building Varies (See Exhibit B)

Exhibit B contains further explanations.

3. Principal Construction Material:

Concrete Hollow Tile Wood

Other Steel and Glass

4. Uses Permitted by Zoning:

| | No. of <u>Apts.</u> | <u>Use Permitted By Zoning</u> |
|---|------------------------|---|
| <input checked="" type="checkbox"/> Residential | <u>84</u> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Commercial* | <u>5</u> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Mix Res/Comm | <u> </u> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Hotel | <u> </u> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Timeshare | <u>62</u> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Ohana | <u> </u> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Industrial | <u> </u> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Agricultural | <u> </u> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Recreational | <u> </u> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Other | <u> </u> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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

Yes No

* As stated in the Special Notes Section at page 2b above, the Sales Gallery Commercial Apartment may, in the future, be subdivided by the Developer to create two (2) separate commercial apartments. It is anticipated that the Common Interest of the Sales Gallery Commercial Apartment will be divided between the newly subdivided Apartments so that the Common Interest of other Apartments in the Project will not be impacted.

5. Special Use Restrictions:

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

Pets: No pets are permitted within Apartments used for timeshare purposes, except that certified seeing eye dogs, signal dogs and service dogs for physically impaired persons are permitted. Pets are permitted in accordance with the House Rules within Apartments other than those used for timeshare purposes.

Number of Occupants: As to Apartments in Buildings 3 and 4, occupancy is limited to six (6) individuals per two bedroom apartment and ten (10) individuals per three bedroom apartment. Occupancy within Apartments in Buildings 1, 2, 5 and 6 are limited to ten (10) individual unless a higher occupancy is permitted by Maui County Ordinance.

Other: Timesharing, transient vacation rental use and non-equity club membership is permitted

There are no special restrictions.

6. Interior (fill in appropriate numbers): See Exhibit "E"

Elevators: 24 Stairways: 37 Trash Chutes: 9

| <u>Apt. Type</u> | <u>Quantity</u> | <u>BR/Bath</u> | <u>Net Living Area (sf)*</u> | <u>Net Other Area (sf)</u> | <u>(Identify)</u> |
|------------------------|-----------------|----------------|------------------------------|----------------------------|-------------------|
| <u>See Exhibit "E"</u> | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ |

Total Number of Apartments: 151

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

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

Boundaries of Each Apartment:

See Exhibit "C"

Permitted Alterations to Apartments:

See Exhibit "D"

Apartments Designated for Owner-Occupants Only: **NOT APPLICABLE TO THIS PROJECT.** Fifty percent (50%) of residential apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has NA elected to provide the information in a published announcement or advertisement.

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

11. Conformance to Present Zoning Code

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

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

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

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

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

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

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

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

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

described in Exhibit F .

as follows:

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

There are no limited common elements in this project.

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

described in Exhibit 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 April 21, 2010 and issued by First American Title Company, Inc.

Blanket Liens:

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

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

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

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

Type of Lien

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

Mortgage dated July 14, 2006, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-129745, as amended and assigned. See items 5.d., e., f., and g. of Exhibit H hereto.

The Mortgage is a blanket lien on the Project. If foreclosed upon prior to closing Buyer's Deposit shall be returned.

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:

At Closing, the Purchaser shall receive a limited warranty from either the general contractor for the Project or Seller, warranting the materials and workmanship relating to the Purchaser's apartment to be free from defects for a period of one (1) year. The one-year warranty period for such warranty shall, if issued by the general contractor, begin from the date of substantial completion of Purchaser's apartment, and, if issued by Seller, from the date of Closing.

The execution, delivery and recordation of the Purchaser's Apartment Deed shall constitute the assignment without recourse by the Seller to the Purchaser of such warranty and the assignment without recourse by Seller to Purchaser of any other warranties relating to the Apartment. The Seller may assign such warranties described herein to future purchasers if such warranties are still in effect at the time the Apartment is conveyed. The Seller, however, makes no representation or warranty whatsoever as to whether such warranties can be further transferred.

2. Appliances:

Developer shall assign to Purchaser, without recourse, any manufacturer's or dealer's warranties covering the furnishings and appliances in the Apartment.

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 was completed in June of 2009.

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):

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:

- not affiliated with the Developer the Developer or the Developer's affiliate.
 self-managed by the Association of Apartment Owners other an affiliate of one of the members of the sole member of the developer entity.

- 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.

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

A RESERVE STUDY HAS BEEN UNDERTAKEN BY THE DEVELOPER AS MAY BE REQUIRED BY LAW.

- C. **Utility Charges for Apartments:**

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

- None Electricity (Common Elements Only Common Elements and Apartments)
 Gas (Common Elements Only Common Elements and Apartments)
 Water (Common Elements Only) Sewer (Common Elements Only) Television Cable
 Other Refuse collection

Note: It is anticipated that the Association will receive bulk billings from the electric, water and sewer service providers covering services provided both to the Common Elements of the Project and to the individual Apartments. Accordingly, the Association shall in turn, assess individual Owners for the electric, water and sewer expenses attributable to their respective Apartments in billings that shall be separate and apart from each owner's normal maintenance fee assessments. With respect to gas service for the Project, it is anticipated that the Association will receive a billing from the gas service provider pertaining to the Common Elements of the Project only. Accordingly, each Owner of an Apartment must set up his/her own account with the gas service provider for gas service to his/her Apartment. The cost of refuse collection is included in the maintenance fee.

Further, because certain equipment and utility service infrastructure is shared by the Project and the Spa Parcel (including certain back-of-house equipment for the Project) and is situated on the Spa Parcel, there is also no separate electric meter for the Project site and the Spa Parcel. Accordingly, charges by the electric service provider for electricity use relative to the Spa Parcel will also be included in the billing to the Association. The Association will in turn, assess the Spa Parcel's owner for its share of electricity charges. The cost of gas, water (including landscape irrigation) and sewer usage are billed separately to the owner of the Spa Parcel by the appropriate utility service provider.

V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

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

- Notice to Owner Occupants
- Specimen Sales Contract
Exhibit J contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated January 27, 2006 .
Exhibit K contains a summary of the pertinent provisions of the escrow agreement.
- Other 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: Any documents listed in Exhibit "H"; Special Management Area Use Permit dated December 19, 2005

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.

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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 870 Haliimaile Road Makawao, Hawaii 96768 |
| Managing Member of Kapalua Bay Holdings, LLC: | MLP KB Partner LLC 870 Haliimaile Road Makawao, Hawaii 96768 |
| Managing Member of MLP KB Partner LLC:: | Maui Land & Pineapple Company, Inc. 870 Haliimaile Road Makawao, Hawaii 96768 |
| Vice President of Maui Land & Pineapple Company, Inc.: | Ryan Churchill 870 Haliimaile Road Makawao, Hawaii 96768 |

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. **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.

- 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

MAY 27 2010

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 "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 Condominium Declaration.

A. **RESERVED RIGHT TO GRANT EASEMENTS.** This right is set forth at Article XIX of the Condominium Declaration. The Developer will have, among other things, the right until December 31, 2026, to grant easements over the common elements of the Condominium.

B. **RESERVED RIGHT TO DEVELOP, CONSTRUCT AND ANNEX ADDITIONAL LAND AND/OR APARTMENTS TO THE PROJECT.** This right is set forth at Article XX of the Condominium Declaration. The Developer will have, among other things, the right until December 31, 2026, to annex (or add) additional land and/or Apartment(s) to the Project.

C. **RESERVED RIGHT TO SUBDIVIDE AND CONSOLIDATE APARTMENTS.** This right is set forth at Article XXI of the Condominium Declaration. The Developer will have, among other things, the right until December 31, 2026, to change the floor plan of any Apartment which it owns so long as the common interest appurtenant to the Apartment does not change; subdivide any Apartment which it owns at any time to create two or more Apartments so long as the total common interest appurtenant to the newly-created Apartments shall equal the common interest appurtenant to the original Apartment; convert the status of certain portions of an existing Apartment to common element status to facilitate the subdivision so long as the total common interest appurtenant to the newly-created Apartment(s) equal the common interest appurtenant to the original Apartment; and consolidate two or more Apartments which it owns and convert any area between Apartments to Apartment status.

D. **RESERVED RIGHT TO CONVERT LIMITED COMMON ELEMENTS TO APARTMENTS.** This right is set forth at Article XXII of the Condominium Declaration. The Developer will have, among other things, the right until December 31, 2026, to convert the status or nature of a limited common element appurtenant to Apartments owned by the Developer, or any part of them, into a separate Apartment of the Project and to change the physical aspects of the limited common element at the Developer's expenses in connection with such a conversion, including building and structures that may be necessary or appropriate.

E. **RESERVED RIGHT TO RECHARACTERIZE LIMITED COMMON ELEMENTS.** This right is set forth at Article XXIII of the Condominium Declaration. The Developer will have, among other things, the right until December 31, 2026, to recharacterize and redesignate certain limited common elements as may be appurtenant to a Commercial Apartment owned by the Developer to be common elements of the Project.

F. **RESERVED RIGHT TO MODIFY PROJECT.** This right is set forth at Article XXV of the Condominium Declaration. The Developer will have, among other things, the right until December 31, 2026 to accomplish all modifications to Apartments and common elements in the Project as may be necessary or required by Developer in its sole discretion, or to ensure full compliance by the Project, any vacation ownership program, the Condominium Association, any vacation owners association and any other association of vacation owners or timeshare owners or by the Developer, with laws which, apply to the Condominium or any vacation ownership program, including the Fair Housing Act, as amended, 42 U.S.C. §§3601 *et seq.*, including all rules and regulations adopted under it, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§ 12101 *et seq.*, including all rules and regulations adopted under it.

G. **RESERVED RIGHT TO UTILIZE LIMITED COMMON ELEMENT AREAS.** This right is set forth at Article XXVI of the Condominium Declaration. The Developer will have, among other things, the right to operate lease and/or use all or any part of the limited common elements of the Project which are appurtenant to an Apartment owned by the Developer for any purpose permitted by law, including the provision of services and amenities conducive to a first-class hotel and resort destination.

H. **RESERVED RIGHT TO REDESIGNATE LIMITED COMMON ELEMENTS AS APPURTENANT TO OTHER APARTMENTS.** This right is set forth at Article XXVII of the Condominium Declaration. The Developer will

have, among other things, the right until December 31, 2026, to change or amend the Condominium Declaration to designate all or a portion of certain limited common elements appurtenant to an Apartment owned by the Developer, as appurtenances to another Apartment or Apartments owned by the Developer.

I. RESERVED RIGHT REGARDING SPECIAL MANAGEMENT AREA USE PERMIT AND OTHER PERMITS. This right is set forth at Article XXVIII of the Condominium Declaration. The Developer will have, among other things, the right until December 31, 2026 to amend the Condominium Declaration, to enter into any agreements and to do all things necessary and convenient to satisfy the requirements of 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), and any other permit or entitlement required for the construction and development of the Project.

J. RESERVED RIGHT TO SUBDIVIDE, AND/OR TO CONSOLIDATE AND RESUBDIVIDE, WITHDRAW AND CONVEY LAND AND/OR APARTMENTS. This right is set forth at Article XXIX of the Condominium Declaration. The Developer will have, among other things, the right until December 31, 2026 to amend the Condominium Declaration, to enter into any agreements and to do all things necessary and convenient to effect the subdivision, and/or consolidation and resubdivision and the withdrawal and conveyance of Apartments and/or all or a portion of the land and/or Apartments of the Project.

K. RESERVED RIGHT TO CONVEY APARTMENTS AND LIMITED COMMON ELEMENTS TO ASSOCIATION. This right is set forth in Article XXX of the Condominium Declaration. The Developer will have, among other things, the right until December 31, 2026, to convey Apartments (including, without limitation, the Sales Gallery Commercial Apartment) owned by the Developer to the Association which the Association shall duly accept, and to redesignate limited common elements appurtenant to Apartments owned by the Developer to Apartments owned by the Association, and to the extent necessary or convenient, to amend the Condominium Declaration and the Condominium Map to effect such changes.

L. ASSIGNMENT OF RESERVED RIGHTS. Pursuant to Article XXXI of the Condominium Declaration, the rights reserved by the Developer are fully assignable.

M. RECALCULATION OF COMMON INTERESTS. It may be necessary to recalculate the common interests appurtenant to the Apartments in the Condominium upon the exercise of certain of Developer's reserved rights set forth above. The method by which the common interests will be recalculated are set forth in Article XXIV of the Condominium Declaration.

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.

END OF EXHIBIT "A"

EXHIBIT "B"

SCHEDULE AND DESCRIPTION OF BUILDINGS

The Project is comprised of seven (7) multi-story buildings designated as Buildings 1, 2, 3, 4, 5, 6 and the Arrival Building, all of which are constructed primarily of concrete, steel, wood and glass. Building 1 has six (6) floors consisting of 24 Resort Apartments, Buildings 2, 3 and 4 each have seven (7) floors and each consists of 31 Resort Apartments, Building 5 has six (6) floors consisting of 22 Resort Apartments, Building 6 has four (4) floors consisting of 7 Resort Apartments, and the Arrival Building has three (3) floors and contains two (2) Commercial Apartments. No Building has a basement. In addition, one (1) Commercial Apartment is located in Building 1 and there are two (2) free standing Commercial Apartments. All Commercial Apartments are constructed primarily of concrete, steel, wood and glass and designated as Commercial Apartments on the Condominium Map.

END OF EXHIBIT "B"

EXHIBIT "C"

BOUNDARIES OF EACH APARTMENT

With the exception of the Sales Gallery Commercial Apartment and the Model Unit Commercial Apartment that are free standing Apartments, the Apartments consist of spaces within the perimeter and party walls, windows, doors, floors and ceilings of each of the one hundred fifty-one (151) Apartments of the Project, distributed among Buildings 1, 2, 3, 4, 5 and 6 and within other structures constituting the Project. The respective Apartments shall not be deemed to include: (a) the perimeter or party walls or the undecorated or unfinished interior surfaces thereof (except for the storefronts of Commercial Apartments, which are considered a part of such Commercial Apartments), (b) the floors and ceilings surrounding each Apartment or the undecorated or unfinished surfaces thereof, (c) the perimeter doors, door frames, window and window frames and all hardware associated therewith, or the undecorated or unfinished interior surfaces thereof, (d) the interior load bearing walls and columns, if any, or the undecorated or unfinished surfaces thereof, or (e) any pipes, shafts, ducts, pumps, conduits, wires or other utility or service lines which are utilized for or serve more than one Apartment, the same being deemed Common Elements as hereinafter provided. Each Apartment shall be deemed to include: (i) all of the walls and partitions which are not load bearing within its perimeter or party walls, (ii) all pipes, shafts, ducts, pumps, conduits, wires and other utility or service lines running through such Apartment which are utilized for and serve only that Apartment, (iii) the inner decorated or finished surfaces of any doors, door frames, windows or window frames, and (v) all appliances and fixtures installed therein, and replacements therefor.

END OF EXHIBIT "C"

EXHIBIT "D"

PERMITTED ALTERATIONS TO APARTMENTS

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 below, 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 Design Committee. Promptly upon completion of such restoration, replacement or construction, the Association or Owner, as the case shall be, shall duly record such amendment, 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 OR LIMITED COMMON ELEMENT.** Subject to the Declaration, the Bylaws, the House Rules and the Design Committee Rules, an Owner or Owners (if there be more than one Owner of an Apartment) of an Apartment shall have the right at any time and from time to time at such Owner's or Owners' sole cost and expense, and without the necessity of the consent or joinder of any other Apartment Owner but with the prior approval of the Board or Design Committee (except for alterations to the Commercial Apartments which shall not require such approval), to make any of the following alterations solely within the Apartment or Limited Common Element which such Owner or Owners control: to install, maintain, remove and rearrange partitions (including the party wall between two Apartments owned by the same Owner or Owners and other structures from time to time within such Apartment or Limited Common Element, 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 or Limited Common Element by such Owner or Owners 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 or Limited Common Element; provided, however, that nothing contained in this paragraph shall authorize any work or alteration which would be inconsistent with a first-class hotel and resort destination, jeopardize the soundness or safety of any part of the Project, reduce the value thereof, materially adversely affect any other Apartment or Limited Common Element, 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 or Owners 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 such changes within an Apartment or Limited Common Element, or to require same, in order that the buildings of the Property may continue to comply with applicable law, including any fire code requirements.

C. **APARTMENT OWNERS TO EXECUTE AMENDMENT DOCUMENTS IN CERTAIN CASES.** In the event that any change or alteration of an Apartment pursuant to and in compliance with Section B above shall alter the depiction of the particular Apartment on the Condominium Map or the description thereof in the Declaration, then the Owner or Owners 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 or Owners of the affected Apartment or Apartments and by no other party, and such shall become effective upon the recordation thereof at said Bureau. 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 or Owners 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 or Owners and their 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.

END OF EXHIBIT "D"

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% | 048S 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 006CH |
| 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 087C |
| 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% | 061CH and 050CH |
| 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% | 110S and 111S |
| 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 |

| Apartment Number | Apartment Type | Number of Bedrooms/ Bathrooms/ Study* | Building Designation | Apprx. Net Square Footage** | Apprx. Balcony Area | Common Interests*** | Parking Stall Assignments**** |
|------------------|----------------|---|----------------------|-----------------------------|---------------------|---------------------|-------------------------------|
| 2406 | R3-B1 | 3/3.5/1 | Building 2 | 2904 | 661 | 0.743679% | 077S and 076S |
| 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% | 091S and 092S |
| 2704 | R3-A1 | 3/3.5 | Building 2 | 2789 | 613 | 0.714229% | 058S and 059S |
| 2706 | R3-B1 | 3/3.5/1 | Building 2 | 2904 | 661 | 0.743679% | 060S and 109S |
| 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% | --- |

| Apartment Number | Apartment Type | Number of Bedrooms/ Bathrooms/ Study* | Building Designation | Apprx. Net Square Footage** | Apprx. Balcony Area | Common Interests*** | Parking Stall Assignments**** |
|------------------|----------------|---|----------------------|-----------------------------|---------------------|---------------------|-------------------------------|
| 4204 | C2-A | 2/2.5 | Building 4 | 1774 | 554 | 0.454300% | --- |
| 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% | 136CH and 137C |
| 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% | 113C 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% | 114C and 115S |
| 5503 | R3-B1 | 3/3.5/1 | Building 5 | 2904 | 661 | 0.743679% | 153S and 152S |
| 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% | 161H and 168S |

| Apartment Number | Apartment Type | Number of Bedrooms/ Bathrooms/ Study* | Building Designation | Apprx. Net Square Footage** | Apprx. Balcony Area | Common Interests*** | Parking Stall Assignments**** |
|------------------|----------------|---|----------------------|-----------------------------|---------------------|---------------------|-------------------------------|
| 6102 | R3-A | 3/3.5 | Building 6 | 2789 | 628 | 0.714229% | 169S and 170S |
| 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"

EXHIBIT "F"

COMMON ELEMENTS

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 as described on Exhibit "A";
2. All perimeter or party walls and the undecorated or unfinished surfaces thereof (except for the storefronts of Commercial Apartments, as applicable, which are considered a part of such Commercial Apartments), any load-bearing walls and columns, and the undecorated or unfinished surfaces thereof, all structural components such as foundations, concrete sidewalks and curbs, floor slabs, columns, girders, beams, supports, halls, corridors, elevators, escalators, exterior stairs and stairways, main walls, roofs and ceilings;
3. All perimeter doors, door frames, windows, window frames, and all hardware associated therewith, and the undecorated or unfinished interior surfaces thereof; whether at the perimeter of a Building Structure or at the perimeter of an Apartment;
4. All yards, grounds and landscaping, any unimproved areas, and all trash enclosures within the Project;
5. All roads, driveways, parking areas as shown on the Condominium Map, access lanes, paved areas, ramps, loading areas and walkways within the Project;
6. All swimming pools, whirlpool spas, deck areas, including, without limitation, the Pool Bar and the Pool Grille, the Kid's Club, the Cliff House, the Pantry, the Beach Shack, the Ocean Bar and all other amenities and Improvements, to the extent such areas are not otherwise designated as Commercial Apartments on the Condominium Map;
7. 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, PBX system, water, gas, sewer, storm water, refuse, cable television and television signal distribution;
8. Those areas of the Arrival Building designated on the Condominium Map as "General Common Elements," all maintenance and storage areas and other similar areas which are not part of an Apartment;
9. All other apparatus and installations existing for common use, such as tanks, pumps, motors, fans, air-conditioning units including fan coil equipment located within an Apartment, compressors, ducts, shafts, vents, water heating and distribution equipment, fire suppression equipment and other such installations and apparatus;
10. All interior areas of the Project commonly referred to in the hotel industry as "back-of-house," to the extent such areas are not otherwise characterized and defined in the Declaration as Commercial Apartments;
11. All other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use; and

All other areas on the Condominium Map designated as "General Common Elements", or that are not designated as an Apartment or as a Limited Common Element appurtenant to an Apartment.

END OF EXHIBIT "F"

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 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. Real Property taxes which may be due and owing. Reference is made to the Real Property Tax Office, County of Maui.

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

2. Title to all mineral and metallic mines reserved to the State of Hawaii.
3. 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.
4. 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.)
5. 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 Page 766.

Subordination Agreement and Consent dated May 3, 1978, recorded at said Bureau in Book 13034 Page 1, that certain easement granted by instrument recorded at said Bureau in Book 11443 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 13, 2006, both maps prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.)
6. 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 Page 691.
7. 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.
8. 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. 2006-082347).

9. A 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 May 2, 2006 at said Bureau as Document No. 2006-082345.
10. A 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 May 2, 2006 at said Bureau as Document No. 2006-082346.

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

11. Title to all mineral and metallic mines reserved to the State of Hawaii.
12. 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 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, 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.)
13. 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.
14. 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.

AS TO ITEMS ONE (HOTEL PARCEL) AND TWO (PARKING LOT PARCEL) (Lots A-4-A-1 and A-5-A-1):

15. 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 Declaration of Covenants and Restrictions recorded at said Bureau in Book 11922 Page 26.

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

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

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

16. 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 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.
17. 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:
 - a. Restriction of vehicular access, except where permitted, along Lower Honoapiilani Road.
 - b. Existing chainlink fence (ownership unknown) encroaches into TMK (2) 4-2-004-028 along the northerly boundary.
 - c. Existing CRM wall encroaches into TMK (2) 4-2-004-028 along the easterly boundary.
18. 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 Hawaii nonprofit corporation, recorded May 2, 2006 at said Bureau as Document No. 2006-082343.
19. A Grant of Easements for Cliff House Access and 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 May 2, 2006 at said Bureau as Document No. 2006-082344.
20. A Grant of Easements 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 2, 2006 at said Bureau as Document No. 2006-082389.
21. A Grant of Easements for Water Utility Purposes for waterline system purposes over Easement W-1 and Easement W-2, in favor of Kapalua Water Company, Ltd., a Hawaii corporation, recorded May 2, 2006 at said Bureau as Document No. 2006-082390.
22. Kapalua Bay Condominium Map No. 4222.
23. The terms and provisions contained in or incorporated by reference in the Declaration of Condominium Property Regime of Kapalua Bay Condominium. Said Declaration was recorded May 3, 2006 at said Bureau as Document No. 2006-083256.

The foregoing Declaration was amended by instruments recorded November 15, 2006 at said Bureau as Document No. 2006-208339, recorded December 10, 2007 at said Bureau as Document No. 2007-212730, recorded May 6, 2009 at said Bureau as Document No. 2009-068617, recorded July 14, 2009 at said Bureau as Document No. 2009-107544, and recorded February 19, 2010 at said Bureau as Document No. 2010-022936.
24. The terms and provisions contained in or incorporated by reference in the By-Laws of Association of Apartment Owners of Kapalua Bay Condominium. Said By-Laws were recorded May 3, 2006 at said Bureau as Document No. 2006-083257.
25. 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 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.

26. 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 at said Bureau as Document No. 2007-023743.

The interest of Lehman Brother's Holdings Inc., a Delaware corporation, individually and in its capacity as the Agent for itself and the other Current Co-Lenders, in and to the foregoing Mortgage, has been assigned to Central Pacific Bank, a Hawaii corporation, in its capacity as the successor Agent for itself and the other Current Co-Lenders, by Notice of Change of Agent and Assignment of Fee and Leasehold Mortgage, Security Agreement and Fixture Filing recorded February 11, 2009 at said Bureau as Document No. 2009-019982.

The foregoing Mortgage was further amended by Second Omnibus Amendment To Recorded Construction Loan Documents recorded February 11, 2009 at said Bureau as Document No. 2009-019987.

The foregoing Mortgage was further amended by Third Omnibus Amendment To Recorded Construction Loan Documents recorded February 19, 2010 at said Bureau as Document No. 2010-022937.

The interest of Central Pacific Bank, a Hawaii bank, individually and in its capacity as the Agent for itself and the other Current Co-Lenders, in and to the foregoing Mortgage, has been assigned to Lehman Brothers Holdings Inc., a Delaware corporation, as debtor and debtor in possession, in its capacity as the successor Agent for itself and the other Current Co-Lenders, by Notice of Change of Agent and Assignment of Fee and Leasehold Mortgage, Security Agreement and Fixture Filing recorded March 29, 2010 at said Bureau as Document No. 2010-040791.

27. 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.

The foregoing Assignment of Leases and Rents was amended by First Omnibus Amendment To Recorded Construction Loan Documents recorded February 7, 2007 at said Bureau as Document No. 2007-023743.

The interest of Lehman Brother's Holdings Inc., a Delaware corporation, individually and in its capacity as the Agent for itself and the other Current Co-Lenders, in and to the foregoing Assignment of Leases and Rents, has been assigned to Central Pacific Bank, a Hawaii corporation, in its capacity as the successor Agent for itself and the other Current Co-Lenders, by Notice of Change of Agent and Assignment of Assignment of Leases and Rents recorded February 11, 2009 at said Bureau as Document No. 2009-019983.

The foregoing Assignment of Leases and Rents was further amended by Second Omnibus Amendment To Recorded Construction Loan Documents recorded February 11, 2009 at said Bureau as Document No. 2009-019987.

The foregoing Assignment of Leases and Rents was further amended by Third Omnibus Amendment To Recorded Construction Loan Documents recorded February 19, 2010 at said Bureau as Document No. 2010-022937.

The interest of Central Pacific Bank, a Hawaii bank, individually and in its capacity as the Agent for itself and the other Current Co-Lenders, in and to the foregoing Assignment of Leases and Rents, has been assigned to Lehman Brothers Holdings Inc., a Delaware corporation, as debtor and debtor in possession in its capacity as the successor Agent for itself and the other Current Co-Lenders, by Notice of Change of

Agent and Assignment of Assignment of Leases and Rents recorded March 29, 2010 at said Bureau as Document No. 2010-040792.

28. A financing statement

Debtor: Kapalua Bay, LL

Secured Party: Lehman Brothers Holdings Inc.

Recorded July 14, 2006 at said Bureau as Document No. 2006-129747.

According to the public records, the security interest of the secured party was assigned to Central Pacific Bank, as Agent by document recorded February 11, 2009 at said Bureau as Document No. 2009-019985.

According to the public records, the security interest of the secured party was assigned to Lehman Brothers Holdings Inc., as Agent by document recorded March 16, 2010 at said Bureau as Document No. 2010-035471.

29. 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.

According to the public records, the security interest of the secured party was assigned to Central Pacific Bank, as Agent by document recorded February 11, 2009 at said Bureau as Document No. 2009-019986.

According to the public records, the security interest of the secured party was assigned to Lehman Brothers Holdings Inc., as Agent by document recorded March 16, 2010 at said Bureau as Document No. 2010-035472.

30. A Grant of Easement for electrical and utility purposes, in favor of Maui Electric Company, Limited, a Hawaii corporation, and Hawaiian Telcom, Inc., a Hawaii corporation, recorded January 24, 2008 at said Bureau as Document No. 2008-010937.

31. A Grant of Easements for Water Utility Purposes, in favor of Kapalua Water Company, Ltd., a Hawaii corporation, recorded October 7, 2009 at said Bureau as Document No. 2009-154008.

32. The terms and provisions contained in the Grant of Easements for Access Purposes made by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, "Grantor" and Association of Apartment Owners of Kapalua Bay Condominium, a Hawaii nonprofit corporation, and Kapalua Bay Vacation Owners Association, a Hawaii nonprofit corporation, "Grantee" recorded October 7, 2009 at said Bureau as Document No. 2009-154009.

33. The terms and provisions contained in the Grant of Easements for Utility Purposes made by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, "Grantor" and Association of Apartment Owners of Kapalua Bay Condominium, a Hawaii nonprofit corporation, and Kapalua Bay Vacation Owners Association, a Hawaii nonprofit corporation, "Grantee" recorded October 7, 2009 at said Bureau as Document No. 2009-154010.

34. A Grant of Easement for Drainage Purposes, in favor of Kapalua Waste Treatment Company. Ltd., a Hawaii corporation, recorded October 7, 2009 at said Bureau as Document No. 2009-154011.

END OF EXHIBIT "H"

EXHIBIT "I"

BUDGET

**ASSOCIATION OF APARTMENT OWNERS OF KAPALUA BAY
2010 CONDOMINIUM BUDGET (a)
(146 Apartments and 5 Commercial Units)**

| | Annual Total | Resort Club Apartments (62) | Resort Residential Apartments (84) | Beach Club | Sales | General Store | Resales Office | Model |
|--|---------------------|-----------------------------------|--|------------------|------------------|------------------|-------------------|------------------|
| EXPENSES | | | | | | | | |
| Accounting | 150,093 | 55,960 | 94,133 | - | - | - | - | - |
| Activities | (40,181) | (23,954) | (16,227) | - | - | - | - | - |
| Administration | 121,759 | 40,958 | 80,791 | - | - | - | - | - |
| Audit Fees | 15,418 | 6,369 | 8,628 | 103 | 195 | 51 | 10 | 62 |
| Billing & Collections | - | - | - | - | - | - | - | - |
| Board of Directors | 6,006 | 2,550 | 3,456 | - | - | - | - | - |
| Cable TV | 4,745 | 2,015 | 2,730 | - | - | - | - | - |
| Contingency | - | - | - | - | - | - | - | - |
| Electricity - Common | 524,079 | 216,475 | 293,289 | 3,492 | 6,634 | 1,746 | 349 | 2,095 |
| Fees - Food & Beverage | 399,330 | 238,062 | 161,268 | - | - | - | - | - |
| Fees - Golf | 950,400 | 892,800 | 57,600 | - | - | - | - | - |
| Front Desk | 270,439 | 161,223 | 109,216 | - | - | - | - | - |
| Gas | 40,300 | 17,114 | 23,186 | - | - | - | - | - |
| Housekeeping | 292,435 | 120,793 | 163,654 | 1,948 | 3,702 | 974 | 195 | 1,169 |
| Human Resources-Shared | 31,467 | 13,363 | 18,104 | - | - | - | - | - |
| Income Tax | 805 | 332 | 450 | 5 | 10 | 3 | 1 | 3 |
| Insurance | 1,442,393 | 493,897 | 905,143 | 8,224 | 22,699 | 3,428 | 331 | 7,670 |
| Internet - Wireless | 11,830 | 5,024 | 6,806 | - | - | - | - | - |
| Landscaping | 563,745 | 232,859 | 315,487 | 3,756 | 7,136 | 1,878 | 376 | 2,253 |
| Loss Prevention | 340,978 | 140,845 | 190,820 | 2,272 | 4,316 | 1,136 | 227 | 1,363 |
| Maintenance-Shared | 713,108 | 248,447 | 445,899 | 3,643 | 10,055 | 1,519 | 146 | 3,398 |
| Management Fee | 709,472 | 340,373 | 355,963 | 2,782 | 6,540 | 1,470 | 191 | 2,154 |
| Members Lounge | 32,968 | 17,322 | 15,646 | - | - | - | - | - |
| Other Income | (2,515) | (1,039) | (1,407) | (17) | (32) | (8) | (2) | (10) |
| Pest Control | 18,096 | 7,475 | 10,127 | 121 | 229 | 60 | 12 | 72 |
| Pool Maintenance | 430,521 | 255,464 | 173,057 | - | - | 2,000 | - | - |
| Postage & Printing | - | - | - | - | - | - | - | - |
| Refuse Collection | 12,220 | 5,048 | 6,838 | 81 | 155 | 41 | 8 | 49 |
| Residences Liaison | 66,950 | - | 66,950 | - | - | - | - | - |
| Reserves ⁽¹⁾ | 477,330 | 163,446 | 299,869 | 2,722 | 7,512 | 1,135 | 109 | 2,538 |
| Reserve Study | 10,000 | 4,131 | 5,596 | 67 | 127 | 33 | 7 | 40 |
| Water & Sewer - Common | 210,002 | 86,743 | 117,523 | 1,399 | 2,658 | 700 | 140 | 839 |
| SUBTOTAL AOA | \$ 7,804,193 | \$ 3,744,105 | \$ 3,915,596 | \$ 30,598 | \$ 71,936 | \$ 16,166 | \$ 2,100 | \$ 23,695 |
| Fees - Community Association ⁽¹⁾ | 31,499 | - | 31,499 | - | - | - | - | - |
| Management Fees on Fees above ⁽²⁾ | 3,150 | - | 3,150 | - | - | - | - | - |
| Developer Credit ⁽²⁾ | - | - | - | - | - | - | - | - |
| TOTAL AOA^{(1),(2)} | \$ 7,838,842 | \$ 3,744,105 | \$ 3,950,244 | \$ 30,598 | \$ 71,936 | \$ 16,166 | \$ 2,100 | \$ 23,695 |

| | Total AOA | Per Unit | Per Month |
|---|----------------|-------------|------------|
| Resort Club Apartments | \$3,744,104.87 | \$60,388.79 | \$5,032.40 |
| Resort Residential Apartments R3-C | \$442,944.13 | \$55,368.02 | \$4,614.00 |
| Resort Residential Apartments All Other With Community Association | \$2,820,695.07 | \$46,240.90 | \$3,853.41 |
| Resort Residential Apartments All Other Without Community Association | \$686,605.58 | \$45,773.71 | \$3,814.48 |

(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 are \$279,859.00, which represents the pro rated amount of cash reserves funded by the developer for 2009 based on the timing of the opening of the project and developer's payment of all actual expenses of the project during 2009. The total amount of estimated cash reserves and the total amount to fund such reserves in 2010 is \$477,330.00. 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.

(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 Assessment", and ultimately assessed against Owners of Resort Apartments that have been submitted to the plan of vacation ownership. The Total from the fourth column is payable by Kapalua Bay LLC as Owner of certain Resort and Commercial Apartments.

(1) Fees - Community Association - these fees are annual dues the AOA is collecting on behalf of, and as an accommodation to, the Kapalua Resort Association ("KRA") in connection with each Residence Apartment Owners' Ownership of a Residential Apartment other than those Residential Apartments or Commercial Units that are billed by the KRA directly. The KRA annual dues pertaining to those Resident Apartments or Commercial Units that are billed directly by the KRA are not part of this budgeted line item amount. The KRA annual dues for the Resort Club Apartments are reflected as a stand-alone line item in the VOA budget and are not included in the "Fees - Community Association" line item amount above.

(2) Management Fee on Fees - Community Association will be assessed only to those owners of Resort Residential Apartments who are billed by Kapalua Resort Association through the AOA.

EXHIBIT "J"

SUMMARY OF PURCHASE AGREEMENT

Capitalized terms have the same meaning as ascribed to such terms in the Kapalua Bay Condominium Residence Apartments Purchase Agreement ("Purchase Agreement").

The specimen Purchase Agreement, filed with the State of Hawaii Real Estate Commission, provides for, among other things, a description of the Apartment to be sold, the purchase price, the closing costs, the time, manner and place of payment, the Purchaser's obligations regarding financing, the Seller's warranties and disclaimers regarding the Condominium Map and the Project, and the remedies of the Seller and of the Purchaser in the event of a default under the Purchase Agreement. The Purchase Agreement further provides that any form of reservation agreement entered into between Purchaser and Seller prior to execution of the Purchase Agreement shall be automatically terminated upon execution of the Purchase Agreement and all deposits held under such reservation agreement shall be applied to the Purchase Agreement, in the manner set forth in the Purchase Agreement.

Among other provisions the specimen Purchase Agreement provides:

1. Prior to execution of the Purchase Agreement, Purchaser shall receive: (i) a copy of the Final Public Report or Supplementary Public Report for the Project (if any), either personally or by registered or certified mail with return receipt requested, and the receipt and notice ("Receipt and Notice Form") advising Purchaser of Purchaser's right to cancel the Purchase Agreement, the delivery of which is required by Hawaii Revised Statutes, Section 514A-62, and (ii) a copy of the Federal Property Report. Purchaser shall also have been given an opportunity to read said report(s).

Purchaser may cancel the Purchase Agreement within thirty (30) days of Purchaser's receipt of the Final Public Report or Supplementary Public Report. It is understood that Purchaser may, at any time after Purchaser's receipt of the Receipt and Notice Form, waive Purchaser's right to cancel the Purchase Agreement. If Purchaser shall fail to execute the Receipt and Notice Form within thirty (30) days of Purchaser's receipt of the Receipt and Notice Form, Purchaser shall be deemed to have received the Final Public Report or Supplementary Public Report ("Deemed Receipt") and waived Purchaser's right to cancel the Purchase Agreement (by Purchaser's failure to give said written notice of cancellation). The conveyance of the Apartment to the Purchaser within the thirty (30)-day period referenced above shall also be treated as a Deemed Receipt of the Final Public Report or Supplementary Public Report and as a waiver by Purchaser of Purchaser's right to cancel the Purchase Agreement.

2. The Seller has entered into an Escrow Agreement with First American Title Company ("Escrow"), covering the deposit with Escrow of all funds paid by the Purchaser under the Purchase Agreement and the disbursement of the funds by Escrow. Escrow may charge a cancellation fee on account of escrow services performed not to exceed \$250.00.

3. The Purchase Agreement requires the Purchaser to pay the Total Purchase Price by a series of payments prior to Closing. Such payments include any Reservation Deposit due upon execution of the Deposit and Reservation Agreement, if any, and the initial payment when Purchaser signs the Purchase Agreement. Purchaser shall then deposit at or prior to Closing, the remaining balance due.

4. The Purchase Agreement provides that Purchaser will not receive interest on Purchaser's Deposits as set forth in the Purchase Agreement.

5. Purchaser's obligations under the Purchase Agreement are not contingent or conditional on Purchaser's ability to secure financing from a mortgage lender or on Purchaser's ability to sell Purchaser's current residence or any other property. Financing by Seller of any portion of the Total Purchase Price is not available.

6. The Purchase Agreement provides that Purchaser shall pay for closing costs and expenses.

7. The Purchase Agreement provides that it shall not be construed as a present transfer of any rights or of any interest in the Apartment, but rather states that it is an agreement to transfer in the future. By execution of the Purchase Agreement, the Purchaser agrees to waive, relinquish and subordinate the priority or superiority of any lien or other legal or equitable interest arising under the Purchase Agreement in favor of the lien or charge on the Project of the security interests of the Lender, including but not limited to any lien, mortgage or charge securing a loan made to finance the acquisition of the land and the costs of construction (if applicable) and any and all advances therefore until the filing of the Apartment Deed.

8. The Purchase Agreement provides that it may not be assigned by Purchaser. Any assignment of the Purchase Agreement is void and of no legal effect. Notwithstanding the foregoing, Purchaser may assign its rights under the Purchase Agreement to affiliated entities for estate planning purposes without the consent of Seller, provided that any such assignment shall not release Purchaser from its obligations under the Purchase Agreement. In the event that Purchaser decides to make such an assignment for estate planning purposes, Purchaser shall provide written notice thereof to Seller at least fifteen (15) days prior to the Closing Date, as defined in the Purchase Agreement, and shall provide to Seller copies of such documents as Seller, in its sole and absolute discretion, deems necessary to complete Closing.

* * * * *

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

EXHIBIT "K"

SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement for the Project dated January 27, 2006, as amended ("Agreement") contains the following provisions (which may be modified or otherwise limited by provisions which are not summarized hereinbelow):

A. Should Seller and prospective Purchaser enter into a form of reservation agreement for the right to purchase of an Apartment in the Project ("Reservation Agreement"), it shall require payment of deposit due thereunder to be promptly made to Escrow, and shall deliver an executed copy of the Reservation Agreement to Escrow together with the address of prospective Purchaser. Seller shall also promptly pay over to Escrow all monies (including checks) received by Seller from or on behalf of the prospective Purchaser.

B. As and when Seller shall enter into a Purchase Agreement for the conveyance of an Apartment or other interest in the Project ("Purchase Agreement"), it shall require the payment of deposit 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. Any monies held under the Reservation Agreement shall be applicable to deposits required under the Purchase Agreement, as set forth in the Purchase Agreement.

C. 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 Reservation Agreements and 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 an interest-bearing account with a federally insured 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 of the Agreement. All income derived from said account, and all interest paid thereon from the date of execution of the Purchase Agreement, shall be credited to the account of Seller, unless otherwise directed by a Seller or as otherwise set forth in the Purchase Agreement.

D. Notwithstanding anything in the Agreement to the contrary, 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 the Final Public Report for the particular phase of the Project under which such disbursement is requested, has been issued and 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 binding" 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.

E. Purchaser's funds may be used for construction and other allowable expenses in accordance with Section 514A-67 of the Condominium Property Act, as amended, and as enumerated in the Agreement and defined below prior to closing, provided that all the requirements in provision D. above have been met. If funds are to be used for construction prior to closing, the funds shall be distributed by Escrow upon the submission of bills and upon direction to do so from Seller and a qualified financially disinterested person from time to time to pay for: (a)

construction costs of the buildings and improvements in proportion to the valuation of the work completed by the contractor in accordance with the contract documents, as certified by a registered architect or engineer and approved for payment by a qualified financially disinterested person; (b) architectural, engineering, and interior design service fees in proportion to the services performed within each phase of services, as approved by a qualified financially disinterested person; (c) the costs of purchasing furnishings and fixtures for the Apartments, as approved by a qualified financially disinterested person; (d) finance and legal fees, and other incidental expenses of constructing the Apartments or developing the Project, as approved by a qualified financially disinterested person; and (e) such other costs incurred in connection with the construction of the improvements of the Project as a qualified financially disinterested person may approve. Any funds remaining shall not be disbursed until construction of the Project has been completed (or until construction of the particular Apartment being conveyed has been completed to the extent that the Condominium Property Act permits such disbursement) and Escrow receives satisfactory evidence that all mechanics' and materialmen's liens have been cleared (or, to the extent permitted by the Condominium Property Act, have been dealt with in such a fashion as to avoid non-compliance with Section 514A-18 of the Condominium Property Act), unless sufficient funds have been set aside for any bonafide dispute.

F. 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 by Seller.

(4) The conditions providing for refund under Section 514A-62 or under Section 514A-63 of the Hawaii Revised Statutes, as amended, have been met and which notice thereof has been provided by Seller.

Upon the cancellation of any Purchase Agreement as specified above, Escrow shall be entitled to a cancellation fee commensurate with the services rendered by Escrow prior to such cancellation, up to a maximum of \$250.00, as described in Exhibit "A" of the Agreement, plus all costs incurred by Escrow, which shall be paid by the Seller or Purchaser.

G. Except as otherwise provided by law, Escrow shall give each purchaser entitled to a return of his or her funds notice thereof by certified or registered mail, addressed to such purchaser at his address shown on the Purchase Agreement or any address later made known to Escrow by such purchaser. If such purchaser shall not have claimed such refund within sixty (60) days from the date said notice is mailed, Escrow shall deposit such funds into a special account in a bank or other depository selected by Escrow in the name of Seller, as trustee for the benefit of such purchaser. After having sent Seller written notice of the foregoing acts, Escrow shall thereupon be released from further liability hereunder with respect to such funds and such purchaser.

H. 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 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 AND AMENDMENT THERETO. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE ESCROW AGREEMENT AND AMENDMENT, PURCHASER MUST REFER TO THE ESCROW AGREEMENT AND AMENDMENT TO DETERMINE PURCHASER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE ESCROW AGREEMENT AND AMENDMENT, THE ESCROW AGREEMENT AND AMENDMENT WILL CONTROL.

END OF EXHIBIT "K"

EXHIBIT "L"

SUMMARY OF DEED FORM

Capitalized terms have the same meaning ascribed to such terms in the Apartment Deed.

The specimen Apartment Deed, Encumbrances, Reservations of Rights and Power of Attorney for Kapalua Bay Condominium ("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 comprise a portion of the Kapalua Bay Condominium ("Project") situate at Kapalua, Maui, State of Hawaii.

B. The Developer ("Grantor") is the lawful Owner of the fee simple interest in the real property and the rights to be transferred to the Grantee ("Purchaser"); the same are free and clear of and from all encumbrances except as identified in the Deed and except for the lien of real property taxes not yet by law required to be paid; 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 will WARRANT AND DEFEND the same unto the Purchaser forever against the lawful claims and demands of all persons, except as mentioned in the Deed.

C. Purchaser agrees and consents to the exercise by Grantor of any of its reserved rights set forth in the Deed and in the Declaration, and Purchaser agrees to sign such documents and do such things as may be required to permit Grantor to exercise those reserved rights, including the signing, delivering and filing of all documents which may be necessary. Purchaser appoints Grantor as Purchaser's "attorney-in-fact" which means that Grantor can act for Purchaser or on Purchaser's behalf, with "full power of substitution," which means that someone else may take Grantor's place to sign, deliver and file all documents and to do all things on Purchaser's behalf, which grant of authority, being coupled with an interest, which means that the Grantor has an interest beyond just in the power Purchaser is giving, the power of attorney cannot be revoked by Purchaser for the term of the reserved rights, and the power of attorney will not be affected by Purchaser's disability.

D. Purchaser 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 Declaration, the Bylaws, the House Rules, the Design Committee Guidelines, the Amended and Restated Declaration of Covenants and Restrictions dated September 30, 1987, recorded at said Bureau in Book 21185, Page 173, and the Declaration of Covenants, Conditions and Restrictions with Authorization of Time Share and Transient Vacation Rentals dated August 31, 2004, recorded at said Bureau as Document No. 2004-17883, as any of the same exist or may hereafter be amended.

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.

END OF EXHIBIT "L"

EXHIBIT "M"

PROJECT PARKING

A total of 248 parking stalls will be available for the Project as described below. 164 parking stalls are covered, 84 parking stalls are uncovered, 71 are compact sized, 172 are standard sized and 5 are accessible stalls. 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.

END OF EXHIBIT "M"