

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer KAUAI LAGOONS LLC a Hawaii limited liability company
Address 55 Merchant Street Suite 2000, Honolulu, Hawaii 96813

Project Name(\*): Kalanipu'u
Address: Kalapaki, Kauai, Hawaii

Registration No. 6006
Effective date: June 7, 2006
Expiration date: July 7, 2007

Preparation of this Report:

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

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

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

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

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

Type of Report:

x PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.

FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[ ] No prior reports have been issued.
[ ] This report supersedes all prior public reports.
[ ] This report must be read together with

SUPPLEMENTARY: (pink) This report updates information contained in the:
[ ] Preliminary Public Report dated:
[ ] Final Public Report dated:
[ ] Supplementary Public Reports dated:

And [ ] Supersedes all prior public reports.
[ ] Must be read together with
[ ] This report reactivates the public report(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 586-2643 to submit your request.
FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104

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

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

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

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

No prior reports have been issued by the developer.

Changes made are as follows:

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### **General Information On Condominiums:**

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

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

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

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

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

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

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

### **Operation of the Condominium Project:**

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

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

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

**I. PERSONS CONNECTED WITH THE PROJECT**

Developer: KAUAI LAGOONS LLC, a Hawaii limited liability company Phone: (808) 440-6545  
 Name\* (Business)  
55 Merchant St. Suite 2000  
 Business Address  
Honolulu, Hawaii 96813

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

Manager: Kauai Development Manager LLC a Hawaii limited liability company, Kevin M. Showe, sole manager  
Member: Kauai Lagoons Holdings LLC a Delaware limited liability company, Kevin M. Showe, sole manager

Real Estate Brokers\*: Kauai Lagoons Realty LLC Phone: (808)440-6545  
 Name a Hawaii limited liability company (Business)  
55 Merchant St. Suite 2000  
 Business Address  
Honolulu, Hawaii 96813

Escrow\* Title Guaranty Escrow Services, Inc. Phone: (808) 521-0211  
 Name (Business)  
235 Queen Street  
 Business Address  
Honolulu, Hawaii 96813

General Contractor Not yet selected Phone \_\_\_\_\_  
 Name (Business)  
 Business Address \_\_\_\_\_

Condominium Managing Agent Not yet selected Phone \_\_\_\_\_  
 Name (Business)  
 Business Address \_\_\_\_\_

Attorney for Developer Cades Schutte Phone (808) 521-9200  
 A Limited Liability Law Partnership LLP (Business)  
 Attn: Bernice Littman  
1000 Bishop Street, Suite 1200  
Honolulu, Hawaii 96813  
 Business Address

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



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

The House Rules for this condominium are:

Proposed       Adopted       Developer does not plan to adopt House Rules.

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

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

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	_____75%_____
Bylaws	65%	_____65%_____
House Rules	---	<u>By majority of quorum of Board</u>

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

2. **Developer:**

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

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

See Exhibit A



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: Kalapaki, \_\_\_\_\_ Tax Map Key (TMK): (4) 3-5-001:027& 173  
Kauai, Hawaii \_\_\_\_\_ (portions)

Address  TMK is expected to change because No mailing address has yet been assigned to this undeveloped land and the TMK will change upon resubdivision.

Land Area: 8.238  square feet  acre(s) Zoning: \*General Commercial  
\*(See Section V.C.1 for additional zoning information)

Fee Owner\*: KAUAI LAGOONS LLC and K D GOLF OWNERSHIP LLC  
 Name  
55 Merchant Street, Suite 2000  
 Address  
Honolulu, Hawaii 96813

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

(\* See Section V.C.2 for additional information about Developer's right to acquire the remainder of the land of the Project.)

C. **Building and Other Improvements:**

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

2. Number of Buildings 4 Floors Per Building 4 in Bldgs A,B,C  
 1 in pool building

3.  Exhibit B contains further explanations.

4. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other Steel; clay tile roofs.

5. Uses Permitted by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted By Zoning</u>	
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Commercial	<u>1</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Hotel	<u>78*</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other (Parking)	_____	<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

(\* For additional information see Section V. C.1)

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: Animals are not allowed except to the extent permitted in the House Rules

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

Other: See the House Rules

There are no special use restrictions.

6. Interior (fill in appropriate numbers): See Exhibit C for additional information about the Apartments

Elevators: 6 Stairways: 7 Trash Chutes: 3

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Net Other Area (sf)	(Identify)
2BR	53	2/2	1310	238	Lanai (LCE)
2ADA	3	2/2	1310	238	Lanai (LCE)
3BR	20	3/3	1673	339	Lanai (LCE)
3ADA	2	3/3	1673	339	Lanai (LCE)
Front Desk	1	0	499	--	

Total Number of Apartments: 79

**\*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 D

Permitted Alterations to Apartments: See Exhibit E

Apartments Designated for Owner-Occupants Only:

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

[Note not applicable because the project is in General Commercial zone and Visitor Destination Area designation is in process. Multifamily use of the Resort Apartments is permitted in the General Commercial zone by Use Permit which is part of the Land Use Permit described in Section V.C.1.]

7. Parking Stalls:

Total Parking Stalls: 120

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		TOTAL
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
*Assigned (for each unit)	_____	<u>115</u>	_____	_____	_____	_____	<u>115</u>
Guest	_____	<u>5</u>	_____	_____	_____	_____	<u>5</u>
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open	<u>120</u>		_____	_____	_____	_____	<u>120</u>

Note: Each 2 Bedroom Apartment has 1 assigned stall; each 3 Bedroom Apartment has 2 assigned stalls and the Front Desk Apartment has 15 assigned stalls

Each apartment will have the exclusive use of at least 1 parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

Commercial parking garage permitted in condominium project.

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

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool       Storage Area       Recreation Area (Building)

Laundry Area       Tennis Court       Trash Chute/Enclosure(s)

Other Lounge Area, restrooms

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:

(\* See Section V.C.1. for additional information)

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	_____x_____	_____	_____
Structures	_____x_____	_____	_____
Lot	_____x_____	_____	_____

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

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

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

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

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

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.

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 C.

as follows:

Front Desk	0.45106%
2BR	1.18375%
2ADA	1.18375%
3BR	1.51177%
3ADA	1.51177%

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 6, 2006 and issued by Title Guaranty of Hawaii, Incorporated.

Blanket Liens:

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

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

\*However it is anticipated that there will be a construction mortgage loan placed on the Project in the future. See Effect paragraph below.

[ ] 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\*

The lender may choose to honor the Buyer's contract or it may be cancelled and Buyer's s deposit will be returned, less Escrow cancellation fee. Buyer may lose all rights to acquire the Apartment. However, If Buyer's funds are used for construction and other costs and the lender chooses not to honor the contract then Buyer may lose the funds that were used.

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:

See Disclosure Abstract

2. Appliances:

Developer will assign to Buyers the unexpired term, if any, of any manufacturer's or dealer's warranties covering any furnishings, fixtures or appliances in the Apartment.

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

Construction has not yet begun. Construction is estimated to begin October 2006 and the Estimated Date of Completion of the entire Project is April 2008.

H. **Project Phases:**

The developer  has  has not reserved the right to add to, merge, or phase this condominium.

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

See Exhibit A



## 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 I contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated April 6, 2006.  
Exhibit J contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

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

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

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all monies 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 monies the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules, if any.
  - E) Condominium Map, as amended.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other \_\_\_\_\_

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

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)  
Website to access unofficial copy of laws: [www.hawaii.gov/dcca/hrs](http://www.hawaii.gov/dcca/hrs)  
Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

This Public Report is part of Registration No. 6006 filed with the Real Estate Commission on May 11, 2006.

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

YELLOW paper stock                       WHITE paper stock                       PINK paper stock

C. Additional Information Not Covered Above:

1. Zoning. The Project is zoned General Commercial. Hotel use is one of the permitted uses in the General Commercial Zone but the Project will not be considered a hotel under the zoning code because all of its Resort Apartments have kitchens. The Project is one of a number of projects covered by the Special Management Area Permit SMA (U) 2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, Variance Permit V-2005-7 (the "Land Use Permit"). The Land Use Permit allows the use of the Resort Apartments as multifamily dwellings in the General Commercial District. Developer has applied to the County of Kauai for designation of the Project as a Visitor Destination Area and anticipates receiving that approval in August 2006. If received the Resort Apartments may be used for transient rentals. The Land Use Permit is attached to the Disclosure Abstract.

2. Subdivision. The land of the Project is currently part of two lots, primarily on Lot 10 of the Kauai Lagoons Subdivision (Second Amendment) owned by Developer and partly on Lot 2 of the Kauai Lagoons Subdivision (Second Amendment) owned by K D Golf Ownership LLC. The Land Use Permit in Condition 4. requires the Project to be resubdivided to provide the applicable setbacks. Developer and K D Golf Ownership LLC have entered into a Consolidation and Resubdivision Agreement under which Lots 2 and 10 will be consolidated and resubdivided and Developer will be granted the Project land (new Lot 10-B).

3. Master Declaration. The Project is part of an overall resort development ("Kauai Lagoons") including golf courses, lagoons, residential, multifamily, timesharing, hotel, retail and commercial and recreational uses. The land of the resort development is owned by Developer and K D Golf Ownership LLC who intend to submit it to a Declaration of Covenants, Conditions and Restrictions for Kauai Lagoons (the "Master Declaration"). The Master Declaration will become an additional encumbrance on the Project. Before the sales contracts become binding the Buyers will be given copies of the Master Declaration and an opportunity to review it. All property owners in Kauai Lagoons including the Apartment owners of the Project will be members of the Kauai Lagoons Community Association (the "Master Association") and all property in Kauai Lagoons will be subject to assessments at the times and allocations described in the Master Declaration. Those assessments will be secured by liens on the Apartments in the Project and the other properties in Kauai Lagoons. The declarant under the Master Declaration (the "Master Declarant") will reserve significant rights including for example the rights to appoint directors of the Association, to amend the Master Declaration, to annex and withdraw land from Kauai Lagoons, to grant easements over the lands of Kauai Lagoons. The Master Association may be given easements, ownership or use rights over various facilities in Kauai Lagoons and obligations to operate and maintain them, such as roadways, public access areas, lagoons and maintenance facilities. The Master Declaration will contain disclaimers that membership in the Master Association will not give the members any rights to use private amenities in Kauai Lagoons such as the Golf Courses.

4. Disclosures and Indemnities. The Master Declaration, the Sales Contracts and the Apartment deeds will contain disclosures about various conditions, for example the Golf Courses, the lagoons, the adjacent Lihue airport and the County wastewater treatment plant that could have adverse effects on the Project or its occupants. By signing the Sales Contract and the Apartment deed the Buyers will acknowledge those disclosures, accept the conditions and agree to indemnify Developer, the Master Declarant, the owner of the Golf Courses and certain affiliated persons against claims relating to the conditions. The disclosures and indemnities are set out in the Summary of the Sales Contract in Exhibit I. In addition the Land Use Permit in condition 10. requires all deeds to include an indemnity of the County of Kauai, the State of Hawaii and the Land Use Commission of the State of Hawaii against complaints or claims relating to the operation of the wastewater treatment plant and Lihue Airport.

- D. The developer declares subject to the penalties set forth in section 51 4A-49(b) that the 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) [ 514A-1.6] (The developer is required to make this declaration for issuance of art 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.

KAUAI LAGOONS LLC  
 Printed Name of Developer

By: Kauai Development Manager LLC  
 Its Manager

By:   
 Duly Authorized Signatory\*

May 11, 2006  
 Date

KEVIN M. SHOWE Manager of Kauai Development Manager LLC  
 Printed Name & Title of Person Signing Above

Distribution:  
 Department of Finance, County of Kauai  
 Planning Department, County of Kauai

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

## EXHIBIT A DEVELOPER'S RESERVED RIGHTS

Developer has reserved the following rights.

1. Consent rights to: alterations (Declaration 10.8, 17.1, 17.4 and 17.5); change in the use of Common Elements (Declaration 11.3); change in the method of allocating common expenses (Declaration 14.1); amendments adversely affecting Developer's Rights and all amendments during Declarant's Rights Period (Declaration 18.3.1); incorporation of the Association (Bylaws 12.1); amendments to the Bylaws (Bylaws 12.3 and 12.4).

### 2. Amendment Rights

Declaration Section 18.2.1 "Developer acting alone may amend this Declaration to file the "as built" verified statement (with plans, if applicable) required by Section 514A-12 of the Act, so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans previously filed fully and accurately depict the layout, location, apartment numbers and dimensions of the Apartments as built, or, so long as any plans filed with the amendment involve only immaterial changes to the layout, location, apartment numbers, or dimensions of the Apartments as built."

Declaration Section 18.2.2 "No matter what else this Declaration says, during Developer's Rights Period, Developer shall have the right (but not the obligation) to amend this Declaration and the Bylaws (and the Condominium Map, if appropriate) without the consent or joinder of any Apartment owner, lienholder or other person or entity, for the purpose of meeting any requirement imposed by (i) any applicable law, (ii) the Real Estate Commission of the State of Hawaii, (iii) any title insurance company issuing a title insurance policy on the Project or any of the Apartments, (iv) any institutional lender lending funds on the security of the Project or any of the Apartments, or (v) the laws and rules of any state or country in which Developer intends to market or sell Apartments, or any other governmental or quasi-governmental agency, including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development and the Veterans Administration. However, except as provided in Section 23 [Developer's Reserved Rights], no amendment which would change the Common Interest appurtenant to an Apartment or materially change the design, location or size of an Apartment shall be made without the consent of all persons having an interest in such Apartment and Developer cannot use its power of attorney under Section 23.17.3 to grant itself that consent;"

Bylaws Section 12.8.2 "The Developer shall have the reserved right to amend these Bylaws unilaterally for the same purposes that the Developer may amend the Declaration. Each and every party acquiring an interest in the Project, by doing so consents to these Developer amendments and agrees to execute and deliver any documents and instruments and to do such other things as may be necessary or convenient to effect those Amendments. The powers of attorney granted to the Developer in the Declaration apply to Developer's amendments of these Bylaws also."

### 3. Developer's Other Reserved Rights. In the Declaration:

"23. DEVELOPER'S RESERVED RIGHTS. No matter what else this Declaration and the Bylaws may say, Developer reserves the following rights during Developer's Rights Period or such shorter period as is provided in the applicable Section:

23.1 DEVELOPER'S EASEMENT TO COMPLETE CONSTRUCTION OF THE PROJECT AND ALL ITS APARTMENTS AND IMPROVEMENTS. Developer and its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under and upon the Project as may be necessary or appropriate in the opinion of the Developer for the completion of construction to all Apartments and Improvements of the Project and the correction of defects in them.

23.2 DEVELOPER'S EASEMENT FOR NOISE AND DUST. Developer and its agents, employees, consultants, contractors, licensees, successors and assigns shall have an easement over, under and upon the Project or any portion of it, to cause or permit noise, dust and other nuisances to be created by or to result from any work that is connected with or incidental to the construction and sale of any Apartment or other Improvements in the Project, the construction and sale of additional apartments that are or may be annexed to the Project, or the subdivision, consolidation, resubdivision and/or withdrawal of portions of the Land and/or Apartments.

23.3 DEVELOPER'S EASEMENT FOR SALES ACTIVITIES. Developer and its brokers, sales agents and other related persons shall have the right to conduct extensive sales, marketing, rental and leasing activities at the Project, on the General Common Elements and from any Apartment and Limited Common Element owned by it, which right shall include showing the Project to potential buyers, renters and lessees, using model apartments, sales and management offices, permitting potential buyers to stay in Apartments in the Project, and using banners, signs and other displays and activities at the Project. Such activities may include the initial sale, resale, rental or leasing of Apartments and interests in them, including any vacation ownership or timeshare interests which are created by

Developer or an Affiliate of Developer, as well as interests in other projects or properties (whether whole apartments, vacation ownership or timeshare interests, subdivided lots or other residential real estate) developed by Developer or any of its Affiliates or for which Developer or any of its Affiliates serves as a selling or listing real estate brokerage firm. In the event that Developer's mortgage lender, if any, or any successor to or assignee of Developer's mortgage lender acquires any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the mortgage remedies or by a deed or an assignment in lieu of foreclosure, such mortgage lender and its successors and assigns shall have the same rights as Developer to conduct such extensive sales, marketing, rental and leasing activities on the Project.

23.4 DEVELOPER'S EASEMENT FOR THE SUBDIVISION AND CONSOLIDATION OF APARTMENTS, THE CONVERSION OF LIMITED COMMON ELEMENTS TO APARTMENTS, AND TO SUBDIVIDE AND/OR TO CONSOLIDATE AND RESUBDIVIDE THE LAND. Developer and its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under, upon and through the Common Elements, any Limited Common Elements and the Apartments or any portion of them as may be necessary or appropriate in the opinion of Developer to effect the subdivision or consolidation of Apartments, the conversion of Limited Common Elements to Apartments, and the subdivision, consolidation and/or resubdivision of the Land, as contemplated by Sections 23.6, 23.7, 23.8, and 23.11, and such easement shall allow Developer and its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns to cause or permit noise, dust and other nuisances to be created by or to result from any work connected with or incidental to effecting any such subdivision or consolidation of Apartments, the conversion of Limited Common Elements to Apartments, or the subdivision, consolidation and/or resubdivision of the Land.

23.5 RESERVED RIGHT TO GRANT EASEMENTS. Developer shall have the right to delete, relocate, realign, reserve, grant and receive any and all easements and rights-of-way over, under and on the Common Elements (including Limited Common Elements) deemed necessary or desirable in Developer's sole discretion, including easements and rights-of-way for utilities, retention ponds, sanitary and storm sewers, cable television, refuse disposal, driveways, parking areas and roadways. In the event that any private utility is installed in Kauai Lagoons, such as an electric co-generation plant or any plant for hot or chilled water, Developer may make arrangements for the supply of such utilities for the Project and may grant any necessary or useful easements in connection with that supply.

23.6 RESERVED RIGHT TO DEVELOP, CONSTRUCT AND ANNEX ADDITIONAL LAND AND APARTMENTS TO THE PROJECT. Developer will develop and construct the initial Apartments in the Project as described in this Declaration and as depicted on the Condominium Map. Nothing stated in this Declaration shall be construed as a representation or warranty by Developer that any Apartments or Improvements after the initial Apartments and Improvements will be developed, nor shall anything in this Declaration require Developer to develop any additional Apartments or Improvements in the Project. Developer reserves the right and easement to create, develop and construct such additional Apartments and other Improvements in the Project and to annex such Apartments and Improvements and any additional land to the Project in the manner specified below. Developer shall further have the reserved right to execute and record an amendment to this Declaration and to the Condominium Map to create any such additional Apartments and other Improvements within the Project and to annex the same and any additional land, to the purview of this Declaration. Any such creation, development, construction and annexation of additional Apartments, Improvements and/or land to the Project shall be effective provided that:

23.6.1 Developer records or causes to be recorded an amendment to this Declaration: (a) describing the land, Apartments and/or other Improvements to be created and annexed to the Project and setting forth at least a description of the land, Apartments and such Improvements; and (b) in the case of the creation and annexation of Apartments, setting forth the Common Interests appurtenant to the newly formed Apartments and existing Apartments, provided, however, that in the event that additional Resort Apartments are created in the Project, the Common Interests appurtenant to such newly created Apartments shall be substantially equivalent to the Common Interest of existing Resort Apartments having the same number of bedrooms. Upon creating the additional Apartments in the Project, the Common Interests for all Apartments in the Project shall be recalculated by dividing the net living area (or net area) exclusive of any balcony areas and Limited Common Element areas of each Apartment by the sum of the net living area (or net area) of all Apartments then-existing in the Project with minor adjustment to the Common Interest of the Front Desk Apartment in accordance with the original formula for the Common Interest of the Front Desk Apartment, to permit the total Common Interest percentage for all Apartments to equal 100%. Such recalculation of the Common Interest of Apartments in the Project may be utilized by Developer to permit it to create all Apartments in the Project that are developed in the future;

23.6.2 Developer also records or causes to be recorded an amendment to the Condominium Map which depicts the additional land and Apartments being annexed to the Project, and in the case of an Apartment, a floor plan with dimensioning, together with a verified statement of a registered architect or professional engineer, in the manner and content required by Section 514A-12 of the Act; and

23.6.3 Any such alteration shall comply in all respects with all applicable governmental codes, statutes, ordinances, rules and regulations.

23.7 RESERVED RIGHT TO SUBDIVIDE AND CONSOLIDATE APARTMENTS. Developer shall have the right:

23.7.1 With respect to any Apartment which it owns to: (1) alter the floor plan of the Apartment provided that the Common Interest appurtenant to the Apartment shall not change, (2) subdivide the Apartment to create two or more Apartments provided that the total Common Interest appurtenant to the newly created Apartments shall equal the Common Interest appurtenant to the original Apartment; and (3) convert certain portions of any existing Apartment to Common Element status to facilitate any subdivision provided that the total Common Interest appurtenant to the newly created Apartments shall equal the Common Interest appurtenant to the original Apartment.

23.7.2 If Developer is the owner of any two Apartments separated by a party wall, floor or ceiling, to consolidate two or more Apartments and to alter or remove all or portions of the intervening wall, floor or ceiling at Developer's expense provided that: (1) the structural integrity of the Project is not affected by the alteration and (2) the finish of the Common Element then remaining is restored to a condition substantially compatible with that of the Common Element prior to such alteration.

23.7.3 Developer, in the process of consolidating Apartments, shall have the right to convert the area between the Apartments to an Apartment (as opposed to the same remaining a Common Element) for so long as such Apartments shall remain consolidated or shall continue to be commonly used or owned.

23.7.4 The rights to consolidate and subdivide may be used together so that Apartments may be consolidated and resubdivided in the same amendment.

Any such alteration, subdivision or consolidation of Apartment(s) as provided above shall be effective provided that:

(a) Developer records or causes to be recorded an amendment to this Declaration describing the Apartment(s) in question and setting forth at least: (a) a description of the newly formed Apartment(s); (b) in the case of the consolidation of Apartments by Developer, the undivided percentage interest appurtenant to the newly formed Apartment, which shall be calculated by adding together the undivided percentage interests for the Apartments to be consolidated; or (c) in the case of the subdivision of an Apartment by Developer, the undivided percentage interest appurtenant to each of the newly formed Apartments, which shall equal the total of the undivided interest appurtenant to the original Apartment.

(b) Developer shall record or cause to be recorded an amendment to the Condominium Map for the Apartment(s) being altered, subdivided or consolidated to show an amended floor plan, as necessary, together with a verified statement of a registered architect or professional engineer, in the manner required by Section 514A-12 of the Act, that said Condominium Map, as so amended, is an accurate copy of portions of the plans of the altered Apartment(s) as filed with and approved by the county officer having jurisdiction over the issuance of permits for the completion of buildings, and that the plans fully and accurately depict the layout, location, apartment numbers, and dimensions of the Apartments as built; and

(c) Any such alteration shall comply in all respects with all applicable governmental codes, statutes, ordinances, rules and regulations, or with all variances granted from them.

23.8 RESERVED RIGHT TO CONVERT LIMITED COMMON ELEMENTS TO APARTMENTS. Developer shall have the right:

23.8.1 To convert a Limited Common Element appurtenant to an Apartment or Apartments owned by Developer, or any portion of it, into a separate Apartment of the Project. In such event, Developer shall have the right to alter the physical aspects of the Limited Common Element at Developer's expense in connection with such conversion, including building such structures as may be necessary or appropriate, provided that: (1) the structural integrity of the Project is not affected by the alteration and (2) the finish of the Apartment is consistent with the quality of other Apartments in the Project and any remaining portion of the Limited Common Element that is not converted to an Apartment, if any, is restored, to the extent feasible, to a condition substantially compatible with that of the Limited Common Element prior to such conversion.

23.8.2 To designate certain Common Elements or Limited Common Elements of the Project as Limited Common Elements appurtenant to the newly-created Apartment; provided that there is no material adverse effect on the remainder of the Project.

Any such conversion of a Limited Common Element into an Apartment or Apartments as provided above shall be effective provided that:

(a) Developer records or causes to be recorded an amendment to this Declaration describing the Apartment(s) in question and setting forth at least: (a) a description of the newly formed Apartment(s),

and (b) the Common Interests appurtenant to the newly formed Apartments and existing Apartments. In the event that additional Resort Apartments are created, the Common Interests appurtenant to such newly created Apartments shall be substantially equivalent to the Common Interest of existing Resort Apartments having the same number of bedrooms.

(b) Developer shall record or cause to be recorded an amendment to the Condominium Map to show the floor plans and elevations for the newly-created Apartment(s), as necessary, together with a verified statement of a registered architect or professional engineer, in the manner required by Section 514A-12 of the Act, that said Condominium Map, as so amended, contains an accurate copy of portions of the plans of the newly-created Apartment(s) as filed with and approved by the county officer having jurisdiction over the issuance of permits for the completion of buildings, and that the plans fully and accurately depict the layout, location, apartment number(s), and dimensions of the Apartment(s) as built; and

(c) Any such alteration associated with such conversion shall comply in all respects with all applicable governmental codes, statutes, ordinances, rules and regulations.

23.9 RESERVED RIGHT TO REDESIGNATE LIMITED COMMON ELEMENTS. Developer shall have the right to redesignate Limited Common Elements as may be appurtenant to an Apartment owned by Developer as being Common Elements of the Project.

23.10 RECALCULATION OF COMMON INTERESTS. As provided in this Declaration, it may be necessary to recalculate the Common Interests appurtenant to the Apartments in the Project. In such event, the following principles and formulae shall apply:

23.10.1 Generally, it is intended that the Common Interests appurtenant to each existing Apartment shall be recalculated in accordance with the formula set out in Exhibit "B".

23.10.2 In the event that any improvements and/or land are annexed to the Project, but no additional Apartments are created, no change in the Common Interest appurtenant to each existing Apartment shall occur. Developer shall have the right, however, to designate any such annexed land and improvements as Limited Common Elements appurtenant to a particular Apartment or Apartments.

23.10.3 In the event that the Land is subdivided and a portion or portions are withdrawn from the Project but no Apartments are withdrawn in connection with that withdrawal, no change in the Common Interest appurtenant to each existing Apartment shall occur. If one or more Apartments are withdrawn from the Project together with a portion or portions of the Land, the Common Interest appurtenant to all remaining Apartments in the Project shall be recalculated by adding the total Common Interests of the remaining Apartments and then dividing the Common Interest of each remaining Apartment by the total Common Interest of all remaining Apartments to obtain the new Common Interest appurtenant to each remaining Apartment then comprising the Project. Developer may adjust the Common Interests to assure that the total of all Common Interests equals one hundred percent (100%).

23.11 RESERVED RIGHT TO MODIFY PROJECT. Developer shall have the reserved right to effect such modifications to Apartments and Common Elements in the Project and/or to execute, record and deliver any amendments to this Declaration, the Condominium Map, the Bylaws and the House Rules as may be necessary or required by Developer in its sole discretion, or to effect compliance by the Project, the Association, any association of vacation owners or timeshare owners or by Developer, with laws which apply to the Project, including the Fair Housing Act, as amended, 42 U.S.C. §§3601 et seq., including any and all rules and regulations promulgated under it, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§12101 et seq., including any and all rules and regulations promulgated under it (the "ADA"). For instance, Developer will have the right to re-stripe parking stalls and reconfigure parking stalls to meet the requirements of the ADA.

23.12 RESERVED RIGHT TO REDESIGNATE LIMITED COMMON ELEMENTS AS APPURTENANT TO OTHER APARTMENTS. Developer may amend this Declaration to designate all or a portion of certain Limited Common Elements as may be appurtenant to any Apartment owned by Developer, to another Apartment or Apartments owned by Developer.

23.13 RESERVED RIGHT REGARDING SPECIAL MANAGEMENT AREA USE PERMIT AND OTHER PERMITS. Developer shall have the right to enter into any agreements, to grant easements, and to do all other things that may be necessary or convenient to satisfy the requirements of the Land Use Permit.

23.14 RESERVED RIGHT TO SUBDIVIDE, CONSOLIDATE, RESUBDIVIDE AND/OR WITHDRAW LAND AND APARTMENTS.

23.14.1 Developer shall have the right to subdivide, consolidate, resubdivide and/or withdraw from the operation of this Declaration, all or any portion of the Land underlying, and Apartments in, the Project. In connection with such right, Developer shall have the further reserved right to enter and go upon the Land to do all things necessary or proper to effectuate such subdivision, consolidation, resubdivision and/or withdrawal of portions

of the Land and/or Apartments, including making surveys to undertake a realignment of boundaries of the Land (it being understood that Developer shall have the reserved right to effect any such realignment), and to facilitate the granting, reserving, adding, deletion, reception, realignment and relocating of easements and rights-of-way for utilities, cesspools, sanitary and storm sewers, cable television, refuse disposal, driveways, parking areas, roadways, and all other required easements and rights-of-way. The subdivision, consolidation, resubdivision and/or withdrawal of portions of the Land and/or Apartments shall be subject to, and Developer shall, at its own expense, comply with, all of the then-applicable governmental laws, rules and regulations, including subdivision requirements.

23.14.2 In connection with the exercise of this right to subdivide, consolidate, resubdivide and/or withdraw, Developer further reserves the right, at its expense, to: (i) grant, reserve, add, delete, receive, realign and/or relocate over, across and under the Project, as appropriate, easements and rights-of-ways for utilities, cesspools, sanitary and storm sewers, cable television, refuse disposal, access, driveways, parking areas, roadways, and walkways; and (ii) relocate or realign any existing easements and rights-of-way over, across and under the Project, as appropriate, including any existing utilities, sanitary and storm sewer lines, and cable television lines and connect the same over, across and under the Project, provided that such easements and such relocations and connections of lines do not materially impair or interfere with the use of any Apartment in the Project as then constituted; and provided further that Developer specifically reserves the right, whether or not in connection with its right to subdivide, consolidate, resubdivide and withdraw, to grant an easement for access, driveway and parking purposes over the Project in favor of the withdrawn portion of the Land in the event the same shall be withdrawn from the operation of this Declaration.

23.14.3 Upon the exercise of said reserved right to subdivide, consolidate, resubdivide and/or withdraw, Developer shall, at Developer's expense and without being required to obtain the consent or joinder of any apartment owner or lienholder, execute and record in the Record Office an amendment to the Declaration and the Condominium Map:

- (a) describing the withdrawn land and any improvements on it;
- (b) describing the realigned boundaries of the land upon which the Apartments then constituting the Project are located;
- (c) where applicable and appropriate, granting, reserving or relocating easements over, under and on the Common Elements as permitted above; and
- (d) if necessary, adjusting the Common Interest for each Apartment which remains a part of the Project in accordance with Section 23.10. The recording of the amendment to this Declaration and the Condominium Map shall effectuate the withdrawal, without any further consent or joinder of any party. The withdrawn land shall belong to Developer and Developer shall have the right, as grantor, to execute and deliver a deed of the subdivided and withdrawn area upon recording of the withdrawal amendment.

The exercise by Developer of the right to subdivide, consolidate, resubdivide and/or withdraw all or any portion of the Land and/or Apartments provided in this Section 23 shall not in any way limit or be deemed to limit Developer's full use of areas remaining in the Project upon withdrawal, including further development of the Project by constructing additional improvements for commercial or other uses permitted by applicable laws and ordinances then in effect.

23.15 RESERVED RIGHT TO CONVEY APARTMENTS AND LIMITED COMMON ELEMENTS TO ASSOCIATION. Developer shall have the reserved right, but not the obligation, to convey Apartments that are owned by Developer to the Association and to redesignate Limited Common Elements appurtenant to Apartments owned by Developer to Apartments owned by the Association. Any Apartment conveyed under this Section 23.15 shall be free of liens other than nondelinquent real property taxes, Master Association assessments and Association assessments. Developer shall have the right to partially assign this right, with respect to the Front Desk Apartment and Front Desk Elements, to any person who is the Front Desk Owner and any successors and assigns as Front Desk Owner.

23.16 DEVELOPER'S RIGHT TO USE. Developer shall have the reserved right to use (or to permit any Affiliate to use) any Apartment which it owns for promotional purposes, and shall have the right to have guests stay in such Apartments for any length of time; provided that such guests shall abide by and be subject to all of the provisions of the Declaration, the Bylaws and the House Rules. Additionally, Developer will have the right to utilize (or to permit any Affiliate to utilize) Apartments which it owns or any Limited Common Element which is appurtenant to any Apartment which it owns as sales, rental or leasing offices or as a place which is utilized to provide services to the Owners or other occupants of the Project, to the extent such use or uses are permitted under applicable law.

23.17 APARTMENT OWNERS ACCEPTANCE OF DEVELOPER'S RIGHTS. Each and every party acquiring an interest in the Project or the Land by such acquisition consents to the rights reserved by Developer under this Section 23 and elsewhere in this Declaration and:

23.17.1 acknowledges and agrees that the construction, alteration, demolition, sales, rental and leasing activities may result in noise and nuisances and consents to such activity by Developer and its permitted assigns;

23.17.2 consents to every deletion, relocation, realignment, reservation, subdivision, consolidation, creation, development, construction and annexation of Apartments and related Improvements to the Project, to the annexation or withdrawal of lands from the Project, to the granting or reception of easements and rights-of-way provided in this Section 23, and to every other act taken by or right reserved to Developer under this Section 23 and elsewhere in the Declaration and Bylaws;

23.17.3 agrees to execute, deliver and record such documents and instruments and to do such other things as may be necessary or convenient to effect the same, including any subdivision, consolidation or permit applications, any amendments of this Declaration, the Bylaws or the Condominium Map, and any grant of easement amendments; and appoints Developer and its assigns as his attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of Developer's Rights Period, and shall not be affected by the disability of such party or parties, and which grant of such power shall be binding upon any assignee of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any such assignee or successor-in-interest upon any transfer of any Apartment or any interest in it, whether by deed, mortgage, lease, agreement of sale, or any other instrument of conveyance;

23.17.4 consents to the recording in the Record Office of any and all documents that in the opinion of Developer are necessary or useful to effect Developer's reserved rights, including any easements and any amendments of this Declaration, the Bylaws and the Condominium Map; and

23.17.5 further waives, releases and discharges any rights, claims or actions that such party may acquire against Developer, its brokers, sales agents, employees and lenders, and their respective successors and assigns as a result of any such activity or activities.

23.18 ASSIGNMENT OF DEVELOPER'S RIGHTS. The rights reserved to Developer in this Declaration shall be fully assignable by Developer, and Developer may assign or mortgage or grant a security interest in whole or in part in any rights reserved to Developer in this Declaration by a recorded instrument specifically assigning or mortgaging or granting a security interest in such rights, but such rights shall be held by only one person or entity at any time unless the assignment specifically provides otherwise. Every Owner of an Apartment in the Project and all holders of liens affecting any of the Apartments and each and every other party acquiring an interest in the Project or in the Land or any part of it, by acquiring such Apartment, lien or other interest, consents to any such assignment by Developer, and, to the extent designated by Developer, agrees to recognize any assignee as the "Developer" under this Declaration. "

## EXHIBIT B: BUILDINGS AND OTHER IMPROVEMENTS

The Buildings of the Project are depicted on the Condominium Map and consist of four buildings, Buildings A, B and C containing the Apartments and certain Common Elements and Limited Common Elements and one Pool Building containing Common Element restrooms and locker rooms. Buildings A, B and C each has four (4) stories and will be constructed primarily of concrete with post tensioned concrete slabs, stone, steel and clay tile roofs. A portion of Building A has a lower level and in this portion of Building A the four (4) stories are lower level through level 3. The Pool Building has one (1) storey.

The Project also has driveways, pathways and 120 open parking stalls, landscaping, a swimming pool and barbecue area.

EXHIBIT C: DESCRIPTION OF APARTMENTS, COMMON INTERESTS AND PARKING STALL ALLOCATIONS

A. The Resort Apartment Types, the Net Living Area, Lanai Area of the adjacent Limited Common Element lanai and the Common Interest of each Type and the description of the layout of each Type is listed.

Condo.Map Drawing No	Type (No. of Apts)	Interior Net Living Area s.f.	Lanai Area (Ltd Comm Elem.) s.f.	Total Net Living Area s.f.	Description	Common Interest %	Aggregate %
A2-01	2BR(53)	1310	238	1548	Two bedroom unit consisting of a combined living/dining/study area, kitchen, master bedroom, master bathroom, guest bedroom, guest bathroom, foyer, utility, owner's closet and lanai.	1.18375	62.73875
A2-01.1	2-ADA (3)	1310	238	1548	Two bedroom ADA unit consisting of a combined living/dining/study area, kitchen, master bedroom, master bathroom, guest bedroom, guest bathroom, foyer, utility, owner's closet and lanai.	1.18375	3.55125
A2-02	3BR (20)	1673	339	2012	Three bedroom unit consisting of a combined living/dining/study area, kitchen, master bedroom, master bathroom, guest bedroom, guest bathroom, bedroom, bathroom, foyer, utility, owner's closet and lanai.	1.51177	30.23540
A2-02.1	3-ADA (2)	1673	339	2012	Three bedroom ADA unit consisting of a combined living/dining/study area, kitchen, master bedroom, master bathroom, guest bedroom, guest bathroom, bedroom, bathroom, foyer, utility, owner's closet and lanai.	1.51177	3.02354
Subtotal for Resort Apts	78						99.54894

The aggregate Common Interests of the Resort Apartments are 99.54894 and their Common Interests are allocated based on relative Interior Net Living Area with minor adjustments for rounding as follows:  

$$\frac{\text{Interior Net Living Area of Apartment Type}}{\text{Aggregate Net Living Area of all Apartments}} \times 100 = \text{Common Interest for Apartments of that Type}$$

B. The Apartment number and Apartment Type is listed for each Resort Apartment

Drawing No.	Building	Apt No.	Type	Common interest	Parking Stall(s)
A1-01	A	1 001	2BR	1.18375	1
A1-01	A	1 002	3BR	1.51177	3 & 40
A1-01	A	1 003	2BR	1.18375	2
A1-02	A	1 101	2BR	1.18375	5
A1-02	A	1 102	3BR	1.51177	4 & 38
A1-02	A	1 103	2BR	1.18375	6
A1-02	A	1 104	2-ADA	1.18375	41
A1-02	A	1 105	3BR	1.51177	24 & 39
A1-02	A	1 106	2BR	1.18375	25
A1-02	A	1 107	2BR	1.18375	26
A1-07	B	1 108	2BR	1.18375	31

Drawing No.	Building	Apt No.	Type	Common interest	Parking Stall(s)
A1-07	B	1 109	3-ADA	1.51177	30 & 64
A1-07	B	1 110	2BR	1.18375	32
A1-07	B	1 111	2BR	1.18375	33
A1-07	B	1 112	2BR	1.18375	34
A1-07	B	1 114	2BR	1.18375	56
A1-07	B	1 115	2-ADA	1.18375	80
A1-12	C	1 116	2-ADA	1.18375	81
A1-12	C	1 117	2BR	1.18375	91
A1-12	C	1 118	2BR	1.18375	90
A1-12	C	1 119	2BR	1.18375	109
A1-12	C	1 120	2BR	1.18375	113
A1-12	C	1 121	3-ADA	1.51177	87 & 115
A1-12	C	1 122	2BR	1.18375	114
A1-03	A	1 201	2BR	1.18375	7
A1-03	A	1 202	3BR	1.51177	9 & 36
A1-03	A	1 203	2BR	1.18375	8
A1-03	A	1 204	2BR	1.18375	21
A1-03	A	1 205	3BR	1.51177	20 & 37
A1-03	A	1 206	2BR	1.18375	22
A1-03	A	1 207	2BR	1.18375	23
A1-08	B	1 208	2BR	1.18375	73
A1-08	B	1 209	3BR	1.51177	35 & 48
A1-08	B	1 210	2BR	1.18375	47
A1-08	B	1 211	2BR	1.18375	46
A1-08	B	1 212	2BR	1.18375	45
A1-08	B	1 214	3BR	1.51177	74 & 78
A1-08	B	1 215	2BR	1.18375	79
A1-13	C	1 216	2BR	1.18375	88
A1-13	C	1 217	2BR	1.18375	89
A1-13	C	1 218	3BR	1.51177	110 & 120
A1-13	C	1 219	2BR	1.18375	108
A1-13	C	1 220	2BR	1.18375	106
A1-13	C	1 221	3BR	1.51177	107 & 111
A1-13	C	1 222	2BR	1.18375	112
A1-04	A	1 302	3BR	1.51177	11 & 27
A1-04	A	1 303	2BR	1.18375	10
A1-04	A	1 304	2BR	1.18375	17
A1-04	A	1 305	3BR	1.51177	16 & 29
A1-04	A	1 306	2BR	1.18375	18
A1-04	A	1 307	2BR	1.18375	19
A1-09	B	1 308	2BR	1.18375	60
A1-09	B	1 309	3BR	1.51177	61 & 66
A1-09	B	1 310	2BR	1.18375	59
A1-09	B	1 311	2BR	1.18375	311
A1-09	B	1 312	2BR	1.18375	57
A1-09	B	1 314	3BR	1.51177	65 & 71
A1-09	B	1 315	2BR	1.18375	72
A1-14	C	1 316	2BR	1.18375	93
A1-14	C	1 317	2BR	1.18375	92

EXHIBIT C: DESCRIPTION OF APARTMENTS, COMMON INTERESTS AND PARKING STALL ALLOCATIONS

Drawing No.	Building	Apt No.	Type	Common interest	Parking Stall(s)
A1-14	C	1 318	3BR	1.51177	94 & 119
A1-14	C	1 319	2BR	1.18375	104
A1-14	C	1 320	2BR	1.18375	105
A1-14	C	1 321	3BR	1.51177	95 & 118
A1-14	C	1 322	2BR	1.18375	103
A1-05	A	1 404	2BR	1.18375	14
A1-05	A	1 405	3BR	1.51177	13 & 28
A1-05	A	1 406	2BR	1.18375	15
A1-10	B	1 409	3BR	1.51177	44 & 69
A1-10	B	1 410	2BR	1.18375	77
A1-10	B	1 411	2BR	1.18375	68
A1-10	B	1 412	2BR	1.18375	67
A1-10	B	1 414	3BR	1.51177	43 & 70
A1-15	C	1 417	2BR	1.18375	100
A1-15	C	1 418	3BR	1.51177	99 & 117
A1-15	C	1 419	2BR	1.18375	101
A1-15	C	1 420	2BR	1.18375	102
A1-15	C	1 421	3BR	1.51177	98 & 116

**B. Front Desk Apartment.**

There is one Front Desk Apartment shown on the Condominium Map Sheet A2-03. The Front Desk Apartment has an Interior Net Living Area of 499 square feet and no adjacent lanai. The Common Interest appurtenant to the Front Desk Apartment is 0.45106% computed by the following formula:

Total Net Living Area of Front Desk Apartment _____	x 100 =	Front Desk Common Interest adjusted for rounding and by the addition of .00015% so that the aggregate Common Interests total exactly 100%.
Total Net Living Area of all Apartments		

Parking for the Front Desk are:	12A
	42
	49
	50
	51
	52
	53
	54
	55
	62
	63
	75A
	76A
	96A
	97A

EXHIBIT D: BOUNDARIES OF APARTMENTS

Declaration Section 3.4 "The respective Apartments shall not be deemed to include: (i) the perimeter or party walls and their undecorated or unfinished interior surfaces, (ii) the floors and ceilings surrounding each Apartment and their undecorated or unfinished surfaces, (iii) the perimeter doors, door frames, windows and window frames and all hardware associated with them, and their undecorated or unfinished interior surfaces, (iv) the interior load-bearing walls and columns, if any, and their undecorated or unfinished surfaces, and (v) any pipes, shafts, ducts, pumps, conduits, wires and other utility or service lines which are utilized for or serve more than one Apartment, the same being deemed Common Elements as provided in Section 4.6. Each Apartment shall be deemed to include: (A) all of the walls and partitions which are not load-bearing within its perimeter or party walls, (B) 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, (C) the inner decorated or finished surfaces of all walls, floors and ceilings surrounding the Apartment, (D) the inner decorated or finished surfaces of all interior load-bearing walls and columns, if any, within the Apartment, (E) the inner decorated or finished surfaces of any doors, door frames, windows and window frames, and (F) all appliances and fixtures installed in them, and their replacements."

EXHIBIT E: PERMITTED ALTERATIONS TO APARTMENTS

Declaration Section 17. ALTERATION OF THE PROJECT.

17.1 GENERAL PROVISIONS. Except as otherwise expressly provided in this Declaration to the contrary, the restoration or replacement of the Project or any portion of it, or the construction of any additional improvement or structural alteration or addition to any improvement, that is 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 this Declaration in accordance with Section 18, duly executed pursuant to the provisions of Section 18 and accompanied by the written consent of the holders of first mortgage liens on at least seventy-five per cent (75%) of the total number of Apartments involved, which holders have provided written notice to the Association of such first mortgage liens, and in accordance with complete plans and specifications for the construction first approved in writing by the Board and by Developer during Developer's Rights Period. 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.

17.2 WITHIN AN APARTMENT. Any alterations or additions solely within an Apartment or a Limited Common Element that is appurtenant to an Apartment, which do not affect the structural integrity of its Building or the soundness or safety of the Project, reduce the value of the Project, impair any easement or materially alter the exterior of any Building, shall require only the approvals provided in Section 17.4.

17.3 ADJACENT APARTMENTS. An Owner who owns two or more Apartments that are separated only by Common Elements that are non-load bearing walls and doors may alter or remove all or portions of the intervening walls or doors, if the Owner satisfies the following conditions:

17.3.1 The Owner obtains the prior written approval of the Board, which approval shall not be unreasonably withheld or delayed;

17.3.2 The structural integrity of the Building and the soundness and safety of the Project are not affected, the value of the Project is not reduced, and no easement of the Project is impaired;

17.3.3 The remainder of the Common Elements that previously separated the Apartments are restored to a finish that is substantially comparable to the finish of those Common Elements prior to the work;

17.3.4 Upon the termination of the common ownership of such adjacent Apartments, if the intervening walls and doors shall have been altered or removed in accordance with this Section 17.3 each of the Owners of such Apartments shall be obligated to restore the intervening walls and doors to substantially the condition in which they existed before the alteration or removal.

If the adjacent Apartments remain in common ownership, the Owner of the adjacent Apartments which have been altered or removed in accordance with this Section 17.3 may, at any time, restore the intervening walls and doors to substantially the condition in which they existed before the alteration or removal.

17.4 ADDITIONAL CONSENTS. Improvements in accordance with Sections 17.2 and 17.3 may be undertaken without an amendment to the Declaration or the filing of a complete set of floor plans of the Project as so altered. Such improvements, including their plans, which shall be prepared by a licensed architect, shall require the written approval of only the holders of liens affecting such Apartments (if the lien holders require such approval), the Board, Developer during Developer's Rights Period, and all other Apartment owners directly affected (as conclusively determined by the Board). Apartment owners shall be determined to be directly affected only if such improvements are visible from such Owners' Apartments or increase the transmission of sound or heat to such Owners' Apartments or decrease the transmission of light, all as determined by the Board.

17.5 FRONT DESK APARTMENT. In addition to the rights provided by Sections 17.2 and 17.3, the Front Desk Owner may from time to time install, maintain, move or rearrange, non-load bearing partitions and other nonstructural improvements within the Front Desk Apartment or Front Desk Elements, and such improvements shall not be considered an alteration or addition to the Front Desk Apartment or the Common Elements; provided that if the Front Desk Owner is not Developer, then Developer's approval of the plans will be required during Developer's Rights Period.

17.6 DEVELOPER'S ALTERATION RIGHTS. Nothing in this Section 17 shall restrict Developer's rights to make any alterations to any Apartment owned by Developer or any Limited Common Elements appurtenant only to Apartments owned by Developer without the consent of the Board or any other Apartment Owner, as more fully provided in Section 23."

[Note: for Section 23 see Exhibit "A"]

Declaration Section 4. COMMON ELEMENTS.

"One freehold estate is designated in all remaining portions of the Project, which are called the Common Elements, including:

- 4.1 The Land in fee simple and any appurtenances to the Land as described in Exhibit "A";
- 4.2 All perimeter or party walls and their undecorated or unfinished surfaces; any load-bearing walls and columns and their undecorated or unfinished surfaces; all structural components such as foundations, floor slabs, columns, girders, beams, supports, main walls, ceilings and roofs; and all concrete sidewalks and curbs.
- 4.3 All perimeter doors, door frames, windows, window frames, and all hardware associated with them, and their undecorated or unfinished interior surfaces, whether at the perimeter of a Building structure or at the perimeter of an Apartment;
- 4.4 All yards, grounds and landscaping, any unimproved areas, and all trash enclosures within the Project;
- 4.5 All roads, driveways and parking areas as shown on the Condominium Map, including parking stalls 1 through 120 of which 82 through 86 are guest parking stalls, and all access lanes, paved areas, ramps, loading areas and walkways within the Project;
- 4.6 All cables, conduits, ducts, sewer lines, irrigation lines, electrical equipment, wiring, pipes, catch basins and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one Apartment for services such as power, light, water, hot water, chilled water, gas, sanitary sewer, storm water, refuse, cable television, internet access, television signal distribution, and any future technologies installed in the Project, performing similar functions; provided that to the extent the same may lawfully be considered personal property, the PBX and telephone system and all its appurtenances shall not be deemed a Common Element, but shall be owned by the Front Desk Owner;
- 4.7 All hallways, corridors, stairways, stairwells and elevators;
- 4.8 The building structure of each Building;
- 4.9 The swimming pool, pool deck, barbecue areas, Pool Building with lockers, restrooms and showers shown on the Condominium Map as Common Elements numbered P101 through P109, and their amenities and Improvements as shown on the Condominium Map;
- 4.10 The electrical rooms shown on the Condominium Map as Common Elements numbered A064, A164, A264, A364, A464, B164, B264, B364, B464, C164, C264, C364 and C464;
- 4.11 The trash rooms shown on the Condominium Map as Common Elements numbered A072, A172, A272, A372, A472, B172, B272, B372, B472, C172, C272, C372 and C472 and their adjacent trash chutes;
- 4.12 The office and adjacent lanai shown on the Condominium Map as Common Elements numbered B285 and B285A;
- 4.13 The lobby areas shown on the Condominium Map as Common Elements numbered B182 and B184;
- 4.14 The restrooms shown on the Condominium Map as Common Elements numbered B188 and B189, B288 and B289;
- 4.15 The lounge area shown on the Condominium Map as Common Elements numbered B284;
- 4.16 All other apparatus and installations existing for common use, such as tanks, pumps, motors, fans, compressors, ducts, shafts, vents, water heating and distribution equipment, fire suppression equipment and other such installations and apparatus;

4.17 All other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use; and

4.18 All other areas on the Condominium Map designated as "General Common", or that are not designated as an Apartment."

## EXHIBIT G: LIMITED COMMON ELEMENTS

### Declaration Section 5. LIMITED COMMON ELEMENTS.

" Certain parts of the Common Elements, which are called the Limited Common Elements, are designated, set aside and reserved for the exclusive use of certain Apartments, and such Apartments shall have appurtenant to them exclusive easements for the use of such Limited Common Elements as set forth in this Declaration. The costs and expenses of every description pertaining to the Limited Common Elements, including the costs of maintenance, repair, replacement, improvement and additions to the Limited Common Elements, shall be charged to the Owner of the Apartment to which the Limited Common Element is appurtenant, and if there is more than one Apartment to which the Limited Common Element is appurtenant, then in proportion to the Common Interest appurtenant to each of the respective Apartments, unless a different method is adopted pursuant to Section 7.2. [of the Declaration] Limited Common Elements which are appurtenant to more than one Apartment shall be managed and maintained by the Managing Agent on behalf of their Owners, unless they are subject to Direct Administration. In any event that a dispute arises between the Owners of more than one Apartment to which a particular Limited Common Element is appurtenant and which is not subject to Direct Administration, with respect to management or maintenance of such Limited Common Element, such dispute shall be resolved by the Board (or the Managing Agent if delegated by the Board), which shall be the sole arbiter with respect to such matters.

5.1 INDIVIDUAL RESORT APARTMENTS. Each Resort Apartment shall have appurtenant to it as a Limited Common Element the following.

5.1.1 Each Type 2BR and 2 ADA Resort Apartment has the exclusive right to use one (1) parking stall and each Type 3BR and 3 ADA Resort Apartment has the exclusive right to use two (2) parking stalls with the number or numbers shown on the Condominium Map that is listed for that Resort Apartment on Exhibit "B". Only the right to use the parking stall is appurtenant exclusively to the Resort Apartment, the ground surface, signs and striping being Limited Common Elements appurtenant in common to all parking stall owners in proportion to their numbers of parking stalls, as is more fully described in Section 7.2.1 [of the Declaration].

5.1.2 Each Resort Apartment has the exclusive right to use the lanai shown as adjacent to that Resort Apartment and connected to it on the Condominium Map. Only the right to use the lanai is appurtenant to the Resort Apartment, the structure of the lanai, its railings or walls and their decorated and undecorated surfaces and floor coverings being General Common Elements. Furniture on the lanais is not a Common Element but for uniformity of appearance the Board may establish standards for lanai furniture or lists of approved lanai furniture.

5.2 THE FRONT DESK APARTMENT. The Front Desk Apartment shall have appurtenant to it, as Limited Common Elements, the following areas and facilities that are collectively called the Front Desk Elements. Except for the parking stalls, the Front Desk Elements shall be subject to Direct Administration.

5.2.1 The spaces shown as Limited Common Elements on the Condominium Map and numbered A062, A162, A262, A362, A462, B162, B262, B362, B462, C162, C262, C362, C462, A063, A163, A263, A363, A463, B163, B263, B363, B463, C163, C263, C363, C463, C282, C382, C482, B185, B190, B286 and B286A.

5.2.2 To the extent that the telephone and PBX system, including wires, conduits and lines, serving more than one Apartment in the Project are Common Elements rather than personal property, they are Front Desk Elements.

5.2.3 The Front Desk Apartment has the exclusive right to use the parking stalls with the numbers shown on the Condominium Map that are listed for the Front Desk Apartment on Exhibit "B". Only the right to use such parking stalls is appurtenant exclusively to the Front Desk Apartment, the ground surface, signs and striping being Limited Common Elements appurtenant in common to all parking stall owners in proportion to their numbers of parking stalls, as more fully described in Section 7.2.1 [of the Declaration].

5.2.4 The signage monument (including its entire structure) shown on the Condominium Map as Limited Common Elements and numbered S 01.

5.2.5 The wall signage area on the north elevation of Building B, shown on the Condominium Map as Limited Common Elements and numbered S 02, including the decorated or finished surfaces of the signage area or, if none, the undecorated or unfinished surface and a block of airspace projecting twelve inches from the surface in which the Front Desk Owner may install signage, together with the right to penetrate the surface of the signage area for the purpose of attaching signage, provided that the structural integrity of the Building shall not be compromised.

5.2.6 Each cabana area near the swimming pool shown on the Condominium Map as Limited Common Elements and numbered P110, P111, P112, P113, P114 and P115, including any cabana erected on each cabana area.

5.3 BOUNDARIES OF LIMITED COMMON ELEMENTS. Except as provided in this Section 5 each Limited Common Element shall be deemed to include: (i) the space that is bounded by the interior undecorated surfaces of its perimeter walls, floors and ceilings, (ii) all the walls and partitions which are not load-bearing within its perimeter walls, (iii) the interior decorated or finished surfaces of all walls, floors and ceilings, including floor coverings, and (iv) any doors, door frames, windows and window frames along the perimeters. The respective Limited Common Elements shall not be deemed to include: (a) all load-bearing walls and columns, if any, that are within the Limited

Common Element, (b) the undecorated or unfinished surfaces of the perimeter walls, floors and ceilings surrounding each Limited Common Element, including any party walls, (c) any pipes, shafts, wires, conduits and other utility or services lines running through any Limited Common Element which are utilized for or serve more than the Apartment or Apartments to which it is appurtenant or the Limited Common Elements appurtenant to those same Apartments, the same being considered General Common Elements.”

EXHIBIT H: ENCUMBRANCES AGAINST TITLE

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. The terms and provisions, including the failure to comply with any covenants, conditions and reservations contained in DEED dated June 29, 1977, recorded in Liber 12300 at Page 260.

The foregoing includes, but is not limited to, the following:

"Reserving and excepting unto the Grantor, its successors and assigns forever, as appurtenant to the lands of the Grantor located on the island of Kauai, now owned and used or hereafter acquired and used by the Grantor in its sugar plantation operations, the perpetual right and easement over and upon the granted premises to discharge, emit, or transmit surface water runoff, noise, smoke, soot, dust, lights, vapors, odors, and other substances and phenomena of every description, created by and resulting from the reasonable operations of the Grantor in burning sugar cane and bagasse, milling, generating power, trucking, hauling and all other activities incidental to the operation of a sugar cane plantation; and Grantees by the acceptance of this conveyance, do hereby waive any and all claims under any law whatsoever against Grantor arising therefrom."

3. CERTIFICATE OF CONDITIONS dated May 16, 1984, recorded in Liber 17931 at Page 249, by AMFAC PROPERTY DEVELOPMENT CORPORATION, a division of AMFAC, INC., a Hawaii corporation.

4. RIGHT OF ENTRY dated September 24, 1987, recorded in Liber 21309 at Page 338, in favor of CITIZENS UTILITIES COMPANY, whose interest is now held by KAUAI ISLAND UTILITY CO-OP, and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED (now known as HAWAIIAN TELCOM, INC.)

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations contained in DEED dated March 25, 1987, recorded in Liber 20496 at Page 304, as corrected in CORRECTION DEED (The Kauai Lagoons - Lots 2, 5, 6, 7, 8, 10 and 11) dated as of January 15, 1988, recorded in Liber 21584 at Page 334.

The foregoing includes, but is not limited to, the following:

(i) "EXCEPTING AND RESERVING unto LPC, its successors and assigns, forever, a perpetual easement to discharge, emit or transmit surface water runoff, noise, smoke, soot, dust, lights, noxious vapors, odors and other substances and phenomena of every description, created by and resulting from the reasonable operations of LPC, its successors or assigns, in burning sugar cane and bagasse, milling, generating power, trucking, hauling and all other activities incidental to the operation of a sugar cane plantation, agricultural operation or alternate energy projects occurring on lands adjacent to or in the vicinity of the granted premises."

(ii) "And the Grantee does hereby covenant and agree to assume the obligations of LPC under the Decision and Order of the Land Use Commission of the State of Hawaii, issued on August 22, 1983 (Docket No. 82530), reserving unto the Grantee, however, the right to seek relief therefrom or modifications thereof from said Land Use Commission or any other appropriate governmental authority."

6. FILE PLAN 1905 SUBDIVISION AGREEMENT dated January 15, 1988, recorded in Liber 22624 at Page 432, by and among the COUNTY OF KAUAI, HEMMETER-VMS KAUAI COMPANY I and the LIHUE PLANTATION COMPANY, LIMITED.

7. Unrecorded AGREEMENT dated June 1, 1992, of which a MEMORANDUM is filed as Land Court Document No. 1937365, recorded as Document No. 92-123466, by and between KAUAI LAGOONS RESORT COMPANY, LTD., a Hawaii corporation, and ANDREW LELAND NICKLES.

8. GRANT OF AVIGATION AND NOISE EASEMENT in favor of the STATE OF HAWAII, Department of Transportation, Airports Division, dated March 21, 2002, recorded as Document No. 2002-228662; granting (i) a perpetual easement and right of way, appurtenant to the Lihue Airport, for the passage of all aircraft in the air space above the Easement Premises; and (ii) a perpetual easement to discharge, emit or otherwise transmit noise, and also fumes, etc.

9. Existing ponds and waterways; and any and all applicable Federal, State or County laws, regulations and servitudes regarding the ponds and waterways. Any public rights of navigable servitude or other servitudes or easements, including without limitation the jurisdiction of the Army Corps of Engineers, and any matters regarding the designation of the land described in Schedule C as being a wetland; and any and all applicable governmental laws, ordinances and regulations arising out of said designation.

10. Designation of Easement 15" for road, utility and parking purposes; and Easement "16" for pedestrian access; each shown on File Plan 1905.

11. Designation of Easements "A-2", "A-3" and "A-4" for access purposes and Easement "GC-4" for golf course purposes and Easement "R-3" for roadway purposes; each shown on File Plan No. 1933.

Note: Developer intends to delete these easements.

12. GRANT in favor LIHUE PLANTATION COMPANY, LIMITED, a Hawaii corporation, dated January 15, 1988, filed as Land Court Document No. 1527016, recorded in Liber 21584 at Page 379, granting a nonexclusive right and easement for drainage purposes.

13. GRANT in favor of COUNTY OF KAUAI, a political subdivision of the State of Hawaii, dated January 15, 1988, recorded in Liber 21880 at Page 503; granting a nonexclusive right and easement for roadway purposes over and across said Easement "15".

14. GRANT in favor of COUNTY OF KAUAI, a political subdivision of the State of Hawaii, dated January 15, 1988, recorded in Liber 22664 at Page 278; granting: (i) a nonexclusive right and easement for roadway access purposes over and across said Easement "R-3", and (ii) a nonexclusive right and easement for pedestrian access purposes over and across said Easement "16".

Said Grant was amended by instrument dated April 28, 2003, recorded as Document No. 2003-177870.

15. GRANT in favor of the United States of America, represented by the Federal Aviation Administration, dated August 16, 1991, recorded as Document No. 91-120459: granting (i) a nonexclusive easement for roadway purposes over Easement "15" to the extent necessary for access to the VORTAC site, and (ii) a restricted airspace area having a radius of 1,200 feet from the VORTAC site, which includes the right to restrict construction of certain above ground structures described therein.

16. The terms and provisions, including the failure to comply with any covenants, conditions and reservations contained in unrecorded KAUAI LAGOONS RESORT GOLF AND TENNIS PLAY AGREEMENT dated August 3, 1994, by and between KAUAI LAGOONS RESORT COMPANY, LTD., a Hawaii corporation ("Resort Company"), and MARRIOTT KAUAI, INC., a Delaware corporation, ("Hotel Company"), of which a SHORT FORM GOLF AND TENNIS PLAY AGREEMENT is dated August 3, 1994, filed as Land Court Document No. 2169457, and recorded as Document No. 94-129351, on and over the premises described herein, for a term commencing on the date on which Hotel Company acquires title to Hotel Property, and terminating on March 30, 2060.

ASSIGNMENT AND ASSUMPTION OF KAUAI LAGOONS GOLF AND TENNIS PLAY AGREEMENT dated as of June 15, 2001, filed as Land Court Document No. 2716832, recorded as Document No. 2001-097935, by MARRIOTT KAUAI, INC., a Delaware corporation, as "Assignor", and HPTMI HAWAII, INC., a Delaware corporation, as "Assignee".

Said Agreement is subject to any matters arising from or affecting the same.

17. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

ROADWAY AND UTILITY EASEMENT AGREEMENT dated as of January 30, 1991, filed as Land Court Document No. 1797886, recorded as Document No. 91-012273, by and among HEMMETER-VMS KAUAI COMPANY I, a Hawaii limited partnership, HEMMETER-VMS KAUAI COMPANY II, a Hawaii limited partnership, KAUAI LAGOONS RESORT COMPANY, LTD. a Hawaii corporation, and KAUAI LAGOONS HOTEL COMPANY, LTD., a Hawaii corporation, as amended by instrument dated August 3, 1994, filed as Land Court Document No. 2178041 and recorded as Document 94-129352.

18. The terms and provisions, including the failure to comply with any covenants, conditions and reservations contained in CERTIFICATE AND AUTHORIZATION dated November 6, 1991, recorded as Document No. 92-081744, made by and among WM. HYDE RICE, LIMITED, a Hawaii corporation, KAUAI LAGOONS RESORT COMPANY, LTD., a Hawaii corporation, KAUAI LAGOONS BEACH HOTEL COMPANY, LTD., a Hawaii corporation, HEMMETER-VMS KAUAI COMPANY I, a Hawaii limited partnership, HEMMETER-VMS KAUAI COMPANY II, a Hawaii limited partnership, and HEMMETER-VMS KAUAI COMPANY III, a Hawaii general partnership.

19. The terms and provisions, including the failure to comply with any covenants, conditions and reservations contained in unrecorded MARRIOTT KAUAI HOTEL USE AGREEMENT dated August 3, 1994, of which a SHORT FORM HOTEL USE AGREEMENT is dated August 3, 1994, filed as Land Court Document No. 2169456, and recorded as Document No. 94-129350, by and between KAUAI LAGOONS RESORT COMPANY, LTD., a Hawaii corporation, and MARRIOTT KAUAI, INC., a Delaware corporation, and MARRIOTT KAUAI OWNERSHIP RESORTS, INC., a Delaware corporation, for a term commencing on the "Re-Opening Date" and terminating on December 31, 2015.

20. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Limited Warranty Deed dated ---(acknowledged October 13, 2005), recorded as Document No. 2005-209699, as follows:

"(a) The Property is located in the proximity of the Lihue Airport. As a result, aircraft flights over or near the Property may result in noise, odors, dust, mosquitoes, vibrations, lights, and other nuisances and disturbances.

(b) A portion of the Property is adjacent to the Kauai Lagoons Golf Courses. The maintenance, operation and use of the golf courses, driving range, practice facilities and other facilities that comprise the Kauai Lagoons Golf Courses may result in nuisances, disturbances or hazards to persons or property on or about the Property, including without limitation injuries, illness and other damages caused by the use of golf carts and maintenance equipment, stray golf balls, spraying (including herbicides, fungicides, insecticides and other agricultural chemicals), particulates, and the use of non-potable water systems, and from noise, odors, traffic, view obstructions and surface water runoff. The manner of operation of the Kauai Lagoons Golf Courses may be changed at any time at the discretion of their owner or operator. The Property is also part of the Kauai Lagoons Resort. Resort-related activities such as golf tournaments, broadcasting, filming, concerts and luaus may result in further nuisances or hazards to persons or property on or about the Property."

(c) The Property is adjacent to or near other property that may be developed in the future. As a result, persons and property on or about the Property may be exposed to noise, dust, traffic, odors, vibrations, lights, and other construction related nuisances and disturbances.

(d) A portion of the Property is near the Lihue Wastewater Treatment Plant. The maintenance, operation and use of that plant may result in nuisances and disturbances to persons or property on or about the Property, including without limitation noise, odors, dust, mosquitoes, vibrations, lights, and other nuisances and problems."

21. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

(Note: The Lot 2 encumbrances have been intentionally omitted because they will not encumber new Lot 10-B upon the resubdivision.)

EXHIBIT I SUMMARY OF SPECIMEN SALES CONTRACT

The Sales Contract provides for the sale of an Apartment by Developer to a Buyer. The Sales Contract contains many important provisions which are not set out here and should be carefully reviewed by every prospective Buyer. This summary is not complete and will not control in the event of any conflict with a provision in the Sales Contract. Prospective Buyers are cautioned and encouraged to read the Sales Contract carefully.

1. In the Sales Contract the contract is called the "Purchase Agreement", Developer is called "Seller" and the Buyer is called "Purchaser". The Sales Contract provides for the number, amount and timing of payments Buyer is to make to Escrow. The Sales Contract provides that all interest received by Seller or Escrow on Buyer's deposits will belong to Seller.

2. The Sales Contract describes the "Property" being sold, including the Apartment and its common interest.

3. The Sales Contract requires the Buyer to provide evidence of the Buyer's ability to pay the purchase price and closing costs either by providing a loan commitment or evidence of cash or both.

4. The Sales Contract provides: "If Purchaser plans to pay any portion of the Total Purchase Price by way of a loan from a Mortgage Lender, Purchaser shall be solely responsible for securing that financing. PURCHASER'S OBLIGATIONS UNDER THIS PURCHASE AGREEMENT ARE NOT CONTINGENT OR CONDITIONED 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. NO FINANCING BY SELLER OF ANY PORTION OF THE TOTAL PURCHASE PRICE IS AVAILABLE." (Sales Contract 4.4.3 (iii))

5. The Sales Contract provides that after the Sales Contract becomes binding the Buyer's deposits may be used for construction and other costs as provided in the Escrow Agreement (see Exhibit J.)

6. The Sales Contract confirms that Buyer has had the opportunity to read and approve certain important legal documents for the Project, for example the Declaration, Bylaws and House Rules, specimen Apartment Deed. Seller's rights to change the documents are described.

7. The Sales Contract contains many disclaimers including the following:

4.8 WARRANTIES AND DISCLAIMERS

4.8.1 Insulation. Seller presently plans to install insulation in the Building in which the Apartment is located. The location, type, thickness and R-value (according to their manufacturer(s)) are as follows:

RESIDENTIAL ROOF	NON-AIR CONDITIONED AREA ROOFS	EXTERIOR RESIDENTIAL WALLS
R-19	R-19	R-11

The R-value of insulation is a measurement of the insulation's resistance to heat flow that is determined using tests designed by the American Society of Testing and Materials. The above R-values are minimums. Purchaser acknowledges that this R-Value information is based solely upon information supplied by the manufacturer or installer and Seller does not represent or warrant the accuracy of this information. Purchaser further acknowledges that the R-value may vary based on normal construction variance and constitutes only one element of the total energy package. Seller reserves the right to use different types of insulation with different thicknesses and R-values.

4.8.2 Limited Warranty. Seller shall have the option of providing protection to Purchaser and the Condominium Association against defects in the Project in one of three ways, by a Contractor's Warranty or a Seller's Warranty.

(i) If Seller obtains from Seller's general contractor a warranty (a "Contractor's Warranty") to correct any defective materials and workmanship in the Apartment reported in writing to the contractor within the "Warranty Period" and that is assignable to Purchaser then Seller will assign the Contractor's Warranty to Purchaser at Closing and will provide no Seller's Warranty to Purchaser. The Warranty Period will be at least one (1) year from the date Seller's architect issues a Certificate of Substantial Completion that includes the Apartment.

(ii) If Seller does not obtain and assign a Contractor's Warranty to Purchaser, then Seller shall correct, or have Seller's contractor correct any defective materials or workmanship in the Apartment reported in writing to Seller within the one (1) year warranty period ("Seller's Warranty").

(iii) Warranties with respect to the Common Elements will be treated in the same manner as warranties on Purchaser's Apartment by providing Contractor's Warranty or Seller's Warranty. No later than the first meeting of the members of the Association, either Contractor's Warranty on the Common Elements will be assigned to the Condominium Association will be provided to the Condominium Association.

(iv) In addition, Seller shall assign to Purchaser, without recourse, any assignable manufacturer's or dealer's warranties covering the furnishings and appliances in the Apartment ("Appliance Warranty").

(v) It is Purchaser's responsibility to cooperate with Seller or other warrantors and to permit inspections, and if Purchaser fails to inspect (or permit inspection of) Purchaser's Apartment on the dates and times specified by Seller or other warrantors, then Purchaser acknowledges that such conduct will constitute a waiver of Purchaser's warranty rights under this Purchase Agreement.

(vi) EXCEPT FOR THE CONTRACTOR'S WARRANTY OR THE SELLER'S WARRANTY, IF APPLICABLE, AND THE APPLIANCE WARRANTY, NO PERSON ACTING ON BEHALF OF SELLER IS AUTHORIZED TO MAKE, AND BY SIGNING THIS PURCHASE AGREEMENT, PURCHASER AGREES THAT SELLER HAS NOT MADE, AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES OR PROMISES OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, CONCERNING OR WITH RESPECT TO: THE MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROJECT; THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROJECT; ANY ARCHAEOLOGICAL SITES, REMAINS OR ARTIFACTS ON THE LAND; THE PROJECT'S COMPLIANCE WITH LAWS, ORDINANCES OR REGULATIONS; THE QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO THE PROJECT OR THE REPAIRS OR RENOVATIONS; THE PRESENCE OR ABSENCE OF MOLD, STANDING WATER OR HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROJECT; THE CONFORMITY OF THE PROJECT TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING REQUIREMENTS OR SPECIAL PERMITS; THE FACT THAT ALL OR A PORTION OF THE PROJECT MAY BE LOCATED ON OR NEAR A TSUNAMI INUNDATION AREA; THE ABILITY OF THE PROJECT TO WITHSTAND EARTHQUAKE OR HURRICANE DAMAGE; THE EXISTENCE OF TERMITES OR OTHER PESTS OR TERMITE DAMAGE, THE LOCATION OF THE SHORELINE IN ACCORDANCE WITH THE LAWS OF THE STATE OF HAWAII, OR ANY OTHER MATTER CONCERNING THE PROJECT.

(vii) HAWAII REVISED STATUTES, CHAPTER 672E, CONTAINS IMPORTANT REQUIREMENTS PURCHASER MUST FOLLOW BEFORE PURCHASER MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED PURCHASER'S HOME OR FACILITY. NINETY DAYS BEFORE PURCHASER FILES PURCHASER'S LAWSUIT OR OTHER ACTION, PURCHASER MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS PURCHASER ALLEGES ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. PURCHASER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW, AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT PURCHASER'S ABILITY TO FILE A LAWSUIT OR OTHER ACTION. This Section 4.8.2 shall survive the Closing and shall not be merged with the Apartment Deed.

4.8.3 Improvements. Seller shall be responsible for extending roads, sewers, electrical lines and water lines to the Project at Seller's sole expense. Purchaser shall be responsible for any connection fees, utility deposits, and use fees charged by governmental entities or utility companies, but shall not be responsible for impact fees, benefits assessments, or similar development expenses related to the installation of infrastructure by Seller.

4.8.4 The Condominium Map, Artist's Renderings and Building Plans and Specifications Are Not Warranties. The Condominium Map is intended to show only the (a) apartment numbers, (b) approximate layout, location and dimensions of apartments, (c) approximate elevation of the Project, and (d) parking plan and any other detail which is specifically required to be shown under Section 514A-12 of the Act; the Condominium Map is not intended to and shall not be interpreted as creating any obligation to construct or install any other improvements, amenities or facilities as may be depicted and no person may rely in any way on any other detail or other matter depicted. In no event, whether before or after the Effective Date, shall any artist's renderings or models constitute a representation or warranty in any way.

4.8.5 Estimate of Maintenance Fees. Seller's estimate of the monthly maintenance fees for the Project, as shown in the Public Report, was prepared based upon information believed to be accurate and correct. However, Seller makes no warranty or promise regarding the accuracy of these amounts. PURCHASER AGREES THAT SUCH ESTIMATES ARE NOT INTENDED TO BE AND DO NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY BY SELLER, FOR EXAMPLE THEY ARE NOT A REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF ANY LINE ITEM. Purchaser acknowledges and agrees also that the maintenance fees may

increase, for example, as a result of changes in the Project permitted by the Declaration, increases in insurance premiums, utility costs, maintenance services and management fees, etc. Purchaser also understands and agrees that Purchaser will also be responsible for any maintenance fees on the Apartment established under the Master Declaration.

4.8.6 Securities Laws and Regulations. Purchaser understands and agrees that:

(i) Seller, its officers, employees, agents, and any other real estate brokers or real estate sales persons representing Seller, if any (for purposes of this Section 4.8.6, such persons other than Seller being collectively referred to as Seller's "Agents"), have made no representations: (i) regarding the possibility or probability of economic benefit from the purchase and ownership of an Apartment; (ii) to the effect that Seller or the managing agent of the Project will provide services relating to the rental or sale of the Apartment; or (iii) as to the possible advantages of the ownership or the rental of the Apartment under federal law and state tax laws. Neither Seller nor its Agents makes any representation regarding economic benefits to be derived from the ownership, rental or tax treatment of any purchaser of an Apartment. The tax treatment and economic benefits may vary with individual circumstances, and Seller and its Agents recommend that Purchaser consult Purchaser's own attorney, accountant or other tax counsel for advice regarding tax treatment. Purchaser further agrees and acknowledges that Purchaser has not been induced or solicited by Seller or its Agents to purchase the Apartment in the Project as a "security" as defined under federal or state securities laws and regulations.

(ii) Purchaser agrees that Seller may, as a condition to Closing, require Purchaser and any licensed real estate salesperson participating in the sale to sign additional documents to satisfy Seller that no representations contrary to the provisions of this Section 4.8.6 have been made up to and including the Closing Date.

(iii) Purchaser agrees that until the date that all of the individual apartments, lots or units to be developed in Kauai Lagoons, have been conveyed to persons other than Seller or Seller's Lender or affiliates, Purchaser will not enter into any contract or arrangement concerning the rental of the Apartment, with a rental manager or anyone else, that provides for any present or future pooling of income from the Apartment with income from any apartment or property owned by any other person. Purchaser acknowledges that no representations have been made to Purchaser concerning the current or future availability of any rental pool arrangement. If Purchaser breaches this prohibition, Seller may obtain an injunction from a court to prevent Purchaser's continuing with any rental pooling arrangement and Purchaser will pay Seller's costs and attorneys' fees for obtaining the injunction. This prohibition is also included in the Apartment Deed.

(iv) In the event that Purchaser establishes, after Closing, that there has been any violation of federal or state securities laws or disclosure laws or other breach of the obligations of Seller under the terms of this Purchase Agreement, Purchaser agrees that Purchaser's sole remedy shall be rescission of this Purchase Agreement under Section 514A-69 of the Act, under which Purchaser shall be entitled upon reconveyance of the Apartment to recover the Total Purchase Price actually paid by Purchaser, together with interest at the rate of six percent (6%) per annum, and the amount of any reasonable attorneys' fees (based upon reasonable hourly rates) and costs that Purchaser actually paid, less the amount of any income that Purchaser received. Purchaser agrees that any other expenses that Purchaser incurs, including but not limited to real property taxes, maintenance fee assessments, interest payments on mortgages and mortgage loan fees, are agreed to be a portion of the reasonable use value of the Apartment from Closing until the date of repayment and shall not be recoverable from Seller.

4.8.7 No Representations Regarding Views, Traffic, Schools or Future Development.

(i) SELLER HAS NOT MADE ANY ORAL OR WRITTEN STATEMENT, REPRESENTATION OR WARRANTY THAT THERE IS ANY "VIEW" FROM THE APARTMENT OR THAT ANY EXISTING "VIEW" WILL NOT BE OBSTRUCTED IN THE FUTURE. Purchaser acknowledges that: (a) there are no protected views, and no Apartment is assured of the existence or unobstructed continuation of any particular view; (b) any view from the Apartment is not intended as part of the value of the Apartment and is not guaranteed; and (c) any future development, construction, landscaping, growth of trees, or other installation or improvements by Seller or other owners may impair the view from any Apartment.

(ii) Purchaser further acknowledges that the Project is part of a resort development that is subject to the Master Declaration. The property subject to the Master Declaration (including any property later annexed) is called "Kauai Lagoons" in the Master Declaration and this Purchase Agreement. The hotel and timeshare project known as Marriott's Kauai Resort and Beach Club is not part of Kauai Lagoons, although the properties do have certain reciprocal easement agreements. Seller has not made any oral or written statement, representation or warranty as to (i) the availability of any school or school facilities to the Apartment, or (ii) any future use of the properties subject to the Master Declaration or (iii) the likelihood of an increase in traffic flow as Kauai Lagoons is developed. Should Purchaser desire any further information regarding the use or development of properties in Kauai Lagoons or adjacent to it, Seller urges Purchaser to conduct its own independent investigation. The Master Declaration contains a number of disclosures of conditions affecting properties in Kauai Lagoons,

disclaimers of liability for those conditions and releases and indemnities with respect to those conditions. Purchaser acknowledges and agrees that Purchaser will be bound by those disclosures, disclaimers, releases and indemnities.

#### 4.8.8 Ongoing Sales and Construction Activities After Purchaser Has Occupied Purchaser's Apartment; Model Apartments.

(i) Purchaser acknowledges that: (a) Seller's sales activities, which may include the use of model Apartment(s), signs and extensive sales displays and activities may continue in the Project until the sale of the last unit, timeshare or fractional interest in Kauai Lagoons; (b) Seller also reserves the right to utilize unassigned or guest parking spaces described in the Declaration for parking for prospective purchasers until the sale of the last unsold Apartment described in the Declaration and the last unit, timeshare or fractional interest in Kauai Lagoons; (c) Seller also reserves the right for itself, its sales representatives and prospective purchasers to utilize the Common Elements for ingress and egress to the parking spaces and model Apartment(s) and for access in order to show the Project to prospective purchasers; and (d) the Project consists of a number of structures, each of which Seller may complete at different times. Purchaser accepts the conditions described in this Purchase Agreement, as well as any inconvenience or annoyance for example construction work, dust, noise, odors, vibration and related debris, which Purchaser may experience as a result of those conditions, and Purchaser expressly waives any rights, claims or actions which it might otherwise have against Seller as a result of those conditions. Seller reserves the right to designate one or more apartments as model apartments for sales and display purposes.

(ii) Prior to delivery of possession of the Apartment in accordance with Section 4.5.2(v), Purchaser shall not trespass upon the Project site. Purchaser acknowledges that Purchaser's execution of this Purchase Agreement is, and acceptance of an Apartment Deed will be, Purchaser's agreements to remain outside of any fenced or posted construction areas, and any other areas in which ongoing work is being performed pending completion, and Purchaser agrees to exert diligent effort to prohibit entry into such areas by members of Purchaser's household and by Purchaser's tenants and invitees, and to indemnify, defend and save harmless the Seller, the Condominium and Master Association, other apartment owners, and the contractors and agents of any of them, from and against any and all loss or liability on account of any such entry. Violation of this provision shall be a default under this Purchase Agreement and, in addition to Seller's other remedies, Purchaser agrees that Seller shall have the right to remove Purchaser from the premises by any lawful means.

4.8.9 No Authority to Contradict. No real estate broker, real estate sales person, officer, employee or other agent of Seller has the authority to make any representations which contradict the statements set out in this Purchase Agreement. Purchaser acknowledges that Purchaser has not relied on any such representations made by any real estate broker, real estate sales person, officer, employee or other agent of Seller in the purchase of the Apartment.

#### 4.9 SELLER'S DISCLAIMERS AND PURCHASER'S INDEMNITIES ABOUT KAUAI LAGOONS.

4.9.1 Generally. The Project is subject to the Master Declaration, which provides for the Master Association and for mandatory membership in the Master Association and assessments by the Master Association. Master Association assessments are collected by the Condominium Association but are secured by liens in favor of the Master Association covering the individual Apartments in the Project. Certain portions of the Project such as the lagoon, shoreline access and roadways, may be subject to easements in favor of the Master Association for access and to facilitate maintenance at a uniform standard.

4.9.2 Protected Persons. As used in this Section 4.9, "Protected Person" means and include Master Declarant, Seller and their respective members, and all their parent, subsidiary, sister and affiliated companies, in their respective capacities as the Master Declarant and the developer of Kauai Lagoons and the Seller of the Project and the initial sellers of the parcels in Kauai Lagoons or the Apartments in the Project, and the owners, lessees or operators of the Golf Course, all their successors and assigns, and their subsidiary, sister and affiliated companies. Protected Person also includes the County of Kauai, the Land Use Commission of the State of Hawaii, the United States government to the extent required by the permits or land use approvals for Kauai Lagoons or the Project, or by any encumbrance described in the Declaration.

4.9.3 Airport Noise Disclosure. The Master Declaration discloses that the Kauai Lagoons Resort is adjacent to the Lihue Airport. The Project is within the boundaries of the noise exposure area shown on maps prepared by the department of transportation in accordance with Federal Aviation Regulation Part 150-Airport Noise Compatibility Planning (14 Code of Federal Regulations Part 150) for any public airport. The Project currently lies within the 60 and 65 Decibel Noise Level contours shown on those maps and Developer discloses that changes to the Lihue Airport may cause the contour level to change and any change may increase the Decibel Noise Level. By accepting a deed or lease of an Apartment in the Project each Apartment Owner and lessee will acknowledge the location of the Project within those noise contours and give releases and indemnities to the Protected Persons concerning noise levels. Any alterations to an Apartment or the Project must comply with the provisions of the Land Use Permit described in the Declaration with respect to noise abatement.

4.9.4 Acknowledgment of Potential Nuisances.

(i) Description of Potential Nuisances.

(1) Kauai Lagoons is adjacent to, nearby or in the vicinity of lands being, or which in the future may be, actively used for the growing, harvesting and processing of agricultural products (such growing, harvesting and processing activities collectively called the "Agricultural Activities"), which activities may from time to time bring upon the Project or result in exposure to smoke, dust, odors, vibrations, noise, heat, agricultural chemicals, particulates and similar substances and nuisances (collectively called the "Agricultural By-Products").

(2) Without limiting Section 4.9.4(i)(1), the Agricultural Activities or other characteristics of Kauai Lagoons or adjacent lands may result in insects (including mosquitoes), rodents and other pests and vermin (collectively called the "Pest Nuisances") coming onto the Project or Apartments.

(3) The Project is adjacent to, nearby or in the vicinity of the "Golf Courses" as defined in the Master Declaration, the use and operation of which may from time to time bring upon the Project or result in exposure to dust, odors, vibrations, noise, pesticides and other chemicals, particulates, straying golf balls including golf balls that may break windows or other glass in the Project, non-potable water or treated wastewater used for irrigation, and similar substances and nuisances incidental to golf-course operations and golf-related activities (collectively called the "Golf Course Nuisances").

(4) Kauai Lagoons is adjacent to and served by a wastewater treatment plant operated by the County of Kauai. The operation of the wastewater treatment plant may cause odors or other nuisances which may have adverse health effects (collectively called the "Plant Nuisances").

(5) Kauai Lagoons has located within it or adjacent to it, electrical lines, retention basins, the Lagoons, sewer lines, cable, utility poles and other utility facilities which may cause odors and interference with views, television and radio reception and which may have adverse health effects (collectively called the "Utility Nuisances").

(6) Master Declarant has reserved the right to develop parcels and units, construct other improvements, and sell parcels, units, dwellings and buildings. Such development and sales activities will result in blasting, dust, noise, vibrations, increased traffic, obstruction of views, and ventilation and other nuisances. Together with the similar rights reserved by the Developer in the Declaration these are collectively called the "Development Nuisances".

(7) Kauai Lagoons is within the areas shown on the maps prepared by the federal Department of Transportation in accordance with federal aviation regulation Part 150 - Airport Noise Compatibility Planning and is subject to noise and vibration emanating from the adjacent Lihue airport (together with the conditions described in Section 4.9.3 collectively called the "Noise Nuisances").

(8) Kauai Lagoons includes the Golf Courses and may include or be adjacent to other areas that may serve as natural drainage basins or overflow runoff areas. Flooding, erosion, runoff, and damage to the Project and adjacent areas, including Kauai Lagoons, may occur, and such areas may be damaged or made unusable for some period of time (collectively called the "Drainage and Runoff Nuisances").

(9) Adjacent to the Project is a commercial complex which may contain restaurants, bars, spas and other businesses likely to generate noise, light and vibrations, perhaps late at night and a boat maintenance facility that may generate noise, dust and vibrations (collectively called the "Commercial Nuisances").

(10) The Master Association and others may be granted easements or use rights to use the Lagoons, including the Lagoon which is partly located in the Project, for boat transportation, water sports and recreation that may generate noise, odors, vibrations and other disturbances (collectively the "Lagoon Nuisances").

The Agricultural Activities, Agricultural By Products, Pest Nuisances, Golf Course Nuisances, Plant Nuisances, Utility Nuisances, Development Nuisances, Noise Nuisances, Drainage and Runoff Nuisances, Commercial Nuisances and Lagoon Nuisances are collectively called the "Nuisances".

The listing of certain items in this Section 4.9.4(i) is not a representation that there are no other sources of potential interference with the enjoyment of the Project or Apartment.

(ii) Assumption Release, Waiver and Indemnity. Purchaser, by accepting the Apartment Deed and any lessee or other person acquiring any interest in the Apartment or occupying the Apartment by doing so automatically:

(1) Assumes complete risk of and forever releases the Protected Persons, from all claims for damages (including consequential, special, exemplary and punitive damages) and nuisances occurring on the Project or Apartment or in Kauai Lagoons and arising out of any of the Nuisances;

(2) Forever waives any right to require and releases each Protected Person from any obligation, to take any action to correct, modify, alter, eliminate or abate any of the Nuisances and waives any right to file any suit or claim against any Protected Person for injunction or abatement of nuisances or damages;

(3) Agrees to and shall indemnify, defend and hold harmless each Protected Person from and against all claims, demands, actions, losses, damages, liabilities, costs and expenses, including attorneys' fees, asserted against or incurred by any Protected Person which arise out of any injury, death or damage to person, property or business that occurs on Purchaser's Apartment or the Project and is the result of any of the Nuisances no matter what the theory of liability that is asserted against a Protected Person; and

(4) Agrees that any Nuisances and any claim, demand, action, loss, damage, liability, cost or expense arising from them, shall not constitute a breach of any covenant or warranty of any Protected Person or be the basis for a suit or other claim for injunction or abatement of nuisances or damages, and forever waives any right to file any such suit or claim.

## EXHIBIT J SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement provides how the funds paid by Buyer under the Sales Contract to Escrow are to be held and released. The Escrow Agreement contain many important provisions which are not set out here and should be carefully reviewed by every prospective Buyer. This summary is not complete and will not control in the event of any conflict with a provision in the Escrow Agreement. Prospective Buyers are cautioned and encouraged to read the Escrow Agreement carefully.

1. The Escrow Agreement provides that Escrow is to collect Buyer's payments and hold them in accounts with banks or savings institutions that are federally insured.

2. The Escrow Agreement provides for the closing or settlement of the sale. Escrow collects all payments and other amounts owed under the Sales Contract, including closing costs which are shared between Developer and Buyer as described in the Sales Contract.

3. Escrow handles the closing and the transfer of title in accordance with the Escrow Agreement. The Apartment must be conveyed to Buyer free and clear of any blanket liens, such as mortgages covering more than one apartment.

4. The Escrow Agreement provides certain protections to Escrow in the event of a dispute between Buyer and Developer. These rights include filing an "interpleader" and the right to recover certain fees and costs. In an interpleader action the escrow deposit is given to the court to decide what action to take.

5. The Escrow Agreement sets out escrow fees, escrow cancellation fees and the fees for certain policies of title insurance

6. The Escrow Agreement provides that after a Sales Contract becomes binding the Buyer's deposits may be used for construction and other costs:

Escrow Agreement 5. (c) "Disbursement of Purchaser's Funds. Subject to the provisions of Sections (5)(b) and Section (6) of this Agreement [relating to when contracts become binding and other conditions to Escrow's making disbursements] , and upon the written request of the Seller, Escrow shall from time to time make disbursements from the Trust Fund to the Seller, to the Seller's contractor or to the Seller's construction loan mortgagee ("Seller's Lender"), for the purposes and within the limits in this Section (5)(c) (but not necessarily in the order listed):

(i) Construction Costs. To pay for construction costs of the buildings and other improvements and fixtures in such amounts and at such times and in proportion to the valuation of the work completed by the contractor, as certified by a registered architect or professional engineer, upon bills approved or certified for payment by Seller's Lender, or a financially disinterested person who shall be designated in writing by Seller and Seller's Lender, if any, and who shall certify to Escrow in writing that such person is financially disinterested (and Escrow shall have the right to rely on that certification).

(ii) Project Fees and Incidental Expenses. To pay for architectural, engineering, financing, and legal fees and other incidental expenses of the Project (but not selling expenses or brokerage fees relating to sales of any Apartment) upon submission of bills for disbursements to the extent approved by Seller's Lender or the financially disinterested person.

(iii) Balance of Funds. The rest of the money in the Trust Fund shall be disbursed in accordance with the directions of Seller and Seller's Lender or the financially disinterested person only upon completion of the buildings of the Project and when Escrow shall have received satisfactory evidence that all mechanics' and materialmen's liens have been cleared or sufficient funds have been set aside to cover claims if liens are filed; otherwise forty-six (46) days from the filing of the affidavit of publication of notice of completion in the office of the clerk of the circuit court where the Project is located, a copy of which shall have been delivered to Escrow; provided, further, that if any notice of mechanics' or materialmen's liens shall have been filed, the funds shall be disbursed only when such liens have been cleared or sufficient funds have been set aside to cover such claims."