

**DEVELOPER'S PUBLIC REPORT  
FOR A CONDOMINIUM**

CONDOMINIUM PROJECT NAME	Opukea at Lahaina
Address	Limahana Circle (1155, 1233, 1300, 1400, 1500, 1660, 1870 and 2000 Limahana Circle) Lahaina, Hawaii
Registration Number	<b>6107</b>
Effective Date of Report	<b>December 15, 2006</b>
Developer	D.R. Horton-Schuler Homes, LLC, a Delaware limited liability company dba D.R. Horton-Schuler Division

**Preparation of this Report**

The Developer prepared this report to disclose relevant information, including "material facts", that are reasonably known to the Developer about the condominium project covered by this report. This report has been prepared pursuant to the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended from time to time. The law defines "material facts" to mean "any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale."

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts or all pertinent changes, or both, about the project have been fully or adequately disclosed; or (3) is not the Commission's judgment of the value or merits of the project.

This report may be used by the Developer for promotional purposes only if it is used in its entirety. No person shall advertise or represent that the Commission has approved or recommended the project, this report or any of the documents submitted with Developer's application for registration of this project.

This report will be amended if, after the effective date of this report, any changes, either material or pertinent changes, or both, occur regarding the information contained in or omitted from this report. In that case, the Developer is required to submit immediately to the Commission an amendment to this report or an amended Developer's Public Report, clearly reflecting the changes, including any omitted material facts, together with such supporting information as may be required by the Commission. In addition, the Developer may choose at any time to change or update the information in this report. Annually, at least thirty days prior to the anniversary date of the Effective Date of this report, the Developer shall file an annual report to update the material contained in this report. If there are no changes, the Developer is required to state that there are no changes. The Developer's obligation to amend this report or to file annual reports ends when the initial sales of all units in the project have been completed.

Purchasers are encouraged to read this report carefully and to seek professional advice before signing a sales contract for the purchase of a unit in the project.

Signing a sales contract may legally bind a purchaser to purchase a unit in the project, though a purchaser may have rights to cancel or rescind a sales contract under particular circumstances that may arise.

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

## **SPECIAL ATTENTION**

[Use this page for special or significant matters which should be brought to the purchaser's attention and that are not covered elsewhere in this report.]

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The Condominium Map (8 1/2 x 11) has NOT been provided to Buyer. Pursuant to Section 514B-86(a)(1)(A) of the Act, Seller advises Buyer that it is impractical, for legibility reasons, to provide buyers a letter-sized Condominium Map. Accordingly, Buyer shall have the opportunity to examine the Condominium Map at the Sales Office of Seller upon request.

## **General Information On Condominiums**

A condominium is a special form of ownership of real property. To create a condominium in Hawaii after July 1, 2006, the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, must be followed. 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 and/or the building(s) and other improvements are leased to the purchaser. The lease for the land usually requires that at the end of the lease term, the lessees (unit owners) deliver their interest in the land to the lessor (fee property owner).

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

You will be entitled to exclusive ownership and possession of your unit. Subject to the documents governing them, condominium units may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift or operation of law.

Your unit will, however, be part of the group of units that comprise the condominium project. Study the project's Declaration of Condominium Property Regime, Bylaws of the Association of Unit Owners, Condominium Map and House Rules, if any, which are being concurrently delivered to you with this report. These documents contain important information on the use and occupancy of the units and the common elements of the project, as well as the rules and regulations of conduct for unit owners, tenants and guests.

## **Operation of the Condominium Project**

The Association of Unit Owners is the entity through which unit owners may take action with regard to the administration, management and operation of the condominium project. Each unit 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 a unit owner. The Board and officers can take certain actions without the vote of the unit owners. For example, the Board may hire and fire employees, increase or decrease maintenance fees, adopt budgets for revenues, expenses and reserves and regulate the use, maintenance, repair and replacement of common elements. Some of these actions may significantly impact the unit owners.

Until there is a sufficient number of purchasers of units to elect a majority of the Board, it is likely at first 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 purchasers should understand that it is important to all unit owners that the transition of control from the Developer to the unit owners be accomplished in an orderly manner and in a spirit of cooperation.

**1. THE CONDOMINIUM PROJECT**

**1.1 The Underlying Land**

Fee Simple or Leasehold Project	<input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (attach Leasehold Exhibit)
Developer is the Fee Owner	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Fee Owner's Name if Developer is not the Fee Owner	
Fee Owner's Address	828 Fort Street Mall, 4th Floor, Honolulu, HI 96813
Address of Project	1155 Limahana Circle, 1233 Limahana Circle, 1300 Limahana Circle, 1400 Limahana Circle, 1500 Limahana Circle, 1660 Limahana Circle, 1870 Limahana Circle, 2000 Limahana Circle Lahaina, Hawaii
Address of Project is expected to change because	
Tax Map Key (TMK)	(2) 4-5-011-001 (por.)
Tax Map Key is expected to change because	The TMK No. may change as the County tax office completes processing the subdivision that created the underlying land.
Land Area	6.514 acres
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	N/A

**1.2 Buildings and Other Improvements**  
(See Exhibit A)

Number of Buildings	7
Floors Per Building	Bldgs. A,B,C, D, E & F - 4 flrs.; Bldg. G - 2 flrs.
Number of New Building(s)	7
Number of Converted Building(s)	N/A
Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	concrete, wood, metal, glass, hollow tile, aluminum, and other construction materials

**1.3 Unit Types and Sizes of Units**

Unit Type	Quantity	BR/Bath	Net Living Area	Net Other Areas	Other Areas (lanai, garage, etc.)	Area
See Exhibit <u>B</u> .						

114	<b>Total Number of Units</b>
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Note: Net Living Area is the floor area of the unit measured from the interior surface of the perimeter walls of the unit. Other documents and maps may give floor area figures that differ from those above because a different method of determining floor area may have been used.

**1.4 Parking Stalls**

Total Parking Stalls in the Project:	265
Number of Guest Stalls in the Project:	29
Number of Parking Stalls Assigned to Each Unit:	Minimum of 2
Attach <b>Exhibit C</b> specifying the Parking Stall number(s) assigned to each unit and the type of parking stall(s) (regular, compact or tandem and indicate whether covered or open).	
If the Developer has reserved any rights to assign or re-assign parking stalls, describe such rights. See <b>Exhibit D</b>	

**1.5 Boundaries of the Units**

Boundaries of the unit: In this report, a "unit" is sometimes described as a "home" or "residence". See **Exhibit E** for a description of the unit boundaries.

**1.6 Permitted Alterations to the Units**

Permitted alterations to the unit (if the unit is defined as a non-physical or spatial portion of the project, also describe what can be built within such portion of the project):  
  
See **Exhibit F**

**1.7 Common Interest**

Common Interest: Each unit will have a percentage interest in the common elements appurtenant to each unit. This interest is called the "common interest". It is used to determine each unit'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 unit owners. The common interest for each unit in this project, as described in Declaration, is:  
Described in **Exhibit G**.  
As follows:

**1.8 Recreational and Other Common Facilities** (Check if applicable):

<input type="checkbox"/>	Swimming pool
<input type="checkbox"/>	Laundry Area
<input type="checkbox"/>	Storage Area
<input type="checkbox"/>	Tennis Court
<input type="checkbox"/>	Recreation Area
<input checked="" type="checkbox"/>	Trash Chute/Enclosure(s)
<input type="checkbox"/>	Exercise Room
<input type="checkbox"/>	Security Gate
<input type="checkbox"/>	Playground
<input checked="" type="checkbox"/>	Other (describe): See <b>Exhibit H</b>

**1.9 Common Elements**

<p><u>Common Elements</u>: Common elements are those parts of the condominium project other than the individual units and any other real estate for the benefit of unit owners. Although the common elements are owned jointly by all unit owners, those portions of the common elements that are designated as limited common elements (see Section 1.10 below) may be used only by those units to which they are assigned. In addition to the common facilities described in Section 1.8 above, the common elements for this project, as described in the Declaration, are set forth below.</p>	
<p>Described in <b>Exhibit I</b>.</p>	
<p>Described as follows:</p>	
<b>Common Element</b>	<b>Number</b>
Elevators	7
Stairways	16
Trash Chutes	7 (plus one exterior trash enclosure) Note: Units F101 - F108, inclusive, may not have access to the trash chute area on the first floor.

**1.10 Limited Common Elements**

<p><u>Limited Common Elements</u>: A limited common element is a portion of the common elements that is reserved for the exclusive use of one or more but fewer than all units in the project.</p>
<p>Described in <b>Exhibit J</b>.</p>
<p>Described as follows:</p>

**1.11 Special Use Restrictions**

<p>The Declaration and Bylaws may contain restrictions on the use and occupancy of the units. Restrictions for this project include, but are not limited to, those described below.</p>	
<input checked="" type="checkbox"/>	Pets: See <b>Exhibit K</b>
<input checked="" type="checkbox"/>	Number of Occupants: See <b>Exhibit K</b>
<input checked="" type="checkbox"/>	Other: See <b>Exhibit K</b>
<input type="checkbox"/>	There are no special use restrictions.

**1.12 Encumbrances Against Title**

<p>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 a unit in the project. Encumbrances shown may include blanket liens which will be released prior to conveyance of a unit (see Section 5.3 on Blanket Liens).</p>
<p><b>Exhibit L</b> describes the encumbrances against title contained in the title report described below.</p>
<p>Date of the title report: December 7, 2006</p>
<p>Company that issued the title report: Old Republic Title &amp; Escrow of Hawaii</p>

**1.13 Uses Permitted by Zoning and Zoning Compliance Matters**

Uses Permitted by Zoning: See <b>Exhibit M.</b>				
	Type of Use	No. of Units	Use Permitted by Zoning	Zoning
<input checked="" type="checkbox"/>	Residential	114 "Apartment" units	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	M-1 Light Industrial
<input checked="" type="checkbox"/>	Commercial	none	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<input checked="" type="checkbox"/>	Mix Residential/Commercial	none	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Hotel		<input 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 checked="" type="checkbox"/>	Industrial	none	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Agricultural		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Recreational	none (reserved)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Other (specify)		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is/Are this/these use(s) specifically permitted by the project's Declarations or Bylaws?			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Variances to zoning code have been granted.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Describe any variances that have been granted to zoning code.			N/A	

**1.14 Other Zoning Compliance Matters**

Conforming/Non-Conforming Uses, Structures and Lots
<p>In general, a non-conforming use, structure or lot is a use, structure or lot that was lawful at one time but that does not now conform to present zoning requirements. Under present zoning requirements, limitations may apply to extending, enlarging or continuing the non-conformity and to altering and repairing non-conforming structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.</p> <p>If a variance has been granted or if uses, structures or lots are either non-conforming or illegal, the purchaser should consult with county zoning authorities as to possible limitations that may apply in situations such as those described above.</p> <p>A purchaser may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot.</p>

	Conforming	Non-Conforming	Illegal
Uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Structures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lot	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If a non-conforming use, structure or lot exists in this project, this is what will happen under existing laws or codes if the structure is damaged or destroyed: The Maui County Planning Committee is reviewing a proposed amendment to the Zoning Ordinance to prohibit future apartments within this zoning district. Before such an amendment will become law, it will require referral to the County Counsel before the amendment can have any effect. If adopted by the County Counsel, in its current form, the amendment will cause the apartment use at Opukea at Lahaina to be a legal non-conforming use and the units may also be legal non-conforming structures. In that event, the construction, repair and replacement of the structures and the continuation of the apartment use will be controlled by Maui Ordinance 19.500.110.

**1.15 Conversions**

<p><b>Developer's statements regarding units that may be occupied for residential use and that have been in existence for five years or more.</b></p>	<p><input type="checkbox"/> Applicable</p> <p><input checked="" type="checkbox"/> Not Applicable</p>
<p>Developer's statement, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units:</p>	
<p>Developer's statement of the expected useful life of each item reported above:</p>	
<p>List of any outstanding notices of uncured violations of any building code or other county regulations:</p>	
<p>Estimated cost of curing any violations described above:</p>	

<p><b>Verified Statement from a County Official</b>     N/A</p>
<p>Regarding any converted structures in the project, attached as Exhibit ____ is a verified statement signed by an appropriate county official which states that either:</p> <p>(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:</p> <ul style="list-style-type: none"> <li>(i) Any variances or other permits that have been granted to achieve compliance;</li> <li>(ii) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and</li> <li>(iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance;</li> </ul> <p>or</p> <p>(B) Based on the available information, the county official cannot make a determination with respect to the foregoing matters in (A) above.</p>
<p>Other disclosures and information:</p>

**1.16 Project In Agricultural District**

<p><b>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii?</b>  <b>If answer is "Yes", provide information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable state and county land use laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation.</p>	
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable county real property tax laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation and state whether there are any penalties for noncompliance.</p>	
<p>Other disclosures and information:</p>	

**1.17 Project with Assisted Living Facility**

<p><b>Does the project contain any assisted living facility units Subject to Section 321-11(10), HRS?</b>  <b>If answer is "Yes", complete information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Licensing requirements and the impact of the requirements on the costs, operations, management and governance of the project.</p>	
<p>The nature and the scope of services to be provided.</p>	
<p>Additional costs, directly attributable to the services, to be included in the association's common expenses.</p>	
<p>The duration of the provision of the services.</p>	
<p>Other possible impacts on the project resulting from the provision of the services.</p>	
<p>Other disclosures and information.</p>	

## 2. PERSONS CONNECTED WITH THE PROJECT

<p><b>2.1 Developer</b></p>	<p>Name: See <b>Exhibit N</b> Address:</p> <p>Business Phone Number: E-mail Address:</p>
<p>Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary).</p>	<p>See <b>Exhibit N</b></p>
<p><b>2.2 Real Estate Broker</b></p>	<p>Name: See <b>Exhibit N</b> Address:</p> <p>Business Phone Number: E-mail Address:</p>
<p><b>2.3 Escrow Depository</b></p>	<p>Name: See <b>Exhibit N</b> Address:</p> <p>Business Phone Number:</p>
<p><b>2.4 General Contractor</b></p>	<p>Name: See <b>Exhibit N</b> Address:</p> <p>Business Phone Number:</p>
<p><b>2.5 Condominium Managing Agent</b></p>	<p>Name: See <b>Exhibit N</b> Address:</p> <p>Business Phone Number:</p>
<p><b>2.6 Attorney for Developer</b></p>	<p>Name: See <b>Exhibit N</b> Address:</p> <p>Business Phone Number:</p>

### 3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances (Regular System) or filing in the Office of the Assistant Registrar of the Land Court, or both, a Declaration of Condominium Property Regime, a Condominium Map and the Bylaws of the Association of Unit Owners. The Condominium Property Act (Chapter 514B, HRS), the Declaration, Bylaws and House Rules control the rights and obligations of the unit owners with respect to the project and the common elements, to each other, and to their respective units.

#### 3.1 Declaration of Condominium Property Regime

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

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	July 19, 2006	2006-149210

#### Amendments to Declaration of Condominium Property Regime

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	October 11, 2006	2006-224163

#### 3.2 Bylaws of the Association of Unit Owners

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

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	July 19, 2006	2006-149211

#### Amendments to Bylaws of the Association of Unit Owners

Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.3 Condominium Map

The Condominium Map contains a site plan and floor plans, elevations and layout of the condominium project. It also shows the floor plan, unit number and dimensions of each unit.

Land Court Map Number	
Bureau of Conveyances Map Number	4301
Dates of Recordation of Amendments to the Condominium Map: December 7, 2006 (Document No. 2006-224162)	

### 3.4 House Rules

The Board of Directors may adopt rules and regulations (commonly called "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. Changes to House Rules do not need to be recorded to be effective.

The House Rules for this project:

Are Proposed	<input type="checkbox"/>
Have Been Adopted and Date of Adoption	<input checked="" type="checkbox"/>
Developer does not plan to adopt House Rules	<input type="checkbox"/>

### 3.5 Changes to the Condominium Documents

Changes to Condominium Documents: Changes to the Declaration, Bylaws and Condominium Map are effective only if they are duly adopted and recorded. Where permitted, the minimum percentages of the common interest that must vote for or give written consent to changes to the Declaration, Bylaws and Condominium Map are set forth below. The percentages for any individual condominium project may be more than the minimum set by law if the Declaration or Bylaws for the project so provide.

Document	Minimum Set by Law	This Condominium
Declaration	67%	See <b>Exhibit O</b>
Bylaws	67%	See <b>Exhibit O</b>

### 3.6 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents

<input type="checkbox"/>	No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).
<input checked="" type="checkbox"/>	Developer has reserved the right to change the Declaration, Bylaws, Condominium Map and House rules (if any) and to add to or merge the project or to develop the project in one or more phases, and such rights are summarized as follows:  See <b>Exhibit P</b>

## 4. CONDOMINIUM MANAGEMENT

### 4.1 Management of the Common Elements

<p><b>Management of the Common Elements:</b> The Association of Unit Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.</p>	
<p>The Initial Condominium Managing Agent for this project is (check one):</p>	
<input checked="" type="checkbox"/>	Not affiliated with the Developer
<input type="checkbox"/>	None (self-managed by the Association)
<input type="checkbox"/>	The Developer or an affiliate of the Developer
<input type="checkbox"/>	Other (explain)

### 4.2 Estimate of the Initial Maintenance Fees

<p><b>Estimate of the Initial Maintenance Fees:</b> The Association will make assessments against your unit to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your unit and the unit may be sold through a foreclosure proceeding. Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided. See Special Disclosure at <b>Exhibit Q</b></p>	
<p><b>Exhibit Q</b> contains a breakdown of the estimated annual maintenance fees and the monthly estimated maintenance fee for each unit, certified to have been based on generally accepted accounting principles, with the Developer's statement as to when a unit owner shall become obligated to start paying the unit owner's share of the common expenses.</p>	

### 4.3 Utility Charges to be Included in the Maintenance Fee

<p>If checked, the following utilities are included in the maintenance fee:</p>	
<input checked="" type="checkbox"/>	Electricity for the common elements
<input type="checkbox"/>	Gas for the common elements
<input checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer (Private)
<input type="checkbox"/>	TV cable
<input checked="" type="checkbox"/>	Other (specify) Private Trash Service

### 4.4 Utilities to be Separately Billed to Unit Owner

<p>If checked, the following utilities will be billed to each unit owner and are not included in the maintenance fee:</p>	
<input checked="" type="checkbox"/>	Electricity for the Unit only
<input type="checkbox"/>	Gas for the Unit only
<input type="checkbox"/>	Water
<input type="checkbox"/>	Sewer
<input checked="" type="checkbox"/>	TV cable
<input type="checkbox"/>	Other (specify)

## 5. SALES DOCUMENTS

### 5.1 Sales Documents Filed with the Real Estate Commission

Sales Documents on file with the Commission include, but are not limited to, the following:	
<input checked="" type="checkbox"/>	Specimen Sales Contract <b>Exhibit R</b> contains a summary of the pertinent provisions of the sales contract. Including but not limited to any rights reserved by the Developer.
<input checked="" type="checkbox"/>	Escrow Agreement dated: July 18, 2006 Name of Escrow Company: Old Republic Title & Escrow of Hawaii <b>Exhibit S</b> contains a summary of the pertinent provisions of the escrow agreement.
<input type="checkbox"/>	Other

### 5.2 Sales to Owner-Occupants

If this project contains three or more residential units, the Developer shall designate at least fifty percent (50%) of the units for sale to Owner-Occupants.

<input checked="" type="checkbox"/>	The sales of units in this project are subject to the Owner-Occupant requirements of Chapter 514B. See <b>Exhibit T</b> .
<input type="checkbox"/>	Developer has designated the units for sale to Owner-Occupants in this report. See Exhibit _____.
<input checked="" type="checkbox"/>	Developer has or will designate the units for sale to Owner-Occupants by publication.

### 5.3 Blanket Liens

Blanket Liens: A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project or more than one unit that secures some type of monetary debt (such as a loan) or other obligation. Blanket liens (except for improvement district or utility assessments) must be released as to a unit before the developer conveys the unit to a purchaser. The purchaser's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the unit to the purchaser.

<input checked="" type="checkbox"/>	There are <u>no blanket liens</u> affecting title to the individual units.
<input type="checkbox"/>	There are <u>blanket liens</u> that may affect title to the individual units.

<u>Type of Lien</u>	<u>Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>

### 5.4 Construction Warranties

Construction Warranties: Warranties for individual units and the common elements, including the beginning and ending dates for each warranty (or the method of calculating them), are as set forth below:
Building and Other Improvements: The Developer's sole warranty will be provided in the form attached to this Public Report as <b>Exhibit U</b> . Prospective purchasers should read the Limited Warranty with care to understand coverage, limitations and exclusions, and procedures.
Appliances: The Developer makes no warranty as to appliances or other consumer products installed in any Residence or in the common elements. If there are no applicable manufacturer's or dealer's warranties relating to such appliances or other consumer products, the Developer will endeavor to assign and pass on to each Residence owner the benefit of such warranties.

### 5.5 Status of Construction, Date of Completion or Estimated Date of Completion

Status of Construction: Developer estimates construction to commence approximately August 2006.
Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.
Completion Deadline for any unit not yet constructed, as set forth in the sales contract: The Unit shall be completed no later than twenty-four (24) months following the date that the sales contract becomes a binding contract, which is the earlier of the date: (a) Buyer delivers to Seller Buyer's written waiver of Buyer's right to cancel the sales contract following Seller's delivery to Buyer of the Notice of Right to Cancel this sales contract, or (b) thirty (30) days have expired following Seller's delivery to Buyer of the Notice of Right to Cancel, provided Buyer has not exercised Buyer's right to cancel, subject to Seller's right to extend the Completion Deadline for force majeure events, which are defined in the sales contract.
Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:

### 5.6 Developer's Use of Purchaser Deposits to Pay for Project Construction Costs Before Closing or Conveyance

The Developer is required to deposit all moneys paid by purchasers in trust under a written escrow agreement with a Hawaii licensed escrow depository. Escrow shall not disburse purchaser deposits to the Developer or on behalf of the Developer prior to closing, except if a sales contract is canceled or if Developer has met certain requirements, which are described below.

#### 5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance

<input checked="" type="checkbox"/>	The Developer hereby declares by checking the box to the left that it shall use its own funds to complete the construction of the condominium project by the date indicated in Section 5.5 of this report, and the Developer, pursuant to its own analysis and calculations, certifies that it has sufficient funds to complete the construction of the condominium project. If the box to the left is checked, Sections 5.6.2 and 5.7, which follow below, will not be applicable to the project.
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#### 5.6.2 Purchaser Deposits Will Be Disbursed Before Closing

Hawaii law provides that, if certain statutory requirements are met, purchaser deposits in escrow under a binding sales contract may be used before closing to pay for certain project costs. For this project, the Developer indicates that purchaser deposits may be used for the following purposes (check applicable box):	
<input type="checkbox"/>	For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person; or
<input type="checkbox"/>	For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses.

In connection with the use of purchaser deposits (check Box A or Box B):

<p><b>Box A</b> <input type="checkbox"/></p>	<p>The Developer has submitted all information and documents required by law and the Commission prior to the disbursement of purchaser deposits before closing. This means that the Developer may use such deposits before closing. If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>If Box A is checked, you should read and carefully consider the following notice, which is required by law:</p> <p><b><u>Important Notice Regarding Your Deposits:</u> Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.</b></p>
<p><b>Box B</b> <input checked="" type="checkbox"/></p>	<p>The Developer has <b>not</b> submitted all information and documents required by law and the Commission, and, until all such information and documents are submitted, thus, the Developer cannot use purchaser deposits.</p> <p>If the Developer later submits all information and documents required by law and the Commission for the use of purchaser deposits, then the Developer must provide an amendment to this report or an amended developer's public report to each purchaser who has signed a sales contract. At such time, the <b><u>Important Notice Regarding Your Deposits</u></b> set forth immediately above will apply to all purchasers and will be restated in the amendment to this report or an amended developer's public report. When an effective date for such an amendment or an amended developer's public report is issued, <b><u>you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment.</u></b> (This, however, does not affect your right to rescind for material changes or any other right you may have to rescind or cancel the sales contract, as described in Section 5.8 below.) If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>You should understand that, although the <b><u>Important Notice Regarding Your Deposits</u></b> set forth above does not currently apply to you, it might apply to you in the future, and, therefore, you should read and carefully consider it now to ensure that you understand the risk involved in deciding whether to proceed with your purchase.</p>

**Material House Bond.** If the Developer has submitted to the Commission a completion or performance bond issued by a material house instead of a surety as part of the information provided prior to the use of purchaser deposits prior to closing or conveyance of a unit, the Developer shall disclose the same below and disclose the impact of any restrictions on the Developer's use of purchaser deposits.

## 5.7 Rights Under the Sales Contract

Before signing the sales contract, prospective purchasers should carefully review all documents relating to the project. These include but are not limited to the documents listed below. Items 2, 3 and 4 are made a part of this public report, as well as Item 5, if any, and are being delivered to you with this report.

**1. Developer's Public Report**

**2. Declaration of Condominium Property Regime (and any amendments)**

**3. Bylaws of the Association of Unit Owners (and any amendments)**

**4. Condominium Map (and any amendments)**

5. House Rules, if any

6. Escrow Agreement

7. Hawaii's Condominium Property Act (Chapter 514B, HRS, as amended) and Hawaii Administrative Rules (Chapter 16-107, adopted by the Real Estate Commission, as amended), provided that rules and regulations under Chapter 514B have not yet been adopted.

8. Other: All documents as provided in Exhibit L.

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 514B, HRS) and the Administrative Rules (Chapter 107, HAR), 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 rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

## 5.8 Purchaser's Right to Cancel or Rescind a Sales Contract

A purchaser's right to cancel a sales contract or to rescind a sales contract may arise under varying circumstances. In the sections below, some circumstances that will give rise to a purchaser's right to cancel or rescind are described, together with what a purchaser must do if the purchaser wishes to exercise any of the rights.

### 5.8.1 When a Sales Contract becomes Binding and Purchaser's 30-Day Right to Cancel a Sales Contract

A sales contract signed by a purchaser and the developer will not become binding on a purchaser or the Developer until the following events have taken place:

- (1) The purchaser has signed the sales contract.
- (2) The Developer has delivered to the purchaser a true copy of the developer's public report with an effective date issued by the Commission, together with all amendments to the report as of the date of delivery, and the project's recorded Declaration and Bylaws, House Rules (if any), the Condominium Map and any amendments to them to date (all of which are a part of the developer's public report). If it is impracticable to include a letter-sized Condominium Map, the Developer must provide written notice of an opportunity to examine the Condominium Map.
- (3) The Developer has delivered to the purchaser a notice of the purchaser's 30-day cancellation right on a form prescribed by the Commission.
- (4) The purchaser does at least one of the following:
  - (a) Waives the purchaser's right to cancel the sales contract within 30 days from receipt of the notice of the purchaser's 30-day cancellation right; or

- (b) Allows the 30-day cancellation period to expire without exercising the right to cancel; or
- (c) Closes the purchase of the unit before the 30-day cancellation period expires.

The purchaser or the Developer may cancel the sales contract at any time during the 30-day cancellation period, and the sales contract will be canceled and the purchaser's deposits returned to the purchaser, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

### **5.8.2 Right to Cancel a Sales Contract if Completion Deadline Is Missed**

In addition to the purchaser's 30-day cancellation right described in Section 5.8.1 above, when a sales contract is signed before completion of construction of a project, the purchaser will have the right to cancel if the unit is not completed by certain deadlines. In conversion projects, there must be a deadline for completion of any required repairs. Every sales contract shall contain an agreement of the Developer that the completion of construction shall occur on or before the completion deadline, and that completion deadline is set forth in this report in Section 5.5. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. Upon a cancellation, the purchaser's deposits shall be refunded, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.00.

### **5.8.3 Purchaser's Right to Rescind a Binding Sales Contract After a Material Change**

If a "material change" in a project occurs after a purchaser has signed a sales contract that has become binding, the purchaser will have a 30-day right to rescind after notification and description of the material change. A material change is defined in the Condominium Property Act to be any change that "directly, substantially and adversely affects the use or value of (1) a purchaser's unit or appurtenant limited common elements; or (2) those amenities of the project available for the purchaser's use."

The purchaser will be informed of the material change by the developer on a form prescribed by the Commission containing a description of the material change.

After notice of the material change, the purchaser may waive the right to rescind by:

- (1) Checking the waiver box on the rescission form; or
- (2) Letting the 30-day rescission period expire, without taking any action to rescind; or
- (3) Closing the purchase of the unit before the 30-day rescission period expires.

The rescission form must be signed by all purchasers of the affected unit and delivered to the developer no later than midnight of the 30th calendar day after the purchasers received the rescission form from the developer. Purchasers who validly exercise the right of rescission shall be entitled to a prompt and full refund of any moneys paid.

A rescission right shall not apply in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the project's Declaration.

These provisions shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies.

**6. MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT**

See Exhibit V.



## **EXHIBIT A**

### Section 1.2 -- Buildings and Other Improvements

#### **DESCRIPTION OF BUILDINGS**

There shall be four (4) different building types in the Community (the term "Community" shall have the same meaning herein as "project" in HRS 514B). Each building is identified on the Condominium Map by a letter designation.

Buildings A, B, C, and E have four (4) floors and contain sixteen (16) Residences, Building D has four (4) floors and contains fourteen (14) residences, Building F has four (4) floors and contains twenty-eight (28) units, and Building G has two floors and contains eight (8) Residences. The unit types contained in each building are as follows:

Building A, B, C, and E: Unit types A, B, C, H,  
Building D: Unit types A, B, C, H, I  
Building F: Unit types A, B, C, H, I, J, K,  
Building G: Unit types E, F, G, H,

#### **DESCRIPTION OF RESIDENCES**

The Community shall contain one hundred fourteen (114) Residences in seven (7) buildings. The Residences and buildings shall be constructed principally of metal, wood, glass and related building materials.

There are ten (10) different unit types in the Community, designated as Unit types A, B, C, E, F, G, H, I, J, and K. A description of each Unit type is as follows:

##### **Unit type A**

These Unit types are single-story Residences containing two bedrooms, two bathrooms, living/dining area, kitchen, lanai, and other improvements as shown on the Condominium Map. These Unit types contain a net living area of approximately 1,246 square feet and a lanai area of approximately 125 square feet. There are fourteen (14) of these Unit types in the Community.

##### **Unit type B**

These Unit types are single-story Residences containing two bedrooms, two bathrooms, living/dining area, kitchen, lanai, and other improvements as shown on the Condominium Map. These Unit types contain a net living area of approximately 1,269 square feet and a lanai area of approximately 125 square feet. There are thirty-six (36) of these Unit types in the Community.

Unit type C

These Unit types are single-story Residences containing three bedrooms, two bathrooms, living/dining room, kitchen, lanai, and other improvements as shown on the Condominium Map. These Unit types contain a net living area of approximately 1,332 square feet and a lanai area of approximately 125 square feet. There are twelve (12) of these Unit types in the Community.

Unit type E

These Unit types are single-story Residences containing three bedrooms, two bathrooms, living/dining room, kitchen, lanai, and other improvements as shown on the Condominium Map. These Unit types contain a net living area of approximately 1,369 square feet and a lanai area of approximately 126 square feet. There are two (2) of these Unit types in the Community.

Unit type F

These Unit types are single-story Residences containing three bedrooms, two bathrooms, living/dining room, kitchen, lanai, and other improvements as shown on the Condominium Map. These Unit types contain a net living area of approximately 1,369 square feet and a lanai area of approximately 126 square feet. There are two (2) of these Unit types in the Community.

Unit type G

These Unit types are single-story Residences containing three bedrooms, two bathrooms, living/dining area, kitchen, lanai, and other improvements as shown on the Condominium Map. These Unit types contain a net living area of approximately 1,373 square feet and a lanai area of approximately 125 square feet. There are two (2) of these Unit types in the Community.

Unit type H

These Unit types are single-story Residences containing three bedrooms, two bathrooms, living/dining area, kitchen, lanai, and other improvements as shown on the condominium Map. These Unit types contain a net living area of approximately 1,373 square feet and a lanai area of approximately 125 square feet. There are thirty-four (34) of these Unit types in the Community.

Unit types I

These Unit types are single-story Residences containing four bedrooms, three bathrooms, living/dining area, kitchen, rear and side lanais, and other improvements as shown on the Condominium Map. These Unit types contain a net living area of approximately 1,893 square feet and a total lanai area of approximately 424 square feet. There are six (6) of these Unit types in the Community.

### Unit type J

These Unit types are single-story Residences containing three bedrooms, two bathrooms, living/dining area, kitchen, lanai, and other improvements as shown on the Condominium Map. These Unit types contain a net living area of approximately 1,350 square feet and a lanai area of approximately 124 square feet. There are two (2) of these Unit types in the Community.

### Unit types K

These Unit types are single-story Residences containing three bedrooms, two bathrooms, living/dining area, kitchen, lanai, and other improvements as shown on the Condominium Map. These Unit types contain a net living area of approximately 1,369 square feet and a lanai area of approximately 126 square feet. There are four (4) of these Unit types in the Community.

### **LOCATION AND NUMBERING OF UNITS:**

Each Residence shall be designated by a letter comprised of the Building Number ("A", "B", "C", "D", etc.) followed by the Residence Number (e.g. 101, 102, 103, etc.). The Residence numbers and locations are more fully illustrated on the Condominium Map.

### **ACCESS TO COMMON ELEMENTS:**

Each residence in the Community has immediate access to the common elements of the Community or to a walkway or stairway leading to the common elements of the Community.

### **ACCESS TO A PUBLIC STREET:**

The community will have access to Limahana Place and thereafter Honoapiilani Highway.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE BUILDINGS AND OTHER IMPROVEMENTS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT B**

Section 1.3 -- Unit Types and Sizes of Units

Unit Type	Quantity	BR/Bath	Net Living Area (sf)	Net Other Areas	Other Areas (lanai, garage, etc.)	Area
A/AR	14	2/2	1,246		125	1,371
B/BR	36	2/2	1,269		125	1,394
C/CR	12	3/2	1,332		125	1,457
E/ER	2	3/2	1,369		126	1,495
F/FR	2	3/2	1,369		126	1,495
G/GR	2	3/2	1,373		125	1,498
H/HR	34	3/2	1,373		125	1,498
I/IR	6	4/3	1,893		424	2,317
J/JR	2	3/2	1,350		124	1,474
K/KR	4	3/2	1,369		126	1,495

Note regarding Net Living Areas: Throughout the Opukea at Lahaina documentation, the area of individual units is generally expressed as "net living area" square footage. This measurement represents the architect's best estimate of the interior square footage of the unit as measured from the unit's perimeter walls, which are included in the unit. This measurement is based upon the plans for the construction of the unit and different architects performing the same measurement may obtain a larger or smaller result.

Units followed by a "/R" represent a reverse floor plan configuration from that reflected on the condominium map.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE UNIT TYPES AND SIZES OF UNITS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT C**

## Section 1.4 -- Parking Stall Assignments

<b>UNIT NO.</b>	<b>STALL #1 (Covered)</b>	<b>STALL # 2 (Uncovered)</b>	<b>STALL #3 (Uncovered)</b>
A101	254	13	
A102	255	14	
A103	256	15	
A104	257	3	
A201	258	4	
A202	259	5	
A203	260	6	
A204	261	7	
A301	262	8	
A302	263	9	
A303	264	10	
A304	265	11	
A401	28	12	
A402	29	25	
A403	30	26	
A404	31	27	
B101	107	22	
B102	106	23	
B103	105	24	
B104	104	96	
B201	103	50	
B202	102	49	
B203	101	48	
B204	100	47	
B301	99	46	
B302	98	45	
B303	97	42	
B304	36	41	
B401	37	32	
B402	38	33	
B403	39	34	
B404	40	35	
C101	123	51	
C102	122	52	
C103	121	53	
C104	120	54	
C201	119	55	
C202	118	56	
C203	117	57	
C204	116	58	
C301	115	59	
C302	114	60	
C303	113	61	
C304	112	62	

UNIT NO.	STALL #1 (Covered)	STALL # 2 (Uncovered)	STALL #3 (Uncovered)
C401	111	63	
C402	110	64	
C403	109	65	
C404	108	66	
D101	137	67	
D102	136	68	
D103	135	71	
D104	134	72	
D201	133	73	
D202	132	74	
D203	131	75	
D204	130	76	
D301	129	77	
D302	128	78	
D303	127	79	
D304	126	80	
D401	125	81	82
D402	124	83	84
E101	188	85	
E102	187	86	
E103	186	89	
E104	185	90	
E201	149	91	
E202	148	92	
E203	147	93	
E204	146	158	
E301	145	157	
E302	144	156	
E303	143	155	
E304	142	154	
E401	141	153	
E402	140	152	
E403	139	151	
E404	138	150	
F101	220	230	
F102	219	229	
F103	218	228	
F104	217	227	
F105	212	226	
F106	211	225	
F107	210	216	
F108	209	215	
F201	208	214	
F202	207	213	
F203	206	159	
F204	205	160	
F205	204	161	

<b>UNIT NO.</b>	<b>STALL #1 (Covered)</b>	<b>STALL # 2 (Uncovered)</b>	<b>STALL #3 (Uncovered)</b>
F206	203	162	
F207	202	163	
F208	201	164	
F301	200	184	
F302	199	183	
F303	198	182	
F304	197	181	
F305	196	178	
F306	195	177	
F307	194	176	
F308	193	175	
F401	192	173	174
F402	191	171	172
F403	190	169	170
F404	189	165	166
G101	253	236	
G102	252	235	
G103	238	234	
G104	237	233	
G201	224	232	
G202	223	231	
G203	222	242	
G204	221	239	

All parking stalls are "standard" in size. Any parking stalls designated as a standard sized parking stall may be constructed as a compact sized parking stall and such modification is approved by the Buyer. The parking stall marked with a "HC", as shown on the Condominium Map, indicates a parking stall that is suited for use by persons with disabilities. The loading stalls are labeled with "Load" on the Condominium Map.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE PARKING STALL ASSIGNMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

## EXHIBIT D

(Section 1.4 -- Reserved Right to Assign or Re-Assign Parking Stalls)

Developer shall have the reserved right, to effect such modifications to the Homes and Common Elements in the Community and/or to execute, record and deliver any amendments to the Declaration, the Condominium Map as well as the Bylaws and rules and regulations promulgated thereunder, as may be necessary or required to effect compliance by the Community, the Association, or by Developer with laws which apply to the Community, including, without limitation, the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq., including any and all rules and regulations promulgated thereunder, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§ 12101 et seq., including any and all rules and regulations promulgated thereunder. Without limitation, Developer may amend the Declaration (and, when appropriate, the Condominium Map) in any manner required to retrofit guest parking stalls, so they are suited for use by persons with disabilities and to assign such stalls as appurtenant Limited Common Elements to any one or more of the units intended for use by persons with disabilities upon substitution therefor of alternate guest parking stall(s). Such assignment may be made to Homes, the Owners of which Developer, in its sole judgment, determines require a parking stall accessible to persons with disabilities. Such reassignment is hereby specifically declared not to constitute a material amendment of the Declaration or, when appropriate, the Condominium Map. All costs of such reassignment shall be borne as determined by Developer. Notwithstanding the foregoing, Developer also reserves the right, but does not hereby undertake any obligation, to interchange guest parking stalls and the disabled guest parking stalls to accommodate Home Owners in need of such parking. The rights of Developer under this Section may be assigned to the Association, without the consent of joinder of the Board.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE RESERVED RIGHT TO ASSIGN OR RE-ASSIGN PARKING STALLS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

## EXHIBIT E

### Section 1.5 -- Boundaries of the Units

Each Unit includes all walls, columns and partitions which are not load-bearing within the Unit's perimeter walls (including the garage, if any, associated therewith, as shown on the Condominium Map), all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit and all other portions of the walls, floors, or ceilings, are a part of the common element. Each Unit shall also include ceilings, doors, door frames, and window frames along the perimeters, all windows along the perimeters, the air space within the perimeter, the lanais, if any, shown on the Condominium Map to the inner decorated or finished surfaces of the perimeter walls of such lanais and to the interior edge of the exterior railings or other boundaries of such lanais, the entry court or area, if any, shown on the Condominium Map to the inner decorated or furnished surfaces of the perimeter walls of such entry court or area and to the interior edge of other boundaries of such entry court or area, the exterior storage areas, if any, shown on the Condominium Map, all rollers, locks, handles, tracks, and appurtenant hardware associated with all windows, doors and exterior automobile garage doors, if any, and all sliding or swinging screen doors and all glass window screens and all fixtures originally installed in the Unit, and all pipes, plumbing (including water heaters), wires, conduits and other utility or service lines and facilities servicing only the Unit. The Units shall not include the undecorated or unfinished surfaces of the perimeter party or non-party walls, the undecorated or unfinished surfaces of the doors, door frames and window frames along the perimeters, the interior load-bearing columns, girders, beams and walls, the undecorated or unfinished surfaces of the floors and ceiling surrounding each Unit, the exterior edge of the exterior railings or other exterior boundaries of the lanais, if any, shown on the Condominium Map, or any pipes, shafts, wires, conduits or other utility or service lines running through a Unit which are utilized for or serve more than one Unit, all of which are deemed Common Elements as provided in the Declaration. If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that unit is a Limited Common Element appurtenant solely to that Unit, and any portion thereof serving more than one Unit or any portion of thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements, such as an air conditioner system.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE BOUNDARIES OF THE UNITS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

## EXHIBIT F

### Section 1.6 -- Permitted Alterations

1. Except as provided in the Declaration, repair, reconstruction, restoration, replacement of the Community or any building or other structure or unit within the Community or construction of any additional building or other structure or structural alteration or addition thereto, different in any material respect from the Condominium Map shall be undertaken by the Association or any Home Owners only pursuant to an amendment of the Declaration. Except as expressly provided otherwise in the Declaration, any such amendment shall be duly executed by or pursuant to the affirmative vote of seventy-five percent of the Home Owners and accompanied by the written consent of the eligible holders of first mortgage (as hereinafter defined) on Units to which at least sixty-seven percent of the votes of Units subject to mortgages held by such eligible holders are allocated, and in accordance with complete plans and specifications therefor first approved in writing by the Board. Promptly upon completion of such repair, reconstruction, restoration, replacement, construction, alteration or addition, the Association shall duly record and file of record such amendment together with a complete set of floor plans of the Community as so altered, certified as-built by a licensed, registered architect or professional engineer.

2. Any alterations or additions solely within a Unit or within a Limited Common Element appurtenant to and for the exclusive use of a Unit or more than one Unit, shall require only the written approval thereof, including the plans thereof, by the Owners of such Unit(s), by the holders of first mortgage liens affecting such Unit(s) (if the lien holder require such approval), by the appropriate agencies of the State of Hawaii and the County if such agencies so require, and by the Board (which approval shall not be unreasonably or arbitrarily withheld or delayed), and by all other Owners thereby directly affected (as determined in a reasonable manner by the Board); provided, however, that the Board shall always have the right to disapprove a proposed addition or alteration that the Board reasonably determines could jeopardize the soundness or safety of the Property, impair any easement, or interfere with or deprive any nonconsenting Owner of the use or enjoyment of any part of the property. Upon completion of such alterations or additions, the Home Owner(s) directly affected shall duly Record and file of record an amendment to the Declaration together with the approved plans showing only such alterations or additions within a Unit space or within a Limited Common Element as aforesaid. Such amendment to the Declaration need only be executed by the Home Owner(s) directly affected and their first mortgagees, as may be required.

3. Any other provision in the Declaration to the contrary notwithstanding and without limitation of the rights reserved to Developer in the Declaration, prior to (i) the time that all Units in the Community have been sold and the conveyance thereof recorded, and (ii) the filing by Developer of the "as built" verified statement (with plans, if applicable) required by Section 514B-34 of the Act, Developer shall have the right, without being required to obtain the consent or joinder of any person or group of persons, including the Association, any Unit Owner or any mortgagee, lienholder, or any other person who may have an interest in the Community, to do the following:

(a) To make alterations in the Community (and to amend the Declaration and the Condominium Map accordingly) which change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any Unit (and the Limited Common Elements appurtenant thereto) in the Community which is not sold and the conveyance thereof recorded which right includes the ability to change the overall "product mix" (e.g. change the building type or model home types to be constructed); and

(b) To make other alterations in the Community (and to amend the Declaration and the Condominium Map accordingly) which make minor changes in any Unit in the Community or in the Common Elements which do not affect the physical location, design or size of any Unit which has been sold and the conveyance thereof recorded.

4. Notwithstanding anything to the contrary contained herein but subject to (1) the Easements and other rights and licenses reserved for the benefit of other Unit Owners, (2) compliance with the Design Guidelines, and (3) such other limitations specified below, each Unit Owner has the following rights:

(a) Each Owner has the right to make any of the following changes, additions and Improvements solely within the Owner's Unit or Limited Common Element that such Owner controls, subject to the Owner's compliance with the Design Guidelines:

(i) To install, maintain, remove, and rearrange partitions and other structures from time to time within the Unit or Limited Common Element; provided that the Owner shall not have the right to enclose any exterior lanai;

(ii) To finish, change, or substitute any plumbing, electrical, or other fixtures attached to the ceilings, floors, or walls as appropriate for the use of the Unit or Limited Common Element;

(iii) To decorate, paint, repaint, wallpaper or otherwise change the appearance of any walls, floors, and ceilings of the Unit or Limited Common Element that are not readily visible from outside the Unit or Limited Common Element;

(iv) To tile, finish, carpet, re-carpet, and install, change, or remove other flooring in the Unit or Limited Common Element which is not readily visible from outside the Unit or Limited Common Element, subject to the limitation on the installation of "hard" flooring as contained in the Design Guidelines; or

(v) To make such changes, additions and improvements to the Unit or Limited Common Elements to facilitate handicapped accessibility within the Unit or Limited Common Element.

(b) Except as otherwise provided in the Declaration, the Bylaws or the Design Guidelines, an Owner may make "nonmaterial structural additions" to the Common Elements or to an Owner's unit as the foregoing term is used in and subject to the provisions of Section 514B-140(c) of the Act.

(c) The Owner of two (2) Units that are separated by a Common Element that is a wall, floor, or a ceiling, or whose lanai or Limited Common Elements are separated from each other or from such Units by a Common Element that is a wall, floor, or ceiling, has the right and an easement, subject to Board approval and compliance with the Design Guidelines, to change or remove all or part of the intervening wall, floor, and/or ceiling. The Owner also has the right, subject only to Board approval and compliance with the Design Guidelines, to install doors, stairways, and other Improvements in such opening or openings in the intervening Common Element, to seal hallways or other openings, and to make other reasonable changes or additions which do not adversely affect the structural integrity of the Unit or Limited Common Element or the building in which such Unit is situated. Before terminating its common ownership of any of the adjacent Units, the Owner must restore the Common Element wall,

floor, ceiling, hallway, and/or other openings to substantially the same condition as before the change or removal, unless the new Owners each agree otherwise in writing.

(d) An Owner who owns any two (2) adjacent Units has the right, subject only to Board approval and compliance with the Design Guidelines: (i) to consolidate the Units into a single Unit; and (ii) to make any Common Element walls, floors or ceilings between the Units part of the Unit or its Limited Common Elements. The Common Interest of the newly created Unit will be equal to the sum of the Common Interests of the Units being consolidated.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE PERMITTED ALTERATIONS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT G**  
Section 1.7 -- Common Interest

Unit type	Residence Number	Undivided Common Interest of Each Residence
A/AR (14)	A102, A103, B102, B103, C102, C103, D102, D103, E102, E103, F102, F103, F106, F107	0.0080837
B/BR (36)	A202, A203, A302, A303, A402, A403, B202, B203, B302, B303, B402, B403, C202, C203, C302, C303, C402, C403, D202, D203, D302, D303, E202, E203, E302, E303, E402, E403, F202, F203, F206, F207, F302, F303, F306, F307	0.0082193
C/CR (12)	A101, A104, B101, B104, C101, C104, D101, D104, E101, E104, F101, F108	0.0085908
E/ER (2)	G102, G103	0.0088148
F/FR (2)	G202, G203	0.0088148
G/GR (2)	G101, G104	0.0088325
H/HR (34)	A201, A204, A301, A304, A401, A404, B201, B204, B301, B304, B401, B404, C201, C204, C301, C304, C401, C404, D201, D204, D301, D304, E201, E204, E301, E304, E401, E404, F201, F208, F301, F308, G201, G204	0.0088325
I/IR (6)	D401, D402, F401, F402, F403, F404	0.0136615
J/JR (2)	F104, F105	0.0086932
K/KR (4)	F204, F205, F304, F305	0.0088148

**COMMON EXPENSE ALLOCATIONS  
APPLICABLE TO INCREMENT 1 ONLY**

Unit type	Residence Number	Allocation of Common Expenses Until Addition of Future Increments
A/AR (6)	A102, A103, B102, B103, C102, C103	0.019863
B/BR (18)	A202, A203, A302, A303, A402, A403, B202, B203, B302, B303, B402, B403, C202, C203, C302, C303, C402, C403	0.020195
C/CR (6)	A101, A104, B101, B104, C101, C104	0.02111
H/HR (17)	A204, A301, A304, A401, A404, B201, B204, B301, B304, B401, B404, C201, C204, C301, C304, C401, C404	0.021702
H/HR (1)	A201	0.021718

**COMMON EXPENSE ALLOCATIONS  
APPLICABLE TO INCREMENTS 1 AND 2 ONLY**

Unit type	Residence Number	Allocation of Common Expenses Until Addition of Future Increments
A/AR (10)	A102, A103, B102, B103, C102, C103, D102, D103, E102, E103	0.0120379
B/BR (28)	A202, A203, A302, A303, A402, A403, B202, B203, B302, B303, B402, B403, C202, C203, C302, C303, C402, C403, D202, D203, D302, D303, E202, E203, E302, E303, E402, E403	0.0122398
C/CR (10)	A101, A104, B101, B104, C101, C104, D101, D104, E101, E104	0.012793
H/HR (28)	A201, A204, A301, A304, A401, A404, B201, B204, B301, B304, B401, B404, C201, C204, C301, C304, C401, C404, D201, D204, D301, D304, E201, E204, E301, E304, E401, E404,	0.013153
I/IR (2)	D401, D402	0.0203463

\* Declarant contemplates that the community shall proceed in three (3) increments. The Declarant may alter the number of Residences within an Increment (by increasing or decreasing the number of Residences within an Increment) or construct the Community in one (1) or more Increments in Developer's discretion. Increment 1 shall consist of 48 Residences, Increment 2 shall consist of 30 Residences and Increment 3 shall consist of 36 Residences.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE COMMON INTEREST CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

## EXHIBIT H

### Section 1.8 -- Recreational and Other Common Facilities

The recreational and other common facilities include mailbox(es) and pathways as shown on the Condominium Map, and other common elements identified in Exhibit I attached hereto. The Developer has reserved the right to construct within the "Common Area Facilities Expansion Area" recreational facilities which may include a spa, swimming pool, recreational building and barbeques areas. The "Common Area Facilities Expansion Area" is shown on the Condominium Map. If a spa, swimming pool and other water features are built, the water from these features shall not drain into the sewer system. The draining of these water features shall be performed by a pumping service.

Developer shall have the absolute right, notwithstanding the lease, sale, or conveyance of any Unit and without being required to obtain the consent or joinder of any Unit Owner, lien holder, or other persons, to make other alterations in the Community (and to amend the Declaration and the Condominium Map accordingly) which make minor changes in any Unit in the Community or in the Common Elements that do not affect the physical location, design, or size of any Unit that has been sold and the conveyance thereof Recorded.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE RECREATIONAL AND OTHER COMMON FACILITIES CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT I**

**Section 1.9 -- Common Elements**

The common elements of the Community shall specifically include, but are not limited to, the following:

1. The Land and those improvements to the Land, excluding the Residences and Private Yard Areas, if any, but including without limitation the Community Access Road, exterior lighting fixtures located along and/or adjacent to the Community Access Road, the common area landscaping and similar improvements.
2. All the benefits, if any, inuring to the land or to the Community from all easements, if any, shown on the Condominium Map or listed in Exhibit "A" attached to the Declaration of Condominium Property Regime.
3. All structural components, such as foundations, girders, columns, beams, floor slabs, supports, main walls, load-bearing walls, floors, ceilings (except the inner or decorated surfaces of such walls, floors and ceilings), roofs, exterior stairs and stairways, landings, railings, entrances and exits (other than the entry courts or entry areas included in the definition of a residence) of the buildings and/or Residences, doors, door frames, windows, window frames, and other building appurtenances; provided, however, that all rollers, locks, handles, tracks and appurtenant hardware associated with all windows, doors and exterior garage doors, if any, and all sliding screen doors and all glass and window screens shall be the responsibility of the Residence owners and all other portions of the walls, floors, or ceilings, are a part of the common element. If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a Residence, any portion thereof serving only that unit is a Limited Common Element appurtenant solely to that Residence, and any portion thereof serving more than one Residence or any portion of thereof serving more than one Residence or any portion of the Common Elements is a part of the Common Elements.
4. All yards, grounds, gardens, planters, plants, landscaping, sidewalks, pathways, curbs, mailbox(es), lamp, lamp posts, trash receptacle areas, trash enclosures, trash chutes, elevators, maintenance building, electrical rooms, refuse facilities, loading area, ejector pump station, if any.
5. All fences and walls as shown on the Condominium Map.
6. All drainage facilities or swales, pipes, shafts, wires, conduits or other utilities or service lines running through a Residence, or Private Yard Area, if any, which are utilized for or serve more than one Residence, or Private Yard Area, if any, or other features of the Community.
7. Loading areas are identified as Load 250 and Load 251 on the Condominium Map. There are 29 guest parking stalls and the guest parking stalls are numbered as follows:

1HC	21	94HC	241HC	249
2HC	43HC	95HC	243	
16	44HC	167HC	244	
17	69HC	168HC	245	
18	70HC	179HC	246	
19	87HC	180HC	247	
20	88HC	240HC	248	

Developer reserves the right to transfer guest parking stalls with Residences, without affecting the total number of guest parking stalls.

8. Any and all apparatus and installations of common use and all other parts of the Community necessary or convenient to its existence, maintenance and safety, or normally in common use.

9. All ducts, electrical equipment, transformers, wiring, pipes and other central and appurtenant transmission facilities and installations over, under and across the Community or individual Private Yard Areas, if any, shown on the Condominium Map, which are utilized by or serve more than one Residence or for services such as power, light, water, gas, sewer, drainage, telephone and radio and television signal distribution, if any.

10. All areas, rooms, spaces, structures, housings, chutes, elevators, shafts or facilities of the Community within or outside of the buildings, which are for common use or which serve more than one Residence, such as electrical, maintenance, service, security, machine, mechanical and equipment rooms and the equipment, machinery and facilities therein.

11. All other parts of the Community not included in the definition of a Residence.

12. The Entry Sign Monument identifying the Community, which may be covered by a grant of easement in favor of the Association.

13. The "Common Areas Facilities Expansion Area" as shown on the Condominium Map. Developer has reserved the right to construct a spa, swimming pool, recreational building, and/or barbeque areas in the Common Area Facilities Expansion Area.

14. The obligation to share in the maintenance of the Shared Entrance Road described as the Entrance Road in the Declaration.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE COMMON ELEMENTS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT J**  
Section 1.10 -- Limited Common Elements

Each Residence shall have appurtenant to the Residence easements for the exclusive use of certain limited common elements as follows:

1. Private Yard Area:

Certain units may include Private Yard Areas. This land area appurtenant to each Residence, as described in the Declaration and if shown on the Condominium Map, and bearing the same Private Yard Area number as the unit number assigned to the Residence, is a limited common element. Private Yard Areas are not legally subdivided lots. Private Yard Areas include the land beneath the Residence bearing the same number as the Private Yard Area, the yard area in front of, to the rear and the sides of the Residence as demarked (at the sole election of Developer) by (1) fencing of the yard area or rear yard and/or front yard areas of the Residence; (2) appropriate physical monuments at the corners of the Private Yard Area and/or locations shown on the Condominium Map; or (3) by metes and bounds noted on the Condominium Map or contained in a Supplemental Declaration.

2. Parking Stall Assignments:

All Residences have assigned to it at least two (2) covered or uncovered parking stalls assigned to it as a limited common element as shown on the Condominium Map. Certain Residences have assigned to it three (3) covered or uncovered parking stalls. The particular parking stalls that initially will be appurtenant to the particular Residence are described in Exhibit C attached hereto.

3. Partially Included in Unit

If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that unit is a Limited Common Element appurtenant solely to that Unit, and any portion thereof serving more than one Unit or any portion of thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE LIMITED COMMON ELEMENTS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

## EXHIBIT K

### Section 1.11 -- Special Use Restrictions

1. No livestock, poultry, or other animals whatsoever shall be allowed or kept in or on any part of the Community, except that dogs, cats, or other common household pets as described in the Bylaws, in reasonable number, may be kept by Owners and Occupants in their respective Homes. Pets shall not be allowed on any common elements of the Community except on a leash or when carried. Owners and Occupants shall be responsible for the immediate and proper removal and disposal of all fecal matter of pets while the pets (whether on a leash or carried) are on any common elements of the Community. The Owner or Occupant of any Home in which a pet is to be kept pursuant to these rules shall register the pet with the Board or the Managing Agent prior to or immediately upon bringing such pet onto the Community. Pets shall not be kept, bred or used for any commercial purpose. Any personal injury or property damage to the structures, grounds, flooring, walls, trim, finish, tile, carpeting, stairs or other portion of the Community caused by a pet will be the full responsibility of the pet owner and the Owner of the Home in which the pet is kept. Owners and Occupants shall be responsible for the immediate and proper removal and disposal of all fecal matter of pets kept in their Homes. Any pet which is a nuisance or causes unreasonable disturbance to any Occupant or causes damage to the Community shall be removed by its Owner or by the Occupant of the Home in which it is kept promptly upon the request of the Board.

2. The number of occupants shall be in accordance with any limitations imposed by State or municipal law or ordinances.

3. The Homes shall at all times be occupied and used only for residential purposes in accordance with applicable laws, the Declaration and the Bylaws, and for no other purposes.

4. The Homes or any interest therein shall not be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any timesharing purpose or under any timesharing plan, arrangement or program, including without limitation any so-called "vacation license," "travel club membership," or "time-interval ownership" arrangement. The term "timesharing" as used in the Declaration shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess a Home rotates among various persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise.

5. The Home Owners shall have the absolute right to sell, lease, rent or otherwise transfer their respective Homes subject to all provisions of the Act and the Community Documents. All Homes may not be leased or rented for an initial term of less than thirty days (or such longer period as may be required by ordinance of the County to avoid classification of the Home as a "transient vacation unit") and may not be rented in any manner by which the occupants of the Home are provided customary hotel or similar services, such as room service, maid service, laundry or linen service or bell service. Any lease or rental agreement of a Home shall be in writing and shall provide that it shall be subject in all respects to the provisions of the Community Documents and that the failure of the lessee or tenant to comply with the terms of the Community Documents shall be a default under the lease or rental agreement.

6. A Home Owner shall not use his or her Home and/or any appurtenant Limited Common Element for any purpose which will injure the reputation of the Community or suffer anything to

be done or kept in his or her Home or elsewhere in the Community which will (a) jeopardize the soundness of any building in the Community, (b) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants, (c) increase the rate of fire insurance on any structure or the contents of any structure, or (d) reduce the value of the Community or any structure in the Community.

7. Use of those parking stalls, if any, which are not designated as Limited Common Elements appurtenant to any specific Home, may be governed by rules and regulations adopted in accordance with the Bylaws to assure equitable use of the stalls by all Owners. The Board of Directors may install parking meters, gates, security devices, checkpoints and other equipment appropriate to this end and may issue stickers or adopt an allocation system.

8. The Common Elements and their use is subject to an express limited warranty by Developer in favor of the Association, which is conditioned on appropriate regular and routine maintenance, inspection and repair of the Common Elements by the Association, that the construction of the Common Elements has been completed in general conformity with approved plans and specifications, subject to appropriate or required field changes in accordance with the building standards set out in Developer's Limited Warranty ("Developer's performance standards"). The exact terms of Developer's Limited Warranty are set forth in Exhibit "D" of the Declaration and such limited warranty shall be effective upon the recording of the Declaration. Developer's Limited Warranty shall be administered by the Professional Warranty Service Corporation ("PWC"). An appropriate validation form, described below and in Developer's Limited Warranty, will be delivered to the Association NOT later than the first annual meeting of the Owners. It is expressly understood and agreed by and between Developer and each Owner and the Association that, other than this express limited warranty, DEVELOPER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE COMMON ELEMENTS, THE COMMUNITY OR CONSUMER PRODUCTS OR OTHER THINGS WHICH MAY BE INSTALLED OR WHICH ARE CONTAINED IN THE COMMON ELEMENTS OR THE COMMUNITY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS FOR A PARTICULAR USE. During the term of Developer's Limited Warranty, the Association shall in each and all instances permit Developer or Developer's designated representative to repair any and all items classified by Developer as items covered by Developer's Limited Warranty. The Association and its members shall have no further rights and Developer no further obligation to the Association and/or its members in respect of such matters repaired by Developer or Developer's representative.

In providing for the maintenance, management and repair of the Area of Common Responsibility (which are defined as Common Elements in Developer's Limited Warranty) pursuant to the Declaration, the Association shall comply with each of those obligations specified in the attached form of Developer's Limited Warranty and undertake each of those actions therein required to be taken by the Association. In that regard, the Association shall let appropriate contracts to service professionals in order to provide and shall provide regular and routine maintenance, inspection and repair of the Common Area. Without limitation of the obligations imposed on the Association pursuant to the Declaration, the Association, through its Board, shall execute all necessary documents in order to effectuate Developer's Limited Warranty, including without limitation, the "Limited Warranty Validation Form". With respect to the Developer's Limited Warranty, the Association acknowledges and agrees:

- With respect to items covered under Developer's Limited Warranty, the Association hereby waives all other express or implied warranties, as set forth in Developer's Limited Warranty, to the fullest extent permitted by law.

- PWC is only administrator of Developer's Limited Warranty.
- The Association shall satisfy each and every requirement contained in Developer's Limited Warranty, including without limitation those for written notice, access, right of repair and review etc., as detailed in Developer's Limited Warranty.
- The Association board has received and shall maintain a copy of Developer's Performance Standards and further understands and acknowledges that Developer's performance standards will be utilized in determining coverage under Developer's Limited Warranty.
- The Association has and undertakes to perform those affirmative maintenance obligations as set forth in Developer's Limited Warranty, in addition to any maintenance obligations otherwise required by the Declaration or by applicable law.

9. Each Home Owner may use the Common Elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other Home Owners, provided that the Board of Directors shall have the right:

(a) To change the use of the Common Elements upon approval of seventy-five percent of the Owners;

(b) On behalf of the Association, to lease or otherwise use for the benefit of the Association those Common Elements that, in accordance with Section 514B-38(5) of the Act, the Board determines are not actually used by any Home Owners for a purpose permitted in the Declaration so long as it does not adversely affect Developer's rights and interests in the Common Elements, provided that, unless the approval of sixty-seven percent (67%) of the Owners is obtained, such lease shall not have a term of more than five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) days' written notice;

(c) To lease or otherwise use for the benefit of the Association those parts of the Common Elements not falling within subsection (b) above, upon obtaining the approval of seventy-five percent of the Owners, including all directly affected Owners and in the case of Limited Common Elements, all Owners of Homes to which such Limited Common Elements are appurtenant, and the approval of all mortgagees of record on Homes with respect to which Owner approval is required, if such lease or use agreement would be in derogation of the interest of such mortgagees: and

(d) To enact, amend and repeal rules and regulations reasonably restricting and regulating use of the Common Elements, provided that such rules and regulations shall be enacted, amended or repealed in accordance with and shall be consistent with the terms of the Community Documents, and shall not be in derogation of the rights reserved to Developer in the Community Documents.

10. Lanais. Without limiting the generality of any other provision of the Declaration, the following provisions shall apply to lanais:

(a) Use of Lanais. Lanais shall be used only as outdoor living areas containing patio furniture, potted plants, and other similar outdoor furnishings that comply with the standards governing the appearance of such items as set forth in the Community Rules. Said furnishings shall be equipped with protective leg caps or other devices to prevent damage to the floor of the

lanais. No Improvement shall be nailed, bolted, or otherwise attached to the floor, walls, or any other portion of the lanais. No hanging screens or banners and no other accoutrement (other than plants), which may be visible from any other Home, the Common Elements, or the Community are permitted on any portion of the lanais. Unless placed by Developer, any plants placed on lanais must be approved by the Board, must have sufficiently large receptacles to contain all drainage from such plants, and must not be allowed to collect condensates or moisture between the receptacles and the floor of the lanais.

(b) Limitations on Use. Lanais shall not be used for storage of any type, including, without limitation, boxes, tools, exercise and sports equipment, bicycles, cleaning utensils and supplies, or other household items. Lanais shall be maintained in a clean, neat, and sanitary condition at all times, and nothing shall be placed on Lanais so as to render them unsightly or offensive to the other Owners or to any other Homes in the Community or its occupants. No dust, dirt, or other substances shall be shaken, swept, or thrown from or hosed off the lanais on or into any Common Elements. Any item which in the opinion of the Board or the Board is unsightly or offensive shall be removed from the lanais upon receipt of written notice of such determination from the Board or the Board. No Owner shall change or alter the surface or exterior of any lanais without the consent of the Board.

11. Rights of Persons with Disabilities. Subject to the provisions of the Declaration, each Owner shall have the right to modify the Owner's Home and the Board and/or the Developer has the right to modify the route over the Common Elements leading to the front door of the Home, at the Owner's sole cost and expense, in order to facilitate access to the Home by persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to such persons. The rights granted by the Declaration are further subject to the following conditions: (i) the modifications shall be consistent with applicable building code requirements; (ii) the modifications shall be consistent with the intent of otherwise applicable provisions of the Declaration pertaining to safety or the aesthetic integrity of the Community; (iii) the modifications which are external to the Home shall not prevent reasonable passage by other Owners or Invitees on the Community, and shall be removed by the Owner when the Home is no longer occupied by persons requiring those modifications; (iv) any Owner who intends to modify a Home pursuant to the Declaration shall submit their plans and specifications to the Board for review to determine whether the modifications comply with the provisions of the Declaration; and (v) any change in the exterior appearance of a Home shall be in accordance with the provisions of the Declaration and all applicable provisions of law. Any Owner with a disability desiring such a modification shall make such request, in writing, to the Board. That request shall set out, with specificity and in detail, the nature of the request and the reason that the requesting party needs to be granted such the modification. The Board shall not unreasonably withhold or delay its consent to such request and the Board shall not deny approval of the proposed modifications under the Declaration without good cause.

12. Improvements and Pests. Except as otherwise specifically provided in the Declaration, any Supplemental Declaration, or any agreement with the Association, the performance and cost of all maintenance and repair of each Private Yard Area, and all structures, parking areas, landscaping and other Improvements located on or within such Private Yard Area shall be the sole responsibility of the Owner of the Home to which such Private Yard Area is appurtenant. Each Owner shall maintain all Improvements, including landscaping upon or within such Owner's Private Yard Area, in a state of good condition and repair in accordance with the Declaration. No Owner or occupant of a Private Yard Area shall landscape or plant in any area controlled by the Association or otherwise interfere with the landscaping and maintenance of such landscaping as performed by the Association. No such Owner or occupant shall interfere

in any manner with the proper and effective operation of the irrigation facilities, if any, located in or on such common areas or easement areas, including any automatic or electric timer system(s) associated with such facilities. Further, each Owner acknowledges and agrees that the Owner is responsible for the control of pests (termites, insects, rodents and the like) in or around the Private Yard Areas and Improvements to the Private Yard Area. Notwithstanding anything to the contrary in the Declaration, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. Notwithstanding anything to the contrary contained in the Declaration, each Owner shall have and shall comply with each of those obligations specified in the attached form of Developer's Limited Warranty and undertake each of those actions therein required to be taken by the Home Owner.

13. Maintenance.

(a) Appearance of Improvements. Each Owner shall maintain the exterior appearance of the Improvements to their Private Yard Area in a neat and attractive manner, consistent with the surrounding areas in accordance with the provisions of the Declaration and the maintenance responsibilities set out in Exhibit "E" of the Declaration. Any interior window coverings in a Home visible from a neighboring Home or Private Yard Area shall be neutral in color. Each Owner should attempt to utilize colors that are consistent with the exterior color scheme of the Home and surrounding Homes within the Community.

(b) Improper Maintenance and Use of Private Yard Areas. In the event any portion of any Private Yard Area is so maintained as to present a public or private nuisance or an unreasonable condition (as determined by the Board) with respect to other Owners or occupants, or as to substantially detract from the appearance or quality of the surrounding Private Yard Areas or other areas of the Community, or in the event any portion of a Private Yard Area is being used in a manner which violates the Declaration, the Community Rules or any applicable Supplemental Declaration, or in the event the Owner of any Private Yard Area or portion thereof is failing to perform any of its obligations under the Declaration, any applicable Supplemental Declaration or Community Rules, the Board may by resolution, make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto, give notice to the offending Owner that, unless corrective action is taken within ten days, the Board may cause such action to be taken at the Owner's cost. If, at the expiration of said ten-day period of time, the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be a Special Assessment against the offending Owner and the Owner's Private Yard Area, secured by a special assessment lien enforceable in accordance with the Declaration.

14. Design Guidelines. Each Owner shall comply with the Design Guidelines set forth in the Community Rules.

15. Landscaping.

(a) All Private Yard Areas shall be landscaped in accordance with plans that comply with the Declaration and the Design Guidelines contained in the Community Rules. Landscaping on all Private Yard Areas shall be maintained in a neat and attractive manner, consistent with any surrounding common areas and shall conform to any additional landscape maintenance standards established in the Design Guidelines and which may be established under the Declaration. The entire Private Yard Area must be landscaped within 90 days after Owner's purchase. In the event an Owner fails to landscape these areas on Owner's Private Yard Area within 100 days after Owner's purchase, either the Developer or the Association may, at their respective option, perform all such clearing and landscape work and the Owner shall

reimburse the Developer or the Association, as the case may be, for the cost thereof upon demand together with interest thereon at the maximum rate allowed by law; provided, however, that the cost thereof does not exceed \$5,000, exclusive of interest. All such sums expended shall be a special assessment lien on the Home, subject to foreclosure in accordance with the Declaration.

(b) Similarly, if after 30 days following written demand, the Owner fails to maintain, repair and/or restore, as the case may be, the landscaping on the Private Yard Area in a neat and attractive manner, the Developer or the Association may at their respective option perform the work and shall be reimbursed therefor, together with the interest on amounts advanced to perform such work. Any sums not paid by the Owner on demand shall be a lien against the Private Yard Area, subject to foreclosure as herein permitted. All landscaping in Private Yard Areas, including without limitation, plants, flowers, bushes, shrubs, or foliage of any kind, must be at least two (2) feet away from the Home in order to prevent possible termite damage to the Home.

16. Trees and Planting Strip Area. The Association and/or Developer may plant trees in Private Yard Areas or in the common area along the roadway in the Community (the "Planting Strip Area"). No trees planted by the Developer shall be removed, changed or relocated without the prior written consent of the Developer and the County agency or agencies with jurisdiction over the Planting Strip Area ("DPR"). Each Owner shall be responsible for the proper maintenance and care of any trees planted on Owner's Private Yard Area and/or any Planting Strip Area adjacent to Owner's Private Yard Area. Under no circumstances may the Owner alter the Planting Strip Area without permission of the Board of Directors. County ordinance may restrict the removal of trees growing in the Planting Strip Area and may restrict the alteration of any landscaping in the Planting Strip Area, without first obtaining a permit from DPR, or in emergencies, the traffic engineer and the chief engineer of the County. Owners may not plant trees in the Planting Strip Area, landscape, or alter the landscaping in the Planting Strip Area without first obtaining an appropriate Street Tree Planting Permit from the DPR and approval of the Board. The County may prohibit any person from injuring or destroying street trees in any manner, including but not limited to: (i) the filling in of the ground area around the tree; (ii) the piling of building materials or equipment which may injure the tree; (iii) poisoning the tree or parking strip area; (iv) the posting of any signs or notices on any tree; (v) the damaging of any tree; and (vi) alteration of the Planting Strip Area.

17. Exterior Lighting. Any exterior lighting used on any Private Yard Area shall be suitably dimmed, screened, shaded or diffracted so that no offensive glare from the light sources is visible from any neighboring Private Yard Area or from the street. Owners shall properly maintain any exterior lighting fixtures located within Owners' respective Private Yard Areas.

18. Existing Drainage Facilities and Easements. No Owner shall alter the existing drainage pattern on any Private Yard Area, nor shall any Owner modify any existing drainage facility located on the Owner's Private Yard Area. Private Yard Area Owners shall be responsible for maintaining the existing drainage pattern on Owners' respective Private Yard Areas. The Owner of a Private Yard Area on which any drainage ditch facility or portion thereof is located shall be responsible, at the Owner's cost, for the maintenance, repair and cleaning, as required, of the drainage ditch facilities located on the Owner's Private Yard Area. The County shall be responsible for the maintenance of the underground drainage facilities located on a Private Yard Area, if any, which are constructed for the benefit of the County.

19. Existing Fences and Walls. Among the Improvements constructed by Developer are various vinyl or aluminum fences and masonry or cementitious walls located within various

Private Yard Areas or along Private Yard Area boundaries. The Owners may not remove or alter such fences or walls. The locations of the fences or walls shown on the Condominium Map are tentative and may be changed at any time, all without further notice to Owner. The final locations of the fences and walls will be shown on the Condominium Map filed with the "as built" statement.

20. Future Additions and Alterations. No Owner shall add to or alter any Improvement constructed by the Developer, including the Homes, without the prior written consent of the Director of the County planning department, and the Association's Board. All Improvements constructed on the Private Yard Areas by an Owner shall conform with the requirement of the Declaration and the Design Guidelines, if any, and the restrictions contained in the Declaration. Specifically, but without limitation, yard setbacks and the height of all Improvements on each Private Yard Area shall comply with any and all applicable zoning requirements, including, without limitation, any applicable requirements of the "Land Use" or "Zoning" or "Building" Ordinance for the County. In the event of a conflict between the Declaration and the Design Guidelines, the more restrictive provision shall control.

21. Right of Removal. Any construction, alteration, or other work done in violation of the Declaration shall be deemed to be nonconforming. Upon written request from the Board, the Owner(s) shall, at his, her or their own cost and expense, remove such nonconforming construction, alteration, or other work and shall restore the Private Yard Area to substantially the same condition as existed prior to the nonconforming construction, alteration, or other work. Should an Owner fail to remove and restore as required in the Declaration, the Board or its designee(s) shall have the right to enter the Private Yard Area, remove the violation and restore the property to substantially the same condition as existed prior to the nonconforming construction, alteration or other work. The Owner shall be liable for all costs thereof together with interest thereon at the maximum rate allowed by law, and the Association shall have an assessment lien to secure the payment of such costs.

22. Dispute Resolution. All disputes among Home Owners concerning the common or individual responsibility for items described in the Declaration shall first be reviewed by the Board or a committee thereof designated for that purpose and the Board's non-binding opinion may be accepted by the disputing parties. Any Owner dissatisfied with such non-binding opinion may thereafter resolve the matter pursuant to the Declaration.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE SPECIAL USE RESTRICTIONS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT L**

**Section 1.12 -- Encumbrances Against Title**

1. Real Property Taxes which may be due and owing. Reference is made to the County of Maui Tax Assessor's Office.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Free flowage of Kahoma Stream as shown on Map No. 22 of the "Kahoma Stream Flood Control Project", filed with the Department of Public Works, County of Maui, State of Hawaii, under L.U.C.A. File No. 4.689.
4. Restriction of vehicle access along the westerly boundary of the land described in Schedule C (except where permitted) as set forth in DEED dated February 12, 1957, recorded in Liber 3231 at Page 411.
5. LEASE in favor of MAUI ELECTRIC COMPANY, LIMITED and HAWAIIAN TELEPHONE COMPANY (now known as HAWAIIAN TELCOM, INC.), dated October 13, 1967, recorded in Liber 5893 at Page 226; leasing and demising rights-of-way, each twenty-five (25) feet in width, over, across and under all lands owned and held by Pioneer Mill Company, Limited, situate in the District of Lahaina and upon all other such lands which Pioneer Mill Company, Limited, may hereafter acquire, for a term of thirty-five (35) years from the date hereof, and thereafter from year to year until terminated.

6. SUBDIVISION AGREEMENT (LARGE LOTS)

DATED: December 15, 1980  
RECORDED: Liber 15229 Page 224  
PARTIES: PIONEER MILL COMPANY, LIMITED, a Hawaii corporation, and COUNTY OF MAUI

7. SUBDIVISION AGREEMENT (THREE LOTS OR LESS)

DATED: December 15, 1980  
RECORDED: Liber 15229 Page 229  
PARTIES: PIONEER MILL COMPANY, LIMITED, a Hawaii corporation, and COUNTY OF MAUI

8. DEED

DATED: September 27, 1982  
RECORDED: Liber 16593 Page 456

ASSIGNMENT OF RESERVED RIGHTS effective as of September 15, 2003, recorded as Document No. 2004-163983, by and between PIONEER MILL COMPANY, LLC, a Delaware limited liability company (successor by merger to Pioneer Mill Company, Limited, a Hawaii corporation), "the Assignor", and KAAPALI DEVELOPMENT CORP., a Hawaii corporation, "the Assignee".

9. LICENSE AGREEMENT dated September 6, 1985, recorded in Liber 18921 at Page 653, by and between HAWAII OMORI CORPORATION, a Hawaii corporation, as "Licensor" and LAHAINA STORAGE DEPOT, a registered Hawaii general partnership, as "Licensee", re: Exclusive right to use portion of Licensor's property on the south portion on which Licensee's building encroaches.
10. GRANT
- TO: MAUI ELECTRIC COMPANY, LIMITED and HAWAIIAN TELEPHONE COMPANY, now known as HAWAIIAN TELCOM, INC.
- DATED: June 10, 1987
- RECORDED: Liber 21057 Page 225
- GRANTING: perpetual right and easement for utility purposes as shown on map attached thereto
11. SECTION VII(c) AGREEMENT FOR WEST MAUI AREAS
- DATED: December 20, 1989
- RECORDED: Document No. 90-029937
- PARTIES: HAWAII OMORI CORPORATION, a Hawaii corporation, and the DEPARTMENT OF WATER SUPPLY OF THE COUNTY OF MAUI
- RE: Special rule establishing a source assessment fee, allocating water usage on an annual basis and regulating the approval of subdivision applications
12. ACKNOWLEDGEMENT REGARDING LAHAINA WASTEWATER TREATMENT CAPACITY
- DATED: August 23, 1990
- RECORDED: Document No. 90-139192
- PARTIES: HAWAII OMORI CORPORATION
- RE: connection to the County's sewer system
13. GRANT
- TO: MAUI ELECTRIC COMPANY, LIMITED and GTE HAWAIIAN TELEPHONE COMPANY, INCORPORATED, now known as HAWAIIAN TELCOM, INC.
- DATED: August 18, 1992
- RECORDED: Document No. 92-175343
- GRANTING: a perpetual right and easement for utility purposes over, across, through and under Easement 1 (Electrical and Telephone Easement), being more particularly described therein

14. A right in the nature of an easement and right of way in favor of RAILROADS OF HAWAII, INC., a Hawaii corporation, more particularly set forth in that certain Short Form Lease dated December 28, 1998, but effective as of May 23, 1998, recorded April 26, 1998 in the Bureau of Conveyances of the State of Hawaii, as Document No. 98-064187, for the purposes of constructing and maintaining track, road switches and necessary equipment for the operation of a railroad as described in Paragraph 16 of Article IV of said Lease.

15. GRANT

TO: STATE OF HAWAII, by its Director of Transportation  
DATED: April 19, 2002  
RECORDED: Document No. 2002-070423  
GRANTING: non-exclusive easement to excavate, grade, grass, landscape and/or maintain Easement 2 (Embankment Easement) of the Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street), being more particularly described therein

16. MODIFICATION OF SUBDIVISION REQUIREMENTS AGREEMENT

DATED: April 20, 1993  
RECORDED: Document No. 93-080970  
PARTIES: HAWAII OMORI CORPORATION, a Hawaii corporation, and the BOARD OF WATER SUPPLY OF THE COUNTY OF MAUI

17. LAND PATENT GRANT NUMBER S-15,770

DATED: June 23, 1992

The foregoing includes, but is not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

By letter dated December 1, 2003 the conditions regarding reverter of the land to the State of Hawaii and revenue generation in favor of the County of Maui, do not affect private landowners.

18. LIMITED WARRANTY DEED AND RESERVATION OF EASEMENT

DATED: January 30, 2004  
RECORDED: Document No. 2004-020408

19. The following encroachments or any other matters as shown on survey map prepared by Kirk T. Tanaka, Land Surveyor, with R. T. Tanaka Engineers, Inc. dated August 30, 2005:

(A) An existing concrete gutter along the south boundary of Parcel 1-B-1 encroaches into Lot 20-B by 1.5 feet.

- (B) Two existing guy wires run outside of Easement 1 by 9.9 and 13.2 feet.
- (C) An existing building on the adjacent Lot 19 encroaches onto the subject property by 0.3 ft.

(Note: The Developer may undertake to cure such encroachments. To the extent such encroachments are not cured, the Developer believes that the presence of such encroachments will not impair purchaser's ability to secure title insurance for a unit or mortgagee's coverage in respect of any mortgage issued to purchaser. Should such encroachments impair purchaser's ability to secure such title insurance coverages, Developer will resolve such issue with the escrow depository's title agent in a manner that purchaser may obtain such title insurance coverages.)

- 20. Declaration of Condominium Property Regime of Opukea at Lahaina  
Condominium Map No. 4301

Dated: July 19, 2006  
Document No.: 2006-149210

- 21. Bylaws of the Association of Home Owners of Opukea at Lahaina

Dated: July 19, 2006  
Document No.: 2006-149211

- 22. Amendment to Declaration of Condominium Property Regime of Opukea at Lahaina  
(Document No. 2006-224163)

- 23. Amendment to Condominium Map for Opukea at Lahaina (Condominium Map No. 4301)

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE ENCUMBRANCES AGAINST TITLE CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

## EXHIBIT M

### Section 1.13 -- Uses Permitted by Zoning and Zoning Compliance Matters

The County of Maui's zoning designation for Opukea at Lahaina is M-1 (Light Industrial District) which allows warehousing and distribution types of activity, and permits most compounding, assembly, or treatment of articles or materials with the exception of heavy manufacturing and processing of raw materials. This designation also allows "apartment houses". Uses permitted in this zoning district (which encompasses lands surrounding and adjacent to the Community include those specified in Section 19.24.020 of the Maui Zoning Code, which provides:

(a) Within the M-1 district, no building, structure or premises shall be used and no building or structure hereafter erected, structurally altered, replaced, or enlarged except for one or more of the following uses:

1. Any use permitted in a B-1, B-2, or B-3 district; provided, however, that no building, structure or portion thereof shall be hereafter erected, converted, or moved onto any lot in an M-1 district for dwelling purposes, including hotels and motels, except living quarters used by watchmen or custodians of industrially used property;
2. Animal kennels;
3. Carpet cleaning plants;
4. Cold storage plants;
5. Commercial laundries;
6. Craft, cabinet and furniture manufacturing;
7. Assembly of electrical appliances, radios and phonographs including the manufacture of small parts such as coils, condensers, crystal holders and the like;
8. Farm implement sales and service;
9. General food, fruit and vegetable processing and manufacturing plants;
10. Ice cream and milk producing, manufacturing and storage;
11. Laboratories-experimental, photo or motion pictures, film or testing;
12. Light and heavy equipment and product display rooms, storage and service;
13. Machine shop or other metal working shop;
14. The manufacture, compounding or treatment of articles or merchandise from the following previously prepared materials; aluminum, bone, cellophane, canvas, cloth, cork, feathers, felt, fibre, fur, glass, hair, horn, leather, plastics, precious or semi-precious metals or stones, shell, tobacco and wood;
15. The manufacture, compounding, processing, packing or treatment of such products as candy, cosmetics, drugs, perfumes, pharmaceutical, toiletries, and food products except the rendering or refining of fats and oils;
16. The manufacture, dyeing and printing of cloth fabrics and wearing apparel;
17. The manufacture of musical instruments, toys, novelties and rubber and metal stamps;
18. Manufacture of pottery and figurines or other similar ceramic products;
19. Milk bottling or central distribution stations;
20. Plumbing shops having more than five employees;
21. Poultry or rabbit slaughter incidental to a retail business on the same premises;
22. Radio transmitting and television stations; provided, that towers are of the self-sustaining type without guys;

23. Replating shop;
24. Retail lumber yard including mill and sash work, except that mill and sash work shall be conducted within a completely enclosed building;
25. Small boat building;
26. Soda water and soft drink bottling and distribution plants;
27. Tire repair operation including recapping and re-treading;
28. Vocations and trade schools giving general instruction as prescribed by the State Department of Education;
29. Warehouse, storage and loft buildings;
30. Wearing apparel manufacturing;
31. Wholesale business, storage buildings, nonexplosive goods and warehouses;
32. Apartment houses.

(b) The above uses are to be conducted wholly within a completely enclosed building, or within an area enclosed on all sides except the front of the lot, by a solid fence or wall or cyclone fence at least six feet in height. (Prior code § 8-1.12(b)).

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE USES PERMITTED BY ZONING AND ZONING COMPLIANCE MATTERS CONTAINED IN THE DECLARATION, BY LAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

## EXHIBIT N

### Section 2 -- Persons Connected With the Project

#### **Developer:**

Name: D.R. Horton-Schuler Homes, LLC, a Delaware Limited liability company,  
dba D.R. Horton-Schuler Division  
Address: 828 Fort Street, 4<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
Business Phone Number: (808) 521-5661  
E-mail Address: mtjones@drhorton.com

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):

Donald R. Horton, Chairman of the Board; Donald J. Tomnitz, Vice Chairman, President & Chief Executive Officer; Samuel R. Fuller, Senior Executive Vice President; Bill W. Wheat, Executive Vice President & Chief Financial Officer; Stacey H. Dwyer, Executive Vice President & Treasurer; James K. Schuler, Senior Vice President & Region President; Michael T. Jones, Vice President of the Company & Division President; R. Dale Eggleston, Vice President; Joan L. Fleming, Vice President; Mary K. Flood, Vice President of Sales & Marketing; Galen Lee, Vice President of Finance; Donald J. Tomnitz, Vice President; Paul W. Buchschacer, Assistant Secretary; Ted I. Harbour, Assistant Secretary; Paula D. Hunter-Perkins, Assistant Secretary; Alan D. Labbe, Assistant Secretary; Thomas B. Montano, Assistant Secretary; and David T. Morice, Assistant Secretary. All officers are officers of Vertical Construction Corporation, the Developer's manager.

#### **Real Estate Broker:**

Name: D.R. Horton-Schuler Homes, LLC, a Delaware Limited liability company,  
dba D.R. Horton-Schuler Division  
Address: 828 Fort Street, 4<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
Business Phone Number: (808) 521-5661  
E-mail Address: mflood@drhorton.com

#### **Escrow Depository:**

Name: Old Republic Title & Escrow of Hawaii  
Address: 1314 South King Street, Suite 662  
Honolulu, Hawaii 96814  
Business Phone Number: (808) 596-7259  
E-mail Address: jLeong@ortc.com

**General Contractor:**

Name: Vertical Construction Corporation  
Address: 828 Fort Street, 4<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
Business Phone Number: (808) 521-5661  
E-mail Address: [alabbe@drhorton.com](mailto:alabbe@drhorton.com)

**Condominium Managing Agent:**

Name: Hawaiiana Management Company, Ltd.  
Address: 711 Kapiolani Boulevard, Suite 700  
Honolulu, Hawaii 96813  
Business Phone Number: (808) 593-9100  
E-mail Address: [phyllisok@hmcmtg.com](mailto:phyllisok@hmcmtg.com)

**Attorney for Developer:**

Name: Case Lombardi & Pettit  
Dennis M. Lombardi, Esq.  
737 Bishop Street, Suite 2600  
Honolulu, Hawaii 96813  
Business Phone Number: (808) 547-5400  
E-mail Address: [DML@caselombardi.com](mailto:DML@caselombardi.com)

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE PERSONS CONNECTED WITH THE PROJECT. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

## EXHIBIT O

### Section 3.5 -- Changes to the Condominium Documents

Owners may not amend any provisions in the Declaration and Bylaws reserving rights to the Developer without the consent of Developer.

#### Amendment to Declaration:

Pursuant to the Declaration, restoration of the community with less than all of the units after any casualty or condemnation may be undertaken by the Association, except where required by law, only pursuant to an amended declaration, duly adopted by the affirmative vote of not less than eighty percent (80%) of the Home Owners, including at least eighty percent (80%) of the Owners of Homes that will not be restored, and by all holders of liens affecting all or any part of the Community.

Pursuant to the Declaration, except as provided in the Declaration, repair, reconstruction, restoration, replacement of the community or any building or other structure or unit within the community or construction of any additional building or other structure or structural alteration or addition thereto, different in any material respect from the Condominium Map shall be undertaken by the Association or any Home Owners only pursuant to an amendment of the Declaration, which amendment shall be duly executed by or pursuant to the affirmative vote of seventy-five percent of the Home Owners and accompanied by the written consent of the eligible holders of first mortgage (as hereinafter defined) on Homes to which at least sixty-seven percent of the votes of Homes subject to mortgages held by such eligible holders are allocated, and in accordance with complete plans and specifications therefor first approved in writing by the Board.

Pursuant to the Declaration, except as otherwise expressly provided in the Declaration or in the Act, the Declaration may be amended by the affirmative vote or written consent of not less than seventy-five percent of the owners at a meeting of the Association called for that purpose, and effective only upon the recording of an instrument setting forth such amendment and vote, duly executed by any two officers of the Association; provided, however, that, except as otherwise expressly provided in the Declaration or in the Act, the approval of eligible holders of first mortgages on Homes to which at least fifty-one percent of the votes of Homes subject to mortgages held by such eligible holders are allocated, together with such other approval requirements as set forth in the Declaration, shall be required to materially amend any provision of the Declaration, or to add any material provisions set forth in the Declaration.

Any provision of the Declaration to the contrary notwithstanding, and in addition to such other approval requirements as are set forth in the Declaration, to the extent permitted by Section 514B-106(d) of the Act, the prior written approval of Developer is required before any amendment which would impair or diminish the rights of Developer to complete the Property or sell or lease Units therein in accordance with the Declaration shall become effective. Notwithstanding any other provisions of the Declaration, until such time as Developer no longer owns any Unit in the Community, the following actions, before being undertaken by the Association, shall first be approved in writing by Developer:

(a) Mortgagee Approval. Any amendment or action requiring the approval of Mortgagees pursuant to the Declaration;

(b) Capital Improvement Assessment. The levy of a capital improvement Assessment for the construction of new facilities not constructed in the Common Element by Developer;

(c) Reduction in Services. Subject to any restrictions contained in the Bylaws regarding limitations on general assessment increases, any significant reduction of Association maintenance or other services;

(d) Assessments. Alteration in the method of fixing and collecting assessments or any increases in assessments beyond the amounts permitted under the Bylaws;

(e) Responsibility for Repairs. Reduction in the level of, or change in allocation of, responsibility for maintenance of and repairs to all or any portion of the Common Element subject to the Declaration, or any other maintenance obligations of the Association set forth in the Declaration;

(f) Common Elements. Conveyance or dedication by the Association of all or any portion of the Common Elements;

(g) Architectural Committee Enforcement and Review Procedures. Modification of the enforcement and review procedures of the Board or Design Review Committee, or any change in the architectural and landscaping design originally installed by Developer;

(h) Improvements to and Maintenance of Common Elements. Modification to Improvements to the Common Elements or to the level or frequency of maintenance of the Common Elements;

(i) Enforcement of the Declaration. Alteration in the method of enforcing the provisions of the Declaration; or

(j) Developer's Reserved Rights. Any modification of the rights reserved and granted to Developer herein with respect to development or sale of the Property or which are for the express benefit of Developer.

#### Amendment to Bylaws:

Pursuant to Section 3.2 of the Bylaws, the Bylaws may be amended to reduce the number of Board members where at least seventy percent (70%) of the unit owners do not reside at the community by the written consent of a majority of Owners or the vote of a majority of a quorum at any annual meeting or special meeting called for that purpose.

Pursuant to Section 11.2 of the Bylaws, the Bylaws may be amended in any respect not inconsistent with law or the Declaration by the affirmative vote or written consent of not less than sixty-seven percent (67%) of the Owners.

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE CHANGES TO THE CONDOMINIUM DOCUMENTS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

## EXHIBIT P

### Section 3.6 -- Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents

The Developer has the right to change the condominium documents for any of the following reasons or purposes:

1. Developer shall have the right to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements of the Community or Private Yard Areas, if any, for any reasonable purpose, which may include, but shall not be limited to, those purposes which are necessary for the operation, care, upkeep, maintenance or repair of any Home, the Common Elements or any easements for utilities or for any public purpose.

2. Developer and its agents, employees, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under and upon the Community and each and any portion of the Community and the individual Homes to create and cause noise, dust, vibration and other nuisances or annoyances created by and resulting from any work connected with or incidental to the development, construction and sale of any Home or other Improvement to the Community, any additional increment to the Community, or any other community which Developer, its successors or assigns, may develop on property adjacent to or in the vicinity of the Community. Each and every Owner or other person acquiring any interest in the Community waives any and all rights, claims or actions that might otherwise be asserted against Developer, its agents, employees, licensees, successors, mortgagees and assigns, based on any such noise, dust, vibration and other nuisances or annoyances. Without limitation of the foregoing:

(a) Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns, shall have an easement over, under and upon the Community as may be reasonable or appropriate for additional construction, the completion of renovations to the improvements of the Community, and (at the option of Developer) the correction of defects therein. In addition to any other easements reserved to Developer under the Declaration, in connection with, and to the extent necessary for the development and construction of units, common facilities, and/or increments following the transfer of ownership of any Unit to an individual or entity other than Developer, Developer shall have the right to enter upon the Community premises with employees, agents and contractors for all purposes reasonably necessary for or useful to constructing and completing all increments in accordance with the Declaration and the Condominium Map. Such rights shall include, but are not limited to, the following:

(1) An easement over, under and across the Common Elements of the Community and all utility service to the Community for the purposes of all work connected with or incidental to the development, construction and sale of the Units or increments; and,

(2) The right in the nature of an easement over and upon the existing buildings and Common Elements of the Community to create and cause dust, noise, vibration and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of the increments or Units.

(b) Developer, its contractors, subcontractors, licensees, mortgagees and assigns, and their respective employees and agents, shall have the right and an easement in favor of Developer and its successors and assigns is hereby granted at any time and from time to time prior to the thirtieth (30th) anniversary date from the recording of the Declaration, to enter upon, use, remove, replace, add to, or otherwise alter the Common Elements and the Limited Common Elements of the Community and to do all things reasonably necessary, desirable or useful for designing, developing, constructing or completing any additional increment to the Community, connecting any such additional increment to the utility installations of the Community, and selling the Units contained within any such additional or increment, including, but not limited to, the right to consolidate any parcel(s) of land covered hereby with any other parcel(s) of land in connection with the merger of increments; provided that the exercise of the rights granted herein shall not cause any permanent or avoidable interruption in the service of utilities to the Community, and provided further that any person exercising such rights shall use reasonable efforts, without additional cost to Developer and consistent with maintaining the progress of the design, development, construction, completion and sale of the additional increment, to minimize interference with the Owners' use and enjoyment of the Property. Developer further reserves the right to grant, for the benefit of the owner or owners from time to time of all or any portion of each of the other Increments, and without the consent or joinder of any party having any interest in the Community, easements over, under, across, along, upon and through the Common Elements of the Community for ingress and egress purposes, access purposes, electrical, gas, communications and other utility purposes, sanitary sewer, drainage and drainline, waterline, and flowage purposes, and all other purposes, to the State of Hawaii, the County, the Board of Water Supply of the County, any other appropriate governmental agency, and/or any public or private utility or other corporation, partnership, individual or entity, provided that such easements and rights-of-way do not materially impair or interfere with the use of any Unit in the Community or the Common Elements of the Community.

(c) Without limiting the foregoing, anything to the contrary notwithstanding, Developer shall have the following retained and reserved construction easements:

(i) A non-exclusive easement in all structural members, footings, foundations, columns and beams and any other supporting components located in or constituting a part of the Community;

(ii) A non-exclusive easement for access to, the right to connect to and the use for their intended purposes and maintenance, of all facilities located in the Community including heating, ventilating and air conditioning systems, boilers and hot water systems;

(iii) A non-exclusive easement permitting encroachments in the event and to the extent that, by reason of the original construction or any reconstruction or replacement of any improvements currently located or hereafter constructed on any part of the Community or the subsequent settlement or shifting of any part of the improvements on any portion of the Community;

(iv) A non-exclusive easement in and for the use of all common walls, floors and ceilings common to the Community;

(v) A non-exclusive easement for ingress and egress of persons and vehicles through, over and along all portions of the Community as they exist on the date the Declaration is Recorded and which, by their nature, currently permit the passage of persons and motor

vehicles, respectively, for the purpose of affording access to and egress from the public alleys and streets adjoining the Community; and

(vi) A non-exclusive easement for ingress and egress of persons and vehicles through, over and along all portions of the Community to construct and maintain facilities therein, provided that the existence of the facilities when completed does not materially interfere with the use of the Community through or in which the Facilities are constructed for their intended purpose. During construction of the facilities, Developer and its contractors may restrict the use of the common areas of the Community as would be normal for the type of construction involved, provided that the common areas of the Community can still be used for the purpose for which they were designed, or reasonable alternative services are available.

(d) The purpose of the easements declared and granted in the Declaration is to enable Developer to fully exploit and use the Community or any portion thereof for any lawful purpose whatsoever and to construct thereon any improvements which Developer is lawfully permitted to construct, and, in connection with such construction, to connect to, rest upon, abut and otherwise receive support for any improvements which may be created, from the improvements currently located on the Community adjoining the area of such improvement and for ingress and egress through the common areas of the Community as currently enjoyed. Developer's exercise of rights reserved in the Declaration are subject to Developer's agreement to repair at its sole cost, in a good and workmanlike manner and in accordance with all laws any damage caused to the Community by reason of the exercise of the Easements granted by the Declaration. The Easements granted in the Declaration are perpetual and may assigned in whole or in part, subject to such limitations as may be determined appropriate by Developer in Developer's sole discretion, by Developer to one or more Owners.

3. Any other provision in the Declaration to the contrary notwithstanding, the Developer shall have the right (but shall not be obligated) at its sole discretion under the Declaration, without being required to obtain the consent or joinder of any person or group of persons, including the Association, any Residence Owner or any mortgagee, lien holder, Residence purchaser or any other person who may have an interest in the Community or in any Residence, to develop, construct, transfer, convey and/or sell the Residences hereunder in increments on a building by building basis. Upon the completion of any Residence within an increment, the Developer may, notwithstanding the incompleteness of any other increment(s) or other Residences in the pending increment, but subject to the Community Documents and the provisions of the sales contract for the sale of a Residence in such increment, thereupon transfer ownership of Residences in such increment to Residence purchasers.

4. In connection with, and to the extent necessary for the development and construction of the Community, other Units and/or increments following the transfer of ownership of any Residence to an individual or entity other than the Developer, the Developer shall have the right to enter upon the Community premises with employees, agents and contractors for all purposes reasonably necessary for or useful to constructing and completing all increments in accordance with the Declaration and the Condominium Map. Such rights shall include, but are not limited to, the following:

(a) An easement over, under and across the Common Elements of the Community for the purposes of all work connected with or incidental to the development, construction and sale of the Community, other units and all increments;

(b) The right in the nature of an easement over and upon the existing buildings and Common Elements of the Community to create and cause dust, noise, vibration and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of the increments;

(c) The right to enter the common areas of the Community for the purpose of showing prospective purchasers Residences in the Community;

(d) The right to place signs upon the Community in conjunction with sales of Residences; and

(e) The right of the Developer to use any Residence owned or rented by the Developer for sales or display purposes until all Residences have been sold.

(f) The right to use utility services benefiting the Community for the foregoing purposes.

5. Developer reserves a present easement over the whole of the common area, together with the right for itself and its successors and assigns, to designate, grant, convey, transfer, cancel, relocate, reserve or otherwise deal with any easements, licenses, and rights of way at any time for utilities, any public-type facility (mailboxes and the like), sanitary and storm sewers, cable television transmission facilities, party walls (including the creation of the same on the Community boundaries), refuse disposal, landscape, maintenance, driveways, parking areas, access roadways and other similar purposes, on, over, across, under and through the Common Elements of the Community and the Private Yard Areas (as limited by the Declaration). Without limiting the generality of the foregoing, Developer reserves the right to utilize any common utility facilities (including without limitation water, sewer, electrical, telephone, and cable) described in the prior sentence (such as, but not limited to, waterlines, sewer lines, access roadways and the like) whether located in designated easement areas or otherwise, together with the right of entry to construct, reconstruct, operate, maintain, repair and relocate such lines, facilities and appurtenances and to grant any such easements or rights of way to governmental or quasi-governmental authorities, utility or service companies, homeowner's associations or other entities and the right to grant, dedicate, designate, use and enjoy easements and/or rights-of-way for access purposes (including for vehicular and pedestrian access). Developer may, in its discretion, complete any construction of intended facilities in advance of the designation or creation and granting of the easement covering the facilities so constructed. The rights reserved to Developer include specifically without limitation the right to utilize any utility service to the Community to complete such construction, to perform warranty or punchlist repair services within the Community and to serve adjacent and separate developments outside of the Community provided Developer with respect to such separate and/or adjacent communities submeters such use, and may use roadways in the Community to serve adjacent developments provided the association controlling such development shares pro rata in the cost of maintenance and repair of the roadway and reimburses the Association for any submetered use. The easements retained in the Declaration and these reserved rights shall be exercised in a manner that will not materially impair or interfere with the use of any Home. In the event of a submetered use (such as water service), the Association shall be entitled to confirm submeter readings. Each Owner, by purchasing a Home, consents to any such designation, granting, conveyance, transfer, cancellation, relocation and reservation of easements and/or rights of way as provided above without the necessity of any Owner or those claiming by, through or under an Owner entering into any further agreement respecting such action or document; provided, however, that such Owner and those claiming by, through or under an Owner agrees to join in

and execute such documents and instruments and do such other things as may be necessary or convenient to effect the same promptly at the request of Developer without payment of additional consideration.

6. Developer, and its agents, successors, mortgagees and assigns, shall have the right and an easement to conduct extensive sales activities on and at the Community, including the use of any Home owned by Developer (and any other Home, with the express permission of the Owner of such Home) and the Common Elements (excluding Limited Common Elements appurtenant to other Homes) for model homes, sales and management offices, parking and extensive sales displays and activities, and the posting and maintenance of signs and other advertisements relating to such sales activities. Without limitation of the foregoing, Developer reserves, for itself and its successors and assigns, the right during the course of Developer's sales of units in the Community to supplement, modify and amend the estimated breakdown of annual maintenance fees and estimated cost of assessment to each unit, as Developer deems appropriate, to reflect changes in estimated expenses applicable to ownership of units attributable to the increase in cost of service or modification of proposed service to the Association reflected in the budget for annual maintenance fees. Upon such modifications, Developer may supplement and amend its public report applicable to the Community.

7. Developer and its agents, employees, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under and upon any portion of the Community, including the Common Elements, any utility service, Limited Common Elements and any Home, as may be reasonably necessary for the inspection of and for the completion of improvements to and correction of defects and other "punchlist" and warranty items in the Home or Private Yard Area or the Community. The rights reserved in the Declaration shall continue until ten (10) years after the later of: (i) the Recording of the "as built" verified statement required by Section 514B-34 of the Act; (ii) the "date of completion" of the improvements as defined in Section 507-43(f), Hawaii Revised Statutes of the last increment constructed in the Community or (iii) the expiration of the applicable limited warranty period for any portion or portions of the Common Elements.

8. The Developer, its contractors, subcontractors, licensees, mortgagees and assigns, and their respective employees and agents, shall have the right and an easement in favor of the Developer and its successors and assigns is hereby granted at any time and from time to time prior to the twentieth (20th) anniversary date of the Recording of the Declaration, to enter upon, use, remove, replace, add to, or otherwise alter the Common Elements and the Limited Common Elements of the Community and to do all things reasonably necessary, desirable or useful for designing, developing, constructing or completing any additional increment to the Community, connecting any such additional increment to the roads and utility installations of the Community, and selling the Residences contained within any such additional increment, including, but not limited to, the right to consolidate any parcel(s) of land covered hereby with any other parcel(s) of land in connection with the addition of an increment; provided that the exercise of the rights granted herein shall not cause any permanent or avoidable interruption in the service of utilities to the property, and provided further that any person exercising such rights shall use reasonable efforts, without additional cost to the Developer and consistent with maintaining the progress of the design, development, construction, completion and sale of the additional increment, to minimize interference with the Owners' use and enjoyment of the property. Developer further reserves the right to grant, for the benefit of the owner or owners from time to time of all or any portion of each of the other Increments, and without the consent or joinder of any party having any interest in the Community, easements over, under, across, along, upon and through the Common Elements of the Community for ingress and egress

purposes, access purposes, electrical, gas, communications and other utility purposes, sanitary sewer, drainage and drainline, waterline, and flowage purposes, and all other purposes, to the State of Hawaii, the County, the Board of Water Supply of the County, any other appropriate governmental agency, and/or any public or private utility or other corporation, partnership, individual or entity, provided that such easements and rights-of-way do not materially impair or interfere with the use of any Home in the Community or the Common Elements of the Community.

9. The common interest and easements appurtenant to each Home shall have a permanent character and shall not be altered except as noted in the Declaration. The common interest, voting rights and easements appurtenant to each Home may be altered (diminished or increased) by a recorded amendment to the Declaration: (a) as may be determined necessary by Developer, without the consent of any party, to correct typographical or mathematical errors in the statement of such common interests, (b) filed by Developer, without the joinder of any party, upon the alteration of the Community as permitted pursuant to the Declaration, and/or (c) upon the action or consent of all Owners of Homes affected thereby, and the consent of the holders of any mortgage affecting such Homes as shown in the Association's records of ownership, or who have given the Board notice of their interest.

10. Subject to the provisions of the Declaration, each Owner shall have the right to modify the Owner's Home and the Board and/or the Developer has the right to modify the route over the Common Elements leading to the front door of the Home, at the Owner's sole cost and expense, in order to facilitate access to the Home by persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to such persons. The rights granted by the Declaration are further subject to the following conditions: (i) the modifications shall be consistent with applicable building code requirements; (ii) the modifications shall be consistent with the intent of otherwise applicable provisions of the Declaration pertaining to safety or the aesthetic integrity of the Community; (iii) the modifications which are external to the Home shall not prevent reasonable passage by other Owners or Invitees on the Community, and shall be removed by the Owner when the Home is no longer occupied by persons requiring those modifications; (iv) any Owner who intends to modify a Home pursuant to the Declaration shall submit their plans and specifications to the Board for review to determine whether the modifications comply with the provisions of the Declaration; and (v) any change in the exterior appearance of a Home shall be in accordance with the provisions of the Declaration and all applicable provisions of law. Any Owner with a disability desiring such a modification shall make such request, in writing, to the Board. That request shall set out, with specificity and in detail, the nature of the request and the reason that the requesting party needs to be granted such the modification. The Board shall not unreasonably withhold or delay its consent to such request and the Board shall not deny approval of the proposed modifications under the Declaration without good cause.

11. Developer reserves the right to plant trees in Private Yard Areas or in the common area along the roadway in the Community (the "Planting Strip Area"). No trees planted by the Developer shall be removed, changed or relocated without the prior written consent of the Developer and the County agency or agencies with jurisdiction over the Planting Strip Area ("DPR").

12. Any other provision in the Declaration to the contrary notwithstanding and without limitation of the rights reserved to Developer in the Declaration, prior to (i) the time that all Homes in the Community have been sold and the conveyance thereof Recorded, and (ii) the filing by Developer of the "as built" verified statement (with plans, if applicable) required by

Section 514B-34 of the Act, Developer shall have the right, without being required to obtain the consent or joinder of any person or group of persons, including the Association, any Home Owner or any mortgagee, lienholder, or any other person who may have an interest in the Community, to do the following:

(a) To make alterations in the Community (and to amend the Declaration and the Condominium Map accordingly) which change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any Home (and the Limited Common Elements appurtenant thereto) in the Community which is not sold and the conveyance thereof Recorded which right includes the ability to change the overall "product mix" (e.g. change the building type or model home types to be constructed); and

(b) To make other alterations in the Community (and to amend the Declaration and the Condominium Map accordingly) which make minor changes in any Home in the Community or in the Common Elements which do not affect the physical location, design or size of any Home which has been sold and the conveyance thereof Recorded.

13. Any provision of the Declaration to the contrary notwithstanding, and until the Recording of Home conveyances or agreements of sale with respect to all of the Homes in the Community in favor of persons other than Developer, Developer may amend the Declaration, the Bylaws and/or the Condominium Map, without the approval, consent or joinder of any person or group of persons, including the Association, any Home Owner or any mortgagee, lienholder, Home purchaser or any other person who may have an interest in the Community, to correct typographical or mathematical errors and to make such amendments as may be required by law, by the Real Estate Commission of the State of Hawaii, by any title insurance company issuing a title insurance policy on the Community or any of the Homes, by any institutional lender lending funds on the security of the Community or any of the Homes, or by any governmental agency (including without limitation the VA, HUD, FNMA and/or FHLMC) or as otherwise required by Developer (including specifically the right to alter, adjust, or reassign guest parking stalls and to change covered and uncovered parking stalls); provided, however, that, except as otherwise provided herein, no such amendment which would change the common interest appurtenant to a Home or substantially change the design, location or size of a Home or the building in which it is located shall be made without the consent to such amendment by all persons having an interest in such Home.

14. Any provision of the Declaration to the contrary notwithstanding, Developer may amend the Declaration (and when appropriate the Condominium Map) without the approval, consent or joinder of any person or group of persons, including the Association, any Home Owner or any mortgagee, lienholder, Home purchaser or any other person who may have an interest in the Community or in any Home, to file a verified statement of the developer, a registered architect, or a professional engineer certifying that the final Recorded Condominium Map fully and accurately depicts the layout, location, house numbers and dimensions of the Homes, as built, or that any revised plans being filed simultaneously with the amendment involve only immaterial changes to the layout, location and dimensions of the Homes as built or any change in any house number, or such other changes as Developer is permitted to make pursuant to the Declaration.

15. Any provision of the Declaration to the contrary notwithstanding, Developer may amend the Declaration (and when appropriate the Condominium Map) as provided in the Declaration without the approval, consent or joinder of any person or group of persons, including the

Association, any Home Owner or any mortgagee, lienholder, or any other person who may have an interest in the Community or in any Home.

16. Notwithstanding anything to the contrary herein contained, Developer may amend the Declaration (and when appropriate the Condominium Map) without the approval, consent or joinder of any person or group of persons, including the Association, any Home Owner or any mortgagee, lienholder, Residence purchaser or any other person who may have and interest in the Community or in any Residence in any manner required to retrofit guest parking stalls so they are suited for use by persons with disabilities and to assign such retrofitted stalls or existing guest stalls designated for use by persons with disabilities as appurtenant Limited Common Elements to any one or more of the homes intended for use by persons with disabilities upon substitution therefor of alternate guest parking stall(s). Such reassignment is hereby specifically declared not to constitute a material amendment of the Declaration or Condominium Map. All costs of such reassignment shall be borne as determined by Developer. Notwithstanding the foregoing, Developer also reserves the right to interchange guest parking stalls and the handicap guest parking stall with other parking stalls in the control of Developer as owner of a Residence to accommodate Residence owners in need of such.

17. Developer may revise the specimen deed and sales contract for the community to conform with any future amendments that may be made to the Declaration and the community.

18. Developer may change parking stalls designated as a standard sized parking stall into a compact sized parking stall and may change covered and uncovered parking stalls.

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

## EXHIBIT Q

### Section 4.2 -- Estimate of the Initial Maintenance Fees

The Estimated Maintenance Fee Disbursements for Opukea at Lahaina have been compiled by Hawaiiana Management Company, a licensed property manager, assuming that all units in the community as reflected on the Condominium Map are constructed. Although the property manager makes every effort to estimate the actual cost of operation, certain budget items, especially insurance in today's insurance market, may change. The Buyer is aware that such amounts are only estimates and may change for reasons beyond the control of Developer, and the Buyer hereby specifically accepts and approves any such changes. The Buyer is also aware that such estimates do not include the Buyer's obligation for payment of real property taxes. The Buyer understands that such estimates are not intended to be and do not constitute any representation or warranty by the Developer, including but not limited to any representation or warranty as to the accuracy of such estimates. Buyer understands that Developer has not independently confirmed the accuracy or content of the estimates prepared by the licensed independent managing agent. Further, the Developer advises that costs and expenses of maintenance and operation of a condominium community are very difficult to estimate initially and even if such maintenance charges have been accurately estimated, such charges will tend to increase in an inflationary economy and as the improvements age. Maintenance charges can vary depending on services desired by unit owners and may increase significantly depending on the level of services eventually selected by the Association's Board of Directors. The Buyer should examine the maintenance charges schedule to see what services are included in the schedule and address these issues with its Board upon its formation. Buyers should also be aware that the estimates provided are as of the date reflected in the Managing Agent's certification and do not reflect the actual charges that may be incurred upon the formation of the Association and the actual contracting for such services such as insurance and maintenance, etc.

The Developer intends to pay all of the actual common expenses for the units and the unit owner shall not be obligated for the payment of the owner's share of the common expenses until such time as the Developer causes a 30 day advance written notice to be sent to the Owners that, after a specified date, the unit owners shall be obligated to pay for the portion of common expenses that is allocated to their respective units. The developer shall mail the written notice to the owners, the association, and the managing agent, if any, at least thirty days before the specified date.

The estimate of the initial annual maintenance fees and monthly estimated Maintenance fees is attached hereto.

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE ESTIMATE OF THE INITIAL MAINTENANCE FEES CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF SUCH RESERVED RIGHTS, PURCHASER CAN USE THIS SUMMARY OF SUCH RESERVED RIGHTS, PURCHASER SHOULD REFER TO THE CONDOMINIUM DECLARATION TO DETERMINE THE ACTUAL RIGHTS RESERVED BY THE DEVELOPER. IF ANY CONFLICT OR DIFFERENCES EXISTS BETWEEN THIS SUMMARY AND THE CONDOMINIUM DECLARATION, THE CONDOMINIUM DECLARATION WILL CONTROL.

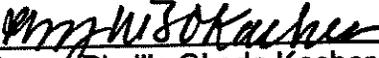
**CERTIFICATE**

I, the undersigned, duly sworn on oath, depose and affirm as follows:

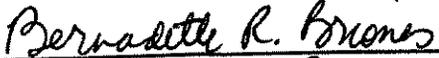
1. That I am the Senior Vice President for Hawaiiana Management Company, Ltd., a Hawaii corporation, designated by the Developer of the Opukea at Lahaina Incr 1 (without Rec Ctr) condominium project (the "Project") to act as the Managing Agent for the management and administration of the Project.

2. That I hereby certify that the breakdown of the annual maintenance charges and the monthly estimated cost for each unit in the Project, as set forth in Exhibit "1" attached hereto and hereby incorporated herein by reference, were determined pursuant to a reserve study conducted in accordance with Section 514B-148 of the Hawaii Revised Statutes and Chapter 107 of the Hawaii Administrative Rules, and are reasonable estimates for the one-year period commencing September 1, 2006, based on generally accepted accounting principles.

DATED: Honolulu, Hawaii, this 14<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Name: Phyllis Okada Kacher  
Title: Senior Vice President  
Hawaiiana Management Company, Ltd.

Subscribed and sworn to before me  
this 14<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Typed or Printed Name: Bernadette R. BRIONES  
Notary Public, State of Hawaii

My commission expires: 2/21/07

8-14-06

## Estimated Fee Disbursement Incr 1 (without Rec Ctr)

Opukea at Lahaina  
(48 units)

	Monthly Fee	Annual Fee
<b>Utilities</b>		
Electricity	\$320.00	\$3,840.00
Gas	\$0.00	\$0.00
Water	\$1,200.00	\$14,400.00
Sewer	\$1,440.00	\$17,280.00
<b>Maintenance</b>		
Grounds Mtnc.	\$1,000.00	\$12,000.00
Tree Trimming	\$300.00	\$3,600.00
Water Feature	\$0.00	\$0.00
Electrical/Lighting	\$50.00	\$600.00
Pool Maintenance	\$0.00	\$0.00
Pest Control	\$100.00	\$1,200.00
Plumbing	\$50.00	\$600.00
Refuse	\$768.00	\$9,216.00
Recycling	\$96.00	\$1,152.00
Fire Systems	\$192.00	\$2,304.00
Misc. Repairs and Supplies	\$250.00	\$3,000.00
Storm Drain Maintenance	\$100.00	\$1,200.00
Sewer Pump Maintenance	\$85.00	\$1,020.00
Shared Road Maintenance	\$64.00	\$768.00
<b>Professional Services</b>		
Admin Supplies and Services	\$350.00	\$4,200.00
Management Fees	\$546.00	\$6,552.00
Design Review	\$200.00	\$2,400.00
Audit/Tax Preparation	\$60.00	\$720.00
Legal Fees	\$100.00	\$1,200.00
	\$333.00	\$3,996.00
<b>Security</b>		
<b>Payroll</b>		
Manager	\$0.00	\$0.00
Unit Rental	\$0.00	\$0.00
Site Management	\$0.00	\$0.00
Workers Comp	\$0.00	\$0.00
TDI	\$0.00	\$0.00
Health Care	\$0.00	\$0.00
Payroll Taxes	\$0.00	\$0.00
Payroll Prep	\$0.00	\$0.00
<b>Insurance</b>		
Property	\$5,193.00	\$62,316.00
Liability	\$140.00	\$1,680.00
Umbrella	\$80.00	\$960.00
D and O	\$50.00	\$600.00
Flood	\$0.00	\$0.00
Bond	\$40.00	\$480.00
<b>Other</b>		
GET & Fed. Taxes	\$10.00	\$120.00
Condo Registration	\$15.00	\$180.00
<b>Subtotal</b>	<b>\$13,132.00</b>	<b>\$157,584.00</b>
<b>Reserves</b>		
<b>Total</b>	<b>\$500.00</b>	<b>\$6,000.00</b>
<b>Total</b>	<b>\$13,632.00</b>	<b>\$163,584.00</b>

I, Phyllis Kacher, as agent for/and/or employed by Hawaiiana Management Company, the condominium managing agent/developer for the Opukea at Lahaina Condominium project, Incr 1, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principals.

  
Signature

8.14.06  
Date

Pursuant to 514B-148,7b, Hawaii Revised Statutes, a new association need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. The Developer has not conducted a reserve study for the Project.





**CERTIFICATE**

I, the undersigned, duly sworn on oath, depose and affirm as follows:

1. That I am the Senior Vice President for Hawaiiana Management Company, Ltd., a Hawaii corporation, designated by the Developer of the Opukea at Lahaina Incr 1 & 2 (without Rec Ctr) condominium project (the "Project") to act as the Managing Agent for the management and administration of the Project.

2. That I hereby certify that the breakdown of the annual maintenance charges and the monthly estimated cost for each unit in the Project, as set forth in Exhibit "1" attached hereto and hereby incorporated herein by reference, were determined pursuant to a reserve study conducted in accordance with Section 514B-148 of the Hawaii Revised Statutes and Chapter 107 of the Hawaii Administrative Rules, and are reasonable estimates for the one-year period commencing September 1, 2006, based on generally accepted accounting principles.

DATED: Honolulu, Hawaii, this 14<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Name: Phyllis Okada Kacher  
Title: Senior Vice President  
Hawaiiana Management Company, Ltd.

Subscribed and sworn to before me  
this 14<sup>th</sup> day of August, 2006.

  
Typed or Printed Name: Bernadette R. Briones  
Notary Public, State of Hawaii

My commission expires: 2/21/07

8-14-06

### Estimated Fee Disbursement Incr 1 and 2 (without Rec Ctr)

Opukea at Lahaina  
(78 units)

	Monthly Fee	Annual Fee
<b>Utilities</b>		
Electricity	\$520.00	\$6,240.00
Gas	\$0.00	\$0.00
Water	\$1,950.00	\$23,400.00
Sewer	\$2,340.00	\$28,080.00
<b>Maintenance</b>		
Grounds Mtnce.	\$2,000.00	\$24,000.00
Tree Trimming	\$600.00	\$7,200.00
Water Feature	\$0.00	\$0.00
Electrical/Lighting	\$100.00	\$1,200.00
Pool Maintenance	\$0.00	\$0.00
Pest Control	\$200.00	\$2,400.00
Plumbing	\$100.00	\$1,200.00
Refuse	\$1,248.00	\$14,976.00
Recycling	\$156.00	\$1,872.00
Fire Systems	\$312.00	\$3,744.00
Misc. Repairs and Supplies	\$350.00	\$4,200.00
Storm Drain Maintenance	\$200.00	\$2,400.00
Sewer Pump Maintenance	\$138.00	\$1,656.00
Shared Road Maintenance	\$103.00	\$1,236.00
<b>Professional Services</b>		
Admin Supplies and Services	\$500.00	\$6,000.00
Management Fees	\$1,092.00	\$13,104.00
Design Review	\$400.00	\$4,800.00
Audit/Tax Preparation	\$120.00	\$1,440.00
Legal Fees	\$200.00	\$2,400.00
Security	\$666.00	\$7,992.00
<b>Payroll</b>		
Manager	\$0.00	\$0.00
Unit Rental	\$0.00	\$0.00
Site Management	\$0.00	\$0.00
Workers Comp	\$0.00	\$0.00
TDI	\$0.00	\$0.00
Health Care	\$0.00	\$0.00
Payroll Taxes	\$0.00	\$0.00
Payroll Prep	\$0.00	\$0.00
<b>Insurance</b>		
Property	\$8,439.00	\$101,268.00
Liability	\$220.00	\$2,640.00
Umbrella	\$130.00	\$1,560.00
D and O	\$100.00	\$1,200.00
Flood	\$0.00	\$0.00
Bond	\$80.00	\$960.00
<b>Other</b>		
GET & Fed. Taxes	\$20.00	\$240.00
Condo Registration	\$30.00	\$360.00
Subtotal	\$22,314.00	\$267,768.00
Reserves	\$600.00	\$7,200.00
<b>Total</b>	<b>\$22,914.00</b>	<b>\$274,968.00</b>

I, Phyllis Kacher, as agent for/and/or employed by Hawaiiana Management Company, the condominium managing agent/developer for the Opukea at Lahaina Condominium project, Incr 1 & 2, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principals.

  
Signature

8-14-06  
Date

Pursuant to 514B-148.7b, Hawaii Revised Statutes, a new association need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. The Developer has not conducted a reserve study for the Project. The budget amount for Reserves is an estimate only.



8-14-06

## Estimate of Initial Maintenance Fees Increment 1 and 2 (without Rec Ctr)

Opukea at Lahaina  
(78 units)

Apt. Type	Common Interest	Monthly Fee	Annual Fee
C/CR	1.2793000%	\$293.14	\$3,517.67
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
H/HR	1.3153000%	\$301.39	\$3,616.65
I/IR	2.0346300%	\$466.22	\$5,594.58
I/IR	2.0346300%	\$466.22	\$5,594.58
<b>TOTAL</b>	100.0000000%	\$22,914.00	\$274,968.00

CERTIFICATE

I, the undersigned, duly sworn on oath, depose and affirm as follows:

1. That I am the Senior Vice President for Hawaiiana Management Company, Ltd., a Hawaii corporation, designated by the Developer of the Opukea at Lahaina Incr 1, 2 & 3 (without Rec Ctr) condominium project (the "Project") to act as the Managing Agent for the management and administration of the Project.

2. That I hereby certify that the breakdown of the annual maintenance charges and the monthly estimated cost for each unit in the Project, as set forth in Exhibit "1" attached hereto and hereby incorporated herein by reference, were determined pursuant to a reserve study conducted in accordance with Section 514B-148 of the Hawaii Revised Statutes and Chapter 107 of the Hawaii Administrative Rules, and are reasonable estimates for the one-year period commencing September 1, 2006, based on generally accepted accounting principles.

DATED: Honolulu, Hawaii, this 14<sup>th</sup> day of August, 2006.

*Phyllis Okada Kacher*  
Name: Phyllis Okada Kacher  
Title: Senior Vice President  
Hawaiiana Management Company, Ltd.

Subscribed and sworn to before me  
this 14<sup>th</sup> day of August, 2006.

*Bernadette R. Briones*  
Typed or Printed Name: *Bernadette R. BRIONES*  
Notary Public, State of Hawaii

My commission expires: *2/21/07*

8-14-06

## Estimated Fee Disbursement Incr 1 and 2 and 3 (without Rec Ctr)

Opukea at Lahaina  
(114 units)

	Monthly Fee	Annual Fee
<b>Utilities</b>		
Electricity	\$725.00	\$8,700.00
Gas	\$0.00	\$0.00
Water	\$2,850.00	\$34,200.00
Sewer	\$3,420.00	\$41,040.00
<b>Maintenance</b>		
Grounds Mtnc.	\$3,000.00	\$36,000.00
Tree Trimming	\$900.00	\$10,800.00
Water Feature	\$0.00	\$0.00
Electrical/Lighting	\$150.00	\$1,800.00
Pool Maintenance	\$0.00	\$0.00
Pest Control	\$300.00	\$3,600.00
Plumbing	\$150.00	\$1,800.00
Refuse	\$1,824.00	\$21,888.00
Recycling	\$384.00	\$4,608.00
Fire Systems	\$456.00	\$5,472.00
Misc. Repairs and Supplies	\$750.00	\$9,000.00
Storm Drain Maintenance	\$300.00	\$3,600.00
Sewer Pump Maintenance	\$200.00	\$2,400.00
Shared Road Maintenance	\$150.00	\$1,800.00
<b>Professional Services</b>		
Admin Supplies and Services	\$570.00	\$6,840.00
Management Fees	\$2,032.00	\$24,384.00
Design Review	\$200.00	\$2,400.00
Audit/Tax Preparation	\$60.00	\$720.00
Legal Fees	\$100.00	\$1,200.00
Security	\$1,000.00	\$12,000.00
<b>Payroll</b>		
Manager		\$0.00
Unit Rental	\$1,500.00	\$18,000.00
Site Management	\$0.00	\$0.00
Workers Comp	\$0.00	\$0.00
TDI	\$0.00	\$0.00
Health Care	\$0.00	\$0.00
Payroll Taxes	\$0.00	\$0.00
Payroll Prep		
<b>Insurance</b>		
Property	\$12,334.00	\$148,008.00
Liability	\$230.00	\$2,760.00
Umbrella	\$186.00	\$2,232.00
D and O	\$110.00	\$1,320.00
Flood	\$0.00	\$0.00
Bond	\$40.00	\$480.00
<b>Other</b>		
GET & Fed. Taxes	\$30.00	\$360.00
Condo Registration	\$45.00	\$540.00
<b>Subtotal</b>	<b>\$33,996.00</b>	<b>\$407,952.00</b>
<b>Reserves</b>	<b>\$2,280.00</b>	<b>\$27,360.00</b>
<b>Total</b>	<b>\$36,276.00</b>	<b>\$435,312.00</b>

I, Phyllis Kacher, as agent for/and/or employed by Hawaiiana Management Company, the condominium managing agent/developer for the Opukea at Lahaina Condominium project, Incr 1, 2 & 3 hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principals.

  
Signature

8-14-06  
Date

Pursuant to 514B-148,7b, Hawaii Revised Statutes, a new association need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. The Developer has not conducted a reserve assessment. The budget amount for Reserves is an estimate only.





8-14-06

## Estimate of Initial Maintenance Fees Increment 1 and 2 and 3 (without Rec Ctr)

Opukea at Lahaina  
(114 units)

Apt. Type	Common Interest	Monthly Fee	Annual Fee
H/HR	0.8832500%	\$320.41	\$3,844.89
H/HR	0.8832500%	\$320.41	\$3,844.89
H/HR	0.8832500%	\$320.41	\$3,844.89
H/HR	0.8832500%	\$320.41	\$3,844.89
H/HR	0.8832500%	\$320.41	\$3,844.89
H/HR	0.8832500%	\$320.41	\$3,844.89
H/HR	0.8832500%	\$320.41	\$3,844.89
H/HR	0.8832500%	\$320.41	\$3,844.89
H/HR	0.8832500%	\$320.41	\$3,844.89
I/IR	1.3661500%	\$495.58	\$5,947.01
I/IR	1.3661500%	\$495.58	\$5,947.01
I/IR	1.3661500%	\$495.58	\$5,947.01
I/IR	1.3661500%	\$495.58	\$5,947.01
I/IR	1.3661500%	\$495.58	\$5,947.01
I/IR	1.3661500%	\$495.58	\$5,947.01
I/IR	1.3661500%	\$495.58	\$5,947.01
J/JR	0.8693200%	\$315.35	\$3,784.25
J/JR	0.8693200%	\$315.35	\$3,784.25
K/KR	0.8814800%	\$319.77	\$3,837.19
K/KR	0.8814800%	\$319.77	\$3,837.19
K/KR	0.8814800%	\$319.77	\$3,837.19
K/KR	0.8814800%	\$319.77	\$3,837.19
<b>TOTAL</b>	<b>100.0000000%</b>	<b>\$36,276.00</b>	<b>\$435,312.00</b>

**CERTIFICATE**

I, the undersigned, duly sworn on oath, depose and affirm as follows:

1. That I am the Senior Vice President for Hawaiiana Management Company, Ltd., a Hawaii corporation, designated by the Developer of the Opukea at Lahaina Incr 1 (with Rec Ctr) condominium project (the "Project") to act as the Managing Agent for the management and administration of the Project.

2. That I hereby certify that the breakdown of the annual maintenance charges and the monthly estimated cost for each unit in the Project, as set forth in Exhibit "1" attached hereto and hereby incorporated herein by reference, were determined pursuant to a reserve study conducted in accordance with Section 514B-148 of the Hawaii Revised Statutes and Chapter 107 of the Hawaii Administrative Rules, and are reasonable estimates for the one-year period commencing September 1, 2006, based on generally accepted accounting principles.

DATED: Honolulu, Hawaii, this 14<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Name: Phyllis Okada Kacher  
Title: Senior Vice President  
Hawaiiana Management Company, Ltd.

Subscribed and sworn to before me  
this 14<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Typed or Printed Name: Bernadette R. BRIONES  
Notary Public, State of Hawaii

My commission expires: 2/21/07

8-14-06

## Estimted Fee Disbursement Incr 1 (with Rec Ctr)

Opukea at Lahaina  
(48 units)

	Monthly Fee	Annual Fee
<b>Utilities</b>		
Electricity	\$1,968.00	\$23,616.00
Gas	\$300.00	\$3,600.00
Water	\$1,940.00	\$23,280.00
Sewer	\$1,440.00	\$17,280.00
<b>Maintenance</b>		
Grounds Mtnc.	\$1,000.00	\$12,000.00
Tree Trimming	\$300.00	\$3,600.00
Water Feature	\$0.00	\$0.00
Electrical/Lighting	\$200.00	\$2,400.00
Pool Maintenance	\$300.00	\$3,600.00
Pest Control	\$100.00	\$1,200.00
Plumbing	\$50.00	\$600.00
Refuse	\$768.00	\$9,216.00
Recycling	\$96.00	\$1,152.00
Fire Systems	\$192.00	\$2,304.00
Misc. Repairs and Supplies	\$250.00	\$3,000.00
Storm Drain Maintenance	\$100.00	\$1,200.00
Sewer Pump Maintenance	\$85.00	\$1,020.00
Shared Road Maintenance	\$64.00	\$768.00
<b>Professional Services</b>		
Admin Supplies and Services	\$350.00	\$4,200.00
Management Fees	\$516.00	\$6,192.00
Design Review	\$200.00	\$2,400.00
Audit/Tax Preparation	\$60.00	\$720.00
Legal Fees	\$100.00	\$1,200.00
Security	\$333.00	\$3,996.00
<b>Payroll</b>		
Manager	\$0.00	\$0.00
Unit Rental	\$0.00	\$0.00
Site Management	\$1,500.00	\$18,000.00
Workers Comp	\$0.00	\$0.00
TDI	\$0.00	\$0.00
Health Care	\$0.00	\$0.00
Payroll Taxes	\$0.00	\$0.00
Payroll Prep	\$0.00	\$0.00
<b>Insurance</b>		
Property	\$5,193.00	\$62,316.00
Liability	\$167.00	\$2,004.00
Umbrella	\$80.00	\$960.00
D and O	\$50.00	\$600.00
Flood	\$0.00	\$0.00
Bond	\$40.00	\$480.00
<b>Other</b>		
GET & Fed. Taxes	\$10.00	\$120.00
Condo Registration	\$15.00	\$180.00
Subtotal	\$17,767.00	\$213,204.00
Reserves	\$960.00	\$11,520.00
<b>Total</b>	<b>\$18,727.00</b>	<b>\$224,724.00</b>

I, Phyllis Kacher, as agent for/and/or employed by Hawaiiana Management Company, the condominium managing agent/developer for the Opukea at Lahaina Condominium project, Incr 1, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principals.

  
Signature

8-14-06  
Date

Pursuant to 514B-148,7b, Hawaii Revised Statutes, a new association need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. The Developer has not conducted a reserve study for the Project. The budget amount for Reserves is an estimate only.



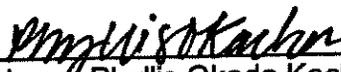
**CERTIFICATE**

I, the undersigned, duly sworn on oath, depose and affirm as follows:

1. That I am the Senior Vice President for Hawaiiana Management Company, Ltd., a Hawaii corporation, designated by the Developer of the Opukea at Lahaina Incr 1 & 2 (with Rec Ctr) condominium project (the "Project") to act as the Managing Agent for the management and administration of the Project.

2. That I hereby certify that the breakdown of the annual maintenance charges and the monthly estimated cost for each unit in the Project, as set forth in Exhibit "1" attached hereto and hereby incorporated herein by reference, were determined pursuant to a reserve study conducted in accordance with Section 514B-148 of the Hawaii Revised Statutes and Chapter 107 of the Hawaii Administrative Rules, and are reasonable estimates for the one-year period commencing September 1, 2006, based on generally accepted accounting principles.

DATED: Honolulu, Hawaii, this 14<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Name: Phyllis Okada Kacher  
Title: Senior Vice President  
Hawaiiana Management Company, Ltd.

Subscribed and sworn to before me  
this 14<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Typed or Printed Name: Bernadette R. Briones  
Notary Public, State of Hawaii

My commission expires: 2/21/07

8-14-06

### Estimated Fee Disbursement Incr 1 and 2 (with Rec Ctr)

Opukea at Lahaina  
(78 units)

	Monthly Fee	Annual Fee
<b>Utilities</b>		
Electricity	\$3,198.00	\$38,376.00
Gas	\$500.00	\$6,000.00
Water	\$3,340.00	\$40,080.00
Sewer	\$2,340.00	\$28,080.00
<b>Maintenance</b>		
Grounds Mtnc.	\$2,000.00	\$24,000.00
Tree Trimming	\$600.00	\$7,200.00
Water Feature	\$0.00	\$0.00
Electrical/Lighting	\$400.00	\$4,800.00
Pool Maintenance	\$600.00	\$7,200.00
Pest Control	\$200.00	\$2,400.00
Plumbing	\$100.00	\$1,200.00
Refuse	\$1,248.00	\$14,976.00
Recycling	\$156.00	\$1,872.00
Fire Systems	\$312.00	\$3,744.00
Misc. Repairs and Supplies	\$350.00	\$4,200.00
Storm Drain Maintenance	\$200.00	\$2,400.00
Sewer Pump Maintenance	\$138.00	\$1,656.00
Shared Road Maintenance	\$103.00	\$1,236.00
<b>Professional Services</b>		
Admin Supplies and Services	\$500.00	\$6,000.00
Management Fees	\$1,032.00	\$12,384.00
Design Review	\$400.00	\$4,800.00
Audit/Tax Preparation	\$120.00	\$1,440.00
Legal Fees	\$200.00	\$2,400.00
Security	\$666.00	\$7,992.00
<b>Payroll</b>		
Manager	\$0.00	\$0.00
Unit Rental	\$0.00	\$0.00
Site Management	\$3,000.00	\$36,000.00
Workers Comp	\$0.00	\$0.00
TDI	\$0.00	\$0.00
Health Care	\$0.00	\$0.00
Payroll Taxes	\$0.00	\$0.00
Payroll Prep	\$0.00	\$0.00
<b>Insurance</b>		
Property	\$8,439.00	\$101,268.00
Liability	\$271.00	\$3,252.00
Umbrella	\$130.00	\$1,560.00
D and O	\$100.00	\$1,200.00
Flood	\$0.00	\$0.00
Bond	\$80.00	\$960.00
<b>Other</b>		
GET & Fed. Taxes	\$0.00	\$0.00
Condo Registration	\$20.00	\$240.00
Subtotal	\$30.00	\$360.00
Reserves	\$30,773.00	\$369,276.00
Total	\$1,060.00	\$12,720.00
	<b>\$31,833.00</b>	<b>\$381,996.00</b>

I, Phyllis Kacher, as agent for/and/or employed by Hawaiiana Management Company, the condominium managing agent/developer for the Opukea at Lahaina Condominium project, Incr 1 & 2, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principals.

  
Signature

8.14.06  
Date

Pursuant to 514B-148,7b, Hawaii Revised Statutes, a new association need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. The Developer has not conducted a reserve study for the Project. The budget amount for Reserves is an estimate only.





**CERTIFICATE**

I, the undersigned, duly sworn on oath, depose and affirm as follows:

1. That I am the Senior Vice President for Hawaiiana Management Company, Ltd., a Hawaii corporation, designated by the Developer of the Opukea at Lahaina Incr 1, 2 & 3 (with Rec Ctr) condominium project (the "Project") to act as the Managing Agent for the management and administration of the Project.

2. That I hereby certify that the breakdown of the annual maintenance charges and the monthly estimated cost for each unit in the Project, as set forth in Exhibit "1" attached hereto and hereby incorporated herein by reference, were determined pursuant to a reserve study conducted in accordance with Section 514B-148 of the Hawaii Revised Statutes and Chapter 107 of the Hawaii Administrative Rules, and are reasonable estimates for the one-year period commencing September 1, 2006, based on generally accepted accounting principles.

DATED: Honolulu, Hawaii, this 14<sup>th</sup> day of August, 2006.

*Phyllis Okada Kacher*

Name: Phyllis Okada Kacher

Title: Senior Vice President

Hawaiiana Management Company, Ltd.

Subscribed and sworn to before me  
this 14<sup>th</sup> day of August, 2006.

*Bernadette R. Briones*

Typed or Printed Name: Bernadette R. Briones

Notary Public, State of Hawaii

My commission expires: 2/21/07

8-14-06

## Estimated Fee Disbursement Incr 1 and 2 and 3 (with Rec Ctr)

Opukea at Lahaina  
(114 units)

	Monthly Fee	Annual Fee
<b>Utilities</b>		
Electricity	\$4,300.00	\$51,600.00
Gas	\$900.00	\$10,800.00
Water	\$3,920.00	\$47,040.00
Sewer	\$3,420.00	\$41,040.00
<b>Maintenance</b>		
Grounds Mtnc.	\$3,000.00	\$36,000.00
Tree Trimming	\$900.00	\$10,800.00
Water Feature	\$0.00	\$0.00
Electrical/Lighting	\$600.00	\$7,200.00
Pool Maintenance	\$500.00	\$6,000.00
Pool Maintenance	\$300.00	\$3,600.00
Pest Control	\$150.00	\$1,800.00
Plumbing	\$1,824.00	\$21,888.00
Refuse	\$384.00	\$4,608.00
Recycling	\$456.00	\$5,472.00
Fire Systems	\$750.00	\$9,000.00
Misc. Repairs and Supplies	\$300.00	\$3,600.00
Storm Drain Maintenance	\$200.00	\$2,400.00
Sewer Pump Maintenance	\$150.00	\$1,800.00
Share Road Maintenance		
<b>Professional Services</b>		
Admin Supplies and Services	\$570.00	\$6,840.00
Management Fees	\$2,032.00	\$24,384.00
Design Review	\$200.00	\$2,400.00
Audit/Tax Preparation	\$60.00	\$720.00
Legal Fees	\$100.00	\$1,200.00
Legal Fees	\$1,000.00	\$12,000.00
Security		
<b>Payroll</b>		
Manager	\$3,000.00	\$36,000.00
Unit Rental	\$1,200.00	\$14,400.00
Site Management		\$0.00
Workers Comp	\$300.00	\$3,600.00
TDI	\$24.00	\$288.00
Health Care	\$300.00	\$3,600.00
Payroll Taxes	\$300.00	\$3,600.00
Payroll Prep	\$125.00	\$1,500.00
<b>Insurance</b>		
Property	\$12,334.00	\$148,008.00
Liability	\$395.00	\$4,740.00
Umbrella	\$186.00	\$2,232.00
D and O	\$110.00	\$1,320.00
Flood	\$0.00	\$0.00
Bond	\$40.00	\$480.00
<b>Other</b>		
GET & Fed. Taxes	\$30.00	\$360.00
Condo Registration	\$45.00	\$540.00
Subtotal	\$44,405.00	\$532,860.00
Reserves	\$2,280.00	\$27,360.00
<b>Total</b>	<b>\$46,685.00</b>	<b>\$560,220.00</b>

I, Phyllis Kacher, as agent for/and/or employed by Hawaiiana Management Company, the condominium managing agent/developer for the Opukea at Lahaina Condominium project, Incr 1, 2 & 3 hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principals.



Signature

8.14.06

Date

Pursuant to 514B-148.7b, Hawaii Revised Statutes, a new association need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. The Developer has not conducted a reserve study for the Project. The budget amount for Reserves is an estimate only.





8-14-06

## Estimate of Initial Maintenance Fees Increment 1 and 2 and 3 (with Rec Ctr)

Opukea at Lahaina  
(114 units)

Apt. Type	Common Interest	Monthly Fee	Annual Fee
H/HR	0.8832500%	\$412.35	\$4,948.14
H/HR	0.8832500%	\$412.35	\$4,948.14
H/HR	0.8832500%	\$412.35	\$4,948.14
H/HR	0.8832500%	\$412.35	\$4,948.14
H/HR	0.8832500%	\$412.35	\$4,948.14
H/HR	0.8832500%	\$412.35	\$4,948.14
H/HR	0.8832500%	\$412.35	\$4,948.14
H/HR	0.8832500%	\$412.35	\$4,948.14
I/IR	1.3661500%	\$637.79	\$7,653.45
I/IR	1.3661500%	\$637.79	\$7,653.45
I/IR	1.3661500%	\$637.79	\$7,653.45
I/IR	1.3661500%	\$637.79	\$7,653.45
I/IR	1.3661500%	\$637.79	\$7,653.45
I/IR	1.3661500%	\$637.79	\$7,653.45
J/JR	0.8693200%	\$405.84	\$4,870.10
J/JR	0.8693200%	\$405.84	\$4,870.10
K/KR	0.8814800%	\$411.52	\$4,938.23
K/KR	0.8814800%	\$411.52	\$4,938.23
K/KR	0.8814800%	\$411.52	\$4,938.23
K/KR	0.8814800%	\$411.52	\$4,938.23
<b>TOTAL</b>	<b>100.0000000%</b>	<b>\$46,685.00</b>	<b>\$560,220.00</b>

## EXHIBIT R

### Section 5.1 -- Summary of Pertinent Provisions of Sales Contract

The Deposit Receipt, Reservation and Sales Agreement (the "Sales Contract") contains the price and other terms and conditions under which a purchaser will agree to buy a Residence in the Community. Among other things, the Sales Contract states:

- (a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of a Unit.
- (b) That the purchaser acknowledges having received and read the public report for the Community prior to signing the Sales Contract.
- (c) That the Developer makes no representations concerning rental of a Unit, income or profit from a Unit, or any other economic benefit to be derived from the purchase of a Unit.
- (d) That the Sales Contract may be subordinate to the lien of a construction lender.
- (e) The Sales Contract provides that it shall not be construed as a present transfer of any rights or of any interest in the Unit, but rather states that it is an agreement to transfer in the future. By execution of the Sales Contract, the Purchaser agrees to waive, relinquish and subordinate the priority or superiority of any lien or other legal or equitable interest arising under the Sales Contract in favor of the lien or charge on the Community of the security interests of the Lender, including but not limited to any lien, mortgage or charge securing a loan made to finance the acquisition of the land and the costs of construction (if applicable) and any and all advances therefore until the filing of the Deed.
- (f) That the purchaser's money will be held in escrow, under the terms of the Escrow Agreement.
- (g) Requirements relating to the purchaser's financing of the purchase of a Unit.
- (h) The Sales Contract provides that Purchaser may purchase upgrades, including modifications or additions to, or upgrades of, the standard fixtures, appliances and/or layout of the Unit to be made by Seller, pursuant to an option addendum attached to the Sales Contract upon Purchaser's execution of the Sales Contract. Purchaser must make deposits for the upgrades as required by Seller.
- (i) That the Unit and the Community will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.
- (j) That, except to the extent of a limited warranty in form attached to this Public Report, the Developer makes no warranties regarding the Unit, the Community or anything installed or contained in the Unit or the Community.
- (k) That the Community will be subject to ongoing construction and sales activities which may result in certain annoyances to the purchaser.

- (l) That the purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
- (m) That the Developer has reserved certain rights and powers relating to the Community and the purchaser acknowledges and consents to the exercise of such rights and powers.
- (n) That except under certain circumstances, as set forth in the Sales Contract, all interest on deposits toward the purchase price shall be the property of the Developer.
- (o) If the purchaser defaults, Developer may retain purchaser's deposits and bring an action against purchaser. If the Developer defaults, purchasers may bring an action against Developer. All actions are subject to the rules of the Dispute Prevention Resolution, Inc., as provided in the Sales Contract.
- (p) Buyer may not at any time assign its rights or obligations under the Purchase Agreement.
- (q) Any assignment of the Sales Contract is void and of no legal effect.
- (r) The Sales Contract provides that any dispute by or between Seller and Purchaser arising out of or incident to the Sales Contract, or the development or management of the Community, the sale of the Unit or the use or occupancy thereof, or any other aspect of the relationship between Seller and Purchaser regarding the Community which is raised or otherwise asserted after Closing shall be submitted to mediation and, if necessary, to arbitration in accordance with the terms, conditions and procedures set forth in the Sales Contract. The Sales Contract also provides that any dispute by or between Seller and Purchaser arising out of or incident to the Sales Contract that is raised or otherwise asserted before Closing need not be submitted to arbitration, and Seller and Purchaser shall be free to pursue such dispute, as otherwise provided herein, in proceedings in a court of competent jurisdiction, provided that any judicial proceedings initiated shall be conducted in Maui, Hawaii.

The Sales Contracts contains various other important provisions relating to the purchase of a Unit in the Community. Purchasers and prospective purchasers should carefully read the specimen Sales Contracts on file with the Real Estate Commission. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings given them under the Purchase Agreement.

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

## EXHIBIT S

### Section 5.1 -- Summary of Pertinent Provisions of Escrow Agreement

The Escrow Agreement sets up an arrangement under which the deposits a purchaser makes pursuant to a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

- (a) Escrow will let the purchaser know when payments are due.
- (b) Escrow will arrange for the purchaser to sign all necessary documents.
- (c) Except under certain circumstances as set forth in the Sales Contract, all deposits toward the purchase price shall be the property of the Developer. Provided that the purchaser is not in default under the Sales Contract and the Sales Contract contains a financing provision, purchaser's deposits, less escrow cancellation fees and third party lender fees, is refundable to purchaser if purchaser fails to qualify for a mortgage loan. Otherwise, all deposits toward the purchase price shall be the property of the Developer. The purchaser will be entitled to a refund of his or her funds only under certain circumstances.
- (d) The purchaser will be entitled to a refund of his or her funds only under certain circumstances as set forth in the Sales Contract.

The Escrow Agreement also establishes the procedures for the retention and disbursement of a purchaser's funds and says what will happen to the funds upon a default under the Sales Contract. The Escrow Agreement contains various other important provisions and establishes certain charges with which a purchaser should be familiar. Purchasers and prospective purchasers should carefully read the signed Escrow Agreement on file with the Real Estate Commission. A copy is available at the Developer's sales office. The Escrow Agreement contains the following provisions (which may be modified or otherwise limited by provisions not set forth below):

1. As and when Seller enters into a Sales Contract, Seller will give Escrow a signed copy of the Sales Contract and Buyer's deposit towards the purchase price of a Unit. The Sales Contract will require Buyer to pay to Escrow all other payments of the purchase price required under the Sales Contract. If Buyer gets a mortgage loan, the money from the loan will be paid to Escrow, along with the lender's mortgage for recording, and Escrow shall follow the lender's instructions. The Sales Contract will show the correct name and address of each Buyer. If a Sales Contract is signed and the sale occurs in a state other than Hawaii, the Sales Contract will show the place where the sale occurs.

2. Escrow will put all of the money it gets from Buyer in one or more special accounts (the "trust fund"). The trust fund will be deposited only at a depository designated by Seller or in banks or savings and loan institutions in Hawaii that are insured by the federal government as directed by Seller. The place, or places, where the trust fund is set up will be chosen by Escrow, unless otherwise selected or directed by Seller. Unless any of the Sales Contracts show different instructions, Seller will get all of the interest earned on the trust fund. Escrow will deposit the payments it gets from Buyer into the trust fund one or more times each week, so that the funds may earn the maximum interest.

3. Notwithstanding anything in this Agreement to the contrary, if Seller has submitted to the Real Estate Commission a material house bond securing the construction of improvements in the Community, the following provisions shall apply:

(i) Buyer's money shall not be disbursed to pay for construction costs or other expenses of the Community until the Unit to be conveyed has been completed and the Deed to Buyer has been recorded; and

(ii) If closing is to occur prior to the expiration of the applicable mechanic's lien period, Seller shall provide Buyer with a mechanic's lien endorsement to Buyer's owner's title insurance policy that protects Buyer against all future mechanic's and materialmen's liens. Further, Seller shall confirm to Escrow that Seller has provided the Real Estate Commission with a release by the general contractor of the contractor's lien rights.

4. The Sales Contract states when refunds of deposits may be made to Buyer. In the case where the Sales Contract is not yet binding and Buyer requests a refund, Escrow shall notify Seller of such request. Escrow may refund the deposit to Buyer, less any cancellation or other fees to which Escrow is entitled, only after receiving written approval from Seller. In all other cases, Escrow shall not make any refund to a Buyer who asks for it unless Escrow receives written approval from Seller or from a court of competent jurisdiction. The words "cancellation fees" mean Escrow's cancellation fees which are described in the Sales Contract and are described later in this Agreement. Fees for cancellation may also be charged by the lender who has agreed to lend Buyer money to buy the Unit. The Sales Contract states the instances when Escrow is to subtract cancellation fees from the amount to be refunded unless Seller tells Escrow not to charge the cancellation fees. Escrow shall give each Buyer who is to get a refund written notice of the refund. Escrow will send this notice by registered or certified mail to Buyer at the address shown on Buyer's Sales Contract or to the last address which Buyer may have given to Escrow.

5. Escrow will notify Seller and Buyer promptly if Buyer fails to make a payment or is otherwise in default under the Sales Contract (to the knowledge of Escrow). Seller will notify Escrow in writing if a Buyer has defaulted or not done something that Buyer promised to do in the Sales Contract. Seller will tell Escrow in the same letter that, because Buyer has defaulted, Seller is cancelling the Sales Contract and will give Escrow a copy of the letter that Seller delivered in person or sent by registered or certified mail to Buyer, telling Buyer of the default and cancellation. Seller will also give Escrow a copy of a receipt signed by Buyer or the registered or certified mail return receipt. Escrow will then send a letter to Buyer by registered or certified mail, informing Buyer that Seller has cancelled the Sales Contract because of the default. Escrow will wait for fifteen (15) days after the date which shows on the return receipt as the date when Buyer got Escrow's letter or the date which shows the last time that the post office tried to deliver the letter. If Escrow does not hear from Buyer during that time, Escrow may deduct its cancellation fee from Buyer's funds and treat Buyer's funds which are left as belonging to Seller. If Buyer tells Escrow that Buyer has not defaulted or tells Escrow not to do anything with Buyer's funds, then Escrow may proceed in accordance with Section 5.2 of the Escrow Agreement (to interplead funds) or deliver the funds to Seller.

6. Escrow will set the time (in accordance with Sales Contract and Seller's interest to pre-close) for taking in all money from each Buyer and for the signing of all of the documents that each Buyer must sign to complete the purchase, except for the mortgage documents, which may be signed at the lender's place of business. The conveyance tax certificates, preliminary closing statements, escrow instructions and final closing statements will be prepared by Escrow,

and Escrow will do all of the escrow acts required under this Agreement or any other written agreements between Seller, Buyer and Escrow. Escrow will give Buyer and Seller copies of HARPTA and FIRPTA forms, or provide the online link to obtain copies of those forms, with a recommendation that the parties seek appropriate counsel to complete the forms. Escrow will coordinate with Buyer's lender, the title companies and all others who are a part of the purchase so that closing will occur at a suitable time. Escrow agrees to close all of the sales at the same time or individually from time to time, as directed by Seller. "Closing" is complete when all necessary conveyance and financing documents to complete a purchase are recorded in the appropriate Hawaii recording office. After all documents have been signed, Escrow will close on the closing date as agreed to in the Sales Contract only if:

- (i) The required money has been paid to Escrow;
- (ii) All necessary documents can be recorded, as appropriate;
- (iii) All mortgages having to do with the purchase can be recorded, following the lender's instructions; and
- (iv) All necessary releases can be recorded so that the Unit is conveyed free and clear of all blanket liens in accordance with the Condominium Law.

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

**EXHIBIT T**  
Section -- 5.2 Sales to Owner Occupants

**OPUKEA AT LAHAINA  
AFFIDAVIT OF INTENT TO PURCHASE AND RESIDE IN AN OWNER-OCCUPANT  
DESIGNATED TOWNHOME CONDOMINIUM RESIDENCE**

[ ] Chronological System    [ ] Lottery System

We, the undersigned "owner-occupants", on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, do hereby declare that it is our intention to purchase and reside in a designated townhouse condominium residence designated for an "owner-occupant" in Opukea at Lahaina condominium community ("Community") proposed by D.R. Horton – Schuler Homes, LLC, a Delaware limited liability company, dba D.R. Horton-Schuler Division ("Developer").

We understand, affirm, represent and agree by signing this Affidavit that:

1. It is our intent to reserve and purchase an owner-occupant designated residential unit ("designated residential unit") pursuant to Section 514B-96 of the Owner-Occupant Law, and upon closing escrow, to reside in the designated residential unit as our principal residence for 365 consecutive days.

2. The term "owner-occupant" as used herein is defined in section 514B-95 of the Owner-Occupant Law as:

"...any individual in whose name sole or joint legal title is held in a residential unit that, simultaneous to such ownership, serves as the individual's principal residence, as defined by the department of taxation, for a period of not less than three hundred and sixty-five consecutive days; provided that the individual shall retain complete possessory control of the premises of the residential unit during this period. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases, or assigns the premises for any period of time to any other person in whose name legal title is not held; except that an individual shall be deemed to have complete possessory control even when the individual conveys or transfers the unit into a trust for estate planning purposes and continues in the use of the premises as the individual's principal residence during this period." (Emphasis added).

3. We understand that if two or more prospective owner-occupants intend to reside jointly in the same designated residential unit, only one owner-occupant's name shall be placed on the reservation list for either the chronological system or the lottery system.

4. Should we require financing from a financial institution to purchase the designated residential unit, the financing shall be an owner-occupant mortgage loan. The financial institution is required to take all reasonable steps necessary to determine whether the borrower intends to become an owner-occupant.

5. At any time after obtaining adequate financing or a commitment for adequate financing up until the expiration of this Affidavit (365 days after recordation of the instrument conveying the designated residential unit to us), we shall notify the Real Estate Commission immediately upon any decision to cease being an owner-occupant of the designated residential unit.

6. At closing of escrow, we shall file a claim for and secure an owner-occupant property tax exemption with the appropriate county office for the designated residential unit.

7. We have personally executed this Affidavit and we are all of the prospective owner-occupants for the designated residential unit. This Affidavit shall not be executed by an attorney-in-fact.

8. We shall not sell or offer to sell, lease or offer to lease, rent or offer to rent, assign or offer to assign, convey or otherwise transfer any interest in the designated residential unit until at least 365 consecutive days have elapsed since the recordation of the instrument conveying title to the designated residential unit to us. Furthermore, we understand that we have the burden of proving our compliance with the law. We affirm that we will notify the Real Estate Commission immediately upon any decision to cease being an owner occupant.

9. We understand that it is the affirmative duty of any developer, employee or agent of a developer, and real estate licensee, to report immediately to the Real Estate Commission any person who violates or attempts to



**EXHIBIT U**  
Section 5.4 -- Construction Warranties

# HOME BUILDER'S LIMITED WARRANTY

Administered by Professional Warranty Service Corporation

Throughout this **HOME BUILDER'S LIMITED WARRANTY**, referred to hereinafter as the "**LIMITED WARRANTY**", the words "**YOU**" and "**YOUR**" refer to the **HOMEOWNER** and **HOMEOWNERS ASSOCIATION**. The words "**WE**", "**US**" and "**OUR**" refer to the **BUILDER**. The other words and phrases which appear in boldface uppercase type also have special meaning. Refer to the Section **X. Definitions**, so that **YOU** will understand the terminology applicable to this **LIMITED WARRANTY**.

This **LIMITED WARRANTY** establishes an agreed method for determining when a **CONSTRUCTION DEFECT** exists and a clear understanding of **OUR** responsibilities for remedying any such **CONSTRUCTION DEFECT**. This **LIMITED WARRANTY** also helps distinguish a **CONSTRUCTION DEFECT** that is **OUR** responsibility from those minor imperfections that can reasonably be expected in a **HOME** or the **COMMON ELEMENTS** or result from normal wear and tear or are routine **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** maintenance responsibilities.

This **LIMITED WARRANTY** contains the procedures **YOU** must use to notify **US** of a condition in **YOUR HOME** or the **COMMON ELEMENTS**, which **YOU** believe may constitute a **CONSTRUCTION DEFECT**. In the event a condition occurs in the **HOME** or the **COMMON ELEMENTS** that **YOU** believe may constitute a **CONSTRUCTION DEFECT**, **YOU** agree to submit any request for warranty performance under this **LIMITED WARRANTY**. Based on the information **YOU** provide, and where **WE** deem it necessary information obtained from **OUR** onsite investigation inspection and/or testing of the **HOME** or the **COMMON ELEMENTS**, **WE** will determine whether **WE** agree with **YOU** that the condition constitutes a **CONSTRUCTION DEFECT**. If **WE** determine that the condition reported by **YOU** is a **CONSTRUCTION DEFECT**, **WE** will remedy the condition in accordance with the remedies prescribed in this **LIMITED WARRANTY**. **WE** will make this determination in accordance with Section III, **OUR Coverage Obligations**, contained in this **LIMITED WARRANTY**.

If **WE** determine that a condition does not constitute a **CONSTRUCTION DEFECT** that is **OUR** responsibility and therefore deny **YOUR** request for warranty performance, **YOU** have the right to initiate binding arbitration that will irrevocably determine whether the condition constitutes a **CONSTRUCTION DEFECT** that is **OUR** responsibility. If this binding arbitration determines that the condition does constitute a **CONSTRUCTION DEFECT** that is **OUR** responsibility, **WE** will resolve the problem in accordance with the remedies prescribed in this **LIMITED WARRANTY**. The arbitrator will make a determination based on the language contained in Section III, **OUR Coverage Obligations**.

Enclosed with this **LIMITED WARRANTY** is a Limited Warranty Validation Form. The Limited Warranty Validation Form provides the dates on which the warranty coverage period begins and expires. It is important that this form is retained with the **LIMITED WARRANTY**. Liability under this **LIMITED WARRANTY** is limited to the amount shown on the Limited Warranty Validation Form.

All express or implied warranties other than this **LIMITED WARRANTY**, including any oral or written statement or representation made by **US** or any other person, and any implied warranty of habitability, merchantability or fitness, are hereby disclaimed by **US** and are waived by **YOU**. In addition, **YOU** waive the right to seek damages or other legal or equitable remedies from **US**, **OUR** subcontractors, agents, vendors, suppliers, design professionals and materialmen, under any other common law or statutory theory of liability, including but not limited to negligence and strict liability. **YOUR** only remedy in the event of a **CONSTRUCTION DEFECT** in or to the **HOME** or the **COMMON ELEMENTS** or to the real property on which the **HOME** or the **COMMON ELEMENTS** is situated is the coverage provided to **YOU** under this **LIMITED WARRANTY**. There may be instances where an additional **PWC** administered Builder's Limited Warranty is issued together with this **LIMITED WARRANTY**. If both of these warranties are issued to **YOU**, **YOU** agree to request warranty performance under either warranty relative to warrantable issues on the **HOME** or the **COMMON ELEMENTS**. **YOU** may not collect twice relative to the same defect and amounts paid or expended by **US** for warranty performance under either warranty will reduce the limit of liability remaining under both warranties simultaneously.

**WE** have contracted with **PWC** for certain administrative services relative to this **LIMITED WARRANTY**. **PWC's** sole responsibility is to provide administrative services. Under no circumstances or conditions is **PWC** responsible for fulfilling **OUR** obligations under this **LIMITED WARRANTY**.

If any provision of this **LIMITED WARRANTY** is determined to be unenforceable, such a determination will not affect the remaining provisions. If this **LIMITED WARRANTY** or any provision herein is determined to be unenforceable as to a **HOMEOWNERS ASSOCIATION** or a specific **HOMEOWNER**, such a determination will not affect the enforceability of this **LIMITED WARRANTY** or such provision as to any other **HOMEOWNERS ASSOCIATION** or any other **HOMEOWNER**. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this **LIMITED WARRANTY**.

## I. Coverage Limit

The amount shown on the Limited Warranty Validation Form is **OUR** limit of liability. It is the most **WE** will pay or expend for all covered **CONSTRUCTION DEFECTS** regardless of the number of requests for warranty performance made against this **LIMITED WARRANTY**. Once **OUR** limit of liability has been paid, no further requests for warranty performance can be made against this **LIMITED WARRANTY** or any other **PWC** administered Builder's Limited Warranty issued for the **HOME** or the **COMMON ELEMENTS**.

## II. Warranty Coverage

Coverage under this **LIMITED WARRANTY** is expressly limited to **CONSTRUCTION DEFECTS** which occur during the **WARRANTY PERIOD** indicated on the Limited Warranty Validation Form and are reported by **YOU** in accordance with the notification requirements of Section VII, Procedure to Request **US** To Perform Under This **LIMITED WARRANTY**.

**SAMPLE** Coverage During the **WARRANTY PERIOD** indicated on the Limited Warranty Validation Form that is attached to and made part of this **LIMITED WARRANTY**, **WE** warrant the **HOME** and the **COMMON ELEMENTS** will be free of **CONSTRUCTION DEFECTS**. To be eligible for coverage **WE** must receive written notice from **YOU** of the alleged **CONSTRUCTION DEFECT** as soon as it is reasonably possible after **YOU** have become aware or should have become aware of a **CONSTRUCTION DEFECT** but in no event later than thirty (30) days after the expiration of the coverage.

## III. OUR Coverage Obligations

All notices of alleged **CONSTRUCTION DEFECTS**, and complaints under this **LIMITED WARRANTY** must be made by **YOU** in writing. Telephonic or face-to-face discussion will not protect **YOUR** rights under this **LIMITED WARRANTY** (see Section VII, Procedure to Request **US** To Perform Under This **LIMITED WARRANTY**).

In the event **YOU** allege a **CONSTRUCTION DEFECT** occurs during the **WARRANTY PERIOD**, upon receiving written notice from **YOU**, **WE**, or a third party designated by **US** or acting on **OUR** behalf, will inspect, investigate and/or test (including destructive testing) the alleged **CONSTRUCTION DEFECT** to determine if a **CONSTRUCTION DEFECT** exists. Upon confirmation of a **CONSTRUCTION DEFECT**, **WE**, or a third party designated by **US** or acting on **OUR** behalf, will (1) repair or replace the **CONSTRUCTION DEFECT**, (2) pay to **YOU** the actual amount it would cost **US** to repair or replace the **CONSTRUCTION DEFECT** or (3) **PAY** to **YOU** an amount equal to the diminution in fair market value caused by the **CONSTRUCTION DEFECT**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** authorized representative's sole option.

**WE** will have been considered to have breached this **LIMITED WARRANTY** only if **WE** fail to resolve a **CONSTRUCTION DEFECT** in accordance with the terms and conditions of this **LIMITED WARRANTY**.

**A. Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined**

In the event YOU believe that a flaw in the HOME or the COMMON ELEMENTS constitutes a CONSTRUCTION DEFECT, the following factors will be considered by US in determining whether the condition constitutes a CONSTRUCTION DEFECT. Should either YOU or WE elect to initiate binding arbitration, these factors will be considered by the arbitrator in rendering a decision:

1. Any performance standards or guidelines or other documents or manuals that contain OUR building standards, that were provided to YOU at or prior to closing on the HOME, or in the case of the HOMEOWNERS ASSOCIATION, prior to transferring title to all the COMMON ELEMENTS. Absent such standards, the Residential Construction Performance Guidelines published by the National Association of Home Builders, in effect at the time of closing on the HOME, or in the case of the HOMEOWNERS ASSOCIATION, at the time of transferring title to all the COMMON ELEMENTS shall apply. Absent a specific standard in the documents identified above, building practices and standards in use in the region of the country in which the HOME or the COMMON ELEMENTS are located shall apply;
2. Consideration as to whether the magnitude of the flaw or imperfection:
  - materially affects the structural integrity of the HOME or COMMON ELEMENTS; or
  - has an obvious and material negative impact on the appearance of the HOME or COMMON ELEMENTS; or
  - jeopardizes the life or safety of the occupants; or
  - results in the inability of the HOME or the applicable COMMON ELEMENTS to provide the functions that can reasonably be expected in such a HOME or COMMON ELEMENT.
3. Consideration as to whether a condition is the result of normal wear and tear (conditions that are normal wear and tear, or are caused by normal wear and tear are not CONSTRUCTION DEFECTS);
4. Consideration as to whether the condition was caused by, or in any way resulted from, the failure of the HOMEOWNER or HOMEOWNERS ASSOCIATION to perform normal or routine maintenance (any condition that is determined to be a HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance issue, or any condition that results from improper or inadequate HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance, is not a CONSTRUCTION DEFECT);
5. Consideration as to whether the condition was caused by the HOMEOWNER or HOMEOWNERS ASSOCIATION or their representatives, other than US, after the HOMEOWNER took possession of the HOME or the COMMON ELEMENTS (WE and YOU conducted a walk through inspection just prior to closing on the HOME. Damage that was caused by YOU or YOUR representatives is not a CONSTRUCTION DEFECT, for example, a large, visible scratch on marble tile in the entry foyer that was not noted in the walk through inspection, but was reported after furniture was moved into the HOME, will not be considered a CONSTRUCTION DEFECT);
6. Recognition that any condition resulting directly or indirectly from or worsened by changes, additions, alterations or other actions or omissions by the HOMEOWNER or HOMEOWNERS ASSOCIATION or their agents, other than US, will not be considered a CONSTRUCTION DEFECT (this includes changes to the topography, drainage or grade of the property);
7. Any Exclusions contained in this LIMITED WARRANTY.

SAMPLE

## IV. Homeowner Maintenance Obligations

Maintenance of the **HOME** and the **COMMON ELEMENTS** is **YOUR** responsibility. All homes and common elements require periodic maintenance to prevent premature deterioration, water intrusion and to ensure adequate performance of the **SYSTEMS**. **WE** will make a "Homeowner Maintenance Manual" or similar publication available to **YOU** upon request. Whether from this document or others that are readily available to **YOU**, **YOU** must understand and perform the maintenance that the **HOME** and **COMMON ELEMENTS** require. As stated in other sections of this **LIMITED WARRANTY**, **WE** are not responsible for **HOME** or **COMMON ELEMENTS** maintenance issues or for damage that results from **YOUR** failure to maintain the **HOME** or the **COMMON ELEMENTS**.

## V. Coverage Limitations

When **WE** or a third party designated by **US** or acting on **OUR** behalf, repair or replace a **CONSTRUCTION DEFECT** the repair or replacement will include the repair or replacement of only those surfaces, finishes and coverings that were damaged by the **CONSTRUCTION DEFECT** that were part of the **HOME** or the **COMMON ELEMENTS** when title was first transferred by **US**. Surfaces, finishes and coverings that require repair or replacement in order for **US** or a third party designated by **US** to repair or replace **CONSTRUCTION DEFECTS** will be repaired or replaced. The extent of the repair and replacement of these surfaces, finishes or coverings will be to approximately the same condition they were in prior to the **CONSTRUCTION DEFECT**, but not necessarily to a like new condition.

When repairing or replacing surfaces, finishes and coverings, the repair or replacement will attempt to achieve as close a match with the original surrounding areas as is reasonably possible, but an exact match cannot be guaranteed due to such factors as fading, aging and unavailability of the same materials.

In the case where a **CONSTRUCTION DEFECT** exists and the **HOME** is rendered uninhabitable and the **CONSTRUCTION DEFECT** is repaired or replaced, the repair or replacement shall include the reasonable cost of the **HOMEOWNER'S** alternative shelter until the **HOME** is made habitable.

## VI. Exclusions

A. This **LIMITED WARRANTY** does not cover:

1. Any **CONSTRUCTION DEFECTS** or other damages resulting, either directly or indirectly, from the following causes or occurring in the following situations:

- a. Fire;
- b. Lightning;
- c. Explosion;
- d. Riot and Civil Commotion;
- e. Smoke;
- f. Hail;
- g. Aircraft;
- h. Falling Objects;
- i. Vehicles;
- j. Floods;
- k. Earthquake;
- l. Landslide or mudslide originating on property other than the site of the **HOME** or the **COMMON ELEMENTS** or other property developed by the **BUILDER**;
- m. Mine subsidence or sinkholes;

11. Any deviation from plans and specifications that has not resulted in a **CONSTRUCTION DEFECT**.
- B. **OUR LIMITED WARRANTY** does not cover any **CONSTRUCTION DEFECT** which would not have occurred in the absence of one or more of the excluded events or conditions listed in Exclusions, Section VI. A.1 a. – A.1.q., A.2. or A.3. above, regardless of:
1. the cause of the excluded event or condition; or
  2. other causes of the loss or damage; or
  3. whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage.

## VII. Procedure to Request US To Perform Under This LIMITED WARRANTY

If **YOU** become aware of a condition that **YOU** believe is a **CONSTRUCTION DEFECT** under this **LIMITED WARRANTY**, **YOU** have the following responsibilities:

### A. Notification

**YOU** must notify **US** in writing as soon as it is reasonably possible after **YOU** have become aware or should have become aware of a **CONSTRUCTION DEFECT**, but in no event may **YOUR** written notice of a **CONSTRUCTION DEFECT** or **YOUR** written request for warranty performance be postmarked or received by **US** later than thirty (30) days after this **LIMITED WARRANTY** has expired.

If the written notice is postmarked or received by **US** more than thirty (30) days after the expiration of this **LIMITED WARRANTY**, **WE** shall have no obligation to remedy the **CONSTRUCTION DEFECT**. In order to establish a record of timely notification, **WE** recommend that written notice should always be sent by Certified Mail, return receipt requested.

### B. Cooperate With US

**YOU** must give **US** and any third parties acting on **OUR** behalf reasonable help in inspecting, investigating, testing (including destructive testing), monitoring, repairing, replacing or otherwise correcting an alleged **CONSTRUCTION DEFECT**. Help includes, but is not limited to, granting reasonable access to the **HOME** or **COMMON ELEMENTS** for the forgoing purposes. If **YOU** fail to cooperate or provide such reasonable access to the **HOME** or **COMMON ELEMENTS**, **WE** will have no obligation to do any of the foregoing.

### C. Do Not Make Voluntary Payments

**YOU** agree not to make any voluntary payments or assume any obligations or incur any expenses for the remedy of a condition **YOU** believe is a **CONSTRUCTION DEFECT** without prior written approval from **US**, or other parties authorized to act on **OUR** behalf. **WE** will not reimburse **YOU** for costs incurred where **YOU** did not obtain prior written approval.

However, **YOU** may incur reasonable expenses in making repairs in an **EMERGENCY CONDITION** without prior written approval, provided the repairs are solely for the protection of the **HOME** or **COMMON ELEMENTS** from further damage or to prevent an unsafe living condition and provided **YOU** notify **US** as soon as is reasonably possible. To obtain reimbursement for repairs made during an **EMERGENCY CONDITION**, **YOU** must provide **US** with an accurate written record of the repair costs.

#### D. Sign A Release

When **WE** or a third party designated by **US** or acting on **OUR** behalf have completed repairing, replacing or paying **YOU** as to any **CONSTRUCTION DEFECTS** or other related damage to the **HOME** or the **COMMON ELEMENTS** covered by this **LIMITED WARRANTY**. **YOU** must sign a full release of **OUR** obligation for the **CONSTRUCTION DEFECTS**. The release shall be applicable to the **CONSTRUCTION DEFECTS** and shall not prevent **YOU** from notifying **US** should **YOU** become aware of a subsequent **CONSTRUCTION DEFECT**.

#### E. If **YOU** Disagree With **US**

If **YOU** believe **WE** have not responded to **YOUR** request for warranty performance to **YOUR** satisfaction or in a manner that **YOU** believe this **LIMITED WARRANTY** requires, **YOU** may provide written notice to **PWC** requesting Mediation. Upon **PWC's** receipt of written notice from **YOU**, **PWC** may review and mediate **YOUR** request by communicating with **YOU**, **US**, and any other individuals or entities that **PWC** believes may possess relevant information. If after forty-five (45) days, **PWC** is unable to successfully mediate **YOUR** request for warranty performance, or at any earlier time when **PWC** determines that **YOU** and **WE** are at an impasse, **PWC** will notify **YOU** that **YOUR** request for warranty performance remains unresolved and that **YOU** may elect to initiate Binding Arbitration. Binding Arbitration as described in the following section is the sole remedy for the resolution of disputes between **YOU** and **US** as set forth in the following section.

### VIII. Binding Arbitration Procedure

Any disputes between **YOU** and **US**, or parties acting on **OUR** behalf, including **PWC**, related to or arising from this **LIMITED WARRANTY**, the design or construction of the **HOME** or the **COMMON ELEMENTS** or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS** will be resolved by binding arbitration. Binding arbitration shall be the sole remedy for resolving any and all disputes between **YOU** and **US**, or **OUR** representatives. Disputes subject to binding arbitration include, but are not limited to:

- A. Any disagreement that a condition in the **HOME** or the **COMMON ELEMENTS** is a **CONSTRUCTION DEFECT** and is therefore covered by this **LIMITED WARRANTY**;
- B. Any disagreement as to whether a **CONSTRUCTION DEFECT** has been corrected in compliance with this **LIMITED WARRANTY**;
- C. Any alleged breach of this **LIMITED WARRANTY**;
- D. Any alleged violation of consumer protection, unfair trade practice, or any other statute;
- E. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and any other claims arising in equity or from common law;
- F. Any dispute concerning the issues that should be submitted to binding arbitration;
- G. Any dispute concerning the timeliness of **OUR** performance and/or **YOUR** notifications under this **LIMITED WARRANTY**;
- H. Any dispute as to the payment or reimbursement of the arbitration filing fee;
- I. Any dispute as to whether this **LIMITED WARRANTY**, or any provision hereof, including, but not limited to any waiver hereunder, is unenforceable;
- J. Any other claim arising out of or relating to the sale, design or construction of **YOUR HOME** or the **COMMON ELEMENTS**, including, but not limited to any claim arising out of, relating to or based

on any implied warranty or claim for negligence or strict liability not effectively waived by this **LIMITED WARRANTY**.

The arbitration shall be conducted by Construction Arbitration Services, Inc., or such other reputable arbitration service that **PWC** shall select, at its sole discretion, at the time the request for arbitration is submitted. The rules and procedures of the designated arbitration organization, that are in effect at the time the request for arbitration is submitted, will be followed. A copy of the applicable rules and procedures will be delivered to **YOU** upon request.

This arbitration agreement shall be governed by the United States Arbitration Act (9 U.S.C. §§ 1 – 16) to the exclusion of any inconsistent state law, regulation or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

Each party shall bear its own attorneys fees and costs (including expert costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between **YOU** and **US**. This filing fee shall be no more than the amount charged by the arbitration service to **PWC** for each arbitration. Contact **PWC** to determine the arbitration filing fee in effect at the time an arbitration is being requested. The arbitrator shall, as part of any decision, award to the party prevailing at the arbitration any applicable filing fees or other arbitration fees paid by that party.

The process for **YOU** to initiate arbitration is described below.

**Step 1** **YOU** complete a Binding Arbitration Request Form and mail it to **PWC** along with the appropriate arbitration filing fee. A Binding Arbitration Request Form is attached to this **LIMITED WARRANTY**. **YOUR** Binding Arbitration Request Form must be received no later than ninety (90) days after this **LIMITED WARRANTY** expires. **YOU** must still notify **US** of an alleged **CONSTRUCTION DEFECT** as soon as it is reasonably possible after **YOU** have become aware or should have become aware of the **CONSTRUCTION DEFECT**, but in no event later than thirty (30) days after expiration of this **LIMITED WARRANTY**. Please Note that while **YOU** have thirty (30) days after this **LIMITED WARRANTY** expires to notify **US** and ninety (90) days after it expires to file for arbitration, this time period does not extend the **WARRANTY PERIOD** for **CONSTRUCTION DEFECTS**. Additionally, no investigation, inspection, testing, repair, replacement, or payment, nor any promise of same by **US** under this **LIMITED WARRANTY**, nor any dispute resolution efforts, shall extend the term of this **LIMITED WARRANTY** or extend or toll any statutes of limitations or any of **YOUR** rights or remedies.

**Step 2** **PWC** Will Arrange the Arbitration Proceeding. The arbitrator or arbitration organization will notify **YOU** of the time, date and location of the arbitration hearing. Most often the hearing will be conducted at the **HOME** or the **COMMON ELEMENTS** or some other location that is agreeable to all the parties to the dispute. In scheduling the hearing the arbitrator will set a time and date that is reasonably convenient to all the parties.

**Step 3** The Arbitration Hearing. The parties at the arbitration hearing will include the arbitrator, **YOU**, **US** and/or a third party designated by **US** or acting on **OUR** behalf. Any party to the proceeding may be represented at the hearing. All persons who are parties to the arbitration, as well as representatives and witnesses, are entitled to attend hearings.

After evidence is presented by **YOU**, **US** or **OUR** representatives, a decision will be rendered by the arbitrator. The decision is final and binding on **YOU** and **US**. The arbitrator first will determine whether any claimed or alleged **CONSTRUCTION DEFECT** exists and whether it is **OUR** responsibility. Second, if the arbitrator finds **US** responsible for a **CONSTRUCTION DEFECT**, the arbitrator will determine the scope of any repair or replacement, **OUR** cost of any such repair or replacement, and the diminution in fair market value, if any, caused by such **CONSTRUCTION DEFECT**. Based upon the arbitrator's decision, **WE** shall choose whether **WE** shall (1) repair, replace the **CONSTRUCTION DEFECT**, (2) pay to **YOU** the actual amount it would cost **US** to repair or replace the **CONSTRUCTION DEFECT** or (3) **PAY** to **YOU** an amount equal to the diminution in fair market value caused by

the **CONSTRUCTION DEFECT**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** authorized representative's sole option. In addition, the arbitrator shall render a decision resolving any other disputed matters or issues related to or arising from this **LIMITED WARRANTY**, the design or construction of the **HOME** or the **COMMON ELEMENTS** or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS**.

**Step 4** **OUR Arbitration Performance Obligations.** **WE** will comply with the arbitrator's decision no later than 60 days from the date of the award or other such date as may be specified or allowed in the decision. However, delays caused by circumstances beyond **OUR** or **OUR** representative's control shall be excused.

**Step 5.** If **YOU** believe **WE** Have Failed To Comply With The Award. **YOU** should contact **PWC** at its mailing address specified in this **LIMITED WARRANTY** if **YOU** believe **WE** have not complied with the arbitrator's award. **PWC** will mediate this dispute and if it cannot be resolved, will advise **YOU** that a compliance inspection arbitration is available to determine whether **WE** have performed adequately under the original arbitration award. **PWC** will communicate these findings to both **US** and **YOU**. If it is determined that **WE** have not properly performed, **WE** will be obligated to immediately comply.

**PWC's** sole responsibility is to administer this **LIMITED WARRANTY** on **OUR** behalf and as such **PWC** assumes no other liabilities in connection with this **LIMITED WARRANTY**. Under no condition or circumstance is **PWC** responsible for fulfilling any of **OUR** obligations under this **LIMITED WARRANTY**.

## IX. General Conditions

### A. Separation of This **LIMITED WARRANTY** From The Contract Of Sale

This **LIMITED WARRANTY** is separate and independent of the contract between **YOU** and **US** for the construction and/or sale of the **HOME** or transfer of the **COMMON ELEMENTS**. The provisions of this **LIMITED WARRANTY** shall in no way be restricted or expanded by anything contained in the construction and/or sales contract or other documents between **YOU** and **US**.

### B. Transfer to Subsequent **HOMEOWNERS**

This **LIMITED WARRANTY** will transfer to new owners of the **HOME** for the remainder of the **WARRANTY PERIOD**. **YOU** agree to provide this **LIMITED WARRANTY** to any subsequent purchaser of the **HOME** as a part of the contract of sale of the **HOME**. **OUR** duties under this **LIMITED WARRANTY** to the new **HOMEOWNER** will not exceed the limit of liability then remaining, if any.

### C. Transfer of Manufacturer's Warranties

**WE** assign to **YOU** all the manufacturer's warranties on all appliances, fixtures and items of equipment that **WE** installed in the **HOME**. Should an appliance or item of equipment malfunction **YOU** must follow the procedures set forth in that manufacturer's warranty to correct the problem. **OUR** obligation under this **LIMITED WARRANTY** is limited to the workmanlike installation of such appliances and equipment. **WE** have no obligation for appliances and equipment defined as **CONSUMER PRODUCTS**.

### D. Recovery Rights

If **WE** or a third party designated by **US** or acting on **OUR** behalf repairs, replaces or pays **YOU** as to a **CONSTRUCTION DEFECT**, or other related damage to the **HOME** or the **COMMON ELEMENTS** covered by this **LIMITED WARRANTY**, **WE** are entitled, to the extent of **OUR** payment, to take over **YOUR** related rights of recovery from other people and organizations, including but not limited to, other warranties and insurance. **YOU** have an obligation not to make it harder for **US** to enforce these rights. **YOU** agree to sign any papers, deliver them to **US**, and do anything else that is necessary to help **US** exercise **OUR** rights.

## E. General Provisions

1. If any provision of this **LIMITED WARRANTY** is determined to be unenforceable, such a determination will not affect the remaining provisions. If this **LIMITED WARRANTY** or any provision herein is determined to be unenforceable as to a **HOMEOWNERS ASSOCIATION** or a specific **HOMEOWNER**, such a determination will not affect the enforceability of this **LIMITED WARRANTY** or such provision as to any other **HOMEOWNERS ASSOCIATION** or any other **HOMEOWNER**. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this **LIMITED WARRANTY**.
2. This **LIMITED WARRANTY** and the binding arbitration process are binding on **YOU** and **US**. It is also binding on **YOUR** and **OUR** heirs, executors, administrators, successors, and assigns, subject to paragraph B of the **General Conditions**.
3. As may be appropriate, the use of the plural in this **LIMITED WARRANTY** includes the singular, and the use of one gender includes all genders.

## X. Definitions

**BUILDER** means the individual, partnership, corporation or other entity, which participates in the Warranty Program administered by the Professional Warranty Service Corporation and provides **YOU** with this **LIMITED WARRANTY**. Throughout this document the **BUILDER** is also referred to as "**WE**", "**US**" and "**OUR**".

**COMMON ELEMENTS** means the property as specified in the recorded Covenants, Conditions and Restrictions as common area and any other property as to which the **HOMEOWNERS ASSOCIATION** has standing under the law to make a claim. This may include, but is not limited to, streets, slopes, the structure or components of enclosure or other parts of the **HOME**, corridors, lobbies, vertical transportation elements, rooms, balconies, clubhouses or other spaces that are for the common use of the residents of the development in which the **HOME** is located. **SYSTEMS** serving two or more **HOMES**, and the outbuildings that contain parts of such **SYSTEMS** are also included in this definition.

**CONSEQUENTIAL OR INCIDENTAL DAMAGES** means any loss or injury other than:

- A. **OUR** cost to correct a **CONSTRUCTION DEFECT** including the correction of those surfaces, finishes and coverings damaged by the **CONSTRUCTION DEFECT**;
- B. **OUR** cost of repair or replacement of furniture, carpet or personal property damaged by the **CONSTRUCTION DEFECT**. Should replacement be necessary, **OUR** obligation is limited to replacement with items providing the same function and quality and that are readily available at the time the item is being replaced.
- C. **OUR** costs of removal or replacement in order to repair or replace a **CONSTRUCTION DEFECT**;
- D. The reasonable cost of the **HOMEOWNER'S** alternative shelter where the **HOME** is uninhabitable due to a **CONSTRUCTION DEFECT** or where the **HOME** is rendered uninhabitable by the repair of the **CONSTRUCTION DEFECT**.

Diminished fair market value is considered "**CONSEQUENTIAL OR INCIDENTAL DAMAGE**" and is excluded under this **LIMITED WARRANTY** unless **WE** elect this remedy in lieu of the repair, replacement or other payment as to a **CONSTRUCTION DEFECT**.

**CONSTRUCTION DEFECT(S)** means a flaw in the materials or workmanship used in constructing the **HOME** that:

- materially affects the structural integrity of the **HOME** or the **COMMON ELEMENTS**; or
  - has an obvious and material negative impact on the appearance of the **HOME** or the **COMMON ELEMENTS**;
- or
- jeopardizes the life or safety of the occupants; or
  - results in the inability of the **HOME** or the applicable **COMMON ELEMENTS** to provide the functions that can reasonably be expected in a residential dwelling.

**WE** and any arbitrator assigned to rule relative to a **CONSTRUCTION DEFECT** will consider both this definition and

Section III – A. (Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined) in determining the existence of a CONSTRUCTION DEFECT. A flaw is a CONSTRUCTION DEFECT if either WE or an arbitrator conducting a binding arbitration hearing declares the flaw to be a CONSTRUCTION DEFECT. OUR obvious and visible failure to complete the construction of the HOME or COMMON ELEMENTS, or any portion of the HOME or COMMON ELEMENTS, is not a CONSTRUCTION DEFECT.

CONSUMER PRODUCT means any item of equipment, appliance or other item defined as a CONSUMER PRODUCT in the Magnuson-Moss Warranty Act (15 U.S.C. §. 2301, et seq.) Examples of Consumer Products include, but are not limited to dishwasher, garbage disposal, gas or electric cook-top, range, range hood, refrigerator or refrigerator/freezer combination, gas oven, electric oven, microwave oven, trash compactor, garage door opener, clothes washer and dryer, hot water heater and thermostat.

EMERGENCY CONDITION means an event or situation that creates the imminent threat of damage to the HOME or COMMON ELEMENTS, or results in an unsafe living condition due to a CONSTRUCTION DEFECT that YOU (or as applicable, the HOMEOWNERS ASSOCIATION) become aware of at a point in time other than OUR normal business hours and YOU were unable to obtain OUR or OUR authorized representative's prior written approval to initiate repairs to stabilize the condition or prevent further damage.

HOME means a single family residence either attached or detached covered by this LIMITED WARRANTY or a condominium or cooperative unit in a multi-unit residential structure/building covered by this LIMITED WARRANTY.

HOME BUILDER'S LIMITED WARRANTY means only this express warranty document provided to YOU by US.

HOMEOWNER means the first person(s) to whom a HOME (or a unit in a multi-unit residential structure/building) is sold or for whom such HOME is constructed, for occupancy by such person or such person's family, and such person's(s) successors in title to the HOME or mortgagees in possession and any representative of such person(s) who has standing to make a claim on that person(s) behalf, including any class representative or HOMEOWNERS ASSOCIATION making a claim in a representative capacity.

HOMEOWNERS ASSOCIATION means a profit or nonprofit corporation, unincorporated association, organization, partnership, assessment district, limited liability company, limited liability partnership or other entity of any kind that owns, manages, maintains, repairs, administers, or is otherwise responsible for and has standing to make a claim as to any part of the COMMON ELEMENTS.

POLLUTANTS means all solid, liquid, or gaseous irritants or contaminants. The term includes, but is not limited to, petroleum products, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, radon gas, and waste materials, including materials to be recycled.

PWC means Professional Warranty Service Corporation, which administers the warranty program in which WE participate. As such, PWC assumes no other liabilities in connection with this LIMITED WARRANTY. The PWC mailing address is:

Professional Warranty Service Corporation  
P.O. Box 800      Annandale, VA 22003-0800

SYSTEMS means the following:

- (a) Plumbing system - gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; and water, gas and sewer services piping and their extensions to the tie-in of a public utility connection or on-site well and sewage disposal system.
- (b) Electrical system - all wiring, electrical boxes, switches, outlets, and connections up to the public utility connection.
- (c) Heating, Cooling, and Ventilation system - all duct-work; steam, water and refrigerant lines; and registers, connectors, radiation elements and dampers.

WARRANTY PERIOD shall commence on the date the title to the HOME is transferred to the first HOMEOWNER. Notwithstanding anything to the contrary set forth in this LIMITED WARRANTY, the WARRANTY PERIOD for the COMMON ELEMENTS of an individual structure/building commences on the date the title for the first HOME in the structure/building is transferred to the first HOMEOWNER or as concerns clubhouses or outbuildings or other COMMON ELEMENTS not part of the HOME the date the title to these structures is transferred to the

**HOMEOWNERS ASSOCIATION.** The dates the **WARRANTY PERIOD** begins and ends are indicated on the Limited Warranty Validation Form, which is attached to and made part of this **LIMITED WARRANTY**.

**WE, US, OUR** means the **BUILDER**.

**YOU, YOUR** means the **HOMEOWNER** and the **HOMEOWNERS ASSOCIATION**.

**SAMPLE**

**BINDING ARBITRATION REQUEST FORM**

Dear Homeowner (Homeowners Association):

Prior to requesting binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY, you should have sent your builder a clear and specific written request outlining the situation or condition that you are herein submitting to binding arbitration. If you have taken this step and believe the builder has not properly responded in accordance with the HOME BUILDER'S LIMITED WARRANTY, fill out this form and send it to PWC along with the arbitration filing fee. Be sure to attach a copy of all pertinent correspondence between you and your builder relative to the issue.

The information you need to fill out this form can be found on the Limited Warranty Validation Form. However, if you do not know the answers to any questions, write "Don't Know." Please do not leave any item blank.

Your name: \_\_\_\_\_

Address: \_\_\_\_\_

CITY

STATE

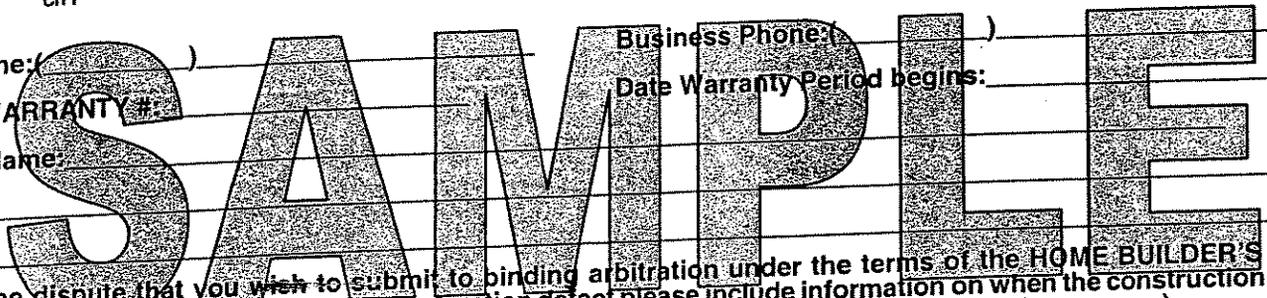
ZIP

Home Phone: (\_\_\_\_) \_\_\_\_\_ Business Phone: (\_\_\_\_) \_\_\_\_\_  
Date Warranty Period begins: \_\_\_\_\_

LIMITED WARRANTY # \_\_\_\_\_

Builder's Name: \_\_\_\_\_

Address: \_\_\_\_\_



Describe the dispute that you wish to submit to binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY. If the dispute is relative to a construction defect please include information on when the construction defect(s) first occurred or when you first noticed the construction defect. (Attach additional sheets, if necessary).

We are hereby requesting PWC to initiate a binding arbitration to resolve the dispute described herein above.

\_\_\_\_\_  
Signature Date Signature Date

INSTRUCTIONS: Photo-copy this form and complete the fields.  
Obtain the required arbitration filing fee by contacting PWC at 1-800/850-2799.  
Send this Binding Arbitration Request Form and the arbitration filing fee to:

**PROFESSIONAL WARRANTY SERVICE CORPORATION**  
P. O. BOX 800  
ANNANDALE, VIRGINIA 22003-0800

# SUBSEQUENT HOME BUYER ACKNOWLEDGMENT AND TRANSFER

Any coverage remaining under the HOME BUILDER'S LIMITED WARRANTY applicable to the home specified on the Limited Warranty Validation Form is transferred to the subsequent homeowner. Any obligations under the HOME BUILDER'S LIMITED WARRANTY to any subsequent homeowner shall not exceed the limit of liability remaining at the time of transfer, if any.

The undersigned home buyer(s) hereby acknowledge and agree:

I/we acknowledge that I have reviewed, understand and agree to all the terms of the HOME BUILDER'S LIMITED WARRANTY document (PWC Form No. 117)

I/we understand and acknowledge that Professional Warranty Service Corporation ("PWC") is not the warrantor of the HOME BUILDER'S LIMITED WARRANTY.

I/we understand that I/we am responsible for the maintenance of the home including maintenance of the grade of the land surrounding the home, and that the builder shall not be responsible for any defect of damage to the home which is the result of my/our failure to maintain the home.

I/we acknowledge and agree to the Binding Arbitration Procedure contained in the HOME BUILDER'S LIMITED WARRANTY.

Signature(s) of Subsequent Home Buyer(s): \_\_\_\_\_ Date: \_\_\_\_\_

Print above name(s): \_\_\_\_\_

Re-issuance of the Limited Warranty Validation Form with the name(s) of the new Home Buyer(s) is not necessary for you to receive the coverage remaining under the HOME BUILDER'S LIMITED WARRANTY. Upon receipt of this signed form, PWC will update its records to reflect the name(s) of the new homeowner(s). If you want PWC to issue another Limited Warranty Validation Form with your name(s) on the form, please check the box below and send a check in the amount of \$20.00 made payable to "PWC" with your submission of this form.

YES, re-issue the Limited Warranty Validation Form in the above name(s)  (check box) Initial \_\_\_\_\_

Address of Home: \_\_\_\_\_

Limited Warranty No.: \_\_\_\_\_

INSTRUCTIONS: Photo-copy this form. Provide information requested, sign, fill in Limited Warranty # in the space provided (this number is provided on the Limited Warranty Validation Form), and provide a telephone number where you can be reached (\_\_\_\_\_) \_\_\_\_\_. If you want the Limited Warranty Validation Form reissued in your name, enclose your check to PWC in the amount of \$20.00 (check box above and initial). To reach PWC by phone, call: 1-800/850-2799.

Mail this form and a photocopy of applicable settlement/closing documents indicating transfer of title, to:

PROFESSIONAL WARRANTY SERVICE CORPORATION P.O. BOX 800 ANNANDALE, VA 22003-0800

- n. Changes in the underground water table not reasonably foreseeable by the **BUILDER**;
- o. Volcanic eruption; explosion or effusion;
- p. Wind including:
  - (i). Gale force winds;
  - (ii). Hurricanes;
  - (iii). Tropical storms;
  - (iv). Tornadoes;
- q. Insects, animals or vermin;
- r. Changes of the grading of the ground by anyone other than **US** or **OUR** agents, or subcontractors which results in surface drainage towards the **HOME** or other improper drainage or permits water to pond or become trapped in localized areas against the foundation or otherwise;
- s. Changes, additions, or alterations made to the **HOME** or the **COMMON ELEMENTS** by anyone after the **WARRANTY PERIOD** begins, except those made or authorized by **US**;
- t. Any defect in material or workmanship supplied by anyone other than **US** or **OUR** agents, or subcontractors;
- u. Improper maintenance, negligence or improper use of the **HOME** or the **COMMON ELEMENTS** by **YOU** or anyone other than **US** that results in rot, dry rot, moisture, rust, mildew or any other damage;
- v. Dampness or condensation due to **YOUR** failure to maintain adequate ventilation;
- w. Damage resulting from the weight and/or performance of any type of waterbed or other furnishings which exceeds the load-bearing design of the **HOME** or the **COMMON ELEMENTS**;
- x. Normal wear and tear or normal deterioration of materials;
- y. Economic damages due to the **HOME'S** or the **COMMON ELEMENTS'** failure to meet consumer expectations.

**SAMPLE**

2. Any costs arising from, or any **CONSTRUCTION DEFECT** resulting from the actual, alleged or threatened discharge, dispersal, release or escape of **POLLUTANTS**. **WE** will not cover costs or expenses arising from the uninhabitability of the **HOME** or the **COMMON ELEMENTS** or health risk due to the proximity of **POLLUTANTS**. **WE** will not cover costs, or expenses resulting from the direction of any governmental entity to test, clean-up, remove, treat, contain or monitor **POLLUTANTS**.

- 3. Any costs arising from, or any **CONSTRUCTION DEFECT** resulting from the effects of electromagnetic fields (EMF's) or radiation;
- 4. Any damage to personal property that does not result from a **CONSTRUCTION DEFECT**;
- 5. Any "**CONSEQUENTIAL OR INCIDENTAL DAMAGES**";
- 6. Any damage to **CONSUMER PRODUCTS**;
- 7. Any **CONSTRUCTION DEFECT** as to which **YOU** have not taken timely and reasonable steps to protect and minimize damage after **WE** or **OUR** authorized representative have provided **YOU** with authorization to prevent further damage;
- 8. Any damage to the extent it is incurred after or as a result of **YOUR** failure to notify **US** in a reasonably timely manner after **YOU** have become aware or should have become aware of the **CONSTRUCTION DEFECT** or condition causing such damage.
- 9. Any costs or obligations paid or incurred by **YOU** in violation of Section VII. C. below;
- 10. Any non-conformity with local building codes, regulations or requirements that has not resulted in a **CONSTRUCTION DEFECT**. While **WE** acknowledge **OUR** responsibility to build in accordance with applicable building codes, this **LIMITED WARRANTY** does not cover building code violations in the absence of a **CONSTRUCTION DEFECT**;

## EXHIBIT V

### Section 6 -- Miscellaneous Information Not Covered Elsewhere in this Report

1. All prospective purchasers should also be aware that the private yard areas, if any are available to units in the community, are not subdivided lots, but are exclusive use areas appurtenant to the unit(s).
2. Developer may revise the specimen deed and sales contract for the community to conform with any future amendments that may be made to the Declaration and the community.
3. Each prospective purchaser should review the Condominium Map Site Plan so that they may identify easement areas benefiting the community, which easements may affect the use of the Private Yard Area, if any.
4. A "sight view triangle" is required by the County on all corner yards in order to maintain clear views of traffic at certain intersections. The County requires that all structures and landscaping within the sight view triangle be no greater than thirty (30) inches in height.
5. Buyer may landscape the easement area(s) within a Private Yard Area, if any, as long as you do not interfere with the use of the easement area(s) affecting your unit. The grantee of the easement area, whether it is MECO, the Opukea at Lahaina, or an agency of the County, will have the right to trim and keep trimmed any plants within the easement area that may be in the way. Also, you may not be permitted to construct other structures in the area depending on the nature of the easement. Such structures may require the grantee's approval. Additionally, should the grantee determine that it must remove any plants or foliage within the easement area, it may NOT be obligated to replace them, but rather will only be obligated to restore the surface of the ground within the easement area as much as the grantee determines is reasonably possible.
6. Exterior elevations, door and window locations and types may be modified from that reflected on the Condominium Map. Condominium Map depictions are representations only.
7. Act 119 passed by the State of Hawaii Legislature and effective July 1, 2004, contains important requirements you must follow before you file a lawsuit or other action for defective construction against the contractor who designed, repaired, or constructed your unit or facility. Ninety days before you file your lawsuit or other action, you must serve on the contractor a written notice of any construction conditions you allege are defective. Under the law, a contractor has the opportunity to make an offer to repair and/or pay for the defects. You are 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 your ability to file a lawsuit or other action.
8. Certain portions of the community may be used as a sales office and a railroad easement. Buyer is aware that noise and traffic from these areas may cause a disturbance. Buyer is responsible for investigating noise levels in and around the community to determine if the Buyer is satisfied with the acoustics and noise levels within the unit and within the community as a whole. Seller makes no guaranty as to these matters now or in the future.
9. The buyer should be aware that the Opukea at Lahaina community may be periodically affected by certain environmental conditions due to historical, existing and prospective

surrounding conditions and uses. Those uses include, without limitation, industrial, commercial and other non-residential uses, animal husbandry and pasture uses, and a railroad easement. Overhead and underground radio transmission wires and high voltage electric lines and facilities may be located within and around the community. Such facilities purportedly may emit electric and magnetic emissions. Aircraft may fly in the proximity of or over or close to the community. Buyers should also be aware that ongoing construction, commercial and industrial uses, plantation harvesting and farming may temporarily generate heavy dust and/or other nuisances. Pesticides and fertilizers were or may be used in the plantation harvesting and farming and may have long term effects on the land, water and environment.

10. Buyers are encouraged to find out which parking stalls are available for their use and the location of the parking stalls.

11. The height of the windows on the fourth floor units of Buildings A, B, C, D, E and F, and the second floor units in Building G is approximately 6 inches less than the lower floors in these buildings. The affected units are identified with an "\*" on the Condominium Map.

12. The Community is benefited by the Entrance Road and the Entrance and Utility Easement described in the Declaration. The use and maintenance of these items are addressed in the Limited Warranty Deed and Reservation of Easements dated January 30, 2004, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-020408 (hereinafter "Historic Deed") and are subject to the obligations and requirements specified in the Historic Deed and as described in the Declaration. The owner of adjacent property has the right to maintain the Entrance Road and the Community must share in the cost of that maintenance based on the formula set out in the Historic Deed. The Association will be billed for its share of such maintenance expense. The charges levied for maintenance of the Entrance Road shall be included in the common area maintenance expenses for the Community. The Historic Deed is attached hereto as Exhibit W.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT CONTAINED IN THE DECLARATION, BY LAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT W**  
(Limited Warranty Deed and Reservation of Easement)



R-451 STATE OF HAWAII  
 BUREAU OF CONVEYANCES  
 RECORDED  
 JAN 30, 2004 08:01 AM  
 Doc No(s) 2004-020408



/s/ CARL T. WATANABE  
 REGISTRAR OF CONVEYANCES  
 CONVEYANCE TAX: \$3100.00

20 1/1 23

LAND COURT SYSTEM

REGULAR SYSTEM

Return By: Mail (X) Pickup ( ) To:

Kahoma Development LLC  
 635 Kenolio Road  
 Kihei, Hawaii 96753

Total Pages: 20

TG: 200366427-S  
 TGE: A3-101-6198  
 BARBARA PAULO RS-1

Tax Map Key: (4) 5-011-001(2)  
 (4) 5-009-058 (2)  
 Moku South  
 (3-49529.08)

LIMITED WARRANTY DEED AND RESERVATION OF EASEMENT

THIS LIMITED WARRANTY DEED AND RESERVATION OF EASEMENT made this 30th day of January, 2004, by HAWAII OMORI CORPORATION, a Hawaii corporation, whose post office address is 1221 Honoapiilani Highway, Lahaina, Hawaii, hereinafter called the "Grantor", to KAHOMA DEVELOPMENT LLC, a Hawaii limited liability company, whose mailing address is 635 Kenolio Road, Kihei, Hawaii 96753, hereinafter called the "Grantee",

WITNESSETH THAT:

I. Conveyance:

The Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to the Grantor paid by the Grantee, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey all of the Grantor's right, title and interest in and to the real property described in EXHIBIT A attached hereto and incorporated herein ("Real Property"), subject to the reservations, restrictions easements, encumbrances and other matters noted herein and in said Exhibit A, and made a part hereof by this reference, unto the Grantee, as TENANT IN SEVERALTY, its successors and assigns, forever.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

**AND TOGETHER WITH**, a perpetual, nonexclusive easement for roadway and utility line purposes over, under, across, upon and through Easement No. 3 (50 foot wide and containing an area of 16,155 square feet), as designated in File Plan 1144 ("**Easement 3**"), reserved pursuant to that certain Limited Warranty Deed and Reservation of Easement, dated November 21, 2003 from Grantor to Lawson Limited Partnership, a Hawaii limited partnership, James M. Lawson, Trustee of the James, M. Lawson Revocable Trust dated March 20, 1986, as amended, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2003-261006 ("**Lowson Deed**") conveying title to that certain property identified as Tax Map Key No. (2) 4-5-007:033 ("**Monarch Property**"), subject however, to: (i) compliance with the terms, covenants and conditions of the Lowson Deed, as they relate to Easement 3, which terms, covenants and conditions are incorporated herein by reference, and (ii) the rights of other persons entitled to use Easement 3.

**TO HAVE AND TO HOLD** the same, as to the Real Property, together with all rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto the Grantee, subject as aforesaid, absolutely and in fee simple.

**II. Grantor's Covenants and Limited Warranty:**

The Grantor does hereby covenant and agree with the Grantee as follows:

1. The Grantor is lawfully seized and is the owner in fee simple of the real property;
2. The Grantor's title to all of the Real Property is free and clear of and from all encumbrances suffered or incurred by the Grantor except as herein mentioned, those mentioned in the **EXHIBIT A** attached hereto, and the real property taxes which have been prorated between the parties hereto; and
3. The Grantor has good right to sell and convey the Real Property as aforesaid.

**III. Grantee's Covenants, Warranties and Agreements:**

The Grantee, for itself, and its successors and assigns covenants, warrant and agrees as follows:

1. **Acknowledgement of Limitation of Access to Public Roadway And Utilities:** Grantee, for itself, its successors and assigns, admits, acknowledges and agrees that it is fully aware that the Real Property's only access to a public road is by way of Easement 3. Furthermore, Grantee, for itself, its successors and assigns have received a copy of the Lowson Deed in which Grantor reserved to itself, its successors and assigns, the right to use Easement 3. Grantee, for itself, its successors and assigns, admits, acknowledges and agrees that while Grantor is conveying to Grantee, its successors and assigns, its rights reserved in the Lowson Deed to use Easement 3 (with others similarly entitled) for vehicular and pedestrian access and public utilities purposes, to permit the development of the Real Property, Grantee for itself, it

successors and assigns admits, acknowledges and agrees, that there is no way to fully predict the requirements, limitations, approvals and conditions which may be imposed by the applicable governmental entities and which might affect the ability of Grantee, its successors and assigns to use Easement 3 for the purposes of which it was reserved, or to otherwise develop the Real Property. Therefore, with this prior knowledge and understanding and in light of its agreement accepting title to the Real Property in an "AS IS" condition, Grantee, for itself, its successors and assigns, specifically waives any and all claims it may have against Grantor arising out of or related in any way, in whole or in part, to the lack, limitation or restriction of access or utilities to the Real Property, or the lack of or inability to develop the Real Property arising out of or caused by, in whole or in part, the limitations related to use of Easement 3 as the sole access to the Real Property.

2. Obligation to Share in the Costs of Maintaining Easement 3: Grantee, for itself, and its successors and assigns, agrees to pay for its share of the costs incurred by the owner of the Monarch Property to maintain, repair, replace, upkeep and insure the roadway and roadway improvements and utilities located on, under or within Easement 3 in such condition as to satisfy all requirements imposed by the County of Maui to allow Easement 3 to be used as a private roadway sufficient to provide pedestrian and vehicular access for ingress and egress, and to provide access for any utilities needed or required to serve all lots accessed by Easement 3, including but not limited to the Real Property, the Monarch Property, and the adjacent properties including Tax Map Key Nos. (2) 4-5-007-039, (2) 4-5-007-040, and (2) 4-5-007-041 (hereinafter collectively "Losberg Properties"), the cost and expenses of which are hereafter called the "Maintenance Costs"; provided however that the Grantee understands that the Monarch Property owner's right to assess and recover from the owner of the Losberg Properties their proportionate share of such costs is not established. Grantee shall pay to the owner of the Monarch Property its proportionate annual assessment for the Maintenance Costs for Easement 3.

The formula for determining the proportionate share of the Maintenance Costs shall be based upon the ratio which the total square footage of rentable premises located on the specific Covered Property to be assessed, bears to the total aggregate square footage of all improvements on all of the Covered Properties using Easement 3 from time to time, which are subject to such assessments, at law or in equity, or the owners of which have voluntarily agreed to such assessment. The term "rentable premises" as used herein shall mean all premises of the kind which are customarily leased to or occupied by tenants in Hawaii, including, without limitation, buildings or structures (used for any purpose permitted by the applicable zoning), including covered or uncovered paved areas, such as parking lots regardless of whether they are actually rented to tenants or occupied by the owners. Provided further, that each of the premises used for residential purposes shall be assessed at one-fifth (1/5) or twenty percent (20%) of the rate assessed for premises used for all other purposes. Grantee for itself, its successors and assigns, as the owners of the Real Property, agree to pay for their respective proportionate share of the Maintenance Costs calculated in accordance with the formula set forth above.

3. Obligation to Provide Reasonable Advance Notice and To Consult With Owner of Monarch Property Before Implementing Improvements to Easement 3: Separate and apart from and in addition to the normal maintenance which the owner of the Monarch Property may perform on Easement 3, Grantee, its successors and assigns have the right to construct or

reconstruct any improvements on, under or within Easement 3, or in any way improve Easement 3, for their own use, at the sole cost and expense of the Grantee, and Grantee's successors and assigns. However, in such case, Grantee, for itself, its successors and assigns, hereby covenants, warrants and agrees that in the event Grantee, or its successors and assigns, elects to initiate and carry out such improvements of Easement 3, Grantee shall provide the owner of the Monarch Property, or its successors and assigns with reasonable advance notice of such plans and shall meet and consult with the owner of the Monarch Property, its successors and assigns to advise them of such plans in order to reduce, to the extent reasonably possible, the disruption to the use of Easement 3 caused by such construction, provided however that, because Easement 3 is the only legal access to the Monarch Property and the Losberg Properties, Grantee's activities shall at no time completely block access to such properties or interrupt utilities without the prior written consent by the affected parties. Grantee, its successors and assigns shall obtain the necessary bonds needed to ensure that the construction of improvements will be completed lien free. Notwithstanding anything to the contrary, Grantee, its successors and assigns shall not suffer any use of Easement 3 not otherwise permitted by law.

4. Obligation to Cooperate and Participate in Dedication of Utility Easements to Appropriate Public Utilities: In addition to and not in lieu of the obligations provided for hereinabove, Grantee, for itself, its successors and assigns, may at Grantee's cost, create, dedicate and convey, within Easement 3 any utility easement which may be required by any public utility for the purpose of providing utility service, of any kind, to the Real Property; provided that such utility easement(s) shall not interfere with the rights of others entitled to use Easement 3; and provided further that Grantee, its successors and assigns shall be responsible for any and all costs necessary to install and construct such utility improvements within Easement 3 and for any maintenance of its own utility facilities within such utility easement area, to the extent not assumed or maintained by the appropriate public utility.

#### IV. Restrictive Use of Real Property

The Grantee acknowledges and agrees that the Real Property shall be subject to those certain restrictions set forth in (i) section 12 of that certain unrecorded Lease by and between Safeway Stores, Incorporated and Lahaina Cannery Development Corp. dated September 7, 1984 (the "Safeway Lease") which affects, among others, the Real Property, as such restrictions are set forth in EXHIBIT B-1, and (ii) section 12 of that certain recorded Lease between Longs Drug Stores, Inc. and Lahaina Development Corp. dated June 22, 1984, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 19078, Page 421, as amended (the "Longs Lease"), which also affect the Real Property, as such restrictions are set forth in EXHIBIT B-2. The Real Property is encumbered by restrictions contained in the foregoing leases for the Lahaina Cannery Mall (located makai or seaward of the Real Property on lands more particularly designated as Tax Map Key Nos. (2) 4-5-011:002 and (2) 4-5-011:004) with respect to the types of uses to which any improvements made to the Real Property may be put. Such restrictive covenants shall run with the Real Property, but only: (i) during the terms of the Safeway Lease and the Longs Lease; or (ii) for the time period(s) in which the restrictions are contained in the Safeway Lease and Longs Lease, respectively, whichever is shorter.

**V. Limitation of Liability and Release:**

The Real Property is being conveyed "As Is". Except as otherwise provided in this Limited Warranty Deed, Grantee hereby acknowledges and agrees that it is relying solely upon any title insurance it is obtaining with respect to Grantee's title to the real property and solely upon the inspections conducted by Grantee and its agents as to the physical condition, zoning and permitted uses of the real property. Except as otherwise provided in this Limited Warranty Deed, Grantee does hereby release Grantor, its successors and assigns, and their respective directors, officers, employees and agents, from any and all claims, liabilities, costs and expenses arising out of or connected with the title to the Real Property, the physical condition of the Real Property and the compliance of the Real Property with applicable law, ordinance, rule or regulation.

**VI. Miscellaneous:**

The terms "Grantor" and/or "Grantee", when and if used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporations, and each of their respective successors, heirs, executors, administrators and assigns, according to the context thereof. If these presents shall be signed by two or more Grantors, by two more Grantees, all covenants of such parties shall for all purposes be joint and several.

**VII. Counterpart Signatures:**

This Limited Warranty Deed may be executed in counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery. All of such counterparts together shall constitute one and the same document, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this document, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have duly executed these presents on the day and year first above mentioned.

HAWAII OMORI CORPORATION, a Hawaii corporation

By:   
Name: *Selima Kitehori*  
Its: *ETP*

"Grantor"

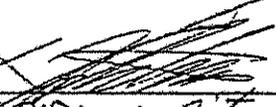
KAHOMA DEVELOPMENT LLC, a Hawaii limited liability company

\_\_\_\_\_  
Name:  
Its:

"Grantee"

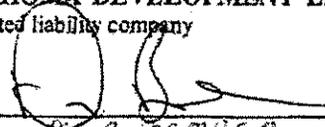
IN WITNESS WHEREOF, the parties hereto have duly executed these presents on the day and year first above mentioned.

~~HAWAII OMORI CORPORATION, a Hawaii corporation~~

~~By:   
Name: Susan M. Titadoni  
Its: EOP~~

~~"Grantor"~~

KAHOMA DEVELOPMENT LLC, a Hawaii limited liability company

  
Name: DWAYNE PETELLE  
Its: KAHOA, LLC  
"Grantee" INGRMPT

STATE OF HAWAII )  
 ) SS:  
COUNTY OF MAUI )

On this 20th day of January 2004, before me personally appeared Susumu Nitadori, to me known, who being by me duly sworn, did say that he is the Exec. Vice President of HAWAII OMORI CORPORATION, a Hawaii corporation; that the instrument was signed on behalf of said corporation by authority of its Board of Directors; and said officer acknowledged the instrument to be the free act and deed of said corporation

LS

Tammy C. Yonahara  
Name of Notary: Tammy C. Yonahara  
Notary Public, State of Hawaii  
My commission expires: 7/12/06

STATE OF HAWAII )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of January 2004, before me personally appeared \_\_\_\_\_, to me known, who being by me duly sworn, did say that \_\_\_\_\_ is the \_\_\_\_\_ of KAHOMA DEVELOPMENT LLC, a Hawaii limited liability company, and acknowledged that \_\_\_\_\_ executed the foregoing instrument as the free act and deed of said limited liability company.

\_\_\_\_\_  
Name of Notary:  
Notary Public, State of Hawaii  
My commission expires:

STATE OF HAWAII )  
 ) SS:  
COUNTY OF MAUI )

On this 20th day of January 2004, before me personally appeared Susumu Nishiori to me known, who being by me duly sworn, did say that he is the Exec. Vice President of HAWAII OMORI CORPORATION, a Hawaii corporation; that the instrument was signed on behalf of said corporation by authority of its Board of Directors; and said officer acknowledged the instrument to be the free act and deed of said corporation

L.S

Tammy C. Yonahara

Name of Notary: Tammy C. Yonahara  
Notary Public, State of Hawaii  
My commission expires: 7/12/06

STATE OF HAWAII )  
 ) SS:  
COUNTY OF MAUI )

On this 27th day of January 2004, before me personally appeared DUANE BETSIG to me known, who being by me duly sworn, did say that he is the OWNER-MANAGER of KAHOMA DEVELOPMENT LLC, a Hawaii limited liability company, and acknowledged that he executed the foregoing instrument as the free act and deed of said limited liability company.

\* of Aaron LLC who is a Managing Member of

Margaret A. Joynson  
Name of Notary: MARGARET A. JOYNSON  
Notary Public, State of Hawaii  
My commission expires: 10.16.03

Tax Map Key: 4-5-011-001 (2)  
Tax Map Key: 4-5-009-058 (2)  
(Title Guaranty)  
(346473.02)

#### EXHIBIT A

All of that certain parcel of land (being portions of the land described in and covered by Royal Patent Number 5691, Land Commission Award Number 3702, Apana 3 to D. Malo, Royal Patent Number 5604, Land Commission Award Number 3421-B, Apana 1 to Kaaa, Royal Patent Number 5632, Land Commission Award Number 520, Part 2 to Daniel II, Royal Patent Number 1888, Land Commission Award Number 9795-G, Apana 1 to Ua, Royal Patent Number 1748, Land Commission Award Number 9795-F, Apana 1 and 2 to Kaunauma, Royal Patent Number 5675, Land Commission Award Number 10612, Apana 1 to Palau, Royal Patent Number 1871, Land Commission Award Number 5116, Apana 2 to Samuela Kanae, Parcel E of Land Patent Grant Number S-15,770 to County of Maui (being Kahoma Stream Remnant 7), Royal Patent Number 3453, Land Commission Award Number 6760-B, Apana 4 to Hanalei, Royal Patent Number 5666, Land Commission Award Number 4760-B, Apana 1 to Lelehu and all of Royal Patent Number 1181, Land Commission Award Number 468, Apana 1 to Mahana) situate, lying and being on the east side of Honoapiilani Highway, Federal Aid Project No. F-031-1(1) and south side of Kahoma Stream Flood Control Project at Lahaina, District of Lahaina, Island and County of Maui, State of Hawaii, being PARCEL 1-B-1, bearing Tax Key Designation (2) 4-5-009-058 and 4-5-011-portion 001, described as follows:

Beginning at the northwest corner of this parcel of land on the east side of Honoapiilani Highway, Federal Aid Project No. F-031-1(1), the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAINA" being 4,564.83 feet north and 4,665.08 feet west, thence running by azimuths measured clockwise from true South:

1. 282° 18' 00" 7.03 feet along Kahoma Stream Remnant Parcel 6-A, Honoapiilani Highway Widening Subdivision along the remainder of Royal Patent 5691, Land Commission Award 3702, Apana 3 to D. Malo;
2. 192° 18' 00" 40.00 feet along Kahoma Stream Remnant Parcels 6-A and 6-B, Honoapiilani Highway Widening Subdivision, along the remainders of Royal Patent 5691, Land Commission Award 3702, Apana 3 to D. Malo and Kahoma Parcel E of Land Patent Grant Number S-15,770 to the County of Maui;
3. 275° 10' 30" 201.55 feet along Kahoma Stream Remnant Parcel 6-B and Parcel 6-A, Honoapiilani Highway Widening Subdivision, along the remainders of Kahoma Parcel E of Land Patent Grant Number S-15,770 to the County of Maui, Royal Patent 3453, Land Commission Award 6760-B, Apana 4 to Hanalei and Royal Patent 5666, Land Commission Award 4760, Apana 1 to Lelehu;
4. 282° 18' 00" 500.00 feet along Parcel 6-A, Honoapiilani Highway Widening

Subdivision, along the remainders of Royal Patent 5666, Land Commission Award 4760, Apana 1 to Lelehu and Royal Patent 1726, Land Commission Award 6849, Apana 2 to Nahale;

5.	300°	18'	15"	210.30	feet along Parcel 6-A, Honoapiilani Highway Widening Subdivision, along the remainder of Royal Patent 5666, Land Commission Award 4760, Apana 1 to Lelehu;
6.	12°	18'	00"	10.00	feet along Parcel 6-A, Honoapiilani Highway Widening Subdivision, along the remainder of Royal Patent 5666, Land Commission Award 4760, Apana 1 to Lelehu;
7.	282°	18'	00"	24.49	feet along Parcel 6-A, Honoapiilani Highway Widening Subdivision, along the remainder of Royal Patent 5666, Land Commission Award 4760, Apana 1 to Lelehu;
8.	1°	44'	00"	136.11	feet along Parcel 5-A, Kahoma Stream Flood Control Project, along the remainder of Royal Patent 5666, Land Commission Award 4760, Apana 1 to Lelehu;
9.	2°	13'	00"	42.72	feet along Parcel 5-A, Kahoma Stream Flood Control Project, along Kahoma Stream Parcel F of Land Patent Grant S-15,770 to County of Maui;
10.	1°	44'	00"	30.71	feet along Lot 1-A, Pioneer Mill Subdivision, along the remainder of Royal Patent 1871, Land Commission Award 5116, Apana 2 to Samuela Kanae;
					Thence along Lot 1-A, Pioneer Mill Subdivision, along the remainder of Royal Patent 1871, Land Commission Award 5116, Apana 2 to Samuela Kanae, on a curve to the left with a radius of 376.04 feet, the chord azimuth and distance being:
11.	350°	30'	42"	146.36	feet;
12.	126°	50'	00"	77.91	feet along Lots 25, 16 and 18, Willi Ko Subdivision, File Plan 1144, along the remainder of Royal Patent 1871, Land Commission Award 5116, Apana 2 to Samuela Kanae;
13.	112°	50'	00"	177.31	feet along Lots 18 and 19, Willi Ko Subdivision, File Plan 1144, along the remainder of Royal Patent 1871, Land Commission Award 5116, Apana 2 to Samuela Kanae;
14.	115°	40'	00"	294.00	feet along Lots 19, 20-A-1B and 20-A-1A, Willi Ko

- Subdivision, along the remainders of Royal Patent 1871, Land Commission Award 5116, Apana 2 to Samuela Kanae, Royal Patent 1748, Land Commission Award 9795-F, Apana 1 to Kaumauma and Royal Patent 5675, Land Commission Award 10612, Apana 1 to Palau;
15. 96° 10' 00" 213.13 feet along Lots 20-A-1A, 20-A-2, and 20-B, Wili Ko Subdivision, along the remainders of Royal Patent 5675, Land Commission Award 10612, Apana 1 to Palau, Royal Patent 1746, Land Commission Award 9795-F, Apana 2 to Kaumauma and Royal Patent 1888, Land Commission Award 9795-G, Apana 1 to Ua;
16. 66° 25' 00" 117.84 feet along Lot 20-B, Wili Ko Subdivision, along the remainder of Royal Patent 1888, Land Commission Award 9795-G, Apana 1 to Ua;
- Thence along the east side of Honoapiilani Highway, Federal Aid Project No. F-031-1 (1), on a curve to the right with a radius of 1864.86 feet, the chord azimuth and distance being:
17. 160° 22' 25" 257.56 feet;
18. 164° 20' 00" 104.69 feet along the east side of Honoapiilani Highway, Federal Aid Project No. F-031-1 (1), to the point of beginning and containing an area of 6.514 acres, more or less.

Said above described parcel of land having been acquired by **HAWAII OMORI CORPORATION**, a Hawaii corporation, by the following:

1. By that certain Deed of Pioneer Mill Company, Limited, a Hawaii corporation, dated June 24, 1985, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 19170, at Page 364;
2. By Exchange Deed of County of Maui, a political subdivision of the State of Hawaii, dated February 17, 1994, recorded as aforesaid as Document No. 94-083151; and
3. By that certain Deed of Pioneer Mill Company, Limited, a Hawaii corporation, dated September 27, 1982, recorded as aforesaid in Liber 16593, at Page 456.

Together with a perpetual nonexclusive easement for roadway and utility line purposes over, under, across, upon and through Easement 3 (50 feet wide) as designated on File Plan No. 1144, as reserved by Limited Warranty Deed and Reservation of Easement dated November 21, 2003, subject to the terms, covenants, and conditions contained therein.

**SUBJECT, HOWEVER,** to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
  2. Restriction of vehicle access along the westerly boundary of the land described herein (except where permitted) as set forth in Deed dated February 12, 1957, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 3231, at Page 411.
  3. Lease in favor of Maui Electric Company, Limited and Hawaiian Telephone Company (now known as Verizon Hawaii, Inc.) dated October 13, 1967, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 5893, at Page 226; leasing and demising rights-of-way, each twenty-five (25) feet in width, over, across and under all lands owned and held by Pioneer Mill Company, Limited, situate in the District of Lahaina and upon all other such lands which Pioneer Mill Company, Limited, may hereafter acquire, for a term of thirty-five (35) years from the date hereof, and thereafter from year to year until terminated.
  4. A right in the nature of an easement and right of way in favor of Railroads of Hawaii, Inc., a Hawaii corporation, more particularly set forth in that certain unrecorded Lease dated May 23, 1973, a short form of which is dated June 5, 1978, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 12938, at Page 191, for the purposes of constructing and maintaining track, road switches and necessary equipment for the operation of a railroad as described in Paragraph 14 of Article IV of said Lease.
  5. Terms, provisions, covenants, conditions and reservations contained in that certain Subdivision Agreement (Large Lots) dated December 15, 1980, by and between Pioneer Mill Company, Limited, a Hawaii corporation, and County of Maui, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 15229, at Page 224.
  6. Terms, provisions, covenants, conditions and reservations contained in that certain Subdivision Agreement (Three Lots or Less) dated December 15, 1980, by and between Pioneer Mill Company, Limited, a Hawaii corporation, and County of Maui, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 15229, at Page 229.
  7. Encroachments of improvements from adjoining properties, as follows:
    - (A) Encroachment of an existing air conditioner located on adjoining land, Tax Key (2) 4-5-007-031.
    - (B) Encroachment of corner of building located on adjoining land, Tax Key (2) 4-5-007-032.
    - (C) Encroachment of building located on adjoining land, Tax Key (2) 4-5-007-032.
- (Note: Above three (3) encroachments are depicted on survey prepared by Warren A. Suzuki, Registered Professional Surveyor, for Amfac, Inc., dated September 16, 1983.)
8. Terms, provisions, covenants, conditions and reservations contained in that certain Deed dated September 27, 1982, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 16593, at Page 456.
  9. License Agreement dated September 6, 1985, by and between HAWAII OMORI

CORPORATION, a Hawaii corporation, as "Licensor" and Lahaina Storage Depot, a registered Hawaii general partnership, as "Licensee", recorded in the Bureau of Conveyances of the State of Hawaii in Liber 18921, at Page 653; regarding Exclusive right to use portion of Licensor's property on the south portion on which Licensee's building encroaches.

10. Grant dated June 10, 1987, in favor of Maui Electric Company, Limited and Hawaiian Telephone Company, now known as Verizon Hawaii, Inc., recorded in the Bureau of Conveyances of the State of Hawaii in Liber 21057, at Page 225; granting a perpetual right and easement for utility purposes as shown on map attached thereto.

11. Terms, provisions, covenants, conditions and reservations contained in that certain Section VII(c) Agreement for West Maui Areas dated December 20, 1989, by and between HAWAII OMORI CORPORATION, a Hawaii corporation, and the Department of Water Supply of the County of Maui, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 90-029937; regarding special rule establishing a source assessment fee, allocating water usage on an annual basis and regulating the approval of subdivision applications.

12. Terms, provisions, covenants, conditions and reservations contained in that certain Acknowledgement Regarding Lahaina Wastewater Treatment Capacity dated August 23, 1990, between HAWAII OMORI CORPORATION, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 90-139192, regarding connection to the County's sewer system.

13. Grant dated August 18, 1992, in favor of Maui Electric Company, Limited, a Hawaii corporation and GTE Hawaiian Telephone Company, Incorporated, a Hawaii corporation, now known as Verizon Hawaii, Inc., recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 92-175343, granting an electrical and telephone easement over and across portions of Parcels 1-A-1 and 6-A, Kahoma Stream Remnant Parcel 6-A and Lot 1-B-1-A of Honoapiilani Highway Subdivision (Vicinity of Kenui Street to Kapunakea Street), and Kahoma Stream Remnant Parcel 7 of Kahoma Stream Flood Control Project, described as follows:

All of that certain parcel of land being EASEMENT 1 (Electrical and Telephone Easement), at Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street); being portions of Royal Patent 1113, Land Commission Award 486-C:1 to Kaei for Uluoa; Grant 1891:6 to D. Baldwin; Royal Patent 4509, Land Commission Award 10532:2 to Naolulo; Grant 1891:3 to D. Baldwin; Royal Patent 5579, Land Commission Award 2320:2 to Moakaka for Mere; Grant 1891:2 to D. Baldwin; Royal Patent 5664, Land Commission Award 286:3 to Keawa (Ekeia); Royal Patent 1839, Land Commission Award 3702 and 6659:3 to D. Malo; Territory of Hawaii to Pioneer Mill Company; Royal Patent 1726, Land Commission Award 6849:2 to Nahale; Royal Patent 3453, Land Commission Award 6760-B:4 to Hanalei; Royal Patent 5691, Land Commission Award 3702:3 to D. Malo; Royal Patent 5604, Land Commission Award 3421-B:1 to Kaaa; Royal Patent 5632, Land Commission Award 520, Part 2 to Daniela II; Royal Patent 1888, Land Commission Award 9795-G:1 to Ua; and old Kahoma Stream, situate at Kapunakea and Moulili, Lahaina, Maui, Hawaii and being more particularly bounded and described as follows:

Beginning at a point at the northwesterly corner of this easement, being also the northwesterly corner of Parcel 1-A-1 of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street), the coordinates of said point of beginning referred to Government Survey Triangulation

Station "LAINA" being 3,251.47 feet south and 5,035.51 feet west and running by azimuths measured clockwise from true South:

- |    |      |         |        |  |
|----|------|---------|--------|--|
| 1. | 227° | 51'     | 2.62   | feet over and across a portion of Royal Patent 1113, Land Commission Award 486-C:1 to Kaei for Uluoa, being also along Parcel 1-A-2 (Highway Widening Lot) of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);  |
| 2. | 342° | 46' 17" | 128.98 | feet over and across portions of Royal Patent 1113, Land Commission Award 486-C:1 to Kaei for Uluoa; Royal Patent 4509, Land Commission Award 10532:2 to Naolulo; and Grant 1891:6 to D. Baldwin, being also over and across a portion of Parcel 1-A-1 of the Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);  |
| 3. | 235° | 30'     | 23.44  | feet over and across a portion of Grant 1891:6 to D. Baldwin, being also over and across a portion of Parcel 1-A-1 of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);  |
| 4. | 325° | 30'     | 5.00   | feet over and across same;   |
| 5. | 55°  | 30'     | 25.00  | feet over and across portions of Grant 1891:6 to D. Baldwin and Royal Patent 4509, Land Commission Award 10532:2 to Naolulo, being also over and across a portion of Parcel 1-A-1 of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);   |
| 6. | 342° | 46' 17" | 749.50 | feet over and across portions of Royal Patent 4509, Land Commission Award 10532:2 to Naolulo; Grant 1891:3 to D. Baldwin; Royal Patent 5579, Land Commission Award 2320:2 to Moakaka for Mere; Grant 1891:2 to D. Baldwin; Royal Patent 5664, Land Commission Award 286:3 to Keawa (Ekela); and Royal Patent 1839, Land Commission Award 3702 and 6659:3 to D. Malo, being also over and across a portion of Parcel 1-A-1 of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street); |
| 7. | 253° | 55' 44" | 24.05  | feet over and across portions of Royal Patent 1839, Land Commission Award 3702 and 6659:3 to D. Malo, being also over and across a portion of Parcel 1-A-1 of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);  |

8.	343°	55'	44"	5.00	feet over and across same;
9.	73°	55'	44"	24.05	feet over and across same;
10.	345°	05'	10"	637.12	feet over and across portions of Royal Patent 1839, Land Commission Award 3702 and 6659:3 to D. Malo; Territory of Hawaii to Pioneer Mill Company; Royal Patent 1726, Land Commission Award 6849:2 to Nahale; Royal Patent 3453, Land Commission Award 6760-B:4 to Hanalei; and old Kahoma Stream, being also over and across portions of Parcels 1-A-1 and 6-A, and Kahoma Stream Remnant Parcel 6-A of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street), and Kahoma Stream Remnant Parcel 7 of Kahoma Stream Flood Control Project;
11.	342°	04'	38"	200.05	feet over and across portions of old Kahoma Stream, Royal Patent 5604, Land Commission Award 3421-B:1 to Kaaa; and Royal Patent 1888, Land Commission Award 9795-G:1 to Ua, being also over and across portions of Kahoma Stream Remnant Parcel 7 and Parcel 1-B-1-A of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);
12.	66°	25'		6.25	feet over and across a portion of Royal Patent 1888, Land Commission Award 9795-G:1 to Ua, being also along Lot 20-B of Wili Ko Subdivision (File Plan 1144);
13.					Thence over and across portions of Royal Patent 1888, Land Commission Award 9795-G:1 to Ua; Royal Patent 5632, Land Commission Award 520, Part 2 to Daniela Ii; Royal Patent 5604, Land Commission Award 3421-B:1 to Kaaa; and Royal Patent 5691, Land Commission Award 3702:3 to D. Malo, being also along Lot 1-B-1-B (Highway Widening Lot) of the Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street) on a curve to the right with the point of curvature azimuth to the radial point being: 245° 24' 50" and the point of tangency azimuth from the radial point being: 74° 20' having a radius of 1864.86 feet, the chord azimuth and distance being:
	160°	22'	25"	257.56	feet;
14.	164°	20'		104.69	feet over and across a portion of Royal Patent 5691, Land Commission Award 3702:3 to D. Malo, being also along

Lot 1-B-1-B (Highway Widening Lot) of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);

15.	282°	18'	7.03	feet over and across a portion of Royal Patent 5691, Land Commission Award 3702:3 to D. Malo, being also along Kahoma Stream Right-of-Way Parcel 11 of Kahoma Stream Flood Control Project;
16.	192°	18'	14.73	feet over and across same;
17.	156°	38'	41.83	feet along Royal Patent 5691, Land Commission Award 3702:3 to D. Malo, being also along Kahoma Stream Right-of-Way Parcel 11 of Kahoma Stream Flood Control Project;
18.	164°	14' 10"	80.95	feet over and across a portion of old Kahoma Stream, being also along Kahoma Stream Remnant Parcel 6-B (Highway Widening Lot) of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);
19.	167°	31' 41"	154.03	feet over and across portions of Royal Patent 5691, Land Commission Award 3702:3 to D. Malo; old Kahoma Stream; Royal Patent 3453, Land Commission Award 6760-B:4 to Hanalei; and Territory of Hawaii to Pioneer Mill Company, being also along Parcel 6-B of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);
20.	167°	11' 45"	60.97	feet over and across a portion of Territory of Hawaii to Pioneer Mill Company, being also along Parcel 1-A-2 (Highway Widening Lot) of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);
21.	164°	20'	250.00	feet over and across portion of Territory of Hawaii to Pioneer Mill Company; Royal Patent 1839, Land Commission Award 3702 and 6659:3 to D. Malo; and Royal Patent 5664, Land Commission Award 286:3 to Keawa (Ekela), being also along Parcel 1-A-2 (Highway Widening Lot) of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);
22.	159°	05' 45"	120.50	feet over and across portions of Royal Patent 5664, Land Commission Award 286:3 to Keawa (Ekela) and Grant 1891:2 to D. Baldwin, being also along Parcel 1-A-2

(Highway Widening Lot) of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);

- |     |      |         |        |  |
|-----|------|---------|--------|--|
| 23. | 164° | 20'     | 60.00  | feet over and across a portion of Grant 1891:2 to D. Baldwin, being also along Parcel 1-A-2 (Highway Widening Lot) of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);  |
| 24. | 163° | 04' 23" | 235.06 | feet over and across same;   |
| 25. | 163° | 17' 21" | 265.04 | feet over and across portions of Grant 1891:2 to D. Baldwin; Royal Patent 5579, Land Commission Award 2320:2 to Moakaka for Mere; Grant 1891:3 to D. Baldwin; Royal Patent 4509, Land Commission Award 10532:2 to Naolulo; and Grant 1891:6 to D. Baldwin, being also along Parcel 1-A-2 (Highway Widening Lot) of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street and Kapunakea Street);                            |
| 26. | 164° | 20'     | 86.61  | feet over and across portions of Grant 1891:6 to D. Baldwin; Royal Patent 4509, Land Commission Award 10532:2 to Naolulo; and Royal Patent 1113, Land Commission Award 486-C:1 to Kaei for Uluoa, being also along Parcel 1-A-2 (Highway Widening Lot) of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street) to the point of beginning and containing an area of 14,671 square feet, more or less. |

14. Embankment Easement 2 of the Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street), in favor of the State of Hawaii over and across a portion of Parcel 1-B-1-A and being more particularly described as follows:

All of that certain parcel of land (being portion of the lands described in and covered by Royal Patent Number 5691, Land Commission Award Number 3702, Apana 3 to D. Malo; Royal Patent Number 5604, Land Commission Award Number 3421-B, Apana 1 to Kaa; Royal Patent Number 5632, Land Commission Award Number 520, Part 2 to Daniela li; and Royal Patent Number 1888, Land Commission Award Number 9795-G, Apana 1 to Ua) situate, lying and being at Kapunakea and Moalii, District of Lahaina, Island and County of Maui, State of Hawaii, being Easement 2 (Embankment Easement) of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street), in favor of the State of Hawaii over and across a portion of Parcel 1-B-1-A and being more particularly described as follows:

Beginning at a point at the northwesterly corner of this easement, being also the northwesterly corner of Lot 1-B-1-A of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street), the coordinates of said point of beginning referred to Government Survey Triangulation

Station "LAINA" being 4,563.69 feet south and 4,665.41 feet west and running by azimuths measured clockwise from true South:

1.     282°     18'             7.03    feet over and across portions of Royal Patent 5691, Land Commission Award 3702:3 to D. Malo, being also along Kahoma Stream Right-of-Way Parcel 11 of Kahoma Stream Flood Control Project;
2.     192°     18'             8.24    feet over and across same;
3.     344°     12'    52"        144.54   feet over and across portions of Royal Patent 5691, Land Commission Award 3702:3 to D. Malo, being also over and across Lot 1-B-1-A of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);
4.                                    Thence along old Kahoma Stream, being also along Kahoma Stream Remnant Parcel 7 of Kahoma Stream Flood Control Project on a curve to the left with the point of curvature azimuth to the radial point being: 260° 03' 20", and the point of tangency azimuth from the radial point being: 55° 18' 56", having a radius of 150.00 feet, the chord azimuth and distance being:  
  
          337°     41'    08"        64.27    feet;
5.     342°     04'    38"        156.50   feet over and across portions of Royal Patent 5604, Land Commission Award 3421-B:1 to Kaaa and Royal Patent 1888, Land Commission Award 9795-G:1 to Ua, being also over and across a portion of Lot 1-B-1-A of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street);
6.     66°      25'             6.25    feet over and across a portion of Royal Patent 1888, Land Commission Award 9795-G:1 to Ua, being also along Lot 20-B of Wili Ko Subdivision (File Plan 1144);
7.                                    Thence over and across portions of Royal Patent 1888, Land Commission Award 9795-G:1 to Ua; Royal Patent 5632, Land Commission Award 520, Part 2 to Daniela II; Royal Patent 5604, Land Commission Award 3421-B:1 to Kaaa; and Royal Patent 5691, Land Commission Award 3702:3 to D. Malo, being also along Lot 1-B-1-B of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street) on a curve to the right with the point of curvature azimuth to the radial point being: 246° 24' 50", and the point of tangency azimuth

from the radial point being:  $74^{\circ} 20'$ , having a radius of 1864.86 feet, the chord azimuth and distance being:

- |    |      |     |     |        |  |
|----|------|-----|-----|--------|--|
|    | 160° | 22' | 25" | 257.56 | feet:  |
| 8. | 164° | 20' |     | 104.69 | feet over and across a portion of Royal Patent 5691, Land Commission Award 3702:3 to D. Malo, being also along Lot 1-B-1-B (Highway Widening Lot) of Honoapiilani Highway Widening Subdivision (Vicinity of Kenui Street to Kapunakea Street) to the point of beginning and containing an area of 3,944 square feet, more or less. |

15. Grant dated April 19, 2002, in favor of the State of Hawaii, by its Director of Transportation, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-070423; granting non-exclusive easement to excavate, grade, grass, landscape and/or maintain Easement 2, Embankment Easement, area: 3,944 square feet (besides other easements) described in the preceding exception.

16. Terms, provisions, covenants, conditions and reservations contained in that certain Modification of Subdivision Requirements Agreement dated April 20, 1993, by and between HAWAII OMORI CORPORATION, a Hawaii corporation, and the Board of Water Supply of the County of Maui, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-080970.

17. Terms, provisions, covenants, conditions and reservations contained in that certain Land Patent Grant Number S-15,770 dated June 23, 1992.

The foregoing includes, but is not limited to, matters relating to the condition that access will not be permitted into and from the Honoapiilani Highway, Federal Aid Project No. F-031-1(1), over and across Course No. 31 of Parcel E, etc.

By letter dated December 1, 2003, the conditions regarding reverter of the land to the State of Hawaii and revenue generation in favor of the County of Maui, do not affect private landowners.

18. Terms, provisions, covenants, conditions and reservations contained in that certain Declaration of Restrictive Covenants dated December 26, 2003, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2003-286553.