

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

CONDOMINIUM PROJECT NAME	SEA RANCH COTTAGES AT HANA-MAUI
Address	5031 Hana Highway, Hana, Hawaii 96713
Registration Number	6145 (conversion)
Effective Date of Report	April 13, 2007
Developer	Ohana Hotel Company, LLC, a Delaware limited liability company

**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.]

- (1) Flood Zone. The Project is not located in flood zone.
- (2) Special Management Area Permit. The Project is located in a special management area. A Special Management Area Permit (85-SMA-30) was issued by the County of Maui on February 5, 1986. A copy of the SMA Permit is attached as Exhibit V. Based on the certificates of occupancy which were subsequently issued by the County of Maui, the Developer believes the Project was built pursuant to and in accordance with the SMA Permit. Any future improvements to the Project must be in compliance with applicable rules and regulations of the County of Maui relating to special management areas and additional SMA permits may be required for future improvements. If any purchaser has questions concerning the SMA Permit (85-SMA-30), he or she may contact the Planning Department of the County of Maui.
- (3) Completion Dates of the Project. The Project was originally constructed pursuant to building permits that were issued by the County of Maui in 1986. See Private Water Agreements more particularly described in Exhibit H to this Public Report. The improvements in the Project were completed in 1987 through 1989. Given the dates of completion, the Seller is not required to give purchasers any disclosure regarding lead based paint.
- (4) Hana Ranch Easements. The land upon which the Project is located, as well as other property owned by the Developer, is benefited by a series of easement agreements (the "Easement Agreements") pursuant to which hotel guests of the Hotel Hana-Maui may use designated areas located on property owned by Hana Acquisition Partners, LLC (an entity that is unrelated to the Developer) for horseback riding tours operated by Developer, and for walking and jogging. The Easement Agreements are more particularly described in the legal description attached to the Condominium Declaration and in Exhibit H to this Public Report. With the exception of the Lehoula Beach Easement, described in Exhibit H, Item N, the Easement Agreements define hotel guests as (i) any person staying at the Hotel Hana-Maui, (ii) any affiliate of the Developer, and (iii) any person who owns an interest in the land benefited by the Easement Agreements, including but not limited to the owner of any condominium unit, timeshare unit or private club membership. In the Condominium Declaration, Developer has reserved the right as the Developer of the Project to amend or modify the Easement Agreements in Developer's sole discretion and without the consent of any other Owner. By acquiring an interest in the Project, each Purchaser agrees and approves of the Developer's exercise of this reserved right and the power of attorney each Purchaser gives to the Developer to deal with the Easement Agreements pursuant to the Condominium Declaration. Common Expenses of the Project shall include any maintenance fees or costs associated with the Easement Agreements. The easement areas identified in the Easement Agreements may be relocated by Hana Acquisition Partners subject to certain conditions set forth in the Easement Agreements. The Lehoula Beach Easement may only be used by guests of the Hotel Hana Maui and not purchasers of Units. All of the Easement Agreements shall be made available to Purchasers upon their request.
- (5) Private Water Agreements. Pursuant to the Private Water System Agreements described in Exhibit H to this Public Report, the Sea Ranch project is served by a private water system, which is not dedicated to the County of Maui's Department of Water Supply. The County does not maintain, control, or operate the water system serving the Project and, therefore, the County is not responsible for the adequacy or volume of water available from the system. The Developer, and each purchaser, as the Developer's successors in interest, holds the County harmless from property damage, personal injury and wrongful death caused by the design, operation, maintenance and modification of any improvements to the system.

Water service is provided to the Project by Hana Water Resources, Inc., a Delaware corporation ("Hana Water"), which is a registered public utility. Hana Water and the Developer's predecessor, were parties to a Water Service Agreement dated January 11, 2001, which Agreement was assigned to the Developer, which provides that as long as the Project is not metered, the fee for water consumption between January 11, 2006 and January 11, 2021 shall be \$2500 per month.

If meters are installed by Hana Water, the fee for water consumption shall be the greater of the rate charged by Hana Water to its residential customers or the rate charged by the County of Maui for public water services to hotels.

- (6) County compliance letters. Pursuant to Section 514B-84 of the Hawaii Revised Statutes, the Developer has attached to this Public Report as Exhibit I letters written by the County of Maui concerning the building and zoning code compliance of the Project. The Units are in compliance with all zoning and building ordinances and codes applicable to the Project.
- (7) Parking. The parking stalls located in the Resort Area are used and will continue to be used to cause the Project to comply with zoning. In addition, pursuant to that certain Declaration of Parking Rights recorded January 16, 2007 as Document No. 2007-007739, certain real property owned by the Developer and situated in close proximity to the Project shall be used to provide sufficient parking for the Project as well as the Hotel Hana-Maui condominium project located across the street from the Project so that these projects meet and continue to meet the requirements of the Maui County Code applicable to H-1 zoning. **Because the Declaration of Parking Rights guarantees available parking for the Project, the Units are being conveyed by the Developer without appurtenant parking stalls, which means that no purchaser shall receive a deeded interest in a parking stall.** Owners, guests and Permitted Users will park their vehicles at such locations designated by the Developer or the Association. The Developer reserves the right to require Owners, guests and Permitted Users to park their vehicles with the valet parking service provided through the Hotel. The fee for valet parking, if any, will be established by the Developer from time to time. The valet parking fee, if any, is not included in any Assessment but is an incidental cost to be paid by the Owner, Guest or Permitted User, as the case may be, at the time of departure.
- (8) Restrictions on Use. The Project is located in the Hotel zone established by the County of Maui. Units classified as "Lodging Units" may be used for hotel, timeshare or vacation ownership use and transient vacation rental use (subject to the Developer's prior written consent). Lodging Units are units that do not have kitchens as defined by the Maui County Code. No Owner or occupant may use or install in any Lodging Unit a device or any kind used for the cooking or preparation of food. The Developer and the Association are empowered by the Declaration to protect the Project's hotel use. As a result, you do not have the right to modify a Lodging Unit into a dwelling unit or to use or occupy a Lodging Unit for residential purposes.
- (9) Each Purchaser's use of the Hana Ranch Easements and other amenities available in the Project and at the Hotel Hana-Maui are subject to the entry into a Hotel Amenity License Agreement. See Exhibit D-1 to the Public 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		
Address of Project	5031 Hana Highway, Hana, Hawaii 96713	
Address of Project is expected to change because		
Tax Map Key (TMK)	(2) 1-4-003-058	
Tax Map Key is expected to change because		
Land Area	12.750 acres, more or less	
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)		

## 1.2 Buildings and Other Improvements

See **Exhibit A**

Number of Buildings	28
Floors Per Building	1
Number of New Building(s)	
Number of Converted Building(s)	28
Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	Concrete, wood, metal studs, cementious material, aluminum, glass, drywall, flooring, windows

## 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 <b>Exhibit A</b> .						

47 Lodging; 4 Commercial	<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:	14
Number of Guest Stalls in the Project:	0
Number of Parking Stalls Assigned to Each Unit:	0
Attach Exhibit ____ 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.	
<p><u>Parking.</u> The parking stalls located in the Resort Area are used and will continue to be used to cause the Project to comply with zoning. In addition, pursuant to that certain Declaration of Parking Rights recorded January 16, 2007 as Document No. 2007-007739, certain real property owned by the Developer and situated in close proximity to the Project shall be used to provide sufficient parking for the Project as well as the Hotel Hana-Maui condominium project located across the street from the Project so that these projects meet and continue to meet the requirements of the Maui County Code applicable to H-1 zoning. <b>Because the Declaration of Parking Rights guarantees available parking for the Project, the Units are being conveyed by the Developer without appurtenant parking stalls, which means that no purchaser shall receive a deeded interest in a parking stall.</b> Owners, guests and Permitted Users will park their vehicles at such locations designated by the Developer or the Association. The Developer reserves the right to require Owners, guests and Permitted Users to park their vehicles with the valet parking service provided through the Hotel. The fee for valet parking, if any, will be established by the Developer from time to time. The valet parking fee, if any, is not included in any Assessment but is an incidental cost to be paid by the Owner, Guest or Permitted User, as the case may be, at the time of departure.</p>	

**1.5 Boundaries of the Units**

Boundaries of the unit: See **Exhibit B**

**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 C**

**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 See **Exhibit A**.  
As follows:

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

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

**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 <u>Exhibit E</u>.</p>	
<p>Described as follows:</p>	
<b>Common Element</b>	<b>Number</b>
Elevators	
Stairways	
Trash Chutes	

**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 <u>Exhibit F</u>.</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 <u>Exhibit G</u>
<input checked="" type="checkbox"/>	Number of Occupants: See <u>Exhibit G</u>
<input checked="" type="checkbox"/>	Other: See <u>Exhibit G</u>
<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><u>Exhibit H</u> describes the encumbrances against title contained in the title report described below.</p>
<p>Date of the title report: March 8, 2007</p>
<p>Company that issued the title report: First American Title Company, Inc.</p>

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

Uses Permitted by Zoning:				
	Type of Use	No. of Units	Use Permitted by Zoning	Zoning
<input checked="" type="checkbox"/>	Residential (Allowed for Hotel/Timeshare)	47	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	H-1
<input checked="" type="checkbox"/>	Commercial	4	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	H-1
<input type="checkbox"/>	Mix Residential/Commercial		<input 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 type="checkbox"/>	Industrial		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Agricultural		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Recreational		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Other (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	
Units A101 to A107, B101 to B126, C101 to C106, D101 to D107 and E101 of the Project are designated as Lodging Units, which may be used for hotel, timeshare, vacation ownership or residential use. There are four (4) Units designated in the Declaration as Commercial Units.				
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.				

**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"/>

<p>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:</p>
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**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 checked="" type="checkbox"/> <b>Applicable</b></p> <p><input type="checkbox"/> <b>Not Applicable</b></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>The project was originally completed between 1987 and 1989. Declarant is unable to provide an estimate of the expected useful life of the structural components of the project and all mechanical and electrical installations material to the use and enjoyment thereof. However, based upon the report prepared by an independent Hawaii registered structural engineer, the present condition of all structural components of the project and all mechanical and electrical installations material to the use and enjoyment of the project is adequate for the use for which they were designed.</p> <p>Declarant makes no representation or warranty as to the useful life or durability of the structural components.</p>	
<p>Developer's statement of the expected useful life of each item reported above:</p> <p>See Physical Condition Report and Summary of Reserve Study attached as <b>Exhibit I</b>.</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></p>
<p>Regarding any converted structures in the project, attached as <b>Exhibit I-1</b> 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> <p>See <b>Exhibit I-1</b></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: Ohana Hotel Company LLC, a Delaware limited liability company  Address: 5031 Hana Highway, Hana, Hawaii 96713</p> <p>Business Phone Number: (808) 248-8211  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>Passport Resorts LLC, a California limited liability company;  Peter Heinemann, Its Manager</p>
<p><b>2.2 Real Estate Broker</b></p>	<p>Name: Hana Coast Realty, Inc.  Address: P.O. Box 507  Hana, Hawaii 96713</p> <p>Business Phone Number: (808) 248-7002  E-mail Address:</p>
<p><b>2.3 Escrow Depository</b></p>	<p>Name: First American Title Company, Inc.  Address: 1177 Kapiolani Boulevard  Honolulu, Hawaii 96814</p> <p>Business Phone Number: (808) 536-3866</p>
<p><b>2.4 General Contractor</b></p>	<p>Name: Not Applicable  Address:</p> <p>Business Phone Number:</p>
<p><b>2.5 Condominium Managing Agent</b></p>	<p>Name: Hawaiiiana Management Company, Ltd.  Address: 711 Kapiolani Boulevard, Suite 700  Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808) 593-9100</p>
<p><b>2.6 Attorney for Developer</b></p>	<p>Name: Dennis M. Lombardi, Esq./Stacey W.E. Foy, Esq.  Address: Case Lombardi &amp; Pettit  737 Bishop Street, Suite 2600  Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808) 547-5400</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 - See Exhibit R

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
	October 3, 2006	2007-024553

Amendments to Declaration of Condominium Property Regime		
Land Court or Bureau of Conveyances	Date of Document	Document Number
	March 3, 2007	2007-041932

#### 3.2 Bylaws of the Association of Unit Owners - See Exhibit S

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
	October 3, 2006	2007-024554

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	4381
Dates of Recordation of Amendments to the Condominium Map:	

### 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 checked="" type="checkbox"/> - See <b>Exhibit I</b>
Have Been Adopted and Date of Adoption	<input 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%	<b>Exhibit J</b>
Bylaws	67%	<b>Exhibit J</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"/>	<p>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:</p> <p>See <b>Exhibit K</b></p>

## 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.</p>
<p><b>Exhibit L</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 checked="" type="checkbox"/>	Gas for the common elements
<input type="checkbox"/>	Water
<input type="checkbox"/>	Sewer
<input type="checkbox"/>	TV cable
<input type="checkbox"/>	Other (specify) Telephone

### 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 checked="" type="checkbox"/>	Gas for the Unit only
<input checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer
<input type="checkbox"/>	TV cable
<input checked="" type="checkbox"/>	<p>Other (specify): Telephone                      Tie-in to the central switchboard is included in the Amenity License Fee charged under the Hotel Amenities Access and Use and Services Agreement. Those Owners who choose not to enter into the Hotel Amenities Access and Use and Services Agreement have the option of arranging for their own phone service and will be billed separately for telephone service.</p>

## 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 M</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: September 15, 2006 Name of Escrow Company: First American Title Company, Inc. <b>Exhibit N</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 type="checkbox"/>	The sales of units in this project are subject to the Owner-Occupant requirements of Chapter 514B.
<input type="checkbox"/>	Developer has designated the units for sale to Owner-Occupants in this report. See Exhibit _____.
<input 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 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>	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
	See <b>Exhibit O</b>

### 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: See **Exhibit P**

Appliances: The Developer makes no representation or warranties whatsoever as to any appliances, fixtures or furnishings conveyed together with a Unit or otherwise used or owned in common by the Association or Unit Owners in the Project.

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

Status of Construction: THE PROJECT WAS ORIGINALLY COMPLETED IN THE 1970'S. ALL UNITS WILL BE SOLD IN THEIR AS-IS CONDITION.
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:
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 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):

<b>Box A</b>	<p><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>
<b>Box B</b>	<p><input 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: Reserve Study, a copy of which has been or will be given to the purchaser for examination. Any documents listed on **Exhibit I** attached hereto.

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 Q

See Exhibit Q-1 - Developer's Reserved Rights Re Future Phases

The Developer declares subject to the penalties set forth in Section 514B-69, HRS, that this project conforms to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the project is located, all in accordance with Sections 514B-5 and 32(a)(13), HRS.

For any conversion, if any variances have been granted, they are specified in Section 1.14 of this report, and, if purchaser deposits are to be used by the Developer to cure any violations of zoning, permitting requirements or rules of the county in which the project is located, the violation is specified in Section 1.15 of this report, along with the requirements to cure any violation, and Section 5.5 specifies the date by which the cure will be completed.

The Developer hereby certifies that all the information contained in this report and the exhibits attached to this report and all documents to be furnished by the Developer to purchasers concerning the project have been reviewed by the Developer and are, to the best of the Developer's knowledge, information and belief, true, correct and complete. The Developer hereby agrees promptly to amend this report to report any pertinent or material change or both in any information contained in this report and to file annually a report to update the material contained in this report at least 30 days prior to the anniversary date of the effective date of this report.

OHANA HOTEL COMPANY LLC, a Delaware limited liability company  
Printed Name of Developer

By: PASSPORT RESORTS LLC, a California limited liability company

By: Peter M. Heinemann \_\_\_\_\_ 12/3/06  
Duly Authorized Signatory\* Date

Peter M. Heinemann, Its Manager  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, \_\_\_\_\_ County of Maui

Planning Department, \_\_\_\_\_ County of Maui

**\*Must be signed for a corporation by an officer; for a partnership or limited liability partnership (LLP) by the general partner; for a limited liability company (LLC) by the manager or an authorized member; and for an individual by the individual.**

**EXHIBIT A**

Section 1.2 – Buildings and Other Improvements  
 Section 1.3 – Unit Types and Sizes of Units  
 Section 1.7 – Common Interest

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE BUILDINGS AND OTHER IMPROVEMENTS; UNIT TYPES AND SIZES OF UNITS; AND 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 PROJECT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE PROJECT, SUCH DOCUMENTS WILL CONTROL.

Building No.	Unit Numbers	Unit Type Commercial /Lodging	Unit Type	Total Area (in square feet)	Common Interest	Description
1	B101	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
1	B102	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
2	B103	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
2	B104	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
3	B105	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
3	B106	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
4	B107	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
4	B108	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
5	B109	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.

5	B110	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
6	B111	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
6	B112	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
7	C101	Lodging	C-1	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 651 square feet.
7	C102	Lodging	C-2	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 651 square feet.
8	C103	Lodging	C-1	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 651 square feet.
8	C104	Lodging	C-2	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 651 square feet.
9	A101	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 720 square feet.
9	D101	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
10	A102	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
10	D102	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
11	A103	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.

11	D103	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
12	A104	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
12	D104	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
13	B113	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
13	B114	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
14	B115	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
14	B116	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
15	B117	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
15	B118	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
16	A105	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
16	D105	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
17	B119	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.

17	B120	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
18	B121	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
18	B122	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
19	A106	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
19	D106	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
20	B123	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
20	B124	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
21	C105	Lodging	C-1	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
21	C106	Lodging	C-2	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
22	B125	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
22	B126	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
23	A107	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.

23	D107	Lodging	D	1,088.0	1.66756%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
24	E101	Lodging	E	986.0	1.51123%	Studio unit consisting of living room and bathroom. Lanai and Private Garden Area comprises 644 square feet.
Housekeeping/ Maid's Quarters Building	n/a	Commercial	n/a	914	1.40086%	A Commercial Unit consisting of office, storage, cart storage space, an electrical room and a bathroom.
Service Building	n/a	Commercial	n/a	1,034	1.58480%	A Commercial Unit consisting of rooms used for the pool pump, pool equipment and two bathrooms. Lanais comprise 368 square feet.
Snack Bar Building	n/a	Commercial	n/a	462	0.70810%	A Commercial Unit consisting of kitchen and service rooms.
Wellness Building	n/a	Commercial	n/a	2,304	3.53131%	A Commercial Unit consisting of rooms used for office and fitness related activities, and two bathrooms. Lanais comprise 1,008 square feet.
				65,245	100.00000%	

Additional Information concerning Units:

1. Location of Units. Each Unit is identified on the Condominium Map by a number designation and is located as shown on the Condominium Map.
2. Construction Materials. All of the buildings in the Project are single-story, have no basements and are constructed principally of metal, wood, glass and related building materials.
3. Number of Buildings. There are 28 buildings in the Project. There are two Lodging Units in each of buildings 1 through 23. There is one Lodging Unit in building 24, and one Commercial Unit in each of the Housekeeping/Maids Quarters, Service, Snack Bar and Wellness Buildings. The Commercial Units are owned and used by the Developer in connection with the ownership and use of various units comprising the Hotel Hana-Maui condominium project located in the immediate vicinity of the Project.
4. Access to Common Elements. Subject to the Developer's reserved rights concerning control over the Resort Area, as more particularly set forth in Section 5 of Paragraph H of the Declaration, and to the provisions of the Amenity Use and Service Agreement, each Unit has immediate access to the common elements of the Project or to a walkway leading to the Common Elements of the Project.

**END OF EXHIBIT A**

## EXHIBIT B

### Section 1.5 – Boundaries of Units

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 PROJECT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE PROJECT, SUCH DOCUMENTS WILL CONTROL.

(a) Boundaries of the Commercial Units. The Commercial Units include all walls, columns and partitions (both load bearing and not load bearing) which are within the Commercial Unit's perimeter walls including, without limitation, the Commercial Unit's perimeter walls, the foundation, all floors, ceilings, doors, windows, sliding glass doors, screen doors, door frames and window frames, the air space within the Commercial Unit, the foundation, ceiling, doors, the lanais (whether or not enclosed), planters and any garden areas, 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 Commercial Units, and all pipes, plumbing (including water heaters), wires, conduits and other utility or service lines and facilities servicing only the Commercial Units. The Commercial Units shall also include all load-bearing columns, girders, beams, building components and other elements included within each Commercial Unit. The Commercial Units shall not include any pipes, shafts, wires, conduits or other utility or service lines running through a Commercial Unit which are utilized for or serve more than one Unit, all of which are deemed Common Elements as provided in the Declaration.

(b) Boundaries of the Lodging Units. Each Lodging Unit includes the air space within all perimeter walls of the Lodging Unit, excluding the walls, columns and partitions which are not load-bearing, but including the space within the inner decorated or finished surfaces of all walls, windows, floors, ceilings, doors, door frames and windows of the Lodging Unit, all rollers, locks, handles, tracks, and appurtenant hardware associated with all windows, 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 within the Unit perimeter and servicing only the Lodging Unit. The Lodging 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 (notwithstanding the obligation of the Owner of a Lodging Unit or the applicable Vacation Ownership Association, as the case may be, to maintain the same), the interior load-bearing columns, girders, beams, and walls, the undecorated or unfinished surfaces of the floors and ceiling surrounding each Lodging Unit, or any pipes, shafts, wires, conduits, or other utility or service lines running through a Lodging Unit which are utilized for or serve more than one Lodging Unit, all of which are deemed Common Elements as provided in the Declaration.

END OF EXHIBIT B

## EXHIBIT C

### Section 1.6 – Permitted Alterations to the Units

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE PERMITTED ALTERATIONS TO 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 PROJECT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE PROJECT, SUCH DOCUMENTS WILL CONTROL.

1. Consent Required for Alteration of the Project. Except as otherwise provided by the federal Fair Housing Act (42 U.S.C. Sec. 3601 et seq.) as amended by the Fair Housing Amendments Act of 1988, and the rules and regulations promulgated thereunder, as the same may be amended from time to time in the future and except as otherwise provided herein, restoration or replacement of the Project or any building or other structure thereof or construction of any additional building or other structure or structural alteration or addition thereto, shall be undertaken by the Association or any Unit Owner only pursuant to an amendment of the Declaration, duly executed by or pursuant to a vote or the written consent of seventy-five percent (75%) of the Unit Owners together with the consent of all Unit Owners whose Units or the Limited Common Elements appurtenant thereto are directly affected (as determined in a reasonable manner by the Board of Directors) and in accordance with complete plans and specifications therefor first approved in writing by the Board of Directors, and promptly upon completion of such restoration, replacement, construction, alteration or addition the Association shall duly record or file of record such amendment together with a complete set of floor plans of the Project, or portion thereof, as so altered, certified as built by a registered architect or professional engineer; PROVIDED, HOWEVER, that:

(a) the foregoing consent requirement shall not apply to "nonmaterial additions or alterations" as defined in Section 514B-140 of the Act, which shall require approval only by the Board and a majority of the Unit Owners.

(b) all exterior alterations to any building in the Project must be in keeping with the Resort Quality Standard and, provided further that any exterior improvement or alteration to the buildings in which the Lodging Units are located shall not materially deviate from the uniform external appearance of Project as a whole, including the Commercial Units.

(c) the rights and easements reserved to the Developer set forth in the Declaration, including without limitation, the easements set forth in Section 8 of Paragraph F of the Declaration and the reserved rights set forth in Paragraph T of the Declaration may be exercised without the consent of the Board or any other person.

(d) any exterior alterations or additions in respect of the Commercial Units and the Limited Common Elements appurtenant thereto shall require only the written approval thereof, including the plans therefor, by Owner of the Commercial Unit in question, the holders of first mortgage liens affecting such Unit (if the lien holders require such approval), and by the appropriate agencies of the State of Hawaii and the County of Maui (if such agencies so require). Upon completion of the alterations or additions, the Owner of the affected Commercial Unit shall duly record an amendment to the Declaration together with the approved plans showing only such alterations and alterations made to the Commercial Unit or the Limited Common Elements appurtenant thereto, and such amendment need only be executed by the Commercial Unit Owner and its lien holder, if required by the lien holder.

(e) any change or addition to the Project shall comply in all respect with all applicable governmental codes, statutes, ordinances and rules and regulations, or with all variances granted therefrom.

2. Developer's Reserved Rights Regarding Alterations. Notwithstanding any other provision in the Declaration to the contrary, prior to the time that all Units in the Project have been sold and recorded and the filing by Developer of the "as built" verified statement required by Section 514B-34 of the Act, Developer shall have the right, without the approval, consent or joinder of any Unit Owner, (a) to make alterations in the Project (and/or 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 Project which is not sold and recorded; or (b) to make other alterations in the Project (and to amend the Declaration and the Condominium Map accordingly) which make minor changes in any Unit in the Project or the Common Elements which do not affect the physical location, design or size of any Unit which has been sold and recorded, PROVIDED, HOWEVER, that as to (a) above, any such changes shall be reflected in an amendment to the Declaration. As used herein the term "sold and recorded" shall mean and refer to the sale of Units in the Project, and the recording of the deed in the Recording Office from Developer to any party who is not the assignee or holder of the Developer's reserved rights under the Declaration.

**END OF EXHIBIT C**

**EXHIBIT D**

Section 1.8 – Recreational and Other Common Facilities

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 PROJECT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE PROJECT, SUCH DOCUMENTS WILL CONTROL.

The swimming pool is a limited common element appurtenant to the Commercial Units. The Owner of the Commercial Units has the exclusive right to use and control the use by other Owners over the Resort Area. Owners shall have a non-exclusive right to use the Resort Area as well as other lands and facilities owned by the Developer and used in the operation of The Hotel-Hana Maui, subject to the rights of the Owner of Commercial Units set forth in the Declaration and upon entry into a Hotel Amenities Access and Use and Services Agreement with the Developer, in its capacity as the Owner of Commercial Units. This is a voluntary agreement requiring the payment of an access fee to defray the cost of repairing and maintaining the amenities and the grounds. The form of the Hotel Amenities Access and Use and Services Agreement is attached as **Exhibit D-1**.

**END OF EXHIBIT D**

**EXHIBIT D-1**

Form of Hotel Amenity Access Agreement  
Attached

**HOTEL AMENITIES ACCESS AND USE  
AND SERVICES AGREEMENT**

This **HOTEL AMENITIES ACCESS AND USE AND SERVICES AGREEMENT** (this "Agreement") is made and executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between OHANA HOTEL COMPANY LLC, a Delaware limited liability company ("Hotel Owner"), \_\_\_\_\_ ("Owner").

**RECITALS**

- A. Hotel Owner owns and either directly or through its affiliates, operates and manages a luxury hotel known as the Hotel Hana-Maui (the "Hotel"), consisting of certain real property, a hotel facility and certain recreation facilities and amenities, including, but not limited to, open space, and the facilities identified as follows on the map attached as Exhibit A and A-1 (collectively "Hotel Amenities"):
- 1) 3-hole Pitch & Putt Golf, SPA, Croquet Lawn, Garden Pool Pavilion, Hotel Tennis Courts (all of which are located on the Main Building property), hereinafter "Condominium Property Amenities".
  - 2) Wellness Pool and Whirlpool, Fitness Center, Showers/Restrooms, Snacks & Drinks (all of which are located on the property labelled Sea Ranch Cottages on the attached map), hereinafter the "Hotel Property Amenities".
  - 3) recreational open space and beach house facilities located on the real property designated by Tax Map Key (2) 1-4-10:1
- B. Located on a portion of the Hotel property and owned by the Hotel Owner is a condominium project (the "Condominium") created pursuant to that certain Declaration of Condominium Property Regime of The Hotel Hana-Maui Condominiums, recorded on \_\_\_\_\_ with the Bureau of Conveyances of the State of Hawaii (the "Condominium Declaration"), consisting of twenty-one (21) apartments, comprised of ten (10) one-bedroom apartments contained in a single building to be dedicated to residential use ("Residence Apartments"); eleven (11) apartments in multiple buildings dedicated to residential and/or commercial use.
- C. Owner has purchased a Residence Apartment located within the Condominium (referred to as a "Whole-Ownership Apartment" under the Condominium Declaration and the "Unit" herein).
- D. Hotel Owner has agreed to permit Owner and his or her guests ("Guests") access to and use of the Hotel Amenities and to provide certain services to Owner and his or her Guests in the manner described herein, all as subject to the terms and conditions of this Agreement.

- E. Any capitalized term used herein and not otherwise defined shall have the meaning assigned to such term in the Condominium Declaration.

## AGREEMENT

NOW THEREFORE in consideration of the covenants and agreements set forth in this Agreement, the parties agree that:

### ARTICLE I

#### TERM AND TERMINATION

##### 1.01 Term

The term of this Agreement shall commence as of the date hereof and have effect for a period of one (1) year from the date of execution hereof. Unless this Agreement has been sooner terminated pursuant to its terms (including the provisions of Section 1.02), this Agreement shall be automatically extended for successive periods of one (1) years each, unless, at least ninety (90) days prior to the expiration of the then-current term, either Owner or Hotel Owner gives written notice to the other of its election not to extend this Agreement.

##### 1.02 Termination

Notwithstanding anything to the contrary contained in this Agreement, Hotel Owner, or its agents on behalf of Hotel Owner, shall have the right but not the obligation to terminate this Agreement on written notice to Owner if Owner fails to pay any Amenities Access Fee (as defined in Section 2.02) within thirty (30) days after such amount is due, or fails to fulfill any material covenant, undertaking, obligation or condition set forth in this Agreement for a period of thirty (30) days after the date on which notice of failure has been given to Owner by Hotel Owner or such longer period of time as is reasonably necessary if Owner is diligently and continuously proceeding to cure such failure other than the failure to pay.

### ARTICLE II

#### ACCESS TO AND USE OF HOTEL AMENITIES

##### 2.01 Right to Access and Use Hotel Amenities

Hotel Owner hereby grants to Owner and his or her Guests (subject to payment of Guests Fees, as applicable) a non-exclusive right to access and use the Hotel Amenities and such other recreation facilities and amenities that are made available by Hotel Owner for owners of Whole-Ownership Apartments and their guests from time to time, in common with others entitled thereto, in accordance with and subject to the terms of this Agreement and any rules and regulations that may be promulgated by the Hotel and provided to the owners of Whole-Ownership Apartments from time to time. The Hotel Amenities are generally located as depicted on the map attached hereto as Exhibits A and A-1; provided, however, the facilities and amenities which comprise the Hotel Amenities are subject to change in the sole discretion of the Hotel Owner. Owner and his or her Guests are allowed access to and use of the Amenities only

while in residence at Owner's Unit. No more than four (4) adults or three (3) adults and two (2) children in residence at Owner's Unit shall be permitted to use the Hotel Amenities per day.

## 2.02 Amenities Access Fee

a. Allocation to Owner's Unit. Hotel Owner or an affiliate of Hotel Owner, as manager of the Hotel Amenities, shall prepare an annual budget (the "Hotel Amenities Budget") which shall include all anticipated costs and expenses for the management, operation, maintenance and repair of the Hotel Amenities (referred to herein as the "Hotel Amenities Common Expenses"). Hotel Owner shall distribute to Owner the Hotel Amenities Budget for each fiscal year of the Hotel not less than thirty (30) days and not more than sixty (60) days prior to the beginning of each such fiscal year. The Hotel Amenities Budget shall include an allocation of the Owner's share of the Hotel Amenities Common Expenses (the "Amenities Access Fee") which shall be one-tenth of the Hotel Amenities Common Expenses allocated to the Residences Apartments, which allocation shall be determined by Hotel Owner in its reasonable discretion, based on anticipated and historical actual use of the Hotel Amenities by owners of Residence Apartments and their Guests, determined on an annual basis, or some other reasonable basis of allocation as determined by Hotel Owner.

b. Payment of the Amenities Access Fee. Hotel Owner shall fix the amount of the annual Amenities Access Fee at least sixty (60) days in advance of the beginning of each fiscal year of Hotel Owner, reserving the right, acting reasonably, on sixty (60) days notice to revise the amount of the annual fee from time to time to reflect changes in circumstances as more particularly set forth in Section 2.02(c) hereof. All installments of the Amenities Access Fee shall be collected in advance on a monthly basis and on such due dates as Hotel Owner shall determine from time to time.

c. Revised Hotel Amenities Budget. Except as otherwise provided below, Hotel Owner shall not exceed the aggregate expenditures set forth in the applicable Hotel Amenities Budget, including contingencies. Notwithstanding the foregoing, whenever, by reason of emergency or reasonably unforeseen circumstances beyond the control of Hotel Owner, Hotel Owner may make expenditures which are in the reasonable opinion of Hotel Owner required for:

- (i) the lawful or safe operation of the Hotel Amenities; or
- (ii) the maintenance of the Resort Quality Standard (including any such expenditures as may be required to maintain the requisite nature and amount of insurance for the Hotel Amenities).

Hotel Owner shall be entitled to make such expenditures and/or incorporate such expenditures in the Hotel Amenities Budget notwithstanding that such expenditures are not provided for in a Hotel Amenities Budget and/or may exceed the allowances set out in the Hotel Amenities Budget. In such circumstances, Hotel Owner shall use its reasonable efforts to give Owner advance notice prior to making any such expenditures. Whenever the giving of such advance notice or the obtaining of such approval is, however, impracticable, in Hotel Owner's opinion, Hotel Owner shall be entitled to make such expenditures without having to give such advance notice; so long as Hotel Owner provides Owner with notice of such expenditures as

soon as practicable or together with the Hotel Amenities Budget for the following fiscal year when such budget is distributed pursuant to Section 2.02.

### **2.03 Failure to Pay**

Any amount of the Amenities Access Fee which is not paid within thirty (30) days after its due date shall bear interest from the due date at a rate of interest equal of ten percent (10%) not to exceed the maximum legal rate permitted by law. Such accrued interest shall become part of the Amenities Access Fee. If any installment of the Amenities Access Fee is not paid within sixty (60) days after it is due in addition to any other rights Hotel Owner has at law, Hotel Owner may bring an action at law against Owner. Owner may not waive or otherwise escape liability for the Amenities Access Fee provided herein by non-use of the Hotel Amenities or abandonment of his or her Unit.

### **2.04 Guest Fees**

The Hotel Owner may from time to time and in its sole discretion, establish fees for the use by Guests of any or all of the Hotel Amenities ("Guest Fees"). The right of any Guest to use any Hotel Amenities for which a Guest Fee has been established shall be conditioned upon the payment of the applicable Guest Fees prior to such use. Hotel Owner shall have the right to deny access to the Hotel Amenities to any Guest who has not paid the Guest Fee.

### **2.05 Operation, Repair and Maintenance of the Hotel Amenities**

Nothing in this Agreement is intended to limit, and shall be interpreted in a manner that limits, in any way, the interests of the Hotel Owner in the Hotel and the Hotel Amenities. Hotel Owner shall have from time to time in its sole discretion, the right to operate, repair and maintain the Hotel and the Hotel Amenities, including but not limited to, the right to:

- (i) alter or modify all or any of the Hotel Amenities;
- (ii) change the permitted use of any of the Hotel Amenities;
- (iii) cease the operation of or discontinue making available all or any of the Hotel Amenities;
- (iv) operate the Hotel (including the Hotel Amenities) either directly or through one or more agents, concessionaries and/or managers;
- (v) assign, pledge, mortgage, transfer or encumber its interests in the Hotel (including the Hotel Amenities);
- (vi) add additional structures to, alter, contract, expand, modify, reconstruct, remodel, or otherwise change the Hotel (including the Hotel Amenities), and in connection therewith, erect temporary scaffolding and other construction aids, limit or otherwise restrict access to or use of facilities and perform work at the Hotel, all of which may create dust, dirt, noise, visual obstruction or other temporary inconveniences;

- (vii) grant easements or licenses relating to, or other rights to use, any portion of the Hotel (including the Hotel Amenities);
- (viii) conduct special or limited admission events at the Hotel (including at the Hotel Amenities); and
- (ix) close the Hotel (including the Hotel Amenities) at such times and in such manner as the Hotel Owner, in its sole discretion, may determine is necessary for the operation and maintenance of the Hotel or to perform any of the foregoing, or for any other reason as determined by the Hotel Owner in its sole discretion.

### **2.06 Use of Hotel Amenities by Others**

Nothing in this Agreement is intended to limit, or shall be interpreted in a manner that limits, in any way, the right of Hotel Owner to make the Hotel Amenities available for use by other Persons.

## **ARTICLE III PROVISION OF SERVICES**

### **3.01 A la Carte Services**

a. Hotel Owner has agreed, subject to certain conditions as set forth below, to make available to Owner certain services (the "A la Carte Services") in conjunction with Hotel Owner's operation of the Hotel. All A la Carte Services shall be provided to Owner and/or his or her Guests, upon request by such Owner while Owner or his or her Guests are in residence and on the condition that Owner is responsible for paying for services requested and subject to reasonable procedures for requests and payment as the Hotel Owner may establish from time to time (including minimum notice requirements and mandatory prepayment or deposits for certain services, depending on the scope and character of such requested services). The Hotel Owner shall keep a list of available A la Carte Services and cost for such services at the Hotel, which will be provided to each Owner upon check-in. Hotel Owner may from time to time modify the list of available A la Carte Services. If Owner requests that the Hotel Owner provide any additional services not among the A la Carte Services and Hotel Owner is willing to provide such services, Hotel Owner will inform Owner of the cost for such requested additional service at such time.

b. Guests. Hotel Owner shall have no obligation to provide any A la Carte Services to any Guest of Owner unless the provisions of A la Carte Services for such Guest is requested by Owner. The provision of such A la Carte Services to persons occupying Owner's Unit at times when the Owner is not in residence may be subject to the payment of an additional service fee.

c. Payment. Owner shall pay Hotel Owner the then-current listed or quoted cost for any A la Carte Service requested of Hotel Owner by Owner or his or her Guests. Except with respect to any services that require pre-payment, Hotel Owner shall bill Owner's credit card on file with the Hotel. Receipts will be provided to Owner in a timely manner each time Owner's credit card is charged. The payment for A la Carte Services is separate and distinct from Owner's payment of the Amenities Access Fee. Any services provided by Hotel Owner at the request of Owner or a Guest of Owner shall be for and on account of Owner, and shall be included in the

charges against Owner's credit card.

## ARTICLE IV LIABILITY AND INDEMNIFICATION

### 4.01 Liability for Obligations

In the performance of its obligations under this Agreement, the Hotel Owner, its affiliates, and its respective directors, officers, employees, consultants, agents and representatives (collectively, the "Hotel Parties") shall not be liable to the Owner or any Guest (collectively the "Owner Parties") or any other Person for any act or omission (whether negligent, tortious or otherwise) of any of the Hotel Parties (including any liability resulting from the use and enjoyment of the Hotel Amenities or the A la Carte Services by the Owner Parties) except to the extent such liabilities, obligations, claims, costs and expenses arise out of or are caused by the gross negligence or wilful misconduct of one or more of the Hotel Parties (and, for clarity, (a) neither Hotel Owner nor its respective directors, officers, employees, consultants, agents or representatives shall be liable for the acts or omissions of the other party or its directors, officers, employees, consultants, agents or representatives, and (b) Hotel Owner shall have no liability under this Agreement and shall not be denied the benefits of the indemnity set forth in Section 4.02 below based on the acts or omissions of any individual performing services in the name of, or on behalf of, the Hotel, whether such individuals are employed by Hotel Owner, the Condominium, or any other Person ("Hotel Personnel"), except to the extent that such acts or omissions are caused by such Hotel Owner's own gross negligence or wilful misconduct in the hiring, training, direction or supervision of such Hotel Personnel).

### 4.02 Indemnity

Owner hereby indemnifies and holds Hotel Parties harmless from and against any and all liabilities, fines, suits, claims, obligations, damages, penalties, demands, actions, costs and expenses of any kind or nature, including, without limitation, legal fees (collectively, "Claims") arising out of any use or enjoyment of the Hotel Amenities or the Ala Carte Services by Owner or Guest, and any action or omission or course of action on the part of any of the Hotel Parties in its performance of its obligations under this Agreement; provided that this indemnity shall not apply to any Claims resulting from the wilful misconduct or gross negligence of the party being indemnified by this Section 4.02.

The Hotel Owner hereby indemnifies and holds harmless the Owner Parties from any Claims resulting from the wilful misconduct or gross negligence of any of the Hotel Parties.

## ARTICLE V GENERAL PROVISIONS

### 5.01 Assignment

The Hotel Owner may assign all but not part of its respective right, title and interest in this Agreement to any person or entity and Owner hereby irrevocably gives its respective consent (as applicable) to any such assignment provided any such assignee executes an acknowledgement and agrees to assume and perform all obligations of Hotel Owner hereunder.

Owner may not assign any of its respective right, title and interest in this Agreement. Any assignment by Hotel Owner shall not release such party from any liability arising or incurred by such party prior to the date of such assignment.

If Hotel Owner's right, title and interest under this Agreement are conveyed or assigned to or acquired by any successor or assign of Hotel Owner, its lender(s), or by any successor or assign of such lender(s) or any other purchaser at a foreclosure sale by virtue of the exercise of a power of sale, by deed in lieu of foreclosure, or upon the appointment of a receiver (any such parties, a "Subsequent Owner") pursuant to the terms of the lender's mortgage, deed of trust or other security instrument (collectively, the "Mortgage") or by any other proceedings to enforce the Mortgage, Owner hereby irrevocably gives its consent to such conveyance, assignment or acquisition provided the Subsequent Owner agrees to assume and perform all obligations of Hotel Owner hereunder.

#### **5.02 Successors and Assigns**

Subject to Section 5.01, this Agreement shall be binding on the successors and assigns of the parties hereto and shall inure to the benefit of the successors and assigns of the parties hereto.

#### **5.03 Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter contemplated herein and supersedes all oral statements and prior writings with respect to the subject matter contemplated herein. This Agreement creates no other relationship between Hotel Owner and Owner other than a contractual relationship for purposes of this Agreement.

#### **5.04 Modification and Changes**

This Agreement cannot be changed or modified except by another agreement in writing signed by all the parties or by their respective duly authorized agents.

#### **5.05 Waivers**

No failure by a party to insist upon the strict performance of any provision of this Agreement, or to exercise any right or remedy consequent upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such provision. No provision of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every provision of this Agreement shall continue in full force and effect with respect to any other breach then existing or subsequent breach thereof.

#### **5.06 Applicable Law**

This Agreement shall be construed, interpreted and applied in accordance with, and shall be governed by, the laws of the State of Hawaii.



IN WITNESS WHEREOF the parties have executed this Hotel Amenities Access and Use and Services Agreement as of the day and year first written above.

**“HOTEL OWNER”**

OHANA HOTEL COMPANY LLC,  
a Delaware limited liability company

By: Passport Resorts, LLC  
Its: Manager

By: \_\_\_\_\_  
Peter Heinemann, Manager

**“OWNER”**

By: \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

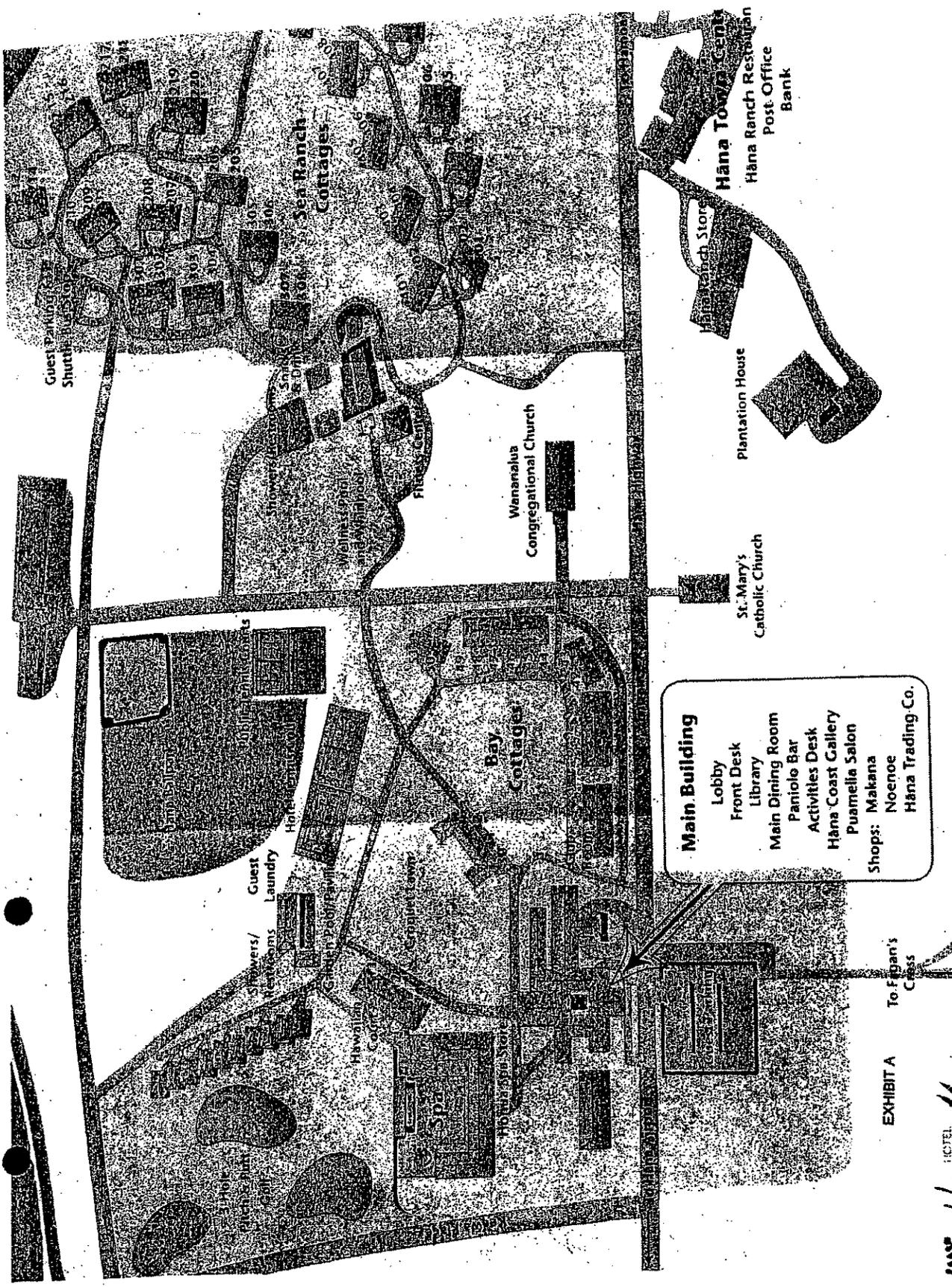


EXHIBIT A

To: Pan's Caves

Hamao

**ALTA/ACSM LAND TITLE SURVEY**  
 of Land Court Application 1620  
 At Makae-Nui, Hana, Maui, Hawaii  
 Tax Map Key: 2nd Div. 1-4-10:1

- Beginning at a pipe at the Northwest corner of this parcel of land, being also the end of Course 10 of Land Court Application 1602, the Coordinates of said point of beginning referred to Government Survey Triangulation Station "Kachokama" being 2304.04 feet South and 6640.47 feet East and thence running by azimuths measured clockwise from True South
1. 265° 30' 324.06 feet along Land Court Application 1602;
  2. 271° 46' 63.24 feet along the South side of Hanaoo Government Road (50.00 feet wide) to a "3" cut in rock;
  3. 52° 00' 61.66 feet along Land Court Application 1603 to highwater mark at seashore and passing over a "3" cut in rock at 51.66 feet; Thence along highwater mark at seashore, the direct azimuth and distance being;
  4. 34° 43' 10" 31.57 feet;
  5. 176° 14' 422.91 feet along Land Court Application 1605 and along Land Court Application 1603 to the point of beginning and passing over pipes at 31.00 feet and 64.54 feet and containing an area of 74,260 square feet or 1.705 Acres.

Owner(s) Hana-Han Land Company, LLC.

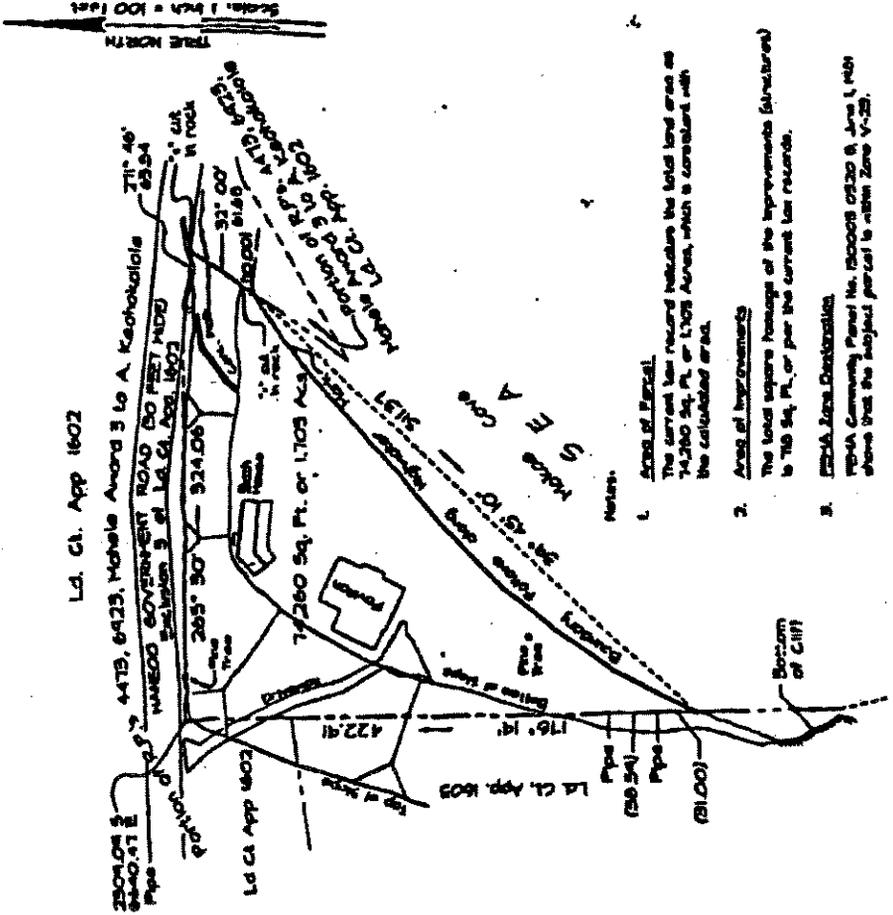
CERTIFICATION TO: MERIDIAN FINANCIAL RESOURCES L.L.C. AND TITLE GUARANTY OF HAWAII

I hereby certify that this survey made on the ground under my direct supervision on October 7, 1998, correctly shows the relationship of structures to the property lines of the land indicated hereon, and that there are no encroachments onto said land, nor overlap of structures from said land, except as shown, and that this plat and the survey on which it is based were made in accordance with the Minimum Standards Requirements for ALTA/ACSM and adopted by ALTA and ACSM in 1992, and meets the Accuracy Standards, as adopted by ALTA and ACSM and in effect on the date of this certification of a Rural Survey.

R.M. Towill Corporation

*[Signature]*  
 Russell P. Kaula  
 Licensed Professional Land Surveyor  
 Certificate Number 4729

420 Hialeah Road, Suite 411  
 Honolulu, Hawaii 96817  
 October 7, 1998



1. **Area of Parcel**  
 The parcel here returned includes the total land area as 74,260 Sq. Ft. or 1.705 Acres, which is consistent with the calculated area.
2. **Area of Improvements**  
 The total square footage of the improvements (structures) is 760 Sq. Ft. or per the current tax records.
3. **DEED, DEED DESCRIPTIONS**  
 DEED Community Parcel No. 200008 0720 B, June 1, 1988 shows that the subject parcel is within Zone V-22.
4. **IMPROVEMENTS**  
 Improvements shown are based on field surveys conducted on October 7, 1998 and Map 1 of Land Court Application 1620.
5. The parcel is zoned under the following designation: Conservation
6. Azimuths and coordinates are referred to Government Survey Triangulation Station "Kachokama".
7. The plan does not authorize any sub-lease features, leases and underground utilities.

R.M. TOWILL CORPORATION  
 R.M. TOWILL

TC Ref. No. 1-0617-0-5  
 5, 7214  
 41 Hana 2-98

EXHIBIT A-1

## EXHIBIT E

### Section 1.9 – Common Elements

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 PROJECT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE PROJECT, SUCH DOCUMENTS WILL CONTROL.

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

1. The Land in fee simple and any appurtenances thereto.
2. The building structure of the twenty-four (24) buildings in which the Lodging Units are located, including all perimeter or party walls and the undecorated or unfinished surfaces thereof, any load-bearing walls and columns, and the undecorated or unfinished surfaces thereof, all structure components such as foundations, concrete sidewalks and curbs, floor slabs, columns, girders, beams, support, halls, corridors, main walls, roofs and ceiling, including without limitation all perimeter doors, door frames, door handles, door lock set, windows, window frames, and all hardware associated therewith, and the undecorated or unfinished interior surfaces thereof; whether at the perimeter of the building structure or at the perimeter of a Lodging Unit.
3. All cables, conduits, ducts, trash chute, sewer lines, electrical equipment, wiring, pipes, catch basins and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one Unit for services such as power, light, water, gas, sewer, storm water, refuse, cable television and television signal distributions.
4. All other apparatus and installations existing for common use, such as tanks, pumps, motors, fans, air-conditioning units including fan coil equipment located within a Unit in the buildings in which the Lodging Units are located, compressors, ducts, shafts, vents, water heating and distribution equipment, fire suppression equipment and other such installations and apparatus.
5. All other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use.
6. All other areas designated on the Condominium Map as "Common Elements", or that are not designated as a Unit or as a Limited common Element appurtenant to a Unit.

END OF EXHIBIT E

## EXHIBIT F

### Section 1.10 – Limited Common Elements

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 PROJECT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE PROJECT, SUCH DOCUMENTS WILL CONTROL.

1. **Lodging Units.** Each Lodging Unit designated on the Condominium Map shall have appurtenant to it as a Limited Common Element the Private Garden Area and Lanai as depicted in the Condominium Map.
2. **Commercial Units.** The Commercial Units designated as the Wellness Building, Service Building, Snack Bar, and Housekeeping/Maid's Quarters on the Condominium Map shall have appurtenant to them the Resort Area which includes all of the Land (except for the portions upon which the buildings are located) and the improvements on the Land, including without limitation, the pool, the parking area and the grounds as shown on Page CPR 03 of the Condominium Map.

END OF EXHIBIT F

## EXHIBIT G

### Section 1.11 – Special Use Restrictions

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 PROJECT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE PROJECT, SUCH DOCUMENTS WILL CONTROL.

1. All Units shall be used only for such purposes as provided in the Declaration and the Project Rules.

2. Rental. Owners shall have the right to sell, lease, rent, or otherwise transfer their respective Units subject to all provisions of the Act and the Project Documents. Any lease or rental agreement of an Unit shall provide that it shall be subject in all respects to the provisions of the Project Documents and that the failure of the lessee or tenant to comply with the terms of the Project Documents shall be a default under the lease or rental agreement. A copy of any lease shall be provided to the Developer.

3. Use and Enjoyment. The Owners, their respective guests and Permitted Users shall not interfere with or prevent the use and enjoyment of any part of the Project by an Owner, guest or any other Permitted User. It is intended that the Project is for the use of the Owners, guests and other Permitted Users and the Association shall control access thereto by all persons whose presence the Association considers, in its reasonable discretion, to be prejudicial to the safety, character, reputation and interests of the Project and the Owners, guests and Permitted Users of the Project. The Association reserves the right to exclude or expel from the Common Elements any person who, in the judgment of Association, creates a disturbance or nuisance or who shall in any manner act in violation of any of the Rules.

4. Whole-Ownership Units. An Owner of a Whole-Ownership Unit will notify the Association in advance of when such Owner will be in residence at its Whole-Ownership Unit and will check-in with the front desk of the Hotel. An Owner of a Whole-Ownership Unit may permit other persons to occupy its Unit at the same time such Unit is occupied by the Owner, or at different times, provided that the maximum allowable occupancy limit allowed by law is not exceeded. If a guest will be occupying a Whole-Ownership Unit without the Owner, the Owner will provide the Association with the name and address of such person(s) in writing prior to such occupancy and such guest(s) will check-in with the front desk of the Hotel. When checking in, an Owner of a Whole-Ownership Unit or any guest of such Owner will be required to show proof of identification, to sign a registration card and to provide a credit card imprint. Guests will comply with the Rules at all times during their presence at the Project. The Owner is responsible for all personal charges and/or damage to the Common Elements resulting from use by the Owner's guests.

5. Safety; Emergency.

- a. Owners, guests and Permitted Users shall comply with all safety, security, fire protection and evacuation procedures and rules established by the Association or any governmental agency.
- b. In case of an emergency, contact the Managing Agent or contact the appropriate authorities by dialing 911.

6. Parking. Owners, guests and Permitted Users will park their vehicles at such locations designated by the Developer. The Developer reserves the right to require Owners, guests and Permitted Users to park their vehicles with the valet parking service provided through the Hotel. The fee for valet parking, if any, will be established by the Developer from time to time. The valet parking fee, if any, is not included in any Assessment but is an incidental cost to be paid by the Owner, Guest or Permitted User, as the case may be, at the time of departure.

7. Fire; Outdoor Cooking. No fires, including barbecue fires, shall be allowed in any part of any Unit or the Common Elements. Barbecuing shall include, but shall not be limited to, the cooking of any food items over a charcoal fire, gas grill or electrical grill.

8. Certain Activities. No Owner, guest or Permitted User shall do anything within the Project, or bring or keep anything therein, which would in any way (i) increase or tend to increase the risk of fire, (ii) result in the cancellation or the increase of the insurance or any part thereof which the Association is required to maintain pursuant to the Project Documents, (iii) conflict with any rules or ordinances established by any governmental agency, (v) materially threaten or destroy the vegetation or wildlife within the Project, (vi) result in unreasonable levels of sound or light pollution, (vii) emit foul or obnoxious odors, or (iv) causes an unclean, unhealthy, or untidy condition to exist.

9. Noise. All Owners and occupants shall exercise care so as not to make excess noise especially in the use of musical instruments, radios, televisions and other devices with sound amplification that may disturb other occupants.

10. Pets; Animals. No livestock or poultry, or animals of any kind shall be allowed or kept in any part of the Project, except for specially trained animals or animals that must be permitted on the Project pursuant to the Americans with Disabilities Act or any other law. For purposes of this section, "specially trained animals" means certified guide dogs, signal dogs, service animals and other animals specially trained to assist handicapped people. Any animal permitted to accompany an Owner pursuant to this Rule shall be kept on a leash when they are not in the Owner's Unit and any animal being or causing a nuisance or an unreasonable disturbance to any other occupant of the Project may be permanently removed therefrom promptly upon notice given by the Board or Managing Agent. Owners shall be responsible for the immediate and proper disposal of all fecal matter of their pets.

11. Waste; Common Elements. No Owner or occupant shall make or suffer any strip of waste or unlawful, improper or offensive use of his or her Unit, any Limited Common Element appurtenant thereto or any other part of the Project, nor shall any Owner or occupant alter or remove any furniture, furnishings or equipment from the Common Elements.

12. Electrical Equipment. No Owner or occupant shall, without the written approval of the Board install any wiring for electrical installations, television antenna, machines or air conditioning units, or other equipment or appurtenances whatsoever on the exterior of any Unit or protruding through the walls, windows or roof thereof.

13. Storage. No Owner or occupant shall place, store or maintain in the landings, stairways, walkways, sidewalks, parking areas, driveways, roads, grounds or other Common Elements of similar nature any furniture, packages or objects of any kind or otherwise obstruct transit through such Common Elements.

14. Landscape. Each Owner shall be responsible for the landscaping, care and maintenance of any garden areas, including Private Garden Area appurtenant to his or her Unit; provided, however, that any landscaping or other plantings within such areas shall be maintained by and at the expense of the respective Owners in neat and trim condition and shall be in accordance with the Resort Quality Standard and in substantial conformance or compatible with adjacent Common Element landscaping.

15. Utility Systems. No Owner, guest or Permitted User shall obstruct, alter or in any way impair the operation of the Project's plumbing, sprinkler, fire safety or lighting systems.

16. Business. No Owner, guest or Permitted User shall solicit business anywhere within the Project or use the Project for conducting any business or activity other than as specifically allowed by the Association; provided, however, that any retail establishments located within the Project shall be permitted to operate in such capacity.

17. Solicitation. Canvassing, soliciting, distribution of handbills or any other printed material, or peddling in on, or about the Project is prohibited, and the Owners shall cooperate and assist the Association to prevent same; provided, however, that the distribution of printed materials in connection with the sale of Units within the Project is permitted.

18. Signage. No sign (other than signs erected in connection with the operation of the Project), advertisement, notice (other than notices of meetings of the Association) or handbill shall be exhibited, distributed, painted or affixed by any, Owner guest or Permitted User on any part of the Project, without the prior written consent of the Association, which consent may be withheld in sole and absolute discretion of the Association. In the event of the violation of the foregoing, the Association may remove same without any liability, and may charge the expense incurred in such removal to a Owner, if such expense is attributable to an Owner. No Owner, without the prior written consent of the Board, may display any sign or place any other item in or upon any door, window, wall or other portion of an Unit or the Common Elements so as to be visible from the outside.

19. Awnings, Shades. No awnings, shades, jalousies or other device shall be erected or placed on or projecting from the exterior of any Lodging Unit, so as to be visible from the outside without prior written permission from the Board. The Owners of the Commercial Units are excluded from this prohibition with respect to the Commercial Units and the Limited Common Elements appurtenant thereto.

20. Trash; Debris. The Owners, guests and Permitted Users shall not deposit any trash, refuse, cigarettes, or other substances of any kind within the Project, except in the refuse containers provided therefor. No material shall be placed in the trash boxes or receptacles if such material is of such a nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage within the Project.

21. Smoking. The Association reserves the right to prohibit smoking on any part of the Project (other than within the Units) at any time. The Association further reserves the right to designate, relocate or discontinue smoking areas within the Project (other than within the Units) at any time.

22. Garments; Rugs. No garments, rugs or other objects (including towels or swimsuits) shall be hung from the railings, window ledges, lanais or any exterior portion of any Unit or other part of the Project. No rugs or other objects shall be dusted or shaken from the windows or lanais of any Unit or other part of the Project or cleaned by beating or sweeping onto any exterior part of the Project.

23. Children. Parents and guardians are responsible for the conduct of their children. Children under thirteen (13) years of age must be accompanied by an adult. Parents and guardians will be held financially responsible for disturbances or damages caused by children. Failure to pay for damages caused by such behavior may affect the Owner's use privileges.

24. Personal Charges. Each Owner is responsible for the prompt payment of any fee or other charge which may be incurred by such Owner, its guests or Permitted Users. The Association will charge a minimum fee of \$10.00 for any personal charges required to be billed to an Owner after check-out. All personal charges, including, but not limited to, extra services or damages for Guests or Permitted Users are considered the responsibility of the Owner who requested access for such Guest or Permitted User. Any unpaid personal charges payable to the Association will bear interest at the maximum rate allowed by law.

25. Amenities. Each Owner of a Whole-Ownership Unit may elect to enter into a Hotel Amenities Access and Use and Services Agreement whereby such Owner and its guests may use the Amenities and receive services provided by the Hotel subject to and in accordance with the terms and

conditions of the Hotel Amenities Access and Use and Services Agreement. Such terms and conditions may impose fees and special restrictions or limitations on use by guests of the Owner.

**END OF EXHIBIT G**

## EXHIBIT H

### Section 1.12 – Encumbrances Against Title

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 PROJECT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE PROJECT, SUCH DOCUMENTS WILL CONTROL.

1. Real Property Taxes which may be due and owing. Reference is made to the County of Maui Tax Assessor's Office.
2. Private Water System Agreement recorded December 3, 1987 in Book 21388 Page 26.
3. Private Water System Agreement recorded February 2, 1988 in Book 21597 Page 51.
4. Private Water System Agreement recorded May 23, 1988 in Book 21954 Page 638.
5. Declaration of Restrict Uses of Land recorded July 24, 2002 as Document No. 2002-128432.
6. Declaration of Parking Rights recorded January 16, 2007 as Document No. 2007-007739.
7. Condominium Map No. 4381.
8. Declaration of Condominium Property Regime of Sea Ranch Cottages at Hana-Maui recorded February 8, 2007 as Document No. 2007-024553, which was amended by Amendment No. 1 recorded March 7, 2007 as Document No. 2007-041932.
9. Bylaws of the Association of Unit Owners of Sea Ranch Cottages at Hana-Maui recorded February 8, 2007 as Document No. 2007-024554.

The land upon which the Project is located is benefited by the following Easements, however, as set forth in the Purchase Contract and Declaration, the easement areas under the Lehoula Beach Easement and License Agreement identified as item N. below may only be used by hotel guests of the Seller and not purchasers of Units. Use of Easements by the Unit Owners is dependent upon the entry in a Hotel Amenities Access and Use and Services Agreement.

A. Horseback Riding Staging Area License Agreement, dated January 12, 2001, recorded as Document No. 2001-005198.

B. Mauka Horse Grazing License Agreement, dated January 12, 2001, recorded as Document No. 2001-005199.

C. Makai Horse Grazing License Agreement, dated January 12, 2001, recorded as Document No. 2001-005200 as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128434.

D. Makai Horseback Riding Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005201, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128436.

E. Makai Horseback Riding Trail Easement Agreement, dated January 12, 2001, recorded

as Document No. 2001-005202, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128437.

F. Makai Horseback Riding Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005203, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128435.

G. Mauka Horseback Riding Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005204, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-12838.

H. Jogging Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005205, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128440.

I. Jogging Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005206, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128441.

J. Jogging Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005207, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128442.

K. Jogging Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005208, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128439.

L. Jogging Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005209, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128443.

M. Hotel Walkway Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005210, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128444.

N. Lehoula Beach Easement and License Agreement, dated January 12, 2001, recorded as Document No. 2001-005213, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128433.

O. Hana Hotel/Town Center Employee Housing License Agreement, dated January 12, 2001, recorded as Document No. 2001-005216.

**END OF EXHIBIT H**

**EXHIBIT I**

Section 1.15 - Conversions

Physical Condition Report and Reserve Study  
Attached



# Armstrong Consulting, Inc.



May 16, 2006

## Sea Ranch Cottages Condition Report

Visual observations were conducted at the request of the Passport Resorts LLC for the Sea Ranch Cottages on March 27, 2006. This property is located at 5031 Hana Highway, Hana, Maui 96713.

### **Description:**

The Sea Ranch property consists of 27 buildings containing 47 residential units. There are four support buildings consisting of a Wellness building, housekeeping building, pool/kitchen building and restrooms/pool mechanical building.

The buildings are constructed with reinforced isolated concrete footings, post and beam framing floor framing, with wood-framed walls and roof structures built in 1988. The roof consists of zinc coated corrugated aluminum. Exterior cladding consists of 1 x 6 tongue and groove siding with wood trims. The buildings are fire sprinkled and have smoke alarms.

There is one swimming pool and spa located on the property.

### **Disclaimer:**

Observations were made to ascertain the current condition of the subject property. This report relies on information obtained from onsite staff, maintenance personnel, and limited project drawings. No destructive measures or laboratory analyses were made. Armstrong Consulting, Inc did not perform ADA compliance and environmental surveys. No effort is made to determine if existing systems meet current building and mechanical codes, adequacy of design for the intended purpose or efficiency of operation. We reserve the right to alter or change any opinions or information given to reflect any new or contradictory information that may be made available.

### **Summary:**

The majority of maintenance is performed in-house. At the time of the on site observations the property appeared to be well maintained and in above average condition. Wood rot and plumbing repairs are being made on an as needed basis with no major plumbing or electrical failures reported.

**Sea Ranch Cottages**  
**May 16, 2006**  
**Page 2 of 2**

The project sewage system consists of a series of cesspools dedicated one per building. According to on site personnel there have been no problems with the systems. The cesspools have not required pumping since their installation.

The project buildings appear to have been painted within the last two years by in house staff and are on a three year painting cycle.

**Structural:**

As stated in the attached letter, dated April 27, 2006, from Roscoe Ford, P.E. both structural and civil engineer, all buildings appear to be good condition structurally.

**Plumbing:**

Due to the age of the project, corrosion of plumbing lines both above and below grade may be expected. There were no reported issues with the plumbing beyond periodic blockage removal and replacement of copper lines to due salt related corrosion. The buildings are fire sprinkled with random sprinkler head replacement occurring due to salt air corrosion on an as needed basis.

**Electrical:**

The electrical feeds are underground. Each building contains its own transformer. The electrical system appeared to be adequate for its designed demand and to be in good working order with no reported problems.

The fire alarm system panel is an AFP - 200 and is serviced by National Fire Protection. There are fire sprinklers, pull stations and smoke alarms that are reported to be monitored by the fire alarm system.

**Mechanical Systems:**

The mechanical systems are limited to the pool kitchen operations that are not part of this report.

**Swimming Pool:**

The swimming pool is located adjacent to the wellness building. There were no visual concerns or reported problems with the pool and spa or with its pumps, filters and chlorinators.

Please feel free to call if you have any concerns or questions.

Sincerely,

**ARMSTRONG CONSULTING, INC**



**DALE ARSTRONG**  
President & CEO

**Roscoe O. Ford**

Structural/Civil Engineer

469 Ena Road, #2604

Telephone (808) 949-5784

Honolulu, HI 96815

Facsimile (808) 949-5784

April 27, 2006

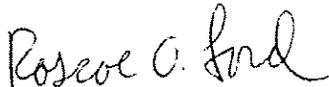
To Whom It May Concern:

I have made a non-destructive inspection of the buildings at the Sea Ranch Cottages for structural concerns. The buildings are constructed using reinforced concrete footings, wood for roof framing and stud walls.

From the visual inspection, all buildings appear to be in good condition structurally. No obvious structural defects were observed.

This report does not address the architectural, plumbing or electrical conditions of the project. Also, no statement or representations with regard to the expected useful life of the structure is made.

Very truly yours,



Roscoe O. Ford, P.E. 3731-S

2006  
RESERVE STUDY  
FOR

**Sea Ranch Cottages**

*May 1, 2006*

*Prepared by*

**Armstrong Consulting, Inc.**

**HAWAII** 850 W. Hind Dr., Suite 208 • Honolulu, HI 96821 • Phone: (808) 377-8500 • Fax: (808) 377-8511  
**FLORIDA** 1333 Gateway Dr., Suite 1014 • Melbourne, FL 32901 • Phone: (321) 674-0196 • Fax: (321) 308-0231  
Toll Free Phone: (800) 561-7732 • E-mail: [sales@armstrongassoc.net](mailto:sales@armstrongassoc.net) • Toll Free Fax: (888) 332-4610

**2006**  
**RESERVE STUDY**  
**FOR**  
**Sea Ranch Cottages**  
May 1, 2006

A level one (1) study was performed according to the Community Associations Institute (CAI) Reserve Study Standards. (*See attached standards.*)

On-site visual observations of the common area elements [i.e., roofs, parking areas, paint, etc.] were performed by Dale Armstrong.

This report may also rely on information supplied by the property manager, Board of Directors, resident manager, contractors and published replacement guides modified for local conditions related to reconstruction.

The placement of a useful life on common elements is not an exact science. There are many variables that affect their life. For example, weather, usage, vandalism and proper maintenance. Therefore, we recommend a review of the physical analysis every three years or at any time of a major condition change [i.e., storm damage] and an update of the financial analysis every year.

**Disclosure;** as an impartial third party, Armstrong Consulting, Inc. also provides construction management for Association's reserve projects, by being the Association's representative.

This report was either prepared or reviewed by Dale Armstrong, R.S.

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# COMMUNITY ASSOCIATIONS INSTITUTE (CAI) RESERVE STUDY STANDARDS

## What is a Reserve Study?

A Reserve Study is made up of two parts, 1) the information about the physical status and repair/replacement cost of the major common area components the association is obligated to maintain (Physical Analysis), and 2) the evaluation and analysis of the association's Reserve balance, income, and expenses (Financial Analysis). The Physical Analysis is comprised of the Component Inventory, Condition Assessment, and Life and Valuation Estimates. The Component Inventory should be relatively "stable" from year to year, while the Condition Assessment and Life and Valuation Estimates will necessarily change from year to year. The Financial Analysis is made up of a finding of the client's current Reserve Fund Status (measured in cash or as Percent Funded) and a recommendation for an appropriate Reserve contribution rate (Funding Plan).

Physical Analysis	Financial Analysis
Component Inventory Condition Assessment Life and Valuation Estimates	Fund Status Funding Plan

## Reserve Study Contents

The following is a list of the minimum contents to be included in the Reserve Study.

- A summary of the association's number of units, physical description, and Reserve Fund financial condition.
- A projection of Reserve Starting Balance, recommended Reserve contributions, projected Reserve expenses, and projected ending Reserve Fund Balance for a minimum of 20 years.
- A tabular listing of the Component Inventory, component quantity or identifying descriptions, Useful Life, Remaining Useful Life, and Current Replacement Cost.
- A description of methods and objectives utilized in computing the Fund Status and development of the Funding Plan.
- Source(s) utilized to obtain component Repair or Replacement cost estimates.
- A description of the Level of Service by which the Reserve Study was prepared.
- Fiscal year for which the Reserve Study is prepared.

## Levels of Service

The following three categories describe the various types of Reserve Studies, from exhaustive to minimal.

- I. Full: A Reserve Study in which the following five Reserve Study tasks are performed:
  - Component Inventory
  - Condition Assessment (based upon on-site visual observations)
  - Life and Valuation Estimates
  - Fund Status
  - Funding Plan

II. Update, With-Site-Visit/On-Site Review: A Reserve Study update in which the following five Reserve Study tasks are performed:

- Component Inventory (verification only, not quantification)
- Condition Assessment (based on on-site visual observations)
- Life and Valuation Estimates
- Fund Status
- Funding Plan

III. Update, No-Site-Visit/Off-Site Review: A Reserve Study update with no on-site visual observations in which the following three Reserve Study tasks are performed:

- Life and Valuation Estimates
- Fund Status
- Funding Plan

## Disclosures

The following are the minimum disclosures to be included in the Reserve Study.

**General:** Description of other involvement(s) with the association that could result in actual or perceived conflicts of interest.

**Physical Analysis:** Description of how thorough the on-site observations were performed: representative sampling vs. all common areas, destructive testing or not, field measurements vs. drawing take-offs, etc.

**Financial Analysis:** Description of assumptions utilized for interest and inflation, tax, and other outside factors.

**Personnel Credentials:** State or organizational licenses or credentials carried by the individual responsible for Reserve Study preparation or oversight.

**Update Reports:** Disclosure of how the current work is reliant on the validity of prior Reserve Studies.

**Completeness:** Material issues which, if not disclosed, would cause a distortion of the association's situation.

**Reliance on Client Data:** Information provided by the official representative of the association regarding financial, physical, quantity, or historical issues will be deemed reliable by the consultant. The reserve study will be a reflection of information provided to the consultant and assembled for the association's use, not for the purpose of performing an audit, quality/forensic analyses, or background checks of historical records.

**Reserve Balance:** The actual or projected total presented in the reserve study is based upon information provided and was not audited.

**Component Quantities:** For Update With-Site-Visit and Update No-Site-Visit Levels of Service, the client is considered to have deemed previously developed component quantities as accurate and reliable.

**Reserve Projects:** Information provided about reserve projects will be considered reliable. Any on-site inspection should not be considered a project audit or quality inspection.

## Terms and Definitions

**CASH FLOW METHOD:** A method of developing a Reserve Funding Plan where contributions to the Reserve fund are designed to offset the variable annual expenditures from the Reserve fund. Different Reserve Funding Plans are tested against the anticipated schedule of Reserve expenses until the desired Funding Goal is achieved.

**COMPONENT:** The individual line items in the Reserve Study, developed or updated in the Physical Analysis. These elements form the building blocks for the Reserve Study. Components typically are: 1) Association responsibility, 2) with limited Useful Life expectancies, 3) predictable Remaining Useful Life expectancies, 4) above a minimum threshold cost, and 5) as required by local codes.

**COMPONENT INVENTORY:** The task of selecting and quantifying Reserve Components. This task can be accomplished through on-site visual observations, review of association design and organizational documents, a review of established association precedents, and discussion with appropriate association representative(s).

**COMPONENT METHOD:** A method of developing a Reserve Funding Plan where the total contribution is based on the sum of contributions for individual components. See "Cash Flow Method."

**CONDITION ASSESSMENT:** The task of evaluating the current condition of the component based on observed or reported characteristics.

**CURRENT REPLACEMENT COST:** See "Replacement Cost."

**DEFICIT:** An actual (or projected) Reserve Balance less than the Fully Funded Balance. The opposite would be a Surplus.

**EFFECTIVE AGE:** The difference between Useful Life and Remaining Useful Life. Not always equivalent to chronological age, since some components age irregularly. Used primarily in computations.

**FINANCIAL ANALYSIS:** The portion of a Reserve Study where current status of the Reserves (measured as cash or Percent Funded) and a recommended Reserve contribution rate (Reserve Funding Plan) are derived, and the projected Reserve income and expense over time is presented. The Financial Analysis is one of the two parts of a Reserve Study.

**FULLY FUNDED:** 100% Funded. When the actual (or projected) Reserve balance is equal to the Fully Funded Balance.

**FULLY FUNDED BALANCE (FFB):** Total Accrued Depreciation. An indicator against which Actual (or projected) Reserve balance can be compared. The Reserve balance that is in direct proportion to the fraction of life "used up" of the current Repair or Replacement cost. This number is calculated for each component, then summed together for an association total. Two formulas can be utilized, depending on the provider's sensitivity to interest and inflation effects. Note: Both yield identical results when interest and inflation are equivalent.

$$FFB = \text{Current Cost} \times \text{Effective Age} / \text{Useful Life}$$

or

$$FFB = (\text{Current Cost} \times \text{Effective Age} / \text{Useful Life}) + [(\text{Current Cost} \times \text{Effective Age} / \text{Useful Life}) / (1 + \text{Interest Rate}) ^ \text{Remaining Life}] - [(\text{Current Cost} \times \text{Effective Age} / \text{Useful Life}) / (1 + \text{Inflation Rate}) ^ \text{Remaining Life}]$$

**FUND STATUS:** The status of the reserve fund as compared to an established benchmark such as percent funding.

**FUNDING GOALS:** Independent of methodology utilized, the following represent the basic categories of Funding Plan goals:

- **Baseline Funding:** Establishing a Reserve funding goal of keeping the Reserve cash balance above zero.
- **Full Funding:** Setting a Reserve funding goal of attaining and maintaining Reserves at or near 100% funded.
- **Statutory Funding:** Establishing a Reserve funding goal of setting aside the specific minimum amount of Reserves required by local statutes.
- **Threshold Funding:** Establishing a Reserve funding goal of keeping the Reserve balance above a specified dollar or Percent Funded amount. Depending on the threshold, this may be more or less conservative than "Fully Funding."

**FUNDING PLAN:** An association's plan to provide income to a Reserve fund to offset anticipated expenditures from that fund.

**FUNDING PRINCIPLES:**

- Sufficient Funds When Required
- Stable Contribution Rate over the Years
- Evenly Distributed Contributions over the Years
- Fiscally Responsible

**LIFE AND VALUATION ESTIMATES:** The task of estimating Useful Life, Remaining Useful Life, and Repair or Replacement Costs for the Reserve components.

**PERCENT FUNDED:** The ratio, at a particular point of time (typically the beginning of the Fiscal Year), of the actual (or projected) Reserve Balance to the Fully Funded Balance, expressed as a percentage.

**PHYSICAL ANALYSIS:** The portion of the Reserve Study where the Component Inventory, Condition Assessment, and Life and Valuation Estimate tasks are performed. This represents one of the two parts of the Reserve Study.

**REMAINING USEFUL LIFE (RUL):** Also referred to as "Remaining Life" (RL). The estimated time, in years, that a reserve component can be expected to continue to serve its intended function. Projects anticipated to occur in the initial year have "zero" Remaining Useful Life.

**REPLACEMENT COST:** The cost of replacing, repairing, or restoring a Reserve Component to its original functional condition. The Current Replacement Cost would be the cost to replace, repair, or restore the component during that particular year.

**RESERVE BALANCE:** Actual or projected funds as of a particular point in time that the association has identified for use to defray the future repair or replacement of those major components which the association is obligated to maintain. Also known as Reserves, Reserve Accounts, Cash Reserves. Based upon information provided and not audited.

**RESERVE PROVIDER:** An individual who prepares Reserve Studies.

**RESERVE STUDY:** A budget planning tool that identifies the current status of the Reserve fund and a stable and equitable Funding Plan to offset the anticipated future major common area expenditures. The Reserve Study consists of two parts: the Physical Analysis and the Financial Analysis. "Our budget and finance committee is soliciting proposals to update our Reserve Study for next year's budget."

**RESPONSIBLE CHARGE:** A reserve specialist in responsible charge of a reserve study shall render regular and effective supervision to those individuals performing services that directly and materially affect the quality and competence rendered by the reserve specialist. A reserve specialist shall maintain such records as are reasonably necessary to establish that the reserve specialist exercised regular and effective supervision of a reserve study of which he was in responsible charge. A reserve specialist engaged in any of the following acts or practices shall be deemed not to have rendered the regular and effective supervision required herein:

1. The regular and continuous absence from principal office premises from which professional services are rendered; except for performance of field work or presence in a field office maintained exclusively for a specific project;
2. The failure to personally inspect or review the work of subordinates where necessary and appropriate;
3. The rendering of a limited, cursory or perfunctory review of plans or projects in lieu of an appropriate detailed review;
4. The failure to personally be available on a reasonable basis or with adequate advance notice for consultation and inspection where circumstances require personal availability.

**SPECIAL ASSESSMENT:** An assessment levied on the members of an association in addition to regular assessments. Special Assessments are often regulated by governing documents or local statutes.

**SURPLUS:** An actual (or projected) Reserve Balance greater than the Fully Funded Balance. See "Deficit."

**USEFUL LIFE (UL):** Total Useful Life or Depreciable Life. The estimated time, in years, that a reserve component can be expected to serve its intended function if properly constructed in its present application or installation.

## **HAWAII'S AMENDMENT TO ALLOW CASH FLOW ANALYSIS**

### **HB 70**

"Cash flow plan" means a twenty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency.

*Courtesy of Armstrong Consulting, Inc.*

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# Sea Ranch Cottages

## PROJECT DEFINITION REPORT

5/01/2006

### Project Information

Project: Sea Ranch Cottages  
Address: 5031 Hana Hwy  
City: Hana  
State: HI  
Zip: 96713-0000

Project Date: 1/01/1988  
Number of Phases: 2  
Number of Units: 47  
Number of Models: 0

### Property Description

The Sea Ranch property consists of 24 buildings containing 47 residential units. There are four support buildings consisting of a Wellness building, housekeeping building, pool kitchen building and restrooms/pool mechanical building.

The property amenities include one water feature, Jacuzzi, large pool, pool snack bar and a fitness center known as the Wellness Center.

The property appeared to be well maintained.

# Sea Ranch Cottages

## ANALYSIS DEFINITION REPORT

### Analysis 1

#### Project Information

Project: Sea Ranch Cottages  
Address: 5031 Hana Hwy  
City: Hana  
State: HI  
Zip: 96713-0000

Project Date: 1/01/1988  
Analysis Date: 1/01/2007  
Number of Phases: 2  
Number of Units: 47  
Number of Models: 0

#### Analysis Parameters

Rate of Inflation: 3.6%  
Rate of Return on Investment: 3.25%  
Beginning Funds: \$0.00  
Loan/Special Assessment: No

Deferred Expenditures: No  
Contingency: 0%  
Contingency Time: None

#### Annual Contribution Factors

		2017:	4%
2008:	4%	2018:	4%
2009:	4%	2019:	0%
2010:	4%	2020:	0%
2011:	4%	2021:	0%
2012:	4%	2022:	0%
2013:	4%	2023:	0%
2014:	4%	2024:	0%
2015:	4%	2025:	0%
2016:	4%	2026:	0%

#### Additional Analysis Information

As this is a conversion of an existing project, a zero beginning balance as of January 1, 2007 is projected. A 3.25% average rate of return is used for reserve fund investments and a 3.6% inflation rate is used for future expenditures.

A 2007 reserve contribution of \$110,000 is recommended utilizing a 4% annual increase starting in 2008 through 2017.

Under this analysis the Association would meet Hawaii State reserve requirements under the cash flow method of calculations.

Please review the above parameters and the entire report for accuracy.

# Sea Ranch Cottages

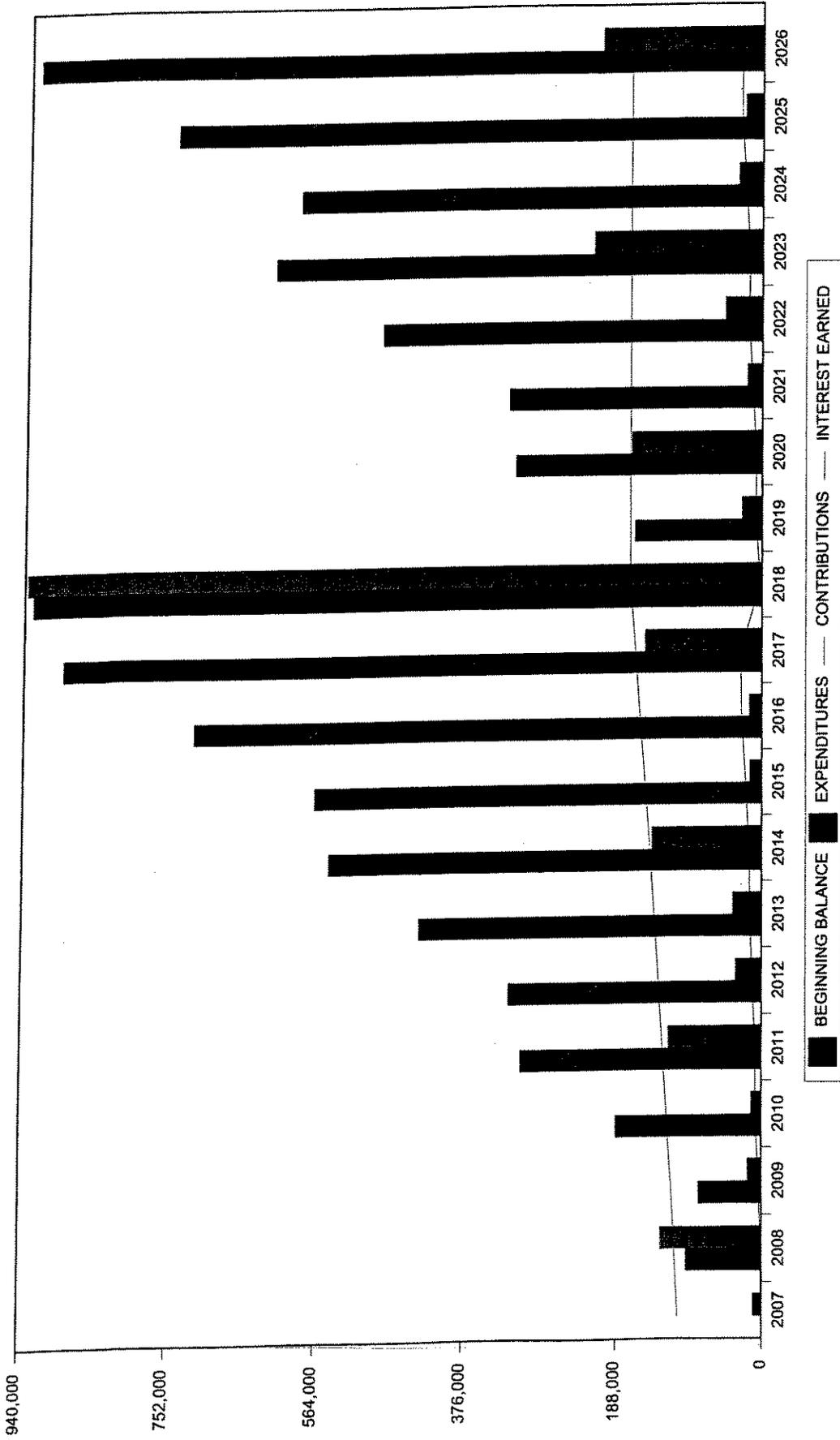
## CASHFLOW PERCENT FUNDED SUMMARY PROJECTIONS

### Analysis 1

Year	Beginning Balance	Contribution	Average/ Unit/Mo	Interest Earned	Expenditures	Ending Balance
2007	0.00	110,000.00	195.04	1,567.65	12,000.00	99,567.65
2008	99,567.65	114,400.00	202.84	1,059.47	132,660.00	82,367.12
2009	82,367.12	118,976.00	210.95	4,230.15	18,246.00	187,327.27
2010	187,327.27	123,735.04	219.39	7,938.53	13,343.00	305,657.84
2011	305,657.84	128,684.44	228.16	8,341.98	122,109.00	320,575.26
2012	320,575.26	133,831.82	237.29	11,843.15	33,655.00	432,595.23
2013	432,595.23	139,185.09	246.78	15,505.16	37,538.00	549,747.48
2014	549,747.48	144,752.49	256.65	16,015.07	142,231.00	568,284.04
2015	568,284.04	150,542.59	266.92	20,895.41	15,930.00	723,792.04
2016	723,792.04	156,564.29	277.60	26,112.90	16,503.00	889,966.23
2017	889,966.23	162,826.86	288.70	27,268.17	151,027.00	929,034.26
2018	929,034.26	169,339.93	300.25	2,749.62	936,944.00	164,179.81
2019	164,179.81	169,339.93	300.25	7,568.38	25,997.00	315,091.12
2020	315,091.12	169,339.93	300.25	7,864.45	167,933.00	324,362.50
2021	324,362.50	169,339.93	300.25	13,059.76	19,696.00	487,066.19
2022	487,066.19	169,339.93	300.25	17,494.49	47,951.00	625,949.61
2023	625,949.61	169,339.93	300.25	16,489.77	217,294.00	594,485.31
2024	594,485.31	169,339.93	300.25	21,595.91	31,025.00	754,396.15
2025	754,396.15	169,339.93	300.25	27,145.44	22,689.00	928,192.52
2026	928,192.52	169,339.93	300.25	26,777.73	207,633.00	916,677.18
<b>Totals:</b>		<b>3,007,557.99</b>		<b>281,523.19</b>	<b>2,372,404.00</b>	

**Sea Ranch Cottages**  
**CASHFLOW PROJECTIONS GRAPH**

Analysis 1



**PROJECTED EXPENDITURES**

**Analysis 1**

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Fire Alarm System										
Hot Water Heaters-Gas						19,334	19,789			
Internet Service			5,366							
Painting-Exterior		97,384						6,407		
Plumbing Repairs		16,783			108,285			120,448		
Screens-Windows		3,626								
Smoke Alarms		2,435								
Wood Rot Repairs	12,000	12,432	12,880	13,343	13,824	14,321	2,907	15,376	15,930	16,503
<b>Totals</b>	<b>12,000</b>	<b>132,660</b>	<b>18,246</b>	<b>13,343</b>	<b>122,109</b>	<b>33,655</b>	<b>37,538</b>	<b>142,231</b>	<b>15,930</b>	<b>16,503</b>

**PROJECTED EXPENDITURES**

Analysis 1

	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Electrical Repairs							26,424			
Hot Water Heaters-Gas						27,546				
Internet Service			7,646					9,125		
Painting-Exterior	133,930			148,922						184,127
Plumbing Repairs		23,913					165,591			
Roofing-Corrugated Aluminum		694,497								
Screens-Windows		5,166								
Smoke Alarms		3,469					4,140			
Transformers-Electrical		192,186								
Wood Rot Repairs	17,097	17,713	18,351	19,011	19,696	20,405	21,139	21,900	22,689	23,506
<b>Totals</b>	<b>151,027</b>	<b>936,944</b>	<b>25,997</b>	<b>167,933</b>	<b>19,696</b>	<b>47,951</b>	<b>217,294</b>	<b>31,025</b>	<b>22,689</b>	<b>207,633</b>

**Sea Ranch Cottages**  
**ACCOUNTANT'S REPORT**

Analysis 1  
1/01/2007 - 12/31/2007

Component	Remaining Life (yr/mo)	Future Cost	Assigned Reserves	2007 Contribution Requirement	2007 Assigned Interest Earned	2007 Funding Requirement
Electrical Repairs	16/00	26,424	0	2,038	33	2,071
Fire Alarm System	06/00	19,789	0	2,136	34	2,170
Hot Water Heaters-Gas	05/00	19,334	0	1,373	22	1,395
Internet Service	02/00	5,366	0	457	7	464
Painting-Exterior	01/00	97,384	0	9,222	148	9,370
Plumbing Repairs	01/00	16,783	0	2,265	36	2,301
Roofing-Corrugated Aluminum	11/00	694,497	0	62,479	999	63,478
Screens-Windows	00/00	2,545	0	2,545	0	2,545
Smoke Alarms	00/00	1,432	0	1,432	0	1,432
Transformers-Electrical	11/00	192,186	0	17,290	277	17,567
Wood Rot Repairs	00/00	6,347	0	6,347	0	6,347
<b>Totals:</b>		<b>1,082,087</b>	<b>0</b>	<b>107,584</b>	<b>1,556</b>	<b>109,140</b>

**Sea Ranch Cottages**  
**COMPONENT SUMMARY REPORT**

Analysis 1

<u>Description</u>	<u>Starting Date</u>	<u>Useful Life (yr/mo)</u>	<u>Adj. Life (yr/mo)</u>	<u>Sched. Rpl. (mo/yr)</u>	<u>Recur</u>	<u>Current Cost</u>	<u>Future Cost</u>
<u>Carpentry</u>							
Wood Rot Repairs	1/01/1988	01/00	00/00	*01/89*	Y	12,000	12,000
<b>Sub Total:</b>						<b>12,000</b>	<b>12,000</b>
<u>Communications</u>							
Internet Service	1/01/2004	05/00	00/00	01/09	Y	5,000	5,366
<b>Sub Total:</b>						<b>5,000</b>	<b>5,366</b>
<u>Electrical</u>							
Electrical Repairs	1/01/1988	20/00	+15/00	01/23	Y	15,000	26,424
Transformers-Electrical	1/01/1988	30/00	00/00	01/18	Y	130,200	192,186
<b>Sub Total:</b>						<b>145,200</b>	<b>218,610</b>
<u>Fire Control</u>							
Smoke Alarms	1/01/1988	05/00	00/00	*01/93*	Y	2,350	2,350
<b>Sub Total:</b>						<b>2,350</b>	<b>2,350</b>
<u>Fire/Life Safety</u>							
Fire Alarm System	1/01/1988	25/00	00/00	01/13	Y	16,000	19,789
<b>Sub Total:</b>						<b>16,000</b>	<b>19,789</b>
<u>Mechanical</u>							
Hot Water Heaters-Gas	1/01/2002	10/00	00/00	01/12	Y	16,200	19,334
<b>Sub Total:</b>						<b>16,200</b>	<b>19,334</b>

# Sea Ranch Cottages

## COMPONENT SUMMARY REPORT

### Analysis 1

Description	Starting Date	Useful Life (yr/mo)	Adj. Life (yr/mo)	Sched. Rpl. (mo/yr)	Recur	Current Cost	Future Cost
<b><u>Painting</u></b>							
Painting-Exterior	1/01/2005	03/00	00/00	01/08	Y	94,000	97,384
<b>Sub Total:</b>						<b>94,000</b>	<b>97,384</b>
<b><u>Plumbing</u></b>							
Plumbing Repairs	1/01/1988	10/00	+10/00	01/08	Y	16,200	16,783
<b>Sub Total:</b>						<b>16,200</b>	<b>16,783</b>
<b><u>Roofing</u></b>							
Roofing-Corrugated Aluminum	1/01/1988	30/00	00/00	01/18	Y	470,500	694,497
<b>Sub Total:</b>						<b>470,500</b>	<b>694,497</b>
<b><u>Screens</u></b>							
Screens-Windows	1/01/1988	10/00	00/00	*01/98*	Y	3,500	3,500
<b>Sub Total:</b>						<b>3,500</b>	<b>3,500</b>
<b><u>Sewage</u></b>							
Cesspools	1/01/1988	50/00	00/00	01/38	Y	0	0
<b>Sub Total:</b>						<b>0</b>	<b>0</b>
<b>Grand Total:</b>						<b>780,950</b>	<b>1,089,613</b>

# Sea Ranch Cottages

## COMPONENT DETAIL REPORT

### Analysis 1

#### Cesspools

Category:	Sewage	Unit Cost:	\$0.00
Began Use:	1/01/1988	Cost Type:	Contractor
Lifespan:	50 years	Percent Replacement:	100.00%
Lifespan Adjustment:	None	Current Cost:	\$0.00
Next Replacement:	1/01/2038	Future Cost:	\$0.00
Remaining Life:	31 YRS	Salvage Value:	\$0.00
Quantity:	27.00 TOTAL		

#### Remarks

The cesspools are a passive system with no mechanical components. There have been no reported problems and pumping has not been required since their installation. No funds are being reserved for at this time.

## Sea Ranch Cottages

### COMPONENT DETAIL REPORT

#### Analysis 1

#### Electrical Repairs

Category:	Electrical	Unit Cost:	\$15,000.00
Began Use:	1/01/1988	Cost Type:	Contractor
Lifespan:	20 years	Percent Replacement:	100.00%
Lifespan Adjustment:	+ 15 years	Current Cost:	\$15,000.00
Next Replacement:	1/01/2023	Future Cost:	\$26,424.14
Remaining Life:	16 YRS	Salvage Value:	\$0.00
Quantity:	1.00 TOTAL		

#### Remarks

The above cost is for electrical repairs on an as needed basis. New ground lighting is planned for 2007/08. The cost estimate for this asset is provided by Armstrong Consulting, Inc., which may rely upon information, furnished to us by the client and/or their vendor. This estimate is to be used for budgeting purposes only.

## Sea Ranch Cottages

### COMPONENT DETAIL REPORT

#### Analysis 1

#### Fire Alarm System

Category: Fire/Life Safety  
Began Use: 1/01/1988  
Lifespan: 25 years  
Lifespan Adjustment: None  
Next Replacement: 1/01/2013  
Remaining Life: 6 YRS  
Quantity: 1.00 SYSTEM

Unit Cost: \$16,000.00  
Cost Type: Contractor  
Percent Replacement: 100.00%  
Current Cost: \$16,000.00  
Future Cost: \$19,789.38  
Salvage Value: \$0.00

#### Remarks

The fire alarm system panel is a AFP - 200 and is serviced by National Fire Protection. There are fire sprinklers, pull stations and smoke alarms that are reported to be tied into the fire alarm system.

The above cost is for component replacement on an as needed basis.

## Sea Ranch Cottages

### COMPONENT DETAIL REPORT

#### Analysis 1

#### Hot Water Heaters-Gas

Category: Mechanical  
Began Use: 1/01/2002  
Lifespan: 10 years  
Lifespan Adjustment: None  
Next Replacement: 1/01/2012  
Remaining Life: 5 YRS  
Quantity: 27.00 EACH

Unit Cost: \$600.00  
Cost Type: Contractor  
Percent Replacement: 100.00%  
Current Cost: \$16,200.00  
Future Cost: \$19,333.65  
Salvage Value: \$0.00

#### Remarks

The placed in service date is not known and is estimated. It is assumed that replacement will be made on an as needed basis.

The cost estimate for this asset is provided by Armstrong Consulting, Inc., which may rely upon information, furnished to us by the client and/or their vendor. This estimate is to be used for budgeting purposes only.

## Sea Ranch Cottages

### COMPONENT DETAIL REPORT

#### Analysis 1

#### Internet Service

Category:	Communications	Unit Cost:	\$5,000.00
Began Use:	1/01/2004	Cost Type:	Contractor
Lifespan:	5 years	Percent Replacement:	100.00%
Lifespan Adjustment:	None	Current Cost:	\$5,000.00
Next Replacement:	1/01/2009	Future Cost:	\$5,366.48
Remaining Life:	24 MOS	Salvage Value:	\$0.00
Quantity:	1.00 TOTAL		

#### Remarks

American Data Path installed high speed internet service in 2004. Information concerning this system was not provided by the vendor at the time of this report. It is assumed that component replacement will be made on an as needed basis.

The cost estimate for this asset is provided by Armstrong Consulting, Inc., which may rely upon information, furnished to us by the client and/or their vendor. This estimate is to be used for budgeting purposes only.

# Sea Ranch Cottages

## COMPONENT DETAIL REPORT

### Analysis 1

#### Painting-Exterior

Category:	Painting	Unit Cost:	\$2,000.00
Began Use:	1/01/2005	Cost Type:	Contractor
Lifespan:	3 years	Percent Replacement:	100.00%
Lifespan Adjustment:	None	Current Cost:	\$94,000.00
Next Replacement:	1/01/2008	Future Cost:	\$97,384.00
Remaining Life:	12 MOS	Salvage Value:	\$0.00
Quantity:	47.00 TOTAL		

#### Remarks

The project was painted in 2005 by a painting contractor. Historically the project is painted every three years.

The cost estimate for this asset is provided by Armstrong Consulting, Inc., which may rely upon information, furnished to us by the client and/or their vendor. This estimate is to be used for budgeting purposes only.

## Sea Ranch Cottages

### COMPONENT DETAIL REPORT

#### Analysis 1

#### Plumbing Repairs

Category:	Plumbing	Unit Cost:	\$54,000.00
Began Use:	1/01/1988	Cost Type:	Contractor
Lifespan:	10 years	Percent Replacement:	30.00%
Lifespan Adjustment:	+ 10 years	Current Cost:	\$16,200.00
Next Replacement:	1/01/2008	Future Cost:	\$16,783.20
Remaining Life:	12 MOS	Salvage Value:	\$0.00
Quantity:	1.00 TOTAL		

#### Remarks

Corrosion is noted on the above ground domestic water copper lines located in the crawl spaces. The cost is for replacement on an as-needed basis. Corrosion is expected due to the proximity to the ocean.

The cost estimate for this asset is provided by Armstrong Consulting, Inc., which may rely upon information, furnished to us by the client and/or their vendor. This estimate is to be used for budgeting purposes only.

## Sea Ranch Cottages

### COMPONENT DETAIL REPORT

#### Analysis 1

#### Roofing-Corrugated Aluminum

Category: Roofing  
Began Use: 1/01/1988  
Lifespan: 30 years  
Lifespan Adjustment: None  
Next Replacement: 1/01/2018  
Remaining Life: 11 YRS  
Quantity: 941.00 SQUARE

Unit Cost: \$500.00  
Cost Type: Contractor  
Percent Replacement: 100.00%  
Current Cost: \$470,500.00  
Future Cost: \$694,497.26  
Salvage Value: \$0.00

#### Remarks

The zinc coated aluminum corrugated appears to be in good condition. Corrosion is noted and reported on the underside of the roof only at the exposed lanais. Repairs are performed as needed.

The cost estimate for this asset is provided by Armstrong Consulting, Inc., which may rely upon information, furnished to us by the client and/or their vendor. This estimate is to be used for budgeting purposes only.

## Sea Ranch Cottages

### COMPONENT DETAIL REPORT

#### Analysis 1

#### Screens-Windows

Category:	Screens	Unit Cost:	\$3,500.00
Began Use:	1/01/1988	Cost Type:	Contractor
Lifespan:	10 years	Percent Replacement:	100.00%
Lifespan Adjustment:	None	Current Cost:	\$3,500.00
Next Replacement:	1/01/1998	Future Cost:	\$3,500.00
Remaining Life:	0	Salvage Value:	\$0.00
Quantity:	--- 1.00-TOTAL		

#### Remarks

The above cost is for window screen replacement on an as needed basis. It is estimated that approximately \$3,500 will be spent every ten years for replacement.

## Sea Ranch Cottages

### COMPONENT DETAIL REPORT

#### Analysis 1

#### Smoke Alarms

Category:	Fire Control	Unit Cost:	\$50.00
Began Use:	1/01/1988	Cost Type:	Contractor
Lifespan:	5 years	Percent Replacement:	100.00%
Lifespan Adjustment:	None	Current Cost:	\$2,350.00
Next Replacement:	1/01/1993	Future Cost:	\$2,350.00
Remaining Life:	0	Salvage Value:	\$0.00
Quantity:	47.00 EACH		

#### Remarks

Smoke alarms are located inside the residential units. It is assumed that replacement will be made on an as needed basis.

The cost estimate for this asset is provided by Armstrong Consulting, Inc., which may rely upon information, furnished to us by the client and/or their vendor. This estimate is to be used for budgeting purposes only.

## Sea Ranch Cottages

### COMPONENT DETAIL REPORT

#### Analysis 1

#### Transformers-Electrical

Category:	Electrical	Unit Cost:	\$4,200.00
Began Use:	1/01/1988	Cost Type:	Contractor
Lifespan:	30 years	Percent Replacement:	100.00%
Lifespan Adjustment:	None	Current Cost:	\$130,200.00
Next Replacement:	1/01/2018	Future Cost:	\$192,186.06
Remaining Life:	11 YRS	Salvage Value:	\$0.00
Quantity:	31.00 EACH		

#### Remarks

It is reported that there is one transformer per building. The residential buildings' transformer are 37.5 KVA. The housekeeping building transformer is 25 KVA. The transformers are manufactured by Square D.

The cost estimate for this asset is provided by Armstrong Consulting, Inc., which may rely upon information, furnished to us by the client and/or their vendor. This estimate is to be used for budgeting purposes only.

## Sea Ranch Cottages

### COMPONENT DETAIL REPORT

#### Analysis 1

#### Wood Rot Repairs

Category:	Carpentry	Unit Cost:	\$12,000.00
Began Use:	1/01/1988	Cost Type:	Contractor
Lifespan:	1 years	Percent Replacement:	100.00%
Lifespan Adjustment:	None	Current Cost:	\$12,000.00
Next Replacement:	1/01/1989	Future Cost:	\$12,000.00
Remaining Life:	0	Salvage Value:	\$0.00
Quantity:	1.00 TOTAL		

#### Remarks

It is reported that approximately \$500 per month is spent for materials only to address wood rot repairs.  
\$1,000 per month is budgeted to include labor and materials.

**EXHIBIT I-1**

Section 1.15 – Conversions  
Verified Statement from a County Official

1. Zoning Compliance; Variance. The Project contains existing structures being converted by the Declaration to condominium status. As required by Section 514B-32(a)(13) of the Act, and subject to the penalties specified in Section 514B-69(b) of the Act, the Developer declares, to the best of its knowledge, and based on statements set forth in the following letters from the County of Maui, Development Services Administration, that Units are in compliance with all zoning and building ordinances and codes applicable to the Project and no variances are required from the applicable ordinances or codes to achieve such compliance.

(i) Letter dated April 28, 2006 re Miscellaneous Inspection #MISC 2006/0072 for Wellness Building.

(ii) Letter dated April 28, 2006 re Miscellaneous Inspection #MISC 2006/0073 & 0074 for Buildings 1 & 2.

(iii) Letter dated April 28, 2006 re Miscellaneous Inspection #MISC 2006/0076 to 2006/0099 for all cottages.

(iv) Letter dated April 28, 2006 re Miscellaneous Inspection #MISC 2006/0075 for Snack Shop.

(v) Letter dated June 13, 2006 re Miscellaneous Inspection #MISC 2006/0076 to 2006/0099 re windows and tub enclosure.

(vi) Letter dated June 21, 2006 re Miscellaneous Inspection #MISC 2006/0072-0099 re electrical and plumbing.

(vii) Letter dated August 16, 2006 re Miscellaneous Inspection #MISC 2006/0076 to 2006/0099 re windows and tub enclosure.

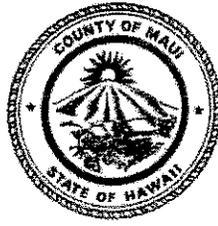
(viii) Letter dated March 27, 2007 re Notices with Regard to Hana Hotel Sea Ranch Cottages concerning safety glass glazing for windows and guardrails acknowledging that notices of violation concerning guardrails have been corrected and notices of violation concerning safety glazing have been rescinded.

**END OF EXHIBIT I-1**

ALAN M. ARAKAWA  
Mayor

DN M. ARAKAWA, A.I.C.P.  
Director

CHANEL M. MIYAMOTO  
Deputy Director



RALPH M. NAGAMINE  
Development Services A

TRACY TAKAMIN  
Wastewater Reclamation

CARY YAMASHITA  
Engineering Div

BRIAN HASHIRO  
Highways Division

Solid Waste Division

COUNTY OF MAUI  
DEPARTMENT OF PUBLIC WORKS  
AND ENVIRONMENTAL MANAGEMENT  
**DEVELOPMENT SERVICES ADMINISTRATION**

250 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

April 28, 2006

EXISTING  
 PROPOSED  
 OCCUPIED  
 NOT OCCUPIED

Mr. Peter Heinemann  
P.O. Box 10  
Hana, Hawaii 96713

SUBJECT: MISCELLANEOUS INSPECTION #MISC 2006/0072  
HRS COMPLIANCE  
HOTEL HANA SEA RANCH COTTAGES - WELLNESS BUILDING  
TMK (2) 1-4-03:058  
TYPE OF CONSTRUCTION: V-N W/FS      GROUP OCCUPANCY: B

Dear Mr. Heinemann:

This letter is regarding your April 4, 2006 request for a Miscellaneous Inspection at 5031 Hana Highway, Hana, Maui.

We inspected the structures on the subject parcel on April 26, 2006, and found said structure in general compliance with building codes.

If you have any questions regarding this letter, please call me at 270-7375.

Sincerely,

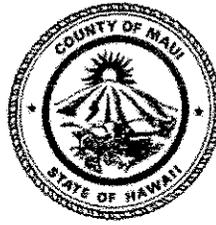
  
SONNY HUI  
Building Inspector

SH:jh

IAN M. ARAKAWA  
Mayor

M. ARAKAWA, A.I.C.P.  
Director

DALE M. MIYAMOTO  
Deputy Director



RALPH M. NAGAM  
Development Service

TRACY TAKAM  
Wastewater Reclam

CARY YAMASHITA  
Engineering

BRIAN HASHI  
Highways Division

Solid Waste Division

COUNTY OF MAUI  
DEPARTMENT OF PUBLIC WORKS  
AND ENVIRONMENTAL MANAGEMENT  
**DEVELOPMENT SERVICES ADMINISTRATION**  
250 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

April 28, 2006

EXISTING  
 PROPOSED  
 OCCUPIED  
 NOT OCCUPIED

Mr. Peter Heinemann  
P.O. Box 10  
Hana, Hawaii 96713

SUBJECT: MISCELLANEOUS INSPECTION #MISC 2006/0073, & 0074  
HRS COMPLIANCE  
HOTEL HANA SEA RANCH COTTAGES BUILDINGS 1 & 2  
TMK (2) 1-4-03:058  
TYPE OF CONSTRUCTION: V-N W/FS      GROUP OCCUPANCY: M

Dear Mr. Heinemann:

This letter is regarding your April 4, 2006 request for a Miscellaneous Inspection at 5031 Hana Highway, Hana, Maui.

We inspected the structures on the subject parcel on April 26, 2006, and found said structure in general compliance with building codes.

If you have any questions regarding this letter, please call me at 270-7375.

Sincerely,

  
SONNY HUI  
Building Inspector

SH:jh

ALAN M. ARAKAWA  
Mayor

MILTON M. ARAKAWA, A.I.C.P.  
Director

MICHAEL M. MIYAMOTO  
Deputy Director



RALPH M. NAGAMINE, L.S., P.E.  
Development Services Administration

TRACY TAKAMINE, P.E.  
Wastewater Reclamation Division

CARY YAMASHITA, P.E.  
Engineering Division

BRIAN HASHIRO, P.E.  
Highways Division

Solid Waste Division

COUNTY OF MAUI  
DEPARTMENT OF PUBLIC WORKS  
AND ENVIRONMENTAL MANAGEMENT  
**DEVELOPMENT SERVICES ADMINISTRATION**  
250 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

April 28, 2006

INSPECTOR'S COPY

Certified Mail 7004 1160 0002 5915 8036

- Existing
- Proposed
- Occupied
- Not Occupied

Mr. Peter Heinemann  
P.O. Box 10  
Hana, Hawaii 96713

**SUBJECT: MISCELLANEOUS INSPECTION # MISC 2006/0076 to 2006/0099  
FOR ALL COTTAGES  
FOR H.R.S. SECTION 514A-40 COMPLIANCE  
HOTEL HANA MAUI SEA RANCH COTTAGES  
TYPE OF CONSTRUCTION: V-N W/FS      GROUP OCCUPANCY: R-1  
AT: 5031 HANA HIGHWAY, HANA, MAUI  
TMK (2) 1-4-003:058**

Dear Mr. Heinemann:

Based on a site inspection conducted on April 26, 2006, the following items need to be addressed before a Certificate of Occupancy can be issued under the amended 1985 Uniform Building Code (UBC):

1. Per **Section 5406.(d)** : Provide safety glazing for all windows within tub enclosure.
2. Per **Section 1711**: Provide guard rail at all windows with sill height less than 36" from finished floor and with fall greater than 30" from finished floor.

You have until **October 25, 2006**, to correct the above listed code violations. For safety glazing requirement, you may provide evidence showing that all glass by the tub is safety glazed or replace all glass with safety glass or tempered glass. Failure to comply will result in a Notice of Violation being issued with an initial fine of \$500 and daily fines of \$100 per day that doubles every 30 days if the violation is not corrected within 30 days after issuance of the Notice of Violation.

Mr. Peter Heinemann  
TMK (2) 1-4-003:058  
April 28, 2006  
Page 2 of 2

If you have any questions regarding this letter or after corrections have been made, please call me for re-inspection at 270-7375.

Sincerely,



SONNY HUH  
Building Inspector

SH:jh

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ALAN M. ARAKAWA  
Mayor

MILTON M. ARAKAWA, A.I.C.P.  
Director

MICHAEL M. MIYAMOTO  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PUBLIC WORKS  
AND ENVIRONMENTAL MANAGEMENT  
**DEVELOPMENT SERVICES ADMINISTRATION**  
250 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

April 28, 2006

RALPH M. NAGAMINE, L.S., P.E.  
Development Services Administration

TRACY TAKAMINE, P.E.  
Wastewater Reclamation Division

CARY YAMASHITA, P.E.  
Engineering Division

BRIAN HASHIRO, P.E.  
Highways Division

Solid Waste Division

INSPECTOR'S COPY

Certified Mail 7004 1160 0002 5915 8403

- Existing
- Proposed
- Occupied
- Not Occupied

Mr. Peter Heinemann  
P.O. Box 10  
Hana, Hawaii 96713

SUBJECT: MISCELLANEOUS INSPECTION # MISC 2006/0075  
SNACK SHOP  
FOR H.R.S. SECTION 514A-40 COMPLIANCE  
HOTEL HANA MAUI SEA RANCH COTTAGES  
TYPE OF CONSTRUCTION: V-N W/FS      GROUP OCCUPANCY: B  
AT: 5031 HANA HIGHWAY, HANA, MAUI  
TMK (2) 1-4-003:058

Dear Mr. Heinemann:

Based on a site inspection conducted on April 26, 2006, the following item needs to be addressed before a final approval can be issued under the amended 1985 Uniform Building Code (UBC):

1. Per Section 3304 (i) : Provide solid landing at exterior door. Landing size is 36" x width of door.

You have until October 25, 2006, to correct the above listed code violation. Failure to comply will result in a Notice of Violation being issued with an initial fine of \$500 and daily fines of \$100 per day that doubles every 30 days if the violation is not corrected within 30 days after issuance of the Notice of Violation.

Mr. Peter Heinemann  
TMK (2) 1-4-003:058  
April 28, 2006  
Page 2 of 2

If you have any questions regarding this letter or after corrections have been made, please call me for re-inspection at 270-7375.

Sincerely,



SONNY HUH  
Building Inspector

SH:jh

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ALAN M. ARAKAWA  
Mayor

MILTON M. ARAKAWA, A.I.C.P.  
Director

MICHAEL M. MIYAMOTO  
Deputy Director



RALPH M. NAGAMINE, L.S., P.E.  
Development Services Administration

DAVID TAYLOR, P.E.  
Wastewater Reclamation Division

CARY YAMASHITA, P.E.  
Engineering Division

BRIAN HASHIRO, P.E.  
Highways Division

TRACY TAKAMINE, P.E.  
Solid Waste Division

COUNTY OF MAUI  
DEPARTMENT OF PUBLIC WORKS  
AND ENVIRONMENTAL MANAGEMENT  
**DEVELOPMENT SERVICES ADMINISTRATION**  
250 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
June 13, 2006

Certified Mail 7004 1160 0002 5944 4665

- Existing
- Proposed
- Occupied

Mr. Peter Heinemann  
P.O. Box 10  
Hana, Hawaii 96793

SUBJECT: MISCELLANEOUS INSPECTION # MISC 2006/0076 to 2006/0099

PURPOSE: (Check One)

- HRS COMPLIANCE
- HOME OWNERS INSURANCE
- OTHER
- CARE HOME

HANA HOTEL SEA RANCH COTTAGES

TYPE OF CONSTRUCTION: VN W/FS GROUP OCCUPANCY: R1

AT: 5031 HANA HIGHWAY, HANA, MAUI

TMK: (2) 1-4-003:058

Dear Mr. Heinemann :

Based on a site inspection conducted on April 26, 2006, the following items need to be addressed before your HRS compliance inspections can be approved under the amended 1985 Uniform Building Code (UBC):

1. Per Section 5406 (d): Provide safety glazing for all windows within tub enclosure.
2. Per Section 1711: Provide guard rail at all windows with sill height less than 36" from finish floor and with a height greater than 30' from finished floor.

This is your second notice. You have until October 25, 2006 to correct the above listed code violations for safety glazing requirement. These units shall not be occupied until reinspected and approved. You may provide evidence showing that all glass by the tub is safety glazed or replace all glass with safety glass or tempered glass.

Mr. Peter Heinemann  
TMK (2) 1-4-003:058  
June 13, 2006  
Page 2 of 2

Failure to comply will result in a Notice of Violation being issued with an initial fine of \$500 and daily fines of \$100 per day that doubles every 30 days if the violation is not corrected within 30 days after issuance of the Notice of Violation.  
at 270-7250.

If you have any questions regarding this letter or after corrections have been made, please call me for re-inspection at 270-7375.

Sincerely,



NEIL NICHOLAS  
Building Inspector

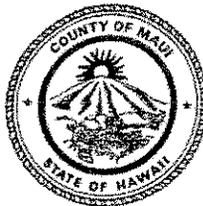
NPN:jh

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ALAN M. ARAKAWA  
Mayor

ON M. ARAKAWA, A.I.C.P.  
Director

MICHAEL M. MIYAMOTO  
Deputy Director



RALPH M. NA  
Development Se

DAVID T  
Wastewater Re

CARY YAN  
Engineer

BRIAN H/  
Highwa

TRACY TA  
Solid We

COUNTY OF MAUI  
DEPARTMENT OF PUBLIC WORKS  
AND ENVIRONMENTAL MANAGEMENT  
**DEVELOPMENT SERVICES ADMINISTRATION**  
250 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

June 21, 2006

COPY

Mr. Peter Heinemann, Manager  
SEA RANCH COTTAGES  
DBA HOTEL HANA MAUI  
5031 Hana Highway  
Hana, Hawaii 96713

SUBJECT: MISCELLANEOUS INSPECTION # 2006/0072-0099  
FOR HOTEL HANA MAUI  
LOCATED AT 5031 HANA HIGHWAY, HANA, HAWAII  
TMK: (2) 1-4-003:058

Dear Mr. Heinemann:

This is regarding your April 4, 2006, request for miscellaneous inspections on a warehouse for a preliminary condominium public report on the subject property.

- We made a building, electrical, and plumbing inspection on April 26, 2006, and found the premises to be in general compliance with applicable codes.

Please note that we were unable to inspect any of the concealed building, electrical, or plumbing work.

OTHER COMMENTS:

- There are no pending subdivisions, building and code appeals, or administrative waivers currently in process for the premises.
- Hana Highway is a State roadway and, therefore, maintained by the State. The County of Maui has no jurisdiction on this State roadway.
- There are no pending requests for code appeals in our Section or administrative waivers

June 21, 2006

Mr. Peter Heinemann

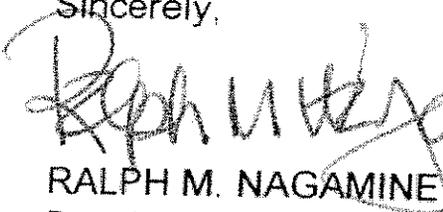
SUBJECT: MISCELLANEOUS INSPECTIONS #2006/0072-0099  
FOR HOTEL HANA MAUI  
LOCATED AT 5031 HANA HIGHWAY, HANA, HAWAII  
TMK: (2) 1-4-003:058

Page 2 of 2

- Units A, B, C, and E were approved as guest rooms not as single family dwellings with kitchens.
- All other accessory buildings shall be used as declared on its building permit.
- We also recommend that you call the Planning Department at 270-7735 to verify if there are any variances, or if the existing or proposed uses, if any, are legally permitted.

If you have any questions regarding this letter, please call Jae Mattos at 270-7250.

Sincerely,

 **COPY**

RALPH M. NAGAMINE  
Development Services Administrator

jm S:\DSA\Permits\SCNMISC-INS\2006-0072\_thru\_0099\_hotel\_hana\_maui\_hrs\_jm.wpd

c: Hawaii Real Estate Commission  
Planning Department

ALAN M. ARAKAWA  
Mayor

MILTON M. ARAKAWA, A.I.C.P.  
Director

MICHAEL M. MIYAMOTO  
Deputy Director



RALPH M. NAGAMINE, L.S., P.E.  
Development Services Administration

DAVID TAYLOR, P.E.  
Wastewater Reclamation Division

CARY YAMASHITA, P.E.  
Engineering Division

BRIAN HASHIRO, P.E.  
Highways Division

TRACY TAKAMINE, P.E.  
Solid Waste Division

COUNTY OF MAUI  
DEPARTMENT OF PUBLIC WORKS  
AND ENVIRONMENTAL MANAGEMENT  
**DEVELOPMENT SERVICES ADMINISTRATION**

250 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

August 16, 2006

Certified Mail 7005 1160 0000 4102 6764

- Existing
- Proposed
- Occupied
- Not Occupied

Mr. Peter Heinemann  
P.O. Box 10  
Hana, Hawaii 96713

SUBJECT: MISCELLANEOUS INSPECTION # MISC 2006/0076 to 2006/0099

PURPOSE: (Check One)

- HRS COMPLIANCE
- HOME OWNERS INSURANCE
- OTHER
- CARE HOME

HANA HOTEL SEA RANCH COTTAGES

TYPE OF CONSTRUCTION: VN W/FS GROUP OCCUPANCY: R1

AT: 5031 HANA HIGHWAY, HANA, MAUI

TMK: (2) 1-4-003:058

Dear Mr. Heinemann :

Based on a site inspection conducted on April 26, 2006, the following items need to be addressed before your HRS compliance inspections can be approved under the amended 1985 Uniform Building Code (UBC):

1. Per Section 5406 (d): Provide safety glazing for all windows within tub enclosure.
2. Per Section 1711: Provide guard rail at all windows with sill height less than 36" from finish floor and with a height greater than 30' from finished floor.

This is your third and final notice. You have until October 25, 2006 to correct the above listed code violations for safety glazing requirement. These units shall not be occupied until reinspected and approved. You may provide evidence showing that all glass by the tub is safety glazed or replace all glass with safety glass or tempered glass.

Mr. Peter Heinemann  
TMK (2) 1-4-003:058  
August 16, 2006  
Page 2 of 2

Failure to comply will result in a Notice of Violation being issued with an initial fine of \$500 and daily fines of \$100 per day that doubles every 30 days if the violation is not corrected within 30 days after issuance of the Notice of Violation. at 270-7250.

If you have any questions regarding this letter or after corrections have been made, please call me for re-inspection at 270-7375.

Sincerely,



NEIL NICHOLAS  
Building Inspector

NPN:jh

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PAUL R. MANCINI\*  
THOMAS D. WELCH, JR.  
JAMES W. GEIGER

**MANCINI, WELCH & GEIGER LLP**  
A LIMITED LIABILITY LAW PARTNERSHIP

THE KAHULUI BUILDING  
33 LONO AVE., SUITE 470  
KAHULUI, HAWAII  
96732-1681

-----  
COUNSEL  
ROSALYN LOOMIS  
PETER A. HOROVITZ  
ROBERT A. RICHARDSON

-----  
TELEPHONE:  
(808) 871-8351

-----  
FACSIMILE:  
(808) 871-0732

-----  
\*A LAW CORPORATION

August 24, 2006

Mr. James Duponte  
Development Services Administration  
Department of Public Works and Environmental Management  
County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

RE: Notices with Regard to Hana Hotel Sea Ranch Cottages, TMK: (2) 1-4-003:058,  
Uniform Building Code Issues Concerning Safety Glazing for Windows and  
Guardrail, et al., Windows at Sea Ranch Cottages

Dear Mr. Duponte:

This will confirm the various conversations we've had concerning the above referenced matter. Our understanding is that the subject notices will be retracted and there will be no need to provide safety glazing for the windows within the tub enclosures at the Sea Ranch Cottages. With regard to the guard rails at the windows with window sill height less than 36 inches from finished floor, I've inquired with the management of the hotel there may be 9 units that would have to be addressed. My understanding is that the management of the hotel have been dealing with the County inspector to address the situation. The hotel management is now preparing a plan to address the situation. I hope to meet with you on the plan at a mutually convenient time.

I appreciate your attention to the matter. If any of the above is inconsistent with our discussion, please let me know as soon as possible.

Very truly yours,

**MANCINI, WELCH & GEIGER LLP**



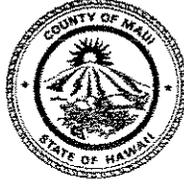
Paul R. Mancini

PRM:ta

CHARMAINE TAVARES  
Mayor

MILTON M. ARAKAWA, A.I.C.P.  
Director

MICHAEL M. MIYAMOTO  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PUBLIC WORKS  
AND ENVIRONMENTAL MANAGEMENT  
**DEVELOPMENT SERVICES ADMINISTRATION**  
250 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

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March 27, 2007

Paul R. Mancini, Esq.  
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33 Lono Avenue, Suite 470  
Kahului, Hawaii 96732

SUBJECT: NOTICES WITH REGARD TO HANA HOTEL SEA RANCH COTTAGES  
TMK: (2) 1 - 4 - 003 : 058 ISSUES CONCERNING SAFETY GLASS  
GLAZING FOR WINDOWS AND GUARDRAILS AT SEA RANCH  
COTTAGES

Dear Mr. Mancini:

This is to follow up on our various conferences and meetings concerning the above referenced matter.

Hana Hotel has complied with the Notice of Violation of August 16, 2006 concerning guardrails at all windows (Section 1711 violation) and the Notice of Violation with regard to Section 5406(d), safety glazing, has been rescinded.

Very truly yours,

CARL PUHI \*

Department of Development Services Administration  
Department of Environmental Management

CWP/ijt

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\* NO VIOLATIONS WERE ISSUED FOR THE MISCELLANEOUS INSPECTIONS, Misc# 20060076 & Misc# 20060099 per the COM/KWA SYSTEM. J 03/27/07

## EXHIBIT J

### Section 3.5 - Changes to the Condominium Documents

THIS SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF HOW THE CONDOMINIUM DOCUMENTS MAY BE CHANGED. 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.

#### Amendment to Declaration:

1. Pursuant to the Declaration, except as otherwise provided therein or in the Act, the Declaration may be amended by vote or written consent of seventy-five percent (75%) of the Unit Owners, and shall be effective only upon the recordation in the Recording Office of an instrument setting forth such amendment and the votes or written consent obtained, and duly executed by the proper officers of the Association. If any provision of the Declaration is considered an amendment thereof and, pursuant to the Declaration, (a) the vote or written consent of the Unit Owners is required, and (b) such vote or written consent of the required percent or percentage of Unit Owners has not been obtained, then such provision shall not be effective and the provision as originally written shall prevail, until any such requisite vote or consent is obtained. In any event, the validity and enforceability of the other provisions of the Declaration shall remain unaffected.
  
2. Amendment of the Declaration by Developer to Record an As-Built Certificate Notwithstanding the foregoing and notwithstanding the recordation in the Recording Office of any or all Unit deeds conveying any or all of the Units to any person, Developer hereby reserves the right to successively amend the Declaration (including the Bylaws and, when applicable, the Condominium Map), without the consent, approval or joinder of the Association, persons then owning or leasing the Units, to file the "as built" verified statement (with plans, if applicable) required by Section 514B-34, Hawaii Revised Statutes, as amended, (a) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed or being filed simultaneously with such amendment fully and accurately depict the layout, location, Unit numbers and dimensions of the Units as built, or (b) so long as any plans filed therewith involve only changes to the layout, location, Unit numbers, dimensions of or other changes to the Units and Common Elements as built which Developer is permitted to make in accordance with Paragraph Q of the Declaration.
  
3. Amendment of the Declaration by Developer for Other Reasons. Notwithstanding the foregoing and until the Recordation in the Recording Office of Unit deeds covering all of the Units in the Project (including all interests therein) in favor of parties, other than Developer or any party acquiring all or substantially all of Developer's Units in the Project through purchase, foreclosure, or otherwise, Developer hereby reserves the right to amend the Declaration, the Bylaws and the Condominium Map, without the approval, consent or joinder of the Association, any purchaser or Owner of any Unit, any owner of a Vacation Ownership Interest under a Vacation Ownership Declaration, or any other party with any interest in the Unit (including any tenant) (a) to correct typographical errors, and (b) as may be required by (i) law, (ii) the Real Estate Commission of the State of Hawaii, (iii) any title insurance company issuing a title insurance policy on the Project or any of the Units or any interest therein, (iv) any institutional lender lending funds on the security of the Project or any of the Units or any interest therein, or (v) any governmental agency of any state, territory, possession or foreign country or other foreign jurisdiction as a condition precedent to the marketing or sale of Units in any such jurisdiction; provided, however, that no such amendment which would change the percent or percentage of Common Interest appurtenant to a Unit (as opposed to a change in what constitutes the Common Elements of the Project) or would

substantially change the actual design, location or size of a Unit shall be made without the consent to such amendment by all persons having an ownership or mortgage interest in such Unit.

4. Votes Required. The percent or percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percent or percentage of affirmative votes prescribed for the action to be taken under that clause. For example, if the Declaration expressly states that eighty percent (80%) of the Unit Owners must concur with a proposal to remove any part of the Project from the Condominium Property Regime, then the vote or written consent of eighty percent (80%) of the Unit Owners is necessary to amend this provision regardless of the percent or percentage prescribed in the general provision pertaining to amendments of the Declaration.

5. No Amendment of Developer's Reserved Rights Without its Approval. No amendment of any provision contained in the Declaration or in the Bylaws that grants or reserves rights in favor of Developer shall be effective unless approved, signed, and acknowledged by Developer.

6. No Amendment of Commercial Unit Owners Rights Without Approval. No amendment of any provision contained in the Declaration or in the Bylaws that grants or reserves rights in favor of a Commercial Unit Owner shall be effective unless approved, signed, and acknowledged by the affected Commercial Unit Owner.

Amendment to Bylaws (Section 10.2):

(a) Vote or Consent Requirements. Except as otherwise expressly provided in the Declaration, the Bylaws, or in the Act, 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, provided that each of the particulars set forth in Section 514B-108 of the Act shall always be embodied in the Bylaws, and provided further that an amendment to the provisions of the Bylaws that are for the express benefit of holders or insurers of first Mortgages on Units shall require the approval of eligible holders of first Mortgages on Units to which there are allocated at least fifty-one percent (51%) of the votes allocated to all Units subject to first Mortgages held by such eligible holders, together with the vote of not less than sixty-seven percent (67%) of the Owners, and provided further that an amendment to the provisions of the Bylaws that are for the express benefit of Developer shall also require the express written consent and joinder of Developer, together with such other approval requirements as set forth in Section 10.2(a) of the By-Laws.

(b) Proposed Amendments. Proposed amendments to the Bylaws with the rationale for the proposal may be submitted to the Owners either by the Board of Directors or by a volunteer Owner's group. If a volunteer Owner's group desires to submit a proposal to the Owners, it shall first submit the proposal to the Board of Directors with the rationale for the proposal and a petition supporting the proposed Bylaws signed by not less than twenty-five percent (25%) of the Owners. Within thirty (30) days from the receipt of the proposal, the rationale, and the petition by the Board, the Board shall mail to the Owners for approval without change the proposed amendments to the Bylaws, the rationale for the proposal, ballots for voting, and the Board's comments, if any, concerning the proposal. No amendment proposed by the Board or the volunteer Owner's group shall be valid unless the required percentage of votes or consents for such amendment are obtained within three hundred sixty-five (365) days of the mailing to Owners, or in such shorter time as is specified in the mailing.

**END OF EXHIBIT J**

## EXHIBIT K

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

THIS 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.

Among other rights set forth in the Declaration, Developer will have the following reserved rights with respect to the Project:

1. Reserved Rights with Respect to the Commercial Units and the Limited Common Elements. Developer has the reserved right, but not the obligation, to:

- (a) convert any Commercial Unit owned by the Developer into one or more Vacation Ownership Units or Whole-Ownership Units and to further designate Limited Common Elements appurtenant to such new Units,
- (b) transfer the exclusive use rights associated with a Limited Common Element appurtenant to a Commercial Unit owned by the Developer to another Unit,
- (c) convert Limited Common Elements to Common Elements, upon such conversion, the Association shall accept any such conversion, and shall not have any right to refuse or reject any such conversion,
- (d) construct new Units on the Land located within the Resort Area envelope and to designate Common Elements or Limited Common Elements appurtenant to such new Units, as set forth in Paragraph U. of the Declaration,
- (e) alter, maintain, repair, demolish and/or replace any Limited Common Element appurtenant to the Commercial Units,
- (f) alter, maintain, repair, demolish and/or replace the Commercial Units,
- (g) modify any of the uses associated with the Commercial Units or the Limited Common Elements appurtenant thereto, provided that any such use complies with applicable law, and
- (h) discontinue the use and availability of certain Commercial Units or facilities in the Resort Area.

2. Reserved Right to Subdivide and Consolidate Units. Notwithstanding anything provided to the contrary, and except as otherwise provided by law:

- (a) Developer shall have the reserved right, without obtaining the approval of any party with an interest in the Project, including any other Unit Owner and/or mortgagee, to: (a) alter the floor plan of any Unit which it owns at any time provided that the Common Interest appurtenant to the Unit shall not change, (b) cause the subdivision of any Unit which it owns at any time to create two or more

Units provided that the total Common Interest appurtenant to the newly created Units shall equal the Common Interest appurtenant to the original Unit; and (c) convert certain portions of any existing Unit to Common Element status or any Common Element to Unit status to facilitate any subdivision provided that the total Common Interest appurtenant to the newly created Unit or Units shall equal the Common Interest appurtenant to the original Unit or Units.

(b) If Developer is the Owner of any two Units separated by a party wall, floor or ceiling, Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Unit Owner and/or mortgagee to consolidate two or more Units and to alter or remove all or portions of the intervening wall, floor or ceiling at Developer's expense provided that: (a) the structural integrity of the Project is not thereby affected, (b) the finish of the Common Element then remaining is restored to a condition substantially compatible with that of the Common Element prior to such alteration, and (c) all construction activity necessary to any such alteration or removal shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the control of Developer or its contractors, whether caused by strikes, the unavailability of construction materials or otherwise, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence.

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

3. Declaration of Merger:

A. Definitions. The terms defined in Section T.4 of the Declaration shall have the following meanings:

(1) "Administrative Merger" means the unification of the administration, management and use of the Project and The Hotel Hana-Maui Condominiums, as provided in and pursuant to Section T.4 of the Declaration, such that the use of the respective common elements, the respective common expenses, and the management of the respective affairs of the merged projects are shared, and the administration of the merged projects is unified under one integrated association of Unit owners, but the ownership interests of the respective Unit owners in the Project and The Hotel Hana-Maui Condominiums are not altered or affected.

(2) "Administrative Merger Date" means the date of recording of the applicable Certificate of Administrative Merger in accordance with the provisions of Section C below.

(3) "Association" means the Association of Unit Owners of the Merged Project.

(4) "The Hotel Hana-Maui Condominiums" means the condo project located on that certain parcel of land more particularly identified by Tax Map Key No. (2) 1-4-004-022 comprised of 10 Lodging Units and 11 Commercial Units.

(5) "Merged Project" means, in the case of an Administrative Merger, the Project and The Hotel Hana-Maui Condominiums as reconstituted by the recording of one or more Certificates of Administrative Merger in accordance with the provisions of Section C below, or, in the case of an Ownership Merger, the Project and The Hotel Hana-Maui Condominiums as reconstituted by the recording of one or more Certificates of Ownership Merger in accordance with the provisions of Section 5 below.

(6) "Ownership Merger" means the merger of ownership interests of the Project and The Hotel Hana-Maui Condominiums such that each Unit owner in the merged projects shall have appurtenant thereto an undivided percentage ownership interest in the common elements (including

the land) of the Merged Project and may include, at the option of Developer, the consolidation of any parcel(s) of land covered by the projects being merged.

(7) "Ownership Merger Date" means the date of recording of the applicable Certificate of Ownership Merger in accordance with the provisions of Section 5 below.

(8) "The Hotel Hana-Maui Condominiums" means the condominium project located on that certain parcel of land more particularly identified by Tax Map Key (2) 1-4-003-058, comprised of ten (10) Lodging Units and eleven (11) Commercial Units as defined in the Declaration for that Project.

B. Administrative Merger. Developer shall have the right, but not the obligation, in its sole and absolute discretion, without the further act, consent, or joinder of any Unit owner, lien holder, or any other persons, to cause and effect the Administrative Merger of the Project and The Hotel Hana-Maui Condominiums and to execute and record a Certificate of Administrative Merger (as described in Section C below) and all other instruments as Developer deems necessary or appropriate for the purpose of effecting the Administrative Merger.

C. Requirements of Administrative Merger. Administrative Merger shall take effect upon completion of all of the following:

(1) Declaration; Bylaws; Condominium Map. Developer shall have, with respect to the projects to be merged, recorded a declaration of condominium property regime and bylaws and filed a condominium map, complying with the requirements of the Act. Each such declaration of condominium property regime and bylaws shall be in substantially similar form (with appropriate modifications for such items as the physical description of the land included in each project and easements and other encumbrances affecting the land, the number and description of the Units in each project, the description of the common elements and limited common elements in each project, and the percentage of common interest appurtenant to the Units in each project).

(2) Construction. With respect to each project, there shall have been recorded a verified statement of a Hawaii registered architect or professional engineer certifying that the final plans filed as the condominium map fully and accurately depict the layout, location, Unit numbers, and dimensions of the Units of such project, as built.

(3) Certificate of Administrative Merger. Developer shall have recorded a "Certificate of Administrative Merger," which certificate shall contain (i) a certification that the requirements of subsections C(1) and C(2) above have been satisfied; (ii) a statement explaining how the common expenses for the Merged Project will be calculated; and (iii) a statement that Administrative Merger with respect to the projects to be merged has, by the recording of the Certificate of Administrative Merger, become effective.

D. Effect of Administrative Merger. From and after the Administrative Merger Date, the following consequences shall ensue:

(1) Use of Common Elements. Each Unit in the Merged Project shall have appurtenant thereto nonexclusive easements and rights to use and enjoy the common elements of each of the merged projects to the same extent and subject to the same limitations as are imposed upon Units in each of such projects as though the merged projects had been developed as a single condominium project.

(2) Common Expenses. The merged projects will each bear a share of the total common expenses (as the term "common expenses" is defined in the respective declarations of condominium property regime for the merged projects) of the Merged Project, treating the merged projects as one project for this purpose. The share of common expenses for each project shall be a fraction, the numerator of which shall be the total approximate net living floor area of all of the Units in the

respective project, and the denominator of which shall be the total approximate net living floor area of all Units in the Merged Project. The approximate net living floor areas shall be as reflected in the respective declarations of condominium property regime for each project to be merged. Each Unit's share of the common expenses of the Merged Project shall be the product of the common interest appurtenant to such Unit multiplied by the share of common expenses allocated to the project in which the Unit is located. The Unit owner's obligations with respect to the common expenses for the Merged Project shall commence as of the Administrative Merger Date or other date specified in the Certificate of Administrative Merger and may increase or decrease following the Administrative Merger.

(3) Association of Unit Owners. The associations of Unit owners of each of the merged projects provided for in their respective declarations of condominium property regime and bylaws shall be merged into a single association covering the entire Merged Project which shall be known as the "Association of Unit Owners of The Hotel Hana-Maui" (the "Association"). After Administrative Merger, the Association shall have all of the powers and obligations vested in the associations of Unit owners of the merged projects. In the event that the association of Unit owners of one of the merged projects shall be incorporated prior to an Administrative Merger, the Unit owners in the other merged project shall upon Administrative Merger automatically become members of the association of Unit owners of the incorporated project, and its charter and bylaws shall so provide.

(4) Voting. Each of the merged project shall have the same share of the total votes of the Merged Project as the share set forth above for the sharing of common expenses. As such, each Unit owner's vote in the Association will be the product of the common interest appurtenant to his or her Unit multiplied by the fractional share of the common expenses allocated to the project in which his or her Unit is located.

(5) Board of Directors. Upon Administrative Merger, the boards of directors of the associations of Unit owners of the merged projects immediately prior to Administrative Merger shall govern jointly the Merged Project; provided, however, that within sixty days following the Administrative Merger Date, or other specified in the Certificate of Administrative Merger, a special meeting of the Association shall be called to elect a new board of directors to replace the existing boards of directors, and the new board of directors shall thereafter govern the Merged Project. In the event that such special meeting should be held as required herein six months or more before the next annual meeting of the Association, the terms of the directors shall be calculated as if they had been elected at the previous annual meeting of the Association. If such special meeting is held less than six months before the next annual meeting of the Association, the terms of the directors shall be calculated as if they were elected at the next annual meeting of the Association, and no election shall be held at such next annual meeting. The provisions and procedures for calling and holding such meeting and all other meetings of the Association, and for qualification and election of directors, shall be as set forth in the applicable provisions of the declarations of condominium property regime and bylaws of the merged projects. The number of directors of the Association shall be nine, unless Unit owners having not less than sixty-five percent of the total vote in the Merged Project vote by mail ballot, or at a special or general meeting, to reduce the minimum number of directors, but to no fewer than three directors.

(6) Interpretation. For the purposes of administration and use of the Merged Project, upon Administrative Merger all of the Units in the Merged Project shall be treated as though they were all included in a single condominium project created by a single recording of a declaration of condominium property regime covering the Merged Project, and the declarations of condominium property regime applicable to the merged projects shall be construed as one document applicable to the entire Merged Project, except to the extent expressly otherwise provided herein. The same shall be true of the respective bylaws and project rules of each project. In the event of a conflict between the respective declarations of condominium property regime, bylaws, and/or project rules, the declaration of condominium property regime, bylaws, and project rules first in effect for any of the merged projects shall control. Upon Administrative Merger, the specified voting percentages required to amend the declaration of condominium property regime, bylaws, and house rules for the Merged Project shall refer to and mean the specified percentage of the total vote in the Merged Project. From and after the Administrative Merger Date, the merged projects shall be treated for purposes of administration, use, and sharing of

common expenses as though they had been developed as a single project. The Merged Project shall be known as "The Hotel Hana-Maui Condominiums".

(7) **Ownership.** Except as otherwise provided in the Declaration of Merger, Administrative Merger shall only affect the administration and use of the merged projects and the sharing of common expenses, and shall not affect the ownership of Units and common elements in the respective projects.

E. **Ownership Merger.** The provisions of this Section E shall apply only in the event Developer elects to effect an Ownership Merger of the Project and The Hotel Hana-Maui Condominiums. The recording of one or more Certificates of Ownership Merger shall be conclusive evidence that Developer has elected to effect an Ownership Merger of such projects. In the event that Developer shall elect to effect an Ownership Merger of such projects, the provisions of this Section E shall control in the event of a conflict with any other provision of the Declaration of Merger.

(1) **Ownership Merger.** Any provision of the Declaration of Merger to the contrary notwithstanding, Developer shall have the right, but not the obligation, in its sole and absolute discretion, without the further act, consent, or joinder of any Unit owner, lien holder, or any other persons, to cause and effect the Ownership Merger of the Project and The Hotel Hana-Maui Condominiums and to execute and record a Certificates of Ownership Merger (as described below in this Section E) and all other instruments as Developer deems necessary or appropriate for the purpose of effecting the Ownership Merger.

(2) **Requirements of Ownership Merger.** Ownership Merger shall take effect upon completion of all of the following:

(a) **Declaration; Bylaws; Condominium Map.** Developer shall have, with respect to each project to be merged, recorded a declaration of condominium property regime and bylaws and filed a condominium map, complying with the requirements of the Act. Each such declaration of condominium property regime and bylaws shall be in substantially similar form for each project to be merged (with appropriate modifications for the physical description of the land included in each project and easements and other encumbrances affecting the land, the number and description of the Units in each project, the description of the common elements and limited common elements in each project, and the percentage of common interest appurtenant to the Units in each project).

(b) **Construction.** With respect to each project, there shall have been recorded a verified statement of a Hawaii registered architect or professional engineer certifying that the final plans filed as the condominium map fully and accurately depict the layout, location, Unit numbers, and dimensions of the Units of such project, as built.

(c) **Certificate of Ownership Merger.** Developer shall have recorded a "Certificate of Ownership Merger", which certificate shall contain (i) certification that the requirements of subsections 5(b)(1) and 5(b)(2) above has been satisfied; (ii) a schedule setting forth the undivided percentage common interest appurtenant to each Unit in the Merged Project; (iii) the revised property descriptions reflecting the consolidation of parcels of land in the Merged Project, if applicable; (iv) a statement explaining how undivided common interests assigned to an Unit in the Merged Project will be calculated; and (v) a statement that Ownership Merger with respect to the projects to be merged has, by the recording of the Certificate of Ownership Merger, become effective.

(3) **Effect of Ownership Merger.** From and after the Ownership Merger Date, the following consequences shall ensue:

(a) **Common Elements.** The common elements of each of the merged projects, including the land, will be the common elements of the Merged Project, and each owner of a Unit in the merged projects shall have the right to full use and enjoyment of all of the common elements of the Merged Project to the same extent and subject to the same limitations as are imposed

upon Unit owners in each of the merged projects as though the merged projects had been developed as a single project.

(b) Common Interest. Each Unit in the Merged Project shall have appurtenant thereto an undivided common interest in the common elements of the Merged Project, including the land, and in all common profits and expenses of the Merged Project, and for all other purposes, including voting, as set forth in the Certificate of Ownership Merger. The undivided common interest in common elements assigned to an Unit in the Merged Project shall be a fraction, the numerator of which is the approximate net living floor area of the Unit (as set forth in the declaration of condominium property regime covering the project in which such Unit is situated) and the denominator of which is the total approximate net living floor area of all Units in the Merged Project. The obligations of an Unit owner with respect to undivided common interest in common elements assigned to an Unit shall commence as of the Ownership Merger Date or other date as specified in the Certificate of Ownership Merger and may increase or decrease after the Ownership Merger. The common interest appurtenant to each Unit in the Merged Project shall be calculated and rounded off in such a manner that each common interest will be reflected as a number having no more than five digits following the decimal point. Adjustments to the common interest for each Unit in the Merged Project may be made in Developer's discretion in order that the total common interest for all Units in the Merged project equals exactly 1.0000 (100.00%). The recording of the Certificate of Ownership Merger shall be deemed an amendment to the declarations of condominium property regimes of the merged projects which effectuates such alteration and reassignment of common interests, and, upon recording of the Certificate of Ownership Merger, the deeds for Units in the Merged Project as recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii shall be deemed automatically amended, without further action by Developer or any other person, to reflect the newly assigned common interests appurtenant to the Units as set forth in the Certificate of Ownership Merger.

(c) Association of Unit Owners. The associations of Unit owners of each of the merged projects provided for in their respective declarations of condominium property regime and bylaws shall be merged into a single association covering the entire Merged Project which shall be known as the "Association of Unit Owners of The Hotel Hana-Maui" (the "Association"). After Ownership Merger, the Association shall have all of the powers and obligations vested in the associations of Unit owners of the merged projects. In the event that the association of Unit owners of one of the merged projects shall be incorporated prior to an Ownership Merger, the Unit owners in the other merged project(s) shall upon Ownership Merger automatically become members of the association of Unit owners of the incorporated project, and its charter and bylaws shall so provide.

(d) Board of Directors. Upon Ownership Merger, the boards of directors of the associations of Unit owners of the merged projects immediately prior to Ownership Merger shall govern jointly the Merged Project; provided, however, that within sixty days following the Ownership Merger Date, a special meeting of the Association shall be called to elect a new board of directors to replace the existing boards of directors, and the new board of directors shall thereafter govern the Merged Project. In the event that such meeting should be held as required herein six months or more before the next annual meeting of the Association, the terms of the directors shall be calculated as if they had been elected at the previous annual meeting of the Association. If such special meeting is held less than six months before the next annual meeting of the Association, the terms of the directors shall be calculated as if they were elected at the next annual meeting of the Association and no election need be held at such next annual meeting. The provisions and procedures for calling and holding such meeting and all other meetings of the Association, and for qualification and election of directors, shall be as set forth in the applicable provisions of the declarations of condominium property regime and bylaws of the merged projects. The number of directors of the Association shall be nine unless Unit owners having not less than sixty-five percent of the common interests in the Merged Project vote by mail ballot, or at a special or general meeting, to reduce the minimum number of directors, but to no fewer than three directors.

(e) Interpretation. Upon Ownership Merger, all of the Units in the Merged Project shall be treated as though they were all included in a single condominium project created

by a single recording of a declaration of condominium property regime covering the Merged Project, and the declarations of condominium property regime applicable to the merged projects shall be construed as one document applicable to the entire Merged Project, except to the extent expressly otherwise provided herein. The same shall be true of the respective bylaws and project rules of each project. In the event of a conflict between the respective declarations of condominium property regime, bylaws, and/or project rules, the declaration of condominium property regime, bylaws and project rules first in effect for any of the merged projects shall control. From and after the Ownership Merger Date, the merged projects shall be treated for all purposes as though they had been developed, divided into Units and used by the Unit owners thereof as a single undivided project. The Merged Project shall be known as "The Hotel Hana-Maui Condominiums".

(f) Consolidation. Upon Ownership Merger of the Project and The Hotel Hana-Maui Condominiums, Developer shall have the right, but not the obligation, in its sole and absolute discretion, without the further act, consent, or joinder of any Unit owner, lien holder, or any other persons, to cause and effect the legal consolidation of the Property or any portions thereof into one or more parcels of land. Developer shall have the right to execute, acknowledge, deliver, and record any documents, maps, petitions, or other instruments necessary or appropriate, as determined by Developer in its sole and absolute discretion, for the purpose of effecting such legal consolidation of the Property, and to amend the declarations of condominium property regime of the Merged Project to reflect such consolidation.

F. Accumulated Funds. Any long-term funds accumulated for the purpose of major repairs and replacements in any pre-existing project prior to Administrative Merger or Ownership Merger shall remain intact in a separate account for such pre-existing project, or shall be isolated and identified as pertaining only to the pre-existing project, and shall be expended solely for the contemplated purposes before funds from any other source are so expended, and the interest in such funds of each Unit owner in that project or in those projects shall be equal to his or her common interest prior to merger, and such interest shall not be separated from the Unit to which it appertains, and shall be deemed to be conveyed with such Unit even though not expressly mentioned or described in the instrument of conveyance. Other reserve funds shall be consolidated and maintained as a single fund for the Merged Project, and, so that the interest in such other reserve funds attributable to each Unit in the Merged Project shall be equal to that Unit's share of the vote (or common interest in the event of Ownership Merger) in the Merged Project, the board of directors shall, if necessary, make adjustments to the account of each Unit owner by (i) refund in whole or in part; and/or (ii) credit in whole or in part against future assessments; and/or (iii) special assessments or series of assessments; and/or (iv) any other means consistent with generally accepted accounting principles; provided, however, the board of directors shall make such adjustments without charging any Unit owner a special assessment for reserves in any one month that exceeds more than twenty percent (20%) of the monthly assessment for other common expenses, after excluding any assessment for reserves. Except as provided above, there shall be only one common fund for the Merged Project.

G. Contributions. Upon Administrative Merger or Ownership Merger, Developer may, but need not, require the Unit owners in all or any of the merged projects to make contributions, in addition to their normal prescribed share of the common expenses, to the cash reserves, the general operating account, and/or any other accounts of the Merged Project. Developer may provide that such contributions shall be made in a lump sum amount or in installments over a period of time. In setting the amount and terms of any such contributions, Developer shall take into consideration the amount of cash reserves, the amounts in the general operating accounts, and/or the amounts in any other accounts of the respective projects accumulated prior to the merger, and the physical condition of the various buildings and Units in each of the merged projects. The amount and terms of the contributions to be made by the Unit owners in a project shall be fairly determined by Developer in Developer's sole and absolute discretion and shall be set forth in a notice by Developer to the Unit owners or the board of directors of the Merged Project. Developer shall have no obligation to collect such contributions from the Unit owners. Collection of such contribution amounts shall be the responsibility of the board of directors, which may, in its discretion, elect to instruct the managing agent of the Merged Project to administer the collection of such contribution amounts. Delinquent amounts of such contributions shall constitute a lien

against the delinquent Unit owner's interest in his or her Unit that may be foreclosed by the board of directors of the Merged Project, or the managing agent thereof, in the same manner as provided in the Act for unpaid common expenses.

H. Pre-merger Obligations. The Unit owners in a project being merged into an existing and completed project shall not be assessed, nor shall they have any obligation with respect to any debts, expenses, costs, or other obligations of the Unit owners in such completed project incurred prior to the Administrative Merger Date or the Ownership Merger Date, as applicable.

I. Limitation on Time for Merger.

(a) Administrative Merger. Developer's right to effect an Administrative Merger with respect to the Project and The Hotel Hana-Maui Condominiums shall terminate automatically on December 31, 2022, unless and until such merger is approved by the vote or written consent of Unit owners in each of the projects to be merged who own at least sixty-five percent of the common interests in that project.

(b) Ownership Merger. Developer's right to effect an Ownership Merger with respect to the Project and The Hotel Hana-Maui Condominiums shall terminate automatically on December 31, 2022.

J. No Obligations Regarding Other Development. Nothing in Section T.4 of the Declaration shall be construed as a representation, warranty, or agreement by Developer that The Hotel Hana-Maui Condominiums will be developed or that either an Administrative Merger or an Ownership Merger of such project with the Project will occur, or to prohibit Developer from dealing freely with the Property, including, without limitation, developing the whole or any part of the Property for purposes inconsistent with the merger of such projects or with the uses or designs of other portions of the Property.

K. Power of Attorney. Developer shall have the absolute right, notwithstanding the lease, sale, or conveyance of any or all of the Units in the Project or The Hotel Hana-Maui Condominiums, and without being required to obtain the consent or joinder of any Unit owner, lien holder, or any other persons, to effect an Administrative Merger or Ownership Merger, in accordance with the provisions of Section T.4 of the Declaration, and to execute and record the Certificate of Administrative Merger, the Certificate of Ownership Merger and any and all other instruments necessary or appropriate for the purpose of effecting the merger of projects as contemplated hereby, including, but not limited to, the amendment of any declaration of condominium property regime and/or the condominium map of the Property or the alteration of common interests in the case of Ownership Merger, and the consolidation of any parcel(s) of land covered by a new project being merged into an existing project with any parcel(s) of land covered by an existing project, if applicable. Any such action shall be deemed taken by Developer as the true and lawful attorney-in-fact of the respective Unit owners. Each and every party acquiring an interest in the Property, by such acquisition, consents to all such mergers of projects and to the execution, delivery, and recordation of such documents as may be necessary to effect the same; agrees to execute such documents and do such other things as may be necessary or convenient to effect the same; and appoints Developer and its assigns his or her attorney-in-fact with full power of substitution to execute, acknowledge, deliver, and record such documents and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights and shall not be affected by the disability of any such party.

L. Severability. If any provision of Section T.4 of the Declaration is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of Section T.4 of the Declaration, and Section T.4 of the Declaration shall continue in full force and effect and be construed and enforced as if such provision had not been included, or had been modified as provided above, as the case may be, to the full extent permissible by law.

M. Amendment of Declaration of Merger. Prior to a merger of the Project and The Hotel Hana-Maui Condominiums, any amendment of Section T.4 of the Declaration shall require the consent of Developer and the vote or written consent of Unit owners having not less than sixty-five percent of the common interests in each project. Upon an Administrative Merger, any amendment of Section T.4 of the Declaration shall require the consent of Developer, the vote or written consent of Unit owners having not less than sixty-seven percent (67%) of the total vote in the Merged Project, and the vote or written consent of Unit owners in each non-merged project having not less than sixty-seven percent (67%) of the common interests in each such project. Upon an Ownership Merger, any amendment of Section T.4 of the Declaration shall require the consent of the Developer, the vote or written consent of Unit owners having not less than sixty-five percent of the common interests in the Merged Project, and the vote or written consent of Unit owners in each non-merged project having not less than sixty-seven percent (67%) of the common interests in each such project. The foregoing provisions of this Section M notwithstanding, Developer may amend Section T.4 of the Declaration, without the consent or joinder of any other person or entity, to remove therefrom any portion of the Property, prior to any merger affecting such portion of the Property to be so removed and so long as Developer shall be the owner of such portion of the Property to be so removed, or to add to the Property other property adjacent to or in the vicinity of the Property, so long as Developer shall be the owner of such other property to be so added.

N. Assignment. The rights reserved to the Developer in Section T.4 of the Declaration shall be fully and freely assignable by the Developer in whole or in part, and every Unit owner in the Project or The Hotel Hana-Maui Condominiums, every holder of liens in the Project or The Hotel Hana-Maui Condominiums, and each every other party acquiring an interest in the Project or The Hotel Hana-Maui Condominiums, or in the Property, or any part thereof, by acquiring such Unit, lien or other interest, consents to any such assignment by Developer and, to the extent designated by Developer, agrees to recognize any assignee as the "Developer" under Section T.4 of the Declaration.

4. Reserved Right to Approve Alterations. The Developer shall have the right, but not the obligation, to approve any alteration of any kind that affects or may affect the appearance of all or any portion of the Project.

5. Reserved Right to Amend Declaration and Condominium Map. In connection with the Developer's exercise of the Developer's reserved rights set forth in Paragraphs T.2, T.3 and T.4 of the Declaration, the Developer shall have the right to amend the Declaration and the Condominium Map.

(a) The amendment to the Condominium Declaration shall describe (a) any additional buildings, the number of stories and any basements and the principal materials used in construction, (b) the unit number of the new Units, their location, approximate area, number of rooms, percentage interest in common elements, and another other information needed to properly identify the Unit, (c) any new Common Elements, (d) any additional or newly designated Limited Common Elements appurtenant to the new Units, (e) any additional restrictions on use not otherwise set forth in the Declaration, and (f) any other information that the Developer deems necessary or appropriate or is required by law.

(b) The amendment to the Condominium Map shall (a) include the floor plans and elevations of any new building or buildings, (b) include, if new Units are created, the layout, location, unit numbers and dimensions of the new Units, (c) be accompanied by a certificate signed by a registered architect or professional engineer pursuant to Section 514B-34 of the Act.

(c) The right to amend the Declaration to effect the reserved rights of the Developer shall remain in effect as long as the Developer retains ownership of one or more Commercial Units.

6. Reserved Right to Amend Recorded Deeds The Developer shall have the reserved right to amend any recorded deed or other document conveying or encumbering an Unit or interest in an Unit so that it conforms to amendments made to the Declaration or the Condominium Map, or the Developer may record a new deed for that purpose. For example, if the Developer creates new Units in the Resort

Area or on any adjacent lands, it may need to adjust the common interest of each existing Unit as set forth in Paragraph E.1 of the Declaration. In that event, the Developer may amend the deeds for existing Units to reflect the change in the common interest or it may issue replacement deeds reflecting the new common interest of each Unit.

7. Reserved Right to Modify Project to Comply with Law. Developer shall have the reserved right, to effect such modifications to the Units and Common Elements in the Project 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 Project, the Association, a Vacation Ownership Association created under a Vacation Ownership Declaration, or by Developer with laws which apply to the Project, 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.

8. Reserved Right Regarding Special Management Area Permit. Developer shall have the reserved right, to amend the Declaration, to enter into any agreements and to do all things necessary and convenient to satisfy the requirements of any Special Management Area Permit pertaining to the Project, and to execute, record and deliver any and all documents necessary to effect the same, including, but not limited to, any amendments to the Declaration and to the Condominium Map.

9. Reserved Right to Establish Special Use Program. Developer, its successors and assigns, shall have the reserved right to establish a program at the Project whereby non-owners of Units (as well as any owners of interests in the Project who do not have current use rights) have the right to utilize the Resort Area, including any recreational amenities thereof. Such a program may involve, without limitation, the use of certain Developer-controlled areas for check-in/checkout purposes, the provision of certain services and other purposes.

10. Reserved Right to Modify or Cancel Hana Ranch Easements. Developer, its successors and assigns, shall have the exclusive reserved right to amend and modify in any way, or to cancel the easements more particularly identified in Exhibit "C" attached to the Declaration (collectively, the "Hana Ranch Easements"), pursuant to which "hotel guests" have the non-exclusive right to use property owned by Hana Acquisition Partners, LLC (not affiliated with Developer) for horseback riding, jogging, walking and other activities made available by Developer in connection with the operation of The Hotel Hana-Maui. With the exception of the Lehoula Beach Easement, described as item N in Exhibit C, "hotel guests" include (i) any person staying at the Hotel Hana Maui, (ii) any affiliate of the Developer, and (iii) any person who owns an interest in the land benefitted by the Hana Ranch Easements, including but not limited to the owner of any condominium unit, timeshare unit or private club membership. The Lehoula Beach Easement may only be used by guests of the Hotel Hana Maui and not purchasers of Units. Each Owner acquiring an interest in a Unit consents to the foregoing reserved right notwithstanding that such Owner may be entitled to use the easement areas identified in the Hana Ranch Easements.

11. Reserved Right Regarding Resort Area. Developer, as the Owner of the Commercial Units shall have the reserved right to control the use by other Owners of the Resort Area, to change the use of, to make alterations of any kind, to lease, restrict access or to discontinue the available facilities without the consent of any other Owner, subject to the provisions of the Amenity Use and Services Agreement.

12. Consent to Exercise of Developer's Reserved Rights Each and every party acquiring an interest in the Project, by such acquisition: (a) consents to the exercise by the Developer (in its capacity as the Developer or the Commercial Unit Owner, as the case may be), of each and every reserved right set forth in the Declaration, including without limitation, Paragraphs Q, S, T and U of the Declaration, such consent constituting the consent required by Section 514B-140 of the Act with respect to structural alterations and additions to the Project, and to the execution, delivery and recording (if necessary) of any and all documents necessary to effect the same, including any amendment or amendments of the

Declaration and the Condominium Map; (b) agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and (c) appoints Developer and its assigns as such party's or parties' attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on such party's or parties' behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of such reserved rights of Developer, and shall not be affected by the disability of such party or parties.

15. Assignment of Reserved Rights. Notwithstanding anything stated herein to the contrary, every Owner of a Unit in the Project or of a vacation ownership or time share interest and all holders of liens affecting any of the Units and each and every other party acquiring an interest in the Project, in any time share, fractional, club, vacation ownership or similar use plan or program or in the Land, or any party thereof, by acquiring such Unit, lien or other interest, consents to and recognizes: (a) the right of the Developer (in its capacity as the Developer or as a Commercial Unit Owner) to assign, in whole or in part, the rights reserved to them in the Declaration, (b) upon any such assignment, the Developer (in its capacity as the Developer or as a Commercial Unit Owner) shall be relieved of any and all liability arising after the assignment, (c) any assignee of the Developer and/or the Commercial Unit Owner shall thereafter be recognized as such under the Declaration, (d) the right of the Developer to also transfer its rights as the Developer as collateral for a loan, in which event the assignee lender shall not have the rights and obligations as "developer" until it (i) forecloses on the loan and takes title to the Developer's interest in the Project, and (ii) records an instrument declaring itself to be the "Developer".

**END OF EXHIBIT K**

EXHIBIT L

Section 4.2 – Estimate of the Initial Maintenance Fees

THIS EXHIBIT 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 AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE PROJECT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE PROJECT, SUCH DOCUMENTS WILL CONTROL.

The Estimated Maintenance Fee Disbursements for Sea Ranch Cottages at Hana-Maui have been compiled by Hawaiiana Management Company, a licensed property manager.

The Purchaser is aware that such amounts are only estimates and may change for reasons beyond the control of the Developer, and the Purchaser hereby specifically accepts and approves any such changes. The Purchaser is also aware that such estimates do not include the Purchaser's obligation for payment of real property taxes. THE PURCHASER 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. 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 Purchaser 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. Purchasers 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 as insurance and maintenance, etc.

The estimate of initial annual maintenance fees and monthly estimated maintenance fees are attached hereto.

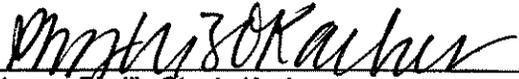
CERTIFICATE

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 Sea Ranch Cottages at Hana-Maui 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 Estimate of Initial Maintenance Fee Disbursements and Estimate of Initial Maintenance Fees 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 January 1, 2007, based on generally accepted accounting principles.

DATED: Honolulu, Hawaii, October 5, 2006.

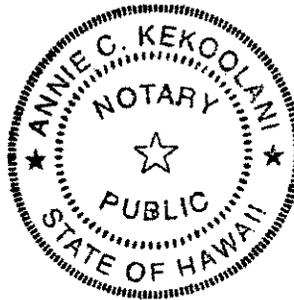
  
Name: Phyllis Okada Kacher  
Title: Senior Vice President  
Hawaiiana Management Company, Ltd.

Subscribed and sworn to before me  
this 5 day of October, 2006.



Type or print name: Annie C. Kekoolani  
Notary Public, State of Hawaii

My commission expires: 02-16-2010



**ESTIMATE OF INITIAL MAINTENANCE FEE DISBURSEMENTS  
SEA RANCH COTTAGES AT HANA-MAUI**

	<b>Monthly Fee</b>	<b>Yearly Total</b>
Utilities (All buildings except support buildings)		
Electricity*	\$6,000.00	\$72,000.00
Water	\$500.00	\$6,000.00
Sewer	\$200.00	\$2,400.00
Gas	\$4,000.00	\$48,000.00
Telephone	\$0.00	\$0.00
Total	\$10,700.00	\$128,400.00
 Contract Services (All buildings except support buildings)		
General Maintenance/Repairs	\$1,500.00	\$18,000.00
Refuse	\$1,000.00	\$12,000.00
Supplies Purchases	\$500.00	\$6,000.00
Total	\$3,000.00	\$36,000.00
 Professional Services		
Management Fee	\$1,041.66	\$12,499.92
Admin Services	\$750.00	\$9,000.00
Public Accounting	\$300.00	\$3,600.00
Legal Fees	\$200.00	\$2,400.00
Total	\$2,291.66	\$27,499.92
 Insurance / Taxes		
Property Fire/ Gen Liability	\$14,000.00	\$168,000.00
Umbrella Liability	\$2,500.00	\$30,000.00
D&O Liability	\$1,000.00	\$12,000.00
G.E. Tax	\$100.00	\$1,200.00
Fidelity Bond	\$600.00	\$7,200.00
Total	\$18,200.00	\$218,400.00
 Total Expenses	\$34,191.66	\$410,299.92

I, Phyllis Kacher, as agent for/and/or employed by Hawaiiana Management Company, the condominium managing agent/developer for the Sea Ranch Cottages at Hana-Maui condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
Signature

10-5-06  
Date

Pursuant to 514-B-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 conducted a reserve study for the Project. The budget amount for Reserves is an estimate only.

**ESTIMATE OF INITIAL MAINTENANCE FEES  
SEA RANCH COTTAGES AT HANA-MAUI**

<b>Estimate of Initial Maintenance Fees</b>	<b>Basic Monthly Fee</b>	<b>Special Residence Hana Maui Fee (Reserves for 2007)</b>	<b>Monthly Total</b>	<b>Yearly Total</b>
<b><u>Residence Apartments</u></b>				
B101	\$667.13	\$186.95	\$854.08	\$10,248.92
B102	\$667.13	\$186.95	\$854.08	\$10,248.92
B103	\$667.13	\$186.95	\$854.08	\$10,248.92
B104	\$667.13	\$186.95	\$854.08	\$10,248.92
B105	\$667.13	\$186.95	\$854.08	\$10,248.92
B106	\$667.13	\$186.95	\$854.08	\$10,248.92
B107	\$667.13	\$186.95	\$854.08	\$10,248.92
B108	\$667.13	\$186.95	\$854.08	\$10,248.92
B109	\$279.40	\$186.95	\$466.35	\$5,596.25
B110	\$667.13	\$186.95	\$854.08	\$10,248.92
B111	\$667.13	\$186.95	\$854.08	\$10,248.92
B112	\$667.13	\$186.95	\$854.08	\$10,248.92
C101	\$725.22	\$203.23	\$928.45	\$11,141.40
C102	\$725.22	\$203.23	\$928.45	\$11,141.40
C103	\$725.22	\$203.23	\$928.45	\$11,141.40
C104	\$725.22	\$203.23	\$928.45	\$11,141.40
A101	\$918.68	\$257.44	\$1,176.13	\$14,113.54
D101	\$577.15	\$161.74	\$738.89	\$8,866.63
A102	\$918.68	\$257.44	\$1,176.13	\$14,113.54
D102	\$577.15	\$161.74	\$738.89	\$8,866.63
A103	\$918.68	\$257.44	\$1,176.13	\$14,113.54
D103	\$577.15	\$161.74	\$738.89	\$8,866.63
A104	\$918.68	\$257.44	\$1,176.13	\$14,113.54
D104	\$577.15	\$161.74	\$738.89	\$8,866.63
B113	\$667.13	\$186.95	\$854.08	\$10,248.92
B114	\$667.13	\$186.95	\$854.08	\$10,248.92
B115	\$667.13	\$186.95	\$854.08	\$10,248.92
B116	\$667.13	\$186.95	\$854.08	\$10,248.92
B117	\$667.13	\$186.95	\$854.08	\$10,248.92
B118	\$667.13	\$186.95	\$854.08	\$10,248.92
A105	\$918.68	\$257.44	\$1,176.13	\$14,113.54
D105	\$577.15	\$161.74	\$738.89	\$8,866.63
B119	\$667.13	\$186.95	\$854.08	\$10,248.92
B120	\$667.13	\$186.95	\$854.08	\$10,248.92
B121	\$667.13	\$186.95	\$854.08	\$10,248.92
B122	\$667.13	\$186.95	\$854.08	\$10,248.92
A106	\$918.68	\$257.44	\$1,176.13	\$14,113.54
D106	\$577.15	\$161.74	\$738.89	\$8,866.63
B123	\$667.13	\$186.95	\$854.08	\$10,248.92
B124	\$667.13	\$186.95	\$854.08	\$10,248.92
C105	\$725.22	\$203.23	\$928.45	\$11,141.40
C106	\$725.22	\$203.23	\$928.45	\$11,141.40
B125	\$667.13	\$186.95	\$854.08	\$10,248.92
B126	\$667.13	\$186.95	\$854.08	\$10,248.92
A107	\$918.68	\$257.44	\$1,176.13	\$14,113.54
D107	\$587.96	\$164.76	\$752.72	\$9,032.67
E101	\$532.84	\$149.32	\$682.15	\$8,185.86

<b>Estimate of Initial Maintenance Fees</b>	<b>Basic Monthly Fee</b>	<b>Special Residence Hana Maui Fee (Reserves for 2007)</b>	<b>Monthly Total</b>	<b>Yearly Total</b>
<b>Commercial Buildings</b>				
Wellness Building	\$723.62	0	\$723.62	\$8,683.48
Snack Bar Building	\$145.10	0	\$145.10	\$1,741.22
Service Building	\$324.75	0	\$324.75	\$3,897.01
Maid Quarters Building	\$287.06	0	\$287.06	\$3,444.75
				\$515,647.25

## EXHIBIT M

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

THIS SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS-CONTAINED IN THE SALES CONTRACT. WHILE A BUYER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF BUYER'S RIGHTS AND OBLIGATIONS UNDER THE SALES CONTRACT, 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 SALES CONTRACT WILL CONTROL.

A specimen Sales Contract ("Agreement"), has been submitted to the Real Estate Commission. ALL PURCHASERS AND PROSPECTIVE PURCHASERS SHOULD CAREFULLY READ THE AGREEMENT IN FULL since this summary is NOT A COMPLETE DESCRIPTION of its contents. The Agreement contains, among other things, the following terms and conditions (which may be modified or otherwise limited by provisions which are not summarized hereinbelow):

A. The Seller (Developer) has engaged First American Title Company, Inc. ("Escrow") to handle Purchaser's funds and to close the transaction in accordance with the terms of the Agreement.

B. The Purchase Price does not include closing costs which include among other things, the escrow fee, cost of a preliminary title report, cost of preparation of the Unit Deed, real property tax, maintenance fees and other prorations, all acknowledgment fees, conveyance taxes, title insurance, if requested by Purchaser, cost of any lender's title insurance, appraisal fees, costs for drafting of any notes and mortgages, all recording costs or fees, loan fees, credit report costs and all other applicable mortgage costs. Purchaser shall pay as additional sums the Association start-up fees, estimated reserves and other fees, as provided in the Agreement.

C. If the Purchaser intends to finance part of the Purchase Price, Purchaser agrees to deliver, within fifteen (15) days after Seller's acceptance of the offer, written evidence of Purchaser's financing.

D. The "Closing Date" shall be the date, which is 15 days after the date Purchaser waives its right to cancel the Purchase Agreement or is deemed to have waived its right to cancel the Purchase Agreement, as set forth in Paragraph B of the Additional Terms and Conditions attached to the specimen form of Purchase Contract.

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

F. If Purchaser, after the delivery by Seller of a copy of the Developer's Public Report, either personally or by registered or certified mail with return receipt requested, shall fail to execute a form of receipt and notice of Purchaser's right to cancel the Agreement (or shall fail to give his or her written approval or acceptance to any material change to the Project as requested by Seller pursuant to the provisions of Hawaii Revised Statutes, Section 514B-87, as amended) within thirty (30) days of such receipt, Seller may at its option: (i) cancel the Agreement upon ten (10) days' written notice to Purchaser of such cancellation and upon such cancellation Seller shall cause Escrow to refund to Purchaser all payments previously made by Purchaser without interest and less any escrow cancellation fees and other costs, up to \$250; or (ii) elect (by its failure to give said written notice of cancellation) to treat such failure as a deemed acceptance ("Deemed Receipt") of such Public Reports and as a waiver of the right to cancel this Agreement (or as a Deemed Receipt of such material change, as the case may be). In the event that Purchaser shall close the purchase of the Property within said thirty (30) day period (and prior to the time the Purchaser shall have executed a waiver of the right to cancel or approve of material

change), such closing shall also constitute a Deemed Receipt of the Developer's Public Report and/or material change (as applicable).

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

H. Purchaser agrees to intentionally waive, relinquish and subordinate the priority of any interest under the Agreement in favor of the liens or charges upon the Project of the Seller's lenders mortgage loans.

I. Purchaser expressly acknowledges, consents to and approves all of the disclaimers, disclosures, and other matters described in the Agreement, and Purchaser assumes any and all risks in connection with each of those matters.

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

L. Seller, in its sole discretion, and in addition to any other rights of cancellation or termination reserved to Seller, may elect to cancel the Agreement if Purchaser defaults under the Agreement. Purchaser may lose its deposit with Escrow and Seller. Seller may, at its option, pursue other legal remedies. If Seller defaults under the Agreement, and Purchaser is not in default, Purchaser shall be entitled to specific performance of the Agreement or, if specific performance is unavailable, shall have the right to cancel the Agreement and a refund of Purchaser's deposit, including interest, as set forth in the Agreement.

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

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

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

P. Purchaser specifically acknowledges that Seller has reserved the right for itself, its sales representatives and prospective purchasers to utilize the common elements of the Project for ingress and egress and to show the common elements to prospective purchasers.

Q. Developer reserves the right to use an option agreement in advance of entry into a Sales Contract. The Sales Contract may contain terms and conditions negotiated by the Developer and prospective buyers that are different from the terms and conditions contained in the specimen forms of Sales Contracts.

**END OF EXHIBIT M**

## EXHIBIT N

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

THIS 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.

The Sea Ranch Cottages at Hana-Maui Escrow Agreement dated October 1, 2006, contains among others, the following terms and conditions (which may be modified or otherwise limited by provisions which are not summarized hereinbelow):

A. When Seller (Developer) enters into a Sales Contract for the conveyance of a Unit in the Project ("Sales Contract"), it shall require the payments of deposits due thereunder to be promptly made to Escrow, and shall deliver an executed copy of the Sales Contract to Escrow together with the address of the Purchaser. Seller shall also promptly pay over to Escrow all monies (including checks) received by Seller from or on behalf of the Purchasers, including those received on any Sales Contract, and all payments made on loan commitments from lending institutions on account of any Unit in the Project.

B. Escrow shall receive, deposit and hold in one or more separate escrow accounts and disburse as set forth in the Agreement: (a) all payments received by it under Sales Contracts, and (b) such sums received by it under the Agreement from or for the account of Seller. Escrow shall not at any time commingle or permit the commingling of any Purchaser's funds with funds belonging to or held for the benefit of Seller. All funds and instruments received from Purchasers or prospective Purchasers shall be held by Escrow in accordance with the provisions contained in Chapter 514B of the Hawaii Revised Statutes. All monies received by Escrow hereunder shall be deposited, within a reasonable time of the receipt by Escrow and in reasonably convenient and practical sums, in an interest-bearing account with a federal insured bank or savings and loan company under an escrow arrangement, and shall be held in immediately available funds in accordance with the terms the Agreement.

C. Escrow shall make no disbursements of Purchasers' funds or proceeds from the sale of Units in the Project (including any payments made on loan commitments from lending institutions), except by way of refunds thereof as provided in the Agreement, until Escrow has received written certification from Seller stating that the Sales Contracts are binding and the requirements of Section 514B-86 of the Hawaii Revised Statutes have been met, and further, that a Developer's Public Report for the Project has been issued by the Real Estate Commission and Escrow has received a copy of Purchaser's receipt for Developer's Public Report and waiver of right to cancel, or thirty (30) days have elapsed since Purchaser receipted for such Developer's Public Report.

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

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

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

(3) There is any material change in the Project which directly, substantially and adversely affects the use or value of Purchaser's Unit, the limited common elements appurtenant to such Unit, or the amenities of the Project available for Purchaser's use which Purchaser has not approved in writing, and Purchaser has not accepted the Unit or occupied it for more than ninety (90) days, or Purchaser is otherwise entitled to rescind as provided in H.R.S. Section 514B-54; or

(4) After the Developer's Public Report is delivered, the Purchaser notifies Seller in writing that Purchaser has decided to cancel the Sales Contract within thirty (30) days of Purchaser's receipt of the Developer's Public Report.

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

Upon the cancellation of any Sales Contract as specified above, Escrow shall be entitled to a cancellation fee of up to \$50. The cancellation fee is the sole expense of the individual Purchaser and not the obligation of Seller.

**END OF EXHIBIT N**

EXHIBIT O

Section 5.3 -- Blanket Liens

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE BLANKET LIENS 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 PROJECT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE PROJECT, SUCH DOCUMENTS WILL CONTROL.

The Project is presently subject to the following:

1. Mortgage dated December 19, 2001, recorded as Document No. 2001-203115, in favor of Fremont Investment & Loan, a California industrial loan association.

The above Mortgage was amended by Memorandum of First Amendment to Mortgage and Other Loan Documents recorded July 16, 2003 as Document No. 2003-145217, recorded as Land Court Document No. 2959883.

The above Mortgage was further amended by Second Amendment to Mortgage and Other Loan Documents recorded March 17, 2005 as Document No. 2005-053099.

The above Mortgage was further amended by Additional Charge Mortgage; Third Amendment to Mortgage and Other Loan Documents recorded March 17, 2005 as Document No. 2005-053103.

The above Mortgage was assigned to Hana-Lani Capital, LLC by Assignment recorded March 17, 2005 as Document No. 2005-053100.

The above Mortgage was further assigned to Gulfstream Mortgage Capital, LLC, a Delaware limited liability company, by assignment recorded November 20, 2006 as Document No. 2006-212676.

2. Assignment of Rents and Leases recorded December 26, 2001 as Document No. 2001-203116, in favor of Fremont Investment & Loan, a California industrial loan association.

The above Assignment of Rents and Leases was amended by Memorandum of First Amendment to Mortgage and Other Loan Documents recorded July 16, 2003 as Document No. 2003-145218.

The above Assignment of Rents and Leases was further amended by Memorandum of Second Amendment to Mortgage and Other Loan Documents recorded March 17, 2005 as Document No. 2005-053099.

The above Assignment of Rents and Leases was further amended by Additional Charge Mortgage; Third Amendment to Mortgage and Other Loan Documents recorded March 17, 2005 as Document No. 2005-053103.

The above Assignment of Rents and Leases was assigned to Hana-Lani Capital, LLC by Assignment recorded March 17, 2005 as Document No. 2005-053101.

The above Assignment of Rents and Leases was further assigned to Gulfstream Mortgage Capital, LLC, a Delaware limited liability company, by assignment recorded November 20, 2006 as Document No. 2006-212676.

3. Collateral Assignment of Notes and Liens recorded March 17, 2005 as Document No. 2005-053104, made by Hana-Lani Capital, LLC, as Assignor, to Gulfstream Capital Corporation, as Assignee.
4. Collateral Assignment of Notes and Liens recorded June 8, 2005 as Document No. 2005-114032, made by Hana-Lani Capital, LLC, as Assignor, to Gulfstream Capital Corporation, as Assignee.

Upon conveyance of a Unit to a purchaser, the foregoing documents will be released with respect to the Unit being conveyed. If there is a default and foreclosure of the existing mortgage prior to conveyance, the purchaser may lose the right to buy the Unit.

**END OF EXHIBIT O**

**EXHIBIT P**

Section 5.4 – Construction Warranties

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE CONSTRUCTION WARRANTIES 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 PROJECT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE PROJECT, SUCH DOCUMENTS WILL CONTROL.

Building and Other Improvements: As the Project was completed in between 1987 and 1989 pursuant to building permits issued by the County of Maui in 1986 by a prior unrelated developer, the Developer makes no warranties, express or implied, about the Units or the Project, or about consumer products or anything else installed or contained in the Units or the Project. This includes, but is not limited to, warranties of merchantability, habitability, workmanlike construction, fitness for a particular purpose, or sufficiency of design. All rights and interests in the Project are sold by the developer "as is" and "where is", with all defects, whether visible or hidden, and whether not or not known.

**END OF EXHIBIT P**

## EXHIBIT Q

### Section 6. - Miscellaneous Information Not Covered Elsewhere In This Report

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, 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 PROJECT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE PROJECT, SUCH DOCUMENTS WILL CONTROL.

The following additional disclosures are summaries only of certain disclosures set forth in the Sales Contract. Purchasers are advised to review such disclosures in full before deciding to purchase an Unit in the Project.

**1. Limited use of the Resort Area.** All of the land in the Project, except for the land underneath the buildings, and the amenities in the Project have been designated in the Declaration as the "Resort Area". The Resort Area is a limited common element appurtenant to the Commercial Units. The Owner of the Commercial Units uses the Resort Area in connection with the ownership and operation of the Hotel Hana-Maui, which was submitted to condominium property regime and is known as The Hotel Hana-Maui Condominiums. As a result, the Resort Area will be used by Unit owners in that project as well as hotel guests of the Developer. The Owner of the Commercial Units has the exclusive right to use and control the use by other Owners over the Resort Area; provided that (a) Unit Owners have the right to use the sidewalks and paths designated by the Owner of the Commercial Units from time to time for ingress and egress to their Units, and (b) Unit Owners shall have the right to park their vehicles in the parking area within the Resort Area subject to rules established by the Developer which may include a valet service, as set forth in the Declaration. Owners in the Project shall have the right to use and enjoy the Resort Area and the amenities located therein provided they enter into the Hotel Amenities Access and Use and Services Agreement, a specimen copy of which is attached as **Exhibit D-1** to this Public Report. That Agreement requires the payment of an Amenity License Fee to the Owner of the Commercial Units, which will be used to defray the cost of maintaining the Resort Area and repairing the facilities located therein. The Amenity License Fee charged to the Owners shall be calculated in a manner that reasonably reflects the use those Owners make or are likely to make of the Resort Area, taking into account the use made by hotel guests and invitees in the Project. The Amenity License Fee may be adjusted from time to time in order to reflect the number of Owners having the right to use the Resort Area. Neither the Board of Directors or the Association has any right to change the use of, to make alterations of any kind, or to lease or otherwise use the Resort Area, unless the consent of the Owner of the Commercial Units is first obtained. The Owner of the Commercial Units shall have no obligation to provide additional amenities in the Resort Area for the use and enjoyment of any other Owner or to continue to make available any amenity or service provided as of the date of the Declaration. The Owner of the Commercial Units may change or elect to discontinue for any reason any amenity or service or to restrict access to portions of the Resort Area, provided the Amenity License Fee is adjusted accordingly. Further, neither the Board nor the Association shall have the right to restrict the ability of the Owner of the Commercial Units to alter or modify the Resort Area, or such Owner's right to construct new buildings or amenities in the Resort Area.

**2. Hana Ranch Easements.** The land upon which the Project is located, as well as other property owned by the Developer, is benefited by a series of easement agreements (the "Easement Agreements") pursuant to which hotel guests of the Hotel Hana-Maui may use designated areas located on property owned by Hana Acquisition Partners, LLC (an entity that is unrelated to the Developer) for horseback riding tours operated by Developer, and for walking and jogging. The Easement Agreements are more particularly described in the legal description attached to the Condominium Declaration and in

Exhibit H to this Public Report. The Easement Agreements define hotel guests as (i) any person staying at the Hotel Hana-Maui, (ii) any affiliate of the Developer, and (iii) any person who owns an interest in the land benefited by the Easement Agreements, including but not limited to the owner of any condominium unit, timeshare unit or private club membership. In the Condominium Declaration, Developer has reserved the right as the Developer of the Project to amend or modify the Easement Agreements in Developer's sole discretion and without the consent of any other Owner. By acquiring an interest in the Project, each Purchaser agrees and approves of the Developer's exercise of this reserved right and the power of attorney each Purchaser gives to the Developer to deal with the Easement Agreements pursuant to the Condominium Declaration. Common Expenses of the Project shall include any maintenance fees or costs associated with the Easement Agreements. The easement areas identified in the Easement Agreements may be relocated by Hana Acquisition Partners subject to certain conditions set forth in the Easement Agreements.

**3. Membership in a Vacation Ownership Association and Condominium Association.**

At Closing, each Purchaser will be a member of the Association of Unit Owners of Sea Ranch Cottages at Hana-Maui. If a Vacation Ownership Association is established, purchasers of Vacation Ownership Interests will also be members of the Vacation Ownership Association and have the right to use a Vacation Ownership Unit (which may not be the same Unit described in the Purchaser's Deed). In addition to the Project Documents governing Sea Ranch Cottages at Hana-Maui, Residence Club purchasers will be governed by a Vacation Ownership Declaration and Bylaws and other documents establishing and governing the Vacation Ownership program (the "Vacation Ownership Plan Governing Documents"), all of which will be made available for review by Purchasers. Additionally, Purchasers of Vacation Ownership Interests will (a) have to make reservations to use a Vacation Ownership Unit in accordance with rules established by developer of the program, and (b) pay a Proportional Interest in the cost of the operation, management, governance and maintenance of the Vacation Ownership plan shall be assessed to each Purchaser annually as further described in the Vacation Ownership Plan Governing Documents.

**4. Seller Makes No Warranties or Promises.** PURCHASER ACKNOWLEDGES THAT ALTHOUGH SELLER HAS UNDERTAKEN CERTAIN RENOVATIONS TO THE UNITS AND COMMON ELEMENTS OF THE PROJECT, SELLER IS NOT THE ORIGINAL DEVELOPER OF THE PROJECT AND WAS NOT INVOLVED IN (AND IS NOT RESPONSIBLE FOR) THE ORIGINAL PLANNING OR CONSTRUCTION OF THE PROJECT. PURCHASER FURTHER ACKNOWLEDGES THAT THE PROJECT WAS SUBSTANTIALLY COMPLETED BETWEEN 1987 AND 1989 AND HAS BEEN USED OVER THE YEARS PRIMARILY FOR HOTEL PURPOSES. PURCHASER UNDERSTANDS AND AGREES THAT THE UNIT IS BEING SOLD "**AS IS, WHERE IS**" WITH ALL FAULTS AND THAT SELLER DISCLAIMS AND MAKES NO WARRANTIES OR PROMISES OF ANY KIND, EXPRESS OR IMPLIED, ABOUT THE UNIT, THE LAND UNDERLYING THE PROJECT (THE "LAND") OR THE PROJECT (INCLUDING THE COMMON ELEMENTS OF THE PROJECT), OR ABOUT ANY FURNISHINGS, FIXTURES, APPLIANCES OR OTHER CONSUMER PRODUCTS, MECHANICAL SYSTEMS, PLUMBING SYSTEMS, ELECTRICAL SYSTEMS, COOLING OR HEATING SYSTEMS OR ANYTHING ELSE INSTALLED, ATTACHED, AFFIXED OR OTHERWISE CONTAINED IN THE UNIT, THE LAND OR THE PROJECT (INCLUDING THE COMMON ELEMENTS OF THE PROJECT), INCLUDING ANY WARRANTIES OR PROMISES OF "HABITABILITY", "MERCHANTABILITY", "WORKMANSHIP" OR "FITNESS FOR A PARTICULAR USE OR PURPOSE".

WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, SELLER DISCLAIMS AND MAKES NO WARRANTIES OR PROMISES: (A) THAT THE PROJECT OR ANY IMPROVEMENTS IN THE UNIT, THE LAND OR THE PROJECT (INCLUDING THE COMMON ELEMENTS) WILL BE FREE FROM CRACKS IN OR OTHER DAMAGE TO, THE CONCRETE OR OTHER BUILDING MATERIALS; (B) REGARDING THE VALUE, QUALITY, GRADE OR USEFUL LIFE OF THE UNIT, THE PROJECT OR ANYTHING INSTALLED, ATTACHED, AFFIXED OR OTHERWISE CONTAINED IN THE UNIT, THE LAND OR THE PROJECT (INCLUDING THE COMMON ELEMENTS OF THE PROJECT); (C) REGARDING THE STRUCTURAL, PHYSICAL OR ENVIRONMENTAL HISTORY OR CONDITION OF THE PROJECT, INCLUDING, WITHOUT LIMITATION, ANY DEFERRED MAINTENANCE AT THE PROJECT; OR (D) REGARDING THE SUITABILITY, CONFORMANCE,

COMPLIANCE OR LACK OF COMPLIANCE OF THE PROJECT WITH ANY STATE, FEDERAL, COUNTY OR LOCAL LAW, CODE, ORDINANCE, ORDER, PERMIT, ADMINISTRATIVE REQUIREMENT, OR REGULATION, INCLUDING, WITHOUT LIMITATION, THOSE RELATED TO THE CONSOLIDATION AND SUBDIVISION OF LAND, THE OPERATION AND USE OF THE PROJECT AND ACCESSIBILITY OF THE PROJECT BY PERSONS WITH DISABILITIES. IN OTHER WORDS, SELLER MAKES NO WARRANTIES OR PROMISES AT ALL.

**END OF EXHIBIT Q**

**EXHIBIT Q-1**

Section 6. - Miscellaneous Information Not Covered Elsewhere In This Report  
Developer's Reserved Rights Re Future Phases

THIS 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.

1. Developer's right of merger. See **Exhibit K**.

2. Developer's right to construct new Units. Subject to the limitations set forth in Paragraph U. of the Declaration, the Developer has the right, but not the obligation, to construct new Units on land within the Resort Area. In the exercise of this right, Developer may exercise all of the following rights and easements:

(a) The right to connect to, use or relocate or re-align utilities and to designate, grant, convey, transfer, cancel and otherwise deal with any easements over, under, across or through the common elements as necessary, provided that no interruption in service is experienced by other Owners, except temporary interruptions that do not materially interfere with the use and enjoyment of the Project by others;

(b) An easement over, under and across the common elements of the Project for the purposes of all work connected with or incidental to the development, construction and sale of the increments;

(c) The right in the nature of an easement over and upon the existing buildings and common elements of the Project 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;

(d) The right to enter the common areas of the Project for the purpose of showing prospective purchasers Units in the Project;

(e) The right to place signs upon the Project in conjunction with sales of Units; and

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

**END OF EXHIBIT Q-1**

**EXHIBIT R**

Declaration of Condominium Property Regime  
of Sea Ranch Cottages at Hana-Maui  
recorded February 8, 2007 as Document No. 2007-024553

Amendment No. 1 recorded March 7, 2007 as Document No. 2007-041932

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII

BUREAU OF CONVEYANCES

Doc 2007-024553

DATE..... FEB 08, 2007 11:00 AM

DOCUMENT NO. ....

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Return by Mail [ X ] Pickup [ ]

Case Lombardi & Pettit (SWF)  
737 Bishop Street, Suite 2600  
Honolulu, Hawaii 96813

Total Pages: 75

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Tax Map Key No.: (2) 1-4-003-058

**DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF  
SEA RANCH COTTAGES AT HANA-MAUI**

**CONDOMINIUM MAP NO. 4381**

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**DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF  
SEA RANCH COTTAGES AT HANA-MAUI**

This Declaration of Condominium Property Regime of SEA RANCH COTTAGES AT HANA-MAUI (this "**Declaration**") is made on October 3, 2006 by **OHANA HOTEL COMPANY LLC**, a Delaware limited liability company, whose place of business and address is 5031 Hana Highway, Hana, Hawaii 96713 ("**Developer**").

**RECITALS.**

1. The Developer is the owner in fee simple of that certain parcel of land more particularly described in the Exhibit "A" attached hereto (the "**Land**"), upon which is situated certain improvements consisting of (a) four (4) buildings, including a Wellness Building, Service Building, Snack Bar, and Housekeeping/Maid's Quarters, all of which are commercial Units used by the Developer in connection with the operation of the Hotel Hana-Maui (the "**Commercial Units**"), more particularly described in Exhibit "B-1" attached hereto, and (b) twenty-four (24) buildings containing a total of forty-seven (47) hotel/lodging condominium Units (collectively the "**Lodging Units**"), more particularly described in Exhibit "B-1" attached hereto. The Lodging Units are capable of being sold as whole condominium units, or subjected to a time share, fractional, club, vacation ownership or similar use plan or program and sold as undivided interests. The Land and all of the improvements thereon are collectively referred to as the "**Project**".

2. The Hotel Hana Maui is located on that certain parcel of land more particularly designated by Tax Map Key No. (2) 1-4-004-022, in the immediate vicinity of the Project. The Hotel Hana Maui has been submitted to condominium property regime and is known as "The Hotel Hana-Maui Condominiums", containing ten (10) Lodging Units and eleven (11) Commercial Units. The Developer may, but is not obligated to, merge this Project with the Hotel Hana-Maui Condominiums pursuant to the provisions of Section T.4 below.

3. The Developer intends by this Declaration to establish the Condominium Property Regime on the Land, which provides a structure for the operation, management, governance and maintenance of the Project.

**A. DEFINITIONS.** The terms used herein shall have the meanings given to them in the Act, as defined below, except as otherwise expressly provided herein. Unless clearly repugnant to the context, the following terms, whenever used in this Declaration, shall be given the following meanings:

1. "**Act**" means the "Condominium Property Act" codified in Chapter 514B of the Hawaii Revised Statutes.

2. "**Amenity License Fee**" means the fee to be paid by the Owner of a Whole Ownership Unit or the Owners of Vacation Ownership Units under the Amenity Use and Services Agreement in exchange for the use and enjoyment of the Resort Area and other areas owned by the Developer.

3. **"Amenity Use and Service Agreement"** means the Hotel Amenity Use and Services Agreement to be executed by the Commercial Unit Owner and the Board of Directors of the Vacation Ownership Units or Owners of Whole Ownership Units pursuant to which Owners in the Project are permitted to use the Resort Area, other properties owned by the Developer, and the amenities located thereon.

4. **"Association"** means the Association of Unit Owners of SEA RANCH COTTAGES AT HANA-MAUI, whose members consist of all Owners of Units in the Project; provided that, in the event the Project is merged with a condominium development or developments located or to be located on lands adjacent to or in the vicinity of the Project, in accordance with a declaration of merger, all references to the Association shall mean and refer to the merged association of unit owners of the entire development, as reconstituted by any such merger or mergers.

5. **"Board of Directors" or "Board"** means the Board of Directors of the Association.

6. **"Bureau"** means the Bureau of Conveyances of the State of Hawaii, or any successor recording office for the recordation of deeds and other real property documents affecting the Project.

7. **"Bylaws"** means those certain Bylaws of the Association of Unit Owners of SEA RANCH COTTAGES AT HANA-MAUI recorded with this Declaration, as the same may be further amended or restated from time to time.

8. **"Commercial Units"** means the Units designated as such in Exhibit "B-1", and depicted on the Condominium Map as the Wellness Building, Service Buildings, Snack Bar and Housekeeping/Maid's Quarters, which shall be operated and used for such purposes set forth in Section 3 of Paragraph H. Developer has the reserved right to change the designation and use of the Commercial Units and the Limited Common Elements appurtenant thereto as set forth in this Declaration. The Commercial Units shall have appurtenant to them the Resort Area as depicted on CPR 03 of the Condominium Map.

9. **"Common Elements"** means those portions of the Project designated in this Declaration and on the Condominium Map as Common Elements and as further described on Exhibit "B-2" attached hereto, including Limited Common Elements.

10. **"Common Expenses"** includes the expenses, costs and charges designated as common expenses in Paragraph K of this Declaration and all other expenses, costs and charges designated as Common Expenses in this Declaration or in the Bylaws.

11. **"Common Interest" or "Common Interests"** means the undivided percent or percentage interest in the Common Elements appurtenant to each Unit in the Project, set forth in Exhibit "B-1" and calculated in accordance with Paragraph E of this Declaration.

12. **"Condominium Map"** means the plans and elevations for the Project Recorded as Condominium Map No. 4081, as the same may be amended from time to time.

13. **"Condominium Property Regime"** shall mean the condominium property regime established by the execution and recordation of this Declaration.

14. **"Developer"** means Ohana Hotel Company LLC, a Delaware limited liability company, its successors and assigns. A person or entity shall be deemed a successor or assign of Developer only if specifically designated in a duly Recorded written instrument pursuant to this Declaration and only to the extent of particular rights or interests of the Developer which are set forth in such Recorded instrument.

15. **"Land"** means the real property described in Exhibit "A" attached hereto, subject to the encumbrances noted therein.

16. **"Land Court"** means the Office of the Assistant Registrar of the Land Court of the State of Hawaii, or any successor recording office for the recordation of deeds and other real property documents affecting the Project.

17. **"Limited Common Elements"** means those portions of the Common Elements designated in this Declaration and on the Condominium Map as limited common elements and as further described on Exhibit "B-3" attached hereto.

18. **"Limited Common Expenses"** means the expenses, costs and charges designated as limited common expenses in Paragraph K of this Declaration.

19. **"Lodging Units"** mean the forty-seven (47) Units designated as "Lodging Units" in Exhibit "B-1", and as depicted on the Condominium Map as Unit Types A through E, which are subject to the use restrictions set forth in Section H hereof and which may be subjected to a time share, fractional, club, vacation ownership or similar use plan or program subject to Developer's prior written consent, which may be withheld in Developer's sole discretion, or sold as whole ownership hotel/lodging condominium units. Each Lodging Unit shall have appurtenant to it as a Limited Common Element a Private Garden Area. Developer reserves the right to change the designation and use of the Lodging Units as set forth in this Declaration.

20. **"Managing Agent"** means the agent, if any, employed by the Board of Directors or Developer pursuant to Paragraph J of this Declaration.

21. **"Private Garden Area"** means the lanai and garden area appurtenant to a Lodging Unit and designated as a Limited Common Element appurtenant to such Lodging Unit on the Condominium Map.

22. Any specified **"percent or percentage of the Unit Owners"** means Owners of Units to which are appurtenant such specified percent or percentage of the Common Interests.

23. **"Project"** means and includes the Land, the buildings and all other improvements thereon (including the Units and the Common Elements) and all easements, rights and appurtenances belonging thereto, and all other property with respect to which the Condominium Property Regime shall exist from time to time pursuant to this Declaration.

24. **"Project Documents"** means this Declaration, the Bylaws and the Project Rules, as amended, modified or restated from time to time.

25. **"Project Rules"** means all of the rules and regulations contained in the Bylaws and adopted and promulgated from time to time by the Board of Directors in accordance with the Bylaws.

26. **"Record", "Recorded", "Recording", "Recordation" or "Recording"** means an instrument of record in, or the act of recording or causing to be recorded an instrument with the Assistant Registrar of the Land Court of the State of Hawaii, and/or the Bureau of Conveyances of the State of Hawaii, as appropriate.

27. **"Recording Office"** means the Bureau and, if applicable, the Land Court.

28. **"Replacement Reserve Fund"** means the Replacement Reserve Fund established and maintained pursuant to the Act and Paragraph R of this Declaration.

29. **"Resort Area"** means all of the Land (excluding only the portions upon which the buildings are located) and the improvements located thereon, designated on CPR 03 of the Condominium Map, which Resort Area is a Limited Common Element appurtenant to the Commercial Units and includes, but is not limited to, the pool and all of the grounds (all as depicted on the Condominium Map).

30. **"Resort Quality Standard"** means the highest of the following standards: (1) the standard required to maintain and operate the Project in a condition and a quality level no less than that which existed at the time that the Project was initially created (ordinary wear and tear excepted), (2) the standard required under a resort management agreement (if any), any franchise or license agreement entered into by and between the Developer or the Association and a third party franchisor or licensor of a hotel or other hospitality brand (whether a five-star luxury brand or otherwise), or (3) if no resort management agreement or third party franchisor or licensor exists, a luxury physical and service standard consistent with (i) identification as a quality luxury brand and with the physical standard of quality as a luxury hotel (i.e., a luxury hotel as understood in the hotel industry as having the development, construction, operating, service and maintenance standards at least equal to those of other similar resort hotel facilities in up-scale tropical resort locations) and in a fashion which shall not interfere with the operations of or diminish the status or reputation of the Project, and (ii) identification with quality luxury service standards and comparable with the standard of services provided in quality luxury residential coastal resort properties in tropical resort locations which standard shall include, at a minimum, the types of services provided at other residential tropical resort properties of similar quality in Hawaii.

31. **"Unit"** means a Unit in the Project, within the meaning of that term as used in the Act, as designated and described in this Declaration, and including both the Commercial Units and Lodging Units.

32. **"Unit Owner" or "Owner"** means a person owning, or the persons owning jointly or in common, a Unit and the Common Interest appurtenant thereto, to the extent of such ownership, including any person owning a time share, fractional, club, vacation

ownership or similar use plan or program which includes an undivided interest in a Unit and the Common Interest appurtenant thereto.

33. **"Unit and Unit Deed"** means a deed conveying Unit in the Project to an Owner and recorded in the Bureau of Conveyances.

34. **"Vacation Ownership Unit"** means a Lodging Unit subjected to a time share, fractional, club, vacation ownership or similar use plan or program. Developer reserves the right to change the designation and use of the Vacation Ownership Units as set forth in this Declaration.

35. **"Vacation Ownership Association"** means an association formed to administer a time share, fractional, club, vacation ownership or similar use plan or program located within the Project in accordance with a Vacation Ownership Declaration.

36. **"Vacation Ownership Declaration"** means a declaration of covenants, conditions and restrictions and reservations of easements Recorded by the Developer which creates a time share, fractional, club, vacation ownership or similar use plan or program in which the use, occupancy or possession of one or more Units circulates among various persons in accordance with a reservation and use plan for a period of sixty (60) or more days in any year; provided that the occupancy and possession of any Vacation Ownership Unit subjected to a time share ownership or use plan established under Chapter 514E of Hawaii Revised Statutes shall circulate among various persons for less than sixty (60) days per year per occupant.

37. **"Vacation Ownership Interest"** means an undivided tenant in common interest in a Unit and the right to reserve and use a Vacation Ownership Unit.

38. **"Whole-Ownership Units"** means a Lodging Unit which is not subjected to a time share, fractional, club, vacation ownership or similar use plan or program.

**B. SUBMISSION TO CONDOMINIUM PROPERTY REGIME.** Subject to the limitations herein contained, including without limitation those relating to the Association's obligation to maintain the Common Elements, Developer hereby submits all of its right, title and interest in and to the Land and all improvements now located or hereafter constructed on the Land to a Condominium Property Regime as established by the Act. Developer declares that such Land and improvements are owned and shall be owned, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions, covenants and conditions set forth in this Declaration and in the Bylaws, which declarations, restrictions, covenants and conditions shall constitute equitable servitudes, liens and covenants running with the land and shall be binding on and shall inure to the benefit of Developer, all subsequent owners and lessees of Units, all subsequent owners and lessees of all or any part of the Project and their respective heirs, successors, successors in trust, personal representatives and assigns. All of the provisions of this Declaration are intended to create mutual servitudes upon each Unit and to create reciprocal rights among the Unit Owners.

**C. NAME OF THE PROJECT.** The Condominium Property Regime established by this Declaration shall be known as **SEA RANCH COTTAGES AT HANA-MAUI.**

**D. DESCRIPTION OF THE PROJECT.**

1. Land. The land submitted to the Condominium Property Regime is described in Exhibit "A" attached hereto.

2. Buildings and Units. The Project consists of (a) four (4) buildings comprising four (4) Commercial Units, including a Wellness Building, Service Building, Snack Bar and Housekeeping/Maid's Quarters, all of which are used by the Developer in connection with the operation of the Hotel Hana-Maui, and which are more particularly described in Exhibit "B-1" attached hereto, and (b) twenty-four (24) buildings containing a total of forty-seven (47) Lodging Units, as more fully described in Exhibit "B-1" attached hereto. The Condominium Map is intended only to show the layout, location, and dimensions of the Units and elevations of the Units and is not intended and shall not be deemed to contain or make any other representation or warranty.

3. Limits of Units.

(a) Boundaries of the Commercial Units. The Commercial Units include all walls, columns and partitions (both load bearing and not load bearing) which are within the Commercial Units' perimeter walls including, without limitation, the Commercial Units' perimeter walls, the foundation, all floors, ceilings, doors, windows, sliding glass doors, screen doors, door frames and window frames, the air space within the Commercial Units, the foundation, ceiling, doors, the lanais (whether or not enclosed), planters and any garden areas, 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 Commercial Units, and all pipes, plumbing (including water heaters), wires, conduits and other utility or service lines and facilities servicing only the Commercial Units. The Commercial Units shall also include all load-bearing columns, girders, beams, building components and other elements included within each Commercial Unit. The Commercial Units shall not include any pipes, shafts, wires, conduits or other utility or service lines running through a Commercial Unit which are utilized for or serve more than one Unit, all of which are deemed Common Elements as provided in the Declaration.

(b) Boundaries of the Lodging Units. Each Lodging Unit includes the air space within all perimeter walls of the Lodging Unit, excluding the walls, columns and partitions which are not load-bearing, but including the space within the inner decorated or finished surfaces of all walls, windows, floors, ceilings, doors, door frames and windows of the Lodging Unit, all rollers, locks, handles, tracks, and appurtenant hardware associated with all windows, 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 within the Unit perimeter and servicing only the Lodging Unit. The Lodging 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 (notwithstanding the obligation of the Owner of a Lodging Unit or the applicable Vacation Ownership Association, as the case may be, to maintain the same), the interior load-bearing columns, girders, beams, and walls, the undecorated or unfinished surfaces of the floors and ceiling surrounding each Lodging Unit, or any pipes, shafts, wires, conduits, or

other utility or service lines running through a Lodging Unit which are utilized for or serve more than one Lodging Unit, all of which are deemed Common Elements as provided in this Declaration.

4. Common Elements. The Common Elements include the Land in fee simple and the Limited Common Elements described below, and all other portions of the Project, other than the Units, including, specifically, but not limited to, the common elements mentioned in the Act that are actually constructed on the Land, and all other portions of the Project necessary or convenient to its existence, maintenance and safety or normally in common use and which are not included as part of a Unit, including, but not limited to, those Common Elements described in Exhibit "B-2" and as may be shown on the Condominium Map.

5. Limited Common Elements. Certain parts of the Common Elements, referred to as the "Limited Common Elements", are hereby designated and set aside for the exclusive use of certain Units, and such Units shall have appurtenant, exclusive easements for the use of such Limited Common Elements. The Limited Common Elements, and the Unit(s) to which the Limited Common Elements are appurtenant, are described in Exhibit "B-3". The costs and expenses associated with the Limited Common Elements, including, but not limited to, the costs of maintenance, repair, replacement, improvement or additions to the Limited Common Elements, shall be charged to the Owner of the Unit to which the Limited Common Elements is appurtenant, and if there is more than one Unit to which the Limited Common Element shall be appurtenant, then in proportion to the Common Interest, appurtenant to each of the respective Units; provided, however, all costs of maintenance, repair, replacement, improvement or addition associated with Vacation Ownership Units shall be allocated and paid by the applicable Vacation Ownership Association on behalf of the owners of such Vacation Ownership Units pursuant to the terms of the applicable Vacation Ownership Declaration.

#### **E. COMMON INTEREST.**

1. Calculation of Common Interest. Each Unit shall have appurtenant thereto a Common Interest in all Common Elements, and the same proportionate share in all common profits and expenses of the Project and for all other purposes, except as otherwise provided in this Declaration, which Common Interest shall be subject to adjustment upon the annexation by Developer of additional Units and/or land into the Project as hereafter provided. The Common Interest for each Unit is as set forth in Exhibit "B-1". Notwithstanding anything provided in this Declaration to the contrary, all voting rights attributable to a Unit subjected to a Vacation Ownership Declaration shall be controlled by such declaration or other documents creating and governing such time share, fractional, club, vacation ownership or similar use plan or program. The Common Interest appurtenant to a particular Unit will be based on the total area of that Unit divided by the sum of the areas of all Units in the Project, rounded off so that the total of all Common Interests equals 1.0 (100%).

2. Calculation of Unit Areas. The Developer's architect calculated the areas of the Commercial Units and the initial net living areas of each Lodging Unit based on the boundaries of the Units set forth in this Declaration. The areas of each Unit are set forth in Exhibit "B-1". The net living areas of the Lodging Units are not limited to the area of a Lodging Unit that is suitable for occupancy. Rather, net living area refers to the floor area of a Lodging

Unit. The calculation of net living areas may not be exact and may be based on floor plans of each Lodging Unit. The measurements of each Unit do not necessarily follow the boundaries of the Units in every detail. The Developer makes no representations or warranty as to the actual area of any Unit. All calculations performed by the Developer's architect calculations (subject to change if necessary when the "as built" certificate is filed for any Unit) shall be conclusive and binding upon all Unit Owners, and all other interested persons, unless the calculation is clearly and materially wrong.

F. **EASEMENTS.** The provisions of this Paragraph F are (a) in addition to any easements described in Exhibit "A" attached hereto, and (b) subject to the exclusive rights reserved to the Owner of the Commercial Units in connection with the Resort Area, as more particularly set forth in Paragraph H.5 of this Declaration. Each Unit, any Limited Common Elements appurtenant thereto, and the Common Elements shall have and be subject to the following easements:

1. **Non-Exclusive Easement.** Each Unit shall have appurtenant thereto non-exclusive easements in the Common Elements designed for such purposes for ingress to, egress from, utility services for and support, maintenance and repair of such Unit; and in the other Common Elements for use according to their respective purposes, subject always to the exclusive or limited use of the Limited Common Elements, as herein provided. Each Unit in a building shall have an appurtenant easement in the other Units and Limited Common Elements in the building for support.

2. **Easement for Encroachments.** If any part of the Common Elements now or hereafter encroaches upon any Unit or Limited Common Element, or if any Unit or Limited Common Element now or hereafter encroaches upon any other Unit or upon any portion of the Common Elements, a valid easement for such encroachment and the maintenance thereof shall and does exist for so long as such encroachment continues. In the event any buildings of the Project shall be partially or totally destroyed and then rebuilt or in the event of any shifting, settlement or movement of any portion of the Project, minor encroachments of and parts of the Common Elements or Units or Limited Common Elements due to such construction, shifting, settlement or movement shall be permitted and valid easements for such encroachments and the maintenance thereof shall and does exist for so long as such encroachment exists.

3. **Association's Right to Enter Units and Limited Common Elements.** The Association shall have the irrevocable right, to be exercised by its Board of Directors or Managing Agent, to enter any Units and/or Limited Common Elements if any, from time to time during reasonable hours as may be necessary for the operation of the Project or at any time for making emergency repairs therein required to prevent damage to any Units or Common Elements or for the inspection, repair, painting, resurfacing, maintenance, installation or replacement of any Common Elements.

4. **Developer's Sales Activities.** Developer and its agents, employees, contractors, licensees, successors, and assigns shall have the right to conduct extensive sales activities on and at the Project, including without limitation, the use of any Unit owned by the Developer, and the Limited Common Elements appurtenant thereto as model Units, and/or sales and management offices, and to conduct extensive sales displays and activities until the closing

of the sale of the last unsold Vacation Ownership Interest in a Lodging Unit or any other Unit in the Project, provided that Developer warrants that it will attempt to carry out such sales activities in a manner which is as least obtrusive as reasonably possible so as to not unreasonably and materially interfere with the use, possession, and aesthetic enjoyment of the Project by the other Unit Owners. In the event that Developer's mortgage lender or any successor to or assignee of Developer's mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or by a deed in lieu of foreclosure, such mortgage lender, its successors and assigns, shall have the right to conduct such extensive sales activities on the Project until at least ninety-five percent (95%) of all of the Vacation Ownership Interests in the Units have been sold and closed, notwithstanding the foregoing. Each and every party acquiring an interest in the Project hereby acknowledges that the sales activities may result in noise and nuisances, and consents to such activity by Developer, and further waives, releases and discharges any rights, claims or actions such party may acquire against Developer, its brokers, sales agents, employees and lenders, and their respective successors and assigns as a result of any such activity or activities.

5. Developer's Reserved Rights Concerning Easements. Developer hereby reserves the right to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements for any reasonable purpose, which may include, but shall not be limited to, any easements for utilities or for any public purpose. Developer hereby further reserves the right to transfer, cancel, relocate, annex to the Project, or otherwise deal with any easement over, under, across or through any land adjacent to or across the street from the Project, for any reasonable purpose, which reserved right may include, but shall not be limited to, (a) the right to accept and annex to the Project a license, grant of easement, or any other right for the purpose of access and utility service to the Project and to obligate the Association to satisfy the terms and conditions of such license, grant, or other right, (b) the right to effectuate the same purposes set forth above in this Section 5 of Paragraph F, and (c) the right to negotiate with any owner of land upon which such easement is located on behalf of the Association and Owners any and all terms and conditions upon which such easement may be relocated, expanded, reduced, modified, or otherwise altered, and to execute, deliver, and record any instruments providing therefor upon or including such terms and conditions as Developer may reasonably determine to be just or appropriate. To the extent that the joinder of any Unit Owner, lien holder, or other person who may have any interest in the Land or the Project or any Unit in it may be required in order to validate any act or thing done pursuant to the foregoing reservations, such joinder shall be accomplished by power of attorney from each of the Owners, lien holders, or other such parties, the acquiring or acceptance of ownership in a Unit or of a lien covering a Unit or any other interest in the Project or Land subject to this Declaration being a grant of such power and the grant being coupled with an interest, being irrevocable.

6. Developer's Easements Over the Common Elements. Notwithstanding anything provided in this Declaration to the contrary, Developer and the assignee of Developer's reserved rights shall have an easement over the Common Elements of the Project, which easement may be assigned from time to time to anyone whom Developer wishes, including Owners and non-owners, on a permanent or temporary basis, for access over, under, across and through and to utilize the Common Elements of the Project.

7. Developer's Easements to Effect the Subdivision or Consolidation of Units. Developer, its agents, employees, consultants, contractors, licensees, successors, mortgages and assigns, shall have an easement over, under, upon and through the Common Elements and any Limited Common Elements and through the Units or any portion thereof as may be reasonably necessary to effect the subdivision or consolidation of Units, and such easement shall allow Developer, its agents, employees, consultants, contractors, licensees, successors, mortgages and assigns, to create and cause dust and other nuisances created by and resulting from any work connected with or incidental to effecting any such subdivision or consolidation provided that any such work is undertaken with the exercise of reasonable diligence.

8. Developer's Easements for Construction and Annexation. Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns, shall have an easement over, under and upon the Project as may be reasonable or appropriate for additional construction, the completion of renovations to the improvements of the Project, and (at the option of the Developer) the correction of defects therein, and to annex additional lands and/or Units to the Project.

9. Developer's Other Easement Rights. Developer, its agents, employees, consultants, contractors, licensees, successors and assigns, shall have an easement over, under and upon the Project or any portion thereof, to create and cause noise, dust and other nuisances created by and resulting from any work connected with or incidental to the renovation, construction and sale of any Unit or other improvement in the Project or the construction and sale of additional Units annexed to the Project.

10. Association's Right to Grant Easements. The Association shall have the right, exercisable by the Board of Directors, to grant, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across, or through the Common Elements for any reasonable purpose, which may include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance or repair of any Lodging Unit and the Common Elements in accordance with the Resort Quality Standard, or any easements for utilities or for any public purpose; provided, however that the Association shall have no such right in respect of any Commercial Unit or its Limited Common Elements unless the consent of the Owner of the Commercial Unit Owner is first obtained.

11. Association's Right to Accept, Assign, Cancel, and Relocate Easements  
The Association shall have the right, exercisable by the Board of Directors to accept, assign, cancel, relocate, and otherwise deal with any easement over, under, across or through any lands adjacent to and across the street from the Project, for any reasonable purpose, which may include, but shall not be limited to, any of the same purposes set forth in Section 5 of this Paragraph F or for the reason that any owner of any such lands adjacent to or across the street from the Project exercises any right to require the relocation of any such easement provided it does not adversely affect Developer's rights and interests therein.

12. Easements for Vacation Ownership Associations. Pursuant to Paragraph H.2, the Developer may establish or authorize one or more time share, fractional, club, vacation ownership or similar use plans or projects. Any Vacation Ownership Association created

pursuant to a Vacation Ownership Declaration, together with its respective representatives, managers, licensees and invitees, shall have a non-exclusive easement over, under and upon the Common Elements of the Project for the following purposes only:

(a) the administration, management or operation of the time share, fractional, club, vacation ownership or similar use plan or project;

(b) the use, maintenance, or servicing of Units included in time share, fractional, club, vacation ownership or similar use plan or project;

(c) to enter and use the Resort Area to maintain or replace the cesspools serving the Lodging Units, provided the area affected by such maintenance or replacement is restored to its condition immediately after the completion of such maintenance, repair or replacement; and

(d) the use of any easement reserved or granted in a Vacation Ownership Declaration, or related documents, which allows the Vacation Ownership Association to use the Units included in such time share, fractional, club, vacation ownership or similar use plan or project; provided, however, that under no circumstances, may this easement be used, directly or indirectly, for the following purposes: (1) to sell or promote the sale of, or to solicit prospective purchasers of, Vacation Ownership Interests on behalf of anyone other than the Developer, or (2) to operate a tour or activity desk or any other business used to sell or promote the sale of Vacation Ownership Interests on behalf of any one other than the Developer.

13. Easement(s) in Resort Area. Each Owner shall have a non-exclusive easement on and over the Resort Area for: (1) ingress and egress to such Owner's Unit as may be reasonably necessary or convenient in connection with the use and occupancy of such Unit; provided, however that such ingress and egress shall be limited to sidewalks and paths designated from time to time by the Owner of the Commercial Units; and (2) parking in the parking lot located in the Resort Area, subject to the right of the Owner of the Commercial Units to change the location of the parking stalls within the Resort Area as long as there is sufficient parking within the Project and on that certain parcel of land owned by Developer and designated by TMK (2) 1-4-003-057 to permit the Project to comply with applicable zoning requirements.

14. Easements for Commercial Units. Each Commercial Unit shall have an non-exclusive easement under which the representatives, vendors, licensees, and invitees of the Owner of such Commercial Unit shall have the right, for purposes of the business conducted in the Commercial Units, or the Limited Common Elements appurtenant thereto, to do the following things:

(a) To enter the Project using the Common Elements intended for access to and from any nearby roads or streets;

(b) To park motor vehicles in any unassigned parking areas;

(c) To make deliveries using any delivery area and any Common Elements connecting the delivery area to the applicable Commercial Unit or its Limited Common Elements;

(d) To use the Common Elements for ingress and egress as may be reasonably necessary or convenient in connection with the ordinary course of business operations in the Commercial Units and their appurtenant Limited Common Elements.

**G. ALTERATION AND TRANSFER OF INTERESTS.** Except as otherwise expressly provided in Paragraph U.5, the percent or percentage of Common Interest appurtenant to each Unit (1) shall have a permanent character, such percent or percentage shall not be increased or decreased without the consent of all Owners of Units affected thereby as expressed in an amendment to this Declaration duly recorded, which amendment shall contain the consent thereto by the holders of any first mortgage on such Units, as shown in the Association's record of ownership, or who have given the Board notice of their interest through the Secretary of the Association or the Managing Agent, and (2) shall not be separated from such Unit and shall be deemed to be conveyed or encumbered with such Unit even though not expressly mentioned or described in the conveyance or other instrument. The Common Elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by the Act.

**H. USE.**

1. Lodging Units. The Lodging Units may be designated by the Developer for hotel, time share or vacation ownership use. Lodging Units shall be used for hotel, time share or vacation ownership use and transient vacation rental use as set forth in this Declaration. Lodging Units are not intended and shall not be used for dwelling purposes or long-term residential purposes, without the prior written consent of the Developer, which may be withheld in Developer's sole and absolute discretion, and no Owner may install a kitchen in any Lodging Unit without the Developer's consent. As used herein, the term "kitchen" shall have the meaning from time to time set forth in the Maui County Code and includes a room or portion thereof arranged, intended or used for cooking or otherwise making food ready for consumption and within which there may be appliances for the heating or cooking of food. No Owner or occupant of a Lodging Unit shall place or maintain in such Unit any fixture, appliances or device of any kind for heating or cooking food, including without limitation, any oven, microwave oven, rice cooker or hotplate. In the event that any Owner or occupant of a Lodging Unit breaches this use restriction and does not cure the breach within twenty-four (24) hours after notice from the Board to do so, the Board shall have the right to access the Unit and to remove the offending fixtures, appliance or device.

(a) Vacation Ownership Units. Any Lodging Unit subjected to a Vacation Ownership Declaration shall be considered a "Vacation Ownership Unit" under this Declaration. The use of any Vacation Ownership Unit subjected to a Vacation Ownership Declaration shall be governed by the provisions of such declaration and its associated governing documents to the extent not inconsistent with this Declaration and the other Project Documents.

(b) Rental. Owners shall have the right to sell, lease, rent, or otherwise transfer their respective Units subject to all provisions of the Act and the Project Documents. Any lease or rental agreement of a Unit shall provide that it shall be subject in all respects to the provisions of the Project Documents and that the failure of the lessee or tenant to

comply with the terms of the Project Documents shall be a default under the lease or rental agreement. A copy of any Lease shall be provided to the Developer.

2. Time Share, Fractional, Club and Vacation Ownership Use Permitted.

Time share, fractional, club, vacation ownership or similar use within the Project is permitted only pursuant to a time share, fractional, club, vacation ownership or other use plan or program established by or under the specific advance written authorization of, the Developer, in its sole and absolute discretion and set forth in a Recorded Vacation Ownership Declaration. Any such time share, fractional, club, vacation ownership or other use plan or program may cover all or some of the Units and any other units which may be later constructed on the Land and several such plans or programs may exist within the Project simultaneously. Specifically, the Units may be used, leased or rented, or any undivided interest therein may be transferred, for time share purposes or under any time share or interval ownership plan, program, agreement, or arrangement established by the Developer, as the same are defined under Chapter 514E of the Hawaii Revised Statutes, as amended.

3. Commercial Units. The Commercial Units, inclusive of the Limited Common Elements appurtenant to such Units, are intended to be, and shall be, operated and used only for commercial purposes or uses, including, without limitation, (a) for commercial, management, hotel rental, and property management purposes, concierge services, and for the on-site sales of Whole-Ownership Units, Vacation Ownership Units and Vacation Ownership Interests, (b) for restaurants, bars, specialty store, gift and sundry shops, retail, office, food and beverage sales, and all commercial and other purposes accessory to the foregoing, and (c) for such other purposes as may be permitted under applicable law and approved by Developer. The Owner or Owners of the Commercial Units shall have the absolute right to rent or lease all or any portion or portions of the Commercial Units in connection with such commercial operations or use for any length of time and upon such terms and conditions as such Owner or Owners shall determine, and to retain the revenues and rents generated from operations. Developer reserves the right, without the consent of any Owner, to change the use of the Commercial Units, to make alterations to the Commercial Units and the Limited Common Elements appurtenant thereto, and to change the use of the Limited Common Elements, as set forth in, among other provisions, Paragraph T of this Declaration.

4. Use of Common Elements. Subject to the rights reserved by Developer elsewhere in this Declaration or in the Bylaws and subject also to the exclusive or limited use of the Limited Common Elements, each Unit Owner may use the Common Elements in accordance with the purposes for which they were intended without hindering or encroaching upon the lawful rights of the other Unit Owners, subject to the rights of the Board of Directors:

(a) To change the use of the Common Elements upon the approval of seventy-five percent (75%) of the Unit Owners, provided that the change does not adversely affect Developer's rights and interests in the Common Elements;

(b) On behalf of the Association, to lease or otherwise use for the benefit of the Association those Common Elements which are not actually used by any of the Unit Owners for an originally intended special purpose, as determined by the Board so long as it does not adversely affect Developer's rights and interests in the Common Elements; provided

that unless the approval of seventy-five percent (75%) of the Unit Owners is obtained, any such lease shall not have a term exceeding 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' prior written notice; and

(c) Provided it does not adversely affect Developer's rights and interests in the Common Elements, to lease or otherwise use for the benefit of the Association those Common Elements not falling within subsection (b) hereinabove, upon obtaining: (1) the approval of seventy-five percent (75%) of the Unit Owners, including all directly affected Owners and all Owners of Units to which such Common Elements are appurtenant in the case of Limited Common Elements, and (2) the approval of all mortgagees of record on Units with respect to which Owner's approval is required by clause (1) above, if such lease or use would be in derogation of the interest of such mortgagees.

(d) Administration of Limited Common Elements Appurtenant to Commercial Units. Notwithstanding any provision contained herein to the contrary, the Owner(s) of the Commercial Units, or its successor and assigns (and not the Association), shall be responsible for maintaining the Commercial Units and the Limited Common Elements appurtenant thereto. The Commercial Units and appurtenant Limited Common Elements shall not be considered "Association property" for which the Association must collect replacement reserves, as defined in the Act and Hawaii Administrative Rules, Section 16-107-61 et. seq. The Commercial Units and their Limited Common Elements shall be maintained in a manner that is consistent with the Resort Quality Standard. However, the Owner of the Commercial Units, or its successor or assigns, shall not have any obligation to other Owners or to the Association or the Board to add additional buildings or amenities to the Resort Area, to add additional services for the use or pleasure of other Owners, to continue to make available any particular amenity or service existing as of the date of this Declaration.

5. Limited Use of the Resort Area.

(a) Notwithstanding any provision contained herein to the contrary, the Owner of the Commercial Units shall have the exclusive right to use and control the use by other Owners over the Resort Area; provided that (1) all Unit Owners shall have the right to use the sidewalks and paths designated by the Owner of Commercial Units from time to time for ingress and egress to their Units and (2) Unit Owners shall have the right to park their vehicles in the parking area within the Resort Area subject to rules established by the Developer which may include a valet parking service subject to the right of the Developer to change the location of the parking stalls within the Resort Area as long as there is sufficient parking within the Project and on that certain parcel of land owned by Developer and designated by TMK (2) 1-4-003-057 to permit the Project to comply with applicable zoning requirements; and provided further that Owners in the Project shall have the right to use and enjoy the Resort Area and the amenities located therein (1) subject to the rights reserved in this Declaration to the Owner of the Commercial Units and (2) subject to the Owners entering into the Amenity Use and Services Agreement, the terms of the Amenity Use and Services Agreement and the payment by such Owners of an Amenity License Fee to defray the cost of maintaining the Resort Area and repairing the facilities located therein. The Amenity License Fee charged to the Owners shall be calculated in a manner that reasonably reflects the use those Owners make or are likely to make

of the Amenities, taking into account the use made by hotel guests and invitees in the Project. The Amenity License Fee may be adjusted from time to time in order to reflect the number of Owners having the right to use the Resort Area.

(b) Notwithstanding any provision contained herein to the contrary, neither the Board nor the Association has any right to change the use of, to make alterations of any kind, or to lease or otherwise use the Resort Area, unless the consent of the Owner of the Commercial Units is first obtained. The Owner of the Commercial Units shall have no obligation to provide additional amenities in the Resort Area for the use and enjoyment of any other Owner or to continue to make available any amenity or service provided as of the date of this Declaration. The Owner of the Commercial Units may change or elect to discontinue for any reason any amenity or service or to restrict access to portions of the Resort Area, provided the Amenity License Fee is adjusted accordingly. Further, neither the Board nor the Association shall have the right to restrict the ability of the Owner of Commercial Units to alter or modify the Commercial Units or the Resort Area, or such Owner's right to construct new buildings or amenities in the Resort Area.

**I. ADMINISTRATION OF PROJECT.** Administration of the Project shall be vested in the Association in accordance with the Act and the Bylaws. Operation of the Project and maintenance, repair, replacement and restoration of the Common Elements, and any additions and alterations thereto, shall be in accordance with the provisions of the Act, this Declaration and the Bylaws, and specifically but without limitation the Association shall:

1. Improvements Required by Law. Make, build, maintain and repair all fences, sewers, drains, roads, driveways, driveway ramps, curbs, sidewalks, easement areas, parking areas, and other improvements which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Project or any part thereof.

2. Observance Required By Law. Keep all Common Elements in a strictly clean and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Project or the use thereof.

3. Maintenance in Accordance with Resort Quality Standard. Repair, maintain, amend and keep all Common Elements, including without limitation the exterior of all buildings in which Lodging Units are located and the Limited Common Elements appurtenant to the Lodging Units with all necessary reparations and amendments whatsoever in a manner that is consistent with the Resort Quality Standard, and maintain and keep the Land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the Common Elements herein required to be repaired by the Association, of which notice shall be given by any Owner or Owner's agent, within thirty (30) days after the giving of such notice or such additional period as may be reasonably necessary to complete such work in the exercise of due diligence. Notwithstanding any provision contained herein or in the Project Documents, the Owners of the Commercial Units (and not the Association) shall be obligated to maintain their Units in

accordance with the Resort Quality Standard and the Owner of the Commercial Units (and not the Association) shall be obligated to maintain the Resort Area in accordance with the Resort Quality Standard, subject to the provisions contained in Paragraph H hereof.

4. Bond for Construction. Before commencing or permitting construction of any common element improvement on the Project where the cost thereof exceeds \$25,000.00, obtain a performance and lien payment bond naming as obligees, the Board of Directors, the Association and collectively all Unit Owners and their respective mortgagees of record, as their respective interests may appear, with a responsible corporate surety authorized to do business in the State of Hawaii, guaranteeing the full and faithful performance of the contract for such construction free and clear of all mechanics' and materialmen's liens for such construction and the payment of all subcontractors, labor and materialmen, including mechanics' and materialmen's liens arising under the Act for a penal sum of not less than one hundred percent (100%) of the estimated cost of such construction. The Board may, in its sole discretion, increase the \$25,000.00 limitation from time to time by an amount equal to the percentage increase in the Honolulu Consumer Price Index for all items as published by the Bureau of Labor Statistics of the United States Department of Labor or other successor federal or state agency or department, and adjusted to any new basis and method of computation then applicable. For purposes of this Paragraph, the term "percentage increase" shall mean the product of (i) the fraction, the numerator of which is the difference between the Honolulu Consumer Price Index for the first day of the calendar month preceding the calendar month in which the Board shall approve an increase in such dollar limitation and the Honolulu Consumer Price Index for the first day of the calendar month in which this Declaration is Recorded, and the denominator of which is the Honolulu Consumer Price Index for the first day of the calendar month in which this Declaration is Recorded times (ii) \$25,000.00.

5. Setback Lines. Observe any setback lines affecting the Project and not erect, place or maintain any building or structure within the setback line along such boundary, except as may be permitted by applicable laws.

6. Improper Use. Not make or suffer any strip or waste or unlawful, improper or offensive use of the Project.

7. Emergency Repairs. Have the right, to be exercised by its Board of Directors or Managing Agent, to enter any Unit or Limited Common Elements appurtenant thereto from time to time during reasonable hours as may be necessary for the operation of the Project or at any time for making emergency repairs therein required to prevent damage to any Units or Common Elements or for the installation, repair or replacement of any Common Elements.

**J. MANAGING AGENT: SERVICE OF LEGAL PROCESS.** Operation of the Project may be conducted for the Association by a responsible corporate Managing Agent who shall be appointed by the Association in accordance with the Bylaws; provided that the initial Managing Agent shall be appointed by the Developer. The Managing Agent shall be authorized to receive service of legal process in all cases provided in the Act. The Managing Agent shall at all times be in compliance with the fidelity bond and other requirements of the Act pertaining to Managing Agents.

**K. COMMON EXPENSES.**

1. Definition of Common Expenses. "*Common Expenses*" shall mean and include all charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration, management, and operation of the Project and all other sums designated as Common Expenses under the Act, this Declaration or the Bylaws, including, without limiting the generality of the foregoing, the following:

(a) all charges for taxes (except real property taxes and other such taxes or assessments which are or may hereafter be assessed separately on each Unit and the Common Interest in the Common Elements appertaining thereto or the personal property or any other interest of the Unit Owner) and assessments;

(b) all costs of maintenance, repair, rebuilding, replacement and restoration of the Common Elements and any additions and alterations thereto, necessary to uphold the Resort Quality Standard, including any labor, services, materials, supplies and equipment therefor;

(c) any liability whatsoever for loss or damage arising out of or in connection with the Common Elements or any accident, fire or nuisance thereon;

(d) yard, janitorial or other similar services, wages, accounting and legal fees, management fees, and other necessary expenses of upkeep, maintenance, management and operation incurred on or for the Common Elements;

(e) the cost of pest control services, whether or not affecting any particular Unit or Units;

(f) any premiums for insurance, including hazard and liability insurance herein required to be maintained by the Association;

(g) the cost of all utility services, including water, electricity, gas (if any), garbage disposal, sewer, sewage treatment, telephone and other similar services, unless separately metered or otherwise separately attributable to a Unit or group of Units, in which case the amount charged or attributable to each Unit or group of Units, as determined by the Board of Directors, shall be payable by the Owner or Owners of such Units;

(h) all cost of maintenance and landscaping to any easement area appurtenant to the Land, which Owners have the right to use; and

(i) such amounts as the Board of Directors may deem proper for the payment of any deficit in the Common Expense assessments for any prior year, for a reserve fund for the operation and maintenance of the Project and a reserve fund for working capital and replacements, repairs and contingencies.

2. Payment of Common Expenses. Except as otherwise provided herein or in the Bylaws, the Common Expenses shall be charged to the Unit Owners in proportion to the Common Interests appurtenant to their respective Units; PROVIDED, HOWEVER, that:

(a) the Common Expenses charged to the Lodging Units shall not include the cost of maintenance, repair, replacement or improvement to the Commercial Units and the Limited Common Elements appurtenant thereto but shall include assessments for maintenance and repair of the building in which the Lodging Units are located and the Limited Common Elements appurtenant to such Units;

(b) the Common Expenses charged to the Commercial Units shall not include the cost of maintenance, repair, replacement or improvement to the Lodging Units;

(c) if the Association elects, with the consent of the Owner(s) of the Commercial Unit(s), to obtain comprehensive casualty insurance, with appropriate liability limits, covering the Commercial Units and all Limited Common Elements appurtenant thereto which is separate from the casualty insurance covering the Lodging Units and the Private Garden Areas, the Common Expenses charged to the Commercial Units shall not include premiums for fire and casualty insurance applicable to the Lodging Units, but shall include the cost of liability and other insurance, required or permitted to be maintained by the Association pursuant to this Declaration;

(d) the Common Expenses charged to the Commercial Units shall not include reserve assessments applicable to components of the Lodging Units, and vice versa;

(e) all charges, costs and expenses incurred by the Association only for or in connection with any Unit or group of Units or any Limited Common Elements including but not limited to, all costs of maintenance, repair, replacement, additions and improvements to the Units or the Limited Common Elements and utility costs arising therefrom shall constitute Limited Common Expenses for which only the Owner or Owners of any such Unit(s) shall be liable, or for which only the Owner or Owners of the Unit(s) to which such Limited Common Elements are appurtenant shall be liable or, if the Limited Common Elements are appurtenant to more than one Unit, the Owners of such Units to which such Limited Common Elements are appurtenant shall be severally liable in proportion to the ratio that the Common Interest appurtenant to their respective Units, bears to the sum of the Common Interests of all Units to which such Limited Common Elements are appurtenant (such charges, costs and expenses incurred only for or in connection with any Unit or Limited Common Element being herein called "*Limited Common Expenses*"); and

(f) all charges, costs and expenses incurred by the Association which are necessitated by the negligence, misuse or neglect of a Unit Owner or occupant or any person under either of them shall be charged to such Unit Owner or the Owner of the Unit of such occupant, as a special assessment secured by the lien created under this Paragraph K.

3. No Exemption from Payment of Common Expenses and Limited Common Expenses. No Unit Owner may exempt himself or herself from liability for such Owner's contribution toward the Common Expenses and Limited Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit.

4. Exclusions from Definition of Common Expense. Common Expense shall not mean and include costs and expenses for the maintenance, repair or restoration of property or

fixtures which comprise a portion of a Unit, regardless of whether such costs and expenses are incidental to or arise out of the maintenance, repair or restoration of Common Elements of the Project, or Limited Common Elements, and such costs and expenses shall be deemed to be the sole responsibility of the affected Unit Owner or Owners.

5. Assessments and Failure to Pay Assessments. The Board of Directors shall from time to time assess the Common Expenses and Limited Common Expenses against all the Units in their respective proportionate shares, and the unpaid amount of such assessments against any Unit shall constitute a lien against such Unit prior to all other liens, except only (i) liens for taxes and assessments lawfully imposed by governmental authority against such Unit, and (ii) all sums unpaid on any mortgage of record which was recorded prior to the recordation of a notice of a lien by the Association, and costs and expenses including attorney's fees provided in such mortgages. The lien of the Association for an unpaid assessment may be foreclosed by the Board of Directors or Managing Agent as provided by the Act, provided that thirty (30) days' prior written notice of intention to foreclose shall be mailed, postage prepaid, to all persons having any interest in such Unit as shown in the Association's record of ownership. When the mortgagee of a mortgage of record or other purchaser of a Unit acquires title to such Unit as a result of the remedies provided in the mortgage, foreclosure of the mortgage, or a sale in lieu of foreclosure, such mortgagee or such other purchaser, as the case may be, and their respective heirs, devisees, personal representatives, successors and assigns, shall not be liable for the share of the Common Expenses, Limited Common Expenses, or assessments chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share shall be deemed Common Expenses collectible from all of the Unit Owners, including such mortgagee or such other purchaser and their respective heirs, devisees, personal representatives, successors and assigns, who is a Unit Owner.

6. Default by a Unit Owner. If a Unit Owner shall default for a period of thirty (30) days or more in the payment of such Owner's share of the Common Expenses, the Board of Directors may, at its option, so long as such default shall continue, demand and receive from any tenant of the Unit Owner, the rent due or becoming due from such tenant to the Unit Owner up to an amount sufficient to pay all sums due from the Unit Owner, including interest, if any, and any such payment of rent to the Board of Directors by the tenant shall be sufficient discharge of such tenant, as between such tenant and the Unit Owner to the extent of the amount paid. Any such demand or acceptance of rent from any tenant shall not be deemed to be a consent to or approval of any lease by the Unit Owner or a release or discharge of any of the obligations of the Unit Owner hereunder, or an acknowledgement or surrender of any rights or duties hereunder. In the event that the Board of Directors makes demand upon the tenant, the tenant shall not have the right to question the right of the Board of Directors to make such demand, but shall be obligated to make the payments to the Board of Directors as demanded by the Board; provided, however, that the Board of Directors may not exercise this right if a receiver has been appointed to take charge of the Unit pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.

7. Excess Charge for Common Expenses. In the event that assessments received during any year are in excess of the actual expenditures for such year by the Association for Common Expenses, the Board of Directors may, subject to approval by the Unit Owners at the next annual meeting, determine that such excess shall be:

(a) Applied in whole or in part to reduce the assessments for the immediately subsequent year;

(b) Designated in whole or in part as a capital contribution to the Association to be used for future capital improvements and replacements;

(c) Segregated and held in whole or in part as a "Custodial Fund" to be expended solely for specifically designated capital improvements and replacements; or

(d) Segregated and added in whole or in part to the Replacement Reserve Fund established hereunder.

The proportionate interest of each Unit Owner in said capital contributions, Custodial Fund or Replacement Reserve Fund, cannot be withdrawn or separately assigned but shall be deemed to be transferred with such Unit even though not expressly mentioned or described in the conveyance thereof. In case the Condominium Property Regime hereby created shall be terminated or waived, said capital contribution, Custodial Fund or Replacement Reserve Fund remaining after full payment of all Common Expenses of the Association shall be distributed to all Unit Owners in proportion to their respective Common Interests except for the Owners of any Units then reconstituted as a new condominium property regime.

**L. COMPLIANCE WITH DECLARATION AND BYLAWS.** All Unit Owners, their tenants, families, servants and guests, and any other persons who may in any manner use the Project, or any part thereof, shall be bound by and comply strictly with the provisions of this Declaration and the Bylaws, and all agreements, decisions and determinations of the Association as lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors or Managing Agent on behalf of the Association or, in a proper case, by any aggrieved Unit Owner; in the event of the failure of any Unit Owner to comply fully with any of the same within thirty (30) days after written demand therefor by the Association, the Association shall promptly give written notice of such failure to the holder of any first mortgage of such Unit, as shown in the Association's record of ownership or who has given the Board of Directors notice of its interest through the Secretary of the Association or the Managing Agent.

**M. INSURANCE.**

1. General Provisions. The Association shall at all times maintain the insurance set forth in this Paragraph M, and shall assess the cost of such insurance as Common Expenses to the Unit Owners, except to the extent that the Association elects, with the consent of the Commercial Unit Owners, to obtain casualty insurance covering the Commercial Units and appurtenant Limited Common Elements separate from the casualty insurance maintained by the Association on the Lodging Units. Upon such election, the premium associated with the Commercial Units shall be charged solely to the Owner of such Units and the premium associated with the Lodging Units shall be charged solely to the Owners of such Units.

(a) Each insurance company must be licensed to do business in the State of Hawaii, with a financial performance rating of Class VI or better according to Best's

Insurance Report. The only exceptions are for (i) federal flood insurance and other government insurance programs, and (ii) insurance not available, or not available at a reasonable price, from a company licensed in Hawaii. If the insurance cannot be obtained from a company having the required Best's rating, or if the Board decides that the cost is too high, then the Association may buy the insurance from any financially sound company of recognized responsibility.

(b) The Board has the right and power to increase coverage or to obtain better terms than those stated in this Paragraph M if the Board decides that it is necessary or is in the best interests of the Association. The Board may also buy other kinds of insurance even if they are not described in this Paragraph M. For example, the Board might buy business interruption insurance.

(c) The Board of Directors shall review not less frequently than annually the adequacy of its entire insurance program and shall adjust its insurance program accordingly; the Board of Directors shall then prepare a report of its conclusions and action taken. Copies of every policy of insurance procured by the Board of Directors and such report of the Board of Directors shall be available for inspection by any Unit Owner (or purchaser holding a contract to purchase an interest in a Unit) and the holder of any first mortgage on any Unit at the office of the Managing Agent.

(d) The Board shall not be liable for any decision it makes in connection with insurance provided the Board is not grossly negligent or acts with willful disregard. Neither the Developer nor the managing agent shall be liable for insurance decisions absent gross negligence or willful misconduct.

2. Hazard Insurance. Absent an election by the Association to obtain, with the consent of the Commercial Unit Owners, separate casualty insurance covering the Commercial Units and their Limited Common Elements, the Association shall at all times keep all buildings and Common Elements of the Project, and, whether or not part of the Common Elements, all exterior and interior walls, floors, and ceilings and all exterior glass, in accordance with the as-built plans and specifications, insured against loss or damage by fire and other damages under a condominium special property broad form policy of insurance with an extended coverage endorsement, or such other special form policy of insurance that provides equivalent coverage in an amount sufficient to provide for the full repair or full replacement thereof without deduction for depreciation (but taking into consideration any reasonable deductible), with an inflation guard endorsement and a water damage endorsement, in the name of the Association, as trustee for all Unit Owners and all mortgagees of record according to the loss or damage to their respective Units and appurtenant Common Interest. Such insurance shall be payable in case of loss to such bank or trust company authorized to do business in the State of Hawaii as the Board of Directors shall designate (herein sometimes called the "*Trustee*") for the custody and disposition as herein provided of all proceeds of such insurance, and the Association shall from time to time cause to be deposited promptly with the Secretary of the Association and with each mortgagee of record with any interest in a Unit who may have requested the same true copies of such insurance policies or current certificates thereof and promptly notify in writing each such mortgagee of record of any deposit with the Trustee of any proceeds of such insurance, all without prejudice to the right of each Unit Owner to insure the Unit for the Unit Owner's own benefit. Flood insurance shall also be provided under the provisions of the federal Flood

Disaster Protection Act of 1973, if the property is located in an identified flood hazard area, with minimum limits equal to the aggregate of the outstanding principal balances of all mortgage loans on Units in the Project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. Except as provided in Paragraph N, in every case of such loss or damage all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the Units and Common Elements in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved by the Board of Directors as herein provided, and the Association at its Common Expense shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall:

(a) Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of, any other insurance obtained by or for any Unit Owner;

(b) Provide that coverage shall not be affected, reduced or lost due to  
(i) any increased danger or hazard on any part of the Project, which is not within the knowledge of the Association, the Board of Directors, the Managing Agent or Unit Owners collectively, or  
(ii) any danger of hazard, which the Association, its Board of Directors or all Unit Owners collectively could not have controlled.

(c) Provide that the policy may not be cancelled or substantially modified by the insurance company without at least sixty (60) days' written notice to the Board of Directors and the Managing Agent. If the insurance company agrees, this notice must also be given to each Unit Owner (and mortgagee or seller of a Unit under an agreement of sale) who has requested, in writing, such notice from the insurance company;

(d) Contain a waiver by the insurer of any right of subrogation to any right of the Board of Directors, the Association, or any Unit Owners against any of them or any other persons under any of them;

(e) Contain a waiver by the insurer of any right to deny liability because of vacancy of any Unit or Units;

(f) Provide that the insurance company shall not have the right to require that any part of the Project be restored or replaced, if the Unit Owners elect otherwise, however, Unit Owners shall be subject to the standard valuation clause contained in the policy;

(g) Provide that the insurer's agent or broker, at the inception of the policy and on each anniversary date thereof, shall provide the Board of Directors with a written summary, in layman's terms, of the policy. This summary shall include, without limitation, a description of the type of policy, the coverage and limits thereof, the amount of the annual premium, and the renewal dates. Upon receipt of such summary from the insurer, the Board of Directors shall have the summary available for review by Unit Owners and the holder of any first mortgage on any Unit;

(h) Contain a standard mortgagee clause which shall:

(1) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any Unit in or Unit deed covering any Unit of the Project, in their respective order and preference, either named in the policy or on file with the insurer;

(2) Provide that non-compliance with the policy terms or conditions by one insured person or entity shall not be imputed to other innocent insured persons or entities;

(3) Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution from the mortgagee; and

(4) Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Board of Directors; and

(i) If obtainable, be accompanied by the certificate of a licensed insurance broker or agent certifying that the policy complies with and satisfies the requirements of this Section 1 of Paragraph M.

3. Liability Insurance. The Board of Directors, on behalf of the Association and at its Common Expense, shall also effect and maintain at all times comprehensive general liability insurance, covering all Unit Owners, the Board of Directors, the Association, the Managing Agent and its employees, and the employees of the Association with respect to the Project in a responsible insurance company authorized to do business in Hawaii and having a financial rating by Best's Insurance Reports of Class A VI or better, with minimum limits of not less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) for personal injury to or death of any number of persons in any one accident or occurrence and ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for property damage, or such higher limits as the Board of Directors may from time to time establish with due regard to then prevailing prudent business practice in the State of Hawaii as reasonably adequate for the protection of the Board of Directors, the Association, all Unit Owners' Common Interests in the Project, the Managing Agent and its employees and the employees of the Association, and from time to time cause to be deposited promptly with each mortgagee of record of any interest in a Unit current certificates of such insurance, all without prejudice to the right of any Unit Owners to maintain additional liability insurance for their respective Units. Any such policy of insurance shall:

(a) Provide that non-compliance with the policy terms or conditions by one insured person or entity shall not be imputed to other innocent insured persons or entities;

(b) Contain a waiver by the insurer of any right of subrogation to any right of the Board of Directors, or the Unit Owners against any of them or any other persons under them;

(c) Contain a "severability of interest" endorsement precluding the insurer from denying the claim of a Unit Owner because of negligent acts of the Board of Directors, the Association, the Managing Agent or any other Unit Owner; and,

(d) The policy may not be cancelled or substantially modified by the insurance company without at least sixty (60) days' written notice to the Board of Directors and the Managing Agent. If the insurance company agrees, this notice must also be given to each Unit Owner (and mortgagee or seller of a Unit under an agreement of sale) who has requested, in writing, such notice from the insurance company.

4. Directors' and Officers' Liability Insurance. The Association, at its Common Expense, may also procure and maintain directors' and officers' liability insurance covering the directors and officers of the Association with respect to their actions and activities as directors and officers of the Association, in any insurance company authorized to do business in the State of Hawaii with minimum limits as established by the Board of Directors, and shall from time to time deposit promptly with the Secretary of the Association current certificates of any such insurance. Any such policy of insurance shall provide that the insurer or its agent or broker, at the inception of the policy and on each anniversary date thereof, shall provide the Board of Directors with a written summary in laymen's terms, of the policy. This summary shall include, without limitation, a description of the type of policy, the coverage and limits thereof, the amount of the annual premium and the renewal dates. Upon receipt of such summary from the insurer, the Board of Directors shall have the summary available for review by Unit Owners and the holder of any first mortgage on any Unit.

#### **N. INSURED DAMAGE OR DESTRUCTION.**

1. Damage to One Unit. If the Project is damaged by fire or other casualty which is insured against and said damage is limited to a single Unit and/or the Limited Common Elements appurtenant thereto, all of the insurance proceeds shall be used by the Trustee for payment of the contractor employed by the Board of Directors to rebuild or repair such Unit and/or said Limited Common Elements, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be previously approved by the Board of Directors and any mortgagee of record of any interest in the Unit so damaged.

2. Damage to More than One Unit. If such damage extends to two or more Units and/or the Limited Common Elements appurtenant thereto, or to any other Common Elements, the Board of Directors shall thereupon contract to repair or rebuild the damaged portions of the buildings, including all Units and Limited Common Elements so damaged, as well as the Common Elements, in accordance with plans and specifications therefor which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with the Resort Quality Standard and such modified plan as shall be previously approved by the Board of Directors and any mortgagee of record of any interest in a Unit directly affected thereby; provided that in the event said modified plan eliminates any Unit and such Unit is not reconstructed, the Trustee shall pay the Owner of said Unit and any mortgagee of record of any

interest in said Unit, as their interests may appear, the portion of said insurance proceeds allocable to said Unit (less the proportionate share of said Unit in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds.

3. Insufficient Insurance Proceeds. All insurance proceeds shall be paid by the Trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this Paragraph N. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding any Common Elements, other than any Limited Common Elements, the Board of Directors shall levy, as soon as reasonably possible following the determination of the amount of such insufficiency, a special assessment on the Owners of all Units in proportion to their respective Common Interests. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any Unit or Limited Common Element appurtenant thereto (but not including any Common Elements within any Unit) shall be specially assessed against the Owner of such Unit and said special assessment shall be secured by the lien created under Paragraph K of this Declaration.

4. Payments for Repair Work. The cost of all repair work (as estimated by the Board of Directors) shall be paid out from time to time or at the direction of the Board of Directors as the work progresses, but subject to the following conditions:

(a) An architect or engineer (who may be an employee of the Board of Directors) shall be in charge of the work;

(b) Each request for payment shall be made on seven (7) days' prior notice to the Trustee and shall be accompanied by a certificate to be made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required to reimburse the Board of Directors for payments by the Board of Directors to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services or materials), and that when added to all sums previously paid out by the Trustee, the sum requested does not exceed the value of the work done to the date of such certificate;

(c) Each request shall be accompanied by waivers of liens satisfactory to the Trustee, covering that part of the work for which payment or reimbursement is being requested, and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Trustee, that no mechanics' or other lien or instrument for the retention of title has been filed with respect to the premises for any part of the work not discharged of record;

(d) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the premises legal;

(e) The fees and expenses of the Trustee, as determined by the Board of Directors and the Trustee, shall be paid by the Association as Common Expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Trustee; and

(f) Such other conditions not inconsistent with the foregoing as the Trustee may reasonably request.

5. Any Remaining Insurance Proceeds. Upon completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board of Directors or the Trustee shall be paid or credited to all of the Owners of the Units and the holders of any mortgage on the Units, as their interests may appear, in proportion to the respective Common Interests appurtenant to each Unit.

6. Waiver of Subrogation. To the extent that any loss, damage or destruction to any building or other property is covered by insurance procured by the Board of Directors, the Board of Directors shall have no claim or cause of action for such loss, damage or destruction against any Unit Owner or tenant. To the extent that any loss, damage or destruction to the property of any Unit Owner or tenant is covered by insurance procured by such Owner or tenant, such Owner or tenant shall have no claim or cause of action for such loss, damage or destruction against the Board of Directors, the Association, the Managing Agent or any other Unit Owner or any person claiming under any of them.

## **O. CONDEMNATION.**

1. General Provisions. In case at any time or times the Project or any part thereof shall be taken or condemned by any entity having the power of eminent domain, or shall be sold to such entity under threat of condemnation, all compensation and damages payable for or on account of such taking shall be payable to a condemnation trustee, who shall be a bank or trust company designated by the Board of Directors doing business in the County of Maui, State of Hawaii. The Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related to the actual or threatened condemnation of the Project or any part thereof; provided that the Owner of the Commercial Apartments (including the Developer if the Developer is the Owner) shall have the right to represent itself with respect to any right or claim it may have to proceeds payable for the reserved right to add additional buildings in the Resort Area.

2. Division of Proceeds Between Units. Any proceeds remaining after payment of the Commercial Unit Owner's share will be allocated between the Unit Owners in the following manner (a) pursuant to a final court decision, or (b) absent such a decision, a qualified real estate appraiser will divide the proceeds among the Units based on the value of each Unit and its common interest. Such appraiser shall be a member of the American Institute of Real Estate Appraisers, or of a successor organization. If the appraiser who acted on behalf of the Unit Owners in the condemnation proceedings is so qualified, then such appraiser shall be responsible for allocating the remaining condemnation award among the Units. If there was no such appraiser, or if that appraiser is not qualified, or if there was more than one appraiser, then the Board shall select an appraiser subject to the right of the Unit Owners to elect, by a majority

vote, to require that a panel of three appraisers make the decision. The Unit Owners shall make such election within fifteen days after the Board announces the appointment of the appraiser, whereupon the Board must choose three appraisers and the decision of any two of them will decide how to divide the proceeds.

3. Condemnation or Termination of the Whole Project. If the whole Project is taken or so much of it is taken that the Association decides to terminate the Condominium Property Regime, then the condemnation trustee must pay the condemnation proceeds as follows: (a) the trustee shall pay to the Developer and to its lender, if any, the Developer's share of the proceeds for the Developer's reserved rights, and (b) the trustee must pay to each Unit Owner and the Owner's lender, as their interest may appear, the share of the proceeds for the Owner's unit as provided in Paragraph O.2.

4. Partial Condemnation.

(a) If only part of the Project is taken and if the Association does not decide to terminate the Condominium Property Regime, then the condemnation trustee must use the condemnation proceeds as follows: It must pay to the Developer and to its lender, if any, the Developer's share of the proceeds for the Developer's reserved rights. The remainder of the proceeds shall be distributed as follows:

(1) Removal of Unit. If a Unit or its Limited Common Elements are eliminated or a portion of the same is eliminated such that the remainder cannot be repaired or rebuilt in a manner that is satisfactory to the Unit Owner, the condemnation trustee will pay to the Owner and to any lender having a mortgage on the unit, as their interests may appear and in full satisfaction of their interests in the unit, the share of the proceeds allocable to that Unit and its Limited Common Elements, after first deducting from those proceeds that unit's share of the cost of debris removal. The Association must amend this declaration to remove the unit and to adjust the common interests of the remaining units.

(2) Repair and Restoration. In all other cases, the Association must repair and restore the remaining improvements according to their design just before the taking. If this cannot be done, then the Association must repair or restore the remaining improvements according to a new design. The new design must comply with all laws then in effect. Any changed plans and specifications must first be approved by the Board and by any lender having a mortgage on each unit remaining after the taking. If there are not enough proceeds to pay the cost of the repairs and restoration, the Association must pay the shortfall as a Common Expense. The Board is expressly authorized to pay the shortfall using money in the replacement reserve funds. If this is not enough, then the Board must (i) determine the remaining amount of the shortfall, and (ii) charge a special assessment to the Owners of all units except any units eliminated as provided in subsection (1) above. Each unit will pay a percentage of the special assessment equal to the percentage of the Common Expenses that it will be paying after the removal of any Units being eliminated as provided in section subsection (1) above.

(3) Excess Condemnation Proceeds. "Excess proceeds" are proceeds remaining after paying (i) all amounts payable to Owners and lenders of removed units, (ii) the costs of debris removal, and (iii) the costs to repair and restore the remainder of the

Project. Each unit (including units eliminated under subsection (1) above) will each receive a percentage of the excess proceeds equal to the percentage of the Common Expenses that it paid before the condemnation.

(4) Removal of Debris. Unless restoration or replacement is undertaken within a reasonable time after such taking, condemnation or sale, the Association at its common expense must remove all remains of the improvements on the remaining land and restore the site to good orderly condition and even grade.

**P. UNINSURED CASUALTY; PARTIAL RESTORATION; AND DETERMINATION AGAINST RESTORATION.**

1. Uninsured Casualty. In case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not herein required to be insured against, such improvements shall be rebuilt, repaired or restored unless Unit Owners owning eighty percent (80%) or more of the Units in number and eighty percent (80)% of the Unit Owners vote to the contrary. Any such restoration of the Common Elements shall be completed diligently by the Association at its Common Expense and the Unit Owners shall be solely responsible for any restoration of their respective Units so damaged or destroyed, according to the original plans and elevation thereof, or such other plan first approved by the Board of Directors, and the mortgagees of record of any interest in a Unit directly affected thereby. Unless such restoration is undertaken within a reasonable time after such casualty, the Association at its Common Expense shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade.

2. Partial Restoration. Restoration of the Project with less than all of the Units after any casualty or condemnation may be undertaken by the Association only pursuant to an amended declaration, duly adopted by the affirmative vote of not less than eighty percent (80%) of the Unit Owners, including at least eighty percent (80%) of the Unit Owners that will not be restored, and by all holders of liens affecting all or any part of the Project, by (a) removing the Project from the Condominium Property Regime, (b) reconstituting all of the remaining Units and Common Elements to be restored as a new condominium property regime, and (c) providing for payment to the Owner of each Unit not to be restored the agreed value of such Unit and its Common Interest.

3. Determination Against Restoration in the Event of an Insured Casualty or Condemnation. Except as otherwise provided in Section 1 or Section 2 of this Paragraph P, in the event of an insured casualty or the condemnation of any part or all of the Project, the Project shall be repaired, rebuilt and restored as provided in Paragraph N hereof in the case of an insured casualty, and as provided in Paragraph O hereof in the case of condemnation, unless, within ninety (90) days after such a casualty or condemnation, it is determined by the affirmative vote of eighty percent (80%) of the Unit Owners (including eighty percent (80%) of the Unit Owners of the damaged or condemned Units) that the Project will not be so repaired, rebuilt or restored.

**Q. ALTERATION OF PROJECT.**

1. Consent Required for Alteration of the Project. Except as otherwise provided by the federal Fair Housing Act (42 U.S.C. Sec. 3601 et seq.) as amended by the Fair Housing Amendments Act of 1988, and the rules and regulations promulgated thereunder, as the same may be amended from time to time in the future and except as otherwise provided herein, restoration or replacement of the Project or any building or other structure thereof or construction of any additional building or other structure or structural alteration or addition thereto, shall be undertaken by the Association or any Unit Owner only pursuant to an amendment of this Declaration, duly executed by or pursuant to a vote or the written consent of seventy-five percent (75%) of the Unit Owners together with the consent of all Unit Owners whose Units or the Limited Common Elements appurtenant thereto are directly affected (as determined in a reasonable manner by the Board of Directors) and in accordance with complete plans and specifications therefor first approved in writing by the Board of Directors, and promptly upon completion of such restoration, replacement, construction, alteration or addition the Association shall duly record or file of record such amendment together with a complete set of floor plans of the Project, or portion thereof, as so altered, certified as built by a registered architect or professional engineer; PROVIDED, HOWEVER, that:

(a) the foregoing consent requirement shall not apply to "nonmaterial structural additions to the common elements" as defined in Section 514B-140 of the Act, which shall require approval only by the Board and a majority of the Unit Owners.

(b) all exterior alterations to any building in the Project must be in keeping with the Resort Quality Standard and, provided further that any exterior improvement or alteration to the buildings in which the Lodging Units are located shall not materially deviate from the uniform external appearance of Project as a whole, including the Commercial Units.

(c) the rights and easements reserved to the Developer set forth in this Declaration, including without limitation, the easements set forth in Section 8 of Paragraph F above and the reserved rights set forth in Paragraph T may be exercised without the consent of the Board or any other person.

(d) any exterior alterations or additions in respect of the Commercial Units and the Limited Common Elements appurtenant thereto shall require only the written approval thereof, including the plans therefor, by the Owner of the Commercial Unit in question, the holders of first mortgage liens affecting such Unit (if the lien holders require such approval), and by the appropriate agencies of the State of Hawaii and the County of Maui (if such agencies so require). Upon completion of the alterations or additions, the Owner of the affected Commercial Unit shall duly Record an amendment to this Declaration together with the approved plans showing only such alterations and alterations made to the Commercial Unit or the Limited Common Elements appurtenant thereto, and such amendment need only be executed by the Commercial Unit Owner and its lien holder, if required by the lien holder.

(e) the Owner of any Commercial Unit may from time to time may from time to time, rearrange, enlarge, and modify in anyway, interior spaces within the Commercial Unit, without the consent of the Board or any other person.

(f) Any change or addition to the Project shall comply in all respect with all applicable governmental codes, statutes, ordinances and rules and regulations, or with all variances granted therefrom.

2. Developer's Reserved Rights Regarding Alterations. Notwithstanding any other provision in this Declaration to the contrary, prior to the time that all Units in the Project have been sold and Recorded and the filing by Developer of the "as built" verified statement required by Section 514B-34 of the Act, Developer shall have the right, without the approval, consent or joinder of any Unit Owner, (a) to make alterations in the Project (and/or to amend this 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 Project which is not sold and Recorded; or (b) to make other alterations in the Project (and to amend this Declaration and the Condominium Map accordingly) which make minor changes in any Unit in the Project or the Common Elements which do not affect the physical location, design or size of any Unit which has been sold and Recorded, PROVIDED, HOWEVER, that as to (a) above, any such changes shall be reflected in an amendment to this Declaration. As used herein the term "sold and Recorded" shall mean and refer to the sale of Units in the Project, and the recording of the deed in the Recording Office from Developer to any party who is not the assignee or holder of the Developer's reserved rights under this Declaration.

**R. REPLACEMENT RESERVE FUND.** The Board of Directors shall establish and maintain the Replacement Reserve Fund as required by Section 514B-148 of the Hawaii Revised Statutes, as amended, by the assessment of and payment by all Unit Owners in equal monthly installments of their respective proportionate shares of such annual amount as required by the Act for the upkeep, repair, replacement in accordance with the Resort Quality Standard of those parts of the Common Elements, including, but not limited to roofs, walls, decks, paving, and equipment, that the Association is obligated to maintain. The Association shall be obligated to maintain the twenty-four (24) buildings in which the Lodging Units are located and the Limited Common Elements appurtenant to the Lodging Units and shall be responsible for collecting adequate replacement reserves from the Owners of the Lodging Units in amount(s) necessary to uphold the Resort Quality Standard. The Association shall *not* be obligated to maintain the Commercial Units, the Limited Common Elements appurtenant thereto, or the land in the Resort Area. The Owner of the Commercial Units shall have the obligation to maintain such Units and to set aside adequate replacement reserves to maintain such Units, the appurtenant Limited Common Elements and the Resort Area, as appropriate, in a manner consistent with the Resort Quality Standard. The Replacement Reserve Fund may from time to time be increased or reduced by the Board of Directors pursuant to the Act. The proportionate interest of each Unit Owner in the Replacement Reserve Fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such Unit even though not expressly mentioned or described in the conveyance thereof. In case the Condominium Property Regime hereby created shall be terminated, the Replacement Reserve Fund remaining after full payment of all Common Expenses of the Association shall be distributed to all Unit Owners in proportion to their respective Common Interests, excluding Owners of any Units then reconstituted as a new condominium property regime. In the event additional Units are created and annexed to the Project, the account of each Unit Owner with respect to funds in the Replacement Reserve Fund shall be subject to adjustment as set forth in Paragraph U.6 of this Declaration.

**S. AMENDMENT OF DECLARATION.**

1. Amendment of this Declaration by Unit Owners. Except as otherwise provided herein or in the Act, this Declaration may be amended by vote or written consent of seventy-five percent (75%) of the Unit Owners, and shall be effective only upon the recordation in the Recording Office of an instrument setting forth such amendment and the votes or written consent obtained, and duly executed by the proper officers of the Association. If any provision of this Declaration is considered an amendment hereof and, pursuant to this Declaration, (a) the vote or written consent of the Unit Owners is required, and (b) such vote or written consent of the required percent or percentage of Unit Owners has not been obtained, then such provision shall not be effective and the provision as originally written shall prevail, until any such requisite vote or consent is obtained. In any event, the validity and enforceability of the other provisions of this Declaration shall remain unaffected.

2. Amendment Prior to Unit Sales. Developer hereby reserves the right to amend this Declaration, the Bylaws and the Condominium Map at any time prior to the Recording of the first Unit deed relating to the Project.

3. Amendment of this Declaration by Developer to Record an As-Built Certificate. Notwithstanding the foregoing and notwithstanding the recordation in the Recording Office of any or all Unit deeds conveying any or all of the Units to any person, Developer hereby reserves the right to successively amend this Declaration (including the Bylaws and, when applicable, the Condominium Map), without the consent, approval or joinder of the Association, persons then owning or leasing the Units, to file the "as built" verified statement (with plans, if applicable) required by Section 514B-34, Hawaii Revised Statutes, as amended, (a) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed or being filed simultaneously with such amendment fully and accurately depict the layout, location, Unit numbers and dimensions of the Units as built, or (b) so long as any plans filed therewith involve only changes to the layout, location, Unit numbers, dimensions of or other changes to the Units and Common Elements as built which Developer is permitted to make in accordance with Paragraph Q of this Declaration.

4. Amendment of this Declaration by Developer for Other Reasons. Notwithstanding the foregoing and until the Recordation in the Recording Office of Unit deeds covering all of the Units in the Project (including all interests therein) in favor of parties, other than Developer or any party acquiring all or substantially all of Developer's Units in the Project through purchase, foreclosure, or otherwise, Developer hereby reserves the right to amend this Declaration, the Bylaws and the Condominium Map, without the approval, consent or joinder of the Association, any purchaser or Owner of any Unit, any owner of a Vacation Ownership Interest under a Vacation Ownership Declaration, or any other party with any interest in the Unit (including any tenant) (a) to correct typographical errors, and (b) as may be required by (i) law, (ii) the Real Estate Commission of the State of Hawaii, (iii) any title insurance company issuing a title insurance policy on the Project or any of the Units or any interest therein, (iv) any institutional lender lending funds on the security of the Project or any of the Units or any interest therein, or (v) any governmental agency of any state, territory, possession or foreign country or other foreign jurisdiction as a condition precedent to the marketing or sale of Units in any such jurisdiction; provided, however, that no such amendment which would change the percent or

percentage of Common Interest appurtenant to a Unit (as opposed to a change in what constitutes the Common Elements of the Project) or would substantially change the actual design, location or size of a Unit shall be made without the consent to such amendment by all persons having an ownership or mortgage interest in such Unit.

5. Votes Required. The percent or percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percent or percentage of affirmative votes prescribed for the action to be taken under that clause. For example, if this Declaration expressly states that eighty percent (80%) of the Unit Owners must concur with a proposal to remove any part of the Project from the Condominium Property Regime, then the vote or written consent of eighty percent (80%) of the Unit Owners is necessary to amend this provision regardless of the percent or percentage prescribed in the general provision pertaining to amendments of this Declaration.

6. No Amendment of Developer's Reserved Rights Without its Approval. No amendment of any provision contained in this Declaration or in the Bylaws that grants or reserves rights in favor of Developer shall be effective unless approved, signed, and acknowledged by Developer.

7. No Amendment of Commercial Unit Owners Rights Without Approval. No amendment of any provision contained in this Declaration or in the Bylaws that grants or reserves rights in favor of a Commercial Unit Owner shall be effective unless approved, signed, and acknowledged by the affected Commercial Unit Owner.

#### **T. DEVELOPER'S RESERVED RIGHTS.**

1. Board Approval. Notwithstanding the provisions contained elsewhere in this Declaration, the Developer reserves the rights listed in this Paragraph T for itself and each Owner (including the Developer to the extent it is an Owner), which reserved rights may be exercised by the Developer without the approval of the Board or any other party with an interest in the Project, including other Owners or their mortgagees.

2. Reserved Rights with Respect to the Commercial Units and the Limited Common Elements. Notwithstanding anything provided to the contrary, and except as otherwise provided by law, Developer shall have the reserved right, but not the obligation, to:

(a) convert any Commercial Unit owned by the Developer into one or more Vacation Ownership Units or Whole-Ownership Units and to further designate Limited Common Elements appurtenant to such new Units,

(b) transfer the exclusive use rights associated with a Limited Common Element appurtenant to a Commercial Unit owned by the Developer to another Unit,

(c) convert Limited Common Elements to Common Elements, upon such conversion, the Association shall accept any such conversion, and shall not have any right to refuse or reject any such conversion,

(d) construct new Units on the Land located within the Resort Area envelope and to designate Common Elements or Limited Common Elements appurtenant to such new Units, as set forth in Paragraph U,

(e) alter, maintain, repair, demolish and/or replace any Limited Common Element appurtenant to the Commercial Units,

(f) alter, maintain, repair, demolish and/or replace the Commercial Units,

(g) modify any of the uses associated with the Commercial Units or the Limited Common Elements appurtenant thereto, provided that any such use complies with applicable law, and

(h) discontinue the use and availability of certain Commercial Units or facilities in the Resort Area.

3. Reserved Right to Subdivide and Consolidate Units. Notwithstanding anything provided to the contrary, and except as otherwise provided by law:

(a) Developer shall have the reserved right, without obtaining the approval of any party with an interest in the Project, including any other Unit Owner and/or mortgagee, to: (a) alter the floor plan of any Unit which it owns at any time provided that the Common Interest appurtenant to the Unit shall not change, (b) cause the subdivision of any Unit which it owns at any time to create two or more Units provided that the total Common Interest appurtenant to the newly created Units shall equal the Common Interest appurtenant to the original Unit; and (c) convert certain portions of any existing Unit to Common Element status or any Common Element to Unit status to facilitate any subdivision provided that the total Common Interest appurtenant to the newly created Unit or Units shall equal the Common Interest appurtenant to the original Unit or Units.

(b) If Developer is the Owner of any two Units separated by a party wall, floor or ceiling, Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Unit Owner and/or mortgagee to consolidate two or more Units and to alter or remove all or portions of the intervening wall, floor or ceiling at Developer's expense provided that: (a) the structural integrity of the Project is not thereby affected, (b) the finish of the Common Element then remaining is restored to a condition substantially compatible with that of the Common Element prior to such alteration, and (c) all construction activity necessary to any such alteration or removal shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the control of Developer or its contractors, whether caused by strikes, the unavailability of construction materials or otherwise, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence.

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

4. Declaration of Merger:

A. Definitions. The terms defined in this Paragraph shall have the following meanings:

(1) "Administrative Merger" means the unification of the administration, management and use of the Project and The Hotel Hana-Maui Condominiums, as provided in and pursuant to this Paragraph T.4, such that the use of the respective common elements, the respective common expenses, and the management of the respective affairs of the merged projects are shared, and the administration of the merged projects is unified under one integrated association of unit owners, but the ownership interests of the respective unit owners in the Project and The Hotel Hana-Maui Condominiums are not altered or affected.

(2) "Administrative Merger Date" means the date of recording of the applicable Certificate of Administrative Merger in accordance with the provisions of Paragraph T.4.C below.

(3) "Association" means the Association of Unit Owners of the Merged Project.

(4) "The Hotel Hana-Maui Condominiums" means the condo project located on that certain parcel of land more particularly identified by Tax Map Key No. (2) 1-4-004-022 comprised of ten (10) Lodging Units and eleven (11) Commercial Units.

(5) "Merged Project" means, in the case of an Administrative Merger, the Project and The Hotel Hana-Maui Condominiums as reconstituted by the recording of one or more Certificates of Administrative Merger in accordance with the provisions of Paragraph T.4.C below, or, in the case of an Ownership Merger, the Project and The Hotel Hana-Maui Condominiums as reconstituted by the recording of one or more Certificates of Ownership Merger in accordance with the provisions of Paragraph T.4.E below.

(6) "Ownership Merger" means the merger of ownership interests of the Project and The Hotel Hana-Maui Condominiums such that each unit owner in the merged projects shall have appurtenant thereto an undivided percentage ownership interest in the common elements (including the land) of the Merged Project and may include, at the option of Developer, the consolidation of any parcel(s) of land covered by the projects being merged.

(7) "Ownership Merger Date" means the date of recording of the applicable Certificate of Ownership Merger in accordance with the provisions of Section 5 below.

(8) "The Hotel Hana-Maui Condominiums" means the condominium project located on that certain parcel of land more particularly identified by Tax Map Key (2) 1-4-003-058, comprised of ten (10) Lodging Units and eleven (11) Commercial Units, as defined in the Declaration for that Project.

B. Administrative Merger. Developer shall have the right, but not the obligation, in its sole and absolute discretion, without the further act, consent, or joinder of any unit owner, lien holder, or any other persons, to cause and effect the Administrative Merger of the Project and The Hotel Hana-Maui Condominiums and to execute and record a Certificate of Administrative Merger (as described in Paragraph T.4.C below) and all other instruments as Developer deems necessary or appropriate for the purpose of effecting the Administrative Merger.

C. Requirements of Administrative Merger. Administrative Merger shall take effect upon completion of all of the following:

(1) Declaration; Bylaws; Condominium Map. Developer shall have, with respect to the projects to be merged, recorded a declaration of condominium property regime and bylaws and filed a condominium map, complying with the requirements of the Act. Each such declaration of condominium property regime and bylaws shall be in substantially similar form (with appropriate modifications for such items as the physical description of the land included in each project and easements and other encumbrances affecting the land, the number and description of the units in each project, the description of the common elements and limited common elements in each project, and the percentage of common interest appurtenant to the units in each project).

(2) Construction. With respect to each project, there shall have been recorded a verified statement of a Hawaii registered architect or professional engineer certifying that the final plans filed as the condominium map fully and accurately depict the layout, location, unit numbers, and dimensions of the units of such project, as built.

(3) Certificate of Administrative Merger. Developer shall have recorded a "Certificate of Administrative Merger," which certificate shall contain (i) a certification that the requirements of Paragraph T.4.C(1) and T.4.C(2) above have been satisfied; (ii) a statement explaining how the common expenses for the Merged Project will be calculated; and (iii) a statement that Administrative Merger with respect to the projects to be merged has, by the recording of the Certificate of Administrative Merger, become effective.

D. Effect of Administrative Merger. From and after the Administrative Merger Date, the following consequences shall ensue:

(1) Use of Common Elements. Each unit in the Merged Project shall have appurtenant thereto nonexclusive easements and rights to use and enjoy the common elements of each of the merged projects to the same extent and subject to the same limitations as are imposed upon units in each of such projects as though the merged projects had been developed as a single condominium project.

(2) Common Expenses. The merged projects will each bear a share of the total common expenses (as the term "common expenses" is defined in the respective declarations of condominium property regime for the merged projects) of the Merged Project, treating the merged projects as one project for this purpose. The share of common expenses for each project shall be a fraction, the numerator of which shall be the total approximate net living

floor area of all of the units in the respective project, and the denominator of which shall be the total approximate net living floor area of all units in the Merged Project. The approximate net living floor areas shall be as reflected in the respective declarations of condominium property regime for each project to be merged. Each unit's share of the common expenses of the Merged Project shall be the product of the common interest appurtenant to such unit multiplied by the share of common expenses allocated to the project in which the unit is located. The unit owner's obligations with respect to the common expenses for the Merged Project shall commence as of the Administrative Merger Date or other date specified in the Certificate of Administrative Merger and may increase or decrease following the Administrative Merger.

(3) Association of Unit Owners. The associations of Unit owners of each of the merged projects provided for in their respective declarations of condominium property regime and bylaws shall be merged into a single association covering the entire Merged Project which shall be known as the "Association of Unit Owners of The Hotel Hana-Maui" (the "Association"). After Administrative Merger, the Association shall have all of the powers and obligations vested in the associations of unit owners of the merged projects. In the event that the association of unit owners of one of the merged projects shall be incorporated prior to an Administrative Merger, the unit owners in the other merged project shall upon Administrative Merger automatically become members of the association of unit owners of the incorporated project, and its charter and bylaws shall so provide.

(4) Voting. Each of the merged project shall have the same share of the total votes of the Merged Project as the share set forth above for the sharing of common expenses. As such, each unit owner's vote in the Association will be the product of the common interest appurtenant to his or her unit multiplied by the fractional share of the common expenses allocated to the project in which his or her unit is located.

(5) Board of Directors. Upon Administrative Merger, the boards of directors of the associations of unit owners of the merged projects immediately prior to Administrative Merger shall govern jointly the Merged Project; provided, however, that within sixty days following the Administrative Merger Date, or other specified in the Certificate of Administrative Merger, a special meeting of the Association shall be called to elect a new board of directors to replace the existing boards of directors, and the new board of directors shall thereafter govern the Merged Project. In the event that such special meeting should be held as required herein six months or more before the next annual meeting of the Association, the terms of the directors shall be calculated as if they had been elected at the previous annual meeting of the Association. If such special meeting is held less than six months before the next annual meeting of the Association, the terms of the directors shall be calculated as if they were elected at the next annual meeting of the Association, and no election shall be held at such next annual meeting. The provisions and procedures for calling and holding such meeting and all other meetings of the Association, and for qualification and election of directors, shall be as set forth in the applicable provisions of the declarations of condominium property regime and bylaws of the merged projects. The number of directors of the Association shall be nine, unless unit owners having not less than sixty-five percent of the total vote in the Merged Project vote by mail ballot, or at a special or general meeting, to reduce the minimum number of directors, but to no fewer than three directors.

(6) Interpretation. For the purposes of administration and use of the Merged Project, upon Administrative Merger all of the units in the Merged Project shall be treated as though they were all included in a single condominium project created by a single recording of a declaration of condominium property regime covering the Merged Project, and the declarations of condominium property regime applicable to the merged projects shall be construed as one document applicable to the entire Merged Project, except to the extent expressly otherwise provided herein. The same shall be true of the respective bylaws and project rules of each project. In the event of a conflict between the respective declarations of condominium property regime, bylaws, and/or project rules, the declaration of condominium property regime, bylaws, and project rules first in effect for any of the merged projects shall control. Upon Administrative Merger, the specified voting percentages required to amend the declaration of condominium property regime, bylaws, and house rules for the Merged Project shall refer to and mean the specified percentage of the total vote in the Merged Project. From and after the Administrative Merger Date, the merged projects shall be treated for purposes of administration, use, and sharing of common expenses as though they had been developed as a single project. The Merged Project shall be known as "The Hotel Hana-Maui Condominiums".

(7) Ownership. Except as otherwise provided in this Declaration of Merger, Administrative Merger shall only affect the administration and use of the merged projects and the sharing of common expenses, and shall not affect the ownership of units and common elements in the respective projects.

E. Ownership Merger. The provisions of this Paragraph T.4.E shall apply only in the event Developer elects to effect an Ownership Merger of the Project and The Hotel Hana-Maui Condominiums. The recording of one or more Certificates of Ownership Merger shall be conclusive evidence that Developer has elected to effect an Ownership Merger of such projects. In the event that Developer shall elect to effect an Ownership Merger of such projects, the provisions of this Paragraph T.4.E shall control in the event of a conflict with any other provision of this Declaration of Merger.

(1) Ownership Merger. Any provision of this Declaration of Merger to the contrary notwithstanding, Developer shall have the right, but not the obligation, in its sole and absolute discretion, without the further act, consent, or joinder of any unit owner, lien holder, or any other persons, to cause and effect the Ownership Merger of the Project and The Hotel Hana-Maui Condominiums and to execute and record a Certificates of Ownership Merger (as described below in this Paragraph T.4.E) and all other instruments as Developer deems necessary or appropriate for the purpose of effecting the Ownership Merger.

(2) Requirements of Ownership Merger. Ownership Merger shall take effect upon completion of all of the following:

(a) Declaration; Bylaws; Condominium Map. Developer shall have, with respect to each project to be merged, recorded a declaration of condominium property regime and bylaws and filed a condominium map, complying with the requirements of the Act. Each such declaration of condominium property regime and bylaws

shall be in substantially similar form for each project to be merged (with appropriate modifications for the physical description of the land included in each project and easements and other encumbrances affecting the land, the number and description of the units in each project, the description of the common elements and limited common elements in each project, and the percentage of common interest appurtenant to the units in each project).

(b) Construction. With respect to each project, there shall have been recorded a verified statement of a Hawaii registered architect or professional engineer certifying that the final plans filed as the condominium map fully and accurately depict the layout, location, unit numbers, and dimensions of the units of such project, as built.

(c) Certificate of Ownership Merger. Developer shall have recorded a "Certificate of Ownership Merger", which certificate shall contain (i) certification that the requirements of Paragraphs T.4.E(2)(a) and T.4.E(2)(b) above have been satisfied; (ii) a schedule setting forth the undivided percentage common interest appurtenant to each unit in the Merged Project; (iii) the revised property descriptions reflecting the consolidation of parcels of land in the Merged Project, if applicable; (iv) a statement explaining how undivided common interests assigned to a unit in the Merged Project will be calculated; and (v) a statement that Ownership Merger with respect to the projects to be merged has, by the recording of the Certificate of Ownership Merger, become effective.

(3) Effect of Ownership Merger. From and after the Ownership Merger Date, the following consequences shall ensue:

(a) Common Elements. The common elements of each of the merged projects, including the land, will be the common elements of the Merged Project, and each owner of a unit in the merged projects shall have the right to full use and enjoyment of all of the common elements of the Merged Project to the same extent and subject to the same limitations as are imposed upon unit owners in each of the merged projects as though the merged projects had been developed as a single project.

(b) Common Interest. Each unit in the Merged Project shall have appurtenant thereto an undivided common interest in the common elements of the Merged Project, including the land, and in all common profits and expenses of the Merged Project, and for all other purposes, including voting, as set forth in the Certificate of Ownership Merger. The undivided common interest in common elements assigned to a unit in the Merged Project shall be a fraction, the numerator of which is the approximate net living floor area of the unit (as set forth in the declaration of condominium property regime covering the project in which such unit is situated) and the denominator of which is the total approximate net living floor area of all units in the Merged Project. The obligations of a unit owner with respect to undivided common interest in common elements assigned to a unit shall commence as of the Ownership Merger Date or other date as specified in the Certificate of Ownership Merger and may increase or decrease after the Ownership Merger. The common interest appurtenant to each unit in the Merged Project shall be calculated and rounded off in such a manner that each common interest will be reflected as a number having no more than five digits following the decimal point. Adjustments to the common interest for each unit in the Merged Project may be

made in Developer's discretion in order that the total common interest for all units in the Merged project equals exactly 1.0000 (100.00%). The recording of the Certificate of Ownership Merger shall be deemed an amendment to the declarations of condominium property regimes of the merged projects which effectuates such alteration and reassignment of common interests, and, upon recording of the Certificate of Ownership Merger, the deeds for units in the Merged Project as recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii shall be deemed automatically amended, without further action by Developer or any other person, to reflect the newly assigned common interests appurtenant to the units as set forth in the Certificate of Ownership Merger.

(c) Association of Unit Owners. The associations of unit owners of each of the merged projects provided for in their respective declarations of condominium property regime and bylaws shall be merged into a single association covering the entire Merged Project which shall be known as the "Association of Unit Owners of The Hotel Hana-Maui" (the "Association"). After Ownership Merger, the Association shall have all of the powers and obligations vested in the associations of unit owners of the merged projects. In the event that the association of unit owners of one of the merged projects shall be incorporated prior to an Ownership Merger, the unit owners in the other merged project(s) shall upon Ownership Merger automatically become members of the association of unit owners of the incorporated project, and its charter and bylaws shall so provide.

(d) Board of Directors. Upon Ownership Merger, the boards of directors of the associations of unit owners of the merged projects immediately prior to Ownership Merger shall govern jointly the Merged Project; provided, however, that within sixty (60) days following the Ownership Merger Date, a special meeting of the Association shall be called to elect a new board of directors to replace the existing boards of directors, and the new board of directors shall thereafter govern the Merged Project. In the event that such meeting should be held as required herein six months or more before the next annual meeting of the Association, the terms of the directors shall be calculated as if they had been elected at the previous annual meeting of the Association. If such special meeting is held less than six months before the next annual meeting of the Association, the terms of the directors shall be calculated as if they were elected at the next annual meeting of the Association and no election need be held at such next annual meeting. The provisions and procedures for calling and holding such meeting and all other meetings of the Association, and for qualification and election of directors, shall be as set forth in the applicable provisions of the declarations of condominium property regime and bylaws of the merged projects. The number of directors of the Association shall be nine unless unit owners having not less than sixty-five percent of the common interests in the Merged Project vote by mail ballot, or at a special or general meeting, to reduce the minimum number of directors, but to no fewer than three directors.

(e) Interpretation. Upon Ownership Merger, all of the units in the Merged Project shall be treated as though they were all included in a single condominium project created by a single recording of a declaration of condominium property regime covering the Merged Project, and the declarations of condominium property regime applicable to the merged projects shall be construed as one document applicable to the entire Merged Project, except to the extent expressly otherwise provided herein. The same shall be true

of the respective bylaws and project rules of each project. In the event of a conflict between the respective declarations of condominium property regime, bylaws, and/or project rules, the declaration of condominium property regime, bylaws and project rules first in effect for any of the merged projects shall control. From and after the Ownership Merger Date, the merged projects shall be treated for all purposes as though they had been developed, divided into units and used by the unit owners thereof as a single undivided project. The Merged Project shall be known as "The Hotel Hana-Maui Condominiums".

(f) Consolidation. Upon Ownership Merger of the Project and The Hotel Hana-Maui Condominiums, Developer shall have the right, but not the obligation, in its sole and absolute discretion, without the further act, consent, or joinder of any unit owner, lien holder, or any other persons, to cause and effect the legal consolidation of the Property or any portions thereof into one or more parcels of land. Developer shall have the right to execute, acknowledge, deliver, and record any documents, maps, petitions, or other instruments necessary or appropriate, as determined by Developer in its sole and absolute discretion, for the purpose of effecting such legal consolidation of the Property, and to amend the declarations of condominium property regime of the Merged Project to reflect such consolidation.

F. Accumulated Funds. Any long-term funds accumulated for the purpose of major repairs and replacements in any pre-existing project prior to Administrative Merger or Ownership Merger shall remain intact in a separate account for such pre-existing project, or shall be isolated and identified as pertaining only to the pre-existing project, and shall be expended solely for the contemplated purposes before funds from any other source are so expended, and the interest in such funds of each unit owner in that project or in those projects shall be equal to his or her common interest prior to merger, and such interest shall not be separated from the unit to which it appertains, and shall be deemed to be conveyed with such unit even though not expressly mentioned or described in the instrument of conveyance. Other reserve funds shall be consolidated and maintained as a single fund for the Merged Project, and, so that the interest in such other reserve funds attributable to each unit in the Merged Project shall be equal to that unit's share of the vote (or common interest in the event of Ownership Merger) in the Merged Project, the board of directors shall, if necessary, make adjustments to the account of each unit owner by (i) refund in whole or in part; and/or (ii) credit in whole or in part against future assessments; and/or (iii) special assessments or series of assessments; and/or (iv) any other means consistent with generally accepted accounting principles; provided, however, the board of directors shall make such adjustments without charging any unit owner a special assessment for reserves in any one month that exceeds more than twenty percent (20%) of the monthly assessment for other common expenses, after excluding any assessment for reserves. Except as provided above, there shall be only one common fund for the Merged Project.

G. Contributions. Upon Administrative Merger or Ownership Merger, Developer may, but need not, require the unit owners in all or any of the merged projects to make contributions, in addition to their normal prescribed share of the common expenses, to the cash reserves, the general operating account, and/or any other accounts of the Merged Project. Developer may provide that such contributions shall be made in a lump sum amount or in installments over a period of time. In setting the amount and terms of any such

contributions, Developer shall take into consideration the amount of cash reserves, the amounts in the general operating accounts, and/or the amounts in any other accounts of the respective projects accumulated prior to the merger, and the physical condition of the various buildings and units in each of the merged projects. The amount and terms of the contributions to be made by the unit owners in a project shall be fairly determined by Developer in Developer's sole and absolute discretion and shall be set forth in a notice by Developer to the unit owners or the board of directors of the Merged Project. Developer shall have no obligation to collect such contributions from the unit owners. Collection of such contribution amounts shall be the responsibility of the board of directors, which may, in its discretion, elect to instruct the managing agent of the Merged Project to administer the collection of such contribution amounts. Delinquent amounts of such contributions shall constitute a lien against the delinquent unit owner's interest in his or her unit that may be foreclosed by the board of directors of the Merged Project, or the managing agent thereof, in the same manner as provided in the Act for unpaid common expenses.

H. Pre-merger Obligations. The unit owners in a project being merged into an existing and completed project shall not be assessed, nor shall they have any obligation with respect to any debts, expenses, costs, or other obligations of the unit owners in such completed project incurred prior to the Administrative Merger Date or the Ownership Merger Date, as applicable.

I. Limitation on Time for Merger.

(a) Administrative Merger. Developer's right to effect an Administrative Merger with respect to the Project and The Hotel Hana-Maui Condominiums shall terminate automatically on December 31, 2022, unless and until such merger is approved by the vote or written consent of unit owners in each of the projects to be merged who own at least sixty-five percent of the common interests in that project.

(b) Ownership Merger. Developer's right to effect an Ownership Merger with respect to the Project and The Hotel Hana-Maui Condominiums shall terminate automatically on December 31, 2022.

J. No Obligations Regarding Other Development. Nothing in this Section T.4 shall be construed as a representation, warranty, or agreement by Developer that The Hotel Hana-Maui Condominiums will be developed or that either an Administrative Merger or an Ownership Merger of such project with the Project will occur, or to prohibit Developer from dealing freely with the Property, including, without limitation, developing the whole or any part of the Property for purposes inconsistent with the merger of such projects or with the uses or designs of other portions of the Property.

K. Power of Attorney. Developer shall have the absolute right, notwithstanding the lease, sale, or conveyance of any or all of the units in the Project or The Hotel Hana-Maui Condominiums, and without being required to obtain the consent or joinder of any unit owner, lien holder, or any other persons, to effect an Administrative Merger or Ownership Merger, in accordance with the provisions of this Section T.4, and to execute and

record the Certificate of Administrative Merger, the Certificate of Ownership Merger and any and all other instruments necessary or appropriate for the purpose of effecting the merger of projects as contemplated hereby, including, but not limited to, the amendment of any declaration of condominium property regime and/or the condominium map of the Property or the alteration of common interests in the case of Ownership Merger, and the consolidation of any parcel(s) of land covered by a new project being merged into an existing project with any parcel(s) of land covered by an existing project, if applicable. Any such action shall be deemed taken by Developer as the true and lawful attorney-in-fact of the respective unit owners. Each and every party acquiring an interest in the Property, by such acquisition, consents to all such mergers of projects and to the execution, delivery, and recordation of such documents as may be necessary to effect the same; agrees to execute such documents and do such other things as may be necessary or convenient to effect the same; and appoints Developer and its assigns his or her attorney-in-fact with full power of substitution to execute, acknowledge, deliver, and record such documents and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights and shall not be affected by the disability of any such party.

L. Severability. If any provision of this Section T.4 is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Section T.4, and this Section T.4 shall continue in full force and effect and be construed and enforced as if such provision had not been included, or had been modified as provided above, as the case may be, to the full extent permissible by law.

M. Amendment of Declaration of Merger. Prior to a merger of the Project and The Hotel Hana-Maui Condominiums, any amendment of this Section T.4 shall require the consent of Developer and the vote or written consent of unit owners having not less than sixty-five percent of the common interests in each project. Upon an Administrative Merger, any amendment of this Section T.4 shall require the consent of Developer, the vote or written consent of unit owners having not less than sixty-seven percent (67%) of the total vote in the Merged Project, and the vote or written consent of unit owners in each non-merged project having not less than sixty-seven percent (67%) of the common interests in each such project. Upon an Ownership Merger, any amendment of this Section T.4 shall require the consent of the Developer, the vote or written consent of unit owners having not less than sixty-five percent of the common interests in the Merged Project, and the vote or written consent of unit owners in each non-merged project having not less than sixty-seven percent (67%) of the common interests in each such project. The foregoing provisions of this Section M notwithstanding, Developer may amend this Section T.4, without the consent or joinder of any other person or entity, to remove therefrom any portion of the Property, prior to any merger affecting such portion of the Property to be so removed and so long as Developer shall be the owner of such portion of the Property to be so removed, or to add to the Property other property adjacent to or in the vicinity of the Property, so long as Developer shall be the owner of such other property to be so added.

N. Assignment. The rights reserved to the Developer in this Section T.4 shall be fully and freely assignable by the Developer in whole or in part, and every unit owner in the Project or The Hotel Hana-Maui Condominiums, every holder of liens in the Project

or The Hotel Hana-Maui Condominiums, and each every other party acquiring an interest in the Project or The Hotel Hana-Maui Condominiums, or in the Property, or any part thereof, by acquiring such unit, lien or other interest, consents to any such assignment by Developer and, to the extent designated by Developer, agrees to recognize any assignee as the "Developer" under this Section T.4.

5. Reserved Right to Approve Alterations. The Developer shall have the right, but not the obligation, to approve any alteration of any kind that affects or may affect the appearance of all or any portion of the Project.

6. Reserved Right to Amend Declaration and Condominium Map. In connection with the Developer's exercise of the Developer's reserved rights set forth in Paragraphs T.2, T.3 and T.4 above, the Developer shall have the right to amend this Declaration and the Condominium Map.

(a) The amendment to this Condominium Declaration shall describe (a) any additional buildings, the number of stories and any basements and the principal materials used in construction, (b) the unit number of the new Units, their location, approximate area, number of rooms, percentage interest in common elements, and another other information needed to properly identify the Unit, (c) any new Common Elements, (d) any additional or newly designated Limited Common Elements appurtenant to the new Units, (e) any additional restrictions on use not otherwise set forth in this Declaration, and (f) any other information that the Developer deems necessary or appropriate or is required by law.

(b) The amendment to the Condominium Map shall (a) include the floor plans and elevations of any new building or buildings, (b) include, if new Units are created, the layout, location, unit numbers and dimensions of the new Units, (c) be accompanied by a certificate signed by a registered architect or professional engineer pursuant to Section 514B-34 of the Act.

(c) The right to amend this Declaration to effect the reserved rights of the Developer shall remain in effect as long as the Developer retains ownership of one or more Commercial Units.

7. Reserved Right to Amend Recorded Deeds. The Developer shall have the reserved right to amend any recorded deed or other document conveying or encumbering a Unit or interest in a Unit so that it conforms to amendments made to this Declaration or the Condominium Map, or the Developer may record a new deed for that purpose. For example, if the Developer creates new units in the Resort Area or on any adjacent lands, it may need to adjust the common interest of each existing unit as set forth in Paragraph E.1. In that event, the Developer may amend the deeds for existing Units to reflect the change in the common interest or it may issue replacement deeds reflecting the new common interest of each Unit.

8. Reserved Right to Modify Project to Comply with Law. Developer shall have the reserved right, to effect such modifications to the Units and Common Elements in the Project and/or to execute, record and deliver any amendments to this 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 Project, the Association, a Vacation Ownership Association created under a Vacation Ownership Declaration, or by Developer with laws which apply to the Project, 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.

9. Reserved Right Regarding Special Management Area Permit. Developer shall have the reserved right, to amend this Declaration, to enter into any agreements and to do all things necessary and convenient to satisfy the requirements of any Special Management Area Permit pertaining to the Project, and to execute, record and deliver any and all documents necessary to effect the same, including, but not limited to, any amendments to this Declaration and to the Condominium Map.

10. Reserved Right to Establish Special Use Program. Developer, its successors and assigns, shall have the reserved right to establish a program at the Project whereby non-owners of Units (as well as any Owners of interests in the Project who do not have current use rights) have the right to utilize the Resort Area, including any recreational amenities thereof. Such a program may involve, without limitation, the use of certain Developer-controlled areas for check-in/checkout purposes, the provision of certain services and other purposes.

11. Reserved Right to Modify or Cancel Hana Ranch Easements. Developer, its successors and assigns, shall have the exclusive reserved right to amend and modify in any way, or to cancel the easements more particularly identified in Exhibit "C" attached hereto (collectively, the "Hana Ranch Easements"), pursuant to which "hotel guests" have the non-exclusive right to use property owned by Hana Acquisition Partners, LLC (not affiliated with Developer) for horseback riding, jogging, walking and other activities made available by Developer in connection with the operation of the Hotel Hana-Maui. With the exception of the Lehoula Beach Easement, described as item N in Exhibit C, "hotel guests" include (i) any person staying at the Hotel Hana Maui, (ii) any affiliate of the Developer, and (iii) any person who owns an interest in the land benefitted by the Hana Ranch Easements, including but not limited to the owner of any condominium unit, timeshare unit or private club membership. The Lehoula Beach Easement may only be used by guests of the Hotel Hana Maui and not purchasers of Units. Each Owner acquiring an interest in a Unit consents to the foregoing reserved right notwithstanding that such Owner may be entitled to use the easement areas identified in the Hana Ranch Easements.

12. Reserved Right Regarding Resort Area. Developer, as the Owner of the Commercial Units shall have the reserved right to control the use by other Owners of the Resort Area, to change the use of, to make alterations of any kind, to lease, restrict access or to discontinue the available facilities without the consent of any other Owner, subject to the provisions of the Amenity Use and Services Agreement.

13. Consent to Exercise of Developer's Reserved Rights. Each and every party acquiring an interest in the Project, by such acquisition: (a) consents to the exercise by the Developer (in its capacity as the Developer or as Commercial Unit Owner, as the case may be,) of each and every reserved right set forth in this Declaration, including without limitation,

Paragraphs Q, S, T and U of this Declaration, such consent constituting the consent required by Section 514B-140 of the Act with respect to structural alterations and additions to the Project, and to the execution, delivery and recording (if necessary) of any and all documents necessary to effect the same, including any amendment or amendments of this Declaration and the Condominium Map; (b) agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and (c) appoints Developer and its assigns as such party's or parties' attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on such party's or parties' behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of such reserved rights of Developer, and shall not be affected by the disability of such party or parties.

14. Assignment of Reserved Rights. Notwithstanding anything stated herein to the contrary, every Owner of a Unit in the Project or of a vacation ownership or time share interest and all holders of liens affecting any of the Units and each and every other party acquiring an interest in the Project, in any time share, fractional, club, vacation ownership or similar use plan or program or in the Land, or any party thereof, by acquiring such Unit, lien or other interest, consents to and recognizes: (a) the right of the Developer (in its capacity as the Developer or as a Commercial Unit Owner) to assign, in whole or in part, the rights reserved to them in this Declaration, (b) upon any such assignment, the Developer (in its capacity as the Developer or as a Commercial Unit Owner) shall be relieved of any and all liability arising after the assignment, (c) any assignee of the Developer and/or the Commercial Unit Owner shall thereafter be recognized as such under this Declaration, (d) the right of the Developer to also transfer its rights as the Developer as collateral for a loan, in which event the assignee lender shall not have the rights and obligations as "developer" until it (i) forecloses on the loan and takes title to the Developer's interest in the Project, and (ii) records an instrument declaring itself to be the "Developer".

**U. DEVELOPER'S RIGHT TO CREATE NEW UNITS.**

1. Developer's Exercise of Rights. The Developer has the right, but not the obligation, to construct new Units on land within the Resort Area or in the vicinity of the Project. In the exercise of the rights reserved under this Paragraph U, the Developer may exercise all of its reserved rights afforded by this Declaration in addition to the following rights and easements:

(a) The right to connect to, use or relocate or re-align utilities and to designate, grant, convey, transfer, cancel and otherwise deal with any easements over, under, across or through the Common Elements as necessary, provided that no interruption in service is experienced by other Owners, except temporary interruptions that do not materially interfere with the use and enjoyment of the Project by others;

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

(c) The right in the nature of an easement over and upon the existing buildings and Common Elements of the Project 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;

(d) The right to enter the common areas of the Project for the purpose of showing prospective purchasers Units in the Project;

(e) The right to place signs upon the Project in conjunction with sales of Units; and

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

2. Limitations on Developer's Rights under this Paragraph. The rights reserved to the Developer in this Paragraph U are subject to the following terms and conditions:

(a) Construction shall be in accordance with complete plans and specifications therefor prepared by a licensed architect or engineer and in accordance with this Declaration and the Condominium Map (as the same may be amended pursuant to this Declaration), and each increment shall be generally consistent with the other increments in terms of quality of construction;

(b) No plans and specifications shall require the alteration or demolition of any existing Units or Limited Common Elements, except that the Developer shall have the right to utilize, relocate and realign existing, and/or to develop additional, central and appurtenant installations for services to the additional Units for electricity, hot and cold water and other applicable utilities and services and, when applicable, to add, delete, relocate, realign, designate and grant easements and rights-of-way over, under and on the Common Elements as necessary and desirable in connection therewith; provided that the same shall not cause an interruption, other than a temporary interruption, in the service of such utilities to any other part of the Project;

(c) Construction of each increment shall be at the Developer's expense and shall be completed within three (3) years of commencement thereof, subject to delays beyond the control of the Developer;

(d) During the entire course of such construction, the Developer will cause to be maintained at its expense builder's all-risk insurance in an amount not less than the estimated cost of construction. The Association shall be named as an additional insured and evidence of such insurance shall be deposited with the Board of Directors;

(e) Prior to commencement of such construction, the Developer shall, in Developer's sole discretion, deposit with the Association evidence of a payment and performance bond or an irrevocable letter of credit issued by a bank authorized to do business in the State of Hawaii, naming the Association as a co-obligee, in an amount not less than one hundred percent (100%) of the cost of construction as estimated by the Developer, or in lieu thereof a guarantee issued by Developer against mechanic's and materialman's liens; and

(f) The Developer shall not in any way encumber individual Units no longer owned by the Developer in connection with the financing of construction of increments, provided that the Developer may assign, by way of security, its interest in the Units owned by the Developer.

3. Until the conveyance by the Developer of a Unit in the Project, the Developer shall for all purposes be deemed the "Unit Owner" as to such Unit, regardless of whether such Unit is located within a completed increment, an increment under construction, or an increment yet to be developed. Liens arising in connection with the Developer's ownership and/or construction of any increment shall not adversely affect the rights of any Owner other than the Developer or the priority of prior mortgages covering Units not owned by the Developer.

4. 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 hereof, to enter upon, use, remove, replace, add to, or otherwise alter the Common Elements and the Limited Common Elements of the Project and to do all things reasonably necessary, desirable or useful for designing, developing, constructing or completing any additional increment to the Project, connecting any such additional increment to the roads and utility installations of the Project, and selling the Units 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 merger of increments for ownership purposes; 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.

5. The common profits and expenses of the Project shall be allocated to and shared among only those Units identified in Exhibit "B-1" until such time as an Architect's Certificate of Completion of an additional increment has been issued by Developer and Recorded with respect to any subsequent increment. As to subsequent increments, Common Expenses shall be shared and payable by the Owner(s) of each Unit in an increment or increments commencing as to each Unit on the first day of the first month following issuance of such Architect's Certificate of Completion applicable to the increment in which such Unit is located. Upon completion of the new Unit or new increment, the Common Interests appurtenant to each Unit in the Project, including the units in the new increment, shall be recalculated in a manner consistent with Paragraph E.1 above.

6. Subject to the provisions of Paragraph R of this Declaration, all funds collected by the Association in the Replacement Reserve Fund before the creation of a new increment shall belong to all Unit Owners, including those newly created. Each Unit shall have an interest in the Replacement Reserve Fund proportionate to the Unit's Common Interest, as recalculated to include the new increment. If necessary to assure that each Unit contributes a share of the reserve funds equal to its percentage share of the Common Expenses, the Board may

adjust the account of each Unit Owner by (a) refunding all or part of its money in the Replacement Reserve Fund, (b) giving a credit against future assessments, (c) charging a special assessment or series of assessments, or (d) taking any other action that is consistent with generally accepted accounting principles; provided, however that the Board may not charge any Unit Owner a special assessment which exceeds twenty percent (20%) of the monthly assessment for other Common Expenses, after excluding any assessment for reserve funds.

7. Notwithstanding any provision herein to the contrary, this Paragraph may not be amended without the written consent and joinder of the Developer.

8. If any one or more of the provisions of this Paragraph U shall be declared to be contrary to law, then such provision or provisions shall be null and void and shall be deemed separable from the remaining provisions of this Paragraph U and shall in no way affect the enforceability of any other provision hereof.

## **V. OTHER DISCLOSURES AND LIMITATIONS ON LIABILITY.**

1. Zoning Compliance; Variance. The Project contains existing structures being converted by this Declaration to condominium status. As required by Section 514B-32(a)(13) of the Act, and subject to the penalties specified in Section 514B-69(b) of the Act, the Developer declares, to the best of its knowledge, and based on statements set forth in the following letters from the County of Maui, Development Services Administration:

(i) Letter dated April 28, 2006 re Miscellaneous Inspection #MISC 2006/0072 for Wellness Building.

(ii) Letter dated April 28, 2006 re Miscellaneous Inspection #MISC 2006/0073 & 0074 for Buildings 1 & 2.

(iii) Letter dated April 28, 2006 re Miscellaneous Inspection #MISC 2006/0076 to 2006/0099 for all cottages.

(iv) Letter dated April 28, 2006 re Miscellaneous Inspection #MISC 2006/0075 for Snack Shop.

(v) Letter dated June 13, 2006 re Miscellaneous Inspection #MISC 2006/0076 to 2006/0099 re windows and tub enclosure.

(vi) Letter dated June 21, 2006 re Miscellaneous Inspection #MISC 2006/0072-0099 re electrical and plumbing.

(vii) Letter dated August 16, 2006 re Miscellaneous Inspection #MISC 2006/0076 to 2006/0099 re windows and tub enclosure.

(a) The Commercial Units are in compliance with all zoning and building ordinances and codes applicable to the Project and no variances are required from the applicable ordinances or codes to achieve such compliance.

(b) The Lodging Units are in compliance with all zoning and building ordinances and codes applicable to the Project, **with the exception that:**

**1. Correspondence from the County indicates that safety glazing must be installed in all windows within the tub enclosure of each bathroom in the Lodging Units. By letter dated August 24, 2006, Developer has confirmed with the County of Maui that the safety glazing need not been installed. On or before September 30, 2007, Developer will either install the safety glazing or obtain written confirmation from the County that such safety glazing is not needed.**

**2. Guard rails must be installed at all windows with a sill height of less than 36 inches from the finished floor and with a fall of greater than 30 inches from the finished floor. This will be corrected on or before September 30, 2007.**

2. Warranties. The Developer is developing the Project but it is not the general contractor. The Developer makes no warranties, express or implied, about the Units or the Project, or about consumer products or anything else installed or contained in the Units or the Project. This includes, but is not limited to, warranties of merchantability, habitability, workmanlike construction, fitness for a particular purpose, or sufficiency of design. All rights and interests in the Project are sold by the Developer "as is" and "where is", with all defects, whether visible or hidden, and whether not or not known. This means, among other things, that the Developer does not have to fix any defect no matter what causes it or when it is discovered. Each Owner and every other interested person waives and releases any and all rights and claims such person may have, now or in the future, against the Developer, its representatives, successors and assigns for (i) any defects in the Units or the Project or any consumer products or anything else things installed or contained in the Units or the Project, and (ii) for injury to persons or property arising from any such defects. This means that the Developer will not have to pay for any injury or damage to people or things as a result of any defect.

3. Security. The Association, the Developer, and the Managing Agent each have the right, but not the duty to take steps designed to make the Project safer than it otherwise might be. The Association, the Developer, the Managing Agent, and each of their representatives, are not in any way to be considered insurers or guarantors of safety or security within the Project, nor can any of them be held liable for any loss or damage by reason of failure to provide adequate or effective safety or security measures. Neither the Association nor the Developer nor the Managing Agent make any representation or warranty that any fire protection, burglar alarm, or other safety or security system or measures, including anything intended to limit access to the Project, (i) will be effective in all cases and cannot be compromised or circumvented; (ii) will prevent all losses; (iii) will limit access to the Project; or (iv) will provide the detection or protection which it is designed or intended to provide. Each Owner and every other interested person acknowledges, understand, and agrees that the Association, the Developer and the Managing Agent are not insurers and that each person using the Project assumes all risks of personal injury, death, or loss or damage to Project property resulting from the acts of third parties.

## W. CLAIMS AND LITIGATION.

1. Limitation on Liability. Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting title to any Unit, acknowledges and agrees on behalf of the Owner and the Association that no officer, director, member, manager, partner, or shareholder of Developer (or of Developer's successor or assignee) shall have any personal liability to any Owner or other person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration.

### 2. Negotiation, Mediation and Arbitration.

(a) No Judicial or Administrative Proceedings. Except as specifically permitted by law or in this Paragraph W.2, no judicial or administrative (inclusive of arbitration) proceeding shall be commenced or maintained by the Association or any Owner, individually or collectively.

#### (b) Negotiation, Mediation and Arbitration.

(1) Each Owner on behalf of Owner, Owner's successors and assigns, agrees that there shall be no right to litigate in respect of the Covered Matters, hereinafter defined, and in the event Owner or any other person with an interest in the Project shall have any claim or cause of action arising out of or in any way related to this Declaration (and any and all rules, regulations, and Supplemental Declarations promulgated pursuant to the foregoing, and the enforcement thereof), the design, orientation of the improvements to the Unit and related facilities, or the Project, the development, construction, quality, sales, marketing, disclosures concerning, financing, delivery of the Project or any Unit, or any other aspect of or activity with respect to the Project or the Land (herein collectively the "**Covered Matters**"), against any of those persons hereinafter defined as Covered Parties, such claim or cause of action (a "**Dispute**") whether such dispute is based on contract, tort, or statute, including, without limitation, any dispute over (1) the disposition of any deposits hereunder, (2) breach of contract, (3) negligent or intentional misrepresentation or fraud, (4) nondisclosure, (5) breach of any alleged duty of good faith and fair dealing, (6) allegations of latent or patent construction defects, or (7) any other matter arising from or related to the interpretation of any term or provision of this Declaration, or any defense going to the formation or validity of this Declaration, or any provision of this Declaration, including, without limitation, allegations of unconscionability, fraud in the inducement, or fraud in the execution, whether such dispute arises before or after the close of escrow, shall be arbitrated pursuant to the Federal Arbitration Act and subject to the procedures set forth in this Paragraph ("**Arbitration**" or "**arbitration**"), after it shall have first been submitted to the process of "Negotiation" and "Mediation" defined and described below. Any such claim or cause of action shall be subject to Negotiation, Mediation, and Arbitration regardless of whether the claim is against another Owner, Developer, Developer's real estate broker, agent or attorney, the architects, engineers, or other design consultants for the Project, the contractor, subcontractors, sub-subcontractors, material suppliers, managing agent, or other persons involved with the Project, and their respective officers, directors, agents, servants, employees, or representatives (the "**Covered Parties**"), provided that such person(s) has entered into an agreement or otherwise agree to negotiate, mediate, and/or arbitrate such disputes; or if

such claim or cause of action is filed jointly and severally against other parties, it shall be subject to mediation and arbitration with respect to those parties that have agreed to arbitration, regardless of whether other parties are bound to or are willing to submit to arbitration as herein provided. Any dispute concerning the interpretation or the enforceability of this Paragraph, including, without limitation, its revocability or voidability for any cause, any challenges to the enforcement or the validity of this Declaration, or this Paragraph, or the scope of arbitrable issues under this Paragraph, and any defense relating to the enforcement of this Paragraph, including, without limitation, waiver, estoppel, or laches, shall be decided by an arbitrator in accordance with this Paragraph and not by a court of law. Further, in the event that a Dispute is raised between the parties after an Owner's acquisition of the Owner's Unit, whether such Dispute is related to, or arises from, an act, omission, or other event occurring prior to such acquisition, such Dispute shall be decided by an arbitrator in accordance with this Paragraph and not by a court of law.

(2) In respect of all Covered Matters, the Owner agrees to participate in a period of good faith negotiation (the "**Negotiation**"). Each Owner recognizes that the Negotiation process must be completed before the Mediation and/or Arbitration process described in this Paragraph can begin. As such, the claimant Owner must first give written notice to the Covered Party describing the nature of the Dispute and a description of what the Owner believes ought to be done to resolve the Dispute. Owner must also propose a date and time for a conference, which date must fall on a business day between fifteen (15) and twenty (20) days after the date the claimant sends the foregoing notice to the Covered Party (the "Conference"), unless mutually extended by the parties. The Conference shall be held at a mutually agreed-upon location. Within five business (5) days of this Conference notice, the Covered Party shall provide a follow-up notice to the claimant confirming the time of the Conference and stating the name and title of Covered Party's representative to the Conference. Prior to the Conference, claimant will, in good faith, discuss with the Covered Party's representative and consider possible resolutions of the claim. At the Conference, the claimant (and claimant's representatives, if any) and Covered Party's representatives shall confer together to resolve the Dispute for a maximum period of two (2) hours, although the parties may extend or adjourn the meeting by mutual agreement. If, as a result of the Conference, the Dispute or certain issues in the Dispute have been resolved, the parties shall jointly state in writing the issues that have been resolved and the issues, if any, that remain unresolved and will require Mediation and Arbitration.

(3) In the event that the parties have completed Negotiation as required by this Paragraph but failed to resolve the entire Dispute, then, if either of the parties wishes to pursue the Dispute further, the unresolved aspects of the Dispute shall be resolved, if possible, by mediation conducted with the assistance of a single mediator approved by Dispute Prevention and Resolution, Inc., or if not then in existence, the American Arbitration Association ("**DPR**") in accordance with its rules or the rules of the approved mediator in effect at the time of the initiation of the mediation (the "**Mediation**"). Any counterclaim a Covered Party may have against a claimant shall also be a subject of (and an attempt shall be made to resolve the same in the context of and by) Mediation. Any Mediation shall be conducted in the County where the Property is located. The parties shall share equally the expense of the mediator.

(4) In the event that the parties have completed Negotiation and Mediation as required by this Paragraph but failed to resolve the claim, then, if any one of the parties wishes to pursue the Dispute further, the unresolved aspects of the Dispute shall be submitted to binding arbitration by and pursuant to the rules of DPR in effect at the time of the initiation of the arbitration. Provided, however, no arbitration may be commenced until Developer is provided access to the Unit or Common Element, which is subject to the Dispute and a reasonable opportunity to cure the alleged defect. Developer shall be provided a minimum of thirty (30) days to exercise its right to repair or remedy any alleged defect or damage, without a waiver of any right by Developer to seek recovery of the cost of such effort, following notice of the claimant's intent to proceed to arbitration of a Dispute. Any counterclaim a Covered Party may have against a claimant shall also be resolved in the context of and by Arbitration. The following provisions shall apply to any arbitration commenced by the parties:

(a) Each Owner, the Association and Developer expressly agree and acknowledge that this Declaration involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all Disputes shall be arbitrated, which arbitration shall be mandatory and binding. To the extent that any state or local law, ordinance, regulation, or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

(b) This Paragraph W shall inure to the benefit of, and be enforceable by, Developer's subcontractors, agents, vendors, suppliers, design professionals, insurers, and any other person(s) whom Owner contends is responsible for any alleged defect in or to the Land or the Unit or any improvement or appurtenance thereto.

(c) In the event any Dispute is submitted to Arbitration, each party shall bear its own attorneys' fees and costs (including expert costs) for the Arbitration.

(d) The decision of the arbitrator shall be final and binding. Owner, the Association, and Developer expressly agree that an application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the county in which the Land is located.

(e) The participation by any party in any judicial proceeding concerning this Paragraph W or any matter arbitrable hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this Paragraph. Any counterclaim a Covered Party may have against a claimant shall also be resolved in the context of and by Arbitration.

(f) Except as otherwise agreed by the parties pursuant to Developer's limited warranty or as required by applicable law, the administration and/or arbitrator fees charged by the arbitration service shall be borne pro rata by the parties to the arbitration; provided, however, the administration and/or arbitrator fees and any other fees and costs of the arbitration shall ultimately be borne as determined by the arbitrator.

(g) The arbitrator appointed to serve shall be a neutral and impartial individual.

(h) The venue of the arbitration shall be in the county where the Property is located unless the parties agree in writing to another location. No punitive damages shall be awarded in any claim against Developer or any other Covered Parties, no award of attorneys' fees or for damages attributable to emotional distress or a multiple of actual damages based upon any theory of law may be made or awarded in any claim against or Dispute involving Developer or any of the other Covered Parties, all of which are expressly waived by the Association and each Owner. No award of consequential or incidental damages shall be awarded. The arbitrator may award equitable relief pursuant to any Arbitration instituted to enforce this Declaration or any Supplemental Declaration.

(i) If any provision of this Paragraph W shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

(j) In the event the foregoing arbitration provision is held not to apply or is held invalid, void, or unenforceable in its entirety for any reason, Owner, the Association and Developer agree that all Disputes shall be tried before a judge in a court of competent jurisdiction without a jury. The judge in such court of competent jurisdiction shall have the power to grant all legal and equitable remedies and award compensatory damages. Developer, the Association and Owner each hereby waive and covenant not to assert their constitutional right to trial by jury of any Disputes, including, but not limited to, Disputes relating to construction defects, misrepresentation, or Developer's failure to disclose material facts. Developer, the Association, and Owner hereby covenant and agree that their mutual waiver of jury trial shall be binding upon their respective successors and assigns and upon all persons and entities asserting rights or claims or otherwise acting on behalf of Developer or Owner or their successors and assigns.

3. Rights of Owner to Dispute Assessments. Notwithstanding the provisions of Paragraph W.2, an Owner who pays the Association the full amount of assessments claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the Owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration as provided above; provided, however, that an Owner may only file for arbitration if all amounts claimed by the Association have been paid in full on or before the date of filing. If the Owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the Owner pays all Association assessments within thirty (30) days of the date of suspension, the Owner may ask the arbitrator to recommence the arbitration proceedings. If the Owner fails to pay all Association assessments by the end of the thirty (30) day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The Owner shall be entitled to a refund of any amounts paid to the Association that are not owed.

4. Rights of Association and Developer. Notwithstanding the provisions of Paragraph W.2, the Association and/or the Developer may proceed by litigation in connection

with: (i) the imposition and collection of assessments by the Association, including foreclosure actions necessitated by the failure of an Owner to pay the required assessments; or (ii) counterclaims brought by the Association in proceedings instituted against it. No actions to enforce the provisions of this Declaration, any Supplemental Declaration, and/or any duly-adopted rules or regulations, Bylaws or the Project Rules, if any adopted by the Board, shall be commenced by the Association except on the affirmative vote of sixty-seven percent (67%) of the total votes of the Board, and shall proceed only by arbitration in accordance with the provisions of this Paragraph V. Actions or proceedings of any kind other than those described in Paragraph V.3 shall be commenced or prosecuted by the Association only upon the affirmative vote of not less than seventy-five percent (75%) of the Owners at a meeting duly called for that purpose. All such approved actions shall then proceed by the arbitration process outlined in this Paragraph V.

## **X. OTHER PROVISIONS.**

1. Consent, Power of Attorney, Waiver. By acceptance of a deed, lease or other conveyance of an interest in a Unit, each and every Owner or other person or entity acquiring such interest, including the holders of mortgage liens on individual Units, consents to the rights reserved to Developer in this Declaration, including but not limited to, the right to prepare, execute, file, process and Record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Condominium Map and the Bylaws. By such acceptance, each and every Owner or party acquiring such interest, including the holders of mortgage liens on individual Units, agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of Developer, with full right of substitution, as the attorney-in-fact of such Owner or acquiring party to execute such documents and to do such things on such Owner's or acquiring party's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period(s) of Developer's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or acquiring party.

2. Security. Developer shall not in any way be considered an insurer or guarantor of security within or relating to the Project, including any Project areas or facilities in which the Association may have an interest or obligation, and Developer shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Each Unit Owner, for such Owner and for the family, lessees, tenants and guests of such Owner, acknowledges and understands that neither Developer nor the Board are insurers of the safety or well being of Owners or occupants of the Project or their property, and that each Unit Owner assumes all risks for loss or damage to persons, the Units, the Common Elements and environs of the Project and to the contents of improvements located thereon, and further acknowledges that neither Developer nor the Board has made any representations or warranties nor has any Unit Owner or occupant of the Project relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to the security of the Project and the surrounding areas, including the surrounding areas, any community areas or facilities in which the Association may have an interest or obligation, or any security measures undertaken within such community areas or facilities.

3. Invalidity. If any provision of this Declaration shall be declared invalid, all other provisions of this Declaration shall continue in full force and effect as if the invalid provision had not been included.

4. Incorporation of Exhibits. Exhibits "A", "B-1", "B-2", "B-3, and "C", attached to this Declaration are incorporated herein by reference.

5. Incorporation of Condominium Map. The Condominium Map is incorporated herein by reference.

6. Interpretation and Captions. In case any provision of this Declaration shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or any provision hereof.

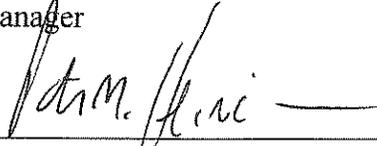
7. No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed on the day and year first above written.

**OHANA HOTEL COMPANY LLC**  
a Delaware limited liability company

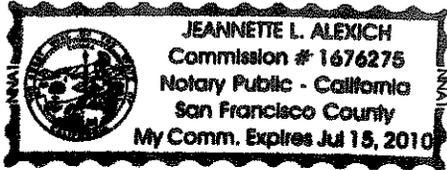
By: Passport Resorts LLC,  
a California limited liability company  
Its: Manager

By:   
\_\_\_\_\_  
Peter M. Heinemann  
Its: Manager

**"Developer"**

STATE OF CALIFORNIA )  
 )  
COUNTY OF San Francisco ) SS.

On this 3rd day of October, 2006, before me appeared PETER M. HEINEMANN, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Jeannette L. Alexich  
Type or print name: Jeannette L. Alexich  
Notary Public, State of California  
My commission expires: July 15, 2010

EXHIBIT "A"

All of that certain parcel of land (portions of the land described in and covered by Royal Patent Number 1958, Part 1, Land Commission Award No. 387, Part 5, Section 3 to the American Board of Commissioners for Foreign Missions; Land Patent Grant Number 7005 to the Board of the Hawaiian Evangelical Association, Trustee for the Wananalua Congregational Church (a Hawaiian corporation); Royal Patent Grant Number 650 to Maui; and Royal Patent Grant Number 634 Apana 1 to Gerrit P. Judd) situate, lying and being on the south side of Hauoli Road and the south end of Uakea Road at Wananalua, Oloewa, Paauhau, Hana, Island and County of Maui, State of Hawaii, being Lot 1-B of the "Hana Ranch Subdivision No. 5", and thus bounded and described as per survey of Warren A. Suzuki, Registered Professional Land Surveyor, to-wit:

Beginning at a 1/2 inch pipe, found and adopted, at the northwest corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI", being 606.26 feet south and 1,500.32 feet west and running by azimuths measured clockwise from true south:

1.     257° 54'                 331.02 feet along the south side of Hauoli Road to a pipe;
2.     Thence along the remainder of R. P. 1958, Part 1, L. C. Aw. 387, Part 5, Section 3 to A.B.C.F.M. on a curve to the right having a radius of 20.00 feet, the chord azimuth and distance being: 302° 22' 28.02 feet to a pipe;
3.     346° 50'                 141.41 feet along the remainder of R. P. 1958, Part 1, L. C. Aw. 387, Part 5, Section 3 to A.B.C.F.M. and along Grant 650 to Maui to a pipe;
4.     262° 06'                 17.33 feet along Grant 650 to Maui to a pipe;
5.     307° 06'                 14.14 feet along same to a pipe;
6.     352° 06'                 130.96 feet along same to a 2" pipe, found and adopted;
7.     260° 36'                 317.02 feet along Grant 650 to Maui and the south end of Uakea Road and along the remainder of Grant 634:1 to Gerrit P. Judd to a pipe;
8.     269° 20'                 317.00 feet along the remainder of Grant 634:1 to Gerrit P. Judd to a pipe;
9.     340° 00'                 40.79 feet along same to a pipe;
10.    35° 46'                  834.43 feet along same to a pipe;

11. Thence along same on a curve to the right having a radius of 700.00 feet, the chord azimuth and distance being: 127° 47' 19" 655.96 feet to a pipe;
12. 174° 20' 344.33 feet along the remainders of Grant 634:1 to Gerrit P. Judd, and Grant 7005 to a pipe;
13. 167° 36' 137.72 feet along the remainder of R. P. 1958, Part 1, L. C. Aw. 387, Part 5, Section 3 to A.B.C.F.M. to the point of beginning and containing an area of 12.750 acres, more or less.

Together with a 15-foot wide access and utility Easement "A" over and across a portion of Lot 1-A of Hana Ranch Subdivision No. 5 and being more particularly described as follows:

Beginning at a point on the northeast corner of this easement, the azimuth and distance from the point of beginning for Course 12 of the above described lot being 331° 45' 40" 96.86 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI", being 1,168.74 feet south and 1,390.91 feet west and running by azimuths measured clockwise from true south:

1. Along Lot 1-S of Hana Ranch Subdivision No. 5 on a curve to the left having a radius of 700.00 feet, the chord azimuth and distance being: 327° 09' 43" 15.44 feet;
2. 43° 30' 405.89 feet over and across a portion of Lot 1-A of Hana Ranch Subdivision No. 5;
3. 87° 15' 49.21 feet over and across same;
4. 172° 24' 49" 15.06 feet along the east side of Hana Highway;
5. 267° 15' 44.46 feet over and across a portion of Lot 1-A of Hana Ranch Subdivision No. 5;
6. 223° 30' 403.51 feet over and across same to the point of beginning and containing an area of 6,775 square feet, more or less.

1. Together with a non-exclusive right to use the license area for the sole purposes of allowing hotel guests and licensee's employees to mount and dismount from horses, all in conjunction with licensee's guided horseback riding tours for the hotel guests, etc., as granted by Horseback Riding Staging Area License Agreement, recorded January 12, 2001 as Document No. 2001-005198.
2. Together also with a non-exclusive right to use the license area for the sole purpose of grazing horses, etc., as granted by Mauka Horse Grazing License Agreement, recorded January 12, 2001 as Document No. 2001-005199.
3. Together also with a nonexclusive right to use the license area for the sole purpose of grazing horses, etc., as granted by Makai Horse Grazing License Agreement, recorded January 12, 2001 as Document No. 2001-005200.

The above makai horse grazing license agreement was amended by Amended and Restated Makai Horse Grazing, Recreational and Access Easement and License Agreement recorded July 24, 2002 as Document No. 2002-128434.

4. Together also with a non-exclusive easement to use the easement area for the sole purpose of conducting guided horseback tours for hotel guests, etc., as granted by Makai Horseback Riding Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005201.

The above Makai Horseback Riding Trail Easement Agreement was amended by Amended and Restated Makai Horseback Riding Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128436.

5. Together also with a non-exclusive easement to use the easement area for the sole purpose of conducting guided horseback tours for hotel guests, etc., as granted by Makai Horseback Riding Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005202.

The above Makai Horseback Riding Trail Easement Agreement was amended by Amended and Restated Makai Horseback Riding Trail and Hiking Easement Agreement recorded July 24, 2002 as Document No. 2002-128437.

6. Together also with a non-exclusive easement to use the easement area for the sole purpose of conducting guided horseback tours for hotel guests, etc., as granted by Makai Horseback Riding Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005203.

The above Makai Horseback Riding Trail Easement Agreement was amended by Amended and Restated Makai Horseback Riding Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128435.

7. Together also with a non-exclusive easement to use the easement area for the sole purpose of conducting guided horseback tours for hotel guests, etc., as granted, by Mauka

Horseback Riding Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005204.

The above Mauka Horseback Riding Trail Easement Agreement was amended by Amended and Restated Mauka Horseback Riding Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128438.

8. Together with a non-exclusive easement to use the easement area for the sole purpose of allowing hotel guests to walk and jog thereon, as granted by Jogging Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005205.

The above Jogging Trail Easement Agreement was amended by Amended and Restated Jogging Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128440.

9. Together with a non-exclusive easement to use the easement area for the sole purpose of allowing hotel guests to walk and jog thereon, as granted by Jogging Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005206.

The above Jogging Trail Easement Agreement was amended by Amended and Restated Jogging Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128441.

10. Together with a non-exclusive easement to use the easement area for the sole purpose of allowing hotel guests to walk and jog thereon, as granted by Jogging Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005207.

The above Jogging Trail Easement Agreement was amended by Amended and Restated Jogging Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128442.

11. Together with a non-exclusive easement to use the easement area for the sole purpose of allowing hotel guests to walk and jog thereon, as granted by Jogging Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005208.

The above Jogging Trail Easement Agreement was amended by Amended and Restated Jogging Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128439.

12. Together with a non-exclusive easement to use the easement area for the sole purpose of allowing hotel guests to walk and jog thereon, as granted by Jogging Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005209.

The above Jogging Trail Easement Agreement was amended by Amended and Restated Jogging Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128443.

13. Together with a non-exclusive easement to use the easement area for the sole purpose of allowing hotel employees to walk thereon, as granted by Hotel Walkway Easement Agreement, recorded January 12, 2001 as Document No. 2001-005210.

The above Hotel Walkway Easement Agreement was amended by Amended and Restated Hotel Walkway Easement Agreement recorded July 24, 2002 as Document No. 2002-128444.

14. Together with a non-exclusive easement to use the amended access easement area for the sole purpose of ingress to and egress from the amended cookout use area for the hotel guests, as granted by Lehoula Beach Easement and License Agreement, recorded January 12, 2001 as Document No. 2001-005213.

The above Lehoula Beach Easement and License Agreement was amended by First Amended and Restated Lehoula Beach Easement and License Agreement recorded July 24, 2002 as Document No. 2002-128433.

15. Together also with the exclusive right to use the premises as described in said instrument, for the sole purpose of providing housing for licensee's employees, as granted by Hana Hotel/Town Center Employee Housing License Agreement, recorded January 12, 2001 as Document No. 2001-005216.
16. Together also with, and subject to the terms and provisions, including the failure to comply with any covenants, conditions, reservations and agreements contained in that certain Declaration of Restrict Uses of Land recorded July 24, 2002 as Document No. 2002-128432.
17. Together also with, and subject to the rights and provisions, including the failure to comply with any covenants, conditions, conditions, reservations and agreements contained in that certain Declaration of Parking Rights recorded January 16, 2007 as Document No. 2007-007739.

Being a portion of the premises conveyed by Meridian Financial Resources, L.L.C., a Delaware limited liability company, as Grantor, to Ohana Hotel Company LLC, a Delaware limited liability company, as Grantee, by Special Warranty Deed recorded August 15, 2001 as Document No. 2001-127566.

SUBJECT, HOWEVER, to:

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. The terms and provisions contained in the Private Water System Agreement recorded December 3, 1987 in Book 21388 Page 26.
3. The terms and provisions contained in the Private Water System Agreement recorded February 2, 1988 in Book 21597 Page 51.

4. The terms and provisions contained in the Private Water System Agreement recorded May 23, 1988 in Book 21954 Page 638.
5. Mortgage dated December 19, 2001, recorded as Document No. 2001-203115, in favor of Fremont Investment & Loan, a California industrial loan association.

The above Mortgage was amended by Memorandum of First Amendment to Mortgage and Other Loan Documents recorded July 16, 2003 as Document No. 2003-145217, recorded as Land Court Document No. 2959883.

The above Mortgage was further amended by Second Amendment to Mortgage and Other Loan Documents recorded March 17, 2005 as Document No. 2005-053099.

The above Mortgage was further amended by Additional Charge Mortgage; Third Amendment to Mortgage and Other Loan Documents recorded March 17, 2005 as Document No. 2005-053103.

The above Mortgage was assigned to Hana-Lani Capital, LLC by Assignment recorded March 17, 2005 as Document No. 2005-053100.

The above Mortgage was further assigned to Gulfstream Mortgage Capital, LLC, a Delaware limited liability company, by assignment recorded November 20, 2006 as Document No. 2006-212676.

6. Assignment of Rents and Leases recorded December 26, 2001 as Document No. 2001-203116.

The above Assignment of Rents and Leases was amended by Memorandum of First Amendment to Mortgage and Other Loan Documents recorded July 16, 2003 as Document No. 2003-145218.

The above Assignment of Rents and Leases was further amended by Memorandum of Second Amendment to Mortgage and Other Loan Documents recorded March 17, 2005 as Document No. 2005-053099.

The above Assignment of Rents and Leases was further amended by Additional Charge Mortgage; Third Amendment to Mortgage and Other Loan Documents recorded March 17, 2005 as Document No. 2005-053103.

The above Assignment of Rents and Leases was assigned to Hana-Lani Capital, LLC by Assignment recorded March 17, 2005 as Document No. 2005-053101.

The above Assignment of Rents and Leases was further assigned to Gulfstream Mortgage Capital, LLC, a Delaware limited liability company, by assignment recorded November 20, 2006 as Document No. 2006-212676.

7. Collateral Assignment of Notes and Liens recorded March 17, 2005 as Document No. 2005-053104.

8. Collateral Assignment of Notes and Liens recorded June 8, 2005 as Document No. 2005-114032.

END OF EXHIBIT "A"

EXHIBIT "B-1"

LIST OF UNITS, TOTAL AREA AND COMMON INTEREST

Building No.	Unit Numbers	Unit Type Commercial /Lodging	Unit Type	Total Area (in square feet)	Common Interest	Description
1	B101	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
1	B102	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
2	B103	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
2	B104	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
3	B105	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
3	B106	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
4	B107	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
4	B108	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
5	B109	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
5	B110	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
6	B111	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.

6	B112	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
7	C101	Lodging	C-1	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 651 square feet.
7	C102	Lodging	C-2	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 651 square feet.
8	C103	Lodging	C-1	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 651 square feet.
8	C104	Lodging	C-2	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 651 square feet.
9	A101	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 720 square feet.
9	D101	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
10	A102	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
10	D102	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
11	A103	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
11	D103	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
12	A104	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
12	D104	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.

13	B113	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
13	B114	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
14	B115	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
14	B116	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
15	B117	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
15	B118	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
16	A105	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
16	D105	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
17	B119	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
17	B120	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
18	B121	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
18	B122	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
19	A106	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.

19	D106	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
20	B123	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
20	B124	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
21	C105	Lodging	C-1	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
21	C106	Lodging	C-2	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
22	B125	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
22	B126	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
23	A107	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
23	D107	Lodging	D	1,088.0	1.66756%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
24	E101	Lodging	E	986.0	1.51123%	Studio unit consisting of living room and bathroom. Lanai and Private Garden Area comprises 644 square feet.
Housekeeping/ Maid's Quarters Building	n/a	Commercial	n/a	914	3.53131%	A Commercial Unit consisting of office, storage, cart storage space, an electrical room and a bathroom.
Service Building	n/a	Commercial	n/a	1,034	0.70810%	A Commercial Unit consisting of rooms used for the pool pump, pool equipment and two bathrooms. Lanais comprise 368 square feet.
Snack Bar Building	n/a	Commercial	n/a	462	1.58480%	A Commercial Unit consisting of kitchen and service rooms.
Wellness Building	n/a	Commercial	n/a	2,304	1.40086%	A Commercial Unit consisting of rooms used for office and fitness related activities, and two bathrooms. Lanais comprise 1,008 square feet.
				65,245	100.00000%	

Additional Information concerning Units:

1. Location of Units. Each Unit is identified on the Condominium Map by a number designation and is located as shown on the Condominium Map.
2. Construction Materials. All of the buildings in the Project are single-story, have no basements and are constructed principally of metal, wood, glass and related building materials.
3. Number of Buildings. There are 28 buildings in the Project. There are two Lodging Units in each of buildings 1 through 23. There is one Lodging Unit in building 24, and one Commercial Unit in each of the Housekeeping/Maids Quarters, Service, Snack Bar and Wellness Buildings. The Commercial Units are owned and used by the Developer in connection with the ownership and use of various units comprising the Hotel Hana-Maui condominium project located in the immediate vicinity of the Project.
4. Access to Common Elements. Subject to the Developer's reserved rights concerning control over the Resort Area, as more particularly set forth in Section 5 of Paragraph H, and to the provisions of the Amenity Use and Service Agreement, each Unit has immediate access to the common elements of the Project or to a walkway leading to the Common Elements of the Project.

END OF EXHIBIT "B-1"

EXHIBIT "B-2"

COMMON ELEMENTS

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

1. The Land in fee simple and any appurtenances thereto as described on Exhibit "A".
2. The building structure of the twenty-four (24) buildings in which the Lodging Units are located, including all perimeter or party walls and the undecorated or unfinished surfaces thereof, any load-bearing walls and columns, and the undecorated or unfinished surfaces thereof, all structure components such as foundations, concrete sidewalks and curbs, floor slabs, columns, girders, beams, support, halls, corridors, main walls, roofs and ceiling, including without limitation all perimeter doors, door frames, door handles, door lock set, windows, window frames, and all hardware associated therewith, and the undecorated or unfinished interior surfaces thereof; whether at the perimeter of the building structure or at the perimeter of a Lodging Unit.
3. All cables, conduits, ducts, trash chute, sewer lines, electrical equipment, wiring, pipes, catch basins and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one Unit for services such as power, light, water, gas, sewer, storm water, refuse, cable television and television signal distributions.
4. All other apparatus and installations existing for common use, such as tanks, pumps, motors, fans, air-conditioning units including fan coil equipment located within a Unit in the buildings in which the Lodging Units are located, compressors, ducts, shafts, vents, water heating and distribution equipment, fire suppression equipment and other such installations and apparatus.
5. All other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use.
6. All other areas designated on the Condominium Map as "Common Elements", or that are not designated as a Unit or as a Limited common Element appurtenant to a Unit.

END OF EXHIBIT "B-2"

EXHIBIT "B-3"

LIMITED COMMON ELEMENTS

1. **Lodging Units.** Each Lodging Unit designated on the Condominium Map shall have appurtenant to it as a Limited Common Element the Private Garden Area and Lanai as depicted in the Condominium Map.
2. **Commercial Units.** The Commercial Units designated as the Wellness Building, Service Building, Snack Bar, and Housekeeping/Maid's Quarters on the Condominium Map shall have appurtenant to them the Resort Area which includes all of the Land (except for the portions upon which the buildings are located) and the improvements on the Land, including without limitation, the pool, parking area and the grounds as shown on Page CPR 03 of the Condominium Map.

END OF EXHIBIT "B-3"

EXHIBIT "C"

DESCRIPTION OF HANA RANCH EASEMENTS

A. Horseback Riding Staging Area License Agreement, dated January 12, 2001, recorded as Document No. 2001-005198.

B. Mauka Horse Grazing License Agreement, dated January 12, 2001, recorded as Document No. 2001-005199.

C. Makai Horse Grazing License Agreement, dated January 12, 2001, recorded as Document No. 2001-005200 as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128434.

D. Makai Horseback Riding Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005201, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128436.

E. Makai Horseback Riding Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005202, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128437.

F. Makai Horseback Riding Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005203, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128435.

G. Mauka Horseback Riding Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005204, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-12838.

H. Jogging Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005205, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128440.

I. Jogging Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005206, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128441.

J. Jogging Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005207, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128442.

K. Jogging Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005208, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128439.

L. Jogging Trail Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005209, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128443.

M. Hotel Walkway Easement Agreement, dated January 12, 2001, recorded as Document No. 2001-005210, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128444.

N. Lehoula Beach Easement and License Agreement, dated January 12, 2001, recorded as Document No. 2001-005213, as amended by instrument dated July 24, 2002, recorded as Document No. 2002-128433.

O. Hana Hotel/Town Center Employee Housing License Agreement, dated January 12, 2001, recorded as Document No. 2001-005216.

END OF EXHIBIT "C"

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MAR 07, 2007 12:00 PM

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Return by Mail [ X ] Pickup [ ]

Case Lombardi & Pettit (SWF)  
737 Bishop Street, Suite 2600  
Honolulu, Hawaii 96813

Total Pages: 9

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Tax Map Key No.: (2) 1-4-003-058

**AMENDMENT NO. 1  
TO  
DECLARATION OF CONDOMINIUM PROPERTY REGIME OF  
SEA RANCH COTTAGES AT HANA-MAUI**

This Amendment No. 1 to Declaration of Condominium Property Regime of Sea Ranch Cottages at Hana-Maui (this "**Declaration**") is dated March 3, 2007, by **OHANA HOTEL COMPANY LLC**, a Delaware limited liability company, whose place of business and address is 5031 Hana Highway, Hana, Hawaii 96713 ("**Developer**").

RECITALS:

1. By Declaration of Condominium Property Regime of Sea Ranch Cottages at Hana-Maui dated October 3, 2006, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2007-024553 (the "Declaration"), Developer submitted certain land and improvements, as described in the Declaration, to a condominium property regime (hereinafter the "Project"), with the plans therefor filed as Condominium Map No. 4381 in said Bureau. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to those rights set forth in the Declaration.

2. The common interest for the Housekeeping/Maid's Quarters Buildings, Service Building, Snack Bar Building and Wellness Building were typographically incorrectly stated in Exhibit "B-1" to the Declaration.

3. Pursuant to Section T.6 of the Declaration, the Developer has exercised its reserved right to amend the Declaration.

Now, therefore, in accordance with Section T.6 of the Declaration, Developer hereby amends the Declaration as follows:

1. Correct the typographical errors in the common interest appurtenant to the Housekeeping/Maid's Quarters Buildings, Service Building, Snack Bar Building and Wellness Building stated in Exhibit "B-1" to the Declaration.

2. Exhibit "B-1" to the Declaration is hereby amended and restated in its entirety as set forth in Exhibit "B-1" attached hereto.

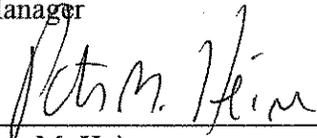
3. In all other respects the Declaration is unmodified and shall continue in full force and effect.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Developer has caused this Amendment to be executed on the day and year first above written.

**OHANA HOTEL COMPANY LLC**  
a Delaware limited liability company

By: Passport Resorts LLC,  
a California limited liability company  
Its: Manager

By:   
Peter M. Heinemann  
Its: Manager

**"Developer"**

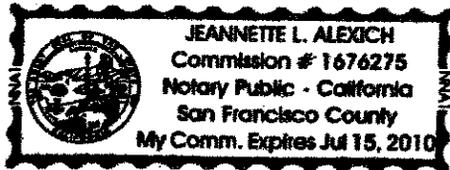
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of San Francisco } ss.

On March 3, 2007 before me, Jeannette L. Alexich, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Peter M. Heinemann  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Jeannette L. Alexich  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Amendment No. 1 - Declaration of Condominium Property Regime, Sea Ranch Cottages  
Document Date: Not dated Number of Pages: 3 pages plus 5 page exhibit B-1  
Signer(s) Other Than Named Above: None

**Capacity(ies) Claimed by Signer**

Signer's Name: Peter M. Heinemann

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: Manager of Passport Resorts LLC

Signer Is Representing: Ohana Hotel Company LLC

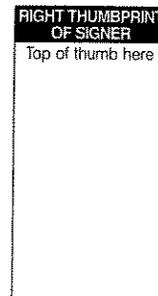


EXHIBIT "B-1"

LIST OF UNITS, TOTAL AREA AND COMMON INTEREST

Building No.	Unit Numbers	Unit Type Commercial /Lodging	Unit Type	Total Area (in square feet)	Common Interest	Description
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6	B112	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 551 square feet.
7	C101	Lodging	C-1	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 651 square feet.
7	C102	Lodging	C-2	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 651 square feet.
8	C103	Lodging	C-1	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 651 square feet.
8	C104	Lodging	C-2	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 651 square feet.
9	A101	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 720 square feet.
9	D101	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
10	A102	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
10	D102	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
11	A103	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
11	D103	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
12	A104	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
12	D104	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.

13	B113	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
13	B114	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
14	B115	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
14	B116	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
15	B117	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
15	B118	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
16	A105	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
16	D105	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
17	B119	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
17	B120	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
18	B121	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
18	B122	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
19	A106	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.

19	D106	Lodging	D	1,068.0	1.63691%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
20	B123	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
20	B124	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
21	C105	Lodging	C-1	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
21	C106	Lodging	C-2	1,342.0	2.05686%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
22	B125	Lodging	B-1	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
22	B126	Lodging	B-2	1,234.5	1.89210%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
23	A107	Lodging	A	1,700.0	2.60556%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
23	D107	Lodging	D	1,088.0	1.66756%	One bedroom unit consisting of a living room, bedroom and bathroom. Lanai area and Private Garden Area comprises 510 square feet.
24	E101	Lodging	E	986.0	1.51123%	Studio unit consisting of living room and bathroom. Lanai and Private Garden Area comprises 644 square feet.
Housekeeping/ Maid's Quarters Building	n/a	Commercial	n/a	914	1.40086%	A Commercial Unit consisting of office, storage, cart storage space, an electrical room and a bathroom.
Service Building	n/a	Commercial	n/a	1,034	1.58480%	A Commercial Unit consisting of rooms used for the pool pump, pool equipment and two bathrooms. Lanais comprise 368 square feet.
Snack Bar Building	n/a	Commercial	n/a	462	0.70810%	A Commercial Unit consisting of kitchen and service rooms.
Wellness Building	n/a	Commercial	n/a	2,304	3.53131%	A Commercial Unit consisting of rooms used for office and fitness related activities, and two bathrooms. Lanais comprise 1,008 square feet.
				65,245	100.00000%	

Additional Information concerning Units:

1. Location of Units. Each Unit is identified on the Condominium Map by a number designation and is located as shown on the Condominium Map.
2. Construction Materials. All of the buildings in the Project are single-story, have no basements and are constructed principally of metal, wood, glass and related building materials.
3. Number of Buildings. There are 28 buildings in the Project. There are two Lodging Units in each of buildings 1 through 23. There is one Lodging Unit in building 24, and one Commercial Unit in each of the Housekeeping/Maids Quarters, Service, Snack Bar and Wellness Buildings. The Commercial Units are owned and used by the Developer in connection with the ownership and use of various units comprising the Hotel Hana-Maui condominium project located in the immediate vicinity of the Project.
4. Access to Common Elements. Subject to the Developer's reserved rights concerning control over the Resort Area, as more particularly set forth in Section 5 of Paragraph H, and to the provisions of the Amenity Use and Service Agreement, each Unit has immediate access to the common elements of the Project or to a walkway leading to the Common Elements of the Project.

END OF EXHIBIT "B-1"

**EXHIBIT S**

Bylaws of the Association of Unit Owners  
of Sea Ranch Cottages at Hana-Maui  
recorded February 8, 2007 as Document No. 2007-024554.

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII

BUREAU OF CONVEYANCES

Doc 2007-024554  
DATE..... FEB 08, 2007 11:00 AM  
DOCUMENT NO-

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After Recordation, Return by Mail ( ) Pickup (X)

Case Lombardi & Pettit (SWF)  
737 Bishop Street, Suite 2600  
Honolulu, Hawaii 96813

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**BYLAWS OF THE  
ASSOCIATION OF UNIT OWNERS OF  
SEA RANCH COTTAGES AT HANA-MAUI**

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**BYLAWS OF THE  
ASSOCIATION OF UNIT OWNERS OF  
SEA RANCH COTTAGES AT HANA-MAUI**

**1. INTRODUCTORY PROVISIONS**

1.1 Definitions. The terms used in these Bylaws shall have the meanings given to them in the Declaration (as hereinafter defined) and in Chapter 514B, Hawaii Revised Statutes, as amended, except as otherwise expressly stated herein or clearly required by the context. All definitions used in the Declaration shall be incorporated by this reference.

1.2 Adoption of Bylaws. Developer has established a condominium property regime by the execution and Recordation of the Declaration affecting the land described in Exhibit "A" attached hereto. Developer declares that the Project constituting such condominium property regime is owned and shall be owned, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions, and conditions set forth in these Bylaws, all of which are declared to be in furtherance of the plan set forth in the Declaration, and are established for the purpose of enhancing and preserving the value, desirability, and attractiveness of the Project and the Project. These Bylaws shall constitute equitable servitudes, liens, and covenants running with the Project and all Units and shall be binding on and shall inure to the benefit of all Persons having or acquiring any right, title, or interest in any portion of the Project.

1.3 Conflicts. These Bylaws are intended to comply with the Act. In case of any conflict between the provisions of these Bylaws and those of Hawaii law, the Act or the Declaration, then the provisions of Hawaii law, the Act or the Declaration, as the case may be, shall control.

1.4 Subordination. These Bylaws are subordinate and subject to all provisions of the Act and the Declaration and any amendments thereto, which shall control, in that order, in case of any conflict. Additionally, in the event any portion of the Act is not addressed in these Bylaws or the Declaration, the Act shall govern. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or the Act.

1.5 Application. All present and future Owners, lessees, Mortgagees, purchasers under agreements of sale, tenants, and occupants of Units and their guests, patrons, customers, other business Invitees and employees, and any other Persons who may use any part of the Project in any manner are subject to the Project Documents, as each or any of them may be amended from time to time. The acceptance of a Unit Deed or other conveyance, or the entry into a rental agreement of a Unit, or the act of occupying a Unit, shall constitute an agreement that the Project Documents, as they may be amended from time to time, are accepted, ratified, and will be strictly complied with.

**2. ASSOCIATION OF OWNERS**

2.1 Membership. All Owners shall constitute the Association. Each Owner shall become a member of the Association upon acquiring title to a Unit. Membership shall terminate only when ownership of the Unit ceases for any reason, and shall terminate automatically upon such transfer of ownership of the Unit. It is intended that the Association qualify as a homeowner's association under Section 528 of the Internal Revenue Code of 1986, as amended.

## 2.2 Meetings of the Association.

(a) First Meeting. Developer or the Managing Agent shall call the first meeting of the Association no later than one hundred eighty (180) days after Recordation of the first Unit Deed, if at that time at least forty percent (40%) or more of the Units in the Project have been sold and Recorded. If forty percent (40%) of the Units in the Project are not sold and Recorded at the end of one (1) year from the date the first conveyance is Recorded, an annual meeting shall be called as soon as practicable upon the request in writing of at least ten percent (10%) of the Owners. At such meeting, a Board of Directors will be elected to serve until the next annual meeting. The term "sold and recorded" means the sale of a Unit and the Recording of the Unit Deed. Notwithstanding anything to the contrary contained in these Bylaws, Developer shall be entitled to vote and act on all matters as the Association and the Board of Directors until such time as the first meeting of the Association.

(b) Annual Meetings. Annual meetings of the Association shall be held within ninety (90) days following the close of the fiscal year of the Association on such date as the President of the Association (the "**President**") may designate. If the President shall fail to designate such date by the forty-fifth (45th) day following the close of the fiscal year, then the annual meeting shall be held on the third Tuesday in the third calendar month following the close of the fiscal year. Each annual meeting shall be a general meeting, and any business within the powers of the Association, without special notice of such business, may be transacted except as limited by law, the Declaration, or these Bylaws. The Board (by resolution) or a majority of all of the Owners (by petition) may establish meetings in addition to annual meetings at semi-annual, quarter-annual or other regular intervals.

(c) Special Meetings. Special meetings of the Association may be called by the President, a majority of the Board, or by a petition to the Secretary of the Association (the "**Secretary**") or the Managing Agent signed by not less than twenty-five percent (25%) of the Owners. Upon receipt of the call for a meeting, the Secretary or the Managing Agent shall send notice of the meeting to all Owners. If the Secretary or Managing Agent does not send out the notices for the special meeting within fourteen (14) days of the receipt of a proper call for a meeting, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of these Bylaws. The meeting shall be held at the time and place specified in such call, or, if unspecified, at any reasonable time within forty-five (45) days from the date the call was received. Except as provided otherwise in these Bylaws or by law, only such business shall be transacted at any special meeting as shall have been indicated by a specific or general description in the notice of the meeting. A special meeting and procedures adopted for the removal and replacement of directors shall be conducted in accordance with the provisions of these Bylaws pertaining to the removal, replacement and election of directors.

(d) Special Meeting Upon Merger. Anything in these Bylaws to the contrary notwithstanding, in the event that the Project is merged with an additional phase or increment, a special meeting of the Association shall be called and held within ninety (90) days following the date of any of such merger. At such meeting, a new Board of Directors for the Association, as reconstituted by any such merger, shall be elected to replace the existing Board.

(e) Adjournment. Any meeting of the Association may be adjourned to a time not less than forty-eight (48) hours from the time the original meeting was called, to such place and time as may be determined by majority vote of the Owners present at the meeting, either in person or by proxy, and whether or not a quorum is present, without notice other than the announcement at such

meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted by a quorum at the meeting as originally called.

(f) Place of Meetings. All meetings of the Association shall be held at the address of the Project or elsewhere within the State of Hawaii convenient to the Owners as designated by the Board, provided that, in the event of a natural disaster, such as a hurricane, an Association meeting may be held outside of the State of Hawaii.

2.3 Notice of Meetings. The notice of every meeting of the Association shall state whether it is an annual or special meeting, the date, time, and place of the meeting, the items on the agenda for the meeting, including the general nature and rationale of any proposed amendment to the Declaration or Bylaws and any proposal to remove a member of the Board (provided that this Section shall not preclude any Unit Owner from proposing an amendment to the Declaration or Bylaws or to remove a member of the Board at any annual Association meeting), and shall include a standard proxy form authorized by the Association, if any, and any other information permitted or required to be given by these Bylaws. Notice of each meeting, whether annual or special, shall be given at least fourteen (14) days but no more than sixty (60) days before the date of the meeting. If notice is given pursuant to the provisions of these Bylaws, the failure of any Owner to receive actual notice of a meeting shall not invalidate the meeting or any proceedings taken at the meeting. If a Vacation Ownership Unit is part of a fractional or timeshare plan, notice to all Owners of a single fractional or timeshare interest in such Unit may be given by providing notice to any one of the Owners of the timeshare or fractional interest in such Unit.

2.4 Waiver of Notice. The presence of an Owner or Unit Mortgagee, in person or by proxy, at any meeting shall constitute a waiver of any required notice to that Owner or Mortgagee unless an Owner shall at the opening of such meeting object to the holding of the meeting because of the failure to comply with the provisions of this Section. Except as otherwise provided by law, an Owner automatically waives notice of any Association meeting if the Owner fails to file a written objection with the Secretary or Managing Agent within thirty (30) days after the Owner receives written notice of any action taken at an Association meeting.

2.5 Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of a Majority of Owners shall constitute a quorum at all meetings of Owners. For purposes of these Bylaws, "**Majority of Owners**" (or other specified percentage of Unit Owners) means the Owners of Units (including Lodging and Commercial Units) to which are appurtenant more than fifty percent (50%) (or other specified percentage) of the Common Interests in the Project.

2.6 Acts of Association. The vote of a Majority of Owners present at a meeting at which a quorum shall be present shall be the acts of the Association and binding upon all Owners for all purposes unless the Declaration or these Bylaws requires a different percentage.

## 2.7 Voting.

(a) Who Is Entitled To Vote. Each Owner shall be entitled to that percentage of the total vote of all of the Owners (Lodging Units and Commercial Units) equal to the percentage of the Common Interest appurtenant to the Owner's Unit. Votes allocated to lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar common areas not located inside Units shall not be cast at any Association meeting, whether or not it is so designated in the Declaration. Votes may be cast in person or by proxy in accordance with **Section 2.8**. A personal representative, guardian, conservator, or trustee may vote the percentage of vote for any Unit owned or controlled by such Person in such capacity, provided that such Person shall first have presented evidence satisfactory to the Association that such Person

owns or controls the Unit in such capacity. When a Unit is owned of record by two (2) or more Persons, if only one of several Owners of such Unit is present at a meeting of the Association, that Owner is entitled to cast all the votes allocated to that Unit. If more than one of the Owners is present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the Owners, unless the Declaration expressly provides otherwise. There is majority agreement if any one of the Owners casts the votes allocated to that Unit without protest being made by any of the other Owners of the Unit to the Person presiding over the meeting before the polls are closed. In case of protest, each cotenant shall be entitled to vote a fraction only of such vote in proportion to the cotenant's share of ownership in such Unit. Notwithstanding anything to the contrary provided herein, Developer shall be entitled to vote and act on all matters as the Association and the Board of Directors until such time as the first meeting of the Association. Thereafter, Developer, as the Owner of any unsold Units, shall be entitled to vote the interest of each such Unit.

(b) Votes of Owners of Vacation Ownership Units. Notwithstanding the foregoing, the board of directors of a Vacation Ownership Association, acting pursuant to a special power of attorney and/or proxy granted to it, may cast the vote of any Vacation Ownership Unit included in the fractional or timeshare plan documents; provided that if for any reason the means set forth for casting votes in the fractional or timeshare plan documents is deemed to be invalid, then the vote of the Vacation Ownership Unit will be determined by vote of the majority of the undivided interests voting, in person or by proxy, with respect to that Unit. In the event of a tie vote, one-half of the vote allocated to the Vacation Ownership Unit will be counted in favor of and one-half against the matter at issue. The purpose and intent of this Section is to assure the operation of the Association notwithstanding the likelihood that the Owners of fractional or timeshare interests in the Vacation Ownership Units may not vote or participate in Association affairs as actively as the Act or the Project Documents may require.

(c) Voting for Directors. Directors shall be elected by cumulative voting. The total number of votes that each Owner of an Unit may cast in an election for Directors is determined by multiplying the votes that Owner is entitled to vote on a noncumulative basis multiplied by the number of Directors to be elected. Each Owner of a Unit is entitled to cumulate the Owner's votes and give all of them to one nominee or to distribute such votes among any or all of the nominees. Subject to the provisions of **Section 3.2** of these Bylaws, the nominees receiving the highest number of votes on a cumulative basis, up to the total number of Directors to be elected, shall be deemed elected.

## 2.8 Proxies and Pledges.

(a) Requirements. The authority given by any Owner to another Person to represent the Owner at meetings of the Association must be in writing and contain at least the following: (i) the name of the Association, (ii) the date of the meeting of the Association, (iii) the printed name and signature of the Person or Persons giving the authority, (iv) the Unit or Units for which the proxy is given, (v) the printed name of the Person to whom the proxy is given, and (vi) the date the proxy is given. A proxy may designate any Person or the Board of Directors as an entity as proxy and may be limited as the Unit Owner indicates. In the case of a standard proxy form authorized by the Association, such proxy must contain boxes wherein the Owner has indicated that the proxy is given (A) for quorum purposes only, (B) to the individual whose name is printed on a line next to this box, (C) to the Board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting, or (D) to those directors present at the meeting with the vote to be shared with each director receiving an equal percentage. Proxy

forms which are not marked shall be considered a choice by the owner that the vote be made on the basis of the preference of the majority of the Board.

A standard proxy form authorized by the Association must also contain a box wherein the Owner may indicate that the Owner wishes to obtain a copy of the annual audit report required by Section 514B-150 of the Act. No proxy shall be irrevocable unless coupled with a financial interest in the Unit represented. A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy.

(b) To be valid, a proxy must be delivered to the Secretary of the Association or the Managing Agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains. A Unit Owner may vote by mail or electronic transmission through a duly executed proxy. Any one (1) of two (2) or more Persons owning a Unit may give or revoke a proxy for the entire vote of such Unit, or if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the Person or Persons giving the proxy.

A proxy given by a co-owner or co-owners for only a share of a Unit's vote may be exercised to cast the entire vote for such Unit in the absence of protest by another co-owner or the holder of a proxy from another co-owner. In case of a protest, each co-owner or holder of a proxy from a co-owner, as the case may be, shall be entitled to only a share of such Unit's vote in proportion to the respective shares of ownership in such Unit. Any provision hereof to the contrary notwithstanding, the standard proxy form, if any, which accompanies a notice of meeting: (i) shall be valid only for the meeting to which such notice pertains and its adjournment, if any; (ii) may designate any Person as proxy; and (iii) may be limited to the Unit Owner's desires as indicated.

(c) Limitations on Proxy Votes. A director who uses Association funds to solicit proxies shall not cast any of these proxy votes for the election or reelection of directors at any Association meeting unless the proxy form specifically authorizes such a vote, and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least twenty-one (21) days prior to its solicitation of proxies. Any Owner has seven (7) days from the time the Board posts notice to request Association funds to solicit proxies accompanied by a statement. The statement shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page and shall disclose the Owner's qualifications to serve on the Board and the reasons for wanting proxies. The Board shall promptly mail to all Owners a proxy form containing either (i) the names of all Owners who requested the use of Association funds to solicit proxies, together with their statements, or (ii) without any names but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements.

A Managing Agent employed by the Association shall not solicit any proxies for its use, nor shall the Managing Agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. Voting rights transferred or pledged in a mortgage, deed of trust, lease, or agreement of sale of any Unit or interest therein, a true copy of which is filed with the Secretary, shall be exercised only by the Person designated in such instrument unless a written release or other termination signed by the parties is filed with the Secretary. No officer or member of the Association Board shall use Association funds to solicit proxies; except for the distribution of proxies as set forth in Section 514B-123(h) of the Act, provided that this shall not prevent an officer or individual member of the Board from exercising his or her right as a Unit Owner under the above-stated limitations.

(d) Termination. A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments. A Unit Owner may revoke a proxy by actual notice of revocation to the Secretary of the Association or the Managing Agent. A proxy is void if it purports to be revocable without notice. Any one (1) of two (2) or more Persons owning a Unit may revoke a proxy for the entire vote of such Unit or if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the Person or Persons giving such proxy. A proxy given by a co-owner for only a share of a Unit's vote in proportion to the share of ownership of such co-owner shall be revocable only by such co-owner.

2.9 Order and Conduct of Business. The order of business at all meetings of the Association shall be generally as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Approval of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees (if any);
- (f) Selection of inspectors of election (when required);
- (g) Election of members of the Board of Directors (when required);
- (h) Ratification of auditor;
- (i) Unfinished business;
- (j) New business;
- (k) Adjournment.

All meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order Newly Revised, or by any means that allow participation by all Unit Owners in any deliberation or discussion.

2.10 Committees. The Board may create and appoint such general or special committees as the affairs of the Association may require and define the authority and duties of such committees.

2.11 Candidates for Election to Board of Directors. Each candidate for election or reelection to the Board of Directors may submit to the Board, for distribution to each member of the Association prior to the election, a personal biography which shall include a disclosure of any significant business connection, financial or otherwise, with any current insurer or the Managing Agent of the Project.

2.12 Prohibited Acts of Association Employees. No employee of the Association shall engage in selling or renting Units in the Project, except Association-owned Units, unless such activity is approved by an affirmative vote of sixty-seven percent (67%) of the Owners.

2.13 Rights of Developer. Notwithstanding anything to the contrary provided herein, Developer shall be entitled to vote and/or act on all matters as the Association and the Board of Directors until the first meeting of the Association.

2.14 Committees. The Board may create and appoint such general or special committees as the affairs of the Association may require and define the authority and duties of such committees.

### 3. BOARD OF DIRECTORS

3.1 Powers and Duties. The affairs of the Association, except as otherwise provided by the Act, the Declaration, or these Bylaws, shall be conducted and managed by a Board. In the performance of his or her duties, each director shall owe the Association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under Chapter 414D of the Hawaii Revised Statutes, as amended.

3.2 Number and Qualification. The affairs of the Association shall be governed by the Board of Directors. The Board of Directors shall be composed three (3) Persons. Subject to the limitations of **Section 2.7(b)**, all directors shall be either Owners, co-Owners, or vendees under an agreement of sale, a trustee of a trust which owns a Unit, an officer of any corporate owner (including a limited liability company) of a unit, or a representative of any other legal entity which owns a Unit. An officer of a corporate Owner, the general partners of a general or limited partnership Owner, and the fiduciary or officer of a fiduciary Owner, respectively, shall be deemed to be Owners for the purposes of this Section. There shall not be more than one representative on the Board of Directors from any one Unit. No resident manager or employee of the Project shall serve on the Board. An Owner shall not act as an officer of the Association and an employee of the Managing Agent. Any Owner who is a Board member of the Association and an employee of the Managing Agent shall not participate in any discussion regarding a management contract at a Board meeting and shall be excluded from any executive session of the Board where the management contract or the Managing Agent will be discussed. For so long as Developer shall own a Unit or Units within the Project, and for a period of two (2) years thereafter, Developer may appoint a non-voting "ex-officio" member of the Board of Directors. Developer shall not exercise this right, however, should Developer's representative serve as an elected member of the Board of Directors. Any ex-officio member of the Board of Directors may be excluded from executive sessions of the Board of Directors upon a majority vote of the Board of Directors. Any ex-officio member shall have all rights, privileges, and protections as an elected member of the Board as provided under these Bylaws, with the sole exception that such ex-officio member shall be non-voting.

3.3 Election and Term of Office. The election of directors shall be by secret written ballot at each annual meeting and any special meeting called for that purpose. Directors shall hold office for a period of two (2) years and until their respective successors have been elected, subject to removal as herein provided; except that at the first annual meeting of the Association, the number of Persons to equal a majority of Directors (but no more) who receive the largest number of votes shall be elected for terms of two (2) years, and the remaining Directors shall be elected for a term of one (1) year. Thereafter, at the expiration of the term of office of each of the initial Directors, each successor Director shall be elected for a term of two (2) years. Except with respect to the election of directors at the first annual Association meeting, if the number of nominees is equal to or less than the number of vacancies, balloted voting may be waived and the nominees elected by acclamation.

3.4 Inspectors for Voting and Elections. At any meeting of the Association at which voting will take place, the Board, or, at the direction of the Board, the chairperson of the meeting, shall appoint inspectors of the voting at the meeting, including the voting for the election of directors. The number of inspectors will be either one (1) or three (3). The inspector or inspectors will: (a) determine the number of votes that may be cast, the authenticity, validity, and effect of proxies, pledges, and other documents purporting to give a Person the right to represent, act, and vote for an Owner; (b) receive votes, ballots, and consents; (c) hear and determine all challenges, questions,

and conflicts relating in any way to the right to cast votes; (d) count and tabulate all votes and consents; (e) decide when the polls will close; (f) determine the results of all votes and elections; (g) do other acts that may be proper to conduct the vote or election with fairness to all Owners; and (h) perform such duties impartially, in good faith, to the best of his, her, or their ability and as quickly as practical. The decision, act, or certificate of a majority of inspectors, if there are three (3), or of the single inspector will be effective. Any facts stated in any effective report or certificate shall be presumed to be accurate.

3.5 Nomination for Election to the Board. The Board will appoint a committee to nominate Owners for election to the Board at each annual meeting. This committee will make their selections at least sixty (60) days before the date of each such meeting. The list of nominees must also include any qualified Person nominated in any petition signed by at least five percent (5%) of the Owners and received by the Board sixty (60) days before the meeting. This list of nominees must be sent to each Owner. If the list is prepared before the notice of meeting is sent, it must be sent with the notice. Each Person nominated must be placed on the ballot at the meeting. At the meeting, however, any Owner present may nominate any other qualified Person for director, and the Person so nominated must be added to the ballot.

3.6 Removal. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or without cause by vote of a majority of Unit Owners, and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created. Such removal and replacement shall be in accordance with all applicable requirements and procedures in these Bylaws for the removal and replacement of directors, including, but not limited to, any provisions relating to cumulative voting. Any director whose removal has been proposed by the Unit Owners shall be given an opportunity to be heard at such meeting.

If any such removal and replacement is to occur at a special meeting, the call for such meeting shall be made in accordance with **Section 2.2(c)** above. Except as otherwise provided in the Act, such meeting and the procedures adopted for the removal and replacement from office of directors shall be scheduled, noticed and conducted in accordance with these Bylaws.

3.7 Vacancies. Vacancies in the Board caused by any reason other than the removal of a director by the Association or by the Board shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director for the remainder of the term of the member whose vacancy he filled and until a successor is elected thereafter. A vacancy may also be filled at a special meeting of the Association whether or not called for that purpose. Death, incapacity or resignation of a director, or if a director ceases to qualify for office as set forth above, shall cause his office to become vacant. Any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment for more than sixty (60) days may be removed by a majority vote of the directors present at a regular or special meeting of the Board at which a quorum is present and a successor may be elected by the Board in the manner described above.

### 3.8 Meetings of the Board of Directors.

(a) Annual Meetings. An organizational meeting of the Board and each annual meeting thereafter shall be held at the place of and immediately following the annual meeting of the Association. No separate notice other than the notice of the annual meeting of the Association shall be necessary for such meeting. At such meeting the Board shall elect the officers of the Association for the ensuing year.

(b) Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Board. The Board shall meet at least once a year in addition to the annual meeting. Developer, when acting as the Board as provided in **Section 2.2(a)**, may act without a formal meeting, call, or notice.

(c) Special Meetings. Special meetings of the Board may be called by the President and will be called by the Secretary promptly upon the written request of at least two (2) directors.

(d) Open and Executive Sessions. All meetings of the Board, other than executive sessions, shall be open to all Owners, and Owners who are not directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise. The Board, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters (i) concerning personnel, (ii) concerning litigation in which the Association is or may become involved, (iii) necessary to protect the attorney-client privilege of the Association, or (iv) necessary to protect the interests of the Association while negotiating contracts, leases, and other commercial transactions. The general nature of any business to be considered in executive session shall first be announced in open session.

(e) Attendance By Telephone. Members of the Board or of any committee may participate in a meeting by means of a conference telephone or similar communication equipment by which all Persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

(f) Conduct of Meetings. All meetings of the Board shall be conducted in accordance with the most current edition of Robert's Rules of Order Newly Revised.

3.9 Notice. Fourteen (14) days prior written notice of regular meetings of the Board, if practicable, and at least three (3) business days prior written notice of special meetings shall be given to each director, either personally or by telephone, electronic mail transmission, or facsimile, and shall state the time, place, and purpose of such meeting. Notice of all Board meetings shall be posted by the Managing Agent, resident manager (if any) or a member of the Board in prominent locations within the Project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board.

3.10 Waiver of Notice. A director may waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance at a meeting shall constitute a waiver of notice of the time, place and purpose of the meeting. If all the directors are present at a meeting of the Board, notice shall not be required and any business may be transacted at such meeting.

3.11 Quorum of Board of Directors. At all meetings of the Board, a majority of the total number of directors established by these Bylaws shall constitute a quorum for the transaction of business. The votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board. A director shall not vote by proxy at any meeting. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12 Conflicts of Interest. A director shall not vote at any meeting on any issue in which such director has a conflict of interest. A director who has a conflict of interest concerning any issue before the Board shall disclose the nature of the conflict of interest to the Board prior to the vote on that issue at the meeting of the Board, and the minutes of the meeting shall record the fact that a disclosure was made. For purposes of this Section, a "conflict of interest" shall mean an issue in which a director has a direct personal or pecuniary interest not common to other members of the Association. The determination of whether a conflict of interest exists as to a particular director or directors shall be determined by a majority of the non-interested directors, which determination shall be conclusive and binding on all parties. If abstentions for such a reason would result in less than a majority being able to vote, the directors who do not abstain shall appoint one or more Persons as temporary directors to vote on the matter in question.

3.13 Compensation. Directors shall not receive any compensation from the Association for acting as such other than a reasonable fee for attendance at the meetings of the Board as set by the Owners at the annual meeting. The directors may expend Association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses, provided that, except for economy travel expenses within the State of Hawaii, all other travel expenses incurred shall be subject to the requirements of this Section and Section 514B-107(d) of the Act.

3.14 Fidelity Bonds. The Board shall require that the Managing Agent and all directors, officers, trustees, employees, and volunteers responsible for handling funds belonging to or administered by the Association furnish adequate fidelity bonds naming the Association as the insured and providing coverage in such amounts as the Board deems adequate, but in no event in any amount less than any minimum amount required under Section 514B-132(a)(3) of the Act. The premiums on such bonds, if paid by the Association, shall constitute a Common Expense. Every such bond shall:

(a) Provide that the bond(s) may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least sixty (60) days prior written notice to the Board, the first Mortgagees of record with respect to any Unit or any interest therein and every other Person in interest who shall have requested such notice; and

(b) Contain a waiver of any defense based upon the exclusion of Persons who serve without compensation from any definition of the term "employee" or similar term, and, by appropriate endorsement, provide coverage for any such Persons not otherwise covered.

3.15 Project Documents. The Association shall, at its expense, provide all Board members with a current copy of the Declaration, these Bylaws, any Project Rules in effect, and, annually, a copy of the Act.

#### 4. OFFICERS

4.1 Designation and Qualification. The principal officers of the Association shall be the President, Vice President (the "**Vice President**"), Secretary, and Treasurer (the "**Treasurer**"), all of whom shall be elected by the Board. The Board may appoint such other officers, who need not be members of the Board or the Association, as in its judgment may be necessary (e.g., the Board may appoint a recording secretary to take the minutes of any or all meetings). Except to the extent

required by law, officers are not required to be members of the Board. One individual may hold no more than one office.

4.2 Election of Officers. The officers of the Association shall be elected annually by the Board and shall hold office at the pleasure of the Board.

4.3 Removal. Any officer may be removed with or without cause by the affirmative vote of a majority of the Board. Vacancies may be filled by the Board at any regular meeting or at a special meeting of the Board called for such purpose.

4.4 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. Subject to the control of the Board, the President shall have all the general powers and duties which are incident to the office of president of a corporation organized under the laws of the State of Hawaii, including, but not limited to, the power to appoint committees from among Owners as the President may, in his or her discretion, decide to be appropriate to assist in the conduct of the affairs of the Association. The President shall also have such other powers and duties as may be provided by these Bylaws or assigned from time to time by the Board.

4.5 Vice President. The Vice President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to act temporarily in the place of the President. The Vice President shall also have such other powers and duties as may be assigned from time to time by the Board or by the President.

4.6 Secretary. The Secretary shall keep the minutes of all meetings of the Owners and the Board, shall maintain and keep a continuous and accurate record of the ownership of all Units, shall have charge of such books and papers as the Board may direct, keep the minute book wherein resolutions shall be recorded, and shall in general perform all the duties incident to the office of secretary of a corporation organized under the laws of the State of Hawaii. Duties of the Secretary may be delegated to the Managing Agent or to an assistant secretary subject to the Secretary's supervision.

4.7 Treasurer. The Treasurer shall be responsible for the keeping of full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data and reports. The Treasurer shall be responsible for the deposit of all moneys and other valuable effects of the Association in such depositories as may be designated by the Board of Directors; and shall, in general, perform all the duties incident to the office of treasurer of a corporation organized under the laws of the State of Hawaii. Duties of the Treasurer may be delegated to the Managing Agent subject to the Treasurer's supervision.

4.8 Compensation. No Person shall receive any compensation from the Association for acting as an officer but may be reimbursed for actual expenses incurred in the course of performing such officer's duties.

4.9 Auditor. The Board shall select, subject to the ratification of the Owners at the annual meeting, a certified public accountant or accounting firm as auditor, who shall not be an officer of the Association nor own any interest in any Unit, to audit the books and financial records of the Association as required by law or these Bylaws, or directed additionally by the Board.

4.10 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.11 Fiduciary Duty. In the performance of his or her duties, each officer of the Association shall owe the Association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under Chapter 414D of the Hawaii Revised Statutes, as amended.

4.12 General - Committees. Committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed of such persons as may be appointed by the Board, and shall operate in accordance with the terms of the resolution of the Board of Directors or with rules adopted by the Board of Directors.

## 5. ADMINISTRATION

5.1 Management. The Board of Directors shall have the powers and duties necessary for the management and operation of the Project, for the administration of the affairs of the Association, and for the performance of all duties and obligations placed on the Board by the Project Documents, and may do all acts and things except those that may not be delegated by the Association to the Board of Directors by the Act, the Declaration or these Bylaws. Such powers and duties of the Board of Directors include, without limitation, the following:

(a) To contract and incur liabilities in connection with the exercise of any of the powers and duties of the Board;

(b) To have custody and control over all funds of the Association, open bank accounts on behalf of the Association, and designate the signatories of those accounts;

(c) To keep books of accounts and records with respect to the Project as provided in the Act and these Bylaws;

(d) To maintain, repair, replace, and restore the Common Elements in a manner consistent with the Resort Quality Standard and make any additions and alterations thereto;

(e) To make additions, alterations, and Improvements to the Project and repair and restore the Project in accordance with the provisions of the Act, the Declaration or these Bylaws after damage or destruction by fire or other casualty or as a result of condemnation;

(f) To purchase, maintain; and replace any equipment and provide all water and utility services required for the Common Elements;

(g) To provide each Unit with all water, sewer, electricity, and other utility services the Board shall deem necessary, either at the expense of such Unit or as a Common Expense, as determined by the Board;

(h) To purchase or provide all other materials, supplies, furniture, labor, and services required by these Bylaws or by law, or which the Board, in its discretion, deems necessary or appropriate for the proper operation and maintenance of the Project, or which are used in

common or jointly by the Common Elements and Units, in each case to the extent such goods and services shall not be otherwise provided;

(i) To have access to each Unit from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units;

(j) To maintain and repair any Unit or Limited Common Element if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Elements, Limited Common Elements or any other portion of the Project and if the Owner or Owners of the Unit shall have failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of maintenance or repair shall have been delivered by the Board to the Owner or Owners. The Board shall levy a special assessment against such Unit for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

(k) To employ, supervise, and dismiss such personnel as may be necessary for the operation, repair, maintenance, and replacement of the Common Elements;

(l) To procure legal, accounting, and management services necessary or proper for the operation of the Project or the interpretation, enforcement or implementation of the Declaration, these Bylaws and any other material documents affecting the Project;

(m) To obtain and maintain in effect all policies of insurance and bonds as may be required or authorized by the Declaration, these Bylaws, the Board, or the Act;

(n) To cause to be prepared and to approve a budget covering the itemized estimated income of the Project, if any, from all sources and the estimated cost of maintaining and operating the Project during the ensuing fiscal year in accordance with the Resort Quality Standard, including the reserves established by these Bylaws and any other reasonable reserves for such purposes, less any surpluses from the operation of prior years, if any, which surpluses shall, subject to **Section 6.1(d)**, be applied to pay operating expenses or reserve contributions of subsequent years;

(o) To prepare and approve a schedule of monthly assessments against each Owner for such Owner's proportionate share of such estimated cost of maintaining and operating the Project for such ensuing year in accordance with the Resort Quality Standard and to levy and collect all monthly and special assessments of the Common Expenses and other charges payable by the Owners;

(p) To pay all Common Expenses which the Association is required to pay pursuant to these Bylaws or by law or which in the Board's opinion shall be necessary or proper for the operation and maintenance of the Project in accordance with the Resort Quality Standard or for the enforcement of these Bylaws, provided that if any such payment is required because of the particular actions of negligence by any Owner, the cost thereof shall be specially assessed to that Owner;

(q) To pay and discharge any lien, encumbrance, tax or assessment levied against all or any portion of the Project which may in the opinion of the Board constitute a lien against the Project or against the Common Elements or Limited Common Elements rather than merely against the interest of particular Owners. If one or more Owners are responsible for the

existence of any such lien, they shall be jointly and severally liable for the cost of discharging such lien and for the costs incurred by the Board by reason of such lien;

(r) To enforce the provisions of the Project Documents and establish, assess, and collect such penalties and fines, and any interest as the Board deems appropriate with respect to such enforcement, including penalties, fines, and interest for failure or refusal to pay on demand all costs and expenses required to be paid hereunder; provided that such penalties, fines and interest are not inconsistent with the law or the provisions of these Bylaws or the Declaration. The unpaid amount of such penalties and fines against any Owner shall constitute a lien against the Owner's interest in the Owner's Unit that may be foreclosed by the Board or the Managing Agent in the same manner as provided in the Act for the foreclosure of a lien for Common Expenses;

(s) To notify all Persons having any interest in any Unit, according to the Association's record of ownership and subject to the provisions of **Section 5.6**, of delinquency exceeding sixty (60) days in the payment of any assessment against such Unit;

(t) From time to time to adopt and amend and enforce Project Rules that govern the details of the operation and use of the Project, provided, however, that no Project Rule adopted by the Board shall be effective if disapproved by a Majority of Owners at a meeting duly called for such purpose. Nothing herein shall be construed to require that a meeting of the Association be called for the purpose of approving or disapproving Project Rules adopted by the Board of Directors. All Amendments to Project Rules shall not be effective until thirty (30) days after being mailed to the Owners;

(u) To lease or otherwise use for the benefit of the Association those, including, without limitation, to grant easements and enter into licenses respecting, those common areas and elements that, in accordance with Section 514B-38(5) of the Act, the Board determines are not actually used by any Unit Owners for a purpose permitted in the Declaration 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, provided that the foregoing approval requirement shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by Section 514B-140(d);

(v) To lease or otherwise use for the benefit of the Association, including, without limitation, to grant easements and enter into licenses respecting, those common areas and elements that, in accordance with Section 514B-38(6) of the Act, the Board determines are actually used by one or more Unit Owners for a purpose permitted in the Declaration upon obtaining the approval of sixty-seven percent (67%) of the Owners, including all directly affected Owners that the Board reasonably determines actually use such Common Elements, and the Owners' Mortgagees, provided that the foregoing approval requirement shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by Section 514B-140(d);

(w) To purchase, lease, or otherwise acquire any Unit in the Project in the name of the Board of Directors or its nominee, corporate, trust, or otherwise, on behalf of the Association and thereafter sell, lease, mortgage, vote the Common Interests appurtenant to, and otherwise hold or deal with such Unit, provided that no votes allocated to a Unit owned by the Association may be cast for the election or reelection of directors at any Association meeting. The Board of Directors may organize corporations to act as nominees of the Board of Directors in acquiring title to or leasing of Units on behalf of the Association;

(x) To purchase any Unit in the Project at foreclosure or other judicial sales in the name of the Board of Directors or its nominee, corporate, trust, or otherwise, on behalf of the Association.

(y) Subject to any approval requirements and spending limits contained in the Declaration and these Bylaws, to borrow money with or without security to be used by the Association for the repair, replacement, maintenance, operation, or administration of the Common Elements of the Project, or the making of any additions, alterations, or Improvements thereto. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a Common Expense of the Project; provided that a Majority of Owners give written consent to such borrowing, having been first notified of the purpose and use of the funds;

(z) To delegate its powers and duties to the Managing Agent, and to committees, agents, officers, representatives, and employees;

(aa) To grant an easement across the Common Elements for any "reasonable purpose," which term shall include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance, and repair of any Unit, the Common Elements, or any Limited Common Elements in the Project;

(bb) To keep, or cause the Managing Agent to keep, an accurate and current list of members of the Association and their current addresses and names and addresses of the vendees under agreements of sale, if any; and

(cc) On behalf of the Association, to enter into one or more agreements or contracts with the association(s) of Unit Owners of a condominium community or condominium communities adjacent to or in the vicinity of the Project as necessary or convenient to provide for the joint satisfaction of insurance requirements, on-site management functions, and other items of Common Interest between the Association and such other association(s), as may be desirable in the interest of efficiency and/or economy for the provision of such items. In such event, the joint expenses relating to such shared items shall be allocated among the participating associations based on the relative total net living floor area of all Units in each of the participating condominium communities, or in such other manner as may be reasonably determined fair and appropriate by the Board and the other participating associations.

Nothing herein contained shall be construed to give the Board authority to conduct an active business for profit on behalf of the Owners, or any of them, or the Association. Anything contained herein to the contrary notwithstanding, the Board shall have no power to impair the use and enjoyment of a Unit or the Limited Common Elements appurtenant thereto in a manner inconsistent with the Declaration or these Bylaws.

5.2 Employment of a Managing Agent. Except as otherwise provided in the Declaration with respect to the initial Managing Agent, the Board (on behalf of the Association) shall at all times employ a responsible company duly registered with the Real Estate Commission and licensed to do business in the State of Hawaii as Managing Agent to manage and control the Project, subject at all times to direction by the Board and subject also to the primary rights and responsibility of the Association, with such administrative functions as shall be delegated by the Board. The compensation of the Managing Agent shall be determined by the Board.

The Managing Agent shall have such powers and duties as may be necessary or proper, as determined by the Board and as delegated by the Board, in connection with (a) supervision of the

immediate management and operation of the Project; (b) maintenance, repair, replacement, and restoration and any additions or alteration of the Common Elements; (c) the purchase, maintenance, and replacement of any equipment; (d) provision for utilities services to the buildings and the various Units; (e) employment, supervision, and dismissal on behalf of the Association of such personnel as it deems necessary for the maintenance and operation of the Project; (f) execution of contracts with others for the furnishing of such services as it deems proper for the Project; (g) preparation of a proposed budget and schedule of assessments; (h) collection of all assessments and payment of all bills; (i) purchase of such insurance as is contemplated by these Bylaws; (j) custody and control of all funds; (k) maintenance of books and records on a cash basis; and (l) preparation of financial reports.

Developer, or such Managing Agent as Developer may designate, shall act as the initial Managing Agent for the Project. If the initial management contract is for a term of more than one year, it shall provide that it may be terminated by either party at the end of the first year or at any time thereafter upon not less than ninety (90) days written notice; however, if Developer or a division, subsidiary, or affiliate of Developer acts as the first Managing Agent, such management contract shall be subject to termination by either party thereto on not more than sixty (60) days written notice. The termination of any initial management contract shall be without payment of any termination fee to the Managing Agent. In no event shall the management contract be for a term exceeding three (3) years, and any such management contract shall be subject to termination, without penalty, by either party thereto on not more than ninety (90) days written notice. No decision by the Board of Directors to terminate professional management of the Project may be made without the prior written consent of at least sixty-five (65%) of the institutional holders of first Mortgages on Units (based upon one vote for each such first Mortgage).

The Board of Directors may in its discretion limit any of the powers granted to the Managing Agent in these Bylaws or grant additional powers to the Managing Agent.

5.3 Execution of Instruments. The officer or officers as shall be provided by general or special resolution of the Board or, in the absence of any such resolution applicable to such instrument, by the President and the Vice President, or by the President or the Vice President and the Treasurer or the Secretary shall (i) sign all checks, drafts, notes, acceptances, conveyances, contracts, and other instruments on behalf of the Association, and (ii) prepare, execute, certify and record amendments to the Declaration, subject to the provisions of the Declaration.

5.4 Deposits of Association Funds. The funds of the Association shall be: (i) deposited in financial institutions, located in the State of Hawaii, pursuant to a resolution of the Board, and whose deposits are insured by an agency of the United States; (ii) held by a corporation authorized to do business HRS 412:8-100 through 8-403; (iii) held by the United States Treasury; or (iv) purchased in the name of and held for the benefit of the Association through a securities broker that is registered with the Securities and Exchange Commission, that has an office in the State of Hawaii, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation. The funds in the general operating account of the Association shall not be commingled with funds of other activities such as lease rent collections rental, timeshare and assisted living facility operations, nor shall the Managing Agent commingle any Association funds with its own funds. For purposes of this Section, lease rent collections and rental operations shall not include the rental or leasing of Common Elements conducted on behalf of the Association. Association funds shall not be transferred between accounts by oral instructions over the telephone. The funds of the Association shall be invested only as set forth in Section 514B-149(c) of the Act.

## 5.5 Books and Records of Account.

(a) Financial Records. The Board of Directors will maintain or cause to be maintained accurate and complete books of account and other financial records on a cash basis in accordance with recognized accounting practices. The records shall include, without limiting the generality of the foregoing, detailed and accurate records in chronological order of all receipts and expenditures of the Association, specifying and itemizing all expenses paid or incurred in connection with the maintenance, repair, restoration, and replacement of the Common Elements and any other expenses incurred, all vouchers authorizing payment of such expenses, and monthly statements showing the total current delinquent amount of unpaid assessments for Common Expenses.

(b) Annual Statements. Within ninety (90) days after the end of each fiscal year of the Association, the Board will render or cause to be rendered to each Owner a balance sheet and a summary statement of all receipts and disbursements, including assessments received and receivable during the preceding year. Upon request by an Owner, the Association shall provide to such Owner a detailed statement of receipts and disbursements made in the preceding year and a statement of all Association funds and other assets, including, without limitation, all reserve accounts.

(c) Audit. The Association shall require an annual audit of the Association's financial accounts and no less than one yearly, unannounced verification of the Association's cash balance by an independent public accountant. A copy of the annual audit shall be made available to each Unit Owner in accordance with the requirements set forth in Sections 514B-150(b) and (c) of the Act.

5.6 Record of Ownership. The Board of Directors or the Managing Agent under the direction and supervision of the Board, will keep an accurate and current record of the names and addresses of members of the Association, their tenants, Mortgagees, and vendees under agreements of sale, and each Owner's Common Interest. Every Owner and purchaser under an agreement of sale shall promptly cause to be duly Recorded and filed with the Association the instrument conveying the Owner's interest in a Unit to such Owner or other evidence of the Owner's title or interest in a Unit. The Secretary shall maintain all such information in the record of ownership of the Association. Each Owner shall pay the Association or the Managing Agent on demand a service charge in an amount fixed from time to time by the Board for the registration on the records of the Association of a change in the ownership of a Unit.

5.7 Minutes of Meetings. The Association shall maintain minutes of all meetings of the Board of Directors, the Association, and their committees. The minutes shall include the recorded vote of each Board member on all motions except those voted on in executive session.

5.8 Association Records; Generally. The Association shall keep financial and other records sufficiently detailed to enable the Association to comply with requests for information and disclosures related to resale of Units. Except as otherwise provided by law, all financial and other records shall be made reasonably available for examination by any Unit Owner and the Owner's authorized agents. Association records shall be stored on the island on which the Project is located; provided that if original records, including but not limited to invoices, are required to be sent off-island, copies of the records shall be maintained on the island on which the Project is located.

## 5.9 Location and Inspection of Books and Records.

(a) Location. Subject to the provisions of **Section 5.8**, all of the Association's books and records shall be kept at the Project or at such other convenient place within the State of

Hawaii as the Board shall designate, and in accordance with the requirements of the Act. Subject to the provisions of **Section 5.9(b)**, the Board of Directors shall establish reasonable rules with respect to notice to be given to the custodian of the records by an Owner desiring to make inspection, the hours and days of the week when such inspection may be made, and the payment of the cost of reproducing copies of documents so requested:

(b) Inspection of Financial Records and Minutes.

(i) The Association's most current financial statement and minutes of the Board's meetings, once approved, shall be available to any Owner, at no cost to the Owner or on twenty-four (24) hour loan, at a convenient location designated by the Board.

(ii) Minutes of meetings of the Board and the Association for the current and prior year shall be available for examination by Unit Owners, at convenient hours at a place designated by the Board. Minutes of meetings shall include the recorded vote of each Board member on all motions except motions voted on in executive session. Copies of meeting minutes shall be provided to any Owner within fifteen (15) days of receipt of the Owner's request, provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the Owner if the Owner indicated a preference at the time of the request; provided, further, that the Owner, shall, subject to Section 514B-105(d) of the Act, pay a reasonable fee for administrative costs associated with handling the request.

(iii) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the Association for the duration those records are kept by the Association and delinquencies of ninety (90) days or more shall be available for examination by Unit Owners, at convenient hours at a place designated by the Board; provided that:

(A) The Board may require Owners, to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the Association or its members or both; and

(B) Owners, pay for administrative costs incurred by the Association under this **Section 5.9(b)(iii)** in excess of eight (8) hours per year.

Copies of these items shall be provided to any Owner, upon such Person's request, provided that the Owner, pay a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(iv) After any Association meeting, and not earlier, Owners, shall be permitted to examine proxies, tally sheets, ballots, Owners' check-in lists, and the certificate of election, provided that:

(A) Owners, shall make a request to examine the documents within thirty (30) days after the Association meeting;

(B) The Board may require Owners, to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both; and

(C) Owners, pay for administrative costs incurred by the Association under this **Section 5.9(b)(iv)** in excess of eight (8) hours per year.

If there are no requests to examine proxies and ballots, the documents may be destroyed thirty (30) days after the Association meeting. If there are requests to examine proxies and ballots, the documents shall be kept for an additional sixty (60) days, after which they may be destroyed. Copies of tally sheets, Owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any Owner upon the Owner's request, provided that the Owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(v) Owners, may file a written request with the Board to examine other documents. The Board shall give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.

The Association may comply with this **Section 5.9(b)** by making information available to Unit Owners, at the option of each Unit Owner and at no cost to the Unit Owner for downloading the information, through an Internet site.

(c) Members List. Each Owner shall promptly file with the Board of Directors a true and complete copy, as Recorded, of each Unit Deed, lease, mortgage, agreement of sale, assignment, or other instrument whereby such Owner acquires, encumbers, or disposes of an interest in a Unit. The Board or Managing Agent, under direction of the Board, shall keep an accurate and current list of members of the Association and their current addresses and the names and addresses of the vendees under agreements of sale, if any (the "**Members List**"). Owners shall be responsible for providing the Board or the Managing Agent with any change of such Owner's billing and/or mailing address. The Members List shall be maintained at a place designated by the Board and a copy shall be available at cost to any member of the Association as may be provided in the Project Rules or, in any event, to any member who furnishes to the Managing Agent or the Board of Directors a duly executed and acknowledged affidavit stating that the list (i) will be used by the Owner personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters and (ii) shall not be used by the Owner or furnished to any other Person for any other purpose.

(d) In addition to the foregoing, Owners shall have such rights of access to Association records as are provided in Section 514B-154 of the Act.

5.10 Representation. The Board may represent the Association or any two (2) or more Owners in any action, suit, hearing, or other proceeding affecting the Association, the Common Elements, or more than one (1) Unit and, on its or their behalf may institute, defend, intervene in, prosecute, and settle any such actions, suits, and proceedings, without prejudice to the rights of any Owners individually to appear, to sue, or be sued. Service of process on two (2) or more Owners in any such action, suit, or proceeding may be made on the President.

5.11 Liability and Indemnity of the Board of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners for any mistake of judgment or otherwise, except for their own gross negligence or willful misconduct. The Association shall indemnify each director and officer of the Association against all costs, expenses, and liabilities which may be incurred by or imposed on such director in connection with any claim, action, proceeding, investigation, or inquiry made, instituted, or threatened in which such Person may be involved as a party or otherwise by reason of such Person's being or having been a director or officer of the Association, or by reason of any past or future action taken, authorized, or approved by such director or officer or any omission to act as a director or officer, whether or not such Person continues to be such director or officer at the time of the incurring or imposition of such costs,

expenses, or liabilities. Such costs, expenses or liabilities shall include judgments, amounts paid in compromise settlements, and amounts paid for services of counsel and other related expenses except those costs, expenses, and liabilities as shall relate to matters as to which such officer or director shall be finally adjudged to be, or shall be, liable by reason of gross negligence or willful misconduct toward the Association in the performance of such Person's duties as a director or officer. In the absence of a final adjudication of the existence or nonexistence of a director's or officer's liability to the Association, the determination of whether a director or officer has acted with gross negligence or willful misconduct may be made (i) by the Board of Directors by a majority vote or a quorum consisting of disinterested directors, or (ii) if such quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel selected by the Board of Directors, or (iii) if a quorum of disinterested directors so directs, by a majority vote of the Owners. The foregoing right of indemnification shall not be exclusive of other rights that any director or officer may have and shall inure to the benefit of the heirs and personal representatives of each director or officer.

## **6. BUDGETS, RESERVES AND ASSESSMENTS**

### **6.1 Budget for Common Expenses.**

(a) Before the start of each fiscal year of the Association, the Board shall prepare, or have prepared, and adopt an annual operating budget in accordance with Section 514B-148 of the Act. At a minimum, the budget shall include the following:

(i) The estimated revenues, operating expenses and working capital requirements of the Association for the upcoming year;

(ii) Information as to whether the budget has been prepared on a cash or accrual basis;

(iii) The total replacement reserves (as defined in Section 514B-148(h) of the Act) of the Association as of the date of the budget;

(iv) The estimated replacement reserves the Association will require to maintain the Project in accordance with the Resort Quality Standard based on a reserve study conducted by the Association;

(v) A general explanation of how the estimated replacement reserves are computed;

(vi) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves;

(vii) An estimate of the maintenance reserves the Association must collect in accordance with applicable provisions in the Declaration;

(viii) An amount which the Board deems appropriate to make up all or a portion of any deficiency from a prior year;

(ix) The amount of surplus from the prior year, if any, which shall be used to pay Common Expenses in the upcoming year; and

(x) Information as to whether the amount the Association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a percent

funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to Section 6.1(a)(iv).

(b) The proposed allocation of assessments for Units in the Project, subject to the provisions of the Declaration. For the fiscal year beginning after the Association's first annual meeting and for each fiscal year thereafter, the Association shall assess the Owners to fund a minimum of fifty percent (50%) of the estimated replacement reserves for the applicable fiscal year, except that incremental funding of replacement reserves may be implemented in accordance with rules specifically promulgated by the Real Estate Commission pursuant to Section 514B-148(b) of the Act or otherwise as permitted by the Act, within the reasonable discretion of the Board. Estimated replacement reserves shall be computed by a formula based on the estimated life and the estimated capital expenditure or major maintenance (as such terms are defined in Section 514B-148(h) of the Act) required for each part of the Project and shall include: (i) adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and (ii) separate, designated reserves for each part of the Project for which capital expenditures or major maintenance will exceed \$10,000.00. Parts of the Project for which capital expenditures or major maintenance will not exceed \$10,000.00 may be aggregated in a single designated maintenance reserve. Neither Developer, the Association, the Managing Agent, any Unit Owner, nor any director, officer or employee of the Association who makes or participates in a good faith effort to calculate the estimated replacement reserves for the Association shall have any personal liability if such estimate subsequently proves to be incorrect.

(c) Within thirty (30) days after the adoption of any proposed budget, the Board shall make available a copy of the budget to all the Unit Owners and shall notify each Unit Owner that the Unit Owner may request a copy of the budget. Upon adoption by the Board, the budget shall constitute the basis of the Association's calculation of Common Expenses for the year that shall be collected from the Owners as general assessments and/or special assessments. If practical, each year's budget shall be sent to all Unit Owners at least thirty (30) days before the annual meeting of the Association, provided that the budget for the first fiscal year of the Association need not be sent. If practical, the Association's annual statement prepared in accordance with **Section 5.5(b)** shall also be sent out at least thirty (30) days before the annual meeting of the Association.

(d) The Board may, but shall not required to, adjust the budget during any year in the event of surplus funds or projected surplus funds, but no Owner will have a right to a refund of any assessment already paid or the right not to pay any assessment due but unpaid as a result of any such adjustment in the budget. At the annual meeting each year, the Association shall adopt a resolution that any surplus funds collected from the Owners for Common Expenses but left over after the end of the previous year shall be used to pay Common Expenses, excluding any capital improvements, in the next year. For this purpose, each Owner irrevocably appoints the President as such Owner's proxy and attorney-in-fact to adopt such a resolution.

(e) A copy of the Association's annual operating budget shall be furnished to the Real Estate Commission upon its request as part of the Association's registration with the Real Estate Commission under Section 514B-103 of the Act, or as required by law.

(f) Developer shall not use working capital reserve funds to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits while it is in control of the Association.

6.2 Supplemental Budget. The Association's expenditures in any given fiscal year may not exceed by more than twenty percent (20%) the total annual operating budget for that fiscal year, except in an emergency situation, as defined in Section 514B-148(h) of the Act, or with the approval of a majority of the Unit Owners. If an emergency situation arises, or the Association experiences significant revenue shortfalls due to unpaid assessments, or due to increased costs necessary to insure maintenance in accordance with the Resort Quality Standard, and the Association does not have, or the Board projects that it will not have sufficient funds to pay Common Expenses on a current basis, the Board shall prepare or have prepared a revision of the estimated Common Expenses for that year. The increased expense or revenue shortfall amounts of such revision shall be established by Board resolution as a supplemental budget for that year. Such supplemental budget resolution shall contain written findings as to the necessity of the extraordinary expenses and why the expenses were not or could not have been reasonably foreseen in the budgeting process and shall, if not previously approved by a Majority of Owners, be distributed to the Owners before any special assessment is made based on such supplemental budget.

6.3 Notice of Increase in Certain Assessments. The Board shall send to all Owners thereby affected written notice of any new or increased general assessment or any special assessment for Common Expenses at least thirty (30) days before the effective date of such new or increase general assessment or special assessment.

6.4 Owner's Payments for Common Expenses. Each Owner shall be liable for and pay a share of the Common Expenses (as defined in the Declaration) in proportion to the Common Interest appurtenant to such Owner's Unit. However, except to the extent provided in the Declaration or otherwise in these Bylaws, all costs and expenses of any Limited Common Element will be charged to the Owner of the Unit to which the Limited Common Element is appurtenant, including all costs of maintenance, repair, replacement, additions and improvements to such Limited Common Element. General assessments and special assessments arising from any supplemental budget shall be charged to each Owner accordingly. Each assessment duly made by the Board pursuant to the Declaration or these Bylaws shall be the separate, distinct and personal obligation of each Owner assessed as of the date of assessment and shall constitute a lien on the Owner's Unit as provided in the Declaration, these Bylaws and the Act. When a Unit is owned by more than one Person, the obligation shall be joint and several among the co-Owners. Each Owner shall pay the assessments against such Owner's Unit for Common Expenses at such times and in such amounts as established by the Board, provided, however, that Owners who are required by the terms of a first Mortgage to make payments to the Mortgagee for transmittal to the Board shall be permitted to do so. Each Owner shall also be liable for and shall pay all other amounts chargeable to such Owner in accordance with the Declaration and these Bylaws, and all such amounts shall be charged to such Owner as a special assessment, and shall constitute a lien on the Owner's Unit as provided in the Declaration, these Bylaws and the Act. No Unit Owner may exempt himself from liability for contribution towards Common Expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the Unit.

6.5 Payment as Agent. Each Owner, as principal, shall be liable for the Owner's proportionate share of the Common Expenses. The Board, on behalf of the Owners, will pay or cause to be paid all Common Expenses and shall be responsible, as agent for each Owner, only to collect the funds for the payment of the Common Expenses and transmit the payments to third Persons to whom such payments must be made.

6.6 Due Date of Assessments. Regular assessments shall be payable in monthly installments, unless otherwise determined by the Board, on the first day of each month, commencing with respect to each Unit on the first day of the first month following the issuance by

the appropriate county agency of a certificate of occupancy for such Unit. The first regular installment of Common Expenses shall be prorated for each Unit from the date of issuance of such certificate of occupancy. Special assessments for Common Expenses may be made payable in a lump sum or in installments as the Board shall determine. Special assessments for other charges to an Owner shall be due on the date the next regular assessment is due or on such other date as the Board shall determine.

6.7 Taxes and Assessments. Each Owner shall be obligated to have the real property taxes for the Owner's Unit and appurtenant Common Interest separately assessed by the proper governmental authority and any other taxes which now are or may hereafter be assessed by law on each Unit and its limited Common Interest or the personal property or other interest of the Owner. Each Owner shall be obligated to pay the amount of the taxes so determined. Each Owner shall execute such documents and take such actions as may be reasonably specified by the Board to facilitate compliance with the proper governmental authority regarding such taxes and assessments. Each Owner shall pay the Owner's proportionate share of any assessment by the Board for any taxes or assessments, if any, assessed against the Land as a whole or any part of the common elements as a whole and not separately. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire Land or any part of the common elements, the Board may pay such taxes or assessments and shall in a fair and equitable manner allocate such taxes and assessments to (a) the common elements, exclusive of the limited common elements, in which event such allocated share of the taxes or assessments shall be deemed to be a Common Expense and payable by all Unit Owners as such and (b) the Individual limited common elements, in which event such allocated share of the taxes or assessments shall be deemed to be Individual limited Common Expenses and payable as such by the Owners of the Units to which such Individual limited common elements are appurtenant.

6.8 Utility Expenses.

(a) If the cost of utility services to the any Unit or its Limited Common Element(s) are separately metered or check metered, then, assuming the utility company provides separate bills for such Unit and/or its limited common elements, the Owner of the Unit shall be responsible for the payment of the bill directly to the utility company. Otherwise, the cost of the utility services to such separately metered Unit and/or its limited common elements will be added to the Unit's assessment for Common Expenses. For all utility expenses to the Unit and/or their limited common elements that are not separately metered or check metered, the Board will allocate a proportionate share of the utility expenses to each of the Units as a Common Expense equal to the Common Interest appurtenant to each Unit.

(b) For all utility expenses to a Commercial Unit and its limited common elements that are not separately metered or check metered the Board will fairly and equitably allocate to such Unit the cost of utility services that are not separately metered or check metered based upon estimated consumption and cost of utilities. If the Owner of any such Unit disputes the board's allocation, the Owner may require that the matter be submitted to arbitration. If the arbitrator's allocation is not more than ten percent (10%) different from the Board's allocation, then the owner must pay the costs of the arbitration and the Board's legal fees and costs. Otherwise, the Association must pay the costs of the arbitration and the owner's legal fees and costs.

(c) The cost of utility services for the common elements is a Common Expense. Notwithstanding any provision to the contrary contained herein, for any Unit included in a time share, fractional, club, vacation ownership or similar use plan or program, the Board will collect and pay taxes, assessments and costs of utility services in the same manner as Common Expenses and will

assess such costs to the applicable Vacation Ownership Association unless the applicable Vacation Ownership Association requests otherwise. All such sums paid for or on account of Vacation Ownership Units included in a time share, fractional, club, vacation ownership or similar use plan or program will be allocated to the Units or portions thereof, as the case may be, in accordance with the formula or method for allocating expenses among Owners of such undivided interests stated in the applicable Vacation Ownership Declaration or the other documents governing the such plan or program.

(d) All such sums paid for or on account of a Unit and the Limited Common Elements appurtenant thereto will be charged to the Owner of such Unit, as appropriate. The Owner of such Unit must pay the amounts actually charged to that Unit. To the extent that the taxes or assessments are separately assessed or utility services separately metered or check metered, the Board may direct or permit the applicable Unit Owner to pay those costs directly to the taxing authority or utility company in lieu of having the Association collect and pay those amounts.

6.9 Default in Payment of Assessments. Any assessment not paid within ten (10) days after the due date thereof shall be subject to a late charge of Fifty Dollars (\$50.00) or such other charge as the Board may specify from time to time, to defray the costs to the Association of additional record keeping and reporting, and the remaining unpaid balance shall accrue interest up to eighteen percent (18%) per annum in accordance with Section 514B-144(b) of the Act, or such other lawful rate as determined by the Board, from the due date until paid. Any unpaid assessment shall constitute an assessment lien on the Unit for which the assessment was made, which lien shall have the priority and standing in regard to other liens as provided by law, in particular Section 514B-146(a) of the Act. The Association may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Owner shall also be liable for attorneys' fees and other related costs incurred by the Association as a result of such delinquency, and if any suit, action or arbitration proceeding is brought to collect any such assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.

In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies the Board may have under the Project Documents or by law, the Board may enforce each such obligation as follows:

(a) By suit to enforce such assessment obligations, provided that each such suit must be authorized by a majority of a quorum of the Board at a regular or special meeting thereof, and any such suit may be instituted by any one member of the Board or by the Managing Agent, if the latter is so authorized in writing. Each such action shall be brought in the name of the Board, and the Board shall be deemed to be acting on behalf of all the Owners. Any judgment rendered in any such action shall include all costs and expenses incurred by the Association in collecting the assessment, including reasonable attorneys' fees. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two (2) members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time after the occurrence of the default, the Board or the Managing Agent (acting upon the authorization of the majority of the Board at any regular or special meeting) may give a notice to the defaulting Owner (with a copy to the Mortgagee of such Owner if such Mortgagee has furnished its name and address to the Board) stating the date of the delinquency, the amount of the delinquency, and making demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may prepare and Record on behalf

of the Association a claim of lien against the Unit of such delinquent Owner. Such claim of lien shall state (i) the name of the delinquent Owner; (ii) a designation of the Unit against which the claim of lien is made; (iii) the amount claimed to be due and owing (after the allowance of any proper offset); (iv) that the claim of lien is made pursuant to the terms of these Bylaws and the Act; and (v) that a lien is claimed against such Unit in an amount equal to the net amount of the stated delinquency plus any accrued interest and costs of collection, including attorneys' fees, if any. Such claim of lien shall be signed and acknowledged by any two (2) or more members of the Board, or by the attorney for the Board or by the Managing Agent and shall be dated as of the date of execution. Upon Recordation of a duly executed original or copy of such claim of lien, the Board shall have and may exercise all available remedies. Said remedies include, but are not limited to, foreclosure of the lien in a like manner as to the foreclosure of a mortgage of real property, including foreclosure under power of sale, as provided for in Chapter 667, Hawaii Revised Statutes, and such other rights as may be exercised by the Board pursuant to HRS 514B-146, including without limitation 514B-146(e).

The Owner of a Unit against which the lien of the Association is foreclosed shall pay a reasonable rental for such Unit, and the plaintiff in such a foreclosure shall be entitled to a receiver to collect such rental. Each default shall constitute a separate basis for a claim of lien, but a single claim of lien may be filed with respect to more than one default.

6.10 Vacation Ownership Association. Each Vacation Ownership Association shall be liable for and pay the share of the Common Expenses allocated to the Common Interests appurtenant to the Vacation Ownership Units or portions thereof subjected to the applicable Vacation Ownership Declaration and all costs and expenses of any Limited Common Elements appurtenant to such Vacation Ownership Units, including all costs of maintenance, repair, replacement, additions and improvements to such Limited Common Elements. Regular assessments and special assessments arising from any supplemental budget shall be allocated to each Vacation Ownership Association accordingly. Each Vacation Ownership Association shall impose upon and collect assessments from the members of such Vacation Ownership Association in an amount sufficient to pay all assessments imposed on the Vacation Ownership Association by the Association. Notwithstanding the foregoing, the Board shall have the option, but not the obligation to treat each Vacation Ownership Interest as if it was a separate unit for such purposes as the Board chooses. This means, among other things, that: (a) each Owner of a Vacation Ownership Interest will be liable only for assessments charged to the Owner or to his or her Vacation Ownership Interest; (b) Owners of other Vacation Ownership Interests in the same Unit will be liable only for assessments charged to their Vacation Ownership Interest and they will not be jointly and severally liable for assessments charged to the Owners of other Vacation Ownership Interests in the same Unit; (c) co-Owners of a single Vacation Ownership Interest will be jointly and severally liable for all assessments charged to their Vacation Ownership Interest; (d) the Association will have a lien on each Owner's Vacation Ownership Interest for the amount of any assessments charged to that Owner's Vacation Ownership Interest, but the lien on one Vacation Ownership Interest will be separate from the lien on any other Vacation Ownership Interest in the same Unit; (e) the Association may foreclose its lien on one Owner's Vacation Ownership Interest without foreclosing its lien on any other Vacation Ownership Interest in the same Unit; (f) the Association may file a lawsuit against the Owner of one Vacation Ownership Interest without filing a lawsuit against the Owners of any other Vacation Ownership Interest in that same Unit; and (g) the Association may file a notice of lien on one Vacation Ownership Interest without filing a notice of lien on any other Vacation Ownership Interest in that same Unit.

6.11 Collection from Tenants and Agents. If an Owner shall default in the payment of any assessment for a period longer than thirty (30) days, the Board may, at its option, so long as such default shall continue and subject to the requirements of HRS §514B-145, demand and receive from any tenant of the Owner occupying that Owner's Unit, the rent as it becomes due or the net amounts

due to the Owner under any contract between the Owners and a rental agent up to an amount sufficient to pay all sums due from the Owner, including interest and costs of enforcement, if any. Any such payment to the Board by a tenant or rental agent shall be a full and sufficient discharge of the tenant or agent as between the tenant or agent and the Owner to the extent of the amount so paid. No such demand or acceptance of rent from any tenant or agent shall be deemed to be an approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner remaining unpaid or unperformed or an acknowledgment of surrender of any rights or duties hereunder. Neither the tenant nor the rental agent shall have the right to question the right of the Board to make such demand, but shall be obligated to make such payments to the Board as demanded. The Board may not exercise this right if a receiver has been appointed to take charge of a Unit or if a Mortgagee is in possession pending a mortgage foreclosure.

#### 6.12 Disputed Assessments; Notices; Dispute Resolution.

(a) No Owner shall withhold any assessment claimed by the Association. An Owner who disputes the amount of an assessment may request a written statement clearly indicating:

(i) The amount of Common Expenses included in the assessment, including the due date of each amount claimed;

(ii) The amount of any penalty, late fee, lien filing fee, and any other charges included in the assessment;

(iii) The amount of attorneys' fees and costs, if any, included in the assessment;

(iv) That under Hawaii law, the Owner has no right to withhold assessments for any reason;

(v) That the Owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of the Association's assessment, provided that the Owner immediately pays the assessment in full and keeps assessments current; and

(vi) That payment in full of the assessment does not prevent the Owner from contesting the assessment or receiving a refund of amounts not owed.

(b) An Owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the Owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Part VII of the Act; provided that an Owner may only file for arbitration if all amounts claimed by the Association have been paid in full on or before the date of filing. If the Owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the Owner pays all Association assessments within thirty (30) days of the date of suspension, the Owner may ask the arbitrator to recommence the arbitration proceedings. If the Owner fails to pay all Association assessments by the end of the thirty (30)-day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The Owner shall be entitled to a refund of any amounts paid to the Association which are not owed.

6.13 Liability for Unpaid Assessments Upon Sale. In the event of voluntary conveyance of a Unit, the purchaser or other grantee shall be jointly and severally liable with the Owner or other

grantor for all unpaid assessments for Common Expenses assessed against the Owner or other grantor up to the time of the conveyance; provided, however, that the Owner or other grantor or the purchaser or other grantee may obtain a certificate as provided in **Section 6.14** below, and, except as to the amount of subsequently dishonored checks mentioned in such certificate as having been received within the thirty (30) day period immediately preceding the date of such certificate, the grantee shall not be liable for, nor shall the Unit conveyed be subject to, any lien for any unpaid assessments against the Owner or other grantor in excess of the amount set forth in the certificate.

6.14 Certificate of Unpaid Assessments. Any Owner (and his or her Mortgagee or any purchaser of an interest in his or her Unit) shall be entitled to a certificate from the Board, either directly or through the Managing Agent or resident manager, setting forth the amount of any due and unpaid assessments with respect to the Owner's Unit or setting forth that all assessments due are paid, if such is the case, within fifteen (15) days after written request and upon payment of a reasonable fee. If any claim of lien is Recorded and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, including accrued interest and costs of enforcement, then upon demand of the Owner or the Owner's successor, and the payment of a reasonable fee, the Board, acting by any two members, shall execute, acknowledge and deliver a release of lien in Recordable form. A certificate regarding unpaid assessments executed and acknowledged or made under penalty of perjury by any two (2) members of the Board or the Managing Agent or resident manager shall be conclusive upon the Board and the Association in favor of any and all Persons who rely thereon in good faith as to the matters therein contained, except as to the amount of subsequently dishonored checks mentioned in such certificate as having been received within the thirty (30) day period immediately preceding the date of such certificate.

6.15 Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the Owner hereunder, or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver or a relinquishment for the future of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by an Owner with or without knowledge by the Board of the breach of any covenant hereof shall not be deemed a waiver of such breach.

6.16 Late Fees. The Association may deduct and apply portions of Common Expenses payments received from an Owner to unpaid late fees, legal fees, fines and interest only if the Board adopts and distributes a policy in accordance with Section 514B –105(c) of the Act.

## **7. MAINTENANCE AND USE**

7.1 Maintenance and Repair of Units and Limited Common Elements. Each Owner or such Owner's authorized agent shall at his or her own expense at all times keep the Owner's Unit, the appurtenant Limited Common Elements and all fixtures and equipment installed in the Owner's Unit in good order, repair, and condition and shall do such repainting and redecorating as may be necessary to maintain the good appearance and condition of the Owner's Unit. Each Owner or such Owner's authorized agent shall be responsible for the maintenance, repair, and replacement of all plumbing and lighting fixtures, windows, water heating, cooling or heating equipment, and appliances and similar equipment installed in the Owner's Unit and not part of the Common Elements. Notwithstanding the foregoing, the Association may clean the exterior of the Units, including, without limitation, the windows of the Units and any lanai, and charge the costs thereof as a Common Expense or as a special assessment against the Owner, as may be deemed appropriate by the Board. Each Owner shall perform promptly all repair and maintenance work, the omission of which would adversely affect any Common Elements or any other Unit. To the extent a

Maintenance Manual is provided to an Owner, the Owner shall perform the inspections recommended in the Maintenance Manual. Each Owner shall further be responsible for the care and maintenance of the Owner's Unit as provided in the Declaration and Project Rules. However, no Owner may paint or otherwise decorate the Owner's lanai except as provided in the Declaration and in the Project Rules. It is intended that the exterior of the building shall present a uniform appearance and that the Project will be maintained and operated in accordance with the Resort Quality Standard. To that end, the Board alone may arrange for painting or repair of the lanais, lanai ceilings, patios, outside doors, windows, trim, walls, railings and other exterior parts of any buildings, even if they are limited common elements or part of the Units. The Board may also choose the type and color of paint to be used and the Board may assess each Owner for his or her proportionate share of the painting and repairs or the Board may use reserve funds for such exterior maintenance.

Notwithstanding the foregoing, the cost of painting and repairs due to negligence, misuse or neglect of an Owner or other occupant may be charged to the applicable Owner as a special assessment. No awnings, shades, jalousies or other device, nor any lanai enclosure, shall be erected or placed on the lanais so as to be visible from the exterior without prior written permission from the Board or in accordance with the Project Rules, if applicable provisions are stated therein. Every Unit Owner and occupant must (a) reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings, and equipment owned by the Association caused by that Owner or occupant or by any person using the Project with their permission (except for normal wear and tear), and (b) give to the Managing Agent notice of any such loss or damage or other defect in the Project promptly after discovering it. The provisions of this section do not apply to the Limited Common Elements of the Commercial Units, to the extent that the Owner of such Unit elects to maintain the exterior of those elements itself.

**7.2 Maintenance and Repair of Common Elements.** Except as provided otherwise in the Declaration or these Bylaws, all maintenance, repairs, and replacements of the Common Elements shall be made in accordance with the Resort Quality Standard only by or at the direction of the Board of Directors and be charged to all the Owners as a Common Expense, except: (i) the costs of maintenance, repairs, and replacements necessitated by the negligence, misuse, or neglect of an identified Unit Owner shall be charged to such Unit Owner as a special assessment, and (ii) all costs of maintenance, repair, replacement, additions, and Improvements to any Limited Common Element shall be charged as a special assessment to the Owner(s) of the Unit or Units to which such Limited Common Element is appurtenant. To the extent a Maintenance Manual is provided to the Association, the Association shall perform the inspections recommended in the Maintenance Manual and, as a result of these inspections, perform all necessary maintenance when recommended. The Association waives any claim against and shall indemnify the Developer and any of its agents and the contractor if the recommended maintenance is not performed by the Association. Except as otherwise provided in these Bylaws or in the Declaration, all maintenance, repairs and replacements of Limited Common Elements appurtenant to the Commercial Units, whether located inside or outside the Unit, will be made by or at the direction of the Owner of the Commercial Units.

**7.3 Use of Project.**

(a) All Units shall be used only for such purposes as provided in the Declaration.

(b) No fires, including barbecue fires, shall be allowed in any part of any Unit or the Common Elements, provided that barbecuing shall be permitted to the extent permitted by the County fire code (i) on lanais not located under another Unit or lanai and (ii) in such portions of the Common Elements as the Board may designate from time to time by resolution or in the Project

Rules. Barbecuing shall include, but shall not be limited to, the broiling of any food items over a charcoal fire, gas grill, or electrical grill.

(c) Every Owner and occupant shall at all times keep his or her Unit in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules, and regulations now or hereafter made by any governmental authority or the Association which are applicable to the Project.

(d) All Owners and occupants shall exercise care so as not to make excess noise or vibration especially in the use of musical instruments, radios, televisions, and other devices with sound amplification that may disturb other occupants.

(e) Pets.

(i) No livestock, poultry, or other animals whatsoever shall be allowed to kept in any part of the Project, except that dogs, cats, or other typical household pets ("**pet**"), such as a guinea pig, a rabbit, fishes, or birds may be kept by occupants in their respective units subject to the conditions and restrictions contained herein, but shall not be kept, bred, or used therein for any commercial purpose.

(ii) Except for fish, no more than one (1) pet shall be allowed per unit.

(iii) No pet may exceed twenty-five (25) lbs. in weight. No infant or juvenile pet of a type or breed which, when fully grown, is likely to exceed twenty-five (25) lbs. in weight, may be kept in the Project.

(iv) No animal described as a pest under H.R.S. § 150A-2 or prohibited from importation under H.R.S. § 141.2, §150A-5, or § 150A-6, may be kept in the Project.

(v) Notwithstanding any provision to the contrary contained herein, specially trained animals shall be permitted at the Project subject to the following restrictions:

(A) Such specially trained animals shall not be kept, bred, or used at the Project for any commercial purpose;

(B) Such specially trained animals shall be permitted on the common elements (including but not limited to the recreation areas) provided the specially trained animal is on a leash.

For purposes of this section, "specially trained animals" means certified guide dogs, signal dogs, service animals and other animals specially trained to assist handicapped people.

(vi) Except when in transit, pets (other than specially trained animals) shall not be allowed on any common area. Any pet (other than a specially trained animal) in transit through the common areas must be carried whenever practicable or on a leash which keeps the pet within three feet (3') of its handler's feet. Pets shall not be allowed to come into contact with persons other than the handlers thereof, except as permitted by such other persons. Any animal being or causing a nuisance or an unreasonable disturbance to any other occupant of the Project may be permanently removed therefrom promptly upon notice given by the Board or Managing Agent. Owners shall be responsible for the immediate and proper disposal of all fecal matter of their pets.

(f) No Owner or occupant shall make or suffer any strip of waste or unlawful, improper, or offensive use of his or her Unit, any Limited Common Element appurtenant thereto or any other part of the Project, nor shall any Owner or occupant alter or remove any furniture, furnishings, or equipment from the Common Elements.

(g) The Owner or occupant of any Unit shall not, without the prior written consent of the Board or in accordance with the Project Rules, if applicable provisions are stated therein, display any sign or place any other thing in or upon any door, window, wall, or other portion of a Unit or the Common Elements so as to be visible from the outside.

(h) No garments, rugs, or other objects shall be hung from the windows, lanais, or facades of any Unit or other part of the Project. No rugs or other objects shall be dusted or shaken from the windows or lanais of any Unit or other part of the Project or cleaned by beating or sweeping onto any exterior part of the Project. No refuse, garbage, or trash of any kind shall be thrown, placed, or kept on any Common Elements of the Project outside of the disposal facilities provided for such purposes.

(i) No Owner or occupant shall, without the written approval of the Board or in accordance with the Project Rules, if applicable provisions are stated therein, install any wiring for electrical installations, television antenna, machines or air conditioning units, or other equipment or appurtenances whatsoever on the exterior of any Unit or protruding through the walls, windows, or roof thereof.

(j) No Owner or occupant shall place, store, or maintain in the landings, stairways, walkways, sidewalks, parking areas, driveways, roads, grounds, or other Common Elements of similar nature any furniture, packages, or objects of any kind or otherwise obstruct transit through such Common Elements.

(k) No Owner or occupant shall permit any Person who has not obtained the age of majority and who is residing or visiting with him or her to loiter or play in any common areas of the Project that the Board may designate as a non-play area.

(l) Draperies and other window treatments visible from the exterior of the Lodging Units shall be permitted only in accordance with the Project Rules.

(m) No awnings, shades, jalousies or other device shall be erected or placed on or projecting from the exterior of any Unit, or the exterior Limited Common Elements, so as to be visible from the outside without prior written permission from the Board or unless specifically permitted in accordance with the Project Rules. The Owners of the Commercial Units are excluded from this prohibition with respect to the Commercial Units and the Limited Common Elements appurtenant thereto.

## **8. RESTORATION**

8.1 Determination to Reconstruct or Repair. If a building in the Project is damaged by fire or other casualty which is insured against, the Board of Directors shall, to the extent permitted by law, contract to repair the damage and restore the building, including any Units and Common Elements. Where the Declaration permits Owners to decide not to repair and restore the damaged property, the Board of Directors shall immediately contract to repair and restore the damaged Units and Common Elements unless the specified percentage of Owners decide within ninety (90) days after the casualty or condemnation occurs. All costs of repair and restoration of the Units and the Common Elements shall be paid from the proceeds of insurance, and if the casualty is uninsured or

the insurance proceeds are insufficient for the restoration, the deficiency shall be paid out of the Replacement Reserve Fund; provided, however, that the Unit Owners shall be solely responsible for such deficiency as it related to the restoration of their respective Unit. If the reserve fund is inadequate, the Board of Directors shall levy a special assessment on the appropriate Owners in accordance with the Common Interest appurtenant to their Units.

8.2 Notice to Owners. As promptly as possible after any casualty that requires the Owners to decide whether to repair and restore any damage or destruction, the Board of Directors shall notify all Owners of the nature and extent of the damage, the estimated cost to repair or restore, the amount of insurance proceeds, and the estimated amount of assessments required to pay the excess of the cost of reconstruction or repair over the amount of insurance proceeds, and any other information deemed relevant by the Board of Directors. Notice shall also be given of a meeting of Owners to decide the question of restoration. An Owner's approval or disapproval may be expressed by vote or in writing filed with the Association at or prior to the meeting. The expense of such determination shall be a Common Expense.

8.3 Plans and Specifications. Any reconstruction or repair shall be substantially in accordance with the plans and specifications for the Improvements existing immediately prior to the casualty, and if restoration to such design is not permissible under applicable laws and regulations then in force, then such reconstruction or repair shall be in accordance with such modified plans and specifications as shall be previously approved by the Board of Directors and any Mortgagee of record of any interest in the Unit. If one or more Units are eliminated from the Project, the Common Interests and other rights of the Owners of Units in the modified Project shall be adjusted in an amendment of the Declaration, provided that the Common Interest of any Owner shall not be altered without the Owner's consent. The Owner of any eliminated Unit shall be discharged from all obligations under the Project Documents upon the amendment of the Declaration. Alternatively, if the Declaration is not amended so as to discharge the Owners of eliminated Units of all such obligations and to adjust equitably the Common Interest appurtenant to those Units not eliminated, the Owner of any eliminated Unit may convey the Owner's interest to the Board of Directors for the benefit of all other Owners and thereby be discharged from all such obligations under the Project Documents.

8.4 Construction Contract. The Board shall contract to repair or rebuild the damaged portions of the Project, including all Units so damaged as well as the Common Elements, in accordance with the approved plans and specifications. If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of the Owner, then the Owner shall be responsible for reconstruction and repair after casualty.

8.5 Disbursement of Funds. The funds for payment of costs of repair and restoration, which shall consist of proceeds of insurance and funds collected by the Association from assessments against Owners, shall be disbursed in the following manner:

(a) In the event a decision is made not to repair or rebuild all or any lesser number of the damaged or destroyed Units, the Association, which shall hold insurance proceeds in trust for Unit Owners and Mortgagees, as their interests may appear, shall pay to the Owner and any Mortgagee of each Unit eliminated, as their interests may appear, the portion of the insurance proceeds allocable to their respective Unit, less the proportionate share of the cost of debris removal. The Owner of any eliminated Unit may, in addition to the Owner's allocable share of insurance proceeds, receive such reimbursement as the Board deems appropriate. The remaining insurance proceeds shall be paid by the Association, holding insurance proceeds in trust for Unit Owners and Mortgagees, to the contractor employed for such work in accordance with the terms of

the construction contract and the terms of this **Section 8.5**. When such funds are exhausted, the Association, or if an Owner shall be responsible for costs in excess of insurance proceeds, then that Owner, shall disburse the funds to the contractor.

(b) The cost of the work (as estimated by the Board) shall be paid out from time to time or at the direction of the Board as the work progresses, but subject to the following conditions:

(i) An architect or engineer (who may be an employee of the Board) shall be in charge of the work when the cost of repairs is in excess of \$10,000.00.

(ii) Each request for payment shall be made seven (7) days prior notice to the Association and shall be accompanied by a certificate to be made by such architect or engineer (if one is required hereunder) stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is required to reimburse the Board for payments by the Board to, or is due to, the contractor, subcontractors, materialmen, laborers, engineers, architects, or other Persons rendering service or materials for the work (giving a brief description of such services and materials), and that, when added to all sums previously paid out by the Association, the sum requested does not exceed the value of the work done to the date of the certificate.

(iii) Each request shall be accompanied by waivers of liens satisfactory to the Association covering that part of the work for which payment or reimbursement is being requested and by a search of title prepared by a licensed abstractor or other evidence satisfactory to the Association showing that no mechanics' or materialmen's or other lien or instrument for the retention or encumbrance of title shall have been filed since the commencement of the reconstruction work and permitted to remain undischarged of record with respect to the Project or any part of the work.

(iv) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law for occupancy of the premises.

(v) Such other conditions not inconsistent with the foregoing as the Association may reasonably request.

(c) The first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. Upon the completion and payment in full of the work, any remaining balance in a construction fund shall be paid or credited to the Owners (or to the holder of any mortgage on a Unit) in proportion to their respective Common Interests.

(d) To the extent that any loss, damage, or destruction to the buildings or other property is covered by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage, or destruction against any Owner or lessee. To the extent that any loss, damage, or destruction to the property of any Owner or lessee is covered by insurance procured by such Owner or lessee, such Owner or lessee shall have no claim or cause of action for such loss, damage, or destruction against the Board, the Managing Agent, any other Owner, or the Association.

## 9. MORTGAGES AND MORTGAGEES

9.1 Notice to Board of Directors. An Owner who mortgages the Owner's interest in a Unit shall notify the Board of the name and address of the Owner's Mortgagee and file a conformed copy of the mortgage with the Association within ten (10) days after execution of the mortgage. The Board of Directors shall maintain such information in a book entitled "Mortgagees of Units."

9.2 Notice of Default. When giving notice to an Owner of a default in paying Common Expenses or other default in the performance of any obligation under the Project Documents or any other document of the Association, the Board of Directors shall send a copy of such notice to each holder of a Mortgage on the Owner's Unit or interest therein whose name and address has been furnished to the Board of Directors.

9.3 Examination of Books. Each holder of a Mortgage on a Unit shall be permitted to examine the books of account and records of the Association at reasonable times on business days, and each such Mortgagee shall have the right to require the submission to it of annual reports and other financial data that may be required to be submitted to an Owner.

### 9.4 Mortgage Protection.

(a) The liens in favor of the Association on any Unit and its appurtenant interest in the Common Elements shall be subject and subordinate to the rights of the holder of any indebtedness secured by any Recorded Mortgage of such Project made for value, provided that, after the foreclosure of any such Mortgage, there shall be a lien upon the interest of the purchaser at such foreclosure sale to secure all assessments, whether general or special, assessed to such Unit if falling due after the date of such foreclosure sale.

(b) All taxes, assessments, and charges that may become liens prior to the first Mortgage under the laws of the State of Hawaii shall relate only to the individual Units and not to the Project as a whole.

(c) The Declaration and these Bylaws shall not give an Owner priority over any rights of first Mortgagees of Units pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

(d) No amendment to this **Section 9** shall affect the rights of the holder of any Recorded first Mortgage who does not join in the execution thereof, if such Mortgage was Recorded prior to the Recording of such amendment.

(e) Any holder, insurer, or guarantor of a first Mortgage of a Unit whose interest appears in the record of ownership or who has otherwise delivered a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number) shall be entitled to:

(i) Prior written notice of any proposed amendment to the Declaration or these Bylaws effecting a change in (1) the boundaries of a Unit, (2) the Common Interest pertaining to the Unit, or (3) the purposes to which the Unit, the Limited Common Elements appurtenant thereto, or the Common Elements are restricted;

(ii) Prior written notice of any proposed termination of the Project;

(iii) Timely written notice of any actual or threatened condemnation or eminent domain proceeding or casualty loss affecting the Project or any portion thereof;

(iv) Timely written notice of any significant damage or destruction to the Common Elements or to a Unit on which there is a first Mortgage held, insured, or guaranteed by such holder;

(v) A copy of any bond required to be posted before commencing or permitting construction of any Improvements on or to the Project;

(vi) Timely written notice of all meetings of the Association (the holder or insurer of a first Mortgage being permitted to designate a representative to attend all such meetings);

(vii) Notice of any default by the Owner of the Unit involved which is not cured within sixty (60) days;

(viii) Upon request therefor, a certificate of any then unpaid assessments for Common Expenses due from the Owner of the Unit involved, as provided in **Section 6.14** above;

(ix) A copy of all pleadings filed in any lawsuit, administrative proceedings, or other action affecting the Project, or any portion thereof, upon specific written request and at such Person's expense;

(x) Prior written notice of any proposal to subdivide, encumber, sell, or transfer the Common Elements or any part thereof, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Project shall not be deemed a transfer within the meaning of this subsection;

(xi) Prior written notice of a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(xii) Prior written notice of any proposed action that requires the consent of a specified percentage of Mortgagees.

(f) Unless at least seventy-five percent (75%) of the Owners have given their prior written approval and the approval by the eligible holders for first Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by such eligible holders are allocated have been obtained, the Association shall not be entitled to:

(i) Change the Common Interest appurtenant to any individual Unit;

(ii) Partition or subdivide any Unit;

(iii) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Project shall not be deemed a transfer within the meaning of this subsection;

(iv) Use condemnation proceeds or hazard insurance proceeds for losses to the Project or any part thereof (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of same;

(v) Amend any provision of the Declaration or these Bylaws that materially and adversely affect Mortgagees;

(g) Unless at least eighty percent (80%) of the Owners have given their prior written approval and (i) in the event of substantial destruction or condemnation, the approval by the eligible holders for first Mortgages on Homes to which at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by such eligible holders are allocated have been obtained, or (ii) absent substantial destruction or condemnation, the approval by the eligible holders for first Mortgages on Units to which at least sixty-seven percent (67%) of the votes of Units subject to Mortgages held by such eligible holders are allocated have been obtained, the Association shall not be entitled to, by act or omission, seek to abandon or terminate the Project.

provided, however, that **Section 9.4(f) and (g)** shall not apply to any actions taken pursuant to rights expressly reserved to Developer in the Project Documents.

9.5 Right of First Refusal Not Applicable. In the event that there shall be any "right of first refusal" to purchase any Unit by the Association, any first Mortgagee who obtains title to a Unit pursuant to the remedies provided in a Mortgage or foreclosure of the Mortgage or deed in lieu of foreclosure shall be exempt from such "right of first refusal" (but such right of first refusal shall apply to any subsequent transferee of the first Mortgage).

9.6 Unpaid Common Expenses or Assessments. Any first Mortgagee who obtains title to a Unit pursuant to the remedies provided in a Mortgage or foreclosure of the Mortgage shall be liable for such Unit's unpaid Common Expenses and assessments that accrue prior to the acquisition of title to such Unit by the Mortgagee to the extent required by Section 514B-146 of the Act. Mortgagee shall be liable for any fees or costs related to the collection of unpaid dues if the Association's lien priority includes costs of collecting unpaid dues. Notwithstanding the foregoing, the unpaid share of Common Expenses or assessments shall be deemed to be collectible from all of the Owners as a Common Expense of the Association, including an acquirer of such Unit and his or her successors and assigns.

9.7 Release of Information. The Board may provide any information available to it pertaining to a Unit or the Project to the first Mortgagee of a Unit and such Mortgagee may provide any information to the Board regarding the mortgagor, the mortgagor's loan, and the status of such loan.

9.8 Eligible Holders. As used in these Bylaws, an "eligible holder, insurer, or guarantor" shall mean a holder, insurer, or governmental guarantor of a first Mortgage on a Unit that has requested notice in accordance with **Section 9.4** of these Bylaws.

## 10. GENERAL AND MISCELLANEOUS PROVISIONS

10.1 Project Rules. Developer may initially establish and the Board may thereafter adopt, amend, or repeal Project Rules as the Board may deem necessary to govern the conduct, use, and operation of the Project, including, without limitation, the Lodging Units, the Commercial Units, Common Elements, and Limited Common Elements. Each Owner agrees that the Owner's rights under this instrument shall be in all respects subject to the Project Rules. Each Owner agrees to obey the Project Rules as the same may be promulgated from time to time and shall see that the

Project Rules are faithfully observed by the Owner's Invitees, guests, employees, and tenants. The Project Rules shall uniformly apply to and be binding upon all occupants of the Units and may not be amended without the affirmative vote of at least 67% of the Owners of Units.

## 10.2 Amendment of Bylaws.

(a) Vote or Consent Requirements. Except as otherwise expressly provided in the Declaration, these Bylaws, or in the Act, these 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, provided that each of the particulars set forth in Section 514B-108 of the Act shall always be embodied in the Bylaws, and provided further that an amendment to the provisions of these Bylaws that are for the express benefit of holders or insurers of first Mortgages on Units shall require the approval of eligible holders of first Mortgages on Units to which there are allocated at least fifty-one percent (51%) of the votes allocated to all Units subject to first Mortgages held by such eligible holders, together with the vote of not less than sixty-seven percent (67%) of the Owners, and provided further that an amendment to the provisions of these Bylaws that are for the express benefit of Developer shall also require the express written consent and joinder of Developer, together with such other approval requirements as set forth in this **Section 10.2(a).**

(b) Proposed Amendments. Proposed amendments to these Bylaws with the rationale for the proposal may be submitted to the Owners either by the Board of Directors or by a volunteer Owner's group. If a volunteer Owner's group desires to submit a proposal to the Owners, it shall first submit the proposal to the Board of Directors with the rationale for the proposal and a petition supporting the proposed Bylaws signed by not less than twenty-five percent (25%) of the Owners. Within thirty (30) days from the receipt of the proposal, the rationale, and the petition by the Board, the Board shall mail to the Owners for approval without change the proposed amendments to these Bylaws, the rationale for the proposal, ballots for voting, and the Board's comments, if any, concerning the proposal. No amendment proposed by the Board or the volunteer Owner's group shall be valid unless the required percentage of votes or consents for such amendment are obtained within three hundred sixty-five (365) days of the mailing to Owners, or in such shorter time as is specified in the mailing.

(c) Adoption of Committee's Proposal. If the Board fails to mail the proposed amendments to these Bylaws, rationale, and ballots for voting to the Owners within thirty (30) days of the receipt of the petition by the Board, then the Owner's committee may mail such items to the Owners, and the vote thus taken will be valid, provided the Owner's committee has complied with all other applicable rules on voting for Bylaws amendments. The results of such vote shall be presented to the officers of the Association who shall promptly execute such documents as shall be necessary to permit the amendments to be Recorded.

(d) When Amendments Are Effective. An amendment to the Bylaws shall be effective only upon the Recording of such amendment.

10.3 Abatement and Enjoinment of Violations by Unit Owners. The violation of any Project Rules adopted by the Board, the breach of any requirements of the Architectural Guidelines, the breach of any of these Bylaws, or the breach of any provision of the Declaration shall give the Board the right, in addition to any other right set forth in the Declaration or these Bylaws:

(a) To enter the Unit and/or Limited Common Elements appurtenant thereto, in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the appropriate Owner, any structure, thing, or condition that may exist therein which is

contrary to the intent and meaning of the Project Documents, and the Board shall not be deemed guilty in any manner of trespass; or

(b) To enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs, including attorneys' fees, shall be paid by the appropriate Owner upon demand.

10.4 Penalties for Violations. The violation by any Owner of any of the covenants, conditions, and restrictions set forth in the Declaration, these Bylaws, the Project Rules, or the Architectural Guidelines shall give the Board the right, in addition to other rights set forth in the Declaration, these Bylaws, or the Project Rules, to assess a reasonable fine against such Owner; provided that if any such violation continues for a period of ten (10) days after notice of violation has been given to such Owner, such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties. The unpaid amount of such fines against any Owner shall constitute a lien against such Owner's interest in such Owner's Unit that may be foreclosed by the Board or the Managing Agent in the same manner as provided in the Declaration, these Bylaws, or the Act for unpaid Common Expenses. No penalty may be imposed under this **Section 10.4** until the Owner accused of any such violation has been afforded the right to have a hearing before the Board or a committee designated by the Board to conduct such hearing or has waived such right in writing. Each such Owner shall have the right to be heard in person, by submission of a written statement, or through a spokesperson, at any such hearing.

#### 10.5 Litigation.

(a) It is specifically intended that all disputes or controversies as described in Section R of the Declaration, except those described in **Sections 5.1(r)** and **6.9** of these Bylaws be resolved by alternative dispute resolution methodologies. The Board, absent an affirmative vote or written consent of not less than seventy-five percent (75%) of the Owners, shall not commence any litigation (except as specifically permitted pursuant to **Sections 5.1(r)** and **6.9** of these Bylaws. In advance of the limitation of arbitration permitted pursuant to Section W.2 of the Declaration, the Board shall first engage in non-binding mediation in an effort to resolve any dispute or controversy which is the subject of Section W.2 of the Declaration. State law may limit when and how an Owner and/or Association may make a claim against a contractor.

(b) Before making an arbitration claim for defective construction against the contractor who designed, repaired or constructed your unit, the Owner and/or Association must serve on the contractor a written notice of any alleged construction defect ninety (90) days before making an arbitration claim. The contractor has the opportunity to make an offer to repair and/or pay for the alleged defects. An Owner and/or Association are not obligated to accept any offer made by the contractor. There are strict deadlines and procedures under the law and failure to follow them may negatively affect your ability to make an arbitration claim.

10.6 Attorneys' Fees and Expenses of Enforcement. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

- (a) Collecting any delinquent assessments from any Unit Owners;
- (b) Asserting and/or foreclosing any lien thereon; and
- (c) Enforcing any provision of the Declaration, these Bylaws, the Project Rules or the Architectural Guidelines, the Act or the rules and regulations of the Commission;

against a Unit Owner, such Unit Owner's employees, tenants, guests, or invitees, shall be promptly paid on demand by such Unit Owner to the Association, provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by such Unit Owner as a result of the action of the Association shall be promptly paid on demand to such Unit Owner by the Association.

10.7 Attorneys' Fees and Expenses of Owner. If any claim by an Owner is substantiated in any action against the Association, any of its officers or the Board to enforce any provision of the Declaration, these Bylaws, the Project Rules or the Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such Owner shall be awarded to such Owner; provided that no such award shall be made in any derivative action unless:

(a) The Owner first shall have demanded and allowed reasonable time for the Board to pursue such enforcement; or

(b) The Owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board would have been fruitless.

10.8 Manner of Giving Notices. All notices permitted or required to be given under these Bylaws, the Declaration, or the Act must be in writing and may be delivered either personally or by mail. All notices mailed to Owners shall be sent by registered, certified, or first class mail, or, at the option of the Owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the Owner, in each case to the Owner or Owners at the address furnished in writing from time to time to the Association, or, if no address has been furnished, to the Unit. All notices to the Board may be personally delivered to a director or may be sent by registered or certified mail or facsimile transmission to the office of the Managing Agent or to such other address as the Board may hereafter designate from time to time by notice in writing to all Owners and Mortgagees of Units. All notices to Mortgagees of Units shall be sent by registered, certified, or first class mail to their respective addresses, as designated by them from time to time in writing, to the Board. All notices given by mail shall be deemed to have been given seventy-two (72) hours after being deposited in the United States mail, postage prepaid, except notices of changes of address which shall be deemed to have been given when received.

10.9 Owners May Incorporate. All of the rights, powers, obligations, and duties of the Association imposed hereunder may be exercised and enforced by a nonprofit membership corporation, formed under applicable laws for the purposes herein set forth. Such a corporation shall be formed upon the approval of at least seventy-five percent (75%) of the Owners. The formation of the corporation shall in no way alter the terms, covenants, and conditions set forth herein, and the Articles and Bylaws of the corporation shall be subordinated hereto and controlled hereby. Any action taken by said corporation which is in violation of any or all of the terms, covenants, or conditions contained herein shall be void and of no effect.

10.10 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these Bylaws, or the intent of any provisions hereof.

10.11 Gender. The use of a pronoun of any gender in these Bylaws shall be deemed to include the other gender and the use of the singular shall be deemed to include the plural whenever the context requires.

10.12 Waiver. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

10.13 Interpretation. The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform condominium complex whereby the Owners shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

10.14 Severability. The provisions of these Bylaws shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

10.15 Incorporation of Exhibit. Exhibit "A" attached to these Bylaws is incorporated into these Bylaws by this reference.

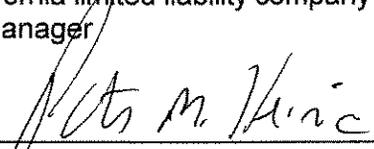
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CERTIFICATE OF ADOPTION

The undersigned Developer and Owner of all Units in the Project hereby adopts the foregoing as the Bylaws of the Association of Unit Owners of Sea Ranch Cottages at Hana-Maui as of October 3, 2006.

**OHANA HOTEL COMPANY LLC**  
a Delaware limited liability company

By: Passport Resorts LLC,  
a California limited liability company  
Its: Manager

By:   
Peter M. Heinemann  
Its: Manager

**"Developer"**

STATE OF California )  
COUNTY OF San Francisco ) SS.

On this 3<sup>rd</sup> day of Oct., 2006, before me personally appeared PETER M. HEINEMANN, to me personally known, who, being by me duly sworn, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Jeannette L. Alexich  
Notary Public in and for said State and County  
Type or print name: Jeannette L. Alexich

My commission expires: July 15, 2010

**EXHIBIT "A"**

All of that certain parcel of land (portions of the land described in and covered by Royal Patent Number 1958, Part 1, Land Commission Award No. 387, Part 5, Section 3 to the American Board of Commissioners for Foreign Missions; Land Patent Grant Number 7005 to the Board of the Hawaiian Evangelical Association, Trustee for the Wananalua Congregational Church (a Hawaiian corporation); Royal Patent Grant Number 650 to Maui; and Royal Patent Grant Number 634 Apana 1 to Gerrit P. Judd) situate, lying and being on the south side of Hauoli Road and the south end of Uakea Road at Wananalua, Oloewa, Paauhau, Hana, Island and County of Maui, State of Hawaii, being Lot 1-B of the "Hana Ranch Subdivision No. 5", and thus bounded and described as per survey of Warren A. Suzuki, Registered Professional Land Surveyor, to-wit:

Beginning at a 1/2 inch pipe, found and adopted, at the northwest corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI", being 606.26 feet south and 1,500.32 feet west and running by azimuths measured clockwise from true south:

1.     257°   54'                 331.02   feet along the south side of Hauoli Road to a pipe;
2.     Thence along the remainder of R. P. 1958, Part 1, L. C. Aw. 387, Part 5, Section 3 to A.B.C.F.M. on a curve to the right having a radius of 20.00 feet, the chord azimuth and distance being: 302° 22' 28.02 feet to a pipe;
3.     346°   50'                 141.41   feet along the remainder of R. P. 1958, Part 1, L. C. Aw. 387, Part 5, Section 3 to A.B.C.F.M. and along Grant 650 to Maui to a pipe;
4.     262°   06'                 17.33   feet along Grant 650 to Maui to a pipe;
5.     307°   06'                 14.14   feet along same to a pipe;
6.     352°   06'                 130.96   feet along same to a 2" pipe, found and adopted;
7.     260°   36'                 317.02   feet along Grant 650 to Maui and the south end of Uakea Road and along the remainder of Grant 634:1 to Gerrit P. Judd to a pipe;
8.     269°   20'                 317.00   feet along the remainder of Grant 634:1 to Gerrit P. Judd to a pipe;
9.     340°   00'                 40.79   feet along same to a pipe;
10.    35°    46'                 834.43   feet along same to a pipe;
11.    Thence along same on a curve to the right having a radius of 700.00 feet, the chord azimuth and distance being: 127° 47' 19" 655.96 feet to a pipe;
12.    174°   20'                 344.33   feet along the remainders of Grant 634:1 to Gerrit P. Judd, and Grant 7005 to a pipe;

13. 167° 36' 137.72 feet along the remainder of R. P. 1958, Part 1, L. C. Aw. 387, Part 5, Section 3 to A.B.C.F.M. to the point of beginning and containing an area of 12.750 acres, more or less.

Together with a 15-foot wide access and utility Easement "A" over and across a portion of Lot 1-A of Hana Ranch Subdivision No. 5 and being more particularly described as follows:

Beginning at a point on the northeast corner of this easement, the azimuth and distance from the point of beginning for Course 12 of the above described lot being 331° 45' 40" 96.86 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI", being 1,168.74 feet south and 1,390.91 feet west and running by azimuths measured clockwise from true south:

1. Along Lot 1-S of Hana Ranch Subdivision No. 5 on a curve to the left having a radius of 700.00 feet, the chord azimuth and distance being: 327° 09' 43" 15.44 feet;
  2. 43° 30' 405.89 feet over and across a portion of Lot 1-A of Hana Ranch Subdivision No. 5;
  3. 87° 15' 49.21 feet over and across same;
  4. 172° 24' 49" 15.06 feet along the east side of Hana Highway;
  5. 267° 15' 44.46 feet over and across a portion of Lot 1-A of Hana Ranch Subdivision No. 5;
  6. 223° 30' 403.51 feet over and across same to the point of beginning and containing an area of 6,775 square feet, more or less.
1. Together with a non-exclusive right to use the license area for the sole purposes of allowing hotel guests and licensee's employees to mount and dismount from horses, all in conjunction with licensee's guided horseback riding tours for the hotel guests, etc., as granted by Horseback Riding Staging Area License Agreement, recorded January 12, 2001 as Document No. 2001-005198.
  2. Together also with a non-exclusive right to use the license area for the sole purpose of grazing horses, etc., as granted by Mauka Horse Grazing License Agreement, recorded January 12, 2001 as Document No. 2001-005199.
  3. Together also with a nonexclusive right to use the license area for the sole purpose of grazing horses, etc., as granted by Makai Horse Grazing License Agreement, recorded January 12, 2001 as Document No. 2001-005200.

The above makai horse grazing license agreement was amended by Amended and Restated Makai Horse Grazing, Recreational and Access Easement and License Agreement recorded July 24, 2002 as Document No. 2002-128434.

4. Together also with a non-exclusive easement to use the easement area for the sole purpose of conducting guided horseback tours for hotel guests, etc., as granted by Makai Horseback Riding Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005201.

The above Makai Horseback Riding Trail Easement Agreement was amended by Amended and Restated Makai Horseback Riding Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128436.

5. Together also with a non-exclusive easement to use the easement area for the sole purpose of conducting guided horseback tours for hotel guests, etc., as granted by Makai Horseback Riding Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005202.

The above Makai Horseback Riding Trail Easement Agreement was amended by Amended and Restated Makai Horseback Riding Trail and Hiking Easement Agreement recorded July 24, 2002 as Document No. 2002-128437.

6. Together also with a non-exclusive easement to use the easement area for the sole purpose of conducting guided horseback tours for hotel guests, etc., as granted by Makai Horseback Riding Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005203.

The above Makai Horseback Riding Trail Easement Agreement was amended by Amended and Restated Makai Horseback Riding Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128435.

7. Together also with a non-exclusive easement to use the easement area for the sole purpose of conducting guided horseback tours for hotel guests, etc., as granted, by Mauka Horseback Riding Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005204.

The above Mauka Horseback Riding Trail Easement Agreement was amended by Amended and Restated Mauka Horseback Riding Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128438.

8. Together with a non-exclusive easement to use the easement area for the sole purpose of allowing hotel guests to walk and jog thereon, as granted by Jogging Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005205.

The above Jogging Trail Easement Agreement was amended by Amended and Restated Jogging Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128440.

9. Together with a non-exclusive easement to use the easement area for the sole purpose of allowing hotel guests to walk and jog thereon, as granted by Jogging Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005206.

The above Jogging Trail Easement Agreement was amended by Amended and Restated Jogging Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128441.

10. Together with a non-exclusive easement to use the easement area for the sole purpose of allowing hotel guests to walk and jog thereon, as granted by Jogging Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005207.  
  
The above Jogging Trail Easement Agreement was amended by Amended and Restated Jogging Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128442.
11. Together with a non-exclusive easement to use the easement area for the sole purpose of allowing hotel guests to walk and jog thereon, as granted by Jogging Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005208.  
  
The above Jogging Trail Easement Agreement was amended by Amended and Restated Jogging Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128439.
12. Together with a non-exclusive easement to use the easement area for the sole purpose of allowing hotel guests to walk and jog thereon, as granted by Jogging Trail Easement Agreement, recorded January 12, 2001 as Document No. 2001-005209.  
  
The above Jogging Trail Easement Agreement was amended by Amended and Restated Jogging Trail Easement Agreement recorded July 24, 2002 as Document No. 2002-128443.
13. Together with a non-exclusive easement to use the easement area for the sole purpose of allowing hotel employees to walk thereon, as granted by Hotel Walkway Easement Agreement, recorded January 12, 2001 as Document No. 2001-005210.  
  
The above Hotel Walkway Easement Agreement was amended by Amended and Restated Hotel Walkway Easement Agreement recorded July 24, 2002 as Document No. 2002-128444.
14. Together with a non-exclusive easement to use the amended access easement area for the sole purpose of ingress to and egress from the amended cookout use area for the hotel guests, as granted by Lehoula Beach Easement and License Agreement, recorded January 12, 2001 as Document No. 2001-005213.  
  
The above Lehoula Beach Easement and License Agreement was amended by First Amended and Restated Lehoula Beach Easement and License Agreement recorded July 24, 2002 as Document No. 2002-128433.
15. Together also with the exclusive right to use the premises as described in said instrument, for the sole purpose of providing housing for licensee's employees, as granted by Hana Hotel/Town Center Employee Housing License Agreement, recorded January 12, 2001 as Document No. 2001-005216.
16. Together also with, and subject to the terms and provisions, including the failure to comply with any covenants, conditions, reservations and agreements contained in that certain Declaration of Restrict Uses of Land recorded July 24, 2002 as Document No. 2002-128432.
17. Together also with, and subject to the rights and provisions, including the failure to comply with any covenants, conditions, conditions, reservations and agreements contained in that certain Declaration of Parking Rights recorded January 16, 2007 as Document No. 2007-007739.

Being a portion of the premises conveyed by Meridian Financial Resources, L.L.C., a Delaware limited liability company, as Grantor, to Ohana Hotel Company LLC, a Delaware limited liability company, as Grantee, by Special Warranty Deed recorded August 15, 2001 as Document No. 2001-127566.

SUBJECT, HOWEVER, to:

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. The terms and provisions contained in the Private Water System Agreement recorded December 3, 1987 in Book 21388 Page 26.
3. The terms and provisions contained in the Private Water System Agreement recorded February 2, 1988 in Book 21597 Page 51.
4. The terms and provisions contained in the Private Water System Agreement recorded May 23, 1988 in Book 21954 Page 638.
5. Mortgage dated December 19, 2001, recorded as Document No. 2001-203115, in favor of Fremont Investment & Loan, a California industrial loan association.

The above Mortgage was amended by Memorandum of First Amendment to Mortgage and Other Loan Documents recorded July 16, 2003 as Document No. 2003-145217, recorded as Land Court Document No. 2959883.

The above Mortgage was further amended by Second Amendment to Mortgage and Other Loan Documents recorded March 17, 2005 as Document No. 2005-053099.

The above Mortgage was further amended by Additional Charge Mortgage; Third Amendment to Mortgage and Other Loan Documents recorded March 17, 2005 as Document No. 2005-053103.

The above Mortgage was assigned to Hana-Lani Capital, LLC by Assignment recorded March 17, 2005 as Document No. 2005-053100.

The above Mortgage was further assigned to Gulfstream Mortgage Capital, LLC, a Delaware limited liability company, by assignment recorded November 20, 2006 as Document No. 2006-212676.

6. Assignment of Rents and Leases recorded December 26, 2001 as Document No. 2001-203116.

The above Assignment of Rents and Leases was amended by Memorandum of First Amendment to Mortgage and Other Loan Documents recorded July 16, 2003 as Document No. 2003-145218.

The above Assignment of Rents and Leases was further amended by Memorandum of Second Amendment to Mortgage and Other Loan Documents recorded March 17, 2005 as Document No. 2005-053099.

The above Assignment of Rents and Leases was further amended by Additional Charge Mortgage; Third Amendment to Mortgage and Other Loan Documents recorded March 17, 2005 as Document No. 2005-053103.

The above Assignment of Rents and Leases was assigned to Hana-Lani Capital, LLC by Assignment recorded March 17, 2005 as Document No. 2005-053101.

The above Assignment of Rents and Leases was further assigned to Gulfstream Mortgage Capital, LLC, a Delaware limited liability company, by assignment recorded November 20, 2006 as Document No. 2006-212676.

7. Collateral Assignment of Notes and Liens recorded March 17, 2005 as Document No. 2005-053104.
8. Collateral Assignment of Notes and Liens recorded June 8, 2005 as Document No. 2005-114032.
9. Declaration of Condominium Property Regime of Sea Ranch Cottages at Hana-Maui Condominium Map No. 4381, dated October 3, 2006, recorded as Document No. 2007-024553.

**END OF EXHIBIT "A"**

**EXHIBIT T**

House Rules (Proposed)

**RULES AND REGULATIONS OF  
SEA RANCH COTTAGES AT HANA-MAUI**

I. PURPOSE

The rules set forth below, as they may be amended from time to time (collectively, these "Rules" and individually, a "Rule"), shall supplement the Declaration of Condominium Project Regime of Sea Ranch Cottages At Hana-Maui (the "Condominium Declaration") relating to the governance of Sea Ranch Cottages At Hana-Maui (the "Project") by the Association of Unit Owners of Sea Ranch Cottages At Hana-Maui (the "Association") and the use of the Project by the Owners and any other person permitted to use the Project (the "Permitted Users").

II. DEFINITIONS

As used in these Rules, all capitalized terms not defined herein shall have the meanings set forth in the Condominium Declaration.

III. GENERAL

a. These Rules are in addition to the terms, covenants, conditions, restrictions and agreements of the Condominium Declaration and the other Project Documents. In the event of any conflict between these Rules and a Project Document, such Project Document shall control.

b. The Owners, guests and Permitted Users will comply with (i) all Rules as set forth in these Rules, as they may be amended from time to time, and (ii) the Project Documents, as they may be further limited by these Rules.

c. The Association may waive any one or more Rules for the benefit of the Owners, but no such waiver by the Association shall be construed as a waiver of any other Rule in favor of such Owners nor prevent the Association from thereafter enforcing any of these Rules against the Owners or their respective guests or Permitted Users.

d. The Association reserves the right to adopt such other Rules as may from time to time be necessary or desirable for the safety and security and care and cleanliness of the Project, the preservation of good order therein, or for the governance thereof by the Association.

e. The Association may delegate any or all of its rights set forth in these Rules to the Managing Agent. The Association reserves the right to enforce and to initiate legal and/or any other proceedings permitted against any Owner for breach of any of these Rules.

f. Wherever in these Rules reference is made to the Association, such reference shall include the Managing Agent when acting on behalf of the Association and within the scope of its duties.

g. The Rules may be adopted, amended or modified pursuant to Section 10.1 of the Bylaws of the Association.

h. The Association will be responsible for keeping an updated copy of the Rules in effect from time to time and shall make available printed or electronic copies to any Owner upon request.

#### IV. RULES

The following Rules shall apply to the use of the Project or the Common Elements by the Owners, their respective guests and Permitted Users, as applicable.

1. Use and Enjoyment. The Owners, their respective guests and Permitted Users shall not interfere with or prevent the use and enjoyment of any part of the Project by an Owner, guest or any other Permitted User. It is intended that the Project is for the use of the Owners, guests and other Permitted Users and the Association shall control access thereto by all persons whose presence the Association considers, in its reasonable discretion, to be prejudicial to the safety, character, reputation and interests of the Project and the Owners, guests and Permitted Users of the Project. The Association reserves the right to exclude or expel from the Common Elements any person who, in the judgment of Association, creates a disturbance or nuisance or who shall in any manner act in violation of any of these Rules.

2. Whole-Ownership Units. An Owner of a Whole-Ownership Unit will notify the Association in advance of when such Owner will be in residence at its Whole-Ownership Unit and will check-in with the front desk of the Hotel. An Owner of a Whole-Ownership Unit may permit other persons to occupy its Unit at the same time such Unit is occupied by the Owner, or at different times, provided that the maximum allowable occupancy limit allowed by law is not exceeded. If a guest will be occupying a Whole-Ownership Unit without the Owner, the Owner will provide the Association with the name and address of such person(s) in writing prior to such occupancy and such guest(s) will check-in with the front desk of the Hotel. When checking in, an Owner of a Whole-Ownership Unit or any guest of such Owner will be required to show proof of identification, to sign a registration card and to provide a credit card imprint. Guests will comply with the Rules at all times during their presence at the Project. The Owner is responsible for all personal charges and/or damage to the Common Elements resulting from use by the Owner's guests.

3. Safety; Emergency.

a. Owners, guests and Permitted Users shall comply with all safety, security, fire protection and evacuation procedures and rules established by the Association or any governmental agency.

b. In case of an emergency, contact the Managing Agent or contact the appropriate authorities by dialing 911.

4. Parking. Owners, guests and Permitted Users will park their vehicles at such locations designated by the Association. The Association reserves the right to require Owners, guests and Permitted Users to park their vehicles with the valet parking service provided through the Hotel. The fee for valet parking, if any, will be established by the Hotel Owner from time to time. The valet parking fee, if any, is not included in any Assessment but is an incidental cost to be paid by the Owner, Guest or Permitted User, as the case may be, at the time of departure.

5. Fire; Outdoor Cooking. No fires, including barbecue fires, shall be allowed in any part of any Unit or the Common Elements. Barbecuing shall include, but shall not be limited to, the cooking of any food items over a charcoal fire, gas grill or electrical grill.

6. Certain Activities. No Owner, guest or Permitted User shall do anything within the Project, or bring or keep anything therein, which would in any way (i) increase or tend to increase the

risk of fire, (ii) result in the cancellation or the increase of the insurance or any part thereof which the Association is required to maintain pursuant to the Project Documents, (iii) conflict with any rules or ordinances established by any governmental agency, (v) materially threaten or destroy the vegetation or wildlife within the Project, (vi) result in unreasonable levels of sound or light pollution, (vii) emit foul or obnoxious odors, or (iv) causes an unclean, unhealthy, or untidy condition to exist.

7. Noise. All Owners and occupants shall exercise care so as not to make excess noise especially in the use of musical instruments, radios, televisions and other devices with sound amplification that may disturb other occupants.

8. Pets; Animals. No livestock or poultry, or animals of any kind shall be allowed or kept in any part of the Project, except for specially trained animals or animals that must be permitted on the Project pursuant to the Americans with Disabilities Act or any other law. For purposes of this section, "specially trained animals" means certified guide dogs, signal dogs, service animals and other animals specially trained to assist handicapped people. Any animal permitted to accompany an Owner pursuant to this Rule shall be kept on a leash when they are not in the Owner's Unit and any animal being or causing a nuisance or an unreasonable disturbance to any other occupant of the Project may be permanently removed therefrom promptly upon notice given by the Board or Managing Agent. Owners shall be responsible for the immediate and proper disposal of all fecal matter of their pets.

9. Waste; Common Elements. No Owner or occupant shall make or suffer any strip of waste or unlawful, improper or offensive use of his or her Unit, any Limited Common Element appurtenant thereto or any other part of the Project, nor shall any Owner or occupant alter or remove any furniture, furnishings or equipment from the Common Elements.

10. Electrical Equipment. No Owner or occupant shall, without the written approval of the Board install any wiring for electrical installations, television antenna, machines or air conditioning units, or other equipment or appurtenances whatsoever on the exterior of any Unit or protruding through the walls, windows or roof thereof.

11. Storage. No Owner or occupant shall place, store or maintain in the landings, stairways, walkways, sidewalks, parking areas, driveways, roads, grounds or other Common Elements of similar nature any furniture, packages or objects of any kind or otherwise obstruct transit through such Common Elements.

12. Landscape. Each Owner shall be responsible for the landscaping, care and maintenance of any garden areas, including Private Garden Area appurtenant to his or her Unit; provided, however, that any landscaping or other plantings within such areas shall be maintained by and at the expense of the respective Owners in neat and trim condition and shall be in accordance with the Resort Quality Standard and in substantial conformance or compatible with adjacent Common Element landscaping.

13. Utility Systems. No Owner, guest or Permitted User shall obstruct, alter or in any way impair the operation of the Project's plumbing, sprinkler, fire safety or lighting systems.

14. Business. No Owner, guest or Permitted User shall solicit business anywhere within the Project or use the Project for conducting any business or activity other than as specifically allowed by the Association; provided, however, that any retail establishments located within the Project shall be permitted to operate in such capacity.

15. Solicitation. Canvassing, soliciting, distribution of handbills or any other printed material, or peddling in on, or about the Project is prohibited, and the Owners shall cooperate and assist the

Association to prevent same; provided, however, that the distribution of printed materials in connection with the sale of Units within the Project is permitted.

16. Signage. No sign (other than signs erected in connection with the operation of the Project), advertisement, notice (other than notices of meetings of the Association) or handbill shall be exhibited, distributed, painted or affixed by any, Owner guest or Permitted User on any part of the Project, without the prior written consent of the Association, which consent may be withheld in sole and absolute discretion of the Association. In the event of the violation of the foregoing, the Association may remove same without any liability, and may charge the expense incurred in such removal to a Owner, if such expense is attributable to an Owner. No Owner, without the prior written consent of the Board, may display any sign or place any other item in or upon any door, window, wall or other portion of an Unit or the Common Elements so as to be visible from the outside.

17. Awnings, Shades. No awnings, shades, jalousies or other device shall be erected or placed on or projecting from the exterior of any Residence Unit, so as to be visible from the outside without prior written permission from the Board. The Owners of the Commercial Units are excluded from this prohibition with respect to the Commercial Units and the Limited Common Elements appurtenant thereto.

18. Trash; Debris. The Owners, guests and Permitted Users shall not deposit any trash, refuse, cigarettes, or other substances of any kind within the Project, except in the refuse containers provided therefor. No material shall be placed in the trash boxes or receptacles if such material is of such a nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage within the Project.

19. Smoking. The Association reserves the right to prohibit smoking on any part of the Project (other than within the Units) at any time. The Association further reserves the right to designate, relocate or discontinue smoking areas within the Project (other than within the Units) at any time.

20. Garments; Rugs. No garments, rugs or other objects (including towels or swimsuits) shall be hung from the railings, window ledges, lanais or any exterior portion of any Unit or other part of the Project. No rugs or other objects shall be dusted or shaken from the windows or lanais of any Unit or other part of the Project or cleaned by beating or sweeping onto any exterior part of the Project.

21. Children. Parents and guardians are responsible for the conduct of their children. Children under thirteen (13) years of age must be accompanied by an adult. Parents and guardians will be held financially responsible for disturbances or damages caused by children. Failure to pay for damages caused by such behavior may affect the Owner's use privileges.

22. Personal Charges. Each Owner is responsible for the prompt payment of any fee or other charge which may be incurred by such Owner, its guests or Permitted Users. The Association will charge a minimum fee of \$10.00 for any personal charges required to be billed to an Owner after check-out. All personal charges, including, but not limited to, extra services or damages for Guests or Permitted Users are considered the responsibility of the Owner who requested access for such Guest or Permitted User. Any unpaid personal charges payable to the Association will bear interest at the maximum rate allowed by law.

23. Amenities. Each Owner of a Whole-Ownership Unit may elect to enter into an Hotel Amenities Access and Use and Services Agreement whereby such Owner and its guests may use the Amenities and receive services provided by the Hotel subject to and in accordance with the terms and

conditions of the Hotel Amenities Access and Use and Services Agreement. Such terms and conditions may impose fees and special restrictions or limitations on use by guests of the Owner.

24. Performance of the Rules. In the event any Owner, guest or Permitted User fails to keep and perform any of the terms and conditions of these Rules, subject to an applicable notice cure period (if any), immediately upon written notice from the Association, the Association shall have the right to restore any affected part of the Project to its condition prior to such failure, and the Owner shall reimburse Association upon demand for such cost of restoration, as provided in further detail in the Project Documents. The Association may demand that the applicable Owner immediately restore to its prior condition any part of the Project affected by such persons failure to keep and perform one or more Rules. A failure by an Owner to comply with the terms and provisions of these Rules shall constitute a default under the Project Documents and the Association shall be entitled to any and all remedies which may be available to the Association.

25. Enforcement of the Rules. The Association expects all Owners, guests and Permitted Users to adhere to the requirements set forth in the Project Documents and these Rules. To assist the Association in the enforcement of the provisions of these documents, the Association has delegated enforcement authority to the Managing Agent. Any Owner, guest or Permitted User who has been advised by the Managing Agent that they are in violation of these Rules or the Project Documents will immediately cease and desist that activity.

**EXHIBIT U**

"Historic Deed"

**DOUBLE SYSTEM**

L-93 STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
RECORDED

AUG 15, 2001 08:01 AM

Doc No(s) 2729551

on Cert(s) 568.039

Issuance of Cert(s) 589.057

/s/ CARL T. WATANABE  
ASSISTANT REGISTRAR

CONVEYANCE TAX: \$10565.00

R-562

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

AUG 15, 2001 08:01 AM

Doc No(s) 2001-127566

/s/ CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

AFTER RECORDATION, RETURN BY MAIL ( ) PICKUP ( ) Total No. of Pages: 26

MR PAUL MANCINI  
MANCINI RONLAND & WELCH  
33 LONO AVE  
STE 470  
KAHULUI, HI 96732

TOCH 303569-3  
TOES AL-101-1576  
BARBARA PAULO

26-3

(Tax Map Key Nos. (2) 1-4-003-054; (2) 1-4-003-056; (2) 1-4-003-057;  
(2) 1-4-003-058; (2) 1-4-004-022; and (2) 1-4-010-001)

**SPECIAL WARRANTY DEED**

THIS DEED, made this 15<sup>th</sup> day of August, 2001, by  
MERIDIAN FINANCIAL RESOURCES, L.L.C., a Delaware limited liability company, whose  
principal place of business and post office address is 210 East State Street, Batavia, Illinois  
60510, hereinafter called the "Grantor", and OHANA HOTEL COMPANY LLC, a Delaware  
limited liability company, whose principal place of business and mailing address is P.O. Box 10,  
Hana, Hawaii 96713, hereinafter called the "Grantee".

**WITNESSETH:**

That in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and  
other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged,  
the Grantor does hereby grant, bargain, sell and convey unto the Grantee, its successors and  
assigns, forever, all of its right, title and interest in and to the property, situated on the Island of

Maui, State of Hawaii, and described in Exhibit "A" attached hereto and by reference made a part hereof.

TO HAVE AND TO HOLD the same unto Grantee, Grantee's successors and assigns, forever, together with all of the estate, right, title and interest of Grantor in and to all buildings and improvements thereon, all rights, licenses, permits, privileges, and easements held or enjoyed in connection therewith, all rents, issues and profits therefrom, or appurtenant thereto. The land and its improvements are being conveyed "as is" and Grantee acknowledges that it has inspected the property and accepts it with all existing conditions, flaws or defects.

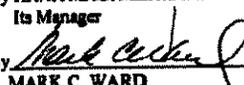
AND, in consideration of the premises, the Grantor does hereby covenant with the Grantee that except for the lien of real property taxes not yet by law required to be paid and except as may herein specifically be set forth, said property is free and clear of and from all liens and encumbrances created by, through or under the Grantor or any affiliate of the Grantor; that the Grantor has authority to sell and convey its right, title and interest in and to the Property; and, that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The rights and obligations of the Grantor and the Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, personal representatives, successors, successors in trust and assigns.

The conveyance herein set forth and the warranties of the Grantor concerning the same are expressly declared to be in favor of the Grantee, its successors and assigns.

The terms "Grantor" and "Grantee", as and when 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 their and each of their respective successors, heirs, personal representatives and assigns, according to the context thereof.

IN WITNESS WHEREOF, the Grantor has executed these presents on the day and year first above written.

MERIDIAN FINANCIAL RESOURCES, L.L.C.  
By HANA MAUI MERIDIAN INVESTORS, L.L.C.  
Its Manager  
By   
MARK C. WARD  
Its Manager

Grantor

(A space should show here)

STATE OF HAWAII )  
 ) ss:  
CITY AND COUNTY OF HONOLULU )

On this 13th day of August, 2001, before me appeared MARK C. WARD, to me personally known, who, being by me duly sworn did say that he is the Manager of HANA MAUI MERIDIAN INVESTORS, L.L.C., a Delaware limited liability company, the Manager of MERIDIAN FINANCIAL RESOURCES, L.L.C., a Delaware limited liability company, and that the instrument was signed in behalf of the said limited liability companies by authority of their members, and said Manager acknowledged the instrument to be the free act and deed of said limited liability companies.



Notary Public, State of Hawaii

BARBARA T. PAULO  
Expiration Date: June 14, 2004

My commission expires: \_\_\_\_\_

EXHIBIT "A"

-ITEM I:- (TAX KEY: (2) 1-4-003-054)

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 683 to Gerrit P. Judd) situate, lying and being at Wananalua, District of Hana, Island and County of Maui, State of Hawaii, being LOT 2, of the "HANA RANCH SUBDIVISION NO. 4", being the parking lot for Hasegawa General Store, bearing Tax Key designation (2) 1-4-003-054, and containing an area of 14,400 square feet or 0.331 acre, more or less.

-ITEM II:- (TAX KEY: (2) 1-4-003-056)

All of that certain parcel of land (portions of the lands described in and covered by Royal Patent Grant Number 883 to G. P. Judd, Royal Patent Grant Number 683 to G. P. Judd, Royal Patent Number 8211, Land Commission Award Number 3696-B to Beta, Royal Patent Number 8007, Land Commission Award Number 3697-B to Kaluahi, Royal Patent Number 2347, Land Commission Award Number 2954 to Hopu, and Royal Patent Number 8011, Land Commission Award Number 2986 to Laaupau) situate, lying and being on the west side of Hana Highway at Wananalua, Hana, Island and County of Maui, State of Hawaii, being LOT 2 of the "WANANALUA SUBDIVISION", and thus bounded and described as per survey of Warren A. Suzuki, Registered Professional Land Surveyor, to-wit:

Beginning at a point on the northeast corner of this lot on the west side of Hana Highway, the coordinates of which point of beginning referred to Government Survey Triangulation Station "KAUIKI", being 910.61 feet south and 1,840.66 feet west and running by azimuths measured clockwise from true South:

1. 352° 24' 49" 615.52 feet along the west side of Hana Highway to a pipe;
2. Thence along the remainder of Grant 883 to G. P. Judd on a curve to the left having a radius of 20.00 feet, the chord azimuth and distance being: 127° 48' 44.5" 28.28 feet to a pipe;
3. 82° 49' 65.00 feet along same to a pipe;

4.	352°	49'		135.00	feet along same to a pipe;
5.	262°	49'		85.00	feet along same to a pipe;
6.	352°	56'	05"	153.25	feet along the west side of Hana Highway to a pipe;
7.	83°	41'		150.20	feet along the remainder of Grant 883 to G. P. Judd to a pipe;
8.	352°	56'	05"	289.99	feet along same to a pipe;
9.	263°	41'		150.20	feet along same to a pipe;
10.	351°	10'		275.91	feet along the west side of Hana Highway to a pipe;
11.	83°	41'		110.00	feet along the remainder of Grant 683 to G. P. Judd to a pipe;
12.	171°	10'		138.13	feet along same to a pipe;
13.	96°	30'		1190.44	feet along the remainder of Grant 883 to G. P. Judd and Grant 683 to G. P. Judd to a pipe;
14.	172°	20'		684.51	feet along the remainder of Grant 683 to G. P. Judd and R. P. 8211, L. C. Aw. 3696-B to Beta to a pipe;
15.	179°	12'	20"	481.62	feet along the remainder of L. C. Aw. 3696-B to Beta and R. P. 8007, L. C. Aw. 3697-B to Kaluahi to a pipe;
16.	257°	35'		1103.27	feet along the remainder of R. P. 8007, L. C. Aw. 3697-B to Kaluahi, Grant 883 to G. P. Judd and R. P. 2347, L. C. Aw. 2954 to Hopu to a pipe;
17.	347°	35'	30"	125.00	feet along the remainder of R. P. 2347, L. C. Aw. 2954 to Hopu to a pipe;

18. 257° 35' 30" 125.00 feet along same and the remainder of Grant 883 to G. P. Judd to the point of beginning and containing an area of 17.000 acres, more or less.

-ITEM III:- (TAX KEY: (2) 1-4-003-057)

All of that certain parcel of land (portion of the land described in and covered by Royal Patent Grant Number 883 to G. P. Judd), situate, lying and being on the west side of Hana Highway at Wananalua, Hana, Island and County of Maui, State of Hawaii, being LOT 3 of the "WANANALUA SUBDIVISION", and thus bounded and described as per survey of Warren A. Suzuki, Registered Professional Land Surveyor, to-wit:

Beginning at a point at the southeast corner of this lot on the west side of Hana Highway, the coordinates of which point of beginning referred to Government Survey Triangulation Station "KAUIKI", being 146.00 feet south and 2,009.88 feet west and running by azimuths measured clockwise from true South:

1. 77° 28' 223.00 feet along the remainder of Grant 883 to G. P. Judd to a pipe;
2. 164° 45' 462.71 feet along same to a pipe;
3. 251° 39' 222.11 feet along same to a pipe;
4. 341° 39' 104.00 feet along the west side of Hana Highway to a pipe;
5. Thence along same on a curve to the right having a radius of 2,607.29 feet, the chord azimuth and distance being  
344° 33' 30" 264.58 feet to a pipe;
6. 347° 28' 117.00 feet along same to the point of beginning and containing an area of 2.480 acres, more or less.

-ITEM IV:- (TAX KEY: (2) 1-4-003-058)

All of that certain parcel of land (portions of the land described in and covered by Royal Patent Number 1958, Part 1, Land Commission Award No. 387, Part 5, Section 3 to the American Board of Commissioners for Foreign Missions; Land Patent Grant Number 7005 to The Board of the Hawaiian Evangelical Association, Trustee for the Wananalua Congregational Church (a Hawaiian corporation); Royal Patent Grant Number 650 to Maui; and Royal Patent Grant Number 634 Apana 1 to Gerrit P. Judd) situate, lying and being on the south side of Hauoli Road and the south end of Uakea Road at Wananalua, Oloeva, Paauhau, Hana, Island and County of Maui, State of Hawaii, being Lot 1-B of the "HANA RANCH SUBDIVISION NO. 5", and thus bounded and described as per survey of Warren A. Suzuki, Registered Professional Land Surveyor, to-wit:

Beginning at a 1/2 inch pipe, found and adopted, at the northwest corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI", being 606.26 feet south and 1,500.32 feet west and running by azimuths measured clockwise from true South:

1. 257° 54' 331.02 feet along the south side of Hauoli Road to a pipe;
2. Thence along the remainder of R. P. 1958, Part 1, L. C. Aw. 387, Part 5, Section 3 to A.B.C.F.M. on a curve to the right having a radius of 20.00 feet, the chord azimuth and distance being:  
302° 22' 28.02 feet to a pipe;
3. 346° 50' 141.41 feet along the remainder of R. P. 1958, Part 1, L. C. Aw. 387, Part 5, Section 3 to A.B.C.F.M. and along Grant 650 to Maui to a pipe;
4. 262° 06' 17.33 feet along Grant 650 to Maui to a pipe;
5. 307° 06' 14.14 feet along same to a pipe;
6. 352° 06' 130.96 feet along same to a 2" pipe, found and adopted;

7. 260° 36' 317.02 feet along Grant 650 to Maui and the south end of Uakea Road and along the remainder of Grant 634:1 to Gerrit P. Judd to a pipe;
8. 269° 20' 317.00 feet along the remainder of Grant 634:1 to Gerrit P. Judd to a pipe;
9. 340° 00' 40.79 feet along same to a pipe;
10. 35° 46' 834.43 feet along same to a pipe;
11. Thence along same on a curve to the right having a radius of 700.00 feet, the chord azimuth and distance being:
  - 127° 47' 19" 655.96 feet to a pipe;
12. 174° 20' 344.33 feet along the remainders of Grant 634:1 to Gerrit P. Judd; and Grant 7005 to a pipe;
13. 167° 36' 137.72 feet along the remainder of R. P. 1958, Part 1, L. C. Aw. 387, Part 5, Section 3 to A.B.C.F.M. to the point of beginning and containing an area of 12.750 acres, more or less.

Together with a 15-foot wide Access and Utility Easement "A" over and across a portion of Lot 1-A of Hana Ranch Subdivision No. 5 and being more particularly described as follows:

Beginning at a point on the northeast corner of this easement, the azimuth and distance from the point of beginning for course 12 of the above described lot being 331° 45' 40" 96.86 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI", being 1,168.74 feet south and 1,390.91 feet west and running by azimuths measured clockwise from true South:

1. Along Lot 1-B of Hana Ranch Subdivision No. 5 on a curve to left having a radius of 700.00 feet, the chord azimuth and distance being:

- |    |      |     |     |        |  |
|----|------|-----|-----|--------|--|
|    | 327° | 09' | 43" | 15.44  | feet   |
| 2. | 43°  | 30' |     | 405.89 | feet over and across a portion of Lot 1-A of Hana Ranch Subdivision No. 5;                                     |
| 3. | 87°  | 15' |     | 49.21  | feet over and across same;   |
| 4. | 172° | 24' | 49" | 15.06  | feet along the east side of Hana Highway;  |
| 5. | 267° | 15' |     | 44.46  | feet over and across a portion of Lot 1-A of Hana Ranch Subdivision No. 5;                                     |
| 6. | 223° | 30' |     | 403.51 | feet over and across same to the point of beginning and containing an area of 6,775 square feet, more or less. |

-ITEM V:- (TAX KEY: (2) 1-4-004-022)

All of that certain parcel of land (portions of the lands described in and covered by Royal Patent Number 1958, Part 1, Land Commission Award Number 387, Part 5, Section 3 to the American Board of Commissioners for Foreign Missions and Royal Patent Grant Number 883 to Gerrit P. Judd) situate, lying and being at Wananalua, Hana, Island and County of Maui, State of Hawaii, being the parcel of land bounded by the Hana Highway, Keawa Place and drainage ditch, Uakea Road, the Hana School Garden Lot, the Hana Park and a road widening parcel for Hauoli Road, and thus bounded and described as per survey of Randal Sherman, Registered Professional Land Surveyor, dated July 5, 1979, to-wit:

Beginning at a 1/2 inch pipe (set) at a southeasterly corner of this parcel of land, being also the northeasterly corner of a 15 foot wide strip of land conveyed to the County of Maui for road widening purposes (Ref: Book 1621, Pages 134 through 137) and being also a point on the southwesterly boundary of the Hana Park (Ref: Executive Order 477), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI" being 534.15 feet south and 1,333.57 feet west and running by azimuths measured clockwise from true South; thence,

- |    |     |     |  |        |  |
|----|-----|-----|--|--------|--|
| 1. | 77° | 54' |  | 515.77 | feet along a remainder of Royal Patent 1958, Part 1, Land Commission |
|----|-----|-----|--|--------|--|

Award Number 387, Part 5, Section 3 to the American Board of Commissioners for Foreign Missions along the northerly side of a 15 foot wide strip of land conveyed to the County of Maui for road widening purposes (Ref: Book 1621, Pages 134 through 137) to a 1/2 inch pipe (set); thence,

2. 166° 41' 314.93 feet along a remainder of Royal Patent 1958, Part 1, Land Commission Award Number 387, Part 5, Section 3 to the American Board of Commissioners for Foreign Missions along the easterly side of the Hana Highway to a 1/2 inch pipe (set); thence,
3. 167° 28' 426.26 feet along the same to a 1/2 inch pipe (set); thence,
4. Following along the same and along a remainder of Grant 883 to Gerrit P. Judd along the southerly side of Keawa Place and drainage ditch along a curve to the right with a radius of 125.00 feet, the chord azimuth and distance being:
- 210° 02' 169.00 feet to a 1/2 inch pipe (set); thence,
5. 252° 32' 511.20 feet along remainders of Grant 883 to Gerrit P. Judd and along a remainder of Royal Patent 1958, Part 1, Land Commission Award Number 387, Part 5, Section 3 to the American Board of Commissioners for Foreign Missions along the southerly side of Keawa Place and drainage ditch to a point; thence,
6. 247° 38' 195.00 feet along a remainder of Grant 883 to Gerrit P. Judd along the

- southerly side of Keawa Place and drainage ditch to a point; thence,
7. 227° 15' 101.14 feet along the same to a 1/2 inch pipe (set); thence,
  8. 337° 35' 119.76 feet along a remainder of Grant 883 to Gerrit P. Judd and along Royal Patent 1958, Part 1, Land Commission Award Number 387, Part 5, Section 3 to the American Board of Commissioners for Foreign Missions along the westerly side of Uakea Road to a 1/2 inch pipe (set); thence,
  9. 341° 10' 194.93 feet along a remainder of Royal Patent 1958, Part 1, Land Commission Award Number 387, Part 5, Section 3 to the American Board of Commissioners for Foreign Missions along the westerly side of Uakea Road to a 1/2 inch pipe (set); thence,
  10. 47° 32' 276.66 feet along the Hana School Garden Lot (Ref: Executive Order 927) to a 1/2 inch pipe (set); thence,
  11. Following along the same along a curve to the left with a radius of 169.05 feet, the chord azimuth and distance being:
    - 24° 41' 45" 131.22 feet to a 1/2 inch pipe (set); thence,
  12. 332° 19' 30" 11.07 feet along the same to a 1/2 inch pipe (set); thence,
  13. 1° 51' 30" 351.00 feet along the Hana Park (Ref: Executive Order 477) to a 1/2 inch pipe (set); thence,
  14. 348° 25' 30" 92.92 feet along the same to the point of beginning and containing an area of 14.647 acres, more or less.

-ITEM VI:- (TAX KEY: (2) 1-4-010-001)

All of that certain parcel of land situate at Moka-Nui, District of Hana, Island and County of Maui, State of Hawaii, containing an area of 74,260 square feet or 1.705 acres, more or less, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1820 of Hana Ranch, Inc., a Hawaii corporation;

Being a portion of the lands described in Transfer Certificate of Title No. 568,039 issued to MERIDIAN FINANCIAL RESOURCES, L.L.C., a Delaware limited liability company.

BEING THE PREMISES ACQUIRED BY COMMISSIONER'S DEED

GRANTOR : THOMAS R. COLE, Commissioner  
GRANTEE : MERIDIAN FINANCIAL RESOURCES, L.L.C., a  
Delaware limited liability company  
DATED : October 16, 2000  
FILED : Land Court Document No. 2664693  
RECORDED : Document No. 2000-161219

-AS TO ITEMS IV AND V:-

1. Together with a non-exclusive right to use the License Area for the sole purpose of allowing Hotel Guests and Licensee's employees to mount and dismount from horses, all in conjunction with Licensee's guided horseback riding tours for the Hotel Guests, etc., as granted by HORSEBACK RIDING STAGING AREA LICENSE AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005198; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.
2. Together with a non-exclusive right to use the License Area for the sole purpose of grazing horses, etc., as granted by MAUKA HORSE GRAZING LICENSE AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005199; and subject to the terms

and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.

3. Together with a non-exclusive right to use the License Area for the sole purpose of grazing horses, etc., as granted by MAKAI HORSE GRAZING LICENSE AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005200; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.
4. Together with a non-exclusive easement to use the Easement Area for the sole purpose of conducting guided horseback tours for Hotel Guests, etc., as granted by MAKAI HORSEBACK RIDING TRAIL EASEMENT AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005201; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.
5. Together with a non-exclusive easement to use the Easement Area for the sole purpose of conducting guided horseback tours for Hotel Guests, etc., as granted by MAKAI HORSEBACK RIDING TRAIL EASEMENT AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005202; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.
6. Together with a non-exclusive easement to use the Easement Area for the sole purpose of conducting guided horseback tours for Hotel Guests, etc., as granted by MAKAI HORSEBACK RIDING TRAIL EASEMENT AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005203; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.
7. Together with a non-exclusive easement to use the Easement Area for the sole purpose of conducting guided horseback tours for Hotel Guests, etc., as granted by MAUKA HORSEBACK RIDING TRAIL EASEMENT AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005204; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.

8. Together with a non-exclusive easement to use the Easement Area for the sole purpose of allowing Hotel Guests to walk and jog thereon, as granted by JOGGING TRAIL EASEMENT AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005205; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.
9. Together with a non-exclusive easement to use the Easement Area for the sole purpose of allowing Hotel Guests to walk and jog thereon, as granted by JOGGING TRAIL EASEMENT AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005206; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.
10. Together with a non-exclusive easement to use the Easement Area for the sole purpose of allowing Hotel Guests to walk and jog thereon, as granted by JOGGING TRAIL EASEMENT AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005207; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.
11. Together with a non-exclusive easement to use the Easement Area for the sole purpose of allowing Hotel Guests to walk and jog thereon, as granted by JOGGING TRAIL EASEMENT AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005208; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.
12. Together with a non-exclusive easement to use the Easement Area for the sole purpose of allowing Hotel Guests to walk and jog thereon, as granted by JOGGING TRAIL EASEMENT AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005209; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.

13. Together with a non-exclusive easement to use the Easement Area for the sole purpose of allowing Hotel Employees to walk thereon, as granted by HOTEL WALKWAY EASEMENT AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005210; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.
  
14. Together with a non-exclusive easement to use the Amended Access Easement Area for the sole purpose of ingress to and egress from the Amended Cookout Use Area for the Hotel Guests, as granted by LEHOULA BEACH EASEMENT AND LICENSE AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005213; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.

-AS TO ITEMS II, IV AND V:-

Together with the exclusive right to use the Premises as described in said instrument, for the sole purpose of providing housing for Licensee's Employees, as granted by HANA HOTEL/TOWN CENTER EMPLOYEE HOUSING LICENSE AGREEMENT, dated January 12, 2001, recorded as Document No. 2001-005216; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.

SUBJECT, HOWEVER, to the following:

1. -AS TO ITEM I:- (TAX KEY: (2) 1-4-003-054)

- (A) Reservation in favor of the State of Hawaii of all mineral and metallic mines.
  
- (B) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : AGREEMENT  
 DATED : November 27, 1978  
 RECORDED : Liber 13357 Page 462

PARTIES : COUNTY OF MAUI, DEPARTMENT OF WATER  
SUPPLY, a political subdivision of the  
State of Hawaii, "County", and HASEGAWA  
GENERAL STORE, "Applicant"  
RE : Subdivision approval and private water  
system

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

(D) Any and all existing roadways, trails, heiaus, easements,  
rights of way, flumes and ditches.

2. -AS TO ITEM II:- (TAX KEY: (2) 1-4-003-056)

(A) Reservation in favor of the State of Hawaii of all mineral  
and metallic mines.

(B) GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED and  
VERIZON HAWAII, INC.

DATED : October 12, 1976  
RECORDED : Liber 11799 Page 248  
GRANTING : a perpetual right and easement for  
utility purposes

(C) GRANT

TO : COUNTY OF MAUI

DATED : July 1, 1924  
RECORDED : Liber 775 Page 116  
GRANTING : an easement for water pipe line purposes

(D) The terms and provisions, including the failure to comply  
with any covenants, conditions and reservations, contained  
in the following:

INSTRUMENT : PRIVATE WATER SYSTEM AGREEMENT  
DATED : July 15, 1983  
RECORDED : Liber 17289 Page 282  
PARTIES : COUNTY OF MAUI and the DEPARTMENT OF  
WATER SUPPLY, COUNTY OF MAUI, "COUNTY",  
and HANA RANCH, INC., a Delaware  
corporation, "OWNER"

(E) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : PRIVATE WATER SYSTEM AGREEMENT  
DATED : September 30, 1985  
RECORDED : Liber 19010 Page 145  
PARTIES : HANA RANCH, INC., "Subdivider", and the  
COUNTY OF MAUI and its DEPARTMENT OF  
WATER SUPPLY, "County"

(F) -As to Royal Patent Number 8011, Land Commission Award Number 2986 to Laaupau (Kuleana):-

Reservations in favor of the State of Hawaii, as reserved in Final Judgment and Decree dated April 29, 1993, filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 91-0162 (3), April 29, 1993, recorded as Document No. 93-080178 on May 19, 1993.

(G) LEASE

LESSOR : KEOLA HANA MAUI, INC.  
LESSEE : UNITED STATES POSTAL SERVICE  
DATED : --- (effective March 1, 1992)  
RECORDED : Document No. 92-101336  
TERM : Commencing on March 1, 1992 and ending on  
August 31, 1993 for a total of 17 months,  
option to renew for four (4) 5-year  
periods

Said Lease demising the following described premises:

A portion of a one story wood-frame building containing a Total Site Area of 1,428 square feet.

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

(H) GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED and  
VERIZON HAWAII, INC.

DATED : April 7, 1994  
RECORDED : Document No. 94-098470  
GRANTING : a perpetual right and easement for  
utility purposes

(I) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : WATERLINE EASEMENT AGREEMENT

DATED : January 12, 2001  
RECORDED : Document No. 2001-005214  
PARTIES : MERIDIAN FINANCIAL RESOURCES, L.L.C., a  
Delaware limited liability company,  
"Grantor", and HANA WATER RESOURCES,  
INC., a Delaware corporation, "Grantee"

RE : granting a perpetual non-exclusive ten  
(10) foot wide easement, in gross, for  
the purpose of storing and carrying water  
through water pipelines, water storage  
tanks, and related apparatus, over, under  
and across those portions of the Grantors  
lands, the centerline of which is shown  
by the dashed line on the map attached  
thereto as Exhibit "B"

(J) The following matters as shown on survey map, prepared by Ryan M. Suzuki, Licensed Surveyor, with R. M. Towill Corporation, dated October 7, 1999, last revised July 11, 2001, to wit:

1. Wire fences crossing into TMK (2) 1-4-003-003.

2. Wall crosses into Hana Highway.
3. A.C. Roadway crosses into TMK (2) 1-4-003-003.
4. Existing 40' wide Road Easement.

3. -AS TO ITEM III:- (TAX KEY: (2) 1-4-003-057)

(A) A non-exclusive road and utility easement, as set forth in Original Certificate of Title No 143,515 issued to Jane Fagan Olds, et al, Trustees of the William G. Irwin Charity Foundation, an unincorporated charitable association, dated September 17, 1971.

(B) GRANT

TO : COUNTY OF MAUI  
 DATED : July 1, 1924  
 RECORDED : Liber 775 Page 116  
 GRANTING : an easement for water pipe line purposes

(C) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : PRIVATE WATER SYSTEM AGREEMENT  
 DATED : July 15, 1983  
 RECORDED : Liber 17289 Page 282  
 PARTIES : COUNTY OF MAUI and the DEPARTMENT OF WATER SUPPLY, COUNTY OF MAUI, "COUNTY", and HANA RANCH, INC., a Delaware corporation, "OWNER"

(D) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : PRIVATE WATER SYSTEM AGREEMENT  
DATED : September 30, 1985  
RECORDED : Liber 19010 Page 145  
PARTIES : HANA RANCH, INC., "Subdivider", and the  
COUNTY OF MAUI and its DEPARTMENT OF  
WATER SUPPLY, "County"

(E) GRANT

TO : STATE OF HAWAII  
DATED : May 3, 1999  
RECORDED : Document No. 99-083040  
GRANTING : the right in the nature of a perpetual  
easement for drainage purposes, through,  
under and across Easement "1", more  
particularly described as per survey of  
Kirk T. Tanaka, Licensed Professional  
Surveyor, with R. T. Tanaka Engineers,  
Inc., dated February 25, 1998, to-wit:

HANA HIGHWAY  
DRAINAGE IMPROVEMENTS  
VICINITY OF KEAWE PLACE  
FAP NO. STP-0360(7)

EASEMENT 1  
(40.04 Feet Wide)  
for Drainage purposes

Being a portion of Grant 883 to G. P. Judd and being also  
a portion of Lot 3, Wananalua Subdivision, situated on  
the westerly side of Hana Highway, at Wananalua, Hana,  
Maui, Hawaii

Beginning at a point on the northeast corner of this  
Easement on the westerly side of Hana Highway, the  
coordinates of said point of beginning referred to  
Government Survey Triangulation Station "KAUIKI" being  
194.68 feet north and 2,096.42 feet west and running by  
azimuths measured clockwise from true South:

1. Along Hana Highway on a curve to the right with a  
radius of 2,607.29 feet  
the chord azimuth and  
distance being:

342° 45'            40.04 feet;

- 2. 72° 45' 70.00 feet along the remainder of Lot 3, Wananalua Subdivision;
- 3. 162° 45' 40.04 feet along the remainder of Lot 3, Wananalua Subdivision;
- 4. 252° 45' 70.00 feet along the remainder of Lot 3, Wananalua Subdivision to the point of beginning and containing an area of 2,805 square feet, more or less.

(F) Wire fence crosses into TMK (2) 1-4-003-003, as shown on survey map prepared by Ryan M. Suzuki, Licensed Surveyor, with R. M. Towill Corporation, dated October 7, 1999, revised April 25, 2001.

4. -AS TO ITEM IV:- (TAX KEY: (2) 1-4-003-058)

- (A) Reservation in favor of the State of Hawaii of all mineral and metallic mines.
- (B) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : PRIVATE WATER SYSTEM AGREEMENT  
 DATED : October 5, 1987  
 RECORDED : Liber 21388 Page 26  
 PARTIES : COUNTY OF MAUI and its DEPARTMENT OF WATER SUPPLY, "County", and ROSEWOOD HOTELS, INC., "Applicant"

- (C) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : PRIVATE WATER SYSTEM AGREEMENT  
 DATED : December 3, 1987  
 RECORDED : Liber 21597 Page 51

PARTIES : COUNTY OF MAUI and its DEPARTMENT OF  
WATER SUPPLY, "County", and ROSEWOOD  
HOTELS, INC., "Applicant"

- (D) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : PRIVATE WATER SYSTEM AGREEMENT  
DATED : March 17, 1988  
RECORDED : Liber 21954 Page 638  
PARTIES : COUNTY OF MAUI and its DEPARTMENT OF  
WATER SUPPLY, "County", and ROSEWOOD  
HOTELS, INC., "Applicant"

5. -AS TO ITEM V:- (TAX KEY: (2) 1-4-004-022)

- (A) Reservation in favor of the State of Hawaii of all mineral and metallic mines.

(B) GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED and  
VERIZON HAWAII, INC.

DATED : October 12, 1976  
RECORDED : Liber 11799 Page 248  
GRANTING : a perpetual right and easement for  
utility purposes

- (C) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : AGREEMENT  
DATED : August 12, 1982  
RECORDED : Liber 16748 Page 360  
PARTIES : COUNTY OF MAUI, DEPARTMENT OF WATER  
SUPPLY, a political subdivision of the  
State of Hawaii, "County", and HANA RANCH  
INC., "Owner"  
RE : Building permit

- (D) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : PRIVATE WATER SYSTEM AGREEMENT  
DATED : May 30, 1985  
RECORDED : Liber 18918 Page 776  
PARTIES : COUNTY OF MAUI and its DEPARTMENT OF WATER SUPPLY, "County", and HANA RANCH, INC., "Applicant"

- (E) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : PRIVATE WATER SYSTEM AGREEMENT  
DATED : October 10, 1985  
RECORDED : Liber 19057 Page 456  
PARTIES : COUNTY OF MAUI and its DEPARTMENT OF WATER SUPPLY, "County", and ROSEWOOD HOTELS, INC., "Applicant"

- (F) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : PRIVATE WATER SYSTEM AGREEMENT  
DATED : December 18, 1985  
RECORDED : Liber 19381 Page 268  
PARTIES : COUNTY OF MAUI and its DEPARTMENT OF WATER SUPPLY, "County", and ROSEWOOD HOTELS, INC., "Applicant"

- (G) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : PRIVATE WATER SYSTEM AGREEMENT  
DATED : September 23, 1986  
RECORDED : Liber 19897 Page 380  
PARTIES : COUNTY OF MAUI and its DEPARTMENT OF WATER SUPPLY, "County", and ROSEWOOD HOTELS, INC., "Applicant"

(H) The following matters as shown on survey map prepared by Ryan M. Suzuki, Licensed Surveyor, with R. M. Towill Corporation, dated October 9, 1999, revised April 25, 2001, to-wit:

- (1) Walkway crosses into Hauili Road.
- (2) Hawaiian Telephone Company utility box located in the subject parcel near the west boundary which is not covered by an easement.

6. -AS TO ITEM VI:- (TAX KEY: (2) 1-4-010-001)

- (A) Reservation in favor of the State of Hawaii of all mineral and metallic mines.
- (B) Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and its effect, if any, upon the area of said tax key parcel.
- (C) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : HAWAII BEACH PEDESTRIAN WALKWAY AND  
ROADWAY EASEMENT AGREEMENT

DATED : January 12, 2001  
FILED : Land Court Document No. 2676819  
RECORDED : Document No. 2001-005215  
PARTIES : MERIDIAN FINANCIAL RESOURCES, L.L.C., a  
Delaware limited liability company,  
"MERIDIAN", and HANA ACQUISITION  
PARTNERS, L.L.C., a Hawaii limited  
liability company, "HANA ACQUISITION  
PARTNERS"

RE : Meridian grants to Hana Acquisition  
Partners a perpetual non-exclusive  
easement, appurtenant to the Dominant

Tenements, and for ingress and egress to and from the Recreational Area, including the right to install, maintain and repair the Pedestrian Walkway Easement Area, etc., and a perpetual non-exclusive easement, appurtenant to the Dominant Tenements, and for ingress and egress by Prescribed Owners, to and from, and to provide utility services (for water, power, cable, television, and other services) to the Recreational Area, including the right to install, maintain and repair the Roadway Easement Area, etc.

(D) Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

(E) The following matters as shown on survey map, prepared by Ryan M. Suzuki, Licensed Surveyor, with R. M. Towill Corporation, dated October 7, 1999, revised April 25, 2001, to wit:

1. Driveway crosses into TMK (2) 1-4-007-007.
2. Concrete walk crosses into Haneo Government Road.

7. -AS TO ITEM VII:- (TAX KEY: (2) 1-4-013-001)

(A) Reservation in favor of the State of Hawaii of all mineral and metallic mines.

(B) DESIGNATION OF EASEMENT "2" (10 feet wide)

PURPOSE : utility  
SHOWN : File Plan No. 866  
IN FAVOR OF : MAUI ELECTRIC COMPANY, LIMITED and  
VERIZON HAWAII, INC.

(C) GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED and  
VERIZON HAWAII, INC.  
DATED : August 23, 1972  
RECORDED : Liber 8546 Page 454  
GRANTING : an easement over said Easement "2"

(D) Proposed 50-foot roadway for future road widening of  
Keawe Place, as shown on File Plan No. 866.

(E) SETBACK (20 feet wide)

PURPOSE : Building  
ALONG : Hana Highway and Keawe Place  
SHOWN : File Plan No. 866

8. -AS TO ITEMS II, IV AND V:-

Any adverse claim or boundary dispute which may exist or arise  
by reason of the failure of the HANA HOTEL/TOWN CENTER EMPLOYEE  
HOUSING LICENSE AGREEMENT referred to herein to locate with  
certainty the boundaries of the Premises, an approximately ten  
thousand (10,000) square foot described in said instrument.

9. -AS TO ITEMS IV AND VI:-

Any adverse claim or boundary dispute which may exist or arise  
by reason of the failure of the Agreements recorded as Document  
No.(s) 2001-005198 through 2001-005210, inclusive, and 2001-  
005213 referred to herein to locate with certainty the  
boundaries of the easements described in said instruments.

END OF EXHIBIT "A"

**EXHIBIT V**

SMA Approval Letter dated February 5, 1986

MAUI PLANNING COMMISSION  
David T. Fukuda, Chairman  
Joseph C. Ventura, Vice Chairman  
Toshi Ansai  
Joseph Felipe  
Joseph J. Franco  
Rachael Jio  
Roy Suda  
Tom Sato  
Susumu Sakaida  
Vince Bagoyo, Jr., Ex-Officio  
Alvin Fukunaga, Ex-Officio



HANNIBAL TAVARES  
Mayor

CHRISTOPHER L. HART  
Planning Director

RALPH N. MASUDA  
Deputy Planning Director

**COUNTY OF MAUI  
PLANNING DEPARTMENT**

200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
February 5, 1986

Mr. Paul Mancini, Esq.  
Case, Kay and Lynch  
The Kahului Building  
33 Lono Avenue, Suite 470  
Kahului, HI 96732

Dear Mr. Mancini:

Re: Special Management Area Use Permit Application for Hana Ranch, Inc. for the construction of the "Garden Cottages" at TMK's 1-4-3:3, 1-4-4:16 and 17, Hana, Maui (85/SMA-30).

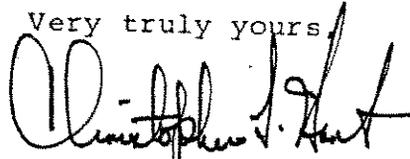
At its regular meeting of February 4, 1986, the Maui Planning Commission reviewed the above request and after due deliberation, voted to grant Special Management Area Use Permit approval subject to the following conditions:

1. That construction shall begin within twelve (12) months from the date of approval of this Special Management Area Permit.
2. That appropriate measures shall be undertaken during construction to mitigate the impacts of increased levels of noise and dust.
3. That full compliance with comments 1, 2, 3 and 4 of the Department of Public Works in its September 3, 1985 memorandum shall be rendered.
4. That full compliance with the standard comments of the Urban Design Review Board shall be rendered.
5. That final landscape planting and lighting plan shall be submitted to the Planning Department for review and approval.
6. That no variance shall be sought for any portion of development pertaining to this project.
7. That a final signage plan shall be submitted for the project.
8. That the applicant, its successors, and assigns shall defend, indemnify and hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this permit.

Mr. Paul Mancini  
February 5, 1986  
Page 2

A copy of the Staff Report dated October 8, 1985 is enclosed for your reference. Should you have any questions, please contact Clyde Murashige of this office.

Very truly yours,



CHRISTOPHER L. HART  
Planning Director

CM:wc  
encl.  
cc: LUCA/CZM  
LUCA/Planning  
DOH-Mau