

**AMENDMENT 1 TO
DEVELOPER'S PUBLIC REPORT
FOR A CONDOMINIUM**

CONDOMINIUM PROJECT NAME:	SEASCAPE CONDOMINIUM PHASES II, III and IV
PROJECT ADDRESS:	Nuuanu Street, Kailua-Kona, North Kona, Hawaii. Street Nos. for each Building are listed on page 4.
REGISTRATION NUMBER:	6354
EFFECTIVE DATE OF REPORT:	October 24, 2008
MUST BE READ TOGETHER WITH DEVELOPER'S PUBLIC REPORT DATED:	JULY 3, 2007
DEVELOPER(S):	SEASCAPE DEVELOPMENT, LLC

Preparation of this Amendment

The Developer prepared this amendment pursuant to the Condominium Property Act, Section 514B-56, Hawaii Revised Statutes (HRS), as amended from time to time. Section 514B-56, HRS, requires that after the Commission has issued an effective date for the Developer's Public Report, if there are any changes, either material or pertinent changes, or both, regarding the information contained in or omitted from the Developer's Public Report, or if the developer desires to update or change the information set forth in the Developer's Public Report, the developer shall immediately submit to the Commission an amendment to the Developer's Public Report or an amended Developer's Public Report clearly reflecting the change, together with such supporting information as may be required by the Commission, to update the information contained in the Developer's Public Report.

The law defines "material change" as used in parts IV and V of Chapter 514B, HRS means 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 law defines "pertinent change" to mean, as determined by the commission, a change not previously disclosed in the most recent public report that renders the information contained in the public report or in any disclosure statement inaccurate, including, but not limited to (1) The size, construction materials, location, or permitted use of a unit or its appurtenant limited common element; (2) The size, use, location, or construction materials of the common elements of the project; or (3) The common interest appurtenant to the unit. A pertinent change does not necessarily constitute a material change.

The filing of an amendment to the Developer's Public Report or an amended Developer's Public Report, in and of itself, shall not be grounds for a purchaser to cancel or rescind a sales contract. A purchaser's right to cancel or rescind a sales contract shall be governed by sections 514B-86 and 514B-87, HRS, the terms and conditions of the purchaser's contract for sale, and applicable common law.

This Amendment 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 amendment to the 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, material changes, or pertinent changes about the project have been fully or adequately disclosed; and (3) is not the

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Commission's judgment of the value or merits of the project.

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 amendment may be used by the Developer for promotional purposes only if it is used with the last Developer's Public Report in its entirety.

Prospective purchasers and purchasers are encouraged to read this amendment carefully and to seek professional advice.

Summary of Changes from Earlier Developer's Public Report are Described Beginning on the Next Page

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Summary of Changes from Earlier Developer's Public Report:

This summary contains a general description of the changes, if any, made by the developer since the last Developer's Public Report was issued an effective date. It is not necessarily all inclusive. Prospective purchasers and purchasers must read this amendment together with the last Developer's Public Report with the effective date as noted on the top of page 1 if they wish to know the specific changes that have been made.

Changes made are as follows (include a description of what the change is and page number and or exhibit alphabet or number; additional pages may be used):

I. Sales at The Affordable Price to Buyers Who Do Not Qualify Under The County of Hawaii's Affordable Housing Policy Will be Free and Clear of all Affordable House Sales Requirements and Resale Restrictions.

The Developer's Public Report, on page 1, stated:

A. That initially Units in the Project were "*affordable housing units*" as provided for in Article 1, Affordable Housing, Chapter 11, Hawaii County Code (the "**Affordable Housing Policy**"); and that pursuant and subject to the terms and conditions stated in the Agreement Re Affordable Housing dated March 7, 2006, between the Developer and the County of Hawaii (the "**County**") recorded in the Bureau of Conveyances of the State of Hawaii (the "**Bureau**") on March 16, 2006 as Document No. 2006-049941 ("**Affordable Housing Agreement**"), initially the Developer was required to offer the Units for sale to a "*qualified household*" (as defined in the Affordable Housing Policy) earning 120% to 140% of the County's median family income at the time of sale; but that if Developer were unable, after good faith efforts, to sell any particular Unit to a qualified household, and the County did not exercise its first right to purchase such a Unit, then the Developer would be permitted to sell that Unit to a non-qualified buyer at the "*affordable price*."

B. Further, that the Developer commenced its pre-registration marketing of units in the Project in June, 2006 in compliance with the County's requirements, including conducting a lottery for qualified prospective buyers; but that as of May 3, 2007, the Developer had been unable, after such good faith efforts, to locate prospective qualified buyers for all of the Units in the Condominium; and that by letter dated May 14, 2007, the County waived its first right to purchase, so that the Developer was authorized to sell to non-qualified buyers those Units not reserved for or not subsequently contracted for purchase by or not sold to "*qualified household*" buyers, provided that such buyers would be subject to resale restrictions in favor of the County (the "**Resale Restrictions**"). The Resale Restrictions were stated in the Developer's Public Report at pages 50 thru 53 for "*qualified household*" buyers and at pages 53 thru 56 for buyers who are not "*qualified households*."

The Developer's Public Report is now amended:

1. At page 1 to disclose that by a "Release of Sales Restrictions" dated December 12, 2007 and recorded in the Bureau on January 2, 2008 as Document No. 008-000226, the County has released all Units in the Sescape Condominium which have previously been sold or will be sold by the Developer to buyers who are not "*qualified households*" at the affordable price of no more than \$293,403 per Unit (all such units being referred to as the "**Released Units**"), such that such buyers from the Developer and subsequent owners from time to time of the Released Units are released from all Resale Restrictions, from all other restrictions under the County's Affordable Housing Policy and from the Affordable Housing Agreement as well as any deed restrictions in favor of the County that have been imposed thereon.

2. At page 50, so that the first paragraph of paragraph 4 of Exhibit H "**Summary of Purchase and Sale Contract (the 'Purchase Contract') and Escrow Agreement,**" regarding deed restrictions on buyers, is revised to read as follows:

"Each Unit sold to a buyer who is not a *qualified household*" under the County of Hawaii's Affordable Housing Policy will not be subject to resale restrictions in favor of the County, provided that the purchase price for such Unit does not exceed \$293,403. Each Unit sold to a "*qualified household*" will be subject to resale restrictions that will be stated in an Exhibit B to such a buyer's Deed. The resale restrictions on a Unit purchased by a "*qualified household*" buyer are stated on pages 50 thru 53.

3. At pages 53 thru 56 to delete the resale restrictions for a buyer who is not a "qualified household."

II. Real Estate Broker. At page 9 of the Developer's Public Report, Section 2.2 is amended to delete Akamai Realty, LLC ("Akamai") as the real estate broker for Phases II, III and IV of the Project, to disclose the companies listed below as the real estate brokers for Phases II, III and IV of the Project, and to advise that the real estate brokers listed below are not affiliated with the Developer:

Name: Intero Real Estate Services Hawaii, LLC
Address: 75-5706 Hanama Place, Suite #108
Kailua-Kona, HI 96740
Business Phone Number: (808) 334-0548
Email Address: marni@marnishirley.com

Name: Prince Properties, Inc.
Address: 75-5706 Hanama Place, Suite #108
Kailua-Kona, HI 96740
Business Phone Number: (808) 334-0548
Email Address: Prince@ccimhawaii.com

Accordingly, at page 18 of the Developer's Public Report, Section 6.1 is also amended to delete all references to the former real estate broker Akamai and its affiliation with the Developer.

III. Declaration of Condominium Property Regime. At page 10 of the Developer's Public Report, Section 3.1 is supplemented to disclose additional amendments to the Declaration of Condominium Property Regime that have been recorded in the Bureau as follows:

<u>Date of Document</u>	<u>Document No.</u>	<u>Attaching:</u>
July 10, 2007	2007-123790	Architect's "As Built" Certificate for Phase II
August 29, 2008	2008-139221	Architect's "As Built" Certificate for Phase III; Affidavits of Publication of Notices of Completion for all Buildings in Phases I, II and III

Note: The street number for each Building in Phases II, III and IV is as follows:

<u>Phase II Buildings:</u>	<u>Phase III Buildings:</u>	<u>Phase IV Buildings:</u>
E 73-1100 Nuuanu Place	H 73-1106 Nuuanu Place	K 73-1112 Nuuanu Place
F 73-1102 Nuuanu Place	I 73-1108 Nuuanu Place	L 73-1114 Nuuanu Place
G 73-1104 Nuuanu Place	J 73-1110 Nuuanu Place	M 73-1116 Nuuanu Place

IV. Status of Construction, Date of Completion or Estimated Date of Completion. At page 14 of the Developer's Public Report, Section 5.5 is revised and supplemented to disclose that the construction of Phases II and III has been completed; that the construction of Phase IV has commenced and is estimated to be completed on or before April 15, 2009, however, that the Completion Deadline for Phase IV is December 31, 2009, subject to extension for delays caused by acts of nature and good (force majeure)..

V. Encumbrances Against Title: Since the effective date of the Developer's Public Report, additional encumbrances against title have been recorded in the Bureau as disclosed in the Revised Exhibit E attached to this Amendment No. 1. Accordingly, at pages 29 and 30 of the Developer's Public Report, Exhibit E is amended to substitute the Revised Exhibit attached to this Amendment for the prior Exhibit.

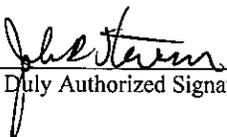
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The Developer declares subject to the penalties set forth in Section 514B-69, HRS that this project continues to conform to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting 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 as amended, 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 as amended, 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 as amended and the exhibits attached to this report (if any) as amended 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 as amended to report and include either or all material facts, material or pertinent changes to any information contained in or omitted from this report and to file annually a report to update the material contained in this report as amended at least 30 days prior to the anniversary date of the effective date of this report.

SEASCAPE DEVELOPMENT, LLC, a Hawaii limited liability company,
By its Manager, Westpro Holdings LLC, a Hawaii limited liability company
Printed Name of Developer

By:  7-15-08
Duly Authorized Signatory* Date

JOHN STEVENS, Its Manager
Printed Name & Title of Person Signing Above

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

***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.**

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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.]

The units in the Condominium (the "Units") initially were "affordable housing units" as provided for in Article 1, Affordable Housing, Chapter 11, Hawaii County Code (the "Affordable Housing Policy"). Pursuant and subject to the terms and conditions stated in the Agreement Re Affordable Housing dated March 7, 2006, between Seller and the County of Hawaii (the "County") recorded in the Bureau of Conveyances of the State of Hawaii on March 16, 2006 as Document No. 2006-049941 ("Affordable Housing Agreement"), Developer initially was required to offer the Units for sale to a "qualified household" (as defined in the Affordable Housing Policy) earning 120% to 140% of the County's median family income at the time of sale; however, if Developer was unable, after good faith efforts, to sell any particular Unit to a qualified household, and the County did not exercise its right of first refusal to purchase such Unit, then Seller would be permitted to sell such Unit to a non-qualified buyer at the "affordable price" (subject to certain resale restrictions in favor of the County, including a right of first refusal ["Resale Restrictions"]). Seller advised the County that as of May 3, 2007 it has been unable, after such good faith efforts to locate prospective qualified buyers for all of the units in the Condominium. By letter dated May 14, 2007, the County has waived its first right to purchase. Seller was therefore authorized to sell to buyers who are not qualified those units in Phases II, III and IV not reserved for or not subsequently contract for purchase by or not sold to prospective qualified buyers. Subsequently a "Release of Sales Restrictions" dated December 12, 2007 and recorded in the Bureau on January 2, 2008 as Document No. 008-000226, the County released all Units in the Seascape Condominium which had previously been sold or will be sold by the Developer to buyers who are not "qualified households" at the affordable price of no more than \$293,403 per Unit (all such units being referred to as the "Released Units"), such that "non-qualified household" buyers from the Developer and subsequent owners from time to time of the Released Units are released from all Resale Restrictions, from all other restrictions under the County's Affordable Housing Policy and from the Affordable Housing Agreement as well as any deed restrictions in favor of the County that have been imposed thereon.

Phase I of the Seascape Condominium was registered with the Real Estate Commission under Registration No. 6186. Phase I includes five (5) two story buildings lettered "A", "B", "C", "D" and "N", with each building containing eight (8) units for a total of forty (40) units numbered as follows: A-101 thru A-104, inclusive; A-201 thru A-204, inclusive; B-101 thru B-104, inclusive; B-201 thru B-204, inclusive; C-101 thru C-104, inclusive; C-201 thru C-204, inclusive; D-101 thru D-104, inclusive; D-201 thru D-204, inclusive; N-101 thru N-104, inclusive; and N-201 thru N-204, inclusive. The street addresses for each building in Phase I are as follows: Building "A": 73-1107 Nuuanu Street; Building "B": 73-1105 Nuuanu Street; Building "C": 73-1103 Nuuanu Street; Building "D": 73-1101 Nuuanu Street; and Building "N": 73-1111 Nuuanu Street.

This Registration No. 6354 covers the remaining Phases in the Seascape Condominium, Phases II, III and IV.

Phase II includes three (3) two story buildings lettered "E", "F" and "G", with each building containing eight (8) units for a total of twenty-four (24) units numbered as follows: E-101 thru E-104, inclusive; E-201 thru E-204, inclusive; F-101 thru F-104, inclusive; F-201 thru F-204, inclusive; G-101 thru G-104, inclusive; and G-201 thru G-204, inclusive. The street addresses for each building in Phase II are as follows: Building "E": 73-1100 Nuuanu Street; Building "F": 73-1102 Nuuanu Street; and Building "G": 73-1104 Nuuanu Street.

Phase III includes three (3) two story buildings lettered "H", "I" and "J", with buildings "H" and "I" containing eight (8) units and building J containing four (4) units for a total of twenty (20) units numbered as follows: H-101 thru H-104, inclusive; H-201 thru H-204, inclusive; I-101 thru I-104, inclusive; I-201 thru I-204, inclusive; J-101 thru J-102, inclusive; and J-201 thru J-202, inclusive. The street addresses for each building in Phase I are as follows: Building "H": 73-1106 Nuuanu Street; Building "I": 73-1108 Nuuanu Street; and Building "J": 73-1110 Nuuanu Street.

Phase IV includes three (3) two story buildings lettered "K", "M" and "N", with each building containing eight (8) units for a total of twenty-four (24) units numbered as follows: K-101 thru K-104, inclusive; K-201 thru K-204, inclusive; L-101 thru L-104, inclusive; L-201 thru L-204, inclusive; M-101 thru M-104, inclusive; and M-201 thru M-204, inclusive. The street addresses for each building in Phase I are as follows: Building "K": 73-1112 Nuuanu Street; Building "L": 73-1114 Nuuanu Street; and Building "M": 73-1116 Nuuanu Street.

2. PERSONS CONNECTED WITH THE PROJECT

2.1 Developer(s)	Name: Seascape Development, LLC Business Address: P.O. Box 2808 Kailua-Kona, Hawaii 96745-2808 Business Phone Number : (808) 326-4675 E-mail Address: reception@westprodev.com
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).	John Stevens, Manager Stevens Family Limited Partnership, LLLP, Member Westpro Development, Inc., Member
2.2 Real Estate Broker	Name: Intero Real Estate Services, Hawaii, LLC & Prince Properties Inc. Business Address: (for both) 75-5706 Haname Place, Suite #108 Kailua-Kona, Hawaii 96740 Business Phone Number: (for both) (808) 334-0548 E-mail Address: marni@mamishirley.com & Prince@ccimhawaii.com
2.3 Escrow Depository	Name: Hawaii Escrow and Title, Inc. Business Address: 700 Bishop Street Honolulu, Hawaii 96813 Business Phone Number: (808) 532-2977
2.4 General Contractor	Name: Avalon Hawaii Construction Business Address: P.O.Box 685 Kilua-Kona, HI 96745 Business Phone Number: (808) 329-2818
2.5 Condominium Managing Agent	Name: Certified Management Business Address: 75-170 Hualalai Road, #A-200 Kailua-Kona, HI 96740 Business Phone Number: (808) 329-6063
2.6 Attorney for Developer	Name: Robert E. Warner, Esq.. Business Address: 810 Richards St, Ste 700 Honolulu, Hawaii 96813 Business Phone Number: (808) 286-2442

3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

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

3.1 Declaration of Condominium Property Regime

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

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	February 16, 2007	2007-035079 (created Phase I)

Amendments to Declaration of Condominium Property Regime

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	May 14, 2007	2007-089526 (created Phase II)
	May 14, 2007	2007-089527 (created Phase III)
	May 14, 2007	2007-089527 (created Phase IV)
	June 27, 2007	2007-115331
	July 10, 2007	2007-123790
	August 29, 2008	2008-139221

3.2 Bylaws of the Association of Unit Owners

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

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	February 16, 2007	2007-035080

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	4401
Dates of Recordation of Amendments to the Condominium Map: May 17, 2007 (three amendments, one for each of Phases II, III and IV, and June 27, 2007, July 10, 2007 and August 29, 2008.	

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

<p>Status of Construction: Construction of Phases II and III has been completed. Construction has commenced for Phase IV and is estimated to be completed on or before April 15, 2009. THIS IS AN ESTIMATE ONLY AND THE ACTUAL COMPLETION DATE MAY VARY, and of course the estimated date is subject to extension for delays caused by acts of nature and God (force majeure).</p>
<p>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.</p>
<p>Completion Deadline for any unit not yet constructed; as set forth in the sales contract:</p> <p>For units in Phase IV: December 31, 2009 subject to extension for delays caused by acts of nature and God (force majeure).</p>
<p>Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:</p>

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

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

5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance

<input checked="" type="checkbox"/>	<p>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.</p> <p><i>If this box is checked, Section 5.6.2, which follows below, will not be applicable to the project.</i></p>
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5.6.2 Purchaser Deposits Will Be Disbursed Before Closing

<p>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):</p>	
<input type="checkbox"/>	<p>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</p>
<input type="checkbox"/>	<p>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.</p>

REVISED EXHIBIT E
to
DEVELOPER'S PUBLIC REPORT FOR SEASCAPE CONDOMINIUM PHASES II, III AND IV

A. Permitted Encumbrances

The following now encumber title to the land, will remain as encumbrances on the title to a Unit conveyed to a buyer (except as noted re item 4 below), and together with such other encumbrances as may be placed on the title that do not materially and adversely affect the use or value of a Unit, are sometimes called the "Permitted Encumbrances."

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. Affidavit of Peter H. Souza, Jr. dated February 8, 2006, recorded in the Bureau of Conveyances of the State of Hawaii on February 21, 2006, as Document No. 2006-034153, including but not limited to, the designation of archaeological site buffers, being SIHP Sites 5747, 23413 and 23414, as shown on subdivision map of Lokahi Ka'u prepared by Peter H. Souza, Jr., licensed professional surveyor, Certificate No. 9279, revised March 16, 2005 affecting Lot 2 (among others).
3. An Archaeological Mitigation Plan (unrecorded) for Ten Sites on TMK: 3-7-3-10:03 prepared by Rechtman Consulting, LLC (Robert B. Rechtman, Ph.D. and Matthew R. Clark, B.A.) dated August 2004, with respect to the archaeological site shown on Condominium Map No./ 4401 as amended, being SIHP Sites 5747, 23413 and 23414, as accepted by letter dated March 11, 2005 to Rechtman Consulting Inc. from the State of Hawaii Department of Land and Natural Resources.
4. Agreement Re Affordable Housing dated March 7, 2006, between the Seascape Development LLC and the County of Hawaii recorded on March 16, 2006 as Document No. 2006-049941, and amended by Release of Sales Restrictions dated December 12, 2007 recorded on January 2, 2008 as Document No. 008-000226.

Notes:

(a) Re buyers who are not "qualified households:" As provided for in said Release, each unit sold to and closed with a buyer who is not a "qualified households" under the County of Hawaii's Affordable House Policy will not be subject to resale restrictions required by said Affordable Housing Policy and will be released from said Agreement re Affordable Housing, provided that the purchase price for such unit is not in excess of \$293, 403.

(b) Re "qualified household" buyers: Each unit purchased by a "qualified household" buyer will be subject to said Agreement re Affordable Housing, including the resale restrictions which are disclosed at pages 50 thru 53 of the Developer's Public Report.

5. Declaration of Joint Ownership and Use for Private Wastewater Treatment Facility dated January 25, 2007 recorded on February 16, 2007 as Document No. 2007-030438, as amended from time to time (the "**Wastewater Declaration**").

6. Declaration of Condominium Property Regime for Seascape Condominium and Creation of Phase I dated February 16, 2007, recorded on February 26, 2007 as Document No. 2007-035079, By-Laws of the Association of Unit Owners of Seascape Condominium of even date therewith recorded February 26, 2007 as Document No. 2007-035080, the Condominium Map recorded as Map No. 4401, as each of the same may be lawfully amended from time to time, including as amended by the exercise of the Reserved Rights, and the unrecorded House Rules promulgated from time to time pursuant to said Bylaws (all of documents as so amended and the Wastewater Declaration being sometimes called the "**Condominium Documents**"). Amendments include documents:

<u>Dated</u>	<u>Recorded</u>	<u>Document No.</u>	<u>Dated</u>	<u>Recorded</u>	<u>Document No.</u>
May 14, 2007	May 17, 2007	2007-089526	July 10, 2007	July 11, 2007	2007-123790
May 14, 2007	May 17, 2007	2007-089527	October 29, 2007	November 2, 2007	2007-193713
May 14, 2007	May 17, 2007	2007-089528	August 29, 2008	September 2, 2008	2008-139221
June 26, 2007	June 27, 2007	2007-115331			

7. Grant of Easement and Bill of Sale in favor of Water Board of the County of Hawaii dated May 16, 2007, recorded June 29, 2007 as Document No. 2007-117240.

B. 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. The title is presently encumbered by the following Blanket Liens. The title may also be encumbered by additional Blanket Liens placed against the Condominium or the Property during the course of construction. However, all 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, see Section 5.3, page 13 of the Developer's Public Report.)

1. (a) Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing from Seascape Development. LLC, as mortgagor, in favor of California Savings Bank, as mortgagee, dated December 6, 2006, recorded in said Bureau on December 7, 2006, as Document No. 2006-224221.

(b) Assignment as Collateral Security and Security from Seascape Development. LLC, as assignor, in favor of California Savings Bank, as assignee, dated December 6, 2006, recorded in said Bureau on December 7, 2006, as Document No. 2006-224222.

(c) Assignment of Rights under Covenants, Conditions and Restrictions, Sales Agreements, Permits and Development Documents, from Seascape Development. LLC, as assignor, in favor of California Savings Bank, as assignee, dated December 6, 2006, recorded in said Bureau on December 7, 2006, as Document No. 2006-224223.

(d) Financing Statement from Seascape Development. LLC, as debtor, in favor of California Savings Bank, as secured party, recorded in said Bureau on December 7, 2006, as Document No. 2006-224224.

Note: The Developer has entered into an unrecorded Long Form Condominium Purchase and Sale Agreement with Banyan Trimont Properties, LLC, a Hawaii limited liability company ("BTP"), a Short Form of which dated August 7, 2008 was recorded in the Bureau on August 19, 2008 as Document No. 2008-131157. If any Unit covered by this Short Form is sold to a buyer other than BTP, the Short Form will and must be released from such Unit upon the recordation of a deed in favor of such other buyer.

END OF REVISED EXHIBIT E

EXHIBIT H

Summary of Purchase and Sale Contract (the "Purchase Contract") and Escrow Agreement

1. **Purchase Contract and Escrow Agreement Complementary.** The Purchase Contract between the Developer as the Developer and each Buyer and the Escrow Agreement dated November 15 and 16, 2006 between the Developer and Hawaii Escrow Title, Inc., as Escrow Agent complement each other, as follows:

1.1 **Purchase Price, Payment Terms and Handling of Buyer's Funds.** The Purchase Contract states the purchase price and payment terms for Buyer's purchase and requires that all Buyer's Funds be deposited with and held, handled and disbursed by the Escrow Agent in accordance with the Escrow Agreement, including as follows.

(a) **Interest on Buyer's Funds.** Any interest earned on Buyer's Funds held in escrow belongs to Developer, except as otherwise agreed in writing or as stated below in Section 1.3(c) of this Exhibit.

(b) **Disbursement of Buyer's Funds.** Escrow shall disburse Buyer's Funds:

(1) **To pay certain construction and related costs** on the conditions stated above in Section 5.6.2 of this Public Report;

(2) **Upon Closing** to the Developer;

(3) **As a refund to Buyer;** if either Buyer or the Developer cancels the Contract before it become legally binding as stated above in Section 5.8.1 of this Public Report; or if as Buyer's sole and exclusive remedy Buyer cancels if the Completion Deadline for the completion of construction is missed as stated above in Section 5.8.2 of this Public Report; or if as Buyer's sole and exclusive remedy Buyer rescinds after a material change as stated above in Section 5.8.3 of this Public Report; or if as Buyer's sole and exclusive remedy Buyer elects to terminate the Purchase Contract if the Developer defaults on the Contract and does not cure that default within the time period required by the Contract; or if the Developer exercises any of its rights to cancel, rescind or terminate where Buyer is not in default.

(4) **As Liquidated Damages to The Developer,** if the Developer terminates because the Buyer is in default.

1.2 **Closing Terms and Conditions.** The Purchase Contract and Escrow Agreement state the terms and conditions on which each Buyer's purchase will close as scheduled by the Developer, including as follows:

(a) **Construction is substantially completed** as evidenced by the first publication of the Notice of Completion pursuant to HRS Chapter 507, Part 2. The Developer will attempt to schedule an inspection of Buyer's Unit prior to the Closing but Closing shall not be delayed if the inspection does not occur prior to the Closing or if Buyer, for any reason, does not attend the inspection or does not accept Buyer's Unit; *however*, any incomplete items shall be completed by the Developer as soon as reasonably possible after Closing;

(b) **There is a commitment to issue to Buyer upon Closing an Owner's Title Policy insuring that Buyer's title to the Unit is free and clear of:**

(1) **All Blanket Liens** as stated above in Section 5.3 of this Public Report; and

(2) **All Other Encumbrances except for the Permitted Encumbrances** which are stated in Exhibit E to this Public Report.

Buyer shall pay for the Title Policy and is free at Buyer's expense to choose any Title Insurer Buyer wants that is licensed in Hawaii to issue the Title Policy. But unless Buyer tells Escrow in writing differently, the Escrow Agent will make its own arrangements for title insurance for Buyer. If the Title Commitment is arranged for by the Escrow Agent, the premium for the Title Policy shall be as stated in the Escrow Agreement.

(c) **Protection against Mechanic's and Materialmen's Liens.** Closing may occur prior to the expiration of the applicable lien period established pursuant to said HRS Chapter 507, Part II as long as the Title Insurer issuing the Title Policy to Buyer is committed upon closing to include in Buyer's Title Policy protections against any and all mechanic's and materialmen's liens, whether or not filed, arising from the construction of the Unit, or if the Title Insurer cannot insure the Buyer against such liens, the Closing shall occur only when such liens have been released, or sufficient funds have been set aside to cover the amount of such lien.

(d) **Buyer shall pay all closing expenses**, which *include* but are not limited to: (1) the cost of evidence of title and the premium for the Buyer's Title Policy, and any additional costs relating to the issuance of endorsements, an extended coverage policy, or a lender's policy; (2) the cost of drafting any revisions or addenda to this Contract; (3) the cost of obtaining any consent necessary for Buyer to enter into and/or fulfill its obligations under this Contract; (4) Buyer's notary fees; (5) all conveyance taxes and recording fees; (6) two months' maintenance fees and start-up fees for the Condominium Association; (7) Buyer's share of pro-rated property taxes and if applicable insurance premiums; (8) the Escrow Agent's fees; and (9) any fees or charges incurred in connection with any mortgage loan obtained by Buyer; and *exclude* only the costs of preparation of the Unit Deed (provided Buyer will pay all costs of redrafts due to changes made by Buyer), preparation and recording of The Developer's partial release of Blanket Liens, and The Developer's share of pro-rated property taxes and The Developer's notary fees.

1.3 **Cancellation, Rescission and Termination Rights.**

(a) **Buyer's Rights** are summarized above in Section 1.1(b)(3) of this Exhibit.

(b) **Developer's Rights include the right to terminate:**

- at any time before the Contract becomes as stated in Section 5.8.1, of this Public Report; or
- if Buyer does not return to the Developer any cancellation, rescission or waiver notice delivered to Buyer within the prescribed time period; or
- if Buyer (or if multiple Buyers or any one of them) should die or become incompetent or suffer any incapacitating injury or disease prior to the Closing; or
- if Buyer shall fail to qualify or maintain Buyer's qualification for mortgage financing; or
- if Buyer is purchasing as a "*qualified household*" as defined in the County of Hawaii's Affordable Housing Policy (see the below Section 2.1 of this Exhibit), Buyer shall fail to so qualify or maintain such qualification; or
- if Buyer should default on the Contract.

(c) **Refund to Buyer and Termination Expenses.** Upon any cancellation, termination or rescission of the Contract except upon a default by Buyer, Buyer shall be entitled to a prompt and full refund of all moneys paid, without interest, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250 as stated above in Section 5.8.1 of this Public Report (collectively, the "**Termination Costs**"). *However*, if either the Developer or Buyer terminates this Contract before it becomes legally binding or if the Developer terminates where the Buyer is not in default or as Buyer cancels as Buyer's sole and exclusive remedy where the Developer is in default, *then*, the Developer shall pay the Termination Costs, and in the case of Buyer termination due to default of the Developer, Buyer shall also be entitled to any interest earned on Buyer's Funds deposited in escrow.

2. **Other Purchase Contract Provisions.** The Contract also provides as follows:

2.1 **Sales to Buyers who are not Qualified Households.** Pursuant and subject to the terms and conditions stated in the Agreement Re Affordable Housing dated March 7, 2006, between Seller and the County of Hawaii (the "**County**") recorded in the Bureau of Conveyances of the State of Hawaii on March 16, 2006 as Document No. 2006-049941 ("**Affordable Housing Agreement**"), Developer initially marketed the Units to prospective buyers as "*qualified households*" (as defined in the Affordable Housing Policy) earning 120% to 140% of the County's median family income at the time of sale. However, if Developer was unable, after good faith efforts, to sell any particular unit to a qualified household, and the County did not exercise its first right to purchase such Unit, then Developer would be permitted to sell such Unit to a non-qualified buyer at the "*affordable price.*" Developer has advised the County that after eleven months of good faith pre-registration marketing efforts, it has been unable to locate prospective qualified buyers for all of the units in the Condominium. By letter dated May 14, 2007, the County has waived its first right to purchase. Developer was therefore authorized to sell to buyers who are not qualified those units in Phases II, III and IV not reserved for or not subsequently contracted for purchase by or not sold to prospective qualified buyers, subject to certain "**Resale Restrictions**" in favor of the County. Subsequently by a "Release of Sales Restrictions" dated December 12, 2007 and recorded in the Bureau on January 2, 2008 as Document No. 008-000226, the County released all Units in the Seascape Condominium which had previously been sold or will be sold by the Developer to buyers who are not "*qualified households*" at the affordable price of no more than \$293,403 per Unit (all such units being referred to as the "**Released Units**"), such that "non-qualified household" buyers from the Developer and subsequent owners from time to time of the Released Units are released from all Resale Restrictions, from all other restrictions under the County's Affordable Housing Policy and from the Affordable Housing Agreement as well as any deed restrictions in favor of the County that have been imposed thereon.

2.2 **Buyer's Default and The Developer's Remedies, Including Liquidated Damages.** Buyer will be in default under the Contract if Buyer fails to make a payment when due; or Buyer acts in bad faith as determined by the Developer in an attempt to qualify or maintain Buyer's qualification for mortgage financing or, if applicable, for the purchase of a Unit a "*qualified*

household"; or if Buyer fails to observe or perform any other material obligation required to be observed or performed by Buyer under this Contract and such failure continues for fifteen (15) days after the Developer gives written notice to Buyer of such failure.

If the Developer cancels where Buyer is in default, the injury to the Developer will be uncertain as to the nature and amount and difficult to ascertain in view of, but not limited to: the Developer's financial commitments with respect to the Condominium, including without limitation, Developer's construction loan; the connection between the sale, cancellation or such default with respect to one Unit and the sale, cancellation or any default with respect to other Units in the Condominium; and the nature of the real estate market in Hawaii. As a reasonable estimate of the Developer's damages resulting from any such default, the sums previously paid by Buyer under the Contract together with all accrued interest thereon shall become, at Developer's option, the sole property of the Developer as liquidated damages and not as a penalty for such default. It is understood that the damages suffered by the Developer by virtue of such a default later in time will likely be greater than such a default occurring at an earlier point in time. If The Developer does not elect to retain Buyer's Funds as liquidated damages, The Developer may instead pursue any other rights and remedies and combination thereof permitted at law or in equity, including, but not limited to, actual and consequential damages, and specific performance. The Developer may also, at its sole discretion, elect to have its claims for Preclosing and Closing defaults by Buyer resolved by binding arbitration on an expedited basis.

If Closing does not occur on the date scheduled by the Developer due to any event of default by Buyer, but the Developer does not then elects to terminate the Contract and Closing occurs at a later date, *then*, upon Closing, as liquidated damages for Buyer's default, Buyer shall be required to pay the Developer through the Escrow Agent One Hundred and No/100 Dollars (\$100.00) per day for each day the Closing is delayed due to Buyer's default, commencing as of the initially scheduled Closing date and continuing until the actual Closing date.

2.3 Default by the Developer; The Developer's Cure Rights; Buyer's Exclusive Remedies. If The Developer shall fail to perform any material obligation required of the Developer prior to or at Closing, the Developer shall have the opportunity to cure such default within fifteen (15) days after the date Buyer notifies the Developer in writing of such default by certified or registered mail. If the Developer does not cure the default within that period, Buyer may elect, at Buyer's sole discretion, to either: (1) terminate this Purchase Contract, or (2) seek specific performance of the Contract. Buyer shall give written notice of its election to the Developer. If Buyer elects to terminate, *then* as its sole and exclusive remedy Buyer shall be entitled to receive a full refund of Buyer's Funds in escrow plus any interest accrued thereon, and shall have no other rights or remedies whatsoever, including, without limitation, claims for damages, and the Developer shall be released and discharged from any further obligation under this Contract. If Buyer seeks specific performance, *then* Buyer shall not be entitled to recover any damages from, pursue any other right or remedy against, or obtain any other relief from the Developer, and Buyer's Funds and any interest thereon shall be not refunded to Buyer.

2.4 Buyer Qualification for Mortgage Financing and Affordable Housing Purchase; Credit Inquiries. Immediately upon signing the Contract, Buyer must qualify for mortgage financing and qualify to purchase as a "qualified household" and during the term of the Contract must keep and maintain those qualifications and confirm them at the request of the Developer. Buyer hereby authorizes The Developer to make credit inquiries about Buyer including, but not limited to, obtaining credit reports on Buyer and verifying by any legal means any financial information submitted to The Developer.

2.5 Buyer Approval of Estimated Initial Budget and Schedule of Maintenance Fees and Buyer's Obligation to the Condominium Association. The Contract also provides: that Buyer has examined and approved the estimated initial budget for the Association and the estimated monthly maintenance assessments for the Unit as shown in Exhibit G attached to the Public Report; and that Buyer is aware and accepts: (1) that such amounts are only estimates, are subject to change for various reasons, and Buyer also accepts any such changes; (2) that SUCH ESTIMATES ARE NOT INTENDED TO BE AND DO NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY BY THE DEVELOPER OR THE MANAGING AGENT, INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF SUCH ESTIMATES; and (3) that under the Condominium Documents, Buyer shall be liable for the payment of a monthly assessment to the Association for the operation and maintenance of the Common Elements and the Limited Common Elements of the Condominium and the administration of the affairs of the Association.

2.6 Regarding Construction. The Contract also provides that:

(a) **Notice to Buyer Required By HRS Chapter 672E:** "CHAPTER 672E OF THE HAWAII REVISED STATUTES CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED YOUR UNIT. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER

MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.”

Buyer shall provide to Seller a copy of any notice Buyer serves on any Contractor pursuant to HRS Chapter 672E.

(b) Builder’s Limited Warranty; No Other Developer Warranties, Express or Implied; Assignment of Appliance Warranties from Others. Buyers will be given the BUILDER’S LIMITED WARRANTY, see Section 5.4 of the Public Report.

Except for the BUILDER’S LIMITED WARRANTY, THE DEVELOPER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNIT, THE CONDOMINIUM OR ANY PHASE OF THE CONDOMINIUM, ANY CONSUMER PRODUCTS OR ANYTHING ELSE INSTALLED IN THE UNIT OR IN THE CONDOMINIUM, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION, ADEQUACY OF DESIGN OR FITNESS OF THE UNIT FOR A PARTICULAR PURPOSE.

By recording the Unit Deed to Buyer, the Developer is assigning to the Buyer and where applicable to the Condominium Association whatever appliance warranties, see also said Section 5.4. All assignments of appliance warranties by the Developer are without recourse to the Developer. The Developer is not providing any appliance warranty to Buyer, is merely attempting to pass through to Buyer any warranties given by others, and is not adopting any such warranties or acting as co-warrantor. In the event of the breach of any warranty, Buyer shall have no claim against the Developer on account of such breach. Instead, Buyer’s sole remedy shall be expressly limited to the party making the warranty. The Developer’s obligation with respect to any defects will be limited to assisting Buyer and if applicable the Condominium Association in presenting to the warranting party those claims for defects reported in writing to the Developer within the term of such warranty.

(c) Certain Buyer Acknowledgments and Agreements. The Contract also includes certain Buyer acknowledgement and agreements regarding construction matters that the Developer recommends Buyer read with care, as well as certain required procedures to be followed should Buyer discover any material, structural or other defect in the Unit that Buyer believes may be the responsibility of the Developer (any “Defect”), including giving notice, inspection rights and the opportunity to cure to the Developer. The Developer is not liable for any general, special or consequential damage, cost, diminution in value or other loss Buyer may suffer as a result of any Defect which reasonably might have been avoided had Buyer followed such procedures; *however*, following such procedures will not create or otherwise establish any contractual duty or obligation on the part of the Developer to repair, replace or cure any Defect or affect any other limitation on the Developer’s liability.

2.7 General Limitations on the Developer’s Liability. The Contract also provides other general limitations on the Developer’s liability, for example: **(a)** The Developer is using every commercially reasonable effort to avoid, eliminate, minimize and mitigate inherent risks in connection with the development and construction of the Condominium; **(b)** The Developer is not responsible for the actions of third parties or events beyond its control; and **(c)** to the fullest extent permitted by law and without limiting the applicability of any of the provisions of the Contract, The Developer’s total liability to Buyer for any and all injuries, claims, losses, expenses, damages, or claim expense related to, arising from or associated with, directly or indirectly, in whole or in part, the acts or omissions of the Developer, shall not exceed the limits of any applicable insurance covering such injuries, claims, losses, expenses, damages, or claim expense; **(d)** Buyer waives all claims for consequential damages including without limitation, damages incurred for rental expenses, loss of use, income, profit, financing, business and reputation, and for loss of productivity or services; **(e)** The Developer and Buyer waive trial by jury; and **(f)** The Developer shall be notified as prescribed in the Contract.

Also at the election of the Developer, claims, disputes or other matters in question between the Developer and Buyer (other than Preclosing or Closing matters which at the Developer’s election are subject to special arbitration proceedings) shall be subject to mediation and/or arbitration, and where a dispute involves common issues of fact or law requiring the presence of third-persons or entities if complete relief is to be accorded in arbitration, or where the failure to consolidate would create a risk of inconsistent results in disputes between the Developer and Buyer, or between the Developer or Buyer and third-persons or entities, any such third person or entity necessary to resolve a claim shall be made parties to the same dispute resolution proceeding by consolidation or joinder.

2.8 Brokers. The Contract also provides that: the Developer’s Broker represents only the Developer, that the Developer is not responsible for any representation or statement of Buyer’s Broker, if any, that is inconsistent with those set forth in the Contract or the Developer’s Public Report. If Buyer writes in the Contract that Buyer does not have any Broker, Buyer warrants that no real estate broker or other person represented Buyer or was engaged by Buyer in connection with Buyer’s purchase and agrees to indemnify, defend, and hold the Developer harmless against claims to the contrary.

3. **Other Provisions of the Escrow Agreement.** The Escrow Agreement also provides that the Developer shall provide a copy of each executed Purchase Contract to the Escrow Agent as well as other information relevant to that Contract and that Escrow Agents given certain protections by the Developer and Buyer for acting as the escrow for the sale and purchase between the parties. The Escrow Agreement shall be subject to and shall be interpreted to comply with the Condominium Property Act.

4. **Deed Restrictions on Buyers who are versus those who are not "qualified households."** "Each Unit sold to a buyer who is not a *qualified household*" under the County of Hawaii's Affordable Housing Policy will not be subject to resale restrictions in favor of the County, provided that the purchase price for such Unit does not exceed \$293,403. Each Unit sold to a *qualified household* will be subject to resale restrictions that will be stated in an Exhibit B to such a buyer's Deed, which will be as follows:

"The conveyance by this Deed of the property described in Exhibit A by Grantor to Grantee is subject to the following rights of the County of Hawaii:

"1. **Definitions:** The following terms shall have the following meanings:

(a) "County" shall mean the County of Hawaii.

(b) "Grantee" shall mean the named Grantee in this Deed.

(c) "HRS" shall mean the Hawaii Revised Statutes, as amended from time to time.

(d) "Mortgage Holder" shall mean and include the United States Department of Housing and Urban Development, Federal Housing Administration; the United States Department of Agriculture, Farmers Home Administration; or other federal or state agency engaged in housing activity; Administrator of Veterans Affairs; Federal National Mortgage Association; Governmental National Mortgage Association; Federal Home Loan Mortgage Corporation; any private mortgage tender; or any private mortgage insurer; and their respective successors, grantees and assigns.

(e) "Property" shall mean the property conveyed by this Deed.

(f) "Right of First Refusal" shall mean the County's Right of First Refusal to purchase the Property as set forth in Sections 2(b) and (c) below.

(g) "Purchaser" shall mean Grantee. "Purchaser" shall also mean any person(s) to whom title or any other interest in the Property shall have been transferred with the County's consent under Section 3 below or pursuant to a sale with respect to which the County shall not have exercised its Right of First Refusal under Section 2 below.

(h) "Qualified Resident" shall mean a person meeting the requirements of HRS Section 201E:2, as amended, or any other requirements established by the County from time to time (which may in the County's discretion supersede those of said Section 201E:2).

(i) "Restriction Period" shall mean a period of ten years after the date of which this Deed is recorded in the Bureau of Conveyances of the State of Hawaii.

(j) "Transfer" shall mean the transfer of title to the Property or any portion thereof or interest therein, whether in fee simple, leasehold, transfer of equitable interest or otherwise.

2. **Restrictions and Right of First Refusal.** The following provisions shall apply to the Property during the Restriction Period:

(a) Except as otherwise permitted in this Exhibit B, no person may Transfer the Property at any time during the Restriction Period unless the County shall have received prior written notice of said Transfer.

(b) The County shall have the Right of First Refusal during the Restriction Period to purchase fee simple title to the Property at a price equal to the sum of the following three amounts:

(i) The original purchase price of the Property paid by the Grantee named in this Deed;

(ii) The actual cost to the Purchaser of any capital improvements to the Property constructed or installed on the Property and paid for by the Purchaser as evidenced by receipted invoices or other

reasonable and accurate records of said costs and payments. The term "capital improvements" shall mean improvements of a capital nature and shall not include labor or materials normally considered as repairs or incident to periodic home maintenance.

(iii) Interest on the total of the amounts under subparagraphs (i) and (ii) at the rate the Consumer Price Index for the City & County shall have increased from the date of Purchaser's acquisition of the Property to the date of the conveyance of the Property to or as directed by the County pursuant to this Right of First Refusal.

(c) In the event of any proposed transfer of the Property at any time during the Restriction Period, the County shall have, within 90 days following written notice thereof given to the County as provided for in Section 2(a) above, the power to exercise its Right of First Refusal by written notice to Purchaser. If the County exercises said Right of First Refusal, then within 90 days following the County's notice of exercise the County will pay to the Purchaser the purchase price computed under Section 2(b) above and Purchaser will convey to the County (or to such other person or entity which the County shall designate), by warranty deed, good and marketable fee simple title to the Property free and clear of all mortgages, liens and encumbrances, except (i) those encumbrances listed on Exhibit A and this Exhibit B to this Deed, and (ii) any mortgage of the Property then of record which the County (or its designated transferee) shall elect to assume as part of the purchase (in which case the principal balance of all indebtedness so assumed shall be credited against the purchase price at closing and the County will pay in cash only the unpaid balance of the purchase price after deducting the amount of said assumed indebtedness). If any mortgage on the Property is not so assumed at closing, said mortgage will be paid and discharged by the closing escrow agent out of the proceeds of the purchase price before any disbursements are made to the Purchaser. If at the time of any Transfer during the Restriction Period the County fails to exercise its said Right of First Refusal, all of the restrictions and Right of First Refusal set forth in this Exhibit B shall not terminate but shall continue to apply as a continuing encumbrance on the Property in the hands of the new Purchaser.

3. Transfers to Which Said Restrictions Do Not Apply. The restrictions set forth in this Exhibit B shall not apply to the following transactions:

(a) The Transfer by devise or descent to a parent, sibling or lineal descendant of the Purchaser; provided that the transferee shall be approved in advance by the County as a Qualified Resident and shall take title subject to the restrictions and option set forth in this Exhibit B.

(b) Any Transfer under a federally subsidized mortgage program for affordable housing if (but only to the extent that) said restrictions and Right of First Refusal are prohibited by applicable federal laws, rules or regulations as limiting or jeopardizing the federal government's ability to recapture any interest-credit subsidies provided to the homeowner.

(c) Any Transfer to a Qualified Resident with respect to which the County determines in its sole discretion to waive the restriction because the Transfer would be at a price and upon terms that are consistent with the purpose and intent of this Exhibit B without the necessity of the County repurchasing the Property, and the transferee takes title subject to the restrictions and Right of First Refusal set forth in this Exhibit B.

4. Expiration of the Restriction Period. Upon the expiration of the Restriction Period, the Right of First Refusal shall expire and thereafter the Property may be transferred at any time and from time to time free and clear of the above restrictions and Right of First Refusal; provided, however, that if the County shall have paid any rent, interest or purchase price subsidy with respect to the Property at any time in connection with any purchase, development, construction and sale of the Property either before or during the Restriction Period, the Purchaser shall be required to repay to the County any such subsidy, plus interest at 7% per annum, non-compounded.

5. Protection of Mortgagees. Notwithstanding anything herein to the contrary, the above restrictions shall be subject to the following terms and provisions for the benefit of Mortgage Holders holding any interest in the Property:

(a) The transfer of a security interest in the Property by the Purchaser to a Mortgage Holder shall not be deemed to be a Transfer for purposes of Section 2(a) above.

(b) Any laws to the contrary notwithstanding, as long as the Right of First Refusal set forth in Section 2 above apply to the Property, any Mortgage Holder, prior to commencing mortgage foreclosure proceedings,

shall notify the County in writing of (1) any default of mortgagor under the mortgage, and (2) any intention of the mortgagee to foreclose the mortgage under HRS Chapter 667; provided that the mortgagee's failure to provide such written notice to the County shall not affect the Mortgage Holder's rights under the mortgage.

(c) The County shall be made a party to any foreclosure action and shall be entitled to all proceeds remaining after payment of (i) all customary and actual costs and expenses of foreclosure and transfer pursuant to default and (ii) all liens and encumbrances of record; provided that the owner(s) of the Property who are then in default shall be entitled to an amount which shall not exceed the sum of the amounts determined pursuant to Section 2(a)(ii) and (iii), above.

(d) The restrictions and Right of First Refusal set forth in Section 2 above shall be automatically extinguished and shall not attach in subsequent Transfers of title when a Mortgage Holder or other party becomes the owner of the Property pursuant to a mortgage foreclosure, foreclosure under power of sale, or conveyance in lieu of foreclosure after a foreclosure action is commenced, or when a mortgage is assigned to a federal housing agency.

6. **Restrictions on Use of Property.** During the time when the restrictions and option in Section 2 above apply to the Property, the Property shall be subject to the following additional restrictions on use (in addition to other use restrictions of record, if any):

(a) The Property shall be occupied as the principal residence of the Purchaser.

(b) The Purchaser will verify the Purchaser's principal residence status at the County's request from time to time on such verification form or affidavit as the County may in its discretion request.

7. **Miscellaneous.** Except as provided in Section 5 above, every Transfer which occurs during the Restriction Period shall be expressly made subject to all the terms and restrictions and Right of First Refusal set forth in this Exhibit B. The terms set forth in this Exhibit B shall not be amended or modified without the express written joinder of the County."

END OF EXHIBIT H