

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

CONDOMINIUM PROJECT NAME	MAKALI'I CONDOMINIUM
Project Address	Hoolaulea Way, Kalapaki, Kauai, Hawaii 96766
Registration Number	6441
Effective Date of Report	July 28, 2008
Developer(s)	Kauai Lagoons LLC

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; and (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.

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. What this report covers. This report covers forty-nine (49) Units in the Condominium of which two are commercial units and forty-seven (47) are "Resort Units". Of the Resort Units, nineteen (19) are "Residences Units" and twenty-eight (28) (the "Club Units") will be registered with the time share administrator under a time share plan in accordance with Chapter 514E Hawaii Revised Statutes. For the Club Units there will be a revised specimen sales contract, revised specimen conveyance document and a separate escrow agreement that will be included in the Chapter 514E filing. In accordance with Section 514B-82, if any Units are registered under Chapter 514E, this Public Report will not be delivered by the Developer to the purchasers or prospective purchasers of those Units.

2. Other Declarations and Associations.

(a) Master Declaration. Makali'i Condominium is part of Kauai Lagoons Resort which is subject to an overall Declaration of Covenants Conditions and Restrictions for Kauai Lagoons (the "Master Declaration").

- Declarant under the Master Declaration has special rights for example rights to amend, grant easements, appoint directors and appoint a Design Committee.
- Owners in Kauai Lagoons will be members of Kauai Lagoons Community Association, a nonprofit corporation, governed by the nonprofit corporation statute 414D Hawaii Revised Statutes and the planned community association statute 421J Hawaii Revised Statutes, which will maintain Areas of Common Responsibility, make assessments and have lien rights to enforce them.
- Declarant as Class B member of Kauai Lagoons Community Association has 3 votes for every vote it would have as a Class A member.

(b) The Residences Units will be submitted to an additional Declaration of Covenants (the "Residences Declaration").

- Owners of Residences Units will be members of Association of Residence Owners of Makali'i, a nonprofit corporation, governed by the nonprofit corporation statute 414D Hawaii Revised Statutes and the planned community association statute 421J Hawaii Revised Statutes (the "Residences Association"). The Residences Association will maintain certain Limited Common Elements, make assessments and have lien rights to enforce them. See Exhibit J for the budget of the Residences Association which includes the Kauai Lagoons Community Association assessment.

(c) The Club Units will be submitted to a time share declaration in connection with the time share registration.

Initially the Condominium Association, the Club Association and the Residences Association will each have a manager or managing agent that is an affiliate of the Developer. Each of the Condominium Association and Residences Association will have the right to enter the Residences Units for certain purposes and emergencies.

For more detailed information see Exhibit M.

3. Maintenance of Certain Limited Common Elements by Residences Association. Maintenance of certain Limited Common Elements, which would otherwise be performed by the Unit Owners, will be performed by the Residences Association. The Residences Association will maintain entry courtyards for those Residences Units in the Residences Main Building which have them and maintain the bridge, entry and plunge pool of each Residences Unit in Townhomes Building A (Condominium Declaration 7.3.2). If the Residences Association fails to maintain those Limited Common Elements the Condominium Association can do so and charge the Unit Owner. (Condominium Bylaws 6.2.1) The Residences Association will also assign (but not maintain or repair) certain golf cart parking spaces in the Residences Main Building.

4. Common Interest of the Front Desk Unit. One of the rights of the Developer (See Exhibit B for the full list) is the right, but not the obligation, to develop additional Units on the Future Development Areas shown on the Condominium Map. The Future Development Areas are initially Limited Common Elements to the Front Desk Unit. So that the Common Interests of the initial 47 Resort Units will at least approximate the Common Interests they will have when and if the Condominium is fully developed, and so that the County of Kauai will not over assess the Resort Units for the land area of the Condominium, the Front Desk Unit has been given a Common Interest that is initially almost 63%. As additional Units are developed and allocated Common Interests, the Front Desk Unit's Common Interest will be progressively reduced. Initially however, where the Declaration or Bylaws call for a 67% vote of Common Interests the Front Desk will have a Common Interest large enough that its vote will be required for any vote that requires a high percentage . For example a change in the use of a general Common Element will require the approval of the Board and 67% of the Common Interests (see Condominium Declaration 11.1); and amendments to the Declaration and Bylaws require approval of 67% of the Common Interests.

5. Method of Allocating Common Expenses. Common Expenses are not allocated according to Common Interest. The Common Interests are allocated based on square footage as described in Exhibit A to this Public Report. The Common Expenses are allocated 1% each to the Front Desk Unit and Pool Grill Unit. The remaining 98% are allocated by a two step method in which line items are first allocated to the Club Units, the Residences Units in the Residences Main Building (the "Main Residences"), and the other Residences Units (the "Townhomes") according to a set of allocation methods based on number of Units, adjusted number of Units, square footage, calculated cost or fixed percentage. Then the Common Expenses amount allocated to the Club Units is allocated among the Club Units by a weighted formula based on number of bedrooms. The Common Expenses amount allocated to the Main Residences is allocated among the Main Residences by a weighted formula based on number of bedrooms and the Common Expenses amount allocated to the Townhomes is allocated among the Townhomes by a weighted formula based on number of bedrooms. Because the allocation matrix is based on Developer's experience of usage of facilities in other Condominiums, the Board is given the power to adjust the matrix based on the Condominium's own experience. See Exhibit "A" to the Bylaws, attached to Exhibit J of this Public Report, for more details.

6. Developer Subsidy. The Condominium Declaration provides that Developer and the Association may enter into an agreement under which the Developer subsidizes the Common Expenses or guarantees a maximum level of maintenances fees, or any similar form of agreement that pertains to the payment of Common Expenses for the Condominium. Any decision by Developer to end a subsidy or guaranty will be communicated to the Board at least sixty (60) days before the beginning of the Association's next fiscal year. (Condominium Declaration Section 14.1) See the note to the 2009 Estimated Operating Budget attached to this Public Report as part of Exhibit J Budget and Maintenance Fees, which notes that for 2009 Developer agrees to subsidize the maintenance fees for 2009 to the built out projection. The initial subsidy and guaranty period expires on December 31, 2009 and for subsequent years the Developer may elect not to subsidize the operating expenses of the Association and/or guarantee the maximum amount of the Maintenance Fee assessments.

7. Insurance Required of Unit Owners. In addition to the insurance carried by the Condominium Association, the Condominium Declaration requires Owners to insure their own Units. See Sections 15.7.1 and 15.7.2 of the Declaration, included in Exhibit G to this Public Report.

8. Classes of Director. One Director shall be elected by the Front Desk Owner, one half of the remaining Directors shall be elected by the Owners of the Residences Units and the other half by the Owners of the Club Units. (Bylaws 3.1.2) The class of Owner that elects a Director may remove and replace that Director (Bylaws 3.4). For example the Owners of the Residences Units may remove and replace the Director or Directors they elected.

9. Golf Club Membership. The Declaration provides for a mandatory golf course membership at the election of the Golf Course Owner (currently MORI Golf (Kauai), LLC.) Additional information is provided in Exhibit M.

10. Conditions for Binding Contracts. Developer has not yet recorded the Declaration, By-Laws and Condominium Map for this Condominium (collectively the "condominium documents"). As a result, any sales contract entered into by Buyer is non-binding and may be cancelled at any time. Upon cancellation, buyer shall be entitled to a prompt and full refund of all moneys paid, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250. The sales contract between Buyer and Developer will become binding when ALL of the following events occur:

- The condominium documents have been recorded;
- A copy of an amended public report with an effective date issued by the Real Estate Commission has been delivered to the Buyer, along with copies of the recorded condominium documents; and
- The Buyer has waived Buyer's 30-day right to cancel the sales contract.

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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 checked="" type="checkbox"/> No
Fee Owner's Name if Developer is not the Fee Owner	MORI Golf (Kauai), LLC owns a portion of the land	
Address of Project	Hoolaulea Way, Kalapaki Beach, Lihue, HI 96766	
Address of Project is expected to change because	No street number has been assigned by the County	
Tax Map Key (TMK)	TMK por. (4) 3-5-001-027 and 172	
Tax Map Key is expected to change because	The land will be consolidated and resubdivided	
Land Area	27.436 acres	
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	Amended and Restated Consolidation and Resubdivision Agreement dated as of September 1, 2007	

1.2 Buildings and Other Improvements

Number of Buildings	3
Floors Per Building	Residences Main Building: 3 Club Building A: 5; Townhomes Building A: 2
Number of New Building(s)	3
Number of Converted Building(s)	0
Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	Concrete; post tensioned concrete slabs; stone; steel; clay tile roofs

1.3 Unit Types and Sizes of Units

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

49	Total Number of Units
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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:	101
Number of Guest Stalls in the Project:	0
Number of Parking Stalls Assigned to Each Unit:	See Exhibit A
Attach Exhibit A 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. Developer's reserved rights to reassign: See Exhibit B Reserved Rights of Developer.	

1.5 Boundaries of the Units

Boundaries of the unit: See Exhibit C
--

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 D
--

1.7 Common Interest

<u>Common Interest</u> : Each unit will have a percentage interest in the common elements appurtenant to each unit. This interest is called the "common interest". It is used to determine each unit's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by unit owners. The common interest for each unit in this project, as described in Declaration, is:
Described in Exhibit A.
As follows:

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

<input checked="" type="checkbox"/>	Swimming pool
<input type="checkbox"/>	Laundry Area
<input checked="" type="checkbox"/>	Storage Area
<input type="checkbox"/>	Tennis Court
<input checked="" type="checkbox"/>	Recreation Area
<input checked="" type="checkbox"/>	Trash Chute/Enclosure(s)
<input checked="" type="checkbox"/>	Exercise Room
<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 Exhibit <u>F</u>.</p>	
<p>Described as follows:</p>	
Common Element	Number
Elevators	Elevators 4 (2 Main building; 2 Club Building A)
Stairways	Stairways 5 (3 Main building; 2 Club Building A)
Trash Chutes	Trash Chutes 1 (Club Building A)

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 Exhibit <u>G</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 Exhibit G for restrictions in Bylaws and House rules
<input type="checkbox"/>	Number of Occupants:
<input checked="" type="checkbox"/>	Other: See Exhibit G
<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>Exhibit <u>I</u> describes the encumbrances against title contained in the title report described below.</p>
<p>Date of the title report May 27, 2008</p>
<p>Company that issued the title report: Title Guaranty of Hawaii, Incorporated</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	19	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	RR20
<input checked="" type="checkbox"/>	Commercial	2	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	RR20
<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 checked="" type="checkbox"/>	Timeshare	28	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	RR20
<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 checked="" type="checkbox"/>	Other(specify)	All units	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Visitor des. area
Is/Are this/these use(s) specifically permitted by the project's Declarations or Bylaws?			<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Variances to zoning code have been granted.			<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Describe any variances that have been granted to zoning code.			See permits attached as Exhibit I		

1.14 Other Zoning Compliance Matters

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

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

If a non-conforming use, structure or lot exists in this project, this is what will happen under existing laws or codes if the structure is damaged or destroyed:

1.15 Conversions

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

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

1.16 Project In Agricultural District

<p>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii? If answer is "Yes", provide information below.</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>Does the project contain any assisted living facility units subject to Section 321-11(10), HRS? If answer is "Yes", complete information below.</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>2.1 Developer(s)</p>	<p>Name: Kauai Lagoons LLC Business Address: 3351 Hoolaulea Way, Suite 201, Kalapaki Beach, Lihue, HI 96766</p> <p>Business Phone Number: (808) 241-2000 E-mail Address: james.barry@ritzcarltonclub.com</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>Sole member Kauai Lagoons Holdings LLC, a Delaware limited liability company of which the sole member is MORI Member (Kauai), LLC, a Delaware limited liability company. The officers of MORI Member (Kauai), LLC are: President-Stephen P. Weisz; V.P.-Donald L. Baarman; V.P.-Ralph Lee Cunningham; V.P.-Victoria L. Dolan; V.P.-James H. Hunter; IV; V.P.-David W. Mann; V.P.-Robert A. Miller; V.P.-William T. Phillips; V.P.-Lester M. Pulse, Jr; V.P.-Edward A. Ryan; V.P.-Arne Morris Sorenson; V.P.-Peter J. Watzka; V.P.-Daniel B. Zanini</p>
<p>2.2 Real Estate Broker</p>	<p>Name: The Ritz-Carlton Development Company, Inc. Business Address: 3351 Hoolaulea Way, Suite 201, Kalapaki Beach, Lihue, HI 96766</p> <p>Business Phone Number: : (808) 241-2000 E-mail Address: james.barry@ritzcarltonclub.com</p>
<p>2.3 Escrow Depository</p>	<p>Name: First American Title Company, Inc. Business Address: 1177 Kapiolani Blvd., Hnolulu, HI 96814</p> <p>Business Phone Number: (800) 842-0835; (808) 536-3866</p>
<p>2.4 General Contractor</p>	<p>Name: Not yet selected Business Address:</p> <p>Business Phone Number:</p>
<p>2.5 Condominium Managing Agent</p>	<p>Name: The Ritz-Carlton Development Company, Inc. Business Address: 6649 Westwood Blvd., Orlando, FL 32821</p> <p>Business Phone Number: (407) 206-6400</p>
<p>2.6 Attorney for Developer</p>	<p>Name: Cades Schutte LLP Attention: Bernice Littman Business Address: 1000 Bishop St., #1200, Hon., HI 96813</p> <p>Business Phone Number: (808) 521-9219</p>

3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

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

3.1 Declaration of Condominium Property Regime

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

Land Court or Bureau of Conveyances	Date of Document	Document Number
Not recorded		

Amendments to Declaration of Condominium Property Regime		
Land Court or Bureau of Conveyances	Date of Document	Document Number

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
Not recorded		

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	Not recorded
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"/>
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%	67%
Bylaws	67%	67%

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>Exhibit B</p>

4. CONDOMINIUM MANAGEMENT

4.1 Management of the Common Elements

<p>Management of the Common Elements: 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 type="checkbox"/>	Not affiliated with the Developer
<input type="checkbox"/>	None (self-managed by the Association)
<input checked="" type="checkbox"/>	The Developer or an affiliate of the Developer
<input type="checkbox"/>	Other (explain)

4.2 Estimate of the Initial Maintenance Fees

<p>Estimate of the Initial Maintenance Fees: 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>Exhibit <u>J</u> 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 checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer
<input type="checkbox"/>	TV cable
<input checked="" type="checkbox"/>	Other (specify) see Sect 6.5 and notes to Ex J for elect/water/sewer to Residences

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 Residences Billed by Assoc. see Sect 6.5 and notes to Ex J
<input type="checkbox"/>	Gas for the Unit only
<input checked="" type="checkbox"/>	Water Billed by Assoc. see Sect 6.5 and notes to Ex J
<input checked="" type="checkbox"/>	Sewer Billed by Assoc. see Sect 6.5 and notes to Ex J
<input type="checkbox"/>	TV cable
<input type="checkbox"/>	Other (specify)

5. SALES DOCUMENTS

5.1 Sales Documents Filed with the Real Estate Commission

Sales Documents on file with the Commission include, but are not limited to, the following:	
<input checked="" type="checkbox"/>	Specimen Sales Contract Exhibit <u> K </u> 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: August 15, 2007 Name of Escrow Company: First American Title Company, Inc. Exhibit <u> L </u> 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.
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<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 <u> </u> .
<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 checked="" type="checkbox"/>	There are <u>no blanket liens</u> affecting title to the individual units.
<input type="checkbox"/>	There are <u>blanket liens</u> that may affect title to the individual units.

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

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: Developer will obtain a warranty from the contractor but give no separate warranty (see sales contract).
Appliances: Developer will assign any warranties but give no separate warranty (see sales contract).

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

Status of Construction:		
Estimated:	commencement ;	completion
Main Building	<u>July 2008</u>	<u>October 2009</u>
Townhomes Building A	<u>December 2008</u>	<u>January 2010</u>
Club Building A	<u>July 2008</u>	<u>October 2009</u>
<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: 2 years from Effective Date with extensions for force majeure (events beyond Developer's control). See sales contract.</p>		
<p>Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract: N/A</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 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>If the box to the left is checked, Section 5.6.2, which follow below, will not be applicable to the project.</p>
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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 checked="" type="checkbox"/>	For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person; or
<input type="checkbox"/>	For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses.

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

<p>Box A <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><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.</p>
<p>Box B <input checked="" type="checkbox"/></p>	<p>The Developer has <u>not</u> 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 <u>Important Notice Regarding Your Deposits</u> 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, <u>you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment.</u> (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 <u>Important Notice Regarding Your Deposits</u> 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: Form of Limited Warranty Deed with Covenants and Powers of Attorney. Master Declaration of Covenants for Kauai Lagoons; Declaration of Residences Association

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

Website to access rules: 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

6.1. •ZONING. The Project is zoned RR-20 Resort Residential. The Project is one of a number of projects covered by the Special Management Area Permit SMA (U) 2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, Variance Permit V-2005-7. The Project is also one of the projects affected by Kauai Ordinance PM-2006-383 which allows multifamily units in the RR-20 district of the Project (collectively the "Land Use Permit"). The Land Use Permit is attached as Exhibit I.

6.2. •CONSOLIDATION AND RESUBDIVISION. Developer owns most of the project land. The Developer and MORI Golf (Kauai), LLC have applied for Consolidation and Resubdivision and upon approval they will quitclaim the project land to Developer. Completion of the consolidation and resubdivision is estimated to take place before the end of July 2008.

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

6.4. •TV CABLE. Basic service will be included in the maintenance fees of the Club Association and the Residences Association. Expanded service will be the responsibility of individual Unit Owners.

6.5. •ELECTRICITY, WATER AND SEWER SUBMETERING. The Association will receive a single bill from the utility company for electricity and from the County for water/sewer and will submeter the individual Residences Units. Electricity and water/sewer for the individual Residences Units therefore though part of the Common Expenses will be individually billed to each Residences Owner by the Association. See the notes to the budget in Exhibit J. Electricity for the air conditioning system is not submetered but included in the Common Expenses and allocated as part of electricity to the Common Elements.

6.6 •MANAGEMENT AGREEMENT. In order to maintain brand standards the Management Agreement with the Condominium's Managing Agent delegates considerable authority to the Managing Agent and a prospective purchaser will be given a copy of the Management Agreement and should review it carefully.

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 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 at least 30 days prior to the anniversary date of the effective date of this report.

Kauai Lagoons LLC
Printed Name of Developer

By:  June 4, 2008
Duly Authorized Signatory* Date

Peter J. Watzka, Vice President
Printed Name & Title of Person Signing Above

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

***Must be signed for a corporation by an officer; 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 . DESCRIPTION OF UNITS, PARKING STALLS AND COMMON INTERESTS

I. DESCRIPTION OF UNITS

A. Description of Residences Units (Residences Main Building).

Types B and B-1 are two-bedroom Units also listed below as Main 2 because they are in the Residences Main building, Types A, A-R and C are three-bedroom Units also listed below as Main 3 because they are in the Residences Main Building and Types D, D-1 and D-2 are four bedroom Units also listed below as Main 4 because they are in the Residences Main building. The terms 2 bedroom, 3 bedroom and 4 bedroom Main Residence are used in connection with the allocation of Common Expenses in Exhibit "A" to the Bylaws and shortened to Main 2, Main 3 and Main 4 in this Exhibit.

Units 2101 through 2108 are two story Units on the Entry and Upper Levels, Units 2109 through 2111 are single story Units on the Entry Level and Units 2209 through 2211 are single story Units on the Upper Level.

No.	Map Sheet	Type	Net interior living area s.f.	Lanai area s.f. LCE	Total net living area s.f.	Common Interest %	Assigned parking stalls/ golf cart ports
2101	A1-02 A1-03 A2-11 A2-12	D-2 Main 4	2897	1758	4655	0.9726	1, 2 & 3/ C1
2102	A1-02 A1-03 A2-02 A2-03	A-R Main 3	2519	980	3499	0.8457	10 & 11 C2
2103	A1-02 A1-03 A2-01	A Main 3	2519	980	3499	0.8457	12 & 13 C3
2104	A1-02 A1-03 A2-07 A2-08	D Main 4	2897	2064	4961	0.9726	4, 5 & 6 C4
2105	A1-02 A1-03 A2-09 A2-10	D-1 Main 4	2897	1183	4080	0.9726	7, 8 & 9 C5
2106	A1-02 A1-03 A2-01	A Main 3	2519	980	3499	0.8457	16 & 17 C6
2107	A1-02 A1-03 A2-02 A2-03	A-R Main 3	2519	980	3499	0.8457	18 & 19 C7
2108	A1-02 A1-03 A2-02 A2-03	A-R Main 3	2519	835	3354	0.8457	26 & 27 C8
2109	A1-02 A2-04	B Main 2	2748	701	3449	0.9226	20 C9
2110	A1-02 A2-06	C Main 3	3452	1760	5212	1.1590	51 & 52 C22
2111	A1-02 A2-05	B-1 Main 2	2748	763	3511	0.9226	21 C23
2209	A1-03 A2-04	B Main 2	2748	701	3449	0.9226	22 C24
2210	A1-03	C	3452	1760	5212	1.1590	24 & 25

EXHIBIT A: . DESCRIPTION OF UNITS, PARKING STALLS AND COMMON INTERESTS

No.	Map Sheet	Type	Net interior living area s.f.	Lanai area s.f. LCE	Total net living area s.f.	Common Interest %	Assigned parking stalls/ golf cart ports
	A2-06	Main 3					C25
2211	A1-03 A2-05	B-1 Main 2	2748	763	3511	0.9226	23 C26
			39182			13.1547	

EXHIBIT A: DESCRIPTION OF UNITS, PARKING STALLS AND COMMON INTERESTS
Page 2

B. Description of Townhomes

The Residences Units in Townhome Building A are all two story Units. Types 3A and 3A-R are three-bedroom units, Types 4A and 4A-R are four-bedroom Units. In connection with the allocation of Common Expenses in Exhibit "A" to the Bylaws they are referred to as "3 bedroom and 4 bedroom Townhomes".

No.	Map Sheet	Type	Net interior living area s.f.	Lanai (courtyard bridge) s.f. LCE	Total net living area s.f.	Common Interest %	Garage carport/ parking stalls LCE
2001	C1-01 C2-03 C2-04	4A	2804	1050 275 98	4227	0.9414	301 C301/ 348 349
2002	C1-01 C2-01	3A-R	2411	855 275 98	3639	0.8095	302 C302/ 350
2003	C1-01 C2-01	3A	2411	855 275 98	3639	0.8095	303 C303/ 351
2004	C1-01 C2-02	3A	2411	855 275 98	3636	0.8095	304 C304/ 352
2005	C1-01 C2-05 C2-06	4A-R	2804	1050 275 98	4227	0.9414	305 C305/ 353 354
			12841		19368	4.3113	

C. Description of Club Units

Club Units with 2 at the beginning of the Type designation are 2 bedroom Units also referred to as Club 2 and Club Units with 3 at the beginning of the Type designation are 3 bedroom Units also referred to as Club 2 and Club 3 in this Exhibit. In Exhibit "A" to the Bylaws they are referred to as 2 bedroom Club Units and 3 bedroom Club Units and used in connection with the allocation of Common Expenses.

No.	Map Sheet	Type	Net interior living area s.f.	Lanai area s.f. LCE	Total net living area s.f.	Common Interest %
2121	B1-02 B2-04	3 BR-E Club 3	1990	373	2363	0.6681
2122	B1-02 B2-03	3 BR Club 3	2008	311	2319	0.6742
2124	B1-02 B2-06	3 BR ADA Club 3	2008	311	2319	0.6742
2126	B1-02 B2-01	2 BR Club 2	1552	370	1922	0.5211
2127	B1-02 B2-01	2 BR Club 2	1552	311	1863	0.5211
2128	B1-02 B2-04	3 BR-E Club 3	1990	319	2309	0.6681
2221	B1-03 B2-04	3 BR-E Club 3	1990	373	2363	0.6681
2223	B1-03 B2-02	3 BR Club 3	2008	311	2319	0.6742
2222	B1-03 B2-03	3 BR Club 3	2008	311	2319	0.6742
2224	B1-03 B2-02	3 BR Club 3	2008	311	2319	0.6742
2225	B1-03 B2-03	3 BR Club 3	2008	311	2319	0.6742
2226	B1-03 B2-01	2 BR Club 2	1552	370	1922	0.5211
2227	B1-03 B2-01	2 BR Club 2	1552	311	1863	0.5211
2228	B1-03 B2-04	3 BR-E Club 3	1990	319	2309	0.6681
2321	B1-04 B2-04	3 BR-E Club 3	1990	373	2363	0.6681
2322	B1-04 B2-03	3 BR Club 3	2008	311	2319	0.6742
2323	B1-04 B2-02	3 BR Club 3	2008	311	2319	0.6742
2324	B1-04 B2-02	3 BR Club 3	2008	311	2319	0.6742
2325	B1-04 B2-03	3 BR Club 3	2008	311	2319	0.6742
2326	B1-04 B2-01	2 BR Club 2	1552	370	1922	0.5211
2327	B1-04 B2-05	2 BR ADA Club 2	1552	311	1863	0.5211
2328	B1-04 B2-04	3 BR-E Club 3	1990	319	2309	0.6681
2422	B1-05 B2-03	3 BR Club 3	2008	311	2319	0.6742
2423	B1-05 B2-02	3 BR Club 3	2008	311	2319	0.6742

No.	Map Sheet	Type	Net interior living area s.f.	Lanai area s.f. LCE	Total living area s.f.	net area	Common Interest %
2424	B1-05 B2-02	3 BR Club 3	2008	311	2319		0.6742
2425	B1-05 B2-03	3 BR Club 3	2008	311	2319		0.6742
2426	B1-05 B2-01	2 BR Club 2	1552	370	1922		0.5211
2427	B1-05 B2-01	2 BR Club 2	1552	311	1863		0.5211
			52468				17.6162

D. Description of Front Desk Unit.

There is one Front Desk Unit shown on the Condominium Map Sheet A1-02 with an Interior Net Living Area of 1,190 square feet.

Parking Stalls for the Front Desk Unit are Nos.: 14A and 15A (accessible stalls and their common access aisle) and Nos. 28 through 50, all shown on Sheet A1-01; uncovered Nos. 130 and 131 and 142A (accessible stall and its access aisle) all shown on Sheet B0-01; and 111A and 112A (accessible stalls and their common access aisle) shown on Sheet B1-01.

E. Description of Pool Grill Unit.

There is one Pool Grill Unit shown on the Condominium Map Sheet A1-01 with an Interior Net Living Area of 6,619 square feet.

II. METHOD OF CALCULATING COMMON INTEREST.

A. **Initial Common Interests.** The total Interior Net Living Area of all Units currently planned by Developer, including the 49 initial Units plus the additional Units planned for the Future Development Area is 297,853 square feet (the "Total Area"). The percentage interest for each square foot of planned Interior Net Living Area is:

$$\frac{1}{\text{Total Area}} \times 100 = 0.00033574$$

Common Interests are rounded to four decimal places.

The Common Interest for the Front Desk Unit is

- (a) 0.3995% based on its Interior Net Living Area plus
 - (b) 62.2968% based on the total Interior Net Living Area of the planned Units for the Future Development Area.
- 62.6963% total

The Common Interest for the Pool Grill Unit would be 2.2222% based on Interior Net Living Area but so that the aggregate Common Interests will equal exactly 100.0000% the Common Interest of the Pool Grill Unit has been reduced by 0.0007% to 2.2215%.

Total Common Interest percentages are:

Main Residences (see table I.A.):	13.1547
Townhomes Building A Residences (see table I.B)	4.3113
Club (see table I.C)	17.6162
Pool Grill	2.2215
Front Desk	62.6963
	100.0000

B. **Future Allocations.** As each new Unit is created in the Future Development Area it shall have a Common Interest of 0.00033574% times its Interior Net Living Area (rounded to four decimal places) and the Common Interest for element (b) of the Front Desk Common Interest shall be reduced by the same amount.

In the event the Developer makes a decision to increase or decrease the Total Area, it shall have the right from time to time to amend the Common Interests of all Units, without the joinder of any other Unit Owner or mortgagee, to reflect the change in the Total Area, based on the same formula as is used in this Exhibit for the initial percentages.

Any rounding needed to cause the Common Interests to equal exactly 100 when the Condominium has been fully developed or the Developer has surrendered its right shall be made in the Common Interest for the Pool Grill Unit.

EXHIBIT B: RESERVED RIGHTS OF DEVELOPER

Developer has reserved the following rights.

1. Consent rights to: alterations (Declaration 10.9, 17.1, 17.4, 17.5 and 17.6); change in the use of Common Elements (Declaration 11.4); amendments adversely affecting Developer's Rights, and all amendments during Declarant's Rights Period (Declaration 18.3.1); approval of changes in default interest rate (Bylaws 7.7) incorporation of the Association (Bylaws 11.1); amendments to the Bylaws (Bylaws 11.8.3 and 11.8.4).

2. Amendment Rights

Declaration Section 18.2.1 "Developer acting alone may amend this Declaration to file the "as built" verified statement (with plans, if applicable) required by Section 514B-34, so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans previously filed fully and accurately depict the layout, location, unit numbers and dimensions of the Units as built, or, so long as any plans filed with the amendment involve only immaterial changes to the layout, location, unit numbers, or dimensions of the Units as built."

Declaration Section 18.2.2 "No matter what else this Declaration says, during Developer's Rights Period, Developer shall have the right (but not the obligation) to amend this Declaration and the Bylaws (and the Condominium Map, if appropriate) without the consent or joinder of any Unit Owner, lienholder or other person or entity, for the purpose of meeting any requirement imposed by (i) any applicable law, (ii) the Real Estate Commission of the State of Hawaii, (iii) any title insurance company issuing a title insurance policy on the Condominium or any of the Units, (iv) any institutional lender lending funds on the security of the Condominium or any of the Units, or (v) the laws and rules of any state or country in which Developer intends to market or sell Units or interests in Units, or any other governmental or quasi-governmental agency, including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development and the Veterans Administration. However, except as provided in Section 23, no amendment which would change the Common Interest appurtenant to a Unit or materially change the design, location or size of a Unit shall be made without the consent of all persons having an interest in that Unit and Developer cannot use its power of attorney under Section 23.18.3 to grant itself that consent."

Bylaws Section 11.8.2. "The Developer shall have the reserved right to amend these Bylaws unilaterally for the same purposes that the Developer may amend the Declaration. Each and every party acquiring an interest in the Condominium, by doing so consents to these Developer amendments and agrees to execute and deliver any documents and instruments and to do such other things as may be necessary or convenient to effect those Amendments. The powers of attorney granted to the Developer in the Declaration apply to Developer's amendments of these Bylaws also."

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

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

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

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

23.3 DEVELOPER'S EASEMENT FOR SALES ACTIVITIES. Developer and its Affiliates, together with the brokers, sales agents and their other related persons shall have the right to conduct extensive sales, marketing, rental and leasing activities at the Condominium, on the General Common Elements and from any Unit and Limited Common Element owned by it, which right shall include showing the Condominium to potential buyers, renters and lessees, using model units, sales and management offices, permitting potential buyers to stay in Units in the Condominium, and using banners, signs and other displays and activities at the Condominium. Such activities may include the initial sale, resale, rental or leasing of Units and interests in them, including any vacation ownership or timeshare interests or any other interests in any type of vacation destination resort which are created by Developer or an Affiliate of Developer, as well as interests in other projects or properties (whether whole units, vacation ownership or timeshare interests, subdivided lots or other residential real estate) developed by Developer or any of its Affiliates or for which Developer or any of its Affiliates serves as a selling or listing real estate brokerage firm. In the event that Developer's mortgage lender, if any, or any successor to or assignee of Developer's mortgage lender acquires any portion of the Condominium in the course of any foreclosure or other legal proceeding or in the exercise of the mortgage remedies or by a deed or an assignment in lieu of foreclosure, that mortgage lender and its successors and assigns shall have the same rights as Developer to conduct such extensive sales, marketing, rental and leasing activities on the Condominium to the fullest extent permitted by the Act.

23.4 DEVELOPER'S EASEMENT FOR THE SUBDIVISION AND CONSOLIDATION OF UNITS, THE CONVERSION OF LIMITED COMMON ELEMENTS TO UNITS, AND TO SUBDIVIDE AND/OR TO CONSOLIDATE AND RESUBDIVIDE THE LAND. Developer and its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under, upon and through the Common Elements, any Limited Common Elements and the Units or any portion of them as may be necessary or appropriate in the opinion of Developer to effect the subdivision or consolidation of Units, the conversion of Limited Common Elements to Units, and the subdivision, consolidation and/or resubdivision of the Land, as contemplated by Sections 23.6, 23.7, 23.8 and 23.12, and this easement shall allow Developer and its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns to cause or permit noise, dust and other nuisances to be created by or to result from any work connected with or incidental to effecting any such subdivision or consolidation of Units, the conversion of Limited Common Elements to Units, or the subdivision, consolidation and/or resubdivision of the Land.

23.5 RESERVED RIGHTS TO GRANT EASEMENTS.

23.5.1 Developer shall have the right to delete, relocate, realign, reserve, grant and receive any and all easements and rights-of-way over, under and on the Common Elements (including Limited Common Elements) deemed necessary or desirable in Developer's sole discretion, including easements and rights-of-way for utilities, retention ponds, lagoon use, sanitary and storm sewers, cable television, refuse disposal, driveways, parking areas and roadways.

23.5.2 Developer reserves the right to grant to the Master Association an easement over any telephone or other telecommunications rooms or systems that are part of the General Common Elements, and all

EXHIBIT B: RESERVED RIGHTS OF DEVELOPER

necessary Conduits, for the installation of a portion of a private branch exchange (PBX) system serving the Condominium and other portions of Kauai Lagoons. In the event that the Association desires to install its own PBX system as a General Common Element during Developer's Rights Period, the installation will be subject to the prior approval of Developer. The Master Association shall have the right under any such easement to install a telephone line and telephone in each Resort Unit, subject to the right of individual Residences Owners to make arrangements with a public utility to install an additional direct telephone line for the use of their respective Residences Units.

23.5.3 Developer reserves the right to grant to the Master Association an easement (and amend the same from time to time) over the retention basins, slipways and other improvements described in the Retention Basin Agreement, which may include the right and obligation of the Master Association as an authorized representative of all owners of undivided interests in the Land to perform the maintenance required by the Retention Basin Agreement and make the annual written certification required by the Retention Basin Agreement.

23.6 RESERVED RIGHT TO DEVELOP, CONSTRUCT AND ANNEX ADDITIONAL LAND AND UNITS TO THE CONDOMINIUM. Developer will develop and construct the forty-nine (49) Units in the Condominium as described in this Declaration and as depicted on the Condominium Map. Developer currently anticipates that Developer will construct in the Future Development Area up to forty-one (41) additional Resort Units that will be Residences Units and up to forty-four (44) additional Resort Units that will be Club Units and may also develop additional Units for commercial purposes with the same. Nothing stated in this Declaration shall be construed as a representation or promise by Developer that any Units or Improvements after the initial Units and Improvements will be developed, nor shall anything in this Declaration require Developer to develop any additional Units or Improvements in the Condominium. If additional Units are developed a larger or smaller number than forty-one (41) Residences Units and forty-four (44) Club Units may be developed and the mix of Units between Residences Units, Club Units or commercial use may differ from Developer's current intentions. Additional Common Elements developed on the Future Development Area may be designated by Developer as General Common Elements or as Limited Common Elements appurtenant to some or all of the Units developed on the Future Development Area and in the case of Residences Elements appurtenant to all Residences or only some of them and in the case of Club Units appurtenant to all Club Units or only some of them. Developer reserves the right and easement to create, develop and construct such additional Units and other Improvements in the Condominium and to annex such Units and Improvements and any additional land to the Condominium in the manner specified below. Developer shall further have the reserved right to execute and record an amendment to this Declaration and to the Condominium Map to create any such additional Units and other Improvements within the Condominium and to annex the same and any additional land, to be governed by this Declaration. Any such creation, development, construction and annexation of additional Units, Improvements and/or land to the Condominium shall be effective if these procedures are followed:

23.6.1 Developer records or causes to be recorded an amendment to this Declaration: (a) describing the land, Units and/or other Improvements to be created and annexed to the Condominium and setting out at least a description of the land, Units and such Improvements; and (b) in the case of the creation and annexation of Units, setting out the Common Interests appurtenant to the newly formed Units and existing Units. Upon creation of the additional Units in the Condominium, the Common Interests for all Units in the Condominium shall be recalculated by using the same calculations set forth as described in Exhibit "B" with minor adjustment to the Common Interest of the Pool Grill Unit in accordance with the original calculations for the Common Interest of the Pool Grill Unit, to permit the total Common Interest percentage for all Units to equal 100%. Developer may reduce the Common Interest appurtenant to the Front Desk Unit by the amount of the Common Interest appurtenant to any newly created Unit in the Future Development Area in accordance with the formula in Exhibit "B". This recalculation of the

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Common Interest of Units in the Condominium may be utilized by Developer to permit it to create all Units in the Condominium that are developed in the future;

23.6.2 Developer also records or causes to be recorded an amendment to the Condominium Map which depicts the additional land (if any) and Units being annexed to the Condominium, and complying with Section 514B-34; and

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

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

23.7.1 With respect to any Unit which it owns to: (1) alter the floor plan of the Unit provided that the Common Interest appurtenant to the Unit shall not change, (2) subdivide the Unit 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 (3) convert certain portions of any existing Unit to Common Element status to facilitate any subdivision.

23.7.2 If Developer is the owner of any two Units separated by a party wall, floor or ceiling, 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: (1) the structural integrity of the Condominium is not affected by the alteration and (2) the finish of the Common Element then remaining is restored to a condition substantially compatible with that of the Common Element prior to such alteration.

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

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

Any such alteration, subdivision or consolidation of Unit(s) shall be effective if these procedures are followed:

(a) Developer records or causes to be recorded an amendment to this Declaration describing the Unit(s) in question and setting out at least: (1) a description of the newly formed Unit(s); (2) in the case of the consolidation of Units, the Common Interest appurtenant to the newly formed Unit, which shall be calculated by adding together the Common Interests for the Units to be consolidated; or (3) in the case of the subdivision of a Unit the Common Interest appurtenant to each of the newly formed Units, which shall equal the total of the Common Interest appurtenant to the original Unit. In the event of concurrent consolidation and resubdivision the Common Interests of the resulting Units shall equal the total Common Interests of all Units consolidated.

(b) Developer shall record or cause to be recorded an amendment to the Condominium Map for the Unit(s) being altered, subdivided or consolidated complying with Section 514B-34; and

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

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

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

23.8.2 To designate certain Common Elements or Limited Common Elements of the Condominium as Limited Common Elements appurtenant to the newly-created Unit. However, if there is any material adverse effect on any Unit in the Condominium owned by a person other than Developer, then the Developer must obtain the written consent of the Owners of that affected Unit.

Any such conversion under 23.8.1 and 23.8.2 shall be effective if these procedures are followed:

- (a) Developer records or causes to be recorded an amendment to this Declaration describing the Unit(s) in question and setting forth at least: (a) a description of the newly formed Unit(s), and (b) the Common Interests appurtenant to the newly formed Units and existing Units, which Common Interests shall equal the total of the Common Interests appurtenant to the original Units.
- (b) Developer shall record or cause to be recorded an amendment to the Condominium Map to show the floor plans and elevations for the newly-created Unit(s), as necessary, together with a verified statement of a registered architect or professional engineer complying with Section 514B-34; and
- (c) Any such alteration associated with such conversion shall comply in all respects with all applicable governmental codes, statutes, ordinances, rules and regulations.

23.9 RESERVED RIGHT TO REDESIGNATE LIMITED COMMON ELEMENTS. Developer shall have the right to redesignate any Limited Common Elements as may be appurtenant to a Unit owned by Developer as being General Common Elements of the Condominium or as Club Elements or Residences Elements. In connection with any creation of Club Units or additional Residences Units, Developer currently intends to make portions of the Future Development Area into Club Elements or Residences Elements as applicable but Developer's Rights under this Section 23.9 are not limited to the Future Development Area.

23.10 RESERVED RIGHT WITH RESPECT TO CONVERSION OF RESORT UNITS.

23.10.1 From time to time Developer may convert a Resort Unit owned by Developer or an Affiliate from a Club Unit to a Residences Unit by (a) adding the Unit to the Resort Units submitted to the Residences Declaration and (b) if necessary, withdrawing the Unit from the Resort Units submitted to the Club Declaration. If Developer converts a Resort Unit from a Club Unit to a Residences Unit, Developer will transfer at least one (1) parking stall to that Unit by any of the following methods:

- (a) transfer one (1) parking stall from another Residences Unit, or one (1) or two (2) parking stalls from the Front Desk Unit, to the new Residences Unit, with the consent of the Unit Owner and any mortgagee;

(b) convert one (1) parking stall from a Limited Common Element appurtenant to the Club Units to a parking stall appurtenant to the new Residences Unit without the joinder of any Club Owner or mortgagee; or

(c) assign one (1) or more parking stalls on the Future Development Area to the new Residences Unit.

23.10.2 From time to time Developer may convert a Resort Unit owned by Developer or an Affiliate from a Residences Unit to a Club Unit by: (a) adding the Unit to the Resort Units submitted to the Club Declaration and (b) if necessary, withdrawing the Unit from the Resort Units submitted to the Residences Declaration. If Developer converts a Resort Unit from a Residences Unit to a Club Unit then Developer will convert at least one (1) of the Resort Unit's parking stalls to a Limited Common Element appurtenant to the Club Units, without the joinder of any Club Owner or mortgagee.

23.10.3 Developer may amend this Declaration to transfer the stall or stalls without the joinder or consent of any person except as provided in Section 23.10.1(a) and may use the power of attorney granted by Section 23.18 to do so except that Developer may not use the power of attorney for any consent required by Section 23.10.1(a).

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

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

23.11.2 In the event that any improvements and/or land are annexed to the Condominium, but no additional Units are created, no change in the Common Interest appurtenant to each existing Unit shall occur. Developer shall have the right, however, to designate any such annexed land and improvements as Limited Common Elements appurtenant to a particular Unit or Units. If Units are added or annexed to the Condominium, the Common Interest appurtenant to all Units in the Condominium shall be recalculated in accordance with the calculations set forth in Exhibit "B".

23.11.3 In the event that the Land is subdivided and a portion or portions are withdrawn from the Condominium but no Units are withdrawn in connection with that withdrawal, no change in the Common Interest appurtenant to each existing Unit shall occur, unless Developer reduces the Common Interest of the Front Desk Unit to reflect any reduction in Developer's plans for the total number of Units in the Condominium. In that event all Common Interests will be recalculated in accordance with the calculations set forth in Exhibit "B". If one or more Units are withdrawn from the Condominium together with a portion or portions of the Land, the Common Interest appurtenant to all remaining Units in the Condominium shall be recalculated in accordance with the calculations set forth in Exhibit "B". Developer may adjust the Common Interests to assure that the total of all Common Interests equals one hundred percent (100%).

23.12 RESERVED RIGHT TO MODIFY CONDOMINIUM. Developer shall have the reserved right to effect such modifications to Units and Common Elements in the Condominium and/or to execute, record and deliver any amendments to this Declaration, the Condominium Map, the Bylaws and the House Rules as may be necessary or required by Developer in its sole discretion, or to effect compliance by the Condominium, the Association, any Club Association or Residences Association or by Developer, with laws which apply to the Condominium, including the Fair Housing Act, as amended, 42 U.S.C. §§3601 et seq., including any and all rules and regulations promulgated under it, and the ADA. For

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instance, Developer will have the right to re-stripe parking stalls and reconfigure parking stalls to meet the requirements of the ADA.

23.13 RESERVED RIGHT TO REDESIGNATE LIMITED COMMON ELEMENTS AS APPURTENANT TO OTHER UNITS. Developer may amend this Declaration to designate all or a portion of certain Limited Common Elements as may be appurtenant to any Unit owned by Developer, to another Unit or Units owned by Developer. Transferred Front Desk Elements shall cease to be Front Desk Elements and may be designated as appurtenant to one or more Units, as Club Elements or as Residences Elements, as applicable.

23.14 RESERVED RIGHT REGARDING THE LAND USE PERMIT. Developer shall have the right to enter into any agreements, to construct Improvements, to grant easements, and to do all other things that may be necessary or convenient to satisfy the requirements of the Land Use Permit. For example the easements labeled Golf Cart Path Easement and Shoreline Public Access Easement on the Condominium Map and required under the Land Use Permit may not be shown in the final locations acceptable to the County of Kauai. Upon final agreement with the County of Kauai and the Golf Course Owner, Developer will have the final easements designated and will grant them to the County of Kauai in accordance with the Land Use Permit with respect to the Shoreline Public Access Easement and may grant the Golf Cart Path Easement to the Golf Club Owner.

23.15 RESERVED RIGHT TO SUBDIVIDE, CONSOLIDATE, RESUBDIVIDE AND/OR WITHDRAW LAND AND UNITS.

23.15.1 Developer shall have the right to subdivide, consolidate, resubdivide and/or withdraw from the operation of this Declaration, all or any portion of the Land underlying, and Units in, the Condominium. In connection with such right, Developer shall have the further reserved right to enter and go upon the Land to do all things necessary or proper to effectuate such subdivision, consolidation, resubdivision and/or withdrawal of portions of the Land and/or Units, including making surveys to undertake a realignment of boundaries of the Land (it being understood that Developer shall have the reserved right to effect any such realignment), and to facilitate the granting, reserving, adding, deletion, reception, realignment and relocating of easements and rights-of-way for utilities, cesspools, sanitary and storm sewers, cable television, refuse disposal, driveways, parking areas, roadways, and all other required easements and rights-of-way. The subdivision, consolidation, resubdivision and/or withdrawal of portions of the Land and/or Units shall be subject to, and Developer shall, at its own expense, comply with, all of the then-applicable governmental laws, and related rules and regulations, including subdivision requirements.

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

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

- (a) describing the withdrawn land and any improvements on it;
- (b) describing the realigned boundaries of the land upon which the Units then constituting the Condominium are located;
- (c) where applicable and appropriate, granting, reserving or relocating easements over, under and on the Common Elements as permitted above; and
- (d) if necessary, adjusting the Common Interest for each Unit which remains a part of the Condominium in accordance with Section 23.11. The recording of the amendment to this Declaration and the Condominium Map shall effectuate the subdivision, consolidation, resubdivision, or withdrawal, without any further consent or joinder of any party. Any withdrawn land shall belong to Developer and Developer shall have the right, as grantor, to execute and deliver a deed of the subdivided and withdrawn area upon recording of the withdrawal amendment.

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

23.16 RESERVED RIGHT TO CONVEY UNITS AND LIMITED COMMON ELEMENTS TO ASSOCIATION ETC..

23.16.1 Developer shall have the reserved right, but not the obligation, to convey Units that are owned by Developer to the Association and to redesignate Limited Common Elements appurtenant to Units owned by Developer to Units owned by the Association or to redesignate them as general Common Elements in which event any such elements that were under Direct Administration when they were Limited Common Elements shall cease to be under Direct Administration. Any Unit conveyed under this Section 23.16 shall be free of liens other than nondelinquent real property taxes, Master Association assessments and Association, Club Association or Residences Association (if applicable) assessments.

23.16.2 Developer shall have the right to partially assign this right, with respect to the Front Desk Unit and Front Desk Elements, to any person who is the Front Desk Owner and any successors and assigns as Front Desk Owner. In addition the Front Desk Owner shall have the reserved right, but not the obligation, to transfer one or more of the golf cart parking stalls described in Section 5.3.3 as Limited Common Elements appurtenant to one or more Residences Units. In the event that the transfer is to more than one Residences Unit then the Residences Association shall have the authority to allocate the use of the transferred golf cart parking stall.

23.17 DEVELOPER'S RIGHT TO USE. Developer shall have the reserved right to use (or to permit any Affiliate to use) any Unit which it owns for promotional purposes, and shall have the right to have guests stay in such Units for any length of time; provided that such guests shall abide by and be subject to all of the provisions of this Declaration, the Bylaws and the House Rules. Additionally, Developer will have the right to utilize (or to permit any Affiliate tenant or agent to utilize) Units which it owns or any Limited Common Element which is appurtenant to any Unit which it owns as sales, rental or leasing

offices or as a place which is utilized to provide services to the Owners or other occupants of the Condominium, to the extent such use or uses are permitted under applicable law.

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

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

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

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

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

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

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

EXHIBIT C: BOUNDARIES OF THE UNITS

The boundaries of the Units are as follows: (Section 3.4 of the Declaration)

(A) General Common Element	(B) Limited Common Element, appurtenant only to the Unit	(C) Included in the Unit
(i) the perimeter or party walls, floors and ceilings surrounding the Unit	(i) perimeter doors, door frames, windows and window frames and all hardware associated with them	(i) all of the walls and partitions which are not load-bearing within the Unit's perimeter or party walls
(ii) any interior load-bearing walls and columns	(ii) any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios, or other fixtures designed to serve a single Unit, that are located outside the Unit's boundaries	(ii) all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials that form any part of the inner decorated or finished surfaces of the elements in column (A) (i) and (ii), (B) (i) and (C) (i)
(iii) any chute, flue, duct, wire, conduit, pumps and other utility or service line (a "Conduit") which is utilized for or serves more than one Unit even though it lies partially within and partially outside the boundaries of the Unit	(ii) any portion of a Conduit or other fixture that serves only one Unit even though it lies partially within and partially outside the boundaries of that Unit	

EXHIBIT C: BOUNDARIES OF THE UNITS

EXHIBIT D: PERMITTED ALTERATIONS BY RESORT UNIT OWNERS

Declaration Section 17. "ALTERATION OF THE CONDOMINIUM.

17.1 GENERAL PROVISIONS. Except where this Declaration expressly says otherwise, the restoration or replacement of the Condominium or any portion of it, or the construction of any additional improvement or structural alteration or addition to any improvement, that is different in any material respect from the Condominium Map of the Condominium, shall be undertaken by the Association or any Unit Owner only as described in an amendment of this Declaration made in accordance with Section 18, duly executed in accordance with Section 18 and in accordance with complete plans and specifications for the construction first approved in writing by the Board and by Developer during Developer's Rights Period. Promptly upon completion of the restoration, replacement or construction, the Association or Owner, as the case shall be, shall duly record the amendment, together with a complete set of floor plans of the Condominium as so altered, certified as built by a registered architect or professional engineer.

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

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

17.3.1 The Owner obtains the prior written approval of the Board, which approval shall not be unreasonably withheld or delayed but may be conditioned on such matters as evidence of financial ability, insurance and bonding;

17.3.2 Owner acknowledges and agrees that it will continue to be liable for all Common Expenses and any other charge due on each of the Units it owns

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

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

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

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

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

EXHIBIT D: PERMITTED ALTERATIONS BY RESORT UNIT OWNERS

increase the transmission of sound or heat to such Owners' Units or decrease the transmission of light, all as determined by the Board.

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

17.6 POOL GRILL UNIT. In addition to the rights provided by Sections 17.2 and 17.3, the following rights are reserved to the Pool Grill Owner: the Pool Grill Owner may from time to time install, maintain, move or rearrange, non-load bearing partitions and other nonstructural improvements within the Pool Grill Unit and its appurtenant Limited Common Elements, and such improvements shall not be considered an alteration or addition to the Pool Grill Unit or the Common Elements; provided that if the Pool Grill Owner is not Developer, the Association, or an Affiliate of Developer, then Developer's approval of the plans will be required during Developer's Rights Period.

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

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

EXHIBIT E: COMMON ELEMENTS

COMMON ELEMENTS. One freehold estate is designated in all remaining portions of the Condominium, which are called the Common Elements, including:

- (a) The Land in fee simple and any appurtenances to the Land as described in Exhibit "A";
- (b) All improvements described in Section 3.4 column (A);
- (c) All structural components such as foundations, floor slabs, columns, girders, beams, supports, main walls, ceilings and roofs; and all concrete sidewalks and curbs;
- (d) All yards, grounds and landscaping, any unimproved areas, and all trash enclosures within the Condominium;
- (e) The greeting station and all roads, driveways and parking areas as shown on the Condominium Map, and all access lanes, paved areas, ramps, loading areas and walkways within the Condominium;
- (f) All cables, conduits, ducts, sewer lines, irrigation lines, electrical equipment, wiring, pipes, catch basins and other central and appurtenant transmission facilities and installations over, under and across the Condominium which serve more than one Unit for services such as power, light, water, hot water, chilled water, gas, sanitary sewer, storm water, refuse, cable television, internet access, television signal distribution, and any future technologies installed in the Condominium, performing similar functions, including the Conduits described in Section 3.4 column A (iii);
- (g) All hallways and corridors, stairways, stairwells and elevators that are not within Units;
- (h) The Building Structure of each Building;
- (i) The storage, electrical, telephone, engineering, pump, equipment, mechanical, restroom, housekeeping, employee, lounge, fitness, activity and other rooms and spaces hatched and shown on the Condominium Map as "General Common Elements." The rights of the Association and Unit Owners in the Common Elements that are telephone or telecommunication rooms, Conduits or systems are subject to any easement for similar purposes in favor of the Master Association and the Association shall not interfere with the equipment installed by the Master Association.
- (j) The motor court shown on Residences Main Building Site Plan Sheet A0-01;
- (k) The swimming pools and pool deck shown on Residences Main Building Site Plan Sheet A0-01;
- (l) The swimming pool and pool deck shown on Club Building A Site Plan Sheet B0-01;
- (m) The boat docks shown on Residences Main Building Site Plan Sheet A0-01 Club Building A Site Plan Sheet B0-01 and those portions of the Lagoon that lie within the Condominium;
- (n) The retention basins, spillways and other improvements described in the Retention Basin Agreement that are located on the Land within the Future Development Area;
- (o) All other apparatus and installations existing for common use, such as tanks, pumps, motors, fans, compressors, ducts, shafts, vents, water heating and distribution equipment, fire suppression equipment and other such installations and apparatus;
- (p) All other parts of the Condominium necessary or convenient to its existence, maintenance and safety, or normally in common use; and

EXHIBIT E: COMMON ELEMENTS

(q) All other areas on the Condominium Map designated as "General Common Element", or that are not designated as a Unit or as Limited Common Elements. (Declaration Section 4)

EXHIBIT F: LIMITED COMMON ELEMENTS

5. LIMITED COMMON ELEMENTS. Certain parts of the Common Elements, which are called the Limited Common Elements, are designated, set aside and reserved for the exclusive use of certain Units, and such Units shall have appurtenant to them exclusive easements for the use of such Limited Common Elements as set out in this Declaration. The costs and expenses of every description pertaining to the Limited Common Elements, including the costs of maintenance, repair, replacement, improvement and additions to the Limited Common Elements, shall be charged as provided in the Bylaws. Unless Limited Common Elements are subject to Direct Administration, the Limited Common Elements shall be managed and maintained by the Managing Agent on behalf of their Owners. In the event that a dispute over the management or maintenance of a Limited Common Element arises between the Owners of more than one Unit to which a particular Limited Common Element is appurtenant and which is not subject to Direct Administration, the dispute shall be resolved by the Board (or the Managing Agent if delegated by the Board), which shall be the sole arbiter with respect to such matters.

5.1 LIMITED COMMON ELEMENTS FOR INDIVIDUAL RESORT UNITS. Resort Units shall have appurtenant to them as a Limited Common Element the exclusive right to use the following.

5.1.1 Each Residences Unit shall initially have one (1) parking stall for a two-bedroom Unit, two (2) parking stalls for a three-bedroom Unit and three (3) parking stalls for a four-bedroom Unit.

5.1.2 Each Residences Unit in Townhomes Building A shall have a parking garage as one of its assigned parking stalls. Each three-bedroom Unit in Townhomes Building A shall initially have an additional one (1) uncovered parking stall and each four-bedroom Unit in Townhomes Building A shall initially have an additional two uncovered (2) parking stalls.

5.1.3 Each Residences Unit in Residences Main Building shall have a golf cart parking stall.

5.1.4 Each Residences Unit in Townhomes Building A shall have a golf cart port.

5.1.5 The numbers of the parking stalls, golf cart parking stalls, parking garages and golf cart ports are shown on the Condominium Map and listed for the respective Residences Unit on Exhibit "B".

5.1.6 For individual and duplex parking garages and any attached closets the boundaries of the Limited Common Element parking garage are described in Section 5.5. For other golf cart parking stalls, golf cart ports and parking stalls, only the right to use the parking stalls, golf cart parking stall and golf cart port is appurtenant exclusively to the Residences Unit, the ground surface, signs and striping being General Common Elements.

5.1.7 While parking stalls and golf cart parking stalls or golf cart ports may be transferred between Units in accordance with Section 514B-40, each Residences Unit shall always have at least one (1) parking stall or parking garage and at least one (1) golf cart parking stall or golf cart port. If a Residences Unit has only one (1) parking stall or parking garage or only one (1) golf cart parking stall or golf cart port then that one (1) may not be leased or licensed separately from the Residences Unit and vice versa, except on a lease or license that shall automatically terminate upon conveyance of the Residences Unit to which it is appurtenant, including a conveyance by operation of law or in foreclosure or deed in lieu of foreclosure, so that each Residences Unit shall always be conveyed with the use of at least one (1) parking stall or parking garage and at least one (1) golf cart parking stall or golf cart port.

5.1.8 The lanai or lanais and the courtyard shown as adjacent to a Resort Unit and connected to it on the Condominium Map shall be a Limited Common Element appurtenant to that Resort Unit. Only the right to use the lanai or courtyard is appurtenant to the Resort Unit, the structure of the lanai or courtyard, its railings or walls and their decorated and undecorated surfaces and floor coverings being General

EXHIBIT F: LIMITED COMMON ELEMENTS

Common Elements. Furniture on the lanais is not a Common Element but for uniformity of appearance the Board may establish standards for lanai furniture or lists of approved lanai furniture. Certain lanais of adjacent Resort Units have gates in their common railings which are required by law for emergency ingress and egress and are subject to the easement described in Section 8.8 but shall otherwise not be opened except with the consent of the Owners or occupants of both Resort Units.

5.1.9 Each of Residences Units 2101, 2102, 2103, 2104, 2105, 2106, 2107 and 2108, has appurtenant to it the Entry Courtyard adjacent to its front door shown as a Limited Common Element shown on Sheet A1-02 and on Sheets A2-01, A2-02, A2-07, A2-09 and A2-11. These Residences Elements will be subject to Direct Administration for cleaning, maintenance, repair and replacement by their Residences Owners until the Residences Declaration is recorded and afterwards by the Residences Association to the extent the Residences Association so provides, but utilities and insurance shall not be separately allocated.

5.1.10 The bridge and entry connected to each Residences Unit in Townhomes Building A and the plunge pool adjacent to each such Residences Unit in Townhomes Building A including its underground equipment vault and cover, shall be a Limited Common Element appurtenant to that Residences Unit. These Residences Elements will be subject to Direct Administration for cleaning, maintenance, repair and replacement by their Residences Owners until the Residences Declaration is recorded and afterwards by the Residences Association to the extent the Residences Association so provides, but utilities and insurance shall not be separately allocated.

5.1.11 The fenced mechanical equipment area adjacent to Residences Unit 2003 shall be a Limited Common Element appurtenant to Residences Unit 2003 and subject to Direct Administration by the Owner.

5.2 LIMITED COMMON ELEMENTS FOR MORE THAN ONE RESORT UNIT.

5.2.1 Corridors and elevator lobbies which serve only those Resort Units on the same level will be Limited Common Elements appurtenant to those Resort Units for privacy purposes (subject to the easement rights of the Association, Residences Association and Club Association), but will be administered by the Association and their costs will be Common Expenses.

5.2.2 The Club Units have the exclusive right to use the uncovered parking stalls 132 through 141 shown on Sheet B0-01 and the parking stalls with the numbers 101 through 110 and 113 through 129 shown on Sheet B1-01. Only the right to use those parking stalls is appurtenant exclusively to the Club Units, the ground surface, signs and striping being General Common Elements.

5.2.3 The Club Units have the exclusive right to use the spaces shown as Limited Common Elements on the Condominium Map and designated as follows:

Map Sheet	Number	Description
A1-01	D115	Storage
A1-01	D116	Storage
A1-01	D117	Storage
B1-01	A001	Storage

EXHIBIT F: LIMITED COMMON ELEMENTS

Map Sheet	Number	Description
B1-01	A002	Storage
B1-01	A009	Storage
B1-03	A202	Storage
B1-04	A302	Storage
B1-05	A402	Storage

The Club Elements described in this Section 5.2.3 will be subject to Direct Administration for cleaning, maintenance, repair and replacement by the Club Association, to the extent the Club Declaration so provides, but utilities and insurance shall not be separately allocated.

5.2.4 The mechanical closets behind duplex parking garages 301/302 and 304/305 shall be appurtenant jointly to the Units to which the respective parking garages are appurtenant and subject to Direct Administration by their Owners.

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

5.3.1 The spaces shown as Limited Common Elements on the Condominium Map and designated as follows:

Map Sheet	Number	Description
T0-02	S001	Project Sign No. 1
T0-02, A0-01 B0-01	S002	Project Sign No. 2
T0-02, A0-01	S003	Project Sign No. 3
T0-02, B0-01	S004	Project Sign No. 4
A0-01	D 001	Event Lawn
A1-02	D 201	Concierge
A1-02	D 202	Bag Storage

5.3.2 The Front Desk Unit has the exclusive right to use the parking stalls with the numbers shown on the Condominium Map that are listed for the Front Desk Unit on Exhibit "B". Only the right to use those parking stalls is appurtenant exclusively to the Front Desk Unit, the ground surface, signs and striping being General Common Elements.

EXHIBIT F: LIMITED COMMON ELEMENTS

5.3.3 The Front Desk Unit has the exclusive right to use the twelve (12) golf cart parking stalls numbered C10 through C21 shown on Sheet A1-01. Only the right to use those cart parking stalls is appurtenant exclusively to the Front Desk Unit, the ground surface, signs and striping being General Common Elements. The Front Desk Owner may use the twelve (12) golf cart parking stalls for golf cart parking on a short or long term basis, for Owners or occupants of Resort Units or other owners or occupants of property within Kauai Lagoons, or for other persons with business in the Condominium, such as patrons of the Pool Grill.

5.3.4 With respect to the Project signs

(a) The wall signage area for the sign shown on the Condominium Map and labeled Project Sign No. 1, on the General Common Element greeting station, including the decorated or finished surfaces of the signage area or, if none, the undecorated or unfinished surface and a block of airspace projecting twelve inches from the surface, in which the Front Desk Owner may install signage, together with the right to penetrate the surface of the signage area for the purpose of attaching signage, provided that the structural integrity of the greeting station shall not be compromised.

(b) The signage monuments (including their entire structure) shown on the Condominium Map as Limited Common Elements and labeled Project Sign No. 2, Project Sign No. 3 and Project Sign No. 4.

5.3.5 The Future Development Area shown on Sheet T0-02 and more particularly described in Exhibit C.

If any portion of the Front Desk Elements is transferred to another Unit it will cease to be a Front Desk Element and become a Limited Common Element appurtenant to that other Unit or Units, a Club Element or a Residences Element as the case may be. If any portion of the Front Desk Elements is converted to a General Common Element it will cease to be a Front Desk Element.

5.4 OTHER LIMITED COMMON ELEMENTS. All items described in Section 3.4 column (B) are Limited Common Elements appurtenant to their respective Units.

5.5 BOUNDARIES OF LIMITED COMMON ELEMENTS. The boundaries of the Limited Common Elements that are rooms or otherwise surrounded by walls shall be as follows:

(A) General Common Element	(B) Limited Common Element,
(i) the perimeter or party walls floors and ceilings surrounding the Limited Common Element	(i) perimeter doors, door frames, windows and window frames and all hardware associated with them
(ii) any interior load-bearing walls and columns	(ii) all of the walls and partitions which are not load-bearing within the Limited Common Element 's perimeter or party walls

(A) General Common Element	(B) Limited Common Element,
(iii) any chute, flue, duct, wire, conduit, pumps and other utility or service line (a "Conduit") which is utilized for or serves more than the Limited Common Element and the Unit to which it is appurtenant even though it lies partially within and partially outside the boundaries of the Limited Common Element	(iii) any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios, or other fixtures designed to serve the Limited Common Element, that are located outside the Limited Common Elements
	(iv) all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials that form any part of the inner decorated or finished surfaces of the elements in column (A) (i) and (ii), and (B)
	(v) any portion of a Conduit or other fixture that serves only the Limited Common Element or the Unit to which it is appurtenant even though it lies partially within and partially outside the boundaries of that Limited Common Element

(Declaration Section 5)

EXHIBIT G: USE RESTRICTIONS

10. USE OF UNITS. The Units in the Condominium shall be occupied and used only for purposes that are consistent with, and appropriate to, a first-class resort destination.

10.1 USE OF THE FRONT DESK UNIT.

10.1.1 The Front Desk Unit may be used for any purpose that is permitted by law, this Declaration or the Bylaws, including administrative offices, retail stores, sales and marketing offices, and activity desks or offices, serving Owners or occupants of the Condominium or Kauai Lagoons or members of the public. The Front Desk Operator shall at all times arrange for the issuance of card keys for the front doors of all Resort Units to control access to the Resort Units and shall issue the card keys to the Resort Owners. Card keys shall also be provided to the Association, the Club Association and the Residences Association for access to the Resort Units, the Club Units or the Residences Units as applicable, and to any Limited Common Elements accessed by card keys when such access is permitted by this Declaration, the Bylaws or the Act. The Front Desk Operator may charge a reasonable fee to Resort Owners, the Club Association or the Residences Association for the issuance of card keys and the replacement of lost card keys. Upon the first conveyance or lease of the Front Desk Unit, the Front Desk Operator shall enter into an agreement with the Association providing for the procedures for the issuance of card keys and the initial schedule of charges.

10.1.2 The Front Desk Owner shall have the reserved right, but shall have no obligation, to operate, lease and/or utilize all or any part of the Front Desk Elements or to utilize all or any part of the General Common Elements, for any purpose permitted by law, or to utilize all or any part of the General Common Elements for their respective purposes under this Declaration, including for purposes related to the sale of time share interests or other real estate, or providing services and amenities conducive to a first-class resort destination. The Front Desk Owner may contract with various providers of goods and services, such as food and beverage operators, retail stores and other vendors, to provide goods and services at the Condominium serving Owners and occupants of the Condominium or Kauai Lagoons or members of the public, and may retain any compensation paid to it in consideration of the Front Desk Owner permitting any such vendor to utilize space at the Condominium.

10.2 USE OF THE POOL GRILL UNIT.

10.2.1 The Pool Grill Unit may be used for any purpose that is permitted by law, this Declaration or the Bylaws. However any use other than the following shall require the approval of the Board: café, snack bar, restaurant and bar use, including the sale of food and beverages including alcoholic beverages and the provision of food and beverage service to occupants of the Condominium and their guests.

10.2.2 At any time that the Pool Grill Unit is open to serve food or beverages for service to occupants of the Condominium it will be open for service to members of the public. This requirement shall not require the operator of the Pool Grill Unit to provide delivery service to members of the public. Nor will it prevent the Pool Grill Unit use from being changed as provided in Section 10.2.1 and if, and so long as, the use is changed from food and beverage service members of the public will no longer have access. This provision shall not be amended without the consent of the County of Kauai.

10.2.3 The Pool Grill Owner shall have the reserved right to use the General Common Elements for access but shall not use the swimming pools and other recreational amenities for recreational purposes.

10.3 USE OF RESORT UNITS.

10.3.1 Except when this Section 10.3 says otherwise, the Resort Units may be used only for residential purposes for the Resort Owners, their immediate family and their personal guests. The Resort Units may

not be used for commercial, business, manufacturing or industrial purposes under any circumstances, except for rentals permitted in this Section 10.3. These use restrictions will not prohibit a Resort Owner from maintaining a personal professional library, keeping personal or professional records or accounts or handling personal, business or professional telephone calls, facsimile or electronic mail in and from the Resort Unit. Uses of this kind are expressly declared to be a customary incidental use to the principal residential use.

10.3.2 NO TIMESHARE PLANS, FRACTIONAL PLANS, EXCHANGE PROGRAMS OR CLUB, OR TRAVEL OR VACATION CLUBS COMPRISED OF A TRUST, CORPORATION, COOPERATIVE, LIMITED LIABILITY COMPANY, PARTNERSHIP, EQUITY PLAN, NON-EQUITY PLAN, MEMBERSHIP PROGRAM, OR ANY SUCH OTHER SIMILAR PROGRAMS, STRUCTURES, SCHEMES, DEVICES OR PLANS OF ANY KIND (A) SHALL BE CREATED, ESTABLISHED, OPERATED OR MAINTAINED WITH RESPECT TO ANY UNITS; (B) SHALL ACQUIRE OR ACCOMMODATE ANY UNITS OR PORTIONS THEREOF; OR (C) SHALL BE PERMITTED TO INCORPORATE A UNIT OR PORTION THEREOF INTO SUCH ENTITY'S PROGRAM, STRUCTURE, SCHEME, DEVICE OR PLAN, EXCEPT BY THE DEVELOPER OR AN AFFILIATE OF DEVELOPER, OR EXCEPT WITH THE PRIOR WRITTEN AUTHORIZATION FROM THE DEVELOPER, WHICH AUTHORIZATION MAY BE GIVEN OR WITHHELD IN THE DEVELOPER'S SOLE AND ABSOLUTE DISCRETION, AND WHICH AUTHORIZATION SHALL BE EVIDENCED BY A WRITTEN INSTRUMENT EXECUTED BY THE DEVELOPER, RECORDED IN THE PUBLIC RECORDS, AND CONTAINING A REFERENCE TO THIS DECLARATION AND THIS SECTION 10.3.2; HOWEVER, ANY TIMESHARE PLANS, FRACTIONAL PLANS, EXCHANGE PROGRAMS OR CLUB, OR TRAVEL OR VACATION CLUBS ENTERED INTO BY THE DEVELOPER OR ANY AFFILIATE OF DEVELOPER WITH RESPECT TO THE CONDOMINIUM OR ANY PORTION THEREOF SHALL BE DEEMED TO COMPLY WITH THIS SECTION 10.3.2.

10.3.3 Subject to any limitations in the Club Declaration, the Club Units may be used for the purposes provided in Section 10.3.1 or 10.3.2.

10.3.4 Each Resort Owner shall have the obligation to keep the Front Desk Operator informed of the occupants of his Resort Unit. Each Resort Owner shall notify the Front Desk Operator in the event his Resort Unit shall be vacant for more than ten (10) consecutive days.

10.3.5 If a Resort Owner occupies his Unit he may elect to take custody of the card keys for his Resort Unit, in which case the Front Desk Operator shall be relieved of responsibility for the card keys during the period of such election, except for providing replacement card keys in accordance with the fee schedule.

10.3.6 If a Resort Owner provides the use of his Resort Unit to guests who are not the members of his immediate family, then the Resort Owner shall give instructions to the Front Desk Operator to issue the card keys to the Resort Owner's tenants or guests, and the Resort Owner shall, upon direction of the Front Desk Operator:

- (a) Execute an indemnity agreement in a form provided by the Front Desk Operator relieving the Front Desk Owner and the Front Desk Operator and their employees and agents of liability in connection with the card keys, except for any liability resulting from the gross negligence or willful misconduct of the Front Desk Owner or Front Desk Operator;
- (b) Provide the Front Desk Operator in writing from time to time the names and addresses of the persons to whom the card keys are to be issued and the dates for which they are to be issued;

(c) Cause the persons occupying the Resort Unit from time to time to check in with the Front Desk Operator at the beginning of their occupancy and to check out with the Front Desk Operator at the end of their occupancy; and

(d) Pay a reasonable fee to the Front Desk Operator for this service.

10.4 OWNERS' RIGHT TO SELL. The Owners of the respective Units shall have the absolute right, without obtaining the consent or joinder of any other Owners, to sell or otherwise transfer an interest in their respective Units subject to all provisions of the Act, the Master Declaration, this Declaration, the Club Declaration with respect to Club Units and the Bylaws.

10.5 OWNERS' RIGHT TO MORTGAGE. The Owners of the respective Units shall have the absolute right, without obtaining the consent or joinder of any other Owners, to mortgage or otherwise transfer an interest in their respective Units as security for the repayment of a loan, subject to all provisions of the Act, the Master Declaration, this Declaration, the Club Declaration with respect to Club Units and the Bylaws.

10.6 OWNER'S RIGHT TO LEASE. A Resort Owner may lease or rent a Resort Unit subject to strict compliance with the following conditions:

10.6.1 The term of the lease or rental may not be less than seven (7) consecutive days.

10.6.2 The lease or rental agreement will require the tenant to agree to abide by this Declaration, the Bylaws and the House Rules.

10.6.3 The tenant must register with the Front Desk Operator at the beginning and end of the tenancy.

10.6.4 The Resort Owner will be responsible for the compliance of the tenant with these requirements.

10.6.5 The Resort Owner will advise the Managing Agent, from time to time, of the full contact information including name, address, telephone, facsimile and email address if any, and license number of the Resort Owner's rental agent, if one is used.

10.6.6 The Resort Owner will comply with all applicable laws and regulations relating to the rental of the Resort Unit.

10.6.7 The use of the Common Elements such as the swimming pool is for the occupants of the Units. Therefore while the Resort Owner has no right of possession of the Resort Unit because of a lease or rental, the Resort Owner shall also have no right of use of the Common Elements, except (a) as a guest of the tenant and subject to all limitations on guests in the House Rules or (b) in compliance with any daily use policy which the Board may establish and discontinue from time to time, permitting such use to Resort Owners who are not in possession of their Units. Any daily use policy may provide for daily use charges established from time to time by the Board or Managing Agent. Since it is anticipated that there will be many more Club Owners for each Club Unit than there will be Residences Owners for each Residences Unit, the daily use policy may have different rules for Club Owners and Residences Owners.

10.6.8 The Residences Association or Club Association may impose additional rules and regulations on rental of Residences Units and the Club Units, as the case may be and the Club Declaration may prohibit rentals by Club Owners or place additional restrictions on them.

10.7 LIMITATION ON OPEN HOUSES. Except for open houses held by Developer, its agents and Affiliates, open houses within Resort Units shall be limited to no more than two (2) times during any calendar week and may be operated only from 10:00 AM to 5:00 PM. All open houses must be scheduled with the Managing Agent at least twenty-four (24) hours in advance. These requirements may be waived by the Board in appropriate circumstances in its sole discretion.

10.8 PROHIBITION ON ACTIVITIES WHICH JEOPARDIZE THE CONDOMINIUM.

10.8.1 No Unit Owner shall do or suffer or permit to be done anything in any Unit or appurtenant Limited Common Element or elsewhere on the Condominium that will: (1) injure the reputation of the Condominium, (2) jeopardize the safety or soundness of the Condominium, (3) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants, (4) reduce the value of the Condominium, (5) result in the cancellation of insurance applicable to the Condominium, or adversely affect the right of recovery under any policy, or result in reputable companies refusing to provide insurance as required or permitted by this Declaration, the Bylaws or the Act, (6) increase the rate of insurance applicable to the Units or their contents, or to the Condominium, or (7) contravene the terms of this Declaration. By acquiring a Unit in the Condominium or an interest in it, every person acquiring the Unit or interest shall be deemed to have agreed that the exercise by Developer of Developer's Rights shall not be deemed to breach the prohibitions of this Section 10.8.

10.8.2 No cigarettes, cigarette butts, pipes, cigars or other refuse may be put out or thrown on any part of the Condominium. Smoking is not allowed inside any Buildings other than within the boundaries of the Resort Units and is not allowed on the pool deck.

10.9 CHANGES TO BUILDING STRUCTURES AND UNITS. The Board, with the consent of Developer during Developer's Rights Period, shall have the right to change the exterior appearance of the Building structures, but may not change the signage that is a Front Desk Element without the prior written consent of the Front Desk Owner. No change shall be made which shall result in an appearance that is inconsistent with a first-class resort destination. The Board may delegate the foregoing responsibility to the Managing Agent. No Owner shall, without the prior written consent of either the Board or the Managing Agent, and of Developer during Developer's Rights Period, change or cause a change to the exterior appearance of a Unit in any manner.

10.10 OWNERS TO MAINTAIN UNITS AND LIMITED COMMON ELEMENTS IN GOOD ORDER. A Unit Owner shall keep the interior of his or her Unit and all plumbing, electrical and other fixtures and appurtenances constituting a part of the Unit and its Limited Common Elements in good order and repair, and in a condition consistent with a first-class resort destination. Each Unit Owner shall keep clean (a) the inside of the windows of the Unit and (b) any exterior of windows that are not accessible to the Association, as determined by the Managing Agent, without entering the Unit, whether or not they are Limited Common Elements of that Unit. If any Unit Owner fails to clean and maintain the Unit and glass in accordance with this Section 10.10 the Residences Association or the Club Association, if so provided in their respective declarations, and the Association shall have the right to cure the deficiency at the Unit Owner's expense. The Club Declaration may delegate the obligations of the Club Owners under this Section 10.10 to the Club Association.

10.11 EXEMPTIONS FOR PERSONS WITH DISABILITIES. No matter what else this Declaration, the Bylaws or the House Rules say, Owners with disabilities shall be allowed reasonable exemptions from this Declaration, the Bylaws and the House Rules, when necessary and as appropriate to enable them to use and enjoy their Units and the Common Elements, provided that any Owner with a disability desiring such an exemption shall make such request, in writing, to the Board. That request shall set out, with specificity and in detail, the nature of the request and the reason that the requesting party needs to be

granted such an exemption. The Board of Directors shall not unreasonably withhold or delay its consent to such a request, and any such request shall be deemed to be granted if not denied in writing within forty-five (45) days after the Board's receipt of it, or within forty-five (45) days after the Board's receipt of additional information reasonably required by the Board, as permitted by law, in order to consider such request, whichever shall last occur.

(Declaration Section 10)

15.7.1 Property and Casualty Insurance. Each Unit Owner shall procure and maintain insurance coverage on the Unit Owner's real property, including improvements and betterments, or personal property located within the boundaries of the Unit and elsewhere, such as within the Common Elements or Limited Common Elements areas. The coverage shall be in an amount not less than the full insurable value or replacement cost of such property and any improvements and betterments and personal property of the Unit Owner including, but not limited to, all electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a Unit and serve only one Unit and all air conditioning compressors that service only an individual Unit, whether or not located within the Unit boundaries. The coverage shall provide protection as indicated in Section 15.1 in reasonable amounts. The coverage shall insure all areas not covered by the Association including but not limited to those areas as defined as outside the scope of the Association's insurance in Section 15.1;

15.7.2 Liability. Liability insurance for bodily injury and property damage in an amount of not less than One Million Dollars (\$1,000,000) per occurrence for each Resort Unit, and in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence or such greater amount as may be required by the Board, for the Front Desk Unit and for the Pool Grill Unit. As stated in 514B 143 (i), the personal liability of a negligent Unit Owner shall include liability for the deductible of the Owner whose Unit was damaged, any damage not covered by insurance required by this Section 15.7.2 as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings;

(Declaration Section 15)

Pet Restrictions: No animals shall be allowed in any Resort Unit or in the Common Elements of the Condominium, except for animals permitted by the House Rules and subject to all conditions provided in the House Rules and except that persons with disabilities will be granted reasonable accommodations in accordance with Section 10.11 of the Declaration or as otherwise required by applicable law. (Bylaws 5.1.7)

House Rules A-12 Animals and Pets

Only customary household pets that belong to Resort Unit Occupants and weigh no more than forty (40) pounds each are permitted on the Condominium Property. "Customary household pets" are limited to cats, dogs, caged birds and aquarium fish. In addition, no pets may be kept on the Condominium Property under conditions which, in the reasonable judgment of the Board or the Managing Agent, constitute an unreasonable annoyance, nuisance or safety hazard, or an unreasonable interference with the use, occupancy and enjoyment of the Project. Except for aquarium-kept tropical fish, no more than two household pets may be kept in any Resort Unit at any time.

Pets are subject to these further restrictions:

A-12.1 Resort Unit Occupants must register their pets with the management office prior to bringing them on the Condominium Property.

A-12.2 No pet is permitted outside a Resort Unit except on a leash or while carried and under the control of a responsible person. Pets may be walked only in areas that are designated by the Board or the Managing Agent.

A-12.3 The owners of each pet are strictly responsible for immediately collecting, removing and properly disposing of pet waste matter or litter.

A-12.4 No Pit bull dogs, Rotweilers, Doberman Pinschers and similar breeds which may, in the sole discretion of the Board or the Managing Agent, have the potential for vicious or dangerous behavior are permitted.

A-12.5 No pet may be kept for breeding purposes or for any other commercial purpose.

A-12.6 No pet may be left unattended on a lanai, balcony, terrace, patio, or other exterior space.

A-12.7 No pet may make an unreasonable amount of noise, disturb the peace, or otherwise become an annoyance or nuisance.

A-12.8 All pets must be current on all required vaccinations.

A-12.9 Those pets which, in the sole discretion of the Board or the Managing Agent, endanger the health, make objectionable noise or constitute a nuisance, threat or inconvenience, must be removed within three (3) days after written request from the Board or the Managing Agent. The failure to remove such pets will entitle the Association to obtain a court order enforcing the decision of the Board. All costs incurred by the Association in connection with such court proceedings, including reasonable attorney's fees, are payable by the offending Resort Unit Occupant, and in the case of a user other than the Owner, the Resort Owner will also be liable.

A-12.10 Each Resort Owner, by acquiring title to his Unit, automatically agrees to indemnify and hold harmless the Developer, the Managing Agent, the Association and the Board against all losses and liability of any kind whatsoever that arises in any way from any pet or animal that the Resort Owner or any occupant of his Resort Unit brings upon the Condominium Property.

A-12.11 The Association further reserves the right to adopt and enforce additional pet regulations as may be necessary to ensure that pets are not and do not become a nuisance.

EXHIBIT H: ENCUMBRANCES AGAINST TITLE

1. Real Property Taxes when due and owing
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. The terms and provisions contained in DEED dated June 29, 1977, recorded in Liber 12300 at Page 260.
4. CERTIFICATE OF CONDITIONS dated May 16, 1984, recorded in Liber 17931 at Page 249, by AMFAC PROPERTY DEVELOPMENT CORPORATION, a division of AMFAC, INC., a Hawaii corporation.
5. RIGHT OF ENTRY dated September 24, 1987, recorded in Liber 21309 at Page 338, in favor of CITIZENS UTILITIES COMPANY, whose interest is now held by KAUAI ISLAND UTILITY CO-OP, and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED (now known as HAWAIIAN TELCOM, INC.)
6. The terms and provisions contained in DEED dated March 25, 1987, recorded in Liber 20496 at Page 304, as corrected in CORRECTION DEED (The Kauai Lagoons - Lots 2, 5, 6, 7, 8, 10 and 11) dated as of January 15, 1988, recorded in Liber 21584 at Page 334.
The foregoing includes, but is not limited to, the following:
"And the Grantee does hereby covenant and agree to assume the obligations of LPC under the Decision and Order of the Land Use Commission of the State of Hawaii, issued on August 22, 1983 (Docket No. 82530), reserving unto the Grantee, however, the right to seek relief therefrom or modifications thereof from said Land Use Commission or any other appropriate governmental authority."
7. FILE PLAN 1905 SUBDIVISION AGREEMENT dated January 15, 1988, recorded in Liber 22624 at Page 432, by and among the COUNTY OF KAUAI, HEMMETER-VMS KAUAI COMPANY I and the LIHUE PLANTATION COMPANY, LIMITED.
8. GRANT in favor of HEMMETER-VMS KAUAI COMPANY I, a Hawaii limited partnership, dated January 15, 1988, filed as Land Court Document No. 1527017, recorded in Liber 21584 at Page 403, granting a perpetual nonexclusive right and easement for drainage purposes; provided that such right and easement for drainage purposes shall not include the right to construct any drainage improvements or facilities.
9. Unrecorded AGREEMENT dated June 1, 1992, of which a MEMORANDUM is filed as Land Court Document No. 1937365, recorded as Document No. 92-123466, by and between KAUAI LAGOONS RESORT COMPANY, LTD., a Hawaii corporation, and ANDREW LELAND NICKLES.
10. GRANT OF AVIGATION AND NOISE EASEMENT in favor of the STATE OF HAWAII, Department of Transportation, Airports Division, dated March 21, 2002, recorded as Document No. 2002-228662; granting (i) a perpetual easement and right of way, appurtenant to the Lihue Airport, for the passage of all aircraft in the air space above the Easement Premises; and (ii) a perpetual easement to discharge, emit or otherwise transmit noise, and also fumes, etc.
11. Designation of Easements "2" and "4" for road and utility purposes, as shown on File Plan 1905.
12. GRANT in favor LIHUE PLANTATION COMPANY, LIMITED, a Hawaii corporation, dated January 15, 1988, filed as Land Court Document No. 1527016, recorded in Liber 21584 at Page 379; granting (i) a nonexclusive right and easement for roadway and utility purposes over and across said Easement "4", and (ii) a nonexclusive right and easement for drainage purposes.
13. Designation of Easement "A-1" for access purposes; and Easement "GC-1" for golf course purposes; each shown on File Plan No. 1933.
14. The terms and provisions contained in DEED dated January 30, 1991, recorded as Document No. 91-012227.

EXHIBIT H: ENCUMBRANCES AGAINST TITLE

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

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

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

16. Designation of Easement "3" (52 feet wide) for road and utility purposes, as shown on the map prepared by Robert W. Cunningham, Land Surveyor, with Belt Collins Hawaii, Ltd., dated February 20, 2003, approved by the Planning Department, County of Kauai.

17. The terms and provisions contained in the following:

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

18. The terms and provisions contained in that certain Limited Warranty Deed dated --- (acknowledged October 13, 2005), recorded as Document No. 2005-209699, as follows:

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

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

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

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

19. The terms and provisions contained in CERTIFICATE AND AUTHORIZATION dated November 6, 1991, recorded as Document No. 92-081744, made by and among WM. HYDE RICE, LIMITED, a Hawaii corporation, KAUAI LAGOONS RESORT COMPANY, LTD., a Hawaii corporation, KAUAI LAGOONS BEACH HOTEL COMPANY, LTD., a Hawaii corporation, HEMMETER-VMS KAUAI COMPANY I, a Hawaii limited partnership, HEMMETER-VMS KAUAI COMPANY II, a Hawaii limited partnership, and HEMMETER-VMS KAUAI COMPANY III, a Hawaii general partnership.

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

21. Any unrecorded leases and matters arising from or affecting the same. [Note: Developer will provide affidavits to the title company at closing to remove this encumbrance from Buyers' title policies.

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

Note: Encumbrances solely on Lot 2 have been omitted because upon subdivision they will not apply to Lot 9-A

LAND USE PERMIT]

BRYAN J. BAPTISTE
MAYOR



IAN K. COSTA
DIRECTOR OF PLANNING

GARY K. HEU
ADMINISTRATIVE ASSISTANT

MYLES S. HIRONAKA
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUI
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUI, HAWAII 96766-1326

TELEPHONE: (808) 241-6677 FAX: (808) 241-6699

RF

August 25, 2005

Kauai Development LLC
KD Golf Ownership LLC
55 Merchant Street, Suite 1900
Honolulu, Hawaii 96813

RECEIVED
AUG 29 2005
WILSON SHAMOTO CORPORATION

Subject: Special Management Area Use Permit SMA(U)-2005-8
Project Development Use Permit U-2005-26
Use Permit U-2005-25
Variance Permit V-2005-7
Class IV Zoning Permit Z-IV-2005-30
Tax Map Keys: 3-5-001: 27, 165, 169, 170, 171, 172, and 173.
Kalapaki, Lihue, Kauai

The Planning Commission, at its meeting held on August 23, 2005, approved the subject permit applications to allow the construction of 723 hotel/residential units, which includes 24 affordable housing units, a new golf clubhouse, treatment spa, fitness center, retail and offices, a restaurant, resort check in facilities, temporary sales facilities and model units, 1,818 off-street parking stalls, public recreational facilities, and other amenities on the subject properties. Approval is subject to the following conditions as recommended by the Planning Department, and as amended by the Planning Commission.

1. The maximum building height for the proposed condominium, timeshare, multi-family, and hotel units buildings in Project Area "A", "B", and "D" shall not exceed four (4) stories or forty (40) feet from the ground line measured at each point along the building to the highest wall plate line, whichever is less. Gables and roof height shall not exceed one-half (1/2) the wall height or fifteen (15) feet, whichever is less. The applicant shall design the proposed multi-family building along the south eastern portion of Project Area B" with a staggered three to four story design as shown on the plans submitted for the project.

The maximum building height for structures in Project Area "C" shall be as follow:

- a. The "Bungalow Condominiums" shall be one and two stories in designs with a maximum building height of 33 to 35 feet from finished grade at main entry of the building to the highest point of the roof of the building.
- b. Tri-plex Units shall have a two to three story design with a maximum building height of 45 feet as measured from the ground line at each point along the building to the highest point of the roof the building.
- c. The maximum building height for the proposed "Inn on the Cliffs" buildings shall not exceed three stories or 45 feet as measured from the ground line at each point along the building to the highest point of the roof the building.
- d. The single family residential development shall comply with the building height requirements of Section 8-3.7 (b) (1).
- e. The Seven-plex Units shall have a three to four story design with a maximum building height of 55 feet as measured from the ground line at each point along the building to the highest point of the roof the building.

The Applicant shall also follow the proposed architectural design guidelines that establish building design, roof design, building materials, and earth tone color schemes as shown on the pages 11, 16, 21, 26 and 44 of Volume II of the subject applications.

2. The maximum building height for the proposed Golf Club House facility on TMK: 3-5-001: 27 shall not exceed 35 feet from finished grade at the main entrance of the building to highest point of the roof.
3. The applicant shall provide building design, color scheme samples, and landscape plans for each phase of the project for the review and approval of the Planning Department at time of Building Permit and/or Subdivision Permit Application. The Applicant is encouraged to incorporate the use of native plants that are common to the area or endemic, indigenous, or Polynesian introduce in the landscape plans for each phase of the development.

The landscape plan shall also include landscaping and/or landscape berm(s) along Haoa Street and Kapule Highway to address visual impacts of the project and to help minimize noise impacts from the highway to the residential project.

4. The Applicant shall comply with the required setback distance to property lines for all of the buildings in Project Area "A" to "D" by adjusting the building location or configuration and/or conducting boundary adjustments through the Subdivision process to obtain the land area with the adjacent lands to meet the required 10 to 20 feet setback distances to the respective property line(s).

The Applicant shall also consolidate parcels identified by Tax Map Key: 3-5-001: 169 and 170 into one lot to address the straddling of buildings and improvements over the common boundary line on Project Area "A".

The Applicant shall either consolidate the proposed offstreet parking area for the "Bungalow Condominium" projects on TMK: 3-5-001: 27 into the Project Area "C" or provide perpetual easements for the purpose of parking on each of the affected properties. Further, the Applicant shall either consolidate the proposed offstreet parking area east of the Fashion Landing area on TMK: 3-5-001: 27 into the Project Area "D" or provide perpetual easements for the purpose of parking on each of the affected properties.

The foregoing requirements shall be resolved with the Planning Department prior to Building Permit or Subdivision Permit Approval.

5. As required under Condition No. 2 of Ordinance No. PM-2002- 363, the Applicant shall provide documentation of the restriction on density in the subject property (ies) within Open District into the deeds of the affected property prior to building permit issuance.
6. As represented by the Applicant and as recommended by the State Department of Transportation in its letter of June 17, 2005, the Applicant shall fully fund the improvements that are needed for the full build-out of the Kapule Highway/Rice Street intersection. These improvements include traffic signalization, acceleration, deceleration, and storage lanes.

As also represented, the applicant shall provide a primary vehicular access to the resort project from Kapule Highway to lessen the traffic impacts of the project at both the Rice Street/Kapule Highway intersection and at the existing entrance to the project along Rice Street. The improvements that are needed at the Kapule Highway entrance shall be resolved with the State Department of Transportation and the Department of Public Works. The Applicant shall submit a Supplemental Traffic Impact Analysis Report to the Department of Transportation indicating that the Kapule Highway entrance shall serve as a primary access to the project.

As further represented, the Applicant shall extend the right turn lane on Haa Street at the intersection of Haa and Kapule Highway and also provide a left turn

“pocket” on Haoa Street at the entrance to the affordable housing project on TMK: 3-5-001: 165.

In addition, the Applicant shall consult with the DOT Airports Division on the possibility of utilizing the “Airport Road”, situated to the north of the project site and along the western boundary of the Airport Facility, to provide direct access from the Airport Facility to the resort property for vans and/or shuttle buses.

In order to coordinate the requirements specified in the above, the applicant shall prepare a working plan providing a schedule covering the preparation of construction plans and construction timetables for the various roadway improvements, subject to the review and approval Public Works Departments, the State Department of Transportation, and Planning Department at time of Building Permit Application and/or Subdivision Application for projects that are granted subject permits.

7. As recommended by the Department of Public Works, Wastewater Division, the Applicant shall resolve the following requirements with the Department of Public Works:
 - a. The STP Effluent Agreement dated August 14, 2001 between Kauai Lagoons Resort Company, Ltd. and the County of Kauai shall remain in effect.
 - b. The said agreement reserves the Applicant with 150,000 gallons per day of treatment capacity at the Lihue Wastewater Treatment Plant for its development up to ten (10) years from the date of the agreement.
 - c. The applicant shall meet with the Department of Public Works to negotiate an agreement for sewer capacity exceeding 150,000 gallons per day.
 - d. The agreement stipulates that the County shall provide, and the applicant shall accept, up to 1.5 million gallons per 24 hour day (MGD) of treated effluent. If this condition cannot be met the applicant shall meet with the Department of Public Works to negotiate an agreement to dispose any of the unused effluent that remains form the 1.5 MGD discharged from the County’s Lihue Wastewater Treatment Plant.
 - e. All sewer improvements required for the development shall be designed and constructed to County standards.

Should the sewer capacity for additional development on the property exceed 150,000 gallons per day, the Applicant acknowledges that it shall be subject to

any applicable waiting or priority list established by the County of Kauai for such service.

8. The Applicant is advised that the Project Development Use Permit is hereby approved on TMK: 3-5-001: 165 provided that the project is made available to households qualifying for Federal or State subsidized housing program designed to produce housing for lower income persons as administered by the County Housing Agency of the County of Kauai. The applicant shall construct the affordable housing units on the property in accordance with the performance measures of the Affordable Housing Agreement, dated February 18, 2005, between the Applicant and the County of Kauai.

The Applicant shall record in the deed of subject property a restrictive covenant that prohibits the commercial or industrial uses on TMK: 3-5-001: 156.

9. Applicant shall continue to allow public access over and across all existing public vehicular and pedestrian public accesses on the subject property. The Applicant shall provide the improvements shown on the Applicants Public Access Plan dated August 2005. The improvements include a recreational shelter, shower and restroom facilities, a minimum of 10 public parking stalls at the eastern edge of the Fashion Landing area, and a minimum of 10 public parking stalls at the western end of the project near Kukii Point. The Applicant shall also provide a lateral pedestrian public access beginning from the Fashion Landing area to the former "Inn on the Cliffs" area and on to Kukii Point. Easement documents for these accesses are to be provided to the County prior to Building Permit or Subdivision Permit Approval. The applicant shall prepare a plan providing a schedule for construction timetables for the various recreational improvements, and the installation of public access and public parking signs on the property prior to Building Permit and/or Subdivision Permit Application.
10. All deeds or instruments transferring interest in the subject property, or in the structures or improvements therein, easements running in favor of the State of Hawaii and the Land Use Commission and the County of Kauai shall indemnify and hold the State of Hawaii and Land Use Commission and the County of Kauai, harmless from any complaints or claims due to noise, odor, dust, mosquitoes, and other nuisances and problems emanating from the operation of the Lihue Airport and the operation of the Lihue Wastewater Treatment Plant.
11. Pursuant to Condition No. 9 of Ordinance No. PM-2002-363, no residential, condominium, of hotel units shall be constructed within areas greater than the 60 DNL noise contour of the Lihue Airport; provided, however, that such uses may be permitted within the 60 to 65 DNL noise contours, if there is an accompanying mitigation of interior noise to the 45 DNL noise level.

12. The Applicant shall comply with any height restriction to be set by the State of Hawaii pursuant to specifications established in FAA regulations for aviation easement purposes along the perimeter of the Lihue airport runways. An aviation easement in a form prescribed by the State Department of Transportation shall be granted to the State of Hawaii by the Applicant, to cover the entirety of the Kauai Lagoons Resort property owned by the Applicant.
13. If historic/cultural remains such as archaeological artifacts, charcoal deposits or human burials are found during construction, the applicant shall stop work in the immediate area, and shall contact the State Historic Preservation Division SHPD at 742-7033, and the Planning Department, to determine appropriate action.
14. In order to minimize adverse impacts on Federally Listed Threatened Species, such as Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following types: shielded lights, cut-off luminaries, or indirect lighting. Spotlights aimed upward or spotlighting of structures and landscaping on the project site shall be prohibited.
15. The Applicant shall comply with all requirements established by the Department of Public Works, County of Kauai, regarding drainage and erosion control, in order to minimize any adverse impact on Kalapaki Bay and adjoining off shore waters.
16. In accordance with Section 9-2.8 of the KCC, the requirements relating to "Parks and Playgrounds" are applicable to the project and shall be resolved at time of Subdivision and/or prior to building permit approval.
17. In accordance with Section 11A-2.2 of the KCC, the Applicant shall submit to the Planning Department an Environmental Impact Assessment Fees (EIA) for the project. The EIA fee for the Multi-family unit project is based on \$1,000 per unit and is due prior to building permit approval. The EIA fees for the single family residential project are due prior to Subdivision permit approval.
18. The applicant shall continue to make available 200 hundred off-street parking stalls within the Project Area "A" for the Kauai Marriott Resort and Beach Club.
19. As contained in Condition No. 18 of Ordinance No. PM-2002-363, substantial construction of 125 hotel or resort /residential units shall be completed within five (5) years from the effective date of the Ordinance. Substantial construction of an additional 125 units shall be completed within 10 years and the remainder of the 750 units shall be completed within 15 years from the effective date of the Ordinance. Substantial construction, as used herein, shall mean the laying of foundations. If substantial construction is not completed within this time frame,

the Planning Commission may initiate proceedings to review the provisions of the zoning designations for the property, including, but not limited to additional infrastructure requirements.

20. As stated in Condition No. 19 of Ordinance No. PM-2002-363:

“Pursuant to Chapter 4 (“Developing Jobs & Business”), Section 4.5.2 (“Supporting Business and Jobs for Kauai Residents – Implementing Actions”) of the Kauai General Plan (November 2000):

“(c) In granting zoning and permits for new resorts and other business, the County shall seek commitments that businesses will actively recruit and train Kauai residents to fill new jobs.”

To this end, the Applicant shall seek to actively recruit and train Kauai residents to fill new jobs. To accomplish this, the applicant may cooperate with, and utilize, whatever government training programs and Kauai Community College curricula which may be available so that Kauai residents may be trained to fill such newly-generated jobs. The Applicant may also work to actively recruit Kauai residents to participate in such job training programs and curricula.”

21. In accordance with Condition No. 20 of Ordinance No. PM-2002-363, “to the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are reasonably competitive with other contractors, and shall seek to employ residents of Kauai in temporary construction and permanent resort related jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai resident possesses such skills. For the purposes of this condition, the Council shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices”.
22. The Applicant shall consider the application of Leadership in Energy and Environmental Design (LEED) standards and strategies wherever feasible for sustainable site, utilities and building development.
23. The Applicant shall seek to establish and designate emergency shelters within the Resort which would be available for use during natural disasters.
24. As recommended by the Department of Water, the applicant shall resolve the following with the Department of Water (DOW):
- a. Submit detailed water demand calculations along with proposed water meter size. Water demand calculations should include fixture count and

water meter sizing worksheets. These calculations shall include but not be limited to domestic, irrigation and other applicable water demands of this project along with the proposed water meter size. If the existing water meters will be used to provide water service to this development, water demand calculations will be required for the existing and proposed uses and shall include the existing and proposed unit counts. The Water Department's comments may change depending on the approved water demand calculations.

- b. Prepare and receive DOW's approval of construction drawings for necessary water system facilities and construct said facilities. These facilities shall include but not be limited to:
 1. The domestic service connection and fire service connection, if applicable
 2. The interior plumbing plans with the appropriate backflow prevention device, if applicable,
 3. Additional source facilities for this area. The applicant may wait until others (including the DOW) to construct additional source for this area. The DOW is in the process of obtaining additional source for this area. Grove Farm is constructing a Surface Water Treatment Plant, which will provide additional water capacity for the Lihue Area. Upon completion of this SWTP the DOW will reassess their water situation in the Lihue area.
 4. Additional storage facilities of this area. The applicant may wait until others (including DOW) to construct additional storage for this area.
 - c. Pay the applicable charges in effect at the time payment is made to the Water Department. At the present time, these charges shall include:
 1. The Facilities Reserve Charge (FRC) of either \$4,600 per unit or the facilities reserve charge as determined by the approved water meter size, whichever amount is larger.
25. The applicant shall resolve and comply with applicable conditions or requirements as recommended by the State Health Department, County Fire, and Public Works Departments.

26. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permits through proper procedures should the applicant fail to comply with the conditions of approval.
27. The applicant is advised that prior to and/or during construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).
28. The Applicant shall provide an annual report to the Planning Commission, which shall be submitted to the Planning Department 30 days prior to the annual anniversary date of approval of this project. The annual report shall include the progress and status of the project and compliance with all conditions of approval. An annual report shall be provided until project completion and compliance with all conditions of approval.
29. The Applicant shall work with the County Transportation Agency to determine if a bus stop for the County Bus Transportation system can be placed on the project. The Applicant shall construct/install a bus stop, at no cost to the County of Kauai, if it is determined that a County bus stop should be place on the subject property.
30. The Applicant shall provide sidewalks along the Resort Drive and Lagoon Drive as represented on the pages 8 and 9 of Volume II of the subject applications.

Pursuant to the letter from Wilson Okamoto Corporation dated June 22, 2005 Variance Permit Application V-2005-7 has been withdrawn.



Ian K. Costa
Director of: Planning

- c:
- Wilson Okamoto Corporation
 - Public Works - Engineering Div.
 - Public Works - Waste Water Div.
 - Public Works - Solid Waste Div
 - Public Works - Building Div.
 - Water Dept.
 - State Health Dept.
 - State Historic Preservation Div. – DLNR
 - Fire Dept.
 - State Highways Div. - DOT
 - Real Property Div.

COUNTY COUNCIL
Bill "Kaipo" Asing Chair
James Kunane Tokioka, Vice Chair
Jay Furfaro
Shaylene Iseri-Carvalho
Daryl W. Kaneshiro
Mel Rapozo
JoAnn A. Yukimura



OFFICE OF THE COUNTY CLERK

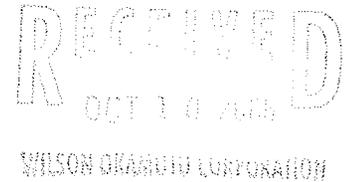
Peter A. Nakamura, County Clerk
Ernesto G. Pasion, Deputy County Clerk

Phone (808) 241-6371
Fax (808) 241-6349

Council Services Division
4396 Rice Street, Room 206
Lihu'e, Kaua'i, Hawai'i 96766-1371

October 4, 2006

Mr. Rodney Funakoshi
WILSON OKAMOTO CORPORATION
Engineers and Planners
1907 South Beretania Street, Suite 400
Honolulu, Hawai'i 96826



Michael J. Belles, Esq.
BELLES, GRAHAM, PROUDFOOT & WILSON
4334 Rice Street, Suite 202
Lihu'e, Hawai'i 96766

Dear Messrs. Funakoshi and Belles:

RE: Bill No. 2190 – General Plan Amendment, Nāwiliwili, Kaua'i
Bill No. 2191, Draft 3 – Zoning Amendment, Nāwiliwili, Kaua'i
Bill No. 2192, Draft 3 – VDA Amendment, Nāwiliwili, Kaua'i
(Kauai Lagoons LLC, KD Golf Ownership LLC, and KD Kapule LLC,
Applicants)

Enclosed for your information and files are Bill No. 2190, Bill No. 2191, Draft 3, and Bill No. 2192, Draft 3, which were adopted by the Kaua'i County Council at its meeting held on September 27, 2006. Mayor Bryan J. Baptiste signed the bills on September 29, 2006, and they now have the effect of law as Ordinances No. PM-2006-382, No. PM-2006-383, and No. PM-2006-384, respectively.

If you have any questions, please call the Council Services Division at 241-6371.

Sincerely,

PETER A. NAKAMURA
County Clerk

Encs.

cc: Planning Department

PUBLIC NOTICE

BILL NO. 2190

ORDINANCE NO. PM-2006-382

A BILL FOR AN ORDINANCE AMENDING CHAPTER 7, KAUAI COUNTY CODE 1987, RELATING TO GENERAL PLAN DESIGNATION IN NAWILIWILI, KAUAI (Kauai Lagoons LLC and KD Golf Ownership LLC, Applicants)

BILL NO. 2191, DRAFT 3

ORDINANCE NO. PM-2006-383

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, RELATING TO ZONING DESIGNATION IN NAWILIWILI, KAUAI (Kauai Lagoons LLC, KD Golf Ownership LLC, and KD Kapule LLC, Applicants)

BILL NO. 2192, DRAFT 3

ORDINANCE NO. PM-2006-384

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, ARTICLE 17, KAUAI COUNTY CODE 1987 RELATING TO VISITOR DESTINATION AREA DESIGNATION IN NAWILIWILI, KAUAI (Kauai Lagoons LLC and KD Golf Ownership LLC, Applicants)

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that Bill No. 2190, Bill No. 2191, Draft 3, and Bill No. 2192, Draft 3, were adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on September 27, 2006, by the following vote:

FOR ADOPTION: Furfaro, Iseri-Carvalho, Kaneshiro, Rapozo, Tokioka, Yukimura, Asing	TOTAL – 7,
AGAINST ADOPTION: None	TOTAL – 0,
EXCUSED & NOT VOTING: None	TOTAL – 0,

approved by the Mayor on September 29, 2006, and now have the effect of law as Ordinances Nos. PM-2006-382, PM-2006-383, and PM-2006-384, respectively.

Līhu'e, Hawai'i
October 4, 2006

(One Publication – The Garden Island – October 9, 2006)

/s/ Peter A. Nakamura
County Clerk, County of Kaua'i

A BILL FOR AN ORDINANCE AMENDING CHAPTER 7,
KAUA'I COUNTY CODE 1987, RELATING TO GENERAL PLAN DESIGNATION
IN NĀWILIWILI, KAUA'I

(Kauai Lagoons LLC, and KD Golf Ownership LLC, Applicants)

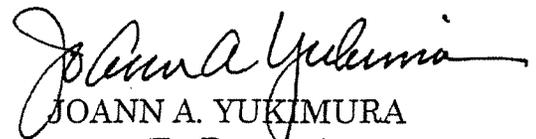
BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF
HAWAII:

SECTION 1. The General Plan designation for that certain area of approximately 190 acres in Nāwiliwili, Kaua'i, identified as TMK: 3-5-01: por. 27, por. 168, and as delineated on the map attached hereto and incorporated herein as Map 2, is hereby amended from "Open" to "Resort."

SECTION 2. The Planning Commission is directed to note this amendment on the official General Plan map filed with the Commission. All General Plan provisions applicable to the "Resort District" designation shall apply to the area described herein.

SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY:


JOANN A. YUKIMURA
(By Request)

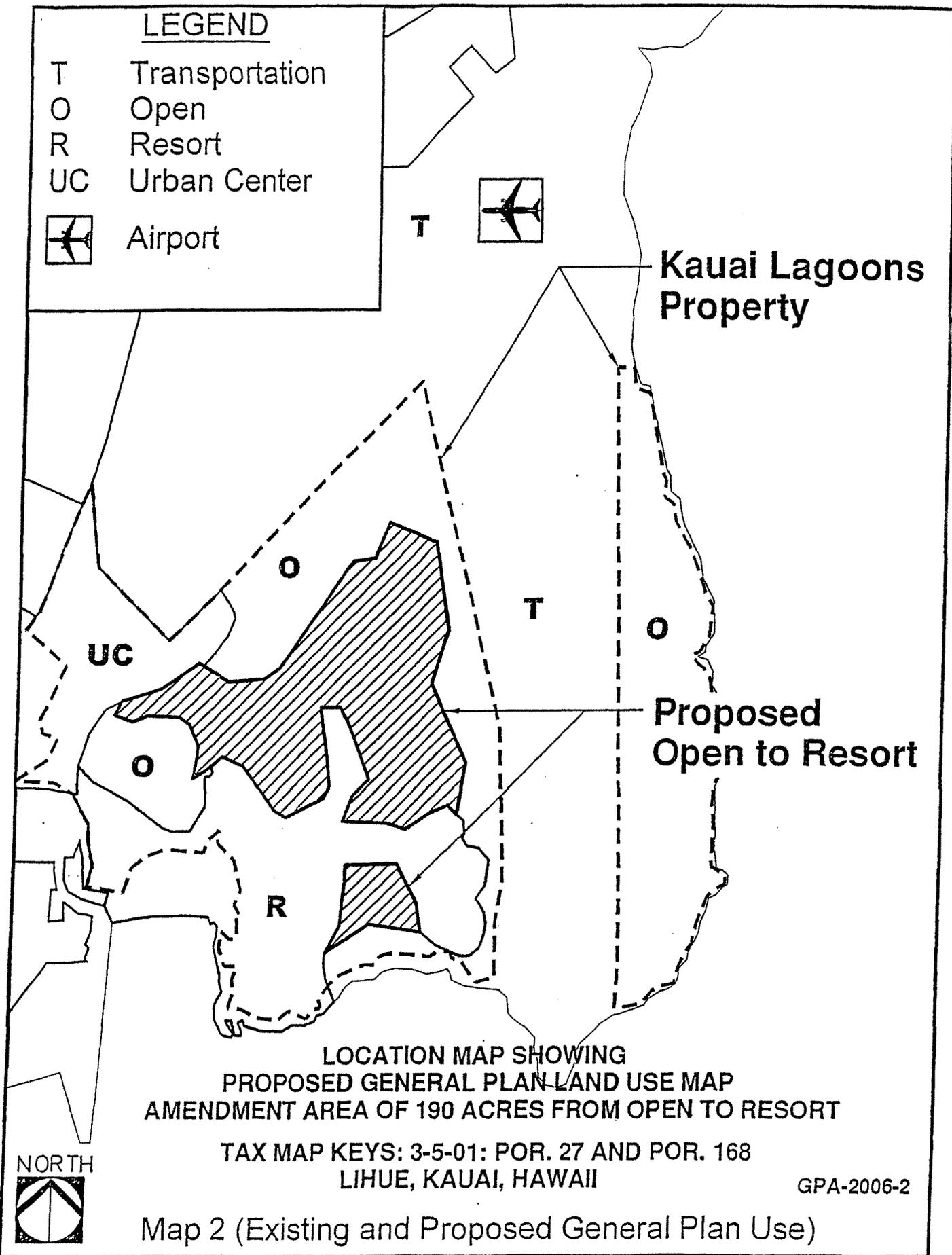
DATE OF INTRODUCTION:

June 28, 2006

Līhu'e, Kaua'i, Hawai'i

LEGEND

- T Transportation
- O Open
- R Resort
- UC Urban Center
-  Airport



Kauai Lagoons Property

Proposed Open to Resort

**LOCATION MAP SHOWING
PROPOSED GENERAL PLAN LAND USE MAP
AMENDMENT AREA OF 190 ACRES FROM OPEN TO RESORT**

**TAX MAP KEYS: 3-5-01: POR. 27 AND POR. 168
LIHUE, KAUAI, HAWAII**



GPA-2006-2

Map 2 (Existing and Proposed General Plan Use)

CERTIFICATE OF THE COUNTY CLERK

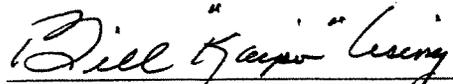
I hereby certify that heretofore attached is a true and correct copy of Bill No. 2190, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on September 27, 2006, by the following vote:

FOR ADOPTION: Furfaro, Iseri-Carvalho, Kaneshiro, Rapozo, Tokioka, Yukimura, Asing	TOTAL - 7,
AGAINST ADOPTION: None	TOTAL - 0,
EXCUSED & NOT VOTING: None	TOTAL - 0.

Līhu'e, Hawai'i
September 14, 2006


Peter A. Nakamura
County Clerk, County of Kaua'i

ATTEST:


Bill "Kaipo" Asing
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

September 29, 2006

Approved this 29th day of

September, 2006.


Bryan J. Baptiste
Mayor
County of Kaua'i

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUA'I COUNTY
CODE 1987, RELATING TO ZONING DESIGNATION IN NĀWILIWILI, KAUA'I
(Kauai Lagoons LLC, KD Golf Ownership LLC, and KD Kapule LLC, Applicants)

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. The zoning designation for that certain area of approximately 66.7 acres in Nāwiliwili, Kaua'i, identified on zoning map ZM-NW 400 from Open District (O) to Residential District (R-2), Resort District (RR-10), and Resort District (RR-20) on parcels identified by TMK 3-5-01: por. 27, por. 168, por. 172, and from Limited Industrial District (I-L) to Residential District (R-20) on TMK 3-5-01:165 and on the map attached hereto and incorporated herein as Revised Map 3 (9/27/06), subject to the following conditions:

1. Notwithstanding any provisions to the contrary, no more than a total of 750 dwelling units or hotel/motel rooms ("herein referred to the "Density Cap") shall be developed on the properties identified herein. The affordable housing units constructed within the areas rezoned herein shall not be counted as part of the Density Cap as long as the units remain as affordable pursuant to the Agreement (Kaua'i Lagoons Affordable Housing) between Kauai Development LLC and the County of Kaua'i, dated February 18, 2005, as amended. For the purposes of implementing this condition, units are defined as a hotel room (a suite or room without kitchen facilities) or a combination of hotel and residential units (a unit with kitchen facilities) for development within the Resort District (RR-10, RR-20). For development within the Residential District (R-20) only residential dwelling units are allowed. As represented, uses situated in the affected areas sought for zoning amendment shall be limited to the following residential types as described below:
 - a. For development within the Resort District (RR-10, RR-20), multi-family residential units are allowed.
 - b. Development within the Residential District (R-2) shall be limited to single family detached residential units. No Additional Dwelling Units (ADU) are permitted."
2. As further represented by the Applicant, "...the Open District (O) portions of the property shall not have any residential density or be used for the calculation of any residential density on the property. No

building permits shall be issued unless documentation that this restriction on density has been incorporated into the deeds of the affected property(ies) has been received by the Planning Department.”

3. The Applicant shall comply with, and fully implement all provisions of the Effluent Use Agreement dated August 14, 2001, entered into between Kauai Lagoons Resort Company, Ltd. and the County of Kaua'i.

Pursuant to the aforementioned agreement, the Applicant agrees to dedicate free and clear of any liens, and encumbrances, without cost to the County:

- a. All land and easements required for the disposal of effluent from the Lihu'e Wastewater Treatment Plant (“LWWTP”);
- b. Approximately 2.22 acres of land for the expansion of LWWTP
- c. Approximately 7.1 acres of land in the “Stable Area;”
- d. Any other land and easements required for the County's operation of the LWWTP as may be mutually agreed to between the County and the Applicant;
- e. Prior to conveying ownership of the LWWTP site to the County, the Applicant shall remove and relocate all golf course irrigation system improvements, weather station infrastructure and any related appurtenances from the property. Other than provided above, all lands conveyed to the County by the Applicant shall be on an “as is” basis. The Applicant is not aware of any dangerous, hazardous or environmentally damaging conditions existing on any of the lands to be conveyed.

The Applicant shall dedicate the aforesaid lands to the County within ninety (90) days after final subdivision approval of its Subdivision Application for the subject property currently pending before the Planning Commission.

4. Should the sewer capacity for additional development on the property exceed 150,000 gallons per day, the Applicant acknowledges that it shall be subject to any applicable waiting or priority list established by the County of Kaua'i for such service. No building permits shall be issued until sewer capacity issues have been resolved with the Department of Public Works – Wastewater Division.

5. The Applicant shall submit a request to the Planning Commission to cancel the existing Running Waters Hotel permits, identified as SMA Use Permit SMA (U)-87-17, Special Permit SP-87-15, Project Development Use Permit U-87-17, and Class IV Zoning Permit Z-IV-87-59, within 6 months from the approval of this zoning amendment ordinance.
6. The Applicant shall resolve the provision of affordable housing for this zoning amendment with the County Council in accordance with the Kaua'i Lagoons Affordable Housing Agreement dated February 18, 2005 as may be amended or otherwise determined by the County Council.
7. The Applicant shall allow public access over and across all existing public vehicular and pedestrian public accessways on the subject property. Easement documents in favor of the County providing for non-motorized bicycle access from the public access entrance at Kapule Highway to eventually connect with "Easement 1" on TMK: 3-5-01 por. 102 (as described in State of Hawai'i Bureau of Conveyances Document No. 90-152880) shall be executed within one hundred and eighty (180) days from the enactment of this ordinance.

The Applicant shall provide a passive beach park to include public parking in the vicinity of the former Fashion Landing commercial area, restroom and shower facilities, recreational shelters, and picnic areas in the approximate vicinity of the Kiele No. 13 green and the area commonly referred to as Running Waters Beach.

The aforementioned facilities shall be inclusive of, but not limited to, the following amenities:

- a. Public restrooms and shower facility at the former Fashion Landing commercial area (beneath restaurant facility);
- b. Public restrooms and shower facility near the Running Waters Beach; picnic shelters (i.e., recreational shelters) to be located close by; and
- c. Weather shelters and picnic tables along the lateral shoreline access.

Restroom and shower facilities and other public recreational amenities required in this condition shall be constructed within two (2) years from the date of the enactment of this ordinance, and shall be maintained by the Applicant.

The Applicant shall provide lateral shoreline access according to the 'Roadway and Public Access Plan (dated August 2006),' which is attached to and incorporated herein as part of this ordinance. More specific plans shall be submitted for the review and approval of the County of Kaua'i at the time of Zoning Permit and/or SMA permit application for the hotel/resort-residential project prior to any construction of the restroom and shower facilities and other public recreational amenities referenced above. Facility locations are to be determined at this time.

As represented by the Applicant, the Applicant shall indemnify, defend, pay for all attorneys fees and costs, and hold harmless the County of Kaua'i, its employees, agents, successors and assigns from any and all injuries and/or property damage that may directly or indirectly arise from the use by the public of the public access easements and facilities located on the Applicant's properties identified herein.

8. All deeds or instruments transferring interest in the subject property, or in the structures or improvements therein, easements running in favor of the State of Hawaii and the Land Use Commission and the County of Kaua'i shall indemnify and hold the State of Hawaii and Land Use Commission and the County of Kaua'i, harmless from any complaints or claims due to noise, odor, dust, mosquitoes, and other nuisances and problems emanating from the operation of the Līhu'e Airport and the operation of the Līhu'e Wastewater Treatment Plant.
9. No residential, condominium, or hotel units shall be constructed within areas greater than the 60 DNL noise contour of the Līhu'e Airport; provided, however, that such uses may be permitted within the 60 to 65 DNL noise contours, if there is an accompanying mitigation of interior noise to the 45 DNL noise level. The Applicant shall satisfy this condition with the appropriate State and/or Federal agency at time of submittal of Zoning Permit and/or SMA Use Permit application.
10. The Applicant shall comply with any height restriction to be set by the State of Hawaii pursuant to specifications established in FAA regulations for aviations easement purposes along the perimeter of the Līhu'e airport runways.
11. Traffic improvements to intersections or roadways within the Līhu'e District, as determined by the State Highways Division and/or Department of Public Works, to mitigate increase in traffic generated by the proposed hotel/resort residential projects shall be considered

and, as may be appropriate, required by the Planning Commission at time of consideration of Zoning Permit and/or SMA Use Permit Application for the proposed hotel/resort-residential project.

12. To minimize adverse impacts to Newell's shearwaters, exterior lighting fixtures shall be only of the following types: shielded lights, cut-off luminaries or indirect lighting. The Applicant shall consult with the Division of Forestry and Wildlife, Kaua'i District (State Department of Land and Natural Resources), for its specific lighting recommendations. Up-lighting shall be prohibited and only fully shielded, low profile lights shall be implemented. Spotlighting of any structures or the ocean shall be reviewed and approved by the Planning Director.
13. The Applicant, its successors or assigns, shall develop the appropriate documents and/or agreements for the review of and approval by the County of Kaua'i that would hold the County of Kaua'i harmless from any lawsuits relating to noise generated during normal airport activities at the Līhu'e Airport by any owners, subtenants, guests, or other users of the rezoned area.
14. An aviation easement in a form prescribed by the State Department of Transportation shall be granted to the State of Hawaii by the Applicant, to cover the entirety of the Kauai Lagoons Resort property owned by the Applicant.
15. The Applicant shall consult with and comply with all archaeological/historical requirements of the State Historic Preservation Division at time of Zoning Permit and/or SMA Use Permit Applications for the property.
16. The Applicant shall comply with all requirements established by the Department of Public Works regarding grading, grubbing, drainage and erosion control in order to minimize any adverse impacts to surrounding properties, to Kalapakī Bay, and to adjoining off-shore waters during construction and other grading or grubbing activity. The applicant shall also conduct a drainage study to evaluate the impacts of increased runoff from the development of residences, parking lots and other impermeable surfaces and shall implement measures to keep storm flow rates to levels existing prior to the project construction of any of the said 750 units.
17. The Applicant shall continue to make available two hundred (200) off-street parking stalls within the parking lot area described as "Easement P-1" to the property currently identified as the Kauai

Marriott Resort and Beach Club (TMK: 3-5-02: 02) for hotel and resort purposes.

18. Substantial construction of one hundred twenty-five (125) hotel or resort/residential units shall be completed within two (2) years from the effective date of this ordinance. Substantial construction of an additional one-hundred-twenty-five (125) hotel or resort/residential units shall be completed within seven (7) years from the effective date of this ordinance (total of two-hundred-fifty units). Substantial construction of the balance of the seven-hundred-fifty (750) units allowed by this ordinance, or five-hundred (500) units shall be completed within twelve (12) years of the effective date of this ordinance. Substantial construction, as used herein, shall mean the laying of foundations. If substantial construction is not completed within this timeframe, the Planning Commission shall initiate proceedings to review the provisions of the zoning designations for the property.
19. Pursuant to Chapter 4 ("Developing Jobs & Businesses"), Section 4.5.2 ("Supporting Businesses and Jobs for Kauai Residents - Implementing Actions") of the Kaua'i General Plan (November 2000):
 - (c) In granting zoning and permits for new resorts and other businesses, the County shall seek commitments that businesses will actively recruit and train Kaua'i residents to fill new jobs."

To this end, the Applicant shall seek to actively recruit and train Kaua'i residents to fill new jobs.

20. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kaua'i contractors as long as they are reasonably competitive with other contractors, and shall seek to employ residents of Kaua'i in temporary construction and permanent resort related jobs. It is recognized that the Applicant may have to employ non-Kaua'i residents for particular skilled jobs where no qualified Kaua'i resident possesses such skills. For the purposes of this condition, the Council shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.
21. Prior to or as part of any submittal for any major land use permits for development associated with this petition or any portion of its resort campus, the Applicant shall provide the Planning Commission a status

report of applicable conditions of approval under Special Management Area Use Permit SMA(U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30. The status report shall include but not be limited to:

- a. a development schedule of all highway improvements as required by the State Highways Division;
 - b. an updated roadway and public access master plan (Figure 9, Applicant's Petition, November 2005) identifying the location and availability for use by the general, the public beach access and associated improvements, and public access for vehicular, pedestrian and non-motorized traffic that shall be incorporated herein and referenced to in this zoning ordinance;
 - c. the location of the additional affordable housing units that are intended to be required by the subject land use petitions.
22. The Applicant is made aware that during the review of major land use permits and design, additional shoreline setbacks, height restrictions, and lot coverage restrictions may be required to mitigate visual impacts along the coast and to preserve near shore water quality.
23. As represented by the Applicant, the Applicant shall have that certain parcel of land located in Kalapakī, Hanamā'ulu, Līhu'e (Puna), Kaua'i, Hawai'i, identified by Kaua'i Tax Map Key No. (4) 3-05-001:102 ("Subject Property") encumbered with a Declaration Of Conservation Restriction (to be recorded in the Bureau of Conveyances of the State of Hawaii) which will contain provisions regulating the development of the Subject Property, including but not limited to, the following restrictions (hereinafter referred to as the "Development Restrictions"):
- a. No dwelling units shall be allowed within those portions of the Subject Property located in the 65 DNL or higher noise contours as shown on that certain map entitled FAR Part 150 5-Year (CY 1991) Noise Exposure Map for Līhu'e Airport (from the Līhu'e Airport – FAR Part 150 Noise Compatibility Program, Noise Compatibility Program Report, State Department of Transportation Airports Division, December 1989) (referred to hereinafter as the "Restricted Area").
 - b. Only the following structures or improvements shall be allowed within the Restricted Area: roads, fences, walls, vegetation and landscaping, not more than five (5) agricultural accessory

buildings, underground utilities and above-ground facilities associated therewith (none of which shall exceed five (5) feet in height), irrigation ditches, no more than two (2) water tanks (neither of which shall exceed fifteen (15) feet in height), and water wells. No dwelling units shall be allowed within the Restricted Area.

- c. Only agricultural uses shall be allowed within the Restricted Area. No residential, industrial, resort or commercial uses (except commercial uses related to agriculture activities) shall be allowed within the Restricted Area.
- d. The Subject Property shall not be subdivided.
- e. The maximum number of dwelling units that may be developed on the Subject Property shall not exceed eleven (11) dwelling units. The owner of the Subject Property shall have the right to use the dwelling unit density to which the Restricted Area is eligible, provided that any and all dwelling units (not to exceed 11) are located on the portions of the Subject Property outside of the Restricted Area.
- f. The Declaration Of Conservation Restriction encumbering the Subject Property may not be amended in any manner so as to change, modify, or delete the Restrictive Covenants contained herein without the prior approval of the Council of the County of Kaua'i.

24. The Applicant is advised that additional government agency conditions may be imposed. It shall be the Applicant's responsibility to resolve those conditions with the respective agency(ies).

SECTION 2. The zoning designation for that certain area in Nāwiliwili, Kaua'i, identified as TMK: 3-5-01: 27, 82, 83, 115, 116, 117, 118, 119, and 120, as shown on Zoning Map ZM-NW-400 and on the map attached hereto and incorporated herein as Exhibit ZA-2002-1, are subject to the amendments in Section 1 hereinabove, and incorporated herein as part of this zoning application.

SECTION 3. Ordinance No. PM-2002-363 is superceded.

SECTION 4. The Planning Commission is directed to note the change on the official Zoning Map on file with the Commission. All applicable provisions of the Comprehensive Zoning Ordinance shall apply to the area rezoned herein.

SECTION 5. Severability. The invalidity of any word, section, clause, paragraph, sentence, part or portion of this ordinance shall not affect the validity of any other part of this ordinance that can be given effect without such invalid part or parts.

SECTION 6. This ordinance shall take effect upon approval.

INTRODUCED BY: /s/ JOANN A. YUKIMURA

DATE OF INTRODUCTION:

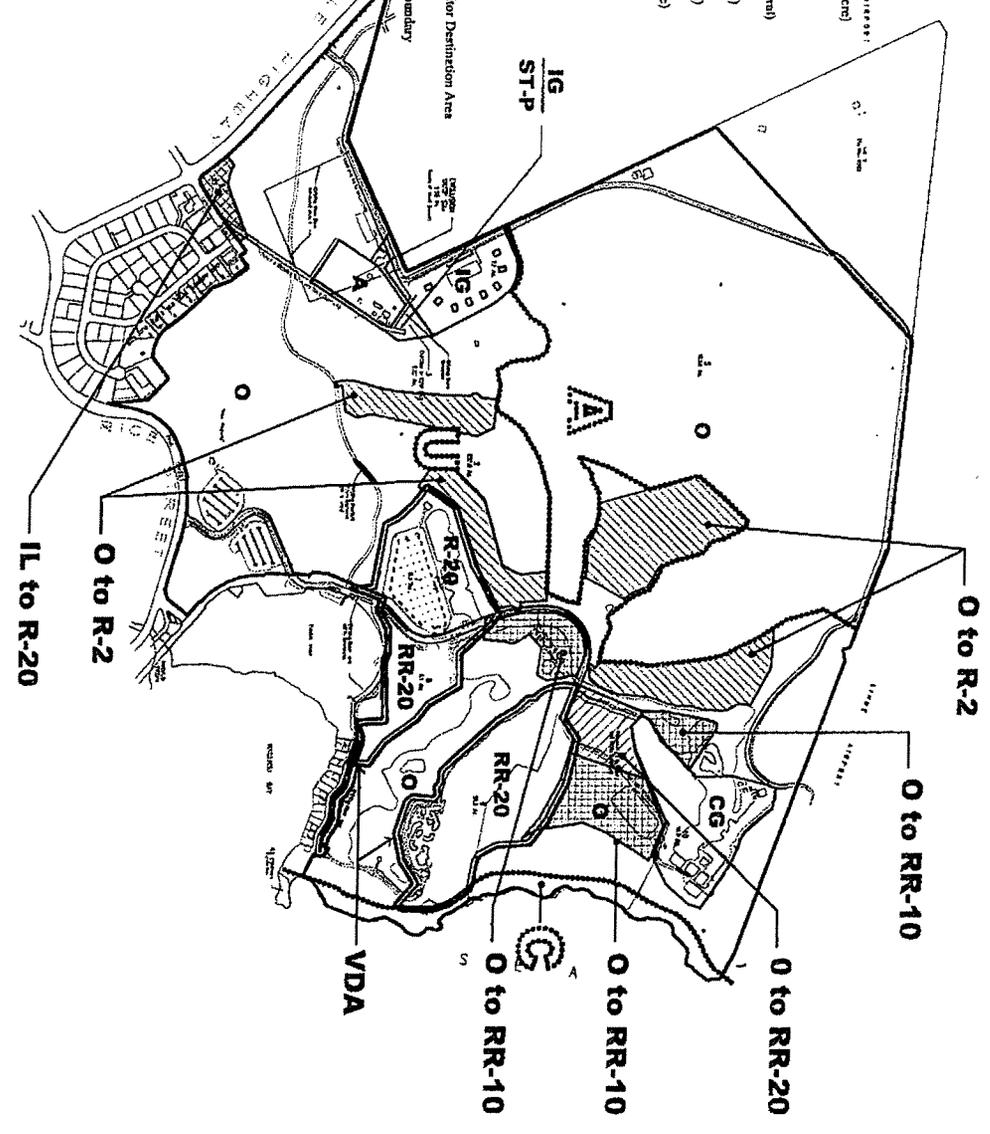
June 28, 2006

Līhu'e, Kaua'i, Hawai'i

Legend
Area (in Ac.)

Area (in Ac.)	County Zoning
0	Open (O)
RR-20	Resort (20 Units/Acre)
R-20	Residential
CG	Commercial (General)
IO	Industrial (General)
IG	Industrial (General)
ST-P	Conservation (State)
8.0	O to RR-20
16.6	O to RR-10
40.0	O to R-2
2.1	IL to R-20
66.7	VDA - Existing Visitor Destination Area

- State Backline Boundary
- U Urban
- A Agriculture
- G Conservation



LOCATION MAP SHOWING
PROPOSED AMENDMENT TO
ZONING MAP ZM-NW-400

FROM
OPEN DISTRICT (O) AND
LIMITED INDUSTRIAL DISTRICT (IL)
TO

RESORT DISTRICT (RR-10, RR-20) AND
RESIDENTIAL DISTRICTS (R-2, R-20)

TAX MAP KEYS: 3-5-01: 27 (P.O.R.),
165, 168 (P.O.R.), AND 172 (P.O.R.)

KALAPAKI, KAUAI, HAWAII

ZA-2006-05
REVISED Map 3 (Existing and Proposed Zoning)

Revised 9/27/06

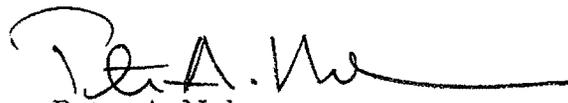


CERTIFICATE OF THE COUNTY CLERK

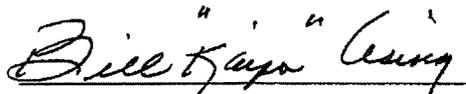
I hereby certify that heretofore attached is a true and correct copy of Bill No. 2191, Draft 3, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on September 27, 2006, by the following vote:

FOR ADOPTION: Furfaro, Iseri-Carvalho, Kaneshiro, Rapozo, Tokioka, Yukimura, Asing	TOTAL - 7,
AGAINST ADOPTION: None	TOTAL - 0,
EXCUSED & NOT VOTING: None	TOTAL - 0.

Līhu'e, Hawai'i
September 14, 2006


Peter A. Nakamura
County Clerk, County of Kaua'i

ATTEST:


Bill "Kaipo" Asing
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

September 29, 2006

Approved this 29th day of

September, 2006.


Bryan J. Baptiste
Mayor
County of Kaua'i

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, ARTICLE 17, KAUAI
COUNTY CODE 1987 RELATING TO VISITOR DESTINATION AREA
DESIGNATION IN NĀWILIWILI, KAUAI
(Kauai Lagoons LLC, and KD Golf Ownership LLC, Applicants)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF
HAWAII:

SECTION 1. Tax Map Key No. 3-5-01: por. 27, por. 168, por. 172, and
por. 173 consisting of approximately 230.8 acres in Nāwiliwili, Kauai, as shown on
the attached Revised Map 4, is hereby designated as a Visitor Destination Area
(VDA).

SECTION 2. The Visitor Destination Area designation and boundary
lines established herein shall be transferred onto the official zoning maps for
reference purposes.

SECTION 3. Severability. The invalidity of any word, section, clause,
paragraph, sentence, part or portion of this ordinance shall not affect the validity of
any other part or portion of this ordinance that can be given effect without such
invalid part or parts.

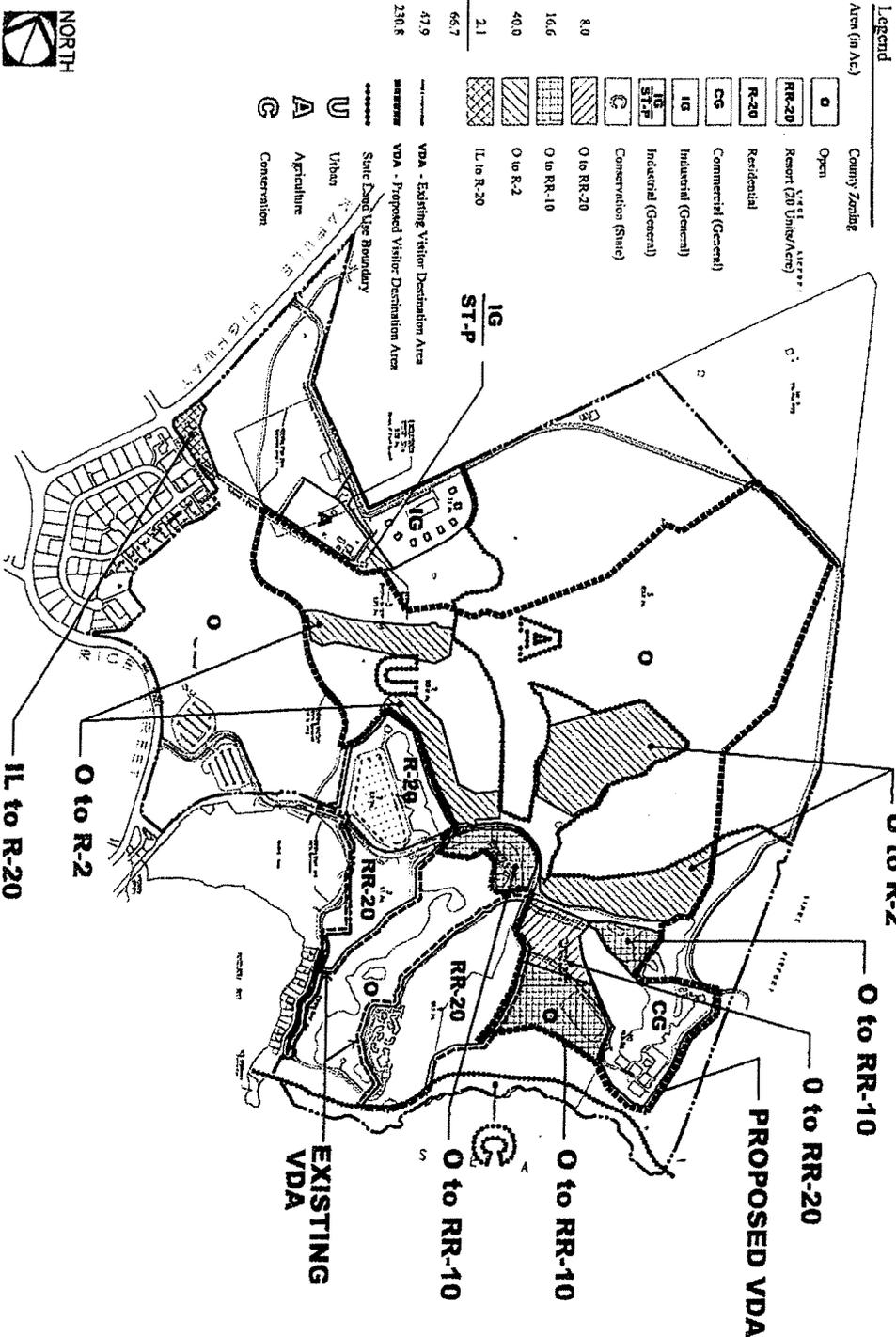
SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY: /s/ JOANN A. YUKIMURA

DATE OF INTRODUCTION:

June 28, 2006

Lihu'e, Kauai, Hawaii



LOCATION MAP SHOWING
 PROPOSED AMENDMENT TO
 ZONING MAP ZM-NW-400

AMENDMENT TO THE VISITOR
 DESTINATION AREA DESIGNATION
 FOR

THE RESORT DISTRICT (RR-10, RR-20),
 RESIDENTIAL DISTRICT (R-2),
 AND OPEN DISTRICT (O)

TAX MAP KEYS: 3-5-01: 27 (P.O.R.),
 168 (P.O.R.), 172 (P.O.R.), AND 173

KALAPAKI, KAUAI, HAWAII

REVISED Map 4 (Existing and Proposed
 Visitor Destination Area)

ZA-2006-05

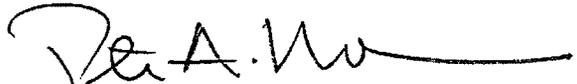
Revised 9/27/06

CERTIFICATE OF THE COUNTY CLERK

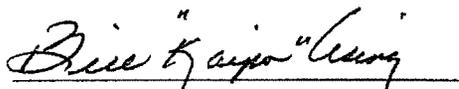
I hereby certify that heretofore attached is a true and correct copy of Bill No. 2192, Draft 3, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on September 27, 2006, by the following vote:

FOR ADOPTION: Furfaro, Iseri-Carvalho, Kaneshiro, Rapozo, Tokioaka, Yukimura, Asing	TOTAL - 7,
AGAINST ADOPTION: None	TOTAL - 0,
EXCUSED & NOT VOTING: None	TOTAL - 0.

Lihu'e, Hawai'i
September 14, 2006


Peter A. Nakamura
County Clerk, County of Kaua'i

ATTEST:


Bill "Kaipo" Asing
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

September 29, 2006

Approved this 29th day of

September, 2006.


Bryan J. Baptiste
Mayor
County of Kaua'i

EXHIBIT J BUDGET AND MAINTENANCE FEES

This Exhibit shows the budget and maintenance fee estimates of the Condominium Association for the initial phase which will have nineteen (19) Residences Units, twenty-eight (28) Club Units and two Commercial Units. Since the Pool Grill Unit will be conveyed to the Association it will not be charged maintenance fees while it remains in Association ownership. To provide Buyers with additional information this Exhibit also shows projections of Makali'i as built out to the current projections. This is for informational purposes only and is not a promise by the Developer that any additional units will be built on the Future Development Areas or that the numbers of Units if any are built will be as currently projected. For further information this Exhibit also shows projections for the Residences Association, which includes projected assessments for the Master Association which will be billed to Residences Unit owners and collected through the Residences Association and a projected budget for the Master Association. Unit Owners will begin paying maintenance fee assessments upon taking title to their Units. A limited subsidy agreement is included in the attachments.

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EXHIBIT J BUDGET AND MAINTENANCE FEES

EXHIBIT J BUDGET AND MAINTENANCE FEES

**Association of Owners of Makali'i (Phase 1)
2009 Estimated Operating Budget (a)**

	Residences Annual Total	Main Residences Annual Total	Townhomes (b) Annual Total
Total Operating & Reserve Fee (a)	\$ 940,731	\$ 700,835	\$ 239,896
	2 Bdr.	\$ 48,804.67	
	3 Bdr.	\$ 50,268.81	\$ 45,781.68
	4 Bdr.	\$ 51,244.90	\$ 51,275.48

(a) The Developer will subsidize the operation of the Association of Owners of Makali'i through December 31, 2009 by paying the resulting operating deficit of the Association relating to the Association. The Developer is guaranteeing the Maintenance Fee to the projected built-out amounts for each Main Residences Unit Owner of a two bedroom Main Residences Unit to be \$36,541.09 of a three bedroom Main Residences Unit to be \$37,637.32 and of a four bedroom Main Residences Unit to be \$38,368.14. The Developer is guaranteeing the Maintenance Fee to the projected built-out amounts for each Townhome Unit Owner of a three bedroom Townhome Unit to be \$33,937.90 and of a four bedroom Townhome Unit to be \$38,010.45. The initial subsidy and guarantee period expires on December 31, 2009 and for subsequent years the Developer may elect not to subsidize the operating expenses of the Association and/or guarantee the maximum amount of the Maintenance Fee assessments.

(b) The Townhomes are anticipated to be open in 2010 and therefore the budget likely will be higher than the above 2009 represented budget.

**Residences Summary (Phase 1)
2009 Estimated Operating Budget**

	Residences Annual Total	Main Residences Annual Total	Townhomes (b) Annual Total
Makali'i Residences Association Fees	\$ 442,078	\$ 171,512	\$ 270,566
Association of Owners of Makali'i Fees	940,731	700,835	239,896
Total Residences Operating & Reserve Fee (a)	\$ 1,382,809	\$ 872,347	\$ 510,462
	2 Bdr.	\$ 60,748.40	
	3 Bdr.	\$ 62,570.85	\$ 97,416.41
	4 Bdr.	\$ 63,785.82	\$ 109,106.38

(a) The Developer will subsidize the operation of the Makali'i Residences Association and the Association of Owners of Makali'i through December 31, 2009 by paying the resulting operating deficit of the Associations relating to the Associations. The Developer is guaranteeing the Maintenance Fee to the projected built-out amounts for each Main Residences Unit Owner of a two bedroom Main Residences Unit to be \$47,360.94 of a three bedroom Main Residences Unit to be \$48,781.77 and of a four bedroom Main Residences Unit to be \$49,728.98. The Developer is guaranteeing the Maintenance Fee to the projected built-out amounts for each Townhome Unit Owner of a three bedroom Townhome Unit to be \$47,303.19 and of a four bedroom Townhome Unit to be \$52,979.57. The initial subsidy and guarantee period expires on December 31, 2009 and for subsequent years the Developer may elect not to subsidize the operating expenses of the Association and/or guarantee the maximum amount of the Maintenance Fee assessments.

(b) The Townhomes are anticipated to be open in 2010 and therefore the budget likely will be higher than the above 2009 represented budget.

EXHIBIT J BUDGET AND MAINTENANCE FEES

**Association of Owners of Makali'i (Built Out)
2009 Estimated Operating Budget**

	Residences Annual Total	Main Residences Annual Total	Townhomes Annual Total
Total Operating & Reserve Fee	\$ 2,118,454	\$ 524,730	\$ 1,593,724
	2 Bdr.	\$ 36,541.09	
	3 Bdr.	\$ 37,637.32	\$ 33,937.90
	4 Bdr.	\$ 38,368.14	\$ 38,010.45

**Residences Summary (Built Out)
2009 Estimated Operating Budget**

	Residences Annual Total	Main Residences Annual Total	Townhomes Annual Total
Makali'i Residences Association Fees	\$ 783,007	\$ 155,373	\$ 627,634
Association of Owners of Makali'i Fees	2,118,454	524,730	1,593,724
Total Residences Operating & Reserve Fee	\$ 2,901,461	\$ 680,103	\$ 2,221,358
	2 Bdr.	\$ 47,360.94	
	3 Bdr.	\$ 48,781.77	\$ 47,303.19
	4 Bdr.	\$ 49,728.98	\$ 52,979.57

**Association of Owners of Makali'i
2009 Estimated Operating Budget
Phase 1 (47 Residential Units and 2 Commercial Units) (a)**

Project	Residences Units (19)				Commercial Units (2)	
	Club Units (28) Annual Total	Main Residences		Townhomes Annual Total	Front	Pool Bar
		Annual Total	Annual Total		Desk Annual Total	and Grill Annual Total
Operating Expenses						
Accounting	\$ 83,819	\$ 48,931	\$ 24,471	\$ 8,740	\$ 839	\$ 838
Administration	148,365	86,613	43,314	15,471	1,483	1,484
Ancillary Provision	259,487	189,858	47,477	16,962	2,595	2,595
Annual Audit	3,090	1,804	902	322	31	31
Board of Directors	2,575	1,502	752	269	26	26
Cable Television	167	98	48	18	1	2
Electricity - Common (c)	37,297	21,773	10,889	3,889	373	373
Front Office	657,661	612,283	23,745	8,480	6,577	6,576
Gas/Fuel Oil	22,838	13,334	6,667	2,381	228	228
Housekeeping	96,713	56,460	28,234	10,085	967	967
Insurance	545,920	268,625	200,625	65,752	5,459	5,459
Landscaping & Grounds	66,014	38,539	19,272	6,883	660	660
Management Fee	283,878	192,679	63,712	21,809	2,839	2,839
Members Lounge	69,364	50,751	12,692	4,534	693	694
Pest Control	4,090	2,013	1,504	492	41	40
Pool	40,893	29,920	7,482	2,673	409	409
Recreation/Activities	251,096	183,719	45,942	16,413	2,511	2,511
Refuse Collection	17,253	10,070	5,039	1,799	173	172
Repairs & Maintenance	135,562	66,704	49,819	16,328	1,355	1,356
Security/Loss Prevention	138,829	101,577	25,401	9,074	1,389	1,388
Transportation	62,913	46,030	11,511	4,113	629	630
Water & Sewer - Common (c)	3,490	2,037	1,019	364	35	35
Operating Fee	\$ 2,931,314	\$ 2,025,320	\$ 630,517	\$ 216,851	\$ 29,313	\$ 29,313
Reserve For Replacement (b)	191,342	94,153	70,318	23,045	1,913	1,913
Total Operating & Reserve Fee	\$ 3,122,656	\$ 2,119,473	\$ 700,835	\$ 239,896	\$ 31,226	\$ 31,226

a) This budget has been prepared on an accrual basis.

b) The total cash reserves of the Association as of the date of this Budget is \$0. The total amount of estimated cash reserves, and the total amount to fund such reserves in 2009 is \$191,342. The estimated cash reserves have been calculated on a cash flow basis by identifying each reserve components estimated replacement cost and dividing it by its estimated useful life.

c) Each unit owner will be billed for electricity and water and sewer usage by the Association based on that unit's consumption measured by sub-meters. Monthly electricity bills are estimated to be in the range of \$500.00 to \$1,000.00 for Main Residences and \$750 to \$1250 for Townhomes but could be even higher depending on consumption and increases in electricity rates. Monthly water and sewer bills are estimated to be in the range of \$110.00 to \$200.00 but could be even higher depending on consumption and increases in water and sewer rates. The Association must pay the entire monthly electricity and water and sewer bills received from the utility companies. Therefore, if a unit owner does not pay for their electricity or water and sewer consumption to the Association, the Association must assume this potential bad debt expense.

Common Expenses will be allocated 1% to the Pool Grill Unit, 1% to the Front Desk Unit and the other 98% will be allocated as set forth in the two-step process described below. In this Exhibit the Units in the Residences Main Building are referred to as "Main Residences" and the other planned Residences (including those Residences located in Townhomes Building A) are referred to as "Townhomes".

Allocation of Common Expenses in the Condominium will be a two step process, which will occur as follows.

Step One. Allocation among Club Units, Main Residences and Townhomes.

Common Expenses will be allocated among Club Units in the aggregate ("Club Common Expenses"), Main Residences in the aggregate ("Main Residences Common Expenses") and Townhomes in the aggregate ("Townhomes Common Expenses").

Step Two. Allocation to Individual Units.

Club Common Expenses will be allocated among the Club Units.

Main Residences Common Expenses will be allocated among the Main Residences.

Townhomes Common Expenses will be allocated among the Townhomes.

The examples of calculation given below are based on the number of Club Units and Residences Units and the number of square feet of net interior living area in the initial development and the currently planned future development of the Condominium. For example although 19 Residences will be constructed initially a total of 60 are planned, although 28 Club Units will be constructed initially a total of 72 are planned.

While the listing of allocation methods and allocation of line items is intended to be comprehensive, it is anticipated that additional line items may require different allocation methods and that allocation methods for certain costs may need to be adjusted based on the actual operating model adopted when the Condominium is first occupied and at varying times until the Condominium is completed.

If the Developer's plans change for the number, size or mix of Units then appropriate adjustments will be required and this Exhibit may be amended by the Developer as part of its rights under Section 23 of the Declaration.

In addition to Developer's right to modify the allocations set forth in this Exhibit "A", these allocation methods and their calculations under both Step One and Step Two may also be adjusted from time to time by the Board, with the advice of the Managing Agent, to reflect the experience of the Condominium in facility usage, with the consent of the Developer during Developer's Rights Period.

This Exhibit concerns only General Common Expenses.

Step One: Allocation among Club Units, Main Residences and Townhomes

1. Allocation Methods

(a) Initial Development

#	Method	Description	Calculation	
1	Unit %	The total number of Resort Units in the Condominium (47) is divided by the number of Club Units, Main Residences and Townhomes.	Club Units: Main Residences Townhomes	28/47 = 59.57% 14/47 = 29.79% 5/47 = 10.64% 100.00%
2	Adjusted Unit %	The number of Residences (19) is factored down by 50% then divided by the number of adjusted Units. This discounts Residences based on Developer's experience of intensity of usage.	Club Units: Main Residences: Townhomes:	28/37.5 = 74.66% 7/37.5 = 18.67% 2.5/37.5 = 6.67% 100.00%
3	Square Feet	The total net interior square feet of the Resort Units (104,491) is divided by the square footage of the Club Units, Main Residences and Townhomes.	Club Units : Main Residences: Townhomes	52,468/104,491 = 50.21% 39,182/104,491 = 37.50% 12,841/104,491 = 12.29% 100.00%

(b) Planned Development

#	Method	Description	Calculation	
1	Unit %	The total number of Units in the Condominium (132) is divided by the number of Club Units, Main Residences and Townhomes.	Club Units: Main Residences: Townhomes:	72/132 = 54.54% 14/132 = 10.61% 46/132 = <u>34.85%</u> 100.00%
2	Adjusted Unit %	The number of Residences (60) is factored down by 50% then divided by the number of adjusted Units. This discounts Residences based on Developer's experience of intensity of usage.	Club Units : Main Residences: Townhomes:	72/102 = 70.59% 7/102 = 6.86% 23/102 = <u>22.55%</u> 100.00%
3	Square Feet	The total net interior square feet of the Resort Units (290,044) is divided by the square footage of the Club Units, Main Residences and Townhomes.	Club Units : Main Residences: Townhomes:	136,812/290,044 = 47.17% 39,182/290,044 = 13.51% 114,050/290,044 = 39.32% 100.00%

Allocation explanations (from Exhibit A to Condominium Bylaws)

EXHIBIT J BUDGET AND MAINTENANCE FEES

2. **Line Item Allocations.**

<u>Expenses</u>	<u>Allocation Method</u>
<u>Maintenance</u>	
Landscaping & Grounds – shared	Unit %
Pest Control – shared	Unit %
Pool – shared	Adjusted Units %
Repairs & Maintenance – shared	Square feet %
<u>Utilities</u>	
Cable TV/Satellite – shared	Unit %
Electricity – shared	Unit %
Gas/Fuel Oil – shared	Adjusted Units %
Water & Sewer – shared	Unit %
<u>Services</u>	
Front Office – shared	Flat % (95% Club/5% Residences) ²
Housekeeping – shared	Unit %
Members Lounge – shared	Adjusted Units %
Recreation/Activities – shared	Adjusted Units %
Security/Loss Prevention	Adjusted Units %
<u>Other Operating Expenses</u>	
Accounting – shared	Unit %
Annual Audit – shared	Unit %
Board of Directors – shared	Unit %
Insurance – shared	Unit %
Management Fee	10% Calculation ³
Ancillary Provisions – shared	Adjusted Units %
<u>Reserves for Replacement</u>	
Reserve for Replacement – shared	Square feet %

¹ Electricity for individual Residences, except for aspects of the air-conditioning system that will not be separately metered, and water/sewer usage for individual Residences, will be check metered by the Association and billed with the other maintenance fees but stated separately. Electricity and water/sewer for the Club Units will be check metered collectively by the Association and billed with the other maintenance fees but stated separately. Utilities for Club Units may either be billed directly to the Club Owners or billed through the Club Association.

² Based on the anticipated greater usage of Front Desk services by the Club Units because of their more transient occupancy.

³ The management fee will be equal to ten percent (10%) of all money that the Managing Agent is required to collect pursuant to the budget (exclusive of the management fee itself and any assessments payable to the Master Association, but inclusive of taxes whether or not separately invoiced from the assessments) and for special assessments, if not part of the budget, for any given fiscal year.

Step Two: Allocation to Individual Units

Club Units. After determining the aggregate Club Common Expenses, that amount will be allocated among the Club Units so that each 3 bedroom Club Unit will have a 17% premium over each 2 bedroom Club Unit. For example if a 2 bedroom Club Unit has a Condominium maintenance fee of \$100.00 then each 3 bedroom Club Unit will have a Condominium maintenance fee of \$117.00.

Main Residences. After determining the aggregate Main Residences Common Expenses, that amount will be allocated to the Main Residences so that each 3 bedroom Main Residence will have a 3% premium over each 2 bedroom Main Residence and each 4 bedroom Main Residence will have a 5% premium over each 2 bedroom Main Residence. For example, if a 2 bedroom Main Residence has a Condominium maintenance fee of \$100.00 then each 3 bedroom Main Residence will have a Condominium maintenance fee of \$103.00 and each 4 bedroom Main Residence will have a Condominium maintenance fee of \$105.00.

Townhomes. The Townhomes are currently planned to have 3 or 4 bedrooms. After determining the aggregate Townhomes Common Expenses, that amount will be allocated to the Townhomes Units so that each 4 bedroom Townhome will have a 12% premium over each 3 bedroom Townhome. For example, if a 3 bedroom Townhome has a Condominium maintenance fee of \$100.00 then each 4 bedroom Townhome will have a Condominium maintenance fee of \$112.00.

The Board or Managing Agent may assess to Owners residing in countries other than the United States and Canada, and/or Owners who reside in the United States or Canada but who have mailing addresses, telephone numbers or fax numbers outside of the United States or Canada an international owner's surcharge, which reasonably relates to the added costs for postage, personal delivery, increased frequency of and costs associated with long-distance telephone calls, translation costs, additional costs for facsimile or electronic communications and labor costs for additional, special support staff and which may be adjusted from time to time.

In the event that the Association elects to bill Club Owners directly for their maintenance fees instead of billing through the Club Association, then actual postage expenses, or a reasonable estimate if the Managing Agent considers it impractical to track actual postage expenses, will be allocated to the Club Units, Main Residences and Townhomes, except to the extent they charged to individual Owners in accordance with the preceding paragraph.

Makali'i Condominium Association

<u>Allocation Method *</u>	<u>Description</u>	<u>Current Line Items Allocation</u>
1) Number Of Units	Costs are allocated equally to all Units, and then are further allocated to the Club Association and the Residences Association based on the number of Units in each Association.	Landscaping, Refuse, Cable T.V, Electricity, Gas / Fuel Oil, Water & Sewer, Housekeeping, Accounting, Administrative, Board of Directors, Annual Audit
2) Square Feet	Allocation method is based on the square footage of the Club Units and Residence Units divided by the total square footage of all of the Club Units and Residence Units.	Pest Control, Repairs & Maintenance, Insurance, Reserves
3) Adjusted Number of Units**	Allocation method is based on the number of Club Units and Residence Units divided by the adjusted total Club Units and Residence Units. To determine the adjusted total Club Units and Residence Units, the Residence Units are included at 50% of their total Units while the Club Units are included at 100% of their total Units.	Pool, Members Lounge, Recreation / Activities, Security / Loss Prevention, Transportation, Ancillary Provision
4) Direct Cost	Allocation method in which the cost is considered attributable only to a Club Unit or Residence Unit, as applicable.	Front Office Residences, Front Office Club
5) Calculated Cost	Allocation method is based on the total expenses of the Association multiplied by a percentage.	Management Fee

* The Commercial Units are allocated two percent (2%) of the costs. The balance of the costs for the non Commercial Units are allocated based on the above methodologies, as applicable.

** The Residences are only included at 50% of their total Units while the Club is included at 100% of their total Units because it is estimated that the occupancy of the Residence Units will be approximately half that of the Club Units.

**Association of Owners of Makali'i
2009 Estimated Operating Budget
Built Out (132 Residential Units and 2 Commercial Units) (a)**

Project	Residences Units (60)				Commercial Units (2)	
	Club	Main	Townhomes	Front	Pool Bar	
	Units (72)	Residences	Annual	Desk	and Grill	
Annual	Annual	Annual	Annual	Annual	Annual	
Total	Total	Total	Total	Total	Total	
Operating Expenses						
Accounting	\$ 75,938	\$ 40,589	\$ 7,896	\$ 25,934	\$ 759	\$ 760
Administration	227,161	121,415	23,620	77,583	2,272	2,271
Ancillary Provision	103,000	71,253	6,925	22,762	1,030	1,030
Annual Audit	3,090	1,651	321	1,056	31	31
Board of Directors	7,725	4,129	803	2,638	77	78
Cable Television	167	89	18	57	2	1
Electricity - Common (c)	84,339	45,079	8,769	28,804	843	844
Front Office	1,337,418	1,245,137	15,291	50,242	13,374	13,374
Gas/Fuel Oil	51,313	27,428	5,335	17,524	513	513
Housekeeping	121,035	64,692	12,585	41,337	1,210	1,211
Insurance	1,696,892	784,415	224,666	653,874	16,969	16,968
Landscaping & Grounds	185,400	99,096	19,277	63,319	1,854	1,854
Management Fee	544,905	341,420	47,703	144,884	5,449	5,449
Members Lounge	98,832	68,369	6,645	21,841	989	988
Pest Control	4,090	1,891	542	1,576	41	40
Pool	81,786	56,578	5,498	18,074	818	818
Recreation/Activities	374,016	258,739	25,144	82,653	3,740	3,740
Refuse Collection	48,455	25,898	5,039	16,549	484	485
Repairs & Maintenance	302,541	139,854	40,056	116,580	3,025	3,026
Security/Loss Prevention	142,866	98,832	9,605	31,572	1,428	1,429
Transportation	113,238	78,335	7,613	25,025	1,133	1,132
Water & Sewer - Common (c)	7,839	4,190	815	2,677	79	78
Operating Fee	\$ 5,612,046	\$ 3,579,079	\$ 474,166	\$ 1,446,561	\$ 56,120	\$ 56,120
Reserve For Replacement (b)	381,911	176,546	50,564	147,163	3,819	3,819
Total Operating & Reserve Fee	\$ 5,993,957	\$ 3,755,625	\$ 524,730	\$ 1,593,724	\$ 59,939	\$ 59,939

a) This budget has been prepared on an accrual basis.

b) The total cash reserves of the Association as of the date of this Budget is \$0. The total amount of estimated cash reserves, and the total amount to fund such reserves in 2009 is \$381,911. The estimated cash reserves have been calculated on a cash flow basis by identifying each reserve components estimated replacement cost and dividing it by its estimated useful life.

c) Each unit owner will be billed for electricity and water and sewer usage by the Association based on that unit's consumption measured by sub-meters. Monthly electricity bills are estimated to be in the range of \$500.00 to \$1,000.00 for Main Residences and \$750 to \$1250 for Townhomes but could be even higher depending on consumption and increases in electricity rates. Monthly water and sewer bills are estimated to be in the range of \$110.00 to \$200.00 but could be even higher depending on consumption and increases in water and sewer rates. The Association must pay the entire monthly electricity and water and sewer bills received from the utility companies. Therefore, if a unit owner does not pay for their electricity or water and sewer consumption to the Association, the Association must assume this potential bar

**Makali'i Residences Association
2009 Estimated Operating Budget
Phase 1 (19 Units) (a)**

	Project Annual Total	Main Residences Annual Total	Townhomes (d) Annual Total
Operating Expenses			
Billing & Collections	\$ 1,957	\$ 1,442	\$ 515
Cable Television	5,871	4,326	1,545
Common Area Maintenance	35,295	26,583	8,712
Contingency	10,553	7,776	2,777
Golf Cart Lease & Expense	19,570	14,420	5,150
Golf Membership	46,968	34,608	12,360
Management Fee	12,981	9,258	3,723
Master POA Dues	299,286	69,671	229,615
Other Income	(650)	(479)	(171)
Pool (c)	4,944	-	4,944
Postage Printing & Handling	196	144	52
Operating Fee	436,971	167,749	269,222
Reserve For Replacement (b)	5,107	3,763	1,344
Total Operating & Reserve Fee (c)	\$ 442,078	\$ 171,512	\$ 270,566
	2 Bdr.	\$ 11,943.73	
	3 Bdr.	\$ 12,302.04	\$ 51,634.73
	4 Bdr.	\$ 12,540.92	\$ 57,830.90

(a) This budget has been prepared on an accrual basis.

(b) The total cash reserves of the Association as of the date of this Budget is \$0. The total amount of estimated cash reserves, and the total amount to fund such reserves in 2009 is \$5,107. The estimated cash reserves have been calculated on a cash flow basis by identifying each reserve components estimated replacement cost and dividing it by its estimated useful life.

(c) Limited Common Elements plunge pools if provided.

(d) The Townhomes are anticipated to be open in 2010 and therefore the budget likely will be higher than the above 2009 represented budget.

(e) The Developer will subsidize the operation of the Makali'i Residences Association through December 31, 2009 by paying the resulting operating deficit of the Association relating to the Association. The Developer is guaranteeing the Maintenance Fee to the projected built-out amounts for each Main Residences Unit Owner of a two bedroom Main Residences Unit to be \$10,819.85 of a three bedroom Main Residences Unit to be 11,144.45 and of a four bedroom Main Residences Unit to be \$11,360.84. The Developer is guaranteeing the Maintenance Fee to the projected built-out amounts for each Townhome Unit Owner of a three bedroom Townhome Unit to be 13,365.29 and of a four bedroom Townhome Unit to be \$14,969.12. The initial subsidy and guarantee period expires on December 31, 2009 and for subsequent years the Developer may elect not to subsidize the operating expenses of the Association and/or guarantee the maximum amount of the Maintenance Fee assessments.

**Makali'i Residences Association
2009 Estimated Operating Budget (a)
Built Out (60 Units)**

	<u>Project Annual Total</u>	<u>Main Residences Annual Total</u>	<u>Townhomes Annual Total</u>
<u>Operating Expenses</u>			
Billing & Collections	\$ 6,180	\$ 1,442	\$ 4,738
Cable Television	18,540	4,326	14,214
Common Area Maintenance	44,594	11,403	33,191
Contingency	28,728	6,702	22,026
Golf Cart Lease & Expense	61,800	14,420	47,380
Golf Membership	148,320	34,603	113,717
Management Fee	34,380	7,060	27,320
Master POA Dues	404,831	77,715	327,116
Other Income	(26,596)	(6,205)	(20,391)
Pool (c)	45,485	-	45,485
Postage Printing & Handling	618	144	474
Operating Fee	<u>766,880</u>	<u>151,610</u>	<u>615,270</u>
Reserve For Replacement (b)	16,127	3,763	12,364
Total Operating & Reserve Fee	<u>\$ 783,007</u>	<u>\$ 155,373</u>	<u>\$ 627,634</u>
	2 Bdr.	\$ 10,819.85	
	3 Bdr.	\$ 11,144.45	\$ 13,365.29
	4 Bdr.	\$ 11,360.84	\$ 14,969.12

a) This budget has been prepared on an accrual basis.

b) The total cash reserves of the Association as of the date of this Budget is \$0. The total amount of estimated cash reserves, and the total amount to fund such reserves in 2009 is \$16,127. The estimated cash reserves have been calculated on a cash flow basis by identifying each reserve components estimated replacement cost and dividing it by its estimated useful life.

c) Limited Common Elements plunge pools if provided.

ALLOCATION MATRIX

Residences Expenses will be allocated as set forth in the two-step process described below. In this Exhibit the Units in the Residences Main Building are referred to as “**Main Residences**” and the other planned Residences (including those Residences located in Townhomes Building A) are referred to as “**Townhomes**”.

Allocation of Residences Expenses will be a two step process, which will occur as follows.

Step One. Allocation between Main Residences and Townhomes.

Residences Expenses will be allocated between among Main Residences in the aggregate ("Main Residences Residences Expenses") and Townhomes in the aggregate ("Townhomes Residences Expenses").

Step Two. Allocation to Individual Units.

Main Residences Residences Expenses will be allocated among the Main Residences.

Townhomes Residences Expenses will be allocated among the Townhomes.

The examples of calculation given below are based on the number of Residences Units and the number of square feet of net interior living area in the initial development and the currently planned future development of the Condominium. For example although 19 Residences will be constructed initially a total of 60 are planned.

While the listing of allocation methods and allocation of line items is intended to be comprehensive, it is anticipated that additional line items may require different allocation methods and that allocation methods for certain costs may need to be adjusted based on the actual operating model adopted when the Residences Units in the Condominium are first occupied and at varying times until the Residences Units in the Condominium are completed.

If the Developer's plans change for the number, size or mix of Units then appropriate adjustments will be required and this Exhibit may be unilaterally amended by the Developer.

In addition to Developer's right to modify the allocations set forth in this Exhibit “C”, these allocation methods and their calculations under both Step One and Step Two may also be adjusted from time to time by the Board, with the advice of the Manager, to reflect the experience of the Association in facility usage, with the consent of the Developer during Developer's Rights Period as defined in the Condominium Declaration.

Step One: Allocation between Main Residences and Townhomes

1. **Allocation Methods**

(a) Initial Development

	Method	Description	Calculation	
1	Unit %	The total number of Residences Units in the Condominium (19) is divided by the number of Main Residences and Townhomes.	Main Residences Townhomes	14/19 = 73.68 % 5/19 = 26.32% 100.00%
2	Square Feet	The square footage of the, Main Residences and Townhomes is divided by the total net interior square feet of the Residences (52,023)	Main Residences: Townhomes	39,182/52,023 = 75.32% 12,841/52,023 = 24.68% 100.00%
3	Direct Cost	The cost is based on the particular Unit type. Refer to Master Declaration for specific weighting formulas.		

(b) Planned Development

#	Method	Description	Calculation	
1	Unit %	The total number of Residences in the Condominium (60) is divided by the number of Main Residences and Townhomes.	Club Units: Main Residences: Townhomes:	14/60 = 23.33% 46/60 = <u>76.67%</u> 100.00%
2	Square Feet	The square footage of the Main Residences and Townhomes is divided by the total net interior square feet of the Residences Units (290,044).	Club Units : Main Residences: Townhomes:	39,182/153,232 = 25.57 % 114,050/153,232 = 74.43 % 100.00%
3	Direct Cost	The cost is based on the particular Unit type. Refer to Master Declaration for specific weighting formulas.		

2. **Line Item Allocations.**

<u>Expenses</u>	<u>Allocation Method</u>
Billing & Collections Cable Television Contingency Golf Cart Lease & Expense Other Income Postage, Printing & Handling	Unit %
Common Area Maintenance Reserve for Replacement	Square feet %
Plunge Pools	Townhomes only
Master Association Dues	Direct Cost
Management Fees ⁴	10% Calculation

Step Two: Allocation to Individual Units

Main Residences. After determining the aggregate Main Residences Residences Expenses, that amount will be allocated to the Main Residences so that each 3 bedroom Main Residence will have a 3% premium over each 2 bedroom Main Residence and each 4 bedroom Main Residence will have a 5% premium over each 2 bedroom Main Residence. For example, if a 2 bedroom Main Residence has a Residences Association assessment of \$100.00 then each 3 bedroom Main Residence will have a Residences Association assessment of \$103.00 and each 4 bedroom Main Residence will have a Residences Association assessment of \$105.00.

Townhomes. The Townhomes are currently planned to have 3 or 4 bedrooms. After determining the aggregate Townhomes Residences Expenses, that amount will be allocated to the Townhomes Units so that each 4 bedroom Townhome will have a 12% premium over each 3 bedroom Townhome. For example, if a 3 bedroom Townhome has a Residences Association assessment of \$100.00 then each 4 bedroom Townhome will have a Residences Association assessment of \$112.00.

The Board or Manager may assess to Owners residing in countries other than the United States and Canada, and/or Owners who reside in the United States or Canada but who have mailing addresses, telephone numbers or fax numbers outside of the United States or Canada an international owner's surcharge, which reasonably relates to the added costs for postage, personal delivery, increased frequency of and costs associated with long-distance telephone calls, translation costs, additional costs for facsimile or electronic communications and labor costs for additional, special support staff and which may be adjusted from time to time.

⁴ The management fee will be equal to ten percent (10%) of all money that the Manager is required to collect pursuant to the budget (exclusive of the management fee itself and any assessments payable to the Master Association, but inclusive of taxes whether or not separately invoiced from the assessments) and for special assessments, if not part of the budget, for any given fiscal year.

Makali'i Residences Association

<u>Allocation Method</u>	<u>Description</u>	<u>Current Line Items Allocation</u>
1) Number Of Units	Costs are allocated equally among all Units based on the number of Units in the Association at that time.	Billing & Collections, Cable Television, Contingency, Golf Cart Lease & Expense, Other Income, Postage, Printing & Handling
2) Square Feet	Allocation method is based on the total square footage of all Units within a particular Unit type divided by the total square footage of all the Unit types in the Residence Association, which is further divided by the number of Units within a particular Unit type.	Common Area Maintenance, Pool, Reserve for Replacement
3) Direct Cost	Allocation method in which the cost is based on the particular Unit type. Please refer to Master Declaration for specific weighting formulas.	Master POA Dues
4) Calculated Cost	Allocation method is based on the total expenses of the Association multiplied by a percentage.	Management Fee

The total allocated expenses (including those of the Association of Owners of Makali'i Condominium) by Unit type produced the following results:

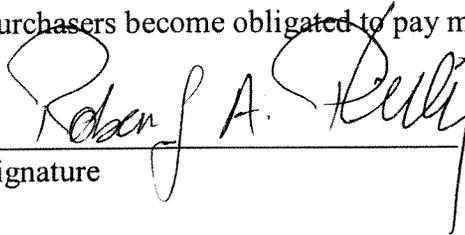
- Main Residences:** The Three Bedroom Units allocated costs were three percent (3%) greater than the Two Bedroom Units allocated costs
 The Four Bedroom Units allocated costs were five percent (5%) greater than the Two Bedroom Units allocated costs
- Townhomes:** The Four Bedroom Units allocated costs were twelve percent (12%) greater than the Three Bedroom Units allocated costs

**Kauai Lagoons Community Association
2009 Estimated Operating Budget**

	2009 Annual Total	Kauai Lagoons Golf	Association of Owners of Kalanipu'u Condominium Association	Makali'i Residences Association	Association of Club Owners of Makali'i Association	Single Family Lots	Kauai Lagoons LLC
Accounting	\$ 298,301	\$ 388	\$ 30,993	\$ 2,774	\$ 13,708	\$ 21,448	\$ 228,990
Administration	577,767	751	60,030	5,373	26,550	41,541	443,522
Electricity	80,577	105	8,372	749	3,703	5,793	61,855
Housekeeping	302,143	393	31,393	2,810	13,884	21,724	231,939
Insurance	118,880	155	12,352	1,106	5,463	8,547	91,257
Landscaping	479,542	623	49,824	4,460	22,036	34,479	368,120
Loss Prevention	670,229	871	69,637	6,233	30,798	48,189	514,501
Repairs & Maintenance	231,871	301	24,091	2,156	10,655	16,672	177,996
Transportation	426,388	554	44,302	3,965	19,593	30,657	327,317
Water & Sewer	199,262	259	20,703	1,853	9,157	14,327	152,963
Reserves	20,269	26	2,106	189	931	1,457	15,560
Management Fee	340,523	443	35,380	3,167	15,648	24,484	261,401
	<u>\$ 3,746,762</u>	<u>\$ 4,869</u>	<u>\$ 389,183</u>	<u>\$ 34,835</u>	<u>\$ 172,126</u>	<u>\$ 269,318</u>	<u>\$ 2,876,421</u>

I, Robert A. Phillips, Vice President, of THE RITZ-CARLTON DEVELOPMENT COMPANY, INC. the Managing Agent of Makali'i, certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

Purchasers become obligated to pay maintenance fees upon closing.


Signature

June 3, 2008
Date

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

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

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

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

4. The Sales Contract provides: (iii) No Financing Contingencies. If Purchaser plans to pay any portion of the Total Purchase Price by way of a loan from a Mortgage Lender, Purchaser shall be solely responsible for securing that financing. PURCHASER'S OBLIGATIONS UNDER THIS PURCHASE AGREEMENT ARE NOT CONTINGENT OR CONDITIONED ON PURCHASER'S ABILITY TO SECURE FINANCING FROM A MORTGAGE LENDER OR ON PURCHASER'S ABILITY TO SELL PURCHASER'S CURRENT RESIDENCE OR ANY OTHER PROPERTY. NO FINANCING BY SELLER OF ANY PORTION OF THE TOTAL PURCHASE PRICE IS AVAILABLE. (Sales Contract 4.4.3 (iii))

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

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

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

“4.8 WARRANTIES AND DISCLAIMERS

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

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

The R-value of insulation is a measurement of the insulation's resistance to heat flow that is determined using tests designed by the American Society of Testing and Materials. The above R-values are minimums. Purchaser acknowledges that this R-Value information is based solely upon information supplied by the manufacturer or installer and Seller does not represent or warrant the accuracy of this information. Purchaser further acknowledges that the R-value may vary based on normal construction

EXHIBIT K SUMMARY OF SPECIMEN SALES CONTRACT

variance and constitutes only one element of the total energy package. Seller reserves the right to use different types of insulation with different thicknesses and R-values.

4.8.2 Mold Disclosure. Mold and mold spores are present throughout our environment and the process of constructing residences is not, and cannot be, designed to exclude mold spores. If the growing conditions are favorable, mold can grow in the Unit. All types of mold are not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. Moisture is the only mold growth factor that can be controlled in a residential setting. By minimizing moisture, Purchaser can reduce or eliminate mold growth. Purchaser agrees to assume responsibility for taking appropriate steps to reduce or eliminate mold growth in the Unit. Purchaser releases and discharges, and agrees to indemnify and defend the Protected Persons defined below and the general contractor from and against any and all claims, demands, damages, causes of action, liabilities, losses, and expenses, that the Purchaser or any occupant of the Unit had, has, or may have in the future, that are in any way connected with indoor air quality, moisture or the presence of any mold, mold spores or chemicals on, in or about the Unit, whether or not caused by, in whole or in part, any act or omission of any of the Protected Persons, the Seller's general contractor, the subcontractors or material suppliers.

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

(i) If Seller obtains from Seller's general contractor a warranty ("Contractor's Warranty") to correct any defective materials and workmanship in the Unit reported in writing to the contractor within the "Warranty Period" and that is assignable to Purchaser then Seller will assign the Contractor's Warranty to Purchaser at Closing without recourse and will provide no Seller's Warranty to Purchaser. The Warranty Period will be at least one (1) year from the date Seller's architect issues a Certificate of Substantial Completion that includes the Unit.

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

(iii) Warranties with respect to the Common Elements will be treated in the same manner as warranties on Purchaser's Unit by providing Contractor's Warranty or Seller's Warranty. No later than the first meeting of the members of the Association, either Contractor's Warranty on the Common Elements will be assigned without recourse to the Condominium Association or Seller's Warranty will be provided to the Condominium Association.

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

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

(vi) EXCEPT FOR THE CONTRACTOR'S WARRANTY OR THE SELLER'S WARRANTY, IF APPLICABLE, AND THE APPLIANCE WARRANTY, NO PERSON ACTING ON BEHALF OF SELLER IS AUTHORIZED TO MAKE, AND BY SIGNING THIS PURCHASE AGREEMENT, PURCHASER AGREES THAT SELLER HAS NOT MADE, AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES OR PROMISES OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, CONCERNING OR WITH RESPECT TO: THE MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROJECT; THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROJECT; ANY ARCHAEOLOGICAL SITES,

REMAINS OR ARTIFACTS ON THE LAND; THE PROJECT'S COMPLIANCE WITH LAWS, ORDINANCES OR REGULATIONS; THE QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO THE PROJECT OR THE REPAIRS OR RENOVATIONS; THE PRESENCE OR ABSENCE OF MOLD, STANDING WATER OR HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROJECT; THE CONFORMITY OF THE PROJECT TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING REQUIREMENTS OR SPECIAL PERMITS; THE FACT THAT ALL OR A PORTION OF THE PROJECT MAY BE LOCATED ON OR NEAR A TSUNAMI INUNDATION AREA; THE ABILITY OF THE PROJECT TO WITHSTAND EARTHQUAKE OR HURRICANE DAMAGE; THE EXISTENCE OF TERMITES OR OTHER PESTS OR TERMITE DAMAGE; THE LOCATION OF THE SHORELINE IN ACCORDANCE WITH THE LAWS OF THE STATE OF HAWAII, OR ANY OTHER MATTER CONCERNING THE PROJECT.

(vii) HAWAII REVISED STATUTES, CHAPTER 672E, CONTAINS IMPORTANT REQUIREMENTS PURCHASER MUST FOLLOW BEFORE PURCHASER MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED PURCHASER'S HOME OR FACILITY. NINETY DAYS BEFORE PURCHASER FILES PURCHASER'S LAWSUIT OR OTHER ACTION, PURCHASER MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS PURCHASER ALLEGES ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. PURCHASER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW, AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT PURCHASER'S ABILITY TO FILE A LAWSUIT OR OTHER ACTION. This Section 4.8.3 shall survive the Closing and shall not be merged with the Unit Deed.

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

4.8.5 The Condominium Map, Artist's Renderings and Building Plans and Specifications Are Not Warranties. The Condominium Map is intended to show only the (a) unit numbers, (b) approximate layout, location, boundaries and dimensions of units, (c) approximate elevation of the Condominium, and (d) parking plan and any other detail which is specifically required to be shown under Section 514B 33; the Condominium Map is not intended to and shall not be interpreted as creating any obligation to construct or install any other improvements, amenities or facilities as may be depicted and no person may rely in any way on any other detail or other matter depicted. In no event, whether before or after the Effective Date, shall any artist's renderings or models constitute a representation or warranty in any way.

4.8.6 Estimate of Maintenance Fees. Seller's estimate of the monthly maintenance fees for the Condominium, as shown in the Public Report, was prepared based upon information believed to be accurate and correct. However, Seller makes no warranty or promise regarding the accuracy of these amounts. PURCHASER AGREES THAT SUCH ESTIMATES ARE NOT INTENDED TO BE AND DO NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY BY SELLER; FOR EXAMPLE THEY ARE NOT A REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF ANY LINE ITEM. Purchaser acknowledges and agrees also that the maintenance fees may increase, for example, as a result of changes in the Condominium permitted by the Declaration, increases in insurance premiums, utility costs, maintenance services and management fees, etc. Purchaser also understands and agrees that Purchaser will also be responsible for any maintenance fees on the Unit established under the Master Declaration.

4.8.7 No Financial Representations. Purchaser understands and agrees that:

(i) Seller, its officers, employees, agents, and any other real estate brokers or real estate sales persons representing Seller, if any (for purposes of this Section 4.8, such persons other than Seller being collectively referred to as Seller's "Agents"), have made no representations: (i) regarding the possibility or probability of economic benefit from the purchase and ownership of a Unit; or (ii) as to the possible advantages of the ownership or the rental of the Unit under federal law and state tax laws. Neither Seller nor its Agents makes any representation regarding economic benefits to be derived from the ownership or tax treatment of any purchaser of a Unit. The tax treatment and economic benefits may vary with individual circumstances, and Seller and its Agents recommend that Purchaser consult Purchaser's own attorney, accountant or other tax counsel for advice regarding tax treatment.

(ii) Purchaser agrees that Seller may, as a condition to Closing, require Purchaser and any licensed real estate salesperson participating in the sale to sign additional documents to satisfy Seller that no representations contrary to the provisions of this Section 4.8.7 have been made up to and including the Closing Date.

(iii) In the event that Purchaser establishes, after Closing, that there has been any breach of the obligations of Seller under the terms of this Purchase Agreement, Purchaser agrees that Purchaser's sole remedy shall be rescission of this Purchase Agreement under Section 514B-94, under which Purchaser shall be entitled upon reconveyance of the Unit to recover the Total Purchase Price actually paid by Purchaser, together with interest at the rate of six percent (6%) per annum, and the amount of any reasonable attorneys' fees (based upon reasonable hourly rates) and costs that Purchaser actually paid, less the amount of any income that Purchaser received. Purchaser agrees that any other expenses that Purchaser incurs, including but not limited to real property taxes, maintenance fee assessments, interest payments on mortgages and mortgage loan fees, are agreed to be a portion of the reasonable use value of the Unit from Closing until the date of repayment and shall not be recoverable from Seller.

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

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

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

4.8.9 Ongoing Sales and Construction Activities After Purchaser Has Occupied Purchaser's Unit; Model Units.

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

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

4.8.10 Limitation on Use. Purchaser acknowledges that the use provisions of the Declaration and the Unit Deed provide that the Resort Units that are Residences Units may be used only for residential purposes for the Resort Owners, their immediate family or their personal guests. The Resort Units may not be rented or used for commercial or business purposes under any circumstances, except for certain permitted rentals.

4.8.11 No Authority to Contradict. None of Seller's Agents has the authority to make any representations which contradict the statements set out in this Purchase Agreement. Purchaser acknowledges that Purchaser has not relied on any such representations made by any of Seller's Agents. "

EXHIBIT L SUMMARY OF ESCROW AGREEMENT

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

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

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

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

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

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

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

" 8. RELEASE OF PURCHASER'S FUNDS PRIOR TO CLOSING.

(a) Purchasers' funds may be used for construction and other allowable expenses in accordance with Section 514B-92 prior to closing, provided that the requirements of [binding contracts] have been met. If funds are to be used for construction and other expenses prior to closing, the funds shall be disbursed by Escrow Agent to pay for construction costs only in proportion to the valuation of the work completed by the contractor, as certified by a licensed architect or engineer of the building or buildings in proportion to the valuation of the work completed by the contractor, as certified by a registered architect or engineer, and for the architectural, engineering, finance, and legal fees, and other incidental expenses of the condominium project, as approved by the lender providing Seller with construction financing, or another or an otherwise qualified, financially disinterested person.

(b) Any funds remaining shall not be disbursed until construction of the applicable phase of the Condominium has been completed (or until construction of the particular apartment being conveyed has been completed, to the extent that the Condominium Act permits such disbursement) and Escrow has received satisfactory assurances that all blanket mortgages and liens have been released from the Purchaser's unit in accordance with Section 514B-45 unless sufficient funds have been set aside for any bona-fide dispute."

EXHIBIT L SUMMARY OF ESCROW AGREEMENT

EXHIBIT M: INFORMATION ON THE MASTER ASSOCIATION, RESIDENCES ASSOCIATION AND GOLF CLUB

1. The Master Declaration.

Generally. The Condominium is part of an overall resort development ("Kauai Lagoons") including golf courses, lagoons, residential, multifamily, timesharing, retail and commercial and recreational uses. The land of Kauai Lagoons is owned by Developer and MORI Golf (Kauai) LLC which intend to submit it to a Declaration of Covenants Conditions and Restrictions for Kauai Lagoons (the "Master Declaration"). The Master Declaration will be executed and recorded by Kauai Lagoons LLC with the joinder of MORI Golf (Kauai), LLC, immediately before the recording of the Declaration of Condominium Property Regime of the first condominium to be created in Kauai Lagoons. The Master Declaration will become an additional encumbrance on the Condominium. The Master Declaration will cover approximately 513 acres of land at Kalapaki, Lihue, Kauai, including the land of Makali'i Condominium with rights to annex certain adjacent lands or to withdraw lands. In the Master Declaration Kauai Lagoons LLC is described as the "Declarant".

The Master Association and its member classes. All property owners in Kauai Lagoons including the Unit Owners of the Makali'i Condominium will be members of the Kauai Lagoons Community Association (the "Master Association") a Hawaii nonprofit corporation. All owners except Declarant will be Class A members. Declarant will be the Class B member and will have three (3) votes for every vote it would have as a Class A member. Class B membership will exist during "Declarant's Control Period" which ends on the first to occur of the following: (i) when Declarant no longer owns any Unit in Kauai Lagoons and has no further rights to annex property to Kauai Lagoons; (ii) January 1, 2050; or (iii) when Declarant records an instrument terminating Declarant's Control Period.

Master Declarant's Rights. The Master Declaration reserves to the Declarant special rights, for example rights to appoint the Design Committee, to appoint directors of the Association, to grant easements, to pay assessments on a different basis from other owners, to amend the Declaration and to approve amendments by the Association, to annex and withdraw land from Kauai Lagoons, and to grant easements over the lands of Kauai Lagoons

Allocation of Votes and Assessments. Votes and assessments will be allocated by Parcel based on a "Points" system depending on the kind of development on the Parcel. To make certain that Parcels pay their share of expenses even before they are developed or if they are underdeveloped, each Parcel has Minimum Points. The Master Plan attached as Exhibit B to the Master Declaration shows the Parcels, their uses and their Minimum Points. The allocation formula in Exhibit C shows how Points are allocated to developed Parcels.

Voting by Delegates. As Parcels are developed they will be allocated to Districts; for example Makali'i will be a District. A District will choose a Delegate who will cast the District's votes for most Association issues.

Master Association's Activities. Certain areas ("Areas of Common Responsibility") will be the responsibility of the Master Association. The Master Association may be given easements, ownership or use rights over various facilities in Kauai Lagoons and obligations to operate and maintain them, such as roadways, parking lots, comfort stations and showers, picnic areas and recreational shelters, public access areas, lagoons and maintenance facilities. The Master Association will also have a Design Committee to review construction and alteration plans of owners other than Declarant.

Master Association Lien. The Master Association will have powers to make assessments and a lien over Units to enforce the assessments. Master Association assessments will be subordinate to first mortgages to institutional lenders, for example banks, and to mortgages of any priority to Declarant and its affiliates. Where there is a condominium or other subassociation the subassociation will have an obligation to collect and pay the Master Association assessments on the Units covered by the subassociation. In the case of Makali'i the Club Association and the Residences Association will have that collection obligation under the Master Declaration. The Master Association assessments are listed as the line item "Master POA dues" in the Residences Association budget that is attached to this Public Report as part of Exhibit J.

Prospective purchasers will be given a copy of the current draft of the Master Declaration before they sign their Purchase Agreements and will be given a copy of the recorded Master Declaration before their contracts become binding. They should read the Master Declaration carefully before deciding whether to purchase a Unit at Makali'i. For further information about the budget and assessments under the Master Declaration prospective purchasers may call Dirk Schavemaker at 407-206-6000.

2. The Residences Declaration.

Generally. The Makali'i Residences Declaration of Covenants, Conditions and Restrictions (the "Residences Declaration") will be executed and recorded by Developer after recording of the Declaration of Condominium Property Regime but before the first Residences Unit is conveyed to a purchaser.

Residences Association. The Developer will establish a Residences Association which will be a Hawaii nonprofit corporation. Each owner of a Residences Unit will be a member of the Residences Association.

Voting and Assessments. There will be one (1) vote in the Residences Association for each Residences Unit. Assessments will be allocated so that each 3 bedroom Residence will have a 6% premium over each 2 bedroom Residence and each 4 bedroom Residence will have a 10% premium over each 2 bedroom Residence. For example if the 2 bedroom has an assessment of \$100.00, the 3 bedroom will have \$106.00 and the 4 bedroom will have \$110.00. When and if additional Residences are developed ("Other Residences") a 3 bedroom Other Residence would have an assessment of \$112.36 and a 4 bedroom would have \$122.47.

Residences Association's Activities. The Residences Association will have Direct Administration of certain Residences Elements, namely the Entry Courtyards of Residences Units described in Exhibit F. The Residences Association will pay and allocate among the Residences Units the Master Association assessments on the Residences Units. The Residences Association will also lease and make available golf carts and will provide through its Manager individual services to Units on an ala carte basis.

Residences Association Lien. The Residences Association will have a lien over each Residences Unit to enforce its assessments. The lien will cover the Unit and include a security interest over any proceeds from selling the Unit. The assessments will be subordinate to Master Association assessments, Condominium assessments, first mortgages to institutional lenders such as banks, and mortgages to Developer or its affiliates. If a Residences Unit is sold the buyer remains responsible for the seller's unpaid assessments but can rely on a certificate of the manager stating what if any unpaid charges there are. The Residences Association can also suspend services to a defaulting Owner.

Insurance Requirements. The Residences Declaration requires Owners to insure their Residences Units and their contents and carry liability insurance, naming the Residences Association and its manager as additional insureds.

Prospective purchasers of Residences Units will receive a copy of the Residences Declaration before signing a sales contract. The Developer has reserved certain rights to amend the Residences Declaration and any amendments will be provided to prospective purchasers.

3. Kauai Lagoons Golf Club.

As provided in the Residences Declaration and the Condominium Declaration, if established at the option of the Golf Club Owner (currently MORI Golf (Kauai), LLC), The Kauai Lagoons Golf Club (which name may be changed from time to time in the sole discretion of the Golf Club Owner or its affiliates) will be a non-proprietary, non-voting resort membership club located within the Kauai Lagoons resort. The planned facilities of The Kauai Lagoons Golf Club are owned by the Golf Club Owner. The Kauai Lagoons Golf Club will be operated by Marriott International, Inc. (the "Operator"). Initially only one type of membership will be offered in The Kauai Lagoons Golf Club, but the Golf Club Owner (or any affiliate thereof) reserves the right to issue additional types of memberships (in its sole discretion) at any time. Memberships in The Kauai Lagoons Golf Club will be offered in accordance with, and will be governed by, a Membership Plan, Rules and Regulations and Membership Agreements (as any of them may be amended from time to time, collectively, the "Membership Documents").

With respect to Residences Owners, the Residences Association will acquire and hold memberships in The Kauai Lagoons Golf Club, on behalf of the Residences Owners, who will be designated users of such memberships. Each Residences Owner will acquire membership privileges by virtue of becoming a member of the Residences Association at the time of the closing on the purchase of a Residences Unit. Purchasers of Residences Units shall pay an initiation fee as part of the purchase price of the Residences Unit, except as the fee may be waived from time to time at the discretion of the Golf Club Owner.

The annual assessment levied by the Residences Association against Residences Unit Owners will include the amount of dues payable for a membership in The Kauai Lagoons Golf Club in accordance with the Membership Documents. As more particularly provided in the Residences Declaration, the Residences Association has a lien on the Residences Unit of an Owner who fails to timely pay any assessment owed to the Residences Association, subject to the rights of certain mortgagees. The Residences Association shall, in the event of an Owner's failure to pay the Residences Expenses, have all the remedies set out in Section 10 of the Residences Association, including the right to enforce the lien by foreclosure.

In accordance with the Membership Documents, the Golf Club Owner and Operator, for themselves, and on behalf of their respective successors and assigns, have reserved the right to modify the Membership Documents, the right to modify, add to, alter or eliminate any of the facilities available for use by members of The Kauai Lagoons Golf Club, as well as the right to terminate memberships subject to the terms of the Membership Documents, all as more particularly set out in the Membership Documents. The Golf Club Owner and/or Operator has the ability to establish from time to time, the dues, fees and charges payable by members in respect of membership in The Kauai Lagoons Golf Club. Each Residences Unit Owner or Club Unit Owner entitled to enjoy membership privileges at The Kauai

EXHIBIT M: INFORMATION ON THE MASTER ASSOCIATION, RESIDENCES ASSOCIATION
AND GOLF CLUB

Lagoons Golf Club, may enjoy those privileges subject to the terms of the Condominium Documents, Residences or Club Documents, as the case may be, and the Membership Documents. In the event of any conflict between the Membership Documents and any of the other documents listed above, the Membership Documents shall control.

Prospective purchasers of Residence Units will be given a copy of the current draft of the Residences Declaration before they sign their Purchase Agreements and will be given a copy of the final Residences Declaration before their contracts become binding. They should read the Residences Declaration carefully before deciding whether to purchase a Residences Unit at Makali'i Condominium.