

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer Ocean Villas Development, L.L.C.
Business Address 333 South Grand Avenue, 28th Floor, Los Angeles, California 90071

Project Name (\*): Ocean Villas at Turtle Bay Resort
Address: Turtle Bay Resort, Kahuku, Hawaii 96731

Registration No. 5316
Effective date: November 15, 2010
Expiration date: December 15, 2011

Preparation of this Report:

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

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

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

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

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

Type of Report:

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

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

X SUPPLEMENTARY: (pink) This report updates information contained in the:
[ ] Preliminary Public Report dated:
[X] Final Public Report dated: November 29, 2004
[ ] Supplementary Public Report dated:

And [ ] Supersedes all prior public reports.
[X] Must be read together with Final Public Report dated November 29, 2004
[X] This report reactivates the Final public report(s) which expired on April 30, 2010

(\*) Exactly as named in the Declaration

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

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

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

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

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

No prior reports have been issued by the developer.

Changes made are as follows:

**A. Subdivision and Withdrawal of the Hotel at Turtle Bay Resort**

The Hotel at Turtle Bay Resort (the "Hotel"), an operating hotel containing 403 guest rooms, seven (7) single story, slab on grade, concrete block buildings with wood framed roofs, and other related structures, facilities, and grounds, was originally included in the Project as a limited common element appurtenant to and for the exclusive use and enjoyment of the Hotel Related Apartment as defined in the Declaration. Under the Declaration, the Developer and Kuilima Resort Company reserved the right to subdivide the land under the Hotel and related structures, facilities and grounds from the remainder of the Project, and upon completion of said subdivision (the "Hotel Subdivision"), to withdraw the Hotel and its related structures, facilities and grounds from the Project subject to the conditions provided for in the Declaration.

On January 22, 2010, the Land Court of the State of Hawaii approved the Hotel Subdivision described above by Land Court Order 181650, a copy of which is attached hereto as part of Exhibit N.

On February 4, 2010, the Developer and KRC withdrew the Hotel and related structures, facilities and grounds from the Project by an amendment to the Declaration recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3937560 and in the Bureau of Conveyances of the State of Hawaii as Document No. 2010-016167 (the "Withdrawal Amendment"). A copy of the Withdrawal Amendment is attached hereto as part of Exhibit N. As a result of the Withdrawal Amendment, the Hotel and its related structures, facilities and grounds are no longer a part of the common elements of the Project.

**B. Other Changes**

1. A change in the legal structure of the manager of the Developer;
2. Updated contact information for certain persons connected with the Project;
3. Amendments made to the Declaration, Condominium Map, and Bylaws since the original effective date of the Final Public Report;
4. The fact that the land of the Project is now owned in common by Kuilima Resort Company (KRC) and the owners of the units in the Project sold by KRC and the Developer since the original effective date of the Final Public Report.
5. Changes made necessary as a result of the withdrawal of the Hotel from the Project.

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## **General Information On Condominiums**

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

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

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

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

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

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

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

## **Operation of the Condominium Project**

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

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

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: Ocean Villas Development, L.L.C. Phone: (213) 830-6316  
Name\* (Business)  
333 South Grand Avenue, 28th Floor  
Business Address  
Los Angeles, California 90071

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker\*: Landmark Real Estate, L.L.C. Phone: (808) 973-1302  
Name (Business)  
1888 Kalakaua Avenue, Suite C-105  
Business Address  
Honolulu, Hawaii 96815

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

General Contractor\*: Armstrong Builders, Ltd. Phone: (808) 848-2484  
Name (Business)  
80 Sand Island Access Road, #209  
Business Address  
Honolulu, Hawaii 96819

Condominium Managing Agent\*: Villa Management, L.L.C., RB-18410 Phone: (808) 306-3313  
Name (Business)  
57-091 Kamehameha Highway  
Business Address  
Kahuku, Hawaii 96731

Attorney for Developer: D. Scott MacKinnon, Esq. Phone: (808) 529-7300  
Joel D. Kam, Esq. (Business)  
Name  
McCorriston Miller Mukai MacKinnon LLP  
Business Address  
P. O. Box 2800, Honolulu, Hawaii 96803

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

**II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

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

The Declaration for this condominium is:

Proposed  
 Recorded - Bureau of Conveyances: Document No. 2004-200492  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. 3172940

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]:

**See Exhibit B**

B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

Proposed  
 Recorded - Bureau of Conveyances Condo Map No. 1665  
 Filed - Land Court Condo Map No. 3844

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

**See Exhibit B**

C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment 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 which affect how the condominium project will be governed.

The Bylaws for this condominium are:

Proposed  
 Recorded - Bureau of Conveyances: Document No. 2004-200493  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. 3172941

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

**See Exhibit B**

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

The House Rules for this condominium are:

Proposed       Adopted       Developer does not plan to adopt House Rules

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

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

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>N/A</u>

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

2. **Developer:**

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

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

**See Exhibit C**

III. THE CONDOMINIUM PROJECT

A. **Interest to be Conveyed to Buyer:**

- Fee Simple:** Individual apartments and the common elements, which include the underlying land, will be in fee simple.
- Leasehold or Sub-leasehold:** Individual apartments and the common elements, which include the underlying land will be leasehold.

**Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable: [ ] Monthly [ ] Quarterly  
[ ] Semi-Annually [ ] Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per: [ ] Month [ ] Year

**For Sub-leaseholds:**

- Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is: [ ] Canceled [ ] Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

- Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Sub-leasehold:**

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable: [ ] Monthly [ ] Quarterly  
[ ] Semi-Annually [ ] Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per: [ ] Month [ ] Year



[ ] Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

**B. Underlying Land:**

Address: Turtle Bay Resort Tax Map Key (TMK): (1) 5-7-1-13 (por.)  
Kahuku, Hawaii 96731

[ ] Address [ ] TMK is expected to change because \_\_\_\_\_

Land Area: 4.594 [ ] square feet [X] acre(s) Zoning: Resort

Fee Owner:\* Kuilima Resort Company, a Hawaii general partnership  
Name

Lessor: N/A  
Name

Business Address

**\*KRC owns an undivided percentage interest in the land of the Project in connection with its ownership of Units 119, 316 and 317. The remaining interests in the land are owned by various owners of the other units in the Project.**

C. **Buildings and Other Improvements:**

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

2. Number of Buildings: 9 Floors Per Building: See Exhibit D

Exhibit D contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other See Exhibit D

4. Uses Permitted by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted By Zoning</u>	
<input type="checkbox"/> Residential	<u>      </u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	<u>      </u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	<u>      </u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	<u>      </u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	<u>      </u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	<u>      </u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	<u>      </u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	<u>      </u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	<u>      </u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Other*	<u>57</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?

Yes  No

\*Resort use

5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

Pets: See Exhibit E

Number of Occupants: See Exhibit E

Other: See Exhibit E

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 2                      Stairways: 6                      Trash Chutes: 0

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Net Other Area (sf)	(Identify)
<u>See Exhibit F</u>					

Total Number of Apartments: 57

\* Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.

Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.

Boundaries of Each Apartment: **Each Apartment consists of the spaces within the perimeter and party walls, windows, doors, floors, ceiling(s) and lanai(s) of the respective apartments.**

Permitted Alterations to Apartments: **See Exhibit G**

Apartments Designated for Owner-Occupants Only:

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

7. Parking Stalls:

Total Parking Stalls:	<u>67</u>				
	<u>Regular</u>	<u>Compact</u>	<u>Tandem</u>		
	<u>Covered</u> <u>Open</u>	<u>Covered</u> <u>Open</u>	<u>Covered</u> <u>Open</u>		<u>TOTAL</u>
Assigned (for each unit)	<u>44</u>	<u>11</u>			<u>55</u>
Guest	<u>2</u>	<u>10</u>			<u>12</u>
Unassigned					
Extra for Purchase					
Other: _____					
Total Covered & Open:	<u>46</u>	<u>21</u>	<u>0</u>		<u>67</u>

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

- Commercial parking garage permitted in condominium project.
- Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

- There are no recreational or common facilities.
- Swimming pool                       Storage Area                       Recreation Area
- Laundry Area                       Tennis Court                       Trash Chute/Enclosure(s)
- Other: See Exhibit H

9. Compliance With Building Code and Municipal Regulations; Cost to Cure Violations

- There are no violations.                       Violations will not be cured.
- Violations and cost to cure are listed below:     Violations will be cured by \_\_\_\_\_  
(Date)

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations (For conversions of residential apartments in existence for at least five years):

**N/A**

11. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>  X  </u>	<u>          </u>	<u>          </u>
Structures	<u>          </u>	<u>  X*  </u>	<u>          </u>
Lot	<u>  X  </u>	<u>          </u>	<u>          </u>

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

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

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

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

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

described in Exhibit   H  .

as follows:

**\*Building E is non-conforming with respect to flood zone requirements. All other structures are conforming.**

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project.

The limited common elements and the apartments which use them, as described in the Declaration, are:

described in Exhibit H.

as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit F.

as follows:

E. Encumbrances Against Title: An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit I describes the encumbrances against the title contained in the title report dated August 19, 2010 and issued by Title Guaranty of Hawaii, Inc.

Blanket Liens:

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

There are no blanket liens affecting title to the individual apartments.

There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed <b>Prior to Conveyance</b></u>
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F. Construction Warranties:

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements: **None**
  
2. Appliances: **The closing of the sale of any Apartment in the Project shall also constitute the assignment by the Developer to the Purchaser, for the unexpired term, if any, of any manufacturer's or dealer's warranties covering any furnishings, fixtures and appliances that are part of the apartment. The Developer is merely attempting to pass through to the Purchaser any such manufacturer's or dealer's warranties; the Developer is not adopting any such warranties or acting as co-warrantor with respect to any furnishings, fixtures or appliances. The terms of the manufacturer's or dealer's written warranties will be available for the Purchaser's examination at the Developer's sales office.**

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

Construction was completed in 2005.

H. **Project Phases:**

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

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

**Notwithstanding rights reserved by the Developer under the Declaration to add, merge, or phase this condominium, the Developer has no plans to exercise any such rights or undertake any future development.**



**IV. CONDOMINIUM MANAGEMENT**

- A. **Management of the Common Elements:** The Association of Apartment 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.

**Initial Condominium Managing Agent:** When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

not affiliated with the Developer                                         the Developer or Developer's affiliate  
 self-managed by the Association of Apartment Owners             Other: \_\_\_\_\_

- B. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment 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 apartment and the apartment 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.

Exhibit   J   contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

- C. **Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

None             Electricity (  Common Elements only      \_\_\_ Common Elements & Apartments)

Gas            (  Common Elements only      \_\_\_ Common Elements & Apartments)

Water\*         Sewer\*         Television Cable

Other Telephone (common elements only)\_\_\_\_\_

\*Common elements only

## V. MISCELLANEOUS

### A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit   K   contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated   January 29, 2004    
Exhibit   L   contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

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

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

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if:

- A) The Developer delivers to the buyer a copy of:
  - 1) Either the Final Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
  - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
- B) The buyer is given an opportunity to read the report(s); **AND**
- C) One of the following has occurred:
  - 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
  - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
  - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

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

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

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)

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

Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

This Public Report is a part of Registration No. 5316 filed with the Real Estate Commission on March 9, 2004.

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

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C. **Additional Information Not Covered Above**

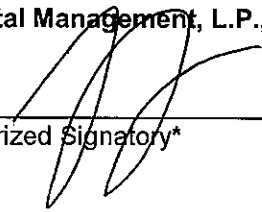
**See Exhibit M**

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

**Ocean Villas Development, L.L.C.**  
 \_\_\_\_\_  
 Printed Name of Developer


By: **Oaktree Capital Management, L.P.,  
 Its Manager**

By: \_\_\_\_\_ NOV 12 2010  
 Duly Authorized Signatory\* Date



**Ambrose Fisher, Managing Director**  
 \_\_\_\_\_  
 Printed Name & Title of Person Signing Above

By: \_\_\_\_\_ NOV 12 2010  
**Cary Klehman** Date  
**Vice President**



Distribution:

Department of Finance, City and County of Honolulu

Planning Department, City and County of Honolulu

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

**EXHIBIT A**

**Manager and Members of Developer**

Manager: Oaktree Capital Management, L.P., a Delaware limited partnership

Sole Member: Kuilima Resort Company, a Hawaii general partnership

**EXHIBIT B**

**Amendments to Condominium Documents**

**A. Declaration**

Name of Document	Date	Recording Information
First Amendment to Declaration of Condominium Property Regime of Ocean Villas at Turtle Bay Resort	8/23/05	Land Court Doc. No. 3364329; Regular System Doc. No. 2005-250675
Amendment to Declaration of Condominium Property Regime of Ocean Villas at Turtle Bay Resort	12/20/05	Land Court Doc. No. 3375969-3375970; Regular System Doc. No. 2006-003879/80
Second Amendment to Declaration of Condominium Property Regime of Ocean Villas at Turtle Bay Resort	1/26/10	Land Court Doc. No. 3948204; Regular System Doc. No. 2010-036222
Amendment of Declaration of Condominium Property Regime of Ocean Villas at Turtle Bay Resort, Condominium Map Nos. 1665 and 3844, and Bylaws of Association of Apartment Owners of Ocean Villas at Turtle Bay Resort, Effectuating the Withdrawal and Deletion of Lot 1217-A and of a Portion of Exclusion 17 from the Project, and Confirmation of Title to Lot 1217-A and to a Portion of Exclusion 17	2/4/10	Land Court Doc. No. 3937560; Regular System Doc. No. 2010-016167

**B. Condominium Map**

Name of Document	Date	Recording Information
First Amendment to Declaration of Condominium Property Regime of Ocean Villas at Turtle Bay Resort	8/23/05	Land Court Doc. No. 3364329; Regular System Doc. No. 2005-250675
Amendment of Declaration of Condominium Property Regime of Ocean Villas at Turtle Bay Resort, Condominium Map Nos. 1665 and 3844, and Bylaws of Association of Apartment Owners of Ocean Villas at Turtle Bay Resort, Effectuating the Withdrawal and Deletion of Lot 1217-A and of a Portion of Exclusion 17 from the Project, and Confirmation of Title to Lot 1217-A and to a Portion of Exclusion 17	2/4/10	Land Court Doc. No. 3937560; Regular System Doc. No. 2010-016167

**C. Bylaws**

Name of Document	Date	Recording Information
Amendment of Declaration of Condominium Property Regime of Ocean Villas at Turtle Bay Resort, Condominium Map Nos. 1665 and 3844, and Bylaws of Association of Apartment Owners of Ocean Villas at Turtle Bay Resort, Effectuating the Withdrawal and Deletion of Lot 1217-A and of a Portion of Exclusion 17 from the Project, and Confirmation of Title to Lot 1217-A and to a Portion of Exclusion 17	2/4/10	Land Court Doc. No. 3937560; Regular System Doc. No. 2010-016167

## EXHIBIT C

### **Developer's Rights to Change the Declaration, Condominium Map, Bylaws or House Rules**

Note: Unless otherwise specified, capitalized terms used herein have the same meanings as in the Condominium Declaration.

1. The Developer has the right to change the Condominium Documents:
  - A. In any way and for any purpose before the date when the Developer first records a deed transferring an Apartment to someone other than the Developer or its Lenders.
  - B. To file the "as-built" statement (with plans, if necessary or convenient) required by Section 514A-12 of the Condominium Property Act. The Developer may do this each time any New Improvement is completed. It may also do this at any other time required by law or permitted by this Declaration. The Developer does not need the consent of the Board or anyone else who owns an Apartment or any other Interested Person.
  - C. To comply with the real estate laws of any place (for example, the State of Hawaii) or the requirements of any government agency (such as the Hawaii Real Estate Commission or the California Department of Real Estate) in connection with the registration of the Project to permit the sale of Apartments.
  - D. To satisfy requests for changes made by any institutional lender loaning money to the Developer or by any title company licensed to do business in the State of Hawaii.
  - E. To correct any misstatements of fact in the Condominium Documents. For example, the Developer can correct a mistake in the legal description of the Land.

The Developer may use these rights at any time and it may use them more than once.

2. The Developer has the right to amend the Declaration and/or the Condominium Map to reflect any of the following changes if the change materially changes the depiction of a particular Apartment or Apartments on the Condominium Map or the description of it in the Declaration:
  - A. Change or remove all or part of an intervening Common Element wall separating two (2) apartments owned by the Developer; installation of doors and other Improvements in such opening or openings in the intervening Common Element; and other reasonable changes or additions in accordance with Section 18.2.3 of the Declaration.
  - B. Change of the designation of the Limited Common Elements appurtenant to any two (2) adjacent Apartments owned by the Developer so that one or more Limited Common Elements appurtenant to one Apartment now will be appurtenant to the other Apartment or to both of the Apartments in accordance with Section 18.2.4 of the Declaration.
3. The Developer has the right to amend the Declaration and the Condominium Map as necessary or convenient to describe any New Improvements constructed on the Land in accordance with Section 19 of the Declaration.
4. In connection with the Developer's right under Section 20 of the Declaration to subdivide the Land of the Project and/or to consolidate the Land of the Project with any Adjacent Parcel, the Developer has the right to amend the Declaration to change the description of the Land and the right to amend the



Condominium Map if the Developer deems it necessary or useful to reflect the subdivision and/or consolidation.

5. In connection with the Developer's reserved right under Section 21 to withdraw and delete from the Project, and from the condominium property regime, all or any part of the areas designated on the Condominium Map as "Possible Deletion Areas", together with any improvements thereon, the Developer has the right to amend the Declaration to change the description of the Land to delete the areas withdrawn from the Project, and the right to amend the Condominium Map if the Developer deems it necessary or useful to reflect the deletion and withdrawal of the deleted areas or any Improvements on such areas.

6. In connection with the Developer's right under Section 22 of the Declaration to annex into the Project and the condominium property regime any Adjacent Parcel and any Improvements located on the Adjacent Parcel, the Developer has the right to amend the Declaration to change the description of the Land to include the Adjacent Parcel annexed and to describe any improvements on the Adjacent Parcel, and the right to amend the Condominium Map if the Developer deems it necessary or useful to reflect the annexation of the Adjacent Parcel or any Improvements on it.

7. The Developer has the right to amend the Condominium Documents as required to comply with any laws that apply to the Project or to the Association, or the Developer.

8. The Developer has the right to amend the Condominium Documents as necessary or convenient to satisfy the requirements of the SMA Permits as set forth in Section 24 of the Declaration.

9. The Developer has the right to amend the Condominium Documents as necessary or convenient to subject the Land and the Project to the Joint Development Agreement, and to satisfy the requirements of the Joint Development Agreement, as set forth in Section 25 of the Declaration.

10. The Developer has the right to amend the Condominium Documents as necessary or convenient to satisfy the requirements of the Design Guidelines as set forth in Section 26 of the Declaration.

## EXHIBIT D

### Description of Buildings

Note: Unless otherwise specified, capitalized terms used herein have the same meanings as in the Condominium Declaration.

The project consists of seven apartment buildings, a pool, a pool equipment room, a trash enclosure, and related facilities as shown on the Condominium Map. The project is a renovation and addition to the original 5 apartment buildings (Buildings A-E are original). The original apartment buildings have been stripped of all roofs, interior partitions and exterior finishes (including asbestos). Concrete block walls have been retained and will receive grout infill as part of the renovation process. New construction on the first and second level will consist principally of concrete floors, concrete block walls, gypsum board, metal stud partitions, and glass. New construction on the third floor will consist principally of concrete floors, metal stud partitions, gypsum board, plywood, and glass. Pitched roofs are asphalt shingles, and flat roofs are built up roofing.

1. Building A. This building is a three-story building. The first floor is original construction. The second and third floors are new construction. The building has nine resort apartments, an elevator, a storage locker room, an electrical meter room, an electrical room, an elevator machine room, linen rooms, and miscellaneous storage areas.
2. Building B. This building is a three-story building. The first and second floors are original construction. The third floor is new construction. The building has nine resort apartments, a mailbox area, a storage locker room, an electrical meter room, an electrical room, and miscellaneous storage areas.
3. Building C. This building is a three-story building. The first and second floors are original construction. The third floor is new construction. The building has nine resort apartments, a storage locker room, an electrical meter room, an electrical room, and miscellaneous storage areas.
4. Building D. This building is a three-story building. The first and second floors are original construction. The third floor is new construction. The building has nine resort apartments, a storage locker room, an electrical meter room, an electrical room, and miscellaneous storage areas.
5. Building E. This building is a one-story building. The first floor is original construction. The building has three resort apartments, a storage locker room, and an electrical meter room.
6. Building F. This building is a three story building, all new construction. The building has nine resort apartments, a storage locker room, an electrical meter room, an electrical room and miscellaneous storage areas.
7. Building G. This building is a three-story building, all new construction. The building has nine resort apartments, a storage locker room, an elevator, an elevator machine room, an office, a bathroom, an electrical meter room, an electrical room, and miscellaneous storage areas.
8. Other buildings. The project also includes
  - a. Trash enclosure. This building is constructed of concrete block walls, concrete slab on grade and has no roof.
  - b. Pool pump house. This building is constructed of concrete block and a concrete slab on grade. It is partially covered by an earth berm.

## EXHIBIT E

### Special Use Restrictions

Note: Unless otherwise specified, capitalized terms used herein have the same meanings as in the Condominium Declaration.

1. Pets.

A. No livestock, poultry, pets or other animals of any kind are allowed on or may be kept in any part of the Project.

B. Notwithstanding the restriction against pets, animals that must be permitted on the Project pursuant to the Americans with Disabilities Act are allowed on the Project and may be kept by occupants in their respective Apartments.

C. In addition, specially trained animals are permitted on the Project pursuant to Chapter 515, Hawaii Revised Statutes, provided that:

(1) Specially trained animals may not be kept, bred, or used at the Project for any commercial purpose.

(2) Specially trained animals must be kept on a leash when they are on the Common Elements, including, but not limited to, any recreation areas.

(3) Any specially trained animal causing a nuisance or an unreasonable disturbance to any other occupant of the Project must be permanently removed from the Project promptly after the Board or the Managing Agent gives notice to the person using the specially trained animal. The notice must give the person a reasonable period within which to obtain a replacement specially trained animal. The animal causing a nuisance or disturbance need not be removed before the time stated in the notice unless the Board believes that the animal poses an imminent and serious threat of physical harm to other occupants of the Project.

(4) The Board may from time to time include in the House Rules reasonable restrictions or prohibitions relating to specially trained animals. Any such restrictions or prohibitions must be consistent with any laws protecting the civil rights of persons using specially trained animals.

D. A tenant of an Owner must obtain the written consent of the Owner to keep an animal allowed under paragraphs B and C above in the Apartment and provide a copy of such written consent to the Managing Agent.

2. Occupancy Limitation. No more than ten (10) persons at any time shall be permitted to occupy or reside in any Apartment. This occupancy limitation shall not apply to or restrict the Owner of any such Apartment from hosting a larger group of invited guests or visitors in such Apartment.

3. Other Use Restrictions.

A. Apartments. The Apartments may be occupied and used as follows:

(1) Generally. The Apartments may be occupied and used for resort, hotel or transient vacation rental purposes, and for no other purpose; subject however, to the limitations set forth in the Declaration and applicable law. Except for (a) home office use by the Apartment Owner that is allowed or permitted under the applicable zoning ordinance, or (b) where the Declaration allows the

Developer to do otherwise, or (c) the Hotel Related Apartment and its appurtenant Limited Common Elements: (i) the Apartments and their Limited Common Elements may not be used to carry on any business, trade or profession; (ii) the Apartments and their Limited Common Elements must not be used for sales of any articles or goods; and (iii) no Apartment Owner, lessee, tenant or other occupant of an Apartment may bring clients, customers or other business invitees onto the premises on a regular basis for business purposes.

(2) Time Share Use. Notwithstanding any other provision of the Declaration or the Bylaws, the Apartments may be used in or devoted to a time share, interval ownership, fractional use or joint ownership plan or program only if the Developer creates such plan or program or if the Developer authorizes or consents to such use in a recorded instrument.

(3) Right to Sell, Lease or Rent. The Apartment Owners have the absolute right to sell, lease, rent or otherwise transfer their own Apartments, subject to these restrictions and also subject to all other provisions of the Declaration and the Bylaws.

(4) Association's Use. Except for any rights to use expressly reserved to the benefit of the Fee Owner and/or the Developer, nothing limits or restricts the Association's right to use the Common Elements or any Apartment owned or leased by the Association for the benefit of the members of the Association to the full extent permitted by the applicable zoning ordinance, including without limitation, for a concierge desk and services, or activities desk.

B. Use of The Common Elements. Subject to the rights reserved by the Fee Owner and/or the Developer elsewhere in the Declaration or in the Bylaws, each Apartment Owner may use the Common Elements for the purposes for which they were intended without hindering or encroaching upon the lawful rights of the other Apartment Owners, subject to:

(1) The exclusive or other permitted use of the Limited Common Elements as provided in the Declaration;

(2) The right of the Board to change the use of the Common Elements or to lease or otherwise use the Common Elements for the benefit of the Association. The Board may only do so upon the terms and subject to the limits contained in the Condominium Property Act. See, for example, Section 514A-13(d) of the Condominium Property Act. However, no such lease, use or change in use may be made (i) before the Development Period ends unless the Developer consents to it in writing, or (ii) with respect to or affecting the Hotel, unless the owner of the Hotel Related Apartment consents to it in writing; and

(3) The right of the Developer and/or the Fee Owner to change the use of or otherwise deal with the Common Elements and Limited Common Elements in the exercise of the Developer's Reserved Rights.

(4) Except for the owner of the Hotel Related Apartment, no Apartment Owner, lessee, tenant, occupant, or other Interested Person may use the Common Elements or any part of it for any business purpose including the operation of a rental program, or a registration or check-in desk for guests of Apartment Owners. The owner of the Hotel Related Apartment shall be entitled to use the Common Elements or any part of it for any legitimate business purpose including but not limited to the operation of the Hotel and related services, functions, and activities.

C. Other Limitations on Use of the Apartments and Common Elements. No Apartment Owner, lessee, tenant, occupant, or other Interested Person can use the Project or any part of it (a) for the promotion or sale of time share interests or interests in any other interval ownership, fractional use or joint ownership plan or program, directly or indirectly; (b) for the operation of a tour or activity desk or any other business that directly or indirectly promotes the sale of time share interests, or interests in any other interval ownership, fractional use or joint ownership plan or program; (c) for the operation of a flea market,

dance hall, discotheque, funeral parlor, off-track betting parlor, carnival, amusement park, circus, gas station, auto repair shop, or bar or tavern where the primary business involves the sale of liquor for on-premises consumption; (d) for the operation of any business seeking a cabaret license; (e) for the promotion or sale of paraphernalia for use with illicit drugs; or (f) for the promotion or sale of pornography. Provided, however, that clauses (a), (b) and (c) of this paragraph do not apply to the Developer, the owner of the Hotel Related Apartment, or any Interested Person approved by the Developer in a recorded instrument.

D. Changes to Building Appearance.

(1) Changes by Owners or the Developer. Even though some of the Common Elements are Limited Common Elements appurtenant to certain Apartments, Owners are not allowed to change or cause a change to the exterior appearance of the Project unless they have the prior written consent of either the Board or the Managing Agent. This rule does not apply to the owner of the Hotel Related Apartment or to the Developer when exercising the Developer's Reserved Rights.

(2) Changes by the Board. Except for the Hotel, the Board has the right to change the exterior appearance of the Project. During the Development Period, however, the Board cannot do so without the Developer's written consent.

(3) Design Guidelines. Nobody is allowed to change the appearance of the Project in a way that does not strictly adhere to all principles, requirements and goals set forth in that certain instrument dated August 24, 2004, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-195080, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3169232 (the "Design Guidelines"). A copy of the Design Guidelines is attached as Exhibit E to the Declaration.

E. Maintenance and Repair of Apartments and Limited Common Elements. Each Owner must keep the interior of the Owner's Apartment, and its appurtenant Limited Common Elements, in good order and repair. This includes not just the walls and windows, but also includes all plumbing, electrical and other fixtures and equipment that are part of the Apartment or its Limited Common Elements. The Board, however, will provide for periodic resurfacing and other routine maintenance of parking stalls. This does not relieve an Owner from the obligation to pay for damages beyond normal wear and tear to his or her parking stall.

F. Developer's Rights of Use. Regardless of anything else stated in the Condominium Documents, the Developer has the right to use any Apartment that it owns or leases for promotional purposes or in connection with the initial sale and any resale of Apartments. This includes, for example, the right to have guests stay in those Apartments for any length of time. Of course, guests must comply with the Condominium Documents. It also includes the right to use its Apartments and their appurtenant Limited Common Elements as model Apartments or as sales, management or administrative offices or to provide services to the Owners or other occupants of the Project. These rights are subject to any requirements of the zoning code and any other laws that may apply to the Property.

4. Bylaws. See Section 9 of the Bylaws for more detailed examples of use restrictions applicable to the Project.

**EXHIBIT F**  
**Ocean Villas at Turtle Bay Resort**  
**Apartment Areas and Common Interest**

Unit	Building	Unit Size	Unit Type	Approx. Net Interior Floor Area (sf)	Approx. Net Lanai Floor Area (sf)	Approx. Net Living Area (sf)	Common Interest %
101	F	4 BED	TYPE B	2391	158	2549.0	2.71
102	F	1 BED	STUDIO	673	134	807.0	.86
103	F	3 BED	TYPE B	1538	160	1698.0	1.81
104	A	4 BED	TYPE A	2275	158	2433.0	2.59
105	A	1 BED	STUDIO	673	134	807.0	.86
106	A	3 BED	TYPE B	1538	160	1698.0	1.81
107	B	3 BED	TYPE B	1538	160	1698.0	1.81
108	B	3 BED	TYPE A	1411	135	1546.0	1.64
109	B	3 BED	TYPE A	1411	135	1546.0	1.64
110	C	3 BED	TYPE B	1538	160	1698.0	1.81
111	C	3 BED	TYPE A	1411	135	1546.0	1.64
112	C	3 BED	TYPE B	1538	160	1698.0	1.81
113	D	3 BED	TYPE A	1411	135	1546.0	1.64
114	D	3 BED	TYPE A	1411	135	1546.0	1.64
115	D	3 BED	TYPE B	1538	160	1698.0	1.81
116	G	3 BED	TYPE B	1538	160	1698.0	1.81
117	G	1 BED	STUDIO	673	134	807.0	.86
118	G	4 BED	TYPE B	2391	158	2549.0	2.71
119	E	3 BED	TYPE B	1538	160	1698.0	1.81
120	E	1 BED	STUDIO	673	134	807.0	.86
121	E	4 BED	TYPE B	2391	158	2549.0	2.71
201	F	4 BED	TYPE B	2391	158	2549.0	2.71
202	F	1 BED	STUDIO	673	134	807.0	.86
203	F	3 BED	TYPE B	1538	160	1689.0	1.81
204	A	4 BED	TYPE A	2275	158	2443.0	2.59
205	A	1 BED	STUDIO	673	134	807.0	.86
206	A	3 BED	TYPE B	1538	160	1698.0	1.81
207	B	3 BED	TYPE B	1538	160	1698.0	1.81
208	B	3 BED	TYPE A	1411	135	1546.0	1.64
209	B	3 BED	TYPE A	1411	135	1546.0	1.64
210	C	3 BED	TYPE B	1538	160	1698.0	1.81
211	C	3 BED	TYPE A	1411	135	1546.0	1.64
212	C	3 BED	TYPE B	1538	160	1698.0	1.81
213	D	3 BED	TYPE A	1411	135	1546.0	1.64
214	D	3 BED	TYPE A	1411	135	1546.0	1.64
215	D	3 BED	TYPE C	1684	164	1848.0	1.93
216	G	3 BED	TYPE B	1538	160	1698.0	1.81
217	G	1 BED	STUDIO	673	134	807.0	.86
218	G	4 BED	TYPE B	2391	158	2549.0	2.71
301	F	4 BED	TYPE B	2391	158	2549.0	2.71
302	F	1 BED	STUDIO	673	134	807.0	.86
303	F	3 BED	TYPE B	1538	160	1698.0	1.81
304	A	4 BED	TYPE A	2275	158	2433.0	2.59
305	A	1 BED	STUDIO	673	134	807.0	.86
306	A	3 BED	TYPE B	1538	160	1698.0	1.81
307	B	3 BED	TYPE B	1538	160	1698.0	1.81
308	B	3 BED	TYPE A	1411	135	1546.0	1.64

**EXHIBIT F**  
**Ocean Villas at Turtle Bay Resort**  
**Apartment Areas and Common Interest**

Unit	Building	Unit Size	Unit Type	Approx. Net Interior Floor Area (sf)	Approx. Net Lanai Floor Area (sf)	Approx. Net Living Area (sf)	Common Interest %
309	B	3 BED	TYPE A	1411	135	1546.0	1.64
310	C	3 BED	TYPE B	1538	160	1698.0	1.81
311	C	3 BED	TYPE A	1411	135	1546.0	1.64
312	C	3 BED	TYPE B	1538	160	1698.0	1.81
313	D	3 BED	TYPE A	1411	135	1546.0	1.64
314	D	3 BED	TYPE A	1411	135	1546.0	1.64
315	D	3 BED	TYPE C	1684	164	1848.0	1.93
316	G	3 BED	TYPE B	1538	160	1698.0	1.81
317	G	1 BED	STUDIO	673	134	807.0	.86
318	G	4 BED	TYPE B	2391	158	2549.0	2.71
					<b>Total</b>	<b>94058</b>	<b>100%</b>

The Common Interest for each Apartment is computed by the following formula:

$$\text{Common Interest \%} = (\text{Net Living Area} \div \text{Total Net Living Area}) \times 100$$

As used above, "Net Living Area" for each apartment refers to the sum of the approximate net interior floor area and the approximate net lanai floor area for such apartment. "Total Net Living Area" refers to the sum of the Net Living Areas for all apartments in the Project.

## EXHIBIT G

### Permitted Alterations to Apartments

Note: Unless otherwise specified, capitalized terms used herein have the same meanings as in the Condominium Declaration.

1. Each Owner has the right, subject only to the terms and conditions set forth in the Condominium Documents and to Board approval (which will not be unreasonably withheld or delayed, and which does not apply to the owner of the Hotel Related Apartment), to make any of the following changes, additions and Improvements solely within the Owner's Apartment or solely within any Limited Common Element that such Owner controls:

A. To install, maintain, remove and rearrange partitions and other walls from time to time within the Apartment or Limited Common Element; provided that the Owner shall not have the right to enclose any exterior lanai; and provided, further, that the number of Apartments shall not be increased as a result of the exercise of such rights;

B. To finish, change or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors or walls as appropriate for the use of the Apartment or Limited Common Element;

C. To decorate, paint, repaint, wallpaper or otherwise change the appearance of any walls, floors and ceilings of the Apartment or Limited Common Element which are not readily visible from outside the Apartment or Limited Common Element;

D. To tile, finish, carpet, re-carpet, and install, change, or remove other flooring in the Apartment or Limited Common Element which is not readily visible from outside the Apartment or Limited Common Element provided that any hard flooring materials and/or systems shall meet a Sound Transmission Coefficient (STC) acoustic standard of 50 or better and an Impact Insulation Criteria (IIC) acoustic standard of 50 or better; or

E. To make such changes, additions and improvements to the Apartment or Limited Common Elements to facilitate handicapped accessibility within the Apartment or Limited Common Element.

2. An Owner may make "nonmaterial structural additions to the Common Elements" as that term is used in §514A-89 of the Condominium Property Act.

3. The Owner of two Apartments which are separated by a Common Element that is a wall, or whose Limited Common Elements are separated from each other by a Common Element that is a wall, has the right and an easement to do these things, subject only to Board approval (which will not be unreasonably withheld or delayed), to:

A. Change or remove all or part of the intervening wall.

B. Install doors and other improvements in such opening or openings in the intervening Common Element.

C. Make other reasonable changes or additions.

Before terminating its common ownership of any of the adjacent Apartments, the Owner or Developer must restore the Common Element wall and/or other openings to substantially the same condition as before the change or removal unless the new Owners each agree otherwise in writing.



The rights of an Owner and the Developer to make the foregoing changes may be exercised only if:

(1) The structural integrity of the Apartment, or Limited Common Element or the building in which the Apartment is situated will not be adversely affected;

(2) The finish of the remaining Common Element improvements are restored to substantially the same condition they were in before the change or removal; and

(3) All construction activity is completed within a reasonable time after it begins. If there is a delay for reasons beyond the control of the Owner or Developer or their contractors, the construction activity must be completed in the additional time reasonably needed to finish it by working on it diligently.

4. The Owners of any two (2) adjacent Apartments have the right to change the designation of the Limited Common Elements appurtenant to their Apartments so that one or more Limited Common Elements appurtenant to one Apartment now will be appurtenant to the other Apartment or to both of the Apartments. The Owners cannot do this without the written consent of each Lender who has a Mortgage on either Apartment.

## EXHIBIT H

### Common Elements

Note: Unless otherwise specified, capitalized terms used herein have the same meanings as in the Condominium Declaration.

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

- A. The Land in fee simple;
- B. All yards, grounds, trees, gardens, walkways, walkway railings, gates, landscaping and refuse facilities not located within an Apartment;
- C. All roads, driveways, access lanes, paved areas, ramps and loading areas;
- D. All parking stalls and parking areas;
- E. All mailboxes and storage lockers;
- F. The swimming pool and deck, barbeque areas and facilities, pool pump room, outdoor shower, and rubbish yard;
- G. All foundations, floor slabs, columns, girders, beams, supports, perimeter, party and load-bearing walls and partitions (excluding the finishes thereon), roofs, stairways, elevators, walkways, corridors, ramps, loading areas, entrances, entry ways and exits of the Project, all storage rooms not located within an apartment, all maintenance rooms, all mechanical rooms, all telephone rooms, and all electrical rooms.
- H. All vents, shafts, sewer lines, water lines, pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations on, above, over, under and across the Project to the point of their respective connections to Improvements comprising a part of the Apartments or the Limited Common Elements appurtenant thereto, which serve more than one Apartment, including, without limitation, those providing electricity, light, gas (if any), water, air conditioning, sewer, refuse, drainage, irrigation, telephone, and radio and television signal distribution (if any); and
- I. Any and all other equipment, apparatus and installations existing for common use by more than one (1) Apartment, and any and all other parts of the Project necessary or convenient to its existence, maintenance or safety, or normally in common use.

2. Limited Common Elements. Certain parts of the Common Elements, herein called the "Limited Common Elements", are hereby designated and set aside for the exclusive use of certain Apartments, and such Apartments shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements as follows:

- A. Each Apartment shall have for its exclusive use one (1) mailbox bearing the same number as such Apartment and located in the mailbox area located on the first level of Building B as shown on the Condominium Map.
- B. Each Apartment shall have for its exclusive use one (1) storage locker as noted on Exhibit D attached to the Declaration and as shown on the Condominium Map.

C. Each Apartment shall have for its exclusive use one (1) parking stall as noted on Exhibit D attached to the Declaration and as shown on the Condominium Map.

**EXHIBIT I**

**Encumbrances Against Title**

1. Real Property Taxes that may be due and owing; reference is made to the Department of Finance, City and County of Honolulu.
2. AS TO LOT 1217-B:
  - (A) Easement "75" (72 feet wide) for drainage purposes, as shown on Map 68, as set forth by Land Court Order No. 35003, filed April 28, 1972.
  - (B) Easement "79" (56 feet wide) for utility purposes, as shown on Map 68, as set forth by Land Court Order No. 35003, filed April 28, 1972.
  - (C) Grant in favor of the City and County of Honolulu, dated May 3, 1978, filed as Land Court Document No. 875601, recorded in Liber 12898, Page 459; granting the right in the nature of an easement to be exercised and enjoyed by the Board of Water Supply to construct, install, maintain, operate, replace and remove an underground water pipeline or pipelines, etc., through said Easement "79".
  - (D) Perpetual easement appurtenant to Exclusion 17 for right of way purposes from Exclusion to the nearest public highway over such ways as now exist or may hereafter be lawfully substituted therefor, as set forth in Original Certificate of Title No. 17,854.
  - (E) Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.
  - (F) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

**INSTRUMENT: DECLARATION CONCERNING LOCATION OF PEDESTRIAN EASEMENT**

DATED: August 8, 1990  
FILED: Land Court Document No. 1754787  
RECORDED: Document No. 90-123616

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. 3942088, recorded as Document No. 2010-024405.

- (G) Rights of the State of Hawaii as set forth by Land Court Order No. 181650, filed January 27, 2010:
  - (1) the State of Hawai'i's ownership of all mineral and metallic mines of every kind or description, including geothermal rights, and the right to remove the same;
  - (2) the rights of native tenants; and
  - (3) the State of Hawai'i's reservation of all right, title, interest or claim to the waters having their source upon or flowing over or under the land.

(H) Reservation of an easement for waterline purposes in favor of the City and County of Honolulu, as set forth in Land Court Order 181650, filed January 27, 2010.

(I) Utility rights in favor of Lot 1217-A across and under the portion of Easement 79 located on Lot 1217-B, and the owner of Lot 1217-A shall have the right to grant such utility rights to one or more utility companies and/or other appropriate grantees, as set forth by Land Court Order No. 181650, filed January 27, 2010.

3. AS TO PORTION OF EXCLUSION 17:

Reservation in favor of the State of Hawaii of all mineral and metallic mines.

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

INSTRUMENT: DECLARATION CONCERNING LOCATION OF PARKS AND EASEMENTS  
DATED: October 11, 1989  
FILED: Land Court Document No. 1675414  
RECORDED: Liber 23764 Page 692

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. 3942088, recorded as Document No. 2010-024405.

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

INSTRUMENT: DEED  
DATED: December 30, 1988  
FILED: Land Court Document No. 1603995  
RECORDED: Liber 22730 Page 142

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

INSTRUMENT: UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING  
DATED: September 23, 1986  
FILED: Land Court Document No. 1402662  
DATED: August 12, 1986  
RECORDED: Liber 19756 Page 709  
PARTIES: Kuilima Development Company, and the Trustees under the Will and of the Estate of James Campbell, Deceased, acting in their fiduciary and not in their individual corporate capacities.

AMENDMENT TO UNILATERAL AGREEMENT dated December --, 1988, filed as Land Court Document No. 1603989, recorded in Liber 22730 at Page 23.

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. 3942088, recorded as Document No. 2010-024405.

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

INSTRUMENT: UNRECORDED KUILIMA ACQUISITION AGREEMENT  
DATED: June 3, 1988, but effective as of January 1, 1988

PARTIES: F. E. TROTTER, INC., W. H. McVAY, INC., P. R. CASSIDAY, INC. and H. C. CORNUELLE, INC., all Hawaii professional corporations, the duly appointed qualified and acting Trustees under the Will and of the Estate of James Campbell, deceased, and KUILIMA DEVELOPMENT COMPANY, a Hawaii registered general partnership

Said Kuilima Acquisition Agreement was assigned to and assumed by KUILIMA RESORT COMPANY, a Hawaii general partnership, by unrecorded ASSIGNMENT AND ASSUMPTION AGREEMENT dated as of June 3, 1988.

A SHORT FORM KUILIMA ACQUISITION AGREEMENT incorporating all of the foregoing is dated as of June 3, 1988, filed as Land Court Document No. 1555263.

Said Short Form Kuilima Acquisition Agreement was corrected by CORRECTION TO SHORT FORM KUILIMA ACQUISITION AGREEMENT dated December 30, 1988, filed as Land Court Document No 1603988.

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. 3942088, recorded as Document No. 2010-024405.

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

INSTRUMENT: DECLARATION OF RESTRICTIVE COVENANTS  
DATED: December 30, 1988  
FILED: Land Court Document No. 1603990  
RECORDED: Liber 22730 at Page 33

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. 3942088, recorded as Document No. 2010-024405.

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

INSTRUMENT: DECLARATION OF RESTRICTIVE COVENANTS  
DATED: August 8, 1990  
FILED: Land Court Document No. 1767661  
RECORDED: Document No. 90-149978

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. 3942088, recorded as Document No. 2010-024405.

10. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in GRANT OF NON-EXCLUSIVE EASEMENT (ACCESS) dated December 30, 1988, filed as Land Court Document No. 1603996, recorded in Liber 22730 at Page 170.

11. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in GRANT OF NON-EXCLUSIVE EASEMENT (NON-POTABLE WATER) dated December --, 1988, (acknowledged December 29, 1988 and December 28, 1988), filed as Land Court Document No. 1603997, recorded in Liber 22730 at Page 212.

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

INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS  
DATED : August 24, 2004  
FILED : Land Court Document No. 3169232  
RECORDED : Document No. 2004-195080

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. 3942088, recorded as Document No. 2010-024405.

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

INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY REGIME  
FOR "OCEAN VILLAS AT TURTLE BAY RESORT"  
CONDOMINIUM PROJECT  
DATED : August 31, 2004  
FILED : Land Court Document No. 3172940  
RECORDED : Document No. 2004-200492  
MAPS : 1665 filed in the Office of the Assistant Registrar of the Land  
Court, and 3844 recorded in the Bureau of Conveyances, and  
any amendments thereto

Said Declaration was amended by instrument dated August 23, 2005, filed as Land Court Document No. 3364329, recorded as Document No. 2005-250675.

Said Declaration was further amended by instruments dated February 4, 2010, filed as Land Court Document No. 3937560, recorded as Document No. 2010-016167; re: land description, and dated January 26, 2010, filed as Land Court Document No. 3948204, recorded as Document No. 2010-036222.

-Note:- Amendments to the Declaration of Condominium Property Regime amending the assignment of parking stalls to and from apartments have been omitted herefrom.

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

INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS  
DATED : August 24, 2004  
FILED : Land Court Document No. 3172941  
RECORDED : Document No. 2004-200493

15. GRANT in favor of HAWAII ELECTRIC COMPANY and VERIZON HAWAII INC., now known as HAWAIIAN TELCOM, INC., dated February 9, 2005, filed as Land Court Document No. 3231119, recorded as Document No. 2005-031930; granting a perpetual right and easement for utility purposes as shown on the map attached thereto.

16. The terms and provisions contained in the following:

INSTRUMENT: AGREEMENT FOR ISSUANCE OF CONDITIONAL USE PERMIT UNDER  
SECTION 21-5.380 OF THE LAND USE ORDINANCE (LUO)  
DATED: --- (acknowledged November 10, 2005)  
FILED: Land Court Document No. 3366116  
RECORDED: Document No. 2005-253259  
PARTIES: KUILIMA RESORT COMPANY, a Hawaii general partnership, and OCEAN  
VILLAS DEVELOPMENT, L.L.C., a Delaware limited liability company

This agreement supersedes and replaces that certain Agreement filed as Land Court Document No. 1961378, recorded as Document No. 92-166782, however, said release is not noted on Transfer Certificates of Title referred to herein.

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. 3942088, recorded as Document No. 2010-024405.

17. Any claims or other matters affecting the land in connection with or that may arise out of Civil No. 06-1-0867, KEEP THE NORTH SHORE COUNTRY, as Plaintiff, and CITY AND COUNTY OF HONOLULU; HENRY ENG, Director of Department of Planning and Permitting; and KUILIMA RESORT COMPANY, as Defendants, filed in the Circuit Court of the First Circuit, State of Hawaii on May 19, 2006, including any appeals that may be had with respect thereto.

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

19. Any unrecorded leases and matters arising from or affecting the same.

20. Mineral or water rights of any nature in favor of the State of Hawaii.

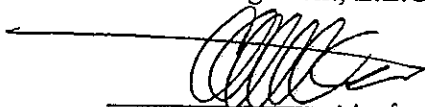


**EXHIBIT J**

**Estimate of Maintenance Fees**

The undersigned hereby certifies that the attached 2010 budget and schedule of monthly maintenance fees for each apartment is based on generally accepted accounting principles.

Villa Management, L.L.C.

A handwritten signature in black ink, appearing to read 'Cliff Cassity', is written over a horizontal line.

Cliff Cassity, its MANAGING AGENT

**Ocean Villas at Turtle Bay Resort  
2010 Budget - Proposed 6% Increase**

**Accrual Basis**

**Revised December 17, 2009**

**2010 Annual Budget**

	2010 Operating Budget	2010 Reserve Changes	2010 Total Budget	Actual Fees & Costs 2009 (1)	Budget 2010 V.S. Actual 2009	% Change Budget 2010 VS Actual 2009
	Entry	Entry	Automatic	Automatic	Automatic	Automatic
<b>REVENUE</b>						
Maintenance Fees	\$ 826,256		\$ 826,256	\$ 763,205	\$ 63,051	
Storage Unit Rental Income	6,000		6,000	6,000	-	
<b>Total</b>	<b>\$ 832,256</b>		<b>\$ 832,256</b>	<b>\$ 769,205</b>	<b>\$ 63,051</b>	
% Reserve for non-payment Fees	2.0%		2.0%			
Reserve for non-payment Fees	\$ (16,645)		\$ (16,645)			
<b>Net Revenue</b>	<b>\$ 815,611</b>		<b>\$ 815,611</b>			
<b>EXPENSES</b>						
<b>Utilities</b>						
Water	\$ 21,500		\$ 21,500	\$ 21,448	\$ 52	0%
Television	21,500		21,500	21,288	212	1%
Gas	45,000		45,000	42,161	2,839	7%
Electricity	75,000		75,000	78,234	(3,234)	-4%
Sewer	22,500		22,500	22,159	341	2%
Telephone	3,500		3,500	3,300	200	6%
<b>Total</b>	<b>\$ 189,000</b>	<b>\$ -</b>	<b>\$ 189,000</b>	<b>\$ 188,590</b>	<b>\$ 410</b>	<b>0%</b>
<b>Contract services</b>						
T1 Internet Provider	\$ 7,200		\$ 7,200	\$ 7,917	\$ (717)	-9%
Landscaping	55,000		55,000	93,614	(38,614)	-41%
Trash removal	10,951		10,951	10,529	422	4%
Air conditioning	17,160		17,160	16,503	657	4%
Elevator	7,000		7,000	6,956	44	1%
Tree trimming	9,955	-	9,955	9,312	643	7%
Mechanical Systems	750		750	178	572	321%
Fire Alarm System Electronic	1,200		1,200	-	1,200	N/A
Fire Alarm System Mech	1,200		1,200	141	1,059	751%
Fire Alarm System Electrical	1,200		1,200	-	1,200	N/A
Pest control	28,000		28,000	28,900	(900)	-3%
Termite Control - Sentricon	2,800		2,800	2,663	137	5%
Backflow/sewer testing	720		720	-	720	N/A
Window Cleaning	5,588		5,588	5,277	311	6%
<b>Total</b>	<b>\$ 148,724</b>	<b>\$ -</b>	<b>\$ 148,724</b>	<b>\$ 181,990</b>	<b>\$ (33,266)</b>	<b>-18%</b>
<b>Maintenance</b>						
Bldg & Paint Supplies	\$ 5,000		\$ 5,000	\$ 1,815	\$ 3,185	175%
Landscaping Supplies	3,000		3,000	1,049	1,951	186%
Building repairs	3,000		3,000	4,165	(1,165)	-28%
AC System Repairs	1,020		1,020	1,960	(940)	-48%
Light bulbs/electrical	3,000		3,000	2,503	497	20%
Custodial supplies/equipment	4,500		4,500	11,243	(6,743)	-60%
Plumbing repairs	4,000		4,000	11,349	(7,349)	-65%
Pool & Jacuzzi Supplies	4,000		4,000	1,853	2,147	116%
Pool & Jacuzzi Repairs	3,500		3,500	7,664	(4,164)	-54%
Gutter Cleaning & Repair	500		500	65	435	669%
Fire system Inspection	3,600		3,600	4,892	(1,292)	-26%
Misc expense	3,000		3,000	7,446	(4,446)	-60%
Fuel Allowance	1,920		1,920	1,998	(78)	-4%
Large Equipment Purchases	4,000		4,000	5,519	(1,519)	-28%
<b>Total</b>	<b>\$ 44,040</b>	<b>\$ -</b>	<b>\$ 44,040</b>	<b>\$ 63,521</b>	<b>\$ (19,481)</b>	<b>-31%</b>

**Ocean Villas at Turtle Bay Resort  
2010 Budget - Proposed 6% Increase**

**Accrual Basis**

**Revised December 17, 2009**

2010 Annual Budget							
	2010 Operating Budget	2010 Reserve Changes	2010 Total Budget	Actual Fees & Costs 2009 (1)	Budget 2010 V.S. Actual 2009	% Change Budget 2010 VS Actual 2009	
<b>Professional Services</b>							
Management services	\$ 43,573		\$ 43,573	\$ 46,375	\$ (2,802)	-6%	
Admin supplies and services	2,000		2,000	2,863	(863)	-30%	
AOAO admin expenses	4,013		4,013	3,756	257	7%	
Legal	3,500		3,500	3,539	(39)	-1%	
Newsletter/Web publication	75		75	-	75	N/A	
Bookkeeping	4,000		4,000	1,359	2,641	194%	
Consulting services	-		-	-	-	N/A	
Audit	4,000		4,000	4,031	(31)	-1%	
Manager's Office Cleaning	-		-	89	(89)	-100%	
<b>Total</b>	<b>\$ 61,161</b>	<b>\$ -</b>	<b>\$ 61,161</b>	<b>\$ 62,012</b>	<b>\$ (851)</b>	<b>-1%</b>	
<b>Payroll and Benefits includes 21% PEO (see supporting table 3 below)</b>							
Security Officer # 1	\$ 40,772		\$ 40,772	\$ 34,802	\$ 5,970	17%	
Security Officer # 2	\$ 36,695		36,695	27,607	9,088	33%	
Security Officer # 3	\$ 36,695		36,695	24,777	11,918	48%	
Maintenance Worker	\$ 36,695		36,695	31,344	5,351	17%	
Maintenance Helper	\$ 36,695		36,695	29,045	7,650	26%	
Custodial Worker (Part Time)	\$ 24,503		24,503	22,788	1,715	8%	
Manager	\$ 59,290		59,290	61,640	(2,350)	-4%	
Manager's apartment	\$ 9,600		9,600	9,600	-	0%	
<b>Total</b>	<b>\$ 280,944</b>		<b>\$ 280,944</b>	<b>\$ 241,603</b>	<b>\$ 39,341</b>	<b>16%</b>	
<b>Insurance</b>							
Property	\$ 24,507		\$ 24,507	\$ 24,265	\$ 242	1%	
General Liability	4,058		4,058	4,018	40	1%	
Umbrella	1,581		1,581	1,565	16	1%	
Fidelity Bond	251		251	249	2	1%	
Flood	52,935		52,935	48,123	4,812	10%	
Insurance - D & O	1,429		1,429	1,415	14	1%	
Boiler & Machinery	2,034		2,034	2,014	20	1%	
<b>Total</b>	<b>\$ 86,795</b>	<b>\$ -</b>	<b>\$ 86,795</b>	<b>\$ 81,649</b>	<b>\$ 5,146</b>	<b>6%</b>	
<b>Total Expenses</b>	<b>\$ 810,664</b>	<b>\$ -</b>	<b>\$ 810,664</b>	<b>\$ 819,365</b>	<b>\$ (8,700)</b>	<b>-1%</b>	
<b>Surplus/ (Deficit)</b>	<b>\$ 4,947</b>	<b>\$ -</b>	<b>\$ 4,947</b>	<b>\$ (50,159)</b>	<b>\$ 55,106</b>	<b>-110%</b>	
<b>Unpaid Maintenance Fees over 30 days past due</b>				<b>\$ (19,468)</b>			
<b>Total Surplus or (Deficit) if Maintenance Fees were paid by owners who are more than 30 days past due</b>				<b>\$ (30,691)</b>			
<b>Footnotes:</b>							
<b>(1) is Actual Performance for first 11 months and an estimate for the last month of the calendar year.</b>							
<b>(2) Variance is Budget less Actual Performance</b>							
<b>(3) Supporting Payroll Table</b>							
	<b>Current Hourly Rate</b>	<b>Proposed Hourly Rate</b>	<b>Hours Worked in Year</b>	<b>Overtime &amp; Holiday Pay 8%</b>	<b>Total Compensation</b>	<b>Payroll and PEO Costs at 21%</b>	
Security Officer # 1	\$ 14.00	\$ 15.00	2,080	\$ 2,496	\$ 33,696	\$ 40,772	
Security Officer # 2	\$ 11.00	\$ 13.50	2,080	\$ 2,246	\$ 30,326	\$ 36,695	
Security Officer # 3	\$ 10.00	\$ 13.50	2,080	\$ 2,246	\$ 30,326	\$ 36,695	
Maintenance Worker	\$ 12.50	\$ 13.50	2,080	\$ 2,246	\$ 30,326	\$ 36,695	
Maintenance Helper	\$ 12.50	\$ 13.50	2,080	\$ 2,246	\$ 30,326	\$ 36,695	
Custodial Worker (Part Time)	\$ 12.00	\$ 12.50	1,500	\$ 1,500	\$ 20,250	\$ 24,503	
Manager					\$ 49,000	\$ 59,290	
Manager's apartment						\$ 9,600	
<b>Total</b>						<b>\$ 280,944</b>	

Ocean Villas  
at Turtle Bay Resort  
2010 Maintenance Fee Log

Owner's Names (by alpha)	# of Bedroom	MF Amount
Allen:Villa 111	3	\$1,129.21
Anderson:Villa 102	1	\$592.14
Anderson:Villa 103	3	\$1,246.26
Armstrong:Villa 301	4	\$1,865.96
Crocker:Villa 312	3	\$1,246.26
Farrell:Villa 212	3	\$1,246.26
Flannigan:Villa 218	4	\$1,865.96
Gay:Villa 101	4	\$1,865.96
Ginella/Long:Villa 309	3	\$1,129.21
Glati/Snell:Villa 110	3	\$1,246.26
Glendenning:Villa 116	3	\$1,246.26
Glendenning:Villa 117	1	\$592.14
Grey:Villa 213	3	\$1,129.21
Gullo:Villa 207	3	\$1,246.26
HI Condo Inv.: Villa 205	1	\$592.14
HI Condo Inv.: Villa 206	3	\$1,246.26
Hicks:Villa 107	3	\$1,246.26
Horton:Villa 113	3	\$1,129.21
Horton:Villa 314	3	\$1,129.21
Hulon:Villa 215	3	\$1,328.89
Hussey:Villa 115	3	\$1,246.26
Jensen:Villa 313	3	\$1,129.21
Jewell:Villa 204	4	\$1,783.33
Jewell:Villa 214	3	\$1,129.21
Johnson: Villa 114	3	\$1,129.21
Kasoff:Villa 307	3	\$1,246.26
Leff:Villa 305	1	\$592.14
Leff:Villa 306	3	\$1,246.26
Lewandowski:Villa 304	4	\$1,783.33
Liang:Villa 201	4	\$1,865.96
Liotta, Gina:Villa 106	3	\$1,246.26
Liotta:Villa 104	4	\$1,783.33
Marsh:Villa 108	3	\$1,129.21
Marsh:Villa 109	3	\$1,129.21
Matson:Villa 210	3	\$1,246.26
McCann:Villa 208	3	\$1,129.21
McClanahan:Villa 311	3	\$1,129.21
McClanahan:Villa 318	4	\$1,865.96
Mount:Villa 216	3	\$1,246.26
Mount:Villa 217	1	\$592.14
Olsen, Carole:Villa 105	1	\$558.63
Olsen, Carole:Villa 203	3	\$1,175.72
Olsen, Nathaniel:Villa 202	1	\$558.63
Olsen, Nathaniel:Villa 302	1	\$558.63
Olsen, Nathaniel:Villa 303	3	\$1,175.72
OVD: Villa 119	3	\$1,246.26
OVD: Villa 120	1	\$592.14
OVD: Villa 316	3	\$1,246.26
OVD: Villa 317	1	\$592.14
Pugmire:Villa 112	3	\$1,246.26
Seitz:Villa 209	3	\$1,129.21
Shmerler:Villa 315	3	\$1,328.89
Spezzano:Villa 121	4	\$1,865.96
TBOV, LLC :Villa 310	3	\$1,246.26
Weinman:Villa 118	4	\$1,865.96
Wiebort:Villa 211	3	\$1,129.21
Wilhelm:Villa 308	3	\$1,129.21
		<b>\$68,612.63</b>

## EXHIBIT K

### Summary of Sales Contract

The specimen Condominium Purchase Agreement, Deposit Receipt and Contract ("Purchase Agreement") contains, among others, the following terms and provisions (which may be modified or otherwise limited by provisions not summarized):

1. The Purchase Price shall be paid in two (2) payments, the second of which shall be paid to the escrow agent, subject to other terms, three (3) days prior to the Date of Closing, except that mortgage proceeds from Buyer's Permanent Loan may be paid one (1) day prior to the Date of Closing.
2. The Purchase Price does not include closing costs, prorations, and additional costs payable by Buyer under the Purchase Agreement.
3. The Purchase Agreement will become a binding sales contract upon acceptance by Seller, provided that Buyer may cancel within 30 days of receiving a copy of the Final Public Report and any Supplemental Public Report. Buyer may elect to waive Buyer's right to cancel before the end of said 30-day period.
4. Buyer has received a copy of the public report(s) for the Project, and Buyer acknowledges that Buyer has had a reasonable opportunity to read the Declaration, By-Laws, House Rules, form of Apartment Deed and Escrow Agreement, and to examine the Project plans, and Buyer accepts such documents and plans with such changes and modifications as the Project architect may deem necessary.
5. Within twelve (12) days after the date Seller accepts the Purchase Agreement, Buyer must submit to Seller a Qualification Letter, in form and content acceptable to Seller, issued by the Qualification Agent identified in the Purchase Agreement confirming Buyer's ability to pay the Purchase Price.
6. If Buyer applied for and diligently pursued a Qualification Letter, and Buyer does not obtain a Qualification Letter in form and content acceptable to Seller within twelve (12) calendar days of Seller's acceptance of this Agreement, then Seller or Buyer can terminate this Agreement, and in such event, Escrow shall refund to Buyer all monies previously paid by Buyer, with interest to the extent provided under the Purchase Agreement, less Escrow's cancellation fee and other actual expenses incurred by reason of Buyer having signed the Purchase Agreement.
7. If Buyer does not act in good faith under the Purchase Agreement or otherwise comply with the requirements with respect to mortgage financing set forth in the Purchase Agreement strictly within the time frames set forth in the Purchase Agreement, Buyer shall be in default under the Purchase Agreement, and Seller may then cancel Escrow, terminate the Purchase Agreement and pursue remedies as provided in the Purchase Agreement.
8. All payments made by Borrower under the Purchase Agreement will be deposited with Escrow under the terms of the Escrow Agreement.
9. The Purchase Agreement shall not be construed as a present transfer of any interest in the Apartment, but is an agreement to transfer in the future.
10. The monthly maintenance charges and assessments for the Apartments set forth in the public reports for the Project are not intended to be and do not constitute any representation or warranty by Seller.
11. Seller may cancel the Purchase Agreement if (i) Buyer fails to make any payment when due under the Purchase Agreement, or (ii) Buyer fails to furnish to Seller the qualification letter within the time

period specified in the Purchase Agreement, or (iii) if Buyer is not a natural person, Buyer fails to have its obligations under the Purchase Agreement guaranteed by a person acceptable to Seller, or (iv) Buyer fails to execute and return the receipt and notice of right to cancel in connection with Buyer's receipt of a copy of the Final Public Report within the time period specified in the Purchase Agreement, or (v) Buyer fails to perform any other obligation required under the Purchase Agreement and such failure continues for fifteen (15) days after Seller gives written notice to Buyer of such failure, or (vi) any Buyer under the Purchase Agreement dies prior to the performance of all of Buyer's obligations under the Purchase Agreement.

12. Neither Seller nor any of Seller's representatives has made any representations or references as to rental of the Apartment, or the income, or any other economic benefit to be derived from the rental of the Apartment.

13. Seller makes only those warranties regarding construction and appliances which are set forth in the Purchase Agreement.

14. The Date of Closing shall be a date mutually acceptable to Buyer and Seller, but in no event more than sixty (60) days after Seller has accepted the Purchase Agreement.

15. Buyer will not take possession of the Apartment prior to the Date of Closing and full satisfaction by Buyer of all terms and conditions of the Purchase Agreement.

16. Buyer or its agent will inspect the Apartment and will sign an inspection sheet to be furnished by Seller or the contractor, or Buyer will appoint the inspecting architect or engineer for the Project, or Seller or any agent of Seller to inspect the Apartment and execute the inspection sheet on behalf of Buyer. Buyer agrees to accept possession of the Apartment despite the existence of defects and damages as long as Seller agrees to repair such defects or damages within a reasonable time. Buyer agrees to indemnify Seller for any damages or losses resulting from any wrongful refusal to accept possession of the Apartment.

17. Risk of loss to the Apartment shall be borne by Seller until the Date of Closing.

18. Time is of the essence of the obligations of Buyer under the Purchase Agreement.

19. In the event of any default under the Purchase Agreement by Buyer, (i) Seller may terminate the Purchase Agreement and thereupon, at Seller's option, all sums previously paid by Buyer, together with all accrued interest thereon, shall belong to Seller as liquidated damages, or (ii) Seller may pursue any other remedies permitted at law or in equity, including, but not limited to, specific performance.

20. Seller shall be in default under this Agreement if Seller fails to perform any obligation required under the Purchase Agreement and such failure continues for fifteen (15) days after Buyer gives written notice to Seller of such failure.

21. In the event of any default by Seller, Buyer may (i) cancel and terminate the Purchase Agreement by written notice to Seller, and receive (x) from Escrow a full refund of all moneys paid by Buyer under the Purchase Agreement, together with interest to the extent provided in the Purchase Agreement (less any cancellation fee imposed by Escrow), and (y) all costs, including reasonable attorneys' fees, incurred by Buyer by reason of Seller's default, or (ii) file suit against Seller for the actual damages suffered by Buyer as a result of Seller's default under the Purchase Agreement, or (iii) pursue any other remedies permitted at law or in equity, including, but not limited to, seeking specific performance of the Purchase Agreement.

22. Buyer may not at any time assign its rights or obligations under the Purchase Agreement.

23. Portions of the Project are located within a flood zone (zone VE). However, upon completion of construction, all buildings of the Project will either conform with applicable flood zone requirements and

regulations then in effect, or qualify as legal non-conforming structures with respect to flood zone requirements and regulations then in effect. Buyer will be assuming the risk of any property damage, personal injury, loss in property value, costs, expenses or other consequences that may result from (i) the location of portions of the Project within a flood zone, such as the cost of obtaining flood insurance as may be required by the Declaration or other applicable law; or (ii) future changes to the flood zone requirements applicable to the Project or portions thereof, such as the additional cost of rebuilding any non-conforming structure that may be destroyed in conformity with the flood zone requirements then applicable to the Project.

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



## EXHIBIT L

### Summary of Escrow Agreement

The Condominium Escrow Agreement ("Escrow Agreement") dated as of January 29, 2004, was made by and between Title Guaranty Escrow Services, Inc. ("Escrow Agent") and Ocean Villas Development, L.L.C. The Escrow Agreement contains among other provisions the following (which may be modified or otherwise limited by provisions not summarized herein):

1. Sales Contracts Deposited in Escrow. Whenever Developer enters into a sales contract with a purchaser for the sale of an apartment in the Ocean Villas at Turtle Bay condominium project (the "Project"), Developer shall deliver an executed copy of said contract to Escrow Agent. The sales contract shall require that all payments due thereunder be made directly to Escrow Agent to be held and disbursed in accordance with the Escrow Agreement. If the purchaser intends to purchase the apartment as an "owner-occupant" pursuant to Chapter 514A, Part VI, Hawaii Revised Statutes ("H.R.S."), said purchaser shall deliver an owner-occupant affidavit to Escrow Agent in the form and content required by H.R.S. §514A-104.5.
2. Receipt of Funds by Escrow Agent. Escrow Agent will receive payments under the sales contracts and from any other source relating to the Project. Escrow Agent will deposit all funds within a reasonable time after receipt in an interest-bearing account or accounts at a federally insured bank, savings and loan association, or other financial institution. Any interest earned on such deposits shall accrue to the credit of Developer unless Escrow Agent is asked to establish a separate account for a purchaser, in which case interest on such account shall accrue to the credit of said purchaser.
3. Conditions to be Met Prior to Disbursement of Purchasers' Funds Held In Escrow to Pay Certain Project Expenses Prior to Completion of Construction. Escrow Agent shall make no disbursement of funds deposited with it unless: (a) the Real Estate Commission has issued a Final Public Report on the Project; (b) Developer or Developer's attorney has notified Escrow Agent that the requirements of H.R.S. §514A-62 and §514A-63 have been met; and (c) Developer has given Escrow Agent a written waiver of any reserved option to cancel the sales contract. Prior to completion of construction, provided that the requirements set forth in clauses (a) through (c) of the preceding sentence have been satisfied, Escrow Agent shall disburse funds deposited with it to pay for (i) construction costs of the buildings and other improvements and fixtures of the Project, and (ii) architectural, engineering, finance and legal fees and other incidental expense of the Project to the extent approved by Developer's mortgagee.
4. Return of Funds and Documents. Escrow Agent will return deposited sums, without interest and less Escrow Agent's cancellation fee and other costs up to a maximum of \$250.00, to a purchaser if:
  - (a) Developer and such purchaser shall instruct Escrow Agent in writing to return such funds to such purchaser; or
  - (b) Developer shall notify Escrow Agent of Developer's exercise of the option to cancel or rescind the Sales Contract entered into by such purchaser pursuant to any right of cancellation or rescission provided for therein or otherwise available to Developer with respect to which, in accordance with the sales contract, Purchaser is entitled to a return of funds deposited by it with Escrow Agent; or
  - (c) With respect to any purchaser whose funds were obtained prior to the issuance of the Final Public Report, such purchaser has exercised such purchaser's right to cancel the sales contract entered into by such purchaser pursuant to HRS Section 514A-62; or
  - (d) Such purchaser has exercised such purchaser's right to rescind the sales contract pursuant to HRS Section 514A-63.

5. Unclaimed Funds. Escrow Agent shall notify each purchaser entitled to a return of funds by registered or certified mail. If any purchaser does not claim the refund within sixty (60) days, Escrow Agent shall deposit the funds with a bank or depository selected by Escrow Agent in the name of Developer as trustee for the purchaser. Thereafter, Escrow Agent shall have no further obligation or liability with respect to such funds or purchaser.
6. Closing. Except for the sales contract and any note and mortgage, Escrow Agent shall arrange for and supervise the execution, recording, and delivery of all documents, as necessary, related to the Project.
7. Partial Closings. In the event Developer desires partial closings (i.e. closings for some but not all of the apartments), Escrow Agent agrees to cooperate and facilitate such partial closings.
8. Defects in Documents. Escrow Agent shall record all documents within three (3) business days of the date of closing, provided said documents are not defective in any way. If any documents are defective, Escrow Agent will notify Developer thereof and correct such defects if they are within Escrow Agent's capacity to correct.
9. Purchaser's Default. Developer shall notify Escrow Agent when payments are due from a purchaser, who shall then be notified by Escrow Agent. Escrow Agent shall notify Developer of any defaults by a purchaser. If Developer certifies to Escrow Agent in writing that Developer has terminated the sales contract, Escrow Agent shall thereafter treat all funds of the purchaser paid on account of said sales contract as funds of Developer. Upon the written request of Developer, Escrow Agent shall pay such funds to Developer, less any cancellation fee, and shall return any partially executed conveyance documents. Escrow Agent shall retain all other documents for the statutory period. Thereafter, Escrow Agent shall have no further obligation or liability with respect to such funds or purchaser.
10. Protection of Escrow Agent. Escrow Agent shall have no liability for acting in accordance with the terms of the Escrow Agreement, notwithstanding a notice to the contrary from Developer, any purchaser, or any third person. Escrow Agent shall not be responsible for the validity or sufficiency of any documents received by it, shall assume that said documents have been properly executed, and shall assume that any written certification or instrument from Developer is true and accurate. In the event of any dispute, difference, or conflicting demand upon Escrow Agent, Escrow Agent shall not be required to determine the same or take any action in the premises, but may await settlement of the controversy by appropriate legal proceedings or otherwise, including the resolution of an interpleader action initiated by Escrow Agent. Developer and each purchaser agree to pay Escrow Agent on demand and to indemnify and hold harmless Escrow Agent against all costs and damages arising out of this Agreement, except for any act or omission of Escrow Agent that is not generally accepted as a reasonable business practice. Escrow Agent shall not be required to mail any notice or keep any records required under H.R.S. Chapter 514A.
11. Miscellaneous. The Escrow Agreement is binding upon and inures to the benefit of the parties hereto and their successors and assigns. The Escrow Agreement may be terminated on thirty (30) days written notice to either party. In the event of any conflict between the Escrow Agreement and H.R.S. Chapter 514A, the statutory provisions shall control. Escrow Agent shall furnish Developer with semi-monthly reports that cover the status of each sales contract in escrow.
12. Compensation. For each Apartment sale closed by Escrow Agent, Escrow Agent shall be paid an escrow fee. The escrow fee shall be \$800.00 plus the applicable Hawaii general excise tax thereon with respect to Apartments having a purchase price of less than \$750,000.00. The escrow fee shall be \$1,000.00 plus the applicable Hawaii general excise tax thereon with respect to Apartments having a purchase price of from \$750,000.01 to \$1,000,000.00. The escrow fee shall be \$1,500.00 plus the applicable Hawaii general excise tax thereon with respect to Apartments having a purchase price of more than \$1,000,000.00. The premium for the standard owner's title insurance policy with respect to each Apartment shall be \$900.00 with respect to Apartments having a purchase price of less than \$750,000.00;

\$1,200.00 with respect to Apartments having a purchase price of from \$750,000.01 to \$1,000,000.00; and \$1,700.00 with respect to Apartments having a purchase price of more than \$1,000,000.00. Premiums for an ALTA Homeowner's policy or ALTA Owner's policy are slightly more and are set forth in the Escrow Agreement. An ALTA lender's title insurance policy (if necessary) issued concurrently with the title insurance policy is free of charge. The title insurance premiums may be subject to change if reinsurance rates change, or if special endorsements or additional title services are requested.

The compensation to Escrow Agent with respect to the closing of the sale of any apartment shall be due and payable upon the earlier of: (i) transfer to a purchaser of legal title to such apartment; and (ii) final disbursement of the purchase price of such apartment and other sums held by Escrow Agent with respect hereto. Developer agrees to pay an additional charge for any changes to any closing statement or other document that are necessary after the commencement of preclosing or closing proceedings, unless said changes are necessary due to the fault of Escrow Agent.

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

## EXHIBIT M

### Additional Information

Note: Unless otherwise specified, capitalized terms used herein have the same meanings as in the Condominium Declaration.

1. This report applies only to Units 119, 316 and 317 of the Project which, as of the date of this report, are the only remaining units in the Project still owned by the Developer and Kulima Resort Company.
2. As of the date of this report, the Developer does not own the percentage interest in the Land which is appurtenant to Units 119, 316 or 317. Rather, the percentage interest in the Land appurtenant to such units is owned by Kulima Resort Company (the "Fee Owner"). The Developer and the Fee Owner entered into a Development Agreement whereby the Fee Owner granted the Developer the right to develop the Project and to construct the Improvements on the Land. Under the Development Agreement, the Fee Owner agreed, at the closing of the sale of any Apartment in the Project, to sign the Apartment Deed conveying the Apartment to the purchaser for purposes of conveying a fee simple interest in the Land to the purchaser at closing. Thus, upon the sale of any of the remaining units owned by the Developer, the Fee Owner will join with the Developer in the Apartment Deed to convey to the purchaser a fee simple interest in the Land appurtenant to the unit being conveyed.
3. Under the Bylaws, anyone who purchases an Apartment after the initial sale of such Apartment by the Developer must pay three (3) months of maintenance fees to the Association.
4. The Project, including each of the Apartments in the Project, is encumbered by restrictive covenants, conditions and restrictions (the "Design Guidelines") recorded in the Bureau of Conveyances as Document No. 2004-195080 and filed in the Land Court of the State of Hawaii as Document No. 3169232. The Design Guidelines impose restrictions on the construction of any new improvements or material alterations to existing improvements of the Project including but not limited to obtaining the approval of the owner of the Hotel at Turtle Bay Resort.
5. The Project is located adjacent to the ocean, and the prevailing winds come off the ocean much of the time. As a result, frequent, ongoing, and routine maintenance will be required to mitigate the corrosive effect of the salt particles in the air carried by the wind on hardware and other materials and items in the Project which are susceptible to corrosion, including any items stored or placed in the individual apartments such as furniture, appliances, fixtures, and personal belongings. Even with such maintenance, prospective purchasers should expect that hardware and such other susceptible materials and items will have to be replaced on a much more frequent basis than in other environments as a result of the corrosive effects of the ocean-front locale of the Project.
6. Portions of the Project are located within a flood zone (zone VE). However, all buildings of the Project either conform with or qualify as legal non-conforming structures with respect to applicable flood zone requirements and regulations. Buyer will be assuming the risk of any property damage, personal injury, loss in property value, costs, expenses or other consequences that may result from (i) the location of portions of the Project within a flood zone, such as the cost of obtaining flood insurance as may be required by the Declaration or other applicable law; or (ii) future changes to the flood zone requirements applicable to the Project or portions thereof, such as the additional cost of rebuilding any non-conforming structure that may be destroyed in conformity with the flood zone requirements then applicable to the Project.

**EXHIBIT N**

OFFICE OF THE  
ASSISTANT REGISTRAR, LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

The original of this document was  
recorded as follows:

DOCUMENT NO. \_\_\_\_\_  
DATE LCO 181650  
CTI 971,332  
JAN 27, 2010 02:00 PM

Reserved for Recording Information

Reserved for Recording Information

After recording, return by-mail [ ] Or pick-up [x]

SHAUN M. MUKAI, ESQ.  
McCorriston, Miller, Mukai,  
MacKinnon, LLP  
Five Waterfront Plaza, 4<sup>th</sup> Floor  
500 Ala Moana Boulevard  
Honolulu, Hawaii 96813

Document contains 102 Pages

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application )  
 )  
 of )  
 )  
 Trustees under the Will of the Estate of James )  
 Campbell, deceased )  
 )  
 )  
 to register and confirm title )  
 to land situate at Kahuku, District of )  
 Ko'olaupoko, City and )  
 County of Honolulu, State of Hawai'i )  
 \_\_\_\_\_ )

LAND COURT APPLICATION NO. 1095  
LAND COURT CASE NO. 09-0055  
DECREE (MAP 172)

LAND COURT  
STATE OF HAWAII  
FILES  
2010 JAN 22 PM 12:04  
KATHLEEN HANAWAHINE  
REGISTRAR

DECREE (MAP 172)

In conformity with the Findings of Fact and Decision entered on JAN 22 2010

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Map 172 of Land Court Application No. 1095 be and the same is hereby approved;
2. The high-water mark, being the seaward boundary of new Lots 1217-A and 1217-B, as of May 23, 2005, is as shown on Map 172;
3. Easement 392 for access purposes, in favor of Lot 1217-B and affecting Lot 1217-A, is designated as shown on Map 172;
4. KUILIMA RESORT COMPANY, a Hawai'i general partnership, one of the Petitioners herein, is the sole owner of said new Lot 1217-A, as shown on Map 172, and the improvements thereon, subject to the rights, liens and encumbrances as set forth below;

5. Lot 1217-B, as shown on Map 172, and the improvements thereon are vested in the Apartment Owners shown on Exhibit "A" attached hereto, subject to the mortgages shown on Exhibit "A" attached hereto and the rights, liens and encumbrances set forth below;
6. Lots 1217-A and 1217-B shall have the access and other rights as set forth in said Findings of Fact and Decision entered on JAN 22 2010;
7. Lots 1217-A and 1217-B are subject to the encumbrances as set forth in said Findings of Fact and Decision entered on JAN 22 2010;
8. The Ocean Villas at Turtle Bay Resort, more particularly described in that certain Declaration of Condominium Property Regime for "Ocean Villas at Turtle Bay Resort" Condominium Project dated August 31, 2004, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 3172940, as amended, and on Condominium Map 1665, consists of fifty-seven (57) apartment units and related improvements, which units and related improvements are located on Lot 1217-B.
9. The Assistant Registrar of the Land Court is hereby authorized and directed to endorse on Transfer Certificate of Title No. 323,595 as to Lot 1217-B and those Transfer Certificates of Title issued to the individual Apartment Owners as shown in Exhibit A attached hereto, a reference to this decree, to said map and to the encumbrances as set forth herein;
10. The Assistant Registrar of the Land Court is hereby authorized and directed to issue to KUILIMA RESORT COMPANY, a Hawai'i general partnership, whose address is 57-091 Kamehameha Highway, Kahuku, Hawai'i 96731 a new Land Court Certificate of Title for Lot 1217-A referencing this decree, said map and the encumbrances as set forth herein.



Dated: Honolulu, Hawai'i JAN 22 2010

KATHLEEN HANAWAHINE  
REGISTRAR OF THE LAND COURT

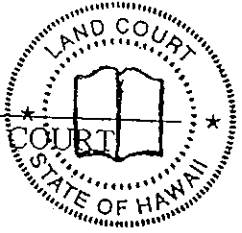


Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mtg Doc Nos.	2nd Mtg Doc No.	3rd Mtg Doc No.	4th Mtg Doc No.	5th Mtg Doc No.	Lender Name
101	LYNETTE, GAY and ALISON H. MOSCA, Co-Trustees under that certain unrecorded trust known as "The Lynette N. Gay Revocable Trust" dated June 26, 2002	755867	3289340 2005-130036	n/a	n/a				
102	JAMES BRANDT ANDERSEN, husband of Katherine Ann Andersen, Tenant in Severalty	766175	3315742 2205-165401	3315743 2005-165402	n/a				Bank of America, N.A.
103	JAMES BRANDT ANDERSEN, husband of Katherine Ann Andersen, Tenant in Severalty	766176	3315745 2005-165408	3315746 2005-165409	n/a				Bank of America, N.A.
104	VINCENT FRANK LIOTTA, husband of JoAnne Liotta, Tenant in Severalty	845932	3562009 2007-030403	3562010 2007-030404	3562011 2007-030405	3585947 2007-066092			Wells Fargo Bank, N.A.
105	CAROLE GAY OLSEN, unmarried, Tenant in Severalty	775494	3341937 2005-210385	3621664 2007-117140	3636959 2007-137899				JPMorgan Chase Bank, N.A. MERS as nominee for Countrywide Bank FSB
106	GINA CARMEL OLSEN, wife of Nathaniel Penn Olsen, Tenant in Severalty	775495	3341939 2005-210387	3477188 2006-163200	3629490 2007-127488				Wells Fargo Bank, N.A.
107	MICHAEL PAU HICKS and MARIE LOUISE ELEONORA HICKS, husband and wife, as Joint Tenants	760428	3300464 2005-143441	3300465 2005-143442	3300466 2005-143443				Wells Fargo Bank, N.A.
108	TURTLE BAY 108, LLC, a Utah limited liability company	920325	3782747 2008-134320	3602811 2007-088529					Wells Fargo Bank, N.A.
109	TURTLE BAY 108, LLC, a Utah limited liability company	916900	3773878 2008-120016	n/a	n/a				Wells Fargo Bank, N.A.
110	CHRISTOPHER WILLIAM GLATIS, unmarried, and KBITH EDDY SNELL, husband of Margaret Snell, a Tenants in Common	775271	3341443 2005-209786	3341444 2005-209787	3341445 2005-209788				Wells Fargo Bank, N.A.
111	PATRICK JOSEPH ALLEN and SANDRA KASHIWADA ALLEN, husband and wife, as Tenants by the Entirety	813674	3452967 2006-129277	n/a	n/a				Wells Fargo Bank, N.A.
112	UMGENI, LLC, a California limited liability company	744625	3256686 2005-078742	3256687 2005-178743	A/M 3831631 2009-027156				First Hawaiian Bank Bank of America, N.A.
113	KIM BLATNICK HORTON, wife of Richard Alm Horton, as Tenant in Severalty	751246	3276639 2005-111063 A/M 3788638 2008-143353	3276640 2005-111064	3358720 2005-239167	3460340 2006-139530	3707644 2008-015458	3774061 2008-120210	First Horizon Home Loan Corporation Douglas Shields Virginia K. Petersen, Trustee of the Paul and Virginia Petersen Trust C Dated January 2, 1996 Activity Link Systems, LLC

Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mfg Doc Nos.	2nd Mfg Doc No.	3rd Mfg Doc No.	4th Mfg Doc No.	5th Mfg Doc No.	Lender Name
114	EDWARD BLAINE JOHNSON, husband of Christina Ray Johnson	895053	3711011 2008-021105						
115	JOHN JAMES HUSSEY and PAULA ANTONETTE HUSSEY, husband and wife, as Tenants by the Entirety	695265	3271335 2005-101536	3271336 2005-101537	3701977 2008-005725				Wells Fargo Bank, N.A.
116	STANLEY DOUGLAS GLENDENNING and GRETCHEN GRAFF GLENDENNING, husband and wife, as Tenants by the Entirety	909208	3751342 2006-083810	n/a	n/a				
117	STANLEY DOUGLAS GLENDENNING and GRETCHEN GRAFF GLENDENNING, husband and wife, as Tenants by the Entirety	909206	3751337 2006-083808	3751338 2008-083809					
118	BARRY M. WEINMAN and VIRGINIA S. WEINMAN, as Trustees of the Weinman Family Trust dated September 25, 1998	770296 323595	3327258 2005-186514	n/a	n/a				MERS as nominee for Central Pacific Home Loans Inc
119	Yet to be sold				3335668 2005-199934				
120	Yet to be sold								
121	CHUCK SPEZZANO and LENORA KAY SPEZZANO, also known as Lency Spezzano, as Co-Trustees of the Charles Lee Spezzano Revocable Trust dated May 16, 1995, and LENORA KEY SPEZZANO and CHUCK SPEZZANO, as Co-Trustees of the Lenora Kay Spezzano Revocable Trust dated May 16, 1995, as Tenants in Common	323595		3335667 2005-199933	A/M 3751517 2008-084075	3751518 2008-084076			Credit Suisse Wells Fargo Bank NA
201	KENNETH CHICHU LIANG and LAURA KELLY LIANG, husband and wife, as Joint Tenants as to an undivided 1/3 interest, and GEORGE ANTHONY LEIVA and VALERIE JEAN LEIVA, husband and wife, as Joint Tenants, as to an undivided 1/3 interest, and KEITH LIANG, unmarried, as Tenant in Severalty as to an undivided 1/3 interest, as Tenants in Common	845516	3560116 2007-028128	3529787 2006-232942	3529788 2006-232943	3811424 2008-184233			Bank of Hawaii
202	NATHANIEL PENN OLSEN, husband of Gina Carmel Olsen, as Tenant in Severalty	782447 851781	3362721 2005-246518	3362722 2005-246519					Wells Fargo Bank, N.A. JP Morgan Chase Bank, N.A. MERS as nominee for American Brokers Conduit

Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mtg Doc Nos.	1st Mtg Doc No.	2nd Mtg Doc No.	3rd Mtg Doc No.	4th Mtg Doc No.	5th Mtg Doc No.	Lender Name
203	CAROLE GAY OLSEN, as Trustee of The Carole Gay Olsen Trust dated July 27, 2002	853869	3587870 2007-066742	3582224 2007-058286	3582225 2007-058287					Wells Fargo Bank, N.A.
204	SURFER DUDE VILLA, LLC, a Washington limited liability company	854444	2007-069504	n/a	n/a					Wells Fargo Bank, N.A.
205	HAWAII CONDO INVESTORS, LLC, a Delaware limited liability company	745088	3257880 2005-080752	3257881 2005-080753	n/a					Wells Fargo Bank, N.A.
206	HAWAII CONDO INVESTORS, LLC, a Delaware limited liability company	745089	3257883 2005-080759	3257884 2005-080760	n/a					Wells Fargo Bank, N.A.
207	CHARLES S. GULLO, husband of Michelle Meana Gullo, as Tenant in Severalty	766702	3317140 2005-167782	3317141 2005-167783	n/a					Wells Fargo Bank, N.A.
208	JOHN MICHAEL MCCANN, unmarried and GARY TODD STEPHENS, unmarried, as Joint Tenants	767007	3317939 2005-169568	3317940 2005-169569	3458974 2006-137116					Bank of Hawaii assigned to Lehman Brothers Bank, FSB Bank of Hawaii
209	KEVIN LEWIS SEITZ and KATHLEEN WONG SEITZ, husband and wife, as Tenants by the Entirety	800571	3413763 2006-065536	3413764 2006-065537	3413765 2006-065538					MERS as nominee for Central Pacific Home Loans, Inc. Central Pacific Bank
210	JOSEPH MATSON; HENRY and PAULETTE BARRET-MATSON, husband and wife, as Joint Tenants	732813	3244609 2005-057173	n/a	n/a					
211	ROBERT WIEBORT, Trustee of the Robert Wiebort Trust dated March 31, 2004	755570	3288376 2005-128322	3615170 2007-107349	3682009 2007-200891					Wells Fargo Bank, N.A.
212	DOUGLAS IRVINE FARRELL and MYRA FARRELL, husband and wife, as Tenants by the Entirety	744626	3256689 2005-078749	3256690 2005-078750	3256691 2005-078751					Wells Fargo Bank, N.A.
213	PHILIP HAROLD GREY, husband of Denise Elizabeth Grey, as to an undivided 1/3 interest, and PAUL GEORGE GREY, husband of Sherry Mae Grey, as to an undivided 1/3 interest, and CYNTHIA HAES, unmarried, as to an undivided 1/3 interest, as Tenants in Common	755000	3286632 2005-125004		3594642 2007-076776					MERS as nominee for Multi-State Home Lending, Inc.

Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc No.	Mtg Doc Nos.	2nd Mtg Doc No.	3rd Mtg Doc No.	4th Mtg Doc No.	5th Mtg Doc No.	Lender Name
214	OCEANFRONT VILLAS AT TURTLE BAY, LLC, a Washington limited liability company	891667	3700928 2008-004819						
215	GERALDINE TERESA DAVIS-HULON, unmarried, as Tenant in Severalty	751525	3277373 2005-111866	3277374 2005-111867	3611614 2007-101906				Wells Fargo Bank, N.A. Washington Mutual Bank
216	DAVID ALLEN MOUNT and SHARON Family Trust dated March 5, 1997	779828	3355083 2005-232968	n/a	n/a				
217	DAVID ALLEN MOUNT and SHARON Family Trust dated March 5, 1997	779829	3355084 2005-232969	n/a	n/a				
218	EDMUND RICHARDS TWEEDY FLANIGAN, husband of Cynthia Flanigan, as Tenant in Severalty	766384	3316424 2005-166365	n/a	n/a				
301	PATRICK WILLIAMS WCDYTTI, unmarried, WILLIAM GREGORY BEIGER and JACQUELINE LUTZ GEIGER, Trustees under that certain Gelger Family Trust dated November 23, 2004, and SEAN F. ARMSTRONG and JUDY ARMSTRONG, Trustees under that certain Armstrong Family Trust dated February 21, 2001, and DESMOND A. ARMSTRONG and ANN M. ARMSTRONG, Trustees under The Armstrong Family Trust dated April 22, 2005, as Tenants in Common	720674	3342949 2005-212943	3342950 2005-212944	n/a				
302	NATHANIEL PENN OLSEN, husband of Gina Carmel Olsen, as Tenant in Severalty	849078	3571610 2007-044153	3601705 2007-086736	3669679 2007-183315				Wells Fargo Bank, N.A.
303	NATHANIEL PENN OLSEN, husband of Gina Carmel Olsen, as Tenant in Severalty	750934	3275729 2005-109534	3507042 2006-199708	3554222 2007-021171				Wells Fargo Bank, N.A.
304	THOMAS EDWARD LEWANDOWSKI and JANE LEWANDOWSKI, husband and wife, as Tenants by the Entirety	760146	3299362 2005-141934	3299363 2005-141935	n/a				Wells Fargo Bank, N.A.
305	MEI-LI TENG LEFF, wife of Leslie Leff, as Tenant in Severalty	765021	3312553 2005-161607	n/a	n/a				Wells Fargo Bank, N.A.
306	MEI-LI TENG LEFF, wife of Leslie Leff, as Tenant in Severalty	765022	3312555 2005-161613	n/a	n/a				
307	IRA ETHAN KOSOFF and ELLEN RUTH ELIASOPH, husband and wife, as Tenants by the Entirety	749423	3270950 2005-101141	3270951 2005-101142	n/a				American Savings Bank, F.S.B.

Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc No.	Mtg. Doc No.	2nd Mtg Doc No.	3rd Mtg Doc No.	4th Mtg Doc No.	5th Mtg Doc No.	Lender Name
308	ROBERT E. WILHELM, Trustee under that certain unrecorded trust known as the "Robert E. Wilhelm Living Trust" dated January 31, 2002 THOMAS JOSEPH GINELLA and MAUREEN WEBER-GINELLA, husband and wife, as Tenants by the Entirety, as to an undivided 1/2 interest and PAUL JAN LONG and LISA ASTURIAS LONG, husband and wife, as Tenants by the Entirety, as to an undivided 1/2 interest, as Tenants in Common GREGORY JOSEPH DAVIS, husband of Karen Christie Davis, MARK ARNOLD SCHEELE, husband of Sheri Denise Scheele, SCOTT EDWARD SCHEELE, husband of Cheryl Ann Scheele, and JAMES ROSS RUBIN, husband of Pamela Key Rubin, as Tenants in Common	745140	3258074 2005-081117	n/a	n/a				
309		811273	3445847 2006-119354	3445848 2006-119355	n/a				MERS as nominee for Steward Financial Inc.
310		753263	3281653 2005-116931	3281654 2005-116932	3281655 2005-116933				Wells Fargo Bank, N.A.
311	CAPSTONE PROPERTIES, LLC, an Arizona limited liability company CHRISTOPHER E. CROCKER and SHARON A. CROCKER, Trustees under that certain Christopher E. Crocker and Sharon A. Crocker Trust Agreement dated November 30, 1998	851780	3582218 2007-058280	3582219 2007-058281					M&I Bank, FSB
312		741305	3248820 2005-064119	3248821 2005-064120	n/a				Wells Fargo Bank, N.A.
313	IRWIN E. JENSEN and JOYCE D. JENSEN, as Co-Trustees of that certain unrecorded The Irwin E. and Joyce D. Jensen Revocable Trust created by Trust Declaration dated April 28, 1994	816776	3462402 2006-142065	n/a	n/a				
314	KIM BLATNICK HORTON, wife of Richard Alm Horton, as Tenant in Severalty	791953	3389038 2006-026580	A/M 3389039 2006-026581	3389040 2006-026582	3774061 2008-120210			MERS as nominee for Shasta Financial Services, Inc. Activity Link Systems LLC
315	GARY SHMERLER and KAREN SHMERLER, husband and wife, as Tenants by the Entirety	738859	3242109 2005-052719	3242110 2005-052720	3457764 2006-135731	3827786 2009-019638			Wells Fargo Bank, N.A. Johnson Bank

Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mfg Doc Nos.	2nd Mfg Doc No.	3rd Mfg Doc No.	4th Mfg Doc No.	5th Mfg Doc No.	Lender Name
316	Yet to be sold	323595							
317	Yet to be sold	323595							
318	PHIL DEAN MCCLANAHAN, Trustee of the PEMR Trust dated January 1, 1996	876756	3655669 2007-164189	3655670 2007-164190					M&I Bank FSB

C

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application )  
 of )  
 Trustees under the Will of the Estate of James )  
 Campbell, deceased )  
 )  
 to register and confirm title )  
 to land situate at Kahuku, District of )  
 Ko'olaupoko, City and )  
 County of Honolulu, State of Hawai'i )

LAND COURT APPLICATION NO. 1095  
 LAND COURT CASE NO. 09-0055  
 FINDINGS OF FACT AND DECISION  
 (MAP 172)

LAND COURT  
 STATE OF HAWAII  
 T.L.S.  
 2010 JAN 22 PM 12:04  
 KATHLEEN KAWAHINE  
 REGISTRAR

FINDINGS OF FACT AND DECISION (MAP 172)

The records show the following:

1. Amended Petition of KUILIMA RESORT COMPANY and others, for subdivision of the original Lot 479, for correction of the boundary to reflect the erosion of said Lot 479, as shown on the map filed with said Amended Petition, and for other relief sought therein, was filed on July 29, 2009, and it, together with said map showing such erosion, was referred to the State Land Surveyor, who has approved said map and found said erosion to be natural.
2. Due notices were served on the Attorney General of the State of Hawai'i, the Corporation Counsel of the City and County of Honolulu, and all other interested parties as required by law and the rules of this Court. All adjoining land is owned by Petitioner Kuilima Resort Company.



3. On September 17, 2009, the State of Hawai'i filed an Answer to said Amended Petition and took no position to said Amended Petition except that the State of Hawai'i owns the submerged land to the highest reaches of the wash of the waves, including, the 9.626 acre eroded area and new Lots 1217-A and 1217B are subject to (a) the State of Hawai'i's ownership of all mineral and metallic mines of every kind or description, including geothermal rights, and the right to remove the same; (b) the rights of native tenants; and (c) the State of Hawai'i's reservation of all right, title, interest or claim to the waters having their source upon or flowing over or under new Lots 1217-A and 1217B. Petitioner Kuilima Resort Company does not object to the State of Hawai'i's position.

4. On September 23, 2009, the City and County of Honolulu filed an Answer to said Amended Petition and took no position to said Amended Petition except that all real property taxes, penalties, and interest shall be paid to the City and County of Honolulu when the same are due or become due in accordance with law and that the City and County of Honolulu reserve an easement for water pipeline purposes. Petitioner Kuilima Resort Company does not object to the City and County of Honolulu's position.

5. Except as noted in Paragraphs 3 and 4 hereinabove, no answer has been filed or appearances noted.

BASED UPON THE FOREGOING, THE COURT HEREBY FINDS AS FOLLOWS:

1. That the high water mark, which is the seaward boundary of new Lots 1217-A and 1217-B, as of May 23, 2005, is as shown on Map 172 of Land Court Application No. 1095.

2. That the change in location of the seaward boundary has been due entirely to natural erosion of the original Lot 479 on the seaward side.
3. That Lot 479 less erosion is subdivided and redesignated as Lots 1217-A and 1217-B, as shown on Map 172.
4. Easement 392 for access purposes, in favor of Lot 1217-B and affecting Lot 1217-A, is designated as shown on Map 172.
5. That new Lots 1217-A and 1217-B shall be subject to the aforementioned rights of the City and County of Honolulu and State of Hawai'i.
6. That the petitioner KUILIMA RESORT COMPANY, a Hawai'i general partnership, is the sole owner of new Lot 1217-A, as shown on Map 172, and the improvements thereon, subject to the rights, liens and encumbrances as set forth below; the Apartment Owners shown on Exhibit "A" attached hereto and their mortgagees (other than mortgagees of Kuilima Resort Company) being hereby divested of any interest in Lot 1217-A and the improvements thereon, title to said Lot 1217-A and the improvements thereon being hereby vested solely in said Kuilima Resort Company, subject to the rights, liens and encumbrances as set forth below.
7. Lot 1217-B, as shown on Map 172, and the improvements thereon are vested in the Apartment Owners shown on Exhibit "A" attached hereto, subject to the mortgages shown on Exhibit "A" attached hereto and the rights, liens and encumbrances set forth below.
8. Lot 1217-A has access across Lots 467 and 478 and unregistered land (Turtle Bay Access Drive). Lot 1217-A shall also have utility rights across and under the portion of

Easement 79 located on Lot 1217-B, and the owner of Lot 1217-A shall have the right to grant such utility rights to one or more utility companies and/or other appropriate grantees.

9. Lot 1217-B has access across Lots 467, 478 and 1217-A and unregistered land (Turtle Bay Access Drive) through Easement 392. Easement 392 shall be subject to reasonable realignment by the owner of Lot 1217-A at such owner's expense.

10. The Lots shown on such map are subject to the following encumbrances:

(a) Easement "75" (72 feet wide) for drainage purposes, as shown on Map 68, as set forth by Land Court Order No. 35003, filed April 28, 1972.

(b) Easement "79" (56 feet wide) for utility purposes, as shown on Map 68, as set forth by Land Court Order No. 35003, filed April 28, 1972 ("Easement 79").

(c) Grant in favor of City and County of Honolulu dated May 3, 1978, filed in said Office as Land Court Document No. 875601 over Easement 79.

(d) Rights of way in favor of lots entitled thereto as shown on Map 68, as set forth by Land Court Order No. 35003, filed April 28, 1972.

(e) Terms, provisions, and reservation of rights to the Trustees Under the Will and of the Estate of James Campbell, deceased, contained in Short Form Acquisition Agreement dated June 3, 1988, filed in said Office as Land Court Document No. 1555263.

(f) Terms and provisions contained in Declaration Concerning Location of Pedestrian Easement dated August 8, 1990, filed in said Office as Land Court Document No. 1754787.

(g) Terms and provisions contained in Deed dated December 30, 1988, filed in said Office as Land Court Document No. 1603995.

(h) Terms and provisions contained in Declaration of Restrictive Covenants dated December 30, 1988, filed in said Office as Land Court Document No. 1603990.

(i) Terms and provisions contained in Declaration Concerning Location of Parks and Easements dated October 11, 1989, filed in said Office as Land Court Document No. 1675414.

(j) Terms and provisions contained in Declaration of Restrictive Covenants, Conditions and Reservations dated August 24, 2004, filed in said Office as Land Court Document No. 3169232.

(k) Grants of Easement, Additional Security Mortgage and Financing Statement dated February 9, 2005, filed in said Office as Land Court Document No(s). 3231119 and 3231120. Consent thereto dated February 9, 2005, filed in said Office as Land Court Document No. 3231121.

(l) Condominium Map 1665 and the terms and provisions contained in the Declaration of Condominium Property Regime for "Ocean Villas at Turtle Bay Resort" Condominium Project dated August 31, 2004, filed in said Office as Land Court Document No. 3172940, as amended by the First Amendment dated August 23, 2005, filed in said Office as Land Court Document No. 3364329 and the Amendment dated December 20, 2005, filed in said Office as Land Court Document No. 3375969. Consent thereto dated December 20, 2005, filed

in said Office as Land Court Document No. 3375970 (said condominium project is hereinafter referred to as the "Project").

(m) Terms and provisions contained in By-Laws of the Association of Apartment Owners dated August 31, 2004, filed in said Office as Land Court Document No. 3172941.

(n) Terms and provisions contained in Unilateral Agreement and Declaration for Conditional Zoning dated September 23, 1986, filed in said Office as Land Court Document No. 1402662, as amended by the Amendment to Unilateral Agreement dated December 1988, filed in said Office as Land Court Document No. 1603989.

(o) Terms and provisions contained in Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance dated \_\_, 2005, filed in said Office as Land Court Document No. 3366116.

(p) As to Lot 1217-A and as to an undivided 0.86% interest in Lot 1217-B only, which undivided 0.86% interest is appurtenant to Apartment 120 in the Project, that certain First Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement in favor of Credit Suisse ("Credit Suisse"), dated September 30, 2005, made by Kuilima Resort Company, a Hawai'i general partnership and TBR Property L.L.C., a Delaware limited liability company, filed in said Office as Land Court Document No. 3335667, subsequently amended in that certain First Amendment to First Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement, dated May 23, 2008, filed in said Office as Land Court Document No. 3751516, and Notice of

Pendency of Action, dated December 28, 2007, filed in said Office as Land Court Document No. 3697072.

(q) As to Lot 1217-A and as to an undivided 0.86% interest in Lot 1217-B only, which undivided 0.86% interest is appurtenant to Apartment 120 in the Project, that certain Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement in favor of Credit Suisse, dated September 30, 2005, made by Kuilima Resort Company, a Hawai'i general partnership and TBR Property L.L.C., a Delaware limited liability company, filed in said Office as Land Court Document No. 3335668, subsequently assigned in that certain Quitclaim Assignment of Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement to Wells Fargo Bank, N.A. ("Wells Fargo"), dated May 16, 2008, filed in said Office as Land Court Document No. 3751517, subsequently amended in that certain First Amendment to Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement, dated May 23, 2008, filed in said Office as Land Court Document No. 3751519.

(r) As to Lot 1217-A and as to an undivided 0.86% interest in Lot 1217-B only, which undivided 0.86% interest is appurtenant to Apartment 120 in the Project, that certain New Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement in favor of Wells Fargo Bank, N.A., dated May 23, 2008, made by Kuilima Resort Company, a Hawai'i general partnership and TBR Property L.L.C., a Delaware limited liability company, filed in said Office as Land Court Document No. 3751518.

(s) As to Lot 1217-A and as to an undivided 0.86% interest in Lot 1217-B only, which undivided 0.86% interest is appurtenant to Apartment 120 in the Project, that certain Memorandum of Lease dated December 28, 2001, filed in said Office as Land Court Document No. 2768281, the Lease referenced in said Memorandum of Lease having been amended by instruments filed in said Office as Land Court Document Nos. 3140458, 3229445, 3241465, 3334217 and 3335173.

11. The Ocean Villas at Turtle Bay Resort, more particularly described in that certain Declaration of Condominium Property Regime for "Ocean Villas at Turtle Bay Resort" Condominium Project dated August 31, 2004, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 3172940, as amended, and on Condominium Map 1665, consists of fifty-seven (57) apartment units and related improvements, which units and related improvements are located on Lot 1217-B.

12. The Assistant Registrar of the Land Court is hereby authorized and directed to endorse on Transfer Certificate of Title No. 323,595 as to Lot 1217-B and those Transfer Certificates of Title issued to the individual Apartment Owners as shown in Exhibit A attached hereto, a reference to this Findings of Fact and Decision (Map 172), to said map and to the encumbrances as set forth herein;

13. The Assistant Registrar of the Land Court is hereby authorized and directed to issue to KUILIMA RESORT COMPANY, a Hawai'i general partnership, whose address is 57-091 Kamehameha Highway, Kahuku, Hawai'i 96731, a new Land Court Certificate of Title for Lot 1217-A referencing this Findings of Fact and Decision (Map 172), said map and the encumbrances as set forth herein.

Dated: Honolulu, Hawai'i, JAN 22 2010

GARY W.B. CHANG  
JUDGE OF THE LAND COURT

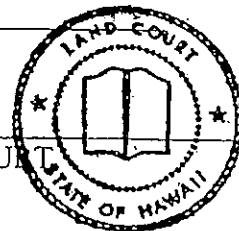




Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mtg Doc Nos.	2nd Mtg Doc No.	3rd Mtg Doc No.	4th Mtg Doc No.	5th Mtg Doc No.	Lender Name
101	LYNETTE N. GAY and ALISON R. MOSCA, Co-Trustees under that certain unrecorded trust known as "The Lynette N. Gay Revocable Trust" dated June 26, 2002	755867	3289340 2005-130036	n/a	n/a				
102	JAMES BRANDT ANDERSEN, husband of Katherine Ann Anderson, Tenant in Severalty	766175	3315742 2205-165401	3315743 2005-165402	n/a				Bank of America, N.A.
103	JAMES BRANDT ANDERSEN, husband of Katherine Ann Anderson, Tenant in Severalty	766176	3315745 2005-165408	3315746 2005-165409	n/a				Bank of America, N.A.
104	VINCENT FRANK LIOTTA, husband of JoAnne Liotta, Tenant in Severalty	845932	3562009 2007-030403	3562010 2007-030404	3562011 2007-030405	3585947 2007-066092			Wells Fargo Bank, N.A.
105	CAROLE GAY OLSEN, unmarried, Tenant in Severalty	775494	3341937 2005-210585	3621664 2007-117140	3636959 2007-137899				JPMorgan Chase Bank, N.A. MERS as nominee for Countrywide Bank FSB
106	GINA CARMEL OLSEN, wife of Nathaniel Penn Olsen, Tenant in Severalty	775495	3341939 2005-210587	3477188 2006-163200	3629490 2007-127488				Wells Fargo Bank, N.A.
107	MICHAEL PAU HICKS and MARIE LOUISE ELEANORA HICKS, husband and wife, as Joint Tenants	760428	3300464 2005-143441	3300465 2005-143442	3300466 2005-143443				Wells Fargo Bank, N.A.
108	TURTLE BAY 108, LLC, a Utah limited liability company	920325	3782747 2008-134320	3602811 2007-088529					Wells Fargo Bank, N.A.
109	TURTLE BAY 108, LLC, a Utah limited liability company	916900	3773878 2008-120016	n/a	n/a				
110	CHRISTOPHER WILLIAM GLATIS, unmarried, and KEITH EDDY SNELL, husband of Margaret Snell, a Tenants in Common	775271	3341443 2005-209786	3341444 2005-209787	3341445 2005-209788				Wells Fargo Bank, N.A.
111	PATRICK JOSEPH ALLEN and SANDRA KASHIWADA ALLEN, husband and wife, as Tenants by the Entirety	813674	3452967 2006-129277	n/a	n/a				
112	UMQENI, LLC, a California limited liability company	744625	3256686 2005-078742	3256687 2005-178743	A/M 3831631 2009-027156				First Hawaiian Bank Bank of America, NA
113	KIM BLATNICK HORTON, wife of Richard Alm Horton, as Tenant in Severalty	751246	3276639 2005-111063 A/M 3788638 2008-143353	3276640 2005-111064	3358720 2005-239167	3460340 2006-139530	3707644 2008-015458	3774061 2008-120210	First Horizon Home Loan Corporation Douglas Shields Virginia K. Petersen, Trustee of the Paul and Virginia Petersen Trust C Dated January 2, 1996 Activity Link Systems, LLC

Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mfg Doc Nos.	1st Mfg Doc No.	2nd Mfg Doc No.	3rd Mfg Doc No.	4th Mfg Doc No.	5th Mfg Doc No.	Lender Name
114	EDWARD BLAINE JOHNSON, husband of Christina Ray Johnson	895053	3711011 2008-0211105							
115	JOHN JAMES HUSSEY and PAULA ANTONETTE HUSSEY, husband and wife, as Tenants by the Entirety	695263	3271335 2005-101536	3271336 2005-101537	3701977 2008-006725					Wells Fargo Bank, N.A.
116	STANLEY DOUGLAS GLENDENNING and GRETCHEN GRAFF GLENDENNING, husband and wife, as Tenants by the Entirety	909208	3751342 2006-083810	n/a	n/a					
117	STANLEY DOUGLAS GLENDENNING and GRETCHEN GRAFF GLENDENNING, husband and wife, as Tenants by the Entirety	909206	3751337 2008-083808	3751338 2008-083809						
118	BARRY M. WEINMAN and VIRGINIA S. WEINMAN, as Trustees of the Weinman Family Trust dated September 25, 1998	770296 323595	3327258 2005-186514	n/a	n/a					MERS as nominee for Central Pacific HomeLoans Inc
119	Yet to be sold				3335668 2005-199934					
120	Yet to be sold									
121	CHUCK SPEZZANO and LENORA KAY SPEZZANO, also known as Lency Spezzano, as Co-Trustees of the Charles Les Spezzano Revocable Trust dated May 16, 1995, and LENORA KEY SPEZZANO and CHUCK SPEZZANO, as Co-Trustees of the Lenora Kay Spezzano Revocable Trust dated May 16, 1995, as Tenants in Common	323595	3335667 2005-199933	3751517 2008-084075	3751518 2008-084076					Credit Suisse Wells Fargo Bank NA
201	KENNETH CHIU LIANG and LAURA KELLY LIANG, husband and wife, as Joint Tenants as to an undivided 1/3 interest, and GEORGE ANTHONY LEIVA and VALERIE JEAN LEIVA, husband and wife, as Joint Tenants, as to an undivided 1/3 interest, and KEITH LIANG, unmarried, as Tenant in Severalty as to an undivided 1/3 interest, as Tenants in Common	845516	3560116 2007-028128	3529787 2006-232942	3529788 2006-232943	3811424 2008-184233				Bank of Hawaii
202	NATHANIEL PENN OLSEN, husband of Gina Carmel Olsen, as Tenant in Severalty	782447	3362721 2005-246518	3362722 2005-246519						Wells Fargo Bank, N.A.
		851781	3582220 2007-058282	3582221 2007-058283	3582222 2007-058284					JP Morgan Chase Bank, N.A. MERS as nominee for American Brokers Conduit

Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mtg Doc Nos.	2nd Mtg Doc No.	3rd Mtg Doc No.	4th Mtg Doc No.	5th Mtg Doc No.	Lender Name
203	CAROLE GAY OLSEN, as Trustee of The Carole Gay Olsen Trust dated July 27, 2002	853869	3587870 2007-066742	3582224 2007-058286	3582225 2007-058287				Wells Fargo Bank, N.A.
204	SURFER DUDE VILLA, LLC, a Washington limited liability company	854444	3589735 2007-069504	n/a	n/a				
205	HAWAII CONDO INVESTORS, LLC, a Delaware limited liability company	745088	3257880 2005-080752	3257881 2005-080753	n/a				Wells Fargo Bank, N.A.
206	HAWAII CONDO INVESTORS, LLC, a Delaware limited liability company	745089	3257883 2005-080759	3257884 2005-080760	n/a				Wells Fargo Bank, N.A.
207	CHARLES S. GULLO, husband of Michelle Meena Gullo, as Tenant in Severalty	766702	3317140 2005-167782	3317141 2005-167783	n/a				Wells Fargo Bank, N.A.
208	JOHN MICHAEL MCCANN, unmarried and GARY TODD STEPHENS, unmarried, as Joint Tenants	767007	3317990 2005-169569	A/M 3334586 2005-198649	3458924 2006-137116				Bank of Hawaii assigned to Lehman Brothers Bank, FSB Bank of Hawaii
209	KEVIN LEWIS SEITZ and KATHLEEN WONG SEITZ, husband and wife, as Tenants by the Entirety	800571	3413763 2006-065556	3413764 2006-065557	3413765 2006-065558				MERS as nominee for Central Pacific Home Loans, Inc. Central Pacific Bank
210	JOSEPH MATSON-HENRY and PAULETTE BARRET-MATSON, husband and wife, as Joint Tenants	739813	3244609 2005-057173	n/a	n/a				
211	ROBERT WIEBORT, Trustee of the Robert Wiebort Trust dated March 31, 2004	755570	3288376 2005-128322	3615170 2007-107349	3682009 2007-200891				Wells Fargo Bank, N.A.
212	DOUGLAS IRWINE FARRELL and MYRA FARRELL, husband and wife, as Tenants by the Entirety	744626	3256689 2005-078749	3256690 2005-078750	3256691 2005-078751				Wells Fargo Bank, N.A.
213	PHILIP HAROLD GREY, husband of Denise Elizabeth Grey, as to an undivided 1/3 interest, and and PAUL GEORGE GREY, husband of Sherry Mae Grey, as to an undivided 1/3 interest, and CYNTHIA HAES, unmarried, as to an undivided 1/3 interest, as Tenants in Common	755000	3286632 2005-125004		3594642 2007-076776				MERS as nominee for Multi-State Home Lending, Inc.

Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mtg Doc Nos.	2nd Mtg Doc No.	3rd Mtg Doc No.	4th Mtg Doc No.	5th Mtg Doc No.	Lender Name
214	OCEANFRONT VILLAS AT TURTLE BAY, LLC, a Washington limited liability company	891667	3700928 2008-004819						
215	GERALDINE TERESA DAVIS-HULON, unmarried, as Tenant in Severalty	751525	3277373 2005-111866	3277374 2005-111867	3611614 2007-101906				Wells Fargo Bank, N.A. Washington Mutual Bank
216	DAVID ALLEN MOUNT and SHARON LYNNE MOUNT, as Trustees of the Mount Family Trust dated March 5, 1997	779828	3355083 2005-232968	n/a	n/a				
217	LYNNE MOUNT, as Trustees of the Mount Family Trust dated March 5, 1997	779829	3355084 2005-232969	n/a	n/a				
218	EDMUND RICHARDS TWEEDY FLANIGAN, husband of Cynthia Flanigan, as Tenant in Severalty	766384	3316424 2005-166365	n/a	n/a				
301	PATRICK WILLIAMS WIDVIT, unmarried, WILLIAM GREGORY GEIGER and JACQUELINE LUTZ GEIGER, Trustees under that certain Geiger Family Trust dated November 23, 2004, and SEAN F. ARMSTRONG and JUDY ARMSTRONG, Trustees under that certain Armstrong Family Trust dated February 21, 2001, and DESMOND A. ARMSTRONG and ANN M. ARMSTRONG, Trustees under The Armstrong Family Trust dated April 22, 2005, as Tenants in Common	720674	3342949 2005-212943	3342950 2005-212944	n/a				
302	NATHANIEL PENN OLSEN, husband of Gina Carmel Olsen, as Tenant in Severalty	849078	3571610 2007-044153	3601705 2007-086736	3669679 2007-183315				Wells Fargo Bank, N.A.
303	NATHANIEL PENN OLSEN, husband of Gina Carmel Olsen, as Tenant in Severalty	750934	3275729 2005-109534	3507042 2006-199708	3554222 2007-021171				Wells Fargo Bank, N.A.
304	THOMAS EDWARD LEWANDOWSKI and JANE LEWANDOWSKI, husband and wife, as Tenants by the Entirety	760146	3299362 2005-141934	3299363 2005-141935	n/a				Wells Fargo Bank, N.A.
305	MEI-LI TENG LEFF, wife of Leslie Leff, as Tenant in Severalty	765021	3312553 2005-161607	n/a	n/a				
306	MEI-LI TENG LEFF, wife of Leslie Leff, as Tenant in Severalty	765022	3312555 2005-161613	n/a	n/a				
307	IRA ETHAN KOSOFF and ELLEN RUTH ELIASOPH, husband and wife, as Tenants by the Entirety	749423	3270950 2005-101141	3270951 2005-101142	n/a				American Savings Bank, F.S.B.

Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) S-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mfg Doc Nos.	2nd Mfg Doc No.	3rd Mfg Doc No.	4th Mfg Doc No.	5th Mfg Doc No.	Lender Name
308	ROBERT E. WILHELM, Trustee under that certain unrecorded trust known as the "Robert E. Wilhelm Living Trust" dated January 31, 2002 THOMAS JOSEPH GINELLA and MAUREEN WEBER-GINELLA, husband and wife, as Tenants by the Entirety, as to an undivided 1/2 interest and PAUL JAN LONG and LISA ASTURIAS LONG, husband and wife, as Tenants by the Entirety, as to an undivided 1/2 interest, as Tenants in Common	745146	3258074 2005-081117	n/a	n/a				
309	GREGORY JOSEPH DAVIS, husband of Karen Christie Davis, MARK ARNOLD SCHEELE, husband of Sheri Denise Scheele, SCOTT EDWARD SCHEELE, husband of Cheryl Ann Scheele, and JAMES ROSS RUBIN, husband of Pamela Kay Rubin, as Tenants in Common	811273	3445847 2006-119354	3445848 2006-119355	n/a				MERS as nominee for Steward Financial Inc.
310	CAPSTONE PROPERTIES, LLC, an Arizona limited liability company CHRISTOPHER E. CROCKER and SHARON A. CROCKER, Trustees under that certain Christopher E. Crocker and Sharon A. Crocker Trust Agreement dated November 30, 1998	753263	3281653 2005-116931	3281654 2005-116932	3281655 2005-116933				Wells Fargo Bank, N.A.
311	IRWIN E. JENSEN and JOYCE D. JENSEN, as Co-Trustees of that certain unrecorded The Irwin E. and Joyce D. Jensen Revocable Trust created by Trust Declaration dated April 28, 1994	851780	3582218 2007-058280	3582219 2007-058281					M&I Bank, FSB
312	KIM BLATNICK HORTON, wife of Richard Alm Horton, as Tenant in Severalty	741305	3248820 2005-064119	3248821 2005-064120	n/a				Wells Fargo Bank, N.A.
313	GARY SHMERLER and KAREN SHMERLER, husband and wife, as Tenants by the Entirety	816776	3462402 2006-142065	n/a	n/a				
314		791953	3389038 2006-026580	3389039 2006-026581 A/M 3389039 2006-026581	3389040 2006-026582	3774061 2008-120210			MERS as nominee for Shasta Financial Services, Inc. Activity Link Systems LLC
315		738859	3242109 2005-052719	3242110 2005-052720	3457764 2006-135731	3827786 2009-019638			Wells Fargo Bank, N.A. Johnson Bank

Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mtg Doc Nos.	2nd Mtg Doc No.	3rd Mtg Doc No.	4th Mtg Doc No.	5th Mtg Doc No.	Lender Name
316	Yet to be sold	323595							
317	Yet to be sold	323595							
318	PHIL DEAN MCCLANAHAN, Trustee of the PEMR Trust dated January 1, 1996	876756	3655669 2007-164189	3655670 2007-164190					M&I Bank FSB

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application )  
 )  
 of )  
 )  
 Trustees under the Will of the Estate of James )  
 Campbell, deceased )  
 )  
 )  
 to register and confirm title )  
 to land situate at Kahuku, District of )  
 Ko'olaupoko, City and )  
 County of Honolulu, State of Hawai'i )  
 \_\_\_\_\_ )

SUBDIVISION  
 of  
 Application 1095  
 (Map 172

JOINDER OF KUILIMA RESORT COMPANY

Comes now, Kuilima Resort Company, a Hawai'i general partnership, hereby joins in, consents to, and approves the Amended Petition for Subdivision of Lot 479 Less Erosion and Resubdivision into New Lots 1217-A and 1217-B and Designation of Easement 392 Affecting New Lot 1217-A dated June 8, 2009.

[SIGNATURES ON NEXT PAGE]

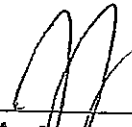
Dated: Honolulu, Hawai'i, January 22, 2010.

**KUILIMA RESORT COMPANY,**  
a Hawai'i general partnership

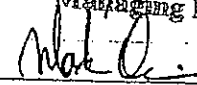
By: **KUILIMA RESORT COMPANY HOLDING I, LLC,**  
a Delaware limited liability company,  
its managing general partner

By: **OAKTREE CAPITAL MANAGEMENT, L.P.,**  
a Delaware limited partnership,  
its manager

By:

  
Name: **Ambrose Fisher**  
Title: **Managing Director**

By:

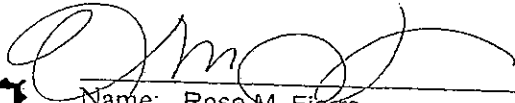
  
Name:  
Title: **Mark Oei**  
**Managing Director**



STATE OF California )  
 ) SS.  
COUNTY OF Los Angeles )

On this 2nd day of January, 2010, before me appeared  
Ambrose Fisher and Mark Oei, each to me  
personally known (or proved to me to be such person on the basis of satisfactory evidence), each of  
whom being by me duly sworn or affirmed, did say that such person executed the foregoing  
instrument as the free act and deed of such person, and if applicable in the capacity shown, having  
been duly authorized to execute such instrument in such capacity.



  
Name: Rose M. Fierro  
Notary Public, State of California  
My commission expires: August 9, 2013

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application )  
 )  
 of )  
 )  
 Trustees under the Will of the Estate of James )  
 Campbell, deceased )  
 )  
 to register and confirm title )  
 to land situate at Kahuku, District of )  
 Ko'olaupoko, City and )  
 County of Honolulu, State of Hawai'i )  
 \_\_\_\_\_ )

SUBDIVISION  
of  
Application 1095  
(Map 172)

JOINDER OF OCEAN VILLAS DEVELOPMENT, L.L.C.

Comes now, Ocean Villas Development, L.L.C., a Delaware limited liability company, hereby joins in, consents to, and approves the Amended Petition for Subdivision of Lot 479 Less Erosion and Resubdivision into New Lots 1217-A and 1217-B and Designation of Easement 392 Affecting New Lot 1217-A dated June 8, 2009.

[SIGNATURES ON NEXT PAGE]

Dated: Honolulu, Hawai'i, January 22, 2010.

OCEAN VILLAS DEVELOPMENT, L.L.C.,  
a Delaware limited liability company

By: OAKTREE CAPITAL MANAGEMENT, L.P.,  
a Delaware limited partnership,  
its Manager

By \_\_\_\_\_  
Name: **Ambrose Fisher**  
Its **Managing Director**

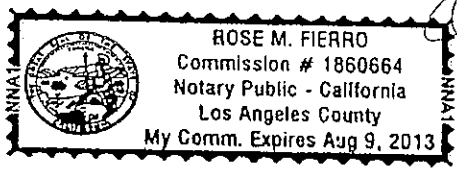
By \_\_\_\_\_  
Name: **Mark Oei**  
Its **Managing Director**

STATE OF California

COUNTY OF Los Angeles

)  
) SS.  
)

On this 2nd day of January, 2010, before me appeared  
Ambrose Fisher and Mark Oei, each to me  
personally known (or proved to me to be such person on the basis of satisfactory evidence), each of  
whom being by me duly sworn or affirmed, did say that such person executed the foregoing  
instrument as the free act and deed of such person, and if applicable in the capacity shown, having  
been duly authorized to execute such instrument in such capacity.



[Signature]  
Name: Rose M. Fierro  
Notary Public, State of California

My commission expires: August 9, 2013

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application )  
 )  
 of )  
 )  
 Trustees under the Will of the Estate of James )  
 Campbell, deceased )  
 )  
 to register and confirm title )  
 to land situate at Kahuku, District of )  
 Ko'olaupoko, City and )  
 County of Honolulu, State of Hawaii )  
 )

SUBDIVISION  
of  
Application 1095  
(Map 172)

JOINDER OF WELLS FARGO BANK, N.A.

Comes now, Wells Fargo Bank, N.A., (i) as the Administrative Agent, Collateral Agent and Paying Agent of the current holder of that certain Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement in favor of Credit Suisse, dated September 30, 2005, made by Kuilima Resort Company, a Hawaii'i general partnership, and TBR Property L.L.C., a Delaware limited liability company, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii'i as Land Court Document No. 3335668, as assigned in that certain Quitclaim Assignment of Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement to Wells Fargo Bank, N.A., dated May 16, 2008, filed in said Office as Land Court Document No. 3751517, and as amended in that certain First Amendment to Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement, dated May 23, 2008, filed in said Office as Land Court Document No. 3751519; and (ii) as the Administrative Agent and Collateral Agent of the current holder of that

certain New Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement in favor of Wells Fargo Bank, N.A., dated September May 23, 2008, made by Kuilima Resort Company, a Hawai'i general partnership, and TBR Property L.L.C., a Delaware limited liability company, filed in said Office as Land Court Document No. 3751518, all duly noted on Certificate of Title No. 323,595, said Mortgages covering certain portions of the real property mentioned in the Amended Petition for Subdivision of Lot 479 Less Erosion and Resubdivision into Lots 1217-A and 1217-B and Designation of Easement 392 Affecting Lot 1217-A (the "Amended Petition"), hereby joins in, consents to, and approves of the Amended Petition.

Dated: April 9, 2009.

WELLS FARGO BANK, N.A.

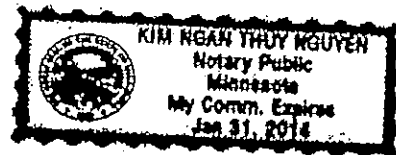
By: [Signature]  
Its David Bergstrom  
Assistant Vice President

This 2 page Joinder of Wells Fargo Bank, N.A., was subscribed and sworn to before me by David Bergstrom, on April 8<sup>th</sup> 2009, in the State of Minnesota.

[Signature]  
(Signature of Notary)

Print Notary Name: KIM NGAN THUY NGUYEN  
Notary Public, State of Minnesota

My commission expires: Jan 31, 2014



IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application )  
 )  
 of )  
 )  
 Trustees under the Will of the Estate of James )  
 Campbell, deceased )  
 )  
 )  
 to register and confirm title )  
 to land situate at Kahuku, District of )  
 Ko'olaupoko, City and )  
 County of Honolulu, State of Hawai'i )  
 \_\_\_\_\_ )

SUBDIVISION  
of  
Application 1095  
(Map 172)

JOINDER OF CREDIT SUISSE

Comes now, Credit Suisse, a bank organized under the laws of Switzerland, acting through its Cayman Islands Branch, as the Administrative Agent and Collateral Agent and current holder of that certain First Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement in favor of Credit Suisse, dated September 30, 2005, made by Kuilima Resort Company, a Hawai'i general partnership, and TBR Property L.L.C., a Delaware limited liability company, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 3335667, and subsequent Notice of Pendency of Action, dated December 28, 2007, filed in said Office as Land Court Document No. 3697072 and subsequent First Amendment to the First Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement, dated May 23, 2008, filed in said Office as Land Court Document No. 3751516; all duly noted on Certificate of Title No. 323,595, said Mortgage covering certain portions of the

real property mentioned in the Amended Petition for Subdivision of Lot 479 Less Erosion and Resubdivision into Lots 1217-A and 1217-B and Designation of Easement 392 Affecting Lot 1217-A (the "Amended Petition"), hereby joins in, consents to, and approves the Amended Petition..

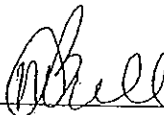
Dated: New York, New York, January \_\_, 2009.

Credit Suisse, Cayman Islands Branch

By:   
Its **Bryan J. Matthews**  
**Director**

By:   
Its **Didier Siffer**  
**Managing Director**

This 2 page Joinder of Credit Suisse, a bank organized under the laws of Switzerland, acting through its Cayman Islands Branch, was subscribed and sworn to before me by B. MATTHEWS-D.I.L. & D. SIFFER-M.D.L., on MARCH 26, 2009, in New York City, New York.

  
(Signature of Notary)

Print Notary Name: MARJORIE E. BULL  
Notary Public, State of New York

My commission expires: 02-20-11

MARJORIE E. BULL  
Notary Public, State of New York  
No. 01BU6055282  
Qualified in New York County  
Commission Expires February 20, 2011



IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application )  
 )  
 of )  
 The Trustees of the Estate of )  
 James Campbell, deceased )  
 )  
 to register title to land situate at )  
 Kahuku, Koolauloa, Oahu, State )  
 of Hawaii )

APPLICATION NO. 1095  
(MAP 172 - DECREE)

KATHLEEN HANAWAHINE  
REGISTRAR

2010 JAN 26 AM 10:34

LAND COURT  
STATE OF HAWAII  
FILED

RETURN OF THE STATE LAND SURVEYOR

To the Honorable Judge of the Land Court  
State of Hawaii

Pursuant to an Order duly made and issued out of said Honorable Court, referring the map filed on the 22<sup>nd</sup> day of January, 20 10, to the State Land Surveyor with instructions to cause the same to be amended therewith, the undersigned, the State Land Surveyor begs to report.

That the map referred to has been amended in accordance with the Order of the Judge of the Land Court and that the following certificate has been engrossed on the tracing of the herein application:

"I hereby certify that Decree re-establishing high-water mark as of May 23, 2005 and the redesignation of Lot 479 less erosion as Lot 1217 and the subdivision of said Lot 1217 into Lots 1217-A and 1217-B and designation of Easement 392 affecting Lot 1217-A as requested in the herein application has been entered January 22, 2010 and same has been noted on Transfer Certificate of Title No. 323,595 and those Transfer Certificate of Title issued to the individual Apartment Owners as shown in Exhibit A attached to the decree and to issue a new Land Court Certificate of Title to Kuilima Resort Company, a Hawaii general partnership for Lot 1217-A.

Honolulu, Hawaii  
January 22, 2010

KATHLEEN HANAWAHINE  
Registrar of the Land Court."

And that the map in the above entitled matter is being herewith returned with two (2) blueprints, reserving one of such blueprints for the Office of the State Land Surveyor.

Dated at Honolulu, this 26th day of January, 20 10.

Examined by:

Ronald L.K. Sumida  
Assistant.

Mil F. [Signature]  
STATE LAND SURVEYOR

lk  
=====

RECEIVED from the Office of the State Land Surveyor \_\_\_\_\_ blueprint of, and the approved tracing map in the above-entitled matter, on which the amendment has been made.

Honolulu, Hawaii JAN 26 2010, 20 \_\_\_\_\_

TRACIANN SHIMABUKURO  
CLERK OF THE LAND COURT

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application )  
 )  
 of )  
 )  
 Trustees under the Will of the Estate of James )  
 Campbell, deceased )  
 )  
 to register and confirm title )  
 to land situate at Kahuku, District of )  
 Ko'olaupoko, City and )  
 County of Honolulu, State of Hawai'i )

SUBDIVISION  
of  
Application 1095  
(Map 172)

2009 JUL 29 PM 1:29  
KATHLEEN J. HAWAII  
REGISTRAR

LAND COURT  
STATE OF HAWAII  
FILED

AMENDED PETITION  
FOR SUBDIVISION OF LOT 479  
LESS EROSION AND RESUBDIVISION INTO LOTS 1217-A AND 1217-B AND  
DESIGNATION OF EASEMENT 392 AFFECTING LOT 1217-A; ORDER TO SHOW  
CAUSE; AND CITATION

TO THE HONORABLE PRESIDING JUDGE OF THE LAND COURT OF THE  
STATE OF HAWAII:

COME NOW, KUILIMA RESORT COMPANY, a Hawai'i general partnership ("KRC"), OCEAN VILLAS DEVELOPMENT L.L.C., a Delaware limited liability company ("OVD"), and the apartment owners of the units in the Ocean Villas at Turtle Bay condominium project ("Project") listed in Exhibit "A" attached hereto and incorporated herein by this reference (each an "Apartment Owner" and collectively, "Apartment Owners") (KRC, OVD, and Apartment Owners are sometimes referred to herein collectively, as the "Petitioner"), hereby desires to amend the petition submitted to this Court for the subdivision of the property described herein, in response to the Return of the State Land Surveyor, dated December 21, 2007, as follows ("Amended Petition"):

1. KRC is the fee simple owner of Lot 479, area 60,474 square feet, as shown on Map 68 of Land Court Application No. 1095 of the Will of the Estate of James Campbell, deceased; subject to the interests of the Apartment Owners.
2. KRC is the holder of Certificate of Title No. 323,595 which covers said Lot 479, subject to the interests of the Apartment Owners.

3. OVD is the developer of the Project which is located on Lot 479, and is more particularly described in that certain Declaration of Condominium Property Regime for "Ocean Villas at Turtle Bay Resort" Condominium Project dated August 31, 2004, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 3172940, as amended by the First Amendment dated August 23, 2005, filed in said Office as Land Court Document No. 3364329 and the Amendment dated December 20, 2005, filed in said Office as Land Court Document No. 3375969, consent thereto dated December 20, 2005, filed in said Office as Land Court Document No. 3375970 (collectively, the "Declaration"), a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.

4. As of the date hereof, KRC and OVD have conveyed fee simple interests in fifty-three (53) apartment units in the Project (each an "Apartment Unit" and collectively, "Apartment Units") to the Apartment Owners. KRC is the fee simple owner of Apartment Unit 120, subject to the mortgages described in paragraphs 10.p, 10.q and 10.r herein, which mortgages cover KRC's interest in the real property known as the Turtle Bay Resort, including any interest that is acquired after the date of the mortgages. In addition, KRC is the owner of three other Apartment Units, which are not subject to the mortgages described in paragraphs 10.p, 10.q and 10.r herein.

5. In addition to the names of the Apartment Owners and their respective Apartment Unit numbers, Exhibit "A" also includes the following information:

- a. The certificates of title issued to each Apartment Owner;
- b. The recordation information of the apartment deed issued to each Apartment Owner;
- c. The recordation information of security instruments, if any, affecting each Apartment Unit; and
- d. The name of the lender, if any, under any security instruments affecting each Apartment Unit.

6. Pursuant to Section 20 (Developer's Reserved Right to Subdivide and Consolidate the Land) and Section 20.2 (Nature of Developer's Reserved Rights) of the Declaration, KRC and OVD reserved the right to subdivide said Lot 479, including, but not limited to, the right to file this Amended Petition.

7. Pursuant to Section 21 (Developer's Reserved Right to Delete Land and Improvements), Section 21.2 (Nature of Developer's Reserved Rights) and Section 21.4 (What Happens When Areas Are Deleted) of the Declaration, KRC and OVD reserved the right to withdraw and delete the area to be identified as Lot 1217-A, which area is shown on Condominium Map 1665 as "Possible Deletion Areas", from the Project and Declaration, including, but not limited to, the right to divest the Apartment Owners and their mortgagees (other than mortgagees of KRC or OVD) of any interest in the Possible Deletion Areas and the improvements thereon and the right to cause title to the Possible Deletion Areas and the

improvements thereon to be vested solely in KRC, subject to any mortgage affecting the Possible Deletion Areas to the extent that such mortgage was signed by KRC or OVD. The mortgages signed by KRC or OVD that affect the Possible Deletion Areas are the mortgages that in fact were signed by KRC and are more particularly described in paragraphs 10.p, 10.q and 10.r herein.

8. Pursuant to Section 20 (Developer's Reserved Right to Subdivide and Consolidate the Land) and Section 27.2 (Consent; Special Power of Attorney) of the Declaration, OVD exercises its right to subdivide said Lot 479, without being required to obtain the approval, consent, or joinder of the Apartment Owners and their respective lenders, if any, and the Apartment Owners and their respective lenders, if any, have appointed OVD, "as his or her attorney-in-fact to join in, consent to, sign, have notarized, deliver and record all documents and to do all things on his, her or its behalf" in connection with this Amended Petition. Further, pursuant to Sections 21, 21.2 and 21.4 of the Declaration, KRC and OVD exercise their rights to (a) withdraw and delete the area to be identified as Lot 1217-A and the improvements thereon from the Project, (b) divest the Apartment Owners and their mortgagees (other than mortgagees of KRC) of any interest in Lot 1217-A and the improvements thereon, and (c) cause title to Lot 1217-A and the improvements thereon to be vested solely in KRC, subject to the mortgages signed by KRC and more particularly described in paragraphs 10.p, 10.q and 10.r herein.

9. KRC has filed herewith a subdivision map duly approved by the Department of Planning and Permitting of the City and County of Honolulu ("DPP") (a copy of DPP's approval letter dated October 14, 2005 is attached hereto as Exhibit "C"), which map shows the resubdivision of said Lot 479, as shown on Map 172 of Land Court Application No. 1095, less erosion, into Lots 1217-A and 1217-B and the designation of Easement 392 for access purposes in favor of Lot 1217-B affecting Lot 1217-A.

10. Lot 1217-A and 1217-B shall be subject to the following encumbrances:

- a. Easement "75" (72 feet wide) for drainage purposes, as shown on Map 68, as set forth by Land Court Order No. 35003, filed April 28, 1972.
- b. Easement "79" (56 feet wide) for utility purposes, as shown on Map 68, as set forth by Land Court Order No. 35003, filed April 28, 1972 ("Easement 79").
- c. Grant in favor of City and County of Honolulu dated May 3, 1978, filed in said Office as Land Court Document No. 875601 over Easement 79.
- d. Rights of way in favor of lots entitled thereto as shown on Map 68, as set forth by Land Court Order No. 35003, filed April 28, 1972.
- e. Terms, provisions, and reservation of rights to the Trustees Under the Will and of the Estate of James Campbell, deceased, contained in Short Form Acquisition Agreement dated June 3, 1988, filed in said Office as Land Court Document No. 1555263.
- f. Terms and provisions contained in Declaration Concerning Location of Pedestrian Easement dated August 8, 1990, filed in said Office as Land Court Document No. 1754787.

- g. Terms and provisions contained in Deed dated December 30, 1988, filed in said Office as Land Court Document No. 1603995.
- h. Terms and provisions contained in Declaration of Restrictive Covenants dated December 30, 1988, filed in said Office as Land Court Document No. 1603990.
- i. Terms and provisions contained in Declaration Concerning Location of Parks and Easements dated October 11, 1989, filed in said Office as Land Court Document No. 1675414.
- j. Terms and provisions contained in Declaration of Restrictive Covenants, Conditions and Reservations dated August 24, 2004, filed in said Office as Land Court Document No. 3169232.
- k. Grants of Easement, Additional Security Mortgage and Financing Statement dated February 9, 2005, filed in said Office as Land Court Document No(s). 3231119 and 3231120. Consent thereto dated February 9, 2005, filed in said Office as Land Court Document No. 3231121.
- l. Condominium Map 1665 and the terms and provisions contained in the Declaration of Condominium Property Regime for "Ocean Villas at Turtle Bay Resort" Condominium Project dated August 31, 2004, filed in said Office as Land Court Document No. 3172940, as amended by the First Amendment dated August 23, 2005, filed in said Office as Land Court Document No. 3364329 and the Amendment dated December 20, 2005, filed in said Office as Land Court Document No. 3375969. Consent thereto dated December 20, 2005, filed in said Office as Land Court Document No. 3375970.
- m. Terms and provisions contained in By-Laws of the Association of Apartment Owners dated August 31, 2004, filed in said Office as Land Court Document No. 3172941.
- n. Terms and provisions contained in Unilateral Agreement and Declaration for Conditional Zoning dated September 23, 1986, filed in said Office as Land Court Document No. 1402662, as amended by the Amendment to Unilateral Agreement dated December 1988, filed in said Office as Land Court Document No. 1603989.
- o. Terms and provisions contained in Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance dated \_\_, 2005, filed in said Office as Land Court Document No. 3366116.
- p. As to Lot 1217-A and as to an undivided 0.86% interest in Lot 1217-B only, that certain First Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement in favor of Credit Suisse ("Credit Suisse"), dated September 30, 2005, made by Kuilima Resort Company, a Hawai'i general partnership and TBR Property L.L.C., a Delaware limited liability company, filed in said Office as Land Court Document No. 3335667, subsequently amended in that certain First Amendment to First Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement, dated May 23, 2008, filed in said Office as Land Court

Document No. 3751516, and Notice of Pendency of Action, dated December 28, 2007, filed in said Office as Land Court Document No. 3697072.

q. As to Lot 1217-A and as to an undivided 0.86% interest in Lot 1217-B only, that certain Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement in favor of Credit Suisse, dated September 30, 2005, made by Kuilima Resort Company, a Hawai'i general partnership and TBR Property L.L.C., a Delaware limited liability company, filed in said Office as Land Court Document No. 3335668, subsequently assigned in that certain Quitclaim Assignment of Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement to Wells Fargo Bank, N.A. ("Wells Fargo"), dated May 16, 2008, filed in said Office as Land Court Document No. 3751517, subsequently amended in that certain First Amendment to Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement, dated May 23, 2008, filed in said Office as Land Court Document No. 3751519.

r. As to Lot 1217-A and as to an undivided 0.86% interest in Lot 1217-B only, that certain New Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement in favor of Wells Fargo Bank, N.A., dated May 23, 2008, made by Kuilima Resort Company, a Hawai'i general partnership and TBR Property L.L.C., a Delaware limited liability company, filed in said Office as Land Court Document No. 3751518.

11. Credit Suisse and Wells Fargo have joined in, consented to, and approved of the filing of this Amended Petition, as shown by those certain Joinders filed herewith.

12. Lot 1217-A shall have access across Lots 467 and 478 and unregistered land (Turtle Bay Access Drive). Lot 1217-A shall also have utility rights across and under the portion of Easement 79 located on Lot 1217-B, and the owner of Lot 1217-A shall have the right to grant such utility rights to one or more utility companies and/or other appropriate grantees.

13. Lot 1217-B shall have access across Lots 467, 478 and 1217-A and unregistered land (Turtle Bay Access Drive) through Easement 392. Easement 392 shall be subject to reasonable realignment by the owner of Lot 1217-A at such owner's expense.

14. Lot 1217-A is not subject to that certain Memorandum of Lease dated December 28, 2001, filed in said Office as Land Court Document No. 2768281, the Lease referenced in said Memorandum of Lease having been amended by instruments filed in said Office as Land Court Document Nos. 3140458, 3229445, 3241465, 3334217 and 3335173.

WHEREFORE, Petitioner prays that this Court:

1. Examine the map filed herewith pursuant to Section 501-85 of the Hawai'i Revised Statutes, as amended, and be find it to be correct;

2. Issue an order:
  - a. Granting this Amended Petition for Erosion of Lot 479;
  - b. Granting this Amended Petition for Subdivision of Lot 479 Less Erosion and Resubdivision into Lots 1217-A and 1217-B and divesting the Apartment Owners and their mortgagees (other than mortgagees of KRC) of any interest in Lot 1217-A and the improvements thereon and vesting title solely in KRC, subject to the mortgagees and other rights, liens and encumbrances described in the Land Court Certificate of Title described in paragraph 3 below;
  - c. Designating Easement 392 Affecting Lot 1217-A;
3. Authorize and direct the Assistant Registrar of this Court to issue a new Land Court Certificate of Title for Lot 1217-A, showing ownership solely in KRC, and noting on the new Certificate references to said map and to the order to be issued by reason of this Amended Petition, subject to access rights and the encumbrances described in paragraphs 10 (including the items described in paragraphs 10.p, 10.q and 10.r), 12 and 13 herein in accordance with Sections 501-85 and 501-109 of the Hawai'i Revised Statutes, or any amendments thereto, and Rule 15 of the Rules of the Land Court.
4. Authorize and direct the Assistant Registrar of this Court to note on Transfer Certificate of Title No. 323,595 and to note on the Land Court Certificates of Title in favor of the other individual Apartment Owners, references to said map, to the order to be issued by reason of this Amended Petition and to the Land Court Certificate of Title in favor of KRC as described in the preceding paragraph, subject to access rights and encumbrances for or affecting Lot 1217-B as described in paragraphs 10, 12 and 13 herein, provided that the encumbrances described in paragraphs 10.p, 10.q and 10.r herein, to the extent applicable to Lot 1217-B, are and shall only be applicable to an undivided 0.86% interest in Lot 1217-B, which undivided 0.86% interest is appurtenant to Apartment 120 in the Project, in accordance with Sections 501-85 and 501-109 of the Hawai'i Revised Statutes, or any amendments thereto, and Rule 15 of the Rules of the Land Court.

Dated: Honolulu, Hawai'i, \_\_\_\_\_

*June 8, 2009*

*Shaun M. Mukai*

SHAUN M. MUKAI,  
Attorney for Petitioners KUILIMA RESORT  
COMPANY, a Hawai'i general partnership;  
OCEAN VILLAS DEVELOPMENT L.L.C., a  
Delaware limited liability company, and the  
apartment owners of the units in the Ocean Villas at  
Turtle Bay condominium project

This 61 page Amended Petition for Subdivision of Lot 479  
Less Erosion, etc. dated June 8, 2009,  
was subscribed and sworn to before me by  
Shaun M. Mukai, on June 8, 2009, in the First  
Circuit of the State of Hawai'i.

Karen R. Yamasato

(Signature of Notary)



Print Name: Karen Y. Yamasato  
Notary Public, State of Hawai'i

My commission expires: 4-14-2010



Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mtg Doc Nos.	2nd Mtg Doc No.	3rd Mtg Doc No.	4th Mtg Doc No.	5th Mtg Doc No.	Lender Name
101	LYNETTE N. GAY and ALISON H. MOSCA, Co-Trustees under that certain unrecorded trust known as "The Lynette N. Gay Revocable Trust" dated June 26, 2002	755867	3289340 2005-130036	n/a	n/a				
102	JAMES BRANDT ANDERSEN, husband of Katherine Ann Andersen, Tenant in Severalty	766175	3315742 2205-165401	3315743 2005-165402	n/a				Bank of America, N.A.
103	JAMES BRANDT ANDERSEN, husband of Katherine Ann Andersen, Tenant in Severalty	766176	3315745 2005-165408	3315746 2005-165409	n/a				Bank of America, N.A.
104	VINCENT FRANK LIOTTA, husband of JoAnne Liotta, Tenant in Severalty	845932	3562009 2007-030403	3562010 2007-030404	3562011 2007-030405	3585947 2007-066092			Wells Fargo Bank, N.A.
105	CAROLE GAY OLSEN, unmarried, Tenant in Severalty	775494	3341937 2005-210585	3621664 2007-117140	3636959 2007-137899				JPMorgan Chase Bank, N.A. MERS as nominee for Countrywide Bank FSB
106	GINA CARMEL OLSEN, wife of Nathaniel Penn Olsen, Tenant in Severalty	775495	3341939 2005-210587	3477188 2006-163200	3629490 2007-127488				Wells Fargo Bank, N.A.
107	MICHAEL PAU HICKS and MARIE LOUISE ELEONORA HICKS, husband and wife, as Joint Tenants	760428	3300464 2005-143441	3300465 2005-143442	3300466 2005-143443				Wells Fargo Bank, N.A.
108	TURTLE BAY 108, LLC, a Utah limited liability company	920325	3782747 2008-134320	3602811 2007-088529					Wells Fargo Bank, N.A.
109	TURTLE BAY 108, LLC, a Utah limited liability company	916900	3773878 2008-120016	n/a	n/a				Wells Fargo Bank, N.A.
110	CHRISTOPHER WILLIAM GLATIS, unmarried, and KEITH EDDY SNELL, husband of Margaret Snell, a Tenants in Common	775271	3341443 2005-209786	3341444 2005-209787	3341445 2005-209788				Wells Fargo Bank, N.A.
111	PATRICK JOSEPH ALLEN and SANDRA KASHIWADA ALLEN, husband and wife, as Tenants by the Entirety	813674	3452967 2006-129277	n/a	n/a				Wells Fargo Bank, N.A.
112	UMGENI, LLC, a California limited liability company	744525	3256686 2005-078742	3256687 2005-178743	A/M 3831631 2009-027156				First Hawaiian Bank Bank of America, N.A.
113	KIM BLA TNICK HORTON, wife of Richard Aim Horton, as Tenant in Severalty	751246	3276639 2005-111063 A/M 3788638 2008-143353	3276640 2005-111064	3358720 2005-239167	3460340 2006-139530	3707644 2008-015458	3774061 2008-120210	First Horizon Home Loan Corporation Douglas Shields Virginia K. Petersen, Trustee of the Paul and Virginia Petersen Trust C Dated January 2, 1996 Activty Link Systems, LLC

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Ocean Villas at Turtle Bay Resort  
 Tax Map Key (1) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mtg Doc Nos.	2nd Mtg Doc No.	3rd Mtg Doc No.	4th Mtg Doc No.	5th Mtg Doc No.	Lender Name
114	EDWARD BLAINE JOHNSON, husband of Christina Ray Johnson	895053	3711011 2008-021105						
115	JOHN JAMES HUSSEY and PAULA ANTOINETTE HUSSEY, husband and wife, as Tenants by the Entirety	695265	3271335 2005-101536	3271336 2005-101537	3701977 2008-006725				Wells Fargo Bank, N.A.
116	STANLEY DOUGLAS GLENDENNING and GRETCHEN GRAFF GLENDENNING, husband and wife, as Tenants by the Entirety	909208	3751342 2006-083810	n/a	n/a				
117	STANLEY DOUGLAS GLENDENNING and GRETCHEN GRAFF GLENDENNING, husband and wife, as Tenants by the Entirety	909206	3751337 2008-083808	3751338 2008-083809					MERS as nominee for Central Pacific HomeLoans Inc
118	BARRY M. WEINMAN and VIRGINIA S. WEINMAN, as Trustees of the Weinman Family Trust dated September 25, 1998	770296	3327258 2005-186514	n/a	n/a				
119	Yet to be sold	323595							
120	Yet to be sold				3335668 2005-199934				
121	CHUCK SPEZZANO and LENORA KAY SPEZZANO, also known as Lency Spezzano, as Co-Trustees of the Charles Lee Spezzano Revocable Trust dated May 16, 1995, and LENORA KEY SPEZZANO and CHUCK SPEZZANO, as Co-Trustees of the Lenora Kay Spezzano Revocable Trust dated May 16, 1995, as Tenants in Common	323595		3335667 2005-199933	A/M 3751517 2008-084075	3751518 2008-084076			Credit Suisse Wells Fargo Bank NA
201	KENNETH CHI CHU LIANG and LAURA KELLY LIANG, husband and wife, as Joint Tenants as to an undivided 1/3 interest, and GEORGE ANTHONY LEIVA and VALERIE JEAN LEIVA, husband and wife, as Joint Tenants, as to an undivided 1/3 interest, and KEITH LIANG, unmarried, as Tenant in Severalty as to an undivided 1/3 interest, as Tenants in Common	845516	3560116 2007-028128	3529787 2006-232942	3529788 2006-232943	3811424 2008-184233			Bank of Hawaii
202	NATHANIEL PENN OLSEN, husband of Gina Carmel Olsen, as Tenant in Severalty	782447	3362721 2005-246518	3362722 2005-246519					Wells Fargo Bank, N.A.
		851781	3582220 2007-038282	3582221 2007-058283	3582222 2007-058284				JP Morgan Chase Bank, N.A. MERS as nominee for American Brokers Conduit

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Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mfg Doc Nos.	2nd Mig Doc No.	3rd Mig Doc No.	4th Mig Doc No.	5th Mig Doc No.	Lender Name
203	CAROLE GAY OLSEN, as Trustee of The Carole Gay Olsen Trust dated July 27, 2002	853869	3587870 2007-066742	3582224 2007-058286	3582225 2007-058287				Wells Fargo Bank, N.A.
204	SURFER DUDE VILLA, LLC, a Washington limited liability company	854444	2007-069504	n/a	n/a				
205	HAWAII CONDO INVESTORS, LLC, a Delaware limited liability company	745088	3257880 2005-080752	3257881 2005-080753	n/a				Wells Fargo Bank, N.A.
206	HAWAII CONDO INVESTORS, LLC, a Delaware limited liability company	745089	3257883 2005-080759	3257884 2005-080760	n/a				Wells Fargo Bank, N.A.
207	CHARLES S. GULLO, husband of Michelle Meena Gullo, as Tenant in Severalty	766702	3317140 2005-167782	3317141 2005-167783	n/a				Wells Fargo Bank, N.A.
208	JOHN MICHAEL MCCANN, unmarried and GARY TODD STEPHENS, unmarried, as Joint Tenants	767007	3317940 2005-169569	3317940 2005-169569					
209	KEVIN LEWIS SEITZ and KATHLEEN WONG SEITZ, husband and wife, as Tenants by the Entirety	800571	3317939 2005-169568	A/M 3334586 2005-198649	3458924 2006-137116				Bank of Hawaii assigned to Lehman Brothers Bank, FSB Bank of Hawaii
210	JOSEPH MATSON-HENRY and PAULETTE BARRET-MATSON, husband and wife, as Joint Tenants	739813	3413763 2006-065556	3413764 2006-065557	3413765 2006-065558				MERS as nominee for Central Pacific Home Loans, Inc. Central Pacific Bank
211	ROBERT WIEBORT, Trustee of the Robert Wiebort Trust dated March 31, 2004	755570	3244609 2005-057173	n/a	n/a				
212	DOUGLAS IRVINE FARRELL and MYRA FARRELL, husband and wife, as Tenants by the Entirety	744626	3288376 2005-128322	3615170 2007-107349	3682009 2007-200891				Wells Fargo Bank, N.A.
213	PHILLIP HAROLD GREY, husband of Denise Elizabeth Grey, as to an undivided 1/3 interest, and PAUL GEORGE GREY, husband of Sherry Mae Grey, as to an undivided 1/3 interest, and CYNTHIA HAES, unmarried, as to an undivided 1/3 interest, as Tenants in Common	755000	3256689 2005-078749	3256690 2005-078750	3256691 2005-078751				Wells Fargo Bank, N.A.
			3286632 2005-125004		3594642 2007-076776				MERS as nominee for Multi-State Home Lending, Inc.

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214	OCEANFRONT VILLAS AT TURTLE BAY, LLC, a Washington limited liability company	891667	3700928 2008-004819						
215	GERALDINE TERESA DAVIS-HULON, unmarried, as Tenant in Severalty	751525	3277373 2005-111866	3277374 2005-111867	3611614 2007-101906				Wells Fargo Bank, N.A. Washington Mutual Bank
216	DAVID ALLEN MOUNT and SHARON LYNNE MOUNT, as Trustees of the Mount Family Trust dated March 5, 1997	779828	3355083 2005-232968	n/a	n/a				
217	DAVID ALLEN MOUNT and SHARON LYNNE MOUNT, as Trustees of the Mount Family Trust dated March 5, 1997	779829	3355084 2005-232969	n/a	n/a				
218	EDMUND RICHARDS TWEEDY FLANIGAN, husband of Cynthia Flanigan, as Tenant in Severalty	766384	3316424 2005-166365	n/a	n/a				
301	PATRICK WILLIAM MCDONALD, unmarried, WILLIAM GREGORY GEIGER and JACQUELINE LUTZ GEIGER, Trustees under that certain Geiger Family Trust dated November 23, 2004, and SEAN F. ARMSTRONG and JUDY ARMSTRONG, Trustees under that certain Armstrong Family Trust dated February 21, 2001, and DESMOND A. ARMSTRONG and ANN M. ARMSTRONG, Trustees under The Armstrong Family Trust dated April 22, 2005, as Tenants in Common	720674	3342949 2005-212943	3342950 2005-212944	n/a				
302	NATHANIEL PENN OLSEN, husband of Gina Carmel Olsen, as Tenant in Severalty	849078	3571610 2007-044153	3601705 2007-086736	3669679 2007-183315				Wells Fargo Bank, N.A.
303	NATHANIEL PENN OLSEN, husband of Gina Carmel Olsen, as Tenant in Severalty	750934	3275729 2005-109534	3507042 2006-199708	3554222 2007-021171				Wells Fargo Bank, N.A.
304	THOMAS EDWARD LEWANDOWSKI and JANE LEWANDOWSKI, husband and wife, as Tenants by the Entirety	760146	3299362 2005-141934	3299363 2005-141935	n/a				Wells Fargo Bank, N.A.
305	MEI-LI TENG LEFF, wife of Leslie Leff, as Tenant in Severalty	765021	3312553 2005-161607	n/a	n/a				
306	MEI-LI TENG LEFF, wife of Leslie Leff, as Tenant in Severalty	765022	3312555 2005-161613	n/a	n/a				
307	IRA ETHAN KOSOFF and ELLEN RUTH ELIASOPH, husband and wife, as Tenants by the Entirety	749423	3270950 2005-101141	3270951 2005-101142	n/a				American Savings Bank, F.S.B.

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Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mtg Doc Nos.	2nd Mtg Doc No.	3rd Mtg Doc No.	4th Mtg Doc No.	5th Mtg Doc No.	Lender Name
308	ROBERT E. WILHELM, Trustees under that certain unrecorded trust known as the "Robert E. Wilhelm Living Trust" dated January 31, 2002 THOMAS JOSEPH GINELLA and MAURIBEN WEBER-GINELLA, husband and wife, as Tenants by the Entirety, as to an undivided 1/2 interest and PAUL JAN LONG and LISA ASTURIAS LONG, husband and wife, as Tenants by the Entirety, as to an undivided 1/2 interest, as Tenants in Common.	745146	3258074 2005-081117	n/a	n/a				
309	GREGORY JOSEPH DAVIS, husband of Karen Christie Davis, MARK ARNOLD SCHEELE, husband of Sheri Denise Scheele, SCOTT EDWARD SCHEELE, husband of Cheryl Ann Scheele, and JAMES ROSS RUBIN, husband of Pamela Kay Rubin, as Tenants in Common	811273	3445847 2006-119354	3445848 2006-119355	n/a				MERS as nominee for Steward Financial Inc.
310		73263	3281653 2005-116931	3281654 2005-116932	3281655 2005-116933				Wells Fargo Bank, N.A.
311	CAPSTONE PROPERTIES, LLC, an Arizona limited liability company CHRISTOPHER E. CROCKER and SHARON A. CROCKER, Trustees under that certain Christopher E. Crocker and Sharon A. Crocker Trust Agreement dated November 30, 1998	851780	3582218 2007-058280	3582219 2007-058281					M&I Bank, FSB
312		741305	3248820 2005-064119	3248821 2005-064120	n/a				Wells Fargo Bank, N.A.
313	IRWIN E. JENSEN and JOYCE D. JENSEN, as Co-Trustees of that certain unrecorded The Irwin E. and Joyce D. Jensen Revocable Trust created by Trust Declaration dated April 28, 1994	816776	3462402 2006-142065	n/a	n/a				
314	KIM BLATNICK HORTON, wife of Richard Alin Horton, as Tenant in Severalty	791953	3389038 2006-026580	A/M 3389039 2006-026581	3389040 2006-026582	3774061 2008-120210			MERS as nominee for Shasta Financial Services, Inc. Activity Link Systems LLC
315	GARY SHMERLER and KAREN SHMERLER, husband and wife, as Tenants by the Entirety	738859	3242109 2005-052719	3242110 2005-052720	3457764 2006-135731	3827786 2009-019638			Wells Fargo Bank, N.A. Johnson Bank

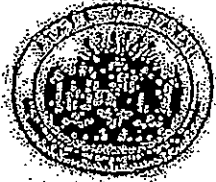
Exhibit A

Ocean Villas at Turtle Bay Resort  
 Tax Map Key (I) 5-7-001-013  
 Land Court Condo Map No. 1665

Unit No.	Owner's Name	TCT No.	Deed Doc Nos.	Mtg Doc Nos.	2nd Mtg Doc No.	3rd Mtg Doc No.	4th Mtg Doc No.	5th Mtg Doc No.	Lender Name
316	Yet to be sold	323595							
317	Yet to be sold	323595							
318	PHIL DEAN MCCLANAHAN, Trustee of the PEMR Trust dated January 1, 1996	876756	3655669 2007-164189	3655670 2007-164190					M&I Bank FSB

DOUBLE SYSTEM

25  
66A



L-700  
STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
RECORDED  
SEP 29, 2004 02:00 PM  
Doc No(s) 3172840  
on Cert(s) 323,898



89 1/2 Z1 R1036

/s/ CARL T. WATANABE  
ASSISTANT REGISTRAR



R-1038  
STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
SEP 29, 2004 02:00 PM  
Doc No(s) 2004-200492



86 1/2 Z1 L700

/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL  PICKUP   
McCorrison Miller Mukai MacKinnon LLP  
D. Scott MacKinnon, Esq.  
Joel D. Kam, Esq.  
P.O. Box 2800  
Honolulu, Hawaii 96803-2800

This Document Contains 76 Pages

DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF OCEAN VILLAS AT TURTLE BAY RESORT  
CONDOMINIUM MAP NO. 1665 and 3844

Tax Map Key: (1) 5-7-001:013

EXHIBIT "B"

DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF  
OCEAN VILLAS AT TURTLE BAY RESORT

This Declaration of Condominium Property Regime of Ocean Villas at Turtle Bay Resort is made by OCEAN VILLAS DEVELOPMENT, L.L.C., a Delaware limited liability company (the "Developer"), KUILIMA RESORT COMPANY, a Hawaii general partnership (the "Fee Owner"), joins in this Declaration only for the purposes, and subject to the limitations of liability, specified in Section 30.5 below.

I. INTRODUCTION

- A. The Fee Owner is the owner in fee simple of the land described in Exhibit A attached to this document (the "Land").
- B. The Fee Owner and the Developer have entered into that certain Ocean Villas Development Agreement (the "Development Agreement") effective as of August 24, 2004, which confers the right to develop a portion of the Land to the Developer. Pursuant to the Development Agreement, the Developer intends to construct or place certain buildings and other improvements on the Land.
- C. The Fee Owner and the Developer intend to establish a condominium that consists of the Land and the improvements to be constructed by the Developer.
- D. This Declaration is one of the documents required by law to create the condominium. It divides the Land and the Improvements into separately owned "Apartments" and commonly owned "Common Elements". It also establishes the rights of the Fee Owner, the Developer and anyone who owns an Apartment.

II. DECLARATION

1. DEFINITIONS. When used in this Declaration or the Bylaws, the following terms will have the following meanings unless the context clearly indicates otherwise:

- 1.1 "Adjacent Parcel" means all or any part of the following Tax Map Key parcels: (1) 5-7-1 parcels 1, 16, 17, 20, 22, 27, 28, 29, 30, 31 and 35; (1) 5-7-2 parcel 19; (1) 5-7-3 parcel 72; (1) 5-7-6 parcels 1, 2, 22, and 23; (1) 5-6-3 parcels 33, 40, 41, and 42. If any such parcel is subdivided into separate lots, each of them will be an "Adjacent Parcel" whether or not they are each physically adjacent to the Project.
- 1.2 "Apartment" means any part of the Project designated as an Apartment in Section 5.1.
- 1.3 "Apartment Owner" or "Owner" means the person or persons who own an Apartment and its appurtenant Common Interest, provided that:
- 1.3.1 To the extent and for the purposes, including voting, provided by a recorded lease of an Apartment, a lessee of an Apartment will be deemed to be the Owner of it; and
- 1.3.2 The buyer of an Apartment under a recorded agreement of sale has all the rights of an Apartment Owner, including the right to vote. The seller may keep the right to vote, however, on "matters substantially affecting the seller's security interest in the Apartment" as that phrase is used in the Condominium Property Act.
- 1.4 "Association" means The Association of Apartment Owners of Ocean Villas at Turtle Bay Resort.



- 1.5 "Board of Directors" or "Board" means the Board of Directors of the Association.
- 1.6 "Bureau" means the Bureau of Conveyances of the State of Hawaii.
- 1.7 "Bylaws" means the "Bylaws of the Association of Apartment Owners of Ocean Villas at Turtle Bay Resort" recorded in the Land Court immediately following this Declaration. It also includes any amendments properly made to the Bylaws from time to time.
- 1.8 "Common Elements" means all parts of the Project, except for the Apartments, including those parts of the Project designated in this Declaration as Common Elements or as Limited Common Elements.
- 1.9 "Common Expenses" means (i) all expenses of operation and maintenance of the Project, and (ii) all sums designated as Common Expenses by or pursuant to the Condominium Property Act, this Declaration or the Bylaws.
- 1.10 "Common Interest" means the undivided percentage interest in the Common Elements appurtenant to each Apartment in the Project as stated in this Declaration or in any amendment to this Declaration.
- 1.11 "Condominium Documents" means this Declaration, the Bylaws, any House Rules, and the Condominium Map.
- 1.12 "Condominium Map" means the plans and elevations for the Project recorded in the Land Court as Condominium Map No. 1665 and in the Bureau as Condominium Map No. 3844. It also includes any changes and additions properly made to them from time to time.
- 1.13 "Condominium Property Act" means the Hawaii Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, and any changes to it. If that law is replaced, then "Condominium Property Act" will mean the substitute or replacement law. If the State of Hawaii adopts the Uniform Common Interest Ownership Act or any other law that permits condominium projects to choose to be governed by that law, and if this Project chooses to do so, then the term "Condominium Property Act" will mean that law, as amended from time to time, or any substitute or replacement for that law.
- 1.14 "Condominium Regulations" means the regulations adopted under the Condominium Property Act from time to time.
- 1.15 "Declaration" means this document and any changes, amendments and additions properly made to it.
- 1.16 "Design Guidelines" means that certain Declaration of Restrictive Covenants, Conditions and Restrictions dated August 24, 2004, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-195080, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3169832, as the same may be amended from time to time. A copy of the Design Guidelines is attached hereto as Exhibit E and made a part hereof.
- 1.17 "Developer" means Ocean Villas Development, L.L.C., a Delaware limited liability company. If the Developer transfers some or all of its rights to another person pursuant to Section 27.4, then that person will become the "Developer" to the extent of the rights transferred.
- 1.18 "Developer's Reserved Rights" means all rights reserved to the Fee Owner and/or the Developer under this Declaration or in the Bylaws.

1.19 "Development Period" means the period starting on the date that this Declaration is recorded and ending on the earlier of (i) December 31, 2018, or (ii) the date when the Developer records a document giving up all of the Developer's Reserved Rights.

1.20 "Fee Owner" means Kuliima Resort Company, a Hawaii general partnership.

1.21 "Hotel" means the Hotel at Turtle Bay Resort, 57-001 Kamehameha Highway, Kahuku, Hawaii 96731, and related buildings, structures, grounds and facilities as described in Section 4.

1.22 "Hotel Related Apartment" means Apartment 120.

1.23 "House Rules" means the rules and regulations adopted by the Board, as permitted by the Bylaws, governing the details of the operation, maintenance and use of the Common Elements and, to the extent permitted by the Condominium Property Act, the Apartments. It also includes any changes and additions properly made to the House Rules from time to time.

1.24 "Improvements" means all improvements located on the Land, now or in the future. If the Fee Owner or the Developer annexes any Adjacent Parcel using its rights in Section 22, then the term "Improvements" will include both the improvements located on the Land before the annexation, plus the improvements located on the Adjacent Parcel so annexed.

1.25 "Interested Person" means any person who has any interest in the Project or who has the right to use the Project or any part of it. For example, each Owner, each Lender, and anyone who rents or leases an Apartment would be an "Interested Person". It would also include anyone who has the right (in legal terms, an "easement") or who has permission to use the Project or any part of it.

1.26 "Land" means the real property described in Exhibit A and any appurtenances to it. If the Fee Owner or the Developer annexes any adjacent land using its rights in Section 22, then the term "Land" will include both the Land just before the annexation, plus the Adjacent Parcel so annexed.

1.27 "Land Court" means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

1.28 "Lender" means the mortgagee of a recorded Mortgage on an Apartment. It also includes the beneficiary of a deed of trust encumbering an Apartment.

1.29 "Limited Common Elements" means (i) those parts of the Common Elements designated in Section 5.3 as Limited Common Elements, and (ii) any Common Elements later designated as Limited Common Elements as expressly permitted by this Declaration.

1.30 "Majority of the Owners" means Owners of Apartments having more than fifty percent (50%) of the Common Interests for the whole Project. Any other reference to a certain percentage of the Apartment Owners means the Owners of Apartments having that percentage of the Common Interests for the whole Project.

1.31 "Majority of the Owners Voting" means Owners of Apartments having more than fifty percent (50%) of the Common Interests voted on a particular issue. Any other percentage of the Apartment Owners voting means the Owners of Apartments having that percentage of the Common Interests voted on a particular issue.

1.32 "Managing Agent" means the agent employed by the Developer pursuant to the Declaration and Bylaws. It also includes any replacement agent employed by the Board pursuant to the Declaration and Bylaws.

1.33 "Mortgage" when used as a noun, means a recorded mortgage or deed of trust on an Apartment as collateral for a loan. When used as a verb, it refers to making an Apartment subject to a mortgage or deed of trust.

1.34 "New Improvement" means any improvements that the Developer develops, builds, alters or adds from time to time on the Land pursuant to Sections 19 or 22.

1.35 "Person" means any natural person or any corporation, partnership, limited partnership, limited liability partnership, joint venture, trust, limited liability company or other legal entity.

1.36 "Possible Deletion Areas" means those parts of the Land identified on the Condominium Map as such and which may be deleted from the Project by the Fee Owner and the Developer pursuant to Section 21.

1.37 "Project" means the condominium project established pursuant to this Declaration and the other Condominium Documents.

1.38 "Property" means the Land and the Improvements.

1.39 "Record", "Recorded", "Recording", and similar terms mean recorded and/or filed in the Land Court. Hawaii law may be changed to require that deeds, mortgages, amendments to the Condominium Documents, or other documents, be recorded in the Bureau of Conveyances of the State of Hawaii. After any such law takes effect, "record", "recorded", "recording" and similar terms will mean and refer to recording in the Bureau to the extent provided by the change in the law.

1.40 "Representatives" means a person's directors, officers, members (in the case of a limited liability company), partners, agents, fiduciaries, managers, employees and independent contractors.

1.41 "SMA Permits" means the following: (i) Special Management Area Use Permit granted under Resolution 86-308 adopted by the Council of the City and County of Honolulu on October 1, 1986; (ii) Special Management Area Use Permit granted under Resolution 03-116, CD1, adopted by the Council of the City and County of Honolulu on July 2, 2003, and all amendments or modifications thereto.

## 2. ESTABLISHMENT OF PROJECT.

2.1 Submission of Property to Condominium Property Regime. In order to create a condominium project consisting of the Land and the Improvements, the Fee Owner and the Developer submit all of their respective estates, rights, title and interests in the Property to this Declaration and the Bylaws and to the condominium property regime established by the Condominium Property Act. In furtherance thereof, the Fee Owner and the Developer make the following declarations as to divisions, limitations, covenants, conditions, easements and restrictions, and declare and agree that the Property is held and will be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, covenants, conditions, easements and restrictions contained in this Declaration and the Bylaws, all of which:

- A. Are intended to create mutual servitudes upon each Apartment within the Project and to create reciprocal rights between the respective Apartment Owners;
- B. Constitute equitable servitudes, liens and covenants running with the Land; and

- C. Will be binding on and for the benefit of the Fee Owner, the Developer, their respective successors, heirs, personal representatives and assigns, and all subsequent Owners, Lenders, tenants, and occupants of all or any part of the Project and any other person who may use any part of the Project, and each of their respective successors, heirs, personal representatives and assigns.

This means, among other things, that the Condominium Documents will be binding on the Property and on anyone (i) who now or later owns the Property or any Apartment or other Interest in it, or (ii) who is entitled to use or occupy any Apartment or any other part of the Project. It also means that the Condominium Documents are intended to benefit each of those persons and also the Association and the Developer. Each of them has the right to enforce the Condominium Documents in the manner provided in the Condominium Property Act or in the Condominium Documents.

2.2 Reservation of Easements and Other Rights. The Fee Owner and the Developer grant and reserve the easements described in this Declaration. The Fee Owner and the Developer also reserve the Developer's Reserved Rights in the Property and the Project. The Fee Owner and the Developer declare that all Apartments and their appurtenant Common Interests and all Common Elements (including the Limited Common Elements) are subject to the Developer's Reserved Rights and to the easements granted or reserved in this Declaration or in the Bylaws.

3. NAME OF THE CONDOMINIUM. The name of the Project is "Ocean Villas at Turtle Bay Resort".

4. DESCRIPTION OF THE PROJECT. The Project shall contain six (6) three-story buildings (Buildings A, B, F and G), and one (1) single-story building (Building E), constructed principally of wood, concrete, concrete block, gypsum board, metal stud partitions, and glass, and shall include fifty-seven (57) Apartments and Common Elements as described in Sections 5.1 and 5.2 hereinafter and as shown on the Condominium Map. The Project shall also contain that certain six (6) story building comprising the Hotel constructed principally of cast-in-place concrete, seven (7) single story, slab on grade, concrete block buildings with wood framed roofs, and related buildings, structures and facilities located on the Land (collectively, the "Hotel"). The Buildings of the Project, as shown on the Condominium Map, are described as follows:

4.1 Building A. Levels 1, 2 and 3 of Building A will each include three (3) Apartments, one (1) covered walkway and one (1) elevator. In addition, Level 1 will include HECO vaults, storage lockers, an electrical room, and a machine room. Level 2 will include a linen room and miscellaneous storage areas. Level 3 will include a linen room and condenser units. Additional condenser units may be situated on the roof of Building A.

4.2 Building B. Levels 1, 2 and 3 of Building B will each include three (3) Apartments, one (1) stairway, and one (1) covered walkway. In addition, Level 1 will include HECO vaults, storage lockers, mailboxes, and an electrical room. Level 2 will include miscellaneous storage areas. Level 3 will include condenser units.

4.3 Building C. Levels 1, 2 and 3 of Building C will each include three (3) Apartments, two (2) stairways, and one (1) covered walkway. In addition, Level 1 will include HECO vaults, storage lockers, and an electrical room. Level 2 will include miscellaneous storage areas. Level 3 will include condenser units.

4.4 Building D. Levels 1, 2 and 3 of Building D will each include three (3) Apartments, one (1) stairway, and one (1) covered walkway. In addition, Level 1 will include HECO vaults, storage lockers, and an electrical room. Level 2 will include miscellaneous storage areas. Level 3 will include condenser units.

4.5 Building E. Building E will include three (3) Apartments, one (1) covered walkway, HECO vaults, storage lockers, and an electrical room.

4.6 Building F. Levels 1, 2 and 3 of Building F will each include three (3) Apartments, one (1) stairway, and one (1) covered walkway. In addition, Level 1 will include HECO vaults, storage lockers, and an electrical room. Level 3 will include condenser units.

4.7 Building G. Levels 1, 2 and 3 of Building G will each include three (3) Apartments, one (1) stairway, one (1) covered walkway, and one elevator. In addition, Level 1 will include HECO vaults, storage lockers, an electrical room, machine room, and an office. Level 2 will include miscellaneous storage areas. Level 3 will include condenser units.

4.8 Hotel. The Hotel is comprised of a six (6) story building containing 403 guest rooms, seven (7) single story, slab on grade, concrete block buildings with wood framed roofs, and related buildings, structures, grounds and facilities located on the Land and as shown on the Condominium Map. The Hotel does not contain any apartments and, in Section 5.3.4 hereinafter, is designated as a limited-common element of the Hotel Related Apartment.

5. DIVISION OF PROPERTY. The Project is hereby divided into the following separate freehold estates:

5.1 Apartments. There are hereby established in the Project fifty-seven (57) Apartments as designated and shown on the Condominium Map. Each Apartment consists of the spaces within the perimeter and party walls, windows, doors, floors and ceiling of the respective Apartment as shown on the Condominium Map.

5.1.1 Floor Plans of Apartments. The Apartments are constructed according to ten (10) different floor plans. A description of each of the floor plans for the Apartments is set forth in Exhibit B attached hereto and for every purpose made a part hereof.

5.1.2 Location of Apartments. Each Apartment is numbered and located in the manner shown on the Condominium Map.

5.1.3 Number of Rooms/Net Living Floor Area/Net Floor Area of Apartments. Each Apartment will have the number of rooms and approximate net living floor area in square feet, as set forth in Exhibit C attached hereto and for every purpose made a part hereof.

5.1.4 Measurement of Net Living Area/Net Floor Area. The approximate net living floor areas of the Apartments set forth in Exhibit C are based on measurements taken from the interior surface of all perimeter walls, except that no reduction has been made to account for interior walls, ducts, vents, shafts, stairways and the like located within the perimeter walls. All floor areas set forth in Exhibit C are not exact but are approximations based on the floor plans of each type of Apartment.

5.1.5 Access to Common Elements. Each of the Apartments shall have immediate access to walkways, corridors, stairways and/or elevators which lead to the Common Elements of the Project.

5.1.6 Limits of Apartments. Notwithstanding the floor areas set forth in Exhibit C and the manner in which such floor areas have been measured, the respective Apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter or party walls or interior load-bearing walls or partitions, the foundations, columns, girders, beams, floor slabs, supports, floors and ceilings surrounding each Apartment or any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust, or air conditioning running through or

otherwise located within such Apartment which are utilized for or serve more than one Apartment, the same being deemed Common Elements as hereinafter provided. Each Apartment shall be deemed to include all of the walls and partitions which are not load-bearing and which are within its perimeter or party walls, all movable-lanal doors and their door frames, all windows and window frames, louvers (if any), and shutters (if any), the inner decorated or finished surfaces of all walls, panels, doors (except movable-lanal doors) and their door frames, floors and ceilings, all fixtures originally installed therein, and any pipes, wires, vents, shafts, ducts, conduits, wires or other utility service lines which are utilized solely by or serve only the Apartment.

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

- A. The Land in fee simple;
- B. All yards, grounds, trees, gardens, walkways, walkway railings, gates, landscaping and refuse facilities not located within an Apartment;
- C. All roads, driveways, access lanes, paved areas, ramps and loading areas;
- D. All parking stalls and parking areas;
- E. All mailboxes and storage lockers;
- F. The Hotel;
- G. The swimming pool and deck, barbeque areas, pool pump house, outdoor shower, and trash enclosure;
- H. All foundations, floor slabs, columns, girders, beams, supports, perimeter, party and load-bearing walls and partitions (excluding the finishes thereon), roofs, stairways, elevators, walkways, corridors, ramps, loading areas, entrances, entry ways and exits of the Project, all storage rooms not located within an apartment, all maintenance rooms, all mechanical rooms, all telephone rooms, and all electrical rooms.
- I. All vents, shafts, sewer lines, water lines, pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations on, above, over, under and across the Project to the point of their respective connections to improvements comprising a part of the Apartments or the Limited Common Elements appurtenant thereto, which serve more than one Apartment, including, without limitation, those providing electricity, light, gas (if any), water, air conditioning, sewer, refuse, drainage, irrigation, telephone, and radio and television signal distribution (if any); and
- J. Any and all other equipment, apparatus and installations existing for common use by more than one (1) Apartment, and any and all other parts of the Project necessary or convenient to its existence, maintenance or safety, or normally in common use.

5.3 Limited Common Elements. Certain parts of the Common Elements, herein called the "Limited Common Elements", are hereby designated and set aside for the exclusive use of certain Apartments, and such Apartments shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements as follows:

5.3.1 Each Apartment shall have for its exclusive use one (1) mailbox bearing the same number as such Apartment and located in the mailbox area located on the first level of Building B as shown on the Condominium Map.

5.3.2 Each Apartment shall have for its exclusive use one (1) storage locker as noted on Exhibit D attached to this Declaration and as shown on the Condominium Map.

5.3.3 Each Apartment shall have for its exclusive use one (1) parking stall as noted on Exhibit D attached to this Declaration and as shown on the Condominium Map.

5.3.4 Apartment 120 (the "Hotel Related Apartment") shall have for its exclusive use the Hotel and surrounding grounds as shown on the Condominium Map.

6. COMMON INTEREST. Each Apartment shall have appurtenant thereto an undivided percentage interest in all Common Elements (herein called the "Common Interest"), and the same proportionate share in all common profits and expenses of the Project and for all other purposes, including voting, as set forth in Exhibit C. Except as otherwise provided in this Declaration, an Apartment and its Common Interest cannot be separated.

7. EASEMENTS. In addition to (a) any easements described in Exhibit A, and (b) the exclusive easements herein designated in the Limited Common Elements, the Apartments and Common Elements shall also have and be subject to the following easements:

7.1 Easements for Access and Support. Each Apartment shall have appurtenant thereto non-exclusive easements in the Common Elements designed for such purposes for ingress to, egress from, utility services for, and support, maintenance and repair of such Apartment and its Limited Common Elements; in the other Common Elements for use according to their respective purposes, subject always to the exclusive or limited use of the Limited Common Elements, if any, as herein provided; and in all other Apartments of the building(s) for support.

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

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

7.4 Reserved.

7.5 Rights of Occupants. Anyone who has the right or permission to occupy an Apartment also has the right and a license to use the general Common Elements, and any Limited Common Elements of the Apartment occupied, to the same extent that the Owner would have the right to do so. This right of use and license remains in effect only during the time period when the person has the right to occupy the Apartment. This includes, for example, anyone who rents or leases an apartment (subject to any limits contained in any rental agreement or lease with the Owner).

7.6 Developer's Easement for Sales Activities. The Developer and its Representatives, licensees, and invitees have the exclusive right and an easement to conduct extensive sales activities on the Common Elements (including, but not limited to, the Limited Common Elements appurtenant to Apartments owned and/or leased by the Developer) and from any Apartment owned and/or leased by the Developer. This right includes, but is not limited to: (a) the right to permit purchasers and prospective purchasers and their family members and guests, to come onto the Project through the Common Elements intended for access to and from any nearby roads, streets or highways; (b) the right to permit purchasers and prospective purchasers to park motor vehicles in any unassigned parking stalls; (c) the right to show the Project (including, but not limited to, model Apartments) to purchasers and prospective purchasers (who will have a right of ingress and egress for these purposes); (d) the right to use Apartments owned or leased by the Developer as model Apartments, sales management, and/or administrative offices; and (e) the right to use banners, signs or other extensive sales displays and activities at the Project. This easement applies to activities conducted in connection with the initial sale and/or any resale of any Apartment in the Project. Each Interested Person understands, acknowledges and accepts that the easements provided in this Section 7.6 and the use of them, may result in increased traffic, noise, and related inconveniences. Each Interested Person gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions such person may have now or in the future, against the Developer and its Representatives, licensees, invitees, successors and assigns and arising from or with respect to the exercise of this easement.

7.7 Developer's Easements for Access. The Developer and its Representatives, licensees, invitees (including any governmental officials that the Developer may invite), successors and assigns, have an easement over, under and upon the Project, including the Common Elements, Limited Common Elements, and any Apartment, as may be reasonably necessary or convenient to complete any Improvements and to correct any defects and other punchlist items in the Common Elements or any Apartment or to the exercise of any of the other Developer's Reserved Rights. The easement to complete Improvements or correct defects or punchlist items ends, sixty (60) months after the later to occur of (i) the recording date of the first deed of an Apartment; or (ii) the "date of completion" (as the term is used in Chapter 507, Part II, Hawaii Revised Statutes) of the Improvement to be completed or corrected.

7.8 Developer's Easement for Noise, Dust, Etc. The Developer and its Representatives, licensees, and invitees, have an easement over, under and upon the Project and all of its parts, to create and cause noise, dust, soot, smoke, odors, surface water runoff, vibrations, and other nuisances or hazards in connection with (a) the exercise of the easements it has under this Section 7, (b) the development of any Adjacent Parcel, or (c) the exercise of the Developer's Reserved Rights or any other rights of the Developer described elsewhere in this Declaration. Each Interested Party (i) understands, acknowledges and accepts that these activities may result in noise, dust, soot, smoke, odors, surface water runoff, vibrations and other nuisances and hazards, (ii) consents to this activity, and (iii) gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions that he or she may have, now or in the future, against the Developer and/or its Representatives, licensees, invitees, successors and assigns. Each Owner and other Interested Person assumes the risk any property damage, personal injury or loss in property value arising from these activities. The rights of the Developer under this Section 7 are part of the Developer's Reserved Rights under this Declaration.

7.9 Grant of Additional Easements and Modification of Easements by the Association.



7.9.1 Easements Through Common Elements. The Association has the right, exercisable by the Board, to designate, grant, lease, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across, or through all of the Common Elements except for the Hotel, for any reasonable purpose, which may include, but will not be limited to, (i) those purposes necessary to the operation, care, upkeep, maintenance or repair of any Apartment, the Common Elements or any Limited Common Element, or (ii) any easements for utilities or for any public purpose including for example, pedestrian walkways, stairs, ramps, or other passageways, or restroom facilities. During the Development Period, the Association must have the written consent of the Developer before it can exercise this right.

7.9.2 Easements Through Adjacent Lands. The Association has the right, exercisable by the Board, to transfer, cancel, relocate and otherwise deal with any easement or license in favor of the Land or the Project, for any reasonable purpose. This includes, for example, any of the purposes mentioned in Section 7.9.1. During the Development Period, the Association must have the written consent of the Developer before it can exercise this right. The Board may also exercise these rights if the owner of property that is subject to an easement in favor of the Land or the Project uses any right he or she has to require a change in the location of that easement. The Developer's consent is not required in this case.

7.10 Grant of Additional Easements and Modification of Easements by the Fee Owner or the Developer. The Fee Owner and the Developer each hereby reserve, as additional Developer's Reserved Rights, the following rights:

7.10.1 Easements Through Common Elements. The Fee Owner and the Developer each reserve the right to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements as necessary or convenient to the exercise of any of the Developer's Reserved Rights, or for any reasonable purpose, which may include, but will not be limited to:

- A. Any purpose necessary to the operation, care, upkeep, maintenance or repair of any Apartment, the Common Elements or any Limited Common Element; or
- B. Any easements for utilities or for any public purpose including for example pedestrian walkways, stairs, ramps, paths, trails, bikeways, or other passageways, or restroom facilities.

7.10.2 Easements Through Adjacent Lands. The Fee Owner and the Developer each also reserve the right to transfer, cancel, relocate and otherwise deal with any easement or license in favor of the Land or the Project for any reasonable purpose which may include, but will not be limited to, any of the same purposes set forth above in Section 7.10.1, or for the reason that any owner of property that is subject to an easement in favor of the Land or the Project uses any right it has to require a change in the location of that easement.

7.11 Consent of Other Persons. The Fee Owner and the Developer may each exercise its reserved rights in this Section 7 without the consent or joinder of anyone else as more particularly set forth in Section 27.2.

8. ALTERATION AND TRANSFER OF INTERESTS. Except as otherwise expressly provided in this Declaration, the Common Interest and easements appurtenant to each Apartment (a) shall have a permanent character, (b) shall not be altered without the consent of all owners of Apartments affected thereby as expressed in an amendment to this Declaration duly recorded, which amendment shall contain the consent thereto by the holders of any first mortgage on such Apartments, as shown in the Association's record of ownership, or who have given the Board notice of their interest through the Secretary of the Association or the Managing Agent, (c) shall not be separated from such Apartment, and (d) shall be deemed to be conveyed or encumbered with such Apartment even though not expressly

mentioned or described in the conveyance or other instrument. Except as otherwise expressly provided in this Declaration, the Common Elements shall remain undivided, and no right shall exist to partition or divide any part thereof, except as provided by the Condominium Property Act, and, without limiting the provisions of Section 514A-21(a) of the Hawaii Revised Statutes, any such partition or division shall be subject to the prior written consent thereto by the holders of any first mortgage, filed of record, of any Apartment.

## 9. PURPOSES AND USE.

9.1 Apartments. The Apartments may be occupied and used as follows:

9.1.1 Generally. The Apartments may be occupied and used for resort, hotel or transient vacation rental purposes, and for no other purpose, subject however, to the limitations set forth in this Declaration and applicable law. Except for (a) home office use by the Apartment Owner that is allowed or permitted under the applicable zoning ordinance, or (b) where this Declaration allows the Developer to do otherwise, or (c) the Hotel Related Apartment and its appurtenant Limited Common Elements, (i) the Apartments and their Limited Common Elements may not be used to carry on any business, trade or profession; (ii) the Apartments and their Limited Common Elements must not be used for sales of any articles or goods; and (iii) no Apartment Owner, lessee, tenant or other occupant of an Apartment may bring clients, customers or other business invitees onto the premises on a regular basis for business purposes.

9.1.2 Time Share Use. Notwithstanding any other provision of this Declaration or the Bylaws, the Apartments may be used in or devoted to a time share, interval ownership, fractional use or joint ownership plan or program only if the Developer creates such plan or program or if the Developer authorizes or consents to such use in a recorded instrument.

9.1.3 Right to Sell, Lease or Rent. The Apartment Owners have the absolute right to sell, lease, rent or otherwise transfer their own Apartments, subject to these restrictions and also subject to all other provisions of this Declaration and the Bylaws.

9.1.4 Association's Use. Except for any rights to use expressly reserved to the benefit of the Fee Owner and/or the Developer under this Declaration, nothing in this Section 9 or otherwise contained in the Declaration is intended to limit or restrict the Association's right to use the Common Elements or any Apartment owned or leased by the Association for the benefit of the members of the Association to the full extent permitted by the applicable zoning ordinance, including without limitation, for a concierge desk and services, or activities desk.

9.1.5 Occupancy Limitation. No more than ten (10) persons at any time shall be permitted to occupy or reside in any Apartment. This occupancy limitation shall not apply to or restrict the Owner of any such Apartment from hosting a larger group of invited guests or visitors in such Apartment.

9.2 Use of the Common Elements. Subject to the rights reserved by the Fee Owner and/or the Developer elsewhere in this Declaration or in the Bylaws, each Apartment Owner may use the Common Elements for the purposes for which they were intended without hindering or encroaching upon the lawful rights of the other Apartment Owners, subject to:

A. The exclusive or other permitted use of the Limited Common Elements as provided in this Declaration;

B. The right of the Board to change the use of the Common Elements or to lease or otherwise use the Common Elements for the benefit of the Association. The Board may only do so upon the terms and subject to the limits contained in the Condominium Property Act. See, for example, Section 514A-13(d) of the Condominium Property Act. However, no such lease, use or change

in use may be made (i) before the Development Period ends unless the Developer consents to it in writing, or (ii) with respect to or affecting the Hotel, unless the owner of the Hotel Related Apartment consents to it in writing; and

C. The right of the Developer and/or the Fee Owner to change the use of or otherwise deal with the Common Elements and Limited Common Elements in the exercise of the Developer's Reserved Rights.

D. Except for the owner of the Hotel Related Apartment, no Apartment Owner, lessee, tenant, occupant, or other Interested Person may use the Common Elements or any part of it for any business purpose including the operation of a rental program, or a registration or check-in desk for guests of Apartment Owners. The owner of the Hotel Related Apartment shall be entitled to use the Common Elements or any part of it for any legitimate business purpose including but not limited to the operation of the Hotel and related services, functions, and activities.

9.3 Other Limitations on Use of the Apartments and Common Elements. Notwithstanding the provisions of Sections 9.1 and 9.2, no Apartment Owner, lessee, tenant, occupant, or other Interested Person can use the Project or any part of it (a) for the promotion or sale of time share interests or interests in any other Interval ownership, fractional use or joint ownership plan or program, directly or indirectly; (b) for the operation of a tour or activity desk or any other business that directly or indirectly promotes the sale of time share interests, or interests in any other Interval ownership, fractional use or joint ownership plan or program; (c) for the operation of a flea market, circus, gas station, auto repair shop, or funeral parlor, off-track betting parlor, carnival, amusement park, bar, or tavern where the primary business involves the sale of liquor for on-premises consumption; (d) for the operation of any business seeking a cabaret license; (e) for the promotion or sale of pornography; (f) for the promotion or sale of pornography. Provided, however, that clauses (a), (b) and (c) of this Section 9.3 shall not apply to the Developer, the owner of the Hotel Related Apartment, or any Interested Person approved by the Developer in a recorded instrument.

#### 9.4 Changes to Building Appearance.

9.4.1 Changes by Owners or the Developer. Even though some of the Common Elements are Limited Common Elements appurtenant to certain Apartments, Owners are not allowed to change or cause a change to the exterior appearance of the Project unless they have the prior written consent of either the Board or the Managing Agent. This rule does not apply to the owner of the Hotel Related Apartment or to the Developer when exercising the Developer's Reserved Rights.

9.4.2 Changes by the Board. Except for the Hotel, the Board has the right to change the exterior appearance of the Project. During the Development Period, however, the Board cannot do so without the Developer's written consent.

9.4.3 Design Guidelines. Notwithstanding the provisions set forth in Sections 9.4.1 and 9.4.2, nobody is allowed to change the appearance of the Project in a way that does not strictly adhere to all principles, requirements and goals set forth in the Design Guidelines.

9.5 Maintenance and Repair of Apartments and Limited Common Elements. Each Owner must keep the interior of Owner's Apartment, and its appurtenant Limited Common Elements, in good order and repair. This includes not just the walls and windows, but also includes all plumbing, electrical and other fixtures and equipment that are part of the Apartment or its Limited Common Elements. The Board, however, will provide for periodic resurfacing and other routine maintenance of parking stalls. This does not relieve an Owner from the obligation to pay for damages beyond normal wear and tear to his or her parking stall.

9.6 Developer's Rights of Use. Regardless of anything else stated in the Condominium Documents, the Developer has the right to use any Apartment that it owns or leases for

promotional purposes or in connection with the initial sale and any resale of Apartments. This includes, for example, the right to have guests stay in these Apartments for any length of time. Of course, guests must comply with the Condominium Documents. It also includes the right to use its Apartments and their appurtenant Limited Common Elements as model Apartments or as sales, management or administrative offices or to provide services to the Owners or other occupants of the Project. These rights are subject to any requirements of the zoning code and any other laws that may apply to the Property.

#### 10. ADMINISTRATION OF PROJECT.

10.1 Generally. Administration of the Project shall be vested in its Association of Apartment Owners, herein called the "Association", consisting of all Apartment Owners in accordance with the Bylaws. Operation of the Project and maintenance, repair, replacement and restoration of the Common Elements, and any additions and alterations thereto, shall be in accordance with the provisions of the Condominium Property Act, this Declaration and the Bylaws, and specifically but without limitation the Association shall:

A. Make, build, maintain and repair all fences, gates, sewer lines, water lines, water features, drains, roads, driveways, driveway ramps, curbs, sidewalks, parking areas, Common Element and landscape lighting, and other improvements which may be required by law or any recorded document that applies to the Project to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Project or any part thereof;

B. Keep all Common Elements in a strictly clean and sanitary condition, and observe and do anything required by all laws, ordinances, rules and regulations that apply from time to time to the Project or the use of it;

C. Well and substantially repair, maintain, amend and keep all Common Elements, including without limitation the buildings thereof, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein, and maintain and keep the Land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the Common Elements herein required to be repaired by the Association, of which notice is given by any owner or the agent of any owner within thirty (30) days after the giving of such notice or such additional period as may be reasonably necessary to complete such work in the exercise of due diligence;

D. Not erect or place on the Project any building or structure, including fences and walls, nor make material additions or structural alterations to or exterior changes of any Common Elements of the Project, except in accordance with plans and specifications prepared by a licensed architect and approved by the Developer (until the expiration of the Development Period) and by any other Owners whose consent is required by the Condominium Property Act. After starting such additions or alterations, the Association must work diligently to complete them.

E. Before commencing or permitting construction of any additions or alterations to the Project where the cost thereof exceeds Twenty-Five Thousand and No/100 Dollars (\$25,000.00), obtain a performance and labor and materials payment bond naming as obligees, the Board of Directors, the Association and collectively all Apartment Owners and their respective mortgages of record, as their respective interests may appear, with a responsible corporate surety authorized to do business in the State of Hawaii, guaranteeing the full and faithful performance of the contract for such construction free and clear of any mechanics' and materialmen's liens; for such construction, the payment of all subcontractors, laborers and materialmen, and the discharge of any mechanics' and materialmen's liens arising under Section 514A-16 of the Hawaii Revised Statutes, as the same may be amended from time to time, for a penal sum of not less than one hundred percent (100%) of the estimated cost of such construction;

F. Observe any setback lines affecting the Project and not erect, place or maintain any building or structure whatsoever except approved fences or walls between any street boundary of the Project and the setback line along such boundary;

G. Not neglect or abuse, or make or suffer any strip or waste or unlawful, improper or offensive use of, the Project; and

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

10.2 Administration and Maintenance of Hotel Limited Common Element. Regardless of any other provision of this Declaration, the Bylaws, or any other Condominium Documents, the owner of the Hotel Related Apartment, and not the Association, shall administer, operate and maintain the Hotel; shall be solely responsible for all costs and expenses incurred in connection with such duties; shall not, with respect to the Hotel, be bound by the provisions of Section 10.1; and shall be entitled to receive and retain all revenues generated by the Hotel.

11. MANAGING AGENT; SERVICE OF LEGAL PROCESS. Operation of the Project may be conducted for the Association by a responsible corporate Managing Agent who shall be appointed by the Association in accordance with the Bylaws; provided that until such time as the Association appoints a Managing Agent, the Developer shall manage the Project. The Managing Agent shall be authorized to receive service of legal process in all cases provided in the Condominium Property Act.

12. COMMON EXPENSES. The term "Common Expenses" shall mean and include all charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration, management, and operation of the Project and all other sums designated as Common Expenses under the Act, this Declaration or the Bylaws, including, without limiting the generality of the foregoing, the following: all charges for taxes (except real property taxes and other such taxes or assessments which are or may hereafter be assessed separately on each Apartment and the Common Interest in the Common Elements appertaining thereto or the personal property or any other interest of the Apartment Owner), assessments, costs of maintenance, repair, rebuilding, replacement and restoration of the Common Elements and any additions and alterations thereto, any labor, services, materials, supplies and equipment therefor, any liability whatsoever for loss or damage arising out of or in connection with the Common Elements or any accident, fire or nuisance thereon, yard, janitorial or other similar services, wages, accounting and legal fees, management fees, and other necessary expenses of upkeep, maintenance, management and operation incurred on or for the Common Elements, the cost of pest control services (including termite control), whether or not affecting any particular Apartment or Apartments, any premiums for insurance, including hazard and liability insurance herein required to be maintained by the Association, the cost of operating and staffing a check-in desk in the Hotel for the purpose of registering guests of Owners pursuant to Section 9.8 of the Bylaws, and the cost of all utility services, including water, electricity, gas (if any), garbage disposal, sewer, sewage treatment, telephone, cable television, and other similar services, unless separately metered or otherwise separately attributable to an Apartment or group of Apartments, in which case the amount charged or attributable to each Apartment or group of Apartments, as determined by the Board of Directors, shall be payable by the owner or owners of such Apartments. Common Expenses shall also include a portion of the expenses incurred by Kullima Resort Company and/or TBR Property, L.L.C., and/or KRC Golf, L.L.C., their respective successors or assigns, for or in connection with the maintenance, repair, rebuilding, replacement and restoration of the common facilities of the Turtle Bay Resort of which the Project is a part, including but not limited to the cost of: (i) all utility services including water, sewage, gas, electricity, cable television and other similar services unless separately metered or otherwise separately attributable to the Project, an Apartment or group of Apartments; (ii) maintenance and repair of the landscaping along the entry road of the Turtle Bay Resort; (iii) beach maintenance and landscaping; (iv) repair and

maintenance of the visitor parking lot serving the Turtle Bay Resort; (v) maintenance and repair of all interior roads and walkways in the Turtle Bay Resort; and (vi) security services for the Turtle Bay Resort. Such expenses are estimated to be \$75 per Apartment per month, which amount may be increased from time to time upon notice to the Association by Kullma Resort Company and/or TBR Property, L.L.C. and/or KRC Golf, L.L.C. their respective successors or assigns. Except as otherwise provided herein or in the Bylaws, the Common Expenses shall be charged to the Apartment Owners in proportion to the Common Interests appurtenant to their respective Apartments; PROVIDED, HOWEVER, that all charges, costs and expenses incurred by the Association only for or in connection with any Apartment or any Limited Common Elements, including but not limited to, all costs of maintenance, repair, replacement, additions and improvements to the Apartments or the Limited Common Elements and utility costs arising therefrom and reserves therefor shall constitute limited common expenses of the Project for which only the owner of any such Apartment shall be liable, or for which only the owner of the Apartment to which such Limited Common Elements are appurtenant shall be liable or, if the Limited Common Elements are appurtenant to more than one Apartment, the owners of such Apartments to which such Limited Common Elements are appurtenant shall be severally liable in proportion to the ratio that the approximate square footage of their respective Apartments, including lanais, bears to the sum of the approximate square footages of all Apartments, including lanais, to which such Limited Common Elements are appurtenant (such charges, costs and expenses incurred only for or in connection with any Apartment or Limited Common Element being herein called "Limited Common Expenses"); PROVIDED FURTHER, HOWEVER, that all charges, costs and expenses incurred by the Association which are necessitated by the negligence, misuse or neglect of an Apartment Owner or occupant or any person under either of them shall be charged to such Apartment Owner or the owner of the Apartment of such occupant, as a special assessment secured by the lien created under this Section 12. No Apartment Owner shall be exempted from liability for the owner's contribution toward the Common Expenses and Limited Common Element Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the owner's Apartment.

12.1 Reserved.

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

12.3 Annual Designation of Excess Receipts by Association. In the event that assessments received during any year are in excess of the actual expenditures for such year by the Association for common expenses, the Board of Directors may, subject to approval by the Apartment Owners at the next annual meeting, determine that such excess shall be: applied in whole or in part to reduce the assessments for the immediately subsequent year; designated in whole or in part as a capital contribution to the Association to be used for future capital improvements and replacements; segregated

and held in whole or in part as a Custodial Fund to be expended solely for specifically designated capital improvements and replacements; or segregated and added in whole or in part to the Maintenance Reserve Fund established hereunder.

12.4 Interest in Common Expense Funds Not Separately Assignable. The proportionate interest of each Apartment Owner in said capital contributions, Custodial Fund or Maintenance Reserve Fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such Apartment even though not expressly mentioned or described in the conveyance thereof. In case the Condominium Property Regime hereby created shall be terminated or waived, said capital contributions, Custodial Fund or Maintenance Reserve Fund remaining after full payment of all common expenses of the Association shall be distributed to all Apartment Owners in their respective proportionate shares except for the owners of any Apartments then reconstituted as part of a new condominium property regime.

13. COMPLIANCE WITH DECLARATION AND BYLAWS. All Apartment Owners, their tenants, families, servants, guests, and invitees, and anyone else who may in any manner use the Project or any part of it, but not including persons staying at the Hotel, are bound by and must comply strictly with the Condominium Documents and all agreements, decisions and determinations of the Association as lawfully made from time to time. Any failure to comply is grounds for an action to recover sums due, for damages or injunctive relief, or both. The Board or the Managing Agent acting on behalf of the Association or, in a proper case, an aggrieved Apartment Owner may bring such an action.

13.1 Costs and Expenses of Enforcement. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

- A. Collecting any delinquent assessments against any Owner's Apartment;
- B. Foreclosing any lien on it;
- C. Enforcing any part of the Condominium Documents or the Condominium Property Act; or
- D. Enforcing the Condominium Regulation

against an Owner, occupant, tenant, employee of an Owner, or anyone else who may in any manner use the Project or any part of it must be paid promptly on demand to the Association by that person or persons; provided, that if the claims upon which the Association takes any action are not substantiated, then promptly on demand the Association must pay all costs and expenses, including reasonable attorneys' fees, incurred by the Apartment Owner as a result of the Association's action.

13.2 Exemptions for Persons with Disabilities. No matter what else the Condominium Documents say, and except as otherwise provided by law, Owners with disabilities are allowed reasonable exemptions from the requirements of the Condominium Documents when necessary and to the extent appropriate to enable them to use and enjoy their Apartments or the Common Elements. Any Owner with a disability and who wants an exemption must ask the Board in writing. The request must include a specific and detailed description of the exemption requested and the reason why the Owner needs it. The Board must not unreasonably withhold or delay its consent to the request. A request will be granted automatically unless the Board denies it in writing within forty-five (45) days after the Board receives it, or within forty-five (45) days after the Board receives any additional information reasonably required by the Board in order to consider the request, whichever occurs last.

## 14. INSURANCE.

14.1 Insurance Generally. The Association must see that, at a minimum, the Association and the Apartment Owners are covered by the Insurance required by this Section 14. Each policy of such Insurance may be separate, or the Association can buy one or more commercial package policies; provided, however, that the Hotel and Possible Deletion Areas shall be insured under a policy (or policies) separate from the rest of the Project. The cost of the Insurance will be a Common Expense; provided, however, that the owner of the Hotel Related Apartment shall, in advance of the due date for any premiums for such Insurance, reimburse the Association for the cost of the Insurance covering the Hotel and Possible Deletion Areas.

14.1.1 Source of the Insurance. The Association shall buy the Insurance itself. If the Managing Agent or any related company manages more than one owners association or real estate project, then the Managing Agent may buy one or more blanket policies that cover the Project and any other owners associations or real estate projects. In that case, the covered projects will split the costs of the policies. The amount charged to the Project for its share of the costs is subject to approval by the Board.

14.1.2 Qualified Insurance Companies. Each Insurance company must be licensed to do business in the State of Hawaii except for (i) federal flood insurance and other government insurance programs, and (ii) insurance not available, or not available at a reasonable price, from a company licensed in Hawaii. Each Insurance company must have a financial rating of Class VI or better according to Best's Insurance Report. If the Insurance cannot be obtained from a company having that rating, or if the Board decides that the cost is too high, then the Association may buy the insurance from any financially sound company of recognized responsibility.

14.1.3 Additional Insurance. The Board has the right and power to increase coverage or to obtain better terms than those stated in this Section 14 if the Board decides that it is necessary or is in the best interests of the Association. The Board may also buy other kinds of insurance even if they are not described in this Section 14. For example, the Board might buy business interruption insurance. Notwithstanding any provision in this Declaration to the contrary, the provision by the Association of any of the insurance coverages contemplated under this Declaration shall in no way limit, impair or diminish the right of each Owner, at such Owner's sole cost and expense, to procure and maintain additional, supplemental or other insurance coverages for such Owner's Apartment and any Limited Common Elements of such Apartment as such Owner deems prudent and appropriate.

14.1.4 Substitute Coverage; Reduction in Insurance. Except for Insurance required by law, the Board need not buy any insurance if it is advised that it cannot reasonably be obtained or if the Board decides that it is too expensive; provided that no such decision shall be made without the consent of the owner of the Hotel Related Apartment. In those cases, the Board may buy other insurance that it believes to be appropriate under the circumstances for apartments in condominiums similar in construction, location and use. The Board may accept any deductibles, uninsured retentions, and co-insurance as it chooses in its business judgment. Any amount paid on account of any deductible, uninsured retention, or co-insurance will be a Common Expense; provided that if a loss results from the negligence or willful misconduct of an Owner, then the Association may charge the amount to the Owner as provided in the Bylaws. The terms of any such additional insurance covering the Hotel or Possible Deletion Areas may not be changed without the consent of the owner of the Hotel Related Apartment.

14.1.5 Yearly Review of Insurance Programs. The Board must review the adequacy of its entire insurance program at least yearly. The Managing Agent must furnish an analysis of (a) the insurance needs of the Association and the Owners; and (b) the adequacy of the existing insurance policies to meet those needs. The Board will review this analysis and then make any changes in the insurance program that it deems necessary or appropriate, except that the changes to the insurance covering the Hotel and the Possible Deletion Areas shall require the consent of the owner of the Hotel Related Apartment. All Board decisions are final. The Board must report in writing its conclusions and the action taken after its review.



14.1.6 Liability for Insurance Decisions. The Board will not be liable for any decision it makes on insurance unless it was grossly negligent or was guilty of intentional misconduct. Likewise, neither the Developer nor the Managing Agent will be liable except for their gross negligence or intentional misconduct regarding any decisions on insurance.

14.1.7 Inspection and Copies of Insurance Policies. Any Owner (and anyone having a contract to buy an Apartment) may inspect copies of the Association's insurance policies at the office of the Managing Agent, provided, however, that no Owner may inspect any insurance policy covering the Hotel or Possible Deletion Areas without first obtaining the prior consent of the owner of the Hotel-Related Apartment. If asked to do so, the Board will furnish a copy of any policy or a current certificate of insurance, to any Lender that has a first Mortgage on an Apartment. The Lender must pay a reasonable fee for the copy.

14.1.8 Notice of Changes in Insurance. The Association will send notice to the Owners if:

A. The Association's policy of property insurance under Section 14.2 or liability insurance under Section 14.4 has lapsed, has been canceled, or will not be renewed unless replacement coverage will be in effect before the policies lapse or are canceled; or

B. There is a significant adverse change in the coverage of those policies (for example, a significant reduction in the policy limits or a substantial increase in the deductible).

The Association must send any notice required by this Section 14.1.8 by first-class mail and it must do so as soon as reasonably possible. The Section 14.1.8 shall not apply, however, to any insurance policy covering the Hotel or Possible Deletion Areas.

14.2 Property Insurance. The Association must buy and keep in effect at all times a policy (or policies) of property insurance. This is called the "Policy" (or "Policies") in this Section 14.2.

14.2.1 Who is Insured. Each Policy must name the Association, as trustee for all Apartment Owners and any Lenders, as the insured. In addition, the Fee Owner must be named as an insured under the policy covering the Hotel and Possible Deletion Areas, and the Developer must be named as an insured during the Development Period.

14.2.2 Required Coverage. The Policy (or Policies collectively) must insure all Common Elements of the Project and, whether or not part of the Common Elements, all exterior and interior walls, floors, and ceilings, all in accordance with the as-built plans and specifications. The Policy (or Policies collectively) must cover 100% of the cost of replacing that property without deductions for depreciation.

14.2.3 Coverage Not Required. The Policy (or Policies) does not have to cover (i) exterior glass, if the Board decides that this is too expensive, and (ii) underground improvements, except for conduits, plumbing and wiring.

14.2.4 Form of Policy. Each Policy must cover those risks generally covered by a special form policy. A special form policy usually insures against these risks: fire, lightning, windstorm, hail, smoke, explosion, civil commotion, riot, and riot attending a strike, aircraft and vehicle damage, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, breakage of glass, falling objects, water damage, collapse of structure, and direct physical loss. Each Policy must also include hurricane coverage. If the Project is located in an area prone to earthquakes, the Association must also buy earthquake insurance, if it is available at a reasonable cost.

14.2.5 Additional Coverage. Each Policy must contain the following endorsements, unless the owner of the Hotel Related Unit determines, with respect to the policy covering the Hotel and Possible Deletion Areas, in its sole and absolute discretion that such endorsements are unnecessary:

A. An agreed-amount endorsement. This protects Owners from co-insurance clauses. A co-insurance clause reduces benefits if the Association fails to buy enough insurance.

B. An inflation guard endorsement. This automatically increases the Policy limits up to a certain amount each year to assist in keeping the Policy limits current with inflation.

14.2.6 Required and Prohibited Provisions. Unless the Board (or with respect to the policy covering the Hotel and Possible Deletion Areas, the owner of the Hotel Related Unit) decides the cost is unreasonably high (and such party's decision will be final), each Policy must provide as follows:

A. The Policy must not relieve the insurance company from liability because of:

(1) Any increased hazard on any part of the Project, whether or not within the control or knowledge of the Association, the Board, the Developer, the Managing Agent, any Owner, or any persons under any of them; or

(2) Any breach of warranty or condition or any other act or neglect by any of those persons.

B. The Policy must not permit the insurance company to cancel or substantially change the Policy or the coverage (whether or not asked by the Board) unless the insurance company gives written notice of the cancellation or change at least thirty (30) days in advance. The insurance company must send the notice to the Board and the Managing Agent. The Board will send a copy to each Lender and any other Interested Person who has, in either case, requested a copy of any such notice.

C. The Policy must provide that the insurance company gives up ("waives") any right to repair, rebuild or replace any damaged or destroyed improvements if the Association or the Owner of the Hotel Related Apartment, as the case may be, decides not to do so pursuant to Section 17.

D. The Policy must provide that the insurance company gives up ("waives") any right of subrogation to any right of the persons insured by the policy as against the Association, the Board, the Managing Agent, the Developer, the Fee Owner, the Owners and any person under any of them. Subrogation is the right of the insurance company to try to recover its costs from the person who caused the loss.

E. The Policy must provide that the insurance company gives up any right to deny liability because any Apartment or Apartments are vacant.

F. The Policy must not limit or prohibit any Apartment Owner from buying other insurance for the Owner's own benefit. It must also provide that the liability of the insurance company will be primary and will not be affected by any such other insurance, and that the insurance company cannot claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Apartment Owner.

G. The Policy must provide that any loss will be adjusted (settled) by (i) the Insurance company, (ii) the Board or, in the case of the policy covering the Hotel and Possible Deletion areas, the Owner of the Hotel Related Apartment, and (iii) any Lender having a Mortgage on an Apartment directly affected by the loss (or in the case of the policy covering the Hotel and Possible Deletion Areas, the Lender having a mortgage on such property).

H. The Policy must contain a standard "mortgage clause". This protects the rights of Lenders. Unless it cannot be obtained, the mortgage clause must:

- (1) Name as an insured any Lender whose name has been furnished to the Board and to the insurance company;
- (2) Provide that any reference to a Lender in the policy includes all Lenders, in their order of priority, whether or not named in the policy;
- (3) Provide that any act or neglect of the Association, the Board, or any occupant will not release the Insurance company from its duties to the lender;
- (4) Provide that the Insurance company gives up:
  - (a) any right to deny coverage for the Lender's benefit because the Lender fails to notify the Insurance company of any hazardous use or vacancy,
  - (b) any requirement that the Lender pay any policy premium. (But, the Lender may pay any premium due if the Association fails to do so on time),
  - (c) any right to contribution from the Lender, and
  - (d) any right to be subrogated to the right of any Lender against anyone causing the loss or to require that any Mortgage be transferred to the insurance company. However, the insurance company may retain the right of subrogation to the extent of insurance proceeds received and retained by the Lender, if the insurance company gives up any claims for liability against the Lender, the Association, the Board, the Managing Agent, the Developer, the Fee Owner, the Owners and all persons under them. This must not, however, impair the Lender's right to sue any person for any loss or deficiency not covered by the insurance proceeds.

I. The Policy must provide that if there is a loss to the Project and the amount paid by the insurance company exceeds Two Hundred Thousand Dollars (\$200,000.00), then the money must be paid to a bank or trust company authorized to do business in Hawaii and chosen by the board to have custody and control of the insurance proceeds (the "Insurance Trustee"), provided, however, that the foregoing requirement shall not apply to the policy covering the Hotel and Possible Deletion Areas, which instead shall provide that all insurance proceeds in respect of damage to the Hotel or other portions of the Possible Deletion Areas shall be paid to the Owner of the Hotel Related Apartment or its mortgagee. The Policy must also require that the insurance company recognize the Insurance Trust Agreement if applicable. Whenever insurance proceeds are deposited with an Insurance Trustee, the Association must promptly notify each Lender listed in the Association's records of ownership.

14.3 Flood Insurance. If the Project is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency, then the Association must buy a policy (or policies) of flood insurance that complies with the requirements of the National Flood Insurance Program and the Federal Insurance Administration unless the Project has obtained an exemption certificate from the Federal Emergency Management Agency. Flood insurance for the Hotel and Possible Deletion Areas must be provided under a separate policy from the rest of the Project. The amount of the coverage under the policy (or policies) must be equal to the lesser of:

A. The aggregate of the outstanding principal balances of all Mortgage loans on Apartments in the Project, or

B. The maximum limit of coverage available under the National Flood Disaster Protection Act of 1973.

14.4 Liability Insurance. The Board must buy and keep in effect commercial general liability insurance and, if necessary, commercial umbrella insurance. In this Section 14.4, the commercial general liability insurance and commercial umbrella insurance are together called the "Policy".

14.4.1 Who is Insured. The Policy must cover all Apartment Owners, the Board, the Association, the Developer (during the Development Period), the Managing Agent, and each of their Representatives, against claims for personal injury, bodily injury, death and property damage; provided, however, that the Policy may exclude coverage for any claims, injuries or damages suffered in the Hotel or on the Possible Deletion Areas if the Board determines that it would be too expensive (and its decision will be final) to include such coverage.

14.4.2 Required Coverage. The Policy limits must not be less than TWO MILLION DOLLARS (\$2,000,000) for personal injury, bodily injury, and death, and ONE MILLION DOLLARS (\$1,000,000) for property damage.

14.4.3 Required and Prohibited Provisions. Unless the Board decides the cost is unreasonably high (and its decision will be final), the Policy must provide as follows:

A. The Policy must not limit or prohibit any Apartment Owner from buying other liability insurance for the Owner's own benefit.

B. The policy must not relieve the insurance company from liability because of any act or neglect of the Association, the Managing Agent, the Developer, the Board, the Apartment Owners and occupants, or any person under any of them.

C. The Policy must provide that the insurance company gives up any right of subrogation to any right of the persons insured by the policy as against the Association, the Board, the Managing Agent, the Developer, the Owners and any persons under any of them.

D. The Policy must contain a "cross-liability" endorsement. This permits one person who is covered by the Policy to file a claim on the Policy based on the acts or failure to act of another person who is also covered by the Policy.

E. The Policy must contain a "severability of interest" provision. This prevents the insurance company from denying the claim of one person who is covered by the Policy because of the negligence of another person who is covered by the Policy.

F. The Policy must not permit the insurance company to cancel or substantially change the Policy or the coverage (whether or not asked by the Board) unless the insurance company gives written notice of the cancellation or change at least thirty (30) days in advance. The insurance company must send the notice to the Board, the Managing Agent, and the Developer. The Board will send a copy to every Lender and any other Interested Person who has, in either case, requested a copy of any such notice.

14.5 Directors and Officers Liability Insurance. The Board must buy and maintain a policy insuring, to the extent allowed by law, each person who is or was a director, officer, agent or employee of the Association against all liability in connection with any claim made against him or her as a result of his or her holding that position. This is called the "Policy" in this Section 14.5. The Policy must

also cover anyone who serves, at the request of the Association, as a director, officer, member, employee or agent of another company. The Board will choose the Policy limits from time to time. If it can be obtained at a reasonable cost, the Policy must provide coverage to the extent permitted by law for any proceeding whether it is civil or criminal, administrative or investigative. The Policy must pay for any expense actually and reasonably incurred. This includes, but is not limited to, attorneys' fees, court costs, and payment of any judgments, fines and settlements. The Board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law.

14.6 Fidelity Bonds. A "fidelity bond" covers the loss of money in the care or custody of the Association or the Managing Agent. The Association must buy a fidelity bond or fidelity insurance covering the Association and the Managing Agent, and each of their directors, officers, agents, and employees who handle funds belonging to or administered by the Association or the Managing Agent. The fidelity bond or insurance must name the Association as the person protected and who gets paid in case of loss (the "obligee" or the "insured"). The cost of the bond or insurance will be a Common Expense. The bond or insurance must also:

A. Satisfy the requirements of the Condominium Property Act and Condominium Rules; and

B. Cover anyone who serves without pay (for example, a volunteer) and waive (give up) any defense based on excluding such persons from the definition of the term "employee" or similar terms.

15. INSURED DAMAGE OR DESTRUCTION. This Section 15 applies if all or any part of the Project is damaged or destroyed and if the damage or destruction is covered by insurance. If this happens, then the Association, the Insurance Trustee or the Owner of the Hotel Related Apartment, as the case may be, will use the insurance proceeds as provided in this Section 15. In this Section 15 "proceeds" means any money paid by an insurance company for a loss under an insurance policy paid for by the Association.

15.1 Damage to a Single Apartment or its Limited Common Elements. If only a single Apartment or its Limited Common Elements are damaged then the Board will hire one or more contractors to rebuild or repair the Apartment and/or its Limited Common Elements. The repairs will include paint, floor covering and fixtures, and any Common Element mechanical, electrical and other equipment in the Apartment or Limited Common Elements. The Association will rebuild and repair the Apartment and/or its Limited Common Elements according to their design just before the damage happened. If it cannot do this (for example, if changes in the law prevent it) then the Association will rebuild or repair the Apartment and/or Limited Common Elements according to a new design. The new design must comply with all laws then in effect. Any modified plans and specifications must first be approved by the Board and by any Lender having a Mortgage on that Apartment.

15.2 Other Insured Casualty. In all other cases, the Board must hire one or more contractors to repair or rebuild the damaged parts of the Project, including all Common Elements, Apartments and Limited Common Elements damaged.

15.2.1 Plans for Rebuilding or Repair. The Association will rebuild and repair the Project according to their design just before the damage. If it cannot do this (for example, if changes in the law prevent this) then the Association will rebuild or repair the Project according to a new design. The new design must comply with all laws then in effect. Any modified plans and specifications must first be approved by the Board and by any Lender having a Mortgage on any Apartment that is directly affected.

15.2.2 Use of Proceeds if Apartment Not Repaired or Rebuilt. It is possible that the modified plans and specifications will not provide for rebuilding or repairing a particular Apartment or its Limited Common Elements. Also, if the law or this Declaration allows it, the Association may decide

not to rebuild or repair a particular Apartment or its Limited Common Elements. In either case the Association or the Insurance Trustee will use the Insurance proceeds as follows:

- A. Proceeds will be applied first to pay that Apartment's share of the cost of debris removal;
- B. The part of the Insurance proceeds allocable to that Apartment and/or its Limited Common Elements will be paid to the Owner of the Apartment and to any Lender having a Mortgage on that Apartment, as their interests may appear.

15.3 Shortfall of Insurance Proceeds. The Association or the Insurance Trustee will use Insurance proceeds to pay any contractor hired by the Board. Payments will be made as and when required by the construction contract and this Section 15. If there are not enough Insurance proceeds to pay the full cost to repair and/or rebuild the Common Elements, then the Board can pay the shortfall from the replacement reserve fund. If this is not enough, then the Board must (i) determine the amount of the remaining shortfall, and (ii) charge a special assessment to each Apartment except for Apartments that are not being rebuilt or repaired. Each Apartment will pay a percentage of the special assessment equal to the percentage of the Common Expenses that it will be paying after the removal of any Apartments that are not being rebuilt or repaired. The Association will also charge a special assessment to the Owner of an Apartment for any costs in excess of the Insurance proceeds for repairing and/or rebuilding an Apartment or its Limited Common Elements (but not including any Common Elements within any Apartment).

15.4 Disbursement of Insurance Proceeds. The Association or the Insurance Trustee will pay the cost of the work (as estimated by the Board) from time to time or at the direction of the Board as the work progresses. If an Insurance Trust is required, then the Insurance Trustee will make payment only if these conditions are met:

A. An architect or engineer (who may be an employee of the Board) must be in charge of the work.

B. Each request for payment must be given to the Insurance Trustee at least seven (7) days in advance. It must include a certificate signed by the architect or engineer. The certificate must state that:

(1) All of the work completed complies with the approved plans and specifications,

(2) The amount requested is justly required to reimburse the Board for payments by the Board to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons providing services or materials for the work (giving a brief description of those services or materials), and

(3) When the amount requested is added to all sums previously paid by the Insurance Trustee, the total does not exceed the value of the work done as of the date of the certificate.

C. Each request must include releases of liens. The releases must:

(1) Be satisfactory to the Insurance Trustee, and

(2) Cover the work for which payment or reimbursement is being requested.

D. Each request must include a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Insurance Trustee, that nobody has recorded with respect to the Property any mechanics' or other lien or instrument for the retention of title with respect to any part of the work not discharged of record.

E. If the work is finished, then the request for any payment must include a copy of any certificate or certificates required by law to make it legal to occupy the Property. This includes, for example, a certificate of occupancy in the case of an Apartment.

F. The fees and expenses of the Insurance Trustee, as agreed by the Board and the Insurance Trustee, are a Common Expense. The Insurance Trustee may pay these fees and expenses from any proceeds it holds from time to time.

G. The Insurance Trustee may establish any other reasonable conditions to payment if they are not inconsistent with the conditions listed in this Section 15.4.

15.5 Excess Insurance Proceeds. "Excess proceeds" are proceeds remaining after paying the cost to rebuild or repair any damage. Any excess proceeds will be paid to the Apartment Owners and their Lenders in proportion to their share of the Common Expenses.

15.6 Release of Claims. To the extent that the Association's insurance covers any loss, damage or destruction to any part of the Project, the Association and the Owners will have no claim or cause of action for that loss, damage or destruction against the Fee Owner, the Developer, the Managing Agent, the Association, or any of their Representatives or against any Apartment Owner (except for any special assessment charged under Section 15.3) or any person under any of them. To the extent that any loss, damage or destruction to the property of any Apartment Owner or anyone under the Apartment Owner is covered by insurance purchased by that Owner, the Owner will have no claim or cause of action for that loss, damage or destruction against the Association, the Fee Owner, the Developer, the Managing Agent or any other Apartment Owner, or any person under any of them, or any of their Representatives.

15.7 Determination Against Restoration. In the event of an insured casualty of all or any part of the Project, the Project or such portion thereof will be repaired, rebuilt and restored as provided in Section 15 hereinafter, unless, within ninety (90) days after such casualty, the Association decides by the affirmative vote of ninety percent (90%) of the Apartment Owners (including the Owners of 90% of the damaged Apartments and their respective Lenders) not to repair, rebuild or restore the Project or such portion of the Project. During the Development Period the consent of the Developer and its Lenders is also required. Provided, however, that unless the owner of the Hotel Related Apartment elects not to restore the Hotel, the Hotel Related Apartment must be repaired, rebuilt and restored as long as the Hotel is an appurtenant limited common element to such Apartment. If notwithstanding the previous sentence, there is ever a situation where (i) the Hotel Related Apartment is destroyed by a casualty and (ii) either (a) an election to not restore the Hotel Related Apartment has occurred or (b) the casualty to the Hotel Related Apartment will, pursuant to law or judicial decision, and notwithstanding anything to the contrary contained in this Declaration, cause the Hotel to become a limited common element for an Apartment that is owned by any Person other than the Owner of the Hotel Related Apartment, or a common element (other than a limited common element) under this Declaration, then, in such situation, the Hotel shall become a separate Apartment in the Project (the "Hotel Apartment"), the fee ownership of which shall be vested in the Owner of the Hotel Related Apartment. In such event, the Developer shall be entitled to take all steps, and to exercise any and all of the Developer's Reserved Rights, as may be necessary to establish the Hotel Apartment, including without limitation, amending this Declaration and the Condominium Map, and signing, acknowledging, recording and delivering documents and doing other things in its own right and/or using its power of attorney under Section 27.2.

15.8 Casualty to Hotel and/or Possible Deletion Areas. Notwithstanding any other provision of this Declaration to the contrary, the Owner of the Hotel Related Apartment, and/or its Lender,

if any, shall have the sole right and authority, to the exclusion of all others, to receive and retain all insurance proceeds from any policy of insurance covering the Hotel and Possible Deletion Areas and to direct the repair or rebuilding of the Hotel or any portion of the Possible Deletion Areas in the event of a casualty or condemnation. The foregoing right includes, without limitation, the exclusive right: (i) to decide whether to repair or rebuild such areas, provided that if the Owner of the Hotel Related Apartment decides not to rebuild the Hotel or any portion of the Possible Deletion Areas, then, subject to the completion of any necessary subdivision and obtaining all necessary governmental approvals, such areas shall be withdrawn and deleted from the Project by the Developer; and (ii) to hire contractors to perform such work and to prepare plans for the performance of such work, all within its sole and absolute discretion and without having to obtain the prior consent or approval of the Board or any other person. Neither the Board nor the Association shall have any right or authority, notwithstanding any other provision of this Declaration, to direct, control, dictate or influence any decisions relating to the repair or rebuilding of the Hotel or Possible Deletion areas, or the application of any insurance proceeds relating thereto. By purchasing an Apartment in the Project, each Apartment Owner acknowledges and agrees that the authority for all such decisions and actions relating to the repair or rebuilding of the Hotel and Possible Deletion Areas, and to the application of insurance proceeds related thereto, is vested solely and exclusively with the owner of the Hotel Related Apartment.

16. CONDEMNATION. The government and certain other persons have the "power of eminent domain". This means that they can make someone sell their property to them. This process is called "condemnation". Anyone having the power of eminent domain is called a "condemning agency". This Section 16 explains what happens if the Project or any part of it is "taken", meaning that it is condemned or is sold to a condemning agency that has threatened to condemn it.

16.1 Condemnation Trustee. The Association must pay the condemnation proceeds it receives to a bank or trust company (the "Condemnation Trustee") designated by the Board and authorized to do business in the State of Hawaii. In this Section 16, "proceeds" means any money paid by the condemning agency as compensation or damages for taking the Project or any part of it.

16.2 Representation in Condemnation Matters. Each Owner gives the Association a special power of attorney to represent the Owner in any proceedings, negotiations, settlements or agreements related to any actual or threatened condemnation of the Project or any part of it. However, (i) the Owner of the Hotel Related Apartment will represent itself with respect to any right or claim it may have to proceeds payable for the taking of any part of the Hotel or Possible Deletion Areas, and (ii) the Developer will represent itself with respect to any right or claim it may have to proceeds payable for the Developer's Reserved Rights.

16.3 Notice to Lenders. The Association must provide a copy of any notice of a condemnation proceeding to anyone who holds, insures or guarantees a Mortgage and who files a written demand for notice with the Board. The notice must state the person's name and address and the Apartment number for the Apartment on which it has (or insures or guarantees) a Mortgage.

16.4 Division of Proceeds Between Developer and Owners. If all or any part of Project is taken or is sold under threat of condemnation before the end of the Development Period, then the condemnation proceeds must first be divided between the Developer and the Apartment Owners.

16.4.1 How Proceeds are Divided.

A. The Developer will be entitled to receive all proceeds payable for or on account of the loss of the Developer's Reserved Rights.

B. The Owner of the Hotel Related Apartment will be entitled to receive all proceeds payable for or on account of the loss of any part of the Hotel or Possible Deletion Areas.



C. The Apartment Owners will be entitled to receive the rest of the proceeds. The Condemnation Trustee will use them as provided in Sections 16.5, 16.6 and 16.7. The Developer will, of course, be entitled to receive any part of those proceeds paid on account of any Apartments owned by the Developer.

#### 16.4.2 How to Determine the Developer's Share.

A. If a court makes a final decision as to how much of the proceeds to pay to the Developer for the Developer's Reserved Rights, then the Condemnation Trustee will pay that amount to the Developer.

B. In all other cases, the Condemnation Trustee must pay to the Developer a share of proceeds equal to the value of the Developer's Reserved Rights. A qualified real estate appraiser will determine the value of Developer's Reserved Rights. To be qualified, the appraiser must be a member of the American Institute of Real Estate Appraisers, or of a successor organization. If a single qualified appraiser acted on behalf of the Developer, the Owner of The Hotel Related Apartment, and the Apartment Owners in the condemnation proceedings, then he or she will make the decision. If there was no such appraiser, or if that appraiser is not qualified, or if there was more than one appraiser, or if the Developer, the Owner of the Hotel Related Apartment and the Apartment Owners used different appraisers, then the Board, the Owner of the Hotel Related Apartment and the Developer must choose an appraiser. However, any party may elect to require that a panel of three appraisers make the decision simply by giving written notice to the other two. Within fifteen (15) days after the notice is received, the Board, the Owner of The Hotel Related Apartment and the Developer will each choose an appraiser. If any party fails to choose an appraiser on time, then any other party may petition the Circuit Court of the First Circuit, State of Hawaii, to appoint an appraiser on behalf of such party. The decision of any two appraisers will decide how much to pay to the Developer. The Developer, the Owner of The Hotel Related Apartment, and the Association will each pay one-third of the cost and expenses of the appraisers.

#### 16.4.3 How to Determine the Share of the Owner of the Hotel Related Apartment.

A. If a court makes a final decision as to how much of the proceeds to pay to the Owner of the Hotel Related Apartment for the Hotel (or any portion thereof) or the Possible Deletion Areas (or any portion thereof), then the Condemnation Trustee will pay that amount to the Owner of the Hotel Related Apartment.

B. In all other cases, the Condemnation Trustee must pay to the Owner of the Hotel Related Apartment a share of proceeds equal to the value of the portions of the Hotel or Possible Deletion Areas taken. A qualified real estate appraiser will determine the value of such areas. To be qualified, the appraiser must be a member of the American Institute of Real Estate Appraisers, or of a successor organization. If a single qualified appraiser acted on behalf of the Developer, the Owner of the Hotel Related Apartment, and the Apartment Owners in the condemnation proceedings, then he or she will make the decision. If there was no such appraiser, or if that appraiser is not qualified, or if there was more than one appraiser, or if the Developer, the Owner of the Hotel Related Apartment and the Apartment Owners used different appraisers, then the Board, the Owner of the Hotel Related Apartment and the Developer must choose an appraiser. However, any party may elect to require that a panel of three appraisers make the decision simply by giving written notice to the other two. Within fifteen (15) days after the notice is received, the Board, the Owner of the Hotel Related Apartment and the Developer will each choose an appraiser. If any party fails to choose an appraiser on time, then any other party may petition the Circuit Court of the First Circuit, State of Hawaii, to appoint an appraiser on behalf of such party. The decision of any two appraisers will decide how much to pay to the Owner of the Hotel Related Apartment. The Developer, the Owner of the Hotel Related Apartment, and the Association will each pay one-third of the cost and expenses of the appraisers.

16.5 How Proceeds Will Be Divided Among the Apartments. Any proceeds remaining after payment of the Developer's share under Section 16.4.1.A and the share of the Owner of the Hotel Related Apartment under Section 16.4.1.B, will be split by the Apartment Owners in this way:

A. If a court makes a final decision as to how much of the proceeds to pay to each Apartment, then the proceeds will be divided in that way.

B. In all other cases, a qualified real estate appraiser will divide the proceeds among the Apartments based on the value of each Apartment and its Common Interest. To be qualified, the appraiser must be a member of the American Institute of Real Estate Appraisers, or of a successor organization. If the appraiser who acted on behalf of the Apartment Owners in the condemnation proceedings is qualified, then he or she will make the decision. If there was no such appraiser, or if that appraiser is not qualified, or if there was more than one appraiser, then the Board must choose an appraiser. However, the Owners of the Apartments taken may elect, by a majority vote, to require that a panel of three appraisers make the decision. They must make this election within fifteen days after the Board announces the appointment of the appraiser. If they elect to do so, the Board must choose three appraisers and the decision of any two of them will decide how to divide the proceeds.

16.6 Condemnation or Termination of the Whole Project. If the whole Project is taken or so much of it is taken that the Association decides to terminate the condominium property regime, then the Condemnation Trustee must: (i) pay to the Developer and to its Lender, if any, the Developer's share of the proceeds for the Developer's Reserved Rights as required by Section 16.4, (ii) pay to the Owner of the Hotel Related Apartment its share of the proceeds for the Hotel and Possible Deletion Areas as required by Section 16.4, and (iii) pay to each Apartment Owner and to the Owner's Lender, as their interests may appear, the share of the proceeds for the Owner's Apartment as provided in Section 16.5.

16.7 Partial Taking. If only part of the Project is taken and if the Association does not decide to terminate the condominium property regime, then the Condemnation Trustee must: (i) pay to the Developer and to its Lender, if any, the Developer's share of the proceeds for the Developer's Reserved Rights as provided in Section 16.4, (ii) pay to the Owner of the Hotel Related Apartment its share of the proceeds for the Hotel and Possible Deletion Areas as provided in Section 16.4, and (iii) use the rest of the proceeds in the manner provided hereinbelow.

16.7.1 Elimination of Apartments. If (i) an Apartment or its Limited Common Elements are physically eliminated, or (ii) only a portion is eliminated and the rest cannot be repaired or rebuilt in a way that is satisfactory to the Owner of the Apartment, then:

A. The Condemnation Trustee will pay to the Owner and to any Lender having a Mortgage on the Apartment, as their interests may appear and in full satisfaction of their interests in the Apartment, the share of the proceeds allocable to that Apartment and its Limited Common Elements. However, the Condemnation Trustee must first deduct from those proceeds that Apartment's share of the cost of debris removal.

B. The Association must amend this Declaration to remove the Apartment and to adjust the Common Interests of the remaining Apartments.

16.7.2 Repair and Restoration. In all other cases, the Association must repair and restore the remaining Improvements, except for the Hotel and Possible Deletion Areas the repair and restoration of which shall be controlled and directed by the Owner of the Hotel Related Apartment as provided in Section 15.8, according to their design just before the taking. If this cannot be done, then the Association must repair or restore such remaining Improvements according to a new design. The new design must comply with all laws then in effect. Any changed plans and specifications must first be approved by the Board and by any Lender having a Mortgage on each Apartment remaining after the taking. If there are not enough proceeds to pay the cost of the repairs and restoration, the Association must pay the shortfall as Common Expense. The Board is expressly authorized to pay the shortfall using

money in the replacement reserve funds. If this is not enough, then the Board must (i) determine the remaining amount of the shortfall, and (ii) charge a special assessment to the Owners of all Apartments except any Apartments eliminated as provided in Section 16.7.1. Each Apartment will pay a percentage of the special assessment equal to the percentage of the Common Expenses that it will be paying after the removal of any Apartments being eliminated as provided in Section 16.7.1.

**16.7.3 Excess Proceeds.** Excess proceeds are proceeds remaining after paying (i) all amounts payable to Owners and Lenders of removed Apartments, (ii) the costs of debris removal, and (iii) the costs to repair and restore the rest of the Project. Each Apartment (including Apartments eliminated under Section 16.7.1) will each receive a percentage of the excess proceeds equal to the percentage of the Common Expenses that it paid before the condemnation.

**16.7.4 Removal of Debris.** Unless restoration or replacement is undertaken within a reasonable time after such taking, condemnation or sale, the Association at its Common Expense must remove all remains of the Improvements on the remaining Land and restore the site to good orderly condition and even grade.

**16.8 Determination Against Restoration.** In the event of the condemnation of all or any part of the Project, and subject to the rights of the Owner of the Hotel Related Apartment under Section 16.8 of this Declaration, the Project will be repaired, rebuilt and restored as provided in Section 16 hereinafter, unless, within ninety (90) days after such a condemnation, the Association decides by the affirmative vote of ninety percent (90%) of the Apartment Owners (including the Owners of ninety percent (90%) of the condemned Apartments) not to repair, rebuild, or restore the Project or such portion of the Project as shall have been condemned. During the Development Period, the consent of the Developer and its Lenders is also required.

**17. UNINSURED DAMAGE: DECISION NOT TO REPAIR.** This Section 17 applies if the Common Elements are substantially damaged or destroyed and if the damage or destruction is not covered by insurance.

**17.1 Decision Not to Rebuild.** The Association may decide not to repair, rebuild or restore the Improvements, provided that the Owner of the Hotel Related Apartment alone may decide not to repair, rebuild or restore the Hotel and the Possible Deletion Areas. The Association may only make this decision by the affirmative vote of not less than ninety percent (90%) of the Apartment Owners at an annual or special meeting of the Association. The meeting must be held within ninety (90) days after the damage or destruction occurs. During the Development Period, the consent of the Developer is also required. If the Owner of the Hotel Related Apartment decides not to rebuild the Hotel or any portion of the Possible Deletion Areas then, subject to the completion of any necessary subdivision and obtaining all necessary governmental approvals, such areas shall be withdrawn and deleted from the Project by the Developer.

**17.2 Rebuilding.** In all other cases, the Project will be repaired, rebuilt and restored as follows:

A. The Association must work diligently to repair, rebuild or restore the Common Elements, except for the Limited Common Elements, and will pay the cost as a Common Expense.

B. Each Apartment Owner will pay the cost to repair, rebuild, and restore the Owner's Apartment and its Limited Common Elements and the Association will pay the cost to repair, rebuild and restore all parking stalls, mailboxes, and other Limited Common Elements where the Association decides that it is more practical for it to do so.

C. All Improvements except for the Hotel and any Improvements located in the Possible Deletion Areas, must be repaired, rebuilt or restored according to their design just before the

damage occurred. If this cannot be done, then they must be repaired, rebuilt or replaced according to a new design that complies with all laws then in effect. Any changed plans and specifications must first be approved (i) by the Board, (ii) by any Lender having a Mortgage on any Apartment directly affected, and (iii) by the Developer during the Development Period.

D. Notwithstanding the foregoing, the Owner of the Hotel Related Apartment shall have the sole and exclusive right to direct the repair or rebuilding of the Hotel or any portion of the Possible Deletion Areas as provided in Section 15.8 of this Declaration.

## 18. CHANGES TO THE PROJECT.

18.1 General Provisions. This Section 18 applies except as otherwise provided by the federal Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), as amended by the Fair Housing Amendments Act of 1988, and the rules and regulations adopted under it, as either of them may be amended from time to time and except as otherwise provided in this Declaration. This Section 18 does not apply to changes made by the Developer when exercising the Developer's Reserved Rights, or to the owner of the Hotel Related Apartment. Neither the Association nor any Owner may:

- A. Restore or replace the Project or any building or other structure on it,
- B. Construct any new building or other structure on it, or

C. Make any structural change or addition to it that is different in any material respect from the Condominium Map, except pursuant to an amendment of this Declaration. The amendment must be adopted by the vote of the written consent of (i) seventy-five percent (75%) of the Apartment Owners, (ii) the Developer until the end of the Development Period, and (iii) all Apartment Owners whose Apartments or whose Limited Common Elements are directly affected (as the Board reasonably determines). Any such restoration, replacement, construction, alteration or addition must be made in accordance with complete plans and specifications that are first approved by the Board in writing. Promptly after the work is completed, the Association must record (1) the amendment, and (2) a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer. This section does not apply to "nonmaterial structural additions to the Common Elements" as that term is used in §514A-89 of the Condominium Property Act.

## 18.2 Changes by Owners or by the Developer.

18.2.1 Changes Permitted. No matter what else the Condominium Documents say, and except as otherwise provided by law, (i) the Developer here and now reserves the rights listed in this Section 18.2 for itself, (and these will be included within the Developer's Reserved Rights), and (ii) each other Owner will also have the rights listed in this Section 18.2. The Developer and the Owners may use their rights under this Section 18.2 at any time and may use them more than once. The Developer or the Owners must pay all costs associated with the exercise of these rights.

18.2.2 Additions or Changes Within an Apartment or Limited Common Element. Each Owner has the right, subject only to the terms and conditions set forth in the Condominium Documents and to Board approval (which will not be unreasonably withheld or delayed), to make any of the following changes, additions and improvements solely within the Owner's Apartment or solely within any Limited Common Element that such Owner controls:

- A. To install, maintain, remove and rearrange partitions and other walls from time to time within the Apartment or Limited Common Element; provided that the Owner shall not have the right to enclose any exterior lanai; and provided, further, that the number of Apartments shall not be increased as a result of the exercise of such rights;

B. To finish, change or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors or walls as appropriate for the use of the Apartment or Limited Common Element;

C. To decorate, paint, repaint, wallpaper or otherwise change the appearance of any walls, floors and ceilings of the Apartment or Limited Common Element which are not readily visible from outside the Apartment or Limited Common Element;

D. To tile, finish, carpet, re-carpet, and install, change, or remove other flooring in the Apartment or Limited Common Element which is not readily visible from outside the Apartment or Limited Common Element provided that any hard flooring materials and/or systems shall meet a Sound Transmission Coefficient (STC) acoustic standard of 50 or better and an Impact Insulation Criteria (IIC) acoustic standard of 50 or better; or

E. To make such changes, additions and improvements to the Apartment or Limited Common Elements to facilitate handicapped accessibility within the Apartment or Limited Common Element.

In addition, an Owner may make "nonmaterial structural additions to the Common Elements" as that term is used in §514A-89 of the Condominium Property Act. The Developer's Reserved Rights include the right to do any or all of these things with respect to any Apartment that the Developer owns or the Limited Common Elements of an Apartment that it owns. The requirement to obtain Board approval shall not apply to the owner of the Hotel Related Apartment.

18.2.3 Changes Between Two Apartments. The Owner of two Apartments which are separated by a Common Element that is a wall, or whose Limited Common Elements are separated from each other by a Common Element that is a wall, has the right and an easement to do these things, subject only to Board approval (which will not be unreasonably withheld or delayed), to:

A. Change or remove all or part of the Intervening wall.

B. Install doors and other improvements in such opening or openings in the Intervening Common Element.

C. Make other reasonable changes or additions.

The Developer's Reserved Rights include the right to do the same things with respect to any two (2) adjacent Apartments that it owns. Before terminating its common ownership of any of the adjacent Apartments, the Owner or Developer must restore the Common Element wall and/or other openings to substantially the same condition as before the change or removal unless the new Owners each agree otherwise in writing.

The rights of an Owner and the Developer under Section 18.2.3 may be exercised only if:

1. The structural integrity of the Apartment, or Limited Common Element or the building in which the Apartment is situated will not be adversely affected;

2. The finish of the remaining Common Element improvements are restored to substantially the same condition they were in before the change or removal; and

3. All construction activity is completed within a reasonable time after it begins. If there is a delay for reasons beyond the control of the Owner or Developer or their contractors, the construction activity must be completed in the additional time reasonably needed to finish it by working on it diligently.

18.2.4 Redesignation of Limited Common Elements Between Two (2) Apartments. The Owners of any two (2) adjacent Apartments have the right to change the designation of the Limited Common Elements appurtenant to their Apartments so that one or more Limited Common Elements appurtenant to one Apartment now will be appurtenant to the other Apartment or to both of the Apartments. The Owners cannot do this without the written consent of each Lender who has a Mortgage on either Apartment. The Developer's Reserved Rights include the right to do the same things with respect to any two (2) Apartments that it owns.

18.2.5 Limits on Owner or Developer Alterations. Nothing contained in this Section 18.2:

A. Authorizes the construction, placement or making, by an Owner other than the Developer or the owner of the Hotel Related Apartment, of any new improvements or material alterations in existing improvements on the Property (with the exception of (i) interior changes to the buildings which are not visible from the exterior, (ii) any landscaping, and (iii) improvements or alterations in existing improvements that (a) cost less than \$250,000 in the aggregate, and (b) strictly adhere to all principles, requirements and goals set forth in the Design Guidelines), without the prior consent of the Board and, during the Development Period, the Developer;

B. Authorizes any work or change by an Owner or the Developer that would jeopardize the soundness or safety of any part of the Project, or reduce the value of it;

C. Authorizes any work or change by an Owner other than the Developer or the owner of the Hotel Related Apartment that would materially change the uniform external appearance of the Project without the consent of the Board and, during the Development Period, the Developer;

D. Prohibits the Board from making or requiring that an Owner or the Developer make changes within an Apartment or Limited Common Element as needed to comply with the fire code and all other laws that apply to the Project; or

E. Authorizes any work or change by an Owner other than the Developer or the owner of the Hotel Related Apartment to the electrical, structural, or plumbing systems and facilities (e.g. electrical wiring, load-bearing walls and supports, and pipes) in or serving an Apartment without the consent of the Board and, during the Development Period, the Developer.

18.2.6 Conditions to Board Approval. The Board may impose certain conditions upon the Board's approval of any alteration, addition, change, removal or consolidation under this Section 18, including, without limitation the following:

A. The Owner of the Apartment (or the Developer as to its Apartments) provide evidence satisfactory to the Board that the Owner (or Developer) has sufficient funds in cash or by means of committed financing to fully pay the estimated costs of construction for the contemplated alterations, additions, changes or consolidation.

B. The Owner of the Apartment (or the Developer as to its Apartments) provides a copy of the building permit covering the proposed improvement work duly issued by the City and County of Honolulu.

C. The Owner of the Apartment (or the Developer as to its Apartment) provide a performance bond and a labor and materials payment bond in a face amount equal to one hundred percent (100%) of the estimated cost of the construction, naming the Board on behalf of the Association, the Apartment Owners and their Lenders, as their respective interests may appear as additional obligees. As an alternative, and under the appropriate circumstances the Board may approve a written indemnity, in form and content acceptable to the Association, under which the Owner of the

Apartment (or the Developer) agrees to indemnify and save harmless the Association, the Apartment Owners, and their Lenders, as their respective interests may appear, from and against any claims, demands or liability arising out of any failure by the Owner (or the Developer) to pay all costs and expenses for any and all labor, materials or supplies for any work performed in or to the Apartment or Limited Common Element. The Developer shall have the right to provide such written indemnity in lieu of a bond.

**18.9 Amendment To Declaration.** If any change to an Apartment made under the authority of Section 18 materially changes the depiction of a particular Apartment or Apartments on the Condominium Map or the description of it in the Declaration, then the Owner or Owners of the Apartment(s) (or the Developer as to its Apartments) must amend this Declaration and/or the Condominium Map to reflect the change. The amendment will take effect when it is recorded, subject to the following:

A. The Board has approved the form of the amendment and has acknowledged such approval by signing the amendment.

B. The Owner of the changed Apartment or Apartments (or the Developer as to its Apartments) must sign the amendment. No matter what Section 18 says, it is not necessary for anyone else to vote for, consent to, or sign the amendment, except for any Lender who has a Mortgage on the Apartment or Apartments that are changed or altered.

C. When an Apartment Owner or other interested person acquires an Apartment or any other interest in the Project, he or she automatically (i) consents to the change, and (ii) agrees that he or she will, if required by law or by the Owner who has changed an Apartment under the authority of Section 18, join in, consent to, sign, deliver and record all documents necessary or desirable to make the amendment of the Condominium Documents effective.

**19. DEVELOPER'S RESERVED RIGHT TO DESIGN, DEVELOP, BUILD, ADD TO AND COMPLETE NEW IMPROVEMENTS ON THE LAND.** Regardless of anything stated to the contrary in this Declaration or the Bylaws, the Developer reserves the right to design, develop, build, add, alter and complete New Improvements on the Land. The Developer may do this more than once and at any time before the Development Period ends.

**19.1 Limits on Developer's Reserved Rights.** The Developer's Reserved Rights in this Section 19 are subject to these terms and conditions:

**19.1.1 Plans and Specifications.** A licensed architect or engineer must prepare plans and specifications for any New Improvements having an estimated value of \$500,000 or more, and any such plans and specifications must be approved by the officer of the City and County of Honolulu having jurisdiction over the issuance of building permits. The plans and specifications must be designed so that the New Improvements will be substantially consistent with the existing Improvements of the Project in terms of quality of construction and finish, as determined by the Developer in its sole discretion. The Developer must build the New Improvements substantially in accordance with the plans and specifications. However, this Section 19.1.1 does not apply to the exercise of the Developer's Reserved Rights under this Section 19 with respect to the Hotel or Possible Detention Areas.

**19.1.2 Changes to Existing Improvements.** The plans and specifications cannot require any material change to, or the demolition of, (i) any existing Apartment or Limited Common Element, or (ii) any material building or structure of the Project, provided that:

A. The Developer has the right to connect to, use, relocate and/or realign existing, and/or to develop additional central and appurtenant installations for services to the New Improvements to provide electricity, hot and cold water, air conditioning and other applicable utilities and services and, when applicable, to designate, grant, convey, transfer, cancel, relocate and otherwise deal

with any easements over, under, across or through the Common Elements as necessary and desirable in connection therewith. The Developer must do this in a way that does not cause any interruption, other than a temporary interruption, in the service of utilities to any other part of the Project.

B. The Developer can change, alter or demolish all or any part of an existing Apartment owned by the Developer or where the Owner of such Apartment consents to the change, alteration or demolition in writing.

C. The Developer can change, alter or demolish all or any part of an existing Limited Common Element appurtenant to an Apartment owned by the Developer or where the Owner of the Apartment to which the Limited Common Element is appurtenant consents to the change, alteration or demolition in writing. If the Limited Common Element is appurtenant to more than one Apartment then the consent of the Owners of all of those Apartments is necessary.

D. The Developer can change or remove any roads, driveways, parking structures, and the like so long as there is reasonable and adequate access from the public streets and highways to the parking stalls and to the entries to the buildings of the Project.

E. The Developer can relocate or replace any utility locations and installations and the like so long as the plans and specifications provide for replacements that provide comparable services. The Developer must do this in a way that does not cause any interruption, other than a temporary interruption, in the service of utilities to any other part of the Project.

F. The Developer has the right to remove or change parking stalls provided that at all times there must be at least one parking stall for each Apartment;

19.1.3 Cost and Time for Completion. The Developer must pay all costs and expenses for the design, development and construction of the New Improvements. The Developer makes no promise as to when construction of any New Improvements will commence and/or be completed. The Developer must finish building any New Improvements within a reasonable time after it starts building them. If there is a delay for reasons beyond the reasonable control of the Developer or its contractors, the construction must be completed in the additional time reasonably needed to finish it by working on it diligently.

19.1.4 Expenses. The Developer must at its sole cost and expense repair any damage to the Common Elements caused by its construction contractors.

19.1.5 Reserved.

19.1.6 Encumbrance of Apartments. The Developer can Mortgage or assign its interest in any Apartments owned by the Developer as security for a loan. It may do this even before construction of the New Improvements is complete. This might happen, for example, if the Developer borrows money to pay for the cost of building the New Improvements. The Developer cannot Mortgage any Apartment that it does not own. Likewise, the Developer cannot put any other encumbrance on any Apartment that it does not own unless this Declaration permits it.

19.2 Nature of Developer's Reserved Rights. The Developer's Reserved Rights in this Section 19 include the right to do anything necessary or convenient to design, develop, build, add, alter and complete New Improvements on the Land, including the right to amend the Declaration and Condominium Map as necessary or convenient to describe the New Improvements.

19.3 Owners' Obligations. During the construction period, each Owner must: (a) remain outside of any fenced construction area; and (b) not directly or indirectly do or attempt to do anything that would or could affect or interfere with the development, construction, alteration and completion of the New Improvements in the manner determined by the Developer in its sole discretion.



✓ 20. DEVELOPER'S RESERVED RIGHT TO SUBDIVIDE AND CONSOLIDATE THE LAND. Regardless of anything stated to the contrary in this Declaration or the Bylaws, the Fee Owner and the Developer reserve the right to subdivide the Land of the Project, and/or to consolidate the Land of the Project with any Adjacent Parcel, for or in connection with the exercise of the Developer's Reserved Rights under this Declaration. The Fee Owner and the Developer may do this more than once and at any time before the Development Period ends.

20.1 Limits on Developer's Reserved Rights. The Developer's Reserved Rights in this Section 20 are subject to these terms and conditions:

- A. The Developer may only consolidate the Land of the Project with one or more Adjacent Parcels; and
- B. The Developer must pay all costs of any subdivision or consolidation and the cost of constructing any New Improvements.

✓ 20.2 Nature of Developer's Reserved Rights. Subject to the limitations stated in Section 20.1, the Developer's Reserved Rights in this Section 20 include the right to do anything necessary or convenient to subdivide the Land of the Project and/or to consolidate the Land of the Project with any Adjacent Parcel, including the right to amend the Declaration to change the description of the Land and the right to amend the Condominium Map if the Developer deems it necessary or useful to reflect the subdivision or consolidation. For example, the Fee Owner and the Developer may do any of the following:

- A. File one or more applications to subdivide the Land of the Project, and process the application to final approval.
- B. File one or more applications to consolidate the Land of the Project with any Adjacent Parcel, and process the application to final approval.
- C. File, register or record any document required to effect the subdivision or consolidation in the recorded legal records. This includes, for example, (i) a Land Court Map showing the new lot or lots, and the location of any easements, and (ii) Land Court Petitions to approve any such map and the subdivision or consolidation of the lots.
- D. Make any improvements necessary or convenient to obtain any necessary approvals or to complete the subdivision or consolidation. The Developer may do this by using the Developer's Reserved Rights under Section 19 to make New Improvements.
- E. Do anything necessary or convenient to satisfy the requirements of Article 7, Chapter 22, Revised Ordinances of Honolulu, relating to park and/or playground requirements imposed by the City and County of Honolulu in connection with an application to subdivide the Land. This includes, for example, the right to designate any portion of the Land as a park or playground, to amend the Declaration and Condominium Map as necessary to accomplish the same, and to file or record any document required to effect the same.
- F. Seek and obtain any variance, zoning change, or other land use approval necessary or convenient to accomplish such subdivision or consolidation or for the benefit of any parcel to be deleted pursuant to Section 21.
- G. Amend this Declaration or the Bylaws to change the description of the Land.

H. Amend the Condominium Map if the Developer deems it necessary or useful to reflect the subdivision and/or consolidation.

I. Amend any recorded deed or other document conveying or encumbering any Apartment so that it conforms to the revised Declaration. The Fee Owner and the Developer may also record a new deed or conveyance document for that purpose.

J. Use any of the other Developer's Reserved Rights as may be necessary or convenient to subdivide the Land or to consolidate the Land with any adjacent Parcel. For example, the Developer may (i) use its rights to deal with easements under Section 7, 10, or (ii) sign, acknowledge, record, and deliver documents and do other things in its own right and/or using its power of attorney under Section 27.2.

✓ 21. DEVELOPER'S RESERVED RIGHT TO DELETE LAND AND IMPROVEMENTS. Regardless of anything stated to the contrary in this Declaration or the Bylaws, the Fee Owner and the Developer reserve the right to withdraw and delete from the Project and from the condominium property regime, all or any part of the areas designated on the Condominium Map as "Possible Deletion Areas" together with any improvements located thereon. The Fee Owner and the Developer may do this more than once and at any time before the Development Period ends.

21.1 Limits on the Developer's Reserved Rights. The Developer's Reserved Rights in this Section 21.1 are subject to these terms and conditions:

A. The Fee Owner and the Developer may delete all or any part of the Land and Improvements designated on the Condominium Map as "Possible Deletion Areas", including any Limited Common Elements located within the Possible Deletion Areas. The Fee Owner and the Developer may not delete any other part of the Land or Improvements.

B. The part of the Land deleted must be a legally separate lot. The Fee Owner and the Developer can use the Developer's Reserved Rights under Section 20 to make all or any part of the Possible Deletion Areas into a separate lot.

C. The Fee Owner and the Developer must pay all costs of deleting any part of the Land. This includes but is not limited to these costs:

(1) The cost of preparing and recording any amendment to this Declaration, the Bylaws, and the Condominium Map, and the cost of preparing and recording any other legal documents required to delete all or any part of the Possible Deletion Areas.

(2) The cost of constructing any New Improvements (pursuant to Section 19) needed to operate the Project without the deleted land.

(3) The cost of replacing any walls or fences that may be required by law to separate the Project from the deleted land.

(4) The cost of relocating utility easements, utility lines, and so on as needed to operate the Project without the deleted land.

Under no circumstances, however, can this Subsection 21.1C or any other part of the Condominium Documents be construed to require that the Fee Owner or the Developer pay any compensation on account of the part of the Land and/or Improvements deleted.

✓ 21.2 Nature of Developer's Reserved Rights. Subject to the limits stated in Section 21.1, the Developer's Reserved Rights in this Section 21 include the right to do anything necessary or

convenient to delete all or any part of the Possible Deletion Areas. For example, the Fee Owner and the Developer have the following rights:

A. The Fee Owner and the Developer may amend this Declaration and the Bylaws to change the description of the Land.

B. The Fee Owner and the Developer may amend the Condominium Map if necessary or useful to reflect the deletion of the Possible Deletion Areas.

C. The Fee Owner and the Developer may amend any recorded deed or other document conveying or encumbering an Apartment so that it conforms to the revised Declaration. The Fee Owner and the Developer may also record a new deed or conveyance document for that purpose.

D. The Fee Owner and the Developer may sign, acknowledge, and record one or more deeds, releases, or other documents as the Fee Owner or Developer deem necessary or convenient to do the following:

(1) To complete the deletion of all or any part of the Possible Deletion Areas.

(2) To remove the deleted land and improvements from the condominium property regime.

(3) To vest title to the deleted land and improvements in the Developer or related entity free of all claims, liens, and interests of anyone else; or to convey it to someone else.

E. The Fee Owner and Developer may use any of the other Developer's Reserved Rights as may be necessary or convenient to delete all or any part of any Possible Deletion Areas. For example, the Fee Owner and Developer may sign, acknowledge, record and deliver documents and do other things in its own right and/or using its power of attorney under Section 27.2.

21.3 The Fee Owner and the Developer Must Amend the Condominium Documents. To delete some or all of any Possible Deletion Areas, the Fee Owner and the Developer must amend this Declaration and the Bylaws, and may also amend the Condominium Map.

A. Content of Amendment to Declaration. The Fee Owner and the Developer must amend this Declaration and the Bylaws so that the description of the Land refers only to the lot or lots that will remain after the deletion takes effect. The Fee Owner and the Developer may also change the Land description as necessary or convenient to refer to any easements and other changes to title, and may include anything else that the Fee Owner or the Developer deem necessary or appropriate or that is required by law. The Fee Owner and Developer may also revise Sections 4 (Description of the Project), 5 (Division of Property), and any other Section of this Declaration as necessary to reflect the deletion of all or any portion of the Possible Deletion Areas and Limited Common Elements located within such areas.

B. Amendment to Condominium Map. The Fee Owner and the Developer may amend the Condominium Map but it does not have to do so unless the law requires it. The amendment may also contain any site plan, floor plans and elevations, or other drawings that the Fee Developer chooses to include.

#### 21.4 What Happens When Areas Are Deleted.

A. The deletion of all or a part of the Possible Deletion Areas will be effective for all purposes when the Fee Owner and the Developer record the amendment to this Declaration and any amendment to the Condominium Map required by Section 21.3. From then on, no Apartment Owner and no other Interested Person except for the Fee Owner, the Developer and/or any related entity, and their Lender (if the Fee Owner or the Developer signed a Mortgage that covers any Possible Deletion Areas) will have any rights in or claims on (in legal terms, any legal or equitable interest in or to) any part of the Land or Improvements that are deleted. In other words, the title to the land and Improvements deleted will belong only to the Fee Owner or the Developer and/or any related entity. Each Interested Person understands, acknowledges, accepts and agrees (i) that the Fee Owner or the Developer and/or any related entity will be the sole owner of any part of the Land or Improvements that are deleted as provided in this Section 21, and (ii) after the deletion takes effect, the land and Improvements deleted will no longer be a part of the Project or subject to the Condominium Documents. In legal terms, the interest of the Owners in the Possible Deletion Areas is a "defeasible interest".

B. Any part of the Land that is deleted as provided in this Section 21 will become an Adjacent Parcel. The Fee Owner and the Developer have the right to sell, deed, convey or otherwise deal with title to any Adjacent Parcel free of the covenants, conditions and restrictions of this Declaration and the Bylaws.

**22. DEVELOPER'S RESERVED RIGHT TO ANNEX LAND AND IMPROVEMENTS.** Regardless of anything stated to the contrary in this Declaration or the Bylaws, the Developer reserves the right to change the Project by annexing into the Project and the condominium property regime any Adjacent Parcel and any Improvements located on the Adjacent Parcel. The Developer may do this more than once and at any time before the Development Period ends.

**22.1 Limits on the Developer's Reserved Rights.** The Developer's Reserved Rights in this Section 22 are subject to these terms and conditions:

- A. The Developer may annex only an Adjacent Parcel;
- B. Any Adjacent Parcel to be annexed must be a legally separate lot;

C. If the Adjacent Parcel contains any Improvements, and if these Improvements will not be replaced by new construction, then: (i) the Improvements on the Adjacent Parcel must have been constructed according to plans and specifications prepared by a licensed architect or engineer; (ii) the plans and specifications must have been approved by the official of the City and County of Honolulu having jurisdiction over the issuance of building permits; and (iii) the Improvements must be substantially consistent with the existing Improvements of the Project in terms of quality of construction and finish, as determined by the Developer in its sole discretion;

- D. The Developer must pay all costs of annexing the Adjacent Parcel; and

E. Each person who has a Mortgage or other lien on the Adjacent Parcel must sign a document that makes the Mortgage or lien subordinate to the Condominium Documents. Anyone else who has a lien on the Adjacent Parcel must sign a document that makes the lien subordinate to the Condominium Documents. These requirements do not apply, however, to a lien for taxes, a lien in favor of any government or governmental agency, a lien to enforce payment of the costs to keep up a roadway or some other kind of commonly used property or easement, or a lien in favor of a homeowners' association.

**22.2 Nature of Developer's Reserved Rights.** Subject to the limitations stated in Section 22.1, the Developer's Reserved Rights in this Section 22 include the right to do anything necessary or convenient to annex any Adjacent Parcel and any Improvements on it, including the right to amend the Declaration to change the description of the Land and the right to amend the Condominium Map if the Developer deems it necessary or useful to reflect the subdivision or consolidation.

22.3 The Developer Must Amend the Condominium Documents. To annex an Adjacent Parcel and the Improvements on it the Developer must amend this Declaration. The Developer may also have to amend the Condominium Map to do so.

22.3.1 Content of Amendment to Declaration.

A. The Developer must amend this Declaration to change the description of the Land so that it includes the Adjacent Parcel. The Land description may also be changed as necessary or convenient to refer to any easements and other changes to title.

(1) It is not necessary to annex all rights in the Adjacent Parcel. For example, the Adjacent Parcel might be a lot that contains a road. The road might serve other property besides the Project. The persons who have the right to use the roadway lot would each own a share (in legal terms, an "undivided interest") in the lot. In such a case, the Developer has the right to annex just the undivided interest in the Adjacent Parcel. The Adjacent Parcel might also be subject to a reasonable agreement to share the cost of any maintenance, upkeep, repair and replacement of the road, and the cost of insurance for any liabilities arising with respect to the road. The Developer has the right to annex an Adjacent Parcel, or any interest in it, subject to any such agreement.

B. If the Developer designates all or any part of the Additional Parcel and/or any Improvements on it as a Limited Common Element assigned to one or more existing Apartments, the amendment to this Declaration must identify the Apartment or Apartments to which it is appurtenant.

C. The amendment may include anything else that the Developer deems necessary or appropriate or that is required by law.

22.3.2 Amendment to Condominium Map. The Developer may amend the Condominium Map but it does not have to do so unless the law requires it. The amendment may also contain any site plans, floor plans and elevations, or other drawings that the Developer chooses to include.

22.4 What Happens When an Adjacent Parcel is Annexed. The annexation of an Adjacent Parcel takes effect when the Developer records an amendment to this Declaration annexing the Adjacent Parcel and any amendment to the Condominium Map required by Section 22.3, and any Lender or other lienholder signs and records a document that meets the requirement of Section 22.1.E. After that:

A. Any Improvements on the Adjacent Parcel (except for Improvements that will be replaced by new construction) will be deemed New Improvements;

B. The Adjacent Parcel and the New Improvements will be Common Elements unless and until any parts of them are designated as Apartments or Limited Common Elements as permitted in Section 19.

C. All of the Apartments will have the right to use the Common Elements in the Project to the same extent and subject to the same limits as if the entire Project (including any annexed Adjacent Parcel) had been developed at the same time. This includes both the Land as it existed before the annexation and the Adjacent Parcel, to the extent that they are Common Elements. After the Adjacent Parcel is annexed, and after any designation of any Common Elements, and Limited Common Elements, the Project will be treated as though it had always been developed, divided into Apartments, held, occupied and used by the Owners as a single undivided Project.

23. DEVELOPER'S RESERVED RIGHT TO CHANGE THE PROJECT TO COMPLY WITH LAW. Regardless of anything stated to the contrary in this Declaration or the Bylaws, and except as otherwise provided by law, the Developer reserves the right, at any time and from time to time, to change the Apartments, the Common Elements, the Limited Common Elements, and/or to amend the Condominium Documents as required to comply with any laws that apply to the Project or to the Association, or the Developer. This includes, for example, the federal Fair Housing Act, 42 U.S.C. §§3601 et seq., and the Americans With Disabilities Act, 42 U.S.C. §§12101 et seq. (the "ADA"), and any rules and regulations adopted under either of them. For example, the Developer could use this right: (i) to re-stripe or reconfigure parking stalls to comply with the ADA, or (ii) to change the slope of a ramp for wheelchairs to comply with the ADA. The Developer may also use any of the other Developer's Reserved Rights described in this Declaration in connection with the use of its rights under this Section 23.

24. DEVELOPER'S RESERVED RIGHTS REGARDING SMA PERMITS. Because the Land is beachfront property, the Project is located in a "Special Management Area" or "SMA". Hawaii law requires that the Developer obtain an SMA Permit for any development in a Special Management Area. The Project is presently subject to the SMA Permits described in Section 1.41. Some of the requirements of the SMA Permit apply to the initial construction and completion of the Project. Other requirements may apply to the Project on an ongoing basis. No matter what else the Condominium Documents say, and except as otherwise provided by law, the Developer and the Fee Owner reserve the right to do all things necessary or convenient to satisfy the requirements of the SMA Permits, and any zoning or other land use requirements that apply to the Project from time to time. The Developer and the Fee Owner may do this more than once and at any time before the Development Period ends.

24.1 Limits of Reserved Rights. The Developer and/or the Fee Owner must pay all of the immediate costs arising out of the use of the Developer's Reserved Rights under this Section 24. The Developer and Fee Owner do not, however, have to pay the costs to the Association to comply with the SMA Permits on an ongoing basis. Rather, the Association is responsible for ongoing compliance with the SMA Permits and must pay the cost to do so. Such costs of ongoing compliance with the SMA Permits are costs of owning property in the Project and by purchasing an apartment in the Project, each Owner agrees to and accepts the same. The Developer and/or the Fee Owner are responsible for compliance with the SMA Permits pertaining to the initial construction and completion of the Project and other requirements of the SMA Permits that do not relate to the Project directly, and in each case must pay the cost to do so. The Developer and the Fee Owner, however, have no obligation to comply with requirements of the SMA Permits that relate directly to the Project but which do not apply to the initial construction and completion of the Project.

24.2 Nature of Reserved Rights. Subject to the limits stated in Section 24.1, the Developer's Reserved Rights under this Section 24 include the right to do anything necessary or convenient to satisfy the requirements of the SMA Permits, and any zoning or other land use requirements that apply to the Project from time to time. For example, the Developer and the Fee Owner have these rights:

A. They can do anything required by the SMA Permits. For example, the SMA Permits may require that construction stop if historic, archaeological, or cultural sites are discovered. This would extend the time period within which the Developer must complete its construction of flow improvements.

B. They can enter into any agreements with the City and County of Honolulu or the State of Hawaii, or any agency of either of them. It can also record those agreements so that they are binding on the Project, and it can do the things required by those agreements.

C. They can defend any challenge to the SMA Permits, and can also enter into settlement agreements with anyone who challenges the SMA Permits or who otherwise intervenes in the SMA Permitting process, and do the things required by the settlements.

D. They can agree to changes to the SMA Permits. However, the Developer and the Fee Owner may not do so if the change would impose an unreasonable financial burden on the Association.

E. They can amend the Condominium Documents.

F. They can amend any recorded deed or other document conveying or encumbering an Apartment so that it conforms to the revised Declaration. They can also record a new deed or conveyance document for that purpose.

G. They can use any of the other Developer's Reserved Rights as may be necessary or convenient to satisfy the requirements of the SMA Permits, and any zoning or other land use requirements that apply to the Project from time to time. For example, the Developer may sign, acknowledge, record and deliver documents and do other things in its own right and/or using its power of attorney under Section 27.2.

**25. DEVELOPER'S RESERVED RIGHTS REGARDING JOINT DEVELOPMENT AGREEMENT.** In order to facilitate the development of the Project, the Developer and the Fee Owner intend to subject the Land and the Project to an Agreement for Issuance of Conditional Use Permit (under Section 21-5.380 of the Land Use Ordinance (the "Joint Development Agreement") substantially in the form attached hereto as Exhibit E. Regardless of anything stated to the contrary in this Declaration or the Bylaws, and except as otherwise provided by law, the Developer and the Fee Owner reserve the right to do all things necessary or convenient to subject the Land and Project to the Joint Development Agreement and to satisfy the requirements of the Joint Development Agreement. The Developer and the Fee Owner may do this more than once and at any time before the Development Period ends.

**25.1 Limits on Reserved Rights.** The Developer and/or the Fee Owner must pay all of the immediate costs arising out of the use of the Developer's Reserved Rights under this Section 25. The Developer and Fee Owner do not, however, have to pay the costs to the Association to comply with the Joint Development Agreement on an ongoing basis. Rather, the Association is responsible for ongoing compliance with the Joint Development Agreement and must pay the cost to do so. Such costs of ongoing compliance with the Joint Development Agreement are costs of owning property in the Project and by purchasing an apartment in the Project, each Owner agrees to and accepts the same.

**25.2 Nature of Reserved Rights.** Subject to the limits stated in Section 25.1, the Developer's Reserved Rights under this Section 25 include the right to do anything necessary or convenient to subject the Land and Project to the Joint Development Agreement and to comply with the requirements of the same and any zoning or other land use requirements that apply to the Project from time to time. For example, the Developer and the Fee Owner have these rights:

A. The Developer and the Fee Owner can sign, acknowledge, record and deliver the Joint Development Agreement and any amendment thereto without having to obtain the consent, joinder or approval of any person or group of persons, including the Association, any apartment owner or any mortgagee, lien holder, any apartment purchaser or any other person who may have an interest in the Project or in any apartment.

B. If, notwithstanding Section 25.2A of this Declaration or any other of the Developer's Reserved Rights, the consent, joinder or approval of any Owner is necessary in order to subject the Land and the Project to the Joint Development Agreement, the Developer may give such consent, joinder or approval on behalf of such Owner using its power of attorney under Section 27.2. This right includes without limitation the right to sign, acknowledge, record and deliver the Joint Development Agreement and any amendment thereto on behalf of any Owner having an interest in the Land or the Project using the power of attorney under Section 27.2.

C. The Developer and the Fee Owner can enter into any agreements with the City and County of Honolulu or the State of Hawaii, or any agency of either of them. It can also record those agreements so that they are binding on the Project, and it can do the things required by those agreements.

D. The Developer and the Fee Owner can agree to amendments to the Joint Development Agreement, including but not limited to any amendment to withdraw any portion of the Land from the Joint Development Agreement, without having to obtain the consent, joinder or approval of any person or group of persons, including the Association, any apartment owner or any mortgagee, lien holder, any apartment purchaser or any other person who may have an interest in the Project or in any apartment. If, notwithstanding the foregoing sentence, the consent, joinder or approval of any Owner is necessary in order to amend the Joint Development Agreement, the Developer may give such consent, joinder or approval on behalf of such Owner using its power of attorney under Section 27.2. This right includes without limitation the right to sign, acknowledge, record and deliver any amendments to the Joint Development Agreement on behalf of any Owner having an interest in the Land or the Project.

E. The Developer and the Fee Owner can amend the Condominium Documents.

F. The Developer and the Fee Owner can amend any recorded deed or other document conveying or encumbering an Apartment so that it conforms to the revised Declaration. They can also record a new deed or conveyance document for that purpose.

G. The Developer and the Fee Owner can use any of the other Developer's Reserved Rights as may be necessary or convenient to subject the Land and Project to the Joint Development Agreement and to satisfy the requirements thereof, and any zoning or other land use requirements that apply to the Project from time to time. For example, the Developer may sign, acknowledge, record and deliver documents, and do other things in its own right and/or using its power of attorney under Section 27.2.

26. DEVELOPER'S RESERVED RIGHTS REGARDING DESIGN GUIDELINES. The Land and the Project are subject to the Design Guidelines described in Section 4.16 of this Declaration. Regardless of anything stated to the contrary in this Declaration or the Bylaws, and except as otherwise provided by law, the Developer reserves the right to do all things necessary or convenient to satisfy the requirements of the Design Guidelines. The Developer may do this more than once and at any time before the Development Period ends. The foregoing reserved rights include the right to use any of the other Developer's Reserved Rights as may be necessary or convenient to satisfy the requirements of the Design Guidelines and any amendments thereto and to sign, acknowledge, record and deliver documents and do other things in its own right and/or using its power of attorney under Section 27.2.

## 27. DEVELOPER'S RESERVED RIGHTS GENERALLY.

27.1 Nature of Developer's Reserved Rights. The Developer may exercise the Developer's Reserved Rights separately or in one or more combinations and at one or more times. The Developer has no duty to exercise the Developer's Reserved Rights. Nothing contained in the Condominium Documents can be deemed to be a representation that it will do so. For example, the Developer has no duty to build any New Improvements, subdivide any of the Land, delete any of the Land, annex any Adjacent Parcel, and so on. Conversely, the use of these rights on one occasion does not limit or otherwise affect the Developer's right to use them again from time to time. The Developer's Reserved Rights are reserved and presented to and may be exercised by the Developer regardless of anything stated in or that may be inferred from any provision of the Condominium Documents or any other document creating, governing, or encumbering the Project or any part of it.

27.2 Consent, Special Power of Attorney. The Developer may exercise the Developer's Reserved Rights without being required to obtain the approval, consent, or joinder of anyone



else, and without the knowledge of anyone else. This includes but is not limited to the Association, any Apartment Owner, any Lender, or any other Interested Person. When an Apartment Owner or any other Interested Person acquires an Apartment or any other interest in the Project, he or she automatically:

A. Takes his or her interest in the Project subject to the Developer's Reserved Rights, and each and every exercise and/or assignment of them;

B. Acknowledges, approves, consents to, agrees to and accepts (i) the Developer's Reserved Rights and the exercise of them from time to time; (ii) that this may change the Project; (iii) that this may result in the recalculation of the Common Interest of some or all Apartments in some cases; and (iv) that the Developer can file and/or record any and all documents that the Developer deems necessary or convenient to the exercise of its rights. This includes, but is not limited to, amendments to some or all of the Condominium Documents;

C. Agrees, promptly after being asked to do so, to join in, consent to, sign (and have notarized if asked), deliver, and record all documents and do all other things that the Developer in its sole discretion determines to be necessary or convenient to the exercise of the Developer's Reserved Rights or to accomplish the purposes for which those rights were reserved (as determined by the Developer). This promise includes the duty to sign, have notarized, deliver, and record a special power of attorney in the form attached hereto as Exhibit C (with any changes needed to record it).

D. Appoints the Developer as his or her attorney-in-fact to join in, consent to, sign, have notarized, deliver and record all documents and to do all things on his, her or its behalf. This means that the Developer can act in the place of the Owner or other Interested Person. The Developer can do anything that they could do, and they ratify, accept and confirm anything that the Developer does using this power of attorney.

(1) This power of attorney appointment is permanent. In legal terms, it is "coupled with an interest"; it is "irrevocable"; it is a "durable power of attorney"; and it will not be affected by any disability of the Owner or any other Interested Person who gives it.

(2) This power of attorney appointment includes "full power of substitution". This means that the Developer can let someone else act in its place as a substitute attorney-in-fact.

(3) Each Owner and every other Interested Person gives the Developer this power of attorney whether or not it expressly says so in the deed, Mortgage, or other document by which the Owner or other Interested Person obtained any interest in the Project.

(4) This power of attorney appointment is a "special power of attorney". This means that the Developer has the power to do only the things stated or intended by the Condominium Documents (as determined by the Developer). This includes, however, the power to do anything else that the Developer deems necessary or convenient to accomplish the stated or intended goal and anything incidental to it. Ambiguities must be resolved in favor of giving, not denying, the Developer the power to act.

To be clear, and regardless of the preceding language of this Section 27, the Developer intends and this Declaration should be construed to provide, to the fullest extent permitted by law, that any amendment to the Condominium Documents made in connection with the exercise of the Developer's Reserved Rights, and any other action taken by the Developer in the exercise of the Developer's Reserved Rights, requires the vote or written consent of only the Developer and does not require the vote or written consent of any Owner or any other Interested Person. To the extent that the vote or written consent of any Owner or other Interested Person is required, however, the Developer may use this power of attorney to cast that vote or give that consent on behalf of that Owner or other Interested Person.

EXHIBIT " C "

DEPARTMENT OF PLANNING AND PERMITTING  
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET · HONOLULU, HAWAII 96813  
Phone: (808) 523-4414 · Fax: (808) 527-6743

RECEIVE

OCT 19 2005

ENGINEERS SURVEYORS HAWAII,

MUFI HANNEMANN  
MAYOR



HENRY ENG, FAICP  
DIRECTOR

DAVID K. TANOUÉ  
DEPUTY DIRECTOR

SUBDIVISION		2005/SUB-157
File Number	2005/SUB-157	
Project	SUB / Kahuku--Turtle Bay Resort / TMK: 5-7-001: 013	
Location	57-91 Kam Hwy	
Tax Map Key	5-7-001:013	
Owner	KUILIMA RESORT COMPANY	
Surveyor	ENGINEERS SURVEYORS HAWAII, INC.	
Agent	ENGINEERS SURVEYORS HAWAII, INC.	

Description of the Proposal: Revised erosion of Lot 7 as shown on DPP File No. 1972/SUB-77 of Land Court Application 1095, also being Lot 479 (Map 08) of Land Court Application 1095 and Exclusion 17 (Map 1), of Royal Patent 8000, Land Commission Award 2716, Apana 2 to Hōiale and subdivision of Lot 7 less erosion into two lots: Lot 7-A of 46.504 acres and Lot 7-B of 4.594 acres; and the designation of Easement A-1 (for access purposes in favor of Lot 7-B) affecting Lot 7-A.

Modification is granted for the irregular lot lines and use of an easement to access the lots on the basis that the lots in the subdivision are under a "joint development" (DPP File No. 2004/CUP-48). No cancellation of the joint development shall be allowed, unless the applicant reconsolidates or reconfigures the lots to comply with the requirements of the Subdivision Rules and Regulations.


The State of Hawaii Department of Health (DOH) in their letter dated August 16, 2004, stated that they concur with the proposed subdivision as long as domestic wastewater is treated via connection to the wastewater facility owned and operated by Kuilima Resort. A copy of DOH's letter is attached for your information and use.

Approval was granted to the proposal.

Copies of the approved map with the stamp of approval are attached.

This copy is notification of the action taken and the date it was signed.

SIGNATURE

 & DIRECTOR

TITLE

October 14, 2005

DATE

This action does not constitute approval of any other required permits, such as building or sign permits. Should you have any questions, please call Mr. Jeff Lee at 523-4255 or Mr. Lester Lai at 523-4252.

EXHIBIT " C "

IN THE LAND COURT OF THE STATE OF HAWAI'I

In the Matter of the Application )

of )

Trustees under the Will of the Estate of James )  
Campbell, deceased )

to register and confirm title )  
to land situate at Kahuku, District of )  
Ko'olaupoko, City and )  
County of Honolulu, State of Hawai'i )

SUBDIVISION  
of  
Application 1095  
(Map 172)

ORDER TO SHOW CAUSE

TO: THE PERSONS LISTED ON EXHIBIT "1" ATTACHED TO THE CITATION FILED  
HEREWITH

Whereas, KUILIMA RESORT COMPANY, a Hawai'i general partnership ("KRC"), OCEAN VILLAS DEVELOPMENT L.L.C., a Delaware limited liability company ("OVD"), and the apartment owners of the units in the Ocean Villas at Turtle Bay condominium project ("Project") (each an "Apartment Owner" and collectively, "Apartment Owners") (KRC, OVD, and Apartment Owners are referred to herein collectively, as the "Petitioner"), have filed in this Court an Amended Petition for Subdivision of Lot 479 Less Erosion and Resubdivision into Lots 1217-A and 1217-B and Designation of Easement 392 Affecting Lot 1217-A, in which Petitioner has prayed for (i) the finding that the map filed therewith pursuant to Section 501-85 of the Hawai'i Revised Statutes, as amended, is correct; (ii) an order granting the Amended Petition for Subdivision of Lot 479 Less Erosion and Resubdivision into Lots 1217-A and 1217-B, divesting the Apartment Owners and their mortgagees (other than mortgagees of KRC) of any interest in Lot 1217-A and the improvements thereon and vesting title solely in KRC, subject to the

mortgagees and other rights, liens and encumbrances described in the Land Court Certificate of Title described hereinbelow, and designating Easement 392 affecting Lot 1217-A; (iii) the Court to authorize and direct the Assistant Registrar of this Court to issue a new Land Court Certificate of Title for Lot 1217-A, showing ownership solely in KRC, and noting on the new Land Court Certificate references to said map and to the order to be issued by reason of the Amended Petition, subject to access rights and the encumbrances described in paragraphs 10 (including the items described in paragraphs 10.p, 10.q, and 10.r), 12 and 13 of the Amended Petition in accordance with Sections 501-85 and 501-109 of the Hawai'i Revised Statutes, or any amendments thereto, and Rule 15 of the Rules of the Land Court; and (iv) the Court to authorize and direct the Assistant Registrar of this Court to note on Transfer Certificate of Title No. 323,595 and to note on the Land Court Certificates of Title in favor of the other individual Apartment Owners references to said map, to the order to be issued by reason of the Amended Petition, and to the Land Court Certificate of Title in favor of KRC as described in subsection (iii) hereinabove, subject to access rights and encumbrances for or affecting Lot 1217B as described in paragraphs 10, 12 and 13 of the Amended Petition, provided, that the encumbrances described in paragraphs 10.p, 10.q and 10.r of the Amended Petition, to the extent applicable to Lot 1217-B, are and shall only be applicable to an undivided 0.86% interest in Lot 1217-B, which undivided interest would be appurtenant to Apartment Unit 120 in the Project, in accordance with Section 501-85 and 501-109 of the Hawai'i Revised Statutes, or any amendments thereto, and Rule 15 of the Rules of the Land Court.

IT IS HEREBY ORDERED that THE PERSONS LISTED ON EXHIBIT "1" ATTACHED TO THE CITATION FILED HERewith appear before the Honorable Judge Gary W.B. Chang, Judge of the Land Court of the State of Hawai'i, in his Courtroom on the Fourth Floor of Ka'ahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813 on SEP 28 2009, 2009, at 9:00 A.m., then and there to show cause, if you have any, why

the prayer of said Amended Petition for Subdivision of Lot 479 Less Erosion and Resubdivision into Lots 1217-A and 1217-B and Designation of Easement 392 Affecting Lot 1217-A should not be granted.

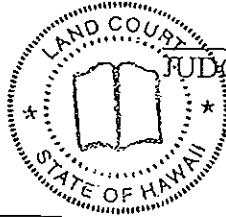
GARY W.B. CHANG

JUDGE OF THE LAND COURT



Attest:

KATHLEEN HANAWAHINE



By: Registrar of the Land Court.

IN THE LAND COURT OF THE STATE OF HAWAI'I

In the Matter of the Application	)	
	)	
of	)	
	)	SUBDIVISION
Trustees under the Will of the Estate of James	)	of
Campbell, deceased	)	Application 1095
	)	(Map 172)
	)	
to register and confirm title	)	
to land situate at Kahuku, District of	)	
Ko'olaupoko, City and	)	
County of Honolulu, State of Hawai'i	)	

CITATION

TO: THE PERSONS LISTED ON EXHIBIT "1" ATTACHED TO THE CITATION FILED HEREWITH

YOU ARE HEREBY NOTIFIED that KUILIMA RESORT COMPANY, a Hawai'i general partnership ("KRC"), OCEAN VILLAS DEVELOPMENT L.L.C., a Delaware limited liability company ("OVD"), and the apartment owners of the units in the Ocean Villas at Turtle Bay condominium project ("Project") (each an "Apartment Owner" and collectively, "Apartment Owners") (KRC, OVD, and Apartment Owners are referred to herein collectively, as the "Petitioner"), have filed in this Court an Amended Petition for Subdivision of Lot 479 Less Erosion and Resubdivision into Lots 1217-A and 1217-B and Designation of Easement 392 Affecting Lot 1217-A, in which Petitioner has prayed for (i) the finding that the map filed therewith pursuant to Section 501-85 of the Hawai'i Revised Statutes, as amended, is correct; (ii) an order granting the Amended Petition for Subdivision of Lot 479 Less Erosion and

Resubdivision into Lots 1217-A and 1217-B, divesting the Apartment Owners and their mortgagees (other than mortgagees of KRC) of any interest in Lot 1217-A and the improvements thereon and vesting title solely in KRC, subject to the mortgagees and other rights, liens and encumbrances described in the Land Court Certificate of Title described hereinbelow, and designating Easement 392 affecting Lot 1217-A; (iii) the Court to authorize and direct the Assistant Registrar of this Court to issue a new Land Court Certificate of Title for Lot 1217-A, showing ownership solely in KRC, and noting on the new Land Court Certificate references to said map and to the order to be issued by reason of the Amended Petition, subject to access rights and the encumbrances described in paragraphs 10 (including the items described in paragraphs 10.p, 10.q, and 10.r), 12 and 13 of the Amended Petition in accordance with Sections 501-85 and 501-109 of the Hawai'i Revised Statutes, or any amendments thereto, and Rule 15 of the Rules of the Land Court; and (iv) the Court to authorize and direct the Assistant Registrar of this Court to note on Transfer Certificate of Title No. 323,595 and to note on the Land Court Certificates of Title in favor of the other individual Apartment Owners references to said map, to the order to be issued by reason of the Amended Petition, and to the Land Court Certificate of Title in favor of KRC as described in subsection (iii) hereinabove, subject to access rights and encumbrances for or affecting Lot 1217B as described in paragraphs 10, 12 and 13 of the Amended Petition, provided, that the encumbrances described in paragraphs 10.p, 10.q and 10.r of the Amended Petition, to the extent applicable to Lot 1217-B, are and shall only be applicable to an undivided 0.86% interest in Lot 1217-B, which undivided interest would be appurtenant to Apartment Unit 120 in the Project, in accordance with Section 501-85 and 501-109 of the Hawai'i Revised Statutes, or any amendments thereto, and Rule 15 of the Rules of the Land Court.

YOU ARE HEREBY CITED AND FURTHER NOTIFIED, pursuant to the

foregoing Order to Show Cause, to appear before the Honorable Judge Gary W.B. Chang, Judge of the Land Court of the State of Hawai'i, in his Courtroom on the Fourth Floor of Ka'ahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813 on SEP 28 2009, 2009, at 9:00 A.m., then and there to show cause, if you have any, why the prayer of said Amended Petition for Subdivision of Lot 479 Less Erosion and Resubdivision into Lots 1217-A and 1217-B and Designation of Easement 392 Affecting Lot 1217-A should not be granted, and unless you appear at said Court at the time and place aforementioned, your default will be recorded and the Amended Petition for Subdivision of Lot 479 Less Erosion and Resubdivision into Lots 1217-A and 1217-B and Designation of Easement 392 Affecting Lot 1217-A will be taken as confessed and the Amended Petition will be granted, and you will be forever barred from contesting said Amended Petition or any judgment, decrees or writ entered thereon.

Witness, the Registrar of the Land Court of the State of Hawai'i

Dated: Honolulu, Hawai'i, \_\_\_\_\_

JUL 29 2009

**KATHLEEN HANAWAHINE**

\_\_\_\_\_  
Registrar





**EXHIBIT 1**

Corporation Counsel  
City and County of Honolulu  
Honolulu Hale  
530 South King Street  
Honolulu, Hawai'i 96813  
Attn: Carrie K.S. Okinaga, Esq.

Department of Land & Natural Resources, Land Division  
Oahu District Branch  
1151 Punchbowl Street, Room 200  
Honolulu, Hawai'i 96813  
Attn: Charlene Unoki

Department of the Attorney General  
State of Hawai'i  
425 Queen Street  
Honolulu, Hawai'i 96813  
Attn: Mark J. Bennett, Esq.

\* all adjoining lands are owned by the Petitioner, KRC

DOUBLE SYSTEM



L-235 STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
RECORDED  
FEB 04, 2010 08:01 AM  
Doc No(s) 3937560  
on Cert(s) AS LISTED HEREIN



R-349 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
FEB 04, 2010 08:01 AM  
Doc No(s) 2010-016167



20 1/1 Z12 R349

/s/ NICKI ANN THOMPSON  
ASSISTANT REGISTRAR



20 1/1 Z12 L235

/s/ NICKI ANN THOMPSON  
REGISTRAR

Land Court System

Regular System

After Recordation, Return By Mail  Or Pickup

McCorriston Miller Mukai MacKinnon LLP (JDK)  
P.O. Box 2800  
Honolulu, Hawaii 96803

TGA: 200943277 - S

Type of Document: AMENDMENT OF DECLARATION OF CONDOMINIUM PROPERTY  
REGIME OF OCEAN VILLAS AT TURTLE BAY RESORT,  
CONDOMINIUM MAP NOS. 1665 AND 3844, AND BYLAWS OF  
ASSOCIATION OF APARTMENT OWNERS OF OCEAN VILLAS AT  
TURTLE BAY RESORT, EFFECTUATING THE WITHDRAWAL AND  
DELETION OF LOT 1217-A AND OF A PORTION OF EXCLUSION 17  
FROM THE PROJECT, AND CONFIRMATION OF TITLE TO LOT  
1217-A AND TO A PORTION OF EXCLUSION 17

(Total Pages: 20)

Parties To Document: KUILIMA RESORT COMPANY, a Hawai'i general partnership

OCEAN VILLAS DEVELOPMENT, L.L.C., a Delaware limited  
liability company

Tax Map Key No.: (1) 5-7-001-013

THIS AMENDMENT OF DECLARATION OF CONDOMINIUM PROPERTY  
REGIME OF OCEAN VILLAS AT TURTLE BAY RESORT, CONDOMINIUM MAP NOS.  
1665 AND 3844, AND BYLAWS OF ASSOCIATION OF APARTMENT OWNERS OF  
OCEAN VILLAS AT TURTLE BAY RESORT, EFFECTUATING THE WITHDRAWAL  
AND DELETION OF LOT 1217-A AND OF A PORTION OF EXCLUSION 17 FROM THE  
PROJECT, AND CONFIRMATION OF TITLE TO LOT 1217-A AND TO A PORTION OF

EXCLUSION 17 (the "Withdrawal Instrument") is made as of February 4, 2010 (the "Effective Date"), by KUILIMA RESORT COMPANY ("KRC"), a Hawai'i general partnership, and OCEAN VILLAS DEVELOPMENT, L.L.C. ("OVD"), a Delaware limited liability company, each having its mailing address at 57-091 Kamehameha Highway, Kahuku, Hawai'i 96731.

#### RECITALS:

A. OVD is the "Developer" and KRC is the "Fee Owner" under: (i) that certain Declaration of Condominium Property Regime for Ocean Villas at Turtle Bay Resort dated August 31, 2004, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 3172940, and recorded in Bureau of Conveyances of the State of Hawaii as Document No. 2004-200492, as amended (the "Declaration"); and (ii) that certain Bylaws of the Association of Apartment Owners of Ocean Villas at Turtle Bay Resort filed in said Office as Land Court Document No. 3172941, and recorded in said Bureau as Document No. 2004-200493, as amended (the "Bylaws").

B. The Declaration and Bylaws, together with that certain Condominium Map No. 1665 and 3844 (the "Condominium Map") (collectively, the "Condominium Documents"), established and created the Ocean Villas at Turtle Bay Resort condominium project (the "Project").

C. Pursuant to rights reserved by KRC and OVD in Section 20 of the Declaration, KRC and OVD have subdivided the "Land" (as such term is defined in the Declaration) of the Project into two separate parcels, the "Hotel Parcel" more particularly described on Exhibit "A" hereto, and the "Ocean Villas Parcel" more particularly described on Exhibit "B" hereto.

D. Pursuant to Section 21 of the Declaration, KRC and OVD reserved the right to withdraw and delete the Hotel Parcel, which area is shown on the Condominium Map as "Possible Deletion Areas", and any improvements thereon from the Project and from the condominium regime created and established by the Condominium Documents, which reserved right includes, but is not limited to, the following:

(1) The right to amend the Declaration to reflect the deletion of the Hotel Parcel from the description of the Land;

(2) The right to amend the Bylaws to reflect the deletion of the Hotel Parcel from the description of the Land;

(3) The right to amend the Condominium Map to reflect the deletion of the Hotel Parcel;

(4) The right to divest the owners of any apartments in the Project and their mortgagees (other than mortgagees of KRC or OVD) of any interest in the Hotel Parcel and the improvements thereon and the right to cause title to the Hotel Parcel and the improvements

thereon to be vested solely in KRC, subject to any mortgage affecting the Hotel Parcel to the extent that such mortgage was signed by KRC or OVD.

E. Pursuant to Section 27.2 of the Declaration, OVD may exercise all of the rights described in Recital D above without being required to obtain the approval, consent, or joinder of any owner of an apartment in the Project or such owner's lender, if any, and all owners of apartments in the Project and their respective lenders, if any, have appointed OVD "as his or her attorney-in-fact to join in, consent to, sign, have notarized, deliver and record all documents and to do all things on his, her or its behalf" necessary or convenient to effectuate the withdrawal and deletion of the Hotel Parcel from the Project.

NOW, THEREFORE, based on the foregoing Recitals, KRC and OVD hereby (a) withdraw and delete the Hotel Parcel and the improvements thereon from the Project and confirm that the right of exclusive use of the Hotel Parcel and the improvements thereon in favor of Apartment 120 in the Project is terminated, (b) divest the owners of apartments in the Project and their mortgagees (other than mortgagees of KRC) of any interest in the Hotel Parcel and the improvements thereon, (c) cause title to the Hotel Parcel and the improvements thereon to be vested solely in KRC, subject to the encumbrances described on Exhibit "A", including, without limitation, the mortgages and other security instruments described on Exhibit "A", which mortgages and other security instruments are hereby confirmed by KRC, and (d) amend the Condominium Documents as follows:

1. Amendment of Declaration. The legal description of the Land contained in Exhibit A to the Declaration is hereby deleted and replaced with the legal description of the Ocean Villas Parcel as set forth in Exhibit "B" hereto. From and after the Effective Date the Declaration shall encumber and affect only the Ocean Villas Parcel and not the Hotel Parcel, all references to the "Hotel" in the Declaration are hereby deleted from the Declaration, the term "Land" as used in the Declaration shall mean and refer only to the Ocean Villas Parcel and not the Hotel Parcel or any part thereof, and the term "Project" as used in the Declaration shall mean and refer only to the Ocean Villas Parcel and the improvements thereon and not the Hotel Parcel or any improvements thereon.

2. Amendment of Bylaws. The legal description of the Land contained in Exhibit A to the Bylaws is hereby deleted and replaced with the legal description of the Ocean Villas Parcel as set forth in Exhibit "B" hereto. From and after the Effective Date, the Bylaws shall encumber and affect only the Ocean Villas Parcel and not the Hotel Parcel.

3. Amendment of Condominium Map. Sheet no. CPR 1.0.1 (i.e., the site plan) of the Condominium Map is hereby deleted and replaced with the map attached hereto as Exhibit "C".

4. Withdrawal Instrument to be Filed in the Land Court and Recorded in the Bureau of Conveyances. This Withdrawal Instrument shall be filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, noted on the Transfer Certificates of Title in favor of KRC and each of the owners of apartments in the Project, which Transfer Certificates of

Title are noted in Exhibit "A" hereto, Exhibit "B" hereto and Exhibit "D" hereto, and recorded in the Bureau of Conveyances of the State of Hawaii.

- signatures appear on the following page -

IN WITNESS WHEREOF, KRC and OVD have executed this instrument as of the Effective Date.

OCEAN VILLAS DEVELOPMENT, L.L.C.,  
a Delaware limited liability company

By: Oaktree Capital Management, L.P., a Delaware limited partnership, its Manager

By \_\_\_\_\_  
Name: **Ambrose Fisher**  
Its **Managing Director**

By \_\_\_\_\_  
Name: **Mark Oei**  
Its **Managing Director**

KUILIMA RESORT COMPANY,  
a Hawaii general partnership

By: Kuilima Resort Company Holding I, LLC, a Delaware limited liability company, its managing general partner

By: Oaktree Capital Management, L. P., a Delaware limited partnership, its Manager

By \_\_\_\_\_  
Name: **Ambrose Fisher**  
Its **Managing Director**

By \_\_\_\_\_  
Name: **Mark Oei**  
Its **Managing Director**

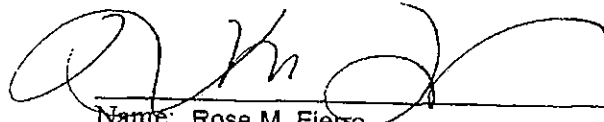
STATE OF California

COUNTY OF Los Angeles

)  
) SS.  
)

On this 22nd day of January, 2010, before me appeared  
Ambrose Fisher and Mark Oel, each to me  
personally known (or proved to me to be such person on the basis of satisfactory evidence), each of  
whom being by me duly sworn or affirmed, did say that such person executed the foregoing  
instrument as the free act and deed of such person, and if applicable in the capacity shown, having  
been duly authorized to execute such instrument in such capacity.

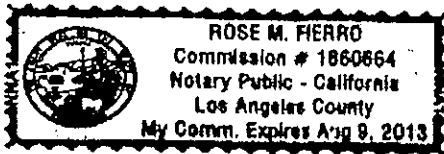


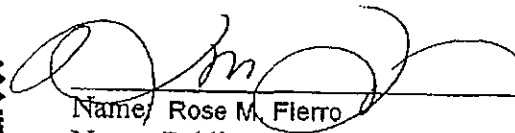
  
Name: Rose M. Fierro  
Notary Public, State of California

My commission expires: August 9, 2013

STATE OF California )  
 ) SS.  
COUNTY OF Los Angeles )

On this 2nd day of January, 2010, before me appeared  
Ambrose Fisher and Mark Oei, each to me  
personally known (or proved to me to be such person on the basis of satisfactory evidence), each of  
whom being by me duly sworn or affirmed, did say that such person executed the foregoing  
instrument as the free act and deed of such person, and if applicable in the capacity shown, having  
been duly authorized to execute such instrument in such capacity.



  
Name, Rose M. Fierro  
Notary Public, State of California

My commission expires: August 9, 2013



**EXHIBIT "A"**  
**Hotel Parcel**

All of that certain property located in the City and County of Honolulu, State of Hawaii, identified as Lot 7-A, area 46.504 acres, more or less, on that certain map prepared by Engineers Surveyors Hawaii, Inc. and approved by the Department of Planning and Permitting, City and County of Honolulu, on October 14, 2005, which Lot 7-A is comprised of the lands described in Item I and Item II as follows:

Item I:

All of that certain parcel of land situate at Kahuku, District of Koolaupoko, City and County of Honolulu, State of Hawaii, described as follows:

LOT 1217-A, area 46.466 acres, more or less, as shown on Map 172, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased.

Being the land described in Transfer Certificate of Title No. 971,332 issued to Kuilima Resort Company, a Hawaii general partnership.

NOTE: Lot 1217-A shall have access across Lots 467 and 478 and unregistered land (Turtle Bay Access Drive), as set forth by Land Court Order No. 181650, filed January 27, 2010. Lot 1217-A shall also have utility rights across and under the portion of Easement 79 located on Lot 1217-B, and the owner of Lot 1217-A shall have the right to grant such rights to one or more utility companies and/or other appropriate grantees, as set forth by Land Court Order No. 181650, filed January 27, 2010.

Item II:

All of that certain parcel of land (being a portion of the land described in and covered by Royal Patent Number 8000, Land Commission Award Number 2716, Apana 2 to Hoolae) situate, lying and being at Kahuku, District of Koolauloa, City and County of Honolulu, State of Hawaii, being a portion of Exclusion 17 and described as follows:

Beginning at the Southeast corner of this parcel of land, and on the North side of Lot 1217-B, Map 172, of Land Court Application 1095, the coordinates of which referred to Government Survey Triangulation Station "PUUKI" being 12,309.49 feet North and 5,443.30 feet West and running by azimuths measured clockwise from True South:

- |    |     |         |       |   |
|----|-----|---------|-------|---|
| 1. | 94° | 14'     | 43.03 | feet along remainder of Royal Patent 8000, Land Commission Award 2716, Apana 2 to Hoolae; |
| 2. | 72° | 05' 14" | 69.83 | feet along remainder of Royal Patent 8000, Land Commission Award 2716, Apana 2 to Hoolae; |

- |    |      |     |        |   |
|----|------|-----|--------|---|
| 3. | 190° | 20' | 39.87  | feet along Lot 1217-A, Map 172, of Land Court Application 1095;   |
| 4. | 280° | 20' | 104.30 | feet along Lot 1217-A, Map 172, of Land Court Application 1095;   |
| 5. | 10°  | 20' | 2.25   | feet along Lot 1217-A, Map 172, of Land Court Application 1095, to the point of beginning and containing an area of 0.038 Acre. |

Together with a perpetual easement appurtenant to said premises, for rights of way by necessity from said premises, to the nearest public highway over such ways as now exist or may hereafter be lawfully substituted therefor, as set forth in Original Certificate of Title No. 17,854.

AS TO LOT 7-A, BEING THE LANDS DESCRIBED IN ITEM I AND ITEM II ABOVE, SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Easement "75" (72 feet wide) for drainage purposes, as shown on Map 68, as set forth by Land Court Order No. 35003, filed April 28, 1972.
2. Easement "79" (56 feet wide) for utility purposes, as shown on Map 68, as set forth by Land Court Order No. 35003, filed April 28, 1972 ("Easement 79").
3. Grant in favor of City and County of Honolulu dated May 3, 1978, filed in said Office as Land Court Document No. 875601 over Easement 79 and also recorded in Book 12898, Page 459.
4. Rights of way in favor of lots entitled thereto, as set forth by Land Court Order No. 35003, filed April 28, 1972.
5. Terms, provisions, and reservation of rights to the Trustees Under the Will and of the Estate of James Campbell, deceased, contained in Short Form Acquisition Agreement dated June 3, 1988, filed in said Office as Land Court Document No. 1555263, as amended by Correction to Short Form Kuilima Acquisition Agreement dated December 30, 1988, filed in said Office as Land Court Document No. 1603988.
6. Terms and provisions contained in Declaration Concerning Location of Pedestrian Easement dated August 8, 1990, filed in said Office as Land Court Document No. 1754787 and also recorded as Document No. 90-123616.
7. Terms and provisions contained in Deed dated December 30, 1988, filed in said Office as Land Court Document No. 1603995 and also recorded in Book 22730 at Page 142.
8. Terms and provisions contained in Declaration of Restrictive Covenants dated December 30, 1988, filed in said Office as Land Court Document No. 1603990 and also recorded in Book 22730, Page 33.

9. The terms and provisions contained in Grant of Non Exclusive Easement (Access) dated December 30, 1988, filed as Land Court Document No. 1603996 and also recorded in Book 22730, Page 170.

10. The terms and provisions contained in Grant of Non Exclusive Easement (Non Potable Water) dated December ---, 1988 , filed as Land Court Document No. 1603997 and also recorded in Book 22730, Page 212.

11. Terms and provisions contained in Declaration Concerning Location of Parks and Easements dated October 11, 1989, filed in said Office as Land Court Document No. 1675414 and also recorded in Book 23764, Page 692.

12. Terms and provisions contained in Declaration of Restrictive Covenants, Conditions and Reservations dated August 24, 2004, filed in said Office as Land Court Document No. 3169232 and also recorded as Document No. 2004-195080.

13. Grant of Easement dated February 9, 2005, filed in said Office as Land Court Document No. 3231119 and also recorded as Document No. 2005-031930.

14. Terms and provisions contained in Unilateral Agreement and Declaration for Conditional Zoning dated September 23, 1986, filed in said Office as Land Court Document No. 1402662, and also recorded in Book 19756, Page 709, as amended by Amendment to Unilateral Agreement dated December 29, 1988, filed in said Office as Land Court Document No. 1603989 and recorded in Book 22730, Page 23.

15. Terms and provisions contained in Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance dated \_\_, 2005, filed in said Office as Land Court Document No. 3366116 and also recorded as Document No. 2005-253259.

16. That certain First Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement in favor of Credit Suisse, dated September 30, 2005, made by Kuilima Resort Company, a Hawai'i general partnership and TBR Property L.L.C., a Delaware limited liability company, filed in said Office as Land Court Document No. 3335667 and also recorded as Document No. 2005-199933, as amended by that certain First Amendment to First Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement, dated May 23, 2008, filed in said Office as Land Court Document No. 3751516 and also recorded as Document No. 2008-084074; Notice of Pendency of Action, dated December 28, 2007, filed in said Office as Land Court Document No. 3697072 and also recorded as Document No. 2007-223330.

17. That certain Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement in favor of Credit Suisse, dated September 30, 2005, made by Kuilima Resort Company, a Hawai'i general partnership, and TBR Property L.L.C., a Delaware limited liability company, filed in said Office as Land Court Document No. 3335668 and also recorded as Document No. 2005-199934, subsequently assigned by that certain Quitclaim Assignment of Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement to Wells Fargo

Bank, N.A., dated May 16, 2008, filed in said Office as Land Court Document No. 3751517 and also recorded as Document No. 2008-084075, as amended by that certain First Amendment to Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement, dated May 23, 2008, filed in said Office as Land Court Document No. 3751519 and also recorded as Document No. 2008-084079; Notice of Pendency of Action, dated December 28, 2007, filed in said Office as Land Court Document No. 3697072 and also recorded as Document No. 2007-223330.

18. Assignment in favor of Credit Suisse, as administrative agent, recorded as Document No. 2005-199935.

19. Assignment in favor of Credit Suisse, as administrative agent, recorded as Document No. 2005-199936, as amended by that certain First Amendment to Assignment of Rights dated May 23, 2008 and recorded as Document No. 2008-084081.

20. Financing Statement in favor of Credit Suisse, as collateral agent, recorded as Document No. 2005-199939.

21. Financing Statement in favor of Credit Suisse, as collateral agent, recorded as Document No. 2005-199940. The foregoing was assigned to Wells Fargo Bank, N.A., as collateral agent by instrument recorded as Document No. 2008-084082 and re-recorded on May 23, 2008 as Document No. 2008-084179.

22. That certain New Second Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement in favor of Wells Fargo Bank, N.A., dated May 23, 2008, made by Kuilima Resort Company, a Hawai'i general partnership, and TBR Property L.L.C., a Delaware limited liability company, filed in said Office as Land Court Document No. 3751518 and also recorded as Document No. 2008-084076.

23. Assignment of Rights in favor of Wells Fargo Bank, N.A., as administrative agent, collateral agent and paying agent, dated May 23, 2008, recorded as Document No. 2008-084077.

24. Financing Statement in favor of Wells Fargo Bank, N.A., as collateral agent, recorded as Document No. 2008-084078.

25. Access rights in favor of Lot 1217-B across Easement 392, as set forth by Land Court Order No. 181650, filed January 27, 2010; Easement 392 shall be subject to reasonable realignment by the owner of Lot 1217-A at such owner's expense, as set forth by Land Court Order No. 181650, filed January 27, 2010.

**END OF EXHIBIT "A"**

**EXHIBIT "B"**  
**Ocean Villas Parcel**

All of that certain property located in the City and County of Honolulu, State of Hawaii, identified as Lot 7-B, area 4.594 acres, more or less, on that certain map prepared by Engineers Surveyors Hawaii, Inc. and approved by the Department of Planning and Permitting, City and County of Honolulu, on October 14, 2005, which Lot 7-A is comprised of the lands described in Item I and Item II as follows:

Item I:

All of that certain parcel of land situate at Kahuku, District of Koolaupoko, City and County of Honolulu, State of Hawaii, described as follows:

LOT 1217-B, area 4.382 acres, more or less, as shown on Map 172, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased.

Being a portion of the land described in Transfer Certificate of Title No. 323,595 issued to Kuilima Resort Company, a Hawaii general partnership, and in those Transfer Certificates of Title listed in Exhibit "D" attached hereto issued to the owners specified on said exhibit.

NOTE: Lot 1217-B shall have access across Lots 467, 478 and 1217-A and unregistered land (Turtle Bay Access Drive) through Easement 392, as set forth by Land Court Order No. 181650, filed January 27, 2010. Easement 392 shall be subject to reasonable realignment by the owner of Lot 1217-A at such owner's expense, as set forth by Land Court Order No. 181650, filed January 27, 2010.

Item II:

All of that certain parcel of land (being a portion of the land described in and covered by Royal Patent Number 8000, Land Commission Award Number 2718, Apana 2 to Hoolae) situate, lying and being at Kahuku, District of Koolauloa, City and County of Honolulu, State of Hawaii, being a portion of Exclusion 17, and described as follows:

Beginning at the Northeast corner of this parcel of land, and on the South side of Lot 1217-A, Map 172, of Land Court Application 1095, the coordinates of which referred to Government Survey Triangulation Station "PUUKI" being 12,309.49 feet North and 5,443.30 feet West and running by azimuths measured clockwise from True South:

1. 10°          20'          102.05          feet along Lot 1217-B, Map 172, of Land Court Application 1095;

- |    |      |         |        |   |
|----|------|---------|--------|---|
| 2. | 100° | 20'     | 104.30 | feet along Lot 1217-B, Map 172 of Land Court Application 1095;  |
| 3. | 190° | 20'     | 64.43  | feet along Lot 1217-B, Map 172, of Land Court Application 1095;   |
| 4. | 252° | 05' 14" | 69.83  | feet along remainder of Royal Patent 8000, Land Commission Award 2716, Apana 2 to Hoolae;   |
| 5. | 274° | 14'     | 43.03  | feet along remainder of Royal Patent 8000, Land Commission Award 2716, Apana 2 to Hoolae, to the point of beginning and containing an area of 0.212 Acre. |

Together with a perpetual easement appurtenant to said premises, for rights of way by necessity from said premises, to the nearest public highway over such ways as now exist or may hereafter be lawfully substituted therefore, as set forth in Original Certificate of Title No. 17,854.

AS TO LOT 7-B, BEING THE LANDS DESCRIBED IN ITEM I AND ITEM II ABOVE, SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Easement "75" (72 feet wide) for drainage purposes, as shown on Map 68, as set forth by Land Court Order No. 35003, filed April 28, 1972.
2. Easement "79" (56 feet wide) for utility purposes, as shown on Map 68, as set forth by Land Court Order No. 35003, filed April 28, 1972 ("Easement 79").
3. Grant in favor of City and County of Honolulu dated May 3, 1978, filed in said Office as Land Court Document No. 875601 over Easement 79 and also recorded in Book 12898, Page 459.
4. Rights of way in favor of lots entitled thereto, as set forth by Land Court Order No. 35003, filed April 28, 1972.
5. Terms, provisions, and reservation of rights to the Trustees Under the Will and of the Estate of James Campbell, deceased, contained in Short Form Acquisition Agreement dated June 3, 1988, filed in said Office as Land Court Document No. 1555263, as amended by Correction to Short Form Kuilima Acquisition Agreement dated December 30, 1988, filed in said Office as Land Court Document No. 1603988.
6. Terms and provisions contained in Declaration Concerning Location of Pedestrian Easement dated August 8, 1990, filed in said Office as Land Court Document No. 1754787 and also recorded as Document No. 90-123616.
7. Terms and provisions contained in Deed dated December 30, 1988, filed in said Office as Land Court Document No. 1603995 and also recorded in Book 22730 at Page 142.

8. Terms and provisions contained in Declaration of Restrictive Covenants dated December 30, 1988, filed in said Office as Land Court Document No. 1603990 and also recorded in Book 22730, Page 33.

9. The terms and provisions contained in Grant of Non Exclusive Easement (Access) dated December 30, 1988, filed as Land Court Document No. 1603996 and also recorded in Book 22730, Page 170.

10. The terms and provisions contained in Grant of Non Exclusive Easement (Non Potable Water) dated December —, 1988, filed as Land Court Document No. 1603997 and also recorded in Book 22730, Page 212.

11. Terms and provisions contained in Declaration Concerning Location of Parks and Easements dated October 11, 1989, filed in said Office as Land Court Document No. 1675414 and also recorded in Book 23764, Page 692.

12. Terms and provisions contained in Declaration of Restrictive Covenants, Conditions and Reservations dated August 24, 2004, filed in said Office as Land Court Document No. 3169232 and also recorded as Document No. 2004-195080.

13. Grant of Easement dated February 9, 2005, filed in said Office as Land Court Document No. 3231119 and also recorded as Document No. 2005-031930.

14. Terms and provisions contained in Unilateral Agreement and Declaration for Conditional Zoning dated September 23, 1986, filed in said Office as Land Court Document No. 1402662, and also recorded in Book 19756, Page 709, as amended by Amendment to Unilateral Agreement dated December 29, 1988, filed in said Office as Land Court Document No. 1603989 and also recorded in Book 22730, Page 23.

15. Terms and provisions contained in Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance dated \_\_, 2005, filed in said Office as Land Court Document No. 3366116 and also recorded as Document No. 2005-253259.

16. Terms and provisions contained in the Declaration of Condominium Property Regime for "Ocean Villas at Turtle Bay Resort" Condominium Project dated August 31, 2004, filed in said Office as Land Court Document No. 3172940 and also recorded as Document No. 2004-200492, as amended by the First Amendment dated August 23, 2005, filed in said Office as Land Court Document No. 3364329 and also recorded as Document No. 2005-250675, and the Amendment dated December 20, 2005, filed in said Office as Land Court Document No. 3375969 and also recorded as Document No. 2006-003879.

17. Terms and provisions contained in By-Laws of the Association of Apartment Owners of "Ocean Villas at Turtle Bay Resort" dated August 31, 2004, filed in said Office as Land Court Document No. 3172941 and also recorded as Document No. 2004-200493.

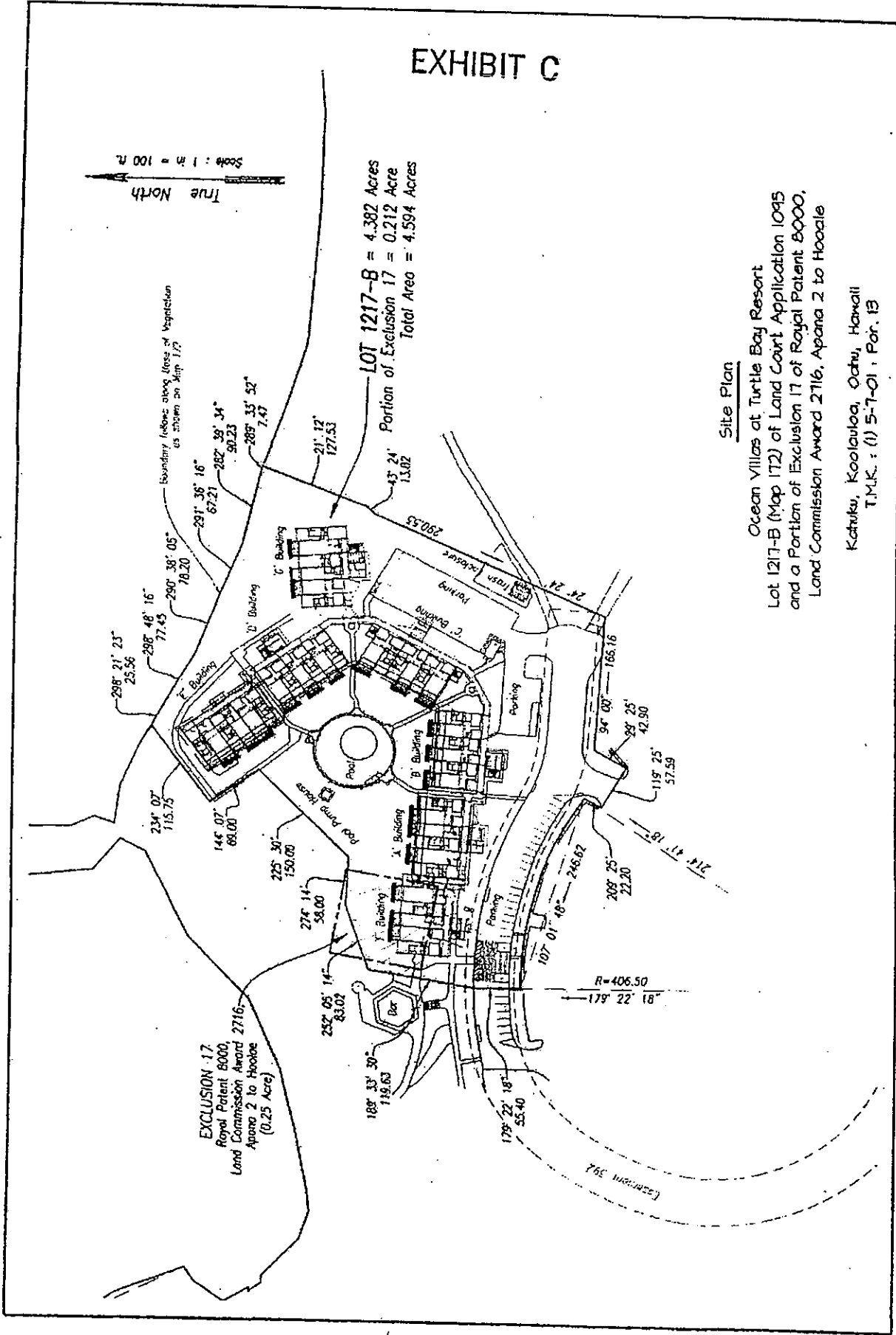
18. The rights of apartment owners in the Ocean Villas at Turtle Bay Resort condominium project, their mortgagees and the successors and assigns of such apartment owners and mortgagees.

19. Utility rights in favor of Lot 1217-A across and under the portion of Easement 79 located on Lot 1217-B, as set forth by Land Court Order No. 181650, filed January 27, 2010; the owner of Lot 1217-A shall have the right to grant such rights to one or more utility companies and/or other appropriate grantees, as set forth by Land Court Order No. 181650, filed January 27, 2010.

**END OF EXHIBIT "B"**



# EXHIBIT C



# EXHIBIT C

# EXHIBIT C

**EXHIBIT "D"**  
**Schedule of Transfer Certificates of Title**

<u>Unit No.</u>	<u>Owner's Name</u>	<u>TCT No.</u>
101	LYNETTE N. GAY and ALISON H. MOSCA, Co-Trustees under that certain unrecorded trust known as "The Lynette N. Gay Revocable Trust" dated June 26, 2002	755867 ✓
102	JAMES BRANDT ANDERSEN, husband of Katherine Ann Andersen, Tenant in Severalty	766175 ✓
103	JAMES BRANDT ANDERSEN, husband of Katherine Ann Andersen, Tenant in Severalty	766176 ✓
104	VINCENT FRANK LIOTTA, husband of JoAnne Liotta, Tenant in Severalty	845932 ✓
105	CAROLE GAY OLSEN, unmarried, Tenant in Severalty	775494 ✓
106	GINA CARMEL OLSEN, wife of Nathaniel Penn Olsen, Tenant in Severalty	775495 ✓
107	MICHAEL PAU HICKS and MARIE LOUISE ELEONORA HICKS, husband and wife, as Joint Tenants	760428 ✓
108	TURTLE BAY 108, LLC, a Utah limited liability company	920325 ✓
109	TURTLE BAY 108, LLC, a Utah limited liability company	916900 ✓
110	CHRISTOPHER WILLIAM GLATIS, unmarried, and KEITH EDDY SNELL, husband of Margaret Snell, a Tenants in Common	775271 ✓
111	PATRICK JOSEPH ALLEN and SANDRA KASHIWADA ALLEN, husband and wife, as Tenants by the Entirety	813674 ✓
112	UMGENI, LLC, a California limited liability company	744625 ✓
113	KIM BLATNICK HORTON, wife of Richard Alm Horton, as Tenant in Severalty	751246 ✓
114	EDWARD BLAINE JOHNSON, husband of Christina Ray Johnson	895053 ✓
115	JOHN JAMES HUSSEY and PAULA ANTOINETTE HUSSEY, husband and wife, as Tenants by the Entirety	695265 ✓
116	STANLEY DOUGLAS GLENDENNING and GRETCHEN GRAFF GLENDENNING, husband and wife, as Tenants by the Entirety	909208 ✓

117	STANLEY DOUGLAS GLENDENNING and GRETCHEN GRAFF GLENDENNING, husband and wife, as Tenants by the Entirety	909206 -
118	BARRY M. WEINMAN and VIRGINIA S. WEINMAN, as Trustees of the Weinman Family Trust dated September 25, 1998	770296 /
119	Yet to be sold	323595
120	Yet to be sold	323595 /
121	CHUCK SPEZZANO and LENORA KAY SPEZZANO, also known as Lency Spezzano, as Co-Trustees of the Charles Lee Spezzano Revocable Trust dated May 16, 1995, and LENORA KEY SPEZZANO and CHUCK SPEZZANO, as Co-Trustees of the Lenora Kay Spezzano Revocable Trust dated May 16, 1995, as Tenants in Common	845516 -
201	KENNETH CHI CHU LIANG and LAURA KELLY LIANG, husband and wife, as Joint Tenants as to an undivided 1/3 interest, and GEORGE ANTHONY LEIVA and VALERIE JEAN LEIVA, husband and wife, as Joint Tenants, as to an undivided 1/3 interest, and KEITH LIANG, unmarried, as Tenant in Severalty as to an undivided 1/3 interest, as Tenants in Common	782447 -
202	NATHANIEL PENN OLSEN, husband of Gina Carmel Olsen, as Tenant in Severalty	851781 -
203	CAROLE GAY OLSEN, as Trustee of The Carole Gay Olsen Trust dated July 27, 2002	853869 -
204	SURFER DUDE VILLA, LLC, a Washington limited liability company	854444 -
205	HAWAII CONDO INVESTORS, LLC, a Delaware limited liability company	745088 -
206	HAWAII CONDO INVESTORS, LLC, a Delaware limited liability company	745089 -
207	CHARLES S. GULLO, husband of Michelle Meena Gullo, as Tenant in Severalty	766702 -
208	JOHN MICHAEL MCCANN, unmarried and GARY TODD STEPHENS, unmarried, as Joint Tenants	767007 /
209	KEVIN LEWIS SEITZ and KATHLEEN WONG SEITZ, husband and wife, as Tenants by the Entirety	800571 -
210	JOSEPH MATSON-HENRY and PAULETTE BARRET-MATSON,	739813 /

	husband and wife, as Joint Tenants	
211	ROBERT WIEBORT, Trustee of the Robert Wiebort Trust dated March 31, 2004	755570 ✓
212	DOUGLAS IRWINE FARRELL and MYRA FARRELL, husband and wife, as Tenants by the Entirety	744626 ✓
213	PHILLIP HAROLD GREY, husband of Denise Elizabeth Grey, as to an undivided 1/3 interest, and PAUL GEORGE GREY, husband of Sherry Mae Grey, as to an undivided 1/3 interest, and CYNTHIA HAES, unmarried, as to an undivided 1/3 interest, as Tenants in Common	755000 ✓
214	OCEANFRONT VILLAS AT TURTLE BAY, LLC, a Washington limited liability company	891667 ✓
215	GERALDINE TERESA DAVIS-HULON, unmarried, as Tenant in Severalty	751525 ✓
216	DAVID ALLEN MOUNT and SHARON LYNNE MOUNT, as Trustees of the Mount Family Trust dated March 5, 1997	779828 ✓
217	DAVID ALLEN MOUNT and SHARON LYNNE MOUNT, as Trustees of the Mount Family Trust dated March 5, 1997	779829 ✓
218	EDMUND RICHARDS TWEEDY FLANIGAN, husband of Cynthia Flanigan, as Tenant in Severalty	766384 ✓
301	PATRICK WILLIAM MCDIVITT, unmarried, WILLIAM GREGORY GEIGER and JACQUELINE LUTZ GEIGER, Trustees under that certain Geiger Family Trust dated November 23, 2004, and SEAN F. ARMSTRONG and JUDY ARMSTRONG, Trustees under that certain Armstrong Family Trust dated February 21, 2001, and DESMOND A. ARMSTRONG and ANN M. ARMSTRONG, Trustees under The Armstrong Family Trust dated April 22, 2005, as Tenants in Common	720674 ✓
302	NATHANIEL PENN OLSEN, husband of Gina Carmel Olsen, as Tenant in Severalty	849078 ✓
303	NATHANIEL PENN OLSEN, husband of Gina Carmel Olsen, as Tenant in Severalty	750934 ✓
304	THOMAS EDWARD LEWANDOWSKI and JANE LEWANDOWSKI, husband and wife, as Tenants by the Entirety	760146 ✓
305	MEI-LI TENG LEFF, wife of Leslie Leff, as Tenant in Severalty	765021 ✓

306	MEI-LI TENG LEFF, wife of Leslie Leff, as Tenant in Severalty	765022 ✓
307	IRA ETHAN KOSOFF and ELLEN RUTH ELIASOPH, husband and wife, as Tenants by the Entirety	749423 ✓
308	ROBERT E. WILHELM, Trustee under that certain unrecorded trust known as the "Robert E. Wilhelm Living Trust" dated January 31, 2002	745146 ✓
309	THOMAS JOSEPH GINELLA and MAUREEN WEBER-GINELLA, husband and wife, as Tenants by the Entirety, as to an undivided 1/2 interest and PAUL JAN LONG and LISA ASTURIAS LONG, husband and wife, as Tenants by the Entirety, as to an undivided 1/2 interest, as Tenants in Common	811273 ✓
310	GREGORY JOSEPH DAVIS, husband of Karen Christie Davis, MARK ARNOLD SCHEELE, husband of Sheri Denise Scheele, SCOTT EDWARD SCHEELE, husband of Cheryl Ann Scheele, and JAMES ROSS RUBIN, husband of Pameley Kay Rubin, as Tenants in Common	753263 ✓
311	CAPSTONE PROPERTIES, LLC, an Arizona limited liability company	851780 ✓
312	CHRISTOPHER E. CROCKER and SHARON A. CROCKER, Trustees under that certain Christopher E. Crocker and Sharon A. Crocker Trust Agreement dated November 30, 1998	741305 ✓
313	IRWIN E. JENSEN and JOYCE D. JENSEN, as Co-Trustees of that certain unrecorded The Irwin E. and Joyce D. Jensen Revocable Trust created by Trust Declaration dated April 28, 1994	816776 ✓
314	KIM BLATNICK HORTON, wife of Richard Alm Horton, as Tenant in Severalty	791953 ✓
315	GARY SHMERLER and KAREN SHMERLER, husband and wife, as Tenants by the Entirety	738859 ✓
316	Yet to be sold	323595 ✓
317	Yet to be sold	323595 ✓
318	PHIL DEAN MCCLANAHAM, Trustee of the PEMR Trust dated January 1, 1996	876756 ✓