

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer MOANA IKENA, LLC
Address 737 Bishop Street, Suite 2350, Honolulu, Hawaii 96813

Project Name (\*): WAI'ULA'ULA AT MAUNA KEA RESORT
Address Ouli, Waimea, District of South Kohala, Island and County of Hawaii
(c/o 737 Bishop Street, Suite 2350, Honolulu, Hawaii 96813)

Registration No. 5477 Effective date: November 9, 2004
Expiration date: December 9, 2005

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:

- X 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.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
SUPPLEMENTARY: (pink) This report updates information contained in the:
And [ ] Supersedes all prior public reports

**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:

**SPECIAL ATTENTION ABOUT LAND AREAS**

This is a **CONDOMINIUM PROJECT**, not a subdivision. It does not involve the sale of individual subdivided lots. The land areas adjacent to some of the units are designated as **LIMITED COMMON ELEMENTS** and are not legally subdivided lots. The drawings on the Condominium Map indicating the boundaries and disclosing the approximate number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots. This public report does not constitute approval of the Project by the Real Estate Commission, or any other government agency. **THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.**

**BASED ON DIRECTIVES ISSUED BY THE HAWAII COUNTY PLANNING OFFICE, UNLESS THE DEVELOPER FIRST SATISFIES CERTAIN COUNTY REQUIREMENTS, THE PURCHASER MAY NOT BE ABLE TO DEVELOP, REPLACE, EXPAND, OR CONSTRUCT OTHER STRUCTURES FOR THIS CONDOMINIUM PROJECT IN THE FUTURE. PRIOR TO PURCHASE THE PROSPECTIVE PURCHASER IS ADVISED TO REVIEW THIS CONDOMINIUM PROJECT WITH THE HAWAII COUNTY PLANNING OFFICE TO RECEIVE THE MOST RECENT DIRECTIVE ON THIS ISSUE.**

## TABLE OF CONTENTS

	Page
Preparation of this Report	1
Expiration Date of Reports	1
Type of Report	1
Disclosure Abstract	2
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information on Condominiums	4
Operation of the Condominium Project	4
I. PERSONS CONNECTED WITH THE PROJECT	5
Developer	
Real Estate Broker	
Attorney for Developer	
Escrow Company	
General Contractor	
Condominium Managing Agent	
II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS	
A. Declaration	6
B. Condominium Map (File Plan)	6
C. Bylaws	6
D. House Rules	7
E. Changes to Condominium Documents	7
III. THE CONDOMINIUM PROJECT	
A. Interest to be Conveyed to Buyer	8
B. Underlying Land	9
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	13
E. Encumbrances Against Title	14
F. Construction Warranties	15
G. Status of Construction	16
H. Project Phases	16
IV. CONDOMINIUM MANAGEMENT	
A. Management of the Common Elements	17
B. Estimate of Initial Maintenance Fees	17
C. Utility Charges for Apartments	17
V. MISCELLANEOUS	
A. Sales Documents Filed with the Real Estate Commission	18
B. Buyer's Right to Cancel Sales Contract	18
C. Additional Information Not Covered Above	20
D. Signature of Developer	21
EXHIBIT A: DESCRIPTION OF UNITS	
EXHIBIT B: BOUNDARIES OF UNITS	
EXHIBIT C: PERMITTED ALTERATIONS	
EXHIBIT D: COMMON ELEMENTS	
EXHIBIT E: LIMITED COMMON ELEMENTS	
EXHIBIT F: ENCUMBRANCES AGAINST TITLE	
EXHIBIT G: DEVELOPER'S RESERVED ALTERATION, WITHDRAWAL AND MERGER RIGHTS	
EXHIBIT H: ESTIMATE OF INITIAL MAINTENANCE FEES AND ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS	
EXHIBIT I: SUMMARY OF SALES CONTRACT AND ESCROW AGREEMENT	
EXHIBIT J: DECLARATION OF MERGER OF CONDOMINIUM PHASES (DRAFT)	
EXHIBIT K: DESCRIPTION OF THE LAND	

## **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: MOANA IKENA, LLC Phone: (808) 587-7662
Name\* (Business)
737 Bishop Street, Ste. 2350
Business Address
Honolulu, Hawaii 96813

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):

The members and member-managers of MOANA IKENA, LLC, are Eastrich Uplands Investor I, LLC, a Delaware limited liability company (co-managing member), Mauna Kea Mauka Partners, LLC, a Hawaii limited liability company (co-managing member), and Maryl Group, Inc, a Hawaii corporation (member)

Real Estate Broker\*: Mauna Kea Properties, Inc., (dba Mauna Kea Realty) Phone: (808) 882-5600
Name (Business)
62-100 Mauna Kea Beach Drive
Business Address
Kamuela, Hawaii 96743

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 329-6666
Name (Business)
75-170 Hualalai Road, C-310
Business Address
Kailua-Kona, Hawaii 96740

General Contractor\*: Maryl Pacific Construction, Inc. Phone: (808) 545-2920
Name (Business)
737 Bishop Street, Ste. 1560
Business Address
Honolulu, Hawaii 96813

Condominium Managing Agent\*: Maryl Realty, Inc. Phone: (808) 331-8200
Name (Business)
75-1000 Henry Street, Ste. 200
Business Address
Kailua-Kona, Hawaii 96740

Attorney for Developer: Brooks Tom Porter & Quitiquit, LLP Phone: (808) 526-3011
Name (Business)
841 Bishop Street, Suite 2125
Business Address
Honolulu, Hawaii 96813
Attn: Jeffrey D. Watts, Esq.

\* 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. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_

Filed - Land Court: Document No. \_\_\_\_\_

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

- 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. \_\_\_\_\_

Filed - Land Court Condo Map No. \_\_\_\_\_

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

- 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. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_

Filed - Land Court: Document No. \_\_\_\_\_

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

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%*	75%
Bylaws	65%	65%
House Rules	-----	Majority of Board

\* The percentage 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:

Under section 23 of the Declaration, the Developer has reserved various rights, including the rights to amend the Declaration and the Condominium Map to withdraw land and/or unsold apartments from the Project, to change the common interests, to merge the Project with a new project subsequently developed on land withdrawn from the Project, and/or to reconfigure the Project. These reservations are more fully disclosed on page 20 of this public report and in Exhibit G attached hereto. Notwithstanding the lease, sale or conveyance of any of the Apartments, the Developer may amend the Declaration and the Condominium Map to file the "as-built" verified statement required by Section 514A-12 of the Act. For so long as the Developer retains any interest in an Apartment in the Project, the Developer shall have the right (but not the obligation) to amend the Declaration and the Bylaws (and the Condominium Map, if appropriate) without the consent or joinder of any Apartment Owner, lienholder or other person or entity, for the purpose of meeting any requirement imposed by (i) any applicable law, (ii) the Real Estate Commission of the State of Hawaii, (iii) any title insurance company issuing a title insurance policy on the Project or any of the Apartments, (iv) any institutional lender lending funds on the security of the Project or any of the Apartments, or (v) any other governmental or quasi-governmental agency including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; provided, however, that no amendment which would change the common interest appurtenant to an Apartment or substantially change the design, location or size of an Apartment shall be made without the consent of all persons having an interest in such Apartment. Prior to the election of the first Board of Directors, the Developer may amend the Rules and Regulations in any manner without the joinder, consent or approval of any other party.

**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 Subleasehold: 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 Subleaseholds:**

- 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 Subleasehold:**

**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: Off of Amaui Drive, Ouli, Waimea, District of  
South Kohala, Island and County of Hawaii

Tax Map Keys (TMK): (3) 6-2-13-13,  
-14, -15, -16 &  
a portion of -7

Address  TMK is expected to change because no street names or street addresses have yet been assigned,  
and the land is in the process of being consolidated and  
resubdivided.

Land Area: approx. 47.699\*  square feet  acre(s) Zoning: RM-6 and RM-15 (multiple family  
residential)

\*Prior to issuance of a final public report for the Project, the area of the Project's land will be revised upon consolidation and resubdivision of the land.

Fee Owner: MOANA IKENA, LLC  
 Name  
737 Bishop Street, Ste. 2350  
 Address  
Honolulu, Hawaii 96813

Lessor: n/a  
 Name  
 Address

**C. Buildings and Other Improvements:**

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

2. Number of Buildings: 44 residential; Floors Per Building 1 each for SF and D buildings;  
1 amenity center 2 each for MF buildings  
 Exhibit \_\_\_\_\_ contains further explanations.

3. Principal Construction Material:

- Concrete     Hollow Tile     Wood  
 Other stucco, glass, concrete tile roofing and allied building materials

4. Uses Permitted by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted By Zoning</u>	
<input checked="" type="checkbox"/> Residential	<u>102</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?  
 Yes     No

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: Dogs, cats and other generally recognized household pets permitted in reasonable numbers, with prior approval of the Board. See the House Rules.

Number of Occupants: \_\_\_\_\_

Other: \_\_\_\_\_

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

UNIT TYPE	Bedrooms & Bathrooms	Net Living Area (sf)*	Net Garage Area (sf)*	Net Lanai Area (sf)*	Net Combined Area (sf)*
SF-A	3 Bedrooms, 3½ Bathrooms	2,693	401	644	3,738
SF-B	4 Bedrooms, 4½ Bathrooms	3,131	401	716	4,248
D	2 Bedrooms, 3½ Bathrooms	2,517	494	488	3,499
MF-1	2 Bedrooms, 3 Bathrooms	2,082	--	509	2,591
MF-2	2 Bedrooms, 3 Bathrooms	2,111	--	258	2,369

Total Units: 102 SEE EXHIBIT "A"

**\*Net Living Area is the floor area of the unit measured from the interior surface of the unit's perimeter walls. The Net Garage and Net Lanai areas are the floor areas of the respective spaces measured from the interior surfaces of perimeter walls and doors (for the garages) and from interior surfaces of perimeter walls to a railing (for lanais with railings) or to the outer edge of flooring material (for lanais that do not have railings).**

**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:

SEE EXHIBIT "B"

Permitted Alterations to Apartments:

SEE EXHIBIT "C"

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. Developer has elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 215

	<u>Regular</u>		<u>Compact</u>		<u>Handicap</u>		<u>TOTAL</u>
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	
Assigned*	<u>147</u>	<u>55</u>	<u>      </u>	<u>      </u>	<u>  1  </u>	<u>  1  </u>	<u>204</u>
Guest	<u>      </u>	<u>  7  </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>  4  </u>	<u>  11</u>
Unassigned	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Extra for Purchase	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Other:	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Total Covered & Open	<u>  209  </u>	<u>      </u>	<u>      0  </u>	<u>      </u>	<u>      6  </u>	<u>      </u>	<u>  215  </u>

\*Each SF and D unit will have the exclusive use of 2 parking stalls located in the unit's attached garage. Each MF unit will initially have the exclusive use of 1 covered parking bay in an MF garage, and 1 uncovered parking stall.

Commercial parking garage permitted in condominium project.

Exhibit "A" 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: The recreation area ("Amenity Center") includes the swimming pool, a toddler's pool, a spa (jacuzzi), outdoor showers, men's and women's restrooms/locker rooms, a fitness gym area, a meeting room, a multi-function room, a kitchen and a barbeque area, all as shown on the Condominium Map.

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>	_____	_____
Structures	<u>  X  </u>	_____	_____
Lot	<u>  X  </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 "D".

as follows:

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 "E".

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 "A".

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 "F" describes the encumbrances against the title contained in the title report dated August 25, 2004 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.

[X] 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>
<p>*NOTE: There are <b>currently</b> no blanket liens affecting title to any part of the Project. However, prior to issuance of a final public report for the Project, the Developer may obtain a construction loan and secure the loan by placing a blanket mortgage on the entire Project. This would be a blanket lien that may affect title to the individual apartments.</p>	<p>If the Developer places a blanket mortgage on the Project and defaults under the mortgage before the Apartment is conveyed to Buyer, the Mortgagee will have the right to decide whether to sell the Apartment to the Buyer under the Sales Contract or to terminate the Sales Contract. If the Mortgagee terminates the Sales Contract, Buyer's deposit will be refunded, less any escrow cancellation fee, and Buyer shall have no further interest under the Sales Contract.</p>

**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:

The developer intends to require the general contractor to provide a one-year warranty, commencing upon the date of "Substantial Completion", or such other date as the architect specifies in the Certificate of Substantial Completion the architect delivers to the contractor and the Developer for the work that is under warranty, that (a) the materials and equipment furnished for construction of the project will be of good quality and new, unless the construction contract requires or permits that the materials and equipment be otherwise; and (b) the construction and services required by the construction contract (including all labor, materials and equipment to be provided by the general contractor) will be free from defects, except for defects inherent in the quality of the construction and services required or permitted by the construction contract. Without incurring any legal liability, the developer will agree to cooperate with the buyer to try to have the general contractor perform all of the general contractor's warranties. (See section F.7 of the Sales Contract.)

2. Appliances:

Appliance warranty information is not yet available because appliances have not yet been purchased. However, the developer intends to transfer to the buyer, without warranty, any manufacturer's or dealer's warranties that are transferable and cover appliances sold with the apartments.

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

The Project will be constructed in several increments. The Developer estimates that construction of the first increment will commence on or about November 15, 2004, and will be completed on or about July 15, 2005. The Developer estimates that construction of the entire project will be completed on or about November 15, 2007.

**H. Project Phases:**

The developer [X] 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):

SEE PAGE 20 BELOW.  
SEE ALSO EXHIBIT "G" ATTACHED.



**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
- self-managed by the Association of Apartment Owners
- the Developer or the Developer's affiliate
- other The initial managing agent is related to one of the members of the Developer

**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 "H" 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\* ( Common Elements only  Common Elements & Apartments)
- Sewer ( Common Elements only  Common Elements & Apartments)
- Television Cable ( Common Elements only  Common Elements & Apartments)
- Telephone ( Common Elements only  Common Elements & Apartments)
- Other: \_\_\_\_\_

\*Water service to each unit will be separately sub-metered by the Association, and each unit will be separately billed for water based upon actual consumption.

## 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 "I" contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated September 10, 2004

Exhibit "I" 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 given 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 Declaration of Protective Covenants, Conditions and Restrictions for the \_\_\_\_\_  
Uplands at Mauna Kea

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 part of Registration No. 5477 filed with the Real Estate Commission on September 24, 2004.

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

YELLOW paper stock

WHITE paper stock

PINK paper stock

**C. Additional Information Not Covered Above:**

1. **Development in Increments.** The one hundred two (102) units in the Project will be constructed in increments. Following issuance of this Preliminary Public Report on the entire Project, the Developer will issue a Final Public Report covering the first construction increment. As the Developer meets the requirements for a final public report on the remaining units, the Developer will issue one or more subsequent Final Public Reports identifying the units for which final public report requirements have been met. Only those units covered by a Final Public Report will be sold to purchasers under binding sales contracts. However, the Developer will continue to market all of the units described in this Preliminary Public Report, and purchasers will be able to enter into nonbinding contracts for the units that have not yet been covered in a Final Public Report.

2. **Developer's Reserved Alteration, Withdrawal and Merger Rights.** Under section 23 of the Declaration, the Developer has reserved various rights, including (but not limited to) the rights to alter unbuilt and unsold units and the limited common elements appurtenant thereto, to withdraw from the Project portions of the Project's land, common elements and units, to change the common interests appurtenant to the remaining units in the Project, to sell or otherwise dispose of the withdrawn property, or to establish (or cooperate in the establishment of) a new condominium property regime on the withdrawn property and subsequently to merge (or cooperate in the merger of) such new project with the Project, all without being required to obtain the consent or joinder of any person or group of persons, including the Project's Association, any unit owner or any mortgagee, lien holder, unit purchaser, or any other person who may have an interest in the Project or in any unit. The foregoing rights are more fully disclosed in Exhibit "G" attached hereto, which reproduces section 23 of the Declaration. Also attached hereto as Exhibit "J" is the form of Declaration of Merger of Condominium Phases the Developer intends to record prior to recordation of the Declaration. THE BUYER IS ENCOURAGED TO READ EXHIBITS "G" AND "J" VERY CAREFULLY, AS THE EXERCISE OF THE DEVELOPER'S RIGHTS RESERVED IN SECTION 23 OF THE DECLARATION MAY HAVE A MATERIAL EFFECT ON THE BUYER'S INTEREST IN THE PROJECT.

3. **Master Deed.** The Project is subject to the terms, conditions, restrictions and reservations set forth in that certain Limited Warranty Deed and Grant of Easements, dated May 11, 2004, recorded in the Bureau as Document No. 2004-095012 (the "Master Deed"). By the Master Deed, Mauna Kea Development Corp., a Hawaii corporation ("MKD"), conveyed the Project's land to the Developer. Pursuant to the terms of the Master Deed, MKD has the right, subject to the Developer's prior approval (which approval shall not be unreasonably withheld), to grant easements over, under, across and through the Project's land for the benefit of, or in connection with the development of, other property owned as of the date of recordation of the Master Deed by MKD; provided, however, that the exercise of such reserved rights shall not unreasonably interfere with the Developer's development and use of the Project's land; and provided, further, that any such reserved easements may be relocated by MKD from time to time, at MKD's sole cost and expense, provided that such relocation shall be subject to the Developer's prior written approval (which approval shall not be unreasonably withheld or delayed) and shall not materially impair the Developer's ability to develop or use the Project's land in the manner set forth in that certain Real Property Development Plan approved by MKD on May 6, 2004, and more particularly described in the Master Deed. The reservations, exceptions, rights and easements mentioned in the Master Deed are appurtenant to all land owned by MKD or its affiliated companies as of the date of recordation of the Master Deed in the vicinity of the Project and may be assigned, transferred or conveyed, in whole or in part, by MKD or its affiliated companies and their successors and assigns, without the consent or joinder of any person owning any interest in the land or any portion thereof. At the time the Project's Association elects its first Board of Directors, the Developer's approval rights set forth in the Master Deed (and the obligation not to withhold approval unreasonably) shall automatically transfer to the Project's Association, and shall be exercised by the vote of a majority of a quorum the members of the Board, without the need for further approval by any individual unit owner.

4. **Master Declaration.** The Project is subject to that certain Declaration of Protective Covenants, Conditions and Restrictions for the Uplands at Mauna Kea, dated August 10, 1999, recorded in the Bureau as Documents No. 99-131337 and 99-131338, as now or hereafter amended (the "Master Declaration"), and all rules and regulations promulgated under the Master Declaration. The Master Declaration provides, among other things, that each owner of a unit in the Project shall automatically become a member of The Uplands at Mauna Kea Community Association, a Hawaii nonprofit corporation (the "Master Association"), and shall have various rights and obligations as such member. The obligations of each unit owner as a member of the Master Association include, but are not limited to, the obligation to pay various assessments levied from time to time upon members of the Master Association, and to observe and comply with various use restrictions, maintenance and design standards and requirements set forth in the Master Declaration, the Bylaws of the Master Association and any rules and regulations promulgated under either of them, and those certain Design and Construction Requirements for Homes in The Uplands, dated August 10, 1999 (the "Design Requirements"). In addition, the Master Declaration contains provisions relating to water conservation measures and other requirements designed to minimize water consumption at the Project. In order to effectuate such

conservation measures and requirements, the Master Declaration provides that the “Declarant” or the “Fee Owner”, both as identified in the Master Declaration, shall have the right to establish such water conservation measures and restrictions as are reasonably necessary to assure that the aggregate gallons of potable water per day used within the Project shall not exceed the maximum allocated to the Project by the Department of Water Supply of the County of Hawaii, and by acquiring title to a unit under a Condominium Unit Deed, each purchaser will thereby covenant and agree to comply at all times with all such water conservation measures and to observe and comply with all covenants, conditions, restrictions and other requirements to which the Project is subject under the Master Deed, the Master Declaration, the Bylaws of the Master Association, the Design Requirements and any and all rules and regulations promulgated thereunder. The obligations of a unit owner as a member of the Master Association are in addition to the unit owner’s obligations as a member of the Project’s Association of Unit Owners.

5. **Golf Course.** The Project is in the vicinity of or adjacent to a golf course. By accepting an interest in a unit and the Project, each buyer will thereby acknowledge and accept that golf cart path easements may affect portions of the Project’s land, and that resort-related activities, including without limitation golf tournaments and other events, may be held on and in the vicinity of such golf course, and that the location of the Project with respect to such golf course and golf cart path easements may result in nuisances, disturbances or hazards to persons and property on or within the Project as a result of such golf course related operations and other resort-related operations thereon. By acquiring an interest in a unit and the Project, each buyer will covenant and agree that the buyer assumes all risks associated with the location of the Project with respect to such golf course and golf cart path easements, including without limitation, the risk of property damage, personal injury, bodily injury or death arising out of or in connection with the use of golf carts, stray golf balls, or other activities incidental to such golf course operations and resort related activities, and the buyer will waive any rights, claims or actions the buyer may have or acquire against the Developer as a result of or in any way related to such conditions, operations or activities. By acquiring an interest in a unit and the Project, the buyer will thereby covenant and agree, as a covenant running with the Project’s land and the buyer’s interest therein, that the buyer shall indemnify and hold harmless Mauna Kea Development Corp., as “Grantor” under the Master Deed described above, and Mauna Kea Properties, Inc., and their affiliates (including the owners and operators of the golf course), the Developer, the Developer’s partners and members, the Project’s Association of Unit Owners, the Master Association described above, and all of their respective officers, directors, employees, agents, successors and assigns from any and all actions, liabilities, claims, losses, damages, costs or expenses, including attorney’s fees, arising out of or in connection with any such property damage, personal injury, bodily injury or death, to property or person of the buyer, and the buyer’s family members, assigns, tenants, lessees, servants, guests, invitees, licensees, agents, employees, or any other person who may use or occupy the unit or the Project by, through, or under the buyer, arising out of or in connection with such golf cart path easements, golf course related operations and other resort-related operations; and by acquiring an interest in a unit and the Project, the buyer will thereby irrevocably agree to suffer and permit all actions and consequences incidental to the construction, maintenance, operation and use of the golf course and golf cart path easements and to the carrying out of all golf course related operations and resort related activities thereon and will thereby waive any rights, claims or actions buyer may have or acquire against the Developer as a result of or in any way related to any such incidental actions, consequences, operations, activities and conditions.

6. **Volcanic Activity.** The Project is located on the Island of Hawaii, an Island that has been formed as a result of volcanic eruptions and other activity. The Project’s land is within a volcanic rift zone and subject to potential earthquakes and lava flows. In the event of volcanic eruptions, the Project may be subject to volcanic haze, unpleasant odors and other inconveniences, including possible destruction of the Project. By acquiring a unit and an interest in the Project, each buyer will be required to accept such conditions and waive any rights, claims or actions the buyer may have or acquire against the Developer as a result of or in any way related to such conditions, and each buyer will be required to indemnify and hold harmless the Developer, the Developer’s partners and members, and all of their respective officers, directors, employees, agents, successors and assigns from any and all loss (including but not limited to economic loss), cost, expense, harm, injury or damage to person or property that the buyer or any of the buyer’s family members, assigns, tenants, lessees, servants, guests, invitees, licensees, agents, employees, or any other person who may use or occupy the unit or the Project by, through, or under the buyer may suffer as a result of such conditions.

7. **Mold.** Climactic conditions where the Project is located are conducive to the growth of mold and other types of potentially irritating or harmful growths (collectively “Mold”). Each buyer acknowledges and understands that Mold can be irritating or harmful to the respiratory tract of certain individuals and can cause deterioration of property. By acquiring a unit and an interest in the Project, each buyer will thereby assume the risk that Mold may be present from time to time in the buyer’s unit or elsewhere at the Project and the buyer will be required to waive any rights, claims or actions the buyer may have or acquire against the Developer as a result of or in any way related to Mold in the unit or elsewhere at the Project, and the buyer will further be required to agree to indemnify and hold harmless the Developer, the Developer’s partners and members, and all of their respective officers, directors, employees, agents, successors and assigns from any and all loss (including but not limited to

economic loss), cost, expense, harm, injury or damage to person or property that the buyer or any of the buyer's family members, assigns, tenants, lessees, servants, guests, invitees, licensees, agents, employees, or any other person who may use or occupy the unit or the Project by, through, or under the buyer may suffer as a result of the presence of Mold in the unit or anywhere else at the Project.

8. **Drainage; Flooding.** The topography of the Project's land is varied, and the land includes low-lying areas, gulches and drainage easements that may be subject to overflow and flooding under certain extreme weather conditions. By acquiring a unit and an interest in the Project, the buyer will thereby assume the risk that flooding may occur from time to time in such areas and will be required to waive any rights, claims or actions the buyer may have or acquire against the Developer as a result of or in any way related to flooding in the low-lying areas, gulches and drainage easements at the Project, and the buyer will thereby agree to indemnify and hold harmless the Developer, the Developer's partners and members, and all of their respective officers, directors, employees, agents, successors and assigns from any and all loss (including but not limited to economic loss), cost, expense, harm, injury or damage to person or property that the buyer or any of the buyer's family members, assigns, tenants, lessees, servants, guests, invitees, licensees, agents, employees, or any other person who may use or occupy the unit or the Project by, through, or under the buyer may suffer as a result of such flooding.

9. **Views.** By acquiring a unit and an interest in the Project, each buyer will be required to acknowledge and accept that the unit is being conveyed with no warranties or guarantees whatsoever as to the availability of views from the unit. Each buyer will further acknowledge and agree that views that may be available from the unit now or hereafter may change or may not continue to be available in the future. By accepting title to a unit, the buyer will expressly acknowledge and agree that the buyer is not thereby acquiring a view easement or view plane easement or any other right or entitlement of any kind to have or enjoy or retain any views whatsoever from the unit or from anywhere else at the Project.

10. **Security.** By acquiring a unit and an interest in the Project, each buyer will be required to acknowledge and agree that neither the Project's Association of Unit Owners nor the Developer nor Mauna Kea Development Corp. shall in any way be considered insurers or guarantors of security within the Project, and neither the Project's Association nor the Developer nor Mauna Kea Development Corp. shall be held liable for any loss or damage by reason of failure to provide adequate security or the ineffectiveness of any security measures undertaken. All tenants, guests, and invitees of the buyer shall be deemed to acknowledge that the Project's Association, its Board of Directors, the Developer and any committees established by any of the foregoing entities, and Mauna Kea Development Corp. are not insurers and that each tenant, guest, and invitee assumes all risk of loss or damage to persons, to units, and to the contents of units, and further acknowledges that the Developer, the Developer's representatives, the Project's Association, the Board of Directors, the committees and Mauna Kea Development Corp. have made no representations or warranties relative to any security measures recommended or undertaken.

- 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.

MOANA IKENA, LLC  
 Printed Name of Developer

By Eastrich Uplands Investor I, LLC  
 Its Co-Managing Member

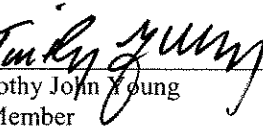
By  9-20-04  
 Jonathan A. Spound  
 Its Authorized Signatory Date

By Mauna Kea Mauka Partners, LLC  
 Its Co-Managing Member

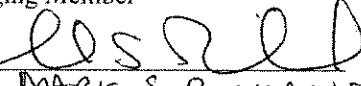
By Blackpoint Capital Advisors, LLC  
 Its Co-Managing Member

By  9-20-04  
 Timothy John Young  
 Its Co-Managing Member Date

By 10 of Diamonds, LLC  
 Its Member

By  9-20-04  
 Timothy John Young  
 Its Member Date

By Maryl Group, Inc.  
 Its Co-Managing Member

By  9-20-04  
 MARC S. RICHARDS  
 Its PRESIDENT Date

Distribution:

Department of Finance, County of Hawaii  
 Planning Department, County of Hawaii

\* 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.

## DESCRIPTION OF UNITS

The Project contains three (3) primary types of Units, designated in the Declaration and on the Condominium Map as types SF, D and MF.

There are two (2) subtypes of the SF Units, designated in the Declaration and on the Condominium Map as types SF-A and SF-B. Each SF-A and SF-B Unit is located in an SF Building, and each SF Building contains only one Unit.

There is only one (1) type of D Unit, although half of the D Units are designated in the Declaration and on the Condominium Map as type DR, indicating that the Unit's floor plan is the reverse of the standard D floor plan. Each D and DR Unit is located in a duplex D Building, and each D Building contains one D and one DR Unit.

There are two (2) subtypes of MF Units, designated in the Declaration and on the Condominium Map as MF-1 (and its reverse, MF-1R), and MF-2 (and its reverse, MF-2R). Each MF-1 and MF-1R Unit is on the ground floor of a 4-plex MF Building, and each MF-2 and MF-2R Unit is on the second floor of a 4-plex MF Building. Each MF Building contains one MF-1 Unit, one MF-1R Unit, one MF-2 Unit and one MF-2R Unit.

The Units, by type, are more particularly described as follows:

### TYPE SF UNITS:

**SF-A Units.** The Project contains eight (8) SF-A Units. Each SF-A Unit is contained in a separate, single-story free-standing SF Building and includes an entry foyer, three (3) bedrooms, three and one-half (3.5) bathrooms, a kitchen, a dining room, a "great room," a family room, laundry and storage areas for a combined net living area of approximately 2,693 square feet. Each Type SF-A Unit also includes an attached two-car garage with a net floor area of approximately 401 square feet, and a covered lanai with a net area of approximately 644 square feet, for a total aggregate net area of approximately 3,738 square feet.

**SF-B Units.** The Project contains six (6) SF-B Units. Each SF-B Unit is contained in a separate, single-story free-standing SF Building and includes an entry foyer, four (4) bedrooms (one of which is a guest room with its own entry), four and one-half (4.5) bathrooms, a kitchen, a dining room, a "great room," a family room, laundry and storage areas for a combined net living area of approximately 3,131 square feet. Each Type SF-B Unit also includes an attached two-car garage with a net floor and storage area of approximately 401 square feet, a covered lanai and an uncovered lanai with a combined net area of approximately 716 square feet, for a total aggregate net area of approximately 4,248 square feet.

### TYPE D UNITS:

The Project contains thirty-two (32) D Units (16 of which are designated as DR and are the reverses of the D Units). Each D (or DR) Unit is one-half of a side-by-side duplex and shares



a single-story free-standing D Building with a DR (or D) Unit. The D and DR Units in each D Building are connected by a common wall. Each Type D and DR Unit includes an entry foyer, two (2) bedrooms, three and one-half (3.5) bathrooms, a kitchen, a living/dining area, a study, laundry and storage areas for a combined net living area of approximately 2,517 square feet. Each Type D and DR Unit also includes an attached two-car garage with a net floor and storage area of approximately 494 square feet, and a covered lanai with a net area of approximately 488 square feet, for a total aggregate net area of approximately 3,499 square feet.

**TYPE MF UNITS:**

**MF-1 Units.** The Project contains twenty-eight (28) MF-1 Units (14 of which are designated as MF-1R and are the reverses of the MF-1 Units). Each Type MF-1 and MF-1R Unit is located on the ground floor of an MF Building. Each Type MF-1 and MF-1R Unit includes an entry foyer, two (2) bedrooms, three (3) bathrooms, a kitchen, a living/dining area, a study, laundry and storage areas for a combined net living area of approximately 2,082 square feet. Each Type MF-1 and MF-1R Unit also includes a covered lanai and an uncovered lanai with a combined net area of approximately 509 square feet, for a total aggregate net area of approximately 2,591 square feet.

**MF-2 Units.** The Project contains twenty-eight (28) MF-2 Units (14 of which are designated as MF-2R and are the reverses of the MF-2 Units). Each Type MF-2 and MF-2R Unit is located on the second floor of an MF Building. Each Type MF-2 and MF-2R Unit includes an entry foyer, two (2) bedrooms, three (3) bathrooms, a kitchen, a living/dining area, a study, laundry and storage areas for a combined net living area of approximately 2,111 square feet. Each Type MF-2 and MF-2R Unit also includes a covered lanai with a net area of approximately 258 square feet, for a total aggregate net area of approximately 2,369 square feet.

The numbers, types, approximate net living areas, approximate net lanai areas, approximate net garage areas (for the SF and D Units) assigned parking garage bays and assigned uncovered parking stalls (for the MF Units) and common interests of the Units are as shown in the chart that begins on the next page.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

Unit Number	Unit Type	*Approx. Net Living Area	*Approx Net Lanai Area	*Approx. Net Garage Area (SF & D Units)	***Assigned Parking (MF Units)	**Common Interest
A101	MF-1	2,082	509	--	GA1, A1	0.883%
A102	MF-1R	2,082	509	--	GA3, A2	0.883%
A201	MF-2	2,111	258	--	GA2, A3	0.886%
A202	MF-2R	2,111	258	--	GA4, A4	0.886%
B101	MF-1	2,082	509	--	GB1, B1	0.883%
B102	MF-1R	2,082	509	--	GB3, B2	0.883%
B201	MF-2	2,111	258	--	GB2, B3	0.886%
B202	MF-2R	2,111	258	--	GB4, B4	0.886%
C101	MF-1	2,082	509	--	GC1, C1	0.883%
C102	MF-1R	2,082	509	--	GC3, C3	0.883%
C201	MF-2	2,111	258	--	GC2, C2	0.886%
C202	MF-2R	2,111	258	--	GC4, C4	0.886%
D101	MF-1	2,082	509	--	GD1, D1	0.883%
D102	MF-1R	2,082	509	--	GD3, D2	0.883%
D201	MF-2	2,111	258	--	GD2, D3	0.886%
D202	MF-2R	2,111	258	--	GD4, D4	0.886%
E101	MF-1	2,082	509	--	GE1, E1	0.883%
E102	MF-1R	2,082	509	--	GE3, E2	0.883%
E201	MF-2	2,111	258	--	GE2, E3	0.886%
E202	MF-2R	2,111	258	--	GE4, E4	0.886%
F101	MF-1	2,082	509	--	GF1, F1	0.883%
F102	MF-1R	2,082	509	--	GF3, F3	0.883%
F201	MF-2	2,111	258	--	GF2, F2	0.886%
F202	MF-2R	2,111	258	--	GF4, F4	0.886%
G101	MF-1	2,082	509	--	GG1, G1	0.883%
G102	MF-1R	2,082	509	--	GG3, G3	0.883%
G201	MF-2	2,111	258	--	GG2, G2	0.886%
G202	MF-2R	2,111	258	--	GG4, G4	0.886%
H101	MF-1	2,082	509	--	GH1, H1	0.883%
H102	MF-1R	2,082	509	--	GH3, H2	0.883%
H201	MF-2	2,111	258	--	GH2, H3	0.886%
H202	MF-2R	2,111	258	--	GH4, H4	0.886%
I101	MF-1	2,082	509	--	GI1, I1	0.883%
I102	MF-1R	2,082	509	--	GI3, I3	0.883%
I201	MF-2	2,111	258	--	GI2, I2	0.886%
I202	MF-2R	2,111	258	--	GI4, I4	0.886%
J101	MF-1	2,082	509	--	GJ1, J1	0.883%
J102	MF-1R	2,082	509	--	GJ3, J3	0.883%

**EXHIBIT "A"**

Unit Number	Unit Type	*Approx. Net Living Area	*Approx Net Lanai Area	*Approx. Net Garage Area (SF & D Units)	***Assigned Parking (MF Units)	**Common Interest
J201	MF-2	2,111	258	--	GJ2, J2	0.886%
J202	MF-2R	2,111	258	--	GJ4, J4	0.886%
K101	MF-1	2,082	509	--	GK1, K1	0.883%
K102	MF-1R	2,082	509	--	GK3, K3	0.883%
K201	MF-2	2,111	258	--	GK2, K2	0.886%
K202	MF-2R	2,111	258	--	GK4, K4	0.886%
L101	MF-1	2,082	509	--	GL1, L1	0.883%
L102	MF-1R	2,082	509	--	GL3, L3	0.883%
L201	MF-2	2,111	258	--	GL2, L2	0.886%
L202	MF-2R	2,111	258	--	GL4, L4	0.886%
M101	MF-1	2,082	509	--	GM1H, M1H	0.883%
M102	MF-1R	2,082	509	--	GM2, M2	0.883%
M201	MF-2	2,111	258	--	GM3, M3	0.886%
M202	MF-2R	2,111	258	--	GM4, M4	0.886%
N101	MF-1	2,082	509	--	GN1, N1	0.883%
N102	MF-1R	2,082	509	--	GN3, N3	0.883%
N201	MF-2	2,111	258	--	GN2, N2	0.886%
N202	MF-2R	2,111	258	--	GN4, N4	0.886%
302	DR	2,517	488	494	--	1.056%
304	D	2,517	488	494	--	1.056%
306	DR	2,517	488	494	--	1.056%
308	D	2,517	488	494	--	1.056%
309	D	2,517	488	494	--	1.056%
311	DR	2,517	488	494	--	1.056%
312	DR	2,517	488	494	--	1.056%
314	D	2,517	488	494	--	1.056%
316	DR	2,517	488	494	--	1.056%
318	D	2,517	488	494	--	1.056%
320	DR	2,517	488	494	--	1.056%
322	D	2,517	488	494	--	1.056%
324	DR	2,517	488	494	--	1.056%
325	D	2,517	488	494	--	1.056%
326	D	2,517	488	494	--	1.056%
327	DR	2,517	488	494	--	1.056%
328	DR	2,517	488	494	--	1.056%
329	D	2,517	488	494	--	1.056%
330	D	2,517	488	494	--	1.056%
331	DR	2,517	488	494	--	1.056%

**EXHIBIT "A"**

Unit Number	Unit Type	*Approx. Net Living Area	*Approx Net Lanai Area	*Approx. Net Garage Area (SF & D Units)	***Assigned Parking (MF Units)	**Common Interest
332	DR	2,517	488	494	--	1.056%
334	D	2,517	488	494	--	1.056%
336	DR	2,517	488	494	--	1.056%
338	D	2,517	488	494	--	1.056%
340	DR	2,517	488	494	--	1.056%
342	D	2,517	488	494	--	1.056%
343	DR	2,517	488	494	--	1.056%
344	DR	2,517	488	494	--	1.056%
345	D	2,517	488	494	--	1.056%
346	D	2,517	488	494	--	1.056%
348	DR	2,517	488	494	--	1.056%
350	D	2,517	488	494	--	1.056%
401	SF-A	2,693	644	401	--	1.111%
403	SF-B	3,131	716	401	--	1.298%
405	SF-B	3,131	716	401	--	1.298%
407	SF-B	3,131	716	401	--	1.298%
409	SF-A	2,693	644	401	--	1.111%
411	SF-A	2,693	644	401	--	1.111%
413	SF-A	2,693	644	401	--	1.111%
415	SF-B	3,131	716	401	--	1.298%
417	SF-B	3,131	716	401	--	1.298%
419	SF-A	2,693	644	401	--	1.111%
420	SF-A	2,693	644	401	--	1.111%
421	SF-A	2,693	644	401	--	1.111%
422	SF-A	2,693	644	401	--	1.111%
424	SF-B	3,131	716	401	--	1.298%

**Total Common Interests: 100.000%**

**\*NET AREAS**

The approximate net areas shown above are in square feet.

**\*\*COMMON INTERESTS**

The common interest for each Unit was determined by (i) dividing the Unit's net living area (excluding lanai and garage areas) by the aggregate net living areas of all of the Units, (ii) converting the resulting fractions to percentages, and (iii) rounding the percentages and making minor adjustments so that the aggregate common interest appurtenant to all of the Units equals 100%.

**EXHIBIT "A"**

### **\*\*\*PARKING**

**SF and D Units.** Each SF and D Unit includes an attached two-car garage that is part of the Unit. The net area for each SF and D Unit's attached garage is shown in the chart above. There are no other identifying numbers or designations for the garages attached to the SF and D Units. Because the SF and D Units have attached garages, they do not have any assigned limited common element parking stalls.

**MF Units.** Each MF Unit is initially assigned a limited common element parking bay in one of the MF Garages in closest proximity to the MF Building in which the Unit is located, and one limited common element uncovered standard sized parking stall, also in the vicinity of the Unit's Building. The initial parking bay and uncovered stall assignments are as shown in the chart above.

Each assigned limited common element parking bay is identified in the chart above (and on the Condominium Map) by the letter "G", indicating a parking bay in an MF Garage, followed by another letter which is the letter designating the MF Building served by the MF Garage, and a number, indicating which bay is assigned. For example, in the above chart "GA1" indicates parking bay number 1 in an MF Garage serving MF Building A. Each MF Building, except MF Building M, has two MF Garages, and each of those garages contains two parking bays. MF Building M has one MF Garage that contains four parking bays. Parking bay designations that end in "H" indicate a handicap bay.

The uncovered limited common element parking stalls assigned to the MF Units are identified in the chart above (and on the Condominium Map) by a letter and a number. The letter indicates the MF Building to which the stall is closest, and the number identifies the stall in that building's group of stalls. Uncovered parking stall designations that end in "H" indicate a handicap stall.

Owners of the MF Units may transfer assigned limited common element parking bays or stalls pursuant to this Declaration. Under certain circumstances described in paragraph 9.2 of this Declaration, the Owner of an MF Unit to which a handicap parking bay or stall is assigned may be required to transfer such bay or stall to another Unit in exchange for a non-handicap bay or stall.

### **GUEST PARKING**

The Project contains eleven unassigned, uncovered guest parking stalls. Eight of these unassigned guest stalls (one of which is a handicap stall) are in the vicinity of the Amenity Center. Each of the remaining three unassigned guest stalls is a handicap stall, one of which is located along Driveway E1, and the other two of which are located along Driveway E, as shown on the as shown on the Condominium Map.

### **EXHIBIT "A"**

**Transfer of Stalls.** Owners of the MF Units may transfer assigned parking bays or uncovered limited common element parking stalls pursuant to the Declaration. Under certain circumstances described in paragraph 9.2 of the Declaration, the Owner of a Unit to which a handicap parking bay or stall is assigned may be required to transfer such bay or stall to another Unit in exchange for a non-handicap bay or stall.

## **BOUNDARIES OF UNITS**

Each Unit shall be deemed to include: (i) all the walls and partitions which are not load-bearing within its perimeter walls, (ii) the interior decorated or finished surfaces of all walls, floors and ceilings, including floor coverings, (iii) any doors and door frames, windows or panels along the perimeters, window frames, (iv) all fixtures originally installed therein, (v) the decorated or finished surface of the floor, walls (if any) and ceiling of the lanai(s) appurtenant to the Unit, the railing (if any) of such lanai(s) and the lanai air space. Each of the SF and D Units shall also be deemed to include the two-car garage attached to the Unit. The respective Units shall not be deemed to include: (a) the undecorated or unfinished surfaces of the perimeter walls, the interior load-bearing walls, or the party walls, (b) the undecorated or unfinished surfaces of the floors and ceilings surrounding each Unit, and (c) any pipes, shafts, wires, conduits or other utility or service lines running through such Unit which are utilized for or serve more than one Unit, the same being deemed common elements as hereinafter provided.

Should the descriptions and divisions set forth in the Declaration conflict with the depictions and divisions shown on the Condominium Map, the Condominium Map shall control. The Condominium Map, however, is intended to show only the layout, location, Unit numbers and dimensions of the Units and elevations of the buildings and is not intended and shall not be deemed to contain or make any other representation or warranty.

The approximate areas of the Units are set forth in Exhibit "A" attached to this Public Report and are based on measurements taken from the interior surface of all perimeter walls, except that no reduction is made to account for interior walls, ducts, vents, shafts, and the like located within the perimeter walls. The areas set forth in Exhibit "A" are not exact but are approximations based on the floor plans of each type of Unit. The measurements set forth in Exhibit "A" may not follow the designation of the limits of the Units (the legally designated areas of the Units) set forth above and the net living areas set forth in Exhibit "A" may be greater than the floor areas of the Units as so designated and described above.

## PERMITTED ALTERATIONS

Section 8.3 of Article VIII of the Bylaws provides as follows:

(a) Subject to the provisions of the Declaration, the Act, and that certain Declaration of Protective Covenants, Conditions and Restrictions for the Uplands at Mauna Kea, dated August 10, 1999, recorded in the Bureau as Documents No. 99-131337 and 99-131338, as now or hereafter amended (the "Master Declaration"), and all rules and regulations promulgated under the Master Declaration, and except as otherwise provided herein, no Owner of a Unit shall, without the prior written approval of the Board and, if applicable, the Uplands Design Committee established in accordance with Article X of the Master Declaration, make any structural alterations in or additions or improvements to his Unit (including the Unit's lanai(s)) or make any changes to his Unit and/or its lanai(s) or any limited common elements appurtenant to the Unit that would change the exterior appearance of the Project.

(b) An Owner may make non-structural alterations and additions solely within his Unit at the Owner's sole cost and expense, provided that such alterations or additions do not affect any other Unit or common elements or change the exterior or appearance of the Project, and provided, further, that any building permit or other governmental permit or authorization required for such alterations or additions is first duly obtained and filed with the Board and the proposed alteration or addition will not adversely affect the Project's insurance rating or premiums.

(c) No Unit Owner shall, without the prior written approval of the Board, install any wiring for electrical or telephone installations, television antenna, machines or air-conditioning units, or other equipment, fixtures, appliances or appurtenances whatsoever on the exterior of the Building or protruding through the walls, windows or roofs thereof.

(d) No Unit Owner shall, without the prior written approval of the Board, make any modifications, changes, additions or alterations to his lanai(s) or add any awnings, sunscreens, louvers, exhaust vents, wind baffles, or drain.

(e) No Owner of an SF or D Unit shall, without the prior written approval of the Board, make any modifications, changes, additions or alterations to the Unit's limited common element enclosed pool area, including the pool and spa therein.

(f) No Owner of an SF Unit shall, without the prior written approval of the Board, make any modifications, changes, additions or alterations to the limited common element courtyard and entryway adjacent to the Unit, the HVAC pad and enclosure adjacent to the Unit and any improvements, machinery or equipment (including air-conditioning units and related equipment) placed thereon, or the driveway leading from common element Driveway D to the Unit's attached garage.

(g) No Owner of a D Unit shall, without the prior written approval of the Board, make any modifications, changes, additions or alterations to the limited common element



courtyard and entryway adjacent to the Unit and the landscaped area immediately adjacent to the courtyard and entryway, the HVAC pad and enclosure adjacent to the Unit and any improvements, machinery or equipment (including air-conditioning units and related equipment) placed thereon, or the driveway (both the shared and the individual limited common element portions) leading from common element Driveway E or common element Driveway E1 to the Unit's attached garage.

(h) No Owner of a ground floor MF Unit shall, without the prior written approval of the Board, make any modifications, changes, additions or alterations to the limited common element entry walkway and landscaped area adjacent thereto.

(i) No Owner of a second floor MF Unit shall, without the prior written approval of the Board, make any modifications, changes, additions or alterations to the limited common element finished surfaces of the stairs and stairway railings leading to such Unit, the finished surfaces of the second floor landing and railings appurtenant thereto, and the finished surface of the second floor entryway leading to the Unit.

(j) No Owner of an MF Unit shall, without the prior written approval of the Board and all of the Owners of the other MF Units in the same MF Building, make any modifications, changes, additions or alterations to the shared limited common element paved driveway and motor court area leading from common element Driveway B, B1 or C, as the case may be, to the uncovered parking stalls and the MF Garages serving the MF Building in which such Unit is located, or to the shared limited common element landscaped area on the ground level extending from the exterior boundary of the study comprising part of each ground floor MF Unit to the paved edge of the shared limited common element driveway.

(k) No Owner of an MF Unit shall, without the prior written approval of the Board and the Owner of the MF Unit directly above or below, make any modifications, changes, additions or alterations to the shared limited common element HVAC pad and enclosure that serves such Unit (and the Unit directly above or below), and any improvements, machinery or equipment (including air-conditioning units and related equipment) placed thereon, and the enclosed area containing the water heater serving such Unit (and the Unit directly above or below).

(l) All interior window coverings (including curtains, drapes and screens of any kind) visible from outside of the Unit shall include a backing of a type, color and appearance approved by the Board. In addition, Owners may not, without the prior written approval of the Board, apply any substance, material or process to the exterior or interior surfaces of the Unit's windows that may alter the exterior color, appearance or reflectivity of the windows.

(m) It is intended that the exterior of the Project present a uniform and attractive appearance. Accordingly, whenever Board approval is required for any proposed modification, change, addition to or alteration of any Unit or limited common element, the Board shall base its decision to grant or deny approval at least in part upon considerations of whether (and to what extent) the proposed modification, change, addition or alteration will adversely

**EXHIBIT "C"**

affect the appearance of the Project. Except as otherwise provided in Section 8.5 below in connection with proposed modifications to accommodate Owners with disabilities, if the Board determines that the proposed modification, change, addition or alteration will materially adversely affect the appearance of the Project, the Board shall deny its approval. It is acknowledged that the Board's determination will unavoidably involve an element of subjective taste. Therefore, the Board's determination that a proposed modification, change, addition or alteration will materially adversely affect the appearance of the Project shall not be challengeable by any Unit Owner or group of Unit Owners on the grounds that the determination is to any extent based upon subjective criteria.

(n) Whenever Board approval is required for any proposed modification, change, addition to or alteration of any Unit or limited common element, if the Board determines that the proposed modification, change, addition or alteration will not materially adversely affect the appearance of the Project, the Board shall not unreasonably withhold its approval, provided that it shall not be deemed unreasonable for the Board to withhold its approval if the proposed modification, change, addition or alteration may, in the Board's best estimate, adversely affect any of the Project's common elements or any Unit or other part of the Project in any way, or increase the Project's hazard or liability insurance premiums or other common expenses, or otherwise violate any applicable law, any provision of these Bylaws, the House Rules, the Declaration, the Master Declaration or any guidelines or rules or regulations promulgated thereunder, or the Act.

Section 8.4(e) of Article VIII of the Bylaws provides as follows:

(e) The Owner of any two or more adjacent Units separated by a common element wall may alter or remove all or portions of such wall if the structural integrity of the building in which the Units are located is not thereby affected and if the finish of the remaining common element(s) is restored to a condition substantially comparable to that of the common element prior to such alterations. Such alteration shall require only the written approval of the Board, including the Board's approval of the Owner's plans for such alteration, together with the approval of the holders of first mortgages on all Units affected by such alteration, and the approval of the appropriate agencies of the State of Hawaii and/or the County of Hawaii if such agencies so require. The Board's approval may be conditioned upon the Board having first received a certified written statement of a registered Hawaii architect or engineer that the proposed alterations shall not adversely affect the structural integrity of any part of the Project or jeopardize the soundness or safety of the Project in any way. Notwithstanding subsection 8.4(d) above, such alteration may be undertaken without an amendment to the Declaration or the Condominium Map. If, in the reasonable judgment of the Board, the alterations or additions are substantial in nature, the Board may require that the Owner of the Units affected provide evidence satisfactory to the Board of sufficient financing to complete such alterations or additions or, in lieu thereof, require that the Owner obtain a performance and lien payment bond, naming as obligees the Board, the Association and all Unit Owners and their mortgagees of record, as their interests may appear, for a penal sum of not less than one hundred percent (100%) of the estimated cost of such construction. Prior to the termination of the common ownership of any such adjacent Units, the Owner of such Units shall be obligated to restore the

intervening wall between the Units to substantially the same condition in which the wall existed prior to its alteration or removal.

Section 8.5 of Article VIII of the Bylaws provides as follows:

Subject to Section 8.6 below, Owners with disabilities shall be permitted to make reasonable modifications to their Units and/or the common elements, at their sole expense (including the cost of obtaining any bonds required by the Declaration, these Bylaws or the Act), if such modifications are necessary to enable them to use and enjoy their Units and/or the common elements, and when permitted under the Master Declaration and related documents, rules and guidelines, provided that any Owner with a disability desiring to make such modifications shall make such request, in writing, to the Board of Directors. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to make such modifications. If the proposed modification will change the exterior appearance of the Project or any part thereof, the Board's approval of the request may be conditioned upon evidence satisfactory to the Board that the needs of the disabled Owner cannot adequately be met at reasonable cost without causing such change in appearance, and that the proposed modification shall cause the least change in appearance reasonably possible under all of the circumstances. The Board of Directors shall not unreasonably withhold or delay their consent to such request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days of the Board's receipt thereof, or within forty-five (45) days of the Board's receipt of additional information reasonably required in order to consider such request, whichever shall last occur. Nothing contained in this Section 8.5 shall exempt an Owner, at such Owner's sole cost and expense, from making all amendments to these Bylaws, the Declaration or the Condominium Map necessitated by any changes permitted under this Section. Such amendments need only be approved and executed by the Board and the Owner making such modifications.

Section 8.6 of Article VIII of the Bylaws provides as follows:

Anything herein to the contrary notwithstanding, no Unit Owner shall do any work which could jeopardize the soundness or safety of the Project, reduce the value thereof, impair any easement or hereditament, nor may any Unit Owner add any material structure or excavate any basement or cellar without in every such case the consent of seventy-five percent (75%) of the Unit Owners being first obtained, together with the consent of all Unit Owners whose Units or limited common elements appurtenant thereto are directly affected; provided that "nonmaterial structural additions to the common elements" (as defined in Section 514A-89 of the Act), including, without limitation, the installation of solar energy devices (as defined in Section 514A-89 of the Act), or additions to or alterations of a Unit made within such Unit or within a limited common element appurtenant to and for the exclusive use of the Unit, shall require approval only by the Board of Directors and such percentage, number, or group of Unit Owners as may be required by the Declaration or these Bylaws.

Article VIII of the Bylaws contains additional information regarding alterations to the Units, the common elements and the limited common elements.

## COMMON ELEMENTS

The common elements consist of all portions of the Project other than the Units, including (but not limited to) those parts of the Project described in section 4 of the Declaration as follows:

(a) The Project's land (the "Land"), in fee simple, and all rights, entitlements and easements appurtenant thereto, including (but not limited to) easements for roadway, utility and other purposes as more particularly described in the Master Deed described in page 20 of this Public Report and/or in Exhibit "A" attached to the Declaration;

(b) The limited common elements described in section 5 of the Declaration and in Exhibit "E" attached to this Public Report;

(c) All slabs, foundations, columns, girders, beams, supports, perimeter walls, load-bearing walls, roofs, exterior stairs and stairways, pumps, ducts, pipes, wires, conduits, or other utility or service lines located outside of the Units and which are utilized for or serve more than one Unit, and generally all equipment, apparatus, installations and personal property existing for common use in any of the buildings or located on the Land;

(d) All pipes, wires, ducts, conduits or other utility or service lines running through a Unit which are utilized by or serve more than one Unit;

(e) All recreational facilities and other amenities of the Project, including, but not limited to, the Amenity Center and the adjacent swimming pool and pool deck;

(f) All driveways, roadways and other common ways, all uncovered parking spaces, the MF Garages and the parking bays and storage areas contained therein, and all other parking stalls and areas that are not a part of or included within an SF or D Unit's attached garage, all gates and kiosks or gatehouses (if any) at the entryway to the Project, all perimeter fences, walls and gates surrounding all or any portion of the enclosed pool areas appurtenant to SF and D Units, all storage areas not located within a Unit or its attached garage, all landscaping, courtyards, fences, gates, retaining walls, mailboxes, trash areas, maintenance structures and facilities and accessory equipment areas, including electrical and mechanical rooms or facilities located on the Land or within any of the buildings and serving more than one Unit;

(g) All other improvements on the Land which are not part of any Unit.

## LIMITED COMMON ELEMENTS

The limited common elements set aside and reserved for the exclusive use of the Units to which they are assigned are described in section 5 of the Declaration as follows:

5.1 **All Units**. Each Unit shall have appurtenant thereto as limited common elements all pipes, wires, ducts, conduits or other utility or service lines located within or running through the Unit and utilized by or serving only that Unit.

5.2 **SF and D Units Only**. Each SF and D Unit shall have appurtenant thereto as a limited common element the air space (if any) between the Unit's ceiling and roof.

5.3 **SF Units Only**. Each SF Unit shall have appurtenant thereto as limited common elements:

(a) The courtyard and entryway adjacent to the Unit as shown on the Condominium Map, and any improvements, equipment or structures placed thereon;

(b) The enclosed pool area adjacent to the Unit as shown on the Condominium Map, including the swimming pool and all pool equipment originally provided with the Unit or subsequently provided exclusively for the Unit by the Developer or the Association, and all other improvements and landscaping located in the enclosed pool area, but excluding all perimeter fences, walls and gates surrounding any part of the pool area, the same being common elements as provided in section 4 above;

(c) The two HVAC pads and enclosures adjacent to the Unit as shown on the Condominium Map, and any improvements, machinery or equipment (including air-conditioning units and related equipment) placed thereon; and

(d) The driveway leading from common element Driveway D, as shown on the Condominium Map, to the Unit's attached garage, including all paved additional parking or turn-around areas comprising part of the driveway.

5.4 **D Units Only**. Each D Unit shall have appurtenant thereto as limited common elements:

(a) The courtyard and entryway adjacent to the Unit, and the landscaped area immediately adjacent to the courtyard and entryway as shown on the Condominium Map, and any improvements, equipment or structures placed thereon;

(b) The enclosed pool area adjacent to the Unit as shown on the Condominium Map, including the swimming pool and all pool equipment originally provided with the Unit or subsequently provided exclusively for the Unit by the Developer or the Association, and all other improvements and landscaping located in the enclosed pool area, but

excluding all perimeter fences, walls and gates surrounding any part of the pool area, the same being common elements as provided in section 4 above;

(c) The HVAC pad and enclosure adjacent to the Unit as shown on the Condominium Map, and any improvements, machinery or equipment (including air-conditioning units and related equipment) placed thereon; and

(d) The portion of the driveway immediately adjacent to and extending approximately 20 feet from the front of the Unit's attached garage, as shown on the Condominium Map.

(e) The portion of the driveway not included in section 5.4(d) above and serving each attached pair of D Units and providing access to and from common element Driveway E or common element Driveway E1 shall be a shared limited common element appurtenant to and for the exclusive use of the two D Units served.

(f) The landscaped area at the end of the shared limited common element driveway closest to each D Building, as shown on the Condominium Map, shall be a shared limited common element appurtenant to and for the exclusive use of the two D Units to which such area is adjacent.

5.5 **MF Units Only**. Each MF Unit shall have appurtenant thereto, as limited common elements:

(a) Any parking bay(s) assigned to the Unit as shown on Exhibit "C" and located in an MF Garage. Each parking bay shall be deemed to include an interior floor surface area (both parking and storage) of approximately 296 square feet (except for the parking bays in the MF Garage closest to MF Building M, which have an interior floor surface area, both parking and storage, of approximately 331 square feet), bounded by three walls and a garage door, the interior decorated or finished surfaces of the perimeter walls, ceiling and floor of the bay (and storage area), any window and window frame located in a bay wall, together with the bay's garage door and any mechanical and/or electrical apparatus and equipment connected to or made part of the door, and together also with any cabinets, shelves, light fixtures, electrical outlets and switches and other electrical or mechanical facilities located within the bay and serving only the bay, and together also with the airspace bounded by the bay's floor, ceiling, walls and garage door. Each parking bay shall not be deemed to include any structural components of the MF Garage within which the bay is located, nor the MF Garage's attic space (if any), nor any of the MF Garage's interior or exterior walls beneath the interior decorated or finished surfaces thereof, nor the roof or other components of the building, nor the slab upon which the MF Garage is located, the foregoing all being common elements as herein provided.

(b) Any uncovered parking stall(s) assigned to the Unit as shown on Exhibit "C".

5.6 **MF Building Shared Limited Common Elements.** The four MF Units in each MF Building shall share, as limited common elements, (i) the paved driveway and motor court area leading from common element Driveway B, B1 or C, as the case may be, to the uncovered parking stalls and the MF Garages serving those MF Units, and (ii) the landscaped area on the ground level extending from the exterior boundary of the study comprising part of each ground floor MF Unit to the paved edge of the shared limited common element driveway, as shown on the Condominium Map.

5.7 **Ground Floor MF Units Only.** Each ground floor MF Unit shall have appurtenant thereto, as limited common elements, the entry walkway and landscaped area adjacent thereto, as shown on the Condominium Map.

5.8 **Second Floor MF Units Only.** In addition to the limited common elements described in subparagraphs 5.5 and 5.6 above, each second floor MF Unit shall have appurtenant thereto, as limited common elements, the finished surfaces of the stairs and stairway railings leading to the second floor and providing access to the Unit, the finished surface of the second floor landing and railings appurtenant thereto, and the finished surface of the entryway leading to the Unit, all as shown on the Condominium Map.

5.9 **Stacked MF Units Only.** Each ground floor MF Unit shall share with the second floor MF Unit immediately above it, as limited common elements appurtenant to both Units, the HVAC pad and enclosure adjacent to the ground floor Unit as shown on the Condominium Map, and any improvements, machinery or equipment (including air-conditioning units and related equipment) placed thereon, and also the enclosed area containing the water heaters for both units; provided, however, that each water heater shall be a limited common element appurtenant only to the MF Unit that is served by such water heater.

5.9 **All Units.** Any other common element of the Project which is rationally related to a single Unit to the exclusion of all other Units shall be deemed a limited common element appurtenant to and for the exclusive use of the Unit to which such common element is rationally related.

**ENCUMBRANCES AGAINST TITLE**

That certain Preliminary Report dated **August 25, 2004**, issued by Title Guaranty of Hawaii, Inc., discloses that the land of the Project is subject to the following encumbrances (references to ITEMS and LOTS are to the lands described in Exhibit "K" attached to this Public Report and in Exhibit "A" attached to the Declaration):

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. -AS TO ITEM I, LOT 2:-

(A) GRANT

TO : STATE OF HAWAII

DATED : January 26, 1954

RECORDED : Liber 2797 Page 448

GRANTING : an easement for the construction, maintenance, repair, replacement and operation of a pipeline, etc.

(B) GRANT

TO : HAWAII ELECTRIC LIGHT COMPANY, INC. and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, now known as VERIZON HAWAII INC.

DATED : February 11, 1994

RECORDED : Document No. 94-059840

GRANTING : Easement "E-1", more particularly described as per survey of Robert E. Cunningham, Registered Professional Surveyor, dated May 4, 1993, to-wit:

EASEMENT "E-1"  
For Electrical Purposes

Being a portion of Royal Patent Number 2237, Land Commission Award Number 8518-B, Apana 1 to Kanehoa (Certificate of Boundaries No. 63), and being a portion of Lot 1 of South Kohala Resort (File Plan 2094), situate, lying and being at Ouli, Waimea, District of South Kohala, Island and County of Hawaii, State of Hawaii.

Beginning at the north corner of this parcel of land, on the southwesterly side of Road Lot D of South Kohala Resort (File Plan 2094), the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUAKO" being 11,084.89 feet north and 7,371.55 feet east, thence running by azimuths measured clockwise from true South:



1. 312° 15' 10.00 feet along the southwesterly side of Road Lot D of South Kohala Resort (File Plan 2094);
2. 42° 15' 14.00 feet along the remainder of Lot 1 of South Kohala Resort (File Plan 2094);
3. 132° 15' 10.00 feet along the remainder of Lot 1 of South Kohala Resort (File Plan 2094);
4. 222° 15' 14.00 feet along the remainder of Lot 1 of South Kohala Resort (File Plan 2094) to the point of beginning and containing an area of 140 square feet, more or less.

(C) DESIGNATION OF EASEMENT "2" (area 24,067 square feet)

PURPOSE : drainage  
 SHOWN : on File Plan No. 2234

3. -AS TO ITEM I, LOT 3:-

(A) GRANT

TO : STATE OF HAWAII

DATED : January 26, 1954

RECORDED : Liber 2797 Page 448

GRANTING : an easement for the construction, maintenance, repair, replacement and operation of a pipeline, etc.

(B) DESIGNATION OF EASEMENT "3" (area 3.064 acres)

PURPOSE : drainage  
 SHOWN : on File Plan No. 2234

4. -AS TO ITEM I, LOT 4:-

(A) DESIGNATION OF EASEMENT "5" (area 9,387 square feet)

PURPOSE : drainage  
 SHOWN : on File Plan No. 2234

(B) DESIGNATION OF EASEMENT "6" (area 18,153 square feet)

PURPOSE : drainage  
SHOWN : on File Plan No. 2234

5. -AS TO ITEM I, LOT 5:-

(A) DESIGNATION OF EASEMENT "7" (area 35,178 square feet)

PURPOSE : drainage  
SHOWN : on File Plan No. 2234

(B) DESIGNATION OF EASEMENT "15" (area 278 square feet)

PURPOSE : drainage  
SHOWN : on File Plan No. 2234

6. -AS TO ITEM II:-

(A) GRANT

TO : STATE OF HAWAII

DATED : January 26, 1954

RECORDED : Liber 2797 Page 448

GRANTING : an easement for the construction, maintenance, repair, replacement and operation of a pipeline, etc.

(B) GRANT

TO : HAWAIIAN ELECTRIC COMPANY, INC. and GTE  
HAWAIIAN TELEPHONE COMPANY INCORPORATED, now  
known as VERIZON HAWAII INC.

DATED : February 11, 1994

RECORDED : Document No. 94-059840

GRANTING : a perpetual right and easement to build, construct, reconstruct,  
rebuild, repair, maintain and operate underground lines and  
transformer vaults, etc., for the transmission of electricity, etc.

(C) Rights of others who may have easement or access rights in the land described in  
Exhibit "K" to this public report.

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

INSTRUMENT : DECLARATION OF CONDITIONS

DATED : April 11, 1995

RECORDED : Document No. 95-049097

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

INSTRUMENT : DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR THE UPLANDS AT  
MAUNA KEA

DATED : August 10, 1999

RECORDED : Document No. 99-131337

Consent and joinder given by SOUTH KOHALA RESORT CORP., a Hawaii corporation, by instrument recorded as Document No. 99-131338.

Said Declaration was amended by instruments dated October 7, 1999, recorded as Document No. 99-165199, and dated May 11, 2004, recorded as Document No. 2004-095010.

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

INSTRUMENT : WARRANTY DEED

DATED : as of September 27, 1999

RECORDED : Document No. 99-156915

The foregoing includes, but is not limited to, matters relating to (1) water reservation and (2) golf course operations on adjacent lands.

10. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
11. Encroachments or any other matters as shown on survey map prepared by Robert K.Y. Lee, Land Surveyor, with Towill, Shigeoka & Associates Inc., dated March 18, 2004.
12. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : LIMITED WARRANTY DEED AND GRANT OF EASEMENTS

DATED : as of May 11, 2004  
RECORDED : Document No. 2004-095012

The foregoing includes, but is not limited to, matters relating to underground water and golf operation.

13. Real Property taxes as may be due and owing. Refer to the County of Hawaii Director of Finances for further information.

## **DEVELOPER'S RESERVED ALTERATION, WITHDRAWAL AND MERGER RIGHTS**

Section 23 of the Declaration provides as follows:

### **23. Reservation to Change Units, Withdraw Land and/or Units and Reconfigure the Project.**

23.1 **Rights Generally.** Any other provision in this Declaration to the contrary notwithstanding, the Developer shall have the right (but shall not be obligated) in its sole discretion under this section 23, without being required to obtain the consent or joinder of any person or group of persons, including the Association, any Unit Owner or any mortgagee, lien holder, Unit purchaser, or any other person who may have an interest in the Project or in any Unit, to change the type, layout and dimensions of any unbuilt and unsold Unit and/or the limited common elements appurtenant thereto, and/or to remove and delete from the Project and from the effect of this Declaration and the Act portions of the Land, all or any unsold Units and any related common elements and limited common elements; provided, however, that the right to withdraw shall not apply to the recreational amenities described in section 4 above, nor to any common element driveways, walkways, parking areas, landscaped areas, easements or any other part of or interest in the Project actually utilized by or serving any Unit owned by any person (an "Affected Person") other than the Developer at the time of such withdrawal, without first obtaining such Affected Person's consent. For purposes of this section 23, "unsold Unit" shall mean a Unit owned by the Developer and for which no sales contract for the purchase and sale of the Unit has become binding upon both the seller and the buyer under the contract. Those parts of the Project withdrawn pursuant to the rights reserved to the Developer in this section 23 are sometimes hereinafter called the "Withdrawn Property."

23.2 **Effect of Withdrawal.** Upon such removal and deletion of the Withdrawn Property as set forth in this section 23, and with no further action required, no Unit Owner, mortgagee, lien holder, Unit purchaser or any other person (other than the Developer and the holder of any blanket mortgage covering the Withdrawn Property) who may have an interest in the Project or any Unit shall have any legal or equitable interest in the Withdrawn Property (it being the intent hereof that upon such removal and deletion, fee simple title to the Withdrawn Property, including the Land, common elements and Units so removed and deleted and any interests appurtenant thereto, will be vested solely in the Developer). If deemed necessary to effect the intent of this section 23, each Unit Owner, mortgagee, lien holder and any other person who may have an interest in the Project or any Unit shall, if requested by the Developer, unconditionally quitclaim and/or release its interest (if any) in the Withdrawn Property to the Developer.

23.3 **Rights to Subdivide, Amend, Etc.** In the exercise of the rights reserved in this section 23, the Developer may (but shall not be obligated to) at any time (i) file and process to final approval an application with the County of Hawaii for the legal subdivision of that portion of the Project to be withdrawn, (ii) file or record supporting file plans, maps or other instruments in the Bureau, (iii) record one or more amendments to this Declaration in the Bureau containing an amended description of the Land, common elements and/or Units covered by this

Declaration and deleting therefrom the Withdrawn Property, and amending the common interests appurtenant to the remaining Units by increasing such common interests so that the aggregate common interest appurtenant to all remaining Units equals 100%, (iv) file in the Bureau an amended Condominium Map reflecting the changes to the Units, common elements and/or limited common elements, and/or the removal and deletion of the Withdrawn Property, and (v) if deemed necessary or appropriate, apply for and obtain from the Real Estate Commission of the State of Hawaii an effective date for a Supplementary Public Report describing the changes made to the Project pursuant to the terms of this section 23. Any changes to the Project made pursuant to this section 23 shall be deemed effective for all purposes upon the recordation in the Bureau of the amendment(s) to this Declaration and Condominium Map referenced herein. If Units are withdrawn from the Project pursuant to this section 23 and the common interests of the remaining Units are recalculated, the new common interests shall be determined by (i) dividing each remaining Unit's net living area (excluding lanai and garage areas) by the aggregate net living areas of all of the remaining Units, (ii) converting the resulting fractions to percentages, and (iii) rounding the percentages and making minor adjustments if necessary so that the aggregate common interest appurtenant to all of the remaining Units equals 100%.

23.4 **Rights to Deal With Withdrawn Property; Easements; Costs.** Upon the deletion and removal from the Project of the Withdrawn Property pursuant to the rights reserved to the Developer in this section 23, the Developer shall have the absolute right, without the joinder or consent of any other party except the holder of any blanket lien encumbering the Withdrawn Property, to convey, sell, lease, pledge or otherwise transfer to any third party (whether or not related to the Developer) some or all of the Developer's interest in and/or title to some or all of the Withdrawn Property, or to develop, improve (or cooperate with any subsequent owner of the Withdrawn Property in such development or improvement) or otherwise deal with or dispose of the Withdrawn Property or any portions thereof in such manner as the Developer, in its sole discretion, sees fit, including developing or improving the Withdrawn Property for uses and with designs, materials and plans materially different from those of the Project, subject, however, to such consents and approvals as may be required under the Master Declaration and any rules and regulations promulgated thereunder, including the Design Requirements discussed in section 24 below. This right shall expressly include the unilateral right of the Developer to grant easements over, on or beneath portions of the Project in favor of and for the benefit of the Withdrawn Property for such purposes as may be necessary or convenient for the subdivision, subsequent development and use of the Withdrawn Property, including (but not limited to) easements for access and utilities. In the event that the development and use of the Withdrawn Property or any portion thereof (including, but not limited to, the use of any easement benefiting and serving all or any part of the Withdrawn Property) shall increase the common expenses of the Project (including but not limited to common expenses for roadway maintenance and repair and liability or other insurance), the owners from time to time of the Withdrawn Property so benefited shall be required to contribute to the Association an equitable portion of such costs and expenses as determined by the Developer. In the event that all or a portion of the Withdrawn Property is developed as a "New Project" (as defined in section 23.5 below) and subsequently merged with the Project in accordance with the Declaration of Merger (described in section 23.5 below), costs and expenses

pertaining to the Project and the New Project will be apportioned and allocated between the Project and the New Project in accordance with the terms of the Declaration of Merger.

23.5 **Rights Regarding New Project and Merger.** Without limiting the generality of the foregoing, the Developer (or the Developer's successor in interest in and to the Withdrawn Property) may (but shall not be obligated to) submit all or portions of the Withdrawn Property to a separate condominium property regime by executing and recording in the Bureau a separate declaration of condominium property regime, bylaws and condominium map and such other documents as may be required. At any time following the establishment of all or a portion of the Withdrawn Property as a separate condominium property regime (the "New Project"), the Developer shall have the right (but shall not be obligated), without the joinder or consent of any person or group of persons, including the Association, any Unit Owner or any mortgagee, lien holder, Unit purchaser, or any other person who may have an interest in the Project or in any Unit, to cause a merger of the Project with such New Project (and/or to cooperate with any subsequent owner of the New Project in causing such merger) in accordance with the provisions and requirements of that certain Declaration of Merger of Condominium Phases (the "Declaration of Merger") pertaining to the Project and recorded in the Bureau immediately prior to recordation of this Declaration. This Declaration is expressly made subject to the Declaration of Merger, and all of the terms and provisions of the Declaration of Merger, including all reservations of rights in favor of the Developer as "Declarant" therein, are hereby incorporated into this Declaration by reference as if stated herein in their entirety.

23.6 **Developer's Successor in Interest.** Except as otherwise provided in this section 23.6, the Developer may transfer its rights reserved under this section 23 (and all other rights specifically reserved to the Developer in this Declaration, in the Bylaws, in the Declaration of Merger and under the Unit Deeds) in whole or in part to any person who acquires all or a portion of the Developer's interest in the Project, including but not limited to the Withdrawn Property. Such reserved rights shall be transferred by express reference and assignment in the instrument conveying title to all or a portion of the Project to such person. The term "Developer's successor in interest" or "successor in interest of the Developer," as used in this Declaration, shall mean any person who acquires title to the Developer's interest in and to all or a portion of the Project by an instrument that also expressly assigns some or all of the rights reserved to the Developer in this section 23 and/or elsewhere in this Declaration, the Bylaws, the Declaration of Merger and the Unit Deeds. No deed or lease of a Unit or Units in the Project shall transfer any of the Developer's reserved rights under this Declaration, the Bylaws, the Declaration of Merger or the Unit Deeds unless the deed or lease expressly refers to and assigns said rights. Absent an express assignment of such reserved rights, each deed or lease or other transfer of a Unit or Units shall only transfer title to such Unit or Units, the common interest in the common elements appurtenant to such Unit or Units, and the rights (and obligations) of a Unit Owner as set forth herein, in the Bylaws and in the Act. Once all or a portion of the Developer's reserved rights are transferred to a successor in interest of the Developer, the transferee may have and exercise all of the rights of the Developer to the extent transferred, but only to such extent.

23.7 **Special Power of Attorney.** The Developer shall have the absolute right, notwithstanding the lease, sale or conveyance of any Unit, and without being required to obtain the consent or joinder of the Association, any Unit Owner or purchaser, any eligible mortgage holder (as defined in section 18.3), lien holder or other persons, to effect the changes to the unsold Units, the common elements and/or limited common elements and/or the removal and deletion of portions of the Project, and/or the subsequent development or submission to a new condominium property regime of all or portions of the Withdrawn Property, and/or the merger of the Project with any New Project, all in accordance with this section 23, and to execute, record and/or file the herein described application, amendments, quitclaims, declarations, bylaws, maps, releases and any and all other instruments necessary or appropriate for the purpose of effecting the changes to and/or removal and deletion and/or subsequent development and merger of portions of the Project as contemplated hereby. Any such action shall be deemed taken by the Developer as the true and lawful attorney-in-fact of the respective Unit Owners, eligible mortgage holders, lien holders and others who may have an interest in the Project. Each and every person acquiring an interest in any Unit, the Project or the Land covered by this Declaration, by such acquisition, consents to all such changes, deletion and/or removal (including an increase in the common interest appurtenant to any Unit owned by such person and a concomitant increase in such person's ownership interest in the Project's remaining common elements), and to the recordation of such documents as may be necessary to effect the same; agrees to execute such documents and do such other things as may be necessary or convenient to effect the same; and appoints the Developer his, her or its attorney-in-fact with full power of substitution to execute such documents and do all such other things on his, her or its behalf, as are contemplated in this section 23, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such person.

23.8 **Association Bound.** Without limiting the generality of the foregoing, if the Developer or the Developer's successor in interest exercises or wishes to exercise any of the rights reserved to the Developer in this section 23 after the first meeting of the Association and the election of the Association's first Board of Directors, the Board, acting on behalf of the Association, upon the request of the Developer or the Developer's successor in interest, and without requiring the vote or consent of any Unit Owner, Board member or other person, shall execute such instruments (including but not limited to grants of easements) and do all such other things as may be necessary or convenient to enable the Developer or the Developer's successor in interest to exercise the rights reserved in this section 23, and accomplish the purposes contemplated by the reservation of such rights.

23.9 **Amendment of this Section 23.** Notwithstanding any provision herein to the contrary, this section 23 may not be amended without the written consent and joinder of the Developer for so long as the Developer retains an ownership interest in any Unit.



**ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS  
FOR  
WAPULA'ULA AT MAUNA KEA RESORT**

**Estimate of Initial Maintenance Fees:**

<u>Apartment Type</u>	<u>Monthly Fee</u>	<u>X 12 Months</u>	<u>= Yearly Total</u>
SF-A (w/pool)	\$1,337.25		\$16,047.00
SF-B (w/pool)	\$1,537.08		\$18,444.96
D (w/pool)	\$1,278.47		\$15,341.64
MF-1 (no pool)	\$943.60		\$11,323.20
MF-2 (no pool)	\$946.81		\$11,361.72

Apartment owners shall not be obligated for the payment of their respective shares of the common expenses until such time as the Developer files with the Real Estate Commission an amended abstract providing that, commencing upon a date certain stated in the amended abstract, each apartment owner shall become obligated to pay his respective share of the common expenses.

The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.

**Estimate of Maintenance Fee Disbursements: For maintenance and service of the Common Elements only.**

	<u>Monthly Fee</u>	<u>X 12 Months</u>	<u>= Yearly Total</u>
<b>Utilities and Services</b>			
Cable	\$40		\$480
Electricity	\$3,400		\$40,800
Gas/Propane	\$600		\$7,200
Refuse	\$0		\$0
Sewer	\$75		\$900
Telephone	\$100		\$1,200
Water	\$6,500		\$78,000
<b>Maintenance, Repairs and Supplies</b>			
Building	\$2,016		\$24,192
Grounds	\$21,400		\$256,800
Supplies (incl. Pool Maint, Amenity Center)	\$2,200		\$26,400
Common Area Labor	\$3,000		\$36,000

Monthly Fee      X 12 Months      = Yearly Total

<b>Payroll and Benefits</b>		
Wages and Salaries	\$3,917	\$47,004
Insurance	\$335	\$4,020
Taxes	\$583	\$6,996
Health Care	\$300	\$3,600
<b>Management</b>		
Residential Concierge	\$0	\$0
Director's expense	\$125	\$1,500
Audit/Tax fees	\$300	\$3,600
Legal fees	\$417	\$5,004
Management fees	\$3,900	\$46,800
Mauna Kea Resort fees	\$12,012	\$144,144
Office Supplies	\$795	\$9,540
Taxes-income	\$19	\$228
<b>Insurance</b>		
Common Elements and Liability	\$31,050	\$372,600
Directors and Officers, Bond	\$175	\$2,100
Other: GET, Miscellaneous	\$54	\$648
Interest Income Operating	(\$100)	(\$1,200)
Reserves (*)	\$13,650	\$163,800
<b>SUB-TOTAL - ALL UNITS</b>	<b>\$106,863</b>	<b>\$1,282,356</b>
Pool Maintenance - Units with pools only	\$6,900	\$82,800
<b>TOTAL w/Unit pools &amp; common element pool(s)</b>	<b>\$113,763</b>	<b>\$1,365,156</b>

I, Susan Gand, as agent and employed by Maryl Realty, Inc., the condominium managing agent for the Wai'ula'ula at Mauna Kea Resort condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

Susan Gand  
(signature)

Dated: 9-22-04

(\*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for

“Reserves”, the Developer has conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association’s first annual meeting.

### **EXPLANATION REGARDING RESERVES**

In arriving at the figure for “Reserves” in this Exhibit “H”, the Developer did not conduct a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. The amount shown for reserves is an estimate only based on similar condominium projects.

## **SUMMARY OF SALES CONTRACT AND ESCROW AGREEMENT**

The Sales Contract provides for the sale of a condominium unit (the "Unit") by the Developer to a Buyer. The Escrow Agreement provides how the funds paid by the Buyer under the Sales Contract to Escrow are to be held and released. Both the Sales Contract and Escrow Agreement contain many important provisions which are not set out here and should be carefully reviewed by every prospective Buyer.

The Sales Contract provides for the number, amount and timing of payments the Buyer is to make to Escrow. The Escrow Agreement provides that Escrow is to collect these payments and hold them in accounts with banks or savings institutions that are federally insured. The Sales Contract and Escrow Agreement provide who gets to keep interest that may be earned on the funds with Escrow. If the Sales Contract is signed before the Real Estate Commission has issued an effective date for a Final Public Report covering the Unit and before certain other things have happened (as described in the Sales Contract), the Sales Contract shall not be binding on the Buyer or the Seller, and either of them may cancel it at any time before it becomes binding. After the Sales Contract becomes binding, it may be cancelled by the Developer, among other reasons, if the Buyer is obtaining financing and fails to obtain a lender commitment within a certain time period specified in the Sales Contract, or if the Buyer is a cash buyer and fails to furnish satisfactory evidence of ability to pay within other time periods. In certain cases, the Buyer may be responsible for cancellation fees.

The Sales Contract provides that commencing upon the date the Sales Contract becomes binding between Buyer and Seller in accordance with Section F.1 of the Sales Contract, Escrow may disburse to Seller, prior to closing and completion of construction of Buyer's Unit, all or portions of Buyer's funds deposited with Escrow to pay construction costs of the building(s) and other improvements of the Project, in accordance with and subject to the requirements of Hawaii's condominium law (Chapter 514A of the Hawaii Revised Statutes, as amended) and the Escrow Agreement. The Sales Contract provides that no interest will be earned or paid on Buyer's funds that are used to pay construction costs in accordance with the Sales Contract and the Escrow Agreement and the condominium law.

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

If the Buyer defaults under the Sales Contract after an effective date is issued for a Final Public Report for the Project and the Final Public Report is "accepted" by the Buyer, the Buyer may lose all of the deposits with Escrow and the Developer, at its option, may pursue other legal remedies. If the Developer defaults under the Sales Contract, the Buyer shall be entitled to specific performance of the Sales Contract, or shall have the right to cancel and terminate the Sales Contract. Under the Sales Contract, the Developer promises to complete construction of the Unit within two (2) years from the effective date of the Sales Contract, provided that the two (2) year period may be extended under certain circumstances specified in Section F.6 of the Sales Contract.

If the Buyer cancels and terminates the Sales Contract because of the Developer's default, the Developer shall repay to the Buyer all sums the Buyer has paid to the Developer or to Escrow under the Sales Contract, and the Buyer may pursue other legal or equitable remedies.

The Sales Contract confirms that the Buyer has had the opportunity to read and approve certain important legal documents for the Project, including the Declaration, Bylaws, and Rules and Regulations. The Sales Contract also provides that the rights of any construction lender with a mortgage against the Project will be superior to the rights of the Buyer under the Sales Contract.

The Sales Contract provides that prior to the Effective Date of the Sales Contract, the Seller shall have the right to change the Project and modify the Project's documents in any way, including (but not limited to) the right to increase the purchase price under the Sales Contract or to terminate the Project, in which case the Buyer will be entitled to a refund of all sums paid by Buyer under the Sales Contract. The Sales Contract also provides that the Seller has the right to change the Project and the Project's documents in certain ways after the Effective Date of the Sales Contract, including changes that reduce the Project's common elements and the number of units and increase the common interest appurtenant to the Buyer's unit, all without the Buyer's joinder or consent, and all as more particularly disclosed in the Sales Contract and on page 20 of the Public Report to which this exhibit is attached, and also in Exhibits "G" and "J" attached to the Public Report.

The Sales Contract limits the Buyer's right to assign the Sales Contract and provides that the Seller may require a consent fee for any transfer. The Sales Contract provides for "pre-closing." "Pre-closing" means that Escrow may set a time for the Buyer to sign all of the documents Escrow asks the Buyer to sign, including the Unit Deed and other closing documents, and the Buyer will pay the Buyer's share of the closing costs, as estimated by Escrow, even though the Buyer's Unit may not be ready for occupancy. Buyer's share of closing costs include one-half of Escrow's fee, all recording fees, real property taxes and other prorations, Buyer's notary fees, up to four (4) months' maintenance start-up fees, title report and title insurance fees, conveyance tax, and fees charged by a lender if the Buyer is financing the purchase of his Unit with a loan. Escrow then handles the closing, the transfer of title in accordance with the Escrow Agreement. The Unit must be conveyed to the Buyer free and clear of any blanket liens, such as mortgages covering more than one unit.

By signing the Sales Contract, the Buyer acknowledges that sales and construction activity at the Project by the Developer may continue after closing of the Buyer's purchase. The Buyer also acknowledges several rights reserved to the Seller as "Developer" under the Project's Declaration and the Unit Deed that will convey title to the Buyer, and also several conditions that affect or may affect the Project and the Buyer's Unit.

The Escrow Agreement provides certain protections to Escrow in the event of a dispute between the Buyer and the Developer. These protections include the right to file an "interpleader" and the right to recover certain fees and costs. In an interpleader action the

escrow deposit is given to the court to decide what action to take. The Escrow Agreement sets out escrow fees, escrow cancellation fees and the fees for certain policies of title insurance.

The Sales Contract gives notice to the Buyer that Hawaii law contains important requirements that the Buyer must follow before the Buyer may file a lawsuit or other action for defective construction against the contractor who designed or constructed the Buyer's Unit.

**THIS SUMMARY IS NOT COMPLETE AND WILL NOT CONTROL IN THE EVENT OF ANY CONFLICT WITH A PROVISION IN THE SALES CONTRACT OR THE ESCROW AGREEMENT. PROSPECTIVE BUYERS ARE CAUTIONED AND ENCOURAGED TO READ CAREFULLY THE SALES CONTRACT AND ESCROW AGREEMENT.**

Return by Mail ( ) Pickup ( ) To:

Tax Map Key No. (3) 6-2-13-13, -14, -15, -16 & por. -7  
Total No. of Pages:

**DECLARATION OF MERGER OF CONDOMINIUM PHASES**

**WHEREAS**, MOANA IKENA, LLC, a Delaware limited liability company (hereinafter called the “Declarant”), is the owner in fee simple of the land described in Exhibit “A” attached hereto and made a part hereof (the “Property”); and

**WHEREAS**, the Declarant currently intends to develop the Property as a single condominium property regime with a total of 102 residential units, to be constructed in multiple increments; and

**WHEREAS**, the Declarant also intends to reserve the right to withdraw portions of the Property from the condominium property regime initially established, to further subdivide the Property if necessary, to develop one or more of the withdrawn portions of the Property as separate condominium property regimes, or to sell withdrawn portions of the Property to persons who may elect to develop such land as separate condominium property regimes; and

**WHEREAS**, in the event that multiple condominium property regimes are established on the Property (each such condominium property regime being hereinafter called a “phase”), the Declarant wishes to reserve the right to merge the phases subsequently, either for management and administrative purposes only, or for ownership purposes as provided herein; and

**WHEREAS**, to effectuate the foregoing purpose the Declarant desires to establish covenants, restrictions and easements as part of a general and incremental plan of development of the Property so that, in the event that the phases are established as separate condominium

property regimes, upon completion of the development of the separate phases and the decision of the Declarant to merge such phases, the phases so merged shall be treated for administrative purposes (and possibly for ownership purposes) as integral parts of a single merged condominium project (the “Merged Project”);

**NOW, THEREFORE,** the Declarant hereby declares that the Property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, easements, covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Property and for the merger of phases in accordance with Section 514A-19 of the Hawaii Revised Statutes, as amended, and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of the limitations, covenants, easements, restrictions and conditions set forth herein shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of and be binding upon each owner and such owner’s heirs, devisees, personal representatives, successors, successors in trust and assigns.

**1. Definition of Merger.** Except as provided in paragraph 7 below where the definition of “merger” is expanded to include the merger of ownership interests, for the purposes hereof, “merger” shall mean and refer to the unification of the management and use of any phase with the management and use of any other phase or phases in accordance with the provisions hereof. Merger may occur with respect to any two or more phases at the same or at different times, and merger with respect to any two of such phases shall not affect the right of the Declarant to merge separately or together the other phases at a later date, subject to all of the terms, covenants and conditions herein contained.

**2. Merger.** The Declarant shall have the absolute right, notwithstanding the lease, sale or conveyance of any or all of the units in any of the phases being merged, and without being required to obtain the consent or joinder of any unit owner, lien holder or other persons, to effect any merger in accordance with the provisions hereof, and to execute and file the below-described certificate and any and all other instruments necessary or appropriate for the purpose of effecting the merger of phases as contemplated hereby. Except with respect to merger in accordance with the provisions of paragraph 7 below, where additional amendments must be recorded, merger shall take effect upon completion of all of the following:

**(a) Declaration and Condominium Map.** The Declarant shall have recorded with respect to each phase to be merged a Declaration of Condominium Property Regime and Condominium Map. Each such Declaration of Condominium Property Regime, other than the Declaration of Condominium Property Regime being recorded concurrently herewith, shall be in form substantially similar to the Declaration of Condominium Property Regime being recorded concurrently herewith (with modifications for the physical description of the phase, the units and common elements, and the percentage of common interest appurtenant to units therein).



(b) **Development.** The units and common elements described in the respective Declarations of Condominium Property Regime for the phases to be merged shall have been constructed and a Certificate of Substantial Completion issued therefor.

(c) **Certificate of Compliance.** The Declarant shall have recorded in the Bureau of Conveyances a certificate stating that the requirements of subparagraphs 2(a) and 2(b) hereof have been satisfied, that merger of the phases has become effective, and that the merger has not resulted in a breach of any of the conditions set out in paragraph 3 hereof.

3. **Limitations on Merger.** All mergers shall take place prior to the twentieth (20th) anniversary date hereof (the "Expiration Date"), and no merger shall take place after the Expiration Date unless and until approved by the vote or written consent of unit owners owning not less than sixty-five percent (65%) of the total common interest of the phases to be merged.

4. **Effect of Merger.** From and after the effective date of a merger in accordance with the provisions of paragraph 2 hereof, the following consequences shall ensue:

(a) **Use of Common Elements.** Each unit in the Merged Project shall have appurtenant thereto nonexclusive easements and rights to use the common elements in each of the merged phases to the same extent as, and subject to the same limitations as are imposed upon, units in each of such phases as though the merged phases had been developed as a single project.

(b) **Common Expenses.** The merged phases will each bear a share of the total common expenses of the Merged Project, as the term "common expenses" is defined in the respective Declarations of Condominium Property Regime for the merged phases, treating all merged phases as one project for this purpose. The share for each phase shall be a fraction, the numerator of which shall be the aggregate net living area (exclusive of garages and lanais, if any, and whether or not the same are considered to be part of the units) in such phase, and the denominator of which shall be the aggregate net living area (exclusive of garages and lanais, if any, and whether or not the same are considered to be part of the units) of all of the units in the Merged Project. Each unit's share of the common expenses of the Merged Project shall be the product of the common interest appurtenant to the unit multiplied by the share of the common expenses allocated to the phase in which said unit is located.

(c) **Accumulated Funds.** Any long-term funds accumulated for the purpose of major repairs and replacements in any pre-existing phase or phases prior to the merger of phases shall remain intact in a separate account for such pre-existing phase or phases, or shall be isolated and identified as pertaining only to the pre-existing phase or phases, and shall be expended solely for the contemplated purposes before funds from any other source are so expended, and the interest in such funds of each unit owner in that phase or in those phases shall be equal to his share of the vote prior to merger, and such interest shall not be separated from the unit to which it appertains, and shall be deemed to be conveyed with such unit even though not expressly mentioned or described in the instrument of conveyance. Other reserve funds shall be consolidated and maintained as a single fund for the Merged Project; and if necessary so that the interest in such other reserve funds attributable to each unit in the Merged Project shall be equal

to that unit's share of the vote in the Merged Project, the Board shall make adjustments to the account of each unit owner by (i) refund in whole or in part; and/or (ii) credit in whole or in part against future assessments; and/or (iii) special assessments or series of assessments; and/or (iv) any other means consistent with generally accepted accounting principles; provided, however, that the Board shall make such adjustments without charging any unit owner a special assessment for reserves in any one month which exceeds more than twenty percent (20%) of the monthly assessment for other common expenses, after excluding any assessment for reserves. Except as provided above, there shall be only one common fund for the Merged Project.

(d) **Association of Unit Owners/Managing Agent.** The Association of Unit Owners provided for in each phase shall be merged into a single Association governing the entire Merged Project. There shall be only one Managing Agent.

(e) **Voting.** Each of the merged phases shall have the same share of the total votes of the Merged Project as the share set forth above for the sharing of common expenses. Thus, each unit owner's total vote will be the product of the common interest appurtenant to his unit multiplied by the fractional share of the common expenses allocated to the phase in which said unit is located.

(f) **Election of Board.** Within sixty (60) days following any merger of phases a special meeting of the Association of Unit Owners of the Merged Project shall be called to elect a new Board of Directors to replace any existing Board of Directors and to govern the Merged Project. The procedure for calling and holding such meeting and all other meetings of such Association shall be the procedure for calling and holding special meetings of the Association of Unit Owners set forth in the applicable Bylaws of the Association of Unit Owners.

Notwithstanding anything provided to the contrary in the Bylaws of any of the phases, the Board of Directors of the Association of Unit Owners of the Merged Project shall consist of at least nine members unless unit owners having not less than sixty-five percent (65%) of the total vote in the Merged Project vote by mail ballot, or at an annual or special meeting of the Association, to reduce the minimum number of directors. In the event that nine directors are required, the term of office of the three (3) members of the Board receiving the greatest number of votes shall be fixed at three (3) years, the term of office of the three (3) members of the Board receiving the next greatest numbers of votes shall be fixed at two (2) years, and the term of office of the three (3) members of the Board receiving the next greatest numbers of votes shall be fixed at one (1) year. After the expiration of the term of office of each of the initial members, each successor member of the Board shall be elected to serve for a term of three (3) years. Each member of the Board shall continue to exercise the powers and duties of the office until his successor shall have been elected by the unit owners.

(g) **Interpretation.** For the purpose of administration and use of the Merged Project, the phases after merger shall be treated as part of a single project developed as a whole from the beginning; and for such purpose the applicable Declarations of Condominium Property Regime and Bylaws thereafter shall be construed as one document applicable to the entire

Merged Project, provided that in the event of any conflict between such instruments, the Declaration and Bylaws recorded simultaneously herewith shall control. From and after the date of any merger, all of the phases so merged shall be treated for purposes of administration, use and sharing of common expenses as though they had been developed as a single project.

(h) **Ownership.** Except as otherwise provided herein, the merger shall affect the administration and use of the phases and the sharing of common expenses only, and shall not affect the ownership of units and common elements in the respective phases. Except as otherwise provided herein, each unit owner owning a unit in a particular phase shall not own any part of another phase unless said unit owner shall also own a unit in that other phase.

5. **Amendment.** Any amendment to this Declaration of Merger shall require the consent of the Declarant and the approval of unit owners (other than the Declarant) in each phase that is subject to this Declaration of Merger who own at least 65 % of the common interest not owned by Declarant in that phase.

6. **Declarant's Right to Deal with Phases Prior to Merger.** Nothing in this Declaration of Merger shall be construed to require the Declarant (or any subsequent owner of any part of the Property) to develop any phase or merge any phase, once developed, with any other phase or to prohibit the Declarant (or any subsequent owner of any part of the Property) from dealing freely with any phase not merged into the Merged Project, including, without limitation, developing the whole or any part of such phase for a purpose inconsistent with a merger of such phase into the Merged Project.

7. **Merger of Ownership Interests.** The provisions of this paragraph shall only apply in the event that Declarant shall elect to merge ownership of the phases in addition to effecting the administrative merger of phases. The filing of the below-described amendments to effect the merger of ownership interests shall be conclusive evidence that Declarant has elected to merge ownership of the phases. In the event that Declarant shall elect to merge ownership of the phases, the provisions of this paragraph shall control in any event of conflict with the other provisions hereof. Notwithstanding anything herein provided to the contrary, "merger" for purposes of this paragraph shall mean and refer to, in addition to any other definition provided herein, the allocation of ownership interests in one phase to unit owners in another phase and vice versa. Each such merger shall take effect upon the filing in the Bureau of Conveyances of the State of Hawaii of the certificate of compliance referred to above plus an amendment to the respective Declarations of Condominium Property Regime of the phases being merged merging the projects and setting forth at least the undivided percentage interest appurtenant to each unit in the merged projects, and such other matters as the Declarant deems necessary or appropriate.

Each unit in the Merged Project shall have appurtenant thereto an undivided percentage interest in the common elements of all of the merged phases in the same proportion that such unit's net living area (exclusive of garages and lanais, if any, and whether or not the same are considered to be part of the units) bears to the total aggregate net living area (exclusive of garages and lanais, if any, and whether or not the same are considered to be part of the units) of all of the units in the Merged Project, as shown on the Condominium Map or Maps and/or as set

forth in the respective Declarations of Condominium Property Regime for the phases. The percentage interest appurtenant to each unit shall be calculated and rounded off in such a manner that each percentage interest will be reflected as a number having no more than five digits following the decimal point. Adjustments to the common interest for each unit may be made in Declarant's discretion in order that the total common interest equals 100%.

Notwithstanding anything herein provided to the contrary, each unit's undivided percentage interest, upon merger and when calculated in accordance with the provisions of this paragraph, shall constitute such unit's proportionate share in the common elements, profits and common expenses of the Merged Project, and such unit's proportionate representation for all other purposes, including voting in the Merged Project; provided, however, that the unit in any new phase being merged into an existing and completed phase shall not be assessed nor shall it have any obligation with respect to debts or obligations for such completed phase incurred prior to the issuance of a temporary or permanent certificate of occupancy for that unit in the new phase. Upon the filing of any such certificate and amendment, the deeds for the units of the Merged Project which have been recorded in the Bureau of Conveyances shall be deemed automatically amended to reflect the newly assigned undivided percentage interest appurtenant to the respective units.

Declarant shall have the absolute right, notwithstanding the lease, sale or conveyance of any or all of the units in any of the phases being merged, and without being required to obtain the consent or joinder of any unit owner, lien holder or other persons, to effect a merger in accordance with the provisions hereof, and to execute and record the above-described amendments and any and all other instruments necessary or appropriate for the purpose of effecting the merger of phases as contemplated hereby. Any such action shall be deemed taken by Declarant as the true and lawful attorney-in-fact of the respective unit owners. Each and every party acquiring an interest in the property, by such acquisition, consents to all such mergers of phases and to the filing or recording of such documents as may be necessary to effect the same; agrees to execute such documents and do such other things as may be necessary or convenient to effect the same, and appoints the Declarant and its assigns as his, her or its attorney-in-fact with full power of substitution to execute such documents and to do such things on his, her or its behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights and shall not be affected by the disability of any such party.

The rights of the Declarant hereunder shall extend to the Declarant, its successors and assigns.

The Declarant may transfer its rights under this Declaration of Merger, in whole or in part, to any person who subsequently acquires all or a portion of the Property. Such rights shall be transferred by express reference and assignment in the instrument conveying title to all or a portion of the Property to such person. No deed or lease of a unit or units in any phase shall transfer any of the Declarant's rights under this Declaration of Merger unless the deed or lease expressly refers to and assigns said rights. Absent an express assignment of such rights, each deed or lease or other transfer of a unit or units in any phase shall only transfer title to such unit

**EXHIBIT "J"**

or units, the common interest in the common elements appurtenant to such unit or units, and the rights (and obligations) of a unit owner as set forth in such phase's Declaration of Condominium Property Regime, Bylaws and in Chapter 514A of the Hawaii Revised Statutes, as amended. Once all or a portion of the Declarant's rights are transferred to a successor in interest of the Declarant, the transferee may have and exercise all of the rights of the Declarant under this Declaration of Merger to the extent transferred, but only to such extent.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Declarant has executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 200\_

**MOANA IKENA, LLC**

By Eastrich Uplands Investor I, LLC  
Its Co-Managing Member

By \_\_\_\_\_

Its \_\_\_\_\_

By Mauna Kea Mauka Partners, LLC  
Its Co-Managing Member

By Blackpoint Capital Advisors, LLC  
Its Co-Managing Member

By \_\_\_\_\_

Gary Iki  
Its Co-Managing Member

By 10 of Diamonds, LLC  
Its Co-Managing Member

By \_\_\_\_\_

Timothy John Young  
Its Member

By Maryl Group, Inc.  
Its Co-Managing Member

By \_\_\_\_\_

Its \_\_\_\_\_

**EXHIBIT "J"**

**Page 8 of 14**

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me personally appeared \_\_\_\_\_, to me personally known, who, 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.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My commission expires:

*[EASTRICH UPLANDS INVESTOR I, LLC]*

STATE OF HAWAII )  
 ) SS  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me personally appeared **GARY IKI**, to me personally known, who, 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.

---

Notary Public, State of Hawaii

My commission expires:

*[BLACKPOINT CAPITAL ADVISORS, LLC  
FOR MAUNA KEA MAUKA PARTNERS, LLC]*



STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me personally appeared **TIMOTHY JOHN YOUNG**, to me personally known, who, 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.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My commission expires:

*[10 OF DIAMONDS, LLC  
FOR BLACKPOINT CAPITAL ADVISORS, LLC  
FOR MAUNA KEA MAUKA PARTNERS, LLC]*

STATE OF HAWAII )  
 ) SS  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me personally appeared \_\_\_\_\_, to me personally known, who, 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.

---

Notary Public, State of Hawaii

My commission expires:

*[MARYL GROUP, INC.  
FOR MAUNA KEA MAUKA PARTNERS, LLC]*

**EXHIBIT "A"**

-ITEM I:-

All of those certain parcel(s) of land(s) situate at Ouli, Waimea, District of South Kohala, Island and County of Hawaii, State of Hawaii, of the "THE UPLANDS AT MAUNA KEA, PART A" as shown on File Plan Number 2234, filed in the Bureau of Conveyances of the State of Hawaii, and described as follows:

LOT	AREA (more or less)	TAX MAP KEY
2	17.572 acres	(3) 6-2-013-013
3	19.404 acres	(3) 6-2-013-014
4	2.540 acres	(3) 6-2-013-015
5	7.110 acres	(3) 6-2-013-016

-ITEM II:- TAX KEY: (3) 6-2-013-POR. 007

All of that certain parcel of land situate at Ouli, Waimea, District of South Kohala, Island and County of Hawaii, State of Hawaii, being LOT D of the "SOUTH KOHALA RESORT", as shown on File Plan Number 2094, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 1.073 acres, more or less.

Together with the right in the nature of a perpetual non-exclusive easement with others thereunto entitled for roadway, utility and other reasonably related purposes over, under, through and across "The Uplands Entry Road" (being a portion of Road Lot A as shown on File Plan No. 2094, from the north intersection of Queen Kaahumanu Highway to the most northerly intersection of `Amaui Drive), as more particularly described in Declaration of Protective Covenants, Conditions and Restrictions for The Uplands at Mauna Kea dated August 10, 1999, recorded as Documents Nos. 99-131337 and 99-131338, as the same has been or may hereafter be amended or supplemented from time to time; provided, however, that said easement shall be automatically canceled and terminated with respect to any portion of The Uplands Entry Road, upon the recordation of a dedication deed covering such portion of The Uplands Entry Road in favor of the County of Hawaii, the State of Hawaii, or any other appropriate governmental entity.

Together also with the right in the nature of a perpetual non-exclusive easement with others thereunto entitled for roadway, utility and other reasonably related purposes over, under, through and across Road Lot B as shown on File Plan No. 2094; provided, however, that said easement shall be automatically canceled and terminated with respect to any portion of any of such Road Lot, upon the recordation of a dedication deed covering such portion of such Road Lot in favor of the County of Hawaii, the State of Hawaii, or any other appropriate governmental entity.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED AND GRANT OF EASEMENTS

GRANTOR : MAUNA KEA DEVELOPMENT CORP., a Hawaii corporation,  
acting by and through Mauna Kea Properties, Inc., its agent and  
attorney in fact

GRANTEE : MOANA IKENA, LLC, a Delaware limited liability company

DATED : as of May 11, 2004

RECORDED : Document No. 2004-095012

**-- END OF EXHIBIT "A" --**

**DESCRIPTION OF THE LAND**

**NOTE:** The land described herein (and also described in that certain Preliminary Report dated **August 25, 2004**, issued by Title Guaranty of Hawaii, Inc., and in Exhibit "A" attached to the Declaration) is, as of the date of this Preliminary Public Report, in the process of being consolidated and resubdivided. Accordingly, the area and description of the land described herein and in Exhibit "A" attached to the Declaration may change prior to recordation of the Declaration.

**-ITEM I:-**

All of those certain parcel(s) of land(s) situate at Ouli, Waimea, District of South Kohala, Island and County of Hawaii, State of Hawaii, of the "THE UPLANDS AT MAUNA KEA, PART A" as shown on File Plan Number 2234, filed in the Bureau of Conveyances of the State of Hawaii, and described as follows:

LOT	AREA (more or less)	TAX MAP KEY
2	17.572 acres	(3) 6-2-013-013
3	19.404 acres	(3) 6-2-013-014
4	2.540 acres	(3) 6-2-013-015
5	7.110 acres	(3) 6-2-013-016

**-ITEM II:- TAX KEY: (3) 6-2-013-POR. 007**

All of that certain parcel of land situate at Ouli, Waimea, District of South Kohala, Island and County of Hawaii, State of Hawaii, being LOT D of the "SOUTH KOHALA RESORT", as shown on File Plan Number 2094, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 1.073 acres, more or less.

Together with the right in the nature of a perpetual non-exclusive easement with others thereunto entitled for roadway, utility and other reasonably related purposes over, under, through and across "The Uplands Entry Road" (being a portion of Road Lot A as shown on File Plan No. 2094, from the north intersection of Queen Kaahumanu Highway to the most northerly intersection of `Amaui Drive), as more particularly described in Declaration of Protective Covenants, Conditions and Restrictions for The Uplands at Mauna Kea dated August 10, 1999, recorded as Documents Nos. 99-131337 and 99-131338, as the same has been or may hereafter be amended or supplemented from time to time; provided, however, that said easement shall be automatically canceled and terminated with respect to any portion of The Uplands Entry Road, upon the recordation of a dedication deed covering such portion of The Uplands Entry Road in favor of the County of Hawaii, the State of Hawaii, or any other appropriate governmental entity.

Together also with the right in the nature of a perpetual non-exclusive easement with others thereunto entitled for roadway, utility and other reasonably related purposes over, under, through and across Road Lot B as shown on File Plan No. 2094; provided, however, that said easement shall be automatically canceled and terminated with respect to any portion of any of

such Road Lot, upon the recordation of a dedication deed covering such portion of such Road Lot in favor of the County of Hawaii, the State of Hawaii, or any other appropriate governmental entity.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED AND GRANT OF EASEMENTS

GRANTOR : MAUNA KEA DEVELOPMENT CORP., a Hawaii corporation, acting by and through Mauna Kea Properties, Inc., its agent and attorney in fact

GRANTEE : MOANA IKENA, LLC, a Delaware limited liability company

DATED : as of May 11, 2004

RECORDED : Document No. 2004-095012