

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

CONDOMINIUM PROJECT NAME	THE VILLAS AT POIPU KAI
Project Address	2373 Ho'ohu Road, Koloa, Kauai Hawaii, 96756
Registration Number	7123 (Conversion)
Effective Date of Report	<b>September 1, 2011</b>
Developer(s)	Regency Villas, LLC, a Hawaii limited liability company

**Preparation of this Report**

The Developer prepared this report to disclose relevant information, including "material facts", that are reasonably known to the Developer about the condominium project covered by this report. This report has been prepared pursuant to the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended from time to time. The law defines "material facts" to mean "any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale."

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts or all pertinent changes, or both, about the project have been fully or adequately disclosed; and (3) is not the Commission's judgment of the value or merits of the project.

This report may be used by the Developer for promotional purposes only if it is used in its entirety. No person shall advertise or represent that the Commission has approved or recommended the project, this report or any of the documents submitted with Developer's application for registration of this project.

This report will be amended if, after the effective date of this report, any changes, either material or pertinent changes, or both, occur regarding the information contained in or omitted from this report. In that case, the Developer is required to submit immediately to the Commission an amendment to this report or an amended Developer's Public Report, clearly reflecting the changes, including any omitted material facts, together with such supporting information as may be required by the Commission. In addition, the Developer may choose at any time to change or update the information in this report. Annually, at least thirty days prior to the anniversary date of the Effective Date of this report, the Developer shall file an annual report to update the material contained in this report. If there are no changes, the Developer is required to state that there are no changes. The Developer's obligation to amend this report or to file annual reports ends when the initial sales of all units in the project have been completed.

Purchasers are encouraged to read this report carefully and to seek professional advice before signing a sales contract for the purchase of a unit in the project.

Signing a sales contract may legally bind a purchaser to purchase a unit in the project, though a purchaser may have rights to cancel or rescind a sales contract under particular circumstances that may arise.

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*This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at (808) 586-2643 to submit your request.*

## SPECIAL ATTENTION

1. Master Association. There is a Poipu Kai Association, a master homeowner's association, as described in that certain First Restatement of the Declaration of Covenants and Restrictions of Poipu Kai Association dated August 23, 2010, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2010-128383 (the "Master Declaration") governing Lots D-18, D-22, D-1 and D-19, among other lots, of the Poipu Kai Subdivision. The Property subject to the Declaration of Condominium Property Regime of The Villas at Poipu Kai (this "Declaration") is a portion of Lot D-22 of the Poipu Kai Subdivision, as more particularly described in Exhibit "A" to the Declaration. The Master Declaration subjects the named lots to land classification and use restrictions, the rules and procedures of the Poipu Kai Design Committee, and the Poipu Kai Association, certain fund and assessment requirements, including but not limited to water, sewer, roadway and other assessments, and miscellaneous provisions for the development of the named properties as a planned community. Unit Owners in the Community are subject to the terms and covenants of the Master Declaration as well as the condominium documents of this Project. Prospective purchasers are encouraged to read the documents of The Villas at Poipu Kai condominium project and the Poipu Kai Association.

2. Pets. No animals whatsoever, including without limitation, livestock, poultry, dogs, cats, or other common household pets, shall be allowed or kept in or on any part of the Community. The Association may establish a pets policy and amend these Bylaws accordingly with the affirmative vote or written consent of not less than sixty-seven percent (67%) of the Owners.

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The Condominium Map (8 1/2 x 11) will NOT be provided to Buyer. Pursuant to Section 514B-86(a)(1)(A) of the Act, Seller advises Buyer that it is impractical, for legibility reasons, to provide buyers a letter-sized Condominium Map. Accordingly, Buyer shall have the opportunity to examine the Condominium Map at the Sales Office of Seller upon request.

## **General Information On Condominiums**

A condominium is a special form of ownership of real property. To create a condominium in Hawaii after July 1, 2006, the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, must be followed. In addition, certain requirements and approvals of the county in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land and/or the building(s) and other improvements are leased to the purchaser. The lease for the land usually requires that at the end of the lease term, the lessees (unit owners) deliver their interest in the land to the lessor (fee property owner).

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

You will be entitled to exclusive ownership and possession of your unit. Subject to the documents governing them, condominium units may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift or operation of law.

Your unit will, however, be part of the group of units that comprise the condominium project. Study the project's Declaration of Condominium Property Regime, Bylaws of the Association of Unit Owners, Condominium Map and House Rules, if any, which are being concurrently delivered to you with this report. These documents contain important information on the use and occupancy of the units and the common elements of the project, as well as the rules and regulations of conduct for unit owners, tenants and guests.

## **Operation of the Condominium Project**

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

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as a unit owner. The Board and officers can take certain actions without the vote of the unit owners. For example, the Board may hire and fire employees, increase or decrease maintenance fees, adopt budgets for revenues, expenses and reserves and regulate the use, maintenance, repair and replacement of common elements. Some of these actions may significantly impact the unit owners.

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

**1. THE CONDOMINIUM PROJECT**

**1.1 The Underlying Land**

Fee Simple or Leasehold Project	<input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (attach Leasehold Exhibit)
Developer is the Fee Owner	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Fee Owner's Name if Developer is not the Fee Owner	
Address of Project	2373 Ho'ohu Road, Koloa, Kauai Hawaii, 96756
Address of Project is expected to change because	
Tax Map Key (TMK)	(4) 2-8-027:034
Tax Map Key is expected to change because	New TMK's may be assigned to individual units
Land Area	2.612 acres
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	N/A

**1.2 Buildings and Other Improvements  
(See Exhibit A)**

Number of Buildings	6
Floors Per Building	3 floors
Number of New Building(s)	N/A
Number of Converted Building(s)	6
Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	concrete, wood, metal, glass, hollow tile, aluminum, composite, synthetic and other construction materials

**1.3 Unit Types and Sizes of Units**

Unit Type	Quantity	BR/Bath	Net Living Area	Net Other Areas	Other Areas (lanai, garage, etc.)	Total Area
See Exhibit <u>B</u> .						

28	<b>Total Number of Units</b>
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Note: Net Living Area is the floor area of the unit measured from the interior surface of the perimeter walls of the unit. Other documents and maps may give floor area figures that differ from those above because a different method of determining floor area may have been used.

**1.4 Parking Stalls**

Total Parking Stalls in the Project:	58 (46 open space, unassigned stalls plus 12 covered garage stalls)
Number of Guest Stalls in the Project:	18 open space stalls
Number of Parking Stalls Assigned to Each Unit:	1 for each of 16 units; 2 for each of 12 units (garage and open space tandem stall)
Attach <b>Exhibit C</b> specifying the Parking Stall number(s) assigned to each unit and the type of parking stall(s) (regular, compact or tandem and indicate whether covered or open).	
If the Developer has reserved any rights to assign or re-assign parking stalls, describe such rights. See <b>Exhibit D</b>	

**1.5 Boundaries of the Units**

Boundaries of the unit: In this report, a "unit" is sometimes described as an "Apartment." See <b>Exhibit E</b> for a description of the unit boundaries.
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**1.6 Permitted Alterations to the Units**

Permitted alterations to the unit (if the unit is defined as a non-physical or spatial portion of the project, also describe what can be built within such portion of the project):
See <b>Exhibit F</b>

**1.7 Common Interest**

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

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

<input checked="" type="checkbox"/>	Swimming pool
<input type="checkbox"/>	Laundry Area
<input type="checkbox"/>	Storage Area
<input type="checkbox"/>	Tennis Court
<input checked="" type="checkbox"/>	Recreation Area (Possible Future Development/See <b>Exhibit H</b> )
<input checked="" type="checkbox"/>	Trash chute/Enclosure(s)
<input type="checkbox"/>	Exercise Room
<input type="checkbox"/>	Security Gate
<input type="checkbox"/>	Playground
<input checked="" type="checkbox"/>	Other (describe): See <b>Exhibit H</b>

**1.9 Common Elements**

Common Elements: Common elements are those parts of the condominium project other than the individual units and any other real estate for the benefit of unit owners. Although the common elements are owned jointly by all unit owners, those portions of the common elements that are designated as limited common elements (see Section 1.10 below) may be used only by those units to which they are assigned. In addition to the common facilities described in Section 1.8 above, the common elements for this project, as described in the Declaration, are set forth below.

Described in **Exhibit I**.

Described as follows:

Common Element	Number
Elevators	6
Stairways	12 (1 main stairway per building plus 1 emergency stairway per building serving penthouse floors only)
Trash Chutes / Enclosures	5 (exterior)

**1.10 Limited Common Elements**

Limited Common Elements: A limited common element is a portion of the common elements that is reserved for the exclusive use of one or more but fewer than all units in the project.

Described in **Exhibit J**.

Described as follows:

**1.11 Special Use Restrictions**

The Declaration and Bylaws may contain restrictions on the use and occupancy of the units. Restrictions for this project include, but are not limited to, those described below.

<input checked="" type="checkbox"/>	Pets: See <b>Exhibit K</b>
<input type="checkbox"/>	Number of Occupants:
<input checked="" type="checkbox"/>	Other: See <b>Exhibit K</b>
<input type="checkbox"/>	There are no special use restrictions.

**1.12 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 a unit in the project. Encumbrances shown may include blanket liens which will be released prior to conveyance of a unit (see Section 5.3 on Blanket Liens).

**Exhibit L** describes the encumbrances against title contained in the title report described below.

Date of the title report: March 24, 2011; Revised April 14, 2011

Company that issued the title report: Title Guaranty of Hawaii, Inc.



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

Uses Permitted by Zoning:				
	Type of Use	No. of Units	Use Permitted by Zoning	Zoning
<input checked="" type="checkbox"/>	Residential	27 units	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	R-10
<input type="checkbox"/>	Commercial		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Mix Residential/Commercial		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Hotel		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Timeshare		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Ohana		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Industrial		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Agricultural		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Recreational		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input checked="" type="checkbox"/>	Other (specify) Clubhouse	1 unit	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	R-10
Is/Are this/these use(s) specifically permitted by the project's Declarations or Bylaws?			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Variances to zoning code have been granted.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Describe any variances that have been granted to zoning code.			N/A	

### 1.14 Other Zoning Compliance Matters

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

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

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

**1.15 Conversions**

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

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

**1.16 Project In Agricultural District**

<p><b>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii?</b>  <b>If answer is "Yes", provide information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable state and county land use laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation.</p>	
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable county real property tax laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation and state whether there are any penalties for noncompliance.</p>	
<p>Other disclosures and information:</p>	

**1.17 Project with Assisted Living Facility**

<p><b>Does the project contain any assisted living facility units Subject to Section 321-11(10), HRS?</b>  <b>If answer is "Yes", complete information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Licensing requirements and the impact of the requirements on the costs, operations, management and governance of the project.</p>	
<p>The nature and the scope of services to be provided.</p>	
<p>Additional costs, directly attributable to the services, to be included in the association's common expenses.</p>	
<p>The duration of the provision of the services.</p>	
<p>Other possible impacts on the project resulting from the provision of the services.</p>	
<p>Other disclosures and information.</p>	

## 2. PERSONS CONNECTED WITH THE PROJECT

<b>2.1 Developer(s)</b>	Name: Regency Villas, LLC, a Hawaii limited liability company P.O. Box 101 Riverton, Utah 84065 Business Phone Number: (801) 541-7025 E-mail Address: <a href="mailto:GStuart@commercecrg.com">GStuart@commercecrg.com</a>
Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary).	<b>Manager:</b> J. Nathan Hale  <b>Members:</b> Nathan Hale Investments, LLC, a Utah limited liability company Mai Ke Kula, LLC, a Hawaii limited liability company
<b>2.2 Real Estate Broker</b>	Name: Kauai Heritage Properties, LLC Business Address: P.O. Box 69 Koloa, Hawaii 96756 Business Phone Number: (808) 742-1191 E-mail Address: <a href="mailto:Hannah@kauaihp.com">Hannah@kauaihp.com</a>
<b>2.3 Escrow Depository</b>	Name: Title Guaranty Escrow Services, Inc. Business Address: 235 Queen St, Honolulu, HI 96813 Business Phone Number: (800) 521-0211 E-mail Address: <a href="mailto:main@tghawaii.com">main@tghawaii.com</a>
<b>2.4 General Contractor</b>	Name: NA Business Address:  Business Phone Number: E-mail Address:
<b>2.5 Condominium Managing Agent</b>	Name: Hawaiiana Management Company, Ltd. Business Address: 711 Kapiolani Boulevard, Suite 700 Honolulu, Hawaii 96813 Business Phone Number: (808) 593-9100 E-mail Address: <a href="mailto:phyllisok@hmcmtg.com">phyllisok@hmcmtg.com</a>
<b>2.6 Attorney for Developer</b>	Name: Case Lombardi & Pettit Nancy J. Youngren, Esq. Business Address: 737 Bishop Street, Suite 2600 Honolulu, Hawaii 96813 Business Phone Number: (808) 547-5400 E-mail Address: <a href="mailto:njy@caselombardi.com">njy@caselombardi.com</a>

### 3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

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

#### 3.1 Declaration of Condominium Property Regime

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

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	7/14/2010	2010-100198

Amendments to Declaration of Condominium Property Regime		
Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	1/31/2011	2011-024193

#### 3.2 Bylaws of the Association of Unit Owners

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

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	7/14/2010	2010-100199

Amendments to Bylaws of the Association of Unit Owners		
Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	8/22/2011	2011-137842

#### 3.3 Condominium Map

The Condominium Map contains a site plan and floor plans, elevations and layout of the condominium project. It also shows the floor plan, unit number and dimensions of each unit.

Land Court Map Number	
Bureau of Conveyances Map Number	4914
Dates of Recordation of Amendments to the Condominium Map:	

### 3.4 House Rules

The Board of Directors may adopt rules and regulations (commonly called "House Rules") to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the Developer. Changes to House Rules do not need to be recorded to be effective.	
The House Rules for this project:	
Are Proposed	<input type="checkbox"/>
Have Been Adopted and Date of Adoption	<input checked="" type="checkbox"/> April 1, 2011
Developer does not plan to adopt House Rules	<input type="checkbox"/>

### 3.5 Changes to the Condominium Documents

Changes to Condominium Documents: Changes to the Declaration, Bylaws and Condominium Map are effective only if they are duly adopted and recorded. Where permitted, the minimum percentages of the common interest that must vote for or give written consent to changes to the Declaration, Bylaws and Condominium Map are set forth below. The percentages for any individual condominium project may be more than the minimum set by law if the Declaration or Bylaws for the project so provide.		
Document	Minimum Set by Law	This Condominium
Declaration	75%	See <b>Exhibit N</b>
Bylaws	67%	See <b>Exhibit N</b>

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

<input type="checkbox"/>	No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).
<input checked="" type="checkbox"/>	Developer has reserved the right to change the Declaration, Bylaws, Condominium Map and House rules (if any) and to add to or merge the project or to develop the project in one or more phases, and such rights are summarized as follows:  See <b>Exhibit O</b>

## 4. CONDOMINIUM MANAGEMENT

### 4.1 Management of the Common Elements

<p><b>Management of the Common Elements:</b> The Association of Unit Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.</p>	
<p>The Initial Condominium Managing Agent for this project is (check one):</p>	
<input checked="" type="checkbox"/>	Not affiliated with the Developer
<input type="checkbox"/>	None (self-managed by the Association)
<input type="checkbox"/>	The Developer or an affiliate of the Developer
<input type="checkbox"/>	Other (explain)

### 4.2 Estimate of the Initial Maintenance Fees

<p><b>Estimate of the Initial Maintenance Fees:</b> The Association will make assessments against your unit to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your unit and the unit may be sold through a foreclosure proceeding. Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided. See Special Disclosure at <b>Exhibit P</b></p> <p><b>Exhibit P</b> contains a breakdown of the estimated annual maintenance fees and the monthly estimated maintenance fee for each unit, certified to have been based on generally accepted accounting principles, with the Developer's statement as to when a unit owner shall become obligated to start paying the unit owner's share of the common expenses.</p>
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### 4.3 Utility Charges to be Included in the Maintenance Fee

<p>If checked, the following utilities are included in the maintenance fee:</p>	
<input checked="" type="checkbox"/>	Electricity for the common elements
<input type="checkbox"/>	Gas for the common elements
<input checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer
<input type="checkbox"/>	TV cable
<input checked="" type="checkbox"/>	Other (specify) Private Trash Service

### 4.4 Utilities to be Separately Billed to Unit Owner

<p>If checked, the following utilities will be billed to each unit owner and are not included in the maintenance fee:</p>	
<input checked="" type="checkbox"/>	Electricity for the Unit only
<input type="checkbox"/>	Gas for the Unit only
<input type="checkbox"/>	Water
<input type="checkbox"/>	Sewer
<input checked="" type="checkbox"/>	TV cable
<input type="checkbox"/>	Other (specify)

## 5. SALES DOCUMENTS

### 5.1 Sales Documents Filed with the Real Estate Commission

Sales Documents on file with the Commission include, but are not limited to, the following:	
<input checked="" type="checkbox"/>	Specimen Sales Contract <b>Exhibit Q</b> contains a summary of the pertinent provisions of the sales contract. Including but not limited to any rights reserved by the Developer.
<input checked="" type="checkbox"/>	Escrow Agreement dated: November 8, 2010 Name of Escrow Company: Title Guaranty Escrow Services, Inc. <b>Exhibit R</b> contains a summary of the pertinent provisions of the escrow agreement.
<input type="checkbox"/>	Other

### 5.2 Sales to Owner-Occupants

If this project contains three or more residential units, the Developer shall designate at least fifty percent (50%) of the units for sale to Owner-Occupants.

<input checked="" type="checkbox"/>	The sales of units in this project are subject to the Owner-Occupant requirements of Chapter 514B. See <b>Exhibit S</b> .
<input type="checkbox"/>	Developer has designated the units for sale to Owner-Occupants in this report. See Exhibit _____.
<input checked="" type="checkbox"/>	Developer has or will designate the units for sale to Owner-Occupants by publication.

### 5.3 Blanket Liens

Blanket Liens: A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project or more than one unit that secures some type of monetary debt (such as a loan) or other obligation. Blanket liens (except for improvement district or utility assessments) must be released as to a unit before the developer conveys the unit to a purchaser. The purchaser's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the unit to the purchaser.

<input type="checkbox"/>	There are <u>no blanket liens</u> affecting title to the individual units.
<input checked="" type="checkbox"/>	There are <u>blanket liens</u> that may affect title to the individual units.

Type of Lien	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
Mortgage	If the Developer places a blanket mortgage on the project, the buyer's interest under a sales contract will be subordinate to the interest of the mortgagee under such a mortgage. This means, among other things, that if the Developer defaults under the mortgage, the mortgagee may take over the project, cancel the sales contracts and refund the buyer's deposits, less escrow cancellation fees, and the buyer shall have no further interest in the project.

### 5.4 Construction Warranties

Construction Warranties: Warranties for individual units and the common elements, including the beginning and ending dates for each warranty (or the method of calculating them), are as set forth below:

Building and Other Improvements: None. Units will be sold "as-is"
Appliances: The Developer makes no warranty as to appliances or other consumer products installed in any Unit or in the common elements. If there are applicable manufacturer's or dealer's warranties relating to such appliances or other consumer products, the Developer will endeavor to assign and pass on to each Unit owner the benefit of such warranties.



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

Status of Construction: All of the units were constructed in 2008
Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.
Completion Deadline for any unit not yet constructed, as set forth in the sales contract: NA
Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract: NA

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

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

<input type="checkbox"/>	The Developer hereby declares by checking the box to the left that it shall use its own funds to complete the construction of the condominium project by the date indicated in Section 5.5 of this report, and the Developer, pursuant to its own analysis and calculations, certifies that it has sufficient funds to complete the construction of the condominium project. If the box is checked, Sections 5.6.2, which follow below, will not be applicable to the project.
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**5.6.2 Purchaser Deposits Will Be Disbursed Before Closing**

Hawaii law provides that, if certain statutory requirements are met, purchaser deposits in escrow under a binding sales contract may be used before closing to pay for certain project costs. For this project, the Developer indicates that purchaser deposits may be used for the following purposes (check applicable box):	
<input type="checkbox"/>	For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person; or
<input type="checkbox"/>	For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses.

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

<p><b>Box A</b> <input type="checkbox"/></p>	<p>The Developer has submitted all information and documents required by law and the Commission prior to the disbursement of purchaser deposits before closing. This means that the Developer may use such deposits before closing. If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>If Box A is checked, you should read and carefully consider the following notice, which is required by law:</p> <p><b><u>Important Notice Regarding Your Deposits:</u> Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.</b></p>
<p><b>Box B</b> <input type="checkbox"/></p>	<p>The Developer has <b>not</b> submitted all information and documents required by law and the Commission, and, until all such information and documents are submitted, thus, the Developer cannot use purchaser deposits.</p> <p>If the Developer later submits all information and documents required by law and the Commission for the use of purchaser deposits, then the Developer must provide an amendment to this report or an amended developer's public report to each purchaser who has signed a sales contract. At such time, the <b><u>Important Notice Regarding Your Deposits</u></b> set forth immediately above will apply to all purchasers and will be restated in the amendment to this report or an amended developer's public report. When an effective date for such an amendment or an amended developer's public report is issued, <b>you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment.</b> (This, however, does not affect your right to rescind for material changes or any other right you may have to rescind or cancel the sales contract, as described in Section 5.8 below.) If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>You should understand that, although the <b><u>Important Notice Regarding Your Deposits</u></b> set forth above does not currently apply to you, it might apply to you in the future, and, therefore, you should read and carefully consider it now to ensure that you understand the risk involved in deciding whether to proceed with your purchase.</p>

**Material House Bond.** If the Developer has submitted to the Commission a completion or performance bond issued by a material house instead of a surety as part of the information provided prior to the use of purchaser deposits prior to closing or conveyance of a unit, the Developer shall disclose the same below and disclose the impact of any restrictions on the Developer's use of purchaser deposits.

## 5.7 Rights Under the Sales Contract

Before signing the sales contract, prospective purchasers should carefully review all documents relating to the project. These include but are not limited to the documents listed below. Items 2, 3 and 4 are made a part of this public report, as well as Item 5, if any, and are being delivered to you with this report.

**1. Developer's Public Report**

**2. Declaration of Condominium Property Regime (and any amendments)**

**3. Bylaws of the Association of Unit Owners (and any amendments)**

**4. Condominium Map (and any amendments)**

5. House Rules, if any

6. Escrow Agreement

7. Hawaii's Condominium Property Act (Chapter 514B, HRS, as amended) and Hawaii Administrative Rules (Chapter 16-107, adopted by the Real Estate Commission, as amended), provided that rules and regulations under Chapter 514B have not yet been adopted.

8. Other: All documents as provided in Exhibit L.

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

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

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

## 5.8 Purchaser's Right to Cancel or Rescind a Sales Contract

A purchaser's right to cancel a sales contract or to rescind a sales contract may arise under varying circumstances. In the sections below, some circumstances that will give rise to a purchaser's right to cancel or rescind are described, together with what a purchaser must do if the purchaser wishes to exercise any of the rights.

### 5.8.1 When a Sales Contract becomes Binding and Purchaser's 30-Day Right to Cancel a Sales Contract

A sales contract signed by a purchaser and the developer will not become binding on a purchaser or the Developer until the following events have taken place:

- (1) The purchaser has signed the sales contract.
- (2) The Developer has delivered to the purchaser a true copy of the developer's public report with an effective date issued by the Commission, together with all amendments to the report as of the date of delivery, and the project's recorded Declaration and Bylaws, House Rules (if any), the Condominium Map and any amendments to them to date (all of which are a part of the developer's public report). If it is impracticable to include a letter-sized Condominium Map, the Developer must provide written notice of an opportunity to examine the Condominium Map.
- (3) The Developer has delivered to the purchaser a notice of the purchaser's 30-day cancellation right on a form prescribed by the Commission.
- (4) The purchaser does at least one of the following:
  - (a) Waives the purchaser's right to cancel the sales contract within 30 days from receipt of the notice of the purchaser's 30-day cancellation right; or

- (b) Allows the 30-day cancellation period to expire without exercising the right to cancel; or
- (c) Closes the purchase of the unit before the 30-day cancellation period expires.

The purchaser or the Developer may cancel the sales contract at any time during the 30-day cancellation period, and the sales contract will be canceled and the purchaser's deposits returned to the purchaser, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

### **5.8.2 Right to Cancel a Sales Contract if Completion Deadline Is Missed**

In addition to the purchaser's 30-day cancellation right described in Section 5.8.1 above, when a sales contract is signed before completion of construction of a project, the purchaser will have the right to cancel if the unit is not completed by certain deadlines. In conversion projects, there must be a deadline for completion of any required repairs. Every sales contract shall contain an agreement of the Developer that the completion of construction shall occur on or before the completion deadline, and that completion deadline is set forth in this report in Section 5.5. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. Upon a cancellation, the purchaser's deposits shall be refunded, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.00.

### **5.8.3 Purchaser's Right to Rescind a Binding Sales Contract After a Material Change**

If a "material change" in a project occurs after a purchaser has signed a sales contract that has become binding, the purchaser will have a 30-day right to rescind after notification and description of the material change. A material change is defined in the Condominium Property Act to be any change that "directly, substantially and adversely affects the use or value of (1) a purchaser's unit or appurtenant limited common elements; or (2) those amenities of the project available for the purchaser's use."

The purchaser will be informed of the material change by the developer on a form prescribed by the Commission containing a description of the material change.

After notice of the material change, the purchaser may waive the right to rescind by:

- (1) Checking the waiver box on the rescission form; or
- (2) Letting the 30-day rescission period expire, without taking any action to rescind; or
- (3) Closing the purchase of the unit before the 30-day rescission period expires.

The rescission form must be signed by all purchasers of the affected unit and delivered to the developer no later than midnight of the 30th calendar day after the purchasers received the rescission form from the developer. Purchasers who validly exercise the right of rescission shall be entitled to a prompt and full refund of any moneys paid.

A rescission right shall not apply in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the project's Declaration.

These provisions shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies.

## 6. MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT

1. See Exhibit T.

2. Rights of Merger. Declarant hereby reserves the right, but not the obligation, to merge the Project with other projects in the vicinity, to permit the joint use of the common elements of the developments by all the owners of the units in the merged developments (hereafter, the "merged project"). The Declarant may implement the merger without the consent, approval or joinder of the unit owners upon the recording of a certificate of merger; provided, however, that any such merger shall require the written approval of the Declarant's mortgagee, if any. The certificate of merger may provide for a merger of the common elements of the Community and the other developments so that each unit owner in the merged project has an undivided ownership interest in the common elements of the merged project. In the event of a merger of common elements, the common interests of each unit in the merged project shall be adjusted in accordance with the merger provisions in the projects' declarations so that the total common interest of all units in the resulting merged project totals one hundred percent. If the certificate of merger does not provide for a merger of the common elements, the common elements and common interests of the merged project shall remain separate, but shall be subject to the provisions set forth in the respective declarations with respect to merger. Declarant hereby reserves the right from time to time, upon the merger of the Community with another development as provided herein to record an amendment of this Declaration that adjusts and recomputes the undivided common interest appurtenant to each unit as provided for in the certificate of merger.

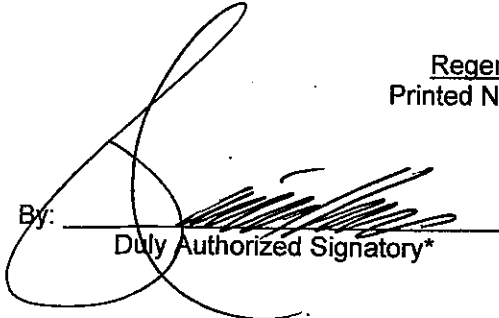
3. Right to Enter into Agreements for Recreational Facilities. The Declarant may enter into one or more license agreements with a limited number of non-owner guests to use the recreational common elements of the Project, with or without charge, including, without limitation, swimming pool, spa and other recreational amenities available to all Unit owners. The Declarant further reserves the right, but not the obligation, to submit the Recreational Facilities to a Poipu Kai Recreational Facilities Maintenance Declaration and form a Poipu Kai Recreational Facilities Maintenance Association, whose members shall be the Association and the Association of Apartment Owners of The Regency Villas at Poipu Kai, or provide for shared use by both associations in any other manner in Declarant's sole discretion.

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

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

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

Regency Villas, LLC  
Printed Name of Developer

By:   
Duly Authorized Signatory\*

June 2, 2011  
Date

J. Nathan Hale, Manager  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

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

## EXHIBIT A

### Section 1.2 -- Buildings and Other Improvements

#### DESCRIPTION OF BUILDINGS

The Community shall contain twenty eight (28) Units in six (6) buildings. Each building is identified on the Condominium Map by a letter designation, A through F. Each building has three (3) floors. The Units and buildings shall be constructed principally of concrete, metal, wood, glass and related building materials.

#### DESCRIPTION OF UNITS

There are fifteen (15) different unit types in the Community, designated as Unit types D, D-1, D-2, E, ER, E-1, ER-1, E-2, E, F, FR, F-1, F-2, F-3 and Clubhouse. A description of each unit type is as follows:

1. Unit Type D. The Unit is a single story, ground floor Unit containing eleven (11) rooms, consisting of three (3) bedrooms, one (1) den/bedroom, three (3) full bathrooms, one (1) half bathroom, one (1) living room, one (1) kitchen/dining room, and one (1) laundry room. The Unit also contains one (1) lanai. The Unit has a net living area of 2,114 square feet, and a net lanai area of 667 square feet, for a net total area of 2,781 square feet.
2. Unit Type D-1. The Unit is a single story, ground floor Unit containing eight (8) rooms, consisting of three (3) bedrooms, three (3) bathrooms, one (1) living/dining room, and one (1) kitchen. The Unit also contains one (1) lanai. The Unit has a net living area of 1,616 square feet, and a net lanai area of 315 square feet, for a net total area of 1,931 square feet.
3. Unit Type D-2. The Unit is a single story, ground floor Unit containing eight (8) rooms, consisting of three (3) bedrooms, three (3) bathrooms, one (1) living/dining room, and one (1) kitchen. The Unit also contains one (1) lanai. The Unit has a net living area of 1,644 square feet, and a net lanai area of 315 square feet, for a net total area of 1,959 square feet.
4. Unit Type E. The Unit is a single story, second floor Unit containing eight (8) rooms, consisting of three (3) bedrooms, three (3) bathrooms, one (1) living/dining room, and one (1) kitchen. The Unit also contains one (1) lanai. The Unit has a net living area of 1,616 square feet, and a net lanai area of 403 square feet, for a net total area of 2,019 square feet.
5. Unit Type ER. The Unit is a single story, second floor Unit containing eight (8) rooms, consisting of three (3) bedrooms, three (3) bathrooms, one (1) living/dining room, and one (1) kitchen. The Unit also contains one (1) lanai. The Unit has a net living area of 1,616 square feet, and a net lanai area of 403 square feet, for a net total area of 2,019 square feet.
6. Unit Type E-1. The Unit is a single story, second floor Unit containing eight (8) rooms,

consisting of three (3) bedrooms, three (3) bathrooms, one (1) living/dining room, and one (1) kitchen. The Unit also contains one (1) lanai. The Unit has a net living area of 1,644 square feet, and a net lanai area of 403 square feet, for a net total area of 2,047 square feet.

7. Unit Type ER-1. The Unit is a single story, second floor Unit containing eight (8) rooms, consisting of three (3) bedrooms, three (3) bathrooms, one (1) living/dining room, and one (1) kitchen. The Unit also contains one (1) lanai. The Unit has a net living area of 1,644 square feet, and a net lanai area of 403 square feet, for a net total area of 2,047 square feet.
8. Unit Type E-2. The Unit is a single story, second floor Unit containing eight (8) rooms, consisting of three (3) bedrooms, three (3) bathrooms, one (1) living/dining room, and one (1) kitchen. The Unit also contains one (1) lanai. The Unit has a net living area of 1,616 square feet, and a net lanai area of 315 square feet, for a net total area of 1,931 square feet.
9. Unit Type E-3. The Unit is a single story, second floor Unit containing eight (8) rooms, consisting of three (3) bedrooms, three (3) bathrooms, one (1) living/dining room, and one (1) kitchen. The Unit also contains one (1) lanai. The Unit has a net living area of 1,644 square feet, and a net lanai area of 315 square feet, for a net total area of 1,959 square feet.
10. Unit Type F. The Unit is a single story, third floor Unit containing ten (10) rooms, consisting of three (3) bedrooms, one (1) study/bedroom, three (3) full bathrooms, one (1) half bathroom, one (1) living room, and one (1) kitchen/dining room. The Unit also contains three (3) lanais. The Unit has a net living area of 2,031 square feet, and a net lanai area of 752 square feet, and a net storage area of 28 square feet, for a net total area of 2,811 square feet.
11. Unit Type FR. The Unit is a single story, third floor Unit containing ten (10) rooms, consisting of three (3) bedrooms, one (1) study/bedroom, three (3) full bathrooms, one (1) half bathroom, one (1) living room, and one (1) kitchen/dining room. The Unit also contains three (3) lanais. The Unit has a net living area of 2,031 square feet, and a net lanai area of 752 square feet, and a net storage area of 28 square feet, for a net total area of 2,811 square feet.
12. Unit Type F-1. The Unit is a single story, third floor Unit containing eleven (11) rooms, consisting of three (3) bedrooms, one (1) study/bedroom, three (3) full bathrooms, one (1) half bathroom, one (1) living room, and one (1) kitchen/dining room. The Unit also contains four (4) lanais. The Unit has a net living area of 2,046 square feet, and a net lanai area of 896 square feet, and a net storage area of 28 square feet, for a net total area of 2,970 square feet.
13. Unit Type F-2. The Unit is a single story, third floor Unit containing eleven (11) rooms, consisting of three (3) bedrooms, one (1) study/bedroom, three (3) full bathrooms, one (1) half bathroom, one (1) living room, and one (1) kitchen/dining room. The Unit also contains three (3) lanais. The Unit has a net living area of 2,046 square feet, a net lanai area of 647 square feet, and a net storage area of 28 square feet, for a net total area of 2,721 square feet.



14. Unit Type F-3. The Unit is a single story, third floor Unit containing ten (10) rooms, consisting of three (3) bedrooms, one (1) study/bedroom, three (3) full bathrooms, one (1) half bathroom, one (1) living room, and one (1) kitchen/dining room. The Unit also contains three (3) lanais. The Unit has a net living area of 1,994 square feet, and a net lanai area of 622 square feet, and a net storage area of 28 square feet, for a net total area of 2,644 square feet.
15. Clubhouse. This Unit is a single story nonresidential, first floor Unit containing eight (8) rooms consisting of a lounge/lobby room, an exercise room, a workroom, a meeting room/office, a kitchen, a conference room, a one-half bath and a storage room. The Unit also contains a lanai. The Unit has a net living area of 2,201 square feet and a net lanai area of 578 square feet for a net total area of 2,779 square feet.

**LOCATION AND NUMBERING OF UNITS:**

Each Unit shall be designated by the Building Number ("A", "B", "C", "D", "E" and "F") followed by the a number corresponding to the floor location of the Unit (e.g., Unit B110 is a first floor unit located in Building B, etc.). The Unit numbers and locations are more fully illustrated on the Condominium Map.

**ACCESS TO COMMON ELEMENTS:**

Each Unit in the Community has immediate access to the Common Elements of the Community or to a walkway leading to the common elements of the Community.

**ACCESS TO A PUBLIC STREET:**

The Community will have direct access to Hoohu Road, a public road.

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE BUILDINGS AND OTHER IMPROVEMENTS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT B**

## Section 1.3 -- Unit Types and Sizes of Units

Unit Type	Quantity	BR/Bath	Net Living Area (sf)	Net Other Areas	Other Areas (lanai, garage, etc.)	Area
D	1	4/3½	2,114		667 (lanai)	2,781
D-1	4	3/3	1,616		315 (lanai)	1,931
D-2	4	3/3	1,644		315 (lanai)	1,959
E	1	3/3	1,616		403 (lanai)	2,019
ER	1	3/3	1,616		403 (lanai)	2,019
E-1	1	3/3	1,644		403 (lanai)	2,047
ER-1	1	3/3	1,644		403 (lanai)	2,047
E-2	4	3/3	1,616		315 (lanai)	1,931
E-3	4	3/3	1644		315 (lanai)	1,959
F	1	4/3½	2,031		752 (lanai) 28 (storage)	2,811
FR	1	4/3½	2,031		752 (lanai) 28 (storage)	2,811
F-1	2	4/3½	2,046		896 (lanai) 28 (storage)	2,970
F-2	1	4/3½	2,046		647 (lanai) 28 (storage)	2,721
F-3	1	4/3½	1,994		622 (lanai) 28 (storage)	2,644
Clubhouse	1	Nonresidential	2,201		578 (lanai)	2,779

Note regarding Net Living Areas: Throughout the Villas at Poipu Kai documentation, the area of individual units is generally expressed as "net living area" square footage. This measurement represents the architect's best estimate of the interior square footage of the unit as measured from the unit's perimeter walls, which are included in the unit. This measurement is based upon the plans for the construction of the unit and different architects performing the same measurement may obtain a larger or smaller result.

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE UNIT TYPES AND SIZES OF UNITS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY

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

## EXHIBIT C

### Section 1.4 – Designation of Garage and/or Assignment of Parking Stall to Unit

#### **PARKING STALLS AND GARAGES:**

There are forty six (46) parking stalls and twelve (12) covered garages in the Community. The parking stalls are not striped but are of the approximate dimensions and locations as shown on the Condominium Map. The parking stalls do not include designations indicating whether such stalls are compact or standard in size and/or adaptable in nature.

#### **DESIGNATION OF GARAGE AND TANDEM STALL TO UNIT:**

There are twelve (12) garages in the Community, as shown on the Condominium Map. Six (6) are located in Building A and are designated Garages A1 through A6. Six (6) are located in Building F and are designated Garages F1 through F6. The following Units have each assigned to it, as Limited Common Elements appurtenant to the respective Unit, one (1) enclosed garage, together with one (1) uncovered tandem parking stall located adjacent to the garage.

The particular garage and tandem parking stalls that initially will be Limited Common Elements appurtenant to the particular Unit are described as follows:

<b>Garage and stall number</b>	<b>Unit number</b>
Garage A1 and stall 46	Clubhouse
Garage A2 and stall 45	Unassigned
Garage A3 and stall 44	A300
Garage A4 and stall 43	C300
Garage A5 and stall 42	Unassigned
Garage A6 and stall 41	B300
Garage F1 and stall 33	Unassigned
Garage F2 and stall 32	Unassigned
Garage F3 and stall 31	F100
Garage F4 and stall 30	F300
Garage F5 and stall 29	D300
Garage F6 and stall 28	E300

The Developer reserves the right to assign the Unassigned garages and adjoining stalls to Units.

#### **UNASSIGNED, UNCOVERED COMMON ELEMENT PARKING STALLS**

Other than the garage and tandem stalls assigned to twelve (12) Units as described above, each of the remaining sixteen (16) Units will have the right to use one (1) unassigned Common Element uncovered, unmarked parking stall as shown on the Condominium Map. The remaining eighteen (18) Common Element uncovered, unmarked parking stalls may be used by guests. The 34 Common Element parking stalls shall be administered by the Managing Agent through a parking program. Some of the guest stalls may also be used by Owners at the

discretion of the Association and the Managing Agent. Common Element parking stall Nos. 39 and 40 are handicapped stalls.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE PARKING STALL ASSIGNMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

## EXHIBIT D

(Section 1.4 -- Reserved Right to Assign or Re-Assign Parking Stalls)

Declarant shall have the reserved right, to effect such modifications to the Units and Common Elements in the Community and/or to execute, record and deliver any amendments to the Declaration, the Condominium Map as well as the Bylaws and rules and regulations promulgated thereunder, as may be necessary or required to effect compliance by the Community, the Association, or by Declarant with laws which apply to the Community, including, without limitation, the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq., including any and all rules and regulations promulgated thereunder, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§ 12101 et seq., including any and all rules and regulations promulgated thereunder. Without limitation, Declarant may amend the Declaration (and, when appropriate, the Condominium Map) in any manner required to retrofit guest parking stalls, including without limitation any adaptable parking stall, so they are suited for use by persons with disabilities and to assign such stalls as appurtenant Limited Common Elements to any one or more of the apartments intended for use by persons with disabilities upon substitution therefor of alternate guest parking stall(s). Such assignment may be made to Units, the Owners of which Declarant, in its sole judgment, determines require a parking stall accessible to persons with disabilities. Such reassignment is hereby specifically declared not to constitute a material amendment of this Declaration or, when appropriate, the Condominium Map. All costs of such reassignment shall be borne as determined by Declarant. Notwithstanding the foregoing, Declarant also reserves the right, but does not hereby undertake any obligation, to interchange guest parking stalls and the disabled guest parking stalls to accommodate Unit Owners in need of such parking. The rights of Declarant under this Section may be assigned to the Association, without the consent of joinder of the Board.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE RESERVED RIGHT TO ASSIGN OR RE-ASSIGN PARKING STALLS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

## **EXHIBIT E**

### **Section 1.5 -- Boundaries of the Units**

Each Unit includes all walls, columns and partitions which are not load-bearing within the Unit's perimeter walls, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit and all other portions of the walls, floors, or ceilings, are a part of the common element. Each Unit shall also include all inner decorated or finished surfaces of all ceilings, doors, door frames, and window frames along the perimeters, all windows along the perimeters, the air space within the perimeter, the lanais, if any, shown on the Condominium Map to the inner decorated or finished surfaces of the perimeter walls of such lanais and to the interior edge of the exterior railings or other boundaries of such lanais, the entry court or area, if any, shown on the Condominium Map to the inner decorated or furnished surfaces of the perimeter walls of such entry court or area and to the interior edge of other boundaries of such entry court or area, all rollers, locks, handles, tracks, and appurtenant hardware associated with all windows, and doors, and all sliding or swinging screen doors, glass doors, and all glass window screens and all fixtures originally installed in the Unit, and all pipes, plumbing (including water heaters), wires, conduits and other utility or service lines and facilities servicing only the Unit. The Units shall not include the undecorated or unfinished surfaces of the perimeter party or non-party walls, the undecorated or unfinished surfaces of the doors, door frames and window frames along the perimeters, the interior load-bearing columns, girders, beams and walls, the undecorated or unfinished surfaces of the floors and ceiling surrounding each Unit, the exterior edge of the exterior railings or other exterior boundaries of the lanais, if any, shown on the Condominium Map, or any pipes, shafts, wires, conduits or other utility or service lines running through a Unit which are utilized for or serve more than one Unit, all of which are deemed Common Elements as provided in the Declaration. If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element appurtenant solely to that Unit, and any portion thereof serving more than one Unit or any portion of thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE BOUNDARIES OF THE UNITS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT F**  
Section 1.6 -- Permitted Alterations

1. Except as provided in the Declaration, repair, reconstruction, restoration, replacement of the Community or any building or other structure or unit within the Community or construction of any additional building or other structure or structural alteration or addition thereto, different in any material respect from the Condominium Map shall be undertaken by the Association or any Unit Owners only pursuant to an amendment of the Declaration. Except as expressly provided otherwise in the Declaration, any such amendment shall be duly executed by or pursuant to the affirmative vote of seventy-five percent (75%) of the Unit Owners and accompanied by the written consent of the eligible holders of first mortgage (as hereinafter defined) on Units to which at least sixty-seven percent (67%) of the votes of Units subject to mortgages held by such eligible holders are allocated, and in accordance with complete plans and specifications therefor first approved in writing by the Board. Promptly upon completion of such repair, reconstruction, restoration, replacement, construction, alteration or addition, the Association shall duly record and file of record such amendment together with a complete set of floor plans of the Community as so altered, certified as-built by a licensed, registered architect or professional engineer.

2. Any alterations or additions solely within a Unit or within a limited common element appurtenant to and for the exclusive use of a Unit, another Unit, or more than one Unit, shall require only the written approval thereof, including the plans thereof, by the Owners of such Unit(s), by the holders of first mortgage liens affecting such Unit(s) (if the lien holder require such approval), by the appropriate agencies of the State of Hawaii and the County if such agencies so require, and by the Board (which approval shall not be unreasonably or arbitrarily withheld or delayed), and by all other Owners thereby directly affected (as determined in a reasonable manner by the Board); provided, however, that the Board shall always have the right to disapprove a proposed addition or alteration that the Board reasonably determines could jeopardize the soundness or safety of the Property, impair any easement, or interfere with or deprive any nonconsenting Owner of the use or enjoyment of any part of the property. Upon completion of such alterations or additions, the Unit Owner(s) directly affected shall duly Record and file of record an amendment to the Declaration together with the approved plans showing only such alterations or additions within a Unit space or within a limited common element as aforesaid. Such amendment to the Declaration need only be executed by the Unit Owner(s) directly affected and their first mortgagees, as may be required. Notwithstanding the foregoing, no alteration of a Unit may be made that causes or requires a protrusion through a common element wall.

3. Notwithstanding anything to the contrary contained herein but subject to (1) the Easements and other rights and licenses reserved for the benefit of other Unit Owners, (2) compliance with the Design Guidelines, and (3) such other limitations specified below, each Unit Owner has the following rights:

(a) Each Owner has the right to make any of the following changes, additions and Improvements solely within the Owner's Unit or limited common element that such Owner controls, subject to the Owner's compliance with the Design Guidelines:

(i) To install, maintain, remove, and rearrange partitions and other structures from time to time within the Unit or limited common element; provided that the Owner shall not have the right to enclose any exterior lanai;



(ii) To finish, change, or substitute any plumbing, electrical, or other fixtures attached to the ceilings, floors, or walls as appropriate for the use of the Unit or limited common element;

(iii) To decorate, paint, repaint, wallpaper or otherwise change the appearance of any walls, floors, and ceilings of the Unit or limited common element that are not readily visible from outside the Unit or limited common element;

(iv) To tile, finish, carpet, re-carpet, and install, change, or remove other flooring in the Unit or limited common element which is not readily visible from outside the Unit or limited common element, subject to the limitation on the installation of "hard" flooring as may be contained in the Design Guidelines; or

(v) To make such changes, additions and improvements to the Unit or limited common elements to facilitate handicapped accessibility within the Unit or limited common element.

(b) Except as otherwise provided in the Declaration, the Bylaws or the Design Guidelines, an Owner may make "nonmaterial structural additions" to the common elements or to an Owner's unit as the foregoing term is used in and subject to the provisions of Section 514B-140(c) of the Act.

(c) The Owner of two (2) Units that are separated by a common element that is a wall, floor, or a ceiling, or whose lanai or limited common elements are separated from each other or from such Units by a common element that is a wall, floor, or ceiling, has the right and an easement, subject to Board approval and compliance with the Design Guidelines, to change or remove all or part of the intervening wall, floor, and/or ceiling. The Owner also has the right, subject only to Board approval and compliance with the Design Guidelines, to install doors, stairways, and other Improvements in such opening or openings in the intervening common element, to seal hallways or other openings, and to make other reasonable changes or additions which do not adversely affect the structural integrity of the Unit or limited common element or the building in which such Unit is situated. Before terminating its common ownership of any of the adjacent Units, the Owner must restore the common element wall, floor, ceiling, hallway, and/or other openings to substantially the same condition as before the change or removal, unless the new Owners each agree otherwise in writing.

(d) An Owner who owns any two (2) adjacent Units has the right, subject only to Board approval and compliance with the Design Guidelines: (i) to consolidate the Units into a single Unit; and (ii) to make any common element walls, floors or ceilings between the Units part of the Unit or its limited common elements. The Common Interest of the newly created Unit will be equal to the sum of the Common Interests of the Units being consolidated.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE PERMITTED ALTERATIONS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS.

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

**EXHIBIT G**  
Section 1.7 -- Common Interest

<b>Unit No.</b>	<b>Unit Type</b>	<b>Net Living Area (sf)</b>	<b>Net Lanai Area (sf)</b>	<b>Net Storage Area (sf)</b>	<b>Net Total Area (sf)</b>	<b>% Common Interest</b>
A100	Clubhouse	2,201	578	0	2,779	0.045013
A210	ER-1	1,644	403	0	2,047	0.033156
A211	ER	1,616	403	0	2,019	0.032702
A300	FR	2,031	752	28	2,811	0.045530
B110	D-1	1,616	315	0	1,931	0.031277
B111	D-2	1,644	315	0	1,959	0.031730
B210	E-2	1,616	315	0	1,931	0.031277
B211	E-3	1,644	315	0	1,959	0.031730
B300	F-1	2,046	896	28	2,970	0.048106
C110	D-1	1,616	315	0	1,931	0.031277
C111	D-2	1,644	315	0	1,959	0.031730
C210	E-2	1,616	315	0	1,931	0.031277
C211	E-3	1,644	315	0	1,959	0.031730
C300	F-1	2,046	896	28	2,970	0.048106
D110	D-1	1,616	315	0	1,931	0.031277
D111	D-2	1,644	315	0	1,959	0.031730
D210	E-2	1,616	315	0	1,931	0.031277
D211	E-3	1,644	315	0	1,959	0.031730
D300	F-2	2,046	647	28	2,721	0.044074
E110	D-1	1,616	315	0	1,931	0.031277
E111	D-2	1,644	315	0	1,959	0.031730
E210	E-2	1,616	315	0	1,931	0.031277
E211	E-3	1,644	315	0	1,959	0.031730
E300	F-3	1,994	622	28	2,644	0.042825
F100	D	2,114	667	0	2,781	0.045044
F210	E	1,616	403	0	2,019	0.032702
F211	E-1	1,644	403	0	2,047	0.033156
F300	F	2,031	752	28	2,811	0.045530

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE COMMON INTEREST CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

## **EXHIBIT H**

### **Section 1.8 -- Recreational and Other Common Facilities**

The "Recreational Facilities" may include a pool, spa, and barbeque area(s), as shown on the Condominium Map. The depiction of the Recreation Facilities shown on the Condominium Map is shown for general information only and may not reflect the actual location of the Recreation Facilities, any of which may be relocated by Declarant. Declarant has reserved the right to improve such areas with other recreational facilities, which may include, but are not limited to, picnic tables and additional barbeque area(s), all of which upon such construction shall be Common Elements of the Community. The Recreational Facilities do not include the Clubhouse Unit which is a privately owned Unit. Its use as an accessory to the residential units is governed by the Clubhouse Unit owner.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE RECREATIONAL AND OTHER COMMON FACILITIES CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT I**  
Section 1.9 -- Common Elements

**COMMON ELEMENTS**

The Common Elements of the Community shall specifically include, but are not limited to, the following:

1. The Land and those improvements to the Land, excluding the Units, but including without limitation the Community Access Road, exterior lighting fixtures located along and/or adjacent to the Community Access Road, the common area landscaping and similar improvements.
2. All the benefits, if any, inuring to the land or to the Community from all easements, if any, shown on the Condominium Map or listed in Exhibit "A" attached to the Declaration of Condominium Property Regime.
3. All structural components, such as foundations, girders, columns, beams, floor slabs, supports, main walls, load-bearing walls, floors, ceilings (except the inner or decorated surfaces of such walls, floors and ceilings), roofs, exterior stairs and stairways, landings, railings, elevators, elevator lobbies, hallways, and unassigned storage areas, entrances and exits (other than the hallways and storage areas, entry courts or entry areas included in the definition of a unit) of the buildings and/or Units, exterior doors and door frames, exterior window frames, and other building appurtenances; provided, however, that all rollers, locks, handles, tracks and appurtenant hardware associated with all windows, doors and exterior garage doors, if any, and all sliding screen doors, sliding glass doors and all glass and window screens shall be the responsibility of the Unit owners and all other portions of the walls, floors, or ceilings, are a part of the Common Element. If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element appurtenant solely to that Unit, and any portion thereof serving more than one Unit or any portion of thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.
4. All yards, grounds, gardens, planters, plants, landscaping, sidewalks, pathways, curbs, mailbox stations, lamp, lamp posts, trash receptacle areas, trash enclosures, electrical rooms, refuse facilities and loading areas, which may be shown on the Condominium Map.
5. All fences and outdoor walls.
6. All drainage facilities or swales, including the pond feature and storm water storage area as shown on the Condominium Map, pipes, shafts, wires, conduits or other utilities or service lines running through a Unit which are utilized for or serve more than one Unit, if any, or other features of the Community.
7. All non-assigned uncovered parking stalls as shown on the Condominium Map. There are 46 parking stalls in the Community, of which 34 are Common Elements. The remaining 12 parking stalls are assigned to, and are Limited Common Elements appurtenant to 12 Units as shown on Exhibit "D." 16 Units in the Community each have the right to use one (1) unassigned Common Element stall. 18 Common Element stalls may be used by guests, or, at the discretion of the Association and Managing Agent, may be used by Unit Owners. There are a total of 2

Common Element parking stalls in the Community that are suited or adaptable for use by persons with disabilities. Guest stalls may be retrofitted for exclusive use by disabled persons.

8. Any and all apparatus and installations of common use and all other parts of the Community necessary or convenient to its existence, maintenance and safety, or normally in common use.

9. All ducts, electrical equipment, transformers, wiring, pipes and other central and appurtenant transmission facilities and installations over, under and across the Community, which are utilized by or serve more than one Unit or for services such as power, light, water, gas, sewer, drainage, telephone and radio and television signal distribution, if any.

10. All areas, rooms, spaces, structures, housings, chutes, shafts or facilities of the Community within or outside of the buildings, which are for common use or which serve more than one Unit, such as electrical, maintenance, service, security, machine, mechanical and equipment rooms and the equipment, machinery and facilities therein.

11. All other parts of the Community not included in the definition of a Unit, to the extent provided in the Declaration.

12. The Entry Sign Monument identifying the Community, which may be covered by a grant of easement in favor of the Association.

13. The "Recreational Facilities", which may include a pool, spa, and barbeque area(s), as shown on the Condominium Map. The depiction of the Recreation Facilities shown on the Condominium Map is shown for general information only and may not reflect the actual location of the Recreation Facilities, any of which may be relocated by Declarant. Declarant has reserved the right to improve such areas with other recreational facilities, which may include, but are not limited to, picnic tables and additional barbeque area(s), all of which upon such construction shall be Common Elements of the Community. The Recreational Facilities do not include the Clubhouse Unit which is a privately owned Unit. Its use as an accessory to the residential units is governed by the Clubhouse Unit owner.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE COMMON ELEMENTS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT J**  
Section 1.10 -- Limited Common Elements

**LIMITED COMMON ELEMENTS.**

The Limited Common Elements are those certain parts of the Common Elements which are designated and set aside for the exclusive use of certain Units as follows:

1. Each Unit shall have for its exclusive use one (1) mailbox bearing the same number as such Unit.
  
2. Each Unit shall have assigned to it the use of an air conditioner condensing unit located on the side of the building in which the Unit is located. Each owner shall be responsible for the repair, maintenance and replacement of the assigned air conditioner condensing unit and all appurtenant equipment, pipes and wiring, regardless of location.

Air conditioning units as shown on the Condominium Map are Limited Common Elements appurtenant to Units as follows:

<b>Unit No.</b>	<b>Air Conditioning Unit No.</b>
A100 (Clubhouse)	AC-A3 AC-A4
A210	AC-A2
A211	AC-A1
A300	AC-A5 AC-A6
B110	AC-B5
B111	AC-B6
B210	AC-B4
B211	AC-B3
B300	AC-B1 AC-B2
C110	AC-C2
C111	AC-C4
C210	AC-C3
C211	AC-C5
C300	AC-C1 AC-C6
D110	AC-D3
D111	AC-D5
D210	AC-D1
D211	AC-D2
D300	AC-D4

	AC-D6
E110	AC-E5
E111	AC-E2
E210	AC-E4
E211	AC-E1
E300	AC-E3 AC-E6
F100	AC-F5 AC-F6
F210	AC-F4
F211	AC-F3
F300	AC-F1 AC-F2

3. Each Unit will have exclusive use of a central vacuum canister located in unassigned storage areas within the respective buildings. Each owner shall be responsible for the repair, maintenance and replacement of the assigned central vacuum canister and all appurtenant equipment, pipes and wiring.

4. Certain Units have the exclusive use of assigned garages and adjacent tandem parking stalls, as more fully described in Exhibit "C."

5. If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a Unit (including all facilities, piping, condenser units or the other components of the air conditioning system servicing the Unit), any portion thereof serving only that unit is a Limited Common Element appurtenant solely to that Unit, and any portion thereof serving more than one Unit or any portion of thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.



THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE LIMITED COMMON ELEMENTS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.



## EXHIBIT K

### Section 1.11 -- Special Use Restrictions

1. Residential Purposes. The Units shall at all times be occupied and used only for residential purposes in accordance with applicable laws, this Declaration and the Bylaws, and for no other purposes. Notwithstanding the foregoing sentence, the Clubhouse Unit may be used for recreational and other accessory uses as allowed by the zoning regulations of the County and subject to rules and regulations established by the owner of the Clubhouse Unit.

2. Restrictions. The Units or any interest therein shall not be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any fractional ownership, fractional interest, timesharing purpose or under any timesharing plan, arrangement or program, including without limitation any so-called "vacation license," "travel club membership," or "time-interval ownership" arrangement. The terms "fractional ownership", "fractional interest", or "timesharing plan" as used in this Section shall be deemed (i) to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess a Unit rotates among various persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise; and (ii) not to include the rights of joint tenants, tenants in common, or tenants by the entirety to all use a Unit they own without limitation as to specific time periods, as owners of undivided interest in the Unit.

3. Limitation of Transfer of Short Term Ownership. The Unit Owners shall have the absolute right to sell, lease, rent or otherwise transfer their respective Units subject to all provisions of the Act and the Community Documents. Any lease or rental agreement of a Unit shall be in writing and shall provide that it shall be subject in all respects to the provisions of the Community Documents and that the failure of the lessee or tenant to comply with the terms of the Community Documents shall be a default under the lease or rental agreement.

4. Use of Unit. A Unit Owner shall not use his or her Unit and/or any appurtenant Limited Common Element for any purpose which will injure the reputation of the Community or suffer anything to be done or kept in his or her Unit or elsewhere in the Community which will (a) jeopardize the soundness of any building in the Community, (b) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants, (c) increase the rate of fire insurance on any structure or the contents of any structure, or (d) reduce the value of the Community or any structure in the Community.

5. Use of Parking Stalls. Use of those parking stalls, if any, which are not designated as Limited Common Elements appurtenant to any specific Unit, may be governed by rules and regulations adopted in accordance with the Bylaws to assure equitable use of the stalls by all Owners. The Board of Directors may install parking meters, gates, security devices, checkpoints and other equipment appropriate to this end and may issue stickers or adopt an allocation system. Adaptable stalls (stalls capable of being designated for use by disabled persons) may be retrofitted to limit their use to disabled persons.

6. Use of Recreational Facilities by Declarant. The Declarant on behalf of itself as the developer and not as a Unit owner, reserves the right to continue to use and enjoy the Recreational Facilities, without charge.

7. Use of Common Elements. Subject to the rights reserved by Declarant elsewhere in this Declaration or in the Bylaws and subject also to the exclusive or limited use of the Limited Common Elements that may be specified in this Declaration, each Unit Owner may use the Common Elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other Unit Owners, provided that the Board of Directors shall have the right:

(a) To change the use of the Common Elements upon approval of seventy-five percent (75%) of the Owners;

(b) On behalf of the Association, to lease or otherwise use for the benefit of the Association those Common Elements that, in accordance with Section 514B-38(5) of the Act, the Board determines are not actually used by any Unit Owners for a purpose permitted in this Declaration so long as it does not adversely affect Declarant's rights and interests in the Common Elements, provided that, unless the approval of sixty-seven percent (67%) of the Owners is obtained, such lease shall not have a term of more than five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) days' written notice; provided, however, that the foregoing approval requirement shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by Section 514B-140(d); and

(c) Provided it does not adversely affect Declarant's rights and interests in the Common Elements or Limited Common Elements, to lease or otherwise use for the benefit of the Association those parts of the Common Elements not falling within subsection (b) above, upon obtaining the approval of seventy-five percent of the Owners, including all directly affected Owners and in the case of Limited Common Elements, all Owners of Units to which such Limited Common Elements are appurtenant, and the approval of all mortgagees of record on Units with respect to which Owner approval is required, if such lease or use agreement would be in derogation of the interest of such mortgagees; provided, however, that the foregoing approval requirement shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by Section 514B-140(d); and

(d) To enact, amend and repeal rules and regulations reasonably restricting and regulating use of the Common Elements, provided that such rules and regulations shall be enacted, amended or repealed in accordance with and shall be consistent with the terms of the Community Documents, and shall not be in derogation of the rights reserved to Declarant in the Community Documents.

8. Lanais. Without limiting the generality of any other provision of this Declaration, the following provisions shall apply to lanais:

(a) Use of Lanais. Lanais shall be used only as outdoor living areas containing patio furniture, potted plants, and other similar outdoor furnishings that comply with the standards governing the appearance of such items as set forth in the Community Rules. Said furnishings shall be equipped with protective leg caps or other devices to prevent damage to the floor of the lanais. No Improvement shall be nailed, bolted, or otherwise attached to the floor, walls, or any other portion of the lanais. No hanging screens or banners and no other accoutrement (other than plants), which may be visible from any other Unit, the Common Elements, or the Community are permitted on any portion of the lanais. Any plants placed on lanais must have sufficiently large

receptacles to contain all drainage from such plants, and must not be allowed to collect condensates or moisture between the receptacles and the floor of the lanais. Owners may not install wet bars or refrigerators on the lanais.

(b) Limitations on Use. Lanais shall not be used for storage of any type, including, without limitation, boxes, tools, exercise and sports equipment, bicycles, cleaning utensils and supplies, or other household items. Lanais shall be maintained in a clean, neat, and sanitary condition at all times, and nothing shall be placed on Lanais so as to render them unsightly or offensive to the other Owners or to any other Units in the Community or its occupants. No dust, dirt, or other substances shall be shaken, swept, or thrown from or hosed off the lanais on or into any Common Elements. Any item which in the opinion of the Board or the Board is unsightly or offensive shall be removed from the lanais upon receipt of written notice of such determination from the Board or the Board. No Owner shall change or alter the surface or exterior of any lanais without the consent of the Board.

9. Rights of Persons with Disabilities. Subject to the provisions of this Declaration, each Owner shall have the right to modify the Owner's Unit and the Board and/or the Declarant has the right to modify the route over the Common Elements leading to the front door of the Unit, at the Owner's sole cost and expense, in order to facilitate access to the Unit by persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to such persons. The rights granted by this Section are further subject to the following conditions: (i) the modifications shall be consistent with applicable building code requirements; (ii) the modifications shall be consistent with the intent of otherwise applicable provisions of this Declaration pertaining to safety or the aesthetic integrity of the Community; (iii) the modifications which are external to the Unit shall not prevent reasonable passage by other Owners or invitees on the Community, and shall be removed by the Owner when the Unit is no longer occupied by persons requiring those modifications; (iv) any Owner who intends to modify a Unit pursuant to this Section shall submit their plans and specifications to the Board for review to determine whether the modifications comply with the provisions of this Declaration; and (v) any change in the exterior appearance of a Unit shall be in accordance with the provisions of this Declaration and all applicable provisions of law. Any Owner with a disability desiring such a modification shall make such request, in writing, to the Board. That request shall set out, with specificity and in detail, the nature of the request and the reason that the requesting party needs to be granted such the modification. The Board shall not unreasonably withhold or delay its consent to such request and the Board shall not deny approval of the proposed modifications under this Section without good cause. Any 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 by the Board in order to consider such request, whichever shall last occur.

10. Pets. No animals whatsoever, including without limitation, livestock, poultry, dogs, cats, or other common household pets, shall be allowed or kept in or on any part of the Community. The Association may establish a pets policy and amend the Bylaws accordingly with the affirmative vote or written consent of not less than sixty-seven percent (67%) of the Owners.

11. Master Association. There is a Poipu Kai Association, a master homeowner's association, as described in that certain First Restatement of the Declaration of Covenants and Restrictions of Poipu Kai Association dated August 10, 2010, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2010-128383 (the "Master Declaration").

The Property subject to this Declaration is a portion of Lot D-22 of the Poipu Kai Subdivision, as more particularly described in Exhibit "A.". The Master Declaration subjects the named lots to land classification and use restrictions, the rules and procedures of the Poipu Kai Design Committee, and the Poipu Kai Association, certain fund and assessment requirements, including but not limited to water, sewer, roadway and other assessments, and miscellaneous provisions for the development of the named properties as a planned community. Unit Owners in the Community are subject to the terms and covenants of the Master Declaration as well as the condominium documents of this Project.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE SPECIAL USE RESTRICTIONS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT L**

**Section 1.12 -- Encumbrances Against Title**

1. Reservation of Mineral and water rights of any nature in favor of the State of Hawaii.

2. The terms and provisions contained in the following:

**INSTRUMENT :** FIRST RESTATEMENT OF THE DECLARATION  
OF COVENANTS AND RESTRICTIONS OF  
POIPU KAI ASSOCIATION

**DATED :** August 10, 2010  
**RECORDED :** Document No. 2010-128383

The foregoing First Restatement of the Declaration of Covenants and Restrictions of Poipu Kai Association restates the original DECLARATION OF COVENANTS AND RESTRICTIONS dated January 8, 1979, recorded in Liber 13428 at Page 440, and any amendments and supplements thereto.

3. The terms and provisions contained in the following:

**INSTRUMENT :** FIRST RESTATEMENT OF THE BYLAWS OF  
THE POIPU KAI ASSOCIATION

**DATED :** August 23, 2010  
**RECORDED :** Document No. 2010-128382

The foregoing First Restatement of the Bylaws of the Poipu Kai Association restates the original unrecorded By-Laws dated January 11, 1979.

4. GRANT

**TO :** POIPU KAI ASSOCIATION

**DATED :** August 1, 1979  
**RECORDED :** Liber 13910 Page 298  
**GRANTING :** a perpetual and non-exclusive easement in, upon, through, over and across Easement "3" for pedestrian access purposes, said easement being more particularly described therein

5. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION

DATED : October 31, 1979  
RECORDED : Liber 14168 Page 201

Said Declaration was amended by instrument dated February 23, 1981, recorded in Liber 15384 at Page 582.

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

INSTRUMENT : AGREEMENT

DATED : March 7, 2001  
RECORDED : Document No. 2001-038223  
PARTIES : REGENCY INVESTMENTS & DEVELOPMENT, LC, a Utah limited liability company, CHESTER WAYNE HUNT and LETITIA HUNT, Trustees of the Hunt Family Revocable Living Trust under unrecorded Trust Agreement dated October 15, 1990, STEVEN A. HUNT, Trustee of the Steven A. Hunt Revocable Trust dated July 1, 1998, and LAUREN L. HUNT, Trustee of the Lauren L. Hunt Revocable Trust dated July 1, 1998  
RE : development

7. "A portion of Easement "A" (10 feet wide) along Lot D-24, as shown in red on the map attached hereto and incorporated herein as Exhibit "B". A Grant of Easement conveying Easement "A" and other easements for pedestrian purposes to the County of Kauai, was executed by Leadership Homes of Hawaii, Inc., a Delaware corporation, prior to its conveyance of the above described property to The Housing Group, a California corporation licensed to do business in Hawaii, and will be executed, dated and recorded by the County of Kauai subsequent hereto. The recordation of the Grant of Easement shall relate back and said Grant of Easement shall be considered to have been in effect prior to the date of the conveyance of the above described property by Leadership Homes of Hawaii, Inc., to the Housing Group....", as set forth in Warranty Deed dated January 17, 1970, recorded in Liber 13428 at Page 503.
8. Easement "6-A" for roadway and parking purposes in favor of Lot D-18-A, more particularly described in Liber 13860 at Page 210.
9. A portion of Easement "3", in favor of the Poipu Kai Association, a Hawaii non-profit corporation, more particularly described in instrument recorded in Liber 13910 at Page 298.
10. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS

DATED : June 18, 1999

RECORDED : Document No. 99-104872

11. DESIGNATION OF EASEMENT "AU-2"

SHOWN : on consolidation map prepared by Dennis M. Esaki, Land Surveyor, with Esaki Surveying & Mapping, Inc., dated March 31, 2005, approved by the Planning Commission of the County of Kauai on May 24, 2005

12. The terms and provisions contained in the following:

INSTRUMENT : WAIVER, RELEASE AND INDEMNITY AGREEMENT

DATED : February 16, 2006

RECORDED : Document No. 2006-033275

PARTIES : REGENCY VILLAS, LLC ("Applicant") and the DEPARTMENT OF WATER, COUNTY OF KAUAI, a political subdivision of the State of Hawaii ("Department of Water")

13. MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

LOAN/ACCOUNT NO. 724830-5.1

MORTGAGOR : REGENCY VILLAS LLC, a Hawaii limited liability company

MORTGAGEE : AMERICA FIRST FEDERAL CREDIT UNION, a federally chartered credit union

DATED : January 17, 2007

RECORDED : Document No. 2007-012076

AMOUNT : \$15,000,000.00

AMENDED AND RESTATED AMENDMENT OF MORTGAGE

MORTGAGOR : REGENCY VILLAS, LLC, a Hawaii limited liability company,

MORTGAGEE : AMERICA FIRST FEDERAL CREDIT UNION, a federally chartered credit union

DATED : July 17, 2010

RECORDED : Document No. 2010-104574  
AMOUNT : \$16,500,000.00

The foregoing Amended and Restated Amendment of Mortgage restates the original AMENDMENT OF MORTGAGE dated August 31, 2009, recorded as Document No. 2009-137432.

Said Amended and Restated Amendment of Mortgage was further amended by instrument dated September 29, 2010, recorded as Document No. 2010-158106.

14. The terms and provisions contained in the following:

INSTRUMENT : ASSIGNMENT OF LESSOR'S INTEREST IN LEASES

DATED : January 17, 2007

RECORDED : Document No. 2007-012077

PARTIES : REGENCY VILLAS, LLC, a Hawaii limited liability company, "Assignor", and AMERICA FIRST FEDERAL CREDIT UNION, a federally chartered credit union

RE : to secure the repayment of that certain Note in the principal amount of \$15,000,000.00

15. FINANCING STATEMENT

DEBTOR : REGENCY VILLAS, LLC, a Hawaii limited liability company

SECURED PARTY : AMERICA FIRST FEDERAL CREDIT UNION, a federally chartered credit union

RECORDED : Document No. 2007-012078

RECORDED ON: January 22, 2007

16. GRANT

TO : KAUAI ISLAND UTILITY COOPERATIVE and HAWAIIAN TELCOM, INC.

DATED : April 25, 2008

RECORDED : Document No. 2008-128243

GRANTING : a perpetual right and easement for utility purposes over, under, upon, across and through Easements "E-1" and "E-2", said easements being more particularly described in Exhibit "A" attached thereto



17. GRANT

TO : BOARD OF WATER SUPPLY, COUNTY OF  
KAUAI

DATED : November 13, 2008

RECORDED : Document No. 2009-029751

GRANTING : an easement for utility purposes on, over and  
under Easement "W-1", said easement being more  
particularly described in Exhibit "A" attached  
thereto

18. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY  
REGIME FOR  
"THE VILLAS AT POIPU KAI" CONDOMINIUM  
PROJECT

DATED : July 14, 2010

RECORDED : Document No. 2010-100198

MAP : 4914 and any amendments thereto

Said Declaration was amended by instrument dated January 31, 2011,  
recorded as Document No. 2011-024193.

19. The terms and provisions contained in the following:

INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF UNIT  
OWNERS

DATED : July 14, 2010

RECORDED : Document No. 2010-100199

20. CONVEYANCE OF WATER FACILITY dated December 11, 2008,  
recorded as Document No. 2009-126475.

21. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONSOLIDATION

DATED : December 1, 2010

RECORDED : Document No. 2011-015928

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE ENCUMBRANCES AGAINST TITLE CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

**EXHIBIT M**

Verified Statement of a County Official

## EXHIBIT N

### Section 3.5 -- Changes to the Condominium Documents

Owners may not amend any provisions in the Declaration and Bylaws reserving rights to the Developer without the consent of Developer.

#### Amendment to Declaration:

1. Pursuant to the Declaration, the Declaration may be amended by the affirmative vote or written consent of not less than seventy-five percent of the Unit Owners at a meeting of the Association called for that purpose, and effective only upon the Recording of an instrument setting forth such amendment and vote, duly executed by two officers of the Association as provided in the Bylaws; provided, however, that, except as otherwise expressly provided in the Declaration or in the Act, the approval of eligible holders of first mortgages (as defined below) on Units to which at least fifty-one percent of the votes of Units subject to mortgages held by such eligible holders are allocated, together with such other approval requirements as set forth in this Section, shall be required to materially amend any provision of the Declaration, or to add any material provisions hereto, which establish, provide for, govern or regulate any of the following:

- (e) By act or omission, seek to abandon or terminate the Community;
- (f) Change the common interest appurtenant to any individual Unit;
- (g) Partition or subdivide any Unit;
- (h) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Community shall not be deemed a transfer within the meaning of this subsection;
- (i) Use condemnation proceeds or hazard insurance proceeds for losses to the Property or any part thereof (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of same; and
- (j) Amend any provision of the Declaration or the Bylaws that materially and adversely affect mortgagees, provided, however, that this subsection shall not apply to any actions taken pursuant to rights expressly reserved to Declarant in the Community Documents. To qualify as an "eligible holder of first mortgage," a first mortgagee must have made a written request to the Association for timely written notice of proposed amendments to the Community Documents, as provided in the Bylaws; provided, however, that this subsection shall not apply to any actions taken pursuant to rights expressly reserved to Declarant in the Community Documents.

To qualify as an "eligible holder of first mortgage," a first mortgagee must have made a written request to the Association for timely written notice of proposed amendments to the Community Documents, as provided in Section 10.4 of the Bylaws entitled "Mortgage Protection" is incorporated into this Declaration by this reference.

Any amendment to the Declaration on behalf of the Association, shall be signed by such officer or officers as shall be provided by general or special resolution of the Board or, in the absence of any resolution applicable to such instrument, by the President and Vice President, or by the President or the Vice President and the Treasurer or the Secretary.

2. Amendment of Declaration by Declarant. Declarant may amend this Declaration, the Bylaws and/or the Condominium Map, without the approval, consent or joinder of any person or group of persons, including the Association, any Unit Owner or any mortgagee, lienholder, Unit purchaser or any other person who may have an interest in the Community, to correct typographical or mathematical errors and to make such amendments as may be required by law, by the Real Estate Commission of the State of Hawaii, by any title insurance company issuing a title insurance policy on the Community or any of the Units, by any institutional lender lending funds on the security of the Community or any of the Units, or by any governmental agency (including without limitation the VA, HUD, FHA, FNMA and/or FHLMC) or as otherwise required by Declarant (including specifically without limitation the right to alter, adjust, or reassign guest parking stalls, retrofit adaptable parking stalls and limit the use thereof); provided, however, that, except as otherwise provided herein, no such amendment which would change the common interest appurtenant to a Unit or substantially change the design, location or size of a Unit or the building in which it is located shall be made without the consent to such amendment by all persons having an interest in such Unit.

3. Amendment of Declaration by Declarant to File an As Built Certificate. Any provision of this Section to the contrary notwithstanding, Declarant may amend this Declaration (and when appropriate the Condominium Map) without the approval, consent or joinder of any person or group of persons, including the Association, any Unit Owner or any mortgagee, lienholder, Unit purchaser or any other person who may have an interest in the Community or in any Unit, to file a verified statement of a licensed architect, engineer or surveyor certifying that the final Recorded Condominium Map fully and accurately depicts the layout, location, house numbers and dimensions of the Units, as built, or that any revised plans being filed simultaneously with the amendment involve only immaterial changes to the layout, location and dimensions of the Units as built or any change in any house number, or such other changes as Declarant is permitted to make pursuant to this Declaration.

4. Amendment of this Declaration by Declarant to Alter Community. Any provision of this Section to the contrary notwithstanding, and notwithstanding the sale and Recording of conveyances for all Units within the Community, Declarant may amend this Declaration, the Condominium Map and/or the Bylaws as may be provided in this Declaration in connection with the exercise of any right reserved to Declarant, without the approval, consent or joinder of any person or group of persons, including the Association, any Unit Owner or any mortgagee, lienholder, or any other person who may have an interest in the Community or in any Unit.

#### Amendment to Bylaws:

Pursuant to Section 3.2 of the Bylaws, the Bylaws may be amended to reduce the number of Board members where at least seventy percent (70%) of the unit owners do not reside at the Community by the written consent of a majority of Owners or the vote of a majority of a quorum at any annual meeting or special meeting called for that purpose.

Pursuant to Section 11.2 of the Bylaws, the Bylaws may be amended in any respect not inconsistent with law or the Declaration by the affirmative vote or written consent of not less than sixty-seven percent (67%) of the Owners.

Until such time as the Declarant has turned over administration of the Community to the Association, Declarant shall have the right to amend the Bylaws without the approval, consent or joinder of, or notice to, any person or group of persons, including the Association, any Unit Owner or any mortgagee, lienholder, Unit purchaser or any other person who may have an interest in the Community.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE CHANGES TO THE CONDOMINIUM DOCUMENTS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL.

## EXHIBIT O

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

1. Declarant's Reserved Rights Concerning Easements. Declarant reserves a present easement over the whole of the Common Elements, together with the right for itself and its successors and assigns, to designate, grant, convey, transfer, cancel, relocate, reserve or otherwise deal with any easements, licenses, and rights of way at any time for utilities, any public-type facility (mailboxes and the like), sanitary and storm sewers, cable television transmission facilities, party walls (including the creation of the same on the Community boundaries), refuse disposal, landscape, maintenance, driveways, parking areas, access roadways and other similar purposes, on, over, across, under and through the Common Elements of the Community (as limited by Section E.5 of the Declaration). Without limiting the generality of the foregoing, Declarant reserves the right to utilize any common utility facilities (including without limitation water, sewer, electrical, telephone, and cable) described in the prior sentence (such as, but not limited to, waterlines, sewer lines, access roadways and the like) whether located in designated easement areas or otherwise, together with the right of entry to construct, reconstruct, operate, maintain, repair and relocate such lines, facilities and appurtenances and to grant any such easements or rights of way to governmental or quasi-governmental authorities, utility or service companies, home owner's associations or other entities and the right to grant, dedicate, designate, use and enjoy easements and/or rights-of-way for access purposes (including for vehicular and pedestrian access). Declarant may, in its discretion, complete any construction of intended facilities in advance of the designation or creation and granting of the easement covering the facilities so constructed. The rights reserved to Declarant include specifically without limitation the right to utilize any utility service to the Community to complete such construction and to serve adjacent and separate developments outside of the Community provided Declarant with respect to such separate and/or adjacent communities submeters such use, and may use roadways in the Community to serve adjacent developments provided the association controlling such development shares pro rata in the cost of maintenance and repair of the roadway and reimburses the Association for any submetered use. The easements retained in this Section and these reserved rights shall be exercised in a manner that will not materially impair or interfere with the use of any Unit. In the event of a submetered use (such as water service), the Association shall be entitled to confirm submeter readings. Each Owner, by purchasing a Unit, consents to any such designation, granting, conveyance, transfer, cancellation, relocation and reservation of easements and/or rights of way as provided above without the necessity of any Owner or those claiming by, through or under an Owner entering into any further agreement respecting such action or document; provided, however, that such Owner and those claiming by, through or under an Owner agrees to join in and execute such documents and instruments and do such other things as may be necessary or convenient to effect the same promptly at the request of Declarant without payment of additional consideration.
2. Easement to Conduct Extensive Sales Activities. Declarant, and its agents, successors, mortgagees and assigns, shall have the right and an easement to conduct extensive sales activities on and at the Community, including the use of any Unit owned by Declarant (and any other Unit, with the express permission of the Owner of such Unit) and the Common Elements (excluding Limited Common Elements appurtenant to other Units) for model

Units, sales and management offices, parking and extensive sales displays and activities, and the posting and maintenance of signs and other advertisements relating to such sales activities. Without limitation of the foregoing, Declarant reserves, for itself and its successors and assigns, the right during the course of Declarant's sales of units in the Community to supplement, modify and amend the estimated breakdown of annual maintenance fees and estimated cost of assessment to each Unit, as Declarant deems appropriate, to reflect changes in estimated expenses applicable to ownership of units attributable to the increase in cost of service or modification of proposed service to the Association reflected in the budget for annual maintenance fees. Upon such modifications, Declarant may supplement and amend its public report applicable to the Community.

3. Declarant's Easement for Construction. Declarant and its agents, employees, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under and upon any portion of the Community, including the Common Elements, any utility service, Limited Common Elements and any Unit, as may be reasonably necessary for the inspection of and for the completion of improvements, if any, in the Unit or the Community. The rights reserved in this Section shall continue until ten (10) years after the Recording of the "as built" verified statement required by Section 514B-34 of the Act.

4. Declarant's Easements for Development, Construction, and Sale. Declarant and its agents, employees, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under and upon the Community and each and any portion of the Community and the individual Units to create and cause noise, dust, vibration and other nuisances or annoyances created by and resulting from any work connected with or incidental to the development, construction and sale of any Unit or other Improvement to the Community, any additional increment to the Community, or any other community which Declarant, its successors or assigns, may develop on property adjacent to or in the vicinity of the Community. Each and every Owner or other person acquiring any interest in the Community waives any and all rights, claims or actions that might otherwise be asserted against Declarant, its agents, employees, licensees, successors, mortgagees and assigns, based on any such noise, dust, vibration and other nuisances or annoyances. Without limitation of the foregoing:

(a) Declarant, its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns, shall have an easement over, under and upon the Community as may be reasonable or appropriate for additional construction, the completion of renovations to the improvements of the Community, and (at the option of Declarant) the correction of defects therein. In addition to any other easements reserved to Declarant under the Declaration, in connection with, and to the extent necessary for the development and construction of units, common facilities, and/or increments following the transfer of ownership of any Unit to an individual or entity other than Declarant, Declarant shall have the right to enter upon the Community premises with employees, agents and contractors for all purposes reasonably necessary for or useful to constructing and completing all increments in accordance with the Declaration and the Condominium Map. Such rights shall include, but are not limited to, the following:

(i) An easement over, under and across the Common Elements of the Community and all utility service to the Community for the purposes of all work connected with or incidental to the development, construction and sale of the Units or increments; and,



(ii) The right in the nature of an easement over and upon the existing buildings and Common Elements of the Community to create and cause dust, noise, vibration and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of the increments or Units.

(b) Declarant, its contractors, subcontractors, licensees, mortgagees and assigns, and their respective employees and agents, shall have the right and an easement in favor of Declarant and its successors and assigns is hereby granted at any time and from time to time prior to the thirtieth (30th) anniversary date from the recording of the Declaration, to enter upon, use, remove, replace, add to, or otherwise alter the Common Elements and the Limited Common Elements of the Community and to do all things reasonably necessary, desirable or useful for designing, developing, constructing or completing any additional increment to the Community, connecting any such additional increment to the utility installations of the Community, and selling the Units contained within any such additional or increment, including, but not limited to, the right to consolidate any parcel(s) of land covered hereby with any other parcel(s) of land in connection with the merger of increments; provided that the exercise of the rights granted herein shall not cause any permanent or avoidable interruption in the service of utilities to the Community, and provided further that any person exercising such rights shall use reasonable efforts, without additional cost to Declarant and consistent with maintaining the progress of the design, development, construction, completion and sale of the additional increment, to minimize interference with the Owners' use and enjoyment of the Property. Declarant further reserves the right to grant, for the benefit of the owner or owners from time to time of all or any portion of each of the other Increments, and without the consent or joinder of any party having any interest in the Community, easements over, under, across, along, upon and through the Common Elements of the Community for ingress and egress purposes, access purposes, electrical, gas, communications and other utility purposes, sanitary sewer, drainage and drainline, waterline, and flowage purposes, and all other purposes, to the State of Hawaii, the County, the Board of Water Supply of the County, any other appropriate governmental agency, and/or any public or private utility or other corporation, partnership, individual or entity, provided that such easements and rights-of-way do not materially impair or interfere with the use of any Unit in the Community or the Common Elements of the Community.

(c) Without limiting the foregoing, anything to the contrary notwithstanding, Declarant shall have the following retained and reserved construction easements:

(i) A non-exclusive easement in all structural members, footings, foundations, columns and beams and any other supporting components located in or constituting a part of the Community;

(ii) A non-exclusive easement for access to, the right to connect to and the use for their intended purposes and maintenance, of all facilities located in the Community including heating, ventilating and air conditioning systems, elevators, boilers and hot water systems;

(iii) A non-exclusive easement permitting encroachments in the event and to the extent that, by reason of the original construction or any reconstruction or replacement of any improvements currently located or hereafter constructed

on any part of the Community or the subsequent settlement or shifting of any part of the improvements on any portion of the Community;

(iv) A non-exclusive easement in and for the use of all common walls, floors and ceilings common to the Community;

(v) A non-exclusive easement for ingress and egress of persons and vehicles through, over and along all portions of the Community as they exist on the date the Declaration is Recorded and which, by their nature, currently permit the passage of persons and motor vehicles, respectively, for the purpose of affording access to and egress from the public alleys and streets adjoining the Community; and

(vi) A non-exclusive easement for ingress and egress of persons and vehicles through, over and along all portions of the Community to construct and maintain facilities therein, provided that the existence of the facilities when completed does not materially interfere with the use of the Community through or in which the Facilities are constructed for their intended purpose. During construction of the facilities, Declarant and its contractors may restrict the use of the Common Elements of the Community as would be normal for the type of construction involved, provided that the Common Elements of the Community can still be used for the purpose for which they were designed, or reasonable alternative services are available.

(d) The purpose of the easements declared and granted in this Section is to enable Declarant to fully exploit and use the Community or any portion thereof for any lawful purpose whatsoever and to construct thereon any improvements which Declarant is lawfully permitted to construct, and, in connection with such construction, to connect to, rest upon, abut and otherwise receive support for any improvements which may be created, from the improvements currently located on the Community adjoining the area of such improvement and for ingress and egress through the Common Elements of the Community as currently enjoyed. Declarant's exercise of rights reserved in this Section are subject to Declarant's agreement to repair at its sole cost, in a good and workmanlike manner and in accordance with all laws any damage caused to the Community by reason of the exercise of the Easements granted by this Section. The Easements granted in this Section are perpetual and may assigned in whole or in part, subject to such limitations as may be determined appropriate by Declarant in Declarant's sole discretion, by Declarant to one or more Owners.

5. Community Access Road. Each Owner shall have a non-exclusive right to enter upon and use for ingress and egress purposes the Community Access Road serving the Community. Declarant hereby discloses and each Owner acknowledges that Declarant intends to use the Community Access Road to conduct and perform its sales activities within the Community until all of the Units have been sold and the Community Access Road will be used for access purposes by other Owners in the Community. These activities may result in noise, vibration and other nuisances and hazards, including traffic congestion and temporary impairment of access to portions of the Community, and each Owner covenants that such Owner assumes all risks associated with the Owner's use of the road. The provisions of the Declaration shall apply to and govern each Owner's use of the road unless and until such time as it is dedicated to the County and/or State and removed from the Community Land by amendment to the Declaration, which right to dedicate the roads is specifically reserved to

Declarant. Each Owner shall indemnify and hold harmless Declarant, its successors and assigns, from and against any and all claims and demands for damages made by, through or under such Owner in connection with the right of entry granted by Declarant to such Owner.

11. Declarant's Reserved Right Regarding County Licenses and Permits. Declarant shall have the reserved right for a period of thirty (30) years following the Recordation of the Declaration, without the approval, consent or joinder of, and without notice to, the Association, any purchaser or Owner of any Unit, or any other party with any interest in the Unit (including any tenant), which may be exercised as herein provided or as provided in Section U.1 of the Declaration to (a) amend any of the Community Documents, including, without limitation, the Declaration, (b) enter into any agreements, including, without limitation, to declare and subject the Land and Improvements to restrictive covenants, (c) designate and grant easements, (d) secure any other governmental permits, (e) do all things necessary and convenient to satisfy, alter or amend the requirements of any land use or other permits pertaining to the Community, including, without limitation, such permits as may be issued authorizing the Community, including one or more building permits, Conditional Use Permit(s) (Minor), Zoning Adjustment(s), and Special District (Major) Permit(s), issued by the applicable planning department of the County relating to the development of the Community, and to execute, file and deliver any and all documents necessary to effect the same, including, but not limited to, any amendments to the Declaration, Condominium Map, or such permits, and (f) assign any of the foregoing to the Association.

Without limitation of the foregoing, each Owner acknowledges and agrees that Declarant, on behalf of the Association or Declarant, may (i) seek or has obtained certain licenses and permits from the County and other government agencies relating to the development of the Community, including, but not limited to items that may include or address the public storm sewer system, conditional use permit (major or minor), and the joint development of the Land subject to the Declaration; (ii) enter and Record as an encumbrance on the Land any declaration regarding improvements or use of the Property Declarant is required to impose on the Land in order to proceed with the development of the Land and/or (iii) impose on the Association obligations imposed on Land and the development of the Land by such licenses and permits, the declarations required to proceed with the improvement, use, or development of the property, and/or the applicable Unilateral Agreement (collectively these items and all such items of a substantially equivalent nature are described as the "**licenses and permits**"). To the extent that any such licenses or permits have not been issued to the Association, Declarant and its agents, employees, contractors, licensees, successors, mortgagees and assigns, reserve the right to transfer to the Association any and all obligations arising under or imposed in connection with such permits. Declarant hereby reserves the right, without the joinder or consent of, or notice to, the Association or any Owner or their mortgagees, (a) to enter and/or to amend such license or permit as may be required or issued by the County Planning Department or other government agency or in respect of which Declarant has reserved such right in the applicable instrument, (b) to encumber the Land and the Association with the obligations thereunder arising, and (c) to modify Improvements to the Community to conform to the licenses and permits. In connection with such licenses and permits, the Association shall have the responsibility to comply at all times now and in the future with all requirements and obligations under such licenses and permits transferred to the Association or that encumber the Land, and all County Planning Department regulations and any other applicable statutes, ordinances and rules and regulations of Federal, State or County agencies relating to the discharge, drainage and runoff of storm water and surface water, and their constituents, from the Community into the public storm sewer system. Neither the Association nor any Owner

shall take any actions that may in any way undermine the Association's obligations to comply with the foregoing requirements. Each Owner and the Association shall execute any and all documents required by Declarant in Declarant's sole discretion to transfer, if required, any applicable license or permit to the Association, including without limitation any license relative to discharge, drainage and runoff.

Without limitation of the foregoing, the rights reserved to Declarant by this Section include by way of example and not limitation, the right: (i) to provide open space(s) and a sidewalk for use by the public in the Community; (ii) to designate one or more areas and/or to record against the Community one or more agreements with the Department of Land and Natural Resources of the State of Hawaii for purposes of addressing the preservation, establishment, location and/or relocation of any burial or historic sites or artifacts found during development of the Community and protected under the laws of the State of Hawaii; (iii) to amend the Community Declaration and to modify the Condominium Map and scope of any Limited Common Element or Common Element, including, without limitation, the recreational facilities and parking facilities to effect the foregoing; (iv) to perform such additional offsite requirements as may be mandated, including, without limitation, road widening improvements and/or the provisioning of utilities, traffic signals, bus stops and/or stop signs; (v) to modify the landscaping plan, or available number of parking stalls (both Common Element and Limited Common Element parking stalls); and (vi) to prohibit enclosure of the lanais to any Unit in the Community. The Association and each Owner shall indemnify and hold harmless Declarant, its successors and assigns, from and against any and all claims and demands for damages in connection with the Association's fulfillment of its obligations under transferred licenses and permits, including, without limitation, any storm sewer connection obligations.

12. Declarant's Reserved Right Regarding Grading and Drainage Channels. Declarant hereby reserves to itself and the Association, and their respective officers, agents, employees, successors, and assigns, an easement to enter upon, across, over, in, and under any portion of the Community, for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of any portion of the Community for all reasons determined appropriate by Declarant, including without limitation so as to improve the drainage of water on the Community. Reasonable efforts shall be made to use this easement so as to disturb as little as possible the uses of the Owners, the Association and Declarant, as applicable, to prosecute such drainage work promptly and expeditiously, and to restore any areas affected by such work to a slightly and usable condition as soon as reasonably possible following such work.

13. Declarant's Right for Roadway and Utility Purposes. Declarant hereby reserves an easement for roadway and utility purposes on and over the Community Access Road as shown on the Condominium Map. Without limitation of Declarant's rights under Section E.6 of the Declaration, Declarant further reserves the right to grant to the County or Kauai Island Utility Cooperative or any agency or organization acting on their behalf any or all of the easement areas designated under the Condominium Map or in the Declaration, without joinder or consent of the Association, any Owner, or any Owner's mortgagee.

14. Declarant's Reserved Right to Transfer Property to the Association. The Association shall accept title to any property, including any Improvements thereon, and any property transferred to the Association by Declarant shall become Common Elements, together with the responsibility to perform any and all duties associated therewith, which, upon conveyance or dedication to the Association, the Association shall maintain at its expense for the benefit of the Members as provided in the Declaration. Property interests transferred to the Association by Declarant may include, without limitation, any Unit, any flowage, drainage, or

utility easements (pending dedication of all or portions of the affected easement areas to the County), the roadways, and may encompass fee simple title, easements, leasehold interests and licenses to use; provided, however, that any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association "as-is," "where-is," free and clear of all liens and encumbrances except for the following: (i) the lien for property taxes and assessments not then due and payable; (ii) the terms of the Declaration and the terms of any Supplemental Declaration annexing property to the Property; (iii) easements, rights-of-way, reservations, covenants, conditions, restrictions and equitable servitudes or other non-financial encumbrances as Declarant in its discretion may deem appropriate; and (iv) such financial encumbrances as may be reasonably accepted and assumed by the Association and specifically approved by resolution of the Board. Any property or interest in property transferred to the Association by Declarant shall not impose any unreasonable or special burden on the Association other than the normal burdens of ownership and maintenance of property and the operation of facilities thereon; provided, however, such conveyance instrument may contain an indemnity of the Declarant by the Association. Each Owner, by accepting title to any portion of the Property and becoming an Owner, is deemed to approve and accept the acquisition by the Association of Common Elements as provided herein, and any Common Expenses which may relate thereto. The conveyance by Declarant may be without warranty of any kind except as aforesaid and without the benefit of escrow or title insurance, provided, however, the Association may purchase such title insurance, at the Association's expense, as the Association may wish. Upon transfer, the Association agrees to assume the obligations of the Declarant under any applicable leases, contracts, and other agreements. Furthermore, and notwithstanding anything to the contrary contained or implied in the Declaration, Declarant shall have the absolute right, without consent or joinder of the Association, or any member thereof or its Board, to convey to the Association the Common Element(s) and properties described in this Section.

15. Declarant's Reserved Rights Regarding Alterations and Repair. Any other provision in the Declaration to the contrary notwithstanding, Declarant does hereby reserve the rights described in this Section unto Declarant, its successors and assigns. Prior to the later of (i) the time that all Units in the Community have been sold and the conveyance thereof Recorded, (ii) December 31, 2040, and (iii) the filing by Declarant of the "as built" verified statement (with plans, if applicable) required by Section 514B-34(a) of the Act, Declarant shall have the right, but not the obligation, and 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, lienholder, Unit purchaser, or any other person who may have an interest in the Community, to do the following:

(a) Configuration of Units and Other Changes. Declarant 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 any Unit Owner, lien holder, or other persons, to make alterations in the Community (and to amend the Declaration and the Condominium Map accordingly) to change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any Unit (and the Limited Common Elements appurtenant thereto) in the Community which is not sold and the conveyance thereof Recorded, to change the overall "product mix" (e.g., change the Unit types or change the configuration of a Unit built on a particular floor of a building), to create Limited Common Element(s) benefitting a single or more than one Unit, or alter the Common Elements or the Limited Common Elements for any purpose benefitting one or more Units, including without limitation by creating, expanding or

reducing lanais, fenced areas, gates, pathways and sidewalks, or utility placement locations. Without limitation of the foregoing, Declarant may change or remove of all or part of any Common Element feature and/or an intervening Common Element wall, floor, and/or ceiling separating two (2) Units owned by the Declarant or Limited Common Elements controlled by the Declarant, install doors, stairways, and other Improvements in such opening or openings in the intervening Common Element, seal hallways or other openings, and make any other reasonable related changes or additions Declarant determines expedient or necessary. Further, Declarant may consolidate any two (2) adjacent Units owned by the Declarant into a single Unit and make any Common Element walls, floors, or ceilings between the Units part of the Unit or its Limited Common Elements. In that regard, Declarant may change the designation of the Limited Common Elements appurtenant to any two (2) adjacent Units owned by the Declarant so that one or more Limited Common Elements appurtenant to one Unit will be appurtenant to the other Unit or to both of the Units. Without limitation of the foregoing, Declarant also reserves the right to (i) modify door and window types (open versus fixed, slider versus awning or otherwise) and the location of the same, (ii) to change the size and location of lanais and lanai railings and coverings, parking stall locations, and air conditioning unit locations, (iii) to add, delete, and/or relocate exterior stairways, (iv) to alter utility and/or trash enclosure locations from those reflected on the Condominium Map, and (v) to substitute any included appliances as standard. In addition to the foregoing, Declarant shall have the right to amend the Declaration, Bylaws and/or Community Rules to change the name of the Community and/or alter the pet policy of the Community.

(b) Right to Improve and Fix Location of Recreation Areas. Declarant 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 any Unit Owner, lien holder, or other persons, to improve recreation areas as shown on the Condominium Map or any other area within the Community with other recreational facilities, which may include, but are not limited to, barbeque areas and pathways. These areas and structures may result in the creation of public activity zones that may negatively impact the Owner's use, views, privacy and enjoyment of their Unit. Upon the construction of such items, they shall be Common Elements of the Community.

(c) Alterations to the Community. Generally without limitation by virtue of the foregoing, Declarant 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 any Unit Owner, lien holder, or other persons, to make other alterations in the Community (and to amend the Declaration and the Condominium Map accordingly) which make changes in any Unit in the Community or in the Common Elements that do not affect the physical location, design, or size of any Unit that has been sold and the conveyance thereof Recorded.

(d) Amendment to Declaration and Condominium Map. Declarant 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 any Unit Owner, lien holder, or other persons, to amend the Declaration and the Condominium Map as necessary or convenient to describe any new Improvements constructed on the Property in accordance with the Declaration and to make such amendments to the Declaration as are appropriate to describe any rights and obligations in respect of such new Improvement in accordance with this Section.

(e) Right of Inspection. Declarant reserves the right, but not the obligation, to make any inspection the Common Elements, Limited Common Elements, or Units.

(f) Right to Relocate and/or Redesign the Drainage Facilities. Declarant 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 any Unit Owners, lien holder, or other persons, to relocate the drainage facilities within the Community, and/or to redesign such areas to increase or decrease the size of such easement area within the Community, provided such modifications do not interfere as to the existing drainage, except during the period of connection, reconstruction, repair or replacement of the relocated or redesigned such easement area, and provided further that such relocation and/or redesign of such easement area does not reduce the design capacity of the drainage system.

16. Declarant's Right to Change Designation of Parking Stalls. Declarant reserves the right to change the designation or size of parking stalls, and to amend the Declaration and Condominium Map as necessary or convenient to describe the change in the designation or size of the parking stalls.

17. Reserved Right to Control Association for Limited Period. Declarant shall have the reserved right to control the Association in accordance with Section 514B-106(d) of the Act, during which time Declarant, or persons designated by Declarant, may appoint and remove the officers and members of the Board of Directors. Such period of control of the Association by Declarant (the "**Control Period**") shall terminate no later than the earlier of:

(a) Sixty (60) days after conveyance of seventy-five percent (75%) of the common interest appurtenant to Units to Owners other than Declarant or an affiliate of Declarant;

(b) Two (2) years after Declarant has ceased to offer Units for sale in the ordinary course of business;

(c) Two (2) years after any right to add new Units was last exercised; or

(d) The day Declarant, after giving written notice to Unit Owners, Records an instrument voluntarily surrendering all rights to control activities of the Association.

Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Control Period, but in such event Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective, provided, however, that during the Control Period (i) Declarant must provide a copy of all amendments to the Department of Veterans Administration (the "**VA**"), and (ii) the Association may not make any material amendments or take any extraordinary actions as described in VA Pamphlet 26-7 revised, as may be applicable, without the approval of VA.

18. Amendment of Declarant's Reserved Rights. The Declaration cannot be amended to modify or eliminate the easements or other rights reserved to Declarant by this or any other Section without the prior written consent of Declarant, and any attempt to do so shall have no effect.

19. Alterations and Transfers of Common Interest. The common interest and easements appurtenant to each Unit shall have a permanent character and shall not be altered except as noted in this Section. The common interest, voting rights and easements appurtenant to each Unit may be altered (diminished or increased) by a Recorded amendment to the Declaration: (a) as may be determined necessary by Declarant, without the consent of any party, to correct typographical or mathematical errors in the statement of such common interests, (b) filed by Declarant, without the joinder or consent of or notice to any party, upon the alteration of the Community as permitted pursuant to this Declaration, including without limitation upon the exercise of rights reserved to Declarant under Sections E, F or M of the Declaration, and/or (c) upon the action or consent of all Owners of Units affected thereby, and the consent of the holders of any mortgage affecting such Units as shown in the Association's records of ownership, or who have given the Board notice of their interest. The common interest and appurtenant easements shall not be separated from the Unit to which they appertain and shall be deemed to be conveyed or encumbered with that Unit even though such interest or easements are not expressly mentioned in the conveyance or other instrument. The Common Elements shall remain undivided and the right to partition or divide any part of the Common Elements shall not exist except as provided in the Act.

20. Rights of Merger. Declarant hereby reserves the right, but not the obligation, to merge the Project with other projects in the vicinity, to permit the joint use of the common elements of the developments by all the owners of the units in the merged developments (hereafter, the "merged project"). The Declarant may implement the merger without the consent, approval or joinder of the unit owners upon the recording of a certificate of merger; provided, however, that any such merger shall require the written approval of the Declarant's mortgagee, if any. The certificate of merger may provide for a merger of the common elements of the Community and the other developments so that each unit owner in the merged project has an undivided ownership interest in the common elements of the merged project. In the event of a merger of common elements, the common interests of each unit in the merged project shall be adjusted in accordance with the merger provisions in the projects' declarations so that the total common interest of all units in the resulting merged project totals one hundred percent. If the certificate of merger does not provide for a merger of the common elements, the common elements and common interests of the merged project shall remain separate, but shall be subject to the provisions set forth in the respective declarations with respect to merger. Declarant hereby reserves the right from time to time, upon the merger of the Community with another development as provided herein to record an amendment of the Declaration that adjusts and recomputes the undivided common interest appurtenant to each unit as provided for in the certificate of merger.

21. Right to Enter into Agreements for Recreational Facilities. The Declarant may enter into one or more license agreements with a limited number of non-owner guests to use the recreational common elements of the Project, with or without charge, including, without limitation, swimming pool, spa and other recreational amenities available to all Unit owners (the "**Recreational Facilities**"). The Declarant further reserves the right, but not the obligation, to submit the Recreational Facilities to a Poipu Kai Recreational Facilities Maintenance Declaration and form a Poipu Kai Recreational Facilities Maintenance Association, whose members shall be the Association and the Association of Apartment Owners of The Regency Villas at Poipu Kai, or provide for shared use by both associations in any other manner in Declarant's sole discretion. Formation of a Poipu Kai Recreational Facilities Maintenance Association shall require the written approval of the Declarant's mortgagee, if any. Shared use documentation shall set forth the rights and obligations of the member associations with respect



to the administration, maintenance, preservation, use, regulation, reconstruction, renovation or removal of the Recreational Facilities.

22. Rights of Declarant. The rights of the Declarant under this Section shall extend to the Declarant and its respective successors and assigns.

23. Enforcement. If any one or more of the provisions of this Section shall be declared to be contrary to law, then such provision or provisions shall be null and void and shall be deemed separable from the remaining provisions of this Section and shall in no way affect the enforceability of any other provision hereof.

24. No Amendment. The Declaration cannot be amended to modify or eliminate the easements or other rights reserved to Declarant by this or any other Section without the prior written consent of Declarant, and any attempt to do so shall have no effect.

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THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL OF THE RIGHTS RESERVED BY THE DEVELOPER UNDER THE CONDOMINIUM DOCUMENTS CONTAINED IN THE DECLARATION, BY LAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF SUCH RESERVED RIGHTS, PURCHASER CAN USE THIS SUMMARY OF SUCH RESERVED RIGHTS, PURCHASER SHOULD REFER TO THE CONDOMINIUM DECLARATION TO DETERMINE THE ACTUAL RIGHTS RESERVED BY THE DEVELOPER. IF ANY CONFLICT OR DIFFERENCES EXISTS BETWEEN THIS SUMMARY AND THE CONDOMINIUM DECLARATION, THE CONDOMINIUM DECLARATION WILL CONTROL.

## EXHIBIT P

### Section 4.2 – Estimate of the Initial Maintenance Fees

The Estimated Maintenance Fee Disbursements for The Villas at Poipu Kai have been compiled by Hawaiiana Management Company, a licensed property manager, assuming that all units in the Community as reflected on the Condominium Map are constructed. Although the property manager makes every effort to estimate the actual cost of operation, certain budget items, especially insurance in today's insurance market, may change. The Buyer is aware that such amounts are only estimates and may change for reasons beyond the control of Developer, and the Buyer hereby specifically accepts and approves any such changes. The Buyer is also aware that such estimates do not include the Buyer's obligation for payment of real property taxes. The Buyer understands that such estimates are not intended to be and do not constitute any representation or warranty by the Developer, including but not limited to any representation or warranty as to the accuracy of such estimates. Buyer understands that Developer has not independently confirmed the accuracy or content of the estimates prepared by the licensed independent managing agent. Further, the Developer advises that costs and expenses of maintenance and operation of a condominium community are very difficult to estimate initially and even if such maintenance charges have been accurately estimated, such charges will tend to increase in an inflationary economy and as the improvements age. Maintenance charges can vary depending on services desired by unit owners and may increase significantly depending on the level of services eventually selected by the Association's Board of Directors. The Buyer should examine the maintenance charges schedule to see what services are included in the schedule and address these issues with its Board upon its formation. Buyers should also be aware that the estimates provided are as of the date reflected in the Managing Agent's certification and do not reflect the actual charges that may be incurred upon the formation of the Association and the actual contracting for such services such as insurance and maintenance, etc.

The Developer intends to pay all of the actual common expenses for the units and the unit owner shall not be obligated for the payment of the owner's share of the common expenses until such time as the Developer causes a 30 day advance written notice to be sent to the Owners that, after a specified date, the unit owners shall be obligated to pay for the portion of common expenses that is allocated to their respective units. The developer shall mail the written notice to the owners, the association, and the managing agent, if any, at least thirty days before the specified date.

The estimate of the initial annual maintenance fees and monthly estimated Maintenance fees is attached hereto.

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE ESTIMATE OF THE INITIAL MAINTENANCE FEES CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, HOUSE RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF SUCH RESERVED RIGHTS, PURCHASER CAN USE THIS SUMMARY OF SUCH RESERVED RIGHTS, PURCHASER SHOULD REFER TO THE CONDOMINIUM DECLARATION TO DETERMINE THE ACTUAL RIGHTS RESERVED BY THE DEVELOPER. IF ANY CONFLICT OR DIFFERENCES EXISTS BETWEEN THIS SUMMARY AND THE CONDOMINIUM DECLARATION, THE CONDOMINIUM DECLARATION WILL CONTROL.

**ATTACH Estimated Annual Maintenance Fees and Monthly Estimated Maintenance Fees**

**CERTIFICATE**

I, the undersigned, duly sworn on oath, depose and affirm as follows:

1. I am the Senior Vice President for Hawaiiana Management Company, Ltd., a Hawaii corporation, designated by the Developer of the The Villas at Poipu Kai condominium project (the "Project") to act as the Managing Agent for the management and administration of the Project.

2. I hereby certify that the breakdown of the annual maintenance charges and the monthly estimated cost for each unit in the Project, as set forth in Exhibit "1" attached hereto and hereby incorporated herein by reference, were determined in accordance with Section 514B-148 of the Hawaii Revised Statutes and Chapter 107 of the Hawaii Administrative Rules, and are reasonable estimates for the one-year period commencing December 2010, based on generally accepted accounting principles.

3. As permitted pursuant to Section 514B-148(b), new associations need not collect estimated reserves until the fiscal year which begins after the association's first annual meeting. The Developer has not conducted a reserve study for the Project. The budget amount for Reserves is an estimate only.

DATED: Honolulu, Hawaii, this 27<sup>th</sup> day of December, 2010.

Name: THEODORE J. WALKEY  
Title: SENIOR VICE PRESIDENT

Subscribed and sworn to before me  
this 27<sup>th</sup> day of December, 2010.

State of Hawaii  
City & County of Honolulu

Date: December 27, 2010 # of Pages: 3

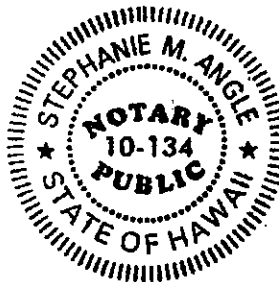
Doc. Description: Certificate of Managing Agent & Estimated  
Annual Disbursements for: The Villas at Poipu Kai

12/27/2010  
Notary Signature

Name: Stephanie M. Angle

No. & Expiration: 10-134

My commission expires: 6/13/2014  
First Circuit, State of Hawaii



**NOTARY CERTIFICATION**

12-27-10

**Estimated Fee Disbursement**

The Villas at Poipu Kai  
(28 units)

	Monthly	Annually
<b>Utilities and Services</b>		
Electricity (common elements only)	\$1,800.00	\$21,600.00
Water	\$1,300.00	\$15,600.00
Sewer	\$1,500.00	\$18,000.00
Telephone	\$100.00	\$1,200.00
<b>Maintenance, Repairs and Supplies</b>		
Buildings	\$600.00	\$7,200.00
Grounds Maintenance	\$2,000.00	\$24,000.00
Tree Trimming	\$100.00	\$1,200.00
Pool Maintenance	\$300.00	\$3,600.00
Pest Control	\$300.00	\$3,600.00
Maintenance	\$250.00	\$3,000.00
Supplies	\$100.00	\$1,200.00
Trash Collection		
<b>Management</b>		
Site Manager/Maintenance	\$2,000.00	\$24,000.00
Management Fee	\$1,032.00	\$12,384.00
Design Review Services		
Office Supplies	\$200.00	\$2,400.00
Security		
<b>Insurance</b>		
Property	\$4,763.00	\$57,156.00
Compr. General Liability	\$100.00	\$1,200.00
Umbrella	\$90.00	\$1,080.00
D & O	\$80.00	\$960.00
Bond	\$39.00	\$468.00
Equipment Breakdown	\$93.00	\$1,116.00
<b>Taxes and Government Assessments</b>		
	\$20.00	\$240.00
<b>Professional Services/Legal/Other</b>		
	\$250.00	\$3,000.00
<b>Audit and Tax Preparation</b>		
	\$84.00	\$1,008.00
<b>Poipu Kai Dues</b>		
Reserves	\$4,760.00	\$57,120.00
<b>Total</b>	<b>\$21,861.00</b>	<b>\$262,332.00</b>

I, Ted Walkey, as agent for/and/or employed by Hawaiiana Management Company, the condominium managing agent for The Villas at Poipu Kai condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted account principles.

  
Signature

12/27/10  
Date

# Estimated Maintenance Fee

The Villas at Poipu Kai  
(28 units)

Apartment No.	Apartment Type	Common Interest	Monthly Fee	Yearly Total
A100	Club House	4.51%	\$985.93	\$11,831.17
A210	ER-1	3.32%	\$725.79	\$8,709.42
A211	ER	3.27%	\$714.85	\$8,578.26
A300	FR	4.55%	\$994.68	\$11,936.11
B110	D-1	3.13%	\$684.25	\$8,210.99
B111	D-2	3.17%	\$692.99	\$8,315.92
B210	E-2	3.13%	\$684.25	\$8,210.99
B211	E-3	3.17%	\$692.99	\$8,315.92
B300	F-1	4.81%	\$1,051.51	\$12,618.17
C110	D-1	3.13%	\$684.25	\$8,210.99
C111	D-2	3.17%	\$692.99	\$8,315.92
C210	E-2	3.13%	\$684.25	\$8,210.99
C211	E-3	3.17%	\$692.99	\$8,315.92
C300	F-1	4.81%	\$1,051.51	\$12,618.17
D110	D-1	3.13%	\$684.25	\$8,210.99
D111	D-2	3.17%	\$692.99	\$8,315.92
D210	E-2	3.13%	\$684.25	\$8,210.99
D211	E-3	3.17%	\$692.99	\$8,315.92
D300	F-2	4.41%	\$964.07	\$11,568.84
E110	D-1	3.13%	\$684.25	\$8,210.99
E111	D-2	3.17%	\$692.99	\$8,315.92
E210	E-2	3.13%	\$684.25	\$8,210.99
E211	E-3	3.17%	\$692.99	\$8,315.92
E300	F-3	4.28%	\$935.65	\$11,227.81
F100	D	4.50%	\$983.75	\$11,804.94
F210	E	3.27%	\$714.85	\$8,578.26
F211	E-1	3.32%	\$725.79	\$8,709.42
F300	F	4.55%	\$994.68	\$11,936.11
		100.0000%	\$21,861.00	\$262,332.00

## EXHIBIT Q

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

The Fee Simple Home Sales Agreement (the "Sales Contract" or "Purchase Agreement") contains the price and other terms and conditions under which a purchaser will agree to buy a Unit in the Community. Among other things, the Sales Contract states:

- (a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of a Unit.
- (b) That the purchaser acknowledges having received and read the public report for the Community prior to signing the Sales Contract.
- (c) That the Developer makes no representations concerning rental of a Unit, income or profit from a Unit, or any other economic benefit to be derived from the purchase of a Unit.
- (d) That the Purchase Price includes furniture, fixtures, and equipment as described in the Sales Contract and in a Furnishings Addendum to the Sales Contract..
- (e) The Sales Contract provides that it shall not be construed as a present transfer of any rights or of any interest in the Unit, but rather states that it is an agreement to transfer in the future. By execution of the Sales Contract, the Purchaser agrees to waive, relinquish and subordinate the priority or superiority of any lien or other legal or equitable interest arising under the Sales Contract in favor of the lien or charge on the Community of the security interests of the Lender, including but not limited to any lien, mortgage or charge securing a loan made to finance the acquisition of the land and the costs of construction (if applicable) and any and all advances therefore until the filing of the Deed.
- (f) That the purchaser's money will be held in escrow, under the terms of the Escrow Agreement.
- (g) Requirements relating to the purchaser's financing of the purchase of a Unit.
- (h) That the Unit and the Community will be subject to various other legal documents which the purchaser should examine, including without limitation a Master Declaration.
- (i) That, except to the extent of a limited warranty in form attached to this Public Report, the Developer makes no warranties regarding the Unit, the Community or anything installed or contained in the Unit or the Community.
- (j) That the Community will be subject to ongoing construction and sales activities which may result in certain annoyances to the purchaser.
- (k) That the purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

- (l) That the Developer has reserved certain rights and powers relating to the Community and the purchaser acknowledges and consents to the exercise of such rights and powers.
- (m) That except under certain circumstances, as set forth in the Sales Contract, all interest on deposits toward the purchase price shall be the property of the Developer.
- (n) If the purchaser defaults, Developer may retain purchaser's deposits and bring an action against purchaser. All actions are subject to the rules of the Dispute Prevention Resolution, Inc., as provided in the Sales Contract.
- (o) Buyer may not at any time assign its rights or obligations under the Purchase Agreement without the prior written consent of the Developer.
- (p) Any unapproved assignment of the Sales Contract shall be considered a default under the Sales Contract.
- (q) The Sales Contract provides that any dispute by or between Seller and Purchaser arising out of or incident to the Sales Contract, or the development or management of the Community, the sale of the Unit or the use or occupancy thereof, or any other aspect of the relationship between Seller and Purchaser regarding the Community which is raised or otherwise asserted before or after Closing shall be submitted to mediation if the parties agree, and, if necessary, to arbitration in accordance with the terms, conditions and procedures set forth in the Sales Contract.

The Sales Contracts contains various other important provisions relating to the purchase of a Unit in the Community. Purchasers and prospective purchasers should carefully read the specimen Sales Contracts on file with the Real Estate Commission. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings given them under the Purchase Agreement.

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



## EXHIBIT R

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

The Escrow Agreement sets up an arrangement under which the deposits a purchaser makes pursuant to a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

- (a) Escrow will let the purchaser know when payments are due.
- (b) Escrow will arrange for the purchaser to sign all necessary documents.
- (c) The purchaser will be entitled to a refund of his or her funds only under certain circumstances as set forth in the Sales Contract.

The Escrow Agreement also establishes the procedures for the retention and disbursement of a purchaser's funds and says what will happen to the funds upon a default under the Sales Contract. The Escrow Agreement contains various other important provisions and establishes certain charges with which a purchaser should be familiar. Purchasers and prospective purchasers should carefully read the signed Escrow Agreement on file with the Real Estate Commission. A copy is available at the Developer's sales office. The Escrow Agreement contains the following provisions (which may be modified or otherwise limited by provisions not set forth below):

1. As and when Seller enters into a Sales Contract, Seller will give Escrow a signed copy of the Sales Contract and Buyer's deposit towards the purchase price of a Unit. The Sales Contract will require Buyer to pay to Escrow all other payments of the purchase price required under the Sales Contract. If Buyer gets a mortgage loan, the money from the loan will be paid to Escrow, along with the lender's mortgage for recording, and Escrow shall follow the lender's instructions. The Sales Contract will show the correct name and address of each Buyer. If a Sales Contract is signed and the sale occurs in a state other than Hawaii, the Sales Contract will show the place where the sale occurs.

2. Escrow will put all of the money it gets from Buyer in one or more special accounts (the "Escrow Deposit Account"). The Escrow Deposit Account will be deposited only at a depository designated by Seller or in banks or savings and loan institutions in Hawaii that are insured by the federal government as directed by Seller. The place, or places, where the Escrow Deposit Account is set up will be chosen by Escrow, unless otherwise selected or directed by Seller. Unless any of the Sales Contracts show different instructions, Seller will get all of the interest earned on the Escrow Deposit Account. Escrow will deposit the payments it gets from Buyer into the Escrow Deposit Account one or more times each week.

3. The Sales Contract states when refunds of deposits may be made to Buyer. In the case where the Sales Contract is not yet binding and Buyer requests a refund, Escrow shall notify Seller of such request. Escrow may refund the deposit to Buyer, less any cancellation or other fees to which Escrow is entitled, only after receiving written approval from Seller. In all other cases, Escrow shall not make any refund to a Buyer who asks for it unless Escrow receives written approval from Seller or from a court of competent jurisdiction. The words "cancellation fees" mean Escrow's cancellation fees which are described in the Sales Contract and are described later in this Agreement. Fees for cancellation may also be charged by the lender who

has agreed to lend Buyer money to buy the Unit. The Sales Contract states the instances when Escrow is to subtract cancellation fees from the amount to be refunded unless Seller tells Escrow not to charge the cancellation fees. Escrow shall give each Buyer who is to get a refund written notice of the refund. Escrow will send this notice by mail to Buyer at the address shown on Buyer's Sales Contract or to the last address which Buyer may have given to Escrow.

4. Escrow will notify Seller and Buyer promptly if Buyer fails to make a payment or if Buyer fails to attend a scheduled pre-closing. Seller will notify Escrow in writing if a Buyer has defaulted or not done something that Buyer promised to do in the Sales Contract. Seller will tell Escrow in the same letter that, because Buyer has defaulted, Seller is cancelling the Sales Contract and will give Escrow a copy of the letter that Seller delivered in person or sent by registered or certified mail to Buyer, telling Buyer of the default and cancellation. Seller will also give Escrow a copy of a receipt signed by Buyer or the registered or certified mail return receipt. Escrow will then send a letter to Buyer by registered or certified mail, informing Buyer that Seller has cancelled the Sales Contract because of the default. Escrow will wait for fifteen (15) days after the date which shows on the return receipt as the date when Buyer got Escrow's letter or the date which shows the last time that the post office tried to deliver the letter. If Escrow does not hear from Buyer during that time, Escrow may deduct its cancellation fee from Buyer's funds and treat Buyer's funds which are left as belonging to Seller. If Buyer tells Escrow that Buyer has not defaulted or tells Escrow not to do anything with Buyer's funds, then Escrow may proceed in accordance with Section 5.2 of the Escrow Agreement (to interplead funds) or deliver the funds to Seller.

5. Escrow will set the time (in accordance with Sales Contract and Seller's interest to pre-close) for taking in all money from each Buyer and for the signing of all of the documents that each Buyer must sign to complete the purchase, except for the mortgage documents, which may be signed at the lender's place of business. The conveyance tax certificates, preliminary closing statements, escrow instructions and final closing statements will be prepared by Escrow, and Escrow will do all of the escrow acts required under this Agreement or any other written agreements between Seller, Buyer and Escrow. Escrow will give Buyer and Seller copies of HARPTA and FIRPTA forms, or provide the online link to obtain copies of those forms, with a recommendation that the parties seek appropriate counsel to complete the forms. Escrow will coordinate with Buyer's lender, the title companies and all others who are a part of the purchase so that closing will occur at a suitable time. Escrow agrees to close all of the sales at the same time or individually from time to time, as directed by Seller. "Closing" is complete when all necessary conveyance and financing documents to complete a purchase are recorded in the appropriate Hawaii recording office. After all documents have been signed, Escrow will close on the closing date as agreed to in the Sales Contract only if:

- (i) The required money has been paid to Escrow;
- (ii) All necessary documents can be recorded, as appropriate;
- (iii) All mortgages having to do with the purchase can be recorded, following the lender's instructions; and
- (iv) All necessary releases can be recorded so that the Unit is conveyed free and clear of all blanket liens in accordance with the Condominium Law.

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

**EXHIBIT S**  
Section -- 5.2 Sales to Owner Occupants

**THE VILLAS AT POIPU KAI**  
**AFFIDAVIT OF INTENT TO PURCHASE AND RESIDE IN AN OWNER-OCCUPANT**  
**DESIGNATED CONDOMINIUM UNIT**

**Chronological System     Lottery System**

We, the undersigned "owner-occupants", on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, do hereby declare that it is our intention to purchase and reside in a designated townhouse condominium unit designated for an "owner-occupant" in The Villa at Poipu Kai condominium community ("Community") proposed by Regency Villas, LLC, a Hawaii limited ("Developer").

We understand, affirm, represent and agree by signing this Affidavit that:

1. It is our intent to reserve and purchase an owner-occupant designated residential unit ("designated residential unit") pursuant to Section 514B-96 of the Owner-Occupant Law, and upon closing escrow, to reside in the designated residential unit as our principal unit for 365 consecutive days.

2. The term "owner-occupant" as used herein is defined in section 514B-95 of the Owner-Occupant Law as:

"...any individual in whose name sole or joint legal title is held in a residential unit that, simultaneous to such ownership, serves as the individual's principal unit, as defined by the department of taxation, for a period of not less than three hundred and sixty-five consecutive days; provided that the individual shall retain complete possessory control of the premises of the residential unit during this period. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases, or assigns the premises for any period of time to any other person in whose name legal title is not held; except that an individual shall be deemed to have complete possessory control even when the individual conveys or transfers the unit into a trust for estate planning purposes and continues in the use of the premises as the individual's principal unit during this period."  
(Emphasis added).

3. We understand that if two or more prospective owner-occupants intend to reside jointly in the same designated residential unit, only one owner-occupant's name shall be placed on the reservation list for either the chronological system or the lottery system.

4. Should we require financing from a financial institution to purchase the designated residential unit, the financing shall be an owner-occupant mortgage loan. The

financial institution is required to take all reasonable steps necessary to determine whether the borrower intends to become an owner-occupant.

5. At any time after obtaining adequate financing or a commitment for adequate financing up until the expiration of this Affidavit (365 days after recordation of the instrument conveying the designated residential unit to us), we shall notify the Real Estate Commission immediately upon any decision to cease being an owner-occupant of the designated residential unit.

6. At closing of escrow, we shall file a claim for and secure an owner-occupant property tax exemption with the appropriate county office for the designated residential unit.

7. We have personally executed this Affidavit and we are all of the prospective owner-occupants for the designated residential unit. This Affidavit shall not be executed by an attorney-in-fact.

8. We shall not sell or offer to sell, lease or offer to lease, rent or offer to rent, assign or offer to assign, convey or otherwise transfer any interest in the designated residential unit until at least 365 consecutive days have elapsed since the recordation of the instrument conveying title to the designated residential unit to us. Furthermore, we understand that we have the burden of proving our compliance with the law. We affirm that we will notify the Real Estate Commission immediately upon any decision to cease being an owner occupant.

9. We understand that it is the affirmative duty of any developer, employee or agent of a developer, and real estate licensee, to report immediately to the Real Estate Commission any person who violates or attempts to violate the Owner-Occupant Law. No developer, employee or agent of a developer, or real estate licensee shall violate or aid any person in violating the Owner-Occupant Law.

10. The Real Estate Commission may require verification of our owner-occupant status and if we fail to submit such verification, we may be subject to a fine in an amount equal to the profit made from the sale, assignment or transfer of the designated residential unit.

11. Any false statement in this Affidavit or violation of the Owner-Occupant Law shall subject us to a misdemeanor charge with a fine not to exceed \$2,000, or by imprisonment of up to a year or both. We further understand that if we violate or fail to comply with the Owner-Occupant Law, we shall be subject to a civil penalty of up to \$10,000, or fifty per cent of the net proceeds received or to be received from the sale, lease, rental, assignment or other transfer of the designated residential unit, whichever is greater.

12. When required by context, each pronoun reference shall include all numbers (singular or plural) and each gender shall include all genders.

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STATE OF HAWAII )  
 ) SS.  
COUNTY OF KAUAI )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared

\_\_\_\_\_  
to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

\_\_\_\_\_  
Type or print name: \_\_\_\_\_  
Notary Public, State of Hawaii.  
My commission expires: \_\_\_\_\_

Date of Doc: _____	# Pages: _____
Name of Notary: _____	Notes: _____
Doc. Description: _____	
	(stamp or seal)
Notary Signature _____	Date _____
Fifth Circuit, State of Hawaii	
<b>NOTARY CERTIFICATION</b>	

## EXHIBIT T

### Section 6 -- Miscellaneous Information Not Covered Elsewhere in this Report

1. Developer may revise the specimen deed and sales contract for the Community to conform with any future amendments that may be made to the Declaration and the Community.
2. Each prospective purchaser should review the Condominium Map Site Plan so that they may identify easement areas benefiting the Community, which easements may affect the use of the Community, if any.
3. Act 119 passed by the State of Hawaii Legislature and effective July 1, 2004, contains important requirements you must follow before you file a lawsuit or other action for defective construction against the contractor who designed, repaired, or constructed your unit or facility. Ninety days before you file your lawsuit or other action, you must serve on the contractor a written notice of any construction conditions you allege are defective. Under the law, a contractor has the opportunity to make an offer to repair and/or pay for the defects. You are not obligated to accept any offer made by a contractor. There are strict deadlines and procedures under the law and failure to follow them may negatively affect your ability to file a lawsuit or other action.
4. Certain portions of the Community may be used as a sales office or model units. The Buyer is aware that noise and traffic from these areas may cause a disturbance. The Buyer is responsible for investigating noise levels in and around the Community to determine if the Buyer is satisfied with the acoustics and noise levels within the unit and within the Community as a whole. Developer makes no guaranty as to these matters now or in the future.
5. The Buyer should be aware that the Community may be periodically affected by certain environmental conditions due to historical, existing and prospective surrounding conditions and uses. Those uses include, without limitation, industrial, commercial and other non-residential uses, animal husbandry and pasture uses. Overhead and underground radio transmission wires and high voltage electric lines and facilities may be located within and around the Community. Such facilities purportedly may emit electric and magnetic emissions. Aircraft may fly in the proximity of or over or close to the Community. Buyers should also be aware that ongoing construction, commercial and industrial uses, plantation harvesting and farming may temporarily generate heavy dust and/or other nuisances. Pesticides and fertilizers were or may be used in the plantation harvesting and farming and may have long term effects on the land, water and environment.
6. Buyers are encouraged to find out which parking stalls are available for their use and the location of the parking stalls.
7. All prospective purchasers should be aware that the Association may enter into license agreements with individual owners of the adjacent Regency Villas at Poipu Kai community which would allow those owners the right to use the swimming pool, spa and barbecue facilities within the Community in exchange for a License Fee.



8. Developer has the reserved right to control the Association in accordance with Section 514B-106(d) of the Act, during which time Developer, or persons designated by Developer, may appoint and remove the officers and members of the Board of Directors. Such period of control of the Association by Developer (the "Control Period") shall terminate no later than the earlier of:

(a) Sixty (60) days after conveyance of seventy-five percent (75%) of the common interest appurtenant to Units to Owners other than Developer or an affiliate of Developer;

(b) Two (2) years after Developer has ceased to offer Units for sale in the ordinary course of business;

(c) Two (2) years after any right to add new Units was last exercised; or

(d) The day Developer, after giving written notice to Unit Owners, Records an instrument voluntarily surrendering all rights to control activities of the Association.

Developer may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Control Period, but in such event Developer may require, for the duration of the period of Developer control, that specified actions of the Association or Board, as described in a Recorded instrument executed by Developer, be approved by Developer before they become effective, provided, however, that during the Control Period (i) Developer must provide a copy of all amendments to the Department of Veterans Administration (the "VA"), and (ii) the Association may not make any material amendments or take any extraordinary actions as described in VA Pamphlet 26-7 revised, as may be applicable, without the approval of VA.

Until such time as the Declarant has turned over administration of the Community to the Association, Declarant shall have the right to amend the Bylaws without the approval, consent or joinder of, or notice to, any person or group of persons, including the Association, any Unit Owner or any mortgagee, lienholder, Unit purchaser or any other person who may have an interest in the Community.

9. All prospective purchasers should be aware that The Villas at Poipu Kai is within and a part of the master homeowners association known as the Poipu Kai Association, and is subject to certain conditions and restrictions contained in the various documents that affect the Community, including the covenants, conditions, restrictions, reservations, agreements, obligations and other provisions contained in the First Restatement of the Declaration of Covenants and Restrictions of Poipu Kai Association, as the same may be amended and/or supplemented.

10. The Association of Apartment Owners of Manualoha, an adjacent condominium property, has alleged that there is an encroachment from the Community into Easement 6A, which benefits the Manualoha community. Declarant and the Association of Apartment Owners of Manualoha have entered into a Tolling Agreement to preserve any claims of the Association of Apartment Owners of Manualoha while steps are taken to resolve the issue.

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THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT CONTAINED IN THE DECLARATION, BY LAWS, CONDOMINIUM MAP, HOUSE RULES AND

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