

# IMPORTANT - - Read This Developer Prepared Report Before Buying

This Report Is Not a Commission Approval or Disapproval of This Condominium Project

## SECOND AMENDED DEVELOPER'S PUBLIC REPORT FOR A CONDOMINIUM

CONDOMINIUM PROJECT NAME	KAUAI KAILANI
Project Address	4-856 Kuhio Highway, Kapaa, HI 96746
Registration Number	7461 (Conversion)
Effective Date of Report	<b>August 30, 2018</b>
Developer(s)	GCT Properties, 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.

---

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

## Special Attention - - Significant Matters

[Use this page for special or significant matters which should be brought to the purchaser's attention. At minimum "Subject Headings" and page numbers where the subject is explained more may be used.]

**The developer's inclusion of a disclosure or an explanation of any or all of the following applicable significant matters in this part of the developer's public report shall not be construed to constitute the Commission's:**

- **Approval or disapproval of the project;**
- **Representation that the developer has fully or adequately disclosed either all material facts or all pertinent changes, or both, concerning the project;**
- **Representation that the developer's disclosures of other material facts elsewhere in this report is less important; or**
- **Judgment of the value or merits of the project.**

**The commission reserves the right to request that the developer include these special and significant matters elsewhere in the developer's public report.**

A. In this report, we use the following terms:

1. "Project" means the Kauai Kailani condominium project.
2. "Developer" means GCT Properties, LLC, a Hawaii limited liability company.
3. "Purchaser" means someone who has signed a Sales Contract.
4. "Sales Contract" means a contract to purchase a Unit in the Project.

In this report, we sometimes use the term "we" to refer to the Developer and "you" to refer to Purchasers and prospective Purchasers. Certain other terms are defined in Exhibit A. If a term is capitalized, but not defined in Exhibit A, then it will have the meaning given to it in the Declaration of Condominium Property Regime for Kauai Kailani or the Bylaws of the Association of Unit Owners of Kauai Kailani. You should read both of these documents.

This report contains disclosures required by Hawaii's Condominium Property Act, Chapter 514B, Hawaii Revised Statutes. It also contains information that we believe will be of general interest to Purchasers and prospective Purchasers. We also capitalized, highlighted in bold or underlined some things that we did not want to escape your attention. Purchasers and prospective Purchasers should understand, however, that it is not possible or practical to include in this report all points that each individual Purchaser or prospective Purchaser may consider important. It is also not possible for the Developer to predict which issues may turn out to be important to Purchasers and prospective Purchasers. Purchasers and prospective Purchasers are therefore cautioned to read with care this entire report, and each of the documents identified in Section 5.7 of this report, and to review them with their legal and tax advisors in order to be sure that the purchase of a Unit(s) in the Project will satisfy their own personal requirements and expectations. Each Purchaser is also cautioned that by signing a Sales Contract, he or she accepts and agrees to be bound by and comply with all the documents identified in Section 5.7.

- B. This Second Amended Developer's Public Report for a Condominium (this "Public Report") and any information contained in this Public Report SUPERSEDES any information provided to prospective Purchasers in that certain Developer's Public Report for a Condominium with an effective date of January 14, 2014, that certain Amended Developer's Public Report for a Condominium with an effective date of July 24, 2015, Amendment 1 to Amended Developer's Public Report for a Condominium with an effective date of October 24, 2016, the Notice(s) of Material Change dated April 20, 2015, December 11, 2015, July 12, 2016, and December 30, 2016, and any Notice of Pertinent Change provided to purchasers prior to the date of this Public Report.

C. This Section highlights certain noteworthy changes between this Public Report and the Amended Developer's Public Report for a Condominium dated July 24, 2015, as amended by the First Amendment to the Amended Public Report dated October 24, 2016. **Prospective purchasers are encouraged to read this entire Public Report, not just some part or section of it, or just the sections mentioned below.**

1. Section 1.4 (Parking Stalls) and Exhibit D (Information on Parking Stalls): All parking stalls were initially assigned as limited common elements to the Gazebo Unit (Unit No. 2), however, as of June 2018, about 35 of the 51 parking stalls have been sold to certain unit owners and assigned as limited common elements to their respective units. The Condominium Declaration has been amended several times for the purpose of assigning parking stalls as limited common elements of certain units. The Developer cannot predict how many parking stalls will remain unassigned and available for use by owners who do not purchase parking stalls. Exhibit D which is referenced in Section 1.4 of this Public Report has been updated to reflect these changes.
2. Section 1.12 (Encumbrances Against Title) and Exhibit I: The Developer obtained an updated title report dated May 7, 2018. Exhibit I has been updated to accurately reflect the list of encumbrances shown in the updated title report, including but not limited to that certain Indemnification Agreement made by the Association of Unit Owners of Kauai Kailani, GCT Properties, LLC, and the County of Kauai, dated December 12, 2016, recorded January 30, 2017, as Document No. A-62390548.
3. Section 5.5 (Status of Construction, Date of Completion or Estimated Date of Completion): Remodeling of the Plumeria Building was substantially completed in 2013 and remodeling of the Orchid Building was substantially completed in 2015.
4. Exhibit B (Description of the Buildings): This Exhibit was updated to note that privacy walls were constructed around the boundaries of the lanais of ground floor Units of the Plumeria Building, but not the Orchid Building, and an elevator was installed in the Orchid Building.
5. Exhibit D (Schedule of Parking Stalls): The Schedule of Parking Stalls was updated to note the number of sold parking stalls as of June 2018 and to clarify that certain stalls may be adjacent to Easement 1, rather than located on Easement 1.
6. Exhibit L (Names of Managers and Members of Developer): The manager of the Developer is now RAM Corporation, a Hawaii corporation.
7. Exhibit N (Budget): The budget was updated so that it accurately reflects the current maintenance fees based on the recalculated common interest for each unit.

The budget also takes into account the fact that the Association has borrowed the funds required to pay the remainder of the costs to address the shoreline erosion issues at the Project.

In addition, the budget attached to this Public Report does not include costs related to the operation and maintenance of an elevator in the Orchid Building. The maintenance fees of the Owners of Units in the Orchid Building may be increased to include the costs of operating and maintaining the elevator.

8. Exhibit O (Summary of Sales Contract): The form of Purchase Agreement for the Project was updated. Therefore, Exhibit O was revised to reflect the changes made to the form of Purchase Agreement.
9. Exhibit Q (Warranties): Warranties given to the Developer by the General Contractor pursuant to the Construction Contract, and any manufacturer's or dealer's warranties covering any Furnishings, have expired. Therefore, Exhibit Q was revised to reflect these changes.
10. Exhibit R (Additional Disclosures):
  - i. A paragraph was added to Section 1.10 (Statement of Condition) to note that the Statement of Condition was prepared more than five years ago. In addition to the renovation of the Project, the condition of the Property is likely to have changed in the intervening years.

- ii. Section 1.17 (Erosion Agreement) was added to disclose that the location of the shorelines around the islands tend to move. Prior to the establishment of the Project as a condominium, the Developer asked the State of Hawaii to certify the location of the shoreline. The State required the Developer to "Resolve the encroachments of the concrete wall and short wooden retaining structures" located on the State's land. In response to the State, the Developer removed the concrete wall or "groin" and wooden retaining structures. Subsequently, the shoreline moved again. The Association of Unit Owners of Kauai Kailani (the "Association") filed a lawsuit against the Developer (the "Lawsuit"). On March 9, 2017, the court dismissed the Lawsuit without prejudice. The Developer and the Association signed a settlement agreement dated October 23, 2017 (the "Erosion Agreement").

To reduce or prevent erosion of the beach in front of the Project, the Association desires to construct or install a hardened wall or "groin" like the concrete groin that was removed. The Association also desires to restore the sand on the beach. The Association has hired Oceanit Coastal Corporation to provide the design and permitting work.

The Association and the Developer anticipate that construction or installation of a new groin or other shoreline protection barrier is a process that includes multiple approvals across County, State and Federal agencies. As a result, the Developer can make no promises or predictions about whether the Association will be able to obtain all the governmental approvals that it desires or when it will know whether it can obtain them. To avoid further erosion while seeking such governmental approvals, the Association arranged for the construction of a barrier along the shoreline of the Project, called the Shoreline Protection Feature ("SPF").

Activities relating to the design and construction work will likely generate noise, dust, and other nuisances and may temporarily disrupt use of Common Elements.

- iii. Section 1.18 (Non-Erosion Agreement) was added to disclose the agreements by the Developer pursuant to a settlement agreement dated June 21, 2017 (the "Non-Erosion Agreement"). Under the Non-Erosion Agreement, the Developer agreed to make certain payments to the Association, install an elevator, make certain corrections, and limit sales of parking stalls.

The Developer has installed an elevator in the Orchid Building. Although the 2018 Operating Budget did not include any elevator expenses or reserves, future budgets are likely to add this. As a condition to issuing the permits required for the installation of the elevator in the Orchid Building, the County of Kauai required that the Association enter into an Indemnification Agreement dated December 12, 2016, recorded as Document No. A-62390548. This Indemnification Agreement may constitute an impediment to the Association's ability to construct or install a hardened wall or "groin" like the concrete groin that was removed several years ago. There are no plans to install an elevator in the Plumeria Building.

The Developer has made certain corrections to the stairways and walkways of the Orchid Building. The Association will pay all ongoing costs to maintain and repair them as a common expense.

The Project has more Units than parking stalls. The Developer has agreed that, in the future, it will not sell more than one parking stall with any unsold Unit or to any current Unit Owner without a stall.

- iv. Section 1.19 (Miscellaneous) was added to disclose that a new reserve study is to be conducted in 2018.

# TABLE OF CONTENTS

	<u>Page</u>
Preparation of this Report.....	1
General Information On Condominiums.....	2
Operation of the Condominium Project.....	2
1. THE CONDOMINIUM PROJECT.....	3
1.1 The Underlying Land.....	3
1.2 Buildings and Other Improvements.....	3
1.3 Unit Types and Sizes of Units.....	3
1.4 Parking Stalls.....	4
1.5 Boundaries of the Units.....	4
1.6 Permitted Alterations to the Units .....	4
1.7 Common Interest.....	4
1.8 Recreational and Other Common Facilities.....	4
1.9 Common Elements.....	5
1.10 Limited Common Elements.....	5
1.11 Special Use Restrictions .....	5
1.12 Encumbrances Against Title.....	5
1.13 Uses Permitted by Zoning and Zoning Compliance Matters .....	6
1.14 Other Zoning Compliance Matters.....	6
1.15 Conversions .....	7
1.16 Project In Agricultural District.....	8
1.17 Project with Assisted Living Facility.....	8
2. PERSONS CONNECTED WITH THE PROJECT.....	9
2.1 Developer.....	9
2.2 Real Estate Broker.....	9
2.3 Escrow Depository.....	9
2.4 General Contractor.....	9
2.5 Condominium Managing Agent.....	9
2.6 Attorney for Developer .....	9
3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS .....	10
3.1 Declaration of Condominium Property Regime .....	10
3.2 Bylaws of the Association of Unit Owners .....	10
3.3 Condominium Map.....	10
3.4 House Rules.....	11
3.5 Changes to the Condominium Documents.....	11
3.6 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents.....	11
4. CONDOMINIUM MANAGEMENT.....	12
4.1 Management of the Common Elements .....	12
4.2 Estimate of the Initial Maintenance Fees.....	12
4.3 Utility Charges to be Included in the Maintenance Fee.....	12
4.4 Utilities to be Separately Billed to Unit Owner .....	12
5. SALES DOCUMENTS.....	13
5.1 Sales Documents Filed with the Real Estate Commission.....	13
5.2 Sales to Owner-Occupants.....	13
5.3 Blanket Liens.....	13
5.4 Construction Warranties .....	13
5.5 Status of Construction, Date of Completion or Estimated Date of Completion.....	14

## TABLE OF CONTENTS

	Page
5.6	Developer's Use of Purchaser Deposits to Pay for Project Construction Costs Before Closing or Conveyance ..... 14
5.6.1	Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance..... 14
5.6.2	Purchaser Deposits Will Be Disbursed Before Closing..... 15
5.7	Rights Under the Sales Contract ..... 17
5.8	Purchaser's Right to Cancel or Rescind a Sales Contract ..... 17
5.8.1	Purchaser's 30-Day Right to Cancel a Sales Contract..... 17
5.8.2	Right to Cancel a Sales Contract if Completion Deadline Missed..... 18
5.8.3	Purchaser's Right to Rescind a Binding Sales Contract After a Material Change 18
6.	MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT..... 19
EXHIBIT A:	Definitions
EXHIBIT B:	Description of Buildings
EXHIBIT C:	Unit Types and Sizes of Units
EXHIBIT D:	Schedule of Parking Stalls
EXHIBIT E:	Boundaries of the Units
EXHIBIT F:	Permitted Alterations to the Units
EXHIBIT G:	Description of Common Elements and Limited Common Elements
EXHIBIT H:	Special Use Restrictions
EXHIBIT I:	Encumbrances Against Title
EXHIBIT J:	Statement of Condition
EXHIBIT K:	Verified Statement of County Official
EXHIBIT L:	Names of Managers and Members of Developer
EXHIBIT M:	Developer's Reserved Rights
EXHIBIT N:	Estimated Annual Maintenance Fees and Monthly Estimated Fees
EXHIBIT O:	Summary of Sales Contract
EXHIBIT P:	Summary of Escrow Agreement
EXHIBIT Q:	Warranties
EXHIBIT R:	Additional Disclosures

## **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	N/A
Address of Project	4-856 Kuhio Highway, Kapaa, HI 96746
Address of Project is expected to change because	N/A
Tax Map Key (TMK)	(4) 4-3-009-050 and portion of 41
Tax Map Key is expected to change because	County of Kauai may decide to assign a single TMK number to the entire project.
Land Area	Approx. 74,461 sq. ft. due to movement of the shoreline <sup>1</sup>
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	N/A

**1.2 Buildings and Other Improvements**

Number of Buildings	See Exhibit B
Floors Per Building	See Exhibit B
Number of New Building(s)	See Exhibit B
Number of Converted Building(s)	2 buildings – constructed in 1960s or 1970s
Principle Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	See Exhibit B

**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>  C  </u>						

<b>60</b>	<b>Total Number of Units</b>
-----------	------------------------------

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.

<sup>1</sup> Please see Exhibit R for information on the movement of the shoreline and related matters.



**1.4 Parking Stalls**

Total Parking Stall in the Project:	51
Number of Guest Stalls in the Project:	None
Number of Parking Stalls Assigned to Each Unit:	See Exhibit D.
Attach Exhibit <u>D</u> 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. The Developer has the unilateral right to reassign parking stalls from Unit 2 to other units. If the Developer annexes additional land into the Project and creates New Units on such land, it may assign any new parking stalls constructed as New Improvements to the New Units.	

**1.5 Boundaries of the Units**

Boundaries of the unit: See Exhibit E
---------------------------------------

**1.6 Permitted Alterations to the Units**

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

**1.7 Common Interest**

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

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

<input checked="" type="checkbox"/>	Swimming pool (There are 2 swimming pools.)
<input type="checkbox"/>	Laundry Area (Located in Commercial Unit No. 3. Not available to Association or Owners without Unit Owner's permission.)
<input type="checkbox"/>	Storage Area (Storage Room 1-A is a limited common element of Unit 1 and not available to the Association or Owners. However, some, but not all, resort units, have storage units that are limited common elements of the units and available for the Unit Owner's use.)
<input type="checkbox"/>	Tennis Court
<input checked="" type="checkbox"/>	Recreation Area (Recreation Room)
<input type="checkbox"/>	Trash Chute/Enclosure(s)
<input type="checkbox"/>	Exercise Room
<input type="checkbox"/>	Security Gate
<input type="checkbox"/>	Playground
<input type="checkbox"/>	Other (describe):

**1.9 Common Elements**

<p><b>Common Elements:</b> Common elements are those parts of the condominium project other than the individual units and any other real estate for the benefit of unit owners. Although the common elements are owned jointly by all unit owners, those portions of the common elements that are designated as limited common elements (see Section 1.10 below) may be used only by those units to which they are assigned. In addition to the common facilities described in Section 1.8 above, the common elements for this project, as described in the Declaration, are set forth below.</p>									
<p>Described in Exhibit G _____.</p>									
<p>Described as follows:</p>									
<table border="1"> <thead> <tr> <th>Common Element</th> <th>Number</th> </tr> </thead> <tbody> <tr> <td>Elevators</td> <td>1 (1 in the Orchid Bldg.; 0 in Plumeria Bldg.)</td> </tr> <tr> <td>Stairways</td> <td>5 (3 in Orchid Bldg.; 2 in Plumeria Bldg.)</td> </tr> <tr> <td>Trash Chutes</td> <td>0</td> </tr> </tbody> </table>		Common Element	Number	Elevators	1 (1 in the Orchid Bldg.; 0 in Plumeria Bldg.)	Stairways	5 (3 in Orchid Bldg.; 2 in Plumeria Bldg.)	Trash Chutes	0
Common Element	Number								
Elevators	1 (1 in the Orchid Bldg.; 0 in Plumeria Bldg.)								
Stairways	5 (3 in Orchid Bldg.; 2 in Plumeria Bldg.)								
Trash Chutes	0								

**1.10 Limited Common Elements**

<p><b>Limited Common Elements:</b> A limited common element is a portion of the common elements that is reserved for the exclusive use of one or more but fewer than all units in the project.</p>
<p>Described in Exhibit G _____.</p>
<p>Described as follows:</p> <p>Note that the lanais for all Units are limited common elements. Some, but not all Units, have an assigned parking stall as a limited common element.</p>

**1.11 Special Use Restrictions**

<p>The Declaration and Bylaws may contain restrictions on the use and occupancy of the units. Restrictions for this project include, but are not limited to, those described below.</p>	
<input checked="" type="checkbox"/>	Pets: Persons with handicaps may keep specially trained animals. No other animals allowed
<input type="checkbox"/>	Number of Occupants:
<input checked="" type="checkbox"/>	Other: See Exhibit H.
<input type="checkbox"/>	There are no special use restrictions.

**1.12 Encumbrances Against Title**

<p>An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of a unit in the project. Encumbrances shown may include blanket liens which will be released prior conveyance of a unit (see Section 5.3 on Blanket Liens).</p>
<p>Exhibit I _____ describes the encumbrances against title contained in the title report described below.</p>
<p>Date of the title report: May 7, 2018</p>
<p>Company that issued the title report: Old Republic Title &amp; Escrow of Hawaii, Ltd.</p>

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

Uses Permitted by Zoning				
	Type of Use	No. of Units	Use Permitted by Zoning	Zoning
<input checked="" type="checkbox"/>	Residential	57	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	R20
<input checked="" type="checkbox"/>	Commercial	3	<input checked="" type="checkbox"/> Yes* <input type="checkbox"/> No	R20
<input checked="" type="checkbox"/>	Mix Residential/Commercial		<input checked="" type="checkbox"/> Yes* <input type="checkbox"/> No	R20
<input checked="" type="checkbox"/>	Hotel		<input checked="" type="checkbox"/> Yes* <input type="checkbox"/> No	R20
<input checked="" type="checkbox"/>	Timeshare		<input checked="" type="checkbox"/> Yes* <input type="checkbox"/> No	R20
<input type="checkbox"/>	Ohana		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Industrial		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Agricultural		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Recreational		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Other (Specify):		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is/Are this/these use(s) specifically permitted by the project's Declaration 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			None	

\* Allowed with applicable zoning and use permits.

**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	Illega
Uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Structures	<input type="checkbox"/>	<input checked="" 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:  
 The laws and regulations of Kauai County may prohibit repair or reconstruction of any non-conforming structure that is damaged or destroyed. In such event, the Association must remove all remains of such improvements, restore the land to good orderly condition and even grade, and any damaged or destroyed Units that are not repaired or replaced will be eliminated from the Project.

**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 checked="" type="checkbox"/> <b>Applicable</b>  <input 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:                  See Exhibit J, which is attached hereto and hereby incorporated herein by this reference.</p>	
<p>Developer's statement of the expected useful life of each item reported above:                  The Developer makes no representation as to the expected useful life of the structural components and mechanical and electrical installations material to the use and enjoyment of the units.</p>	
<p>List of any outstanding notices of uncured violations of any building code or other county regulations:                  None</p>	
<p>Estimated cost of curing any violations described above:                  None</p>	

<p><b>Verified Statement from a County Official</b></p>
<p>Regarding any converted structures in the project, attached as Exhibit K___ 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 non-conforming 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 style="text-align: center;">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

<p><b>2.1 Developer(s)</b></p>	<p>Name: GCT Properties, LLC, a Hawaii limited liability company</p> <p>Business Address: 1717 Akahi Street, 2<sup>nd</sup> Floor Honolulu, Hawaii 96819-4265</p> <p>Business Phone Number : (808) 432-9900</p> <p>E-mail Address:</p>
<p>Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary).</p>	<p>See Exhibit L</p>
<p><b>2.2 Real Estate Broker</b></p>	<p>Name: Oceanfront Realty International, Inc. Business Address: 5-4280 Kuhio Highway G-200 Princeville, Hawaii 96722</p> <p>Business Phone Number: (808) 826-6585</p>
<p><b>2.3 Escrow Depository</b></p>	<p>Name: Old Republic Title &amp; Escrow of Hawaii, Ltd. Business Address: 4-356 G Kuhio Highway Kapaa, Kauai, Hawaii 96746</p> <p>Business Phone Number: (808) 821-6808</p>
<p><b>2.4 General Contractor</b></p>	<p>Name: Craig Kawakami Builders (2012-15 Renovations) Business Address: P.O. Box 1155 Kaneohe, Hawaii 96744</p> <p>Business Phone Number: (808) 245-4610</p>
<p><b>2.5 Condominium Managing Agent</b></p>	<p>Name: Castle Resorts &amp; Hotels, Inc. Business Address: 500 Ala Moana Blvd., Bldg. 3, Suite 555 Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808) 524-0900</p>
<p><b>2.6 Attorney for Developer</b></p>	<p>Name: Charles E. Pear, Jr.; Stacey Hee; Kelsey S. Yamaguchi Business Address: 500 Ala Moana Blvd., Bldg. 5, Suite 400 Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808) 529-7300</p>

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

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

#### 3.1 Declaration of Condominium Property Regime

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

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau	December 30, 2013	A-51130960

#### Amendments to Declaration of Condominium Property Regime\*

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau	July 10, 2015**	A-5669075

#### 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	December 30, 2013	A-51130961

#### Amendments to Bylaws of the Association of Unit Owners

Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.3 Condominium Map

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

Land Court Map Number	N/A
Bureau of Conveyances Map Number	5242
Dates of Recordation of Amendments to the Condominium Map: July 10, 2015**	

\*Amendments to the Condominium Declaration amending the assignment of parking stalls to various units have been omitted.

**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"/>	December 31, 2013
Developer does not plan to adopt House Rules	<input type="checkbox"/>	

**3.5 Changes to the Condominium Documents**

Changes to Condominium Documents: Changes to the Declaration, Bylaws and Condominium Map are effective only if they are duly adopted and recorded. Where permitted, the minimum percentages of the common interest that must vote for or give written consent to changes to the Declaration, Bylaws and Condominium Map are set forth below. The percentages for any individual condominium project may be more than the minimum set by law if the Declaration or Bylaws for the project so provide.

Document	Minimum Set by Law	This Condominium
Declaration	67%	67%
Bylaws	67%	67%

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

<input type="checkbox"/>	No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).
<input checked="" type="checkbox"/>	The 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 summaries as follows:  See Exhibit M. Some of the Developer's reserved rights are described in other exhibits attached hereto, including but not limited to Exhibits B, F, H, Q & R.



## 4. CONDOMINIUM MANAGEMENT

### 4.1 Management of the Common Elements

**Management of the Common Elements:** The Association of Unit Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

The initial Condominium Managing Agent for this project is (check one):

<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

**Estimate of the Initial Maintenance Fees:** The Association will make assessments against your unit to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your unit and the unit may be sold through a foreclosure proceeding. Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit N 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.

### 4.3 Utility Charges to be Included in the Maintenance Fee

If checked, the following utilities are included in the maintenance fee:

<input checked="" type="checkbox"/>	Electricity for the common elements
<input checked="" type="checkbox"/>	Gas for the common elements
<input checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer
<input checked="" type="checkbox"/>	TV Cable
<input type="checkbox"/>	Other (specify)

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

If checked, the following utilities will be billed to each unit owner and are not included in the maintenance fee:

<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 type="checkbox"/>	TV Cable
<input checked="" type="checkbox"/>	Other (specify) Telephone and internet.

## 5. SALES DOCUMENTS

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

<input checked="" type="checkbox"/>	Specimen Sales Contract Exhibit <u>O</u> contains a summary of the pertinent provisions of the sales contract. Including but not limited to any rights reserved by the Developer.
<input checked="" type="checkbox"/>	Escrow Agreement dated: October 1, 2013 Name of Escrow Company: Old Republic Title & Escrow of Hawaii, Ltd. Exhibit <u>P</u> contains a summary of the pertinent provisions of the escrow agreement.
<input type="checkbox"/>	Other:

### 5.2 Sales to Owner-Occupants

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

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

### 5.3 Blanket Liens

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

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

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

### 5.4 Construction Warranties

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

Building and Other Improvements:

NONE by Developer. The warranties of the General Contractor have expired. See Exhibit Q.

Appliances:

NONE by Developer.

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

<p>Status of Construction: The Project was originally built in the late 1960s or early 1970s. Remodeling of the Plumeria Building was substantially completed in 2013 and remodeling of the Orchid Building was substantially completed in 2015.</p>
<p>Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.</p>
<p>Completion Deadline for any unit not yet constructed, as set forth in the sales contract: Remodeling will be completed within one year after Purchaser's sales contract becomes binding. This period is subject to extension in certain circumstances enumerated in the sales contract.</p>
<p>Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract: N/A</p>

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

<input type="checkbox"/>	<p>Spatial Units. The Developer hereby declares by checking the box to the left that it is offering spatial units for sale and will not be using purchasers' deposits to pay for any costs to pay for project construction or to complete the project.</p> <p>Should the developer be using purchasers' deposits to pay for any project construction costs or to complete the project including lease payments, real property taxes, architectural, engineering, legal fees, financing costs; or costs to cure violations of county zoning and building ordinances and codes or other incidental project expenses, the Developer has to meet certain requirements, described below in 5.6.1 or 5.6.2..</p>
--------------------------	--

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

**5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance**

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

### 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></p> <p><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></b> Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.</p>
<p><b>Box B</b></p> <p><input type="checkbox"/></p>	<p>The Developer has <u>not</u> submitted all information and documents required by law and the Commission, and, until all such information and documents are submitted, thus, the Developer cannot use purchaser deposits.</p> <p>If the Developer later submits all information and documents required by law and the Commission for the use of purchaser deposits, then the Developer must provide an amendment to this report or an amended developer's public report to each purchaser who has signed a sales contract. At such time, the <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><u>you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment.</u></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: Form of Kauai Kailani Unit Deed.

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 30<sup>th</sup> 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**

**PLEASE SEE EXHIBIT R FOR ADDITIONAL IMPORTANT DISCLOSURES.**



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.

GCT Properties, LLC, a Hawaii limited liability company

By RAM Corporation, a Hawaii corporation  
Its Manager

\_\_\_\_\_  
Printed Name of Developer

By:   
Duly Authorized Signatory\*

7/31/18  
Date

Gary Oda, President

\_\_\_\_\_  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

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

**EXHIBIT A**  
**DEFINITIONS**

**1.1 "ACCOMMODATIONS"** means any condominium or cooperative unit, townhouse unit, apartment, time share unit, hotel room, house, or other property that is suitable and intended to provide overnight lodgings for one or more persons, whether or not located in the Condominium.

**1.2 "ADJACENT PARCELS"** means these lots:

- Tax Map Key No. (4) 4-3-009-48;
- Tax Map Key No. (4) 4-3-009-49;
- Tax Map Key No. (4) 4-3-009-51;
- Tax Map Key No. (4) 4-3-009-71;
- Tax Map Key No. (4) 4-3-009-4; and
- Any lot that was part of the Condominium but that is withdrawn and deleted from the Condominium by the Developer pursuant to Section 22 of the Declaration.

If any such lot is subdivided into separate lots, each of them will be an "Adjacent Parcel" whether or not they are physically adjacent to the Condominium. Likewise, if any such lot is consolidated with any other lot, whether or not listed above, the consolidated lot will also be an "Adjacent Parcel." If any Adjacent Parcel is consolidated with any other property, the resulting lot will be an "Adjacent Parcel." An "Adjacent Parcel" may consist of a fee simple interest in a lot or condominium unit, or it may consist of a lesser interest including but not limited to an estate for years, a leasehold and/or an easement in the fee, in an estate for years or in a leasehold.

**1.3 "ARTICLES"** means the Articles of Incorporation of the Association and all changes and additions properly made to them from time to time.

**1.4 "ASSOCIATION"** means the Association of Unit Owners of Kauai Kailani, a Hawaii non-profit corporation. It is the association of the Unit Owners of the Condominium.

**1.5 "ASSOCIATION PROPERTY"** means all real and personal property owned by the Association.

**1.6 "BOARD OF DIRECTORS" OR "BOARD"** means the board of directors of the Association.

**1.7 "BYLAWS"** means the bylaws of the Association recorded with the Declaration, and all changes and additions properly made to them from time to time.

**1.8 "COMMERCIAL UNITS"** means the Units designated as Commercial Units in Section 5 of the Declaration, and any New Units designated as Commercial Units.

**1.9 "COMMERCIAL UNIT OWNER"** means a person who is the Owner of a Commercial Unit.

**1.10 "COMMON ELEMENTS"** means all of the Condominium except for the Units. There are two kinds of Common Elements: General Common Elements and Limited Common Elements.

**1.11 "COMMON INTEREST"** means the percentage undivided interest in the Common Elements appurtenant to each Unit in the Condominium as stated in the Declaration or in any amendment to the Declaration.

**1.12 "CONDOMINIUM"** means the condominium created by the Declaration and the other Condominium Documents.

**1.13 "CONDOMINIUM DOCUMENTS"** means the Declaration, the Articles, the Bylaws, any Rules and Regulations, and the Condominium Map.

**1.14 "CONDOMINIUM LAW"** means (i) the Condominium Property Act, and (ii) the Condominium Regulations.

**1.15 "CONDOMINIUM MAP"** means the map or plans of the Condominium recorded concurrently with the Declaration, and all changes, additions, and substitutions properly made to them from time to time.

**1.16 "CONDOMINIUM PROPERTY ACT"** means Chapter 514B, Hawai'i Revised Statutes, as it may be amended from time to time, and any substitute or replacement law to the extent provided in such substitute or replacement law.

**1.17 "CONDOMINIUM REGULATIONS"** means the rules adopted pursuant to the Condominium Property Act from time to time.

**1.18 "C.P.I. INDEX"** means the U.S. Department of Labor Consumer Price Index for All Urban Consumers – Honolulu. If the government stops publishing that index, then the most similar index available will be used in its place. The Board will choose the replacement index.

**1.19 "C.P.I. ADJUSTED"** means that the figure will be increased or decreased based on changes in the C.P.I. Index during each twelve month period beginning on January 1<sup>st</sup> and ending on December 31<sup>st</sup> of each calendar year. The amount of the initial increase or decrease will be equal to the percentage change between (i) the C.P.I. Index published for the period ending December 31, 2013, and (ii) the C.P.I. Index for the period ending December 31, 2014. The increase or decrease for each calendar year after that will be determined in the same manner, based on a comparison of the C.P.I. Index as of December 31 of such year to the C.P.I. Index for the year ending December 31, 2013.

**1.20 "DECLARATION"** means the Declaration of Condominium Property Regime for Kauai Kailani (With Covenants, Conditions and Restrictions, and Grants and Reservations of Easements and Special Powers of Attorney) and all changes and additions properly made to it from time to time.

**1.21 "DEVELOPER"** means GCT PROPERTIES, LLC, a Hawaii limited liability company, its successors and assigns. If GCT PROPERTIES, LLC (or its successors or assigns) transfers some or

all of its rights or duties to another person as provided by Section 27.5 of the Declaration, then that person will become the "Developer" to the extent of the rights and duties transferred.

**1.22 "DEVELOPER'S RESERVED RIGHTS"** means all rights reserved to the Developer in the Condominium Documents. For example, see the descriptions of the Developer's Reserved Rights contained in Sections ~~3:271E-71H, 72A, 74, 97, 172A~~ (as to the Developer only), ~~18~~ through ~~27~~, and ~~323~~ of the Declaration. This is not a listing of all of the Developer's Reserved Rights.

**1.23 "DEVELOPMENT PERIOD"** means the period starting on the date that the Declaration is recorded and ending on the earlier of (i) December 31, 2025, or (ii) the date when the Developer records a document giving up all of the Developer's Reserved Rights.

**1.24 "FRACTIONAL PLAN"** means any plan or program, other than a Vacation Plan, in which various persons are entitled to the use, occupancy, or possession, on a periodically recurring basis, of Accommodations included in or available through such plan or program, whether or not (i) the Accommodations remain the same from period to period, and (ii) the plan or program includes any Unit or Unit Lease in the Condominium. To the extent that they do not fall within the meaning of "Vacation Plan" as defined in Subsection 1.51, the term "Fractional Plan includes, but is not limited to "private residence clubs," "non-equity clubs," "destination clubs," and similar programs. For examples of such programs, see the "Signature Destinations Club," "The Leading Residence of the World," "Exclusive Resorts," "Epiphany Clubs," and similar programs.

**A. "FRACTIONAL INTEREST"** means any interest in a Fractional Plan, or in real or personal property included in or subject to a Fractional Plan, that entitles the owner or holder of that interest to use, occupy, or possess, on a periodically recurring basis, Accommodations included in or available through the Fractional Plan.

**B. "FRACTIONAL OWNERSHIP PLAN"** means a Fractional Plan in which some or all of the owners of the Fractional Interests own or hold an undivided interest in one or more Units in the Condominium, or in one or more Unit Leases.

**C. "FRACTIONAL OWNERSHIP INTEREST"** means a Fractional Interest in a Fractional Ownership Plan, but only if the Fractional Interest consists of or includes an undivided interest in one or more Units in the Condominium, or in one or more Unit Leases.

**D. "FRACTIONAL OWNER"** means the owner of a Fractional Interest.

**E. "FRACTIONAL USE PLAN"** means a Fractional Plan in which some or all of the owners or holders of the Fractional Interests are entitled to the use, occupancy, or possession of one or more Units in the Condominium, but do not own or hold an undivided interest in any Unit in the Condominium, or in any Unit Lease, whether or not the Fractional Plan also includes other property that is not part of the Condominium.

**F. "FRACTIONAL PLAN DOCUMENTS"** means the documents creating or governing a Fractional Ownership Plan or Fractional Use Plan, and any changes and additions properly made to any of those documents from time to time. This includes, for example, any

declaration of covenants, conditions and restrictions, and the articles and bylaws of the Fractional Owners Association.

**G. "FRACTIONAL OWNERS ASSOCIATION"** means the association of Fractional Owners for a particular Fractional Ownership Plan or Fractional Use Plan.

**1.25 "GAZEBO UNIT"** means Unit 2.

**1.26 "GENERAL COMMON ELEMENTS"** means all Common Elements that are not Limited Common Elements.

**1.27 "IMPROVEMENTS"** means all improvements located on the Land, now or in the future. If the Developer annexes any Adjacent Parcel pursuant to Section ~~18~~ of the Declaration, then the term "Improvements" will include both the improvements located on the Land before the annexation plus the improvements located on the Adjacent Parcel annexed. If the Developer deletes any part of the Land using its rights in Section ~~22~~ of the Declaration, then the term "Improvements" will not include any improvements located on the part of the Land that is deleted.

**1.28 "INTERESTED PERSON"** means any person who has any legal or equitable interest in the Condominium or who has the right to use the Condominium or any part of it. For example, it includes (i) each Owner, each Mortgage Lender, and anyone who rents or leases a Unit, and (ii) anyone who has the right (in legal terms, an "easement") or who has permission to use the Condominium or any part of it.

**1.29 "LAND"** means the real property described in Exhibit A to the Declaration and all easements, rights and appurtenances to that real property. If the Developer annexes any Adjacent Parcel pursuant to Section ~~18~~ of the Declaration, then the term "Land" will include both the Land just before the annexation plus the Adjacent Parcel annexed. If the Developer deletes any part of the Land pursuant to Section ~~22~~ of the Declaration, then the term "Land" will not include any part of the Land that is deleted.

**1.30 "LAND USE PERMITS"** means the following permits and documents:

**A.** Any Special Management Area Use Permits, Shoreline Setback Variances, Conditional Use Permits Planned Development Approvals, and/or other zoning or land use permits and approvals that affect the Condominium; and

**B.** Any and all changes and additions properly made to any of those permits from time to time, any replacement permits, and any supplementary requirements related to those permits.

**1.31 "LIMITED COMMON ELEMENTS"** means (i) those parts of the Common Elements designated in Section ~~5~~ of the Declaration as Limited Common Elements, and (ii) any Common Elements later designated as Limited Common Elements as expressly permitted by the Declaration. For example, see Sections ~~17:2A, 18, 19~~ and ~~24~~ of the Declaration.

**1.32 "MAJORITY OF UNIT OWNERS"** means Owners whose Units have more than fifty percent (50%) of the Common Interests for the entire Condominium. Any other reference to a certain percentage of the Unit

Owners means the Owners of Units having that percentage of the Common Interests for the entire Condominium.

**1.33 "MAJORITY OF UNIT OWNERS VOTING"** means Unit Owners whose Units have more than fifty percent (50%) of the Common Interests actually voted on a particular issue. Any reference to a specific percentage of "Unit Owners Voting" means Unit Owners whose Units have that percentage of the Common Interests actually voted on a particular issue. In the case of a ballot, it means Unit Owners having that percentage of the Common Interests for all Units that actually cast a ballot on a particular issue.

**1.34 "MANAGING AGENT"** means the person hired from time to time pursuant to Section 22 of the Bylaws to manage the operation of the Condominium.

**1.35 "MORTGAGE LENDER"** means anyone who holds a recorded mortgage on a Unit, Unit Lease, Vacation Ownership Interest or Fractional Ownership Interest. It also includes the beneficiary of a deed of trust recorded against a Unit, Unit Lease, Vacation Ownership Interest or Fractional Ownership Interest.

**1.36 "NEW UNIT"** means any Unit that the Developer creates from time to time using its rights under Sections 17.2, 19 or 23 of the Declaration.

**1.37 "NEW IMPROVEMENT"** means any Improvement that the Developer develops, installs, builds, or otherwise adds to the Condominium from time to time using its rights under Sections 17.2, 20, 21, 2D, 22, E, 23, 24 of the Declaration, or on any Adjacent Parcel that the Developer adds to the Condominium using its rights in Section 18 of the Declaration. It does not extend to Improvements that the Developer remodels from time to time using its rights under Section 20 of the Declaration.

**1.38 "POSSIBLE DELETION AREAS"** means (i) all or any part of the Land located within fifteen (15) feet of the perimeter boundaries of the Condominium, (ii) all or any part of the Land that, from time to time, is located beyond the seaward boundary as established by Hawaii law (or by a shoreline survey) by reason of erosion or other natural forces, and (iii) until the Developer deeds any Unit in the Plumeria building, all or any portion of Lot 19, Map 4, App. 276, and/or Lot B, File Plan 435.

**1.39 "PERSON"** means any natural person or any corporation, partnership, limited partnership, limited liability partnership, joint venture, trust, limited liability company or other legal entity or organization.

**1.40 "PROPERTY"** means the Land and the Improvements.

**1.41 "PROPERTY STANDARD"** means a standard at least equal to the standard required to obtain and maintain a three diamond rating by the American Automobile Association. If the American Automobile Association materially alters or stops publishing that standard, then the most similar standard available will be used in its place. The Board will choose the replacement standard and its decision will be final unless the standard chosen by the Board is materially lower than the current standard or is so much higher than the current standard that it will work a material financial hardship on the Owners as a whole.

**1.42 "RECORD," "RECORDED," "RECORDING,"** and similar terms mean recorded in the Bureau. The term has this meaning even though it is not capitalized in the Condominium Documents.

**A. "BUREAU"** means the Bureau of Conveyances of the State of Hawai'i.

**1.43 "REPRESENTATIVES"** means a person's directors, officers, general partners of a partnership, members (in the case a member-managed limited liability company), managers (in case of a manager-managed limited liability company), agents, employees and independent contractors.

**1.44 "RESORT UNITS"** means the Units designated as Resort Units in Section 5.1 of the Declaration, and any New Units designated as Resort Units.

**1.45 "RESORT UNIT OWNER"** means a person who is the Owner of a Resort Unit.

**1.46 "RULES AND REGULATIONS"** means the rules and regulations adopted by the Developer, and any changes and additions properly made to them from time to time by the Board, acting on behalf of the Association, in accordance with and subject to the limitations imposed by the Declaration, the Articles, the Bylaws, and the Condominium Law.

**1.47 "TIME SHARE ACT"** means Chapter 514E, Hawai'i Revised Statutes, as it may be amended from time to time, and any substitute or replacement law to the extent provided in such substitute or replacement law.

**1.48 "UNIT"** means any part of the Condominium designated as a Unit in Section 5 of the Declaration, and any New Unit. All Resort Units and all Commercial Units are Units.

**1.49 "UNIT LEASE"** means any recorded lease of a Unit, unit deed and ground lease, or condominium conveyance document. It does not refer to any deeded estate for years.

**1.50 "UNIT OWNER" or "OWNER"** means the person or persons who own a Unit and its Common Interest; provided that:

**A.** To the extent and for the purposes, including voting, provided by a recorded lease of a Unit, the person or persons leasing the Unit will be deemed to be the Unit Owner; and

**B.** The buyer of a Unit under a recorded Agreement of Sale has all the rights of a Unit Owner, including the right to vote. The seller may keep the right to vote, however, on matters substantially affecting the seller's security interest in the Unit.

The terms "Unit Owner" or "Owner" do not include persons who only have a right in (in legal terms, an "easement"), or who only have permission to use, the Condominium or any part of it.

Note: Any person who from time to time owns or holds a Vacation Ownership Interest or Fractional Ownership Interest is a Unit Owner.

When the Condominium Documents refer to the Owner of a specific Unit (for example, to the "Owner of Unit 1" or the "Unit 1 Owner") it means the Unit Owner of that Unit.

**1.51 "VACATION PLAN"** means any time share or vacation plan or program, whether or not the plan or program includes any Unit in the Condominium.

**A. "VACATION INTEREST"** means any interest in a Vacation Plan, or in real or personal property included in or subject to a Vacation Plan, that entitles the Owner or holder of that interest to use, occupy, or possess, on a periodically recurring basis, Accommodations included in or available through the Vacation Plan.

**B. "VACATION OWNERSHIP PLAN"** means a Vacation Plan in which some or all of the owners of the Vacation Interests own or hold an undivided interest in one or more Units in the Condominium, or in one or more Unit Leases.

**C. "VACATION OWNERSHIP INTEREST"** means a Vacation Interest in a Vacation Ownership Plan, but only if the Vacation Interest consists of or includes an undivided interest in one or more Units in the Condominium, or in one or more Unit Leases.

**D. "VACATION USE PLAN"** means a Vacation Plan in which some or all of the owners or holders of the Vacation Interests are entitled to the use, occupancy, or possession of one or more Units in the Condominium, but do not own or hold an undivided interest in any Unit in the Condominium, or in any Unit Lease, whether or not the Vacation Plan also includes property that is not part of the Condominium.

**E. "VACATION PLAN DOCUMENTS"** means the documents creating or governing a Vacation Ownership Plan or Vacation Use Plan and any changes and additions properly made to any of those documents from time to time. This includes, for example, any declaration of covenants, conditions and restrictions, and the articles and bylaws of the Vacation Owners Association.

**F. "VACATION OWNER"** means the owner of a Vacation Interest.

**G. "VACATION OWNERS ASSOCIATION"** means the association of Vacation Owners for a particular Vacation Ownership Plan or Vacation Use Plan.

**END OF EXHIBIT A**

## EXHIBIT B

### DESCRIPTION OF BUILDINGS

The Developer has been developing the Condominium in stages. Each stage is called a "phase" or an "increment." Each phase may include Units and other Improvements. The phases are described below.

This Public Report covers only the buildings identified in Phases 1, 2 and 3.

Although the Developer has reserved the right to develop Phases 4 - 7, as of the Effective Date of this Public Report, the Developer is not planning to proceed with the development of these Phases. Nevertheless, because the Developer's Reserved Rights include the right to develop Phases 4 - 7, the Developer is required to disclose such rights so that Purchasers and prospective Purchasers are made aware of these rights and of the possibility that the Developer may choose to exercise them in the future. In such event the Developer will obtain a new Public Report covering such Phases and/or will amend this Public Report.

**1.1 PHASE 1.** The first phase consists of the Orchid Building, as shown on the Condominium Map, and related Improvements. The Orchid Building is a three-story building. It has no basement. It is constructed principally of concrete masonry unit blocks, wood, gypsum board, glass and allied building materials. The Orchid Building contains thirty-seven (37) Resort Units and one (1) Commercial Unit (Unit No. 1). Phase 1 also contains a pool, pool deck and courtyard. Sheets A-1 through and including A-15 of the Condominium Map depict Phase 1 of the Condominium.

**1.2 PHASE 2.** The second phase consists of Plumeria Building and related Improvements. The Plumeria Building is a three-story building. It has no basement. It is constructed principally of concrete masonry unit blocks, wood, gypsum board, glass and allied building materials. The Plumeria Building contains twenty (20) Resort Units and one (1) Commercial Unit (Unit No. 3). Phase 2 also contains a pool, pool deck and courtyard. Sheets A-16 through and including A-21 of the Condominium Map depict Phase 2 of the Condominium.

**1.3 PHASE 3.** The third phase, if it is constructed, is planned to consist of the remodeling and reconfiguration of portions of the Condominium in accordance with an amended or new SMA Permit and building permits that the Developer plans to seek and the construction of Commercial Unit 2 - the Gazebo Unit. The nature and extent of the development of Phase 3, if it occurs at all, will be substantially dependent on whether the Developer's application for an SMA Permit and building permit will authorize such development and whether the Developer deems such development economically worthwhile in its sole, absolute and unfettered discretion. For example, depending on the SMA Permit, any building permits and the Developer's decisions, the Phase 3 remodeling and reconfiguration of the Condominium may have the result that: (a) certain units may be expanded and converted into three bedroom units, (b) privacy walls may be constructed around the boundaries of the lanais of ground floor Units, (c) some of the storage rooms may no longer exist, (d) Units 113, 213 and 313 may be modified so that one or more lanais may be constructed adjacent to one or more of the Units at the end of the building facing the ocean and/or picture windows and/or sliding doors may be installed on that end of the building, (e) the recreation room in the Orchid Building may be expanded and/or reconfigured, (f) an elevator may be installed in the Orchid Building, (g) an elevator may be installed in the Plumeria Building although the Developer currently is not planning to do so, (h)

the laundry, linen and laundry storage facilities of the Orchid Building may be converted to a New Unit or incorporated into an existing Unit with the result that the laundry and housekeeping facilities of the Plumeria Building would have to serve both the Orchid Building and the Plumeria Building, (i) the pool, pool deck and courtyard of the Orchid Building and/or the Plumeria Building may be reconfigured, expanded and/or otherwise remodeled, (j) Commercial Unit 1 may be relocated, reduced in size and/or reconfigured, (k) all or any portion of the Orchid Building formerly occupied by Commercial Unit 1 may be converted to a New Unit that will be a Resort Unit and/or incorporated into an existing Resort Unit, (l) a new entry to Commercial Unit 1 may be constructed, which may include additional windows, doors, awnings, sidewalks, guest loading and unloading area and/or parking stalls, exterior bell desk and/or valet desk, luggage cart storage area and various other entry features common to resort properties, and (m) the Gazebo Unit may be constructed. The New Improvements of Phase 3 are likely to be constructed principally of steel, concrete, concrete masonry unit blocks, wood, glass and allied building materials. The Gazebo, however, is likely to be constructed principally of wood and concrete. However, the Developer has reserved the right to construct the Gazebo Unit in a different location, using different materials and/or a different design from that shown on the Condominium Map. The Developer may also decide not to build the Gazebo Unit at all.

*Status:* Remodeling of the Plumeria Building was substantially completed in 2013, and most or all punchlist items have now been completed. Remodeling of the Orchid Building was substantially completed in 2015, and most or all punchlist items have now been completed. In 2015, the Condominium Map was amended and restated to reflect certain changes made to the Condominium, including changes made as part of the Phase 3 remodeling and reconfiguration. Among other things, the Phase 3 remodeling and reconfiguration of the Condominium resulted in the following: (a) certain units were expanded and converted from two-bedroom into three bedroom units, (b) privacy walls were constructed around the boundaries of the lanais of ground floor Units of the Plumeria Building, but not the Orchid Building, (c) some of the storage rooms no longer exist, (d) the recreation room in the Orchid Building was expanded and reconfigured, (e) the laundry, linen and laundry storage facilities of the Orchid Building were converted to a New Unit and a portion was incorporated into an existing Unit with the result

that the laundry and housekeeping facilities of the Plumeria Building will have to serve both the Orchid Building and the Plumeria Building, (f) the laundry and housekeeping area of the Plumeria Building was converted into a new Commercial Unit 3, (g) Commercial Unit 1 was relocated, reduced in size and/or reconfigured, (h) all or any portion of the Orchid Building formerly occupied by Commercial Unit 1 was converted to a New Unit that will be a Resort Unit and/or incorporated into an existing Resort Unit, (i) the parking area was reconfigured, (j) an elevator was installed in the Orchid Building, and (k) the Gazebo Unit was not constructed, although it may be constructed at a later date. The New Improvements of Phase 3 are constructed principally of steel, concrete, concrete masonry unit blocks, wood, glass and allied building materials.

**1.4 PHASE 4.** The fourth phase, if it is constructed, is planned to consist of a parking structure to be constructed on the portion of the Condominium that generally lies between (i) the Plumeria Building and Kuhio Highway, or (ii) the Plumeria Building and Wana Road. Phase 4, if it is constructed, is likely to consist of a single structure having no more than four (4) stories plus related improvements. Phase 4 may include elevators, stairways, walkways, driveways, and other improvements, as determined by the Developer in its sole, absolute and unfettered discretion but subject to all requirements of the zoning and building codes of the County of Kauai and any SMA Permit that applies to the Property or needed to permit the development of Phase 4. Phase 4, if it is constructed, may also include one or more basement levels, which may be used for parking, storage, or other purposes permitted by law. Phase 4 may include no more than four (4) commercial units, but this number shall not limit the number of separate storage lockers that may be established in the New Improvements of Phase 4. The New Improvements of Phase 4 are likely to be constructed principally of steel, concrete, concrete masonry unit blocks, wood, glass and allied building materials.

**1.5 PHASE 5.** The fifth phase, if it is constructed, is planned to consist of a building to be located above the parking structure constructed as part of Phase 4. Phase 5, if it is constructed, is likely to consist of a single building having no more than five (5) stories (not counting stories of the Phase 4 parking structure) plus related improvements, including elevators, stairways, walkways and other improvements as determined by the Developer in its sole, absolute and unfettered discretion but subject to all requirements of the zoning and building codes of the County of Kauai and any SMA Permit that applies to the Property or needed to permit the development of Phase 5. The New Improvements of Phase 5 are likely to be constructed principally of steel, concrete, concrete masonry unit blocks, wood, gypsum board, glass and allied building materials. Phase 5 will contain Commercial Units and Resort Units, but in no case more than fifty (50) Units. It has no basement.

**1.6 PHASE 6.** The sixth phase, if it is constructed, is likely to consist of one or more buildings to be located on an Adjacent Parcel identified as Tax Map Key Nos. (4) 4-3-009: 48 and/or 49. Phase 6, if it is constructed, is likely to consist of no more than four (4) buildings having no more than four (4) stories plus related improvements, including elevators, stairways, driveways, walkways and other improvements as determined by the Developer in its sole, absolute and unfettered discretion but subject to all requirements of the zoning and building codes of the County of Kauai and any SMA Permit that applies to the Property or needed to permit the development of Phase 6. The New Improvements of Phase 6 are likely to be constructed principally of steel, concrete, concrete masonry unit blocks, wood, gypsum board, glass and allied building materials. Phase 6 will contain Resort Units and may contain Commercial Units, but in no case more than forty (40) Units. Phase 6, if it is constructed, may also include (i) a parking structure and/or parking area, and (ii) one or more basement levels, which may be used for parking, storage, or other purposes permitted by law.

**1.7 PHASE 7.** The seventh phase, if it is constructed, is likely to consist of one or more buildings to be located on an Adjacent Parcel identified as Tax Map Key Nos. (4) 4-3-009: 51, 71 and/or portions of 4. Phase 7, if it is constructed, is likely to consist of no more than five (5) buildings having no more than five (5) stories plus related improvements, including elevators, stairways, driveways, walkways and other improvements as determined by the Developer in its sole, absolute and unfettered discretion but subject to all requirements of the zoning and building codes of the County of Kauai and any SMA Permit that applies to the Property or needed to permit the development of Phase 7. The New Improvements of Phase 7 are likely to be constructed principally of steel, concrete, concrete masonry unit blocks, wood, gypsum board, glass and allied building materials. Phase 7 will contain Resort Units and may contain Commercial Units, but in no case more than fifty (50) Units. Phase 7, if it is constructed, may also include (i) a parking structure and/or parking area, and (ii) one or more basement levels, which may be used for parking, storage, or other purposes permitted by law.

**1.8 ORDER OF DEVELOPMENT.** The Developer has no obligation to develop any phase beyond Phase 1. The Developer can develop the phases in any order that it wishes. It can also develop more than one phase at a time. The Developer can also divide a phase into separate smaller phases or combine two or more phases. For example, the Developer could have remodeled the Units during Phase 3 one at a time or in groups of two or more Units at a time. Each separate remodeling project would have then constituted a separate Phase (which might have been labeled Phase 3A, 3B and so on).

#### **END OF EXHIBIT B**

## EXHIBIT C

### UNIT TYPES AND SIZES OF UNITS

#### RESORT UNITS

1. **AREA AND UNIT TYPES OF RESORT UNITS.** Resort Units have a floor plan type, Net Living Area and initial Common Interest as shown on Schedule 1 to this Exhibit C.

a. The approximate "Net Living Area" for each Resort Unit consists of the interior floor area of the Unit as listed in Column 4 of Schedule 1 to this Exhibit C.

b. The Net Living Areas listed in Schedule 1 to this Exhibit C are based on measurements taken from the interior surfaces of the perimeter walls, windows and window frames, doors and their door frames. The Net Living Areas were not reduced, however, to account for interior walls, ducts, vents, shafts, stairways and so on located within those interior surfaces of the Unit.

c. All Net Other Areas listed in Column 5 of Schedule 1 to this Exhibit C are based on measurements taken from the boundaries of the Unit lanais. Where the Unit includes a lanai storage closet as indicated in Column 6 of Schedule 1 to this Exhibit C, the Net Other Area (i) includes both the lanai and the storage closet, and (ii) the measurements of the Net Other Area have been calculated as if the storage closet was simply part of the lanai, without deduction for the walls, doors and door frames separating the lanai from the storage closet. Column 7 shows the "Total Area", which consists of the Net Living Area plus the Net Other Area. Note, however, that the

lanais are not located within the boundaries of the Resort Units and lanais are not part of the Resort Units. The "Total Area" has been calculated for convenience of reference in determining the size of the Unit and any lanai appurtenant to the Unit as a Limited Common Element.

d. The Net Living Areas, Net Other Areas, and Total Areas listed in Schedule 1 to this Exhibit C are not exact. Instead, they are estimates based on the floor plans of each type of Resort Unit. The measurements are based upon the requirements of the Condominium Regulations and do not necessarily follow the boundaries of the Units in every detail. For example, the boundary of a wall that contains a sliding glass lanai door could be calculated from the surface of the glass, the surface of the frame in which the glass is installed, the edge of the door jamb, the edge of the door sill, or the surface of the wall in which the door is installed. The calculation of floor areas in the Declaration are intended to provide approximations of the areas of the Units and their lanais, but without the kind of precision that might be suggested by the preceding example. Prospective Owners who feel that such precision is important to them should, before purchasing a Unit, personally inspect and measure the actual dimensions of the Unit and its lanai to ensure that the Unit and lanai meet their own personal requirements and expectations. **The Developer makes no representation or warranty as to the actual area of any Resort Unit.**

#### COMMERCIAL UNITS

1. **UNIT TYPES OF THE COMMERCIAL UNITS.** Each Commercial Unit has a unique floor plan.

a. Commercial Unit No. 1 consists of two rooms (described as "Office" on Sheets A-2 and A-8 of the Condominium Map) plus a half bath (i.e., a room containing a sink and toilet but no tub or shower).

b. Commercial Unit No. 2 (the Gazebo) consists of an unenclosed space bounded by the exterior edge of a concrete slab as shown on Sheets A-16 and A-22 of the Condominium Map. Note that the Developer's Reserved Rights include the right to change the location of Unit 2.

c. Commercial Unit No. 3 consists of two rooms (described as "Laundry" and "Housekeeping" on Sheets A-17 and A-19 of the Condominium Map). The mechanical room, the electrical room and the lanai (shown on Sheets A-17 and A-19) all of which are adjacent to Unit No. 3 are not part of Unit No. 3.

2. **AREA OF THE COMMERCIAL UNITS.** The approximate Net Living Area of each Commercial Unit is described in Schedule 1 to this Exhibit C.

a. The approximate Net Living Area for Commercial Unit 1 consists of the interior floor area Unit as listed in Column 4 of

Schedule 1 to this Exhibit C. The approximate Net Living Area for Commercial Unit No. 2 (the Gazebo) consists of the area of the floor slab for Unit 2, as listed in Column 4 of Schedule 1 to this Exhibit C. No Commercial Unit currently has a lanai.

b. The Net Living Areas of the Units listed in Schedule 1 to this Exhibit C are based on measurements taken from the boundaries of the Unit interior. The Net Living Area of Unit 1 was not reduced to account for interior walls, ducts, vents, shafts, stairways and so on located within the boundaries of the Unit. The Net Living Area of Unit 2 was not reduced to account for any of the columns, studs, walls, partitions, and so on located within the boundaries of the Unit.

c. The Net Living Areas and Total Areas listed in Schedule 1 to this Exhibit C are not exact. Instead, they are estimates based on the plans of each Commercial Unit as shown on the Condominium Map. The measurements are based upon the requirements of the Condominium Regulations and do not necessarily follow the boundaries of the Units in every detail. See the example provided in Paragraph 1.d., above, under the heading for Resort Units. **The Developer makes no representation or warranty as to the actual area of any Commercial Unit.**



### Schedule 1 to Exhibit C

**IMPORTANT NOTE: ALL FLOOR AREAS FOR RESORT AND COMMERCIAL UNITS AS SHOWN IN THIS EXHIBIT C ARE APPROXIMATE. THE DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACTUAL AREA OF ANY PARTICULAR UNIT. THE AREAS OF PARTICULAR UNITS ARE LIKELY TO VARY.**

This Schedule 1 lists the Units by unit number, and shows the Net Living Area, Net Other Area, and the total of the Net Living Area plus Net Other Area (including any storage closets) of the Units and Common Interest of each Unit. The following table shows the unit types and sizes of the Units based on the governmental permits and approvals for remodeling that the Developer has obtained to date.

1 Unit Type	2 Quantity	3 BR/Bath	4 Net Living Area	5 Net Other Area	6 Other Areas (lanai, garage, etc.)	7 Area	8 Common Interest
<b>ORCHID BUILDING</b>							
Unit 1 (Commercial Unit)	1	½Ba	400	239	Storage Area 1-A	639	1.0455
1 <sup>st</sup> Floor End Unit (Unit 101)	1	2BR/1Ba	590	200 + 97	1 lanai; 1 entry lanai; storage closet	887	1.5420
Typical 1 <sup>st</sup> Floor Unit (Units 102-106; 109)	6	2BR/1Ba	590	200	1 lanai; storage closet	790	1.5420
Unit 108	1	3BR/2½Ba	876	187	Lanai; storage closet	1063	2.2895
Unit 110	1	3BR/2½Ba	987	205	Lanai; storage closet	1192	2.5797
Unit 112	1	3BR/2½Ba	939	200+111	2 lanais; storage closet	1250	2.4542
1 <sup>st</sup> Floor End Unit (Unit 113)	1	2BR/1Ba	590	200	Lanai; storage closet	790	1.5420
*2 <sup>nd</sup> & 3 <sup>rd</sup> Floor End Unit (Units 201 & 301)	2	2BR/1Ba	590	131 + 70	2 Lanais; storage closet	791	1.5420
*Typical 2 <sup>nd</sup> & 3 <sup>rd</sup> Floor Unit (Units 202-206; 209; 212; 302-306; 309; 312)	14	2BR/1Ba	590	131	Lanai; storage closet	721	1.5420
Unit 207	1	3BR/2½Ba	916	114	Lanai; storage closet	1030	2.3941
Unit 208	1	3BR/2½Ba	944	116	Lanai; storage closet	1060	2.4673
Unit 210	1	3BR/2½Ba	934	131	Lanai; storage closet	1065	2.4411
Unit 211	1	3BR/2½Ba	927	100	Lanai	1027	2.4228
Unit 307	1	3BR/2½Ba	916	114	Lanai; storage closet	1030	2.3941
Unit 308	1	3BR/2½Ba	944	116	Lanai; storage closet	1060	2.4673
Unit 310	1	3BR/2½Ba	929	131	Lanai; storage closet	1060	2.4281
Unit 311	1	3BR/2½Ba	933	100	Lanai	1033	2.4385
2 <sup>nd</sup> & 3 <sup>rd</sup> Floor End Unit (Units 213 & 313)	2	2BR/1Ba	590	131	Lanai; storage closet	721	1.5420
<b>PLUMERIA BUILDING</b>							
Unit 3 (Commercial Unit)	1	None	406			406	1.0611
*Typical 1 <sup>st</sup> Floor Units (Units 115-117)	3	2BR/1Ba	590	144	Lanai with wall; storage closet	734	1.5420
*Typical 1 <sup>st</sup> Floor Units (Units 118-120)	3	2BR/1Ba	590	153	Lanai with wall; storage closet	743	1.5420
*Typical Upper Unit Floors (Units 214-220; 314-320)	14	2BR/1Ba	590	131	Lanai; storage closet	721	1.5420
<b>GAZEBO</b>							
Unit 2 (Commercial Unit)	1	None	70			70	0.1847

**Notes:**

1. There is no Unit 107, there is no Unit 111 and there is no Unit 114.
2. Unit 2 may not be constructed, and it will not be constructed unless the necessary permits and approvals are obtained. The location of Unit 2 may be changed if the Developer deems it necessary or helpful to obtain all necessary permits and approvals or if the Developer otherwise determines to do so in the exercise of the Developer's Reserved Rights.
3. Only a partial wall separates the lanais of Units 110 and 112. Privacy may be limited, especially for Unit 110.
4. The Net Other Areas for the Units does not show the area of any parking stalls appurtenant to that Unit as a limited common element.

**End of Schedule 1 to Exhibit C**

**End of Exhibit C**

## EXHIBIT D

### **SCHEDULE OF PARKING STALLS**

1. The parking stalls are numbered from 1 – 51, as shown on the Condominium Map for the Project.
2. All parking stalls are open (i.e., none of the parking stalls are covered).
3. All parking stalls were initially assigned as limited common elements to the Gazebo Unit (Unit 2), however, as of June 2018, about 35 of the 51 parking stalls have been sold to certain unit owners and assigned as limited common elements to their respective units. The Condominium Declaration has been amended several times for the purpose of assigning parking stalls as limited common elements of certain units. The Developer cannot predict how many parking stalls will remain unassigned and available for use by owners who do not purchase parking stalls.
4. Parking stall nos. 2, 15, 16, 29, 31-36 and 46 are compact stalls.
5. Parking stall nos. 1 and 30 are accessible parking stall.
6. Parking stalls 35, 36, 45 and 46 are presently planned to consist of unpaved or partially unpaved, unmarked parking stalls situated in the locations shown on the Condominium Map for the Project.
7. Parking stalls 28 and 29-36 are located on, or adjacent to, Easement 1, for sanitary sewer purposes, as shown on Map 5 and described in Land Court Order No. 118020, and therefore may be subject to interruptions in use from time to time.

**END OF EXHIBIT D**

**EXHIBIT E**

**BOUNDARIES OF THE UNITS**

**RESORT UNITS**

1. **BOUNDARIES OF THE RESORT UNITS.** The Resort Units consist of a Unit interior. Any adjacent lanai is a Limited Common Element, and is not part of the Unit.

a. **UNIT INTERIOR.** The boundaries of the Unit interior consist of the interior surface of the perimeter walls, windows and window frames, doors and door frames, floors, and ceilings.

b. **THINGS THAT ARE PART OF THE RESORT UNITS.** These things are part of each Resort Unit:

- ❖ All of the walls and partitions that are not load-bearing and that are located inside of the Unit's boundaries.
- ❖ All movable lanai doors and the door frames.
- ❖ All doors and door frames located inside of the Unit's boundaries.
- ❖ The inner decorated or finished surfaces of all boundary walls, windows and window frames, doors and their door frames, floors and ceilings.
- ❖ All fixtures originally installed in the Units and all replacements of those fixtures.

c. **THINGS THAT ARE NOT PART OF THE RESORT UNITS.** These things are not part of the Resort Units:

- ❖ The boundary walls, windows and window frames, doors and their door frames (except movable lanai doors and door frames), floors and ceilings. However the decorated or finished surfaces located within the Unit interior are part of the Unit.
- ❖ Any doorknobs, door handles, latches, and locks located on or in any boundary doors and door frames (except in the case of movable lanai doors and door frames). This includes but is not limited to any strike plate, spindie, key cylinder, dead-bolt and other component parts.
- ❖ Any load-bearing walls or columns inside of the Unit. However the decorated or finished surfaces are part of the Unit.
- ❖ The foundations, footings, girders, beams, floor slabs, supports, floors and ceilings surrounding each Resort Unit.
- ❖ Any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust, or air conditioning running through or otherwise located within a Unit if they are used for or serve more than one Unit, the General Common Elements, or the Limited Common Elements of any other Unit.

All of these things are General Common Elements. This is so regardless of the Net Living Areas listed in Schedule 1 to Exhibit C and the way in which they were measured.

**COMMERCIAL UNITS**

2. **BOUNDARIES OF THE COMMERCIAL UNITS.** The boundaries of the Commercial Units are as follows:

a. **UNIT INTERIOR.** The boundaries of the interior of Unit 1 and Unit 3 consist of: (i) the centerline of all perimeter walls or floors that separate one Commercial Unit from another (initially, there are no such walls), (ii) the interior surface of all other perimeter walls, and (iii) interior surface of all perimeter windows and window frames, doors and door frames, floors, and ceilings. If the Condominium Map does not use walls or other physical Improvements to mark the boundaries of the Unit interior, then the boundary will consist of an imaginary vertical plane in the location shown by a line drawn on the Condominium Map. The boundaries of the interior of Unit 2 (the Gazebo) consist of a series of imaginary vertical planes along the edges of the concrete floor slab.

i. For purposes of this Subsection and Sections 2.c and 2.d:

1) The "ceiling" of the Gazebo Unit is the underside of the roofing structure above it; and

2) The "ceiling" of any other Commercial Unit (or part of a Commercial Unit) is the surface of the underside of the floor above it. If there is no floor above it, then the "ceiling" will be the underside of the roofing structure above it.

This means that the Commercial Units include any crawl space or plenum between the "ceiling" and any acoustic tiles or other ceiling system.

b. **LANAI.** At present, the Commercial Units have no lanais.

c. **THINGS THAT ARE PART OF THE COMMERCIAL UNITS.** These things are part of each Commercial Unit:

- ❖ All of the walls and partitions that are not load-bearing and that are located inside of the Unit's boundaries.
- ❖ All movable lanai doors and the door frames, if any.
- ❖ All doors and door frames located inside of the Unit's boundaries.
- ❖ The inner decorated or finished surfaces of all boundary walls, windows and window frames, doors and their door frames, floors and ceilings.
- ❖ All fixtures originally installed in the Units and all replacements of those fixtures.

d. **THINGS THAT ARE NOT PART OF THE COMMERCIAL UNITS.** These things are not part of the Commercial Units:

- ❖ The boundary walls (except for any part within the centerline of the boundary walls that separate one Commercial Unit from another). However (i) the decorated or finished surfaces located within the Unit interior are part of the Unit,

and (ii) any boundary walls constructed or installed in Unit 2 (the Gazebo) by the Owner of Unit 2 will be a part of that Unit.

- ❖ The boundary windows and window frames, doors and their door frames (except movable lanai doors and door frames).
- ❖ Any load-bearing walls or columns inside of the Unit. However, the decorated or finished surfaces of all load-bearing walls or columns located within the Unit are part of the Unit.
- ❖ The foundations, footings, girders, beams, floor slabs, supports, floors and ceilings surrounding each Commercial Unit.
- ❖ Any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust, or air conditioning running through or otherwise located within a Unit if they are used for or serve the Common Elements or more than one Unit.

All of these things are General Common Elements. This is so regardless of the Net Living Areas listed in Schedule 1 to Exhibit C and the way in which they were measured.

**END OF EXHIBIT E**

**EXHIBIT F**

**PERMITTED ALTERATIONS TO THE UNITS**

**Provisions of the Declaration:**

**A. CHANGES TO CONDOMINIUM APPEARANCE.** Unit Owners are not allowed to change or cause a change to the exterior appearance of the Condominium unless they have the prior written consent of the Board. This rule applies even though some of the Common Elements (for example, the lanais of the Resort Units) are Limited Common Elements of certain Units. This rule does not apply to the Developer when using the Developer's Reserved Rights. The Board has the right to change the exterior appearance of the Condominium. During the Development Period, however, the Board cannot do so without the Developer's prior written consent. Nobody is allowed to change the appearance of the Condominium in a way that will detract from the resort ambience of the project or that is not consistent with the Property Standard. "Property Standard" is defined in Exhibit A to this Public Report.

**B. CHANGES PERMITTED.** No matter what else the Condominium Documents say, and except as otherwise provided by law, (i) the Developer has reserved certain rights listed in Section 17.2 of the Declaration for itself (and these will be some of the Developer's Reserved Rights), and (ii) subject to the limitations on making changes to the exterior appearance of the Condominium described in Paragraph A., above, each Unit Owner (including the Developer to the extent that it is a Unit Owner) will also have the rights listed in Section 17.2 of the Declaration. The Developer and the Unit Owners may use their rights under Section 17.2 at any time and may use them more than once. The Developer or the Unit Owners must pay all costs associated with the use of these rights.

**1) ADDITIONS OR CHANGES WITHIN A UNIT OR LIMITED COMMON ELEMENT.**

(a) **ALL UNITS.** Each Unit Owner has the right to make, from time to time, any of the following changes, additions and improvements solely within the Unit Owner's Unit or within any Limited Common Element that the Unit Owner controls:

(1) The Unit Owner may install, maintain, remove and rearrange partitions and any other structures (other than load-bearing partitions and structures) within the Unit or its Limited Common Element. This does not prohibit the Developer from installing, maintaining, removing or rearranging load-bearing partitions and structures during the Development Period.

(2) The Unit Owner may 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 its Limited Common Element.

(3) The Unit Owner may decorate, paint, wallpaper or otherwise change the appearance of the walls, floors and ceilings of the Unit or Limited Common Element.

(4) The Unit Owner may tile, finish, carpet, and install, change, or remove other flooring in the Unit or Limited Common Element.

(5) The Unit Owner may install, change or remove the ceiling system of a Commercial Unit or its Limited Common Element.

In addition, a Unit Owner may make nonmaterial additions and alterations of the Common Elements and/or the Unit Owner's Unit as that phrase is used in §514B-140 of the Condominium Property Act.

The Developer's Reserved Rights include the right to do any or all of these things with respect to any Unit that the Developer owns or the Limited Common Elements of a Unit that it owns.

(b) **CONDITIONS.** The Unit Owners and the Developer may do the things permitted by paragraph B.1)(a), above only if:

(1) The structural integrity of the building will not be adversely affected,

(2) Within sixty (60) days after completion of such activity, the finish of any Common Element Improvements affected by such activity are restored to a condition that is substantially the same as or better than the condition they were in before the activity occurred, and

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

**2) CHANGES BETWEEN UNITS AND/OR LIMITED COMMON ELEMENTS.**

(a) **BETWEEN A UNIT AND ITS LIMITED COMMON ELEMENTS.** A Commercial Unit Owner has the right and an easement to do these things:

(1) It can change or remove all or any part of any Common Element wall, floor, or ceiling that separates the Unit from its Limited Common Elements.

(2) It can install doors, stairways and other Improvements in any opening that it makes.

(3) It can seal hallways or other openings.

(4) It can make other reasonable changes or additions.

The Developer's Reserved Rights include the right to do the same things with respect to any Resort Unit and/or Commercial Unit that it owns.

**(b) BETWEEN TWO UNITS.**

(1) A Commercial Unit Owner whose Commercial Units are separated by a Common Element that is a wall, floor or a ceiling, or whose Limited Common Elements are separated from each other or from such Commercial Units by a Common Element that is a wall, floor or ceiling, has the right and an easement to do these things:

- i. It can change or remove all or part of the intervening wall, floor and/or ceiling.
- ii. It can install doors, stairways and other Improvements in such opening or openings in the intervening Common Element.
- iii. It can seal hallways or other openings.
- iv. It can make other reasonable changes or additions.

A Resort Unit Owner has the right to do the same things with respect to any Resort Units that it owns, but only if it first obtains the written consent of (i) the Board, (ii) the Developer (during the Development Period), and (iii) and each Mortgage Lender holding a mortgage on any such Unit.

The Developer's Reserved Rights include the right to do the same things with respect to any Resort Units and/or Commercial Units that it owns.

(2) Before terminating its common ownership of any of the adjacent Units, the Unit Owner or the Developer must restore the Common Element wall, floor, ceiling, hallway and/or other openings to a condition that is substantially the same as or better than the condition they were in before the change or removal unless the new Unit Owners each agree otherwise in writing.

(c) **CONDITIONS.** The Unit Owners and the Developer may do the things permitted by Paragraphs B.2)(a) and B.2)(b) only if:

- (1) The structural integrity of the building will not be adversely affected,
- (2) The finish of the remaining Common Element Improvements are restored to a condition that is substantially the same as or better than the condition they were in before the change or removal, and
- (3) All construction activity is completed within a reasonable time after it begins. If there is a delay for reasons beyond the control of the Unit Owner or the Developer or their contractors, the construction activity must be completed in the additional time reasonably needed to finish it by working on it diligently.

**3) SUBDIVISION OF UNIT.**

(a) A Commercial Unit Owner has the right to do these things:

(1) It can subdivide the Unit to create two or more Units.

(2) It can designate which Limited Common Elements of the subdivided Unit, if any, will be appurtenant to the Units resulting from the subdivision.

(3) To the extent that a Unit has any other special rights or easements under this Declaration or the Bylaws, the Unit Owner can designate which resulting Unit or Units will have the special rights or easements of the subdivided Unit.

(4) It can convert parts of the existing Unit to Common Element status to facilitate the subdivision, and may designate all or any part of any adjacent General Common Element as a Limited Common Element of one or more of the Units. In legal terms, the interest of the Unit Owners and every other Interested Person, in the General Common Elements is a "defeasible interest" and is subject to this possible "defeasance."

The Developer's Reserved Rights include the right to do the same things with respect to any Resort Units and/or Commercial Units that it owns.

(b) The total of the Common Interests for the newly created Units must be equal to the Common Interest of the Unit that was subdivided.

**4) CONSOLIDATION OF UNITS.**

(a) A Unit Owner who owns any two (2) or more Commercial Units has these rights:

(1) The Unit Owner may consolidate the Units into a single Unit (whether or not the Units are adjacent to each other).

(2) If the Units are adjacent to each other, the Unit Owner may make any Common Element walls, floors or ceilings between the consolidated Units part of the Unit or its Limited Common Elements. In legal terms, the interest of the Unit Owners and every other Interested Person, in the General Common Elements is a "defeasible interest" and is subject to this possible "defeasance."

The Developer's Reserved Rights include the right to do the same things with respect to any Resort Units and/or Commercial Units that it owns. If the Developer consolidates a Resort Unit and a Commercial Unit, then Developer must state whether the resulting Unit is a Commercial Unit or Resort Unit.

(b) The Common Interest of the newly created Unit will be equal to the sum of the Common Interests of the Units being consolidated.

**5) RE-DESIGNATION OF LIMITED COMMON ELEMENTS.** The Unit Owners of any two (2) Commercial Units have the right to change the designation of the Limited Common Elements appurtenant to their Units so that all or any part of one Unit's Limited Common Elements now will be appurtenant either to the other Unit or to both of the Units. The Unit Owners cannot do this without the written consent of each Mortgage Lender who has a mortgage on either Unit. The Developer's Reserved Rights include the right to do the same things with respect to any Resort Units and/or Commercial Units that it owns.

**C. LIMITS ON OWNER ALTERATIONS.** Nothing contained in Section 17.2 of the Declaration:

1) Authorizes any work or change by a Unit Owner or the Developer that would jeopardize the soundness or safety of any part of the Condominium, or reduce the value of it.

2) Authorizes any work or change by a Unit Owner (other than the Developer) that would materially change the external appearance of the Condominium without the consent of the Board and, during the Development Period, the Developer.

3) Prohibits the Board from making or requiring that a Unit Owner or, as to its Units, the Developer make changes within a Unit or Limited Common Element as needed to comply with the fire code and all other laws that apply to the Condominium.

**D. FINANCING AND BOND.** If the Board reasonably decides that any changes or additions to be made under Section 17.2 of the Declaration are substantial in nature then the Board may require that the Unit Owner (or the Developer as to its Units):

1) Provide evidence satisfactory to the Board that the Unit Owner (or the Developer) has sufficient financing to complete the changes or additions, or

2) Provide a performance and a labor and materials payment bond. The bond must name as obligees (the persons protected) the Board on behalf of the Association, the Unit Owners and their Mortgage Lenders, as their interests may appear. The bond must cover at least one hundred percent (100%) of the estimated cost of the construction.

**E. REQUIRED APPROVALS.** Changes and additions made under Section 17.2 of the Declaration by any Unit Owner other than the Developer require the consent of the Board (if and to the extent required by Section 17.2A. of the Declaration or by the Condominium Law), but do not require the consent or approval of any other Unit Owner. Changes and additions made under Section 17.2 of the Declaration by the Developer do not require the vote or consent of the

Board, any Unit Owner, or anyone else. See Section 514B-32(a)(12) of the Condominium Property Act. Subdivisions and consolidations of Units pursuant to Paragraph B.3) and B.4), above, and redesignations of Limited Common Elements pursuant to Paragraph B.5), above, by the Developer or by a Unit Owner or Unit Owners do not require the vote or consent of the Board or anyone else except any Mortgage Lenders having a mortgage on the subdivided or consolidated Units.

**F. AMENDMENT TO DECLARATION.** If any change to a Unit made under the authority of Section 17.2 of the Declaration materially changes the depiction of a particular Unit or Units on the Condominium Map or the description of it in the Declaration, then the Unit Owner or Unit Owners of the Unit(s) (or the Developer as to its Units) must amend this Declaration and/or the Condominium Map to reflect the change. The amendment will take effect when it is recorded.

1) The Unit Owner of the changed Unit or Units (or the Developer as to its Units) must sign the amendment. Regardless of the requirements of Section 32 of the Declaration, it is not necessary for anyone else to vote for, consent to, or sign the amendment except for any Mortgage Lender who has a mortgage on the Unit or Units that are changed or altered.

2) When a Unit Owner or other Interested Person acquires a Unit or any other interest in the Condominium, such Unit Owner or other Interested Person automatically:

(a) Consents to such changes;

(b) Agrees, if required by law or by the Unit Owner who has changed a Unit pursuant to Section 17.2 of the Declaration, to join in, consent to, sign, have notarized, deliver and record all documents necessary or desirable to make the amendment of the Condominium Documents effective; and

(c) Gives the Unit Owner a special power of attorney to sign, deliver and record such documents and to do such things for such Unit Owner.

#### **Provisions of the Bylaws:**

**A. PROHIBITED ALTERATIONS.** Subject to the provisions of the Declaration and the Condominium Property Act, no Unit Owner may, without the prior written approval of the Board (in the case of a Resort Unit and, to the extent required by the Condominium Property Act, in the case of a Commercial Unit) and the Developer (until the Development Period ends), make any alteration or addition: (i) to his or her Unit that materially and adversely affects the Common Elements or changes the exterior or appearance of the Condominium; or (ii) to any of the Common Elements including, without limitation, Common Elements within, encompassing or adjacent to his Unit.

**B. EXTERIOR PAINTING AND REPAIRS.** It is intended that the exterior of the buildings will have a uniform appearance and that the Condominium will be maintained in accordance with the Property Standard. To that end, the Board alone may arrange for painting or repair of the lanais, lanai ceilings, patios, outside doors, windows,

Unit entry doors, door frames and door locks, trim, walls, railings and other exterior parts of any buildings, even if they are Limited Common Elements or part of the Units. The Board may also choose the type and color of paint to be used. The Board may assess each Unit Owner for his or her proportionate share of the painting and repairs or the Board may pay for it using the funds in the appropriate Reserve Accounts. However, the cost of painting and repairs due to negligence, misuse or neglect of a Unit Owner or other occupant, or someone under either of them, may be charged as a Personal Assessment. This paragraph does not apply to Limited Common Elements of the Commercial Units to the extent that the Unit Owners of those Commercial Units choose to do the painting and repairs themselves as authorized in the Declaration and so long as they maintain and repair them and keep them in good order and condition at all times. Until the Development Period ends, however, the Unit Owners of any such Units must obtain the written consent of the

Developer to any painting or repairs that may change the exterior appearance of the Condominium.

**C. LANAI FURNITURE AND DECORATIONS.** It is intended that the lanai for each of the Resort Units will have a uniform appearance that is consistent with the Property Standard and either complementary or consistent with the other phases. To that end, the Association will own the lanai furniture for each Resort Unit and any standard lanai decorations. The Developer will choose the initial lanai furniture and decorations for the Resort Units. The Association will repair and replace the lanai furniture and decorations, and the cost of such repair or replacement shall constitute a Common Expense of the Association except as otherwise provided in Section 9.2B of the Bylaws (which requires Owners and occupants to pay for damage caused by them other than damage due to normal wear and tear and except for damage caused by an unavoidable accident). From time to time, the Association may determine, by vote of the Owners at an annual or special meeting of the Association, to replace the lanai furniture package and/or decorations for all Resort Units with a new furniture package and/or new lanai decorations. The cost of purchasing any new lanai furniture or decorations shall be a Common Expense.

**D. DOORS AND DOOR LOCKS OF RESORT UNITS.** It is intended that the doors leading into the Resort Units, and the locking systems for such doors, shall be identical for all of the Resort Units. The doors and locking systems are General Common Elements of the Condominium. The Association will own the doors and locking systems but shall provide keys, keycards or other means of access to Owners. The Managing Agent shall at all times maintain a copy of the key or keycard or other means of access through the doors and door locking systems, and shall be entitled to use the same only when expressly authorized to enter the Unit by the Owner or occupant, as permitted in the Condominium Documents, or as permitted under the Condominium Law. The Managing Agent will provide a duplicate key, keycard or other means of access to the Owner of a Unit upon request and after payment of a reasonable fee to defray the cost of preparing the duplicate key, keycard or other means of access. The Developer will choose the initial doors and door locking systems for the Resort Units. The Association will maintain, repair and replace the doors and locking systems from time to time, and the cost of such maintenance, repair or replacement shall constitute a Common Expense of the Association except as otherwise provided in Section 9.2B of the Bylaws (which requires Owners and occupants to pay for damage caused by them other than damage due to normal wear and tear and except for damage caused by an unavoidable accident). From time to time, the Association may determine, by vote of the Owners at an annual or special meeting of the Association, to replace the doors and/or locking systems for all Resort Units. The cost of purchasing any new doors and/or locking systems shall be a Common Expense. Owners and occupants shall not install any additional or replacement lock or locking system on any Common Element door; provided that the Association, by its Board, may authorize the replacement of any Common Element door, or the locking system on any Common Element door, as required to

comply with the Americans With Disabilities Act, the federal Fair Housing Act, or any similar law or regulation.

**E. GENERAL RESTRICTIONS.** Nothing may be allowed, done or kept in any Unit or Common Element of the Condominium if it would:

1) Overload or impair the floors, walls or roofs.

2) Cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance on the Condominium maintained by or for the Association unless the Unit Owner agrees to pay the increased cost and the Board approves it.

**F. CHANGES TO EXTERIOR APPEARANCE.** It is intended that the buildings of each phase will have a uniform exterior appearance that is consistent with the Property Standard and either complementary or consistent with the other phases. To that end, without the prior written consent of the Board and (until the end of the Development Period) the Developer, no Unit Owner or occupant other than the Developer may do anything that changes the exterior appearance of the Condominium. For example,

1) Nobody can tint the windows to his or her Unit if it may affect the exterior appearance of it.

2) Nobody can install draperies or other window coverings if the exterior side is anything but an unpatterned, uniform white color or any other color and texture approved by vote of the Owners at an annual or special meeting of the Association.

3) Nobody can hang clothing, rugs, or anything else from the windows, lanais, or otherwise on the Condominium exterior.

4) No plants, furniture, packages, or other objects may be placed, stored or otherwise maintained on or in the lanais of the Resort Units if they are visible from outside of the Unit except as approved by the Association at an annual or special meeting of the Association. This does not prohibit temporary placement of bicycles on the lanais for security purposes.

5) Nobody can install or have any electrical or telephone wiring, television or other antenna, machines, air-conditioning units, or other equipment or accessories of any kind on the exterior of the Condominium or that stick out of the walls, windows, or roof of the Condominium; provided that the Rules and Regulations may authorize the installation of air conditioning units, or particular types, kinds or brands of air conditioning units.

6) Nobody can install awnings, shades, blinds, screens, louvers, or other similar objects on the lanai of any Unit, or any exhaust vents, wind baffles, or drains.

7) Nobody can paint, resurface, enclose or make any structural modifications, changes, additions or alterations to his or her lanai.

**END OF EXHIBIT F**



## EXHIBIT G

### DESCRIPTION OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

#### Common Elements.

The "Common Elements" consist of all of the Condominium except for the Units. The Common Elements include, among other things, the following:

- A. The Land in fee simple.
- B. All foundations, floor slabs, columns, girders, beams, supports, Unit boundary and load-bearing walls and partitions (except for the finishes on them and except as otherwise provided for the boundary walls separating two Commercial Units) and roofs.
- C. All lobby areas (if any) to the extent that they are not located within a Unit, stairways, elevators and elevator lobbies (if any—currently there are none), walkways, corridors, entrances, entry ways and exits of each building, all storage rooms, maintenance rooms, elevator machine rooms (if any—currently there are none), mechanical rooms, electrical rooms, service yards (if any – currently there are none), loading docks (if any—currently there are none), boiler rooms (if any—currently there are none), telephone equipment rooms (if any), and chillers (if any—currently there are none).
- D. All yards, grounds, walkways, walkway railings, gardens and other landscaping, and all refuse facilities.

E. The pools, pool shower(s), pool decks, and pool equipment.

F. All roads, driveways, parking structures (if any are constructed and to the extent that the same are not part of any Commercial Unit— currently there are no parking structures), parking stalls and parking areas (to the extent that the same are not part of any Commercial Unit), access lanes, paved areas, ramps, fire lanes and loading areas.

G. All pipes, wires, cables, conduits, ducts, water meters, electrical equipment, vents, shafts, sewer lines, wiring and other central and appurtenant transmission facilities and installations over, under and across the Condominium that serve the Common Elements or more than one Unit for services such as power, light, gas (if any), water, air conditioning (if any— currently there is no central air conditioning), sewer, refuse, telephone, and radio, internet and television signal distribution (if any).

H. Any and all other equipment, apparatus and installations existing for common use, such as tanks, pumps, motors, fans, compressors, boilers, and, in general, any and all other parts of the Condominium necessary or convenient to its existence, maintenance or safety, or normally in common use.

#### Limited Common Elements.

Some Common Elements, called "Limited Common Elements," are designated and set aside for the exclusive use of certain Units. Except as otherwise specifically provided in the Declaration, those Units have the exclusive right (in legal terms, an "exclusive easement") to use the Limited Common Elements set aside for their use.

#### RESORT UNITS

##### **A. LIMITED COMMON ELEMENTS OF RESORT UNITS.**

1) Each Resort Unit has appurtenant to it the lanai or lanais accessible from the interior of the Resort Unit via the intervening lanai door. Each Unit's lanai shall be a Limited Common Element appurtenant to the Unit.

2) Units 101, 201 and 301 have an entry lanai leading to the front door of the Unit. Each Unit's lanai shall be a Limited Common Element appurtenant to the Unit.

3) The lanais for certain Resort Units have a storage closet accessible from the lanai of the Unit, as listed in Schedule 1 to Exhibit C. If a Unit has a storage closet, it will be part of the lanai appurtenant as a Limited Common Element to the Unit.

4) If the Developer constructs or installs an elevator servicing the Orchid Building, the elevator will be a Limited Common Element of the Units located in the Orchid Building.

**B. RESORT UNIT LANAI BOUNDARIES.** The boundaries of the Resort Unit lanais consist of the following:

1) The decorated or finished surfaces of the outside walls of the building that separate the lanai or the lanai storage closet from the Unit interior or from the lanai of any other Unit.

2) The outside surface of any doors, door frames, windows and window frames that separate the lanai from the Unit interior.

3) The interior decorated surface of any railings or support posts, and any other walls or other Improvements enclosing the lanai and/or the lanai storage closet. If the Condominium Map does not use walls, railings, support posts, or other physical Improvements to mark the boundaries of the lanai, then the boundary will consist of an imaginary vertical plane in the location shown by a line drawn on the Condominium Map.

4) The ceiling above the lanai (or lanai storage closet) or, if there is no ceiling, an imaginary horizontal plane located just below the lowest point of and parallel to the underside of the floor of the lanai (or lanai storage closet) of the Unit on the next floor up, provided that:

- If the underside of the lanai floor (or the floor of the lanai storage closet) for the next Unit up consists of exposed support beams, then the boundary will consist of an imaginary horizontal plane located just below the lowest point of the exposed support beams, and parallel to the floor of the lanai (or lanai storage closet) of the Unit on the next floor up.
- If there is no lanai on the next floor up, the boundary will be an imaginary horizontal plane located just below the lowest point of, and parallel to, the underside of the roof and/or the support beams or other Improvements comprising the roofing system located above the lanai (or lanai storage closet).
- If there is no lanai floor or roofing system above the lanai, then the boundary will be an imaginary horizontal plane located parallel to and eight (8) feet above the lanai floor, but excluding from it any area occupied by other Improvements of the Condominium.

**C. THINGS THAT ARE PART OF THE LANAIS.** The following are part of the Resort Unit lanais:

- The lanai storage closets; and
- Any walls, doors and door frames that separate the lanai storage closet from the lanai of that Resort Unit.

**D. THINGS THAT ARE NOT PART OF THE RESORT UNIT LANAIS.** The following are General Common Elements and are not part of the Resort Unit Lanais:

- The boundary walls, railings, support posts, windows and window frames, doors and their door frames, floors, ceilings, and, in the case of Units 115 – 120, any flood panels and/or gates installed in the boundary walls separating the lanais of such Units from the grounds of the Condominium. However

the decorated or finished surfaces, etc., of the same are part of the lanais to the extent provided in Section B., above.

- The walls that separate the lanai storage closets from (i) the Unit interior, (ii) the lanai of another Units, or (iii) other exterior walls of the building. However the decorated or finished surface of any such walls located within the lanai storage closet are part of the lanai storage closet and therefore part of the lanai.
- Any load-bearing walls or columns inside of the lanais. However the decorated or finished surfaces are part of the lanai.
- The foundations, footings, girders, beams, floor slabs, supports, floors and ceilings surrounding each lanai.
- Any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust, or air conditioning (if any) running through or otherwise located within a lanai if they are used for or serve more than one Unit, the General Common Elements, or the Limited Common Elements of any other Unit.
- Any Improvements located above the lanai. This would include, for example the underside of the lanai for a Unit on the next floor up, or the underside of the roof and/or the support beams or other Improvements comprising the roofing system located above a lanai.
- In the case of Units 101, 201 and 301, any doorknobs, door handles, latches, and locks located on or in the door leading from the General Common Element corridor into the front lanai of the Unit or in the door frame for such door. This includes but is not limited to any strike plate, spindle, key cylinder, dead-bolt and other component parts.
- In the case of the gates installed in the lanai boundary walls for Units 115-120, any doorknobs, door handles, latches, and locks located on or in the gate leading from the General Common Element grounds into the lanai of the Unit or in the door frame for such door. This includes but is not limited to any strike plate, spindle, key cylinder, dead-bolt and other component parts.

#### COMMERCIAL UNITS

##### **A. LIMITED COMMON ELEMENTS OF COMMERCIAL UNITS.**

1) Unit 1 has appurtenant to it Storage Room 1-A. The electrical room shown on Sheet A-7 of the Condominium Map is not part of Storage Room 1-A.

2) Unit 2 (the Gazebo) has appurtenant to it all parking stalls, except for the parking stalls assigned from it to other Units by amendments to the Declaration.

**B. LIMITED COMMON ELEMENT BOUNDARIES.** The boundaries of the Limited Common Elements (other than the parking stalls) of the Commercial Units consist of the following: the interior surface of all perimeter walls, windows and window frames, doors and door frames,

floors, and ceilings. For purposes of this Subsection, the "ceiling" is the surface of the underside of the floor above it. This means that the Limited Common Elements of a Commercial Unit includes any crawl space or plenum between the "ceiling" and any acoustic tiles, furred ceiling or other ceiling system.

**C. THINGS THAT ARE PART OF THE LIMITED COMMON ELEMENTS.** The following are part of the Limited Common Elements (other than the parking stalls) of the Commercial Units:

- All non-load bearing walls and partitions located within the boundaries of the Limited Common Element.
- All movable lanai doors and the door frames, if any.

- All boundary doors and door frames, and all doors and door frames located inside of the boundaries of the Limited Common Element.
- Any doorknobs, door handles, latches, and locks located on or in any boundary doors and door frames. This includes but is not limited to any strike plate, spindle, key cylinder, dead-bolt and other component parts.
- The inner decorated or finished surfaces of all boundary walls, windows and window frames, doors and their door frames, floors and ceilings.
- All fixtures originally installed in the Limited Common Element, and all replacements of those fixtures.

**D. THINGS THAT ARE NOT PART OF THE LIMITED COMMON ELEMENTS.** The following are General Common Elements and are not part of the Limited Common Elements:

- The boundary walls, windows and window frames, floors and ceilings. However the decorated or finished surfaces

located within the interior of the Limited Common Element are part of the Limited Common Element.

- Any load-bearing walls or columns inside of the Limited Common Element. However the decorated or finished surfaces are part of the Limited Common Element.
- The foundations, footings, girders, beams, floor slabs, supports, floors and ceilings surrounding the Limited Common Element.
- Any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust, or air conditioning running through or otherwise located within the Limited Common Element if they are used for or serve any Unit, the General Common Elements, or the Limited Common Elements of any other Unit.
- The lanai accessible from within Laundry Room 2.

**END OF EXHIBIT G**

## EXHIBIT H

### SPECIAL USE RESTRICTIONS

The Condominium Documents contain extensive provisions governing and restricting the use and occupancy of the Units. The Developer recommends that Purchasers and prospective Purchasers read all of the Condominium Documents carefully in order to fully understand all of the restrictions and other provisions of the Condominium Documents governing the use and occupancy of the Units and the rest of the Condominium. The following provisions are only some of the restrictions established in the Condominium Documents:

#### DECLARATION

##### 1.1 RESORT UNITS.

###### A. PERMITTED USE.

**1) THE RESORT UNITS MAY BE OCCUPIED AND USED AS A PERMANENT OR TEMPORARY RESIDENCE OR FOR HOTEL OR TRANSIENT VACATION RENTAL PURPOSES.**

2) NO MATTER WHAT ELSE THE CONDOMINIUM DOCUMENTS SAY, THE RESORT UNITS MAY BE USED IN A FRACTIONAL PLAN IF THE DEVELOPER CREATES THE FRACTIONAL PLAN OR IF IT AUTHORIZES OR CONSENTS TO THAT USE IN A RECORDED DOCUMENT.

**3) NO MATTER WHAT ELSE THE CONDOMINIUM DOCUMENTS SAY, THE RESORT UNITS MAY BE USED IN A VACATION PLAN IF THE DEVELOPER CREATES THE PLAN OR IF THE DEVELOPER AUTHORIZES OR OTHERWISE CONSENTS TO THAT USE IN A RECORDED DOCUMENT. NOTE: A TIME SHARE PLAN IS A "VACATION PLAN."**

**B. RESTRICTIONS ON USE.** The following rules apply except where the Declaration allows the Developer or its Representatives, licensees and invitees to do otherwise:

1) The Resort Units and their Limited Common Elements must not be used to carry on any business, trade or profession.

2) The Resort Units and their Limited Common Elements must not be used for sales of any articles or goods.

3) No Unit Owner, Vacation Owner, Fractional Owner, Exchanger, lessee, tenant, occupant of a Resort Unit or other person (except the Developer) can bring clients, customers or other business invitees onto the premises on a regular basis for business purposes.

4) Each Owner promises not to enter into a "rental pool" or similar arrangement where the Owner's Unit (or the use or occupancy rights of a Vacation Owner's Vacation Ownership Interest or a Fractional Owner's Fractional Ownership Interest) is placed together in a pool with other Owners' Units (or the use or occupancy rights of other Owners' Vacation Interests or Fractional Interests) and rented, or where rental income and/or expenses are shared in some

other way. Only the Developer can enforce this restriction. The Developer can enforce this restriction until the earlier of (1) December 31, 2025, or (2) the date the Developer sells all Resort Units, Vacation Ownership Interests and Fractional Ownership Interests that it owns in the Condominium. The Developer makes no representation or warranty that any rental pool arrangement will become available, or as to the potential rental value of a Unit, Vacation Ownership Interest or Fractional Ownership Interest, or that an Owner may expect to make a profit by buying, selling, or renting a Unit, Vacation Ownership Interest or Fractional Ownership Interest.

**C. RIGHTS OF UNIT OWNERS.** Subject to the restrictions in this Section 1.1, the Unit Owners have the absolute right to sell, lease, rent or otherwise transfer their own Units, Vacation Ownership Interests or Fractional Ownership Interests. This right is subject to all other provisions of the Declaration and the Bylaws.

##### 1.2 COMMERCIAL UNITS.

**A.** The Commercial Units are restricted to nonresidential uses. Without limiting the preceding sentence, the Commercial Units are established with the intent that business be conducted in them and, accordingly, they may be operated and used for any commercial purpose permitted by law and for hotel and resort purposes. Except for Unit No. 3, this includes, but is not limited to USE AS HOTEL ROOMS OR TRANSIENT VACATION RENTAL UNITS. Notwithstanding the foregoing, the laundry room of Unit 3 as shown on the Condominium Map may only be used to provide a laundromat (using standard laundromat equipment such as coin-operated washers and dryers) for the use of Owners and occupants of the Resort Units at prices comparable to the rates charged for similar goods and services by resorts in the area whose operations are consistent with the Property Standard of the Condominium.

**B.** Every Commercial Unit Owner has the absolute right to rent or lease all or any part of the Unit and/or its Limited Common Elements for any length of time and upon any terms and conditions that the Unit Owner chooses. The Unit Owner has the right to keep the rent and any other amounts paid pursuant to the rental agreement or lease.

**C.** Every Commercial Unit Owner, except the Owner of Unit No. 3, may contract with various providers of goods and services, such as food and beverage operators, retail stores, childcare providers and other vendors, to provide goods and services at the Condominium. The Owner of Unit No. 3 may only contract with providers of goods and services related to the provision of laundromat and housekeeping services that the Owner of Unit No. 3 makes available to Owners and occupants of the Condominium. The Unit Owner may retain any

compensation paid to the Unit Owner in return for permitting anyone to use space at the Condominium, whether that space is inside the Unit Owner's Unit or its Limited Common Elements. The Owner of Unit No. 3 may retain any compensation paid to the Unit Owner in return for permitting Owners and occupants to use the laundromat located in the laundry room of Unit No. 3; provided that, the rates charged for these goods and services are comparable to the rates charged for similar goods and services by resorts in the area whose operations are consistent with the Property Standard of the Condominium. A Commercial Owner's rights under this Subsection are subject to the exclusive rights of:

- 1) The Developer under Section 7.1F (Developer's Easement for Sales Activity);
- 2) Commercial Unit 1 under Section 7.1M (Easement for Bellhop Service);
- 3) Commercial Unit 2 under Section 7.1N (Easement for Children's Program); and
- 4) Any other exclusive rights granted or reserved in the Declaration.

**D. NO MATTER WHAT ELSE THE CONDOMINIUM DOCUMENTS SAY, ANY PART OR PARTS OF A COMMERCIAL UNIT (AND ANY UNITS THAT WERE FORMERLY PART OF A COMMERCIAL UNIT), EXCEPT THE GAZEBO AND UNIT NO. 3, MAY BE CONFIGURED FOR USE AS ONE OR MORE RESORT UNITS, AND THEN USED FOR ANY PURPOSE PERMITTED BY SECTION 1.1, INCLUDING BUT NOT LIMITED TO USE IN A FRACTIONAL PLAN OR VACATION PLAN CREATED OR AUTHORIZED BY THE DEVELOPER IN A RECORDED DOCUMENT. During any such use, Section 1.1 instead of this Section 1.2, will govern the use of those parts of the Commercial Unit, or formerly part of a Commercial Unit, being used for such purposes. It will be as if it is a Resort Unit.**

**E.** Any amendment to the provisions of the Declaration described in Section 9.2 of the Declaration (described in Section 1.2, above, of this Exhibit), and any amendment to the Condominium Documents that would limit or interfere in any way with the use of a Commercial Unit or its Limited Common Elements, or with access to or from a Commercial Unit or its Limited Common Elements, will not be effective without the written consent of the Unit Owner. This limitation does not apply to amendments made by the Developer when using the Developer's Reserved Rights.

**1.3 USE OF THE COMMON ELEMENTS.** Subject to the rights reserved by the Developer elsewhere in or pursuant to the Declaration or the Bylaws:

**A.** Each Unit Owner may use the Common Elements for the purposes for which they were intended without hindering or encroaching upon the lawful rights of the other Unit Owners. This right is subject to the following:

- 1) The exclusive use of the Limited Common Elements as provided in the Declaration.

- 2) The easements granted or reserved in or pursuant to the Declaration or the Bylaws.

- 3) The right of the Association to amend the Declaration to change the use of the Common Elements or the right of the Board to lease or otherwise use the Common Elements for the benefit of the Association. The Board may only do so upon the terms and subject to the limits contained in the Condominium Law. See, for example, Section 514B-38 of the Condominium Property Act. However, no such lease, use or change in use may be made before the Development Period ends unless the Developer consents to it in writing.

- 4) The right of the Developer to change the use of or otherwise deal with the General Common Elements and/or Limited Common Elements in the exercise of the Developer's Reserved Rights.

**B.** Each Commercial Unit Owner may operate and use any Limited Common Elements of that Unit for any purpose permitted by law and by Section 9.2 of the Declaration (described in Section 1.2, above, of this Exhibit). If a Limited Common Element is appurtenant to more than one Commercial Unit then these rules apply:

- 1) The Unit Owners of those Commercial Units may only operate and use that Limited Common Element for purposes permitted by law and by Section 9.2 of the Declaration.

- 2) The Unit Owners of at least seventy-five percent (75%) of the Common Interests for all of the Units to which that Limited Common Element is appurtenant have the right to choose, and to change, the use of that Limited Common Element, so long as such Limited Common Element remains subject to the easements granted or reserved in or pursuant to the Declaration or the Bylaws.

A Unit Owner has the right to keep all revenues generated by any business that the Unit Owner operates on the Limited Common Elements of his or her Commercial Unit.

**C.** Regardless of anything else stated in the Condominium Documents, neither the Board nor the Association has any right to change the use of or to lease or otherwise use any Limited Common Element of a Commercial Unit. The only exception is when the Unit Owners of all Units to which a Limited Common Element is appurtenant give their written consent in advance.

**D.** Regardless of anything else stated in the Condominium Documents, neither the Board nor the Association has any right, without first getting the written consent of the Unit Owner of each Commercial Unit affected, to obstruct the entrance to, or the visibility of any signage, notice, picture, placard, poster, or other advertising matter pertaining to or posted inside of any Commercial Unit, or outside of the building on the boundary walls or windows of the Unit. However, any such signage and so on that is visible from outside of the Unit must not detract from the resort ambience of the Condominium and must not be inconsistent with the Property Standard.

#### 1.4 LIMITS ON USE OF THE UNITS AND COMMON ELEMENTS.

A. **PROMOTIONAL USE.** Notwithstanding any of the provisions of the Declaration, the Articles or the Bylaws, **no Unit Owner, lessee, tenant, occupant, or other Interested Person, or any licensee or invitee of any such person, can use the Condominium or any part of it:**

- **For the promotion or sale of Vacation Interests or Fractional Interests, whether directly or indirectly, or**
- **For the operation of a tour or activity desk or any other business or enterprise that directly or indirectly promotes the sale of Vacation Interests or Fractional Interests.**

These restrictions are intended to benefit the Developer alone and they will apply in every case unless the Developer gives its written consent in a recorded document. Of course, these restrictions do not apply to the Developer. The Developer has the right to use its Units and the Developer's Reserved Rights for the promotion and sale of Vacation Interests and/or Fractional Interests.

B. **TIMESHARE PLANS, FRACTIONAL PLANS AND CLUBS.** No timeshare plans, fractional plans, exchange programs or clubs, or travel or vacation clubs comprised of a trust, corporation, cooperative, limited liability company, partnership, equity plan, non-equity plan, membership program, or any such other similar programs, structures, schemes, devices or plans of any kind (a) shall be created, established, operated or maintained with respect to the Condominium or the Units; (b) shall acquire or accommodate Units, Vacation Ownership Interests or Fractional Ownership Interests; and (c) shall be permitted to incorporate any Unit, Vacation Ownership Interest or Fractional Ownership Interest into such entity, program, structure, scheme, device or plan, except by the Developer or except with the prior written authorization from the Developer, which authorization may be given or withheld in the Developer's sole, absolute and unfettered discretion, and which authorization shall be evidenced by a written instrument executed by the Developer, recorded in the Bureau of Conveyances of the State of Hawai'i and containing a specific reference to the Declaration.

C. **ANIMALS.** No livestock, poultry, or other animals of any kind are allowed on or may be kept in any Unit or any other part of the Condominium except to the extent otherwise required by the

Americans with Disabilities Act, the Fair Housing Act, Chapter 515, Hawaii Revised Statutes, or any other law that applies to the Condominium, or to the extent explicitly permitted in the House Rules.

1.5 **CHANGES TO CONDOMINIUM APPEARANCE.** Unit Owners are not allowed to change or cause a change to the exterior appearance of the Condominium unless they have the prior written consent of the Board. This rule applies even though some of the Common Elements are Limited Common Elements of certain Units. This rule does not apply to the Developer when using the Developer's Reserved Rights. The Board has the right to change the exterior appearance of the Condominium. During the Development Period, however, the Board cannot do so without the Developer's prior written consent. Nobody is allowed to change the appearance of the Condominium in a way that will detract from the resort ambience of the project or that is not consistent with the Property Standard.

#### 1.6 MAINTENANCE AND REPAIR OF UNITS AND LIMITED COMMON ELEMENTS.

A. Each Unit Owner must keep its Unit, and its Limited Common Elements, in good order and repair, and in a condition consistent with the Property Standard. This includes not just the walls, windows, and so on but also includes all plumbing, electrical and other fixtures and equipment that are part of the Unit or its Limited Common Elements.

B. A Commercial Unit Owner has the right to make decisions on repairs or changes to the Unit's Limited Common Elements. If a Limited Common Element is appurtenant to more than one Commercial Unit then the Unit Owners of at least seventy-five percent (75%) of the Common Interests for all of those Units have the right to make decisions on repairs and changes to it. These rights of the Commercial Unit Owners are subject to the requirements of Sections 9.5, 9.6A and 11.2 of the Declaration, and any additional other provisions of the Declaration that apply.

1.7 **THE DEVELOPER'S RIGHTS OF USE.** Regardless of anything else stated in the Condominium Documents, the Developer has the right to use any Unit that it owns for promotional purposes or in connection with the initial sale and/or any resale or other conveyance of Units, Vacation Interests, and/or Fractional Interests. This includes, for example, the right to use its Units (or any portion thereof) and their Limited Common Elements as model Units, or as sales, management or administrative offices or to sell tours and activities or to provide services to the Unit Owners or other occupants of the Condominium. These rights are subject to any requirements of the zoning code and any other laws that may apply.

#### BYLAWS

1.1 **USE.** Subject to the Developer's Reserved Rights and to the provisions of the Declaration:

A. Each Unit may be used only for the purposes expressly permitted in the Declaration. **PURSUANT TO AND SUBJECT TO THE RESTRICTIONS OF SECTION 9.1 OF THE DECLARATION: (1) THE RESORT UNITS MAY BE USED IN A FRACTIONAL PLAN OR VACATION PLAN, IF THE DEVELOPER CREATES THE PLAN OR IF THE DEVELOPER AUTHORIZES OR OTHERWISE CONSENTS**

**TO THAT USE IN A RECORDED DOCUMENT, AND (2) ANY PART OR PARTS OF A COMMERCIAL UNIT (AND ANY UNITS THAT WERE FORMERLY PART OF A COMMERCIAL UNIT) MAY BE CONFIGURED FOR USE AS ONE OR MORE RESORT UNITS, AND THEN USED IN A FRACTIONAL PLAN OR VACATION PLAN IF THE DEVELOPER CREATES THE PLAN OR IF THE DEVELOPER AUTHORIZES OR OTHERWISE CONSENTS TO THAT USE IN A RECORDED DOCUMENT.**

**B.** The Common Elements may be used only for their respective purposes as designed or as described in the Declaration, subject to:

1) The right of the Board to change the use of the Common Elements or to lease or otherwise use the Common Elements for the benefit of the Association. The Board may only do so upon the terms and subject to the limits contained in the Condominium Property Act. See, for example, Section 514B-38 of the Condominium Property Act. However, no such lease, use or change in use may be made before the Development Period ends unless the Developer consents to it in writing.

2) The right of the Developer to use, change the use of, or otherwise deal with the General Common Elements and Limited Common Elements in the exercise of the Developer's Reserved Rights.

**C.** It is intended that the lanai for each of the Resort Units will have a uniform appearance that is consistent with the Property Standard and either complementary or consistent with the other phases. To that end, the Association will own the lanai furniture for each Resort Unit and any standard lanai decorations. The Developer will choose the initial lanai furniture and decorations for the Resort Units. The Association will repair and replace the lanai furniture and decorations, and the cost of such repair or replacement shall constitute a Common Expense of the Association except as otherwise provided in Section 1.2B. From time to time, the Association may determine, by vote of the Owners at an annual or special meeting of the Association, to replace the lanai furniture package and/or decorations for all Resort Units with a new furniture package and/or new lanai decorations. The cost of purchasing any new lanai furniture or decorations shall be a Common Expense.

**D.** It is intended that the doors leading into the Resort Units (and, in the case of Units 101, 201 and 301, the door leading from the Common Element corridor into the front lanai of those Units), and the locking systems for such doors, shall be identical for all of the Resort Units. The doors and locking systems are General Common Elements of the Condominium. The Association will own the doors and locking systems but shall provide keys, keycards or other means of access to Owners. The Managing Agent shall at all times maintain a copy of the key or keycard or other means of access through the doors and door locking systems, and shall be entitled to use the same only when expressly authorized to enter the Unit by the Owner or occupant, as permitted in the Condominium Documents, or as permitted under the Condominium Law. The Managing Agent will provide a duplicate key, keycard or other means of access to the Owner of a Unit upon request and after payment of a reasonable fee to defray the cost of preparing the duplicate key, keycard or other means of access. The Developer will choose the initial doors and door locking systems for the Resort Units. The Association will maintain, repair and replace the doors and locking systems from time to time, and the cost of such maintenance, repair or replacement shall constitute a Common Expense of the Association except as otherwise provided in Section 1.2B. From time to time, the Association may determine, by vote of the Owners at an annual or special meeting of the Association, to replace the doors and/or locking systems for all Resort Units. The cost of purchasing any new doors and/or locking systems shall be a Common Expense. Owners and occupants shall

not install any additional or replacement lock or locking system on any Common Element door; provided that the Association, by its Board, may authorize the replacement of any Common Element door, or the locking system on any Common Element door, as required to comply with the Americans With Disabilities Act, the federal Fair Housing Act, or any similar law or regulation.

**E.** Every Unit Owner and occupant must at all times keep his or her Unit, the lanai appurtenant to his or her Unit, and the lanai furnishings and decorations in a strictly clean and sanitary condition and in a condition that is consistent with the Property Standard.

**F.** No Unit Owner or occupant may make or suffer any strip or waste or unlawful, improper, or offensive use of his or her Unit or the Condominium. No Unit Owner or occupant may alter or remove any furniture, furnishings, or equipment of the Common Elements.

**G.** All Unit Owners and occupants must use extreme care to avoid making any noise that will unreasonably disturb the Unit Owners or occupants of other Units.

**H.** No Unit Owner or occupant may throw, place, or keep any refuse, garbage, or trash of any kind on any Common Elements of the Condominium other than in the trash disposal facilities. All Unit Owners and occupants must comply with any rules adopted by the Association regarding the sorting and disposal of various types of refuse, garbage and trash.

**I.** Except to the extent as otherwise required by the Americans with Disabilities Act, the Fair Housing Act, Chapter 515, Hawaii Revised Statutes, or any other law that applies to the Condominium, no livestock, poultry, or other animals of any kind are allowed on or may be kept in any part of the Condominium. The Board may from time to time include in the Rules and Regulations reasonable restrictions or prohibitions relating to animals used to assist disabled persons so long as the restrictions or prohibitions are consistent with any laws protecting the civil rights of persons using those animals.

**J.** Nothing may be allowed, done or kept in any Unit or Common Element of the Condominium if it would:

1) Overload or impair the floors, walls or roofs.

2) Cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance on the Condominium maintained by or for the Association unless the Unit Owner agrees to pay the increased cost and the Board approves it.

**K.** It is intended that the buildings of each phase will have a uniform exterior appearance that is consistent with the Property Standard and either complementary or consistent with the other phases. To that end, without the prior written consent of the Board and (until the end of the Development Period) the Developer, no Unit Owner or occupant other than the Developer may do anything that changes the exterior appearance of the Condominium. For example,

1) Nobody can tint the windows to his or her Unit if it may affect the exterior appearance of it.

2) Nobody can install draperies or other window coverings if the exterior side is anything but an unpatterned, uniform white color or any other color and texture approved by vote of the Owners at an annual or special meeting of the Association.

3) Nobody can hang clothing, rugs, or anything else from the windows, lanais, or otherwise on the Condominium exterior.

4) No plants, furniture, packages, or other objects may be placed, stored or otherwise maintained on or in the lanais of the Resort Units if they are visible from outside of the Unit except as approved by the Association at an annual or special meeting of the Association. This does not prohibit temporary placement of bicycles on the lanais for security purposes.

5) Nobody can install or have any electrical or telephone wiring, television or other antenna, machines, air-conditioning units, or other equipment or accessories of any kind on the exterior of the Condominium or that stick out of the walls, windows, or roof of the Condominium; provided that the Rules and Regulations may authorize the installation of air conditioning units, or particular types, kinds or brands of air conditioning units.

6) Nobody can install awnings, shades, blinds, screens, louvers, or other similar objects on the lanai of any Unit, or any exhaust vents, wind baffles, or drains.

7) Nobody can paint, resurface, enclose or make any structural modifications, changes, additions or alterations to his or her lanai.

L. No Unit Owner or other occupant of a Resort Unit may post any advertisement, bill, poster, or other sign on or in the Condominium. Regardless of anything else stated in this Section 1.1 or elsewhere in the Bylaws (except for Section 1.1J.2), which always applies), a Commercial Unit Owner may, subject to all applicable laws and necessary government approvals:

1) Install and display signs in the windows of its Unit or in the Unit's Limited Common Elements;

2) Conduct its business operations in its Unit even if they can be seen from outside of the Unit.

During the Development Period, a Commercial Unit Owner must get written approval from the Developer before doing any of these things. After the Development Period ends, a Commercial Unit Owner must get written approval from the Board before doing any of these things. The Board may not unreasonably withhold its consent.

M. No Unit Owner or occupant may place, store, or maintain on walkways, roadways, grounds, or other Common Elements any furniture, packages, or objects of any kind or otherwise obstruct transit through the Common Elements. This does not prohibit the Commercial Unit Owners from placing goods and other materials on the Common Elements when loading or unloading them, or transporting them from loading docks, loading ramps, or other loading areas, to the Commercial Units or to storage areas that are Limited Common Elements appurtenant to one or more Commercial Units. Any such loading, unloading, and transportation must be completed promptly.

N. Access to the roofs of buildings is limited to the Developer and persons authorized by the Board to perform any necessary inspections, maintenance or repairs on the roofs. The Board may likewise restrict access to other Common Elements (for example, elevator mechanical rooms, electrical equipment rooms, and so on) that would not ordinarily be open to the public in an apartment building or hotel.

**1.2 MAINTENANCE AND REPAIR OF UNITS.** [CEP1] Except as otherwise provided by law or in the Bylaws or in the Declaration:

**A. OWNERS' RESPONSIBILITIES.** A Unit Owner must maintain and repair his or her Unit and keep it in good order and condition at all times, and must pay the cost of doing so.

1) This duty includes, for example, the obligation to repair and maintain:

(a) The interior decorated or finished surfaces of all walls, floors, and ceilings of the Unit, and

(b) All installations for water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights, and all other fixtures and accessories. This applies only to installations, fixtures and accessories that are part of the Unit Owner's Unit.

2) A Unit Owner is liable for all loss or damage caused by his or her failure to perform any such work diligently. If the Unit Owner fails to do it after reasonable notice from the Association, the Association may do it. The Association may then charge the cost of doing it to the Unit Owner as a Personal Assessment.

**B. DAMAGE TO COMMON PROPERTY.** Every Unit Owner and occupant:

1) Must reimburse the Association promptly on demand for all expenses incurred by it in repairing or replacing any uninsured loss or damage to the Common Elements or any furniture, furnishings, and equipment owned by the Association caused by that Unit Owner or occupant or by any person under either of them (except for normal wear and tear and except for damage caused by an unavoidable accident), and

2) Must give to the Managing Agent notice of any such loss or damage or other defect in the Condominium promptly after discovering it

**C. EXTERIOR PAINTING AND REPAIRS.** It is intended that the exterior of the buildings will have a uniform appearance and that the Condominium will be maintained in accordance with the Property Standard. To that end, the Board alone may arrange for painting or repair of the lanais, lanai ceilings, patios, outside doors, windows, Unit entry doors, door frames and door locks, trim, walls, railings and other exterior parts of any buildings, even if they are Limited Common Elements or part of the Units. The Board may also choose the type and color of paint to be used. The Board may assess each Unit Owner for his or her proportionate share of the painting and repairs or the Board may pay for it using the funds in the appropriate Reserve Accounts. However, the cost of painting and repairs due to negligence, misuse or neglect of a Unit Owner or other occupant, or someone under either of them, may be charged as a Personal



Assessment. This Section 1.2C does not apply to Limited Common Elements of the Commercial Units to the extent that the Unit Owners of those Commercial Units choose to do the painting and repairs themselves as authorized in the Declaration and so long as they maintain and repair them and keep them in good order and condition at all times. Until the Development Period ends, however, the Unit Owners of any such Units must obtain the written consent of the Developer to any painting or repairs that may change the exterior appearance of the Condominium.

### 1.3 MAINTENANCE AND REPAIR OF COMMON ELEMENTS.

**A. GENERAL COMMON ELEMENTS.** Except as otherwise provided in the Bylaws or in the Declaration, all maintenance, repairs and replacements of the General Common Elements will be made only by or at the direction of the Board. The cost will be charged to all the Unit Owners as a Common Expense.

**B. LIMITED COMMON ELEMENTS.** Except as otherwise provided in the Bylaws or in the Declaration, all maintenance, repairs and replacements of Limited Common Elements, whether located inside or outside of the Units, will be made only by or at the direction of the Board. Except as otherwise required by law, however, this rule does not apply to Limited Common Elements appurtenant to Commercial Units whose Unit Owners choose to conduct such maintenance, repairs and replacements themselves as authorized in the Declaration.

### 1.4 ALTERATIONS AND ADDITIONS BY OWNERS.

**A. PERMITTED ALTERATIONS.** A Unit Owner may make additions, alterations or improvements solely within his Unit or within a Limited Common Element appurtenant to and for the exclusive use of his Unit:

- 1) At his sole cost and expense,
- 2) With the approval of the Board in the case of a Resort Unit or, to the extent required by the Condominium Property Act, in the case of a Commercial Unit, and
- 3) In accordance with the requirements of the Declaration and the Condominium Property Act.

**B. PROHIBITED ALTERATIONS.** Subject to the provisions of the Declaration and the Condominium Property Act, no Unit Owner may,

without the prior written approval of the Board (in the case of a Resort Unit and, to the extent required by the Condominium Property Act, in the case of a Commercial Unit) and the Developer (until the Development Period ends), make any alteration or addition: (i) to his or her Unit that materially and adversely affects the Common Elements or changes the exterior or appearance of the Condominium; or (ii) to any of the Common Elements including, without limitation, Common Elements within, encompassing or adjacent to his Unit.

**C. BOARD APPROVAL.** A Unit Owner must not begin work on any alterations, additions or improvements that require Board approval until after:

1) The Unit Owner submits a written request for Board approval. The request must include plans and specifications if the Board asks for them, and

2) The Board (or a committee appointed by the Board) approves the request in writing or the Board is deemed to have approved the request as provided in Section 1.4D.

**D. TIME LIMIT FOR BOARD RESPONSE.** The Board must respond to a request for approval within sixty (60) days after it receives it. The request will be approved automatically unless, within the sixty-day period, the Board either (i) disapproves the request, or (ii) asks the Unit Owner to make changes. This automatic approval, however, does not apply to work that will affect the Common Elements, the exterior appearance of the Condominium or the rights of any other Unit Owner.

**E. CONDITIONS TO APPROVAL.** The Board may impose reasonable conditions on its approval of any such request. For example, the Board might require (i) changes to the request or the plans, (ii) that the work be supervised by an architect, engineer, or other construction professional, or (iii) that a licensed contractor be used to do any construction.

**F. UNAUTHORIZED WORK.** The Board may inspect the work from time to time. It may require the removal or correction of any work (i) for which consent by the Board is required but has not been given, (ii) that materially and adversely affects the Common Elements or the exterior appearance of the Condominium, or (iii) that directly, materially, and adversely affects another Unit Owner's Unit or its Limited Common Elements without that Unit Owner's consent.

## HOUSE RULES

**1.1** Each Occupant shall at all times keep his/her Unit in good order and condition and observe and perform all laws, ordinances, rules, and regulations that apply to the use of the Project and his/her Unit now or hereafter made by any governmental authority or the Board.

**1.2** No clothes, towels, garments, rugs, or other objects shall be hung on clotheslines or from the lanai railings or walls, doorways, windows, or facades of the Resort Units in such a manner as to be in view of persons outside the building. No shoes, flip-flops, slippers, sandals, dry cleaning, or other objects shall be allowed to remain in view at the front entrance of any Resort Unit.

**1.3** Lanais shall not be used for storage in any manner, including without limitation, sports and play equipment, surplus cartons, boxes, or any other belongings. This prohibition does not apply, however, to the storage closets located on the lanais of those Units that have a storage closet.

**1.4** The Association will own the lanai furniture for each Resort Unit and any standard lanai decorations. The Association will repair and replace the lanai furniture and decorations, and the cost of such repair or replacement shall constitute a Common Expense of the Association except as otherwise provided in the Bylaws. Occupants are responsible to keep the lanai furniture clean and in a neat and

attractive condition and must pay for any damage to or destruction of the lanai furniture except for normal wear and tear.

**1.5** The Association owns the doors leading into the Resort Units (and, in the case of Units 101, 201 and 301, the door leading from the Common Element corridor into the front lanai of those Units), and the locking systems for such doors but shall provide keys, keycards or other means of access to Owners. The Association will maintain, repair and replace the doors and locking systems from time to time, and the cost of such maintenance, repair or replacement shall constitute a Common Expense of the Association except as otherwise provided in the Bylaws. Occupants are responsible to keep the doors, locking systems, keys, keycards or other means of access in a good, neat and attractive condition and must pay for any damage to or destruction of the same except for normal wear and tear. An Owner or Occupant who locks himself or herself out of the Resort Unit or who loses his or her key, keycard or other means of access must pay any fees and costs to open the door and, if necessary, a reasonable fee to defray the cost of preparing a duplicate key, keycard or other means of access.

**1.6** Draperies, curtains, shades or any other window coverings that are visible from the exterior of the building are not permitted if the exterior side is anything but an unpatterned, uniform white color or any other color and texture approved by vote of the Owners at an annual or special meeting of the Association. Window coverings must be maintained in good condition and repair at all times.

**1.7** Eating, drinking of beverages (including alcoholic beverages in moderation), and picnicking shall be allowed on the lawns and in no other areas of the Common Elements at any time. Except as otherwise specifically provided in the House Rules, eating, drinking, or smoking is not permitted in any common area of the Project including, without limitation, lobbies, hallways, elevators, corridors, stairwells, barbeque areas, driveways and parking areas.

**1.8** Kauai Kailani is intended to be a smoke free Project. The smoking of tobacco (cigarettes, cigars, pipes or anything else), including smoke-less or vapor cigarettes, on Limited Common Element lanais and in or on the Common Elements of the Project is declared to be a nuisance and is strictly prohibited. Smoking within an Occupant's Unit is permitted but only if the Occupant takes reasonable steps to prevent smoke from infiltrating the Common Elements of the Project and other units in the Project. This includes excessive seepage out of windows or doors and penetrating neighboring units through air conditioner in-takes (if any).

**1.9** Each Owner must (i) keep the storage closet and its contents clean and in a neat and attractive condition, (ii) inspect the storage closet and its contents at least monthly for evidence of damage or possible damage resulting from or due to termite infestation, water intrusion, weather, strong winds, and/or other causes, and inform the Managing Agent promptly after learning of any of the same; and (iii) pay for any damage to or destruction of the storage closet except for (A) damage due to normal wear and tear, and (B) damage resulting from or due to termite infestation, water intrusion, weather, strong winds, and/or other causes beyond the control of the Owner or any Occupant and as to which the Owner promptly notifies the Managing Agent. The Association shall not be liable or responsible for damage to the contents of the storage closet from any cause whatsoever

except to the extent that the Association fails to conduct any necessary maintenance and repairs within a reasonable time after receipt of notice from the Owner documenting any damage resulting from or due to termite infestation, water intrusion, weather, strong winds, and/or other causes beyond the control of the Owner or any Occupant.

**1.10** The Board and/or Managing Agent (at the direction of the Board) may conduct periodic inspections of the exterior of the storage closets, and if as a result of such inspection any evidence of damage or possible damage resulting from or due to termite infestation, water intrusion, weather, strong winds, and/or other causes is found to exist, then the Association may (a) repair or cause the repair of any such physical or structural damage to the Owner's storage room caused by weather, strong winds or other causes and (b) take steps to eliminate or cause the elimination of any live termite infestation and to repair or cause the repair of any physical or structural damage to the storage closet resulting therefrom, as may be applicable.

**1.11** All parking is reserved for the use of the Occupants of the Units to which the parking stalls are appurtenant.

**1.12** The parking areas shall not be used for playing or loitering.

**1.13** Washing or repair of Motor Vehicles in any of the parking stalls is prohibited.

**1.14** Except to the extent as otherwise required by the Americans with Disabilities Act, the Fair Housing Act, Chapter 515, Hawaii Revised Statutes, or any other law that applies to the Project, no livestock, poultry, or other animals of any kind are allowed on or may be kept in any part of the Project. To the extent that animals must be allowed on the Condominium, any such animals shall be subject to the restrictions stated in the House Rules.

**1.15** Occupants of Units shall maintain quiet between 10:00 p.m. and 7:00 a.m. on weekdays (Sunday through Thursday nights) and 11:00 p.m. to 7:00 a.m. on weekends (Friday and Saturday nights).

**1.16** The potential sound transmission through a tile, wood or synthetic wood floor when compared to carpeting is greater, and thus tile, wood or synthetic wood flooring may result in greater noise being heard from the units above and adjacent to an Owner's Unit. In order to mitigate, reduce, and soften the level of sound transmission through the tile, wood or synthetic wood flooring, each Owner shall apply or cause to be applied appropriate rubber or felt pads to the feet of any furniture placed on the tile, wood or synthetic wood flooring and will use care when moving furniture or other large objects on or across the tile, wood or synthetic wood flooring, including without limitation, dragging, dropping, or scraping, to minimize any elevated sound transmission.

**1.17** No Occupant shall, without the prior written approval of the Board, install any wiring for electrical, data, or telephone installations, television antennae, machines, air conditioning units, other equipment, or appurtenances whatsoever on the exterior of the Project or protruding through the walls, windows, or roof of the Project; provided, however, that antennae covered by the FCC Antenna Rule (47 C.F.R. Part 1, Subpart S, Section 1.400 et seq.) may be installed in accordance with the Antenna Installation Policy adopted by the Board.

**1.18** No Occupant of a Unit shall install any additional locks or locking system on the front door of his or her Unit (in the case of Units 101, 201 and 301, the door leading from the Common Element corridor into the front lanai of those Units) or alter any existing locks or locking system. This shall not prohibit the Occupant of a Unit from installing a bolt, latch or chain that is accessible solely from the inside of the front door of his or her Unit as is common in many hotel rooms.

**1.19** Cooking on the Lanai of any Unit is prohibited. Other than the gas barbeque grills provided in the barbeque areas (if any), the use of hibachis, barbeque grills, and other open-fire cooking equipment is strictly prohibited in all areas.

**1.20** The Recreational Facilities (other than the pools) may be used between the hours of 8:00 a.m. and 10:00 p.m. daily. The pools may be used by Occupants who are adults for the purpose of swimming laps or other quiet exercise between the hours of 6:00 a.m. to 8:00 a.m. daily. The pools may be used by all Occupants between the hours of 8:00 a.m. to 10:00 p.m. daily.

**1.21** Bicycles may be stored by the Occupants in their Unit. Up to two (2) bicycles may be stored on the lanai of a Unit provided that the tires are not flat and the bicycles show no visible signs of rust. Children's bicycles and tricycles may be stored in the Unit or (provided that they are not visible from outside of the lanai) on the Unit's lanai.

**1.22** Surfboards, rafts and boogey boards may be stored in the Units or on their lanais provided that they are not visible from outside of the lanai.

**1.23** The violation of the Declaration, the By-Laws, or any of these House Rules by an Occupant shall give the Association, through the Board or the Managing Agent, the right, in addition to any other remedies, to levy a fine against the Owner of the Unit of the responsible Occupant. The fine schedule is: (i) First offense - a written citation; (ii) Second offense - citation and \$100.00 fine on Unit Owner; (iii) Third offense - citation and \$250.00 fine on the Unit Owner; (iv) Fourth and subsequent offenses - citation and \$500.00 fine on the Unit Owner. If the violation is not corrected within thirty (30) days after the date of the citation, the fine will be increased by ten dollars (\$10.00) per day from the thirtieth day until the violation is corrected. After twelve (12) months, a paid fine shall be removed from an Occupant's record and shall not be used in calculating subsequent violations.

**1.24** The House Rules also contain extensive rules for installation of electric vehicle charging stations.

**END OF EXHIBIT H**

## EXHIBIT I

### ENCUMBRANCES AGAINST TITLE

The Developer has obtained a title report, dated May 7, 2018, from Old Republic Title & Escrow of Hawaii, Ltd. (the "Title Company"). It disclosed the following encumbrances on title:

1. The lien of real property taxes. For more information, contact the County of Kauai Real Property Assessment Division.

2. Title to all minerals and metallic mines reserved to the State of Hawaii.

3. AS TO ITEM II:

A. Any adverse claim based upon the assertion that some portion of said land is tide or submerged land or has been created by artificial means or has accreted to such portion so created.

B. As to the portion of the land herein described bordering on the ocean:

(1) The effect of Sections 205A-41 to 205A-49, inclusive, Hawaii Revised Statutes, as now or hereafter amended, pertaining to shoreline setbacks.

(2) Any adverse claim of the State of Hawaii based upon the contention that some portion of the land hereinafter described lies seaward of the line of vegetation, pursuant to the ruling of County vs. Sotomura (1973) 55H. 176, 517 P. 2d 57.

4. AS TO ITEM I:

A. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in Grant of Easement for Sanitary/Sewer purposes, granted to HATSUME SHIMAMOTO and HERBERT TERUFUMI TOYOOKA, as Trustees under the Will and of the Estate of Hisao Shimamoto, Deceased, dated August 26, 1994, recorded September 26, 1994 in the Bureau of Conveyances, State of Hawaii, as Document No. 94-157383, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 2182726.

B. Terms and provisions as contained in an instrument, entitled SEWER AGREEMENT, executed by COUNTY OF KAUAI, a political subdivision of the State of Hawaii and KAUAI KAI ASSOCIATES, a Washington limited partnership registered to do business in the State of Hawaii and HATSUME SHIMAMOTO and HERBERT TERUFUMI TOYOOKA, Trustees under the Will and of the Estate of Hisao Shimamoto, Deceased, dated September 22, 1994, recorded October 6, 1994 in the Bureau of Conveyances, State of Hawaii as Document No. 94-164528, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 2185978, which, among other things, provides: Sewer connection for TMK: 4-3-009-050.

C. Any rights, interests or claims which may exist or arise by reason of the facts shown on a survey plat prepared by Brian M.

Hennessy, Licensed Professional Land Surveyor No. 14484, on July 26, 2012, designated Job No. ----, as follows: A) 2-Water Meter boxes crossing boundary with Wana Road by 1.8 max inside by 5.7'.

5. AS TO PARCEL FIRST ITEM II: Easement "1" (10-ft. wide) For: Sanitary sewer purposes, as shown on Map 5, as set forth by Land Court Order No. 118020, filed September 12, 1994.

6. As to PARCEL SECOND ITEM I:

A. RESTRICTIONS of vehicular access rights as shown on subdivision map prepared by EDUARDO L. PORTUGAL, Licensed Professional Land Surveyor, No. 12973-LS, accepted by the Planning Commission on the County of Kauai on April 26, 2011.

B. EASEMENT "U-1" (266 sq. ft.) for utility purposes as shown on subdivision map prepared by EDUARDO L. PORTUGAL, Licensed Professional Land Surveyor, No. 12973-LS, accepted by the Planning Commission on the County of Kauai on April 26, 2011.

C. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in Grant of Easement, granted to KAUAI ISLAND UTILITY COOPERATIVE, a cooperative association formed pursuant to the provision of Chapter 421C of the Hawaii Revised Statutes, for utility purposes, recorded June 28, 2012 in the Bureau of Conveyances, State of Hawaii, as Document No. A-45620382.

7. AS TO ITEM II:

A. Terms and provisions as contained in an instrument, entitled SEWER AGREEMENT, executed by COUNTY OF KAUAI, a political subdivision of the State of Hawaii and KAUAI KAI ASSOCIATES, a Washington limited partnership registered to do business in the State of Hawaii and HATSUME SHIMAMOTO and HERBERT TERUFUMI TOYOOKA, Trustees under the Will and of the Estate of Hisao Shimamoto, Deceased, dated September 22, 1994, recorded October 6, 1994 in the Bureau of Conveyances, State of Hawaii as Document No. 94-164528, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 2185978.

B. Any rights, interests or claims which may exist or arise by reason of the facts shown on a survey plat prepared by Brian M. Hennessy, Licensed Professional Land Surveyor No. 14484, on July 26, 2012, designated Job No. ----, as follows: A) Portion of Rock Planter into Niulani Rd. (0.3') max. by a length of 18 ft.

Affects ITEM I AND II and other property

8. Condominium Map No. 5242, filed in the Bureau of Conveyances, State of Hawaii, and as amended and restated.

9. Declaration of Condominium Property Regime dated December 30, 2013, recorded in said Bureau of Conveyances as Document No. A-51130960.

Said Declaration was amended by that certain First Amendment to Declaration of Condominium Property Regime dated July 10, 2015, recorded in said Bureau of Conveyances as Document No. A-56690795.

Said Declaration has been amended by various amendments assigning parking stalls, including, but not limited to, the following:

Dated	Document No.
May 16, 2014	Document No. A-52660345A
July 16, 2014	Document No. A-53540245A
September 9, 2014	Document No. A-53890542A
October 14, 2014	Document No. A-54030121A
March 25, 2015	Document No. A-55680423A
October 14, 2014	Document No. A-56120318
May 21, 2015	Document No. A-56370376
March 4, 2016	Document No. A-59550416 (Correction of Amendment)
July 13, 2015	Document No. A-56750065
July 29, 2015	Document No. A-56960085
August 17, 2015	Document No. A-57170373
August 17, 2015	Document No. A-57210010
August 10, 2015	Document No. A-57390145
October 9, 2015	Document No. A-57640473
November 5, 2015	Document No. A-57920572
March 4, 2016	Document No. A-59460325A (Correction of Amendment)
November 5, 2015	Document No. A-57950477
November 5, 2015	Document No. A-57950478
November 5, 2015	Document No. A-58910135
March 4, 2016	Document No. A-59140513
March 4, 2016	Document No. A-59140521
March 4, 2016	Document No. A-59480266A
March 4, 2016	Document No. A-59480267
March 4, 2016	Document No. A-59490067
March 4, 2016	Document No. A-59490068
April 5, 2016	Document No. A-59590014
Acknowledged June 7, 2016	Document No. A-60310205
Acknowledged June 7, 2016	Document No. A-60310208
July 6, 2016	Document No. A-60330184
November 5, 2015	Document No. A-60430013A
August 5, 2016	Document No. A-60670312A

August 30, 2016	Document No. A-61020378
August 30, 2016	Document No. A-61340143
August 30, 2016	Document No. A-61870790A

Note: Certain amendments noted hereinabove assign multiple parking stalls. Additional amendments to the Declaration may be made from time to time from and after the date of this Public Report as parking stalls are sold by and to individual condominium unit owners.

Liens and charges for upkeep and maintenance as provided in the above mentioned covenants, conditions and restrictions, if any, where no notice thereof appears on record. For information regarding the current status of said liens and/or assessments, please contact the Association of Unit Owners of Kauai Kailani.

11. By-Laws of the Association of Unit Owners dated December 30, 2013, recorded in said Bureau of Conveyances as Document No. A-51130961, and as amended from time to time.

12. Indemnification Agreement executed by KAUAI KAILANI AOUO and GCT PROPERTIES LLC and the COUNTY OF KAUAI, a political subdivision of the State of Hawaii, by and through its Department of Planning, dated December 12, 2016, recorded January 30, 2017 in the Bureau of Conveyances as Document No. A-62390548.

13. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

14. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

15. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

16. Any encroachment, encumbrance, violation, variation, question of location, boundary and/or area, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.

17. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

18. Any lien or right to a lien for services, labor or material not shown by the public records.

19. The requirement that the Title Company be provided with a suitable Owner's Affidavit (form ORT 174). The Title Company

reserves the right to make additional exceptions and/or requirements upon review of the Owner's Affidavit.

20. Prior to the issuance of any policy of title insurance, the Title Company will require the following with respect to GCT Properties, LLC, a Hawaii limited liability company: (a) A current certified copy of the Articles of Organization (Form LLC-1) from the office of the director of the State of Hawaii Department of Commerce and Consumer Affairs, (b) A copy of any operating agreement and any

amendments thereto, together with a current list of all members of said LLC. The Title Company reserves the right to make additional exceptions and/or requirements upon review of the above.

21. Satisfactory evidence furnished to the Title Company: (a) as to the due formation and continued existence of RAM Corporation as a legal entity under the laws of Hawaii, and (b) documents from its board of directors authorizing this transaction and specifying the officers who shall execute on behalf of the corporation.

**NOTES:**

ITEM I referred to above is comprised of (i) PARCEL FIRST consisting of Lot 19, as shown on Map 4 of Land Court Application 276 (deregistered by Doc. No. A-47360708), and (ii) PARCEL SECOND consisting of Lot B-1, a portion of Lot B Niulani Tract (First Addition) as shown on File Plan 435. Being a portion of the property described in that certain deed made by and between KAUAI KAI ASSOCIATES, a Washington limited partnership registered to do business in the State of Hawaii, as Grantor, and GCT PROPERTIES LLC, a Hawaii limited liability company, as Grantee, recorded August 10, 2012 in the Bureau of Conveyances, State of Hawaii, as Document No. A-46050567, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. T-8257271.

ITEM II referred to above is comprised of (i) PARCEL FIRST consisting of Lot 20, as shown on Map 4 of Land Court Application 276 (deregistered by Doc. No. A-47360707), and (ii) PARCEL SECOND consisting of Lot A as shown on map entitled "Niulani Tract (First Addition)" filed in the Bureau of Conveyances, State of Hawaii as File Plan 435. Being a portion of the property described in that certain Deed made by and between Herbert Toyooka, as Trustee of the testamentary trust established under the Last Will and Testament of Hisao Shimamoto dated August 23, 1960, as Grantor, and GCT PROPERTIES LLC, a Hawaii limited liability company, as Grantee, recorded July 10, 2012 in the Bureau of Conveyances, State of Hawaii, as Document No. A-45740530, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. T-8226112.

**END OF EXHIBIT I**

# EXHIBIT J

## **Ron Agor Architect**

425 Ena Road, Suite 206A

Honolulu, HI 96815

Tel-808-947-2467

E-mail – [ron@agorarchitects.com](mailto:ron@agorarchitects.com)

---

March 2013

RE: Building Inspection Report  
Kauai Kailani Condominium  
4856 Kuhio Highway  
Kapaa, HI 96746

### **I - DESCRIPTION OF PROJECT:**

Kauai Kailani is a 57 unit multi-family complex located in Kapaa, Kauai, Hawaii. The complex consists of two separate structures, the Orchid Building and the Plumeria Building. The Orchid Building is on Tax Map Key (4) 4-3-09:50 fronting the ocean. The Plumeria Building is on Tax Map Key (4) 4-3-09: 41, adjacent and mauka of the Orchid Building.

Both building are three story walk-ups with 37 one bedroom units in the Orchid Building and 20 one bedroom units in the Plumeria Building

The structural building components of both structures consist of concrete slabs with the end walls, demising walls and portions of the front and rear walls made up of 8 inch concrete masonry units (cmu) from the foundation up to the upper floor wall plate line. A portion of the front and rear walls are composed of wood studs and rough sawn plywood siding. The second and third floor systems are of wood joists and plywood sub-floors. The corridor floors at the exterior are supported by 4x4 posts. The roof framing consists of roof beams spaced at approximately seven feet on center with T & G roof decking at a slope of approximately 3:12.

The exterior finishes are as follows:

Roofing	Roll Mineral Roofing
Roof Fascia	2x10
Ext. CMU Walls	Painted
Plywood Siding	Painted
Railings	Wood
Upper Corridor Floors	Outdoor Carpeting

Ground Floor Corridor	Concrete
Upper Corridor Floors	Outdoor Carpeting
Ground Lanai Floor	Concrete
Upper Corridor Floors	Outdoor Carpeting
Stairways	Wood
Windows	Jalousies and Sliders
Front Doors	Solid Core w/louvers
Down Spouts	Painted Metal

The interior demising walls and portions of the front and rear walls are of painted cmu walls. The interior partitions are of wood studs with drywall. The ceilings are of drywall.

The kitchen cabinets have wood upper and lower cabinets. The bathroom cabinets are also of wood. The counter tops of both the bathrooms and kitchens are formica. The interior doors are solid wood and louvers.

The bathroom showers are fiber-glass and the lavatories are of cast iron. The kitchen sinks are of one compartment stainless steel. The kitchens have free standing ranges and refrigerators.

The bathroom, hallway and the kitchen floors are of vinyl sheets. The bedrooms and the living room are carpeted.

Both the Orchid Building and the Plumeria Building were constructed prior to the County of Kauai's adoption of the Building Code. Therefore, the County of Kauai Building Division does not require upgrades of building components to conform to the current building codes.

## **II - SITE OBSERVATIONS:**

Site observations of the building components were conducted during the week of March 15, 2013. The following are detailed observations and applicable recommendations.

### **A-Roofing and Roof Structure:**

#### **Observation 1:**

The existing mineral roll roofing on both buildings appear to be



functioning properly. No evidence of roof leaks were discovered on the ceilings of the units, lanais and corridors.

**Recommendation:**

The roofing should be inspected regularly every six months and after heavy rainfalls. Check for soft spots and uplifts of roofing layers. Conduct applicable repairs should defects be observed.

The roof drains and roofing around the drains should be inspected at least every six months and after heavy rainfalls. Make sure that the drains are not impaired by debris and the roofing around the drains is not uplifting. Conduct applicable repairs should defects be observed.

Ceiling of the upper floor units should be inspected every year for potential signs of roof leaks. Conduct applicable repairs should defects be observed.

**Observation 2:**

The roof decking and roof beams show no signs of sagging or deflection beyond allowed by code.

**Recommendation:**

Yearly inspection of the structural roof decking and roof beams should be conducted. Should excessive sagging of roof decking and roof beams be observed, an Architect or Structural Engineer should be consulted.

**Observation 3:**

The underside of the roof decking at the gable end along Unit 301 appears to have dry rot.

**Recommendation:**

Sand the underside of the roof decking and remove all loose elements. Apply a coat of primer paint. Then, install a layer of 1x6 T & G to the underside of the existing decking with associated trims. (A layer of 5/8" R/S plywood would be acceptable) Paint to match existing.

**Observation 4:**

The roof fascias and roof beam outriggers throughout the complex appear to be in good condition.

**Recommendation:**

It is important to inspect the building roof fascias and roof beam outriggers for dry rot yearly. Preventive measures like making sure a good coat of paint is always present on their surfaces should be implemented.

**B-Vertical Exterior 4x4 posts along Corridors and Lanais:**

**Observation 1:**

The exterior 4x4 structural posts along the corridors are generally in good condition and functioning properly. There are signs of minor rust spots on the surface of the posts. The metal brackets connecting the posts to the roof beams are in good condition with no signs of deterioration.

**Recommendation:**

Sand the minor rust spots off the surface of the posts and re-paint the surfaces. Sand minor rust spots on all fasteners and repaint. Repaint the metal brackets.

**Observation 2:**

The bottom 2 feet of the corner post at the lanai of Unit 101 is rotted out. The bolts along the vertical posts fastened to the demising cmu wall ends show signs of rusting.

**Recommendation:**

Saw off the bottom 30 inches of the rotted post described above. Replace sawed off member with a 4x4 and epoxy bolt to cmu at top and bottom. Install epoxy bolt approximately 3" above the cut off line of the existing remaining post.

**Observation 3:**

The brackets and bolts keeping the posts off of the concrete corridors show signs of minor rusting. The bottom of a few posts sitting on the subject brackets have signs of minor deterioration.

**Recommendation:**

Sand/wire brush brackets and bolts and apply new paint. Sand bottom of posts and repaint. If necessary, apply bondo to the bottom of the

posts to maintain the existing full dimension of the posts. (3-1/2" x 3-1/2") Then repaint.

### **C- Corridors and Lanais:**

#### **Observation 1:**

The corridors for both buildings have a 48 inch width. They slope from the building line to the exterior at a minimum of 3/4 inch. There were no signs of sagging in the floor joists. The surface is of outdoor carpeting on plywood. The corridor surfaces are in poor condition.

#### **Recommendation:**

Replace the outdoor carpeting with a waterproofed elastomeric type of surface. Create a watertight detail between the corridor floor and the walls. Install a sheet metal edge at the exterior corridor edge.

#### **Observation 2:**

The lanais for both buildings have a width of 6 feet. They slope from the building line to the exterior approximately 1 inch. There were no signs of the floor joists sagging. The floor joists of Units 101 and 102 were exposed from the underside and evidence of dry rot at their bearing points exists. The lanai surfaces are in poor condition.

#### **Recommendation:**

All lanai floor joists should be exposed to inspect for dry rot. Remove joist hangers at all discovered dry rotted joists at their bearing points. Sand over the dry rot areas and apply a coat of primer paint. Add a floor joist of 2 feet minimum in length scabbed next to the existing joists at its dry rotted bearing end with nails and glue. Reinstall joist hangers with Simpson LUS26-2. (Galv)

Replace the outdoor carpeting with a waterproofed elastomeric type of surface. Create a watertight detail between the corridor floor and the walls. Install a sheet metal edge at the exterior corridor edge.

## **D-Exterior Walls:**

### **Observation 1:**

The exterior walls of both buildings are of concrete masonry units (cmu). Along the corridors each unit has approximately 10 feet of cmu walls with 12 feet of 2x4 framed walls with plywood siding. There were no visible signs of spalding or cracks in the cmu walls.

### **Recommendation:**

Conduct yearly inspections of all concrete masonry unit walls for spalding or cracking. Should any spalding or cracking appear, an Architect or Structural engineer should be consulted with. Minimally, re-paint the cmu walls.

Caulk and re-paint the wood framed walls. Add vertical battens at 16 inches on center, and particularly at the plywood joints.

## **E-Exterior Doors and Windows:**

### **Observation:**

The front doors are 29.5 inches wide. The thresholds are of aluminum at  $\frac{3}{4}$  inch to 1 inch above the plywood flooring. The windows along the corridors are in good condition. Their open and close apparatus are difficult to operate.

### **Recommendations:**

Replace the front doors with new 34 inch wide doors with wood louvers to match existing. Install ADA accessible locksets for each door. Replace the thresholds with one that is no more than  $\frac{1}{2}$  inch above the plywood subfloor and beveled for wheelchair access.

Re-paint the wood louvered windows and replace the window operators that do not work properly.

Replace the glass doors and windows along the lanais of each unit in both buildings.

## **F-Railings and Stairs:**

### **Observation 1:**

The railings are constructed of wood and are structurally in good condition.

### **Recommendation:**

Although, as stated herein, the complex is not required to upgrade building components to meet the current building codes, it is recommended that the railings be replaced with aluminum railings. The height of the railings shall be 42 inches in height, with openings no larger less than 4 inches.

### **Observation 2:**

The Orchid Building has 3 sets of wood stairways. Their risers are at 6.75 inches average with treads of 11.25 inches width. The average width of the stairs is 50 inches. The existing handrails are mounted at 38.5 inches above the tread nosing. The condition of the stair components are good.

### **Recommendation:**

Replace all railing at stairways. Openings in railings shall be less than 4". Install handrails at 33" maximum height above the top and bottom treads. An inspection of the treads mounted to the stringers should be conducted yearly. Conduct work to assure that the treads are securely fastened to the stringers at all times.

### **Observation 3:**

The Plumeria Building has 2 sets of wood stairways. The width of the stairways are 44 inches minimum. The risers at the east stairway are at 6 inches with treads at 11.25 inches. The risers at the south stairway are at 7.5 inches with 11.25 inch minimum treads.

### **Recommendation:**

Replace all railing at stairways. Openings in railings shall be less than 4". Install handrails at 33" maximum height above the top and bottom treads. An inspection of the treads mounted to the stringers should be conducted yearly. Conduct work to assure that the treads are securely fastened to the stringers at all times.

## **G-Flooring and Floor Structure:**

### **Observation 1:**

The standard flooring at the entry hall, bathroom and kitchen of the units is sheet vinyl flooring. The standard flooring of the living room and bedrooms of the units is carpeting. The condition of the flooring materials are in poor condition.

### **Recommendation:**

Replace all flooring materials. Manufactured wood flooring and/or tile on a thin-set layer are recommended.

### **Observation 2:**

The flooring system is made up of plywood sheathing over wood joists. There were no signs of sagging in the floor system observed in the units.

### **Recommendation:**

Conduct inspections yearly for sagging or substantial deflection of the floor system. Should any sagging or substantial deflections be discovered, consult with an Architect or Structural Engineer for corrective measures.

### **Observation 3:**

There appear to be no sound insulation between floors.

### **Recommendation:**

Consult with a building sound consultant for a recommendation to minimize sound transfer between floors.

## **H-Interior Demising Walls:**

### **Observation 1:**

The unit demising walls are of 8 inch concrete masonry units (cmu). The demising cmu walls extend continuously from the foundation to the upper floor roof plate line. The cmu walls were observed to have no visible cracks or spalling. They appear to be plumb and lined appropriately. The finish is paint.

**Recommendation:**

Conduct yearly inspections of the concrete masonry unit demising walls for cracks or spalding. Consult with an Architect or Structural Engineer for corrective measures should cracking or spalding of the cmu walls become evident. The cmu demising walls are in need of re-painting.

**I-Foundation:**

**Observation 1:**

The concrete foundation slab does not appear to have settled over the years of past. Finish elevation of the slabs were surveyed and the finish slab elevations of the units are consistent with each other, showing no signs of settlement.

There were no visible signs of concrete edges spalding.

**Recommendations:**

Conduct yearly inspections for slab settlement.

**J-Interior Finishes:**

**Observation 1:**

The interior partitions are of wood studs with painted drywall finish. The ceilings are of painted drywall. They appear to be in good condition.

**Recommendation:**

Re-paint interior walls, trims and ceilings.

**Observation 2:**

The bathroom bathtubs are of fiberglass. The lavatories are porcelain on formica counter tops. The cabinets are of solid wood finish. The condition of the faucets and drains are in fair condition, however is expected to become dysfunctional in the very near future.

**Recommendation:**

Conduct inspections of the fiberglass tubs for cracking or discoloration yearly. Inspect the formica counter tops yearly for cracking or detachment from the subsurface. Should defects occur in the tubs and counter tops, replace them. Replace the water faucets and the finish components of the drains.

**Observation 3:**

The kitchen cabinets are of solid wood and the countertops are made of formica finish. The cabinets are in good condition, but the counter tops are just in fair to poor condition. The kitchen sinks are of stainless steel and in fair condition. The kitchen sink faucets are in fair to poor condition. The ranges and refrigerators are free standing appliances. Their conditions are good to poor depending on their date of replacement over the past years.

**Recommendation:**

Inspect the formica counter tops yearly for cracking or detachment from the subsurface. Should defects start occurring, replace the entire counter tops. Replace the kitchen sink faucets and the finish components of the drain. Appliances should become the responsibility of the unit owner.

**Observation 4:**

The interior doors are in fair condition. The locksets are near needing replacement.

**Recommendation:**

Re-paint the interior doors and change the locksets.

**Observation 5:**

The closet and storage shelves appear in good condition.

**Recommendation:**

Re-paint all closet and storage shelving.



## **K- Water Supply and Electrical Service:**

### **Observation 1:**

The water pressure at the plumbing fixtures in each unit appears to be adequate for its use. Hot water is being provided by a mechanical boiler and distributed to each unit.

### **Recommendation:**

Conduct regular quarterly inspection and maintenance of the hot water boiler for both buildings.

### **Observation 2:**

The electrical service to each building consists of one meter for all of the units in their respective building.

### **Recommendation:**

Install new electrical distribution systems in each building so each unit may have their own electric meter.

## **L-Flood Concerns:**

### **Observation 1:**

The entire ground floor of the Plumeria Building flooded just over a year ago. The water level reached approximately 16 inches above the finish floor. The drywalls up to 32 inches above the finish floor line have been removed. There are no evidence of the presence of mold on the exposed studs and the inside surface of the existing drywall.

### **Recommendation:**

Install a flood barrier around the perimeter of the Plumeria Building out of concrete masonry units (cmu). Provide an appropriate number of openings along the barrier to access the building. Each opening shall be provided a watertight removable panel to be installed in anticipation of heavy rainfall. The flood barrier shall be a minimum of 18 inches above the finish floor. The watertight panels shall be stored under the stairway readily accessible in anticipation of flash flood warnings.

Consult with a mold inspector to test the walls for the presence of mold.

Install new drywall to replace the removed flood damaged drywall in accordance with the recommendation of the mold inspector.

Consult with a civil engineer to attempt to diverge any potential flooding away from the building.

**Observation 2:**

Units 101 and 102 in the Orchid Building are in the VE Flood Zone. The base flood elevation is at 11 feet mean sea level. The finish floor of both units is at 9.3 feet mean sea level.

**Recommendation:**

Install a flood barrier around Units 101 and 102 at a minimum height of 24 inches. The flood barrier shall be constructed similar to the barrier proposed for the Plumeria Building as described above.

**M-Accessibility:**

**Observation 1:**

The parking lot of the Orchid Building is in need of re-surfacing. There are no handicap stalls existing and no clear access from the parking lot to the building corridors. The corridors accessing the units have a minimum of 48 inches in clear width. The existing entry door to the units are 29 inches in width. The thresholds are  $\frac{3}{4}$  inch above the finish floor.

**Recommendation:**

Re-surface the parking lot and construct a handicap stall adjacent to the building with proper accessible signage. Provide a minimum of 48 inches wide accessible walkway to the exterior corridors used to access the units. As stated above, install a minimum of 34 inch wide exterior doors with ADA locksets to each unit on all floors. Replace the existing thresholds to meet ADA accessible standards.

**Observation 2:**

The parking lot surface for the Plumeria Building is in good condition. The existing handicap stalls do not meet the required dimensions for ADA parking. There is access from the parking lot to the building exterior corridor accessing each unit on the ground floor. The corridor has a minimum width of 48 inches. The existing entry door to the units are 29 inches in width. The thresholds are  $\frac{3}{4}$  inch above the finish floor.

**Recommendation:**

Increase the size of the handicap stalls to 8.5 feet by 19.0 feet. Install proper accessible signage. As stated above, install a minimum of 34 inch wide exterior doors with ADA locksets to each unit on all floors. Replace the existing thresholds to meet ADA accessible standards.

**Observation 3:**

The interiors of each unit are not accessible. However, they can be conducive to being adaptable for ADA compliance. The bathroom bath tub could be replaced with an ADA compliant shower. The existing lavatory and cabinet could be replaced with a pedestal type lavatory conforming to ADA accessible standards. The pedestal lavatory will provide more width for the water closet and provide more wall space to install a 34 inch wide door. The kitchen cabinets could be replaced with cabinets having a maximum height of 34" and constructed to meet ADA compliant standards.

**Recommendation:**

Install blocking behind the drywall for future grab bars in the existing bathtub and behind the water closets.

**N-Asbestos/Lead Paint/Mold**

**Recommendation:**

The project should be tested for the potential presence of asbestos, lead paint and mold. Should the testing results be positive, then take mitigation actions per the recommendations of the consultants performing the tests.

**END OF EXHIBIT J**

EXHIBIT K

LETTER FROM PLANNING AND PERMITTING

Bernard P. Carvalho, Jr.  
Mayor



Michael A. Dahilig  
Director of Planning



Gary K. Heu  
Managing Director

Dee M. Crowell  
Deputy Director of Planning

PLANNING DEPARTMENT  
County of Kauai, State of Hawaii  
444 Rice Street, Suite A-473, Lihu'e, Hawaii 96766  
TEL (808) 241-4050 FAX (808) 241-6699

SEP 24 2013

TO: Cynthia M.L. Yee, Esq.  
Senior Condominium Specialist  
Real Estate Commission - P & VLD/DCCA  
335 Merchant Street, Room 333  
Honolulu, Hawaii 96813

FROM: Michael A. Dahilig, Director of Planning *M. Dahilig*

SUBJECT: Certification of Inspection of Existing Buildings

Project Name: KAUI KAILANI  
Condominium Project (97)  
Tax Map Key: (4) 4-3-009: 050 & portion of 41

The attorney of the above-mentioned condominium project has requested that this office, as an agency of the County of Kauai, review the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai, Section 514 B-5 & 514 B-6, Hawaii Revised Statutes, subject to the disclosures and waivers (item "5" below) specified herein, we certify the following:

1. The developer has contracted architect Ron Agor to certify that the buildings on the proposed project referred to as Kauai Kailani Condominium Unit 1 through Unit 59 inclusive are in compliance with all ordinances, codes, rules, regulations and other requirements in force at the time of its construction; and to that extent, and subject to the conditions of waiver herein, the Planning Department adopts that certification as it pertains to the rules and regulations administered solely by the Department.

*An Equal Opportunity Employer*

Senior Condominium Specialist  
Kauai Kailani Condominium  
TMK: (4) 4-3-009: 050  
Page two

2. This parcel contains two (2) nonconforming structures (Orchid Building and Plumeria Building) as a result of the adoption of the Comprehensive Zoning Ordinance (CZO).
3. There are no variances approved for the subject property.
4. There are no notices of violation of County building or zoning codes outstanding according to our records.
5. **WAIVER**  
The foregoing certification is not a warranty to any compliance with applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements relating to the regulations of condominiums under subsection 514 B-5 & 514 B-6, Hawaii Revised Statutes.

If you have any questions, please contact Sheilah Miyake at 241- 4050.

cc: Charles E. Pear, Jr., Attorney at Law  
GCT Properties, LLC, Project Developer

**END OF EXHIBIT K**

**EXHIBIT L**

**NAMES OF MANAGERS AND MEMBERS OF DEVELOPER**

The Developer is a Hawaii limited liability company. Its managers and members are as follows:

1.     **Manager:** RAM Corporation, a Hawaii corporation
  
2.     **Members:**
  - A.     Fried Hotel Corp., a Hawaii corporation
  - B.     RAM Corporation, a Hawaii corporation
  - C.     Melvyn I. Izumi Revocable Living Trust, dated October 18, 1988
  - D.     Michael Yasuhiko Nakahara Revocable Living Trust, dated October 25, 1988, restated October 7, 2004
  - E.     KK1&2, LLC, a Hawaii limited liability company

**END OF EXHIBIT L**

## EXHIBIT M

### DEVELOPER'S RESERVED RIGHTS

The Developer has reserved various rights under the Condominium Documents. Some of the Developer's Reserved Rights are or may be necessary or helpful to developing or remodeling the Condominium in phases. Even so, the exercise of the Developer's Reserved Rights is not limited to the development or remodeling of the Condominium in phases except to the extent that the Declaration expressly states otherwise.

The Section numbers that appear at the end of each item are intended to guide you to some but not necessarily all applicable provisions of the Condominium Documents. Section numbers refer to the Declaration unless another document is identified.

The Condominium, all Units and their Common Interests and all Common Elements are subject to the Developer's Reserved Rights and to the easements and licenses granted or reserved in or pursuant to the Declaration, the Articles (if any), and/or the Bylaws. (Section 2.4A and Bylaws Section 1.5)

The Developer's Reserved Rights under the Condominium Documents include, among others, the following rights and easements:

1. The Developer has the right to develop the Condominium in phases. The Developer has no obligation to develop any phase beyond Phase 1. If the Developer decides to develop additional phases, the Developer may (i) develop the phases in any order that it wishes, and (ii) divide a phase into separate smaller phases or combine two or more phases. (Sections 4 & 4.8; 27.1)
2. The Developer has the **exclusive** right to control, manage, arrange and/or conduct the design, development, construction, installation, addition, and completion of the New Improvements, and the remodeling of the existing Improvements, of the Condominium even after it deeds or conveys Units, Vacation Ownership Interests, and/or Fractional Ownership Interests to others. This right includes controlling the work, segregating the construction areas, applying for permits and licenses, arranging contracts, and so on. (Section 20.2F.)
3. The Developer has the right to use the General Common Elements to conduct educational, cultural, entertainment or sporting events, other activities of general community interest, and/or other resort activities. See Exhibit R. (Section 7.1E)
4. The Developer has the exclusive right and an easement to conduct marketing and sales activities (which may be extensive) on the General Common Elements and from any Unit owned by the Developer or any Limited Common Elements of such Unit. See Exhibit R. (Section 7.1F)
5. The Developer has the exclusive right and an easement for the Developer and its licensees to establish, operate, maintain, repair and replace four concession stands in the General Common Elements, and has the right to keep all revenues generated by any business that it conducts using the concession stands. See Exhibit R. (Section 7.1G)
6. The Developer has an easement to complete the installation, construction or initial renovation of any Improvements, the installation, construction or initial remodeling and reconfiguration of the Project as part of Phase 3, and to correct any defects and other punchlist items. (Section 7.1H)
7. The Developer has the right and an easement to make noise, dust, soot, smoke, odors, surface water runoff, vibrations, and other nuisances or hazards when using these or other reserved rights of the Developer. See Exhibit R. (Section 7.2)
8. The Developer has the right to designate, grant, accept, lease, convey, transfer, cancel, relocate or otherwise deal (i) with any easements and/or licenses over, under, across or through the Common Elements, or (ii) with any easements in favor of the Land or the Condominium. See Exhibit R. (Sections 7.4)
9. The Developer may create or authorize a Vacation Plan or Fractional Plan, and may authorize the use of the Resort Units in a Vacation Plan or Fractional Plan. Note: A TimeShare Plan is a "Vacation Plan." See Exhibit H. (Section 9 and Bylaws Section 9)
10. The Developer has the right to use its Units and the Developer's Reserved Rights to promote and sell Vacations Interests and/or Fractional Interests. See Exhibit H. (Section 9.4A)
11. Developer has the right to use any Unit that it owns for promotional purposes or in connection with the initial sale and/or any resale or other conveyance of Units, Vacation Interests, and/or Fractional Interests. For example, the Developer may use its Units as model Units, or as sales, management or administrative offices or to sell tours and activities. See Exhibit H. (Section 9.7)
12. The Developer may change the name of the Condominium or the Association at any time and may arrange for one or more tradename(s) or trademark(s) to be licensed to the Condominium or the Association. (Sections 3.2 and 3.3)
13. The Developer has certain rights to change the exterior appearance of the Condominium that nobody else has. (Section 9.5 and Bylaws Section 9.7A.1))
14. The Developer has the right to appoint and remove the officers and members of the Board during the Developer Control Period. (Section 10.3B and Bylaws Section 4.4) Until the first Board is elected, the Developer may exercise some or all of the powers of the Board. (Bylaws Section 4.3)
15. If all or any part the Condominium is taken or is sold under threat of condemnation before the end of the Development Period, then

the condemnation proceeds must first be divided between the Developer and the Unit Owners. (Section 15.5) The Developer will be entitled to receive all proceeds payable for or on account of the loss of the Developer's Reserved Rights. (Section 15.5A.1))

16. The Developer has the right to make certain changes, additions and improvements within any Unit the Developer owns or the Limited Common Elements of a Unit that it owns, and it may do so without any approval by the Board, any Owners, or anyone else. (Section 17.2A.1 and Bylaws Section 9.4))
17. The Developer has the right to change or remove any wall, floor or ceiling between two adjacent Units that it owns, or within a Unit that it owns, or between a Unit that it owns and the Limited Common Elements of that Unit. (Section 17.2A.)
18. The Developer has the right to subdivide any Unit that it owns into two or more Units, and to combine two or more Units that it owns into one Unit. (Sections 17.2A.3) and 17.2A.4))
19. The Developer has the right to change the designation of the Limited Common Elements appurtenant to any Units that it owns so that all or any part of one Unit's Limited Common Elements now will be appurtenant either to the other Unit or to both of the Units. (Section 17.2A.5))
20. The Developer has the right to transfer any easement appurtenant to any Units that it owns so that all or any part of an easement appurtenant to one Unit now will be appurtenant either to the other Unit or to both of the Units. The also has the right to assign to any other person any easement that the Developer has under any of the Condominium Documents. (Section 17.2A.6))
21. The Developer has the right to annex into the Condominium and the condominium property regime, any Adjacent Parcel and any Improvements located on the Adjacent Parcel. The Developer may do this at any time before the Development Period ends. (Section 18) The "Adjacent Parcels" consist of:
  - Tax Map Key No. (4) 4-3-009-48;
  - Tax Map Key No. (4) 4-3-009-49;
  - Tax Map Key No. (4) 4-3-009-51;
  - Tax Map Key No. (4) 4-3-009-71;
  - Tax Map Key No. (4) 4-3-009-4; and
  - Any lot that was part of the Condominium but that is withdrawn and deleted from the Condominium by the Developer.

If any such lot is subdivided into separate lots, each of them will be an "Adjacent Parcel" whether or not they are physically adjacent to the Condominium. Likewise, if any such lot is consolidated with any other lot, whether or not listed above, the consolidated lot will also be an "Adjacent Parcel." If any Adjacent Parcel is consolidated with any other property, the resulting lot will be an "Adjacent Parcel." An "Adjacent Parcel" may consist of a fee simple interest in a lot or condominium unit, or it may consist of a lesser interest including but not limited to an estate for years, a leasehold and/or an easement in the fee, in an estate for years or in a leasehold.

22. The Developer has the right to create New Units and to designate Limited Common Elements appurtenant to any New Unit. The Developer may do this at any time before the Development Period ends. (Section 19)
23. The Developer has the right to design, develop, install, build, add, and complete New Improvements on the Land and to remodel the existing Improvements. The Developer may do this at any time before the Development Period ends. (Section 20) For example, the Developer has the following rights:
  - a. The Developer has the right to remove, change, or add Common Elements. (Section 20.2B)
  - b. The Developer has the right to build and install Improvements that that the Developer intends to designate as Units or Limited Common Elements pursuant to the Condominium Declaration. (Section 20.2C)
  - c. The Developer has the right to segregate the construction areas using signs, gates, walls, fences, or other means. (Section 20.2E)
  - d. It has the exclusive right to control, manage, arrange and conduct the design, development construction, installation, addition and completion of the New Improvements, and the design, development construction, installation, addition and completion of the remodeling of existing Improvements, including the rights:
    - ❖ to obtain all permits, licenses, and approvals necessary or convenient to the development, construction, installation, remodeling, completion, and/or operation and use of the Condominium;
    - ❖ to coordinate the work and activities of the contractors, subcontractors, architects, engineers, laborers, suppliers, and others;
    - ❖ to exercise all rights and make all decisions of the "owner" or the "developer" or similar contracting party with respect to all contracts;
    - ❖ to review and approve necessary or desirable changes and requests for changes and change orders;
    - ❖ to file the notice of substantial completion under Chapter 507, Part II, H.R.S.;
    - ❖ to seek and obtain temporary and/or permanent certificates of occupancy;
    - ❖ to approve and direct the replacement of any Improvements that are under construction or renovation, and that are damaged by fire or something else;
    - ❖ to come onto the Condominium and authorize others to do so;
    - ❖ to make noise, dust, and so on;
    - ❖ to deal with easements; and
    - ❖ to sign, acknowledge, record and deliver documents.



24. The Developer has the right to change or demolish all or any part of (i) an existing Unit owned by the Developer, or (ii) any part of an existing Limited Common Element of a Unit owned by the Developer. (Sections 20.1B)
25. The Developer may convey Units, Vacation Ownership Interests, and/or Fractional Ownership Interests, in a particular building or phase before construction or remodeling of that building or phase is completed. (Section 20.4)
- a. Until 45 days after the "date of completion" (as that term is defined in Section 507-43(f), Hawaii Revised Statutes) of the Developer's initial construction or initial remodeling of the Unit Owner's Unit, the Developer will have a special power of attorney and a proxy to receive notice of and attend all meetings of the Association, and to vote and otherwise act on behalf of the Unit Owner at the meetings. (Section 20.4B)
26. The Developer has the right to subdivide the Land of the Condominium and/or to consolidate the Land of the Condominium with any Adjacent Parcel. In connection with this, the Developer may (i) make any improvements necessary or convenient to obtain any necessary approvals or to complete the subdivision or consolidation; and (ii) seek and obtain any variance, zoning change, SMA Permit or other land use approval necessary or convenient to accomplish such subdivision or consolidation or for the benefit of any parcel to be deleted. (Section 21)
27. The Developer has the right to withdraw and delete from the Condominium, and from the condominium property regime, all or any part of the Possible Deletion Areas. Title to the land deleted will belong only to the Developer. (Sections 22 and 22.4) "Possible Deletion Areas" means (i) all or any part of the Land located within fifteen (15) feet of the perimeter boundaries of the Condominium, (ii) all or any part of the Land that, from time to time, is located beyond the seaward boundary as established by Hawaii law (or by a shoreline survey) by reason of erosion or other natural forces, and (iii) until the Developer deeds any Unit in the Plumeria building, all or any portion of Lot 19, Map 4, App. 276, and/or Lot B, File Plan 435.
28. The Developer has the right to convert all or any part of a Limited Common Element appurtenant to a Unit owned by the Developer into one or more separate Units. (Section 23)
29. The Developer has the right to convert: (i) any part of any Unit owned by the Developer into Limited Common Elements appurtenant to that Unit, or (ii) all or any part of any Unit owned by the Developer, or its Limited Common Elements, into General Common Elements. (Section 24)
30. The Developer has the right to change the Units, the General Common Elements, the Limited Common Elements, and/or to amend the Condominium Documents as required to comply with any laws that apply to the Condominium or to the Association, any Vacation Owners Association, any Fractional Owners Association, or the Developer. This includes, for example, the federal Fair Housing Act, 42 U.S.C. §§3601 *et seq.*, and the Americans With Disabilities Act 42 U.S.C. §§12101 *et seq.*, (the "ADA"). (Section 25 and Bylaws Section 12.3B)
31. The Developer has the right to do all things to satisfy the requirements of any zoning or other land use laws, licenses, permits and/or requirements that apply to the Condominium or any Adjacent Parcel from time to time. (Section 26)
32. If the Developer signs and records a document that expressly transfers to someone else some or all of the Developer's Reserved Rights, or any of the Developer's other rights under the Condominium Documents, then that person will become the "Developer" to the extent of the rights transferred. (Section 27.5A)
33. The Developer may transfer its rights as collateral for a loan. (Section 27.5B)
34. When Units are subdivided or consolidated, or New Units are created, or in certain other circumstances, the Developer has the right to reallocate the Common Interests among the existing Units and the New Units, as required by the Condominium Documents. This includes the right to change the Common Interests of the existing units. (Section 28)
- a. The Developer has the right to choose the Units that will have their Common Interests rounded up or down, and to decide whether to round them up or down. (Section 28.3)
35. The Developer has the right to change the Condominium Documents:
- a. In any way and for any purpose before the date when the Developer first records a deed, Unit Lease, other conveyance document or agreement of sale transferring a Unit, Unit Lease, Vacation Ownership Interest, or Fractional Ownership Interest to someone other than (i) the Developer, (ii) any company related to the Developer, (iii) a bulk transferee, or (iv) any lender. (Section 32.3A.1)
- b. To file the "as-built" certification required by the Condominium Law. (Section 32.3A.2))
- c. To comply with the laws and regulations in effect in the State of Hawai'i, or the requirements of any government agency in Hawai'i. (Section 32.3A.3))
- d. To comply with the laws or regulations of any place or the requirements of any government agency in connection with the registration of the (i) Condominium, (ii) any Vacation Plan that includes one or more Units, or (iii) any Fractional Plan that includes one or more Units, to permit the sale of Units, Vacation Interests, or Fractional Interests there. (Section 32.3A.4))
- e. To satisfy requests for changes made by any title insurance company issuing a title insurance policy on the Condominium or any of the Units. (Section 32.3A.5))

- f. To satisfy requests for changes made by or requirements for making or purchasing mortgage loans by (i) any institutional lender lending funds on the security of the Condominium or any of the Units, or (ii) any governmental or quasi-governmental agency. (Section 32.3A.6))
  - g. To facilitate the operation and management of the Condominium, any Vacation Plan that includes one or more Units or any Fractional Plan that includes one or more Units. (Section 32.3A.7))
  - h. To correct any mistake in the Condominium Documents. (Section 32.3A.8))
  - i. The Developer may sign, record and deliver amendments in its own name and/or in the name of the Association, Unit Owners or other Interested Persons pursuant to its power of attorney. (Section 32.3.B)
36. No amendment to any of the Condominium Documents that changes, terminates, or otherwise affects any of the Developer's Reserved Rights, or any other rights or privileges of the Developer under the Condominium Documents, will be effective unless the Developer gives its written consent and signs the amendment, and the amendment is recorded. (Section 32.4B)
  37. The Developer has the right and an option to buy a Unit back from a Unit Owner for a period of three (3) years from the date of recordation of the deed initially conveying the Unit to an Owner (the "**Developer's Reserved Buy-Back Right**"); provided, however, that the Developer may exercise the Developer's Reserved Buy-Back Right **if and only if** the Owner shall have made a complaint to the Developer about the physical condition and/or design of the Unit or the Project and the Developer, after good faith and diligent effort, shall be unable to rectify the matters complained about to the satisfaction of the Owner of the Unit within a reasonable period of time, as determined by the Developer in its sole, absolute and unfettered discretion. (Section 33.3C.)
  38. During the Developer Control Period, the Developer (i) will appoint the officers of the Association. (Bylaws Section 5.3) and (ii) may remove any officer, with or without cause. (Bylaws Section 5.5)
  39. The Developer may call a special meeting of the Association at any time for any one or more purposes. (Bylaws Section 3.2)
  40. The Association's powers are subject to any rights of the Developer and to any limitations imposed by law, in the Declaration or the other Condominium Declaration. (Bylaws Section 7.1W)
  41. The Developer has the right to choose and employ the first Managing Agent for the Condominium. The Managing Agent may be the Developer or an affiliate of the Developer. (Bylaws Section 7.2B)
  42. The Developer has certain rights to change the Rules and Regulations. (Bylaws Section 7.4)
  43. Until the first Board is elected or appointed, the Developer will set the amount of the Regular Assessments. (Bylaws Section 8.4B.1)
  44. During the Development Period, alterations, additions, maintenance, repair or replacement of the Common Elements costing, on a C.P.I. Adjusted basis, in excess of \$500,000 are subject to approval by the Developer. (Bylaws Section 9.6)
  45. The Developer's Reserved Rights under the Declaration include various rights such as the right: (i) to develop the Condominium in phases or increments by building New Improvements and creating New Units on the Land, and (ii) to amend the Condominium Documents, without the consent of anyone else, as necessary to reflect any changes in or additions to the Condominium made using the Developer's Reserved Rights. (Section 17-27; Bylaws Sections 9.7 and 12.3B)
  46. The Association will furnish a copy of the Membership List to the Developer upon the Developer's request. The Developer or its affiliates may use the Membership List for commercial purposes. (Bylaws Section 11.1)
  47. No amendment to the Condominium Documents that changes, terminates, or otherwise adversely impacts any of the Developer's Reserved Rights, or any other rights of the Developer under the Condominium Documents, will be effective unless the Developer signs it and it is recorded. (Bylaws Section 12.3A.3))
  48. The Developer has the reserved right to (i) amend the Bylaws at the times and under the circumstances stated in the Declaration, and (ii) restate the Bylaws in connection with any such amendment. (Bylaws Section 12.3B)
- Only the Developer may exercise the Developer's Reserved Rights. (Section 2.4B) The Developer may exercise the Developer's Reserved Rights separately or in one or more combinations and at one or more times. The Developer has no duty to use any of the Developer's Reserved Rights. (Sections 2.4B and 27.2) Conversely, the use of these rights on one occasion does not limit or otherwise affect the Developer's right to use them again from time to time. (Section 27.2)
- The Developer may use the Developer's Reserved Rights without being required to obtain the approval, consent, or joinder of anyone else, and without having to give notice to anyone else. (Section 27.3)
- When a Unit Owner or any other Interested Person acquires a Unit or any other interest in the Condominium, the Unit Owner or other Interested Person automatically does each of these things:
- It takes its interest in the Condominium subject to the Developer's Reserved Rights and each and every exercise and/or assignment of them. (Section 27.3A.1))
- It acknowledges, approves, consents to, agrees to and accepts:

- a. The Developer's Reserved Rights and its use of them from time to time;
- b. That this may change the Condominium;
- c. That this may result in the recalculation of the common interests of some or all Units in some cases; and
- d. That the Developer can file and/or record any and all documents that the Developer deems necessary or convenient to the use of its rights. This includes, but is not limited to, amendments to some or all of the Condominium Documents. (Section 27.3A.2 and Bylaws Section 12.3B))

It agrees, promptly after being asked to do so, to join in, consent to, sign (and have notarized if asked), deliver, and record all documents and do all other things that the Developer in its sole discretion determines to be necessary or convenient to the use of the Developer's Reserved Rights or to accomplish the purposes for which those rights were reserved (as determined by the Developer). (Section 27.3A.3))

It appoints the Developer as its attorney-in-fact to join in, consent to, sign, have notarized, deliver and record all documents and to do all things on its behalf. This means that the Developer can act in the place of the Owner or other Interested Person. This means that the Developer can act in the place of the Owner of other Interested

Person. The Developer can do anything that they could do, and they ratify, accept and confirm anything that the Developer does using this power of attorney. (Section 27.3A.4))

- a. This power of attorney appointment is permanent. (Section 27.3A.4)(a))
- b. The Developer can let someone else act in its place as a substitute attorney-in-fact. (Section 27.3A.4)(b))
- c. Each Owner and every other Interested Person gives the Developer this power of attorney whether or not it expressly says so in any deed, mortgage, or other document by which the Unit Owner or other Interested Person obtained an interest in the Condominium. (Section 27.3A.4)(c))
- d. The Developer has the power to do only the things stated or intended by the Condominium Documents (as determined by the Developer). This includes, however, the power to do anything else that the Developer deems necessary or convenient to accomplish the stated or intended goal and anything incidental to it. Ambiguities must be resolved in favor of giving, not denying, the attorney-in-fact the power to act. (Section 27.3A.4)(d))

**THIS IS ONLY A SUMMARY OF CERTAIN OF DEVELOPER'S RESERVED RIGHTS AND SPECIAL RIGHTS UNDER THE CONDOMINIUM DECLARATION AND OTHER CONDOMINIUM DOCUMENTS. THE NATURE AND EXTENT OF THE RIGHTS OF THE DEVELOPER AND THE OWNERS IS DESCRIBED IN AND GOVERNED BY THESE DOCUMENTS. YOU SHOULD READ THEM WITH CARE AND, IF YOU HAVE ANY QUESTIONS, YOU SHOULD REVIEW THEM WITH YOUR LEGAL COUNSEL.**

**END OF EXHIBIT M**

## **EXHIBIT N**

### **ESTIMATE OF INITIAL MAINTENANCE FEES**

**AND**

### **ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS**

The amounts set forth in this Exhibit are estimates only. It is very difficult to estimate the costs and expenses of maintaining and operating a condominium project such as Kauai Kailani. Even if the maintenance charges have been accurately estimated, such charges will tend to increase as the improvements age and due to inflation and other factors over which the Developer has little or no control.

For example, insurance, energy and labor costs are currently in flux and can substantially increase over a short period of time. The Developer cannot predict how changes in the economic, social and political conditions in Hawaii, the U.S. and/or globally may impact such costs. Purchasers are aware and acknowledge that the budget, and as a result, each purchaser's maintenance fees, may increase substantially due to increasing costs, including but not limited to insurance, energy and labor costs.

In addition, maintenance charges can vary depending on the services desired by the Owners. Purchasers should examine the budget of maintenance fees to see what services are included in the budgets.

Each purchaser recognizes and acknowledges that the common interests and maintenance fees are subject to change as the project evolves. Such estimates are not intended to be and do not constitute any representation or warranty by the Developer or the Managing Agent, including but not limited to any representation or warranty as to the accuracy of such estimates.

Exhibit 1 to this Exhibit N contains a breakdown of the annual maintenance fees and the monthly estimated cost for each unit.

Exhibit 2 to this Exhibit N contains a reserve study prepared by Barrera and Company. This reserve study is dated February 20, 2013 for the fiscal year ending December 31, 2012, and has not been updated since that date. A new reserve study is being prepared in order to be sure that the Association's reserves are funded as required by Hawaii law.

Pursuant to Section 514B-41, H.R.S., a unit owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to the owner's unit at the time the certificate of occupancy relating to the owner's unit is issued by the appropriate county agency.

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

**CERTIFICATE**

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

1. I am the Vice President of Finance for Castle Resorts & Hotels, Inc., a Hawaii corporation, the Managing Agent for the Kauai Kailani condominium project (the "Project").

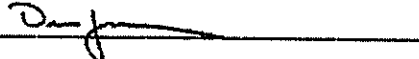
2. I hereby certify that the breakdown of the annual maintenance charges and the monthly estimated cost for each unit in the Project, as set forth in Exhibit "1" attached hereto and hereby incorporated herein by reference, were determined in accordance with §514B-148 of the Hawaii Revised Statutes and Chapter 107 of the Hawaii Administrative Rules, and are reasonable estimates for the one-year period commencing January 1, 2018, based on generally accepted accounting principles.

3. In arriving at the figure for "Reserves", Barrera and Company conducted a reserve study, dated February 20, 2013, in accordance with Section 514A-83.6 of the Hawaii Revised Statutes, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. A copy of the reserve study is attached hereto as Exhibit "2". The budget amount for Reserves is based on such study and is an estimate only.

4. The Budget has been prepared on a cash basis.

DATED: Honolulu, Hawaii, this 5th day of March, 2018.

CASTLE RESORTS & HOTELS, INC.,  
a Hawaii general partnership

By 

Name: Dean Yamamoto

Its Vice President of Finance

Date: March 5, 2018

**EXHIBIT 1 to EXHIBIT N**  
**2018 Annual Proforma Budget**

**FINAL APPROVED 11/27/17**

Page 1 of 5

	2017 BUDGET	2017 PROJECTED	2017 VARIANCE	2018 BUDGET	2018/2017 \$ VARIANCE	2018/2017 % VARIANCE
<b>REVENUES</b>						
MAINTENANCE FEES	470,796	471,024	228	474,504	3,708	0.79%
MAINTENANCE FEES- LOAN	0	0	0	36,816	36,816	0.00%
INTEREST INCOME	0	0	0	0	0	0.00%
LATE FEES	300	1,125	825	300	0	0.00%
RENTAL INCOME	25	1,000	975	25	0	0.00%
OTHER INCOME	0	97,525	97,525	0	0	0.00%
SPECIAL ASSESSMENT	0	0	0	0	0	0.00%
LEGAL ASSESSMENT	49,932	0	(49,932)	0	(49,932)	-100.00%
<b>TOTAL REVENUES</b>	<b>521,053</b>	<b>570,675</b>	<b>49,622</b>	<b>511,645</b>	<b>(9,408)</b>	<b>-1.81%</b>
<b>OPERATING EXPENSES</b>						
<b>UTILITIES</b>						
ELECTRICITY	5,919	4,957	(962)	5,587	(332)	-5.61%
GAS	24,600	25,320	720	25,320	720	2.93%
SEWER	23,400	15,872	(7,528)	18,282	(5,118)	-21.87%
WATER	21,573	16,423	(5,150)	17,112	(4,461)	-20.68%
TELEPHONE	2,745	2,292	(453)	3,015	270	9.84%
TV/CABLE	41,637	41,757	120	41,824	187	0.45%
<b>TOTAL UTILITIES</b>	<b>119,874</b>	<b>106,621</b>	<b>(13,253)</b>	<b>111,140</b>	<b>(8,734)</b>	<b>-7.29%</b>
<b>BUILDING MAINTENANCE</b>						
COMMUNICATIONS-INTERNAL	0	0	0	0	0	0.00%
GROUPS & GROUND SUPPLIES	3,900	1,824	(2,076)	3,900	0	0.00%
GROUPS - CONTRACTS	3,594	7,849	4,255	3,594	0	0.00%
ELEVATOR MAINTENANCE	0	0	0	0	0	0.00%
PEST CONTROL	5,156	5,289	133	5,156	0	0.00%
PEST CONTROL - TERMITES	0	0	0	0	0	0.00%
POOL	2,400	3,390	990	3,660	1,260	52.50%
REFUSE	14,676	14,244	(432)	14,256	(420)	-2.86%
REPAIRS & PURCHASES	4,500	7,441	2,941	6,000	1,500	33.33%
WATCHMEN	53,916	42,028	(11,888)	44,042	(9,874)	-18.31%
<b>TOTAL BUILDING MAINTENANCE</b>	<b>88,142</b>	<b>82,065</b>	<b>(6,077)</b>	<b>80,608</b>	<b>(7,534)</b>	<b>-8.55%</b>
<b>PAYROLL EXPENSES</b>						
WAGES - MAINTENANCE	60,552	55,929	(4,623)	60,444	(108)	-0.18%
WAGES - MANAGER & ADMIN	32,328	24,179	(8,149)	32,712	384	1.19%
WAGES - GROUNDS	0	0	0	0	0	0.00%
PAYROLL TAXES	11,244	8,269	(2,975)	9,180	(2,064)	-18.36%
WORKERS' COMPENSATION	1,860	2,381	521	2,520	660	35.48%
MEDICAL BENEFITS	12,864	8,172	(4,692)	12,864	0	0.00%
PAYROLL - OTHER	0	0	0	0	0	0.00%
<b>TOTAL PAYROLL</b>	<b>118,848</b>	<b>98,930</b>	<b>(19,918)</b>	<b>117,720</b>	<b>(1,128)</b>	<b>-0.95%</b>
<b>GENERAL &amp; ADMINISTRATIVE</b>						
AUTOMOBILE EXPENSE	300	0	(300)	300	0	0.00%
INSURANCE	113,991	115,083	1,092	118,053	4,062	3.56%
AUDIT & TAX FEES	3,000	3,000	0	3,000	0	0.00%
LEGAL FEES	5,000	94,579	89,579	7,500	2,500	50.00%
OFFICE SUPPLIES	720	462	(258)	450	(270)	-37.50%
MANAGEMENT FEE	19,104	19,104	0	19,680	576	3.02%
BANK CHARGES	180	352	172	360	180	100.00%
DUES & SUBSCRIPTION	300	1,196	896	1,356	1,056	352.00%
MEETING EXPENSES	400	947	547	400	0	0.00%
MISCELLANEOUS EXPENSE	1,200	330,868	329,668	4,200	3,000	250.00%
BAD DEBT EXPENSE	0	0	0	0	0	0.00%
TRAVEL EXPENSES	0	268	268	9,996	9,996	0.00%
TAXES - GENERAL EXCISE	60	108	48	60	0	0.00%
<b>TOTAL A&amp;G EXPENSE</b>	<b>144,255</b>	<b>565,967</b>	<b>421,712</b>	<b>165,355</b>	<b>21,100</b>	<b>14.63%</b>
<b>TOTAL OPERATING EXPENSE</b>	<b>471,119</b>	<b>853,583</b>	<b>382,464</b>	<b>474,823</b>	<b>3,704</b>	<b>0.79%</b>
<b>NON-OPERATING EXPENSES</b>						
LOAN PRINCIPAL PAYMENTS	0	6,066	6,066	24,821	24,821	0.00%
FHB INTEREST PAYMENT	0	3,135	3,135	11,995	11,995	0.00%

CASTLE RESORTS & HOTELS  
 KAUAI KAILANI AOUO  
 2018 ANNUAL BUDGET

OPERATING STATEMENT

FINAL APPROVED 11/27/17

	2017 BUDGET	2017 PROJECTED	2017 VARIANCE	2018 BUDGET	2018/2017 \$ VARIANCE	2018/2017 % VARIANCE
TOTAL NON-OPERATING EXPENSE	0	9,201	9,201	36,816	36,816	0.00%
NET SURPLUS/(DEFICIT)	49,934	(292,109)	(342,043)	6	(49,928)	(0)

CAPITAL RESERVE STATEMENT

	2017 BUDGET	2017 PROJECTED	2017 VARIANCE	2018 BUDGET	2018/2017 \$ VARIANCE	2018/2017 % VARIANCE
<b>REVENUES</b>						
MAINTENANCE FEES - RESERVES	104,748	104,748	0	107,892	3,144	3.00%
INTEREST INCOME - RESERVES	756	186	(570)	36	(720)	-95.24%
<b>TOTAL CAPITAL RESERVE REVENUES</b>	<b>105,504</b>	<b>104,934</b>	<b>(570)</b>	<b>107,928</b>	<b>2,424</b>	<b>2.30%</b>
<b>CAPITAL RESERVE EXPENSES</b>						
ASPHALT & CONCRETE SURFACES	12,948	0	(12,948)	12,948	0	0.00%
COMMON INTERIOR	0	0	0	0	0	0.00%
DOORS & WINDOWS	0	3,624	3,624	0	0	0.00%
ELEVATORS	0	0	0	0	0	0.00%
FENCING & GATES	0	0	0	0	0	0.00%
LANAIS & WALKWAYS	0	0	0	0	0	0.00%
LANDSCAPING	0	2,874	2,874	0	0	0.00%
LIGHTING & ELECTRICAL	0	3,510	3,510	0	0	0.00%
MECHANICAL EQUIPMENT	0	0	0	0	0	0.00%
MISCELLANEOUS	300	0	(300)	0	(300)	-100.00%
PAINTING	3,504	0	(3,504)	79,560	76,056	2170.55%
PLUMBING	7,500	3,510	(3,990)	7,500	0	0.00%
POOLS	0	0	0	0	0	0.00%
ROOFING	0	0	0	0	0	0.00%
<b>TOTAL RESERVE EXPENSES</b>	<b>24,252</b>	<b>13,518</b>	<b>(10,734)</b>	<b>100,008</b>	<b>75,756</b>	<b>312.37%</b>
<b>NET RESERVE FUNDING</b>	<b>81,252</b>	<b>91,416</b>	<b>10,164</b>	<b>7,920</b>	<b>(73,332)</b>	<b>-90.25%</b>



2018 ANNUAL BUDGET  
SCHEDULE OF MAINTENANCE FEES

UNIT #	% COMMON INTEREST	2017 MONTHLY FEE	2018 MAINT FEE	2018 RESERVE FEE	2018 MONTHLY FEE	2018 ANNUAL FEE	2018/2017 \$ INCREASE	2018/2017 % INCREASE
COMM 1	1.0455%	\$501.65	\$ 451.77	\$94.00	\$545.77	\$6,549.28	44.12	8.79%
COMM 2	0.1847%	\$88.62	\$ 79.81	\$16.61	\$96.42	\$1,157.01	7.80	8.80%
COMM 3	1.0611%	\$509.13	\$ 458.52	\$95.40	\$553.92	\$6,647.00	\$44.79	8.80%
101	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
102	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
103	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
104	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
105	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
106	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
108	2.2895%	\$1,098.53	\$ 989.32	\$205.85	\$1,195.17	\$14,342.01	96.64	8.80%
109	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
110	2.5797%	\$1,237.77	\$ 1,114.72	\$231.94	\$1,346.66	\$16,159.90	108.89	8.80%
112	2.4542%	\$1,177.56	\$1,060.48	\$220.66	\$1,281.14	\$15,373.73	103.58	8.80%
113	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
115	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
116	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
117	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
118	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
119	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
120	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
201	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
202	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
203	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
204	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
205	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
206	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
207	2.3941%	\$1,148.72	\$ 1,034.52	\$215.25	\$1,249.77	\$14,997.25	101.05	8.80%
208	2.4673%	\$1,183.84	\$ 1,066.15	\$221.83	\$1,287.98	\$15,455.79	104.14	8.80%
209	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
210	2.4411%	\$1,171.27	\$ 1,054.83	\$219.48	\$1,274.31	\$15,291.67	103.04	8.80%
211	2.4228%	\$1,162.49	\$ 1,046.92	\$217.83	\$1,264.75	\$15,177.03	102.26	8.80%
212	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
213	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
214	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
215	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
216	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
217	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
218	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
219	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
220	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
301	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
302	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
303	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
304	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
305	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
306	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
307	2.3941%	\$1,148.72	\$ 1,034.52	\$215.25	\$1,249.77	\$14,997.25	101.05	8.80%
308	2.4673%	\$1,183.84	\$ 1,066.15	\$221.83	\$1,287.98	\$15,455.79	104.14	8.80%
309	1.5420%	\$739.87	\$ 666.32	\$138.64	\$804.96	\$9,659.48	65.09	8.80%
310	2.4281%	\$1,165.04	\$ 1,049.21	\$218.31	\$1,267.52	\$15,210.23	102.48	8.80%

2018 ANNUAL BUDGET  
SCHEDULE OF MAINTENANCE FEES

UNIT #	% COMMON INTEREST	2017 MONTHLY FEE	2018 MAINT FEE	2018 RESERVE FEE	2018 MONTHLY FEE	2018 ANNUAL FEE	2018/2017 \$ INCREASE	2018/2017 % INCREASE
311	2.4385%	\$1,170.03	\$ 1,053.70	\$219.25	<del>\$1,272.95</del>	\$15,275.38	102.92	8.80%
312	1.5420%	\$739.87	\$ 666.32	\$138.64	<del>\$804.96</del>	\$9,659.48	65.09	8.80%
313	1.5420%	\$739.87	\$ 666.32	\$138.64	<del>\$804.96</del>	\$9,659.48	65.09	8.80%
314	1.5420%	\$739.87	\$ 666.32	\$138.64	<del>\$804.96</del>	\$9,659.48	65.09	8.80%
315	1.5420%	\$739.87	\$ 666.32	\$138.64	<del>\$804.96</del>	\$9,659.48	65.09	8.80%
316	1.5420%	\$739.87	\$ 666.32	\$138.64	<del>\$804.96</del>	\$9,659.48	65.09	8.80%
317	1.5420%	\$739.87	\$ 666.32	\$138.64	<del>\$804.96</del>	\$9,659.48	65.09	8.80%
318	1.5420%	\$739.87	\$ 666.32	\$138.64	<del>\$804.96</del>	\$9,659.48	65.09	8.80%
319	1.5420%	\$739.87	\$ 666.32	\$138.64	<del>\$804.96</del>	\$9,659.48	65.09	8.80%
320	1.5420%	\$739.87	\$ 666.32	\$138.64	<del>\$804.96</del>	\$9,659.48	65.09	8.80%
60 0	100.0000%	\$ 47,981.23	\$ 43,211.34	8,990.93	52,202.27	626,425.40	4,221.04	8.80%
		\$ 575,774.76		107891.16			50,652.48	

2018 FEES NEEDED FOR OPERATION INCLUDING LOAN	511,320.00
2018 FEES NEEDED FOR RESERVES	107,892.00
2017 NET OPERATING (SURPLUS)/DEFICIT	7,213.37
TOTAL ASSESSMENTS NEEDED	626,425.37

**End to EXHIBIT 1 to EXHIBIT N**

Exhibit 2 to Exhibit N



**RESERVE STUDY - FINANCIAL REPORT**

**Kauai Kailani Apartments**

**February-2013**

Report Start Date:01-Jan-2013



**BARRERA AND COMPANY**  
Kapaa, HI  
RESERVE SPECIALISTS

Date: 20-Feb-2013  
Units: 57  
Fiscal Year End: 31-Dec-2012  
Report Start Date: 01-Jan-2013

---

**PROJECT INFORMATION**

Name of Association:	Kauai Kailani Apartments
City and State:	Kapaa, HI
Type of Project:	Condo Conversion
Number of Units:	57
Age of Project:	42 Years
Fiscal Year End:	31-Dec-2012
Level of Reserve Study:	Level 1: Full Reserve Study
Date of Inspection: (if applicable)	24-Oct-2012

---

**Descriptions of Levels**

**Level 1: (Full, On-site Review)**

Component inventory, b) Condition assessment (based on on-site visual observations, c) Life and valuation estimates, d) Fund status, e) Funding plan(s).

**Level 2: (Update, With-Site-Visit/On-site Review)**

Includes: a) Component inventory (verification only, not quantification), b) Condition assessment (based on on-site visual observations), c) Life and valuation estimates, d) Fund status, e) Funding plan(s).

**Level 3: (Update, No-Site-Visit/Off-site Review)**

Includes: a) Life and valuation estimates, b) Fund status, c) Funding plan(s).

---

**MANAGEMENT COMPANY**

**PREPARED BY**

**RESERVE STUDY INFORMATION**

**Reserve Study (Definition):** A budget planning tool which identifies the current status of the reserve fund and a stable and equitable Funding Plan to offset the anticipated future major capital expenditures. The Reserve Study consists of two parts: the Physical Analysis and the Financial Analysis.

**Included in the Reserve Study:**

- **Component Worksheet Report:** Includes the quantity, estimated current replacement cost, projected future cost, service life and the projected remaining life of each major component.
- **Percentage Funded Report:** Includes the total replacement cost, current reserve balance, fully funded reserve balance (to be 100%) and the percentage to which the association is fully funded
- **Funding Plans:** One or more of the following plans may be included in the Reserve Analysis:
  - **Current Funding:** The funding level equal to the Association's current assessments for reserve assets.
  - **100% Funding (Reserve Analysis-Year Plan):** Funding level designed to reduce the current deficit and reach the fully funded (100%) within a five year period.
  - **Threshold Funding:** Funding Plan designed to meet all projected disbursement requirements as they occur while always maintaining threshold level of funds in the reserve account.
  - **Reserve Analysis 50% - Compliance Funding (Hawaii Only):** Funding Plan designed to meet all projected disbursement requirements as they occur over the projected 20 years while also maintaining a minimum percentage funded rate of 50%.
- **Executive Summary**
- **Reserve Funding Disclosure Summary -California State Statute 1365.2.5 - Assessment and Reserve Funding Disclosure, 2. Reserve Analysis (California Only)**

The purpose of this report is to provide information about the existing condition, life expectancy and estimated cost for maintenance and replacement of the physical elements that the Association is responsible for maintaining. This evaluation is designed to comply with all current state requirements.

A level-1 or 2 report is based on a diligent visual inspection of the reserve components and may rely on information supplied by the management company, Board of Directors, associated vendors, contractors and published replacement guides modified for local conditions related to reconstruction. A level-3 reserve study report does not include an on-site visual evaluation but is updated accordingly based on a previous years on-site evaluation.

Future cost figures include an annual inflationary factor (see inflation rate), which should be updated and reincorporated into the reserve budget when deemed appropriate. Funding and disbursement projections presented have been computed with a Time Value of Money approach. An annual inflation rate and average interest rate were assumed. Inflation was applied to the projected disbursements, and interest to the ending cash balance values. A straight-line method of calculation was employed for both time value rates.

Adjustments to the component service lives and listed costs should be made whenever the rate of deterioration has changed or when there have been significant changes in the cost of materials and/or labor. Some assumptions have been made about costs, conditions, and future events and circumstances that may occur. Some assumptions inevitably will not materialize and unanticipated events and circumstances may occur subsequent to the date of this report. Therefore, the actual replacement costs and remaining lives may vary from this report and the variations could be material.

It is imperative that these assets be reviewed annually to consider the impact of changing conditions. The findings in the following report are applicable as of the study's completion date, and those items, which are not expected to undergo major repair or replacement within a thirty-year time frame, have been defined as 'life of the project' and may not be included. The report is to be used only for the purpose stated herein, any use or reliance for any other purpose is invalid.

The contents of the Reserve Study Report are based on estimates of the most probable reserve component replacement costs and remaining useful lives. Accordingly, the funding plans reflect consultant judgments based on circumstances at the time of inspection of the most likely costs, regular maintenance, service and remaining lives. The Association may elect to implement any of the funding plans presented, or may implement some variation developed from this information. An annual increase (based on listed inflation %) has been assumed in the funding plans provided (for future projections).

Because the compilation of the reserve funding plans and related projections is limited as described above, no conclusion or any other form of assurance on the funding options or projections is provided. No responsibility to update this report for events and circumstances occurring after the date of this report is assumed.

Inflation Rate: 3%      Interest Rate: 1%      Funding Rate: 3%

**TERMS AND DEFINITIONS**

**Cash Flow Method:** A method of developing a Reserve Funding Plan where contributions to the reserve fund are designed to offset the variable annual expenditures from the reserve fund. Different Reserve Funding Plans are tested against the anticipated schedule of reserve expenses until the desired funding goal is achieved.

**Component:** The individual line items in the Reserve Study, developed or updated in the Physical Analysis. These elements form the building blocks for the Reserve Study. Components typically are: 1) association or cooperative responsibility, 2) with limited useful life expectancies, 3) predictable remaining useful life expectancies, 4) above a minimum threshold cost, and Reserve Analysis) as required by local codes.

**Component Method:** A method of developing a Reserve Funding Plan where the total contribution is based on the sum of contributions for individual components. See "cash flow method."

**Current Replacement Cost:** The cost of replacing, repairing, or restoring a reserve component to its original functional condition. The current replacement cost would be the cost to replace, repair, or restore the component during that particular year.

**Deficit:** An actual (or projected) reserve balance less than the fully funded balance. The opposite would be a surplus.

**Effective Age:** The difference between useful life and remaining useful life. Not always equivalent to chronological age, since some components age irregularly. Used primarily in computations.

**Financial Analysis:** The portion of a Reserve Study where current status of the reserves (measured as cash or percent funded) and a recommended reserve contribution rate (Reserve Funding Plan) are derived, and the projected reserve income and expense over time is presented. The Financial Analysis is one of the two parts of a Reserve Study.

**Fully Funded:** When the actual (or projected) reserve balance is equal to the fully funded balance.

**Full Funded Balance (FFB):** Total accrued depreciation. An indicator against which actual (or projected) reserve balance can be compared. The reserve balance that is in direct proportion to the fraction of life "used up" of the current repair or replacement cost. This number is calculated for each component, then summed together for an association total.  $FFB = \text{Current Cost} \times \text{Effective Age} / \text{Useful Life}$

**Fund Status:** The status of the reserve fund as compared to an established benchmark such as percent funding.

**Funding Goals:** Independent of methodology utilized, the following represent the basic categories of Funding Plan goals:

1. **Baseline Funding:** Establishing a reserve funding goal of keeping the reserve cash balance above zero.
2. **Fully Funding:** Setting a reserve funding goal of attaining and maintaining reserves at or near 100% funded.
3. **Statutory Funding:** Establishing a reserve funding goal of setting aside the specific minimum or regulatory amount of reserves required by local statutes or financing agencies.
4. **Threshold Funding:** Establishing a reserve funding goal of keeping the reserve balance above a specified dollar or percent funded amount. Depending on the threshold, this may be more or less conservative than "fully funding."

**Funding Plan:** An association or cooperative's plan to provide income to a reserve fund to offset anticipated expenditures from that fund.

**Funding Principles:** A) Sufficient funds when required; B) Fiscally responsible; C) Stable contribution rate.

**Life and Valuation Estimates:** The task of estimating useful life, remaining useful life, and repair or replacement costs for the reserve components.

**Percent Funded:** The ratio, at a particular point of time (typically the beginning of the fiscal year), of the actual (or projected) reserve balance to the fully funded balance, expressed as a percentage.

**Remaining Useful Life (RUL):** Also referred to as "remaining life" (RL). The estimated time, in years, that a reserve component can be expected to continue to serve its intended function. Projects anticipated to occur in the initial year have "zero" remaining useful life.

**Reserve Balance:** Actual or projected funds as of a particular point in time that the association or cooperative has identified for use to delay the future repair or replacement of those major components which the association or cooperative is obligated to maintain. Also known as reserves, reserve accounts and cash reserves. Based upon information provided and not audited.

**Reserve Provider:** An individual that prepares Reserve Studies.

**Special Assessment:** An assessment levied on the members of an association or cooperative in addition to regular assessments. Governing documents or local statutes may regulate special assessments.

**Surplus:** An actual (or projected) reserve balance greater than the fully funded balance. See "Deficit."

**Useful Life (UL):** Total useful life or depreciable life. The estimated time, in years that a reserve component can be expected to serve its intended function if properly constructed in its present application or installation.

Inflation Rate: 3%      Interest Rate: 1%      Funding Rate: 3%

## Percentage Funded Report



**BARRERA AND COMPANY**  
 Kapāā, HI  
RESIDENTIAL SPECIALISTS

Date: 20-Feb-2013

Units: 57

Fiscal Year End: 31-Dec-2012

Report Start Date: 01-Jan-2013

**Percent Funded: 126 %**

Component	Service Life (a)	Remaining Life (b)	Years In Service (c)	Current Replacement Cost (d)	Projected Reserve Balance (e)	Required Reserve Funding (f)	Projected Fully Funded Reserves (g)	Deficit / Surplus of Fully Funded Reserves (h)	Per Unit Deficit / Surplus of Fully Funded Reserves (i)
<b>Asphalt &amp; Concrete Surfaces</b>									
Asphalt - Overlay (KK1)	25	25	0	\$31,155	\$0	\$1,246	\$0	\$0	\$0.00
Asphalt - Overlay (KK2)	25	20	5	\$20,640	\$5,201	\$826	\$4,128	\$1,073	\$18.82
Asphalt - Seal/Stripe & Repair (KK1)	5	5	0	\$7,789	\$0	\$1,558	\$0	\$0	\$0.00
Asphalt - Seal/Stripe & Repair (KK2)	5	3	2	\$5,160	\$2,600	\$1,032	\$2,064	\$536	\$9.41
Concrete - Repair	10	10	0	\$3,000	\$0	\$300	\$0	\$0	\$0.00
Contingency									
<b>Common Interior</b>									
Int. Furnishings - Check-In Area/Offices	12	12	0	\$6,000	\$0	\$500	\$0	\$0	\$0.00
<b>Elevators</b>									
Elevators (KK1/KK2) - Cab Refurbish	20	20	0	\$11,000	\$0	\$550	\$0	\$0	\$0.00
Elevators (KK1/KK2) - Upgrade Systems (3 Flrs)	25	25	0	\$250,000	\$0	\$10,000	\$0	\$0	\$0.00
<b>Fencing &amp; Gates</b>									
Aluminum Rails - KK1/KK2	30	30	0	\$153,000	\$0	\$5,100	\$0	\$0	\$0.00
Pool Fencing - KK1	20	20	0	\$7,650	\$0	\$383	\$0	\$0	\$0.00
Pool Fencing - KK2	20	20	0	\$7,110	\$0	\$356	\$0	\$0	\$0.00
Pool Gates - KK1	20	20	0	\$750	\$0	\$38	\$0	\$0	\$0.00
Pool Gates - KK2	30	30	0	\$250	\$0	\$8	\$0	\$0	\$0.00
<b>Landscaping</b>									
Irrigation System (clocks/valves, etc)	5	5	0	\$5,000	\$0	\$1,000	\$0	\$0	\$0.00
<b>Lighting</b>									
Entry Fixtures - KK1	20	20	0	\$4,625	\$0	\$231	\$0	\$0	\$0.00
Ext. Hallway Fixtures (Ceiling Can) - KK2	25	25	0	\$1,800	\$0	\$72	\$0	\$0	\$0.00
Ext. Hallway Fixtures (Wall-Top Flr) - KK2	25	25	0	\$1,125	\$0	\$45	\$0	\$0	\$0.00
Ground Lighting	10	10	0	\$5,000	\$0	\$500	\$0	\$0	\$0.00
Lanal Ceiling Fixtures - KK1	20	20	0	\$3,700	\$0	\$185	\$0	\$0	\$0.00
Lanal Fixtures - KK2	25	25	0	\$2,500	\$0	\$100	\$0	\$0	\$0.00
<b>Mechanical Equipment</b>									
Exhaust Fans (Roof)	20	10	10	\$2,000	\$1,260	\$100	\$1,000	\$260	\$4.56
Sewer System - "Oxigest" Treatment	10	1	9	\$5,000	\$5,670	\$500	\$4,500	\$1,170	\$20.52
Storage Tanks (1/bldg)	25	10	15	\$5,000	\$3,780	\$200	\$3,000	\$780	\$13.68
Water Heaters (1/bldg) - 80 Gal	10	5	5	\$2,600	\$1,638	\$260	\$1,300	\$338	\$5.93
<b>Miscellaneous</b>									

## Percentage Funded Report



**BARRERA AND COMPANY**  
RESERVE SPECIALISTS  
**Kauai Kailani Apartments**  
Kapaa, HI

Date: 20-Feb-2013

Units: 57

Fiscal Year End: 31-Dec-2012

Report Start Date: 01-Jan-2013

**Percent Funded: 126 %**

Component	Service Life (a)	Remaining Life (b)	Years In Service (c)	Current Replacement Cost (d)	Projected Reserve Balance (e)	Required Reserve Funding (f)	Projected Fully Funded Reserves (g)	Deficit / Surplus of Fully Funded Reserves (h)	Per Unit Deficit / Surplus of Fully Funded Reserves (i)
Barbecues	6	3	3	\$2,100	\$1,323	\$350	\$1,050	\$273	\$4.79
Elasto (Recoat) - Hallways - KK1/KK2	6	6	0	\$15,993	\$0	\$2,666	\$0	\$0	\$0.00
Elasto (Recoat) - Lanais - KK1/KK2	6	6	0	\$21,240	\$0	\$3,540	\$0	\$0	\$0.00
Elasto (Resurface) - Hallways - KK1/KK2	24	24	0	\$85,296	\$0	\$3,554	\$0	\$0	\$0.00
Elasto (Resurface) - Lanais - KK1/KK2	24	24	0	\$113,280	\$0	\$4,720	\$0	\$0	\$0.00
Entry Doors (Units)	16	16	0	\$28,500	\$0	\$1,781	\$0	\$0	\$0.00
Lanai Sliding Doors	25	25	0	\$85,500	\$0	\$3,420	\$0	\$0	\$0.00
Mailboxes	18	18	0	\$5,700	\$0	\$317	\$0	\$0	\$0.00
Metal Stair Tread over Wood - KK1	15	15	0	\$1,980	\$0	\$132	\$0	\$0	\$0.00
Metal Stair Tread over Wood - KK2	15	15	0	\$1,340	\$0	\$89	\$0	\$0	\$0.00
TBD - Termite Treatment	10	10	0	\$37,050	\$0	\$3,705	\$0	\$0	\$0.00
Painting									
Ext. Surfaces - KK1	9	9	0	\$36,255	\$0	\$4,028	\$0	\$0	\$0.00
Ext. Surfaces - KK2	9	9	0	\$19,350	\$0	\$2,160	\$0	\$0	\$0.00
Ext. Surfaces - Wood/Stucco Repairs	9	9	0	\$15,000	\$0	\$1,667	\$0	\$0	\$0.00
Pools									
Pool (KK1) - Coping	30	30	0	\$2,175	\$0	\$73	\$0	\$0	\$0.00
Pool (KK1) - Deck Repairs	25	25	0	\$14,400	\$0	\$576	\$0	\$0	\$0.00
Pool (KK1) - Filter	15	15	0	\$1,250	\$0	\$83	\$0	\$0	\$0.00
Pool (KK1) - Resurface, plaster	12	12	0	\$9,500	\$0	\$792	\$0	\$0	\$0.00
Pool (KK1) - Tile Trim	20	20	0	\$2,610	\$0	\$131	\$0	\$0	\$0.00
Pool (KK1/2) - ADA Lift Systems	10	10	0	\$12,000	\$0	\$1,200	\$0	\$0	\$0.00
Pool (KK1/2) - Furnishings	6	6	0	\$5,950	\$0	\$992	\$0	\$0	\$0.00
Pool (KK2) - Coping	30	30	0	\$2,050	\$0	\$68	\$0	\$0	\$0.00
Pool (KK2) - Deck Repairs	25	25	0	\$11,448	\$0	\$458	\$0	\$0	\$0.00
Pool (KK2) - Filter	15	15	0	\$1,250	\$0	\$83	\$0	\$0	\$0.00
Pool (KK2) - Resurface, plaster	12	12	0	\$9,000	\$0	\$750	\$0	\$0	\$0.00
Pool (KK2) - Tile Trim	20	20	0	\$2,460	\$0	\$123	\$0	\$0	\$0.00
Roofing									
Built-in Gutters - KK1	25	19	6	\$10,650	\$3,220	\$426	\$2,556	\$664	\$11.66
Built-in Gutters - KK2	25	19	6	\$4,980	\$1,506	\$199	\$1,195	\$311	\$5.45
Built-up Roofing- KK1	15	9	6	\$96,000	\$48,381	\$6,400	\$38,400	\$9,981	\$175.11
Built-up Roofing- KK2	15	9	6	\$43,800	\$22,074	\$2,920	\$17,520	\$4,554	\$79.89
Downspouts - KK1	25	19	6	\$5,700	\$1,724	\$228	\$1,388	\$356	\$6.24



## Percentage Funded Report



**BARRERA AND COMPANY**  
 Kapaa, HI  
RESPECT. SPECIALISTS

Date: 20-Feb-2013

Units: 57

Fiscal Year End: 31-Dec-2012

Report Start Date: 01-Jan-2013

**Percent Funded: 126 %**

Component	Service Life (a)	Remaining Life (b)	Years In Service (c)	Current Replacement Cost (d)	Projected Reserve Balance (e)	Required Reserve Funding (f)	Projected Fully Funded Reserves (g)	Deficit / Surplus of Fully Funded Reserves (h)	Per Unit Deficit / Surplus of Fully Funded Reserves (i)
Downspouts - KK2	25	19	6	\$2,400	\$726	\$96	\$576	\$150	\$2.63
Shake.roof - KK2 (BBQ Area)	20	1	19	\$750	\$898	\$38	\$713	\$185	\$3.25

## Percentage Funded Report



**BARRERA AND COMPANY**  
RESERVES SPECIALISTS  
**Kauai Kailani Apartments**  
Kāpāā, HI

Date: 20-Feb-2013

Units: 67

Fiscal Year End: 31-Dec-2012

Report Start Date: 01-Jan-2013

**Percent Funded: 126 %**

	Current Replacement Cost (d)	Projected Reserve Balance (e)	Required Reserve Funding (f)	Projected Fully Funded Reserves (g)	Deficit / Surplus of Fully Funded Reserves (h)	Per Unit Deficit / Surplus of Fully Funded Reserves (i)
Totals	\$1,248,811	\$100,000	\$72,842	\$79,370	\$20,630	\$361.94

### PERCENTAGE FUNDED & DEFINITIONS

Based on the estimated total current replacement cost of \$1,248,811 and estimated service lives and remaining useful lives for the individual reserve components, the annual (day 1) reserve funding for the Kauai Kailani Apartments is \$72,842 and the Fully Funded Reserve as of fiscal year-end 31-Dec-2012 is \$79,370. As of this date, the Association has projected \$100,000 to be in savings available for reserves. This will be a surplus of \$20,630 under the Fully Funded Reserve. Based on these numbers, the Kauai Kailani Apartments will be 126% funded as of 31-Dec-2012.

This Percent Funded value presented in the data summary sheet is calculated by dividing the current (or projected) cash reserve savings by the Fully Funded reserve amount.

#### DEFINITION OF TERMS

(For Percentage Funded Page Calculations)

Column a - Service Life: Normal time period the association reserve component can be expected to remain in functional or useful condition.

Column b - Remaining Life (B): An estimate of years remaining before repair, replacement or refurbishment will be necessary.

Column c - Calculated Years in Service (C): A calculation derived by subtracting Remaining Life from Service Life. (Note: Years in service is a calculated value, not necessarily the actual age of the component.) Calculation: (A) - (B) = (C).

Column d - Current Replacement Cost (D): The current cost of repairing, replacing or refurbishing a component.

Column e - Current Actual Reserve Funds (E): Current amount of reserve funds available for each component. This is calculated by: (Individual component Fully Funded Reserve) / (the total Fully Funded Reserve for all components) x (the Total Current Actual Reserve Balance for all reserve components) Calculation: G/G (Total) x E (Total) = (E) Individual Component Current Actual Reserve Balance.

Column f - Day 1 Reserve Funding (Annual) (F): The annual amount of reserve funding required as of the Fiscal Year End which, when Fully Funded from the first year of service for all components will achieve full funding. This annualized value is calculated by dividing Current Replacement Cost by the Useful Life. This funding level makes no adjustment to eliminate any current reserve deficits. Calculation: (D) / (A) = (F).

Column g - Fully Funded Reserve (G): This value is calculated by multiplying the Calculated Years in Service by the Day 1 Reserve Funding Amount. If an association is 100% funded, this number will be equal or less than the Current Allocated Reserve Fund Balance for each component. Calculation: (C) x (F) = (G).

Column h - Deficit/Surplus to the Fully Funded Reserve (H): The shortage or surplus of reserve funding with respect to the Fully Funded Reserve as of the reported Current Actual Reserve Balance (E). The deficit is calculated by subtracting the Current Actual Reserve Balance from the Fully Funded Reserve: (G) - (E) = (H).

Column i - Per Unit Deficit/Surplus of Fully Funded Reserves (I): The per unit breakdown of the shortage or surplus of reserve funding with respect to the Fully Funded Reserve. Calculated by dividing the current Deficit/Surplus of the Fully Funded Reserve by the number of units.

# Disbursement Report



**BARRERA AND COMPANY**  
 RESIDENT SPECIALISTS  
**Kauai Kailani Apartments**  
 Kapaa, HI

Date: 20-Feb-2013

Units: 57

Fiscal Year End: 31-Dec-2012

Report Start Date: 01-Jan-2013

Category	Component	Service Life	Replacement Cost	Projected Cost
<b>2013:</b>				
<b>Total for 2013:</b>				<b>\$0</b>
<b>2014:</b>				
Mechanical Equipment	Sewer System - "Oxigest" Treatment	10	\$5,000	\$5,150
Roofing	Shake roof - KK2 (BBQ Area)	20	\$750	\$773
<b>Total for 2014:</b>				<b>\$5,923</b>
<b>2015:</b>				
<b>Total for 2015:</b>				<b>\$0</b>
<b>2016:</b>				
Asphalt & Concrete Surfaces	Asphalt - Seal/Stripe & Repair (KK2)	5	\$5,160	\$5,638
Miscellaneous	Barbecues	6	\$2,100	\$2,295
<b>Total for 2016:</b>				<b>\$7,933</b>
<b>2017:</b>				
<b>Total for 2017:</b>				<b>\$0</b>
<b>2018:</b>				
Asphalt & Concrete Surfaces	Asphalt - Seal/Stripe & Repair (KK1)	5	\$7,789	\$9,029
Landscaping	Irrigation System (clocks/valves,etc)	5	\$5,000	\$5,796
Mechanical Equipment	Water Heaters (1/bldg) - 80 Gal	10	\$2,600	\$3,014
<b>Total for 2018:</b>				<b>\$17,840</b>
<b>2019:</b>				
Miscellaneous	Elasto (Recoat) - Hallways - KK1/KK2	6	\$15,993	\$19,096
Miscellaneous	Elasto (Recoat) - Lanais - KK1/KK2	6	\$21,240	\$25,362
Pools	Pool (KK1/2) - Furnishings	6	\$5,950	\$7,105
<b>Total for 2019:</b>				<b>\$51,563</b>
<b>2020:</b>				
<b>Total for 2020:</b>				<b>\$0</b>
<b>2021:</b>				
Asphalt & Concrete Surfaces	Asphalt - Seal/Stripe & Repair (KK2)	5	\$5,160	\$6,537
<b>Total for 2021:</b>				<b>\$6,537</b>
<b>2022:</b>				
Miscellaneous	Barbecues	6	\$2,100	\$2,740
Painting	Ext. Surfaces - KK1	9	\$36,255	\$47,305
Painting	Ext. Surfaces - KK2	9	\$19,350	\$25,247
Painting	Ext. Surfaces - Wood/Stucco Repairs	9	\$15,000	\$19,572
Roofing	Built-up Roofing- KK1	15	\$96,000	\$125,256
Roofing	Built-up Roofing- KK2	15	\$43,800	\$57,149
<b>Total for 2022:</b>				<b>\$277,271</b>
<b>2023:</b>				
Asphalt & Concrete Surfaces	Asphalt - Seal/Stripe & Repair (KK1)	5	\$7,789	\$10,467
Asphalt & Concrete Surfaces	Concrete - Repair Contingency	10	\$3,000	\$4,032
Landscaping	Irrigation System (clocks/valves,etc)	5	\$5,000	\$6,720
Lighting	Ground Lighting	10	\$5,000	\$6,720
Mechanical Equipment	Exhaust Fans (Roof)	20	\$2,000	\$2,688
Mechanical Equipment	Storage Tanks (1/bldg)	25	\$5,000	\$6,720
Miscellaneous	TBD - Termite Treatment	10	\$37,050	\$49,792

## Disbursement Report



**BARRERA AND COMPANY**  
 Kapaa, HI  
RESIDENTIAL MANAGERS

**Kauai Kailani Apartments**

Date: 20-Feb-2013

Units: 57

Fiscal Year End: 31-Dec-2012

Report Start Date: 01-Jan-2013

Category	Component	Service Life	Replacement Cost	Projected Cost
Pools	Pool (KK1/2) - ADA Lift Systems	10	\$12,000	\$16,127
			<b>Total for 2023:</b>	<b>\$103,265</b>
<b>2024</b>				
Mechanical Equipment	Sewer System - "Oxigest" Treatment	10	\$5,000	\$6,921
			<b>Total for 2024:</b>	<b>\$6,921</b>
<b>2025</b>				
Common Interlor	Int. Furnishings - Check-In Area/Offices	12	\$6,000	\$8,555
Miscellaneous	Elasto (Recoat) - Hallways - KK1/KK2	6	\$15,993	\$22,802
Miscellaneous	Elasto (Recoat) - Lanais - KK1/KK2	6	\$21,240	\$30,283
Pools	Pool (KK1) - Resurface, plaster	12	\$9,500	\$13,545
Pools	Pool (KK1/2) - Furnishings	6	\$5,950	\$8,483
Pools	Pool (KK2) - Resurface, plaster	12	\$9,000	\$12,832
			<b>Total for 2025:</b>	<b>\$96,500</b>
<b>2026</b>				
Asphalt & Concrete Surfaces	Asphalt - Seal/Stripe & Repair (KK2)	5	\$5,160	\$7,578
			<b>Total for 2026:</b>	<b>\$7,578</b>
<b>2027</b>				
			<b>Total for 2027:</b>	<b>\$0</b>
<b>2028</b>				
Asphalt & Concrete Surfaces	Asphalt - Seal/Stripe & Repair (KK1)	5	\$7,789	\$12,135
Landscaping	Irrigation System (clocks/valves,etc)	5	\$5,000	\$7,790
Mechanical Equipment	Water Heaters (1/100g) - 80"Gal	10	\$2,600	\$4,051
Miscellaneous	Barbecues	6	\$2,100	\$3,272
Miscellaneous	Metal Stair Tread over Wood - KK1	15	\$1,980	\$3,085
Miscellaneous	Metal Stair Tread over Wood - KK2	15	\$1,340	\$2,088
Pools	Pool (KK1) - Filter	15	\$1,250	\$1,947
Pools	Pool (KK2) - Filter	15	\$1,250	\$1,947
			<b>Total for 2028:</b>	<b>\$36,314</b>
<b>2029</b>				
Miscellaneous	Entry Doors (Units)	16	\$28,500	\$45,734
			<b>Total for 2029:</b>	<b>\$45,734</b>
<b>2030</b>				
			<b>Total for 2030:</b>	<b>\$0</b>
<b>2031</b>				
Asphalt & Concrete Surfaces	Asphalt - Seal/Stripe & Repair (KK2)	5	\$5,160	\$8,785
Miscellaneous	Elasto (Recoat) - Hallways - KK1/KK2	6	\$15,993	\$27,227
Miscellaneous	Elasto (Recoat) - Lanais - KK1/KK2	6	\$21,240	\$36,160
Miscellaneous	Mailboxes	18	\$5,700	\$9,704
Painting	Ext. Surfaces - KK1	9	\$36,255	\$61,722
Painting	Ext. Surfaces - KK2	9	\$19,350	\$32,942
Painting	Ext. Surfaces - Wood/Stucco Repairs	9	\$15,000	\$25,536
Pools	Pool (KK1/2) - Furnishings	6	\$5,950	\$10,129
			<b>Total for 2031:</b>	<b>\$212,205</b>
<b>2032</b>				
Roofing	Built-in Gutters - KK1	25	\$10,650	\$18,675

# Disbursement Report



**BARRERA AND COMPANY**  
**Kauai Kailani Apartments**  
 Kapaa, HI

Date: 20-Feb-2013

Units: 57

Fiscal Year End: 31-Dec-2012

Report Start Date: 01-Jan-2013

Category	Component	Service Life	Replacement Cost	Projected Cost
Roofing	Built-in Gutters - KK2	25	\$4,980	\$8,732
Roofing	Downspouts - KK1	25	\$5,700	\$9,995
Roofing	Downspouts - KK2	25	\$2,400	\$4,208
			<b>Total for 2032:</b>	<b>\$41,611</b>
<b>2033</b>				
Asphalt & Concrete Surfaces	Asphalt - Overlay (KK2)	25	\$20,640	\$37,278
Asphalt & Concrete Surfaces	Asphalt - Seal/Stripe & Repair (KK1)	5	\$7,789	\$14,067
Asphalt & Concrete Surfaces	Concrete - Repair Contingency	10	\$3,000	\$5,418
Elevators	Elevators (KK1/KK2) - Cab Refurbish	20	\$11,000	\$19,867
Fencing & Gates	Pool Fencing - KK1	20	\$7,650	\$13,817
Fencing & Gates	Pool Fencing - KK2	20	\$7,110	\$12,841
Fencing & Gates	Pool Gates - KK1	20	\$750	\$1,355
Landscaping	Irrigation System (clocks/valves, etc)	5	\$5,000	\$9,031
Lighting	Entry Fixtures - KK1	20	\$4,625	\$8,353
Lighting	Ground Lighting	10	\$5,000	\$9,031
Lighting	Lanai Ceiling Fixtures - KK1	20	\$3,700	\$6,683
Miscellaneous	TBD - Termite Treatment	10	\$37,050	\$66,916
Pools	Pool (KK1) - Tile Trim	20	\$2,610	\$4,714
Pools	Pool (KK1/2) - ADA-Lift Systems	10	\$12,000	\$21,673
Pools	Pool (KK2) - Tile Trim	20	\$2,460	\$4,443
			<b>Total for 2033:</b>	<b>\$235,488</b>
<b>2034</b>				
Mechanical Equipment	Sewer System - "Oxigest" Treatment	10	\$5,000	\$9,301
Miscellaneous	Barbecues	8	\$2,100	\$3,907
Roofing	Shake roof - KK2 (BBQ Area)	20	\$750	\$1,395
			<b>Total for 2034:</b>	<b>\$14,603</b>
<b>2035</b>				
			<b>Total for 2035:</b>	<b>\$0</b>
<b>2036</b>				
Asphalt & Concrete Surfaces	Asphalt - Seal/Stripe & Repair (KK2)	5	\$5,160	\$10,184
			<b>Total for 2036:</b>	<b>\$10,184</b>
<b>2037</b>				
Common Interior	Int. Furnishings - Check-In Area/Offices	12	\$6,000	\$12,197
Miscellaneous	Elasto (Recoat) - Hallways - KK1/KK2	6	\$15,993	\$32,510
Miscellaneous	Elasto (Recoat) - Lanais - KK1/KK2	6	\$21,240	\$43,177
Miscellaneous	Elasto (Resurface) - Hallways - KK1/KK2	24	\$85,296	\$173,389
Miscellaneous	Elasto (Resurface) - Lanais - KK1/KK2	24	\$113,280	\$230,275
Pools	Pool (KK1) - Resurface, plaster	12	\$9,500	\$19,312
Pools	Pool (KK1/2) - Furnishings	8	\$5,950	\$12,095
Pools	Pool (KK2) - Resurface, plaster	12	\$9,000	\$18,295
Roofing	Built-up Roofing - KK1	15	\$96,000	\$195,148
Roofing	Built-up Roofing - KK2	15	\$43,800	\$89,036
			<b>Total for 2037:</b>	<b>\$825,434</b>
<b>2038</b>				

# Disbursement Report



**BARRERA AND COMPANY** Kauai Kailani Apartments  
Kapaa, HI  
RESIDENT SPECIALISTS

Date: 20-Feb-2013  
Units: 57  
Fiscal Year End: 31-Dec-2012  
Report Start Date: 01-Jan-2013

Category	Component	Service Life	Replacement Cost	Projected Cost	
Asphalt & Concrete Surfaces	Asphalt - Overlay (KK1)	25	\$31,155	\$65,232	
Asphalt & Concrete Surfaces	Asphalt - Seal/Stripe & Repair (KK1)	5	\$7,789	\$16,308	
Elevators	Elevators (KK1/KK2) - Upgrade Systems (3 Flrs)	25	\$250,000	\$523,444	
Landscaping	Irrigation System (clocks/valves,etc)	5	\$5,000	\$10,469	
Lighting	Ext. Hallway Fixtures (Ceiling Can) - KK2	25	\$1,800	\$3,769	
Lighting	Ext. Hallway Fixtures (Wall-Top Flr) - KK2	25	\$1,125	\$2,358	
Lighting	Lanal Fixtures - KK2	25	\$2,500	\$5,234	
Mechanical Equipment	Water Heaters (1/bldg) - 80 Gal	10	\$2,600	\$5,444	
Miscellaneous	Lanal Sliding Doors	25	\$65,500	\$179,018	
Pools	Pool (KK1) - Deck Repairs	25	\$14,400	\$30,150	
Pools	Pool (KK2) - Deck Repairs	25	\$11,448	\$23,970	
			<b>Total for 2038:</b>	<b>\$865,393</b>	
			<b>Total for 2039:</b>	<b>\$0</b>	
			<b>Total for 2040:</b>	<b>\$161,499</b>	
Miscellaneous	Barbecues	6	\$2,100	\$4,665	
Painting	Ext. Surfaces - KK1	9	\$36,255	\$80,633	
Painting	Ext. Surfaces - KK2	9	\$19,350	\$42,982	
Painting	Ext. Surfaces - Wood/Stucco Repairs	9	\$15,000	\$33,319	
			<b>Total for 2041:</b>	<b>\$11,806</b>	
			<b>Total for 2042:</b>	<b>\$0</b>	
2041	Asphalt & Concrete Surfaces	Asphalt - Seal/Stripe & Repair (KK2)	5	\$5,160	\$11,806

# Hawaii Compliance Funding



**BARRERA AND COMPANY**  
 KAUAI KAILANI APARTMENTS  
 Kapaa, HI

Date: 20-Feb-2013  
 Units: 57  
 Fiscal Year End: 31-Dec-2012  
 Report Start Date: 01-Jan-2013

Hawaii - Compliance Funding (50%): This option projects the lowest annual funding feasible over the next 20 years which will meet statutory reserve requirements. This funding level is calculated to achieve the Statutory Replacement Reserve (50% of the Full Replacement Reserve) by the end of year one of the report and maintain the minimum 50% funded level throughout the remaining 20 years. This method of funding considers total disbursements one year at a time and annual requirements may fluctuate widely. If implemented, this allocation should be reviewed on a regular basis and adjusted as required to ensure future funding requirements will be met. The annual percentage funded projections are based on the assumption that reserve components and their useful lives will remain constant, that the remaining life will decrease by one each year, and that actual reserve contributions, inflation, and interest will equal to the respective projected values.

Year	Annual Funding Amount	Average Monthly Fee Per Unit	Beginning Cash	Annual Interest	Reserve Funds	Annual Disbursements	End Balance	Surplus/Deficit of Fully Funded Reserves	Projected % Funded Year End
2013	\$56,800	\$83.04	\$100,000	\$1,284	\$158,084	\$0	\$158,084	\$1,306	101%
2014	\$58,504	\$85.53	\$158,084	\$1,844	\$218,432	\$5,923	\$212,509	(\$20,151)	91%
2015	\$60,259	\$88.10	\$212,609	\$2,426	\$275,196	\$0	\$275,196	(\$44,042)	86%
2016	\$62,067	\$90.74	\$275,195	\$3,023	\$340,284	\$7,933	\$332,351	(\$70,276)	83%
2017	\$63,929	\$93.46	\$332,351	\$3,643	\$399,923	\$0	\$399,923	(\$99,227)	80%
2018	\$65,847	\$96.27	\$399,923	\$4,289	\$470,009	\$17,840	\$452,169	(\$130,558)	78%
2019	\$67,822	\$99.16	\$452,169	\$4,963	\$524,595	\$51,563	\$473,032	(\$163,655)	74%
2020	\$69,857	\$102.13	\$473,032	\$5,680	\$547,968	\$0	\$547,968	(\$200,093)	73%
2021	\$71,953	\$105.19	\$547,968	\$6,447	\$625,728	\$6,537	\$619,191	(\$239,622)	72%
2022	\$74,111	\$108.35	\$619,191	\$7,266	\$698,478	\$277,271	\$421,207	(\$275,676)	60%
2023	\$76,334	\$111.60	\$421,207	\$8,137	\$501,619	\$103,265	\$398,354	(\$313,903)	56%
2024	\$78,624	\$114.95	\$398,354	\$9,062	\$481,321	\$6,921	\$474,400	(\$355,952)	57%
2025	\$80,983	\$118.40	\$474,400	\$10,042	\$560,049	\$96,500	\$463,550	(\$399,290)	54%
2026	\$83,413	\$121.95	\$463,550	\$11,077	\$551,977	\$7,578	\$544,399	(\$446,701)	55%
2027	\$85,915	\$125.61	\$544,399	\$12,167	\$636,188	\$0	\$636,188	(\$498,131)	56%
2028	\$88,493	\$129.38	\$636,188	\$13,313	\$731,303	\$36,314	\$694,989	(\$552,846)	56%
2029	\$91,147	\$133.26	\$694,989	\$14,517	\$793,313	\$45,734	\$747,579	(\$610,982)	55%
2030	\$93,882	\$137.25	\$747,579	\$15,780	\$849,406	\$0	\$849,406	(\$673,922)	56%
2031	\$96,698	\$141.37	\$849,406	\$17,103	\$954,021	\$212,205	\$741,816	(\$736,370)	50%
2032	\$99,599	\$145.61	\$741,816	\$18,497	\$849,123	\$41,611	\$807,513	(\$803,721)	50%

Inflation Rate: 3%      Interest Rate: 1%      Funding Rate: 3%

# Hawaii Cash Flow Plan



**BARRERA AND COMPANY**  
 Kaula Kailani Apartments  
 Kapaa, HI

Date: 20-Feb-2013

Units: 57

Fiscal Year End: 31-Dec-2012

Report Start Date: 01-Jan-2013

This funding plan follows the definition of the 'Cash Flow Plan' (§614B - 148 (h)) meaning a minimum twenty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency, provided that it does not include a projection of special assessments or loans during that twenty-year period. This funding requirement is calculated with the constraint that the ending reserve balance for each year (1 through 20) must be greater than or equal to five percent (5%) of the current replacement cost (see designated threshold). The calculation takes into consideration only the immediate total annual disbursement requirements and does not take into account annual funding percentages. Due to this fact, annual allocations may fluctuate widely from year to year. This option provides a minimal contingency for unanticipated emergency expenditures. If implemented, funding and required disbursements should be reviewed on an annual basis and adjusted as required to ensure current and future funding requirements will be met.

**Threshold: \$65,000**

Year	Annual Funding Amount	Average Monthly Fee Per Unit	Beginning Cash	Annual Interest	Reserve Funds	Annual Disbursements	End Balance (Min \$65,000)	Surplus/Deficit of Fully Funded Reserves	Projected % Funded Year End
2013	\$32,800	\$47.95	\$100,000	\$1,164	\$133,964	\$0	\$133,964	(\$22,814)	85%
2014	\$33,784	\$49.39	\$133,964	\$1,479	\$169,227	\$5,923	\$163,304	(\$69,356)	70%
2015	\$34,798	\$50.87	\$163,304	\$1,807	\$199,909	\$0	\$199,909	(\$119,328)	63%
2016	\$35,841	\$52.40	\$199,909	\$2,139	\$237,889	\$7,933	\$229,956	(\$172,671)	57%
2017	\$36,917	\$53.97	\$229,956	\$2,484	\$269,357	\$0	\$269,357	(\$229,794)	54%
2018	\$38,024	\$55.59	\$269,357	\$2,794	\$310,175	\$17,840	\$292,336	(\$290,392)	50%
2019	\$39,165	\$57.26	\$292,336	\$2,861	\$334,362	\$51,563	\$282,799	(\$353,887)	44%
2020	\$40,340	\$58.98	\$282,799	\$3,030	\$326,169	\$0	\$326,169	(\$421,893)	44%
2021	\$41,550	\$60.76	\$326,169	\$3,437	\$371,155	\$6,537	\$364,619	(\$494,194)	42%
2022	\$42,767	\$62.57	\$364,619	\$2,474	\$409,889	\$277,271	\$132,619	(\$564,264)	19%
2023	\$44,080	\$64.45	\$132,619	\$1,030	\$177,729	\$103,265	\$74,464	(\$637,793)	10%
2024	\$45,403	\$66.38	\$74,464	\$937	\$120,804	\$6,921	\$113,883	(\$716,469)	14%
2025	\$46,765	\$68.37	\$113,883	\$890	\$161,538	\$96,500	\$65,038	(\$797,801)	8%
2026	\$45,400	\$66.37	\$65,038	\$839	\$111,278	\$7,578	\$103,700	(\$887,400)	10%
2027	\$46,762	\$68.37	\$103,700	\$1,271	\$151,733	\$0	\$151,733	(\$982,586)	13%
2028	\$48,165	\$70.42	\$151,733	\$1,577	\$201,475	\$36,314	\$165,160	(\$1,082,675)	13%
2029	\$49,610	\$72.53	\$165,160	\$1,671	\$216,441	\$45,734	\$170,707	(\$1,187,855)	13%
2030	\$51,098	\$74.70	\$170,707	\$1,863	\$223,768	\$0	\$223,768	(\$1,299,560)	15%
2031	\$52,631	\$76.95	\$223,768	\$1,440	\$277,838	\$212,205	\$65,634	(\$1,412,552)	4%
2032	\$54,210	\$79.25	\$65,634	\$719	\$120,563	\$41,611	\$78,952	(\$1,532,282)	5%

Inflation Rate: 3%      Interest Rate: 1%      Funding Rate: 3%

Report Generated by SmartProperty - www.smartproperty.com - All Rights Reserved. SmartProperty has not reviewed the data and information contained in this report for its accuracy or completeness and takes no responsibility whatsoever for the content contained herein. Such data and information shall be used at your own risk. Please refer to the end of the consolidated report for an important disclaimer.



## Hawaii Current Funding



**BARRERA AND COMPANY**  
RESERVE SPECIALISTS  
**Kauai Kailani Apartments**  
Kapaa, HI

Date: 20-Feb-2013

Units: 57

Fiscal Year End: 31-Dec-2012

Report Start Date: 01-Jan-2013

Current Funding: This option projects the Reserve Fund over the next 20 years based on a funding level equal to the Association's current assessments for reserve assets. If continued, this option should be reviewed annually and adjusted accordingly to ensure all future funding requirements will be met.

Year	Annual Funding Amount	Average Monthly Fee Per Unit	Beginning Cash	Annual Interest	Reserve Funds	Annual Disbursements	End Balance	Surplus / Deficit of Fully Funded Reserves	Projected % Funded Year End
2013	\$34,596	\$50.58	\$100,000	\$1,173	\$135,769	\$0	\$135,769	(\$21,009)	87%
2014	\$35,634	\$52.10	\$135,769	\$1,506	\$172,909	\$5,923	\$166,987	(\$65,673)	72%
2015	\$36,703	\$53.66	\$166,987	\$1,853	\$205,543	\$0	\$205,543	(\$113,694)	64%
2016	\$37,804	\$55.27	\$205,543	\$2,205	\$246,552	\$7,933	\$237,618	(\$165,008)	59%
2017	\$38,938	\$56.93	\$237,618	\$2,571	\$279,127	\$0	\$279,127	(\$220,023)	56%
2018	\$40,106	\$58.63	\$279,127	\$2,903	\$322,136	\$17,840	\$304,297	(\$278,431)	52%
2019	\$41,309	\$60.39	\$304,297	\$2,992	\$348,598	\$51,563	\$297,035	(\$339,652)	47%
2020	\$42,549	\$62.21	\$297,035	\$3,183	\$342,767	\$0	\$342,767	(\$405,295)	46%
2021	\$43,825	\$64.07	\$342,767	\$3,614	\$390,206	\$6,537	\$383,669	(\$475,144)	45%
2022	\$45,140	\$65.99	\$383,669	\$2,676	\$431,485	\$277,271	\$154,215	(\$542,668)	22%
2023	\$46,494	\$67.97	\$154,215	\$1,258	\$201,967	\$103,265	\$98,702	(\$613,555)	14%
2024	\$47,889	\$70.01	\$98,702	\$1,192	\$147,783	\$6,921	\$140,862	(\$689,490)	17%
2025	\$49,326	\$72.11	\$140,862	\$1,173	\$191,360	\$96,500	\$94,860	(\$767,979)	11%
2026	\$50,805	\$74.28	\$94,860	\$1,165	\$146,831	\$7,578	\$139,253	(\$851,847)	14%
2027	\$52,330	\$76.51	\$139,253	\$1,654	\$193,237	\$0	\$193,237	(\$941,082)	17%
2028	\$53,899	\$78.80	\$193,237	\$2,020	\$249,156	\$36,314	\$212,842	(\$1,034,993)	17%
2029	\$55,516	\$81.16	\$212,842	\$2,177	\$270,538	\$46,734	\$224,802	(\$1,133,760)	17%
2030	\$57,182	\$83.60	\$224,802	\$2,534	\$284,518	\$0	\$284,518	(\$1,238,810)	19%
2031	\$58,897	\$86.11	\$284,518	\$2,079	\$345,494	\$212,205	\$133,289	(\$1,344,897)	9%
2032	\$60,664	\$88.69	\$133,289	\$1,428	\$195,381	\$41,611	\$153,770	(\$1,457,484)	10%

Inflation Rate: 3%      Interest Rate: 1%      Funding Rate: 3%

Report Generated by SmartProperty - www.smartproperty.com - All Rights Reserved. SmartProperty has not reviewed the data and information contained in this report for its accuracy or completeness and takes no responsibility whatsoever for the content contained herein. Such data and information shall be used at your own risk. Please refer to the end of the consolidated report for an important disclaimer.

## Executive Summary



**BARRERA AND COMPANY**  
Kapaa, HI  
RESERVE SPECIALISTS

Date: 20-Feb-2013  
Units: 57  
Fiscal Year End: 31-Dec-2012  
Report Start Date: 01-Jan-2013

### For Homeowner Distribution

Number of Units: 57  
Budget Year Start: January 01, 2013  
Budget Year End: December 31, 2013  
Location: Kapaa, HI

### As of: 31-Dec-2012

Projected Reserve Fund Balance: \$100,000  
Projected Fully Funded Reserve: \$79,370  
Deficit Below Fully Funded Reserve: \$0 or \$0.00 Per unit  
Percentage Funded: 126%  
Current Replacement Cost: \$1,248,811

### Current Funding - Five Year Summary

	Allocation	Per Unit Per Month	Disbursements	Year-End Balance	Fully Funded \$	Percentage Funded
Year 1:	\$34,596	\$50.58	\$0	\$135,769	\$158,778	87%
Year 2:	\$35,894	\$52.10	\$5,923	\$166,987	\$232,660	72%
Year 3:	\$36,703	\$58.88	\$0	\$205,543	\$319,237	64%
Year 4:	\$37,804	\$55.27	\$7,933	\$237,618	\$402,627	59%
Year 5:	\$38,938	\$56.83	\$0	\$278,127	\$499,150	56%

Inflation Rate: 3%    Interest Rate: 1%    Funding Rate: 3%

Report Generated by SmartProperty - www.smartproperty.com - All Rights Reserved. SmartProperty has not reviewed the data and information contained in this report for its accuracy or completeness and takes no responsibility whatsoever for the content contained herein. Such data and information shall be used at your own risk. Please refer to the end of the consolidated report for an important disclaimer.

## Executive Summary



**BARRERA AND COMPANY**  
RESERVE SPECIALISTS  
**Kauai Kailani Apartments**  
Kapaa, HI

Date: 20-Feb-2013

Units: 57

Fiscal Year End: 31-Dec-2012

Report Start Date: 01-Jan-2013

### RESERVE COMPONENT WORKSHEET DEFINITIONS

- Component:** Identifies the item to be included for reserve funding.
- Service Life:** The estimated total life of a reserve component using published information and professional experience. For components in which the useful life should equal that of the project, no life expectancy has been projected (i.e. plumbing, framing, etc...)
- Remaining Life:** An estimate of expected remaining longevity of that component based on information provided, maintenance, visual inspection, and assumptions of probability. Projects anticipated to occur in the initial year have "zero" remaining useful life.
- Cost Per Unit:** The approximate amount of money it will take to replace the reserve component, per the measurement it is defined by (i.e. sf = Square Foot).
- Approximate Quantity:** The approximate total amount of the reserve component as it has been defined under Cost Per Unit.
- Current Replacement Cost:** This indicates the approximate cost of replacing the reserve component at the present time.
- Future Cost:** This indicates the estimated expenditure by the Association when the component is in need of repair or replacement. The future cost has been calculated on a 3.00% yearly inflation factor. It is assumed that any repairs or replacement of any reserve component below \$1,000 in any given year will be replaced from the operating account.

**Source Code:** The means by which the information for the reserve component has been obtained. Source is as follows:

- |                            |                         |
|----------------------------|-------------------------|
| 1 - Architect/Engineer     | 11 - Inspector          |
| 2 - Awaiting Information   | 12 - Maintenance Manual |
| 3 - Bid                    | 13 - Management         |
| 4 - Board of Directors     | 14 - Manufacturer       |
| 5 - Builder/Developer      | 15 - On File            |
| 6 - Contract               | 16 - Previous Study     |
| 7 - Contractor             | 17 - Special Assessment |
| 8 - Cost Estimating Manual | 18 - Specialist/Expert  |
| 9 - DRE Budget             | 19 - Vendor             |
| 10 - Industry Standard     |                         |

#### Percentage Funded and Parameters

**Percentage Funded:** This percent funded value presented in the data summary sheet is calculated by dividing the current (or projected) cash reserve savings by the Fully Funded reserve amount. The maximum reported percentage is 100%, and indicates an association is currently fully funded.

**Inflation/Interest:** Funding and disbursement projections presented have been computed with a Time Value of Money approach. Inflation was applied to the projected disbursements, and average interest to the ending cash balance values.

Assumed Annual Inflation Rate:   
Assumed Average Interest Rate:

Inflation Rate: 3%      Interest Rate: 1%      Funding Rate: 3%

# Component Report



**BARRERA AND COMPANY**  
**Kauai Kailani Apartments**  
 Kapaa, HI  
 RESERVE SPECIALISTS

Date: 20-Feb-2013  
 Units: 57  
 Fiscal Year End: 31-Dec-2012  
 Report Start Date: 01-Jan-2013

**Current Replacement Cost Total: \$1,248,811**

Component	Service Life	Remaining Life	Cost Per Unit	Approx Qty	Current Replace Cost	Future Cost	Source
<b>Asphalt &amp; Concrete Surfaces</b>							
Asphalt - Overlay (KK1)	25	25	\$3.00 / Square Feet	10,385	\$31,155	\$65,232	On File
Asphalt - Overlay (KK2)	25	20	\$3.00 / Square Feet	6,880	\$20,640	\$37,278	Inspector
Asphalt - Seal/Stripe & Repair (KK1)	5	5	\$0.75 / Square Feet	10,385	\$7,789	\$9,029	On File
Asphalt - Seal/Stripe & Repair (KK2)	5	3	\$0.75 / Square Feet	6,880	\$5,160	\$5,638	Inspector
Concrete - Repair Contingency	10	10	\$3,000.00 / Total	1	\$3,000	\$4,032	Inspector
<b>Totals</b>					<b>\$67,744</b>	<b>\$121,209</b>	
<b>Common Interior</b>							
A/C System	Maintenance / Operating						Awaiting Information
* Not located at time of inspection. Awaiting confirmation to include.							
Int. Furnishings - Check-in Area/Offices	12	12	\$6,000.00 / Total	1	\$6,000	\$8,555	On File
Laundry Facilities - TBD	To be Determined						Awaiting Information
* Awaiting status of this component to be included?							
Recreation Room - TBD	To be Determined						Awaiting Information
* Awaiting status of this component to be included?							
<b>Totals</b>					<b>\$6,000</b>	<b>\$8,555</b>	
<b>Elevators</b>							
Elevators (KK1/KK2) - Cab Refurbish	20	20	\$5,500.00 / Each	2	\$11,000	\$19,867	On File
Elevators (KK1/KK2) - New Construction (1-Time)	Other						On File
* New construction costs are considered a 1-time capital expense and are not included in the reserve funding plan. Upon completion of this work the components within this line item are to be reviewed and incorporated accordingly in future reserve plans.							
Elevators (KK1/KK2) - Testing/Maint.	Maintenance / Operating						On File
Elevators (KK1/KK2) - Upgrade Systems (3 Flrs)	25	25	\$125,000.00 / Each	2	\$250,000	\$523,444	On File
<b>Totals</b>					<b>\$261,000</b>	<b>\$543,312</b>	
<b>Fencing &amp; Gates</b>							
Aluminum Rails - KK1/KK2	30	30	\$85.00 / Linear Feet	1,800	\$153,000	\$371,371	On File
* KK1: wood rails and KK2 wood picket and stairwell rails to be replaced with aluminum during renovation.							
Pool Fencing - KK1	20	20	\$45.00 / Linear Feet	170	\$7,650	\$13,817	On File
Pool Fencing - KK2	20	20	\$45.00 / Linear Feet	158	\$7,110	\$12,841	On File
Pool Gates - KK1	20	20	\$250.00 / Each	3	\$750	\$1,355	On File
Pool Gates - KK2	30	30	\$250.00 / Each	1	\$250	\$607	On File
Trash Enclosure Gates	Maintenance / Operating						On File
<b>Totals</b>					<b>\$168,760</b>	<b>\$399,991</b>	
<b>Landscaping</b>							
Backflow Valve	Maintenance / Operating						On File
Irrigation System (clocks/valves, etc)	5	5	\$5,000.00 / Total	1	\$5,000	\$5,796	Management
Landscape Upgrades	Maintenance / Operating						On File
Tree Maintenance	Maintenance / Operating						On File

# Component Report



**BARRERA AND COMPANY**  
RESURFACING SPECIALISTS  
**Kauai Kailani Apartments**  
Kapaa, HI

Date: 20-Feb-2013

Units: 57

Fiscal Year End: 31-Dec-2012

Report Start Date: 01-Jan-2013

**Current Replacement Cost Total: \$1,248,811**

Component	Service Life	Remaining Life	Cost Per Unit	Approx Qty	Current Replace Cost	Future Cost	Source
					<b>Totals</b>	<b>\$5,000</b>	<b>\$5,796</b>
<b>Lighting:</b>							
Entry Fixtures - KK1	20	20	\$125.00 / Each	37	\$4,625	\$8,353	Inspector
Exit Fixtures			Maintenance / Operating				On File
Ext. Hallway Fixtures (Ceiling Cart) - KK2	25	25	\$100.00 / Each	18	\$1,800	\$3,769	Inspector
Ext. Hallway Fixtures (Wall-Top Fir) - KK2	25	25	\$125.00 / Each	9	\$1,125	\$2,358	Inspector
Ground Lighting	10	10	\$5,000.00 / Total	1	\$5,000	\$6,720	Management
Lanal Ceiling Fixtures - KK1	20	20	\$100.00 / Each	37	\$3,700	\$6,683	Inspector
Lanal Fixtures - KK2	25	25	\$125.00 / Each	20	\$2,500	\$5,234	Inspector
					<b>Totals</b>	<b>\$18,750</b>	<b>\$33,114</b>
<b>Mechanical Equipment:</b>							
Exhaust Fans (Roof)	20	10	\$1,000.00 / Each	2	\$2,000	\$2,688	Inspector
Sewer System - "Oxigest" Treatment	10	1	\$5,000.00 / Each	1	\$5,000	\$5,150	Awaiting Information
* Awaiting additional information from management and engineering in regards to life cycle and projected future costs.							
Storage Tanks (1/bldg)	25	10	\$2,500.00 / Each	2	\$5,000	\$6,720	Inspector
Water Heaters (1/bldg) - 80 Gal	10	5	\$1,300.00 / Each	2	\$2,600	\$3,014	Inspector
					<b>Totals</b>	<b>\$14,600</b>	<b>\$17,572</b>
<b>Miscellaneous</b>							
Barbecues	6	3	\$700.00 / Each	3	\$2,100	\$2,295	Inspector
Elasto (Recoat) - Hallways - KK1/KK2	6	6	\$3.00 / Square Feet	5,331	\$15,993	\$19,096	Awaiting Information
Elasto (Recoat) - Lanals - KK1/KK2	6	6	\$3.00 / Square Feet	7,080	\$21,240	\$25,362	Awaiting Information
Elasto (Resurface) - Hallways - KK1/KK2	24	24	\$16.00 / Square Feet	5,331	\$85,296	\$173,389	Awaiting Information
Elasto (Resurface) - Lanals - KK1/KK2	24	24	\$16.00 / Square Feet	7,080	\$113,280	\$230,275	Awaiting Information
Entry Doors (Units)	16	16	\$500.00 / Each	57	\$28,500	\$45,734	On File
Lanal Sliding Doors	25	25	\$1,600.00 / Each	57	\$85,500	\$179,018	On File
Mailboxes	18	18	\$100.00 / Each	57	\$5,700	\$9,704	On File
Metal Stair Tread over Wood - KK1	15	15	\$20.00 / Each	99	\$1,980	\$3,085	On File
Metal Stair Tread over Wood - KK2	15	15	\$20.00 / Each	67	\$1,340	\$2,088	On File
Signage			Maintenance / Operating				On File
TBD - FOB Reader System			To be Determined				Awaiting Information
* Awaiting status of this component to be included?							
TBD - Shuffleboard Courts			To be Determined				Awaiting Information
* Awaiting status of this component to be included?							
TBD - Termite Treatment	10	10	\$650.00 / Unit(s)	57	\$37,050	\$49,792	Awaiting Information
* Awaiting representation status of this component. Included for budgetary purposes only.							
Windows			Individual Homeowners Responsibility				Management
					<b>Totals</b>	<b>\$397,979</b>	<b>\$739,836</b>

# Component Report



**BARRERA AND COMPANY** **Kauai Kailani Apartments**  
Kapaa, HI  
BUSINESS OPPORTUNITIES

Date: 20-Feb-2013  
Units: 57  
Fiscal Year End: 31-Dec-2012  
Report Start Date: 01-Jan-2013

**Current Replacement Cost Total: \$1,248,811**

Component	Service Life	Remaining Life	Cost Per Unit	Approx Qty	Current Replace Cost	Future Cost	Source
<b>Painting:</b>							
Ext. Surfaces - KK1	9	9	\$1.50 / Square Feet	24,170	\$36,255	\$47,305	Management
* Completed during 2012 renovation project.							
Ext. Surfaces - KK2	9	9	\$1.50 / Square Feet	12,900	\$19,350	\$25,247	Management
* Completed during 2012 renovation project.							
Ext. Surfaces - Wood/Stucco Repairs	9	9	\$15,000.00 / Total	1	\$15,000	\$19,572	Management
* Completed during 2012 renovation project.							
Int. Surfaces (In-house)	Maintenance / Operating						On File
				<b>Totals</b>	<b>\$70,605</b>	<b>\$92,124</b>	
<b>Pools:</b>							
Pool (KK1) - Coping	30	30	\$25.00 / Linear Feet	87	\$2,175	\$5,279	On File
Pool (KK1) - Deck Repairs	25	25	\$12.00 / Square Feet	1,200	\$14,400	\$30,150	On File
Pool (KK1) - Filler	15	15	\$1,250.00 / Each	1	\$1,250	\$1,947	On File
Pool (KK1) - Pump/Motor	Maintenance / Operating						On File
Pool (KK1) - Resurface, plaster	12	12	\$10.00 / Square Feet	950	\$9,500	\$19,545	On File
Pool (KK1) - Tile Trim	20	20	\$30.00 / Linear Feet	87	\$2,610	\$4,714	On File
Pool (KK1/2) - ADA Lift Systems	10	10	\$6,000.00 / Each	2	\$12,000	\$16,127	Awaiting information
Pool (KK1/2) - Drain Safety System	Maintenance / Operating						On File
Pool (KK1/2) - Furnishings	6	6	\$175.00 / Total	34	\$6,950	\$7,105	On File
Pool (KK2) - Coping	30	30	\$25.00 / Linear Feet	82	\$2,050	\$4,976	On File
Pool (KK2) - Deck Repairs	25	25	\$12.00 / Each	954	\$11,448	\$23,970	On File
Pool (KK2) - Filler	15	15	\$1,250.00 / Each	1	\$1,250	\$1,947	On File
Pool (KK2) - Pump/Motor	Maintenance / Operating						On File
Pool (KK2) - Resurface, plaster	12	12	\$10.00 / Square Feet	900	\$9,000	\$12,832	On File
Pool (KK2) - Tile Trim	20	20	\$30.00 / Linear Feet	82	\$2,460	\$4,443	On File
				<b>Totals</b>	<b>\$74,093</b>	<b>\$127,035</b>	
<b>Roofing:</b>							
Built-in Gutters - KK1	25	19	\$15.00 / Linear Feet	710	\$10,650	\$18,675	Inspector
Built-in Gutters - KK2	25	19	\$15.00 / Linear Feet	332	\$4,980	\$8,732	Inspector
Built-up Roofing - KK1	15	9	\$600.00 / Squares	160	\$96,000	\$125,258	Inspector
Built-up Roofing - KK2	15	9	\$600.00 / Squares	73	\$43,800	\$57,149	Inspector
Downspouts - KK1	25	19	\$10.00 / Linear Feet	570	\$5,700	\$9,995	Inspector
Downspouts - KK2	25	19	\$10.00 / Linear Feet	240	\$2,400	\$4,208	Inspector
Fiberglass Sheet - KK1 (BBQ Area)	Maintenance / Operating						On File
Shake roof - KK2 (BBQ Area)	20	1	\$750.00 / Squares	1	\$750	\$773	Inspector
				<b>Totals</b>	<b>\$164,280</b>	<b>\$224,790</b>	
<b>Security &amp; Fire Systems</b>							
Fire System - Extinguishers	Maintenance / Operating						On File
Fire System - Hoses/Cabinets	To be Determined						Awaiting Information
* Awaiting status of this component to be included?							
Fire System - Panel	To be Determined						Awaiting Information

# Component Report



**BARRERA AND COMPANY**  
RESERVE SPECIALISTS  
**Kauai Kailani Apartments**  
Kapaa, HI

Date: 20-Feb-2013

Units: 57

Fiscal Year End: 31-Dec-2012

Report Start Date: 01-Jan-2013

**Current Replacement Cost Total: \$1,248,811**

Component	Service Life	Remaining Life	Cost Per Unit	Approx Qty	Current Replace Cost	Future Cost	Source
* Awaiting status of this component to be included?							
Fire System - Pull stations		To be Determined					Awaiting Information
* Awaiting status of this component to be included?							
Fire System - Standpipes (KK1 only)		To be Determined					Awaiting Information
* Awaiting status of this component to be included?							
Fire System - Testing/Repairs		Maintenance / Operating					On File
<b>Totals</b>					<b>\$0</b>	<b>\$0</b>	

**DISCLAIMER**

SmartProperty has not reviewed the data and information contained in this report for its accuracy or completeness and takes no responsibility whatsoever for the content contained herein. Such data and information shall be used at your own risk. THIS REPORT AND ALL DATA AND INFORMATION CONTAINED IN THIS REPORT ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND SUBJECT TO THE TERMS AND CONDITIONS CONTAINED IN THIS DISCLAIMER. YOUR USE OF THIS REPORT SIGNIFIES YOUR AGREEMENT TO THE TERMS AND CONDITIONS CONTAINED IN THIS DISCLAIMER. SMARTPROPERTY DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO: (1) ANY WARRANTIES CONCERNING THE ACCURACY, USEFULNESS OR CONTENT OF ANY DATA AND INFORMATION AND (2) ANY WARRANTIES OF TITLE, WARRANTY OF NON-INFRINGEMENT, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, NEITHER SMARTPROPERTY NOR ANY OF ITS EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, AFFILIATES, LICENSORS, REPRESENTATIVES OR SERVICE PROVIDERS SHALL BE LIABLE TO YOU OR ANY OTHER THIRD PARTY FOR ANY DAMAGE, LOSS OR EXPENSE OF ANY KIND RELATING TO OR ARISING OUT OF USE OF THIS REPORT OR ANY DATA AND INFORMATION CONTAINED IN THIS REPORT REGARDLESS OF WHETHER SUCH LIABILITY IS BASED IN TORT, CONTRACT, BREACH OF WARRANTY OR OTHERWISE. IN NO EVENT SHALL SMARTPROPERTY OR ANY OF ITS EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, AFFILIATES, LICENSORS, REPRESENTATIVES OR SERVICE PROVIDERS BE LIABLE TO ANY PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL OR OTHERWISE, RELATING TO OR ARISING FROM USE OF THIS REPORT OR ANY DATA AND INFORMATION CONTAINED IN THIS REPORT, EVEN IF SMARTPROPERTY OR ANY OF ITS EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, AFFILIATES, LICENSORS, REPRESENTATIVES OR SERVICE PROVIDERS ARE EXPRESSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IN SUCH STATES, THE RESPECTIVE LIABILITY OF SMARTPROPERTY, ITS EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, AFFILIATES AND SERVICE PROVIDERS IS LIMITED TO THE GREATEST EXTENT PERMITTED BY SUCH STATE LAW.



## EXHIBIT O

### SUMMARY OF SALES CONTRACT

NOTE: ALL PURCHASERS AND PROSPECTIVE PURCHASERS SHOULD READ WITH CARE ALL PROVISIONS OF THE ESCROW AGREEMENT AND THEIR SALES CONTRACT, AND DISCUSS THEM WITH THEIR LEGAL AND TAX ADVISORS TO BE SURE THAT THEY FULLY UNDERSTAND THESE IMPORTANT LEGAL DOCUMENTS. THE SUMMARIES OF THE ESCROW AGREEMENT AND SALES CONTRACT CONTAINED IN EXHIBITS O AND P ARE NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THOSE DOCUMENTS BUT ONLY A SUMMARY OF SOME KEY PROVISIONS OF THOSE AGREEMENTS. IN ADDITION, SOME PROVISIONS OF THE SALES CONTRACT ARE ADDRESSED ELSEWHERE IN THIS PUBLIC REPORT (FOR EXAMPLE, EXHIBIT Q, DEALING WITH WARRANTIES). PURCHASERS AND PROSPECTIVE PURCHASERS MUST REFER TO THE ESCROW AGREEMENT AND THEIR SALES CONTRACT TO DETERMINE THEIR RIGHTS AND OBLIGATIONS AND TO DETERMINE THE SPECIAL MEANING OF TERMS THAT ARE DEFINED IN THE ESCROW AGREEMENT OR THE SALES CONTRACT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THE SUMMARIES CONTAINED IN EXHIBITS O, P OR ELSEWHERE IN THIS PUBLIC REPORT ON THE ONE HAND, AND THE ESCROW AGREEMENT AND/OR SALES CONTRACT ON THE OTHER HAND, THE ESCROW AGREEMENT AND/OR SALES CONTRACT WILL GOVERN.

Capitalized terms used in this Exhibit have the meaning given to them in the Kauai Kailani Purchase Agreement (the "Sales Contract").

1. The specimen Sales Contract filed with the State of Hawaii Real Estate Commission provides for, among other things, a description of the Condominium Unit to be sold, a list of any appliances and furnishings included in the sale, the Purchase Price, the closing costs, the time, manner and place of payment, the Purchaser's obligations regarding financing, the Sellers warranties and disclaimers regarding the Condominium Map and the Project, and the remedies of the Seller and of the Purchaser in the event of a default under the Sales Contract.
2. §514B-86, HRS, gives you a thirty-day right to cancel your Sales Contract. The cancellation period may end earlier if you waive it or in certain other circumstances. (See Section 5.8.1 of this Public Report for details). At any time before your Sales Contract becomes binding, either party may terminate it by written notice to the other party. In such event, Seller will instruct Escrow to refund all payments previously made by you, and neither party shall have any other or further liability under the Sales Contract or with respect to the Project.
3. The Seller has entered into an Escrow Agreement, summarized in Exhibit "P", with Old Republic Title & Escrow of Hawaii, Ltd., a Hawaii corporation ("**Escrow**"), covering the deposit with Escrow of all funds paid by you under your Sales Contract and the disbursement of the funds by Escrow. Escrow may charge a cancellation fee on account of escrow services performed, not to exceed \$250. All interest earned on funds in escrow shall be paid to Seller and will not be credited against the Purchase Price or Additional Charges.
4. The Sales Contract requires that you pay the Purchase Price by a series of payments prior to Closing, including an initial payment when you sign the Sales Contract and an additional deposit. You must then deposit the remaining balance due four (4) business days prior to the Scheduled Closing Date, subject to loan requirements set forth in your Sales Contract.
5. Within (30) calendar calendar days after Seller signs your Sales Contract (the "**Effective Date**"), you must submit to Seller a Qualification Letter, in form and content acceptable to Seller (in Seller's discretion), issued by a Qualification Agent. Only a Qualification Letter issued by a Qualification Agent designated or otherwise approved by Seller will satisfy this obligation.

6. If you apply for a Qualification Letter and diligently pursue your application as required by the Sales Contract, but you cannot obtain one in form and content acceptable to Seller (in Seller's sole, absolute and unfettered discretion) within thirty (30) calendar days after the Effective Date, then both Seller and you have the right to terminate your Sales Contract, in which case Escrow will refund all money previously paid by you less Escrow's cancellation fee and any other expenses actually incurred by reason of your having signed your Sales Contract.

7. If you plan to pay part of the Purchase Price using a mortgage loan, then you will be solely responsible for taking all necessary and appropriate steps as requested from time to time by (A) the Qualification Agent, (B) a lender arranged for, by or through the Qualification Agent, or (C) any other lender that you choose (the applicable one of (A), (B), or (C) being your "**Permanent Lender**") to complete the process of applying for and obtaining a mortgage loan (your "**Permanent Loan**").

8. If (a) you obtain a Qualification Letter acceptable to Seller, and (b) you waive your cancellation right under §514B-86, HRS, or are deemed to have waived it, then you will be responsible to pay the Purchase Price of the Property. **EXCEPT AS PROVIDED IN PARAGRAPH 6, ABOVE, YOUR OBLIGATIONS UNDER YOUR SALES CONTRACT ARE NOT CONTINGENT OR CONDITIONED ON YOUR ABILITY TO SECURE FINANCING FROM A MORTGAGE LENDER OR ON YOUR ABILITY TO SELL YOUR CURRENT RESIDENCE OR ANY OTHER PROPERTY OR ASSETS OR ON OBTAINING THE INTEREST RATE THAT YOU DESIRE.** The sale and purchase of the Property is not contingent upon your ability to retain the interest rate quoted at the time of approval of the Qualification Letter or your Permanent Loan, and you must pay the interest charged by your Permanent Lender at the Close of Escrow. Seller has no responsibility to provide or arrange financing for all or any part of the Purchase Price.

9. The Sales Contract includes Seller disclosures and Buyer acknowledgments of various conditions pertaining to the Project and the sale of the Property, including the following:

a. The Project is a fee simple beachfront condominium project. The beach is public property. The Project currently consists of two (2) buildings constructed in the late 1960s or 1970s by someone other than the Seller. The Orchid Building fronts on the beach; the Plumeria Building does not.

b. Seller has rented or plans to rent the units in the Project, including your Unit, for transient vacation rental purposes until they are sold and the sale has closed. As a result, on the Date of Closing, the Property may be delivered to you

subject to the rights of any guest then occupying your Unit (and you agree to accept title to the Property subject to such rights), which occupancy shall not extend more than ten (10) days beyond the Date of Closing. In order to avoid any violation of securities laws, you agree that Seller may keep all amounts paid by guests who are occupying your Unit as of the Date of Closing. You acknowledge and accept that, as of the Date of Closing, your Unit may have been previously occupied, and its Furnishings and lanai(s) used by the occupants of your Unit, such that the Property will no longer be in new and unused condition.

c. Seller or the Architect may have made and may make such changes in the plans and specifications as it deems appropriate at any time, to accommodate any in-the-field construction needs as more fully discussed in this Section and in response to recommendations or requirements of local, state or federal governmental or quasi-governmental agencies or applicable utility and/or insurance providers. Such plans and specifications, as they are so amended, are referred to in your Sales Contract as "**Seller's Plans and Specifications**". The changes described above and changes in the dimensions of rooms, lanai(s), in the location of windows, doors, walls, partitions, utility (including, but not limited to, television, internet, intranet, antennae and other technologies equipment and wiring and telephone, if any) lead-ins and outlets, air-conditioning equipment, ducts and components (if any), lighting fixtures and electric panel boxes, and in the general layout of your Unit and its lanai(s), other units, and Project, may have been or may hereafter be made by Seller or its Architect in their respective discretion. In furtherance of the understanding and agreement stated above, you acknowledge and agree that it is a widely observed construction industry practice for pre-construction plans and specifications for any unit or project to be changed and adjusted from time to time in order to accommodate on-going, "in the field" construction needs and/or "value engineering" or budgetary needs. These changes and adjustments are essential in order to permit all components of the units and the rest of the Project to be integrated into a well-functioning, aesthetically pleasing and economically viable product in an expeditious and cost-effective manner. Because of the foregoing, you acknowledge, accept and agree that it is to your benefit to allow Seller the flexibility to make such changes in your Unit, its lanai(s), and elsewhere in the Project. You also acknowledge and agree that (i) the plans and specifications for your Unit, its lanai(s), other units and the Project on file with the applicable governmental authorities may not, initially, be identical in detail to Seller's Plans and Specifications, and (ii) because of the day-to-day nature of the changes described in this Section, the plans and specifications on file with applicable governmental authorities may not include some or any of these changes (there being no legal requirement to file all changes with such

authorities). As a result of the foregoing, you and Seller both acknowledge and agree: **The Unit, its lanai(s), and the Project may not be constructed in accordance with the plans and specifications on file with applicable governmental authorities. Without limiting the generality of Section 7(e) of the Sales Contract (warranty disclaimers), Seller disclaims and you waive any and all express or implied warranties that construction has been or will be accomplished in compliance with such plans and specifications. Seller has not given and you have not relied on or bargained for any such warranties. In furtherance of the foregoing, in the event of any conflict between the actual construction of your Unit, its lanai(s), and/or any other part of the Project, and that which is set forth in the plans and specifications, you agree that the actual construction shall prevail and to accept your Condominium Unit and the rest of the Project as actually constructed (in lieu of what is set forth in the plans and specifications).**

d. The Unit and/or its lanai(s) may be or may have been constructed as a reverse ("mirror image") of that illustrated in the floor and building plan of the applicable model and building (as shown in the Condominium Documents or in any illustrations of the models and/or the Project); and may be "sited" in a position different from that of the applicable models and floor and building plan (or any such illustrations).

e. The Declaration reserves to the Seller extensive rights to remodel and expand the Project (see the description of Phases 3 – 7 in the Declaration). Seller is not currently planning to proceed with the development of Phases 4 – 7 but has the right to do so.

f. Subject to certain limits, Seller can modify the Condominium Documents, the form of Deed and other documents as may be required by law, any title insurance company, any institutional mortgagee or any governmental agency, or as otherwise may be deemed appropriate by Seller.

g. The Architect may have increased or decreased the thickness of any wall within your Unit or its lanai(s), resulting in the room dimensions becoming smaller or larger than those shown on the Condominium Map. Seller may require alterations to the Project (and the Condominium Documents) to change the configuration of, to alter the number of rooms of, to decrease or increase the size of, or to change the location of any other unit and/or parking area, and to make other minor changes in your Unit, its lanai(s), any of the other units or the common elements of the Project (the "**Common Elements**"). Seller may increase or decrease the number of parking stalls in the Project.

h. Exhibit I to this Public Report lists the encumbrances on title to the Project as of the date stated in it. You should carefully review these encumbrances since some of them may affect your rights and interests in the Project. When you receive a title report in connection with the Closing, you should also read any additional encumbrances shown in it. Your purchase is in all respects subject to the Project Documents and such other encumbrances.

i. Seller has made no promises, representations or assurances to you regarding the pricing, size, design or configuration of any units in the Project other than your Condominium Unit. You acknowledge that as market conditions or other facts change, these matters may be subject to change, including reduction in prices of such other units in the Project or sales incentives offered in connection therewith, and changes in size, design or product type of such other units in the Project. Neither Seller nor the contractor is obligated to agree to provide extras or options for your Unit, its lanai(s), or its Furnishings, including any extras or options shown in any model unit.

j. Neither Seller nor any of its authorized agents, representatives or employees has made any representations, warranties or promises concerning any views, present or future, that may be enjoyed from all or any part of your Unit, its lanai(s) or the Project or concerning any natural light that may be available with respect to your Unit or its lanai(s). The natural light in and views from your Unit, its lanai(s) or Project may change, be affected or obstructed by various factors.

k. Any sum estimated for taxes or insurance affecting your Condominium Unit or the Project may increase or decrease depending upon fluctuation of real property taxes or insurance rates. You should be aware that the government recently increased federal flood insurance rates significantly and is likely to continue to do so in the future.

l. Mold and mold spores are present throughout the environment and residential condominium construction cannot practicably be designed to exclude the introduction of mold spores. All mold is not necessarily harmful, but certain strains of mold have been found to have adverse health effects on susceptible persons. Seller cannot ensure that mold and mold spores will not be present in the Project, particularly given its oceanfront setting. Seller shall not be liable for any actual, special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory, with respect to the presence and/or existence of molds, mildew and/or microscopic spores at the Project unless caused by the sole negligence or willful misconduct of Seller.

m. The views from each unit, height of the unit above the ground level, exposure to morning, afternoon or evening sun, exposure to prevailing and non-prevailing winds and rain, exposure to other natural and human-made environmental factors (for example, exposure to noise or fumes from vehicular traffic emanating from within the Project or from neighboring driveways, streets or highways [including but not limited to traffic on Kuhio Highway], sounds of crashing surf, pedestrian traffic, child or adult play, related music and activities, noise, dust, smoke, odors, surface water runoff and other things emanating from other units or their lanais, the barbeque areas, the Gazebo, the pools, pool decks, walkways and grounds, lobby areas, other common areas, the ocean, the beach, or other neighboring properties, exercise of traditional native Hawaiian ceremonies, remodeling, construction and/or landscaping of future phases, construction, landscaping, operation and maintenance of Neighboring Developments, construction and maintenance of electrical transmission and other utility lines and facilities within or in the vicinity of the Project, irrigation of the Project or neighboring properties with reclaimed water, treated effluent, or other non-potable water sources, vog, agricultural uses of neighboring properties [including cattle and livestock grazing, sugar cane milling, burning, harvesting and tending, as well as fertilization and pest and weed control], salt spray from the ocean, and so on), proximity of the units to elevators, trash chutes, and stairwells, proximity of parking stalls to units intended to comply with the Americans With Disabilities Act ("ADA"), suitability of the units for various kinds of disabilities, and so on, all differ depending on the orientation, nature, design and location of the unit and the building in which it is located, as well as on other factors. **All units may be subject to some or all of these factors. For the most part Seller has no control over these factors and, in any case, Seller makes no representations or warranties with respect to the presence, absence, impact, lack of impact, intensity, timing, duration, affect, or anything else arising from or relating to any of these kinds of things. Seller has not authorized the Project Broker or anyone else to make any such representations or warranties on Seller's behalf.**

n. Living in a multi-story, mixed-use resort condominium project entails living in very close proximity to other persons and businesses, with attendant limitations on solitude and privacy. Owners may hear noise from adjacent units within the Project or from the hallways including, but not limited to, noise from showers, bathtubs, sinks, toilets or other sources of running water and/or plumbing fixtures. Occupants of units on the lower floors are likely to hear noise from the units above them, especially since the Project is constructed partly with wood. Also, owners may hear noise from things like the beach, the pools, BBQ areas, vacuum cleaners, stereos or televisions, or from

people running, walking, exercising or socializing. Units located in the immediate vicinity of the elevator doors, shafts or equipment rooms on each level of the Orchid Building may be prone to greater noise, vibrations, and other nuisances associated with the normal operation of the elevators than units located further away from the elevator doors, shafts or equipment rooms. Also during certain hours of the day there may be delays in the elevator servicing each floor as a result of high traffic loads and/or in the event of servicing and/or repairs to the elevator. The levels of sound, music, noise, odors and other nuisances may be greater for units used for time sharing, fractional ownership or transient vacation rental purposes. Seller has no control over the neighboring properties, the beach, or persons using the beach or the ocean. Changes in neighboring properties or Kuhio Highway also may change noise levels and the amount of pedestrian and vehicular traffic and attendant noise and fumes may increase. Owners may also have light entering the units from lighting in the vicinity and from street lights located in close proximity to the window and doors of the units.

o. Your Sales Contract is not a present transfer of any interest in the Property, but rather is an agreement to transfer in the future. The Sales Contract provides that you waive, relinquish, and subordinate the priority or superiority of any lien or other legal or equitable interest arising under your Sales Contract in favor of the liens or charges on the Project and the security interests of each of the Seller's mortgage lenders (each, a "Lender"), including but not limited to any lien, mortgage or other charge securing any loans made to finance the acquisition of the land, the costs of construction and/or remodeling, any other costs during such construction and/or remodeling, and any and all advances therefor, whether contractual or voluntary, until the final closing and delivery by Seller of your deed to you.

p. Your Sales Contract provides that you consent to Seller's assignment to Seller's Lender, as security, of Seller's interests in your Sales Contract and your deposits with Escrow, and agree that in the event Lender (or its successors in interest) acquires Seller's interest your Sales Contract and/or your deposits pursuant to said assignment, that you will, at Lender's option, perform to, attorn to and recognize Lender (and its successors in interest, if any) as Seller under your Sales Contract.

q. Remodeling of the Plumeria Building and the Orchid Building has been completed.

r. You are buying a completed Unit. Remodeling of the Plumeria Building was substantially completed in 2013 and remodeling of the Orchid Building was substantially completed in 2015. The Seller is not related to the contractor who performed

the remodeling (the "**General Contractor**"). Any model shown to you is provided only for illustration and Seller shall not thereby be required to deliver your Unit or its lanai(s) in exact accordance therewith. None of the appurtenances and furnishings shown in any model is included in your Sales Contract, unless Seller agrees in writing to deliver the same for part of the Purchase Price. The usable or living area, location and configuration of your Unit, its lanai(s), and all improvements of the Project may fluctuate from that shown on the Condominium Map or from that shown or displayed to you in any drawings, plans or models. Despite models or drawings shown to you, Seller has made no representations, warranties or assurances to you regarding the size, height, location or composition of any improvement on or adjacent to the Project. Seller may substitute the materials, appliances and other items in your Unit, its lanai(s), and the Project with materials, appliances and other items of substantially equal quality and utility. Such substitutions may include kitchen appliances, household fixtures, electrical outlets and switches, hardware, wall and countertop surfaces, paint, floor coverings, and other similar items. Seller may make such substitutions without adjustment to the Purchase Price. Your consultation by Seller or Seller's agents shall not waive Seller's rights to make any change contemplated or provided herein. If Seller is unable to complete or install in your Unit or its lanai(s) any optional item, decorator item, fixture, furnishing or other improvement, and such failure is caused by circumstances beyond Seller's reasonable control, the Close of Escrow shall not be delayed. The incomplete items shall be completed by Seller as soon as reasonably possible after the Close of Escrow.

s. In the Sales Contract, you acknowledge that (i) the budget attached as Exhibit N to this Public Report was prepared by Castle Resorts & Hotels, Inc., and not by the Seller, (ii) that such amounts are only estimates, and (iii) that they are subject to change for various reasons. You accept and approve any such changes. **YOU AGREE THAT SUCH ESTIMATES ARE NOT INTENDED TO BE AND DO NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY BY SELLER, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF SUCH ESTIMATES OR FUTURE MAINTENANCE CHARGES AND ASSESSMENTS. YOU FURTHER ACKNOWLEDGE THAT MANAGING AGENTS SEEM TO HAVE A HARD TIME PREDICTING THE MAINTENANCE FEES FOR NEW CONDOMINIUMS AND IT IS COMMON FOR MAINTENANCE CHARGES AND ASSESSMENTS TO BE HIGHER THAN INITIALLY ESTIMATED, FREQUENTLY BY 10 TO 20% OR MORE IN EACH OF THE FIRST FEW YEARS AFTER AN ASSOCIATION STARTS OPERATING. YOU ACCEPT THE RISK THAT THE ACTUAL MAINTENANCE FEES MAY BE HIGHER THAN PROJECTED AND YOU AGREE THAT YOU**

**WILL HAVE NO RIGHT TO CANCEL YOUR SALES CONTRACT OR, AFTER CLOSING, TO RESCIND YOUR PURCHASE OF THE PROPERTY BY REASON OF ANY SUCH INCREASE IN THE MAINTENANCE FEE FOR THE CONDOMINIUM UNIT.**

t. **NO WALL COVERINGS, FLOOR COVERINGS, WINDOW COVERINGS, CHANDELIERS OR OTHER FURNITURE, FURNISHINGS OR APPLIANCES (other than those specified in Exhibit A to your Sales Contract), WHETHER OR NOT INCLUDED IN ANY MODEL UNIT, ADVERTISING MATERIALS OR ARTISTIC RENDERINGS, ARE INCLUDED IN YOUR UNIT OR WITHIN THE PURCHASE PRICE FOR THE PROPERTY.**

u. The photos, building model, vignettes, and computer renderings shown and included in any sales or marketing materials for the Project are for illustrative purposes only and are not intended as a warranty or representation by Seller. Seller is not remodeling any unit to the precise specifications or design of any rendering or other preliminary plans which may be shown or depicted in any sale or marketing materials for the Project or otherwise. Rather Seller is remodeling each unit as part of the overall Project. Any floor plan for a unit in the Project depicted in any sales or marketing materials for the Project is shown for illustration and is not intended to be an exact replica of the unit as it is or will be built or remodeled. The landscaping and certain portions of the surrounding areas or recreation areas shown in the computer or artist's rendering in any sales or marketing materials for the Project include in some instances a depiction which shows mature landscaping and intentionally omits the neighboring areas for illustrative purposes only and does not reflect how the actual project landscaping MAY look when it has gained maturity or the lack of neighboring areas. None of the appurtenances and furnishings shown or depicted in any unit in any sales or marketing materials for the Project is included with your Condominium Unit unless expressly provided in your Sales Contract.

v. Under §514B-87 of the Act, you have the right to rescind your Sales Contract if there is a material change in the Project. The Act defines "material change" as a change that directly, substantially and adversely affects the use or value of (i) your Unit or its appurtenant limited common elements, or (ii) those amenities of the Project available for your use. The rescission right does not apply, however, to additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of the Project, made pursuant to the terms of the Declaration. §514B-3 of the Act defines "material fact" 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. Under §514B-94(a) of the Act, the Seller may not (i) Knowingly authorize, direct, or aid in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any project offered for sale or lease; or, (2) Issue, circulate, publish, or distribute any advertisement, pamphlet, prospectus, or letter concerning a project that contains any false written statement or is misleading due to the omission of a material fact. A sale made in violation of §514B-94(a) is voidable at the election of the Buyer, but no action may be brought after two years from the date of the sale.

w. You and Seller agree that it is not the intent or agreement of the parties that you will have an option to rescind your Sales Contract or your purchase of the Property in the event of a downturn in the real estate market. Instead, it is the intent and agreement of the parties that, after your Sales Contract becomes binding, you will bear the risk that the value of the Property will be stagnant or decline. As an essential inducement to Seller to enter into your Sales Contract with you, you and Seller stipulate and agree that: (A) For purposes of Section 514B-94 of the Act, the "date of the sale" shall be the date upon which you waive or are deemed to have waived your Cancellation Right; (B) For purposes of Section 514B-94(a) of the Act, the determination of whether any fact, defect, or condition constitutes a "material fact" (meaning 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) will be based on whether the fact, defect or condition would have measurably affected the value as of the date upon which you waive or are deemed to have waived your Cancellation Right; and (C) For purposes of Section 514B-87 of the Act, the determination of whether there has been a "material change" (meaning any change that directly, substantially, and adversely affects the use or value of: (i) your Unit or its appurtenant limited common elements, or (ii) those amenities of the Project available for your use) will be based on whether the change would have directly affected such use or value as of the date upon which you waive or are deemed to have waived your Cancellation Right.

x. Units and lanais situate on the ground floor of the Plumeria Building experienced significant flooding in 2012. The General Contractor has taken certain steps to remove and replace or to repair any damaged drywall and certain common elements in or between such units. However, neither the concrete floor slab nor wood studs and framing were removed or replaced. The Architect's plans for remodeling called for installation of certain improvements intended to prevent flooding from recurring in similar circumstances in the future. These

improvements depend for their effectiveness on closing certain openings during periods of heavy rain. **The Seller makes no representations or warranties (1) that such units and common elements are free of any and all damage resulting from such flooding, including the risk of mold and mildew damage, and (2) that any flood prevention measures (i) will be effective; (ii) will prevent all losses; or (iii) will provide the protection that they are designed or intended to provide.** You assume and accept the risk of residual damage from the 2012 flooding and the risk of future flooding and you agree to indemnify and hold Seller harmless from any and all loss, damage and expense suffered or incurred as a result thereof.

y. Under Hawaii law, the beach and any other land located on the ocean side of the shoreline belongs to the State. From time to time, the location of the shorelines around the islands tend to move due to ocean currents, waves, and other natural forces. Prior to the establishment of the Project as a condominium, the Developer asked the State of Hawaii to certify the location of the shoreline for the land of the Project. After inspecting the property in February, 2013, the State sent a letter requiring, among other things, that the Developer "Resolve the encroachments of the concrete wall and short wooden retaining structures" located on the State's land. These were located along the boundary between the Project and a neighbor's property, with the bulk of the wall located on the neighbor's side of the lot line. By the date of the State's letter, however, most of the wall was located on State land due to the fact that the shoreline (and the boundaries of the waterfront lots) had moved mauka from its original location. In response to the State's requirement, the Developer removed the concrete wall or "groin" and wooden retaining structures. Subsequently, the shoreline moved again and so the Developer added disclosures to the public report specifically addressing the new erosion. The Association filed a lawsuit against the Developer and certain companies and persons associated with the Developer, Civil No. 16-1-0176 (the "Lawsuit"). On March 9, 2017, the court dismissed the Lawsuit without prejudice. The Developer and the Association signed a settlement agreement dated June 21, 2017 (the "Non-Erosion Agreement"), in which the Developer agreed to make certain payments to the Association, to install an elevator, to make certain corrections to the Project, and to limit sales of parking stalls. The Developer and the Association signed a settlement agreement dated October 23, 2017 (the "Erosion Agreement"), in which the Developer agreed to make certain payments to the Association. In return, the Association, for itself and on behalf of each Owner of a Unit in the Condominium, released and discharged the Developer for all past, present and future claims and causes of action of any kind or nature, whether known or unknown. A more detailed disclosure is provided in Exhibit R of this Public Report.

It is incumbent on the Purchaser to read and digest the information provided in Exhibit R.

z. The shoreline and the adjacent public beach experienced significant erosion subsequent to the removal of the concrete wall or groin as discussed in Section 9.y, above. To reduce or prevent future erosion, the Association desires to construct or install a hardened wall or "groin" like the concrete groin that was removed several years ago. The Association also desires to restore the sand on the beach in front of the Project to a condition comparable to the beach as it existed before the concrete groin was removed. The Association and the Developer anticipate that construction or installation of a new groin or other shoreline protection barrier is a process that includes multiple approvals across County, State and Federal agencies. To avoid further erosion while seeking such governmental approvals, the Association arranged for the construction of an interim barrier along the shoreline of the Project, called the Shoreline Protection Feature ("SPF"). **The Seller makes no representations or warranties: (1) that the Association will be able to obtain all the governmental approvals that it desires or when it will know whether it can obtain them, or (2) that the SPF and any other erosion protection measures (i) will be effective; (ii) will prevent all losses; or (iii) will provide the protection that they are designed or intended to provide.** You assume and accept the risk of future erosion and you agree to indemnify and hold Seller harmless from any and all loss, damage and expense suffered or incurred by you as a result thereof.

aa. The Developer has installed an elevator in the Orchid Building. The Association will pay all costs to maintain and operate the elevator and related improvements as a common expense. Although the 2018 Operating Budget did not include any elevator expenses or reserves, future budgets are likely to add this. As a result, the maintenance fees for the owners of units in the Orchid Building may increase to account for the maintenance and/or repair of this elevator. As a condition to issuing the permits required for the installation of the elevator in the Orchid Building, the County of Kauai required that the Association enter into an Indemnification Agreement dated December 12, 2016, recorded as Document No. A-62390548. The Indemnification Agreement is intended to satisfy the requirements of Section 8-27.7(b)(3) of the Kauai County Code, which provides: "The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion control or shoreline hardening structure and/or landscaping shall not be allowed to protect the permitted structure during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation located more than forty (40) feet from the shoreline." The Indemnification Agreement may constitute an impediment to the Association's

plans to construct or install a hardened wall or "groin" like the concrete groin that was removed several years ago. There are no plans to install an elevator in the Plumeria Building.

bb. The long term volcanic activity/eruptions from Kilauea volcano on the Island of Hawai'i has resulted in emissions into the air which are commonly called "vog". Vog refers to a type of air pollution or volcanic smog created by the gases emitted into the air from the ongoing volcanic eruption mixing with water vapor and very small particles which are primarily sulfur compounds and sulfur dioxide. Vog is the haze you sometimes see in the air in Hawai'i. Vog becomes thicker or lighter depending upon the amount of emissions from Kilauea volcano, the direction and amount of wind, and other weather conditions. People with pre-existing respiratory conditions are more prone to adverse effects from vog which may include: headaches, breathing difficulties, increased susceptibility to respiratory ailments, watery eyes, and sore throat, but the long-term health effects of vog are currently unknown, at least to Seller. Since the weather, wind direction and amount of volcanic activity vary from day to day it is not possible to provide specific guidance regarding when the vog will be heavy or light. Upon request, Seller will give you a copy of the publication from the County of Hawai'i entitled "Emissions from Kilauea Volcano (March 2008)" which contains a brief summary of the health hazards and protective measures relating to vog. Having been apprised of the foregoing condition and risk, by acquiring the Condominium Unit, you agree to accept this condition and to assume all risks associated with it, and to give up (in legal terms, "waive, release and discharge") any rights, claims or actions that you may have, now or in the future, against Seller and the Seller's representatives, successors and assigns, and arising directly or indirectly out of or from the presence of vog on or in the vicinity of the Project.

10. You or your agent must inspect your Unit, its lanai(s), and its Furnishings on a date and at a time specified by Seller in a written notice to you. Upon completion of such inspection, you must sign or to cause your agent to sign an inspection sheet to be furnished by Seller or the contractor which shall list all defects or damages (except normal wear and tear) to your Unit, its lanai(s), and its Furnishings, if any, as well as any missing items. You agree to accept possession of the Property and proceed with closing your purchase of the Property pursuant to your Sales Contract despite the existence of any such defects, damages or missing items, so long as they do not render your Unit uninhabitable. If you or your agent do not inspect your Unit, its lanai(s), or its Furnishings on the date and time scheduled, you will be deemed to have accepted the Property in its **AS-IS** condition.

11. If, as a result of your act, failure to act or default, Escrow is not in a position to close on the Scheduled Closing Date, and if Seller elects not to terminate your Sales Contract, then (i) you must pay Seller Two Hundred-Fifty Dollars (\$250) per day for each day that the Close of Escrow is delayed, and (ii) all taxes, assessments, and other prorations shall be prorated as though Date of Closing had occurred on the original Scheduled Closing Date.

12. All taxes, assessments and charges of any kind assessable against the land or buildings or units will be prorated as of the Date of Closing in most cases. Seller will pay for its own acknowledgment fees, and one-half (½) of the escrow fee. You must pay all other closing costs.

13. You also must pay (i) a Project start-up fee (for the Association) in an amount fixed by multiplying one month's estimated maintenance fees for the Condominium Unit by 3, plus (ii) one month's estimated maintenance fee for your Condominium Unit.

14. You will be in default under your Sales Contract if (i) you fail to make a payment when due (including non-payment due to failure or refusal of your Permanent Lender to fund your Permanent Loan when required under Section V of your Sales Contract), or (ii) you fail to keep any of your other promises or to perform any of your other obligations under your Sales Contract, or you fail to do so on time. If you do not cure your default within the time allowed by your Sales Contract then Seller, may terminate your Sales Contract and either may retain all sums paid by you under your Sales Contract, together with all accrued interest thereon, as liquidated damages or pursue any other remedies permitted at law or in equity.

15. Seller will be in default under your Sales Contract if Seller fails to perform any material obligation of Seller under your Sales Contract and such failure continues for twenty (20) days

after you give written notice to Seller of such failure or within such additional time as may reasonably be required by Seller to cure its default.

a. If Seller violates §514B-94 of the Act after your Sales Contract becomes a legally binding contract, you agree that your sole remedy (except any remedies that, by law, you cannot waive or be required to waive) shall be rescission of your Sales Contract pursuant to §514B-94 of the Act, pursuant to which you will be entitled, upon reconveyance of the Condominium Unit to Seller (if it has been deeded to you), to recover the Purchase Price actually paid by you, together with interest thereon at the rate of six percent (6%) per annum, and the amount of any reasonable attorneys' fees and costs that you actually paid, less the amount of any income that you received.

b. If Seller otherwise defaults and does not cure its default, then your sole and exclusive remedy (other than any remedies that, by law, you cannot waive or be required to waive) shall be to terminate your Sales Contract and receive a full refund of all sums paid by you under your Sales Contract, without interest and less any cancellation fee imposed by Escrow.

16. You cannot assign your Sales Contract to anyone else without Seller's written consent. Seller may consent or refuse to consent for any reason or for no reason, in its discretion.

17. Whenever the consent or approval of Seller is referred to in your Sales Contract or the taking of any action under your Sales Contract is subject to the consent or approval of Seller, it shall mean Seller's prior written approval to be given or withheld for any reason or for no reason, in its discretion. Further, any references to Seller's discretion as set forth in your Sales Contract shall mean Seller's sole, absolute and unfettered discretion to the exclusion of any other person or entity unless specifically provided otherwise.

**END OF EXHIBIT O**



## EXHIBIT P

### SUMMARY OF ESCROW AGREEMENT

NOTE: ALL PURCHASERS AND PROSPECTIVE PURCHASERS SHOULD READ WITH CARE ALL PROVISIONS OF THE ESCROW AGREEMENT AND THEIR SALES CONTRACT, AND DISCUSS THEM WITH THEIR LEGAL AND TAX ADVISORS TO BE SURE THAT THEY FULLY UNDERSTAND THESE IMPORTANT LEGAL DOCUMENTS. THE SUMMARIES OF THE ESCROW AGREEMENT AND SALES CONTRACT CONTAINED IN EXHIBITS O AND P ARE NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THOSE DOCUMENTS BUT ONLY A SUMMARY OF SOME KEY PROVISIONS OF THOSE AGREEMENTS. PURCHASERS AND PROSPECTIVE PURCHASERS MUST REFER TO THE ESCROW AGREEMENT AND THEIR SALES CONTRACT TO DETERMINE THEIR RIGHTS AND OBLIGATIONS AND TO DETERMINE THE SPECIAL MEANING OF TERMS THAT ARE DEFINED IN THE ESCROW AGREEMENT OR THE SALES CONTRACT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THE SUMMARIES CONTAINED IN EXHIBITS O AND/OR P ON THE ONE HAND, AND THE ESCROW AGREEMENT AND/OR SALES CONTRACT ON THE OTHER HAND, THE ESCROW AGREEMENT AND/OR SALES CONTRACT WILL GOVERN.

The Developer has entered into an Escrow Agreement dated October 1, 2013 (the "Escrow Agreement"), with Old Republic Title & Escrow of Hawaii, Ltd. ("Escrow"). In the Escrow Agreement, the Developer is called the "Seller." Among other things, the Escrow Agreement provides as follows:

1. Deposit of Funds by Seller. Seller shall pay over to Escrow any monies received by Seller from purchasers under sales contracts covering units in the Project, including all disbursements made on loan commitments, if any, from lending institutions to individual purchasers.

§514B-86(c). (The purchaser may waive the purchaser's rescission right by (A) checking the waiver box on the rescission notice, signing it and delivering it to the Seller; (B) letting the thirty-day rescission period expire without taking any action to rescind; or (C) closing the purchase of the unit before the rescission period expires.)
2. Interest on Funds in Escrow. Unless otherwise provided in the Escrow Agreement, any interest earned on funds deposited in escrow under the Escrow Agreement shall accrue as specified in the sales contract. If the sales contract does not specify to whom interest is to accrue, any interest earned on funds deposited in escrow under the Escrow Agreement shall accrue to the credit of the purchaser.
3. Conditions to Be Met Prior to Disbursement of Funds in Escrow. No disbursements of funds held in escrow shall be made unless and until the following conditions have been fulfilled:
  - a. Effective Public Report and Amendments. Seller shall have delivered to the purchaser a true copy of the current Public Report, including all amendments, for which the Real Estate Commission has issued an effective date.
  - b. Waiver of Cancellation Rights.
    - i. Notice of Cancellation. Seller shall have delivered to the purchaser notice of the purchaser's thirty-day right of cancellation on a form prescribed by the Real Estate Commission.
    - ii. Waiver of Cancellation Rights. The purchaser shall have waived the right to cancel or shall be deemed to have waived the right to cancel in accordance with HRS §514B-86(c).
  - iii. Receipts Related to Cancellation Rights. Seller shall have provided to Escrow evidence that the purchaser has received a true copy of the Public Report and all amendments thereto and the notice of the thirty-day right of cancellation, which evidence may be a receipt for the Public Report signed by the purchaser, a receipt of the notice of the thirty-day right of cancellation signed by the purchaser, return receipts for copies of the Public Report or notice sent by certified or registered mail or such other evidence satisfactory to Escrow.
- c. Waiver of Rescission Rights.
  - i. No Material Change. Seller shall affirm to Escrow that there has been no material change in the Project that gives rise to rescission rights under HRS §514B-87(a) after the sales contract became binding. ("Material change" shall have the meaning contained in HRS §514B-3.) Otherwise, the rescission provisions set forth below shall apply.
  - ii. Rescission Waived. In the event of a material change in the Project that gives rise to rescission rights under HRS §514B-87(a) after the sales contract becomes binding,

Seller shall affirm that Seller has delivered to the purchaser a description of the material change on a form prescribed by the Real Estate Commission.

1. Notice of Right of Rescission Because of Material Change. Seller shall have delivered to the purchaser notice of the purchaser's thirty-day rescission right on a form prescribed by the Real Estate Commission.
2. Waiver of Rescission Rights. The purchaser shall have waived the right to rescind or shall be deemed to have waived the right to rescind in accordance with HRS §514B-87(b). (The purchaser may waive the purchaser's rescission right by (A) checking the waiver box on the rescission notice, signing it and delivering it to the Seller; (B) letting the thirty-day rescission period expire without taking any action to rescind; or (C) closing the purchase of the unit before the rescission period expires.)
3. Receipts Related to Rescission Rights. Seller shall have provided to Escrow evidence that the purchaser has received the thirty-day notice of right of rescission, which evidence may be a receipt for the notice of the thirty-day right of rescission signed by the purchaser, return receipts for copies of the notice mailed certified or registered mail or such other evidence satisfactory to Escrow.

4. Return of Purchaser's Funds and Documents.

- a. Cancellation or Rescission of a Sales Contract. Unless otherwise provided in this Agreement, a purchaser shall be entitled to a return of such purchaser's funds and Escrow shall pay such funds to such purchaser, together with any interest that may have accrued to the credit of such purchaser, if any one of the following has occurred:
  - i. Seller and purchaser shall have requested Escrow in writing to return to purchaser the funds of purchaser held under the Escrow Agreement by Escrow; or
  - ii. Seller shall have notified Escrow of Seller's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Seller; or

- iii. The purchaser shall have notified Escrow of purchaser's exercise of purchaser's right to cancel the sales contract pursuant to HRS §514B-86 (thirty-day right to cancel), or, if applicable, HRS §514B-89 (failure to complete construction before specified completion deadline); or
- iv. The purchaser shall have notified Escrow of purchaser's exercise of purchaser's right to rescind the sales contract pursuant to HRS §514B-87, by a valid rescission signed by all purchasers of the affected unit and postmarked no later than midnight of the thirtieth calendar day after the date that the purchasers received the notice of rescission from Seller, in which case the purchasers shall be entitled to a prompt and full refund of any moneys paid.

In any of the foregoing events, Escrow shall, upon the occurrence of the event described in sections 4(a)(i) or 4(a)(ii) above or upon receipt of a written request for a refund from the purchaser upon the occurrence of an event described in sections 4(a)(iii) or 4(a)(iv) above, unless the purchaser has waived or has been deemed to have waived the right to a refund, pay said funds to the purchaser (less a cancellation fee commensurate with the work done by Escrow prior to such cancellation, up to a maximum of \$250.00); provided, however, that no refund shall be made to a purchaser at the purchaser's request prior to receipt by Seller of written notice from Escrow of Escrow's intent to make such refund and the purchaser shall not be required to pay a cancellation fee to Escrow for any rescission pursuant to HRS §514B-87.

5. Unclaimed Funds. Escrow shall give each purchaser entitled to a return of funds notice thereof by registered, certified or regular mail, postage prepaid, addressed to such purchaser at the purchaser's address shown on the sales contract or any address later made known in writing to Escrow by such purchaser. If such purchaser shall not have claimed such refund within sixty (60) days, Escrow shall deposit such funds into a special account in a bank or other depository selected by Escrow, in the name of Seller, as trustee for the benefit of such purchaser. After notifying the purchaser of all such facts at the purchaser's address as provided above, Escrow shall thereupon be released from any further duties or liability under the Escrow Agreement with respect to such funds and such purchaser.
6. Purchaser's Default. If a purchaser fails to make any payment to Escrow on or before the due date thereof or if the purchaser fails to perform in any matter that is being handled by Escrow, Escrow shall promptly

notify Seller of any such failure on the part of the purchaser. If Seller subsequently certifies in writing to Escrow that Seller has terminated the sales contract in accordance with the terms thereof and provides to Escrow copies of all such notices of termination sent to the purchaser, Escrow shall thereafter treat all funds of the purchaser paid on account of such purchaser's sales contract as funds of Seller and not as funds of the purchaser. Thereafter, such funds shall be free of the escrow established by the Escrow Agreement and shall be held by Escrow for the account of Seller. Upon written request by Seller, Escrow shall pay such funds to Seller, less any escrow cancellation fee. Escrow shall thereupon be released from any further duties or liability under the Escrow Agreement with respect to such funds and such purchaser.

7. Protection of Escrow. In consideration of Escrow acting as escrow holder under the Escrow Agreement, it is agreed that Escrow is relieved from all liability for acting in accordance with the terms of the Escrow Agreement, notwithstanding a notice to the contrary by Seller or any purchaser or third person. Escrow shall not be responsible for the validity or sufficiency of any sales contracts or other documents received by it and shall be entitled for all purposes to assume that the same have been signed by the persons whose signatures purport to be thereon and that any written certifications or instruments from Seller are true and accurate.

If any dispute or difference shall arise or if any conflicting demand shall be made upon Escrow, Escrow shall not be required to determine the same or take any specific action, but Escrow may await settlement of the controversy by final appropriate legal proceedings or otherwise as it may require, or Escrow may file a suit in interpleader in any court having jurisdiction in the matter, for the purpose of having the respective rights of the parties adjudicated, and may deposit with the court any or all monies held under the Escrow Agreement. Upon institution of such interpleader suit or other action, depositing such money with the court, and giving notice thereof to the parties thereto by personal service or in accordance with the order of the court, Escrow shall be fully released and discharged from all further obligations

under the Escrow Agreement with respect to the monies so deposited.

8. Compensation of Escrow. The compensation of Escrow for performance under the Escrow Agreement shall be Five Hundred Fifty-One Dollars (\$551.00), plus tax (4.166%), for each unit in the Project sold and closed by Escrow pursuant to the Escrow Agreement. Escrow shall also arrange for the issuance of a title insurance policy (Hawaii standard owner's or ALTA lender's policy) for the sum of Six Hundred Twelve Dollars (\$612.00) for each unit in the Project. If an escrow involves a 1031 Exchange, Escrow has the right to assess additional fees commensurate with the amount of work involved.

For all sales contracts for all units sold in the Project, each purchaser need not acquire any title insurance policy through Escrow and said purchaser shall be free to acquire a title insurance policy from any title insurer doing business or admitted to do business in the State of Hawaii or that is otherwise authorized to issue title insurance policies on real property located in the State of Hawaii.

In the event of the cancellation of any sales contract that has been submitted to Escrow, a cancellation fee commensurate with the services rendered by Escrow, prior to such cancellation, plus all costs incurred by Escrow, up to a maximum of \$250.00, shall be charged to the purchaser, unless otherwise agreed to by Seller and the purchaser.

Escrow shall be entitled to no cancellation fee in the event that a purchaser cancels the purchaser's sales contract (i) during the thirty-day cancellation period provided by Chapter 514B, (ii) in the event of a material change to the Project substantially beyond the Seller's control and that gives rise to rescission rights under HRS §514B-87(a), or (iii) in the event that performance of the sales contract by the Seller or the purchaser is excused by law. If Escrow shall for any reason without fault on its part be required to change subsequent to the commencement of preclosings or closings for the Project any closing statement or document previously approved as to form and figures by Seller, Seller agrees to pay an additional charge of \$30.00 for each such statement or document that is changed.

**END OF EXHIBIT P**

**EXHIBIT Q**

**WARRANTIES**

The Property was built in the late 1960s or the early 1970s by someone other than the Developer. Any warranties from the original developer expired many years before the Developer bought the Property. The Condominium has experienced substantial wear and tear over the years. The Developer is making or has already made certain repairs and renovations to the Condominium, but the Developer is not making any promises about those repairs and renovations.

Remodeling of the Plumeria Building was substantially completed in 2013 and remodeling of the Orchid Building was substantially completed in 2015. The warranties of the General Contractor under the construction contract for the remodeling of the Project (the "Construction Contract") have expired:

The Close of Escrow shall also constitute the assignment by the Developer to the Purchaser, without recourse, of the unexpired term, **if any**, of any manufacturer's or dealer's warranties covering any Furnishings described in Exhibit A to the Purchaser's Purchase Agreement to the extent that the same can be so assigned. The Developer is merely attempting to pass through to the Purchaser any such manufacturer's or dealer's warranties. However, the Developer is not adopting any such warranties or acting as co-warrantor with respect to any furnishings, fixtures or appliances. Purchasers may examine the manufacturer's or dealer's written warranties at the Developer's sales office. **It is likely that some or all of the manufacturer's and dealer's warranties have expired.**

**The Developer makes no representations, warranties or other promises, express or implied, about the Units or the Condominium, or about consumer products or anything else now or hereafter installed or contained in the Units or the Condominium. This includes, but is not limited to, representations, warranties or other promises with respect to:**

**A. The merchantability, habitability, marketability, profitability, fitness for a particular purpose, workmanlike construction, or sufficiency of design of the Property;**

**B. The manner, quality, state of repair or lack of repair of the Property or the Project;**

**C. Any archaeological sites, remains or artifacts on the Land;**

**D. The Property's compliance with any applicable laws or regulations;**

**E. The quality of construction or materials incorporated into the Property or the repairs or remodeling;**

**F. The presence or absence of asbestos, asbestos-containing materials, lead-based paint, paint containing lead, mold, mildew, other micro-organisms, standing water or hazardous materials at, on, under or adjacent to the Property;**

**G. The conformity of the Property to past, current or future applicable zoning or building requirements, permits or licenses;**

**H. The fact that all or a portion of the Property may be located in a flood plain, or on or near a tsunami inundation area;**

**I. Whether flooding on the Property will recur, whether any measures taken to limit future flooding as part of the remodeling of the Property will provide the flood protection that they are designed or intended to provide, or will be adequate to prevent or reduce any future flooding of the Units or the Property;**

**J. The ability of the Property to withstand damage due to earthquake, wind, hurricane, tsunami, high surf, tornado, waterspout or other natural events;**

**K. The existence or absence of termites or other pests, or damage from termites or other pests;**

**L. The location of the shoreline in accordance with the laws of the State of Hawai'i, and any effect that movement of the**

shoreline may have on the Condominium or on the boundaries and area of the Land of the Condominium; or

M. Any other matter concerning the Property or the Condominium.

All rights and interests in the Units and the Condominium are sold by the Developer "as is" and "where is," with all defects and other conditions, whether visible or hidden, and whether known or not known. This means, among other things, that neither the Developer nor any of its affiliates have to correct or fix, or pay to have someone else correct or fix, any defect or other condition no matter what causes it or when it is discovered. Each Unit Owner and every other Interested Person, and all of their respective licensees and invitees, (1) gives up (in legal terms, "waives and releases") any and all rights and claims such person (or such person's successors and assigns) may have, now or in the future, against the Developer and its affiliates, their respective Representatives, and each of their respective successors and assigns, for (i)

any defects and/or other conditions in the Units or the Condominium, or any consumer products or anything else installed or contained in the Units or the Condominium, and (ii) for injury to persons or property arising from any such defects and/or other conditions, and (2) agree to indemnify and hold Developer harmless from all loss, damage and expense suffered or incurred as a result thereof.

This means that neither the Developer nor any affiliate of the Developer will have to pay for any injury or damage to people or things as a result of any defect or other condition, including any of the conditions listed above.

Finally, without limiting the other parts of this Section, nothing in the Condominium Map constitutes or is intended to be a representation or warranty by the Developer.

The foregoing provisions shall also apply to any New Improvements added by the Developer from time to time.

END OF EXHIBIT Q

## EXHIBIT R

### ADDITIONAL DISCLOSURES

The Declaration of Condominium Property Regime contains numerous provisions disclosing the condition of the Property, disclaiming any warranties by the Developer, and otherwise limiting the liability of the Developer to Purchasers and prospective Purchasers, including the following provisions:

#### PROPERTY CONDITIONS

**1.1 POOLS, BEACH AND OCEAN.** The Condominium fronts on a beach and on the Pacific Ocean. The beach and the ocean are NOT part of the Condominium. The Condominium has two swimming pools, both of which are Common Elements of the Condominium.

A. Each Unit Owner and every other Interested Person understands, acknowledges, agrees and accepts that:

1) The pools and the proximity of the Condominium to the beach and the Pacific Ocean creates inherent and potentially dangerous conditions and risks of personal injury and/or property damage to Unit Owners and anyone else present on the Condominium or using the beach or ocean. Hawai'i is known for its high surf, and the surf can be dangerous, especially to inexperienced swimmers or swimmers unfamiliar with strong currents. In addition, the beach and ocean in front of the Condominium may contain rocks, rock formations and/or coral. The County of Kauai may or may not choose to post lifeguards in or around the beach, or may choose to do so only at certain times (for example, weekends and holidays). Nothing requires that lifeguards be provided by the Association, any Vacation Owners Association, any Fractional Owners Association, the Developer, the Managing Agent or anyone else, and you should not assume or expect that they will provide them with respect to the beach or ocean or, for that matter, with respect to any pools or other water features of the Condominium. In addition to the risks normally associated with swimming and other water activities, the Condominium is located in a Tsunami inundation area.

2) Normal use of the beach and ocean may result in increased traffic, noise, gathering of crowds (especially on weekends and holidays), trespassers, and related inconveniences or nuisances.

B. The Developer, the Association, the Managing Agent, and each Unit Owner here and now gives notice of the activities and effects described above (the "*Pool, Beach and Ocean Activities*") and of the risks of personal injury and/or property damage resulting from or incidental to the Pool, Beach and Ocean Activities (the "*Pool, Beach and Ocean Risks*"). Each Interested Person and anyone else who is present on the Property:

1) Assumes all risks of personal injury, death, or loss or damage to property resulting from or incidental to any of the Pool, Beach and Ocean Activities or the Pool, Beach and Ocean Risks; and

2) Gives up (in legal terms, "waives, releases and discharges") all rights, claims and actions that such person may have against the Protected Persons, now or in the future, for personal injury, death, or loss or damage to property arising from or related to the Pool, Beach and Ocean Activities or the Pool, Beach and Ocean Risks. The "Protected Persons" are (i) the

Developer and all of its affiliates, the Unit Owners, the Association and the Managing Agent; (ii) the Representatives of each person listed in item (i); and (iii) the successors and assigns of each person listed in items (i) and (ii); and

3) Agrees to indemnify and hold the Protected Persons harmless from all rights, claims and actions that such person may have against the Protected Persons, now or in the future, for personal injury, death, or loss or damage to property arising from or related to the Pool, Beach and Ocean Activities or the Pool, Beach and Ocean Risks.

**1.2 SUGAR CANE AND OTHER AGRICULTURAL OPERATIONS.** Each Owner and every other Interested Person understands, acknowledges, agrees and accepts that (i) portions of the Island of Kauai are or have been used and operated for farming sugar cane, pineapple and for other agricultural operations, and (ii) the land of the Condominium may have been used for such purposes, and (iii) the Condominium may be located near land that is still used for such purposes. These operations include, for example, open burning, percolating, evaporating, milling, generating power, trucking, plowing, hauling, fertilizing, grading, storing, herbicide and pesticide spraying, crop dusting, water diversion, irrigating, and all other activities incidental to planting, cultivating, harvesting, and processing crops. This activity may from time to time cause surface water runoff, noise, soot, smoke, dust, light, heat, vapors, odors, chemicals, vibrations, and other substances and phenomena of every description (collectively, the "*Agricultural Effects*") to be discharged, emitted, transmitted or otherwise present over or upon the Condominium. The Agricultural Effects may be a nuisance or danger to an Owner or anyone else occupying or using the Condominium. Each Owner also hereby acknowledges that the Hawai'i Right to Farm Act (Chapter 165 of the Hawai'i Revised Statutes) and Hawai'i law limit the circumstances under which farming operations may be deemed to be a nuisance. Each Owner and every other Interested Person gives up (in legal terms, "waives and releases") any rights, claims or actions that he or she may have, now or in the future, against the Developer or the State of Hawai'i, and each of their Representatives, licensees, invitees, successors and assigns arising directly or indirectly out of or from the Agricultural Effects as to the Condominium, and agrees to indemnify and hold the Developer harmless from any such rights, claims and causes of action.

**1.3 VOG.** The long term volcanic activity/eruptions from Kilauea volcano on the Island of Hawaii has resulted in emissions into the air which are commonly called "vog". Vog refers to a type of air pollution or volcanic smog created by the gases emitted into the air from the ongoing volcanic eruption mixing with water vapor and very small particles which are primarily sulfur compounds and sulfur dioxide. Vog is the haze visible in the air on the Island of Hawaii and sometimes on other islands. Vog becomes thicker or lighter

depending upon the amount of emissions from Kilauea volcano, the direction and amount of wind, and other weather conditions. People with pre-existing respiratory conditions are more prone to adverse effects from vog which may include: headaches, breathing difficulties, increased susceptibility to respiratory ailments, watery eyes, and sore throat, but the long-term health effects of vog are currently unknown, at least to the Developer. Since the weather, wind direction and amount of volcanic activity vary from day to day it is not possible to provide specific guidance regarding when the vog will be heavy or light. The presence of vog in the air surrounding the Condominium may be a nuisance or danger to an Owner or anyone else occupying or using the Condominium. Each Owner and every other Interested Person gives up (in legal terms, "waives and releases") any rights, claims or actions that he or she may have, now or in the future, against the Developer and its Representatives, licensees, invitees, successors and assigns arising directly or indirectly out of or from the presence or effect of vog in the air surrounding the Condominium, and agrees to indemnify and hold the Developer harmless from any such rights, claims and causes of action.

**1.4 SECURITY.** The Association, the Developer and/or the Managing Agent may, but need not, take steps designed to make the Association Property and/or the Condominium safer than it otherwise might be. The Association, the managing Agent and the Developer, and each of their respective Representatives, are not in any way to be considered insurers or guarantors of safety or security within the Association Property or the Condominium, nor can any of them be held liable for any loss or damage by reason of failure to provide adequate or effective safety or security measures. The Association, the Managing Agent and the Developer make no representation or warranty that any fire protection, burglar alarm, door locks, doors, or other safety or security system or measures, including anything intended to limit access to the Condominium or to any Unit, (i) will be effective in all cases and cannot be compromised or circumvented; (ii) will prevent all losses; (iii) will limit access to the Condominium or to any Unit; or (iv) will provide the detection or protection that it is designed or intended to provide. Each Unit Owner and every other Interested Person, including but not limited to each occupant of each Unit, acknowledges, understands, and agrees that the Association, the Managing Agent, and the Developer are not insurers and each person present on the Condominium assumes all risks of personal injury, death, or loss or damage to property resulting from the acts of third parties.

**1.5 ENVIRONMENTAL FACTORS.** Each Owner and every other Interested Person understands, acknowledges, agrees and accepts that the views from each Unit, height of the Unit above the ground level, exposure to morning, afternoon or evening sun, exposure to prevailing and non-prevailing winds and rain, exposure to other natural and human-made environmental factors (for example, exposure to noise or fumes from vehicular traffic emanating from within the Condominium or from neighboring driveways, streets or highways [including but not limited to parking in the Waipouli Beach Resort and traffic on Kuhio Highway], surface water runoff from neighboring properties, sounds of crashing surf, pedestrian traffic, child or adult play, related music and activities, noise, dust, smoke, odors, surface water runoff and other things emanating from the lanais of other Units, barbeque areas, the pools, pool decks, walkways and grounds, lobby areas (if any), other common areas, the ocean, the beach, exercise of traditional native Hawaiian ceremonies, construction, landscaping, operation and maintenance of neighboring homes or projects, construction and maintenance of electrical transmission lines and facilities within or in the vicinity of the Property, irrigation of the Property or neighboring properties with reclaimed water, treated effluent, or other non-potable water sources, volcanic fog ["vog"] from the Island of Hawaii, salt spray from the ocean, and so on), proximity of the Units to trash facilities and stairwells, proximity of the Units to parking stalls intended to comply with the Americans With Disabilities Act, suitability of Units for various kinds of disabilities, and so on, all differ depending on the orientation, nature, design and location of the Unit and the building in which it is located, as well as on other factors. All Units may be subject to some or all of the factors listed above (the "Environmental Factors"). For the most part the Developer has no control over the Environmental Factors and, in any case, the Developer makes no representations or warranties with respect to the presence, absence, impact, lack of impact, intensity, timing, duration, affect, or anything else arising from or relating to any of the Environmental Factors. Neither the Developer's brokerage firm nor any other real estate brokerage firm has been authorized by the Developer to make any such representations or warranties on its behalf. Each Unit Owner and every other Interested Person, and all of their respective Guests, gives up (in legal terms, "waives and releases") any and all rights, claims and causes of action such person (or such person's successors and assigns) may have, now or in the future, against the Developer and its affiliates, their respective Representatives, and each of their respective successors and assigns, arising directly or indirectly out of or from the Environmental Factors, and agrees to indemnify and hold the Developer and such other persons harmless from any such rights, claims and causes of action.

## **EASEMENTS**

**1.6 CREATION OF EASEMENTS.** "Easement" is a legal term. In general (but not always), it refers to the right of one person to use property in the possession of someone else. The Property is subject to (a) any recorded easements, and (b) the exclusive easements to use the Limited Common Elements. In addition, the Units, General Common Elements and Limited Common Elements also have and/or

are subject to the easements created in the Condominium Documents, some of which are described as follows:

**A. EASEMENT FOR COMMERCIAL UNIT EMPLOYEES, CUSTOMERS AND GUESTS.**

1) Each Commercial Unit has the right and an appurtenant easement pursuant to which the Unit Owner, its Representatives, licensees and invitees (including customers and their guests) are entitled to do the following things in connection with or for the purposes of the business conducted in the Commercial Unit or its Limited Common Elements:

(a) To come onto the Condominium using the Common Elements, if any, intended for access to and from any nearby roads, streets or highways.

(b) To park motor vehicles in any unassigned parking stalls (for example, any guest parking stalls – if there are any) without payment of any parking fees or charges.

(c) To make deliveries using any delivery area or parking area, and any Common Elements connecting the delivery area or parking area to the Commercial Unit or its Limited Common Elements.

(d) To go to and from the Unit and its Limited Common Elements using the Common Element walkways and other Common Elements intended for such purposes.

(e) To use the Common Elements otherwise as may be reasonably necessary in connection with the ordinary conduct of business operations in the Commercial Unit and/or its Limited Common Elements. The Rules and Regulations may impose reasonable restrictions on such use.

2) Each Commercial Unit has the right and an appurtenant easement pursuant to which the Unit Owner, its Representatives, licensees and invitees (including customers and their guests) is entitled to create, cause or permit noise, dust, soot, smoke, odors, surface water runoff, vibrations, and other nuisances for the purposes of the business conducted in the Commercial Unit or its Limited Common Elements, provided, however, the Rules and Regulations may restrict the use of this easement between 10:00 p.m. and 8:00 a.m. to avoid disturbing the occupants of other Units (see).

3) Each Interested Person understands, acknowledges and accepts that the easements provided in this Section 1.6, and the use of them, may result in increased traffic, noise, gathering of crowds, and related inconveniences. Each Interested Person gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions arising from or with respect to the proper use of these easements that the Interested Person may have, now or in the future, against (i) the Commercial Unit Owners and their Representatives, licensees, and invitees, (ii) the guests of any of the persons listed in items (i), and (iii) the successors and assigns of anyone listed in items (i) and (ii). (Declaration, Section 7.1D.)

**B. EASEMENTS FOR SPECIAL EVENTS.** The Developer and its Representatives, licensees and invitees may use the Common Elements (including but not limited to the pool decks, lawns, grounds and accessways to the beach and Pacific Ocean) for the purpose of conducting educational, cultural, entertainment or sporting events, other activities of general community interest, and/or other resort activities. These events may occur at times they deem appropriate in their sole, absolute and unfettered discretion. However no such events may be held before 8:00 a.m. or after 10:00 p.m (12:30 a.m.

for New Years Eve celebrations). The rights under Section 1.6A. may be used in connection with any such events, just as if the Developer is a Commercial Unit Owner. The Developer must reimburse the Association for its costs of such activity, but not for any fee, profit or other sum except for actual out-of-pocket costs. Each Interested Person understands, acknowledges and accepts that the use of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences. Each Interested Person gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions such person may have, now or in the future, against the Developer, the Association, and each of their Representatives, licensees, invitees, successors and assigns and arising from or with respect to the proper use of this easement. (Declaration, Section 7.1E.)

### C. THE DEVELOPER'S EASEMENT FOR SALES ACTIVITIES.

1) The Developer has the exclusive right and an easement to conduct marketing and sales activities (which may be extensive) on the General Common Elements and from any Unit owned by the Developer or any Limited Common Elements of such Unit. This right includes but it is not limited to the following:

(a) The right to permit purchasers and prospective purchasers and their family members and guests to come onto the Condominium through the Common Elements intended for access to and from any nearby roads, streets or highways.

(b) The right to permit purchasers and prospective purchasers to park motor vehicles in any unassigned parking stalls of the Condominium without payment of any parking fees or charges.

(c) The right to show the Condominium (including but not limited to model Units) to purchasers and prospective purchasers (who will have a right of access for these purposes).

(d) The right to use Units owned by the Developer as model Units, sales, management, and/or administrative offices.

(e) The right to establish and operate four or activity desks or other businesses intended to promote sales from any Unit owned by the Developer or its Limited Common Elements.

(f) The right to authorize the Developer's Representatives, licensees, and invitees, to use these easements. This includes, for example, the right to permit sales and administrative staff to come onto the Condominium.

(g) The right to use banners, signs or other extensive sales displays and activities in the Condominium.

2) This easement applies to activities conducted in connection with the initial sale and/or any resale (or lease or other conveyance) of one or more Units, Vacation Interests and/or Fractional Interests.

3) Each Interested Person understands, acknowledges and accepts that the easements described in this Section 1.6C, and the use of them, may result in increased traffic, noise, and related inconveniences. Each Interested Person gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions such



person may have, now or in the future, against the Developer and its Representatives, licensees and invitees, and each of their respective successors and assigns, and arising from or with respect to the use of this easement. (Declaration, Section 7.1F.)

**D. THE DEVELOPER'S EASEMENT FOR CONCESSION STANDS.**

1) The Developer has the exclusive right and an easement under which the Developer and its licensees may establish, operate, maintain, repair and replace no more than four (4) concession stands in or on the General Common Elements. This may include, for example, concession stands on the pool decks, lawns or elsewhere in the Condominium. The floor area of a single concession stand cannot exceed two hundred (200) square feet. The Developer has the right to choose the location of each concession stand. The concession stands may be used for any lawful purposes including, for example (i) sales of food and/or beverages, (ii) the rental and storage of bicycles or other recreational equipment, (iii) the operation by the Developer of tour or activity desks or other businesses intended to promote the sales of Units, Vacation interests and/or Fractional interests. The easement described in this Subsection 1.6D.1) includes the right to connect the concession stands with utility services. Any concession stands must be built, set up, operated and maintained in accordance with all laws that apply. The Developer must pay all costs to build, set up, operate and maintain any concession stands, including the costs of utility services consumed by the concession stands. The Developer has the right to keep all revenues generated by any business that it conducts using the concession stands. Concession stands may consist of permanent, semi-permanent and/or portable facilities of any kind.

2) Each Interested Person understands, acknowledges and accepts that the easements described in this Section 1.6D, and the use of them, may result in increased traffic, noise, and related inconveniences. Each Interested Person gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions such person may have, now or in the future, against the Developer and its Representatives, licensees and invitees, and each of their respective successors and assigns, and arising from or with respect to the use of this easement. (Declaration, Section 7.1G.)

**E. THE DEVELOPER'S EASEMENTS FOR ACCESS.** The Developer has an easement over, under and upon the Condominium, including all General Common Elements, all Limited Common Elements, and all Units, as may be reasonably necessary or convenient to complete the installation, construction or initial renovation of any Improvements (including, for example, the installation, construction or initial remodeling and reconfiguration of the Condominium as part of Phase 3), and to correct any defects and other punchlist items in the Common Elements or any Unit or to use any of the Developer's Reserved Rights. The easement to conduct and complete the installation, construction or initial renovation of Improvements (for example, any Phase 3 remodeling or reconfiguration), or to correct defects or punchlist items ends, as to any particular phase or increment of the Condominium, sixty (60) months after the "date of completion" (as the term is used in Chapter 507, Part II, Hawaii Revised Statutes) of the improvement or work to be completed or corrected. The Developer may authorize its Representatives, licensees and invitees (including its architects,

contractors, governmental officials, and so on) to use this easement. (Declaration, Section 7.1H.)

**F. EASEMENTS FOR VACATION OWNERS ASSOCIATION.** Any Vacation Owners Association has the non-exclusive right and an easement under which it and its Representatives, licensees and invitees (including, for example, its plan manager and the members of a Vacation Use Plan) may use the General Common Elements of the Condominium.

1) They may only use this easement as necessary or appropriate for these purposes:

(a) The administration, management or operation of the Vacation Plan.

(b) The use, maintenance or servicing of Units included in the Vacation Plan.

(c) The use of any easements reserved or granted in the Vacation Plan Documents that allows them to use the Units included in the Vacation Plan.

2) Under no circumstances, however, may this easement be used for any of the following purposes:

(a) To sell or promote the sale or conveyance of Vacation Interests or Fractional Interests, or

(b) To operate a tour or activity desk or any other business intended to sell or promote the sale or conveyance of Vacation Interests or Fractional Interests.

Any such activity is prohibited by and will violate Section 9.4 of the Declaration.

3) This easement pertains only to Vacation Plans that include one or more Units in the Condominium, and only if the Developer creates the Vacation Plan or if it authorizes or consents to that use in a recorded document. (Declaration, Section 7.1I.)

**G. EASEMENTS FOR FRACTIONAL OWNERS ASSOCIATION.** Any Fractional Owners Association will have the same easements that a Vacation Owners Association has as described in Section 1.6F, and will be subject to the same terms, conditions, and limitations including, specifically, the limitations described in Sections 1.6F.1) and 2). This easement pertains only to Fractional Plans that include one or more Units in the Condominium, and only if the Developer creates the Fractional Plan or if it authorizes or consents to that use in a recorded document. (Declaration, Section 7.1J.)

**H. EASEMENTS FOR USE OF HOUSEKEEPING FACILITIES.** Without limiting the generality of the easements described in Sections 1.6F and 1.6G, each Vacation Owners Association for a Vacation Plan that includes at least ten (10) Units in the Condominium and each Fractional Owners Association for a Fractional Plan that includes at least ten (10) Units in the Condominium has a non-exclusive easement (in common with the Association) to use the service closets and housekeeping rooms, and any linen and storage rooms that are General Common Elements. Such a Vacation Owners Association or Fractional Owners Association may use the housekeeping rooms to

store linens, cleaning supplies and equipment, and for purposes related to providing housekeeping services to Units in its Vacation Plan or Fractional Plan. The Association will provide keys to the Vacation Owners Association and/or Fractional Owners Association, and their housekeeping staff. If necessary, the Association will modify these facilities so that the Association may keep its supplies and equipment separate from those of the Vacation Owners Association and Fractional Owners Association. For example, the Association may install partitions, locks, or similar security measures. The Association may require that the Vacation Owners Association or Fractional Owners Association reimburse the Association for a reasonable share of the costs to use, maintain, repair and replace the housekeeping rooms. A Vacation Owners Association or Fractional Owners Association may authorize their housekeeping staff and other persons working in or on the Units included in the Vacation Plan or Fractional Plan to use this easement. (Declaration, Section 7.1K.)

**I. EASEMENT FOR BELLHOP SERVICE.** The Owner of Unit 1 has the right (but no obligation) and an easement to provide or to arrange with someone else to provide bellhop services to the occupants of the Resort Units. For this purpose, the Unit Owner and its Representatives, licensees and invitees have the right to use the General Common Elements of the Condominium. Bellhop activity must not be conducted in a way that unreasonably disturbs the occupants of the Resort Units. This easement is appurtenant to Unit 1. (Declaration, Section 7.1M.)

**J. EASEMENT FOR CHILDREN'S PROGRAMS.** The Owner of Unit 2 has the right and an easement (but no obligation) to operate one or more children's programs on the Condominium. It may make these programs available to children of (i) Unit Owners and occupants, (ii) potential purchasers of Units, Vacation Interests or Fractional Interests, while they are attending a sales presentation, and (iii) guests of any of these persons. The Owner of Commercial Unit 2 may contract with someone else to operate such a program for them. The programs may involve use of the beach and/or Common Elements of the Condominium (for example, the pools). These programs may occur at times they deem appropriate in their sole but reasonable discretion. However no such programs may start before 8:00 a.m. or end after 10:00 p.m. (12:30 a.m. for New Years Eve celebrations). Each Interested Person understands, acknowledges and accepts that the use of this easement may result in increased noise and other nuisances, and partial closure of portions of the Common Elements from time to time. Each Interested Person gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions he or she may have arising from or with respect to the proper use of this easement, now or in the future, against the Owner of Commercial Unit 2 and its Representatives, licensees and invitees, and each of their respective successors and assigns. (Declaration, Section 7.1N.)

**K. EASEMENT FOR GAZEBO UNIT.** Unit No. 2 has the right and an easement pursuant to which the Unit Owner, its Representatives, licensees and invitees (including customers and their guests) are entitled to use the restroom constructed in the Recreation Room. If the Recreation Room does not contain a restroom, the Owner of Unit 2 has the right and an easement (but no obligation) to construct a restroom in the Recreation Room, including the right to connect it with the necessary utilities. Any restroom must be built, operated and maintained in accordance with all laws that apply. The Owner of Unit

2 must pay all costs to build the restroom. The restroom will constitute a General Common Element available for use by all Owners and occupants and will be managed, maintained and operated by the Association, and the costs of doing so will be charged to all Owners as a Common Expense. This easement is appurtenant to Unit 2. (Declaration, Section 7.1 O.)

**1.7 THE DEVELOPER'S EASEMENT FOR NOISE, DUST, ETC.** The Developer has an easement over, under and upon the Condominium and all of its parts, pursuant to which the Developer and its Representatives, licensees and invitees have the right to create and cause noise, dust, soot, smoke, odors, surface water runoff, vibrations, and other nuisances or hazards in connection with (a) the use of the easements it has under Section 7 of the Declaration, (b) the development of any Adjacent Parcels, and/or (c) the use of the Developer's Reserved Rights or any other rights of the Developer described elsewhere in this Declaration. Each Interested Person: (i) understands, acknowledges and accepts that these activities may result in noise, dust, soot, smoke, odors, surface water runoff, vibrations and other nuisances and hazards, (ii) consents to this activity, and (iii) gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions that he or she may have, now or in the future, against the Developer and/or its Representatives, licensees and invitees, and each of their successors and assigns. Each Unit Owner and other Interested Person assumes the risk of any property damage, personal injury or loss in property value arising from these activities. These rights are among the Developer's Reserved Rights. (Declaration, Section 7.2)

**1.8 GRANT, MODIFICATION, ETC., OF EASEMENTS BY THE DEVELOPER.** The Developer hereby reserves, as among the Developer's Reserved Rights, the following rights:

**A. EASEMENTS THROUGH COMMON ELEMENTS.** The Developer has the right to designate, grant, accept, lease, convey, transfer, cancel, relocate and otherwise deal with any easements and/or licenses over, under, across or through the Common Elements as necessary or convenient to the use of any of the Developer's Reserved Rights, or for any reasonable purpose. This includes, but is not limited to:

1) Any purpose necessary to the development, operation, care, upkeep, maintenance or repair of any Unit, the General Common Elements or any Limited Common Elements.

2) Any easements for utilities or for any public purpose or to serve the Condominium. This would include, for example, pedestrian walkways, stairs, ramps, paths, trails, bikeways, driveways, or other passageways, or restroom facilities.

**B. EASEMENTS THROUGH ADJACENT LANDS.** The Developer also has the right to accept, transfer, cancel, relocate and otherwise deal with any easement or license in favor of the Land or the Condominium as necessary or convenient to the use of any of the Developer's Reserved Rights, or for any reasonable purpose. This includes, for example, any of the purposes mentioned in Section 1.8A, above. The Developer may also use these rights if the owner of property that is subject to an easement or license in favor of the Land or the Condominium uses any right that such owner has to require a change in the location of that easement or licensed area.

**C. CONSENT OF OTHER PERSONS.** The Developer may use its reserved rights in this Section 1.8 without the consent or joinder of anyone else. This is discussed in more detail in Section 27 of the Declaration. To the extent that the Developer determines that the consent or joinder of any Interested Person may be required or desirable in order to validate any act or thing done by it using the Developer's Reserved Rights, such consent or joinder may be accomplished by power of attorney or otherwise as provided in the Declaration.

**1.9 ASSOCIATION EASEMENT.** The Association has the right and an easement through Unit No. 3 for access to and from the mechanical room adjacent to Unit No. 3. This right may be exercised by the Board or the Managing Agent, and by anyone authorized by either of them. They may use this right only as necessary and appropriate to access the mechanical room adjacent to Unit No. 3.

## CONDITION OF THE PROPERTY

### **1.10 STATEMENT OF CONDITION.**

Exhibit J to this Public Report contains a statement of the condition of the Condominium, dated March, 2013 (the "*Statement of Condition*"). The Statement of Condition was prepared by Ron Agor, a Licensed Professional Architect, License No. 5921 (the "*Architect*"). The Developer retained the Architect as an independent contractor. The Architect has prepared plans and specifications for the renovation of the Condominium and has requested building permits, SMA Permits and other land use permits from the County of Kauai. The Architect also prepared the Condominium Map for the Condominium and the Statement of Condition. The Statement of Condition contains observations and opinions of the Architect. The Developer is not an architect or other design professional and has relied entirely on the Architect in the preparation of the Statement of Condition. There is a risk that more extensive inspection and testing might change the conclusions reached in the Statement of Condition. Except as otherwise required by law, **the Developer makes no representation or warranty that the Statement of Condition is accurate, correct comprehensive or complete, or that more extensive inspection and testing would not change the conclusions reached in the Statement of Condition.**

The Statement of Condition makes recommendations as to ongoing inspection, maintenance and repairs to the Property. The Association will be solely responsible for making such inspections, maintenance and repairs, and the costs thereof will be a Common Expense of the Condominium. ***The Developer shall have no obligation to conduct or pay the costs and expenses associated with such inspections, maintenance and repairs.***

The Statement of Condition was prepared prior to and/or during the renovation of the Condominium. Accordingly, some of the conditions identified in the Statement of Condition will no longer exist as a result of the renovation. Although the Statement of Condition makes specific recommendations for some repairs and renovations to the Project, ***the Developer makes no representation or warranty that all of the recommended repairs or renovations were made, or that they were made in accordance with the recommendations set forth in the Statement of Condition.*** In some cases, repairs and renovations may have been made in a manner that is different from that recommended in the Statement of Condition. In other cases, the Developer may have elected to make only some of the recommended repairs and renovations, or not to make any repairs or renovations whatsoever.

The Statement of Condition also recommended that the Developer consult with other professionals, including (i) a building sound consultant for a recommendation to minimize sound transfer between floors, (ii) a mold inspector to test the walls for the presence of mold, particularly with respect to the ground floor of the Plumeria Building which, approximately one year earlier, had flooded to a water level that reached approximately 16 inches above the finish floor; (iii) consult with a civil engineer to attempt to diverge any potential future flooding away from the building; and (iv) consultants to test for the potential presence of asbestos, lead paint and mold.

Pursuant to such recommendations, the Developer arranged for the preparation of the Asbestos Report identified in Section 1.11 and the Mold and Lead Exposure Report identified in Section 1.12. Except to the extent addressed in the Asbestos Report and the Mold and Lead Exposure Report, the Developer has not retained any of the consultants recommended by the Statement of Condition.

The Statement of Condition was prepared more than five years ago. In addition to the work performed on the Property as part of the renovation of the Condominium, the condition of the Property is also likely to have changed in the intervening years by reason of actions or decisions of the Association and/or as a result of normal wear and tear, environmental conditions and other natural forces (such as wind, rain, water, surf, and so on) or other factors that may affect or have already affected the Property with the passage of time and as the improvements age.

### **1.11 ASBESTOS.**

Attached as Exhibit 1 to this Exhibit R is a portion of a Limited Asbestos Inspection Report, dated March 29, 2013 (the "*Asbestos Report*") prepared at the request of the Developer by Owen Environmental, Inc. (the "*Asbestos Inspector*"), State-certified Asbestos Inspector (# HIASB-0904), Asbestos Project Designer, Asbestos Management Planner and Asbestos Project Monitor. The entire Asbestos Report shall be made available to purchasers and prospective purchasers upon request.

The Developer retained the Asbestos Inspector as an independent contractor. The Asbestos Report contains observations and opinions of the Asbestos Inspector. The Developer is not an engineer, asbestos inspector, asbestos project designer, or asbestos management planner. The Developer has relied entirely on the Asbestos Inspector to identify any potential asbestos issues or problems that may exist in the Project.

Both of the main buildings at the Kauai Kailani complex (Building A [the Orchid Building] and Building B [the Plumeria Building]) were undergoing renovation at the time of the inspections. Only those areas of each building which were unoccupied in anticipation of renovation were inspected by Owen Environmental, Inc. This means that only some of the Units were inspected. The Asbestos Report identifies the Units that were inspected.

The inspections performed by the Asbestos Inspector covered only those building materials which were exposed and/or reasonably accessible, and which appeared likely to be disturbed or removed during ongoing renovation activities. The specific areas inspected included exterior finish materials on those portions of the buildings that were undergoing renovation work, and interior finish materials in Resort Units that were accessible for inspection.

There is a risk that more extensive inspection and testing might change the conclusions reached in the Asbestos Report. ***The Developer makes no representations or warranties that the Asbestos Report is accurate, correct, comprehensive or complete, or that more extensive inspection and testing would not change the conclusions reached in the Asbestos Report.***

The Asbestos Report contained various recommendations, including recommendations: (i) that additional inspections should be conducted, (ii) that any disturbance and/or removal of friable asbestos-containing materials be performed only by licensed asbestos abatement contractors using appropriate engineering controls, (iii) that a State-certified Asbestos Project Designer be hired; (iv) that an independent Asbestos Project Monitor be hired to monitor abatement work; and (v) that a Closure Report be produced to document the entire abatement project. ***The Developer makes no representation or warranties all of the recommendations of the Asbestos Inspector were implemented, or that they were implemented in the manner or to the extent recommended in the Asbestos Report.***

#### 1.12 MOLD AND LEAD EXPOSURE.

Attached as Exhibit 2 to this Exhibit R is a brief report entitled "Visual Inspection for Mold and Assessment of Potential for Lead Exposure,"

dated August 9, 2013 (the "Mold and Lead Exposure Report") prepared at the request of the Developer by Owen Environmental, Inc. (the "Environmental Inspector"), State-certified Asbestos Inspector (# HIASB-0904), Asbestos Project Designer, Asbestos Management Planner and Asbestos Project Monitor. The Developer retained the Environmental Inspector as an independent contractor. The Mold and Lead Exposure Report contains observations and opinions of the Environmental Inspector. The Developer is not an engineer, asbestos inspector, asbestos project designer, or asbestos management planner. The Developer has relied entirely on the Environmental Inspector to identify any potential mold or lead exposure issues or problems that may exist in the Project.

Due to the extensive renovations underway at the time of the inspection, only a visual survey of the Project was conducted by the Environmental Inspector. There is a risk that more extensive inspection and testing might change the conclusions reached in the Mold and Lead Exposure Report. ***The Developer makes no representations or warranties that the Mold and Lead Exposure Report is accurate, correct, comprehensive or complete, or that more extensive inspection and testing would not change the conclusions reached in the Mold and Lead Exposure Report.***

#### 1.13 PROSPECTIVE PURCHASERS' OBLIGATION OF DUE DILIGENCE.

In order to be sure that the purchase of a Unit in the Project will satisfy their own personal requirements and expectations, Purchasers and prospective Purchaser are cautioned (i) to read with care the entire Statement of Condition, the Asbestos Report, and the Mold and Lead Exposure Report, (ii) to review them with their legal and other consultants and advisors, and (iii) to personally inspect and to retain home inspectors and other qualified consultants and advisors to inspect the Condominium and any Unit that they may consider purchasing. **The Developer disclaims all liability for any latent or patent condition in the Condominium or any Unit that a purchaser or prospective purchaser, a home inspector, or licensed architect, engineer or other professionals, could or should have discovered by conducting an inspection and, where necessary, testing sufficient to satisfy the purchaser or prospective purchaser that the purchase of a Unit in the Project will satisfy their own personal requirements and expectations.**

### OTHER DISCLOSURES

#### 1.14 ASSOCIATION.

**A. DEVELOPER CONTROL PERIOD.** The Developer reserves the right to appoint and remove the officers and members of the Board. This right shall remain in effect for a period (the "Developer Control Period") commencing on the date when the Association is established and terminating upon the earlier of (i) seven (7) years from the date when this Declaration is first recorded, or (ii) at such earlier time as provided in the Condominium Property Act. The Developer may voluntarily surrender the right to appoint and remove the officers and members of the Board before the termination of the Developer Control Period, but in that event the Developer may require, for the duration of the Developer Control Period, that specified actions of the Association or Board, as described in a recorded instrument executed by the

Developer, be approved by the Developer before they become effective. (Declaration, Section 10.3B.)

**B. LEGAL SERVICES.** The Board may begin, defend, settle, or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters relating to (i) interpretation or enforcement of the Condominium Documents; (ii) damage to the Common Elements to the extent that the Association is obligated to maintain and repair them; (iii) damage to any part of any Unit to the extent that the Association is obligated to maintain and repair it; or (iv) damage to the Units that arises out of, or is integrally related to, damage to any the Common Elements or to any part of any Unit to the extent that the Association is obligated to maintain and repair them or it.

1) **CONDITIONS TO LITIGATION, ARBITRATION, OR OTHER PROCEEDINGS.** The Board shall not pay or incur, or commit the Association to pay or incur legal fees and costs of more than \$50,000 in any lawsuit, arbitration or other legal proceeding unless it first meets each of these requirements:

(a) The Board must obtain from at least two Hawai'i law firms legal opinions written in clear and plain language, and containing:

(1) A list of all of the Association's claims, and all claims against the Association, if any.

(2) An estimate of the likelihood of prevailing on each claim stated on a percentage basis. The estimate must be based on information then known to the Association. It cannot be based on assumptions or speculation.

(3) An estimate of the total amount of legal fees and costs, court costs and other expenses that the Association is likely to incur through the completion of the trial, arbitration or other proceeding (assuming that the Association will prevail on only those claims where the law firms give the Association more than a 60% chance of prevailing).

(4) An estimate of the likely award of damages to or against the Association, including legal fees and costs, court costs, and other expenses, for claims of the Association and for claims against the Association.

(5) An estimate of the total amount of any Special Assessments, or any increase in the Regular Assessments, that the Board may have to charge to the Owners to pay for legal fees and costs, court costs, and other expenses while the lawsuit or other legal proceeding is going on.

The estimates required by Subsections 1.14B.1(a)(3), 1.14B.1(a)(4), and 1.14B.1(a)(5) may be stated as a range (for example, \$50,000 to \$60,000) provided that the range is not so broad as to impair the ability of the Owners to make an informed decision, and in no case may the higher amount be more than twenty percent (20%) greater than the lesser amount.

(b) The Board must call a special meeting of the Association. The notice of the special meeting must include each of the following:

(1) A copy of every legal opinion obtained by the Board in connection with each claim, whether favorable or unfavorable;

(2) A document containing a table listing:

i. The Association's claims and all claims against the Association. Each claim must be listed on a separate row;

ii. For each claim:

a) The estimate of each law firm of the likelihood of prevailing on that claim;

b) The estimated amount of damages that may be awarded for claims of the Association, including legal fees and costs, court costs, and other expenses;

c) The estimated amount of damages that may be awarded for claims against the Association, including legal fees and costs, court costs, and other expenses; and

d) In the case of claims asserted or that may be asserted against the Association, a statement of whether the Association's insurance covers the claim, the amount of the policy limits, and whether the estimated amount of the damages, legal fees and costs, court costs, and other expenses, exceeds the policy limits.

(3) An estimate of the total amount of any Special Assessments, or any increase in the Regular Assessments, that the Association may have to charge to pay for legal fees, court costs, and expenses while the lawsuit, arbitration or other legal proceeding is going on.

(4) A description, written in clear and plain language, of any pending settlement offer by the other party or parties.

(c) At the special meeting, a Majority of Unit Owners must authorize the Board to start, prosecute and/or defend the lawsuit, arbitration or other legal proceeding. If the Developer is a defendant in the lawsuit, arbitration or other legal proceeding, then the Common Interests of any Units owned solely by the Developer will not be considered in determining whether a Majority of Unit Owners have authorized the Board to proceed.

(d) The Board has collected from the Owners an amount equal to the total amount of any Special Assessments that the Board expects to charge to the Owners to pay for legal fees, court costs, and expenses while the lawsuit, arbitration or other legal proceeding is going on.

## 2) **LIMITATIONS.**

(a) The rule in Subsection 1.14B.1), above, does not apply to suits filed solely to collect Assessments that are past due or for breach of any contract to provide goods or services to the Association (for example, the Management Contract).

(b) Prior to the completion of the special meeting required by Subsection 1.14B.1)(b), the Association may pay or incur legal fees, not to exceed the \$50,000 ceiling established in Subsection 1.14B.1), as necessary to:

(1) Obtain the legal opinions required by Subsection 1.14B.1)(a);

(2) File an answer to any complaint or other legal proceeding filed against the Association; or

(3) File a complaint or initiate any other legal proceeding necessary to prevent the loss of the Association's claim by reason of the expiration of the statute of limitations.

3) **EVIDENCE.** In a trial, arbitration or other legal proceeding about the Association's claims, nobody can introduce into evidence the opinions of the law firms obtained pursuant to Subsection 1.14B.1)(a). This includes the Developer, the Association, the Owners, and everyone else. This paragraph does not preclude the presentation of the opinions in a hearing or proceeding to determine whether the requirements of Subsection 1.14B.1) have been satisfied.

4) **C.P.I. ADJUSTMENTS.** The \$50,000 ceiling contained in Subsection 1.14B.1) will rise or fall each year with the rate of inflation in Honolulu, Hawai'i, as measured by the C.P.I. Index.

5) **THIRD-PARTY BENEFICIARIES.** Unless otherwise prohibited by law, the Developer and each of its affiliates are intended third-party beneficiaries of this Section 1.14B and may enforce it by injunction or in any other manner allowed by law or by the Condominium Documents.

(Bylaws, Section 7.1P.)

### 1.15 MANAGING AGENT. [CEP2]

#### 1) **TERM.** The Management Contract:

(a) Provides for an initial term of not more than five (5) years from the Starting Date. [The] [CEP3] "Starting Date" is the first date on which a Unit Lease or an instrument conveying a Unit, Vacation Ownership Interest, or Fractional Ownership Interest is recorded (excluding conveyance to the Developer or an affiliate of the Developer, or a conveyance to the Developer's Lender or other bulk conveyance).

(b) Provides that when the first term and each later term ends, the contract automatically will be renewed for three more years unless either party sends a written notice that it is not renewing the contract (a "Notice of Non-Renewal") to the other party at least ninety (90) days before the next renewal date. The Management Contract also provides that the Association cannot give a Notice of Non-Renewal unless a Majority of Unit Owners vote not to renew the Management Contract at an annual or special meeting of the Association held within one year before the renewal date. In addition, it should be noted that:

(1) A decision to cancel or not to renew the Management Contract cannot be made by any officer of the Association or by the Board; neither the Association's officers nor its Board have the power or authority to do so, whether in their own right or on behalf of the Association; and

(2) Neither the Board nor any officer, Director, employee or agent of the Association can give the Notice of Non-Renewal before the Association determines by vote or written assent of a Majority of Unit Owners as provided above, not to renew the Management Contract. Any Notice of Non-Renewal sent before then will not be effective. It will be void.

**B. TERMINATION BY THE ASSOCIATION.** The Management Contract gives the Association the right to terminate it in each of the following situations:

1) **FOR CAUSE.** The Association has the right to terminate the Management Contract whenever the Managing Agent violates a material part of it and fails to cure its violation within the time permitted by the Management Contract or any longer time permitted by the Board. [COMMENT4]

2) **WITHOUT CAUSE.** The Association has the right to terminate the Management Contract without penalty to the Association within a period of one hundred eighty days after the Board elected by the Unit Owners pursuant to Section 514B-106(e), HRS, takes office, on not less than ninety (90) days' written notice (a "Notice of Termination"). The Management Contract provides that the Association cannot give a Notice of Termination unless a Majority of Unit Owners vote to do so at an annual or special meeting of the Association. In addition, it should be noted that:

(a) A decision to terminate under this Section cannot be made by any officer of the Association or by the Board alone; neither the Association's officers nor its Board shall have the power or authority to do so whether in their own right or on behalf of the Association; and

(b) Neither the Board nor any officer, Director, employee or agent of the Association can give the Notice of Termination before a Majority of Unit Owners vote to terminate the Management Contract at an annual or special meeting of the Association. Any Notice of Termination sent before then will not be effective; it will be void.

Note that Seller appointed Castle Resorts and Hotels, Inc., a Hawai'i corporation, as the initial managing agent for the Project pursuant to a Property Management and Agency Agreement dated November 19, 2013 that provides for an initial term of five (5) years with automatic three (3) year renewals as provided above. The Starting Date of this agreement is April 17, 2014.

1.16 **RULES AND REGULATIONS.** [CEP5] The Association may adopt, publish and enforce fair and reasonable Rules and Regulations governing the operation and use of the Common Elements and, to the extent provided by the Condominium Law, the use or behavior in the Resort Units. The Developer, as the sole initial member of the Association, adopted the initial Rules and Regulations. The Board may revise the Rules and Regulations from time to time. The Board may change the Rules and Regulations from time to time. The Developer also has certain rights to change the Rules and Regulations. The Rules and Regulations must be consistent with the Declaration, the Articles, the Bylaws and the Condominium Law. The Association must give notice to the Owners of any change in the Rules and Regulations. Notice of any amendment shall be: (i) either mailed, faxed, e-mailed or sent by other electronic or wireless means, as the case may be, by the Association to each Unit Owner at the Unit Owner's last known mailing address, e-mail address, fax number or other electronic address or number, prior to its effective date; or (ii) included as a part of a newsletter or other periodic report sent by the Association or the Managing Agent. The Association may also give this notice in any other way that is likely to be effective to give notice to the Unit Owners. Notice need not be given of any changes to the Managing Agent's internal, operational or proprietary policies, procedures or administrative practices or the interpretation and implementation of the Rules and Regulations. At any time when the

Developer holds a mortgage on or owns any Unit, Unit Lease, Vacation Ownership Interest or Fractional Ownership Interest, no change to the Rules and Regulations will be effective without the Developer's written consent. (Bylaws, Section 7.4.)

**1.17 EROSION AGREEMENT.** Under Hawaii law, the beach and any other land located on the ocean side of the shoreline belongs to the State. From time to time, the location of the shorelines around the islands tend to move due to ocean currents, waves, and other natural forces. Prior to the establishment of the Project as a condominium, the Developer asked the State of Hawaii to certify the location of the shoreline for the land of the Project. After inspecting the property in February, 2013, the State sent a letter requiring, among other things, that the Developer "Resolve the encroachments of the concrete wall and short wooden retaining structures" located on the State's land. These were located along the boundary between the Project and a neighbor's property, with the bulk of the wall located on the neighbor's side of the lot line. By the date of the State's letter, however, most of the wall was located on State land due to the fact that the shoreline (and the boundaries of the waterfront lots) had moved mauka from its original location. In response to the State's requirement, the Developer removed the concrete wall or "groin" and wooden retaining structures. Subsequently, the shoreline moved again and so the Developer added disclosures to the public report specifically addressing the new erosion. The Association filed a lawsuit against the Developer and certain companies and persons associated with the Developer, Civil No. 16-1-0176 (the "*Lawsuit*"). Among other things, the Association claimed that the removal of the groin should have been disclosed and that the Developer should have done more to maintain the beach after the removal of the groin. On March 9, 2017, the court dismissed the Lawsuit without prejudice. The Developer and the Association signed a settlement agreement dated October 23, 2017 (the "*Erosion Agreement*"), in which the Developer agreed to make certain payments to the Association. In return, the Association, for itself and on behalf of each Owner of a Unit in the Condominium, released and discharged the Developer for all past, present and future claims and causes of action of any kind or nature, whether known or unknown, except for the claims that are the subject of an earlier settlement agreement known as the "Non-Erosion Agreement" (discussed below).

**A. GROIN AND BEACH NOURISHMENT.** To reduce or prevent erosion of the beach in front of the Project, the Association desires to construct or install a hardened wall or "groin" like the concrete groin that was removed several years ago. The Association also desires to restore the sand on the beach in front of the Project to a condition comparable to the beach as it existed before the concrete groin was removed. The Association has hired Oceanit Coastal Corporation (the "*Engineering Contractor*") to provide the design and permitting work (the "*Design Work*"). The Developer will pay 68% of the cost of the Design Work and certain related expenses up to a maximum of \$130,560, and the Association will pay the rest. Upon selection of a contractor to do the construction work ("*Construction Work*"), the Developer will pay 68% of the costs of the Construction Work and the Association will pay 32%. However, the Developer has an option (the "*Early Out Option*") to terminate its financial obligations under the Erosion Agreement by depositing a lump sum in an escrow account either in December of 2018 or in December of 2019. In such event, the Association may withdraw funds from the escrow account to pay certain expenses of the Association, including the Design Work and

the Construction Work. Any funds remaining after October 23, 2037, will be returned to the Developer.

The Association and the Developer anticipate that construction or installation of a new groin or other shoreline protection barrier is a process that includes multiple approvals across County, State and Federal agencies. As a result, the Developer can make no promises or predictions about whether the Association will be able to obtain all the governmental approvals that it desires or when it will know whether it can obtain them. To avoid further erosion while seeking such governmental approvals, the Association arranged for the construction of a barrier along the shoreline of the Project, called the Shoreline Protection Feature ("*SPF*"). The total cost of the initial design, construction and installation of the SPF ("*SPF Work*") was estimated to be no more than \$300,000.00. The Developer paid 68% (\$204,000.00) of this cost and the Association paid the rest. Until the Association completes the Construction Work for the new planned groin/barrier and beach nourishment project, the Developer will pay 68% and the Association will pay 32% of the cost to maintain or repair the SPF and to repair any damage to the shoreline landscaping caused by further erosion. The Developer's financial obligations will end if the Developer exercises the Early Out Option.

After the Construction Work is completed, the Association will pay, as a common expense, all costs to maintain, repair and replace the groin or other improvements constructed or installed as part of the Construction Work, and all landscaping and related improvements.

The 2018 budget for the Association provides for payments on a loan from First Hawaiian Bank. The Managing Agent has informed the Developer that the loan was done to cover the Association's share of expenses paid under the settlement agreements.

**B. NUISANCES.** Activities relating to the Design Work and Construction Work are likely to generate noise, dust, and other nuisances, and may temporarily disrupt the use of Common Elements. The Association is responsible to see that the Work takes place between 7:00 a.m. and 5:00 p.m., Monday thru Friday, and to require each contractor to perform its work in a way that minimizes the closure of Common Elements required to get to any given Unit or to get to the Unit's assigned parking stall, if any.

**1.18 NON-EROSION AGREEMENT.** As part of the Lawsuit, the Association also raised non-erosion claims. The Developer and the Association signed a settlement agreement dated June 21, 2017 (the "*Non-Erosion Agreement*"), in which the Developer agreed to make certain payments to the Association, to install an elevator, to make certain corrections to the Project, and to limit sales of parking stalls. In return, the Association, for itself and on behalf of each Owner of a Unit in the Condominium, released and discharged the Developer from the claims addressed in the Non-Erosion Agreement. Among other things, the Non-Erosion Agreement provided for the following:

**A. ELEVATOR.** The Developer has installed an elevator in the Orchid Building. The Association will pay all costs to maintain and operate the elevator and related improvements as a common expense. Although the 2018 Operating Budget did not include any elevator expenses or reserves, future budgets are likely to add this. As a condition to issuing the permits required for the installation of the elevator in the Orchid Building, the County of Kauai required that the

Association enter into an Indemnification Agreement dated December 12, 2016, recorded as Document No. A-62390548. The Indemnification Agreement is intended to satisfy the requirements of Section 8-27.7(b)(3) of the Kauai County Code, which provides: "The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion control or shoreline hardening structure and/or landscaping shall not be allowed to protect the permitted structure during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation located more than forty (40) feet from the shoreline." The Indemnification Agreement may constitute an impediment to the Association's ability to construct or install a hardened wall or "groin" like the concrete groin that was removed several years ago, as discussed above. There are no plans to install an elevator in the Plumeria Building.

**B. WALKWAYS AND STAIRWAYS.** The Developer has made certain corrections to the stairways and walkways of the Orchid Building. The Association will pay all ongoing costs to maintain and repair them as a common expense.

**C. PARKING STALLS.** The Project has more Units than parking stalls. The Developer has agreed that, in the future, it will not sell more than one parking stall with any unsold Unit or to any current Unit Owner without a stall. The Developer will not sell any parking stalls to anyone else. After the last unit is sold, the Developer will transfer to the Association (i) the Developer's Reserved Rights for the creation and restriping of parking stalls; and (ii) any unsold parking stalls.

**1.19 MISCELLANEOUS.** The Managing Agent has advised the Developer that the Board of Directors of the Association held up on preparing a new reserve study in 2017 due to the pending settlement negotiations with the Developer, but that most likely a new reserve study would be done in 2018.