

IMPORTANT - - Read This Developer Prepared Report Before Buying

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

DEVELOPER'S PUBLIC REPORT FOR A CONDOMINIUM

CONDOMINIUM PROJECT NAME	MAKALEA CONDOMINIUM
Project Address	Makalea Street Koloa, Poipu, Kauai, Hawaii 96756
Registration Number	7676
Effective Date of Report	September 25, 2015
Developer(s)	Steven A. Hunt, Trustee of the Steven A. Hunt Revocable Trust Lauren L. Hunt, Trustee of the Lauren L. Hunt Revocable Trust

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.

1. This is a CONDOMINIUM PROJECT, not a subdivision. The entire parcel of land upon which the Project is situated is designated as a common element. The portion of the land beneath each CONDOMINIUM UNIT conveyed to a purchaser for his exclusive use and is not a legally subdivided lot. The purchaser is also conveyed an "undivided" percentage interest in the common elements of the Project. The dotted lines on the condominium map bounding the designated areas of the land which comprise the UNITS are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.

2. Units 1 and 2 as defined by the Condominium Property Act are only spatially described. Any new residential structure constructed on a UNIT must be built in accordance with applicable recorded covenants, conditions and restrictions as well as applicable governmental building and zoning laws and ordinances. The development of this Project is subject to the provisions of the Poipu Beach Estates Declaration of Covenants, Conditions and Restrictions, as amended (the "CCR"). The right to construct a "Main Dwelling" and an "Additional Dwelling Unit" on the Project as they are each respectively defined and limited by the CCR, will be allocated between the two units by the deeds conveying the same. Also, the 8,600 square feet of "floating" R-4 zoning allowed on the Project the by County of Kauai will be allocated between the units by the conveyancing deeds.

3. This Public Report does not constitute an "approval" of the Project by the Real Estate Commission, or any other governmental agency, nor does it warrant that all applicable county codes, ordinances and subdivision requirements have necessarily been complied with.

4. Facilities and improvements associated with county-approved subdivisions, such as fire protection devices, county street lighting, electricity, upgraded water facilities, etc., may not be provided, and county street maintenance and trash collection may not be available for interior roads and driveways.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.

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General Information On Condominiums

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

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

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

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

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

Operation of the Condominium Project

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

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

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

1. THE CONDOMINIUM PROJECT

1.1 The Underlying Land

Fee Simple or Leasehold Project	<input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (attach Leasehold Exhibit)
Developer is the Fee Owner	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Fee Owner's Name if Developer is not the Fee Owner	
Address of Project	Makalea Street, Poipu, Koloa, Kauai, Hawaii 96756
Address of Project is expected to change because	County of Kauai will assign house numbers as residences are constructed
Tax Map Key (TMK)	[4] 2-8-031:173
Tax Map Key is expected to change because	County of Kauai will assign each Unit a separate tax map key
Land Area	43,562 square feet
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	

1.2 Buildings and Other Improvements

Number of Buildings	0
Floors Per Building	0
Number of New Building(s)	0
Number of Converted Building(s)	0
Principle Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	n/a

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
1	1	0	0	21,552 sq. ft.	spatial unit	21,552 s.f.
2	1	0	0	21,552 sq. ft.	spatial unit	21,552 s.f.
See Exhibit <u> </u> "B" <u> </u> .						

2	Total Number of Units
---	------------------------------

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

1.4 Parking Stalls

Total Parking Stall in the Project:	See Section 6 on page 19 of this Public Report
Number of Guest Stalls in the Project:	
Number of Parking Stalls Assigned to Each Unit:	
Attach Exhibit _____ 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.	

1.5 Boundaries of the Units

Boundaries of the unit: Described in Exhibit "B"

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): Any structure or improvement not prohibited by recorded instrument and allowed by applicable governmental law or regulation.

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 "B" _____.
As follows:

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

<input type="checkbox"/>	Swimming pool
<input type="checkbox"/>	Laundry Area
<input type="checkbox"/>	Storage Area
<input type="checkbox"/>	Tennis Court
<input type="checkbox"/>	Recreation Area
<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

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

Described in Exhibit "C" .

Described as follows:

Common Element	Number
Elevators	0
Stairways	0
Trash Chutes	0

1.10 Limited Common Elements

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

Described in Exhibit n/a .

Described as follows:
 There are no limited common elements in this Project.

1.11 Special Use Restrictions

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

<input type="checkbox"/>	Pets:
<input type="checkbox"/>	Number of Occupants:
<input checked="" type="checkbox"/>	Other: Poipu Beach Estates Declaration of Covenants, Conditions and Restrictions (Exhibit H)
<input type="checkbox"/>	There are no special use restrictions.

1.12 Encumbrances Against Title

An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of a unit in the project. Encumbrances shown may include blanket liens which will be released prior to conveyance of a unit (see Section 5.3 on Blanket Liens).

Exhibit "D" describes the encumbrances against title contained in the title report described below.

Date of the title report: May 20, 2015

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

1.13 Uses Permitted by Zoning and Zoning Compliance Matters

Uses Permitted by Zoning				
	Type of Use	No. of Units	Use Permitted by Zoning	Zoning
<input checked="" type="checkbox"/>	Residential		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Open/R-4 (floating)
<input type="checkbox"/>	Commercial		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Mix Residential/Commercial		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Hotel		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Timeshare		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Ohana		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Industrial		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Agricultural		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Recreational		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input checked="" type="checkbox"/>	Other (Specify):	2	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Open/R-4 (floating)
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				

1.14 Other Zoning Compliance Matters

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

1.15 Conversions

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

<p>Verified Statement from a County Official</p>	
<p>Regarding any converted structures in the project, attached as Exhibit <u>n/a</u> is a verified statement signed by an appropriate county official which states that either:</p> <p>(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:</p> <ul style="list-style-type: none"> (i) Any variances or other permits that have been granted to achieve compliance; (ii) Whether the project contains any legal non-conforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and (iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance; <p 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>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii? If answer is "Yes", provide information below.</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable state and county land use laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation.</p>	
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable county real property tax laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation and state whether there are any penalties for noncompliance.</p>	
<p>Other disclosures and information:</p>	

1.17 Project with Assisted Living Facility

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

2. PERSONS CONNECTED WITH THE PROJECT

<p>2.1 Developer(s)</p>	<p>Name: Steven A. Hunt, Trustee and Lauren L. Hunt, Trustee</p> <p>Business Address: 4129 Puahale Place Lihue, Hawaii 96766</p> <p>Business Phone Number : (808)-241-4225</p> <p>E-mail Address: n/a</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>n/a</p>
<p>2.2 Real Estate Broker</p>	<p>Name: None. See Section 6 on page 19 of this Public Report.</p> <p>Business Address:</p> <p>Business Phone Number:</p> <p>E-mail Address:</p>
<p>2.3 Escrow Depository</p>	<p>Name: Title Guaranty Escrow Services, Inc.</p> <p>Business Address: 235 Queen Street, First Floor Honolulu, HI 96802</p> <p>Business Phone Number: 808-533-5855</p>
<p>2.4 General Contractor</p>	<p>Name: n/a</p> <p>Business Address:</p> <p>Business Phone Number:</p>
<p>2.5 Condominium Managing Agent</p>	<p>Name: Self-managed by Association of Unit Owners</p> <p>Business Address:</p> <p>Business Phone Number:</p>
<p>2.6 Attorney for Developer</p>	<p>Name: Patrick J. Childs</p> <p>Business Address: 4365 Kukui Grove Street, Suite 104 Lihue, HI 96766</p> <p>Business Phone Number: 808-245-2863</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
Land Court	April 9, 2015	T-9248151

Amendments to Declaration of Condominium Property Regime

Land Court or Bureau of Conveyances	Date of Document	Document Number
Land Court	May 5, 2015	T-9263241

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
Land Court	April 9, 2015	T-9248152

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	2283
Bureau of Conveyances Map Number	
Dates of Recordation of Amendments to the Condominium Map:	

3.4 House Rules

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

The House Rules for this project:

Are Proposed	<input type="checkbox"/>	
Have Been Adopted and Date of Adoption	<input type="checkbox"/>	
Developer does not plan to adopt House Rules	<input checked="" 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%	100%

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

<input type="checkbox"/>	No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).
<input checked="" type="checkbox"/>	<p>Developer has reserved the right to change the Declaration, Bylaws, Condominium Map and House Rules (if any) and to add to or merge the project or to develop the project in one or more phases, and such rights are summarized as follows:</p> <p>The Developer shall have, and hereby reserves, the absolute right to amend this Declaration and the Condominium Map without the consent or joinder of any Unit Owner or any other party (including any mortgagee) holding any interest in any unit or the Project, for the purpose of adding real estate to the Project, creating units, adding common elements within the Project, subdividing units, combining units, converting units into common elements, withdrawing real estate from the Project, merging projects or increments of a project or otherwise altering the Project, upon the condition that not such amendment shall in any way alter or impact in any material way any unit of common interest therein which has been conveyed by the Developer prior the filing of such amendment in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.</p>

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 type="checkbox"/>	Not affiliated with the Developer
<input checked="" 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 "E" 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 type="checkbox"/>	Electricity for the common elements
<input type="checkbox"/>	Gas for the common elements
<input type="checkbox"/>	Water
<input type="checkbox"/>	Sewer
<input 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 checked="" type="checkbox"/>	Gas for the Unit only
<input checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer
<input checked="" type="checkbox"/>	TV Cable
<input checked="" type="checkbox"/>	Other (specify) Telephone and any other utilities

5. SALES DOCUMENTS

5.1 Sales Documents Filed with the Real Estate Commission

<input checked="" type="checkbox"/>	Specimen Sales Contract Exhibit "F" 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: June 4, 2015 Name of Escrow Company: Title Guaranty Escrow Services, Inc. Exhibit "G" 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 type="checkbox"/>	There are <u>no blanket liens</u> affecting title to the individual units.
<input checked="" type="checkbox"/>	There are <u>blanket liens</u> that may affect title to the individual units.

<u>Type of Lien</u>	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
Mortgage	Upon default the lender may foreclose on the property and terminate the purchaser's interest in any sales contract. In such case, all deposits, less cancellation fees, would be refunded.

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
Appliances: none

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

Status of Construction: There are no structures constructed or under construction on the Project.
Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.
Completion Deadline for any unit not yet constructed, as set forth in the sales contract:
Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:

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

<input checked="" type="checkbox"/>	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. 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 met certain requirements, described below in 5.6.1 or 5.6.2..
-------------------------------------	--

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

5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance

<input type="checkbox"/>	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. <i>If this box is checked, Section 5.6.2, which follows below, will not be applicable to the project.</i>
--------------------------	---

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

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:
Poipu Beach Estates Declaration of Covenants, Conditions and Restrictions, as amended |

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

Website to access official copy of laws: www.capitol.hawaii.gov

Website to access rules: www.hawaii.gov/dcca/har

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

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

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

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

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

(b) Allows the 30-day cancellation period to expire without exercising the right to cancel; or

(c) Closes the purchase of the unit before the 30-day cancellation period expires.

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

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

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

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

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

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

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

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

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

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

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

6. MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT

NOT A SUBDIVISION. This is a condominium project which should not be confused with a subdivision. A purchaser of a condominium project will be conveyed a unit with an undivided percentage interest in the common elements of the Project. The entire parcel of land upon which the Project is situated is designated as a common element. That portion of the common element which each purchaser has the exclusive right to use is called a unit, but is not a legally subdivided lot.

PARKING. There is ample room on each of the two units for the parking of at least two (2) vehicles.

DISCLOSURE OF REAL ESTATE BROKER. As of the date of this Public Report, the developer has not executed a listing agreement for either of the two units. This means that the developer may not offer to sell or sell either unit until he executes a Broker's Listing Agreement with a licensed real estate broker for the unit(s) he wishes to sell, and delivers to the prospective purchaser an Amended Public Report which reflects the listing agreement.

MANAGEMENT OF PROJECT. The Project's Association of Unit Owners and Board of Directors are responsible for the management of the Project. Under the Project's Declaration and Bylaws each owner must attend Association and Board meetings in order to establish a quorum, and any decision of the Association or the Board requires the concurrence of both unit owners or their designated representatives.

COVENANTS, CONDITIONS AND RESTRICTIONS. This Project is situated in the Po'ipu Beach Estates Subdivision and is therefore subject to the Po'ipu Beach Estates Declaration of Covenants, Conditions and Restrictions which document is attached as Exhibit "H" to this Public Report.

COMMUNITY ASSOCIATION ASSESSMENTS AND FEES. The Poipu Beach Estates Declaration of Covenants, Conditions and Restrictions ("CCR") establishes the Po'ipu Beach Estates Community Association as a non-profit corporation with the power to levy assessments against the owners of the lots in the subdivision for various purposes relating to the maintenance and management of the the subdivision. Any such assessments against Lot 173 underlying the Project shall be divided and paid equally by the two owners of the units. Any prospective purchaser of a unit in the Project should inquire and ascertain the cost of the current assessments at the time.

UNIT DEEDS. There are two forms of deeds which will be issued for the units in this Project:

1. Unit deed granting the right to construct a Main Dwelling which shall be the only residence allowed on the limited common element appurtenant to the subject unit. The Main residence shall only be as allowed and constrained by Section 8.1 and Exhibit "B" of the Poipu Beach Estates CCR. This deed will also grant the subject unit a certain number of the 8600 square feet of floating R-4 zoning allowed on the Land underlying the Project.
2. Unit deed granting the right to construct an Additional Dwelling Unit ("ADU") which shall be the only residence allowed on the limited common element appurtenant to the subject unit. The ADU shall only be as allowed and constrained by Section 8.1 and Exhibit "B" of the Poipu Beach Estates CCR as well as the unrecorded letter from the County of Kauai Water Department approving the current maximum size for ADUs as 1,800 square feet. This maximum may be modified in the future by the Water Department to limit the ADU to 1,200 square feet. This deed will also grant the subject unit a certain number of the 8600 square feet of floating R-4 zoning allowed on the Land underlying the Project.

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.

STEVEN A. HUNT, Trustee

Printed Name of Developer

By: Steven A. Hunt
Duly Authorized Signatory*

09/18/15
Date

STEVEN A. HUNT, Trustee

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.**

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.

LAUREN L. HUNT, Trustee

Printed Name of Developer

By:



Duly Authorized Signatory*

18 Sept 2015

Date

LAUREN L. HUNT, Trustee

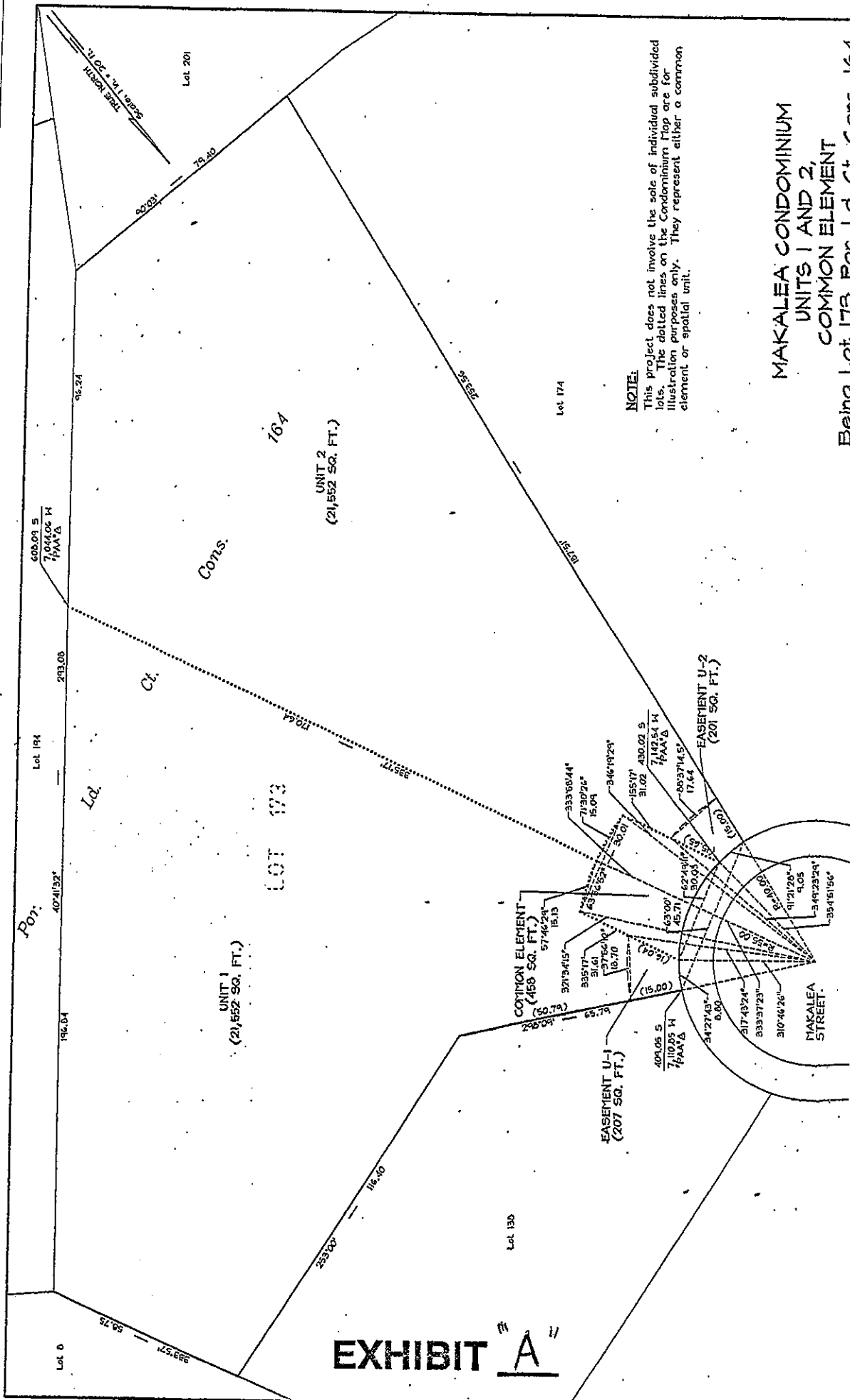
Printed Name & Title of Person Signing Above

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.



NOTE:
 This project does not involve the sale of individual subdivided lots. The dotted lines on the Condominium Map are for illustration purposes only. They represent either a common element or spatial unit.

**MAKALEA CONDOMINIUM
 UNITS 1 AND 2,
 COMMON ELEMENT
 DESIGNATION OF EASEMENTS
 U-1, AND U-2**

Being Lot 173, Por. Ld. Ct. Cons. 164
 KOLOA, POIUFU, KAUAI, HAWAII
 Tax Map Key: (4) 2-B-31, 173
 Owner: Steve Hunt
 Date: February 10, 2015

THIS WORK WAS PREPARED BY ME
 OR UNDER MY SUPERVISION

Wayne J. Webb
 Signature

ESAKI SURVEYING & MAPPING, INC.
 EXPIRES: APRIL 30, 2016

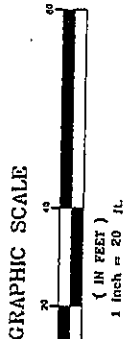


EXHIBIT "A"

EXHIBIT "B"

DESCRIPTION OF UNITS AND COMMON INTERESTS IN THE PROJECT

A. UNIT DESCRIPTIONS:

1. General Descriptions. The Project contains two (2) Units. All Units are spatial areas, which have the following general descriptions;

(a) The perimeter shape in the horizontal plane ("Perimeter") and location of each Unit is shown in horizontal plane view on the Condominium Map.

(b) The base of each Unit ("Base") is located five hundred (500) feet below the level of the ground within the Unit ("Ground Level"), at each point along the ground.

(c) The top of each Unit ("Top") is located one hundred (100) feet above Ground Level at each point along the ground.

(d) The sides of each Unit ("Sides") are defined by vertical parallel lines, which are perpendicular to the horizontal plane; which connect the outside edges of the Base and the outside edges of the Top; and which are all six hundred (600) feet in height.

(e) Each Unit is comprised of and includes, but is not limited to, all of the area within the spatial area inside the Bottom, Top and Sides of each Unit; all improvements (with the exception of any improvements constituting Common Elements, if any, constructed within the Unit, provided, however, that no Unit shall include any utilities, services or roads running through such Unit which are utilized for or serve more than one Unit, same being deemed Common Elements.

The specific spatial coordinates and area of each Unit's Perimeter shape as shown on the Condominium Map are set forth in Exhibit "1", attached hereto and incorporated herein by reference.

B. COMMON INTERESTS:

Percentage of Undivided Interest in Common Elements. Each Unit shall have an undivided percentage interest (herein referred as the "common interest") in all common elements of the Project and all common profits and common expenses of the Project (except as otherwise provided in this Declaration or the Bylaws), and for all other purposes, including voting. The percentage of undivided common interest is determined by apportioning an equal fifty percent (50%) interest to each of the two Units, irrespective of the size of the Units. Each Unit shall have the following percentage of the undivided common interest.

Unit 1	50%
Unit 2	50%
	<hr/>
	100%

MAKALEA CONDOMINIUM
UNIT 1

LAND SITUATED AT KOLOA, POIPU, KAUAI, HAWAII

Being Portion of Lot 173
Being Also Portion of Land Court Consolidation 164

Beginning at the southwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PAA" being 608.09 feet South and 7,044.06 feet West, thence running by azimuths measured clockwise from true South:

1. 155° 17' 185.64 feet along the remainder of Lot 173, Por. Land Court Consolidation 164 (Unit 2);
thence along the remainder of Lot 173, Por. Land Court Consolidation 164 (Common Element) on a curve to the left with a radius of 55.00 feet, the chord azimuth and distance being:
2. 235° 40' 23.5" 15.21 feet;
3. 155° 17' 16.04 feet along the remainder of Lot 173, Por. Land Court Consolidation 164 (Common Element);
thence along the south side of Makalea Street on a curve to the left with a radius of 40.00 feet, the chord azimuth and distance being:
4. 214° 27' 43" 8.80 feet;
5. 298° 09' 65.79 feet along Lot 138, Por. Land Court Consolidation 164;
6. 253° 00' 116.40 feet along Lot 138, Por. Land Court Consolidation 164;
7. 333° 57' 58.75 feet along Lot 8, Por. Land Court Consolidation 164;

8. 40° 41' 32"

196.84

feet along Lot 194, Por. Land Court Consolidation 164 to the point of beginning and containing an area of 21,552 sq. ft.

SUBJECT HOWEVER, to Easement U-1 for utility purposes.



Lihue, Hawaii
February 2015

DESCRIPTION PREPARED BY:
ESAKI SURVEYING & MAPPING, INC.

A handwritten signature in cursive script that reads "Wayne T. Wada".

Wayne T. Wada
Licensed Professional Land Surveyor
Certificate Number 4596

MAKALEA CONDOMINIUM
UNIT 2

LAND SITUATED AT KOLOA, POIPU, KAUAI, HAWAII

Being Portion of Lot 173
Being Also Portion of Land Court Consolidation 164

Beginning at the southeast corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PAA" being 608.09 feet South and 7,044.06 feet West, thence running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|--------|---|
| 1. | 40° 41' 32" | 96.24 | feet along Lot 194, Por. Land Court Consolidation 164; |
| 2. | 90° 03' | 79.40 | feet along Lot 201, Por. Land Court Consolidation 164; |
| 3. | 187° 51' | 253.56 | feet along Lot 174, Por. Land Court Consolidation 164; |
| | | | thence along the south side of Makalea Street on a curve to the left with a radius of 40.00 feet, the chord azimuth and distance being: |
| 4. | 271° 21' 28" | 9.05 | feet; |
| 5. | 335° 17' | 15.65 | feet along the remainder of Lot 173, Por. Land Court Consolidation 164 (Common Element); |
| | | | thence along the remainder of Lot 173, Por. Land Court Consolidation 164 (Common Element) on a curve to the left with a radius of 55.00 feet, the chord azimuth and distance being: |
| 6. | 251° 30' 26" | 15.09 | feet; |
| 7. | 335° 17' | 185.64 | feet along the remainder of Lot 173, Por. Land Court Consolidation 164 (Unit 1) to the point of beginning and containing an area of 21,552 sq. ft. |

SUBJECT HOWEVER, to Easement U-2 for access and utility purposes.



Lihue, Hawaii
February 2015

DESCRIPTION PREPARED BY:
ESAKI SURVEYING & MAPPING, INC.

A handwritten signature in cursive script that reads "Wayne T. Wada".

Wayne T. Wada
Licensed Professional Land Surveyor
Certificate Number 4596

EXHIBIT "C"

DESCRIPTION OF COMMON ELEMENTS OF THE PROJECT

The common elements of the project are all portions of the condominium project other than the units, including specifically, but without limitation:

(a) All of the Land, in fee simple, subject to its delineation and designation as Units in the Declaration;

(b) Any portion of any pipe(s), wire(s), conduit(s), or other utility or service line(s), drainage ditch(es) or drainage structure(s), retaining wall(s) and yard fence(s) or other improvement, which serves more than one unit or any portion of the common elements.

The common elements also include any other interests in real estate for the benefit of the unit owners which are subject to the Declaration as well as any and all apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use.

END OF EXHIBIT "C"

EXHIBIT "D"

**ENCUMBRANCES AGAINST TITLE
AND SUMMARY OF EFFECTS OF ENCUMBRANCES**

The following are listed as encumbrances against title in this Exhibit "D"

1. Real Property Taxes, if any, that may be due and owing.
Tax Key: (4) 2-8-031-173 Area Assessed: 43,562 sq. ft.
2. Mineral and water rights of any nature in favor of the State of Hawaii.
3. Perpetual easement to convey water through ditch known as Makapala Ditch in favor of Annie S. Knudsen.
4. The terms and provisions contained in instrument dated August 27, 1937, filed as Land Court Document No. 40955, by and between The McBryde Sugar Company, Limited, Party of the First Part, Bishop Trust Company, Limited, Trustee for Eric A. Knudsen and Augustus F. Knudsen, Parties of the Second Part, Eric A. Knudsen and Augustus F. Knudsen, Parties of the Third Part, and Bishop Trust Company, Limited, Party of the Fourth Part.
5. DECREE dated June 7, 1951, filed as Land Court Document No. 135050, which stipulates that Carl E. Schimmelfennig, Petitioner in Equity No. 144 and occupant of R. P. 7269, L. C. Aw. 3606 to Kamae, "is entitled to receive water from the Konohiki of the Ahupuaa of Koloa in constant stream 24 hours a day in the amount of 45,000 gallons per day.
6. The terms and provisions contained in the following:

INSTRUMENT : DEED

DATED : September 30, 1987
FILED : Land Court Document No. 1499621
RECORDED : Liber 21190 Page 377

7. The terms and provisions contained in the following:

INSTRUMENT : DEED

DATED : September 30, 1987
FILED : Land Court Document No. 1499622

RECORDED : Liber 21190 Page 392

8. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION, WAIVER AND TRANSFER OF
ZONING RIGHTS

DATED : April 1, 2003
FILED : Land Court Document No. 2914814
RECORDED : Document No. 2003-067516

9. The terms and provisions contained in the following:

INSTRUMENT : WARRANTY DEED AND RESERVATION OF
RIGHTS

DATED : April 1, 2003
FILED : Land Court Document No. 2914819

10. The terms and provisions contained in the following:

INSTRUMENT : AGREEMENT RE KIAHUNA GOLF COURSE
PRIVILEGES

DATED : April 4, 2003
FILED : Land Court Document No. 2914824
RECORDED : Document No. 2003-067523

11. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE
COVENANTS AND AGREEMENT FOR GRANT
OF EASEMENTS AND COOPERATION

DATED : as of March 31, 2003
FILED : Land Court Document No. 2935815
RECORDED : Document No. 2003-106200

12. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF KIAHUNA MAUKA
PARTNERS LLC AGREEMENT

DATED : April 11, 2003
FILED : Land Court Document No. 2935816
RECORDED : Document No. 2003-106201

Said Declaration was amended by instrument dated August 6, 2004,
filed as Land Court Document No. 3148270, recorded as Document
No. 2004-161801.

13. ORDER GRANTING KIAHUNA MAUKA PARTNERS, LLC'S
MOTION TO AMEND OR MODIFY CONDITION NO. 9 OF
DECISION AND ORDER, AS AMENDED IN AUGUST 5, 1997;
AND ERICK A KNUDSEN TRUST'S MOTION TO MODIFY
CONDITION NO. 9a OF DECISION AND ORDER, dated March 25,
2004, recorded as Document No. 2005-168955; re: to amend the
Agricultural Land Use District Boundary into the Urban Land Use
District for Approximately 457.54 acres of land situated at Poipu,
Island of Kauai, State of Hawaii, TMKS Nos: 2-8-14:05, 07, 08, por.
19, 20, 21, 26-36; 2-8-15:77; 2-8-29:1-94.

(Not noted on Transfer Certificate(s) of Title referred to herein)

14. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE
COVENANTS - KIAHUNA MAKAI BLOCK
SUBDIVISION

DATED : December 8, 2005
FILED : Land Court Document No. 3367026
RECORDED : Document No. 2005-255473

15. The terms and provisions contained in the following:

INSTRUMENT : NOTICE OF COUNTY ZONING ORDINANCE

DATED : September 26, 2006
RECORDED : Document No. 2006-178309

(Not noted on Transfer Certificate(s) of Title referred to herein)

16. The terms and provisions contained in the following:

INSTRUMENT : RIGHT-OF-ENTRY AGREEMENT

DATED : July 18, 2006
FILED : Land Court Document No. 3559216
RECORDED : Document No. 2007-026365
PARTIES : ROBERT E. KEOWN, as Trustee of the Robert E. Keown Trust under unrecorded Trust Agreement dated February 21, 2002, etal, (Grantor), and the BOARD OF WATER SUPPLY, COUNTY OF KAUAI (Grantee)

17. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS PO'IPU BEACH ESTATES

DATED : effective of March 25, 2008
FILED : Land Court Document No. 3730985
RECORDED : Document No. 2008-053101

The foregoing includes, but is not limited to, the grant of perpetual and non-exclusive easements for irrigation water line and landscaping purposes.

18. The terms and provisions contained in the following:

INSTRUMENT : PO'IPU BEACH ESTATES DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

DATED : effective of March 25, 2008
FILED : Land Court Document No. 3732277
RECORDED : Document No. 2008-055201

The foregoing includes, but is not limited to, the grant of non-exclusive easements for vehicular and pedestrian access and utility purposes.

Said Declaration was amended by instrument dated September 29, 2008, filed as Land Court Document No. 3794697, recorded as Document No. 2008-153551.

19. The terms and provisions contained in the following:

INSTRUMENT: POIPU BEACH ESTATES DEED AND
RESERVATION OF RIGHTS

DATE : December 22, 2009
FILED : Land Court Document No. 3938993

20. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONDOMINIUM
PROPERTY REGIME FOR
"MAKALEA CONDOMINIUM"
CONDOMINIUM PROJECT

DATED : April 9, 2015
FILED : Land Court Document No. T-9248151
MAP : 2283 and any amendments thereto

Said Declaration was amended by instrument dated May 5, 2015, filed
as Land Court Document No. T-9263241.

21. The terms and provisions contained in the following:

INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF UNIT
OWNERS

DATED : April 9, 2015
FILED : Land Court Document No. T-9248152

SUMMARY OF EFFECT OF ENCUMBRANCES

The encumbrances against title to the real property which underlies this Project include those set forth in the preliminary title report obtained by the Developer and reflect documents that pertained to a parcel of land which at one time included the smaller area which became Poipu Beach Estates Subdivision. The Land referred to in the Declaration for this Project is one of the lots created as part of that subdivision. Some of the documents which are listed in the title report are no longer applicable to this Project. To the best of the Developer's information and belief, the following summary describes the effects of the encumbrances listed in the title report and numbered in this Exhibit "E" as they may continue to affect the Project.

1. Real Property Taxes are paid current.
2. This is the standard reservation of rights by the State of Hawaii as it applies to the Land on which the Project is located.
3. Makapala Ditch no longer remains and does not affect the Project.
4. This instrument does not affect the Project.
5. This Decree does not affect the Project.
6. This Deed does not affect the Project.
7. This Deed does not affect the Project.
8. This Declaration recited intentions and zoning rights that are no longer applicable and do not affect the Project.
9. This Deed includes reservation of rights which no longer apply to the Project.
10. This Agreement does not affect the Project.
11. This Declaration contains agreements pertaining to the agreement of Kiahuna Golf Course to grant easements to facilitate the development of several properties including that which became Poipu Beach Estates Subdivision. It no longer applies to the Project.
12. This Declaration contains the agreement of Kiahuna Mauka Partners LLC, which includes the developers of five residential projects around the Kiahuna Golf Course. One of the projects is Poipu Beach Estates Subdivision. This Declaration may require contributions to Kiahuna Mauka Partners LLC from the Poipu Beach Estates Community Association for maintenance costs. Ownership of a Unit in the subject Project, Makalea Condominium, implies such a potential responsibility.
13. This Order reflects conditions imposed by the Hawaii Land Use Commission for rezoning the land surrounding Kiahuna Golf Course from Agricultural use to Urban use. There are no remaining conditions which affect the Project.
14. This Declaration reflects conditions imposed by the County of Kauai for a boundary adjustment involving the land which became Poipu Beach Estates Subdivision. None of these conditions continues to affect the Project.
15. This Notice does not affect the Project.

16. This Right-of-Entry grants the Kauai County Board of Water Supply rights with regard to the construction, inspection and operation of the public water system within the Poipu Beach Estates Subdivision. It has no practical effect on the Project because all of the water system facilities are located within the subdivision roadway.
17. This Declaration was recorded as a condition to final subdivision approval for the Poipu Beach Estates Subdivision and primarily lists various easements that affect lots in the Subdivision. The easements are also described in the Subdivision Declaration of Covenants, Conditions and Restrictions noted below (No. 18)
18. This Declaration contains the covenants, conditions and restrictions applicable to all lots in the Poipu Beach Estates Subdivision, and, therefore, is applicable to the Project. A complete copy of the Declaration is attached as Exhibit "H" to the Developer's Public Report for this Project. The Declaration contains various provisions regarding the Subdivision's Community Association, assessments for Community Association costs, easements affecting lots and various and use restrictions.
19. This Deed and Reservation of Rights is the conveyance document by which the Developer acquired title to the Property underlying the Project. It contains certain reservations of rights by the Subdivision developer and other terms and conditions related to the Property.
20. This Declaration establishes the Project.
21. These Bylaws relate to the management and operation of the Project.

END OF EXHIBIT "D"

EXHIBIT "E"

ESTIMATE OF INITIAL MAINTENANCE FEES

Developer believes there will be no regular assessment of maintenance fees due to from the Unit Owners. This is because all costs of every kind pertaining to each unit including but not limited to cost of landscaping, maintenance, repair, replacement and improvement shall be borne entirely by the owner the affected unit. There is no depreciable common element associated with the Project. Occasional maintenance of the common element at the entrance to the Project shall be treated as a special assessment. All utilities are separately billed. Based on the foregoing, there is no schedule of maintenance fees attached to this Public Report The Developer also certifies that the foregoing was based on generally accepted accounting principles.

This Exhibit "E" applies to the Project Association of Unit Owners only; it does not describe or apply to fees and disbursements to the Poipu Beach Estates Community Association.



STEVEN A. HUNT, Trustee
Developer Date: 09/18/15



LAUREN L. HUNT, Trustee
Developer Date: 18 Sept 2015

EXHIBIT "F"

SUMMARY OF PURCHASE CONTRACT

The Seller intends to use the Hawaii Association of Realtors' form of "Purchase Contract" as the sales contract for the sale of units in the Project. The Purchase Contract contains the purchase price, description and location of the unit and other terms and conditions under which a Buyer will agree to buy a unit.

Among other things, the Purchase Contract:

1. Provides a section for financing to be completed and agreed to by the parties which will set forth how the Buyer will pay the purchase price.
2. Identifies the escrow agent and states that Buyer's deposit will be held in escrow until the sale is closed or cancelled.
3. Requires that Buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
4. Provides the following remedies in the event of default under the Purchase Contract:

By Seller:

- A. Seller may bring an action against Buyer for breach of contract;
- B. Seller may retain Buyer's deposit as liquidated damages;
- C. Seller shall be compensated for all expenses incurred.

By Buyer:

- A. Buyer may bring an action against Seller for breach of contract;
- B. Buyer may bring an action against Seller compelling Seller to perform under the contract;
- C. Seller shall be responsible for all expenses incurred.

Any awards to the prevailing party in any action are subordinate to escrow's expenses.

5. Allocation of payment of closing costs.

6. The Purchase Contract provides that the Developer reserves the absolute right to amend the Declaration and the Condominium Map without the consent or joinder of any Unit Owner or any other party (including any mortgagee) holding any interest in any apartment or the Project, for the purpose of adding real estate to the Project, creating units, adding common elements within the project, subdividing units, combining units, converting units into common elements, withdrawing real estate from the Project, merging projects or increments of a project or otherwise altering the Project, upon the condition that no such amendment shall in any way alter or impact in any material way any unit or common interest thereof which has been conveyed by the Developer prior to the filing of such amendment in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

END OF EXHIBIT "F"

EXHIBIT "G"

SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement ("Agreement") between TITLE GUARANTY ESCROW SERVICES, INC. (the "Escrow"), and STEVEN A. HUNT, as Trustee under that certain unrecorded Trust Agreement known as the Steven A. Hunt Revocable Trust dated July 1, 1998, and LAUREN L. HUNT, as Trustee under that certain unrecorded Trust Agreement known as the Lauren L. Hunt Revocable Trust dated July 1, 1998 (the "Seller") contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. Purchase contract Deposited into Escrow. Whenever Seller enters into a purchase contract for the sale of a unit, Seller will deliver an executed copy of the purchase contract to Escrow, including any amendments thereto. The purchase contract shall specify the effective date of the Developer's Public Report and any amendments thereto.

2. Funds Paid to Escrow. Seller shall pay over to Escrow any monies received by Seller from purchasers under purchase contracts covering units in the Project, including all disbursements made on loan commitments, if any, from lending institutions to individual purchasers. Escrow shall receive and hold in escrow and disburse as herein set forth: (1) all payments received by Escrow under purchase contracts made by Seller; (2) all sums received by Escrow hereunder from Seller; (3) all funds from any lending institution pursuant to a mortgage loan for the purchase of any unit by individual purchasers; and (4) all sums received by Escrow from any other source on account of this Project. In accordance with written instructions from Seller that are acceptable to Escrow, Escrow shall deposit all funds so received, within a reasonable time of their receipt by Escrow and in reasonably convenient sums, in a federally-insured, interest-bearing account at any bank, savings and loan association, financial services loan company or credit union authorized to do business in the State of Hawaii. Unless otherwise provided in the Escrow Agreement, any interest earned on funds deposited in Escrow shall accrue to the credit of the purchase unless otherwise provided in the Purchase Agreement.

3. 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 Public Report including all amendments, with effective date(s) issued by the Real Estate Commission. Seller shall provide to Escrow a true copy of each Public Report and amendment issued for the Project, and each pending amendment with the date that the pending amendment was filed with the Real Estate Commission.

(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). (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.)

(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 purchase contract became binding. ("Material change" as used herein 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 purchase 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.

(iii) 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.

(iv) 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.)

(v) 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 Purchase 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 which 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 hereunder by Escrow; or

(ii) Seller shall have notified Escrow of Seller's exercise of the option to cancel or rescind the purchase 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 purchase 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 purchase 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 6(a)(i) or 6(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 6(a)(iii) or 6(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.

Seller understands and acknowledges that in the event of a rescission by the purchaser under HRS §514B-87: (A) if interest was accruing to the credit of Seller, interest will be reported to the IRS as being earned by Seller; (B) if Seller required the purchaser to secure a financing commitment, the purchaser shall be entitled to reimbursement from Seller (and not from Escrow) of any fees incurred by the purchaser in securing that financing commitment required by Seller; and (C) Seller shall pay to Escrow a fee commensurate with the work done by Escrow prior to such cancellation, up to a maximum of \$250.00.

5. Escrow will arrange for and supervise the signing of all documents, which are to be signed subsequent to and contemplated by the Purchase contract, and will cause to be recorded and documents for which recordation is necessary.

6. Purchaser's Default. Seller shall give notice in writing to Escrow of the occurrence of each event that initiates an obligation of a purchaser to make a payment to Escrow pursuant to the sales contract as well as notice of the amount and due date of such payment. If the purchaser fails to make such 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 this 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 hereunder with respect to such funds and such purchaser.

SPECIAL NOTICE: THE ABOVE SUMMARY IS **NOT** INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE AGREEMENT. WHILE ONE CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE

AGREEMENT, ONE MUST REFER TO THE ACTUAL AGREEMENT TO DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE AGREEMENT, THE AGREEMENT WILL CONTROL AND NOT THIS SUMMARY.

END OF EXHIBIT "G"

DOUBLE SYSTEM

A34

MS
1/17/08



L-46 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED
APR 09, 2008 08:01 AM
Doc No(s) 3732277
on Cert(s) 900,511



R-405 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
APR 09, 2008 08:01 AM
Doc No(s) 2008-055201



/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

54 1/1 210 R405



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

54 1/1 210 L46

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by: Mail Pickup
BELLES GRAHAM PROUDFOOT & WILSON (DHW)
4334 RICE STREET, STE. 202
LIHUE, KAUAI, HAWAII 96766
TELEPHONE: (808) 245-4705

TG ACCOM 588 859 ?

This document contains 54 pages

TYPE OF DOCUMENT:

PO'IPU BEACH ESTATES
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

DECLARANT: ROBERT E. KEOWN, as Trustee of the Robert E. Keown Trust under unrecorded Trust Agreement dated February 21, 2002, PAULELE LLC, a Hawaii limited liability company, GREGORY ALAN KAMM and LINDSAY WARREN KAMM, husband and wife, CHESTER WAYNE HUNT and LETITIA HUNT, as Trustees of the Hunt Family Revocable Living Trust under unrecorded Trust Agreement dated October 15, 1990, JAMES MICHAEL KILCOYNE and LESLIE JAN KILCOYNE, husband and wife, WILLIAM ALAN MARSHALL and PATRICIA ANNE MARSHALL, husband and wife, STEVEN A. HUNT, Trustee of the Steven A. Hunt Revocable Trust dated July 1, 1998, LAUREN L. HUNT, Trustee of the Lauren L. Hunt Revocable Trust dated July 1, 1998, STEVEN A. HUNT and LAUREN L. HUNT, Trustees of the Hunt Irrevocable Trust for the Benefit of Conor Nakoa Hunt and Mason Makalea Hunt dated December 10, 2003, WILLIAM A. MARSHALL and PATRICIA A. MARSHALL, Trustees of the Hunt Irrevocable Trust for the Benefit of Wade Douglas Marshall and Jake Steven Marshall dated December 10, 2003, ANGELINA CHAN LAUBSCH, unmarried, ALAN JOACHIM LAUBSCH, single; BERTRAND MICHAEL LAUBSCH, single; CELINE KATRIN LAUBSCH, single; MARVIN DEAN OTSUJI and KATHERINE ARMSTRONG LEWI OTSUJI, husband and wife, GERARD JOSEPH McGRATH and JUDITH ANN McGRATH, husband and wife, MARTIN J. KAHN, Trustee of that certain Martin J. Kahn Revocable Trust dated February 29, 1984, as amended, CAROLE ANN KAHN, Trustee of that certain Carole Ann Kahn Revocable Trust dated February 29, 1984, as amended, WAYNE CLAY HELMER and SANDRA LYNN HELMER, husband and wife, ROBERT MYRON COHEN, unmarried, KEVIN JON ANDERSON and KARLA JOLENE MARIE ANDERSON, husband and wife, GWEN KAZUE KAWAHARA JAMES, wife of Patrick Barry James, RAH, LLC, a Hawaii limited liability company, FISERV TRUST COMPANY, a Colorado corporation, FBO Arthur Geoffrey Sheldon, RDJ, INC., a Hawaii corporation, and MARK HOGUE, Trustee of the Mark Hogue Living Trust dated January 27, 2000, all c/o 2711 Milo Hae Loop, Koloa, Kauai, Hawaii 96756

TAX MAP KEY FOR PROPERTY: (4) 2-3-014-035

(\\W\DOCS\2665812\W0094226.DOC)

EXHIBIT H

**PO'IPU BEACH ESTATES
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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**PO'IPU BEACH ESTATES
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made to be effective as of this 25th day of March, 2008 by ROBERT E. KEOWN, as Trustee of the Robert E. Keown Trust under unrecorded Trust Agreement dated February 21, 2002, PAULELE LLC, a Hawaii limited liability company, GREGORY ALAN KAMM and LINDSAY WARREN KAMM, husband and wife, CHESTER WAYNE HUNT and LETITIA HUNT, as Trustees of the Hunt Family Revocable Living Trust under unrecorded Trust Agreement dated October 15, 1990, JAMES MICHAEL KILCOYNE and LESLIE JAN KILCOYNE, husband and wife, WILLIAM ALAN MARSHALL and PATRICIA ANNE MARSHALL, husband and wife, STEVEN A. HUNT, Trustee of the Steven A. Hunt Revocable Trust dated July 1, 1998, LAUREN L. HUNT, Trustee of the Lauren L. Hunt Revocable Trust dated July 1, 1998, STEVEN A. HUNT and LAUREN L. HUNT, Trustees of the Hunt Irrevocable Trust for the Benefit of Conor Nakoia Hunt and Mason Makalea Hunt dated December 10, 2003, WILLIAM A. MARSHALL and PATRICIA A. MARSHALL, Trustees of the Hunt Irrevocable Trust for the Benefit of Wade Douglas Marshall and Jake Steven Marshall dated December 10, 2003, ANGELINA CHAN LAUBSCH, unmarried, ALAN JOACHIM LAUBSCH, single; BERTRAND MICHAEL LAUBSCH, single; CELINE KATRIN LAUBSCH, single; MARVIN DEAN OTSUJI and KATHERINE ARMSTRONG LEWI OTSUJI, husband and wife, GERARD JOSEPH McGRATH and JUDITH ANN McGRATH, husband and wife, MARTIN J. KAHN, Trustee of that certain Martin J. Kahn Revocable Trust dated February 29, 1984, as amended, CAROLE ANN KAHN, Trustee of that certain Carole Ann Kahn Revocable Trust dated February 29, 1984, as amended, WAYNE CLAY HELMER and SANDRA LYNN HELMER, husband and wife, ROBERT MYRON COHEN, unmarried, and KEVIN JON ANDERSON and KARLA JOLENE MARIE ANDERSON, husband and wife, GWEN KAZUE KAWAHARA JAMES, wife of Patrick Barry James, RAH, LLC, a Hawaii limited liability company, FISERV TRUST COMPANY, a Colorado corporation, RDJ, INC., a Hawaii corporation, and MARK HOGUE, Trustee of the Mark Hogue Living Trust dated January 27, 2000, all of whose mailing address is c/o 2711 Milo Hae Loop, Koloa, Kauai, Hawaii 96756 (hereinafter collectively referred to as the "Declarant").

**ARTICLE I
PURPOSE**

Section 1.1 Po'ipu Beach Estates. Declarant is the owner of certain real property located at Koloa, District of Koloa, County of Kauai, State of Hawaii more particularly described in Section 2.27 below, which property is described in Exhibit "A" attached hereto and made a part hereof and which is also known as the "Po'ipu Beach Estates" (the "Subdivision"). Declarant intends to develop the Property as a single-family residential community.

Section 1.2 Purpose of Declaration. The purpose of this Declaration is (i) to create and maintain the Subdivision in a desirable, attractive and safe condition for the benefit of the owners of property within the Subdivision, (ii) to protect and enhance the quality, value, aesthetics, desirability and attractiveness of the Subdivision, (iii) to provide for a Community Association as an entity to hold, maintain, care for and manage the properties and facilities owned by the Association, (iv) to define the duties, powers and rights of the Association, including but not limited to the creation of a method for reviewing and enforcing the design criteria for improvements within the Subdivision, and (v) to define certain duties, land use restrictions and rights of the owners of property within the Subdivision.

Section 1.3 Declaration. The Declarant, for itself and its successors and assigns, and for the mutual benefit and protection of all owners of property in the Subdivision, hereby declares that the Property shall be owned, held, leased, encumbered, conveyed, sold, used, occupied, maintained, and improved subject to the covenants, conditions, restrictions, reservations, exceptions, and other provisions set forth in this Declaration, all of which are established and declared to be for the purpose of enhancing and protecting the quality, value, aesthetics, desirability and attractiveness of the Subdivision. The provisions of this Declaration are intended to and shall run with the Property and shall be binding upon and shall inure to the benefit of the Property, the Declarant, the Association, and all parties who acquire any right, title or interest in the Property or any part thereof, and their respective heirs, successors, successors in trust, personal representatives, and assigns.

ARTICLE II DEFINITIONS

Unless otherwise expressly provided herein, the following words, when used in this Declaration or in the Association Bylaws, shall have the following meaning:

Section 2.1 Articles. "Articles" or "Articles of Incorporation" shall mean the Articles of Incorporation of the Po'ipu Beach Estates Community Association, which have been filed with the Department of Commerce and Consumer Affairs, State of Hawaii, as the same may be amended from time to time.

Section 2.2 Assessment. "Assessment" shall mean an Initial Assessment, Regular Assessment, Special Assessment, or Owner's Assessment.

Section 2.3 Association. "Association" shall mean the Po'ipu Beach Estates Community Association, a Hawaii nonprofit corporation, its successors and assigns.

Section 2.4 Association Properties. "Association Properties" shall mean all real and personal property, including Improvements, and all Common Areas, now or hereafter owned by the Association or with respect to which the Association holds an easement for the use, care, or maintenance thereof, or for which the Association has a right or duty to maintain, held for the common use and enjoyment of certain of its members as provided herein, and for other purposes as may be permitted by this Declaration.

Section 2.5 Board. "Board" shall mean the board of directors of the Association.

Section 2.6 Budget. "Budget" shall mean a written itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared pursuant to Section 5.8 of this Declaration.

Section 2.7 Budget Year. "Budget Year" shall mean a year commencing January 1st and ending December 31st.

Section 2.8 Bureau of Conveyances. "Bureau of Conveyances" shall mean the Bureau of Conveyances of the State of Hawaii.

Section 2.9 Bylaws. "Bylaws" shall mean the Bylaws of the Association that have been or will be adopted by the Board of the Association, as the same may be amended from time to time.

Section 2.10 Common Area. "Common Area" shall mean any portion(s) of the Subdivision designated as Common Area that are owned or maintained by the Association for the common use and enjoyment of the Owners.

Section 2.11 Declaration. "Declaration" shall mean this instrument as it may be amended from time to time.

Section 2.12 Declarant. "Declarant" shall mean the owner(s) of the Property as designated on page 6 of this Declaration, acting as a group but not individually. The Declarant may assign all of the Declarant's rights, powers and reservations under this Declaration to Kiahuna Makai, LLC, a Hawaii limited liability company, or any other entity that Declarant may determine by filing an appropriate written instrument with the Land Court and by recording such instrument with the Bureau of Conveyances, and upon such filing and recordation Kiahuna Makai, LLC or such other entity shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the written instrument. Thereafter, Kiahuna Makai, LLC or such other entity may assign any or all of the Declarant's rights, powers and reservations under this Declaration to such other person as it may determine to be appropriate for such purposes by filing and recording an instrument of assignment with the Land Court and the Bureau of Conveyances.

Section 2.13 Design Committee. "Design Committee" shall mean the committee provided for in Article VI of this Declaration that has the right to review and approve the design of Improvements to all Lots in the Subdivision.

Section 2.14 Fund. "Fund" shall mean any account into which the Board shall deposit money paid to the Association and from which disbursements shall be made in the performance of the functions of the Association, as described in Article V of this Declaration.

Section 2.15 Improvement. "Improvement" shall mean all structures and any appurtenances thereto of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, lanais, patio or lanai covers, awnings, painting of any exterior surfaces of any structure, relocation, installation or replacement of windows, additions, walkways, outdoor sculptures or artwork, sprinkler systems, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, dog runs and dog houses, recreational equipment, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, basketball courts or poles, light poles, flag poles, signs, exterior tanks, solar equipment, antennas, satellite dishes, and exterior air conditioning.

Section 2.16 Improvement to Property. "Improvement to Property" shall mean any change, alteration, or addition to any property within the Subdivision, and shall include, but not be limited to, those improvements more particularly described in Section 6.3 of this Declaration.

Section 2.17 Initial Assessment. "Initial Assessment" shall mean the assessment made upon each Lot upon the initial sale, distribution or transfer of each Lot, as described in Section 5.9.

Section 2.18 Land Court. "Land Court" shall mean the Land Court of the State of Hawaii or the Assistant Registrar of the Land Court of the State of Hawaii, as the context shall require.

Section 2.19 Lot. "Lot" shall mean a legally subdivided parcel of land located within the Subdivision.

Section 2.20 Master Association. "Master Association" shall mean the non-profit association of property owners described in Article VII of this Declaration that is established to own, maintain, repair, and manage certain road, water, landscaping and other improvements used or maintained for the benefit of the Subdivision and other projects in the general vicinity of the Subdivision.

Section 2.21 Owner. "Owner" shall mean the person or, if more than one, all persons collectively, who hold fee simple title of record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder. However, the purchaser under an "agreement of sale" or similar installment purchase contract, and not the seller thereunder, shall be deemed as the "Owner" of the Lot described therein unless the agreement or similar contract clearly provides otherwise.

Section 2.22 Operating Fund. "Operating Fund" shall mean the Fund established by the Board for payment of the Association's regular operating costs and expenses, as described in Section 5.1.

Section 2.23 Owner's Assessment. "Owner's Assessment" shall mean a charge against a particular Owner and the Lot owned by the Owner for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation, directly attributable to the Owner, of the Declaration or any rules and regulations adopted by the Board or the Design Committee, or as a result of any damage or liability described in Section 4.4 herein, together with any applicable late charges and/or interest as provided in this Declaration.

Section 2.24 Property. "Property" shall mean the Property described in Exhibit "A" attached hereto which is included as part of the Subdivision, and which is also collectively known as Po'ipu Beach Estates.

Section 2.25 Regular Assessment. "Regular Assessment" shall mean the assessments made for the purpose of covering the portion of the annual costs of operating the Association, including expenses incurred in connection with any authorized function of the Association, that are to be paid by each Owner to the Association for purposes provided herein and charged to such Owner and to the Lot of such Owner.

Section 2.26 Reserve Fund. "Reserve Fund" shall mean the Fund established by the Board for payment of Association costs and expenses not expected to recur on an annual or more frequent basis, including but not limited to normal and anticipated future maintenance and repairs of Association Properties, as described in Section 5.1.

Section 2.27 Special Assessment. "Special Assessment" shall mean a charge against each Owner and the Lot owned by that Owner representing a portion of the costs of the Association for maintenance, replacements, major capital repairs, and Improvements, and any other purpose authorized by the Board as provided herein.

Section 2.28 Subdivision. "Subdivision" shall mean Lots 1 through 110, inclusive, of Po'ipu Beach Estates, as shown on the final subdivision map for the Subdivision approved by the Planning Commission of the County of Kauai on November 14, 2006, and Lots 92 through 201, inclusive, as shown on Map 8, Land Court Consolidation 164, including all phases or stages of development of the

same and all future subdivisions of the same. Unless otherwise stated, all Subdivision Lot and Easement references in this Declaration will be to the numbers shown on Land Court Map 3.

ARTICLE III
PO'IPU BEACH ESTATES COMMUNITY ASSOCIATION

Section 3.1 General Purposes. The Association is a non-profit corporation charged with the duties and empowered with the rights set forth herein and in its Articles of Incorporation and Bylaws.

Section 3.2 Membership. Every Owner of a Lot in the Subdivision (including a person identified herein as a Declarant) shall be a member of the Association; provided that any such person or entity who holds such interest merely as a security for performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any Lot in the Subdivision

Section 3.3 Declarant's Membership. The Declarant shall remain as a member of the Association until all Common Area, on-site and off-site infrastructure construction in or around the Subdivision, and related development activity, in the sole opinion of the Declarant has been completed. This Section shall not restrict or otherwise be deemed to affect any membership rights the Declarant may have under this Declaration, the Articles of Incorporation, or the Bylaws of the Association.

Section 3.4 Voting. The voting rights of the members shall be as set forth in this Declaration, the Articles of Incorporation and the Bylaws of the Association. All voting rights of any member shall be conditional on that member being current in the payment of his and/or her Assessments due to the Association. In no event shall more than one vote be cast with respect to any Lot.

Section 3.5 Duties and Powers. The Association shall have the rights, obligations, duties and powers set forth in the Articles of Incorporation, the Bylaws, and in this Declaration to do and perform each and every one of the following, and any and all things which may be otherwise authorized, required or permitted for the benefit of the Owners and for the maintenance and improvement of the Subdivision:

- (a) The Association shall accept all Owners as members of the Association, subject to any restrictions on voting rights of members who are delinquent in their Assessment obligations as may be stated herein or in the Bylaws.
- (b) The Association shall maintain or provide for the maintenance of Common Areas and Improvements located on the Common Areas, including landscaping if appropriate.
- (c) To the extent not assessed to or paid by the Owners, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas.
- (d) The Association shall obtain and maintain in force such insurance policies as the Board may deem appropriate.
- (e) The Association shall have the power to levy Assessments against the Owners (subject to the terms contained in Article V below), and shall take such action, whether or not expressly authorized by this Declaration, the Articles, or the Bylaws, as may reasonably be necessary to enforce the restrictions, limitations, covenants and conditions of this Declaration,

the Articles, the Bylaws, and any rules or regulations promulgated pursuant to this Declaration or the Bylaws.

(f) The Association shall have the power to make contracts, to acquire and dispose of property or interests therein, and to borrow money and encumber the Association Properties to secure any loan made by the Association. The Association may also, in the event that there is a foreclosure of any lien against a Lot, be a purchaser of such foreclosed Lot.

(g) The Association shall have the power to promulgate such rules, regulations and restrictions as may be necessary from time to time in furtherance of the rights, obligations, duties and powers contained herein, in the Articles of Incorporation, and in the Bylaws.

(h) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing any Lot, if for any reason the Owner fails to construct, maintain and repair the Lot as required herein, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such area in violation of Article VI. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration.

(i) The Board shall be required to grant and convey to third parties easements or rights-of-way in, on, over or under any Common Area without payment to the Association when requested by the Declarant.

(j) The Board may from time to time employ the services of a manager to manage the affairs of the Association, and may also employ or retain such other employees or agents related to the accounting, legal, office, or other functions of the Association. The Board may delegate to the manager any of its powers under this Declaration, provided, however, the Board cannot delegate to such manager the power to execute any contract binding on the Association for a sum in excess of \$2,000.00; nor for the performance of any work or services, which work or services are not to be completed within 60 days; nor the power to sell, convey, mortgage or encumber any property of the Association; nor the power to make Assessments as provided in Article V. The Association shall obtain, or the manager shall provide, and keep in full force and effect at all times a fidelity bond or bonds for any person handling funds of the Association. Each such bond shall name the Association as obligee and shall be not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months' aggregate Regular Assessments on all Lots plus reserve funds.

Section 3.6 Liability. No member of the Board shall be personally liable to any Owner, guest, lessee or to any other person, including the Declarant, for any error or omission of the Association, its representatives and employees, or the manager, provided, however, that such member has with actual knowledge possessed by him or her acted in good faith.

Section 3.7 Assessment for Violation of Declaration. Any Owner or other person claiming through or under the Owner who refuses or fails to comply with this Declaration, the Articles, the Bylaws, the Design Standards, or any other rules or regulations adopted by the Association shall be liable for payment to the Association of a violation fee in the amount \$100.00 per day for each and every day that the violation continues. Such fee shall not commence until written notice of violation has been given by the Board to the offending Owner or other person and a period of thirty (30) days has elapsed after such written notice has been given without the Owner or other person remedying the violation. If the Owner or other person does not promptly pay the violation fee to the Association, the Board may levy an Owner's Assessment against the Owner of the Lot in question for such fee and reasonable costs or expenses incurred by the Association in connection therewith. The right of the Association to assess such violation fee and Owner's Assessment shall be in addition to all other rights and remedies that the Association may have at law, in equity, or under his Declaration.

ARTICLE IV ASSOCIATION PROPERTIES

Section 4.1 Owner's Rights of Use and Enjoyment Generally. Unless otherwise provided in this Declaration, all Owners may use and enjoy the benefits of the Association Properties, as may be appropriate to the particular property.

Section 4.2 Right of Association To Regulate Use. The Association, acting through the Board, shall have the power to regulate use of Association Properties by Owners and the public to further enhance the overall rights of use and enjoyment of all Owners.

Section 4.3 No Partition of Association Properties. No Owner shall have the right to partition or seek partition of the Association Properties or any part thereof.

Section 4.4 Liability of Owners for Damage. Each Owner shall be liable to the Association for any damage to Association Properties or for any expense or liability incurred by the Association, to the extent not covered by insurance, caused by the negligence or willful misconduct of such Owner or any person using the Association Properties through such Owner and for any violation by such Owner or any such person of this Declaration or any rule or regulation adopted by the Association. The Association shall have the power, as provided elsewhere in this Declaration, to levy and collect an Owner's Assessment against an Owner, after notice and hearing, to cover the costs and expenses incurred by the Association on account of any such damage or violation of this Declaration, or any such rule or regulation, or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 4.5 Association Duties upon Damage or Destruction. In the event of damage to Association Properties by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction, or replacement of any Association Properties, the Association shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of damage or destruction of Association Properties by fire or other casualty shall be paid to the Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction, or replacement. If funds from insurance proceeds or reserves for replacement are insufficient to pay all costs of repair, reconstruction, or replacement of Improvements damaged or destroyed, or if the Association is required to make repairs, replacements, or improvements by governmental authorities, the Association may, in order to make up

any deficiency in the insurance proceeds or to pay for the required repair, replacement, or improvement, levy a Special Assessment in accordance with Section 5.13, or if an Owner or group of Owners is liable for such damage, levy an Owner's Assessment in accordance with Section 5.14 against the responsible Owner or group of Owners to provide the additional funds necessary. Repair, reconstruction, or replacement of Association Properties shall be done under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the excess for future maintenance, repair, improvement, and operation of other Association Properties.

Section 4.6 Association Powers in the Event of Condemnation. If any Association Properties or interests therein are taken under exercise of the power of eminent domain or by private purchase in lieu or under threat thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other person with an interest in such property, including any mortgagee of such property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners or other persons therein. Any award or funds received by the Association shall be held by the Association as a reserve for further maintenance, repair, reconstruction, or replacement of Association Properties or may be used for improvements or additions to, or operation of, Association Properties. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings affecting Association Properties.

Section 4.7 Title to Association Properties on Dissolution of Association. In the event of dissolution of the Association, the Association Properties shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasi-governmental agency or organization, or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for similar purposes for which the particular Association Property was held by the Association. To the extent the foregoing is not possible or appropriate, the Association Properties shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners in proportion to the number of Lots owned by such Owner in the Subdivision.

Section 4.8 Roadway and Utility Easements; Indemnification. Per County of Kauai subdivision and zoning requirements, at all times and for as long as the Subdivision roadway lot shown on the Subdivision map is a privately owned property maintained by the Association or its successor or assigns for vehicular and pedestrian access and utility purposes, there shall be non-exclusive easements for such purposes in favor of each of the properties designated as (a) TMK No. (4) 2-8-015-077 (designated on final County of Kauai subdivision maps as Lot 8A and referred to below as "Parcel 077"), (b) TMK No. (4) 2-8-014-038 (including the property designated on final County of Kauai subdivision maps as Lot 7A and on the applicable Land Court Map as Lot 12, as well as Lot J, Lot F-1 and Exclusion 17, all as shown on the Kauai Tax Map and referred to below as "Parcel 038"), and (c) all future subdivisions of said properties to the extent stated below. The easements shall be used and enjoyed by said properties without charge except as stated below, and the owners of Parcel 077 and Parcel 038 shall not be required to contribute to the normal maintenance, repair or other costs and expenses associated with the Subdivision roadway lot; provided, however, that (i) in the event the roadway is damaged due to heavy use (e.g., by construction equipment going to or from said property) by the owner of Parcel 077 or the owner of Parcel 038, or the said owners' contractors, employees, representatives or agents, then the owners of Parcel 077 and Parcel 038, respectively, shall be liable for any and all costs and expenses for

the repair of all such damage, and (ii) the owners of Parcel 077 and Parcel 038 shall each be required to secure and maintain at all times reasonably sufficient liability insurance covering the owner's and the owner's guests', invitees', contractors' and agents' use of the roadway, with such policy(ies) of insurance to name the Association as an additional insured party, or as an alternative to reimburse the Association for a pro-rata share of the Association's liability insurance coverage for roadway use provided that the Association's insurance covers Parcel 077 and/or 038, as the case may be.

The foregoing roadway and utility easements are and shall continue be on the further condition that the owners of Parcel 077 and Parcel 038 shall each, for themselves and not for the other, shall indemnify, defend, and hold the Association harmless from and against any and all damages, injuries, costs, expenses, obligations or liabilities of any nature whatsoever, including but not limited to reasonable legal fees and costs incurred to defend against the same, that may arise from or be related to the use of the easement area by said owner, provided that the foregoing indemnification shall not include any damages, injuries, etc. caused by the act or neglect of the Association or any member of the Association.

As regards Parcel 038, the easements described in the foregoing two paragraphs shall be for the use and benefit of no more than two legal parcels of record and two single-family dwelling units on each legal parcel of record that is created on said Parcel 038 (i.e., a total of four single family dwellings). Unless otherwise agreed in writing by the Association and only upon such terms and conditions as may be reasonably required by the Association, access and utility easements to serve any additional lots created by a further subdivision of said Parcel 038 shall not be allowed, and unless otherwise agreed by the Association the owners of said Parcel 038 shall be required to access any such additional lots directly from Poipu Road or by some means other than over and across the Subdivision roadway.

Section 4.9 Irrigation Water and Landscape Easement: Implementation of Master Landscape Plan. The Association shall have a perpetual and non-exclusive easement as declared in the Declaration of Restrictive Covenants for Po'ipu Beach Estates filed with the Land Court and recorded with the Bureau of Conveyances concurrently with this Declaration, and as described below over, across, under and through every Lot for (a) the installation, operation, maintenance and repair of an irrigation (i.e., non-potable) water line and facilities appurtenant thereto and (b) landscape installation and maintenance. The easement area shall vary from Lot to Lot and shall extend from the boundary of each Lot along the private Subdivision roadway (the said roadway being Lot 190 as shown on Land Court Map 8) for a depth into the Lot of anywhere from fifteen feet (15') to forty feet (40').

The precise depth of the easement applicable to each Lot (whether or not the irrigation water line easement is relocated as described in the preceding section) is shown on that certain unrecorded plan entitled "Poipu Beach Estates Subdivision Landscape Plan," Sheets L-1 through L-4, inclusive, together with four (4) sub-sheets showing the Subdivision Main Entrance and Subdivision Sample Setbacks, dated March 15, 2006, prepared by Kauai Nursery & Landscaping, Inc., a copy of which plan has been submitted to and is on file with the County of Kauai Planning Department and which plan will also be included in the Design Standards promulgated by the Design Committee pursuant to Section 6.7 of this Declaration.

In addition to the foregoing irrigation and landscape easement along the Subdivision roadway, the Association shall also have a similar perpetual and non-exclusive easement for the same purposes (a) along the Poipu Road boundary of Lots 180 through 187, inclusive as shown on Land Court Map 8
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(being the areas designated as Easements 8 and 9 on Land Court Map 5, or any future amendment of said Easements 8 and 9) and (b) along the eastern boundaries of Lots 172 and 180, as shown on Land Court Map 8, and along the southern boundaries of Lots 178, 198 and 191, as shown on Land Court Map 8. Said easement shall be forty feet (40') in width and shall be in favor of the Association notwithstanding the fact that such easement is not shown in the Landscape Plan referenced above. All references to the easement throughout this Section 4.9 shall include the easement described in this paragraph.

The Association shall maintain, repair, and administer the use of the main header system of the non-potable irrigation water line and appurtenant lines, valves, connections, meters, and other water distribution facilities, and in connection therewith the Association shall have the right to promulgate, revise, amend, and enforce rules and regulations applicable to the use of irrigation water from said irrigation water system, including but not limited to the right to assess (or include in each Owner's Regular Assessments, if deemed appropriate by the Association) fair and equitable charges for each Lot's use of irrigation water, which charges may in the Association's discretion be computed and assessed on a per-Lot or a square foot basis without regard to how much irrigation water is actually used by each Lot. The irrigation line is intended for landscape irrigation only. Lot Owners may not use the non-potable water from the irrigation waterline for any potable or potentially potable use or purpose, and all Lot Owners, by their acquisition of a Lot in the Subdivision, agree to indemnify, defend and hold the Association, its members, directors, officers, employees and agents harmless from and against any liabilities, actions, causes of action, obligations, costs and expenses, including reasonable legal fees incurred to defend against the same, that may arise or be caused by the use of non-potable irrigation water for any unintended purpose.

Each Lot Owner shall be responsible for installing on his or her Lot all elements of the master landscape plan applicable to the Owner's Lot, consistent with the "Poipu Beach Estates Subdivision Landscape Plan" as described above and also subject to the further approval and requirements of the Design Committee. The master landscape plan as described above and as submitted to the County of Kauai Planning Department is the responsibility of each Lot Owner to install within five (5) years of the recordation of this Declaration, but if any Owner fails or refuses to do so the Association will have the right, but not the obligation, to implement the master landscape plan as it relates to the Lot in question, in which case the Association shall charge all costs and expenses incurred by the Association for the Association's installation of the elements of the master landscape plan on the Lot in question to the Owner of that Lot as an Owner's Assessment pursuant to Section 5.14 of this Declaration.

Without limiting the generality of the foregoing paragraph, the Association shall purchase, install, maintain and repair, all at the Lot Owner's expense, any and all water meters, backflow preventers and other connections, valves, or other facilities reasonably determined by the Association to be required to be installed, maintained and repaired on the Owner's Lot to make the irrigation water line functional and in compliance with any Design Standards or Association rules and regulations applicable to the same. A separate water meter for each Lot shall be installed only if the Association determines that each Lot Owner should be metered and charged separately for use of the irrigation water; until such time, irrigation water shall be metered on a single meter and charged to individual Owners as part of the Regular Assessments payable by each Owner. Any Owner may relocate the portion of the irrigation water line located in the Owner's Lot with the prior written approval of the Design Committee and at the Owner's sole cost and expense, provided that such relocation shall not unreasonably interfere with any other Owner's use of irrigation water or the operation of the irrigation water line on any other Lot.

The Association shall be responsible for the normal and on-going maintenance of the elements of the master landscape plan within the easement area on each Lot from and after installation thereof, and the costs and expenses of such normal and on-going maintenance shall be assessed to the Owners in a fair and equitable manner as determined by the Association. In the event the acts, negligence or omissions of any Owner or the Owner's agents, contractors, guests, or invitees shall result in maintenance or repair costs or expenses to the Association in addition to normal and on-going landscape maintenance costs and expenses, then such costs and expenses may be assessed against that Owner as an Owner's Assessment pursuant to Section 5.14 of this Declaration.

TMK No. (4) 2-8-015-077 shall also be subject to an easement for landscaping purpose and for the non-potable irrigation line as described in this Section and, in consideration of the provision of non-potable irrigation water by the Association, shall be liable for payment of a pro-rated share for non-potable water service on the same basis as the Subdivision Lots.

Section 4.10 Waikomo Stream Easement. In addition to the easements described in Section 4.9, the Association shall have a perpetual and non-exclusive easement for access, landscape and clearing purposes along the edge of Waikomo Stream and affecting Lots 187, 188 and 189, as shown on Land Court Map 8. The easement shall be for a width of twenty feet (20') measured from the Waikomo Stream water's edge, as the same may exist from time to time.

ARTICLE V ASSOCIATION BUDGETS AND FUNDS: ASSESSMENTS

Section 5.1 Funds To Be Established. The Association shall establish and maintain the following separate Funds: (a) an Operating Fund; and (b) a Reserve Fund. The Funds shall be established as one or more savings or checking accounts at any financial institution in which deposits are insured by an agency of the federal government, each of which accounts shall be held in trust for the Owners. Notwithstanding anything else to the contrary herein, in no event shall the Association be required to refund any surplus funds of the Association remaining after payment of or provision for common expenses, or any prepayment of or provision for reserves, or to apply any such surplus against any Owner's future Regular Assessment.

Section 5.2 Establishment of Other Funds. The Association may establish other Funds as and when needed. Nothing herein shall limit, preclude, or impair the authority of the Association to establish other Funds for specified purposes authorized by this Declaration. If the Association establishes any additional Funds, the Board shall designate an appropriate title for the Fund to distinguish it from other Funds maintained by the Association.

Section 5.3 Deposit of Regular Assessments to Funds. Money collected by the Association as Regular Assessments shall be deposited in the Funds in accordance with the following provisions: (a) there shall be deposited to the Operating Fund that portion of the Regular Assessments that, according to the Association Budget for the Budget Year, was budgeted for operating costs and expenses; and (b) there shall be deposited to the Reserve Fund that portion of the Regular Assessments that was budgeted for the Reserve Fund.

Section 5.4 Other Deposits to Funds. The Association shall deposit money received by the Association from sources other than Regular Assessments in the Fund determined by the Board to be

most appropriate. For example, an Owner's Assessment shall be deposited to the Fund from which the costs and expenses were or will be paid that form the basis for the Owner's Assessment; and Special Assessments for capital repairs, maintenance, replacements, and improvements shall be deposited to the Fund from which such capital costs have been or will be paid. Interest and late charges received on account of delinquent Assessments may be allocated among the Funds in the same proportions as the delinquent Assessments were allocated or, at the discretion of the Board, may be allocated to any one or more of the Funds.

Section 5.5 Disbursements From Funds. All amounts deposited in the Funds shall be used solely for the common benefit of all the Owners for purposes authorized by this Declaration. Disbursements from particular Funds shall be limited to specific purposes as follows: (a) disbursements from the Operating Fund may be made for such purposes as are necessary or proper under this Declaration, except those purposes for which disbursements are to be made from other Funds; and (b) disbursements from the Reserve Fund shall be made solely for purposes of funding those functions that are not expected to recur on an annual or more frequent basis.

Section 5.6 Authority for Disbursements. The Board shall have the authority to make, or to authorize an agent to make, disbursements of any money in a Fund.

Section 5.7 Funding of Reserve Fund. The Board, in budgeting and levying Assessments, shall endeavor, whenever possible, to fund the Reserve Fund by regularly scheduled payments, included as part of the Regular Assessments, rather than by Special Assessments. Money in the Reserve Fund may be used in the discretion of the Board, from time to time, for any purpose for which a Regular or Special Assessment may be used.

Section 5.8 Annual Budgets. The Board shall cause to be prepared and approved, at least sixty days prior to the commencement of each Budget Year, a Budget for such Budget Year, including a reasonable provision for contingencies and deposits into the Operating and Reserve Funds. The Budget shall show, in reasonable detail, the categories of expenses and the amount of expenses in each Fund, and shall reflect any expected income of the Association for the coming Budget Year, any expected surplus from the Budget Year, and any existing surplus in any Reserve Fund. The Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish, or add to the proper Reserve Fund for major capital repairs, replacements, and improvements for Association Properties. Within thirty days after the adoption of any Budget, the Board shall cause a copy of the Budget or a summary of it to be distributed to each Owner and shall cause a copy of the Budget to be posted at the principal office, if any, of the Association. In the event the Board is unable to approve the Budget, the periodic Budget last approved by the Board shall be continued until such time as the Board ratifies a subsequent Budget. In the event the Association does not have an address for any Owner, such posting shall be deemed delivery to such Owner. If the Association publishes a newsletter for Owners, the Budget or a summary shall be published in the newsletter. The Association shall make copies of the Budget available to any Owner requesting a copy of the same upon payment of the reasonable copying expense.

Section 5.9 Initial Assessments. An initial Assessment in an amount to be determined by the Declarant, but which shall in no event exceed three months' estimated Regular Assessment for the Lot in question determined at the time of collection of the Initial Assessment, shall be collected upon the sale, distribution or transfer of each Lot by the Declarant. The Initial Assessment shall be paid to the

Association by the purchaser, distributee, or transferee of the Lot and shall be in addition to all other Assessments made on or related to such Lot.

Section 5.10 Regular Assessments. For each Budget Year, the Association may levy Regular Assessments against Owners of the Lots. Each Owner shall be obligated to pay the Regular Assessments levied against and allocated to such Owner and the Lot of such Owner, as hereinafter provided.

Section 5.11 Apportionment of Regular Assessments. For purposes of assessing the Regular Assessments, each Lot shall constitute one Lot regardless of size, value, location, or use of such Lot. The Owner of each subdivided Lot that is incorporated into the Subdivision during the Budget Year shall pay an equal share of the Regular Assessments for that Budget Year.

Section 5.12 Supplemental Regular Assessments. If at any time and from time to time during any Budget Year the Regular Assessments prove inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a supplemental Regular Assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth in this Article V.

Section 5.13 Payment of Assessments. Regular Assessments shall be due and payable at such times and installments, if any, as the Board shall determine in its sole and absolute discretion. Notice of the amount of the Regular Assessments shall be given to each Owner on or before May 1 of each Budget Year.

Section 5.14 Special Assessments. In addition to Regular Assessments, the Board may, subject to the provisions of this section, levy Special Assessments for the purpose of raising funds not otherwise provided under the Budget from Regular Assessments to construct or reconstruct, repair, or replace capital improvements upon Association Properties, including necessary personal property related thereto; to add to the Association Properties; to provide for necessary facilities and equipment to offer the services authorized in this Declaration; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. The Board shall not levy special Assessments without the approval of the Owners owning at least two-thirds of the Lots subject to the Special Assessment who are entitled to vote. The Association shall notify Owners in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable. The owners shall pay any such Special Assessment in the manner so specified.

Section 5.15 Owner's Assessments. The Board may, subject to the provisions hereof, levy an Assessment against any Owner if the negligent or willful failure of the Owner or any person claiming through or under the Owner to comply with this Declaration, the Articles, the Bylaws, the Design Standards, or any rules and regulations adopted by the Association shall have resulted in the expenditure of funds by the Association to cause such compliance including, but not limited to, court costs and attorneys' fees. Such Assessment and any other Assessment made by the Association pursuant to Section 3.7 of this Declaration for violation of this Declaration, the Articles, the Bylaws or any rules and regulations adopted by the Association, shall be known as an Owner's Assessment and shall be levied only after notice to the Owner and an opportunity for the Owner to be heard by the Board. The amount of the Owner's Assessment shall be due and payable to the Association thirty days after notice to the Owner of the decision of the Board that the Owner's Assessment is owing.

Section 5.16 Late Charges and Interest. If any Regular Assessment, Special Assessment, or Owner's Assessment or any installment thereof is not paid within thirty days after it is due, the Owner obligated to pay the Assessment may be required to pay a reasonable late charge to be determined by the Board. Any Assessment or installment of an Assessment that is not paid within thirty days after the date of any Notice of Default given under Section 5.18 and prior to the Recordation of a Notice of Lien under Section 5.21 shall bear interest from the date of Recordation of the Notice of Lien at the rate of ten percent (10%) per annum or the highest rate allowed under Hawaii law, whichever is less.

Section 5.17 Attribution of Payments. If any installment payment of a Regular Assessment is less than the amount assessed and the payment does not specify the Fund or Funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in the following order of priority: (a) to the Reserve Fund until that portion of the Regular Assessment has been satisfied; and (b) to the Operating Fund. In each of the foregoing cases, receipts shall be credited first to interest, attorneys' fees and other costs of collection, and next to principal reduction, satisfying the oldest obligations first followed by more current obligations, in accordance with the foregoing order of priority.

Section 5.18 Notice of Default. If any Assessment or any installment thereof is not paid within thirty days after its due date, the Board may mail a Notice of Default to the Owner and to each mortgagee of the Lot who has requested a copy of the Notice. The Notice shall specify: (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date, not less than thirty days from the date the Notice is mailed to the Owner, by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the Notice may result in acceleration of the balance of the Assessment or the installments of the Assessment for the then current Budget Year, if applicable, and the filing and foreclosure of the lien for the Assessment against the Lot of the Owner. If the delinquent Assessment and any late charges or interest thereon are not paid in full on or before the date specified in the Notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand, if applicable, and may enforce the collection of the Assessment and all charges and interest thereon in any manner authorized by law or this Declaration, subject to the protection afforded to mortgagees under this Declaration.

Section 5.19 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct, and personal debt and obligation of the Owner against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Regular, Special, or Owner's, the Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided.

Section 5.20 Lawsuit To Enforce Assessments. The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charges, interest, and other costs of enforcement, including reasonable attorneys' fees in the amount the Court may adjudge, against the defaulting Owner.

Section 5.21 Lien to Enforce Assessments. Each Owner, by acceptance of Lot ownership, whether or not it shall be so expressed in any purchase or sale agreement, deed or lease, shall be deemed to covenant and agree to pay the Assessments described herein to the Association. If the Owner does not pay such Assessment or any installment thereof when due, the entire amount of the Assessment not paid, all late charges and interest as authorized herein, and all costs of collection incurred by the Association

shall be and become a lien upon the Lot of such Owner upon recordation of a Notice of Lien with the Bureau of Conveyances and/or the Land Court. Such lien shall be subject to and subordinate to the lien of any then-existing mortgage of record on the Lot of such Owner. A foreclosure of any such paramount lien, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, shall extinguish the lien as to payments of Assessments which became due prior to such sale, transfer or conveyance, but no such sale, transfer or conveyance shall relieve such Lot or the purchaser or transferee thereof from responsibility for Assessments thereafter becoming due. The Association's Assessment lien may be foreclosed through suit by the Association in like manner as a mortgage of real property, and the Association shall have power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the Lot.

Section 5.22 Estoppel Certificate. Upon the written request of any Owner or any person with, or intending to acquire, any right, title, or interest in the Lot of such Owner, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to the Lot and the Owner thereof, and setting forth the amount of any Assessment levied against such Lot that is not yet due and payable. Such statement shall, with respect to the person to whom it is issued, be conclusive against the Association and all persons for all purposes that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied. The Association shall be entitled to a reasonable fee as a condition to issuing such a certificate.

Section 5.23 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or Board is not properly exercising its duties and powers under this Declaration.

Section 5.24 Exempt Areas. All Association Properties and any portions of the Subdivision as may be conveyed or dedicated to and accepted by a public utility or governmental agency shall be exempt from Assessments.

ARTICLE VI DESIGN STANDARDS AND CONTROLS

Section 6.1 Approval of Improvements Required. The approval of the Design Committee shall be required for any Improvement to Property on any Lot, except (a) any Improvement to Property made by the Declarant (but not by any individual person who is a Declarant as relates to any Lot owned by such individual Declarant); and (b) where prior approval of Improvements to Property may be waived or certain Improvements to Property may be exempted in writing or under written guidelines or rules promulgated by the Design Committee.

Notwithstanding the foregoing Section 6.1, and except as stated in the immediately following paragraph of this Section 6.1, Improvements to Property on each of Lots 171, 191, 192, 195, 196, 197 and 198 shall not be subject to Design Committee review or approval for such time as the said Lot(s) is/are owned by any one or more member of the Laubsch family, or their immediate family members (including spouses and issue). At such time as ownership of any of the said Lots are transferred to any person other than a member of the Laubsch family (as defined herein), that Lot shall become subject to the terms, conditions and restrictions of this Article VI; provided, however, that any Improvements to

Property constructed on the said Lot prior to the transfer of ownership shall be deemed to be in compliance with this Article VI and the Design Standards. This paragraph shall not be deemed or interpreted as a waiver of any and all other obligations of the owners of the said Lots pursuant to this Declaration, including but not limited to the provisions of Article V regarding payment of Assessments.

Notwithstanding the generality of the preceding paragraph, all Lots in the Subdivision, including Lots 171, 191, 192, 195, 196, 197 and 198, shall be required to install a backflow preventer in compliance with the then-existing county of Kauai Department of Water standards prior to the filing of any application for a County water meter. All backflow preventers shall comply with the approved plans attached to the Design Standards, as the same plans may be amended or revised from time to time by the County Department of Water.

Section 6.2 County of Kauai Building, Setback, and Landscaping Restrictions; Subsurface Conditions. Notwithstanding any other provision of this Declaration to the contrary, all of the Lots in the Subdivision are and shall be subject to certain conditions and restrictions regarding easements, building setbacks, landscaping and other conditions imposed by the County of Kauai which are detailed in the Declaration of Restrictive Covenants – Po'ipu Beach Estates and the Declaration of Restrictive Covenant Re Waikomo Stream Buffer, both of which have been or will be filed with the Land Court and recorded with the Bureau of Conveyances (the "County Conditions"). The Design Committee shall be and is hereby authorized to govern and enforce each and every one of the County Conditions, and the approval of the Design Committee shall be obtained pursuant to the guidelines or rules promulgated by the Design Committee for any Improvement that is described in or covered by the County Conditions prior to such Improvement being constructed on any Lot.

All Owners and their contractors and agents are advised that neither the Declarant nor the Association does or shall make any warranty or representation regarding subsurface conditions of any Lot in the Subdivision. Owners shall be responsible for retaining a licensed soils engineer to make any necessary determinations in this regard prior to submitting construction plans for Improvements to the Owner's Lot, and neither Declarant, the Association, the Design Committee, nor their respective owners, members, agents or employees shall be liable for any subsurface conditions affecting any Lot.

Section 6.3 "Improvement to Property" Defined. An "Improvement to Property" requiring approval of the Design Committee shall mean and include, without limitation, (a) the construction, installation, erection, or expansion of any building, structure, or other Improvement, including utility facilities, landscaping, and fences; (b) the demolition or destruction, by voluntary action, of any building, structure, or other Improvement; (c) the grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, or change of drainage pattern; and (d) any change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture.

Section 6.4 Membership of Design Committee. The Design Committee shall consist of three members, all of whom shall be initially appointed by Declarant. Declarant shall have the continuing right to appoint and remove all three members during the Appointment Period (as hereinafter defined). The Board shall have the right to appoint and remove such members after the expiration of the Appointment Period. During the Appointment Period Declarant shall give the Association written notice of the appointment or removal of any member of the Design Committee. The "Appointment Period" shall mean the period of time commencing as of the date of recordation of this Declaration and continuing until the

earliest to occur of the following events: (a) when seventy percent (70%) of the Lots within the Subdivision have been conveyed to persons other than those persons who are in the group of owners that constitute the Declarant; or (b) when, in its sole and absolute discretion, Declarant voluntarily relinquishes such right. Members of the Design Committee shall be Owners of Lots, except that any licensed architect appointed as a member of the Design Committee need not be an Owner of a Lot. After expiration of the Appointment Period, members of the Design Committee shall be appointed by the Board. Members of the Design Committee appointed by the Board may be removed at any time by the Board and shall serve for such terms as may be designated by the Board or until resignation or removal by the Board. After the expiration of the Appointment Period, the number of members of the Design Committee shall not be more or less than three and at least one of the members of the Design Committee shall be an architect licensed in the State of Hawaii. The licensed architect member of the Design Committee shall be paid a reasonable fee for his or her services as a member of the Design Committee. In addition to the licensed architect member of the Design Committee, the Design Committee shall be authorized, with the Board's concurrence, to retain the services of an additional architect licensed to do business in the State of Hawaii to assist with the Design Committee's functions and to recommend approvals or disapprovals to the Design Committee, subject to all of the terms and conditions of this Declaration and of the Design Committee's Design Standards, rules and regulations.

Section 6.5 Submission of Plans. Except as provided in Section 6.1, prior to commencement of work to accomplish any proposed Improvement to Property, the person proposing to make such Improvement to any Lot (the "Applicant") shall submit to the Design Committee such descriptions, surveys, plot plans, drainage plans, elevation drawings, landscaping plans, fencing plans, construction plans, specifications and samples of materials and colors as the Design Committee shall reasonably request (including such numbers thereof as are reasonably requested) showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvements to Property. The Applicant shall be entitled to receive a receipt for the same from the Design Committee or its authorized agent. The Design Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Design Committee of all required materials in connection with the proposed Improvement to Property, the Design Committee may postpone review of any materials submitted for approval.

Section 6.6 Criteria For Approval. The Design Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Subdivision as a whole; that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of the Subdivision; that the Improvement to Property will not detract from the beauty, wholesomeness, and attractiveness of the Subdivision or the enjoyment thereof by Owners; that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association; that the proposed Improvement to Property does not affect the drainage plan for the Subdivision or any portion thereof; and, regarding landscaping on any Lot, that no landscaping will be allowed which may unreasonably interfere with or unreasonably and adversely affect reasonable view planes from other Lots in the Subdivision. The Design Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Design Committee may deem appropriate, and, without limiting the generality of the foregoing statement, the Design Committee may impose reasonable height limitations on any landscaping or other Improvements which may unreasonably interfere with or unreasonably and adversely affect reasonable view planes from other Lots in the Subdivision. Also, regarding corner lots, the Design Committee shall be authorized to

designate the location of the driveway(s) serving such lots to minimize safety, traffic, visual and other concerns reasonably related to the use or location of the driveway.

Section 6.7 Design Standards. The Declarant, the Association and/or the Design Committee may issue standards or rules (the "Design Standards") relating to the procedures, materials to be submitted, fees for review, and additional factors that will be taken into consideration in connection with the review of any proposed Improvement to Property including, but not limited to, landscaping and fencing design standards. The Design Standards may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonably or unduly harsh under the circumstances. The Design Standards may waive the requirement for approval of certain Improvements to Property or exempt certain Improvements to Property from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration.

Section 6.8 Design Review Fee. The Design Committee may, in the Design Standards, provide for the payment of a fee to accompany each request for approval of any proposed Improvement to Property. The Design Committee may provide that the amount of the fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner, such as based upon the estimated cost of the proposed Improvement to Property. The Design Committee may further provide that the amount of any design review fee include engineering or architectural consultant, photocopying, and other fees reasonably incurred by the Association in reviewing any proposed Improvement to Property. The Design Committee may also request from any Owner a construction deposit or compliance bond to assure satisfactory completion of the Improvements requested by the Owner, such deposit or bond to be in a reasonable amount to be determined by the Design Committee and stated in the Design Standards.

Section 6.9 Decision of Committee. Any decision of the Design Committee shall be made within thirty days after receipt by the Design Committee of all materials required by the Design Committee, unless such time period is extended by mutual agreement. The decision shall be in writing. If the decision is not to approve a proposed Improvement to Property, the reasons for disapproval shall be stated. The decision of the Design Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Design Committee.

Section 6.10 Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in complete and strict conformity with the description of the proposed Improvement to Property, any materials submitted to the Design Committee in connection with the proposed Improvement to Property, and any conditions imposed by the Design Committee; provided that within ninety days after approval of any proposed Improvement, or within such longer period as may be approved in writing by the Design Committee, the Owner shall complete the installation of any landscaping and gardening approved in conjunction with the approval of the proposed Improvements. Failure to complete the proposed Improvement to Property within eighteen (18) months after the date of approval, or such longer or shorter period as specified in writing by the Design Committee; or to complete the Improvement to Property in accordance with the description and materials furnished to, and the conditions imposed by, the Design Committee, shall constitute noncompliance with the requirements for approval of Improvement to Property.

Section 6.11 Notice of Completion. Upon completion of the Improvement to Property, the Applicant may give written notice of completion to the Design Committee. Until the date of receipt of such notice of completion, the Design Committee shall not be deemed to have knowledge of completion of such Improvement to Property.

Section 6.12 Inspection of Work. The Design Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion provided that the right of inspection shall terminate thirty days after the Design Committee shall have received a notice of completion from Applicant. Each Owner, by acquiring ownership of a Lot in the Subdivision, shall be deemed to have granted to the Design Committee and its duly authorized representatives, employees, or agents a temporary right of entry to enter the Owner's lot for the purposes of inspecting the Improvements to Property located on that Owner's Lot.

Section 6.13 Notice of Noncompliance. If, as a result of inspections or otherwise, the Design Committee finds that any Improvement to Property has been made without obtaining the approval of the Design Committee or was not made in complete and strict conformity with the description and materials furnished to, and any conditions imposed by, the Design Committee or was not completed within eighteen (18) months after the date of approval by the Design Committee or such longer or shorter period as specified in writing by the Design Committee, the Design Committee shall notify the Applicant in writing of the noncompliance. If any such notice is given, it shall be given within thirty days after the Design Committee receives a notice of completion from the Applicant. The notice of noncompliance shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance. Such remedial action by the Applicant shall be completed not more than thirty (30) days after the Applicant's receipt of the notice of noncompliance.

Section 6.14 Correction of Noncompliance. If after the Applicant's appeal the Board determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than thirty (30) days from the date of receipt by the Applicant of the ruling of the Board. If the Applicant does not comply with the Board ruling within such period, or if the Applicant fails to correct a notice of noncompliance from the Design Committee and also fails to appeal such notice, the Board may, at its option, record a Notice of Noncompliance against the Lot on which the noncompliance exists, may enter upon such property and remove the noncomplying Improvement to Property, or may otherwise remedy the noncompliance. The Applicant shall reimburse the Association, upon demand, for all expenses incurred therewith and shall also be required to pay to the Association a violation fee of \$100.00 for each and every day that the violation continues, beginning the day after the Applicant's remedy period has expired (i.e., either 30 days after receipt of the Design Committee's notice of noncompliance or 30 days after the Applicant's receipt of the Board's ruling on the Applicant's appeal, whichever shall apply). If the Applicant or Owner does not promptly repay such expenses and fees to the Association, the Board may levy an Owner's Assessment against the Owner of the Lot for such costs, expenses and fees. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies that the Association may have at law, in equity, or under this Declaration. The Applicant and Owner of the Lot shall have no claim for damages or otherwise on account of the entry upon the property and removal of the noncomplying Improvement to Property.

Section 6.15 No Implied Waiver or Estoppel. No action or failure to act by the Design Committee or by the Board shall constitute a waiver or estoppel with respect to future action by the Design Committee or the Board with respect to any Improvement to Property. Specifically, the approval

shall its approval of an Improvement to Property be deemed approval of, the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations.

Section 6.21 Construction Period Exception. During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is proceeding with due diligence, the Design Committee shall temporarily suspend the provisions contained in this Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction, provided that, during the course of any such construction, nothing is done that will result in a violation of any of the provisions of this Declaration upon completion of construction, or which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

ARTICLE VII MASTER ASSOCIATION

It is anticipated that a separate owner's association (referred to herein as the "Master Association") shall be established and shall be comprised of the various community associations (including the Association) that have been established to govern the several residential and resort projects in the vicinity of the Subdivision, which community associations are in turn comprised of the individual owners of the properties in the constituent projects. The Master Association shall be responsible for the ownership, maintenance, repair, management and governance of the common roadways, private water facilities, landscaping and other common facilities and amenities that serve or benefit the member projects. The Master Association shall be organized and governed according to such organizational documents as the Declarant and the principals of the other constituent projects shall approve, and upon approval and ratification by the constituent members, including the Declarant, such documents shall be binding upon the Association and, through the Association, upon all Owners in the Subdivision. Among other functions and powers, the Master Association shall have the authority and power to assess each member (including the Association) for the member's equitable pro rata share of the costs of ownership, maintenance, repair and management of the common facilities and properties that are the responsibility of the Master Association, and shall also have the authority and power to impose such liens and other remedies for collection of such assessments as the organizational documents shall provide. The Association shall be entitled to include as part of the Assessments made against the Owners in the Subdivision pursuant to Article V herein each Owner's equitable pro-rata share of the Association's assessment by the Master Association.

ARTICLE VIII LAND USE REGULATIONS

Section 8.1 Residential Use. Except as stated herein, Lots shall be used exclusively for private residential purposes, including but not limited to short and long term rentals, vacation rentals, and bed and breakfast rentals to the extent the same are allowed by County of Kauai ordinances and regulations. Guest houses and additional dwelling units, both as defined by the County of Kauai Comprehensive Zoning Ordinance, shall be allowed if they conform to existing State and County ordinances and if the architectural design of the guest house and/or additional dwelling unit is consistent and/or compatible, in the determination of the Design Committee, with the design of the main dwelling on the Lot. In addition, in-home businesses or occupations shall be allowed, provided such activities are conducted solely within the residence and do not create or result in any nuisance or any unreasonable,

unwarranted, or unlawful use or interference with rights of Owners or of the public, including, but not limited to, unreasonable or unwarranted use or interference with Subdivision streets, rights of way or sidewalks, excessive traffic or parking requirements, or in any other offensive or noxious activities.

The main dwelling and any additional dwelling unit constructed on each Lot shall be subject to the following minimum and maximum size requirements, and shall also be subject to review and approval by the Design Committee:

Main Dwelling – the main dwelling constructed on a Lot that contains less than 1.0 acre of ground area shall have not less than 1,800 square feet of living area (excluding lanais, garages, and other non-living areas), and the main dwelling constructed on a Lot that contains 1.0 acre or more of ground area shall have not less than 2,000 square feet of living area (excluding lanais, garages, and other non-living areas).

Additional Dwelling Unit – an additional dwelling unit constructed on a Lot that contains less than 1.0 acre of ground area shall contain not more than 800 square feet of living area (excluding lanais, garages, and other non-living areas). Subject to the conditions stated immediately following this sentence, an additional dwelling unit constructed on a Lot that contains 1.0 acre or more of ground area shall contain not more than 2,000 square feet of living area (excluding lanais, garages, and other non-living areas) and may be constructed as a detached structure from the main dwelling on the Lot. The size of additional dwelling units are subject to (a) the terms and conditions stated in the unrecorded letters from the County of Kauai Planning Department dated August 31, 2007 and May 4, 2004, copies of which are attached hereto as Exhibit "B" and (b) the county of Kauai Potable Water Master Plan for the Kiahuna Projects, which limits additional dwelling units to 1,200 square feet throughout the Subdivision. The Declarant does not guarantee that the County of Kauai will permit additional dwelling units exceeding 1,200 square feet in size.

Section 8.2 Condition. Each Lot and any and all Improvements from time to time located thereon shall be maintained by the Owner thereof in good and clean condition and repair and in such manner as not to create a fire, safety or health hazard to the Subdivision or any part thereof, all at such Owner's sole cost and expense.

Section 8.3 Exterior Noise. No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the homesite, and Improvements thereon, shall be placed or used upon any Lot.

Section 8.4 Animals. No animals shall be maintained on any Lot other than a reasonable number of generally recognized house pets kept for the Owner's personal pleasure and not for sale, breeding, or other commercial purposes; provided, however, that no animals shall be permitted which are nuisances to neighbors.

Section 8.5 Temporary Structures. No house trailer, mobile home, tent, or similar facility or structure shall be kept, placed or maintained upon any Lot at any time, provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction or improvement of a permanent home or homes on the Lot.

Section 8.6 Trucks and Equipment. No truck of more than one (1) ton capacity shall be kept, placed or maintained upon any Lot in such manner that such truck is visible from the adjoining streets and neighboring property, provided, however, that the provisions of this paragraph shall not apply to construction equipment maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of any home or homes on the Lot.

Section 8.7 Other Structures. No accessories, structures or buildings shall be constructed, placed or maintained upon any Lot prior to the construction of the main structure of the residence, provided, however, that the provisions of this section shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of the main structure of the residence.

Section 8.8 Construction or Repair of Vehicles. No trailer, vehicle or boat shall be constructed, reconstructed or repaired upon any Lot in such a manner that such construction, reconstruction or repair is visible from neighboring properties, nor shall any vehicle not in good operating condition be maintained upon any Lot so as to be visible from any adjoining streets, provided that nothing in this paragraph shall prevent an Owner from performing minor maintenance work and minor repairs on his or her own trailer, vehicle or boat in his or her garage.

Section 8.9 Garbage. No garbage or trash shall be permitted on any Lot except in closed receptacles screened from view from any adjoining street; and no accumulated waste plant materials will be permitted on any Lot, except as part of an established compost pile maintained in such a manner as not to be visible from neighboring property.

Section 8.10 Open Storage. No open storage of trailers, boats, vehicles, furniture, fixtures, appliances and other goods and chattels will be permitted. These items may only be stored in an enclosed garage. Outside clothes lines or other outside clothes drying or airing facilities shall be permitted as long as they are not visible from ground level of a neighboring property or from the first floor portion of any dwelling structure on a neighboring property.

Section 8.11 Fires. No Owner shall permit any exterior fires whatsoever, except contained barbecue fires or reasonable fire pits used solely for campfires or similar recreational purposes. No Owner shall permit any conditions on the Owner's Lot that may create a fire hazard, that may interfere with the health or safety of any neighboring Owner or occupant of any Lot, or that may constitute a nuisance.

Section 8.12 Compliance With Law. No Owner shall violate or permit the violation on the Owner's Lot of any applicable law or ordinance pertaining to zoning, buildings, fires, signs or other matter relating to the use and development of the Lot.

Section 8.13 Offensive Activities. No noxious or offensive activity shall be carried on upon any common area or any residential Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. All occupants shall exercise extreme care about making noises and in the use of musical instruments, radios, televisions, and amplifiers that may disturb other occupants.

houses on any Lot containing less than one (1) acre of land area is authorized under any circumstance. Condominiumization on Lots containing at least one (1) acre of land area shall be allowed.

Section 8.20 Golf Course. By their acquisition of a Lot in the Subdivision, every Owner acknowledges that the Property is in the immediate vicinity of or adjacent to a golf course. Each Owner covenants and agrees that by acquiring ownership of a Lot in the Subdivision, the Owner acknowledges that golf cart path easements may affect portions of the Property, and that resort-related activities, including without limitation golf tournaments and other events, may be held on and in the vicinity of such golf course, and that the location of the Property with respect to such golf course and golf cart path easements may result in nuisances, disturbances or hazards to persons and property on or within the Property as a result of such golf course related operations and other resort-related operations thereon. By acquiring an interest in a Lot, each Owner covenants and agrees that the Owner assumes all risks associated with the location of the Property with respect to such golf course and golf cart path easements, including without limitation the risk of property damage, personal injury, bodily injury or death arising out of or in connection with the use of golf carts, stray golf balls, or other activities incidental to such golf course operations and resort related activities. By acquiring an interest in a Lot, each Owner thereby covenants and agrees, as a covenant running with the land and the Owner's interest therein, that the Owner shall, to the extent of the Owner's interest in the Lot, indemnify and hold harmless the Declarant, the Association, and all of their respective officers, directors, employees, agents, successors and assigns from any and all actions, liabilities, claims, losses, damages, costs or expenses, including attorney's fees, arising out of or in connection with any such property damage, personal injury, bodily injury or death, to property or person of such Owner, and Owner's assigns, tenants, lessees, servants, guests, invitees, licensees, agents, employees, or any other person who may use or occupy the Lot by, through or under the Owner, arising out of or in connection with such golf cart path easements, golf course related operations and other resort-related operations; and by acquiring an interest in a Lot, each Owner shall be deemed thereby to irrevocably agree to suffer and permit all actions and consequences incidental to the construction, maintenance, operation and use of the golf course and golf cart path easements and to the carrying out of all golf course related operations and resort related activities thereon.

Section 8.21 Agricultural Activities. By their acquisition of a Lot in the Subdivision, every Owner acknowledges, understands, and accepts that the Property is nearby or in the vicinity of lands being, or which in the future may be, actively used for the growing, harvesting and processing of agricultural products (such growing, harvesting and processing activities being herein collectively called the "Agricultural Activities"), which activities may from time to time bring about upon the Property or result in smoke, dust, noise, heat, agricultural chemicals, particulates and similar substances and nuisances (collectively, the "Agricultural By-Products"). By their acquisition of a Lot in the Subdivision, every Owner further acknowledges, understands and accepts that the Hawaii Right To Farm Act, Hawaii Revised Statutes Chapter 165, limits the circumstances under which farm activities may be deemed a nuisance. Each Owner hereby assumes complete risk of and forever releases the Declarant, the Association, and their respective agents from all claims for damages (including, but not limited to, consequential, special, exemplary and punitive damages) and nuisances occurring on the Property and arising out of any Agricultural Activities or Agricultural By-Products. Without limiting the generality of the foregoing, each Owner hereby, with full knowledge of its rights, forever waives any right to require the Declarant, the Association, or their respective agents, and releases the Declarant, the Association, and their respective agents from any obligation, to take any action to correct, modify, alter, eliminate or abate any Agricultural Activities or Agricultural By-Products. Any Agricultural Activities or Agricultural By-Products, and any claim, demand, action, loss, damage, liability, cost or expense arising therefrom,

management offices, and model dwellings, all of which may be located on any Lot and relocated to any other Lot within the Subdivision. Declarant may also use vehicles and equipment on Association Properties for promotional purposes; may permit prospective purchasers of property within the boundaries of the Subdivision who are not Owners to use Association Properties at reasonable times and in reasonable numbers; and may refer to the Association Properties and to the Association and services offered by the Association in connection with the promotion, development, construction of Improvements and marketing of property within the boundaries of the Subdivision.

Section 9.4 Declarant's Rights to Complete Development of the Subdivision. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete development of property within the boundaries of the Subdivision; to construct or alter Improvements on any property owned by Declarant within the Subdivision, including temporary buildings; to maintain model homes; temporary buildings, construction trailers, sales trailers or offices for construction or sales purposes, or similar facilities, on any property owned by Declarant or owned by the Association within the Subdivision; or to post signs incidental to development, promotion, development, construction of Improvements, marketing, or sales of property within the boundaries of the Subdivision. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals: (a) to excavate, cut, fill, or grade any property owned by Declarant or to construct, alter, demolish, or replace any Improvements on any property owned by Declarant; (b) to use any structure on any property owned by Declarant as a construction site, model home, or real estate sales office in connection with the sale of any property within the boundaries of the Subdivision; or (c) to require Declarant to seek or obtain the approval of the Design Committee or of the Association for any such activity or Improvement to Property on any property owned by Declarant. Nothing in this Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

Section 9.5 Declarant's Approval of Conveyances or Changes in Use. Until Declarant has lost the right to appoint the members of the Design Committee, the Association shall not, without first obtaining the written consent of Declarant, which consent shall not be unreasonably withheld, convey, change, or alter the use of Association Properties, mortgage the Association Properties, or use Association Properties other than solely for the benefit of the Owners or as specifically allowed hereunder.

Section 9.6 Declarant's Rights to Grant and Create Easements. Declarant shall have and hereby reserves the right to grant or create or be the beneficiary of temporary or permanent easements, licenses, rights of entry, and permits located in, on, under, over, and across (a) Lots owned by Declarant, and (b) Association Properties, for access, utilities, drainage, water, and other purposes incident to development and sale of portions of the Subdivision. This reservation of rights shall expire on the fifth (5th) anniversary of the recording of this Declaration with the Bureau of Conveyances and the filing of this Declaration with the Land Court.

Section 9.7 Declarant's Rights to Convey Additional Property to Association. Declarant shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and Improvements thereon to the Association at any time and from time to time in accordance with this Declaration, so long as any conveyance does not directly result in an increase in the then current Regular Assessments applicable to a Lot by more than twenty percent, unless Declarant agrees to directly subsidize the Association for the excess expenses.

Section 9.8 Declarant's Right to Assign Rights. Declarant shall have and hereby reserves the right to assign and transfer all or any portion of Declarant's rights, privileges, powers, interest and obligations hereunder to the Association or to any successor designated by the Declarant.

Section 9.9 Declarant's Right to Dedicate for Public Use. Declarant shall have and hereby reserves the right to dedicate any drainage, access, utility or similar portion of the Association Properties to public use where such use will have the effect of transferring the responsibility and maintenance of the dedicated use to the governmental authority or private utility accepting the said property. However, Declarant is not authorized to dedicate any portion of the Association Properties that are maintained for the use and enjoyment solely of the Owners (such as a community swimming or recreational facility, if any such facility exists from time to time).

ARTICLE X DURATION AND AMENDMENT OF DECLARATION

Section 10.1 Term of Declaration. Unless amended as herein provided, each provision contained in this Declaration shall continue and remain in full force and effect until December 31, 2050, and thereafter shall be automatically extended for successive periods of ten years each unless terminated by the vote, taken by written ballot, of Owners holding at least seventy percent (70%) of the votes of members of the Association entitled to vote at a duly constituted meeting of the Association. In the event this Declaration is terminated, the termination shall be evidenced by a Termination Agreement, or ratification thereof, executed by the requisite number of Owners. The Termination Agreement shall specify a date after which the Termination Agreement will be void unless recorded before such date. The Termination Agreement shall be filed with the Land Court and recorded with the Bureau of Conveyances, and the termination of this Declaration shall be effective upon such filing and recordation.

Section 10.2 Amendment by Declarant. Until the first Lot subject to this Declaration has been conveyed by Declarant by a recorded deed, any of the provisions, covenants, conditions, and restrictions contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth the amendment or termination or restatement of this Declaration.

Section 10.3 Amendment by Owners. Except as otherwise provided in this Declaration, including this Section and Article IX, and subject to provisions contained elsewhere in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, or restriction contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Owners holding at least seventy percent (70%) of the votes of the Association entitled to vote present in person or by proxy at duly constituted meetings of the Association; except that until seventy percent (70%) or more of the Lots within the Subdivision have been sold and conveyed to persons other than those listed on page 2 of this Declaration as the Declarant, any such amendment or repeal shall not be made except upon approval of the amendment or repeal by Owners holding at least ninety percent (90%) of the votes of the Association entitled to vote present in person or by proxy at duly constituted meetings of the Association. The approval of any duly adopted amendment or repeal shall be evidenced by certification by the Owners of their own votes to the Board. The amendment or repeal shall be effective upon the filing with the Land Court and recordation with the Bureau of Conveyances of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal

has been duly adopted by the Owners. Any amendment to the Declaration made hereunder shall be effective only when filed and recorded.

ARTICLE XI MORTGAGEE'S RIGHTS

Section 11.1 Special Rights of First Mortgagees. Any first mortgagee (meaning a mortgage with first priority over other mortgages) of a mortgage encumbering any Lot in the Subdivision, upon filing a written request therefor with the Association, shall be entitled to: (a) written notice from the Association of any default by the mortgagor of such Lot in the performance of the mortgagor's obligations under this Declaration, the Articles, Bylaws, or any rules or regulations adopted by the Association or the Design Committee, which default is not cured within sixty days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association including any annual financial statement within ninety days following the end of any fiscal year of the Association; (d) receive written notice of all meetings of the Association; (e) designate a representative to attend any meeting of the Association; (f) receive thirty days' written notice prior to the effective date of any proposed material amendment to this Declaration, the Articles, or Bylaws; (g) receive written notice if the Association receives notice or otherwise learns of any damage to the Association Properties if the cost of reconstruction exceeds \$100,000, and (h) receive written notice if the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties.

Section 11.2 First Mortgagee Right to Pay Taxes and Insurance Premiums. Any first mortgagee shall be entitled to pay any taxes or other charges that are in default and that may or have become a charge against any of the Association Properties and may pay any overdue premiums on hazard insurance policies for any Association Properties. The first mortgagee making such payments shall be entitled to immediate reimbursement therefor from the Association.

ARTICLE XII EASEMENTS

Without limiting the power of the Declarant's rights and reservations concerning the creation or granting of easements and other matters as provided in Article IX above, the Property and certain Lots located in the Subdivision shall be subject to the following easements and other restrictions, as detailed in the Declaration of Restrictive Covenants - Po'ipu Beach Estates that will be filed with the Land Court and recorded at the Bureau of Conveyances concurrently with this Declaration (all references to Lot and Easement numbers in this Article XII are to the Lot numbers as they appear on Land Court Map 8):

(a) No direct access shall be permitted onto Poipu Road from Lots 180 - 187, inclusive. The only direct access onto Poipu Road shall be from Roadway Lot 190.

(b) Lots 180 through 189, inclusive, shall be subject to building setback lines as shown on the final Subdivision map.

(c) Lot 92 shall be subject to Easement 53, containing an area of approximately 36

square feet, for utility purposes and shall also be subject to a restriction on vehicular access along a portion of roadway Lot 190.

(d) Lot 98 shall be subject to Easement 52, containing an area of approximately 44 square feet, for utility purposes.

(e) Lot 101 shall be subject to Easement 66, containing a total area of approximately 3,630 square feet (which total area is spread out on all Lots subject to that Easement), for sewer purposes in favor of the Association and its successors and assigns.

(f) Lot 109 shall be subject to Easement 38, containing a total area of approximately 26,049 square feet (which total area is spread out on all Lots subject to that Easement), for pedestrian access purposes in favor of the County of Kauai, and shall also be subject to a restriction on vehicular access along a portion of roadway Lot 190.

(g) Lot 110 shall be subject to Easement 38, containing a total area of approximately 26,049 square feet (which total area is spread out on all Lots subject to that Easement), for pedestrian access purposes in favor of the County of Kauai, Easement 57, containing an area of approximately 36 square feet, for utility purposes, and shall also be subject to a restriction on vehicular access along a portion of roadway Lot 190.

(h) Lot 114 shall be subject to Easement 56, containing an area of approximately 36 square feet, for utility purposes.

(i) Lot 117 shall be subject to Easement 66, containing a total area of approximately 3,630 square feet (which total area is spread out on all Lots subject to that Easement), for sewer purposes in favor of the Association and its successors and assigns.

(j) Lot 124 shall be subject to Easement 38, containing a total area of approximately 26,049 square feet (which total area is spread out on all Lots subject to that Easement), for pedestrian access purposes in favor of the County of Kauai, and shall also be subject to a restriction on vehicular access along a portion of roadway Lot 190.

(k) Lot 125 shall be subject to Easement 38, containing a total area of approximately 26,049 square feet (which total area is spread out on all Lots subject to that Easement), for pedestrian access purposes in favor of the County of Kauai, and shall also be subject to a restriction on vehicular access along a portion of roadway Lot 190.

(l) Lot 126 shall be subject to Easement 60, containing an area of approximately 37 square feet, for utility purposes.

(m) Lot 131 shall be subject to Easement 38, containing a total area of approximately 26,049 square feet (which total area is spread out on all Lots subject to that Easement), for pedestrian access purposes in favor of the County of Kauai, and shall also be subject to a restriction on vehicular access along a portion of roadway Lot 190.

(n) Lot 132 shall be subject to a restriction on vehicular access along a portion of roadway Lot 190.

(o) Lot 133 shall be subject to Easement 54, containing an area of approximately 36 square feet, for utility purposes.

(p) Lot 137 shall be subject to Easement 55, containing an area of approximately 36 square feet, for utility purposes.

(q) Lot 140 shall be subject to Easement 48, containing a total area of approximately 2,845 square feet (which total area is spread out on all Lots subject to that Easement), for drainage purposes in favor of the Association and its successors and assigns.

(r) Lot 141 shall be subject to Easement 65, containing a total area of approximately 2,898 square feet (which total area is spread out on all Lots subject to that Easement), for sewer purposes in favor of the Association and its successors and assigns.

(s) Lot 143 shall be subject to a restriction on vehicular access along a portion of roadway Lot 190.

(t) Lot 144 shall be subject to a restriction on vehicular access along a portion of roadway Lot 190.

(u) Lot 146 shall be subject to Easement 65, containing a total area of approximately 2,898 square feet (which total area is spread out on all Lots subject to that Easement), for sewer purposes in favor of the Association and its successors and assigns and Easement 58, containing an area of approximately 36 square feet, for utility purposes.

(v) Lot 147 shall be subject to Easement 48, containing a total area of approximately 2,845 square feet (which total area is spread out on all Lots subject to that Easement), for drainage purposes in favor of the Association and its successors and assigns.

(w) Lot 148 shall be subject to Easement 49, containing a total area of approximately 5,154 square feet (which total area is spread out on all Lots subject to that Easement), for drainage purposes in favor of the Association and its successors and assigns.

(x) Lot 150 shall be subject to a restriction on vehicular access along a portion of roadway Lot 190.

(y) Lot 153 shall be subject to Easement 59, containing an area of approximately 36 square feet, for utility purposes.

(z) Lot 158 shall be subject to Easement 61, containing an area of approximately 36 square feet, for utility purposes and shall also be subject to a restriction on vehicular access along a portion of roadway Lot 190.

5,154 square feet (which total area is spread out on all Lots subject to that Easement), for drainage purposes in favor of the Association and its successors and assigns.

(bb) Lot 161 shall be subject to Easement 62, containing an area of approximately 37 square feet, for utility purposes.

(cc) Lot 163 shall be subject to a restriction on vehicular access along a portion of roadway Lot 190.

(dd) Lot 167 shall be subject to Easement 63, containing an area of approximately 41 square feet, for utility purposes.

(ee) Lot 168 shall be subject to Easement 42, containing an area of approximately 1,863 square feet, for access and utility purposes in favor of Lot 169.

(ff) Lot 169 shall be subject to Easement 43, containing an area of approximately 1,762 square feet, for access and utility purposes in favor of Lot 168.

(gg) Lot 172 shall be subject to Easement 41, containing a total area of approximately 3,017 square feet (which total area is spread out on all Lots subject to that Easement), for access and utility purposes in favor of adjacent Land Court Lot 392, Land Court Map 88.

(hh) Lot 177 shall be subject to Easement 49, containing a total area of approximately 5,154 square feet (which total area is spread out on all Lots subject to that Easement), for drainage purposes in favor of the Association and its successors and assigns.

(ii) Lot 180 shall be subject to Easement 67, containing a total area of approximately 9,594 square feet (which total area is spread out on all Lots subject to that Easement), for sewer purposes in favor of the Association and its successors and assigns and Easement 8, Land Court Map 5, containing a total area of approximately 0.440 acre (which total area is spread out on all Lots subject to that Easement), for landscaping purposes in favor of the Association and its successors and assigns.

(jj) Lot 181 shall be subject to Easement 67, containing a total area of approximately 9,594 square feet (which total area is spread out on all Lots subject to that Easement), for sewer purposes in favor of the Association and its successors and assigns and Easement 8, Land Court Map 5, containing a total area of approximately 0.440 acre (which total area is spread out on all Lots subject to that Easement), for landscaping purposes in favor of the Association and its successors and assigns.

(kk) Lot 182 shall be subject to Easement 67, containing a total area of approximately 9,594 square feet (which total area is spread out on all Lots subject to that Easement), for sewer purposes in favor of the Association and its successors and assigns, Easement 8, Land Court Map 5, containing a total area of approximately 0.440 acre (which total area is spread out on all Lots subject to that Easement), for landscaping purposes in favor of the Association and its successors and assigns, shall also be subject to a restriction on vehicular access along a portion of roadway Lot 190, and Easement 38, containing a total area of approximately 26,049 square feet (which total area is spread out on all Lots subject to that Easement), for pedestrian access purposes in favor of the County of Kauai.

(ll) Lot 183 shall be subject to Easement 67, containing a total area of approximately 9,594 square feet (which total area is spread out on all Lots subject to that Easement), for sewer purposes in favor of the Association and its successors and assigns, Easement 8, Land Court Map 5, containing a total area of approximately 0.440 acre (which total area is spread out on all Lots subject to that Easement), for landscaping purposes in favor of the Association and its successors and assigns, and Easement 38, containing a total area of approximately 26,049 square feet (which total area is spread out on all Lots subject to that Easement), for pedestrian access purposes in favor of the County of Kauai, and shall also be subject to a restriction on vehicular access along a portion of roadway Lot 190.

(mm) Lot 184 shall be subject to Easement 67, containing a total area of approximately 9,594 square feet (which total area is spread out on all Lots subject to that Easement), for sewer purposes in favor of the Association and its successors and assigns, Easement 8, Land Court Map 5, containing a total area of approximately 0.440 acre (which total area is spread out on all Lots subject to that Easement), for landscaping purposes in favor of the Association and its successors and assigns, and Easement 38, containing a total area of approximately 26,049 square feet (which total area is spread out on all Lots subject to that Easement), for pedestrian access purposes in favor of the County of Kauai.

(nn) Lot 185 shall be subject to Easement 9, Land Court Map 5, containing a total area of approximately 0.187 acre (which total area is spread out on all Lots subject to that Easement), for landscaping purposes in favor of the Association and its successors and assigns, Easement 51, containing a total area of approximately 32,636 square feet (which total area is spread out on all Lots subject to that Easement), for detention basin purposes, and Easement 38, containing a total area of approximately 26,049 square feet (which total area is spread out on all Lots subject to that Easement), for pedestrian access purposes in favor of the County of Kauai.

(oo) Lot 186 shall be subject to Easement 9, Land Court Map 5, containing a total area of approximately 0.187 acre (which total area is spread out on all Lots subject to that Easement), for landscaping purposes in favor of the Association and its successors and assigns, Easement 51, containing a total area of approximately 32,636 square feet (which total area is spread out on all Lots subject to that Easement), for detention basin purposes, and Easement 38, containing a total area of approximately 26,049 square feet (which total area is spread out on all Lots subject to that Easement), for pedestrian access purposes in favor of the County of Kauai.

(pp) Lot 187 shall be subject to Easement 9, Land Court Map 5, containing a total area of approximately 0.187 acre (which total area is spread out on all Lots subject to that Easement), for landscaping purposes in favor of the Association and its successors and assigns, Easement 51, containing a total area of approximately 32,636 square feet (which total area is spread out on all Lots subject to that Easement), for detention basin purposes, and Easement 38, containing a total area of approximately 26,049 square feet (which total area is spread out on all Lots subject to that Easement), for pedestrian access purposes in favor of the County of Kauai.

(qq) Lot 188 shall be subject to Easement 50, containing an area of approximately 210 square feet, for drainage purposes in favor of the Association and its successors and assigns, Easement 51, containing a total area of approximately 32,636 square feet (which total area is spread out on all Lots subject to that Easement), for detention basin purposes, and Easement 38, containing a total area of

approximately 26,049 square feet (which total area is spread out on all Lots subject to that Easement), for pedestrian access purposes in favor of the County of Kauai.

(rr) Lot 190 shall be subject to Easement 38, containing a total area of approximately 26,049 square feet (which total area is spread out on all Lots subject to that Easement), for pedestrian access purposes in favor of the County of Kauai, Easement 46, containing an area of approximately 342 square feet, for access and utility purposes, Easement 47, containing an area of approximately 110 square feet, for cable purposes, Easement 67, containing a total area of approximately 9,594 square feet (which total area is spread out on all Lots subject to that Easement), for sewer purposes in favor of the Association and its successors and assigns, Easement 3, Land Court Map 5, containing a total area of approximately 0.440 acre (which total area is spread out on all Lots subject to that Easement), for landscaping purposes in favor of the Association and its successors and assigns, and Easement 5, Land Court Map 3, for golf cart path purposes.

(ss) Lot 191 shall be subject to Easement 40, containing an area of approximately 160 square feet, for access purposes in favor of the owner of Archaeological Site 4 Preserve Lot 199 and Easement 4, Land Court Map 2, for sanitary sewer purposes.

(tt) Lot 192 shall be subject to Easement 39, containing an area of approximately 3,106 square feet, for access purposes in favor of the owner of Archaeological Site 3 Preserve Lot 201.

(uu) Lot 195 shall be subject to Easement 64, containing an area of approximately 46 square feet, for utility purposes, and Easement 4, Land Court Map 2, for sanitary sewer purposes.

(vv) Lot 196 shall be subject to Easement 44, containing an area of approximately 3,713 square feet, for access and utility purposes in favor of Lot 197, and Easement 4, Land Court Map 2, for sanitary sewer purposes.

(ww) Lot 197 shall be subject to Easement 45, containing an area of approximately 3,639 square feet, for access and utility purposes in favor of Lot 196, Easement 68, containing an area of approximately 5,741 square feet, for waterline purposes in favor of the Association and its successors and assigns, and Easement 4, Land Court Map 2, for sanitary sewer purposes.

(xx) Lots 186 through 189, inclusive shall be subject to a stream buffer area located between Waikomo Stream and a line twenty (20) feet east of the line designated as "Stream Buffer Line" on the map attached as Exhibit "A" to the Declaration of Restrictive Covenant Re Waikomo Stream Buffer referenced in Section 6.2 of this Declaration. No vegetation shall be modified within the stream buffer area unless such modification observes the accepted Best Management Practices for protection of aquatic habitats in Hawaii or except as such modification is otherwise required or authorized by the County of Kauai, the State of Hawaii or other governmental agency.

(yy) All Lots in the Subdivision shall be subject to an easement in favor of the Declarant and the Association, and their respective successors and assigns, for the purpose of (a) installing, operating, maintaining and repairing an irrigation water line and facilities appurtenant thereto and (b) installing and maintaining a master landscape plan for the Subdivision, all as is more fully described and detailed in Section 4.9 of this Declaration.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

Section 13.1 Construction. All of the limitations, restrictions, covenants and conditions contained herein shall be liberally construed together to promote and effectuate the fundamental concepts as set forth in Article I of this Declaration.

Section 13.2 Severability. The limitation, restrictions, covenants and conditions of this Declaration shall be deemed independent and severable and the invalidity or partial invalidity of any such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision of this Declaration.

Section 13.3 Attorneys' Fees. In any action brought by the Declarant, the Association, and/or the Design Committee to enforce the provisions hereof or of the Design Standards, whether legal or equitable, the Declarant, the Association, and/or the Design Committee shall be entitled to reasonable attorneys fees as fixed by the arbitrator or court if it is the prevailing party to the action.

Section 13.4 Notices. Any notice permitted or required to be given under this Declaration or the Design Standards shall be in writing and may be given either personally or by mail or telephone. If served by mail, each notice shall be sent postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Lot of such person if no address has been given to the Association. Each notice shall be deemed given, if not actually received earlier, by 5:00 p.m. on the third business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

Section 13.5 Enforcement of Declaration and Design Standards. Declarant, the Association (acting by authority of the Board), and any Owner of the Association entitled to vote shall have the right to enforce any or all of the provisions, covenants, conditions and restrictions contained in this Declaration or in the Design Standards against any property within the Subdivision and the Owner thereof. Subject to the provisions of Section 13.14 below, the right of enforcement shall include the right to bring an action for damages as well as an action to enjoin any violation of any provision of this Declaration or the Design Standards.

Section 13.6 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, or restriction contained in this Declaration or in the Design Standards, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by an person entitled to enforce the provisions hereof.

Section 13.7 Violations of Law. Any violation of any federal, state, or local law, ordinance, rule, or regulation pertaining to the ownership, occupation, or use of any property within the Subdivision is hereby declared to be a violation of this Declaration and shall be subject to any and all enforcement procedures set forth herein.

Section 13.8 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

Section 13.9 Limitation on Liability. The Association, Board, Design Committee, Declarant, and any member, agent, or employee of any of the same shall not be liable to any person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

Section 13.10 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Subdivision, or any Improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

Section 13.11 Governing Law. This Declaration shall be construed and governed under the laws of the State of Hawaii.

Section 13.12 Conflicts. In the event of a conflict between the provisions of this Declaration and the Association's Articles or Bylaws, the provisions of this Declaration shall supersede and control.

Section 13.13 Declaration to Run With Land. This Declaration and the restrictions, covenants and conditions contained herein shall be deemed to run with the land and shall inure to and be binding upon all property subject hereto and upon each person or entity who now owns or who hereafter acquires ownership or any right, title or interest in any Property which is subject to the Declaration.

Section 13.14 Dispute Resolution. In the event a dispute arises between any of the Declarant, the Association and/or any one or more Owners concerning any aspect of this Declaration or the Design Standards (except for any procedure covered by Article VI regarding noncompliance with design review requirements), the parties to such dispute agree to negotiate within twenty (20) days of receipt of a letter describing the nature of the dispute and referencing this Section of the Declaration. The negotiation will be held by telephone conference call unless the parties to the dispute agree to meet at face-to-face at a mutually acceptable location. In the event the matter is not resolved by negotiation, within thirty (30) days of the settlement meeting the parties to the dispute shall engage a mediator in the County of Kauai, State of Hawaii and attempt to mediate the dispute. If the dispute is not resolved by mediation, any party to the dispute may commence a binding arbitration of the dispute in the County of Kauai, State of Hawaii by referral to a single disinterested arbitrator, to be mutually agreed upon by the parties to the dispute, or, failing such agreement, any party to the dispute may, within twenty (20) days of the date on which said mediator shall declare the mediation at an impasse, apply to the American Arbitration Association for appointment of a single arbitrator who shall act under this Declaration with the same force and effect as if he/she had been chosen by the parties to the dispute. Unless otherwise ordered by the arbitrator, who shall be authorized in his or her discretion to charge legal fees and costs totally against either party or partially against the parties, each party to the dispute will be responsible for a pro-rata share of the expenses and fees of said arbitrator with the decision of the arbitrator being final and binding upon all parties. The purpose and intent of this Section 13.14 is to avoid the filing of lawsuits among the Declarant, the Association, the Board and the Owners and to provide an alternative procedure for dispute resolution for issues arising under or related to this Declaration, the Design Standards or the Subdivision. Therefore, the provisions for negotiation, mediation and binding arbitration of disputes described above are mandatory and shall be specifically enforceable by any party to the dispute.

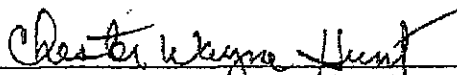
Section 13.15 Release of Claims Regarding Subdivision Development. By acquisition and acceptance of a Lot in the Subdivision, the Owner of that Lot and his, her, their or its heirs, successors, successors in interest and assigns shall be conclusively and perpetually deemed to have waived and released any and all claims, liabilities, actions and causes of action, whether such claims were known or unknown at the time of acquisition and acceptance of the Lot, against each and every one of the Declarant, Kiahuna Makai, LLC, a Hawaii limited liability company, each and all of the Voting Members of Kiahuna Makai, LLC, the Association, and their respective heirs, successors, successors in interest, assigns, agents, employees and representatives, regarding, related to or arising from the development of the Subdivision (including but not limited to claims, actions and causes of action related to site construction, dust and noise), the physical condition of the Subdivision, and the Owner's acquisition of the Lot.

[END OF PAGE 42; SIGNATURE IS ON NEXT PAGE]

to or arising from the development of the Subdivision (including but not limited to claims, actions and causes of action related to site construction, dust and noise), the physical condition of the Subdivision, and the Owner's acquisition of the Lot.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date first above written.

<u>Declarant</u>	<u>Special Power of Attorney Land Court Document No.</u>	<u>Bureau Document No.</u>
Angelina Chan Laubsch	3231501, as amended by	2005-032542 and
	3314616	2005-164442
Paulele LLC /	3231502	2005-032543
Chester Wayne Hunt and Letitia Hunt, Trustees as aforesaid	3231503	2005-032544
Gregory Alan Kamm and Lindsay Warren Kamm /	3231504	2005-032545
James Michael Kilcoyne and Leslie Jan Kilcoyne /	3231505	2005-032546
William Alan Marshall and Patricia Anne Marshall /	3231506	2005-032547
William A. Marshall and Patricia A. Marshall, Trustees as aforesaid /	3231507	2005-032548
Steven A. Hunt, Trustee as aforesaid /	3231508	2005-032549
Lauren L. Hunt, Trustee as aforesaid /	3231509	2005-032550
Steven A. Hunt and Lauren L. Hunt, Trustees as aforesaid /	3231510	2005-032551
Celine Katrin Laubsch /	3314610	2005-164436
	3314613	2005-164439
Bertrand Michael Laubsch /	3314611	2005-164437
	3314614	2005-164440
Alan Joachim Laubsch /	3314612	2005-164438
	3314615	2005-164441
Marvin Dean Otsuji and Katherine Armstrong Lewi Otsuji /	3231511	2005-032552
Gerard Joseph McGrath and Judith Ann McGrath /	3231512	2005-032553
Robert E. Keown, Trustee as aforesaid /	3231513	2005-032554
Martin J. Kahn, Trustee as aforesaid /	3244057	2005-056472
Carole Ann Kahn, Trustee as aforesaid /	3244058	2005-056473
Robert Myron Cohen /	3420498	2006-077694
Wayne Clay Helmer and Sandra Lynn Helmer /	3244066	2005-056478
Kevin Jon Anderson and Karla Jolene Marie Anderson /	3255784	2005-077076
Gwen Kazue Kawahara James /	3369347	2005-259082
RAH, LLC /	3379767	2006-010461
Fiserv Trust Company /	3398173	2006-039792
RDJ, Inc. /	3403297	2006-048137
Mark Hogue, Trustee as aforesaid /	3403300	2006-048140


 CHESTER WAYNE HUNT, their Attorney-in-Fact pursuant to the Special Powers of Attorney listed above

STATE OF HAWAII

)
) SS:

COUNTY OF KAUAI

)

On this 20th day of March, 2008, before me appeared CHESTER WAYNE HUNT, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Jennif A. Uyeda-Gali

Name of Notary: JENNIFER A. UYEDA-GALI

Notary Public, State of Hawaii.

My commission expires: 12/17/2008

LS.

EXHIBIT "A"

All of those certain parcels of land situate at Koloa, District of Koloa, Island and County of Kauai, State of Hawaii, described as follows:

LOTS 92 to 201, inclusive, as shown on Map 8, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 164 of Bishop Trust Company, Limited, Trustee for Augustus F. Knudsen, and First Hawaiian Bank and Valdemar L'Orange Knudsen, Trustees for Eric A. Knudsen.

Said Lots have access to Poipu Road, a public road, over and across Lots 390, 367 and 368 and also across a portion of Royal Patent Number 3755, Land Commission Award Number 3358 to Napunawai and being also a portion of Exclusion 18 from Land Court Application No. 956, and also over and across said Lot 190, all as shown on Map 8 as set forth by Land Court Order No. 174216, filed March 25, 2008.

Being a portion of the land(s) described in Transfer Certificate of Title No. 900,511.

NOTE: Lot 185 also includes the following parcel of land:

All of that certain parcel of land (being portion of the land described in and covered by Land Patent Number 8367, Land Commission Award Number 10272 to Makalulu) situate, lying and being at Koloa, Island and County of Kauai, State of Hawaii, being PARCEL A, and thus bounded and described:

Beginning at the east corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PAA" being 627.76 feet south and 8,249.17 feet west, thence running by azimuth measured clockwise from true South:

- | | | | |
|----|-------------|--------|--|
| 1. | 73° 24' 46" | 213.14 | feet along the remainder of L.P. 8367, L.C. Aw. 10272 to Makalulu; |
| 2. | 194° 27' | 30.03 | feet along Lot 11, Land Court Consolidation 164; |
| 3. | 199° 05' | 660.60 | feet along Lot 11, Land Court Consolidation 164; |
| 4. | 280° 06' | 177.75 | feet along Lot 11, Land Court Consolidation 164, to the point of beginning and containing an area of 0.197 acre, more or less. |

SUBJECT, HOWEVER, to the following:

1. Perpetual easement to convey water through ditch known as Makapala Ditch in favor of Annie S. Knudsen.

2. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in instrument dated August 27, 1937, filed as Land Court Document No.

(WADOCS2665823W0094226.DOC)

40955, by and between The McBryde Sugar Company, Limited, Party of the First Part, Bishop Trust Company, Limited, Trustee for Eric A. Knudsen and Augustus F. Knudsen, Parties of the Second Part, Eric A. Knudsen and Augustus F. Knudsen, Parties of the Third Part, and Bishop Trust Company, Limited, Party of the Fourth Part.

3. DECREE dated June 7, 1951, filed as Land Court Document No. 135050, which stipulates that Carl E. Schimmelfennig, Petitioner in Equity No. 144 and occupant of R. P. 7269, L. C. Aw. 3606 to Kamae, "is entitled to receive water from the Konohiki of the Ahupuaa of Koloa in constant stream 24 hours a day in the amount of 45,000 gallons per day.

4. Free flowage of Waikomo Stream, as shown on Map 5 of Land Court Consolidation No. 164.

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain DEED dated September 30, 1987, filed as Land Court Document No. 1499621 and recorded in Liber 21190 at Page 377.

6. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain DEED dated September 30, 1987, filed as Land Court Document No. 1499622 and recorded in Liber 21190 at Page 392.

7. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain DECLARATION, WAIVER AND TRANSFER OF ZONING RIGHTS dated April 1, 2003, filed as Land Court Document No. 2914814 and recorded as Document No. 2003-067516.

8. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain WARRANTY DEED AND RESERVATION OF RIGHTS dated April 1, 2003, filed as Land Court Document No. 2914819.

9. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain AGREEMENT RE KIAHUNA GOLF COURSE PRIVILEGES dated April 4, 2003, filed as Land Court Document No. 2914824 and recorded as Document No. 2003-067523.

10. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain DECLARATION OF RESTRICTIVE COVENANTS AND AGREEMENT FOR GRANT OF EASEMENTS AND COOPERATION dated as of March 31, 2003, filed as Land Court Document No. 2935815 and recorded as Document No. 2003-106200.

11. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain DECLARATION OF KIAHUNA MAUKA PARTNERS LLC AGREEMENT dated April 11, 2003, filed as Land Court Document No. 2935816 and recorded as Document No. 2003-106201.

Said Declaration was amended by instrument dated August 6, 2004, filed as Land Court Document No. 3148270, recorded as Document No. 2004-161801.

12. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain DECLARATION OF KIAHUNA MAKAI, LLC AGREEMENT dated December 24, 2004, filed as Land Court Document No. 3231514 and recorded as Document No. 2005-032555.

13. RESTRICTION OF VEHICLE ACCESS RIGHTS along Po'ipu Road as shown on Map 5, set forth by Land Court Order No. 163939, filed November 15, 2005.

14. ORDER GRANTING KIAHUNA MAUKA PARTNERS, LLC'S MOTION TO AMEND OR MODIFY CONDITION NO. 9 OF DECISION AND ORDER, AS AMENDED IN AUGUST 5, 1997; AND ERICK A KNUDSEN TRUST'S MOTION TO MODIFY CONDITION NO. 9a OF DECISION AND ORDER, dated March 25, 2004, recorded as Document No. 2005-168955. re: To amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 457.54 acres of land situated at Poipu, Island of Kauai, State of Hawaii, TMKS Nos: 2-8-14:05, 07, 08, por. 19, 20, 21, 26-36; 2-8-15:77; 2-8-29:1-94.

(Not noted on Transfer Certificate(s) of Title referred to herein)

15. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain DECLARATION OF RESTRICTIVE COVENANTS - KIAHUNA MAKAI BLOCK SUBDIVISION dated December 8, 2005, filed as Land Court Document No. 3367026 and recorded as Document No. 2005-255473.

16. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain AGREEMENT OF SALE dated July 11, 2006, by and between RDJ, Inc., as Seller, and Thomas M. Ryan, Trustee of the Thomas M. Ryan Revocable Living Trust dated January 11, 1991, as amended, as Buyer, filed as Land Court Document No. 3452963 and recorded as Document No. 2006-129275.

The foregoing Agreement of Sale was subordinated to the Real Property Mortgage and Financing Statement described below by that certain SUBORDINATION OF AGREEMENT OF SALE dated October 30, 2006, filed as Land Court Document No. 3505875 and recorded as Document No. 2006-197856.

17. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain AGREEMENT RE COUNTY OF KAUAI EMPLOYEE HOUSING ASSESSMENT dated October 19, 2006, filed as Land Court Document No. 3525636 and recorded as Document No. 2006-226329.

18. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain REAL PROPERTY MORTGAGE AND FINANCING STATEMENT dated October 30, 2006, in favor of First Hawaiian Bank, filed as Land Court Document No. 3505874 and recorded as Document No. 2006-197855.

19. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain FINANCING STATEMENT dated October 30, 2006, recorded as Document No. 2006-197857.

20. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain ACKNOWLEDGEMENT OF RECEIPT OF FIRST INSTALLMENT AND PARTIAL RELEASE OF AGREEMENT RE COUNTY OF KAUAI EMPLOYEE HOUSING ASSESSMENT dated December 12, 2006, filed as Land Court Document No. 3542658 and recorded as Document No. 2007-009760.

21. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain RIGHT-OF-ENTRY AGREEMENT in favor of the Board of Water Supply, County of Kauai, dated July 18, 2006, filed as Land Court Document No. 3559216 and recorded as Document No. 2007-026365.

22. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

23. AS TO LOTS 180 THROUGH 184 ONLY:

(A) DESIGNATION OF EASEMENT "8" (0.440 acre) for landscape purposes as shown on Map 5, as set forth by Land Court Order No. 163939, filed November 14, 2005.

24. AS TO LOT 185 ONLY:

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

(B) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in DECLARATION OF CONDITIONS dated July 27, 1977, recorded in Liber 12379 at Page 549.

Said above Declaration was amended by instruments dated July 3, 1978, recorded in Liber 13040 at Page 234; dated December 13, 1979, recorded in Liber 17769 at Page 734; dated November 17, 1997, recorded as Document No. 97-164842; and dated September 30, 1997, recorded as Document No. 98-183117.

(C) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in DEED dated September 30, 1987, filed as Land Court Document No. 1499622, recorded in Liber 21190 at Page 392.

(D) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain DECLARATION OF KIAHUNA MAUKA PARTNERS LLC AGREEMENT dated April 11, 2003, filed as Land Court Document No. 2935816 and recorded as Document No. 2003-106201.

(E) DESIGNATION OF EASEMENT "9" (0.187 acre) for landscape purposes as shown on Map 5, as set forth by Land Court Order No. 163939, filed November 14, 2005.

25. AS TO LOTS 186 AND 187 ONLY:

(A) DESIGNATION OF EASEMENT "9" (0.187 acre) for landscape purposes as shown on Map 5, as set forth by Land Court Order No. 163939, filed November 14, 2005.

26. AS TO LOT 190 ONLY:

(A) DESIGNATION OF EASEMENT "5" for golfcart path purposes as shown on Map 3 of Land Court Consolidation No. 164, as set forth by Land Court Order No. 83521, filed April 8, 1987.

(B) DESIGNATION OF EASEMENT "8" (0.440 acre) for landscape purposes as shown on Map 5, as set forth by Land Court Order No. 163939, filed November 14, 2005.

27. AS TO LOTS 191 AND 195 THROUGH 197 ONLY:

(A) DESIGNATION OF EASEMENT "4" (10 feet wide) for sanitary sewer purposes as shown on Map 2, as set forth by Land Court Order No. 79267, filed July 21, 1986.

EXHIBIT "B"

BRYAN J. BAPTISTE
MAYOR



IAN K. COSTA
DIRECTOR OF PLANNING

GARY K. HEU
ADMINISTRATIVE ASSISTANT

IMA/KALANI P. AIO
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI

PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHLE, KAUAI, HAWAII 96766-1320

TELEPHONE: (808) 241-6677 FAX: (808) 241-6689

August 31, 2007

Mr. Greg Kamm
P.O. Box 1200
Koloa, HI 96756

RE: Additional Dwelling Units for Kiahuna Makai Subdivision
S-2004-16
TMK: (4) 2-3-14: 035 & (4) 2-3-15: 077
Poipu, Kauai, Hawaii

Dear Mr. Kamm,

This letter supersedes our department's letter dated July 17, 2007 regarding the permitting of Additional Dwelling Units (ADUs) for the referenced subdivision, the following information is provided.

I have reviewed the zoning and subdivision conditions associated with the referenced subdivision and regarding the permitting of ADUs for the resulting lots. The referenced subdivision was granted final approval on November 14, 2006. All lots in the Kiahuna Makai Subdivision (aka "Poipu Beach Estates") are 9,000 square feet or larger, are located in the Urban State Land Use District, and contain split-zoning (R-4/Open). Based on the approved construction plans, all lots within the subject subdivision will have the requisite infrastructure requirements (i.e. paved road access, utility services, etc.).

Therefore, the lots resulting from the referenced subdivision do qualify for ADUs subject to the following:

1. ADU Clearance Forms are completed by each landowner and approved by all appropriate permitting agencies.
2. The County makes no implied or explicit representation as to whether the current ordinances and rules affecting the ADU permitting process at time of individual lot owners application for ADUs.

AN EQUAL OPPORTUNITY EMPLOYER

Mr. Greg Kamm
August 31, 2007
Page 2

3. The main dwelling and the ADU, along with all other improvements on any particular lot in the Subdivision, shall comply with all required development standards (i.e. lot coverage, setbacks, height, etc.) of the Comprehensive Zoning Ordinance (CZO).
4. The placement of the residential dwellings shall be consistent with our department's clarification as stated in our letter dated May 4, 2004 (attached) to accommodate the siting of the dwelling unit and ADU.

Please feel free to contact myself or Dale Cua of our staff should you have any questions regarding the foregoing.

Sincerely,


FRANK COSTA
Director of Planning

IKC

BRYAN J. BAPTISTE
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT



IAN K. COSTA
DIRECTOR OF PLANNING

GARY L. HENNIGH
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI
PLANNING DEPARTMENT

Kapule Building
4444 Rice Street, Suite A473
Lihu'e, Hawaii, 96766-1326

May 4, 2004

TELEPHONE: 808.241.6677
FAX: 808.241.6699

Greg Kamm
Planning & Management
P.O. Box 1200
Koloa, Kauai HI 96756

SUBJECT: Zoning Refinement ZR-2004-1
Subdivision S-2004-16

The Residential zoning approved for the project in 1979 did not have definite zoning boundaries to account for the archaeological sites and the golf course layout, both of which were not definite at that time. As a result zoning refinements are necessary to establish definite zoning boundaries after more detailed plans are developed.

In this particular case, the zoning boundaries are being proposed to establish a specific project theme and character while taking into account the archaeological sites and golf course. After evaluating the contents submitted with your April 9, 2004 letter, we find the zoning refinement proposal for Subdivision S-2004-16 to be acceptable.

However, please note that the approval of this "floating zone" concept is contingent upon complying with the following representations made in the Themes and Criteria document submitted with your April 9, 2004 letter:

1. **Large Residential Lot Setbacks.** The large residential lots that are an acre or more in size shall have varying side yard setbacks of no less than 15 feet; 40 foot rear yard setbacks (established by a building setback line); and varying front yard setbacks ranging from 20 to 50 feet or possibly greater.
2. **Standard Residential Lot Setbacks.** The standard sized residential lots that are less than a half acre shall have varying side yard setbacks of no less than 10 feet; varying rear yard setbacks of no less than 15 feet; and varying front yard setbacks ranging from 15 to 40 feet. It should be noted that the standard sized residential lots that have the lesser 15 foot front yard setbacks will be required to provide more landscaping along the front yards.

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3. Residential District (R-4) Zoning. Each lot shall contain 8,500 square feet of R-4 zoning. This R-4 zoning will be allowed to float within the boundaries for each lot. We agree that this will allow for buildings to be staggered and should enhance the buildable areas for each lot at controlled locations, particularly with the increased setbacks to allow for landscaping and open spaces.
4. Lot Coverage. The lot coverage for each lot shall be limited to 50% for the R-4 zone and 10% for the Open zone.
5. Landscape Buffer on Poipu Road. As part of complying with condition 17 of Ordinance No. PM-31-79 regarding the establishment of a greenbelt buffer zone along Poipu Road, a plan to landscape the shoulder area along Poipu Road is being proposed. The proposed plan has three major components: 1) A design theme consistent with the existing landscaping along Poipu Road, 2) A 40 foot building setback from the Poipu Road right-of-way to allow the landscaping to further screen the buildings. It should be noted that "at grade structures" such as swimming pools along with the pool decking, walkways, and fences along the Poipu Road boundary are permitted within the 40 foot building setback provided the lot coverage requirements are complied with. 3) A 20 foot wide landscape easement in favor of the Kiahuna Makai AAO for the lots along Poipu Road to ensure that the landscaping within the rear of the residential lots are maintained.

As discussed through our numerous meetings, the ability to float the Residential (R-4) zone will enable the project to accomplish the following:

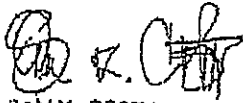
- Allow for the residential zoning to move with the increased setbacks to enable the lands within the setback to be zoned Open to help reduce the amount of lot coverage within the setback and encourage landscaping in place of "at grade structures."
- Allow for greater and staggered front yard building setbacks that will avoid a tract housing appearance as well as allow for the landscaping along the front yard to blend with the streetscape.
- Allow for the development of a six (6) foot wide public access easement within the Open zone along the main collector street. This will create a greenbelt outside of the road right-of-way through an easement within the Open zone on the residential lots. This will help dissolve the front property line and provide an open landscape area that bleeds into the front yard of the residential lots.

Please be advised that covenants reflecting the preceding points 1 through 5 shall be incorporated into the deeds of the affected lots to ensure that the approval of this zoning refinement is properly implemented. Because of the many details involved with this zoning refinement, we will be processing an amendment to the tentative approval of the subdivision to incorporate points 1 through 5 as covenants. The amendments will be forwarded to the Planning

Greg Kamm
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May 4, 2004

Commission in the near future for action to modify the February 10, 2004 tentative approval.
We will notify you of the meeting date.

Please feel free to contact Keith Nitta of my staff at 241-5677 to discuss this matter or to respond to any questions that you may have.



HANK COSTA
Planning Director

**CERTIFICATION OF FIRST AMENDMENT OF PO'IPU BEACH ESTATES
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS CERTIFICATION OF FIRST AMENDMENT OF PO'IPU BEACH ESTATES DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "First Amendment") is made this 29th day of September, 2008.

RECITALS:

A. Pursuant to that certain Po'ipu Beach Estates Declaration of Covenants, Conditions and Restrictions (the "Declaration") dated as of March 25, 2008, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 3732277, noted on Transfer Certificate of Title Nos. 900,511, 921,669 (as to Lot 154 only), 921,889 (as to Lot 110 only), 921,892 (as to Lot 193 only), 922,017 (as to Lot 184 only), 922,575 (as to Lot 158 only), 923,091 (as to Lot 155 only) and 923,678 (as to Lot 163 only), and recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2008-055201, the Declarant named therein declared certain covenants, conditions and restrictions to be applicable to the Po'ipu Beach Estates Subdivision, located on property situate at Koloa, District of Koloa, County of Kauai, State of Hawaii that is more fully described in the Declaration and that is now designated as TMK Nos. (4) 2-8-031-92 through 201, inclusive (the "Subdivision"); and

B. Pursuant to Article X of the Declaration, the Declaration may be amended by the affirmative vote of not less than ninety percent (90%) of the members of the Po'ipu Beach Estates Community Association, a Hawaii nonprofit incorporation (the "Association") who are entitled to vote in person or by proxy at a duly constituted meeting of the Association; and

C. The Declaration further provides that the amendment of the Declaration shall be effective upon the filing with the Land said Court and recordation with the said Bureau of Conveyances of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment in full and certifying that the amendment has been duly adopted by the Owners; and

D. The Bylaws of the Association (the "Bylaws") provide that (a) the members of the Association shall have no voting rights until not less than 70% of the lots in the Subdivision are sold, and (b) the Board of Directors of the Association (the "Board") shall exercise all powers and authority of the Association; and

E. More than 70% of the lots in the Subdivision have not been sold, and therefore the members of the Association are not entitled to vote for the amendment, but rather the Board is authorized to do so on behalf of the Association members pursuant to the Bylaws; and

F. The Board has approved of the amendment more fully stated below in lieu of a meeting, as authorized by the Bylaws, pursuant to its written action on September 25, 2008.

NOW, THEREFORE, the President and the Secretary of the Association, as authorized pursuant to Article X of the Declaration, hereby certify that the following amendments of the Declaration have been duly approved by the requisite action of the Board by its written action dated September 25, 2008:

1. Section 8.18 of the Declaration is hereby amended in its entirety to read as follows:

Section 8.18 Signs. No "For Sale," advertising sign or billboard shall be erected, placed or permitted to remain on any Lot except as provided for in this Section. Until otherwise decided by the Association as provided below, there shall be allowed to be placed on the Roadway Lot within the Subdivision (i.e., Lot 190) no more than two "For Sale" signs that will contain a map of the Subdivision, with Lot numbers identifying each Lot, and a brochure box listing all Lots (including, if applicable, Lots with houses or other improvements constructed thereon) that are for sale, the Lot number, square footage of the Lot, a summary of relevant information on improvements located on the Lot, sale price, real estate agent's name (if any), and contact information. The Association shall add any Lot, with applicable information, in the brochure box and/or on the authorized sign within 48 hours of the Association's receipt of written request (which may be delivered by personal service, mail, facsimile, email or other electronic means), including the applicable information, from any Owner wishing for his or her Lot to be listed for sale. The Association may, at any time by a vote of the Association membership at a meeting duly called for the purpose, revise the limitations and restrictions against signs being located on any Lot and, in such case, the Association shall cause to be filed with the Land Court and recorded with the Bureau of Conveyances a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association, setting forth the revision of this Section. Any such revision shall be effective only when the said certificate is filed and recorded. Any sign that is in violation of this Section may be removed and discarded by the Association or its authorized representative without notice to the Owner of the Lot upon which the sign is located.

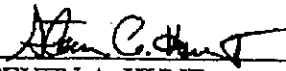
2. A new Section 8.23 is hereby added to the Declaration to read as follows:

Section 8.23 Vacant Lots. In addition to any and all other conditions applicable to all Lots in general, every Owner of a vacant Lot in the Subdivision shall arrange for mowing of the Lot not less than twice monthly and shall otherwise maintain the Lot in compliance with Section 8.2 above. In the event of failure of any Owner to so maintain his or her Lot, the Association shall have the right, in addition to any other rights or remedies contained herein for violation of

this Declaration, to have the Owner's lot mowed and otherwise maintained at the Owner's expense. Also, prior to commencement of construction on any Lot, no construction materials, storage units, vehicles or other items may be placed, maintained or stored on any Lot without the prior approval of the Design Committee, after written request from the Owner of the Lot.

IN WITNESS WHEREOF, this Certification is hereby executed on the date first above written.

PO'IPU BEACH ESTATES COMMUNITY
ASSOCIATION, a Hawaii nonprofit
corporation

By 
STEVEN A. HUNT
Its President

By 
JAMES M. KILCOYNE
Its Secretary

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this 25th day of September, 2008, before me appeared STEVEN A. HUNT, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing CERTIFICATION OF FIRST AMENDMENT OF PO'IPU BEACH ESTATES DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS dated Undated, 2008, which document consists of five (5) pages, as the free act and deed of such persons, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

LS.

Jennifer A. Uyeda-Gali

Name of Notary: JENNIFER A. UYEDA-GALI
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: 12/17/2008
Commission No.: 2000-636

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this 29th day of September, 2008, before me appeared JAMES M. KILCOYNE, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing CERTIFICATION OF FIRST AMENDMENT OF PO'IPU BEACH ESTATES DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS dated September 29, 2008, which document consists of five (5) pages, as the free act and deed of such persons, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

LS.

Jennifer A. Uyeda-Gali

Name of Notary: JENNIFER A. UYEDA-GALI
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: 12/17/2008
Commission No.: 2000-636