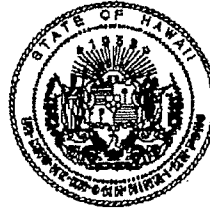


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Total Pages: 54

DECLARATION OF CONDOMINIUM PROPERTY REGIME

OF

KAPALUA BAY CONDOMINIUM

WHEREAS, KAPALUA BAY, LLC, a Delaware limited liability company, with its principal place of business and post office address at 120 Kane Street, Kahului, Hawaii 96734 referred to hereinafter as "Developer" owns, in fee simple, the real property more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Land"); and

WHEREAS, Developer has undertaken to improve said Land by the construction of certain improvements (the "Improvements"), in accordance with plans filed at the Bureau of Conveyances of the State of Hawaii ("Bureau") as Condominium Map No. 4222 (the "Condominium Map"), as the same may be lawfully amended or supplemented from time to time, which Condominium Map is incorporated herein by this reference;

WHEREAS, **TIMESHARING, PURSUANT TO CHAPTER 514E OF THE HAWAII REVISED STATUTES, AS AMENDED, AND THE ADMINISTRATIVE RULES PROMULGATED THEREUNDER, AND TRANSIENT VACATION RENTAL USE, ARE EXPRESSLY PERMITTED IN THE PROJECT;**

NOW, THEREFORE, in order to create a condominium project consisting of the Land and the Improvements (together referred to herein as the "Project"), to be known as "KAPALUA BAY CONDOMINIUM," the Developer, by this Declaration of Condominium Property Regime of Kapalua Bay Condominium (the "Declaration"), submits the Land and the Improvements and all of Developer's interest therein to a Condominium Property Regime established pursuant to Chapter 514A of the Hawaii Revised Statutes, as amended (the "Act"). The Developer hereby declares and agrees that the Project is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration and of the Bylaws of the Association of Apartment Owners of Kapalua Bay Condominium (the "Bylaws"), recorded concurrently herewith at said Bureau, as the provisions of the Declaration and the Bylaws may, from time to time, be amended in accordance with applicable law, and in accordance with the respective provisions of this Declaration and the Bylaws. The

provisions of this Declaration and the Bylaws shall constitute covenants running with the land and equitable servitudes and liens thereon, and shall be binding upon and shall inure to the benefit of the Developer, its successors and permitted assigns, and all subsequent owners and lessees of all or any part of the Project and their respective successors, successors in trust, heirs, devisees, personal representatives, executors, administrators and assigns. All of the provisions of this Declaration are subject to the terms and provisions of that certain Amended and Restated Declaration of Covenants and Restrictions dated September 30, 1987, recorded at said Bureau in Book 21185, Page 173, and that certain Declaration of Covenants, Conditions and Restrictions with Authorization of Time Share and Transient Vacation Rentals dated August 31, 2004, recorded at said Bureau as Document No. 2004-17883, as any of the same exist or may hereafter be amended, including, without limitation, all provisions therein pertaining to the assessment and collection of fees.

I. DEFINED TERMS.

A. USE OF DEFINED TERMS. For purposes of construing and interpreting this Declaration and the Bylaws, all terms, when written with initial capital letters in this Declaration or in the Bylaws, shall have the meaning given such terms in this Article. Such defined terms may be used in the singular or plural or in varying tenses or forms, but such variation shall not affect the meaning of the terms so long as those terms are written in initial capital letters. When such terms are used in this Declaration or in the Bylaws without initial capital letters, such terms shall have the meaning they have in common usage; provided, however, that where legal, technical or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical or trade usage meanings, such terms shall be given such legal, technical or trade usage meanings.

B. DEFINED TERMS. As used in this Declaration and the Bylaws the following terms shall have the attributed meanings:

1. "Act" means Chapter 514A of the Hawaii Revised Statutes, as amended.
2. "Agreement of Sale" means an Agreement of Sale recorded at the Bureau.
3. "Arrival Building" means the Building designated as such on the Condominium Map.
4. "Apartment" means a part of the Project, as described in this Declaration and as shown on the Condominium Map and sometimes referred to on the Condominium Map as "Unit", intended for a use permitted under the Act, with an exit to a public street or highway, or to a Common Element leading to a public street or highway. This term shall include Commercial Apartments and Resort Apartments.
5. "Apartment Deed" means the legal instrument signed by Developer conveying an interest in an Apartment and an undivided interest in the Common Elements, in fee simple to an Owner, subject, however, to the encumbrances identified therein.
6. "Association" means the Association of Apartment Owners of Kapalua Bay Condominium.
7. "Beach Club Commercial Apartment" means the Commercial Apartment designated as such on the Condominium Map.
8. "Beach Shack" means the area designated as such on the Condominium Map.
9. "Board" means the Board of Directors of the Association.
10. "Building" means any one of Buildings 1, 2, 3, 4, 5, 6, the Arrival Building and any additional buildings constructed in the Project.
11. "Building Structure" means the structural components of any building, including all perimeter and party walls, load bearing walls and columns, foundations, footings, floor slabs, girders, beams,

supports, elevators, stairs and stairways, exterior walls, roofs and all other apparatus and installations existing for common use, such as are described in Article II, Sections C.7 and C.9 of this Declaration.

12. "Bureau" means the Bureau of Conveyances of the State of Hawaii.
13. "Bylaws" means the Bylaws of the Association of Apartment Owners of Kapalua Bay Condominium and shall include any lawful amendments thereto.
14. "Capital Improvements Reserve Fund" means that fund established by the Board pursuant to Article VI, Section 1.c of the Bylaws to provide for specific capital improvements for the Project.
15. "Cliff House" means the area designated as such on the Condominium Map.
16. "Club Units" means those Resort Apartments submitted to a timeshare plan pursuant to Chapter 514E of the Hawaii Revised Statutes, as amended, and which are, at any given point in time, subject to such a plan.
17. "Club Association" shall mean the association of owners comprised of the owners of interests in Club Units.
18. "Commercial Apartment" means an apartment specifically identified as such by this Declaration, and depicted on the Condominium Map.
19. "Common Elements" means those parts of the Project which are defined in this Declaration as Common Elements. The term Common Elements includes those portions of the Project designated in this Declaration as Limited Common Elements; provided that this inclusion shall in no way serve to infringe upon the rights of an Owner of an Apartment to which such Limited Common Elements are appurtenant.
20. "Common Expenses" means and includes: (a) all expenses pertaining to the administration, management and operation of the Project, and the maintenance, repair and replacement of, and the making of any additions and improvements to, the Common Elements, (b) all expenditures authorized by the Association pursuant to this Declaration, the Bylaws, pursuant to the Act or otherwise required by law, and (c) all sums designated as such pursuant to the Act, this Declaration or the Bylaws.
21. "Common Interest" means the undivided percentage interest set forth in the Declaration and discussed in Article III below, which percentage interest is appurtenant to an Apartment and is permanent in character and not subject to alteration without the consent of all Owners affected, save and except that if additional Apartments of the Project are constructed and annexed to the Project as then constituted in accordance herewith, the Common Interest shall be the Common Interest as prescribed in an amendment to this Declaration. The Common Interest, as the same may be adjusted in accordance with the provisions of this Declaration, shall not be separated from the Apartment to which it appertains and shall be deemed to be conveyed or encumbered with the Apartment, even though not expressly mentioned or described in the document of conveyance or encumbrance. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an undivided interest in the Common Elements shall be void unless the Apartment to which said interest is appurtenant is also transferred.
22. "Condominium Map" means that certain Condominium Map which is filed at the Bureau as Condominium Map No. 4222, as the same may be duly amended from time to time. The Condominium Map sets forth the layout, location, floor plans, elevations, dimensions and apartment numbers of Apartments, the name of the Project, the location, floor plans and elevations of any other buildings, the general location and layout of common areas and the location and identification of parking stalls and lanai (balcony) areas.
23. "Condominium Map Site Plan" means the site plan which is a part of the Condominium Map. The Condominium Map Site Plan also generally identifies the Project Area.

24. "Declaration" means this Declaration of Condominium Property Regime of Kapalua Bay Condominium, together with any lawful amendments thereto.
25. "Design Committee" means the committee formed pursuant to the Bylaws to promulgate design rules and standards and to oversee and exercise control over the improvements, renovations, replacements or other modifications of the Apartments and other Improvements of the Project.
26. "Design Committee Rules" means those rules and regulations which may be promulgated by the Design Committee to govern improvements, renovations, replacements or other modifications to the Apartments and other Improvements of the Project.
27. "Five Diamond Standard" means the standard of a luxury resort that is designed, operated and maintained at a level equal to or greater than the commercial amenities offered at premier hotel and residential projects within the State of Hawaii having a Five Diamond rating by the American Automobile Association such as the Ritz-Carlton, Kapalua, the Four Seasons Resort Maui at Wailea, the Four Seasons Resort at Hualalai and the Kahala.
28. "Fractional Limited Common Element" shall mean all areas designated herein and on the Condominium Map as such which shall be appurtenant to all Club Units.
29. "Gate House" shall mean the area designated as such on the Condominium Map.
30. "General Store Commercial Apartment" means the Commercial Apartment designated as such on the Condominium Map.
31. "General Replacement Reserve" means that fund established by the Board to provide financial stability for the Project, as is more fully described in Article VI, Section 1.b of the Bylaws.
32. "House Rules" means the administrative rules and regulations promulgated by the Association which govern the operation and use of the Project, as the same may be amended or supplemented from time to time.
33. "Kapalua Bay Condominium" shall be the name of the Project established by the submission of the Land and Improvements to a Condominium Property Regime under the terms and conditions set forth in this Declaration.
34. "KB" means Kapalua Bay, LLC, a Delaware limited liability company.
35. "Kid's Club" means the area designated as such on the Condominium Map.
36. "Land" means the real property described in Exhibit "A" attached hereto and shall include any additional lands annexed to the Condominium Property Regime by the Developer in the future, but shall exclude any land that may be de-annexed or withdrawn after the recordation of this Declaration.
37. "Lounge" means the area designated as such on the Condominium Map.
38. "Limited Common Elements" means those Common Elements which are designated in this Declaration as reserved for the exclusive use of one or more Apartments to the exclusion of other Apartments; provided that no amendment of this Declaration materially and adversely affecting the Limited Common Elements appurtenant to an Apartment or Apartments shall be effective without the consent of the Owner or Owners thereby directly affected. Limited Common Elements are sometimes further differentiated on the Condominium Map as "Commercial Limited Common Elements" and "Fractional Limited Common Elements".
39. "Managing Agent" means an entity or individual employed by the Association pursuant to a contract to manage the Common Elements and the Limited Common Elements.

40. "Member's Lounge" means the area designated as such on the Condominium Map.
41. "MLP" means Maui Land & Pineapple Company, Inc.
42. "Model Unit Commercial Apartment" means the Commercial Apartment designated as such on the Condominium Map.
43. "Non-Equity Club" means a private non-deeded luxury residence membership club with members ("Club Members") (a) who pay a partially refundable initial fee and annual dues in exchange for first come, first served rights to temporary occupancy of properties, including the Apartments anticipated to be constructed within the Project and the use of other services provided by the operator of such Non-Equity Club; (b) do not obtain or receive any direct or indirect legal or equitable ownership or other property rights in the owner of the Non-Equity Club or such owner's assets, including any properties owned, leased or operated by such owner; and (c) who may, subject to the terms and conditions of their individual membership agreement, terminate the membership at any time.
44. "Owner" or "Apartment Owner" means a person or entity owning severally or as a co-tenant, an Apartment and the Common Interest appurtenant thereto, to the extent of such interest so owned; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by the terms of any lease recorded at said Bureau, a lessee or sublessee of an Apartment or interest therein shall be deemed to be the Owner of such Apartment to the extent provided in such lease. The purchaser of an Apartment pursuant to an Agreement of Sale recorded at the Bureau (a "recorded Agreement of Sale") shall have the rights of an Apartment Owner, including the right to vote; provided that the seller may retain the right to vote on matters substantially affecting the seller's security interest in the Apartment as provided in Section 514A-83 of the Act. Where the Owner is a guardian, trustee, corporation or partnership, the method for designating the natural person who shall act as and for the Owner is as set forth in the Bylaws and, as to land trusts, in Article XVII hereof. Where the Owner is an owner of an Apartment by virtue of being the owner of a vacation ownership interest in a vacation ownership plan in the Project, such Owner, along with other owners of vacation ownership interests in the Apartment, shall be represented in Association matters (including the receipt of notices or assessments by the Association) by the board of directors of the owners association for such vacation ownership program, or its duly designated managing agent, or as may otherwise be specified in the project documents for the vacation ownership program. For so long as the Developer owns unsold Apartments in the Project (or to the extent that the Developer shall reacquire any Apartments in the Project), the Developer shall have the rights of an Apartment Owner, including the right to vote, and shall assume the duties of an Apartment Owner as said rights and duties relate to said unsold Apartments (or reacquired Apartments).
45. "Pantry" means the area designated as such on the Condominium Map and reserved for usage by Managing Agent.
46. "Pool Bar" means the area designated as such on the Condominium Map.
47. "Pool Grille" means the area designated as such on the Condominium Map.
48. "Project" means the condominium project established pursuant to this Declaration, including the Land and Improvements. The Project (Land and Improvements) has been submitted to a Condominium Property Regime by this Declaration, and shall include any additional lands and/or improvements annexed to the Condominium Property Regime by the Developer.
49. "Project Area" means the area generally designated as such on the Condominium Map Site Plan.
50. "Public Parking" shall mean the area designated as such on the Condominium Map.
51. "Resale Space Commercial Apartment" means the Commercial Apartment designated as such on the Condominium Map.

52. "Resort Apartment" means an apartment specifically identified as such by this Declaration, and designated on the Condominium Map.

53. "Sales Gallery Commercial Apartment" means the Commercial Apartment designated as such on the Condominium Map.

54. "Spa Parcel" shall mean that parcel of land located immediately adjacent to the Project identified by Tax Map Key No. (2) 4-2-004-027 but which is not part of the Project.

55. "Trustee" means that bank or trust company having a principal place of business in the State of Hawaii designated to hold and administer condemnation or insurance proceeds for the Project or the Managing Agent to the extent permitted by law. Unless otherwise appointed by the Board, the Trustee shall be the Managing Agent.

II. DESCRIPTION AND DIVISION OF PROPERTY.

A. **DESCRIPTION OF THE PROJECT.** The Project is depicted on the Condominium Map and consists of the following:

1. **APARTMENTS.** The Project submitted to this Declaration shall consist of one hundred forty-six (146) Resort Apartments located in Buildings 1-6, inclusive, each being between four (4) to six (6) stories high, and five (5) Commercial Apartments located in the Project as shown on the Condominium Map, known as the Beach Club Commercial Apartment, the General Store Commercial Apartment, the Sales Gallery Commercial Apartment, the Resale Space Commercial Apartment and the Model Unit Commercial Apartment. All Apartments will be constructed primarily of concrete, steel, wood and glass. No Building has a basement.

2. **COMMON ELEMENTS.** The Common Elements identified below.

B. **DESCRIPTION OF THE APARTMENTS.** One hundred fifty-one (151) freehold estates are hereby designated in the spaces within the perimeter and party walls, windows, doors, floors and ceilings of each of the one hundred fifty-one (151) Apartments of the Project and within other structures constituting the Project, which spaces are designated on the Condominium Map and are described as follows:

1. **APARTMENT DESIGNATIONS AND LOCATIONS.** The Apartment designations and locations are shown on the Condominium Map and are further identified in Exhibit "B" attached hereto and incorporated herein by this reference.

2. **APARTMENT LAYOUTS AND DIMENSIONS.** The Apartment areas and layouts are shown on the Condominium Map and are further described in Exhibit "B" attached hereto and incorporated herein by this reference.

3. **ACCESS TO PUBLIC STREETS OR HIGHWAYS.** Except as may be limited by the terms of this Declaration, each Apartment has immediate access through elevators (except for service elevators), stairways, walkways and roadways of the Project to the grounds and common areas of the Project and via private easements, to public streets.

4. **OTHER DATA IDENTIFYING AND DEFINING THE APARTMENTS.** With the exception of the Sales Gallery Commercial Apartment and Model Unit Commercial Apartment that are free standing Apartments, The respective Apartments shall not be deemed to include: (a) the perimeter or party walls or the undecorated or unfinished interior surfaces thereof (except for the storefronts of Commercial Apartments, as applicable, which are considered a part of such Commercial Apartments), (b) the floors and ceilings surrounding each Apartment or the undecorated or unfinished surfaces thereof, (c) the perimeter doors, door frames, windows and window frames and all hardware associated therewith, or the undecorated or unfinished interior surfaces thereof, (d) the interior load-bearing walls and columns, if any, or the undecorated or unfinished surfaces thereof, or (e) any pipes, shafts, ducts, pumps, conduits, wires or other utility or service lines which are utilized for or serve more than one Apartment, the

same being deemed Common Elements as hereinafter provided. Each Apartment shall be deemed to include: (i) all of the walls and partitions which are not load-bearing within its perimeter or party walls, (ii) all pipes, shafts, ducts, pumps, conduits, wires and other utility or service lines running through such Apartment which are utilized for and serve only that Apartment, (iii) the inner decorated or finished surfaces of all walls, floors and ceilings surrounding each Apartment, (iv) the inner decorated or finished surfaces of any doors, door frames, windows or window frames, and (v) all appliances and fixtures installed therein, and replacements therefor.

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

1. The Land in fee simple and any appurtenances thereto as described on Exhibit "A";
2. All perimeter or party walls and the undecorated or unfinished surfaces thereof (except for the storefronts of Commercial Apartments, as applicable, which are considered a part of such Commercial Apartments), any load-bearing walls and columns, and the undecorated or unfinished surfaces thereof, all structural components such as foundations, concrete sidewalks and curbs, floor slabs, columns, girders, beams, supports, halls, corridors, elevators, escalators, exterior stairs and stairways, main walls, roofs and ceilings;
3. All perimeter doors, door frames, windows, window frames, and all hardware associated therewith, and the undecorated or unfinished interior surfaces thereof; whether at the perimeter of a Building Structure or at the perimeter of an Apartment;
4. All yards, grounds and landscaping, any unimproved areas, and all trash enclosures within the Project;
5. All roads, driveways, parking areas as shown on the Condominium Map, access lanes, paved areas, ramps, loading areas and walkways within the Project;
6. All swimming pools, whirlpool spas, deck areas, including, without limitation, the Pool Bar and the Pool Grille, the Kid's Club, the Cliff House, the Pantry, the Beach Shack and all other amenities and Improvements, to the extent such areas are not otherwise designated as Commercial Apartments on the Condominium Map;
7. All cables, conduits, ducts, sewer lines, electrical equipment, wiring, pipes, catch basins and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one Apartment for services such as power, light, PBX system, water, gas, sewer, storm water, refuse, cable television and television signal distribution;
8. Those areas of the Arrival Building designated on the Condominium Map as "General Common Elements," all maintenance and storage areas and other similar areas which are not part of an Apartment;
9. All other apparatus and installations existing for common use, such as tanks, pumps, motors, fans, air-conditioning units including fan coil equipment located within an Apartment, compressors, ducts, shafts, vents, water heating and distribution equipment, fire suppression equipment and other such installations and apparatus;
10. All interior areas of the Project commonly referred to in the hotel industry as "back-of-house," to the extent such areas are not otherwise characterized and defined in this Declaration as Commercial Apartments;
11. All other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use; and
12. All other areas on the Condominium Map designated as "General Common Elements", or that are not designated as an Apartment or as a Limited Common Element appurtenant to an Apartment.

D. **LIMITED COMMON ELEMENTS.** Certain parts of the Common Elements, herein called the "Limited Common Elements," are hereby designated, set aside and reserved for the exclusive use of certain Apartments, and such Apartments shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements as set forth herein. The costs and expenses of every description pertaining to the Limited Common Elements, including, but not limited to, the costs of maintenance, repair, replacement, improvement or additions to the Limited Common Elements, shall be charged to the Owner of the Apartment to which the Limited Common Element shall be appurtenant, and if there is more than one Apartment to which the Limited Common Element shall be appurtenant, then in proportion to the Common Interest appurtenant to each of the respective Apartments, unless a different method is adopted pursuant to Article IX of this Declaration. Limited Common Elements which are appurtenant to more than one Apartment shall be managed and maintained by the Managing Agent on behalf of the Owners of such Apartments. In any event that a dispute shall arise between Owners of Apartments to which a particular Limited Common Element shall be appurtenant with respect to the management and/or maintenance thereof, such dispute shall be resolved by the Managing Agent, which shall be the sole arbiter with respect to such matters. All of the Owners of Commercial Apartments to which a Limited Common Element is appurtenant, may build upon and/or alter any such Limited Common Element, may change the use of such Limited Common Element, may lease any Limited Common Element area, and, in the event that any revenues are generated from such Limited Common Element or improvements thereon or uses thereof, the Owner or Owners of the Commercial Apartment or Commercial Apartments to which such Limited Common Element is appurtenant shall be entitled to such revenues, and no other Owner shall have any right thereto.

1. **THE RESORT APARTMENTS.** The Resort Apartments shall have appurtenant thereto, as Limited Common Elements:

- a. All public areas of each Building in which a Resort Apartment shall exist, including hallways, stairwells, and housekeeping and laundry closets.
- b. The Building Structure of each Building in which a Resort Apartment is located.
- c. The balcony areas, if any, adjacent to specific Resort Apartments, as depicted on the Condominium Map and identified in Exhibit "B" attached hereto.
- d. All areas designated as Resort Apartment Limited Common Elements on the Condominium Map.
- e. Parking stalls, if any, identified in Exhibit "B" attached hereto.
- f. Any area identified on the Condominium Map as a "Resort Apartment Limited Common Element" even if not otherwise described in the foregoing narratives "a" through "e".

2. **BEACH CLUB COMMERCIAL APARTMENT.** The Beach Club Commercial Apartment, which is created with the intent that business be conducted in it, shall have appurtenant thereto, as Limited Common Elements, the following areas and such other areas as may be depicted on the Condominium Map as being "Commercial Apartment Limited Common Elements."

- a. The Building Structure of Building 1 (which is also a Limited Common Element appurtenant to Resort Apartments located in Building 1).
- b. All swimming pool areas immediately adjacent to Beach Club Commercial Apartment.
- c. All landscaped, waterscaped and outdoor walkways and paved areas, whether open or covered, identified as Commercial Limited Common Elements on the Condominium Map or in this Declaration.
- d. The Beach Shack depicted on the Condominium Map.

e. Any area identified on the Condominium Map as a Commercial Limited Common Element, even if not otherwise described in the foregoing narratives "a" through "d."

3. **SALES GALLERY COMMERCIAL APARTMENT.** The Sales Gallery Commercial Apartment, which is created with the intent that business be conducted in it, shall have appurtenant thereto, as Limited Common Elements, the areas immediately adjacent thereto and identified as Commercial Limited Common Element area on the Condominium Map.

4. **MODEL UNIT COMMERCIAL APARTMENT.** The Model Unit Commercial Apartment, which is created with the intent that business be conducted in it, shall have appurtenant thereto, as Limited Common Elements, the areas immediately adjacent thereto and identified as Commercial Limited Common Element area on the Condominium Map.

III. COMMON INTEREST.

Each Apartment shall have appurtenant thereto an undivided percentage interest in all Common Elements of the Project herein called the Common Interest, and the same proportionate share in all common profits and Common Expenses of the Project, and for all other purposes, except as otherwise provided in this Declaration. The Common Interests appurtenant to the Apartments subject to the Declaration are shown in Exhibit "B" attached hereto and incorporated herein by this reference. The Common Interest for each Apartment is calculated by dividing an Apartment's net living area (or net area) exclusive of any balcony areas or Limited Common Element areas by the sum of the net living areas of all Apartments that have been made subject to the Declaration with minor adjustments to the Common Interest for the Beach Club Commercial Apartment to permit the total Common Interest percentage for all Apartments to equal exactly 100%.

Notwithstanding anything provided to the contrary, pursuant to Section 514A-15(a) of the Act, the Common Expenses of the Project may be apportioned in a fair and equitable manner as determined by the Managing Agent from time to time, provided that the allocation of expenses shall not be based solely on whether Apartments are wholly owned, fractionally owned (i.e. timeshare) or used in a Non-Equity Club, unless a particular type of usage as to a specific group of Apartments results in additional or less expenses to the Association that requires a different assessment from otherwise similar types of Apartments. Further, special charges may not be levied against Owners of Apartments, such Owners' guests invitees or tenants for ordinary wear and tear to the Common Elements regardless of the frequency of use. Assessments for the costs associated with the pool, Pool Bar, Pool Bar Grille, Project refuse shall be allocated on the basis of occupancy and not Common Interest as the costs associated with such areas and services are not dependant upon Apartment size. Any profits generated from the use of a particular Apartment or Limited Common Element area shall not be deemed "common profits" subject to distribution in accordance with the Common Interest as set forth above. The Owner of a Commercial Apartment to which a Limited Common Element is appurtenant shall be entitled to all revenues and profits generated from the Limited Common Element or improvements thereon or uses thereof, and no other Owner shall have any rights thereto.

IV. EASEMENTS.

In addition to any easements of record, the Apartments and the Common Elements shall also have, as an appurtenance, or be subject to, as the case may be, the following easements:

A. **EASEMENTS IN THE COMMON ELEMENTS.** Each Apartment shall have appurtenant thereto nonexclusive easements in the Common Elements designed for such purposes as ingress to, egress from, utility services for and support, maintenance and repair of such Apartment; in the other Common Elements for use according to their respective purposes, subject always to the exclusive use of the Limited Common Elements as provided herein; and in the other Apartments in the Building in which such Apartment is located for support; subject to the provisions of Section 514A-13(d) of the Act; provided, however, that with respect to any public area which may be designated as a Limited Common Element appurtenant to a Resort Apartment in this Declaration or in the Condominium Map, such as the corridors, stairwells and walkways appurtenant to such Apartments, a non-exclusive easement over such public area shall exist in favor of all Apartments for such purposes as ingress to and egress from such Apartments.

B. EASEMENT FOR ENCROACHMENTS. If any part of the Common Elements now or hereafter encroaches upon any Apartment or Limited Common Element, or if any Apartment encroaches upon the Common Elements or upon any other Apartment, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In the event that an Apartment shall be partially or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Project, encroachments of any parts of the Common Elements, Apartments or Limited Common Elements due to such construction, shifting, settlement or movement shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist for so long as such encroachment continues.

C. EASEMENT FOR ACCESS TO APARTMENTS. The Association shall have the irrevocable right upon reasonable notice to Owners to be reasonably exercised by its Board or the Managing Agent, to enter each Apartment or Limited Common Element from time to time during reasonable hours as may be appropriate for the operation or maintenance of the Project, or at any time for making emergency repairs therein necessary to prevent damage to any Apartment, Common Element or Limited Common Element or to prevent injuries to people or otherwise in the interest of life safety.

D. DEVELOPER'S EASEMENT TO COMPLETE CONSTRUCTION OF THE PROJECT AND ALL APARTMENTS AND IMPROVEMENTS THEREOF AND TO ANNEX ADDITIONAL LANDS AND/OR APARTMENTS. To and until December 31, 2026, the Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns, shall have an easement over, under and upon the Project as may be reasonably necessary or appropriate for the completion of construction to all Apartments and Improvements of the Project and the correction of defects therein, and, to and until December 31, 2026, to annex additional lands and/or additional apartments and Improvements to the Project pursuant to Article XX below.

E. DEVELOPER'S EASEMENT FOR NOISE AND DUST. To and until December 31, 2026, the Developer, its agents, employees, consultants, contractors, licensees, successors and assigns, shall have an easement over, under and upon the Project or any portion thereof, to create and cause noise, dust and other nuisances created by and resulting from any work connected with or incidental to the construction and sale of any Apartment or other Improvements in the Project, the construction and sale of additional apartments annexed to the Project, or the subdivision and/or consolidation and resubdivision and withdrawal of portions of the Land and/or Apartments.

F. DEVELOPER'S EASEMENT FOR SALES ACTIVITIES. The Developer, its brokers, sales agents and other related persons shall have the exclusive right to conduct extensive sales, rental or leasing activities at the Project and from any Apartment owned by it, which right shall include, without limitation, showing the Project to potential buyers, renters or lessees, the use of model apartments, sales and management offices, permitting potential buyers to stay in Apartments in the Project and the use of banners, signs or other extensive displays and activities at the Project; provided, however, that such activities shall not unreasonably interfere with the use and enjoyment of the Project by Owners. Such activities may include the initial sale, resale, rental or lease of Apartments and interests therein, including, without limitation, any vacation ownership or timeshare interests, as well as interests in other projects or properties (whether whole apartments, vacation ownership or timeshare interests, subdivided lots or other residential real estate) developed by Developer or its affiliated entities or for which Developer or its affiliated entities serve as a selling or listing real estate brokerage firm. In the event that the Developer's mortgage lender, if any, or any successor to or assignee of the Developer's mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the mortgage remedies or by a deed or an assignment in lieu of foreclosure, such mortgage lender, its successors and assigns, shall have the same rights as the Developer to conduct such extensive sales, rental or leasing activities on the Project.

Each and every party acquiring an interest in the Project or the Land hereby acknowledges that the sales, rental or leasing activities may result in noise and nuisances, and consents to such activity by the Developer, and further waives, releases and discharges any rights, claims or actions such party may acquire against the Developer, its brokers, sales agents, employees and lenders, and their respective successors and assigns as a result of any such activity or activities.

G. DEVELOPER'S EASEMENT FOR THE SUBDIVISION AND CONSOLIDATION OF APARTMENTS, THE CONVERSION OF LIMITED COMMON ELEMENTS TO APARTMENTS, AND TO SUBDIVIDE AND/OR TO CONSOLIDATE AND RESUBDIVIDE THE LAND. To and until December 31, 2026, Developer, its agents, employees,

consultants, contractors, licensees, successors, mortgagees and assigns, shall have an easement over, under, upon and through the Common Elements and any Limited Common Elements and through the Apartments or any portion thereof as may be reasonably necessary to effect the subdivision or consolidation of Apartments, the conversion of Limited Common Elements to Apartments, or the subdivision and/or the consolidation and resubdivision of the Land, as contemplated by Articles XXI, XXII and XXIX below, and such easement shall allow Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns, to create and cause noise, dust and other nuisances created by and resulting from any work connected with or incidental to effecting any such subdivision or consolidation of Apartments, the conversion of Limited Common Elements to Apartments, or the subdivision and/or consolidation and resubdivision of the Land, provided that any such work is undertaken with the exercise of reasonable diligence and shall not unreasonably interfere with the use and enjoyment of the Project by Owners.

V. **ALTERATION AND TRANSFER OF INTEREST.**

Except as set forth in this Declaration, the Common Interest appurtenant to each Apartment shall have a permanent character and shall not be altered without the consent of all of the Apartment Owners affected, expressed in an amendment to this Declaration which is duly recorded at said Bureau. The Common Interest shall not be separated from the Apartment to which it appertains, and shall be deemed to be conveyed or encumbered with such Apartment even though such interest is not expressly mentioned or described in the instrument of conveyance. The Common Elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by the Act or by the terms of this Declaration.

Except as set forth in this Declaration, no alteration of the Common Interest or easements appurtenant to any Apartment shall be made, nor shall any partition or subdivision of any Apartment be made, without the prior written consent of the holders of any first mortgage on such Apartment, provided that such consent shall be required to be obtained only from mortgagees that give the Board written notice of their interest through the secretary of the Association or through the Managing Agent, or whose interest otherwise appears in the Association's records of ownership.

VI. **USE.**

A. **APARTMENTS.** The Apartments in the Project shall be occupied and used only for purposes which are consistent with, and appropriate to, a resort destination having a Five Diamond Standard and subject to the following restrictions and limitations:

1. **RESORT APARTMENTS. THE RESORT APARTMENTS MAY BE USED FOR RESIDENTIAL OR TRANSIENT VACATION RENTAL PURPOSES, FOR OPERATION OF A NON-EQUITY CLUB, OR FOR VACATION OWNERSHIP OR TIMESHARE UNITS PURSUANT TO ANY VACATION OWNERSHIP OR TIMESHARE PLAN OR OTHER INTERVAL OWNERSHIP OR JOINT OWNERSHIP PLAN OR PROGRAM PERMITTED BY LAW, THIS DECLARATION AND THE BYLAWS.** Notwithstanding the foregoing, however, transient vacation rental occupancy of any Apartment shall not be for less than six (6) consecutive days, and no Apartment submitted to a timeshare plan under Chapter 514E of the Hawaii Revised Statute, as amended, shall be leased or rented by Owners. All other uses of the Resort Apartments are expressly prohibited.

2. **COMMERCIAL APARTMENTS.** The Commercial Apartments may be used for any purpose permissible by law, this Declaration or the Bylaws subject, however, to any private covenants as to use of such Commercial Apartments as may be imposed by the Owners thereof in a written instrument duly recorded at the Bureau.

B. **USE OF SPECIFIC APARTMENTS.** All Resort Apartments located in Building 6 and also Apartments located in Building 2, with the exception of Apartments 2101, 2201, 2301, 2401, 2103, 2203, 2303, 2403 and 2503 may be used (but are not required to be used) for the operation of a Non-Equity Club by Exclusive Resorts, LLC or an affiliate thereof ("Exclusive Resorts"). Any other Apartments in the other Buildings of the Project that Exclusive Resorts owns in fee simple in the future may also be used in the same manner. Only those

Apartments that are owned by Exclusive Resorts may be operated as a Non-Equity Club or used based upon a Non-Equity Club structure.

C. **LIMITATIONS OF TIME SHARE AND NON-EQUITY CLUB USE.** Other than the programs operated by Exclusive Resorts and The Ritz-Carlton Club, and its or their successors, affiliates and assigns, no Non-Equity Club, destination club, private residence club, tenancy-in-common occupancy arrangements, vacation ownership program, timeshare program or other similar uses, shall be operated in the Project or may use Apartments within the Project. These limitations shall remain in effect only as long as the program operators referred to above continue to operate their respective programs; thereafter new programs may be implemented by the Developer, prior to the completion of original Developer sales, or by the approval of no less than 66 2/3% of the votes of the Association, after the completion of original Developer sales, so long as such new programs do not violate any exclusivity right that may still be retained by the former program operators.

D. **OWNERS' RIGHT TO LEASE APARTMENTS AND LIMITED COMMON ELEMENTS.** Subject to the limitations set forth in Section A. above, the Owners of the respective Apartments shall have the absolute right, without obtaining the consent or joinder of any other Owners, to lease or grant licenses with respect to such Apartments and/or the Limited Common Elements appurtenant thereto, subject to the provisions of the Act, this Declaration, the Bylaws or the House Rules, provided, however, that no Owner other than the Developer or one of its affiliates may implement a rental or timesharing program within the Project.

E. **OWNERS' RIGHT TO SELL.** The Owners of the respective Apartments shall have the absolute right, without obtaining the consent or joinder of any other Owners, to sell or otherwise transfer such Apartments subject to all provisions of the Act, this Declaration, the Bylaws and any Design Committee Rules.

F. **OWNERS' RIGHT TO MORTGAGE.** The Owners of the respective Apartments shall have the absolute right, without obtaining the consent or joinder of any other Owners, to mortgage or otherwise transfer an interest in their respective Apartments as security for the repayment of a loan, subject to all provisions of the Act, this Declaration and the Bylaws.

G. **PROHIBITION ON ACTIVITIES WHICH JEOPARDIZE THE PROJECT.** No Apartment Owner shall do or suffer or permit to be done anything on any Apartment or appurtenant Limited Common Element or elsewhere on the Project which will: (1) injure the reputation of the Project, (2) jeopardize the safety or soundness of the Project, (3) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants, (4) reduce the value of the Project, (5) result in the cancellation of insurance applicable to the Project or adversely affect the right of recovery thereunder or result in reputable companies refusing to provide insurance as required or permitted by the Bylaws, (6) increase the rate of insurance applicable to the Apartments or the contents thereof, or to the Project, or (7) contravene the terms of this Declaration.

H. **CHANGES TO BUILDING STRUCTURES AND APARTMENTS.** Notwithstanding that certain Building Structures are Limited Common Elements appurtenant to certain Apartments, the Board shall have the right to change the exterior appearance of such Building Structures, provided, however, that no change to the exterior appearance of any Building containing a Commercial Apartment may be made without the consent of such affected Commercial Apartment Owner if such change would adversely affect the use or appearance of the Commercial Apartment within such Building. No change shall be made which shall result in an appearance which is inconsistent with a resort destination having a Five Diamond Standard. The Board may delegate the foregoing responsibility to the Managing Agent. No Owner of an Apartment shall, without the prior written consent of either the Board or the Managing Agent, change or cause a change to the exterior of an Apartment in any manner.

I. **OWNERS TO MAINTAIN APARTMENTS AND LIMITED COMMON ELEMENTS IN GOOD ORDER.** The Owner of an Apartment shall keep the interior of his or her Apartment and all plumbing, electrical and other fixtures and appurtenances constituting a part of the Apartment and the Limited Common Elements appurtenant thereto in good order and repair, and in a condition consistent with a resort destination having a Five Diamond Standard. Decisions on repairs or modifications to the Limited Common Elements shall be made by the Owners of Apartments to which such Limited Common Elements are appurtenant, subject to the provisions of Paragraph F above, and subject to the additional provisions stated in the Bylaws.

J. USE OF COMMON ELEMENTS. Subject to the reserved rights of the Developer contained herein, each Apartment Owner and such apartment Owner's guests and invitees, and the members and occupants of Resort Apartments under a timeshare or Non-Equity Club plan associated with the Project may use the Common Elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other Apartment Owners, subject always to:

1. The right of the Board, upon the approval of the Owners of seventy-five percent (75%) of the Common Interest, to change the use of the Common Elements which are not also designated Limited Common Elements;

2. The right of the Board, on behalf of the Association, to lease or otherwise use for the benefit of the Association those Common Elements not actually used by any of the Apartment Owners for an originally intended special purpose and which are not also designated Limited Common Elements, as determined by the Board; provided, that unless the approval of the Owners of seventy-five percent (75%) of the Common Interest is obtained, any such lease shall not have a term exceeding five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) days' written notice;

3. The right of the Board to lease or otherwise use for the benefit of the Association those Common Elements not falling within Article VI, Section J.2 above, which are not also designated Limited Common Elements, upon obtaining: (a) the approval of the Owners of seventy-five percent (75%) of the Common Interest, including all directly affected Owners, and (b) the approval of all mortgagees of record which hold mortgages on Apartments with respect to which owner approval is required by (a) above, if such lease or use would be in derogation of the interest of such mortgagees; and

4. The exclusive use of the Limited Common Elements as provided herein. Notwithstanding anything provided to the contrary, or from which a contrary intent may be inferred, neither the Board nor the Association shall have any right to change the use of or lease or otherwise use any Limited Common Element without the prior written consent of the Owners of all Apartments to which such Limited Common Element is appurtenant. The Owners of at least seventy-five percent (75%) of the Common Interests which are appurtenant to Apartments to which any particular Limited Common Element shall be appurtenant shall have the right to change the use of a particular Limited Common Element.

K. DEVELOPER'S RIGHT TO USE. Notwithstanding anything provided herein to the contrary, as long as there are unsold Resort Apartments in the Project, Developer shall have the right to use any Apartment which it owns for promotional purposes, and shall have the right to have guests stay in such Apartments for any length of time; provided, that such guests shall abide by and be subject to all of the provisions of the Declaration, By-Laws and House Rules. Additionally, the Developer will have the right to utilize Apartments which it owns or any Limited Common Element which is appurtenant to any Apartment which it owns as sales, rental or leasing offices or as a place which is utilized to provide services to the Owners or other occupants of the Project, to the extent such use or uses are permitted under applicable law.

L. LIMITATION ON OPEN HOUSES. Open houses within Resort Apartments shall be limited to no more than three (3) times during any calendar week and may be operated only from 10:00 AM to 2:00 PM. All open houses must be scheduled with the Managing Agent at least twenty-four (24) hours in advance. These requirements may be waived by the Board in appropriate circumstances in its sole discretion.

VII. AGENT FOR SERVICE OF PROCESS.

PHCS Hawaii, Inc. is hereby designated as the agent to receive service of process until such time as the Board and officers of the Association are elected, at which time and thereafter process may be served upon any officer of the Association. The principal place of business and post office address of the agent is 1001 Bishop Street, Suite 1600, Pauahi Tower, Honolulu, Hawaii 96813.

VIII. ADMINISTRATION OF PROJECT.

Administration of the Project shall be vested in the Association, consisting of all Apartment Owners of the Project, in accordance with this Declaration and the Bylaws. The administration, fiscal management and operation of the Project, and the maintenance, repair, replacement and restoration of the Common Elements, and any additions and alterations thereto, shall be in accordance with the provisions of the Act, this Declaration, the Bylaws and any Design Committee Rules, and specifically, but without limitation, the Association shall:

A. **IMPROVEMENTS REQUIRED BY LAW.** Secure, make, build, maintain and repair all fences, walls, sewers, drains, roads, curbs, sidewalks, street lights, parking areas and other improvements which may be required by law to be secured, made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Project or any part thereof.

B. **OBSERVANCE OF LAWS CONCERNING MAINTENANCE OF THE PROJECT.** Keep all Common Elements of the Project in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority during the period that they are applicable to the Project or the use thereof.

C. **ASSOCIATION TO MAINTAIN PROJECT IN GOOD ORDER.** The Association shall well and substantially repair, maintain, amend and keep all Common Elements of the Project, including, without limitation, the buildings thereof, with all necessary reparations and additions thereto in good order and condition except as otherwise provided herein, and maintain and keep the Common Elements in a neat and attractive condition and all trees, shrubs and landscaping thereon in good cultivation and replant the same as may be necessary, all in a manner consistent with a resort destination having a Five Diamond Standard. In the event that seventy-five percent (75%) of the Owners of Apartments to which are appurtenant certain Limited Common Elements determine that the budget to maintain such Limited Common Elements in a manner commensurate with a first-class hotel and resort destination is insufficient, such Owners may recommend changes to such budget and the Board shall revise, or cause to be revised, said budget in accordance with any suggested change. In the event that any Owner or such Owner's agent shall give written notice of any material and substantial deficiency in the repair or maintenance of any Common Element, the Association, consistent with generally accepted standards of practice and sound business judgment, shall, if practicable, commence appropriate repairs or maintenance with respect to such defect not less than thirty (30) days after the receipt of such notice, and shall thereafter proceed with due diligence to complete the repair and to correct such defect.

D. **ADMINISTRATION OF LIMITED COMMON ELEMENT AREAS.** Subject to the provisions of Paragraph F of Article VI of this Declaration, the Owners of Apartments to which are appurtenant certain Limited Common Elements shall have the right, upon a vote of at least seventy-five percent (75%) of the Common Interest appurtenant to such Apartments and upon notice to the Association, to assume administration and maintenance of such Limited Common Elements; provided that such Owners shall administer and maintain all such Limited Common Elements in a manner commensurate with a resort destination having a Five Diamond Standard. In such event, the Association and Managing Agent shall cooperate with such Owners in remitting to such Owners that part of the assessments for Common Expenses collected to maintain such areas or to delegate to such Owner or Owners the right to pay directly such sums as may be required to maintain such areas; provided that all such sums shall be deemed sums paid for Common Expenses.

E. **CONSTRUCTION OF IMPROVEMENTS BY ASSOCIATION; BONDING.** Except for the construction of the Project being undertaken by the Developer, before commencing or permitting construction of any improvement on the Project with a cost in excess of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00), the Association shall obtain performance and payment bonds or certificates thereof naming as obligees collectively all Apartment Owners and their respective mortgagees, as their interests may appear, in a penal sum not less than one-hundred percent (100%) of the cost of such construction and with a corporate surety authorized to do business in Hawaii, guaranteeing performance of such construction free and clear of any mechanics' and materialmen's liens or any liens in lieu of mechanics' and materialmen's liens, provided that the TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) limit may be adjusted upward or downward from time to time by the Board.

F. **ASSOCIATION NOT TO PERMIT WASTE OR IMPROPER USE.** Not make or suffer any waste or unlawful, improper or offensive use of the Project.

G. **OBSERVANCE OF SETBACKS.** Observe any setback lines affecting the Project and not erect, place or maintain any building or structure whatsoever except approved fences or walls between any street boundary of the Project and the setback lines along such boundary.

H. **PLANS AND SPECIFICATIONS FOR IMPROVEMENTS, DILIGENT COMPLETION OF CONSTRUCTION PROJECTS.** Not erect or place on the Project any building or structure including fences and walls, nor make material additions or structural alterations to or exterior changes of any Common Elements of the Project, except in accordance with plans and specifications prepared by a licensed architect that are in accordance with Design Committee Rules, and shall complete any such improvements diligently after the commencement thereof and in compliance with all applicable laws and ordinances.

I. **RENTAL ACTIVITY IN PROJECT.** The Association shall cause each Apartment Owner to observe and abide by the following provisions to the extent permitted by applicable law:

a. With the exception of the Developer, Owners may only rent or lease their Resort Apartment on their own or through a rental agent meeting the criteria set forth below in Section d. of this Paragraph I of Article VIII and which has been authorized by the Board. Additionally, Owners, or their Board-approved rental agent, are required to notify the Managing Agent in writing of the name, address, expected check-in time and date, and expected check-out time and date of any person renting or leasing Owner's Resort Apartment at least seventy-two (72) hours in advance of the expected arrival time. The Managing Agent is specifically authorized to deny the check-in of any person whose name has not been furnished to Managing Agent at least seventy-two (72) hours in advance of the expected arrival time. The Managing Agent is further specifically authorized to deny the check-in of any person into a Resort Apartment whose Owner has not furnished Managing Agent with the evidence of Owner's insurance required below. All Resort Apartments that are leased as rentals may be subject to a surcharge to compensate for any additional financial impact such use may have for the Project, as determined by the Board.

b. Any Owner renting or leasing a Resort Apartment in accordance with this section shall, at Owner's expense, acquire and maintain in effect with respect to the Resort Apartment all insurance required by the Bylaws. The Association, the Board and the Managing Agent shall not be held liable for any damage to or destruction of Owner's property, including, but not limited to, damage to furniture, equipment, appliances or any other property used or retained by Owner in the Resort Apartment. Any and all deductible or co-insurance payments related to a claim by or against Owner shall be the sole responsibility of Owner. In furtherance of this section, any Owner renting or leasing a Resort Apartment in accordance with this section shall deliver to the Managing Agent certificates of insurance certifying that (i) the insurance coverages required by the Bylaws are in full force and effect, (ii) the Board and the Managing Agent will receive at least thirty (30) days advance written notice before any such insurance policy is canceled for any reason, including, without limitation, any failure by Owner to pay any premium or to renew any insurance policy, and (iii) the Managing Agent, the Developer, and the Association will be named as additional insureds on such policies. Such certificates of insurance will be delivered to the Managing Agent prior to the first rental or lease of the Resort Apartment and on an annual basis thereafter.

c. The rental of the Resort Apartments shall be accomplished in a manner that provides the benefit of rental to Owners while at the same time reducing any disruption to the use and enjoyment of other Resort Apartments and the Project by other Owners, guests, transient renters, long term tenants and occupants. This goal will be accomplished at the Project by means of a review and approval process to be managed by the Board to ensure that authorized rental agents understand the goals of the Project and its Owners, the nature of the Project, the desire to maintain the Five Diamond Standard for the Project in all regards, the undesirability of transient guests who might be looking for a boisterous resort experience, and the manner in which rental and check-ins must be accomplished at the Project, including the requirements that all persons, including Owners who do not reside at the Project, are required to check in with the Managing Agent so that the Managing Agent at all times knows which persons are entitled to use the Project property. For those Owners properly using the services of an authorized rental agent, the right of an Owner to lease or rent his Resort Apartment shall not be subject to the approval of the Association; however, any lease or rental arrangement will be deemed to be an acknowledgment and consent on the part of the lessee-sublessee-tenant to use, occupy and possess such Resort Apartment in conformance

and compliance with the provisions of this Declaration, as well as the, Bylaws and the House Rules. Any lease or rental arrangement shall also be deemed to contain a provision requiring that any sums due to the Association as assessments must be deducted from the gross rentals and paid directly to the Association. Managing Agent is specifically authorized to prohibit the check-in of any person who has been procured by a rental agent that has not been authorized by the Board.

d. Any person or entity other than the Managing Agent, the Developer or its affiliates desiring to become an authorized rental agent shall make application to the Board for approval and demonstrate compliance with the following criteria, and any additional criteria that may be established by the Board from time to time:

a) Rental agent has at least ten (10) years' experience in renting or managing transient occupancy residential apartments.

b) Rental agent is registered to do business in the State of Hawaii, is in good standing and has current permits, licenses and registrations required by law for it to perform necessary rental functions, and is a resident of the County of Maui.

c) Rental agent has demonstrated its existing capability to obtain suitable renters for a Five Diamond Standard (as such term is defined herein) transient rental product.

d) Rental agent agrees to comply with applicable Hawaii State law pertaining to client trust accounts and commingling of funds with other operating accounts in the Project.

e) Rental agent agrees to be responsible for and be liable for filings and paying all applicable Hawaii State taxes generated from its rental operations at the Project, including, without limitation, any general excise taxes or transient accommodations taxes, as may be applicable.

f) Rental agent agrees to obtain and maintain, at such rental agent's expense, a policy of liability insurance with a limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence, naming the Association as an additional insured, and shall provide the Association with a certificate of insurance confirming that such insurance is being maintained.

e. The Board shall reasonably and timely review and approve rental agents that meet the criteria to become a Board-authorized rental agent. Furthermore, should any rental agent fail to adhere to the criteria expressed above, the Board may withdraw a rental agent's approval at any time at its sole discretion.

f. Every guest, transient renter, long-term tenant, and occupant of a Resort Apartment other than an Owner, shall present himself or herself to the Managing Agent at the commencement and conclusion of such person's occupancy at the Project. At the time of check-in, the Managing Agent shall collect any and all information deemed necessary by Managing Agent to provide for the safety, security, and operation of the Project. Managing Agent shall also establish a credit card account for the person authorized to check-in to the Managing Agent to stand as security for any damage caused to the Project by the occupants of the Resort Apartment or for incidental charges incurred by the occupants. Should electronic keys or card keys be utilized at the Project, the Managing Agent shall provide a key to the authorized occupant of the Resort Apartment. The Managing Agent has the right in its sole discretion to deny access to a Resort Apartment if: (i) the Managing Agent has the reasonable belief that the intended occupant of the Resort Apartment will not comply with the terms of this Declaration and the House Rules, (ii) the Managing Agent determines that the intended occupants are under age 18 and not accompanied by a responsible adult, (iii) the Managing Agent determines that the persons attempting to check-in are intoxicated or otherwise intending to engage in inappropriate or illegal activity; or (iv) the Managing Agent reasonably believes that the number of intended occupants of the Resort Apartment will exceed the number of permitted occupants established in this Declaration, the Bylaws, House Rules or in any fire, health, or safety regulations promulgated by the appropriate government agency.

g. All sales and marketing materials provided to an Owner in connection with the Resort Apartment or the Project which are otherwise the property of the Developer or Managing Agent, including, without limitation, any imagery, logos, artistic renderings, weblinks, layout depictions, video clips, etc., may not be used by an Owner or any rental agent in the promotion of any Apartment in the Project in any fashion whatsoever without the prior written approval of the Developer in its sole discretion and in accordance with the House Rules. Any use of such material in any way by Owner or any rental agent without such permission will entitle Developer to immediately enjoin such use and to pursue any and all remedies against the Owner and/or rental agent that Developer may have, independently of the obligations set forth in this Declaration. The Owner and/or rental agent will be fully responsible to pay for all costs incurred by Developer in enforcing its proprietary rights in and to such material, including, without limitation, any and all attorneys' fees and costs.

h. The Owner of the Model Unit Commercial Apartment shall have the right to lease such Apartment and appurtenant Limited Common Elements for storage, maintenance and landscaping purposes.

IX. COMMON PROFITS AND EXPENSES.

Other than those profits or expenses directly attributable to Limited Common Elements, the common profits of the property shall be distributed among, and the Common Expenses shall be charged to, the Apartment Owners, including the Developer, in proportion to the Common Interest appurtenant to their respective Apartments. Notwithstanding the foregoing, in recognition of the mixed use nature of the Project, the Managing Agent may implement a formula or method whereby Common Expenses will be allocated among Apartment Owners in a fair and equitable manner in accordance with Article III above. Common profits and Common Expenses attributable to Limited Common Elements shall be distributed or charged to the Owners of the Apartments to which the Limited Common Elements are appurtenant in the same proportion as the Common Interests of such Apartments bear to one another. Further, the Developer and the Association may enter into a subsidy agreement, guaranty or any other form of agreement or agreements that pertain to the payment of Common Expenses for the Project.

The Board, acting on behalf of the Association, shall from time to time assess the Common Expenses against all the Apartments in accordance with the Act, this Declaration and the By-Laws. The assessments shall be levied by mailing to the Owner of each Apartment at the address shown in the records of the Association, a written statement setting forth the amount of the assessment against the individual Apartment, or, in the case of Owners who are also owners of interests in a vacation ownership or timeshare plan in the Project, by mailing to the vacation owners or timeshare association, or its duly designated managing agent, a written statement setting forth the amount of the assessment against the individual Apartment. All sums assessed by the Association but unpaid for the share of the Common Expenses chargeable to any Apartment constitute a lien on the Apartment prior to all other liens, except only: (A) liens for taxes and assessments lawfully imposed by governmental authority against the Apartment, and (B) all sums unpaid on mortgages recorded prior to the recordation of a notice of lien by the Association, and costs and expenses including attorneys' fees provided in such mortgages. The lien may be foreclosed by action by the Managing Agent or Board, acting on behalf of the Apartment Owners, in like manner as a mortgage of real property. In any such foreclosure, the Apartment Owner shall be required to pay a reasonable rental for the Apartment and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the same. The Managing Agent or Board, acting on behalf of the Apartment Owners, may, unless otherwise prohibited in this Declaration, bid on the Apartment at the foreclosure sale, and acquire and hold, lease, mortgage and convey the same. Action to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same.

Prior to foreclosing upon such lien, the Board or Managing Agent shall provide thirty (30) days prior written notice of its intention to foreclose, by mailing such notice, postage prepaid, to all persons having an interest in such Apartment as shown in a title report pertaining to the Apartment which title report shall be dated not more than sixty (60) days prior to the date of any such notice, including, but not limited to, any holder or insurer of a mortgage of any interest in such Apartment.

Where the mortgagee of a mortgage of record or other purchaser of an Apartment obtains title to the Apartment pursuant to the mortgage or as a result of foreclosure of the mortgage, a conveyance in lieu of foreclosure, or exercise of the remedies provided in the mortgage, the acquirer of title, his successors and assigns,

shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to the Apartment which become due prior to the acquisition of title to the Apartment by the acquirer. The unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Apartment Owners, including the acquirer, his successors or assigns.

X. INSURANCE.

The Association shall at all times keep all improvements of the Common Elements (except as provided in this Declaration) insured against loss or damage as provided in the Bylaws. The cost of any premium therefor shall be a Common Expense. In every case of loss or damage to improvements of the Common Elements, insurance proceeds may be used by the Association for rebuilding, repairing or otherwise reinstating the same improvement in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as first approved by the Board. In any event that such insurance proceeds are used for such rebuilding, repairing or otherwise reinstating such improvements, and such insurance proceeds are insufficient, the Association shall make up the deficiency and shall charge the same to all Apartment Owners as a Common Expense. In any event that there shall be any excess insurance proceeds, the same shall be distributed to the Owners in accordance with their respective Common Interests.

Each Owner appoints the Association, or any Trustee, as attorney-in-fact for the collection and appropriate disposition of the proceeds from any insurance policy, the negotiation of losses and execution of releases of liability and the performance of all other acts necessary to accomplish such things.

XI. UNINSURED CASUALTY.

In case at any time or times any improvements of the Common Elements shall be damaged or destroyed by any casualty not insured against, such improvements shall be rebuilt, repaired or restored unless Owners of Apartments to which are appurtenant at least seventy-five percent (75%) of the Common Interest, with the consent of their mortgagees, if such mortgagees require such consent, affirmatively vote against such rebuilding, repairing or restoration. Any such approved restoration of the Common Elements shall be completed diligently by the Association, and the cost thereof shall be a Common Expense. The Apartment Owners shall be solely responsible for any restoration of their respective Apartments and Limited Common Elements so damaged or destroyed according to the original plan and elevation thereof, or such other plan first approved by the Design Committee. Unless such restoration is undertaken within a reasonable time after such casualty, the Association shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade, and the cost of any such removal and restoration shall be a Common Expense.

XII. ALTERATION OF PROJECT.

A. GENERAL PROVISIONS. Except as otherwise expressly provided in this Declaration to the contrary, restoration or replacement of the Project or any portion thereof or construction of any additional improvement or structural alteration or addition to any improvement, different in any material respect from the Condominium Map of the Project, shall be undertaken by the Association or any Apartment Owner only pursuant to an amendment of this Declaration in accordance with Article XIII below, duly executed pursuant to the provisions thereof, accompanied by the written consent of the holders of all mortgage liens affecting any of the Apartments involved, and in accordance with complete plans and specifications therefor first approved in writing by the Design Committee. Promptly upon completion of such restoration, replacement or construction, the Association or Owner, as the case shall be, shall duly record such amendment, together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer.

B. ADDITIONS OR ALTERATIONS SOLELY WITHIN AN APARTMENT OR LIMITED COMMON ELEMENT. Subject to this Declaration, the Bylaws, the House Rules and Design Committee Rules, an Owner or Owners (if there be more than one Owner of an Apartment) of an Apartment shall have the right at any time and from time to time at such Owner's or Owners' sole cost and expense, and without the necessity of the consent or joinder of any other Apartment Owner, but with the prior approval of the Board or Design Committee (except for alterations to the Commercial Apartments which shall not require such approval), to make any of the following alterations solely within the Apartment or Limited Common Element which such Owner or Owners control: to

install, maintain, remove and rearrange partitions (including the party wall between two Apartments owned by the same Owner or Owners and other structures from time to time within such Apartment or Limited Common Element, to finish, alter or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors and walls as shall be appropriate for the utilization of such Apartment or Limited Common Element by such Owner or Owners or the tenants or lessees thereof, and to tile, finish, re-carpet, and do or cause to be done such work on the floors of any Apartment or Limited Common Element; provided, however, that nothing contained in this paragraph shall authorize any work or alteration which would be inconsistent with a resort destination having a Five Diamond Standard, jeopardize the soundness or safety of any part of the Project, reduce the value thereof, materially adversely affect any other Apartment or Limited Common Element, materially alter the uniform external appearance of the Project, materially affect or impair any easement or rights of any of the other Apartment Owners or materially interfere with or deprive any non-consenting Owner or Owners of the use or enjoyment of any part of the Common Elements subject, however, to the exclusive use of the Limited Common Elements. Further, nothing in this paragraph shall prohibit the Board from effecting such changes within an Apartment or Limited Common Element, or to require same, in order that the buildings of the Property may continue to comply with applicable law, including any fire code requirements.

C. **APARTMENT OWNERS TO EXECUTE AMENDMENT DOCUMENTS IN CERTAIN CASES.** In the event that any change or alteration of an Apartment pursuant to and in compliance with Article XII, Section B above shall alter the depiction of the particular Apartment on the Condominium Map or the description thereof in the Declaration, then the Owner or Owners of such Apartment shall amend this Declaration and/or the Condominium Map to set forth such approved change or alteration, which amendment(s) may be executed by the Owner or Owners of the affected Apartment or Apartments and by no other party, and such shall become effective upon the recordation thereof at said Bureau. The provisions of Article XIII below notwithstanding, such amendment shall not require the consent or joinder of the Owner of any other Apartment or any other person or entity, other than any mortgagee of such Apartment or Apartments which are changed or altered. Every Apartment Owner and all holders of liens affecting any of the Apartments of the Project and each and every other party acquiring an interest in the Project or any part thereof, by acquiring such Apartment, lien or other interest, consents to and agrees that he shall, if required by law or by any such Owner or Owners who shall have changed or altered an Apartment as aforesaid, join in, consent to, execute, deliver and record all instruments and documents necessary or desirable to effect the amendment of this Declaration and/or the Condominium Map; and appoints such Owner or Owners and their assigns his attorney-in-fact with full power of substitution to execute, deliver and record such documents and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such party.

XIII. **AMENDMENT OF DECLARATION.**

Except as otherwise provided herein or in the Act, this Declaration may be amended by the affirmative vote or written consent of Owners of Apartments to which are appurtenant at least seventy-five percent (75%) of the Common Interest of the Project, evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association, which amendment shall become effective upon the recordation thereof at the Bureau.

Notwithstanding the foregoing and notwithstanding the sale of any of the Apartments, the Developer acting alone may amend this Declaration to file the "as built" verified statement (with plans, if applicable) required by Section 514A-12 of the Act, so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed fully and accurately depict the layout, location, apartment numbers and dimensions of the Apartments as built, or, so long as any plans filed therewith involve only immaterial changes to the layout, location, apartment numbers, or dimensions of the Apartments as built.

Notwithstanding the foregoing, the Owner or Owners of any Apartment who make a change or alteration of the Apartment pursuant to and in compliance with Article XII, Section C above may record an amendment to the Declaration and/or Condominium Map setting forth such approved change or alteration, without the consent or joinder of any other Owner, person or entity.

Notwithstanding the foregoing, no amendment hereto shall negate or adversely impact any of the Developer's reserved or other rights hereunder without the prior written consent of the Developer. Further, no amendment to this Declaration shall diminish the Five Diamond Standard of design, operation and maintenance of

the Project, nor shall any amendment hereto be adopted that diminishes the rights and/or obligations of the owners of interests in Club Units, as a group, the owners of whole Resort Apartments as a group, or Resort Apartments owned by Exclusive Resorts and operated as a Non-Equity Club, as a group, without the consent of a majority of the owners within the affected group. Further, any amendment hereto pertaining to a Commercial Apartment or the rights and/or obligations of the Owner of such Commercial Apartment, shall require the approval of the affected Commercial Apartment Owner.

Notwithstanding any of the foregoing, no amendment of this Declaration or any other condominium instrument shall effect a change in: (1) the boundaries of any Apartment or the exclusive easement rights appertaining thereto, (2) the Common Interest of any Apartment, (3) the voting rights in the Association appertaining to any Apartment, or (4) the purposes for which any Apartment or its appurtenant Limited Common Elements are permitted or restricted, unless the record Owner of the Apartment and the record holder, insurers and guarantors of a first mortgage lien on the Apartment shall join in the execution of the amendment. Further, no amendment shall be valid which changes or modifies this paragraph unless the record Owners of all Apartments and all record holders, insurers and guarantors of first mortgages on all Apartments shall consent thereto. Additionally, no amendment shall be valid which shall impair or prejudice the rights and priorities of mortgagees or change the provisions of this Declaration with respect to mortgagees without the written consent of all mortgagees of record. Any consent required of a mortgagee hereunder shall be assumed given if such mortgagee fails to submit a response to the written proposal for the amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return-receipt" requested.

XIV. PARTIAL RESTORATION.

Restoration of the Project with less than all of the Apartments after casualty or condemnation may be undertaken by the Association only (i) pursuant to an amendment to the Declaration, duly executed by or pursuant to the affirmative vote or written consent of not less than eighty percent (80%) of the Apartment Owners, and consented to in writing by all holders of first mortgage liens affecting any of the Apartments of the Apartment Owners executing or voting for such amendment to the Declaration, (ii) by removing the Project from the Condominium Property Regime established hereby, (iii) by reconstituting all of the remaining Apartments and Common Elements to be restored as a new Condominium Property Regime, and (iv) by providing for the payment to each Owner of an Apartment not to be restored of the agreed value of such Apartment and its Common Interest, which payment shall include, without prejudice to the generality of the foregoing, all of the insurance proceeds or condemnation award payable for or on account of such Apartments and the Apartment Owners' proportionate share of any Capital Improvements Reserve Fund and General Replacement Reserve without deduction for the cost of such restoration, except for the Apartment Owners' proportionate share of the cost of debris removal. In the event any of the foregoing criteria is not met, the entirety of the Project shall be restored.

XV. TERMINATION.

Except as provided in Section 514A-21 of the Act, the Project shall not be abandoned, terminated or removed from the Condominium Property Regime created by the Declaration and the Act without the prior written approval of all mortgagees who may have an interest in the Project.

XVI. INVALIDITY AND CHANGES IN LAW.

The invalidity of any provision of this Declaration for any reason shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein.

In the event of a change in statutory law applicable to this Project occurring after the recordation of the Declaration or the Bylaws, such change in law shall control over the provisions of the Declaration or the Bylaws only to the extent the legislative body enacting such change in law expressly provides that the provisions of such change in law shall control over provisions to the contrary in preexisting condominium documents.

XVII. LAND TRUSTS.

In the event title to any Apartment and its appurtenant Common Interest is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the Apartment remain vested in the trust beneficiary or beneficiaries, the trust estate and the beneficiaries thereunder from time to time shall be liable for and shall pay all Common Expenses and all other charges, costs and expenses assessed against such Apartment or the Owner thereof pursuant to this Declaration, the By-Laws, the House Rules or the Act. No claim for payment of Common Expenses or other charges, costs or expenses shall be made against any such trustee personally, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or assessment, but the amount thereof shall constitute a lien on the Apartment as provided in this Declaration, the By-Laws, and the Act, notwithstanding any transfer of beneficial interest under such trust.

XVIII. COMPLIANCE BY OWNERS.

All Apartments Owners, tenants of such Owners, employees of Owners and tenants, and any other persons who may in any manner use the Project or any part thereof submitted to the Condominium Property Regime are subject to the provisions of the Act and to the provisions of this Declaration, the By-Laws, and to all agreements, decisions and determinations lawfully made by the Association in accordance with the voting percentages established under the Act, this Declaration and the By-Laws. Each Apartment Owner shall comply strictly with the By-Laws, Design Committee Rules, the House Rules, and with the covenants, conditions and restrictions set forth in this Declaration. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or equitable relief or both, maintainable by the Managing Agent or Board on behalf of the Association or, in a proper case, by an aggrieved Apartment Owner.

In the event of the failure of any Apartment Owner to comply fully with any of the foregoing within thirty (30) days after written demand therefor by the Association, the Association shall promptly give written notice of such failure to the holder of any mortgage of such Apartment, as shown in the Association's record of ownership or who has given the Board notice of its interest through the Secretary of the Association or the Managing Agent.

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

- A. Collecting any delinquent assessments against any Owner's Apartment;
- B. Foreclosing any lien thereon;
- C. Enforcing any provision of this Declaration, the By-Laws, the Design Committee Rules, the House Rules or the Act; or
- D. Enforcing the rules and regulations of the Real Estate Commission;

shall be promptly paid on demand to the Association by the Apartment Owner; provided, that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by the Apartment Owner as a result of the action of the Association, shall be promptly paid on demand to the Apartment Owner by the Association.

XIX. RESERVED RIGHT TO GRANT EASEMENTS.

Notwithstanding anything herein provided to the contrary, Developer does hereby reserve the right unto itself, its successors and assigns, to and until December 31, 2026, to delete, relocate, realign, reserve, grant and receive any and all easements and rights of way over, under and on the Common Elements (including Limited Common Elements) deemed necessary or desirable in Developer's sole discretion, including, but not limited to, easements and/or rights of way for utilities, retention ponds, sanitary and storm sewers, cable television, refuse disposal, driveways, parking areas and roadways, provided that such easements and/or rights of way shall not be

located on or within any existing structure of the Project and shall not be exercised as to unreasonably disturb, impair or interfere with the normal use and enjoyment of the Project by the Apartment Owners.

Each and every party acquiring an interest in the Project, by such acquisition, consents to such deletion, relocation, realignment, reservation, granting and/or reception of easements and/or rights of way as provided in this Article and to the recordation of any and all documents necessary to effect the same at said Bureau, including, without limitation, any amendment or amendments of this Declaration and any grant of easement; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Apartment or any interest therein, whether by deed, mortgage, or any other instrument of conveyance.

XX. RESERVED RIGHT TO DEVELOP, CONSTRUCT AND ANNEX ADDITIONAL LAND AND/OR APARTMENTS TO THE PROJECT.

Developer will develop and construct the initial Apartments in the Project as described herein and as depicted on the Condominium Map. Developer does hereby reserve the right unto itself, its successors and assigns, to and until December 31, 2026, to create, develop and construct such additional Apartments and other Improvements in the Project and to annex such Apartments and Improvements and/or any additional land to the Project in the manner hereafter specified. Developer shall further have the reserved right to execute and record an amendment to this Declaration and to the Condominium Map to create any such additional Apartments and other Improvements within the Project and to annex the same and/or any additional land, to the purview of this Declaration. Any such creation, development, construction and annexation of additional Apartments and any related Improvements to the Project and/or annexation of additional land to the Project shall be effective provided that:

A. Developer shall record or cause to be recorded an amendment to this Declaration: (1) describing the land and/or Apartment(s) and Improvements to be created and annexed to the Project and setting forth at least a description of the land and/or Apartment(s) and such Improvements; and (2) in the case of the creation and annexation of Apartments, setting forth the Common Interests appurtenant to the newly formed Apartments and existing Apartments, provided, in the event that additional Resort Apartments are created in the Project, that Common Interests appurtenant to such newly created Apartments shall be substantially equivalent to the Common Interest of existing Resort Apartments having the same number of bedrooms. Upon creating the additional Apartments in the Project, the Common Interests for all Apartments in the Project shall be recalculated by dividing the net living area (or net area) exclusive of any balcony areas or Limited Common Element areas of each Apartment by the sum of the net living area (or net area) of all Apartments then-existing in the Project with minor adjustment to the Common Interest of the Beach Club Commercial Apartment to permit the total Common Interest percentage for all Apartments to equal 100%. Such recalculation of the Common Interest of Apartments in the Project may be utilized by the Developer to permit it to create all Apartments in the Project that are developed in the future.

B. Developer shall also record or cause to be recorded an amendment to the Condominium Map which depicts the additional land and/or Apartment(s) being annexed to the Project, and in the case of an Apartment, a floor plan with dimensioning, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514A-12 of the Act, that said Condominium Map, as so amended, is an accurate copy of portions of the plans of the Apartment(s) to be annexed as filed with and approved by the county officer having jurisdiction over the issuance of permits for the completion of buildings, and that the plans fully and accurately depict the layout, location, apartment numbers, and dimensions of the Apartment(s) as built; and

C. Any such alteration shall comply in all respects with all applicable governmental codes, statutes, ordinances and rules and regulations.

The right to amend the aforesaid Declaration and Condominium Map to effect the creation, development, construction and annexation of additional Apartments and any related Improvements to the Project and/or annexation of additional land to the Project shall occur at any time or times prior to December 31, 2026, and Developer may, without being required to obtain the consent or joinder of any Owner, lien holder or other persons, execute, deliver and record amendments to the Declaration and Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers or privileges. Any creation, development, construction and annexation of such Apartments and related Improvements to the Project and/or annexation of additional land to the Project after December 31, 2026 shall require the consent of at least a majority of the members of the Board representing the Timeshare Units. In such event the Association shall have the right to exercise the authority reserved to the Developer hereunder to effect the annexation of the Apartments or lands to the Project.

Each and every party acquiring an interest in the Project, by such acquisition, consents to such creation, development, construction and annexation of Apartments and related Improvements to the Project and/or the annexation of lands to the Project, and to the recording of any and all documents necessary to effect the same in said Bureau, including, without limitation, any amendment or amendments of this Declaration and the Condominium Map; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Apartment or any interest therein, whether by deed, mortgage, or any other instrument of conveyance.

Nothing stated in this Declaration shall be construed as a representation or warranty by Developer that any Apartments or Improvements after the initial Apartments and Improvements will be developed, nor shall anything herein require Developer to develop any additional Apartments or Improvements in the Project.

XXI. RESERVED RIGHT TO SUBDIVIDE AND CONSOLIDATE APARTMENTS.

Notwithstanding anything provided to the contrary, and except as otherwise provided by law:

A. Developer shall have the reserved right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee or the Design Committee, to: (1) alter the floor plan of any Apartment which it owns at any time provided that the Common Interest appurtenant to the Apartment shall not change, (2) cause the subdivision of any Apartment which it owns at any time to create two or more Apartments provided that the total Common Interest appurtenant to the newly created Apartments shall equal the Common Interest appurtenant to the original Apartment; and (3) convert certain portions of any existing Apartment to Common Element status to facilitate any subdivision provided that the total Common Interest appurtenant to the newly created Apartment(s) shall equal the Common Interest appurtenant to the original Apartment.

B. If Developer is the owner of any two Apartments separated by a party wall, floor or ceiling, Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee or the Design Committee, to consolidate two or more Apartments and to alter or remove all or portions of the intervening wall, floor or ceiling at Developer's expense provided that: (1) the structural integrity of the Project is not thereby affected, (2) the finish of the Common Element then remaining is restored to a condition substantially compatible with that of the Common Element prior to such alteration, and (3) all construction activity necessary to any such alteration or removal shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the control of the Developer or its contractors, whether caused by strikes, the unavailability of construction materials or otherwise, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence.

C. The Developer, in the process of consolidating Apartments, shall have the right to convert that area between Apartments to an Apartment (as opposed to the same remaining a Common Element) for so long as such Apartments shall remain consolidated or shall continue to be commonly used or owned.

Any such alteration, subdivision or consolidation of Apartment(s) as provided above shall be effective provided that:

1. Developer shall record or cause to be recorded an amendment to this Declaration describing the Apartment(s) in question and setting forth at least: (a) a description of the newly formed Apartment(s); (b) in the case of the consolidation of Apartments by Developer, the undivided percentage interest appurtenant to the newly formed Apartment, which shall be calculated by adding together the undivided percentage interests for the Apartments to be consolidated; or (c) in the case of the subdivision of an Apartment by Developer, the undivided percentage interest appurtenant to each of the newly formed Apartments, which shall equal the total of the undivided interest appurtenant to the original Apartment.

2. Developer shall record or cause to be recorded an Amendment to the Condominium Map for the Apartment(s) being altered, subdivided or consolidated to show an amended floor plan, as necessary, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514A-12 of the Act, that said Condominium Map, as so amended, is an accurate copy of portions of the plans of the altered Apartment(s) as filed with and approved by the county officer having jurisdiction over the issuance of permits for the completion of buildings, and that the plans fully and accurately depict the layout, location, apartment numbers, and dimensions of the Apartments as built; and

3. Any such alteration shall comply in all respects with all applicable governmental codes, statutes, ordinances and rules and regulations, or with all variances granted therefrom.

The Developer expressly reserves the right to amend the aforesaid Declaration and Condominium Map to effect any subdivision or consolidation of Apartments or alterations to floor plans at any time or times prior to December 31, 2026, and Developer may, without being required to obtain the consent or joinder of any Owner, lien holder or other persons, execute and record amendments to the Declaration and Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers or privileges herein reserved to Developer.

Each and every party acquiring an interest in the Project, by such acquisition, consents to such subdivision and/or consolidation and/or alteration, to the recalculation of the Common Interests appurtenant to each Apartment upon such subdivision and/or consolidation, and to the recording of any and all documents necessary to effect the same in said Bureau, including any amendment or amendments of this Declaration and the Condominium Map; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Apartment or any interest therein, whether by deed, mortgage, or any other instrument of conveyance.

XXII. RESERVED RIGHT TO CONVERT LIMITED COMMON ELEMENTS TO APARTMENTS.

Notwithstanding anything provided to the contrary, and except as otherwise provided by law:

A. Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee, to convert a Limited Common Element appurtenant to such Apartment or Apartments owned by Developer, or any portion thereof, into a separate Apartment of the Project. In such event, Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee, to alter the physical aspects of the Limited Common Element

at Developer's expense in connection with such conversion, including building such structures as may be necessary or appropriate, provided that: (1) the structural integrity of the Project is not thereby affected, (2) the finish of the Apartment is consistent with the quality of other Apartments in the Project and any remaining portion of the Limited Common Element not converted to an Apartment, if any, is restored, to the extent feasible, to a condition substantially compatible with that of the Limited Common Element prior to such conversion, and (3) all construction activity necessary to any such conversion shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the control of the Developer or its contractors, whether caused by strikes, the unavailability of construction materials or otherwise, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence.

B. The Developer shall have the reserved right to designate certain Common Elements or Limited Common Elements of the Project as Limited Common Elements appurtenant to the newly-created Apartment; provided that there is no material adverse effect on the remainder of the Project.

Any such conversion of a Limited Common Element into an Apartment or Apartments as provided above shall be effective provided that:

1. Developer shall record or cause to be recorded an amendment to this Declaration describing the Apartment(s) in question and setting forth at least: (a) a description of the newly formed Apartment(s), and (b) the Common Interests appurtenant to the newly formed Apartments and existing Apartments. In the event that additional Resort Apartments are created, the Common Interests appurtenant to such newly created Apartments shall be substantially equivalent to the Common Interest of existing Resort Apartments having the same number of bedrooms.

2. Developer shall record or cause to be recorded an Amendment to the Condominium Map to show the floor plans and elevations for the newly-created Apartment, as necessary, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514A-12 of the Act, that said Condominium Map, as so amended, contains an accurate copy of portions of the plans of the newly-created Apartment(s) as filed with and approved by the county officer having jurisdiction over the issuance of permits for the completion of buildings, and that the plans fully and accurately depict the layout, location, apartment number(s), and dimensions of the Apartment(s) as built; and

3. Any such alteration associated with such conversion shall comply in all respects with all applicable governmental codes, statutes, ordinances and rules and regulations.

The right to amend the aforesaid Declaration and Condominium Map to effect the conversion of any Limited Common Element into an Apartment and the alterations to floor plans shall occur at any time or times prior to December 31, 2026, and Developer may, without being required to obtain the consent or joinder of any Owner, lien holder or other persons, execute, deliver and record amendments to the Declaration and Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers or privileges.

Each and every party acquiring an interest in the Project, by such acquisition, consents to such conversions of the Limited Common Elements, to the recalculation of the Common Interests appurtenant to each Apartment upon such conversion, if necessary, in the manner stated in Article XXIV, below, and to the recording of any and all documents necessary to effect the same at said Bureau, including any amendment or amendments of this Declaration and the Condominium Map; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same, including, without limitation, any deed conveying any newly-created Apartment or conveying Common Interests (or portions thereof) which may be appurtenant to particular Apartments in the Project; and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Apartment or any interest therein, whether by deed, mortgage, or any other instrument of conveyance.

XXIII. RESERVED RIGHT TO RECHARACTERIZE LIMITED COMMON ELEMENTS.

The Developer shall have the reserved right, but not the obligation, to amend this Declaration to recharacterize and redesignate certain Limited Common Elements as may be appurtenant to a Commercial Apartment owned by the Developer as being Common Elements of the Project.

The right to amend the aforesaid Declaration to effect the recharacterization of any Limited Common Element appurtenant to such Commercial Apartment as Common Elements shall occur at any time or times prior to December 31, 2026 and shall be in accordance with the terms of §514A-13 of the Act, and Developer may, without being required to obtain the consent or joinder of any Owner, lien holder or other persons, execute, deliver and record any deed and/or amendments to this Declaration and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers or privileges.

Each and every party acquiring an interest in the Project, by such acquisition, consents to such recharacterization of the Limited Common Elements, and to the recording of any and all documents necessary to effect the same at said Bureau, including any amendment or amendments of this Declaration; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties and shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Apartment or any interest therein, whether by deed, mortgage, or any other instrument of conveyance.

XXIV. RECALCULATION OF COMMON INTERESTS.

As provided herein, it may be necessary to recalculate the Common Interests appurtenant to the Apartments in the Project. In such event, the following principles and formulae shall apply:

A. Generally, it is intended that the Common Interests appurtenant to each existing Apartment shall be recalculated in such a fashion that all Resort Apartments having the same number of bedrooms shall each have substantially the same Common Interest. If any Resort Apartments having a different number of bedrooms is created, each such Resort Apartment shall have the same Common Interest as any other Resort Apartment with the same number of bedrooms.

B. In the event that any land and/or improvements are annexed to the Project, but no additional Apartments are created, no change in the Common Interest appurtenant to each existing Apartment shall occur. The Developer shall have the right, however, to designate such annexed land and/or improvements as Limited Common Elements appurtenant to a particular Apartment.

C. In the event that the Land is subdivided and a portion or portions are withdrawn from the Project but no Apartments are withdrawn in connection therewith, no change in the Common Interest appurtenant to each existing Apartment shall occur. If one or more Apartments are withdrawn from the Project together with a portion or portions of the Land, the Common Interest appurtenant to all remaining Apartments in the Project shall be recalculated by adding the total Common Interests of the remaining Apartments and thereafter dividing the Common Interest of each remaining Apartment by the total Common Interest of all remaining Apartments to obtain the new Common Interest appurtenant to each remaining Apartment then comprising the Project. The Developer may adjust the Common Interests to assure that the total of all Common Interests equals one hundred percent (100%), and to further assure that each particular type of Resort Apartment, according to the number of bedrooms within such type of Resort Apartment, shall each have substantially the same Common Interest.

XXV. RESERVED RIGHT TO MODIFY PROJECT.

Developer shall have the reserved right, to and until December 31, 2026, to effect such modifications to Apartments and Common Elements in the Project and/or to execute, record and deliver any amendments to this

Declaration, the Condominium Map as well as the Bylaws, Design Committee Rules and House Rules promulgated hereunder, as may be necessary or required by Developer in its sole discretion, or to effect compliance by the Project, the Association, any association of vacation owners or timeshare owners or by the Developer, with laws which apply to the Project, including, without limitation, the Fair Housing Act, as amended, 42 U.S.C. §§3601 et seq., including any and all rules and regulations promulgated thereunder, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§12101 et seq., including any and all rules and regulations promulgated thereunder (the "ADA"). For instance, the Developer will have the right to re-stripe parking stalls and reconfigure parking stalls to meet the requirements of the ADA.

Each and every party acquiring an interest in the Project, by such acquisition, consents to such modifications and to the recording of any and all documents necessary to effect the same at said Bureau, including any amendment or amendments of this Declaration, the Condominium Map, the Bylaws and the House Rules, as appropriate; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Apartment or any interest therein, whether by deed, mortgage, or any other instrument of conveyance.

XXVI. RESERVED RIGHT TO UTILIZE LIMITED COMMON ELEMENT AREAS.

The Owner of a Commercial Apartment shall have the reserved right, but shall have no obligation, to operate, lease and/or utilize all or any part of the Limited Common Elements of the Project, and which are appurtenant to such Apartment, for any purpose permitted by law, including, without limitation, for purposes related to the sale of time share interests or other real estate, or providing services and amenities conducive to a resort destination having a Five Diamond Standard. The Owner of such Commercial Apartment may contract with various providers of goods and services, such as food and beverage operators, retail stores and other vendors, to provide goods and services at the Project, and may retain any compensation paid to the Owner in consideration of the Owner permitting any such vendor to utilize space at the Project.

XXVII. RESERVED RIGHT TO REDESIGNATE LIMITED COMMON ELEMENTS AS APPURTENANT TO OTHER APARTMENTS.

Developer shall have the reserved right, to and until December 31, 2026, to amend this Declaration to designate all or a portion of certain Limited Common Elements as may be appurtenant to any Apartment owned by Developer, to another Apartment or Apartments owned by Developer, and to execute, record and deliver any amendments to this Declaration and to the Condominium Map, as may be necessary or required to effect the same.

Each and every party acquiring an interest in the Project, by such acquisition, consents to such partial or total redesignation of said Limited Common Elements appurtenant to a Developer-owned Apartment to another Developer-owned Apartment or Apartments, and to the recording of any and all documents necessary to effect the same in said Bureau, including any amendment or amendments of this Declaration and the Condominium Map; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Apartment or any interest therein, whether by deed, mortgage, or any other instrument of conveyance.

XXVIII. RESERVED RIGHT REGARDING SPECIAL MANAGEMENT AREA USE PERMIT AND OTHER PERMITS.

Developer shall have the reserved right, to and until December 31, 2026, to amend this Declaration, to enter into any agreements and to grant easements and to do all things necessary and convenient to satisfy the requirements of Special Management Area Use Permit (SM1 2005/0001); Step 1 and Step 2 Planned Development Applications;(PD1 2005/0003)(PD2 005/0003); and Shoreline Setback Variance (SSV 2005/0002), and any other permit or entitlement required for the construction and development of the Project, and to execute, record and deliver any and all documents necessary to effect the same, including, but not limited to, any amendments to this Declaration and to the Condominium Map.

Each and every party acquiring an interest in the Project, by such acquisition, consents to Developer's exercise of said reserved right and to the execution, delivery and recording (if necessary) of any and all documents necessary to effect the same, including any amendment or amendments of this Declaration and the Condominium Map and any grant of easements; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Apartment or any interest therein, whether by deed, mortgage, or any other instrument of conveyance.

XXIX. RESERVED RIGHT TO SUBDIVIDE, AND/OR TO CONSOLIDATE AND RESUBDIVIDE, WITHDRAW AND CONVEY LAND AND/OR APARTMENTS.

Developer shall have the reserved right, to and until December 31, 2026, to subdivide and/or to consolidate and resubdivide and withdraw from the operation of this Declaration, all or any portion of the Land underlying, and Apartments in, the Project. In connection with such right, Developer shall have the further reserved right to enter and go upon the Land to do all things necessary or proper to effectuate such subdivision and/or consolidation and resubdivision and withdrawal of portions of the Land and/or Apartments, including, without limitation, making surveys to undertake a reasonable realignment of boundaries of the Land (it being understood that the Developer shall have the reserved right to effect any such realignment), and to facilitate the granting, reserving, adding, deletion, reception, realignment and/or relocating of easements and/or rights of ways for utilities, cesspools, sanitary and storm sewers, cable television, refuse disposal, driveways, parking areas and roadways, and of all other required easements and/or rights of way. The subdivision and/or consolidation and resubdivision and withdrawal of portions of the Land and/or Apartments shall be subject to, and the Developer shall, at its own expense, comply with, all of the then-applicable governmental laws and rules and regulations, including subdivision requirements.

In connection with the exercise of its right to subdivide and/or to consolidate and resubdivide and withdraw hereunder, Developer hereby further reserves the right, at its expense, to: (i) grant, reserve, add, delete, receive, realign and/or relocate over, across and under the Project, as appropriate, easements and/or rights-of-ways for utilities, cesspools, sanitary and storm sewers, cable television, refuse disposal, access, driveways, parking areas and roadways, and walkways; and (ii) relocate or realign any existing easements and rights-of-way over, across and under the Project, as appropriate, including, without limitation, any existing utilities, sanitary and storm sewer lines and cable television lines and connect the same over, across and under the Project, provided that such easements and such relocations and connections of lines shall not materially impair or interfere with the use of any Apartment in the Project as then constituted; and provided further that Developer specifically reserves the right, whether or not in connection with its right to subdivide and/or consolidate and resubdivide and withdraw hereunder, to grant an easement for access, driveway and parking purposes over the Project in favor of the withdrawn portion of the Land in the event the same shall be withdrawn from the operation of this Declaration. The Developer shall have the right to set the compensation to the Association for the grant of any easement pursuant to the terms hereof, provided that such compensation shall be reasonable under the circumstances.

Upon the exercise of said reserved right to subdivide and/or to consolidate and resubdivide and withdraw, Developer shall, at Developer's expense and without being required to obtain the consent or joinder of any apartment owner or lienholder, execute and file at said Bureau, a subdivision map (and, to the extent deemed necessary or

approved by Developer, for designation of easements), and at said Bureau, an amendment to the Declaration, and the Condominium Map: (i) describing the withdrawn land and any improvements thereon; (ii) describing the realigned boundaries of the land upon which the Apartments then constituting the Project are located; and (iii) where applicable and appropriate, granting, reserving or relocating easements over, under and on the Common Elements as permitted above; and (iv) if necessary, adjusting the Common Interest for each Apartment which remains a part of the Project in accordance with Article XXIV above. The filing of the amendment to this Declaration and the Condominium Map shall effectuate the withdrawal, without any further consent or joinder of any party. The Developer shall have the right, as grantor, to execute and deliver a deed of the subdivided and withdrawn area upon filing of the amendments aforesaid.

Each and every party acquiring an interest in the Project, or in the Land, by such acquisition, consents to such subdivision and/or consolidation and resubdivision and withdrawal, the execution, recordation and delivery of any deed therefor, and/or the granting, reserving or relocation of easements and/or rights-of-ways as provided in this Article, and to the amendment or amendments of this Declaration and the Condominium Map and the recordation thereof at said Bureau to effect the same; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Apartment or any interest therein, whether by deed, mortgage, or any other instrument of conveyance.

The exercise by Developer of the right to subdivide and/or to consolidate and resubdivide and withdraw all or any portion of the Land and/or Apartments provided in this Article shall not in any way limit or be deemed to limit Developer's full use of areas remaining in the Project upon withdrawal, including further development of the Project by constructing thereon additional improvements for hotel, timeshare, commercial or other uses permitted by applicable laws and ordinances then in effect.

XXX. RESERVED RIGHT TO CONVEY APARTMENTS AND LIMITED COMMON ELEMENTS TO ASSOCIATION.

The Developer shall have the reserved right, but not the obligation, to convey Apartments (including, without limitation, the Sales Gallery Commercial Apartment) that are owned by the Developer and free of liens to the Association which the Association shall duly accept, and to redesignate Limited Common Elements appurtenant to Apartments owned by the Developer to Apartments owned by the Association and to the extent necessary or required, to amend this Declaration and the Condominium Map to effect the same.

The right to convey such Apartments or redesignate Limited Common Elements, and, to the extent necessary, to amend the aforesaid Declaration to effect the same shall occur at any time or times prior to December 31, 2026, and Developer may, without being required to obtain the consent or joinder of any Owner, lien holder or other persons, execute, deliver and record any deed and/or amendments to this Declaration and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers or privileges.

Each and every party acquiring an interest in the Project, by such acquisition, consents to and accepts any such conveyance of Apartments to the Association and/or to redesignation of Limited Common Elements from apartments owned by the Developer to Apartments owned by the Association, and to the recording of any and all documents necessary to effect the same at said Bureau, including any amendment or amendments of this Declaration; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties and shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Apartment or any interest therein, whether by deed, mortgage, or any other instrument of conveyance.

XXXI. ASSIGNMENT OF RESERVED RIGHTS.

Notwithstanding anything stated herein to the contrary, the rights reserved to the Developer in this Declaration shall be fully assignable by the Developer in whole or in part, and every Owner of an Apartment in the Project or of a vacation ownership or timeshare interest and all holders of liens affecting any of the Apartments and each and every other party acquiring an interest in the Project, in any vacation ownership or timeshare program or in the Land, or any part thereof, by acquiring such Apartment, lien or other interest, consents to any such assignment by Developer, and, to the extent designated by the Developer, agrees to recognize any assignee as the "Developer" under this Declaration.

XXXII. CONSTRUCTION DEFECTS; RIGHT OF DEVELOPER TO CURE.

It is Developer's intent that all Improvements constructed or renovated in the Project be built or made in compliance with all applicable building codes and ordinances and that such Improvements be of a quality that is consistent with good construction and development practices for similar projects. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Developer's responsibility therefor. It is Developer's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, Board and all Owners shall be bound by the following claim resolution procedure:

A. In the event that the Association, Board or any Owner or Owners (collectively, "Claimant") claim, contend or allege that any portion of the Common Elements and/or any Improvements constructed on the Land are defective or that Developer, its agents, consultants, contractors or subcontractors (collectively, "Agents") were negligent or are otherwise liable for defects in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), Developer hereby reserves the right and easement for itself and any successor or assign to inspect, repair and/or replace such Alleged Defect as set forth herein.

B. In the event that a Claimant discovers any Alleged Defect, Claimant shall, within fifteen (15) days of discovery of the Alleged Defect, deliver a written notice (the "Notice of Alleged Defect") to Developer which shall include all of the following:

1. A preliminary list of Alleged Defects (a "Preliminary List of Alleged Defects");
2. A summary of the results of a survey or questionnaire distributed to the Owners to determine the nature and extent of the Alleged Defects, if such a survey has been conducted or questionnaire has been distributed; and
3. Either a summary of the results of testing conducted to determine the nature and extent of the Alleged Defects or the actual test results, if such testing has been conducted.

C. The Notice of Alleged Defect shall, upon delivery to Developer, commence a period of time not to exceed ninety (90) days, unless the Claimant and Developer agree to a longer period, during which the Claimant and Developer shall either, in accordance with the requirements of this Article, attempt to settle the dispute or attempt to agree to submit it to alternative dispute resolution in accordance with the provisions of Article XXXIII, below.

D. Except as provided in this Section, the Notice of Alleged Defect shall, upon mailing, toll all statutory and contractual limitations on actions against all parties who may be responsible for the defects claimed, whether named in the notice or not, including claims for indemnity applicable to the claim, for a period of 150 days or a longer period agreed to in writing by Claimant and Developer; provided, however, at any time, Developer may give written notice (the "Cancellation Notice") to cancel the tolling of the statute of limitations provided in this subsection. Upon delivery of a Cancellation Notice, the Claimant and Developer shall be relieved of any further obligation to satisfy the requirements of this Section except that Claimant shall not be relieved of the obligations under subsection L., below, and if the Association is a Claimant, then Association shall not be relieved of the

obligations under subsection K.2., below. The tolling of all applicable statutes of limitations shall cease sixty (60) days after a Cancellation Notice is delivered to the Claimant.

E. Within twenty-five (25) days of the date the Claimant delivers the Notice of Alleged Defect to Developer, Developer may request in writing (the "Request to Meet and Confer") to meet and confer with the Claimant, if Claimant is an Owner, or with the Board, if Claimant is the Association, and to inspect the Project and conduct testing, including testing which may cause physical damage to any property within the Project, in order to evaluate the claim. If Developer does not make a timely Request to Meet and Confer, the Claimant and Developer shall be relieved of any further obligation to satisfy the requirements of this Section; provided, however, that Claimant shall not be relieved of the obligations of subsection L., below, and if the Association is a Claimant, Association shall remain obligated to satisfy the requirements of subsection K.2., below. Unless Developer and the Claimant otherwise agree, the meeting (the "Initial Meeting") shall take place no later than ten (10) days from the date of the Request to Meet and Confer at a mutually agreeable time and place. If the Association is a Claimant, the Association shall provide to all Owners, notice of the time and place of the Initial Meeting pursuant to the provisions of the Bylaws dealing with meetings of the Board. The discussions at the Initial Meeting shall be privileged communications and shall not be admissible in evidence in any civil action unless Developer and the Claimant consent to their admission. The Initial Meeting shall be for the purpose of discussing all of the following:

1. the nature and extent of the Alleged Defects;
2. proposed methods of correction, to the extent there is sufficient information;
3. proposals for submitting the dispute to alternative dispute resolution; and
4. requests from Developer to inspect the Project and conduct testing.

F. If Claimant has conducted inspection and testing prior to the date it sent the Notice of Alleged Defect to Developer, the Claimant shall, at the earliest practicable date after the Initial Meeting and no later than five (5) days after the Initial Meeting, make available to Developer for inspection and testing at least those areas inspected or tested by the Claimant. Developer shall further have the right, upon reasonable notice to Claimant and the Owners of Units upon which Developer intends to enter, during normal business hours to enter onto or into, as applicable, the Project, including, without limitation, any Resort Apartment or other Improvement constructed within the Project, for the purposes of inspection and testing (including testing that may cause physical damage to any property in the Project) in order to evaluate the Alleged Defect, and each Owner and Association shall make such areas available to Developer for inspection and testing. The inspection and testing shall be completed within fifteen (15) days from the date the Claimant makes such areas available for inspection and testing, unless the Claimant and Developer agree to a longer period or unless inspection and testing cannot reasonably be completed within such time. If Developer does not timely complete the inspection and testing, Claimant shall be relieved of any further obligation to satisfy the requirements of this Section; provided, however, that Claimant shall not be relieved of the obligations under subsection L., below, and if the Association is a Claimant, Association shall remain obligated to satisfy the requirements of subsection K.2., below. In conducting such inspection and testing, Developer shall be entitled to take any actions it deems reasonable and necessary under the circumstances.

G. Developer shall pay all costs of inspection and testing that is requested by Developer, shall restore the Property to the condition which existed immediately prior to the testing, and shall indemnify the Association and each Owner of a Unit upon which Developer enters for the purposes of inspection and testing for any damages resulting from such inspection and testing.

H. The results of the inspection and testing shall not be inadmissible in evidence in any civil action solely because the inspection and testing was conducted pursuant to this Section.

I. Within thirty (30) days of the completion of inspection and testing or within thirty (30) days of the Initial Meeting, if no inspection and testing is conducted pursuant to this Section, Developer shall submit to the Claimant the following:

1. a request to meet with the Claimant if the Claimant is an Owner, or with the Board if the Claimant is the Association, to discuss a written settlement offer;
2. a written settlement offer and a concise explanation of the specific reasons for the terms of the offer. This offer may include an offer to submit the dispute to alternative dispute resolution.
3. a statement that Developer has access to sufficient funds to satisfy the conditions of the settlement offer; and
4. a summary of the results of the testing conducted by Developer for the purpose of determining the nature and extent of the Alleged Defects if this testing has been conducted unless the Claimant provided Developer with actual test results pursuant to subsection (b), above, in which case Developer shall provide the Claimant with actual test results.

If Developer does not timely submit the items required by this subsection (i), the Claimant shall be relieved of any obligations to meet and confer with Developer about the Settlement Offer; otherwise, Claimant or the Board, as the case may be, shall meet and confer with Developer about the Settlement Offer no less than ten (10) days after Developer submits the items described in subsections I.1. through I.4. above.

J. At any time after the Notice of Alleged Defect is delivered to Developer, the Claimant and Developer may agree in writing to modify or excuse any of the time periods or other obligations imposed by this Section. Except for the notice required pursuant to section K, below, all notices, requests, statements, or other communications required pursuant to this section shall be delivered by first-class registered or certified mail, return receipt requested.

K. If Claimant is the Association, then Association shall comply with either subsection K.1. or subsection K.2., below. The failure of the Association to comply with this subsection K. shall be a procedural deficiency to an action for damages by the Association against Developer.

I. If the Board rejects the Settlement Offer, then the Board shall hold a meeting (the "Owner Meeting") open to every Owner no less than fifteen (15) days before the Association commences an action for damages against Developer. No less than fifteen (15) days before the Owner Meeting is held, a written notice shall be sent to each Owner specifying all of the following:

- a. that a meeting will take place to discuss alleged problems that may lead to the filing of a civil action, and the time and place of this meeting;
- b. the options that are available to address the alleged problems, including the commencement of an action in accordance with Article XXXIII, below, and a statement of the various alternatives that are reasonably foreseeable by the Association to pay for those options and whether these payments are expected to be made from the use of Reserve Account funds or the imposition of Basic Assessments or Special Assessments or emergency assessment increases;
- c. the complete text of any Settlement Offer and a concise explanation of the specific reasons for the terms of the Settlement Offer received from Developer and of any offer by Developer to submit the dispute to alternative dispute resolution in accordance with Article XXXIII, below;
- d. the preliminary list of defects provided by the Association to the Developer and a list of any other documents provided by the Association to the Developer pursuant to this Section, and information about where and when Owners may inspect those documents;
- e. a description of the attempts of Developer to correct such Alleged Defect and the opportunities provided to Developer to correct such Alleged Defect;
- f. the estimated cost to repair such Alleged Defect;

g. the name and professional background of the attorney retained by the Association to pursue the claim against Developer and a description of the relationship (if any) between such attorney and any members of the Board;

h. a description of the fee arrangement between such attorney and the Association;

i. the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses; and

j. the estimated time necessary to conclude the action against Developer.

Developer shall pay all expenses attributable to sending the Settlement Offer and any offer for alternative dispute resolution to all Owners. Declarant shall also pay the expense of holding the Owner Meeting, not to exceed Three Dollars (\$3.00) per Owner other than Developer.

The discussions at the Owner Meeting and the contents of the notice of Owner Meeting and the items required to be specified in such notice are privileged communications and are not admissible in evidence in any civil action, unless the Association consents to their admission.

2. If the Association is relieved of its obligation to satisfy the requirements of this Section other than this subsection K.2. and subsection L., below, then the Association may commence an action for damages against Declarant only if Association sends a written notice to each Owner at least thirty (30) days prior to commencing such action, which notice shall include all of the following:

a. the preliminary list of defects provided by the Association to Developer and a list of any other documents provided by the Association to Developer pursuant to this Section, and information about where and when Owners may inspect those documents;

b. the options, including civil actions, that are available to address the alleged problems;

c. a statement that informing the Owners of the procedure required by the Project Documents for the Owners to call a special meeting of the Owners and that if the Owners meet such procedure, a special meeting of the Owners shall be called;

d. a description of the attempts of Developer to correct such Alleged Defect and the opportunities provided to Developer to correct such Alleged Defect;

e. the estimated cost to repair such Alleged Defect;

f. the name and professional background of the attorney retained by the Association to pursue the claim against Developer and a description of the relationship (if any) between such attorney and any members of the Board;

g. a description of the fee arrangement between such attorney and the Association;

h. the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Developer and the source of the funds which will be used to pay such fees and expenses; and

i. the estimated time necessary to conclude the action against Developer.

L. Any judgment or award in connection with any legal action, cause of action, proceeding, reference or arbitration against Developer alleging damages (i) for the costs of repairing or the replacement of any Alleged Defect, (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any consequential damages resulting from such Alleged Defect shall first be used to correct and or repair such

Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Association recovers any funds from Developer (or any other person or entity) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund unless at least seventy-five percent (75%) of the voting power of the Association elects to allocate or distribute the remaining funds otherwise.

M. As soon as is reasonably practicable after the Association and the Developer have entered into a settlement agreement or the matter has otherwise been resolved regarding alleged defects in the Common Elements, where the defects giving rise to the dispute have not been corrected, the Association shall, in writing, inform only the Owners whose names appear on the records of the Association that the matter has been resolved, by settlement agreement or other means, and disclose all of the following:

1. A general description of the defects that the Association reasonably believes, as of the date of the disclosure, will be corrected or replaced;

2. A good faith estimate, as of the date of the disclosure, of when the Association believes that the defects identified in subsection M.1., above, will be corrected or replaced. The Association may state that the estimate may be modified;

3. The status of the claims for defects in the design or construction of the Condominium Project that were not identified in subsection M.1., above, whether expressed in a Preliminary List of Alleged Defects sent to each Owner or otherwise claimed and disclosed to the Owners. The Association may amend the disclosures required pursuant to this subsection M. and any amendments shall supersede any prior conflicting information disclosed to the Owners.

Nothing set forth in this Section shall be construed to impose any obligation on Developer to inspect, repair or replace any item or Alleged Defect for which Developer is not otherwise obligated to do under applicable law. The right of Developer to enter, inspect, repair, and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Developer in the Land Court.

XXXIII. ALTERNATIVE DISPUTE RESOLUTION.

In the event of the occurrence of any controversy or claim arising out of, or related to, this Declaration or to any alleged construction or design defects pertaining to the Common Elements or to the Improvements in the Project ("dispute"), if the dispute cannot be resolved by negotiation, the parties to the dispute agree to submit the dispute to mediation by a mediator mutually selected by the parties. If the parties are unable to agree upon a mediator, then the mediator shall be appointed by the American Arbitration Association. In any event, the mediation shall take place within thirty (30) days of the date that a party gives the other party written notice of its desire to mediate the dispute. If the dispute is not resolved through mediation, the dispute shall be resolved by arbitration pursuant to this Article and the then-current rules and supervision of the American Arbitration Association. The duties to mediate and arbitrate hereunder shall extend to any officer, employee, shareholder, principal, partner, agent trustee-in-bankruptcy, affiliate, subsidiary, third-party beneficiary, or guarantor of all parties making or defending any claim which would otherwise be subject to this Article.

The arbitration shall be held in Honolulu, Hawaii before a single arbitrator who is knowledgeable in the subject matter at issue. The arbitrator's decision and award shall be final and binding and may be entered in any court having jurisdiction thereof. The arbitrator shall not have the power to award punitive, exemplary, or consequential damages, or any damages excluded by, or in excess of, any damage limitations expressed in this Declaration or any other agreement between the parties. In order to prevent irreparable harm, the arbitrator may grant temporary or permanent injunctive or other equitable relief for the protection of property rights.

Issues of arbitrability shall be determined in accordance with the federal substantive and procedural laws relating to arbitration; all other aspects of the dispute shall be interpreted in accordance with, and the arbitrator shall apply and be bound to follow, the substantive laws of the State of Hawaii. Each party shall bear its own attorneys'

fees associated with negotiation, mediation, and arbitration, and other costs and expenses shall be borne as provided by the rules of the American Arbitration Association.

If court proceedings to stay litigation or compel arbitration are necessary, the party who unsuccessfully opposed such proceedings shall pay all associated costs, expenses, and attorneys' fees which are reasonably incurred by the other party.

The arbitrator may order the parties to exchange copies of nonrebuttable exhibits and copies of witness lists in advance of the arbitration hearing. However, the arbitrator shall have no other power to order discovery or depositions unless and then only to the extent that all parties otherwise agree in writing.

Neither a party, witness, or the arbitrator may disclose the facts of the underlying dispute or the contents or results of any negotiation, mediation, or arbitration hereunder without prior written consent of all parties, unless and then only to the extent required to enforce or challenge the negotiated agreement or the arbitration award, as required by law, or as necessary for financial and tax reports and audits.

No party may bring a claim or action, regardless of form, arising out of or related to this Declaration or to any construction or design defects claims pertaining to the Common Elements or to the Improvements of the Project, including any claim of fraud, misrepresentation, or fraudulent inducement, more than one year after the cause of action accrues, unless the injured party cannot reasonably discover the basic facts supporting the claim within one year.

Notwithstanding anything to the contrary in this Article, in the event of alleged violation of a party's property or equitable rights, including, but not limited to, unauthorized disclosure of confidential information, that party may seek temporary injunctive relief from any court of competent jurisdiction pending appointment of an arbitrator. The party requesting such relief shall simultaneously file a demand for mediation and arbitration of the dispute, and shall request the American Arbitration Association to proceed under its rules for expedited procedures. In no event shall any such court-ordered temporary injunctive relief continue for more than thirty (30) days.

If any part of this Article is held to be unenforceable, it shall be severed and shall not affect either the duties to mediate and arbitrate hereunder or any other part of this Article.

XXXIV. DESIGN COMMITTEE AND DESIGN.

The Developer shall have the authority to create a Design Committee and to adopt initial Design Committee Rules for the Project.

XXXV. THE KAPALUA CLUB.

The Kapalua Club is a non-proprietary, non-voting resort membership club located within the Kapalua resort community. The facilities of The Kapalua Club, which include golf, tennis, beach and swimming facilities among others, are owned by Maui Land & Pineapple Company, a Hawaii corporation (the "Kapalua Club Owner"). The Kapalua Club is operated by Kapalua Land Company, Ltd., also a Hawaii corporation (the "Operator"). Various types of memberships are offered in The Kapalua Club. Memberships in The Kapalua Club are offered pursuant to, and are governed by a Membership Plan, Rules and Regulations and Membership Agreements (as any of the same may be amended from time to time, collectively, the "Membership Documents").

Each Owner of a Resort Apartment, excluding Owners of interests in Club Units and the Owner(s) of Apartments initially acquired by Exclusive Resorts ("Exclusive Resorts Apartments"), subject to approval for membership, is required to acquire at least a Premier Resort Membership in The Kapalua Club and maintain a membership in The Kapalua Club for so long as the Kapalua Club Owner owns the Apartment. For initial purchasers of the Resort Apartments in question, the required membership fee is included in the purchase price of the Apartment. Subsequent purchasers of such Apartments are required to acquire and maintain at least a Premier Resort Membership in The Kapalua Club and must pay the membership joining fee established by the Kapalua Club Owner and/or Operator at the time of the acquisition of the Apartment for the type of membership acquired, subject

to approval for membership. The annual assessment levied by the Association against Owners of the subject Apartments will include the amount of dues payable for a Premier Resort Membership in The Kapalua Club pursuant to the Membership Documents. As more particularly provided herein, the Association has a lien on the Apartment of an Owner who fails to timely pay any assessment owed to the Association, subject to the rights of any mortgagee as to said Apartment. The Association shall, in the event of an Owner's failure to pay such Common Expenses, have all the remedies set forth in Article IX above, including the right to enforce such lien by foreclosure.

With respect to owners of interests in the Club Units, the Club Association will acquire and hold Ritz-Carlton Club, Kapalua Bay Memberships on behalf of such Club Unit Owners, who will be designated users thereunder, subject to approval for membership privileges. These memberships will be paid for by the Developer. The assessment payable by Owners of interests in the Club Units will include the dues and annual fees payable for the Ritz-Carlton Club, Kapalua Bay Memberships pursuant to the Membership Documents, which will be paid by the Club Association to The Kapalua Club. A Club Unit Owner's obligation to pay assessments to the Club Association shall be secured by a lien against such Owner's Club Interest in favor of the Club Association subject, however, to the rights of any mortgagee as to said Club Interest. The Club Association shall, in the event of a Club Unit Owner's failure to pay such assessments, have all remedies available by law, including, without limitation, the right to enforce such lien by foreclosure.

The initial purchaser(s) of the Exclusive Resorts Apartments is(are) eligible to acquire an Exclusive Resorts Membership for each Apartment so acquired.

Pursuant to the Membership Documents, the Kapalua Club Owner and Operator, for themselves, and on behalf of their respective successors and assigns, have reserved the right to modify the Membership Documents, the right to modify, add to, alter or eliminate any of the facilities available for use by members of The Kapalua Club, as well as the right to terminate memberships subject to the terms of the Membership Documents, all as more particularly provided therein.

The Kapalua Club Owner and/or Operator has the ability to establish from time to time, the dues, fees and charges payable by members in respect of membership in The Kapalua Club, except that with respect to Premier Golf and Premier Resort Members, the dues for each year cannot be increased by more than fifteen percent (15%) over the prior year's dues. Notwithstanding the foregoing, however, the dues for Premier Golf and Premier Resort Members can be increased by more than fifteen percent (15%) in any year where new "Club Facilities" (as defined in the Membership Documents) are opened for member use or for the year following the year in which new Club Facilities are opened for member use, as determined in the discretion of the Kapalua Club Owner and/or Operator. Dues increases with respect to the Ritz Carlton Club, Kapalua Bay Memberships are subject to the same limitation as prescribed above with respect to Premier Memberships held by Premier Golf and Premier Resort Members.

Each Owner of a Resort Apartment entitled to enjoy membership privileges at The Kapalua Club, may enjoy such privileges subject to the terms of the Condominium Documents, Program Documents (as to Owners of interests in Club Units), Club Documents (as to Owners of interests in Club Units) and the Membership Documents. In the event of any conflict between the Membership Documents and any of the other documents listed above, the Membership Documents shall control. The covenants herein are intended to, and shall run with all Resort Apartments in the Project, in perpetuity.

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IN WITNESS WHEREOF, the undersigned have executed these presents this 18th day of April, 2006.

KAPALUA BAY, LLC,
a Delaware limited liability company

By: KAPALUA BAY HOLDINGS, LLC, its
Managing Member

By: MLP KB PARTNER, LLC, its
a Hawaii limited liability company,
Managing Member

By: MAUI LAND & PINEAPPLE COMPANY, INC.,
a Hawaii corporation,
its Managing Member

By: Ryan Churchill
Name: Ryan Churchill
Its Vice President

STATE OF Hawaii
COUNTY OF Maui

SS:

On this 18th day of April, 2006 before me personally appeared RYAN CHURCHILL, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Rhonda M. Pang
Name: Rhonda M. Pang
Notary Public, State of Hawaii

My commission expires: 5/25/07

C.S.

EXHIBIT "A"

PROPERTY DESCRIPTION

ITEM ONE (HOTEL PARCEL):

Kapalua Development (Large-Lot) Subdivision
Lot A-4-A-1

All of that certain parcel of land situated on the Northwesterly side of Lower Honoapiilani Road at Honokahua, Napili 2 & 3, Lahaina, Island and County of Maui, State of Hawaii, more particularly described as follows:

Lot A-4-A-1 of KAPALUA DEVELOPMENT (LARGE-LOT) SUBDIVISION, being portions of the land described in and covered by R.P. 1663, L.C. Aw. 5524, Apana 1 to L. Konia and R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, and thus bounded and described:

Beginning at a point on the most Easterly corner of this Lot, the coordinates of said point beginning referred to Government Survey Triangulation Station "HAWEA" being 814.48 feet South and 989.83 feet East and running by azimuths measured clockwise from true South:

1. 20° 46' 26.73 feet along the Northwesterly side of Lower Honoapiilani Road to a point;
2. Thence along same on a curve to the left having a radius of 846.51 feet, the chord azimuth and distance being:
18° 02' 80.74 feet;
3. 15° 18' 22.45 feet along same to a point;
4. 120° 37' 204.91 feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, being also along Lot A-3-A-1 of Kapalua Development (Large-Lot) Subdivision to a point;
5. 101° 19' 107.00 feet along same to a point;
6. 156° 12' 86.44 feet along same to a point;
7. 66° 12' 137.72 feet along same to a point;
8. 336° 12' 19.94 feet along same to a point;
9. 66° 12' 39.00 feet along same to a point;
10. 336° 12' 15.92 feet along same to a point;
11. 66° 12' 6.81 feet along same to a point;
12. 336° 12' 247.75 feet along same to a point;
13. 63° 07' 70.85 feet along same to a point;

14.	94°	50'		104.90	feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, being also along Lot A-2-A of Kapalua Development (Large-Lot) Subdivision to a point;
15.	130°	00'		90.86	feet along same to a point;
16.	110°	00'		34.70	feet along same to a point;
17.	87°	00'		40.63	feet along same to a point;
18.	70°	01'	50"	44.48	feet along same to a point;
19.	64°	30'		155.64	feet along the remainders of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis and R.P. 1663, L.C. Aw. 5524, Apana 1 to L. Konia, being also along Lot A-2-A of Kapalua Development (Large-Lot) Subdivision to a point;
20.	70°	01'	50"	138.97	feet along the remainder of R.P. 1663, L.C. Aw. 5524, Apana 1 to L. Konia, being also along Lot A-2-A of Kapalua Development (Large-Lot) Subdivision to a point;
					Thence along the shoreline as confirmed by the State of Hawaii on January 12, 1977 for the next seven (7) courses, the direct azimuths and distance being;
21.	155°	03'		231.15	feet;
22.	101°	49'		237.81	feet;
23.	131°	47'		270.90	feet;
24.	154°	35'	30"	198.62	feet;
25.	300°	22'		370.37	feet;
26.	208°	16'	30"	392.73	feet;
27.	235°	40'		139.44	feet;
28.	251°	38'	20"	212.47	feet along remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis to a point;
29.	240°	10'	20"	253.00	feet along same to a point;
30.	332°	46'	45"	275.14	feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, being also along Lot A-6 of Kapalua Development Subdivision to a point;
31.	242°	46'	45"	214.25	feet along same to a point;
32.	332°	46'	45"	99.00	feet along same to a point;
33.	350°	51'	10"	259.58	feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, being also along Lot A-5-A-1 of Kapalua Development Subdivision (Bay Villas Reception Center) to a point;

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- | | | | | |
|-----|------|-----|--------|--|
| 34. | 2° | 53" | 99.01 | feet along same to a point; |
| 35. | 303° | 58' | 170.00 | feet along same to a point; |
| 36. | 290° | 28' | 74.82 | feet along same to a point of beginning and containing an area of 18.494 acres, more or less |

Being all of the land conveyed by Warranty Deed with Reservations and Covenants recorded August 31, 2004 at the Bureau of Conveyances of the State of Hawaii as Document No. 2004-178884.

Grantor: Maui Land & Pineapple Company, Inc., a Hawaii corporation
 Grantee: Kapalua Bay, LLC, a Delaware limited liability company

ITEM TWO (PARKING LOT PARCEL):

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 2236, Land Commission Award Number 8522-B, Apana 1 to Kale Davis), situate, lying and being on the Northwesterly side of Lower Honoapiilani Road at Honokahua, Napili 2 and 3, Lahaina (Kapalua), Island and County of Maui, State of Hawaii, being Lot A-5-A-1, of the "KAPALUA DEVELOPMENT SUBDIVISION, (BAY VILLAS RECEPTION CENTER)", a portion of Lot A-5-A and thus bounded and described as per survey map dated December 14, 1989, to-wit:

Beginning at a point at the South corner of this Lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 814.48 feet South and 989.83 feet East and running by azimuths measured clockwise from true South:

- | | | | | |
|-----|--|-----|--------|---|
| 1. | 110° | 28' | 74.82 | feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, same being along the Northeast side of Lot A-4-A of the Kapalua Development Subdivision; |
| 2. | 123° | 58' | 170.00 | feet along same; |
| 3. | 182° | 53' | 99.01 | feet along same; |
| 4. | 170° | 51' | 10" | 259.58 feet along same; |
| 5. | 243° | 30' | 59.50 | feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, same being along the South side of Lot A-6 of the Kapalua Development Subdivision; |
| 6. | 192° | 25' | 65.00 | feet along same; |
| 7. | 273° | 05' | 75.41 | feet along same; |
| 8. | 359° | 48' | 45" | 70.53 feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, same being along the Southwest side of Lot A-5-A-2 of the Kapalua Development Subdivision; |
| 9. | 87° | 57' | 20" | 14.98 feet along same; |
| 10. | Thence along same on a curve to the left having a radius of 4.00 feet, the chord azimuth and distance being: | | | |
| | 357° | 57' | 20" | 8.00 feet; |
| 11. | 267° | 57' | 20" | 14.75 feet along same; |

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12. 359° 48' 45" 60.18 feet along same;
13. 90° 21' 14.03 feet along same;
14. Thence along same on a curve to the left having a radius of 5.00 feet, the chord azimuth and distance being:
47° 30' 25" 6.97 feet;
15. 352° 57' 35" 5.38 feet along same;
16. Thence on a curve to the left having a radius of 18.00 feet, the chord azimuth and distance being:
331° 33' 40" 14.23 feet;
17. 310° 30' 43.83 feet along same;
18. 324° 10' 278.77 feet along same;
19. Thence along the Northwest side of Lower Honoapiilani Road on a curve to the left having a radius of 355.40 feet, the chord azimuth and distance being:
31° 10' 40" 128.45 feet;
20. 20° 46' 39.28 feet along same to the point of beginning and containing an area of 94,623 square feet, more or less.

Being all of the land conveyed by Warranty Deed with Reservations and Covenants recorded August 31, 2004 at said Bureau as Document No. 2004-178885.

Grantor: Maui Land & Pineapple Company, Inc., a Hawaii corporation
 Grantee: Kapalua Bay, LLC, a Delaware limited liability company

AS TO ITEMS ONE AND TWO:

Together with a nonexclusive easement for access over and across all of that certain parcel known as Lot 2-A-1-B-4 of the Kapalua Development Subdivision, provided that said easement shall automatically terminate upon the dedication of said parcel to the County of Maui or any other governmental entity for use as a public Roadway, as provided further that Maui Land & Pineapple Company, Inc., shall have the right to relocate such easement from time to time so long as access from a public Roadway to the hotel is not thereby unreasonably disturbed, being more particularly described as follows:

Kapalua Development Subdivision
 Description of Lot 2-A-1-B-4

That certain parcel of land situated Westerly of Honoapiilani Highway (F.A.P. No. RF-030-1(3)) and at the North end of Lower Honoapiilani Road at Napili 2 & 3 and Honokahua, Lahaina, Island and County of Maui, State of Hawaii, being more particularly described as follows:

Lot 2-A-1-B-4 of the Kapalua Development Subdivision, being portions of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia and Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, and thus bounded and described as follows:

Beginning at a point at the Southeast corner of this Lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 2,200.09 feet South and 363.67 feet East and running by azimuths measured clockwise from true South:

1. 117° 35' 24" 80.90 feet along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along the East side of Lower Honoapiilani Road;
2. Thence along same on a curve to the right having a radius of 146.19 feet, the chord azimuth and distance being:
150° 53' 38.50" 160.54 feet;
3. 94° 11' 53" 40.00 feet along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along the North side of Lower Honoapiilani Road;
4. Thence along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along the West side of Lower Honoapiilani Road on a curve to the left having a radius of 186.19 feet, the chord azimuth and distance being:
358° 13' 8.50" 38.79 feet;
5. 101° 26' 54" 8.45 feet along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along TMK: 4-2-02:04;
6. Thence along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along Lots A-1 and A-2 of the Kapalua Development Subdivision on a curve to the right having a radius of 194.19 feet, the chord azimuth and distance being:
190° 17' 30.50" 115.05 feet;
7. 207° 31' 24" 125.19 feet along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along Lot A-2 of the Kapalua Development Subdivision;
8. Thence along same on a curve to the right having a radius of 236.44 feet, the chord azimuth and distance being:
223° 34' 54" 130.81 feet;
9. 239° 38' 24" 173.40 feet along same;
10. Thence along same on a curve to the left having a radius of 294.16 feet, the chord azimuth and distance being:
224° 01' 54" 158.29 feet;
11. 208° 25' 24" 91.40 feet along same;
12. 212° 55' 24" 141.26 feet along the remainders of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia and Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot A-2 of the Kapalua Development Subdivision;

13. 218° 36' 30" 219.92 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot A-2 of the Kapalua Development Subdivision;
14. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots A-2 and A-3-A of the Kapalua Development Subdivision on a curve to the left having a radius of 408.54 feet, the chord azimuth and distance being:
206° 57' 15" 165.05 feet;
15. 195° 18' 105.66 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots A-3-A and A-4-A of the Kapalua Development Subdivision;
16. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot A-4-A of the Kapalua Development Subdivision on a curve to the right having a radius of 846.51 feet, the chord azimuth and distance being:
198° 02' 80.74 feet;
17. 200° 46' 66.02 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots A-4-A and A-5-A-1 of the Kapalua Development Subdivision;
18. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots A-5-A-1 and A-5-A-2 of the Kapalua Development Subdivision on a curve to the right having a radius of 355.40 feet, the chord azimuth and distance being:
217° 05' 30" 199.80 feet;
19. 233° 25' 337.70 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots A-5-A-2 and A-6 of the Kapalua Development Subdivision;
20. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot A-6 of the Kapalua Development Subdivision on a curve to the right having a radius of 282.65 feet, the chord azimuth and distance being:
262° 28' 30" 274.57 feet;
21. 291° 32' 163.23 feet along same;
22. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot A-6 of the Kapalua Development Subdivision, and the Kapalua Place Subdivision File Plan 1956 on a curve to the left having a radius of 735.94 feet, the chord azimuth and distance being:
286° 47' 30" 121.67 feet;
23. 282° 03' 83.16 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along the Kapalua Place Subdivision, File Plan 1956;
24. Thence along same on a curve to the left having a radius of 148.29 feet, the chord azimuth and distance being:

- 264° 03' 91.65 feet;
25. 246° 03' 77.75 feet along same;
26. Thence along same on a curve to the right having a radius of 1,861.47 feet, the chord azimuth and distance being:
- 248° 11' 138.59 feet;
27. 250° 19' 155.12 feet along same;
28. Thence along same on a curve to the left having a radius of 544.96 feet, the chord azimuth and distance being:
- 242° 12' 30" 153.73 feet;
29. 234° 06' 54.39 feet along same;
30. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also the Kapalua Place Subdivision, File Plan 1956 and Lot A-7-A of the Kapalua Development Subdivision on a curve to the right having a radius of 391.78 feet, the chord azimuth and distance being:
- 245° 02' 45" 148.78 feet;
31. 255° 59' 30" 576.56 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots A-7-A and A-7-C-5 of the Kapalua Development Subdivision;
32. 22° 00' 69.23 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots 2-A-1-B-1 of the Kapalua Development Subdivision;
33. 75° 59' 30" 535.86 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots 2-A-1-B-1 and 2-A-2 of the Kapalua Development Subdivision;
34. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots 2-A-2 and 2-A-4 of the Kapalua Development Subdivision on a curve to the left having a radius of 335.78 feet, the chord azimuth and distance being:
- 65° 02' 45" 127.52 feet;
35. 54° 06' 54.39 feet along same;
36. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot 2-A-2 of the Kapalua Development Subdivision on a curve to the right having a radius of 600.96 feet, the chord azimuth and distance being:
- 62° 12' 30" 169.52 feet;
37. 70° 19' 155.12 feet along same;
38. Thence along same on a curve to the left having a radius of 1,805.47 feet, the chord azimuth and distance being:

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- 68° 11' 134.42 feet;
39. 66° 03' 77.75 feet along same;
40. Thence along same on a curve to the right having a radius of 204.29 feet, the chord azimuth and distance being:
- 84° 03' 126.26 feet;
41. 102° 03' 83.16 feet along the remainder of Royal Patent Number 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots 2-A-3 of the Kapalua Development Subdivision;
42. Thence along same on a curve to the right having a radius of 791.94 feet, the chord azimuth and distance being:
- 106° 47' 30" 130.93 feet;
43. 111° 32' 163.23 feet along same;
44. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots 2-A-3 and 2-A-1-B-1 of the Kapalua Development Subdivision on a curve to the left having a radius of 226.65 feet, the chord azimuth and distance being:
- 82° 28' 30" 220.17 feet;
45. 53° 25' 337.70 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot 2-A-1-B-1 of the Kapalua Development Subdivision;
46. Thence along same on a curve to the left having a radius of 299.40 feet, the chord azimuth and distance being:
- 37° 05' 30" 168.31 feet;
47. 20° 46' 66.02 feet along same;
48. Thence along same on a curve to the left having a radius of 790.51 feet, the chord azimuth and distance being:
- 18° 02' 75.40 feet;
49. 15° 18' 105.66 feet along same;
50. Thence along same on a curve to the right having a radius of 464.54 feet, the chord azimuth and distance being:
- 26° 57' 15" 187.68 feet;
51. 38° 36' 30" 217.14 feet along same;
52. 32° 55' 24" 136.27 feet along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along Lot 2-A-1-B-1 of the Kapalua Development Subdivision;
53. 28° 25' 24" 89.21 feet along same;

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54. Thence along same on a curve to the right having a radius of 350.16 feet, the chord azimuth and distance being:
 44° 01' 54" 188.43 feet;
55. 59° 38' 24" 173.40 feet along same;
56. Thence along same on a curve to the left having a radius of 180.44 feet, the chord azimuth and distance being:
 43° 34' 54" 99.82 feet;
57. 27° 31' 24" 125.19 feet along same;
58. Thence along same on a curve to the left having a radius of 138.19 feet, the chord azimuth and distance being:
 342° 33' 24" 195.32 feet;
59. 297° 35' 24" 56.15 feet along same;
60. Thence along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along Lower Honoapiilani Road on a curve to the left having a radius of 198.00 feet, the chord azimuth and distance being:
 315° 30' 52" 26.02 feet to the point of beginning and containing an area of 5.296 acres, more or less.

SUBJECT, HOWEVER, to the following:

1. AS TO ITEM ONE (HOTEL PARCEL) ONLY (Lot A-4-A-1):
 - a. Title to all mineral and metallic mines reserved to the State of Hawaii.
 - b. Shoreline setback lines as they may be established by the State Land Use Commission or by the various Counties pursuant to the Hawaii Revised Statutes.
 - c. Designation of Easements "E-4" (20 feet wide) and "E-3-B" for Roadway purposes, shown on the survey plan (Certificate Map for "Kapalua Bay Hotel") prepared by George F. Newcomer, Registered Professional Land Surveyor, dated June 6, 1990.

 (The portions of the foregoing easements that affect the land herein described are designated as Easements E-4-A, E-3-B-3 and E-3-B-4, as shown on the Kapalua Development (Large-Lot) Subdivision Map, dated September 2, 1999, prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.)
 - d. A Grant of Easement dated May 7, 1976 for electrical and utility purposes, in favor of Maui Electric Company, Limited, and Hawaiian Telephone Company, now Hawaiian Telcom, Inc., recorded at said Bureau in Book 11443 at Page 479.

The foregoing was amended by instruments dated August 5, 1981, recorded at said Bureau in Book 16030 at Page 319, and dated August 21, 1985 recorded at said Bureau in Book 18998 at Page 100.

(By instrument dated August 21, 1985, recorded at said Bureau in Book 18998 at Page 100, the easements affecting a portion of the land herein described have been designated as Easements "U-3" and "U-5")

- e. Easement Grant and Cancellation dated July 20, 1978 for perpetual nonexclusive easements for Road access purposes over portions of the land described herein, said easements being designated as Easements "E-3-B", containing an area of 23,927 square feet, more or less, and easement "E-3-D", containing an area of 396 square feet, more or less, in favor of United States of America, recorded at said Bureau in Book 13033 at Page 766.

Subordination Agreement and Consent dated May 3, 1978, recorded at said Bureau in Book 13034 at Page 1, that certain easement granted by instrument recorded at said Bureau in Book 11443 at Page 479, was subordinated to said above easements "E-3-B" and "E-3-D".

(The portions of the foregoing easements that affect the land herein described are designated as Easements E-3-B-3, E-3-B-4 and Easement E-3-D, as shown on the Kapalua Development (Large-Lot) Subdivision Map, dated September 2, 1999, prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.)

- f. Partial Cancellation of Sewer Facilities and Transmission Line Land Lease and Grant of Easement dated October 10, 1985 for a nonexclusive easement for sewer purposes over, across and under Easement "S-1", in favor of Kapalua Waste Treatment Company, Ltd., a Hawaii corporation, recorded at said Bureau in Book 19011 at Page 554.
- g. Partial Cancellation of Water Facilities and Transmission Line Land Lease and Grant of Easement dated October 10, 1985 for a nonexclusive easement for waterline and incidental purposes over, across and under Easements "W-5" and "W-7", in favor of Kapalua Water Company, Ltd., a Hawaii corporation, recorded at said Bureau in Book 19011 at Page 579.
- h. The terms and provisions contained in the Private Water System Agreement dated November 20, 1987 made by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation ("Owner"), The KBH Company, a California limited partnership, "Developer", and the County of Maui and its Department of Water Supply, "County", recorded at said Bureau in Book 21596 at Page 691.
- i. Corner of two multi-story buildings located over existing Easement "W-5", as shown on the survey map prepared by Bruce R. Lee, Registered Professional Land Surveyor, with Newcomber - Lee Land Surveyors, Inc., dated May 6, 2004, revised June 22, 2004.
- j. Activity shacks and another improvement known as "Cliff House", guardrail, wood steps, stonewall, concrete bench, spot light stand, wooden fences, drain outlet, concrete pad, concrete walkway and chain fence, which are located within the 40-foot shoreline setback, as shown on the survey map prepared by Bruce R. Lee, Registered Professional Land Surveyor, with Newcomber - Lee Land Surveyors, Inc., dated May 6, 2004, revised June 22, 2004.
- k. Footpath over the Northeasterly corner of the subject parcel which is used by the general public to get to and from the public beach, as noted on the survey map prepared by Bruce R. Lee, Registered Professional Land Surveyor, with Newcomber - Lee Land Surveyors, Inc., dated May 6, 2004, revised June 22, 2004.
- l. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515-6 of the Hawaii Revised Statutes, as

contained in the Warranty Deed with Reservations and Covenants recorded August 31, 2004 at said Bureau as Document No. 2004-178884.

Including a reservation of an "exclusive easement in gross to use, maintain, repair, renovate and replace the existing structures within the shoreline setback on the Property commonly referred to as the "Cliff House", together with a right of vehicular and pedestrian access to and from the "Cliff House" in locations acceptable to Grantee.

- m. The following matters shown on the Topographic Survey Map prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, dated April 25, 2005, revised May 10, 2005, but which have not been granted:
 - i. Existing Drainage Easement D-1.
 - ii. Existing Drainage Easement D-2.
 - iii. Existing Drainage Easement D-5.
 - iv. Existing Roadway Easement R-2.
- n. Cancellation and Termination of Sewer Facilities and Transmission Line Land Lease and Grant of Non-Exclusive Easement dated November 17, 1988 for sewage disposal lines and pumps known as the "Kapalua Water System", in favor of Kapalua Waste Treatment Company, Ltd., a Hawaii corporation, recorded at said Bureau in Book 22586 at Page 751. (Said Grant affects other property.)
- o. Grant of Easement for Access Purposes, recorded on May 2, 2006, by and between Kapalua Bay, LLC, as Grantor, and Maui Land & Pineapple Company, Inc., as Grantee, recorded at said Bureau as Document No. 2006-082345.
- p. Grant of Easement for Pedestrian Access Purposes, recorded on May 2, 2006, by and between Kapalua Bay, LLC, as Grantor, and Maui Land & Pineapple Company, Inc., as Grantee, recorded at said Bureau as Document No. 2006-082346.

2. AS TO ITEM TWO (PARKING PARCEL) ONLY (Lot A-5-A-1):

- a. Title to all mineral and metallic mines reserved to the State of Hawaii.
- b. Easements as disclosed by Declaration of Horizontal Property Regime Bay Villas dated January 14, 1977 for ingress and egress purposes over and across Easement "E-4", containing an area of 9,951 square feet, more or less, and Easement "E-5", containing an area of 8 square feet, more or less, in favor of Lot A-6 (Bay Villas Condominium Project), recorded at said Bureau in Book 11975 at Page 242.

(The portion of the foregoing easements that affect the land herein described are designated as Easements E-4-B, as shown on the Kapalua Development (Large-Lot) Subdivision Map, dated September 2, 1999, prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.)
- c. Restriction of vehicular access into and from Lower Honoapiilani Road, as shown on the Kapalua Development (Large-Lot) Subdivision Map, dated September 2, 1999, prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.
- d. Easement "W-9" for waterline purposes, as shown on the Kapalua Development (Large-Lot) Subdivision Map, dated September 2, 1999, prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597, and also shown on the map dated August 26, 2004, prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.

- e. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515-6 of the Hawaii Revised Statutes, as contained in the Warranty Deed with Reservations and Covenants recorded August 31, 2004 at said Bureau as Document No. 2004-178885.

3. AS TO ITEMS ONE (HOTEL PARCEL) AND TWO (PARKING PARCEL) (Lots A-4-A-1 and A-5-A-1):

- a. A mortgage to secure an original principal indebtedness of \$45,000,000.00, and any other amounts or obligations secured thereby.

Dated : August 30, 2004
Mortgagor : Kapalua Bay, LLC, a Delaware limited liability company
Mortgagee : Bank of Hawaii, a Hawaii corporation, as administrative agent
Recorded August 31, 2004 at said Bureau as Document No. 2004-178887.

- b. Terms and Provisions of that certain unrecorded Management Agreement dated August 31, 2004, made by and between Kapalua Bay, LLC, a Delaware limited liability company, ("Owner") and KB Hotel Operator, Inc., a Hawaii corporation ("Manager"), of which a Memorandum of Management Agreement dated August 31, 2005, recorded August 31, 2005 at said Bureau as Document No. 2004-178889.

Assignment of Management Agreement, Subordination, Non-Disturbance and Attornment Agreement dated August 31, 2004 by and among Bank of Hawaii, a Hawaii corporation ("Mortgagee"), Kapalua Bay, LLC, a Delaware limited liability company ("Owner") and KB Hotel Operator Inc., a Hawaii corporation ("Manager"), recorded June 15, 2005 at said Bureau as Document No. 2005-117551.

- c. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515-6 of the Hawaii Revised Statutes, as contained in the Declaration of Covenants and Restrictions dated December 29, 1976 recorded at said Bureau in Book 11922 at Page 26.

The foregoing was amended and/or supplemented by instruments recorded at said Bureau in Book 19005 at Page 629, in Book 12291 at Page 406, in Book 13502 at Page 442 and in Book 13796 at Page 741.

Said Declaration was amended and Restated by instrument recorded at said Bureau in Book 21185 at Page 173.

The foregoing amended and restated Declaration was amended and or supplemented by instruments recorded at said Bureau in Book 24012 at Page 17, as Document No. 90-049427, as Document No. 90-164621, as Document No. 91-067724 and as Document No. 99-160407.

- d. Cancellation and Termination of Water Facilities and Transmission Line Land Lease and Grant of Non-Exclusive Easement dated November 17, 1988 for and easement over land utilized by Kapalua Water Tank and Filter Plant and Water lines, known as the "Kapalua Water System", in favor of Kapalua Water Company, Ltd., a Hawaii corporation, recorded at said Bureau in Book 22586 at Page 768.

- e. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515-6 of the Hawaii Revised Statutes, as contained in the Declaration of Covenants, Conditions and Restrictions with Authorization of Time Share and Transient Vacation Rentals recorded August 31, 2004 at said Bureau as Document No. 2004-178883.
- f. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
- g. Any and all leases, subleases and/or tenancy agreements, the rights thereunder and encumbrances thereto.
- h. Grant of Easement for Shoreline Access and Recreational Use, recorded on May 2, 2006, by and between Kapalua Bay, LLC, as Grantor, and Kapalua Resort Association, as Grantee, recorded at said Bureau as Document No. 2006-082343.
- i. Grant of Easement for Cliff House Access and for Recreational Use, recorded on May 2, 2006, by and between Kapalua Bay, LLC, as Grantor, and in favor of Maui Land & Pineapple Company, Inc., as Grantee, recorded at said Bureau as Document No. 2006-082344.
- j. Grant of Easement for Waste Treatment Purposes dated May 2, 2006, by and between Kapalua Bay, LLC, as Grantor, and Kapalua Waste Treatment Company, Ltd., as Grantee, recorded at said Bureau as Document No. 2006-082389.
- k. Grant of Easements for Water Utility Purposes dated May 2, 2006, by and between Kapalua Bay, LLC, as Grantor, and Kapalua Water Company, Ltd., as Grantee, recorded at said Bureau as Document No. 2006-082390.
- l. Termination of Warranty Deed Reservations, recorded on May 2, 2006, by and between Maui Land & Pineapple Company, Inc., as Grantor, and Kapalua Bay, LLC, as Grantee, recorded at said Bureau as Document No. 2006-082347.

END OF EXHIBIT "A"

EXHIBIT "A"
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EXHIBIT "B"

Apartment Number, Apartment Type, Number of Bedrooms and Bathrooms, Building Designation,
Approximate Net Square Footage, Approximate Balcony Area, Common Interests, Parking Stall Assignments

Apartment Number	Apartment Type	Number of Bedrooms/ Bathrooms/ Study*	Building Designation	Apprx. Net Square Footage**	Apprx. Balcony Area	Common Interests***	Parking Stall Assignments****
1101	R3-C	4/4.5/1	Building 1	4055	948	1.038436%	023S and 024S
1102	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	042S and 041S
1103	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	048H and 047S
1201	R3-C	4/4.5/1	Building 1	4055	948	1.038436%	021S and 022S
1202	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	025S and 026S
1203	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	013S and 014S
1204	R3-A2	3/3.5	Building 1	2789	661	0.714229%	044S and 043S
1205	R3-A	3/3.5	Building 1	2789	628	0.714229%	046S and 045S
1301	R3-C	4/4.5/1	Building 1	4055	948	1.038436%	019S and 020S
1302	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	029S and 030S
1303	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	009S and 010S
1304	R3-A2	3/3.5	Building 1	2789	661	0.714229%	040S and 039S
1305	R3-A	3/3.5	Building 1	2789	628	0.714229%	015S and 016S
1401	R3-C	4/4.5/1	Building 1	4055	948	1.038436%	017S and 018S
1402	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	031S and 032S
1403	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	001S and 002S
1404	R3-A2	3/3.5	Building 1	2789	661	0.714229%	027S and 028S
1405	R3-A	3/3.5	Building 1	2789	628	0.714229%	011S and 012S
1502	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	035S and 036S
1503	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	005S and 006H
1504	R3-A2	3/3.5	Building 1	2789	661	0.714229%	033S and 034S
1505	R3-A	3/3.5	Building 1	2789	628	0.714229%	007S and 008S
1604	R3-A2	3/3.5	Building 1	2789	661	0.714229%	037S and 038S
1605	R3-A	3/3.5	Building 1	2789	628	0.714229%	003S and 004S
2101	R3-C	4/4.5/1	Building 2	4055	948	1.038436%	099S and 083S
2103	R3-B	3/3.5/1	Building 2	2904	551	0.743679%	105S and 106S
2201	R3-C	4/4.5/1	Building 2	4055	948	1.038436%	098S and 082S
2202	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	073S and 072S
2203	R3-B	3/3.5/1	Building 2	2904	628	0.743679%	103S and 087H
2204	R3-A1	3/3.5	Building 2	2789	613	0.714229%	071S and 070S
2206	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	107S and 108S
2208	R3-A	3/3.5	Building 2	2789	628	0.714229%	104S and 069S
2301	R3-C	4/4.5/1	Building 2	4055	948	1.038436%	097S and 081S
2302	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	061H and 050H
2303	R3-B	3/3.5/1	Building 2	2904	628	0.743679%	102S and 086S
2304	R3-A1	3/3.5/1	Building 2	2789	613	0.714229%	068S and 057S
2306	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	109S and 110S
2308	R3-A	3/3.5	Building 2	2789	628	0.714229%	074S and 075S
2401	R3-C	4/4.5/1	Building 2	4055	948	1.038436%	096S and 080S
2402	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	062S and 051S
2403	R3-B	3/3.5/1	Building 2	2904	628	0.743679%	101S and 085S
2404	R3-A1	3/3.5	Building 2	2789	613	0.714229%	067S and 056C
2406	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	077S and 076S
2408	R3-A	3/3.5	Building 2	2789	628	0.714229%	079S and 078S
2502	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	063S and 052S

Apartment Number	Apartment Type	Number of Bedrooms/ Bathrooms/ Study*	Building Designation	Apprx. Net Square Footage**	Apprx. Balcony Area	Common Interests***	Parking Stall Assignments****
2503	R3-B	3/3.5/1	Building 2	2904	628	0.743679%	100S and 084S
2504	R3-A1	3/3.5	Building 2	2789	613	0.714229%	066S and 055C
2506	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	088C and 095S
2508	R3-A	3/3.5	Building 2	2789	628	0.714229%	089C and 094S
2602	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	064S and 053C
2604	R3-A1	3/3.5	Building 2	2789	613	0.714229%	065S and 054C
2606	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	090C and 093S
2608	R3-A	3/3.5	Building 2	2789	628	0.714229%	091C and 092S
2704	R3-A1	3/3.5	Building 2	2789	613	0.714229%	058S and 059H
2706	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	111S and 112S
3101	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3102	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3201	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3202	C3-B-ADA	3/3.5	Building 3	2019	553	0.517041%	---
3203	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3204	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3205	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3301	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3302	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3303	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3304	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3305	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3401	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3402	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3403	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3404	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3405	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3406	C3-A1	3/3.5	Building 3	2065	461	0.528821%	---
3501	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3502	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3503	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3504	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3505	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3506	C3-A1	3/3.5	Building 3	2065	461	0.528821%	---
3602	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3603	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3604	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3605	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3606	C3-A1	3/3.5	Building 3	2065	461	0.528821%	---
3704	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3705	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
4101	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4102	C2-A-ADA	2/2.5	Building 4	1774	554	0.454300%	---
4201	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4202	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4203	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4204	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4205	C3-C-ADA	3/3.5	Building 4	2087	354	0.534455%	---
4301	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4302	C2-A	2/2.5	Building 4	1774	554	0.454300%	---

EXHIBIT "B"
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Apartment Number	Apartment Type	Number of Bedrooms/ Bathrooms/ Study*	Building Designation	Apprx. Net Square Footage**	Apprx. Balcony Area	Common Interests***	Parking Stall Assignments****
4303	C3-A-ADA	3/3.5	Building 4	2065	461	0.528821%	---
4304	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4305	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
4401	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4402	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4403	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4404	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4405	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
4406	C3-A1	3/3.5	Building 4	2065	461	0.528821%	---
4501	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4502	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4503	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4504	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4505	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
4506	C3-A1	3/3.5	Building 4	2065	461	0.528821%	---
4602	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4603	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4604	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4605	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
4606	C3-A1	3/3.5	Building 4	2065	461	0.528821%	---
4704	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4705	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
5101	R3-B	3/3.5/1	Building 5	2904	551	0.743679%	135S and 136S
5102	R3-A1	3/3.5	Building 5	2789	613	0.714229%	133S and 134S
5103	R3-B1	3/3.5/1	Building 5	2904	551	0.743679%	159S and 160S
5104	R3-A	3/3.5	Building 5	2789	551	0.714229%	142S and 141S
5201	R3-B	3/3.5/1	Building 5	2904	628	0.743679%	137S and 138S
5202	R3-A1	3/3.5	Building 5	2789	613	0.714229%	131S and 132S
5203	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	157S and 158S
5204	R3-A	3/3.5	Building 5	2789	628	0.714229%	144S and 143S
5301	R3-B	3/3.5/1	Building 5	2904	628	0.743679%	123S and 124S
5302	R3-A1	3/3.5	Building 5	2789	613	0.714229%	129S and 130S
5303	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	155S and 156S
5304	R3-A	3/3.5	Building 5	2789	628	0.714229%	146S and 145S
5401	R3-B	3/3.5/1	Building 5	2904	628	0.743679%	125S and 126S
5402	R3-A1	3/3.5	Building 5	2789	613	0.714229%	127S and 128S
5403	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	153S and 154S
5404	R3-A	3/3.5	Building 5	2789	628	0.714229%	148S and 147S
5501	R3-B	3/3.5/1	Building 5	2904	628	0.743679%	116S and 117S
5502	R3-A1	3/3.5	Building 5	2789	613	0.714229%	114S and 115S
5503	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	139S and 140S
5504	R3-A	3/3.5	Building 5	2789	628	0.714229%	151C and 152C
5602	R3-A1	3/3.5	Building 5	2789	613	0.714229%	118S and 119S
5603	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	149H and 150S
6101	R3-B	3/3.5/1	Building 6	2904	628	0.743679%	161S and 168S
6102	R3-A	3/3.5	Building 6	2789	628	0.714229%	169S and 170S
6201	R3-B-ADA	3/3.5/1	Building 6	2904	628	0.743679%	171S and 172S
6202	R3-A	3/3.5	Building 6	2789	628	0.714229%	173S and 174S
6301	R3-B	3/3.5/1	Building 6	2904	628	0.743679%	162S and 163S
6302	R3-A	3/3.5	Building 6	2789	628	0.714229%	164S and 165S

EXHIBIT "B"
(Page 3 of 4)

Apartment Number	Apartment Type	Number of Bedrooms/ Bathrooms/ Study*	Building Designation	Apprx. Net Square Footage**	Apprx. Balcony Area	Common Interests***	Parking Stall Assignments****
6401	R3-B	3/3.5/1	Building 6	2904	628	0.743679%	166S and 167S
Beach Club CA	Commercial	NA	Building 1	6108	NA	1.564205%	---
General Store CA	Commercial	NA	Arrival Building	923	NA	0.236369%	---
Model Unit CA	Commercial	NA	Free Standing	2526	NA	0.646878%	---
Resale Space CA	Commercial	NA	Arrival Building	89	NA	0.022792%	---
Sales Gallery CA	Commercial	NA	Free Standing	8946	NA	2.290962%	---
Total				390491	83294	100.000000%	

* Resort Apartments 1101, 1201, 1301, 1401, 2101, 2201, 2301 and 2401 have a fourth bedroom indicated above that may also be used as a media room. In the event such fourth bedroom in any of these Apartments is converted to a media room, the fourth bathroom will also be eliminated as part of such conversion, resulting in such Apartment having 3 bedrooms and 3 ½ bathrooms.

** The approximate net square footage of each apartment as set forth above is measured from the interior surface of the apartment perimeter and party walls and includes all of the interior walls, columns, chase spaces and partitions within its perimeter walls. The areas shown are approximate only, and the Developer makes no representations or warranties whatsoever as to the area of any particular apartment. The areas for the balconies are computed from the outside surface of the apartment unit walls or exterior glass walls to the outside edge of the balcony structure.

*** The Common Interest for each Apartment was assigned by the Developer taking into account the net interior square footage ("net area") that each Apartment bears to the aggregate net area of all Apartments in the Project, however, the sum of .00002% was added to the Common Interest for the Beach Club Commercial Apartment to permit the total of the Common Interests to equal one hundred percent (100%).

**** Each Resort Apartment sold as a whole unit shall have the exclusive use of two (2) parking stalls assigned to it as Limited Common Elements. Owners and users of all Resort Apartments sold as Club Units must park their vehicles using the valet service of the Project and may only self-park vehicles in the area designated as "Valet Parking" on the Condominium Map. All unassigned parking stalls located within or adjacent to Buildings 1, 2, 5 and 6 of the Project as shown on the Condominium Map shall be Limited Common Elements of the whole unit Resort Apartments assigned parking above, and shall be used on a non-exclusive basis by such whole unit Resort Apartment Owners and as parking for such whole unit Resort Apartment Owners' guests. There are also certain parking stalls that are appurtenant to the Commercial Apartments as Limited Common Elements as well as Public Parking stalls that shall remain Common Elements of the Project, as depicted on the Condominium Map.

END OF EXHIBIT "B"

EXHIBIT "B"
(Page 4 of 4)



R-227 STATE OF HAWAII
 BUREAU OF CONVEYANCES
 RECORDED
 NOV 15, 2006 08:01 AM
 Doc No(s) 2006-208339



/s/ CARL T. WATANABE
 REGISTRAR OF CONVEYANCES

20 1/2 Z8

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK-UP (X)

Imanaka Kudo & Fujimoto
 745 Fort Street, 17th Floor
 Honolulu, Hawaii 96813
 (808) 521-9500 (RTA)

FAM-TS 11229929

①

Tax Map Key No. (2) 4-2-04:028 and 029

Total Pages: 4

**FIRST AMENDMENT TO DECLARATION OF
 CONDOMINIUM PROPERTY REGIME OF KAPALUA BAY CONDOMINIUM**

THIS FIRST AMENDMENT ("Amendment") is made this 3rd day of November, 2006 by KAPALUA BAY, LLC, a Delaware corporation, whose principal place of business and post office address is 120 Kane Street, Kahului, Hawaii 96732 (referred to herein as "Developer").

WITNESSETH:

WHEREAS, by way of that certain Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded in the Office of the Registrar of the Land Court of the State of Hawaii as Document No. 2006-083256, as the same may be amended from time to time (hereinafter called the "Declaration") Developer submitted that certain property located at Kapalua, Island and County of Maui, State of Hawaii, more particularly described in Exhibit "A" attached to said Declaration, to a condominium property regime known as the "Kapalua Bay Condominium" (the "Project"); and

WHEREAS, the Developer desires to amend the Declaration to clarify certain provisions therein as well as to make certain revisions to the Condominium Map for said Project being Map 4222 filed at said Bureau ("Condominium Map"); and

WHEREAS, Article XIII of the Declaration authorizes amendments to the Declaration and Condominium Map upon obtaining the written consent of owners representing seventy-five percent (75%) of the common interest of the Project evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association; and

WHEREAS, the Developer currently is the sole owner of all Apartments in the Project and hereby authorizes this Amendment as evidenced by its execution of this Amendment below; and

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer does hereby amend the Declaration in the following manner:

1. Article I, Section B.20 of the Declaration shall be amended in its entirety to read as follows:

"20. "Common Expenses" means and includes: (a) all expenses pertaining to the administration, management and operation of the Project, and the maintenance, repair and replacement of, and the making of any additions and improvements to, the Common Elements, (b) all expenditures authorized by the Association pursuant to this Declaration, the Bylaws, pursuant to the Act or otherwise required by law, including, without limitation, any costs required to maintain certain landscaped areas of the Bay Villas condominium project situated adjacent to the Project (being Lot A-6 of the Kapalua Development Subdivision) to be created once the existing maintenance building on such property is demolished and removed, which landscaped area will benefit the Project, and (c) all sums designated as such pursuant to the Act, this Declaration or the Bylaws."

2. Article III, second full paragraph, of the Declaration shall be amended in its entirety to read as follows:

"Notwithstanding anything provided to the contrary, pursuant to Section 514A-15(a) of the Act, the Common Expenses of the Project may be apportioned in a fair and equitable manner as determined by the Managing Agent from time to time, provided that the allocation of expenses shall not be based solely on whether Apartments are wholly owned, fractionally owned (i.e. timeshare) or used in a Non-Equity Club, unless a particular type of usage as to a specific group of Apartments results in additional or less expenses to the Association that requires a different assessment from otherwise similar types of Apartments. Further, special charges may not be levied against Owners of Apartments, such Owners' guests invitees or tenants for ordinary wear and tear to the Common Elements regardless of the frequency of use. Assessments for the costs associated with the pool, Pool Bar, Pool Bar Grille, Project refuse may be allocated on the basis of occupancy and not Common Interest as the costs associated with such areas and services may not be dependant upon Apartment size. Any profits generated from the use of a particular Apartment or Limited Common Element area shall not be deemed "common profits" subject to distribution in accordance with the Common Interest as set forth above. The Owner of a Commercial Apartment to which a Limited Common Element is appurtenant shall be entitled to all revenues and profits generated from the Limited Common Element or improvements thereon or uses thereof, and no other Owner shall have any rights thereto."

3. Article IV of the Declaration shall be amended by adding a new section to be identified as Section "H." and shall be entitled "Electrical Room Access Easement" that shall read as follows:

"H. **ELECTRICAL ROOM ACCESS EASEMENT.** MLP, its successors and assigns, shall have a non-exclusive easement over, under and upon the Project to permit the transmission of electricity from that certain electrical room designated as room B112 in the Arrival Building of the Project to the Spa Parcel. The Association shall have the primary obligation to install, maintain and repair all equipment and machinery within room B112, including, without limitation, the switchgear and all such other machinery and equipment necessary to provide electrical service to the Spa Parcel, provided, however, that in the event that the Association fails to install, maintain and repair such equipment and machinery servicing the Spa Parcel, MLP, its agents, employees, consultants, contractors, licensees, successors and assigns shall also have a non-exclusive easement to access room B112 for the limited purpose of installing, maintaining and repairing the equipment and machinery necessary for the transmission of electricity service to the Spa Parcel. In no event shall such easement rights afford MLP or its guests, employees, consultants, contractors, licensees, successors and assigns, access to any other part of the Project, including, without limitation, the Common Elements, except those areas necessary for ingress to, and egress from, electrical room B112.

4. Article XXXV, Second full paragraph, of the Declaration shall be amended in its entirety to read as follows:

"With the exception of Owners of interests in Club Units and the Owner(s) of Apartments initially acquired by Exclusive Resorts ("Exclusive Resorts Apartments"), each Owner of a Resort Apartment, subject to approval for membership, is required to acquire at least a Premier Resort Membership in The Kapalua Club and maintain a

membership in The Kapalua Club for so long as the Kapalua Club Owner owns the Apartment. For initial purchasers of the Resort Apartments, the required membership fee is included in the purchase price of the Apartment. Subsequent purchasers of such Apartments as well as subsequent purchasers of the Exclusive Resort Apartments are required to acquire and maintain at least a Premier Resort Membership in The Kapalua Club and must pay the membership joining fee established by the Kapalua Club Owner and/or Operator at the time of the acquisition of the Apartment for the type of membership acquired, subject to approval for membership. The annual assessment levied by the Association against Owners of the subject Apartments will include the amount of dues payable for a Premier Resort Membership in The Kapalua Club pursuant to the Membership Documents. As more particularly provided herein, the Association has a lien on the Apartment of an Owner who fails to timely pay any assessment owed to the Association, subject to the rights of any mortgagee as to said Apartment. The Association shall, in the event of an Owner's failure to pay such Common Expenses, have all the remedies set forth in Article IX above, including the right to enforce such lien by foreclosure."

5. Sheets T2, T4, T5, T6, 1.36, 1.40, 1.40a, 1.49, 1.50, 2.01, 2.02 and 3.11 of the Condominium Map shall be amended as follows:

a. Sheet T2 shall be amended to update the index of sheets comprising the Condominium Map.

b. Sheets T4 and T6 shall be amended to reflect certain changes to the Sales Gallery and Model Unit Commercial Apartments and valet parking area. The Sales Gallery and Model Unit Commercial Apartments have been relocated to the opposite side of the road and the valet parking area has been reconfigured to include an additional parking stall.

c. Sheets T5 and 1.36 shall be amended to reflect an additional ADA unit in Building 6.

d. Sheets 1.40 and 1.40a shall be amended to reflect certain changes to internal bedroom walls and to add an exterior wall to the third bedroom for the unit types depicted on these sheets.

e. Sheets 1.49, 1.50 and 3.11 are added to the Condominium Map to reflect the layout and elevations for the Sales Gallery and Model Unit Commercial Apartments.

f. Sheets 2.01 and 2.02 shall be amended to reflect various incidental changes to the layout of the Arrival Building, including, without limitation, the addition of an electrical room labeled as B112.

6. Exhibit "B" to the Declaration shall be amended to reflect the substitution of Parking Stall No. 150S as a Limited Common Element appurtenant to Apartment No. 5603, to Parking Stall No. 113S. Accordingly, Apartment No. 5603 shall hereafter have as appurtenant Limited Common Elements, Parking Stall Nos. 149H and 113S.

7. The Condominium Map for the Project shall be revised by replacing the sheets affected by the foregoing amendments as indicated above as well as any other sheets of the Condominium Map to which changes are required to reflect such amendments, which sheets shall be filed concurrently herewith and be hereafter incorporated into, and made a part of, Condominium Map No. 1314 filed in said Office.

In all other respects, said Declaration and said Condominium Map shall remain unchanged and in full force and effect.

The parties hereto agree that this Amendment may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, the delivery of this Amendment, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the parties have executed this Amendment on the day and year first above written.

KAPALUA BAY, LLC
a Delaware limited liability company

By: KAPALUA BAY HOLDINGS, LLC, its
Managing Member

By: MLP KB PARTNER, LLC
a Hawaii limited liability company, its
Managing Member

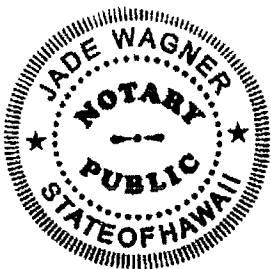
By: Maui land & Pineapple Company, Inc.,
a Hawaii corporation, its
Managing Member

By: Ryan Churchill
Name: Ryan Churchill
Title: Vice President

STATE OF Hawaii
COUNTY OF Maui

SS:

On this 3rd day of November, 2006 before me personally appeared RYAN CHURCHILL, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jade Wagner

Name: JADE WAGNER
Notary Public, State of _____ Expiration Date: June 1, 2007
My commission expires: _____

VERIFIED STATEMENT OF REGISTERED ARCHITECT

STATE OF HAWAII

SS:

CITY AND COUNTY OF HONOLULU

Robert K. Iopa, AIA, being first duly sworn on oath, deposes and says:


That he is an architect duly registered in the State of Hawaii; that he has prepared the site plan, floor plans and elevations comprising the Condominium Map for the condominium project known as "Kapalua Bay Condominium" situate at District of Lahaina, County of Maui, State of Hawaii, located on that certain parcel of land more particularly described in the Declaration of Condominium Property Regime of Kapalua Bay Condominium to which reference is hereby made; that the revised site plans, floor plans and elevations for the Kapalua Bay Condominium project submitted herewith and to be filed with the Condominium Map for said project is an accurate copy of portions of the plans of the building or buildings as filed with the county officer having jurisdiction over the issuance of permits for the construction of buildings.

Further Affiant Sayeth Naught.

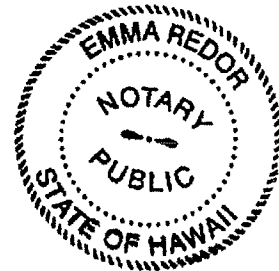
DATED: October 19, 2006.


Robert K. Iopa
Hawaii Registration No. 9890

Subscribed and sworn to before me
this 19th day of October, 2006

Name: 
Notary Public, State of Hawaii

My commission expires: 3/28/08



AU



R-687 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
DEC 10, 2007 03:29 PM
Doc No(s) 2007-212730



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 Z9

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK-UP (X)

Imanaka Kudo & Fujimoto
745 Fort Street, 17th Floor
Honolulu, Hawaii 96813
(808) 521-9500 (RTA)

Tax Map Key No. (2) 4-2-04:028 and 029

Total Pages: 8

**SECOND AMENDMENT TO DECLARATION OF
CONDOMINIUM PROPERTY REGIME OF KAPALUA BAY CONDOMINIUM**

THIS SECOND AMENDMENT ("Amendment") is made this 13th day of November, 2007 by KAPALUA BAY, LLC, a Delaware limited liability company, whose principal place of business and post office address is 120 Kane Street, Kahului, Hawaii 96732 (referred to herein as "Developer").

WITNESSETH:

WHEREAS, by way of that certain Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-083256, as amended by that certain First Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at said Bureau as Document No. 2006-208339 (hereinafter called the "Declaration"), Developer submitted that certain property located at Kapalua, Island and County of Maui, State of Hawaii, more particularly described in Exhibit "A" attached to said Declaration, to a condominium property regime known as the "Kapalua Bay Condominium" (the "Project"); and

WHEREAS, the Developer desires to further amend the Declaration to clarify certain provisions therein as well as to make certain revisions to the Condominium Map for said Project being Map 4222 filed at said Bureau ("Condominium Map"); and

WHEREAS, Article XIII of the Declaration authorizes amendments to the Declaration and Condominium Map upon obtaining the written consent of owners representing seventy-five percent (75%) of the common interest of the Project evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association; and

WHEREAS, the Developer currently is the sole owner of all Apartments in the Project and hereby authorizes this Amendment as evidenced by its execution of this Amendment below; and

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer does hereby amend the Declaration in the following manner:

1. Article II, Section D of the Declaration shall be amended by adding two new sections to be identified as subsections 5 and 6 that shall read as follows:

"5. **GENERAL STORE COMMERCIAL APARTMENT.** The General Store Commercial Apartment, which is created with the intent that business be conducted in it shall have appurtenant thereto, as Limited Common Elements, the two (2) Pool areas adjacent to Building 6 as depicted on the Condominium Map.

6. **RESORT APARTMENT 1205.** Resort Apartment 1205, shall have appurtenant thereto, as a Limited Common Element, the landscaped yard area adjacent to such Apartment as depicted on the Condominium Map."

2. The following Sheets of the Condominium Map have been amended to reflect the following changes as well as all other changes duly reflected thereon:

a. Sheet T1 is amended to remove reference to the Ocean Bar and to remove the water rill feature shown from the Pool Bar to the swimming pool.

b. Sheet T2 is amended to remove reference to the Ocean Bar with respect to sheet 3.08 and to add new sheet 1.21a.

c. Sheets T4 and T6 are amended to remove the water rill feature from the Pool Bar to the swimming pool.

d. Sheets T4, T6, 1.29 through 1.35 are amended to reflect the relocation of the footprint of Building 5. Such repositioning of the footprint of Building 5 has not adversely impacted any Apartment or amenity of the Project.

e. Sheet 1.01 is amended to reflect the addition of a storage and pump room area within the parking area.

f. Sheet 1.02 is amended to reflect the addition of a storage and pump room area within the parking area and indicate these areas as Commercial Limited Common Elements.

g. A new Sheet 1.21a is added to reflect the pool room at Building 4, El. 52.

h. Sheet 1.37 is amended to revise the two pools adjacent to Building 6 to be Limited Common Element areas.

i. Sheet 1.38 is amended to remove the door from the water closet in the Master Bedroom as to Unit Type C2-A to comply with Fair Housing Act regulations.

j. Sheet 1.47 is amended to reflect the floor plan depicting Bedroom 4.

k. Sheet 1.48 is amended to reflect the floor plan with Media Room in lieu of Bedroom 4.

l. Sheet 2.01 is amended to revise Member Storage B114 to Storage/Office B114 and to add Member Storage B144A in Attic Storage B144.

m. Sheet 2.02 is amended to indicate Member Storage B144A as Fractional Limited Common Elements.

n. Sheets 2.03 and 2.04 are amended to remove reference to the water rill feature

o. Sheet 2.08 is amended to remove the water rill to the swimming pool.

p. Sheet 3.08 is amended to remove the Ocean Bar elevations and plan view.

3. The form of Exhibit "B" attached hereto shall replace existing Exhibit "B" to the Declaration.

4. The Condominium Map for the Project shall be revised by replacing all sheets thereof, including, without limitation those sheets affected by the foregoing amendments as indicated above, which sheets shall be filed concurrently herewith and shall hereafter be deemed to be Condominium Map No. 4222 of the Project filed at said Bureau.

In all other respects, said Declaration and said Condominium Map shall remain unchanged and in full force and effect.

The parties hereto agree that this Amendment may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, the delivery of this Amendment, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the undersigned has executed this Amendment on the day and year first above written.

KAPALUA BAY, LLC,
a Delaware limited liability company

By *Ryan Churchill*
RYAN CHURCHILL
Its PRESIDENT

STATE OF HAWAII

SS:

COUNTY OF MAUI

On this 13th day of November, 2007 before me personally appeared RYAN CHURCHILL, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Shirika Nakagawa
Name: Shirika Nakagawa
Notary Public, State of Hawaii

My commission expires: 10/3/2011 h.s.

EXHIBIT "B"

Apartment Number, Apartment Type, Number of Bedrooms and Bathrooms, Building Designation,
Approximate Net Square Footage, Approximate Balcony Area, Common Interests, Parking Stall Assignments

Apartment Number	Apartment Type	Number of Bedrooms/ Bathrooms/ Study*	Building Designation	Aprx. Net Square Footage**	Aprx. Balcony Area	Common Interests***	Parking Stall Assignments****
1101	R3-C	4/4.5/1	Building 1	4055	948	1.038436%	023S and 024S
1102	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	042S and 041S
1103	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	048H and 047S
1201	R3-C	4/4.5/1	Building 1	4055	948	1.038436%	021S and 022S
1202	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	025S and 026S
1203	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	013S and 014S
1204	R3-A2	3/3.5	Building 1	2789	661	0.714229%	044S and 043S
1205	R3-A	3/3.5	Building 1	2789	628	0.714229%	046S and 045S
1301	R3-C	4/4.5/1	Building 1	4055	948	1.038436%	019S and 020S
1302	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	029S and 030S
1303	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	009S and 010S
1304	R3-A2	3/3.5	Building 1	2789	661	0.714229%	040S and 039S
1305	R3-A	3/3.5	Building 1	2789	628	0.714229%	015S and 016S
1401	R3-C	4/4.5/1	Building 1	4055	948	1.038436%	017S and 018S
1402	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	031S and 032S
1403	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	001S and 002S
1404	R3-A2	3/3.5	Building 1	2789	661	0.714229%	027S and 028S
1405	R3-A	3/3.5	Building 1	2789	628	0.714229%	011S and 012S
1502	R3-B3	3/3.5/1	Building 1	2904	613	0.743679%	035S and 036S
1503	R3-B2	3/3.5/1	Building 1	2904	551	0.743679%	005S and 006H
1504	R3-A2	3/3.5	Building 1	2789	661	0.714229%	033S and 034S
1505	R3-A	3/3.5	Building 1	2789	628	0.714229%	007S and 008S
1604	R3-A2	3/3.5	Building 1	2789	661	0.714229%	037S and 038S
1605	R3-A	3/3.5	Building 1	2789	628	0.714229%	003S and 004S
2101	R3-C	4/4.5/1	Building 2	4055	948	1.038436%	099S and 083S
2103	R3-B	3/3.5/1	Building 2	2904	551	0.743679%	105S and 106S
2201	R3-C	4/4.5/1	Building 2	4055	948	1.038436%	098S and 082S
2202	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	073S and 072S
2203	R3-B	3/3.5/1	Building 2	2904	628	0.743679%	103S and 087H
2204	R3-A1	3/3.5	Building 2	2789	613	0.714229%	071S and 070S
2206	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	107S and 108S
2208	R3-A	3/3.5	Building 2	2789	628	0.714229%	104S and 069S
2301	R3-C	4/4.5/1	Building 2	4055	948	1.038436%	097S and 081S
2302	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	061H and 050H
2303	R3-B	3/3.5/1	Building 2	2904	628	0.743679%	102S and 086S
2304	R3-A1	3/3.5/1	Building 2	2789	613	0.714229%	068S and 057S
2306	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	109S and 110S
2308	R3-A	3/3.5	Building 2	2789	628	0.714229%	074S and 075S
2401	R3-C	4/4.5/1	Building 2	4055	948	1.038436%	096S and 080S
2402	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	062S and 051S
2403	R3-B	3/3.5/1	Building 2	2904	628	0.743679%	101S and 085S
2404	R3-A1	3/3.5	Building 2	2789	613	0.714229%	067S and 056C
2406	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	077S and 076S
2408	R3-A	3/3.5	Building 2	2789	628	0.714229%	079S and 078S
2502	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	063S and 052S

Apartment Number	Apartment Type	Number of Bedrooms/ Bathrooms/ Study*	Building Designation	Apprx. Net Square Footage**	Apprx. Balcony Area	Common Interests***	Parking Stall Assignments****
2503	R3-B	3/3.5/1	Building 2	2904	628	0.743679%	100S and 084S
2504	R3-A1	3/3.5	Building 2	2789	613	0.714229%	066S and 055C
2506	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	088C and 095S
2508	R3-A	3/3.5	Building 2	2789	628	0.714229%	089C and 094S
2602	R3-B2	3/3.5/1	Building 2	2904	551	0.743679%	064S and 053C
2604	R3-A1	3/3.5	Building 2	2789	613	0.714229%	065S and 054C
2606	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	090C and 093S
2608	R3-A	3/3.5	Building 2	2789	628	0.714229%	091C and 092S
2704	R3-A1	3/3.5	Building 2	2789	613	0.714229%	058S and 059H
2706	R3-B1	3/3.5/1	Building 2	2904	661	0.743679%	111S and 112S
3101	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3102	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3201	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3202	C3-B-ADA	3/3.5	Building 3	2019	553	0.517041%	---
3203	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3204	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3205	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3301	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3302	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3303	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3304	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3305	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3401	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3402	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3403	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3404	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3405	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3406	C3-A1	3/3.5	Building 3	2065	461	0.528821%	---
3501	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3502	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3503	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3504	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3505	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3506	C3-A1	3/3.5	Building 3	2065	461	0.528821%	---
3602	C3-B	3/3.5	Building 3	2019	553	0.517041%	---
3603	C3-A	3/3.5	Building 3	2065	461	0.528821%	---
3604	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3605	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
3606	C3-A1	3/3.5	Building 3	2065	461	0.528821%	---
3704	C2-A	2/2.5	Building 3	1774	554	0.454300%	---
3705	C3-C	3/3.5	Building 3	2087	354	0.534455%	---
4101	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4102	C2-A-ADA	2/2.5	Building 4	1774	554	0.454300%	---
4201	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4202	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4203	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4204	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4205	C3-C-ADA	3/3.5	Building 4	2087	354	0.534455%	---
4301	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4302	C2-A	2/2.5	Building 4	1774	554	0.454300%	---

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Apartment Number	Apartment Type	Number of Bedrooms/ Bathrooms/ Study*	Building Designation	Apprx. Net Square Footage**	Apprx. Balcony Area	Common Interests***	Parking Stall Assignments****
4303	C3-A-ADA	3/3.5	Building 4	2065	461	0.528821%	---
4304	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4305	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
4401	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4402	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4403	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4404	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4405	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
4406	C3-A1	3/3.5	Building 4	2065	461	0.528821%	---
4501	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4502	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4503	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4504	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4505	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
4506	C3-A1	3/3.5	Building 4	2065	461	0.528821%	---
4602	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4603	C3-A	3/3.5	Building 4	2065	461	0.528821%	---
4604	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4605	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
4606	C3-A1	3/3.5	Building 4	2065	461	0.528821%	---
4704	C2-A	2/2.5	Building 4	1774	554	0.454300%	---
4705	C3-C	3/3.5	Building 4	2087	354	0.534455%	---
5101	R3-B	3/3.5/1	Building 5	2904	551	0.743679%	120S and 121S
5102	R3-A1	3/3.5	Building 5	2789	613	0.714229%	134S and 135S
5103	R3-B1	3/3.5/1	Building 5	2904	551	0.743679%	140C and 141C
5104	R3-A	3/3.5	Building 5	2789	551	0.714229%	146S and 147S
5201	R3-B	3/3.5/1	Building 5	2904	628	0.743679%	132S and 133S
5202	R3-A1	3/3.5	Building 5	2789	613	0.714229%	130S and 131S
5203	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	138C and 139C
5204	R3-A	3/3.5	Building 5	2789	628	0.714229%	144S and 145S
5301	R3-B	3/3.5/1	Building 5	2904	628	0.743679%	122S and 123S
5302	R3-A1	3/3.5	Building 5	2789	613	0.714229%	128S and 129S
5303	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	136S and 137S
5304	R3-A	3/3.5	Building 5	2789	628	0.714229%	142S and 143S
5401	R3-B	3/3.5/1	Building 5	2904	628	0.743679%	124S and 125S
5402	R3-A1	3/3.5	Building 5	2789	613	0.714229%	126S and 127S
5403	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	113S and 156S
5404	R3-A	3/3.5	Building 5	2789	628	0.714229%	155S and 154S
5501	R3-B	3/3.5/1	Building 5	2904	628	0.743679%	118S and 119S
5502	R3-A1	3/3.5	Building 5	2789	613	0.714229%	114S and 115S
5503	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	153S and 152C
5504	R3-A	3/3.5	Building 5	2789	628	0.714229%	151S and 150S
5602	R3-A1	3/3.5	Building 5	2789	613	0.714229%	116S and 117S
5603	R3-B1	3/3.5/1	Building 5	2904	661	0.743679%	149S and 148S
6101	R3-B	3/3.5/1	Building 6	2904	628	0.743679%	161S and 168S
6102	R3-A	3/3.5	Building 6	2789	628	0.714229%	169S and 170S
6201	R3-B-ADA	3/3.5/1	Building 6	2904	628	0.743679%	171S and 172S
6202	R3-A	3/3.5	Building 6	2789	628	0.714229%	173S and 174S
6301	R3-B	3/3.5/1	Building 6	2904	628	0.743679%	162S and 163S
6302	R3-A	3/3.5	Building 6	2789	628	0.714229%	164S and 165S

EXHIBIT "B"
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Apartment Number	Apartment Type	Number of Bedrooms/ Bathrooms/ Study*	Building Designation	Apprx. Net Square Footage**	Apprx. Balcony Area	Common Interests***	Parking Stall Assignments****
6401	R3-B	3/3.5/1	Building 6	2904	628	0.743679%	166S and 167S
Beach Club CA	Commercial	NA	Building 1	6108	NA	1.564205%	---
General Store CA	Commercial	NA	Arrival Building	923	NA	0.236369%	---
Model Unit CA	Commercial	NA	Free Standing	2526	NA	0.646878%	---
Resale Space CA	Commercial	NA	Arrival Building	89	NA	0.022792%	---
Sales Gallery CA	Commercial	NA	Free Standing	8946	NA	2.290962%	---
Total				390491	84031	100.000000%	

* Resort Apartments 1101, 1201, 1301, 1401, 2101, 2201, 2301 and 2401 have a fourth bedroom indicated above that may be alternatively used as a media room. In the event that such fourth bedroom in any of these Apartments is converted to a media room, the number of bathrooms will remain unchanged.

** The approximate net square footage of each apartment as set forth above is measured from the interior surface of the apartment perimeter and party walls and includes all of the interior walls, columns, chase spaces and partitions within its perimeter walls. The areas shown are approximate only, and the Developer makes no representations or warranties whatsoever as to the area of any particular apartment. The areas for the balconies are computed from the outside surface of the apartment unit walls or exterior glass walls to the outside edge of the balcony structure.

*** The Common Interest for each Apartment was assigned by the Developer taking into account the net interior square footage ("net area") that each Apartment bears to the aggregate net area of all Apartments in the Project, however, the sum of .00002% was added to the Common Interest for the Beach Club Commercial Apartment to permit the total of the Common Interests to equal one hundred percent (100%).

**** Each Resort Apartment sold as a whole unit shall have the exclusive use of two (2) parking stalls assigned to it as Limited Common Elements. Owners and users of all Resort Apartments sold as Club Units must park their vehicles using the valet service of the Project and may only self-park vehicles in the area designated as "Valet Parking" on the Condominium Map. All unassigned parking stalls located within or adjacent to Buildings 1, 2, 5 and 6 of the Project as shown on the Condominium Map shall be Limited Common Elements of the whole unit Resort Apartments assigned parking above, and shall be used on a non-exclusive basis by such whole unit Resort Apartment Owners and as parking for such whole unit Resort Apartment Owners' guests. There are also certain parking stalls that are appurtenant to the Commercial Apartments as Limited Common Elements as well as Public Parking stalls that shall remain Common Elements of the Project, as depicted on the Condominium Map.

END OF EXHIBIT "B"

EXHIBIT "B"
(Page 4 of 4)



R-290 STATE OF HAWAII
 BUREAU OF CONVEYANCES
 RECORDED
 MAY 06, 2009 08:01 AM
 Doc No(s) 2009-068617



/s/ NICKI ANN THOMPSON
 REGISTRAR

20 1/2 Z12

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK-UP (X)

Imanaka Kudo & Fujimoto
 745 Fort Street, 17th Floor
 Honolulu, Hawaii 96813
 (808) 521-9500 (RTA)

THIS INSTRUMENT FILED FOR RECORD BY
 FIRST AMERICAN TITLE COMPANY, INC. AS
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Tax Map Key No. (2) 4-2-04:028 and 029

Total Pages: 6

**THIRD AMENDMENT TO DECLARATION OF
 CONDOMINIUM PROPERTY REGIME OF KAPALUA BAY CONDOMINIUM**

THIS THIRD AMENDMENT ("Amendment") is made this 30th day of April, 2009 by KAPALUA BAY, LLC, a Delaware limited liability company, whose principal place of business and post office address is 120 Kane Street, Kahului, Hawaii 96732 (referred to herein as "Developer").

WITNESSETH:

WHEREAS, by way of that certain Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-083256, as amended by that certain First Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at said Bureau as Document No. 2006-208339 and that certain Second Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium ("Second Amendment"), recorded at said Bureau as Document No. 2007-212730 (hereinafter called the "Declaration"), Developer submitted that certain property located at Kapalua, Island and County of Maui, State of Hawaii, more particularly described in Exhibit "A" attached to said Declaration, to a condominium property regime known as the "Kapalua Bay Condominium" (the "Project"); and

WHEREAS, the Developer desires to further amend the Declaration to clarify certain provisions therein as well as to make certain revisions to the Condominium Map for said Project being Map 4222 filed at said Bureau ("Condominium Map"); and

WHEREAS, the Developer, as the holder of certain reserved rights under the Declaration to modify the Declaration and Condominium Map to effect changes to the Project, and as the sole owner of all Apartments in the Project and hereby authorizes this Amendment as evidenced by its execution of this Amendment below;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer does hereby amend the Declaration in the following manner:

476720.8

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EXHIBIT L-3

1. Section I.B. of the Declaration shall be amended to reflect the following additional defined term:

“General Common Elements -- Reserved” shall mean certain Common Elements of the Project that are reserved for the use of the Managing Agent of the Project as designated on the Condominium Map.”

2. Section I.B.16 of the Declaration shall be amended to revise the defined term “Club Units” to read as follows:

“16. “Club Units” means those Resort Apartments submitted to a timeshare plan pursuant to Chapter 514E of the Hawaii Revised Statutes, as amended, and which are, at any given point in time, subject to such a plan. Club Units are also referred to as “Timeshare Units” in the Condominium Map.

3. Article II, Section C.6. of the Declaration shall be amended to read as follows in order to reflect the Ocean Bar:

“6. All swimming pools, whirlpool spas, deck areas, including, without limitation, the Pool Bar and the Pool Grille, the Kid’s Club, the Cliff House, the Pantry, the Beach Shack, the Ocean Bar and all other amenities and Improvements, to the extent such areas are not otherwise designated as Commercial Apartments on the Condominium Map;”

4. Article II, Section C.12. of the Declaration shall be amended to read as follows in order to reflect the term “General Common Elements -- Reserved”:

“12. All other areas on the Condominium Map designated as “General Common Elements” or “General Common Elements - Reserved,” or that are not designated as an Apartment or as a Limited Common Element appurtenant to an Apartment.”

5. Article VI, Section A.1. of the Declaration shall be amended to read as follows in order to clarify that usage provided by Developer, The Ritz-Carlton Development Company, Inc., or The Ritz-Carlton Development Company, Inc.’s affiliates to an Owner of additional days at Apartments submitted to a timeshare plan under Chapter 514E of the Hawaii Revised Statute is not deemed a rental:

“1. RESORT APARTMENTS. THE RESORT APARTMENTS MAY BE USED FOR RESIDENTIAL OR TRANSIENT VACATION RENTAL PURPOSES, FOR OPERATION OF A NON-EQUITY CLUB, OR FOR VACATION OWNERSHIP OR TIMESHARE UNITS PURSUANT TO ANY VACATION OWNERSHIP OR TIMESHARE PLAN OR OTHER INTERVAL OWNERSHIP OR JOINT OWNERSHIP PLAN OR PROGRAM PERMITTED BY LAW, THIS DECLARATION OR THE BYLAWS. Notwithstanding the foregoing, however, transient vacation rental occupancy of any Apartment shall not be for less than six (6) consecutive days, and no Apartment submitted to a timeshare plan under Chapter 514E of the Hawaii Revised Statute, as amended, shall be leased or rented by Owners, except that use by an Owner of additional days in an Apartment made available to Owner through Developer, The Ritz-Carlton Development Company, Inc., or The Ritz-Carlton Development Company, Inc.’s affiliates, and which days are immediately prior to or following such Owner’s use of allocated time under the applicable timeshare plan, shall not be deemed a rental; provided, however, that such Owner’s total occupancy shall not be for less than six (6) consecutive days. All other uses of the Resort Apartments are expressly prohibited.”

6. Article VI, Section C of the Declaration shall be amended to read as follows in order to clarify that The Ritz-Carlton Development Company, Inc. and The Ritz-Carlton Development Company, Inc.’s affiliates may operate a destination club, vacation ownership program or timeshare or similar program in the Project or use Apartments within the Project:

“C. Limitations of Time Share and Non-Equity Club Use. Other than programs operated by Exclusive Resorts and The Ritz-Carlton Club, and its or their successors, affiliates and assigns, including without limitation The Ritz-Carlton Development Company, Inc. and The Ritz-Carlton Development Company, Inc.’s affiliates, no Non-Equity Club, destination club, private residence club, tenancy-in-common occupancy

arrangements, vacation ownership program, timeshare program or other similar uses, shall be operated in the Project or may use Apartments within the Project. These limitations shall remain in effect only as long as the program operators referred to above continue to operate their respective programs; thereafter new programs may be implemented by the Developer, prior to the completion of original Developer sales, or by the approval of no less than 66 2/3% of the votes of the Association, after the completion of original Developer sales, so long as such new programs do not violate any exclusivity right that may still be retained by the former program operators."

7. Article VI, Section K of the Declaration shall be amended to read as follows in order to clarify that Developer, The Ritz-Carlton Development Company, Inc., and The Ritz-Carlton Development Company, Inc.'s affiliates may lease or rent Apartments which they own for promotional purposes and for sales, rental or leasing offices or places utilized to provide services to the Owners:

"K. DEVELOPER'S RIGHT TO USE. Notwithstanding anything provided herein to the contrary, as long as there are unsold Resort Apartments in the Project, Developer, The Ritz-Carlton Development Company, Inc., or any of The Ritz-Carlton Development Company, Inc.'s affiliates shall have the right to use any Apartment which it owns for promotional purposes, and shall have the right to have guests stay in such Apartments for any length of time; provided, that such guests shall abide by and be subject to all of the provisions of the Declaration, By-Laws and House Rules. Additionally, the Developer, The Ritz-Carlton Development Company, Inc., and The Ritz-Carlton Development Company, Inc.'s affiliates will have the right to utilize Apartments which they own or any Limited Common Element which is appurtenant to any Apartment which they own as sales, rental or leasing offices or as a place which is utilized to provide services to the Owners or other occupants of the Project, to the extent such use or uses are permitted under applicable law."

8. Article IX of the Declaration shall be amended to read as follows in order to clarify that assessments of the Association that are levied against Apartments in a vacation ownership or timeshare plan may be delivered to the timeshare association or its designated managing agent as the agent for the timeshare owners:

"IX. COMMON PROFITS AND EXPENSES.

Other than those profits or expenses directly attributable to Limited Common Elements, the common profits of the property shall be distributed among, and the Common Expenses shall be charged to, the Apartment Owners, including the Developer, in proportion to the Common Interest appurtenant to their respective Apartments. Notwithstanding the foregoing, in recognition of the mixed use nature of the Project, the Managing Agent may implement a formula or method whereby Common Expenses will be allocated among Apartment Owners in a fair and equitable manner in accordance with Article III above. Common profits and Common Expenses attributable to Limited Common Elements shall be distributed or charged to the Owners of the Apartments to which the Limited Common Elements are appurtenant in the same proportion as the Common Interests of such Apartments bear to one another. Further, the Developer and the Association may enter into a subsidy agreement, guaranty or any other form of agreement or agreements that pertain to the payment of Common Expenses for the Project.

The Board, acting on behalf of the Association, shall from time to time assess the Common Expenses against all the Apartments in accordance with the Act, this Declaration and the By-Laws. The assessments shall be levied by mailing to the Owner of each Apartment at the address shown in the records of the Association, a written statement setting forth the amount of the assessment against the individual Apartment, or, in the case of Owners who are also owners of interests in a vacation ownership or timeshare plan in the Project, by mailing to the vacation owners or timeshare association, or its duly designated managing agent, as agent for such timeshare Owners, a written statement setting forth the amount of the assessment against the individual Apartment. All sums assessed by the Association but unpaid for the share of the Common Expenses chargeable to any Apartment constitute a lien on the Apartment prior to all other liens, except only: (A) liens for taxes and assessments lawfully imposed by governmental authority against the Apartment, and (B) all sums unpaid on mortgages recorded prior to the recordation of a notice of lien by the Association, and costs and expenses including attorneys' fees provided in such mortgages. The lien may be foreclosed by action by the Managing Agent or Board, acting on behalf of the Apartment Owners, in like manner as a mortgage of real property. In any such foreclosure, the Apartment Owner shall be required to pay a reasonable rental for the Apartment and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the same. The Managing Agent or Board, acting on behalf of the Apartment Owners, may, unless otherwise prohibited in this Declaration, bid on the Apartment at the foreclosure sale, and

acquire and hold, lease, mortgage and convey the same. Action to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same.

Prior to foreclosing upon such lien, the Board or Managing Agent shall provide thirty (30) days prior written notice of its intention to foreclose, by mailing such notice, postage prepaid, to all persons having an interest in such Apartment as shown in a title report pertaining to the Apartment which title report shall be dated not more than sixty (60) days prior to the date of any such notice, including, but not limited to, any holder or insurer of a mortgage of any interest in such Apartment.

Where the mortgagee of a mortgage of record or other purchaser of an Apartment obtains title to the Apartment pursuant to the mortgage or as a result of foreclosure of the mortgage, a conveyance in lieu of foreclosure, or exercise of the remedies provided in the mortgage, the acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to the Apartment which become due prior to the acquisition of title to the Apartment by the acquirer. The unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Apartment Owners, including the acquirer, his successors or assigns."

9. Article XIX of the Declaration shall be amended to read as follows in order to clarify that the Developer may grant or accept easements for the benefit of the Project over the Common Elements of the Project and other property, including, without limitation, the Spa Parcel:

"XIX. RESERVED RIGHT TO GRANT EASEMENTS.

Notwithstanding anything herein provided to the contrary, Developer does hereby reserve the right unto itself, its successors and assigns, to and until December 31, 2026, to delete, relocate, realign, reserve, grant and receive any and all easements and rights of way over, under and on the Common Elements (including Limited Common Elements) and any other property (including, without limitation, the Spa Parcel) deemed necessary or desirable in Developer's sole discretion, including, but not limited to, easements and/or rights of way for utilities, retention ponds, sanitary and storm sewers, cable television, refuse disposal, driveways, parking areas and roadways, provided that such easements and/or rights of way shall not be located on or within any existing structure of the Project and shall not be exercised as to unreasonably disturb, impair or interfere with the normal use and enjoyment of the Project by the Apartment Owners.

Each and every party acquiring an interest in the Project, by such acquisition, consents to such deletion, relocation, realignment, reservation, granting and/or reception of easements and/or rights of way as provided in this Article and to the recordation of any and all documents necessary to effect the same at said Bureau, including, without limitation, any amendment or amendments of this Declaration and any grant of easement; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Apartment or any interest therein, whether by deed, mortgage, or any other instrument of conveyance."

10. The following Sheets of the Condominium Map have been amended to reflect the following changes to the Project as well as all other changes duly reflected thereon:

a. Sheets T1, T2, T4, T6 and 3.08 have been amended to reflect the Ocean Bar and a new Sheet 4.00 has been added to the Condominium Map to provide further detail regarding the Ocean Bar.

b. Sheet T3 has been amended to revise the definition of General Common Elements - Reserved.

c. Sheets T6, 1.01 and 1.02 have been amended to more particularly reflect areas that are Limited Common Elements appurtenant to the Beach Club Commercial Apartment and to more particularly depict the yard area that is a Limited Common Element appurtenant to Resort Apartment 1205.

d. Sheets T5 and 1.36 have been amended to reflect Apartment 6202 as unit type "R3.A" instead of "RS-A.ADA."

e. Sheets T2, 1.49, 1.50 and 3.11 have been amended to more particularly label the Sales Gallery space as the "Sales Gallery Commercial Apartment" and the Model Unit space as the "Model Unit Commercial Apartment".

f. Sheets 2.02, 2.04 and 2.06 have been amended to change certain areas depicted as "General Common Elements" to "General Common Elements - Reserved".

g. Sheets 2.03 and 2.04 have been further amended to change certain areas depicted as "Fractional Limited Common Elements" to "Limited Common Elements".

h. Sheet 2.05 has been amended to label the General Store space more particularly as the "General Store Commercial Apartment" and the Resale space as the "Resale Space Commercial Apartment".

11. The Developer, as the owner of all Apartments in the Project, pursuant to Article XXVII of the Declaration, hereby redesignates the Fractional Limited Common Elements appurtenant to the Club Units being the "Members Lounge" depicted on Sheet 2.03 and 2.04 of the Condominium Map, as being Limited Common Elements appurtenant to all Resort Apartments, including the Club Units.

12. Exhibit "B" to the Declaration is hereby amended to clarify that with respect to Apartment No. 2304, the information in the column entitled "Number of Bedrooms/Bathrooms/Study" shall be "3/3.5" instead of "3/3.5/1".

13. The Condominium Map for the Project shall be revised by replacing all sheets thereof, including, without limitation, those sheets specifically affected by the foregoing amendments as indicated above, which sheets shall be filed concurrently herewith and shall hereafter be deemed to constitute Condominium Map No. 4222 of the Project filed at said Bureau.

In all other respects, said Declaration and said Condominium Map shall remain unchanged and in full force and effect.

The parties hereto agree that this Amendment may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, the delivery of this Amendment, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the undersigned has executed this Amendment on the day and year first above written.

KAPALUA BAY, LLC,
a Delaware limited liability company

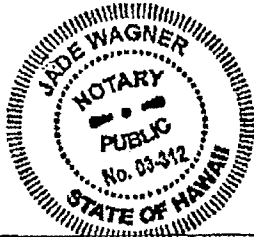
By *Ryan Churchill*
Ryan Churchill
Its PRESIDENT

STATE OF HAWAII

COUNTY OF Maui

SS:

On this 30th day of April, 2009 before me personally appeared RYAN CHURCHILL, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



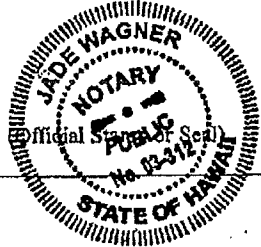
Jade Wagner
Name: _____
Notary Public, State of Hawaii
JADE WAGNER
My commission expires: Expiration Date: June 1, 2011

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: Third Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominiums Document Date: Updated at time of notarization

No. of Pages: 6 Jurisdiction: Second Circuit
(in which notarial act is performed)

Jade Wagner 4/30/2009
Signature of Notary Date of Certificate
JADE WAGNER
Expiration Date: June 1, 2011
Printed Name of Notary



CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE
ORIGINAL RECORDED ON JULY
14, 2009 IN THE BUREAU OF
CONVEYANCES OF THE STATE
OF HAWAII AS DOCUMENT
NOS. 2009-107544 - 2009-
107545.

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK-UP (X)

Imanaka Kudo & Fujimoto
745 Fort Street, 17th Floor
Honolulu, Hawaii 96813
(808) 521-9500 (RTA)

FAM

2223929

Tax Map Key No. (2) 4-2-04:028 and 029

Total Pages: 11

FOURTH AMENDMENT TO DECLARATION OF
CONDOMINIUM PROPERTY REGIME OF KAPALUA BAY CONDOMINIUM AND APARTMENT DEED

THIS FOURTH AMENDMENT ("Amendment") is made this 30 day of June, 2009 by KAPALUA BAY, LLC, a Delaware limited liability company, whose principal place of business and post office address is 120 Kane Street, Kahului, Hawaii 96732 (referred to herein as "Developer"), and HI MAUI KAPALUA BAY, LLC, a Delaware limited liability company, whose principal place of business and post office address is 1515 Arapahoe Street, Tower 3, Suite 300, Denver, Colorado 80202 ("HI MAUI").

WITNESSETH:

WHEREAS, by way of that certain Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-083256, as amended by that certain First Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at said Bureau as Document No. 2006-208339, that certain Second Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium ("Second Amendment"), recorded at said Bureau as Document No. 2007-212730, and that certain Third Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium ("Third Amendment"), recorded at said Bureau as Document No. 2009-068617 (hereinafter collectively called the "Declaration"), Developer submitted that certain property located at Kapalua, Island and County of Maui, State of Hawaii, more particularly described in Exhibit "A" attached to said Declaration, to a condominium property regime known as the "Kapalua Bay Condominium" (the "Project"); and

WHEREAS, the Developer and HI Maui desire to further amend the Declaration to clarify certain parking stall designations in the Project and to make any corresponding revisions to the Condominium Map for said Project being Map 4222 filed at said Bureau ("Condominium Map"), and to further reassign certain parking stalls between Apartments that are owned by the Developer and HI Maui; and

WHEREAS, pursuant to Hawaii Revised Statutes Section 514A-14, as amended, apartment owners have the right to change the designation of parking stalls which are appurtenant to their respective apartments by amendment

of the declaration of condominium property regime, signed and approved only by the owners of the apartments whose parking stalls are being changed and their respective mortgagees, if any; and

WHEREAS, HI Maui is the owner of Apartment Numbers 2202, 2204, 2206, 2208, 2302, 2304, 2306, 2308, 2406, 2408, 2506, 2508, 2606, 2608 and 2706 ("HI Maui Apartments") pursuant to that certain Apartment Deed recorded at said Bureau as Document No. 2009-096381 ("HI Deed"), which HI Maui Apartments are encumbered by that certain mortgage instrument made by HI Maui, as Mortgagor, in favor of The Ritz-Carlton Development Company, Inc., as Mortgagee ("RCDC"), recorded at said Bureau as Document No. 2009-096382; and

WHEREAS, the Developer is the owner of all other Apartments in the Project other than the HI Maui Apartments; and

WHEREAS, the Apartments in the Project other than the HI Maui Apartments, are encumbered by that certain mortgage instrument dated July 14, 2006 made by Developer, as Mortgagor, in favor of Lehman Brothers Holdings, Inc., as Mortgagee ("Mortgage"), recorded at said Bureau as Document No. 2006-129745, as amended, and as assigned to Central Pacific Bank, in its capacity as the successor Agent for itself and the other Current Co-Lenders by instrument recorded on February 11, 2009, recorded at said Bureau as Document No. 2009-019982; and

WHEREAS, pursuant to Article XIII of the Declaration, Developer and HI Maui, as the owners collectively of Apartments in the Project to which one hundred percent (100%) of the Common Interest in the Project are appurtenant, hereby consent to and authorize this Amendment as evidenced by their execution of this Amendment below; and

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer and HI Maui, do hereby amend the Declaration in the following manner:

1. The designation of certain parking stalls set forth in Exhibit "B" to the Declaration shall be modified to read as follows in order to ensure consistency with the parking stall designations set forth in the Condominium Map:

Apartment Number	Original Parking Stall Designation	Modified Parking Stall Designation
1103	048H	048S
1503	006H	006CH
2203	087H	087C
2302	050H	050CH
2302	061H	061CH
2608	091C	091S
2704	059H	059S
5303	136S	136CH
5303	137S	137C
5403	113S	113C

5502	114S	114C
5503	152C	152S
6101	161S	161H

2. Exhibit "B" to the Declaration shall be further amended to delete reference to Parking Stall Number 112S as being a Limited Common Element appurtenant to Apartment Number 2706 as there is no Parking Stall Number 112S designated in the Project.

3. As stated in Exhibit "B" to the Declaration, the parking stall assignments for Apartments Numbers 6101, 6102, 6201, 6202, 6301, 6302 and 6401 within Building 6 of the Project pertaining to Parking Stall Numbers 161H, 162S, 163S, 164S, 165S, 166S, 167S, 168S, 169S, 170S, 171S, 172S, 173S and 174S ("Building 6 Stalls") are Limited Common Elements appurtenant to those Apartments as indicated in said Exhibit "B." Accordingly, revised Sheet T6 of the Condominium Map filed concurrently herewith, is amended to change the legend designation indicating that such areas are Fractional Limited Common Elements to the legend designation indicating that such areas are "Limited Common Elements", and to further, more accurately depict the layout of the parking area containing such Building 6 Stalls and Parking Stall Number 175S.

4. Revised Sheet 1.29 of the Condominium Map also filed concurrently herewith, is amended to correctly reflect Parking Stalls Numbers 113S and 114S as Parking Stalls "113C" and "114C", respectively, to be consistent with the Declaration.

5. The Developer and HI Maui do hereby amend the Declaration and the HI Deed (with respect to Apartment Numbers 2302 and 2608) to reflect the revised parking stall designations set forth in Section 1 above and, pursuant to Hawaii Revised Statutes Section 514A-14, as amended, to effectuate the following parking stall transfers, effective as of the date of recordation of this Amendment at said Bureau: (a) HI Maui does hereby change the designation of Parking Stall Number 109S from being a Limited Common Element appurtenant to Apartment Number 2306 that HI Maui owns, to being a Limited Common Element appurtenant to Apartment Number 2706 that HI Maui also owns, and does further, change the designation of Parking Stall Number 111S from being a Limited Common Element appurtenant to said Apartment Number 2706, to being a Limited Common Element appurtenant to said Apartment 2306; and (b) the Developer and HI Maui do hereby change the designation of Parking Stall Number 060S from being a Limited Common Element appurtenant to all of the Apartments located in Buildings 1, 2, 5 and 6 of the Project to being a Limited Common Element appurtenant solely to Apartment Number 2706.

6. By signing below, Mortgagee does hereby approve and consent to the foregoing parking stall transfers and amendment of the Declaration.

7. By signing below, RCD does hereby approve and consent to the foregoing parking stall transfers and amendment of the Declaration and HI Deed.

In all other respects, said Declaration, Condominium Map and HI Deed shall remain unchanged and in full force and effect. Capitalized terms used herein, unless otherwise noted, shall have the meanings set forth in the Declaration.

The parties hereto agree that this Amendment may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, the delivery of this Amendment, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the undersigned has executed this Amendment on the day and year first above written.

KAPALUA BAY, LLC,
a Delaware limited liability company

By *Ryan Churchill*
RYAN CHURCHILL
Its PRESIDENT

"Developer"

HI MAUI KAPALUA BAY, LLC,
a Delaware limited liability company

By _____
Its _____

"HI Maui"

CENTRAL PACIFIC BANK, a Hawaii corporation, in its
capacity as the successor Agent for itself and the other Current
Co-Lenders

By _____
Its _____

"Mortgagee"

THE RITZ-CARLTON DEVELOPMENT COMPANY, INC.,
a Delaware corporation

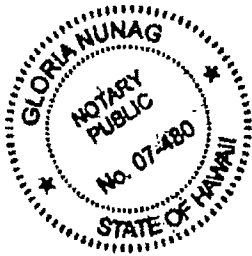
By _____
Its _____

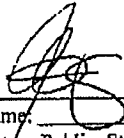
"RCDC"

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

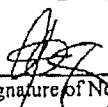
SS:

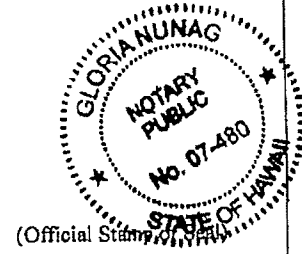
On this 24 day of June, 2009 before me personally appeared RYAN CHURCHILL to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.




Name: _____
Notary Public, State of Hawaii

My commission Gloria Nunag
Notary Public, State of Hawaii
My commission expires: September 16, 2011

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)	
Document Identification or Description: <u>FOURTH AMENDMENT TO DECLARATION</u>	Document Date: <u>JUN 30 2009</u>
No. of Pages: <u>1</u>	Jurisdiction: <u>1st</u> Circuit (in which notarial act is performed)
 Signature of Notary	<u>6/24/09</u> Date of Certificate
<u>GLORIA NUNAG</u> Printed Name of Notary	



IN WITNESS WHEREOF, the undersigned has executed this Amendment on the day and year first above written.

KAPALUA BAY, LLC,
a Delaware limited liability company

By _____
Its _____

"Developer"

HI MAUI KAPALUA BAY, LLC,
a Delaware limited liability company

By Cathy Reis
Cathy Reis
Its SVP, Real Estate

"HI Maui"

CENTRAL PACIFIC BANK, a Hawaii corporation, in its
capacity as the successor Agent for itself and the other Current
Co-Lenders

By _____
Its _____

"Mortgagee"

THE RITZ-CARLTON DEVELOPMENT COMPANY, INC.,
a Delaware corporation

By _____
Its _____

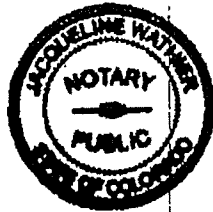
"RCDC"

STATE OF COLORADO

COUNTY OF Adams

SS:

On this 23 day of June, 2009 before me personally appeared Cathy Ross, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



My Commission Expires Sept. 12, 2010

Jacqueline Wathier
Name: Jacqueline Wathier
Notary Public, State of Colorado

My commission expires: Sep 12, 2010

IN WITNESS WHEREOF, the undersigned has executed this Amendment on the day and year first above written.

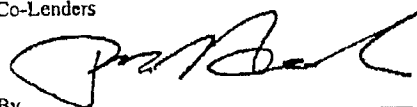
KAPALUA BAY, LLC,
a Delaware limited liability company

By _____
Its _____
"Developer"

HI MAUI KAPALUA BAY, LLC,
a Delaware limited liability company

By _____
Its _____
"HI Maui"

CENTRAL PACIFIC BANK, a Hawaii corporation, in its
capacity as the successor Agent for itself and the other Current
Co-Lenders


By _____
RYAN M. HARADA
Its Executive Vice President
"Mortgagee"

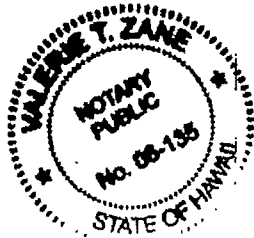
THE RITZ-CARLTON DEVELOPMENT COMPANY, INC.,
a Delaware corporation

By _____
Its _____
"RCDC"

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

SS:

On this 26th day of June, 2009 before me personally appeared Ryan M. Harada, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Valerie T. Zane

Name: Valerie T. Zane
Notary Public, State of Hawaii

My commission expires: 03/05/2010

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

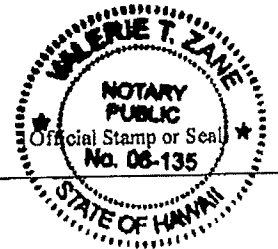
Document Identification or Description: Fourth Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium and Apartment Deed Document Date: undated at time of Notary

No. of Pages: 11 Jurisdiction: First Circuit
(in which notarial act is performed)

Valerie T. Zane
Signature of Notary

06/26/09
Date of Certificate

Valerie T. Zane
Printed Name of Notary



IN WITNESS WHEREOF, the undersigned has executed this Amendment on the day and year first above written.

KAPALUA BAY, LLC,
a Delaware limited liability company

By _____
Its _____
"Developer"

HI MAUI KAPALUA BAY, LLC,
a Delaware limited liability company

By _____
Its _____
"HI Maui"

CENTRAL PACIFIC BANK, a Hawaii corporation, in its
capacity as the successor Agent for itself and the other Current
Co-Lenders

By _____
Its _____
"Mortgagee"

THE RITZ-CARLTON DEVELOPMENT COMPANY, INC.,
a Delaware corporation

By John G. Miller
Its John G. Miller
Vice President
"RCDC"

STATE OF FLORIDA
COUNTY OF ORANGE

SS:

On this 24th day of June, 2009 before me personally appeared JOHN GILLER, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



C-S-

Name: CAROL FUGGI
Notary Public, State of FLORIDA
My commission expires: 08/15/2013





R-231 STATE OF HAWAII
 BUREAU OF CONVEYANCES
 RECORDED
 FEB 18, 2010 08:01 AM
 Doc No(s) 2010-022936



/s/ NICKI ANN THOMPSON
 REGISTRAR

20 1/2 Z12

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK-UP (X)

FAM

2223429

*Imanaka Kudo - Fujimoto
 745 Fort St. 17th Floor
 Honolulu HI 96813*

THIS INSTRUMENT FILED FOR RECORD BY
 FIRST AMERICAN TITLE COMPANY, INC. AS
 AN ACCOMMODATION ONLY IT HAS NOT
 BEEN EXAMINED AS TO ITS EXECUTION OR
 AS TO ITS EFFECT UPON THE TITLE.

Tax Map Key No. (2) 4-2-04:028 and 029

Total Pages: 13

**FIFTH AMENDMENT TO DECLARATION OF
 CONDOMINIUM PROPERTY REGIME OF KAPALUA BAY CONDOMINIUM**

THIS FIFTH AMENDMENT ("Amendment") is made this 11th day of February, 2010 by KAPALUA BAY, LLC, a Delaware limited liability company, whose principal place of business and post office address is 870 Haliimaile Road, Makawao, Hawaii 96768 (referred to herein as "Developer");

WITNESSETH:

WHEREAS, by way of that certain Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-083256, as amended by that certain First Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at said Bureau as Document No. 2006-208339, that certain Second Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at said Bureau as Document No. 2007-212730, that certain Third Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at said Bureau as Document No. 2009-068617 and that certain Fourth Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium and Apartment Deed, recorded at said Bureau as Document No. 2009-107544-2009-107545 (hereinafter collectively called the "Declaration"), Developer submitted that certain property located at Kapalua, Island and County of Maui, State of Hawaii, more particularly described in Exhibit "A" attached to said Declaration, to a condominium property regime known as the "Kapalua Bay Condominium" (the "Project"); and

WHEREAS, the Developer, in accordance with its reserved right set forth in Article XIX of the Declaration, desires to revise Exhibit "A" to the Declaration in order to reflect the recordation of certain easements pertaining to the real property underlying the Project; and

WHEREAS, the Developer also desires, in accordance with its reserved right set forth in Article XIII of the Declaration, to record the "as-built" architect's certification for the Project pursuant to Hawaii Revised Statutes Section 514A-12, as amended;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer does hereby amend the Declaration in the following manner:

1. Exhibit "A" to the Declaration is hereby amended by replacing it with the form of Exhibit "A" attached hereto and incorporated herein by this reference. Said Exhibit "A" shall hereafter constitute the description of the real property underlying the Project.

2. In conformance with Section 514A-12 of the Hawaii Revised Statutes, the Developer is hereby filing the as-built statement of the architect for the Project. Said certification is attached hereto as Exhibit "B" and is incorporated herein by this reference.

In all other respects, said Declaration shall remain unchanged and in full force and effect. Capitalized terms used herein, unless otherwise noted, shall have the meanings set forth in the Declaration.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the undersigned has executed this Amendment on the day and year first above written.

KAPALUA BAY, LLC,
a Delaware limited liability company

By *Ryan Churchill*
Ryan Churchill
Its President

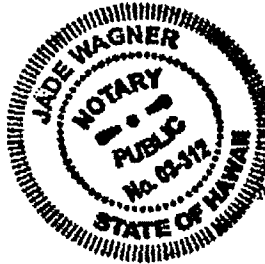
"Developer"

STATE OF HAWAII

SS:

COUNTY OF MAUI

On this 11th day of February, 2010 before me personally appeared RYAN CHURCHILL, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jade Wagner

Name: _____
Notary Public, State of Hawaii

My commission expires: JADE WAGNER
Expiration Date: June 1, 2011

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: Fifth Amendment to Declaration
of Condominium Property Regime of Kapalua Bay
Condominium Document Date: dated at time of notarization

No. of Pages: -13- Jurisdiction: Second Circuit
(in which notarial act is performed)

Jade Wagner February 11, 2010
Signature of Notary Date of Certificate

JADE WAGNER
Expiration Date: June 1, 2011

Printed Name of Notary

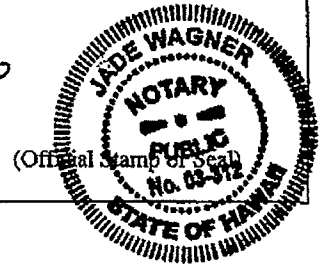


EXHIBIT "A"

ITEM ONE (HOTEL PARCEL):

KAPALUA DEVELOPMENT (LARGE-LOT) SUBDIVISION
LOT A-4-A-1

ALL OF THAT CERTAIN PARCEL OF LAND SITUATED ON THE NORTHWESTERLY SIDE OF LOWER HONOAPIILANI ROAD AT HONOKAHUA, NAPILI 2 & 3, LAHAINA, ISLAND AND COUNTY OF MAUI, STATE OF HAWAII, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT A-4-A-1 OF KAPALUA DEVELOPMENT (LARGE-LOT) SUBDIVISION, BEING PORTIONS OF THE LAND DESCRIBED IN AND COVERED BY R.P. 1663, L.C. AW. 5524, APANA 1 TO L. KONIA AND R.P. 2236, L.C. AW. 8522-B, APANA 1 TO KALE DAVIS, AND THUS BOUNDED AND DESCRIBED:

BEGINNING AT A POINT ON THE MOST EASTERLY CORNER OF THIS LOT, THE COORDINATES OF SAID POINT BEGINNING REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "HAWEA" BEING 814.48 FEET SOUTH AND 989.83 FEET EAST AND RUNNING BY AZIMUTHS MEASURED CLOCKWISE FROM TRUE SOUTH:

1. 20° 46' 26.73 FEET ALONG THE NORTHWESTERLY SIDE OF LOWER HONOAPIILANI ROAD TO A POINT;
2. THENCE ALONG SAME ON A CURVE TO THE LEFT HAVING A RADIUS OF 846.51 FEET, THE CHORD AZIMUTH AND DISTANCE BEING;
18° 02' 80.74 FEET;
3. 15° 18' 22.45 FEET ALONG SAME TO A POINT;
4. 120° 37' 204.91 FEET ALONG THE REMAINDER OF R.P. 2236, L.C. AW. 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOT A-3-A-1 OF KAPALUA DEVELOPMENT (LARGE-LOT) SUBDIVISION TO A POINT;
5. 101° 19' 107.00 FEET ALONG SAME TO A POINT;
6. 156° 12' 86.44 FEET ALONG SAME TO A POINT;
7. 66° 12' 137.72 FEET ALONG SAME TO A POINT;
8. 336° 12' 19.94 FEET ALONG SAME TO A POINT;
9. 66° 12' 39.00 FEET ALONG SAME TO A POINT;
10. 336° 12' 15.92 FEET ALONG SAME TO A POINT;
11. 66° 12' 6.81 FEET ALONG SAME TO A POINT;
12. 336° 12' 247.75 FEET ALONG SAME TO A POINT;
13. 63° 07' 70.85 FEET ALONG SAME TO A POINT;
14. 94° 50' 104.90 FEET ALONG THE REMAINDER OF R.P. 2236, L.C. AW. 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOT A-2-A OF KAPALUA DEVELOPMENT (LARGE-LOT) SUBDIVISION TO A POINT;

15. 130° 00' 90.86 FEET ALONG SAME TO A POINT;

16. 110° 00' 34.70 FEET ALONG SAME TO A POINT;

17. 87° 00' 40.63 FEET ALONG SAME TO A POINT;

18. 70° 01' 50" 44.48 FEET ALONG SAME TO A POINT;

19. 64° 30' 155.64 FEET ALONG THE REMAINDERS OF R.P. 2236, L.C. AW. 8522-B, APANA 1 TO KALE DAVIS AND R.P. 1663, L.C. AW. 5524, APANA 1 TO L. KONIA, BEING ALSO ALONG LOT A-2-A OF KAPALUA DEVELOPMENT (LARGE-LOT) SUBDIVISION TO A POINT;

20. 70° 01' 50" 138.97 FEET ALONG THE REMAINDER OF R.P. 1663, L.C. AW. 5524, APANA 1 TO L. KONIA, BEING ALSO ALONG LOT A-2-A OF KAPALUA DEVELOPMENT (LARGE-LOT) SUBDIVISION TO A POINT;

THENCE ALONG THE SHORELINE AS CONFIRMED BY THE STATE OF HAWAII ON JANUARY 12, 1977 FOR THE NEXT SEVEN (7) COURSES, THE DIRECT AZIMUTHS AND DISTANCE BEING;

21. 155° 03' 231.15 FEET;

22. 101° 49' 237.81 FEET;

23. 131° 47' 270.90 FEET;

24. 154° 35' 30" 198.62 FEET;

25. 300° 22' 370.37 FEET;

26. 208° 16' 30" 392.73 FEET;

27. 235° 40' 139.44 FEET;

28. 251° 38' 20" 212.47 FEET ALONG REMAINDER OF R. P. 2236, L.C. AW. 8522-B, APANA 1 TO KALE DAVIS TO A POINT;

29. 240° 10' 20" 253.00 FEET ALONG SAME TO A POINT;

30. 332° 46' 45" 275.14 FEET ALONG THE REMAINDER OF R.P. 2236, L.C. AW. 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOT A-6 OF KAPALUA DEVELOPMENT SUBDIVISION TO A POINT;

31. 242° 46' 45" 214.25 FEET ALONG SAME TO A POINT;

32. 332° 46' 45" 99.00 FEET ALONG SAME TO A POINT;

33. 350° 51' 10" 259.58 FEET ALONG THE REMAINDER OF R.P. 2236, L.C. AW. 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOT A-5-A-1 OF KAPALUA DEVELOPMENT SUBDIVISION (BAY VILLAS RECEPTION CENTER) TO A POINT;

34. 2° 53' 99.01 FEET ALONG SAME TO A POINT;

35. 303° 58' 170.00 FEET ALONG SAME TO A POINT;

36. 290° 28' 74.82 FEET ALONG SAME TO A POINT OF BEGINNING AND CONTAINING AN AREA OF 18.494 ACRES, MORE OR LESS

ITEM TWO (PARKING LOT PARCEL):

ALL OF THAT CERTAIN PARCEL OF LAND (BEING PORTION(S) OF THE LAND(S) DESCRIBED IN AND COVERED BY ROYAL PATENT GRANT NUMBER 2236, LAND COMMISSION AWARD NUMBER 8522-B, APANA 1 TO KALE DAVIS), SITUATE, LYING AND BEING ON THE NORTHWESTERLY SIDE OF LOWER HONOAPIILANI ROAD AT HONOKAHUA, NAPILI 2 AND 3, LAHAINA (KAPALUA), ISLAND AND COUNTY OF MAUI, STATE OF HAWAII, BEING LOT A-5-A-1, OF THE "KAPALUA DEVELOPMENT SUBDIVISION, (BAY VILLAS RECEPTION CENTER)", A PORTION OF LOT A-5-A AND THUS BOUNDED AND DESCRIBED AS PER SURVEY MAP DATED DECEMBER 14, 1989, TO-WIT:

BEGINNING AT A POINT AT THE SOUTH CORNER OF THIS LOT, THE COORDINATES OF SAID POINT OF BEGINNING REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "HAWEA" BEING 814.48 FEET SOUTH AND 989.83 FEET EAST AND RUNNING BY AZIMUTHS MEASURED CLOCKWISE FROM TRUE SOUTH:

1. 110° 28' 74.82 FEET ALONG THE REMAINDER OF R.P. 2236, L.C. AW. 8522-B, APANA 1 TO KALE DAVIS, SAME BEING ALONG THE NORTHEAST SIDE OF LOT A-4-A OF THE KAPALUA DEVELOPMENT SUBDIVISION;
2. 123° 58' 170.00 FEET ALONG SAME;
3. 182° 53' 99.01 FEET ALONG SAME;
4. 170° 51' 10" 259.58 FEET ALONG SAME;
5. 243° 30' 59.50 FEET ALONG THE REMAINDER OF R.P. 2236, L.C. AW. 8522-B, APANA 1 TO KALE DAVIS, SAME BEING ALONG THE SOUTH SIDE OF LOT A-6 OF THE KAPALUA DEVELOPMENT SUBDIVISION;
6. 192° 25' 65.00 FEET ALONG SAME;
7. 273° 05' 75.41 FEET ALONG SAME;
8. 359° 48' 45" 70.53 FEET ALONG THE REMAINDER OF R.P. 2236, L.C. AW. 8522-B, APANA 1 TO KALE DAVIS, SAME BEING ALONG THE SOUTHWEST SIDE OF LOT A-5-A-2 OF THE KAPALUA DEVELOPMENT SUBDIVISION;
9. 87° 57' 20" 14.98 FEET ALONG SAME;
10. THENCE ALONG SAME ON A CURVE TO THE LEFT HAVING A RADIUS OF 4.00 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:
357° 57' 20" 8.00 FEET;
11. 267° 57' 20" 14.75 FEET ALONG SAME;
12. 359° 48' 45" 60.18 FEET ALONG SAME;
13. 90° 21' 14.03 FEET ALONG SAME;

14. THENCE ALONG SAME ON A CURVE TO THE LEFT HAVING A RADIUS OF 5.00 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

47° 30' 25" 6.97 FEET;

15. 352° 57' 35" 5.38 FEET ALONG SAME;

16. THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 18.00 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

331° 33' 40" 14.23 FEET;

17. 310° 30' 43.83 FEET ALONG SAME;

18. 324° 10' 278.77 FEET ALONG SAME;

19. THENCE ALONG THE NORTHWEST SIDE OF LOWER HONOAPILANI ROAD ON A CURVE TO THE LEFT HAVING A RADIUS OF 355.40 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

31° 10' 40" 128.45 FEET;

20. 20° 46' 39.28 FEET ALONG SAME TO THE POINT OF BEGINNING AND CONTAINING AN AREA OF 94,623 SQUARE FEET, MORE OR LESS.

AS TO ITEMS ONE AND TWO:

TOGETHER WITH A NONEXCLUSIVE EASEMENT FOR ACCESS OVER AND ACROSS ALL OF THAT CERTAIN PARCEL KNOWN AS LOT 2-A-1-B-4 OF THE KAPALUA DEVELOPMENT SUBDIVISION, PROVIDED THAT SAID EASEMENT SHALL AUTOMATICALLY TERMINATE UPON THE DEDICATION OF SAID PARCEL TO THE COUNTY OF MAUI OR ANY OTHER GOVERNMENTAL ENTITY FOR USE AS A PUBLIC ROADWAY, AS PROVIDED FURTHER THAT MAUI LAND & PINEAPPLE COMPANY, INC., SHALL HAVE THE RIGHT TO RELOCATE SUCH EASEMENT FROM TIME TO TIME SO LONG AS ACCESS FROM A PUBLIC ROADWAY TO THE HOTEL IS NOT THEREBY UNREASONABLY DISTURBED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

KAPALUA DEVELOPMENT SUBDIVISION
DESCRIPTION OF LOT 2-A-1-B-4

THAT CERTAIN PARCEL OF LAND SITUATED WESTERLY OF HONOAPILANI HIGHWAY (F.A.P. NO. RF-030-1(3)) AND AT THE NORTH END OF LOWER HONOAPILANI ROAD AT NAPILI 2 & 3 AND HONOKAHUA, LAHAINA, ISLAND AND COUNTY OF MAUI, STATE OF HAWAII, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 2-A-1-B-4 OF THE KAPALUA DEVELOPMENT SUBDIVISION, BEING PORTIONS OF ROYAL PATENT 1663, APANA 1, LAND COMMISSION AWARD 5524, APANA 1 TO L. KONIA AND ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, AND THUS BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT AT THE SOUTHEAST CORNER OF THIS LOT, THE COORDINATES OF SAID POINT OF BEGINNING REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "HAWEA" BEING 2,200.09 FEET SOUTH AND 363.67 FEET EAST AND RUNNING BY AZIMUTHS MEASURED CLOCKWISE FROM TRUE SOUTH:

1. 117° 35' 24" 80.90 FEET ALONG THE REMAINDER OF ROYAL PATENT 1663, APANA 1, LAND COMMISSION AWARD 5524, APANA 1 TO L. KONIA, BEING ALSO ALONG THE EAST SIDE OF LOWER HONOAPIILANI ROAD;

2. THENCE ALONG SAME ON A CURVE TO THE RIGHT HAVING A RADIUS OF 146.19 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

150° 53' 38.50" 160.54 FEET;

3. 94° 11' 53" 40.00 FEET ALONG THE REMAINDER OF ROYAL PATENT 1663, APANA 1, LAND COMMISSION AWARD 5524, APANA 1 TO L. KONIA, BEING ALSO ALONG THE NORTH SIDE OF LOWER HONOAPIILANI ROAD;

4. THENCE ALONG THE REMAINDER OF ROYAL PATENT 1663, APANA 1, LAND COMMISSION AWARD 5524, APANA 1 TO L. KONIA, BEING ALSO ALONG THE WEST SIDE OF LOWER HONOAPIILANI ROAD ON A CURVE TO THE LEFT HAVING A RADIUS OF 186.19 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

358° 13' 8.50" 38.79 FEET;

5. 101° 26' 54" 8.45 FEET ALONG THE REMAINDER OF ROYAL PATENT 1663, APANA 1, LAND COMMISSION AWARD 5524, APANA 1 TO L. KONIA, BEING ALSO ALONG TMK: 4-2-02:04;

6. THENCE ALONG THE REMAINDER OF ROYAL PATENT 1663, APANA 1, LAND COMMISSION AWARD 5524, APANA 1 TO L. KONIA, BEING ALSO ALONG LOTS A-1 AND A-2 OF THE KAPALUA DEVELOPMENT SUBDIVISION ON A CURVE TO THE RIGHT HAVING A RADIUS OF 194.19 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

190° 17' 30.50" 115.05 FEET;

7. 207° 31' 24" 125.19 FEET ALONG THE REMAINDER OF ROYAL PATENT 1663, APANA 1, LAND COMMISSION AWARD 5524, APANA 1 TO L. KONIA, BEING ALSO ALONG LOT A-2 OF THE KAPALUA DEVELOPMENT SUBDIVISION;

8. THENCE ALONG SAME ON A CURVE TO THE RIGHT HAVING A RADIUS OF 236.44 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

223° 34' 54" 130.81 FEET;

9. 239° 38' 24" 173.40 FEET ALONG SAME;

10. THENCE ALONG SAME ON A CURVE TO THE LEFT HAVING A RADIUS OF 294.16 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

224° 01' 54" 158.29 FEET;

11. 208° 25' 24" 91.40 FEET ALONG SAME;

12. 212° 55' 24" 141.26 FEET ALONG THE REMAINDERS OF ROYAL PATENT 1663, APANA 1, LAND COMMISSION AWARD 5524, APANA 1 TO L. KONIA AND ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOT A-2 OF THE KAPALUA DEVELOPMENT SUBDIVISION;

13. 218° 36' 30" 219.92 FEET ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOT A-2 OF THE KAPALUA DEVELOPMENT SUBDIVISION;

14. THENCE ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOTS A-2 AND A-3-A OF THE KAPALUA DEVELOPMENT SUBDIVISION ON A CURVE TO THE LEFT HAVING A RADIUS OF 408.54 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

206° 57' 15" 165.05 FEET;

15. 195° 18' 105.66 FEET ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOTS A-3-A AND A-4-A OF THE KAPALUA DEVELOPMENT SUBDIVISION;

16. THENCE ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOT A-4-A OF THE KAPALUA DEVELOPMENT SUBDIVISION ON A CURVE TO THE RIGHT HAVING A RADIUS OF 846.51 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

198° 02' 80.74 FEET;

17. 200° 46' 66.02 FEET ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOTS A-4-A AND A-5-A-1 OF THE KAPALUA DEVELOPMENT SUBDIVISION;

18. THENCE ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOTS A-5-A-1 AND A-5-A-2 OF THE KAPALUA DEVELOPMENT SUBDIVISION ON A CURVE TO THE RIGHT HAVING A RADIUS OF 355.40 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

217° 05' 30" 199.80 FEET;

19. 233° 25' 337.70 FEET ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOTS A-5-A-2 AND A-6 OF THE KAPALUA DEVELOPMENT SUBDIVISION;

20. THENCE ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOT A-6 OF THE KAPALUA DEVELOPMENT SUBDIVISION ON A CURVE TO THE RIGHT HAVING A RADIUS OF 282.65 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

262° 28' 30" 274.57 FEET;

21. 291° 32' 163.23 FEET ALONG SAME;

22. THENCE ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOT A-6 OF THE KAPALUA DEVELOPMENT SUBDIVISION, AND THE KAPALUA PLACE SUBDIVISION FILE PLAN 1956 ON A CURVE TO THE LEFT HAVING A RADIUS OF 735.94 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

286° 47' 30" 121.67 FEET;

23. 282° 03' 83.16 FEET ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG THE KAPALUA PLACE SUBDIVISION, FILE PLAN 1956;

24. THENCE ALONG SAME ON A CURVE TO THE LEFT HAVING A RADIUS OF 148.29 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

264° 03' 91.65 FEET;

25. 246° 03' 77.75 FEET ALONG SAME;

26. THENCE ALONG SAME ON A CURVE TO THE RIGHT HAVING A RADIUS OF 1,861.47 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

248° 11' 138.59 FEET;

27. 250° 19' 155.12 FEET ALONG SAME;

28. THENCE ALONG SAME ON A CURVE TO THE LEFT HAVING A RADIUS OF 544.96 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

242° 12' 30" 153.73 FEET;

29. 234° 06' 54.39 FEET ALONG SAME;

30. THENCE ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO THE KAPALUA PLACE SUBDIVISION, FILE PLAN 1956 AND LOT A-7-A OF THE KAPALUA DEVELOPMENT SUBDIVISION ON A CURVE TO THE RIGHT HAVING A RADIUS OF 391.78 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

245° 02' 45" 148.78 FEET;

31. 255° 59' 30" 576.56 FEET ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOTS A-7-A AND A-7-C-5 OF THE KAPALUA DEVELOPMENT SUBDIVISION;

32. 22° 00' 69.23 FEET ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOTS 2-A-1-B-1 OF THE KAPALUA DEVELOPMENT SUBDIVISION;

33. 75° 59' 30" 535.86 FEET ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOTS 2-A-1-B-1 AND 2-A-2 OF THE KAPALUA DEVELOPMENT SUBDIVISION;

34. THENCE ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOTS 2-A-2 AND 2-A-4 OF THE KAPALUA DEVELOPMENT SUBDIVISION ON A CURVE TO THE LEFT HAVING A RADIUS OF 335.78 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

65° 02' 45" 127.52 FEET;

35. 54° 06' 54.39 FEET ALONG SAME;

36. THENCE ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOT 2-A-2 OF THE KAPALUA DEVELOPMENT SUBDIVISION ON A CURVE TO THE RIGHT HAVING A RADIUS OF 600.96 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

62° 12' 30" 169.52 FEET;

37. 70° 19' 155.12 FEET ALONG SAME;

38. THENCE ALONG SAME ON A CURVE TO THE LEFT HAVING A RADIUS OF 1,805.47 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

68° 11' 134.42 FEET;

39. 66° 03' 77.75 FEET ALONG SAME;

40. THENCE ALONG SAME ON A CURVE TO THE RIGHT HAVING A RADIUS OF 204.29 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

84° 03' 126.26 FEET;

41. 102° 03' 83.16 FEET ALONG THE REMAINDER OF ROYAL PATENT NUMBER 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOTS 2-A-3 OF THE KAPALUA DEVELOPMENT SUBDIVISION;

42. THENCE ALONG SAME ON A CURVE TO THE RIGHT HAVING A RADIUS OF 791.94 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

106° 47' 30" 130.93 FEET;

43. 111° 32' 163.23 FEET ALONG SAME;

44. THENCE ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOTS 2-A-3 AND 2-A-1-B-1 OF THE KAPALUA DEVELOPMENT SUBDIVISION ON A CURVE TO THE LEFT HAVING A RADIUS OF 226.65 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

82° 28' 30" 220.17 FEET;

45. 53° 25' 337.70 FEET ALONG THE REMAINDER OF ROYAL PATENT 2236, LAND COMMISSION AWARD 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOT 2-A-1-B-1 OF THE KAPALUA DEVELOPMENT SUBDIVISION;

46. THENCE ALONG SAME ON A CURVE TO THE LEFT HAVING A RADIUS OF 299.40 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

37° 05' 30" 168.31 FEET;

47. 20° 46' 66.02 FEET ALONG SAME;

48. THENCE ALONG SAME ON A CURVE TO THE LEFT HAVING A RADIUS OF 790.51 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

18° 02' 75.40 FEET;

49. 15° 18' 105.66 FEET ALONG SAME;

50. THENCE ALONG SAME ON A CURVE TO THE RIGHT HAVING A RADIUS OF 464.54 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

26° 57' 15" 187.68 FEET;

51. 38° 36' 30" 217.14 FEET ALONG SAME;

52. 32° 55' 24" 136.27 FEET ALONG THE REMAINDER OF ROYAL PATENT 1663, APANA 1, LAND COMMISSION AWARD 5524, APANA 1 TO L. KONIA, BEING ALSO ALONG LOT 2-A-1-B-1 OF THE KAPALUA DEVELOPMENT SUBDIVISION;

53. 28° 25' 24" 89.21 FEET ALONG SAME;

54. THENCE ALONG SAME ON A CURVE TO THE RIGHT HAVING A RADIUS OF 350.16 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

44° 01' 54" 188.43 FEET;

55. 59° 38' 24" 173.40 FEET ALONG SAME;

56. THENCE ALONG SAME ON A CURVE TO THE LEFT HAVING A RADIUS OF 180.44 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

43° 34' 54" 99.82 FEET;

57. 27° 31' 24" 125.19 FEET ALONG SAME;

58. THENCE ALONG SAME ON A CURVE TO THE LEFT HAVING A RADIUS OF 138.19 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

342° 33' 24" 195.32 FEET;

59. 297° 35' 24" 56.15 FEET ALONG SAME;

60. THENCE ALONG THE REMAINDER OF ROYAL PATENT 1663, APANA 1, LAND COMMISSION AWARD 5524, APANA 1 TO L. KONIA, BEING ALSO ALONG LOWER HONOAPIILANI ROAD ON A CURVE TO THE LEFT HAVING A RADIUS OF 198.00 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

315° 30' 52" 26.02 FEET TO THE POINT OF BEGINNING AND CONTAINING AN AREA OF 5.296 ACRES, MORE OR LESS.

TOGETHER WITH PERPETUAL EASEMENTS FOR PEDESTRIAN AND VEHICULAR ACCESS PURPOSES OVER AND THROUGH PORTIONS OF LOT A-3-A-1 ("SPA PARCEL") AS SET FORTH AND DESCRIBED IN GRANT OF EASEMENTS FOR ACCESS PURPOSES RECORDED OCTOBER 7, 2009 AS REGULAR SYSTEM DOCUMENT NO. 2009-154009 OF OFFICIAL RECORDS.

TOGETHER WITH PERPETUAL EASEMENTS FOR UTILITY PURPOSES OVER AND THROUGH PORTIONS OF LOT A-3-A-1 ("SPA PARCEL") AS SET FORTH AND DESCRIBED IN GRANT OF EASEMENTS FOR UTILITY PURPOSES RECORDED OCTOBER 7, 2009 AS REGULAR SYSTEM DOCUMENT NO. 2009-154010 OF OFFICIAL RECORDS.

SUBJECT, HOWEVER, to any encumbrances of record affecting the foregoing real property.

EXHIBIT "B"

VERIFIED STATEMENT OF REGISTERED ARCHITECT

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

SS:

Robert K. Iopa, AIA, being first duly sworn on oath, deposes and says:

That he is an architect duly registered in the State of Hawaii; that he has prepared the site plan, floor plans and elevations comprising the Condominium Map for the condominium project known as "Kapalua Bay Condominium" situate at District of Lahaina, County of Maui, State of Hawaii, located on that certain parcel of land more particularly described in the Declaration of Condominium Property Regime of Kapalua Bay Condominium to which reference is hereby made; and that to the best of the architect's knowledge upon reasonable inquiry and inspection, the revised site plans, floor plans and elevations for the Kapalua Bay Condominium project heretofore filed at the Bureau of Conveyances of the State of Hawaii fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as approved by the county officer having jurisdiction over the issuance of permits for the construction of buildings, as built.

Further Affiant Sayeth Naught.

DATED: 15th October, 2009.

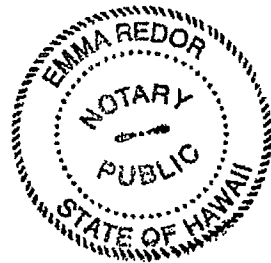

Robert K. Iopa, AIA
Hawaii Registration No. 9890

Subscribed and sworn to before me
this 15th day of October, 2009

Name: Emma Redor
Notary Public, State of Hawaii

My commission expires: 3/28/2012

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)		
Document Identification or Description: <u>Verified Statement of Registered Architect</u>		
Document Date: _____		
No. of Pages: <u>1</u>	Jurisdiction: <u>first</u>	Circuit _____
(in which notarial act is performed)		
<u>Emma Redor</u>	<u>10/15/2009</u>	
Signature of Notary	Date of Certificate	
<u>Emma Redor</u>		
Printed Name of Notary		



(Official Stamp or Seal)

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE _____ Doc 2010-178152
DOCUMENT NO. - NOV 18, 2010 02:00 PM

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK-UP (X)

Trisha Wetmore – Vice President & Senior Counsel
Marriott Vacation Club International
6649 Westwood Boulevard, Orlando, Florida 32821
(407) 206-6000

Tax Map Key No. (2) 4-2-04:028 and 029

Total Pages: 6

**SIXTH AMENDMENT TO DECLARATION OF
CONDOMINIUM PROPERTY REGIME OF KAPALUA BAY CONDOMINIUM**

THIS SIXTH AMENDMENT ("Amendment") is made this 18th day of November 2010 by Association of Apartment Owners of Kapalua Bay Condominium, a Hawaii nonprofit corporation (referred to herein as "Association").

WITNESSETH:

WHEREAS, by way of that certain Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-083256, as amended by that certain First Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at said Bureau as Document No. 2006-208339, and that certain Second Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at said Bureau as Document No. 2007-212730, and that certain Third Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at said Bureau as Document No. 2009-068617, and that certain Fourth Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium and Apartment Deed, recorded at said Bureau as Document No. 2009-107544-2009-107545, and that certain Fifth Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at said Bureau as Document No. 2010-022936 (hereinafter collectively called the "Declaration"), Developer submitted that certain property located at Kapalua, Island and County of Maui, State of Hawaii, more particularly described in Exhibit "A" attached to said Declaration, to a condominium property regime known as the "Kapalua Bay Condominium" (the "Project"); and

WHEREAS, the Association desires to further amend the Declaration to amend the criteria for rental agents;
and

WHEREAS, Article XIII of the Declaration provides for amendment of the Declaration by the affirmative vote or written consent of Owners of Apartments to which are appurtenant at least seventy-five percent (75%) of the Common Interest of the Project; and

WHEREAS, the Owners, by written consent of Owners of Apartments to which are appurtenant not less than seventy-five percent (75%) of the Common Interest of the Project, have approved an amendment to Article VIII, Section I d.(a) of the Declaration to amend the criteria for rental agents as further set forth in this Amendment.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Association does hereby amend the Declaration in the following manner:

1. Article VIII, Section I d.(a) of the Declaration shall be deleted in its entirety and replaced with the following:

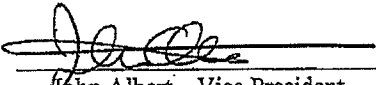
"a) Rental agent has no less than five (5) years experience in renting or managing transient occupancy residential apartments and must be able to provide two (2) letters of recommendation from two (2) separate established property management companies demonstrating satisfaction with rental agent's performance as a rental agent."

In all other respects, said Declaration shall remain unchanged and in full force and effect. Capitalized terms used herein, unless otherwise noted, shall have the meanings set forth in the Declaration.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the undersigned have executed this Amendment on the day and year first above written.

ASSOCIATION OF APARTMENT OWNERS OF
KAPALUA BAY CONDOMINIUM,
a Hawaii non-profit corporation

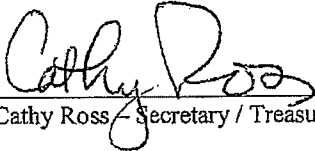
By: 
John Albert – Vice President

By: _____
Cathy Ross – Secretary / Treasurer

IN WITNESS WHEREOF, the undersigned have executed this Amendment on the day and year first above written.

ASSOCIATION OF APARTMENT OWNERS OF
KAPALUA BAY CONDOMINIUM,
a Hawaii non-profit corporation

By: _____
John Albert – Vice President

By:  _____
Cathy Ross / Secretary / Treasurer

STATE OF COLORADO

COUNTY OF Denver

SS:

On this 4 day of November, before me appeared CATHY ROSS, 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.

Jacqueline Wathier
Notary Public
State of Colorado
My Commission Expires 9/29/2014

Jacqueline Wathier
Print Name: _____
Notary Public, in and for said State

My commission expires: 9/29/2014

STATE OF FLORIDA

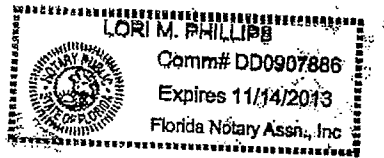
SS:

COUNTY OF ORANGE

On this 1st day of November, 2010 before me personally appeared JOHN ALBERT, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person; and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Lori M. Phillips
Name: Lori M. Phillips
Notary Public, State of Florida

My commission expires: 11.14.2013





R-63

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JUN 30, 2011 08:01 AM
Doc No(s) 2011-102350



/s/ NICKI ANN THOMPSON
REGISTRAR

20 1/5 21

U'

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK-UP (X)

First American Title
177 Kapiolani Blvd
Honolulu, Hawaii

2341950

Tax Map Key No. (2) 4-2-04:028 CPR Nos. 10 and 17

Total Pages: 6

AMENDMENT TO DECLARATION OF
CONDOMINIUM PROPERTY REGIME OF KAPALUA BAY CONDOMINIUM
(Apartment Numbers 1302 and 1404; Parking Stall Numbers 029S, 030S, 027S and 028S)

THIS AMENDMENT ("Amendment") is made this 21 day of June, 2011 by KAPALUA BAY, LLC, a Delaware limited liability company, whose principal place of business and post office address is 870 Haliimaile Road, Makawao, Hawaii 96768 (referred to herein as "Developer").

WITNESSETH:

WHEREAS, by way of that certain Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-083256, as amended by that certain First Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium, recorded at said Bureau as Document No. 2006-208339, that certain Second Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium ("Second Amendment"), recorded at said Bureau as Document No. 2007-212730, and that certain Third Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium ("Third Amendment"), recorded at said Bureau as Document No. 2009-068617, Fourth Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium ("Fourth Amendment"), recorded at said Bureau as Document No. 2009-107544, Fifth Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium ("Fifth Amendment"), recorded at said Bureau as Document No. 2010-022936, and that certain Sixth Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium ("Sixth Amendment"), recorded at said Bureau as Document No. 2010-178152 (hereinafter collectively called the "Declaration"), Developer submitted that certain property located at Kapalua, Island and County of Maui, State of Hawaii, more particularly described in Exhibit "A" attached to said Declaration, to a condominium property regime known as the "Kapalua Bay Condominium" (the "Project"); and

WHEREAS, pursuant to Hawaii Revised Statutes Section 514A-14, as amended, apartment owners have the right to change the designation of parking stalls which are appurtenant to their respective apartments by amendment of the declaration of condominium property regime, signed and approved only by the owners of the apartments whose parking stalls are being changed and their respective mortgagees, if any; and

EXHIBIT

L-7

R/S



2341950

WHEREAS, Parking Stall Numbers 029S and 030S, as shown on the plans of the Project filed at said Bureau as Condominium Map No. 4222, as the same may hereafter be amended from time to time ("Condominium Map"), are currently limited common elements appurtenant solely to Apartment Number 1302 of the Project;

WHEREAS, Parking Stall Numbers 027S and 028S, as shown on the Condominium Map, are currently limited common elements appurtenant solely to Apartment Number 1404 of the Project;

WHEREAS, Developer is the owner of said Apartment Numbers 1302 and 1404; and

WHEREAS, Developer, for itself as the owner of said Apartments, desires to change the designation of the Parking Stalls from being limited common elements appurtenant to said Apartments as follows ("Transfer"); and

Parking Stalls	Transfer Parking Stalls FROM Apartment	Transfer Parking Stalls TO Apartment
029S and 030S	1302	1404
027S and 028S	1404	1302

WHEREAS, said Apartment Numbers 1302 and 1404, are encumbered by that certain mortgage instrument dated July 14, 2006 made by Developer, as Mortgagor, in favor of Lehman Brothers Holdings, Inc., as Mortgagee ("Mortgagee"), recorded at said Bureau as Document No. 2006-129745, as amended, and as assigned to Central Pacific Bank, in its capacity as the successor Agent for itself and the other Current Co-Lenders by instrument recorded on February 11, 2009, recorded at said Bureau as Document No. 2009-019982. The interests of Central Pacific Bank, a Hawaii corporation, individually and in its capacity as the Agent for itself and the other Current Co-Lenders, in and to the Mortgage have been assigned to Lehman Brothers Holdings Inc., a Delaware corporation, as debtor and debtor in possession in its Chapter 11 case in the United States Bankruptcy Court for the Southern District of New York (Case No. 08-13555 (JMP)), in its capacity as the successor Agent for itself and the other Current Co-Lenders by (i) Notice of Change of Agent and Assignment of Fee and Leasehold Mortgage, Security Agreement and Fixture Filing dated March 10, 2010, recorded at said Bureau as Document No. 2010-040791;

NOW, THEREFORE, pursuant to Hawaii Revised Statutes Section 514A-14, as amended, Developer does hereby amend the Declaration to effectuate the Transfer, effective as of the date of recordation of this Amendment at said Bureau.

AND by signing below, Mortgagee does hereby approve and consent to the foregoing Transfer and amendment of the Declaration.

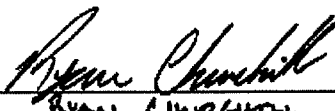
In all other respects, said Declaration shall remain unchanged and in full force and effect. Capitalized terms used herein, unless otherwise noted, shall have the meanings set forth in the Declaration.

The parties hereto agree that this Amendment may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding upon all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, the delivery of this Amendment, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the undersigned has executed this Amendment on the day and year first above written.

KAPALUA BAY, LLC,
a Delaware limited liability company

By 
RYAN CHURCHILL
Its PRESIDENT

"Developer"

LEHMAN BROTHERS HOLDINGS INC., a Delaware corporation, as debtor and debtor in possession in its Chapter 11 case in the United States Bankruptcy Court for the Southern District of New York (Case No. 08-13555 (JMP)), as successor Agent

By: _____
Name:
Title:

"Mortgagee"

IN WITNESS WHEREOF, the undersigned has executed this Amendment on the day and year first above written.

KAPALUA BAY, LLC,
a Delaware limited liability company

By _____

Its _____

"Developer"

LEHMAN BROTHERS HOLDINGS INC., a Delaware corporation, as debtor and debtor in possession in its Chapter 11 case in the United States Bankruptcy Court for the Southern District of New York (Case No. 08-13555 (JMP)), as successor Agent

By: _____

Name: Jeffrey Fitts
Title: Authorized Signatory

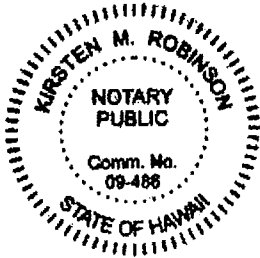
"Mortgagee"

STATE OF HAWAII

SS:

COUNTY OF MAUI

On this 16th day of June, 2011, before me personally appeared RYAN CHURCHILL, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Kirsten M. Robinson
Signature of Notary
Print Notary Name: KIRSTEN M. ROBINSON
Notary Public, in and for said State
My commission expires: NOVEMBER 15, 2013

(Stamp or Seal)

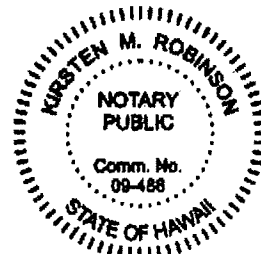
[Below Notary Certification to be completed by Hawaii Notary Only]

STATE OF HAWAII NOTARY CERTIFICATION

Document Identification or Description: **AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KAPALUA BAY CONDOMINIUM**

Date of Document: _____ or Undated at time of notarization
Jurisdiction: SECOND Circuit (in which notarial act is performed)
Number of Pages: FIVE (5)
Date of Certificate: June 16, 2011

Kirsten M. Robinson
Notary Public Signature
Print Name: KIRSTEN M. ROBINSON
Notary Public, State of Hawaii



(Stamp or Seal)


STATE OF NEW YORK

SS:

COUNTY OF NEW YORK

On this 21 day of June, 2011, before me, the undersigned, personally appeared Jeffrey Fitts, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

DEANNA EMILIO
Notary Public, State of New York
No. 01EM6171082
Qualified in Richmond County
Term Expires July 23, 2011


Name: _____
Notary Public in and for said State
My commission expires: _____