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A Limited Liability Law Partnership

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LANDESBANK BADEN-WÜRTTEMBERG,
NEW YORK BRANCH, IN ITS CAPACITY
AS AGENT FOR CENTRAL PACIFIC
BANK, DEUTSCHE HYPOTHEKENBANK
(ACTIEN-GESELLSCHAFT),
LANDESBANK BADEN-WÜRTTEMBERG,
LEHMAN BROTHERS HOLDINGS INC.
AND MH KAPALUA VENTURE, LLC,

Plaintiff,

vs.

KAPALUA BAY, LLC, a Delaware limited
liability company; KAPALUA BAY
HOLDINGS, LLC, a Delaware limited liability
company; ASSOCIATION OF APARTMENT
OWNERS OF KAPALUA BAY
CONDOMINIUM, by its Board of Directors;
KAPALUA BAY VACATION OWNERS
ASSOCIATION, a Hawaii nonprofit
corporation; JOHN DOES 1-100; JANE DOES
1-100; DOE PARTNERSHIPS 1-100; DOE
CORPORATIONS 1-100; DOE ENTITIES 1-
100; DOE GOVERNMENTAL UNITS 1-100,

Defendants.

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2012 SEP 13 PM 3:39

J. KUBO
CLERK

CIVIL NO. 12-1-1649-06
(FORECLOSURE)

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER GRANTING THE
MOTION OF PLAINTIFF LANDESBANK
BADEN-WÜRTTEMBERG, NEW YORK
BRANCH, IN ITS CAPACITY AS AGENT
FOR CENTRAL PACIFIC BANK,
DEUTSCHE HYPOTHEKENBANK
(ACTIEN-GESELLSCHAFT),
LANDESBANK BADEN-WÜRTTEMBERG,
LEHMAN BROTHERS HOLDINGS INC.
AND MH KAPALUA VENTURE, LLC, FOR
SUMMARY JUDGMENT,
INTERLOCUTORY DECREE OF
FORECLOSURE, AND ORDER OF SALE
AGAINST ALL DEFENDANTS AS TO THE
COMPLAINT FILED ON JUNE 13, 2012
EXCEPT DEFENDANT KAPALUA BAY
HOLDINGS, LLC; SCHEDULE "1" AND "2"

(Caption continued on next page.)

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.

Clerk, Circuit Court, First Circuit

HEARING:

JUDGE: Honorable Bert I. Ayabe

DATE: September 5, 2012

TIME: 9:00 a.m.

NO TRIAL DATE SET

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING THE MOTION OF PLAINTIFF LANDESBANK BADEN-WÜRTTEMBERG, NEW YORK BRANCH, IN ITS CAPACITY AS AGENT FOR CENTRAL PACIFIC BANK, DEUTSCHE HYPOTHEKENBANK (ACTIEN-GESELLSCHAFT), LANDESBANK BADEN-WÜRTTEMBERG, LEHMAN BROTHERS HOLDINGS INC. AND MH KAPALUA VENTURE, LLC, FOR SUMMARY JUDGMENT, INTERLOCUTORY DECREE OF FORECLOSURE, AND ORDER OF SALE AGAINST ALL DEFENDANTS AS TO THE COMPLAINT FILED ON JUNE 13, 2012 EXCEPT DEFENDANT KAPALUA BAY HOLDINGS, LLC

The Motion of Plaintiff LANDESBANK BADEN-WÜRTTEMBERG, NEW YORK BRANCH, IN ITS CAPACITY AS AGENT FOR CENTRAL PACIFIC BANK, DEUTSCHE HYPOTHEKENBANK (ACTIEN-GESELLSCHAFT), LANDESBANK BADEN-WÜRTTEMBERG, LEHMAN BROTHERS HOLDINGS INC. AND MH KAPALUA VENTURE, LLC for Summary Judgment, Interlocutory Decree of Foreclosure, and Order of Sale against all Defendants as to the Complaint filed herein on June 13, 2012, except Defendant Kapalua Bay Holdings, LLC came on for hearing before the Honorable Bert I. Ayabe on September 5, 2012 at 9:00 a.m. Jonathan W. Y. Lai, Esq. appeared on behalf of Plaintiff. James A. Wagner, Esq. appeared on behalf of Defendant KAPALUA BAY, LLC. Peter A. Horovitz, Esq. appeared on behalf of Defendants ASSOCIATION OF APARTMENT OWNERS OF KAPALUA BAY CONDOMINIUM and KAPALUA BAY VACATION OWNERS ASSOCIATION. There were no other appearances.

Based upon the pleadings and records of this action and the arguments and evidence presented, this Court makes the following Findings of Fact, Conclusions of Law and

Order Granting the Motion of Plaintiff for Summary Judgment, Interlocutory Decree of Foreclosure, and Order of Sale against all Defendants as to the Complaint filed herein on June 13, 2012, except Defendant Kapalua Bay Holdings, LLC (the “**Motion**”).

FINDINGS OF FACT

1. Plaintiff LANDESBANK BADEN-WÜRTTEMBERG, NEW YORK BRANCH, in its capacity as Agent for LEHMAN BROTHERS HOLDINGS INC., LANDESBANK BADEN-WÜRTTEMBERG, CENTRAL PACIFIC BANK, DEUTSCHE HYPOTHEKENBANK (ACTIEN-GESELLSCHAFT) and MH KAPALUA VENTURE, LLC (“**Plaintiff**”) is, and was at all times relevant herein, a New York State licensed branch of a German banking corporation with offices in New York City, State of New York.

2. Defendant KAPALUA BAY, LLC (“**KB**”) is, and was at all times relevant herein, a Delaware limited liability company.

3. Defendant KAPALUA BAY HOLDINGS, LLC is, and was at all times relevant herein, a Delaware limited liability company.

4. Defendant ASSOCIATION OF APARTMENT OWNERS OF KAPALUA BAY CONDOMINIUM, by its Board of Directors (the “**AOAO**”) is, and was at all times relevant herein, a Hawaii nonprofit corporation organized and existing under and by virtue of Chapter 514A of the Hawaii Revised Statutes, as amended (the “**HRS**”), with its principal place of business in the County of Maui, State of Hawaii.

5. Defendant KAPALUA BAY VACATION OWNERS ASSOCIATION (the “**VOA**”) is, and was at all times relevant herein, a Hawaii nonprofit corporation organized and existing under and by virtue of Chapter 514E of the HRS, with its principal place of business in the County of Maui, State of Hawaii.

6. Defendants KB, Kapalua Bay Holdings, LLC, AOA and VOA have all been duly served. Defendant KB filed its answer on July 13, 2012. Defendants AOA and VOA filed their answer on August 27, 2012.

7. The Motion of Plaintiff for Summary Judgment, Interlocutory Decree of Foreclosure, and Order of Sale against all Defendants as to the Complaint filed herein on June 13, 2012, except Defendant Kapalua Bay Holdings, LLC (the “**Motion**”) was filed on August 3, 2012 herein. In response to the Motion on August 27, 2012, Defendant AOA and VOA filed that certain Statement of No Opposition to the Motion. Thereafter on August 28, 2012, Defendant KB filed that certain Limited Objection to Plaintiff’s Motion.

8. Plaintiff has not sought judgment, in its Motion or in this Order, against Defendant Kapalua Bay Holdings, LLC. Therefore, this Court makes no findings of fact relating to Plaintiff’s claims against Defendant Kapalua Bay Holdings, LLC.

9. This Court finds that final judgment should be entered upon all claims in the Complaint except any claims against Defendant Kapalua Bay Holdings, LLC, as there is no just reason for delay.

PLAINTIFF IS AGENT FOR THE LENDERS

10. On March 26, 2012, Plaintiff was appointed as Agent for the Lenders CENTRAL PACIFIC BANK (“**CPB**”), DEUTSCHE HYPOTHEKENBANK (ACTIEN-GESELLSCHAFT) (“**Deutsche Hypo**”), LANDESBANK BADEN-WÜRTTEMBERG (“**LBBW**”), LEHMAN BROTHERS HOLDINGS INC. (“**LBHI**”) and MH KAPALUA VENTURE, LLC (“**MH Kapalua**”) (collectively referred to herein as the “**Lenders**”) with respect to the loan and mortgage documents that are the subject matter of this foreclosure action including (i) that certain Amended and Restated Construction Loan Agreement dated February

11, 2009, as amended, and as fully described herein at paragraph 18 (the “**Loan Agreement**”), (ii) the other Loan Documents described in Schedule E to the Loan Agreement, each as amended, and (iii) each other document designated by the parties to the Loan Agreement as a Loan Document (as defined in the Loan Agreement) (collectively, the “**Loan Documents**”).

11. Plaintiff’s appointment as Agent for the Lenders was effected pursuant to a notice dated March 26, 2012 (the “**2012 Agency Replacement Notice**”), whereby CPB, Deutsche Hypo and LBBW, in accordance with Section 5 of the Successor Agency Agreement dated as of March 10, 2010 (the “**2010 Successor Agency Agreement**”), removed LBHI as Agent under the Loan Agreement and the Loan Documents and appointed Plaintiff as successor Agent and Plaintiff accepted such appointment. A true and accurate copy of the 2012 Agency Replacement Notice is attached as Exhibit A-1 to the Motion and made a part hereof. A true and accurate copy of the 2010 Successor Agency Agreement is attached as Exhibit A-2 to the Motion and made a part hereof.

12. Pursuant to that certain unrecorded Assignment and Assumption of Loan Documents dated May 16, 2012 (the “**Unrecorded Assignment and Assumption of Loan Documents**”), the removal of LBHI as prior Agent and the appointment of Plaintiff as successor Agent was confirmed, and LBHI as prior Agent assigned and transferred to Plaintiff as successor Agent, and Plaintiff as successor Agent assumed, all of the rights and obligations of Agent under the Loan Agreement and the Loan Documents. A true and accurate copy of the Unrecorded Assignment and Assumption of Loan Documents is attached as Exhibit A-3 to the Motion and made a part hereof.

13. On June 12, 2012, the Lenders placed notice of the removal of LBHI as prior Agent and the appointment of Plaintiff as successor Agent on the public record by

recording the Notice of Change of Agent and Assignment of Fee and Leasehold Mortgage, Security Agreement and Fixture Filing in the Bureau of Conveyances, State of Hawaii (the “**Bureau**”), as Document No. A-45460706A thru A-45460706B (the “**2012 Notice of Change of Agent and Assignment of Mortgage**”), the Notice of Change of Agent and Assignment of Assignment of Leases and Rents, as Document No. A-45460705A thru A-45460705B (the “**2012 Notice of Change of Agent and Assignment of Leases and Rents**”), and the Notice of Change of Agent and Assignment of Ground Lessor Consent, Estoppel Certificate and Amendment (the “**2012 Notice of Change of Agent and Assignment of Ground Lessor Consent, Estoppel Certificate and Amendment**”), along with other recorded notices described herein as findings at paragraphs 36 and 44. A true and accurate copy of the 2012 Notice of Change of Agent and Assignment of Mortgage is attached as Exhibit A-4 to the Motion and made a part hereof. A true and accurate copy of the 2012 Notice of Change of Agent and Assignment of Leases and Rents is attached as Exhibit A-5 to the Motion and made a part hereof. A true and accurate copy of the 2012 Notice of Change of Agent and Assignment of Ground Lessor Consent, Estoppel Certificate and Amendment is attached as Exhibit A-6 to the Motion and made a part hereof.

14. The 2012 Notice of Change of Agent and Assignment of Mortgage sets forth, under the “Recitals” section, certain recorded and unrecorded documents by which the Plaintiff assumed the role as Agent for the Lenders. The Recitals include reference to that certain Notice of Change of Agent and Assignment of Fee and Leasehold Mortgage, Security Agreement and Fixture filing dated as of March 10, 2010, and recorded in the Bureau as Document No. 2010-040791 (the “**2010 Notice of Change of Agent and Assignment of Mortgage**”), which recites the process by which LBHI, as Plaintiff’s predecessor-in-interest, was appointed as successor to CPB, as prior Agent. A true and accurate copy of the 2010 Notice of

Change of Agent and Assignment of Mortgage is attached as Exhibit K-15 to the Motion and made a part hereof.

15. The process by which CPB, as Plaintiff's predecessor-in-interest, was appointed as successor to LBHI, as original Agent is fully set forth in that certain Notice of Change of Agent and Assignment of Fee and Leasehold Mortgage, Security Agreement and Fixture Filing dated as of February 11, 2009, and recorded in the Bureau as Document No. 2009-019982 (the "**2009 Notice of Change of Agent and Assignment of Mortgage**"). A true and accurate copy of the 2009 Notice of Change of Agent and Assignment of Mortgage is attached as Exhibit K-7 to the Motion and made a part hereof.

16. For purposes of establishing a complete record, these findings shall make reference to and incorporate that certain Co-Lending Agreement dated as of February 1, 2007 (the "**Co-Lending Agreement**"), by which CPB, Deutsche Hypo and LBBW appointed LBHI as their Agent with respect to the Loan Agreement and the other Loan Documents. A true and accurate copy of the Co-Lending Agreement is attached as Exhibit K-5 to the Motion and made a part hereof.

17. Pursuant to the 2012 Agency Replacement Notice, the Unrecorded Assignment and Assumption of Loan Documents and the 2012 Notice of Change of Agent and Assignment of Mortgage, the 2012 Notice of Change of Agent and Assignment of Leases and Rents and the 2012 Notice of Change of Agent and Assignment of Ground Lessor Consent, Estoppel Certificate and Amendment, Plaintiff has assumed all of the rights and obligations of the Agent under the Loan Agreement and the other Loan Documents to, and including the right to, prosecute this case.

THE LOAN AGREEMENT

18. On July 14, 2006, LBHI (as predecessor-in-interest to Plaintiff and the Lenders), as lender, and Defendant KB, as borrower, entered into that certain Construction Loan Agreement pursuant to which LBHI agreed to make a loan in the principal amount of up to THREE HUNDRED SEVENTY MILLION AND NO/100 DOLLARS (\$370,000,000.00) to KB (the "**Original Loan**"). The Original Loan was subsequently split and assigned and modified, and thereafter amended and restated, resulting in that certain Amended and Restated Construction Loan Agreement dated February 11, 2009, entered into among the Lenders and Swedbank AB (publ) New York Branch ("**Swedbank**"), as lenders, Plaintiff's predecessor-in-interest, CPB, as Agent, and KB, as borrower ("**Amended and Restated Loan Agreement**"), pursuant to which the Original Loan was reduced to the principal amount of up to THREE HUNDRED FIFTY FOUR MILLION FOUR HUNDRED FIFTY FIVE THOUSAND NINE HUNDRED SIXTY EIGHT AND 31/100 DOLLARS (\$354,455,968.31). A true and accurate copy of the Amended and Restated Loan Agreement is attached as Exhibit B to the Motion and made a part hereof.

19. A recitation of the history from the Original Loan through the 2009 restructuring and the Amended and Restated Loan Agreement is described herein at paragraphs 60 through 69.

20. The Amended and Restated Loan Agreement was subsequently amended by the Lenders and Swedbank, as lender, Plaintiff's predecessors-in-interest, as Agent, and KB, as borrower, pursuant to that certain Amendment No. 1 to Amended and Restated Construction Loan Agreement dated November 27, 2009, the Agreement and Amendment No. 2 to Amended and Restated Construction Loan Agreement dated November 30, 2009, the Amendment No. 3 to

Amended and Restated Construction Loan Agreement dated December 18, 2009, the Modification of Agreement and Amendment No. 2 to Amended and Restated Construction Loan Agreement dated January 15, 2010, the Second Modification of Agreement and Amendment No. 2 to Amended and Restated Construction Loan Agreement dated February 10, 2010, the Third Modification of Agreement and Amendment No. 2 to Amended and Restated Construction Loan Agreement dated March 15, 2010, and the Fourth Modification of Agreement and Amendment No. 2 to Amended and Restated Construction Loan Agreement dated May 21, 2010 (the Amended and Restated Construction Loan Agreement, as amended, is collectively referred to herein as the “**Loan Agreement**”).

21. A true and accurate copy of the Amendment No. 1 to Amended and Restated Construction Loan Agreement dated November 27, 2009 is attached as Exhibit B-1 to the Motion and made a part hereof (“**Am. No. 1 to ARLA**”). A true and accurate copy of the Agreement and Amendment No. 2 to Amended and Restated Construction Loan Agreement dated November 30, 2009 is attached as Exhibit B-2 to the Motion and made a part hereof (“**Am. No. 2 to ARLA**”). A true and accurate copy of the Amendment No. 3 to Amended and Restated Construction Loan Agreement dated December 18, 2009 is attached as Exhibit B-3 to the Motion and made a part hereof (“**Am. No. 3 to ARLA**”). A true and accurate copy of the Modification of Agreement and Amendment No. 2 to Amended and Restated Construction Loan Agreement dated January 15, 2010 is attached as Exhibit B-4 to the Motion and made a part hereof (“**Modification of Am. No 2 to ARLA**”). A true and accurate copy of the Second Modification of Agreement and Amendment No. 2 to Amended and Restated Construction Loan Agreement dated February 10, 2010 is attached as Exhibit B-5 to the Motion and made a part hereof (“**Second Mod. of Am. No. 2 to ARLA**”). A true and accurate copy of the Third Modification

of Agreement and Amendment No. 2 to Amended and Restated Construction Loan Agreement dated March 15, 2010 is attached as Exhibit B-6 to the Motion and made a part hereof (“**Third Mod. of Am. No. 2 to ARLA**”). A true and accurate copy of the Fourth Modification of Agreement and Amendment No. 2 to Amended and Restated Construction Loan Agreement dated May 21, 2010 is attached as Exhibit B-7 to the Motion and made a part hereof (“**Fourth Mod. of Am. No. 2 to ARLA**”).

THE NOTES

22. Pursuant to the Amended and Restated Loan Agreement, KB made, executed, and delivered to the Lenders and Swedbank sixteen separate promissory notes in the aggregate principal amount of \$354,455,968.31, certain of which were further assigned and replaced so that under the Loan Agreement there are currently nineteen promissory notes outstanding:

A. Five separate “Facility A Notes” (as defined in the Loan Agreement), all dated February 11, 2009, consisting of (1) Amended and Restated Promissory Note Facility A in the principal amount of \$12,529,499.58 payable to CPB (“**CPB Facility A Note**”), (2) Amended and Restated Promissory Note Facility A in the principal amount of \$31,274,582.98 payable to LBBW (“**LBBW Facility A Note**”), (3) Amended and Restated Promissory Note Facility A in the principal amount of \$31,274,582.98 payable to Deutsche Hypo (“**Deutsche Hypo Facility A Note**”), (4) Amended and Restated Promissory Note Facility A in the principal amount of \$35,000,000.00 payable to LBHI (“**LBHI Facility A Note**”), and (5) Amended and Restated Promissory Note Facility A in the principal amount of \$10,000,000.00 payable to MH Kapalua (“**MH Kapalua Facility A Note**”).

B. Six separate “Facility B-1 Notes” (as defined in the Loan Agreement), are dated February 11, 2009 except as otherwise indicated, consisting of (1) Amended and Restated Promissory Note Facility B-1 in the principal amount of \$6,062,162.33 payable to CPB (“**CPB Facility B-1 Note**”), (2) Amended and Restated Promissory Note Facility B-1 in the principal amount of \$5,051,801.94 payable to LBBW (“**2009 LBBW Facility B-1 Note**”), (3) Amended and Restated Promissory Note Facility B-1 in the principal amount of \$5,051,801.94 payable to Deutsche Hypo (“**2009 Deutsche Hypo Facility B-1 Note**”), (4) Amended and Restated Promissory Note Facility B-1 in the principal amount of \$1,800,619.42 payable to LBHI (“**LBHI Facility B-1 Note**”), (5) Second Amended and Restated Promissory Note Facility B-1 dated October 12, 2011 in the principal amount of \$5,000,000.00 payable to LBBW (“**2011 LBBW Facility B-1 Note**”), and (6) Second Amended and Restated Promissory Note Facility B-1 dated October 12, 2011 in the principal amount of \$5,000,000.00 payable to Deutsche Hypo (“**2011 Deutsche Hypo Facility B-1 Note**”).

C. One “Facility B-2 Note” (as defined in the Loan Agreement) as evidenced by that certain Amended and Restated Promissory Note Facility B-2 dated February 11, 2009 in the principal amount of \$4,041,441.55 payable to Swedbank, which pursuant to the Assignment and Assumption Agreement dated February 22, 2011, was subsequently assigned and endorsed to LBHI (“**LBHI Facility B-2 Note**”).

D. Six separate “Facility C-1 Notes” (as defined in the Loan Agreement) consisting of (1) Amended and Restated Promissory Note Facility C-1 dated February 11, 2009, in the principal amount of \$16,408,338.09 payable to CPB (“**CPB Facility C-1 Note**”), (2) Second Amended and Restated Promissory Note Facility C-1 dated October 12, 2011 in the principal amount of \$8,673,615.08 to LBBW (“**2011 LBBW Facility C-1 Note**”),

(3) Second Amended and Restated Promissory Note Facility C-1 dated October 12, 2011 in the principal amount of \$5,000,000.00 to MH Kapalua (“**MH Kapalua Facility C-1 Note No. 1**”), (4) Second Amended and Restated Promissory Note Facility C-1 dated October 12, 2011 in the principal amount of \$8,673,615.08 to Deutsche Hypo (“**2011 Deutsche Hypo Facility C-1 Note**”), (5) Second Amended and Restated Promissory Note Facility C-1 dated October 12, 2011 in the principal amount of \$5,000,000.00 to MH Kapalua (“**MH Kapalua Facility C-1 Note No. 2**”), and, (6) Amended and Restated Promissory Note Facility C-1 dated February 11, 2009 in the principal amount of \$147,675,015.27 payable to LBHI (“**LBHI Facility C-1 Note**”).

E. One “Facility C-2 Note” (as defined in the Loan Agreement) as evidenced by that certain Amended and Restated Promissory Note Facility C-2 in the principal amount of \$10,938,892.07 payable to Swedbank, which pursuant to the Assignment and Assumption Agreement dated February 22, 2011, was subsequently assigned and endorsed to LBHI (“**LBHI Facility C-2 Note**”).

23. The CPB Facility A Note, the LBBW Facility A Note, the Deutsche Hypo Facility A Note, the LBHI Facility A Note, the MH Kapalua Facility A Note, the CPB Facility B-1 Note, the 2009 LBBW Facility B-1 Note, the 2011 LBBW Facility B-1 Note, the 2009 Deutsche Hypo Facility B-1 Note, the 2011 Deutsche Hypo Facility B-1 Note, the LBHI Facility B-1 Note, the LBHI Facility B-2 Note, the CPB Facility C-1 Note, the 2011 LBBW Facility C-1 Note, the 2011 Deutsche Hypo Facility C-1 Note, the MH Kapalua Facility C-1 Note No. 1, the MH Kapalua Facility C-1 Note No. 2, the LBHI Facility C-1 Note, and the LBHI Facility C-2 Note are hereinafter collectively referred to as the “**Notes**”.

24. The Lenders are the current holders of the Notes.

25. A true and accurate copy of the CPB Facility A Note is attached as Exhibit C-1 to the Motion and made a part hereof. A true and accurate copy of the LBBW Facility A Note is attached as Exhibit C-2 to the Motion and made a part hereof. A true and accurate copy of the Deutsche Hypo Facility A Note is attached as Exhibit C-3 to the Motion and made a part hereof. A true and accurate copy of the LBHI Facility A Note is attached as Exhibit C-4 to the Motion and made a part hereof. A true and accurate copy of the MH Kapalua Facility A Note is attached as Exhibit C-5 to the Motion and made a part hereof. A true and accurate copy of the CPB Facility B-1 Note is attached as Exhibit C-6 to the Motion and made a part hereof. A true and accurate copy of the 2009 LBBW Facility B-1 Note is attached as Exhibit C-7 to the Motion and made a part hereof. A true and accurate copy of the 2009 Deutsche Hypo Facility B-1 Note is attached as Exhibit C-8 to the Motion and made a part hereof. A true and accurate copy of the LBHI Facility B-1 Note is attached as Exhibit C-9 to the Motion and made a part hereof. A true and accurate copy of the 2011 LBBW Facility B-1 Note is attached as Exhibit C-10 to the Motion and made a part hereof. A true and accurate copy of the 2011 Deutsche Hypo Facility B-1 Note is attached as Exhibit C-11 to the Motion and made a part hereof. True and accurate copies of the Swedbank Facility B-2 Note, the “Allonge” to the note making the note payable to LBHI, and the Assignment and Assumption Agreement between Swedbank and LBHI with respect to the assignment of the Swedbank Facility B-2 Note by Swedbank to LBHI are attached as Exhibit C-12 (previously defined as the “LBHI Facility B-2 Note”) to the Motion and made a part hereof. A true and accurate copy of the CPB Facility C-1 Note is attached as Exhibit C-13 to the Motion and made a part hereof. A true and correct copy of the 2011 LBBW Facility C-1 Note is attached as Exhibit C-14 to the Motion and made a part hereof. A true and correct copy of the MH Kapalua Facility C-1 Note No. 1 is attached as Exhibit C-15 to the Motion and made a

part hereof. A true and correct copy of the 2011 Deutsche Hypo Facility C-1 Note is attached as Exhibit C-16 to the Motion and made a part hereof. A true and correct copy of the MH Kapalua Facility C-1 Note No. 2 is attached as Exhibit C-17 to the Motion and made a part hereof. A true and accurate copy of the LBHI Facility C-1 Note is attached as Exhibit C-18 to the Motion and made a part hereof. True and accurate copies of the Swedbank Facility C-2 Note, the “Allonge” to the note making the note payable to LBHI, and the Assignment and Assumption Agreement between Swedbank and LBHI with respect to the assignment of the Swedbank Facility C-2 Note by Swedbank to LBHI, are attached as Exhibit C-19 (previously defined as the “LBHI Facility C-2 Note”) to the Motion and made a part hereof.

ASSIGNMENT HISTORY: FROM SIXTEEN TO NINETEEN NOTES

26. The original sixteen promissory notes issued under the Amended and Restated Loan Agreement became the current nineteen Notes by way of three assignment events:

A. The 2011 MH Kapalua Assignments. The 2011 LBBW Facility B-1 and 2011 Deutsche Hypo Facility B-1 Notes were issued after MH Kapalua assigned its interest in the Amended and Restated Promissory Note Facility B-1, dated February 11, 2009 (the “**2009 MH Kapalua Facility B-1 Note**”), in the original principal amount of \$10,000,000.00, to LBBW and Deutsche Hypo. A true and accurate copy of the 2009 MH Kapalua Facility B-1 Note is attached as Exhibit K-12 to the Motion and made a part hereof. A true and accurate copy of the Assignment and Assumption Agreement dated as of October 11, 2011 between MH Kapalua and LBBW is attached as Exhibit K-18 to the Motion and is made a part hereof (the “**2011 MH Kapalua Assignment to LBBW**”). A true and accurate copy of the Assignment and Assumption Agreement dated as of October 11, 2011 between MH Kapalua and

Deutsche Hypo is attached as Exhibit K-19 to the Motion and is made a part hereof (the “**2011 MH Kapalua Assignment to Deutsche Hypo**”).

B. The 2011 LBBW Assignment. The 2011 LBBW Facility C-1 Note and MH Kapalua Facility C-1 Note No. 1 were issued after LBBW assigned the principal amount of \$5,000,000.00 of its interest in its Amended and Restated Promissory Note Facility C-1, dated February 11, 2009 (the “**2009 LBBW Facility C-1 Note**”), in the original principal amount of \$13,673,615.08, to MH Kapalua. A true and accurate copy of the 2009 LBBW Facility C-1 Note is attached as Exhibit K-13 to the Motion and made a part hereof. A true and accurate copy of the Assignment and Assumption Agreement dated as of October 11, 2011 between LBBW and MH Kapalua is attached as Exhibit K-20 to the Motion and made a part hereof (the “**2011 LBBW Assignment to MH Kapalua**”).

C. The 2011 Deutsche Hypo Assignment. The 2011 Deutsche Hypo Facility C-1 Note and MH Kapalua Facility C-1 Note No. 2 were issued after Deutsche Hypo assigned \$5,000,000.00 principal amount of its interest in its Amended and Restated Promissory Note Facility C-1, dated February 11, 2009 (the “**2009 Deutsche Hypo Facility C-1 Note**”), in the original principal amount of \$13,673,615.08, to MH Kapalua. A true and accurate copy of the 2009 Deutsche Hypo Facility C-1 Note is attached as Exhibit K-14 to the Motion and made a part hereof. A true and accurate copy of the Assignment and Assumption Agreement dated as of October 11, 2011 between Deutsche Hypo and MH Kapalua is attached as Exhibit K-21 to the Motion and made a part hereof (the “**2011 Deutsche Hypo Assignment to MH Kapalua**”).

THE MATURITY DATE FOR ALL NOTES HAS OCCURRED

27. Pursuant to the terms of the Loan Agreement, each of the CPB Facility A Note, the LBBW Facility A Note, the Deutsche Hypo Facility A Note, the LBHI Facility A Note

and the MH Kapalua Facility A Note matured on December 31, 2010, and all other Notes matured on August 1, 2011.

**THE GRANTS OF SECURITY UNDER
THE MORTGAGE AND OTHER LOAN DOCUMENTS**

28. The obligations of KB to Plaintiff and the Lenders under the Loan Agreement, the Notes and the other Loan Documents are secured by that certain Fee and Leasehold Mortgage, Security Agreement and Fixture Filing dated July 14, 2006, granted, executed and delivered by KB, which is recorded in the Bureau as Document No. 2006-129745 (**“Original Mortgage”**), and the other Loan Documents described herein, each as assigned to Plaintiff as described in paragraphs 11 through 17 hereof, and were amended as described herein.

29. The Original Mortgage was subsequently amended and modified by three recorded amendments, which modify and amend the Original Mortgage: (1) First Omnibus Amendment to Recorded Construction Loan Documents dated January 26, 2007, recorded in the Bureau as Document No. 2007-023743; (2) Second Omnibus Amendment to Recorded Construction Loan Documents dated February 11, 2009, recorded in said Bureau as Document No. 2009-019987; and (3) Third Omnibus Amendment to Recorded Construction Loan Documents dated February 8, 2010, recorded in said Bureau as Document No. 2010-022937. A true and accurate copy of the First Omnibus Amendment to Recorded Construction Loan Documents dated January 26, 2007, recorded in the Bureau as Document No. 2007-023743 (**“First Am. to Mortgage”**), is attached as Exhibit D-1 to the Motion and made a part hereof. A true and accurate copy of the Second Omnibus Amendment to Recorded Construction Loan Documents dated February 11, 2009, recorded in said Bureau as Document No. 2009-019987, is attached as Exhibit D-2 to the Motion and made a part hereof (**“Second Am. to Mortgage”**). A true and accurate copy of the Third Omnibus Amendment to Recorded Construction Loan

Documents dated February 8, 2010, recorded in said Bureau as Document No. 2010-022937, is attached as Exhibit D-3 to the Motion and made a part hereof (“**Third Am. to Mortgage**”) (the First Am. to Mortgage, Second Am. to Mortgage, and Third Am. to Mortgage are collectively referred to in the subsequent paragraphs as the “**Recorded Amendments**”).

30. The Original Mortgage, as subsequently amended and modified by Recorded Amendments (collectively the Original Mortgage and Recorded Amendments are referred to herein as “**the Mortgage**”), grants Plaintiff, as security for the debt and obligations owed to Plaintiff and the Lenders under the Loan Agreement and the other Loan Documents, a first fee simple mortgage lien in and to the real property described in exhibit A-1 to the Original Mortgage, as subsequently updated and set forth in Exhibit E attached to the Motion and incorporated herein by reference, located at 1 Bay Drive, Lahaina, Hawaii 96761, current Tax Map Key No. (2) 4-2-004-028 (the “**Fee Premises**”), which comprise a portion of the “Kapalua Bay Condominium,” created pursuant to recorded declarations of condominium. Attached as Exhibit E to the Motion and made a part hereof is a true and accurate copy of the updated legal description of the Fee Premises that excludes apartments in the Kapalua Bay Condominium Project and timeshare units in the Kapalua Bay Vacation Ownership Project that were sold or otherwise conveyed since the recordation of the Original Mortgage.

31. The Kapalua Bay Condominium Project is described herein at paragraph 70 and the Kapalua Bay Vacation Ownership Project is described herein at paragraph 71.

32. The Mortgage also grants Plaintiff, as security for the debt and obligations owed to Plaintiff and the Lenders under the Loan Agreement and the Loan Documents, a first leasehold mortgage lien in and to the real property described in exhibit A-2 to the Original Mortgage, incorporated herein by reference, located at 1 Bay Drive, Lahaina, Hawaii 96761,

current Tax Map Key No. (2) 4-2-004-027 (the “**Leasehold Premises**”); and a first priority perfected security interest in and to the property described in Section 1.1 of the Mortgage other than the Fee Premises and the Leasehold Premises (“**Other Section 1.1 Property**”).

33. For the purpose of perfecting the Other Section 1.1 Property security interest granted under the Mortgage, that certain UCC Financing Statement naming KB as debtor and LBHI as secured party was recorded July 14, 2006 in said Bureau as Document No. 2006-129747 (“**UCC Financing Statement #1**”), covering, but not limited to, the property described in Section 1.1 of the Mortgage other than the Fee Premises and the Leasehold Premises (the “**Mortgage UCC Collateral**”), and that certain UCC Financing Statement naming KB as debtor and LBHI as secured party was filed on July 19, 2006 in the Office of the Secretary of State of the State of Delaware (the “**Office**”) as File Number 6249018 3 covering the Mortgage UCC Collateral (“**UCC Financing Statement #2**”). A true and accurate copy of the UCC Financing Statement #1 is attached as Exhibit F to the Motion and made a part hereof. A true and accurate copy of the UCC Financing Statement #2 is attached as Exhibit F-1 to the Motion and made a part hereof.

34. Pursuant to that certain UCC Financing Statement Amendment recorded February 11, 2009 in said Bureau as Document No. 2009-019985, LBHI, as prior agent, assigned its interest in Financing Statement #1 to CPB, as successor agent, and pursuant to that certain UCC Financing Statement Amendment filed February 11, 2009 in said Office as File Number 2009-0467081, LBHI, as prior agent, assigned its interest in Financing Statement #2 to CPB, as successor agent. True and accurate copies of the UCC Financing Statement Amendments described in this paragraph are attached as Exhibits F-2 and F-3 to the Motion and are made a part hereof.

35. Pursuant to that certain UCC Financing Statement Amendment recorded March 16, 2010 in said Bureau as Document No. 2010-035471, CPB, as prior Agent under the Loan Agreement, assigned its interest in Financing Statement #1 to LBHI, as successor Agent, and pursuant to that certain UCC Financing Statement Amendment filed March 16, 2010 in said Office as File Number 2010-0904155, CPB, as prior Agent under the Loan Agreement, assigned its interest in Financing Statement #2 to LBHI, as successor Agent. True and accurate copies of the UCC Financing Statement Amendments described in this paragraph are attached as Exhibits F-4 and F-5 to the Motion and are made a part hereof.

36. Pursuant to that certain UCC Financing Statement Amendment recorded June 5, 2012 in said Bureau as Document No. A-45390842, LBHI, as prior Agent under the Loan Agreement, assigned its interest in Financing Statement #1 to Plaintiff, as successor Agent, and pursuant to that certain UCC Financing Statement Amendment filed June 1, 2012 in said Office as File Number 2012-2117440, as corrected by UCC Financing Statement Amendment filed June 5, 2012 in said Office as File Number 2012-2147900, LBHI, as prior Agent under the Loan Agreement, assigned its interest in Financing Statement #2 to Plaintiff, as successor Agent. True and accurate copies of the UCC Financing Statement Amendments described in this paragraph are attached as Exhibits F-6, F-7, and F-8 to the Motion and are made a part hereof.

37. The property described in Section 1.1 of the Mortgage includes all of KB's "agreements" and related consents, and all the rights therein and thereto, to and including the right to collect any sums payable to KB thereunder, respecting or pertaining to the Fee Premises or Leasehold Premises, including, but not limited to, (i) the ML&P Agreements, (ii) the ER Purchase Agreement, and (iii) the Marketing Agreements (as such terms are defined in the Loan Agreement).

38. The Fee Premises, the Leasehold Premises, and the Other Section 1.1 Property are collectively referred to herein as the “**Mortgaged Properties.**”

39. The repayment of the debt and performance of the obligations of KB under the Loan Agreement, the Notes and the other Loan Documents are further secured by the following Loan Documents, which are cumulative with the grants of security under the Mortgage:

A. Assignment of Leases and Rents dated July 14, 2006 granted, executed and delivered by KB and recorded in the Bureau as Document No. 2006-129746, as amended and modified by the Recorded Amendments (as so amended, the “**Assignment of Rentals**”), which provides that all of the existing and future lease proceeds, rent, and other sums payable by the tenants of KB on the Mortgaged Properties, along with other rights and benefits of KB as described therein, are assigned to Plaintiff, as-successor-in-interest (collectively referred to herein as the “**Assignment of Rentals Collateral**”); and

B. Pledge of Accounts, Security Agreement and Rights to Payment dated July 14, 2006 granted, executed and delivered by KB, as amended by that certain First Omnibus Amendment to Construction Loan Documents dated January 26, 2007, and that certain Second Omnibus Amendment to Construction Loan Documents dated February 11, 2009 (as so amended, the “**Security Agreement**”), granting Plaintiff a first priority perfected security interest in and to the property defined in the Security Agreement as the “Collateral” and the “Proceeds” including KB’s interest in certain condominium deposit escrow accounts (collectively, the “**Security Agreement Collateral**”).

40. Plaintiff, as Agent for the Lenders, has assumed all of the right, title and interest of the Agent under the Assignment of Rentals. The relevant history of the assignments

for the Assignment of Rentals is fully set forth in that certain Notice of Change of Agent and Assignment of Assignment of Leases and Rents dated February 11, 2009, recorded in the Bureau as Document No. 2009-019983 (“**2009 Notice of Change of Agent and Assignment of Leases and Rents**”), that certain Notice of Change of Agent and Assignment of Assignment of Leases and Rents dated March 10, 2010, recorded in said Bureau as Document No. 2010-040792 (“**2010 Notice of Change of Agent and Assignment of Leases and Rents**”), and that certain 2012 Notice of Change of Agent and Assignment of Leases and Rents. A true and accurate copy of the Assignment of Rentals is attached as Exhibit G to the Motion and made a part hereof. A true and accurate copy of the 2009 Notice of Change of Agent and Assignment of Leases and Rents is attached as Exhibit K-8 to the Motion and made a part hereof. A true and accurate copy of the 2010 Notice of Change of Agent and Assignment of Leases and Rents is attached as Exhibit K-16 to the Motion and made a part hereof. A true and correct copy of the 2012 Notice of Change of Agent and Assignment of Leases and Rents is attached as Exhibit A-5 to the Motion and made a part hereof.

41. For the purpose of perfecting the security interest granted under the Security Agreement, that certain UCC Financing Statement naming KB as debtor and LBHI as secured party was recorded July 14, 2006 in said Bureau as Document No. 2006-129748 (“**UCC Financing Statement #3**”), covering the Security Agreement Collateral, and that certain UCC Financing Statement naming KB as debtor and LBHI as secured party was filed on July 19, 2006 in the Office of the Secretary of State of the State of Delaware as File Number 2006-62490761 covering the Security Agreement Collateral (“**UCC Financing Statement #4**”). A true and accurate copy of UCC Financing Statement #3 is attached as Exhibit H-3 to the Motion and

made a part hereof. A true and accurate copy of UCC Financing Statement #4 is attached as Exhibit H-4 to the Motion and made a part hereof.

42. Pursuant to that certain UCC Financing Statement Amendment recorded February 11, 2009 in said Bureau as Document No. 2009-019986, LBHI, as prior agent, assigned its interest in Financing Statement #3 to CPB, as successor agent, and pursuant to that certain UCC Financing Statement Amendment filed February 11, 2009 in said Office as File Number 2009-90467099, LBHI, as prior agent, assigned its interest in Financing Statement #4 to CPB, as successor agent. True and accurate copies of the foregoing UCC Financing Statement Amendments are attached as Exhibits H-5 and H-6 to the Motion, and are made a part hereof.

43. Pursuant to that certain UCC Financing Statement Amendment recorded March 16, 2010 in said Bureau as Document No. 2010-035472, CPB, as prior Agent under the Loan Agreement, assigned its interest in Financing Statement #3 to LBHI, as successor Agent, and pursuant to that certain UCC Financing Statement Amendment filed March 16, 2010 in said Office as File Number 2010-0904122, CPB, as prior Agent under the Loan Agreement, assigned its interest in Financing Statement #4 to LBHI, as successor Agent. True and accurate copies of the foregoing UCC Financing Statement Amendments are attached as Exhibits H-7 and H-8 to the Motion and are made a part hereof.

44. Pursuant to that certain UCC Financing Statement Amendment recorded June 5, 2012 in said Bureau as Document No. A-45390843, LBHI, as prior Agent under the Loan Agreement, assigned its interest in Financing Statement #3 to Plaintiff, as successor Agent, and pursuant to that certain UCC Financing Statement Amendment filed June 1, 2012 in said Office as File Number 2012-2117275, as corrected by UCC Financing Statement Amendment filed June 5, 2012 in said Office as File Number 2012-2147611, LBHI, as prior Agent under the Loan

Agreement, assigned its interest in Financing Statement #4 to Plaintiff, as successor Agent. True and accurate copies of the foregoing UCC Financing Statement Amendments are attached as Exhibits H-9, H-10 and H-11 to the Motion and are made a part hereof.

45. The Mortgaged Properties, the Assignment of Rentals Collateral, and the Security Agreement Collateral are hereinafter collectively referred to as the “**Loan Collateral**”.

DEFAULT DUE TO FAILURE TO PAY MATURED NOTES

46. KB has defaulted in the observance and the performance of the terms, covenants, and conditions set forth in the Loan Agreement, the Notes and the other Loan Documents in that it has, among other things, failed, neglected, and refused to make full payment at the respective scheduled maturity dates of the Notes, and is consequently in default under the applicable Loan Documents, including the Loan Agreement, the Notes, the Mortgage, the Assignment of Rentals, and the Security Agreement.

47. As set forth in Amendment No. 3 to the Amended and Restated Construction Loan Agreement, which is attached to the Motion as Exhibit B-3, the Facility A Notes matured on December 31, 2010 (the “**Facility A Maturity Date**”). As set forth in the Loan Agreement, which is attached to the Motion as Exhibit B, all of the Notes, other than the Facility A Notes, matured on August 1, 2011 (the “**Facility B/C Maturity Date**”). Therefore, pursuant to the terms of the Loan Agreement and Notes, the applicable maturity date for all Notes has occurred.

48. Pursuant to that certain notice dated March 9, 2012 (the “**Notice of Event of Default**”), LBHI, as prior Agent, notified KB that it failed to make full payment of the Facility A Notes at the scheduled Facility A Maturity Date, and failed to make full payment of all other Notes at the scheduled Facility B/C Maturity Date, in each case as required under the

Loan Agreement and applicable Notes in the manner provided therein, and KB failed to cure such failure within two Business Days of receipt of such notice and as a result Events of Default exist under the Loan Agreement and Notes. A true and accurate copy of the Notice of Event of Default is attached as Exhibit I-1 to the Motion and made a part hereof.

49. Pursuant to that certain demand letter dated June 5, 2012, the Agent, for itself and on behalf of the Lenders, made demand on KB for full payment of all amounts due and owing under the Loan Agreement, the Notes and the other Loan Documents (the “**Demand Letter**”). A true and accurate copy of the Demand Letter is attached as Exhibit I-2 to the Motion and made a part hereof.

50. Notwithstanding due and proper demand made upon KB for payment of the amounts due and owing to Plaintiff, KB has failed, neglected, and refused, and continues to fail, neglect, and refuse to make full payment under the Loan Agreement and the Notes to Plaintiff.

51. Due to its failure to make payment of the amounts due under the Loan Agreement and the Notes, KB continues to be in default and, in accordance with the terms thereof, the entire amount of the indebtedness thereunder is immediately due and payable.

PROTECTIVE ADVANCES

52. Pursuant to the terms of the Loan Agreement, if KB failed to perform any of its obligations under the Loan Agreement or any of the other Loan Documents, any of the Lenders had a right to make a “Protective Advance” (as defined in the Loan Agreement) to cure the default of KB. All amounts expended by such Lender in making such “Protective Advances” are added to the debt owed to such Lender by KB and bear interest at the Default Rate, as defined in the Loan Agreement.

53. Due to the failure of KB to perform certain of its obligations under the Loan Agreement and other Loan Documents, certain of the Lenders made such “Protective Advances” at various times (all such protective advances being, collectively, the “**Protective Advances**”). These Protective Advances were made either in accordance with the procedures set forth in the Loan Agreement or by letter agreements signed by all the parties to the Loan Agreement. After each Protective Advance, any amount expended by such Lender in making such Protective Advance was added to the debt owed to such Lender by KB and bore interest at the Default Rate, as defined in the Loan Agreement. A true and correct copy of the summary statements with respect to the various Protective Advances made by the various Lenders including a breakdown of the various expenses paid with the proceeds of such Protective Advances is attached to the Motion as Exhibit “J-1” and made a part hereof.

TOTAL DEFAULT AMOUNT

54. The Lenders are and continue to be the holders of their respective Notes and Protective Advances, and as of July 31, 2012, KB is indebted to Plaintiff and the Lenders in the following amounts:

Category of Debt	Principal	Interest	Total
Protective Advances			
CPB	\$675,762.81	\$33,093.02	
Deutsche Hypo	\$1,686,755.39	\$82,602.71	
LBBW	\$1,686,755.39	\$82,602.71	
LBHI	6,634,068.93	\$328,517.43	
Total Protective Advances	\$10,683,342.52	\$526,815.87	\$11,210,158.39
Facility A Obligations			
CPB	\$3,785,134.50	\$429,085.76	
Deutsche Hypo	\$9,447,983.27	\$1,071,030.57	
LBBW	\$9,447,983.27	\$1,071,030.57	
LBHI	\$10,573,423.58	\$1,198,611.35	

MH Kapalua Venture, LLC	\$4,035,745.62	\$453,933.27	
Total Facility A Obligations	\$37,290,270.24	\$4,223,691.52	\$41,513,961.76
Facility B-1 Obligations			
CPB	\$6,062,162.33	\$368,070.75	
Deutsche Hypo	\$5,051,801.94	\$306,725.64	
Deutsche Hypo	\$5,000,000.00	\$303,580.42	
LBBW	\$5,051,801.94	\$306,725.64	
LBBW	\$5,000,000.00	\$303,580.42	
LBHI	\$1,800,619.42	\$109,326.53	
Total Facility B-1 Obligations	\$27,966,385.63	\$1,698,009.40	\$29,664,395.03
Facility B-2 Obligations			
LBHI	\$4,041,441.55	\$245,380.50	\$4,286,822.05
Facility C-1 Obligations			
CPB	\$16,408,338.09	\$996,250.05	
Deutsche Hypo	\$8,673,615.08	\$526,627.92	
LBBW	\$8,673,615.08	\$526,627.92	
LBHI	\$147,675,015.27	\$8,966,248.48	
MH Kapalua Venture, LLC	5,000,000.00	\$303,580.43	
MH Kapalua Venture, LLC	5,000,000.00	\$303,580.43	
Total Facility C-1 Obligations	\$191,430,583.52	\$11,622,915.23	\$203,053,498.75
Facility C-2 Obligations			
LBHI	\$10,938,892.07	\$2,805,928.80	\$13,744,820.87
Consultant Fees	N/A	N/A	\$22,670.83
Servicer Fees	N/A	N/A	\$195,911.64
Agent legal expenses	N/A	N/A	\$388,524.41
Total			\$304,080,763.73

Interest continues to accrue at a rate of interest calculated at the Default Rate pursuant to the Loan Agreement, which for the current Interest Period is 10.2460% per annum with respect to Protective Advances, 10.2460% per annum with respect to the Facility A Notes, 6.9460% per annum with respect to Facility B-1 Notes, the LBHI Facility B-2 Note and the Facility C-1

Notes, and 16.1960% per annum with respect to the LBHI Facility C-2 Note. Plaintiff has incurred and continues to incur Protective Advances in connection herewith and such amounts are secured by the Loan Documents. Plaintiff has incurred and continues to incur attorneys' fees and costs in connection herewith and such amounts are secured by the Loan Documents.

55. The "Servicer" for the loans made under the Loan Agreement and evidenced by the Notes, Mortgage, and other Loan Documents is Trimont Real Estate Advisors, Inc. ("Trimont"). In that capacity, Trimont performs "Loan Servicing" for Plaintiff.

56. Loan Servicing includes, but is not limited to: (a) reviewing as necessary all documents, information and records relating to the Mortgage Loans that are necessary to enable the Servicer to perform its duties (the "Servicing File"), organizing, administering and maintaining the Servicing File, and inputting all relevant information relating to the loans made under the Loan Agreement and the Protective Advances (the "Mortgage Loans") and the Mortgage Loan Documents into Servicer's loan servicing computer system; (b) maintaining and making available to Plaintiff and the Lenders (as defined in the Loan Agreement) an electronic data repository where electronic copies of all Mortgage Loan Documents and other material delivered by KB in compliance with the Mortgage Loan Documents are maintained and updated; (c) determining and notifying KB, Plaintiff and the Lenders of the applicable interest rates on the Mortgage Loans and of the amount of each payment of principal and interest due under the terms of the Loan Agreement and the other Mortgage Loan Documents; (d) performing payment processing, record keeping and administration of various accounts created under the Loan Agreement and maintained by Servicer in connection with the Mortgage Loan Documents; and (e) determining the amounts required for the pay-off of the Mortgage Loans and determining all expenses or required interest calculations relating to actual or prospective payments of the

principal amount of the Mortgage Loans (or any portion thereof) (collectively the loan servicing duties of Trimont are referred to herein as its “duties as Servicer”).

57. Pursuant to its duties as Servicer, Trimont has prepared and provided to Plaintiff copies of the summary statements, loan history, and account activity statements for the various Notes (collectively the “Ledger and Account Activity Statements”). Also, Trimont has prepared and provided to Plaintiff copies of the summary statements with respect to the various Protective Advances made by the various Lenders including a breakdown of the various expenses paid with the proceeds of the Protective Advances (collectively the “Protective Advances Statements”). A true and correct copy of the Ledger and Account Activity Statements provided to Plaintiff by Trimont is attached to the Motion as Exhibit “J” and made a part hereof. A true and accurate copy of the Protective Advances Statements provided to Plaintiff by Trimont is attached to the Motion as Exhibit “J-1” and made a part hereof.

58. Trimont has provided and continues to provide updated Ledger and Account Activity Statements to Plaintiff and the Lenders. Said information is the general loan ledger which reflects the total amounts due and payable to Plaintiff on behalf of the Lenders under the matured Notes and the Protective Advances.

59. Pursuant to the provisions of the Loan Documents, Plaintiff is entitled to foreclose upon its mortgage lien on and security interest in and to the Loan Collateral and is entitled to reimbursement of its costs and reasonable attorneys’ fees incurred herewith.

THE LOAN HISTORY

60. The loan history for the Original Loan prior to the execution and delivery of the Amended and Restated Loan Agreement is described herein from paragraph 61 through paragraph 69 .

61. On July 14, 2006, LBHI (as predecessor-in-interest to Plaintiff and the Lenders), as lender, and KB, as borrower, entered into that certain Construction Loan Agreement dated as of July 14, 2006 (the “**Original Loan Agreement**”) pursuant to which LBHI agreed to make a loan in the principal amount of up to THREE HUNDRED SEVENTY MILLION AND NO/100 DOLLARS (\$370,000,000.00) to KB.

62. On or about January 26, 2007, LBHI and KB entered into that certain Note Splitter and Reaffirmation Agreement dated January 26, 2007, pursuant to which the original note issued under the Original Loan Agreement was split, divided and apportioned into the following six separate promissory notes delivered to LBHI by KB: (a) the Amended, Restated and Severed Promissory Note dated January 26, 2007 in the principal amount of \$30,000,000.00 (the “**2007 Split Note A-1**”), (b) the Amended, Restated and Severed Promissory Note dated January 26, 2007 in the principal amount of \$25,000,000.00 (the “**2007 Split Note A-2**”), (c) the Amended, Restated and Severed Promissory Note dated January 26, 2007 in the principal amount of \$25,000,000.00 (the “**2007 Split Note A-3**”), (d) the Amended, Restated and Severed Promissory Note dated January 26, 2007 in the principal amount of \$15,000,000.00 (the “**2007 Split Note A-4**”), (e) the Amended, Restated and Severed Promissory Note dated January 26, 2007 in the principal amount of \$255,000,000.00 (the “**2007 Split Note A-5**”), and (f) the Amended, Restated and Severed Promissory Note dated January 26, 2007 in the principal amount of \$20,000,000.00 (the “**2007 Split Note B**”). The 2007 Split Note A-1, the 2007 Split Note A-2, the 2007 Split Note A-3, the 2007 Split Note A-4, the 2007 Split Note A-5 and the 2007 Split Note B are hereinafter collectively referred to as the “**2007 Split Notes**.” A true and correct copy of the Note Splitter and Reaffirmation Agreement is attached as Exhibit K-2 to the

Motion and made a part hereof. True and correct copies of the 2007 Split Notes are attached as Exhibit K-3 to the Motion and made a part hereof.

63. Pursuant to that certain Assignment and Assumption Agreement dated February 1, 2007 (“**Assignment #1**”), LBHI assigned the 2007 Split Note A-1 to CPB. Pursuant to that certain Assignment and Assumption Agreement dated February 1, 2007 (“**Assignment #2**”), LBHI assigned the 2007 Split Note A-2 to Landesbank Sachsen Girozentrale (now known as Landesbank Baden-Württemberg) (previously defined as “LBBW”). Pursuant to that certain Assignment and Assumption Agreement dated February 1, 2007 (“**Assignment #3**”), LBHI assigned the 2007 Split Note A-3 to Deutsche Hypo. LBHI retained 2007 Split Note A-4, 2007 Split Note A-5 and 2007 Split Note B. Subsequently, Swedbank became the assignee and successor-in-interest to the 2007 Split Note B. Assignment #1, Assignment #2 and Assignment #3 are collectively referred to herein as the “**2007 Assignment and Assumption Agreements.**” True and correct copies of the 2007 Assignment and Assumption Agreements are attached as Exhibit K-4 to the Motion and made a part hereof.

64. CPB, Deutsche Hypo, LBBW, LBHI and Swedbank are collectively referred to herein as the “**2007 Split Note Holders.**” Pursuant to that the Co-Lending Agreement, the 2007 Split Note Holders appointed LBHI as agent for the 2007 Split Note Holders.

65. Pursuant to that certain Master Assignment and Assumption and Modification Agreement dated February 11, 2009 among CPB, Deutsche Hypo, LBBW, LBHI, MH Kapalua Venture, LLC, Swedbank, LBHI as agent, and KB (the “**Master Assignment Agreement**”), the 2007 Split Note Holders assigned their outstanding loans, their 2007 Split Notes and a portion of their then remaining funding commitments under the Original Loan

Agreement to CPB, Deutsche Hypo, LBBW, LBHI, MH Kapalua Venture, LLC and Swedbank, and the balance of the remaining funding commitments of the 2007 Split Note Holders under the Original Loan Agreement were cancelled. A true and correct copy of the Master Assignment Agreement is attached as Exhibit K-10 to the Motion and made a part hereof.

66. Pursuant to the Master Assignment Agreement, the 2007 Split Notes were further split, divided and apportioned into the following seven separate promissory notes delivered by KB: (a) the Amended, Restated and Severed Promissory Note dated February 11, 2009 in the principal amount of \$36,133,081.90 payable to CPB (the “**2009 Split Note A-1**”), (b) the Amended, Restated and Severed Promissory Note dated February 11, 2009 in the principal amount of \$50,944,234.92 payable to LBBW (the “**2009 Split Note A-2**”), (c) the Amended, Restated and Severed Promissory Note dated February 11, 2009 in the principal amount of \$50,944,234.92 payable to Deutsche Hypo (the “**2009 Split Note A-3**”), (d) the Amended, Restated and Severed Promissory Note dated February 11, 2009 in the principal amount of \$8,338,110.51 payable to LBHI (the “**2009 Split Note A-4**”), (e) the Amended, Restated and Severed Promissory Note dated February 11, 2009 in the principal amount of \$176,747,860.32 payable to LBHI (the “**2009 Split Note A-5**”), (f) the Amended, Restated and Severed Promissory Note dated February 11, 2009 in the principal amount of \$20,000,000.00 payable to MH Kapalua Venture, LLC (the “**2009 Split Note A-6**”) and (g) the Amended, Restated and Severed Promissory Note dated February 11, 2009 in the principal amount of \$15,735,721.55 payable to Swedbank (the “**2009 Split Note B**”).

67. The 2009 Split Note A-1, the 2009 Split Note A-2, the 2009 Split Note A-3, the 2009 Split Note A-4, the 2009 Split Note A-5, the 2009 Split Note A-6 and the 2009 Split Note B are hereinafter collectively referred to as the “**2009 Split Notes**,” and the holders of the

2009 Split Notes are hereinafter collectively referred to as the “2009 Lenders.” True and accurate copies of the 2009 Split Notes are attached as Exhibit K-11 to the Motion and are made a part hereof.

68. Pursuant to a letter agreement dated February 11, 2009 (the “2009 Agency Assignment”), (a) LBHI resigned as agent for the 2009 Lenders, (b) CPB was appointed the successor agent for the 2009 Lenders, and (c) LBHI assigned to CPB its rights and privileges as agent under the Co-Lending Agreement and the Loan Documents. A true and accurate copy of the 2009 Agency Assignment is attached as Exhibit K-6 to the Motion and made a part hereof.

69. Pursuant to that certain Amended and Restated Construction Loan Agreement dated February 11, 2009 among the 2009 Lenders, CPB as agent and KB, the terms and provisions of the Original Loan Agreement were amended and restated. Pursuant to Section 23.22 of the Amended and Restated Loan Agreement, the Co-Lending Agreement was terminated and the terms and provisions of the Co-Lending Agreement were superseded by the Amended and Restated Loan Agreement, which along with the Notes and the other Loan Documents, are the governing loan documents for purposes of this foreclosure action.

RECORDED CONDO DOCUMENTS

70. The Fee Premises comprise a portion of the “Kapalua Bay Condominium” created pursuant to that certain Declaration of Condominium Property Regime of Kapalua Bay Condominium, which was recorded in the Bureau as Document No. 2006-083256, as amended by that certain First Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium dated November 3, 2006, recorded in said Bureau as Document No. 2006-208339, that certain Second Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium dated November 13, 2007, recorded in said Bureau as Document

No. 2007-212730, that certain Third Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium dated April 30, 2009, recorded in said Bureau as Document No. 2009-068617, that certain Fourth Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium and Apartment Deed dated June 30, 2009, recorded in said Bureau as Document Nos. 2009-107544 and 2009-107545, that certain Fifth Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium dated February 11, 2010, recorded in said Bureau as Document No. 2010-022936, that certain Sixth Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium dated November 18, 2010, recorded in said Bureau as Document No. 2010-178152 and that certain Amendment to Declaration of Condominium Property Regime of Kapalua Bay Condominium (Apartment Numbers 1302 and 1404; Parking Stall Numbers 029S, 030S, 027S and 028S) dated June 21, 2011, recorded in said Bureau as Document No. 2011-102350 (the “**Condominium Declaration**”). True and accurate copies of the Condominium Declaration and recorded amendments are attached as Exhibits L and L-1 through L-7 to the Motion and are made a part hereof. Exhibit E describes those “Resort Apartments” (as defined in the Condominium Declaration) in the “Kapalua Bay Condominium” that have been released from the lien of the Mortgage.

RECORDED VACATION OWNERSHIP PROJECT DOCUMENTS

71. A number of the Resort Apartments, as defined in and created pursuant to the Condominium Declaration, comprise a vacation ownership project known as The Kapalua Bay Vacation Ownership Project created pursuant to The Kapalua Bay Vacation Ownership Project Declaration of Covenants, Conditions and Restrictions, which was recorded in the Bureau as Document No. 2006-112198, as amended by that certain First Amendment to The

Kapalua Bay Vacation Ownership Project Declaration of Covenants, Conditions and Restrictions dated as of November 13, 2007, recorded in said Bureau as Document No. 2007-216496, that certain Second Amendment to The Kapalua Bay Vacation Ownership Project Declaration of Covenants, Conditions and Restrictions dated as of June 19, 2008, recorded in said Bureau as Document No. 2008-106853, and that certain Third Amendment to The Kapalua Bay Vacation Ownership Project Declaration of Covenants, Conditions and Restrictions dated as of April 30, 2009, recorded in said Bureau as Document No. 2009-068618 (the “**VOP Declaration**”). True and accurate copies of the VOP Declaration and recorded amendments are attached as Exhibits M and M-1 through M-3 to the Motion and are made a part hereof. Exhibit E describes those “Club Interests” (as defined in the VOP Declaration) in The Kapalua Bay Vacation Ownership Project that have been released from the lien of the Mortgage.

CONCLUSIONS OF LAW

To the extent that any of the following Conclusions of Law shall be determined to be Findings of Fact, they shall be deemed as such. Pursuant to the foregoing Findings of Fact, the Court concludes:

1. This Court has jurisdiction of the parties and the subject matter of this action, and venue is appropriate in this Circuit.
2. Plaintiff has standing to bring this action including the right to foreclose on the Loan Collateral.
3. Defendant KB is indebted to Plaintiff and the Lenders under the Loan Agreement and Notes in the amounts set forth in the above Findings of Fact and the same is not subject to any setoff or affirmative defense.

4. The Loan Agreement, Notes, and other Loan Documents described above in the preceding Findings of Fact are in default and the amounts due and owing under the Loan Agreement and Notes are immediately due and payable.

5. Defendant KB's failure to pay the amounts due and owing on the Loan Agreement and Notes to Plaintiff and the Lenders on the Facility A Maturity Date and the Facility B/C Maturity Date constitutes an Event of Default under the Mortgage. Defendant KB's failure to pay is also an Event of Default under the Assignment of Rentals and Security Agreement.

6. Plaintiff has provided Defendant KB with proper and timely notice of the default under the Loan Documents and, despite receiving said notice, Defendant KB continued to fail, neglect, and refuse to pay the principal sums and interest due under the Loan Agreement and Notes in the manner provided therein.

7. Pursuant to the Mortgage, Plaintiff has a valid first mortgage lien on and perfected security interest in and to the Mortgaged Properties, which include the Fee Premises, Leasehold Premises and Other Section 1.1 Property.

8. Pursuant to the Assignment of Rentals, Plaintiff is assigned all of the existing and future lease proceeds, rents, and other sums payable by the tenants of Defendant KB on the Mortgaged Properties. Plaintiff is also assigned all other rights and benefits of Defendant KB as described in that certain Assignment of Rentals document in and to the Assignment of Rentals Collateral.

9. Pursuant to the Security Agreement, Plaintiff has a valid first priority perfected security interest in and to the Security Agreement Collateral, which is defined in the

Security Agreement as the “Collateral” and the “Proceeds,” including Defendant KB’s interest in certain condominium deposit escrow accounts.

10. Based upon the default of Defendant KB, Plaintiff is entitled to foreclose upon its security interest upon the entire Loan Collateral, which includes the Mortgaged Properties, the Assignment of Rentals Collateral, and the Security Agreement Collateral.

11. Plaintiff is entitled to have the Loan Collateral, which includes the Mortgage, foreclosed and the Fee Premises, Leasehold Premises, Other Section 1.1 Property, Assignment of Rentals Collateral, and Security Agreement Collateral sold in a manner subscribed by law and any of the proceeds arising from such sale applied to the sum due and owing to Plaintiff and the Lenders as aforesaid.

12. Plaintiff, any one or more of the Lenders, and all other parties are entitled to be a purchaser at the foreclosure sale hereinafter provided.

13. The applicable statutory language for Sections 514B-146 and 514A-90 of the HRS which shall govern the determination of any lien rights of the AOA under the Complaint and to the Mortgaged Properties is the statutory language that was in effect at the time the Complaint was filed herein on June 13, 2012.

14. In particular, the statutory provision of Section 514B-146(h) of the HRS that is applicable to this case and the Complaint is set forth as follows:

(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the twelve months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure. In no event shall the amount of the special assessment exceed the sum of \$7,200.

15. Plaintiff is entitled to a judgment as a matter of law as to all claims in the Complaint and against all parties except for the claims pertaining to Defendant Kapalua Bay Holdings, LLC.

16. Plaintiff has not sought and judgment shall not be entered as to its claims against Defendant Kapalua Bay Holdings, LLC.

17. This Court expressly directs that final judgment should be entered upon the Complaint as there is no just reason for delay, provided that Plaintiff's claims in the Complaint against Defendant Kapalua Bay Holdings, LLC shall survive the Motion and this Order and shall be adjudicated at trial or resolved by way of a subsequent motion.

**ORDER GRANTING THE MOTION OF PLAINTIFF FOR
SUMMARY JUDGMENT, INTERLOCUTORY DECREE OF FORECLOSURE
AND ORDER OF SALE AGAINST ALL DEFENDANTS AS TO THE COMPLAINT
FILED ON JUNE 13, 2012 EXCEPT DEFENDANT KAPALUA BAY HOLDINGS, LLC**

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the preceding Findings of Fact and Conclusions of Law are hereby entered, and the Motion of Plaintiff for Summary Judgment, Interlocutory Decree of Foreclosure, and Order of Sale against all Defendants as to the Complaint filed on June 13, 2012 except Defendant Kapalua Bay Holdings, LLC is hereby GRANTED in its entirety.

2. That summary judgment and interlocutory decree of foreclosure are entered in favor of Plaintiff and against Defendant KB, AOA, and VOA as to the Complaint and that, pursuant to Rule 54(b) of the Hawaii Rules of Civil Procedure ("**HRCP**"), this Court expressly directs that said summary judgment and interlocutory decree of foreclosure are entered as a final judgment as to the Complaint filed herein as there is no just reason for delay, provided that Plaintiff's claims in the Complaint against Defendant Kapalua Bay Holdings, LLC shall

survive the Motion and this Order and shall be adjudicated at trial or resolved by way of a subsequent motion.

3. That Defendant KB is declared in default under the Loan Agreement, Notes, Mortgage and the other Loan Documents (as such terms are defined in the Findings of Fact) currently held by Plaintiff and that, as of July 31, 2012, there is due and owing and unpaid to Plaintiff under the Loan Agreement and Notes a total of \$304,080,763.73, consisting of: (i) principal in the amount of \$271,667,573.01; (ii) accrued interest (including interest on protective advances) in the amount of \$21,122,741.32 (iii) protective advances made by “Lenders” (as defined in the Findings of Fact) in the amount of \$10,683,342.52; (iv) Consultant Fees of \$22,670.83; (v) Servicer Fees of \$195,911.64; and (vi) Agent legal expenses of \$388,524.41. Interest at a rate calculated pursuant to the Default Rate stated in the Loan Agreement and Notes, servicing and administrative fees, expenses, attorneys’ fees and costs, and protective advances due to Plaintiff continue to accrue under the Loan Documents.

4. That Mortgage, Assignment of Rentals, Security Agreement, and the other Loan Documents held by Plaintiff are foreclosed as prayed, and the Mortgaged Properties, the Assignment of Rentals Collateral, and Security Agreement Collateral, and without limitation, all of the Loan Collateral, shall be sold at public auction or by private sale, subject only to any superior lien for real property taxes, and shall be sold in an “as is”, and “where is” condition without warranties of any nature, express or implied, and there shall be no upset price. The Commissioner shall accept the highest bid and shall require a down payment of at least ten percent (10%) of the bid price from all third parties at the fall of the hammer in cash or certified or cashier's check, the balance of the purchase price to be paid concurrently with the conveyance of the Loan Collateral to the purchaser (the “**Purchaser**”). The Purchaser shall pay the cost of

conveyancing, recordation and conveyance taxes and shall pay for and be responsible for securing possession of the Loan Collateral. The sale shall not be final until approved and confirmed by the Court.

5. Plaintiff may, and shall to the extent it is directed by the Required Lenders (as the term "Required Lenders" is defined in the Loan Agreement), be a purchaser at said sale, and any amounts determined by this Court to be due and owing to Plaintiff under the Loan Agreement may be credited against the total bid price which Plaintiff may make at said sale. If the Plaintiff is the highest bidder at said sale, the down payment of at least ten percent (10%) of the bid price will not be required.

6. When a sale of the Loan Collateral, or a portion thereof, to a purchaser does not close due to the failure of the purchaser to pay the balance of the full purchase price at closing, the down payment of at least ten percent (10%) of the bid price shall be forfeited and held by the Commissioner in an account for the benefit of Plaintiff, subject to further order of the Court.

7. George W. Van Buren, Esq., whose address is 1950 Fort Street Tower, 745 Fort Street, Honolulu, Hawaii 96813, and whose telephone number is (808) 599-3800, is hereby appointed Commissioner by this Court ("Commissioner") and is authorized and directed to take possession of and sell all of the Loan Collateral described in the foregoing Findings of Fact.

8. The Commissioner is authorized to sell the Loan Collateral separately to different purchasers and in separate public or private sales provided, in the Commissioner's reasonable discretion, the sale of the Loan Collateral in separate public or private sales would result in a higher total sale price than if the entire Loan Collateral was sold to a single purchaser.

The Loan Collateral that the Commissioner is hereby authorized to sell by way of separate public auctions or private sales are the Fee Premises, the Leasehold Premises, the Other Section 1.1 Property, the Assignment of Rentals Collateral, and the Security Agreement Collateral. Notwithstanding the foregoing, the Fee Premises must be sold together in a single sale and not by individual whole or fractional units.

9. It is within the discretion of the Commissioner, who is authorized but not required, to conduct two (2) open houses of the Mortgaged Properties (“**Open Houses**”) for public viewing on two separate days prior to the foreclosure sale, and shall give notice of the Open Houses, if any, by publication as set forth below.

a. The Commissioner is directed that no public Commissioner’s sale shall occur until after notice of such sale is given by the Commissioner by publication in the classified section of newspapers of general circulation in the County of Maui and in the City and County of Honolulu. The notice in each publication is to be published once in each week for three (3) consecutive weeks, with the sale to take place no sooner than fourteen (14) days after the third date of publication; the notice shall provide the date, time and place of the Open Houses, if the Commissioner decides within his discretion to hold Open Houses, the date, time and place of the public sale, an intelligible description of the Loan Collateral, and all of the terms of the foreclosure sale; and,

10. The Commissioner is authorized to continue the public sale from time to time in the Commissioner’s reasonable discretion.

11. The Commissioner shall have all the powers, rights, and duties of a commissioner appointed by the Court, including the following specific rights and powers:

- a. to take full possession, control and custody of the Loan Collateral and to take all necessary steps and measures to properly market the Loan Collateral including the retention of real estate brokers and/or marketing agents;
- b. to take a full inventory of the Loan Collateral to the exclusion of all defendants, and to change the locks to the Mortgaged Properties, if necessary and appropriate;
- c. to manage and rent the Loan Collateral, and to demand, collect, receive and hold all income, profits, lease rentals and receipts accruing from and by the Loan Collateral and the business operations thereon;
- d. to bring and prosecute all proper actions for the (i) collection of income, profits, lease rentals and receipts and other sums earned by the Loan Collateral and the business operations thereon; and (ii) preservation and protection of the Loan Collateral and the business operations thereon;
- e. to take whatever other steps as are actually and reasonably necessary to protect the Loan Collateral from damage by vandalism, or substantial damage by the elements or other significant and imminent hazards;
- f. to expend from the funds coming into his possession only such sums as are actually and reasonably required (i) to continue his uninterrupted possession, control, operation and management of the Loan Collateral and the business operations thereon; (ii) to prevent waste of or harm to the Loan Collateral, including payment for emergency repairs, utility services and the immediate payment of all tax obligations as are due and may become due and may be required to prevent imminent governmental forfeiture (to the extent such funds are available); and (iii) to exercise and effectuate the powers and authorities granted herein;

g. to hold all proceeds remaining in his possession after payment of the aforesaid expenditures in an account, subject to further order of this Court;

h. to take any action the Commissioner determines is required or appropriate to protect and enforce the rights of Plaintiff as to the Loan Collateral;

i. to take any action the Commissioner determines is required or appropriate in dealing with the AOAO or the VOA, including the power to exercise rights of the Developer and/or Owner as stated in the Condominium Declaration and VOP Declaration; and,

j. to receive any proceeds from the Protective Advances from the Plaintiff to facilitate making payments (by the Commissioner) to the AOAO or the VOA as the Commissioner may determine are necessary to preserve Loan Collateral as outlined in subsections f. and h.

12. Except for the liens of real property taxes, allowable condominium association special assessment liens arising under Sections 514B-146(g) and 514A-90(g) of the HRS, and those liens and encumbrances reflected in the property description of the Mortgaged Property as they appear in attached Schedule "1" and "2", the Mortgaged Properties shall be sold free and clear of all liens and encumbrances of any nature arising upon the Mortgaged Properties subsequent to the recordation of the Notice of Pendency of Action filed herein.

13. The VOA lien rights shall be governed by Chapter 514E of the HRS, and Section 514E-29 therein.

14. That pursuant to Section 634-51 of the HRS, any and all other or further encumbrancers or purchasers in respect of the Mortgaged Properties or any part thereof, whose interest arises from and after June 13, 2012 (the date the Notice of Pendency of Action was recorded in the Bureau), will forever be barred of and from any and all right, title and interest in

and to the Mortgaged Properties, and every part thereof upon closing of the sale herein authorized.

15. That Defendant KB, and all persons claiming by, through or under them, except any governmental authority enforcing a lien for unpaid real property taxes as to the Mortgaged Properties or a condominium association enforcing an allowable special assessment lien, pursuant to Sections 514B-146(g) and 514A-90(g) of the HRS, for unpaid regular monthly common assessments on the delinquent apartments at the Mortgaged Properties, provided that pursuant to Sections 514B-146(h) and 514A-90(h), the amount of the special assessment lien on each delinquent apartment shall in no event exceed the sum of \$7,200.00, will be perpetually barred of and from any and all right, title and interest in the Loan Collateral or any part thereof upon closing of the sale herein authorized.

16. The Commissioner shall file an accurate accounting of all receipts and expenses, and shall be awarded such fees and reimbursement of expenses as the Court shall determine to be reasonable.

17. A hearing shall be held to confirm the foreclosure sale, the amounts due to Plaintiff, including its attorneys' fees and costs, the Commissioner's fees and expenses, the amounts due and the priorities of the liens of the parties to this action. The Commissioner's fees and costs shall be determined to be secured by Plaintiff's first mortgage lien on the Mortgaged Properties and security interest upon the other Loan Collateral. The bidding may be reopened at the confirmation hearing provided that the reopening bid exceeds the highest bid accepted at the foreclosure auction or private sale by at least five percent (5%).

18. If any one or more of the Lenders (other than Plaintiff as Agent for some or all of the Lenders) is confirmed as the Purchaser, to the extent such Purchaser would be

entitled to receive any portion of the sale proceeds (the "Purchaser Distribution"), the Purchaser may credit the amount of the Purchaser Distribution against the balance of the purchase price to be paid by the Purchaser with the prior written consent of the Agent.

19. That upon confirmation of the sale, and satisfaction of the obligations of the Commissioner as fully set forth herein, all rights of Defendant KB as to the Loan Collateral shall be transferred to the purchaser of the Loan Collateral pursuant to foreclosure sale.

20. The Court shall retain jurisdiction over the claims and the interests of the parties and the distribution of the sale proceeds resulting from the sale of the Loan Collateral.

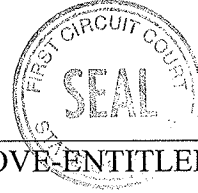
21. Plaintiff has not requested a deficiency judgment against Defendant KB and will not seek any deficiency judgment against Defendant KB in this action (“**Deficiency Issue**”). Notwithstanding the Deficiency Issue, Plaintiff preserves all of its rights under the Notes including the right to later pursue, either in this action or a separate action, claims against Defendant KB under the Recourse Obligations set forth in Article IX of the Notes. Under all circumstances, the Deficiency Issue shall not constitute a waiver, release, or impairment of any right of Plaintiff under the Notes and other Loan Documents, including the right of Plaintiff to pursue Recourse Obligations, if any, against Defendant KB, any of the Exculpated Parties, the Borrower Principals, or any Guarantor (as the terms “Exculpated Parties,” “Borrower Principals” and “Guarantor” are defined in the Loan Agreement and Notes).

22. The Commissioner shall be authorized and instructed to receive the full amount of all rents, if any, resulting from the Loan Collateral and to expend reasonable sums as may be necessary, subject to Plaintiff's approval, to enable the Loan Collateral to be rented and to hold the rentals until distribution is authorized by order of this Court.

23. Pursuant to HRCP Rule 54(b), the foregoing shall be considered as a final order and judgment and there shall be no just reason for delay.


DATED: Honolulu, Hawaii, SEP 13 2012.

BERT I. AYABE



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:


JAMES A. WAGNER, ESQ.
Attorney for Defendant
KAPALUA BAY, LLC.


Peter A. Horovitz, Esq.
Attorney for Defendants
ASSOCIATION OF APARTMENT OWNERS OF KAPALUA BAY CONDOMINIUM
KAPALUA BAY VACATION OWNERS ASSOCIATION

LANDESBANK BADEN-WÜRTTEMBERG, NEW YORK BRANCH, IN ITS CAPACITY AS AGENT FOR CENTRAL PACIFIC BANK, DEUTSCHE HYPOTHEKENBANK (ACTIEN-GESELLSCHAFT), LANDESBANK BADEN-WÜRTTEMBERG, LEHMAN BROTHERS HOLDINGS INC. AND MH KAPALUA VENTURE, LLC v. KAPALUA BAY, LLC, et. al.; Civil No. 12-1-1649 (06); FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER GRANTING THE MOTION OF PLAINTIFF LANDESBANK BADEN-WÜRTTEMBERG, NEW YORK BRANCH, IN ITS CAPACITY AS AGENT FOR CENTRAL PACIFIC BANK, DEUTSCHE HYPOTHEKENBANK (ACTIEN-GESELLSCHAFT), LANDESBANK BADEN-WÜRTTEMBERG, LEHMAN BROTHERS HOLDINGS INC. AND MH KAPALUA VENTURE, LLC, FOR SUMMARY JUDGMENT, INTERLOCUTORY DECREE OF FORECLOSURE, AND ORDER OF SALE AGAINST ALL DEFENDANTS AS TO THE COMPLAINT FILED ON JUNE 13, 2012 EXCEPT DEFENDANT KAPALUA BAY HOLDINGS, LLC; SCHEDULE "1" AND "2"

SCHEDULE "1"

EXHIBIT A-1

(Fee Premises)

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 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.

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 CLOCK WISE 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 A PORTIONS 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 A PORTIONS 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.

BEING THE LAND CONVEYED BY:

1. WARRANTY DEED WITH RESERVATIONS AND COVENANTS RECORDED AUGUST 31, 2004 AS REGULAR SYSTEM DOCUMENT NO. 2004-178884 OF OFFICIAL RECORDS.

GRANTOR: MAUI LAND & PINEAPPLE COMPANY, INC., A HAWAII CORPORATION
GRANTEE: KAPALUA BAY, LLC, A DELAWARE LIMITED LIABILITY COMPANY

2. WARRANTY DEED WITH RESERVATIONS AND COVENANTS RECORDED AUGUST 31, 2004 AS REGULAR SYSTEM DOCUMENT NO. 2004-178885 OF OFFICIAL RECORDS.

GRANTOR: MAUI LAND & PINEAPPLE COMPANY, INC., A HAWAII CORPORATION
GRANTEE: KAPALUA BAY, LLC, A DELAWARE LIMITED LIABILITY COMPANY

EXCEPTING AND RESERVING FROM THE FOREGOING DESCRIBED REAL PROPERTY:

1. THE FOLLOWING APARTMENTS IN THE CONDOMINIUM PROJECT (THE "PROJECT") KNOWN AS "KAPALUA BAY CONDOMINIUM," AS ESTABLISHED BY THAT CERTAIN DECLARATION OF CONDOMINIUM PROPERTY REGIME DATED APRIL 18, 2006, RECORDED AT THE BUREAU OF CONVEYANCES OF THE STATE OF HAWAII AS DOCUMENT NO. 2006-083256, AS AMENDED, AND AS SHOWN ON THE PLANS THEREOF FILED AT SAID BUREAU AS CONDOMINIUM MAP NO. 4222, AS THE SAME MAY BE AMENDED FROM TIME TO TIME:

1103; 1205; 1302; 1303; 1305; 1502; 1503; 2103; 2202; 2203; 2204; 2206; 2208; 2302; 2304; 2306; 2308; 2403; 2406; 2408; 2506; 2508; 2602; 2606; 2608; 2706; 5103; and 5202

2. THE FOLLOWING CLUB INTERESTS IN THE KAPALUA BAY VACATION OWNERSHIP PROJECT, CONSISTING OF UNDIVIDED ONE-TWELFTH (1/12) FEE SIMPLE INTERESTS, AS TENANT IN COMMON WITH THE HOLDERS OF OTHER UNDIVIDED CLUB INTERESTS, IN AND TO CERTAIN APARTMENTS WITHIN THE PROJECT:

<u>APARTMENT</u>	<u>CLUB INTEREST</u>
3101	27
3101	37
3102	2
3102	3
3102	5
3102	9
3102	10
3102	11
3202	2
3202	6
3204	18
3302	25
3302	26
3302	29
3302	33
3302	34
3302	35

3303	5
3303	7
3304	6
3304	7
3401	5
3401	9
3401	12
3402	1
3402	2
3402	6
3402	7
3402	8
3402	9
3402	11
3404	14
3406	16
3504	1
<u>APARTMENT</u>	<u>CLUB INTEREST</u>
3504	2
3504	3
3504	5
3504	8
3505	6
3506	25
3506	26
3506	27
3506	28
3506	29
3506	32
3506	33
3506	34
3506	35
3602	25
3602	26
3602	27
3602	29
3602	32
3602	33
3602	34
3602	35
3602	36
3602	37
3603	14
3603	18
3603	21
3604	1

3604	2
3604	4
3604	5
3604	6
3604	7
3604	10
3604	11
3604	12
3605	3
3605	8
3605	10
3606	25
3606	26
3606	27
3606	28
<u>APARTMENT</u>	<u>CLUB</u> <u>INTEREST</u>
3606	29
3606	30
3606	31
3606	32
3606	33
3606	34
3606	35
3705	25
3705	26
3705	27
3705	28
3705	29
3705	33
3705	35
4101	25
4101	26
4102	6
4201	8
4202	3
4202	4
4203	14
4203	17
4203	18
4302	15
4302	17
4302	23
4304	18
4401	1
4401	2
4401	3

4401	4
4401	5
4401	7
4402	1
4402	2
4402	4
4402	6
4402	10
4402	11
4402	12
4404	2
4404	4
4404	5
<u>APARTMENT</u>	<u>CLUB INTEREST</u>
4404	12
4502	1
4502	2
4502	3
4502	4
4502	5
4502	7
4502	9
4502	10
4502	12
4504	2
4504	3
4504	4
4504	5
4504	6
4504	8
4504	12
4506	13
4506	14
4506	15
4506	17
4602	3
4602	4
4602	5
4602	6
4602	8
4602	10
4602	11
4602	12
4603	1
4603	2
4603	3

4603	5
4603	7
4604	25
4604	26
4604	27
4604	28
4604	29
4604	30
4604	33
4604	34
4604	35
<u>APARTMENT</u>	<u>CLUB INTEREST</u>
4604	38
4605	1
4605	6
4605	7
4704	1
4704	4
4704	5
4704	6
4704	7
4704	9
4704	11
4705	2
4705	4
4705	6

SCHEDULE "2"

EXHIBIT A-2

(Leasehold Premises)

ITEM THREE (THE SHOPS AT KAPALUA PARCEL):

~~A LEASEHOLD ESTATE CREATED BY THAT CERTAIN UNRECORDED GROUND LEASE (THE SHOPS AT KAPALUA) DATED AUGUST 31, 2004 MADE BY AND BETWEEN MAUI LAND & PINEAPPLE COMPANY, INC., A HAWAII CORPORATION, LESSOR, AND KAPALUA BAY, LLC, A DELAWARE LIMITED LIABILITY COMPANY, LESSEE, FOR A TERM DESCRIBED THEREIN.~~

THE FOREGOING UNRECORDED GROUND LEASE (THE SHOPS AT KAPALUA) WAS CONFIRMED BY THAT CERTAIN SHORT FORM OF GROUND LEASE (THE SHOPS AT KAPALUA) MADE ON AUGUST 31, 2004, BY AND BETWEEN THE FOREGOING PARTIES, RECORDED IN THE BUREAU OF CONVEYANCES OF THE STATE OF HAWAII AS DOCUMENT NO. 2004-178886.

LEASING AND DEMISING THE FOLLOWING DESCRIBED PROPERTY:

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-3-A-1 OF THE 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. A.W. 8522-B, APANA 1 TO KALE DAVIS, AND THUS BOUNDED AND DESCRIBED:

BEGINNING AT A POINT ON THE SOUTHEASTERLY CORNER OF THIS LOT, THE COORDINATES OF SAID POINT OF BEGINNING REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "HAWEA" BEING 1,368.84 FEET SOUTH AND 694.80 FEET EAST, AND RUNNING BY AZIMUTHS MEASURED CLOCKWISE FROM TRUE SOUTH:

1. 168° 40' 81.34 FEET ALONG THE REMAINDERS OF R.P. 1163, L.C. AW. 5524, APANA 1 TO L. KONIA, AND 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;

2. 151° 20' 209.49 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;

3. 94° 50' 62.64 FEET ALONG SAME TO A POINT;

4. 243° 07' 70.85 FEET ALONG THE REMAINDER OF R.P. 2236, L.C. AW. 8522-B, APANA 1 TO KALE DAVIS, BEING ALSO ALONG LOT A-4-A-1 OF KAPALUA DEVELOPMENT (LARGE-LOT) SUBDIVISION TO A POINT;

5. 156° 12' 247.75 FEET ALONG SAME TO A POINT;

6. 246° 12' 6.81 FEET ALONG SAME TO A POINT;

7. 156° 12' 15.92 FEET ALONG SAME TO A POINT;

8. 246° 12' 39.00 FEET ALONG SAME TO A POINT;
9. 156° 12' 19.94 FEET ALONG SAME TO A POINT;
10. 246° 12' 137.72 FEET ALONG SAME TO A POINT;
11. 336° 12' 86.44 FEET ALONG SAME TO A POINT;

12. 281° 19' 107.00 FEET ALONG SAME TO A POINT;
13. 300° 37' 204.91 FEET ALONG SAME TO A POINT;
14. 15° 18' 83.21 FEET ALONG THE NORTHWESTERLY SIDE OF LOWER HONOAPILANI ROAD TO A POINT;
15. THENCE ALONG SAME ON A CURVE TO THE RIGHT HAVING A RADIUS OF 408.54 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:
26° 57' 15" 165.05 FEET TO A POINT;
16. 38° 36' 30" 219.92 FEET ALONG SAME TO A POINT;
17. 32° 55' 24" 36.64 FEET ALONG SAME TO A POINT OF BEGINNING AND CONTAINING AN AREA OF 3.486 ACRES, MORE OR LESS.

TOGETHER WITH A PERPETUAL NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR ACCESS TO AND FROM LOWER HONOAPILANI ROAD TO LOT A-3-A-1 OVER EASEMENT A-4 (BEING A PORTION OF LOT A-4-A-1), AS GRANTED BY GRANT OF EASEMENT FOR ACCESS PURPOSES RECORDED MAY 2, 2006 AS REGULAR SYSTEM DOCUMENT NO. 2006-082345 OF OFFICIAL RECORDS, SUBJECT TO THE TERMS AND CONDITIONS SET FORTH THEREIN.

TOGETHER, ALSO, WITH A PERPETUAL NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN ACCESS TO AND FROM LOT A-3-A-1 AND THE SHORELINE OVER EASEMENT A-5 (BEING A PORTION OF LOT A-4-A-1), AS GRANTED BY GRANT OF EASEMENT FOR PEDESTRIAN ACCESS PURPOSES RECORDED MAY 2, 2006 AS REGULAR SYSTEM DOCUMENT NO. 2006-082346 OF OFFICIAL RECORDS, SUBJECT TO THE TERMS AND CONDITIONS SET FORTH THEREIN.

AS TO ITEMS ONE, TWO AND THREE:

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:

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.

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