

KOLOA LANDING AT POIPU BEACH

SALES CONTRACT

CALIFORNIA STATUTORY DISCLAIMER

WARNING: THE CALIFORNIA DEPARTMENT OF REAL ESTATE HAS NOT QUALIFIED, INSPECTED OR EXAMINED THIS OFFERING, INCLUDING BUT NOT LIMITED TO, THE CONDITION OF TITLE, THE STATUS OF BLANKET LIENS ON THE PROJECT (IF ANY), ARRANGEMENTS TO ASSURE PROJECT COMPLETION, ESCROW PRACTICES, CONTROL OVER PROJECT MANAGEMENT, RACIALLY DISCRIMINATORY PRACTICES (IF ANY), TERMS, CONDITIONS, AND PRICE OF THE OFFER, CONTROL OVER ANNUAL ASSESSMENTS (IF ANY), OR THE AVAILABILITY OF WATER, SERVICES, UTILITIES, OR IMPROVEMENTS. IT MAY BE ADVISABLE FOR YOU TO CONSULT AN ATTORNEY OR OTHER KNOWLEDGEABLE PROFESSIONAL WHO IS FAMILIAR WITH REAL ESTATE AND DEVELOPMENT LAW IN THE STATE WHERE THIS SUBDIVISION IS SITUATED.

Purchaser's Initials

ACKNOWLEDGMENT OF RECEIPT, OPPORTUNITY TO REVIEW, AND ACCEPTANCE OF PROJECT DOCUMENTS

THE FOLLOWING DOCUMENTS THAT ARE REFERRED TO IN THIS SALES CONTRACT (“**SALES CONTRACT**”) FORM AN ESSENTIAL PART OF THIS SALES CONTRACT. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS RECEIVED OR HAS HAD AN OPPORTUNITY TO REVIEW COPIES OF EACH OF THE FOLLOWING DOCUMENTS AND THAT PURCHASER HAS HAD A FULL AND COMPLETE OPPORTUNITY TO READ, REVIEW AND EXAMINE EACH OF THE FOLLOWING DOCUMENTS, WHICH MAY BE AMENDED AND SUPPLEMENTED FROM TIME TO TIME.

1. Federal Property Report
2. State of Hawaii Amended Developer's Condominium Public Report For a Condominium
3. Amended and Restated Declaration of Condominium Property Regime of Koloa Landing at Poipu Beach and Condominium Map
4. Amended and Restated Bylaws of the Association of Koloa Landing at Poipu Beach
5. Proposed Rules and Regulations of the Association of Koloa Landing at Poipu Beach (House Rules)
6. Form of Unit Deed, Encumbrances and Reservation of Rights with Power of Attorney for Koloa Landing at Poipu Beach
7. Amended and Restated Escrow Agreement
8. Condominium Management Agreement

KOLOA LANDING AT POIPU BEACH

SALES CONTRACT

This Sales Contract is made by and between **POIPU BEACH VILLAS, LLC**, a Hawaii limited liability company, whose address is c/o 10701 S. Riverfront Parkway, Suite #135, South Jordan, Utah 84095 (“**Seller**”), and “**Purchaser**” named in **Section B**, below. This Sales Contract shall be effective and binding in accordance with **Section D.28**, below. All capitalized terms used herein and not otherwise defined shall have the meaning set forth in **Exhibit A** attached hereto and made a part hereof or as set forth in the Declaration. The purchase and sale transaction described in this Sales Contract is to be administered by Title Guaranty Escrow Services, Inc., a Hawaii corporation (“**Escrow**”) and is made with reference to the following facts:

A. DESCRIPTION OF THE PROPERTY COVERED BY THIS SALES CONTRACT

Residential Unit No. _____ within Koloa Landing at Poipu Beach condominium project, located at 2641 Poipu Road, Koloa, Hawaii 96756, as shown on that certain Condominium Map No. 1878 filed in the Office of the Registrar of the Land Court of the State of Hawaii, and as described in the Declaration, as supplemented or amended from time to time, together with the undivided percentage interest in the Common Elements, as set forth in the Declaration and as depicted on the Condominium Map, together with those certain Limited Common Elements that are designated as appurtenant to such Unit, if any, as also shown on said Condominium Map and as further described in the Declaration;

TOGETHER WITH AND/OR SUBJECT TO certain other easements and/or any other encumbrances recorded against the Project described or reserved in Purchaser’s Unit Deed, Encumbrances and Reservation of Rights with Power of Attorney for Koloa Landing at Poipu Beach (“**Unit Deed**”).

The description provided under this **Section A** shall collectively be called the “**Unit**”.

B. INFORMATION CONCERNING PURCHASER (Include all persons in whom title is to be vested)

1. **Individual Purchaser(s)**

Full name (if no middle name, state “NMN”, do not use initials):

() Single () Married () Trustee-indicate full legal name of trust

Address: _____

Office Tel.: _____ Home Tel: _____ Cell Tel.: _____

Fax No.: _____ E-mail: _____

Spouse’s Full Name: _____

Full name (if no middle name, state "NMN", do not use initials):

() Single () Married () Trustee-indicate full legal name of trust

Address: _____

Office Tel.: _____ Home Tel: _____ Cell Tel.: _____

Fax No.: _____ E-mail: _____

Spouse's Full Name: _____

2. Entity Purchaser

Full legal name and type of entity (i.e., Corporation, Partnership, Limited Partnership, Limited Liability Company or Limited Liability Partnership)

Business Address: _____

Office Tel.: _____ Office Fax: _____ Cell Tel.: _____

Email: _____ Tax ID No. _____

Representative authorized to sign, and title or position: _____

(NOTE: The following documents shall be delivered by Purchaser to Seller upon signing this Sales Contract, during Pre-Closing (as defined in Section D.8. below), or on such other date determined by Seller: (i) if Purchaser is a corporation, a resolution of the board of directors of such corporation authorizing the purchase hereunder and declaring which officer(s) is (are) authorized to execute this Sales Contract and all documents in connection herewith; (ii) if Purchaser is a foreign (non-Hawaii) corporation, a copy of its license to do business in the State of Hawaii or other evidence that it has registered to do business in the State of Hawaii; (iii) if Purchaser is a partnership or limited partnership, a copy of the Partnership Agreement or Limited Partnership Agreement (as applicable) and a copy of the partnership or limited partnership registration statement filed with the Department of Commerce and Consumer Affairs of the State of Hawaii ("DCCA"); (iv) if Purchaser is a limited liability company, a copy of the Operating Agreement and a copy of the Articles of Organization filed at the DCCA; (v) if Purchaser is a limited liability partnership, a copy of the Partnership Agreement and a copy of the Certificate of Limited Partnership filed at the DCCA; and (vi) if Purchaser is a trustee, a copy of the trust instrument or short form thereof, with an appropriate recitation as to the authority of the trustee.)

3. Nature Of Vesting of Title. The manner of vesting of title is at the discretion of Purchaser and can have significant legal and tax consequences. If Purchaser is unable to choose a manner of vesting at this time, Purchaser shall advise Seller and Escrow as soon as possible, but no later than by Pre-Closing, as defined herein, how Purchaser will take title to the Unit. The information appearing in Section B hereof and any vesting

information provided to Escrow by Purchaser will be used for preparing the Unit Deed. Purchaser affirms that the information is correct and complete and agrees to inform the Seller immediately if any of those details are changed. If, as a result of incorrect information provided by Purchaser or a change in the identity of the Purchaser, the Unit Deed is prepared incorrectly and must be redrawn, the Purchaser agrees to pay all costs involved in such redrafting.

- () Severalty () Tenants in Common () To be determined in Escrow
 () Joint Tenants () Tenants by the Entirety (See **Section D.8** herein)

C. TOTAL PURCHASE PRICE; SCHEDULE AND METHOD OF PAYMENT; ADDITIONAL SUMS TO BE PAID; ETC.

1. Purchase Price.

- (a) The "Purchase Price" for the Unit
 (exclusive of any Upgrades)..... \$ _____
- (b) Upgrades ordered pursuant to the
 Upgrade Addendum attached hereto..... \$ _____
- (c) Total Purchase Price..... \$ _____

2. Schedule and Method of Payment.

- (a) Reservation Deposit \$ _____ Reservation Deposit, including any down payment received prior to the execution of this Sales Contract, if any.
- (b) Initial Deposit \$ _____ Initial Deposit due upon Purchaser's execution of this Sales Contract, which together with the Reservation Deposit shall be equal to 10% of the Purchase Price.
- (c) Second Deposit \$ _____ Second Deposit due on or before _____, which shall equal 15% of the Purchase Price (the "**Second Deposit Delivery Date**").
- (d) Balance Due \$ _____ Balance of Total Purchase Price due thirty (30) calendar days before the scheduled or anticipated Closing Date unless otherwise agreed to in writing by Seller; provided that if a portion of the balance of the Total Purchase Price is being paid by way of a loan from a Mortgage Lender, the loan proceeds may be paid no later than two (2) business days before the scheduled or anticipated Closing Date.

NOTE: NO RECEIPT BY A SALESPERSON, EMPLOYEE OR AGENT OF SELLER OF THE DEPOSIT HEREINABOVE SET FORTH OR ANY OTHER SUMS FROM PURCHASER SHALL

CONSTITUTE APPROVAL BY, OR BIND SELLER, NOR SHALL ANY SUCH SALESPERSON, EMPLOYEE OR AGENT BE AUTHORIZED OR BE EMPOWERED TO BIND SELLER TO THIS SALES CONTRACT. SELLER IS ONLY BOUND TO THIS SALES CONTRACT WHEN SELLER SIGNS IT AND DELIVERS IT OR A COPY THEREOF TO PURCHASER AND ESCROW.

NOTE: IF YOU DO NOT MAKE PAYMENT ON TIME, MEANING ON THE DUE DATES SET FORTH IN **SECTION C.2**, ABOVE, SELLER, AT ITS OPTION, MAY CANCEL YOUR SALES CONTRACT AND EXERCISE ITS REMEDIES AS SET FORTH IN **SECTION D.36**, BELOW, OR MAY CHARGE YOU A LATE CHARGE OF EIGHT PERCENT (8%) PER ANNUM, PRORATED DAILY, BASED ON THE AMOUNT OF SUCH PAYMENT.

3. Additional Sums to be Paid. At Closing, Purchaser agrees to pay one (1) month’s maintenance fee to the Association, plus a non-refundable, non-transferable start-up fee to the Association in an amount equal to two (2) months maintenance fee assessments, and the closing costs provided for in **Section D.11**.

4. Sales Contract. Seller agrees to sell and Purchaser agrees to purchase the Unit described in **Section A** above, and **Section D.2** below for the Total Purchase Price.

THE PURCHASE AND SALE OF THE UNIT IS SUBJECT TO AND IN CONSIDERATION OF THE “ADDITIONAL TERMS AND CONDITIONS” SET FORTH IN **SECTION D** OF THIS SALES CONTRACT, WHICH BY THIS REFERENCE ARE MADE A PART HEREOF AND INCORPORATED HEREIN FOR ALL PURPOSES. PURCHASER ACKNOWLEDGES HAVING READ THIS SALES CONTRACT IN FULL AND IS AWARE OF AND ACCEPTS THE TERMS, CONDITIONS AND LIMITATIONS AND DISCLAIMER OF WARRANTIES DESCRIBED HEREIN AND ACKNOWLEDGES THAT THIS SALES CONTRACT, **SECTIONS A THROUGH D.49**, TOGETHER WITH **EXHIBIT A AND EXHIBIT B** ATTACHED HERETO AND THE ADDENDA CHECKED OFF BELOW THAT ARE BEING EXECUTED CONCURRENTLY WITH THIS SALES CONTRACT, CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES.

- Cooperating/Referring Brokerage Agreement Addendum [check if applicable]
- Additional Terms Addendum [check if applicable]
- Upgrade Addendum

5. Termination of Koloa Landing at Poipu Beach Priority Reservation Agreement (“**Reservation Agreement**”). Purchaser and Seller agree that upon execution of this Sales Contract, the Reservation Agreement entered into between Purchaser and Seller, if any, shall automatically be terminated and shall be of no further force and effect. All deposits held under the Reservation Agreement shall be applied to this Sales Contract in accordance with **Section C.2**, above, and the responsibilities, obligations and terms contained herein shall control.

6. Receipt of State of Hawaii Public Report and Federal Property Report. Purchaser acknowledges that he/she has read the State of Hawaii public report , as amended (“**Public Report**”) and Federal Property Report (“**Federal Property Report**”) for the Project prior to the signing hereof, and Purchaser acknowledges having received a copy thereof, along with the notice of Purchaser’s thirty-day cancellation right (“**Notice of Right to Cancel**”) for the Public Report and has read the bold print on page 7 herein regarding the seven-day non-waivable cancellation provision for the Federal Property Report.

7. Completion Deadline. Seller shall complete construction of the Unit so as to permit normal occupancy of the Unit within ten (10) years from the date Purchaser signs a binding contract (the “**Completion Deadline**”). Notwithstanding the foregoing, such ten (10) year period shall be extended for any period of time during which Seller is actually and necessarily delayed in beginning or completing construction by Force Majeure. In the event Seller fails to complete construction by the Completion Deadline, to the extent permitted by applicable

law, Purchaser's sole remedy shall be to cancel this Sales Contract and to receive a refund of all moneys paid, plus any interest earned thereon, less certain costs and fees, all as specified in and pursuant to **Section D.29**.

IF SELLER SIGNS THIS SALES CONTRACT, IT WILL CONSTITUTE A BINDING SALES CONTRACT SUBJECT TO THE RESCISSION PERIODS SET FORTH IN **SECTION C.6** ABOVE; ALSO ; PROVIDED, HOWEVER, THAT IF PURCHASER'S UNIT IS NOT COMPLETED BY THE COMPLETION DEADLINE SET FORTH IN **SECTION C.7**, BELOW, THIS SALES CONTRACT MAY ALSO BE CANCELLED BY PURCHASER AT ANY TIME THEREAFTER. IN THE EVENT OF SUCH CANCELLATION, ALL PAYMENTS MADE BY PURCHASER HEREUNDER, PLUS ANY INTEREST EARNED THEREON, SHALL BE REFUNDED TO PURCHASER, LESS ANY ESCROW CANCELLATION FEE AND OTHER COSTS, UNLESS OTHERWISE SET FORTH IN **SECTIONS D.13** and **29**.

8. Agency Disclosure. In connection with the sale of the Unit pursuant to the Public Report, Purchaser acknowledges that S&P Destination Properties Inc. and all of its salespersons and brokers ("**Project Broker**"), represent the Seller and not the Purchaser, unless the Project Broker is acting as a dual agent (representing both Seller and Purchaser) and has so advised Seller and Purchaser in accordance with applicable law. By initialing below, Purchaser acknowledges that written disclosures relating to agency have been provided prior to signing this Sales Contract.

Purchaser's Initials

9. Purchaser's Broker. Purchaser is (___)/is not (___) represented by a real estate broker. If Purchaser is represented by a real estate broker, such representation shall be evidenced by (i) insertion of such broker's name below, and (ii) a Cooperating Brokerage Agreement signed by Seller and/or Project Broker and Purchaser's broker, and referring specifically to this Sales Contract.

Name of Purchaser's broker (write "none" if Purchaser is not represented)

License No. and State of License

Company Name of Purchaser's Broker

Address of Purchaser's Broker

Telephone No. of Purchaser's Broker

If no name is written in the space above, Purchaser represents and warrants that no real estate broker or other person represented Purchaser or was engaged by Purchaser in connection with Purchaser's purchase of the Unit. Except with respect to Purchaser's broker listed above (if any), Purchaser hereby agrees to indemnify and hold harmless Seller against any liability including, reasonable costs and attorneys' fees, resulting from claims for brokerage commissions from any broker or any other party with whom Purchaser has dealt.

10. Facsimile Documents. The parties agree to accept facsimile executed documents as if they were originally signed documents.

11. Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same agreement.

(The remainder of this page is intentionally left blank)

YOU HAVE THE OPTION TO CANCEL YOUR CONTRACT OR AGREEMENT OF SALE BY NOTICE TO THE SELLER UNTIL MIDNIGHT OF THE SEVENTH DAY FOLLOWING THE SIGNING OF THE CONTRACT OR AGREEMENT.

IF YOU DID NOT RECEIVE A PROPERTY REPORT PREPARED PURSUANT TO THE RULES AND REGULATIONS OF THE OFFICE OF INTERSTATE LAND SALES REGISTRATION, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, IN ADVANCE OF YOUR SIGNING THE CONTRACT OR AGREEMENT, THE CONTRACT OR AGREEMENT OF SALE MAY BE CANCELLED AT YOUR OPTION FOR TWO YEARS FROM THE DATE OF SIGNING.

IN WITNESS WHEREOF, Purchaser has executed this Sales Contract as of the date indicated below.

Purchaser's Signature

Purchaser's Signature

Purchaser's name (print)

Purchaser's name (print)

Date signed by Purchaser: _____

Project Broker confirms receipt of the Initial Deposit from Purchaser upon Purchaser's execution of this Sales Contract:

S&P DESTINATION PROPERTIES, INC.

By _____
Name: _____
Its: _____

This Sales Contract is accepted by Seller.

POIPU BEACH VILLAS, LLC,
a Hawaii limited liability company

By Poipu Beach Management, LLC,
a Hawaii limited liability company
Its Manager

By _____
Name: _____
Its: _____

Date signed by Seller: _____

D. ADDITIONAL TERMS AND CONDITIONS FOR THIS SALES CONTRACT

In consideration of the respective covenants and agreements contained in the preceding **Sections A, B** and **C** of this Sales Contract and the respective covenants and agreements that follow, Seller and Purchaser agree as follows:

INFORMATION CONCERNING THE PROJECT AND THE UNIT

1. Project Information. The Project is located in Koloa, County of Kauai, State of Hawaii. The Project is currently expected to consist of three hundred twenty-three (323) Residential Units in nineteen (19) separate buildings and six (6) Commercial Units, three (3) of which are located in one building and three (3) of which are located in each of their own separate buildings, as set forth in the Declaration and shown on the Condominium Map. The Project is situated on approximately 24.59 acres of land owned in fee simple by Seller, which is more fully described in the Declaration, whereunder Seller has submitted the land and all buildings and improvements thereon to a condominium property regime under Hawaii Revised Statutes, Chapter 514B, as may be amended from time to time ("**Condominium Act**"). The actual number of units and/or stories may vary should the Seller elect to exercise its rights reserved under the Declaration. A summary of the rights reserved to the Seller is also provided in the Public Report and should be reviewed carefully by Purchaser.

2. Description of Unit. Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, in fee simple, the Unit in accordance with the terms of this Sales Contract. The Unit shall be sold in accordance with and subject to all of the applicable limited warranties, terms, covenants, provisions, easements, rights, reservations, agreements and encumbrances and other provisions contained herein and in the Declaration, Bylaws, Unit Deed, and other Condominium Documents.

3. Appliances and Furnishings included with the Unit. The Unit will include only the appliances, fixtures and furnishings listed in **Exhibit B** attached hereto and made a part hereof. Seller reserves the right, without liability to Purchaser, to substitute materials, equipment, cabinets, fixtures, appliances and/or bathroom floor coverings with items of similar or greater quality. Purchaser understands that materials used in construction such as wood, paint, tile, marble, and the like, are subject to shading, the gradation of which may vary from samples, models or color charts, and from piece to piece, and Seller will not be liable for such variation. Purchaser further acknowledges that at Closing, certain appliances and furnishings for the Unit may not yet be available, and may be installed in the Unit at a later date, as soon as reasonably practicable thereafter. Such delivery and installation after Closing shall not in any way affect Purchaser's obligations to timely close the sale as set forth in this Sales Contract.

PAYMENT TERMS, INTEREST ON DEPOSITS, CLOSING AND OCCUPANCY

4. Payment of Total Purchase Price. For the Unit, Purchaser agrees to pay the Total Purchase Price and all other amounts due hereunder, in immediately available funds denominated in United States Dollars, in the amounts and at the times set forth in **Section C.2** above. The Initial Deposit shall be made by payment to Escrow through the Project Broker. Subsequent payments required under this Sales Contract shall be made by Purchaser directly to Escrow. Purchaser hereby authorizes his/her mortgagee(s) to disburse the proceeds of any mortgage loan(s) directly to Escrow.

5. Interest on Contract Deposit. Purchaser understands and agrees that Purchaser will receive interest on Purchaser's Contract Deposit in the form of a credit to Purchaser's escrow account upon Closing; provided that should Closing not occur, Purchaser shall not receive any interest accrued on Purchaser's Contract Deposit held in Escrow or a credit, unless otherwise provided herein. The amount of interest calculated under this **Section D.5** shall begin to accrue (i) as to the Reservation Deposit and the Initial Deposit, on the date this Sales Contract is executed by Seller and upon Escrow's deposit of the same into an interest bearing account; and (ii) as to the Second Deposit, on the date the Second Deposit is delivered by Purchaser to Escrow. No interest shall be paid on such

deposits (a) prior to Seller's execution of this Sales Contract; (b) prior to Escrow's deposit of the same into an interest bearing account; (c) on funds held by Escrow during the sixty (60) calendar days immediately preceding the scheduled Closing Date to accommodate a bulk closing of units by Seller; or (d) as may be used by Seller to pay for construction costs and other expenses as provided in Section 514B-92 of the Condominium Act. Escrow shall establish a separate account for Purchaser and Purchaser shall provide Escrow with Purchaser's social security number or federal tax identification number. Purchaser shall pay Escrow a fee of Twenty-Five and No/100 Dollars (\$25.00) for each separate account created.

6. Purchaser's Financial Status; No Financing Contingencies.

a. Purchaser's Ability to Make Payments. Purchaser represents that Purchaser is able to make, when due, all of the payments required under **Section C.2**. Purchaser shall, within fifteen (15) calendar days after execution of this Sales Contract, give Seller such personal information and financial data (hereinafter the "**Financial Data**") from Purchaser's bankers or accountants, or others, as Seller may require, to demonstrate Purchaser's ability to make the cash payments due at the times and in the amounts described in **Section C.2** above. The Financial Data shall include, but not be limited to: (i) if Purchaser intends to purchase the Unit with cash, Purchaser shall provide Seller with proof of liquid assets in the form of a letter from a certified public accountant or banker, or provide Seller with a current bank or brokerage statement; or (ii) if Purchaser intends to finance the purchase of the Unit, Purchaser shall provide Seller with an acceptable letter from a qualified lender stating that the lender has seen Purchaser's financial information and performed underwriting, together with a current financial statement, income verification, and written authorization to Seller to access Purchaser's credit report. In the event that Seller in its sole discretion shall reject Purchaser's Financial Data as unacceptable, Seller shall notify Purchaser of such rejection in writing within sixty (60) days after Seller shall have received such Financial Data, in which event this Sales Contract shall be cancelled, and Purchaser shall receive a refund of all sums paid hereunder, with accrued interest, if any, and less any escrow cancellation fee.

Purchaser represents that the Financial Data to be submitted in connection with this Sales Contract to Seller shall be true and accurate, and that Purchaser is financially capable of making all required payments at the required times set forth herein. Purchaser agrees to notify Seller immediately of any material adverse change that occurs in the Purchaser's financial condition prior to the Closing. In addition, if requested to do so by Seller, Purchaser will confirm in writing that Purchaser's financial condition has not changed, or, if it has changed, Purchaser shall provide information reasonably requested by Seller to confirm Purchaser's then-current financial status. Purchaser authorizes Seller to make credit inquiries about Purchaser. In the event that Seller shall determine, after review of any financial information submitted by Purchaser, in its reasonable discretion, that Purchaser is unable to pay such sums as may be due at the time required or as a result of any change in Purchaser's financial condition, Seller may declare Purchaser in default of this Sales Contract, whereupon Seller will be entitled to exercise its remedies as set forth in **Section D.36** of this Sales Contract.

b. No Financing Contingencies. If Purchaser plans to pay any portion of the Total Purchase Price by way of a loan from a Mortgage Lender, Purchaser shall be solely responsible for securing such financing. PURCHASER'S OBLIGATIONS UNDER THIS SALES CONTRACT ARE NOT CONTINGENT OR CONDITIONED ON PURCHASER'S ABILITY TO SECURE FINANCING FROM A MORTGAGE LENDER OR ON PURCHASER'S ABILITY TO SELL PURCHASER'S CURRENT RESIDENCE OR ANY OTHER PROPERTY OR ASSETS. FINANCING BY SELLER OF ANY PORTION OF THE TOTAL PURCHASE PRICE IS NOT AVAILABLE.

7. Unit Deed. At Closing, after payment by Purchaser of the Total Purchase Price and performance by Purchaser of all of Purchaser's other obligations under this Sales Contract, Seller agrees to provide Purchaser a duly executed Unit Deed for the Unit and Purchaser agrees to execute and accept such Unit Deed and thereby acquire fee simple title to the Unit.

8. Pre-Closing. Purchaser acknowledges that Seller intends to, and agrees that Seller may, prepare for Closing by having all documents necessary for Closing executed and deposited with Escrow at any time prior to the Closing Date selected by Seller. Purchaser acknowledges that regardless of the status of construction of the Project and in order to accommodate a bulk closing of the units by Seller, such Pre-Closing may occur up to one hundred eighty (180) days prior to the Closing Date selected by Seller. To accomplish this, any time after the Effective Date of this Sales Contract, and upon receiving not less than thirty (30) days written notice of Pre-Closing from Seller, Purchaser's mortgagee(s), or Escrow, Purchaser agrees to take and complete any action which may be necessary to enable Closing and Purchaser will execute at Pre-Closing all documents required for Closing including, without limitation, the Unit Deed and all promissory notes, mortgages and other loan documents necessary for Purchaser's financing of the Unit, all receipts for notices and disclosures, the conveyance tax certificate and a closing statement based on Seller's estimate of the date the Unit will be available for occupancy. This Sales Contract shall constitute Seller's and Purchaser's written authorization to Escrow to date all documents, to add filing information and to adjust the estimated prorations in accordance with the provisions of this Sales Contract. Purchaser may be permitted by Seller to execute documents on another island or outside of the state and return the same by registered or certified mail, return-receipt requested.

In the event that Purchaser fails to designate the type of tenancy for the vesting of title at least five (5) days prior to the date selected for Pre-Closing, purchasers who are sole owners will take title as tenants in severalty; multiple purchasers other than married couples will take title as tenants in common; and married couple purchasers will take title as tenants by the entirety. If Purchaser consists of more than one married couple, or a couple and an individual, corporation or partnership, the couple (or each married couple if there are more than one) will take title as tenants by the entirety as to each other, and the couple (or each couple if there are more than one) will be a tenant in common with every other couple, individual, corporation or partnership. Whenever a couple, individual, corporation or partnership takes title with another couple, individual, corporation or partnership as tenants in common, each tenant in common will take an equal interest, unless Purchaser specifies otherwise at least fifteen (15) days prior to the date selected for Pre-Closing.

In the event that Purchaser requests changes to the Unit Deed and other Closing documents later than fifteen (15) days prior to the date selected for Pre-Closing, Purchaser may be assessed a document revision fee for such changes.

If Purchaser is a trust, partnership, corporation, limited liability company or other business entity, Purchaser will be required to furnish appropriate resolutions and other evidence of authority to purchase and execute documents as Seller or Escrow may reasonably request, including, but not limited to, the documents set forth in the "Note" to **Section B** herein.

9. Inspection of Unit by Purchaser; Orientation. Prior to Closing, Seller shall, with notice to Purchaser, schedule a date for Purchaser or Purchaser's designated agent to attend a pre-closing orientation at the Project. Purchaser agrees to attend such orientation at his/her sole expense. At the pre-closing orientation, Purchaser shall inspect the Unit with Seller, at which time the parties will complete the Pre-Closing Checklist specifying any work required to complete the Unit in accordance with this Sales Contract. Purchaser agrees to accept possession of the Unit despite the existence of such defects or damage to the Unit, including, but not limited to, any defects in carpets, appliances and fixtures which may be listed on the Pre-Closing Checklist. The fact that any warrantor has still to complete the work contemplated under the Pre-Closing Checklist shall not delay or postpone the obligation of Purchaser to close and pay the balance of the Total Purchase Price nor shall the foregoing grant Purchaser the right to have any portion of the Total Purchase Price placed in Escrow pending completion of those items set forth on the Pre-Closing Checklist. Seller will cooperate with and assist Purchaser in having legitimately-listed defects or damage corrected or repaired within a reasonable time thereafter by the responsible warrantor. This obligation shall survive Closing. Purchaser agrees to indemnify Seller for any damages or losses, including interest and attorneys' fees, resulting from any refusal to make such inspection, to sign the Pre-Closing Checklist, or to accept possession of the Unit upon request by Seller (unless the Unit is uninhabitable), and if Purchaser shall make any such refusal, Purchaser shall be deemed to be in default under this

Sales Contract. Purchaser acknowledges that it is Purchaser's responsibility to cooperate with Seller or other warrantors and to permit inspection, and that if Purchaser fails to inspect (or permit inspection of) Purchaser's Unit on the date and time specified by Seller or other warrantors, then Purchaser acknowledges that such conduct will constitute a waiver of Purchaser's inspection rights hereunder. Purchaser shall accept the appliances and furniture listed on **Exhibit B** "AS IS" from Seller and shall pursue any claims directly with the manufacturer pursuant to the manufacturer's warranty, if any.

10. Closing Date; Title Insurance; Remedies for Default in Payment; Prorations; Refunds. The Closing Date shall be that date selected by Seller, in Seller's sole and absolute discretion; provided, however, that the Closing Date shall not be prior to the completion of construction of Purchaser's Unit and the issuance of a certificate of occupancy by the County of Kauai covering the Unit. On the Closing Date, Seller and Purchaser shall be required to perform their respective obligations to sell and purchase the Unit under this Sales Contract. The parties agree that Seller may extend the Closing Date in its sole discretion provided that such Closing Date is not extended beyond the Completion Deadline. Seller or Escrow shall notify Purchaser of the Closing Date within a reasonable time, no less than ten (10) days prior to the scheduled Closing Date. Purchaser expressly acknowledges that on the Closing Date, the construction of other units and portions of the Common Elements may not be fully completed, and that such circumstances shall not in any way affect Purchaser's obligations to make the required payments and to close the sale. Notwithstanding anything provided to the contrary or from which a contrary intent may be inferred, Seller agrees and Purchaser acknowledges that by the Closing Date, which shall occur no later than the Completion Deadline, the Unit shall be physically habitable and usable for the purpose for which it was purchased, ready for occupancy, and shall have the usual and customary utilities extended to it.

Prorations and adjustments shall be made between Purchaser and Seller through Escrow on the basis of a thirty (30)-day month as of the Closing Date for nondelinquent real property taxes and assessments. If the amount of real property taxes is unavailable for the current year, Seller shall estimate such taxes and assessments taking into consideration the existing tax rate, the Total Purchase Price, the County of Kauai's tax and assessment formula, and such other information and factors as shall be deemed reasonable under the circumstances by Seller. Risk of loss shall transfer from Seller to Purchaser on the Closing Date.

The Total Purchase Price and any closing costs that are Purchaser's responsibility, and any other amounts that are Purchaser's responsibility under this Sales Contract shall be due and payable in full as provided in **Section C.2** herein. If such amount is not paid on said date due to: (i) Purchaser's failure to complete (in a timely and diligent manner) all things of every description required of Purchaser to be undertaken in order for said payment to be made to Escrow on said date; or (ii) the failure of Purchaser's Mortgage Lender to make such payment to Escrow on the Closing Date, then such nonpayment shall result in a default by Purchaser under this Sales Contract. In the event of any default with respect to any payment hereunder, in addition to any other remedies permitted under this Sales Contract, a late charge of one and one-half percent (1½%) per month (or the maximum lesser rate, if any, permitted by law), prorated on a thirty (30)-day month basis, shall accrue from the due date of such payment until such payment, together with such late charges, is paid. Seller's acceptance of any of such late charges, late payments, or both, or failure to exercise any other right or remedy, shall not constitute a waiver of any of such defaults or of any of such rights, including, without limitation, the right to cancel this Sales Contract, and will not constitute a modification of this Sales Contract.

If, at Purchaser's request, Seller agrees, in its sole and absolute discretion, to extend the Closing Date, Purchaser agrees to pay an Agreement Extension Fee equal to one and one-half percent (1½%) (or the maximum lesser rate, if any, permitted by law) of the Total Purchase Price per month in advance, directly to Seller (unless otherwise directed by Seller). The Agreement Extension Fee is non-refundable and shall not be applied to any other amounts due from Purchaser; provided however, that the Agreement Extension Fee shall be earned by Seller on a *per diem* basis and any unearned portion of the Agreement Extension Fee shall be returned to Purchaser at Closing or applied, in Seller's sole discretion, to the Total Purchase Price. If Purchaser fails to pay the Agreement Extension Fee on time or to close this sale on the Closing Date chosen by Seller, Seller shall have the right to terminate this Sales Contract and keep all previously paid Agreement Extension Fees, and Escrow shall

distribute the Contract Deposit and any interest accrued thereunder to Seller in accordance with **Section D.36** below.

If, on the original Closing Date, Purchaser fails to make the payments required by this Section or otherwise fails to consummate this sale, then, without limiting any other remedies that Seller may have as a result of Purchaser's failure to make such payments or consummate this sale on a timely basis, all common expenses, real property taxes and other prorated expenses for the Unit shall be prorated as though Closing had occurred on the original Closing Date, regardless of when the Closing of the sale of the Unit actually occurs.

Except as otherwise provided by law, Escrow shall give each purchaser entitled to a return of funds notice thereof by certified or registered mail, addressed to such purchaser at the address shown in **Section B** above or any address later made known in writing to Escrow by such purchaser. IF PURCHASER SHALL NOT HAVE CLAIMED SUCH REFUND WITHIN SIXTY (60) DAYS FROM THE DATE SAID NOTICE IS MAILED, ESCROW SHALL THEREAFTER DEPOSIT SUCH FUNDS INTO A SPECIAL ACCOUNT IN A BANK OR OTHER DEPOSITORY SELECTED BY ESCROW, IN THE NAME OF SELLER, AS TRUSTEE FOR THE BENEFIT OF SUCH PURCHASER. After having sent the Seller written notice of the foregoing acts, Escrow shall thereupon be released from further liability with respect to such funds and such purchaser.

11. Closing Costs. **Purchaser will pay all closing costs associated with this purchase and sale,** including, without limitation: the escrow fee, cost of a preliminary title report, cost of preparation of the Unit Deed, cost of establishing separate escrow account(s), real property tax proration and other customary proration, reimbursement for any and all State general excise tax on items in **Exhibit B**, all acknowledgment fees, conveyance and transfer taxes of all types, title insurance, if requested by Purchaser, cost of any lender's title insurance, appraisal fees, costs for drafting of any notes and mortgages, all recording costs or fees, the cost of drafting any revisions or addenda to this Sales Contract other than the standard addenda listed in **Section C.4**, if any, loan fees, credit report costs and all other applicable mortgage costs, provided that it is understood that this sale is not subject to or conditioned upon Purchaser obtaining a loan. On the date set forth in **Section C.2**, Purchaser shall pay one (1) month's maintenance fee assessment to the Association, plus a non-refundable, non-transferable start-up fee to the Association in an amount equal to two (2) months maintenance fee assessments, the closing costs provided for herein and any proration. These start-up fees are one-time assessments at Closing and are not advance payments of common expenses or assessments, and shall be in addition to the normal monthly assessments. These start-up fees shall be held, accounted for and expended as funds of the Association for the benefit of all of its members by Seller and the Condominium Manager.

12. Occupancy. Delivery of possession of the Unit to Purchaser shall be deemed to have occurred when Seller makes the Unit keys available for pick up by Purchaser, which shall take place after the Closing Date, but not before the date of issuance of a certificate of occupancy by the County of Kauai covering the Unit. Purchaser agrees that keys for the Unit will not be issued to Purchaser and Purchaser shall not be entitled to occupy the Unit until after such Closing Date and the issuance of the certificate of occupancy covering the Unit. Purchaser further agrees and acknowledges that all of the amenities and recreational facilities may not be completed by the time Purchaser closes on their Unit. Purchaser is aware that Seller is not obligated to complete such recreational facilities and amenities prior to Closing.

PROJECT AND SALES DOCUMENTS; SELLER'S RIGHT TO MAKE CHANGES

13. Escrow Agreement; Use of Funds Prior to Closing. Seller has entered into the Escrow Agreement with Escrow, which by this reference is incorporated herein and made a part hereof, covering the deposit with Escrow of all funds paid by Purchaser under this Sales Contract and the disbursement of such funds by Escrow. All payments to be made hereunder, other than the Initial Deposit made through the Project Broker, shall be paid by Purchaser to Escrow pursuant to the Escrow Agreement. Purchaser hereby acknowledges that Purchaser has examined and approves the terms of the Escrow Agreement, and hereby assumes the benefits and obligations set forth therein. Purchaser understands and agrees that Escrow may charge Purchaser a cancellation fee of not less

than Twenty Five and No/100 Dollars (\$25.00) in the event this Sales Contract is canceled, provided that such cancellation fee shall not exceed Two Hundred Fifty and No/100 Dollars (\$250.00), as provided in the Escrow Agreement (“**Cancellation Fee**”). Notwithstanding anything to the contrary, the Cancellation Fee shall not apply to any cancellation of the Sales Contract that occurs within the seven (7)-day rescission period provided to each purchaser pursuant to the Federal Interstate Land Sales Full Disclosure Act. Such Cancellation Fee, however, will apply if Purchaser cancels after expiration of the seven-day rescission period discussed above, but within the Hawaii thirty (30)-day cancellation period described in **Section D.29** herein. Purchaser acknowledges and agrees that, upon issuance of an effective date for the Public Report by the Commission, and Seller’s submission to the Commission of the information required under Section 514B-92 of the Condominium Act, and Escrow’s receipt of a letter from Seller stating that Purchaser has affirmatively waived or is deemed to have waived his/her right to cancel this Sales Contract, and stating further that Purchaser’s rights to rescind have terminated, Seller may be authorized to use Purchaser’s deposits in Escrow for the construction of the Project and for other expenses of the Project, as set forth in the Escrow Agreement and in accordance with the Condominium Act. Should Seller decide to use Purchaser’s funds prior to Closing in accordance with statutory requirements under Sections 514B-92 and 514B-93 of the Condominium Act to pay certain project costs, Purchaser agrees to the use of Purchaser’s deposits for such purposes in accordance with the Escrow Agreement, and directs Escrow to disburse such funds upon direction from Seller, Seller’s lender or an otherwise qualified financially disinterested person. Seller has no obligation to pay interest to Purchaser on any funds used by Seller for those purposes permitted by law.

14. Purchaser’s Approval and Acceptance of Project Documents. Purchaser acknowledges receiving copies of, and having had a full opportunity to read and review, and hereby approves and accepts, the following documents pertaining to the Project: the Public Report, the Federal Property Report, the Declaration, the Bylaws, the Condominium Map, the House Rules, the specimen Unit Deed and the Escrow Agreement. Purchaser acknowledges that Purchaser shall make his/her own due diligence inspection of all other documents of record and reflected in the Unit Deed, the Escrow Agreement, and/or updated title report. It is understood and agreed that this sale is in all respects subject to said documents, and the encumbrances noted therein.

15. Seller Has the Right to Make Certain Changes to the Condominium Documents and to the Project.

a. Changes. Purchaser authorizes Seller to make, and Purchaser hereby specifically approves, the following changes to the Condominium Documents and the Project after the Effective Date:

(i) Any such changes as may be required by law, any title insurance company, Mortgage Lender or governmental agency; provided, however, that such changes shall not (1) constitute a Material Change, or (2) increase the Total Purchase Price.

(ii) Any non-Material Changes which the Seller or the Project Architect, in their sole and absolute discretion, deem appropriate, to the Common Elements, including, without limitation, the roadways, parking areas, and landscaping or any changes for reasons related to financial feasibility or aesthetics; furthermore, the Project Architect may increase or decrease the thickness of any foundation, insulation, wall, column or floor slab, or make other changes to the Condominium Map or building and construction plans, as defined and discussed further in **Section D.21**, below, which could result in the dimensions of Purchaser’s Unit or any appurtenant Limited Common Element thus affected becoming smaller or larger, or resulting in a building height or elevation different from that shown on the Condominium Map or stated in the Declaration or the Public Report; provided that the variance in the net living area of the Unit shall not exceed two percent (2%) of the net living area represented in the Condominium Documents. Further, the Project Architect may make changes necessary to correct any design errors or shortcomings.

(iii) Any such changes to the Condominium Map to conform with the construction plans filed with the County of Kauai to make the Condominium Map consistent with such filed plans.

(iv) Any Material Change made while Purchaser is under a binding sales contract provided that applicable rescission rights shall be given to Purchaser in accordance with Section 514B-87 of the Condominium Act.

(v) Any changes made pursuant to the rights reserved by Seller, as Declarant, under the Declaration, as more fully explained in **Section D.16** below and the Declaration.

b. Eminent Domain. No taking by eminent domain (or transfer by Seller under threat of eminent domain) of an easement right or of a portion of the Common Elements which does not in any such case substantially interfere with or diminish the practical enjoyment and use by Purchaser of the Common Elements shall be deemed grounds for cancellation of this Sales Contract.

16. Seller has Certain Reserved Rights. Purchaser specifically acknowledges and agrees that Seller has the right to exercise reservations of certain rights in favor of Seller contained within the Declaration, and agrees that Seller has the right to exercise such rights as provided in said Declaration. The reserved rights are also summarized in the Public Report. Such rights include, but are not limited to, the Developer’s reserved right to develop and construct all buildings and Improvements in the Project and/or all Units in the Project and alter the number of Units in the Project and accordingly change the percentage Common Interest appurtenant to Units in the Project.

WARRANTIES AND DISCLAIMERS

17. Insulation. Seller presently plans to install insulation in the building in which the Unit is located. The location, type, thickness and R-value (according to the manufacturer(s) thereof) are as follows:

ROOFS	GARAGE ROOF	STACKED UNITS	EXTERIOR WALLS	EXTERIOR GARAGE WALLS
R-19 Batt Insulation	No insulation	7'-10" ceiling heights = Batt Insulation; R-8 9'-10" ceiling heights = Batt Insulation; R-8	Batt Insulation R-11	No insulation

The R-value of insulation is a measurement of the insulation’s resistance to heat flow that is determined using tests designed by the American Society of Testing and Materials. The above R-values provided indicate minimums. Purchaser acknowledges that the R-Value information provided to Purchaser is based solely upon information supplied by the manufacturer or installer and Seller does not represent or warrant the accuracy of this information. Purchaser further acknowledges that the R-value may vary based up normal construction variance and constitutes only one element of the total energy package. Seller reserves the right to use different types of insulation with different thicknesses and R-values in accordance with the provisions of **Section D.15** above.

18. Seller’s Limited Warranty. To the extent obtained by Seller from the general contractor for the Project, and to the extent the same is assignable to Purchaser, at Closing, Purchaser shall receive a limited warranty from the general contractor for the Project warranting the materials and workmanship relating to the Purchaser’s Unit to be free from defects for a period of one (1) year from the date of substantial completion of Purchaser’s Unit. The one-year warranty period for such warranty shall begin from the date of substantial completion of Purchaser’s Unit, and, therefore, should Closing occur after such one-year period has expired as to such Unit, no such warranty shall be extended to Purchaser. In no event shall all or any portion of such limited warranty be deemed to come from Seller, and Seller shall have no obligations or liabilities related to such limited warranty.

The execution, delivery and recordation of Purchaser's Unit Deed shall constitute an assignment without recourse by Seller to Purchaser of such warranty and the assignment without recourse by Seller to Purchaser of any other warranties relating to the Unit. Seller may assign such warranties described herein to future purchasers if such warranties are still in effect at the time the Unit is conveyed. Seller, however, makes no representation or warranty whatsoever as to whether such warranties can be further transferred. Any rights to inspection of the Unit described in **Section D.9** herein conferred to Purchaser by Seller pursuant to this Sales Contract shall not extend to any future purchasers of such Unit. In addition, Seller shall assign to Purchaser, without recourse, any manufacturer's or dealer's warranties covering the furnishings and appliances in the Unit. In no event shall all or any portion of such warranties be deemed to come from Seller, and Seller shall have no obligations or liabilities related to such warranties.

HAWAII REVISED STATUTES, CHAPTER 672E, CONTAINS IMPORTANT REQUIREMENTS PURCHASER MUST FOLLOW BEFORE PURCHASER MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED PURCHASER'S HOME OR FACILITY. NINETY (90) DAYS BEFORE PURCHASER FILES PURCHASER'S LAWSUIT OR OTHER ACTION, PURCHASER MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS PURCHASER ALLEGES ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. PURCHASER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW, AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT PURCHASER'S ABILITY TO FILE A LAWSUIT OR OTHER ACTION. This **Section D.18** shall survive the close of Escrow and shall not be merged with the Unit Deed.

19. Seller Makes No Warranties or Promises Except as Expressly Stated in this Sales Contract. Except as otherwise expressly stated in this Sales Contract, Purchaser acknowledges that Seller has made no warranties, express or implied, with respect to (a) the Unit, its quality or grade, (b) any Common Element or anything installed therein, its quality or grade, or (c) any other portion of the Project, its quality or grade, or any other aspect thereof. Seller, not being the manufacturer of any of the furnishings and appliances in the Project, disclaims any express or implied warranty of any kind whatsoever with respect to such furnishings or appliances, including the merchantability of such furnishings and appliances or their fitness for a particular purpose. Seller disclaims any express or implied warranty of any kind whatsoever with respect to the materials, workmanship or any other matters relating to Purchaser's Unit or any other portion of the Project, including, without limitation, fitness for a particular use, to the fullest extent allowed under applicable law.

20. Improvements. Seller shall be responsible for extending roads, sewer, telephone and electrical lines and water lines to the Project at Seller's expense. Purchaser shall be responsible for any connection fees, utility deposits, and use fees charged by governmental entities and/or utility companies, but shall not be responsible for impact fees, benefits assessments, or similar development expenses related to the installation of infrastructure by Seller. Seller shall also be responsible for constructing the Spa/Fitness Facility (Commercial Unit 2) and swimming pools with spa/hot tubs as part of the Project; provided that the Spa/Fitness Facility and swimming pools with spa/hot tubs may not be completed prior to Closing.

21. The Condominium Map, Artist's Renderings and Building and Construction Plans Are Not Warranties. The Condominium Map, as the same may be amended from time to time, is intended only to show the (a) unit numbers, (b) approximate layout, location and dimensions of units, (c) approximate elevation of the Project, and (d) parking plan and any other detail that is specifically required to be shown under Section 514B-33 of the Condominium Act. The Condominium Map is not intended to and shall not be interpreted as creating any obligation to construct or install any other improvements, amenities or facilities as may be depicted thereon, and no person may rely in any way on any other detail or other matter depicted thereon. In no event, whether before or

after the Effective Date, shall the building plans and specifications or any artist's renderings or models constitute a representation or warranty in any way.

Purchaser understands that the Unit may be the reverse or mirror image of the floor plan shown on Condominium Map, Seller's sales materials or other materials, and that units of the same unit type may not be identical.

Statements of the approximate square footages of the units, as well as of the Common Elements located within the Project, may be made in the Condominium Map and the Declaration. Purchaser acknowledges that there are various methods for calculating the square footage of a unit and that, depending on the method of calculation, the quoted square footage may vary by more than a nominal amount. For example, in building plans, architects may often measure square footage from the outside edge of the exterior walls to the mid-point of the interior walls. Another method, typically used in condominium maps, measures square footage from the inside decorated, finished surface of the perimeter walls, including partition walls (sometimes load-bearing partition walls) and is referred to as the "net living area" of the unit. So long as the units are constructed substantially in accordance with the Condominium Map and/or filed building plans, Purchaser will have no right to rescind this Sales Contract, nor will Purchaser be entitled to any claim for breach of this Sales Contract or adjustment of the Total Purchase Price on account of alleged discrepancies in square footage calculations.

Purchaser further acknowledges and agrees that it is common for pre-construction plans and specifications for any unit or building to be changed and adjusted from time to time to accommodate ongoing "in the field" construction needs. These changes and adjustments are necessary in order to permit all components of the units and the building to be integrated into a well-functioning and aesthetically pleasing product in an expeditious manner. Because of the foregoing, Purchaser understands and agrees that changes in the approximate net living area of units and in the location of telephones, electric, cable television and other utility outlets, windows, doors, walls, partitions, lighting fixtures, electric panel boxes, utility storage closets, and the general layout of the Unit are subject to changes made by Seller in its sole reasonable discretion. Purchaser acknowledges and agrees that it is to Purchaser's benefit to allow Seller to make such changes to the Unit and the Project, and that such changes may result in an increase or decrease in the net living area of the Unit, as well as a corresponding adjustment to the common interest appurtenant to the Unit, as represented in the Condominium Documents. ACCORDINGLY, PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES THAT VARIATIONS IN THE NET LIVING AREA OF THE UNIT OF UP TO TWO PERCENT (2%) OF THE TOTAL NET LIVING AREA OF THE UNIT, AND THE CORRESPONDING ADJUSTMENT TO THE COMMON INTEREST APPURTENANT TO THE UNIT, AS SUCH VALUES ARE REPRESENTED IN THE CONDOMINIUM DOCUMENTS, SHALL NOT CONSTITUTE A MATERIAL CHANGE SUBJECT TO RESCISSION RIGHTS AS SET FORTH IN **SECTION D.31**.

Purchaser further acknowledges that the Seller intends to construct, sell and market the units in the Project in separate phases. Pursuant to Seller's reserved rights in the Declaration, the Seller may not complete all phases of the Project.

22. Estimate of Maintenance Fees. Seller's estimate of monthly maintenance fees, as shown in the Public Report, was prepared based upon information believed to be accurate and correct. Seller makes no warranty or promise regarding the accuracy of these amounts, however. PURCHASER AGREES THAT SUCH ESTIMATES ARE NOT INTENDED TO BE AND DO NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY BY SELLER, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF SUCH ESTIMATES. Purchaser also acknowledges and agrees that such maintenance fees may change due to increases in insurance premiums, utility costs, maintenance services, management fees, variations in the net living area of the Unit as set forth in **Section D.21** herein, should the Seller decide not to build all of the Units in the Project pursuant to Seller's reserved right set forth in the Declaration, and/or other costs outside the control of Seller.

23. Securities Laws and Regulations. Purchaser understands and agrees that:

a. Seller, its officers, employees, agents, and/or any other real estate brokers or real estate salespersons representing Seller, if any, (collectively for purposes of this **Section D.23**, “**Seller and/or its Agents**”) have made no representations: (i) regarding the possibility or probability of economic benefit from the purchase and ownership of a unit; (ii) to the effect that Seller or the Condominium Manager of the Project will provide services relating to the rental or sale of a unit; or (iii) as to the possible advantages of the ownership or the rental of a unit under federal law and state tax laws. Neither Seller nor its Agents make any representation regarding either economic benefit to be derived from the ownership, rental or tax treatment of a unit. The tax treatment may vary with individual circumstances, and Seller and its Agents recommend that Purchaser consult Purchaser’s own attorney, accountant or other tax counsel for advice regarding tax treatment. Purchaser further agrees and acknowledges that Purchaser has not been induced or solicited by Seller or its Agents to purchase the Unit in the Project as a “security” as defined under federal or state securities laws and regulations.

b. Purchaser agrees that Seller may, as a condition to Closing, require Purchaser and any licensed real estate salesperson participating in the sale to sign additional documents to satisfy Seller that no representations contrary to the provisions of this **Section D.23** have been made up to and including the Closing Date.

24. Ongoing Sales Activities After Purchaser Has Occupied Purchaser’s Unit; Model Units. Purchaser specifically acknowledges that: (a) Seller’s sales activities, which may include the use of model unit(s), signs and extensive sales displays and activities, may continue in the Project until the sale of the last unit located in the Project; (b) Seller reserves the right to utilize unassigned or guest parking spaces described in the Declaration for parking for prospective purchasers until the sale of the last unsold unit described in the Declaration; (c) Seller also reserves the right for itself, its sales representatives and prospective purchasers to utilize the Common Elements for ingress and egress to such parking spaces and model unit(s) in order to show the Common Elements to prospective purchasers; (d) the Project consists of a number of structures, each of which the Seller may complete at different times; and (e) Purchaser agrees to take possession and close the sale of the Unit upon completion of the structure in which the Unit is located, even though other Units and the Common Elements of the Project have not been completed, so long as Purchaser is given vehicular access to the Project. Purchaser hereby accepts the foregoing conditions set forth in this **Section D.24**, as well as any inconvenience or annoyance including, but without limitation, construction work, dust, noise, and related debris, which Purchaser may experience as a result of such conditions, and hereby expressly waives any rights, claims or actions that Purchaser might otherwise have against Seller as a result of such circumstances. Seller reserves the right, in its sole discretion, to designate one or more units as model units for sales and display purposes.

Prior to delivery of possession of the Unit, Purchaser shall not trespass upon the Project site during the period of time when the Project is under construction. Purchaser hereby acknowledges that Purchaser’s execution of this Sales Contract constitutes Purchaser’s agreement to remain outside of any fenced or posted construction areas, and any other areas in which ongoing work is being performed pending completion, and Purchaser agrees to exert diligent efforts to prohibit entry into such area by members of Purchaser’s household and by Purchaser’s tenants and invitees, and to indemnify, defend and save harmless Seller, the Association, other unit owners and the contractors and agents or any of them from and against any and all loss or liability on account of any such entry. Violation of this provision shall constitute a default and, in addition to Seller’s other remedies, Purchaser agrees that Seller shall have the right to remove Purchaser from the premises by any lawful means.

25. Seller is Authorized to Act on Behalf of the Association. Purchaser acknowledges that Seller is authorized to exercise all powers of the Association until the first meeting of the Association. After the first meeting of the Association, Seller shall continue to have the right to appoint and remove the officers and members of the board of the Association, provided that this period of “developer control” shall terminate no later than the earlier of: (a) sixty (60) days after the conveyance of units to which are appurtenant seventy-five percent (75%) of the common interest to unit owners other than Seller or an affiliate of Seller; (b) two (2) years after Seller has

ceased to offer units for sale in the ordinary course of business; (c) two (2) years after any right to add new units was last exercised; or (d) the day Seller, after giving written notice to unit owners, records an instrument in said Office voluntarily surrendering all rights to control the activities of the Association (the period prior to termination of such developer control being herein referred to as the “**Developer Control Period**”). Purchaser further authorizes Seller to exercise all the rights and incidents of membership in the Association attributable to the Unit contracted for herein until the recordation of Purchaser’s Unit Deed.

26. Additional Disclosures; Disclaimers and Releases. Without limiting any other provision in the Condominium Documents, the following is a summary of some items that should be considered by a purchaser or that a purchaser may have objections to. Purchaser should carefully review the Condominium Documents and consider each of the following items before submitting an offer to purchase a unit. Purchaser shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following, and such acknowledgment and agreement shall be deemed to survive Closing:

a. Right of Front Desk Unit Owner to Select Resort Manager. Each Purchaser specifically acknowledges and agrees that the Front Desk Unit Owner shall have the right, in its sole discretion, to (a) select a resort manager to lease, manage and/or operate the Front Desk Unit and any Limited Common Elements appurtenant thereto and any Hospitality Services; (b) to change such resort manager from time to time; and (c) to change the name of the Project at any time. EACH UNIT OWNER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER SELLER, THE FRONT DESK UNIT OWNER, NOR ANY OF THEIR RESPECTIVE AGENTS OR REPRESENTATIVES HAVE MADE ANY REPRESENTATIONS, WARRANTIES, GUARANTEES OR OTHER CLAIMS OF ANY KIND REGARDING THE CURRENT AND FUTURE IDENTITY OF THE RESORT MANAGER FOR THE FRONT DESK UNIT OR IF A RESORT MANAGER WILL BE HIRED TO LEASE, OPERATE AND/OR MANAGE THE FRONT DESK UNIT. SELLER AND THE FRONT DESK UNIT OWNER EXPRESSLY DISCLAIM ANY REPRESENTATIONS, WARRANTIES, GUARANTEES OR OTHER CLAIMS OF ANY KIND REGARDING THE SAME.

b. Security Disclaimer. The Association, the Condominium Manager, the Front Desk Unit Owner and/or the resort manager may, but shall not be obligated to maintain or support certain activities within the Project designed to make the Project safer than it might otherwise be.

Neither the Association, the Condominium Manager, the Front Desk Unit Owner, the resort manager nor Seller shall in any way be considered insurers or guarantors of security within the Project, and neither the Association, the Condominium Manager, the Front Desk Unit Owner, the resort manager, Seller, nor any successor-in-interest to Seller shall be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of security measures undertaken. All Owners and occupants of any Unit, tenants, guests and invitees of any Owner, as applicable, acknowledge that the Association, the Condominium Manager, the Front Desk Unit Owner, the resort manager, Seller or any successor-in-interest to Seller do not represent or warrant that any fire protection system or other security system designated or installed according to the guidelines established by Seller or the Association may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, terrorism or otherwise, nor that fire protection or burglar alarm systems or other security systems will in all cases provide the detection or protection for which the system was designed or intended. Purchaser, his or her family, agents, transient guests, or other occupants of any unit, as applicable, acknowledges and understands that the Front Desk Unit Owner, the resort manager, the Association, its Board and committees, the Condominium Map, Seller, and any other successor to Seller is not an insurer, and that each owner, his or her family, agents, transient guests, or other occupants of a unit assume all risks for loss or damage to persons, units and the contents of units, and further acknowledges that the Front Desk Unit Owner, the resort manager, the Association, the Condominium Manager, Seller, or any successor-in-interest to Seller have made no representations or warranties, nor has Purchaser, his or her family, agents, transient guests, long-term guests, or other occupants of a Unit relied upon any representation or warranty, expressed or implied, including any warranty of merchantability as to the fitness of any alarm systems or other security systems recommended or installed, or any security measure undertaken within the Project.

c. Mold Development. Molds, mildews, toxins and fungi may exist and/or develop within the Unit and/or the Project. Purchaser is hereby advised that certain molds, mildews, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose health risk. By acquiring title to a Unit, Purchaser shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released Seller from any and all liability resulting from the same.

d. Condominium Living. Living in a Project with multiple multi-story condominium buildings entails living in close proximity to other persons, with attendant limitations on solitude and privacy. Walls, floors and ceilings have been designed to meet applicable building codes. Purchaser acknowledges that owners will likely hear noise from adjacent units within the Project, however, including, but not limited to, noise from showers, bathtubs, sinks, toilets or other sources of running water and/or plumbing fixtures. Also, owners may hear noise from such items as the pool, vacuum cleaners, stereos or televisions, or from people running, walking, exercising or socializing. Finally, an owner may hear substantial levels of sound, music, noise, odors, vibrations and other nuisances from retail, commercial and hotel developments in the vicinity of the Project. Owners may also experience light entering the Units from commercial lighting in the Project and the vicinity and from street lights located in close proximity to the window and doors for the Units. Purchaser specifically acknowledges and agrees that units may be rented to transient guests in accordance with the Declaration.

e. Noise. The Association and Seller have no control over and shall not be responsible for the transmission of noise, light or odors within the Project and/or from adjacent retail/entertainment, commercial and hotel developments, if any, and the potential effect of such noise, light or odors on units within the Project.

f. Views. SELLER HAS NOT MADE ANY ORAL OR WRITTEN STATEMENT, REPRESENTATION OR WARRANTY THAT THERE IS ANY "VIEW" FROM THE UNIT OR THAT ANY EXISTING "VIEW" WILL NOT BE OBSTRUCTED IN THE FUTURE. Purchaser, by accepting title to the Unit acknowledges that: (a) there are no protected views in the Project, and the units are not assured the existence or unobstructed continuation of any particular view, (b) any view from the Unit is not intended as part of the value of the Unit, and is not guaranteed, and Seller makes no representation or warranty regarding the effect of the view on the value of the Unit, and (c) any future development, construction, landscaping, growth of trees or other installation of improvements by Seller, the Front Desk Unit Owner, other owners or owners of other property in the vicinity of the Project, may impair the view from the Unit, and Purchaser consents to such view impairment.

g. Neighboring Developments. Certain portions of land outside, abutting and/or near the Project may be subject to redevelopment, and in the future may or will be developed by third parties over whom Seller has no control (the "**Neighboring Developments**"). The Association and Seller have no jurisdiction over future Neighboring Developments, and, accordingly, there is no representation as to the nature, use or architecture of any future development or improvements on Neighboring Developments. Any such use, development and/or construction on Neighboring Developments may result in noise, dust, or other "nuisance" to the Project or owners, and Purchaser acknowledges the same.

h. Parking/Storage Lockers. All parking in the Project are Common Elements; provided that the parking stalls located within the 4-car garages and any storage locker or areas therein, are specifically Limited Common Elements appurtenant to the Front Desk Unit. Residential Units shall not have an assigned parking stall, and shall not be guaranteed the use of a specific parking stall. However, such Residential Unit will have the right to use one (1) unassigned parking stall on a first come, first served basis, the location of which shall be determined by the Managing Agent or Resort Agent. Some of the parking stalls may also be reserved for the Developer and/or the Condominium Manager and resort manager, if any, for the operation of the Commercial Units and resort operations in general as guest and/or employee stalls. The Condominium Manager and resort manager, if any, will manage use of the Common Element parking stalls and may delegate its management right to the Resort Manager.

The parking stalls located within the 4-car garages and the storage lockers located therein, as Limited Common Elements to the Front Desk Unit, are for the exclusive use by and are under the control of the Front Desk

Unit Owner; provided that the Front Desk Unit Owner at such Owner's discretion may license, lease out or redesignate such stalls or storage lockers as Limited Common Elements to other Units in the Project.

i. Finishes; Fixtures. Seller intends to install countertops, finishes and fixtures within the units consisting of certain materials as may be depicted in marketing and sales collateral. Each purchaser specifically acknowledges and agrees that display samples represent the typical quality, color, texture, shading, finish and marking of particular finishes. An exact match in color, type, quality, shading, finishes is neither implied nor guaranteed and all finishes are subject to variation. Purchasers further acknowledge and agree that due to the mineral composition and crystalline structure of finishes (i.e., countertops), small pits may be visible on the polished surfaces. The pitting as well as natural fissures shall not be considered flaws, as they do not impair the function or durability of the material. Purchasers acknowledge and agree that due to the porous nature of stone and other natural materials, the certain finishes will still be susceptible to staining. Owners and occupants of units will be responsible for cleaning of stains at their own expense.

j. Potential Beach Hazards. Purchasers should be aware that the beach area fronting the property is known to have high surf and dangerous currents. Swimming in the beach is at your own risk.

MISCELLANEOUS PROVISIONS

27. This Sales Contract is Binding on Seller only if Seller Signs It. This Sales Contract shall not be binding upon Seller until executed by Seller. Execution of this Sales Contract and/or a receipt of any monies under **Section C.2** or other funds by the Project Broker or other sales agent of Seller shall not constitute execution or approval by Seller or obligate Seller to Purchaser pursuant to this Sales Contract or otherwise. Unless otherwise stated herein, delivery of a copy of this Sales Contract which has not been executed by Seller to a prospective purchaser does not create an option or any other right in favor of said prospective purchaser.

28. Binding Contracts; Delivery of Public Report; Purchaser's Right to Cancel; Waiver. This Sales Contract shall become binding when (a) Seller delivers to Purchaser (i) a true copy of the Public Report with an effective date issued by the Commission and all amendments thereto, and (ii) the Notice of Right to Cancel; and (b) Purchaser either (i) affirmatively waives Purchaser's right to cancel this Sales Contract, or (ii) is deemed to have waived the right to cancel. Purchaser may cancel this Sales Contract at any time up to midnight of the thirtieth (30th) day after (a) the date Purchaser signs this Sales Contract and (b) the Public Report and Notice of Right to Cancel are delivered to Purchaser. It is understood that Purchaser may, at any time after Purchaser's receipt of the Public Report and the Notice of Right to Cancel, waive Purchaser's right to cancel this Sales Contract by checking the waiver box on the Notice of Right to Cancel and delivering it to Seller. If Purchaser shall fail to take any action to cancel this Sales Contract within the thirty (30)-day cancellation period, Purchaser shall be deemed to have waived Purchaser's right to cancel this Sales Contract (by Purchaser's failure to give said written notice of cancellation within the thirty (30)-day period). The conveyance of the Unit to the Purchaser within the thirty (30)-day cancellation period referenced above shall also be treated as a waiver by Purchaser of Purchaser's right to cancel this Sales Contract.

Notwithstanding the foregoing, pursuant to the Federal Interstate Land Sales Full Disclosure Act, Purchaser shall have the option to cancel this Sales Contract by notice to the Seller at any time until midnight of the seventh (7th) day following the signing of this Sales Contract by Purchaser. Should Purchaser exercise such right within the requisite period, all payments made by Purchaser hereunder, plus any interest thereon and any cancellation fee and other associated costs shall be refunded to Purchaser. If Purchaser does not receive a Federal Property Report prepared pursuant to the rules and regulations of the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, in advance of Purchaser signing this Sales Contract, this Sales Contract may be cancelled by Purchaser at any time up to two (2)-years from the date of signing by Purchaser. The foregoing rescission period provided pursuant to the Federal Interstate Land Sales Full Disclosure Act shall commence upon execution of this Sales Contract by Purchaser and may run concurrently with the thirty (30)-day cancellation period provided pursuant to Hawaii law as discussed above.

29. Sales Contracts Prior to Completion of Construction; Completion Deadline. If completion of the construction of the Unit does not occur on or before the Completion Deadline set forth in **Section C.7**, as the same may have been extended by reason of Force Majeure, Purchaser may cancel this Sales Contract at any time thereafter. In the event of cancellation because of Seller's failure to complete the Unit by the Completion Deadline, Purchaser shall be entitled to a prompt refund of all moneys paid, plus any interest earned thereon, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of Two Hundred Fifty and No/100 Dollars (\$250.00). If Purchaser shall fail to cancel this Sales Contract within thirty (30) days of the expiration of the Completion Deadline, Seller will thereafter have the right to cancel this Sales Contract; provided that should Seller elect to cancel this Sales Contract pursuant to this **Section D.29**, Purchaser shall be entitled to a prompt and full refund of all moneys paid, plus any interest earned thereon pursuant to Section 514B-5 of the Act, or may pursue the remedies set forth in **Section D.37** herein.

30. New Laws and Other Events Beyond Seller's Control; Increase in Purchase Price. If, after the Effective Date and because of the adoption or enactment of any New Law, or due to any fire, earthquake, act of God, the elements, war, acts of terrorism, civil disturbances, strike or other labor disturbance, or economic controls making it impossible to obtain the necessary labor or material, or market conditions which increase the cost of necessary labor or materials, or any other event, matters or conditions beyond the control of Seller, including any litigation or threat of litigation concerning the Project, Seller determines that such conditions have resulted in or will result in increases in development and construction costs by more than ten percent (10%), then Seller may increase the Total Purchase Price by an amount not in excess of the Unit's proportionate share (based, approximately, on Seller's price list for all Units in effect at the time of both Purchaser's and Seller's execution of this Sales Contract) of the total amount of such increases in development costs, and Purchaser hereby acknowledges that this Sales Contract will be deemed to be amended to incorporate the increased Total Purchase Price upon Seller's giving notice to Purchaser of the amount of the increased Total Purchase Price, and Purchaser shall be deemed to have approved and accepted this Sales Contract, as amended, without memorializing such amendment in any written instrument signed by any of Purchaser or Seller, and Purchaser hereby agrees to pay such increased Total Purchase Price; provided, however, upon receipt of the notice from Seller of the amount of the increased Total Purchase Price, Purchaser shall have thirty (30) days from the date of the notice to cancel this Sales Contract by written notice to Seller and upon such notice to receive a refund of the Contract Deposit and the Upgrade Deposit paid hereunder by Purchaser, with accrued interest. If notice of cancellation is not received from Purchaser within said thirty (30)-day period, Purchaser shall be bound to fulfill all of Purchaser's obligations pursuant to the terms of this Sales Contract, as amended, with the increased Total Purchase Price, and shall execute any documents as they may be required by Escrow, including, but not limited to, an affirmation of such increased Total Purchase Price to facilitate Closing. This Sales Contract will be deemed to have been also amended so as to increase the payments set forth in **Sections C.1** and **C.2** above by the respective new amount for such payment to be set forth in the notice from Seller.

The Hawaii real estate market continually fluctuates due to changes in economic, social and political conditions that directly affect the supply of and demand for housing. Such supply and demand may be further impacted by fluctuating prices and availability of materials and labor necessary to construct the Project. As a result, unit prices as well as the terms and conditions of sale are also subject to change. Therefore, (i) although the price of Purchaser's Unit may not change, except as set forth in the preceding paragraph, Purchaser should be aware that Seller reserves the right at any time prior to or after the close of Escrow for the sale of a unit and without notice, to increase or decrease the Total Purchase Price, adjust incentives and/or otherwise adjust the terms and conditions of sale for units in the Project, and change the number, size, location, and design of units; (ii) Seller is not obligated to offer Purchaser the same price, incentives and/or other terms and conditions of sale that Seller has previously offered or may subsequently offer to another purchaser; (iii) Seller has neither offered nor agreed to any price protection or other similar commitment to Purchaser regarding the value or resale value of Purchaser's Unit (or any other property), and Seller shall not have any obligation or liability whatsoever to Purchaser in the event any price changes directly or indirectly affect the value of Purchaser's Unit; and (iv) when Purchaser entered into the Sales Contract, Seller may have owned other properties which may have been off the market and may not have

been shown to or otherwise made available for purchase by Purchaser. Seller does not have any obligation to notify Purchaser if any of such properties come on the market or are otherwise available for purchase, nor shall Seller have any obligation to notify Purchaser of any future properties Seller may develop and make available for purchase.

31. Material Changes in the Project. Where, after this Sales Contract has become binding in accordance with **Section D.28**, there is a Material Change in the Project, Purchaser may rescind this Sales Contract within thirty (30) days of Purchaser's receipt of a copy of a Disclosure Document providing a description of the Material Change and a Rescission Notice. As provided in Section 514B-87 of the Condominium Act, Purchaser may waive his/her right to rescind this Sales Contract by: (a) checking the waiver box on the Rescission Notice, signing it, and returning it to Seller; (b) allowing the thirty (30)-day rescission period to expire without taking any action to rescind; or (c) closing the purchase of the Unit before the thirty (30)-day rescission period expires. In the event Purchaser rescinds this Sales Contract pursuant to this **Section D.31**, Purchaser shall be entitled to a prompt and full refund of all monies paid, plus any interest earned thereon.

32. PRESALE CONTINGENCY. PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER MAY CANCEL THIS SALES CONTRACT IF SELLER HAS NOT OBTAINED BINDING SALES CONTRACTS TO SELL AT LEAST SEVENTY PERCENT (70%) OF THE UNITS IN THE BUILDING IN WHICH PURCHASER'S UNIT IS LOCATED ON OR BEFORE ONE HUNDRED EIGHTY (180) DAYS AFTER THE DATE OF THE FIRST EXECUTED SALES CONTRACT FOR PURCHASE AND SALE OF A UNIT IN SUCH BUILDING (THE "**PRESALE CONTINGENCY**"). THE PRESALE CONTINGENCY IS SET BY SELLER IN ITS SOLE AND ABSOLUTE DISCRETION. IF THE PRESALE CONTINGENCY FOR THE BUILDING IS NOT SATISFIED FOR ANY REASON, SELLER SHALL HAVE NO OBLIGATION TO CONSTRUCT ANY PORTION OF THE BUILDING IN WHICH SAID UNIT IS LOCATED OR TO SELL THE UNIT TO PURCHASER. IN THE EVENT SELLER ELECTS TO CANCEL THIS SALES CONTRACT PURSUANT TO THIS **SECTION D.32**, PURCHASER SHALL BE ENTITLED TO A FULL REFUND OF ALL MONIES PAID BY PURCHASER TO SELLER HEREUNDER, WITH ACCRUED INTEREST, IF ANY. THIS PRESALE CONTINGENCY IS FOR THE BENEFIT OF SELLER ONLY, AND NOT FOR THE BENEFIT OF PURCHASER, AND MAY BE WAIVED BY SELLER IN SELLER'S SOLE AND ABSOLUTE DISCRETION.

33. Purchaser's Interest under this Sales Contract; Subordination. This Sales Contract shall not be construed as a present transfer of any rights or of any interest in the Unit, but rather this Sales Contract is an agreement to transfer an interest in the future. Purchaser agrees not to file or cause to be filed in the Office any form of this Sales Contract. Purchaser acknowledges that Seller has entered into or may enter into an agreement with one or more lenders (the "**Lender**") pursuant to which the Lender may loan an aggregate of up to Four Hundred Fifty Million and No/100 Dollars (\$450,000,000.00) at an annual interest rate of up to four and one-half (4.5) percentage points, or four hundred fifty (450) basis points, over the Lender's chosen rate (which may be Lender's "prime rate," "base rate," or other rate, or may be the London Inter-Bank Offering Rate "LIBOR," or any other rate such Lender may select). The repayment provisions of the loan may call for repayment of the loan over a period of time likely not to exceed five (5) years. To secure the loan, Seller may grant to the Lender security interests covering the Seller's interest in the Project, including the Unit covered by this Sales Contract. Purchaser acknowledges and agrees that all security interests obtained by the Lender in connection with such loan as well as any extensions, renewals and modifications thereof shall be and remain at all times, until the filing of the Unit Deed, a lien or charge on the Project, including the Unit covered by this Sales Contract, prior to and superior to any and all liens or charges on the Project arising from this Sales Contract or any prior agreement. PURCHASER HEREBY INTENTIONALLY WAIVES, RELINQUISHES AND SUBORDINATES THE PRIORITY OR SUPERIORITY OF ANY LIEN OR OTHER LEGAL OR EQUITABLE INTEREST ARISING UNDER THIS SALES CONTRACT IN FAVOR OF THE LIEN OR CHARGE ON THE PROJECT OF THE SECURITY INTERESTS OF THE LENDER, INCLUDING BUT NOT LIMITED TO ANY LIEN, MORTGAGE OR CHARGE SECURING A LOAN MADE TO FINANCE THE ACQUISITION OF THE LAND AND THE COSTS OF CONSTRUCTION AND OTHER COSTS DURING SUCH CONSTRUCTION AND ANY AND ALL

ADVANCES THEREFOR, WHETHER CONTRACTUAL OR VOLUNTARY, UNTIL THE FILING OF THE UNIT DEED. Purchaser further undertakes and agrees to execute any further documentation or subordination agreement required by the Lender to evidence this subordination and hereby irrevocably appoints Seller as Purchaser's attorney-in-fact to execute any such instrument on behalf of Purchaser, should Purchaser fail or refuse to do so within ten (10) days after request is made or mailed. Said power of attorney is coupled with an interest, shall be irrevocable, and shall not be affected by the disability of the Purchaser. Purchaser also consents to Seller's assignment by way of security of Seller's interests in this Sales Contract and in Purchaser's Contract Deposit to the Lender and agrees that in the event of passage of Seller's interest therein pursuant to said assignment, that Purchaser will, at Lender's option, perform to, attorn to and recognize Lender (and its successors in interest, if any) as the Seller hereunder, with all of the rights of the Seller hereunder, all as if the Lender were the original Seller hereunder. Purchaser further understands and agrees that the Lender has the right under certain circumstances set forth or to be set forth in the mortgage instrument, the security agreement and any other loan documents pertaining to said agreement between Seller and Lender to foreclose its mortgage and/or enforce its other remedies thereunder or under such other loan documents or possessed at law, and Purchaser hereby agrees in such connection that: (a) the Condominium Manager of the Project is hereby irrevocably appointed by Purchaser as Purchaser's agent for acceptance of service of process during the term of this Sales Contract (which power is coupled with an interest and shall not be affected by the disability of the Purchaser), and any service of process upon said Condominium Manager shall be deemed to be effective service of process upon Purchaser as though Purchaser has been personally served therewith; and (b) the rights of Purchaser hereunder are purely contractual in nature, enforceable only against Seller and its legal successors and assigns and not against the real property, improvements and/or appurtenances thereto which are the subject of said mortgage instrument, security agreement or other loan documents, and Purchaser expressly acknowledges and agrees that Purchaser need not be named a party defendant or plaintiff in any cause of action or suit by Lender to foreclose and/or otherwise enforce its rights under said mortgage instrument or security agreement or other loan documents, nor does Purchaser have any right to be served with process in connection therewith or to be notified of the pendency thereof.

34. Administration and Management of Project. Purchaser acknowledges that Seller has retained Outrigger Hotels Hawaii dba Outrigger Hotels & Resorts as the initial Condominium Manager for the Project. For the duration of the Developer Control Period, as discussed in **Section D.25**, Seller shall have the right to replace Outrigger Hotels Hawaii and any other Condominium Manager at any time in Seller's sole discretion. The Condominium Manager shall have the authority, subject to the provisions of the Declaration and Bylaws, to assume control and responsibility for the administration and management of the Project, at the expense of the Association. The Condominium Manager shall undertake administrative functions, including, but not limited to, (i) the preparation of a proposed budget and schedule of assessments, (ii) the custody and control of all funds of the Association and the maintenance of the books and records with respect thereto, (iii) the preparation and filing of financial reports, and (iv) the filing of any other applications or reports that may be required by governmental and non-governmental entities and any other responsibilities set forth in the Bylaws.

Purchaser further acknowledges that certain portions of the Project more particularly described in the Declaration, including, but not limited to, the Weight Room and Aerobics room, lanais, Exercise Lawn, certain landscaped areas, back of house support areas, storage areas and portions of the private garages are designated as Limited Common Elements appurtenant to various Commercial Units in the Project. Accordingly, such Limited Common Elements shall be operated and maintained by the Owner of the Commercial Unit to which such portions of the Project are appurtenant. Purchaser will have the ability to utilize the Weight Room and Aerobics room pursuant to a license between the owner of said unit and the Association. An equitable license fee will be charged to the Association for such use.

35. Assignment of Sales Contract. This Sales Contract may not be assigned by Purchaser. Any assignment of this Sales Contract by Purchaser is void and of no legal effect. For the purposes of this **Section D.35**, an assignment shall include, but not be limited to: (i) the transfer of Purchaser's interest in this Sales Contract to one or more other persons; (ii) the inclusion of additional persons or entities as purchasers under this

Sales Contract; and (iii) where Purchaser is a corporation, partnership, limited liability company or other legal entity, the transfer of a controlling interest in Purchaser. As used herein, "controlling interest" shall mean (a) the sale of more than fifty percent (50%) of the ownership or other beneficial interest in such entity, or (b) the transfer of interests in such entity sufficient to allow the recipient thereof to control the day-to-day operations of such entity or otherwise control or influence the management of, or otherwise manage, set policies or direct the actions of such entity. Notwithstanding the foregoing, Purchaser may assign his/her rights under this Sales Contract to affiliated entities for estate planning purposes without the consent of Seller; provided that any such assignment shall not release Purchaser from his/her obligations under this Sales Contract. In the event that Purchaser decides to make such an assignment for estate planning purposes, Purchaser shall provide written notice thereof to Seller at least fifteen (15) days prior to the Pre-Closing date and shall provide to Seller and/or Escrow copies of such documents as Seller and/or Escrow, in their sole and absolute discretion, deem necessary to complete Closing. Seller shall be able to assign this contract without the prior consent of any Purchaser and/or mortgagee.

36. SELLER'S REMEDIES UPON DEFAULT BY PURCHASER. IN THE EVENT PURCHASER SHALL HAVE DELIVERED THE CONTRACT DEPOSIT (OR PORTION THEREOF REQUIRED TO BE DELIVERED) PURSUANT TO THIS SALES CONTRACT, AND SHALL FAIL TO COMPLY WITH OR PERFORM ANY OF THE COVENANTS, AGREEMENTS OR OTHER OBLIGATIONS TO BE PERFORMED BY PURCHASER UNDER THE TERMS AND PROVISIONS OF THIS SALES CONTRACT, INCLUDING, WITHOUT LIMITATION, DELIVERY OF THE SECOND DEPOSIT TO ESCROW ON OR PRIOR TO THE SECOND DEPOSIT DELIVERY DATE, SELLER SHALL PROVIDE PURCHASER WITH WRITTEN NOTICE OF SUCH DEFAULT OR BREACH AND THE OPPORTUNITY FOR PURCHASER TO REMEDY SUCH DEFAULT OR BREACH WITHIN TWENTY (20) DAYS AFTER THE DATE OF RECEIPT OF SUCH NOTICE. IF PURCHASER HAS NOT REMEDIED SUCH DEFAULT OR BREACH WITHIN SUCH TWENTY (20)-DAY PERIOD, SELLER SHALL BE ENTITLED TO ANY REMEDY AVAILABLE IN LAW OR IN EQUITY INCLUDING, WITHOUT LIMITATION, (I) SPECIFIC PERFORMANCE OF THIS SALES CONTRACT AND THE TERMS AND CONDITIONS SET FORTH THEREIN, OR (II) TERMINATION OF THIS SALES CONTRACT UPON WRITTEN NOTICE TO PURCHASER, WHEREUPON SELLER SHALL BE PAID THE CONTRACT DEPOSIT, AND ALL ACCRUED INTEREST, AS FIXED AND FULL LIQUIDATED DAMAGES. PURCHASER ACKNOWLEDGES THAT IT IS IMPOSSIBLE TO MORE PRECISELY ESTIMATE THE SPECIFIC DAMAGES TO BE SUFFERED BY SELLER FOR WHICH LIQUIDATED DAMAGES ARE PAYABLE PURSUANT TO THIS SALES CONTRACT, BUT THAT THE APPLICABLE SUM STIPULATED AS THE AMOUNT OF THE LIQUIDATED DAMAGES IS A REASONABLE AMOUNT. NOTWITHSTANDING THE FOREGOING, IF PURCHASER LOSES ITS RIGHTS AND INTEREST IN THE UNIT AS A RESULT OF PURCHASER'S BREACH OR DEFAULT UNDER THIS SALES CONTRACT AFTER FIFTEEN PERCENT (15%) OF THE PURCHASE PRICE HAS BEEN PAID BY PURCHASER, (EXCLUSIVE OF ANY INTEREST ACCRUED THEREON), SELLER SHALL REFUND TO PURCHASER ANY AMOUNT THAT REMAINS AFTER SUBTRACTING (A) FIFTEEN PERCENT (15%) OF THE PURCHASE PRICE OF THE UNIT (EXCLUSIVE OF ANY INTEREST EARNED THEREON), OR THE AMOUNT OF DAMAGES INCURRED BY SELLER AS A RESULT OF SUCH BREACH, WHICHEVER IS GREATER, FROM (B) THE AMOUNT PAID BY PURCHASER WITH RESPECT TO THE PURCHASE PRICE OF THE UNIT, EXCLUDING ANY INTEREST EARNED THEREON.

37. PURCHASER'S REMEDIES UPON DEFAULT BY SELLER. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SALES CONTRACT, IF SELLER SHALL BE IN DEFAULT UNDER THE TERMS AND PROVISIONS OF THIS SALES CONTRACT, PURCHASER SHALL PROVIDE WRITTEN NOTICE TO SELLER OF ANY SUCH DEFAULT BY SELLER. IF SELLER DOES NOT THEREAFTER CURE SUCH DEFAULT WITHIN THIRTY (30) DAYS OF SELLER'S RECEIPT OF PURCHASER'S WRITTEN NOTICE, PURCHASER SHALL BE ENTITLED TO THE FOLLOWING REMEDIES:

a. DEFAULT PRIOR TO COMPLETION OF CONSTRUCTION. IF SUCH DEFAULT SHALL OCCUR PRIOR TO THE COMPLETION OF CONSTRUCTION OF THE BUILDING IN WHICH THE UNIT IS LOCATED, PURCHASER'S SOLE REMEDY SHALL BE, PROVIDED THAT PURCHASER IS NOT THEN IN MATERIAL DEFAULT UNDER THIS SALES CONTRACT, TO TERMINATE THIS SALES CONTRACT BY WRITTEN NOTICE TO SELLER, IN WHICH EVENT PURCHASER'S CONTRACT DEPOSIT AND ANY OTHER AMOUNTS PAID BY PURCHASER TO SELLER UNDER THIS SALES CONTRACT SHALL BE RETURNED TO PURCHASER UPON DEMAND, WITH ACCRUED INTEREST DESCRIBED IN **SECTION D.5** HEREOF.

b. DEFAULT AFTER COMPLETION OF CONSTRUCTION. IF SUCH DEFAULT SHALL OCCUR AFTER THE COMPLETION OF CONSTRUCTION OF THE BUILDING IN WHICH THE UNIT IS LOCATED BUT PRIOR TO THE CLOSING OF THE PURCHASE OF THE UNIT, PURCHASER MAY ELECT, PROVIDED THAT PURCHASER IS NOT THEN IN MATERIAL DEFAULT UNDER THIS SALES CONTRACT, AT PURCHASER'S OPTION, TO (A) TERMINATE THIS SALES CONTRACT BY WRITTEN NOTICE TO SELLER, IN WHICH EVENT PURCHASER'S CONTRACT DEPOSIT AND ANY AMOUNTS PAID BY PURCHASER TO SELLER UNDER THIS SALES CONTRACT SHALL BE RETURNED TO PURCHASER UPON DEMAND, WITH ACCRUED INTEREST DESCRIBED IN **SECTION D.5** HEREOF; OR (B) FILE SUIT AGAINST SELLER FOR ACTUAL DAMAGES SUFFERED BY PURCHASER BY REASON OF DEFAULT BY SELLER; PROVIDED THAT PURCHASER SPECIFICALLY WAIVES ANY RIGHT TO RECOVER CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF SELLER'S DEFAULT.

PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT UNLESS AND UNTIL PURCHASER FULLY PERFORMS ALL OF ITS OBLIGATIONS UNDER THIS SALES CONTRACT AND PURCHASES THE UNIT IN A TIMELY MANNER AND IN ACCORDANCE WITH THIS SALES CONTRACT, PURCHASER SHALL NOT HAVE ANY RIGHT, TITLE OR INTEREST IN THE UNIT. PURCHASER HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE UNDER THIS SALES CONTRACT OR ANY OTHER AGREEMENT BETWEEN THE PARTIES, OR OTHERWISE, TO SEEK SPECIFIC PERFORMANCE AND/OR TO FILE ANY ADVERSE CLAIM OR LIS PENDENS WHICH MAY AFFECT OR ENCUMBER TITLE TO THE UNIT.

ALTERNATIVE DISPUTE RESOLUTION NOTIFICATION AND PROCEDURES; WAIVERS

NOTICE TO PURCHASER

38. PURPOSE AND EXCLUSIVITY. THE PURPOSE OF THESE DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES (THE "**PROCEDURES**") IS TO PROVIDE SELLER AND ITS OFFICERS, AGENTS, EMPLOYEES, BROKERS, OTHER REPRESENTATIVES OR ANY CONTRACTOR OR SUBCONTRACTOR, DESIGN PROFESSIONAL, ENGINEER OR SUPPLIER WHO PROVIDED LABOR, SERVICES OR MATERIALS TO THE PROJECT OR ANY PURCHASER OR OTHER OWNER OF AN INTEREST IN THE UNIT AND ANY PERSONS CLAIMING THEREUNDER (COLLECTIVELY FOR PURPOSES OF THIS **SECTION D.38**, THE "**PARTIES**") WITH A MECHANISM TO RESOLVE DISPUTES THAT MAY DEVELOP IN THE FUTURE CONCERNING THE SUBJECT MATTER OF THIS SALES CONTRACT. THE PARTIES AGREE THAT THESE PROCEDURES SHALL BE THE EXCLUSIVE METHOD TO RESOLVE ALL DISPUTES AND THAT THE GOAL OF THE PARTIES IN AGREEING TO THESE PROCEDURES IS TO ENSURE THAT ALL DISPUTES ARE RESOLVED IN THE MOST EXPEDITIOUS AND INEXPENSIVE MANNER POSSIBLE. ALL PROVISIONS OF THESE PROCEDURES ARE TO BE INTERPRETED WITH THIS PURPOSE IN MIND.

a. DEFINITION. "**DISPUTES**" MEANS AND INCLUDES ANY AND ALL ACTIONS, CLAIMS OR DISPUTES BY, BETWEEN OR AMONG THE PARTIES: (A) THAT ARISE OUT OF: THE PROJECT; THIS SALES CONTRACT; DOCUMENTS RELATING TO THE ASSOCIATION; ANY OTHER

AGREEMENTS BETWEEN THE PARTIES; THE SALE OF A UNIT; THE USE OR CONDITION OF ANY IMPROVEMENT OR ANY PORTION THEREOF; THE DESIGN OR CONSTRUCTION OF ANY IMPROVEMENT OR ANY PORTION THEREOF; OR ANY CONDITION ON OR AFFECTING THE PROJECT OR ANY PORTION THEREOF; INCLUDING WITHOUT LIMITING THE FOREGOING, CONSTRUCTION DEFECTS, SURVEYS, SOILS CONDITIONS, GRADING, SPECIFICATIONS, INSTALLATION OF IMPROVEMENTS OR DISPUTES WHICH ALLEGE BREACH OF IMPLIED OR EXPRESS WARRANTIES AS TO THE CONDITION OF ANY IMPROVEMENT OR THE PROJECT; AND (B) WHERE THE TOTAL AMOUNT IN CONTROVERSY (INCLUDING ALL CLAIMS AND COUNTERCLAIMS) IS GREATER THAN THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,500.00). NOTWITHSTANDING ANYTHING ELSE IN THIS **SECTION D.38** TO THE CONTRARY, ANY ACTION OR CLAIM BY OR BETWEEN SELLER AND PURCHASER ARISING OUT OF OR INCIDENT TO THIS SALES CONTRACT THAT IS RAISED OR OTHERWISE ASSERTED BEFORE THE CLOSING DATE NEED NOT BE SUBMITTED TO ALTERNATIVE DISPUTE RESOLUTION AS PROVIDED HEREIN, AND SELLER AND PURCHASER SHALL BE FREE TO PURSUE SUCH ACTION OR CLAIM AS OTHERWISE PROVIDED HEREIN, IN PROCEEDINGS BEFORE ANY COURT OF COMPETENT JURISDICTION. PURCHASER AND SELLER AGREE THAT ANY JUDICIAL PROCEEDINGS INITIATED UNDER THE PRECEDING SENTENCE SHALL BE CONDUCTED IN HONOLULU, HAWAII.

b. **KNOWING RELEASE.** THE PARTIES ACKNOWLEDGE THAT THE PROCEDURES HAVE BEEN A MATERIAL INDUCEMENT FOR THEM TO ENTER INTO THIS SALES CONTRACT. TO ACCOMPLISH THE PURPOSE OF THESE PROCEDURES, THE PARTIES, WITH RESPECT TO ANY DISPUTE, AND ANY PROHIBITED LITIGATION REFERRED TO IN **SECTION D.38.g** BELOW, WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL ON ANY CLAIM OR CAUSE OF ACTION THAT IS BASED UPON OR ARISING OUT OF SUCH DISPUTE, OR SUCH PROHIBITED LITIGATION. IN ADDITION, WITH RESPECT TO ANY DISPUTE OR PROHIBITED LITIGATION, THE PARTIES WAIVE ANY AND ALL RIGHT THAT EITHER OF THEM MAY HAVE TO RECOVER ANY TYPE OF PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES, OR TREBLE OR OTHER MULTIPLE DAMAGES PROVIDED FOR BY ANY STATUTE OR RULE. NOTHING CONTAINED IN THIS **SECTION D.38.b** SHALL PRECLUDE THE RECOVERY OF OTHER DAMAGES OR ATTORNEYS' FEES AND COSTS AS AND TO THE EXTENT PROVIDED ELSEWHERE IN THIS SALES CONTRACT.

c. **NOTICE.** EXCEPT FOR DISPUTES RELATING TO CONSTRUCTION DEFECTS, WHICH SHALL BE GOVERNED BY THE CONTRACTOR REPAIR ACT, CHAPTER 672E OF THE HAWAII REVISED STATUTES (THE "**CONTRACTOR REPAIR ACT**"), AS DISCUSSED IN **SECTION D.18**, HEREIN, ANY PERSON WITH A DISPUTE SHALL NOTIFY THE PARTY TO WHOM THE DISPUTE IS DIRECTED IN WRITING OF THE DISPUTE, WHICH WRITING SHALL DESCRIBE THE NATURE OF THE DISPUTE AND ANY PROPOSED REMEDY (THE "**DISPUTE NOTICE**"). WITHIN A REASONABLE PERIOD AFTER RECEIPT OF THE DISPUTE NOTICE, WHICH PERIOD SHALL NOT EXCEED SIXTY (60) DAYS, THE PARTIES TO THE DISPUTE, REPRESENTED BY INDIVIDUALS WITH DECISION MAKING AUTHORITY, SHALL MEET AT A MUTUALLY ACCEPTABLE PLACE WITHIN OR NEAR THE PROJECT TO DISCUSS THE DISPUTE. THE PARTIES TO THE DISPUTE SHALL NEGOTIATE IN GOOD FAITH IN AN ATTEMPT TO RESOLVE THE DISPUTE.

d. **MEDIATION.** IF THE PARTIES TO THE DISPUTE CANNOT RESOLVE SUCH DISPUTE PURSUANT TO THE CONTRACTOR REPAIR ACT OR THE PROCEDURES DESCRIBED IN **SECTION D.38.c**, ABOVE, THE MATTER SHALL BE SUBMITTED TO MEDIATION PURSUANT TO THE PROCEDURES ADOPTED BY DISPUTE PREVENTION AND RESOLUTION, INC. LOCATED IN HONOLULU, HAWAII (EXCEPT AS SUCH PROCEDURES ARE MODIFIED BY THE PROVISIONS OF THIS **SECTION D.38.d**) OR ANY SUCCESSOR THERETO OR TO ANY OTHER ENTITY OFFERING MEDIATION SERVICES THAT IS ACCEPTABLE TO THE PARTIES. THE MEDIATOR SHALL BE SELECTED WITHIN FIFTEEN (15) DAYS OF THE SUBMITTAL OF THE DISPUTE TO MEDIATION. NO

PERSON SHALL SERVE AS A MEDIATOR IN ANY DISPUTE IN WHICH THE PERSON HAS ANY FINANCIAL OR PERSONAL INTEREST IN THE RESULT OF THE MEDIATION, EXCEPT BY THE WRITTEN CONSENT OF ALL PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION. PRIOR TO ACCEPTING ANY APPOINTMENT, THE PROSPECTIVE MEDIATOR SHALL DISCLOSE ANY CIRCUMSTANCES LIKELY TO CREATE A PRESUMPTION OF BIAS OR TO PREVENT A PROMPT COMMENCEMENT OF THE MEDIATION PROCESS.

(1) POSITION LETTER; PRE-MEDIATION CONFERENCE. WITHIN TEN (10) DAYS OF THE SELECTION OF THE MEDIATOR, EACH PARTY TO THE DISPUTE PARTICIPATING IN THE MEDIATION SHALL SUBMIT A LETTER SETTING FORTH A CONCISE DESCRIPTION OF ITS POSITION WITH REGARD TO THE ISSUES THAT NEED TO BE RESOLVED. SUCH LETTER SHALL BE OF A LENGTH AND MEET THE FORMATTING SPECIFICATIONS ESTABLISHED BY THE MEDIATOR, PROVIDED, HOWEVER, THAT IN NO EVENT SHALL THE MEDIATOR REQUIRE SUCH LETTER TO BE LESS THAN FIVE (5) SINGLE-SPACED PAGES. THE MEDIATOR SHALL HAVE THE RIGHT TO SCHEDULE A PRE-MEDIATION CONFERENCE AND ALL PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION SHALL ATTEND UNLESS OTHERWISE AGREED. THE MEDIATION SHALL BE COMMENCED WITHIN TEN (10) DAYS FOLLOWING THE SUBMITTAL OF THE LETTER AND SHALL BE CONCLUDED WITHIN FIFTEEN (15) DAYS FROM THE COMMENCEMENT OF THE MEDIATION UNLESS THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION MUTUALLY AGREE TO EXTEND THE MEDIATION PERIOD. THE MEDIATION SHALL BE HELD IN HONOLULU, HAWAII OR SUCH OTHER PLACE AS IS MUTUALLY ACCEPTABLE TO THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION.

(2) CONDUCT OF MEDIATION. THE MEDIATOR HAS DISCRETION TO CONDUCT THE MEDIATION IN THE MANNER THAT THE MEDIATOR BELIEVES IS MOST APPROPRIATE FOR REACHING A SETTLEMENT OF THE DISPUTE. THE MEDIATOR IS AUTHORIZED TO CONDUCT JOINT AND SEPARATE MEETINGS WITH THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION AND TO MAKE ORAL AND WRITTEN RECOMMENDATIONS FOR SETTLEMENT. WHENEVER NECESSARY, THE MEDIATOR MAY ALSO OBTAIN EXPERT ADVICE CONCERNING TECHNICAL ASPECTS OF THE DISPUTE, PROVIDED THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION AGREE AND ASSUME THE EXPENSES OF OBTAINING SUCH ADVICE. THE MEDIATOR DOES NOT HAVE THE AUTHORITY TO IMPOSE A SETTLEMENT ON THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION.

(3) PARTIES PERMITTED AT SESSIONS. PERSONS OTHER THAN THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION, THEIR AUTHORIZED REPRESENTATIVES AND THE MEDIATOR MAY ATTEND THE MEDIATION SESSIONS ONLY WITH THE CONSENT OF THE MEDIATOR, PROVIDED, HOWEVER, SUCH PERMISSION AND CONSENT SHALL NOT BE REQUIRED TO ALLOW PARTICIPATION OF SUCH PARTIES' LIABILITY INSURER IN THE MEDIATION TO THE EXTENT REQUIRED UNDER SUCH PARTIES' LIABILITY INSURANCE POLICY.

(4) RECORD. THERE SHALL BE NO STENOGRAPHIC RECORD OF THE MEDIATION PROCESS.

(5) EXPENSES. THE EXPENSES OF WITNESSES FOR EITHER SIDE SHALL BE PAID BY THE PARTY PRODUCING SUCH WITNESSES. ALL OTHER EXPENSES OF THE MEDIATION, INCLUDING, BUT NOT LIMITED TO, THE FEES AND COSTS CHARGED BY THE MEDIATOR AND THE EXPENSES OF ANY WITNESSES OR THE COST OF ANY PROOF OR EXPERT ADVICE PRODUCED AT THE DIRECT REQUEST OF THE MEDIATOR, SHALL BE BORNE EQUALLY BY THE PARTIES TO THE MEDIATION UNLESS THEY AGREE OTHERWISE. EACH PARTY TO THE

MEDIATION SHALL BEAR ITS OWN ATTORNEYS' FEES AND COSTS IN CONNECTION WITH SUCH MEDIATION.

e. BINDING ARBITRATION. IF THE PARTIES TO THE DISPUTE CANNOT RESOLVE SUCH DISPUTE PURSUANT TO THE PROCEDURES DESCRIBED IN **SECTIONS D.38.c AND D.39.d**, ABOVE, THE MATTER SHALL BE SUBMITTED TO BINDING ARBITRATION PURSUANT TO (I) THE PROVISIONS OF CHAPTER 658A OF HAWAII REVISED STATUTES, AS AMENDED FROM TIME TO TIME (WITH EXCEPTION OF HAWAII REVISED STATUTES §§ 658A-21(a), (c) AND (e), AS AMENDED, WHICH THE PARTIES HEREBY AGREE TO WAIVE) AND (II) THE RULES AND PROCEDURES ADOPTED BY DISPUTE PREVENTION AND RESOLUTION, INC. (EXCEPT AS SUCH RULES ARE MODIFIED BY THE PROVISIONS OF THIS **SECTION D.38.e**) OR ANY SUCCESSOR THERETO OR TO ANY OTHER ENTITY OFFERING ARBITRATION SERVICES THAT IS ACCEPTABLE TO SUCH PARTIES ("**DISPUTE AGENCY**"). ALL ARBITRATION PROCEEDINGS SHALL BE CONDUCTED IN HONOLULU, HAWAII OR SUCH OTHER PLACE AS IS MUTUALLY ACCEPTABLE TO THE PARTIES TO THE DISPUTE PARTICIPATING IN THE ARBITRATION.

(1) SELECTION OF ARBITRATOR. ALL DISPUTES SHALL BE HEARD BY A SINGLE ARBITRATOR, WHO SHALL EITHER BE A FORMER JUDGE WITH SUBSTANTIAL EXPERIENCE IN RESIDENTIAL REAL ESTATE LITIGATION MATTERS OR A LICENSED ATTORNEY WITH AT LEAST TEN (10) YEARS EXPERIENCE IN RESIDENTIAL REAL ESTATE TRANSACTIONS AND/OR LITIGATION INVOLVING RESIDENTIAL REAL ESTATE; PROVIDED, HOWEVER, THAT IF THE DISPUTE RELATES TO A CONSTRUCTION DEFECT, THE ARBITRATOR SHALL EITHER BE A FORMER JUDGE WITH SUBSTANTIAL EXPERIENCE IN CONSTRUCTION DEFECT LITIGATION OR A LICENSED ATTORNEY WITH AT LEAST TEN (10) YEARS EXPERIENCE IN CONSTRUCTION DEFECT LITIGATION. THE ARBITRATOR SHALL BE SELECTED IN THE MANNER SET FORTH IN THE RULES OF THE DISPUTE AGENCY WITHIN TEN (10) DAYS AFTER THE SUBMITTAL OF THE MATTER TO ARBITRATION.

(2) POSITION STATEMENTS. WITHIN TEN (10) DAYS AFTER THE SELECTION OF THE ARBITRATOR, THE PARTY WHO REQUESTED ARBITRATION OF THE DISPUTE SHALL FILE WITH THE ARBITRATOR AND SERVE ON THE OTHER PARTY (AND COUNSEL) A POSITION STATEMENT SETTING FORTH A DESCRIPTION OF THE FACTS UNDERLYING THE DISPUTE, THE NATURE OF THE DISPUTE, THE QUESTION(S) TO BE RESOLVED AND THE RELIEF REQUESTED. WITHIN TEN (10) DAYS AFTER THE SERVICE OF THE INITIAL POSITION STATEMENT, THE OTHER PARTY(IES) SHALL FILE AND SERVE WHATEVER COUNTER-POSITION STATEMENT MAY BE APPROPRIATE TO PRESERVE AND ASSERT SUCH PARTY'S POSITION SETTING FORTH A DESCRIPTION OF THE FACTS UNDERLYING THE DISPUTE, THE NATURE OF THE DISPUTE, THE QUESTION(S) TO BE RESOLVED AND THE RELIEF REQUESTED. TEN (10) DAYS AFTER SERVICE OF THE COUNTER-POSITION STATEMENT, ALL PARTIES SHALL FILE AND SERVE A RESPONSE TO THE POSITION STATEMENTS FILED BY THE OTHER, WHICH RESPONSES SHALL CONTAIN A SHORT DESCRIPTION OF THE RESPONSE TO THE POSITIONS BEING ASSERTED, INCLUDING ANY DEFENSES OF AN AFFIRMATIVE NATURE. ANY QUESTION ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE SHALL BE SET FORTH IN THE RESPONSES OR BE FOREVER BARRED. THE ARBITRATOR MAY PERMIT A POSITION STATEMENT, COUNTER-POSITION STATEMENT, OR RESPONSE TO BE AMENDED TO ADD A QUESTION TO BE RESOLVED OR DEFENSE ONLY UPON PRESENTATION OF A REASONABLE BASIS THEREFOR.

(3) CONDUCT OF ARBITRATION HEARING. UNLESS A HEARING IS WAIVED IN WRITING BY ALL PARTIES, ALL DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR AFTER A HEARING CONDUCTED IN ACCORDANCE WITH THESE PROCEDURES. THE ARBITRATOR MAY, IN THE ARBITRATOR'S SOLE DISCRETION, LIMIT TESTIMONY AND ARGUMENT, BOTH LEGAL AND FACTUAL. THE HEARING SHALL BE COMMENCED AT A TIME

AND PLACE SELECTED BY THE ARBITRATOR IN HONOLULU, HAWAII, UNLESS OTHERWISE AGREED TO BY THE PARTIES IN WRITING, TO AFFORD EACH PARTY ADEQUATE PREPARATION FOR PRESENTING ITS POSITION AS TO THE DISPUTE BEING ARBITRATED, BUT IN NO EVENT LATER THAN SIXTY (60) DAYS AFTER THE FILING OF THE LAST OF THE PARTIES' RESPONSES. UNLESS OTHERWISE AGREED IN WRITING BY THE PARTIES, THE HEARING SHALL BE CONCLUDED WITHIN TWENTY (20) DAYS OF COMMENCEMENT OF THE HEARING.

(4) RECORD. UNLESS OTHERWISE AGREED TO BY THE PARTIES, THERE SHALL BE NO STENOGRAPHIC RECORD OF THE ARBITRATION PROCEEDINGS.

(5) POWERS OF THE ARBITRATOR. THE ARBITRATOR SHALL HAVE THE POWER TO DECIDE ALL DISPUTES SUBMITTED TO ARBITRATION HEREUNDER IN ACCORDANCE WITH THESE PROCEDURES. THE ARBITRATOR SHALL NOT HAVE THE POWER TO DECIDE ANY DISPUTE THAT WAS NOT SUBMITTED TO ARBITRATION BY THE PARTIES. THE PARTIES AGREE THAT IN ANY ARBITRATION PROCEEDING CONDUCTED UNDER THESE PROCEDURES, THE ARBITRATOR SHALL APPLY HAWAII LAW, SHALL FOLLOW THE TERMS OF THE DECLARATION, AND SHALL ONLY HAVE THE POWER TO PROVIDE IN THE AWARD FOR ANY REMEDY THAT WOULD HAVE BEEN AVAILABLE TO A COURT DECIDING THE SAME MATTER, SUBJECT TO THE LIMITATIONS AND REMEDIES CONTAINED IN THESE PROCEDURES. THE ARBITRATOR MAY EXTEND ANY OF THE DEADLINES SET FORTH IN THIS **SECTION D.38.e** UPON THE REQUEST OF EITHER PARTY FOR GOOD CAUSE; PROVIDED, HOWEVER, THAT THE ARBITRATOR SHALL ISSUE THE ARBITRATION AWARD IN THE TIME PRESCRIBED BY **SECTION D.38.e(9)**.

(6) DISCOVERY. THE SCOPE, METHODS, AND DURATION OF DISCOVERY SHALL BE WITHIN THE SOLE DISCRETION OF THE ARBITRATOR SUBJECT, HOWEVER, TO THE PROVISIONS OF THIS **SECTION D.38.e(6)**. DISCOVERY SHALL NOT BE PERMITTED AS A MATTER OF RIGHT BUT ONLY TO THE EXTENT NECESSARY IN ACCORDANCE WITH HAWAII REVISED STATUTES § 658A-17(C), AS AMENDED, TO ACHIEVE THE PURPOSE OF THESE PROCEDURES, SET FORTH IN **SECTION D.38**, ABOVE. TO FACILITATE SUCH DISCOVERY, THE ARBITRATOR SHALL HAVE THE POWER TO ISSUE SUBPOENAS FOR THE ATTENDANCE OF WITNESSES AND PRODUCTION OF DOCUMENTS AS PERMITTED BY HAWAII REVISED STATUTES § 658A-17(A), AS AMENDED. THE PARTIES TO THE DISPUTE SHALL COOPERATE TO THE GREATEST EXTENT POSSIBLE SO AS TO AVOID THE NECESSITY FOR THE ISSUANCE OF SUBPOENAS.

(7) OTHER EVIDENCE. NEITHER HAWAII NOR THE FEDERAL RULES OF EVIDENCE OR CIVIL PROCEDURE WILL BE APPLICABLE, EXCEPT THAT THE ATTORNEY-CLIENT PRIVILEGE AND THE WORK PRODUCT DOCTRINE UNDER HAWAII LAW SHALL APPLY.

(8) EXPENSES AND FEES. ALL PROPER COSTS AND EXPENSES OF THE ARBITRATION, INCLUDING WITHOUT LIMITATION, WITNESSES' FEES, ATTORNEYS' FEES AND THE FEES OF THE ARBITRATOR, SHALL BE CHARGED TO A PARTY OR PARTIES IN SUCH AMOUNTS AS THE ARBITRATOR DECIDES AT THE TIME OF THE AWARD.

(9) ARBITRATION AWARD; FINALITY. THE ARBITRATOR SHALL ISSUE A WRITTEN DECISION ON THE MERITS OF THE ISSUE(S) FRAMED BY THE POSITION STATEMENT, COUNTER-POSITION STATEMENT AND RESPONSES WITHIN THIRTY (30) DAYS AFTER THE CLOSE OF THE HEARING. ALL DECISIONS OF THE ARBITRATOR SHALL BE FINAL, CONCLUSIVE AND BINDING ON THE PARTIES, AND SHALL BE SUBJECT TO THE PROVISIONS OF CHAPTER 658A, HAWAII REVISED STATUTES, AS THE SAME MAY BE AMENDED FROM TIME TO

TIME. JUDGMENT MAY BE RENDERED UPON ANY AWARD SO RENDERED BY THE COURTS OF THE STATE OF HAWAII AND THE PARTIES CONSENT TO THE JURISDICTION OF SUCH COURTS.

f. NO JUDICIAL INTERVENTION. THE PARTY BRINGING ANY LITIGATION NOT PERMITTED UNDER THESE PROCEDURES SHALL BE RESPONSIBLE FOR ALL REASONABLE EXPENSES AND FEES (INCLUDING THOSE OF ATTORNEYS, EXPERTS, AND OTHER PROFESSIONALS) INCURRED BY THE OTHER PARTY AS A RESULT OF SUCH PROHIBITED LITIGATION.

g. CONFIDENTIALITY. ALL NEGOTIATIONS, MEDIATIONS, ARBITRATION PROCEEDINGS, AND ANY DISCOVERY CONDUCTED PURSUANT TO THESE PROCEDURES ARE CONFIDENTIAL. ALL PROCEEDINGS CONDUCTED PURSUANT TO THESE PROCEDURES SHALL BE TREATED FOR ALL PURPOSES AS COMPROMISE AND SETTLEMENT NEGOTIATIONS WITHIN THE MEANING OF RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND RULE 408 OF THE HAWAII RULES OF EVIDENCE. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION D.38.g SHALL LIMIT OR PREVENT A PARTY FROM DISCLOSING IN SUBMISSIONS TO THE COURT INFORMATION NECESSARY TO SUPPORT A MOTION UNDER CHAPTER 658A OF THE HAWAII REVISED STATUTES OR AN ACTION TO ENFORCE THE ARBITRATION AWARD.

h. STATUTES OF LIMITATION. NOTHING IN THIS SECTION D.38 SHALL BE CONSIDERED TO TOLL, STAY, REDUCE OR EXTEND ANY APPLICABLE STATUTE OF LIMITATIONS; PROVIDED, HOWEVER, THAT ANY PARTY SHALL BE ENTITLED TO COMMENCE A LEGAL ACTION WHICH IN THE GOOD FAITH DETERMINATION OF THE PARTY IS NECESSARY TO PRESERVE THAT PARTY’S RIGHTS UNDER ANY APPLICABLE STATUTE OF LIMITATIONS, PROVIDED THAT THE PARTY COMMENCING SUCH ACTION SHALL TAKE NO FURTHER STEPS IN PROCESSING THE ACTION UNTIL IT HAS COMPLIED WITH THE PROCEDURES DESCRIBED IN SECTIONS D.38.c, D.38.d AND D.38.e ABOVE.

i. SURVIVAL; SUCCESSORS AND ASSIGNS. THE RIGHTS AND OBLIGATIONS OF THE PARTIES PURSUANT TO THIS SECTION D.38 SHALL SURVIVE THE CONVEYANCE OF THE UNIT PURSUANT TO THIS SALES CONTRACT, INCLUDING, SPECIFICALLY AS TO ANY CONTRACTORS OR SUBCONTRACTORS, THE COMPLETION OF ANY WORK BY ANY CONTRACTORS OR SUBCONTRACTORS. THIS SECTION D.38 AND THE RIGHTS, DUTIES AND OBLIGATIONS OF THE PARTIES SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS.

PURCHASER SELLER _____

END OF NOTICE TO PURCHASER

39. Time; Non-Waiver. Time is of the essence of this Sales Contract. No action or failure to act on the part of Seller shall constitute a waiver of any of Seller’s rights or of any term or condition of this Sales Contract, nor shall such action or failure to act constitute approval of or acquiescence in any breach thereunder, except as the parties hereto shall agree in writing.

40. Notices. Notices to either party may be delivered personally or sent by fax or registered or certified mail return receipt requested, postage prepaid, or by overnight courier (i.e., FedEx) addressed to such party at its address set forth above (or such more recent address of which the mailing party may have notice) and shall be deemed to be given when so delivered, faxed or mailed. If more than one person is listed as a Purchaser, delivery, fax or mailing may be made to any one of them. Delivery, fax or mailing may also be made to any officer of a corporate party. Notwithstanding the foregoing, notice in any manner shall be effective for notice of revocation of this Sales Contract under the Interstate Land Sales Full Disclosure Act.

41. This Sales Contract is Binding on the Successors of the Parties and Purchasers are Responsible Individually and Together. Subject to the terms of **Section D.35** hereof, the terms “Purchaser” and “Seller” include the persons named and their respective heirs, successors, personal representatives, administrators or permitted assigns. The singular includes the plural and vice versa and the use of any gender includes the other as common sense shall require. If this Sales Contract is signed by more than one person as Purchaser, the contract obligations shall be joint and several.

42. Hawaii Law Governs this Sales Contract. The laws of the State of Hawaii shall govern all matters with respect to this Sales Contract, including all matters related to the formation, construction and performance of this Sales Contract.

43. Captions. The captions of the sections of this Sales Contract are for convenience only and do not amplify or limit in any way the provisions hereof.

44. Effect of Partial Invalidity on this Sales Contract. In the event that any provision of this Sales Contract is illegal, void or unenforceable for any reason, the remaining terms of this Sales Contract shall remain in full force and effect.

45. Brokers. Purchaser acknowledges that Project Broker has disclosed that it is a licensed real estate broker and represents only Seller in this transaction, and does not represent Purchaser. Purchaser was represented in his or her purchase of the Unit by Purchaser’s broker, if any, who is identified in **Section C.9** of this Sales Contract and the Cooperating Brokerage Agreement, if any. Purchaser agrees that Seller is not responsible for any representations or statements of Purchaser’s broker that are inconsistent with those set forth in this Sales Contract, the Public Report and other Condominium Documents. If Purchaser has indicated in **Section C.9**, above, that Purchaser is not represented by a broker, Purchaser represents and warrants that no real estate broker or other person represented Purchaser or was engaged by Purchaser in connection with Purchaser’s purchase of the Unit and Purchaser agrees to indemnify, defend and hold Seller harmless against any and all claims to the contrary.

46. Marketing Materials Proprietary. All sales and marketing material provided to Purchaser in connection with the sale of the Unit or otherwise are the property of the Seller, and may not be used by Purchaser in any fashion whatsoever. Any use of such material in any way by Purchaser will entitle Seller to enjoin such use and to pursue other remedies against Purchaser, independently of the obligations set forth in this Sales Contract. Seller, in its sole and absolute discretion, may pursue such remedies in the state courts of Hawaii or federal courts sitting in Hawaii, and shall not be bound to pursue such remedies in accordance with the mediation and arbitration provisions set forth in **Section D.38** hereof. Purchaser hereby agrees to submit to the jurisdiction and venue of such courts for the purpose of any lawsuit brought by Seller under this **Section D.46**. Purchaser will be responsible to pay for all costs incurred by Seller in enforcing its proprietary rights in and to such material, including any and all attorneys’ fees and costs incurred by Seller. This right will survive Closing of the sale of the Unit to Purchaser.

47. Mandatory Seller Disclosure. The Seller is exempt from the provisions of Chapter 508D of the Hawaii Revised Statutes, as amended, regarding mandatory Seller disclosures regarding sales of residential real property. Information pertaining to the Project is contained in the Public Report for the Project.

48. Office of Foreign Asset Control Requirements. Executive Order 13224 required all United States entities and persons to block assets and not transact business with those certain persons, entities, and countries named by the Office of Foreign Asset Control (“OFAC”). This requirement applies to Seller and its affiliates. Accordingly, the Seller and its affiliates will check current OFAC lists and other publications in connection with each potential transaction, loan or sale. In order to check the OFAC list, Purchaser must provide to Seller a government-issued photo identification card, such as a driver’s license, passport or resident alien card. To the extent Purchaser or any single person or entity is on any such OFAC list or publication, the transactions with Purchaser contemplated under this Agreement will immediately be suspended and Purchaser shall be reported, as instructed by OFAC. Purchaser represents and warrants to Seller that Purchaser is not listed on, and shall not

during the term of this Agreement be listed on, the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or on any other similar list maintained by OFAC or other governmental authority pursuant to any authorizing statute, executive order, or regulation.

49. This is the Entire Agreement; Certain Obligations to Continue. This Sales Contract and any addenda attached hereto constitute the entire agreement between the parties and supersedes and cancels all prior negotiations, representations, understandings and agreements, both written and oral, of the parties hereto. No fact sheets, informational material, advertising material or other documents which purport to describe the Unit or the Project in any manner beyond or different from the description set forth in the Declaration, Bylaws, and the Public Report shall be valid or enforceable against Seller unless signed by Seller and no variations of this Sales Contract shall be valid or enforceable unless approved by the parties in writing and attached hereto as an addendum. Unless performed at or before Closing, provisions of this Sales Contract shall survive the execution and filing of the Unit Deed.

EXHIBIT A

DEFINITIONS

When used in this Sales Contract with initial capital letters, the terms listed below will have the following meanings:

“AGREEMENT EXTENSION FEE” means that certain fee, equal to one and one-half percent (1½ %) of the Total Purchase Price per month in advance, to be paid by Purchaser pursuant to **Section D.10** of this Sales Contract in the event that Seller agrees, in its sole and absolute discretion, to extend the Closing Date.

“ASSOCIATION” means the Association of Koloa Landing at Poipu Beach as established pursuant to the Bylaws.

“BYLAWS” means the Bylaws of the Association of Unit Owners of Koloa Landing at Poipu Beach dated March 14, 2007, recorded in said Office as Document No. 3575730, as amended and restated by that certain Amended and Restated Bylaws of the Association of Koloa Landing at Poipu Beach dated September 6, 2007, recorded in said Office as Document No. 3673430, as the same may be amended from time to time.

“CLOSING” shall mean the transfer of the Unit from Seller to Purchaser by way of the filing of the Unit Deed upon payment by Purchaser to Seller of the Total Purchase Price.

“CLOSING DATE” shall mean that date selected by Seller, as described in **Section D.10** of this Sales Contract, upon which Purchaser and Seller shall perform their respective obligations to purchase and sell the Unit.

“COMMON ELEMENTS” means those portions of the Project designated as Common Elements in the Declaration.

“COMMISSION” means the Real Estate Commission of the State of Hawaii.

“COMPLETION DEADLINE” means the date upon which Seller shall complete construction of Purchaser’s Unit, as the same may be extended by reason of Force Majeure. For the purposes of this Sales Contract, the completion of construction shall refer to the completion of the Unit and the issuance of the certificate of occupancy by the County of Kauai Planning Department official after inspection and prior to occupancy of a building or structure as a result of finding no violation of the building code.

“CONDOMINIUM ACT” means Hawaii Revised Statutes, Chapter 514B as may be amended from time to time.

“CONDOMINIUM DOCUMENTS” means the Condominium Map, Declaration, Bylaws, House Rules, Unit Deed, Sales Contract, Escrow Agreement and all other documents required to be filed with the Real Estate Commission in conjunction with the development and sale of the Project, as the same may be amended and/or supplemented from time to time.

“CONDOMINIUM MANAGER” means the condominium manager retained for the Project by way of an executed condominium management agreement. The initial condominium manager is Outrigger Hotels Hawaii dba Outrigger Hotels & Resorts, a Hawaii limited partnership.

“CONDOMINIUM MAP” means Condominium Map No. 1878 for the Project filed in said Office, as the same may be amended from time to time.

“CONTRACT DEPOSIT” means the Reservation Deposit, if any, the Initial Deposit and, if delivered, the Second Deposit, as set forth in **Section C.2** above.

“DECLARATION” means the Declaration of Condominium Property Regime of Koloa Landing at Poipu Beach dated March 14, 2007, recorded in said Office as Document No. 3575729, as amended and restated by that certain Amended and Restated Declaration of Condominium Property Regime of Koloa Landing at Poipu Beach and Condominium Map dated September 6, 2007, recorded in said Office as Document No. 3673430, as the same may be amended from time to time.

“DISCLOSURE DOCUMENT” means an amended Public Report or other document, which discloses a Material Change in the Project to Purchaser pursuant to Section 514B-87 of the Hawaii Revised Statutes, as amended.

“EFFECTIVE DATE” means that date this Sales Contract becomes binding pursuant to the provisions of **Section D.28** of this Sales Contract.

“ESCROW” means Title Guaranty Escrow Services, Inc., a Hawaii corporation. Unless otherwise agreed, references to Escrow shall be to Escrow at its Honolulu office, 235 Queen Street, Honolulu, Hawaii 96813, phone: (808) 521-0211.

“ESCROW AGREEMENT” means the Amended and Restated Escrow Agreement by and between Seller and Escrow dated November 13, 2006, as the same may be amended and/or supplemented.

“FEDERAL PROPERTY REPORT” or “PROPERTY REPORT” means the current effective Property Report for the Project filed with and accepted by the federal Department of Housing and Urban Development.

“FORCE MAJEURE” means fire, flooding, hurricane, tsunami, the elements, war, civil disturbances, strikes or other labor disturbances or economic controls making it impossible to obtain the necessary labor or material, or any other events, matters or conditions beyond the control of Seller that are legally supportable in Hawaii as rendering completion of the Project impossible.

“FRONT DESK UNIT OWNER” means the owner of the Front Desk Unit, which, initially, shall be Seller.

“HOUSE RULES” means the Rules and Regulations of the Association of Koloa Landing at Poipu Beach, as may be amended from time to time.

“LIMITED COMMON ELEMENTS” means those portions of the Common Elements designated in the Declaration as being appurtenant to one or more (but less than all) Units in the Project.

“MATERIAL CHANGE” means a change in the Project which (1) directly, substantially and adversely affects the use or value of the Unit or the Limited Common Elements appurtenant thereto or the amenities of the Project available for Purchaser’s use, and (2) is not made pursuant to a right reserved to Seller under the Declaration; subject to **Section D.15** herein.

“MORTGAGE LENDER” means a bank, insurance company, savings and loan association, credit union or other established lending institution authorized to make mortgage loans in the State of Hawaii, and selected by Purchaser to finance this transaction, if any.

“NEW LAW” means any law, ordinance, rule or regulation, including, but not limited to, a zoning change, required by referendum or otherwise, which would prevent the construction of the Project, the effective date of which law, ordinance, rule or regulation falls after the Effective Date but before the Closing Date of Purchaser’s Unit.

“NOTICE OF RIGHT TO CANCEL” means notice of the prospective purchaser’s thirty-day cancellation right on a form prescribed by the Commission, upon which the prospective purchaser may indicate that he/she has had an

opportunity to read the Public Report, understands the Public Report, and exercises the right to cancel or waives the right to cancel.

“OFFICE” means the Office of the Registrar of the Land Court of the State of Hawaii.

“PRE-CLOSING” means the execution and delivery of documents in Escrow prior to the actual Closing Date as set forth in **Section D.8** of this Sales Contract.

“PRE-CLOSING CHECKLIST” means that certain checklist completed by Purchaser during an inspection of the Unit prior to Closing specifying any work required to complete the Unit in accordance with this Sales Contract.

“PROJECT” means that portion of the Koloa Landing at Poipu Beach condominium project then constructed and located at Poipu, Kauai, Hawaii.

“PROJECT ARCHITECT” means Group 70 International, or such other architect for the Project as Seller may designate from time to time.

“PROJECT BROKER” means S&P Destination Properties, Inc., or such other broker for the Project as Seller may designate from time to time.

“PUBLIC REPORT” means the Public Report for the Project for which the Commission has issued an effective date, as amended. The Public Report shall be deemed to include those items specified in Section 514B-86(a)(1)(A) of the Hawaii Revised Statutes, provided that if the Condominium Map is not provided, it shall be sufficient that Purchaser is provided with notice of an opportunity to examine the map.

“RESCISSION NOTICE” means the notice of Purchaser’s thirty (30)-day rescission right on a form prescribed by the Commission, upon which Purchaser may indicate that he/she has had an opportunity to read the Disclosure Document, understands the Disclosure Document, and exercises his/her right to rescind the Sales Contract or waives the right to rescind the Sales Contract.

“RESERVATION AGREEMENT” means the agreement entered into between Seller and Purchaser prior to execution of this Sales Contract reserving to the Purchaser the opportunity to submit an offer to purchase a Unit in the Project.

“RESERVATION DEPOSIT” means that certain deposit made by Purchaser with Poipu Beach Villas, LLC or its authorized representatives or agents prior to execution of this Sales Contract as set forth in **Section C.2** above.

“SALES CONTRACT” means this Sales Contract, together with (where applicable) any addenda attached hereto or subsequent amendment.

“SELLER” means POIPU BEACH VILLAS, LLC, a Hawaii limited liability company, and its successors and assigns.

“TOTAL PURCHASE PRICE” means the amount set forth in **Section C.1** above.

“UNIT” means the Unit described in **Sections A** and **D.2** of this Sales Contract.

“UNIT DEED” means the Unit Deed, Encumbrances and Reservation of Rights with Powers of Attorney for Koloa Landing at Poipu Beach. The Unit Deed is the legal document that Purchaser and Seller will sign to transfer fee simple ownership of the Unit at Closing to Purchaser. A specimen copy of the Unit Deed has been supplied to Purchaser; copies are also available from the Project Broker.

“UPGRADES” means any modifications or additions to, or upgrades of, the standard fixtures, appliances and/or layout of the Unit to be made by Seller pursuant to a separate addendum attached hereto, if any, entered into between Seller and Purchaser. Unless such separate addendum is attached to this Sales Contract at the time this Sales Contract is executed by Purchaser, Seller shall not be obligated to make any Upgrades to the Unit.

EXHIBIT B
APPLIANCES AND FURNISHINGS

Koloa Landing--FF&E Matrix												10/15/2007
FURNITURE, FURNISHINGS, AND EQUIPMENT BY UNIT TYPE												
		A1	B2	C2	D2	E2	F2	G3	J3	PH1	PH2	
FURNITURE												
FA	Foyer Accent Piece								1	1	1	
SSS	3 Seater Sleeper Sofa	1	1	1	1	1	1	1	1	1	1	
SS	2 Seater Sleeper Sofa									1		
CT	Coffee Table	1	1	1	1	1	1	1	1	2	2	
DCT	Den Storage Coffee Table											
STS	Sectional Sofa									1	1	
ST	Side Table	2	2	2	2	2	2	2	2	2	2	
TL	Table Lamp	2	2	2	2	2	2	2	2	2	2	
FL	Floor Lamp	1	2	1	2	2	1	1	1	2	2	
LCH	Lounge Chair	2	2	2	3	3	2	2	2	3	4	
LRB	Living Room Bench						1	1	1	1	1	
OT	Ottoman									1	1	
LRR	Living Room Rug	1	1	1	1	1	1	1	1	2	2	
CH	Chaise											
DT	Dining Table	1	1	1	1	1	1	1	1	1	1	
DCH	Dining Chairs	4	6	6	6	6	6	8	8	8	8	
BF	Buffet							1	1	1	1	
BS	Bar Stools	3	3	3	3	3	3	3	3	5	5	
CNT	Console Table										1	
DE	Desk						2	1	1			
DEC	Desk Chair						2	1	1			
DEL	Desk Lamp						2	1	1			
TV	TV											
TS	TV Stand	1	1	1	1	1	1	1	1	1	1	
WT	Wall Mounted TV	2	3	3	3	3	3	4	4	4	5	
KB	King Bed	1	1	1	1	1	1	1	1	1	2	
QB	Queen Bed		1	1	1	1	1	1	1	1	1	
TB	Twin Bed							2	2	2	2	
BB	Bed Bench									3	2	
BT	Bedside Table	2	4	4	4	4	4	7	7	7	9	
BL	Bedside Lamp	2	4	4	4	4	4	6	6	6	6	
DR	Dresser	1	2	2	2	2	1	2	2	3	3	
BLC	BR Lounge Chair	1	1	1	1	1	2	2	2	4	3	
BO	BR Ottoman									3	2	
BST	BR Lounge Chair Side Table											
BCL	BR Chaise Lounge											
BFL	BR Floor Lamp	1	1	1	1	1	2	1	2	4	2	
BVC	BR Vanity Chair											
MI	Full Length Mirror											
LCR	Lanai Chair						2	2	2	3	4	
LO	Lanai Ottoman									1	2	
LCS	Lanai Chaise	2	2	2	2	2	4	4	4	3	2	
LDC	Lanai Dining Chair	4	6	6	6	6	6	8	8	8	8	
LDT	Lanai Dining Table	1	1	1	1	1	1	1	1	1	1	
LST	Lanai Side Table	1	1	1	1	1	3	3	3	4	4	
LS	Lanai Sofa						1	1	1	1	1	
SSSS	Study 2 Seater Sleeper Sofa									1	1	
SLC	Study Lounge Chair									1	1	
SO	Study Ottoman										1	
SST	Study Side Table											
SD	Study Desk									2		
SDC	Study Desk Chair									1	1	
SDL	Study Desk Lamp									1	1	
SFL	Study Floor Lamp									1	1	
APPLIANCES												
	36" Refrigerator	1	1	1	1	1	1	1	1	1	1	
	27" Refrigerator											
	Undercounter Refrigerator											
	Wine Storage									1	1	
	Microwave/ Hood Combo											
	Microwave (Built-in)	1			1	1	1	1	1	1	1	
	Built-in Oven	1			1	1	1	1	1	1	1	
	30" Cook Top, Electric, 4 Burner	1			1	1	1	1	1	1	1	
	Cook Top, Electric, 2 Burner											
	Hood	1	1	1	1	1	1	1	1	1	1	
	Dishwasher	1	1	1	1	1	1	1	1	1	1	
	Laundry Washer/ Stacked	1 (s)	1	1	1 (s)	1 (s)	1 (s)	1	1	1	1	
	Laundry Dryer/ Stacked	1 (s)	1	1	1 (s)	1 (s)	1 (s)	1	1	1	1	
	30" Range (inc oven)											
	Countertop Micro											

