



**C. PURCHASE PRICE & CLOSING DATE**

- 1. Total Purchase Price: \$\_\_\_\_\_
- 2. Schedule and Method of Payment:
  - a. Initial Deposit \$5,000.00 (less Purchaser's deposit, if any, under a Reservation Agreement) by way of check payable to "Hawaii Title & Escrow Inc." ("Escrow") when Purchaser signs this Sales Contract.
  - b. The amount of \$\_\_\_\_\_ by way of an additional Deposit paid directly to Escrow no later than \_\_\_\_\_ calendar days after Purchaser signs this Sales Contract.
  - c. The amount of \$\_\_\_\_\_ (the Total Purchase Price less the amounts paid by Purchaser pursuant to items a and b, above) by way of \_\_\_\_\_ **cash** / \_\_\_\_\_ **mortgage loan proceeds** due at Closing Date.  
(mark one)

Each Payment shall be made to Escrow at the place and times described in Section F.1. Closing Costs and Prorations shall be paid as described in Section F.6.

- 3. The Closing Date shall be \_\_\_\_\_.
- 4. Additional sums to be paid at Closing.

Project Start-up fee: \$\_\_\_\_\_ (an amount equal to two (2) months' estimated maintenance fee.

First Month's Maintenance Fee: \$\_\_\_\_\_ One (1) month's Estimated Maintenance Fee.

5. Sales Contract. Seller agrees to sell and Purchaser agrees to buy the property (the "Apartment") described in Section A, above, and Section D, below, which is located in **The Breakers** fee simple condominium project (the "Project") located at Lahaina, Maui County, State of Hawaii. THE SALE AND PURCHASE OF THE APARTMENT IS SUBJECT TO AND IN CONSIDERATION OF THE "ADDITIONAL TERMS AND CONDITIONS" SET FORTH IN SECTIONS D through I 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 I, IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES.

6. Option to Receive Documents & Correspondence Electronically. Initial here \_\_\_\_\_ if Purchaser elects to receive the Project documents on a CD in lieu of paper copies, and to have notices and other communications to Purchaser sent by email.

7. Agency Disclosure. Select and complete one of the following options:

\_\_\_\_\_ No Outside Agent. Maui Showcase Properties, a Hawaii sole proprietor doing business as Maui Showcase Properties ("Broker") and all salespersons and licensees employed by or associated with Broker represent only the Seller. Purchaser represents that no broker or agent represented Purchaser in connection with this purchase. Purchaser agrees to indemnify, defend and hold Seller and Broker harmless from and against any claims or liabilities for commissions,

finder's fees, or other compensation by any broker or agent claiming to have represented Purchaser in connection with this purchase.

\_\_\_\_\_ Dual Agency. Broker has represented Purchaser and Seller in connection with this transaction. Purchaser must sign a Dual Agency addendum.

\_\_\_\_\_ Cooperating Broker. In connection with the sale and purchase of the Apartment, Broker and all salespersons and licensees employed by or associated with Broker represent only the Seller. Purchaser has been represented by \_\_\_\_\_ ("Cooperating Broker"). Cooperating Broker must sign and submit a cooperating brokerage agreement to Broker at the time Purchaser signs and submits this Sales Contract.

\_\_\_\_\_  
Purchaser's Initials

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: \_\_\_\_\_

Seller's Broker acknowledges Receipt of the Initial Deposit from Purchaser, pursuant to Section C.2.a, above:

Maui Showcase Properties

By \_\_\_\_\_  
Name: Foster Hull  
Its Principal Broker / Broker In Charge

This Sales Contract is accepted by 3702 Lower Honoapiilani LLC Seller.

3702 Lower Honoapiilani LLC  
By Gemini Capital, LLC, its Manager

By: \_\_\_\_\_  
Name:  
Its

Date Accepted: \_\_\_\_\_

**IMPORTANT**

**ADDITIONAL TERMS AND CONDITIONS FOR THIS SALES CONTRACT CONTINUE BEGINNING ON NEXT PAGE. THESE TERMS AND CONDITIONS ARE PART OF THIS SALES CONTRACT.**

## **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 which follow, Seller and Purchaser agree as follows:

### **D. DEFINITIONS - Words Used Often in this Sales Contract**

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

"APARTMENT" means the condominium apartment described in Sections A and D of this Sales Contract.

"APARTMENT DEED" means the legal document that Purchaser and Seller will sign to transfer fee simple ownership of the Apartment at Closing to Purchaser. A specimen copy of the Apartment Deed has been supplied to Purchaser; copies are also available from Project Broker.

"ASSOCIATION" means the Association of Apartment Owners of The Breakers as established pursuant to the Declaration and Bylaws.

"BYLAWS" means the Bylaws of the Association of Apartment Owners of the Project recorded in the Bureau of Conveyances, State of Hawaii ("Bureau"), as the same may be amended from time to time.

"CLOSING" or "CLOSING DATE" shall mean that date selected by Seller, as described in Section F.6 of this Sales Contract, upon which Purchaser and Seller shall perform their respective obligations to Sales and sell the Apartment.

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

"CONDOMINIUM DOCUMENTS" means the Condominium Map, the Declaration, Bylaws, Rules and Regulations, Apartment Deed, specimen 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.

"CONDOMINIUM MAP" means the Condominium Map for the Project filed or to be filed with the Bureau as the same may be amended from time to time. A copy of the Condominium Map is available for inspection at Broker's office.

"DECLARATION" means the Declaration of Condominium Property Regime for The Project recorded in the Bureau as the same may be amended from time to time.

"DEPOSIT" or "DEPOSITS" means the amounts paid by Purchaser to Seller as set forth in items C.2. a and b, above.

"EFFECTIVE DATE" means that date when Seller accepts this Sales Contract and the Sales Contract becomes binding pursuant to the provisions of Section I.1, below.

"ESCROW" means HAWAII ESCROW and TITLE, INC., a Hawaii corporation. Unless otherwise agreed, references to Escrow shall be to Escrow at its Honolulu office, 700 Bishop Street, Suite 1600, Honolulu, Hawaii 96813.

"ESCROW AGREEMENT" means the Agreement by and between Seller and Escrow dated February 20, 2007.

"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) apartments in the Project.

"MATERIAL CHANGE" means a change in the Project which directly, substantially and adversely affects the use or value of the Apartment that is the subject of this Sales Contract or Limited Common Elements appurtenant thereto or the amenities of the Project available for Purchaser's use.

"MORTGAGE LENDER" means a financial institution or other institutional lender 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 or materially increase the cost 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 Apartment.

"PROJECT" means The Breakers condominium project located at Lahaina, Maui, Hawaii.

"PROJECT ARCHITECT" means Hillhouse Architects, Inc. or such other architect for the Project as Seller may designate from time to time.

"REAL ESTATE COMMISSION" means the Office of the Real Estate Commission of the Department of Commerce and Consumer Affairs, State of Hawaii.

"RECEIPT FORM" means the Receipt for Public Report(s) and Notice of Right to Cancel form as required by Hawaii Revised Statutes Section 514A-62, which accompanies the Supplementary Public Report, or the written approval or the written acceptance form to accompany a Disclosure Statement as set forth in Hawaii Revised Statutes Section 514A-63.

"RULES AND REGULATIONS" means The Breakers House Rules and Regulations, as may be amended from time to time.

"SALES CONTRACT" means this Sales Contract and Receipt, together with (where applicable) any addenda attached hereto.

"SELLER" means 3702 Lower Honoapiilani, LLC, and its successors and assigns.

"SUPPLEMENTARY PUBLIC REPORT" means the Supplementary Condominium Public Report on the Project with an effective date of November 18, 2009, and any amendments thereto.

"TOTAL PURCHASE PRICE" means the amount set forth in Section C, above.

#### **E. INFORMATION CONCERNING THE PROJECT AND THE APARTMENT**

1. Project Information. The Project is located at 3702 Lower Honoapiilani Road, Lahaina, Maui, Hawaii 96731. The Project consists of four existing buildings containing eighty four (84) condominium apartments, and two additional buildings containing thirty (30) apartments that are planned but have not yet been constructed, all as described in the Declaration and shown on the Condominium Map.

2. Description of Apartment. Seller agrees to sell to Purchaser and Purchaser agrees to buy from Seller, in fee simple, the following property (the "Apartment"):

a. The Apartment designated in Section A above and more fully described in the Declaration, together with the exclusive use of the parking stall(s) designated for the Apartment on Exhibit C to the Declaration and the other Limited Common Elements appurtenant to the Apartment as set forth in the Declaration, and all other rights and easements appurtenant to said Apartment as described in the Declaration.

b. The undivided percentage common interest in the Project that is appurtenant to the Apartment, as set forth in Exhibit B to the Declaration, as tenant in common with the holders from time to time of all other undivided interests in the Project.

The Apartment shall be sold in accordance with and subject to all of the applicable limited warranties, terms, covenants, provisions, easements, rights, agreements and other provisions contained herein, and in (i) the Declaration, Bylaws, Apartment Deed, and other Condominium Documents, and (ii) the Master Declaration.

3. Appliances and Furnishings Included with Apartment. The Apartment includes the following appliances and furnishings: kitchen cabinets and countertops; range and oven; range hood; dishwasher; sink disposal; refrigerator; washing machine; clothes dryer; bathroom vanity and countertops; ceiling fan with lights; closet systems; carpeting & tile or linoleum flooring.

#### **F. PAYMENT TERMS, CLOSING AND OCCUPANCY**

1. Payment of Total Purchase Price. For the Apartment, Purchaser agrees to pay the Total Purchase Price in the amounts and at the times set forth in Section C, above. Any variations in the amounts specified for each of these payments must be accepted in writing and signed by Purchaser and Seller. The Initial Deposit shall be made by payment to Escrow through Seller's broker; subsequent payments shall be made by Purchaser directly to Escrow. The Total Purchase Price shall be paid as set forth in Section C.2, above. Purchaser hereby authorizes Purchaser's mortgagee(s) to disburse the proceeds of any mortgage loan(s) to Escrow.

2. Interest on Deposits. Purchaser shall not earn or receive any interest on any Deposits, nor shall Purchaser receive a credit towards the Purchase Price based on earned interest. If the closing of the sale of the Apartment does not occur for any reason whatsoever, then Purchaser shall not have any right to claim or otherwise receive any interest.

3. Purchase Financing.

a. Purchaser's Obligation to Seek a Loan Commitment. Purchaser represents that Purchaser is financially capable of making all required payments at the required times set forth herein. At the time of Execution of this Sales Contract, Purchaser shall provide Seller with a letter from a Mortgage Lender verifying (i) the source of any down payment, (ii) Purchaser's yearly income, (iii) Purchaser's credit score/rating, and (iv) that Purchaser is pre-qualified for a mortgage in the amount set forth in Section C.2. Purchaser further agrees, if requested, to sign an authorization for Seller to obtain a credit score/rating of Purchaser. If Purchaser does not require financing, Purchaser shall provide a letter acceptable to Seller from a reputable financial institution verifying that Purchaser has sufficient funds on deposit to pay the Total Purchase Price. If financing is required by Purchaser, Purchaser shall, within five (5) days from the date of execution of this Sales Contract by Purchaser, apply for mortgage financing from a Mortgage Lender, promptly sign and deliver all documents and diligently take all steps necessary to qualify and obtain the required financing. An original executed copy of any notification of loan approval or mortgage commitment obtained by Purchaser shall be delivered to Seller immediately upon receipt by Purchaser. Seller shall have the right, in Seller's sole discretion, to disapprove of any loan approval or mortgage commitment submitted to Seller under this Sales Contract within thirty (30) days of the receipt of same by Seller. In the event that Seller shall not have given written notice of disapproval to Purchaser within said thirty (30) day period,

such loan approval or mortgage commitment shall be deemed to be approved. Seller shall have no obligation to arrange for Purchaser's mortgage financing. Purchaser agrees to be solely responsible for any fees charged by Purchaser's Mortgage Lender in processing and canceling Purchaser's loan application. The presentation of a written loan approval or mortgage commitment by the Purchaser to the Seller and Seller's acceptance thereof shall constitute an agreement by Purchaser that Purchaser shall perform all of the terms, conditions and agreement contained therein.

In order to facilitate Seller's awareness of Purchaser's progress in obtaining a mortgage loan under this Section, Purchaser hereby authorizes any of Purchaser's prospective lenders to transmit to Seller upon Seller's request any and all information necessary for this purpose, including but not limited to copies of all correspondence between Purchaser and Purchaser's prospective lender.

b. Rejection of Loan Eligibility by a Mortgage Lender. If any of the following occurs:

(i) Purchaser's application or eligibility for a mortgage loan in the amount set forth in Section C.2.c above is rejected by a Mortgage Lender of Mortgage Lenders, or Purchaser's loan approval or mortgage commitment is not approved within thirty (30) days after application,

(ii) Purchaser fails to supply any proposed Mortgage Lender with full financial information (including copies of tax returns) within seven (7) days of request thereof to Purchaser by said proposed Mortgage Lender, or

(iii) Purchaser, after having had a loan approval or mortgage commitment disapproved by Seller is thereafter unable to have such approval or commitment modified or revised to the satisfaction of Seller,

Then in any of the foregoing events, Seller may elect to cancel this Sales Contract upon written notice to Purchaser and, upon such cancellation, Seller shall direct Escrow to refund to Purchaser all sums paid hereunder by Purchase without interest.

c. Failure to Remove Contingency or Loss of Loan Commitment. At any time following the Effective Date, if Purchaser shall fail for any reason whatsoever to remove any contingency from its loan approval or mortgage commitment by the required Closing Date, or fail (for any reason whatsoever including without limitation any purposeful or inadvertent change in purchaser's credit standing) to keep the loan approval or mortgage commitment in force and thereby fail to close as required herein, such failure shall constitute a default hereunder and Seller shall be entitled, in Seller's sole and absolute discretion, to elect to:

(i) cancel this Sales Contract and refund to the Purchaser all Deposits hereunder without interest;

(ii) provide Purchaser with alternative financing to finance the amount set forth in Section C.2.c, above. Such alternative financing may be in the form of a mortgage commitment from another lender identified by Seller and, if such other lender does not provide financing in the full amount set forth in Section C.2.c. above, a purchase money second mortgage from Seller for the difference between the amount funded by such other lender and the amount set forth in Section C.2.c above. The terms of any financing provided under this subsection shall be as follows:

(A) any first mortgage financing provided by a lender identified by Seller shall be on terms substantially similar to those set forth in Purchaser's Loan approval or mortgage commitment previously approved by Seller under this Section, except that

(i) the fee that such other lender may charge for making such loan may be up to one (1) point (one percent of the loan amount) higher than the corresponding fee set forth in Purchaser's previously approved loan approval or mortgage commitment, and (ii) the interest rate that such other lender may charge may be up to one hundred fifty (150) basis points higher than the corresponding interest rate set forth in Purchaser's previously approved loan approval or mortgage commitment; and

(B) any purchase money second mortgage loan financing provided by Seller shall be at a rate equal to the rate charged by the lender on the first mortgage financing referred to in subpart (A) of this subsection plus one percent and shall otherwise be on terms substantially similar to the terms permitted under subpart (A) above, except that (i) the loan shall be interest only payable monthly, (ii) the term of the loan shall be five (5) years, and (iii) the loan shall be due upon sale or refinancing.

In the event that Seller provides Purchaser with alternative financing as set forth in this Section, Purchaser agrees to take all steps necessary to apply for such financing from the lender identified by Seller and, if offered such alternative financing by the lender (and if applicable, the Seller) on the terms set forth above, to accept such financing and to close on his/her purchase of the Apartment within thirty (30) days after such financing is offered. Purchaser's failure to strictly comply with the foregoing shall constitute a material default of this Sales Contract, and Seller shall thereafter be entitled to cancel this Sales Contract, retain all Deposits paid by Purchaser, and pursue any and all other remedies available to Seller at law or in equity.

4. Apartment 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 Apartment Deed for the Apartment and Purchaser agrees to execute and accept such Apartment Deed and thereby acquire fee simple title to the Apartment described in Sections A and D, above.

5. Closing Procedures. Purchaser acknowledges that Seller intends to and agrees that Seller may pre-close this sale by having all documents necessary for closing executed and deposited with Escrow prior to the time of closing up to and including seven (7) days prior to the Closing Date. To accomplish this, any time after the Effective Date of this Sales Contract, Purchaser agrees to take and complete any action which may be necessary to enable closing and Purchaser will execute all documents required for closing including without limitation, the Apartment Deed and all promissory notes, mortgages and other loan documents necessary for Purchaser's financing of the Apartment, the conveyance tax certificate and a closing statement based on Seller's estimate of the date the Apartment will be available for occupancy. This Sales Contract shall constitute Seller's and Purchaser's written authority to Escrow to date all documents, to add recording information and to adjust the estimated prorations in accordance with the provisions of this Sales Contract. If Purchaser's home or place of business is on the Island of Maui, Purchaser agrees to come to Broker's office on a date and at a time to be specified by Escrow for the Pre-Closing. Other Purchasers may execute documents 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 at least seven (7) days prior to the Pre-Closing Date, 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 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 they specify otherwise. In the event of any changes in the Apartment Deed and other closing documents requested by a Purchaser later than seven (7) days prior to the Pre-Closing Date, Purchaser requesting such

changes may be assessed a documentation fee for such changes. If Purchaser is a partnership, corporation, limited liability company or other business entity, Purchaser will be required to furnish appropriate resolutions and other such evidence of authority to Sales and execute documents as Seller or Escrow may request.

6. Title Insurance; Remedies for Default in Payment; Prorations. Subject to Purchaser's payment of the Total Purchase Price and performance of all of Purchaser's other obligations under this Sales Contract, on the Closing Date Escrow shall record the Apartment Deed in the Bureau. Escrow shall not record Purchaser's Apartment Deed until Escrow has received a certificate from a title company authorized to do business in Hawaii and approved by Seller, stating that, upon recordation of such Apartment Deed, the Apartment and appurtenant common interest are free and clear of all liens, encumbrances and assessments whatsoever other than those permitted by law, this Sales Contract, and as are expressly permitted by Purchaser. Scheduling problems on the part of Purchaser which prevent Purchaser from moving in at or close to the Closing Date shall not, in any case, be grounds for delaying the Closing Date. The Total Purchase Price, which shall include all Deposits made to date, shall be due and payable in full on the Closing Date, and, if not paid on said date due to (1) 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 (2) the failure of Purchaser's mortgage lender to make the payment which amounts to the Total Purchase Price less the Deposits to Escrow on the Closing Date, then such nonpayment shall result in a default 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 two percent (2%) per month (or the maximum lesser rate, if any, permitted by law), prorated on a 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 or 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.

Prorations and adjustments shall be made between Purchaser and Seller through Escrow on the basis of a 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 Purchase Price, the County of Hawaii's tax and assessment formula, and such other information and factors as shall be deemed reasonable under the circumstances. Risk of loss shall transfer from Seller to Purchaser on the Closing Date. If Purchaser fails to make the payments required by this paragraph when due 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, Purchaser shall remain liable for all common expenses, real property taxes and other prorated expenses for the Apartment that are assessed or payable from and after the Closing Date as though closing had then occurred (or in the case of common expenses, such other proration date as provided herein), regardless of when the closing of the sale of the Apartment actually occurs.

7. Closing Costs. Purchaser shall be responsible for all closing costs, including without limitation the premium for the Title Policy, including any additional costs relating to the issuance of extended coverage policy (including a lender's policy), the cost of drafting of conveyance documents, including without limitation the cost of drafting of any revisions or addenda to the purchase contract, Purchaser's (but not Seller's) notary fees, conveyance tax, all escrow fees, the cost of obtaining Purchaser's consents, if any, all recording fees, and any mortgage fees, Hawaii Hurricane Relief Fund, and Hawaii General Excise Tax. At Closing, Purchaser shall pay one (1) month's maintenance fee for the Project's Association, plus a non-refundable, non-transferable start-up fee to the Project's Association in the amount equal to two (2) months' maintenance fee assessments. 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 respective associations for the benefit of all of their members by Seller and the initial managing agent.

8. Occupancy. Delivery of possession of the Apartment to Purchaser shall be deemed to have occurred when Seller makes the Apartment keys available for pick up by Purchaser, which shall occur after Escrow's recordation of Purchaser's Apartment Deed, and Purchaser agrees that keys for the Apartment will not be issued to Purchaser and Purchaser shall not be entitled to occupy the Apartment until such recordation has occurred.

#### **G. PROJECT AND SALES DOCUMENTS; SELLER'S RIGHT TO MAKE CHANGES**

1. Escrow Agreement. 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 Agreement and the disbursement of such funds by Escrow. All payments to be made hereunder, other than the Initial Deposit made through Seller's broker, shall be paid by Purchaser to Escrow pursuant to the Escrow Agreement. Purchaser hereby acknowledges that Purchaser has examined and does approve the terms of the Escrow Agreement and hereby assumes the benefits and obligations set forth therein. Purchaser understands and agrees that Purchaser will not receive any interest on Purchaser's Deposits, and that Escrow may charge a cancellation fee of not less than Twenty Five 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. Purchaser further understands and agrees that the Escrow Agreement provides that Purchaser's Deposits may be disbursed prior to Closing to pay costs of developing and constructing the Apartment and the Project.

2. Purchaser's Approval and Acceptance of Project Documentation. 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 Supplementary Public Report, the Declaration, the Bylaws, the Rules and Regulations, the form Apartment Deed, and the Escrow Agreement. It is understood and agreed that this sale is in all respects subject to said documents. If Purchaser elected in Section C.6 to receive such documents on a CD in electronic format, Purchaser acknowledges the adequacy of delivery in such format in lieu of delivery of paper copies of the documents.

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

a. Changes, Including Termination, Prior to Effective Date. Purchaser acknowledges that, until this Sales Contract is accepted by Seller and becomes binding on Purchaser in accordance with Hawaii law, Seller shall have the right for any reason to change the Project and to modify the Condominium Map, Declaration, Bylaws, Apartment Deed and any other Condominium Documents in any way, including the right to cancel or terminate the Project, in which case Purchaser may elect to terminate this Sales Contract. Upon such termination, Purchaser will be entitled to a refund of all Deposits paid by Purchaser hereunder without interest and the parties shall then be released from all liabilities and obligations hereunder.

b. Changes After Effective Date. 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, institutional mortgage lender or governmental agency.

(ii) Any changes made pursuant to the rights reserved to Seller under the Declaration.

(iii) Any non-Material Changes which the Seller, in its sole discretion, deems appropriate to the Project Common Elements, including, without limitation, the roadways, parking areas, and landscaping, including any changes for reasons related to financial feasibility or aesthetics.

c. Because of Changes, the Declaration and Condominium Map Are the Only Description of the Apartment and Project. Purchaser acknowledges that the description of the Apartment, as contained in the Declaration and the Real Estate Commission's Public Report(s), is intended to be sufficient and the definitive description, as against any other map, artist's rendering or other descriptive document. Purchaser agrees to accept modifications in specifications and design both before and after the Effective Date in accordance with this Section, so long as the overall value of the Project is maintained.

d. Seller has Certain Reserved Rights. Purchaser specifically acknowledges and agrees that the Declaration contains reservations of certain rights and certain other provisions under which Purchaser consents to (a) the filing of the Project amendments provided for in the Declaration which include without limitation, filing an amendment to the Declaration assigning or reassigning parking spaces; (b) granting within the Common Elements easements and rights of way for public utilities and for other purposes for the Project; (c) granting easements for any purpose within the landscaped areas of the Project, provided that such easements shall not materially impair or interfere with the use of any apartment; (d) amending the Declaration, Condominium Map and/or Bylaws as may be necessary to comply with requirements of certain mortgagees or other entities for any reason as set forth in the Declaration or this sales Contract; and (e) Seller's exercise of the rights reserved to Seller in the Declaration.

## **H. WARRANTIES AND DISCLAIMERS**

1. Contractor's Warranty. The general contractor for the Project has issued a warranty to correct any work found defective within one (1) year after the date of substantial completion of the work (as such terms are defined in the construction contract with the general contractor) ("Contractor's Warranty"). Seller does not make this warranty but merely passes on the Contractor's Warranty to Purchaser and the Association. Seller's obligations with respect to any defects will be limited to assisting the Association in presenting to the contractor any claims based on such warranty; it being understood that such Contractor's Warranty is limited to defects reported in writing to Seller within the first year following the date of substantial completion of the work. The execution, delivery and recordation of Purchaser's Apartment Deed shall constitute the assignment without recourse by Seller to Purchaser of the Contractor's Warranty and the assignment without recourse by Seller to Purchaser of any subcontractors' or materialmen's warranties that the contractor may have secured for the benefit of purchasers. The delivery and recordation of Purchaser's Apartment Deed shall also constitute the assignment without recourse to Purchaser of any manufacturer's or dealer's warranties covering the furnishings and appliances in the Apartment. In the event of the breach of any of the manufacturer's or dealer's warranties, Purchaser shall have no claim against Seller on account of such breach, but Purchaser's sole remedy shall be against such manufacturers or dealers.

2. 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 the Apartment its quality or grade, or any Common Element or anything installed therein, its quality or grade. The 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. However, the Purchaser shall have the benefit of any

existing manufacturer's or dealer's warranties covering such furnishings and appliances as set forth in Section H.1. above.

3. The Condominium Map, Artist's Renderings and Building Plans and Specifications Are Not Warranties. The Condominium Map, as the same may be amended from time to time is intended only to show the (a) apartment number, (b) approximate layout, location and dimensions of apartments, (c) approximate elevation of the Project, (d) parking plan and any other detail which is specifically required to be shown under Hawaii Revised Statutes Section 514A-12; 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.

4. Seller's Disclaimers. Seller makes the following disclaimers regarding the Project, which disclaimers do not relieve Purchaser of Purchaser's obligation to investigate the Project and the Project documents and to determine whether the Project is suitable for Purchaser:

a. Estimate of Maintenance Fees. Seller's estimate of monthly maintenance fees, as shown on the Public Reports, was prepared based upon information believed to be accurate and correct. However, Seller makes no warranty or promise regarding the accuracy of these amounts.

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

(i) Seller, its officers, employees, agents or real estate brokers or real estate sales persons have made no representations: (i) regarding the possibility or probability of economic benefit from the purchase and ownership of a Apartment; (ii) to the effect that Seller or the managing agent of the Project will provide services relating to the rental or sale of the Apartment; or (iii) as to the possible advantages of the ownership or the rental of the Apartment under federal law and state tax laws. Neither Seller nor its agents or employees make any representation regarding either economic benefits to be derived from the ownership, rental or tax treatment of any purchaser of an Apartment. The tax treatment and economic benefits 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 nor solicited by Seller or its agents to purchase the Apartment in the Project as a "security" as defined under federal or state securities laws and regulations.

(ii) 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 paragraph have been made up to and including the date of Closing.

(iii) In the event that Purchaser establishes, after Closing, that there has been any violation of federal or state securities laws or disclosure laws or other breach of the obligations of Seller under the terms of this Sales Contract, Purchaser agrees that Purchaser's sole remedy shall be rescission of this Sales Contract pursuant to Hawaii Revised Statutes Section 514A-69, pursuant to which Purchaser shall be entitled upon reconveyance of the Apartment to recover the Purchase Price actually paid by Purchaser, together with interest thereon at the rate of six percent (6%) per annum, and the amount of any reasonable attorneys' fees (based upon reasonable hourly rates) and costs that Purchaser actually paid, less the amount of any income that Purchaser received. Purchaser agrees that any other expenses that

Purchaser incurs including, but not limited to, real property taxes, Association assessments, interest payments on mortgages and mortgage loan fees, shall constitute the reasonable use value of the Apartment from Closing until the date of repayment and shall not be recoverable from Seller.

c. Ongoing Sales and Construction Activities After Purchaser Has Occupied Purchaser's Apartment; Model Apartments. Purchaser specifically acknowledges that: (a) Seller's sales activities, which may include the use of model apartment(s), signs and extensive sales displays and activities will continue in the Project until the sale of the last apartment; (b) Seller also reserves the right to utilize unassigned or guest parking spaces in the Project for parking for prospective purchasers until the sale of the last unsold apartment in the Project; (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 apartment(s) in order to show the Common Elements to prospective purchasers. Seller has also disclosed that Seller intends to construct two additional apartment buildings within the Project as set forth in the Declaration and the Condominium Map, and that Purchaser and the Apartment may be impacted by such construction if and when it occurs. Such impacts may include, without limitation, dust, noise, vibrations, odors, and temporary or permanent changes to views. Purchaser hereby accepts the foregoing conditions set forth in this paragraph as well as any inconvenience or annoyance which Purchaser may experience as a result of such conditions and hereby expressly waives any rights, claims or actions which it might otherwise have against Seller as a result of such circumstances. Any construction-type activity initiated by Purchaser or on Purchaser's behalf to the interior of the Apartment after the Closing Date shall be the sole responsibility of Purchaser and any delays or disputes in connection therewith shall in no way affect or delay Purchaser's performance of Purchaser's obligations hereunder. Seller reserves the right, in its sole discretion, to designate one or more apartments as model apartments for sales and display purposes.

d. Seller is Authorized to Act on Behalf of the Apartments. Purchaser acknowledges that Seller, as the present owner of all those apartments for sale along with their appurtenant common interests in the Project, along with the owner of the 24 units not currently for sale, are authorized to exercise certain powers of the Board and officers of the Association, including voting and the execution of contracts until the election of the Board and the officers. Purchaser further authorizes Seller to exercise all the rights and incidents of membership in the Association attributable to the Apartment contracted for herein until the recordation of Purchaser's Apartment Deed.

Purchaser hereby accepts the foregoing conditions as set forth in this Section as well as any inconvenience, annoyance or other loss which Purchaser may suffer as a result of such conditions and hereby expressly waives any rights, claims or actions, including, without limitation, any action for damages or right to cancel or rescind this Sales Contract which it might otherwise have against Seller as a result of such conditions.

## **I. MISCELLANEOUS PROVISIONS**

1. 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, subject to Section 1.2 below. Execution of this Sales Contract and/or a receipt of the Deposit or other funds by a broker or salesman or agent of Seller, other than a duly appointed officer of Seller or duly executed power of attorney shall not constitute execution or approval by Seller or bind Seller to any obligation to Purchaser pursuant to this Sales Contract or otherwise. 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 said prospective Purchaser. Signatures of any party transmitted by fax or email shall be considered binding.

2. Purchaser's Cancellation Rights. Notwithstanding anything else to the contrary herein, in accordance with Hawaii Revised Statutes Section 514A-62, Purchaser shall have the right to cancel this Sales Contract at any time until Purchaser has received the Supplementary Public Report for the Project and has waived or is deemed to have waived Purchaser's cancellation right under that statute. Purchaser waives or its deemed to have waived Purchaser's cancellation right when Purchaser (a) indicates Purchaser's acceptance of the Supplementary Public Report by waiving Purchaser's right to cancel on the Receipt Form, (b) does not execute and return the Receipt Form within thirty (30) days of the date of delivery of the Supplementary Public Report and the Receipt Form, or (c) accepts conveyance of the Apartment within thirty (30) days of the date of delivery of the Supplementary Public Report and Receipt Form.

3. No Present Transfer. This Sales Contract shall not be construed as a present transfer of any rights or of any interest in the Apartment, but rather the Sales Contract is an agreement to transfer an interest in the future.

4. Purchaser's Interest Under this Sales Contract is Subordinate to the Construction Loan. Purchaser acknowledges that Seller has entered into an agreement with First Hawaiian Bank or another construction lender or lenders (the "Construction Lender") pursuant to which the Construction Lender may loan Seller money to complete the Project in a principal amount of up to \$25 million for a term of two years at a floating annual interest rate equal to the First Hawaiian Bank "Index Rate" or at a 30-day, 90-day or 180-day LIBOR rate plus 1.95%, as selected by Seller, or such other terms as the Construction Lender may require. To secure this loan, Seller has granted to the Construction Lender security interests covering Seller's interest in the land and the Project, including the Apartment covered by this Sales Contract. Purchaser acknowledges and agrees that all security interests obtained by the Construction Lender in connection with such loan as well as any extensions, renewals and modifications thereof shall be and remain at all times a lien or charge on the Project, including the Apartment covered by this Sales Contract, prior to and superior to any and all rights, liens or charges on the Project arising from this Sales Contract. Purchaser hereby intentionally waives, relinquishes and subordinates the priority or superiority of its any rights or lien under this Sales Contract in favor of the lien or charge on the Project of the security interests of the Construction Lender. Purchaser further undertakes and agrees to execute any further documentation or subordination agreement required by the Construction Lender to evidence this subordination and hereby appoints Seller as Purchaser's attorney-in-fact to execute any such subordination agreement. Purchaser also consents to Seller's assignment by way of security of Seller's interests in this Sales Contract and Purchaser's escrow Deposits to the Construction Lender and agrees that in the event of passage of Seller's interests therein pursuant to said assignment, that Purchaser will, at Construction Lender's option, perform to, attorn to and recognize Construction Lender (its successors and assigns in interest, if any) as Seller hereunder, with all of the rights of Seller hereunder, all as if the Construction Lender were the original Seller hereunder.

5. Managing Agent. Purchaser acknowledges that Seller has retained Commercial Properties of Maui Management, Inc., as the initial managing agent of the Project, and that the term of the contract for such initial managing agent does not extend beyond one (1) year following the first Closing Date for an apartment in the Project and that, although employed prior to the election of the Association's Board of Directors under the Bylaws, the managing agent shall have complete authority, subject to the provisions of the Bylaws, to assume full control and responsibility for the management, operation and maintenance of the completed Project at the expense of the Association.

6. Assignment of Sales Contract. This Sales Contract may not be assigned by Purchaser, in whole or in part, without the prior written consent of Seller which consent may be withheld by Seller in its sole and absolute discretion. Any assignment of the Sales Contract made without Seller's written consent is void and of no legal effect.

7. 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.

8. Seller's Remedies Upon Default by Purchaser. If Purchaser shall at any time default in making any payment when required, or fail to perform any other obligation required of Purchaser hereunder, this Sales Contract may, at Seller's option, be terminated by written notice to Purchaser. In the event of such cancellation after the Effective Date, Seller may retain all Deposits paid by Purchaser hereunder as liquidated damages. Seller and Purchaser hereby acknowledge that each understands and agrees that in such event the injury to Seller will be difficult and expensive to measure in view of: Seller's financial commitments with respect to the Project; the connection between sale, cancellation or default with respect to the Apartment and the sale, cancellation or default with respect to other apartments in the Project; and the nature of the real estate market in Hawaii. As a reasonable estimate of Seller's fair compensation for any damages resulting from such default, the parties agree that all sums paid by Purchaser hereunder shall belong to Seller as liquidated damages. Seller may, in addition to the aforesaid damages, pursue any other remedy, including specific performance, permitted by law or equity. All costs, including reasonable attorney's fees, incurred by reason of default by Purchaser shall be borne by Purchaser.

9. Purchaser's Remedies Upon Default by Seller. After the Effective Date if the Seller shall default in selling the Property to Purchaser as provided herein, and the remedy of specific performance is not available to Purchaser for any reason, the parties agree that the Purchaser, if not in default hereunder, may pursue any other remedy, including specific performance, permitted by law or equity.

10. Notices. Notices to either party may be delivered personally or sent by fax or registered or certified mail, postage prepaid, 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.

11. Cancellation of Sales Contract in Event of Purchaser's Death. If Purchaser, or any one or more of the Purchasers, if there is more than one Purchaser listed in Section B above, should die prior to the Closing Date, Seller reserves the right to return all Deposits paid hereunder by Purchaser (including payments to all parties if there is more than one Purchaser listed in Section B above), without interest and this Sales Contract shall then be deemed to have been canceled and both Seller and Purchaser shall be released from all obligations and liability hereunder.

12. This Sales Contract is Binding on the Successors of the Parties and Purchasers are Responsible Individually and Together. 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.

13. 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.

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

15. 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.

16. Dispute Resolution/Venue/Contractor Repair Act.

a. Any dispute by or between Seller and Purchaser arising out of or incident to this Sales Contract, or the development or management of the Project, the sale of the Apartment or the use or occupancy thereof, or any other aspect of the relationship between Seller and Purchaser regarding the Project which is raised or otherwise asserted after the Closing shall be submitted to mediation and, if necessary, to arbitration with Dispute Prevention & Resolution, Inc. ("DPRI") or such other dispute resolution agency as the parties may mutually select. Any person that desires to submit any issue or dispute to arbitration shall promptly so notify the other party in writing. Claims or disputes involving \$25,000 or less shall be heard by a single arbitrator. Claims involving more than \$25,000 or non-monetary issues shall be heard by a panel of three (3) arbitrators. The arbitrator(s) shall be selected by DPRI upon receiving notice from any party that a dispute exists. The arbitration shall be conducted in accordance with the commercial arbitration rules of DPRI then in effect. The decision of a majority of such arbitrators shall be final, conclusive and binding on the parties hereto. All proper costs and expenses of such arbitration including, without limitation, witness fees, attorney's fees and the fees of the arbitrators shall be charged to the party or parties in such amounts as the majority of the arbitrators shall determine at the time of the award. In the event of the failure, inability or refusal of any arbitrator to act, DPRI shall appoint a replacement arbitrator. An award so rendered shall be binding in all aspects and shall be subject to the provisions of Chapter 658A, Hawaii Revised Statutes, as the same may be amended from time to time. In the resolution of any dispute or controversy as set forth in this paragraph, each party hereby irrevocably waives any right and claim to exemplary or punitive damages in any jurisdiction. The parties further agree that any documents of assignment, lease or conveyance of the Apartment by the Purchaser shall contain a provision substantially in the form set forth above, requiring the assignee, lessee or grantee to arbitrate any and all disputes concerning the Apartment. Further, Seller and Purchaser each agree to indemnify, defend and hold harmless the other from and against any and all damage occurring as a result of the resolution of any such dispute other than by arbitration. Seller and Purchaser agree that any arbitration proceedings under this section will be submitted to arbitration on the island of Maui, Hawaii.

b. Notwithstanding anything else in this Paragraph 1.16 to the contrary, any dispute by or between Seller and Purchaser arising out of or incident to this Sales Contract that is raised or otherwise asserted before Closing need not be submitted to arbitration as provided herein, and Seller and Purchaser shall be free to pursue such dispute, 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 on the island of Maui, Hawaii.

c. **Contractor Repair Act Notice.** ACT 119 (2004) CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED OR CONSTRUCTED YOUR HOME OR FACILITY. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. YOU ARE 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 YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

17. This is the Entire Agreement: Certain Obligations to Continue. This Sales Contract constitutes 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 Apartment or the Project in any manner beyond or different from the description set forth in the Declaration, Bylaws, and the Real Estate Commission's Public Report(s) shall be valid or enforceable against Seller unless signed by Seller and no variations of this agreement 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 recordation of the Apartment Deed.

End of **ADDITIONAL TERMS AND CONDITIONS FOR THIS SALES CONTRACT**