

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer 3702 Lower Honoapiilani, LLC, a Colorado limited liability company
Business Address P. O. Box 54, Longmont, Colorado 80502
Project Name (\*): The Breakers
Address: 3706, 3708 & 3710 Lower Honoapiilani Road, Lahaina, Hawaii 96761
Registration No. 6392
Effective date: June 4, 2012
Expiration date: July 4, 2013

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

Expiration Date of Reports: Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

Type of Report:

PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.

FINAL: (white) [ ] This report supersedes all prior public reports. The developer has legally created a condominium and has filed complete information with the Commission.

- [ ] No prior reports have been issued.
[ ] This report supersedes all prior public reports.
[ ] This report must be read together with

X THIRD SUPPLEMENTARY: (pink) This report updates information contained in the:
[ ] Preliminary Public Report dated:
[ ] Final Public Report dated:
[x] Supplementary Public Report dated: 11/18/2009 & 5/18/2010

And [ ] Supersedes all prior public reports.
[x] Must be read together with Supplementary Public Reports dated 11/18/09 & 5/18/2010

[ ] This report reactivates the public report(s) which expired on

(\* ) Exactly as named in the Declaration

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report       Not Required - Disclosures covered in this report.

**Summary of Changes from Earlier Public Reports:**

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

No prior reports have been issued by the developer.

Changes made are as follows:

At the first meeting of the Association of Apartment Owners of The Breakers ("AOAO"), the Second Amendment to the Bylaws of the Association of Apartment Owners of The Breakers dated February 16, 2012 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-44420532 was approved. This amendment reduces the number of Directors on the AOAO Board from nine (9) to five (5) members. As such the Developer has updated the list of encumbrances against title (Exhibit E).

**II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

|                                     |            |                        |                                 |
|-------------------------------------|------------|------------------------|---------------------------------|
| <input type="checkbox"/>            | Proposed   |                        |                                 |
| <input checked="" type="checkbox"/> | Recorded - | Bureau of Conveyances: | Document No. <u>2005-069181</u> |
|                                     |            |                        | Book _____ Page _____           |
| <input type="checkbox"/>            | Filed -    | Land Court:            | Document No.: _____             |

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]:

First Amendment to the Declaration of Condominium Property Regime of The West Maui Breakers, dated January 22, 2007 and recorded in the Bureau of Conveyances as Document No. 2007-020183; Second Amendment to the Declaration of Condominium Property Regime of The West Maui Breakers dated March 22, 2007, recorded in said Bureau as Document No. 2007-078772; Third Amendment to the Declaration of Condominium Property Regime of The West Maui Breakers dated June 1, 2007, recorded in said Bureau as Document No. 2007-111924; Fourth Amendment to the Declaration of Condominium Property Regime of The Breakers dated September 24, 2009, recorded in said Bureau as Document No. 2009-148543; and Fifth Amendment to the Declaration of Condominium Property Regime of The Breakers dated August 18, 2010, recorded in said Bureau as Document No. 2010-\_\_\_\_\_.

B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

|                                     |            |                        |                          |
|-------------------------------------|------------|------------------------|--------------------------|
| <input type="checkbox"/>            | Proposed   |                        |                          |
| <input checked="" type="checkbox"/> | Recorded - | Bureau of Conveyances: | Condo Map No. <u>813</u> |
|                                     |            |                        | Book _____ Page _____    |
| <input type="checkbox"/>            | Filed -    | Land Court:            | Document No.: _____      |

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

Amendments to Condominium Map No. 813 for the West Maui Breakers filed in the Bureau of Conveyances of the State of Hawaii on February 2, 2007, June 22, 2007 and September 28, 2009.

C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

|                                     |            |                        |                                 |
|-------------------------------------|------------|------------------------|---------------------------------|
| <input type="checkbox"/>            | Proposed   |                        |                                 |
| <input checked="" type="checkbox"/> | Recorded - | Bureau of Conveyances: | Document No. <u>2005-069182</u> |
|                                     |            |                        | Book _____ Page _____           |
| <input type="checkbox"/>            | Filed -    | Land Court:            | Document No.: _____             |

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]: 1st Amendment to the Bylaws of the Association of Apartment Owners of The Breakers, dated 9/24/2009, recorded in the Bureau as Doc. No. 2009-148544 and the 2nd Amendment to the Bylaws of the Association of Apartment Owners of The Breakers dated 2/16/2012, recorded in the Bureau as Document No. A-44420532

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules, if any.
  - E) Condominium Map, as amended.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other: Agreement, recorded in the Bureau of Conveyances of the State of Hawaii, in Liber 13745, Page 711; Declaration of Covenants, Conditions, and Restrictions (Flood Zone), recorded in the Bureau of Conveyances of the State of Hawaii, in Liber 15525, Page 171; and Section 14.12.080 Agreement for Central Maui Areas, recorded in the Bureau of Conveyances of the State of Hawaii, in Liber 18904, Page 505.

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

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)  
Website to access unofficial copy of laws: [www.hawaii.gov/dcca/hrs](http://www.hawaii.gov/dcca/hrs)  
Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

This Public Report is a part of Registration No. 6392 filed with the Real Estate Commission on November 18, 2009.

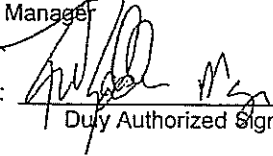
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- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

3702 LOWER HONOAPIILANI, LLC, a Colorado limited liability company  
Printed Name of Developer

By Gemini Capital, LLC  
Its Manager

By:   
Duty Authorized Signatory\*

4/2/12  
Date

Reginald V. Golden, Manager of Gemini Capital, LLC  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Maui

Planning Department, County of Maui

**\* Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner; Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.**

## EXHIBIT E

### ENCUMBRANCES AGAINST TITLE

The Title Commitments, issued by Hawaii Escrow & Title, Inc., Escrow Department on October 2, 2009, list the following encumbrances on Title:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Reservation and Covenant contained in Land Patent Grant No. S-14,686 and Grant No. S-14,687, to-wit:

"Reserving to the State of Hawaii, its successors and assigns, in perpetuity, all minerals and surface and ground waters appurtenant to the land described, together with the right to enter, sever, prospect for, mine and remove such minerals by deep mining, strip mining, drilling and any other means whatsoever, and to occupy and use so much of the surface as may be required therefor or to capture, divert or impound water; provided, that the state shall pay just compensation to the surface owner for improvements taken as a condition precedent to the exercise of such reserved rights.

The patentee, for itself, her heirs and assigns, covenants that the use and enjoyment of the land herein granted shall not be in support of any policy which discriminates against anyone based upon race, creed, color or national origin."

3. Reservation set forth in Deed dated August 22, 1950, recorded in the Bureau of Conveyances of the State of Hawaii, in Liber 2388, Page 81, (as to that portion covered by Royal Patent Number 415, Land Commission Award Number 75 to C. Crockett).

4. Consolidation Agreement dated May 9, 1979, recorded in said Bureau in Liber 13831, Page 197, by and between William A. Jorgensen, Tove K. Jorgensen, James E. Cain and Priscilla A. Cain, as Owner and the County of Maui.

5. Section VII (C) Agreement for West Maui Areas, dated January 19, 1981, recorded in said Bureau in Liber 15304, Page 82, by and between the County of Maui, Department of Water Supply, "County", William A. Jorgensen and Tove K. Jorgensen, Husband and Wife, "Owner", and J & J Development Co., Inc., a Hawaii corporation, "Developer".

6. Easement dated November 16, 1981, recorded in said Bureau in Liber 16049, Page 650, in favor of Maui Electric Company, Limited, a Hawaii corporation, and Hawaiian Telephone Company, a Hawaii corporation (now known as Verizon Hawaii, Inc.) for utility purposes .

7. Terms, provisions, covenants, conditions and reservations contained in Declaration of Condominium Property Regime of The Breakers dated February 25, 2005, recorded in said Bureau as Document No. 2005-069181.

Said Declaration amends and restates in its entirety that certain Declaration of Horizontal Property Regime of Hale Kahekilli, dated August 27, 1980 recorded in said Bureau as Document No. in Liber 15676, Page 172, which was heretofore amended by instruments dated August 28, 1981, recorded in said Bureau in Liber 15789, Page 796, dated May 13, 1982, recorded in said Bureau in Liber 16374, Page 782, dated March 29, 1985, recorded in said Bureau in Liber 18542, Page 116, dated May 16, 1989, recorded in said Bureau in Liber 23208, Page 1, and dated May 16, 1989, recorded in said Bureau in Liber 23208, Page 41.

Said Declaration was amended by instruments dated January 22, 2007, recorded in said Bureau as Document No. 2007-020183, dated March 22, 2007, recorded in said Bureau as Document No. 2007-078772, dated June 1, 2007, recorded in said Bureau as Document No. 2007-111924, dated September 24, 2009, recorded in said Bureau as Document No. 2009-148543, and dated August 18, 2010, recorded in said Bureau as Document No. 2010-124022.

8. Condominium Map No. 813, filed in said Bureau, as amended.
9. The Bylaws of the Association of Apartment Owners of The Breakers dated February 25, 2005, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-069182, as amended by First Amendment dated September 24, 2009 and recorded in said Bureau as Document No. 2009-148544 and by Second Amendment dated February 16, 2012 and recorded in said Bureau as Document No. A-44420532.
10. Any and all matters shown on ALTA/ACSM Land Title Survey of Arthur P. Valencia, Licensed Professional Land Surveyor, Certificate No. 10026, dated April 26, 2007.

11. Easement dated May 22, 2008, recorded in said Bureau as Document No. 2009-036218, in favor of Maui Electric Company, Limited, a Hawaii corporation, and Hawaiian Telcom, Inc., a Hawaii corporation for utility purposes.

12. A mortgage to secure an indebtedness in the amount of \$1,250,000.00 by Douglas E. Myers in favor of 3702 Lower Honoapiilani LLC, a Colorado limited liability company, dated May 20, 2005, recorded in said Bureau as Document No. 2005-104537.

Said Mortgage is also subject to the Subordination Agreement dated June 5, 2007, recorded in said Bureau as Document No. 2007-101263.

Note: Said Mortgage and Subordination Agreement pertains to Apartment Nos. 125 thru 130, inclusive, 225 thru 230, inclusive, 325 thru 330, inclusive and 425 thru 430, inclusive, all of which are part of Building A of The Breakers. Building A is covered by Registration No. 5474.

13. A mortgage to secure an indebtedness in the amount of \$25,000,000.00 by 3702 Lower Honoapiilani LLC, a Colorado limited liability company in favor of First Hawaiian Bank, a Hawaii corporation, dated June 5, 2007, and recorded in said Bureau as Document No. 2007-101260.

Note: Said Mortgage pertains to Apartment Nos. B-20 thru B-27, inclusive, B-30 thru B-37, inclusive, B-40 thru B-47, inclusive, C-21 thru C-24, inclusive, C-30 and C-31, D-20 thru D-27, inclusive, D-30 thru D-37, inclusive, D-40 thru D-47, inclusive, E-20 thru E-27, inclusive, E-30 thru E-37, inclusive, E-40 thru E-47, inclusive and F-20 thru F-25, inclusive and F-40 thru F-45, inclusive. All said Apartment Nos. are part of Buildings B, C, D, E and F, respectively.

14. A mortgage to secure an indebtedness in the amount of \$25,000,000.00 by Douglas E. Myers, as Trustee of the Douglas E. Myers Revocable Trust dated June 8, 2005 in favor of First Hawaiian Bank, a Hawaii corporation, dated June 5, 2007, recorded in said Bureau as Document No. 2007-101261.

Note: Said Mortgage pertains to Apartment Nos. 125 thru 130, inclusive, 225 thru 230, inclusive, 325 thru 330, inclusive and 425 thru 430, inclusive, all of which are part of Building A of The Breakers. Building A is covered by Registration No. 5474.

15. An Assignment of Leases and Rents as security for the repayment of \$25,000,000.00 by Douglas E. Myers, as Trustee of the Douglas E. Myers Revocable Trust dated June 8, 2005 and 3702 Lower Honoapiilani LLC, a Colorado limited liability company, collectively as Assignor to First Hawaiian Bank, a Hawaii corporation, as Assignee, dated June 5, 2007, recorded in said Bureau as Document No. 2007-101262.

16. A Financing Statement by 3702 Lower Honoapiilani LLC, a Colorado limited liability company as Debtor and First Hawaiian Bank, a Hawaii corporation as Secured Party, dated June 5, 2007, and recorded in said Bureau as Document No. 2007-101264.

Note: Said Financing Statement pertains to Apartment Nos. B-20 thru B-27, inclusive, B-30 thru B-37, inclusive, B-40 thru B-47, inclusive, C-21 thru C-24, inclusive, C-30 and C-31, D-20 thru D-27, inclusive, D-30 thru D-37, inclusive, D-40 thru D-47, inclusive, E-20 thru E-27, inclusive, E-30 thru E-37, inclusive, E-40 thru E-47, inclusive and F-20 thru F-25, inclusive and F-40 thru F-45, inclusive. All said Apartment Nos. are part of Buildings B, C, D, E and F, respectively.

17. A Financing Statement by Douglas E. Myers as Debtor and First Hawaiian Bank, a Hawaii corporation as Secured Party, dated June 5, 2007, and recorded in said Bureau as Document No. 2007-101265.

Note: Said Financing Statement pertains to Apartment Nos. 125 thru 130, inclusive, 225 thru 230, inclusive, 325 thru 330, inclusive and 425 thru 430, inclusive, all of which are part of Building A of The Breakers. Building A is covered by Registration No. 5474.

18. A mortgage to secure an indebtedness in the amount of \$2,500,000.00 by 3702 Lower Honoapiilani LLC, a Colorado limited liability company in favor of Flatirons Bank, a Colorado corporation, dated June 4, 2009, and recorded in said Bureau as Document No. 2009-085455.

Note: Said Mortgage pertains to Apartment Nos. F-20 thru F-25, inclusive and F-40 thru F-45, inclusive. All said Apartment Nos. are part of Building F.

