

**THE WAIKOLOA BEACH VILLAS**  
A FEE SIMPLE CONDOMINIUM PROJECT

**DEPOSIT RECEIPT, RESERVATION AND SALES AGREEMENT**

This Deposit Receipt, Reservation and Sales Agreement (this "Agreement") is made by and between SunStone Waikoloa LLC, a Hawaii limited liability company, the address of which is 1001 Bishop Street, Pauahi Tower Suite 1250, Honolulu, Hawaii 96813 (the "Seller") and the "Buyer" named in Article II below, and shall be effective upon the date of its execution by the Seller (the "effective date"), subject to the terms and conditions set forth in this Agreement, and the provisions of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended.

**ARTICLE I. DESCRIPTION OF PROPERTY COVERED BY THIS AGREEMENT**

Project: THE WAIKOLOA BEACH VILLAS

Tax Map Key No.: (3) 6-9-8:13 por.

Condominium Registration No. \_\_\_\_\_

Project Address: \_\_\_\_\_

Apartment No.: \_\_\_\_\_

Unit Type: ? Plan 1 ? Plan 2 ? Plan 3 ? Plan 4 ? Plan 5

Parking Stall(s): \_\_\_\_\_

Approximate Net Living Area: \_\_\_\_\_ square feet      Approximate Entry/Lanai/Storage Area: \_\_\_\_\_ square feet

Undivided Interest in Common Elements: \_\_\_\_\_ (\_\_\_\_\_%)

Appliances/Furnishings: Range/Oven, Refrigerator, Dishwasher, Washer/Dryer, Garbage Disposal, Water Heater, Air Conditioning

**ARTICLE II. INFORMATION ABOUT BUYER (include all persons in which title is to be vested)**

A. \_\_\_\_\_  
**PRINT NAME IN FULL (no initials)**

\_\_\_\_\_ **Print Full Name of Spouse (if any)**

Soc. Sec. No. \_\_\_\_\_

Title to include spouse: ? yes ? no

Street Address \_\_\_\_\_

Soc. Sec. No. \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Tel: (H) \_\_\_\_\_ Tel: (W) \_\_\_\_\_

Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

B. \_\_\_\_\_  
**PRINT NAME IN FULL (no initials)**

\_\_\_\_\_ **Print Full Name of Spouse (if any)**

Soc. Sec. No. \_\_\_\_\_

Title to include spouse: ? yes ? no

Street Address \_\_\_\_\_

Soc. Sec. No. \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Tel: (H) \_\_\_\_\_ Tel: (W) \_\_\_\_\_

Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

**C. MANNER OF OWNERSHIP (TENANCY) BETWEEN CO-BUYERS:** \_\_\_\_\_ . If the Buyer has not yet determined the desired tenancy, the Buyer shall provide Escrow in writing with the tenancy at least thirty days prior to the Closing Date.

**ARTICLE III. PURCHASE PRICE, METHOD OF PAYMENT, ESCROW,  
ADDITIONAL SUMS TO BE PAID, PURCHASE AGREEMENT AND PUBLIC REPORTS**

**A. PURCHASE PRICE:**

- 1. Payment A (deposit with this Agreement, including the reservation deposit, if any) .....\$ 20,000.00
- 2. Payment B (together with Payment A, being 20% of the purchase price).....\$ \_\_\_\_\_
- 3. Payment C (balance from loan proceeds or cash).....\$ \_\_\_\_\_
- TOTAL PURCHASE PRICE: .....\$ \_\_\_\_\_

Payments are to be made at the times set forth in Article IV, Section B.1 below.

**B. ADDITIONAL SUMS TO BE PAID (DUE AT PRECLOSING):**

- 1. Project Start-Up Fee (equal to 2 months maintenance fees).....\$ \_\_\_\_\_
- 2. One Month Maintenance Fees.....\$ \_\_\_\_\_
- 3. Entry Gate Key Fee (nonrefundable).....\$ 250.00
- 4. **PLUS** certain other closing costs and prorations as provided in Article IV, Sections G.2 and G.3 below.

NOTE: THESE ADDITIONAL SUMS AND ANY OTHER AMOUNTS DUE UNDER ARTICLE IV ARE IN ADDITION TO AND NOT PART OF THE TOTAL PURCHASE PRICE.

**C. METHOD OF PURCHASE:**

- ? ALL CASH
- ? MORTGAGE LOAN
- ? FHA GUARANTEED OR INSURED LOAN
- ? OTHER (DESCRIBE): \_\_\_\_\_

NOTE: IF FHA LOAN IS CHECKED, A RIDER IS ATTACHED TO THIS AGREEMENT AND INCORPORATED HEREIN BY THIS REFERENCE. IF THERE IS ANY CONFLICT BETWEEN ARTICLES I, II, III AND IV OF THIS AGREEMENT AND ANY SUCH FHA RIDER, THE FHA RIDER SHALL CONTROL.

**D. ESCROW AGENT:**

HAWAII ESCROW & TITLE, INC. [to which checks shall be made payable to]  
 Attn: Jim Naylor  
 2780 Keka'a Drive, Suite 205  
 Lahaina, Hawaii 96761  
 Telephone: (808) 661-5811  
 Fax: (808) 661-5585  
 Email: jnaylor@hetinc.com

**E. RESERVATION AND PURCHASE AGREEMENT.** The Seller agrees to sell and the Buyer agrees to purchase the apartment (the "Apartment") described in Article I above for the Total Purchase Price payable as set forth in Article III, Section A above on the "Terms and Conditions" set forth in Article IV of this Agreement. **THE BUYER ACKNOWLEDGES HAVING READ ALL OF THIS AGREEMENT (INCLUDING ALL OF ARTICLE IV BELOW) IN FULL.**

**F. RECEIPT OF PUBLIC REPORT.** A copy of the Preliminary ( ), Contingent ( ) and/or Final (including applicable Supplementary) ( ) Condominium Public Report for the Project is acknowledged to have been received by the Buyer on \_\_\_\_\_.

In the event that this Agreement is signed before an effective date is issued for a Contingent Final Public Report or a Final Public Report covering the Project, then pursuant to Hawaii law and Article IV, Section E of this Agreement, this Agreement shall constitute a "reservation" and shall not be a binding contract until an effective date is issued for a

Contingent Final Public Report or a Final Public Report covering the project and certain other conditions are complied with. A reservation may be terminated at any time before it is rendered a binding contract, with or without cause, at the option of either the Buyer or the Seller. In the event of such termination, all payments made by the Buyer shall be refunded to the Buyer, subject to the provisions of Article IV, Section E.

In the event that this Agreement is signed after an effective date is issued for a Contingent Final Public Report covering the Project, but before an effective date is issued for a Final Public Report covering the Project, then pursuant to Hawaii law and Article IV, Section E of this Agreement, this Agreement shall be a binding contract; provided, however, that if an effective date is not issued for a Final Public Report covering the Project before the expiration date of the Contingent Final Public Report, then, after the expiration of the Contingent Final Public Report, this Agreement may be rescinded by either the Buyer or the Seller. In the event of such rescission, all payments made by the Buyer hereunder shall be refunded to the Buyer, plus interest, as set forth in Article IV, Section E.

**Important:** The Buyer acknowledges that neither the Seller nor any of its representatives has made any representation concerning rental of the apartment, income or profit from the apartment, or any other economic benefit to be derived from the purchase of the apartment, including, but not limited to, any representation that the seller or the managing agent of the Project will provide, directly or indirectly, any services relating to the rental or sale of the apartment.

The attention of the Buyer is directed to Article IV, Section D pertaining to the absence of representations and warranties concerning the apartment, the Project, estimated maintenance fees and rental of the apartment.

No receipt by a salesman, employee or agent of the Seller of the deposit set forth in this Agreement or any other sums from the Buyer shall constitute approval by, or bind the Seller, nor shall any such salesman, employee or agent be authorized to bind the Seller to this Agreement. The Seller will be bound by this Agreement only when it signs and accepts this Agreement.

**G. SPECIAL CONDITIONS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE IV. TERMS AND CONDITIONS**

**A. PROPERTY AND INTEREST TO BE CONVEYED**

1. *Project Information.* The Seller has constructed or intends to construct at Waikoloa Beach Resort, Hawaii, a condominium project (the "Project") more fully described in the Declaration of Condominium Property Regime of The Waikoloa Beach Villas, as it may be amended from time to time (the "Declaration"), and shown on the plans for the Project prepared by Pacific Atelier International, Inc. (the "Architect"), as such plans may be changed or amended from time to time (the "Condominium Map"). Copies of the Declaration and the Condominium Map are on file with the Real Estate Commission of the State of Hawaii.

2. *Apartment Deed.* At closing of Escrow, the Seller shall cause to be provided to the Buyer an apartment deed duly executed by the Seller (and also to be signed by the Buyer) conveying the following property to the Buyer:

The apartment (the "Apartment") designated in Article I above and as more particularly described in the Declaration and the Condominium Map, together with all rights and easements appurtenant to the Apartment and designated in the Declaration or other condominium documents, as any of them may be amended from time to time; together with the undivided interest in the common elements of the Project appurtenant to the Apartment, as defined and established in the Declaration, as tenants in common with all other owners from time to time of an undivided interest in the common elements.

SUBJECT, HOWEVER, to all of the terms, covenants, conditions, easements, rights, agreements and other provisions mentioned or contained in the Declaration, the Bylaws and other condominium documents, as they may be amended from time to time, all of which the Buyer acknowledges having had an opportunity to examine and which are accepted by the Buyer.

3. No Present Transfer and Subordination to Construction Loan. This Agreement shall not be construed as a present transfer of any interest in the Apartment. It is, rather, an agreement to transfer in the future. The Buyer acknowledges that the Seller may borrow, or has borrowed, money from one or more construction and development lenders (the "Lender") for the development of the Project. To secure such loan, the Seller may grant to the Lender security interests covering the Seller's interest in the land and the Project, including the property covered by this Agreement. The Buyer 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 recordation of the apartment deed, a lien or charge on the Project, including the property covered by this Agreement, prior to and superior to any and all liens or charges on the Project arising from this Agreement or any prior agreement.

The Buyer hereby intentionally waives, relinquishes and subordinates the priority or superiority of any lien or other legal or equitable interest arising under this Agreement 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 recordation of the apartment deed.

The Buyer further agrees to execute any further documentation or subordination agreement required by the Lender to evidence this subordination and hereby irrevocably appoints the Seller as the Buyer's attorney-in-fact to execute any such instrument on behalf of the Buyer, should the Buyer fail or refuse to do so within 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 Buyer. The Buyer also consents to the Seller's assignment by way of security of the Seller's interests in this Agreement and in the Buyer's escrow deposits to the Lender and agrees that in the event of passage of the Seller's interests therein pursuant to said assignment, that the Buyer will, at Lender's option, perform to, attorn to and recognize the 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.

4. Agreement Signed Under HRS Section 514A-105. Section 514A-103 Hawaii Revised Statutes ("HRS") requires the developer of a residential condominium project to designate certain apartments in the project for sale to prospective "owner-occupants" under HRS Section 514A-105. Pursuant to HRS Section 514A-104(a), the Seller used a chronological system to determine the order in which prospective owner-occupant purchasers would be given an opportunity to select one of the designated apartments in the Project.

If this Agreement is signed under HRS Section 514A-105, the Buyer will be required to reaffirm at the closing of escrow the Buyer's intent to be an owner-occupant of the Apartment, and the Buyer shall execute and record, at Closing, an Affidavit of Intent to Purchase and Reside in an Owner-Occupant Designated Condominium Residential Unit, as provided in HRS Chapter 514A, Part VI. If the Buyer is unable to make such a reaffirmation, this Agreement will be rescinded.

If this Agreement is rescinded under this Section A.4, the Seller will instruct Escrow to return all of the Buyer's payments hereunder, without interest, but less the escrow cancellation fee and all costs of the Seller, Escrow or any lending institution in processing this Agreement or any loan application; provided, however, that if this Agreement has become binding upon the Buyer pursuant to HRS Section 514A-62, as explained further in Section E below, the Seller will keep all of the Buyer's payments up to an amount not to exceed the greater of (a) five percent of the Buyer's payments or (b) actual damages to the Seller.

5. Title Information. The information appearing in Article II of this Agreement will be used for preparing the apartment deed. The Buyer 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 the Buyer or a change in the identity of the Buyer, the apartment deed is prepared incorrectly and must be redrawn, the Buyer agrees to pay all costs involved in such redrafting.

## **B. PAYMENT AND FINANCING**

1. Time of Payment. The Buyer shall pay the Total Purchase Price set forth in Article III, Section A above for the Apartment. The Total Purchase Price shall be paid to Escrow in the amounts shown for each payment in Article III, Section A above, at the following times and in the following manner:

PAYMENT A, upon the Buyer's signing of this Agreement (including the reservation deposit, if any).

PAYMENT B (together with Payment A, being 20% of the Total Purchase Price), at the later to occur of construction of the roof on the building in which the Apartment is located, and 30 days after the effective date of this Agreement.

PAYMENT C, on or before the Closing Date as set forth in Section G.2 below (in cash from the Buyer's funds and/or loan proceeds).

2. Escrow Agreement. The Seller has entered into an Escrow Agreement, covering the deposit, receipt, collection and disbursement of all funds to be paid by the Buyer hereunder, with Hawaii Escrow & Title, Inc. (the "Escrow"), a copy of which is on file with the Real Estate Commission of the State of Hawaii and available for inspection by the Buyer, which Escrow Agreement (as it may be amended from time to time) by this reference is incorporated in and made a part of this Agreement. All payments to be made under this Agreement shall be paid by the Buyer to Escrow pursuant to the Escrow Agreement. The Buyer agrees that the Buyer's funds paid into Escrow pursuant to this Agreement may be disbursed by Escrow as provided in the Escrow Agreement prior to the recordation of the Buyer's apartment deed. The Buyer acknowledges that he has had an opportunity to examine a copy of and hereby approves and accepts the terms and provisions of the Escrow Agreement and assumes the benefits and obligations set forth therein. The Buyer hereby authorizes, requests and instructs Escrow to comply with the terms of the Escrow Agreement and to disburse all funds deposited in escrow under said Escrow Agreement in accordance with the provisions thereof. The Buyer and the Seller acknowledge and agree that notwithstanding any provision contained herein or in the Escrow Agreement, the Buyer need not purchase title insurance from Escrow or any related entities; the Buyer is free to purchase title insurance from any title insurance company authorized to do business in Hawaii.

3. Financing of Purchase.

(a) The Buyer's Financial Condition. The Buyer represents that the Buyer is financially capable of making, when due, all of the required payments set forth in Articles III and IV. The Buyer further represents that the personal financial data to be submitted in connection with this Agreement to the Seller or any prospective mortgagee shall be true and accurate. The Buyer agrees to give written notice to the Seller immediately after any material change occurs in the Buyer's financial condition prior to closing. The Buyer's failure to notify the Seller to the contrary shall constitute a representation by the Buyer that the Buyer's financial data has not materially changed before closing. The Seller shall have the right to cancel this Agreement and hold the Buyer in default under this Agreement if any material discrepancies are discovered between the financial information furnished and the Buyer's actual financial status. The Buyer agrees that by executing this Agreement, the Seller and any proposed mortgagee is authorized to make credit inquiries about the Buyer, and to exchange among themselves credit and loan status information concerning the Buyer, insofar as the Seller or the mortgagee deems it necessary or appropriate to verify the Buyer's financial condition and capability to consummate this Agreement, and the Buyer further agrees that at the Seller's request the Buyer shall confirm such authority promptly and in writing.

(b) *Funds for Purchase.* (i) In the event the Buyer wishes to finance the purchase of the Apartment, the Buyer shall, within 10 business days from the effective date of this Agreement, apply to one or more lending institutions for such loan and the Buyer agrees to perform all of the following acts (herein called the "Mortgage Loan Acts"): To use his best efforts to obtain the mortgage loan in good faith; to execute and deliver all necessary documents and disclose all information; to pay any and all costs, charges and expenses in connection with the mortgage loan; to otherwise promptly and diligently comply with all requests of the mortgagee and/or the Seller to apply for, obtain and close the mortgage loan; and, where deemed necessary by the Seller, to make further applications for a mortgage loan. It is understood that the Buyer may be required to pay a loan fee for such loan. The Buyer acknowledges that the Seller has made financing arrangements with certain lead lenders. Each lead lender is not affiliated with the Seller in any way but has been thoroughly briefed on the Project. Each lead lender has implemented a "fast track" processing procedure to qualify potential purchasers for mortgage loans and has also agreed to provide monitoring and follow up services throughout the loan processing and qualifying process. The Buyer is free to use any institutional lender of the Buyer's choice, provided that if the Buyer uses an institutional lender other than one of the lead lenders then the Seller will charge to the Buyer an administrative fee of \$1,000.00 to be paid at Closing, to cover additional administrative time and expense in providing the Buyer's lender with information about the Project. The Buyer acknowledges and agrees that although the Seller may have made arrangements with an institutional lender to make financing generally available for the purchase of apartments in the Project, the Seller makes no representation or warranty as to whether or not any such lender will commit to a loan to the Buyer, or, if such a commitment is made, that the lender will make the loan or that such loan will be on any specific terms or conditions. It is the Buyer's sole and complete responsibility to obtain a satisfactory loan. The Seller shall have no obligation to arrange for the Buyer's mortgage or other financing and the Buyer acknowledges and agrees that the Seller is not an arranger of credit within the meaning of the Consumer Credit Protection Act or the rules and regulations promulgated thereunder. An executed copy of any loan commitment or rejection obtained by the Buyer shall be delivered to the Seller immediately upon receipt by the Buyer. (ii) **If the Buyer proposes to pay the Total Purchase Price in cash** without utilizing a loan, then the Buyer shall, within 10 business days after the effective date of this Agreement, give the Seller a recent financial statement of the Buyer's net worth and cash on hand and such other written evidence from the Buyer's bankers, accountants, or other persons, as the Seller may require, to show the Buyer's ability to pay the purchase price in cash. The Buyer further agrees to perform all of the following acts (herein called the "Cash Payment Acts"): To use his best efforts to provide the written evidence requested; to execute and deliver all necessary documents and disclose all information requested within 30 days after the effective date of this Agreement; to pay any and all costs, charges and expenses in connection with ascertaining the Buyer's ability to pay the Total Purchase Price in cash; and to otherwise promptly and diligently comply with all requests of the Seller to close the sale on a cash basis.

If (i) the Buyer has undertaken and performed the Mortgage Loan Acts but his application or eligibility for a loan is rejected or the Buyer is not given unqualified approval within 45 days after application, or if such approval, if given, expires and is not reinstated within five days of such expiration, or (ii) the Buyer proposes to pay the Total Purchase Price in cash and has undertaken and performed the Cash Payment Acts, and if the Seller, in its sole discretion, after reviewing the written evidence submitted to it by the Buyer, determines that the Seller is not satisfied as to the Buyer's ability to make such cash payments, then in either of the foregoing events, the Seller may elect to cancel this Agreement upon written notice to the Buyer and, upon such cancellation, the Seller shall direct Escrow to refund to the Buyer all sums paid hereunder by the Buyer, less any costs incurred by the Seller, Escrow or any lending institution in processing this Agreement or the loan application.

The Buyer acknowledges and agrees that, in view of the Seller's financial commitments with respect to the Project and the nature of the real estate market in Hawaii, the Seller's determination that the Seller is not satisfied as to the Buyer's ability to pay the purchase price in cash shall be final and binding, and the Buyer agrees to indemnify the Seller for any damages or losses, including interest and attorneys' fees resulting from the Buyer's refusal to abide by and comply with the Seller's determination.

THE BUYER UNDERSTANDS AND AGREES THAT THE PURCHASE OF THE APARTMENT IS NOT CONTINGENT UPON THE BUYER QUALIFYING FOR A LOAN and that, except as may otherwise be provided in

Section E below, the Buyer shall have no right to cancel this Agreement, and this Agreement shall not be deemed canceled if the Buyer does not qualify for a loan; provided, however, that this paragraph shall not affect in any way the Seller's right to cancel this Agreement as provided in this Section B.3. The Buyer agrees to indemnify the Seller for any damages or losses, including interest and attorney's fees, resulting from the Buyer's refusal to close the purchase of the Apartment which is the subject of this Agreement.

4. Option Package. There may be certain option packages offered by the Seller to certain purchasers depending on the type and location of apartments involved. All such option packages, if any, shall be subject to such additional charges or costs as specified by the Seller. Option packages must be requested by the Buyer in writing and must be accepted by the Seller in writing prior to the expiration date specified by the Seller for such option package. If the Buyer requests an option package at any time after this signing of the Agreement, the Seller will not be required to accept such request unless and until the Buyer pays in cash to Escrow the full additional costs of the option package requested.

### **C. CONDOMINIUM AND RESORT DOCUMENTS; SELLER'S RESERVED RIGHTS AND POWERS**

1. Acceptance of Documentation. The Buyer acknowledges having had full opportunity to read and review and hereby approves and accepts the following documents pertaining to the Project: The Declaration; the Bylaws of the Association of Apartment Owners of The Waikoloa Beach Villas (the "Bylaws"); the specimen apartment deed; the escrow agreement; the project rules; the Condominium Map; the Waikoloa Beach Resort Master Declaration (referenced in Section C.6 below); and all effective condominium public reports for which effective dates have been issued by the Real Estate Commission with respect to the Project. Copies of these documents are on file and available for inspection at the office of the Real Estate Commission of the State of Hawaii. It is understood and agreed that this sale is in all respects subject to these documents and the Seller's right to amend these documents.

2. Seller's Right to Change Documents. In addition to other rights reserved to the Seller in the documents, the Seller reserves the right to modify the Declaration, the Bylaws, the Condominium Map, and other documents, and the Buyer authorizes the Seller to make and the Buyer hereby specifically approves, all changes to said documents and the Project:

- (a) as may be required by law, any title insurance company, any institutional lender, or any governmental agency; or
- (b) prior to the conveyance of the first apartment, as the Seller deems necessary; provided that no such modification shall, without the Buyer's consent:
  - (i) substantially and materially impair the prospective use and enjoyment of the Apartment;
  - (ii) substantially and materially alter the arrangement of the rooms or reduce the usable space within the Apartment or require a substantial material physical change of the Apartment or of the building in which the Apartment is located;
  - (iii) render unenforceable the Buyer's mortgage loan commitment;
  - (iv) substantially increase the Buyer's share of common expenses; or
  - (v) substantially modify any of the obligations of the Seller with respect to the Project.

Without limiting the foregoing, the Buyer specifically acknowledges and accepts that the Declaration and the Bylaws contain provisions reserving to the Seller certain rights to amend the Project documents, including, without limitation, amendments as may be necessary to comply with VA, FHA, FNMA and/or FHLMC requirements so that loans secured by mortgages of apartments in the Project may be made, guaranteed or insured through VA, FHA, FNMA and/or FHLMC

programs. By signing this Agreement, the Buyer consents and agrees to execute at the Seller's request all documents and to do all things necessary or convenient to effect such rights.

3. Exercise Of Association Rights. The Buyer authorizes the Seller to exercise all the rights and incidents of membership in the Association of Apartment Owners (the "Association"), including voting, attributable to the Apartment until closing occurs. The Seller is also authorized to exercise all powers of the Board of Directors of the Association (the "Board") until an election of directors is held at the first annual meeting of the Association, including but not limited to the appointment at the expense of the Association of a responsible and competent person or company as the initial managing agent of the Project for a period not exceeding one year.

4. Managing Agent. The Buyer agrees that the Seller may employ a responsible and competent person or company as the Managing Agent of the Project and enter into a management contract for a term of up to one year and that, although employed prior to the election of the Board under the Bylaws, the Managing Agent shall have complete authority, subject to the provisions of the Declaration, the Bylaws and the management contract, to assume full control and responsibility for the management, operation and maintenance of the completed Project at the expense of the Association.

5. Incremental Development. The Buyer further consents and agrees to the incremental development of the Project as provided by and pursuant to Section O of the Declaration, to any construction activity relating thereto, and to all the terms and conditions regarding such incremental development set forth in the Declaration. The Buyer acknowledges that he has reviewed the applicable provisions of the Declaration pertaining to the rights reserved to the Seller regarding such incremental development.

6. Waikoloa Beach Resort. The Buyer acknowledges that the Project and the Apartment are part of and within a planned resort community development known as the Waikoloa Beach Resort, and that the Project and the Apartment are and shall be subject to the terms and provisions of the Waikoloa Beach Resort Association Declaration of Conditions and Restrictions, as amended and supplemented (the "Waikoloa Beach Resort Master Declaration"), more particularly described in the Declaration. By acquiring ownership of the Apartment, the Buyer, on behalf of the Buyer and the Buyer's lessees, tenants, guests, invitees, licensees, employees, and any other person who may occupy or otherwise use the Apartment, acknowledges and agrees that the Buyer: (i) understands and accepts the disclosures, restrictions, covenants, conditions, easements, reservations of rights and any other matters contained in the Waikoloa Beach Resort Master Declaration; (ii) will observe and perform all of the terms, covenants, conditions and provisions required to be observed and performed by an Owner under the Waikoloa Beach Resort Master Declaration, and (iii) accepts and will abide by all of the applicable terms, covenants, conditions and provisions set forth in the Waikoloa Beach Resort Master Declaration, and all bylaws, design guidelines, rules and regulations and other items or matters adopted or promulgated pursuant to the Waikoloa Beach Resort Master Declaration, including those of the Waikoloa Beach Resort Association (the "Master Association"), whose members will include the owners of all apartments within the Project, including the Buyer. Without limiting the foregoing or the Waikoloa Beach Resort Master Declaration, the Buyer acknowledges that the Waikoloa Beach Resort Master Declaration provides for the assessment of maintenance and other fees from and upon the members of the Master Association, including the owners of apartments in the Project, and for lien rights upon each apartment in the Project, including the Apartment, for non-payment of such assessments. Payment of assessments and other fees to the Master Association will be made by the Buyer through the Project's Association described in Section C.3 above.

7. Golf Course. The Buyer understands and acknowledges that: (i) the Project is located adjacent to and in the vicinity of an existing golf course (the "Waikoloa Beach Resort Golf Course"), approximately as shown on the Condominium Map, (ii) the Waikoloa Beach Resort Golf Course and related facilities do not constitute common property of the Association, and are not subject to the Declaration; (iii) neither membership in the Association or Master Association, nor ownership or occupancy of the Apartment, confers any ownership interest in the Waikoloa Beach Resort Golf Course; (iv) no representations or warranties have been made regarding the continuing ownership or operation of the Waikoloa Beach Resort Golf Course; and (v) the location may result in nuisances or hazards to persons or property on or within the Project or the Apartment as a result of golf course operations, including but not limited to the risk of errant golf balls, noise, loss of privacy and entry upon the Project by golfers, which may affect the use and enjoyment of the Project.

By acquiring ownership of the Apartment, the Buyer, for itself and on behalf of its successors and assigns, hereby expressly acknowledges the foregoing conditions as well as any inconvenience or annoyance that Buyer may experience as a result of such conditions.

**D. WARRANTIES AND REPRESENTATIONS**

1. **TEN YEAR HOME BUILDER'S LIMITED WARRANTY.** THE TEN YEAR HOME BUILDER'S LIMITED WARRANTY (THE "HOME BUILDER'S LIMITED WARRANTY"), THE FORM OF WHICH IS ATTACHED TO THIS AGREEMENT, IS THE SOLE AND ONLY WARRANTY, EITHER EXPRESS OR IMPLIED, THAT THE BUYER SHALL RECEIVE FROM THE SELLER WITH RESPECT TO THE APARTMENT OR THE PROJECT. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES BEING GIVEN BY THE SELLER TO THE BUYER, AND THE BUYER, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS (INCLUDING SUCCESSOR OWNERS OF THE APARTMENT), SPECIFICALLY WAIVES TO THE FULL EXTENT ALLOWED BY LAW ANY IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE APARTMENT AND THE BUYER'S INTEREST IN ALL COMMON ELEMENTS OR ANY PERSONAL PROPERTY OR FIXTURES BEING PROVIDED TO THE BUYER BY THE SELLER AS PART OF THE APARTMENT AND THE BUYER'S INTEREST IN ALL COMMON ELEMENTS. THE BUYER HAS BEEN GIVEN A COPY OF THE HOME BUILDER'S LIMITED WARRANTY, PWC FORM NO. 117 REV. 05/02. THE BUYER HAS ALSO BEEN GIVEN THE HOME BUILDER'S LIMITED WARRANTY ACKNOWLEDGMENT OF RECEIPT AND AGREEMENT TO READ AND UNDERSTAND ("ACKNOWLEDGMENT"), WHICH ACKNOWLEDGMENT THE BUYER HAS EXECUTED CONTEMPORANEOUSLY WITH THIS AGREEMENT. AT CLOSING, THE BUYER SHALL RECEIVE FROM THE SELLER A HOMEOWNER'S MANUAL WHICH SHALL FURTHER EXPLAIN THE HOME BUILDER'S LIMITED WARRANTY PROGRAM. IN ADDITION TO THE SELLER'S OBLIGATION TO CORRECT CONSTRUCTION DEFECTS IN ACCORDANCE WITH THE HOME BUILDER'S LIMITED WARRANTY, THE HOMEOWNER'S MANUAL SHALL CONTAIN THE SELLER'S CUSTOMER SERVICE PROGRAM. THIS CUSTOMER SERVICE PROGRAM PROVIDES FOR THE REPAIR, IF APPLICABLE, BY THE SELLER DURING THE FIRST YEAR OF THE HOME BUILDER'S LIMITED WARRANTY OF MINOR PROBLEMS IN THE APARTMENT THAT MIGHT NOT RISE TO THE LEVEL OF A CONSTRUCTION DEFECT UNDER THE HOME BUILDER'S LIMITED WARRANTY.

2. **Condominium Map.** The Buyer acknowledges that the Condominium Map for the Project is intended to show only the layout, location, apartment numbers and dimensions of the apartments and THE BUYER UNDERSTANDS THAT THE CONDOMINIUM MAP IS NOT INTENDED TO BE AND DOES NOT CONSTITUTE ANY OTHER REPRESENTATION OR WARRANTY BY THE SELLER. The Seller makes no representations or warranties whatsoever as to the size or dimensions of the yard area appurtenant to any particular apartment.

3. **Furnishings.** The Apartment will include only the appliances and furnishings specified in this Agreement. The Buyer acknowledges that no wallpaper, mirrors, chandelier or other furniture, furnishings or appliances (other than those specified in this Agreement) included in any model apartment or other apartment in the Project or in any artist's renderings of the Project or any apartment in the Project are included in the "Total Purchase Price" for the Apartment.

4. **House Insulation Disclosure.** The Federal Trade Commission requires disclosures regarding house insulation. It is anticipated that in construction of the Apartment, insulation will be installed in the perimeter and party walls of the Apartment. No representations are or may be made that owners of apartments in the Project will save on household expenses as a result of any house insulation.

5. **Mold and Mildew.** Microorganisms, including, but not limited to mold, mildew, spores, or any other form of fungi or bacteria ("Microorganisms"), occur naturally in the environment and may be present, during or after construction, in the indoor air and/or on the interior surfaces of the Apartment being constructed by Seller, including, without limitation

to, cavities, attics, windows, foundations, floor slabs, and/or on the exterior surfaces of the Apartment, or any part thereof. Concentration of moisture in the Apartment may result from cooking, showering, or similar activities inside the Apartment, the outside atmosphere, and/or the design, construction means and methods, and/or the building materials used in the construction of the Apartment. This moisture may cause the growth, release, discharge, dispersal, or presence of Microorganisms which, at certain levels, can cause deterioration of building materials, damage to property, health hazards, personal injuries, and/or other irritant effects such as, without limitation, skin irritation, respiratory problems, and/or allergic reactions. Likewise, concentrations of chemicals released from household furnishings, appliances, mechanical equipment, personal possessions, or building materials may, at certain levels, create health hazards and/or other irritant effects, such as, without limitation to, skin irritation, respiratory problems and allergic reactions. Because Microorganisms occur naturally in the environment, Seller cannot eliminate the possibility that chemicals may be present or that Microorganisms may grow in, on, or about the Apartment. Buyer may minimize these effects by proper utilization and maintenance of heating, cooling, dehumidification or ventilation equipment, interior maintenance, such as, but not limited to, proper grading, landscaping, painting and caulking. Buyer acknowledges that Buyer has been informed of the effects of Microorganisms and chemicals, and Buyer assumes all risk of damage, personal injury or destruction of or injury to property that may arise as a result of or be in any way connected with the indoor air quality or the presence of Microorganisms or chemicals in, on, or about the Apartment.

Notwithstanding any other contrary provision in this Agreement, Buyer fully, finally, and forever releases and discharges, and further agrees to indemnify and defend, Seller and its successors and assigns, construction manager, contractors, subcontractors, material suppliers, and the officers, employees, agents of each of them, from and against any and all claims, obligations, demands, damages, causes of action, liabilities, losses, and expenses, including reasonable attorneys' and expert fees, whether now known or hereafter known, foreseen or unforeseen, that Buyer or any occupant of the Apartment had, has, or may have in the future, in law or in equity, that are attributable to (1) bodily injury, sickness, emotional distress, disease, death, or any other personal injury or adverse health effects, or (2) injury to or destruction of tangible personal property, including loss of the use thereof arising out of or relating to, or in any way connected with, indoor air quality, moisture, or the growth, release, discharge, dispersal, or presence of any Microorganisms or chemicals in the indoor air or on the interior surfaces of the Apartment including, without limitation, wall cavities, the attic, windows, and the basement, or on the exterior surfaces of the Apartment or on any part thereof, whether or not caused by, in whole or in part, Seller's breach of this Agreement or any act or omission of Seller, its construction manager, contractors, subcontractors, or material suppliers, in their performance under this Agreement, including, but not limited to, Seller's or its construction manager's, contractors', subcontractors', or material suppliers', construction means and methods, material selection and installation, and/or design services, if any. Seller makes no express or implied warranty of habitability, merchantability, fitness for a particular purpose, or good workmanship as to building materials and/or construction means and methods with regard to indoor air quality or the presence of Microorganisms or chemicals in, on, or about the Apartment.

6. Estimated Monthly Maintenance Fees. The Buyer has had an opportunity to examine and hereby approves the estimate of monthly maintenance fees for the Apartment as shown in the Public Report. The Buyer is aware that such amounts are only estimates and may change for reasons beyond the control of the Seller, and the Buyer hereby specifically accepts and approves any such changes. The Buyer is also aware that such estimates do not include the Buyer's obligation for payment of real property taxes. **THE BUYER UNDERSTANDS THAT SUCH ESTIMATES ARE NOT INTENDED TO BE AND DO NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY BY THE SELLER, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF SUCH ESTIMATES.**

7. No Rental Representations. The Buyer hereby acknowledges and agrees:

- (a) That the Seller and its agents are not offering directly or indirectly a rental service of any kind to the owners of condominium apartment units in the Project, either individually or in any form of pooling arrangement, or by a third party designated or arranged for by the Seller, nor have any representations been made by the

Seller or its agents as to the feasibility of renting the Apartment or otherwise generating income or deriving any other economic benefit from ownership of the Apartment;

- (b) That the Seller and its agents have made no representations (nor is anyone authorized to do so) contrary to this Section D.7 with respect to the tax treatment or any other economic benefit or consequence relating to the purchase of an Apartment; and
- (c) That the Seller may, as a condition of closing, require of the Buyer, any brokers involved in the sale or agents of such brokers, or anyone else connected in any way with the offer to sell and the purchase of the Apartment, the execution and delivery to the Seller of such waivers, affidavits, or other documents as may from time to time be required by the Seller to satisfy the Seller that the offer to sell and the purchase of the Apartment are not in violation of any federal or state securities law or regulations.

8. *No Oral Representations.* The Buyer acknowledges and agrees that the Buyer has not relied and shall not rely on any comments, representations or descriptions of the Project or the Apartment that are not contained in this Agreement or documents specifically referenced in this Agreement. Any such comments, representations or descriptions not contained in this Agreement or referenced documents do not constitute a representation or warranty by the Seller, notwithstanding by whom made or upon whose behalf such comments, representations or descriptions are purported to be made. No agent of the Seller is authorized by the Seller to make, give or provide any such comments, representations or descriptions not contained in this Agreement or the referenced documents.

9. *Security.* The Buyer acknowledges that neither the Seller nor the Association shall in any way be considered an insurer or guarantor of security within or relating to the Project, including any community areas or facilities in which the Seller or the Association may have an interest or obligation, and neither the Seller nor the Association shall be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. The Buyer further specifically acknowledges and understands that neither the Seller nor the Association is an insurer of the safety or well being of owners or occupants or their property, and that each owner and occupant assumes all risks for loss or damage to persons, the apartments, the common elements and environs of the Project, and to the contents of improvements located thereon, and further acknowledges that the Seller has made no representations or warranties, nor has or will the Buyer rely upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to the security of the Project and the surrounding area, including any common or community areas or facilities in which the Seller or the Association may have an interest or obligation, or any security measures undertaken within the Project or within such common or community areas or facilities.

#### **E. SALE BASED ON PRELIMINARY OR CONTINGENT OR FINAL PUBLIC REPORT**

Notwithstanding any other provision of this Agreement to the contrary, it is expressly understood and agreed that if, at the time of execution of this Agreement by the Buyer and the Seller, an effective date for a Contingent Final Public Report or a Final Public Report for the Project has not been issued by the Real Estate Commission of the State of Hawaii, this Agreement shall not be legally binding upon either the Buyer or the Seller. In such event, this Agreement shall constitute a "reservation," not a binding contract, and the Seller shall have no obligation to sell and the Buyer shall have no obligation to buy the Apartment. A reservation agreement cannot become a binding sales contract unless and until the following three conditions have been satisfied: (i) one copy of either the Contingent Final Public Report or the Final Public Report, for which an effective date has been issued by the Real Estate Commission of the State of Hawaii, and two copies of the Receipt and Notice of Right To Cancel form prescribed by the Condominium Property Act have been delivered to the Buyer; (ii) the Buyer has been given an opportunity to read the applicable Report; and (iii) the Buyer has executed the Receipt and Notice of Right to Cancel (which execution shall conclusively indicate that the Buyer has read the applicable Report) and has waived the Buyer's right to cancel, or is deemed to have receipted for the applicable Report and to have waived the Buyer's right to cancel (if the Buyer does not execute and return the Receipt and Notice of Right to Cancel within thirty (30) days from the date of delivery of the applicable Report, or if the Apartment is conveyed to the

Buyer prior to the expiration of said thirty (30) day period, the Buyer shall be deemed to have received for the applicable Report and to have waived the Buyer's right to cancel). **A RESERVATION MAY BE TERMINATED AT ANY TIME BEFORE IT IS RENDERED A BINDING CONTRACT, WITH OR WITHOUT CAUSE, AT THE OPTION OF EITHER PARTY, BY WRITTEN NOTICE OF SUCH TERMINATION TO THE OTHER PARTY.** In the event of such termination, the Seller shall cause Escrow to refund all payments previously made by the Buyer and neither party shall have any other or further liability hereunder or with respect to the Project; provided that if the Buyer terminates this reservation, then Escrow shall deduct from the refund to the Buyer the escrow cancellation fee and all costs incurred by Escrow, or any lending institution in processing this Agreement or the loan application. If the Seller terminates this reservation, then the Seller shall pay such fees and costs.

If this Agreement is entered into after the issuance of an effective date for a Contingent Final Public Report but prior to the issuance of an effective date for the Final Public Report, then this Agreement shall be a fully binding contract if: (i) the Seller has accepted this Agreement; (ii) a copy of the Contingent Final Public Report and all other public reports in effect at the time and two copies of the Receipt and Notice of Right to Cancel form prescribed by the Condominium Property Act have been delivered to the Buyer; (iii) the Buyer has been given an opportunity to read the report(s); and (iv) the Buyer has executed the Receipt and Notice of Right to Cancel (which execution shall conclusively indicate that the Buyer has read the report(s)) and has waived the Buyer's right to cancel, or is deemed to have received for the report(s) and to have waived the Buyer's right to cancel (if the Buyer does not execute and return the Receipt and Notice of Right to Cancel within thirty (30) days from the date of delivery of the report(s), or if the Apartment is conveyed to the Buyer prior to the expiration of said thirty (30) day period, the Buyer shall be deemed to have received for the report(s) and to have waived the Buyer's right to cancel); provided, however, that if an effective date for a Final Public Report is not issued by the date on which the Contingent Final Public Report expires, then the Buyer shall be so notified and the Seller or the Buyer, after the expiration of the Contingent Final Public Report, may rescind this Agreement and, in such event, the Buyer shall be entitled to a prompt and full refund of the Buyer's entire deposit together with all interest earned thereon, reimbursement of any escrow fees, and, if the Seller required the Buyer to secure a financing commitment, the Buyer shall also be entitled to reimbursement by the Seller of any fees the Buyer incurred in securing that financing commitment.

If this Agreement is entered into after the issuance of an effective date for the Final Public Report, then the preceding two paragraphs of this Section E shall be of no force or effect and this Agreement shall be a fully binding contract if: (i) the Seller has accepted this Agreement; (ii) a copy of the Final Public Report and all other effective public reports for which an effective date has been issued by the Real Estate Commission of the State of Hawaii and two copies of the Receipt and Notice of Right to Cancel form prescribed by the Condominium Property Act have been delivered to the Buyer; (iii) the Buyer has been given an opportunity to read the report(s); and (iv) the Buyer has executed the Receipt and Notice of Right to Cancel (which execution shall conclusively indicate that the Buyer has read the reports) and has waived the Buyer's right to cancel, or is deemed to have received for the report(s) and to have waived the Buyer's right to cancel (if the Buyer does not execute and return the Receipt and Notice of Right to Cancel within thirty (30) days from the date of delivery of the report(s), or if the Apartment is conveyed to the Buyer prior to the expiration of said thirty (30) day period, the Buyer shall be deemed to have received for the reports and to have waived the Buyer's right to cancel).

## **F. CONSTRUCTION OF PROJECT**

1. Changes In Plans. The Seller will construct the improvements on the land described in the Declaration in accordance with the plans and specifications prepared by the Architect with such changes as the Seller or the Architect deem appropriate. The plans and specifications are on file in the office of the Seller and are incorporated herein by reference, together with any amendments or changes. The Buyer acknowledges that he has examined the plans and specifications or, if not, waives any objection he might have if he had examined them and accepts them with such changes as the Architect deems necessary or desirable. The Buyer authorizes the Architect in his sole discretion to increase or decrease the thickness of any wall within the Apartment even though the room dimensions thus affected become smaller or larger than those shown on the Condominium Map and further authorizes the Seller to make minor changes that may, in the opinion of the Seller, improve the Apartment, the other apartments or the common elements; provided, however, that no changes shall be made which substantially affect the physical location or design of the Apartment or change the number of apartments contained in the Project.

2. Project Completion Date. The Buyer understands and acknowledges that any estimated completion date of the Project or the building in which the Apartment is located is an approximate date only, and that such date may vary substantially depending upon the progress of construction and unanticipated impediments thereto.

3. Inspection. The Seller or its contractor for the Project shall institute an inspection program and the Buyer agrees to inspect the Apartment on a date and at a time specified in advance by the Seller or the contractor, and, upon completion of such inspection, to sign an inspection sheet to be furnished by the Seller or the contractor which shall list all defects or damages ("punchlist items") to the Apartment, if any. The Seller will attempt to complete and/or correct all punchlist items, if any, within 20 days after completion of the inspection. The Buyer shall have the right to re-inspect the Apartment at such time. Upon re-inspection, the Buyer shall again indicate in writing which of said punchlist items are acceptable and which remain to be completed or corrected. The foregoing procedure shall be repeated until the Buyer has completely accepted the Apartment. If the Buyer will not personally conduct inspections, the Buyer shall designate in writing to the Seller the individual who will conduct the inspections, on behalf of the Buyer. In the absence of such a designation, or if the Buyer or his or her designated inspector shall fail to make a timely inspection, the Buyer agrees that the Architect shall act as the Buyer's representative to inspect the Apartment, and the Buyer further agrees that in the event the Seller's contractor disputes any of the Buyer's punchlist items, the Architect shall determine the dispute, and such determination will be conclusive and binding on the Buyer and the Seller. The Buyer acknowledges that the existence of defects or damages to the Apartment shall not affect the Buyer's obligations to make the required payments hereunder and consummate this sale, and the Buyer covenants and agrees to consummate this sale and accept possession of the Apartment as long as such defects or damages do not render the Apartment unfit for occupancy and the Seller agrees to correct such defects or damages within a reasonable time.

4. Ongoing Construction and Sales Activities. The Buyer specifically acknowledges that: (i) construction activity by the Seller or other apartment owners may continue at the Project and on adjacent property after the Buyer has occupied the Apartment and that this activity may result in noise, dust and other nuisances or annoyances to the Buyer, and may limit the Buyer's access to portions of the Project; (ii) until the Project is completed, the Buyer shall pay a share of the common expenses for all apartments as to which a temporary or permanent certificate of occupancy has been issued proportionate to the common interests appurtenant to such apartments; (iii) the Seller's sales activities, including the use of model apartment units, signs and extensive sales displays and activities, may continue at the Project until 90 days after the closing of the sale of the last unsold apartment in the Project; (iv) the Seller reserves the right, for itself, its sales representative and prospective purchasers, to utilize parking spaces for parking for prospective purchasers until 90 days after the closing of the sale of the last unsold apartment in the Project; and (v) the 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 to model apartments, and also in order to show the common elements to prospective purchasers of apartments in the Project. The Buyer hereby accepts the foregoing conditions set forth in this Section F.4 as well as any inconvenience or annoyance which the Buyer may experience as a result of such conditions and hereby expressly waives any rights, claims or actions which he might otherwise have against the Seller, its agents, employees, contractors or

subcontractors as a result of such circumstances. The Buyer agrees to execute any further documentation required by the Seller to evidence the Buyer's covenants in this Section F.4. The terms of this Section F.4 shall survive recordation of the Apartment Deed and occupancy of the Apartment by the Buyer.

5. *Nuisances Related to Surrounding Properties.* Without in any manner limiting Section F.4 above, the Buyer, in purchasing or otherwise taking title to the Apartment, does so with the express understanding and acknowledgment that the Project and the Apartment may be periodically affected by various hazards and nuisances, and by noise, dust, smoke, earthshock, soot, ash, odor, noxious vapors, transmission of pollutants or other hazardous materials, surface water runoff, or other adverse environmental conditions, including but not limited to those attributable to volcanic action and other natural factors and/or to real estate development and golf course construction, use and maintenance, and other uses and changes in use. The Buyer hereby covenants and agrees that the Buyer, and the tenants, lessees, family, servants, guests, invitees, licensees and employees of the Buyer, assumes all risks associated with each of the conditions and the annoyances, inconveniences, and nuisances created thereby, and expressly waives all rights to any claim against the Seller, its successors and assigns, arising out of or in connection with such activities, annoyances, inconveniences and nuisances, including but not limited to (i) any right to seek damages attributable thereto or for the design or the placement of improvements to the Project, the Apartment or the surrounding property, or any part thereof, or related or adjacent facilities, or (ii) the abatement or elimination thereof. The terms of this Section F.5 shall survive recordation of the Apartment Deed and occupancy of the Apartment by the Buyer.

6. *Views Not Assured.* Buyer hereby acknowledges that Seller has made no representation or warranty as to the preservation of any views or view planes from the Project or the Apartment, and further understands and acknowledges (i) that the completion of the Project and the future development of land adjacent to or in the vicinity of the Project may have a detrimental effect on the views from the Apartment and other parts of the Project, (ii) that there are no view easements or rights appurtenant to the Apartment or the Project, and (iii) that views from the Apartment and the Project are not assured in any way.

7. *Trespass During Construction.* Prior to delivery of possession of the Apartment, the Buyer shall not trespass upon the Project site during the period of time when the Project is under construction. The Buyer hereby acknowledges that his execution of this Agreement and his acceptance of an apartment deed constitutes his 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 the Buyer agrees to exert diligent efforts to prohibit entry into such area by his employees, tenants and invitees. The Buyer also agrees to indemnify, defend and save harmless the Seller, other apartment owners and the contractors and agents of 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 the Seller's other remedies, the Buyer understands that the Seller shall have the right to remove him from the Project by any lawful means.

## **G. CLOSING AND POSSESSION**

1. *Preclosing.* The Seller may, at its option, preclose this sale by having all documents and funds necessary for closing executed and deposited with Escrow prior to the time of closing, and as early as thirty or more days prior to the Closing Date. To accomplish this, any time after the effective date of this Agreement, and within five days after written notice to preclose is mailed or otherwise delivered to the Buyer by the Seller, the Buyer's mortgagee or Escrow, the Buyer agrees to complete all actions, deposit all funds other than the final payment of the purchase price (Article III, Section A.3), and execute all documents required for closing, including, without limitation, the apartment deed, all promissory notes, mortgages and other loan documents necessary for the Buyer's financing of the purchase of the Apartment, the conveyance tax certificate, any additional escrow instructions and a closing statement based on the Seller's estimate of the date the sale will close. This Agreement shall constitute the Seller's and the Buyer's written grant of authority to Escrow to date all documents as of the effective date for the transfer of title and adjust the estimated prorations in accordance with the provisions of this Agreement. The Buyer or the Buyer's duly authorized officer or representative agrees to come to Escrow's office on a date and at a time to be arranged with Escrow for the preclosing.

2. Closing. Closing shall occur on the "Closing Date" established by the Seller when construction of the building in which the Apartment is located is substantially completed, or such earlier or other date as may be agreed by the Seller and the Buyer. The Seller will notify the buyer in writing of the Seller's estimate of the Closing Date when a reasonable estimate of such date can be made.

The Seller shall provide the Buyer at least 10 days notice of the Closing Date. All sums not paid prior to the Closing Date, including but not limited to any unpaid balance of (i) the Total Purchase Price (Article III, Section A), (ii) the Additional Sums To Be Paid (Article III, Section B), and (iii) any late charges, rentals, or other fees to be paid under Articles III and IV, shall be due and payable on the Closing Date. The Buyer agrees to deposit such sums other than Payment C (Article III, Section A.3) with Escrow at preclosing or, if there is no preclosing, then at least five days before the Closing Date and to take and complete any other action which may be necessary to enable closing; failure to do so shall constitute a default under this Agreement. If all such sums (including the final payment) are not paid on or before the scheduled Closing Date or if the Buyer otherwise directly or indirectly delays the closing, then such nonpayment or delay shall constitute a default under this Agreement, and in addition to the Seller's other remedies under this Agreement, the Buyer shall be liable for and pay all common expenses, real property taxes and other prorated expenses the Buyer would have incurred if closing had occurred on the scheduled Closing Date, regardless of when the closing of the sale of the Apartment actually occurs.

Real property taxes, maintenance costs and all other prorations shall be assessed against the Buyer as of the scheduled Closing Date. In the event the Buyer does not close on the scheduled Closing Date because of a failure by the Buyer to comply with any of the provisions of this Section G, the Buyer shall reimburse the Seller for all such prorations accruing from the scheduled Closing Date until closing. All risk of loss to the Apartment and the common elements of the building in which the Apartment is situate shall be borne by the Seller up to and until the scheduled Closing Date; thereafter, all such risk of loss shall be borne by the Buyer. The Buyer expressly acknowledges that on the Closing Date the common areas of the Project may not be fully completed and that there may be ongoing construction activity as provided herein (including, without limitation, "punchlist" work in the Apartment and in other apartments and the common elements) and that such circumstances shall not in any way affect the Buyer's obligations to make the required payments and consummate this sale. The Buyer further acknowledges that any taking by eminent domain of an easement or other limited right or a portion of the common elements which does not substantially interfere with or diminish the practical enjoyment and use of the Apartment and the common elements shall not affect the Buyer's obligations to make the required payments and consummate this sale.

3. Closing Costs; Start-Up Fee. The Buyer will pay all closing costs including, but not limited to, cost of preparation of the apartment deed, Escrow's fee, notary and recording fees, conveyance taxes and evidence of title or title insurance. The Buyer further acknowledges that the Buyer may also be required to pre-pay insurance premiums for as much as one year, maintenance fees for up to four months, and real property taxes for the remainder of the tax year prorated as of the Closing Date, all as may be required by the Buyer's mortgage lender. The Buyer shall pay at Closing a nonrefundable and nontransferable fee ("start-up fee") in the amount specified in Article III above, being equal to at least two months' maintenance fees for the type of apartment being purchased. The start-up fee shall be a one-time assessment at sale, not a common expense, and shall be in addition to the normal monthly maintenance expenses. The start-up fee shall be held, accounted for and expended as a working capital fund of the Association in accordance with the Declaration. The Buyer acknowledges that the Seller will not be required to pay start-up fees for unsold units. The costs mentioned in this section are not intended to, and do not deal with the Buyer's costs incurred in connection with his financing of this purchase, including, among other things, the cost of a credit report, loan fees, appraisal fees and mortgage preparation costs.

4. Occupancy. The Buyer shall not be entitled to possession of the Apartment until the Buyer has completed all payments set forth above and has executed all documents relating to the purchase, and the Buyer has performed the remaining terms and conditions of this Agreement which are to be performed as of closing. Delivery of possession of the Apartment to the Buyer shall be deemed to have occurred when the Seller makes the Apartment keys available for pickup by the Buyer or otherwise notifies the Buyer that the Apartment is available for the Buyer's use and possession. Delivery

of possession shall not occur prior to Escrow's recordation of the Buyer's apartment deed, and the Buyer understands that keys for the Apartment will not be issued to the Buyer and the Buyer shall not be entitled to occupy the Apartment nor move the Buyer's furniture into the Apartment until such time. Violation of this provision shall be deemed a material breach of this Agreement and, in addition to any other remedy of the Seller for the Buyer's breach of this Agreement, the Buyer understands that the Seller shall have the right to remove him from the premises by any lawful means.

## **H. TERMINATION; DEFAULT REMEDIES**

### **1. Default.**

(a) *Time is of the Essence.* Time is of the essence of this Agreement and if the Buyer shall default in any payment when required, or fail to perform any other obligation required of the Buyer hereunder, and the Seller shall notify the Buyer by certified mail of such default and if such default shall not be cured within 10 days after receipt of such notice, this Agreement may, at the Seller's option, be terminated by written notice to the Buyer. In the event of such default, the parties hereto understand and agree that in view of the Seller's financial commitments with respect to the Project, the connection between sale, cancellation and default with respect to other apartments in the Project, and the nature of the real estate market in Hawaii, the injury to the Seller will be difficult and expensive to estimate. As a reasonable estimate of the Seller's damages resulting from such default, the parties agree that the sums paid by the Buyer hereunder shall belong to the Seller as liquidated damages. It is understood that the damages suffered by the Seller by virtue of a default later in time will likely be greater than such a default occurring at an earlier point in time. The Seller may, in addition to the aforesaid damages, pursue any other remedy, including specific performance, permitted by law or equity. All costs, including reasonable attorneys' fees, incurred by reason of default by the Buyer shall be borne by the Buyer.

(b) *Late Charge.* If the Buyer shall default in making any payment when due, a late charge of one percent per month (based on the amount of such payment), prorated on a daily basis, shall accrue from the due date until such payment, together with such late charge, is paid. At any time prior to the time that such payment and late charge is paid in full, the Seller may, at its option and in lieu of collecting such late charge, terminate this Agreement as provided in the preceding section H.1(a).

2. *Death or Dissolution of Buyer.* If the Buyer dies prior to closing, or in the case of a corporation or partnership, dissolves prior to closing, the Seller reserves the right to return the Buyer's payments, without interest and less Escrow cancellation fees and all costs incurred by the Seller, Escrow or any lending institution in processing this Agreement or the loan application, and this Agreement shall be deemed to have been cancelled and both the Seller and the Buyer (including the Buyer's estate and legal representatives) shall be released from all obligations and liability hereunder.

3. *Seller's Remedies for Buyer's Delay.* In addition to all other remedies the Seller has under this Agreement, in the event closing does not occur on the Closing Date established by the Seller pursuant to Section I.2 above by reason of the Buyer's failure to comply with any provision of this Agreement, the Buyer shall be responsible for and pay and/or reimburse the Seller for all charges incurred by the Seller, including that portion of the interest on the Seller's mortgage loan(s) allocable, on a prorata basis, to the Apartment, accruing from and after the scheduled Closing Date, through and including the actual date of closing. Because such damages cannot be calculated precisely, it is agreed that a reasonable estimate of the damages is \$200.00 per day, which amount will be paid by the Buyer to the Seller.

## **I. GENERAL TERMS**

1. *Assignment.* The Buyer may not assign this Agreement without the prior written consent of the Seller. The Seller may determine to withhold its consent in its sole discretion. Any assignment or attempted assignment by the Buyer without the prior written consent of the Seller shall constitute a default, and the Seller, at its option, may terminate this Agreement and retain all sums paid as liquidated damages as provided in Section H.1(a) above. Any assignor hereunder shall not be released from any liability.

2. Interest on Deposits. Any interest earned from the deposit in Escrow of the Buyer's payments toward the purchase price shall be the property of the Seller, as provided in the Escrow Agreement, and the Buyer hereby approves and authorizes Escrow to act pursuant thereto.

3. Notices. Notices to either party may be delivered personally or mailed, postage prepaid, addressed to such party at his 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 or mailed. If more than one person is listed as the Buyer, delivery or mailing may be made to any one of them. Delivery or mailing may also be made to any officer of a corporate entity, or any general partner of a general or limited partnership.

4. Severability. If any part of this Agreement shall be declared illegal, void or ineffective for any reason, the same shall be deemed null and void and the remaining provisions of this Agreement shall continue in full force and effect.

5. Governing Law. The laws of the State of Hawaii shall govern all matters with respect to this Agreement, including all matters related to the formation, construction and performance of this Agreement.

6. **MANDATORY ARBITRATION**. ANY AND ALL CLAIMS OR DISPUTES OF ANY KIND ARISING FROM OR RELATING TO THIS AGREEMENT AND/OR THE APARTMENT OR BUYER'S INTEREST IN ALL OF THE COMMON ELEMENTS AFTER THE CLOSING SHALL BE SUBMITTED TO FINAL AND BINDING ARBITRATION PURSUANT TO AND IN ACCORDANCE WITH THE PROVISIONS OF THE ARBITRATION AGREEMENT CONTAINED IN THE HOME BUILDER'S LIMITED WARRANTY, AND WHICH ARBITRATION AGREEMENT IS INCORPORATED BY REFERENCE HEREIN AS THOUGH FULLY SET FORTH, AND SHALL BE BINDING ON THE BUYER AND ITS SUCCESSORS AND ASSIGNS (INCLUDING SUCCESSOR OWNERS OF THE APARTMENT).

7. Captions. The captions contained in this Agreement are for convenience only and do not amplify or limit in any way the content of any particular provision.

8. Counterparts. This Agreement may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signature of all the parties. Each executed counterpart shall be deemed an original, but all of which together shall constitute one and the same Agreement.

9. Facsimile Signatures. Facsimile signatures on this Agreement and any addenda or other documents related to this Agreement shall be binding and effective for all purposes and treated in the same manner as physical signatures. Notwithstanding the foregoing, the Seller and the Buyer agree that they will promptly forward physically signed copies of this Agreement and such other documents to the Escrow Agent. However, this Agreement and any other documents containing facsimile signatures shall remain binding and effective even if the original documents are not received by the Escrow Agent. The parties understand that they are required to physically sign all conveyance documents and any financing documents for recordation purposes.

10. Definitions. The terms "Buyer" and "Seller" include the persons, firms, partnerships or corporations named and their respective heirs, personal representatives, successors and permitted assigns. The singular includes the plural and vice versa and the use of a pronoun of one gender includes all others as common sense shall require. If this Agreement is signed by more than one person as the Buyer, the obligations shall be joint and several. The term "closing" means that point at which recordation of the apartment deed in the Bureau of Conveyances of the State of Hawaii occurs.

11. Entire Agreement; Survival. This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, understandings and agreements, both written and oral, of the parties. No variations of this Agreement shall be valid or enforceable unless approved by the parties in writing and attached hereto as an

addendum. Except to the extent fulfilled at or prior to closing, all obligations of the parties shall continue in effect after the execution and recordation of the apartment deed.

12. Effective Date. This Agreement shall not be binding upon Seller unless and until it has been executed by both Buyer and Seller (not Seller's Agent), and a duly executed copy has been delivered to Buyer. The effective date of this Agreement shall be the date of its execution by Seller.

**By signing this Agreement, each Buyer agrees to all of the terms of Articles I, II, III and IV above.**

\_\_\_\_\_  
Buyer

Accepted:

SUNSTONE WAIKOA LLC,  
a Hawaii limited liability company

\_\_\_\_\_  
Buyer

By \_\_\_\_\_  
Its Manager

\_\_\_\_\_  
Buyer

Seller

\_\_\_\_\_  
Buyer

Date of signing and acceptance by Seller

Receipt of Buyer's deposit of \$ \_\_\_\_\_ (being  
Payment A) is hereby acknowledged:

\_\_\_\_\_

\_\_\_\_\_  
Sales Representative

\_\_\_\_\_  
Signature of Broker/Sales Representative

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

**AGENCY DISCLOSURE: SUNSTONE REALTY LLC IS THE SELLER'S REAL ESTATE BROKER FOR THIS TRANSACTION. THE BUYER ACKNOWLEDGES THAT SUNSTONE REALTY LLC AND ITS SALESPERSONS REPRESENT THE SELLER, AND NOT THE BUYER, AND THAT ORAL OR WRITTEN DISCLOSURE OF SUCH REPRESENTATION HAS BEEN PROVIDED TO THE BUYER.**