

Registration Number: S-1214  
Preliminary Order of Registration: December 22, 2022  
Final Order of Registration: July 14, 2023

**PUBLIC OFFERING STATEMENT**  
**PĀKELA 'IKE**

1. **NAME AND ADDRESS OF SUBDIVIDER:** TOWER KAUAI LAGOONS SUB 4, LLC, a Delaware limited liability company ("**Seller**"), whose post office address is 3770 Ala'oli Way, Lihue, Hawaii 96766.

2. **DESCRIPTION OF LAND:** Pākela 'Ike (the "**Subdivision**") is situated within approximately 17.39 acres of land located in Lihue, Kauai, in the State of Hawaii (the "**State**") (TMK: 4-3-5-004: 400 through 424). The Subdivision, for which Seller received final subdivision approval from the County of Kauai ("**County**") on April 11, 2023, consists of 24 residential lots ranging between 19,540 to 31,439 square feet in size and one roadway lot of approximately 77,350 square feet. A copy of the map ("**Map**") showing the Subdivision is attached as **Exhibit "A"** and is made a part hereof. A full-sized copy of the Map is available for inspection at the offices of Seller.

The Subdivision is located within, and is a part of, a master-planned community known as the "Hōkūala Resort" ("**Master Community**") created by that certain Declaration of Covenants, Conditions and Restrictions for Kauai Lagoons, recorded at the Bureau of Conveyances of the State of Hawaii ("**Bureau**") as Document No. 2008-040613, as amended ("**Master Declaration**"), under which Seller, along with Tower Kauai Lagoons Land, LLC, Tower Kauai Lagoons Hotel, LLC, Tower Kauai Lagoons 8, LLC, Tower Kauai Lagoons 9B, LLC, Tower Kauai Lagoons 9C, LLC, Tower Kauai Lagoons 9D, LLC, Tower Kauai Lagoons Sub 1, LLC, Tower Kauai Lagoons Sub 2, LLC, Tower Kauai Lagoons Sub 3, LLC, Tower Kauai Lagoons Sub 7, LLC, 2014 Kauai Lagoons Golf, LLC, Tower Kauai Lagoons Retail, LLC, and Tower Kauai Lagoons TS LLC, all of which are Delaware limited liability companies, and with the exception of Tower Kauai Lagoons TS LLC, are the Declarant under the Master Declaration ("**Master Declarant**").

In the event of any conflict between this Public Offering Statement and the Master Declaration in regard to the provisions of the Master Declaration or otherwise pertaining to the Master Community, the terms of the Master Declaration shall control.

3. **OWNERSHIP OF LAND:** Seller is presently the fee simple owner of the Subdivision, which is being offered for sale.

4. **NATURE OF INTEREST IN LAND TO BE CONVEYED/THE HŌKŪALA CLUB:** Lots in the Subdivision will be conveyed to purchasers in fee simple upon the closing of a lot purchase transaction. Lot purchasers will be given nonexclusive access easements over the private roadways within the Master Community, including within the Subdivision.

A. **Hōkūala Club Membership:** Upon acquiring a lot in the Subdivision, each purchaser shall sign a Hōkūala Club Membership Agreement ("**Club Agreement**") and become a member of The Hōkūala Club ("**Club**"), a non-proprietary, non-voting resort membership club within the Master Community that is owned and operated by an affiliate of Seller. Lot purchasers will have access to the Club amenities, which currently include a golf course, tennis courts, walking and biking trails, an organic farm, a lagoon system with kayaking and fishing, and three beach access points. Use of the Club amenities is subject to the Club's rules and regulations, the Club Agreement and the "Membership Plan" (as defined in the Club Agreement), all of which are subject to change without notice. Purchasers are responsible for paying a one-time "Membership Initiation Fee" (as defined in the Club Agreement) of approximately THIRTY-FIVE THOUSAND AND NO/100 DOLLARS (\$35,000.00), "Annual Dues" (as defined in the Club Agreement) of approximately ONE THOUSAND THREE HUNDRED NINETY-FOUR AND NO/100 DOLLARS (\$1,394.00) and any other fees required by the Club Agreement, all of which are subject to change from time to time without notice.

B. **Voting Rights:** The Subdivision is located within and part of the Master Community created by the Master Declaration. Pursuant to the Master Declaration, every owner of a lot in the Subdivision shall be deemed to have a membership in the Hōkūala Community Association ("**Master Association**"); however, there shall be only one membership per lot. Pursuant to Section 3.2 of the Master Declaration, the Master Association shall have two (2) classes of membership, Class "A" and Class "B." Each "District" (as defined in the Master Declaration), including the Subdivision, shall elect or appoint a Delegate (as defined below) who shall be responsible for casting all votes attributable to "Units" (as defined in the Master Declaration) owned by Class "A" "Members" (as defined in the Master Declaration) in the District, including owners of lots in the Subdivision, on all Master Association matters requiring a membership vote, except as otherwise specified in the Master Declaration or the bylaws of the Master Association.

Class "A" members shall be all owners in the Master Community with the exception of the Class "B" Member, if any. Class "A" Members shall be entitled to a vote weighted as set forth in Exhibit "C" of the Master Declaration, which provides that votes shall be weighted by the number of "Points" (as defined in Master Declaration) allocated to a Unit, including a lot in the Subdivision, as set forth in the Master Declaration. As of the Third Amendment to Declaration of Covenants, Conditions and Restrictions for Kauai Lagoons, dated August 8, 2019, and recorded at said Bureau as Document No. A-72410588 and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. T-10893265 ("**Third Amendment to Master Declaration**"), each lot in the Subdivision has been allocated two (2) Points out of seven hundred seventy-four (774) total Points allocated to owners in the Master Community.

The Master Declarant is the sole Class "B" Member. The Class "B" Member shall have three (3) votes for every one (1) vote that it would have if it were a Class "A" Member. The Class "B" membership ends when the Declarant's Control Period (as defined below) ends, unless Master Declarant earlier records an instrument terminating the Class "B" membership.

The owners of lots in the Subdivision shall elect or appoint a person responsible for casting all votes attributable to the lots in the Subdivision on all Master Association matters

requiring a membership vote, unless otherwise specified in the Master Declaration ("**Delegate**"). The Delegate may cast all such votes as the Delegate, in its sole discretion, deems appropriate. Until the Delegate is elected in accordance with Section 3.3.2(c) of the Master Declaration, not later than one (1) year after the conveyance of a lot in the Subdivision to a person other than the Subdivider, the Delegate may be appointed by the Seller and the Points allocated to each lot will be voted by the Seller's designated Delegate.

C. **Declarant's Control Period.** As defined in the Master Declaration, the "Declarant's Control Period" shall end on the first to occur of the following:

- (1) When Master Declarant no longer owns any Unit in the Master Community and has no further rights to annex property to the Master Community;
- (2) January 1, 2050; or
- (3) When Master Declarant records an instrument terminating the Declarant's Control Period.

Master Declarant may terminate Master Declarant's Class "B" membership and waive one or more but less than all of Master Declarant's rights as set forth in the Master Declaration, or the Master Association's articles of incorporation or bylaws, without terminating Declarant's Control Period.

During the Declarant's Control Period, the Master Declarant has additional rights not available to owners of lots in the Subdivision, including the authority to unilaterally amend the Master Declaration, unless otherwise specified therein, including the authority to amend Exhibit "C" to the Master Declaration from time to time, whether or not in connection with an annexation or withdrawal of land; however, the Master Declarant shall not change the "Minimum Points" (as defined in the Master Declaration) attributable to a lot in the Subdivision without the lot owner's consent. The percentage of the total votes and Assessments that a lot represents may change if the total number of Points increases or decreases either because of an amendment to Exhibit "C" to the Master Declaration or the development of Units in excess of the Minimum Points.

During the Declarant's Control Period, Class "A" members, including owners of lots in the Subdivision, will have little to no voting power, their votes being outnumbered by the Master Declarant, which has three (3) votes for every one (1) vote that it would have if it were a Class "A" Member, as discussed above. Upon termination of the Declarant's Control Period, Master Declarant shall become a Class "A" Member entitled to vote in accordance with the formula set forth in the Master Declaration.

As the foregoing consists of only a summary of certain provisions of the Master Declaration, purchasers should read the Master Declaration in its entirety for particulars.

5. **TYPE OF INSTRUMENT USED FOR CONVEYANCE:** Lot purchasers will receive a limited warranty deed that will be delivered and recorded at the Bureau when a lot purchase transaction closes escrow.

6. **ZONING REGULATIONS:** The Subdivision is situated within an "urban" district under the State of Hawaii Land Use Classification System. The Subdivision is also zoned R-2 under the County's Comprehensive Zoning Ordinance, which typically permits two dwelling units per acre of land. The County, however, has prohibited the development of accessory dwelling units on the lots within the Subdivision, and, under the Master Declaration, each lot is to be for single-family use. All owners must comply with the provisions of the Master Declaration, and the Habitat Conservation Plan applicable to the Subdivision, and all amendments thereto, all of which contain restrictions regarding the use of lots within the Subdivision, as well as all applicable laws of the County and the State of Hawaii (the "**State**") relating to land use and zoning applicable to the Subdivision ("**Zoning Laws**"). Seller encourages purchasers to review the Master Declaration, Habitat Conservation Plan, and the Zoning Laws, all as may be amended, in their entirety and/or to consult an attorney or State or County officials as to their applicability to a purchasers' use of lots in the Subdivision.

7. **USE FOR WHICH PROPERTY IS OFFERED:** The Subdivision has been designed and developed as a residential community. Accordingly, it is intended that Lots 1 through 24 within the Subdivision will be used for residential purposes to the extent permitted by the Master Declaration and applicable law. It is intended that Lot 25, the roadway lot, identified as Pohai'ula Way, will be used for vehicular access purposes to the extent permitted by the Master Declaration and applicable law.

Certain uses otherwise permitted under applicable zoning/project district restrictions and requirements may be prohibited on the lots in the Subdivision under the Master Declaration.

8. **ENCUMBRANCES, EASEMENTS, LIENS AND RESTRICTIONS:** The Subdivision is subject to certain existing restrictions, easements, reserved rights and other encumbrances. One or more of the currently existing encumbrances may be cancelled, and additional encumbrances may be created or granted by Seller. The easements are shown on the Map, which is also available for inspection at Seller's office. The existing easements and encumbrances are described below:

**A. COVENANTS, CONDITIONS AND RESTRICTIONS.**

(1) **Master Declaration.** The Subdivision is subject to the Master Declaration, which contains covenants, conditions and restrictions governing the Subdivision as well as other properties within the Master Community. A copy of the Master Declaration will be provided to each purchaser, and each purchaser should carefully review the Master Declaration as it contains numerous provisions that will substantially affect a purchaser's interest the Subdivision and a lot therein.

Certain provisions of the Master Declaration, such as those discussed below, require owners of lots within the Subdivision to secure permissions and approvals and/or to take certain actions before using their lot and obligate said owners upon taking title to a lot within the Subdivision to pay when due certain Assessments (as defined below). This discussion, however, will only highlight certain areas of the Master Declaration and should not be a substitute for a careful study of the entire Master Declaration.

Upon conveyance of title to a lot in the Subdivision to an owner, said owner will become a member of the Master Association and subject to the provisions set forth therein, including, without limitation, Assessment (as defined in the Master Declaration) obligations and the Design Guidelines (as defined in the Master Declaration) established thereunder.

(i) **Master Association.** The Master Association has the authority and obligation to do and perform each of the powers and duties set forth in the Master Declaration, for the benefit of the property owners within the Master Community, including lot owners in the Subdivision, and for the maintenance and improvement of the Master Community. Among other things, the Master Association is responsible for maintaining and keeping in good repair the "Area of Common Responsibility," as defined in the Master Declaration, and all improvements thereon, which Area of Common Responsibility may include, without limitation, those areas identified in Section 4.1.1 of the Master Declaration. Only members of the Master Association are entitled to vote on Master Association matters. The Master Association is governed by the Master Declaration and the Articles of Incorporation and Bylaws for the Master Association. As set forth in the Master Declaration, purchasers will be required to pay various Assessments and fees levied by the Master Association.

(ii) **Assessments.** Section 9 of the Master Declaration outlines the Assessments for which an owner will be obligated upon the recordation of the limited warranty deed conveying title to a lot in the Subdivision to said owner. Said Assessments may include General Assessments, District Assessments, Special Assessments, Limited Assessments, and Service Assessments (collectively, "**Assessments**"), all as such terms are defined in the Master Declaration. Payment of the Assessments shall be made by owners directly to the Master Association, in accordance with the Master Declaration. A purchaser should carefully review the Master Declaration regarding the Assessments and other charges to which an owner may be subject.

At least ninety (90) days before the beginning of each fiscal year, the Board of Directors of the Master Association ("**Master Board**") must prepare and approve a budget covering the estimated costs of operating the Master Association during the coming year. The budget must include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and must separately list expenses for general purposes and for District purposes, identifying the District(s) to which they apply. The Master Board will cause a copy of the budget and notice of the amount of the Assessments to be levied against each lot within the Subdivision, to be delivered to each owner at least thirty (30) days prior to the beginning of the Master Association's fiscal year. The Master Declaration does not specify the types of financial reports the Master Association is required to prepare.

For the 2023 calendar year, it is estimated that the General Assessment and District Assessment under the Master Declaration will be approximately FIVE THOUSAND SEVENTY-EIGHT AND NO/100 DOLLARS (\$5,078.00) and TWO THOUSAND EIGHTY-NINE AND NO/100 DOLLARS (\$2,089.00), respectively, per year for each lot.

All Assessments due under the Master Declaration shall be paid in such manner and on such dates as may be fixed by the Master Board and in accordance with the Master Declaration. The Assessments received by the Master Association shall be held by the Master Association for the use and benefit of its individual members and used for and applied to the specific purposes of the members as set forth in the Master Declaration. The Master Declaration does not specify where the Assessments collected by the Master Association must be deposited, or whether they must be deposited into federally insured or interest-bearing accounts.

(iii) **Design Guidelines.** Pursuant to Section 10 of the Master Declaration, any placing, erection or installation of any structure, including fences or walls, on any portion of a lot or the Subdivision, or any construction or modification (which includes staking, clearing, excavation, grading and other site work, exterior painting and other exterior changes and initial landscaping but not solely internal modifications ("**Construction**") performed by an owner, other than the Master Declarant or its affiliates, on a lot within the Subdivision shall be in strict conformance with the requirements and procedures set forth in the Master Declaration and the Design Guidelines, which may be amended pursuant to the Master Declaration, related to the design and Construction of improvements and landscaping on the individual lots and/or common areas of the Subdivision and Master Community. All plans and specifications for Construction by lot owners within the Subdivision shall first proceed through the application, review, and approval process of the Design Committee (as defined in the Master Declaration), which has jurisdiction over all Construction on any portion of the Master Community. Copies of the Design Guidelines will be available at the Seller's offices. Purchasers are encouraged to thoroughly review the Design Guidelines, which incorporate certain requirements and restrictions of the Habitat Conservation Plan applicable to the Subdivision, including, without limitation, acoustical design and bird safety requirements.

Pursuant to Section 10.2.5 of the Master Declaration, the Design Committee may assess a reasonable fee for its services. Applicants shall also be responsible for the payment of all costs of review by architects, engineers or other professionals, including all costs associated with any request for a waiver, at the request of the Design Committee. Applicants requesting approval or review shall pay all costs and expenses incurred by the Design Committee in connection with approvals and review required under the Master Declaration. The Design Committee may require such fees and charges, including an estimated amount for costs and expenses to be paid in full prior to the review of any application, with actual costs and expenses in excess of the estimate to be billed to and promptly paid by the applicant.

As part of the application and approval process and in connection with the Habitat Conservation Plan, mentioned above, pursuant to the Third Amendment to the Master Declaration, Section 11.8 of the Master Declaration requires the delivery of a construction mitigation plan to the Master Board prior to the commencement of any Construction performed by an owner. The plan must be certified by an approved wildlife biologist and contain, among other things, endangered bird safety considerations, including, but not limited to: (a) the daily hours required to monitor the Construction site based on the size of the project and anticipated endangered bird activity, (b) an Endangered Species Protocol Agreement substantially in the form attached to the Master Declaration, which must be executed

by the owner, the owner's general contractor, and all sub-contractors, and (c) the requirement for all persons performing Construction or consulting activities on the owner's property to participate in bird safety education training. The Master Board may: (a) set reasonable fees, which shall be paid by the owner to the Master Association, for review and approval of the mitigation plan, (b) establish reasonable fees that shall be paid by the owner to the Master Association for monitoring and training activities that must occur throughout the duration of Construction, and (c) impose fines for non-compliance or in the event that any of the following occurs: (i) any endangered species is harmed by Construction activities and/or by persons involved in such Construction activities, (ii) reckless driving by any person in route to or from the owner's Construction site, (iii) hazing of endangered bird species, or (iv) other reckless activities performed in the Master Community.

The Master Community may be subject to certain additional requirements and restrictions, which apply to a portion or portions of the Master Community but not to the Subdivision. For example, properties within the Special Management Area are subject to the requirements and restrictions of the applicable Special Management Area Use Permit. The Subdivision is not in the Special Management Area and, thus, is not subject to the requirements and restrictions of a Special Management Area Use Permit.

As the foregoing consists of only a summary of certain provisions of the Master Declaration, purchasers should read the Master Declaration in its entirety for particulars.

**B. EXISTING ENCUMBRANCES AFFECTING THE SUBDIVISION.** In addition to the covenants, conditions and restrictions set forth in the Master Declaration, the Subdivision is subject to the existing encumbrances described in **Exhibit "B"** attached hereto and incorporated by reference.

**C. OTHER.**

(1) Each lot may be subject to liens that may be granted in favor of the Master Association as described in the Master Declaration for failure to pay the Assessments.

(2) Seller may reserve unto itself, and its successors and assigns, including the Master Association, easements for access purposes over, under, through or upon the Subdivision and the lots (including without limitation, access to property adjoining the Subdivision), for access, electrical, gas, cable television, communications and other utility purposes, to construct, maintain, and/or repair the Subdivision improvements and other improvements intended to service all or certain portions of the Master Community, together with the right to designate easements for the aforesaid purposes, if necessary, and to grant to the Master Association, State of Hawaii, the County, Kauai Island Utility Cooperative, Hawaiian Telcom, and any other appropriate governmental agency, public utility or other person or entity, easements for any such purposes over, under, across, along and through the lot and/or the Subdivision under the usual terms and conditions required by the grantee of such easement rights; provided, however, that, except as necessary to enable Seller to complete the Subdivision improvements or except as to the easements required by the State of Hawaii or County, such easement rights must be exercised in such manner as to not unreasonably interfere with a lot owner's use of the lot, and in connection with the installation, maintenance, or repair of any

facilities pursuant to any of said easements, the land shall be promptly restored by and at the expense of the person owning and exercising such easement rights to substantially the same condition of the land immediately prior to the exercise thereof. Purchasers will consent to Seller's reservation and exercise of such rights and the designation and granting of such easements, all the conditions relating thereto and consequences thereof, and will consent to execute at the request of Seller, such documents and instruments and to do such other things as may be necessary or convenient to effect the same, and shall further agree to appoint Seller, and its assigns, as a purchaser's attorney-in-fact to effect the same.

9. **EXISTING TAXES, SPECIAL TAXES OR ASSESSMENTS:** All real property taxes are paid current, and Seller is not aware of any proposed special taxes or assessments that affect the Subdivision. Lot purchasers will be required to pay real property taxes or assessments by the County, which will be prorated at closing. The real property taxes vary, depending on the assessed value of the lot and any improvements placed on the lot by an owner. Annual taxes on an unimproved lot are based on the assessed value of the lot, which is typically set at the sales price of the lot. For the 2022-2023 tax year, real property taxes are assessed by the County at the rate of SIX AND 5/100 DOLLARS (\$6.05) for residential property, per ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) assessed value of each lot and all structures located on the lot. Any change in the use of a lot will likely affect the tax rate thereof. Additionally, the real property tax rate is subject to change at any time by the County. It is incumbent on purchasers to confirm with the County tax assessment office, from time to time, the applicable tax rate and possible exemptions that may be available to them. The tax map key numbers for the individual lots are listed on **Exhibit "C."**

In addition, each lot owner will be required to pay assessments and fees levied by the Master Association and/or pursuant to the Master Declaration as further described in Paragraph 8 above.

10. **ROADS:** The following summarizes the roads that provide access to and within the Subdivision:

A. **ACCESS TO THE SUBDIVISION.** Access to the Subdivision is currently provided from Pohai'ula Way, a two-lane private way that connects to Kahilipulu Way, a private way located south of the Subdivision, which generally runs in the east-west direction and connects to Hoolaulea Way.

B. **ACCESS WITHIN THE SUBDIVISION.** Access within the Subdivision is provided from Pohai'ula Place, a cul-de-sac located adjacent to Lots 5, 6, 7, and 8, as identified in Exhibit "A" attached hereto.

In accordance with the Master Declaration, the Master Association is responsible for the maintenance of private roadways within the Master Community. A portion of the Assessments paid by lot owners to the Master Association will be for the permanent maintenance costs of these private roads. Lot purchasers will be given nonexclusive access easements over the private roadways within the Master Community, including within the Subdivision.

**11. WATER SUPPLY:**

Potable water will be supplied to the lots within the Subdivision by an extension of water lines to the water system and transmission lines of the central water system owned, operated and maintained by the Master Association, which private central water system is connected to the County's water systems. Seller has constructed all central water system improvements within the Subdivision and has extended the central water system and facilities within the roadway adjacent to each lot and into each lot at no cost to purchasers. All facilities reserve charges have already been paid to the County. There will be no charge to lot owners for construction costs, availability fees, Special Assessments or deposits for the central water system.

Each lot owner must pay the County's Department of Water the costs to apply for a water meter and extend and connect water lines from the points of connection on the owner's lot and throughout the dwelling constructed thereon. The costs of connecting to the central water system and water service will vary depending on the dwelling constructed by the owner.

**12. ELEVATION OF THE LAND:** The Subdivision is generally characterized by topography that slopes downward from its perimeter toward Pohai'ula Way, the central roadway of the Subdivision. On-site ground surface elevations range from approximately 110 to 124 feet above mean sea level.

**13. SOIL CONDITIONS – DRAINAGE:**

The Island of Kauai is composed of a single basalt shield volcano built by the extrusion of lava from the Waimea Canyon Volcanic Series during the late Pliocene Epoch (more than 2.5 million years ago). Following the cessation of this main shield building phase, renewed volcanic activity occurred with the extrusion of basaltic lava of the post-erosional Koloa Volcanic Series and the concurrent deposition of the alluvial sediments of the Palikea Formation.

The basaltic rock built by the extrusion of lavas of the Koloa Volcanic Series generally are characterized by flows of jointed dense vesicular basalt with interbedded thin clinker layers. The weathering process has formed a mantle of residual soils, which grade to saprolite with increased depth. In general, a saprolite is composed of mainly silty material and is typical of the tropical weathering of volcanic rocks. The saprolite grades to less weathered basaltic rock formation with increased depth.

In general, the subsurface conditions of the Subdivision consist of very stiff to hard clayey fills, residual soils, and saprolite. Dense basalt formation may be anticipated below the saprolite materials at greater depths.

The Subdivision lots are being sold to purchasers in an "as is" condition, and Seller is making no express or implied warranty with respect to the condition of the soil and site conditions of any of the lots, including, without limitation, any warranty regarding soil compaction, movement, or expansion, drainage, and suitability of the Subdivision for the construction of any type of improvements or fitness of the Subdivision for any particular use. Accordingly, Seller shall have no liability to any purchaser for any liability, loss, or expense

incurred by a purchaser occasioned by defects in the condition of the soil or the soil, subsoil, or site conditions or characteristics of any lot within the Subdivision that may affect the construction of any particular type of improvements on said lot.

After closing the purchase of a lot, all grading, excavation, boulder removal, fill, drainage, and site work required for construction of improvements on the lot will be the purchaser's responsibility. Seller makes no representations regarding the need for or the extent of any required finish grading, fill, and/or drainage improvements in connection with construction on a lot. All lot improvements must be constructed to conform to County building requirements as they relate to the lot's soil and site conditions and the Master Community drainage plan. Purchasers should note that the longer a lot is left unimproved, the more likely it will suffer from wind and rain erosion. Neither Seller nor the Master Association will be responsible for any post-closing remedial work to restore a lot that has been affected by erosion.

It is incumbent on lot purchasers to make such investigations, including test borings or pits and comprehensive soils reports, as purchasers deem necessary or appropriate, to determine the suitability of the surface and subsurface materials of a lot for a purchasers' intended purpose. Additionally, lot purchasers are advised to retain a structural engineer prior to commencement of construction on a lot.

#### **14. SEWAGE DISPOSAL FACILITIES:**

An underground sewage collection system serving all of the lots within the Subdivision has been installed by Seller and connected to the Lihue Wastewater Treatment Plant owned, operated, and maintained by the County. The sewer collection system has been designed to provide sufficient capacity to service the connection of the lots within the Subdivision.

The sewer collection system to service the dwellings on the lots within the Subdivision is generally installed within the roadway adjacent to each such lot with lateral lines extending to each such lot. The sewer collection system will be owned, operated, and maintained by the Master Association.

Purchasers will not be obligated to pay any construction costs or Special Assessments in connection with construction of the sewer collection system other than utility deposits, connection charges, service fees and sewage usage fees. However, each purchaser of a lot within the Subdivision will be responsible for the cost of installing the sewer lines from the individual residences to the sewer line connections of the sewage collection system provided in the roadway adjacent to such purchaser's respective lot.

Garden Isle Disposal, Inc. will provide for the pickup, hauling and dumping of solid waste or household rubbish from the Subdivision.

**15. EXPOSURES TO NATURAL HAZARDS/NUISANCES:** To Seller's knowledge, the area of the Subdivision has not been formally identified by any federal, state or local agency as an area subject to the frequent occurrence of natural hazards, aside from occasional storms and strong winds.

A. **AIR QUALITY.** As owners construct improvements on the lots in the Subdivision, fugitive dust from such activities could impact air quality in the immediate area. State air pollution control regulations require that there be no visible fugitive dust emissions at the property line. Accordingly, an effective dust control plan should be implemented in an effort to ensure compliance with State regulations. This plan may include watering active work areas, keeping adjacent paved roads clean, covering open bodied trucks, and the use of wind screens.

Pesticides used to maintain the landscaped areas, if not properly applied, could also impact air quality downwind. Measures that might be used that would provide an added level of protection from pesticides include using shrouded spray equipment, maintaining a buffered distance between the target spray areas and populated locations.

B. **FLOODS.** Established by the National Flood Insurance Program of the Department of Housing and Urban Development, flood elevations and boundaries are designated to protect the life and property of the public and to control the development of flood hazard areas. The Subdivision is within "Zone X," which is an area of minimal flood hazard. Purchasers should make their own evaluation as to whether flood insurance should be obtained. Seller does not warrant that flooding will not occur in the Subdivision or the lots therein.

C. **NUISANCES.** There will be ongoing development, construction and sales activities at the Subdivision and on properties in the vicinity of the Subdivision, and such activities may continue after purchasers have occupied their lots. As such, some or all of the lots may be periodically affected by various hazards and noise, dust, smoke, soot, ash, odor, other adverse environmental conditions of any other kind or other nuisances and annoyances to purchasers (including but not limited to those attributable to wind drift, other weather factors, and rodents) created by historical, existing, and prospective surrounding agricultural, golf course and other non-residential uses and activities that include but are not limited to: a) golf course construction and maintenance, pest management (use of pesticides), weed and fungus control (use of herbicides and pesticides), errant golf balls, operations and events; b) construction, development, grading, improvement, sales and maintenance of adjacent and surrounding properties, including residential and non-residential property and roadways; and c) irrigation of any and all surrounding lands, the common areas and golf course(s) with reclaimed water, treated effluent, or other sources of non-potable water.

**16. DATE OF COMPLETION AND RESPONSIBILITY FOR CONSTRUCTION AND MAINTENANCE OF EXISTING AND PROPOSED IMPROVEMENTS:** The existing improvements include a roadway, underground electrical, water, sewer, telephone, communications, and cable television lines, drainage improvements, fire hydrants, street signs, and landscaping. There are no proposed improvements. All water, sewer, electrical, telephone and cable television lines and conduits have been installed by Seller generally within the roadway rights-of-way adjacent to each lot at Seller's expense. Points of connection to the main lines for electricity, water, telephone, cable television, and sewer have been installed on each lot at no cost to purchasers. Upon dedication or transfer of the infrastructure improvements, Kauai Island Utility Cooperative will be generally responsible for maintaining the electrical lines, Hawaiian Telcom will be generally responsible for maintaining the telephone lines, and Spectrum will be generally responsible for maintaining the cable television lines. The roads, underground sewer collection

system, drainage system, and water lines will be maintained by the Master Association. The cost of extending and connecting any electrical, telephone, cable television, sewer and water lines within each lot and dwelling, however, will be the responsibility of each lot owner. Aesthetic entry and landscape features and lighting, if any, along the streets and other areas of the Subdivision will be maintained by Seller, and then by the Master Association upon transfer of the common areas of the Subdivision to the Master Association.

**17. ELECTRICITY, TELEPHONE, CABLE TELEVISION, GAS:** The lots within the Subdivision will be serviced by Kauai Island Utility Cooperative transformers, each having an electric demand load that Seller anticipates will be capable of servicing residences with normal electrical requirements.

Underground electric, telephone and cable television main lines have been installed generally within the roadway adjacent to each lot. Points of connection to the main lines for electricity, telephone, and cable television have been installed on each lot at no cost to purchasers. In order for Kauai Island Utility Cooperative to connect electrical service to a dwelling, it will need to install a meter and wiring from the point of connection to the dwelling. The costs for such installation and connection vary. Each lot owner will be responsible for the costs of connecting and extending the electrical, telephone and cable television lines and service from the point of connection at such owner's lot to and throughout the dwelling constructed thereon. The costs for connection and extension of electrical, telephone and cable television lines will vary depending on the dwelling constructed by each owner. Owners may be charged account set-up fees in addition to service fees, which fees may be subject to change and subject to increase over time.

A centrally distributed gas service system will not be installed in the Subdivision. The primary source of energy in the Subdivision will be electricity. Individual propane gas facilities and services can be obtained from a private gas company. Lot owners may contract directly with a gas company to install liquid propane tanks within their respective lots; provided, however, that all gas systems must be installed in accordance with the Master Declaration.

**18. TYPE OF MAIL SERVICE THAT U.S. POSTAL SERVICE HAS AGREED TO PROVIDE TO THIS SUBDIVISION:** The U.S. Postal Service will provide mail service directly to mailboxes located within a group mailbox structure to be located at the entrance to the Subdivision and maintained by the Master Association.

**19. FIRE AND POLICE PROTECTION:** Fire protection is provided by the County. The nearest fire station (Lihue Fire Station) is located less than 2 miles from the Subdivision. Fire hydrants are located within the Subdivision.

Police protection is provided by the County. The nearest police station (Kauai Police Department, Lihue) is located less than 2 miles from the Subdivision.

**20. PUBLIC TRANSPORTATION:** The Subdivision is located approximately 2 miles from Lihue Airport. Public bus service is available along Rice Street, which connects to Hoolaulea Way, the main roadway leading into the Master Community, and which connects to Kahilipulu Way, which connects to Pohai'ula Way, which provides access within the

Subdivision. Heading South, Rice Street turns into Waapa Road, with a bus stop near Nawiliwili Park, approximately 1.2 miles from the Subdivision.

21. **SCHOOLS:** Wilcox Elementary School, a public elementary school, is located at 4319 Hardy Street, Lihue, Hawaii, which is approximately 2.2 miles from the Subdivision. Kapaa Middle School, a public middle school, is located at 4867 Olohena Road, Kapaa, Hawaii, which is approximately 10 miles from the Subdivision. Kauai High School, a public high school, is located at 3577 Lala Road, Lihue, Hawaii, which is approximately 1.5 miles from the Subdivision.

22. **SHOPPING FACILITIES:** The nearest shopping facilities are situated at Harbor Mall and Anchor Cove Shopping Center, which are, respectively, approximately 0.8 miles and 1 mile from the Subdivision. For groceries and household items, however, Costco Wholesale, Times Supermarket, and Safeway are all located less than 4 miles from the Subdivision. Walmart is also located approximately 3 miles from the Subdivision.

23. **HOSPITAL/MEDICAL FACILITIES:** The nearest medical facility is Wilcox Medical Center located approximately 3 miles from the Subdivision. There are also several clinics, and medical and dental offices, which provide local health care services, within 3 to 4 miles of the Subdivision.

24. **TERMS AND PROVISIONS OF SALE:** Seller intends to sell the lots in fee simple without a dwelling. Subject to the provisions of the purchase and sale agreement, the full purchase price will be required to be paid in cash or partially with purchase money financing.

Seller will enter into purchase and sale agreements for the sale of lots within the Subdivision. The purchase and sale agreements will be binding on Seller and each purchaser in accordance with its terms, subject to any rescission rights a purchaser may have by law or under the terms of the purchase and sale agreement. A purchaser's rescission rights include the right to cancel the purchaser's purchase and sale agreement within seven (7) days after the purchaser signs the purchase and sale agreement. Additionally, a purchaser who enters into a binding purchase and sale agreement prior to the issuance of a final order of registration has the right to cancel the purchaser's purchase and sale agreement, pursuant to Sections 484-8.7 and 484-8.6(b), or 484-8.6(c) of the Hawaii Revised Statutes, as amended ("**HRS**"), as applicable.

Upon cancellation of a purchase and sale agreement by a purchaser, a cancellation fee commensurate with the services rendered by Escrow Agent (as defined in Section 26 below) prior to such cancellation, up to a maximum of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00), plus all costs incurred by Escrow Agent, shall be charged to said purchaser; provided, however, that if a purchaser cancels the purchaser's purchase and sale agreement within seven (7) days after signing the same, or pursuant to Section 484-8.6(b) or 484-8.6(c) of the HRS, the Seller shall pay such fee and costs.

The purchase and sale agreement sets forth the respective rights and obligations of each party, and, therefore, the purchaser should carefully read each provision of the purchase and sale agreement. The purchaser should feel free to consult an attorney or any other person(s) of the purchaser's choosing to review the purchase and sale agreement and to advise the purchaser.

The purchase and sale agreement will also require the purchaser to make one or more cash down payments prior to closing, and to pay the balance of the purchase price at closing.

The following is a brief summary of some of the provisions of the purchase and sale agreement:

(a) The total purchase price, method of payment and additional sums that must be paid in connection with the purchase of a lot.

(b) That the purchaser's money will be held in escrow, under the terms of the Subdivision Escrow Agreement (defined in Section 26 below).

(c) Requirements relating to the purchaser's financing of the purchase of a lot.

(d) The purchaser shall be responsible for all closing costs, including, but not limited to, the following: (i) all recording fees, including the fee for recording the limited warranty deed; (ii) all charges in connection with any mortgage executed by the purchaser, including, but not limited to, recording fees for the mortgage, special mortgage recording fees, title update to the recording of such mortgage, legal fees, appraisal fees, discount points, credit report fees, survey fees and the cost of any mortgagee's and owner's title insurance, if applicable; (iii) escrow fees; (iv) conveyance taxes; (v) acknowledgment fees; (vi) costs for drafting of the limited warranty deed; (vii) all attorneys' fees incurred by the purchaser, and (viii) the annual fee required under Club Agreement for the remainder of the calendar year as of the date of closing. Except as may otherwise be provided in the purchase and sale agreement, real property taxes and Assessments shall be prorated between the purchaser and Seller as of the date of closing. Any other closing costs shall be apportioned in a manner customary for real estate transactions of this nature in Lihue, Hawaii.

(e) Lots will be sold for cash or cash plus mortgage loan proceeds. All of a purchaser's deposits and down payment will be due before the scheduled closing date. Except as may be otherwise expressly provided in the purchase and sale agreement, all interest earned on all deposits made by a purchaser shall belong to and be credited to the account of the purchaser, except as otherwise provided in Section IV.H.4(a) and IV.H.6 of the purchase and sale agreement.

(f) Seller is in compliance with Title VIII of the Civil Rights Act of 1968 and all applicable laws concerning discrimination in land sales. Seller will not discriminate against prospective purchasers because of race, color, religion, gender, familial status, national origin or any physical or mental handicap.

(g) Seller and/or Seller's affiliates may construct, install and/or develop, or cause the construction, installation and/or development of a solar farm in the vicinity of or adjacent to the Subdivision, with associated pipes, wires, cables and other appurtenances running over, under, across, along and through the Subdivision, intended to service the Master Community, or portions thereof, and enter into a power purchase agreement, or other similar agreement, with a solar company therefor. In connection with the construction, installation,

development, maintenance, and repair of said solar farm, Seller may obtain and exercise easement rights for easements over, under, across, along, through and upon the lots and/or the Subdivision. Purchasers acknowledge and recognize that as they may be purchasing a lot prior to the completion of said solar farm, there may be certain inconveniences and nuisances arising from the exercise of said easement rights until certain construction of the solar farm is completed, and purchasers waive all claims with respect thereto; provided, however, that any such inconvenience or nuisance shall not unreasonably interfere with a purchaser's ability to build upon or otherwise utilize the purchaser's lot.

(h) Master Declarant, Seller and/or their affiliates are developing, or intend to develop, other portions of the Master Community, including areas adjacent to or in the vicinity of the Subdivision, and shall have an easement over, under, through and upon the Subdivision and the lots to construct improvements for any additional subdivisions, condominium projects and/or phases of the Master Community, and may do such things as may be reasonably required in connection with the construction of such improvements, including, but not limited to grading, excavation, depositing fill material and installing drainage systems, sewer, water, electrical, gas, telephone and/or television cable lines; provided, however, that such work does not unreasonably interfere with the use and enjoyment of the lots by the owners thereof.

(i) Purchasers agree to maintain their lots in a neat and orderly condition before, during and after any Construction on such lots, to take all reasonable dust control measures to alleviate the generation of dust from such lots, and not to allow trash and debris to accumulate anywhere on the lots; it being understood, however, that prior to the commencement of Construction on a lot by the lot's purchaser, the lot shall be maintained by the Master Association at the sole cost and expense of the purchaser. All maintenance shall be performed in a manner consistent with the standards set forth in the Master Declaration and all other standards prescribed by the Master Association and/or the Design Committee.

Rights under the purchase and sale agreement, although binding on purchasers, may not be enforced against purchasers so as to require purchasers to close their transactions until a final order of registration is entered by the Director of the Department of Commerce and Consumer Affairs, and the requirements of Sections 484-8.7 and 484-8.6(b) or (c) of the HRS, if applicable, have been met. Each purchaser should read the purchase and sale agreement for other provisions regarding the rights and obligations of the purchaser and Seller in connection with the purchase of a lot.

25. **EXISTING OR PROPOSED ASSOCIATION OF LOT OWNERS:** No separate owners' association will be established in connection with the Subdivision at this time.

26. **ESCROW OR TRUST AGREEMENT:** Seller has entered into that certain Amended and Restated Escrow Agreement for Sale of Residential Lots, dated January 10, 2023, as may be amended ("**Subdivision Escrow Agreement**"), with Title Guaranty Escrow Services, Inc. ("**Escrow Agent**"), 235 Queen Street, Honolulu, Hawaii 96813, (808) 521-0211, covering the deposit, receipt, collection and disbursement of all funds to be paid by purchasers. A copy of the Subdivision Escrow Agreement has been or will be provided to purchasers. All payments to be made under the purchase and sale agreements must be paid by purchasers in the form of a

cashier's or certified check or by wire transfer to Escrow Agent pursuant to the Subdivision Escrow Agreement. No cash shall be accepted by Seller or its agents. Purchasers' funds paid into escrow may be disbursed by the Escrow Agent only as provided in the Subdivision Escrow Agreement and only in accordance with the provisions of Chapter 484, HRS, and the rules and regulations adopted thereunder.

27. **ROAD MAINTENANCE FUND:** Any private roadway included within the Subdivision will be part of the Area of Common Responsibility, and the cost of maintaining such private roadway will be paid by the Master Association out of the Assessments collected from their membership in accordance with the Master Declaration.

28. **REPRESENTATIVE OR REAL ESTATE AGENT IN HAWAII:** Seller's broker for the sale of the Subdivision is Timbers Hawaii Real Estate LLC, whose principal place of business and post office address is at 3770 Ala'oli Way, Lihue, Hawaii 96766, and whose telephone number is (808) 320-7384. The principal broker, or the person who is responsible for the brokerage affairs of the broker, is Debra R. Edgerton. The broker may engage other brokers to aid in the sale of the lots in the Subdivision.

29. **NAME AND ADDRESS OF AGENCY TO RECEIVE SERVICE:** As required by Chapter 484 of the HRS, Seller has appointed the Director of the Department of Commerce and Consumer Affairs of the State of Hawaii as its agent to receive service of process in the State of Hawaii.

THIS SUBDIVISION HAS BEEN REGISTERED WITH THE DIRECTOR OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, STATE OF HAWAII, ON JULY 14, 2023. REGISTRATION DOES NOT INDICATE APPROVAL OR DISAPPROVAL OF THE SUBDIVISION.


THIS PUBLIC OFFERING STATEMENT MUST BE GIVEN TO EACH PURCHASER AT THE TIME OF SALE AND THE RECEIPT THEREOF MUST BE TAKEN. THE PURCHASER MUST ALSO BE GIVEN AMPLE OPPORTUNITY TO READ THIS STATEMENT. THE SALE OF SUBDIVISIONS IN HAWAII IS GOVERNED BY CHAPTER 484, HAWAII REVISED STATUTES.

(The remainder of this page is intentionally left blank.)

**EACH PURCHASER HAS A SEVEN-DAY PERIOD, AFTER SIGNING A CONTRACT TO PURCHASE SUBDIVIDED LANDS FROM THE SUBDIVIDER TO RESCIND THE CONTRACT AT NO PENALTY TO THE PURCHASER.**

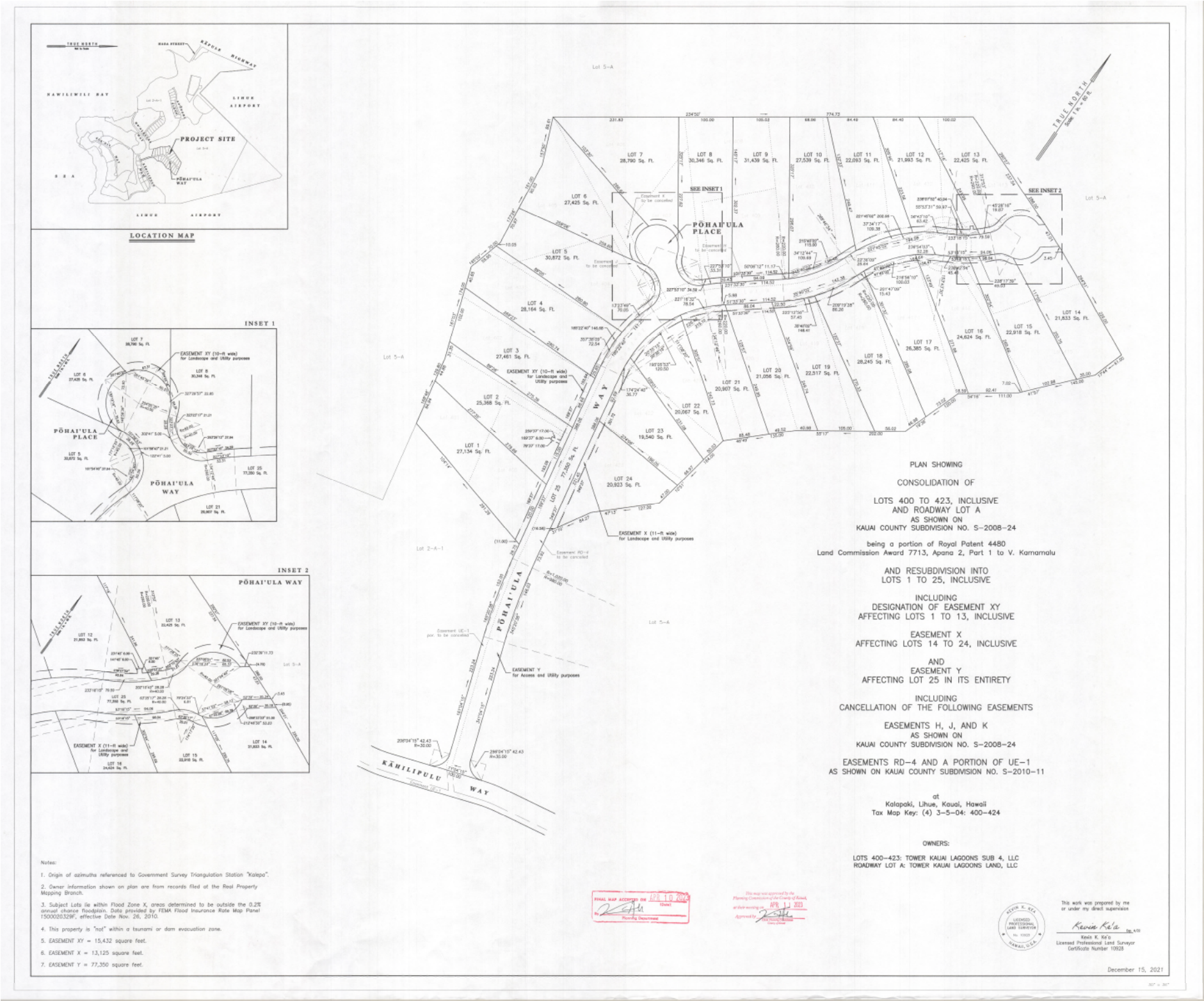
TOWER KAUAI LAGOONS SUB 4, LLC,  
a Delaware limited liability company

By: Tower Kauai Lagoons, LLC,  
a Delaware limited liability company  
Its: Member

By:   
Name: MARK SEAGER  
Title: Authorized Signatory

By:   
Name: JARED LAZARUS  
Title: Authorized Signatory

EXHIBIT "A"  
SUBDIVISION MAP



## **EXHIBIT "B"**

### **EXISTING ENCUMBRANCES**

- (1) Real property taxes due and owing.
- (2) Mineral and water rights of any nature.
- (3) The terms and provisions contained in DEED dated June 29, 1977, recorded in Liber 12300 at Page 260.
- (4) CERTIFICATE OF CONDITIONS dated May 16, 1984, recorded in Liber 17931 at Page 249, by AMFAC PROPERTY DEVELOPMENT CORPORATION, a division of AMFAC, INC., a Hawaii corporation.
- (5) RIGHT OF ENTRY in favor of CITIZENS UTILITIES COMPANY, whose interest is now held by KAUAI ISLAND UTILITY CO-OP, and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED (now known as HAWAIIAN TELCOM, INC.), dated July 24, 1986, recorded in Liber 19887 at Page 53.
- (6) The terms and provisions contained in DEED dated March 25, 1987, recorded in Liber 20496 at Page 304, as corrected in CORRECTION DEED (The Kauai Lagoons - Lots 2, 5, 6, 7, 8, 10 and 11) dated as of January 15, 1988, recorded in Liber 21584 at Page 334.
- (7) RIGHT OF ENTRY dated September 24, 1987, recorded in Liber 21309 at Page 338, in favor of CITIZENS UTILITIES COMPANY, whose interest is now held by KAUAI ISLAND UTILITY CO-OP, and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED (now known as HAWAIIAN TELCOM, INC.).
- (8) GRANT in favor of LIHUE PLANTATION COMPANY, LIMITED, a Hawaii corporation, dated January 15, 1988, filed as Land Court Document No. 1527016, recorded in Liber 21584 at Page 379, granting a nonexclusive right and easement for drainage purposes (over and across former Lot 5 of File Plan No 1905).
- (9) GRANT in favor of HEMMETER-VMS KAUAI COMPANY, a Hawaii limited partnership, dated January 15, 1988, recorded in Liber 21584 at Page 403; granting a nonexclusive right and easement for drainage purposes (over and across former Lot 4 of File Plan 1905).
- (10) The terms and provisions contained in FILE PLAN 1905 SUBDIVISION AGREEMENT dated January 15, 1988, recorded in Liber 22624 at Page 432, by and among the COUNTY OF KAUAI, HEMMETER-VMS KAUAI COMPANY I and the LIHUE PLANTATION COMPANY, LIMITED.

## **EXHIBIT "B"**

(Page 1 of 7)

- (11) The terms and provisions contained in AGREEMENT RE STP EFFLUENT dated January 15, 1988, recorded in Liber 22625 at Page 761, by and among the County of Kauai, Hemmeter-VMS Kauai Company I and Hemmeter-VMS Kauai Company II.

Amended by unrecorded AGREEMENT RE: STP EFFLUENT (CONTRACT NO. 6582) dated August 14, 2001, by and between KAUAI LAGOONS RESORT COMPANY, LTD., a Hawaii corporation, and the COUNTY OF KAUAI, a political subdivision of the State of Hawaii

- (12) ROADWAY AND UTILITY EASEMENT AGREEMENT dated January 30, 1991, by and among HEMMETER-VMS KAUAI COMPANY I, a Hawaii limited partnership, HEMMETER-VMS KAUAI COMPANY II, a Hawaii limited partnership, KAUAI LAGOONS RESORT COMPANY, LTD., a Hawaii corporation, and KAUAI LAGOONS HOTEL COMPANY, LTD., a Hawaii corporation, filed as Land Court Document No. 1797886, recorded as Document No. 91-012273.

ASSIGNMENT AND ASSUMPTION OF GOLF COURSE PROPERTY USE AGREEMENTS dated May 21, 1993, filed as Land Court Document No. 2037177, recorded as Document No. 93-100641.

ASSIGNMENT AND ASSUMPTION OF GOLF AND TENNIS PLAY AGREEMENT AND OTHER AGREEMENTS dated July 1, 1994, filed as Land Court Document No. 2160571, recorded as Document No. 94-111079.

FIRST AMENDMENT TO ROADWAY AND UTILITY EASEMENT AGREEMENT dated August 3, 1994, recorded as Document No. 94-129352. Said Amendment was also filed as Land Court Document No. 2178041.

SECOND AMENDMENT TO ROADWAY AND UTILITY EASEMENT AGREEMENT dated October 13, 2011, filed as Land Court Document No. T-9115235, recorded as Document No. A-54630719

- (13) The terms and provisions contained in DEED dated January 30, 1991, recorded as Document No. 91-012227.
- (14) The terms and provisions contained in DEED dated January 30, 1991, recorded as Document No. 91-012228.
- (15) GRANT in favor of the UNITED STATES OF AMERICA, represented by the Federal Aviation Administration, dated August 16, 1991, recorded as Document No. 91-120459; granting a restricted airspace area having a radius of 1,200 feet from the VORTAC site, which includes the right to restrict construction of certain above ground structures described therein.
- (16) The terms and provisions contained in CERTIFICATE AND AUTHORIZATION dated November 6, 1991, recorded as Document No. 92-081744, made by and among WM. HYDE RICE, LIMITED, a Hawaii corporation, KAUAI LAGOONS RESORT

COMPANY, LTD., a Hawaii corporation, KAUAI LAGOONS BEACH HOTEL COMPANY, LTD., a Hawaii corporation, HEMMETER-VMS KAUAI COMPANY I, a Hawaii limited partnership, HEMMETER-VMS KAUAI COMPANY II, a Hawaii limited partnership, and HEMMETER-VMS KAUAI COMPANY III, a Hawaii general partnership.

- (17) The terms and provisions contained in unrecorded AGREEMENT dated June 1, 1992, of which a MEMORANDUM is filed as Land Court Document No. 1937365, recorded as Document No. 92-123466, by and between KAUAI LAGOONS RESORT COMPANY, LTD., a Hawaii corporation, and ANDREW LELAND NICKLES.
- (18) The terms and provisions contained in unrecorded MARRIOTT KAUAI HOTEL USE AGREEMENT dated August 3, 1994, of which a SHORT FORM HOTEL USE AGREEMENT is dated August 3, 1994, filed as Land Court Document No. 2169456, and recorded as Document No. 94-129350, by and between KAUAI LAGOONS RESORT COMPANY, LTD., a Hawaii corporation, and MARRIOTT KAUAI, INC., a Delaware corporation, and MARRIOTT KAUAI OWNERSHIP RESORTS, INC., a Delaware corporation, for a term commencing on the "Re-Opening Date" and terminating on December 31, 2015.

ASSIGNMENT AND ASSUMPTION OF MARRIOTT KAUAI HOTEL USE AGREEMENT dated as of June 15, 2001, by and between MARRIOTT KAUAI, INC., a Delaware corporation ("Assignor"), and HPTMI HAWAII, INC., a Delaware corporation ("Assignee"), filed as Land Court Document No. 2716830, recorded as Document No. 2001-097931.

- (19) The terms and provisions contained in unrecorded KAUAI LAGOONS RESORT GOLF AND TENNIS PLAY AGREEMENT dated August 3, 1994, by and between KAUAI LAGOONS RESORT COMPANY, LTD., a Hawaii corporation ("Resort Company"), and MARRIOTT KAUAI, INC., a Delaware corporation, ("Hotel Company"), of which a SHORT FORM GOLF AND TENNIS PLAY AGREEMENT is dated August 3, 1994, filed as Land Court Document No. 2169457, and recorded as Document No. 94-129351, on and over the premises described herein, for a term commencing on the date on which Hotel Company acquires title to Hotel Property, and terminating on March 30, 2060.

ASSIGNMENT AND ASSUMPTION OF KAUAI LAGOONS GOLF AND TENNIS PLAY AGREEMENT dated as of June 15, 2001, filed as Land Court Document No. 2716832, recorded as Document No. 2001-097935, by MARRIOTT KAUAI, INC., a Delaware corporation, as "Assignor", and HPTMI HAWAII, INC., a Delaware corporation, as "Assignee".

MEMORANDUM OF LEASE AGREEMENT dated effective as of June 15, 2001, by and between HPTMI HAWAII INC., a Delaware corporation ("Landlord"), and HPT TRS MI-135, INC., a Delaware corporation ("Tenant"), filed as Land Court Document No. 2716833, recorded as Document No. 2001-097936.

FIRST AMENDMENT TO SHORT FORM GOLF AND TENNIS PLAY AGREEMENT dated April 18, 2008, filed as Land Court Document No. 3736831 and recorded as Document No. 2008-061422.

MEMORANDUM OF LEASE AGREEMENT OF MARRIOTT'S KAUAI RESORT AND BEACH CLUB, OWNER AND DEVELOPER RIGHTS UNDER DECLARATION OF CONDOMINIUM PROPERTY REGIME, AND PARKING SUBLEASE dated as of January 1, 2008, filed as Land Court Document No. 3736832, recorded as Document No. 2008-061423, by and between HPTMI HAWAII, INC., a Delaware corporation, and ESSEX HOUSE CONDOMINIUM CORPORATION, a Delaware corporation.

Said Agreement is subject to any matters arising from or affecting the same.

- (20) GRANT OF AVIGATION AND NOISE EASEMENT in favor of the STATE OF HAWAII, Department of Transportation, Airports Division, dated March 21, 2002, recorded as Document No. 2002-228662; granting (i) a perpetual easement and right of way, appurtenant to the Lihue Airport, for the passage of all aircraft in the air space above the Easement Premises; and (ii) a perpetual easement to discharge, emit or otherwise transmit noise, and also fumes, etc.

- (21) The terms and provisions contained in the following:

INSTRUMENT : LIMITED WARRANTY DEED

DATED : --- (acknowledged October 13 ,2005)

RECORDED : Document No. 2005-209699

- (22) The terms and provisions contained in the following:

INSTRUMENT : DEED

DATED : --- (acknowledged July 19, 2007)

FILED : Land Court Document No . 3641266

RECORDED : Document No. 2007-144031

- (23) The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF DEED RESTRICTION CONCERNING DENSITY IN THE OPEN DISTRICT ZONE OF KAUAI LAGOONS RESORT

DATED : December 18, 2007

FILED : Land Court Document No . 3697357

RECORDED : Document No. 2007-223761

**EXHIBIT "B"**

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(24) The terms and provisions contained in the following:

INSTRUMENT : LIMITED WARRANTY DEED WITH COVENANTS (Mori Golf  
(Kauai), LLC-Subdivision Lot 2-A)

DATED : as of February 22, 2008  
RECORDED : Document No. 2008-040611

(25) The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR KAUAI LAGOONS

DATED : --- (acknowledged February 22, 2008)  
RECORDED : Document No. 2008-040613  
FILED : Land Court Document No. 3723797

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR KAUAI LAGOONS dated June 12, 2009, filed as Land Court  
Document No. 3870079, recorded as Document No. 2009-093734.

SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR KAUAI LAGOONS dated December 29, 2014, filed as  
Land Court Document No. T-9130059, recorded as Document No. A-54780169.

ASSIGNMENT OF DECLARANT RIGHTS UNDER DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAUAI LAGOONS dated  
as of December 29, 2014, filed as Land Court Document No. T-9130061, recorded as  
Document No. A-54780206, made and given by KAUAI LAGOONS, LLC, a Hawaii  
liability company, and MORI GOLF (KAUAI), LLC, a Delaware limited liability  
company (collectively, "Assignor"), in favor of TOWER KAUAI LAGOONS LAND,  
LLC, TOWER KAUAI LAGOONS HOTEL, LLC, TOWER KAUAI LAGOONS 8,  
LLC, TOWER KAUAI LAGOONS 9B, LLC, TOWER KAUAI LAGOONS 9C, LLC,  
TOWER KAUAI LAGOONS 9D, LLC, TOWER KAUAI LAGOONS SUB 1, LLC,  
TOWER KAUAI LAGOONS SUB 2, LLC, TOWER KAUAI LAGOONS SUB 3, LLC,  
TOWER KAUAI LAGOONS SUB 4, LLC, TOWER KAUAI LAGOONS SUB 7, LLC,  
2014 KAUAI LAGOONS GOLF, LLC, TOWER KAUAI LAGOONS RETAIL, LLC, all  
of which are Delaware limited liability companies (collectively, "Assignee").

ASSIGNMENT OF DECLARANT RIGHTS UNDER DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAUAI LAGOONS dated  
as of April 30, 2015, recorded as Document No. A-55980535, made and given by  
TOWER KAUAI LAGOONS LAND, LLC, TOWER KAUAI LAGOONS HOTEL,  
LLC, TOWER KAUAI LAGOONS 8, LLC, TOWER KAUAI LAGOONS 9B, LLC,  
TOWER KAUAI LAGOONS 9C, LLC, TOWER KAUAI LAGOONS 9D, LLC,  
TOWER KAUAI LAGOONS SUB 1, LLC, TOWER KAUAI LAGOONS SUB 2, LLC,  
TOWER KAUAI LAGOONS SUB 3, LLC, TOWER KAUAI LAGOONS SUB 4, LLC,

**EXHIBIT "B"**

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TOWER KAUAI LAGOONS SUB 7, LLC, 2014 KAUAI LAGOONS GOLF, LLC, TOWER KAUAI LAGOONS RETAIL, LLC, all of which are Delaware limited liability companies (collectively, "Assignors), in favor of TOWER KAUAI LAGOONS TS LLC, a Delaware limited liability company ("Assignee"), as co-Declarant along with each Assignor.

THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAUAI LAGOONS, dated August 8, 2019, filed as Land Court Document No. T-10893265, recorded as Document No. A-72410588.

FOURTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAUAI LAGOONS dated February 18, 2022, filed as Land Court Document No. T-11746448, recorded as Document No. A-80941049.

CONSENT TO AND JOINDER IN THIRD AND FOURTH AMENDMENTS TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAUAI LAGOONS dated July 12, 2022, filed as Land Court Document No. T-11883249, recorded as Document No. A-82310893 and A-82310894.

- (26) GRANT OF AVIGATION AND NOISE EASEMENT in favor of the STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, AIRPORTS DIVISION, dated October 14, 2008, filed as Land Court Document No. 3800089, recorded as Document No. 2008-162922; granting (i) an avigation easement for the flight of aircraft in all the airspace above.

AMENDMENT TO 2008 AVIGATION EASEMENT AND SUPPLEMENTAL GRANT OF AVIGATION AND NOISE EASEMENT, dated April 9, 2010, recorded as Document No. 2010-050288.

- (27) RIGHT-OF-ENTRY dated October 6, 2008, recorded as Document No. 2008-166719, in favor of KAUAI ISLAND UTILITY COOPERATIVE, a cooperative association formed pursuant to the provision of Chapter 421C of the Hawaii Revised Statutes, and HAWAIIAN TELCOM, INC., a Hawaii corporation.

- (28) The terms and provisions contained in the following:

INSTRUMENT : LIMITED WARRANTY DEED WITH COVENANTS (MORI GOLF (KAUAI), LLC - LARGE LOT SUBDIVISION)

DATED : September 5, 2008

RECORDED : Document No. 2008-166756

- (29) The terms and provisions contained in the following:

INSTRUMENT : LIMITED WARRANTY DEED WITH COVENANTS AND GRANTS OF EASEMENT (KAUAI COUNTY SUBDIVISION 2008-24)

## **EXHIBIT "B"**

(Page 6 of 7)

DATED : December 19, 2008  
RECORDED : Document No. 2008-191226

- (30) RIGHT OF ENTRY dated December 22, 2008, recorded as Document No. 2009-002963.
- (31) EASEMENT dated October 27, 2009, recorded as Document No. 2009-164836.
- (32) Terms and provisions contained in RECIPROCAL EASEMENT AGREEMENT, dated December 29, 2014, recorded as Document No. A-54780207.
- (33) Following matters referenced on Subdivision map prepared by Kevin K. Kea, dated December 15, 2021, and approved by the Planning Commission of the County of Kauai on April 11, 2023 (Subdivision File No. S-2022-4):
  - (a) LOTS 1 THROUGH 13 ONLY: -  
Designation of Easement XY (10-ft. wide) for landscape and utility purposes.
  - (b) LOTS 14 THROUGH 24 ONLY: -  
Designation of Easement X (11-ft. wide) for landscape and utility purposes.
  - (c) AS TO LOT 25 ONLY: -  
Designation of Easement Y for access and utility purposes.
- (34) Encroachments or any other matters which a correct survey would disclose.
- (35) Any unrecorded leases and matters arising from or affecting the same.
- (36) Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land consisting of the Subdivision.

**END OF EXHIBIT "B"**

**EXHIBIT "C"**

**TAX MAP KEY NUMBERS**

<b>Lot No.</b>	<b>Tax Map Key No.</b>
1	4-3-5-004-400
2	4-3-5-004-401
3	4-3-5-004-402
4	4-3-5-004-403
5	4-3-5-004-404
6	4-3-5-004-405
7	4-3-5-004-406
8	4-3-5-004-407
9	4-3-5-004-408
10	4-3-5-004-409
11	4-3-5-004-410
12	4-3-5-004-411
13	4-3-5-004-412
14	4-3-5-004-413
15	4-3-5-004-414
16	4-3-5-004-415
17	4-3-5-004-416
18	4-3-5-004-417
19	4-3-5-004-418
20	4-3-5-004-419
21	4-3-5-004-420
22	4-3-5-004-421
23	4-3-5-004-422
24	4-3-5-004-423
25	4-3-5-004-424

**END OF EXHIBIT "C"**