

Legal Description

-FIRST:-

Unit Nos. 1101, 1102, 1103, 1104, 1106, 1108, 1110, 1112, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1122, 2101, 2102, 2103, 2104, 2106, 2108, 2110, 2112, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2122, 3101, 3102, 3103, 3104, 3105, 3106, 3108, 3110, 3112, 3114, 3115, 3116, 3117, 3118, 3119, 3120, 3122, 4101, 4102, 4103, 4104, 4105, 4106, 4107, 4108, 4109, 4110, 4111, 4112, 4113, 4114, 4115, 4116, 4117, 4118, 4119, 4120, 4122, 5101, 5102, 5103, 5104, 5105, 5106, 5107, 5108, 5109, 5110, 5111, 5112, 5113, 5114, 5115, 5116, 5117, 5118, 5119, 5120, 5122, 6101, 6102, 6103, 6104, 6105, 6106, 6107, 6108, 6109, 6110, 6111, 6112, 6113, 6114, 6115, 6116, 6117, 6118, 6119, 6120, 6122 (the "Units") located in that certain condominium project known as "WAIKOLOA BEACH HOTEL AND RESORT" (the "Project") as established by Declaration of Condominium Property Regime dated as of March 31, 2016 (Effective Date), recorded in the Bureau of Conveyances as Document No. A-59350166, as amended (the "Declaration") and as shown on Condominium Map No. 5518, and recorded in said Bureau, and any amendments thereto (the "Condominium Map").

Together with easements appurtenant to the Unit established by and described in the Declaration, including the following:

- (A) The exclusive right to use those certain limited common elements of the Project which are described in the Declaration as being appurtenant to the Unit, if any, as shown in the Declaration.
- (B) Nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for and support of the Unit, in the other common elements for use according to their respective purposes, subject always to the exclusive or limited use of the limited common elements as provided in the Declaration, and in all other units and common elements of the building in which the Unit is located or any adjacent buildings for support.

-SECOND:-

An undivided 32.151% interest in all common elements of the Project, as established for the Unit by the Declaration, as tenant in common with all other owners from time to time of undivided interests in and to said common elements.

The land upon which the Project is located is described as follows:

ALL OF THAT CERTAIN LAND SITUATED IN THE COUNTY OF HAWAII, STATE OF HAWAII, DESCRIBED AS FOLLOWS:

All of that certain parcel of land situate at Anaehoomalu, District of South Kohala, Island and County of Hawaii, State of Hawaii, being LOT 8, area 15.735 acres, more or less, of the "WAIKOLOA BEACH RESORT PHASE I (AMENDED)", as shown on the map filed in the Bureau of Conveyances of the State of Hawaii, File Plan No. 1562, more particularly described as follows:

Beginning at the Southeast corner of this parcel of land, same being also the North corner of Lot 7 of Waikoloa Beach Resort Phase I (Amended) (File Plan 1562), the coordinates of said point of beginning referred to Government Survey Triangulation Station "APUU HINAI" being 5,200.96 feet North and 36,246.99 feet West and thence running by azimuths measured clockwise from true South:

1. 48° 27' 07" 479.15 feet along Lots 7 and 6 of Waikoloa Beach Resort Phase I (Amended) (File Plan 1562);
2. 78° 04' 50" 431.72 feet along Lot 4 of Waikoloa Beach Resort Phase I (Amended) (File Plan 1562);
3. 165° 22' 58" 669.68 feet along Lot 11 of Waikoloa Beach Resort Phase I (Amended) (File Plan 1562);
4. 233° 27' 974.93 feet along Lots 22 and 24 of Kolea Subdivision (File Plan 2334);
5. Thence along the West side of Waikoloa Beach Drive, same being also Lot R-1 of Waikoloa Beach Resort Phase II (File Plan 1853), on a curve to the right with a radius of 460.00 feet, the chord azimuth and distance being: including with full power to sell, convey, mortgage, encumber and hypothecate all property of the trust estate
349° 51' 06" 289.88 feet;
6. 8° 13' 03" 102.01 feet along the West side of Waikoloa Beach Drive, same being also Lot R-1 of Waikoloa Beach Resort Phase II (File Plan 1853);
7. Thence along the West side of Waikoloa Beach Drive, same being also Lot R 1 of Waikoloa Beach Resort Phase II (File Plan 1853), on a curve to the left with a radius of 540.00 feet, the chord azimuth and distance being:
343° 20' 05" 454.42 feet to the point of beginning and containing an area of 15.735 acres, more or less, as per survey dated July 23, 2004, prepared by Ryan M. Suzuki, Licensed Professional Land Surveyor, Certificate No. 10059.

TOGETHER WITH a nonexclusive easement for roadway and utility purposes over, across, along and upon Roadway Lot R-2 as shown on said File Plan 1562, provided, however, that in the event said Roadway Lot is conveyed to the State of Hawaii or County of Hawaii or other governmental authority, said easement or easements so conveyed shall immediately terminate, as granted by Deed dated April 14, 1980, recorded in the Bureau of Conveyances of the State of Hawaii in Book 14670 at Page 624.

TOGETHER WITH a nonexclusive easement for roadway and utility purposes over and across Easement R-1 affecting Lot 3, and together with a right and easement to grade, pave, construct, and mark roadways, and to construct, reconstruct, install, maintain, operate, repair and remove utility lines and equipment on, through, under and across the easement area, as said Easement R-1 and Lot 3 are shown on File Plan 1435 of the Waikoloa Parcel 4 Subdivision filed in the Bureau of Conveyances of the State of Hawaii (said Lot 3 of "Waikoloa Parcel 4 Subdivision", File Plan 1435, being subsequently further subdivided into Lots 1 to 5, inclusive, and Lot R 1, as shown on File Plan 1712, and known as "Waikoloa Parcel 4 Subdivision No. 3", and the perimeter description of said Easement R 1 and said Lot R 1 now being one and the same), said easement being the same nonexclusive easement granted to At Pac Land Co. in that certain indenture of easement dated April 1, 1980 and recorded in the Bureau of Conveyances of the State of Hawaii in Book 14670 at Page 614 and further granted to Transcontinental Development Co in that certain indenture of easement dated April 1, 1980 and recorded in said Bureau of Conveyances in Book 14670 at Page 619, provided, however, that in the event said Easement is dedicated and conveyed to the State of Hawaii or County of Hawaii or other governmental authority, said easement shall immediately terminate.

TOGETHER WITH nonexclusive easement for roadway and utility purposes over, across, along and upon Lot R 1 of File Plan 1853, provided, however, that in the event that said Lot R-1 is conveyed to the State of Hawaii or County of Hawaii or other governmental authority, said easement shall immediately terminate, as granted by Amendment to Lot R 1 Roadway Easement dated December 20, 1985, recorded in the Bureau of Conveyances of the State of Hawaii in Book 19166 at Page 378.

TOGETHER WITH a non-exclusive easement for pedestrian walkway purposes, over and across that certain 6-foot wide easement area affecting Lot 10 as said Lot 10 is shown on File Plan 1562, as granted by instrument dated August 17, 1981, recorded in said Bureau of Conveyances in Book 16059 at Page 629.

TOGETHER ALSO WITH a nonexclusive easement for pedestrian walkway purposes, over and across that certain 6 foot wide easement area affecting Lot 11 as said Lot 11 is shown on File Plan 1562 of the Waikoloa Beach Resort Phase I (Amended) Subdivision, as granted by instrument dated August 17, 1981, recorded in said Bureau of Conveyances in Book 16059 at Page 641. Consent given by Waikoloa Beach Association, a Hawaii nonprofit corporation.

TOGETHER WITH the right in the nature of a perpetual nonexclusive easement over, under, across, upon and through Lot 11 of the Waikoloa Beach Resort Phase I (Amended) Subdivision, as shown on File Plan 1562, for pedestrian access purposes to, from and between the beach bordering said Lot 11 and the land described herein, as well as for beach and other recreational activities, as granted by instrument dated December 23, 1988, recorded in the Bureau of Conveyances of the State of Hawaii in Book 22724 at Page 503, by and among AtPac Land Co., a Texas partnership, Taas Associates, a joint venture registered as a Hawaii partnership, and Waikoloa Beach Association, a Hawaii nonprofit corporation.

TOGETHER WITH a perpetual nonexclusive easement for roadway access purposes, over and across Easement "B", together with a right and easement to grade, pave, construct, mark, maintain and repair a roadway upon, through and across Easement "B", and a perpetual nonexclusive easement for slope purposes, over and across Easements "B-1" and "B-2", as granted by instrument dated August 7, 1990, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 90-120682, subject to the terms and provisions contained therein.

Together also with any and all rights by virtue of the following:

1. That certain Declaration of Protective Covenants, Conditions and Restrictions for Waikoloa Beach Resort dated as of April 1, 1980, effective on April 23, 1980, recorded in the Bureau of Conveyances of the State of Hawaii in Book 14670 at Page 531, as amended and/or supplemented.

2. That certain Declaration of Protective Covenants, Conditions and Restrictions for Waikoloa Beach Resort Conference dated as of April 1, 1980, effective on April 23, 1980, recorded in the Bureau of Conveyances of the State of Hawaii in Book 14670 at Page 631, as amended and/or supplemented.

3. That certain Declaration of Golf Course Use dated March 28, 1980, by Transcontinental Development Co., a Texas general partnership, recorded in the Bureau of Conveyances of the State of Hawaii in Book 14670 at Page 785, for a term ending fifty (50) years from the date of execution thereof, as amended by the following instruments, namely, (1) dated July 14, 1981, recorded in Book 15706 at Page 354, (2) dated December 20, 1985, recorded in Book 19166 at Page 473, (3) dated May 12, 1989, recorded in Book 23187 at Page 788, (4) dated July 31, 1989, recorded in Book 23506 at Page 18, (5) dated August 31, 1989, recorded in Book 23588 at Page 779, (6) dated October 25, 1989, recorded in Book 23806 at Page 176, (7) dated April 12, 1990, recorded as Document No. 90-063153, (8) dated May 21, 1990, recorded as Document No. 90-074293, (9) dated August 7, 1990, recorded as Document No. 90-120679, and (10) dated December 24, 1990, recorded as Document No. 91-006182, Joinder and Consent dated

January 14, 1991, recorded as Document No. 91-006191, by Transcontinental Development (Hawaii) Co., a Hawaii general partnership, and as may be further amended from time to time. Said Declaration of Golf Course Use assigned to Global Resort Partners, a Hawaii general partnership, by instrument entitled Assignment and Assumption of Declaration of Golf Course Use dated November 5, 1993, recorded as Document No. 93-183750, subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations contained therein.

4. That certain Golf Play Agreement (TAAS) dated March 19, 1980, recorded in Book 14670 at Page 790, by and between Transcontinental Development Co., a Texas partnership, and TAAS Associates, a joint venture registered as a Hawaii general partnership, for a term ending fifty (50) years from the date of execution thereof, as amended by the following instruments, namely, (1) dated June 9, 1981, recorded in Book 15706 at Page 357, (2) dated December 20, 1985, recorded in Book 19166 at Page 482, (3) dated December 23, 1988, recorded in Book 22724 at Page 515, (4) dated July 31, 1989, recorded in Book 23506 at Page 32, (5) dated April 12, 1990, recorded as Document No. 90-063158, and (6) dated December 24, 1990, recorded as Document No. 91-006185, Joinder and Consent dated January 14, 1991, recorded as Document No. 91-006191, by Transcontinental Development (Hawaii) Co., a Hawaii general partnership, and as may be further amended from time to time, subject to the terms and provisions including the failure to comply with any covenants, conditions and reservations, contained therein.

5. That certain Parking License dated March 19, 1980, recorded in Book 14671 at Page 7, by and between Transcontinental Development Co., "Licensor", and TAAS Associates, "Licensee", as amended by instrument entitled "Assignment, Assumption and First Amendment of Parking License" dated January 23, 1991, recorded as Document No. 91-014139 (said Assignment was amended by instrument dated April 19, 1996, effective as of January 23, 1991, recorded as Document No. 96-054922), by and between Transcontinental Development Co., Waikoloa Development Co., and TAAS Associates, granting a sublicense to enter upon portion of Lot 1 of File Plan 1562, as shown on Exhibit "A" attached thereto and made a part thereof, and to construct, maintain, operate and use a parking facility thereon, etc., for a term of fifty (50) years from the dates of execution thereof, subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.

Said Parking License was assigned to BRE/Waikoloa LLC, a Delaware limited liability company, by instrument entitled "Assignment of Parking License" dated July 30, 2004, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-156389, to enter and use two hundred forty (240) unspecified parking stalls located on Lot 1 of the "Waikoloa Beach Resort, Phase 1-A" subdivision, as shown on File Plan 2245, filed in the Bureau of Conveyances of the State of Hawaii, as set forth therein.

Said License is subject to the following:

Parking License Agreement dated January 23, 1991, recorded as Document No. 91-014138, by and between Waikoloa Land & Cattle Co. and Waikoloa Development Co., granting an exclusive license to enter upon Lot 1 as shown on File Plan 1562 and construct, maintain, operate and use a parking facility for a term to terminate on March 19, 2030, as amended by instrument dated March 27, 2000, recorded as Document No. 2000-042865, amending the "License Area", as defined therein, to consist of Lot 1 as shown on File Plan 2245, as set forth therein.

Being the property conveyed by the following: SPECIAL WARRANTY DEED

Grantor:	SMG I HOTEL WAIKOLOA LLC, a Delaware limited liability company
Grantee:	SOUTH TOWER SPE-C LLC, a Delaware limited liability company
Dated:	March 31, 2016

Recorded: April 1, 2016 in the Bureau of Conveyances of the State of Hawaii, as Document No. A-59350175.

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. Easement(s) "PW-1" (6,680 square feet), for pedestrian walk purposes, as delineated on File Plan No. 1562.
3. Easement(s) "S-1" (28,654 square feet), for sanitary sewer purposes, as delineated on File Plan No. 1562.
4. Easement(s) "S-W-2" (114,898 square feet), for slope and walkway purposes, as delineated on File Plan No. 1562.
5. Any adverse claim or boundary dispute which may exist or arise by reason of the failure of the Pedestrian Walkway Easements hereinabove mentioned to locate with certainty the boundaries of the 6-foot-wide easement area affecting Lot 10 and Lot 11 described in instruments, recorded in the Bureau of Conveyances in Book 16059 at Page 629 and Book 16059 at Page 641, respectively.