

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer: Ho'olu Landing LLC
Address: 220 South King Street, Suite 2170, Honolulu, Hawaii 96813

Project Name(\*): Ho'olu Landing at Makakilo
Address: Palahia Street, Makakilo, Hawaii 96707

Registration No. 5519

Effective date: August 29, 2005
Expiration date: September 29, 2006

Preparation of this Report:

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

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

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

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

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

Type of Report:

- PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
SUPPLEMENTARY: (pink) This report updates information contained in the: Preliminary Public Report dated: Final Public Report dated: Supplementary Public Report dated:
And: Supersedes all prior public reports. Must be read together with This report reactivates the public report(s) which expired on

(\* Exactly as named in the Declaration

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request. FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104

**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

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

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

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

No prior reports have been issued by the developer.

Changes made to the Contingent Public Report, as supplemented by the Supplemental Public Report, are as follows:

1. Exhibit "A" was revised to reflect changes in the title report dated August 16, 2005.
2. The property is subject to a Mortgage, Security Agreement and Financing Statement dated March 31, 2005 in favor of Bank of Hawaii, to secure advances made under a construction loan to the Developer, as more fully described in Section E of this Report.
3. An Amendment to and Confirmation of Real Property Mortgage; Security Agreement; Assignment of Rents; and Financing Statement dated March 31, 2005 confirms the existing mortgage in favor of Zilber, Ltd. an increases the loan amount secured by said mortgage to \$2,000,000.00.
4. A Subordination and Stand-Aside Agreement dated March 31, 2005 was filed to confirm that the mortgage in favor of Zilber, Ltd. is subordinated to the mortgage in favor of Bank of Hawaii.
5. A UCC Financing Statement was filed in favor of Bank of Hawaii, covering certain collateral for the aforementioned construction loan.
6. Item III.C.7of the Contingent Public Report was revised to reflect one less guest parking stall, for a total of 12 guest parking stalls and 106 total stalls.
7. Item IV.B7of the Contingent Public Report was revised to reflect membership dues to the Palehua Community Association as of July 2005 are \$168 per annum and to clarify that there is a one time startup fee of \$100 payable to PCA and a transfer fee of \$175 payable to Equity Properties, Inc. on the purchase of a Home.
8. The Statement of Project Costs was revised to reflect the total costs are \$22,726,000.
9. The Ho'olu Landing at Makakilo Fee Simple Home Purchase ("Sales Contract" ) was revised to add an Addendum describing an alternative financing option for Purchasers and to amend the Sales Contract to the extent required to conform to the alternative financing option. The Addendum is attached hereto as Exhibit "I".
10. The recording of the Amendment to Condominium Map for Ho'olu at Makakilo (Condominium Map 1681) dated July 20, 2005, recorded as Document No. 3301517.
11. The contractor for this community is AT Contractors LLC (Section I).
12. Although not a change, Developer wishes to note the following clarifications regarding the Condominium Map:
  - a. All or a portion of each Residence's "front" or "side" yard facing the Community Access Road are excluded from the Residence's Private Yard Area. As noted in Section A.25, Section D.5, and Exhibit "B-3" of the Declaration, the Private Yard Area of a Residence includes the land under the Residences and only those areas in front of, the rear of, and to the sides of the Residence demarked by fencing, etc. Each purchaser should familiarize themselves with the fencing locations demarking their Private Yard Area.
  - b. The Private Yard Areas for Residences 1 through 13, inclusive, may include that portion of the land located between Fence Type 2 and Fence Type 3 shown on the Condominium Map if the individual Residence Owner(s) wishes to enclose such area(s) with fencing or retaining walls authorized under the Declaration (see Sections S.2 and M.2). Once such additional areas are enclosed by the introduction of area fencing or retaining walls, the Residence Owner will be solely responsible for landscaping and maintenance of the area bounded by the new fencing.

c. Due to the slope of that portion of the Private Yard Areas within Residences 1 through 13, inclusive, located between Fence Type 2 and Fence Type 3 shown on the Condominium Map, the Association shall, as permitted by Section H.1(d) of the Declaration, undertake limited landscaping and maintenance of such area, excluding therefrom, however, land area enclosed by additional fencing or retaining walls constructed by the Residence Owner. (See 12.b above).

d. Residences 38 through 43, inclusive, have no Private Yard Area demarked by fencing. Such Residence Owners may, however, install "privacy" fencing at a location generally reflected as the "CPR line Typ." on the Condominium Map provided the design, type, and location of such fencing are first approved in writing by the Board of Directors for the Association and the approvals required under Section M.2 of the Declaration are obtained (such installation is hereby approved by Declarant, as owner of all Residences and constituting all "Owners thereby directly affected" as provide in Section M.2).

13. The recording of an Amendment to Declaration of Condominium Property Regime of Ho'olu Landing at Makakilo dated August 19, 2005, recorded as Document No. 3315737.

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## **General Information On Condominiums**

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owner/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged, or encumbered, and may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

## **Operation of the Condominium Project**

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

## I. PERSONS CONNECTED WITH THE PROJECT

Developer: Ho'olu Landing LLC Phone: (808) 372-7031  
a Hawaii limited liability company Business  
Name\*  
220 South King Street, Suite 2170  
Business Address  
Honolulu, Hawaii 96813

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):

Aiello Development Group LLC, a Nevada limited liability company, Manager of Ho'olu Landing LLC; Towne Development of Hawaii, Inc., a Hawaii corporation, Member of Ho'olu Landing LLC

Real Estate Broker\*: Towne Island Homes, Ltd. Phone: (808) 537-5976  
Name Business  
220 South King Street, Suite 2170  
Business Address  
Honolulu, HI 96813

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 521-0211  
Name Business  
235 Queen Street  
Business Address  
Honolulu, HI 96813

General Contractor\*: AT Contractors LLC Phone: (808) 735-0940  
Name Business  
3660 Waiialae Avenue, Suite 209  
Business Address  
Honolulu, HI 96816

Condominium Managing Agent\*: Hawaiiana Management Company Limited Phone: (808) 593-9100  
Name Business  
711 Kapiolani Boulevard, Suite 700  
Business Address  
Honolulu, HI 96813

Attorney for Developer: Case Bigelow & Lombardi Phone: (808) 547-5400  
Dennis M. Lombardi, Esq. Business  
Nancy J. Youngren, Esq.  
Name  
737 Bishop Street, Suite 2600  
Business Address  
Honolulu, Hawaii 96813

\* For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

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

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

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

The Declaration for this condominium is:

Proposed  
 Recorded - Bureau of Conveyances: Document No. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. 3190774

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

Amendment to Declaration of Condominium Property Regime of Ho'olu Landing at Makakilo dated February 18, 2005 and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 323441; and Amendment to Declaration of Condominium Property Regime of Ho'olu Landing at Makakilo dated August 19, 2005 and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3315737.

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

The Condominium Map for this condominium project is:

Proposed  
 Recorded - Bureau of Conveyances Condo Map No. \_\_\_\_\_  
 Filed - Land Court Condo Map No. 1681

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

Amendment to Condominium Map For Ho'olu Landing at Makakilo dated February 18, 2005 and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 323442.

Amendment to Condominium Map For Ho'olu Landing at Makakilo dated July 20, 2005 and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3301517.

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

The Bylaws for this condominium are:

Proposed  
 Recorded - Bureau of Conveyances: Document No. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. 3190775

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

NONE

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed                       Adopted                       Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents** Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	_____ 75%
Bylaws	65%	_____ 67%
House Rules (Community Rules)	---	<u>Majority vote of Board of Directors</u>

\* The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

2. **Developer:**

No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

A. The project consists of 47 attached and detached condominium residences ("Residence(s)" or "Home(s)"), to be built, in as many separate increments as Developer shall solely determine. Developer contemplates, however, that development shall proceed in four (4) increments. Increment 1 shall consist of 13 Residences, Increment 2 shall consist of 12 Residences, Increment 3 shall consist of 12 Residences and Increment 4 shall consist of 10 Residences. Developer may increase or reduce the number of Homes within the increments at Developer's election. The Private Yard Area (defined in the Declaration) associated with each Residence is not a subdivided lot but rather an exclusive limited common element.

B. Upon completion of the project, the Developer may amend the Declaration and the Condominium Map (if necessary) to file the "as built" verified statement required by Section 514A-12 of the Condominium Property Act.

C. Until all of the Residences have been sold, the Developer may amend the Declaration, the Bylaws and/or the Condominium Map to make such amendments as may be required by law, by the Real Estate Commission, by the title insurance company, by a mortgage lender, or by any governmental agency (including the VA, HUD, FNMA and/or FHLMC), provided that no such amendments change the common interest appurtenant to a Residence or substantially change the design, location or size of a Residence.

D. Until all of the Residences have been sold and the "as built" verified statement is filed, the Developer may amend the Declaration and the Condominium Map to (i) reflect alterations in any Residence which has not been sold; and (ii) reflect minor changes in any Residence or in the common elements which do not affect the physical location, design or size of any Residence which has been sold.

E. The Developer reserves the right to alter the product mix within this project (sometimes the "Community"). Developer has reserved the right to alter the location, size and design of any unsold Residences as described in Section III.H of this Public Report. Such changes could result in a modification of an Owner's common interest and voting rights.

F. Developer has reserved the right to encumber the Park Area and to declare that the area be perpetually used and maintained by the Association as a private park serving the owners and occupants of the Community.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

[ X ] Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.

[ ] Leasehold or Sub-leasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

**Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable: [ ] Monthly [ ] Quarterly  
[ ] Semi-Annually [ ] Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per [ ] Month [ ] Year

For Sub-leaseholds:

[ ] Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:  
[ ] Canceled [ ] Foreclosed

[ ] As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

[ ] Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Sub-leasehold:

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable: [ ] Monthly [ ] Quarterly  
[ ] Semi-Annually [ ] Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per [ ] Month [ ] Year

[ ] Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

**B. Underlying Land:**

Address: Palahia Street Tax Map Key (TMK): 9-2-19:60  
Makakilo, Hawaii

[ X ] Address [ X ] TMK is expected to change because each unit will be given a street address  
and CPR number.

Land Area: 7.12\* [ ] square feet [ X ] acre(s) Zoning: R-5

Land Area: 6.0\* [ ] square feet [ X ] acre(s) Zoning: P-2

\* All areas are approximate.



5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

Pets: Reasonable number of common household pets, such as small dogs, cats, aquarium fish and bird. No livestock or poultry and no animals classified as "pests" or prohibited from importation under state statutes.

Number of Occupants: No more than 2 persons per bedroom, not including children under 5 years old; no more than 3 persons per bedroom, including children under 5 years old; and otherwise only in accordance with any limitations imposed by state or municipal laws or ordinance.

Other: Residences shall be used for residential purposes only; no "time-sharing" permitted.

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

Apt. Type	Quantity	BR/Bath	Net Living Area (sf) *	Patio (sf)*	Entry (sf)	Rear Storage	Garage (sf)
A/AR	10	3/2	1,471		91		384
B/BR	14	3/2 1/2	1,721	77	77		400
C/CR	10	3/2	1,723		114		372
D**	8	3/2 1/2	1,848		98		386
E***	5	3/2	1,718		95		372

Total Number of Apartments: 47

\* **Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.**

\*\*Units 38, 39, 41 and 43 which are "D" type Residences, each have a net living area of approximately 1,839 square feet, with an entry area of 98 square feet and lanai area of approximately 159 square feet and deck area of approximately 159 square feet and a garage area of approximately 386 square feet.

\*\*\* Units 40 and 42, which are "E" type Residences, each have a net living area of approximately 1,709 square feet, with an entry area of 95 square feet and lanai area of approximately 176 square feet and deck area of approximately 176 square feet and a garage area of approximately 372 square feet.

**Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.**

Limits of Residences:

Each Residence includes all walls, columns and partitions (both load bearing and not load bearing) which are within the Residence's perimeter walls including without limitation the Residence's perimeter walls, the Residence's foundation, all floors, ceilings, roofs (including the integrated roof shared by attached or duplex Residences with "Boundary Lines" separating the attached or duplex Residences), doors, windows, sliding glass doors, screen doors, door frames and window frames, the air space within the Residence, the garage including its floor, foundation, ceiling, roof, doors and perimeter walls, the lanais, if any, shown on the Condominium Map, all rollers, locks, handles, tracks, and appurtenant hardware associated with all windows, and all sliding or swinging screen doors and all glass window screens and all fixtures originally installed in the Residence, and all pipes, plumbing (including water heaters), wires, conduits and other utility or service lines and facilities servicing only the Residence. The Residences shall also include all load bearing columns, girders, beams, building components and other elements included within each Residence. The Residence shall not include any pipes, shafts, wires, conduits or other utility or service lines running through a Residence which are utilized for or serve more than one Residence, all of which are deemed common elements as provided in the Declaration.

Residences followed by a "/R" represent a reverse floor plan configuration from that reflected on the condominium map.

**Note regarding Net Living Areas:**

Throughout the Ho'olu Landing at Makakilo documentation, the area of individual Residences is generally expressed as "net living area" square footage. This measurement represents the architect's best estimate of the interior square footage of the Residence as measured from the Residence's perimeter walls which are included in the Residence. This measurement is based upon the plans for the construction of the Residence and different architects performing the same measurement may obtain a larger or smaller result.

**Permitted Alterations to Residences:**

Alterations or additions solely within a Residence or within a limited common element appurtenant to and for the exclusive use of a Residence or more than one Residence, shall require only the written approval thereof, including the plans therefor, by the Owners of such Residence(s), by the holders of first mortgage liens affecting such Residence(s) (if the lien holder require such approval), by the appropriate agencies of the State of Hawaii and the County if such agencies so require, and by the Board (which approval shall not be unreasonably or arbitrarily withheld or delayed), and by all other Owners thereby directly affected (as determined in a reasonable manner by the Board), except that alterations or additions with respect to retaining walls or grading of Private Yard Areas shall require only the written approval thereof, including the plans therefor, by the Owners of such Residence(s), the Board (which approval shall not be unreasonably or arbitrarily withheld or delayed), and by the appropriate agencies of the State of Hawaii and the County if such agencies so require. No retaining walls and other improvements may be installed or constructed unless in compliance with complete and engineered plans and specifications therefor (stamped by a professional engineer) and submitted to and approved by the Board. Upon completion of such alterations or additions, the Residence Owner(s) directly affected shall duly record and file of record an amendment to the Declaration together with the approved plans showing only such alterations or additions within a Residence space or within a limited common element as aforesaid. Such amendment to the Declaration need only be executed by the Residence Owner(s) directly affected and their first mortgagees, as may be required.

**Apartments Designated for Owner-Occupants Only:**

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement. Developer has elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 106

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	<u>2*</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>94</u>
Guest	<u>n/a</u>	<u>12</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>12</u>
Unassigned	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>
Extra for Purchase	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>
Other: Accessible	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>
Other: Loading	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>
Total Covered & Open	<u>106</u>		<u>0</u>		<u>0</u>		<u>106</u>

Each apartment will have the exclusive use of at least 2 parking stall(s).

\*Each Residence includes a two-car enclosed garage.

Commercial parking garage permitted in condominium project.

Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool       Storage Area       Recreation Area

Laundry Area       Tennis Court       Trash Chute/Enclosure(s)

Other: \_\_\_\_\_

9. Compliance With Building Code and Municipal Regulations; Cost to Cure Violations

There are no violations.       Violations will not be cured.

Violations and cost to cure are listed below:       Violations will be cured by \_\_\_\_\_  
(Date)

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations  
(For conversions of residential apartments in existence for at least five years):

N/A

11. Conformance to Present Zoning Code

- a.  No variances to zoning code have been granted.  
 Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>    X    </u>	<u>          </u>	<u>          </u>
Structures	<u>    X    </u>	<u>          </u>	<u>          </u>
Lot	<u>    X    </u>	<u>          </u>	<u>          </u>

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

described in Exhibit     B-2    .

as follows:

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project.

The limited common elements and the apartments which use them, as described in the Declaration, are:

described in Exhibit B-3.

as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit C.

as follows:

The rights reserved to the Developer to alter the Residences in the Community (see Items 1 and 2), may result in alteration of the common interest and attendant voting rights of a homeowner. See Section F of the Declaration that provides:

The common interest and easements appurtenant to each Home shall have a permanent character and shall not be altered except as noted in Section F of the Declaration. The common interest, voting rights and easements appurtenant to each Home may be altered (diminished or increased) by a recorded amendment to the Declaration: (a) as may be determined necessary by the Developer, without the consent of any party, to correct typographical or mathematical errors in the statement of such common interests, (b) filed by the Developer, without the joinder of any party, upon the alteration of the Community as permitted pursuant to Section F or Section M.3 of the Declaration as set forth in subpart H of this report, and/or (c) upon the action or consent of all Owners of Homes affected thereby, and the consent of the holders of any mortgage affecting such Homes as shown in the Association's records of ownership, or who have given the Board notice of their interest. The common interest and appurtenant easements shall not be separated from the Home to which they appertain and shall be deemed to be conveyed or encumbered with that Home even though such interest or easements are not expressly mentioned in the conveyance or other instrument. The common elements shall remain undivided and the right to partition or divide any part of the common elements shall not exist except as provided in the Act. In that the development of the Community will proceed incrementally, Section F of the Declaration also provides that common expense will be allocated based on common interests of the Homes in each increment as new increments are created within the Community. Initially, common expenses will be borne by Increment 1 homeowners in proportion to the common interest of the Increment 1 homeowners. Section M.3 allows the Developer prior to the sale of all Homes and the filing of an "as built" certificate to (a) make alterations in the Community which change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any Home (and the limited common elements appurtenant thereto) in the Community which is not sold and the conveyance thereof recorded which right includes the ability to change the overall "product mix" (e.g., change the model home type and size of a Private Yard Area); and (b) make other alterations in the Community which make minor changes in any Home in the Community or in the common elements which do not affect the physical location, design or size of any Home which has been sold and the conveyance thereof recorded.

- E. Encumbrances Against Title: An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit A describes the encumbrances against the title contained in the title report dated August 16, 2005 and issued by Title Guaranty of Hawaii, Inc.

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage Liens	<p>Buyer's interest in the property is subordinated to the following mortgage loans and the buyer's interest in the Apartment and under the buyer's purchase agreement will be extinguished in the event of a foreclosure:</p> <ol style="list-style-type: none"><li>1. Real Property Mortgage, Security Agreement, Assignment of Rents; and Financing Statement dated May 24, 2004, by Ho'olu Landing LLC, a Hawaii limited liability company, in favor of Zilber Ltd., a Delaware corporation, recorded as Land Court Document No. 3156382; as amended by Amendment to and Confirmation of Real Property Mortgage, Security Agreement, Assignment of Rents; and Financing Statement dated March 31, 2005, recorded as Land Court Document No. 3247727.</li><li>2. Financing Statement recorded on August 25, 2004, by Ho'olu Landing LLC, recorded as Document No. 2004-174418.</li><li>3. Real Property Mortgage, Security Agreement, and Financing Statement dated March 31, 2005, by Ho'olu Landing LLC, a Hawaii limited liability company, in favor of Bank of Hawaii, a Hawaii corporation, recorded as Land Court Document No.3247725.</li><li>4. Financing Statement recorded on March 31, 2005, by Ho'olu Landing LLC, recorded as Document No. 2005-062255.</li></ol>

**F. Construction Warranties:**

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements:

The Developer's sole warranty will be provided in the form attached to this Public Report as Exhibit D-1, the Home Builder's Limited Warranty, and Exhibit D-2, the Acknowledgement.

2. Appliances:

The Developer makes no warranty as to appliances or other consumer products installed in any Residence or in the common elements. If there are applicable manufacturer's or dealer's warranties relating to such appliances or other consumer products, the Developer will endeavor to assign and pass on to each Residence owner the benefit of such warranties.

**G. Status of Construction and Date of Completion or Estimated Date of Completion:**

Construction commenced in January, 2005 and all 47 units should be completed by approximately December, 2006.

**H. Project Phases:**

The developer [X] has [ ] has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

Alteration of the Community: The Developer has reserved the right in its sole and absolute discretion:

1. To make alterations in the Community (and to amend the Declaration and the Condominium Map accordingly) which change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any Residence (and the limited common elements appurtenant thereto) in the Community which is not sold and the conveyance thereof Recorded, including specifically the right to alter the mix of model home types (increase or decrease the number of model home types); and
2. To make other alterations in the community (and to amend the Declaration and the Condominium Map accordingly) which make minor changes in any Residence in the community or in the common elements which do not affect the physical location, design or size of any Residence which has been sold and the conveyance thereof recorded.

Multi-Increment Phase: The Developer has reserved the right to develop this Community in increments as set forth in Section II. E.2 of this Public Report.



## V. MISCELLANEOUS

### A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

- [X] Notice to Owner Occupants
- [X] Specimen Sales Contract
- Exhibit F contains a summary of the pertinent provisions of the sales contract.
- [X] Escrow Agreement dated October 7, 2004
- Exhibit G contains a summary of the pertinent provisions of the escrow agreement.
- [X] Other Exhibit "H" is a Residence Selection Form; Notice of Chronological Reservation System and Receipt of Owner-Occupant Affidavit Form and Exhibit "I" Ho'olu Landing at Makakilo Addendum

### B. Buyer's Right to Cancel Sales Contract:

#### 1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Contingent Final Report or Supplementary Report to a Contingent Final Report: Sales made by the developer are binding if:

- A) The Developer delivers to the buyer a copy of:
  - 1) Either the Contingent Final Public Report **OR** the Supplementary Public Report which has superseded the Contingent Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
  - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
- B) The buyer is given an opportunity to read the report(s); **AND**
- C) One of the following has occurred:
  - 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
  - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
  - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if:

- A) The Developer delivers to the buyer a copy of:
  - 1) Either the Final Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
  - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
- B) The buyer is given an opportunity to read the report(s); **AND**
- C) One of the following has occurred:
  - 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
  - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
  - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules, if any.
  - E) Condominium Map, as amended.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other: Declaration of Covenants, Conditions and Restrictions of the Palehua Community dated January 14, 1977, recorded as Land Court Document No. 801577, as amended.

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

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

This Public Report is a part of Registration No. 5519 filed with the Real Estate Commission on November 10, 2004.

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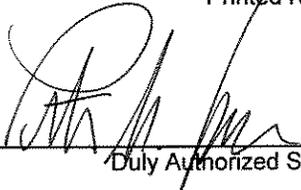
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**C. Additional Information Not Covered Above**

1. All prospective purchasers should also be aware that the Ho'olu Landing Community is within and a part of the master planned community known as the Palehua Community Association, and is subject to certain conditions and restrictions contained in various documents that affect the Ho'olu Landing Community, including: (i) the covenants, conditions, restrictions, reservations, agreements, obligations and other provisions contained in the Declaration of Covenants, Conditions and Restrictions of the Palehua Community dated January 14, 1977, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 801577, as amended by instrument dated December 23, 1996, recorded as Land Court Document No. 2358414.
2. All prospective purchasers should also be aware that the Private Yard Area(s) within the Ho'olu Landing Community are not subdivided lots, but are exclusive use areas appurtenant to a Home.
3. Developer may revise specimen deeds for the Ho'olu Landing Community to conform with any future amendments that may be made to the Declaration.
4. Each prospective purchaser should review the Condominium Map Site Plan (Sheet CPR-A0.1) so that they may identify easement areas benefiting the Ho'olu Landing Community, which easement areas may affect the use of the Private Yard Area.
5. A "sight view triangle" is required by the County on all corner yards in order to maintain clear views of traffic at certain intersections. The County requires that all structures and landscaping within the sight view triangle be no greater than thirty (30) inches in height.
6. The Developer has reserved the right to amend Section S of the Declaration to conform it to the final Cluster Housing Permit issued by the Department of Planning and Permitting for the City and County of Honolulu. Buyer should be aware of the limitations on expansion of their Residence and improvements to appurtenant Private Yard Areas created by the Cluster Housing Permit.

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

Ho'olu Landing LLC a Hawaii limited liability company  
 Printed Name of Developer

By:   
 Duly Authorized Signatory\*

July 28, 2005  
 Date

Peter Aiello, President of Aiello Development Group, LLC, a Nevada limited liability company, Manager of Ho'olu Landing LLC,  
 Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, City and County of Honolulu  
 Planning Department, City and County of Honolulu

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

EXHIBIT "A"

**ENCUMBRANCES AGAINST TITLE**

1. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT :     DECLARATION OF COVENANTS, CONDITIONS AND  
                          RESTRICTIONS OF THE PALEHUA COMMUNITY  
DATED:             January 14, 1977  
FILED:             Land Court Document No. 801577

Said Declaration was annexed by instrument dated December 23, 1996, filed as Land Court Document No. 2358414

2. DESIGNATION OF EASEMENT "1490"

SHOWN:             on Map 425, as set forth by Land Court Order No. 87407, filed  
                          December 4, 1987

3. DESIGNATION OF EASEMENT "2272"

PURPOSE:            drainage  
SHOWN:             on Map 492, as set forth by Land Court Order No. 95501, filed  
                          October 19, 1989

4. DESIGNATION OF EASEMENT "7784"

PURPOSE:            access  
SHOWN:             on Map 1134, as set forth by Land Court Order No. 147711, filed  
                          October 17, 2002

5. GRANT

TO:                 FINANCE REALTY COMPANY, LIMITED for and on behalf of  
                          THE ASSOCIATION OF APARTMENT OWNERS OF PALEHUA  
                          HALE  
DATED:             October 6, 1978  
FILED:             Land Court Document No. 903555  
GRANTING:          a perpetual easement for flowage purposes, etc.

6. GRANT

TO:                 FINANCE REALTY COMPANY, LIMITED  
DATED:             August 24, 1979  
FILED:             Land Court Document No. 969439  
GRANTING:          a perpetual non-exclusive easement for flowage purposes, etc.

7. GRANT
- TO: FINANCE REALTY COMPANY, LIMITED  
 DATED: August 24, 1979  
 FILED: Land Court Document No. 969441  
 GRANTING: a perpetual non-exclusive easement for flowage purposes, etc.
8. GRANT
- TO: CITY AND COUNTY OF HONOLULU  
 DATED: July 5, 1979  
 FILED: Land Court Document No. 1084148  
 GRANTING: a perpetual easement for utility purposes
9. GRANT
- TO: CITY AND COUNTY OF HONOLULU  
 DATED: October 31, 1989  
 FILED: Land Court Document No. 2200242  
 GRANTING: a perpetual nonexclusive easement for flowage purposes as is necessary for the flowage of surface waters, etc., as to Easement "1490"
10. GRANT
- TO: CITY AND COUNTY OF HONOLULU  
 DATED: --- (acknowledged December 27, 1993)  
 FILED: Land Court Document No. 2267206  
 GRANTING: a perpetual easement for utility purposes over Easement "2272"
11. GRANT
- TO: HAWAIIAN ELECTRIC COMPANY, INC.  
 DATED: December 21, 2000  
 FILED: Land Court Document No. 2676236  
 GRANTING: a perpetual right and easement for utility purposes
12. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:
- INSTRUMENT: DEED  
 DATED: January 11, 2002  
 FILED: Land Court Document No. 2772429

13. REAL PROPERTY MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS; AND FINANCING STATEMENT

MORTGAGOR: HO'OLU LANDING LLC, a Hawaii limited liability company  
MORTGAGEE: ZILBER LTD, a Wisconsin corporation  
DATED: May 24, 2004  
FILED: Land Court Document No. 3156382  
AMOUNT: \$700,000.00

ABOVE MORTGAGE AMENDED BY INSTRUMENT

DATED: March 31, 2005  
FILED: Land Court Document No. 3247726  
RE: (1) Increase loan amount from \$700,000.00 to \$2,000,000.00 and  
(2) To confirm ZILBER LTD is a Delaware corporation

SUBORDINATION AGREEMENT

DATED: March 31, 2005  
FILED: Land Court Document No. 3247728  
RECORDED: Document No. 2005-062256

Subordinates said above Real Property Mortgage; Security Agreement; Assignment of Rents; and Financing Statement to the lien of that certain Mortgage; Security Agreement and Financing Statement filed as Land Court Document No. 3247725

14. FINANCING STATEMENT

DEBTOR: HO'OLU LANDING LLC  
SECURED  
PARTY: ZILBER LTD.  
RECORDED: Document No. 2004-174418  
RECORDED ON: August 25, 2004

SUBORDINATION AGREEMENT

DATED: March 31, 2005  
FILED: Land Court Document No. 3247728  
RECORDED: Document No. 2005-062256

Subordinates said above UCC to the lien of that certain UCC recorded as Document No. 2005-062255.



## EXHIBIT "B-1"

### **DESCRIPTION OF BUILDINGS AND RESIDENCES**

The Community shall contain 47 single-family attached and unattached Residences. All of the Residences have a two-car enclosed garage. The Residences shall be constructed principally of metal, wood, glass and related building materials.

There shall be 5 different model types in the Community, designated as Model Types A/AR, B/BR, C/CR, D and E. Each of the models include, without limitation, all components, roof, exterior walls and the foundation. Model Types A/AR and C/CR are attached or duplex Residences. Model Types B/BR, D, and E are unattached Residences. Model Types A/AR, B/BR and C/CR have reverse floor model plans. A description of each model type is as follows:

#### Model Type A/AR

Model Type A/AR is a two-story Residence containing 3 bedrooms, 2 bathrooms, living/dining room, kitchen, utility room, entry patio, rear patio, rear storage room and other improvements as shown on the Condominium Map. This Model Type contains a net living area of approximately 1,471 square feet, entry area of approximately 91 square feet, and two-car garage area of approximately 384 square feet. There are 10 Model Type A/AR Residences in the Community.

#### Model Type B/BR

Model Type B/BR is a three-story Residence containing 3 bedrooms, 2 and one-half bathrooms, living/dining room, family room, kitchen, study, utility room, entry area, rear patio, rear storage room, and other improvements as shown on the Condominium Map. This Model Type contains a net living area of approximately 1,721 square feet, including a basement living area of approximately 142 square feet, entry area of approximately 77 square feet, rear patio of approximately 77 square feet, and two-car garage area of approximately 400 square feet. There are 14 Model Type B/BR Residences in the Community.

#### Model Type C/CR

Model Type C/CR is a two-story Residence containing 3 bedrooms, 2 bathrooms, living/dining room, family room, kitchen, utility room, entry patio, rear patio, storage room, and other improvements as shown on the Condominium Map. This Model Type contains a net living area of approximately 1,723 square feet, entry area of approximately 114 square feet, and two-car garage area of approximately 372 square feet. There are 10 Model Type C/CR Residences in the Community.

#### Model Type D

Model Type D is a two-story Residence containing 3 bedrooms, 2 and one-half bathrooms, living/dining room, family room, kitchen, utility room, entry patio, rear patio, rear storage room, and other improvements as shown on the Condominium Map. Units 38, 39, 41 and 43 have a ground floor deck and a lanai on the lower floor. This Model Type (with exception of Units 38, 39, 41 and 43) contains a net living area of approximately 1,848 square feet, entry area of approximately 98 square feet, and two-car garage area of approximately 386 square feet. Units 38, 39, 41 and 43 contain a net living area of approximately 1,839 square

feet, an entry area of approximately 98 square feet, lanai of approximately 159 square feet, deck of approximately 159 square feet, and two-car garage area of approximately 386 square feet. There are 8 Model Type D Residences in the Community.

Model Type E

Model Type E is a two-story Residence containing 3 bedrooms, 2 bathrooms, living/dining room, family room, kitchen, utility room, entry patio, rear patio, rear storage room, and other improvements as shown on the Condominium Map. Units 40 and 42 have a ground floor deck and a lanai on the lower floor. This Model Type (with exception of Units 40 and 42) contains a net living area of approximately 1,718 square feet, entry area of approximately 95 square feet, and two-car garage area of approximately 372 square feet. Units 40 and 42 contain a net living area of approximately 1,709 square feet, entry area of approximately 95 square feet, lanai of approximately 176 square feet, deck of approximately 176 square feet, and two-car garage area of approximately 372 square feet. There are 5 Model Type E Residences in the Community.

END OF EXHIBIT B-1

## **EXHIBIT "B-2"**

### **DESCRIPTION OF COMMON ELEMENTS**

The common elements of the Community shall specifically include, but are not limited to, the following:

1. The Land and those improvements to the Land, excluding the Residences and Private Yard Areas, but including without limitation the exterior lighting fixtures located along and/or adjacent to the Community Access Road, as defined in the Declaration, the common area landscaping and similar improvements.
2. All drainage facilities or swales, pipes, shafts, wires, conduits or other utilities or service lines running through a Residence, or Private Yard Area which are utilized for or serve more than one Residence, or Private Yard Area or other feature of the Community.
3. All fencing, sidewalks, pathways, curbs, and parking areas as labeled on the Condominium Map.
4. All ducts, electrical equipment, transformers, wiring, pipes and other central and appurtenant transmission facilities and installations over, under and across the Community or individual Private Yard Areas which are utilized by or serve more than one Residence or for services such as power, light, water, gas, sewer, drainage, telephone and radio and television signal distribution, if any.
5. All areas, rooms, spaces, structures, housings, chutes, shafts or facilities of the Community within or outside of the buildings, which are for common use or which serve more than one Residence, such as electrical, maintenance, service, security, machine, mechanical and equipment rooms and the equipment, machinery and facilities therein.
6. All the benefits, if any, inuring to the land or to the Community from all easements, if any, shown on the Condominium Map or listed in Exhibit "A" attached to the Declaration of Condominium Property Regime.
7. Any and all apparatus and installations of common use and all other parts of the Community necessary or convenient to its existence, maintenance and safety, or normally in common use, including the entry gate and associated facilities.
8. All other parts of the Community not included in the definition of a Residence or Private Yard Area.

**END OF EXHIBIT "B-2"**

**EXHIBIT "B-3"**

**DESCRIPTION OF LIMITED COMMON ELEMENTS**

Each Residence shall have appurtenant to the Residence easements for the exclusive use of certain limited common elements as follows:

1. Private Yard Area:

The land area appurtenant to each Residence, as described in this Declaration and as shown on the Condominium Map, and bearing the same Private Yard Area number as the unit number assigned to the Residence, is a limited common element. Private Yard Areas are not legally subdivided lots. Private Yard Areas include the land beneath the Residence bearing the same number as the Private Yard Area, the yard area in front of, to the rear and the sides of the Residence as demarked (at the sole election of Declarant) by (1) fencing of the yard area or rear yard and/or front yard areas of the Residence; (2) appropriate physical monuments at the corners of the Private Yard Area and/or locations shown on the Condominium Map; or (3) by metes and bounds noted on the Condominium Map or contained in a Supplemental Declaration. The driveways to the garage of the Residence to the boundary of such area with the Community access road or Common Driveway is also a limited common element appurtenant to the Residence served.

2. Common Boundary Walls and Party Walls:

All Common Boundary Walls or Party Walls as have been constructed on the common Private Yard Area boundary between limited common element Private Yard Areas, as shown on the Condominium Map, are limited common elements.

3. Mailboxes & Designated Trash Container Location:

Each Residence is provided a designated mailbox and designated trash container location for placement of trash containers on trash pick-up days. The trash container space may be used only as permitted under the Declaration.

**END OF EXHIBIT "B-3"**

**EXHIBIT "C"**

COMMON INTERESTS FOR INCREMENTS 1, 2, 3, and 4\*

**(assuming all increments are constructed)**

Model Type	Residence/(Unit) Number	Undivided Common Interest of Each Unit
A/AR (10 Units)	27, 28, 29, 30, 31, 32, 33, 34, 35, 36	1/47
B/BR (14 Units)	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 37	1/47
C/CR (10 Units)	15, 16, 17, 18, 19, 20, 21, 22, 23, 24	1/47
D (8 units)	25, 26, 38, 39, 41, 43, 45, 47	1/47
E (5 units)	14, 40, 42, 44, 46	1/47

\* The Developer contemplates that the development shall proceed in four increments. The Developer may alter the number of Residences within an Increment (by increasing or decreasing the number of Residences within an Increment) or construct the Community in one (1) or more Increments in Developer's discretion. Increment 1 shall consist of 13 Residences, Increment 2 shall consist of 12 Residences, Increment 3 shall consist of 12 Residences and Increment 4 shall consist of 10 Residences.

**END OF EXHIBIT "C"**

**EXHIBIT "D-1"**

**HOME BUILDER'S LIMITED WARRANTY  
ATTACHED**

# HOME BUILDER'S LIMITED WARRANTY

Administered by Professional Warranty Service Corporation

Throughout this HOME BUILDER'S LIMITED WARRANTY, referred to hereinafter as the "LIMITED WARRANTY", the words "YOU" and "YOUR" refer to the HOMEOWNER and HOMEOWNERS ASSOCIATION. The words "WE", "US" and "OUR" refer to the BUILDER. The other words and phrases which appear in boldface uppercase type also have special meaning. Refer to the Section X. Definitions, so that YOU will understand the terminology applicable to this LIMITED WARRANTY.

This LIMITED WARRANTY establishes an agreed method for determining when a CONSTRUCTION DEFECT exists and a clear understanding of OUR responsibilities for remedying any such CONSTRUCTION DEFECT. This LIMITED WARRANTY also helps distinguish a CONSTRUCTION DEFECT that is OUR responsibility from those minor imperfections that can reasonably be expected in a HOME or the COMMON ELEMENTS or result from normal wear and tear or are routine HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance responsibilities.

This LIMITED WARRANTY contains the procedures YOU must use to notify US of a condition in YOUR HOME or the COMMON ELEMENTS which YOU believe may constitute a CONSTRUCTION DEFECT. In the event a condition occurs in the HOME or the COMMON ELEMENTS that YOU believe may constitute a CONSTRUCTION DEFECT, YOU agree to submit any request for warranty performance under this LIMITED WARRANTY. Based on the information YOU provide, and where WE deem it necessary information obtained from OUR onsite investigation inspection and/or testing of the HOME or the COMMON ELEMENTS, WE will determine whether WE agree with YOU that the condition constitutes a CONSTRUCTION DEFECT. If WE determine that the condition reported by YOU is a CONSTRUCTION DEFECT, WE will remedy the condition in accordance with the remedies prescribed in this LIMITED WARRANTY. WE will make this determination in accordance with Section III, OUR Coverage Obligations, contained in this LIMITED WARRANTY.

If WE determine that a condition does not constitute a CONSTRUCTION DEFECT that is OUR responsibility and therefore deny YOUR request for warranty performance, YOU have the right to initiate binding arbitration that will irrevocably determine whether the condition constitutes a CONSTRUCTION DEFECT that is OUR responsibility. If this binding arbitration determines that the condition does constitute a CONSTRUCTION DEFECT that is OUR responsibility, WE will resolve the problem in accordance with the remedies prescribed in this LIMITED WARRANTY. The arbitrator will make a determination based on the language contained in Section III, OUR Coverage Obligations.

Enclosed with this LIMITED WARRANTY is a Limited Warranty Validation Form. The Limited Warranty Validation Form provides the dates on which the warranty coverage period begins and expires. It is important that this form is retained with the LIMITED WARRANTY. Liability under this LIMITED WARRANTY is limited to the amount shown on the Limited Warranty Validation Form.

All express or implied warranties other than this LIMITED WARRANTY, including any oral or written statement or representation made by US or any other person, and any implied warranty of habitability, merchantability or fitness, are hereby disclaimed by US and are waived by YOU. In addition, YOU waive the right to seek damages or other legal or equitable remedies from US, OUR Contractors, subcontractors, agents, vendors, suppliers, design professionals and materialmen, under any other common law or statutory theory of liability, including but not limited to negligence and strict liability. YOUR only remedy in the event of a CONSTRUCTION DEFECT in or to the HOME or the COMMON ELEMENTS or to the real property on which the HOME or the COMMON ELEMENTS is situated is the coverage provided to YOU under this LIMITED WARRANTY. There may be instances where an additional PWC administered Builder's Limited Warranty is issued together with this LIMITED WARRANTY. If both of these warranties are issued to YOU, YOU agree to request warranty performance under either warranty relative to warrantable issues on the HOME or the COMMON ELEMENTS. YOU may not collect twice relative to the same defect and amounts paid or expended by US for warranty performance under either warranty will reduce the limit of liability remaining under both warranties simultaneously.

**WE** have contracted with **PWC** for certain administrative services relative to this **LIMITED WARRANTY**. **PWC's** sole responsibility is to provide administrative services. Under no circumstances or conditions is **PWC** responsible for fulfilling **OUR** obligations under this **LIMITED WARRANTY**.

If any provision of this **LIMITED WARRANTY** is determined to be unenforceable, such a determination will not affect the remaining provisions. If this **LIMITED WARRANTY** or any provision herein is determined to be unenforceable as to a **HOMEOWNERS ASSOCIATION** or a specific **HOMEOWNER**, such a determination will not affect the enforceability of this **LIMITED WARRANTY** or such provision as to any other **HOMEOWNERS ASSOCIATION** or any other **HOMEOWNER**. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this **LIMITED WARRANTY**.

## I. Coverage Limit

The amount shown on the Limited Warranty Validation Form is **OUR** limit of liability. It is the most **WE** will pay or expend for all covered **CONSTRUCTION DEFECTS** regardless of the number of requests for warranty performance made against this **LIMITED WARRANTY**. Once **OUR** limit of liability has been paid, no further requests for warranty performance can be made against this **LIMITED WARRANTY** or any other **PWC** administered Builder's Limited Warranty issued for the **HOME** or the **COMMON ELEMENTS**.

## II. Warranty Coverage

Coverage under this **LIMITED WARRANTY** is expressly limited to **CONSTRUCTION DEFECTS** which occur during the **WARRANTY PERIOD** indicated on the Limited Warranty Validation Form and are reported by **YOU** in accordance with the notification requirements of Section VII, **Procedure to Request US To Perform Under This LIMITED WARRANTY**.

**Coverage** During the **WARRANTY PERIOD** indicated on the Limited Warranty Validation Form that is attached to and made part of this **LIMITED WARRANTY**, **WE** warrant the **HOME** and the **COMMON ELEMENTS** will be free of **CONSTRUCTION DEFECTS**. To be eligible for coverage **WE** must receive written notice from **YOU** of the alleged **CONSTRUCTION DEFECT** as soon as it is reasonably possible after **YOU** have become aware or should have become aware of a **CONSTRUCTION DEFECT** but in no event later than thirty (30) days after the expiration of the coverage.

## III. OUR Coverage Obligations

All notices of alleged **CONSTRUCTION DEFECTS**, and complaints under this **LIMITED WARRANTY** must be made by **YOU** in writing. Telephonic or face-to-face discussion will not protect **YOUR** rights under this **LIMITED WARRANTY** (see Section VII, **Procedure to Request US To Perform Under This LIMITED WARRANTY**).

In the event **YOU** allege a **CONSTRUCTION DEFECT** occurs during the **WARRANTY PERIOD**, upon receiving written notice from **YOU**, **WE**, or a third party designated by **US** or acting on **OUR** behalf, will inspect, investigate and/or test (including destructive testing) the alleged **CONSTRUCTION DEFECT** to determine if a **CONSTRUCTION DEFECT** exists. Upon confirmation of a **CONSTRUCTION DEFECT**, **WE**, or a third party designated by **US** or acting on **OUR** behalf, will (1) repair or replace the **CONSTRUCTION DEFECT**, (2) pay to **YOU** the actual amount it would cost **US** to repair or replace the **CONSTRUCTION DEFECT** or (3) **PAY** to **YOU** an amount equal to the diminution in fair market value caused by the **CONSTRUCTION DEFECT**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** authorized representative's sole option.

WE will have been considered to have breached this LIMITED WARRANTY only if WE fail to resolve a CONSTRUCTION DEFECT in accordance with the terms and conditions of this LIMITED WARRANTY.

- A. Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined**
- In the event YOU believe that a flaw in the HOME or the COMMON ELEMENTS constitutes a CONSTRUCTION DEFECT, the following factors will be considered by US in determining whether the condition constitutes a CONSTRUCTION DEFECT. Should either YOU or WE elect to initiate binding arbitration, these factors will be considered by the arbitrator in rendering a decision:
1. Any performance standards or guidelines or other documents or manuals that contain OUR building standards, that were provided to YOU at or prior to closing on the HOME, or in the case of the HOMEOWNERS ASSOCIATION, prior to transferring title to all the COMMON ELEMENTS. Absent such standards, the Residential Construction Performance Guidelines published by the National Association of Home Builders, in effect at the time of closing on the HOME, or in the case of the HOMEOWNERS ASSOCIATION, at the time of transferring title to all the COMMON ELEMENTS shall apply. Absent a specific standard in the documents identified above, building practices and standards in use in the region of the country in which the HOME or the COMMON ELEMENTS are located shall apply;
  2. Consideration as to whether the magnitude of the flaw or imperfection:
    - materially affects the structural integrity of the HOME or COMMON ELEMENTS; or
    - has an obvious and material negative impact on the appearance of the HOME or COMMON ELEMENTS; or
    - jeopardizes the life or safety of the occupants; or
    - results in the inability of the HOME or the applicable COMMON ELEMENTS to provide the functions that can reasonably be expected in such a HOME or COMMON ELEMENT.
  3. Consideration as to whether a condition is the result of normal wear and tear (conditions that are normal wear and tear, or are caused by normal wear and tear are not CONSTRUCTION DEFECTS);
  4. Consideration as to whether the condition was caused by, or in any way resulted from, the failure of the HOMEOWNER or HOMEOWNERS ASSOCIATION to perform normal or routine maintenance (any condition that is determined to be a HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance issue, or any condition that results from improper or inadequate HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance, is not a CONSTRUCTION DEFECT);
  5. Consideration as to whether the condition was caused by the HOMEOWNER or HOMEOWNERS ASSOCIATION or their representatives, other than US, after the HOMEOWNER took possession of the HOME or the COMMON ELEMENTS (WE and YOU conducted a walk through inspection just prior to closing on the HOME. Damage that was caused by YOU or YOUR representatives is not a CONSTRUCTION DEFECT, for example, a large, visible scratch on marble tile in the entry foyer that was not noted in the walk through inspection, but was reported after furniture was moved into the HOME, will not be considered a CONSTRUCTION DEFECT);
  6. Recognition that any condition resulting directly or indirectly from or worsened by changes, additions, alterations or other actions or omissions by the HOMEOWNER or HOMEOWNERS ASSOCIATION or their agents, other than US, will not be considered a CONSTRUCTION DEFECT (this includes changes to the topography, drainage or grade of the property);
  7. Any Exclusions contained in this LIMITED WARRANTY.

## IV. Homeowner Maintenance Obligations

Maintenance of the HOME and the COMMON ELEMENTS is YOUR responsibility. All homes and common elements require periodic maintenance to prevent premature deterioration, water intrusion and to ensure adequate performance of the SYSTEMS. WE will make a "Homeowner Maintenance Manual" or similar publication available to YOU upon request. Whether from this document or others that are readily available to YOU, YOU must understand and perform the maintenance that the HOME and COMMON ELEMENTS require. As stated in other sections of this LIMITED WARRANTY, WE are not responsible for HOME or COMMON ELEMENTS maintenance issues or for damage that results from YOUR failure to maintain the HOME or the COMMON ELEMENTS.

## V. Coverage Limitations

When WE or a third party designated by US or acting on OUR behalf, repair or replace a CONSTRUCTION DEFECT the repair or replacement will include the repair or replacement of only those surfaces, finishes and coverings that were damaged by the CONSTRUCTION DEFECT that were part of the HOME or the COMMON ELEMENTS when title was first transferred by US. Surfaces, finishes and coverings that require repair or replacement in order for US or a third party designated by US to repair or replace CONSTRUCTION DEFECTS will be repaired or replaced. The extent of the repair and replacement of these surfaces, finishes or coverings will be to approximately the same condition they were in prior to the CONSTRUCTION DEFECT, but not necessarily to a like new condition.

When repairing or replacing surfaces, finishes and coverings, the repair or replacement will attempt to achieve as close a match with the original surrounding areas as is reasonably possible, but an exact match cannot be guaranteed due to such factors as fading, aging and unavailability of the same materials.

In the case where a CONSTRUCTION DEFECT exists and the HOME is rendered uninhabitable and the CONSTRUCTION DEFECT is repaired or replaced, the repair or replacement shall include the reasonable cost of the HOMEOWNER'S alternative shelter until the HOME is made habitable.

## VI. Exclusions

A. This LIMITED WARRANTY does not cover:

1. Any CONSTRUCTION DEFECTS or other damages resulting, either directly or indirectly, from the following causes or occurring in the following situations:
  - a. Fire;
  - b. Lightning;
  - c. Explosion;
  - d. Riot and Civil Commotion;
  - e. Smoke;
  - f. Hail;
  - g. Aircraft;
  - h. Falling Objects;
  - i. Vehicles;

- j. Floods;
  - k. Earthquake;
  - l. Landslide or mudslide originating on property other than the site of the HOME or the COMMON ELEMENTS or other property developed by the BUILDER;
  - m. Mine subsidence or sinkholes;
  - n. Changes in the underground water table not reasonably foreseeable by the BUILDER;
  - o. Volcanic eruption; explosion or effusion;
  - p. Wind including:
    - (i). Gale force winds;
    - (ii). Hurricanes;
    - (iii). Tropical storms;
    - (iv). Tornadoes;
  - q. Insects, animals or vermin;
  - r. Changes of the grading of the ground by anyone other than US or OUR agents, or Contractors which results in surface drainage towards the HOME or other improper drainage or permits water to pond or become trapped in localized areas against the foundation or otherwise;
  - s. Changes, additions, or alterations made to the HOME or the COMMON ELEMENTS by anyone after the WARRANTY PERIOD begins, except those made or authorized by US;
  - t. Any defect in material or workmanship supplied by anyone other than US or OUR agents, or Contractors;
  - u. Improper maintenance, negligence or improper use of the HOME or the COMMON ELEMENTS by YOU or anyone other than US that results in rot, dry rot, moisture, rust, mildew or any other damage;
  - v. Dampness or condensation due to YOUR failure to maintain adequate ventilation;
  - w. Damage resulting from the weight and/or performance of any type of waterbed or other furnishings which exceeds the load-bearing design of the HOME or the COMMON ELEMENTS;
  - x. Normal wear and tear or normal deterioration of materials;
  - y. Economic damages due to the HOME'S or the COMMON ELEMENTS' failure to meet consumer expectations.
2. Any costs arising from, or any CONSTRUCTION DEFECT resulting from the actual, alleged or threatened discharge, dispersal, release or escape of POLLUTANTS. WE will not cover costs or expenses arising from the uninhabitability of the HOME or the COMMON ELEMENTS or health risk due to the proximity of POLLUTANTS. WE will not cover costs, or expenses resulting from the direction of any governmental entity to test, clean-up, remove, treat, contain or monitor POLLUTANTS;
  3. Any costs arising from, or any CONSTRUCTION DEFECT resulting from the effects of electromagnetic fields (EMF's) or radiation;
  4. Any damage to personal property that does not result from a CONSTRUCTION DEFECT;
  5. Any "CONSEQUENTIAL OR INCIDENTAL DAMAGES";
  6. Any damage to CONSUMER PRODUCTS;
  7. Any CONSTRUCTION DEFECT as to which YOU have not taken timely and reasonable steps to protect and minimize damage after WE or OUR authorized representative have provided YOU with authorization to prevent further damage;
  8. Any damage to the extent it is incurred after or as a result of YOUR failure to notify US in a reasonably timely manner after YOU have become aware or should have become aware of the CONSTRUCTION

**DEFECT** or condition causing such damage;

9. Any costs or obligations paid or incurred by **YOU** in violation of Section VII. C. below;
  10. Any non-conformity with local building codes, regulations or requirements that has not resulted in a **CONSTRUCTION DEFECT**. While **WE** acknowledge **OUR** responsibility to build in accordance with applicable building codes, this **LIMITED WARRANTY** does not cover building code violations in the absence of a **CONSTRUCTION DEFECT**;
  11. Any deviation from plans and specifications that has not resulted in a **CONSTRUCTION DEFECT**.
- B.** **OUR LIMITED WARRANTY** does not cover any **CONSTRUCTION DEFECT** which would not have occurred in the absence of one or more of the excluded events or conditions listed in Exclusions, Section VI. A.1 a. – A.1.q., A.2. or A.3. above, regardless of:
1. the cause of the excluded event or condition; or
  2. other causes of the loss or damage; or
  3. whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage.

## **VII. Procedure to Request US To Perform Under This LIMITED WARRANTY**

If **YOU** become aware of a condition that **YOU** believe is a **CONSTRUCTION DEFECT** under this **LIMITED WARRANTY**, **YOU** have the following responsibilities:

### **A. Notification**

**YOU** must notify **US** in writing as soon as it is reasonably possible after **YOU** have become aware or should have become aware of a **CONSTRUCTION DEFECT**, but in no event may **YOUR** written notice of a **CONSTRUCTION DEFECT** or **YOUR** written request for warranty performance be postmarked or received by **US** later than thirty (30) days after this **LIMITED WARRANTY** has expired.

If the written notice is postmarked or received by **US** more than thirty (30) days after the expiration of this **LIMITED WARRANTY**, **WE** shall have no obligation to remedy the **CONSTRUCTION DEFECT**. In order to establish a record of timely notification, **WE** recommend that written notice should always be sent by Certified Mail, return receipt requested.

### **B. Cooperate With US**

**YOU** must give **US** and any third parties acting on **OUR** behalf reasonable help in inspecting, investigating, testing (including destructive testing), monitoring, repairing, replacing or otherwise correcting an alleged **CONSTRUCTION DEFECT**. Help includes, but is not limited to, granting reasonable access to the **HOME** or **COMMON ELEMENTS** for the forgoing purposes. If **YOU** fail to cooperate or provide such reasonable access to the **HOME** or **COMMON ELEMENTS**, **WE** will have no obligation to do any of the foregoing.

### **C. Do Not Make Voluntary Payments**

**YOU** agree not to make any voluntary payments or assume any obligations or incur any expenses for the remedy of a condition **YOU** believe is a **CONSTRUCTION DEFECT** without prior written approval from **US**, or other parties authorized to act on **OUR** behalf. **WE** will not reimburse **YOU** for costs incurred where **YOU** did

not obtain prior written approval.

However, **YOU** may incur reasonable expenses in making repairs in an **EMERGENCY CONDITION** without prior written approval, provided the repairs are solely for the protection of the **HOME** or **COMMON ELEMENTS** from further damage or to prevent an unsafe living condition and provided **YOU** notify **US** as soon as is reasonably possible. To obtain reimbursement for repairs made during an **EMERGENCY CONDITION**, **YOU** must provide **US** with an accurate written record of the repair costs.

#### **D. Sign A Release**

When **WE** or a third party designated by **US** or acting on **OUR** behalf have completed repairing, replacing or paying **YOU** as to any **CONSTRUCTION DEFECTS** or other related damage to the **HOME** or the **COMMON ELEMENTS** covered by this **LIMITED WARRANTY**, **YOU** must sign a full release of **OUR** obligation for the **CONSTRUCTION DEFECTS**. The release shall be applicable to the **CONSTRUCTION DEFECTS** and shall not prevent **YOU** from notifying **US** should **YOU** become aware of a subsequent **CONSTRUCTION DEFECT**.

#### **E. If YOU Disagree With US**

If **YOU** believe **WE** have not responded to **YOUR** request for warranty performance to **YOUR** satisfaction or in a manner that **YOU** believe this **LIMITED WARRANTY** requires, **YOU** may provide written notice to **PWC** requesting Mediation. Upon **PWC**'s receipt of written notice from **YOU**, **PWC** may review and mediate **YOUR** request by communicating with **YOU**, **US**, and any other individuals or entities that **PWC** believes may possess relevant information. If after forty-five (45) days, **PWC** is unable to successfully mediate **YOUR** request for warranty performance, or at any earlier time when **PWC** determines that **YOU** and **WE** are at an impasse, **PWC** will notify **YOU** that **YOUR** request for warranty performance remains unresolved and that **YOU** may elect to initiate Binding Arbitration. Binding Arbitration as described in the following section is the sole remedy for the resolution of disputes between **YOU** and **US** as set forth in the following section.

## **VIII. Binding Arbitration Procedure**

Any disputes between **YOU** and **US**, or parties acting on **OUR** behalf, including **PWC**, related to or arising from this **LIMITED WARRANTY**, the design or construction of the **HOME** or the **COMMON ELEMENTS** or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS** will be resolved by binding arbitration. Binding arbitration shall be the sole remedy for resolving any and all disputes between **YOU** and **US**, or **OUR** representatives. Disputes subject to binding arbitration include, but are not limited to:

- A. Any disagreement that a condition in the **HOME** or the **COMMON ELEMENTS** is a **CONSTRUCTION DEFECT** and is therefore covered by this **LIMITED WARRANTY**;
- B. Any disagreement as to whether a **CONSTRUCTION DEFECT** has been corrected in compliance with this **LIMITED WARRANTY**;
- C. Any alleged breach of this **LIMITED WARRANTY**;
- D. Any alleged violation of consumer protection, unfair trade practice, or any other statute;
- E. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and any other claims arising in equity or from common law;
- F. Any dispute concerning the issues that should be submitted to binding arbitration;
- G. Any dispute concerning the timeliness of **OUR** performance and/or **YOUR** notifications under

this LIMITED WARRANTY;

- H. Any dispute as to the payment or reimbursement of the arbitration filing fee;
- I. Any dispute as to whether this LIMITED WARRANTY, or any provision hereof, including, but not limited to any waiver hereunder, is unenforceable;
- J. Any other claim arising out of or relating to the sale, design or construction of YOUR HOME or the COMMON ELEMENTS, including, but not limited to any claim arising out of, relating to or based on any implied warranty or claim for negligence or strict liability not effectively waived by this LIMITED WARRANTY.

The arbitration shall be conducted by Construction Arbitration Services, Inc., or such other reputable arbitration service that PWC shall select, at its sole discretion, at the time the request for arbitration is submitted. The rules and procedures of the designated arbitration organization, that are in effect at the time the request for arbitration is submitted, will be followed. A copy of the applicable rules and procedures will be delivered to YOU upon request.

This arbitration agreement shall be governed by the United States Arbitration Act (9 U.S.C. §§ 1 – 16) to the exclusion of any inconsistent state law, regulation or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

Each party shall bear its own attorneys fees and costs (including expert costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between YOU and US. This filing fee shall be no more than the amount charged by the arbitration service to PWC for each arbitration. Contact PWC to determine the arbitration filing fee in effect at the time an arbitration is being requested. The arbitrator shall, as part of any decision, award to the party prevailing at the arbitration any applicable filing fees or other arbitration fees paid by that party.

The process for YOU to initiate arbitration is described below.

- Step 1 YOU complete a Binding Arbitration Request Form and mail it to PWC along with the appropriate arbitration filing fee. A Binding Arbitration Request Form is attached to this LIMITED WARRANTY. YOUR Binding Arbitration Request Form must be received no later than ninety (90) days after this LIMITED WARRANTY expires. YOU must still notify US of an alleged CONSTRUCTION DEFECT as soon as it is reasonably possible after YOU have become aware or should have become aware of the CONSTRUCTION DEFECT, but in no event later than thirty (30) days after expiration of this LIMITED WARRANTY. Please Note that while YOU have thirty (30) days after this LIMITED WARRANTY expires to notify US and ninety (90) days after it expires to file for arbitration, this time period does not extend the WARRANTY PERIOD for CONSTRUCTION DEFECTS. Additionally, no investigation, inspection, testing, repair, replacement, or payment, nor any promise of same by US under this LIMITED WARRANTY, nor any dispute resolution efforts, shall extend the term of this LIMITED WARRANTY or extend or toll any statutes of limitations or any of YOUR rights or remedies.
- Step 2 PWC Will Arrange the Arbitration Proceeding. The arbitrator or arbitration organization will notify YOU of the time, date and location of the arbitration hearing. Most often the hearing will be conducted at the HOME or the COMMON ELEMENTS or some other location that is agreeable to all the parties to the dispute. In scheduling the hearing the arbitrator will set a time and date that is reasonably convenient to all the parties.
- Step 3 The Arbitration Hearing. The parties at the arbitration hearing will include the arbitrator, YOU, US and/or a third party designated by US or acting on OUR behalf. Any party to the proceeding may be represented at the hearing. All persons who are parties to the arbitration, as well as representatives

and witnesses, are entitled to attend hearings.

After evidence is presented by YOU, US or OUR representatives, a decision will be rendered by the arbitrator. The decision is final and binding on YOU and US. The arbitrator first will determine whether any claimed or alleged CONSTRUCTION DEFECT exists and whether it is OUR responsibility. Second, if the arbitrator finds US responsible for a CONSTRUCTION DEFECT, the arbitrator will determine the scope of any repair or replacement, OUR cost of any such repair or replacement, and the diminution in fair market value, if any, caused by such CONSTRUCTION DEFECT. Based upon the arbitrator's decision, WE shall choose whether WE shall (1) repair, replace the CONSTRUCTION DEFECT, (2) pay to YOU the actual amount it would cost in fair market value caused by the CONSTRUCTION DEFECT or (3) PAY to YOU an amount equal to the diminution in fair market value caused by the CONSTRUCTION DEFECT. The decision to repair, replace, or to make payment to YOU is at OUR or OUR authorized representative's sole option. In addition, the arbitrator shall render a decision resolving any other disputed matters or issues related to or arising from this LIMITED WARRANTY, the design or construction of the HOME or the COMMON ELEMENTS or the sale of the HOME or transfer of title to the COMMON ELEMENTS.

**Step 4** OUR Arbitration Performance Obligations. WE will comply with the arbitrator's decision no later than 60 days from the date of the award or other such date as may be specified or allowed in the decision. However, delays caused by circumstances beyond OUR or OUR representative's control shall be excused.

**Step 5.** If YOU believe WE Have Failed To Comply With The Award. YOU should contact PWC at its mailing address specified in this LIMITED WARRANTY if YOU believe WE have not complied with the arbitrator's award. PWC will mediate this dispute and if it cannot be resolved, will advise YOU that a compliance inspection arbitration is available to determine whether WE have performed adequately under the original arbitration award. PWC will communicate these findings to both US and YOU. If it is determined that WE have not properly performed, WE will be obligated to immediately comply.

PWC's sole responsibility is to administer this LIMITED WARRANTY on OUR behalf and as such PWC assumes no other liabilities in connection with this LIMITED WARRANTY. Under no condition or circumstance is PWC responsible for fulfilling any of OUR obligations under this LIMITED WARRANTY.

## IX. General Conditions

### A. Separation of This LIMITED WARRANTY From The Contract Of Sale

This LIMITED WARRANTY is separate and independent of the contract between YOU and US for the construction and/or sale of the HOME or transfer of the COMMON ELEMENTS. The provisions of this LIMITED WARRANTY shall in no way be restricted or expanded by anything contained in the construction and/or sales contract or other documents between YOU and US.

### B. Transfer to Subsequent HOMEOWNERS

This LIMITED WARRANTY will transfer to new owners of the HOME for the remainder of the WARRANTY PERIOD. YOU agree to provide this LIMITED WARRANTY to any subsequent purchaser of the HOME as a part of the contract of sale of the HOME. OUR duties under this LIMITED WARRANTY to the new HOMEOWNER will not exceed the limit of liability then remaining, if any.

### C. Transfer of Manufacturer's Warranties

WE assign to YOU all the manufacturer's warranties on all appliances, fixtures and items of equipment that WE installed in the HOME. Should an appliance or item of equipment malfunction YOU must

follow the procedures set forth in that manufacturer's warranty to correct the problem. **OUR** obligation under this **LIMITED WARRANTY** is limited to the workmanlike installation of such appliances and equipment. **WE** have no obligation for appliances and equipment defined as **CONSUMER PRODUCTS**.

#### **D. Recovery Rights**

If **WE** or a third party designated by **US** or acting on **OUR** behalf repairs, replaces or pays **YOU** as to a **CONSTRUCTION DEFECT**, or other related damage to the **HOME** or the **COMMON ELEMENTS** covered by this **LIMITED WARRANTY**, **WE** are entitled, to the extent of **OUR** payment, to take over **YOUR** related rights of recovery from other people and organizations, including but not limited to, other warranties and insurance. **YOU** have an obligation not to make it harder for **US** to enforce these rights. **YOU** agree to sign any papers, deliver them to **US**, and do anything else that is necessary to help **US** exercise **OUR** rights.

#### **E. General Provisions**

1. If any provision of this **LIMITED WARRANTY** is determined to be unenforceable, such a determination will not affect the remaining provisions. If this **LIMITED WARRANTY** or any provision herein is determined to be unenforceable as to a **HOMEOWNERS ASSOCIATION** or a specific **HOMEOWNER**, such a determination will not affect the enforceability of this **LIMITED WARRANTY** or such provision as to any other **HOMEOWNERS ASSOCIATION** or any other **HOMEOWNER**. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this **LIMITED WARRANTY**.
2. This **LIMITED WARRANTY** and the binding arbitration process are binding on **YOU** and **US**. It is also binding on **YOUR** and **OUR** heirs, executors, administrators, successors, and assigns, subject to paragraph B of the **General Conditions**.
3. As may be appropriate, the use of the plural in this **LIMITED WARRANTY** includes the singular, and the use of one gender includes all genders.

#### **X. Definitions**

**BUILDER** means the individual, partnership, corporation or other entity which participates in the Warranty Program administered by the Professional Warranty Service Corporation and provides **YOU** with this **LIMITED WARRANTY**. Throughout this document the **BUILDER** is also referred to as "**WE**", "**US**" and "**OUR**".

**COMMON ELEMENTS** means the property as specified in the recorded Covenants, Conditions and Restrictions as common area and any other property as to which the **HOMEOWNERS ASSOCIATION** has standing under the law to make a claim. This may include, but is not limited to, streets, slopes, the structure or components of enclosure or other parts of the **HOME**, corridors, lobbies, vertical transportation elements, rooms, balconies, clubhouses or other spaces that are for the common use of the residents of the development in which the **HOME** is located. **SYSTEMS** serving two or more **HOMES**, and the outbuildings that contain parts of such **SYSTEMS** are also included in this definition.

**CONSEQUENTIAL OR INCIDENTAL DAMAGES** means any loss or injury other than:

- A. **OUR** cost to correct a **CONSTRUCTION DEFECT** including the correction of those surfaces, finishes and coverings damaged by the **CONSTRUCTION DEFECT**;
- B. **OUR** cost of repair or replacement of furniture, carpet or personal property damaged by the **CONSTRUCTION DEFECT**. Should replacement be necessary, **OUR** obligation is limited to replacement with items providing the same function and quality and that are readily available at the time the item is being replaced.
- C. **OUR** costs of removal or replacement in order to repair or replace a **CONSTRUCTION**

**DEFECT;**

- D. The reasonable cost of the HOMEOWNER'S alternative shelter where the HOME is uninhabitable due to a CONSTRUCTION DEFECT or where the HOME is rendered uninhabitable by the repair of the CONSTRUCTION DEFECT.

Diminished fair market value is considered "CONSEQUENTIAL OR INCIDENTAL DAMAGE" and is excluded under this LIMITED WARRANTY unless WE elect this remedy in lieu of the repair, replacement or other payment as to a CONSTRUCTION DEFECT.

**CONSTRUCTION DEFECT(S)** means a flaw in the materials or workmanship used in constructing the HOME that:

- materially affects the structural integrity of the HOME or the **COMMON ELEMENTS**; or
- has an obvious and material negative impact on the appearance of the HOME or the **COMMON ELEMENTS**; or
- jeopardizes the life or safety of the occupants; or
- results in the inability of the HOME or the applicable **COMMON ELEMENTS** to provide the functions that can reasonably be expected in a residential dwelling.

WE and any arbitrator assigned to rule relative to a CONSTRUCTION DEFECT will consider both this definition and Section III – A. (Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined) in determining the existence of a CONSTRUCTION DEFECT. A flaw is a CONSTRUCTION DEFECT if either WE or an arbitrator conducting a binding arbitration hearing declares the flaw to be a CONSTRUCTION DEFECT. OUR obvious and visible failure to complete the construction of the HOME or COMMON ELEMENTS, or any portion of the HOME or COMMON ELEMENTS, is not a CONSTRUCTION DEFECT.

**CONSUMER PRODUCT** means any item of equipment, appliance or other item defined as a CONSUMER PRODUCT in the Magnuson-Moss Warranty Act (15 U.S.C. §. 2301, et seq.) Examples of Consumer Products include, but are not limited to dishwasher, garbage disposal, gas or electric cook-top, range, range hood, refrigerator or refrigerator/freezer combination, gas oven, electric oven, microwave oven, trash compactor, garage door opener, clothes washer and dryer, hot water heater and thermostat.

**EMERGENCY CONDITION** means an event or situation that creates the imminent threat of damage to the HOME or COMMON ELEMENTS, or results in an unsafe living condition due to a CONSTRUCTION DEFECT that YOU (or as applicable, the HOMEOWNERS ASSOCIATION) become aware of at a point in time other than OUR normal business hours and YOU were unable to obtain OUR or OUR authorized representative's prior written approval to initiate repairs to stabilize the condition or prevent further damage.

**HOME** means a single family residence either attached or detached covered by this LIMITED WARRANTY or a condominium or cooperative unit in a multi-unit residential structure/building covered by this LIMITED WARRANTY.

**HOME BUILDER'S LIMITED WARRANTY** means only this express warranty document provided to YOU by US.

**HOMEOWNER** means the first person(s) to whom a HOME (or a unit in a multi-unit residential structure/building) is sold, or for whom such HOME is constructed, for occupancy by such person or such person's family, and such person's(s') successors in title to the HOME, or mortgagees in possession and any representative of such person(s) who has standing to make a claim on that person(s) behalf, including any class representative or HOMEOWNERS ASSOCIATION making a claim in a representative capacity.

**HOMEOWNERS ASSOCIATION** means a profit or nonprofit corporation, unincorporated association, organization, partnership, assessment district, limited liability company, limited liability partnership or other entity of any kind that owns, manages, maintains, repairs, administers, or is otherwise responsible for and has standing to make a claim as to any part of the **COMMON ELEMENTS**.

**POLLUTANTS** means all solid, liquid, or gaseous irritants or contaminants. The term includes, but is not limited to, petroleum products, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, radon gas, and

waste materials, including materials to be recycled.

**PWC** means Professional Warranty Service Corporation which administers the warranty program in which **WE** participate. As such, **PWC** assumes no other liabilities in connection with this **LIMITED WARRANTY**. The **PWC** mailing address is: Professional Warranty Service Corporation  
P.O. Box 800 Annandale, VA 22003-0800

**SYSTEMS** means the following:

- (a) Plumbing system - gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; and water, gas and sewer services piping and their extensions to the tie-in of a public utility connection or on-site well and sewage disposal system.
- (b) Electrical system - all wiring, electrical boxes, switches, outlets, and connections up to the public utility connection.
- (c) Heating, Cooling, and Ventilation system - all duct-work; steam, water and refrigerant lines; and registers, connectors; radiation elements and dampers.

**WARRANTY PERIOD** shall commence on the date the title to the **HOME** is transferred to the first **HOMEOWNER**. Notwithstanding anything to the contrary set forth in this **LIMITED WARRANTY**, the **WARRANTY PERIOD** for the **COMMON ELEMENTS** of an individual structure/building commences on the date the title for the first **HOME** in the structure/building is transferred to the first **HOMEOWNER** or as concerns clubhouses or outbuildings or other **COMMON ELEMENTS** not part of the **HOME** the date the title to these structures is transferred to the **HOMEOWNERS ASSOCIATION**. The dates the **WARRANTY PERIOD** begins and ends are indicated on the Limited Warranty Validation Form which is attached to and made part of this **LIMITED WARRANTY**.

**WE, US, OUR** means the **BUILDER**.

**YOU, YOUR** means the **HOMEOWNER** and the **HOMEOWNERS ASSOCIATION**.

**EXHIBIT "D-2"**

**ACKNOWLEDGEMENT  
ATTACHED**

**HOME BUILDER'S LIMITED WARRANTY**  
(Acknowledgement of Receipt and Agreement to Read and Understand)

I/we hereby certify that on, or prior to, the date of this Agreement, I/we have received a copy of the Home Builder's Limited Warranty (PWC Form No. 117 Rev. 05/02) which commences on the date the title for the home is transferred to the first homeowner and expires ten years from the date the title for the home is transferred to the first homeowner. I/we agree that, prior to closing/settlement on the home to which this Agreement relates, I/we will read the Home Builder's Limited Warranty in its entirety and will contact the builder with any questions I/we have about my/our or the builder's duties, rights and obligations under the Home Builder's Limited Warranty or the coverage, limits or exclusions contained therein.

I/we understand that I/we may contact Professional Warranty Service Corporation (PWC), which acts as the warranty administrator, to discuss these issues.

I/we understand that I/we have the right to have the Home Builder's Limited Warranty and any and all other documents related to my/our purchase of the home reviewed by an attorney of my/our choosing at my/our sole expense. This review does not allow the purchaser to alter the terms of the warranty, delay or cancel the closing on the contracted home.

I/we agree that my/our failure to read the Home Builder's Limited Warranty and to obtain any needed assistance in understanding the Home Builder's Limited Warranty document shall not in any way change my/our or the builder's rights, duties or obligations under this Home Builder's Limited Warranty.

Property Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Home Buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Home Buyer

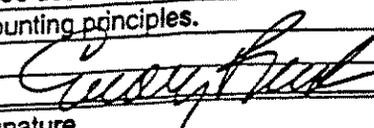
\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Home Buyer

\_\_\_\_\_  
Date

**EXHIBIT "E"**

**ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS  
ATTACHED**

	Monthly	Annually
	Without Bldg Mtnc	Without Bldg Mtnc
<b>Utilities and Services</b>		
Electricity (common elements only)	\$310.00	\$3,720.00
Water	\$1,410.00	\$16,920.00
Water Irrigation	\$1,833.00	\$21,996.00
Sewer	\$1,410.00	\$16,920.00
Table	\$0.00	\$0.00
<b>Common Area Maintenance</b>		
Grounds	\$4,700.00	\$56,400.00
Sanitorial Common Areas	\$250.00	\$3,000.00
Pest Control	\$100.00	\$1,200.00
Equipment	\$125.00	\$1,500.00
Driveway	\$100.00	\$1,200.00
<b>Management</b>		
Management Fee	\$1,000.00	\$12,000.00
Design Review	\$0.00	\$0.00
Misc/Office/Education Expenses	\$250.00	\$3,000.00
<b>Insurance</b>		
Property	\$212.00	\$2,544.00
General Liability	\$335.00	\$4,020.00
Umbrella	\$416.00	\$4,992.00
Auto & O	\$125.00	\$1,500.00
Bond	\$45.00	\$540.00
Taxes and Government Assessments	\$15.00	\$180.00
Professional Services/Legal/Other	\$50.00	\$600.00
Audit and Tax Preparation	\$84.00	\$1,008.00
Reserves	\$588.00	\$7,056.00
<b>Total</b>	<b>\$13,358.00</b>	<b>\$160,296.00</b>
Number of units	47	47
Monthly maintenance fee per unit	\$284.21	
Annual maintenance fee per unit		\$3,410.55
Emory Bush, as agent for/and/or employed by Hawaiiana Management Company, the condominium managing agent for Ho'olu Landing at Makakilo condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.		
		10-4-04 Date
Pursuant to 514A-83.6, Hawaii Revised Statutes, a new association created after January 1, 1993 need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. The Developer has not conducted a reserve study for the Project. The budget amount for Reserves is an estimate only.		
The foregoing estimates of initial maintenance fee assessments and maintenance fee disbursements assume that all building maintenance will be the responsibility of each homeowner, not the association; homeowners will be solely responsible for purchasing and maintaining property insurance on their homes; no property insurance for the homes will be provided by the Association; refuse pick-up will be provided by the City and County of Honolulu, design review services will be charged to the applicant homeowner and tree trimming will not be required until the third year of operation.		

## **EXHIBIT "F"**

### **SUMMARY OF SALES CONTRACT**

The Fee Simple Home Purchase Agreement (the "Sales Contract") contains the price and other terms and conditions under which a buyer will agree to buy a Residence in the Community. Among other things, the Sales Contract states:

- (a) The total buyer price, method of payment and additional sums which must be paid in connection with the purchase of a Residence.
- (b) That the buyer acknowledges having received and read a public report (either contingent or final) for the Community prior to signing the Sales Contract.
- (c) That the Developer makes no representations concerning rental of a Residence, income or profit from a Residence, or any other economic benefit to be derived from the purchase of a Residence.
- (d) That the Sales Contract may be subordinate to the lien of a construction lender.
- (e) That the buyer's money will be held in escrow, under the terms of the Escrow Agreement.
- (f) Requirements relating to the buyer's financing of the purchase of a Residence.
- (g) That the Residence and the Community will be subject to various other legal documents which the buyer should examine, and that the Developer may change these documents under certain circumstances.
- (h) That, except to the extent of a limited warranty in the form attached as Exhibits D-1 and D-2 to this Public Report, the Developer makes no warranties regarding the Residence, the Community, or anything installed or contained in the Residence or the Community.
- (i) That the Community will be subject to ongoing construction and sales activities which may result in certain annoyances to the buyer.
- (j) That the buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
- (k) That the Developer has reserved certain rights and powers relating to the Community and the buyer acknowledges and consents to the exercise of such rights and powers.
- (l) That except under certain circumstances, as set forth in the Sales Contract, all interest on deposits toward the purchase price shall be the property of the Developer.
- (m) If the buyer defaults, Developer may retain buyer's deposits and bring an action against buyer. If the Developer defaults, buyer may bring an action against Developer. All actions are subject to arbitration as provided in the Sales Contract.

The Sales Contract contains various other important provisions relating to the purchase of a Residence in the Community. Buyers and prospective buyers should carefully read the specimen Sales Contract on file with the Real Estate Commission. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings given them under the Sales Contract.

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE SALES CONTRACT. WHILE A BUYER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF BUYER'S RIGHTS AND OBLIGATIONS UNDER THE SALES CONTRACT, BUYER MUST REFER TO THE SALES CONTRACT TO DETERMINE BUYER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE SALES CONTRACT, THE SALES CONTRACT WILL CONTROL.

**END OF EXHIBIT "F"**

## **EXHIBIT "G"**

### **SUMMARY OF ESCROW AGREEMENT**

The Escrow Agreement sets up an arrangement under which the deposits a buyer makes pursuant to a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

- (a) Escrow will let the buyer know when payments are due.
- (b) Escrow will arrange for the buyer to sign all necessary documents.
- (c) Except under certain circumstances as set forth in the Sales Contract, all deposits toward the purchase price shall be the property of the Developer. Provided that the buyer is not in default under the Sales Contract and the Sales Contract contains a financing provision, buyer's deposits, less escrow cancellation fees and third party lender fees, is refundable to buyer if buyer fails to qualify for a mortgage loan. Otherwise, all deposits toward the purchase price shall be the property of the Developer. The buyer will be entitled to a refund of his or her funds only under certain circumstances.

The Escrow Agreement also establishes the procedures for the retention and disbursement of a buyer's funds. A buyer's funds may be used by the Seller only after the Real Estate Commission has (a) issued an effective date for a final public report; and (b) the buyer has been given a copy of the final report together with a receipt and notice which complies with the condominium law; and (c) the buyer has signed the receipt and notice and waived his right to cancel or thirty days have elapsed since buyer received the receipt and notice; and (d) Seller advises Escrow that the sales contract has become binding. The buyer's funds may be used for construction costs only if the above events have occurred and there is money in Escrow to make the payments and the money is used for construction of the community and the Seller's mortgagee has approved the bills submitted to Escrow. Any buyer's money that is left in Escrow after the construction costs have been paid, and any money paid by the buyer at closing shall be paid to Seller when the deed to buyer has been recorded and the building has been completed and a title insurance company has given Escrow proof that all mechanic's and materialmen's liens have been cleared or Escrow holds 150% of the amount needed to cover any liens that may be filed.

The sales contract states when refunds of deposits may be made to the buyer. No refund will be made to a buyer unless Escrow receives written approval from the Seller or from the court.

The Escrow Agreement also says what will happen to the funds upon a default under the Sales Contract. The Escrow Agreement contains various other important provisions and establishes certain charges with which a buyer should be familiar. Buyers and prospective buyers should carefully read the signed Escrow Agreement on file with the Real Estate Commission.

**END OF EXHIBIT "G"**

## EXHIBIT "H"

### HO'OLU LANDING AT MAKAKILO AFFIDAVIT OF INTENT TO PURCHASE AND RESIDE IN AN OWNER-OCCUPANT DESIGNATED FEE SIMPLE CONDOMINIUM RESIDENCE

We, the undersigned "owner-occupants", on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, do hereby declare that it is our intention to purchase and reside in a designated fee simple condominium residence designated for an "owner-occupant" in HO'OLU LANDING AT MAKAKILO ("Community") proposed by Ho'olu Landing LLC, a Hawaii limited liability company ("Developer").

We understand, affirm, represent and agree by signing this Affidavit that:

1. It is our intent to reserve and purchase an owner-occupant designated condominium residence ("designated residence") pursuant to section 514A-103 of the Owner-Occupant Law, and upon closing escrow, to reside in the designated residence as our principal residence for 365 consecutive days.

2. The term "owner-occupant" as used herein is defined in section 514A-101 of the Owner-Occupant Law as:

"...any individual in whose name sole or joint legal title is held in a residential residence which, simultaneous to such ownership, serves as the individual's principal residence, as defined by the state department of taxation, for a period of not less than three hundred and sixty-five consecutive days, provided that the individual retains complete possessory control of the premises of the residential residence during this period. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases or assigns the premises for any period of time to any other person in whose name legal title is not held." (Emphasis added).

3. We understand that if two or more prospective owner-occupants intend to reside jointly in the same designated residence, only one owner-occupant's name shall be placed on the reservation list for either the chronological system or the lottery system.

4. Should we require financing from a financial institution to purchase the designated residence, the financing shall be an owner-occupant mortgage loan. The financial institution is required to take all reasonable steps necessary to determine whether the borrower intends to become an owner-occupant.

5. At any time after obtaining adequate financing or a commitment for adequate financing up until the expiration of this Affidavit (365 days after recordation of the instrument conveying the designated residence to us), we shall notify the Real Estate Commission immediately upon any decision to cease being an owner-occupant of the designated residence.

6. At closing of escrow, we shall file a claim for and secure an owner-occupant property tax exemption with the appropriate county office for the designated residence.

7. We have personally executed this Affidavit and we are all of the prospective owner-occupants for the designated residence. This Affidavit shall not be executed by an attorney-in-fact.

8. This Affidavit shall be reaffirmed by us no earlier than our receipt for the Community's Final Public Report and no later than the closing of escrow for the residence. The developer shall cancel our sales contract or reservation if we fail to make the reaffirmation. If the sales contract has become binding pursuant to section 514A-62 of the Condominium Property Act, we may be considered to be in default under our sales contract, and the Developer may exercise the default or other remedies provided for in the sales contract and any other remedies provided by law.

9. We shall not sell or offer to sell, lease or offer to lease, rent or offer to rent, assign or offer to assign, convey or otherwise transfer any interest in the designated residence until at least 365 consecutive days have elapsed since the recordation of the instrument conveying title to the designated residence to us. Furthermore, we understand that we have the burden of proving our compliance with the law.





## Exhibit "I"

**Ho'olu Landing at Makakilo  
Addendum  
Condominium Home No. \_\_\_\_\_**

This Addendum amends and supplements that certain Ho'olu Landing at Makakilo Fee Simple Home Purchase Agreement ("Sales Contract"), referenced dated \_\_\_\_\_, by and between Ho'olu Landing, LLC, a Hawaii Limited Liability Company, ("Seller") and \_\_\_\_\_ ("Buyer) relating to the sale of Home No. \_\_\_\_\_ at Ho'olu Landing at Makakilo (the "Home"). Capitalized terms used herein, unless otherwise defined herein, shall have the meanings given to them in the Sales Contract.

Buyer has elected to the alternative financing option offered through Countrywide Home Loans known as a "One-Time-Close Loan. " This program provides the Buyer both construction and permanent loan financing. To implement this program, Buyer agrees to close on the purchase of a Home prior to the completion of construction and will contract with the Seller's general contractor to construct the Home as designed and reflected on the Condominium Map, financed by the One-Time-Close Loan.

Buyer and Seller acknowledge and agree that to the extent the Sales Contract is inconsistent with the One-Time-Close Loan financing option elected by Buyer, the Sales Contract is hereby amended or clarified, as applicable, including but not limited to the following provisions:

1. Buyer and Seller hereby agree that the One-Time-Close Loan financing option shall be deemed a special condition and term of the Sales Contract and the Purchase Price shall be paid as follows:

Payment A	\$ <u>No Change</u>
Payment A-1	\$ <u>No Change</u>
Payment B	\$ <u>Not Applicable</u>
Payment C	\$ _____

2. Article IV, Section A.9, **Completion**, is amended to add the following sentence to the end of the section:

"Seller's obligations under this Section shall not apply when under circumstances where Buyer electing to finance the purchase of the Home with a One-Time-Close Loan."

3. Article IV, Section B.3, **Financing of Purchase**, is amended to add a new subsection (e), as follows:

"(e) **One-Time-Close Loan Alternative Financing.** Buyer may apply for a One-Time-Close Loan through Countrywide Home Loans. The purchase price set forth in Article III, Section A above for the Property includes the total costs of the Property and the construction of the Home. If construction of the Home has not yet commenced at the time of Closing, Buyer will enter into a contract with the Seller's general contractor to build the Home ("Construction Contract"). If construction of the Home has commenced at the time of Closing, Seller will assign to Buyer its rights as Owner in the Construction Contract with respect to the individual Home (the Developer-Contractor Contract will be amended accordingly), and Buyer shall assume the obligations of the Owner under the Construction Contract with respect to the individual Home. The Home will be constructed in accordance with the Condominium documents provided to

Buyer and plans approved by the City and County of Honolulu. No deviation from approved plans shall be allowed.

**BUYER IS NOT REQUIRED TO CONSIDER OR USE THE ALTERNATIVE FINANCING DESCRIBED HEREIN AS A CONDITION OF BUYER'S PURCHASE OF THE PROPERTY. SELLER IS NOT AFFILIATED WITH COUNTRYWIDE HOME LOANS. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE BENEFITS OR RISKS OF THE ONE-TIME-CLOSE LOAN OPTION OR BUYER'S QUALIFICATION FOR A ONE-TIME-CLOSE LOAN.**

4. Article IV, Section F.1(a), **Home Builder's Limited Warranty**, is amended by adding the following sentence to the end of the Section:

"Buyer understands and agrees that if Buyer is financing the purchase of the Home with a One-Time-Close Loan, all warranties to Buyer are provided by the general contractor and not by the Seller."

5. Article IV, Section G.2., **Trespass during Construction**, is amended by deleting the first sentence and replacing it with the following:

" Prior to completion of construction and delivery of the completed Home, Buyer shall not trespass upon any designated portions of the construction site during the period of time when the Home or portions of the Community are under construction."

6. Article IV, Section H.2, **Closing**, is amended by adding the following sentence to the end of the section:

" Notwithstanding any provisions of this Section H.2 to the contrary, if Buyer finances the purchase of the Property with a One-Time-Close Loan, Closing and the recording by Escrow of the Property Deed conveying title to the Property to the Buyer shall occur on the date specified by Seller following the approval of the One-Time-Close Loan by Countrywide Homes Loans and the payment to Seller of the balance of the Purchase Price. The balance of the Purchase Price shall be payable three (3) days prior to the date specified in Seller's notice to Buyer."

7. Article IV, Section H.4, **Occupancy**, is amended by adding the following sentence to the end of the section:

"Notwithstanding any provisions of this Section H.4 to the contrary, if Buyer finances the purchase of the Property with a One-Time-Close Loan, delivery of possession of the Property to Buyer shall be deemed to have occurred upon Closing; provided, however, that Buyer shall not be entitled to occupy the Property until construction of the Home is substantially complete. Buyer will receive written notice from the general contractor when the home is complete."

The Buyer agrees to the foregoing, is bound hereby, and acknowledges receipt of this addendum on: \_\_\_\_\_ (date).

BUYER:

_____	_____
_____	_____
_____	_____

SELLER:

HO'OLU LANDING LLC,  
a Hawaii limited liability company

By: Aiello Development Group, LLC,  
a Nevada limited liability company  
Its Manager

\_\_\_\_\_ Date: \_\_\_\_\_  
Peter M. Aiello  
President