# CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer: MERCURY-FC LLC, a Hawaii limited liability company
Business Address 53 Kailuana Place, Kailua, HI 96734

Project Name (*): KUAHINE AT CASTLE POINT (formerly known as 55 KAILUANA PLACE)
Address: 57 AND 57A Kailuana Place, Kailua, HI 96734

Registration No. 5797

Effective date: February 25, 2008
Expiration date: March 25, 2009

Preparation of this Report:

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

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

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

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

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

Type of Report:

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

___ **FINAL: (white)** The developer has legally created a condominium and has filed complete information with the Commission.
[ ] No prior reports have been issued.
[ ] This report supersedes all prior public reports.
[ ] This report must be read together with _____

_X_ **SUPPLEMENTARY: (pink)** This report updates information contained in the:
[ ] Preliminary Public Report dated: _____
[X] Final Public Report dated: October 18, 2006
[ ] Supplementary Public Report dated: _____

And [X] 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-30 286/986/189/1190/892/0197/1098/0800/0203/0104/0107

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

[ ] Required and attached to this report [X] 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.

[**X**] Changes made are as follows:

1. Developer. The Kuahine at Castle Point condominium project (the "Project"); was developed by Funke Kailuana Lot A-2, LLC, Funke Kailuana Lot A-1, LLC, PFLP-HI LLC and Kailuana Point Partners, LLC as set forth in the Final Public Report. Mercury – FC LLC, a Hawaii limited liability company ("Mercury") acquired all right, title and interest in both fully completed Units, namely Unit 57 and Unit 57A, by those certain Limited Warranty Apartment Deeds, each dated December 14, 2006, filed in the Office of the Assistant Registrar as Land Court Document Nos. 3531835 and 3531840. Accordingly (a) Mercury is deemed to be the "Developer" for purposes of this Supplementary Public Report, and (b) Mercury shall have the benefit of all rights reserved to the "Developer" and/or "Declarant" in all Project documents, including without limitation, the Declaration of Condominium Property Regime, Bylaws, as each is now or hereafter amended, and the Final Public Report, as supplemented by this Report.

2. Developer Officer and Director Information. The information regarding the Developer Name on Page 5 has been revised.

3. Real Estate Broker. The Property is now listed for sale with a real estate broker, and Page 5 has been revised accordingly.

4. Attorney for Developer. The Developer's attorney who prepared this Supplementary Report is shown on Page 5.

5. General Contractor. The telephone number and address of the General Contractor have been changed on Page 5.

6. TMK Information. The land has been issued a new tax map number, (1) 4-3-022:13, as shown on Page 9.

7. Title Report. The Title Report referenced in Section III.E on Page 14 has been updated by a Commitment for Title Insurance, dated February 4, 2008, issued by Security Title Corporation, as agent for Stewart Title Guaranty Company.

8. Fee Owner Name. The fee owner identified on Page 10 has changed.

9. Summary of Encumbrances Against Title. Exhibit E has been amended to reflect the current encumbrances against title.

10. Blanket Liens. Page 15 has been revised to also include a mechanic's lien.

11. Status of Construction and Date of Completion or Estimated Date of Completion. Page 16 has been revised to state Unit 57 was completed on or about February 1, 2007. Unit 57A was completed on or about May 1, 2006.

12. Revisions to Pages 20 and 20a. Pages 20 and 20a of the Final Public report have been revised as follows: Paragraphs 1, 5 and 9 have been revised; Paragraphs 8 and 10 have been deleted. The revisions and deletions are included in Pages 20 and 20a attached to this Supplementary Report.

13. Expiration of Final Public Report. The Final Public Report expired on November 18, 2007. Developer hereby confirms there were no pending sales contracts at the time of such expiration.

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This public report does not constitute approval of the Project by the Real Estate Commission, or any other governmental agency, nor does it ensure that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.
THE PROSPECTIVE BUYER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.

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EXHIBIT A: Developer's Reserved Rights
EXHIBIT B: Permitted Alterations to Apartments
EXHIBIT C: Common Elements
EXHIBIT D: Limited Common Elements
EXHIBIT E: Encumbrances Against Title
EXHIBIT F: Summary of the Provisions of the Sales Contract
EXHIBIT G: [Intentionally Deleted]
EXHIBIT H: Estimated Operating Expenses
EXHIBIT I: Summary of the Material Provisions of the Condominium Escrow Agreement
EXHIBIT J: Agreement Relating to Setback and Encroachment Issues and View Planes

## 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, By-laws, 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 buyers 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 By-laws. 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: Mercury - FC, LLC, a Hawaii limited liability company Phone: (503) 925-1850 (x305)
Name* (Business)

53 Kailuana Place, Kailua, Hawaii 96734
Business Address

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) (attached separate sheet if necessary):

Portland Fixture Limited Partnership, an Oregon limited partnership (Manager of Developer)

PFMGP, Inc., an Oregon corporation (General Partner of Portland Fixture Limited Partnership)

David P. Zimel (President of PFMGP, Inc.)

Real Estate Broker*: Century 21 Kailua Beach Realty Phone: (808) 263-6000
Name (Joel Cavasso) (Business)
130 Kailua Beach Road, #110
Kailua, HI 96734
Business Address

Escrow Security Title Corporation Phone: (808) 263-4803
Name (Business)
40 Aulike Street, Suite 312
Kailua, HI 96734
Business Address

General Contractor*: Kailua Construction Company, Inc. Phone: (808) 263-2750
Name (Business)
424 N. Kalaheo Avenue
Kailua, HI 96734
Business Address

Condominium Managing Agent*: Self Managed by the Association Phone
Name (Business)
Business Address

Attorney for Developer: William C. Byrns, Esq. Phone: (808) 523-3080
Name (Business)
MacDonald Rudy Byrns O'Neill & Yamauchi
1001 Bishop St., ASB Tower, Suite 2650
Honolulu, HI 96813
Business Address

* 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 By-laws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, By-laws, 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 _____

[ X ] Filed - Land Court: Document No. 3447360

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

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. _____

[ X ] Filed - Land Court Condo Map No. 1833

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

C. **By-laws 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 By-laws for this condominium are:

[ ] Proposed

[ ] Recorded - Bureau of Conveyances: Document No. _____
Book _____ Page _____

[ X ] Filed - Land Court: Document No. 3447361

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

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 [ X ] Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents**

Changes to the Declaration, Condominium Map, and By-laws 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:

| | Minimum Set by Law | This Condominium |
|---|---|---|
| Declaration (and Condo Map) | 75%* | 100% |
| By-laws | 65% | 65% |
| House Rules | --- | Majority Vote of Directors, if adopted |

* 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, By-laws or House Rules.

[ X ] Developer has reserved the following rights to change the Declaration, Condominium Map, By-laws or House Rules:

See attached Exhibit A.

## 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: 57 and 57A Kailuana Place
Kailua, HI 96734

Tax Map Key (TMK): (1) 4-3-022:013

[ ] Address [ ] TMK is expected to change because _____

Land Area: 52,077 [ X ] square feet [ ] acre(s) Zoning: R-10 Residential District

Fee Owner: Name* Mercury-FC LLC, a Hawaii limited liability company

16390 SW Langer Drive, Sherwood, Oregon 97140
Business Address

Lessor: N/A
Name

Business Address

C. **Buildings and Other Improvements:**

1. [**X**] New Building(s)
   [ ] Conversion of Existing Building(s)
   [ ] Both New Building(s) and Conversion

2. Number of Buildings: 2 Floors Per Building: 1

   [ ] Exhibit _____ contains further explanations.

3. Principal Construction Material:
   [X] Concrete [ ] Hollow Tile [ ] Wood
   [X] Other Glass and allied materials

4. Uses Permitted by Zoning:

| Attorney for Developer: | No. of Apts. | Use Permitted By Zoning | |
|---|---|---|---|
| [**X**] Residential | 2 | [X] Yes | [ ] No |
| [ ] Commercial | | [ ] Yes | [ ] No |
| [ ] Mix Res/Comm | | [ ] Yes | [ ] No |
| [ ] Hotel | | [ ] Yes | [ ] No |
| [ ] Timeshare | | [ ] Yes | [ ] No |
| [ ] Ohana | | [ ] Yes | [ ] No |
| [ ] Industrial | | [ ] Yes | [ ] No |
| [ ] Agricultural | | [ ] Yes | [ ] No |
| [ ] Recreational | | [ ] Yes | [ ] No |
| [ ] Other | | [ ] Yes | [ ] No |

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?
[**X**] Yes [ ] No

5. Special Use Restrictions:

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

[ X ] Pets: Unless the Unit Owners agree otherwise and express their agreement in a written instrument signed by all owners, no livestock, poultry, or any animal raised or kept for commercial purposes shall be allowed or kept in any part of the Project; except that dogs, cats, rabbits, and other household pets in reasonable numbers may be kept by occupants in their respective Units or on the Dwelling Areas appurtenant thereto, but these household pets shall not be kept, bred, or used therein for any commercial purpose. Further, no animal described as a pest under Section 150A-2, Hawaii Revised Statutes, as amended, and no animals prohibited from importation under Sections 141-2, 150A-2 or 150A-6, Hawaii Revised Statutes, as amended, shall be allowed in or on any part of the Project.

[ ] Number of Occupants: _____

[ ] Other: _____

[ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

| Type | Quantity | BR/Bath | Net Living Area (sf)* | Net Other Area (sf) | Identify |
|---|---|---|---|---|---|
| Unit 57 | 1 | 4/5.5 | 4,443 | 1,773/825 | Covered lanais/garage |
| Unit 57A | 1 | 3/5.5 | 4,951 | 1,945/825 | Covered lanais/garage |
| Total Number of Apartments: | | | 2 | | |

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

**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.**

Boundaries of Each Apartment:

The outside surfaces of the exterior walls and roof and bottom surfaces of the footings and foundations of each Unit.

Permitted Alterations to Apartments: Each apartment may be expanded or altered as provided in the Declaration at the owner's discretion (except as limited by law or the Declaration). The owner may unilaterally amend the declaration to redefine the apartment to conform the apartment boundaries as altered or expanded.

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 N/A elected to provide the information in a published announcement or advertisement.

**This project is exempt from Owner-Occupant requirements (2 unit projects are exempt).

7. Parking Stalls:

Total Parking Stalls: 6

| | Regular Covered | Regular Open | Compact Covered | Compact Open | Tandem Covered | Tandem Open | TOTAL |
|---|---|---|---|---|---|---|---|
| Assigned (for each unit) | 6 | | | | | | 6 |
| Guest | | | | | | | |
| Unassigned | | | | | | | |
| Extra for Purchase | | | | | | | |
| Other: | | | | | | | |
| Total Covered & Open: | 6 | | 0 | | 0 | | 6 |

Each apartment will have the exclusive use of at least 3 parking stall(s).

[ ] Commercial parking garage permitted in condominium project.

[ ] Exhibit _____ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

[X 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

[X] 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. [ X] 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.

| | Conforming | Non-Conforming | Illegal |
|---|---|---|---|
| Uses | X | | |
| Structures | X | | |
| Lot | X | | |

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:

[ X] described in Exhibit C.

[ ] 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.

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

[**X**] described in Exhibit ___D____.

[ ] 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 _____.

[**X**] as follows:

| | |
|---|---|
| Unit 57 - | 50% |
| Unit 57A - | 50% |

**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 ___E____ describes the encumbrances against the title contained in the title report dated February 4, 2008 and issued by ____Security Title Corporation_____.

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 no blanket liens affecting title to the individual apartments.

**[X]** 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.

| Type of Lien | Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed **Prior to Conveyance** |
|---|---|
| Mortgages | Buyer's interest may be terminated by mortgagee but Buyer shall be entitled to the return of his or her deposit, less escrow cancellation fee. |
| Mechanic's lien | Buyer will be conveyed its interest free and clear of the mechanic's lien. |

## 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 makes no warranties regarding the building or other improvements on the Dwelling Area after the closing of the sale of the Unit. However, with respect to any Unit sold within one year of its date of completion, the developer will assign all warranties given the developer by the contractor pursuant to the Construction Contract, which provides that, "if, within one year after the date of substantial completion of the [work covered by the Contract], any of the [work] is found to be defective or not in accordance with the contract documents, the Contractor shall correct it promptly after receipt of a written notice from [the] Owner to do so unless [the] Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition." The developer will also attempt to assign to each unit owner, with respect to any Unit sold within one year of its date of completion, any and all warranties given the developer by any subcontractors or materialmen, if any.

2. Appliances:

   The developer makes no representations or warranties regarding the appliances. The closing of the sale of the Unit shall also constitute the assignment without recourse by the developer to the buyer, for the unexpired term, if any, of any manufacturer's or dealer's warranties covering any furnishings, fixtures, and appliances that are part of the Unit.

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

Unit 57 was completed on or about February 1, 2007. Unit 57A was completed on or about May 1, 2006.

## H. Project Phases:

The developer [ ] has [**X** ] 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):

## IV. CONDOMINIUM MANAGEMENT

A. **Management of the Common Elements:** The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

[ ] not affiliated with the Developer
[ X ] self-managed by the Association of Apartment Owners
[ ] the Developer or the Developer's affiliate
[ ] Other: _____

B. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your apartment and the apartment may be sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit____H____ contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

C. **Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

[ X ] None [ ] Electricity (___ Common Elements only ___ Common Elements & Apartments)

[ ] Gas (___ Common Elements only ___ Common Elements & Apartments)

[ ] Water [ ] Sewer [ ] Television Cable

[ ] Other_____

## 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:

[ ] 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 February 4, 2008
Exhibit __I___ contains a summary of the pertinent provisions of the escrow agreement.

[ ] Other _____

### 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.

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) By-laws 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:

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
Website to access unofficial copy of laws: www.hawaii.gov/dcca/hrs
Website to access rules: www. hawaii.gov/dcca/har

This Public Report is a part of Registration No. 5797 filed with the Real Estate Commission on September 26, 2005.

Reproduction of Report. When reproduced, this report must be on:

[ ] YELLOW paper stock [ ] WHITE paper stock [ X ] PINK paper stock

## C. Additional Information Not Covered Above

1. MAINTENANCE FEES. Because the common driveway is new, Developer believes that there will be no maintenance or repair fees for the common driveway during the year 2006 to 2007. When maintenance of the common driveway becomes necessary, the costs for such maintenance and repair shall be divided equally between the two Unit Owners. The estimated monthly fee for water and electricity includes (a) apportioned water charge for sprinklers along the canal side of Kailuana Place, and (b) electricity for street and landscaping lights along Kailuana Place. All other utilities will be separately metered or otherwise charged to the benefiting owner, and the common elements will incur no separate utility charges. POTENTIAL BUYERS SHOULD BE AWARE THAT THE ESTIMATED MONTHLY MAINTENANCE FEES FOR WATER AND ELECTRICITY ARE ESTIMATES ONLY. THE ACTUAL FEES MAY BE HIGHER OR LOWER.

2. RESERVE STUDY. Developer discloses that no "reserve study" was done in accordance with Hawaii Revised Statutes section 514A-83.6, and replacement reserve rules, Hawaii Administrative Rules Subchapter 6, Title 16, Chapter 107.

3. Disclosure Regarding "AS IS" Sale. The two Apartments will be conveyed in their present "as is" condition. Potential buyers are strongly urged to have a professional home inspection to ascertain the exact condition of the property.

4. ACCESS. Each Apartment has access to a public road via Kailuana Place (Easement "17" across Lot 1142-C).

5. REALIGN BOUNDARY. Pursuant to the Declaration, the Declarant has the right (but not the obligation) to realign the boundary line separating Lot 1176-B and Lot 1176-A (specifically, the Dwelling Area appurtenant to Apartment 57A) to eliminate any setback encroachment by any structure on Lot 1176-B. Potential buyers should be aware that each and every party acquiring an interest in the Project, by such acquisition, consents to the realignment of the boundary line separating Lot 1176-B and Lot 1176-A to eliminate any setback encroachment by any structure on Lot 1176-B, and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints Declarant as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of this reserved right, and shall not be affected by the disability of such party or parties. Any and all costs associated with the realignment of the boundary line separating Lot 1176-B and Lot 1176-A to remove any encroachments shall be paid for by the Declarant. The rights reserved in the Declaration regarding the realignment shall continue for so long as any one or more of the parties signing this Declaration as Declarant owns any interest in any of the Units and for a period of five (5) years thereafter.

6. LANDSCAPING AND CONSTRUCTION RESTRICTIONS ON DWELLING AREA 57A. Pursuant to the Declaration, the Declarant has the right (but not the obligation) to impose certain landscaping and construction restrictions on that portion of Dwelling Area 57A depicted on Exhibit B of the Declaration for the purpose of enhancing the privacy of the adjacent owner of Unit 55 of the Castle Point I Condominium Property Regime imposed on Lot 1176-B. Declarant has further reserved the right to negotiate and record an Amendment to Covenants, Conditions and Restrictions for Kainalu Point (the "View Plane Amendment") encumbering the Project as a whole and Unit 57A in particular with such restriction. Potential buyers should be aware that each and every party acquiring an interest in the Project (and, specifically, Unit 57A), by such acquisition, consents to the view plane restrictions and the negotiation and recordation of such View Plane Amendment by Declarant, and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints Declarant as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of this reserved right, and shall not be affected by the disability of such party or parties. Any and all costs associated with the recordation of the View Plane Amendment shall be paid for by the Declarant. The rights reserved in the Declaration regarding these restrictions and the View Plane Amendment shall continue for so long as any one or more of the parties signing this Declaration as Declarant owns any interest in any of the Units and for a period of five (5) years thereafter.

7. ARCHAEOLOGICAL FEATURES; LANDSCAPING AREA RESTRICTION. The area in the Dwelling Area for Unit 57 labeled the "Landscaping Area" on the Condominium Map is the site for the burial of ancient Hawaiian remains which were found on the property. Pursuant to a Burial Treatment Plan, there are certain landscaping obligations for this site for the buyer of Unit 57. The Owner of Unit 57 shall have the continuing obligation to landscape and maintain with naupaka and similar planting the Landscaping Area and to keep in good repair and maintenance any improvements presently located with the Landscaping Area. No building or other improvements may be placed on the Landscaping Area.

8. AGREEMENTS EXECUTED BY DEVELOPER. In connection with the Declarant's rights described in paragraphs 5 and 6 above, the Developer has executed, together with the owners of adjacent Lot 1176-B: (a) that certain Agreement Relating to View Planes dated January 16, 2008, filed in the Office of the Assistant Registrar as Land Court Document No. 3703413 and (b) that certain unrecorded Agreement Relating to Setback and Encroachment Issues and View Planes, in the form attached hereto as Exhibit "J", which sets forth certain agreements with respect to (i) the realignment of the boundary line between Lot 1176-B and subject Lot 1176-A, and (ii) the intention of the parties to execute an Encroachment Agreement. It is recommended that each prospective purchaser review each such agreement.

9. PROJECT MANAGER. The previous developer appointed Kailuana Property Management, LLC, a Hawaii limited liability company, as its project manager for the purpose of managing the completion of the construction, marketing, and sales of Units 57 and 57A. The Deposit Receipt, Offer and Acceptance for each Unit will specifically exempt the Project Manager, which is neither a developer of the Project nor a seller of either Unit, from any liability to a buyer for construction or other matters related to the Unit or the Project, including without limitation Buyer's acquisition of the Unit from the Developer, except for the fraud, bad faith, gross negligence or willful or wanton misconduct of the Project Manager (See Exhibit F).

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.

**MERCURY-FC LLC, a Hawaii limited liability company**
Printed Name of Developer *

By: Portland Fixture Limited Partnership
an Oregon limited partnership, Its Manager

By: PFMGP, Inc., an Oregon corporation
Its General Partner

By: _____
David P. Zimel
Its President

Dated: 11/23/07

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

DEVELOPER'S RESERVED RIGHTS TO CHANGE
THE DECLARATION, CONDOMINIUM MAP, BY-LAWS, OR HOUSE RULES.

The Developer, as the "Declarants", recorded that certain Declaration of Condominium Property Regime "Kuahine at Castle Point" (Condominium Map No. 1833)" subjecting certain land owned by the Declarants to a condominium property regime. The Declarants have reserved the following rights to change the Declaration, Condominium Map, By-Laws or House Rules. Terms not defined below are defined in the Declaration.

Paragraph 20 of the Declaration states:

"20.1 Amendments Generally. Except as otherwise expressly provided herein or in the Act, this Declaration and the Condominium Map may be amended only by the affirmative vote or written consent of all of the Unit Owners, evidenced by an instrument in writing, signed and acknowledged by each of them, which amendment shall be effective upon recordation in the Recording Office; provided, however, that notwithstanding the foregoing provision, at any time prior to the first recording of a conveyance or transfer (other than for security) of an Unit and its appurtenances to a party not a signatory hereto, the Declarant may amend this Declaration (including all exhibits), the Condominium Map, and the By-Laws in any manner, without the consent or joinder of any Unit purchaser or any other party. Notwithstanding the lease, sale or conveyance of any of the Units, Declarant may amend this Declaration (and when applicable, any exhibits to this Declaration and the Condominium Map) to file the "as-built" verified statement required by Section 514A-12 of the Act (i) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans thereto filed fully and accurately depict the layout, location, Unit numbers, and the dimensions of the Units as built, or (ii) so long as the plans filed therewith involve only minor changes to the layout, location, or dimensions of the Units as built or any change in the Unit number.

"20.2 Amendments Required by Law, Lenders, Title Insurers. Etc. Any other provision of this Declaration notwithstanding, for so long as any one or more of the parties signing this Declaration as Declarant owns any interest in any of the Units, the Declarant shall have the right (but not the obligation) to amend this Declaration and the By-Laws (and the Condominium Map, if appropriate) without the consent or joinder of any Unit Owner, lienholder, or other person or entity, (a) to correct any misstatements of fact in the Project Documents, to correct typographical errors, to correct mathematical errors in the statement of Common Interests or to correct errors in the legal description of the Land, (b) as may be required by law, by the Real Estate Commission, by the County (relating to the Employee Housing Program or otherwise), by any title insurance company issuing a title insurance policy on the Project or any of the Units, by any institutional lender lending funds on the security of the Project or any of the Units, or by any governmental agency (including, without limitation, FNMA and/or FHLMC), and (c) to conform the Declaration to updated requirements or standards of any governmental agency (including, without limitation, FNMA and/or FHLMC). Except as otherwise provided in this Declaration and/or the By-laws, no amendment that would change the Common Interest appurtenant to a Unit or substantially change the design, location or size of a Unit or building in which it is located shall be made without the consent to such amendment by the Owner and the holder of a first mortgage, if any, on such Unit. Each and every party acquiring an interest in the Project, by such acquisition, consents to the amendments described in this Paragraph 20.2 and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints Declarant and its assigns as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of such reserved rights, and shall not be affected by the disability of such party or parties.

"20.3 Mortgagee Approval. Amendments to this Declaration of a material adverse nature to mortgagees must be agreed to by mortgagees that represent at least fifty-one percent (51%) of the Common Interest of Units that are subject to mortgages. Implied approval by a mortgagee to a proposed amendment to this Declaration shall be assumed when such mortgagee fails to submit a response to a written proposal for such amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Without limiting or expanding the foregoing, any election by the Association to remove and/or restate any provisions of this Declaration pertaining to the conduct or requirement of Association or Board of Director meetings, if authorized by Hawaii Revised Statutes Section 514B-101(b), are deemed to be not of material adverse nature requiring Mortgagee consent.

"20.4 Amendments for Changes to Units. Notwithstanding the foregoing, an Owner shall have the right without the consent or joinder of any other person to amend this Declaration and the Condominium Map to reflect the changes made to such Owner's Unit in accordance with Paragraph 19.1 or Paragraph 19.2 of this Declaration. Promptly upon completion of such changes, the Unit Owner shall duly record with the Recording Office an amendment to this Declaration and to the Condominium Map, together with a complete set of the floor plans of the Project as so altered, certified as built by a registered architect or professional engineer. All existing Unit Owners and all future Unit Owners and their mortgagees, by accepting an interest in a Unit, shall be deemed to have given each Unit Owner a Power of Attorney to execute an amendment to the Declaration solely for the purpose of describing the changes to such Owner's respective Unit on the Declaration so that each Unit Owner shall hereafter have a Power of Attorney from all the other Unit Owners to execute such Amendment to the Declaration. This Power of Attorney shall be deemed coupled with each Owner's interest in such Owner's Unit (including its appurtenant common interest) and shall be irrevocable.

"20.5 Restatement. Any other provision of this Declaration notwithstanding, the Board, upon resolution duly adopted, shall have the authority as set forth in the Act to restate this Declaration from time to time to set forth any prior amendments hereto, or to amend this Declaration as required to conform with the provisions of the Act or any other statute, ordinance, rule, or regulation enacted by any governmental authority.

"20.6 Amendments to Conform Project Documents to Hawaii Revised Statutes Chapter 514B. Subject to Section 20.3 of this Declaration, the Declarant and/or the Board upon resolution duly adopted, without the consent or joinder of any Unit Owner, lienholder, or other person or entity, shall have the authority to amend the Declaration and the By-laws to restate the Declaration and/or the By-laws to amend the Declaration and/or By-laws to conform either or both documents with Hawaii Revised Statutes Chapter 514B. Notwithstanding the above, no sections for the benefit of the Declarant shall be amended by the Board without the consent of Declarant.

DEVELOPER'S OTHER RESERVED RIGHTS TO REALIGN THE BOUNDARY OF THE PROJECT AND TO IMPOSE CERTAIN LANDSCAPING AND CONSTRUCTION RESTRICTIONS ON PORTIONS OF DWELLING AREA 57A.

Declarant has reserved in the Declaration the following rights to realign the boundary line separating Lot 1176-A and Lot 1176-B, which realignment would affect the square footage of the Dwelling Area of Unit 57A. Declarant has also reserved the right to impose certain landscaping and construction restrictions on the Dwelling Area 57A, as set forth below. Terms not defined below are defined in the Declaration. It is the intention of the Developers that the realignment will not change the percentage common area interest appurtenant to each Unit (each Unit will continue to have a 50% interest in the common area.)

Paragraph 7.6 of the Declaration states:

"7.6 Declarant's Reserved Rights. The rights of an Owner in such Owner's Unit are subject to the following reserved rights:

. . . .

"(d) Any other provision of this Declaration notwithstanding, the Declarant shall have the right (but not the obligation) to realign the boundary line separating Lot 1176-B and Lot 1176-A to eliminate any setback encroachment by any structure on Lot 1176-B. Each and every party acquiring an interest in the Project, by such acquisition, consents to the realignment of the boundary line separating Lot 1176-B and Lot 1176-A to eliminate any setback encroachment by any structure on Lot 1176-B, and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints Declarant as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of this reserved right, and shall not be affected by the disability of such party or parties. Any and all costs associated with the realignment of the boundary line separating Lot 1176-B and Lot 1176-A to remove any encroachments shall be paid for by the Declarant. The rights reserved in this paragraph shall continue for so long as any one or more of the parties signing this Declaration as Declarant owns any interest in any of the Units and for a period of five (5) years thereafter.

"(e) Any other provision of this Declaration notwithstanding, the Declarant shall have the right (but not the obligation) to impose certain landscaping and construction restrictions on that portion of Dwelling Area 57A depicted on Exhibit B attached hereto and made a part hereof, for the

purpose of enhancing the privacy of the adjacent owner of Unit 55 of the Castle Point I Condominium Property Regime imposed on Lot 1176-B. Declarant further reserves the right to negotiate and record an Amendment to Covenants, Conditions and Restrictions for Kainalu Point (the "View Plane Amendment") encumbering the Project as a whole and Unit 57A in particular with such restriction. Each and every party acquiring an interest in the Project (and, specifically, Unit 57A), by such acquisition, consents to the view plane restrictions and the negotiation and recordation of such View Plane Amendment by Declarant, and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints Declarant as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of this reserved right, and shall not be affected by the disability of such party or parties. Any and all costs associated with the recordation of the View Plane Amendment shall be paid for by the Declarant. The rights reserved in this paragraph shall continue for so long as any one or more of the parties signing this Declaration as Declarant owns any interest in any of the Units and for a period of five (5) years thereafter."

End of EXHIBIT A

EXHIBIT B

PERMITTED ALTERATIONS TO APARTMENTS

[Terms not defined below are defined in the Declaration.] Alterations to Apartments are governed by Paragraph 19 of the Declaration which states:

"19.1 Changes to Units. Notwithstanding anything to the contrary contained in this Declaration, a Unit Owner, with the consent by the holder of any mortgage affecting the Owner's Unit (if required by such mortgage), shall have the right at such Owner's sole option at any time and from time to time without the consent of any other person, to improve, renovate, remodel, make additions to, enlarge, remove, replace or restore the improvements to or in such Owner's Unit or portions thereof or to make or build improvements upon the Dwelling Area appurtenant to the Unit (collectively, the foregoing are referred to "changes") subject to the following conditions:

"(a) All changes shall conform to applicable City and County building and the Land Use Ordinance then in effect ("LUO") and other applicable laws and ordinances ("County Rules"); applicable State of Hawaii laws and regulations ("State Laws"); and the Kainalu Point CCRs.

"(b) All changes to a Unit or to the landscaping of the Dwelling Area appurtenant to a Unit shall comply with the terms and conditions of the Kainalu Point CCRs to the extent that such terms and conditions continue to apply to the Land.

"(c) No change to a Unit shall be made if the effect of such change would be to exceed the Unit's proportionate share (its appurtenant common interest) in the allowable building area coverage for the Land, or in the number of dwelling units, as defined by the LUO in effect when the change is to be made; provided, however, that no less a single dwelling unit shall be permitted on each Dwelling Area and no more than one dwelling unit shall be permitted, except in accordance with the Kainalu Point CCRS.

"(d) All such changes shall be at the expense of the Owner making the change, shall be expeditiously made and completed in a manner that will not unreasonably interfere with or cause damage to any other Unit, its appurtenant Dwelling Area, or the use thereof by an Owner of another Unit.

"(e) During the entire course of such construction, the Owner making such change will cause to be maintained at such Owner's expense builder's all-risk insurance in an amount not less than the estimated cost of construction. The Association shall be named as an additional insured and, upon the request of the Association, evidence of such insurance shall be deposited with the Association or its Managing Agent, if any;

"(f) The Unit Owner seeking to make a change to such Owner's Unit shall have the right (aa) to seek on such Owner's own behalf and on behalf of the Association, if required, building permits and other types of approvals and permits from governmental authorities and from utility companies, in order to allow such Unit Owner to make changes to such Owner's Unit; and (bb) to utilize, relocate and realign existing and/or to develop additional, central and appurtenant installations for services to the Unit affected by such change for electricity, sewer and other utilities and services and when applicable, to add, delete, relocate, realign, designate and grant easement and rights-of-way over, under and on the common elements as necessary or desirable in connection therewith; provided that the same shall not cause any interruption in the service of such utilities to any other part of the Project or otherwise materially interfere with their use by the other Owners;

"(g) If the consent to the change or joinder of another Owner is required by the Act, then each Owner hereby consents in advance to such change.

"(h) Each and every conveyance, lease and mortgage or other lien made or created on any Unit and all common interests and other appurtenances thereto shall be subject to the provisions of this paragraph and any lease of a Dwelling Area shall reserve to each Owner the rights set forth in this paragraph.

"19.2 Changes to Other Than Units. Except as set forth in Paragraph 19.1, changes to the Project or any building thereof or construction of any additional building or structural alteration or addition to any building, different in any material respect from the Condominium Map of the Project, shall be undertaken by the Association of Association Owners only pursuant to an amendment of this Declaration, duly executed by or pursuant to vote of all the Unit Owners and accompanied by the written consent of the holders of all liens affecting any of the Units, and in accordance with complete plans and specifications therefor first approved in writing by the Board, and promptly upon completion of such restoration, replacement or construction, the Association shall duly file such amendment in said

office, together with a complete set of the floor plans of the Project as so altered, certified as built by a registered architect or professional engineer.

"19.3 Exemptions for Persons with Disabilities. Notwithstanding anything to the contrary contained in this Declaration, the By-Laws, or the House Rules, handicapped occupants of the Project shall: (a) be permitted to make reasonable modifications to their Units, the limited common elements appurtenant thereto, and/or the common elements, at their own expense (including without limitation the cost of obtaining any bonds required by this Declaration, the By Laws or the Act), if such modifications are necessary to enable them to use and enjoy their Units, the limited common elements, and/or the common elements, as the case may be; and (b) be allowed reasonable exemptions from this Declaration, the By-Laws, and the House Rules, when necessary to enable them to use and enjoy their Units, the limited common elements appurtenant thereto, and/or the common elements, provided that any handicapped occupant desiring to make such modifications or desiring such an exemption shall so request the Board of Directors, in writing. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to make such modification or to be granted such an exemption. The Board of Directors shall not unreasonably withhold or delay its consent to such request, and any such request shall be deemed to be granted if not denied in writing, within forty five (45) days of the Board of Directors' receipt thereof or of any additional information reasonably required by the Board of Directions in order to consider such a request, whichever shall last occur.

"19.4 General Provisions Applicable to Section 19. The following provisions shall apply to each of the paragraphs within this Section 19 unless the context and usage would clearly indicate to the contrary:

"'(a) The rights set forth in each of the Paragraphs within this Section 19 for the benefit of a Unit Owner (including without limitation, the Declarant) may not be amended without the consent of such Owner.

"(b) If notwithstanding that a paragraph within this Section 19 does not require the consent or joinder of an Owner, or a lien holder or other person having any interest in the Project ("Third Party") to the action or change being taken or made by an Owner benefited by a paragraph within this Section 19 ("Benefitted Owner"), but the Act, County Rules, State Laws, title companies, permitting entities or public utility providers nonetheless do require the consent or joinder by the Third Party, then upon the request of the Benefitted Owner, each such Third Party hereby consents in advance to such action or change being made by the benefited Owner and agrees to consent to and join in, as aforesaid, and to execute all instruments or documents necessary or desirable so that the Benefitted Owner may effectuate such Owner's change or otherwise do as permitted under the respective paragraph within this Section 19.

"If the Third Party fails to provide such requested written joinder, consent, or take such action, as the case may be, such shall be accomplished by signature of the Benefitted Owner acting under an irrevocable power-of-attorney in favor of the Benefitted Owner from each of the other Owners and Third Parties, the acquiring or acceptance of ownership in a Unit or of a lien covering a Unit or of any other interest in the Project being a grant of such power, and the grant being coupled with an interest, being irrevocable.

"(c) The rights of a Unit Owner (including, without limitation, the Declarant) granted under each of the Paragraphs within this Section 19 may be assigned, mortgaged or otherwise be transferred by such benefited Owner only in connection with the assignment, mortgage or other transfer of the Unit owned by the Benefitted Owner.

"(d) Each and every conveyance, lease and mortgage or other lien made or created on any Unit and all common interests and other appurtenances thereto shall be subject to each and all of the provisions within this Section 19, and any lease of a Dwelling Area shall reserve to each Owner the rights set forth in each of these provisions within this Section 19."

End of EXHIBIT B

EXHIBIT C

COMMON ELEMENTS. [Terms not defined below are defined in the Declaration.] Paragraph 4 of the Declaration designates certain portions of the Project as "common elements", including specifically but not limited to:

"One freehold estate is hereby also designated in all the remaining portions of the Project, herein called 'common elements', including specifically but not limited to:

"4.1 The Land in fee simple, subject to those easements and other encumbrances set forth or referred to in Exhibit "A" to this Declaration;

"4.2 The limited common elements described in Paragraph 5 of this Declaration;

"4.3 All pipes, wires, ducts, conduits or other utility or service lines, drainage ditches or appurtenant drainage structures and retaining walls (if any), which are located outside the Units and which are utilized for or serve more than one Unit;

"4.4 All pipes, wires, ducts, conduits or other utility or service lines running through a Unit which are utilized by or serve more than one Unit;

"4.5 Rights in, over and under Kailuana Place (Easement 17 across Lot 1142-C, as set forth by Land Court Order No. 57782) subject to the rights of others legally entitled thereto and rights granted under the Kainalu Point CCRS (more particularly described in Paragraph 22 of the Declaration), subject, however, to the obligations of an Owner, as set forth in the Declaration creating the Kainalu Point CCRs; and

"4.6 Common Element (1,488 Sq. Ft.), as shown on the Condominium Map, to be used for roadway and utility purposes in accordance with Paragraph 7.8."

End of EXHIBIT C

EXHIBIT D

LIMITED COMMON ELEMENTS. Paragraph 5 of the Declaration designates:

"5.1 Certain parts of the common elements, herein called the "limited common elements", are hereby designated and set aside for the exclusive use of certain of the Units, and each Unit shall have appurtenant thereto exclusive easements for the use of all such limited common elements set aside and reserved for such Unit's exclusive use. The term "limited common elements" shall include, but not be limited to, the site on which each Unit is located, consisting of the land beneath and immediately adjacent to such Unit (including any yard areas, landscaping, driveways, walkways, and access areas, and including the airspace above such site) as shown and delineated on the Condominium Map (the "Dwelling Area"). Unless otherwise specified, all costs of every kind pertaining to each limited common element, including, but not limited to, costs of landscaping, maintenance, repair, replacement and improvement, shall be borne by the Unit to which it is appurtenant.

"5.2 The limited common elements set aside and reserved for the exclusive use of Unit 57 shall be Dwelling Area 57 as shown and delineated on the Condominium Map, containing an area of 23,458 square feet.

"5.3 The limited common elements set aside and reserved for the exclusive use of Unit 57A shall be Dwelling Area 57A as shown and delineated on the Condominium Map, containing an area of 27,131 square feet.

"5.4 Any other common element of the Project which is rationally related to fewer than all the Units shall be deemed a limited common element appurtenant to and for the exclusive use of such Unit to which it is rationally related."

Note: The "Dwelling Areas" herein described are not legally subdivided lots.

EXHIBIT E

ENCUMBRANCES AGAINST TITLE

1. Any Real Property Taxes that may be due and owing.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and its effect, if any, upon the area of the land herein described.

4. Flood Zone Designation "X", as disclosed on map attached to instrument recorded December 26, 2003 as Land Court Document No. 3047840.

5. Easement 27, area 42 square feet, for transformer vault purposes, as set forth by Land Court Order No. 27862, filed on December 20, 1967.

6. GRANT

| | |
|---|---|
| In Favor Of: | Hawaiian Electric Company, Inc., and GTE Hawaiian Telephone Company Incorporated (now Hawaiian Telcom, Inc..) both Hawaii corporation |
| Document No. | 440924 |
| Purpose: | Easement for utility purposes within Easement 27 |

7. The terms and provisions, including the failure to comply with any covenants, conditions, restrictions, reservations or obligations of that certain Encroachment Agreement dated September 20, 1996, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2342789, to which reference is hereby made.

8. Covenants, conditions, limitations and restrictions as contained in:

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAINALU POINT

| | |
|---|---|
| Dated: | November 18, 2003 |
| Document No. | 3047840 |
| | to which reference is hereby made, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c) |

9. GRANT

| | |
|---|---|
| In Favor of: | Hawaiian Electric Company, Inc., a Hawaii corporation, and Verizon Hawaii Inc.(now Hawaiian Telcom, Inc.), a Hawaii corporation |
| Dated: | February 4, 2005 |
| Document No. | 3229988 |
| Purpose: | Easement for utility purposes over, under, across and through the land referred to herein. |

10 Easement 66, for access purposes in favor of Lot 1176-B, as shown on Map 294, as set forth by Land Court Order No. 165754, filed on April 13, 2006.

11. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME OF "KUAHINE AT CASTLE POINT"

Dated: June 5, 2006
Document No. 3447360

Assignment of Declarant's Rights and Interests Under Declaration of Condominium Property Regime of Kuahine at Castle Point to Mercury-FC LLC, a Hawaii limited liability company, effective date December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3531830.

Condominium Map No. 1833, to which reference is hereby made.

BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF "KUAHINE AT CASTLE POINT"

Dated: June 5, 2006
Document No. 3447361

NOTE: The foregoing may be affected by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Land Court Document No. 3443732, to which reference is hereby made.

12. The terms and provision, including the failure to comply with any covenants, conditions, restrictions, reservations, and or obligations with regards to the "Landscaping Area" as set forth in that certain instrument dated June 5, 2006, recorded in said Office as Land Court Document No. 3447359 and as shown on the Lot 1176-A Landscape Area Map attached thereto, to which reference is hereby made.

13. REAL PROPERTY SUBORDINATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Kailuana Point Partners, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-1, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-2, LLC, a Hawaii limited liability company, Funke Kailuana Lot C-2 LLC, a Hawaii limited liability company, and Funke Kailuana Lot D, LLC, a Hawaii limited liability company |
| Mortgagee: | Robert Evans, husband of Joanne Evans |
| Dated: | --- |
| Recorded: | July 27, 2006 |
| Document No. | 3459079 |
| To Secure: | $1,573,000.00<br>and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to<br>(Note: Also affects other property.) |

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531831 and 3531832, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235867 and 2006-235868. Re: the foregoing Mortgage, is hereby subordinated to that certain Mortgage recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531833 and 3531834, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235869 and 2006-235870. Re: the foregoing Mortgage, is hereby subordinated to that certain Purchase Money Mortgage, Security Agreement and Fixture Filing recorded as Land Court Document No. 3047847, as amended; that certain Financing Statement recorded in said Bureau as Document No. 2003-286531, as amended; that certain Additional Charge Mortgage Security Agreement and Financing Statement recorded as Land Court Document No. 3130985, as amended; that certain Second Additional Charge Mortgage, Security Agreement and Financing Statement recorded as Land Court Document No. 3207186, as amended; that certain Third Additional Charge Mortgage, Security Agreement and Financing Statement (Unit 57) recorded as Land Court Document No. 3456579; and that certain Financing Statement recorded in said Bureau as Document No. 2006-133996.

14. REAL PROPERTY SUBORDINATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Kailuana Point Partners, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-1, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-2, LLC, a Hawaii limited liability company, Funke Kailuana Lot C-2 LLC, a Hawaii limited liability company, and Funke Kailuana Lot D, LLC, a Hawaii limited liability company |
| Mortgagee: | Karen Evans, wife of Robert Leland |
| Dated: | --- |
| Recorded: | August 2, 2006 |
| Document No. | 3461665 |
| To Secure: | $192,666.00<br>and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to<br>(Note: Also affects other property.) |

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531831 and 3531832, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235867 and 2006-235868. Re: the foregoing Mortgage, is hereby subordinated to that certain Mortgage recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531833 and 3531834, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235869 and 2006-235870. Re: the foregoing Mortgage, is hereby subordinated to that certain Purchase Money Mortgage, Security Agreement and Fixture Filing recorded as Land Court Document No. 3047847, as amended; that certain Financing Statement recorded in said Bureau as Document No. 2003-286531, as amended; that certain Additional Charge Mortgage Security Agreement and Financing Statement recorded as Land Court Document No. 3130985, as amended; that certain Second Additional Charge Mortgage, Security Agreement and Financing Statement recorded as Land Court Document No. 3207186, as amended; that certain Third Additional Charge Mortgage, Security Agreement and Financing Statement (Unit 57) recorded as Land Court Document No. 3456579; and that certain Financing Statement recorded in said Bureau as Document No. 2006-133996.

15. REAL PROPERTY SUBORDINATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Kailuana Point Partners, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-1, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-2, LLC, a Hawaii limited liability company, Funke Kailuana Lot C-2 LLC, a Hawaii limited liability company, and Funke Kailuana Lot D, LLC, a Hawaii limited liability company |
| Mortgagee: | Derek Evans, husband of Ellen Marie Evans |
| Dated: | ---- |
| Recorded: | August 2, 2006 |
| Document No. | 3461666 |
| To Secure: | $117,300.00<br>and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to<br>(Note: Also affects other property.) |

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531831 and 3531832, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235867 and 2006-235868. Re: the foregoing Mortgage, is hereby subordinated to that certain Mortgage recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531833 and 3531834, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235869 and 2006-235870. Re: the foregoing Mortgage, is hereby subordinated to that certain Purchase Money Mortgage, Security Agreement and Fixture Filing recorded as Land Court Document No. 3047847, as amended; that certain Financing Statement recorded in said Bureau as Document No. 2003-286531, as amended; that certain Additional Charge Mortgage Security Agreement and Financing Statement recorded as Land Court Document No. 3130985, as amended; that certain Second Additional Charge Mortgage, Security Agreement and Financing Statement recorded as Land Court Document No. 3207186, as amended; that certain Third Additional Charge Mortgage, Security Agreement and Financing Statement (Unit 57) recorded as Land Court Document No. 3456579; and that certain Financing Statement recorded in said Bureau as Document No. 2006-133996.

16. REAL PROPERTY SUBORDINATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Kailuana Point Partners, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-1, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-2, LLC, a Hawaii limited liability company, Funke Kailuana Lot C-2 LLC, a Hawaii limited liability company, and Funke Kailuana Lot D, LLC, a Hawaii limited liability company |
| Mortgagee: | David Evans, husband of Ariana Dawn Evans |
| Dated: | --- |
| Recorded: | August 2, 2006 |
| Document No. | 3461667 |
| To Secure: | $117,300.00<br>and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to<br>(Note: Also affects other property.) |

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531831 and 3531832, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235867 and 2006-235868. Re: the foregoing Mortgage, is hereby subordinated to that certain Mortgage recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531833 and 3531834, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235869 and 2006-235870. Re: the foregoing Mortgage, is hereby subordinated to that certain Purchase Money Mortgage, Security Agreement and Fixture Filing recorded as Land Court Document No. 3047847, as amended; that certain Financing Statement recorded in said Bureau as Document No. 2003-286531, as amended; that certain Additional Charge Mortgage Security Agreement and Financing Statement recorded as Land Court Document No. 3130985, as amended; that certain Second Additional Charge Mortgage, Security Agreement and Financing Statement recorded as Land Court Document No. 3207186, as amended; that certain Third Additional Charge Mortgage, Security Agreement and Financing Statement (Unit 57) recorded as Land Court Document No. 3456579; and that certain Financing Statement recorded in said Bureau as Document No. 2006-133996.

17. Any and all easements encumbering the apartment herein identified and described, and/or the common interest appurtenant thereto, as created by or mentioned in said Declaration, as amended, and/or said Apartment Deed and/or as shown on said Condominium Map No. 1833.

18. ORDER GRANTING LIENOR G.A.M. HAWAII, INC., DOING BUSINESS AS MILL'S GALLERY'S APPLICATION FOR MECHANIC'S AND MATERIAL'S LIEN – M.L. NO. 07-1-0002 SSM – FIRST CIRCUIT COURT

| | |
|---|---|
| Lienor: | G.A.M. HAWAII INC., doing business as MILLS GALLERY |
| Respondents: | Stephen Lee Funke; Alma Lea Funke; Kailua Construction, Inc., PFLP-HI, LLC; Kailuana Point Partners, LLC; Mercury-FC LLC; Funke Kailuana Lot A-1, LLC; Funke Kailuana Lot A-2, LLC; Portland Fixture Limited Partnership; SFG Income Fund VI, LLC; et al |
| Dated: | March 5, 2007 |
| Document No. | 3571085 |
| Re: | Lien in the amount of $55,507.46 against the subject property |

19. AS TO ITEM ONE ONLY:

a) PURCHASE MONEY MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-1, LLC, a Hawaii limited liability company; Kailuana Point Partners, LLC., a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Mortgagee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | November 19, 2003 |
| Recorded: | December 26, 2003 |
| Document No. | 3047847 |
| To Secure: | $2,100,000.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

Subordination Agreement dated October 24, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347700. Re: The foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, shown in Schedule A, Item 4.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 27, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456575 and 3456576, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133992 and 2006-133993 . Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

b) REAL PROPERTY THIRD MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-1, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company; |
| Mortgagee: | Kailuana Point Partners, LLC, a Hawaii limited partnership |
| Acknowledge: | November 26, 2003 |
| Recorded: | December 26, 2003 |
| Document No. | 3047850 |
| To Secure: | $1,700,000.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

Subordination Agreement dated July 1, 2004, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3130986. Re: the foregoing Real Property Third Mortgage, Security Agreement and Fixture Filing, is hereby subordinated to that certain Additional Charge Mortgage, Security Agreement and Financing Statement dated July 1, 2004 and filed as Document No. 3130985.

Second Subordination Agreement dated December 16, 2004, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3207187. Re: the foregoing mortgage, is hereby subordinated to that certain mortgage filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3207186.

Subordination Agreement dated October 26, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347701. Re: the foregoing Mortgage, is hereby subordinated to that certain Mortgage recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 3347699.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 29, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456577 and 3456578, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133994 and 2006-133995. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

Third Subordination Agreement dated July 21, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3456580. Re: the foregoing Mortgage, is hereby subordinated to that certain Third Additional Charge Mortgage recorded as Document No. 3456579.

c) FINANCING STATEMENT

| | |
|---|---|
| Debtor: | Funke Kailuana Lot A-1, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Secured Party: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Filed On: | December 26, 2003 |
| Document No. | 2003-286531 |

Subordination Agreement dated October 24, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347700. Re: the foregoing is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 27, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456575 and 3456576, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133992 and 2006-133993. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

d) ADDITIONAL CHARGE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-1, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Mortgagee: | Portland Fixture Limited Partnership, a Oregon limited partnership |
| Acknowledged: | June 9, 2004 |
| Recorded: | July 1, 2004 |
| Document No. | 3130985 |
| To Secure: | $1,000,000.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

Subordination Agreement dated October 24, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347700. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, shown in Schedule A, Item 4.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 27, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456575 and 3456576, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133992 and 2006-133993. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

e) SECOND ADDITIONAL CHARGE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-1, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Mortgagee: | Portland Fixture Limited Partnership, a Oregon limited partnership |
| Dated: | December 16, 2004 |
| Recorded: | December 16, 2004 |
| Document No. | 3207186 |
| To Secure: | $875,000.00<br>and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

Subordination Agreement dated October 24, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347700. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, shown in Schedule A, Item 4.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 27, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456575 and 3456576, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133992 and 2006-133993. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

f) Terms, provisions, covenants, agreements, reservations, restrictions and easements of that certain (original) Apartment Deed dated June 5, 2006, recorded in said Office of the Assistant Registrar as Document No. 3447362, to which reference is hereby made.

g) MORTGAGE

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-1, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Mortgagee: | SFG Income Fund VI, LLC, a Washington limited liability company |
| Dated: | October 26, 2005 |
| Recorded: | October 28, 2005 |
| Document No. | 3347699 |
| To Secure: | $3,600,000.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

The foregoing First Mortgage, Security Agreement and Fixture Filing was amended by the following:

LOAN MODIFICATION AGREEMENT AND AMENDMENT OF: (1) PROMISSORY NOTE; (2) FIRST MORTAGE, SECURITY AGREEMENT AND FIXTURE FILING; (3) FINANCING STATEMENT; AND (4) GUARANTY

Dated: June 27, 2006 but is effective as of July 7, 2006
Document No. 3456574

The foregoing Mortgage was assigned by the following:

ASSIGNMENT OF NOTE, MORTGAGE, LOAN DOCUMENTS AND RELATED DOCUMENTS

| | |
|---|---|
| Assignor: | SFG Income Fund VI, LLC, a Washington limited liability company |
| Assignee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | Effective August 10, 2007 |
| Recorded: | November 2, 2007 |
| Document No.: | 3676518 |
| Document No.: | 2007-193470 |

h) FINANCING STATEMENT

| | |
|---|---|
| Debtor: | Funke Kailuana Lot A-1, LLC.; Kailuana Point Partners, LLC; and PFLP-HI LLC |
| Secured Party: | SFG Income Fund VI, LLC |
| Filed On: | October 28, 2005 |
| Document No. | 2005-220779 |

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

The foregoing Financing Statement was amended by the following:

LOAN MODIFICATION AGREEMENT AND AMENDMENT OF: (1) PROMISSORY NOTE; (2) FIRST MORTAGE, SECURITY AGREEMENT AND FIXTURE FILING; (3) FINANCING STATEMENT; AND (4) GUARANTY

| | |
|---|---|
| Dated: | June 27, 2006 but is effective as of July 7, 2006 |
| Document No. | 3456574 |

The foregoing Financing Statement was assigned by the following:

ASSIGNMENT OF NOTE, MORTGAGE, LOAN DOCUMENTS AND RELATED DOCUMENTS

| | |
|---|---|
| Assignor: | SFG Income Fund VI, LLC, a Washington limited liability company |
| Assignee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | Effective August 10, 2007 |
| Recorded: | November 2, 2007 |
| Document No.: | 3676518 |
| Document No.: | 2007-193470 |

i) THIRD ADDITIONAL CHARGE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (UNIT 57)

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-1, LLC, a Hawaii limited liability company, PFLP-HI LLC, a Hawaii limited liability company, and Kailuana Point Partners, LLC, a Hawaii limited liability company |
| Mortgagee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | July 21, 2006 |
| Recorded: | July 21, 2006 |
| Document No. | 3456579 |
| To Secure: | $1,762,500.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

j) The terms and provisions of that certain Consent to Third Additional Charge Mortgage and Extension, Confirmation of Subordination Agreement, Release and Indemnity and Consent by Guarantors, effective July 21, 2006, recorded as Land Court Document No. 3456581, to which reference is hereby made.

k) FINANCING STATEMENT

| | |
|---|---|
| Debtor: | Funke Kailuana Lot A-1, LLC, an Hawaii limited liability company, Kailuana Point Partners, a Hawaii limited liability company, and PFLP-HI LLC, a Hawaii limited liability company |
| Secured Party | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Filed On: | July 21, 2006 |
| Document No. | 2006-133996 |

l) Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions as contained in:

LIMITED WARRANTY APARTMENT DEED

| | |
|---|---|
| Effective Date: | December 14, 2006 |
| Document No. | 3531835 To which reference is hereby made, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c) |

m) The terms and provisions, including the failure to comply with any covenants, conditions, restrictions, reservations or obligations of that certain Encroachment Agreement and License dated April 23, 2007, made by and between Mercury-FC LLC, a Hawaii limited liability company, "Mercury", and James Christian Castle, Jr. and Cyrann Ziebell Castle, as Trustees under that certain unrecorded Generation Skipping Trust created under paragraph 5.1 of the James Christian Castle Revocable Trust, dated November 14, 1989, as amended, made by James Christian Castle, as Settlor, and James Christian Castle, Jr., as Trustee under that certain unrecorded James Christian Castle, Jr. Declaration of Trust, dated November 28, 1988, as amended, made by James Christian Castle, Jr., as Settlor and Trustee, "Castle Trustees", filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3625844, to which reference is hereby made.

NOTE: The foregoing Agreement was not joined in or consented to by the Association of Apartment Owners of the "Kuahine at Castle Point" condominium project.

20. AS TO ITEM TWO ONLY:

a) PURCHASE MONEY MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-2, LLC, a Hawaii limited liability company; Kailuana Point Partners, LLC., a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Mortgagee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | November 19, 2003 |
| Recorded: | December 26, 2003 |
| Document No. | 3047852 |
| To Secure: | $2,100,000.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

Subordination Agreement dated October 24, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347705. Re: the foregoing Mortgage, is hereby subordinated to that certain Mortgage recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 3347704.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 27, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456583 and 3456584, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133997 and 2006-133998. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347704, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220780, as amended.

b) FINANCING STATEMENT

| | |
|---|---|
| Debtor: | Funke Kailuana Lot A-2, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Secured Party: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Filed On: | December 26, 2003 |
| Document No. | 2003-286532 |

Subordination Agreement dated October 24, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347705. Re: the foregoing is hereby subordinated to that certain Mortgage recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 3347704.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 27, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456583 and 3456584, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133997 and 2006-133998. Re: the foregoing Financing Statement, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347704, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220780, as amended.

c) FIRST MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-2, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Mortgagee: | SFG Income Fund VI, LLC, a Washington limited liability company |
| Dated: | October 26, 2005 |
| Recorded: | October 28, 2005 |
| Document No. | 3347704 |
| To Secure: | $4,900,000.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

The foregoing First Mortgage, Security Agreement and Fixture Filing was amended by the following:

LOAN MODIFICATION AGREEMENT AND AMENDMENT OF: (1) PROMISSORY NOTE; (2) FIRST MORTAGE, SECURITY AGREEMENT AND FIXTURE FILING; (3) FINANCING STATEMENT; AND (4) GUARANTY

| | |
|---|---|
| Dated: | June 27,2006, but is effective as of July 7, 2006 |
| Document No.: | 3456582 |

The foregoing Mortgage was assigned by the following:

ASSIGNMENT OF NOTE, MORTGAGE, LOAN DOCUMENTS AND RELATED DOCUMENTS

| | |
|---|---|
| Assignor: | SFG Income Fund VI, LLC, a Washington limited liability company |
| Assignee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | Effective August 10, 2007 |
| Recorded: | November 2, 2007 |
| Document No.: | 3676517 |
| Document No.: | 2007-193469 |

d) FINANCING STATEMENT

| | |
|---|---|
| Debtor: | Funke Kailuana Lot A-2, LLC.; Kailuana Point Partners, LLC; and PFLP-HI LLC |
| Secured Party: | SFG Income Fund VI, LLC |
| Filed On: | October 28, 2005 |
| Document No. | 2005-220780 |

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

The foregoing Financing Statement was amended by the following:

LOAN MODIFICATION AGREEMENT AND AMENDMENT OF: (1) PROMISSORY NOTE; (2) FIRST MORTAGE, SECURITY AGREEMENT AND FIXTURE FILING; (3) FINANCING STATEMENT; AND (4) GUARANTY

Dated: June 27,2006, but is effective as of July 7, 2006

The foregoing Financing Statement was assigned by the following:

ASSIGNMENT OF NOTE, MORTGAGE, LOAN DOCUMENTS AND RELATED DOCUMENTS

| | |
|---|---|
| Assignor: | SFG Income Fund VI, LLC, a Washington limited liability company |
| Assignee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | Effective August 10, 2007 |
| Recorded: | November 2, 2007 |
| Document No.: | 3676517 |
| Document No.: | 2007-193469 |
| Document No.: | 3456582 |

e) Terms, provisions, covenants, agreements, reservations, restrictions and easements of that certain (original) Limited Warranty Apartment Deed dated June 5, 2006, filed in said Office of the Assistant Registrar of the Land Court as Document No. 3447363, to which reference is hereby made.

f) THIRD ADDITIONAL CHARGE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-2, LLC, a Hawaii limited liability company |
| Mortgagee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | July 21, 2006 |
| Recorded: | July 21, 2006 |
| Document No. | 3456585 |
| To Secure: | $683,400.00<br>and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

g) The terms and provisions of that certain Consent to Third Additional Charge Mortgage and Extension, Confirmation of Subordination Agreement, Release and Indemnity and Consent by Guarantors effective date July 21, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3456586, to which reference is hereby made.

h) FINANCING STATEMENT

| | |
|---|---|
| Debtor: | Funke Kailuana Lot A-2, LLC, an Hawaii limited liability company |
| Secured Party | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Filed On: | July 21, 2006 |
| Document No. | 2006-133999 |

i) Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions as contained in:

LIMITED WARRANTY APARTMENT DEED

| | |
|---|---|
| Dated: | December 14, 2006 |
| Document No. | 3531840<br>To which reference is hereby made, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c) |

21. The terms and provisions, including the failure to comply with any covenants, conditions, restrictions, reservations or obligations of that certain Agreement Relating to View Planes; Joinder, dated January 16, 2008, made by and between Paul Dennis Sullivan and Karen Lau Sullivan, husband and wife, "Unit 55 Owner", and Mercury-FC LLC, a Hawaii limited liability company, "Mercury", with joinder by Kailuana Point Partners, LLC, a Hawaii limited liability company; Portland Fixture Limited Partnership, an Oregon limited partnership; Robert Evans, husband of Joanne Evans; Karen Evans, wife of Robert Leland; Derek Evans, husband of Ellen Marie Evans; and David Evans, husband of Ariana Dawn Evans; "Lienholders", filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3703413, to which reference is hereby made.

Consent thereto by Paul Dennis Sullivan and Karen Lau Sullivan, husband and wife, "Unit 55 Owner"; Pearl Realty, Inc., a Maryland corporation, "Unit 53 Owner"; and Finance Factors Limited, a Hawaii corporation, "FFL", filed in said Office as Document No. 3703414.

NOTE: The foregoing Agreement was not joined in or consented to by the Association of Apartment Owners of the "Kuahine at Castle Point" or the "Castle Point I" condominium projects.

EXHIBIT F

SUMMARY OF THE PROVISIONS OF THE CONDOMINIUM DEPOSIT RECEIPT AND SALES AGREEMENTS

There are two Specimen Fee Simple Condominium Reservation, Deposit Receipt and Sales Agreement (individually, a "Sales Agreement"), one of which will be used for Unit 57 and one of which will be used for Unit 57A. The primary differences between the two versions are that the Sales Agreement applicable to Unit 57 contains provisions addressing the Landscaping Area Restrictions due to the Archaeological Features in Dwelling Area 57, and the Sales Agreement applicable to Unit 57A contains provisions addressing the Landscaping and Construction Restrictions on Dwelling Area 57A. Both of these Sales Agreements have been submitted to the Real Estate Commission in connection with the filing of this public report and are also available in the Sales Office of the Developer. ALL BUYERS AND PROSPECTIVE BUYERS SHOULD CAREFULLY READ THE RESERVATION AND SALES AGREEMENT IN FULL, since this summary is NOT A COMPLETE DESCRIPTION of its provisions. The Sales Agreement, among other things, covers in more detail the following items [Terms not defined below are defined in the Sale Agreement]:

1. Fee Simple Property being conveyed to Buyer.

(a) Limited Warranty Apartment Deed. Seller shall cause to be delivered to Buyer a Limited Warranty Apartment Deed conveying a fee simple interest in the Unit and an undivided interest in the common elements. A specimen Limited Warranty Apartment Deed has been submitted to the Real Estate Commission with the submittal of this public report.

(b) Title to the Unit. Title to the Unit shall be conveyed subject to the following matters: (I) the lien of real property taxes and assessments not delinquent; (ii) the terms, covenants, conditions, easements, rights, reservations, agreements and other provisions mentioned or contained in the apartment deed and provisions set forth in the Declaration or the By-laws of the Association of Apartment Owners of KUAHINE AT CASTLE POINT, as the same may be amended from time to time; (iii) any encumbrances which do not materially and adversely affect the use of the Unit for its intended purposes; and (iv) the Kainalu Point CCRs; (v) any encumbrances approved or created by Buyer or which are mentioned or referred to in the Public Reports for the Project; and (vi) with respect to Unit 57, the obligation to landscape and maintain with naupaka and similar planting the area designated on the Condominium Map as "Landscaping Area", which is required to serve as the location for the interment of historic human remains that were moved to such Landscaping Area from other parts of Dwelling Area 57.

2. Interest On Funds. All funds received by Escrow may be held together with other monies received by Escrow and may be deposited by Escrow in an interest bearing account. Any interest earned from such account or accounts shall belong to Escrow.

3. Seller's Right (In Its Capacity as a Declarant) to Change the Project and the Project Documents.

(a) Changes Prior to Effective Date. If the Sales Agreement is a reservation agreement, then until the Effective Date (as defined in Section F.1 of the Sales Agreement), Seller (in its capacity as a Declarant under the Declaration) shall have the right for any reason to change the Project and to modify the Project Documents in any way, including the right to cancel or terminate the Project, in which case the Buyer will be entitled to a refund of all sums paid by Buyer under the Sales Agreement, without interest, as provided in Paragraph F.2(b) of the Sales Contract. The parties shall then be released from all liabilities and obligations under the Sales Agreement and to terminate the Sales Agreement.

(b) Changes After Effective Date.

(I) At any time prior to the conveyance of both Units in the Project to persons other than the Seller or any mortgagee of Seller, Seller (in its capacity as a Declarant) reserves the right (a) to correct any misstatements of fact in the Project Documents, to correct typographical errors, to correct mathematical errors in the statement of Common Interests or to correct errors in the legal description of the Land, (b) to modify the Project Documents as may be required by law, the Real Estate Commission of the State of Hawaii, a title insurance company, an institutional mortgagee or any governmental agency, and Buyer authorizes Seller to make and specifically approves all changes to said documents and the Project;

(ii) Seller (in its capacity as a Declarant) reserves the right to amend or change the configuration of, the number of rooms of, the size of or the location of any dwelling upon its Dwelling Area for which a Limited Warranty Apartment Deed has not been recorded with the Recording Office;

(iii) Seller (individually and in its capacity as a Declarant) reserves the right to require minor changes in Buyer's Unit, any of the other wellings, or the common elements;

(iv) Buyer acknowledges that the Seller in its sole discretion (in its capacity as a Declarant) may: (aa) make any changes it deems appropriate in the common elements of the Project (including without limitation the

Project landscaping, the shared utilities and in the shared driveway); and (bb) may make changes necessary to correct any design errors or other shortcomings;

(v) Buyer hereby irrevocably appoints Declarants his or her attorneys-in-fact, coupled with an interest, to execute any documents reasonably necessary or convenient to implement the foregoing provisions and any requirements which may be imposed by any governmental agency in connection with the Project;

(vi) Notwithstanding subparagraphs (I), (ii), (iii), (iv) or (v) above, no modification as provided therein shall:

(aa) Increase Buyer's share of common expenses without his consent; or

(bb) Reduce the obligations of Seller for common expenses on unsold Units; or

(cc) Increase the Total Purchase Price of the Unit; or

(dd) Directly, substantially and adversely affect the use or the value of the Unit or limited common elements appurtenant thereto.

5. Seller's and Declarants' Reserved Rights. The Declaration and the Sales Agreement set forth certain rights and certain other provisions under which Buyer consents to certain actions by Seller and others. Some actions involve Seller in its capacity as one of the Declarants under the Declaration. Such reservations include, without limitation, the following:

(a) Seller and Seller's mortgage lender have the right and easement to conduct extensive activities on or from the Project, including the common elements, in connection with the sale of the two Units in the Project, including the use of model home, parking areas, extensive sales displays and other activities. These rights and easements may exist until both of the Units in the Project are sold.

(b) Seller, in its capacity as one of the Declarants, has reserved the right to grant rights of way and other easements over, under, across, or through the common elements for any reasonable purpose; provided, however, that such right is subject to, and may not be exercised in any manner which is inconsistent with, in derogation of or which would limit, abrogate or interfere with, the exclusive use of any limited common elements or any rights or easements reserved in favor of the Seller or any Owner.

(c) Seller, in its capacity as one of the Declarants, has reserved an easement over and upon any portion of the Project, including the common elements and any Unit, as may be reasonably necessary for the completion of any improvements to and correction of defects and other punch-list items in the Project, including each of the two Units.

(d) As more fully described in the Declaration, Seller, in its capacity as one of the Declarants, has reserved the right (but not the obligation) to realign the boundary line separating the Project and the adjacent Lot 1176-B to eliminate any setback encroachment by any structure on Lot 1176-B. Buyer, by acquiring an interest in the Project, consents to the realignment of the boundary line separating the Project and Lot 1176-B to eliminate any setback encroachment by any structure on Lot 1176-B, and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and agrees that the Declaration will, upon Buyer's acquisition of the Unit, have the effect of appointing Declarants as Buyer's attorneys-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on Buyer's behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of the reserved right, and shall not be affected by any disability of Buyer.

(e) As more fully described in the Declaration, Seller, in its capacity as one of the Declarants, has reserved the right (but not the obligation) to impose certain landscaping and construction restrictions on that portion of the Project that includes Unit 57A for the purpose of enhancing the privacy of the adjacent owner of Unit 55 of the Castle Point I Condominium Property Regime imposed on Lot 1176-B. Seller, in its capacity as one of the Declarants, further has reserved the right to negotiate and record an amendment to the Kainalu Point CCRs (the "View Plane Amendment") to give effect to the landscaping and construction restrictions. Buyer, by acquiring an interest in the Project, consents to the landscaping and construction restrictions and to the negotiation and recordation of the View Plane Amendment, and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and agrees that the Declaration will, upon Buyer's acquisition of the Unit, have the effect of appointing Declarants as Buyer's attorneys-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on Buyer's behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of the reserved right, and shall not be affected by any disability of Buyer.

(f) Seller, in its capacity as one of the Declarants, has reserved the right (but not the obligation) to remove Easement 66 from the Condominium Map and to remove Easement 66 as an encumbrance from title to Units 57 and 57A. Easement 66 is an abandoned easement that previously benefited Lot 1176-B. Buyer, by acquiring an interest in the

Project, consents to such removal, and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and agrees that the Declaration will, upon Buyer's acquisition of the Unit, have the effect of appointing Declarants as Buyer's attorneys-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on Buyer's behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of the reserved right, and shall not be affected by any disability of Buyer.

6. No Present Transfer; Subordination to Construction Loan. The Sales Agreement is not to be construed as a present transfer of any interest in the Apartment but rather it is an agreement to transfer in the future. Buyer is required to acknowledge that Seller has entered into one or more Construction Mortgage Loans with construction lenders pursuant to which the Construction Lender may loan or has loaned funds to Seller to cover construction costs and other associated costs of the Project. To secure the Loan, Seller has granted to the Lender security interests covering the Seller's interest in the Project Land and the Project, including the Apartment covered by the Sales Agreement. All security interests obtained by the Lender in connection with the Construction Mortgage Loan, as well as any extensions, renewals and modifications of the security interests, shall be and remain at all times, until the final closing and delivery by Seller of the conveyance document to Buyer, a lien or charge on the Project, including the Apartment, prior to and superior to any and all liens or charges on the Project arising from the Sales Agreement or any prior agreement. BUYER INTENTIONALLY WAIVES, RELINQUISHES AND SUBORDINATES THE PRIORITY OR SUPERIORITY OF ANY LIEN OR OTHER LEGAL OR EQUITABLE INTEREST ARISING UNDER THE SALES AGREEMENT IN FAVOR OF THE LIEN OR CHARGE ON THE PROJECT OR THE SECURITY INTERESTS OF THE CONSTRUCTION LENDER.

7. Completion Date of the Units.

(a) Estimated Date. Unit 57A is complete. The estimated date for completion of Unit 57 is November 2006. Such date is an approximate date given to the best of Seller's information and belief. The actual date of completion may be substantially earlier or later depending upon financing contingencies and the progress of construction.

(b) Outside Completion Date. Notwithstanding anything to the contrary contained in the Sales Agreement, Seller shall complete construction of the Unit, so that the Unit shall be physically habitable and usable for the purpose for which it was purchased within six (6) months after the date of the execution by Buyer of the Sales Agreement; provided, however, that such period shall be extended for any period of time during which Seller is actually and necessarily delayed in completing construction if the delay is caused by acts of God, casualty losses or material shortages, or other matters or conditions beyond the control of Seller that are legally recognized as defenses to contract actions in the State of Hawaii.

8. Limited Warranty.

(a) Assignment of Warranties. Seller makes no warranties regarding the building or other improvements on the Dwelling Area after the closing of the sale of the Unit. However, Seller will assign all warranties given Seller by the contractor pursuant to the construction contract, which provides that, "if, within one year after the date of substantial completion of the [work covered by the construction contract], any of the [work[ is found to be defective or not in accordance with the contract documents, the [construction contractor] shall correct it promptly after receipt of a written notice from [the] Owner to do so unless [the] Owner has previously given the [construction contractor] a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition." Seller will also attempt to assign to each unit owner any and all warranties given the developer by any subcontractors or materialmen, if any.

(b) Manufacturer's and Dealer's Warranties. The closing of the sale of the Unit shall also constitute the assignment without recourse by Seller to Buyer, for the unexpired term, if any, of any manufacturer's or dealer's warranties covering any furnishings, fixtures and appliances that are part of the Unit. Buyer acknowledges that Seller is only passing through to Buyer any such manufacturer's or dealer's warranties; Seller is not adopting any such warranties or acting as co-warrantor with respect to any furnishings, fixtures or appliances. If and when the purchase contracts therefor are executed by the Seller, then the terms of the manufacturer's or dealer's written warranties will be made available for Buyer's examination at Seller's sales office.

(C) DISCLAIMER OF WARRANTIES. EXCEPT FOR THE AGREEMENTS SET FORTH ABOVE, IT IS EXPRESSLY UNDERSTOOD AND AGREED BY AND BETWEEN SELLER AND BUYER THAT THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE OF THIS AGREEMENT. SELLER MAKES NO WARRANTIES OR PROMISES OF "MERCHANTABILITY", "HABITABILITY", "WORKMANLIKE CONSTRUCTION" OR "FITNESS FOR A PARTICULAR USE OR PURPOSE" OR ANY OTHER WARRANTIES OR PROMISES OF ANY KIND, EXPRESS OR IMPLIED, ABOUT THE UNIT, OR THE PROJECT (INCLUDING THE COMMON ELEMENTS AND LIMITED COMMON ELEMENTS OF THE PROJECT), OR ABOUT ANY FURNISHINGS, FIXTURES, APPLIANCES OR OTHER CONSUMER PRODUCTS OR ANYTHING ELSE INSTALLED, ATTACHED, AFFIXED OR OTHERWISE CONTAINED IN THE UNIT, OR THE PROJECT (INCLUDING THE COMMON ELEMENTS AND LIMITED COMMON ELEMENTS THEREOF). ADDITIONALLY, BUYER SPECIFICALLY ACKNOWLEDGES THAT THE PROJECT MANAGER SHALL HAVE NO LIABILITY

TO BUYER FOR CONSTRUCTION OR OTHER MATTERS RELATED TO THE UNIT OR THE PROJECT, INCLUDING WITHOUT LIMITATION BUYER'S ACQUISITION OF THE UNIT FROM SELLER, EXCEPT FOR THE FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT OF THE PROJECT MANAGER.

(d) Chapter 672E Requirement for Filing a Lawsuit or other Action for Defective Construction Against the Contractor. CHAPTER 672E OF THE HAWAII REVISED STATUTES CONTAINS IMPORTANT REQUIREMENTS BUYER MUST FOLLOW BEFORE BUYER MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED BUYER'S HOME OR FACILITY. NINETY DAYS BEFORE BUYER FILES A LAWSUIT OR OTHER ACTION, BUYER MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS BUYER ALLEGES ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. BUYER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW, AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT BUYER'S ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

9. Financing of Purchase.

(a) Buyer shall be asked to represent in the Sales Agreement that Buyer is financially capable of making, when due, all of the payments required to be made under the Sales Agreement.

(b) Mortgage financing for the Buyer is not a condition to Buyer's obligation to purchase the Unit. Nor, shall Seller have any obligation to arrange for Buyer's mortgage financing.

(c) Buyer Shall Provide Evidence of Funds to Make Payments. As a condition of Buyer's offer, Buyer is also required, within three (3) days from the date of Buyer's execution of the Sales Agreement to give Seller evidence of Buyer's ability to pay the Total Purchase Price at the times specified in the Sales Agreement. If Seller rejects Buyer's evidence of Buyer's ability to pay as unacceptable, Seller shall notify Buyer of such rejection in writing within fifteen (15) days of Seller's receipt of such evidence of Buyer's ability to pay, in which case Buyer's offer to buy the Apartment shall be deemed rejected by Seller and shall be null and void.

(d) Seller's Rights Upon Rejection of Mortgage Loan. If any of the following occurs:

(i) Buyer fails to provide Cash Evidence to Seller within ten (10) days of request thereof to Buyer by Seller,

(ii) Seller, in its sole discretion, after reviewing the written Cash Evidence submitted to it by Buyer, determines that Seller is not satisfied as to Buyer's ability to make the cash Payments,

(iii) If Buyer is not a natural person and Buyer fails to have its obligations under this Agreement guaranteed by a person acceptable to Seller if required,

Then, in any of the foregoing events, Seller may elect to cancel the Sales Agreement upon written notice to Buyer and, upon such cancellation, Seller shall direct Escrow to refund to Buyer all sums paid hereunder by Buyer, without interest. If Seller elects to cancel the Sales Agreement for the reasons set forth in this paragraph, Seller shall not be liable for any damages Buyer may suffer as result of such cancellation.

10. Closing Obligations.

(a) Closing. Under the Sales Agreement, the term "Scheduled Closing Date" shall mean the later of (I) if construction of the Unit has been completed, then thirty (30) days following the date of Seller's execution of this Agreement; or (ii) if construction of the Unit has not been completed, then thirty (30) days following the completion of construction and Seller's written notice to Buyer of such completion. Seller shall have the right to extend the Scheduled Closing Date up to an additional sixty (60) days by giving Buyer notice thereof, and the date as extended shall be treated for all purposes as the Scheduled Closing Date.

(b) Payment of Cash Portions of the Purchase Price. Buyer agrees that on or before fifteen (15) days prior to the Scheduled Closing Date, Buyer shall pay into Escrow the remainder of the purchase price, closing costs and expenses provided for in Paragraph F.18(f) of the Sales Agreement; and all other sums of money which Buyer is required to pay under the Sales Agreement and which Buyer shall not have yet paid.

(c) Closing Costs and Prorations. Buyer is required to pay for all of the closing costs involved in the purchase and sale of the Apartment. In addition to the closing costs, Buyer will also pay Buyer's share prorated as of the Closing Date of real property taxes which Seller has paid or is obligated to pay for the Project or the Apartment.

11. Time of the Essence; Remedies on Default.

(a) Time of the Essence and Non-Waiver. Paragraph 20 of the Sales Agreement provides that "Time is of the essence" of the obligations of Buyer under the Sales Agreement.

(b) Seller's Remedies on Buyer's Default. Buyer shall be in default under the Sales Agreement if Buyer fails to make a payment when due or if Buyer fails to perform any other required obligation (other than relating to the making of payment) and such other failure continues for ten(10) days after Seller gives written notice to Buyer of such failure. In the event of any such default, Seller may, at Seller's option and in addition to any other rights contained in the Sales Agreement, do any one or more of the following:

(i) Seller may terminate the Sales Agreement by written notice to Buyer. In view of Seller's financial commitments with respect to the Project; the connection between the sale, cancellation or default with respect to one apartment and the sale, cancellation or default with respect to other apartments in the Project; and the nature of the real estate market in Hawaii, that the injury to Seller will be uncertain as to nature and amount and difficult to ascertain. As a reasonable estimate of Seller's damages resulting from such default, the parties agree in the Sales Agreement that the sums previously paid by Buyer under the Agreement shall at Seller's option belong to Seller as liquidated damages. It is understood that the damages suffered by Seller by virtue of a default later in time will likely be greater than such a default occurring at an earlier point in time;

(ii) Seller may also file a lawsuit for damages;

(iii) Seller may also file a lawsuit for specific performance;

(iv) Seller may also pursue any other remedy permitted at law or in equity.

(v) All costs, including reasonable attorneys' fees, incurred by Seller by reason of default by Buyer shall be paid by Buyer promptly upon Seller's demand.

(c) Buyer's Remedies on Seller's Default. If Seller shall default in the performance of any obligation required of Seller hereunder, Buyer shall be entitled to specific performance of the Sales Agreement (unless the Agreement is only a "reservation") or Buyer shall have the right to cancel and terminate the Sales Agreement.

(d) Late Payment. In the event of any default with respect to any payment hereunder, in addition to any other remedies permitted under the Sales Agreement a late charge of one percent (1%) per month (provided such shall not exceed the highest rate as may be permitted by law), prorated on a 30-day month basis, shall accrue from the due date of such payment until such payment together with such late charges, is paid.

12. Common Expenses. In the Sales Agreement, Buyer acknowledges that the estimates of the common expenses set forth in Seller's Public Report for the Project are only estimates which are likely to change and do not constitute the representations or warranties by Seller or anyone else. Buyer further acknowledges future taxes and maintenance costs are difficult to predict with any accuracy. BUYER AGREES THAT SUCH ESTIMATES ARE NOT INTENDED TO BE AND DO NOT CONSTITUTE ANY REPRESENTATIONS OR WARRANTY BY SELLER, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF SUCH ESTIMATES.

13. Use of the Apartment. The Sales Agreement provides as follows:

(a) Permitted Uses. Buyer acknowledges and agrees that the Unit may be used for residential and for any other purposes permitted under applicable law; provided, however, that the Unit shall not be used, leased, rented, or any undivided interest be transferred for time-sharing purposes or under any time-sharing plan, agreement, or arrangement as the same is defined in Chapter 514E, Hawaii Revised Statutes, as amended.

(b) Prohibited Activities. No Unit or limited common element appurtenant thereto shall be used in any manner or for any purpose which (i) hinders normal and reasonable ingress to and egress from any other Unit or other access ways leading thereto; (ii) creates or may create a hazard or potential hazard to other residents of the Project; (iii) increases the hazard or liability insurance premiums for the Project; (iv) creates or causes noise, vibrations, noxious odors or other nuisances which are detectable from outside of the Unit and the limited common elements appurtenant thereto; or (v) is illegal or otherwise violates any applicable federal, state or local law, ordinance, rule, regulation or other restriction.

(c) Rental and Time Sharing. The Owners of the Units shall have the right to rent or lease, or otherwise permit the use of their respective Unit, for any length or periods of time as the Owner may desire, subject, however, to the provisions of the City and County Land Use Ordinance, as it may be amended; provided, however, the Units shall not be used, leased, rented or any undivided interest therein be transferred for time-sharing purposes or under any time sharing plan, agreement or arrangement as the same is defined under Chapter 514E, Hawaii Revised Statutes, as amended.

(d) Kainalu Point CCRs. The use of a Unit and the standards for construction and development or changes to a Unit shall comply with the Kainalu Point CCRs, including without limitation, the Design Guidelines, to the extent that such Kainalu Point CCRs or relevant portions thereof are effective in accordance with the terms of such Declaration creating the Kainalu Point CCRs.

14. Arbitration. In the event Buyer shall have a claim against Seller or Seller's agents or representatives (the "Development Team Members"), or if Seller shall have a claim against Buyer arising out of or in any way connected with the Sales Agreement or the design, development, construction, sale, marketing, financing or any other activity relating to the Apartment or the Project, the claims shall be submitted for resolution in Honolulu, Hawaii by a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall also be governed by the applicable provisions of Chapter 658A of the Hawaii Revised Statutes, as amended. Other terms and conditions of such arbitration are set forth in Paragraph 35 of the Sales Agreement.

End of EXHIBIT F

EXHIBIT G

[INTENTIONALLY DELETED]

**EXHIBIT H**
**ESTIMATED OPERATING EXPENSES**
For Period November 1, 2007 to October 31, 2008
As Prepared by Developer

Estimated Annual Expenses:

| | |
|---|---|
| Ground Maintenance | $-2,400.00- |
| * Water/Electricity | $-0- |
| Sewer | $-0- |
| ** Fire/Liability Insurance: | $-0- |
| Management Fee: | $-0- |
| *** Miscellaneous: | $-0- |
| TOTAL ANNUAL EXPENSES | $-2,400.00- |
| Estimated Monthly Expenses | $-200- |
| Estimated Monthly Maintenance Fee for Each Apartment:: | $-100- |

Note: * The estimated monthly fee for water and electricity includes (a) apportioned water charge for sprinklers along the canal side of Kailuana Place, and (b) electricity for street and landscaping lights along Kailuana Place. All other utilities will be separately metered or otherwise charged to the benefiting owner, and the common elements will incur no separate utility charges. POTENTIAL BUYERS SHOULD BE AWARE THAT THE ESTIMATED MONTHLY MAINTENANCE FEES FOR WATER AND ELECTRICITY ARE ESTIMATES ONLY. THE ACTUAL FEES MAY BE HIGHER OR LOWER.

** Section 514A-86, Hawaii Revised Statutes, requires the Association of Apartment Owners to purchase fire insurance to cover the improvements of the Project, and that premiums be common expenses. Developer anticipates that the Association may elect to permit individual apartment owners to obtain and maintain separate policies of fire insurance and name the Association as an additional insured. In such case, fire insurance premiums will be the responsibility of individual apartment owners and not common expenses.

*** Except for monthly water and electricity charges, Developer does not intend to make periodic assessments for the Owner's share of the costs to repair and maintain Kailuana Place, the use of which is shared with a number of other persons. If and when repair and maintenance is required each of the users will be assessed its proportionate share of such costs and expenses. No assessment is expected in the immediate future.

The Developer certifies that the maintenance fees and costs as estimated by the Developer are based on generally accepted accounting principles.

**MERCURY-FC LLC, a Hawaii limited liability company**
Printed Name of Developer *

By: Portland Fixture Limited Partnership
an Oregon limited partnership, Its Manager

By: PFMGP, Inc., an Oregon corporation
Its General Partner

By: _____
David P. Zimel
Its President

Dated: 11/23/07

EXHIBIT I

SUMMARY OF THE MATERIAL PROVISIONS OF THE CONDOMINIUM ESCROW AGREEMENT

Summary of the Condominium Escrow Agreement between the Seller and Security Title Corporation:

1. All deposits will be paid to Escrow. A copy of each Sales Contract (including Reservations) and all payments made to purchase an Apartment shall be turned over to the Escrow Agent.

2. Refunds. A Buyer shall be entitled to a return of his funds, and Escrow shall pay such funds to such Buyer, without interest, in accordance with the Sales Contract if any of the following has occurred:

(a) Seller and the buyer shall have requested Escrow in writing to return to buyer the funds of buyer held hereunder by Escrow; or

(b) Seller shall have notified Escrow of Seller's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Seller; or

(c) With respect to a buyer whose funds were obtained prior to the issuance of the Final Report, the buyer has exercised his right to cancel the contract pursuant to Section 514A-62, Hawaii Revised Statutes, as amended; or

(d) A buyer has exercised his right to rescind the contract pursuant to Section 514A-63, Hawaii Revised Statutes, as amended.

Upon such refund, Escrow Agent shall be entitled to a cancellation fee commensurate with the work done by Escrow prior to cancellation of up to $250.

3. Requirements Prior to Disbursement of Buyer's Funds. Escrow Agent shall make no disbursements of Buyer's funds, pursuant to paragraph 5 of the Escrow Agreement until all of the following have occurred:

(a) the Real Estate Commission has issued a final public report (the "Final Report") on the Project;

(b) Seller or Seller's attorney has given a written opinion to Escrow stating that all of the requirements of Sections 514A-39.5 (as to contingent final public reports), 514A-40 (as to final public reports) and 514A-63 of the Hawaii Revised Statutes, then applicable to the Project, have been satisfied.

(c) Seller shall have given Escrow a written waiver of any option reserved in any sales contract to cancel such sales contract.

4. Buyer's Default. Seller must notify Escrow in writing if Buyer defaults, and must certify that Seller has canceled the Buyer's Sales Contract. After such cancellation Escrow will treat the Buyer's funds less Escrow's cancellation fees as belonging to the Seller.

5. Interest. All interest on funds held by Escrow pursuant to the Escrow Agreement shall accrue to the credit of Escrow.

**Exhibit "J"**

Unit 55, Castle Point I Condominium
Unit 57A, Kuahine at Castle Point Condominium

AGREEMENT RELATING TO SETBACK AND
ENCROACHMENT ISSUES AND VIEW PLANES

This AGREEMENT RELATING TO SETBACK AND ENCROACHMENT ISSUES AND VIEW PLANES (this "**Agreement**") executed effective as of _____, 2008 (the "**Effective Date**"), by and between:

(i) PAUL DENNIS SULLIVAN and KAREN LAU SULLIVAN, husband and wife, whose mailing address is 55 Kailuana Place, Kailua, Hawaii 96734, hereafter collectively called "**Unit 55 Owner**"; and

(ii) MERCURY-FC LLC, a Hawaii limited liability company ("**Mercury**"), whose business address is 16390 SW Langer Drive, Sherwood, Oregon 97140.

**RECITALS:**

A. Unit 55 Owner and PEARL REALTY, INC., a Maryland corporation ("**Unit 53 Owner**"), whose business and post office address is 11350 McCormick Road, Hunt Valley, MD 21031, are the owners of Lot 1176-B ("**Lot 1176-B**"), as shown on Map 294 of Land Court Application No. 677 (amended).

B. Lot 1176-B is subject to a condominium property regime consisting of two condominium units, which condominium property regime is named "Castle Point I", and which was formed in accordance with (a) Declaration of Condominium Property Regime, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "**Land Court**") as Land Court Document No. 3447364; (b) By-Laws of the Association of Apartment Owners of Castle Point I of even date therewith filed as aforesaid as Land Court Document No. 3447365; and (c) Condominium Map No. 1834 (the "**Castle Point I Project**").

C. Unit 55 Owner is the owner of Unit 55 in the Castle Point I Project ("**Unit 55**"), to which Unit is appurtenant an exclusive limited common area known as "**Dwelling Area 55**". Unit 53 Owner is the owner of Unit 53 in the Castle Point I Project.

D. Mercury is the owner of Lot 1176-A ("**Lot 1176-A**"), as shown on Map 294 of Land Court Application No. 677 (amended).

E. Lot 1176-A is subject to a condominium property regime consisting of two condominium units, which condominium property regime is named "Kuahine At Castle Point", and which was formed in accordance with (a) Declaration of Condominium Property Regime, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 3447360; (b) By-Laws of the Association of Apartment Owners of Kuahine At Castle Point of even date therewith filed as aforesaid as Land Court Document No. 3447361; and (c) Condominium Map No. 1833 (the "**Kuahine at Castle Point Project**").

F. Mercury is the owner of Unit 57A ("**Unit 57A**") in the Kuahine at Castle Point Project, to which is appurtenant an exclusive limited common area known as "**Dwelling Area 57A**". In its capacity as owner of Unit 57A, Mercury shall be hereinafter known as "**Unit 57A Owner**". Mercury is also the owner of Unit 57 ("**Unit 57**") in the Kuahine at Castle Point Project. In its capacity as owner of Unit 57, Mercury shall be hereinafter known as "**Unit 57 Owner**".

H. The Castle Point I Project and the Kuahine at Castle Point Project adjoin one another, and Dwelling Area 55 and Dwelling Area 57A are contiguous.

I. Stephen L. Funke, hereafter called "**Funke**", through an affiliated construction company, constructed a garage structure on Dwelling Area 55 of the Castle Point I Project that inadvertently encroached (the "**Inadvertent Encroachment**") into the required setback area between such structure and the boundary line separating the Castle Point I Project and Dwelling Area 55 located thereon, and the Kuahine at Castle Point Project and Dwelling Area 57A located thereon (the "**Affected Boundary Line**").

J. The parties are amenable to the relocation of the Affected Boundary Line in the manner shown on that certain Map approved by the Department of Planning and Permitting of the City and Count of Honolulu ("**DPP**") on April 27, 2007 ("**Resubdivision Map**"), a copy of which is attached hereto as **Exhibit A**.

K. An effect of the relocation of the Affected Boundary Line will be that a portion of the existing wall located along such Line, will then encroach onto Lot 1176-B. The parties have agreed to enter into an agreement with respect to such encroachment, as hereinafter described.

L. The parties have also agreed to enter into an agreement the effect of which would be, among other things, to restrict what the owners of Unit 55 and Unit 57A can build or landscape within certain view plane areas located on the makai portions of Dwelling Area 55 and Dwelling Area 57A. A copy of the form of such agreement (the "**View Plane Agreement**") is attached hereto as **Exhibit B**.

M. The parties wish to set forth their understandings and agreement relating to the foregoing, as hereafter set forth.

## AGREEMENT

Now therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed among the parties as follows:

1. Agreement to Re-align the Affected Boundary Line.

a. The re-alignment of the Affected Boundary Line for the purpose of eliminating the setback area encroachment by the garage structure on Dwelling Area 55 has been approved by the Department of Planning and Permitting of the City of Honolulu as shown on the Resubdivision Map. The parties accept and approve the Resubdivision Map.

b. Unit 57A Owner shall seek to obtain Land Court approval for the Resubdivision Map. In connection therewith, the parties shall (i) execute and deliver an authorization to Unit 57A Owner (or Unit 57A Owner's counsel) to prepare and file on behalf of the parties a Petition to the Land Court; and (ii) shall obtain consents of their respective lenders to the filing of such Petition.

c. Unit 57A Owner agrees to make commercially reasonable good faith efforts to obtain Land Court approval of the Resubdivision Map (or similar map) on terms and conditions reasonably acceptable to Unit 57A Owner and Unit 55 Owner, provided that in any case the approval shall result in a change in the Affected Boundary Line sufficient to avoid any finding that the garage located on the Dwelling Area of Unit 55 encroaches into the setback of the enlarged Lot 1176-B (such approval being referred to herein as the **"Land Court Approval"**).

d. Upon Land Court Approval of the Resubdivision Map, (i) Unit 57A Owner and Unit 57 Owner shall convey to Unit 55 Owner and Unit 53 Owner by quitclaim deed clear title (free of any mortgages and other encumbrances relating to Kuahine at Castle Point) to that portion of the land which is being removed from Lot 1176-A and being added to Lot 1176-B, (ii) Unit 53 Owner and Unit 55 Owner shall enter into an amendment to the Condominium Map and Declaration for Castle Point I, so that such additional portion of the land shall be added to Dwelling Area 55; and (iii) Unit 57A Owner and Unit 57 Owner shall enter into an Amendment to the Condominium Map and Declaration for Kuahine at Castle Point, so that such portion of the land being removed from Lot 1176-A shall be deleted from Dwelling Area 57A.

e. The parties agree to include in the View Plane Agreement a provision stating to the effect that if Land Court Approval has not been obtained, as evidenced by recording of the Resubdivision Map or similar map in the Land Court, by January 1, 2011, the View Plane Agreement shall terminate automatically, and (i) such termination shall be the sole remedy available to Unit 55 Owner and/or Unit 53 Owner for any failure of Unit 57A Owner to obtain Land Court Approval by such date, and (ii) Unit 53 Owner, Unit 55 Owner and all parties claiming by or through either of them upon such termination shall be deemed

to have waived and released any claims either may have against Unit 57A Owner or any other person or entity arising out of the negligent construction by Funke of the garage into the setback area.

2. Encroachment Agreement. Following Land Court Approval of the Resubdivision Map, a portion of the existing wall (now located on Lot 1176-A), will then be located on what will become the enlarged Lot 1176-B. Promptly after Land Court approval of the Resubdivision Map, Unit 55 Owner and Unit 57A Owner shall enter into an agreement setting forth certain understandings and agreements with respect to such encroachment (the "**Encroachment Agreement**"), substantially in the form attached hereto as **Exhibit C**.

3. View Plane Agreement. Concurrently herewith, Unit 55 Owner and Unit 57A Owner shall enter into and record with the Land Court the View Plane Agreement.

4. Future Agreements. From and after the Effective Date, and until this Agreement terminates, all parties agree that all agreements to sell Unit 57, Unit 57A, and Unit 55 and all condominium public reports filed in connection with any such Units shall disclose this Agreement and contain an obligation of the purchaser of any such Unit to agree to be bound by this Agreement.

5. Costs and Expenses. All costs and expenses relating to this Agreement and the steps to be taken in furtherance thereof incurred from and after the Effective Date shall be borne solely by Unit 57A Owner. In addition, upon execution hereof, Unit 57A Owner agrees to pay to Unit 55 Owner the sum of Fifteen Thousand Sixty and 21/100 Dollars ($15,060.21), which payment Unit 55 Owner agrees shall satisfy any and all obligations of Unit 57A Owner, and any other person or entity, to Unit 55 Owner arising directly or indirectly out of the Inadvertent Encroachment and all efforts to apply for and obtain DPP and Land Court approval of the Subdivision Map, and Unit 55 Owner hereby waives any claims that Unit 55 Owner may have against Unit 57A Owner, any Mercury-Related Entity, or any other person or entity, with respect thereto. For the purpose of this Agreement, a "**Mercury-Related Entity**" shall mean and include, but not be limited to, Unit 57A Owner and any parent, subsidiary, partner, member, manager, stockholder or other similarly related person or entity, including, without limitation, Portland Fixture Limited Partnership, an Oregon limited partnership, and any officer, director, member, manager or employee, of any of them.

6. Consent. The parties hereby consent to the actions described in paragraph 1 of this Agreement, it being understood that nothing in this Agreement nor in the re-alignment shall alter any other provision of the Declaration or By-laws of the Castle Point I Project or the Kuahine at Castle Point Project or any allocation of percentage interest in the common elements for either of such Projects.

7. Cooperation. All parties agree to execute and/or join in such instruments and to file such amended subdivision and/or Condominium Maps and other instruments as are

reasonably necessary to carry out the purpose of this Agreement, provided that the preparation and recording of such instruments and map will be at the sole expense of Unit 57A Owner. All parties also agree to request and make commercially reasonable efforts to obtain the consent and cooperation of lien holders on their respective units and any other necessary parties to the realignment described in this Agreement.

8. Enforcement; Recording. This Agreement is a covenant affecting, binding on and running with the properties referenced above and is specifically enforceable by way of injunction. Any party breaching this Agreement will be responsible to the non-defaulting party for all remedies in law or in equity. Notwithstanding the foregoing, neither this Agreement nor a memorandum hereof shall be recorded without the prior written consent of Unit 55 Owner and Unit 57A Owner.

9. No Third Party Beneficiaries. The terms and provisions of this Agreement shall create no right in any person, firm or corporation other than the parties to this Agreement, and their respective successors and permitted assigns, and no third party shall have the right to enforce or benefit from the terms hereof.

10. Entire Agreement, Modifications. This Agreement constitutes the entire agreement among the undersigned parties with respect to the subject matter hereof, and may not be modified or amended except by an instrument in writing signed by all parties hereto, and no provision or conditions may be waived other than by a writing signed by the party waiving such provisions or conditions. The waiver by any party of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition herein contained nor a waiver of the same term, covenant or condition in a future occasion.

11. Successor and Assigns. This Agreement shall be binding upon and inure to the benefit of the undersigned parties and their respective successors and assigns, including, without limitation, their successors by merger or operation of law. Without limiting the foregoing, the rights and obligations of any party hereto may be assigned, without the consent of any other party hereto, to any affiliate, parent or any other legal entity which succeeds to the rights of the assignor under this Agreement (if permitted by the Agreement), provided that (i) the assignee shall assume in writing all of assignor's obligations under this Agreement, and (ii) assignor shall not be released from any of its obligations hereunder by reason of such assignment.

12. Section Headings. Section headings are inserted herein only as a matter of convenience and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof and shall not be considered in interpreting or construing this Agreement.

13. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision

hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14. Attorney's Fees. If any legal action, arbitration or other proceeding is commenced to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to an award of its attorneys' fees and expenses.

15. Rules of Construction. Singular words shall connote the plural number as well as the singular and vice versa, and masculine shall include the feminine and the neuter. This Agreement shall be construed according to its fair meaning and neither for nor against any party hereto irrespective of which party caused the same to be drafted. All of the parties acknowledge that it has been or has had the opportunity to be represented by legal counsel in connection with this transaction.

16. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Hawaii.

17. Counterparts/Facsimile (Fax) Signatures. This Agreement may be executed in any number of counterparts and by any party hereto on a separate counterpart, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute but one and the same instrument. Electronically transmitted executed copies of this Agreement shall be fully binding and effective for all purposes whether or not originally executed documents are transmitted to the other party. Facsimile signatures on documents are to be treated the same as original signatures.

18. Termination. This Agreement shall terminate on the first to occur of the following: (i) recording in the Land Court of the Encroachment Agreement or (ii) January 1, 2011.

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In witness whereof, the parties have executed this Agreement as of the Effective Date.

_____
PAUL DENNIS SULLIVAN

_____
KAREN LAU SULLIVAN

**"Unit 55 Owner"**

MERCURY-FC LLC,
a Hawaii limited liability company

By: Portland Fixture Limited Partnership, an Oregon limited partnership, its Manager

By: PFMGP, Inc., an Oregon corporation, its General Partner

By: _____
David P. Zimel, Its President

**"Mercury"**

4009/001/56038

677

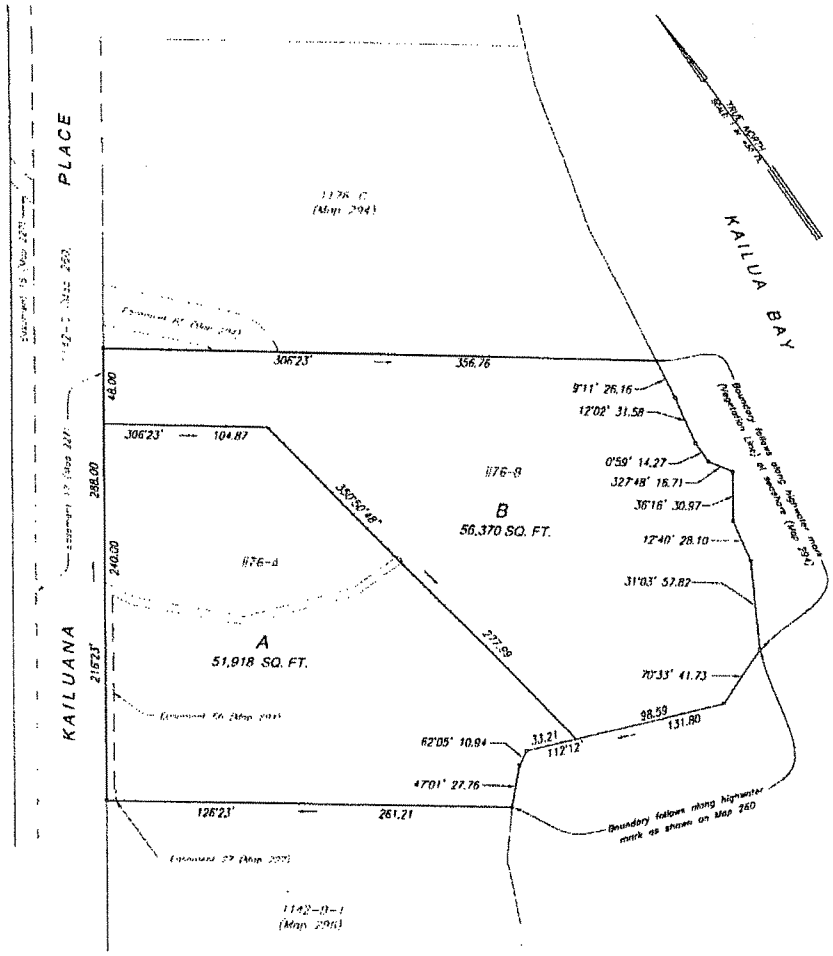
MAP

# LAND COURT

STATE OF HAWAII

# LAND COURT APPLICATION 677

CONSOLIDATION OF LOTS 1176-A AND 1176-B
AS SHOWN ON MAP 294
AND RESUBDIVISION OF SAID CONSOLIDATION
INTO LOTS A AND B
AT KAILUA AND KANEOHE, KOOLAUPOKO, OAHU, HAWAII




2153 N. King Street
Honolulu, Hawaii 96819
Suite 308
DECEMBER 05, 2007

TOWILL, SHIGEOKA & ASSOCIATES, INC.

Licensed Professional Land Surveyor
Certificate Number 5075
Land Court Certificate Number 250

OWNERS: Mercury-FC LLC (LOT 1176-A)

Pearl Realty, Inc. (LOT 1176-B)
Paul Dennis Sullivan
Karen Lau Sullivan

TRANSFER CERTIFICATE OF TITLE: 839,046 (LOT 1176-A)
839,047

872,326 (LOT 1176-B)
811,761

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED _____
BY ORDER OF THE COURT.

_____
REGISTRAR OF THE LAND COURT

Tax Map Keys: (1) 4-3-22: 13 and 14

15" X 21" = 2.2 Sq. Ft.

EXHIBIT A
to Setback Agreement

LAND COURT SYSTEM : REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL[XX] PICKUP[ ]

Schneider Tanaka Radovich Andrew & Tanaka, LLLC (GSK)
1100 Alakea St., Suite 2100
Honolulu, HI 96813

This Document contains _____ pages.

Affects.: TMK No.: (1) 4-3-022-014 CPR 0001 (TCT No. _____)
TMK No.: (1) 4-3-022-013 CPR 0001 (TCT No. _____)
TMK No.: (1) 4-3-022-013 CPR 0002 (TCT No. _____)

# AGREEMENT RELATING TO VIEW PLANES; JOINDER

By: PAUL DENNIS SULLIVAN and KAREN LAU SULLIVAN, husband and wife; and MERCURY-FC LLC, a Hawaii limited liability company ("**Mercury**")

Joinder: KAILUANA POINT PARTNERS, LLC, a Hawaii limited liability company
PORTLAND FIXTURE LIMITED PARTNERSHIP, an Oregon limited partnership;
ROBERT EVANS, husband of Joanne Evans;
KAREN EVANS, wife of Robert Leland;
DEREK EVANS, husband of Ellen Marie Evans; and
DAVID EVANS, husband of Ariana Dawn Evans



EXHIBIT B
to Setback Agreement

AGREEMENT RELATING TO VIEW PLANES; JOINDER

This AGREEMENT RELATING TO VIEW PLANES; JOINDER (this "**Agreement**") is made as of _____, 2008 (the "**Effective Date**"), by and between PAUL DENNIS SULLIVAN and KAREN LAU SULLIVAN, husband and wife, whose mailing address is 55 Kailuana Place, Kailua, Hawaii 96734, hereafter collectively called "**Unit 55 Owner**", and MERCURY-FC LLC, a Hawaii limited liability company ("**Mercury**"), whose business address is 16390 SW Langer Drive, Sherwood, Oregon 97140, with joinder by KAILUANA POINT PARTNERS, LLC, a Hawaii limited liability company, whose address is 53 Kailuana Place, Kailua, Hawaii 96734; PORTLAND FIXTURE LIMITED PARTNERSHIP, an Oregon limited partnership, whose address is 16390 SW Langer Drive, Sherwood, Oregon 97140; ROBERT EVANS, husband of Joanne Evans, whose address is 11348 March's Point Road, Anacortes, Washington 98221, KAREN EVANS, wife of Robert Leland, whose address is 2408 Washington Court, Anacortes, Washington 98221, DEREK EVANS, husband of Ellen Marie Evans, whose address is 6359 Mountain View Lane, Anacortes, Washington 98221, and DAVID EVANS, husband of Ariana Dawn Evans, whose address is 617 38th Street, Anacortes, Washington 98221 (collectively, the "**Lienholders**").

**RECITALS**

A. Unit 55 Owner and PEARL REALTY, INC., a Maryland corporation ("**PRI**"), whose business and post office address is 11350 McCormick Road, Hunt Valley, MD 21031, are the owners of Lot 1176-B ("**Lot 1176-B**"), as shown on Map 294 of Land Court Application No. 677 (amended).

B. Lot 1176-B is subject to a condominium property regime consisting of two condominium units, which condominium property regime is named "Castle Point I", and which was formed in accordance with (a) Declaration of Condominium Property Regime, "Castle Point I" (the "**Castle Point I Project**"), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "**Land Court**") as Land Court Document No. 3447364; (b) By-Laws of the Association of Apartment Owners of Castle Point I of even date therewith filed as aforesaid as Land Court Document No. 3447365; and (c) Condominium Map No. 1834.

C. Unit 55 Owner is the owner of Unit 55 in the Castle Point I Project ("**Unit 55**"), which is covered by Transfer Certificate of Title No. _____ to which Unit is appurtenant an exclusive limited common area known as "**Dwelling Area 55**".

D. Mercury is the owner of Lot 1176-A ("**Lot 1176-A**"), as shown on Map 294 of Land Court Application No. 677 (amended).



EXHIBIT B
to Setback Agreement

E. Lot 1176-A is subject to a condominium property regime consisting of two condominium units, which condominium property regime is named "Kuahine At Castle Point" (the **"Kuahine at Castle Point Project"**), and which was formed in accordance with (a) Declaration of Condominium Property Regime, "Kuahine at Castle Point", filed in the Land Court as Document No. 3447360; (b) By-Laws of the Association of Apartment Owners of Kuahine At Castle Point of even date therewith filed as aforesaid as Land Court Document No. 3447361; and (c) Condominium Map No. 1833.

F. Mercury is the owner of both Unit 57 and Unit 57A (**"Unit 57"** and **"Unit 57A"**, respectively) in the Kuahine at Castle Point Project, which units are covered by Transfer Certificates of Title _____ and _____, respectively. In its capacity as owner of Unit 57A, Mercury shall hereinafter be known as **"Unit 57A Owner"** and in its capacity as owner of Unit 57, Mercury shall hereinafter be known as **"Unit 57 Owner"**. Appurtenant to Unit 57A is a limited common element known as **"Dwelling Area 57A"**

G. Intentionally omitted.

H. Unit 57 and 57A are subject to certain liens and encumbrances in favor of one or more of the Lienholders, as more fully set forth on **Exhibit A** attached hereto. The Lienholders represent holders of all of the liens encumbering any of the units in the Kuahine at Castle Point Project.

I. Mercury and Unit 55 Owner each desire to enter into an agreement the effect of which would be, among other things, to restrict what Unit 55 Owner and Unit 57A Owner can build or landscape within certain view plane areas located on the makai portions of Dwelling Area 55 and Dwelling Area 57A, on the terms and conditions set forth below.

J. Mercury, in its capacities as Declarant and as Unit 57 Owner, and the Lienholders are willing to join into this Agreement for the purpose of consenting to the terms and conditions of this Agreement and subjecting Unit 57A, Dwelling Area 57A, and Lot 1176-A to the burdens and benefits hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Unit 57A Owner and Unit 55 Owner do and each of them does hereby agree as follows:

## AGREEMENT

1. **PLANTINGS ON DWELLING AREA 57A.**

a. No plantings or foliage higher than thirty-nine (39) inches above existing grade will be permitted on the ocean side of ocean-front setbacks of Dwelling Area 57A, except for coconut palms or other trees whose fronds or leaves will be pruned to not lower than twelve (12) feet above existing grade.

b. Unit 57A Owner shall, at Unit 57A Owner's expense, install, and thereafter maintain, in all of that portion of Dwelling Area 57A identified as "**Area #3**" on **Exhibit B** attached hereto, densely-growing plantings or foliage designed so as to restrict access over Area #3, for the purpose of enhancing the privacy of Unit 55 Owner. In the event that the common boundary between Dwelling Area 55 and Dwelling Area 57A is relocated in accordance with recording in the Land Court of the Resubdivision Map (defined below), the parties agree that Area #3 shall be a triangle with twenty (20) feet along the shoreline boundary of Dwelling Area 57A and sixty-five (65) feet along the common boundary of Dwelling Area 55 and Dwelling Area 57A.

2. **PLANTINGS ON DWELLING AREA 55.** Within that portion of Dwelling Area 55 identified as "**Area #2**" on **Exhibit B** attached hereto, no planting, foliage or Improvement higher than forty eight (48) inches above existing grade will be permitted, except for coconut palms or other trees whose fronds or leaves will be pruned to not lower than twelve (12) feet above existing grade. Notwithstanding the foregoing, fences not exceeding forty-eight (48) inches above ground, screened with Naupaka or other salt-tolerant plants, shall be permitted. In the event that the common boundary between Unit 55 Dwelling Area and Unit 57A Dwelling Area is relocated in accordance with the recording in the Land Court of the Resubdivision Map, the parties agree that Area #2 shall be a triangle with fifty (50) feet along the shoreline boundary of Dwelling Area 55 and sixty-five (65) feet along the common boundary of Dwelling Area 55 and Dwelling Area 57A.

3. **SUCCESSORS AND ASSIGNS; FUTURE OWNERS; COVENANT RUNNING WITH THE LAND.** This Agreement shall be binding on all parties executing or joining in to this Agreement and their respective heirs, executors, personal representatives, successors, and assigns. Furthermore, Unit 57A Owner and Unit 55 Owner hereby agree that the provisions herein shall operate as a covenant running with Unit 55 and Unit 57A and their respective Dwelling Areas and with Lot 1176-A, provided, however, that nothing herein contained shall be construed as a conveyance by any party of such party's respective rights in the fee simple interest of such party's Unit, Dwelling Area or underlying Lot. It is expressly understood and agreed that each and every party acquiring any interest in Unit 55 or Unit 57A whether as owner, lessee, mortgagee or otherwise, by such acquisition, shall have all rights of and shall be bound by and comply strictly with the duties and obligations imposed on the Unit 55 Owner and Unit 57A Owner hereunder, respectively.

4. **SEVERABILITY; RULE AGAINST PERPETUITIES**. If any provision of this Agreement, or any paragraph, section, sentence, clause, phrase, or word or the application thereof in any circumstances, shall be held invalid or unenforceable, the validity of the remainder of this Agreement and of the application of such provision, paragraph, section, sentence, clause, phrase, or word under any other circumstances shall not be affected thereby and each provision, paragraph, section; sentence, clause, phrase, or word or application thereof shall be valid and may be enforced to the fullest extent permitted by law. If any provision of this Agreement would violate the Rule Against Perpetuities or any other limitation on the duration of the provisions contained herein imposed by law, then such provisions shall be deemed to remain in effect only for the maximum permissible period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of former President William Clinton or current President George W. Bush, whichever is later.

5. **CAPTIONS; INTERPRETATION**. The captions of the sections hereof are for convenience only and shall not be considered to expand, modify, or aid in the interpretation, construction, or meaning of this Agreement. The use of any gender herein shall be deemed to include the other or neuter gender and the use of the singular herein shall be deemed to include the plural (and vice-versa), whenever appropriate. The reference to any person shall include natural persons, corporations, unincorporated associations, partnerships, limited liability companies, limited liability partnerships, joint ventures, governmental entities, eleemosynary corporations, and/or any other form of entity recognized by law.

6. **NO WAIVER**. The failure by any party to enforce any provision of this Agreement shall not constitute a waiver thereof or of the right to enforce such provision thereafter.

7. **NO PARTY DEEMED DRAFTER**. No party shall be deemed to be the drafter of this Agreement. This Agreement shall be considered as having been drafted by all parties, and shall not be construed or interpreted against any party by reason of such party's role in drafting this Agreement.

8. **NO THIRD PARTY BENEFICIARIES**. Except as otherwise specifically provided herein, the terms and provisions of this Agreement shall create no right in any person, firm or corporation other that the signatories hereto, and their respective successors and permitted assigns, and no third party shall have the right to enforce or benefit from the terms hereof.

9. **SIGNATURES IN COUNTERPARTS**. The parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same Agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Agreement, duplicate, unexecuted, and unacknowledged pages of the

counterparts may be discarded and the remaining pages assembled as one document.

10. **GOVERNING LAW AND ATTORNEYS' FEES AND COSTS**. This Agreement shall be governed by the laws of the State of Hawaii both as to the interpretation and performance. The parties agree that the courts of the State of Hawaii shall have exclusive jurisdiction to enforce the terms and conditions of this Agreement. In the event of a breach by any party, the prevailing party or parties shall be entitled to reasonable attorneys' fees and costs incurred in enforcing this Agreement.

11. **JOINDER; SURVIVAL**. Unit 57 Owner and the Lienholders hereby join into this Agreement for the purpose of consenting to the terms and conditions hereof and to expressly agree with Unit 57A Owner that this Agreement shall survive any termination of the Kuahine at Castle Point Project and any foreclosure of any one or more of the Kuahine at Castle Point liens, and that, if following any termination of the Kuahine at Castle Point Project, Lot 1176-A is subdivided, any resulting parcel that includes all or any portion of Area #3, shall, unless this Agreement shall have been sooner terminated, continue to be burdened and benefited by this Agreement as provided in Paragraphs 1 and 2 above, without any requirement for an instrument assigning such burdens and benefits to the owner of such resulting parcel or parcels. Parcels resulting from any subdivision of Lot 1176-A following termination of the Kuahine at Castle Point that do not include any property affected by Paragraphs 1 or 2 shall not be burdened or benefited by this Agreement.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SECTION 12 FOLLOWS

12. **TERMINATION FOR FAILURE TO RECORD RESUBDIVISION MAP.**

a. Notwithstanding anything herein to the contrary, this Agreement shall automatically terminate on January 1, 2011 unless the Resubdivision Map (defined below) has been recorded in the Land Court (the "**Resubdivision Due Date**").

b. For the purposes of this Agreement "Resubdivision Map" shall mean a map consolidating and re-subdividing Lot 1176-A and Lot 1176-B for the purpose of effecting a minor adjustment of a portion of the common boundary between Lot 1176-A and Lot 1176-B, such map to be substantially in the form of that certain Map (the "**Resubdivision Map**") approved by the Department of Planning and Permitting of the City and County of Honolulu on April 27, 2006, a copy of which is attached hereto as **Exhibit C**.

c. Each and every party acquiring any interest in Unit 55 or Unit 57A whether as owner, lessee, mortgagee or otherwise, by such acquisition, agrees, in the event of the termination of this Agreement in accordance with Section 12(a) above, that the rights hereunder shall be thereafter be null and void, and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the termination of the Agreement and appoints Unit 55 Owner as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of this reserved right, and shall not be affected by the disability of such party or parties.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have hereunto caused this instrument to be executed as of the Effective Date.

**"UNIT 55 OWNER"**

EXHIBIT ONLY - DO NOT SIGN

_____

PAUL DENNIS SULLIVAN

EXHIBIT ONLY - DO NOT SIGN

_____

KAREN LAU SULLIVAN

**"MERCURY"**

MERCURY-FC LLC,
a Hawaii limited liability company

By: Portland Fixture Limited Partnership, an Oregon limited partnership, its Manager

By: PFMGP, Inc., an Oregon corporation, its General Partner

EXHIBIT ONLY - DO NOT SIGN

By: _____

David P. Zimel, Its President

Signature lines continue on next page.

**"LIENHOLDERS"**

**KAILUANA POINT PARTNERS, LLC,**
a Hawaii limited liability company

EXHIBIT ONLY - DO NOT SIGN

By: _____
STEPHEN L. FUNKE
Its Manager

**PORTLAND FIXTURE LIMITED PARTNERSHIP,**
an Oregon limited partnership

By: PFMGP, Inc., an Oregon corporation
Its General Partner

EXHIBIT ONLY - DO NOT SIGN

By: _____
David P. Zimel
Its President

EXHIBIT ONLY - DO NOT SIGN

_____
ROBERT EVANS

EXHIBIT ONLY - DO NOT SIGN

_____
KAREN EVANS

EXHIBIT ONLY - DO NOT SIGN

_____
DEREK EVANS

EXHIBIT ONLY - DO NOT SIGN

_____
DAVID EVANS

STATE OF HAWAII )
) SS:
CITY AND COUNTY OF HONOLULU )

On _____, 2008, before me appeared **PAUL DENNIS SULLIVAN** and **KAREN LAU SULLIVAN**, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), in the capacities shown, having been duly authorized to execute such instrument in such capacities.

_____
Print Name:
Notary Public, State of Hawaii

My commission expires: _____

STATE OF HAWAII )
) SS:
CITY AND COUNTY OF HONOLULU )

On January 10, 2008, before me personally appeared **DAVID P. ZIMEL**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

_____
Print Name: Stephanie S. Yamane
Notary Public, State of Hawaii
My commission expires: 10/19/2011



EXHIBIT B
to Setback Agreement

STATE OF HAWAII )
) SS:
CITY AND COUNTY OF HONOLULU )

On _____, 2008, before me appeared **STEPHEN L. FUNKE**, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), in the capacities shown, having been duly authorized to execute such instrument in such capacities.

_____
Print Name:
Notary Public, State of Hawaii

My commission expires: _____



EXHIBIT B
to Setback Agreement

STATE OF _____)
) SS:
COUNTY OF _____)

On _____, 2008, before me personally appeared **ROBERT EVANS**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

_____
Print Name:
Notary Public, in and for said County and State

My commission expires: _____

STATE OF _____)
) SS:
COUNTY OF _____)

On _____, 2008, before me personally appeared **KAREN EVANS**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

_____
Print Name:
Notary Public, in and for said County and State

My commission expires: _____



EXHIBIT B
to Setback Agreement

STATE OF _____)
)  SS:
COUNTY OF _____)

On _____, 2008, before me personally appeared **DEREK EVANS**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

_____
Print Name:
Notary Public, in and for said County and State

My commission expires: _____

STATE OF _____)
) SS:
COUNTY OF _____)

On _____, 2008, before me personally appeared **DAVID EVANS**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

_____
Print Name:
Notary Public, in and for said County and State

My commission expires: _____



EXHIBIT B
to Setback Agreement

## EXHIBIT A

LIENHOLDERS

A. **PORTLAND FIXTURE LIMITED PARTNERSHIP**. Portland Fixture Limited Partnership is the holder of one or more mortgage liens encumbering one or more Units in the Kuahine at Castle Point condominium project as follows:

a) PURCHASE MONEY MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-1, LLC, a Hawaii limited liability company; Kailuana Point Partners, LLC., a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Mortgagee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Unit: | Unit 57 |
| Dated: | November 19, 2003 |
| Recorded: | December 26, 2003 |
| Encumbers: | Unit 57 |
| Document No. | 3047847 |
| To Secure: | $2,100,000.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

Subordination Agreement dated October 24, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347700. Re: The foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, shown in Schedule A, Item 4.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 27, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456575 and 3456576, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133992 and 2006-133993 . Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

b) FINANCING STATEMENT

| | |
|---|---|
| Debtor: | Funke Kailuana Lot A-1, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Secured Party: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Filed On: | December 26, 2003 |
| Document No. | 2003-286531 |
| Re: | Unit 57 |

Subordination Agreement dated October 24, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347700. Re: the foregoing is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 27, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456575 and 3456576, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133992 and 2006-133993. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

c) ADDITIONAL CHARGE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-1, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Mortgagee: | Portland Fixture Limited Partnership, a Oregon limited partnership |
| Acknowledged: | June 9, 2004 |
| Recorded: | July 1, 2004 |
| Document No. | 3130985 |
| Encumbers: | Unit 57 |
| To Secure: | $1,000,000.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

Subordination Agreement dated October 24, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347700. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, shown in Schedule A, Item 4.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 27, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456575 and 3456576, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133992 and 2006-133993. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

d) SECOND ADDITIONAL CHARGE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-1, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Mortgagee: | Portland Fixture Limited Partnership, a Oregon limited partnership |
| Dated: | December 16, 2004 |
| Recorded: | December 16, 2004 |
| Document No. | 3207186 |
| Encumbers: | Unit 57 |
| To Secure: | $875,000.00<br>and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

Subordination Agreement dated October 24, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347700. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, shown in Schedule A, Item 4.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 27, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456575 and 3456576, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133992 and 2006-133993. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

e) MORTGAGE

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-1, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Mortgagee: | SFG Income Fund VI, LLC, a Washington limited liability company |
| Dated: | October 26, 2005 |
| Recorded: | October 28, 2005 |
| Document No. | 3347699 |
| Encumbers: | Unit 57 |
| To Secure: | $3,600,000.00<br>and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

The foregoing First Mortgage, Security Agreement and Fixture Filing was amended by the following:

LOAN MODIFICATION AGREEMENT AND AMENDMENT OF: (1) PROMISSORY NOTE; (2) FIRST MORTAGE, SECURITY AGREEMENT AND FIXTURE FILING; (3) FINANCING STATEMENT; AND (4) GUARANTY

| | |
|---|---|
| Dated: | June 27, 2006 but is effective as of July 7, 2006 |
| Document No. | 3456574 |

The foregoing Mortgage was assigned by the following:

ASSIGNMENT OF NOTE, MORTGAGE, LOAN DOCUMENTS AND RELATED DOCUMENTS

| | |
|---|---|
| Assignor: | SFG Income Fund VI, LLC, a Washington limited liability company |
| Assignee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | Effective August 10, 2007 |
| Recorded: | November 2, 2007 |
| Document No.: | 3676518 |
| Document No.: | 2007-193470 |

f) FINANCING STATEMENT

| | |
|---|---|
| Debtor: | Funke Kailuana Lot A-1, LLC.; Kailuana Point Partners, LLC; and PFLP-HI LLC |
| Secured Party: | SFG Income Fund VI, LLC |
| Filed On: | October 28, 2005 |
| Document No. | 2005-220779 |
| Re: | Unit 57 |

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

The foregoing Financing Statement was amended by the following:

LOAN MODIFICATION AGREEMENT AND AMENDMENT OF: (1) PROMISSORY NOTE; (2) FIRST MORTAGE, SECURITY AGREEMENT AND FIXTURE FILING; (3) FINANCING STATEMENT; AND (4) GUARANTY

Dated: June 27, 2006 but is effective as of July 7, 2006
Document No. 3456574

The foregoing Financing Statement was assigned by the following:

ASSIGNMENT OF NOTE, MORTGAGE, LOAN DOCUMENTS AND RELATED DOCUMENTS

| | |
|---|---|
| Assignor: | SFG Income Fund VI, LLC, a Washington limited liability company |
| Assignee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | Effective August 10, 2007 |
| Recorded: | November 2, 2007 |
| Document No.: | 3676518 |
| Document No.: | 2007-193470 |

g) THIRD ADDITIONAL CHARGE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (UNIT 57)

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-1, LLC, a Hawaii limited liability company, PFLP-HI LLC, a Hawaii limited liability company, and Kailuana Point Partners, LLC, a Hawaii limited liability company |
| Mortgagee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | July 21, 2006 |
| Recorded: | July 21, 2006 |
| Document No. | 3456579 |
| Encumbers: | Unit 57 |
| To Secure: | $1,762,500.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

Consent to Third Additional Charge Mortgage and Extension, Confirmation of Subordination Agreement, Release and Indemnity and Consent by Guarantors, effective July 21, 2006, recorded as Land Court Document No. 3456581, to which reference is hereby made.

h) FINANCING STATEMENT

| | |
|---|---|
| Debtor: | Funke Kailuana Lot A-1, LLC, an Hawaii limited liability company, Kailuana Point Partners, a Hawaii limited liability company, and PFLP-HI LLC, a Hawaii limited liability company |
| Secured Party | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Filed On: | July 21, 2006 |
| Document No. | 2006-133996 |
| Re: | Unit 57 |

i) PURCHASE MONEY MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-2, LLC, a Hawaii limited liability company; Kailuana Point Partners, LLC., a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Mortgagee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | November 19, 2003 |
| Recorded: | December 26, 2003 |
| Document No. | 3047852 |
| Encumbers: | Unit 57A |
| To Secure: | $2,100,000.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

Subordination Agreement dated October 24, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347705. Re: the foregoing Mortgage, is hereby subordinated to that certain Mortgage recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 3347704.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 27, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456583 and 3456584, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133997 and 2006-133998. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347704, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220780, as amended.

j) FINANCING STATEMENT

| | |
|---|---|
| Debtor: | Funke Kailuana Lot A-2, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Secured Party: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Filed On: | December 26, 2003 |
| Document No. | 2003-286532 |
| Re: | Unit 57A |

Subordination Agreement dated October 24, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347705. Re: the foregoing is hereby subordinated to that certain Mortgage recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 3347704.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 27, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456583 and 3456584, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133997 and 2006-133998. Re: the foregoing Financing Statement, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347704, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220780, as amended.

k) FIRST MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-2, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company |
| Mortgagee: | SFG Income Fund VI, LLC, a Washington limited liability company |
| Dated: | October 26, 2005 |
| Recorded: | October 28, 2005 |
| Document No. | 3347704 |
| Encumbers: | Unit 57A |
| To Secure: | $4,900,000.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

The foregoing First Mortgage, Security Agreement and Fixture Filing was amended by the following:

LOAN MODIFICATION AGREEMENT AND AMENDMENT OF: (1) PROMISSORY NOTE; (2) FIRST MORTAGE, SECURITY AGREEMENT AND FIXTURE FILING; (3) FINANCING STATEMENT; AND (4) GUARANTY

| | |
|---|---|
| Dated: | June 27, 2006, but is effective as of July 7, 2006 |
| Document No.: | 3456582 |

The foregoing Mortgage was assigned by the following:

ASSIGNMENT OF NOTE, MORTGAGE, LOAN DOCUMENTS AND RELATED DOCUMENTS

| | |
|---|---|
| Assignor: | SFG Income Fund VI, LLC, a Washington limited liability company |
| Assignee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | Effective August 10, 2007 |
| Recorded: | November 2, 2007 |
| Document No.: | 3676517 |
| Document No.: | 2007-193469 |

I) FINANCING STATEMENT

| | |
|---|---|
| Debtor: | Funke Kailuana Lot A-2, LLC.; Kailuana Point Partners, LLC; and PFLP-HI LLC |
| Secured Party: | SFG Income Fund VI, LLC |
| Filed On: | October 28, 2005 |
| Document No. | 2005-220780 |
| Re: | Unit 57A |

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

The foregoing Financing Statement was amended by the following:

LOAN MODIFICATION AGREEMENT AND AMENDMENT OF: (1) PROMISSORY NOTE; (2) FIRST MORTAGE, SECURITY AGREEMENT AND FIXTURE FILING; (3) FINANCING STATEMENT; AND (4) GUARANTY

Dated: June 27, 2006, but is effective as of July 7, 2006

The foregoing Financing Statement was assigned by the following:

ASSIGNMENT OF NOTE, MORTGAGE, LOAN DOCUMENTS AND RELATED DOCUMENTS

| | |
|---|---|
| Assignor: | SFG Income Fund VI, LLC, a Washington limited liability company |
| Assignee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | Effective August 10, 2007 |
| Recorded: | November 2, 2007 |
| Document No.: | 3676517 |
| Document No.: | 2007-193469 |
| Document No.: | 3456582 |

m) THIRD ADDITIONAL CHARGE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-2, LLC, a Hawaii limited liability company |
| Mortgagee: | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Dated: | July 21, 2006 |
| Recorded: | July 21, 2006 |
| Document No. | 3456585 |
| Encumbers: | Unit 57A |
| To Secure: | $683,400.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

The terms and provisions of that certain Consent to Third Additional Charge Mortgage and Extension, Confirmation of Subordination Agreement, Release and Indemnity and Consent by Guarantors effective date July 21, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3456586, to which reference is hereby made.

n) FINANCING STATEMENT

| | |
|---|---|
| Debtor: | Funke Kailuana Lot A-2, LLC, an Hawaii limited liability company |
| Secured Party | Portland Fixture Limited Partnership, an Oregon limited partnership |
| Filed On: | July 21, 2006 |
| Document No. | 2006-133999 |
| Re: | Unit 57A |

B. **KAILUANA POINT PARTNERS, LLC**. Kailuana Point Partners, LLC, is the holder of one or more mortgage liens encumbering one or more Units in the Kuahine at Castle Point condominium project as follows:

REAL PROPERTY THIRD MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Funke Kailuana Lot A-1, LLC., a Hawaii limited liability company; Kailuana Point Partners, LLC, a Hawaii limited liability company; and PFLP-HI LLC, a Hawaii limited liability company; |
| Mortgagee: | Kailuana Point Partners, LLC, a Hawaii limited partnership |
| Acknowledge: | November 26, 2003 |
| Recorded: | December 26, 2003 |
| Document No. | 3047850 |
| To Secure: | $1,700,000.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to |

Subordination Agreement dated July 1, 2004, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3130986. Re: the foregoing Real Property Third Mortgage, Security Agreement and Fixture Filing, is hereby subordinated to that certain Additional Charge Mortgage, Security Agreement and Financing Statement dated July 1, 2004 and filed as Document No. 3130985.

Second Subordination Agreement dated December 16, 2004, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3207187. Re: the foregoing mortgage, is hereby subordinated to that certain mortgage filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3207186.

Subordination Agreement dated October 26, 2005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3347701. Re: the foregoing Mortgage, is hereby subordinated to that certain Mortgage recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 3347699.

The foregoing (besides other mortgages) was amended by that certain Amendment of Mortgages, Confirmation of Priority of Liens and Release of Interests dated June 5, 2006, recorded as Document No. 3447372, to which reference is hereby made.

Consent and Reaffirmation of Subordination dated June 29, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3456577 and 3456578, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-133994 and 2006-133995. Re: the foregoing Mortgage, is hereby subordinated to that certain First Mortgage, Security Agreement and Fixture Filing recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

Third Subordination Agreement dated July 21, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3456580. Re: the foregoing Mortgage, is hereby subordinated to that certain Third Additional Charge Mortgage recorded as Document No. 3456579.

C. **ROBERT EVANS**. Robert Evans is the holder of one or more mortgage liens encumbering one or more Units in the Kuahine at Castle Point condominium project as follows:

REAL PROPERTY SUBORDINATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Kailuana Point Partners, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-1, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-2, LLC, a Hawaii limited liability company, Funke Kailuana Lot C-2 LLC, a Hawaii limited liability company, and Funke Kailuana Lot D, LLC, a Hawaii limited liability company |
| Mortgagee: | Robert Evans, husband of Joanne Evans |
| Dated: | --- |
| Recorded: | July 27, 2006 |
| Document No. | 3459079 |
| Encumbers: | Unit 57 and Unit 57A |
| To Secure: | $1,573,000.00<br>and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to<br>(Note: Also affects other property.) |

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531831 and 3531832, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235867 and 2006-235868. Re: the foregoing Mortgage, is hereby subordinated to that certain Mortgage recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531833 and 3531834, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235869 and 2006-235870. Re: the foregoing Mortgage, is hereby subordinated to that certain Purchase Money Mortgage, Security Agreement and Fixture Filing recorded as Land Court Document No. 3047847, as amended; that certain Financing Statement recorded in said Bureau as Document No. 2003-286531, as amended; that certain Additional Charge Mortgage Security Agreement and Financing Statement recorded as Land Court Document No. 3130985, as amended; that certain Second Additional Charge Mortgage, Security Agreement and Financing Statement recorded as Land Court Document No. 3207186, as amended; that certain Third Additional Charge Mortgage, Security Agreement and Financing Statement (Unit 57) recorded as Land Court Document No. 3456579; and that certain Financing Statement recorded in said Bureau as Document No. 2006-133996.

D. **KAREN EVANS**. Karen Evans is the holder of one or more mortgage liens encumbering one or more Units in the Kuahine at Castle Point condominium project as follows:

REAL PROPERTY SUBORDINATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Kailuana Point Partners, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-1, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-2, LLC, a Hawaii limited liability company, Funke Kailuana Lot C-2 LLC, a Hawaii limited liability company, and Funke Kailuana Lot D, LLC, a Hawaii limited liability company |
| Mortgagee: | Karen Evans, wife of Robert Leland |
| Dated: | --- |
| Recorded: | August 2, 2006 |
| Document No. | 3461665 |
| Encumbers: | Unit 57 and Unit 57A |
| To Secure: | $192,666.00<br>and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to<br>(Note: Also affects other property.) |

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531831 and 3531832, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235867 and 2006-235868. Re: the foregoing Mortgage, is hereby subordinated to that certain Mortgage recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531833 and 3531834, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235869 and 2006-235870. Re: the foregoing Mortgage, is hereby subordinated to that certain Purchase Money Mortgage, Security Agreement and Fixture Filing recorded as Land Court Document No. 3047847, as amended; that certain Financing Statement recorded in said Bureau as Document No. 2003-286531, as amended; that certain Additional Charge Mortgage Security Agreement and Financing Statement recorded as Land Court Document No. 3130985, as amended; that certain Second Additional Charge Mortgage, Security Agreement and Financing Statement recorded as Land Court Document No. 3207186, as amended; that certain Third Additional Charge Mortgage, Security Agreement and Financing Statement (Unit 57) recorded as Land Court Document No. 3456579; and that certain Financing Statement recorded in said Bureau as Document No. 2006-133996.

E. **DEREK EVANS**. Derek Evans is the holder of one or more mortgage liens encumbering one or more Units in the Kuahine at Castle Point condominium project as follows:

REAL PROPERTY SUBORDINATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Kailuana Point Partners, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-1, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-2, LLC, a Hawaii limited liability company, Funke Kailuana Lot C-2 LLC, a Hawaii limited liability company, and Funke Kailuana Lot D, LLC, a Hawaii limited liability company |
| Mortgagee: | Derek Evans, husband of Ellen Marie Evans |
| Dated: | --- |
| Recorded: | August 2, 2006 |
| Document No. | 3461666 |
| Encumbers: | Unit 57 and Unit 57A |
| To Secure: | $117,300.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to (Note: Also affects other property.) |

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531831 and 3531832, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235867 and 2006-235868. Re: the foregoing Mortgage, is hereby subordinated to that certain Mortgage recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531833 and 3531834, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235869 and 2006-235870. Re: the foregoing Mortgage, is hereby subordinated to that certain Purchase Money Mortgage, Security Agreement and Fixture Filing recorded as Land Court Document No. 3047847, as amended; that certain Financing Statement recorded in said Bureau as Document No. 2003-286531, as amended; that certain Additional Charge Mortgage Security Agreement and Financing Statement recorded as Land Court Document No. 3130985, as amended; that certain Second Additional Charge Mortgage, Security Agreement and Financing Statement recorded as Land Court Document No. 3207186, as amended; that certain Third Additional Charge Mortgage, Security Agreement and Financing Statement (Unit 57) recorded as Land Court Document No. 3456579; and that certain Financing Statement recorded in said Bureau as Document No. 2006-133996.

F. **DAVID EVANS**. David Evans is the holder of one or more mortgage liens encumbering one or more Units in the Kuahine at Castle Point condominium project as follows:

REAL PROPERTY SUBORDINATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | |
|---|---|
| Mortgagor: | Kailuana Point Partners, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-1, LLC, a Hawaii limited liability company, Funke Kailuana Lot A-2, LLC, a Hawaii limited liability company, Funke Kailuana Lot C-2 LLC, a Hawaii limited liability company, and Funke Kailuana Lot D, LLC, a Hawaii limited liability company |
| Mortgagee: | David Evans, husband of Ariana Dawn Evans |
| Dated: | --- |
| Recorded: | August 2, 2006 |
| Document No. | 3461667 |
| Encumbers: | Unit 57 and Unit 57A |
| To Secure: | $117,300.00<br>and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to<br>(Note: Also affects other property.) |

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531831 and 3531832, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235867 and 2006-235868. Re: the foregoing Mortgage, is hereby subordinated to that certain Mortgage recorded as Document No. 3347699, as amended, and that certain Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-220779, as amended.

Consent and Subordination Agreement dated December 14, 2006, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 3531833 and 3531834, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 2006-235869 and 2006-235870. Re: the foregoing Mortgage, is hereby subordinated to that certain Purchase Money Mortgage, Security Agreement and Fixture Filing recorded as Land Court Document No. 3047847, as amended; that certain Financing Statement recorded in said Bureau as Document No. 2003-286531, as amended; that certain Additional Charge Mortgage Security Agreement and Financing Statement recorded as Land Court Document No. 3130985, as amended; that certain Second Additional Charge Mortgage, Security Agreement and Financing Statement recorded as Land Court Document No. 3207186, as amended; that certain Third Additional Charge Mortgage, Security Agreement and Financing Statement (Unit 57) recorded as Land Court Document No. 3456579; and that certain Financing Statement recorded in said Bureau as Document No. 2006-133996.

**EXHIBIT B**

MAP OF PLANTING AREAS

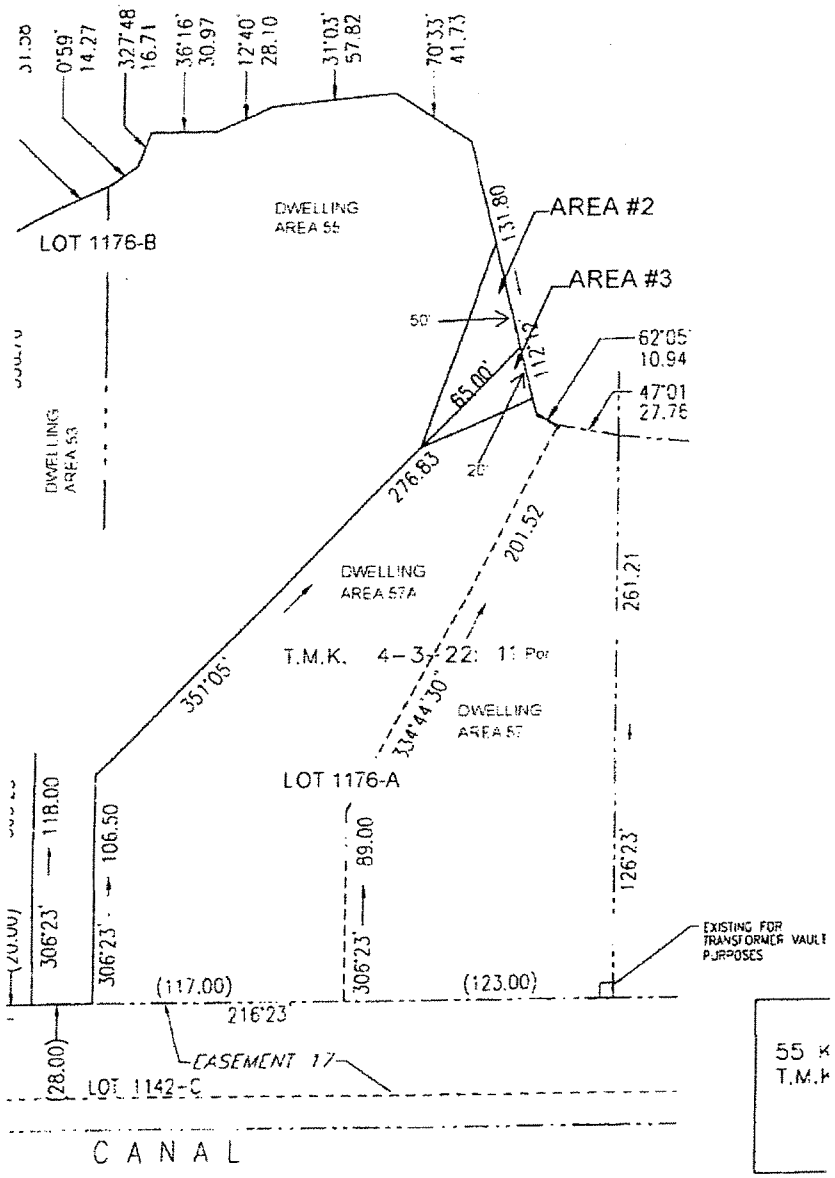



EXHIBIT B
to Setback Agreement

**EXHIBIT C**

RESUBDIVISION MAP

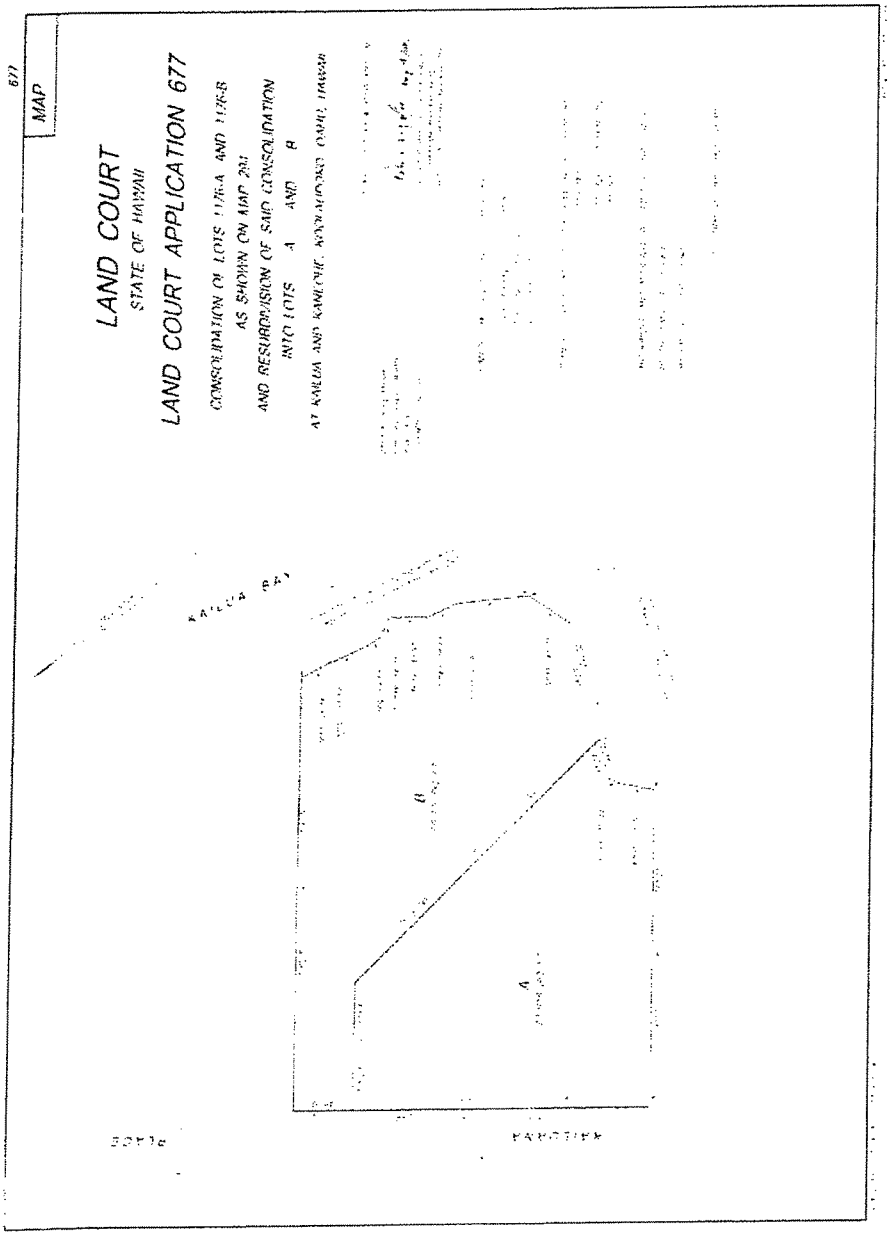





EXHIBIT B
to Setback Agreement

LAND COURT SYSTEM | REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL [x] PICK UP [ ]

Schneider Tanaka Radovich Andrew & Tanaka (GSK)
1100 Alakea Street, Suite 2100
Honolulu, Hawaii 96813

Total No. of Pages: _____

Affects.: TMK No.: (1) 4-3-022-014 CPR 0001 (TCT No. _____)
TMK No.: (1) 4-3-022-014 CPR 0002 (TCT No. _____)
TMK No.: (1) 4-3-022-013 CPR 0001 (TCT No. _____)
TMK No.: (1) 4-3-022-013 CPR 0002 (TCT No. _____)

## ENCROACHMENT AGREEMENT; JOINDER

This **ENCROACHMENT AGREEMENT; JOINDER** (this "**Agreement**") is made as of _____, 200___ (the "**Effective Date**"), by and between _____, whose address is _____, ("**Unit 53 Owner**"), _____, whose address is _____, ("**Unit 55 Owner**"), _____, whose address is _____, ("**Unit 57 Owner**"), _____, whose address is _____, ("**Unit 57A Owner**"), _____, _____ and _____ (collectively, the "**Kuahine at Castle Point Lienholders**"); and _____, _____ and _____ (collectively, the "**Castle Point I Lienholders**").

EXHIBIT C
to Setback Agreement

4009\001\56459

**RECITALS**

A. Unit 55 Owner and Unit 53 Owner are the owners of Lot 1176-B ("**Lot 1176-B**"), as shown on Map 294 of Land Court Application No. 677 (amended).

B. Lot 1176-B is subject to a condominium property regime consisting of two condominium units, which condominium property regime is named "Castle Point I", and which was formed in accordance with (a) Declaration of Condominium Property Regime, "Castle Point I" (the "**Castle Point I Project**"), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "**Land Court**") as Land Court Document No. 3447364, as amended by Amendment to Declaration of Condominium Property Regime, "Castle Point I", filed in the Land Court as Document No. _____; (b) By-Laws of the Association of Apartment Owners of Castle Point I of even date therewith filed as aforesaid as Land Court Document No. 3447365; and (c) Condominium Map No. 1834, as amended.

C. Unit 55 Owner is the owner of Unit 55 in the Castle Point I Project ("**Unit 55**"), which is covered by Transfer Certificate of Title No. _____, to which Unit is appurtenant an exclusive limited common area known as "**Dwelling Area 55**". Unit 53 Owner is the owner of Unit 53 in the Castle Point I Project, which is covered by Transfer Certificate of Title No. _____.

D. Unit 57 Owner and Unit 57A Owner are the owners of Lot 1176-A ("**Lot 1176-A**"), as shown on Map 294 of Land Court Application No. 677 (amended).

E. Lot 1176-A is subject to a condominium property regime consisting of two condominium units, which condominium property regime is named "Kuahine At Castle Point" (the "**Kuahine at Castle Point Project**"), and which was formed in accordance with (a) Declaration of Condominium Property Regime, "Kuahine at Castle Point", filed in the Land Court as Document No. 3447360, as amended by Amendment to Declaration of Condominium Property Regime, "Kuahine at Castle Point", filed in the Land Court as Document No. _____; (b) By-Laws of the Association of Apartment Owners of Kuahine At Castle Point of even date therewith filed as aforesaid as Land Court Document No. 3447361; and (c) Condominium Map No. 1833, as amended.

F. Unit 57A Owner is the owner of Unit 57A in the Kuahine at Castle Point Project ("**Unit 57A**"), which is covered by Transfer Certificate of Title No. _____, to which Unit is appurtenant an exclusive limited common area known as "**Dwelling Area 57A**". Unit 57 Owner is the owner of Unit 57 in the Kuahine at Castle Point Project, which is covered by Transfer Certificate of Title No. _____.

G. Unit 57 and 57A are subject to certain liens and encumbrances (the "**Kuahine at Castle Point Mortgages**") in favor of one or more of the Kuahine at Castle Point Lienholders, as more fully set forth on **Exhibit A** attached hereto. The Kuahine at

Castle Point Lienholders represent holders of all of the liens encumbering any of the units in the Kuahine at Castle Point Project. Unit 53 and Unit 55 are subject to certain liens and encumbrances (the "**Castle Point I Mortgages**") in favor of one or more of the Castle Point I Lienholders, as more fully set forth on **Exhibit B** attached hereto. The Castle Point I Lienholders represent holders of all of the liens encumbering any of the units in the Castle Point I Project.

H. The east and northeasterly boundary of Lot 1176-A and Dwelling Area 57A are identical. The Castle Point I Project and the Kuahine at Castle Point Project adjoin one another, and Dwelling Area 55 and Dwelling Area 57A are contiguous. For the purposes of this Agreement, the "**Common Boundary**" shall mean the common boundary between (i) Lot 1176-B and Dwelling Area 55 located thereon and (ii) Lot 1176-A and Dwelling Area 57A located thereon.

I. There is presently constructed over a portion of the Common Boundary, a wall (the "**Wall**"), portions of which are located partially on Dwelling Area 57A and Dwelling Area 55 (the "**Encroachment**"). The Encroachment is shown on the map attached hereto as **Exhibit C**.

J. Unit 55 Owner is willing to permit the Encroachment to continue on that portion of Dwelling Area 55 which the Wall presently affects, subject to the terms and conditions set forth herein.

K. Unit 53 Owner, Unit 57 Owner, the Kuahine at Castle Point Lienholders and the Castle Point I Lienholders are willing to join into this Agreement for the purpose of consenting to the terms and conditions of this Agreement and subjecting Unit 55, Dwelling Area 55, Lot 1176-B, Unit 57A, Dwelling Area 57A, and Lot 1176-A to the burdens and benefits hereof.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Unit 57A Owner and Unit 55 Owner do and each of them does hereby agree as follows:

1. **RIGHT TO KEEP WALL.** Unit 55 Owner does hereby covenant and agree that, except as otherwise provided herein, so long as the Wall shall remain standing and in good repair, Unit 57A Owner shall have the right to have the Encroachment continue upon Dwelling Area 55 to substantially the same extent and in the same manner as the Wall now encroaches upon said Dwelling Area 55 as shown on the map attached hereto as **Exhibit C**.

2. **WAIVER OF ADVERSE POSSESSION CLAIM.** Except as to the rights granted herein to Unit 57A Owner, Unit 57A Owner declares that Unit 57A Owner does not and will not make any claim against Lot 1176-B, Unit 55 or Dwelling Area 55 by virtue of the Wall encroaching upon Lot 1176-B, Unit 55, and Dwelling Area 55. Unit 57A Owner further covenants and agrees that Unit 57A Owner has not sought, and, except for the rights granted herein to Unit 57A Owner, does hereby forever waive and relinquish any accrued right, if any, to claim title to, or the right to possession of, any portion of Lot 1176-B, Unit 55 or Dwelling Area 55 as a result of said Encroachment. Unit 57A Owner does hereby waive and relinquish, to the fullest extent permitted under applicable law, any right Unit 57A Owner may have to bring an action for the purpose of establishing title to the Encroachment area under Chapter 669 of the Hawaii Revised Statutes, as amended (or any successor statutory provision), under common law or otherwise.

3. **OWNERSHIP AND MAINTENANCE OF WALL.**

a. Unit 57A Owner and Unit 55 Owner agree that the Wall is solely owned by Unit 57A Owner. Unit 55 Owner grants Unit 57A Owner a right of entry over and across those portions of Dwelling Area 55 necessary for Unit 57A Owner to perform its obligation hereunder; provided, that, except in the case of emergency, Unit 57A Owner shall provide Unit 55 Owner with at least seven (7) days advance written notice prior to the entry upon Dwelling Area 55 by Unit 57A Owner, its contractors or subcontractors, to perform such improvements to the Wall. Unit 57A Owner covenants and agrees that Unit 57A Owner's right of entry shall be exercised in a manner that causes a minimum of inconvenience and disturbance to Dwelling Area 55 and to Unit 55 Owner. Notwithstanding anything to the contrary, Unit 57A Owner shall have no right to expand or increase the size or location of the Encroachment into Dwelling Area 55.

b. Unit 57A Owner shall bear all costs of maintenance, repair, and replacement of the Wall. Notwithstanding any provision to the contrary, except in circumstances where disrepair of the Wall creates a safety hazard, Unit 57A Owner shall have the right, in its sole discretion, to determine when and if the Wall is to be maintained, repaired or replaced and shall have no liability to Unit 55 Owner for failure to perform any maintenance, repair, or replacement.

c. Unit 55 Owner shall have no obligation to maintain, repair or replace the Wall under any circumstances. In the event that Unit 55 Owner determines that maintenance, repair or replacement of the Wall is warranted, and after reasonable notice and opportunity is given to Unit 57A Owner to perform such work, Unit 55 Owner shall have the right (but not the obligation) to perform such work at Unit 55 Owner's expense and Unit 57A Owner grants Unit 55 Owner a right of entry over and across those portions of Unit 57A necessary for Unit 55 Owner to perform such work.

4. **LIABILITY OF UNIT 57A OWNER.** Unit 57A Owner shall be liable for the acts and/or omissions of Unit 57A Owner, persons acting by, under, and/or through Unit 57A Owner, and/or Unit 57A Owner's employees, agents, and/or assigns to the

fullest extent permitted by law (statutory, common law, or otherwise) for any and all loss or damage to Lot 1176-B, Unit 55 or Dwelling Area 55 and/or other property and for any and all injury to or death of persons arising out of or in connection with the Encroachment upon Lot 1176-B, Unit 55 or Dwelling Area 55, the breach of any covenant, condition, and/or provision herein contained. This provision shall not limit any right or remedy of Unit 55 Owner against Unit 57A Owner. The foregoing shall not apply to the extent of any loss, damage, injury or death caused by the gross negligence or intentional misconduct of Unit 55 Owner or any persons acting by, under, and/or through Unit 55 Owner, and/or Unit 55 Owner's employees, agents, successors and/or assigns.

5. **INDEMNITY.** Unit 57A Owner agrees to indemnify, defend, and save harmless Unit 55 Owner, Unit 53 Owner and the Castle Point I Association and their respective officers, members, successors, and assigns against any and all loss or damage to Lot 1176-B, Unit 55, or Dwelling Area 55, or other property and from any and all liability for injury to or death of persons arising out of or in connection with: (i) any and all acts or omissions of Unit 57A Owner, persons acting by, under, and/or through Unit 57A Owner, and/or Unit 57A Owner's employees, agents, and/or assigns for which Unit 57A Owner shall be liable under Section 4 above; (ii) the Encroachment upon Dwelling Area 55; or (iii) the breach of any covenant, condition, and/or provision herein contained. The foregoing shall not apply to the extent of any loss or damage caused by the gross negligence or intentional misconduct of Unit 55 Owner, Unit 53 Owner, the Castle Point I Association, or any persons acting by, under, and/or through any of such entities, and/or the employees, agents, successors and/or assigns of any of such entities.

6. **FURTHER IMPROVEMENTS PROHIBITED.** Except to the extent necessary to maintain, repair, and upkeep the Wall, Unit 57A Owner does hereby covenant and agree not to construct upon, extend, enlarge, or otherwise further improve the Wall or the Encroachment area. Any construction, extension, enlargement, repair, or improvement of the Wall which will increase the area of Encroachment shall require the prior written approval of Unit 55 Owner. If at any time Unit 57A Owner removes the Wall, or if the Wall is substantially damaged or destroyed, Unit 57A Owner shall immediately replace the Wall wholly on Lot 1176-A/Unit 57A. As used herein, the phrase "substantially damaged or destroyed" shall mean that more than one-half (½) of the encroaching portion of the Wall shall be damaged or destroyed.

7. **SUCCESSORS AND ASSIGNS; FUTURE OWNERS; COVENANT RUNNING WITH THE LAND.** This Agreement shall be binding on all parties executing or joining in to this Agreement and their respective heirs, executors, personal representatives, successors, and assigns. Furthermore, Unit 57A Owner and Unit 55 Owner hereby agree that the provisions herein shall operate as a covenant running with Unit 55 and Unit 57A and their respective Dwelling Areas and with Lot 1176-A, provided, however, that nothing herein contained shall be construed as a conveyance by any party of such party's respective rights in the fee simple interest of such party's Unit, Dwelling Area or underlying Lot. It is expressly understood and agreed that each

and every party acquiring any interest in Unit 55 or Unit 57A whether as owner, lessee, mortgagee or otherwise, by such acquisition, shall have all rights of and shall be bound by and comply strictly with the duties and obligations imposed on the Unit 55 Owner and Unit 57A Owner hereunder, respectively.

8. **TERM OF AGREEMENT.** Unit 57A Owner and Unit 55 Owner hereby agree that, except as otherwise provided herein, this Agreement and all covenants herein contained shall remain in full force and effect only so long as the Wall shall remain standing in accordance with the terms hereof. Except as otherwise provided herein, upon the removal of said Wall from Dwelling Area 55, this Agreement shall automatically cease and terminate.

9. **SEVERABILITY; RULE AGAINST PERPETUITIES.** If any provision of this Agreement, or any paragraph, section, sentence, clause, phrase, or word or the application thereof in any circumstances, shall be held invalid or unenforceable, the validity of the remainder of this Agreement and of the application of such provision, paragraph, section, sentence, clause, phrase, or word under any other circumstances shall not be affected thereby and each provision, paragraph, section; sentence, clause, phrase, or word or application thereof shall be valid and may be enforced to the fullest extent permitted by law. If any provision of this Agreement would violate the Rule Against Perpetuities or any other limitation on the duration of the provisions contained herein imposed by law, then such provisions shall be deemed to remain in effect only for the maximum permissible period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of former President William Clinton or current President George W. Bush, whichever is later.

10. **CAPTIONS; INTERPRETATION.** The captions of the sections hereof are for convenience only and shall not be considered to expand, modify, or aid in the interpretation, construction, or meaning of this Agreement. The use of any gender herein shall be deemed to include the other or neuter gender and the use of the singular herein shall be deemed to include the plural (and vice-versa), whenever appropriate. The reference to any person shall include natural persons, corporations, unincorporated associations, partnerships, limited liability companies, limited liability partnerships, joint ventures, governmental entities, eleemosynary corporations, and/or any other form of entity recognized by law.

11. **NO WAIVER.** The failure by any party to enforce any provision of this Agreement shall not constitute a waiver thereof or of the right to enforce such provision thereafter.

12. **NO PARTY DEEMED DRAFTER.** No party shall be deemed to be the drafter of this Agreement. This Agreement shall be considered as having been drafted by all parties, and shall not be construed or interpreted against any party by reason of such party's role in drafting this Agreement.

13. **NO THIRD PARTY BENEFICIARIES.** Except as otherwise specifically provided herein, the terms and provisions of this Agreement shall create no right in any person, firm or corporation other that the signatories hereto, and their respective successors and permitted assigns, and no third party shall have the right to enforce or benefit from the terms hereof.

14. **SIGNATURES IN COUNTERPARTS.** The parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same Agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Agreement, duplicate, unexecuted, and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

15. **GOVERNING LAW AND ATTORNEYS' FEES AND COSTS.** This Agreement shall be governed by the laws of the State of Hawaii both as to the interpretation and performance. The parties agree that the courts of the State of Hawaii shall have exclusive jurisdiction to enforce the terms and conditions of this Agreement. In the event of a breach by any party, the prevailing party or parties shall be entitled to reasonable attorneys' fees and costs incurred in enforcing this Agreement.

16. **JOINDER; SURVIVAL.**

a. Unit 57 Owner and the Kuahine at Castle Point Lienholders hereby join into this Agreement for the purpose of consenting to the terms and conditions hereof and to expressly agree with Unit 57A Owner that this Agreement shall survive any termination of the Kuahine at Castle Point Project and any foreclosure of any one or more of the Kuahine at Castle Point Mortgages, and that, if following any termination of the Kuahine at Castle Point Project, Lot 1176-A is subdivided, any resulting parcel that includes all or any portion of the Wall, shall, unless this Agreement shall have been sooner terminated, continue to be burdened and benefited by this Agreement as provided in Section 7 above, without any requirement for an instrument assigning such burdens and benefits to the owner of such resulting parcel or parcels. Parcels resulting from any subdivision of Lot 1176-A following termination of the Kuahine at Castle Point that do not include any portion of the Wall shall not be burdened or benefited by this Agreement.

b. Unit 53 Owner and the Castle Point I Lienholders hereby join into this Agreement for the purpose of consenting to the terms and conditions hereof and to expressly agree with Unit 55 Owner that this Agreement shall survive any termination of the Castle Point I Project and any foreclosure of any one or more of the Castle Point I Mortgages, and that, if following any termination of the Castle Point I Project, Lot 1176-B is subdivided, any resulting parcel that includes all or any portion of the Wall, shall, unless this Agreement shall have been sooner terminated, continue to be burdened and benefited by this Agreement as provided in Section 7 above, without any requirement for an instrument assigning such burdens and benefits to the owner of

such resulting parcel or parcels. Parcels resulting from any subdivision of Lot 1176-B following termination of the Castle Point I Project that do not include any portion of the Wall shall not be burdened or benefited by this Agreement.

(The remainder of this page has been intentionally left blank.)

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement as of the Effective Date.

**"UNIT 53 OWNER"**

EXHIBIT ONLY - DO NOT SIGN

_____

EXHIBIT ONLY - DO NOT SIGN

_____

**"UNIT 55 OWNER"**

EXHIBIT ONLY - DO NOT SIGN

_____

EXHIBIT ONLY - DO NOT SIGN

_____

**"UNIT 57 OWNER"**

EXHIBIT ONLY - DO NOT SIGN

_____

EXHIBIT ONLY - DO NOT SIGN

_____

**"UNIT 57A OWNER"**

EXHIBIT ONLY - DO NOT SIGN

_____

EXHIBIT ONLY - DO NOT SIGN

_____

Signature lines continue on next page.

**"KUAHINE AT CASTLE POINT LIENHOLDERS"**

_____

EXHIBIT ONLY - DO NOT SIGN

By: _____

Its: _____

_____

EXHIBIT ONLY - DO NOT SIGN

By: _____

Its: _____

**"CASTLE POINT I LIENHOLDERS"**

_____

EXHIBIT ONLY - DO NOT SIGN

By: _____

Its: _____

_____

EXHIBIT ONLY - DO NOT SIGN

By: _____

Its: _____

STATE OF HAWAII )
) SS:
CITY AND COUNTY OF HONOLULU )

On _____, 200___, before me appeared _____, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), in the capacities shown, having been duly authorized to execute such instrument in such capacities.

_____
Print Name:
Notary Public, State of Hawaii

My commission expires:

STATE OF _____)
) SS:
COUNTY OF _____)

On _____, 200___, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

_____
Print Name:
Notary Public, in and for said County and State
My commission expires:

**EXHIBIT A**

**KUAHINE AT CASTLE POINT MORTGAGES**

**EXHIBIT B**

**CASTLE POINT I MORTGAGES**

**EXHIBIT C**

**MAP SHOWING ENCROACHMENT**