

## CONDOMINIUM PUBLIC REPORT

Prepared &  
Issued by:

Developer: JBS FAMILY ENTERPRISES, LLLP, a Colorado limited liability limited partnership and  
PULPIT ROCK INVESTMENTS, LLC, a Colorado limited liability company

Address: 6385 Corporate Drive, Suite 200  
Colorado Springs, CO 80919

Project Name(\*): MALIE WAI  
Address: 4-1579 Kuhio Highway, Suite 202  
Kapaa, Kauai, Hawaii 96746

Registration No. 5991  
(Partial Conversion)

Effective date: June 22, 2006  
Expiration date: July 22, 2007

### 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, in 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.  
[ X ] No prior reports have been issued.  
[ ] This report supersedes all prior public reports.  
[ ] This report must be read together with
- SUPPLEMENTARY:**  
(pink) This report updates information contained in the:  
[ ] Preliminary Public Report dated:  
[ ] Final Public Report dated:  
[ ] Supplementary Public Report dated:
- And [ ] Supersedes all prior public reports  
[ ] Must be read together with  
[ ] This report reactivates the \_\_\_\_\_ public report(s) which expired on

(\*) Exactly as named in the Declaration

*This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.*

FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104

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

[ X ] Required and attached to this report As Exhibit "G"  [ ] 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.

[ X ] No prior reports have been issued by the developer.

[ ] Changes made are as follows:

**SPECIAL NOTICE:**

This is a CONDOMINIUM PROJECT, not a subdivision. THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF DWELLINGS, OR OTHER STRUCTURES, WHICH MAY BE BUILT UPON THE PROPERTY. THEREFORE, UNLESS THE PURCHASER IS PURCHASING THE UNIT WITH THE EXISTING DWELLING, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A DWELLING UNIT ON THE PROPERTY. THERE ALSO IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO RESIDENTIAL USE. THE PURCHASER SHOULD CONSULT WITH THE APPROPRIATE GOVERNMENTAL AGENCIES TO DETERMINE WHETHER THE PURCHASER MAY BUILD A DWELLING UNIT, OR ANY OTHER TYPE OF STRUCTURE, UPON THE PROPERTY.

1. There are presently NO RESIDENTIAL STRUCTURES on Units A, C, D, and E of the Project. The only buildings on these Units are shade structures, which may be defined as an "apartment" under the Condominium Property Act.

2. Issuance of an effective date for this Public Report does not constitute an approval of the project by the Real Estate Commission or other agency, nor does it imply that all County codes, ordinances or other requirements have been complied with.

3. This project does not involve the sale of individual subdivided lots. The land area beneath and immediately adjacent to each unit, as shown on the Condominium Map, is designated as a limited common element for that unit and does not represent a legally subdivided lot. The dotted lines on the Condominium Map merely represent the location of the limited common element assigned to each unit.

4. Facilities and improvements normally associated with County approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for and services such as County street maintenance and trash collection may not be available for interior roads and driveways.

THE PROSPECTIVE PURCHASER 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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## **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 owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

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

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

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

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

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

## **Operation of the Condominium Project**

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

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

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

**I. PERSONS CONNECTED WITH THE PROJECT**

Developer: JBS FAMILY ENTERPRISES, LLLP Phone: (808) 822-9777  
a Colorado limited liability limited partnership  
6385 Corporate Drive, Suite 200  
Colorado Springs, CO 80919

PULPIT ROCK INVESTMENTS, LLC Phone: (808) 822-9777  
a Colorado limited liability company  
6385 Corporate Drive, Suite 200  
Colorado Springs, CO 80919

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

JBS FAMILY ENTERPRISES, LLLP : General Partner - Jeffery Smith  
PULPIT ROCK INVESTMENTS, LLC: Manager - Elite Properties of America, Inc.  
Members- Jeffery Smith & Elite Properties of America, Inc.

Real Estate Broker\*: Coldwell Banker Bali Hai Realty, Inc. Phone: (808) 826-7244  
P.O. Box 930  
Hanalei, HI 96714

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 533-6261  
235 Queen Street  
Honolulu, HI 96813

General Contractor\*: None selected

Condominium Managing Agent\*: Self managed by the Association  
of Apartment Owners

Attorney for Developer: Heidi M. Rodgers, Esq. Phone: (808) 245-7212  
4365 Kukui Grove Street, Suite 103  
Lihue, HI 96766

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

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

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

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

The Declaration for this condominium is:

|   |  |                          |      |
|---|--|--------------------------|------|
| <input type="checkbox"/> Proposed                                     |  |                          |      |
| <input checked="" type="checkbox"/> Recorded - Bureau of Conveyances: |  | Document No. 2005-193219 |      |
|   |  | Book                     | Page |
| <input type="checkbox"/> Filed - Land Court:                          |  | Document No.             |      |

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

The Declaration of Condominium Property Regime of Malie Wai was amended by Document No. 2005-224297.

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:

|  |                   |  |  |
|--|-------------------|--|--|
| <input type="checkbox"/> Proposed  |                   |  |  |
| <input checked="" type="checkbox"/> Recorded - Bureau of Conveyances Condo Map No. <u>4077</u> | (see Exhibit "A") |  |  |
| <input type="checkbox"/> Filed - Land Court Condo Map No.                                      |                   |  |  |

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

None

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

The Bylaws for this condominium are:

|   |  |                          |      |
|---|--|--------------------------|------|
| <input type="checkbox"/> Proposed                                     |  |                          |      |
| <input checked="" type="checkbox"/> Recorded - Bureau of Conveyances: |  | Document No. 2005-191220 |      |
|   |  | Book                     | Page |
| <input type="checkbox"/> Filed - Land Court:                          |  | Document No.             |      |

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

None

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

The House Rules for this condominium are:

Proposed                       Adopted                       Developer does not plan to adopt House Rules

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

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

|                             | <u>Minimum<br/>Set by Law</u> | <u>This Condominium</u> |
|-----------------------------|-------------------------------|-------------------------|
| Declaration (and Condo Map) | 75%*                          | 75%                     |
| Bylaws                      | 65%                           | 65%                     |
| House Rules                 | ----                          | NA                      |

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

2. **Developer**

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

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

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 explanation 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: 5-1105 Kuhio Highway  
Kilauea, Kauai, Hawaii 96754

Tax Map Key: (TMK): (4) 5-1-005-025

[ X ] Address [ X ] TMK are expected to change because: each Unit is entitled to its own street address and TMK number

Land Area: 16.29 [ ] square feet [ X ] acre(s) Zoning: Ag

Fee Owners: JBS FAMILY ENTERPRISES, LLLP  
 a Colorado limited liability limited partnership  
 6385 Corporate Drive, Suite 200  
 Colorado Springs, CO 80919  
 (undivided 50% interest)

PULPIT ROCK INVESTMENTS, LLC  
 a Colorado limited liability company  
 6385 Corporate Drive, Suite 200  
 Colorado Springs, CO 80919  
 (undivided 50% interest)

Lessor: N/A

C. **Buildings and Other Improvements:**

1.  New Building(s)  
 Conversion of Existing Building(s)  
 Both New Building(s) and Conversion

2. Number of Buildings: 5 Floors Per Building: Units A, C, D and E – 1 floor  
Unit B – 2 floors

**Exhibit "C"** contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood (residence)

Other: shade structures constructed principally of metal and shade cloth

4. Uses Permitted by Zoning:

|  | <u>No. of<br/>Apts.</u> | <u>Use Permitted by Zoning</u>          |                             |
|--|-------------------------|---|-----------------------------|
| <input checked="" type="checkbox"/> Residential            | <u>1</u>                | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Commercial                        | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Mix Res/Comm                      | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Hotel                             | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Timeshare                         | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Ohana                             | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Industrial                        | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Agricultural                      | _____                   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Other: shade structure | <u>4</u>                | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Is/Are this/ these use(s) specifically permitted by the project's Declaration or Bylaws?

Yes  No

5. Special Use Restrictions:

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

- Pets: Household pets may be kept consistent with any applicable law and restrictive covenants applicable to the Project. Animals shall not include those defined as pests under §150-A-2 H.R.S. and prohibited from importation under §141-2, §150-5, or §150-6 H.R.S.
- Number of Occupants: \_\_\_\_\_
- Other: The Units of the Project may only be occupied and used only for agricultural uses. Residential uses currently require the execution of a Farm Dwelling Agreement with the County of Kauai. See sample Farm Dwelling Agreement attached hereto as **Exhibit "I"**.
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 1 Trash Chutes: 0

| <u>Apt. Type</u> | <u>Quantity</u> | <u>BR/Bath</u> | <u>Net Living Area (sf)*</u> | <u>Net Other Area (sf)</u> | <u>Identify</u>   |
|------------------|-----------------|----------------|------------------------------|----------------------------|---|
| A                | 1               | 0              | 0                            | 20                         | shade structure   |
| B                | 1               | 3/3            | 1,752                        | 1,115<br>100               | 2 <sup>nd</sup> floor balcony<br>1 <sup>st</sup> floor utility<br>bathroom, &<br>stairway |
| C                | 1               | 0              | 0                            | 20                         | shade structure   |
| D                | 1               | 0              | 0                            | 20                         | shade structure   |
| E                | 1               | 0              | 0                            | 20                         | shade structure   |

Total number of Apartments: 5

**\*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: Per the Declaration of Condominium Property Regime, the boundaries of each apartment shall be the outer surface of the entire building. Wires or conduits, pipes or any utility lines running over, under or through any apartment which are utilized for or serve more than one unit shall not be deemed a part of the apartment, the same being deemed common elements.

Permitted Alterations to Apartments: Permitted alterations to apartments are as allowed by County of Kauai zoning ordinances and recorded restrictions on the project, if any. Upon construction of each permanent improvement, an amendment to the Declaration of Condominium Property Regime will be required to disclose actual improvements as a matter of public record.

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 (see attachment 11a). Developer has not elected to provide the information in a published announcement or advertisement.

Parking Stalls:

Total Parking Stalls: 10\*

|                             | <u>Regular</u> |             | <u>Compact</u> |             | <u>Tandem</u>  |             | <u>TOTAL</u> |
|-----------------------------|----------------|-------------|----------------|-------------|----------------|-------------|--------------|
|                             | <u>Covered</u> | <u>Open</u> | <u>Covered</u> | <u>Open</u> | <u>Covered</u> | <u>Open</u> |              |
| Assigned<br>(for each unit) |                | 2           |                |             |                |             | 10           |
| Guest                       |                |             |                |             |                |             |              |
| Unassigned                  |                |             |                |             |                |             |              |
| Extra for Purchase          |                |             |                |             |                |             |              |
| Other:                      |                |             |                |             |                |             |              |
| Total Covered & Open:       |                | 10          |                |             |                |             | 10           |

Each apartment will have the exclusive use of at least two parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

\* Each limited element has ample room for at least two parking stalls

Commercial parking garage permitted in condominium project.

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

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool                       Storage Area                       Recreation Area

Laundry Area                       Tennis court                       Trash Chute/Enclosure(s)

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

9. Compliance With Building Code and Municipal Regulations: Cost to Cure Violations. (See Exhibit "K")

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):

The residence on Unit B was constructed in 1993 and pursuant to the Condition Report attached hereto as Exhibit "I", the expected useful life of the structural components, mechanical and electrical installations is twenty years.

11. Conformance to Present Zoning Code (See Exhibit "K")

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

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

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

|            | <u>Conforming</u> | <u>Non-Conforming</u> | <u>Illegal</u> |
|------------|-------------------|-----------------------|----------------|
| Uses       | 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 Interests:

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

described in **Exhibit "E"**.

as follows:

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

There are no limited common elements in this project.

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

described in **Exhibit "E"**.

as follows:

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

described in **Exhibit "C"**.

as follows: Units A, B, C, D and E: 20% each

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 on or your purchase and ownership of an apartment in the project.

Exhibit "F" describes the encumbrances against the title contained in the title report dated March 22, 2006, and issued by Title Guaranty of Hawaii, Inc..

Blanket Liens:

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

- There are no blanket liens affecting title to the individual apartments.
- There are blanket liens which may affect title to the individual apartments.

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

| <u>Type of Lien</u> | <u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>  |
|---------------------|--|
| MORTGAGE            | LENDER HAS PRIORITY OVER A BUYER'S RIGHTS UNDER A SALES CONTRACT, AND HAS A RIGHT TO TERMINATE SALES CONTRACT UPON FORECLOSURE OF ITS MORTGAGE BEFORE AN APARTMENT SALE IS CLOSED. IN SUCH EVENT BUYER SHALL BE ENTITLED TO A REFUND OF ALL DEPOSITS, LESS ESCROW CANCELLATION FEES. |

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:  
NONE
  
2. Appliances:  
NONE

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

The residence on Unit B was constructed in 1993, and the shade sheds on Units A, C, D and E were constructed in December of 2005.

H. **Project Phases:**

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

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

#### 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 affiliated 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  the Developer or the Developer's affiliate.  
 self-managed by the Association of Apartment Owners  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:

- 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
- Specimen Sales Contract  
**Exhibit "B"** contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated November 29, 2005  
**Exhibit "D"** contains a summary of the pertinent provisions of the escrow agreement.
- Other: Specimen Apartment Deed

### 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 Public 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 the 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 given an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules, if any.
  - E) Condominium Map, as amended.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other: Sample Farm Dwelling Agreement (see **Exhibit "K"**)

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

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)

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

Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

This Public Report is a part of Registration No. 5991 filed with the Real Estate Commission on April 10, 2006.

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

YELLOW paper stock

WHITE paper stock

PINK paper stock

C. **Additional Information Not Covered Above:**

This is a condominium project, not a subdivision. Units purchased are not subdivided lots. To determine whether your expectations can be realized, you should carefully review the contents of this Report, especially the recorded restrictive covenants for the subdivision within which this project is located. Among other things, the restrictive covenants govern land use, building type and materials, possession of animals, and cultivation of crops. You should also conduct your own investigations and ascertain the validity of information provided.

It is anticipated that the initial improvement(s) on Units A, C, and D will be replaced by or supplemented with a farm dwelling and that Unit E will be maintained by Developer for an indefinite period. Unit E is in agricultural use unit with no farm dwelling entitlement. In the event an additional farm dwelling or other residential entitlement shall become available to the Project such entitlement shall be allocated to Unit E.

The prospective purchaser (except for the purchaser of Unit E) shall have the right to build such farm dwelling at purchaser's expense. The purchaser shall also, in such event, file the "as-built" certificate within thirty days of completion of the farm dwelling in conformance with Section 514A-12, Hawaii Revised Statutes, and record an amendment of the Declaration of Condominium Property Regime ("Declaration") to describe the improvements. The County of Kauai Planning Department requires, in order to process the necessary permits for the construction of a residence, authorization from at least 75% of the legal and equitable ownership of the entire project, consistent with the Declaration and the Bylaws ("condominium documents").

Except as limited specifically by the condominium documents and subdivision restrictive covenants (if any), all uses permitted in an Agricultural zone are permitted. Uses in one zone are not the same as in the other, and the prospective purchaser should consult the appropriate state and county agencies for information on uses and construction in the respective zones.

A buyer should understand that all development and use of the property shall be in compliance with County codes and ordinances, that owners in this condominium project will not necessarily receive the same County benefits as owners of approved subdivided lots and that owners who develop their limited common element later than others may find that land use and zoning changes or insufficient utility capacities may thwart their expectations.

The property has been dedicated to agricultural use. Upon dedication of the land to agricultural use, the owner forfeits the right to change the use of the land to a use other than the approved agricultural use for a period of 10 years. Failure to observe the restriction on the use of the land shall cancel the dedication and special tax assessment privileges retroactive to the date of the dedication. The difference in the amount of taxes that were paid and those that would have been due from the assessment in the higher use shall be payable with a ten percent per annum penalty. Once the dedication expires, the unit owner can either re-dedicate or cease the agricultural use. Initially, the dedication applies to the entire property; however, once the CPR is created, the County applies the dedication to each unit and appurtenant limited common area. This means that the unit owner has the option of either continuing to enjoy the lower real property tax rate and continue agricultural use, or cease the agricultural use and be taxed at the higher residential rate. The County Tax Assessor will inspect the units and appurtenant limited common areas in order to access the unit for tax purposes and will send the property owner notice of the new appraised value and rate at which the unit will be taxed. At that point the unit owner can elect what to do.

In the event the sales contract involves the sale of a new structure or the construction or substantial remodeling of a premises Seller hereby discloses the following:

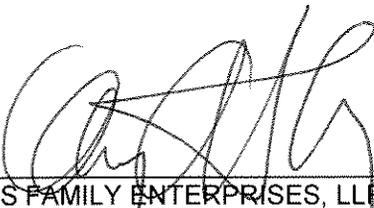
“CHAPTER 672E OF THE HAWAII REVISED STATUTES CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED YOUR HOME OR FACILITY. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE RE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. YOU ARE 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 YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.”

- 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.

Developer:

  
 \_\_\_\_\_  
 PULBIT ROCK INVESTMENTS, LLC  
 a Colorado limited liability company  
 By: Gary Tobey  
 Its: Attorney-in-Fact

Date: 3-9-06

  
 \_\_\_\_\_  
 JBS FAMILY ENTERPRISES, LLP  
 a Colorado limited liability limited partnership  
 By: Gary Tobey  
 Its: Attorney-in-Fact

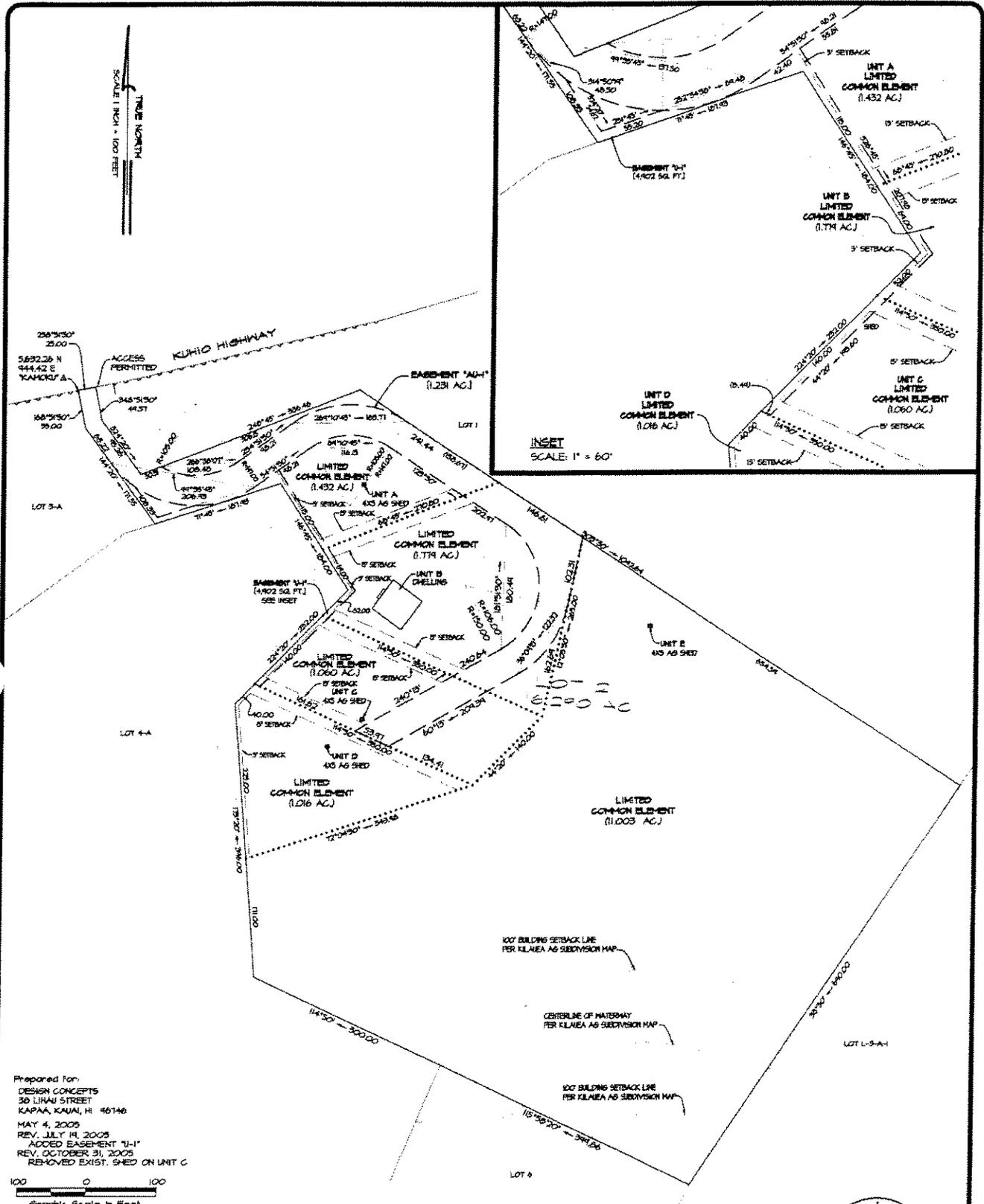
Date: 3-9-06

Distribution:

Department of Finance, COUNTY OF KAUAI

Planning Department, COUNTY OF KAUAI

**\*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.**



Prepared for:  
 DESIGN CONCEPTS  
 30 LIHAI STREET  
 KAPAA, KAUAI, HI 96746  
 MAY 4, 2005  
 REV. JULY 14, 2005  
 ADDED EASEMENT "U-1"  
 REV. OCTOBER 31, 2005  
 REMOVED EXIST. SHED ON UNIT C



- NOTES:
1. This project does not involve the sale of individual lots. The dotted lines on the Condominium Map are for illustration purposes only. They represent either a limited common element or common element.
  2. Denotes no access permitted
  3. Denotes access permitted

MAP OF  
**"MALIE WAI" CONDOMINIUM**  
 SHOWING  
**UNITS A, B, C, D, and E**  
 AND DESIGNATING  
**EASEMENTS "AU-1" and "U-1"**  
 BEING  
 LOT 2  
 KILAUEA AGRICULTURAL SUBDIVISION  
 (FILE PLAN 1646)  
 at  
 EAST MAIAKALUA, HANAIEI, KAUAI, HAWAII



This map was prepared by me or under my direct supervision.  
*Ronald J. Wagner*  
 RONALD J. WAGNER  
 Licensed Professional Land Surveyor  
 Certificate Number 5074

## EXHIBIT "B"

### SUMMARY OF SALES CONTRACT

This Project includes an Addendum to Sales Contract (the "Addendum") to be utilized in conjunction with a standard printed form contract provided by the Hawaii Association of Realtors. The Addendum protects the rights of the Purchasers and the handling of the funds under the Condominium Property Act (the "Act"), as well as the insuring compliance with the Act by all parties. Relevant portions of the Addendum are summarized as follows:

1. The fact that the Act controls over any portion of a contract to sell a condominium unit.
2. That an effective date for a final or supplementary public report must be in place and a receipt for the same signed by the buyer to have an effective date.
3. That all purchaser funds must be held in escrow until the law allows closing and disbursement of the funds.  
The conditions precedent to release of the funds are enumerated, including in part:
  - (a) That Purchaser will receive a copy of the final public report for the project.
  - (b) Purchaser agrees that all payments made will be placed on deposit with escrow pursuant to the terms of the Escrow agreement, and Purchaser is subject to all of the terms of the Escrow Agreement.
  - (c) If there is a dual agency by a single broker, it will be disclosed in the contract.
4. In the event the Project includes the new construction or substantial remodeling of a premise, Hawaii law mandates that the Seller provide a specific notice to the Buyer in respect to filing lawsuits or other actions for defective construction against the contractor.

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

## EXHIBIT "C"

### SCHEDULE OF APARTMENTS AND COMMON INTERESTS

| Qty. | Unit No. | Area of Limited Common Element* (Acres) | No. of Br./Bath | Appx. Net Living Area (Sq. Ft.) | Appx. Other Area (Sq. Ft.) |   | % of Common Int. |
|------|----------|---|-----------------|---------------------------------|----------------------------|---|------------------|
| 1    | A        | 1.432                                   | 0               | 0                               | 20                         | shade structure   | 20%              |
| 1    | B        | 1.779                                   | 3/3             | 1,752                           | 1,115<br>100               | 2 <sup>nd</sup> floor balcony<br>1 <sup>st</sup> floor utility room,<br>bathroom, &<br>stairway | 20%              |
| 1    | C        | 1.060                                   | 0               | 0                               | 20                         | shade structure   | 20%              |
| 1    | D        | 1.016                                   | 0               | 0                               | 20                         | shade structure   | 20%              |
| 1    | E        | 11.003                                  | 0               | 0                               | 20                         | shade structure   | 20%              |

Pursuant to Section 16-107-5, Hawaii Administrative Rules, reference is hereby made to the method by which common interest has been computed. Units A, B, C, D, and E will each burden the common elements as shown above. Therefore, the assessment of undivided interest both for common expense and for voting is 20% for Units A, B, C, D and E.

The common interest appurtenant to each unit shall be permanent. Subject to the zoning requirements and amendments of the Condominium Map and the Declaration of Condominium Property Regime, each unit owner may use the unit, alter or add to it in any manner deemed desirable, so long as it is permitted by law and the Declaration of Protective Covenants and House Rules, if any. If adjoining unit owners desire to alter and/or transfer portions of their respective units, they can do so by the filing of an amendment to the Condominium Map and the Declaration of Condominium Property Regime together with their respective signatures.

\*Note: Land areas referenced herein are not legally subdivided lots.

## EXHIBIT "D"

### SUMMARY OF PORTIONS OF ESCROW AGREEMENT

The Escrow Agreement ("Agreement") between TITLE GUARANTY ESCROW SERVICES, INC. (the "Escrow"), and JBS FAMILY ENTERPRISES, LLLP, a Colorado limited liability limited partnership and PULPIT ROCK INVESTMENTS, LLC, a Colorado limited liability company, whose collective mailing address for this project is 4-1579 Kuhio Highway, Kapaa, Hawaii (the "Seller"), contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. Whenever Seller enters into a sales contract for the sale of an apartment, Seller will require that payments due under the sales contract be made to Escrow and will deliver an executed copy of the sales contract to Escrow.
2. Escrow will receive payments under the sales contract and sums received from any other source with respect to the project. Funds held under the Agreement will initially be deposited in an account for the project. Interest on all funds will be paid to Seller.
3. Escrow will release from the trust fund and disburse Buyer's funds at closing, unless: (a) Buyer has elected within seven days of signing the sales contract to cancel and receive all funds paid, without deduction; or (b) the Real Estate Commission has not issued a Final Public Report on the project or the requirements of the sales contract have not been met; or (c) Seller has not satisfied Escrow that all other requirements of Hawaii Revised Statutes have been met.
4. Escrow will return deposited sums to the Buyer without interest, if Seller and Buyer give Escrow written notice to return the funds to Buyer, if there is a right to cancellation and refund of monies under the sales contract or otherwise. If there is a cancellation under the seven-day right, no fees will be charged Buyer. Thereafter, in the event of a cancellation as a matter of agreement or right, Buyer's funds shall be returned to Buyer less Escrow's cancellation fee, if any, and all other costs incurred in connection with the Escrow, not less than \$25.00.
5. Escrow will arrange for and supervise the signing of all documents, which are to be signed subsequent to and contemplated by the sales contract.
6. As Escrow's compensation for its performance under this Agreement, Escrow will receive its schedule rate for each apartment for which an apartment deed of the project is handled by Escrow and recorded in the Bureau of Conveyances of the State of Hawaii. Escrow will record all applicable documents. The cost of title insurance will be an additional amount, based upon schedule rate.
7. In the event of default by the Buyer, Buyer may forfeit his or her deposit, which will be paid to the Seller, less any cancellation fees charged by Escrow.

SPECIAL NOTICE: THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE AGREEMENT. WHILE ONE CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE AGREEMENT, ONE MUST REFER TO THE ACTUAL AGREEMENT TO DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE AGREEMENT, THE AGREEMENT WILL CONTROL AND NOT THIS SUMMARY.

## EXHIBIT "E"

### COMMON ELEMENTS OF THE PROJECT

The common elements of the project are:

- (a) The land in fee simple;
- (b) Easement AU-1, affecting Units A, B and C for the benefit of Units B, C, D and E, for access and utility purposes, consisting of approximately 1.231 acres, as depicted on the Condominium Map;
- (c) Easement U-1, affecting Units A, B and C for the benefit of Units B, C and D, for utility purposes, consisting of approximately 4,902 square feet, as depicted on the Condominium Map; and
- (d) All commonly used present or future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone; any and all other future elements and facilities in common use or necessary to the Project.

### LIMITED COMMON ELEMENTS OF THE PROJECT

Certain parts of the common elements, referred to as the "limited common elements," have been designated and set aside for the exclusive use of one or more units, and such unit(s) have appurtenant exclusive easements for the use of such limited common elements. The limited common elements set aside, reserved and deemed a limited common element appurtenant to and for the exclusive use of each respective unit is that certain land area upon and around which Units 1 and 2 located, shown and designated on the Condominium Map and the table below.

| <u>Unit<br/>Number</u> | <u>Area of<br/>Limited Common Element*</u> |
|------------------------|--|
| Unit A                 | 1.432 acres                                |
| Unit B                 | 1.779 acres                                |
| Unit C                 | 1.060 acres                                |
| Unit D                 | 1.016 acres                                |
| Unit E                 | 11.003 acres                               |

\*Land areas referenced herein are not legally subdivided lots.

**EXHIBIT "F"**

**ENCUMBRANCES AGAINST TITLE**

The following documents are listed in this Exhibit "F" as encumbrances against title:

1. Any and all Real Property Taxes that may be due and owing reference is hereby made to the County of Kauai Department of Finance.

Tax Key: (4) 5-1-005-025 Area Assessed: 16.290 acre

-Note:- Attention is invited to the fact that the premises covered herein may be subject to possible rollback or retroactive property taxes.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. SETBACK (100 feet wide)

PURPOSE : building  
SHOWN : on File Plan No. 1646

4. DESIGNATION OF EASEMENT "1" (15 feet wide)

PURPOSE : irrigation  
SHOWN : on File Plan No. 1646

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

INSTRUMENT : AGREEMENT

DATED : March 16, 1977  
RECORDED : Liber 12110 Page 330  
PARTIES : STATE OF HAWAII and C. BREWER AND  
COMPANY, LIMITED  
RE : use of land, besides other land, for agriculture purposes

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

INSTRUMENT : AGREEMENT TO INCORPORATE AGRICULTURAL  
RESTRICTIONS INTO INSTRUMENTS OF  
CONVEYANCE

DATED : June 30, 1980  
RECORDED : Liber 15060 Page 397  
PARTIES : HAWAIIANA INVESTMENT CO., INC., and the  
COUNTY OF KAUAI PLANNING DEPARTMENT

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

INSTRUMENT : DECLARATION

DATED : February 23, 1981  
RECORDED : Liber 15368 Page 13

Said Declaration was amended by instrument dated July 3, 1989, recorded as Document No. 90-064533.

NOTICE OF RELEASE dated April 26, 1988, recorded in Liber 21865 at Page 763.

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

INSTRUMENT : DEED

DATED : June 30, 1981  
RECORDED : Liber 15662 Page 345

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

INSTRUMENT : FARM DWELLING AGREEMENT

DATED : August 22, 1984  
RECORDED : Liber 18148 Page 533  
PARTIES : WILSON MINEO OKAMOTO and the COUNTY OF  
KAUAI PLANNING DEPARTMENT

10. GRANT

TO : CITIZENS UTILITIES COMPANY, whose interest is now held by KAUAI ISLAND UTILITY CO-OP

DATED : September 14, 1984  
RECORDED : Liber 18184 Page 602  
GRANTING : an easement for utility purposes

11. DESIGNATION OF EASEMENT "E-18"

PURPOSE : electrical  
SHOWN : on File Plan No. 1646

12. GRANT

TO : CITIZENS UTILITIES COMPANY, whose interest is now held by KAUAI ISLAND UTILITY CO-OP, and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, now known as VERIZON HAWAII INC.

DATED : November 18, 1987  
RECORDED : Liber 21690 Page 214  
GRANTING : an easement over said Easement "E-18"

13. NOTICE OF DEDICATION

DATED : January 13, 2000, effective January 1, 2000  
RECORDED : Document No. 2000-008294  
BY : OKAMOTO FAMILY LIMITED PARTNERSHIP  
RE : dedication of land for Agriculture purposes  
PERIOD : 10 years

14. MORTGAGE

MORTGAGOR : SLW, LLC

MORTGAGEE : JBS FAMILY ENTERPRISES, LLLP, a Colorado corporation

DATED : July 1, 2004  
RECORDED : Document No. 2004-136942

15. THE EFFECTS, IF ANY, OF THE FOLLOWING:

WARRANTY DEED dated effective as of October 29, 2004, recorded as Document No. 2004-232791, from PULPIT ROCK INVESTMENTS, LLC, a Colorado limited liability company, to JBS FAMILY ENTERPRISES, LLLP, a Colorado limited liability limited partnership, as to a undivided 16.145% interest.

16. CORRECTION DEED

DATED: June 27, 2005  
RECORDED: 2005-213850

17. SPECIAL POWER OF ATTORNEY

DATED: August, \_\_\_ 2005  
RECORDED: 2005-193106

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

INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY  
REGIME FOR  
"MALIE WAI" CONDOMINIUM PROJECT

DATED : June 13, 2005  
RECORDED : Document No. 2005-193219  
MAP : 4077 and any amendments thereto

Said Declaration was amended by Document No. 2005-244297.

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

INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF APARTMENT  
OWNERS

DATED : acknowledged June 13, 2005  
RECORDED : Document No. 2005-193220

20. Any unrecorded leases and matters arising from or affecting the same.

**EXHIBIT "G"**

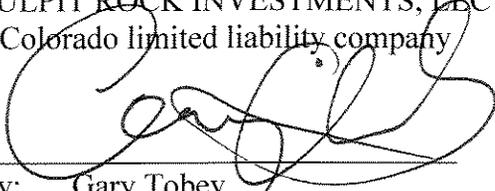
**DISCLOSURE ABSTRACT**

Pursuant to Hawaii Revised Statutes, Section 514(A)-61, the Developer of MALIE WAI condominium makes the following disclosures:

1. The Developers of the project are JBS FAMILY ENTERPRISES, LLLP, a Colorado limited liability limited partnership and PULPIT ROCK INVESTMENTS, LLC, a Colorado limited liability company, whose collective mailing address for this project is 4-1579 Kuhio Highway, Kapaa, Hawaii and telephone number is (808) 822-9777.
2. See Exhibit "H" to the Final Public Report for the projected annual maintenance fees. The Developer hereby certifies that the estimations have been based on generally accepted accounting principles.
3. There are no warranties against defects of material and workmanship in individual apartments, common elements or exclusive use areas, and the purchaser buys his/her unit in an "as is" condition
4. All of the apartments of the project are to be used for agricultural and permitted residential purposes only. No apartments shall be used for hotel or timeshare purposes. There will be no commercial use except those activities permitted by county ordinance.
5. The developer has selected Michael Schmidt of Coldwell Banker Bali Hai, whose mailing address is P. O. Box 930, Hanalei, Hawaii, telephone number is (808) 826-7244, as the real estate broker for the sale of the apartments in the Project.
6. The Developer has not conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. There are no depreciable common elements in the Project.
7. The Developer discloses Common Interest has been divided as shown: Units A, B, C, D, and E are each entitled to 20% each.

Developer:

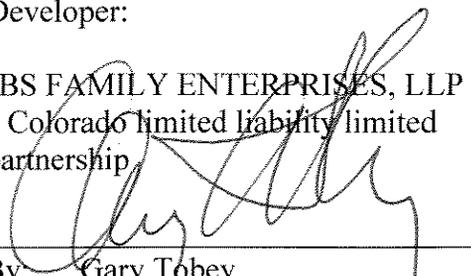
PULPIT ROCK INVESTMENTS, LLC  
a Colorado limited liability company

  
By: Gary Tobey  
Its: Attorney-in-Fact

Date: 3-9-06

Developer:

JBS FAMILY ENTERPRISES, LLP  
a Colorado limited liability limited  
partnership

  
By: Gary Tobey  
Its: Attorney-in-Fact

Date: 3-9-06



Estimate of Maintenance Fee Disbursements:

Monthly Fee x 12 months = Yearly Total

Utilities and Services

- Air Conditioning
- Electricity
  - common elements only
  - common elements and apartments
- Elevator
- Gas
  - common elements only
  - common elements and apartments
- Refuse Collection
- Telephone
- Water and Sewer

Maintenance, Repairs and Supplies

- Building
- Grounds
- Roadway \$20.00 x 12 = \$240.00

Management

- Management Fee
- Payroll and Payroll Taxes
- Office Expenses

Insurance

Reserves(\*)

Taxes and Government Assessments

Audit Fees

Other

TOTAL \$20.00 x 12 = \$240.00

PULPIT ROCK INVESTMENTS, LLC and JBS FAMILY ENTERPRISES, LLP, the Developers, for the MALIE WAI condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

\_\_\_\_\_  
Attorney-in-Fact for PULPIT ROCK INVESTMENTS, LLC  
and JBS FAMILY ENTERPRISES, LLP

3-9-06

\_\_\_\_\_  
Date

(\*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with  $\square$ 514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. (See Disclosure Abstract, Item 6, attached hereto as Exhibit "G")

Pursuant to  $\square$ 514A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

**EXHIBIT "I"**

**AGOR ARCHITECTURE**

**4374 Kukui Grove Dr. Suite 204**

**Lihue, Kauai, Hawaii 96766**

**ARCHITECT'S CONDITION REPORT**

The undersigned, being a licensed Architect within the State of Hawaii, and bearing Registration Number 5921, has inspected Unit A, Unit B, Unit C, and Unit D located at MALIE WAI CONDOMINIUM, Tax Map Key, 4<sup>th</sup> Division, 5-1-05:25

Unit A: Ag Shed  
Unit B: Dwelling  
Unit C: Ag Shed  
Unit D: Ag Shed

The inspection included the exterior roof, foundation, walls, visible electrical, and plumbing systems, and I find as follows

1. The systems and/or components appear to be in satisfactory condition for the stated age thereof and appear to be in good sound condition
2. Without conducting invasive examinations of covered structural components, the apartments appear to be constructed in conformity with the County of Kauai Zoning Ordinances, Building Code, and Rules and Regulations applicable to the construction at the time of construction thereof for Unit A, Unit B, Unit C, and Unit D
3. The apparent useful life of the Unit, provided that proper maintenance is applied to the Units, are as follows:

|         |           |        |
|---------|-----------|--------|
| Unit A: | <u>1</u>  | years. |
| Unit B: | <u>20</u> | years. |
| Unit C: | <u>1</u>  | year.  |
| Unit D: | <u>1</u>  | year.  |

4. There are no non-conforming uses existing on the property and no variances from any zoning or building codes have been granted for structures or uses on the property

THIS IS NOT A WARRANTY OF COMPLIANCE WITH ALL CODES, RULES, AND REGULATIONS, ONLY A WARRANTY THAT INSPECTION WAS MADE AND NO APPARENT VIOLATIONS APPEAR TO EXIST. NO RIGHT SHALL ACCRUE TO ANY THIRD PARTY FOR SUBSEQUENT DISCOVERY OF ANY PROBLEMS WITH CODE COMPLIANCE OR FOR FUTURE CHANGES IN SUCH CODES.

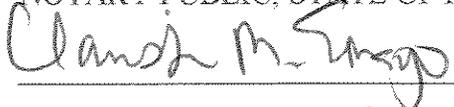
DATED: Lihue, Kauai, Hawaii July 12, 2005.

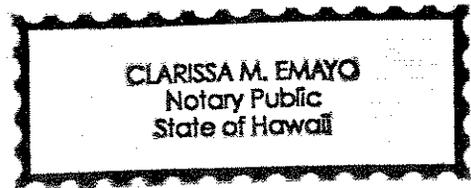
STATE OF HAWAII            )  
  ) s.s.  
COUNTY OF KAUAI        )

RON AGOR, being first duly sworn, deposes and says: That he is Registered Professional Architect No. 5921 in the State of Hawaii, has read the foregoing Certificate, knows the contents thereof and the same is true.

  
\_\_\_\_\_  
RON AGOR  
Registered Professional Architect  
No. 5921

Subscribed and sworn to before me  
this 12th day of July, 2005.

NOTARY PUBLIC, STATE OF HAWAII  
  
\_\_\_\_\_  
My commission expires: 8/11/2006



**EXHIBIT "J"**

\*\*\*FOR ILLUSTRATION ONLY\*\*\*



AFTER RECORDATION RETURN BY MAIL TO:

COUNTY OF KAUAI  
Planning Department  
Building A, Suite 473  
4444 Rice Street  
Lihue, HI 96766

Document contains \_\_\_\_ pages

**FARM DWELLING AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by and between

whose residence and post office address is \_\_\_\_\_,

hereinafter called the "APPLICANT(S)", and the COUNTY OF KAUAI, Planning Department, its business and mailing address being 4444 Rice street, Building A, Suite 473, Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT".

**WITNESSETH:**

WHEREAS, the APPLICANT(S) warrant and represent that he/she/they is/are the \_\_\_\_\_ of that certain parcel of land, Tax Map Key No. (4) \_\_\_\_\_, more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, this document pertains only to Unit(s) \_\_\_\_\_ as shown in Exhibit "B" and made a part hereof; and

WHEREAS, that certain parcel of land is classified Agriculture by the State Land Use commission and is zoned Agriculture by the County of Kauai; and

WHEREAS, Chapter 205, Hawaii Revised Statutes, and the state Land Use District Regulations only permit "farm dwellings" within the State Agriculture Land Use District unless otherwise relieved from the restriction by a special permit obtained pursuant to Chapter 205, Section 6, Hawaii Revised Statutes; and

WHEREAS, a "farm dwelling" is defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations as "a single family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling"; and

WHEREAS, the parcel identified by Tax Map Key No. (4) \_\_\_\_\_, is entitled to \_\_\_\_\_ residential units (and one guest house); and

WHEREAS, this Agreement is evidenced that \_\_\_\_\_ is entitled to one of those residential units; and

WHEREAS, a "family" as used in the definition of "farm dwelling" is defined by the State Land Use District Regulations as "an individual or two or more persons related by blood, marriage or adoption or a group comprising not more than five persons, not related by blood, marriage or by adoption"; and

WHEREAS, the APPLICANT(S) acknowledge that a violation of Chapter 205, Hawaii Revised Statutes, and the state Land Use District restriction is subject to a citation and fine of not more than \$5,000 pursuant to Chapter 205, Section 13, Hawaii Revised Statutes, as amended; and

WHEREAS, the APPLICANT(S) also acknowledge that failure to abide by this Agreement may result in the removal of the prohibited structure at the owner's expense; and

WHEREAS, the DEPARTMENT is charged with the enforcement of the restriction by Chapter 205, Hawaii Revised Statutes; and

WHEREAS, the APPLICANT(S) wish to construct a dwelling unit on that certain parcel of land describe in Exhibit A; and

WHEREAS, the APPLICANT(S) wish to execute this Farm Dwelling Agreement without first obtaining the signatures of all interest holders in the CPR;

NOW, THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained, the parties hereby mutually agree as follows:

1. That the dwelling permitted to be constructed on the parcel of land described in Exhibit "A" classified Agriculture by the State Land Use Commission shall be a "farm dwelling" as defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District regulations, as recited herein; and

2. That the dwelling shall only be occupied by a "family", as defined by the State Land Use District regulations and as recited herein, who derive income from the agricultural activity on the parcel; and

3. That the APPLICANT(S) and all present and future owners, lessees and occupants of said land grant the DEPARTMENT the right of entry at the request of the DEPARTMENT to inspect the premises to assure compliance with the provisions of this Agreement; and

4. That this Agreement shall be a covenant running with the land and be binding on the APPLICANT(S), and all present and future owners, lessees and occupants of said land and anyone claiming under said APPLICANT(S), their heirs, executors, administrators, successors and assigns, as owners or occupants thereof or otherwise; and

5. That this Agreement shall remain in effect so long as the land retains its Agriculture District classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawaii Revised Statutes, and the State Land Use District regulations remain in effect; and

6. That the APPLICANT(S) expressly set forth the provisions of this Agreement in any subsequent conveyance, deed, lease or rental agreement to said property executed by them, so as to give effect to said covenant; and

7. That this Agreement shall be recorded with the State of Hawaii Bureau of Conveyances, fees to be paid by the APPLICANT(S); and

8. The DEPARTMENT and APPLICANT(S) shall execute the Farm Dwelling Agreement; and

9. The APPLICANT(S), for themselves (himself, herself), their (his/her) heirs, administrators, successors and assigns, do hereby waive and release the DEPARTMENT and the County of Kauai, a political subdivision of the State of Hawaii, whose principle place of business is 4444 Rice Street, Suite 473, Lihue, Hawaii 96766, from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

10. The APPLICANT(S) do(es) hereby promise to indemnify and hold the DEPARTMENT and the County of Kauai, its successors, assigns, offices, employees, agents, attorneys or any other person or legal entity connected with or legally responsible to them, harmless from any and all claims, actions, causes of action, lawsuits, demands or liability for damages of whatever kind and nature, arising out of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

11. This agreement shall be a covenant running with the portion of land described in Exhibit "A," and shall be binding on APPLICANT(S) and all present and future owners and occupants of said portion of land and any one claiming under APPLICANT(S), their successors and assigns, as owners or occupants thereof. The APPLICANT(S) further agree(s) to expressly set forth the provisions of this waiver and indemnity agreement in any subsequent conveyance, deed, lease, or rental agreement so as to give effect to said covenant.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED:

APPLICANT(S)

\_\_\_\_\_  
Planning Director

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
County Attorney

STATE OF HAWAII        )  
                                      ) SS:  
COUNTY OF KAUAI     )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF HAWAII            )  
  ) SS:  
COUNTY OF KAUAI         )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF HAWAII            )  
  ) SS:  
COUNTY OF KAUAI         )

On this day of \_\_\_\_\_, 20\_\_\_, before me appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, did say that (s)he is the \_\_\_\_\_ of the PLANNING DEPARTMENT of the COUNTY OF KAUAI; and that said instrument was executed on behalf of said PLANNING DEPARTMENT; and that said \_\_\_\_\_ acknowledged that (s)he executed the same as his/her free act and deed of the PLANNING DEPARTMENT of the COUNTY OF KAUAI. Said Department has no seal.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

EXHIBIT K

**BRYAN J. BAPTISTE**  
MAYOR



**IAN K. COSTA**  
DIRECTOR OF PLANNING

**GARY K. HEU**  
ADMINISTRATIVE ASSISTANT

**MYLES S. HIRONAKA**  
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUA'I**  
PLANNING DEPARTMENT  
4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUA'I, HAWAII 96766-1326

TELEPHONE: (808) 241-6677 FAX: (808) 241-6699

DATE: December 30, 2005

TO: Cynthia M.L. Yee, Esq.  
Senior Condominium Specialist  
Real Estate Commission - P & VLD/DCCA  
335 Merchant Street, Suite 333  
Honolulu, Hawaii 96813

FROM: Ian K. Costa, Director of Planning 

SUBJECT: Recertification of Inspection of Existing Buildings

Project Name: **MALIE WAI  
Condominium Project (284)**

Tax Map Key: (4) 5-1-005: 025

The developer of the above-mentioned condominium project has rectified the zoning violations as indicated in our letter dated October 20, 2005. Therefore, this office, as an agency of the County of Kauai having reviewed the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai, (Section 514 A-40 (b), (1), Hawaii Revised Statutes, subject to the disclosures and waivers (item "5" below) specified herein, we certify the following:

1. The developer has contracted architect Ron Agor to certify that the existing buildings on the proposed project referred to as Malie Wai Condominium Unit A through Unit E inclusive are in compliance with all ordinances, codes, rules, regulations and other requirements in force at the time of its construction, and to that extent, and subject to the conditions of waiver herein, the Planning Department adopts that

Cynthia M.L. Yee, Esq.  
Senior Condominium Specialist  
Malie Wai Condominium  
TMK: (4) 5-1-005: 025  
December 30, 2005  
Page two

certification as it pertains to the rules and regulations administered solely by the Department.

2. There are no variances approved for the subject property.
3. The parcel does not contain any outstanding nonconforming use or structures as a result of the adoption or amendments of any ordinance or codes and regulations.
4. There are no notices of violations of County building or zoning codes outstanding according to our records.
5. **WAIVER**  
The foregoing certification is not a warranty to any compliance with applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements to the regulations of condominiums under subsection 514 A-40, (b), and (1), Hawaii Revised Statutes.

If you have any questions, please contact Sheilah Miyake at (808) 241-6677.

cc: Heidi Rodgers, Attorney at Law ✓  
JBS Family Enterprises and Pulpit Rock Investments, Project Developers