

**DEVELOPER'S PUBLIC REPORT  
FOR A CONDOMINIUM**

<b>CONDOMINIUM PROJECT NAME</b>	MAKALEHA ACRES CONDOMINIUM
<b>Project Address</b>	6403 Waipouli Road, Kapaa, Kauai, Hawaii 96746
<b>Registration Number</b>	6239 <b>(Partial Conversion)</b>
<b>Effective Date of Report</b>	<b>March 28, 2007</b>
<b>Developer(s)</b>	Joe F. Calhoun and Margaret L. Sheen

**Preparation of this Report**

The Developer prepared this report to disclose relevant information, including "material facts", that are reasonably known to the Developer about the condominium project covered by this report. This report has been prepared pursuant to the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended from time to time. The law defines "material facts" to mean "any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale."

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts or all pertinent changes, or both, about the project have been fully or adequately disclosed; and (3) is not the Commission's judgment of the value or merits of the project.

This report may be used by the Developer for promotional purposes only if it is used in its entirety. No person shall advertise or represent that the Commission has approved or recommended the project, this report or any of the documents submitted with Developer's application for registration of this project.

This report will be amended if, after the effective date of this report, any changes, either material or pertinent changes, or both, occur regarding the information contained in or omitted from this report. In that case, the Developer is required to submit immediately to the Commission an amendment to this report or an amended Developer's Public Report, clearly reflecting the changes, including any omitted material facts, together with such supporting information as may be required by the Commission. In addition, the Developer may choose at any time to change or update the information in this report. Annually, at least thirty days prior to the anniversary date of the Effective Date of this report, the Developer shall file an annual report to update the material contained in this report. If there are no changes, the Developer is required to state that there are no changes. The Developer's obligation to amend this report or to file annual reports ends when the initial sales of all units in the project have been completed.

Purchasers are encouraged to read this report carefully and to seek professional advice before signing a sales contract for the purchase of a unit in the project.

Signing a sales contract may legally bind a purchaser to purchase a unit in the project, though a purchaser may have rights to cancel or rescind a sales contract under particular circumstances that may arise.

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

## SPECIAL ATTENTION

[Use this page for special or significant matters which should be brought to the purchaser's attention and that are not covered elsewhere in this report.]

1. **NOT A SUBDIVISION.** This is a condominium project that should not be confused with a subdivision. A purchaser of a unit will be conveyed a unit together with an "undivided" percentage interest in the common elements of the project. The entire parcel of land upon which the project is situated is designated as a common element. That portion of the common element that each purchaser has the exclusive right to use is called a limited common element or area, but is not a separate, legally subdivided lot. The land beneath and immediate adjacent to each unit, as shown on the Condominium Map, is designated as a limited common element and does not represent a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.

There are County of Kauai (County) restrictions on the number of residential dwelling units, or other structures, which may be built on the property. THEREFORE, UNLESS THE PURCHASER IS PURCHASING AN EXISTING RESIDENTIAL DWELLING, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE ALSO IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE. PRIOR TO PURCHASE, THE PROSPECTIVE PURCHASER SHOULD CONSULT WITH THE APPROPRIATE COUNTY AGENCIES TO DETERMINE WHETHER THE PURCHASER MAY BUILD A RESIDENTIAL DWELLING UNIT, OR ANY OTHER TYPE OF STRUCTURE, ON THE PROPERTY.

2. There are presently one (1) residential structure and two (2) sheds on the property, each of which may be defined as a "unit" under the Condominium Property Act. The Project is in compliance with state and county land use laws and the applicable county real property tax laws. Therefore, a purchaser should be aware that the purchaser shall have a continuing obligation to comply with such land use law and real property tax laws.
3. This Report does **not** constitute an approval of the project by the Real Estate Commission or any other governmental agency.
4. Facilities and improvements normally associated with County-approved subdivisions such as improved access for owner and emergency traffic, fire protection devices, electricity, upgraded water facilities, and drainage facilities may not necessarily be provided, and services such as County street maintenance and trash collection may not be available for interior roads and driveways.
5. This Project is within the State Land Use Commission Agricultural District. Please see page 18 of this report for special requirements for residential dwellings within this district.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO REVIEW CAREFULLY THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.

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## **General Information On Condominiums**

A condominium is a special form of ownership of real property. To create a condominium in Hawaii after July 1, 2006, the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, must be followed. 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 and/or the building(s) and other improvements are leased to the purchaser. The lease for the land usually requires that at the end of the lease term, the lessees (unit owners) deliver their interest in the land to the lessor (fee property owner).

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

You will be entitled to exclusive ownership and possession of your unit. Subject to the documents governing them, condominium units may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift or operation of law.

Your unit will, however, be part of the group of units that comprise the condominium project. Study the project's Declaration of Condominium Property Regime, Bylaws of the Association of Unit Owners, Condominium Map and House Rules, if any, which are being concurrently delivered to you with this report. These documents contain important information on the use and occupancy of the units and the common elements of the project, as well as the rules and regulations of conduct for unit owners, tenants and guests.

### **Operation of the Condominium Project**

The Association of Unit Owners is the entity through which unit owners may take action with regard to the administration, management and operation of the condominium project. Each unit 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 a unit owner. The Board and officers can take certain actions without the vote of the unit owners. For example, the Board may hire and fire employees, increase or decrease maintenance fees, adopt budgets for revenues, expenses and reserves and regulate the use, maintenance, repair and replacement of common elements. Some of these actions may significantly impact the unit owners.

Until there is a sufficient number of purchasers of units to elect a majority of the Board, it is likely at first 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 purchasers should understand that it is important to all unit owners that the transition of control from the Developer to the unit owners be accomplished in an orderly manner and in a spirit of cooperation.

# 1. THE CONDOMINIUM PROJECT

## 1.1 The Underlying Land

Fee Simple or Leasehold Project	<input checked="" type="checkbox"/> Fee Simple	<input type="checkbox"/> Leasehold (attach Leasehold Exhibit)
Developer is the Fee Owner	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Fee Owner's Name if Developer is not the Fee Owner	N/A	
Address of Project	6403 Waipouli Road Kapaa, Kauai, Hawaii 96746	
Address of Project is expected to change because	each unit is entitled to its own street address.	
Tax Map Key (TMK)	(4) 4-4-003-009	
Tax Map Key is expected to change because	the County will add additional numbers to the current TMK.	
Land Area	9.37 acres	
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	N/A	

## 1.2 Buildings and Other Improvements

Number of Buildings	4
Floors Per Building	1
Number of New Building(s)	2
Number of Converted Building(s)	2
Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	The sheds are constructed of iron fence posts and shade cloth while the other buildings are constructed primarily of wood.

## 1.3 Unit Types and Sizes of Units

Unit Type	Quantity	BR/Bath	Net Living Area	Net Other Areas	Other Areas (lanai, garage, etc.)	Total Area
1	1	0	0	16 square feet	shade structure	16 SF
2	1	4/2	3146 SF	327F; 484 SF	garage/carport	3957 SF
3	1	0	0	16 SF	shade structure	16 SF
See Exhibit "A".						

3	<b>Total Number of Units</b>
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Note: Net Living Area is the floor area of the unit measured from the interior surface of the perimeter walls of the unit. Other documents and maps may give floor area figures that differ from those above because a different method of determining floor area may have been used.

**1.4 Parking Stalls**

Total Parking Stalls in the Project:	6
Number of Guest Stalls in the Project:	0
Number of Parking Stalls Assigned to Each Unit:	2
Attach Exhibit *___ specifying the Parking Stall number(s) assigned to each unit and the type of parking stall(s) (regular, compact or tandem and indicate whether covered or open).	
If the Developer has reserved any rights to assign or re-assign parking stalls, describe such rights. *Each unit has ample space for parking within its limited common element land area. If an owner constructs a farm dwelling, a two (2) car garage will be required as part of the improvements.	

**1.5 Boundaries of the Units**

Boundaries of the unit:  
The boundaries of each unit is the exterior finished surfaces of the units' perimeter frame, beams, doors, foundations, roofs, shade cloth, windows, frames, and post, if any.

**1.6 Permitted Alterations to the Units**

Permitted alterations to the unit (if the unit is defined as a non-physical or spatial portion of the project, also describe what can be built within such portion of the project):  
Each owner may alter the structure and any other improvements located within his unit's limited common land area as provided in Article XIII of the Declaration, and House Rules. Permitted alterations to units are as allowed by County of Kauai zoning ordinances.

**1.7 Common Interest**

Common Interest: Each unit will have a percentage interest in the common elements appurtenant to each unit. This interest is called the "common interest". It is used to determine each unit'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 unit owners. The common interest for each unit in this project, as described in Declaration, is:  
Described in Exhibit \*\_\_\_.  
As follows:  
Unit 1 = 25%  
Unit 2 = 50%  
Unit 3 = 25%. \*See page 18.

**1.8 Recreational and Other Common Facilities (Check if applicable):**

<input type="checkbox"/>	Swimming pool
<input type="checkbox"/>	Laundry Area
<input type="checkbox"/>	Storage Area
<input type="checkbox"/>	Tennis Court
<input type="checkbox"/>	Recreation Area
<input type="checkbox"/>	Trash Chute/Enclosure(s)
<input type="checkbox"/>	Exercise Room
<input type="checkbox"/>	Security Gate
<input type="checkbox"/>	Playground
<input checked="" type="checkbox"/>	Other (describe): None. There are no recreational or common facilities.

### 1.9 Common Elements

<p><b>Common Elements:</b> Common elements are those parts of the condominium project other than the individual units and any other real estate for the benefit of unit owners. Although the common elements are owned jointly by all unit owners, those portions of the common elements that are designated as limited common elements (see Section 1.10 below) may be used only by those units to which they are assigned. In addition to the common facilities described in Section 1.8 above, the common elements for this project, as described in the Declaration, are set forth below.</p>									
<p>Described in Exhibit "B" .</p>									
<p>Described as follows:</p>									
<table border="1"> <thead> <tr> <th>Common Element</th> <th>Number</th> </tr> </thead> <tbody> <tr> <td>Elevators</td> <td>0</td> </tr> <tr> <td>Stairways</td> <td>1 (Unit 2 dwelling)</td> </tr> <tr> <td>Trash Chutes</td> <td>0</td> </tr> </tbody> </table>		Common Element	Number	Elevators	0	Stairways	1 (Unit 2 dwelling)	Trash Chutes	0
Common Element	Number								
Elevators	0								
Stairways	1 (Unit 2 dwelling)								
Trash Chutes	0								

### 1.10 Limited Common Elements

<p><b>Limited Common Elements:</b> A limited common element is a portion of the common elements that is reserved for the exclusive use of one or more but fewer than all units in the project.</p>
<p>Described in Exhibit "C".</p>
<p>Described as follows:</p>
<p>*Note: The land areas referenced in Exhibit "C" are not legally subdivided lots.</p>

### 1.11 Special Use Restrictions

<p>The Declaration and Bylaws may contain restrictions on the use and occupancy of the units. Restrictions for this project include, but are not limited to, those described below.</p>	
<input checked="" type="checkbox"/>	Pets: Animals and pets are permitted pursuant to Article XI, Sections 1, 2 of the Bylaws.
<input type="checkbox"/>	Number of Occupants:
<input checked="" type="checkbox"/>	Other: Agricultural restrictions: see Article VI, B. of the Declaration, and page 18 of this Report.
<input type="checkbox"/>	There are no special use restrictions.

### 1.12 Encumbrances Against Title

<p>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 a unit in the project. Encumbrances shown may include blanket liens which will be released prior to conveyance of a unit (see Section 5.3 on Blanket Liens).</p>
<p>Exhibit "D" describes the encumbrances against title contained in the title report described below.</p>
<p>Date of the title report: December 13, 2006</p>
<p>Company that issued the title report: Title Guaranty of Hawaii, Inc.</p>

**1.13 Uses Permitted by Zoning and Zoning Compliance Matters**

Uses Permitted by Zoning					
	Type of Use	No. of Units	Use Permitted by Zoning		Zoning
<input type="checkbox"/>	Residential		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Commercial		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Mix Residential/Commercial		<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 checked="" type="checkbox"/>	Agricultural	1 (dwelling)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Agricultural
<input type="checkbox"/>	Recreational		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input checked="" type="checkbox"/>	Other(specify)	2 (shed)	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Agricultural
Is/Are this/these use(s) specifically permitted by the project's Declarations or Bylaws?			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Variances to zoning code have been granted.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Describe any variances that have been granted to zoning code.		N/A			

**1.14 Other Zoning Compliance Matters**

**Conforming/Non-Conforming Uses, Structures and Lots**

In general, a non-conforming use, structure or lot is a use, structure or lot that was lawful at one time but that does not now conform to present zoning requirements. Under present zoning requirements, limitations may apply to extending, enlarging or continuing the non-conformity and to altering and repairing non-conforming structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

If a variance has been granted or if uses, structures or lots are either non-conforming or illegal, the purchaser should consult with county zoning authorities as to possible limitations that may apply in situations such as those described above.

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

	Conforming	Non-Conforming	Illegal
Uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Structures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lot	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If a non-conforming use, structure or lot exists in this project, this is what will happen under existing laws or codes if the structure is damaged or destroyed:

N/A

**1.15 Conversions**

<p><b>Developer's statements regarding units that may be occupied for residential use and that have been in existence for five years or more.</b></p>	<p><input checked="" type="checkbox"/> <b>Applicable</b>  <input type="checkbox"/> <b>Not Applicable</b></p>
<p>Developer's statement, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units:  Unit 2 dwelling was constructed in 1986. See Architect's Condition Report, dated August 31, 2006, attached hereto as Exhibit "E". Developer adopts this certification stating that the structure and related systems and components have an expected useful life in excess of twenty (20) years.</p>	
<p>Developer's statement of the expected useful life of each item reported above:  The apparent useful life of Unit 2, provided that proper maintenance is applied to the Unit, is in excess of twenty (20) years.</p>	
<p>List of any outstanding notices of uncured violations of any building code or other county regulations:  N/A</p>	
<p>Estimated cost of curing any violations described above:  N/A</p>	

<p><b>Verified Statement from a County Official</b></p>
<p>Regarding any converted structures in the project, attached as Exhibit "<u>F</u>" is a verified statement signed by an appropriate county official which states that either:</p> <p>(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:</p> <ul style="list-style-type: none"> <li>(i) Any variances or other permits that have been granted to achieve compliance;</li> <li>(ii) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and</li> <li>(iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance;</li> </ul> <p>or</p> <p>(B) Based on the available information, the county official cannot make a determination with respect to the foregoing matters in (A) above.</p>
<p>Other disclosures and information:  None.</p>

**1.16 Project In Agricultural District**

<p><b>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii?</b>  <b>If answer is "Yes", provide information below.</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b>  <input type="checkbox"/> <b>No</b></p>
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable state and county land use laws? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation.</p>	
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable county real property tax laws? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation and state whether there are any penalties for noncompliance.</p>	
<p>Other disclosures and information:          The subject property is within the State Land Use Agricultural District and is zoned AG by the County of Kauai. "Farm Dwelling" and other structures appropriate to agricultural uses are permitted, subject to specific use restrictions in the agricultural zones. See disclosures on page 18.</p>	

**1.17 Project with Assisted Living Facility**

<p><b>Does the project contain any assisted living facility units subject to Section 321-11(10), HRS?</b>  <b>If answer is "Yes", complete information below.</b></p>	<p><input type="checkbox"/> <b>Yes</b>  <input checked="" type="checkbox"/> <b>No</b></p>
<p>Licensing requirements and the impact of the requirements on the costs, operations, management and governance of the project.          N/A</p>	
<p>The nature and the scope of services to be provided.          N/A</p>	
<p>Additional costs, directly attributable to the services, to be included in the association's common expenses.          N/A</p>	
<p>The duration of the provision of the services.          N/A</p>	
<p>Other possible impacts on the project resulting from the provision of the services.          N/A</p>	
<p>Other disclosures and information.          N/A</p>	

## 2. PERSONS CONNECTED WITH THE PROJECT

<p><b>2.1 Developer(s)</b></p>	<p>Name: Joe F. Calhoun and Margaret L. Sheen</p> <p>Business Address: P.O. Box 51084, Kealia, HI 96751</p> <p>Business Phone Number: 808-652-2007 E-mail Address: calhounconstruction@hawaiiantel.net</p>
<p>Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary).</p>	<p>N/A</p>
<p><b>2.2 Real Estate Broker</b></p>	<p>Name: None selected. See page 18. Business Address: N/A</p> <p>Business Phone Number: N/A E-mail Address: N/A</p>
<p><b>2.3 Escrow Depository</b></p>	<p>Name: Title Guaranty Escrow Services, Inc. Business Address: 235 Queen Street, 1st Floor Honolulu, HI 96813</p> <p>Business Phone Number: 808-521-0211</p>
<p><b>2.4 General Contractor</b></p>	<p>Name: Joe F. Calhoun dba Calhoun Construction Business Address: 4373 Kukui Grove St. #103 P.O. Box 510184, Kealia, HI 96751</p> <p>Business Phone Number: 808-652-2007</p>
<p><b>2.5 Condominium Managing Agent</b></p>	<p>Name: Self managed by Association. Business Address: N/A</p> <p>Business Phone Number: N/A</p>
<p><b>2.6 Attorney for Developer</b></p>	<p>Name: Michelle S. Miyake Business Address: 4268 Rice Street, Suite J P.O. Box 3050, Lihue, Kauai, Hawaii 96766</p> <p>Business Phone Number: 808-634-2244</p>

### 3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances (Regular System) or filing in the Office of the Assistant Registrar of the Land Court, or both, a Declaration of Condominium Property Regime, a Condominium Map and the Bylaws of the Association of Unit Owners. The Condominium Property Act (Chapter 514B, HRS), the Declaration, Bylaws and House Rules control the rights and obligations of the unit owners with respect to the project and the common elements, to each other, and to their respective units.

#### 3.1 Declaration of Condominium Property Regime

The Declaration of Condominium Property Regime contains a description of the land, buildings, units, common interests, common elements, limited common elements, and other information relating to the condominium project.		
Land Court or Bureau of Conveyances	Date of Document	Document Number
	November 6, 2006	2006-229985

Amendments to Declaration of Condominium Property Regime		
Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.2 Bylaws of the Association of Unit Owners

The Bylaws of the Association of Unit Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Unit 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 that affect how the condominium project will be governed.		
Land Court or Bureau of Conveyances	Date of Document	Document Number
	November 6, 2006	2006-229986

Amendments to Bylaws of the Association of Unit Owners		
Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.3 Condominium Map

The Condominium Map contains a site plan and floor plans, elevations and layout of the condominium project. It also shows the floor plan, unit number and dimensions of each unit.		
Land Court Map Number		
Bureau of Conveyances Map Number	4347	
Dates of Recordation of Amendments to the Condominium Map:		

**3.4 House Rules**

The Board of Directors may adopt rules and regulations (commonly called "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. Changes to House Rules do not need to be recorded to be effective.

The House Rules for this project:

Are Proposed	<input type="checkbox"/>	
Have Been Adopted and Date of Adoption	<input checked="" type="checkbox"/>	November 17, 2006
Developer does not plan to adopt House Rules	<input type="checkbox"/>	

**3.5 Changes to the Condominium Documents**

Changes to Condominium Documents: Changes to the Declaration, Bylaws and Condominium Map are effective only if they are duly adopted and recorded. Where permitted, the minimum percentages of the common interest that must vote for or give written consent to changes to the Declaration, Bylaws and Condominium Map are set forth below. The percentages for any individual condominium project may be more than the minimum set by law if the Declaration or Bylaws for the project so provide.

Document	Minimum Set by Law	This Condominium
Declaration	67%	75%
Bylaws	67%	75%

**3.6 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents**

<input checked="" type="checkbox"/>	No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).
<input type="checkbox"/>	Developer has reserved the right to change the Declaration, Bylaws, Condominium Map and House rules (if any) and to add to or merge the project or to develop the project in one or more phases, and such rights are summarized as follows:

## 4. CONDOMINIUM MANAGEMENT

### 4.1 Management of the Common Elements

<p><u>Management of the Common Elements:</u> The Association of Unit 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.</p>	
<p>The Initial Condominium Managing Agent for this project is (check one):</p>	
<input type="checkbox"/>	Not affiliated with the Developer
<input checked="" type="checkbox"/>	None (self-managed by the Association)
<input type="checkbox"/>	The Developer or an affiliate of the Developer
<input type="checkbox"/>	Other (explain)

### 4.2 Estimate of the Initial Maintenance Fees

<p><u>Estimate of the Initial Maintenance Fees:</u> The Association will make assessments against your unit 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 unit and the unit 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.</p>
<p>Exhibit <u>N/A</u> contains a breakdown of the estimated annual maintenance fees and the monthly estimated maintenance fee for each unit, certified to have been based on generally accepted accounting principles, with the Developer's statement as to when a unit owner shall become obligated to start paying the unit owner's share of the common expenses.</p>

### 4.3 Utility Charges to be Included in the Maintenance Fee

<p>If checked, the following utilities are included in the maintenance fee:</p>	
<input type="checkbox"/>	Electricity for the common elements
<input type="checkbox"/>	Gas for the common elements
<input type="checkbox"/>	Water
<input type="checkbox"/>	Sewer
<input type="checkbox"/>	TV cable
<input checked="" type="checkbox"/>	Other (specify) None.

### 4.4 Utilities to be Separately Billed to Unit Owner

<p>If checked, the following utilities will be billed to each unit owner and are not included in the maintenance fee:</p>	
<input checked="" type="checkbox"/>	Electricity for the Unit only
<input checked="" type="checkbox"/>	Gas for the Unit only
<input checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer
<input checked="" type="checkbox"/>	TV cable
<input checked="" type="checkbox"/>	Other (specify) *See page 18.

## 5. SALES DOCUMENTS

### 5.1 Sales Documents Filed with the Real Estate Commission

Sales Documents on file with the Commission include, but are not limited to, the following:	
<input checked="" type="checkbox"/>	Specimen Sales Contract Exhibit "G" contains a summary of the pertinent provisions of the sales contract. Including but not limited to any rights reserved by the Developer.
<input checked="" type="checkbox"/>	Escrow Agreement dated: August 4, 2006 Name of Escrow Company: Title Guaranty Escrow Services, Inc. Exhibit "H" contains a summary of the pertinent provisions of the escrow agreement.
<input type="checkbox"/>	Other

### 5.2 Sales to Owner-Occupants

If this project contains three or more residential units, the Developer shall designate at least fifty percent (50%) of the units for sale to Owner-Occupants.

<input type="checkbox"/>	The sales of units in this project are subject to the Owner-Occupant requirements of Chapter 514B.
<input type="checkbox"/>	Developer has designated the units for sale to Owner-Occupants in this report. See Exhibit _____.
<input type="checkbox"/>	Developer has or will designate the units for sale to Owner-Occupants by publication.

### 5.3 Blanket Liens

Blanket Liens: A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project or more than one unit that secures some type of monetary debt (such as a loan) or other obligation. Blanket liens (except for improvement district or utility assessments) must be released as to a unit before the developer conveys the unit to a purchaser. The purchaser's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the unit to the purchaser.

<input type="checkbox"/>	There are <u>no blanket liens</u> affecting title to the individual units.
<input checked="" type="checkbox"/>	There are <u>blanket liens</u> that may affect title to the individual units.

Type of Lien	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
Mortgages	Lender has priority over a Buyer's rights under a sales contract.
	Foreclosure would terminate Buyer's interest, and Buyer shall be entitled to refund of all deposits, less escrow costs.

### 5.4 Construction Warranties

Construction Warranties: Warranties for individual units and the common elements, including the beginning and ending dates for each warranty (or the method of calculating them), are as set forth below:
Building and Other Improvements: None. There are no warranties, express or implied.
Appliances: None. There are no warranties, express or implied.

**5.5 Status of Construction, Date of Completion or Estimated Date of Completion**

<p>Status of Construction: Construction of Unit 2 was completed in 1986. Construction of Units 1 and 3 were completed in May, 2006.</p>
<p>Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.</p>
<p>Completion Deadline for any unit not yet constructed, as set forth in the sales contract:  N/A</p>
<p>Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:  N/A</p>

**5.6 Developer's Use of Purchaser Deposits to Pay for Project Construction Costs Before Closing or Conveyance**

The Developer is required to deposit all moneys paid by purchasers in trust under a written escrow agreement with a Hawaii licensed escrow depository. Escrow shall not disburse purchaser deposits to the Developer or on behalf of the Developer prior to closing, except if a sales contract is canceled or if Developer has met certain requirements, which are described below.

**5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance**

<input checked="" type="checkbox"/>	<p>The Developer hereby declares by checking the box to the left that it shall use its own funds to complete the construction of the condominium project by the date indicated in Section 5.5 of this report, and the Developer, pursuant to its own analysis and calculations, certifies that it has sufficient funds to complete the construction of the condominium project. If the box to the left is checked, Sections 5.6.2 and 5.7, which follow below, will not be applicable to the project.</p>
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**5.6.2 Purchaser Deposits Will Be Disbursed Before Closing**

<p>Hawaii law provides that, if certain statutory requirements are met, purchaser deposits in escrow under a binding sales contract may be used before closing to pay for certain project costs. For this project, the Developer indicates that purchaser deposits may be used for the following purposes (check applicable box):</p>	
<input type="checkbox"/>	<p>For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person; or</p>
<input type="checkbox"/>	<p>For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses.</p>

In connection with the use of purchaser deposits (check Box A or Box B):

<p><b>Box A</b> <input type="checkbox"/></p>	<p>The Developer has submitted all information and documents required by law and the Commission prior to the disbursement of purchaser deposits before closing. This means that the Developer may use such deposits before closing. If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>If Box A is checked, you should read and carefully consider the following notice, which is required by law:</p> <p><b><u>Important Notice Regarding Your Deposits:</u> Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.</b></p>
<p><b>Box B</b> <input type="checkbox"/></p>	<p>The Developer has <b>not</b> submitted all information and documents required by law and the Commission, and, until all such information and documents are submitted, thus, the Developer cannot use purchaser deposits.</p> <p>If the Developer later submits all information and documents required by law and the Commission for the use of purchaser deposits, then the Developer must provide an amendment to this report or an amended developer's public report to each purchaser who has signed a sales contract. At such time, the <b><u>Important Notice Regarding Your Deposits</u></b> set forth immediately above will apply to all purchasers and will be restated in the amendment to this report or an amended developer's public report. When an effective date for such an amendment or an amended developer's public report is issued, <b><u>you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment.</u></b> (This, however, does not affect your right to rescind for material changes or any other right you may have to rescind or cancel the sales contract, as described in Section 5.8 below.) If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>You should understand that, although the <b><u>Important Notice Regarding Your Deposits</u></b> set forth above does not currently apply to you, it might apply to you in the future, and, therefore, you should read and carefully consider it now to ensure that you understand the risk involved in deciding whether to proceed with your purchase.</p>

**Material House Bond.** If the Developer has submitted to the Commission a completion or performance bond issued by a material house instead of a surety as part of the information provided prior to the use of purchaser deposits prior to closing or conveyance of a unit, the Developer shall disclose the same below and disclose the impact of any restrictions on the Developer's use of purchaser deposits.

N/A

## 5.7 Rights Under the Sales Contract

Before signing the sales contract, prospective purchasers should carefully review all documents relating to the project. These include but are not limited to the documents listed below. Items 2, 3 and 4 are made a part of this public report, as well as Item 5, if any, and are being delivered to you with this report.

- |    |  |
|----|--|
| 1. | <b>Developer's Public Report</b>   |
| 2. | <b>Declaration of Condominium Property Regime (and any amendments)</b>   |
| 3. | <b>Bylaws of the Association of Unit Owners (and any amendments)</b>   |
| 4. | <b>Condominium Map (and any amendments)</b>  |
| 5. | House Rules, if any  |
| 6. | Escrow Agreement   |
| 7. | Hawaii's Condominium Property Act (Chapter 514B, HRS, as amended) and Hawaii Administrative Rules (Chapter 16-107, adopted by the Real Estate Commission, as amended), provided that rules and regulations under Chapter 514B have not yet been adopted. |
| 8. | Other:   |

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 514B, HRS) and the Administrative Rules (Chapter 107, HAR), 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 rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

## 5.8 Purchaser's Right to Cancel or Rescind a Sales Contract

A purchaser's right to cancel a sales contract or to rescind a sales contract may arise under varying circumstances. In the sections below, some circumstances that will give rise to a purchaser's right to cancel or rescind are described, together with what a purchaser must do if the purchaser wishes to exercise any of the rights.

### 5.8.1 When a Sales Contract becomes Binding and Purchaser's 30-Day Right to Cancel a Sales Contract

A sales contract signed by a purchaser and the developer will not become binding on a purchaser or the Developer until the following events have taken place:

- (1) The purchaser has signed the sales contract.
- (2) The Developer has delivered to the purchaser a true copy of the developer's public report with an effective date issued by the Commission, together with all amendments to the report as of the date of delivery, and the project's recorded Declaration and Bylaws, House Rules (if any), the Condominium Map and any amendments to them to date (all of which are a part of the developer's public report). If it is impracticable to include a letter-sized Condominium Map, the Developer must provide written notice of an opportunity to examine the Condominium Map.
- (3) The Developer has delivered to the purchaser a notice of the purchaser's 30-day cancellation right on a form prescribed by the Commission.
- (4) The purchaser does at least one of the following:
  - (a) Waives the purchaser's right to cancel the sales contract within 30 days from receipt of the notice of the purchaser's 30-day cancellation right; or

(b) Allows the 30-day cancellation period to expire without exercising the right to cancel; or

(c) Closes the purchase of the unit before the 30-day cancellation period expires.

The purchaser or the Developer may cancel the sales contract at any time during the 30-day cancellation period, and the sales contract will be canceled and the purchaser's deposits returned to the purchaser, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

### **5.8.2 Right to Cancel a Sales Contract if Completion Deadline Is Missed**

In addition to the purchaser's 30-day cancellation right described in Section 5.8.1 above, when a sales contract is signed before completion of construction of a project, the purchaser will have the right to cancel if the unit is not completed by certain deadlines. In conversion projects, there must be a deadline for completion of any required repairs. Every sales contract shall contain an agreement of the Developer that the completion of construction shall occur on or before the completion deadline, and that completion deadline is set forth in this report in Section 5.5. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. Upon a cancellation, the purchaser's deposits shall be refunded, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.00.

### **5.8.3 Purchaser's Right to Rescind a Binding Sales Contract After a Material Change**

If a "material change" in a project occurs after a purchaser has signed a sales contract that has become binding, the purchaser will have a 30-day right to rescind after notification and description of the material change. A material change is defined in the Condominium Property Act to be any change that "directly, substantially and adversely affects the use or value of (1) a purchaser's unit or appurtenant limited common elements; or (2) those amenities of the project available for the purchaser's use."

The purchaser will be informed of the material change by the developer on a form prescribed by the Commission containing a description of the material change.

After notice of the material change, the purchaser may waive the right to rescind by:

- (1) Checking the waiver box on the rescission form; or
- (2) Letting the 30-day rescission period expire, without taking any action to rescind; or
- (3) Closing the purchase of the unit before the 30-day rescission period expires.

The rescission form must be signed by all purchasers of the affected unit and delivered to the developer no later than midnight of the 30<sup>th</sup> calendar day after the purchasers received the rescission form from the developer. Purchasers who validly exercise the right of rescission shall be entitled to a prompt and full refund of any moneys paid.

A rescission right shall not apply in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the project's Declaration.

These provisions shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies.

## 6. MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT

1. Agricultural Restrictions. As to Units 1 and 3, it is anticipated that the initial improvements on each unit will be replaced by or supplemented with a farm dwelling. The prospective purchaser shall have the right to build such farm dwelling at purchaser's expense. In such an event, the purchaser shall describe the farm dwelling by filing the "substantially as-built" certificate from a licensed architect or engineer within the State of Hawaii, within thirty (30) days after completion of construction of the improvement or supplement (which is different in any material respect from the Condominium Map), and duly record in the Bureau of Conveyances an amendment to the Declaration and the Condominium Map showing the Project as so altered. The County of Kauai (the "County") Planning Department may require, to process the necessary permits for the construction of a farm dwelling and the processing of a Farm Dwelling Agreement, authorization from at least 75% of the legal and equitable ownership of the entire Project. In most cases, a farm dwelling may not be constructed unless a unit owner demonstrates to the County his ability to derive income from his property, established and verified prior to any building permit approval.

The Project is located on land within the State Land Use Agricultural District and is zoned Agricultural by the County. Except as limited specifically by the condominium documents, all uses permitted in the agricultural zones are permitted. Uses in one zone are not the same as in the other, and a prospective purchaser of any unit should consult with the appropriate County agency for information on uses and construction in the respective zones.

A prospective purchaser of any unit should understand that all development and use of the property shall be in compliance with County codes and ordinances, that owners in this 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.

2. Farm Dwelling Agreement. A prospective purchaser should be aware of the impact of the Farm Dwelling Agreement, dated February 7, 1983, recorded Liber 16877 Page 108. This Agreement remains in force and is between the current owners of the property and the County. In short, this recorded Farm Dwelling Agreement means that the initial improvements on each unit may be replaced by or supplemented with a farm dwelling. Purchasers should be aware that Chapter 205, Hawaii Revised Statutes (H.R.S.), does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling." See Article VI, B. (Agricultural Restrictions) of the Declaration for a more detailed explanation.

As noted above in paragraph 1, a farm dwelling may not be constructed unless a unit owner demonstrates to the County his ability to derive income from his property, established and verified prior to any building permit approval. The term "farm dwelling" is defined in Chapter 205-4.5(a)(4), H.R.S., as a "single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling." Failure to comply these agricultural restrictions may result in a penalty. The penalty for violation of Chapter 205-4.5, H.R.S., is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six (6) months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

3. Common Interests. Unit 1 and Unit 3 each shall have appurtenant thereto an undivided twenty-five percent (25%), and Unit 2 shall have appurtenant thereto an undivided fifty percent (50%) interest in all common elements of the property, and the same proportionate share in all common profits and common expenses of the property (except as may be otherwise provided in the Declaration or Bylaws) and for all other purposes, including voting. The percentage common interest for each unit is determined by apportioning a twenty-five percent (25%) interest to Unit 1, apportioning a fifty percent (50%) interest to Unit 2, and apportioning a twenty-five percent (25%) interest to Unit 3, irrespective of the actual land areas contained in each unit.

4. Uses. All of the apartments of the Project are to be used for permitted agricultural and/or residential uses only. No apartments shall be used for transient, hotel, or timeshare purposes. There will be no commercial use except those activities permitted by County ordinance.
5. Water. Presently, there is a County public water system available to the Project. Unit 2 has its own individual water meter. Units 1 and 3 shall be responsible for its own costs associated with installing its own water meters and connecting such water meter to the public water system.
6. Utilities. Each unit is responsible for the costs associated with installing its own utilities.
7. Wastewater. There is no public waste water disposal system available to the Project. Each unit will be serviced by its own septic system and such system must be installed at each owner's expense. Any prospective purchaser should verify requirements with the County and seek design and installation estimates prior to proceeding with the wastewater system.
8. Warranties. None.
9. Contractor. The sheds on Units 1 and 3 were constructed by Developer Joe F. Calhoun who is also a Hawaii-licensed contractor (License No. CT-18313).
10. Sale. The Developer has not selected a real estate broker or salesperson for the sale of any of the units in the Project. It is intended that the Units will be sold "by owner".

If the Developer chooses to use a real estate broker for the sale of a unit, Developer shall (1) submit to the Hawaii Real Estate Commission (the "Commission") an executed copy of a broker listing agreement with a Hawaii licensed real estate broker, (2) submit to the Commission an amendment to the Developer's Public Report clearly identifying the designated real estate broker, and (3) provide a copy of the amendment to the prospective purchaser along with a copy of the Developer's Public Report.

11. Annual Maintenance Fees. The Developer believes that there will be no maintenance fees. This is so because all costs of every kind pertaining to each unit and its respective limited common element including, but not limited to, cost of landscaping, maintenance, repair, replacement, and improvement shall be borne entirely by the respective unit owner. All utilities are, and will be separately metered. The Developer believes that the owners would rather treat any repair, maintenance, or replacement, including any maintenance of the common elements, as a special assessment rather than collect and maintain a reserve fund. Based on the foregoing, the Developer has not attached schedule of the breakdown of the annual maintenance fees and the monthly estimated cost for each unit pursuant to section 514B-83(a)(3).

Developer discloses that no reserve study was done in accordance with Section 514A-83.6, Hawai'i Revised Statutes, and replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawai'i Administrative Rules, as amended. No reserves are necessary because there are no common elements that require any type of replacement or major repair.

Developer anticipates the Association will elect to permit individual unit 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 unit owners and not common expenses. Prospective purchasers should consult with their own insurance professionals to obtain and estimate for individual fire and hazard insurance.

The Developer declares subject to the penalties set forth in Section 514B-69, HRS, that this project conforms to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the project is located, all in accordance with Sections 514B-5 and 32(a)(13), HRS.

For any conversion, if any variances have been granted, they are specified in Section 1.14 of this report, and, if purchaser deposits are to be used by the Developer to cure any violations of zoning, permitting requirements or rules of the county in which the project is located, the violation is specified in Section 1.15 of this report, along with the requirements to cure any violation, and Section 5.5 specifies the date by which the cure will be completed.

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 purchasers 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. The Developer hereby agrees promptly to amend this report to report and include either or all material facts, material or pertinent changes to any information contained in or omitted from this report and to file annually a report to update the material contained in this report at least 30 days prior to the anniversary date of the effective date of this report.

Joe F. Calhoun and Margaret L. Sheen  
Printed Name of Developer

By: Joe F. Calhoun Margaret L. Sheen 3/13/07  
Duly Authorized Signatory\* Date

Joe F. Calhoun and Margaret L. Sheen - Developers/Owners  
Printed Name & Title of Person Signing Above

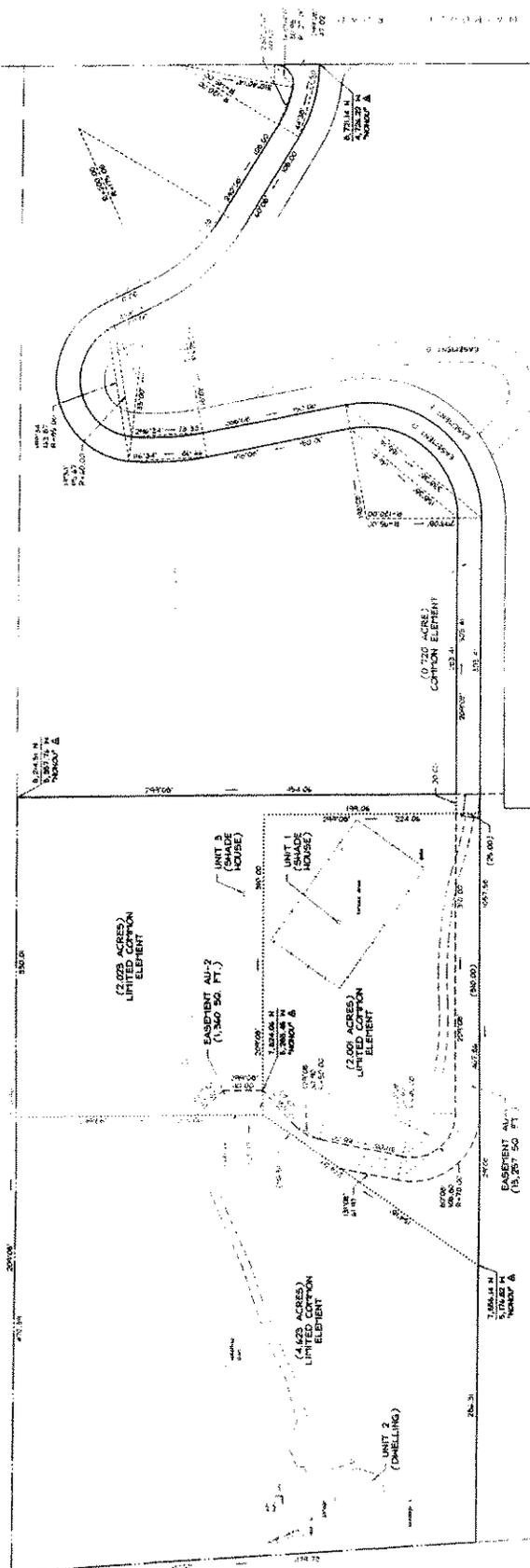
Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

**\*Must be signed for a corporation by an officer; for a partnership or limited liability partnership (LLP) by the general partner; for a limited liability company (LLC) by the manager or an authorized member; and for an individual by the individual.**

LOT 12



**NOTE:**  
 This project does not involve the sale of individual units. It is a common element of the Condominium. The sale of the common element is a common element of common element.



LESIE A. LINDSEY  
 LICENSED SURVEYOR  
 No. 10744-C  
 STATE OF HAWAII

**MAKALEHA ACRES CONDOMINIUM  
 UNITS 1 THRU 3 AND  
 COMMON ELEMENT  
 AND DESIGNATION OF  
 EASEMENTS AU-1 AND AU-2  
 Being Lot 11, 2-D  
 of Grant 7147**

MAIPOLO KAWAIIKI KAUAI HAWAII  
 Tax Map Key: (4) 4-4-03, 04  
 Owners: Joe F. Calhoun  
 and Margaret L. Sheen  
 Date: September 8, 2006

## Exhibit "A"

### Description of Units

The fee simple Project consists of four (4) buildings of which one (1) is a residential dwelling without basement, one (1) garage/lean-to (carport) without basement, and two (2) detached one-story shade structures without basement. There are a total of three (3) units in the Project.

Units 1, 2, and 3 are located as shown on the Condominium Map.

1. Unit 1. Unit 1 consists of one (1) one-story shade structure constructed of iron fence posts and shade cloth, without basement, containing one (1) room (shown as "UNIT 1 (SHADE HOUSE)" on the Condominium Map). The unit contains approximately sixteen (16) square feet of net interior area.
2. Unit 2. Unit 2 consists of two (2) existing buildings. The first building is a two-story single-family residential dwelling, without basement (shown as "UNIT 2 (DWELLING)" on the Condominium Map). This building has a wood frame with asphalt shingle roof, and contains a living room, kitchen, four (4) bedrooms, den, and one (1) bath on the upper floor. The ground floor contains the entry, a utility room, an open area, living area, and one (1) bath. The net living area of the residential dwelling of Unit 2 is approximately 3,146 square feet.

The second building is a detached one-story garage/lean-to (carport) made primarily of wood, without basement (shown as "lean-to" and "garage" on the Condominium Map). The garage is approximately 327 square feet in total and the carport is approximately 484 square feet in total. The combined total of the second building is 811 square feet.

3. Unit 3. Unit 3 consists of one (1) one-story shade structure constructed of iron fence posts and shade cloth, without basement, containing one (1) room (shown as "UNIT 3 (SHADE HOUSE)" on the Condominium Map). The unit contains approximately sixteen (16) square feet of net interior area.

The approximate net floor areas of each unit as set forth above is measured from the interior surface of the unit perimeter walls and includes all of the walls and partitions within its perimeter walls.

## **Exhibit “B”**

### Common Elements

1. The land in fee simple described in Exhibit “A” attached to Declaration.
2. The land area of approximately 0.720 acres that is designated for access and utility purposes.
3. All commonly used present or future ducts, electrical equipment, wiring and other central and appurtenant installations for services such cable, gas, irrigation, light, power, sewerage, telecommunications equipment, telephone, and similar utilities that service more than one (1) unit and any easements for such utility service.
4. All other parts of the Project existing for the common use or necessary to the existence, maintenance, and safety of the Project.
5. The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof, except as provided for in the Act.

COMMON ELEMENT  
MAKALEHA ACRES CONDOMINIUM

LAND SITUATED AT WAIPOULI, KAWAIHAU, KAUAI, HAWAII

Being a Portion of Lot 112-D  
Being Also a Portion of Grant 7147

Beginning at the northeast corner of this parcel of land, on the south side of Waipouli Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 8,721.14 feet North and 4,726.22 feet West, thence running by azimuths measured clockwise from true South:

- |    |          |        |  |
|----|----------|--------|--|
|    |          |        | thence along Lot 112-E on a curve to the right with a radius of 145.00 feet, the chord azimuth and distance being: |
| 1. | 44° 38'  | 77.50  | feet;  |
| 2. | 60° 08'  | 108.00 | feet along Lot 112-E;  |
|    |          |        | thence along Lot 112-E on a curve to the right with a radius of 200.00 feet, the chord azimuth and distance being: |
| 3. | 77° 08'  | 116.95 | feet;  |
| 4. | 94° 08'  | 50.00  | feet along Lot 112-E;  |
|    |          |        | thence along Lot 112-E on a curve to the left with a radius of 60.00 feet, the chord azimuth and distance being:   |
| 5. | 19° 34'  | 115.67 | feet;  |
|    |          |        | thence along Lot 112-E on a curve to the left with a radius of 250.00 feet, the chord azimuth and distance being:  |
| 6. | 296° 34' | 73.33  | feet;  |
| 7. | 288° 08' | 150.00 | feet along Lot 112-E;  |

			thence along Lot 112-E on a curve to the right with a radius of 120.00 feet, the chord azimuth and distance being:
8.	338° 38'	185.19	feet;
9.	29° 08'	303.41	feet along Lot 112-E;
10.	119° 08'	25.00	feet along the remainder of Lot 112-D (Limited Common Element for Unit 1) ;
11.	209° 08'	303.41	feet along the remainder of Lot 112-D (Limited Common Element for Unit 3) and along Lot 112-A;
			thence along Lot 112-A on a curve to the left with a radius of 95.00 feet, the chord azimuth and distance being:
12.	158° 38'	146.61	feet;
13.	108° 08'	150.00	feet along Lot 112-A;
			thence along Lot 112-A on a curve to the right with a radius of 275.00 feet, the chord azimuth and distance being:
14.	116° 34'	80.66	feet;
			thence along Lot 112-A on a curve to the right with a radius of 85.00 feet, the chord azimuth and distance being:
15.	199° 34'	163.87	feet;
16.	274° 08'	50.00	feet along Lot 112-A;
			thence along Lot 112-A on a curve to the left with a radius of 175.00 feet, the chord azimuth and distance being:
17.	257° 08'	102.33	feet;
18.	240° 08'	108.00	feet along Lot 112-A;

- |     |              |       |  |
|-----|--------------|-------|--|
| 19. | 230° 24' 07" | 40.57 | feet;<br><br>thence along Lot 112-A on a curve to the left with a radius of 120.00 feet, the chord azimuth and distance being: |
| 20. | 169° 54' 07" | 30.98 | feet;<br><br>thence along Lot 112-A on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:  |
| 21. | 299° 08'     | 47.02 | feet along the south side of Waipouli Road to the point of beginning and containing an area of 0.720 acre.                     |



Lihue, Hawaii  
July 2006

DESCRIPTION PREPARED BY:  
ESAKI SURVEYING & MAPPING, INC.

*Wayne T. Wada*  
 \_\_\_\_\_  
 Wayne T. Wada  
 Licensed Professional Land Surveyor  
 Certificate Number 4596

## Exhibit "C"

### Limited Common Elements

The limited common elements appurtenant to each unit consist of the portion hereby designated, set aside, and reserved for the exclusive use of that unit are shown on the Condominium Map and include:

Unit 1 – Limited Common Element 2.001 acres. The land area surrounding and under Unit 1, contains approximately 2.001 acres as designated on the Condominium Map, and is reserved for the exclusive use of Unit 1 for the support of the building and other improvements comprising Unit 1, including together with Easements D and E for access and utility purposes. A portion of Unit 1 is subject to Easement AU-1 for access and utility purposes in favor of Units 2 and 3.

Unit 2 – Limited Common Element 4.623 acres. The land area under and surrounding Unit 2, contains approximately 4.623 acres as designated on the Condominium Map, and is reserved for the exclusive use of Unit 2 for the support of the building and other improvements comprising Unit 2, including together with Easements AU-1, AU-2, D and E for access and utility purposes. Unit 2 has its own water meter and cesspool system, which are limited common elements of Unit 2.

Unit 3 – Limited Common Element 2.023 acres. The land area under and surrounding Unit 3, contains approximately 2.023 acres as designated on the Condominium Map, and is reserved for the exclusive use of Unit 3 for the support of the building and other improvements comprising Unit 3, including together with Easements AU-1, D and E for access and utility purposes. A portion of Unit 3 is subject to Easement AU-2 for access and utility purposes in favor of Unit 2.

Any fences, walls, or utility systems or lines that are located within the limited common land area and which services or benefits only one (1) unit shall be deemed a limited common element of such unit.

Each unit owner, at his expense, shall maintain the limited common elements appurtenant to his unit in good order and neat condition. Except as otherwise provided for in this Declaration, all costs and expenses pertaining to limited common elements shall be borne solely by the owner of the unit to which said limited common elements are appurtenant.

LIMITED COMMON ELEMENT FOR  
UNIT 1  
MAKALEHA ACRES CONDOMINIUM

LAND SITUATED AT WAIPOULI, KAWAIHAU, KAUAI, HAWAII

Being a Portion of Lot 112-D  
Being Also a Portion of Grant 7147

Beginning at the south corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 7,555.14 feet North and 5,176.82 feet West, thence running by azimuths measured clockwise from true South:

- |    |          |        |   |
|----|----------|--------|---|
| 1. | 154° 18' | 274.09 | feet along the remainder of Lot 112-D (Limited Common Element for Unit 2);                    |
| 2. | 209° 08' | 310.00 | feet along the remainder of Lot 112-D (Limited Common Element for Unit 3);                    |
| 3. | 299° 08' | 224.06 | feet along the remainder of Lot 112-D (Limited Common Element for Unit 3 and Common Element); |
| 4. | 29° 08'  | 467.86 | feet along Lot 112-E to the point of beginning and containing an area of 2.001 acres.         |

TOGETHER WITH, Easements D and E for access and utility purposes.

SUBJECT, HOWEVER, to Easement AU-1 for access and utility purposes.



Lihue, Hawaii  
July 2006

DESCRIPTION PREPARED BY:  
ESAKI SURVEYING & MAPPING, INC.

Wayne T. Wada  
Wayne T. Wada  
Licensed Professional Land Surveyor  
Certificate Number 4596

LIMITED COMMON ELEMENT FOR  
UNIT 2  
MAKALEHA ACRES CONDOMINIUM

LAND SITUATED AT WAIPOULI, KAWAIHAU, KAUAI, HAWAII

Being a Portion of Lot 112-D  
Being Also a Portion of Grant 7147

Beginning at the east corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 7,555.14 feet North and 5,176.82 feet West, thence running by azimuths measured clockwise from true South:

- |    |          |        |   |
|----|----------|--------|---|
| 1. | 29° 08'  | 286.31 | feet along Lot 112-E  |
| 2. | 116° 00' | 479.78 | feet along Lot 118-A;   |
| 3. | 209° 08' | 470.39 | feet along Lot 113;   |
| 4. | 299° 08' | 255.00 | feet along the remainder of Lot 112-D<br>(Limited Common Element for Unit 3);   |
| 5. | 334° 18' | 274.09 | feet along the remainder of Lot 112-D<br>(Limited Common Element for Unit 1) to<br>the point of beginning and containing an<br>area of 4.623 acres. |

TOGETHER WITH, the following:

1. Easements AU-1 and AU-2 for access and utility purposes.
2. Easements D and E for access and utility purposes.



Lihue, Hawaii  
July 2006

DESCRIPTION PREPARED BY:  
ESAKI SURVEYING & MAPPING, INC.

*Wayne T. Wada*  
\_\_\_\_\_  
Wayne T. Wada  
Licensed Professional Land Surveyor  
Certificate Number 4596

LIMITED COMMON ELEMENT FOR  
UNIT 3  
MAKALEHA ACRES CONDOMINIUM

LAND SITUATED AT WAIPOULI, KAWAIHAU, KAUAI, HAWAII

Being a Portion of Lot 112-D  
Being Also a Portion of Grant 7147

Beginning at the north corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 8,214.51 feet North and 5,357.76 feet West, thence running by azimuths measured clockwise from true South:

- |    |          |        |   |
|----|----------|--------|---|
| 1. | 299° 08' | 454.06 | feet along Lot 112-A;   |
| 2. | 29° 08'  | 20.00  | feet along the remainder of Lot 112-D (Common Element);                             |
| 3. | 119° 08' | 199.06 | feet along the remainder of Lot 112-D (Limited Common Element for Unit 1);          |
| 4. | 29° 08'  | 310.00 | feet along the remainder of Lot 112-D (Limited Common Element for Unit 1);          |
| 5. | 119° 08' | 255.00 | feet along the remainder of Lot 112-D (Limited Common Element for Unit 1);          |
| 6. | 209° 08' | 330.01 | feet along Lot 113 to the point of beginning and containing an area of 2.023 acres. |

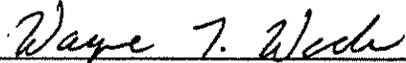
TOGETHER WITH, Easements AU-1, D and E for access and utility purposes.

SUBJECT, HOWEVER, to Easement AU-2 for access and utility purposes.



Lihue, Hawaii  
July 2006

DESCRIPTION PREPARED BY:  
ESAKI SURVEYING & MAPPING, INC.

  
Wayne T. Wada  
Licensed Professional Land Surveyor  
Certificate Number 4596

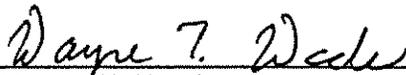


10. 154° 18' 96.51 feet along the remainder of Lot 112-D;
11. 209° 08' 25.12 feet along the remainder of Lot 112-D to the point of beginning and containing an area of 13,257 square feet.



Lihue, Hawaii  
July 2006

DESCRIPTION PREPARED BY:  
ESAKI SURVEYING & MAPPING, INC.

  
\_\_\_\_\_  
Wayne T. Wada  
Licensed Professional Land Surveyor  
Certificate Number 4596

MAKALEHA ACRES CONDOMINIUM  
EASEMENT AU-2  
(For Access and Utility Purposes)

LAND SITUATED AT WAIPOULI, KAWAIHAU, KAUAI, HAWAII

Being a Portion of Lot 112-D  
Being Also a Portion of Grant 7147

Beginning at the east corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 7,824.06 feet North and 5,283.45 feet West, thence running by azimuths measured clockwise from true South:

- |    |          |       |  |
|----|----------|-------|--|
| 1. | 29° 08'  | 25.12 | feet along the remainder of Lot 112-D;   |
| 2. | 119° 08' | 68.26 | feet along the remainder of Lot 112-D;   |
| 3. | 257° 30' | 37.82 | feet along the remainder of Lot 112-D;   |
| 4. | 299° 08' | 40.00 | feet along the remainder of Lot 112-D to the point of beginning and containing an area of 1,360 square feet. |



Lihue, Hawaii  
July 2006

DESCRIPTION PREPARED BY:  
ESAKI SURVEYING & MAPPING, INC.

Wayne T. Wada  
Wayne T. Wada  
Licensed Professional Land Surveyor  
Certificate Number 4596

**Exhibit "D"**

Encumbrances Against Title

1. For real property taxes due and owing, refer to the County of Kauai, Real Property Tax Office.
2. SETBACK (13 feet wide)

PURPOSE: future road widening  
SHOWN: on the map attached to instrument dated July 14, 1978, recorded in Liber 13031 at Page 81

3. Free flowage of Stream on Tax Map.
4. Flood setback line situate within Lot 112-A, as shown on said map attached to instrument recorded in Liber 13031 at Page 81.
5. The terms and provisions contained in the following:

INSTRUMENT : FARM DWELLING AGREEMENT  
DATED: February 7, 1983  
RECORDED: Liber 16877 Page 108  
PARTIES: MARK L. SHEFRIN and ELANA SHEFRIN, husband and wife

SUBORDINATION AGREEMENT

DATED: April 13, 2006  
RECORDED: Document No. 2006-074865

Subordinates said above Farm Dwelling Agreement to the lien of that certain Mortgage dated April 14, 2006, recorded as Document No. 2006-074863.

6. MORTGAGE

LOAN/ACCOUNT NO. 69943

MORTGAGOR : JOE F. CALHOUN, unmarried, and MARGARET L. SHEEN, unmarried

MORTGAGEE : MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as nominee for ALLIANCE BANCORP, a California corporation

DATED: April 14, 2006  
RECORDED: Document No. 2006-074863  
AMOUNT: \$1,000,000.00

7. MORTGAGE

LOAN/ACCOUNT NO. 69944

MORTGAGOR : JOE F. CALHOUN, unmarried, and MARGARET L. SHEEN, unmarried

MORTGAGEE : MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as  
nominee for ALLIANCE BANCORP, a California corporation

DATED: April 14, 2006  
RECORDED: Document No. 2006-074864  
AMOUNT: \$400,000.00

8. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF MAKALEHA ACRES CONDOMINIUM

DATED: November 6, 2006  
RECORDED: Document No. 2006-229985  
MAP: 4347 and any amendments thereto

9. The terms and provisions contained in the following:

INSTRUMENT : BYLAWS OF THE ASSOCIATION OF UNIT OWNERS  
DATED: November 6, 2006  
RECORDED: Document No. 2006-229986

AVERY H. YOUN, ARCHITECT  
2980 EWALU STREET  
LIHUE, HI 96766  
PH. (808) 245-9414  
FAX (808) 245-5238

**ARCHITECT'S CONDITION REPORT**  
**"MAKALEHA ACRES CONDOMINIUM"**

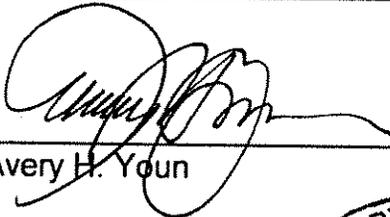
The undersigned, being a licensed architect within the State of Hawaii and bearing Registration Number 3576, has inspected the Unit 2 dwelling, of the "MAKALEHA ACRES CONDOMINIUM" project and declares as follows:

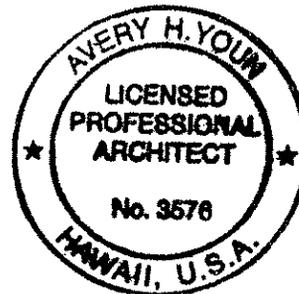
Unit 2 dwelling constructed in 1986;

The structure is situated at Waipouli, Kauai, Hawaii and identified as Tax Map Key No. (4) 4-4-03: 09.

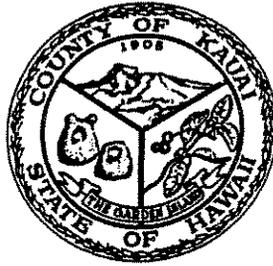
The inspection included the exterior roof, foundation, visible electrical and plumbing systems, and I find that the systems and components of the structure, including visible structural, electrical and plumbing, appear to be in satisfactory and sound condition for the stated age thereof. The structure and related systems and components have an expected useful life in excess of twenty (20) years for Unit 2 dwelling.

DATED: Lihue, Kauai, Hawaii Aug. 31, 2006.

  
Avery H. Youn



**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:** November 29, 2006

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

**FROM:** Ian K. Costa, Director of Planning 

**SUBJECT:** Certification of Inspection of Existing Buildings

**Project Name:** MAKALEHA ACRES  
Condominium Project (407)  
**Tax Map Key:** (4) 4-4-003: 009

The attorney for the above-mentioned condominium project has requested that this office, as an agency of the County of Kauai, review the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai, Section 514 B-5, Hawaii Revised Statutes, subject to the disclosures and waivers (item "5" below) specified herein, we certify the following:

1. The developer has contracted architect Avery Youn to certify that the buildings on the proposed project referred to as Makaleha Acres Condominium Units 1 through Unit 3 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 certification as it pertains to the rules and regulations administered solely by the Department.

Exhibit "F"  
(Page 1 of 2)

Senior Condominium Specialist  
Makaleha Acres Condominium  
TMK: (4) 4-4-003: 009  
November 29, 2006  
Page two

2. There are no variances approved for the subject property.
3. The parcel does not contain any outstanding nonconforming uses or structures as a result of the adoption or amendments of any ordinances or codes and regulations.
4. There are no notices of violation 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 relating to the regulations of condominiums under subsection 514 B-5, Hawaii Revised Statutes.

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

cc: Michelle S. Miyake, Attorney at Law  
Sheen & Calhoun, Project Developers

## Exhibit "G"

### Summary of Sales Contract

The Seller intends to use a Sales Contract for the sale of the units of the Project ("Sales Contract") that will contain the purchase price and other terms and conditions under which a Purchaser will agree to buy a unit in the Project. Among other things, the Sales Contract will provide:

1. A section of financing to be completed and agreed to by the parties, setting forth how Purchaser will pay the purchase price.
2. Purchaser will not receive interest on deposits made under the Sales Contract.
3. Purchaser's money will be held in escrow under the terms of the Escrow Agreement.
4. Purchaser acknowledges having received and read the final public report for the Project prior to signing the Sales Contract.
5. A section of closing to be completed and agreed to by the parties which will set forth that Purchaser must close the purchase on or before a certain date and pay Purchaser's share of closing costs in addition to the purchase price.
6. A description for the allocation of payment of closing costs.
7. Remedies in the event of default under the Sales Contract:
  - a. By Purchaser:
    - i. seller may bring an action against Purchaser for breach of contract;
    - ii. seller may retain Purchaser's initial deposit; and
    - iii. purchaser shall be responsible for expenses incurred.
  - b. By Seller:
    - i. purchaser may bring an action against Seller for breach of contract;
    - ii. purchaser may bring an action to compel Seller to perform under contract; and
    - iii. seller shall be responsible for expenses incurred.
  - c. Any awards to the prevailing party in any action are subordinate to escrow's expenses.
8. The Sales Contract contains various other important provisions relating to the purchase of a unit in the Project. It is incumbent upon purchasers and prospective purchasers to read them with care.

## Exhibit "H"

### Summary of Escrow Agreement

The Escrow Agreement ("Agreement") sets up an arrangement under which the deposits that a Buyer makes under a sales contract with Seller will be held by a neutral party ("Escrow"). Escrow is TITLE GUARANTY ESCROW SERVICES, INC. Under the Agreement (which may be modified or otherwise limited by provisions not summarized), these things will or may happen:

1. Whenever Seller enters into a sales contract for the sale of a unit, 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 be deposited in an account for the project. Interest on all funds will be paid to Buyer.
3. Escrow will release from the trust fund and disburse Buyer's funds at closing, unless:  
(a) Buyer has elected to exercise Buyer's right to cancel the sales contract pursuant to Section 514B-86, Hawaii Revised Statutes (HRS) or right to rescind sales contract pursuant to Section 514B-87, HRS, and receive all funds paid, without deduction; or (b) the Real Estate Commission of the State of Hawaii (Real Estate Commission) has not issued an effective date for the 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 HRS 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 or rescission and refund of monies under the sales contract or otherwise. 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 up to a maximum of \$250.00.
5. 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.
6. Escrow will arrange for and supervise the signing of all documents which are to be signed subsequent to and contemplated by the sales contract.

7. As Escrow's compensation for its performance under this Agreement, Escrow will receive its scheduled rate, plus tax, for each unit for which a unit 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.

**SPECIAL NOTICE:** THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH 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.