

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

CONDOMINIUM PROJECT NAME	KAIVA AINA CONDOMINIUM
Project Address	3390 Kalua Moa Koloa, Hawaii 96756
Registration Number	6350 (Partial Conversion)
Effective Date of Report	<b>November 27, 2007</b>
Developer(s)	DANIEL SOONG AND DIANNA SOONG

**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. The owner-builder building permit that was issued to the Developer for Unit 2, was issued by the County of Kauai pursuant to the provisions of HRS section 444-9.1 and HRS section 444-2(7). Thus, according to the terms of HRS 444-9.1 and HRS 444-2(7), the Developer certified that Unit 2 was for the applicant's personal use and not for use or occupancy by the general public. Therefore, the Developer may not offer Unit 2 for sale until one year from the date of completion of construction of Unit 2 has passed from February 12, 2007. If the Developer violates HRS section 444-2(7), the Developer "may be fined \$5,000 or forty percent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for the first offense; and \$10,000 or fifty percent of the appraised value of building as determined by the county tax appraiser, whichever is greater for any subsequent offense."

2. No unit owner shall renovate his unit in a manner that shall cause the total number of bedrooms in the project to exceed five, which is the total number of permissible bedrooms that may be serviced by the project's common septic system. Unit 1 presently has three bedrooms and Unit 2 has two bedrooms.

## TABLE OF CONTENTS

	<u>Page</u>
Preparation of this Report .....	1
General Information On Condominiums .....	2
Operation of the Condominium Project.....	2
<b>1. THE CONDOMINIUM PROJECT .....</b>	<b>3</b>
1.1 The Underlying Land.....	3
1.2 Buildings and Other Improvements.....	3
1.3 Unit Types and Sizes of Units .....	3
1.4 Parking Stalls .....	4
1.5 Boundaries of the Units.....	4
1.6 Permitted Alterations to the Units .....	4
1.7 Common Interest.....	4
1.8 Recreational and Other Common Facilities .....	4
1.9 Common Elements.....	5
1.10 Limited Common Elements .....	5
1.11 Special Use Restrictions .....	5
1.12 Encumbrances Against Title .....	5
1.13 Uses Permitted by Zoning and Zoning Compliance Matters .....	6
1.14 Other Zoning Compliance Matters .....	6
1.15 Conversions .....	7
1.16 Project In Agricultural District.....	8
1.17 Project with Assisted Living Facility .....	8
<b>2. PERSONS CONNECTED WITH THE PROJECT .....</b>	<b>9</b>
2.1 Developer .....	9
2.2 Real Estate Broker .....	9
2.3 Escrow Depository .....	9
2.4 General Contractor.....	9
2.5 Condominium Managing Agent.....	9
2.6 Attorney for Developer .....	9
<b>3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS .....</b>	<b>10</b>
3.1 Declaration of Condominium Property Regime .....	10
3.2 Bylaws of the Association of Unit Owners .....	10
3.3 Condominium Map .....	10
3.4 House Rules.....	11
3.5 Changes to the Condominium Documents .....	11
3.6 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents.....	11
<b>4. CONDOMINIUM MANAGEMENT .....</b>	<b>12</b>
4.1 Management of the Common Elements .....	12
4.2 Estimate of the Initial Maintenance Fees .....	12
4.3 Utility Charges to be Included in the Maintenance Fee .....	12
4.4 Utilities to be Separately Billed to Unit Owner .....	12
<b>5. SALES DOCUMENTS .....</b>	<b>13</b>
5.1 Sales Documents Filed with the Real Estate Commission.....	13
5.2 Sales to Owner-Occupants .....	13
5.3 Blanket Liens.....	13
5.4 Construction Warranties .....	13
5.5 Status of Construction, Date of Completion or Estimated Date of Completion .....	14

## TABLE OF CONTENTS

	<u>Page</u>
5.6 Developer's Use of Purchaser Deposits to Pay for Project Construction Costs Before Closing or Conveyance .....	14
5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance .....	14
5.6.2 Purchaser Deposits Will Be Disbursed Before Closing .....	14
5.7 Rights Under the Sales Contract .....	16
5.8 Purchaser's Right to Cancel or Rescind a Sales Contract .....	16
5.8.1 Purchaser's 30-Day Right to Cancel a Sales Contract.....	16
5.8.2 Right to Cancel a Sales Contract if Completion Deadline Missed.....	17
5.8.3 Purchaser's Right to Rescind a Binding Sales Contract After a Material Change .	17
6. MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT.....	18
EXHIBIT A: Description of Buildings	
EXHIBIT B: Description of Parking Stalls	
EXHIBIT C: Common Elements	
EXHIBIT D: Limited Common Elements	
EXHIBIT E: Encumbrances Against Title	
EXHIBIT F: Estimate of Initial Maintenance Fees	
EXHIBIT G: Summary of Deposit Receipt Offer and Acceptance	
EXHIBIT H: Summary of portions of Escrow Agreement	
EXHIBIT I: Verified Statement of County Official	

## **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		
Address of Project	390 Kalua Moa Road, Koloa, Hawaii 96756	
Address of Project is expected to change because	Unit numbers will be added to address.	
Tax Map Key (TMK)	(4) 2-6-09 Parcel 24 Lot 13	
Tax Map Key is expected to change because	Unit numbers will be added to TMK	
Land Area	19,888 square feet	
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)		

## 1.2 Buildings and Other Improvements

Number of Buildings	3
Floors Per Building	1
Number of New Building(s)	1
Number of Converted Building(s)	3
Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	Wood, concrete, slab or post and pier, asphalt tile roofing

## 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	3/2	1,666 s.f.	511 s.f./768 s.f.	Lanai/Deck/Grge.	2,945 s.f.
2	1	2/2	1,281 s.f.	958 s.f.	Lanai/Garage	2,239 s.f.
See Exhibit <u>A</u> .						

2	<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:	4
Number of Guest Stalls in the Project:	0
Number of Parking Stalls Assigned to Each Unit:	2
Attach Exhibit <u> B </u> 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.	

**1.5 Boundaries of the Units**

Boundaries of the unit:  
 "Limits of Units. Each unit includes, but is not limited to: the footings or slab on which it is constructed, the exterior walls and roof all interior walls, floors, ceilings, columns and partitions, and the finished surfaces thereof, doors and door frames, windows and window frames, the air space within the perimeters of the unit." (See paragraph 3.a of the Declaration for a complete description of the Boundaries of the Units.)

**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):  
 No unit owner shall renovate his unit in a manner that causes the total number of bedrooms in the project to exceed 5, which is the total number of permissible bedrooms that may be serviced by the project's common septic system. Unit 1 and unit 2 presently have 3 and 2 bedrooms.(See par. 15 of the Declaration)

**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:  
 The common interest for each unit is determined by apportioning a 50% interest to each of the units irrespective of the actual size of the limited common elements appurtenant to each unit.

**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 type="checkbox"/>	Other (describe):

**1.9 Common Elements**

<u>Common Elements:</u> 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.	
Described in Exhibit <u>C</u> .	
Described as follows:	
<b>Common Element</b>	<b>Number</b>
Elevators	0
Stairways	0
Trash Chutes	0

**1.10 Limited Common Elements**

<u>Limited Common Elements:</u> 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.
Described in Exhibit <u>D</u> .
Described as follows:

**1.11 Special Use Restrictions**

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.	
<input checked="" type="checkbox"/>	Pets: As provided in Section 13.1 of the Bylaws
<input checked="" type="checkbox"/>	Number of Occupants: As provided in the Declaration paragraph 7a
<input type="checkbox"/>	Other:
<input type="checkbox"/>	There are no special use restrictions.

**1.12 Encumbrances Against Title**

An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of 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).
Exhibit <u>E</u> describes the encumbrances against title contained in the title report described below.
Date of the title report: January 4, 2007
Company that issued the title report: Title Guaranty Escrow Services, Inc.

**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 checked="" type="checkbox"/>	Residential	2	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Urban R-2
<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 type="checkbox"/>	Agricultural		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Recreational		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Other(specify)		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
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.					

**1.14 Other Zoning Compliance Matters**

Conforming/Non-Conforming Uses, Structures and Lots	
<p>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.</p> <p>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.</p> <p>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.</p>	

	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"/>

<p>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:</p>
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1.15 Conversions

<p>Developer's statements regarding units that may be occupied for residential use and that have been in existence for five years or more.</p>	<p><input type="checkbox"/> Applicable  <input checked="" type="checkbox"/> Not Applicable</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:</p> <p>Without conducting invasive examinations of covered plumbing, electrical and structural components, the structures appear to be in sound condition.</p>	
<p>Developer's statement of the expected useful life of each item reported above:          While Developer makes no warranties or guarantees, Developer estimates the expected useful life of the units is 5 years.</p>	
<p>List of any outstanding notices of uncured violations of any building code or other county regulations:</p>	
<p>Estimated cost of curing any violations described above:</p>	

<p><b>Verified Statement from a County Official</b></p> <p>Regarding any converted structures in the project, attached as Exhibit <u>  1  </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:</p>

**1.16 Project In Agricultural District**

<p>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii? If answer is "Yes", provide information below.</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</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 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 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:</p>	

**1.17 Project with Assisted Living Facility**

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

## 2. PERSONS CONNECTED WITH THE PROJECT

<p><b>2.1 Developer(s)</b></p>	<p>Name: Daniel Soong and Dianna Soong</p> <p>Business Address: P.O. Box 1321 Kalaheo HI 96741</p> <p>Business Phone Number: 808-635-9195 E-mail Address:</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><b>2.2 Real Estate Broker</b></p>	<p>Name: None selected: See page 18 Business Address:</p> <p>Business Phone Number: E-mail Address:</p>
<p><b>2.3 Escrow Depository</b></p>	<p>Name: Title Guaranty Escrow Services, Inc. Business Address: 4414 Kukui Grove St., Suite 104 Lihue, HI 96766</p> <p>Business Phone Number: 808-245-3381</p>
<p><b>2.4 General Contractor</b></p>	<p>Name: Fergus S Macomber dba Kokua Construction Business Address: P.O. Box 54 Lawai, HI 96765 (See also page 18)</p> <p>Business Phone Number: 808-332-6011</p>
<p><b>2.5 Condominium Managing Agent</b></p>	<p>Name: Self Managed by the Association Business Address: 3390 Kalua Moa, Koloa HI 96756</p> <p>Business Phone Number: N/A</p>
<p><b>2.6 Attorney for Developer</b></p>	<p>Name: Helene L. Taylor Business Address: 3-3134 Kuhio Highway, PMB #27 Lihue, HI 96766</p> <p>Business Phone Number: 808-245-9601 or 415-381-1220</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
Bureau of Conveyances	October 5, 2006	2006-215992

Amendments to Declaration of Condominium Property Regime		
Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	August 30, 2007	2007-164929

#### 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
Bureau of Conveyances	October 5, 2006	2006-215993

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	4339
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		
Have Been Adopted and Date of Adoption		
Developer does not plan to adopt House Rules		✓

**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%	67%
Bylaws	67%	67%

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

<input type="checkbox"/>	No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).
<input checked="" type="checkbox"/>	<p>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:</p> <p>Developer has reserved the right at the Developer's sole discretion, at any time prior to the first recording in the Bureau of Conveyances of the State of Hawaii, of a conveyance or transfer (other than for security) of a unit and its appurtenances to a party not a signatory to the Declaration or Bylaws, to amend the Declaration, Bylaws and/or the Condominium Map in any manner, without approval or consent of any unit purchaser. The Developer also has the rights as a unit owner to amend the Declaration as provided therein.</p>

#### 4. CONDOMINIUM MANAGEMENT

##### 4.1 Management of the Common Elements

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

##### 4.2 Estimate of the Initial Maintenance Fees

<b>Estimate of the Initial Maintenance Fees:</b> 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.	
Exhibit <u>F</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.	

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

If checked, the following utilities are included in the maintenance fee:		
<input type="checkbox"/>	<input type="checkbox"/>	Electricity for the common elements
<input type="checkbox"/>	<input type="checkbox"/>	Gas for the common elements
<input type="checkbox"/>	<input type="checkbox"/>	Water
<input type="checkbox"/>	<input type="checkbox"/>	Sewer
<input type="checkbox"/>	<input type="checkbox"/>	TV cable
<input type="checkbox"/>	<input type="checkbox"/>	Other (specify)

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

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

## 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 <u>G</u> 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: November 22, 2006 Name of Escrow Company: Title Guaranty Escrow Services, Inc. Exhibit <u>H</u> 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.

<u>Type of Lien</u>	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
Mortgage	Buyer's interest will terminate and Buyer may be entitled to a refund of his/her deposit less escrow cancellation fees.

### 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. Units are sold "As-Is"	
Appliances: "As-Is"	

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

<p>Status of Construction:          Construction of Unit 1, Buildings 1 and 2 were completed in 2005          Construction of Unit 2 was completed in February 2007</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:</p>
<p>Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:</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></b> 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.</p>
<p><b>Box B</b> <input type="checkbox"/></p>	<p>The Developer has <u>not</u> 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.

## 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. For the purposes of Exhibit F of this report, the Developer has not calculated the estimated replacement reserves in accordance with HRS 514B-148 and any replacement reserve rules of the Hawaii Administrative Rules, as amended.

2. The use of hazardous material is restricted except as provided in the declaration and all hazardous material laws.

3. The swimming pool located on Unit 1 is NOT a common element or recreational area of the project. It is for the exclusive use of Unit 1 and is located within its limited common element. The pool was constructed in January 2006 pursuant to County of Kauai Building Permit No. 05-00002358, by Puni Nani Pools and Spa (4490 Puhi Road, Lihue Hawaii 96766; Telephone: 808-245-5911).

4. Unit 1 was constructed pursuant to County of Kauai Building Permit Nos 04-205 and 04-206 by Kokua Construction (P.O. Box 54, Lawai, Hawaii 96765; Telephone: 808-332-6011). A Certificate of Occupancy was issued by the County of Kauai Department of Public Works on August 16, 2005.

5. Unit 2 was constructed pursuant to County of Kauai Building Permit No. 04-2303 by Perez Construction (P.O. Box 1200, Lawai, Hawaii 96765; Telephone: 808-332-5848). A Certificate of Occupancy has not yet been issued, however, construction is complete and issuance should be henceforth. Please see page 1a for further information.

6. DISCLOSURE RE: SHARED SEPTIC SYSTEM: Unit 1 and Unit 2 share a common septic system. The total number of bedrooms in the project may not exceed five, which is the total number of permissible bedrooms that may be serviced by the project's common septic system. The cost of maintaining the septic system shall be borne in pro rata shares by Unit 1 and Unit 2 and may be incorporated into the project's maintenance fees or may be a separate assessment.

7. DISCLOSURE RE: NON-SELECTION OF REAL ESTATE BROKER: As of the effective date of this Developer's Public Report, the Developer has not executed a listing agreement for the sale of this condominium project with any duly licensed Hawaii real estate broker. Thus, the Developer cannot offer to sell or sell any units in this registered condominium project until: 1) the Developer executes a listing agreement for the sale of this condominium project, 2) amends this Developer's Public Report to reflect the new information, and 3) delivers this public report and amendment to the prospective purchaser. The conditions for binding sales contracts are listed on pages 16-17 paragraph 5.8.1.

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.

DANIEL AND DIANNA SOONG

Printed Name of Developer

By:  4-5-07  
Duly Authorized Signatory\* Date

DANIEL AND DIANNA SOONG, Developer and Fee Owner

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

## EXHIBIT "A"

### KAIVA AINA CONDOMINIUM

#### DESCRIPTION OF BUILDINGS

The project consists of a total of three buildings, which includes two single-family residences and a detached garage. Each unit is shown on the Condominium Map, and described in the metes and bounds descriptions attached to the Declaration as Exhibit B.

**Unit 1:** Is a single-family, one story residence with 1,666 (net) square feet of living space, which consists of three bedrooms, two bathrooms, kitchen, dining and living area. It also has an entry deck with 108 (gross) square feet, a lanai with 403 (gross) square feet and a detached garage with 768 (gross) square feet. The single-family residence is constructed primarily of wood on a post and pier foundation with T1-11 siding and an asphalt tile roof. The garage is constructed primarily of wood on a concrete slab with T1-11 siding and an asphalt tile roof. Unit 1 also includes a swimming pool, which is contained within its limited common element.

**Unit 2:** Is a single-family, one story residence with 1,281 (net) square feet of living space, which consists of two bedrooms, two bathrooms, kitchen, dining, library and living area and an attached two car garage with 638 (gross) square feet. It also has a lanai with 320 (gross) square feet. It is constructed primarily of wood on a post and pier foundation with board and batten siding and an asphalt tile roof.

The approximate net floor area of a 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.

NOTE: THE FLOOR AREAS SHOWN ARE APPROXIMATE ONLY. THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE FLOOR AREA OF ANY PARTICULAR UNIT.

**END OF EXHIBIT "A"**

**EXHIBIT "B"**

**DESCRIPTION OF PARKING STALLS**

**Unit 1** has a detached garage with 768 (gross) square feet that accommodates parking for at least two cars.

**Unit 2** has an attached garage with 638 (gross) square feet that accommodates parking for at least two cars.

**END OF EXHIBIT "B"**

## **EXHIBIT "C"**

### **COMMON ELEMENTS**

The common elements of the project shall specifically include, but not be limited to the following:

1. Portions of the land as may be set forth on the Condominium Map and as described in the Declaration, as amended from time to time.
2. All central and appurtenant installations for common services, including power, light, water, telephone and sewer.
3. Any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, maintenance and safety or normally in common use; any common driveways, roadways, walkways, sidewalks, stairways, grounds, landscaping, planters; and all other portions of the project, other than the units, including, specifically, but not limited to, the common elements mentioned in the Condominium Property Act that are actually constructed on the land.

Each unit has direct access to the common elements of the project.

**END OF EXHIBIT "C"**

**EXHIBIT "D"**

**LIMITED COMMON ELEMENTS**

That certain land area upon and around which units 1 and 2 are located, as shown and designated on the Condominium Map, and as described in the corresponding metes and bounds descriptions, and the Declaration. The limited common elements are deemed limited common elements appurtenant to and for the exclusive use of each respective unit for the support of the building and other improvements comprising the unit, and for the yard, ingress and egress, parking and other permitted uses.

Unit Number	Area of Limited Common Element
1	13,048 square feet
2	6,840 square feet

**END OF EXHIBIT "D"**

**EXHIBIT "E"**

**ENCUMBRANCES AGAINST TITLE**

1. Any taxes that may be due and owing and tax liens that may exist. Refer to the Director of Finance, Kauai County.

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

3. MORTGAGE

MORTGAGOR: DANIEL LANIAKEA SOONG and DIANNA CAROLYN SOONG, husband and wife

MORTGAGEE: SAFETY LOAN COMPANY, LTD., a Hawaii corporation

DATED: October 3, 2003

RECORDED: Document No. 2003-218287

4. SECOND MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

MORTGAGOR: DANIEL LANIAKEA SOONG and DIANNA CAROLYN SOONG, husband and wife

MORTGAGEE: SAFETY LOAN COMPANY, LTD., a Hawaii corporation

DATED: August 5, 2004

RECORDED: Document No. 2004-164548

5. THIRD MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

MORTGAGOR: DANIEL LANIAKEA SOONG and DIANNA CAROLYN SOONG, husband and wife

MORTGAGEE: SAFETY LOAN COMPANY, LTD., a Hawaii corporation

DATED: May 18, 2006

RECORDED: Document No. 2006-095488

6. The terms and provisions contained in the following:

Declaration of Condominium Property Regime of Kaiva Aina Condominium dated October 5, 2006 and recorded in the Bureau of Conveyances, State of Hawaii as Document No. 2006-215992.

Bylaws of Kaiva Aina Condominium dated October 5, 2006 and recorded in the Bureau of Conveyances, State of Hawaii as Document No. 2006-215993.

First Amendment to Declaration of Condominium Property Regime of Kaiva Aina Condominium dated August 30, 2007 and recorded in the Bureau of Conveyances, State of Hawaii as Document No. 2007-164929.

7. Condominium Map No. 4339, and any amendments thereto, recorded in the Bureau of Conveyances, State of Hawaii.

**END OF EXHIBIT "E"**

**EXHIBIT "F"**

**ESTIMATE OF INITIAL MAINTENANCE FEES**

<u>Unit</u>	<u>Monthly Fee</u>	<u>Annual Fee</u> (Monthly Fee x 12)
1	\$129.50	\$1554
2	\$129.50	\$1554

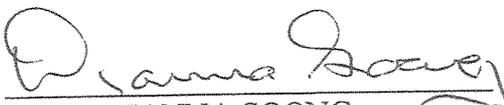
A breakdown of the estimated Maintenance Fees for each unit is as follows:

<u>Description</u>	<u>Monthly Fee</u>	<u>Annual Fee</u> (Monthly Fee x 12)
Property taxes	\$37.50	\$450
Insurance	\$92	\$1104
Total:	\$129.50	\$1554

A unit owner shall become obligated for the payment of maintenance fees for the unit at the time the certificate of occupancy relating to the unit is issued by the appropriate county agency or upon conveyance of the unit to the Purchaser, whichever occurs later.

DANIEL AND DIANNA SOONG, the Developer of the Kaiva Aina Condominium, hereby certify that the above estimates of initial maintenance fees were prepared in accordance with generally accepted accounting principles.

  
\_\_\_\_\_  
DANIEL SOONG

  
\_\_\_\_\_  
DIANNA SOONG

**END OF EXHIBIT "F"**

## **EXHIBIT "G"**

### **SUMMARY OF DEPOSIT RECEIPT OFFER AND ACCEPTANCE AND CPR ADDENDUM (SALES CONTRACT)**

The Deposit Receipt Offer and Acceptance, including the special terms and conditions included in the CPR Addendum attached thereto (also known as the "Sales Contract"), contains the terms and conditions under which a Purchaser will agree to buy a unit in the Project. Among other things, the contract states:

1. The total purchase price, method of payment and additional sums that must be paid in connection with the purchase of a unit, and requirements relating to the Purchaser's financing of the purchase of a unit.
2. If the DROA is signed before construction of the unit designated in the DROA is complete, the deadline for completion of construction of the unit shall occur on or before the deadline set forth in the DROA and/or CPR Addendum; provided that such deadline for completion of construction shall be extended on a day for day basis, for any delay in the occurrence of the completion of construction of the unit due to the occurrence of any force majeure event, as defined in the CPR Addendum.
3. Pursuant to Chapter 514B section 89, if completion of construction of the Purchaser's unit does not occur by the completion deadline set forth in the DROA and/or CPR Addendum, the Purchaser may cancel the Purchaser's sales contract and the Seller will instruct Escrow to return all of the Buyer's payments made, without interest, but less the escrow cancellation fee and all costs of the Seller, Escrow or any lending institution in processing the DROA and the CPR Addendum or any loan application.
4. The Purchaser acknowledges having received and read the Developer's Public Report for the Project prior to signing the contract.
5. Neither the Seller nor any of its representatives has made any representation concerning rental of the unit, income or profit from the unit, or any other economic benefit to be derived from the purchase of the unit, including, but not limited to, any representation that the Seller or managing agent of the Project will provide, directly or indirectly, any services relating to the rental or sale of the unit.
6. The Purchaser's payments will be held in escrow pursuant to the terms of the Escrow Agreement.
7. The unit and Project will be subject to various other legal documents the Purchaser should examine and the Seller may change the documents under certain circumstances.

8. The Purchaser will be acquiring the unit subject to all encumbrances, restrictions, covenants and conditions on the Project
9. The Seller makes no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.
10. The Purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
11. A deed conveying clear title will be given at closing, subject to certain obligations.
12. If the Purchaser defaults:
  - a. The contract may, at the Seller's option, be terminated by written notice to the Purchaser.
  - b. The Seller may bring an action for damages for breach of contract. In the event of default by the Purchaser and/or a legal action or arbitration (including a claim by a Broker for commission), the prevailing party shall be entitled to recover all costs incurred including reasonable attorneys' fees.
  - c. The Seller may retain the initial deposit and all additional deposits provided for in the DROA and CPR Addendum as liquidated damages, and Buyer shall be responsible for any costs incurred in accordance with the DROA.
  - d. The Seller may pursue any other remedies available to the Seller under the DROA on account of the Buyer's default.

SPECIAL NOTICE: THE FOREGOING SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE DROA AND CPR ADDENDUM. 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 PURCHASER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE CONTRACT, THE CONTRACT WILL CONTROL NOT THIS SUMMARY.

**END OF EXHIBIT "G"**

## EXHIBIT "H"

### SUMMARY OF PORTIONS OF ESCROW AGREEMENT

The Escrow Agreement creates an arrangement under which, the deposits a Purchaser makes pursuant to a Deposit, Receipt, Offer Acceptance and CPR Addendum (also known as the "sales contract"), will be held by a neutral party ("Escrow"). The Escrow Agreement contains important provisions and establishes certain charges with which a Purchaser should be familiar. It is incumbent upon Purchasers to read with care, the executed Escrow Agreement on file with the Real Estate Commission and included in the Developer's Public Report.

Among other things, the Escrow Agreement provides:

1. Escrow will let the Purchaser know when payments are due.
2. Escrow will not release and disburse Purchaser's funds at closing, unless: (a) the Real Estate Commission has issued the Developer's Public Report on the Project and the Purchaser has acknowledged receipt of the same, (b) Developer has delivered a written legal opinion to Escrow stating the Purchaser's sales contract has become effective and the requirements of Chapter 514B, Hawaii Revised Statutes, as applicable, have been met, (c) Developer has given escrow a written waiver of any option reserved in any sales contract to cancel said sales contract, and (d) If it is intended that the sale of a unit will be made to Purchasers as owner-occupants, the required affidavits of the Purchasers must be reaffirmed and delivered to Escrow with proof of the date of receipt by the Purchaser of the Developer's Public Report, upon receipt of the Developer's Public Report by the Purchaser or no later than closing of escrow for the unit.
4. Escrow will arrange for and supervise the signing of all documents that are to be signed subsequent to and contemplated by the sales contract and shall promptly and diligently close the transaction.
5. Developer may close any or all sales at different times and Escrow agrees to cooperate with Developer to facilitate its performance of such partial closings.
6. If all documents necessary to effect each sales transaction are accurate and in no way defective, Escrow shall, within five business days (exclusive of the day of closing) file and record the documents necessary to effect the transfer of legal title to the Purchaser. If the documents are defective, Escrow shall file the documents within five business days after learning that the reason that prevented their filing or recording no longer exists.
7. If Purchaser fails to make the required payments to Escrow in a timely manner, Escrow shall notify Developer of Purchaser's failure. If Developer subsequently certifies in writing to Escrow that Developer has terminated the sales contract in accordance with the terms thereof and provides Escrow copies of all such notices of termination sent to

the Purchaser, Escrow shall thereafter treat all funds of the Purchaser paid on account of the sales contract, as funds of the Developer and not as funds of the Purchaser.

8. The Purchaser may or will be entitled to a refund if the Purchaser or Developer cancels the sales contract in accordance with the cancellation provisions, or if the Purchaser terminates a reservation before the sales contract is binding. However, Escrow may deduct from the refund, cancellation fees in accordance with the sales contract. If the Purchaser does not claim any returned funds within sixty-days after receiving adequate notice, Escrow shall deposit the funds into a special account in a bank under the name of Developer as trustee for the benefit of such Purchaser. Escrow's duties with respect to such funds shall thereafter be released.

9. Escrow is relieved from all liability for acting in accordance with the terms of the Escrow Agreement, unless otherwise notified to the contrary by the Developer or Purchaser. If any dispute involving Escrow should arise, Escrow may take no action but instead may await settlement by the appropriate legal proceeding or may file a suit for adjudication and shall thereafter be fully released and discharged from further obligations with respect to the moneys deposited. Developer and Purchaser shall indemnify and hold Escrow harmless.

10. The Escrow Agreement shall be binding and may only be terminated by either the Developer or Escrow upon fifteen days written notice to the other; provided, however, all transactions in process thereunder at the time of the termination shall be completed under the terms of the Agreement. The Agreement shall be interpreted under Hawaii law, which shall control in all instances.

11. Escrow shall furnish Developer with a semi-monthly Developer's report that will cover the status of each sales contract in escrow, including without limitation, the status of receipts, interest-bearing deposits and disbursements. Escrow shall, upon certification from Developer that such payments are due, bill each Purchaser for payments due under the Purchaser's sales contracts.

12. The compensation of Escrow for performance under the Escrow Agreement shall be based on the scheduled rate, plus tax for each unit in the Project, on the condition that all sales of units in the Project are closed on or before two years after the date thereof. The compensation for Escrow's performance does not include costs such as notary fees, recording fees, conveyance document preparation fees or any additional or special services requested by the Purchaser. Escrow shall also arrange for the issuance of a title insurance policy (Standard Owner's or ALTA Lender's policy), for the sum based on the scheduled rate for each unit in the Project. An additional fee of Two Hundred Fifty Dollars \$250 shall be charged to the Purchaser for each mortgage obtained by the Purchaser if the Purchaser does not obtain a mortgage loan from a lender designated by Developer. Should the Purchaser obtain a mortgage loan from any out-of-state lender, a fee of \$500 shall be charged to the Purchaser for each mortgage obtained. If an escrow involves a 1031 exchange, Escrow has the right to assess additional fees commensurate with the amount of work involved. The cost of said escrow fees and title insurance

policies shall be the expense of the individual Purchasers, and the same or any portion thereof shall not in any way be the obligation of the Developer.

13. Escrow's compensation shall become due and payable with respect to a unit in the Project upon the first to occur of the following events: (a) the transfer to the Purchaser of such unit of legal title thereto; or (b) final disbursement of the funds held in escrow in connection with such unit. In the event of the cancellation of any sales contract submitted to Escrow, a cancellation fee commensurate with the services rendered by Escrow prior to such cancellation, plus all costs incurred by Escrow, up to a maximum of \$250.00, shall be charged to the Purchaser, unless otherwise agreed to by Seller. If any changes to documents are required for any reason without fault of Escrow, the Seller agrees to pay an additional charge of \$30.00 for each such statement or document that is changed.

SPECIAL NOTE: THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE ESCROW 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 OF DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE AGREEMENT, THE AGREEMENT WILL CONTROL AND NOT THIS SUMMARY.

**END OF EXHIBIT "H"**

EXHIBIT "I"

BRYAN J. BAPTISTE  
MAYOR



IAN K. COSTA  
DIRECTOR OF PLANNING

GARY K. HEU  
ADMINISTRATIVE ASSISTANT

IMAIKALANI P. AIU  
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI  
PLANNING DEPARTMENT

4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUAI, HAWAII 96766-1326

TEL (808) 241-6677 FAX (808) 241-6699

DATE: May 22, 2007

Received 6/13/07  
EJ

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: KAIVA AINA  
Condominium Project (433)  
Tax Map Key: (4) 2-6-009: 024

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, Sections 514 B-5 & B-6, Hawaii Revised Statutes, subject to the disclosures and waivers (item "5" below) specified herein, we certify the following:

1. The developer has contracted engineer Peter Taylor to certify that the buildings on the proposed project referred to as Kaiva Aina Condominium Unit 1 and Unit 2 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.

Senior Condominium Specialist  
Kaiva Aina Condominium  
TMK: (4) 2-6-009: 024  
May 22, 2007  
Page two

2. 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.
3. There are no notices of violation of County building or zoning codes outstanding according to our records.
4. There are no variances approved for the subject property.
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 Sheilah Miyake at (808) 241- 6677.

cc: Helene Taylor, Attorney at Law  
Daniel & Dianna Soong, Project Developers