

**AMENDMENT 1 TO  
DEVELOPER'S PUBLIC REPORT  
FOR A CONDOMINIUM**

CONDOMINIUM PROJECT NAME:	MCLERNON ESTATES
PROJECT ADDRESS:	3110 and 3116 Poipu Road, Koloa, Hawaii 96756
REGISTRATION NUMBER:	6541 (Conversion)
EFFECTIVE DATE OF REPORT:	<b>October 13, 2010</b>
THIS AMENDMENT:	<input checked="" type="checkbox"/> Must be read together with <input checked="" type="checkbox"/> Developer's Public Report dated <u>May 8, 2008</u> <input type="checkbox"/> Amended Report dated _____ <input type="checkbox"/> Supersedes all prior amendments: Includes all prior amendment(s) and <u>must</u> be read together with <input type="checkbox"/> Developer's Public Report dated _____ <input type="checkbox"/> Amended Report dated _____
DEVELOPER(S):	David E. McLernon and Lynn Carol McLernon

**Preparation of this Amendment**

The Developer prepared this amendment pursuant to the Condominium Property Act, Section 514B-56, Hawaii Revised Statutes (HRS), as amended from time to time. Section 514B-56, HRS, requires that after the Commission has issued an effective date for the Developer's Public Report, if there are any changes, either material or pertinent changes, or both, regarding the information contained in or omitted from the Developer's Public Report, or if the developer desires to update or change the information set forth in the Developer's Public Report, the developer shall immediately submit to the Commission an amendment to the Developer's Public Report or an amended Developer's Public Report clearly reflecting the change, together with such supporting information as may be required by the Commission, to update the information contained in the Developer's Public Report.

The law defines "material change" as used in parts IV and V of Chapter 514B, HRS means 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 law defines "pertinent change" to mean, as determined by the commission, a change not previously disclosed in the most recent public report that renders the information contained in the public report or in any disclosure statement inaccurate, including, but not limited to (1) The size, construction materials, location, or permitted use of a unit or its appurtenant limited common element; (2) The size, use, location, or construction materials of the common elements of the project; or (3) The common interest appurtenant to the unit. A pertinent change does not necessarily constitute a material change.

The filing of an amendment to the Developer's Public Report or an amended Developer's Public Report, in and of itself, shall not be grounds for a purchaser to cancel or rescind a sales contract. A purchaser's right to cancel or rescind a sales contract shall be governed by sections 514B-86 and 514B-87, HRS, the terms and conditions of the purchaser's contract for sale, and applicable common law.

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This Amendment 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 amendment to the 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, material changes, or pertinent changes 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.

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 amendment may be used by the Developer for promotional purposes only if it is used with the last Developer's Public Report in its entirety.

Prospective purchasers and purchasers are encouraged to read this amendment carefully and to seek professional advice.

Summary of Changes from Earlier Developer's Public Report are Described Beginning on the Next Page

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Summary of Changes from Earlier Developer's Public Report:

This summary contains a general description of the changes, if any, made by the developer since the last Developer's Public Report was issued an effective date. It is not necessarily all inclusive. Prospective purchasers and purchasers must read this amendment together with the last Developer's Public Report with the effective date as noted on the top of page 1 if they wish to know the specific changes that have been made.

Changes made are as follows (include a description of what the change is and page number and or exhibit alphabet or number; additional pages may be used):

The Developer signed the First Amendment to Declaration of Condominium Property Regime of McLernon Estates (hereinafter referred to as "First Amendment") for this project on January 19, 2010. The First Amendment and an amendment to Condominium Map 4615 were recorded on February 4, 2010. The amended Condominium Map reflects the elimination of the Common Element Cesspool area with the land area being added to Unit 2. In addition, Exhibit A of the First Amendment reflects a Lot size increase of 140 square feet. As a result, the Developer's Public Report has been amended to reflect the new information contained in the First Amendment and additional current project information as follows:

1. Page ii has been amended to reflect the Exhibits that have been amended.
2. Page 3 Section 1.1 has been amended to reflect the assignment of tax map key numbers to the Units and the amended land area of Parcel 19 (See Exhibit A of the First Amendment).
3. Page 5, Section 1.12 has been amended to reflect an updated Title Report.
4. Page 7, Section 1.15 has been amended to remove an unnecessary reference to a resolved violation of a Kauai County building code or other county regulation.
5. Page 9, Section 2.2 has been amended by adding the name of a Real Estate Agent.
6. Page 10, Section 3.1 has been amended by reflecting the recording information for the First Amendment.
7. Page 10, Section 3.3 has been amended to reflect the recording date of an amendment to the Condominium Map.
8. Page 11, Section 3.6 has been amended to reflect the elimination of Paragraph E of Section 20.1 of the Declaration.
9. Page 14, has been amended by checking the box in Section 5.6.1 and to reflect a reference to Page 18a in Section 5.6 consistent with the current Real Estate Commission Public Report form.
10. Page 16, Section 5.7.1 and 5.7.8 contain minor changes. The mortgage referred to in Section 5.7.8 now refers to one mortgage as to Unit 1 only. New metes and bounds are also included.
11. Page 18, paragraph 6.1 has been amended to refer to Exhibit F for a summary of recorded encumbrances.

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Changes continued:

12. Page 18a has been amended as follows: paragraph 5 has been amended to remove the reference to common cesspool expenses; the second paragraph 5 (typo) has been removed because the Developer has retained a Real Estate Broker and, in its place, paragraph 6 regarding new septic systems has been inserted; and, a new paragraph 7 regarding water meters has been added.
13. Exhibit A has been amended to reflect Amended Condominium Map No. 4615.
14. Exhibit C has been amended to reflect the change in the land area of Unit 2's limited common element. It was increased from 6,628 square feet to 6,779 square feet.
15. Exhibit E has been amended by removing the 151 square foot common element and changing the size of Unit 2's limited common element.
16. Exhibit F has been amended by adding First Amendment to Declaration information and removing reference to the mortgage that affected the entire Lot and replacing it with one mortgage affecting Unit 1 only.

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The Developer declares subject to the penalties set forth in Section 514B-69, HRS that this project continues to conform 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 as amended, 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 as amended, 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 as amended and the exhibits attached to this report (if any) as amended 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 as amended 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 as amended at least 30 days prior to the anniversary date of the effective date of this report.

DAVID E. MCLERNON and LYNN CAROL MCLERNON  
Printed Name of Developer

By:  5.20.10  
Duly Authorized Signatory\* Date

By:  5.20.10  
Duly Authorized Signatory\* Date

DAVID E. MCLERNON and LYNN CAROL MCLERNON/Owners and Developers  
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.**

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**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 (as to Unit 1 only) <input type="checkbox"/> No
Fee Owner's Name if Developer is not the Fee Owner	
Address of Project	3110 and 3116 Poipu Road, Koloa, Hawaii 96756
Address of Project is expected to change because	Address is not expected to change
Tax Map Key (TMK)	(4) 2-8-010-019 0001 & 0002
Tax Map Key is expected to change because	Tax Map Key is not expected to change
Land Area	14,936 square feet
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	Two (2) dwellings
Floors Per Building	Dwellings: one (1) floors
Number of New Building(s)	0
Number of Converted Building(s)	2
Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	Wood, concrete, and glass

**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
Unit 1	1	5/3	1,340 sq. ft.	400 sq. ft.	Carport	
				100 sq. ft.	Lanai	1840 sq. ft.
Unit 2	1	5/3	1,340 sq. ft.	400 sq. ft.	Carport	
				252 sq. ft.	Lanai	1992 sq. ft.
See Exhibit C.						

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.

**1.9 Common Elements**

**Common Elements:** 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 E.  
 Described as follows:  
 See Exhibit E

Common Element	Number
Elevators	0
Stairways	0
Trash Chutes	0

**1.10 Limited Common Elements**

**Limited Common Elements:** 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 E.  
 Described as follows:  
 See Exhibit E

**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: See Section 5.3 item I, Section 12.1 and Section 12.2 of the Bylaws regarding care and replacement of pets.
<input type="checkbox"/>	Number of Occupants:
<input checked="" type="checkbox"/>	Other: See Section 10.1, Section 13.2, and Section 13.3 of the Declaration.
<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 F describes the encumbrances against title contained in the title report described below.  
 Date of the title report: May 17, 2010  
 Company that issued the title report: Title Guaranty of Hawaii, Inc.

**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:</p> <p>Based on the Architect's Condition Report dated January 12, 2007 prepared by Avery H. Youn, Licensed Professional Architect, Registration No. 3576 the Developer states that the structural components, mechanical and electrical installations of the structure located on Units 1 and 2 appear to be in satisfactory and sound condition for the stated age thereof.</p>	
<p>Developer's statement of the expected useful life of each item reported above:</p> <p>Based on the Architect's Condition Report dated January 12, 2006, prepared by Avery H. Youn Licensed Professional Architect, Registration No. 3576, the Developer states that the structure and related systems and components have an expected useful life in excess of approximately thirty-five (35) years for Unit 1 and approximately twenty-five (25) years for Unit 2.</p>	
<p>List of any outstanding notices of uncured violations of any building code or other county regulations:</p> <p>n/a</p>	
<p>Estimated cost of curing any violations described above:</p> <p>n/a</p>	

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

## 2. PERSONS CONNECTED WITH THE PROJECT

<b>2.1 Developer(s)</b>	Name: David E. McLernon and Lynn Carol McLernon Business Address: 3110 and 3116 Poipu Road Koloa, Hawaii 96756 Business Phone Number: (808) 482-0999 E-mail Address: n/a
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).	n/a
<b>2.2 Real Estate Broker</b>	Name: Ocean Rock Properties (as to Unit 1 only) Business Address: 5737 Tapa Street, Koloa, Hawaii 96756 Business Phone Number: (808) 346-1895 E-mail Address:
<b>2.3 Escrow Depository</b>	Name: Title Guaranty Escrow Services, Inc. Business Address: 235 Queen Street, First Floor Honolulu, Hawaii 96813 Business Phone Number: (808) 521-0211
<b>2.4 General Contractor</b>	Name: n/a Business Address: Business Phone Number:
<b>2.5 Condominium Managing Agent</b>	Name: Self-Managed by the Association Business Address: Business Phone Number:
<b>2.6 Attorney for Developer</b>	Name: Glen T. Hale, Hale & Goldberg LLP Business Address: 2970 Kele Street, Suite 210 Lihue, HI 96766 Business Phone Number: (808) 245-4100

### 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	April 9, 2008	2008-057910

Amendments to Declaration of Condominium Property Regime		
Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	January 19, 2010	2010-016309

#### 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
Bylaws	April 9, 2008	2008-057911

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

#### 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	4615
Dates of Recordation of Amendments to the Condominium Map:	
February 4, 2010.	

**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 checked="" type="checkbox"/> (See Exhibit I attached)
Have Been Adopted and Date of Adoption	<input type="checkbox"/>
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%	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> <ul style="list-style-type: none"> <li>A. Execute and/or record any easement required by any State or County agency or as may be required by a private or public utility company;</li> <li>B. Execute and/or record any document required by any State or County agency to complete the development of the Project and/or to obtain approval of the Project's Public Report.</li> <li>C. Execute and/or record any document, including easements required by any State or County agency or any private or public utility company necessary to provide for utilities to the project or any other matters necessary to the project.</li> <li>D. Maintain and/or repair any portion of an Apartment Unit Owner's property that is not being maintained in top condition as determined solely by the Developer.</li> </ul>

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

<p>Status of Construction: This Project is a conversion of two fully constructed and existing dwelling to condominium status. Apartment Unit 1 was completed in 1992 and Apartment Unit 2 was completed in 1985. Said buildings are in compliance with all zoning and building ordinances and codes, rules, regulations or other requirements at the time of their construction. No variance has been granted from any ordinance, code, rule, regulation or other requirement in force at the time of their construction or from any other ordinance, code, rule, regulation or other requirement. The project has no legal nonconforming conditions, uses, or structures.</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>n/a</p>
<p>Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:</p> <p>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. (see page 18a)

**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.</p> <p><i>If this box is checked, Section 5.6.2, which follows below, will not be applicable to the project.</i></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>

## 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. **Developer's Public Report (and any amendments)**
2. **Declaration of Condominium Property Regime (and any amendments)**
3. **Bylaws of the Association of Unit Owners (and any amendments)**
4. **Condominium Map (and any amendments)**
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: (1) Deed; (2) Real Property Mortgage and Financing Statement (affecting Unit 1 only); and (3) Metes and Bounds Description Dated January 23, 2006 of Parcel 19, at Koloa, Kauai, Hawaii; and Surveyor's Certification (Doc. No. 2010-016308)

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

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

### 1. Restrictive Covenants

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

### 2. Replacement or Remodeling

There are currently two residential improvements constructed on Apartment Units 1 and 2 of the project. These structures can be replaced by or remodeled as allowed by law and project documents. The prospective purchaser shall have the right to undertake such work at purchaser's expense. The purchaser shall also, in such event, file the "as-built" certificate within thirty days of completion of the residence in conformance with Section 514B-34, Hawaii Revised Statutes, and record an amendment of the Declaration of Condominium Property Regime ("Declaration") to describe the residence. The County of Kauai Planning Department, in order to process the necessary permits for the construction of any other structure, requires authorization from at least 75% of the legal and equitable ownership of the entire project, consistent with the Declaration and the Bylaws ("condominium documents").

### 3. County Codes and Ordinances

Except as limited specifically by the condominium documents, all uses permitted in the residential zone are permitted. A prospective purchaser should review County restrictions, if any, applicable to the portion of the project that is zoned Open. Uses in one zone are not the same as in the other, and the prospective purchaser should consult the appropriate county agency for information on uses and construction in the respective zones.

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

### 4. Environmental Assessment

With reference to Unit 1 and Unit 2, the Developer neither prepared nor commissioned a Phase I Environmental Site Assessment and makes no representations or warranties whatsoever. The Developer has made no independent investigation as to asbestos or other hazardous substances in the apartments or in, under or around the Project, including but not limited to, radioactive materials, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wasters, toxic substances, and any and all other substances or materials defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under, or for the purposes of, hazardous materials laws. Buyer acknowledges that in light of the age of the Project, there may be asbestos and other hazardous substances in the apartments, or in, under or around the Project. Because of the possible presence of such substances, Buyer should have the apartment inspected to determine the extent (if any) of such contamination and any necessary remedial action. The Developer will not correct any defects in the apartment or in the Project or anything installed or contained therein and Buyer expressly release the Developer from any liability Buyer if any hazardous materials are discovered.

(See Page 18a)

5. Common Element Expenses

Common Element Expenses: Each Apartment Unit owner shall be liable for and shall pay a share of the Project's common expenses, if any, in proportion to the common interest appurtenant to the Apartment Unit. Said common expenses shall include all charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration and operation of the Project including, but not limited to the following:

- A. maintenance, repair, replacement and restoration of the common elements not limited to a particular Apartment Unit's use;
- B. premiums for hazard and liability insurance as required by this Declaration or by law, whichever is greater;
- C. all available utility services and easements, including electricity, water, common telephone expense, etc., unless separately metered or charged;
- D. management fees, if any; and
- E. all other expenses necessary for the upkeep, maintenance, management and operation (including real property tax on common elements, if any) actually incurred on or for the common elements.

See Article 14, Section 14.1 of Declaration.

6. Septic Systems

The Developer replaced the cesspool that was previously located within the common element as shown on the original condominium map. The cesspool was converted to an approved septic system that serves the dwelling on Unit 2. The new septic system occupies approximately the same space as the cesspool. The Developer also installed a new septic system that serves the dwelling on Unit 1. The location of the new septic system is reflected on Amended Condominium Map No. 4615.

7. Water Meters

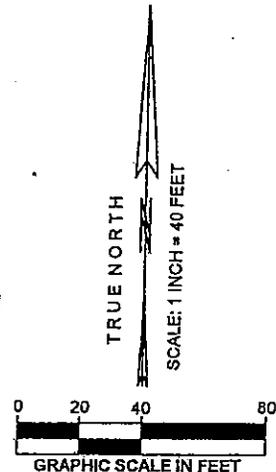
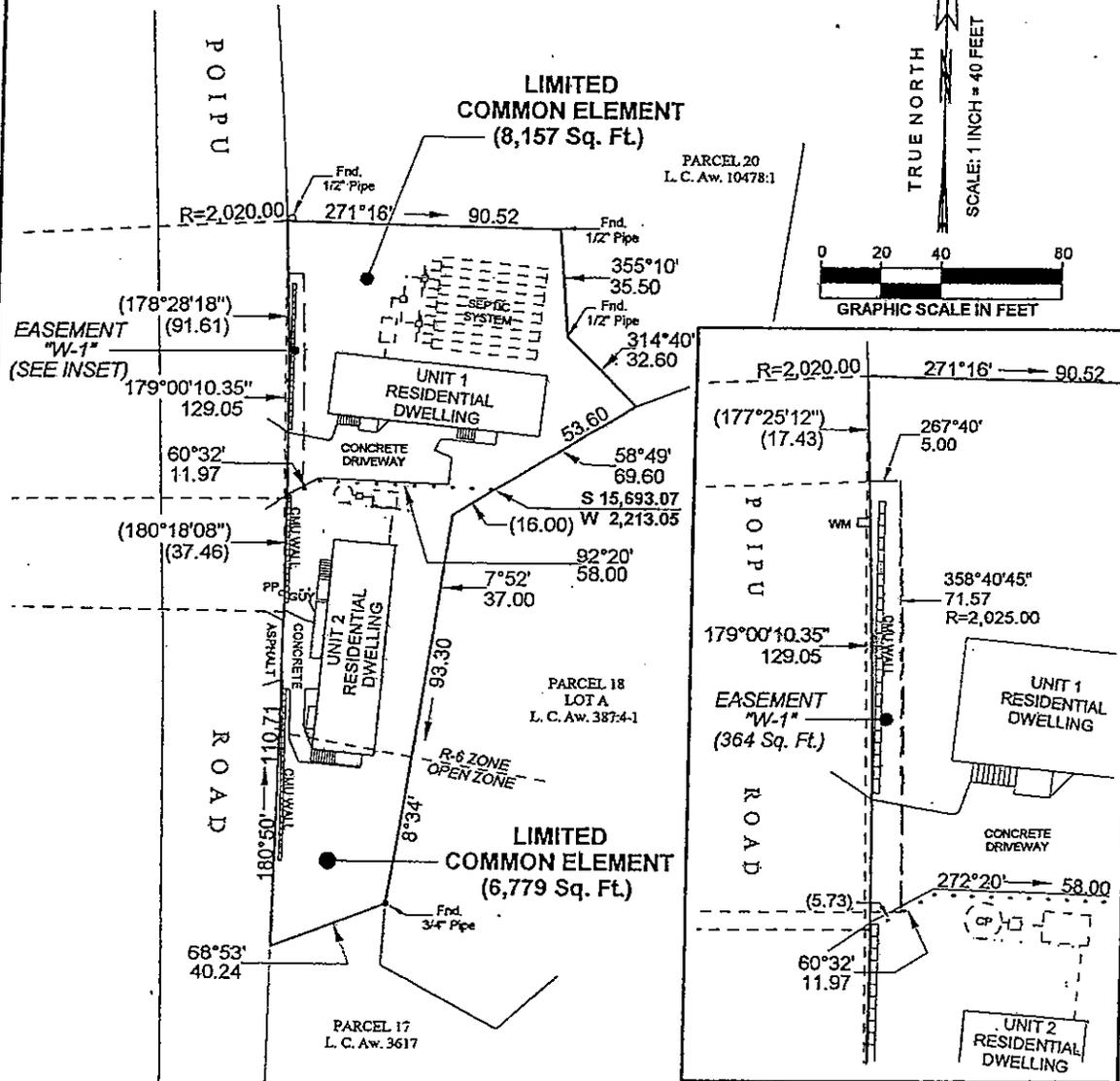
The Developer intends to install a second water meter to service the dwelling on Unit 1. Easement W-1 will remain in place to the extent necessary to install, maintain and repair (if necessary) the separate water meter and water lines for the dwelling on Unit 2.

EXHIBIT A  
AMENDED CONDOMINIUM MAP NO. 4615 (CPR MAP)

**NOTES:**

1. This project does not involve the sale of individual subdivided lots. The dotted lines on the Condominium Map are for illustration purposes only. They represent either a unit or common element.
2. Underground utilities, septic tanks, etc. were not field located except as shown. Information for the existing septic systems shown taken from construction plans by Peter N. Taylor, Inc., "as-built by Pipemasters, Lic. C-28570".
3. The location, existence, size, depth, condition, capacity, etc. of any drainage system, sub-surface water system, cesspool/septic tank system, sewer line, or utility lines to the property, except as shown, are not a part of this map. The appropriate governmental and/or utility agencies should be contacted for this information.
4. All coordinates based on Government Survey Triangulation Station "LAAUKAHI".
5. Easement "W-1" affecting Unit 1 in favor of Unit 2 for water line purposes. (364 Sq. Ft.)
6. R-6/Open Zone line scaled from Planning Department Zoning Map.

CLS HAWAII  
Land Surveying & Mapping  
P.O. Box 777  
Kalaheo, Kauai, Hawaii 96741  
808.635.3700 \* fax 808.332.8910  
surveyor1@CLSHawaii.com



AMENDED  
CONDOMINIUM MAP #4615  
FOR  
"McLERNON ESTATES"  
UNITS 1 & 2  
AND DESIGNATION OF EASEMENT "W-1"  
BEING PARCEL 19  
BEING A PORTION OF  
L. C. Aw. 3242, Ap. 1 TO HOKII  
KOLOA, KAUAI, HAWAII  
Tax Map Key: (4) 2 - 8 - 010: 019  
Area: 14,936 Sq. Ft.  
December 30, 2009



THIS WORK WAS PREPARED BY ME  
OR UNDER MY DIRECT SUPERVISION

*Roger M. Cairns*  
ROGER M. CAIRNS  
Licensed Professional Land Surveyor  
Certificate Number 7919  
Expires 04/30/10

**EXHIBIT C**

**AMENDED SCHEDULE OF APARTMENT UNITS  
AND COMMON INTERESTS**

Quantity	Unit No.	Area of Unit* (Sq. ft.)	No. of Br./Bath	Appx. Net Living Area (Sq. Ft.)	Appx. Other Area (Sq. Ft.)	% of Common Interest
1	Unit 1	8,157	5/3	1,340	Carport – 400 Lanai – 100	50%
		“	n/a	n/a		
1	Unit 2	6,779	5/3	1,340	Carport – 400 Lanai - 252	50%
			n/a	n/a		

Pursuant to Section 16-107-5, Hawaii Administrative Rules, reference is hereby made to the method by which the common interest has been computed. There are two (2) units, each of which will burden the common elements equally. Therefore, the assessment of undivided interest both for common expense and for voting is 50% for each unit.

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

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

**END OF EXHIBIT C**

**EXHIBIT E**

**AMENDED COMMON ELEMENTS OF THE PROJECT**

The common elements of the project are:

- A. The land in fee simple;
- B. all commonly used present or future ducts, vents, shafts, sewer lines, sewage treatment equipment and facilities (if any), electrical equipment, telephone equipment, pipes, wiring, and other central and appurtenant installations over, under and across the Project which serve more than one Apartment Unit for services such as power, light, water, gas (if any), cablevision (if any), sewage, refuse, telephone, radio and television signal distribution, and irrigation;
- C. any and all other future elements and facilities in common use or for the benefit of Apartment Unit owners or necessary to the existence, maintenance and safety of the Project;
- D. The limited common elements and all other portions of the project, other than the Units, necessary or convenient to the project's existence, maintenance and safety or that are normally in common use and which are not included as part of a Unit, including, but not limited to those common elements described and shown on the Condominium Map; and

The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof, except as provided in the Condominium Property Act. Any such partition or division shall be subject to the prior consent thereto by the holder(s) of all mortgage(s) of any condominium unit(s) which are filed of record.

**LIMITED COMMON ELEMENTS OF THE PROJECT**

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

<u>Apartment Unit Number</u>	<u>Area of Limited Common Element</u>
1	8,157 square feet
2	6,779 square feet

Any shutters, storage, closets, awnings, window boxes, doorsteps, stoops, porches,

balconies, lanais, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but which are located outside the Unit's boundaries, are limited common elements appurtenant exclusively to that Unit.

Any entrance, exit, gateway, entry, patio, yard, driveway or steps which would normally be used only for the purposes of ingress and egress from a Unit shall be a limited common element appurtenant to and reserved for the exclusive use of such Unit.

Except for liability created by negligence or intentional acts, all costs of every kind pertaining to the aforesaid limited common elements, including, but not limited to, costs of landscaping, maintenance, repair, replacement and improvement, shall be borne solely by the owner of the unit to which said limited common elements are appurtenant. Utilities will be connected at the expense of individual unit owners.

\*Note: Land areas referenced herein are not legally subdivided lots. Also, See Note at bottom of Exhibit C.

**END OF EXHIBIT E**

**EXHIBIT F**

**AMENDED ENCUMBRANCES AGAINST TITLE**

(Affecting Unit 1 only)

1. Real Property Taxes. Check with the County of Kauai, Department of Finance, Real Property Tax Division, for detailed information.
2. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: DEED  
DATED: September 8, 1942  
RECORDED: Liber 1720 Page 24

3. INSTRUMENT: DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "MCLERNON ESTATES" CONDOMINIUM PROJECT

DATED: April 9, 2008  
RECORDED: Document No. 2008-057910  
MAP: 4615 and any amendments thereto

Said Declaration of amended by instrument dated January 19, 2010, recorded as Document No. 2010-016309.

4. The terms and provisions contained in the following:

INSTRUMENT: BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS

DATED: April 9, 2008  
RECORDED: Document No. 2008-057911

5. REAL PROPERTY MORTGAGE AND FINANCING STATEMENT (affecting Unit 1 only)

MORTGAGOR: DAVID E. MCLERNON (also known as David E. McLernon III), and LYNN CAROL MCLERNON, husband and wife

MORTGAGEE: FIRST HAWAIIAN BANK, a Hawaii corporation

DATED: October 3, 2008

RECORDED: Document No. 2008-156294

**END OF EXHIBIT F**