

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

CONDOMINIUM PROJECT NAME	MAGOUN RESIDENCE CONDOMINIUM
Project Address	3781 Papalina Road Kalaheo, HI 96741
Registration Number	6722
Effective Date of Report	March 9, 2009
Developer(s)	DR. THATCHER MAGOUN and NINA M. MAGOUN, husband and wife

**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.]

### **SPECIAL NOTICE:**

1. Issuance of an effective date for this Public Report does not constitute an approval of the project by the Real Estate Commission, or any other governmental agency, nor does it imply that all County codes, ordinances and subdivision requirements have been complied with.
2. This project does not involve the sale of individual subdivided lots. The land area beneath and immediately adjacent to each unit, as shown on the Condominium Map, is designated as a LIMITED COMMON ELEMENT for that unit and does not represent a legally subdivided lot. The dotted lines on the Condominium Map merely represent the location of the limited common element assigned to each unit.
3. Facilities and improvements normally associated with County approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not be provided for and services such as County street maintenance and trash collection will not be available for interior roads and driveways.

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

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## **General Information On Condominiums**

A condominium is a special form of ownership of real property. To create a condominium in Hawaii after July 1, 2006, the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, must be followed. In addition, certain requirements and approvals of the county in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land and/or the building(s) and other improvements are leased to the purchaser. The lease for the land usually requires that at the end of the lease term, the lessees (unit owners) deliver their interest in the land to the lessor (fee property owner).

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

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

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

## **Operation of the Condominium Project**

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

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as a unit owner. The Board and officers can take certain actions without the vote of the unit owners. For example, the Board may hire and fire employees, increase or decrease maintenance fees, adopt budgets for revenues, expenses and reserves and regulate the use, maintenance, repair and replacement of common elements. Some of these actions may significantly impact the unit owners.

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

# 1. THE CONDOMINIUM PROJECT

## 1.1 The Underlying Land

Fee Simple or Leasehold Project	<input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (attach Leasehold Exhibit)
Developer is the Fee Owner	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Fee Owner's Name if Developer is not the Fee Owner	N/A
Address of Project	3781 Papalina Road Kalaheo, Hawaii 96741
Address of Project is expected to change because	Developer anticipates that the County will be issuing new addresses in the near future
Tax Map Key (TMK)	(4) 2-3-016-039
Tax Map Key is expected to change because	each Unit is entitled to its own address and TMK number
Land Area	1.77 acres
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	N/A

## 1.2 Buildings and Other Improvements

Number of Buildings	2
Floors Per Building	Unit 1 – 1 floor and Unit 2 – 2 floors
Number of New Building(s)	None
Number of Converted Building(s)	2
Principle Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	Wood frame with concrete foundation.

## 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	1,949	427	Garage	2,386
1	1	2/2	1,090	260	Deck	2,878
				612	Boat Garage	
				508	Garage	
				108	Utility	
				300	Lanai	
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 Stall in the Project:	5
Number of Guest Stalls in the Project:	0
Number of Parking Stalls Assigned to Each Unit:	Unit 1 = 2 stalls and Unit 2 = 3 stalls
Attach Exhibit _____ specifying the Parking Stall number(s) assigned to each unit and the type of parking stall(s) (regular, compact or tandem and indicate whether covered or open).	
If the Developer has reserved any rights to assign or re-assign parking stalls, describe such rights.	

**1.5 Boundaries of the Units**

Boundaries of the unit:  
 (a) structures and improvements of any kind located wholly within the limited common element(s) of the individual units; (b) all pipes, wires, conduits or other utility and service lines in or on such unit building, or if the same are not utilized by more than one apartment; and (c) each addition, replacement and other improvement of the apartment as permitted by law.

**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):  
 Unit owners are allowed to make changes as permitted by law. The costs and expenses incurred for such improvements to the apartment as permitted under the laws or the County of Kauai shall be charged to the owners of the unit which is altered, changed or improved.

**1.7 Common Interest**

Common Interest: Each unit will have a percentage interest in the common elements appurtenant to each unit. This interest is called the "common interest". It is used to determine each unit's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by unit owners. The common interest for each unit in this project, as described in Declaration, is:

Described in Exhibit \_\_\_\_\_.

As follows:  
 Unit 1 – 50%; Unit 2 – 50%

**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**

**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  B .

Described as follows:

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  C .

Described as follows:

Note Unit 2 will bear the cost of obtaining a separate water meter if the current sharing of water is changed. The existing meter shall remain with Unit 1. Unit 1 has a concrete driveway to and thru the Common Element Roadway. Unit 2 has an unpaved driveway to the Common Element Roadway

**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: Dogs, cats & other household pets in reasonable numbers are permitted. Bylaws §5.3
<input type="checkbox"/>	Number of Occupants:
<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  D  describes the encumbrances against title contained in the title report described below.

Date of the title report: October 15, 2008

Company that issued the title report: Title Guaranty of Hawaii, 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	R-4
<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 Declaration or Bylaws?			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Variances to zoning code have been granted.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Describe any variances that have been granted to zoning code			N/A	

**1.14 Other Zoning Compliance Matters**

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

**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></p> <p><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:          Developer adopts the Condition report by Avery H. Youn dated June 26, 2008 which states that Units 1 and 2 appear to be in a satisfactory and sound condition for the stated age thereof. See Exhibit I.</p>	
<p>Developer's statement of the expected useful life of each item reported above:          Unit 1 – 20 years.          Unit 2 – 30 years. See Exhibit I.</p>	
<p>List of any outstanding notices of uncured violations of any building code or other county regulations:          N/A</p>	
<p>Estimated cost of curing any violations described above:          N/A</p>	
<p><b>Verified Statement from a County Official</b></p>	
<p>Regarding any converted structures in the project, attached as Exhibit <u> E </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 non-conforming 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 style="text-align: center;">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><b>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii?</b>  <b>If answer is "Yes", provide information below.</b></p>	<p><input 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><b>Does the project contain any assisted living facility units subject to Section 321-11(10), HRS?</b>  <b>If answer is "Yes", complete information below.</b></p>	<p><input type="checkbox"/> 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: DR. THATCHER MAGON and NINA M. MAGOUN</p> <p>Business Address: 3738 Papalina Road Kalaheo, Hawaii 96741</p> <p>Business Phone Number : (808) 332-9430</p> <p>E-mail Address: mthatchnina@earthlink.net</p>
<p>Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary).</p>	<p>N/A</p>
<p><b>2.2 Real Estate Broker</b></p>	<p>Name: None selected, see page 18</p> <p>Business Address:</p> <p>Business Phone Number:</p> <p>E-mail Address:</p>
<p><b>2.3 Escrow Depository</b></p>	<p>Name: Title Guaranty Escrow Services, Inc</p> <p>Business Address: 235 Queen Street Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808) 521-0211</p>
<p><b>2.4 General Contractor</b></p>	<p>Name: N/A</p> <p>Business Address:</p> <p>Business Phone Number:</p>
<p><b>2.5 Condominium Managing Agent</b></p>	<p>Name: Self-Managed by the Association</p> <p>Business Address:</p> <p>Business Phone Number:</p>
<p><b>2.6 Attorney for Developer</b></p>	<p>Name: Steven R. Lee, Esq.</p> <p>Business Address: 4334 Rice Street, Suite 204C Lihue, Hawaii 96766</p> <p>Business Phone Number: (808) 246-1101</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	June 30, 2008	2008-114893

**Amendments to Declaration of Condominium Property Regime**

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	February 23, 2009	2009-027806

**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	June 30, 2008	2008-114894

**Amendments to Bylaws of the Association of Unit Owners**

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	February 23, 2009	2009-027807

**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	4677
Dates of Recordation of Amendments to the Condominium Map:	

**3.4 House Rules**

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

The House Rules for this project:

Are Proposed	<input type="checkbox"/>	
Have Been Adopted and Date of Adoption	<input type="checkbox"/>	
Developer does not plan to adopt House Rules	<input checked="" 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%	
Bylaws	67%	

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

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

#### 4. CONDOMINIUM MANAGEMENT

##### 4.1 Management of the Common Elements

Management of the Common Elements: 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"/>	Not affiliated with the Developer
<input checked="" type="checkbox"/>	None (self-managed by the Association)
<input type="checkbox"/>	The Developer or an affiliate of the Developer
<input type="checkbox"/>	Other (explain)

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

Estimate of the Initial Maintenance Fees: 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 F 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"/>	Electricity for the common elements
<input type="checkbox"/>	Gas for the common elements
<input type="checkbox"/>	Water
<input type="checkbox"/>	Sewer
<input type="checkbox"/>	TV Cable
<input 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"/>	Electricity for the Unit only
<input checked="" type="checkbox"/>	Gas for the Unit only
<input checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer
<input checked="" type="checkbox"/>	TV Cable
<input checked="" type="checkbox"/>	Other (specify) Water - (divided equally each month. See page 5)

**5. SALES DOCUMENTS**

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

<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: May 5, 2008 Name of Escrow Company: Title Guaranty Escrow of Hawaii, Inc. Exhibit <u>H</u> contains a summary of the pertinent provisions of the escrow agreement.
<input checked="" type="checkbox"/>	Other: Specimen Condominium Unit Deed

**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	See Page 18, paragraph 7.

**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

Appliances:

None

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

<p>Status of Construction:                  The residence of Unit 1 was completed in 1974 and the residence of Unit 2 was completed in 1992. Additions to Unit two occurred in 1993, 1997 and 2001.</p>
<p>Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.</p>
<p>Completion Deadline for any unit not yet constructed, as set forth in the sales contract:                  N/A</p>
<p>Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:                  N/A</p>

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

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

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

<input 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>

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

<p><b>Box A</b></p> <p><input type="checkbox"/></p>	<p>The Developer has submitted all information and documents required by law and the Commission prior to the disbursement of purchaser deposits before closing. This means that the Developer may use such deposits before closing. If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>If Box A is checked, you should read and carefully consider the following notice, which is required by law:</p> <p><b><u>Important Notice Regarding Your Deposits:</u> Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.</b></p>
<p><b>Box B</b></p> <p><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. Not a Subdivision. This is a condominium project which should not be confused with a subdivision. A purchaser of a unit will be conveyed a condominium unit together with an "undivided" interest in the common elements of the project. The entire parcel of land upon which the project is situated is designated as a common element. That portion of the common element which each purchaser has the exclusive right to use is called a limited common element or area, but is not a separate, legally subdivided lot.

2. Reserves. Developer discloses that no "reserve study" was done in accordance with Section 514B-148, Hawaii Revised Statutes.

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

4. 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 developer's public report and its amendments to the prospective purchaser. The conditions for a binding sales contract are listed on pages 16-17, paragraph 5.8.1

5. Unit 2 will bear the cost of obtaining a separate water meter if the current sharing of water is changed. The existing meter shall remain with Unit 1.

6. Voting and written consent for Association issues. The condominium project is comprised of two (2) units. Any vote or written consent requiring a "majority" vote or a percentage vote greater than a "majority" for Association issues requires the approval and agreement of the Owners of both Units.

7. Section 5.3, Blanket Liens. LENDER HAS PRIORITY OVER A BUYER'S RIGHTS UNDER A SALES CONTRACT, AND HAS A RIGHT TO TERMINATE SALES CONTRACT UPON FORECLOSURE OF ITS MORTGAGE BEFORE AN APARTMENT SALE IS CLOSED. IN SUCH EVENT BUYER SHALL BE ENTITLED TO A REFUND OF ALL DEPOSITS, LESS ESCROW CANCELLATION FEES.

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 515B-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 Sections 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 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.

DR. THATCHER MAGOUN and NINA M. MAGOUN  
Printed Name of Developer

By: *Thatcher Magoun* 6/30/08  
Duly Authorized Signatory\* Date

By: *Nina M. Magoun* June 30, 2008  
Duly Authorized Signatory\* Date

DR. THATCHER MAGOUN and NINA M. MAGOUN  
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.**

## **EXHIBIT "A"**

### **Description of Units**

Two (2) freehold estates are hereby created and designated, and hereinafter referred to as "condominium units" (also referred to herein as "unit" or "units"). Specifically, the two (2) estates so created and designated are referred to hereinafter as Units 1 and 2. Said units consist of the undivided interest in the common elements of the project, the limited common element(s) appurtenant to the unit, as shown on the Condominium Map for the project and the unit, if any, constructed or to be constructed on the limited common element. The units are designated on plans incorporated herein by reference and being filed separately with the Bureau of Conveyances of the State of Hawaii simultaneously herewith as part of the Condominium Map referenced on the first page hereof. The units are described as follows:

(a) Unit 1 consists of an elevated one-story dwelling that was built in 1974. The entire structure is wood frame with a concrete foundation. The residence contains 1,959 net square feet of living space. The unit contains three bedrooms, two full bathrooms, a living room, a combined family/dining room, a kitchen, a storage room, a sewing room, for a total of ten rooms. The residence also contains a garage consisting of 427 square feet. The structure is located on the east end of the property towards the northern property line within a 0.589 acre limited common element.

(b) Unit 2 consists of an elevated two-story dwelling that was built in 1992 and renovated 2003. It consists of a total of 2,878 square feet. The entire structure is wood frame with a concrete foundation. The second floor residence contains two bedrooms, two full bathrooms, a combined kitchen/dining room and a living room equal to 1,090 net square feet of living space. It has 260 square feet of deck area. The first floor consists of a 508 square foot garage, a 612 square foot boat garage, a 108 square foot utility area and a 300 square foot lanai equaling a total of 1,528 square feet. The structure is located on the east end of a 0.980 acre limited common element.

Unit 1 has 2 covered parking spaces.

Unit 2 has 1 covered parking space and 2 uncovered parking spaces.

The condominium limited common elements are located in the manner shown on the said Condominium Map. Each unit has direct access to Papalina Road over the common element roadway. Unless specifically provided to the contrary herein, the respective units shall not be deemed to include any present or future pipes, wires or conduits or other utility lines running over, under or through any limited common element or apartment which are utilized for or serve all units, the same being deemed common elements as hereinafter provided.

**END OF EXHIBIT "A"**

## **EXHIBIT "B"**

### **COMMON ELEMENTS OF THE PROJECT**

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

(a) the Common Element roadway connecting to both Papalina Road and Waha Road, serves as an access and utility element for the benefit of both units and provides roadway access to real property located to the south of the project, known as Lot B (as depicted on the condominium map) and contains an area of 0.194 acre;

(b) the land in fee simple;

(c) all commonly used present or future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone; and

(d) any and all other future elements and facilities in common use or necessary to the Project.

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.

**END OF EXHIBIT "B"**

**EXHIBIT "C"**

**LIMITED COMMON ELEMENTS OF THE PROJECT**

The limited common elements of the project are:

Certain parts of the common elements, herein referred to as the "limited common elements", are hereby designated and set aside for the exclusive use of one or more units, and such unit(s) shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements 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 Units 1 and 2 are located, shown and designated on the Condominium Map and the table below.

<u>Unit Number</u>	<u>Area of Limited Common Element</u>
1	0.589 acre
2	0.980 acre

Except for liability created by excessive use, negligence or intentional acts, all costs of every kind pertaining to the aforesaid limited common elements or easements , including, but not limited to, costs of landscaping, maintenance, repair, replacement and improvement, shall be borne solely by the owner(s) of the unit(s) to which said limited common elements or easements are appurtenant.

**END OF EXHIBIT "C"**

**EXHIBIT "D"**

**ENCUMBRANCES AGAINST TITLE**

The following encumbrances apply to all Units:

1. Real Property Taxes, if any, that may be due and owing.

2. GRANT

TO : FRANCIS M. F. CHING and RUTH A. CHING, husband and wife

DATED : September 2, 1954

RECORDED : Liber 2865 Page 499

GRANTING : a perpetual easement for ingress and egress for use in common with the owners or occupants of lots bordering thereon, over and across the following described roadway:

All that parcel of land being a portion of Lot 135, Kalaheo Homesteads, Second Series, Land Patent Grant Number 7791 to J. K. Palama, situated between Waha and Papalina Road, Kalaheo, Kona (Koloa), Kauai, Hawaii:

Beginning at a + on a stone, on the southwest corner of this parcel of land and on the east boundary of Waha Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAHIAWA" being 114.46 feet south and 3,462.75 feet east, and running by azimuths measured clockwise from true South:

1. 178° 22' 35.36 feet along Waha Road to a pipe;
2. 236° 24' 490.19 feet through portion of Lot 135, Kalaheo Homesteads;
3. 317° 18' 30.08 feet along Papalina Road, to a + on stone;
4. 56° 24' 513.72 feet through portion of Lot 135, Kalaheo Homesteads, Second Series, Grant 7791, to the point of beginning and containing an area of 15,059 square feet, more or less.

3. MORTGAGE

LOAN/ACCOUNT NO. 7078784654

MORTGAGOR : NINA M. MAGOUN and THATCHER MAGOUN, wife and husband

MORTGAGEE : MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., solely as nominee for MERRILL LYNCH CREDIT CORPORATION, a Delaware corporation

DATED : December 27, 2002

RECORDED : No. 2003-053270

AMOUNT : \$94,500.00

4. MORTGAGE

LOAN/ACCOUNT NO. 6556344

MORTGAGOR : DR. THATCHER MAGOUN and NINA M. MAGOUN, husband and wife

MORTGAGEE : MERRILL LYNCH CREDIT , a Delaware corporation

DATED : February 4, 2003

RECORDED : No. 2003-053271

AMOUNT : Revolving Line of Credit Agreement, up to a maximum amount of \$200,000.00

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

INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "MAGOUN RESIDENCE CONDOMINIUM" CONDOMINIUM PROJECT

DATED : June 30, 2008

RECORDED : Document No. 2008-114893

MAP : 4677 and any amendments thereto

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

INSTRUMENT : BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS

DATED : June 30, 2008

RECORDED : Document No. 2008-114894

**END OF EXHIBIT "D"**

BERNARD P. CARVALHO, JR.  
MAYOR



**COPY**  
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:** February 9, 2009

**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:** MAGOUN RESIDENCE  
Condominium Project (543)

**Tax Map Key:** (4) 2-3-016: 039

The attorney for the above-mentioned condominium project has requested that this office, as an agency of the County of Kauai, review the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai, Section 514 B-5 & B-6, Hawaii Revised Statutes, subject to the disclosures and waivers (item "5" below) specified herein, we certify the following:

1. The developer have contracted architect Avery Youn to certify that the buildings on the proposed project referred to as Magoun Residence 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.

**EXHIBIT "E"**

Senior Condominium Specialist  
Magoun Residence Condominium  
TMK: (4) 2-3-016: 039  
February 9, 2009  
Page two

2. There are no variances approved for the subject property.
3. The parcel does not contain any outstanding nonconforming uses or structures as a result of the adoption or amendments of any ordinances or codes and regulations.
4. There are no notices of violations of County building or zoning codes outstanding according to our records.
5. **WAIVER**  
The foregoing certification is not a warranty to any compliance with applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements relating to the regulations of condominiums under subsection 514 B-84, (a), and (2), Hawaii Revised Statutes.

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

cc: Steven Lee, Attorney at Law  
Dr. Thatcher & Nina Magoun, Project Developers

**END OF EXHIBIT "E"**

EXHIBIT "F"

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee</u>	x	12 months	=	<u>Yearly Total</u>
<u>1</u>	<u>0.00</u>				<u>0.00</u>
<u>2</u>	<u>0.00</u>				<u>0.00</u>
<u> </u>	<u> </u>				<u> </u>
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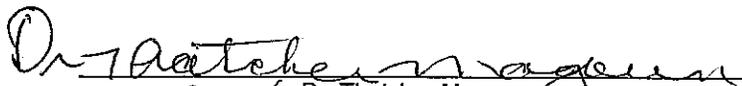
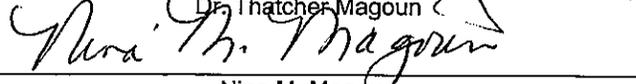
There are no maintenance fees for this project

*The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.*

**Estimate of Maintenance Fee Disbursements:**

	<u>Monthly Fee</u>	x	12 months	=	<u>Yearly Total</u>
<b>Utilities and Services</b>					
Air Conditioning	_____				_____
Electricity	_____				_____
[    ] common elements only					
[    ] common elements and apartments					
Elevator	_____				_____
Gas	_____				_____
[    ] common elements only					
[    ] common elements and apartments					
Refuse Collection	_____				_____
Telephone	_____				_____
Water and Sewer	_____				_____
<b>Maintenance, Repairs and Supplies</b>					
Building	_____				_____
Grounds	_____				_____
<b>Management</b>					
Management Fee	_____				_____
Payroll and Payroll Taxes	_____				_____
Office Expenses	_____				_____
Insurance	_____				_____
Reserves(*)	_____				_____
Taxes and Government Assessments	_____				_____
Audit Fees	_____				_____
Other	_____				_____
TOTAL	=====				=====

We, Dr. Thatcher Magoun and Nina M. Magoun, the condominium developer, for the Magoun Residence Condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles

  
 \_\_\_\_\_  
 Dr. Thatcher Magoun  
  
 \_\_\_\_\_  
 Nina M. Magoun

6/30/08  
 \_\_\_\_\_  
 Date  
 June 30, 2008  
 \_\_\_\_\_  
 Date

(\*) Developer has not conducted a reserve study in accordance with §514AB-148, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514B-148, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

## EXHIBIT "G"

### SUMMARY OF PURCHASE CONTRACT

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

1. The fact that the Act controls over any portion of a contract to sell a condominium unit.
2. That an effective date for a developer's public report must be in place and a receipt for the same signed by the buyer to have a contract.
3. That all purchaser funds must be held in escrow until the law allows closing and disbursement of the funds. The conditions precedent to release of the funds are enumerated, including in part:
  - a. That Purchaser will receive a copy of the developer's public report for the project.
  - b. That the Purchaser will be deemed to have had an opportunity to read the developer's public report(s) within forty-eight (48) hours after receiving them, unless specifically indicated otherwise. Both Seller and Purchaser have the right to cancel the Contract at any time prior to the date when the Contract becomes effective. Seller and Purchaser also have the right to cancel the Contract at any other time explicitly stated by the Act.
  - c. Purchaser agrees that all payments made will be placed on deposit with escrow pursuant to the terms of the Escrow agreement, and Purchaser is subject to all of the terms of the Escrow Agreement.
  - d. If there is a dual agency by a single broker, it will be disclosed in the contract.
  - e. If the Purchaser shall default:
    - i. The contract may, at the Seller's option, be terminated by written notice to the Purchaser; and
    - ii. Any sums paid by the Purchaser shall belong to the Seller as liquidated damages (up to a maximum of 20% of the total purchaser price); and
    - iii. The Seller may pursue any other remedy, including specific performance, permitted by law or equity. All costs, including reasonable attorney's fees, incurred by reason of default by the Purchaser shall be borne by the Purchaser.

Further, if the Purchaser shall default in making any payment when due, a late charge of one percent (1%) per month shall accrue from the due date until such payment, together with such late charge, is paid, or at any time prior to the time that such payment and late charge is paid in full, the Seller may, at its option, terminate this contract as provided above.

- f. If the Seller shall default:

In the event of default by the Developer, the Purchaser may cancel the contract, may bring an action for damages for breach of contract or seek specific performance under the contract and hold the Developer responsible for costs incurred (see paragraph C-29 of the Standard Form Deposit Receipt and Offer and Acceptance). Further, the Purchaser may

resort to mediation and arbitration in the even of a dispute over the contract or a claimed default, as does the Developer.

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

**END OF EXHIBIT "G"**

## EXHIBIT "H"

### SUMMARY OF PORTIONS OF ESCROW AGREEMENT

The Escrow Agreement ("Agreement") between TITLE GUARANTY ESCROW SERVICES, INC. (the "Escrow"), and DR. THATCHER MAGOUN (the "Seller"), contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. Whenever Seller enters into a purchase contract for the sale of a unit, Seller will require that payments due under the purchase contract be made to Escrow and will deliver an executed copy of the purchase contract to Escrow.
2. Escrow will receive payments under the purchase contract and sums received from any other source with respect to the project. Funds held under the Agreement will initially be deposited in an account for the project. Interest on all funds will be paid to Seller.
3. Escrow will release from the trust fund and disburse Buyer's funds at closing, unless: (a) Buyer has elected to cancel the contract as provided by HRS Section 514B-86 or 90 and receive all funds paid, with an Escrow cancellation fee of up to a maximum of \$250.00; or (b) Seller has not satisfied Escrow that all other requirements of Hawaii Revised Statutes have been met, in which case there shall be no escrow cancellation fee. Provisions of Hawaii's Owner-Occupant law shall not apply to this project.
4. Escrow will return deposited sums to the Buyer without interest if Seller and Buyer give Escrow written notice to return the funds to Buyer or if there is a right to cancellation and refund of monies under the purchase contract or otherwise. Thereafter, in the event of a cancellation as a matter of agreement or right, Buyer's funds shall be returned to Buyer less Escrow's cancellation fee, if any, and all other costs incurred in connection with the Escrow, which will be not less than \$25.00 nor more than \$250.00.
5. Escrow will arrange for and supervise the signing of all documents, which are to be signed subsequent to and contemplated by the purchase contract.
6. As Escrow's compensation for its performance under this Agreement, Escrow will receive its scheduled rate for each unit for which a unit deed of the project is handled by Escrow and recorded in the Bureau of Conveyances of the State of Hawaii. Escrow will record all applicable documents. The cost of title insurance will be an additional amount, based upon scheduled rate and assessed to the Buyer.

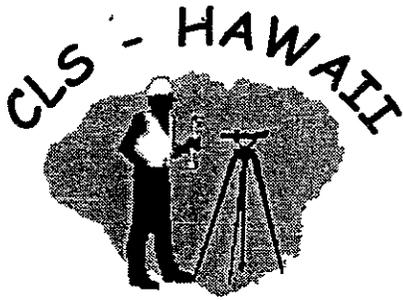
NOTE: Section 514B-87, Hawaii Revised Statutes, provides rescission rights to a purchaser under a binding contract if there is a material change in the Project which directly, substantially and adversely affects the use or value of (1) such purchaser's unit or appurtenant limited common elements, or (2) those amenities of the project for such purchaser's use.

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

END OF EXHIBIT "H"







P.O. Box 777  
Kalaheo, Kauai, Hawaii 96741  
(808) 635-3700 • Fax (808) 332-8910  
surveyor1@clshawaii.com  
www.clshawaii.com

LAND SURVEYING & MAPPING

SURVEYOR'S CERTIFICATION

STATE OF HAWAII )  
 ) SS.  
COUNTY OF KAUAI )

The undersigned, being a licensed professional land surveyor within the State of Hawaii and bearing Certificate Number #7919, hereby certifies to the best of his knowledge that Condominium Map dated April 30, 2008 for the project "MAGOUN RESIDENCE CONDOMINIUM" situate at KALAHEO, KOLOA, KAUAI, HAWAII, and identified by Tax Map Key Number: 4<sup>th</sup> Division, 2-3-016: 039, accurately reflects location and dimensions of the units and the common element. Floor plans and elevations of the structures comprising the project are subject to a separate certification by a registered Hawaii architect or engineer.



*Roger M. Cairns*  
\_\_\_\_\_  
ROGER M. CAIRES

Subscribed and sworn to before me  
This 30 day of MAY, 2008

*Corinne Simao*  
\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii

Printed Name: Corinne Simao  
My commission expires: 10/30/09

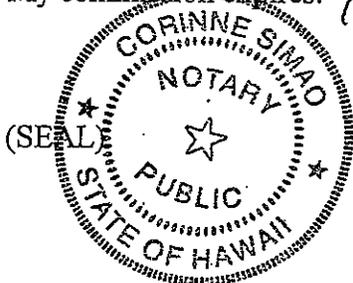


EXHIBIT "I"

AVERY H. YOUN; ARCHITECT  
2980 EWALU STREET  
LIHUE, HAWAII 96766

**"MAGOUN ESTATES CONDOMINIUM"**  
**CERTIFICATE OF ARCHITECT**  
**(Substantially As-Built)**

STATE OF HAWAII            )  
  ) SS.  
COUNTY OF KAUAI        )

The undersigned, being a licensed architect within the State of Hawaii and bearing Registration Number 3576, hereby certifies that:

(a) the attached condominium map, floor plans and elevations of Units 1 and 2 of "MAGOUN ESTATES CONDOMINIUM" are on land designated by Tax Map Key, Fourth Division, 2-3-016: 039, consisting of five (5) sheets of which sheet 1 is the condominium map prepared by Roger M Caires, a Licensed Professional Land Surveyor, and sheets 2 through 5 are the floor plans and elevations prepared or reviewed by the undersigned.

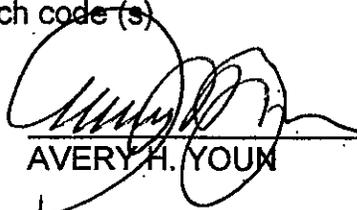
(b) the condominium map accurately reflects location and division of the apartment units and the dimensions of the limited common elements;

(c) the attached floor plans and elevations of the structures on Units 1 and 2 are substantially as-built and constructed;

(d) the drawings are true and correct, and copies of portions of those filed with and approved by the County of Kauai officer having jurisdiction over the issuance of building permits for construction of the project; and

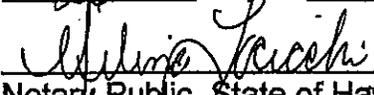
(e) the construction of the buildings appear to be in conformity with all ordinances, codes, rules, regulations, laws and other requirements in force at the time of construction.

This is not a warranty of compliance with all rules and regulations, only a warranty that inspection was made and no violations appear to exist. No right shall accrue to any third party for subsequent discovery of any problems with code compliance or for future changes in such code(s).

  
\_\_\_\_\_  
AVERY H. YOUN



Subscribed and sworn to before me this  
2<sup>nd</sup> Day of June, 2008

  
\_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: 4/20/2012

OS

WS

**NOTES:**

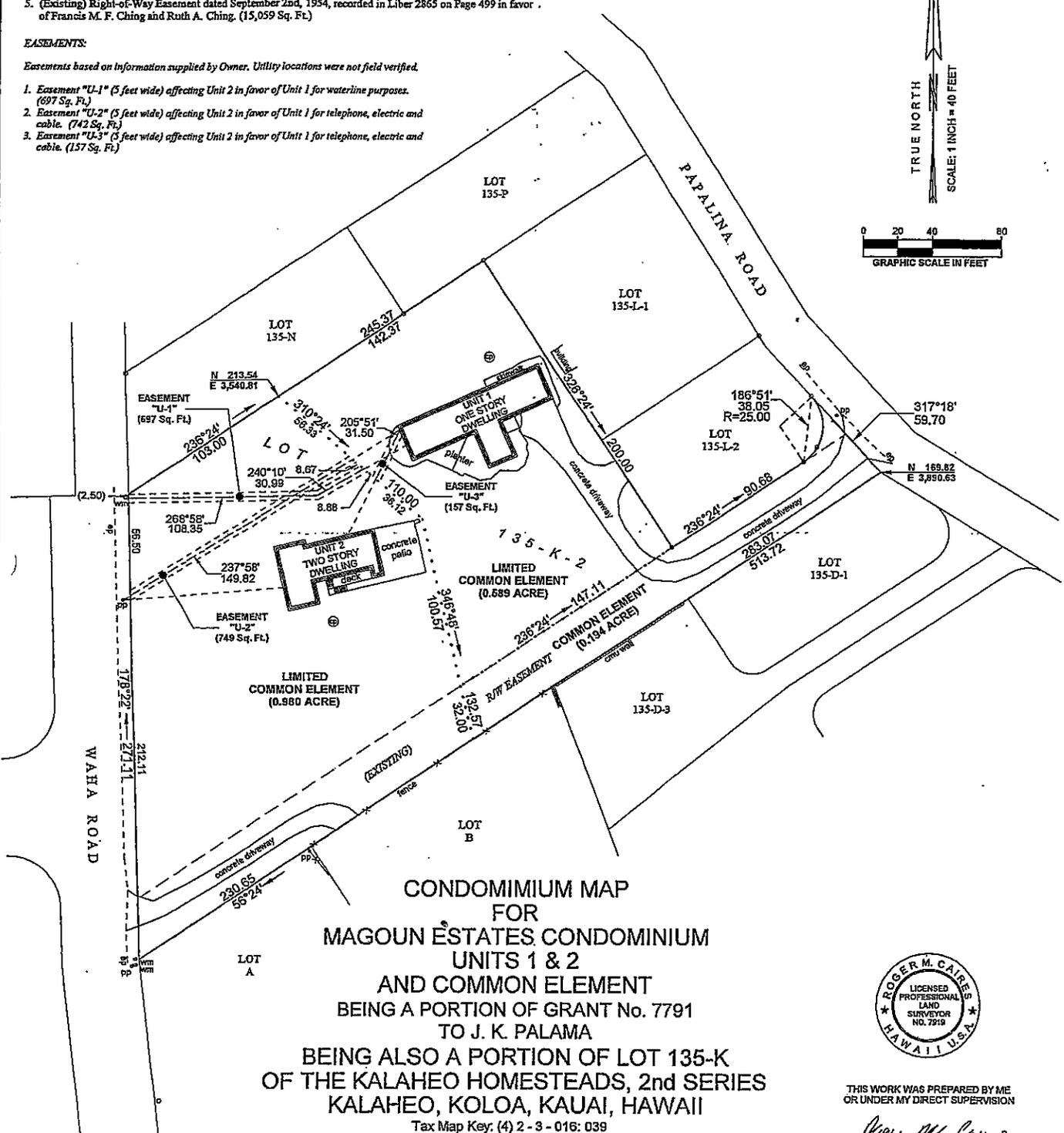
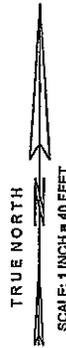
1. This project does not involve the sale of individual subdivided lots. The dotted lines on the Condominium map are for illustration purposes only. They represent either a Limited Common Element or Common Element.
2. Underground utilities, septic tanks, etc. were not field located except as shown. The 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.
3. Utility lines and wastewater treatment system(s) have not been disclosed to the surveyor. Utility locations shown are based on information supplied by owner. No responsibility, liability or representation is made regarding the impact of undisclosed utility lines and wastewater treatment system(s) on this property. Surveyor shall have no liability for the effects of the nondisclosure of these items.
4. All coordinates based on Government Survey Triangulation Station "WAHAWA".
5. (Existing) Right-of-Way Easement dated September 2nd, 1954, recorded in Liber 2865 on Page 499 in favor of Francis M. F. Ching and Ruth A. Ching, (15,059 Sq. Ft.)

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

**EASEMENTS:**

Easements based on Information supplied by Owner. Utility locations were not field verified.

1. Easement "U-1" (5 feet wide) affecting Unit 2 in favor of Unit 1 for waterline purposes. (697 Sq. Ft.)
2. Easement "U-2" (5 feet wide) affecting Unit 2 in favor of Unit 1 for telephone, electric and cable. (742 Sq. Ft.)
3. Easement "U-3" (5 feet wide) affecting Unit 2 in favor of Unit 1 for telephone, electric and cable. (157 Sq. Ft.)



**CONDOMINIUM MAP  
FOR  
MAGOUN ESTATES CONDOMINIUM  
UNITS 1 & 2  
AND COMMON ELEMENT  
BEING A PORTION OF GRANT No. 7791  
TO J. K. PALAMA  
BEING ALSO A PORTION OF LOT 135-K  
OF THE KALAHEO HOMESTEADS, 2nd SERIES  
KALAHEO, KOLOA, KAUAI, HAWAII**

Tax Map Key: (4) 2 - 3 - 016: 039  
Area: 1.763 Acre

Date: June 18, 2008



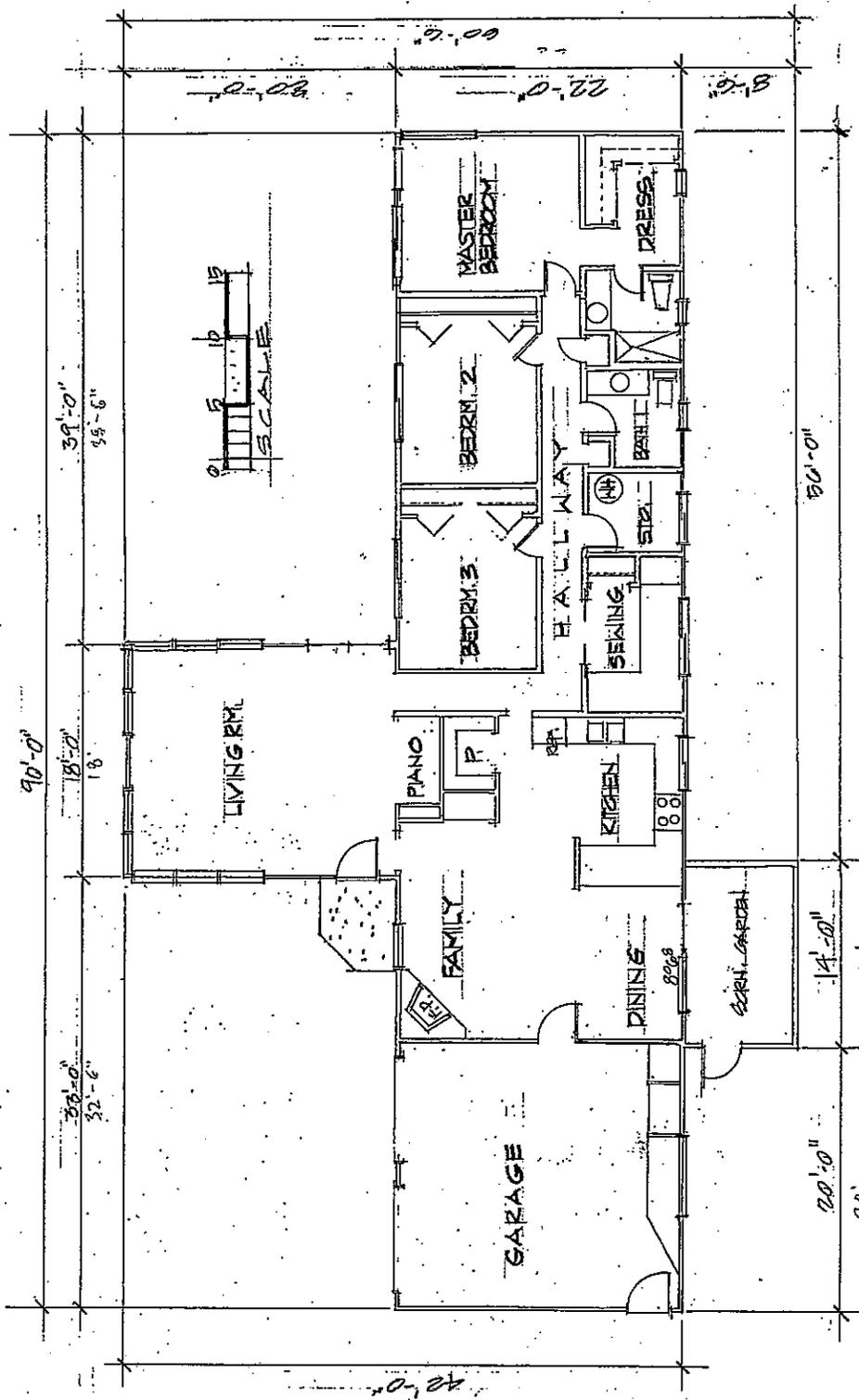
THIS WORK WAS PREPARED BY ME  
OR UNDER MY DIRECT SUPERVISION

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

This work was prepared by me  
 or under my supervision and  
 construction of this project  
 will be under my observation.



"MAGOUN ESTATES CONDOMINIUM" - UNIT 1 DWELLING  
 OWNERS: DR. THATCHER MAGOUN & NINA M. MAGOUN  
 T.M.K.: (4) 2-3-016: 039  
 KALAHEO, KAUAI, HAWAII

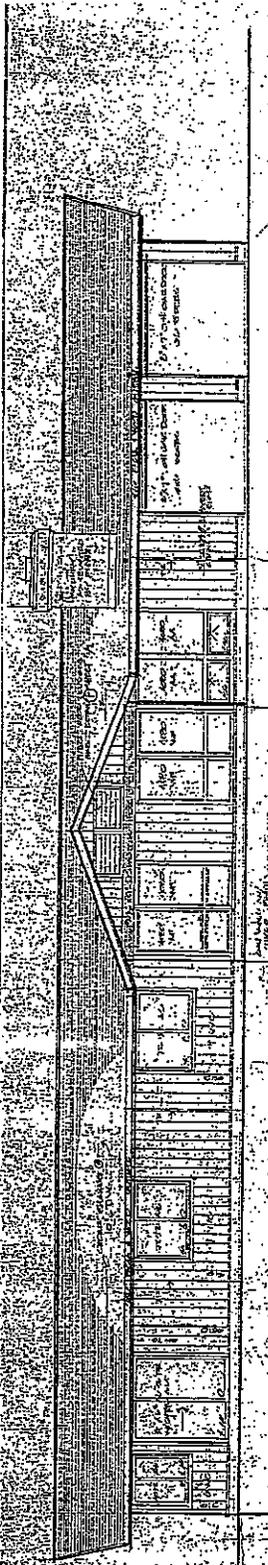


<b>UNIT 1 DWELLING</b>	
LIVING AREA	1,959 S.F.
GARAGE	427 S.F.
<b>TOTAL AREA</b>	<b>2,386 S.F.</b>

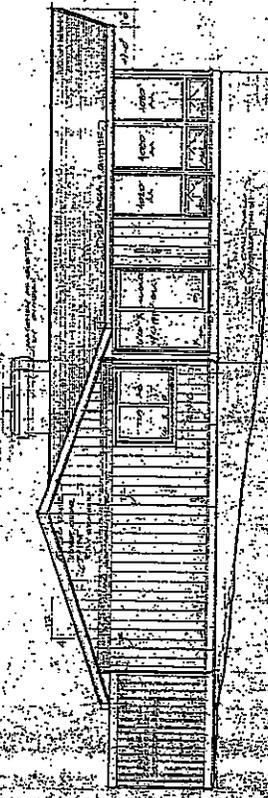
**FLOOR PLAN**  
 1/8" SCALE

"MAGOUN ESTATES CONDOMINIUM" - UNIT 1 DWELLING  
OWNERS: DR. THATCHER MAGOUN & NINA M. MAGOUN  
T.M.K.: (4) 2-3-016: 039  
KALAHEO, KAUAI, HAWAII

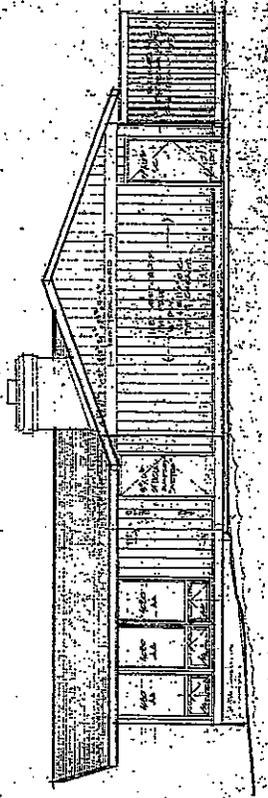
This work was prepared by me  
or under my supervision and  
construction of this project  
will be under my observation.



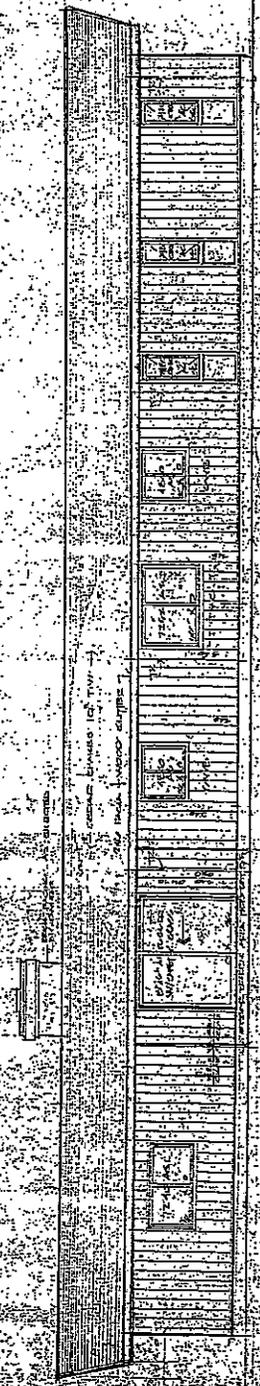
FRONT ELEVATION  
1/8" SCALE



LEFT ELEVATION  
1/8" SCALE



RIGHT ELEVATION  
1/8" SCALE



REAR ELEVATION  
1/8" SCALE

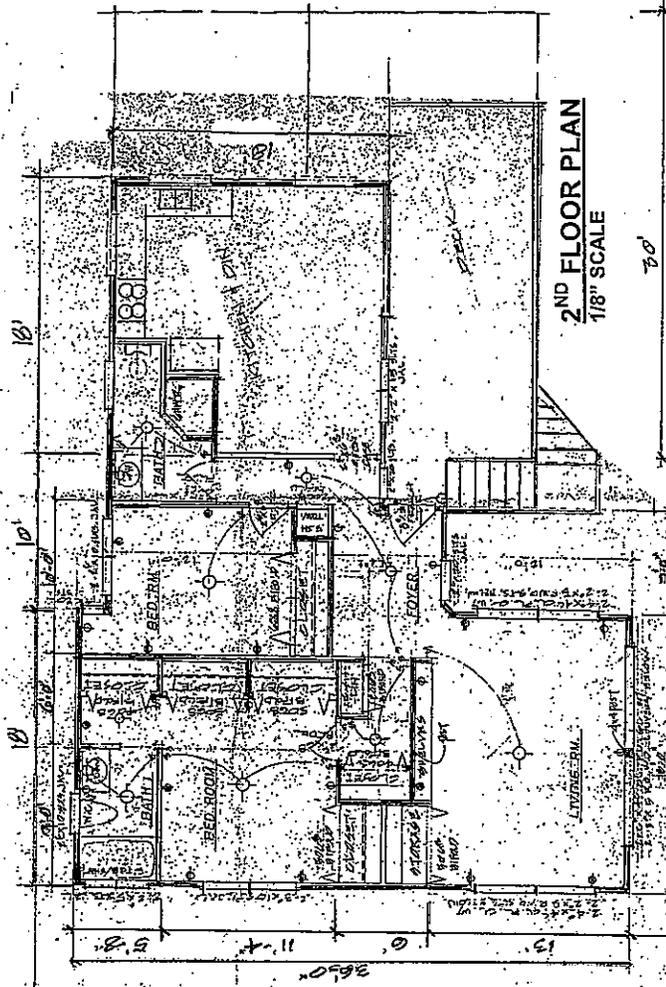


This work was prepared by me  
 or under my supervision and  
 construction of this project  
 will be under my observation  
 Signature 6/08

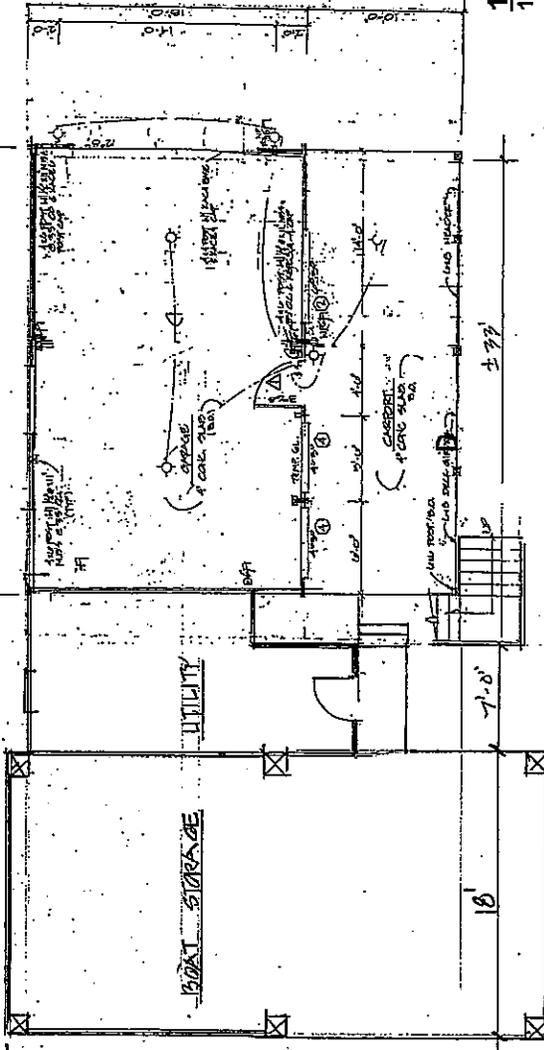


"MAGOUN ESTATES CONDOMINIUM" - UNIT 2 DWELLING  
 OWNERS: DR. THATCHER MAGOUN & NINA M. MAGOUN  
 T.M.K.: (4) 2-3-016: 039  
 KALAHEO, KAUAI, HAWAII

<b>UNIT 2 DWELLING</b>	
1 <sup>ST</sup> FLOOR	508 S.F.
GARAGE	612 S.F.
BOAT GARAGE	108 S.F.
UTILITY	300 S.F.
LANAI	1,528 S.F.
<b>TOTAL</b>	<b>1,090 S.F.</b>
2 <sup>ND</sup> FLOOR	260 S.F.
LIVING AREA	1,360 S.F.
DECK	2,878 S.F.
<b>TOTAL</b>	<b>2,878 S.F.</b>



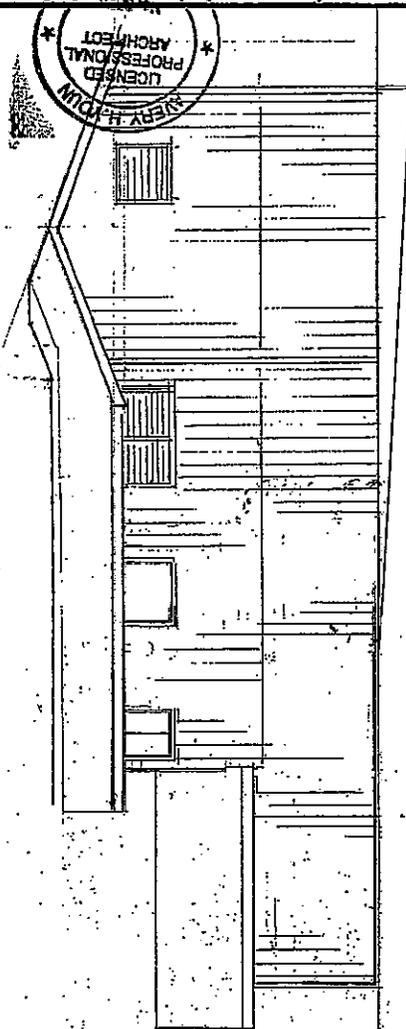
2<sup>ND</sup> FLOOR PLAN  
 1/8" SCALE



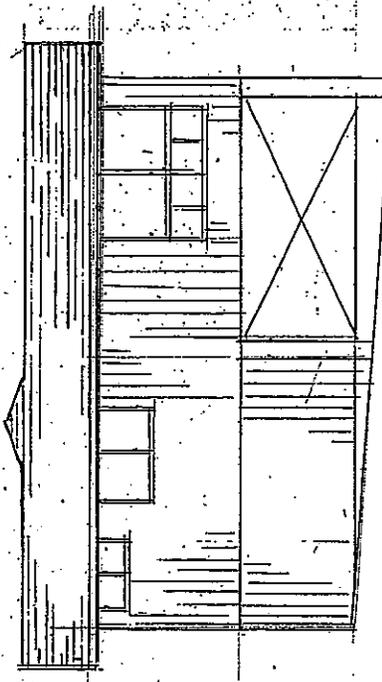
1<sup>ST</sup> FLOOR PLAN  
 1/8" SCALE

"MAGOUN ESTATES CONDOMINIUM" - UNIT 2 DWELLING  
OWNERS: DR. THATCHER MAGOUN & NINA M. MAGOUN  
T.M.K.: (4) 2-3-016: 039  
KALAHEO, KAUAI, HAWAII

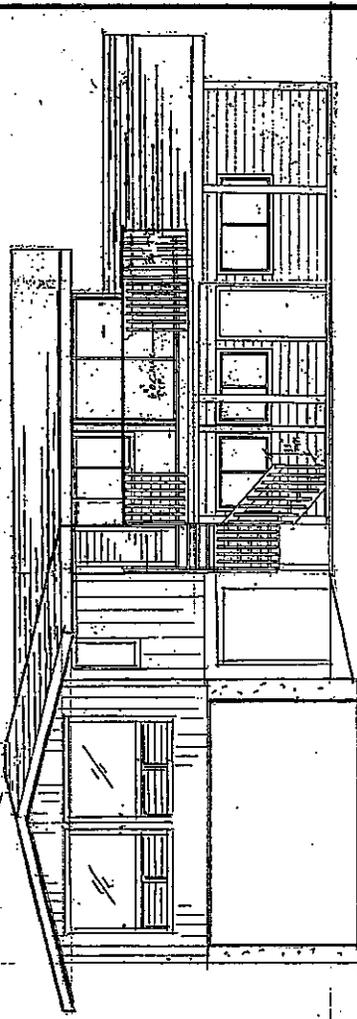
This work was prepared by me  
or under my supervision and  
construction of this project  
will be under my observation  
Signature: *[Signature]*  
Date: 6/10/08



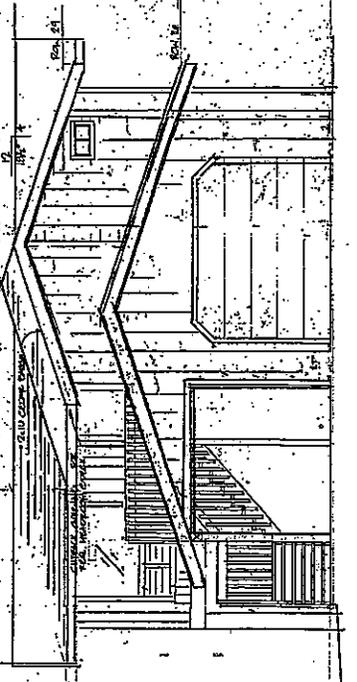
LEFT ELEVATION  
1/8" SCALE



REAR ELEVATION  
1/8" SCALE



FRONT ELEVATION  
1/8" SCALE



RIGHT ELEVATION  
1/8" SCALE

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

**ARCHITECT'S CONDITION REPORT**  
**MAGOUN ESTATES CONDOMINIUM**

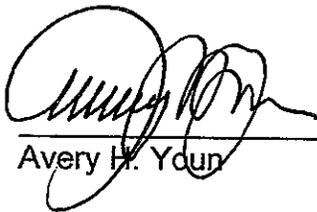
The undersigned, being a licensed architect within the State of Hawaii and bearing Registration Number 3576, has inspected Units 1 and 2 dwelling, of the MAGOUN ESTATES CONDOMINIUM project and declares as follows:

Unit 1 dwelling constructed in 1974  
Unit 2 dwelling constructed in 1992; addition completed in 2003.

The structures are situated at Kalaheo, Kauai, Hawaii and identified as Tax Map Key No. (4) 2-3-016: 039.

The inspection included the exterior roof, foundation, visible electrical and plumbing systems, and I find that the systems and components of the structure, including visible structural, electrical and plumbing, appear to be in satisfactory and sound condition for the stated age thereof. The structures and related systems and components have an expected useful life in excess of twenty (20) years for Unit 1 dwelling and thirty (30) years for Unit 2 dwelling.

DATED: Lihue, Kauai, Hawaii June 26, 2008.

  
Avery H. Youn

