

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

CONDOMINIUM PROJECT NAME	HIDDEN ESTATES
Project Address	Lot 3A, Por. Hovey Subdivision, Por. Lot 145A, Kalaheo Homesteads, 2nd Series, Kalaheo, (Kona), Kauai, Hawaii
Registration Number	6786
Effective Date of Report	<b>July 9, 2009</b>
Developer(s)	HERB MARSHALL LEE and GALE E. LEE, 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

### **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.
4. The common driveway/roadway for the project is an unpaved surface over which this property has access to a public road. A portion of the driveway is shared by a number of properties. There is no written recorded agreement regarding maintenance of the access. All prior and anticipated repair and improvement has been without expense and on a voluntary basis by the properties which use it.
5. It is anticipated that the spatial units on Units 1 and 2 will be replaced by or supplemented with a residence. The prospective purchaser shall have the right to build such residence 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 requires, in order to process the necessary permits for the construction of a residence, authorization from at least 67% of the legal and equitable ownership of the entire project, consistent with the Declaration and the Bylaws ("condominium documents").

This Project is entitled to the construction of an "Additional Dwelling Unit," as defined by, described in and limited by the Revised Code of the County of Kauai, Section 2, Chapter 8, Article 26, and Section 8-3.3(d) of the same code. This means that only one residence can be constructed as a matter of right. The other residence must be constructed by compliance with the referenced sections of the Revised Code of the County of Kauai. Any owner of an Additional Dwelling Unit will be subject to all provisions of the Comprehensive Zoning Ordinance ("CZO") of the County of Kauai. The CZO may limit future expansion or reconstruction occurring on the ADU unit. The right to build a residence on the second Unit will exist so long as the ordinance is not amended or repealed. The only protection a Unit Owner or purchaser will have that a second residence can be constructed is to obtain a building permit for the Additional Dwelling Unit prior to the expiration of the relevant sections of the referenced ordinances. THE SCHEDULED EXPIRATION OF THE ORDINANCE ALLOWING AN ADU RESIDENCE IS DECEMBER 15, 2009.

Except as limited specifically by the condominium documents and subdivision restrictive covenants, all uses permitted in the open/agricultural zone are permitted. The prospective purchaser should consult the appropriate county agency for information on uses and construction in the open/agricultural zone.

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

THE 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	Lot 3-A Kalaheo Homesteads, Kalaheo, Kauai, Hawaii
Address of Project is expected to change because	no address is issued until construction
Tax Map Key (TMK)	(4) 2-3-008: 060
Tax Map Key is expected to change because	each unit will have its own designation (0001 and 0002)
Land Area	5.980 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	N/A
Floors Per Building	N/A
Number of New Building(s)	N/A
Number of Converted Building(s)	None
Principle Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	N/A

**1.3 Unit Types and Sizes of Units**

Unit Type	Quantity	BR/Bath	Net Living Area	Net Other Areas	Other Areas (lanai, garage, etc)	Total Area
1	1	0/0	0	25 cu.ft.	Spatial	25
2	1	0/0	0	25 cu.ft.	Spatial	25

See Exhibit     A    

<b>2</b>	<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:	4
Number of Guest Stalls in the Project:	N/A
Number of Parking Stalls Assigned to Each Unit:	2
Attach Exhibit <u>N/A</u> specifying the Parking Stall number(s) assigned to each unit and the type of parking stall(s) (regular, compact or tandem and indicate whether covered or open).	
If the Developer has reserved any rights to assign or re-assign parking stalls, describe such rights.	N/A

**1.5 Boundaries of the Units**

Boundaries of the unit: See Exhibit "B." All parts of the limited common element and the air space of the unit as shown on the condominium map.
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**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):  See the Declaration. Within the open zone an owner may cover ten percent of the land area within the Open Zone. One residence may be constructed on each unit's limited common element. See Exhibits C, G and K.
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**1.7 Common Interest**

<b>Common Interest:</b> 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:  Units 1 and 2: 50% each

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

<input type="checkbox"/>	Swimming pool
<input type="checkbox"/>	Laundry Area
<input type="checkbox"/>	Storage Area
<input type="checkbox"/>	Tennis Court
<input type="checkbox"/>	Recreation Area
<input type="checkbox"/>	Trash Chute/Enclosure(s)
<input type="checkbox"/>	Exercise Room
<input type="checkbox"/>	Security Gate
<input type="checkbox"/>	Playground
<input checked="" type="checkbox"/>	Other (describe): unpaved driveway

**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  D .

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  E .

Described as follows:

**1.11 Special Use Restrictions**

The Declaration and Bylaws may contain restrictions on the use and occupancy of the units. Restrictions for this project include, but are not limited to, those described below.

<input checked="" type="checkbox"/>	Pets: See Bylaws Section 5.3, Use of Project
<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  F  describes the encumbrances against title contained in the title report described below.

Date of the title report:  March 2, 2009

Company that issued the title report:  Old Republic Title and Escrow 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		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Open
<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 checked="" type="checkbox"/>	Other (Specify): Spatial	2	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Open
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				

**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 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> <p>There are no physical structures on the property</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 type="checkbox"/> Applicable</p> <p><input checked="" type="checkbox"/> Not Applicable</p>
<p>Developer's statement, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units:</p> <p>N/A</p>	
<p>Developer's statement of the expected useful life of each item reported above:</p> <p>N/A</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 ____ 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> <p>N/A - No structures</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> <p>N/A</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

<b>2.1 Developer(s)</b>	<p>Name: Herb Marshall Lee and Gale E. Lee</p> <p>Business Address: PO Box 751 Kalaheo, Hawaii 96741</p> <p>Business Phone Number : (808) 635-8785 E-mail Address: herb@hideawaycove.com</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>
<b>2.2 Real Estate Broker</b>	<p>Name: Herb Lee Realty Business Address: 4011 Pai Street, Kalaheo, HI 96741</p> <p>Business Phone Number: (808) 635-7142 E-mail Address: herb@hideawaycove.com</p>
<b>2.3 Escrow Depository</b>	<p>Name: Old Republic Title &amp; Escrow of Hawaii, Inc. Business Address: 4-831 Kuhio Highway, Suite 415 Kapaa, Hawaii 96746</p> <p>Business Phone Number: (808) 821-6814</p>
<b>2.4 General Contractor</b>	<p>Name: None Business Address:</p> <p>Business Phone Number:</p>
<b>2.5 Condominium Managing Agent</b>	<p>Name: Self-managed by Association Business Address:</p> <p>Business Phone Number:</p>
<b>2.6 Attorney for Developer</b>	<p>Name: Steven R. Lee, Esq. Business Address: 4334 Rice Street, Suite 204C Lihue, Hawaii 96766</p> <p>Business Phone Number: (808) 346-9211</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	January 28, 2009	2009-034370

Amendments to Declaration of Condominium Property Regime		
Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	June 18, 2009	2009-097279

#### 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	January 28, 2009	2009-034371

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

#### 3.3 Condominium Map

The Condominium Map contains a site plan and floor plans, elevations and layout of the condominium project. It also shows the floor plan, unit number and dimensions of each unit.

Land Court Map Number	
Bureau of Conveyances Map Number	4782
Dates of Recordation of Amendments to the Condominium Map: June 24, 2009, Document No. 2009-097279	

**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%	67%
Bylaws	67%	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

<u>Management of the Common Elements:</u> The Association of Unit Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.	
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

<u>Estimate of the Initial Maintenance Fees:</u> The Association will make assessments against your unit to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your unit and the unit may be sold through a foreclosure proceeding. Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.
Exhibit <u>H</u> contains a breakdown of the estimated annual maintenance fees and the monthly estimated maintenance fee for each unit, certified to have been based on generally accepted accounting principles, with the Developer's statement as to when a unit owner shall become obligated to start paying the unit owner's share of the common expenses.

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

If checked, the following utilities are included in the maintenance fee:	
<input type="checkbox"/>	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 type="checkbox"/>	Other (specify)

## 5. SALES DOCUMENTS

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

<input checked="" type="checkbox"/>	Specimen Sales Contract Exhibit <u>I</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: March 2, 2009 Name of Escrow Company: Old Republic Title & Escrow of Hawaii, Inc. Exhibit <u>J</u> contains a summary of the pertinent provisions of the escrow agreement.
<input checked="" type="checkbox"/>	Other: Specimen Apartment 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.

Type of Lien	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
Mortgage	Buyer may lose right to buy unit, Buyer's deposits to be refunded.
	All mortgage liens will be paid in full from proceeds of sale of first unit, both units to be released from mortgage at that time

### 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:
N/A
Appliances:
N/A

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

<p>Status of Construction:</p> <p>None</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>Construction has not yet commenced and there is no estimated completion date available at this time</p>
<p>Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:</p> <p>None</p>

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

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

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

<input checked="" type="checkbox"/>	<p>The Developer hereby declares by checking the box to the left that it shall use its own funds to complete the construction of the condominium project by the date indicated in Section 5.5 of this report, and the Developer, pursuant to its own analysis and calculations, certifies that it has sufficient funds to complete the construction of the condominium project.</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>Important Notice Regarding Your Deposits: 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>Important Notice Regarding Your Deposits</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>Important Notice Regarding Your Deposits</b> set forth above does not currently apply to you, it might apply to you in the future, and, therefore, you should read and carefully consider it now to ensure that you understand the risk involved in deciding whether to proceed with your purchase.</p>

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

N/A

## 5.7 Rights Under the Sales Contract

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

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

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. There are no depreciable common elements.

3. •Spatial Units. Units 1 and 2 are spatial units. Section 514B-3, HRS, permits a unit to be described by spatial coordinates rather than constructing or erecting a physical unit. In this project each of the units is a 5 foot by 5 foot by 5 foot spatial cube as set forth in the Condominium Map. Each of the spatial units may be replaced with a dwelling or structure as described in the Declaration subject to the unit owner obtaining all necessary governmental approvals.

4. •Open Zone Building Restrictions. Part or all of this project is located within the Open District under the County of Kauai Comprehensive Zoning Ordinance ("CZO"), and is therefore subject to certain land coverage restrictions as more fully detailed in the CZO. Under CZO provisions in effect at the time of issuance of this Project's Developer's Public Report, land coverage within the Open District portion of the Project is limited to ten percent (10%) of the total size of the Open District area, provided that any parcel of record existing prior to on or September 1, 1972 is allowed 3,000 square feet of land coverage. "Land coverage" is defined under the CZO as

...a man-made structure, improvement or covering that prevents normal precipitation from directly reaching the surface of the land underlying the structure, improvement or covering. Structures, improvements and covering include roofs, surfaces that are paved with asphalt, stone, or the like such as roads, streets, sidewalks, driveways, parking lots, tennis courts, patios, and lands so used that the soil will be compacted so as to prevent substantial infiltration, such as parking of cars and heavy and repeated pedestrian traffic.

An owner should verify building restrictions with the County of Kauai prior to applying for construction permits.

5. •Flood Zone Building Restrictions. This project is affected by the 100-year flood area including "floodway" and "flood fringe" affecting the subdivision in which this project is located. Construction may be prohibited or restricted within this area. It is possible that the County of Kauai will require a flood or drainage study to establish or verify the areas within the project which are suitable for construction of residential improvements. This will be at the affected Unit owner(s)' expense. Each owner will be responsible for contacting the appropriate agency(ies) of the County of Kauai to determine whether such requirement will be imposed as a condition of further development on the project.

6. •Developer, Herb Marshall Lee is a licensed real estate broker with Herb Lee Realty (RB-17068) and is intended to be the listing agent for the sale of the CPR units.

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

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

The Developer hereby certifies that all the information contained in this report and the exhibits attached to this report and all documents to be furnished by the Developer to purchasers concerning the project have been reviewed by the Developer and are, to the best of the Developer's knowledge, information and belief, true, correct and complete. The Developer hereby agrees promptly to amend this report to report and include either or all material facts, material or pertinent changes to any information contained in or omitted from this report and to file annually a report to update the material contained in this report at least 30 days prior to the anniversary date of the effective date of this report.

  
Herb Marshall Lee and Gale E. Lee

\_\_\_\_\_  
Printed Name of Developer

By: \_\_\_\_\_  
Duly Authorized Signatory\*

3/12/09  
\_\_\_\_\_  
Date

\_\_\_\_\_  
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" (each is also referred to herein as a "unit"). Specifically, the two (2) estates so created and designated are referred to hereinafter as Unit 1 and Unit 2. Said 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 is a 2.583 acre limited common element which is located in the Open zone, and the center of the 5 foot by 5 foot by 5 foot spatial cube has the following coordinates: 200.3 feet South and 2,102.3 feet East of triangulation station "Wahiawa." One single family detached residential dwelling may be constructed in the Open zone, on Unit 1. There is currently no structure located on Unit 1. When a structure is built on Unit 1, within 30 days of the completion of that structure, a copy of the appropriate amendment will be made to the Declaration and recorded with the State of Hawaii Bureau of Conveyances and the amended condominium map will be simultaneously recorded and filed therewith.

(b) Unit 2 is a 3.397 acre limited common element which is located in the Open zone, and the center of the 5 foot by 5 foot by 5 foot spatial cube has the following coordinates: 623.4 feet South and 2,292.8 feet East of triangulation station "Wahiawa." One single family detached residential dwelling may be constructed in the Open zone on Unit 2. There is currently no structure located on Unit 2. When a structure is built on Unit 2, within 30 days of the completion of that structure, a copy of the appropriate amendment will be made to the Declaration and recorded with the State of Hawaii Bureau of Conveyances and the amended condominium map will be simultaneously recorded and filed therewith.

There are no basements in this Project.

The condominium limited common elements and units are located in the manner shown on the said Condominium Map. The boundaries of each unit shall be the outer surface of each building on the specific limited common element areas set aside in the Project. Each unit has direct access to a common access element or easement or to public right(s)-of-way. 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 unit which are utilized for or serve all units, the same being deemed common elements as hereinafter provided.

Each unit has direct access to a common access element and Easement AU-3 to reach Puu Road.

**END OF EXHIBIT "A"**

## **EXHIBIT "B"**

### **Limits of Units**

No buildings will serve the units at this time. Upon construction of future improvements, each unit shall be deemed to include the building comprising the unit, including specifically, but not limited to:

(a) all perimeter walls, floors, foundations and roof of such building, all fences, outbuildings, 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 unit; and

(c) each addition, replacement and other improvement of the unit as permitted by law.

The costs and expenses incurred for such additions, replacements and improvements to the unit, as permitted under the laws of the State of Hawaii or the County of Kauai, shall be charged to the owner of the unit which is altered, changed or improved.

**END OF EXHIBIT "B"**

## **EXHIBIT "C"**

### **Alteration and Transfers of Interests**

Except as otherwise provided in the Declaration, the common interest and easements appurtenant to each condominium unit shall have a permanent character and shall not be altered without the approval of all the unit owner(s) affected, expressed in a duly recorded amendment to this Declaration, which amendment shall contain the consent thereto by the holders of all mortgages of any affected unit which are filed of record. Although the common interest may be reduced by the total number of dwelling units in the Project, the common interest and easements shall not be separated from the unit to which they appertain and shall be deemed to be conveyed, leased, or encumbered with such unit even though such interest or easement may not be mentioned or described expressly in the instrument of transfer.

Units 1 and 2 each consist of a Spatial Unit which is a 5 foot x 5 foot x 5 foot cube of air space, as shown on the condominium map and as identified in Section 2 herein. Units 1 and 2 are each entitled to build one single family residential dwelling. At such time as the construction of the single family residential dwelling is completed on each unit, the Declaration of Condominium Property Regime for Hidden Estates will be amended to show the replacement of the Spatial Unit by the residential dwelling.

**END OF EXHIBIT "C"**

## EXHIBIT "D"

### Description of Common Elements

All the remaining portions of the Project, other than the units are herein referred to as "common elements," including specifically, but not limited to:

(a) Easements AU-1 and AU-2 are off-site easements which are access and utility areas for the benefit of both units, as shown on the condominium map, and contains a combined area of 9,237 square feet; ,

(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 "D"

**EXHIBIT "E"**

**Description of Limited Common Elements**

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	2.583 acres
2	3.397 acres

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 "E"**

**EXHIBIT "F"**

**Encumbrances Against Title**

The following encumbrances apply to all Units:

1. Real Property Taxes, if any, that may be due and owing. Check with the County of Kauai Department of Finance for further information.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Designation of Easement "B" for telephone and power purposes, as shown on tax map.
4. Vehicular access and utility easement over and across Lot 3, as per survey of Masao Fujishige, Registered Land Surveyor, dated July 20, 1987, containing an area of 0.0435 acre, more or less, as mentioned in that certain Warranty Deed dated September 21, 1987, recorded in the Bureau of Conveyances of the State of Hawaii in Book 21436, Page 518.
5. Setback for building purposes, as shown on the map dated August 11, 1987, prepared by Masao Fujishige, Registered Professional Land Surveyor, attached to that certain Deed dated September 21, 1987, and recorded on December 17, 1987 in the Bureau of Conveyances of the State of Hawaii in Book 21436, Page 518.
6. 100 year flood building setback line as shown on map dated August 11, 1987, prepared by Masao Fujishige, Registered Professional Land Surveyor, attached to that certain Deed dated September 21, 1987, and recorded on December 17, 1987 in the Bureau of Conveyances of the State of Hawaii in Book 21436, Page 518.
7. The terms and provisions, including the failure to comply with any covenants and conditions contained in the instrument dated June 12, 2001, recorded July 20, 2001 as Document No. 2001-111921
8. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following:

Cancellation of Easement "A-3", Reclassification of Easement "A-4" and Grant of Easements "AU-1" and "AU-2".

Dated: September 13, 2006

Recorded: September 21, 2006, in the Bureau of Conveyances of the State of Hawaii, Document No. 2006-173396

9. The terms and provisions contained in an instrument entitled:

Cancellation of Easement "A-3", Reclassification of Easement "A-4" and Grant of Easements "AU-1" and "AU-2".

Dated: September 13, 2006

Recorded: September 21, 2006, in the Bureau of Conveyances of the State of Hawaii, Document No. 2006-173396

Which among other things provides: Each party is responsible for the maintenance and improvements within their easement areas.

10. A mortgage to secure an indebtedness as shown below, and any other obligations secured thereby

Dated: September 6, 2005  
Loan No. None shown  
Mortgagor: Herb Marshall Lee and Gale E. Lee, husband and wife  
Mortgagee: U.S. Financial Mortgage corp., a Hawaii corporation  
Recorded: September 14, 2005, in the Bureau of Conveyances of the State of Hawaii, Document No. 2005-183852.

11. 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 "HIDDEN ESTATES"**

DATED: January 28, 2009  
RECORDED: Document No. 2009-034370  
MAP: 4782 and any amendments thereto

12. 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: January 28, 2009  
RECORDED: Document No. 2009-034371

**END OF EXHIBIT "F"**

BERNARD P. CARVALHO, JR.  
MAYOR



**COPY**  
IAN K. COSTA  
DIRECTOR OF PLANNING

GARY K. HEU  
ADMINISTRATIVE ASSISTANT

IMAICALANI P. AIU  
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUA'I  
PLANNING DEPARTMENT

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

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

DATE: April 17, 2009

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

FROM: Ian K. Costa, Director of Planning 

SUBJECT: Recertification of Inspection of Existing Buildings

Project Name: HIDDEN ESTATES  
Condominium Project (583)  
Tax Map Key: (4) 2-3-008: 060

The attorney for the above-mentioned condominium project has addressed the Planning Department's concerns regarding the allowable density of the subject property as stated in our letter dated March 19, 2009. Therefore, this office as an agency of the County of Kauai having reviewed the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai, Sections 514 B-5 & B-6, Hawaii Revised Statutes, subject to the disclosures and waivers (item "5" below) specified herein, we certify the following:

1. The developers have contracted land surveyor Roger Caires to certify that the spatial units on the proposed project referred to as Hidden Estates 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

EXHIBIT "G"

AN EQUAL OPPORTUNITY EMPLOYER

Senior Condominium Specialist  
Hidden Estates Condominium  
TMK: (4) 2-3-008: 060  
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waiver herein, the Planning Department adopts that certification as it pertains to the rules and regulations administered solely by the Department.

2. The parcel does not contain any outstanding nonconforming structures as a result of the adoption or amendments of any ordinances or codes and regulations.
3. There are no variances approved for the subject property.
4. There are no notices of violation of County building or zoning codes outstanding according to our records.
5. **WAIVER**  
The foregoing certification is not a warranty to any compliance with applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements relating to the regulations of condominiums under sections 514 B-5 & B-6, Hawaii Revised Statutes.

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

cc: Herb Lee & Gale Lee, Project Developers  
Steven Lee, Attorney at Law

**END OF EXHIBIT "G"**

EXHIBIT "H"

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>35.00</u>				<u>420.00</u>
<u>2</u>	<u>35.00</u>				<u>420.00</u>
<u> </u>	<u> </u>				<u> </u>
<u> </u>	<u> </u>				<u> </u>

THE PURCHASER'S OBLIGATION TO PAY MAINTENANCE FEES COMMENCES AS OF THE DATE OF CLOSING AND WILL BE PRORATED FOR ANY PARTIAL MONTH OF OWNERSHIP

*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>					
Driveway	60.00				720.00
Building	_____				_____
Grounds	_____				_____
<b>Management</b>					
Management Fee	_____				_____
Payroll and Payroll Taxes	_____				_____
Office Expenses	_____				_____
Insurance	80.00				960.00
Reserves(*)	_____				_____
Taxes and Government Assessments	_____				_____
Audit Fees	_____				_____
Other	_____				_____
TOTAL	<u>140.00</u>				<u>1680.00</u>

I, Herb Marshall Lee and Gale E. Lee, the condominium developer, for the HIDDEN ESTATES condominium project, hereby certifies that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles

Herb Marshall Lee  
Signature

3/12/09  
Date

Gale E. Lee  
Signature

3/12/09  
Date

(\*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with §514AB-148, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

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

## EXHIBIT "I"

### **Summary of Pertinent Provisions of Sales Contract**

The sales contract contains the price, description and location of the unit and other terms and conditions under which a buyer will agree to buy a unit in the Project. Among other things, the sales contract provides:

1. A section for financing to be filled in and agreed to by the parties which will set forth how the buyer will pay the purchase price.
2. That a buyer's deposits will be held in escrow until the sales contract is closed or cancelled.
3. That the buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
4. That in the event of default:  
If the buyer defaults:
  - (a) Seller may bring an action for breach of contract;
  - (b) Seller may retain the deposits as liquidated damages;
  - (c) Buyer is responsible for any costs incurred under the sales contract.  
If the seller defaults:
  - (a) Buyer may bring an action for breach of contract;
  - (b) Buyer may bring an action for specific performance;
  - (c) Seller is responsible for any costs incurred under the sales contract.

The prevailing party is entitled to recover all costs incurred including responsible attorney's fees. Escrow fees incurred shall be deducted before disbursement to the prevailing party.

### **Summary of Pertinent Provisions of Addendum to Sales Contract**

This Project utilizes a Condominium Addendum to Sales Contract (the "Addendum") to be used in conjunction with a standard Purchase Contract form contract provided by the Hawaii Association of Realtors. The Addendum protects the rights of the Purchasers and the handling of the funds under the Condominium Property Act (the "Act"), as well as 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 or amended/amendment 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 all deposits made, Section C.28 of standard Purchase Contract); 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.
- 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 Purchase Contract). 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 SUMMARIES ARE NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL THE TERMS AND PROVISIONS CONTAINED IN THE CONTRACT AND ADDENDUM. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE PURCHASER'S RIGHTS AND OBLIGATIONS, THE PURCHASER MUST REFER TO THE PURCHASER'S CONTRACT TO DETERMINE THE 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 "I"**

## EXHIBIT "J"

### SUMMARY OF PORTIONS OF ESCROW AGREEMENT

The Escrow Agreement ("Agreement") between OLD REPUBLIC TITLE & ESCROW OF HAWAII (the "Escrow"), and HERB MARSHALL LEE and GALE E. LEE, husband and wife (the "Seller"), contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. Whenever Seller enters into a sales contract for the sale of an apartment, Seller will require that payments due under the sales contract be made to Escrow and will deliver an executed copy of the sales contract to Escrow.
2. Escrow will receive payments under the sales contract and sums received from any other source with respect to the project. Funds held under the Agreement will initially be deposited in an account for the project. Interest on all funds will be paid to Seller.
3. Escrow will release from the trust fund and disburse Buyer's funds at closing, unless: (a) Buyer has elected 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) the Real Estate Commission has not issued an effective date for a Developer's Public Report on the project or the Seller's requirements of the sales contract have not been met; or (c) Seller has not satisfied Escrow that all other requirements of Hawaii Revised Statutes have been met, in which case there shall be no escrow cancellation fee. Provisions of Hawaii's Owner-Occupant law to 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 sales 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 up to a maximum of \$250.00. If Buyer defaults for more than ten days in performing the purchase contract, Buyer will forfeit all deposits as liquidated damages.
5. Escrow will arrange for and supervise the signing of all documents, which are to be signed subsequent to and contemplated by the sales contract.
6. As Escrow's compensation for its performance under this Agreement, Escrow will receive its scheduled rate for each apartment for which an apartment deed of the project is handled by Escrow and recorded in the Bureau of Conveyances of the State of Hawaii. Escrow will record all applicable documents. The cost of title insurance will be an additional amount, based upon 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 apartment 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 "J"



PLANNING DEPARTMENT

Site name: POU ROAD Existing Width: 40 ft. Required Width: 56 ft.  
 Dedication: \_\_\_\_\_ ft. Reserve: 8 ft. [ ] N/A 2-3-8:60  
 Road widening requirements: [ ] Yes [ ] No If yes, specify:  
8 FT. FUTURE ROAD WIDENING However  
REQUIRED.

Road Improvements required prior to Building Permit Approval: [ ] Yes [ ] No If yes, specify: \_\_\_\_\_

Clearance Form Is Certified Complete as the following has been completed:

1. Every signature blank on this form has been signed by each respective Agency or Department [  ] Yes [ ] No
2. Applicant has signed attached Affidavit [  ] Yes [ ] No
3. Resolution, authorization, or other consent if applicable [ ] Yes [ ] No

[Signature] \_\_\_\_\_  
 Planning Department Date

\* Pursuant to Ordinance No. 843 which was adopted by the County of Kauai on November 22, 2006, subject to compliance with all applicable legal requirements and conditions, a building permit for an Additional Dwelling Unit shall be granted only to a lot in existence as of December 31, 2006 which, up to December 31, 2006, was eligible to apply for any additional dwelling unit under Section 8-26.1 (a) of the Kauai County Code, 1987, as amended.

AFFIDAVIT FOR ADU FACILITY CLEARANCE FORM

Herb Lee & Gale Lee having been duly sworn on oath, deposes and says:  
Owner Name(s)

1. I am (we are) the Owner(s) of the property described as Tax Map Key No: (4)7-3-8-60 for the attached ADU Facility Clearance Form.
2. I (we) hereby verify that there are no restrictions or covenant applicable in any deed, lease, declaration, instrument or writing affecting the use of the lot (or portion thereof), or other document which prohibits the construction or placement of an Additional Dwelling Unit on the subject lot (or portion thereof).
3. I (we) fully understand that completion of the subject ADU Facilities Clearance Form or previously approved clearance form does not guarantee or vest any right to a building permit, and that all conditions and requirements in existence at the time of building permit application shall be met before a building permit can be issued.
4. I (we) fully understand the provisions of Ordinance No. 843, adopted by the County of Kauai on November 22, 2006, which states that a building permit for an Additional Dwelling Unit shall be granted only to a lot in existence as of December 31, 2006 that up to December 31, 2006 was eligible to apply for an additional dwelling unit under Section 8-26.1 (a) of the Kauai County Code, 1987, as amended, provided that an ADU Facilities Clearance Form was signed by the authorized employees of all agencies or departments listed on the ADU Facilities Clearance Form and submitted with a building permit application prior to November 22, 2006 or for which an ADU Clearance Form is certified complete by the Planning Director as of June 15, 2007. No ADU Clearance Form shall be certified to be complete after June 15, 2007. No Building Permit shall be issued for ADU with completed ADU Clearance Forms after December 15, 2009.
5. In the event of a sale, transfer, or other conveyance of all or any portion of the property identified on this form, I (we) shall require, as a condition precedent to such sale, transfer, or conveyance, future owner(s) to execute a new affidavit(s) for the ADU Clearance form prior to the sale, transfer, or other conveyance of the subject property.

Further Affiant sayeth naught.

Owner (s)  
Herb Lee  
Gale S. Lee

In the event the subject lot is subject to a Condominium Property Regime (CPR) I (we) have attached to this affidavit a resolution, authorization, or other document from all persons with interest in the subject lot meeting the satisfaction of the Planning Director that shows that I (we) are allowed to construct or place an Additional Dwelling Unit on the subject lot.

STATE OF HAWAII )  
 ) ss.  
COUNTY OF KAUAI )

On this day of March 19, 2007, before me personally  
appeared Herbert M. Lee &  
Carle E. Lee

to me known to be the persons described in and who executed the foregoing instrument, and  
acknowledged that they executed the same as their  
free act and deed.



[Signature]  
KRISTINE K. FREY  
Notary Public, State of Hawaii  
My commission expires: 5/26/07