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ASSOCIATION OF II WAI HUI LP

## **PETITION FOR DISTRICT BOUNDARY AMENDMENT**

**DOCKET NO. A06-766**  
**TOWNE DEVELOPMENT OF HAWAII, INC.,**  
**ENDURANCE INVESTORS, LLC, and**  
**ASSOCIATION OF II WAI HUI LP**

**In the Matter of the Petition of Towne Development of Hawaii, Inc.,  
Endurance Investors, LLC, and Association of II Wai Hui LP To  
Amend the Land Use District Boundary Of Certain Lands Situated  
at Wailuku, Island of Maui, State of Hawaii, Consisting Of  
210.0 Acres from the Agriculture District to the Rural and  
Urban Districts, Tax Map Key Nos. (2) 3-5-02:002 and 3-5-02:003**

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TOWNE DEVELOPMENT OF HAWAII, INC.,  
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ASSOCIATION OF II WAI HUI LP

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A06-766
	)	
TOWNE DEVELOPMENT OF HAWAII,	)	
INC., ENDURANCE INVESTORS, LLC,	)	PETITION FOR DISTRICT BOUNDARY
and ASSOCIATION OF II WAI HUI LP	)	AMENDMENT
	)	
To Amend the Land Use District Boundary	)	
Of Certain Lands Situated at Wailuku,	)	
Island of Maui, State of Hawaii, Consisting	)	
Of 210.0 Acres from the Agriculture	)	
District to the Rural and Urban Districts,	)	
Tax Map Key Nos. (2) 3-5-02:002 and	)	
3-5-02:003.	)	
_____	)	

**PETITION FOR DISTRICT BOUNDARY AMENDMENT**

COME NOW, TOWNE DEVELOPMENT OF HAWAII, INC., a Hawaii corporation ("TOWNE"), ENDURANCE INVESTORS, LLC, a Washington limited liability company ("ENDURANCE"), and ASSOCIATION OF II WAI HUI LP, a Hawaii limited partnership ("II WAI HUI") (TOWNE, ENDURANCE, and II WAI HUI are collectively referred

to herein at times as "Petitioner"), by and through their attorneys, CARLSMITH BALL LLP, and hereby respectfully request this Honorable Land Use Commission of the State of Hawaii ("Commission") to amend the land use district boundary to effect a district reclassification of approximately 210.0 acres of land situated at Wailuku, Maui, Hawaii, from the Agricultural District to the Rural and Urban Districts.

This request is submitted pursuant to Section 205-4 of the Hawaii Revised Statutes ("HRS"), the Land Use Commission Rules of the State of Hawaii found in Title 15, Subtitle 3, Chapter 15 of the Hawaii Administrative Rules ("HAR"), and the attached Petition in Support of District Boundary Amendment ("Petition").

## **PETITION IN SUPPORT OF DISTRICT BOUNDARY AMENDMENT**

### **I. STANDING**

II WAI HUI and ENDURANCE are the owners in fee simple of Tax Map Key No. (2) 3-5-02:002 ("Parcel 2") which consists of approximately 60.08 acres. **See Exhibit "1"**. WAILUKU KUIKAHI LLC, a Hawaii limited liability company, is the owner in fee simple of Tax Map Key No. (2) 3-5-02:003 ("Parcel 3") which consists of approximately 149.98 acres. **See Exhibit "2"**. (Parcels 2 and 3 will be collectively referred to herein as "the Property").

WAILUKU KUIKAHI LLC has authorized TOWNE, which has an option to purchase Parcel 3, to file the Petition. **See Exhibits "3" and "6"**.

Based on the foregoing, Petitioner has the requisite standing to file this Petition pursuant to HRS § 205-4(a) and HAR § 15-15-46(3).



**II. AUTHORIZED REPRESENTATIVES**

Mr. B. Martin Luna, Mr. Blaine J. Kobayashi, and the law firm of CARLSMITH BALL LLP, have been appointed to represent Petitioner pursuant to HAR § 15-15-35(b). **See Exhibits "4", "5" and "7"**. TOWNE's principal place of business is 220 S. King Street, Suite 2170, Honolulu, Hawaii 96813. ENDURANCE's principal place of business is 381 Huku Li'i Place, Suite 202, Kihei, Hawaii 96753. II WAI HUI's principal place of business is 1885 Main Street, Suite 404, Wailuku, Hawaii 96793.

Pursuant to HAR § 15-15-50(c)(2), all correspondence and communications in regard to this Petition shall be addressed to, and served upon, Mr. Blaine J. Kobayashi, CARLSMITH BALL, LLP, One Main Plaza, Suite 400, 2200 Main Street, Wailuku, Hawaii 96793, and Mr. Christopher L. Lau, TOWNE DEVELOPMENT OF HAWAII, INC., 220 S. King Street, Suite 2170, Honolulu, Hawaii 96813.

**III. AUTHORITY FOR RELIEF SOUGHT**

The Commission is authorized to grant the relief sought herein pursuant to HRS § 205 and Chapter 15 of the HAR.

**IV. DESCRIPTION OF THE PROPERTY**

The Property is located in Wailuku, Maui, Hawaii, and consists of approximately 210.0 acres, inclusive of all existing easements, and is identified by Tax Map Key Nos. (2) 3-5-02:002 and 3-5-02:003. A location map and tax parcel map of the Property are attached to this Petition as **Exhibits "8" and "9"**. Additional details and description of the Property and the proposed development are contained in Petitioner's Environmental Impact Statement Preparation Notice ("EISPN"), attached hereto as **Exhibit "10"**.

V. **RECLASSIFICATION SOUGHT AND PRESENT USE OF THE PROPERTY**

Petitioner is respectfully requesting that the Commission amend the present classification of the Property from the Agricultural District to the Rural and Urban Districts. The Property is presently located entirely in the Agricultural District.

As illustrated by the conceptual land use plan, attached hereto as **Exhibit "11"**, the majority of the Property is sought to be reclassified to the Rural District, with the remainder to be reclassified to the Urban District. Specifically, 166.0 acres are sought to be reclassified to the Rural District and 44.0 acres are sought to be reclassified to the Urban District.

The Property is currently vacant and fallow. The Property was previously used for sugar cane cultivation by Wailuku Agribusiness Company from 1862-1988. Thereafter, the Property was leased to Maui Land & Pineapple Co. for pineapple cultivation until 2003.

A. **Conformity of the Reclassification to the Standards for Determining the Boundaries of the Rural District**

HAR § 15-15-21 sets forth the standards used by the Commission for determining rural district boundaries. The proposed reclassification of the Property from the Agricultural District to the Rural District conforms to those standards as shown by the following analysis:

1. **Areas consisting of small farms; provided that the areas need not be included in this district if their inclusion will alter the general characteristics of the area.**

While the Property was previously used for large-scale agricultural operations, namely, sugar cane and pineapple, those operations have been terminated. Resuming such large-scale operations, especially given the Property's location in an area of existing and growing urban development, is no longer deemed economically viable. It should be noted that small-

scale agricultural uses are authorized by the County of Maui's rural district zoning as set forth in the County's Comprehensive Zoning Ordinance.

For the most part, the general characteristics of the area consist of urbanized lands to the north (Kehalani Project District), to the east (Wailuku Heights II Subdivision), and to the south (Waiolani Mauka Subdivision). The proposed reclassification from the Agricultural District to the Rural District, as reflected in the conceptual land use plan, will provide an appropriate transition from the urbanized lands to the north and the agricultural lands to the immediate south of the Property.

2. **Activities or uses as characterized by low-density residential lots of not less than one-half acre and a density of not more than one single-family dwelling per one-half acre in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with the low-density residential lots.**

The Property is located on the outskirts of Wailuku and in an area where urban characteristics abruptly meet agricultural lands. As reflected in the conceptual land use plan, the use of the Property within the proposed Rural District area call for a majority of low-density, one-half acre residential lots. This will allow for a smooth transition, from both a land use as well as a visual perspective, from the high-density housing areas located to the north of the Property to the open agricultural lands to the south of the Property.

3. **It may also include parcels of land which are surrounded by, or contiguous to this district, and are not suited to low-density residential uses for small farm or agricultural uses.**

The Property is surrounded by urban and agricultural uses. Given the Property's location and the relative proximity to infrastructure and services, the proposed rural

reclassification and low-density use of the Property provides an appropriate transition between the adjacent urban and agricultural uses.

**B. Conformity of the Reclassification to the Standards for Determining the Boundaries of the Urban District**

HAR § 15-15-18 sets forth the standards used by the Commission for determining urban district boundaries. The proposed reclassification of the Property from the Agricultural District to the Urban District conforms to those standards as shown by the following analysis:

**1. Lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.**

The Property is located immediately adjacent to the 108-lot Waiolani Mauka and Wailuku Heights residential subdivisions. The Property is also in close proximity to Wailuku and Waikapu, which consist of a mix of single-family residential, commercial, and recreational uses.

**2. Proximity to centers of trading and employment except where the development would generate new centers of trading and employment.**

As previously stated, the Property is located adjacent to Wailuku and Waikapu. While there are a few commercial uses in Waikapu, the town consists primarily of residential uses. Wailuku, located approximately 1.2 miles from the Property, is a center of commerce and government for the island of Maui. Numerous professional and business services are in Wailuku, with the main federal, state, and county offices all centrally located therein.

**3. Availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection.**

Basic public services and facilities, such as transportation systems, sewer, water, drainage and public utility hook-ups are available in close proximity to the Property. All of the

drainage improvements for the proposed development will comply with County of Maui standards.

Schools and several parks are located in close proximity to the Property. It should be noted that the proposed development will include a dual purpose 14.6 acre park and retention basin located off of Kuikahi Drive and Honoapiilani Highway. The park will be open for use to the public.

The County of Maui currently provides single-family residences in the area with solid waste disposal service. The Property is also adjacent to Honoapiilani Highway, a major roadway serving the general Wailuku area.

The Property's soil conditions, topography, proximity to existing infrastructure, and excellent view planes make it suitable to be developed for the proposed development. The Property can also be developed without increasing the peak rate of runoff reaching downstream properties. Additional details concerning the preliminary engineering and drainage analyses conducted for the proposed development will be included in Petitioner's Environmental Impact Statement ("EIS").

The State Department of Education's public school system in the Wailuku region include Wailuku Elementary School (Grades K to 5), Iao Intermediate School (Grades 6 to 8), and Baldwin High School (Grades 9 to 12).

Police protection for the Wailuku-Kahului area is provided by the Maui County Police Department, with its main headquarters located in Wailuku. Likewise, fire protection for the Wailuku-Kahului area, which encompasses fire prevention, suppression, rescue, and emergency services, is provided by the Maui County Fire Department, with stations located in

Kahului on Dairy Road, and in Wailuku on Kinipopo Street. The proposed development will not result in any extension of the existing service area limits for these emergency services.

There are a number of parks and numerous recreational opportunities in close proximity to the Property. Two (2) parks are planned for the Kehalani Project District, in close proximity to the project site. The parks are currently being designed, however, one of the parks will be approximately 7.0 acres and the other, which will include the ball fields, will be approximately 11.0 acres. The Waikapu Community Center, a County-owned facility that includes a baseball field, basketball court, and community center building, is located within the immediate vicinity of the Property. Two (2) Little League baseball fields open for public use are located near the Property as well. A nearby park adjacent to the Hale Makana O Waiale Affordable Housing complex contains a baseball field, basketball court, and playground equipment.

Shoreline and boating activities are provided at the Kahului Harbor and adjoining beach parks, and individual and organized athletic activities at various County parks. The War Memorial Athletic Complex, located along Kaahumanu Avenue, includes a gymnasium, swimming pool, tennis courts, baseball fields, and football and soccer fields. The Wailuku-Kahului area also includes the Kahului Community Center, Kanaha Beach Park, and Keopuolani Park (an approximately 140-acre regional park complete with soccer fields, baseball fields, playground equipment, pedestrian and bike ways, and an outdoor amphitheatre).

As previously stated, Petitioner's plan for the proposed development includes a dual purpose 14.6 acre park and retention basin that will be open for use by the public. The park will provide visual relief, will be an attractive open space area, and will provide additional recreational opportunities for the public.

**4. Sufficient reserve areas for foreseeable urban growth.**

The proposed development will utilize approximately 154.50 acres of land for single-family and multi-family residential purposes. Development of the Property will help to address a portion of the island's substantial housing demand without significantly affecting reserve areas for urban growth. Additional areas for single-family residential expansion are reflected in the Wailuku-Kahului Community Plan.

**5. Lands with satisfactory topography, drainage, and reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects.**

The Property is relatively flat, and slopes in a west to east direction with an average slope of 11 percent. Elevations at the western portion of the Property are at approximately 800 feet, while elevations at the easterly portion of the Property are at approximately 350 feet.

As indicated by the Flood Insurance Rate Map, the Property is located within Zone C, which is an area of minimal flooding. The Property is not subject to tsunami, unstable soil conditions or other adverse environmental effects which would render it unsuitable or inappropriate for the proposed development.

**6. Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, and particularly when indicated for future urban use on state or county general plans.**

As reflected on the State Land Use Classification map, the Property is adjacent to areas which are already designated "Urban". Although a majority of the Property is currently designated "Agricultural" by the Wailuku-Kahului Community Plan thereby necessitating the filing of a community plan amendment to change the designation from "Agricultural" to "Rural", it should be noted that an approximately 20-acre area of the Property at the southeastern portion

of the Property is currently designated "Single-Family" by the Wailuku-Kahului Community Plan.

7. **Lands in appropriate locations for new urban concentrations and consideration to areas of urban growth as shown on state and county general plans.**

Given the "Single-Family" designation by the Wailuku-Kahului Community Plan of the southeastern portion of the Property, and the immediately adjacent urban-designated areas, the Property is in an appropriate location for new urban concentration and growth.

8. **May include lands which do not conform to the standards in paragraphs (1) to (5) of HAR § 15-15-18: (A) When surrounded by or adjacent to existing urban development; and (B) Only when those lands represent a minor portion of this district.**

While Petitioner believes the Property conforms with the standards in paragraphs (1) to (5) of HAR § 15-15-18, it is significant to note that the Property is immediately adjacent to the existing urban developments of Wailuku Heights and Waiolani residential subdivisions. The Property's proximity to existing urban development, housing demand, and number of jobs created by the proposed development outweigh the impacts on agriculture which is not expected to be significant since considerable agricultural land remains available on the island of Maui.

9. **Shall not include lands, the urbanization of which will contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services.**

Urbanization of the Property will not contribute to scattered spot urban development. The Property is located adjacent to, and will become part of, the existing urban uses in the Wailuku and Waikapu area, and will provide a smooth transition from the high density Kehalani Project District to the open agricultural lands located to the south of the Property. The proposed development will also be consistent with the character established by



the adjacent Waiolani residential subdivisions and the Waikapu Gardens affordable housing project.

The proposed development will not necessitate unreasonable public investment in infrastructure facilities or public services. Petitioner will be engaging in a number of infrastructure improvements to mitigate any potential impacts of the proposed development. These infrastructure improvements will be detailed in Petitioner's EIS.

- 10. May include lands with a general slope of twenty percent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction controls, as adopted by any federal, state or county agency, are adequate to protect the public health, welfare and safety, and the public's interest in the aesthetic quality of the landscape.**

The Property is characterized by an average slope of 11 percent.

## **VI. PETITIONER'S PROPERTY INTEREST**

II WAI HUI and ENDURANCE are the owners in fee simple of Parcel 2, and WAILUKU KUIKAHI LLC is the owner in fee simple of Parcel 3. WAILUKU KUIKAHI LLC has authorized TOWNE, which has an option agreement to purchase Parcel 3, to file the Petition. TOWNE, ENDURANCE, and II WAI HUI will develop the Property.

## **VII. PROPOSED DEVELOPMENT**

Petitioner proposes to develop the Property into an attractive residential development which will provide a smooth transition from the higher density Kehalani Project District to the agricultural lands located south of the Property. As reflected in the conceptual land use plan, the majority of the proposed development will consist of 214 rural, half-acre lots to be sold in fee simple. The proposed development will also include 6 rural, one-acre lots,

approximately 90 single-family residential lots of 4,000 square feet, and approximately 240 multi-family residential units.

The proposed development will also include a 14.6 acre park that will also serve as a retention basin. Open space buffers ranging in size from 25 feet to 200 feet in width will also be placed along Honoapiilani Highway. There will be an open space buffer of 50 feet along Kuikahi Drive, and a 30-foot no-build zone along the western border of the project area.

A number of on-site and off-site improvements will occur with the proposed development, which will be detailed in the engineering study conducted in connection with the preparation of Petitioner's EIS.

The proposed development will include affordable housing units as required by the County's Department of Housing and Human Concerns.

Development will commence immediately upon Petitioner obtaining all of the necessary land use entitlements and related permits. Petitioner anticipates commencing development in 2009.

#### **VIII. PETITIONER'S FINANCIAL CONDITION**

Evidence of Petitioner's financial condition are reflected in the current balance sheet and income statements attached as **Exhibits "12", "13", and "14"** to the Petition. Petitioner intends to finance infrastructure improvements by obtaining financing through investor equity, internal corporate financing, and conventional construction loans.

#### **IX. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREAS**

The Property is currently vacant and was used in the past for sugar cane and pineapple cultivation. The Property is located adjacent to existing urban developments of the Kehalani Project District, and the Wailuku Heights and Waiolani residential subdivisions. A

more detailed description of the Property and surrounding areas can be found in Petitioner's EISPN, with further details to be included in Petitioner's EIS.

As indicated by the Flood Insurance Rate Map for the County of Maui, the Property is located within Zone C, which is an area of minimal flooding according to the Federal Emergency Management Agency.

The Property is listed as "Prime Agricultural Land" according to the Agricultural Lands of Importance to the State of Hawaii (ALISH) map as shown on Figure 12 of the environmental impact statement preparation notice.

The University of Hawaii Land Study Bureau's Detailed Classification has classified the productivity of the land underlying the proposed project site as "A" and "B". This classification system rates lands on a scale of "A" to "E," reflecting land productivity characteristics. Lands designated "A" are considered to be of highest productivity, with "E" rated lands ranked the lowest.

More specifically, the soils underlying the Property are of four soil types: Iao cobbly silty clay (IbB) - 3 to 7% slopes, Iao clay (IcB) - 3 to 7% slopes, Iao cobbly silty clay (IbC) - 7 to 15% slopes, and Iao clay (IcC) - 7 to 15% slopes. These are well-drained soils with medium runoff and moderate erosion hazard.

## **X. IMPACTS OF THE PROPOSED DEVELOPMENT ON THE ENVIRONMENT**

A preliminary discussion of the impacts of the proposed development on the environment is contained herein and in Petitioner's EISPN. Additional details concerning the proposed development's impacts on the environment will be provided as such information becomes available through the various studies which will be carried out in connection with the preparation of Petitioner's EIS.

**A. Environment.**

The proposed development is not expected to have significant adverse impacts on the environment. While air quality and noise levels will be impacted to a certain extent during the course of development such as exhaust emissions from on-site construction equipment, construction vehicle traffic, and construction noise, the impact will be short-term. In addition, best management practices that include performing construction-related activities in strict compliance with all applicable air and noise regulations will mitigate any temporary impacts.

**B. Flora and Fauna.**

Vegetation in the area is generally comprised of introduced grass species. Plant species typically associated with the area include sandbur, lantana, fingergrass, and bristly foxtail. The Property contains vegetation such as koa haole, kiawe, and castor bean.

Terrestrial fauna in the area include introduced species such as cats, mice, rats, and mongoose. Some of the avifauna include the Spotted Dove, Barred Dove, Japanese white-eye, Cardinal, Red-Crested Cardinal, and Mynah. There are no rare or endangered species of fauna or avifauna found in or around the Property.

**C. Groundwater or Other Resources.**

There are no wetlands in the vicinity of the Property. Waikapu Stream, which is located approximately one-half mile to the north of the Property, will be unaffected by the proposed development.

A plantation reservoir is located near the northwest corner of the Property. The reservoir is maintained by Wailuku Water Company and actively used for sugar cane irrigation.

**D. Scenic Resources.**

The scenic resources of the Property are characterized by views to Mount Haleakala to the east and the West Maui Mountains located mauka of Wailuku Town. The Property is not part of a scenic corridor and will not impact views from inland vantage points.

**E. Agriculture.**

While approximately 210.0 acres of land would be removed from agriculture, it represents a minor portion of the total amount of acres within the Agriculture District on the island of Maui. Further, substantial agricultural lands remain available on the island of Maui. Given the Property's location immediately adjacent to the existing residential areas of Waiolani, Waikapu Gardens, the Kehalani Project District, and Wailuku Heights, agricultural use was not deemed feasible or appropriate. Further details concerning the proposed development's impact on agriculture will be included in Petitioner's EIS.

**F. Recreational Resources.**

In addition to the numerous recreational resources in the area, Petitioner's proposed development will include a 14.6 dual purpose park/retention basin that will provide open space and additional recreational opportunities for the proposed development and general area. The park will be open for public use and will provide visual, open space relief for the area.

**G. Culture and History.**

The Property is located at the foothills of Mauna Li'o, which was known to be a large agricultural area that included taro, banana, and 'ulu fields. The area was also known to be a place where various ancient Hawaiian battles occurred.

Based on historical research of the Property, the proposed development will not adversely impact any cultural beliefs, practices, resources or gathering rights. A comprehensive

analysis and details concerning the culture and history of the Property will be included in Petitioner's EIS.

**XI. IMPACTS OF THE PROPOSED DEVELOPMENT ON THE AVAILABILITY OR ADEQUACY OF PUBLIC SERVICES AND FACILITIES**

A preliminary discussion of the impacts of the proposed development on public services and facilities is contained herein and in Petitioner's EISPN. Additional details concerning the proposed development's impacts on public services and facilities will be provided as such information becomes available through the various studies which will be carried out in connection with the preparation of Petitioner's EIS.

The Property is suitable for the proposed development and any project-related impacts, such as on drainage and traffic, can be readily mitigated with the implementation of the various improvements.

Access to the proposed development will be provided from several points. Three (3) accesses are currently planned for the proposed development along the south side of Kuikahi Drive, while one (1) access (right-in, right-out only) will be provided off Honoapiilani Highway.

The source of water for the proposed development will likely be from a new well being completed in Waikapu. Although the new well will be tapping the Iao Aquifer, it is in keeping with the Commission on Water Resource's recommendation to disperse the location of wells to minimize intrusion of brackish water into the aquifer. Water from the surface water treatment plant at the Iao tank site will serve as a backup to the well.

The proposed development is anticipated to generate approximately 169,700 gpd of wastewater. Wastewater will be treated at the Kahului Wastewater Reclamation Facility which has adequate capacity to accommodate the demands of the proposed development.

**XII. LOCATION OF THE PROPOSED DEVELOPMENT TO ADJACENT LAND USE DISTRICTS AND CENTERS OF TRADING AND EMPLOYMENT**

The Property is located in close proximity to Wailuku and Waikapu. Wailuku is the County's seat of government and is a center of trading and employment with numerous professional and business services. The industrial and commercial center of Kahului is located approximately 4 miles from the Property. The proposed development is located in an area of existing, urbanized lands to the north (Kehalani Project District) and to the east (Wailuku Heights II Subdivision).

**XIII. ECONOMIC IMPACTS OF THE PROPOSED RECLASSIFICATION OR DEVELOPMENT**

With continued stability in the local economy, housing demand has exhibited a significant upward trend. There is also a significant demand for affordable housing on the island. The proposed development, which will include a unique mix of multi-family units, single-family lots, and larger 1/2 and 1 acre lots, will benefit the social and economic welfare of the community by providing a variety of housing inventory, as well as presenting the rare option for purchasers to uniquely design their own home on a lot to fit their lifestyles.

On a short-term basis, the proposed development will have a direct beneficial impact on the local economy during construction through construction and construction-related employment. Over the long term, the residential homeowners will require various services related to home maintenance and improvement that will further support the local economy. Additional details regarding the proposed development's economic impacts will be provided as such information becomes available through studies conducted in connection with preparation of Petitioner's EIS.

The proposed development will have minimal impact in terms of agriculture. Given the Property's location in close proximity to existing residential areas, the availability of substantial agricultural lands on the island, and the continuing demand for housing, agricultural use by the Petitioner was not deemed practical or appropriate. The conversion of agricultural lands to rural and urban uses is prudent and reasonable given the Property's location.

#### **XIV. HOUSING NEEDS**

Recent market studies have indicated a current shortage of single-family housing in the Central Maui area. The forecast is that demand for housing will continue to increase. The proposed development will provide purchasers with opportunities to purchase a multi-family housing unit or to purchase a lot to uniquely design and construct their own home. This will assist in alleviating the current supply-and-demand pressures on Maui's current housing market by providing additional housing products and opportunities for long-term local residents. Additional details concerning housing needs will be provided through consultant studies prepared in connection with Petitioner's EIS. Petitioner will work closely with the County of Maui Department of Housing and Human Concerns regarding the affordable housing requirements and policies as they pertain to the proposed development.

#### **XV. NEED FOR RECLASSIFICATION**

Reclassification of the Property from its current "Agricultural" designation to "Rural" and "Urban" designations is necessary in order for Petitioner to develop the Property. In addition, the Property's "Agricultural" zoning, and "Agricultural" community plan designation do not allow for the proposed development. It should be noted that the southeast corner of the Property is currently designated "Single-Family" by the Wailuku-Kahului Community Plan.



Petitioner will be filing separate Change in Zoning and Community Plan Amendment applications with the Maui Planning Commission, with final action to be taken by the Maui County Council. Approval of these applications will allow for the Property to be developed in accordance with Petitioner's plans.

## **XVI. CONFORMANCE WITH THE HAWAII STATE PLAN**

The Hawaii State Plan, found in HRS § 226, is a comprehensive guide for the future long-range development of the State. Among other things, the Hawaii State Plan's purposes are to identify the goals, objectives, policies, and priorities for the State, provide a basis for allocating limited resources, and improve coordination between federal, state, and county agencies. A detailed discussion of the proposed development's conformance with the Hawaii State Plan is included in Petitioner's EISPN, and will also be included in Petitioner's EIS.

### **A. Goals of the Hawaii State Plan**

The Hawaii State Plan sets forth goals, several of which the proposed development is consistent with. Those goals are:

- A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawaii's present and future generations.
- A desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well-being of the people.
- Physical, social, and economic well-being, for individuals and families in Hawaii, that nourishes a sense of community responsibility, of caring, and of participation in community life.

## **B. Objectives and Policies of the Hawaii State Plan**

The Hawaii State Plan also provides numerous objectives and policies for the State. In particular, the proposed reclassification conforms to the following objectives and policies:

### **HRS § 226-5, HRS, Objectives and Policies for Population**

- HRS § 226-5(a): It shall be the objective in planning for the State's population to guide population growth to be consistent with the achievement of physical, economic, and social objectives contained in this chapter.
- HRS § 226-5(b)(1): Manage population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.
- HRS § 226-5(b)(3): Promote increased opportunities for Hawaii's people to pursue their socio-economic aspirations throughout the islands.

### **HRS § 226-6, Objective and Policies for the Economy - in General**

- HRS § 226-6(b)(b): Strive to achieve a level of construction activity responsive to, and consistent with, State growth objectives.

### **HRS § 226-11, Objectives and Policies for the Physical Environment - Land-Based, Shoreline, and Marine Resources.**

- HRS § 226-11(a)(2): Effective protection of Hawaii's unique and fragile environmental resources.
- HRS § 226-11(b)(3): Take into account the physical attributes of areas when planning and designing activities and facilities.
- HRS § 226-11(b)(8): Pursue compatible relationships among activities, facilities, and natural resources.

### **HRS § 226-12, Objective and Policies for the Physical Environment - Scenic, Natural Beauty, and Historic Resources.**

- HRS § 226-12(b)(5): Encourage the design of developments and activities that complement the natural beauty of the islands.

**HRS § 226-13, Objectives and Policies for the Physical Environment - Land, Air, and Water Quality.**

- HRS § 226-13(b)(2): Promote the proper management of Hawaii's land and water resources.
- HRS § 226-13(b)(6): Encourage design and construction practices that enhance the physical qualities of Hawaii's communities.
- HRS § 226-13(b)(7): Encourage urban developments in close proximity to existing services and facilities.

**HRS § 226-19, Objectives and Policies for Socio-Cultural Advancement - Housing.**

- HRS § 226-19(a)(2): The orderly development of residential areas sensitive to community needs and other land uses.
- HRS § 226-19(b)(1): Effectively accommodate the housing needs of Hawaii's people.
- HRS § 226-19(b)(3): Increase home ownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.
- HRS § 226-19(b)(5): Promote design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas.
- HRS § 226-19(b)(7): Foster a variety of lifestyles traditional to Hawaii through the design and maintenance of neighborhoods that reflect the culture and values of the community.

**HRS § 226-23, Objective and Policies for Socio-Cultural Advancement - Leisure.**

- HRS § 226-23(b)(4): Promote the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values while ensuring that their inherent values are preserved.

**C. Priority Guidelines of the Hawaii State Plan**

Priority guidelines are other important elements of the Hawaii State Plan. By prioritizing major areas of statewide concern, the quality of life for Hawaii's present and future

population is improved and enhanced. The proposed development is in keeping with the following priority guidelines of the Hawaii State Plan:

**HRS § 226-103, Economic Priority Guidelines:**

- HRS § 226-103(1): Seek a variety of means to increase the availability of investment capital for new and expanding enterprises.
- a. Encourage investments which:
- (i) Reflect long term commitments to the State;
  - (ii) Rely on economic linkages within the local economy;
  - (iii) Diversify the economy;
  - (iv) Reinvest in the local economy;
  - (v) Are sensitive to community needs and priorities; and
  - (vi) Demonstrate a commitment to management opportunities to Hawaii residents.

**HRS § 226-104, Population Growth and Land Resources Priority Guidelines**

- HRS § 226-104(a)(1): Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawaii's people.
- HRS § 226-104(b)(1): Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.
- HRS § 226-104(b)(2): Make available marginal or non-essential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.

HRS § 226-104(b)(12): Utilize Hawaii's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline conservation lands, and other limited resources for future generations.

**HRS § 226-106, Affordable Housing Priority Guidelines**

HRS § 226-106(1): Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low and moderate income and gap group households.

HRS § 226-106(8): Give higher priority to the provision of quality housing that is affordable for Hawaii's residents and less priority to development of housing intended primarily for individuals outside of Hawaii.

**D. Functional Plans**

The State Functional Plans implement the Hawaii State Plan by identifying needs, problems and issues, and by recommending policies and priority actions which address the identified areas of concern.

**XVII. CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT PROGRAM**

Hawaii's Coastal Zone Management Program ("CZM"), found in HRS § 205A, establishes numerous objectives, policies, and standards to guide and regulate public and private uses in the coastal zone management area. A preliminary discussion of the proposed development's conformance to the CZM is included in Petitioner's EISPN. A more detailed discussion will be included in Petitioner's EIS. Although the Property involved in this Petition is not located within the County of Maui's Special Management Area ("SMA"), the proposed development's relationship to the following applicable CZM considerations have nevertheless been reviewed and assessed:

**A. Recreational Resources**

HRS § 205A-2(b)(1)(A) provides that the CZM's stated objective is to "[p]rovide coastal recreational opportunities accessible to the public." The statute provides several policies to achieve this objective. Those policies are:

1. Improve coordination and funding of coastal recreational planning and management, and
2. Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:
  - i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;
  - ii) Requiring replacement of coastal resources having significant recreational value, including but not limited to surfing sites, fishponds, and sand beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the state for recreation when replacement is not feasible or desirable;
  - iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;
  - iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;
  - v) Ensuring public recreational use of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;

vi) Adopting water quality standards and regulating point and non-point sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;

vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoon, artificial beaches, and artificial reefs for surfing and fishing; and

viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, county planning commissions; and crediting such dedication against the requirements of Section 46-6, HRS.

The proposed development will not affect coastal zone recreational opportunities. Accessibility to shoreline areas will not be impacted by the proposed development. Additional recreational opportunities will be provided by a 14.6-acre park that will be part of the proposed development.

#### **B. Historic Resources**

HRS § 205A-2(b)(2)(A) provides that the CZM's objective is to "[p]rotect, preserve and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture." In furtherance of this objective, the statute states several policies. These policies are to:

1. Identify and analyze significant archaeological resources;
2. Maximize information retention through preservation of remains and artifacts or salvage operations; and

3. Support state goals for protection, restoration, interpretation, and display of historic resources.

The proposed development is not anticipated to adversely affect significant historic or archaeological resources. An archaeological inventory study of the Property will be carried out in connection with the preparation of Petitioner's EIS.

#### **C. Scenic and Open Space Resources**

HRS § 205A-2(b)(3)(A) states that the CZM's objective is to "[p]rotect, preserve and, where desirable, restore or improve the quality of coastal scenic and open space resources."

The policies to achieve this objective are as follows:

1. Identify valued scenic resources in the coastal zone management area;
2. Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
3. Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and
4. Encourage those developments which are not coastal dependent to locate in inland areas.

The proposed development will not adversely impact scenic or open space resources. The proposed development will not affect public views to and along the shoreline.

#### **D. Coastal Ecosystems**

HRS § 205A-2(b)(4)(A) provides that the CZM's objective is to "[p]rotect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems." The policies set forth in the statute are:



1. Improve the technical basis for natural resource management;
2. Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
3. Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
4. Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate state water quality standards.

Petitioner will ensure that appropriate erosion control measures are implemented during construction of the proposed development to prevent significant impacts upon coastal water ecosystems. There will be no adverse impacts to adjoining downstream properties, and best management practices will be implemented as part of site construction work occurring on the Property. The completion of the proposed development will not significantly disrupt or impact coastal ecosystems. Appropriate engineering and drainage studies will be included in Petitioner's EIS.

#### **E. Economic Uses**

HRS § 205A-2(b)(5)(A) states that the CZM's objective is to "[p]rovide public or private facilities and improvements important to the State's economy in suitable locations." The policies to achieve this objective are:

1. Concentrate coastal dependent development in appropriate areas;
2. Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor facilities and energy generating facilities, are located,

designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and

3. Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long term growth at such areas, and permit coastal dependent development outside of presently designated areas when:

- i) Use of presently designated locations is not feasible;
- ii) Adverse environmental effects are minimized; and
- iii) The development is important to the State's economy.

The proposed development is not a coastal dependent development. No adverse economic impacts will be generated as a result of the proposed development. Rather, the proposed development will benefit the local economy by creating construction-related employment. The proposed development will also generate market and affordable housing to meet existing demand.

#### **F. Coastal Hazards**

HRS §205A-2(b)(6)(A) states that the CZM's objective is to "[r]educe hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution." The policies toward achieving this objective are to:

1. Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;
2. Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint pollution hazards;

3. Ensure that developments comply with requirements of the Federal Flood Insurance Program;
4. Prevent coastal flooding from inland projects; and
5. Develop a coastal point and nonpoint source pollution control program.

As previously stated, the Property is located within Zone C, which is an area of minimal flooding. Moreover, tsunami inundation parameters do not apply to the proposed development. The proposed development is not located within an environmentally sensitive area which is subject to natural hazards. All drainage improvements will be designed in accordance with County standards to ensure no adverse impacts to downstream properties.

**G. Managing Development**

HRS §205A-2(b)(7)(A) states that the CZM's objective is to "[i]mprove the development review process, communication, and public participation in the management of coastal resources and hazards." Stated policies are:

1. Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;
2. Facilitate timely processing of applications for development permits and resolve overlapping of conflicting permit requirements; and
3. Communicate the potential short and long term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process.

The Petition, as well as the Community Plan Amendment and Change in Zoning application processes that are involved with the proposed development, involve comprehensive review by various governmental agencies, the Maui Planning Commission, and the Maui County

Council. In addition, the environmental impact statement process pursuant to HRS § 343 will also involve a comprehensive review of the proposed development. Participation is afforded at public hearings for these processes. All applicable state and county requirements will be adhered to both in the design and construction of the proposed development. Petitioner has held several informational meetings with the Waikapu and Wailuku Heights communities and the Wailuku Main Street Association.

#### **H. Public Participation**

HRS §205A-2(b)(8)(A) states that the CZM's objective is to "[s]timulate public awareness, education, and participation in coastal management." The various policies set forth toward this objective are:

1. Maintain a public advisory body to identify coastal management problems and to provide policy advice and assistance to the coastal zone management program;
2. Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal related issues, developments, and government activities; and
3. Organize workshops, policy dialogues and site-specific mediations to respond to coastal issues and conflicts.

As noted above, ample opportunity for agency and public review of the proposed development is provided through the various processes that are required before it can proceed.

#### **I. Beach Protection**

HRS §205A-2(b)(9)(A) states that the CZM's objective is to "[p]rotect beaches for public use and recreation." The CZM's stated policies are:

1. Locate new structures inland from the shoreline setback to conserve open space and to minimize loss of improvements due to erosion;
2. Prohibit construction of private erosion protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; and
3. Minimize the construction of public erosion protection structures seaward of the shoreline.

The proposed development does not involve any construction work near the shoreline and will not have any effect on beaches in the region.

**J. Marine Resources**

HRS §205A-2(b)(10)(A) states that the CZM's objective is to "[i]mplement the State's ocean resources management plan." The statute provides several policies to achieve this objective. These policies are:

1. Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;
2. Assure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;
3. Coordinate the management of marine and coastal resources and activities management to improve effectiveness and efficiency;
4. Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;

5. Promote research, study, and understanding of ocean processes, marine life, and other ocean resources in order to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and

6. Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.

The proposed development is not anticipated to have any adverse effects upon marine and coastal resources. While the Property is located in an inland area, and away from any marine or coastal resources, Petitioner will utilize appropriate best management practices to ensure that construction runoff is appropriately handled, thus minimizing any impacts to coastal waters.

Based on the foregoing analysis, the proposed development will not have any impact on the SMA and is consistent with the objectives and policies of the CZM.

## **XVIII. CONFORMANCE WITH COUNTY GENERAL PLAN, COMMUNITY PLAN, AND ZONING**

### **A. General Plan**

The General Plan of the County of Maui ("General Plan") was adopted in 1980, and updated in 1990. The General Plan is a statement of the long-range social, economic, environmental, and design objectives for the general welfare and prosperity of the people of Maui County. Section 8-8.5 of the Revised Charter of the County of Maui states:

*The general plan shall indicate desired population and physical development patterns for each island within the county; shall address the unique problems and needs of each island and region within the county; shall explain the opportunities and the social, economic, and environmental consequences related to potential developments; and shall set forth the desired sequence, patterns, and characteristics of future*

*developments. The general plan shall identify objectives to be achieved, and priorities, policies and implementing actions to be pursued with respect to population density, land use maps, land use regulations, transportation systems, public and community facility locations, water and sewage systems, visitor destinations, urban design, and other matters related to development.*

The General Plan contains over 20 different objectives, each with various policies for implementation. These objectives advance the following five (5) major themes stated in the General Plan:

1. Protect Maui County's agricultural land and rural identity;
2. Prepare a directed and managed growth plan;
3. Protect Maui County's shoreline and limit visitor industry growth;
4. Maintain a viable economy that offers diverse employment opportunities for residents; and
5. Provide for needed residential housing.

A preliminary discussion of the proposed development's conformance with the General Plan and community plan referenced hereinbelow is included in Petitioner's EISPN. Further explanations will be provided in Petitioner's EIS. In particular, the proposed reclassification of the Property responds and conforms to Theme No. 5. Market studies have shown that the population growth and correlating need and demand for housing is extremely high on Maui. The proposed reclassification, which will allow individuals and families to purchase a multi-family housing unit or construct a home on a lot that fits their needs, will present an opportunity to address the need for residential housing.

The proposed reclassification and development will be consistent with a directed and managed growth plan, as evidenced by its location near existing urbanized areas. The

proposed development will assist in maintaining a viable economy as construction-related employment opportunities for residents would be generated.

The proposed reclassification is also consistent with the following objectives and policies of the General Plan:

- To plan the growth of resident and visitor population through a directed and managed growth plan so as to avoid social, economic and environmental disruptions.
- To preserve for present and future generations existing geographic, cultural and traditional community lifestyles by limiting and managing growth through environmentally sensitive and effective use of land in accordance with the individual character of the various communities and regions of the County.
- To use the land within the County for the social and economic benefit of all the County's residents.
- To encourage developments which reflect the character and the culture of Maui County's people.
- To see that all developments are well designed and are in harmony with their surroundings.
- To provide a choice of attractive, sanitary and affordable homes for all our residents.
- Provide affordable housing to be fulfilled by a broad cross-section of housing types.
- To provide high-quality recreational facilities to meet the present and future needs of our residents of all ages and physical ability.



- To provide an economic climate which will encourage controlled expansion and diversification of the County's economic base.

**B. Wailuku-Kahului Community Plan**

The Wailuku-Kahului Community Plan, one of nine (9) community plans for Maui County, is mandated by the Revised Charter of the County of Maui and the General Plan. Each region's growth and development is guided by a community plan, which contains goals, objectives, and policies drafted in accordance with the General Plan.

The purpose of the community plan is to provide a relatively detailed agenda for implementing the objectives and policies of the General Plan. Included within the community plans are the desired sequence, patterns, and characteristics of future developments for the particular region, as well as statements of standards and principles with respect to development and sequencing of future developments.

The Wailuku-Kahului Community Plan's current designation of the Property is "Agricultural," which does not allow for the proposed development, although a portion of the Property is designated "Single-Family". Petitioner will therefore be filing an application for a community plan amendment with the Maui Planning Department for processing with the Maui Planning Commission and referred to the Maui County Council, seeking to amend the designation of the Property from its current "Agricultural" designation to allow for the proposed development. Since the proposed development involves a community plan amendment, an EISPN has been prepared in accordance with HRS § 343.

The proposed development is consistent with the following goals, objectives, and policies of the Wailuku-Kahului Community Plan:

**Goal (Housing):**

A sufficient supply and choice of attractive, sanitary and affordable housing accommodations for the broad cross section of residents, including the elderly.

**Objectives and Policies:**

- 2. Provide sufficient land areas for new residential growth which relax constraints on the housing market and afford variety in type, price, and location of units. Opportunities for the provision of housing are presently constrained by a lack of expansion areas. This condition should be relieved by a choice of housing in a variety of locations, both rural and urban in character.
- 6. Coordinate the planning, design and construction of public infrastructure improvements with major residential projects that have an affordable housing component.

**Goal (Infrastructure):**

Timely and environmentally sound planning, development and maintenance of infrastructure systems which serve to protect and preserve the safety and health of the region's residents, commuters and visitors through the provision of clean water, effective waste disposal and drainage systems, and efficient transportation systems which meet the needs of the community.

**Objectives and Policies (Water and Utilities):**

\* \* \*

- 6. Coordinate expansion of and improvements to the water system to coincide with the development of residential expansion areas.

**Objectives and Policies (Drainage):**

\* \* \*

- 4. Ensure that storm water run-off and siltation from proposed development will not adversely affect the marine environment and nearshore and offshore water quality. Minimize the increase in discharge of storm water

runoff to coastal waters by preserving flood storage capacity in low-lying areas, and encouraging infiltration of runoff.

5. Encourage the incorporation of drainageways, setbacks, and flood protection areas into greenways consisting of open space, pedestrian way and bikeway networks.

**Objectives and Policies (Transportation):**

1. Enhance circulation improving road maintenance, improving or providing traffic signals and turning lanes at congested intersections; and by providing street and destination signs. Important intersections include, Lono and Papa Avenues, and intersections along Papa Avenue, Wakea Avenue, and North Market Street. Additional turning lanes, traffic signals and roadway improvements in the Wailuku Town core should be designed to facilitate safe traffic movement and be compatible with the traditional character of the area.
6. Accommodate bicycle and pedestrian ways within planned roadway improvements.

**Goal (Urban Design):**

An attractive and functionally integrated urban environment that enhances neighborhood character, promotes quality design, defines a unified landscape planting and beautification theme along major public roads and highways, watercourses and at major public facilities and recognizes the historic importance and traditions of the region.

**Objectives and Policies for the Wailuku - Kahului Region in General:**

5. Integrate stream channels and gulches into the region's open space system for purposes of safety, open space relief, greenways for public use and visual separation. Drainage channels and siltation basins should not be used for building sites, but rather for public open space. Drainage channel rights-of-way and easements may also be used for pedestrian and bikeway facilities.

7. Buffer public and quasi-public facilities and light-heavy industrial/commercial type facilities from adjacent residential uses with appropriate landscape planting.

**C. County Zoning**

The Property is currently zoned "Agricultural" by Maui County zoning. This zoning does not allow for the proposed development. As such, a separate Change in Zoning application will be filed with the Maui Planning Department for processing with the Maui Planning Commission and referred to the County Council for final action. The request will be to change the Property's current zoning from "Agricultural" to "RU-0.5 and RU-1, Rural Districts", "R-0, Residential District", "A1, Apartment District" and "OS-2, Open Space District" which would allow for the proposed development.

**XIX. DEVELOPMENT OF THE PROPERTY**

Development of the Property will be accomplished within ten (10) years after the date of the Commission's approval.

**XX. HAWAIIAN CUSTOMARY AND TRADITIONAL RIGHTS**

Petitioner is aware of, and sensitive to, the existence and practice of native Hawaiian customary and traditional rights that are protected by Article XII, section 7 of the Hawaii State Constitution. Based on research into the history of the area, there are no known traditional gathering activities or cultural practices affecting the Property. A detailed discussion and the cultural study for the Property will be included in Petitioner's EIS.

**XXI. WRITTEN COMMENTS FROM AGENCIES AND ORGANIZATIONS**

Written comments from the various agencies and organizations that were consulted, including responses, will be included in Petitioner's EIS.

**XXII. SERVICE OF PETITION**

Pursuant to HAR § 15-15-48, copies of this Petition must be served upon the County of Maui Planning Department and Planning Commission, the State of Hawaii Office of Planning, and all persons with a property interest in the Property.

Copies of this Petition will be served upon the above-named parties. An affidavit of compliance with this section is attached as **Exhibit "15"**. In accordance with HAR § 15-15-48(b), copies of this Petition will also be served upon potential intervenors upon receipt of a notice of intent to intervene pursuant to LUC Rule § 15-15-52(b).

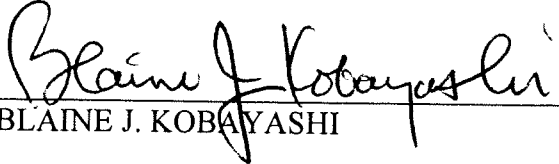
**XXIII. CONCLUSION**

The proposed development will be an attractive residential development that will include a unique mix of multi-family units, single-family lots, and larger one-acre and half-acre lots. The proposed development will provide a smooth transition from the higher density Kehalani Project District to the agricultural lands located south of the Property. Given the Property's location to Wailuku, Waikapu, and Kahului, the proposed development is a reasonable and appropriate use of the Property.

Based on the foregoing, Petitioner respectfully requests that the Commission find that the Petition complies with the necessary requirements of a petition for boundary amendment pursuant to HAR § 15-15-50. Petitioner also respectfully requests that the Commission find that the proposed development meets the standards for determining the Urban and Rural District

boundaries pursuant to HAR §§ 15-15-18 and 15-15-21, and therefore, grant the reclassification of the Property from the Agricultural District to the Urban and Rural Districts.

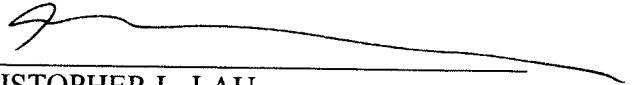
DATED: Wailuku, Hawaii, June 2, 2006.

  
BLAINE J. KOBAYASHI

Attorney for Petitioners  
TOWNE DEVELOPMENT OF HAWAII,  
INC., ENDURANCE INVESTORS, LLC,  
AND ASSOCIATION OF II WAI HUI LP

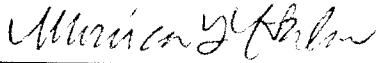
**VERIFICATION**

CHRISTOPHER L. LAU, being duly sworn on oath, deposes and says that he is the President of Towne Development of Hawaii, Inc., a Hawaii corporation, and is authorized to make this verification on behalf of the Petitioners; that he has read the foregoing petition and knows the contents thereof; and that the same are true to the best of his knowledge, information and belief.



CHRISTOPHER L. LAU

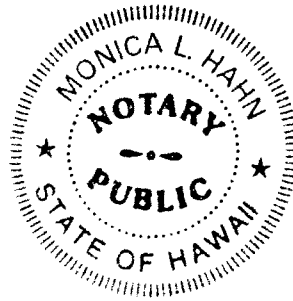
Subscribed and sworn (or affirmed) before me this 19<sup>th</sup> day of May, 2006.



Name: Monica L. Hahn

Notary Public, State of Hawaii

My commission expires: NOV 12 2009







HAWAIIAN TELCOM  
1177 Bishop Street  
Honolulu, Hawaii 96813

BY MAIL

WAILUKU WATER COMPANY, LLC  
255 E. Waiko Road  
Wailuku, Hawaii 96793

BY MAIL

DATED: Wailuku, Hawaii, June 2, 2006.

  
\_\_\_\_\_  
BLAINE J. KOBAYASHI

Attorney for Petitioners  
TOWNE DEVELOPMENT OF HAWAII,  
INC., ENDURANCE INVESTORS, LLC,  
AND ASSOCIATION OF II WAI HUI LP

# **Exhibit "1"**

Correction Quitclaim Deed to Endurance Investors, LLC  
and Association of II Wai Hui LP dated February 17, 2006



R-687

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
MAR 08, 2006 08:02 AM

Doc No(s) 2006-044462



20 1/1 Z6

/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$0.00

LAND COURT

REGULAR SYSTEM

Return By Mail  Pick-Up  To:

Blaine J. Kobayashi  
Carlsmith Ball LLP  
2200 Main Street, Suite 400  
Wailuku, Hawaii 96793

TITLE OF DOCUMENT:

**CORRECTION QUITCLAIM DEED**

PARTIES TO DOCUMENT:

GRANTOR: LLOYD K. SODETANI  
ENDURANCE INVESTORS, LLC

GRANTEE: ENDURANCE INVESTORS, LLC  
381 Huku Li'i Place, Suite 202  
Kihei, Hawaii 96753

ASSOCIATION OF II WAI HUI LP  
1885 Main Street, Suite 404  
Wailuku, Hawaii 96793

TAX MAP KEY(S): (2) 3-5-002:002

(This document consists of 10 pages.)

**EXHIBIT "1"**

**CORRECTION QUITCLAIM DEED**

THIS CORRECTION QUITCLAIM DEED made this 17<sup>th</sup> day of February, 2006, by and between LLOYD K. SODETANI, husband of Sharon L. Sodehani, whose address is 1885 Main Street, Suite 404, Wailuku, Hawaii 96793, and ENDURANCE INVESTORS, LLC, a Washington limited liability company, whose address is 381 Huku Li'i Place, Suite 202, Kihei, Hawaii 96753, hereinafter referred to as the "GRANTOR", and ENDURANCE INVESTORS, LLC, a Washington limited liability company, whose address is 381 Huku Li'i Place, Suite 202, Kihei, Hawaii 96753, and ASSOCIATION OF II WAI HUI LP, a Hawaii limited partnership, whose address is 1885 Main Street, Suite 404, Wailuku, Hawaii 96793, hereinafter referred to as the "GRANTEE",

**W I T N E S S E T H :**

WHEREAS, ENDURANCE INVESTORS, LLC, and II WAI HUI acquired the property described in Exhibit "A" attached hereto and by reference made a part hereof by Quitclaim Deed dated December 31, 2003, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-027469; and

WHEREAS, the Quitclaim Deed erroneously names "II WAI HUI" as one of the Grantees; and

WHEREAS, the correct name should have been ASSOCIATION OF II WAI HUI LP as opposed to II WAI HUI; and

WHEREAS, the parties wish to correct the records in the Bureau of Conveyances of the State of Hawaii to reflect that title to the property should be in the names of "ENDURANCE INVESTORS, LLC, a Washington limited liability company," and "ASSOCIATION OF II WAI HUI LP, a Hawaii limited partnership," as equal tenants in common;

NOW, THEREFORE, the Grantor for and in consideration of the premises and the sum of ONE AND NO/100 DOLLAR (\$1.00) paid to the Grantor by the Grantee, the receipt whereof is hereby acknowledged, does hereby give, grant, convey, release and forever quitclaim unto the said Grantee, as equal tenants in common, all of the Grantor's right title and interest in and to the real property described in Exhibit "A", attached hereto and by this reference incorporated herein; subject, however, to all encumbrances noted on said Exhibit "A".

TOGETHER WITH all and singular the buildings, improvements, rights, tenements, hereditaments, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith.

TO HAVE AND TO HOLD the same unto the Grantee, according to the tenancy and estate as hereinabove set forth, forever.

The covenants and obligations, and the rights and benefits of the Grantor and the Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, devisees, personal representatives, successors, successors in trust, and assigns, and all covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless otherwise expressly provided herein. The terms "Grantor" and "Grantee,"

wherever used herein, and any pronouns used in place thereof, shall mean and include the singular and the plural, and the use of any gender shall mean and include all genders.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first above written.

Approved as to Form  
CARLSMITH BALL LLP

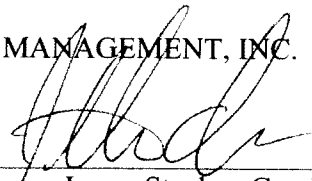
By /s/ Blaine J. Kobayashi

GRANTOR:

  
\_\_\_\_\_  
LLOYD K. SODETANI

ENDURANCE INVESTORS, LLC.

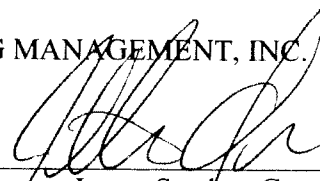
By JSG MANAGEMENT, INC.

By   
\_\_\_\_\_  
Print Name: James Stephen Goodfellow  
Its: President

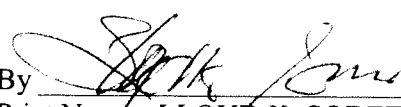
GRANTEE:

ENDURANCE INVESTORS, LLC.

By JSG MANAGEMENT, INC.

By   
\_\_\_\_\_  
Print Name: James Stephen Goodfellow  
Its: President

ASSOCIATION OF II WAI HUI LP

By   
\_\_\_\_\_  
Print Name: LLOYD K. SODETANI  
Its: General Partner

STATE OF HAWAII )  
 ) ss.  
COUNTY OF MAUI )

On this 17th day of February, 2006, before me personally appeared **LLOYD K. SODETANI**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

*Sharon Y. Kuwae*

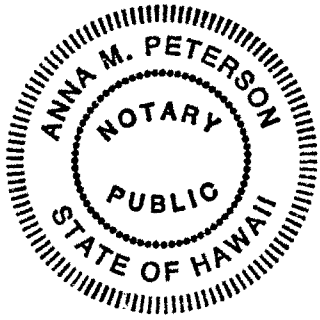
Name: Sharon Y. Kuwae

Notary Public, State of Hawaii

My commission expires: 9-18-07

STATE OF HAWAII )  
 ) ss.  
COUNTY OF MAUI )

On this 13<sup>th</sup> day of February, 20 06, before me personally appeared **JAMES STEPHEN GOODFELLOW** to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that he is the President of JSG MANAGEMENT, INC., the Manager of ENDURANCE INVESTORS, LLC, a Washington limited liability company, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



*Anna M. Peterson*

Name Anna M. Peterson

Notary Public, State of Hawaii

My commission expires: 12-15-07



STATE OF HAWAII                    )  
  ) ss.  
COUNTY OF MAUI                    )

On this 17th day of February, 20 06, before me personally appeared **LLOYD K. SODETANI**, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that he is the General Partner of ASSOCIATION OF II WAI HUI LP, a Hawaii limited partnership, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

69.

Sharon Y. Kuwal  
Name: Sharon Y. Kuwal

Notary Public, State of Hawaii

My commission expires: 9-18-07

**EXHIBIT "A"**

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Grant Number 2953 to W. P. Brown; Royal Patent Number 2775, Land Commission Award Number 3201, Apana 2 to Wm. McLane; Royal Patent Grant Number 282 to James Louzada; Royal Patent Grant Number 2005 to John Ross; Royal Patent Number 3121, Land Commission Award Number 3525, Apana 2 to Keliiolelo; Royal Patent Number 1111, Land Commission Award Number 433 to William Crowningburg; Royal Patent Grant Number 2952 to David Crowningburg and portions of Royal Patent Numbers 4529-B & 4549, Land Commission Award Number 71 to Michael J. Nowlein; Royal Patent Number 7659, Land Commission Award Number 326 to Wm. Humphreys; Royall Patent Grant Number 3152 to Henry Cornwell; Royal Patent Grant Number 2951 to H. Cornwell and J. Louzada; Royal Patent Number 7658, Land Commission Award Number 225 to James Louzada; Royal Patent Number 5356, Land Commission Award Number 2980:1 to Pakele; Royal Patent Grant Number 1680:1 to Manuel Flores and Royal Patent Number 5333, Land Commission Award 3019:2 to Mehao) situate, lying and being on the westerly side of Honoapiilani Highway (F.A.P. 13-G) at Waikapu, Wailuku, Island and County of Maui, State of Hawaii, and thus bounded and described:

Beginning at a point at the southwesterly corner of this parcel of land, being also the northwesterly corner of Lot 3-A of Waikapu North Large-Lot Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being: 6,616.94 feet South and 3,748.66 feet West and running by azimuths measured clockwise from true South:

1.     209°    26'            1,210.02 feet along the easterly side of Old Waikapu Road to a point;
2.     186°    59'            1,034.51 feet along same to a point;
3.     246°    10'            717.18 feet along the southerly side of Old Waikapu Road to a point;
4.     231°    17'            92.08 feet along same to a point;
5.     352°    39'    11"    924.10 feet along the westerly side of Honoapiilani Highway F.A.P. 13-G) to a point;
6.     Thence along same on a curve to the right, having a radius of 2,824.93 feet, the chord azimuth and distance being: 359° 05' 41" 633.87 feet to a point;
7.     5°     32'    11"    1,231.66 feet along same to a point;

8. 103° 26' 1,498.62 feet along the remainders of Grant 2951 to H. Cornwell and J. Louzada; Royal Patent 7658, Land Commission Award 225 to James Louzada; Royal Patent 5356, Land Commission Award 2980:1 to Pakele; Grant 1680:1 to Manuel Flores and Royal Patent 5333, Land Commission Award 3019:2 to Mehao, being also along Lot 3-A of Waikapu North Large-Lot Subdivision to the point of beginning and containing an area of 60.087 acres.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Rights of native tenants as reserved in Royal Patent Grant Numbers 282, 2005, 2952, 2953, 3152 and Royal Patent Number 1111.
3. Grant to Maui Electric Company, Limited, a Hawaii corporation, and Hawaiian Telephone Company, a Hawaii corporation, now known as Verizon Hawaii Inc., dated January 5, 1987, recorded in the Bureau of Conveyances in Liber 20331 on Page 23, granting a nonexclusive right and easement for utility purposes as shown on maps attached thereto.
4. Any and all existing roadways, easements of right-of-way and irrigation ditches.
5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Declaration of Covenants, Conditions, Easements, Reservations and Restrictions dated December 30, 2002, recorded in said Bureau of Conveyances as Document No. 2002-234375. Said Declaration was assigned to Wailuku Water Company, LLC, a Hawaii limited liability company, doing business as Wailuku Water Company, by Assignment of Declarations of Covenants, Conditions, Easements, Reservations and Restrictions dated October 1, 2005, recorded in said Bureau of Conveyances as Document No. 2005-229075.
6. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
7. Any unrecorded leases and matters arising from or affecting the same.
8. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Co-Tenancy Agreement by and

between Endurance Investors, LLC, a Washington limited liability company, and II Wai Hui, a Hawaii limited partnership, dated December 31, 2003, recorded in said Bureau of Conveyances as Document No. 2004-027470.

9. Assignment of In Gross Reservations dated October 1, 2005, by and between Wailuku Agribusiness Co., Inc., a Hawaii corporation, and Wailuku Water Company, LLC, a Hawaii limited liability company, doing business as Wailuku Water Company, recorded in said Bureau of Conveyances as Document No. 2005-229077.

Note: No joinder by Endurance Investors, LLC, a Washington limited liability company, and II Wai Hui, a Hawaii limited partnership.

Being the premises described in Limited Warranty Deed from Wailuku Agribusiness Co., Inc., a Hawaii corporation, as Grantor, to the Grantor herein, as Grantee, dated December 30, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-234374 and also described in Quitclaim Deed from the Grantor to Endurance Investors, LLC, and II Wai Hui, dated December 31, 2003, and recorded in said Bureau of Conveyances as Document No. 2004-027469.

Tax Key: (2) 3-5-002:002

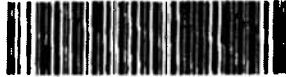
4830-6473-0624.4.000901-00030

# **Exhibit "2"**

Limited Warranty Deed to Wailuku Kuikahi LLC  
dated August 6, 2004



R-1223 STATE OF HAWAII  
 BUREAU OF CONVEYANCES  
 RECORDED  
 AUG 06, 2004 08:02 AM  
 Doc No(s) 2004-161727



/s/ CARL T. WATANABE  
 REGISTRAR OF CONVEYANCES

20 1/4 Z2

CONVEYANCE TAX: \$4450.00

LAND COURT SYSTEM      REGULAR SYSTEM  
 Return by Mail (x) Pickup ( ) To: \_\_\_\_\_  
 WAILUKU KUIKAHI LLC      TG: 200434305 S  
 220 South King Street, Ste 2170      TGE: A42010623  
 Honolulu HI 96813      D. Schoeppner  
 \_\_\_\_\_  
 TMK: (2) 3-5-002:003      Number of Pages: 14

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, whose address is 255 East Waiko Road, Wailuku Hawaii 96793, hereinafter called the "Grantor," in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by WAILUKU KUIKAHI LLC, a Hawaii limited liability company, whose mailing address is 220 South King Street, Suite 2170, Honolulu, Hawaii 96813, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby grant and

convey unto the Grantee as tenant in severalty, all of Grantor's right, title and interest in and to the real property described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property"); subject, however, to all encumbrances noted on said Exhibit "A".

TO HAVE AND TO HOLD the same, together with any improvements thereon and the rights, easements, privileges, and appurtenances thereunto belonging or appertaining unto the Grantee, the heirs, representatives, administrators, successors and assigns of the Grantee, forever.

AND the Grantor covenants with the Grantee that the former is now seised in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances made by persons claiming by, through or under the Grantor, except the liens and encumbrances hereinbefore mentioned, and except also the liens and encumbrances created or permitted by the Grantee after the date hereof; and that the Grantor will WARRANT and DEFEND the Grantee against the lawful claims and demands of all persons claiming by, through or under the Grantor, except as aforesaid.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, or neuter, the singular or plural number, individuals or corporations, and their and each

of their respective successors, heirs, personal representatives, and permitted assigns, according to the context hereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.



IN WITNESS WHEREOF, the Grantor and Grantee have  
executed these presents on this \_\_\_ day of AUG 06 2004,  
20\_\_.

WAILUKU AGRIBUSINESS CO., INC.

By Kear T. Lucien  
Kear T. Lucien  
Its Vice president

By J. Alan Kugle  
J. Alan Kugle  
Its VP + Sec

Grantor

WAILUKU KUIKAHI LLC  
A Hawaii limited liability company

By: TOWNE DEVELOPMENT OF HAWAII, INC.  
Its: Manager

By: Christopher L. Lau  
Its President

Grantee

IN WITNESS WHEREOF, the Grantor and Grantee have  
executed these presents on this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

WAILUKU AGRIBUSINESS CO., INC.

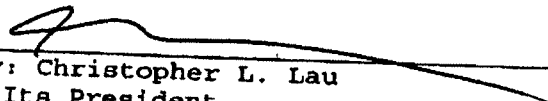
By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

Grantor

WAILUKU KUIKAHI LLC  
A Hawaii limited liability company

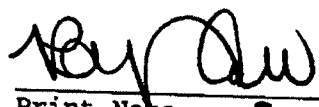
By: TOWNE DEVELOPMENT OF HAWAII, INC.  
Its: Manager

  
By: Christopher L. Lau  
Its President

Grantee

CITY : STATE OF HAWAII )  
COUNTY OF HONOLULU ) SS.

On this 5<sup>th</sup> day of AUGUST, 2004, before me personally appeared KENT T. LUCIEN, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

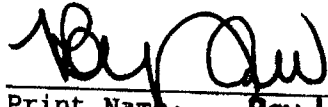


Print Name: Roy J. Tabauro 23  
Notary Public, State of Hawaii.

My commission expires: NOV 2 2005

STATE OF HAWAII )  
City: COUNTY OF HONOLULU ) SS.  
)

On this 5th day of AUGUST, 2004, before me personally appeared J. ALAN KUGLE, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

  
Print Name: Rev J. Totsuno LS  
Notary Public, State of Hawaii.  
Notary Public, State of Hawaii.

My commission expires: NOV 2 2005

STATE OF HAWAII )  
CITY + COUNTY OF HONOLULU ) SS.  
)

On this 5<sup>th</sup> day of August, 2004, before me personally appeared Christopher L. Logg, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Ed. LL Cheung

Print Name: EDITH L L CHEUNG  
Notary Public, State of Hawaii.  
Notary Public, State of Hawaii.

My commission expires: 5/26/2006

EXHIBIT "A"

All of that certain parcel of land (being portion of the lands described in and covered by Royal Patent Number 4529-B and 4549, Land Commission Award Number 71 to Michael J. Nowlein, Royal Patent Number 7659, Land Commission Award Number 326 to William Humphreys, and all of Royal Patent Grant Number 2070 to John Richardson, and Royal Patent Grant Number 1838 to Wm. Humphreys) situate, lying and being on the mauka or westerly side of the old Waikapu Road at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-003 and containing an area of 154.000 acres, more or less.

Being the premises acquired by DEED between F. W. MACFARLANE, husband of Emilia MacFarlane, and WILLIAM H. CORNWELL, as Grantor, and WAILUKU SUGAR COMPANY, as Grantee, dated November 20, 1894, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 152 on Page 86.

SUBJECT, HOWEVER, to the following:

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

2. GRANT to HAWAIIANA INVESTMENT CO., INC., a Hawaii corporation, dated September 23, 1980, recorded in the said Bureau of Conveyances in Liber 15016 on Page 323, granting a non-exclusive easement for landscaping purposes described as follows:

EASEMENT "B" for landscaping purposes over and across Lot 4 of Wailuku Heights Extension, situated on the south side of Lot 2 (Kuikahi Drive) of Wailuku Heights Extension (Large Lot Subdivision) at Wailuku, Maui, Hawaii, being a portion of R. P. 4529-B and 4549, L. C. Aw. 71 to Michael J. Nowlein, the metes and bounds of which easement are as follows:

Beginning at a point at the northwest corner of this easement, the coordinates referred to Government Survey Triangulation Station "LUKE" being 3,339.94 feet south and 2,472.96 feet west and running by azimuths measured clockwise from true South:

1. 261° 50' 15.00 feet along the south side of Lot 2 (Kuikahi Drive) of

Wailuku Heights Extension  
(Large Lot Subdivision);

2. Thence along same on a curve to the right having a radius of 38.00 feet, the chord azimuth and distance being:  
307° 14' 30" 54.12 feet;
3. 347° 18' 40" 1.46 feet along Lot 3  
(Roadwidening Lot) of Wailuku Heights Extension (Large Lot Subdivision);
4. 81° 50' 53.11 feet over and across Lot 4 of Wailuku Heights Extension (Large Lot Subdivision);
5. 171° 50' 40.00 feet over and across same to the point of beginning and containing an area of 1,810 square feet, more or less.

Said above easement was amended by AMENDMENT OF EASEMENT dated February 25, 1983, recorded in the said Bureau of Conveyances in Liber 16895 at Page 565 (re: metes and bounds description).

Note: The metes and bounds description used in the above item is the amended metes and bounds description for EASEMENT "B" as shown in the aforementioned amendment recorded in Liber 16895 at Page 565.

3. GRANT to THE COUNTY OF MAUI, a political subdivision of the State of Hawaii, dated January 24, 1983, recorded in the said Bureau of Conveyances in Liber 17680 on Page 534.

EASEMENT "K"

A Sewerline, Waterline and Drainage Easement over and across portions of R. P. 4529-B and 4549, L. C. Aw. 71 to Michael J. Nowlein and R. P. 7659, L. C. Aw. 326 to Wm. Humphreys at Waikapu, Maui, Hawaii.

Beginning at a point at the northwesterly corner of this easement, the azimuth and distance of said point from

the northeast corner of Lot 43 to Wailuku Heights Extension - Unit I, File Plan 1707 being 186° 10' 50" 6.01 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 4,831.59 feet south and 5,930.74 feet west and running by azimuths measured clockwise from true South:

1. 271° 35' 25.08 feet along the south side of Kuikahi Drive;
2. 6° 10' 50" 160.03 feet over and across portions of R. P. 4529-B and 4549, L. C. Aw. 71 to Michael J. Nowlein and R. P. 7659, L. C. Aw. 326 to Wm. Humphreys;
3. 351° 30' 79.31 feet over and across a portion of R. P. 7659, L. C. Aw. 326 to Wm. Humphreys;
4. 306° 30' 21.89 feet over and across same;
5. 36° 30' 15.00 feet over and across same;
6. 126° 30' 28.11 feet over and across same;
7. 171° 30' 118.84 feet over and across same;
8. 75° 55' 128.76 feet over and across same;
9. 93° 50' 136.97 feet over and across same;
10. 89° 00' 175.19 feet over and across same;
11. 69° 37' 62.37 feet over and across same;
12. 23° 24' 20" 60.46 feet over and across same;
13. 356° 20' 86.15 feet over and across same;
14. 339° 00' 130.44 feet over and across same;
15. 330° 15' 130.18 feet over and across same;
16. 337° 40' 106.57 feet over and across same;
17. 10° 45' 146.72 feet over and across same;



18. 316° 15' 27.06 feet over and across same;
19. 46° 15' 21.00 feet over and across same;
20. 96° 59' 30" 35.00 feet along the northerly side of Lot 1 of Ld. Ct. Appl. 52, Map 3;
21. 199° 08' 0.63 feet along the easterly side of Lot 271 (Park) of Wailuku Heights Extension - Unit I, File Plan 1707;
22. 190° 45' 173.77 feet along same;
23. 157° 40' 97.53 feet along same;
24. 150° 15' 130.47 feet along the easterly side of Lots 271 (Park), 270 and 269 to Wailuku Heights Extension - Unit I, File Plan 1707;
25. 159° 00' 136.16 feet along the easterly side of Lots 269 and 268 of Wailuku Heights Extension - Unit I, File Plan 1707;
26. 176° 20' 88.86 feet along the easterly side of Lots 268, 267 and 266 of Wailuku Heights Extension - Unit I, File Plan 1707;
27. Thence along the easterly side of Lots 266 and 265 and the southerly side of Lot 48 of Wailuku Heights Extension - Unit I, File Plan 1707 on a curve to the right having a radius of 108.00 feet, the chord azimuth and distance being:
- 222° 40' 156.25 feet;
28. 269° 00' 176.26 feet along the southerly side of Lots 48, 47 and 46 of

Wailuku Heights Extension -  
Unit I, File Plan 1707;

29. 279° 00' 45.86 feet along the southerly side  
of Lots 46 and 45 of Wailuku  
Heights Extension - Unit I,  
File Plan 1707;

30. Thence along the southerly side of Lots 45, 44, and 43 of  
Wailuku Heights Extension -  
Unit I, File Plan 1707 on a  
curve to the left having a  
radius of 350.00 feet, the  
chord azimuth and distance  
being:

267° 27' 30" 140.06 feet;

31. 255° 55' 28.25 feet along the southerly side  
of Lot 43 of Wailuku Heights  
Extension - Unit I, File Plan  
1707;

32. Thence along the southeasterly side of Lot 43 of Wailuku  
Heights Extension - Unit I,  
File Plan 1707 on a curve to  
the left having a radius of  
75.00 feet, the chord azimuth  
and distance being:

221° 02' 55" 85.75 feet;

33. 186° 10' 50" 45.92 feet along the easterly side  
of Lot 43 of Wailuku Heights  
Extension - Unit I, File Plan  
1707 and the south side of  
Kuikahi Drive to the point of  
beginning and containing an  
area of 41,573 square feet,  
more or less.

4. GRANT to MAUI ELECTRIC COMPANY, LIMITED, a Hawaii  
corporation, and HAWAIIAN TELEPHONE COMPANY, a Hawaii  
corporation, now known as VERIZON HAWAII, INC., dated January 5,  
1987, recorded in the said Bureau of Conveyances in Liber 20331  
on Page 23, granting a nonexclusive right and easement for  
utility purposes as shown on maps attached thereto.

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, RESERVATIONS AND RESTRICTIONS dated December 30, 2002, recorded in the said Bureau of Conveyances as Document No. 2002-234375, by and between WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation; LLOYD K. SODETANI; and ENDURANCE INVESTORS, LLC, a Washington limited liability company and that certain PARTIAL ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS UNDER DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, RESERVATIONS AND RESTRICTIONS dated August 6, 2004 by and between Wailuku Agribusiness Co., Inc. and Wailuku Kuikahi LLC and recorded in said Bureau of Conveyances concurrently herewith.

6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

7. Water rights, claims or title to water, whether or not shown by the public records.

8. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

9. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, RESERVATIONS AND RESTRICTIONS dated August 6, 2004 by and between Wailuku Agribusiness Co., Inc. and Wailuku Kuikahi LLC and recorded in said Bureau of Conveyances concurrently herewith.

10. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Two Acre Agreement dated August 6, 2004 by and between Wailuku Agribusiness Co., Inc., a Hawaii corporation, and Wailuku Kuikahi LLC, a Hawaii limited liability company and recorded in said Bureau of Conveyances concurrently herewith.

END OF EXHIBIT "A"

Tax Key: (2) 3-5-002-003

# **Exhibit "3"**

Option to Purchase Real Estate

## OPTION TO PURCHASE REAL ESTATE

For good, valuable and sufficient consideration, including the covenants herein contained, as of the 1<sup>st</sup> day of September, 2005, the Wailuku Kuikahi LLC, a Hawaii limited liability company ("Optionor"), hereby grants unto Towne Development of Hawaii, Inc., a Hawaii corporation, or its assigns ("Optionee") an exclusive option to purchase on the terms and conditions herein set forth, certain real property as described in Paragraph 1 below, located in the District of Wailuku, Island and County of Maui, State of Hawaii. This grant of option is referred to herein as the "Agreement".

1. **Premises.** Optionor hereby grants to Optionee on the terms and conditions herein contained an option to purchase ("Option") the real estate described on Exhibit A hereto, being TNK: (2) 3-5-002:003 comprising approximately 152.7 acres of land, more or less, together with all of Optionor's right, title and interest in any entitlements and improvements and other tangible and/or intangible property relating in any manner to the foregoing real estate (collectively the "Property").

2. **Option Period.** Unless sooner exercised or by mutual agreement extended, the Optionee's option to purchase the Property shall run from the date hereof for a period of four (4) years until 11:59 p.m. on August 31, 2009 ("Option Period"). If the Optionee fails to exercise its Option herein within the Option Period, then this Agreement shall terminate and be of no further force and effect.

3. **Option Payments and Manner of Exercise of Option.** Upon execution of this Agreement, the Optionee has paid to the Optionor the sum of Twenty-five Thousand and no/100 Dollars (\$25,000.00) as and for the initial Option payment. An additional Option payment of One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) shall be due Optionor by Optionee on August 31, 2008. The initial Option payment and the additional Option payment shall apply to the Purchase Price (hereinafter defined); however, if Optionee fails to exercise its Option within the Option Period, then said Option payments shall be nonrefundable. This Option shall be exercised by the Optionee by delivering written notice of Optionee's intent to exercise the Option to the Optionor on or before the expiration of the Option Period.

4. **Purchase Price.** The Purchase Price for the Property shall be Sixty-six Thousand Six Hundred Sixty-seven and no/100 Dollars (\$66,667.00) per lot, assuming entitlements are obtained by Optionee for the Property for one hundred fifty (150) lots having either a RU-0.5 or RU-1.0 zoning designation. The Purchase Price shall be payable in U.S. funds by wire transfer at the closing as adjusted pursuant to the other terms and conditions of this Agreement. If the Optionee obtains entitlements for the Property for more or less than one hundred fifty (150) lots, then the Purchase Price shall be adjusted accordingly based upon a per lot Purchase Price of Sixty-six Thousand Six Hundred Sixty-seven and no/100 Dollars (\$66,667.00); provided, however, in no event shall the Purchase Price be less than Eight Million and no/100 Dollars (\$8,000,000.00) or more than Twelve Million and no/100 Dollars (\$12,000,000.00). Example 1: Assuming entitlements for one hundred forty (140) lots, the Purchase Price would be Nine Million Three Hundred Thirty-three Thousand Three Hundred Eighty and no/100 Dollars (\$9,333,380.00). Example 2: Assuming entitlements are obtained for one hundred sixty (160) lots, the Purchase Price would be Ten Million Six Hundred Sixty-six Thousand Seven Hundred Twenty and no/100 Dollars (\$10,666,720.00).

The Purchase Price shall be subject to further adjustment as provided for in Paragraph 5 hereof.

5. Additional Consideration for Option. As and for additional consideration for the Optionor's granting to Optionee of the Option, the Optionee shall pay up to Two Million and no/100 Dollars (\$2,000,000.00) as Optionee's share for obtaining the necessary entitlements and governmental approvals for the establishment of one hundred fifty (150) single family rural RU-0.5 and RU-1.0 Zoned lots on the Property (the "Entitlement Costs") and for the shared detention basin on the Property and for any and all off-site work, including off-site utilities and off-site collector and other road work necessary to develop the Property (the "Detention Basin/Off-site Construction Costs"). The Optionee shall coordinate its development efforts with those of the adjoining property owner, Endurance Investments, LLC, which owns approximately sixty one (61) acres of land. Optionee shall exercise best efforts to ensure that Optionee's share of the Entitlement Costs and Detention Basin/Off-site Construction Costs do not exceed \$2,000,000.00. In the event that the Entitlement Costs and the Detention Basin/Off-site Construction Costs for the Property exceed said amount, then, and in that event, the Optionor and the Optionee agree that the amount by which the Entitlement Costs and the Detention Basin/Off-site Construction Costs exceed \$2,000,000.00 shall be deducted from the Purchase Price as determined pursuant to Paragraph 4 hereof; provided, however, in no event shall the Purchase Price be less than Eight Million and no/100 Dollars (\$8,000,000.00). In the event that the Optionee terminates the Option or fails to exercise its Option within the Option Period, all costs incurred by the Optionee, in doing its due diligence, and for the Entitlements Costs and for the Detention Basin/Off-site Construction Costs, shall be the sole and exclusive cost of the Optionee, and the Optionee shall have no claim against the Optionor with respect to same. Example: Assuming entitlements are obtained for the Property for one hundred fifty (150) lots, then the Purchase Price would be Ten Million and no/100 Dollars (\$10,000,000.00); provided, however, in the event that the Optionee's share for obtaining Entitlement Costs and Detention Basin/Off-site Construction Costs are Two Million Five Hundred Thousand and no/100 Dollars (\$2,500,000.00), then, and in that event, the Purchase Price would be further adjusted to Nine Million Five Hundred Thousand and no/100 Dollars (\$9,500,000.00).

6. Entitlement Schedule and Estimated Categories of Costs to be Shared by Optionee with Endurance Investments, LLC. Attached hereto as Exhibit B is a schedule of various matters which must be completed and categories of costs incurred in order to obtain the entitlements hereinabove referred to. Optionee shall exercise reasonable efforts to adhere to the schedule. If Optionee does not exercise such efforts, Optionor may terminate this Agreement on thirty (30) days prior written notice to the Optionee and the Optionee's failure to cure within said period of time or, if a cure cannot be reasonably obtained within said period of time, Optionor's failure to initiate and continuously thereafter exercise reasonable efforts to cure said failure.

7. Due Diligence Documents and Due Diligence Period. Within fifteen (15) days of the date of the execution of this Agreement, the Optionor shall provide to the Optionee, at no cost or expense to the Optionee, copies of all documents, studies, test results, plans, applications, petitions, entitlements, surveys, title insurance policies or commitments, environmental surveys, archaeological reports, endangered species reports, affordable housing requirements, and any other documents of any nature relating to the Property which the Optionor obtained from its seller when Optionor acquired the Property ("Due Diligence Documents"). Optionee shall, during the Option Period, and if the Optionee exercises its Option, until closing date, to be entitled to enter upon the Property for purposes of conducting such feasibility studies, tests, surveys, inspections, and other investigations as the Optionee shall determine in its sole discretion. In the event that the Optionee does not exercise its Option as herein provided, the Optionee shall return all copies of the Due Diligence Documents, together with copies of all of the reports and investigations obtained by the Optionee to the Optionor.

8. **Indemnity.** Optionor shall not be liable for any action taken or work done on the Property by the Optionor or its agents or consultants. Optionee shall not permit any liens or encumbrances against the Property as a result of any inspection or work done by the Optionee or its agents or consultants. Optionee shall indemnify, defend and hold harmless Optionor against any and all liabilities whatsoever in any way connected with the Optionee's work on, or inspection of, the Property, including reasonable attorneys' fees and costs derived from any action by the Optionee or incurred by the Optionor in enforcing this indemnity. This indemnity shall survive closing or termination of this Option.

9. **Title Report; Title Approval and Permitted Exceptions to Title.** Within thirty (30) days of the date of this Agreement, the Optionor shall deliver to the Optionee a preliminary title report indicating that title to the Property is insurable ("Title Report"), along with copies of all documents and agreements referred to in the Title Report. Optionee shall have thirty (30) days after receipt of the Title Report to deliver to the Optionor written objections to any exceptions shown on the Title Report. Unless the Optionee gives Optionor such written notice of objection to the exceptions to title within said thirty (30)-day period, Optionee shall be deemed to have approved all such exceptions. If Optionee gives Optionor notice of objection, Optionor may elect to either cure or not cure any exceptions to which the Optionee objects by written notice. If the Optionor does not agree to cure such exceptions to Optionee's satisfaction within thirty (30) days, and if Optionee does not waive such exceptions, this Agreement shall terminate. Notwithstanding anything to the contrary, any mortgage liens, UCC liens or judgments affecting the Property as a result of the Optionor's ownership of the Property shall be released at closing and as a condition of closing ("Optionor's Liens"). The exceptions as finally approved hereunder, less and except the Optionor's Liens, are the "Permitted Exceptions".

10. **No Representations.** Optionee acknowledges that its decision to purchase the Property, and the Optionee's approval or waiver of any condition in this Agreement, if any, is based solely on the Optionee's own independent due diligence review and inspection of all aspects of the Property, to the extent desired by the Optionee, after consultation with such agents, attorneys, consultants, advisors and experts as Optionee may have selected. With the exception of the representation set forth in Paragraph 22 hereof (hazardous materials and archaeological matters), Optionee's decision to purchase Property shall not be based upon, or influenced by, any warranties or representations or statements, express or implied by the Optionor or by any agent, attorney or representative of the Optionor, unless same has been set forth in writing and executed by the Optionor. Closing shall constitute Optionee's agreement to purchase the Property in its present condition, "AS-IS", with any and all faults.

11. **Closing Date.** In the event that the Optionee exercises the Option herein provided during the Option Period, the closing date ("Closing Date") shall be a date that is within thirty (30) days after the exercise of said Option.

12. **Conditions to Closing.**

A. **Optionor's Conditions.** The obligation of the Optionor to close the transaction described in this Agreement shall be subject to satisfaction in full of the following conditions ("Optionor's Conditions"):

(1) Optionee shall have exercised its Option as provided for in this Agreement; and

(2) Optionee shall perform on or before the Closing Date its obligations under this Agreement (including all deliveries required in Paragraph 13.B below) required to be performed on or before the Closing Date; and

(3) Optionee shall not be in default of its obligations under this Agreement; and

(4) On or before one (1) business day prior to the Closing Date, Optionee shall have deposited all of the Purchase Price, exclusive of the initial and additional Option payments previously received by Optionor, and all of the sums required to be paid by the Optionee under this Agreement into an escrow account to established by mutual agreement of the parties.

B. Optionee's Conditions. The obligations of the Optionee to close the transaction described in this Agreement shall be subject to satisfaction in full of the following conditions ("Optionee's Conditions"):

(1) Optionor shall perform on or before the Closing Date its obligations under this Agreement (including all deliveries required herein) required to be performed by Optionor on or before the Closing Date.

(2) Optionor shall not be in default of its obligations under this Agreement.

(3) There shall not then be any pending or, to the knowledge of either the Optionor or the Optionee, threatened litigation or administrative proceedings, which, if determined adversely, would restrain the consummation of any of the transaction referred to herein or materially and adversely impact the Property.

(4) Other than Permitted Exceptions to title referred to in Paragraph 9 hereof, or other matters agreed to in writing by Optionee, there shall not be any lease, contract to lease, rental agreement, nor the like, on or with respect to the Property, and no person shall be in possession of the Property, or any portion thereof, and the Property shall be delivered by the Optionor to the Optionee for Optionee's immediate possession.

(5) The Optionor's liens as defined in Paragraph 9 above, shall be released.

(6) Optionee shall have received a current updated endorsement to the Title Report reflecting only the Permitted Exceptions and a binding commitments for issuance of any title policy endorsements required by Optionee.

13. Deliveries by the Parties.

A. Optionor's Deliveries.

(1) On or before the Closing Date, Optionor shall deposit into the escrow established by the parties three (3) original copies of a Limited Warranty Deed, conveying the Property from the Optionor to the Optionee, duly executed and acknowledged by the Optionor, subject only the Permitted Exceptions.



(2) On or before the Closing Date, Optionor shall deposit into escrow an affidavit duly executed and acknowledged by the Optionor to the effect that the Optionor is not a foreign person for purposes of the withholding provisions of Section 1445 of the Internal Revenue Code of 1986, and a "HARPTA" certificate duly executed and acknowledged by the Optionor certifying that the Optionor is a Hawaii resident as such term is used in Section 235-68, Hawaii Revised Statutes, or, to the extent withholding is required, instructions as to the required withholding. On or before the Closing Date, Optionor shall deposit into escrow all such other ordinary and customary documents, including, without limitation, escrow instructions, as may be reasonably required of the Optionor to close the sale in accordance with the terms of this Agreement.

B. Optionee's Deliveries.

(1) On or before one (1) business day before the Closing Date, Optionee shall pay the balance of the Purchase Price, plus or minus adjustments and proration called for in this Agreement.

(2) On or before the Closing Date, Optionee shall deposit with the escrow agent selected by the parties all such other ordinary customary documents, including, without limitation, escrow instructions, as may be reasonably required of the Optionee to close the sale in accordance with the terms of this Agreement.

(3) On or before the Closing Date, the Optionee shall have executed and delivered to the escrow agent three (3) original copies of the Limited Warranty Deed.

14. Closing Costs.

A. Optionor's Responsibility. On or before the Closing Date, Optionor shall pay:

- (1) The conveyance tax.
- (2) Sixty percent (60%) of the cost of a standard owner's title insurance policy.
- (3) One-half (1/2) of any escrow fee.
- (4) recording fees to clear Optionor's title and any other costs required to be paid by the Optionor under this Agreement.

B. Optionee's Responsibility. On or before the Closing Date, Optionee shall pay:

- (1) Forty percent (40%) of the closing cost of the standard owner's title insurance.
- (2) One hundred (100%) of the cost to upgrade said standard title insurance to an ALTA title insurance policy or its equivalent, all at Optionee's discretion.
- (3) One hundred (100%) of the cost of any and all endorsements to the title insurance herein provided for.

(4) All recording charges, except documents to clear Optionor's title.

(5) One-half (1/2) of any escrow fee.

(6) Any other costs required to be paid by the Optionee under this Agreement.

15. **Prorations.** Real property taxes, assessments and any other costs and expenses associated with the ownership of the Property shall be prorated on the Closing Date.

16. **Possession.** Optionee shall be entitled to possession of the Property on the Closing Date

17. **Assignment.** Optionee shall not assign all or any portion of its rights under this Agreement without Optionor's prior written consent, which consent may be withheld in Optionor's absolute discretion, provided Optionee may assign this Agreement to a limited liability company formed and owned or controlled by the Optionee without the need for Optionor's consent. Any assignee approved by Optionor shall assume in writing all of the obligations of Optionee under this Agreement, and no such assignment shall relieve Optionee of its obligations under this Agreement without the written consent of Optionor, which consent shall not be unreasonably withheld, conditioned or delayed.

18. **Default by Optionor.** If Optionor defaults in its obligations under this Agreement, Optionee shall be entitled to all remedies provided by law and equity, including, but not limited to, specific performance.

19. **No Joint Venture.** It is hereby acknowledged by Optionee and Optionor that any relationship between them created hereby is not intended to be, and shall not in any way be, construed to be that of a partnership, joint venture, or principal and agent. It is hereby further acknowledged that any rights reserved herein by Optionor with respect to the Property or any documents or matters related thereto is solely for the purpose of either securing Optionor's interest in this transaction or protecting Optionor's property interests and values. Any approvals or other action by Optionor pursuant to this Agreement, or any document related thereto, is solely for Optionor's benefit and no person or entity may rely upon Optionor's approvals or actions hereunder for any other purpose.

20. **No Commissions.** Optionee and Optionor warrant to each other that no commissions or brokerage fees shall be due and owing to any third person or entity as a result of this sale and that no third person or entity shall have any claim to any portion of the Purchase Price or such other sums to be delivered to Optionor under this Agreement.

21. **Further Assurances.** Whenever requested to do so by the other party, Optionor or Optionee promptly and expeditiously shall execute, acknowledge and deliver any and all such conveyances, assignments, confirmations, satisfactions, releases, instruments of assurance, approvals, consents and any and all further instruments and documents as may be reasonably necessary, expedient, or proper in order to complete any and all conveyances, transfers, sales and assignments herein provided, and to do any and all other reasonable acts and to execute, acknowledge and deliver any and all documents reasonably requested in order to carry out the intent and purpose of this Agreement.

22. **Hazardous Materials - Archaeological Matters.** To the best of Optionor's knowledge, the Property is not contaminated by: (a) any "hazardous substance" or "pollutant or

contaminate” as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et. seq. (“CERCLA”) (b) any asbestos containing materials; (c) any radioactive materials; or (d) any other waste, material, pollutant or substance declared hazardous or toxic or otherwise regulated under Federal or Hawaii law or regulations (all such wastes, substances, materials and pollutants specified in clauses (a) through (d) above are herein collectively referred to as “Hazardous Materials”.

Further, to the best of Optionor’s knowledge, there are no archaeological sites located on or under the Property which are currently, or could currently be, the subject of any State or Federal regulation.

23. Miscellaneous.

A. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supercedes any and all prior agreements or understandings, whether verbal or written, concerning the granting of an Option to purchase the Property.

B. Modification. This Agreement may be modified or amended only by a writing signed by Optionor and Optionee.

C. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties.

D. Choice of Laws. This Agreement shall be governed by the laws of the State of Hawaii.

E. Attorneys’ Fees and Costs. In the event of any claim or dispute arising out of this Agreement, the party that substantially prevails shall be awarded, in addition to all other relief, all reasonable attorney fees and all other reasonable costs and expenses incurred in connection with such claim or dispute, including, without limitation, those fees, costs and expenses incurred with or without a lawsuit.

F. Notices. All notices or communications of any kind which may be required or permitted to be given under this Agreement shall be in writing and personally delivered via Federal Express or other overnight private delivery service, recognizing that “next day” service to and from Hawaii may ultimately be second or third day delivery or by facsimile transmission to the addresses or facsimile numbers of the parties provided below. All notices or communications which are served by private courier shall be deemed to be given at the expiration of the third (3<sup>rd</sup>) business day after the date of mailing and, in case of notice by facsimile transmission, one day after such facsimile transmission. The addresses or facsimile numbers to which notices or communications shall be delivered or mailed may be changed from time to time by giving written notice of the change to the other party.

Optionor: Wailuku Kuikahi LLC  
710 North Plankinton Avenue, Suite 1200  
Milwaukee, Wisconsin 53203  
Telephone: (414) 274-2474  
Facsimile: (414) 274-2706  
Attention: Stephan J. Chevalier, Trustee

Optionee: Towne Development of Hawaii, Inc.  
220 South King Street, Suite 2170

Honolulu, Hawaii 96813  
Telephone: (808) 537-5976  
Facsimile: (808) 525-1095  
Attention: Christopher L. Lau, President

With a copy to:

James B. Young, Esq.  
710 North Plankinton Avenue, Suite 1200  
Milwaukee, Wisconsin 53203  
Telephone: (414) 274-2421  
Facsimile: (414) 274-2710

G. Facsimiles. Fax (facsimile) copies of this executed Agreement shall be fully binding and effective for all purposes. Fax signatures on documents will be treated the same as original signatures.

H. Counterparts. This Agreement may be executed in counterparts, and said execution shall have the same effect as if all parties executed the same original copy hereof.

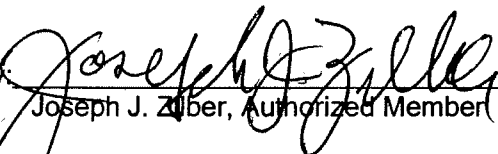
I. Memorandum of Option. Within thirty (30) days of execution of this Agreement, the parties agree to execute a memorandum of option which will be recorded in the Bureau of Conveyances of the State of Hawaii records in order to reflect the Optionee's interest in the Property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

OPTIONOR:

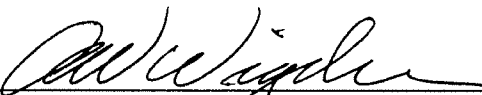
WAILUKU KUIKAHI LLC, a Hawaii limited liability company

By: JJZ Family Investments LLC, Authorized Member

By:   
Joseph J. Zuber, Authorized Member

OPTIONEE:

TOWNE DEVELOPMENT OF HAWAII, INC., a Hawaii corporation

By:   
Arthur W. Wigchers, Jr., President

[JBY3867:093005:R#4]

EXHIBIT "A"

All of that certain parcel of land (being portion of the lands described in and covered by Royal Patent Number 4529-B and 4549, Land Commission Award Number 71 to Michael J. Nowlein, Royal Patent Number 7659, Land Commission Award Number 326 to William Humphreys, and all of Royal Patent Grant Number 2070 to John Richardson, and Royal Patent Grant Number 1838 to Wm. Humphreys) situate, lying and being on the mauka or westerly side of the old Waikapu Road at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-003 and containing an area of 154.000 acres, more or less.

Being the premises acquired by DEED between F. W. MACFARLANE, husband of Emilia MacFarlane, and WILLIAM H. CORNWELL, as Grantor, and WAILUKU SUGAR COMPANY, as Grantee, dated November 20, 1894, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 152 on Page 86.

SUBJECT, HOWEVER, to the following:

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

2. GRANT to HAWAIIANA INVESTMENT CO., INC., a Hawaii corporation, dated September 23, 1980, recorded in the said Bureau of Conveyances in Liber 15016 on Page 323, granting a non-exclusive easement for landscaping purposes described as follows:

EASEMENT "B" for landscaping purposes over and across Lot 4 of Wailuku Heights Extension, situated on the south side of Lot 2 (Kuikahi Drive) of Wailuku Heights Extension (Large Lot Subdivision) at Wailuku, Maui, Hawaii, being a portion of R. P. 4529-B and 4549, L. C. Aw. 71 to Michael J. Nowlein, the metes and bounds of which easement are as follows:

Beginning at a point at the northwest corner of this easement, the coordinates referred to Government Survey Triangulation Station "LUKE" being 3,339.94 feet south and 2,472.96 feet west and running by azimuths measured clockwise from true South:

1. 261° 50' 15.00 feet along the south side of Lot 2 (Kuikahi Drive) of

Wailuku Heights Extension  
(Large Lot Subdivision);

2. Thence along same on a curve to the right having a radius of 38.00 feet, the chord azimuth and distance being:  

307°	14'	30"	54.12 feet;
------	-----	-----	-------------
3. 347° 18' 40" 1.46 feet along Lot 3 (Roadwidening Lot) of Wailuku Heights Extension (Large Lot Subdivision);
4. 81° 50' 53.11 feet over and across Lot 4 of Wailuku Heights Extension (Large Lot Subdivision);
5. 171° 50' 40.00 feet over and across same to the point of beginning and containing an area of 1,810 square feet, more or less.

Said above easement was amended by AMENDMENT OF EASEMENT dated February 25, 1983, recorded in the said Bureau of Conveyances in Liber 16895 at Page 565 (re: metes and bounds description).

Note: The metes and bounds description used in the above item is the amended metes and bounds description for EASEMENT "B" as shown in the aforementioned amendment recorded in Liber 16895 at Page 565.

3. GRANT to THE COUNTY OF MAUI, a political subdivision of the State of Hawaii, dated January 24, 1983, recorded in the said Bureau of Conveyances in Liber 17680 on Page 534.

EASEMENT "K"

A Sewerline, Waterline and Drainage Easement over and across portions of R. P. 4529-B and 4549, L. C. Aw. 71 to Michael J. Nowlein and R. P. 7659, L. C. Aw. 326 to Wm. Humphreys at Waikapu, Maui, Hawaii.

Beginning at a point at the northwesterly corner of this easement, the azimuth and distance of said point from

the northeast corner of Lot 43 to Wailuku Heights Extension - Unit I, File Plan 1707 being 186° 10' 50" 6.01 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 4,831.59 feet south and 5,930.74 feet west and running by azimuths measured clockwise from true South:

1.	271°	35'		25.08 feet along the south side of Kuikahi Drive;
2.	6°	10'	50"	160.03 feet over and across portions of R. P. 4529-B and 4549, L. C. Aw. 71 to Michael J. Nowlein and R. P. 7659, L. C. Aw. 326 to Wm. Humphreys;
3.	351°	30'		79.31 feet over and across a portion of R. P. 7659, L. C. Aw. 326 to Wm. Humphreys;
4.	306°	30'		21.89 feet over and across same;
5.	36°	30'		15.00 feet over and across same;
6.	126°	30'		28.11 feet over and across same;
7.	171°	30'		118.84 feet over and across same;
8.	75°	55'		128.76 feet over and across same;
9.	93°	50'		136.97 feet over and across same;
10.	89°	00'		175.19 feet over and across same;
11.	69°	37'		62.37 feet over and across same;
12.	23°	24'	20"	60.46 feet over and across same;
13.	356°	20'		86.15 feet over and across same;
14.	339°	00'		130.44 feet over and across same;
15.	330°	15'		130.18 feet over and across same;
16.	337°	40'		106.57 feet over and across same;
17.	10°	45'		146.72 feet over and across same;

- 
18. 316° 15' 27.06 feet over and across same;
19. 46° 15' 21.00 feet over and across same;
20. 96° 59' 30" 35.00 feet along the northerly side of Lot 1 of Ld. Ct. Appl. 52, Map 3;
21. 199° 08' 0.63 feet along the easterly side of Lot 271 (Park) of Wailuku Heights Extension - Unit I, File Plan 1707;
22. 190° 45' 173.77 feet along same;
23. 157° 40' 97.53 feet along same;
24. 150° 15' 130.47 feet along the easterly side of Lots 271 (Park), 270 and 269 to Wailuku Heights Extension - Unit I, File Plan 1707;
25. 159° 00' 136.16 feet along the easterly side of Lots 269 and 268 of Wailuku Heights Extension - Unit I, File Plan 1707;
26. 176° 20' 88.86 feet along the easterly side of Lots 268, 267 and 266 of Wailuku Heights Extension - Unit I, File Plan 1707;
27. Thence along the easterly side of Lots 266 and 265 and the southerly side of Lot 48 of Wailuku Heights Extension - Unit I, File Plan 1707 on a curve to the right having a radius of 108.00 feet, the chord azimuth and distance being:
- 222° 40' 156.25 feet;
28. 269° 00' 176.26 feet along the southerly side of Lots 48, 47 and 46 of
-



Wailuku Heights Extension -  
Unit I, File Plan 1707;

29. 279° 00' 45.86 feet along the southerly side of Lots 46 and 45 of Wailuku Heights Extension - Unit I, File Plan 1707;
30. Thence along the southerly side of Lots 45, 44, and 43 of Wailuku Heights Extension - Unit I, File Plan 1707 on a curve to the left having a radius of 350.00 feet, the chord azimuth and distance being:
- 267° 27' 30" 140.06 feet;
31. 255° 55' 28.25 feet along the southerly side of Lot 43 of Wailuku Heights Extension - Unit I, File Plan 1707;
32. Thence along the southeasterly side of Lot 43 of Wailuku Heights Extension - Unit I, File Plan 1707 on a curve to the left having a radius of 75.00 feet, the chord azimuth and distance being:
- 221° 02' 55" 85.75 feet;
33. 186° 10' 50" 45.92 feet along the easterly side of Lot 43 of Wailuku Heights Extension - Unit I, File Plan 1707 and the south side of Kuikahi Drive to the point of beginning and containing an area of 41,573 square feet, more or less.

4. GRANT to MAUI ELECTRIC COMPANY, LIMITED, a Hawaii corporation, and HAWAIIAN TELEPHONE COMPANY, a Hawaii corporation, now known as VERIZON HAWAII, INC., dated January 5, 1987, recorded in the said Bureau of Conveyances in Liber 20331 on Page 23, granting a nonexclusive right and easement for utility purposes as shown on maps attached thereto.

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, RESERVATIONS AND RESTRICTIONS dated December 30, 2002, recorded in the said Bureau of Conveyances as Document No. 2002-234375, by and between WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation; LLOYD K. SODETANI; and ENDURANCE INVESTORS, LLC, a Washington limited liability company and that certain PARTIAL ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS UNDER DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, RESERVATIONS AND RESTRICTIONS dated August 6, 2004 by and between Wailuku Agribusiness Co., Inc. and Wailuku Kuikahi LLC and recorded in said Bureau of Conveyances concurrently herewith.

6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

7. Water rights, claims or title to water, whether or not shown by the public records.

8. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

9. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, RESERVATIONS AND RESTRICTIONS dated August 6, 2004 by and between Wailuku Agribusiness Co., Inc. and Wailuku Kuikahi LLC and recorded in said Bureau of Conveyances concurrently herewith.

10. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Two Acre Agreement dated August 6, 2004 by and between Wailuku Agribusiness Co., Inc., a Hawaii corporation, and Wailuku Kuikahi LLC, a Hawaii limited liability company and recorded in said Bureau of Conveyances concurrently herewith.

END OF EXHIBIT "A"

Tax Key: (2) 3-5-002-003



# **Exhibit "4"**

Authorization of Association of II Wai Hui LP

**AUTHORIZATION**

TO WHOM IT MAY CONCERN:

This will certify that ASSOCIATION OF II WAI HUI LP, a Hawaii limited partnership, is the owner of certain real property situate at Waikapu, Maui, State of Hawaii, more particularly described hereinbelow.

ASSOCIATION OF II WAI HUI LP hereby authorizes TOWNE DEVELOPMENT OF HAWAII, INC., developer, CARLSMITH BALL LLP, its attorney, and MUNEKIYO & HIRAGA, INC., its consultant, and/or their respective designated representatives, to apply for all necessary permits and approvals relative to the development of said real property, including but not limited to applying for a Land Use District Boundary Amendment, Community Plan Amendment and Change in Zoning of said property.

Dated: NOVEMBER 16, 2005.

ASSOCIATION OF II WAI HUI LP

By   
\_\_\_\_\_  
LLOYD K. SODEHANI  
Its General Partner

TMK (2) 3-5-002:002

**EXHIBIT "4"**

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this 17th day of November, 2005, before me personally appeared LLOYD K. SODETANI, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn, did say that he is the General Partner of ASSOCIATION OF II WAI HUI LP, a Hawaii limited partnership, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

69

Sharon Y. Kuwae  
Name: Sharon Y. Kuwae

Notary Public, State of Hawaii

My commission expires: 9-18-07

4820-9479-2704.1.058754-00001

# **Exhibit "5"**

Authorization of Endurance Investors, LLC

**AUTHORIZATION**

TO WHOM IT MAY CONCERN:

This will certify that ENDURANCE INVESTORS, LLC, a Washington limited liability company, is the owner of certain real property situate at Waikapu, Maui, State of Hawaii, more particularly described hereinbelow.

ENDURANCE INVESTORS, LLC hereby authorizes TOWNE DEVELOPMENT OF HAWAII, INC., developer, CARLSMITH BALL LLP, its attorney, and MUNEKIYO & HIRAGA, INC., its consultant, and/or their respective designated representatives, to apply for all necessary permits and approvals relative to the development of said real property, including but not limited to applying for a Land Use District Boundary Amendment, Community Plan Amendment and Change in Zoning of said property.

Dated: November 14, 2005.

ENDURANCE INVESTORS, LLC

By 

JOHN P. MALONEY

Its Agent

TMK (2) 3-5-002:002

**EXHIBIT "5"**



STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this 14 day of NOVEMBER, 2005, before me personally appeared JOHN P. MALONEY, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn, did say that he is the Agent for ENDURANCE INVESTORS, LLC, a Washington limited liability company, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Name: **BLANCA L. LAFOLETTE**

Notary Public, State of Hawaii

My commission expires: 10/15/08

## AGENCY AGREEMENT

This Agreement is made on the 2nd day of August, 2005 by and between ENDURANCE INVESTORS, LLC, a Washington limited liability company, ("Principal") and John P. Maloney ("Agent").

### SECTION 1

#### Authority of Agent

Principal hereby authorizes Agent to act as agent and attorney-in-fact for and on behalf of Principal. Agent is specifically authorized to sign on behalf of Principal all documents associated with the purchase and development of real property located within the State of Hawaii as more specifically described on the attached Exhibit A. Provided, however, Agent is specifically not authorized to sign on behalf of Principal any documents relating to mortgaging real property owned by Principal or to sign any documents relating to borrowing money on behalf of Principal.

### SECTION II

#### Indemnification of Agent

Principal agrees to indemnify and hold Agent harmless from any and all losses arising from the transactions referred to in the preceding paragraph which transactions Agent signs on behalf of Principal.

### SECTION III

#### Agreement as Continuing

This authorization and indemnity is continuing agreement, and shall remain in full force and effect from the date of this Agreement until revoked by Principal. This Agreement may be revoked by written notice addressed to Agent and delivered to Agent's office at 381 Huku Li'i Place, Suite 201 Kihei, Maui, Hawaii 96753.

IN WITNESS WHEREOF the parties have executed this Agreement  
the day and year first above written.

PRINCIPAL:

ENDURANCE INVESTORS, LLC  
A Washington limited liability company

By JSG MANAGEMENT, INC.  
A Washington corporation  
Its Manager

By

  
\_\_\_\_\_  
J. STEPHEN GOODFELLOW  
Its President

AGENT:

  
\_\_\_\_\_  
John P. Maloney

# **Exhibit "6"**

Authorization of Wailuku Kuikahi LLC

**AUTHORIZATION**

TO WHOM IT MAY CONCERN:

This will certify that WAILUKU KUIKAHI LLC, a Hawaii limited liability company, is the owner of certain real property situate at Waikapu, Maui, State of Hawaii, more particularly described hereinbelow.

WAILUKU KUIKAHI LLC hereby authorizes TOWNE DEVELOPMENT OF HAWAII, INC., developer, CARLSMITH BALL LLP, its attorney, and MUNEKIYO & HIRAGA, Inc., its consultant, and/or their respective designated representatives, to apply for all necessary permits and approvals relative to the development of said real property, including but not limited to applying for a Land Use District Boundary Amendment, Community Plan Amendment and Change in Zoning of said property.

Dated: November 14, 2005.

WAILUKU KUIKAHI LLC

By TOWNE DEVELOPMENT OF HAWAII,  
INC., Its Manager

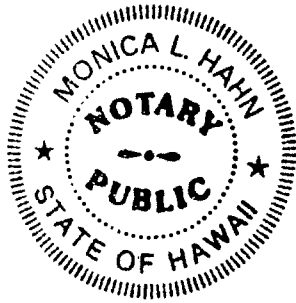
By   
CHRISTOPHER L. LAU  
Its President

TMK (2) 3-5-002:003

**EXHIBIT "6"**

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 14<sup>th</sup> day of November, 2005, before me personally appeared CHRISTOPHER L. LAU, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn, did say that he is the President of TOWNE DEVELOPMENT OF HAWAII, INC., a Hawaii corporation, Manager of WAILUKU KUIKAHI LLC, a Hawaii limited liability company, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Monica L. Hahn

Name: **Monica L. Hahn**

Notary Public, State of Hawaii

My commission expires: 11/12/09

4836-0696-9856.1.058754-00001

# **Exhibit "7"**

Authorization of Towne Development of Hawaii, Inc.

**AUTHORIZATION**

TO WHOM IT MAY CONCERN:

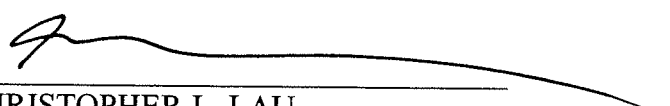
This will certify that TOWNE DEVELOPMENT OF HAWAII, INC., a Hawaii corporation, is the developer of certain real property situate at Waikapu, Maui, State of Hawaii, more particularly described hereinbelow.

TOWNE DEVELOPMENT OF HAWAII, INC. hereby authorizes CARLSMITH BALL LLP, its attorney, and MUNEKIYO & HIRAGA, Inc., its consultant, and/or their respective designated representatives, to apply for all necessary permits and approvals relative to the development of said real property, including but not limited to applying for a Land Use District Boundary Amendment, Community Plan Amendment and Change in Zoning of said property.

Dated: November 14, 2005.

TOWNE DEVELOPMENT OF HAWAII, INC.

By

  
\_\_\_\_\_  
CHRISTOPHER L. LAU  
Its President

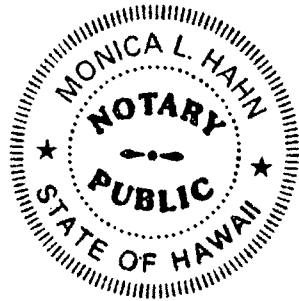
TMK (2) 3-5-002:002 and 3-5-002:003

**EXHIBIT "7"**



STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 14<sup>th</sup> day of November, 2005, before me personally appeared CHRISTOPHER L. LAU, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn, did say that he is the President of TOWNE DEVELOPMENT OF HAWAII, INC., a Hawaii corporation, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



*Monica L. Hahn*

Name: **Monica L. Hahn**

Notary Public, State of Hawaii

My commission expires: 11/12/09

4816-7542-7840.1.058754-00001

# **Exhibit "8"**

Location Map

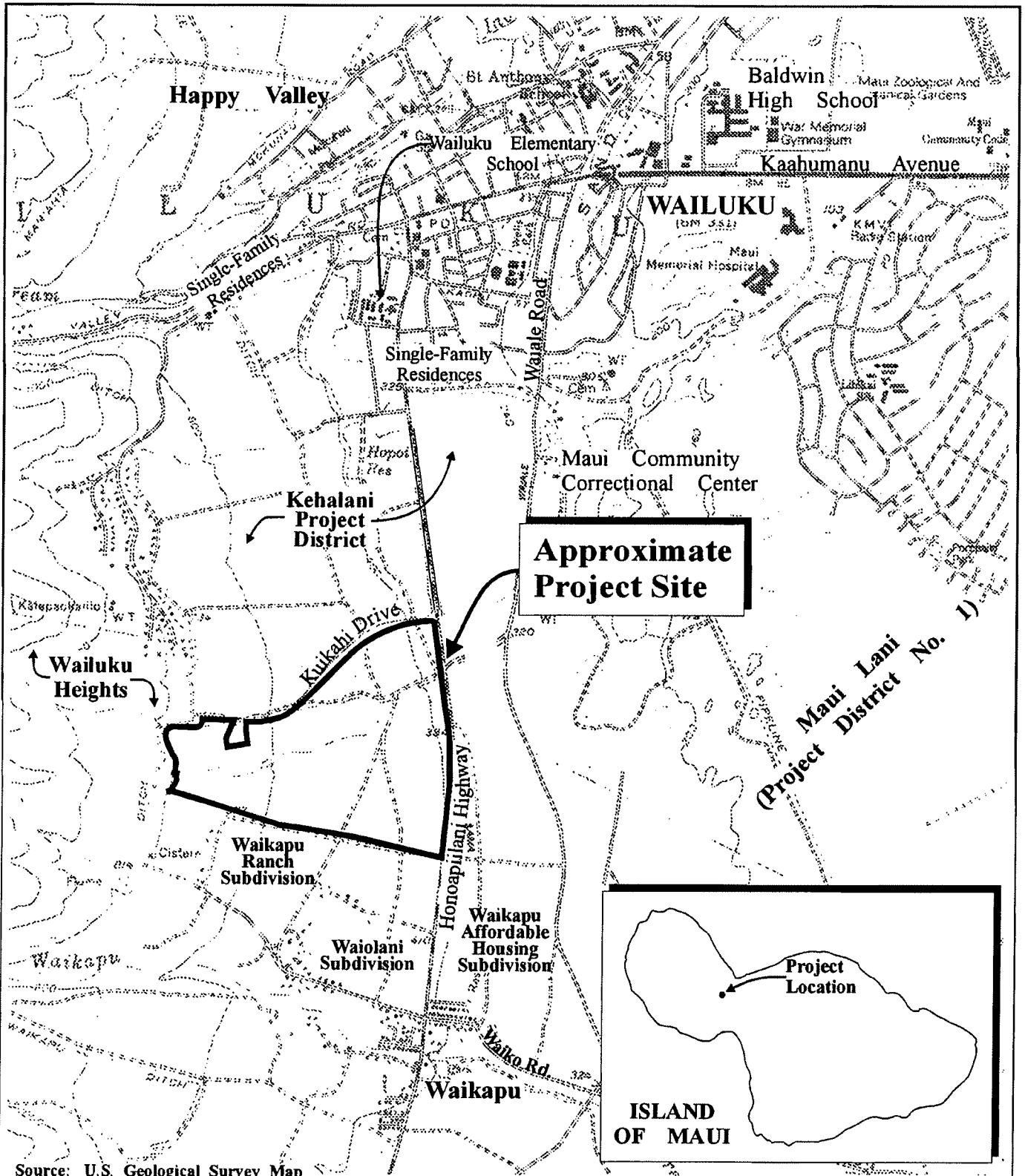
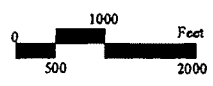


Figure 1 Proposed Pu'unani Subdivision  
Regional Location Map



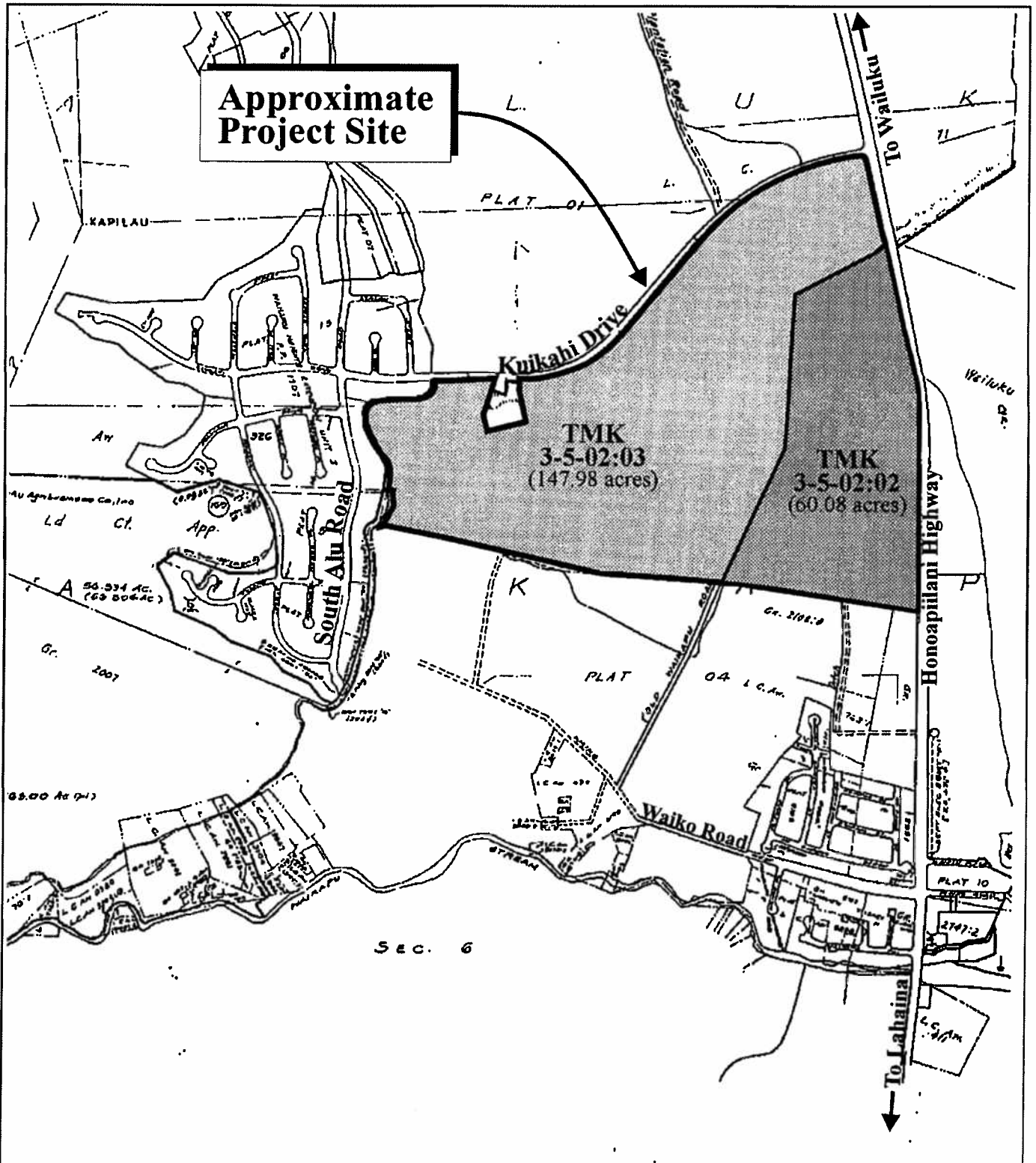
Prepared for: Towne Development of Hawaii, Inc.; Endurance Investors, LLC; and Association of II Wai Hui, LP

MUNEKIYO HIRAGA, INC.

EXHIBIT "8"

# **Exhibit "9"**

Tax Parcel Map



Source: State of Hawaii, Realty Atlas, 2005

# Figure 2 Proposed Pu'unani Subdivision Tax Parcel Map



Prepared for: Towne Development of Hawaii, Inc.; Endurance Investors, LLC; and Association of Ii Wai Hui, LP



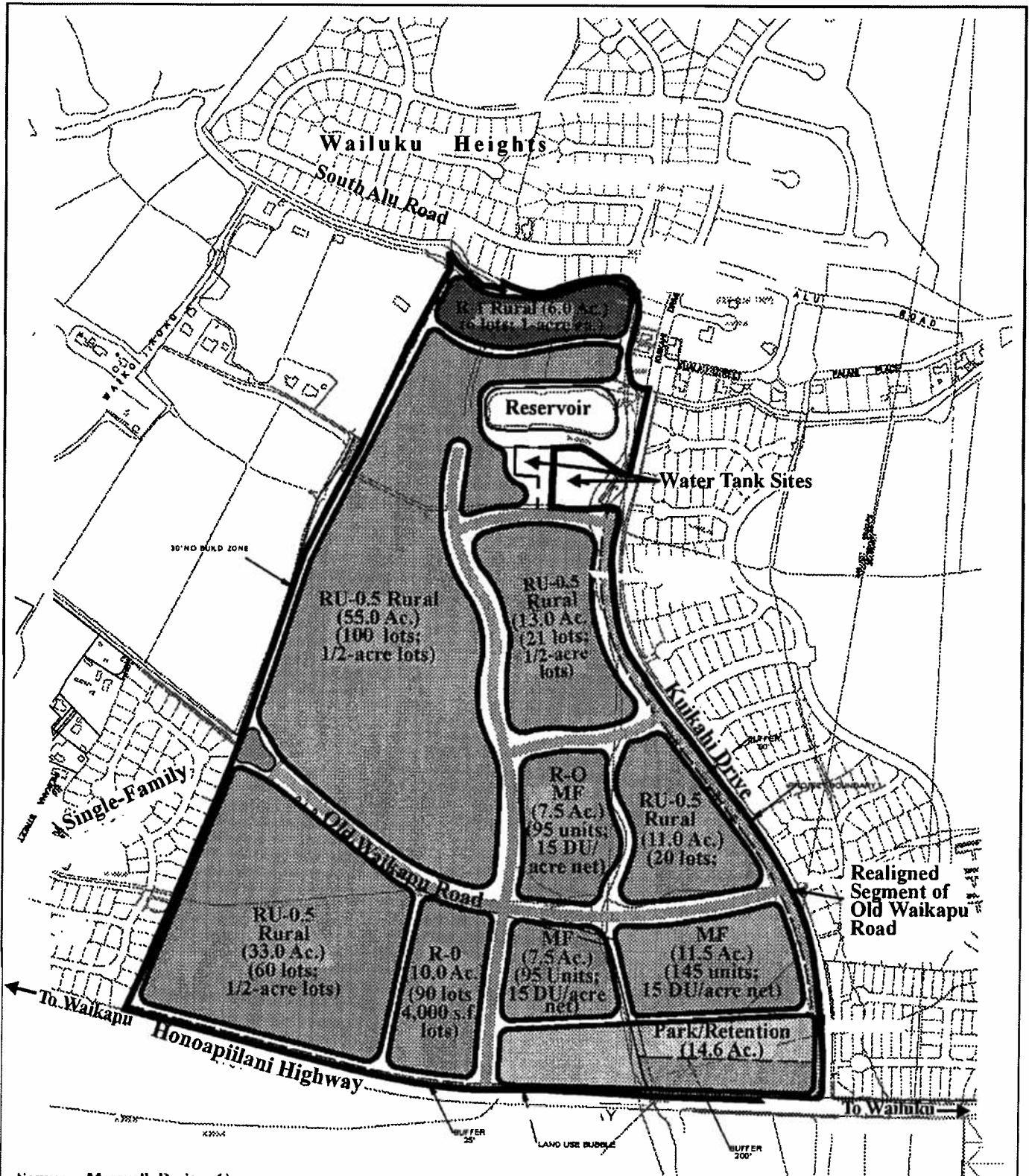
**EXHIBIT "9"**

# **Exhibit "10"**

Environmental Impact Statement Preparation Notice  
(Bound Booklet Attached at the End)

# **Exhibit "11"**

Conceptual Land Use Map



Source: Maxwell Design Group

**Figure 4 Proposed Pu'unani Subdivision**  
**Conceptual Land Use Map**

NOT TO SCALE



Prepared for: Towne Development of Hawaii, Inc.; Endurance Investors, LLC; and Association of Ii Wai Hui, LP

MUNEKIYO & HIRAGA, INC.

**EXHIBIT "11"**



# **Exhibit "12"**

Current Balance Sheet and Income Statement  
of Endurance Investors, LLC

GLP360  
0801921010

ENDURANCE INVESTORS, LLC  
BALANCE SHEET

PREPARED 2/1

FOR 12 FISCAL MONTHS ENDED 12/2005

	Current Activity	Y-T-D Activity
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
CASH	9,239.30	124,366.71
SHORT TERM INVESTMENTS	0.00	0.00
ACCOUNTS RECEIVABLE	0.00	0.00
REAL ESTATE DEVELOPMENT	26,343.41	1,229,972.94
PREPAID EXPENSE & OTHER	0.00	0.00
	-----	-----
TOTAL CURRENT ASSETS	35,581.71	1,354,339.65
<b>INVESTMENTS AND LONG TERM NOTES RECEIVABLE</b>		
L/T NOTES RECEIVABLE	0.00	0.00
<b>INVESTMENT PROPERTY</b>		
INVESTMENT PROPERTY	0.00	0.00
	0.00	0.00
<b>PROPERTY &amp; EQUIPMENT</b>		
BUILDINGS	0.00	0.00
EQUIPMENT	0.00	0.00
FURNITURE & FIXTURES	0.00	0.00
	-----	-----
	0.00	0.00
LESS: ACCUM DEPRECIATION	0.00	0.00
	-----	-----
	0.00	0.00
	-----	-----
TOTAL ASSETS	35,581.71	1,354,339.65
	-----	-----
<b>LIABILITIES AND MEMBERS' EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
CURRENT MATURITIES L/T DEBT	0.00	0.00
ACCOUNTS & RETAINAGE PAYABLE	0.00	0.00
ACCRUED EXPENSES	0.00	0.00
	-----	-----
TOTAL CURRENT LIABILITIES	0.00	0.00
A/P PRL	0.00	0.00
A/P GBI	(1,336,886.06)	0.00
A/P J. STEPHEN GOODFELLOW	0.00	0.00
LESS: CURRENT MATURITIES	0.00	0.00
	-----	-----
	(1,336,886.06)	0.00
<b>MEMBER'S EQUITY</b>		
JSG MANAGEMENT, INC. 50%	675,000.00	676,910.26
JSG INVESTMENT, INC. 50%	675,000.00	676,910.25
YEAR-TO-DATE NET INCOME	22,467.77	519.14
	-----	-----
	1,372,467.77	1,354,339.65
	-----	-----
TOTAL LIABILITIES AND MEMBERS' EQUITY	35,581.71	1,354,339.65
	-----	-----

**EXHIBIT "12"**

GLP360  
0801931010

ENDURANCE INVESTORS, LLC  
INCOME STATEMENT

PREPARED 2/02/06

FOR 12 FISCAL MONTHS ENDED 12/2005

	Current Activity	Y-T-D Activity
REVENUE	0.00	0.00
COSTS	0.00	0.00
	-----	-----
GROSS PROFIT	0.00	0.00
PARTNERSHIP INCOME (LOSS)	0.00	0.00
CAPITAL GAIN/LOSS	0.00	0.00
OTHER OPERATING REVENUE	0.00	0.00
DIVIDEND INCOME	0.00	0.00
GENERAL & ADMINISTRATIVE EXPENSES	127.79	0.00
	-----	-----
OPERATING INCOME	127.79	0.00
	-----	-----
FINANCIAL EXPENSE, NET	22,339.98	519.14
	-----	-----
NET INCOME	22,467.77	519.14
	-----	-----

# **Exhibit "13"**

Current Balance Sheet and Income Statement  
of Association of II Wai Hui LP



**TOMA &  
DRAYSON**  
CPAS, LLP

1341 Kamehameha Street  
Wailuku, Maui, HI 96793-1611  
Telephone: (808) 244-3785  
Fax: (808) 242-0138  
email: [td@tdcpa.com](mailto:td@tdcpa.com)

Lee M. Toma, Esq., CPA  
Richard C. Drayson, CPA

*To the Partners*  
*Association of II Wai Hui LP*  
*A Limited Partnership*  
Wailuku, Maui, Hawaii

We have compiled the accompanying balance sheet -- income tax basis of the Association of II Wai Hui LP, as of December 31, 2005, and the related statement of revenue and expenses -- income tax basis, for the twelve months then ended, in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The financial statements have been prepared on the accounting basis used by the Partnership for federal income tax purposes, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

A compilation is limited to presenting information in the form of financial statements that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all of the informative disclosures ordinarily included in financial statements prepared on the income tax basis of accounting. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the company's assets, liabilities, equity, revenues and expenses. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Association of II Wai Hui LP.

*Toma & Drayson CPAs, LLP*

Wailuku, Maui, Hawaii  
May 25, 2006

**EXHIBIT "13"**

ASSOCIATION OF II WAI HUI LP  
BALANCE SHEET - INCOME TAX BASIS  
DECEMBER 31, 2005

ASSETS

CURRENT ASSETS			
CASH	\$	105,536.52	
TOTAL CURRENT ASSETS			\$ 105,536.52
FIXED ASSETS			
LAND, at cost		1,135,267.44	
TOTAL FIXED ASSETS			\$ 1,135,267.44
OTHER ASSETS			
DEVELOPMENT COSTS		7,723.17	
			\$ 7,723.17
TOTAL ASSETS			\$ 1,248,527.13
			=====
TOTAL PARTNERS' CAPITAL			
PARTNERS' CAPITAL			
CAPITAL ACCOUNTS		1,249,460.45	
NET LOSS		-933.32	
TOTAL PARTNERS' CAPITAL			\$ 1,248,527.13
TOTAL PARTNERS' CAPITAL			\$ 1,248,527.13
			=====

SEE ACCOUNTANTS' COMPILATION REPORT

ASSOCIATION OF II WAI HUI LP  
 STATEMENT OF REVENUE AND EXPENSES - INCOME TAX BASIS  
 FOR THE TWELVE MONTHS ENDED DECEMBER 31, 2005

REVENUE			
INTEREST INCOME	\$	363.74	
			\$ 363.74
EXPENSES			
REAL PROPERTY TAXES		72.92	
POSTAGE		4.84	
ACCOUNTING FEES		825.00	
INSURANCE		387.50	
MISCELLANEOUS EXPENSE		6.80	
			1,297.06
NET LOSS			\$ <u>-933.32</u> =====

SEE ACCOUNTANTS' COMPILATION REPORT

# **Exhibit "14"**

Current Balance Sheet and Income Statement  
of Towne Development of Hawaii, Inc.



**Towne Development of Hawaii, Inc.**  
**Consolidated Balance Sheets**  
**As of November 30, 2005 and February 28, 2005**

(Unaudited)

	<u>November 30, 2005</u>	<u>February 28, 2005</u>
<b><u>ASSETS:</u></b>		
Investment property	\$ 1,524,000	\$ 1,131,000
Less: Accumulated depreciation	<u>(792,000)</u>	<u>(710,000)</u>
	732,000	421,000
Property under development	196,812,000	123,281,000
Receivables secured by real estate	6,603,000	20,428,000
Advances to parent (Towne Realty, Inc.)	17,433,000	14,676,000
Customer deposits	23,637,000	19,204,000
Cash	3,534,000	3,226,000
Accounts receivable and other assets	<u>2,121,000</u>	<u>870,000</u>
Total assets	<u>\$ 250,872,000</u>	<u>\$ 182,106,000</u>

**LIABILITIES & STOCKHOLDER'S INVESTMENT:**

Debt		
Secured by property under development	\$ 106,151,000	\$ 68,826,000
Unsecured	6,020,000	5,020,000
Accounts payable and accruals	11,328,000	12,868,000
Other liabilities	3,381,000	3,215,000
Customer deposits	33,829,000	22,940,000
Minority interest	27,634,000	16,563,000
Stockholder's investment	<u>62,529,000</u>	<u>52,674,000</u>
Total liabilities and stockholder's investment	<u>\$ 250,872,000</u>	<u>\$ 182,106,000</u>

**Towne Development of Hawaii, Inc.**  
**Consolidated Statements of Operations**  
**For the Nine Months Ended November 30, 2005 and Year Ended February 28, 2005**

(Unaudited)

	<u>November 30, 2005</u>	<u>February 28, 2005</u>
Revenues	\$ 134,255,000	\$ 51,238,000
Costs and expenses:		
Real estate sales	93,999,000	36,744,000
Commission and closing costs	2,276,000	1,488,000
Selling, general and administrative	4,554,000	5,280,000
Depreciation	30,000	53,000
	<u>100,859,000</u>	<u>43,565,000</u>
Operating income	33,396,000	7,673,000
Other income(expense):		
Other income, primarily interest	939,000	1,085,000
Interest expense	(13,000)	(43,000)
Minority interest in operations	(19,390,000)	(2,931,000)
	<u>(18,464,000)</u>	<u>(1,889,000)</u>
Income before provision for income taxes	14,932,000	5,784,000
Provision for income taxes	<u>5,077,000</u>	<u>1,967,000</u>
Net Income	<u>\$ 9,855,000</u>	<u>\$ 3,817,000</u>

# **Exhibit "15"**

Affidavit of Service of Petition for  
District Boundary Amendment



LAURA H. THIELEN  
Director  
Office of Planning  
State of Hawaii  
P. O. Box 2359  
Honolulu, Hawaii 96804

BY MAIL

ABE MITSUDA  
Planning Program Administrator  
Office of Planning , Land Use Division  
State of Hawaii  
P. O. Box 2359  
Honolulu, Hawaii 96804

BY MAIL

MICHAEL W. FOLEY  
Director, Planning Department  
County of Maui  
250 South High Street  
Wailuku, Maui, Hawaii 96793

BY HAND DELIVERY

PLANNING COMMISSION  
County of Maui  
250 South High Street  
Wailuku, Maui, Hawaii 96793

BY HAND DELIVERY

BRIAN T. MOTO  
Corporation Counsel  
Office of the Corporation Counsel  
County of Maui  
200 South High Street  
Wailuku, Maui, Hawaii 96793

BY HAND DELIVERY

MAUI ELECTRIC COMPANY, LIMITED  
Attention: Neal Shinyama  
P.O. Box 398  
Kahului, Maui, Hawaii 96733-6898

BY MAIL

HAWAIIAN TELCOM  
1177 Bishop Street  
Honolulu, Hawaii 96813


BY MAIL

WAILUKU WATER COMPANY, LLC  
255 E. Waiko Road  
Wailuku, Hawaii 96793

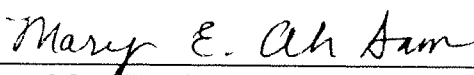
BY MAIL

This Affidavit is provided in compliance with §15-15-50(c)(5)(C), HAR.

That further Affiant sayeth naught.

  
BLAINE J. KOBAYASHI

Subscribed and sworn to before me  
this 1st day of June, 2006.

L.S.   
Name: Mary E. Ah Sam

Notary Public, State of Hawaii

My commission expires: 4/24/07