

**CONDOMINIUM ESCROW AGREEMENT
FOR
THE WEST MAUI BREAKERS**

THIS AGREEMENT is made this 20 day of FEBRUARY, 2007, by and between HAWAII ESCROW & TITLE, INC., a Hawaii corporation, the principal place of business and post office address of which is 700 Bishop Street, Suite 1600, Honolulu Hawaii 96813, hereinafter called "Escrow", and 3702 Lower Honoapiilani, LLC, the business address of which is 3702 Lower Honoapiilani Road, Lahaina Hawaii 96761, hereinafter called the "Seller".

WITNESSETH:

WHEREAS, Developer intends to enter into sales contracts for the sale of units in a condominium project established or to be established under a Declaration of Condominium Property Regime created under Chapter 514A, Hawaii Revised Statutes, as amended, the terms of which sales contracts will provide for payment on account of the purchase price to be made to Escrow, to be held and disbursed by Escrow pursuant to the provisions hereof; and

WHEREAS, there are one hundred and fourteen (114) units in the Project; and

WHEREAS, the land included within the Project is located in the County of Maui, State of Hawaii, and is designated as Tax Map Key No. (2) 4-3-006-002 and (2) 4-3-006-069.

NOW, THEREFORE, it is hereby mutually agreed as follows:

1. **Sales Contracts Deposited in Escrow.**

(a) As and when Developer shall enter into a sales contract for the sale of a unit, Developer shall deliver an executed copy of such sales contract to Escrow. Each sales contract shall contain the correct names and addresses of the purchasers (as provided by such purchasers), shall require that all payments to be made thereunder shall be made to Escrow and shall be accompanied by the initial deposit required thereunder.

(b) If it is intended that the sale of a residential unit will be made to purchasers as owner-occupants (herein called "Owner-Occupants") pursuant to Chapter 514A, Part VI, of the Hawaii Revised Statutes (Sales to Owner-Occupants), as may be amended ("Part VI"), the prospective Owner-Occupants shall affirm, inter alia, that: (a) the prospective Owner-Occupants intend to become a Owner-Occupants pursuant to Part VI; (b) if the prospective Owner-Occupants intent to secure financing from a financial institution, the financing shall be an owner-occupant mortgage loan; and (c) the prospective Owner-Occupants shall notify said Real Estate Commission immediately upon any decision to cease being Owner-Occupants at any time after obtaining adequate financing or a commitment for adequate financing up until the expiration of the Affidavit. The Affidavit shall be personally executed by all of the prospective Owner-Occupants of the residential unit and shall not be executed by an attorney-in-fact.

2. Receipts of Funds by Escrow.

(a) Deposit of Funds by Developer. Developer shall pay over to Escrow any monies received by Developer from purchasers under sales contracts covering units in the Project, including all disbursements made on loan commitments, if any, from lending institutions to individual purchasers under sales contracts covering units in the Project, including all disbursements made on loan commitments, if any, from lending institutions to individual purchasers. With respect to such monies, Escrow shall receive and hold in escrow and disburse as herein set forth: (a) all payments received by Escrow under sales contracts made by Developer; (b) all sums received by Escrow hereunder from Developer; (c) all funds from any lending institution pursuant to a mortgage loan for the purchase of any unit by individual purchasers; and (d) all sums received by Escrow from any other source on account of the Project. In accordance with written instructions from Developer that are acceptable to Escrow, Escrow shall deposit all funds so received, within a reasonable time of their receipt by Escrow and in reasonably convenient sums, in accounts at a federally insured bank, savings and loan association or trust company authorized to do business in the State of Hawaii designated by Developer under an escrow arrangement that pays interest on deposits at the prevailing interest rate; provided, however, that if Escrow is instructed to make such deposits more frequently than once each calendar week. Developer shall pay to Escrow a reasonable service charge of not more than \$30.00 for each additional deposit made during such week, provided further, however, that if at any time Escrow holds One Hundred Thousand Dollars (\$100,000.00) or more in "valid funds", Escrow shall deposit the same immediately, without any additional service charge.

(b) Interest on Funds in Escrow. Any interest earned on funds deposited in escrow under this Agreement shall accrue as specified in the sales contract. If the sales contract does not specify to whom interest is to accrue, any interest earned on funds deposited in escrow under this Agreement shall accrue as set forth herein. Escrow shall not be liable to either Developer or any purchaser for loss or diminution in funds invested in accordance with instructions given to Escrow. Escrow shall not at any time commingle or permit the commingling of purchasers' funds with Developer's funds.

(i) Interest on Funds Under a Contingent Final Public Report. If the sales contract is entered into pursuant to a Contingent Final Public Report, any interest earned on funds deposited in escrow under this Agreement shall accrue to the credit of the purchaser. Escrow shall establish a separate account for funds received pursuant to the sales contract. The purchaser shall furnish to Escrow the purchaser's social security number or federal identification number and the purchaser shall pay Escrow a fee of \$25.00 for such separate account.

(ii) Interest on Funds under a Preliminary or Final Public Report. If the sales contract is entered into pursuant to a Preliminary or Final Public Report, any interest earned on funds deposited in escrow under this Agreement shall accrue to the credit of Developer; except that, if Escrow is instead requested to establish a separate account for a purchaser, Escrow shall do so, the purchaser shall furnish to Escrow the

purchaser's social security number or federal identification number, the purchaser shall pay Escrow a fee of \$50.00 for such separate account and any interest earned on funds deposited in such account shall accrue to the credit of the purchaser.

3. **Conditions to be Met prior to Disbursement.** No disbursements of funds held in escrow shall be made unless and until the following conditions have been fulfilled:

(a) **Final Public Report Must be Issued.** The Real Estate Commission shall have issued an effective date for a Final Public Report on the Project, Developer shall have delivered a true copy of the same to Escrow and:

- (i) **Sales Prior to a Final Public Report.** To the extent any sales contract is entered into and a purchaser's funds are obtained prior to the issuance of an effective date for a Final Public Report, no disbursements shall be made from such purchaser's funds until (a) Developer has delivered to the purchaser a true copy of the Final Public Report personally or by registered or certified mail with return receipt requested; (b) the purchaser has either executed the form of notice and receipt required by Section 514A-62, HRS, or is deemed to have executed the notice and receipt; and (c) the purchaser has either waived any right to cancel the sales contract and a copy of the receipt and waiver has been given by Developer to Escrow, or, if the receipt and waiver form is not executed and returned to Developer prior to the expiration of the thirty-day period after delivery of the report to the purchaser, the purchaser shall have been deemed to have receipted for the report and to have waived the purchaser's right to cancel the sales contract, and proof of the purchaser's receipt of the report or of delivery of the report to purchaser has been given by Developer to Escrow; or
- (ii) **Sales Prior to or After a Contingent Final Public Report.** To the extent any sales contract is entered into and a purchaser's funds are obtained prior to the issuance of a Contingent Final Public Report, or after the issuance of a Contingent Final Public Report but before the issuance of the Final Public Report, no disbursements shall be made from such purchaser's funds until (a) such Contingent Final Public Report shall have been issued; (b) Developer has delivered to the purchaser a true copy of the Contingent Final Public Report personally or by registered or certified mail with return receipt requested; (c) the purchaser has either executed the form of notice and receipt required by Section 514A-62, HRS or is deemed to have executed the notice and receipt; (d) the purchaser has either waived any right to cancel the sales contract and a copy of the receipt and waiver has been given by Developer to Escrow, or, if the receipt and waiver form is not executed and returned to Developer prior to the expiration of the thirty-day period after delivery of the report to the purchaser, the purchaser shall

have been deemed to have receipted for the report and to have waived the purchaser's right to cancel the sales contract, and proof the purchaser's receipt of the report or of delivery of the report to purchaser has been given by Developer to Escrow; (e) the Final Public Report for the Project shall have been issued and Developer shall have delivered to the purchaser personally or by registered or certified mail with return receipt requested a disclosure statement informing the purchaser that the Real Estate Commission has issued an effective date for the Final Public Report, which disclosure shall contain all information contained in the Final Public Report that is not contained in the Contingent Final Public Report; and (f) the purchaser shall have signed a receipt for the disclosure statement or the registered or certified mail receipt which accompanied the mailing of the disclosure statement to the purchaser (or is deemed to have signed the receipt for the disclosure statement or the mail receipt), and a copy of the appropriate receipt (or proof of delivery) has been given by Developer to Escrow.

(b) Receipt of Statement by Escrow. Developer or Developer's attorney shall have been delivered a written statement to Escrow stating that the purchaser's sales contract has become effective and that:

- (i) the requirements of Sections 514A-39.5, 514A-40, 514A-62, 514A-63 and 514A-64.5, HRS, as applicable, has been met; and
- (ii) the relevant sales contracts delivered to Escrow are binding upon the purchasers.

(c) Developer's Waiver. Developer shall have given Escrow a written waiver of any option reserved in any sales contract to cancel such sales contract.

(d) Additional Statement. If applicable, Developer shall have delivered to Escrow a written statement from Developer's attorney stating that Developer has satisfied all conditions that must be met prior to the disbursement of purchaser's funds pursuant to Section 4 of this Agreement.

Escrow shall, from time to time, and at no expense to Developer, release from escrow and pay and disburse to Developer any Developer's funds in the manner directed by Developer. The conditions precedent to allowable disbursement of Developer's funds set forth in Section 3 hereof shall not apply and need not be met for disbursement hereunder of Developer's funds.

4. Disbursement of Purchaser's Funds After Issuance of Final Public Report but Prior to Completion of Units. Subject to the provisions of the preceding Section 3, disbursements from the funds held in escrow shall be made not more than once each month on one check by Escrow, without charge, if requested in writing by Developer, to Developer, to Developer's general contractor or to Developer's mortgagee for the following:

(a) Construction Costs. To pay for construction costs of units and other improvements and fixtures in such amounts and at such times and in proportion to the valuation of the work completed by the contractor, as certified by a registered architect or professional engineer and as approved by Developer's mortgagee, if any, or an otherwise qualified financially disinterested person (the "Disinterested Person") who shall be designated in writing by Developer and Developer's mortgagee, if any, and who shall certify to Escrow in writing that such person is financially disinterested (and Escrow shall have the right to rely on said certification). No such disbursements shall be made by Escrow unless bills are submitted with the request for disbursements that have been approved or certified for payment by Developer's mortgagee, if any, or the Disinterested Person.

(b) Fees and Other Expenses. To pay for architectural, engineering, finance and legal fees and other incidental expenses of the Project (but not selling expenses or brokerage fees relating to sales of any unit) to the extent approved by Developer's mortgagee or the Disinterested Person.

(c) Balance of Funds. No disbursements shall be made by Escrow with respect to the balance of monies remaining in escrow for a unit after payment of construction costs pursuant to Section 4(a) above until construction of the applicable unit has been completed and Escrow has received satisfactory evidence that all mechanics' and materialmen's liens have been cleared or sufficient funds have been set aside to cover claims if liens are filed: otherwise forty-six (46) days after the filing of the affidavit of publication of notice of completion in the office of the clerk of the circuit court where the Project is located, a copy of which shall have been delivered to Escrow; provided, further that if any notice of mechanics' or materialmen's liens have been filed, the funds shall be disbursed only such liens have been cleared or sufficient funds have been set aside to cover such claims.

5. **Return of Purchaser's Funds and Documents.**

(a) Cancellation or Rescission of A Sales Contract. Unless otherwise provided in this Agreement, a purchaser shall be entitled to a return of such purchaser's funds and Escrow shall pay such funds to such purchaser, together with any interest which may have accrued to the credit of such purchaser, if any one of the following has occurred

- (i) Developer and purchaser shall have requested Escrow in writing to return to purchaser the funds of purchaser held hereunder by Escrow; or
- (ii) Developer shall have notified Escrow in writing of Developer's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Developer; or

- (iii) The purchaser has exercised purchaser's right to cancel the sales contract pursuant to Section 514A-62, HRS, as amended, and notified Escrow of same, in writing.

In any of the foregoing events, Escrow shall, upon the occurrence of the event described in (i) or (ii) above or upon receipt of a written request for a refund from the purchaser upon the occurrence of an event described in (iii) or (iv) above, unless the purchaser has waived or has been deemed to have been waived the right to a refund, pay said funds to said purchaser (less a cancellation fee commensurate with the work done by Escrow prior to such cancellation, up to a maximum of \$250.00); provided, however, that no refund shall be made to a purchaser at the purchaser's request prior to 10 days after receipt by Developer of written notice from Escrow of Escrow's intent to make such a refund. It is expressly understood and agreed that no refund shall be made to a purchaser at such purchaser's request without such prior written notice to Developer.

(b) Rescission of A Sales Contract under a Contingent Final Public Report. A purchaser shall be entitled to a return of purchaser's entire deposit together with all interest earned thereon, and Escrow shall pay such funds to such purchaser under the following circumstances:

- (i) The purchaser entered into the sales contract pursuant to a Contingent Final Public Report and the Real Estate Commission does not issue an effective date for a Final Public Report by the date on which the Contingent Final Public Report expires; and
- (ii) Developer or purchaser elects to rescind purchaser's sales contract by giving written notice thereof to the other, with a copy of such notice to Escrow.

Developer understands and acknowledges that in the event of such a rescission: (a) if interest was accruing to the credit of Developer, interest will be reported to the IRS as being earned by Developer; (b) if Developer required the purchaser to secure a financing commitment, the purchaser shall be entitled to reimbursement from Developer (and not from Escrow) of any fees incurred by the purchaser in securing that financing commitment required by Developer; and (c) Developer shall pay to Escrow a fee commensurate with the work done by Escrow prior to such cancellation, up to a maximum of \$250.00.

6. Unclaimed Funds. Escrow shall give each purchaser entitled to a return of funds notice thereof by registered, certified or regular mail, postage prepaid, addressed to such purchaser at the purchaser's address shown on the sales contract or any address later made known in writing to Escrow by such purchaser. If such purchaser shall not have claimed such a refund within sixty (60) days, Escrow shall deposit such funds into a special account in a bank or other depository selected by Escrow, in the name of the Developer, as trustee for the benefit of such purchaser. After notifying the purchaser of all such facts at the purchaser's address as described herein and delivering all partially executed conveyance documents to Developer,

Escrow shall thereupon be released from any further duties or liability hereunder with respect to such funds and such purchaser.

7. **Preclosing of Sales.** Escrow agrees that upon fifteen (15) days' written notice from Developer, Escrow will act with diligence and dispatch to "preclose" sales (a) by arranging for the execution of the deed and such other documents as are required to effect transfer of title to the purchaser, and (b) by calling for the payments then required from the purchaser, all as provided in the sales contract.

8. **Closing.** Except for the sales contracts and any note and mortgage that is to be closed by the mortgagee thereof, Escrow shall promptly and diligently arrange for and supervise the execution of all documents related to the Project and shall promptly and diligently close the transactions and perform such services as are necessary or proper therefore. Upon receipt by Escrow of the conveyance document, receipt of the final public report, all necessary releases of encumbrances, full amount of the purchase price of the unit, any mortgage or other instruments securing payment by the purchaser of all or part of the purchase price of the unit and purchaser's share of closing costs, Escrow will act with diligence and dispatch to "close" the sale of the unit by performing the following:

(a) Escrow shall cause the recording of such releases, conveyance document and mortgage, if any; and

(b) After recordation, Escrow shall cause a copy of said conveyance document to be delivered to the purchaser, the release or partial releases to be delivered to the Developer, the mortgage, if any, to be delivered to the purchaser's lending institution, all sums respecting the purchase of the unit to be disbursed to Developer after deduction by Escrow of Developer's share of the closing costs.

9. **Partial Closings.** It is understood that partial closings, i.e., closing for some but not all of the units, may be desired by the Developer. If Developer desires to close any or all sales at different times, Escrow agrees to cooperate with Developer and shall vary its performance or the directions contained herein in such manner as will facilitate its performance of such partial closings.

10. **Defects in Documents.** Upon the closing of each sales transaction, provided that any individual mortgage in connection therewith may then be filed or recorded, and it is legally possible to file and record all closing documents and none is in any way defective, Escrow shall proceed promptly and within two (2) business days (exclusive of the day of closing) record the necessary documents to effect the transfer of legal title to the purchaser. If for any reason it is determined that any document necessary to close the transaction is defective or cannot be recorded, Escrow shall promptly notify Developer of such facts and Escrow shall proceed promptly to correct such defects as are within its capacity as an escrow depository to correct. If, for any cause beyond Escrow's control, the necessary documents cannot be filed or recorded within said two (2) day period after closing, Escrow shall record the same within two (2) days after learning that the reason that prevented their filing or recording no longer exists.

11. **Purchaser's Default.** Developer shall give notice in writing to Escrow of occurrence of each event that initiates an obligation of a purchaser to make a payment to Escrow pursuant to the sales contract as well as notice of the amount and due date of such payment. If the purchaser fails to make such payment to Escrow on or before the due date thereof or if the purchaser fails to perform in any matter that is being handled by Escrow, Escrow shall promptly notify Developer in writing of any such failure on the part of the purchaser. If Developer subsequently certifies in writing to Escrow that Developer has terminated the sales contract in accordance with the terms thereof and provides to Escrow copies of all such notices of termination sent to the purchaser, Escrow shall thereafter treat all funds of the purchaser paid on account of such purchaser's sales contract as funds of the Developer and not as funds of the purchaser. Thereafter, such funds shall be free to the escrow established by this Agreement and shall be held by Escrow for the account of the Developer. Upon written request by Developer, Escrow shall pay such sums to Developer, less any escrow cancellation fee and shall return to Developer any documents that had been theretofore delivered to Escrow by Developer. Escrow shall thereupon be released from any further duties or liability hereunder with respect to such funds and such purchaser.

12. **Protection of Escrow.** In consideration of Escrow acting as escrow holder hereunder, it is agreed that Escrow is relieved from all liability for acting in accordance with the terms hereof, notwithstanding a notice to the contrary by Developer or any purchaser or third person. Escrow shall not be responsible for the validity or sufficiency of any sales contracts or other documents received by it and shall be entitled for all purposes to assume that the same have been signed by the persons whose signatures purport to be thereon and that any written certification or instruments from Developer are true and accurate.

If any dispute or difference shall arise or if any conflicting demands shall be made upon Escrow, Escrow shall not be required to determine the same or take any action in the premises, but Escrow may await settlement of the controversy by final appropriate legal proceedings or otherwise as it may require, or Escrow may file a suit in interpleader in any court having jurisdiction in the matter, for the purpose of having the respective rights of the parties adjudicated and may deposit with the court any of all monies held hereunder. Upon institution of such interpleader suit or other action, depositing such money with the court and giving notice thereof to the parties thereto by personal service or in accordance with the order of the court, Escrow shall be fully released and discharged from all further obligations hereunder with respect to the monies so deposited.

Developer agrees and shall cause each purchaser to agree to pay Escrow on demand and to indemnify and hold Escrow harmless from and against all costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of every kind and nature reasonably suffered or incurred in connection with or arising out of this Agreement, including, but not limited to, all costs and expenses incurred in connection with the interpretation of this Agreement or with respect to any interpleader or other proceeding, but excluding all of the foregoing that is the result of any act or omission by Escrow or its agents that is not generally accepted in the Honolulu business community as a reasonable business practice. Upon payment thereof, the prevailing party will be subrogated to Escrow's right to judgment for such costs, damages,

judgment, attorneys' fees, expenses, obligations and liabilities of every kind and nature against third persons.

Developer expressly agrees that Escrow shall not be required to mail any notice or keep any records that may be required of Developer under Chapter 514A, Hawaii Revised Statutes.

13. **Binding Effect.** This Agreement shall be binding upon, shall apply to and shall inure to the benefit of the parties hereto and their respective devisees, personal representatives, successors and assigns, and shall upon its acceptance by a given purchaser (which acceptance shall occur automatically upon the purchaser's execution of the sales contract) also be binding upon and inure to the benefit of such purchaser and such purchaser's heirs, personal representatives, successors and permitted assigns.

14. **Termination.** This agreement may be terminated by either party hereto upon fifteen (15) days written notice to the other; provided, however, that all transactions in process hereunder at the time of such termination shall be completed under the terms of this Agreement. In any event, this Agreement shall terminate upon the recording and delivery of all pertinent documents relating to the Project and final disbursement of all funds deposited in escrow hereunder.

15. **Statutory Provisions Control.** This Agreement is, in all of its provisions, to be deemed and interpreted as supplementary and subject to the provisions of Chapter 514A, Hawaii Revised Statutes, as now or hereafter amended, and if any conflict should arise between the provisions of this Agreement and the provisions of said Chapter 514A, the provisions of the latter shall control.

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

17. **Compensation of Escrow.** The compensation of Escrow for performance hereunder shall be as follows:

Escrow Fees	Sales Price Range
\$475.00 plus general excise tax per unit	\$ 0 - \$299,000
\$675.00 plus general excise tax per unit	\$ 300,000 - \$ 499,000
\$875.00 plus general excise tax per unit	\$ 500,000 - \$ 699,000
\$1,150.00 plus general excise tax per unit	\$ 700,000 - \$ 900,000

The compensation for Escrow's performance does not include costs such as notary fees, recording fees, conveyance document preparation fees or any additional or special services requested by the purchasers.

Escrow shall also arrange for the issuance of a title insurance policy (Standard Owner's Policy), the premiums for which shall be:

Title Fees	Sales Price Range
\$675.00 plus general excise tax per unit	\$ 0 - \$299,000
\$875.00 plus general excise tax per unit	\$ 300,000 - \$ 499,000
\$1,095.00 plus general excise tax per unit	\$ 500,000 - \$ 699,000
\$1,550.00 plus general excise tax per unit	\$ 700,000 - \$ 900,000

The cost of said escrow fees and title insurance policies shall be the expense of the individual purchasers, and the same or any portion thereof shall not in any way be the obligation of the Developer.

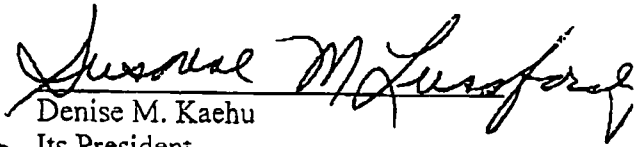
Said compensation shall become due and payable with respect to a unit in the Project upon the first to occur of the following events: (1) the transfer to the purchaser of such unit of legal title thereto; or (2) final disbursement of the funds held in escrow in connection with such unit. In the event of the cancellation of any sales contract that has been submitted to Escrow, a cancellation fee commensurate with the services rendered by Escrow, but not more than Two Hundred Fifty Dollars (\$250.00), plus all costs incurred by Escrow, shall be charged to Developer, unless otherwise agreed to by Developer and the purchaser. If Escrow shall for any reason without fault on its part be required to change subsequent to the commencement of preclosings or closings for the Project any closing statement or document previously approved as to forms and figures by Developer, Developer agrees to pay an additional charge of \$30.00 for each such statement or document that is changed.

18. **Notices.** All notes hereunder may be delivered personally or may be mailed. Except as otherwise specifically provided herein or by laws, notice hereunder by Escrow to a purchaser shall be given in the manner set forth in such purchaser's sales contract and shall be deemed to be effective upon delivery in the case of personal delivery or within seventy-two (72) hours (or ninety-six (96) hours if mailed to an address outside of the State of Hawaii) after depositing the notice in the United States mail, postage prepaid, addressed to the purchaser at the address set forth in the sales contract, or any address later made known to Escrow.

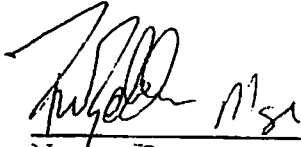
19. **Counterparts/Facsimile.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original, and all of which together shall constitute one and the same Agreement. This Agreement shall also be effective upon the transmission, of signed copies, by facsimile, providing originally executed documents are intended to be provided by the parties to each other.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above.

HAWAII ESCROW AND TITLE, INC.,
a Hawaii corporation

By: 
Denise M. Kaehu
Its President
for (Escrow)

Douglas E. Myers,
an Individual

By: 
Name: DOUGLAS E. MYERS
Title: DEVELOPER
(Developer)
3702 Honoapiilani