

ORIGINAL

LAND USE COMMISSION  
STATE OF HAWAII

*Hanohano LLC*  
*2005 Main Street*  
*Wailuku, Maui, Hawaii 96793*  
*Ph: 808 244 1500*

2007 MAY 21 10:07:02

May 17, 2007

Land Use Commission  
State of Hawaii  
P.O. Box 2359  
Honolulu, Hawaii 96804-2359

Re: Second Annual Report of Hanohano LLC  
Docket No. A03-745

Dear Chair and Members of the Commission:

In accordance with Condition 23 of the Findings Of Fact, Conclusions Of Law, And Decision And Order For A State Land Use District Boundary Amendment (the "D&O") entered in the above-referenced docket on May 17, 2005, Petitioner Hanohano LLC (the "Petitioner") hereby submits its Second Annual Report to the Land Use Commission of the State of Hawaii ("LUC").

I. Status of the Project

As reported in the First Annual Report, Petitioner secured legal title to the Property (as this capitalized term is used in the D&O) on December 28, 2005. Petitioner filed with the Department of Public Works and Environmental Management of the County of Maui (the "Public Works Department") its preliminary plat and other supporting documents and information for the subdivision of the Property into forty-nine (49) residential lots and into various roadway, drainage and other lots (the "Subdivision").

On June 7, 2005, the Director of the Public Works Department (the "Public Works Director") granted his approval to the preliminary plat for the Subdivision. Between September 2, 2005 and September 16, 2005, Petitioner submitted to the Public Works Department construction plans for the improvements contemplated by the Subdivision (the "Construction Plans"). The Construction and final plat for the subdivision have not been approved by the Public Works Director as of the date of this Second Annual Report.

II. Petitioner's Response to the Conditions imposed by the LUC in the D&O as follows:

- "1. Affordable Housing. Prior to approval of the "final plat" (as this term is defined in '18.04.190, Maui County Code for the Project (the "Final Subdivision Approval"), Petitioner shall enter into an agreement with the DHHC, whereby, among other things, Petitioner shall pay Habitat for Humanity Maui, Inc., on or before Final Subdivision Approval, the amount of ONE HUNDRED TWENTY-FIVE THOUSAND and 00/100 DOLLARS (\$125,000.00), in full satisfaction of the County of Maui's affordable housing requirements for the Project."

Status: Petitioner has complied with this condition. On February 10, 2006, Petitioner, through its counsel, submitted to the Director of the Department of Housing and Human Concerns of the County of Maui (the "DHHC") an agreement intended to satisfy this condition. The agreement was approved on November 2, 2006 and is attached as Exhibit "A".

- "2. Ohana Units. Not more than forty-nine (49) "dwelling units" (as this term is defined in '19.04.040, Maui County Code) shall be constructed or maintained on the Property, and not more than one (1) dwelling unit shall be constructed or maintained on each Residential Lot. No "accessory dwellings" (as this term is defined in '19.04.040, Maui County Code) or ohana units shall be permitted in the Project."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "3. Park Dedication Requirements. Prior to Final Subdivision Approval, Petitioner shall comply with the park dedication requirements under '18.16.320, Maui County Code, for the Project, as approved by the Parks Department. An executed agreement between the Petitioner and the Parks Department shall be delivered to the Commission, OP and the Planning Department."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "4. Archaeological. To protect the native Hawaiian practitioner's exercise of customary and traditional practices in the subject area; to ensure appropriate public access to the Heiau located within the Property; to ensure the availability of natural and cultural resources for present and future generations; to promote the practice of ohana and conservation values with respect to the physical and cultural landscape:

4a. Petitioner shall establish on the Heiau/Retention Basin Lot, permanent 60 foot wide and 100 foot wide buffer zones around the

Heiau, with a rock wall of not less than four (4) feet high demarcating the perimeter of the 60 foot buffer zone. Within 6 months of the filing of this Decision and Order, Petitioner shall use reasonable efforts to request, but shall not be required to obtain, the consent and cooperation of the owner of the parcel of land immediately adjacent to the Heiau/Retention Basin Lot to extend the permanent 100 foot wide buffer zone on such adjoining lot. Within six months of Petitioner receiving notice that the adjacent property has changed ownership, Petitioner shall use reasonable efforts to request the consent and cooperation to extend the 100 foot wide buffer on that adjoining lot and shall continue to use such reasonable efforts with each successive owner of the adjacent parcel until such request is agreed to."

Status: As to the first sentence of this condition, Petitioner acknowledges and agrees to comply with this condition. As noted in the supplemental information, dated August 1, 2006, provided in connection with the First Annual Report, Petitioner has completed the design of the rock wall demarking the perimeter of the sixty (60) foot wide buffer zone. The rock wall will be constructed in conjunction with Hanohano's construction of the various on-site and off-site improvements required for the proposed subdivision of the subject property.

As to the second and third sentences of this condition, Petitioner has complied with said provisions, as noted in Petitioner's letter to the LUC, dated November 16, 2005.

- "4b. Petitioner shall include the CC&Rs provisions which prohibit public access, through the use of appropriate signage, to the 60 foot wide buffer zone, and, with the exception of the wall around the 60 foot buffer zone and irrigation lines in the area between the perimeters of the 60 foot wide buffer zones, shall further prohibit the construction of any structures within the entire 100 foot wide buffer zones. Petitioner shall also install appropriate informational signage at the perimeters of the 100 foot wide buffer zone and the Heiau to aid in its preservation."

Status: Petitioner acknowledges and agrees to comply with this condition. The informational signage will be installed in conjunction with the construction of the on-site and off-site subdivision improvements.

- "4c. Petitioner shall cause the formation of a three (3) person committee, composed of a representative of the Homeowners' Association pursuant to a provision in the CC&Rs, a representative from OHA, and a representative from the Kupuna Council of Maui (the "Curator Selection Committee"), to select the Curator, who shall (a) oversee the maintenance of the Heiau by the Homeowners' Association; and (b) direct and coordinate the initial installation by the Petitioner and the perpetual maintenance by the Homeowners' Association of the native plantings in the 60 foot wide buffer zone."

Status: Petitioner acknowledges and agrees to comply with this condition. The Curator Selection Committee has not been formed as of the date of this Second Annual Report and is pending the selection of a representative of the Homeowners' Association. The Homeowners' Association will be established in conjunction with the preparation and recordation with the Bureau of Conveyances of written covenants, conditions and instructions applicable to all of the lots created by the subdivision (the "CC&Rs"). Since the subdivision has not yet received final approval from the County of Maui, the CC&Rs (which require descriptions of the separate lots created by the subdivision) has not been prepared. As such, without CC&Rs, the Homeowners' Association has not been created, thereby preventing the selection of the curator by the Curator Selection Committee, and the holding of any annual or special meetings by this body. Petitioner notes that a representative from OHA, Boyd P. Mossman, and a representative from the Kupuna Council of Maui, Patricia Nishiyama, have agreed to serve on the Curator Selection Committee.

- "4d. The Petitioner shall establish the Curator Selection Committee and its governing laws including succession plans no later than six months from the issuance of this Decision and Order. Upon establishment of the Curator Selection Committee, the Petitioner and Curator Selection Committee shall provide a written report to the Commission, OP and the Planning Department, with details as to the Curator Selection Committee composition and structure, procedures and plan of action to be approved by the Commission."

Status: As noted in the status for item 4c. above, the Homeowners' Association has not been created, thereby preventing the selection of the curator by the

Curator Selection Committee, and the holding of any annual or special meetings by this body.

- "4e. The Curator shall monitor the preservation and maintenance of the Heiau and the effectiveness of the Petitioner's actions to limit access to and/or preserve and maintain the Heiau. The Curator shall provide recommendations consistent with this Decision and Order to the Commission with respect to the maintenance and/or preservation of the Heiau and any other traditional and customary native Hawaiian practices and cultural resources on the Property.

The Curator shall provide reports on an annual basis describing items and issues relating to the preservation and maintenance of the Heiau and other traditional and customary native Hawaiian practices and cultural resources on the Property and discussions with the adjoining landowner with respect to the buffer on the adjoining landowner's property."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "4f. Petitioner shall initially landscape with grass and install the necessary irrigation lines in the area between the 60 foot wide buffer zone and the perimeter of the 100 foot wide buffer zone. Petitioner shall, in consultation with the Curator, initially install appropriate native plantings, without any irrigation lines, in the 60 foot wide buffer zone."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "4g. Upon the establishment of the Homeowners' Association, said Homeowners' Association shall maintain in perpetuity the Heiau/Retention Basin Lot. The CC&Rs will include a condition to the effect that the Homeowners' Association shall bear the cost including reasonable out of pocket costs, if any, of the Curator, such that the Curator may perform the duties prescribed in this Decision and Order."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "4h. The view planes from the Heiau will be preserved by prohibiting (a) the construction of any "structure" (as this term is defined in '19.04.040, Maui County Code), with the exception of the Retention Basin, the 4 foot high walls around the 60 foot wide buffer zones and

the Retention Basin, and irrigation line on that portion of the Property north of the Heiau; and (b) the construction on the Property of any structure or landscaping that blocks the view plan from the Heiau to the summit of Haleakala (but structures that do not block such view plane may be constructed on the Property). This condition will also be included in the CC&R's and in appropriate deed restrictions."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "4i. Petitioner shall comply with any and all conditions proposed by SHPD for the Heiau. Within one month of notification from SHPD, Petitioner shall inform the Commission that SHPD has approved Petitioner's commitments, if any, for the preservation and maintenance of the Heiau, and has determined that any historic preservation mitigation plan and archaeological data recovery sub-plan have been successfully implemented."

Status: Petitioner acknowledges and agrees to comply with this condition. Petitioner notes that SHPD has done a preliminary review; however, the final review has not been completed.

- "5. Unidentified Archaeological Finds. If any previously unidentified human burial, or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, or loi walls (collectively the "Historic Sites") are found during construction on the Property or any Residential Lot, work shall immediately stop and SHPD shall be notified of such Historic Sites. The requirements of Chapter 6E, HAW. REV. STAT., and the rules promulgated thereunder, applicable to the Historic Sites shall be satisfied before construction resumes. SHPD shall determine and approve the significance of the Historical Sites, and construction work shall re-commence at the Property only after both approval by an authorized archaeologist has been obtained and appropriate mitigative measures for the Historic Sites have been implemented."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "6. Traffic Impact Mitigation. On or before the completion of all improvements required by the Director of the DPW as a condition to Final Subdivision Approval, Petitioner shall cause, at its sole cost and expense, the construction of the following:

- 6a. Separate lanes for left turns and right turns on the northbound approach of the Project Entrance to Old Haleakala Highway;
- 6b. A left-turn pocket on the westbound approach on Old Haleakala Highway to the Project Entrance;
- 6c. A taper at the intersection of Old Haleakala Highway and the Project Entrance to facilitate eastbound traffic turning right into the Project;
- 6d. An extended shared through/left turn lane and an extended separated right turn lane approximately 200 feet long on the Old Haleakala Highway approach to the signalized intersection of Haleakala Highway, Kula Highway and Old Haleakala Highway, which improvements shall include full curbs, gutters and sidewalk frontage improvements along the entire Project frontage on Old Haleakala Highway up to Kula Highway; and
- 6e. An extended separate right turn lane, approximately 150 feet long, on the makai bound approach of Haleakala Highway within the available right-of-way and within the constraints of the existing drainage ditch.

Petitioner shall also dedicate a sufficient right-of-way and setback, at no cost to the State of Hawaii, along portions of lots 19 and 20 of the Project fronting Old Haleakala Highway, and along a portion of the pedestrian and utility right-of-way between such lots, as shown on the Petitioner's Conceptual Development Plan (Petitioner's Exhibit 8), for the purpose of accommodating the storage lanes, turn lanes and sidewalk improvements described in Condition 6(d) above."

Status:           Petitioner acknowledges and agrees to comply with this condition.

- "7. Hazard Mitigation. Within six months of issuance of this Decision and Order, the Petitioner shall properly test for the presence of any hazardous materials, and thereafter properly dispose of, the three (3) fifty-five (55) gallon drums currently on the Property. If such testing evidences the presence of hazardous materials, Petitioner shall conduct additional soil sampling at and in close proximity to the location of the drums on the Property to ascertain any potential impacts resulting therefrom and shall mitigate/cure any potential impacts resulting therefrom."

Status:           Petitioner has complied with this condition, as noted in Petitioner's letter to the LUC dated November 16, 2005.

- "8. Responsibility of the Homeowner's Association to maintain the Property. All landscaping in the Project but outside of the Residential Lots, and all easements, cul-de-sac turn arounds, and emergency vehicle, pedestrian and utility rights of way established by Petitioner as a part of the Project shall be maintained in good repair as long as the Project exists."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "9. Water Service. Prior to Final Subdivision Approval, Petitioner shall provide evidence, in the form of a fully executed agreement with DWS, whereby, among other things, the DWS shall allocate to and reserve for the Project any excess source and storage credits arising from the Kulamalu development. Petitioner shall provide adequate potable water transmission improvements for the Project as may be approved by the appropriate State agencies and the DWS."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "10. Wastewater. Petitioner or the owner of each Residential Lot shall provide adequate individual wastewater systems for such Residential Lot as determined by the DOH and the DPW."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "11. Civil Defense. Petitioner shall fund and construct adequate solar-powered civil defense measures for the Project, as determined by the Department of Defense and the Office of Civil Defense of the State of Hawaii and the Civil Defense Agency of the County of Maui."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "12. Drainage Improvements. Petitioner shall design and construct, at its sole cost and expense, drainage improvements required on the Property as a result of the Project to the satisfaction of the appropriate State agencies and the DPW."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "13. Solid Waste. Petitioner shall cooperate with the DOH and the County of Maui to conform the Project with the program goals and objectives of Chapter



342G, HAW. REV. STAT., and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the DOH."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "14. Best Management Practices. Petitioner shall implement at the Property applicable best management practices to reduce or eliminate soil erosion and ground water pollution and effect dust control measures during and after the construction of the Project in accordance with the DOH's guidelines and shall assure best management practices are followed by individual lot owners through appropriate deed restrictions."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "15. Water Conservation Measures. Petitioner shall implement water conservation measures and best management practices for the Project such as use of indigenous and drought tolerant plants and turf, and shall incorporate such measures into common area landscape planting."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "16. Energy Conservation Measures. Petitioner shall implement into the Project energy conservation measures such as use of solar energy and solar heating."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "17. Air Quality Monitoring. Petitioner shall participate in an air quality monitoring program during the construction of the Project as specified by the DOH."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "18. Notification of Potential Nuisances. Petitioner shall notify all prospective buyers and/or lessees of the Residential Lots of potential odor, noise and dust pollution resulting from adjacent agricultural uses."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "19. Hawaii Right to Farm. Petitioner shall notify all prospective buyers and/or lessees of the Residential Lots that the Hawaii Right to Farm Act, Chapter 165, HAW. REV. STAT., limits the circumstances under which pre-existing farm activities may be deemed a nuisance."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "20. Preservation of Access. The access rights of native Hawaiians who customarily and traditionally have used the Property for access onsite or to other areas for subsistence, cultural, and religious practices shall be preserved."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "21. Compliance with Representations to the Commission. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or a change to a more appropriate classification."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "22. Notice of Change to Ownership Interests. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property. This Condition shall be satisfied by the giving of notice only, and shall not require approval by the Commission. This Condition shall not apply to the sale of any Residential Lot from and after Final Subdivision Approval."

Status: Petitioner acknowledges and agrees to comply with this condition. By letter dated January 25, 2006, Petitioner notified the LUC that Petitioner has closed on the purchase, and is now the landowner, of the Property.

- "23. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP and the Planning Department in connection with the status of the Project, administration for the maintenance of the Heiau and its preservation program, and Petitioner's progress in complying with the Conditions. The annual report shall be submitted in a form prescribed by the executive officer of the Commission. The annual

report shall be due prior to or on the anniversary date of the Commission's approval and entry of this Decision and Order.

- 23a. Upon the sale of all of the Residential Lots and establishment of the Homeowner's Association, the Petitioner will transfer to the Homeowner's Association the responsibility of providing annual reports to the Commission."

Status: Petitioner acknowledges and agrees to comply with this condition. Petitioner submits this Second Annual Report in compliance with this condition.

- "24. Release of Conditions. Petitioner shall have the right to seek from the Commission full or partial release of any of the Conditions as to all or any portion of the Property upon assurance acceptable to the Commission of satisfaction of such Conditions."

Status: Petitioner acknowledges this condition and will submit a timely motion to fully or partially release, or amend, certain conditions of the D&O upon compliance with the same.

- "25. Notice of Imposition of Conditions. Within seven (7) days of the delivery to Petitioner of these Findings of Fact, Conclusions of Law, and Decision And Order for the subject reclassification, Petitioner (a) shall record with the Bureau of Conveyances of the State of Hawaii a statement that the Property is subject to the Conditions; and (b) shall file a copy of such recorded statement with the Commission."

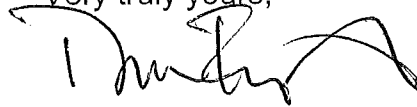
Status: Petitioner has complied with this condition by its recordation of the Certificate of Conditions with the Bureau of Conveyances of the State of Hawaii on May 26, 2005, as Document No. 2005-105309.

- "26. Recordation of Conditions. Petitioner shall record the Conditions with the Bureau of Conveyances of the State of Hawaii pursuant to Section 15-15-92, Hawaii Administrative Rules."

Status: Petitioner has complied with this condition by its recordation of the Certificate of Conditions with the Bureau of Conveyances of the State of Hawaii on May 26, 2005, as Document No. 2005-105309.

Should you have any questions or require additional information, please do not hesitate to contact me:

Very truly yours,

A handwritten signature in black ink, appearing to read 'Don Fujimoto', with a stylized flourish at the end.

DON FUJIMOTO  
Hanohano LLC

cc: Department of Planning, County of Maui  
Office of Planning, State of Hawaii  
Department of the Attorney General  
Department of the Corporation Counsel

**KUALONO AFFORDABLE  
HOUSING AGREEMENT**

This KUALONO AFFORDABLE HOUSING AGREEMENT made this  
2nd day of November, 2006 (the "Effective Date"), by and between  
HANOHANO LLC, a Hawaii limited liability company, whose mailing address is 2005  
Main Street, Wailuku, Maui, Hawaii 96793, hereinafter called "HANOHANO", and the  
COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose mailing  
address is 200 South High Street, Wailuku, Maui, Hawaii, 96793, hereinafter called  
"COUNTY".

**Background Statement**

1. Hanohano owns two (2) parcels of land, situate at Keahua, Kula,  
Island and County of Maui, State of Hawaii, bearing tax map key numbers 2-3-11:1 and  
2-3-11:2 (Second Taxation Division) (together the "Property").
2. On February 3, 2004, Hanohano filed with the Land Use  
Commission of the State of Hawaii (the "Commission") a petition to reclassify the  
Property from the state agricultural district to the state urban district in a proceeding  
entitled "In Re: Petition of Hanohano LLC", bearing Docket No. A03-745 (the "Petition"  
and the "LLC Proceeding").
3. Hanohano proposed in the Petition, and offered in support thereof,  
lay, expert and documentary evidence in the LUC Proceeding for, a subdivision of the  
Property consisting of forty-nine (49) residential lots (the "Residential Lots"), together

with roadway, drainage and archaeological preservation lots, all part of an undertaking known as the Kualono Subdivision (the "Subdivision").

4. County presented, through its Department of Housing and Human Concerns (the "DHHC"), lay and documentary evidence in the LUC Proceeding requesting the Commission to approve the Petition and reclassify the Property from the state agricultural district to the state urban district, subject to, among other things, a condition that Hanohano contribute, prior to the approval by the Director of the Department of Public Works and Environment Management of the County of Maui (the "Public Works Director") to the "final plat" (as this term is used in §18.04.190, Maui County Code) for the Subdivision, the amount of \$125,000.00 to Habitat for Humanity Maui, Inc. ("Habitat") to satisfy in full the County's affordable housing requirements for the Subdivision (the "Affordable Housing Payment").

5. As presented by the County in the evidentiary hearings in the LUC Proceeding, the Affordable Housing Payment was determined by multiplying

(a) a monetary contribution of \$25,000.00 for each affordable housing unit; times

(b) the five (5) affordable housing units that Hanohano would otherwise be required to provide for the forty-nine (49) Residential Lots proposed for the Subdivision.

6. By its Findings Of Fact, Conclusions Of Law, And Decision And Order For A State Land Use District Boundary Amendment (the "LUC Decision") entered in the LUC Proceeding on May 17, 2005, the Commission granted the Petition

and approved the reclassification of the Property from the state agricultural district to the state urban district, subject to, among others, the following condition (the "Affordable Housing Condition"):

"Prior to the approval of the 'final plat' (as this term is defined in §18.04.190, Maui County Code) for the [the Subdivision], (the 'Final Subdivision Approval'), [Hanohano] shall enter into an agreement with the DHHC, whereby, among other things, [Hanohano] shall pay Habitat for Humanity Maui, Inc. on or before Final Subdivision Approval, the amount of ONE HUNDRED TWENTY-FIVE THOUSAND and 00/100 DOLLARS (\$125,000.00) in full satisfaction of the County of Maui's affordable housing requirements for the [the Subdivision]."

7. Further, Findings of Fact No. 47 of the LUC Decision recited:

"47. The Petitioner believes that the property is zoned 'R-3 residential district' under the County of Maui's comprehensive zoning ordinance. The County of Maui contends that the Property is zoned 'interim' under the County of Maui interim zoning ordinance, and therefore requires a change in zoning from interim to residential. This issue, however, does not affect the proceedings by the Commission on the Petition."

8. Hanohano has filed a civil complaint for Declaratory Judgment against the County in the Circuit Court of the Second Circuit entitled "Hanohano, LLC, et al. vs. County of Maui, et al.", Civil No. 06-1-0148(1) (hereinafter "Hanohano Civil Action"), wherein the above-referenced issue/dispute will be determined by the court.

9. In view of the above-referenced outstanding issue/dispute, Hanohano and the County desire to memorialize

(a) Hanohano's obligation to pay the Affordable Housing Payment of \$125,000 to Habitat in accordance with the Affordable Housing Condition; and

(b) upon Hanohano's payment to Habitat of the \$125,000.00 Affordable Housing Payment, Hanohano's full satisfaction of all affordable housing requirements of County for the Subdivision.

NOW THEREFORE, in consideration of the terms and conditions in this Kualono Affordable Housing Agreement (the "Agreement"), Hanohano and County agree as follows:

1. Delivery Of Affordable Housing Payment.

(a) Hanohano shall deliver the Affordable Housing Payment to Habitat on or before the approval by the Public Works Director to the "final plat" (as this term is used in §18.04.190, Maui County Code) for the Subdivision ("Final Subdivision Approval").

(b) If the Hanohano Civil Action results in a final determination that Hanohano is not required to obtain a change in zoning for the Property in order to develop the Subdivision in accordance with the provisions of Title 19 of the Maui County Code, then upon the timely payment of the Affordable Housing Payment by Hanohano to Habitat, County shall not thereafter require or impose any other requirement upon Hanohano for the payment of monies, the conveyance of real property, the construction of any "dwelling unit" (as this quoted term is defined in §19.04.040, Maui County Code), or the development or transfer of property or monies relating to the provision of "affordable housing" for the Subdivision. If the Hanohano Civil Action results in a final determination that Hanohano is required to obtain a change in zoning for the Property in order to develop the Subdivision, then the County's affordable housing requirement



applicable to the Property and the development of the Subdivision shall be pursuant to the change in zoning process and resulting ordinance, and/or any applicable affordable or workforce housing ordinance.

2. Excuse Of Hanohano Performance.

Upon the occurrence of any of the following events (the "Excusing Events"):

(a) The failure of Habitat, for whatsoever reason, to execute, within sixty (60) calendar days after the Effective Date, an agreement with Hanohano, substantially in the form shown by Exhibit "A" attached hereto and made a part hereof, whereby, among other things, Hanohano agrees, to deliver the Affordable Housing Payment to Habitat;

(b) The determination by Hanohano, in its sole and absolute discretion, that it will be unable to obtain, for whatsoever reason, Final Subdivision Approval on or before March 31, 2007; or

(c) The Public Works Director, the Director of the Department of Planning of the County of Maui, the Director of the Department of Water Supply of the County of Maui, and the "sanitary engineer" and the "district engineer" (as these quoted terms are used in § 18.20.180, Maui County Code) fail to approve on or before February 28, 2007, all "construction drawings and specifications" (as their quoted phrase is used in § 18.20.150 through § 18.20.180, Maui County Code), required for Final Subdivision Approval; then Hanohano shall have the right to deliver written notice (the "Excusing Event Notice") to County at any time within three hundred sixty-five (365) calendar days

after the Effective Date that either (i) Hanohano shall pay the Affordable Housing Payment to Habitat, within thirty (30) calendar days following the delivery by Hanohano to County of the Excusing Event Notice (the "Voluntary Affordable Housing Payment"); or (ii) this Agreement shall be cancelled, effective on the thirtieth (30th) consecutive calendar day following the delivery by Hanohano of the Excusing Event Notice (the "Cancellation Right").

In the event Hanohano shall have the right to and shall timely pay Habitat the Voluntary Affordable Housing Payment, and in the event the Public Works Director fails to grant Final Subdivision Approval within five hundred forty-five (545) days after the Effective Date, then the County shall deem the Voluntary Affordable Housing Payment as a credit and in full satisfaction of any and all affordable housing requirements of the County for, at the option of Hanohano, either

- (a) the Subdivision; or
- (b) the construction of five (5) affordable dwelling units that the County requires as a condition to its or any other federal, state or municipal, approval to any other development, use, permit, or other approval requested by either Hanohano or an entity in which The Dowling Company, Inc. is a manager, member, shareholder or partner.

In the event that Hanohano shall have right to and shall timely exercise its Cancellation Right, then this Agreement shall be deemed cancelled, neither party hereto shall be further obligated to the other under this Agreement, neither party shall be liable to the other party hereto for any fee, cost or expense incurred by such party in reliance

upon this Agreement, and County shall have the right, without objection of Hanohano, to request the Commission to reclassify the Property from the state urban district to the state agricultural district.

3. Time; Remedies For Default.

(a) Time is of the essence of this Agreement, and the time specified for the performance of any act (including without limitation the delivery of any instrument or the payment of any money), whether as a condition or as a promise, shall not be extended, and shall be strictly observed.

(b) In the event Hanohano shall fail to perform any material covenant or agreement contained herein which is to be performed by Hanohano, County's sole and only remedy shall be the right to specific performance of this Agreement.

(c) In the event County shall fail to perform any material covenant or agreement contained herein which is to be performed by County, Hanohano's sole and only remedy shall be the right to specific performance of this Agreement.

(d) Notwithstanding any provision of this Agreement to the contrary, except for the remedies set forth in paragraph 3 (b) and 3 (c) hereinabove, neither Hanohano nor County shall have any other remedy against the other, or against any member, manager, officer, employee, director, shareholder, member, manager, partner, attorney, or other representative of the other, in connection with this Agreement, including without limitation the following:

- (i) Except for an action for specific performance, any action in equity, including, without limitation, an action to reform this Agreement;
- (ii) Any action for money damages;
- (iii) Any action in tort for the willful breach of this Agreement;
- (iv) Any action for emotional distress; and
- (v) Punitive damages.

Hanohano and County hereby acknowledge and agree that the foregoing mutual limitation of their remedies for default under this Agreement constitutes a fair and just accommodation of their respective business interests.

4. Assignment Of Hanohano's Rights.

Hanohano shall have the right to assign its rights under this Agreement with the prior written consent of County, which consent shall not be unreasonably withheld. Any such prohibited assignment by Hanohano in violation of this paragraph shall be null and void, without legal effect and constitute a material breach of this Agreement, and in that event County shall be discharged from its obligations under this Agreement.

5. No Partnership Or Principal/Agent.

The parties do not intend to create a partnership or joint venture between them by the execution of this Agreement. The parties do not intend to create a principal

and agent relationship between them by this Agreement. No party has any authority to act as the agent for the other.

6. No Intended Third Party Beneficiaries.

The parties do not intend to make any person (an "Incidental Beneficiary") with whom each of the parties may deal in connection with this Agreement, or any transaction contemplated by this Agreement, an intended third party beneficiary under this Agreement. No such Incidental Beneficiary shall have any rights under this Agreement. No such Incidental Beneficiary shall have the right to assert a claim against any party under this Agreement.

7. Notices.

(a) Generally.

All notices, demands and requests that may be or are required to be given hereunder by either Hanohano or County shall be in writing and shall be sent by United States mail, return receipt requested, postage prepaid, addressed as set forth below, to the respective addresses set forth in paragraph 7(b) below. Notices, demands and requests shall be deemed delivered for all purposes hereunder on the fifth (5th) calendar day immediately following the date such notice, demand or request is deposited with any governmental postal service addressed as set forth in paragraph 7(b) below.

(b) Addresses.

The addresses of Hanohano and County for notices shall be as follows:

If to Hanohano:	2005 Main Street Wailuku, Maui, Hawaii 96793
with a copy to:	David H. Nakamura, Esq. 38 South Market Street Wailuku, Maui, Hawaii 96793
If to County:	200 South High Street Wailuku, Maui, Hawaii 96793

Hanohano and County may change their respective addresses for notice by delivering written notice specifying this paragraph to the other party in the manner set forth hereinbefore, and thereafter such party's address shall be the new address for all notices, demands and requests that may be or are required under this Agreement.

8. No Party Deemed To Be Draftsman.

Hanohano and County have each had the assistance of their own counsel in the drafting of this Agreement. If an ambiguity should appear in this Agreement, such ambiguity shall not be resolved by interpreting this Agreement against either party as the draftsman. The language of this Agreement shall be interpreted simply according to the fair meaning.

9. Interpretation And Construction.

This Agreement and the respective rights and duties of the parties hereunder shall be construed and interpreted in accordance with the law of the State of Hawaii. No amendment of this Agreement shall be effective unless the same is in writing and executed by all the parties. The headings and marginal notations of this Agreement

are for convenience only, and if there be any conflict, the text of this Agreement shall control. The use of any gender shall include all genders. Whenever any words are used herein in the singular, they shall be construed as though they were also used in the plural in all cases where they would so apply, and vice versa. Any reference in this Agreement to money or to payments to be made in money shall mean legal tender of the United States. This Agreement shall be binding upon, and shall inure to the benefit of the parties, their respective successors and assigns.

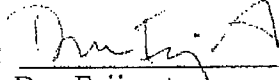
10. Counterpart Execution; Facsimile Copies.

The parties may execute this Agreement (and any amendment) by signing counterparts. In that event, this Agreement (or any amendment) shall take effect, and become a binding instrument, only when all of the counterparts have been signed by the parties. A facsimile signature shall be deemed to be an original signature. All such counterparts shall be deemed to constitute but one and the same instrument. Duplicate unexecuted pages of the counterparts (whether original or received by facsimile) may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties hereto have caused this instrument  
to be duly executed the day and year first above written.

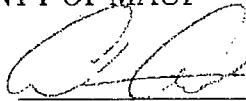
HANOHANO LLC, a Hawaii limited  
liability company:

By: Dowling Company, Inc., Its Manager

By:   
Don Fujimoto  
Its: Vice-President

"HANOHANO"

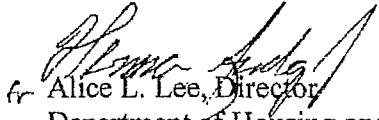
COUNTY OF MAUI

By:   
Name: ALAN M. ARAKAWA  
Title: Mayor

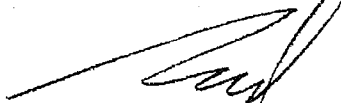
"COUNTY"



RECOMMENDED APPROVAL:

  
for Alice L. Lee, Director  
Department of Housing and Human Concerns

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Deputy Corporation Counsel  
County of Maui