

'A'ALI'I  
ESCROW AGREEMENT  
(Hawaii Revised Statutes Chapter 514B)

THIS AGREEMENT, made as of June 14, 2017 ("**Effective Date**"), is by and between TITLE GUARANTY ESCROW SERVICES, INC., a Hawaii corporation, whose principal place of business and post office address is 235 Queen Street, Honolulu, Hawaii 96813, hereinafter called "**Escrow**", and AALII, LLC, a Delaware limited liability company, whose address is c/o 1240 Ala Moana Boulevard, Suite 200, Honolulu, Hawaii 96814, hereinafter called "**Seller**".

R E C I T A L S:

A. Seller intends to enter into sales contracts for the sale of residential units in a condominium project to be established pursuant to a Declaration of Condominium Property Regime created under the Hawaii Condominium Property Act, Chapter 514B of the Hawaii Revised Statutes, as amended ("**HRS**"), the terms of which sales contracts will provide for payment of the Total Purchase Price and Closing Costs (as such terms are defined in the sales contracts) to be made to Escrow, to be held and disbursed by Escrow pursuant to the terms and provisions of this Agreement.

B. The name of the condominium project subject to this Agreement is 'A'alii' (herein called the "**Project**").

C. Seller currently plans to develop seven hundred fifty-one (751) residential units and one (1) commercial unit in the Project, of which only the residential units will be subject to this Agreement.

D. The land included or to be included within the Project is located in the City & County of Honolulu, State of Hawaii, and is currently identified as Tax Map Key No(s). (1) 2-3-002:067, (1) 2-3-002:086, (1) 2-3-002:087 (por.) and (1) 2-3-002:106 (por.).

E. The Project is located at 987 Queen Street, Honolulu, Hawaii 96814.

F. Seller desires to engage Escrow to act as the escrow agent for the Project, and Escrow is willing to accept such engagement, upon the terms and conditions of this Agreement.

A G R E E M E N T

It is hereby mutually agreed by Escrow and Seller as follows:

1. Appointment of Escrow. Seller hereby appoints Escrow to act as the escrow agent for the closing of the sale of residential units in the Project, and Escrow hereby accepts such appointment, upon and subject to the terms and conditions contained in this Agreement.

2. Sales Contracts Deposited in Escrow. As and when Seller shall enter into a sales contract for the sale of a residential unit in the Project, Seller shall deliver an executed copy of such sales contract and any amendments and/or addenda thereto to Escrow. Each sales contract shall (a) contain the correct name(s), mailing address(es) and email address(es) of the purchaser(s), (b) identify the unit number to be conveyed, (c) require that all payments to be made thereunder shall be made to Escrow, and (d) be accompanied by the Initial Deposit (as such term is defined in the sale contract) required thereunder.

3. Public Reports. Each sales contract shall refer to the Developer's Public Report for the Project and any and all amendments thereto (herein called the "**Public Report**") for which the Real Estate Commission of the State of Hawaii (herein called the "**Real Estate Commission**") has issued an effective date.

4. Sales to Owner-Occupants and Reserved Housing Applicants.

(a) Sales to Owner-Occupants. In the event that Seller offers certain residential units to prospective purchasers as prospective owner-occupants (herein called "**Owner-Occupants**") pursuant to HRS Chapter 514B (Part V, Subpart B, titled "**Sales to Owner-Occupants**"), the prospective Owner-Occupants shall deliver to Escrow an affidavit containing the information required by HRS Chapter 514B, including, without limitation, the requirements of HRS §§ 514B-96.5 and 514B-97 (hereinafter called the "**Affidavit**"). In the Affidavit, the prospective Owner-Occupants shall affirm that: (a) they intend to become Owner-Occupants pursuant to said statutes; and (b) they shall notify the Real Estate Commission immediately upon any decision to cease being Owner-Occupants. The Affidavit shall be personally executed by all of the prospective Owner-Occupants of the residential unit on a form approved by Seller and shall not be executed by an attorney-in-fact.

(b) Sales to Reserved Housing Applicants. In the event that Seller offers certain residential units to prospective purchasers ("**Reserved Housing Applicants**") as reserved housing units ("**Reserved Housing Units**") pursuant to Title 15, Subtitle 4, Chapter 22 of the Hawaii Administrative Rules ("**Mauka Area Rules**"), the Reserved Housing Applicants shall deliver to Escrow any and all information and documents as may be required under the Mauka Area Rules to purchase a Reserved Housing Unit, which documents may include, without limitation, affidavits regarding the Reserved Housing Applicant's intent to purchase and reside in a Reserved Housing Unit and eligibility to purchase a Reserved Housing Unit. Such affidavits shall be personally executed by the Reserved Housing Applicants of the residential unit on a form approved by Seller and shall not be executed by an attorney-in-fact.

5. Funds Paid to Escrow.

(a) Deposit of Funds by Seller. Seller shall pay over to Escrow any monies received by Seller from purchasers under sales contracts covering the residential units in the Project, including all disbursements made on loan commitments, if any, from lending institutions to individual purchasers. Escrow shall receive, deposit

and hold in escrow and disburse as herein set forth: (1) all payments received by Escrow under sales contracts executed by Seller; (2) all sums received by Escrow hereunder from Seller; (3) all funds from any lending institution pursuant to a mortgage loan for the purchase of any unit by individual purchasers; and (4) all sums received by Escrow from any other source on account of this Project. In accordance with written instructions from Seller 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 a federally-insured, interest-bearing account at any bank or savings and loan association, authorized to do business in the State of Hawaii; provided, however, if Escrow is instructed to make such deposits more frequently than once each calendar week, Seller shall pay to Escrow a reasonable service charge for each additional deposit made during such week.

(b) Sale of Units Prior to Completion for the Purpose of Financing Construction. If units are conveyed or leased before the completion of construction of the building or buildings for the purpose of financing the construction, all moneys from the sale of the units, including any payments made on loan commitments from lending institutions, shall be deposited under an escrow arrangement into a federally-insured, interest-bearing account designated solely for that purpose, at a financial institution doing business in the State of Hawaii.

(c) Receipt of Purchaser's Financing Documents. Escrow shall receive evidence, in such form and of such content specified by Seller, of each purchaser's ability to pay in cash the Total Purchase Price stated in the sales contract either: (a) from the purchaser's own funds; or (b) partially from the purchaser's own funds and the balance from the proceeds of a loan (the "Purchaser's Loan") to the purchaser from a responsible lending institution (the "Purchaser's Lender") which has issued a written commitment to make a loan to the purchaser in the amount of such balance. If all or a portion of the Total Purchase Price is to be financed, Escrow shall receive from Purchaser's Lender a note and a mortgage for execution by, or theretofore executed by, the purchaser, and shall receive funds representing the Purchaser's Loan for the purchase of the unit, which funds are to be held for disbursement in accordance with instructions of Purchaser's Lender and in conformity with the sales contract. If the purchase price is to be paid with purchaser's own equity funds, Escrow shall hold from purchaser any security required by Seller pursuant to the sales contract; it being understood that any security required by Seller is independently enforceable by Seller if purchaser is or becomes obligated to purchase.

(d) Interest on Funds in Escrow. Unless otherwise provided in this Agreement, 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 to the credit of the purchaser. Escrow shall not be liable to either Seller or any purchaser for loss or diminution in funds invested in accordance with instructions given to Escrow. If the purchaser requests that a separate account be established for the purchaser, 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 \$50.00 for such separate account.

(e) Collection of Purchaser's Funds. Upon receipt of notice in writing from Seller that any payments are due under any sales contract, Escrow shall give notice in writing to each purchaser under such agreement or contract held by Escrow, and shall call for such payment to be made to Escrow. Escrow shall not be liable for any purchaser's failure to make such payments to Escrow.

6. Conditions to Be Met Prior to Disbursement of Funds in Escrow. No disbursements of funds held in escrow shall be made, except by way of refunds thereof pursuant to Section 8 below, or for the payment of project costs pursuant to Section 7 below, unless and until the following conditions have been fulfilled:

(a) Effective Public Report and Amendments. Seller shall have delivered to the purchaser a true copy of the Public Report including all amendments, with effective date(s) issued by the Real Estate Commission. Seller shall provide to Escrow a true copy of each Public Report and amendment issued for the Project, and each pending amendment with the date that the pending amendment was filed with the Real Estate Commission.

(b) Waiver of Cancellation Rights.

(i) Notice of Cancellation. Seller shall have delivered to the purchaser notice of the purchaser's statutory thirty-day right of cancellation on a form prescribed by the Real Estate Commission.

(ii) Waiver of Cancellation Rights. The purchaser shall have waived the right to cancel or shall be deemed to have waived the right to cancel in accordance with HRS § 514B-86(c).

(iii) Receipts Related to Cancellation Rights. Seller shall have provided to Escrow evidence that the purchaser has received a true copy of the Public Report and all amendments thereto and the notice of the thirty-day right of cancellation, which evidence may be a receipt for the Public Report signed by the purchaser, a receipt of the notice of the thirty-day right of cancellation signed by the purchaser, return receipts for copies of the Public Report or notice sent by certified or registered mail or such other evidence satisfactory to Escrow.

(c) Waiver of Rescission Rights.

(i) No Material Change. Seller shall affirm to Escrow that Seller has made a determination that there has been no material change in the Project, as such term is defined in HRS § 514B-3 (hereinafter, "**Material Change**"), that gives rise to rescission rights under HRS § 514B-87(a) after the sales contract became binding. Otherwise, the rescission provisions set forth below shall apply.

(ii) Rescission Waived. In the event of a Material Change in the Project that gives rise to rescission rights under HRS § 514B-87(a) after the sales contract becomes binding, Seller shall affirm that Seller has delivered to the purchaser a description of the Material Change on a form prescribed by the Real Estate Commission.

(iii) Notice of Right of Rescission Because of Material Change. Seller shall have delivered to the purchaser notice of the purchaser's thirty-day rescission right on a form prescribed by the Real Estate Commission.

(iv) Waiver of Rescission Rights. The purchaser shall have waived the right to rescind or shall be deemed to have waived the right to rescind in accordance with HRS § 514B-87(b). (The purchaser may waive the purchaser's rescission right by (A) checking the waiver box on the rescission notice, signing it and delivering it to Seller; (B) letting the thirty-day rescission period expire without taking any action to rescind; or (C) closing the purchase of the unit before the rescission period expires.)

(v) Receipts Related to Rescission Rights. Seller shall have provided to Escrow evidence that the purchaser has received the thirty-day notice of right of rescission, which evidence may be a receipt for the notice of the thirty-day right of rescission signed by the purchaser, return receipts for copies of the notice mailed certified or registered mail or such other evidence satisfactory to Escrow.

(d) Receipt of Written Assurances by Escrow. Seller shall have delivered to Escrow written certifications, and Escrow shall have the right to rely on such certifications, as follows:

(i) the Real Estate Commission has issued an effective date for the Public Report for the Project;

(ii) Seller has made no offers or entered into any sales contracts prior to registration with the Real Estate Commission of the State of Hawaii and prior to delivery of the Public Report to the purchasers;

(iii) the Public Report includes the matters required to be stated therein; there has been no material or pertinent change since the issuance of the Public Report that has not been described in the Public Report, or if there has been a pertinent change not in the Public Report, Seller's certification shall describe the pertinent change and confirm that Seller filed an amendment to the Public Report and shall provide Escrow with a copy of the amendment;

(iv) if Seller entered into nonbinding preregistration agreements, no moneys from prospective purchasers were collected and no other documents were executed with the purchasers;

(v) after the issuance of the effective date for the Public Report, a true copy of the Public Report including all amendments was delivered to each prospective purchaser, together with a notice of the purchaser's cancellation right; any purchaser whose deposits are to be released from escrow has waived the right to cancel or is deemed to have waived the right to cancel;

(vi) the sales contracts delivered to Escrow under which purchaser's funds are to be released are binding for purposes of HRS § 514B-92;

(vii) Seller has complied with all other requirements of HRS §§ 514B-82, 83, 85, 86, 88, 92 and 93, as applicable;

(viii) upon any cancellation as provided in HRS § 514B-90, the purchaser shall be entitled to a refund of all moneys paid, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.00 as provided therein.

(ix) all conditions contained in this Agreement that must be met prior to the disbursement of purchasers' funds have been satisfied.

(e) Receipt of Opinion by Escrow. Seller shall have caused Seller's attorney to deliver to Escrow a written legal opinion, with qualifications, that, based upon a review of the project documents and relying solely on the factual certifications of Seller, as provided above, without any independent investigation:

(i) the attorney has no actual knowledge that the factual certifications made by Seller to Escrow are untrue in any material respect;

(ii) Seller's Public Report and all amendments (if any) thereto contain those items enumerated in HRS §§ 514B-83(a), 84 (if applicable) and 86(a)(1)(A);

(iii) as of the date of the attorney's letter, an amendment to the Public Report is not required pursuant to HRS § 514B-56(a); and

(iv) that the sales contract forms prepared by the attorney for use by Seller includes the requirements of HRS § 514B-89.

(f) Notification. Seller agrees to inform Escrow immediately in writing of the development of any event or occurrence which renders the certification delivered by Seller pursuant to Section 6(e) above untrue in any material respect.

(g) FHAA Certificate. Seller shall deliver a certificate from Seller's architect stating that the Project is in compliance with the Federal Fair Housing Amendments Act of 1988, if applicable.

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

7. Disbursement of Funds for Payment of Project Costs (Prior to Closing or Prior to Completion of Project). If purchaser deposits are to be released prior to closing or if units are conveyed or leased prior to completion of construction, then in connection with each disbursement request, Seller shall certify to Escrow in writing and to Escrow's reasonable satisfaction, and Escrow shall have the right to rely on such certification, that: (1) Seller has complied with all of the requirements of HRS §§ 514B-92 or 514B-93, as applicable; (2) Seller has complied with the requirements of Sections 6(a), 6(b) 6(c), and 6(d), above; (3) the purchasers' sales contracts under which purchaser deposits being released are effective and binding; and (4) all conditions contained in this Agreement that must be met prior to the disbursement of such funds have been satisfied and no circumstances exist (at the time of the certification described in Section 7(a) below) that would permit a purchaser to cancel or rescind the purchaser's sales contract. Seller shall immediately notify Escrow in writing of the development of any event or occurrence which renders the certification required under Section 7(a) below or the warranties and representations of Seller contained in this Agreement untrue in any material respect. Subject to the provisions of the preceding sentence, Escrow shall make one (1) disbursement per month without charge to Seller, if requested in writing by Seller. If more than one disbursement is made per month, Escrow shall be entitled to a fee of not more than \$500.00 for each additional disbursement. Disbursements shall be made, as requested in writing by Seller, to Seller, to Seller's general contractor, or to Seller's lender for costs authorized under HRS §§ 514B-92 or 514B-93, including, but not limited to, the following:

(a) Project Costs. To pay for construction costs of the buildings and other improvements and other costs incurred in connection with the construction of the building and other improvements of the Project in such amounts and at such times and in proportion to the valuation of the work completed by the contractor in accordance with the terms of the construction contract, as certified by a licensed architect or engineer and as approved by Seller's lender or a qualified, financially disinterested person who shall be designated in writing by Seller and Seller's lender, 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).

(b) Fees and Other Expenses. To persons for architectural, engineering, interior design services, finance and legal fees and other incidental expenses of the Project (but not selling or marketing expenses or brokerage fees/commissions relating to sales of any unit) to the extent approved by Seller's lender or said financially disinterested person.

(c) Furnishings and Fixtures. The costs of purchasing furnishings and fixtures for the units as approved by Seller's lender or said financially disinterested person.

The balance of monies remaining in escrow shall be disbursed in accordance with the directions of Seller and Seller's lender or said financially disinterested person only upon completion of the buildings of the Project (or in the case of conversion, upon completion of the necessary repairs) and when 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 have been 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 shall have been filed, the funds shall be disbursed only when such liens have been cleared or sufficient funds have been set aside to cover such claims.

8. Return of Purchaser's Funds. 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 accrued interest, if any one of the following has occurred:

(a) Seller and purchaser shall have requested Escrow in writing to return to purchaser the funds of purchaser held hereunder by Escrow; or

(b) Seller shall have notified Escrow of purchaser's exercise of a purchaser's right to cancel the sales contract pursuant to HRS § 514B-86 (thirty-day right to cancel); or

(c) Seller shall have notified Escrow of Seller'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 Seller; or

(d) Purchaser or Seller shall have notified Escrow of purchaser's exercise of purchaser's right to cancel the sales contract pursuant to HRS § 514B-89 (failure to complete construction before specified completion deadline); provided that Escrow shall first verify with Seller that Seller has not extended the completion deadline by reason of force majeure; or

(e) Purchaser or Seller shall have notified Escrow of purchaser's exercise of purchaser's right to rescind the sales contract pursuant to HRS § 514B-87, by a valid rescission signed by all purchasers of the affected unit and postmarked no later than midnight of the thirtieth (30<sup>th</sup>) calendar day after the date that the purchaser(s) received the notice of rescission from Seller, in which case such purchaser(s) shall be entitled to a prompt and full refund of any moneys paid.

Upon the cancellation or rescission of any sales contract, as specified above, Escrow shall be entitled to a cancellation fee commensurate with the services rendered by Escrow prior to such cancellation, plus all costs incurred, up to a maximum of \$250.00. Notwithstanding anything herein or in any sales contract provided to the contrary, said cancellation fee shall be the sole expense of the purchaser and shall not in any way be the obligation of Seller, unless the purchaser rescinds the sales contract



pursuant to HRS § 514B-87, whereupon Seller shall pay such fee. Seller understands and acknowledges that in the event of a rescission by the purchaser under HRS § 514B-87, if Seller required the purchaser to secure a financing commitment, the purchaser shall be entitled to reimbursement from Seller (and not from Escrow) of any fees incurred by the purchaser in securing that financing commitment required by Seller. No refund shall be made to a purchaser at the purchaser's request prior to receipt by Seller of written notice from Escrow of Escrow's intent to make such refund.

(f) Pursuant to the sales contract, in the event that Seller, in its sole discretion, rejects a purchaser's Financial Data (as defined in the sales contract) as unacceptable, Seller shall notify such purchaser of such rejection as set forth in the sales contract, in which event Seller may cancel the sales contract and said purchaser shall receive a refund of all sums paid under the sales contract, with accrued interest (if applicable), less any Cancellation Fee. As set forth in the sales contract, a purchaser's obligations under a sales contract are not contingent or conditioned on such purchaser's ability to secure financing of any kind (i.e., from a mortgage lender or from a purchaser's ability to sell purchaser's current residence or other assets).

9. 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 refund, Escrow shall escheat such unclaimed funds pursuant to HRS § 523A-3. Escrow shall thereupon be released from any further duties or liability hereunder with respect to such funds and such purchaser.

10. 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 and recordation of all documents related to the Project and shall promptly and diligently close the transactions and perform such services as are necessary or proper therefor. Upon receipt by Escrow of the conveyance document, the receipt for the Public Report, all other receipts required by Escrow under Section 6 of this Agreement, all necessary releases of encumbrances, the 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 and/or filing of the following documents in the order that they are listed: (i) any applicable releases or partial releases; (ii) the unit deed; (iii) any mortgage(s), if any; and (iv) for Reserved Housing Units, any documents required by the Hawaii Community Development Authority to be recorded against the unit, which may include, without limitation, the Unilateral Declaration of Restrictive Covenants for Unit Designated as Reserved Housing Unit.

(b) After recordation, Escrow may cause a copy of said unit deed to be delivered to the purchaser via email or U.S. Postal regular mail, the release or partial

releases to be delivered to Seller if requested in writing, the mortgage, if any, to be delivered to the purchaser's lending institution, and all sums respecting the purchase of the unit to be disbursed to Seller after deduction by Escrow of Seller's share of the closing costs.

11. Pre-Closings. Escrow agrees that upon ten (10) business days' written notice from Seller or Seller's mortgage lender, Escrow will act with due diligence and dispatch to "pre-close" sales (a) by arranging for the execution of the unit deeds and such other documents as are required to effect the transfer of title, and (b) by calling for payments then required from purchaser, all as provided for in the sales contract.

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

13. Defects in Documents. With respect to the closing of each sales transaction, upon the closing date selected by Seller ("**Closing Date**"), provided that any individual mortgage in connection therewith may then be recorded, and it is legally possible to record all closing documents and none is in any way defective, Escrow shall proceed promptly and within five (5) business days of the Closing Date (exclusive of the Closing Date) to 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 Seller of such fact and Escrow shall use reasonable efforts to obtain the necessary corrections. If, for any cause beyond Escrow's control, the necessary documents cannot be recorded within said five (5) day period after the Closing Date, Escrow shall record the same within five (5) days after learning that the reason that prevented their recording no longer exists.

14. Purchaser's Default. Seller shall give notice in writing to Escrow of the 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 Seller of any such failure on the part of the purchaser. If Seller subsequently certifies in writing to Escrow that Seller has terminated the sales contract in accordance with the terms thereof and provides to Escrow copies of all such notices of termination and proof of receipt 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 Seller and not as funds of the purchaser. Thereafter, such funds shall be free of the escrow established by this Agreement and shall be held by Escrow for the account of Seller. Upon written request by Seller, Escrow shall pay such funds to Seller, less any escrow cancellation fee. Escrow shall thereupon be released from any further duties or liability hereunder with respect to such funds and such purchaser.

15. Representations and Warranties of Seller. Seller represents and warrants the following as to each sales contract held by Escrow pursuant to this Agreement, and each such representation shall continue to be true and correct through closing of each transaction evidenced by such sales contract. If any change in circumstance renders any representation incorrect at any time, Seller shall thereupon promptly notify Escrow in writing.

(a) Public Reports and Notices. Seller has provided the purchaser with copies of the Public Report and all amendments thereto existing at the point at which the sales contract was entered into for which effective dates have been issued by the Real Estate Commission and has delivered to the purchaser the required notice of purchaser's right to cancel.

(b) No Material Change in Project. There has been no Material Change in the Project that would permit a purchaser to rescind a binding sales contract under HRS § 514B-87; or, if there is a Material Change, the purchaser has reviewed the change in an effective amendment to the Public Report and has waived or deemed to have waived purchaser's right to rescind.

(c) Suspension of Sales; Termination of Registration. No governmental entity or court has suspended sales, issued a cease and desist order, issued an order rejecting or revoking the registration, terminated the registration, or issued any injunction with respect to the Project, units or their sale.

(d) Compliance with Law. Seller has complied with the applicable requirements of HRS Chapter 514B.

16. 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 and escrow instructions mutually agreed to, notwithstanding a notice to the contrary by Seller or any purchaser or third person; provided, however, that Escrow shall not be relieved from any liability arising out of or in connection with its own negligence or reckless acts or omissions. 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 certifications or instruments from Seller are true and accurate.

Except as specifically provided herein, if any dispute or difference shall arise or if any conflicting demand shall be made upon Escrow, Escrow shall not be required to determine the same or take any specific action, but Escrow may await settlement of the controversy by final appropriate legal proceedings or otherwise as it may require, or Escrow at its sole discretion 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 or all monies held hereunder with deductions for Escrow's attorney's fees and costs. 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.

Seller agrees to use commercially reasonable efforts to cause each purchaser to agree to pay Escrow on demand and to indemnify and hold Escrow harmless from and against all costs, damages, judgments, reasonable attorneys' fees, expenses, obligations and liabilities of every kind and nature reasonably suffered or incurred in connection with or arising out of this escrow, 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, and 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 said costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of every kind and nature against third persons.

Seller expressly agrees that Escrow shall not be required to mail any notice or to keep any records that may be required under HRS Chapter 514B.

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

18. Assignment. Escrow may not assign its rights or delegate its duties under this Agreement without the prior written consent of Seller.

19. Termination. This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice to the other; provided, however, that unless otherwise specified by Seller, all transactions in process hereunder at the time of such termination shall be completed under the terms of this Agreement. Upon such termination, Escrow shall make no disbursements of funds held hereunder (except with respect to transactions completed after the termination hereof, as provided in the proviso in the preceding sentence) except disbursements to another escrow depository which has entered into an escrow agreement with Seller and which complies with the requirements of HRS Chapter 514B with respect to escrow arrangements for the deposit and disbursement of purchasers' funds. In any other event, this Agreement shall terminate upon the recording and delivery of all pertinent documents relating to the last unit to be sold in the Project and final disbursement of all funds deposited with Escrow hereunder.

20. Statutory Provisions Control. This Agreement, in all of its provisions, is to be deemed and interpreted as supplementary and subject to the provisions of HRS

Chapter 514B, and if any conflict should arise between the provisions of this Agreement and the provisions of HRS Chapter 514B, the provisions of the latter shall control.

21. Reports and Billings by Escrow. Escrow shall furnish Seller with a semi-monthly Seller's report that will cover the status of each sales contract in escrow. Seller shall give notice in writing to Escrow of the 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. Escrow shall thereupon promptly give the purchaser notice of the amount and due date of such payment.

22. Compensation of Escrow. The compensation of Escrow for performance hereunder shall be the applicable amount(s) set forth in Exhibit "A" attached hereto and made a part hereof, plus all applicable general excise taxes, for each residential unit in the Project sold under a sales contract, on the condition that all sales of residential units in the Project are closed on or before five (5) years after the Effective Date hereof. Escrow shall also arrange for the issuance of a title insurance policy (standard owner's and/or ALTA lender's policy) for the applicable amount(s) set forth in Exhibit "A" for each unit in the Project. An additional fee of \$150.00 shall be charged to the purchaser for each mortgage obtained by the purchaser if the purchaser does not obtain a mortgage loan from a lender designated by Seller. Should the purchaser obtain a mortgage loan from an out-of-state lender, a fee of \$250.00 shall be charged to the purchaser for each mortgage obtained. If an escrow involves a 1031 Exchange, Escrow has the right to assess additional fees commensurate with the amount of work involved.

Escrow's compensation shall become due and payable with respect to a unit in the Project upon the first to occur of the following events: (a) the transfer to the purchaser of such unit of legal title thereto; or (b) final disbursement of the funds held in escrow in connection with such unit. In the event of the cancellation of any binding sales contract that has been submitted to Escrow, a cancellation fee commensurate with the services rendered by Escrow prior to such cancellation, plus all costs incurred by Escrow, up to a maximum of \$250.00, shall be charged to the purchaser, unless such cancellation occurs before the sales contract becomes legally binding, or unless otherwise provided for in this Agreement or agreed to by Seller 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 form and figures by Seller, Seller agrees to pay an additional charge of \$30.00 for each such statement or document that is changed.

23. Entire Agreement. This Agreement and any exhibits attached hereto and by reference forming a part hereto constitute and set forth all of the covenants, promises, agreements, conditions and understandings between the parties concerning the Project, and supersede and cancel all prior negotiations, representations, understandings and agreements, both oral and written, of the parties hereto. No subsequent alteration, amendment, change or addition to this Agreement shall be valid, binding or enforceable unless reduced to writing and signed by the parties.

24. Modifications and Additions. Pursuant to written instructions from Seller, purchaser and mortgagee, Escrow shall make such modifications and accept such additions to documents deposited into escrow pertaining to the Project as requested by Seller and as required by law.

25. No Party Deemed Drafter. No party shall be deemed the drafter of this Agreement. If this Agreement is ever construed in a court of law, such court shall not construe this Agreement or any provision hereof against any party as drafter.

26. Notices. Any notice or demand provided for or permitted by this Agreement may be given sufficiently for all purposes in writing, mailed as registered or certified mail, addressed to the purchaser at such purchaser's address as set forth in said purchaser's sales contract or any other address made known to Escrow by purchaser or delivered personally within the State of Hawaii to such purchaser and shall be deemed conclusively to have been given on the date of such mailing or such personal delivery. Notices to Escrow and Seller shall be addressed to Escrow and Seller at such addresses as set forth herein. Any notice or demand to Escrow or Seller shall be mailed as registered or certified mail. Such notice shall be deemed conclusively to have been given to Escrow or Seller on the date of such mailing.

27. Document Preparation. All legal documents required for the conveyance of units in the Project to purchasers shall be prepared by Imanaka Asato L.L.C. ("IA"). Escrow shall send IA any orders for the preparation of any such documents at least forty-eight (48) hours in advance or at the earliest time practicable.

28. Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstances shall, to any extent, be declared illegal, void, invalid, ineffective or unenforceable for any reason by any court or other authority of competent jurisdiction, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held illegal, void, invalid, ineffective or unenforceable shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

29. Headings and Paragraphs. The headings and sections and paragraphs herein are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provisions of this Agreement.

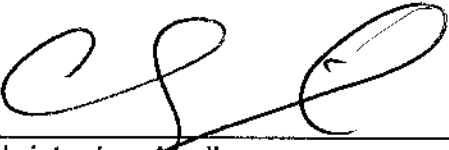
30. Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement, binding upon all of the parties hereto, notwithstanding that 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 agreement duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

31. Hawaii Law; Jurisdiction; Venue. The laws of the State of Hawaii (without regard to its conflict of law provisions) shall govern this Agreement. Any judicial proceeding to interpret or enforce this Agreement shall be brought in the state or federal courts of Hawaii.

(The remainder of this page is intentionally left blank. Signatures to follow.)


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

TITLE GUARANTY ESCROW  
SERVICES, INC., a Hawaii corporation

By   
\_\_\_\_\_  
Christopher Aguilera  
Its: Vice President

(Escrow)

AALII, LLC, a Delaware limited liability  
company

By   
\_\_\_\_\_  
Name: NICHOLAS VANDERBOOM  
Its: VICE PRESIDENT

(Seller)



**EXHIBIT "A"**

**TITLE GUARANTY SCHEDULE OF ESCROW & TITLE FEES**

**'A'ALPI**

<b><i>Sales Price</i></b>	<b><i>Escrow Fee</i></b>	<b><i>Title Fee</i></b>
\$300,000 - \$499,999	\$750 + tax	\$850
\$500,000 - \$999,999	\$1,100 + tax	\$1,100
\$1,000,000 - \$1,499,999	\$1,400 + tax	\$1,600
\$1,500,000 - \$1,999,999	\$1,700 + tax	\$2,100
\$2,000,000 - \$2,499,999	\$2,000 + tax	\$2,600

The above title insurance premium rate, however, may be subject to change if reinsurance rates change or if special endorsement or additional title services are requested.

If additional escrow or title work is required that does not pertain to the sales contract, we reserve the right to charge additional fees.

At the time of closing of a residential unit, a separate escrow fee and title insurance fee may be charged for a parking unit, storage locker or storage unit. If a parking unit or storage unit is sold following the closing of a residential unit, escrow and title fees for such unit will be determined prior to closing.

Escrow fees and title fees for the Commercial Unit will be determined at a later time.