

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

CONDOMINIUM PROJECT NAME	ATKINSON TOWERS
Address	419A Atkinson Drive, Honolulu, Hawaii 96814
Registration Number	6225 (conversion)
Effective Date of Report	April 10, 2007
Developer	Atkinson Towers, Inc.

**Preparation of this Report**

The Developer prepared this report to disclose relevant information, including "material facts", that are reasonably known to the Developer about the condominium project covered by this report. This report has been prepared pursuant to the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended from time to time. The law defines "material facts" to mean "any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale."

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts or all pertinent changes, or both, about the project have been fully or adequately disclosed; or (3) is not the Commission's judgment of the value or merits of the project.

This report may be used by the Developer for promotional purposes only if it is used in its entirety. No person shall advertise or represent that the Commission has approved or recommended the project, this report or any of the documents submitted with Developer's application for registration of this project.

This report will be amended if, after the effective date of this report, any changes, either material or pertinent changes, or both, occur regarding the information contained in or omitted from this report. In that case, the Developer is required to submit immediately to the Commission an amendment to this report or an amended Developer's Public Report, clearly reflecting the changes, together with such supporting information as may be required by the Commission. In addition, the Developer may choose at any time to change or update the information in this report. Annually, at least thirty days prior to the anniversary date of the Effective Date of this report, the Developer shall file an annual report to update the material contained in this report. If there are no changes, the Developer is required to state that there are no changes. The Developer's obligation to amend this report or to file annual reports ends when the initial sales of all units in the project have been completed.

Purchasers are encouraged to read this report carefully and to seek professional advice before signing a sales contract for the purchase of a unit in the project.

Signing a sales contract may legally bind a purchaser to purchase a unit in the project, though a purchaser may have rights to cancel or rescind a sales contract under particular circumstances that may arise.

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This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.

## **SPECIAL ATTENTION**

[Use this page for special or significant matters which should be brought to the purchaser's attention and that are not covered elsewhere in this report.]

1. Section 1.4 of this Public Report and Item 1 of Exhibit A of this Public Report point out that the Developer leases a lot from an adjoining landowner which is used to provide ground-level parking stalls. These stalls are assigned by the Developer to owners who have proprietary leases issued by the Developer. This lease expires on December 31, 2016. At such time, unless some action is taken before that date by the Board of Directors of the Association, there will be fewer stalls available for owners of units in the condominium than there are units in the condominium.

The Board of Directors of the Developer over the past years has been considering many courses of action to address this problem. Some, but not all, would require the expenditure of funds. Some of these alternatives are: (a) Do not increase parking stalls, but develop a system for assigning the available stalls to the owners of the condominium units. This probably would not cost anything; (b) Extend the current lease on the parking lot. This alternative would probably require some relatively modest increase in maintenance fees. The size of the increase would depend upon the value of that lot at the time of the negotiation and the rent which must be paid by the Developer. There might not be an increase in maintenance fees if the Developer charged rent for the stalls; (c) Lease parking stalls from the owner of the two adjoining lots if such owner builds a new structure on either of two lots owned by the owner of the parking lot. This course of action might or might not increase maintenance fees depending on whether the Association charged rent to the lessees of the stalls; (d) Pave over the swimming pool and create additional ground level parking. It does not presently appear that this alternative would require a substantial capital outlay; (e) Purchase the parking lot from the current owner. This alternative would probably require a substantial capital outlay; (f) Construct a parking garage on the parcel owned by the condominium. This alternative would probably require a substantial capital outlay; (g) Purchase parking stalls from the owner of two adjoining lots if such owner builds a new structure on either of two lots owned by the owner of the parking lot. This alternative would probably require a substantial capital outlay.

The Association will not be under obligation to take any action at all with respect to attempting to acquire, lease, or construct additional parking stalls. The Board of Directors of the Association will use its best business judgment with respect to the issues in the future. The alternatives listed above should not be considered the only alternatives which the Board might choose. At some future time the Board may elect another alternative which the Board believes would be the best alternative at the time.

Some of the alternatives will require capital outlays. Capital outlays would have to be paid for from (a) cash reserves held by the Association, or, (b) by special assessments, or (c) by borrowings from lenders. In the case of borrowings, maintenance fees would probably have to be increased in order to pay for the debt service.

#### 1.4 Parking Stalls

Total Parking Stalls in the Project:	57
Number of Guest Stalls in the Project:	0
Number of Parking Stalls Assigned to Each Unit:	0*
Attach Exhibit ____ specifying the Parking Stall number(s) assigned to each unit and the type of parking stall(s) (regular, compact or tandem and indicate whether covered or open).	
If the Developer has reserved any rights to assign or re-assign parking stalls, describe such rights.	
<p>*Atkinson Towers was built in 1959. The parking stalls for the Project are located on the first level of the Project as shown on the Condominium Map. Each of the parking stalls are designated, set aside and reserved for Unit A as Limited Common Elements as shown on <b>Exhibit E</b>. Unit A is located on the first level of the Project and is currently owned by the Developer and used as an office. It will be transferred to the Association. Any or all such Limited Common Element parking stalls may be assigned (permanently or temporarily), encumbered, pledged, sold, leased, transferred or otherwise used, modified (including but not limited to the addition of multi-level elevated parking devices) or disposed of as the Developer or, as applicable, the Association, acting through the Board, determines from time to time</p> <p>Developer leases land contiguous to the Project, which land is currently used to provide thirty-one ground level parking stalls for use by owners of proprietary leases from Developer. Developer will grant permission to the Association to allow owners of units at The Atkinson Towers the right to park in such stalls, whether they have proprietary leases to residential Units from the Developer or whether they have converted and own condominium Units. The lease expires on December 31, 2016. Developer will attempt to negotiate with the current landowner in order to reach an arrangement whereby the Developer (and/or the Association) will secure the right to have continued use of such stalls after December 31, 2016. Alternatively, the Association could attempt to construct additional parking on the larger parcel. If such courses of action are not successful and the lease expires, the Association will have fewer stalls for use of its owners of Units.</p>	

#### 1.5 Boundaries of the Units

<p>Boundaries of the unit:</p> <p>Each Unit shall consist of: (i) all the walls and partitions which are not load-bearing within its perimeter walls, (ii) all pipes, shafts, ducts, pumps, conduits, wires and other utility or service lines running through such Unit which are utilized for and serve only that Unit, (iii) the inner decorated or finished surfaces of all walls, floors and ceilings, (iv) any doors or panels along the perimeter walls of such Unit, (v) all cranks, frames and other window or sliding door hardware, (vi) all appliances and fixtures installed therein and replacements thereof, (vii) any adjacent lanai to which such Unit has direct, exclusive access, (viii) any air conditioning equipment or apparatus within the Unit (to the extent permitted by the Board). The Unit shall not be deemed to include: (i) the undecorated or unfinished surfaces of the perimeter (including party) walls, interior load bearing walls, or lanai slabs or railings, (ii) the undecorated or unfinished surface of the floors and ceilings surrounding each Unit, or (iii) any pipes, shafts, ducts, pumps, valves, wires, conduits or other utility or service lines which are utilized for or serve more than one Unit.</p>
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#### 1.6 Permitted Alterations to the Units

<p>Permitted alterations to the unit (if the unit is defined as a non-physical or spatial portion of the project also describe what can be built within such portion of the project):</p> <p>See Exhibit B</p>
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### 1.13 Uses Permitted by Zoning and Zoning Compliance Matters

Uses Permitted by Zoning									
		Type of Use	No. of Units	Use Permitted by Zoning				Zoning	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Residential	111	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	Apartment A-2	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Commercial	16	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	Apartment A-2	
<input type="checkbox"/>	<input type="checkbox"/>	Mix Residential/Commercial		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>	<input type="checkbox"/>	Hotel		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>	<input type="checkbox"/>	Timeshare		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>	<input type="checkbox"/>	Ohana		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>	<input type="checkbox"/>	Industrial		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>	<input type="checkbox"/>	Agricultural		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>	<input type="checkbox"/>	Recreational		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>	<input type="checkbox"/>	Other(specify)		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
Is/Are this/these use(s) specifically permitted by the project's Declarations or Bylaws?				<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
Variances to zoning code have been granted.				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
Describe any variances that have been granted to zoning code.									

### 1.14 Other Zoning Compliance Matters

Conforming/Non-Conforming Uses, Structures and Lots	
<p>In general, a non-conforming use, structure or lot is a use, structure or lot that was lawful at one time but that does not now conform to present zoning requirements. Under present zoning requirements, limitations may apply to extending, enlarging or continuing the non-conformity and to altering and repairing non-conforming structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.</p> <p>If a variance has been granted or if uses, structures or lots are either non-conforming or illegal, the purchaser should consult with county zoning authorities as to possible limitations that may apply in situations such as those described above.</p> <p>A purchaser may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot.</p>	

	Conforming	Non-Conforming	Illegal
Uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Structures	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lot	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If a non-conforming use, structure or lot exists in this project, this is what will happen under existing laws or codes if the structure is damaged or destroyed:

The structure and parking stalls are considered to be "legal non-conforming," but the Project met all applicable code requirements when it was constructed in 1959. In the event that the Project needs to be re-constructed as a result of the destruction or demolition of all or a portion of the buildings, the Project may be subject to applicable restrictions provided for under the Revised Ordinances of Honolulu.

Atkinson Towers was constructed by the original developer on two parcels of land leased from different lessors. The high-rise residential building was built on the larger parcel. The smaller parcel was used to provide six stalls for use by the Lessor and thirty-one stalls for use by owners of units at Atkinson Towers. There were no building code parking requirements at the time Atkinson Towers was developed. The building presumably used the maximum density permitted based upon the calculation of area of the two parcels.

Both leases originally provided that they would terminate on December 16, 2016. Developer subsequently bought the fee simple title from the owner of the larger parcel. When the lease for the parking stall lot expires, there will be fewer parking stalls available for the owners of condominium units governed by the Association, unless the Association at some time in the future can negotiate with the landowner of the parking stall parcel to secure parking right in some way or unless the Association provides for additional parking on the high-rise parcel.

The two parcels underlying the Project have never been consolidated in the Land Court of the State of Hawaii. At such time as the parking stall lease expires, the City and County of Honolulu could take any one of several courses of action, as follows: (1) it could decide that the density originally allocated to the smaller parcel would continue to be allocated to the Atkinson Towers parcel. This would mean that the landowner of the parking stall parcel could not use the lot for construction, but could only use it for parking or other similar use; or, (2) the City could decide that Atkinson Towers was now over-density and that portions of the building should be removed in order to reduce density; or, (3) the City could decide that since the parcels were never legally consolidated, the Project is grandfathered and the building should be allowed to remain as is.

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## EXHIBITS:

Exhibit "A"	Reservation of Rights
Exhibit "B"	Permitted Alterations to Units
Exhibit "C"	Common Interest
Exhibit "D"	Common Elements
Exhibit "E"	Limited Common Elements
Exhibit "F"	Encumbrances Against Title
Exhibit "G"	Architectural, Structural, Mechanical and Electrical Observation Reports
Exhibit "H"	Letters from the City and County of Honolulu, Department of Planning and Permitting
Exhibit "I"	Maintenance Fees
Exhibit "J"	Summary of Condominium Conversion Contract
Exhibit "K"	Summary of Escrow Agreement

## **General Information On Condominiums**

A condominium is a special form of ownership of real property. To create a condominium in Hawaii after July 1, 2006, the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, must be followed. In addition, certain requirements and approvals of the county in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land and/or the building(s) and other improvements are leased to the purchaser. The lease for the land usually requires that at the end of the lease term, the lessees (unit owners) deliver their interest in the land to the lessor (fee property owner).

If you are a typical condominium unit owner, you will have two kinds of ownership: (1) ownership in your individual unit; and (2) a percentage interest in the common elements.

You will be entitled to exclusive ownership and possession of your unit. Subject to the documents governing them, condominium units may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift or operation of law.

Your unit will, however, be part of the group of units that comprise the condominium project. Study the project's Declaration of Condominium Property Regime, Bylaws of the Association of Unit Owners, Condominium Map and House Rules, if any, which are being concurrently delivered to you with this report. These documents contain important information on the use and occupancy of the units and the common elements of the project, as well as the rules and regulations of conduct for unit owners, tenants and guests.

## **Operation of the Condominium Project**

The Association of Unit Owners is the entity through which unit owners may take action with regard to the administration, management and operation of the condominium project. Each unit owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as a unit owner. The Board and officers can take certain actions without the vote of the unit owners. For example, the Board may hire and fire employees, increase or decrease maintenance fees, adopt budgets for revenues, expenses and reserves and regulate the use, maintenance, repair and replacement of common elements. Some of these actions may significantly impact the unit owners.

Until there is a sufficient number of purchasers of units to elect a majority of the Board, it is likely at first that the Developer will effectively control the affairs of the Association. It is frequently necessary for the Developer to do so during the early stages of development and the Developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective purchasers should understand that it is important to all unit owners that the transition of control from the Developer to the unit owners be accomplished in an orderly manner and in a spirit of cooperation.

# 1. THE CONDOMINIUM PROJECT

## 1.1 The Underlying Land

Fee Simple or Leasehold Project	<input checked="" type="checkbox"/> Fee Simple	<input type="checkbox"/> Leasehold (attach Leasehold Exhibit)
Developer is the Fee Owner	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Fee Owner's Name if Developer is not the Fee Owner	N/A	
Fee Owner's Address	N/A	
Address of Project	419A Atkinson Drive Honolulu, Hawaii 96814	
Address of Project is expected to change because	N/A	
Tax Map Key (TMK)	Oahu 2-3-36-38	
Tax Map Key is expected to change because	N/A	
Land Area	30,919 square feet	
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	N/A	

## 1.2 Buildings and Other Improvements

Number of Buildings	1
Floors Per Building	15
Number of New Building(s)	0
Number of Converted Building(s)	1
Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	reinforced concrete

## 1.3 Unit Types and Sizes of Units

Unit Type	Quantity	BR/Bath	Net Living Area	Net Other Areas	Other Areas (lanai, garage, etc.)	Area
Regular-1	69	2/1	792.15 sf	N/A	N/A	792.15 sf
Regular-2	14	2/1	781.15 sf	N/A	N/A	781.15 sf
End-1	13	2/1	986.26 sf	N/A	N/A	986.26 sf
End-2	14	2/1	993.05 sf	N/A	N/A	993.05 sf
Penthouse	1	3/2	1,786.86 sf	N/A	N/A	1,786.86 sf
Assn 101	1	2/1	694.81	N/A	N/A	694.81
Assn A	1	N/A	213.05 sf	N/A	N/A	213.05 sf
Assn B	14	N/A	232.39 sf	N/A	N/A	232.39 sf
See Exhibit ____.						

127	Total Number of Units
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Note: Net Living Area is the floor area of the unit measured from the interior surface of the perimeter walls of the unit. Other documents and maps may give floor area figures that differ from those above because a different method of determining floor area may have been used.

The Net Living Area also includes the lanais, which are currently in the process of being fully enclosed. Currently the lanais of 60% of the Units have been enclosed and the lanais of the remaining 40% of the Units are in the process of being enclosed.

#### 1.4 Parking Stalls

Total Parking Stalls in the Project:	57
Number of Guest Stalls in the Project:	0
Number of Parking Stalls Assigned to Each Unit:	0*
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#### 1.5 Boundaries of the Units

##### Boundaries of the unit:

Each Unit shall consist of: (i) all the walls and partitions which are not load-bearing within its perimeter walls, (ii) all pipes, shafts, ducts, pumps, conduits, wires and other utility or service lines running through such Unit which are utilized for and serve only that Unit, (iii) the inner decorated or finished surfaces of all walls, floors and ceilings, (iv) any doors or panels along the perimeter walls of such Unit, (v) all cranks, frames and other window or sliding door hardware, (vi) all appliances and fixtures installed therein and replacements thereof, (vii) any adjacent lanai to which such Unit has direct, exclusive access, (viii) any air conditioning equipment or apparatus within the Unit (to the extent permitted by the Board). The Unit shall not be deemed to include: (i) the undecorated or unfinished surfaces of the perimeter (including party) walls, interior load bearing walls, or lanai slabs or railings, (ii) the undecorated or unfinished surface of the floors and ceilings surrounding each Unit, or (iii) any pipes, shafts, ducts, pumps, valves, wires, conduits or other utility or service lines which are utilized for or serve more than one Unit.

#### 1.6 Permitted Alterations to the Units

Permitted alterations to the unit (if the unit is defined as a non-physical or spatial portion of the project also describe what can be built within such portion of the project):

See **Exhibit B**

### 1.7 Common Interest

**Common Interest:** Each unit will have a percentage interest in the common elements appurtenant to each unit. This interest is called the "common interest". It is used to determine each unit's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by unit owners. The common interest for each unit in this project, as described in Declaration, is:

Described in **Exhibit C**.

As follows:

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

<input checked="" type="checkbox"/>	Swimming pool*
<input type="checkbox"/>	Laundry Area
<input checked="" type="checkbox"/>	Storage Area*
<input type="checkbox"/>	Tennis Court
<input type="checkbox"/>	Recreation Area
<input checked="" type="checkbox"/>	Trash Chute/Enclosure(s)
<input type="checkbox"/>	Exercise Room
<input type="checkbox"/>	Security Gate
<input type="checkbox"/>	Playground
<input checked="" type="checkbox"/>	Other (describe): Switch Room and Transformer Vault, as shown on the Condominium Map*

\*The Pool Area, Switch Room and Transformer Vault, as shown on the Condominium Map and defined in the Declaration, are located on the first level of the Project. The Pool Area, Switch Room and Transformer Vault are designated, set aside and reserved for Unit A as Limited Common Elements as shown on **Exhibit E**. Unit A is located on the first level of the Project and is currently owned by the Developer and used as an office. It will be transferred to the Association. The Pool Area, Switch Room and Transformer Vault may be may be may be assigned (permanently or temporarily), encumbered, pledged, sold, leased, transferred or otherwise used, modified or disposed of as the Developer or, as applicable, the Association, acting through the Board, determines from time to time.

## 1.9 Common Elements

**Common Elements:** Common elements are those parts of the condominium project other than the individual units and any other real estate for the benefit of unit owners. Although the common elements are owned jointly by all unit owners, those portions of the common elements that are designated as limited common elements (see Section 1.10 below) may be used only by those units to which they are assigned. In addition to the common facilities described in Section 1.8 above, the common elements for this project as described in the Declaration, are set forth below.

Described in **Exhibit D**.

Described as follows:

Common Element	Number
Elevators	
Stairways	
Trash Chutes	

## 1.10 Limited Common Elements

**Limited Common Elements:** A limited common element is a portion of the common elements that is reserved for the exclusive use of one or more but fewer than all units in the project.

Described in **Exhibit E**

Described as follows:

## 1.11 Special Use Restrictions

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

<input checked="" type="checkbox"/>	Pets: No dogs, cats, or animals of any kind (except fish and small birds) are permitted.
<input type="checkbox"/>	Number of Occupants:
<input checked="" type="checkbox"/>	Other:  Article F of the Declaration provides that the Units, with the exception of the Association Units, may be occupied and used only as private dwellings by the respective Owners thereof, their tenants, families, domestic servants and social guests. Under no circumstances may any of the Units be used for timesharing, as such term is defined in Hawaii Revised Statutes, Chapter 514E.
<input type="checkbox"/>	N/A
<input type="checkbox"/>	There are no special use restrictions.

### 1.12 Encumbrances Against Title

An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of a unit in the project. Encumbrances shown may include blanket liens which will be released prior to conveyance of a unit (see Section 5.3 on Blanket Liens).
<b>Exhibit F</b> describes the encumbrances against title contained in the title report described below.
Date of the title report: December 12, 2006
Company that issued the title report: Title Guaranty of Hawaii, Inc.

### 1.13 Uses Permitted by Zoning and Zoning Compliance Matters

Uses Permitted by Zoning									
		Type of Use	No. of Units	Use Permitted by Zoning				Zoning	
<input checked="" type="checkbox"/>		Residential	111	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	Apartment A-2	
<input checked="" type="checkbox"/>		Commercial	16	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	Apartment A-2	
<input type="checkbox"/>		Mix Residential/Commercial		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>		Hotel		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>		Timeshare		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>		Ohana		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>		Industrial		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>		Agricultural		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>		Recreational		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input type="checkbox"/>		Other(specify)		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
Is/Are this/these use(s) specifically permitted by the project's Declarations or Bylaws?				<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
Variances to zoning code have been granted.				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
Describe any variances that have been granted to zoning code.									

### 1.14 Other Zoning Compliance Matters

Conforming/Non-Conforming Uses, Structures and Lots	
<p>In general, a non-conforming use, structure or lot is a use, structure or lot that was lawful at one time but that does not now conform to present zoning requirements. Under present zoning requirements, limitations may apply to extending, enlarging or continuing the non-conformity and to altering and repairing non-conforming structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.</p> <p>If a variance has been granted or if uses, structures or lots are either non-conforming or illegal, the purchaser should consult with county zoning authorities as to possible limitations that may apply in situations such as those described above.</p> <p>A purchaser may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot.</p>	

	Conforming	Non-Conforming	Illegal
Uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Structures	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lot	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



If a non-conforming use, structure or lot exists in this project, this is what will happen under existing laws or codes if the structure is damaged or destroyed:

The structure and parking stalls are considered to be "legal non-conforming," but the Project met all applicable code requirements when it was constructed in 1959. In the event that the Project needs to be re-constructed as a result of the destruction or demolition of all or a portion of the buildings, the Project may be subject to applicable restrictions provided for under the Revised Ordinances of Honolulu.

Atkinson Towers was constructed by the original developer on two parcels of land leased from different lessors. The high-rise residential building was built on the larger parcel. The smaller parcel was used to provide six stalls for use by the Lessor and thirty-one stalls for use by owners of units at Atkinson Towers. There were no building code parking requirements at the time Atkinson Towers was developed. The building presumably used the maximum density permitted based upon the calculation of area of the two parcels.

Both leases originally provided that they would terminate on December 16, 2016. Developer subsequently bought the fee simple title from the owner of the larger parcel. When the lease for the parking stall lot expires, there will be fewer parking stalls available for the owners of condominium units governed by the Association, unless the Association at some time in the future can negotiate with the landowner of the parking stall parcel to secure parking right in some way or unless the Association provides for additional parking on the high-rise parcel.

The two parcels underlying the Project have never been consolidated in the Land Court of the State of Hawaii. At such time as the parking stall lease expires, the City and County of Honolulu could take any one of several courses of action, as follows: (1) it could decide that the density originally allocated to the smaller parcel would continue to be allocated to the Atkinson Towers parcel. This would mean that the landowner of the parking stall parcel could not use the lot for construction, but could only use it for parking or other similar use; or, (2) the City could decide that Atkinson Towers was now over-density and that portions of the building should be removed in order to reduce density; or, (3) the City could decide that since the parcels were never legally consolidated, the Project is grandfathered and the building should be allowed to remain as is.

### 1.15 Conversions

<b>Developer's statements regarding units that may be occupied for residential use and that have been in existence for five years or more.</b>	X <b>Applicable</b>  <b>Not Applicable</b>
<p>Developer's statement, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units:</p> <p>NO REPRESENTATIONS ARE MADE WITH RESPECT TO THE USEFUL LIFE OF THE STRUCTURAL COMPONENTS AND MECHANICAL AND ELECTRICAL INSTALLATIONS. See consultant's reports and Developer's statement attached as <b>Exhibit G</b> for a description of the current condition of the Project</p>	
<p>Developer's statement of the expected useful life of each item reported above:</p> <p>See above and <b>Exhibit G</b>.</p>	
<p>List of any outstanding notices of uncured violations of any building code or other county regulations:</p> <p>See above and <b>Exhibit G</b>.</p>	
<p>Estimated cost of curing any violations described above:</p> <p>See above and <b>Exhibit G</b>.</p>	

<b>Verified Statement from a County Official</b>
<p>Regarding any converted structures in the project, attached as <b>Exhibit H</b> is a verified statement signed by an appropriate county official which states that either:</p> <p>(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:</p> <ul style="list-style-type: none"> <li>(i) Any variances or other permits that have been granted to achieve compliance;</li> <li>(ii) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and</li> <li>(iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance;</li> </ul> <p>or</p> <p>(B) Based on the available information, the county official cannot make a determination with respect to the foregoing matters in (A) above.</p>
<p>Other disclosures and information:</p> <p>N/A</p>

### 1.16 Project In Agricultural District

<b>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii?</b> If answer is "Yes", provide information below.	<b>Yes</b>  <b>X    No</b>
Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable state and county land use laws? <input type="checkbox"/> Yes <input type="checkbox"/> No  If the answer is "No", provide explanation and state whether there are any penalties for noncompliance.	
Other disclosures and information:	

### 1.17 Project with Assisted Living Facility

<b>Does the project contain any assisted living facility units subject to Section 321-11(10), HRS?</b> If answer is "Yes", complete information below.	<b>Yes</b>  <b>X    No</b>
Licensing requirements and the impact of the requirements on the costs, operations, management and governance of the project.	
The nature and the scope of services to be provided.	
Additional costs, directly attributable to the services, to be included in the association's common expenses.	
The duration of the provision of the services.	
Other possible impacts on the project resulting from the provision of the services.	
Other disclosures and information.	

## 2. PERSONS CONNECTED WITH THE PROJECT

<b>2.1 Developer</b>	Name: Atkinson Towers, Inc. Address: 419A Atkinson Drive Honolulu, Hawaii 96814 Business Phone Number: (808) 946-7442 E-mail Address: N/A
Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary)	Ramin Atabaki Peter Hoffman Robert Fahl Barbara Jennings Ashby Ennis, Jr Norman Smith Jack Morgan Marvin Heskett, III Mike Polovcin
<b>2.2 Real Estate Broker</b>	Name: None selected, see page 18 Address:  Business Phone Number: E-mail Address:
<b>2.3 Escrow Depository</b>	Name: Title Guaranty Escrow Services, Inc. Address: 235 Queen Street, First Floor Honolulu, Hawaii 96813 Business Phone Number: (808) 521-0211
<b>2.4 General Contractor</b>	Name: None Address:  Business Phone Number:
<b>2.5 Condominium Managing Agent</b>	Name: Certified Management Address: 3179 Koapaka Street Honolulu, Hawaii 96819 Business Phone Number: (808) 836-0911
<b>2.6 Attorney for Developer</b>	Name: James H. Case, Esq. Address: Carlsmith Ball LLP 1001 Bishop Street, Suite 2200 Honolulu, Hawaii 96813 Business Phone Number: (808) 523-2500

### 3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances (Regular System) or filing in the Office of the Assistant Registrar of the Land Court, or both, a Declaration of Condominium Property Regime, a Condominium Map and the Bylaws of the Association of Unit Owners. The Condominium Property Act (Chapter 514B, HRS), the Declaration, Bylaws and House Rules control the rights and obligations of the unit owners with respect to the project and the common elements, to each other, and to their respective units.

#### 3.1 Declaration of Condominium Property Regime

The Declaration of Condominium Property Regime contains a description of the land, buildings, units, common interests, common elements, limited common elements, and other information relating to the condominium project.

Land Court or Bureau of Conveyances	Date of Document	Document Number
Land Court	December 21, 2006	3540528

#### Amendments to Declaration of Condominium Property Regime

Land Court or Bureau of Conveyances	Date of Document	Document Number
Land Court	March 23, 2007	3578631

#### 3.2 Bylaws of the Association of Unit Owners

The Bylaws of the Association of Unit Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Unit Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters that affect how the condominium project will be governed.

Land Court or Bureau of Conveyances	Date of Document	Document Number
Land Court	December 21, 2006	3540528

#### Amendments to Bylaws of the Association of Unit Owners

Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.3 Condominium Map

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

Land Court Map Number	1861
Bureau of Conveyances Map Number	
Dates of Recordation of Amendments to the Condominium Map:	

### 3.4 House Rules

The Board of Directors may adopt rules and regulations (commonly called "House Rules") to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the Developer. Changes to House Rules do not need to be recorded to be effective.

The House Rules for this project:

Are Proposed	<input checked="" type="checkbox"/>
Have Been Adopted and Date of Adoption	<input type="checkbox"/>
Developer does not plan to adopt House Rules	<input type="checkbox"/>

### 3.5 Changes to the Condominium Documents

Changes to Condominium Documents: Changes to the Declaration, Bylaws and Condominium Map are effective only if they are duly adopted and recorded, Where permitted. the minimum percentages of the common interest that must vote for or give written consent to changes to the Declaration, Bylaws and Condominium Map are set forth below. The percentages for any individual condominium project may be more than the minimum set by law if the Declaration or Bylaws for the project so provide.

Document	Minimum Set by Law	This Condominium
Declaration	67%	67%
Bylaws	67%	67%

### 3.6 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents

	No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).
X	Developer has reserved the right to change the Declaration, Bylaws, Condominium Map and House rules (if any) and to add to or merge the project or to develop the project in one or more phases, and such rights are summarized as follows:  See <b>Exhibit A</b> attached hereto.

## 4. CONDOMINIUM MANAGEMENT

### 4.1 Management of the Common Elements

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

The Initial Condominium Managing Agent for this project is (check one):

<input checked="" type="checkbox"/>	Not affiliated with the Developer
<input type="checkbox"/>	None (self-managed by the Association)
<input type="checkbox"/>	The Developer or an affiliate of the Developer
<input type="checkbox"/>	Other (explain)

### 4.2 Estimate of the Initial Maintenance Fees

**Estimate of the Initial Maintenance Fees:** The Association will make assessments against your unit to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your unit and the unit may be sold through a foreclosure proceeding. Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

**Exhibit I** contains a breakdown of the estimated annual maintenance fees and the monthly estimated maintenance fee for each unit, certified to have been based on generally accepted accounting principles, with the Developer's statement as to when a unit owner shall become obligated to start paying the unit owner's share of the common expenses.

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

If checked, the following utilities are included in the maintenance fee:

<input checked="" type="checkbox"/>	Electricity for the common elements
<input type="checkbox"/>	Gas for the common elements
<input checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer
<input checked="" type="checkbox"/>	TV cable
<input checked="" type="checkbox"/>	Other (specify) Refuse Collection

### 4.4 Utilities to be Separately Billed to Unit Owner

If checked, the following utilities will be billed to each unit owner and are not included in the maintenance fee:

<input checked="" type="checkbox"/>	Electricity for the Unit only
<input checked="" type="checkbox"/>	Gas for the Unit only
<input type="checkbox"/>	Water
<input type="checkbox"/>	Sewer
<input type="checkbox"/>	TV cable
<input type="checkbox"/>	Other (specify)

## 5. SALES DOCUMENTS

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

Sales Documents on file with the Commission include, but are not limited to the following:	
X	Specimen Sales Contract <b>Exhibit J</b> contains a summary of the pertinent provisions of the sales contract. Including but not limited to any rights reserved by the Developer.
X	Escrow Agreement dated: December 22, 2006 Name of Escrow Company: Title Guaranty Escrow Services, Inc. <b>Exhibit K</b> contains a summary of the pertinent provisions of the escrow agreement.
	Other

### 5.2 Sales to Owner-Occupants

If this project contains three or more residential units, the Developer shall designate at least fifty percent (50%) of the units for sale to Owner-Occupants. N/A. The Developer has not elected to provide the information in a published announcement or advertisement because the units will be offered solely to shareholders of the Developer who are lessees under proprietary leases regarding the respective Units. The other Units (A, 101, and B0 through B-13) are not currently residential

	The sales of units in this project are subject to the Owner-Occupant requirements of Chapter 514B.
	Developer has designated the units for sale to Owner-Occupants in this report. See Exhibit _____.
	Developer has or will designate the units for sale to Owner-Occupants by publication.

### 5.3 Blanket Liens

**Blanket Liens:** A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project or more than one unit that secures some type of monetary debt (such as a loan) or other obligation. Blanket liens (except for improvement district or utility assessments) must be released as to a unit before the developer conveys the unit to a purchaser. The purchaser's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the unit to the purchaser.

	There are <u>no blanket liens</u> affecting title to the individual units.
X	<u>There are blanket liens</u> that may affect title to the individual units.

Type of Lien	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
Mortgage dated March 2, 2000 in favor of Central Pacific Bank, a Hawaii corporation filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2611130.	Such lien will be released from residential Unit prior to conveyance. If such liens are not released or if such lien is foreclosed, the purchaser may not be able to close on purchaser's conversion from co-op to condominium, in which case, the purchaser may cancel purchaser's contract, all of purchaser's monies will be refunded, less escrow cancellation fees, and purchaser will retain purchaser's proprietary lease of the Unit.



Assignment of Rents and Other Income dated March 2, 2000 by and between Atkinson Towers, Inc., a Hawaii corporation and Central Pacific Bank, a Hawaii corporation filed in the Office of the Assistant registrar of the Land Court of the State of Hawaii as Document No. 2611131	Such lien will be released from residential Unit prior to conveyance. If such liens are not released or if such lien is foreclosed, the purchaser may not be able to close on purchaser's conversion from co-op to condominium, in which case, the purchaser may cancel purchaser's contract, all of purchaser's monies will be refunded, less escrow cancellation fees, and purchaser will retain purchaser's proprietary lease of the Unit.
Financing Statement made by Atkinson Towers, Inc., a Hawaii corporation, in favor of Central Pacific Bank, a Hawaii corporation, recorded in the Bureau of Conveyances of the State of Hawaii on March 7, 2000, as Document No. 2000-030356, a continuation thereof recorded in said Bureau of Conveyances on January 25, 2005, as Document No. 2005-014342.	Such lien will be released from residential Unit prior to conveyance. If such liens are not released or if such lien is foreclosed, the purchaser may not be able to close on purchaser's conversion from co-op to condominium, in which case, the purchaser may cancel purchaser's contract, all of purchaser's monies will be refunded, less escrow cancellation fees, and purchaser will retain purchaser's proprietary lease of the Unit.

#### 5.4 Construction Warranties

Construction Warranties: Warranties for individual units and the common elements, including the beginning and ending dates for each warranty (or the method of calculating them), are as set forth below:
Building and Other Improvements: There are no warranties regarding the building and other improvements. Sold "as-is"
Appliances: There are no warranties regarding the appliances. Sold "as-is"

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

Status of Construction: The Project was constructed in 1959.
Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.
Completion Deadline for any unit not yet constructed, as set forth in the sales contract:  N/A
Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:  N/A

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

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

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

X	The Developer hereby declares by checking the box to the left that it shall use its own funds to complete the construction of the condominium project by the date indicated in Section 5.5 of this report, and the Developer, pursuant to its own analysis and calculations, certifies that it has sufficient funds to complete the construction of the condominium project. If the box to the left is checked, Sections 5.6.2 and 5.7, which follow below, will not be applicable to the project.
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### 5.6.2 Purchaser Deposits Will Be Disbursed Before Closing

Hawaii law provides that, if certain statutory requirements are met, purchaser deposits in escrow under a binding sales contract may be used before closing to pay for certain project costs. For this project, the Developer indicates that purchaser deposits may be used for the following purposes (check applicable box):	
<input type="checkbox"/>	For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person or
<input type="checkbox"/>	For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses.

In connection with the use of purchaser deposits (check Box A or Box B):

<b>Box A</b>	<p>The Developer has submitted all information and documents required by law and the Commission prior to the disbursement of purchaser deposits before closing. This means that the Developer may use such deposits before closing. If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>If Box A is checked, you should read and carefully consider the following notice, which is required by law:</p> <p><b><u>Important Notice Regarding Your Deposits:</u></b> Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.</p>
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<b>Box B</b>	<p>The Developer has <b><u>not</u></b> submitted all information and documents required by law and the Commission, and, until all such information and documents are submitted, thus, the Developer cannot use purchaser deposits.</p> <p>If the Developer later submits all information and documents required by law and the Commission for the use of purchaser deposits, then the Developer must provide an amendment to this report or an amended developer's public report to each purchaser who has signed a sales contract. At such time, the <b><u>Important Notice Regarding Your Deposits</u></b> set forth immediately above will apply to all purchasers and will be restated in the amendment to this report or an amended developer's public report. When an effective date for such an amendment or an amended developer's public report is issued, <b><u>you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment.</u></b> (This, however, does not affect your right to rescind for material changes or any other right you may have to rescind or cancel the sales contract, as described in Section 5.8 below.) If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report,</p> <p>You should understand that, although the <b><u>Important Notice Regarding Your Deposits</u></b> set forth above does not currently apply to you, it might apply to you in the future, and, therefore, you should read and carefully consider it now to ensure that you understand the risk involved in deciding whether to proceed with your purchase.</p>
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**Material House Bond.** If the Developer has submitted to the Commission a completion or performance bond issued by a material house instead of a surety as part of the information provided prior to the use of purchaser deposits prior to closing or conveyance of a unit, the Developer shall disclose the same below and disclose the impact of any restrictions on the Developer's use of purchaser deposits.

## 5.7 Rights Under the Sales Contract

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

- |    |   |
|----|---|
| 1. | <b>Developer's Public Report</b>  |
| 2. | <b>Declaration of Condominium Property Regime (and any amendments)</b>  |
| 3. | <b>Bylaws of the Association of Unit Owners (and any amendments)</b>  |
| 4. | <b>Condominium Map (and any amendments)</b>   |
| 5. | House Rules, if any   |
| 6. | Escrow Agreement  |
| 7. | Hawaii's Condominium Property Act (Chapter 514B, HRS, as amended) and Hawaii Administrative Rules (Chapter 16-107, adopted by the Real Estate Commission, as amended). provided that rules and regulations under Chapter 51 4B have not yet been adopted. |
| 8. | Other:  |

Copies of the condominium and sales documents and amendments made by the Developer are available for review through the Developer or through the Developer's sales agent if any. The Condominium Property Regime law (Chapter 514B, HRS) and the Administrative Rules (Chapter 107, HAR), are available online. Please refer to the following sites:

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)

Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

## 5.8 Purchaser's Right to Cancel or Rescind a Sales Contract

A purchaser's right to cancel a sales contract or to rescind a sales contract may arise under varying circumstances. In the sections below, some circumstances that will give rise to a purchaser's right to cancel or rescind are described, together with what a purchaser must do if the purchaser wishes to exercise any of the rights.

### 5.8.1 When a Sales Contract becomes Binding and Purchaser's 30-Day Right to Cancel a Sales Contract

A sales contract signed by a purchaser and the developer will not become binding on a purchaser or the Developer until the following events have taken place:

- (1) The purchaser has signed the sales contract.
- (2) The Developer has delivered to the purchaser a true copy of the developer's public report with an effective date issued by the Commission, together with all amendments to the report as of the date of delivery, and the project's recorded Declaration and Bylaws, House Rules (if any), the Condominium Map and any amendments to them to date (all of which are a part of the developer's public report). If it is impracticable to include a letter-sized Condominium Map, the Developer must provide written notice of an opportunity to examine the Condominium Map.
- (3) The Developer has delivered to the purchaser a notice of the purchaser's 30-day cancellation right on a form prescribed by the Commission.
- (4) The purchaser does at least one of the following:
  - (a) Waives the purchaser's right to cancel the sales contract within 30 days from receipt of the notice of the purchaser's 30-day cancellation right; or

- (b) Allows the 30-day cancellation period to expire without exercising the right to cancel; or
- (c) Closes the purchase of the unit before the 30-day cancellation period expires.

The purchaser or the Developer may cancel the sales contract at any time during the 30-day cancellation period, and the sales contract will be canceled and the purchaser's deposits returned to the purchaser, less any escrow cancellation fee and other costs associated with the purchase. up to a maximum of \$250.

#### **5.8.2 Right to Cancel a Sales Contract if Completion Deadline Is Missed**

In addition to the purchaser's 30-day cancellation right described in Section 5.8.1 above, when a sales contract is signed before completion of construction of a project, the purchaser will have the right to cancel if the unit is not completed by certain deadlines. In conversion projects, there must be a deadline for completion of any required repairs. Every sales contract shall contain an agreement of the Developer that the completion of construction shall occur on or before the completion deadline, and that completion deadline is set forth in this report in Section 5.5. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. Upon a cancellation, the purchaser's deposits shall be refunded, less any escrow cancellation fee and other costs associated with the purchase. up to a maximum of \$250.00.

#### **5.8.3 Purchaser's Right to Rescind a Binding Sales Contract After a Material Change**

If a "material change" in a project occurs after a purchaser has signed a sales contract that has become binding, the purchaser will have a 30-day right to rescind after notification and description of the material change. A material change is defined in the Condominium Property Act to be any change that "directly, substantially and adversely affects the use or value of (1) a purchaser's unit or appurtenant limited common elements; or (2) those amenities of the project available for the purchaser's use."

The purchaser will be informed of the material change by the developer on a form prescribed by the Commission containing a description of the material change.

After notice of the material change, the purchaser may waive the right to rescind by:

- 1) Checking the waiver box on the rescission form; or
- (2) Letting the 30-day rescission period expire, without taking any action to rescind; or
- (3) Closing the purchase of the unit before the 30-day rescission period expires.

The rescission form must be signed by all purchasers of the affected unit and delivered to the developer no later than midnight of the 30th calendar day after the purchasers received the rescission form from the developer. Purchasers who validly exercise the right of rescission shall be entitled to a prompt and full refund of any moneys paid.

A rescission right shall not apply in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the project's Declaration,

These provisions shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies.

## 6. MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT

### LEAD WARNING STATEMENT

Pursuant to federal law, 42 U.S.C. 4852(d), the Residential Lead-Based Paint Reduction Act, "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

### HAZARDOUS MATERIALS

The Developer neither prepared nor commissioned a Phase 1 Environmental Assessment and makes no representations or warranties whatsoever. The Developer has made no independent investigation as to asbestos or other hazardous substances in the units or in, under or around the Project, including but not limited to, radioactive materials, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, and any and all other substances or materials defined as or included in the definition of "hazardous substances", "hazardous wastes" or "toxic substances" under, or for the purposes of, hazardous materials laws. Buyer acknowledges that in light of the age of the Project, there may be asbestos and other hazardous substances in the units, or in, under or around the Project. Because of the possible presence of such substances, Buyer should have the unit inspected to determine the extent (if any) of such contamination and any necessary remedial action. The Developer will not correct any defects in the units in the Project or anything installed or contained therein and Buyer expressly releases the Developer from any liability to Buyer if any hazardous materials are discovered.

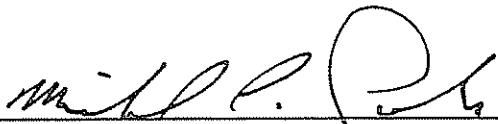
The Developer declares subject to the penalties set forth in Section 514B-69, HRS, that this project conforms to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the project is located,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

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

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

Atkinson Towers, Inc.

Printed Name of Developer

By:  12.22.06  
Duly Authorized Signatory\* Date

Michael C. Polovam, President

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, City and County of Honolulu

Planning Department, City and County of Honolulu

\*Must be signed for a corporation by an officer; for a partnership or limited liability partnership (LLP) by the general partner; for a limited liability company (LLC) by the manager or an authorized member; and for an individual by the individual.

## EXHIBIT A

### RESERVATION OF RIGHTS

The Developer has not reserved any right with respect to the Project including, without limitation, the right to make additions, modifications or deletions to the Project, to merge the Project or to develop the Project in phases, except as follows:

1. Parking. The Developer reserves the right to reconfigure the parking stalls on the first level of the Project, including but not limited to the addition of multi-level elevated parking devices, which if built would be an addition to or a merger into the Project, and to amend the Condominium Map and **Exhibits B and C** hereto to reflect such reconfiguration, and make such other amendments to this Declaration, the Bylaws, the Condominium Map, and other documents pertaining to the Project as the Developer deems necessary or convenient to effectuate such changes. In no event, however, shall any such amendment affect the Common Interest appurtenant to any Unit. The Developer further reserves the right to designate any additional or reconfigured parking stalls, any storage or other spaces and/or the sides and roof (if any) on or within such reconfigured parking area as Limited Common Elements and assign or designate any or all of such designated Limited Common Elements. At such time as may be contemplated by one or more Operating Agreements between Developer and the Association, such reserved right shall be assigned to the Association.

2. Pool Area, Switch Room and Transformer Vault. The Developer reserves the right to reconfigure the Pool Area, Garden, Switch Room and Transformer Vault, or install, remove, alter, relocate or rearrange, walls, partitions, ceilings, roofs (if any) and structures, exterior doors, fixtures, pipes, wiring, ducts, valves, conduits, controls, cables, and other equipment serving the same, and to amend the Condominium Map and **Exhibits B and C** hereto to reflect such reconfiguration, and make such other amendments to this Declaration, the Bylaws, the Condominium Map, and other documents pertaining to the Project as the Developer deems necessary or convenient to effectuate such changes. In no event, however, shall any such amendment affect the Common Interest appurtenant to any Unit. At such time as may be contemplated by one or more Operating Agreements between Developer and the Association, such reserved right shall be assigned to the Association.

3. Reservation of Power to Grant Easements. The Developer reserves to itself the non-exclusive right to grant from time to time within the Common Elements (other than the Limited Common Elements appurtenant to Units of which the Association is not the Owner), easements and rights-of-way over, under, and across the Common Elements (other than the Limited Common Elements appurtenant to Units of which the Association is not the Owner) for utilities, sanitary and storm sewers, drains, cable television, satellite television and other communication services, and other utility services for two (2) or more Units (or for one or more of the Association Units) and the right to relocate, realign or cancel the same, provided that such easements, their use, relocation, realignment, or cancellation shall not materially impair or interfere with the use of any Unit. At such time as may be contemplated by one or more Operating Agreements between Developer and the Association, such reserved right shall be assigned to the Association.

4. Required Amendments. The Developer reserves the right to make, at any time prior to the recordation of an Unit Deed for the last Unit in the Project, amendments to the Declaration, the Bylaws, or the Condominium Map that are required by law, by the Real Estate Commission, by a title insurance company, by a mortgage lender, or by any governmental agency (including the VA, HUD, FNMA and/or FHLMC), provided that such amendments shall not change the Common Interest appurtenant to an Unit or substantially change the design, location or size of any Unit for which an Unit Deed has been recorded. At such time as may be contemplated by one or more Operating Agreements between Developer and the Association, such reserved right shall be assigned to the Association.



## EXHIBIT B

### PERMITTED ALTERATIONS TO UNITS

As set forth in Article M of the Declaration, the permitted alterations of the Units are as follows:

1. General Provisions. Except as otherwise expressly provided in Article M (Alteration of Project) of the Declaration to the contrary, or pursuant to Article N (Reservation of Rights) of the Declaration, restoration or replacement of the Project or any portion thereof or construction of any additional building or structural alteration or addition to any building, different in any material respect from the Condominium Map of the Project, shall be undertaken by the Association or any Unit Owner only pursuant to an amendment of the Declaration in accordance with Article O (Amendment of Declaration) of the Declaration, duly executed pursuant to the provisions thereof, accompanied by the written consent, as may be required, of the holders of all liens affecting any of the Units involved, and in accordance with complete plans and specifications therefor first approved in writing by the Board, and promptly upon completion of such restoration, replacement or construction the Association or Owner, as the case may be, shall duly record or file of record such amendment, together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer.

2. Additions or Alterations Solely Within an Unit. Subject to the provisions of this Declaration, the Bylaws, the House Rules, and the Act, each Owner of a Unit shall have the right, at any time, and from time to time, at such Owner's sole cost and expense, and without the necessity of the consent or joinder of any other Unit Owner or the amendment of the Declaration, but with the prior approval of the Board and with the presentation of such plans and specifications and other materials as the Board may require as is more fully set forth in Section J.6 of the Bylaws, to make any of the following alterations solely within the Unit space as defined in Section B.2(b) (Unit Boundaries) of the Declaration: to install, maintain, remove, and rearrange partitions and other structures from time to time within such Unit, and to paint, paper, panel, plaster, tile, finish, and do or cause to be done such other work on the interior surfaces of the ceilings, floors and walls within any such Unit and to finish, alter or substitute any plumbing, electrical or other fixtures attached to said ceilings, floors and walls as shall be appropriate for the utilization of such Unit by such Owner or the tenants or lessees thereof; provided, however, that nothing contained in this paragraph shall authorize any work or alteration which would jeopardize the soundness or safety of any part of the Project, reduce the value thereof, adversely affect any Common Element or other Unit, alter the uniform external appearance of the Project, or affect or impair any easement or right of any other Unit Owner.

3. Adjoining Units May Be Connected The Owner of any two horizontally adjoining Units may, at the Owner's sole expense, alter or remove all or portions of the non-structural or non-load bearing portion of the intervening wall which separates such Units if the structural integrity of the Project is not thereby affected and if the Common Elements affected are restored to a condition comparable to that of the Common Elements prior to such alteration of such Common Elements; provided, however, that the requirements of the following sentences regarding load-bearing walls shall also apply. If, in any such permitted alteration, the intervening wall affected is a load-bearing wall then, in addition to all other requirements set forth herein, any alteration or removal of all or portions of such wall shall also be done pursuant to written plans and specifications drawn by a structural engineer for the Project or the Project Architect, as approved by the Board, and such work shall be personally supervised by said engineer, which requirement shall also apply to any change in such alteration, including any re-closure of such connection or opening. Any Owner making the alterations permitted hereunder shall secure a performance and payment bond naming as obligees said Owner and collectively the Owners of all other Units as their interests may appear in a penal sum of not less than one hundred percent (100%) of the cost of any construction, guaranteeing the payment of funds in an amount necessary to ensure the completion thereof free and clear of all mechanic's and materialmen's liens, and that any such construction shall be carried out in strict compliance with all applicable laws, rules and regulations. The approval of the Board shall be required to perform the alterations permitted herein, which approval shall

be given provided that each Owner of the adjoining Units complies with all the terms and conditions relating to said alterations set forth herein. Each Owner of such adjoining Units may install in and attach to such opening or openings in such wall, doors and other service devices and may remove and retain ownership of the items so installed. Upon the termination of the common ownership of such adjoining Units, any intervening wall which has been altered or removed pursuant to the foregoing provisions shall be restored at the Owner's expense to substantially the condition which existed prior to such alteration or removal, if the new Owner or Owners do not consent to such alteration.

4. Maintenance Expenses for Common Elements Converted to Limited Common Elements. Any part of the Common Elements of the Project which, because of the alterations as provided for in Article M (Alteration of Project) of the Declaration, serves or is used by exclusively one (1) or more Units shall become a Limited Common Element appurtenant to and for the exclusive use of such Unit or Units and any costs in connection therewith shall be borne as provided in Section B.4 (Limited Common Elements) of the Declaration.

5. Unit Owners to Execute Amendment Documents in Certain Cases. In the event that any change or alteration made in accordance with Article M (Alteration of Project) of the Declaration requires an amendment to the Declaration and/or to the Condominium Map, such amendment shall be executed by the Owner of the affected Unit or Units, and shall become effective upon recordation in the Bureau. Such amendment shall not require the consent or joinder of the Owner of any other Unit or any other person or entity, other than any mortgagee of such Unit or Units.

# EXHIBIT C

## COMMON INTEREST

The Common Interest for Units in the Project set forth in the Declaration are as follows:

UNIT	COMMON INTEREST PERCENTAGE
201	1.00636020%
202	0.80508816%
203	0.80508816%
204	0.80508816%
205	0.80508816%
206	0.80508816%
207	0.80508816%
208	1.00636020%
301	1.00636020%
302	0.80508816%
303	0.80508816%
304	0.80508816%
305	0.80508816%
306	0.80508816%
307	0.80508816%
308	1.00636020%
401	1.00636020%
402	0.80508816%
403	0.80508816%
404	0.80508816%
405	0.80508816%
406	0.80508816%
407	0.80508816%
408	1.00636020%
501	1.00636020%
502	0.80508816%
503	0.80508816%
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505	0.80508816%
506	0.80508816%
507	0.80508816%
508	1.00636020%
601	1.00636020%
602	0.80508816%
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606	0.80508816%
607	0.80508816%
608	1.00636020%
701	1.00636020%
702	0.80508816%
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706	0.80508816%
707	0.80508816%

708	1.00636020%
801	1.00636020%
802	0.80508816%
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806	0.80508816%
807	0.80508816%
808	1.00636020%
901	1.00636020%
902	0.80508816%
903	0.80508816%
904	0.80508816%
905	0.80508816%
906	0.80508816%
907	0.80508816%
908	1.00636020%
1001	1.00636020%
1002	0.80508816%
1003	0.80508816%
1004	0.80508816%
1005	0.80508816%
1006	0.80508816%
1007	0.80508816%
1008	1.00636020%
1101	1.00636020%
1102	0.80508816%
1103	0.80508816%
1104	0.80508816%
1105	0.80508816%
1106	0.80508816%
1107	0.80508816%
1108	1.00636020%
1201	1.00636020%
1202	0.80508816%
1203	0.80508816%
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1205	0.80508816%
1206	0.80508816%
1207	0.80508816%
1208	1.00636020%
1401	1.00636020%
1402	0.80508816%
1403	0.80508816%
1404	0.80508816%
1405	0.80508816%
1406	0.80508816%
1407	0.80508816%
1408	1.00636020%
1501	1.00636020%
1502	0.80508816%
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1504	0.80508816%

1505	0.80508816%
1506	0.80508816%
1507	0.80508816%
1508	1.00636020%
1601	1.00636020%
1602	0.80508816%
1603	0.80508816%
1604	0.80508816%
1605	0.80508816%
1606	0.80508816%
1607	1.81144835%
101	0.70847719%
A	0.21737380%
B-0	0.23347557%
B-1	0.23347557%
B-2	0.23347557%
B-3	0.23347557%
B-4	0.23347557%
B-5	0.23347557%
B-6	0.23347557%
B-7	0.23347557%
B-8	0.23347557%
B-9	0.23347557%
B-10	0.23347557%
B-11	0.23347557%
B-12	0.23347557%
B-13	0.23347557%
<b>TOTAL</b>	<b>100.00000000%</b>

## EXHIBIT D

### COMMON ELEMENTS

As set forth in Section B.3 of the Declaration, the Common Elements of the Project include:

1. The Land, in fee simple, and any and all easements and appurtenances thereto.
2. All unfinished, undecorated portions of all perimeter (including party) walls and interior load-bearing walls, the undecorated or unfinished surfaces of floors and ceilings, all lanai slabs and railings, all structural components, foundations, floor slabs, columns, girders, beams, supports, shafts, ceilings and spaces between the ceiling and the floor slab or roof above, roofs, exterior surfaces of the Project, including any paint or coating thereon, and all exterior windows.
3. All yards, gardens (except the Garden), grounds, planters, trellises and landscaping and all garbage chutes and other refuse facilities, if any, whether within or appurtenant to the Project.
4. The Easements and all roads, driveways, ramps, parking stalls (which parking stalls are a Limited Common Elements appurtenant to Unit A), loading areas or zones, and walkways which are rationally of common use by Owners of more than one Unit.
5. All ducts, pumps, valves, sewer lines, drain lines, electrical equipment, cables, wiring, chutes, pipes, shafts, wires, conduits or other utility or service lines which are utilized for or serve more than one Unit and other central and appurtenant transmission facilities over, under and across the Project which serve more than one Unit for services such as power, light, water, gas, sewer, refuse, telephone and radio and television signal distribution.
6. The Pool Area, Garden, Switch Room and Transformer Vault (which are Limited Common Elements appurtenant to Unit A).
7. The hallways, corridors, stairs, stairways, elevators, elevator lobbies, garbage rooms, and other similar areas which are not part of a Unit and shown on the Condominium Map.
8. Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

## EXHIBIT E

### LIMITED COMMON ELEMENTS

As set forth in Section B.4 of the Declaration, the Limited Common Elements of the Project include:

1. Parking. The parking stalls for the Project are located on the first level of the Project, as shown on the Condominium Map. Each of the parking stalls are designated, set aside and reserved for Unit A as Limited Common Elements as shown on **Exhibit D** of the Declaration. Unit A is located on the lobby floor of the Project and is currently owned by the Developer. It will be transferred to the Association. Any or all such Limited Common Element parking stalls may be assigned (permanently or temporarily), encumbered, pledged, sold, leased, transferred or otherwise used, modified (including but not limited to the addition of multi-level elevated parking devices) or disposed of as the Developer or, as applicable, the Association, acting through the Board, determines from time to time.

2. Pool Area, Garden, Switch Room and Transformer Vault. The Pool Area, Garden, Switch Room and Transformer Vault are designated, set aside and reserved for Unit A as Limited Common Elements as shown on **Exhibit D** of the Declaration and may be assigned (permanently or temporarily), encumbered, pledged, sold, leased, transferred or otherwise used, modified or disposed of as the Developer or, as applicable, the Association, acting through the Board, determines from time to time.

## EXHIBIT F

### ENCUMBRANCES AGAINST TITLE

The following are the encumbrances against title to the Project that are contained in the title report dated December 12, 2006 and issued by Title Guaranty of Hawaii, Inc.

1. Master Lease dated March 30, 1957, by and between Excelsior Lodge Number One, Independent Order of Odd Fellows, and Edwin Koon Quon Yee and Clara Hee Yee, husband and wife, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 199958, as assigned to Edwin Yee, Ltd., a Hawaii corporation, by instrument dated March 30, 1957, filed in said Office of the Assistant Registrar of the Land Court, as Document No. 199960, the Lessor's interest therein held by Atkinson Towers, Inc., a Hawaii corporation by Deed dated March 2, 2000, filed in said Office of the Assistant Registrar of the Land Court, as Document No. 2611129.\*

NOTE: Filed with the Department of Commerce of Consumer Affairs of the State of Hawaii (Business Registration) is the change of name of Edwin Yee, Ltd., a Hawaii corporation, to Eyecor, Ltd., a Hawaii corporation, on September 1, 1981 (not noted on Certificate of Title).

2. Master Sublease dated October 10, 1958, by and between Edwin Yee, Ltd., a Hawaii corporation, and Atkinson Building, Inc., a Hawaii corporation, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 243820, as assigned to Atkinson Towers, Inc., a Hawaii corporation, by instrument dated October 10, 1960, filed in said Office of the Assistant Registrar of the Land Court, as Document No. 265069, as amended by instruments dated January 24, 1961 and May 12, 1964 and filed in said Office of the Assistant Registrar of the Land Court, as Document Nos. 269754 and 336458, respectively.\*

3. Agreement dated August 1, 1960, by and between Excelsior Lodge Number One, Independent Order of Odd Fellows, and Edwin Yee, Ltd., filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 260942.\*

4. The following matters as shown on survey map prepared by Patrick M. Cummins, Licensed Professional Land Surveyor, with Hawaii Land Consultants dated February 3, 2000:

a. Wood fence along portion of easterly side of premises straddles property line.

b. Adjoining Lot 50 is being used for parking, access to which is gained over subject Lot 26-A-2.

c. Adjoining Lot 44 has 6 parking spaces reserved within said Lot 50, access to which is gained over and across subject Lot 26-A-2.

5. Mortgage dated March 2, 2000 in favor of Central Pacific Bank, a Hawaii corporation filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2611130.

6. Assignment of Rents and Other Income dated March 2, 2000 by and between Atkinson Towers, Inc., a Hawaii corporation and Central Pacific Bank, a Hawaii corporation filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2611131.

7. Financing Statement made by Atkinson Towers, Inc., a Hawaii corporation, in favor of Central Pacific Bank, a Hawaii corporation, recorded in the Bureau of Conveyances of the State



of Hawaii on March 7, 2000, as Document No. 2000-030356, a continuation thereof recorded in said Bureau of Conveyances on January 25, 2005, as Document No. 2005-014342.

8. Various recorded and unrecorded proprietary leases covering units within Atkinson Towers and matters arising from or affecting the same.

\*Developer is in the process of filing in the Land Court the change of name of Edwin Yee, Ltd., a Hawaii corporation, to Eyecor, Ltd., a Hawaii corporation which was filed with the Department of Commerce of Consumer Affairs of the State of Hawaii (Business Registration), but not filed in the Land Court. Upon such filing, Encumbrances 1, 2, and 3, should be cleared from title to the Project.

Tax Map Key: (1) 2-3-36-38

## **EXHIBIT G**

### **ARCHITECTURAL, STRUCTURAL, MECHANICAL AND ELECTRICAL OBSERVATION REPORTS**

Purchasers should familiarize themselves with the condition of the Project by reading the attached reports with care.



& Associates, Inc.

CONSULTING MECHANICAL ENGINEERS

## Memorandum

**Date:** December 18, 2006  
**To:** See Distribution  
**From:** Rick Beall  
**Project:** Atkinson Towers, BAI Project No. H025  
**Subject:** Review of Mechanical Systems

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As requested, the following is a brief review of the mechanical systems at the Atkinson Tower apartment building located in Honolulu, Hawaii. A site visit of the project was conducted on November 30, 2006 and was attended by Alan Atkinson of Architects Hawaii, Ltd., Ben Okano of Okano Consulting Electric Engineers, Don Ah Nee, Resident Manager of Atkinson Towers and Rick Beall of Beall & Associates, Inc. During our site visit we visited the roof of the building, one apartment that was indicated to be fairly typical, the lobby, and various mechanical and electrical rooms. The following are our observations, by system: After the site visit, we received the following mechanical drawings: Drawings M1 through M4 stamped by Fredrick H. Kohloss and dated 9/15/59.

### Ventilation and Air Conditioning

1. The project was designed without air conditioning in the apartments. Ventilation consists of a single toilet exhaust grill in each apartment which is ducted to common duct risers connected to large exhaust fans at the roof. There are a total of four risers each with a separate exhaust fan.
2. Make up air is by operable windows in each apartment.
3. It was indicated that the lobby was fully enclosed by full height glass after the original construction of the building. We observed no ventilation systems for the lobby or the adjacent manager's office. This appears to be a code violation.
4. The existing exhaust system may not be compatible if the owners decide to air condition the apartments in the future. In that case, it may be desirable to revise the system to one with intermittent exhaust operation.
5. Did not observe any clothes dryer exhaust vents. It is unclear from the original drawings how these were to be vented, if installed. If they are to be installed by apartment owners in the future, we recommend appropriate locations be developed.

### Plumbing Systems

1. Domestic water is piped from street mains to the building and appears to be carried up to the eighth floor at street pressure after which a booster pump located in the eighth floor mechanical room boosts the pressure for floors 9 and above.

The original design included a 1,600 gallon pneumatic storage tank which appears to have been removed.

2. Each apartment has its own electric domestic water system.
3. Waste is piped by gravity to sanitary sewer site mains.
4. We observed no roof drains or other storm drainage system.
5. There are no fuel systems on the project.
6. Domestic water booster pumping equipment appeared to be quite dated and it appears there is some corrosion of piping in the mechanical room. We also understand that the system is currently being operated on the standby pump as the main pump is being repaired.
7. Given the age of the systems, it may be desirable to check the condition of the waste lines for leaks, cracking and obstructions and the existing domestic water valves for proper operation.

### Fire Protection

1. A single dry standpipe with hose valves is located in the stairwell closest to Atkinson's Street.
2. Two fire hose cabinets are located at each of the typical floors. Fire hose cabinets are fed from a booster pump located in the ground floor mechanical room which is connected to the site domestic water main. Two duplex fire department connections are located at the Atkinson Street end of the building each are labeled to the dry standpipe.

The system appears to be different then that shown on the original plans which have the hose cabinets piped from the domestic water systems.

3. It appears that sprinklers at the top of the trash chutes have been piped off the risers feeding the fire hose cabinets.
4. The fire hose cabinets are quite deteriorated and should be replaced. It appears that some of the hoses have been replaced.
5. Current code requires a building of this type to be fully protected by an automatic fire sprinkler system. This should be considered as a future improvement project.

December 18, 2006  
Page 3 of 3

Please note that the above is based upon a brief site visit and review and does not constitute a detailed check against current codes or codes including those in affect at time of construction, or in operational/functional check of systems and equipment. Those discrepancies that were observed are noted however no exploratory demolition was performed and additional discrepancies may exist.

Please do not hesitate to call should you have any questions.

cc: Distribution: Alan Atkinson, Architects Hawaii, Ltd.

RLB:EHN h:\project files\2006 projects\b025 atkinson tower review\curr\memoreviewofmechanicalsystems.doc

December 11, 2006

Atkinson Towers Inc.  
c/o Carlsmith Ball LLP  
ASB Tower, Suite 2200  
1001 Bishop Street  
Honolulu, Hawaii 96813

**Subject:** Property Condition Report Letter for Atkinson Towers  
Condominium Conversion – AHL Project No. 5183C

**Attention:** Mr. James Case

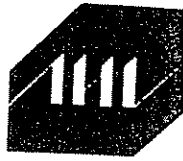
Dear Mr. Case,

On November 30, 2006, Architects Hawaii, in conjunction with Beall & Associates, Inc. Consulting Mechanical Engineers, and Okano Consulting Electrical Engineers, conducted a Property Condition site survey at Atkinson Towers. The property is located at 419A Atkinson Drive, Honolulu, Hawaii, 96813. The building is an existing 15 story residential cooperative. The ground floor plan includes the Manager's Unit including an office, the lobby, building equipment spaces and some covered parking. The typical floor plan, beginning on the second floor, comprises eight 2 bedroom, 1 bath units that exit onto an exterior exit balcony extending the full length of the building. The top floor, numbered floor 16, comprises 6 typical units and one larger penthouse unit.

We reviewed the existing drawings, dated 8/15/59 and 9/21/59, based on the 1997 UBC, as locally adopted and amended. The building construction type appears to be Type I, with all structural members – walls, floors, roof, and stairs – being constructed of reinforced concrete. There is an open stairs at one end of the building, and an enclosed stairs at the other end of the building, accessible to all units on each floor from the second floor up. There are two elevators at the center of the building, opening into a lobby alcove off the exterior exit balcony.

The occupancy appears to be R-1, Hotels and Apartment Houses, for a majority of the building, and S-4 Open Parking Garages for the open parking spaces on the Ground Floor. There is no occupancy separation required between the R-1 and S-4 occupancies. The drawings indicate a floor thickness of 6", which exceeds the minimum thickness for a 2 hour floor construction for the floor between the S-4 and the R-1 occupancy above, based on Table 7-B. Type I construction allows unlimited floor area and unlimited height.

The building is situated approximately 56' from the north property line, 24' from the east property line, 6' from the south property line fronting the Ala Wai Canal, and 41' from the west property line. UBC Table 5-A requires a two-hour bearing wall for the south wall at 6' from the property



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INCORPORATED



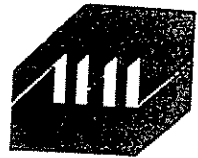
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Dean S. Uehara AIA  
Jean-Louis Loveridge  
Richard L. Sullivan AIA  
Francisco E. Cruzata  
Garret S. Thompson  
Brian I. Takahashi AIA

EMERITUS  
James S. Flaherty FAIA  
Doris A. Anderson AIA



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LIMITED

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The exiting system appears to be adequate for the occupancy type and the occupant load, and appears to meet current code requirements except for the width of the exit stairs, and the step rise and run. Two exits are required for occupant loads exceeding 10, and the building has two exits for the occupant load of 23 per floor. The exterior exit balcony is calculated as 4'-8" clear from the drawings. The required minimum width is 36" based on an occupant load of 23. The stairs are dimensioned as 7'-6" wide for two runs, or 3'-9" (45") for each run. The calculated minimum width of each stairs would be 48.3" (14 x 23 x 0.3/2). The code requirement at the time of construction in 1959 was 44" minimum width, so this is an item that would not be required to be brought up to current code requirements. The current rise and run limitations are 7" and 10" respectively. The existing step rise is dimensioned as 7.3" and the run at 10", which met the original code maximum requirements of 7 1/2" and 10" respectively, and therefore not be required to be brought up to current code requirements.

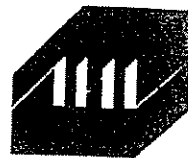
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The condition of the exterior of the building is good for a building of 47 years of age. According to the resident manager, the railing post bases on the exit balcony railing were repaired for concrete spalls about 2 years ago. The building has been painted on the exterior fairly recently, and the condition is good. The concrete at the floor lines on the Ewa, or west, side of the building is exhibiting some spalling, probably from rusting reinforcing steel, and should be repaired in the near future to prevent future deterioration. This is quite common for early concrete buildings in Honolulu. The building has been reroofed very recently with a white single ply membrane, apparently a heat-welded TPO type. According to the resident manager, new tapered insulation was also installed. The roof slopes from the center and drains to the long sides of the building over the roof edge.

Other than the previously mentioned minor spalling on the west side of the building, there are no apparent cracks or deterioration of the concrete structure.

The building site that is not covered by building is almost completely paved with asphaltic concrete paving for the access drive and parking. There is a tiled concrete deck surrounding a free-formed swimming pool. The pool is enclosed by a fence. There are a few small landscaped islands in the parking areas, and a landscaped garden area adjacent to the main lobby entrance. The condition of the

December 11, 2006  
Atkinson Towers Property Condition Report Letter  
Mr. James Case  
Page 3 of 3



ARCHITECTS-HAWAII  
LIMITED

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The letter reports from Beall & Associates, Inc. and Okano Consulting Electrical Engineers are attached for your use also. They are self-contained and self-explanatory.

**Exclusions:** This Property Condition Report Letter, including the attached subconsultants' letter reports, excludes any assessment of the following areas:

1. Accessibility
2. Environmental Hazards
3. Development Feasibility
4. Elevators, Including Equipment
5. Swimming Pool, Including Equipment
6. Building Permit History Research

If you have any questions, please call me. We appreciate the opportunity to work with Atkinson Towers on this project.

Sincerely,

Alan Atkinson, AIA, CSI, CCS  
Senior Associate

AA:aa  
Enclosures

Cc: Mike Polovcin by e-mail



December 11, 2006

Atkinson Towers Inc.  
c/o Carlsmith Ball LLP  
ASB Tower, Suite 2200  
1001 Bishop Street  
Honolulu, Hawaii 96813

**Subject: Property Condition Report Letter for Atkinson Towers  
Condominium Conversion – AHL Project No. 5183C**

**Attention: Mr. James Case**

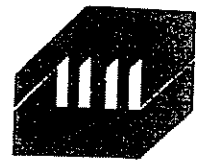
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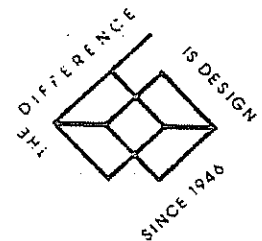
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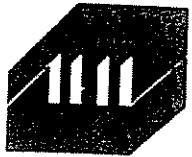
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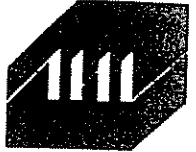
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December 11, 2006  
Atkinson Towers Property Condition Report Letter  
Mr. James Case  
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ARCHITECTS-HAWAII  
LIMITED

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Sincerely,

Alan Atkinson, AIA, CSI, CCS  
Senior Associate

AA:aa  
Enclosures

Cc: Mike Polovcin by e-mail

ORLANDO CONSULTING ELECTRICAL ENGINEERS

1481 S. King St., Suite 314 • Honolulu, HI 96814  
Telephone (808) 955-3366 • Fax (808) 955-3367

---

December 7, 2006

Architects Hawaii, Ltd.  
1001 Bishop St., ASB Tower 300  
Honolulu, HI 96813

Attn: Alan Atkinson

Subj: Atkinson Towers

Dear Alan:

We have conducted a survey of the building for the purpose of evaluating the electrical system for compliance with the electrical code. It should be noted that the building was constructed sometime in the late 1950's, early 1960's time period. Since the electrical code has changed since that time, this report compares what was constructed at that time with what the current code requires. This is a comparison only and is not to be interpreted to mean code violations.

The building's electrical service is provided by a Hawaiian Electric transformer which is located in a transformer vault located at the ground level. The transformer secondary voltage is 120/208 volts, three phase, four wire. The secondary voltage is distributed through the building by a vertical bus duct riser. At every other floor, a meter group is provided for the individual (utility revenue) metering of the residential units. A common area or house meter is provided in the ground floor main electrical room.

The building's telephone service is provided by an underground conduit from the telephone company's facilities on Atkinson Drive. the conduit is terminated in a telephone cabinet located in the ground floor main electrical room. From the telephone cabinet, the telephone cables are routed vertically through the building and are terminated at telephone backboards located at every other floor adjacent to the individual unit electrical meters.

The building has a manual fire alarm system which provides an audible signal only and has pull stations at the exit stairway on all levels and in the main lobby. There are battery only operated smoke detectors located in each residential unit and in the common area equipment (domestic water pump) room. There is no connection between the battery only operated smoke detectors and the fire alarm system.

The individual residential units have a panelboard which is integrated with a factory prewired kitchen center which consists of a one piece sink and counter, cook top, oven, dish washer, and clothes washer.

Comparing the existing electrical system with current codes, the following are items which may be considered for future improvement projects.

1. The openings in the floor slabs for the vertically mounted bus duct serving the electrical meters are not properly sealed. Either concrete grout or a fire stopping material may be used to seal the opening between the bus duct and floor slab.
2. The existing fire alarm pull stations located throughout the building are mounted higher than the currently required maximum of 4 feet 6 inches above the floor.
3. There is only one battery only operated smoke detector in each unit which is located in the hallway between bedrooms. Each bedroom in addition to the common hallway should have a smoke detector. For existing buildings, battery only smoke detectors are permitted, whereas in new buildings, battery and 120 volt powered smoke detectors are required. Current fire codes require smoke detectors which are connected to the fire alarm system to be provided in mechanical and electrical equipment rooms as well as in enclosed elevator lobbies. Also, there are separate fire alarm requirements for buildings classified as high rise buildings which would have to be addressed if the building were to be upgraded by the addition of sprinklers or other improvements meant to bring the building into compliance with current high rise code requirements.
4. The receptacle in the bathroom of each residential unit is required to be of the GFCI type and the receptacles in the bedrooms are required to be protected by an arc fault interrupting type circuit breaker.
5. The panelboard in each residential unit is part of the kitchen counter and sink assembly and would not comply with current code location requirements.

The existing electrical system appears to be in reasonably good condition considering its age of 40 plus years and there are no obvious dangerous conditions which would require immediate attention.

Sincerely,

OKANO CONSULTING ELECTRICAL ENGINEERS



Ben K. Okano

1481 S. King St., Suite 314 • Honolulu, HI 96814  
Telephone (808) 955-3366 • Fax (808) 955-3367

December 7, 2006

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Ben K. Okano

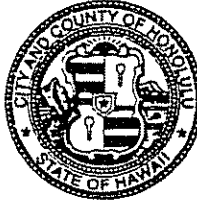
**EXHIBIT H**

**LETTERS FROM THE CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PLANNING AND  
PERMITTING**



PARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 523-4432 • FAX: (808) 527-6743  
DEPT. INTERNET: [www.honolulu.gov](http://www.honolulu.gov) • INTERNET: [www.honolulu.gov](http://www.honolulu.gov)



MUFI HANNEMANN  
MAYOR

HENRY ENG, FAICP  
DIRECTOR

DAVID K. TANQUE  
DEPUTY DIRECTOR

2005/ELOG-1345(AS)

December 16, 2005

Russell L. Case, Esq.  
Carlsmith Ball LLP  
A Limited Liability Law Partnership  
ASB Tower, Suite 2200  
1001 Bishop Street  
Honolulu, Hawaii 96813

Dear Mr. Case:

Re: Condominium Conversion Project  
Atkinson Towers  
419A Atkinson Drive  
Tax Map Key: 2-3-036: 038 & 037

This is in response to your letter dated June 14, 2005, requesting an updated letter regarding the deficiencies mentioned in our letter dated September 27, 2004, Ref. No. 2004/ELOG-1002(AS).

An inspection on November 16, 2005 revealed that the deficiencies noted in item No. 2 were corrected. All of the substandard off-street parking spaces have been removed.

Also, building permit No. 579273 was approved on April 22, 2005, for a new lobby exit door and alteration work to correct item No. 4 of our letter. This permit is currently active.

If you have any questions regarding this matter, please contact Mr. Ivan Matsumoto of our Commercial and Multi-Family Code Enforcement Branch at 527-6341.

Very truly yours,

A handwritten signature in black ink, appearing to read "Henry Eng", is written over a horizontal line.

Henry Eng, FAICP, Director  
Department of Planning and Permitting

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET • HONOLULU, HAWAII 96813  
Telephone: (808) 523-4414 • Fax: (808) 527-6743 • WEBSITE: [www.co.honolulu.hi.us](http://www.co.honolulu.hi.us)

JEREMY HARRIS  
MAYOR



ERIC G. CRISPIN, AIA  
DIRECTOR

BARBARA KIM STANTON  
DEPUTY DIRECTOR

October 4, 2004

2004/ELOG-1002(AS)

Mr. Russell L. Case  
Carlsmith Ball LLP  
A Limited Liability Law Partnership  
ASB Tower, Suite 2200  
1001 Bishop Street  
Honolulu, Hawaii 96813

Dear Mr. Case:

Subject: Condominium Conversion Project  
Atkinson Towers  
419A Atkinson Drive  
Tax Map Key (TMK): 2-3-036: 038 & 037

This is in response to your letter dated May 10, 2004 requesting verification that the building at the above-mentioned property met all applicable code requirements at the time of construction.

Investigation revealed that a 15-story 112-unit apartment building with a total of 91 all-weather surface off-street parking spaces met all applicable code requirements when it was constructed in 1959 on this 41,419-square foot A-2 Apartment zoned lot.

Investigation also revealed the following:

1. On November 5, 1959, subdivision (Ref. File No. 59/SUB-398) was approved to consolidate parcels 37 (10,500 sq. ft.) and 38 (30,919 sq. ft.) into a single zoning lot. For more information regarding this matter, please refer to document number 2003/ELOG-2490(JP), dated July 29, 2003, from this Department (attached).
2. On July 25, 2001, building permit number 524195 was approved to demolish a wall and create one standard size loading zone parking space. The plans also included additional parking spaces, numbers 29 through 32, 92 through 97, and 102 through 106. However, these 15 parking spaces were never approved. Further, spaces 29 through 32 lack minimum stall size, and spaces 92 through 97, 105 and 106 encroach into required driveway width.

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3. Access to the property is via easement A-6 located on the mauka side through TMK: 2-3-036: 001.
4. The open ground floor lobby area has been enclosed without a building permit and now lacks a required conforming exit. The sliding door does not meet code requirements for exit doors.

Notices of Violations shall be issued for the deficiencies noted above in Nos. 2 and 4, if they are not corrected in a timely manner.

No variances or special permits were granted to allow deviations from any applicable codes.

For your information, the Department of Planning and Permitting cannot determine all legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes.

Conversion to a condominium property regime (CPR) is not recognized by the City and County as an approved subdivision. CPR delineates ownership; it does not create separate lots of record for subdivision and zoning purposes.

If you have any questions regarding this matter, please contact Mr. Ivan Matsumoto of our Commercial and Multi-family Code Enforcement Branch at 527-6341.

Sincerely yours,



ERIC G. CRISPIN, AIA  
Director of Planning and Permitting

EGC:ft  
Doc 324599

Attachment

EXHIBIT I

MAINTENANCE FEES

UNIT TYPE	MONTHLY FEE	x12 MONTHS=	YEARLY TOTAL	QUANTITY
	QUANTITY	SUBTOTAL		
Regular	<u>\$ 415.50</u>	<u>\$ 4,986.00</u>	11	<u>\$ 54,846.00</u>
Regular w/1 stall	<u>\$ 419.89</u>	<u>\$ 5,038.68</u>	70	<u>\$ 352,707.60</u>
Regular w/2 stalls	<u>\$ 424.28</u>	<u>\$ 5,091.36</u>	2	<u>\$ 10,182.72</u>
End	<u>\$ 519.38</u>	<u>\$ 6,232.56</u>	1	<u>\$ 6,232.56</u>
End w/1 stall	<u>\$ 523.77</u>	<u>\$ 6,285.24</u>	26	<u>\$ 163,416.24</u>
1607	<u>\$ 939.27</u>	<u>\$ 11,271.24</u>	1	<u>\$ 11,271.24</u>
			111	<u>\$ 598,656.36</u>

*The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency*


(Exhibit "I" continued)

**Estimate of Maintenance Fee Disbursements:**

	<u>Monthly Fee x 12 months =</u>	<u>Yearly Total</u>
<b>Utilities and Services</b>		
Electricity		
<input type="checkbox"/> common elements only		
<input checked="" type="checkbox"/> common elements and Units	\$ 1,451	\$ 17,412
Elevator	\$ 1,938	\$ 23,256
Gas	None	
<input type="checkbox"/> common elements only		
<input type="checkbox"/> common elements and Units		
Refuse Collection	\$ 732	\$ 8,784
Telephone	\$ 312	\$ 3,744
Water and Sewer	\$ 1,787	\$ 21,444
Television Cable	\$ 2,135	\$ 25,620
<b>Maintenance, Repairs and Supplies</b>		
Building	\$ 1,891	\$ 22,692
Grounds	None	
<b>Management</b>		
Management Fee	\$ 1,347	\$ 16,164
Payroll and Payroll Taxes	\$ 5,564	\$ 66,768
Office Expenses (including health insurance)	\$ 1,771	\$ 21,252
Insurance	\$ 4,266	\$ 51,192
Reserves(*)	\$ 13,508	\$ 162,096
Taxes and Government Assessments	\$ 8,233	\$ 98,796
Audit Fees	\$ 81	\$ 972
Other		
TOTAL	\$ 45,016	\$ 540,192

I, Alan I. Takumi, as agent for/and/or employed by Certified Management, Inc.,  
the condominium managing agent/developer for the Atkinson Towers

condominium project, hereby certify that the  
above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in  
accordance with generally accepted accounting principles.

  
\_\_\_\_\_  
Signature

1/10/07  
\_\_\_\_\_  
Date

(\*)Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with §514B-148, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. Developer discloses that no reserve study has been conducted in accordance with 514B-148, HRS, and replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514B-148, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

## EXHIBIT J

### SUMMARY OF CONDOMINIUM CONVERSION CONTRACT

The specimen Condominium Conversion Contract filed with the Commission sets forth the terms on which current owners of an apartment in the Atkinson Towers pursuant to a co-op proprietary lease may convert their ownership to fee simple, condominium ownership. Those terms include the following:

1. **Co-op to Condo Conversion; Conversion Fee.** In order to convert from co-op to condominium form of ownership, a current Owner shall pay a conversion fee of \$600.00 that covers a portion of the costs that the Developer has incurred in setting up the condominium and converting the apartments from co-ops to condominiums. The Owner must also surrender his or her shares in the Developer (Atkinson Towers, Inc.), and surrender his or her existing proprietary lease for the Unit, both free and clear of any liens, mortgages, or other encumbrances. When the Owner does so and deposits same into Escrow, the Developer will execute and deposit into Escrow a Unit Deed conveying fee simple title to the Unit to the Owner. Upon recordation of the Unit Deed, the proprietary lease and shares will be cancelled.

2. **Existing Mortgages.** The Owner is solely responsible for arranging for the release or termination at closing of any mortgages, pledges, lien or other encumbrances on his or her apartment. If Owner must refinance an existing mortgage of owner's proprietary lease in connection with the conversion, Owner's obligations under the Condominium Conversion Contract are contingent on Owner's ability to do so.

3. **Closing Costs.** At Closing, the Developer shall not be responsible for paying the costs of preparing the Owner's Deed. At Closing, Owner shall be responsible for paying the cost of preparing the Owner's Deed, the applicable escrow fee, and notary fees for the Deed, the recording fees for the recordation of the deed, plus applicable taxes, and such other closing costs, if any. Such additional closing costs may include, without limitation, (1) the costs of refinancing any mortgage that Owner may have, (2) the costs of purchasing a policy of title insurance if Owner elects to purchase it, (3) the costs of preparing any releases or similar documents necessary to release any liens or mortgages that encumber Owner's Proprietary Lease or Stock, (4) the notary and recording fees for any such releases or similar documents, and (5) any Escrow fees beyond the basic Escrow fee due to any complexities of Owner's conversion.

4. **Acceptance of the Unit "As Is".** Because the Project is an existing building being converted to condominium ownership, and because the Owner already owns the apartment (under a proprietary lease), the Unit is sold and conveyed to the Owner on a strictly "AS IS, WHERE IS" basis.

5. **Tax Matters.** The transaction that the Condominium Conversion Contract provides for may have adverse tax consequences to the Developer and to Owner. Under Section 336 of the U.S. Internal Revenue Code (the "Code"), the general rule is that a corporation (such as the Developer) will recognize gain or loss on the distribution of deeds to the Units (and the undivided interests in the common elements) to those cooperative shareholders who are not owner-occupants as defined in the Code, as if the distributed property were sold to the shareholders at fair market value. The Code provides in Section 216(e) that a cooperative stockholder in exchange for the cooperative stockholder's stock and proprietary lease, provided that the apartment represented by the deed will have been the cooperative stockholder's principal residence for the period beginning two years before the day of the distribution and will be the cooperative shareholder's principal place of residence within the meaning of Code Section 121. Under Code Section 121, property is treated as the principal place of residence of the taxpayer if, during the five year period ending on the date of sale or exchange, such property has been owned as used by the taxpayer as the taxpayer's principal place of residence for periods aggregating two or more years. However, a corporation will potentially recognize gain or loss on the distribution of other apartment deeds whose exchange with the corporation will not qualify for non-recognition of gain under Section 216(e). Any taxes payable by the corporation will be based upon the fair market value of the

"distributed property". The fair market valuation of the distributed property is unclear, and depending upon its valuation the corporation will have taxable income. The Board of Directors of the Atkinson Towers believes that each condominium Unit in the Project has no appreciable value just before the exchange because each Unit is encumbered by a proprietary lease, but there is no guarantee that the Internal Revenue Service will accept this opinion. The income of a corporation which will be liquidated will be the joint and several obligation of its shareholder if corporate assets are insufficient to pay any tax which is due.

In addition to the possible tax to the Developer, there may also be tax ramifications at the level of the cooperative stockholder (i.e., the existing owner who converts to condominium ownership). The general rule is that the cooperative stockholder must recognize gain to the extent that the fair market value of the condominium unit received exceeds the basis of the cooperative stock and proprietary lease being exchanged. The tax liability to the stockholder may be reduced and may even be avoided if the stockholder has held the cooperative apartment as its principal place of residence (as defined under Code Section 1034) and the gain does not exceed \$250,000 for a single owner or \$500,000 for a husband and wife filing a joint return. In addition, the stockholder may be entitled to treat the transaction as a tax-free exchange if the stockholder has held the cooperative apartment as an investment or business property under Code Section 1031. A stockholder who is neither an owner-occupant nor an investor may be required to recognize gain to the extent of the value of the condominium unit compared to the owner's basis in the owner's stock in the Developer and proprietary lease. State tax implications similar to the federal tax implication described in this Section may arise under the tax laws of the State of Hawaii.

As the facts and circumstances of each shareholder will differ, each shareholder is advised to seek his/her own tax advice to determine whether he/she would have any federal or state tax liability as a shareholder of the Developer or as recipient of a fee simple condominium Unit in exchange for his/her proprietary lease and stock in the Developer.

The Condominium Conversion Contract specifically provides that each Owner assumes all tax risk and possible liability described above and releases the Developer, its directors, officers and agents from any obligation for further disclosure with respect to potential liability and from any obligation to make any payments on account thereof. The Contract also provides that, if prior to closing, the Developer has obtained an opinion of tax counsel (which it is not obligated to obtain) that the conversion to the form of condominium ownership creates significant tax liability to the Developer, then the Developer may elect at any time prior to closing to terminate this Conversion Contract without liability to Owner, whereupon Escrow shall cause the Deposit, if any, to be returned to Owner.

**The foregoing is only a summary of some of the key terms of the Condominium Conversion Contract for the Atkinson Towers. You should read the full text of the Condominium Conversion Contract with care.**

## EXHIBIT K

### SUMMARY OF ESCROW AGREEMENT

A copy of the executed Escrow Agreement for the Project between Title Guaranty Escrow Services, Inc. ("Escrow"), and Developer has been filed with the Commission. The Escrow Agreement provides for the deposit of funds by a lessee of a Unit in Atkinson Towers, Inc. (an "Owner") who wishes to convert from co-op ownership to condominium ownership pursuant to the Conversion Contract and also provides for the retention or disbursement of the funds. Under the Escrow Agreement, the funds will be held in Escrow until the following conditions have been fulfilled: (a) Developer has delivered a copy of the Public Report to the Owner with an Effective Date issued by the Real Estate Commission; (b) Owner has waived its right to cancel the Conversion Contract or is deemed to have waived its right to cancel under HRS § 514B-86(c); (c) if applicable, Owner has waived its right to rescind the Conversion Contract or is deemed to have waived its right to cancel under HRS § 514B-87(b); (d) Developer has delivered to Escrow the opinion required under the Escrow Agreement; and (e) Developer has delivered to Escrow the written waiver of any option reserved in the Conversion Contract to cancel such Contract.

The Escrow Agreement provides in part that any interest earned on money on deposit shall be paid to the parties in accordance with the terms of the Sales Contract. The Developer does not intend that Escrow attempt to deposit funds into an interest-bearing account because the deposit for each owner is of a minimal amount.

In the event that the Conversion Contract or Hawaii Revised Statutes Chapter 514B entitle an Owner to a refund of Owner's Deposits held by Escrow, then Escrow, upon instruction from Developer, will refund Owner's deposits, less certain cancellation fees and costs (e.g., escrow cancellation fees, loan processing fees, cost of credit reports, etc.) as provided for in the Conversion Contract and Chapter 514B, Hawaii Revised Statutes, as amended, if any one of the following occurs:

1. Developer and Owner have requested Escrow in writing to return to Owner the Owner's Deposits held by Escrow; or
2. Developer has notified Escrow of Developer's exercise of the option to cancel or rescind the Conversion Contract pursuant to any cancellation or rescission provided therein or available to Developer; or
3. Owner has notified Escrow of Owner's exercise of Owner's right to cancel the Conversion Contract under Hawaii Revised Statutes § 514B-86 or 514B-87; or
4. Owner has notified Escrow of Owner's exercise of Owner's right to rescind the Conversion Contract under Hawaii Revised Statutes § 514B-87.

By law the total amount of such cancellation fees shall not exceed Two Hundred Fifty and No/100 Dollars (\$250.00) so long as the cancellation occurs prior to the time the Conversion Contract becomes effective. Under the Escrow Agreement no disbursement of funds can be made to the Developer or in payment of expenses until the Conversion Contract becomes effective under the provisions of Chapter 514B, Hawaii Revised Statutes.

Under the Escrow Agreement, if the Owner fails to make a payment to Escrow on or before the due date thereof or if the Owner fails to perform in any matter that is being handled by Escrow, Escrow will promptly notify the Developer of any such failure on the part of the Owner. 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 Owner, Escrow will thereafter pay all expenses incurred by Escrow or by the Developer pursuant to



the Conversion Contract and return any excess funds to the Owner. Escrow will thereupon be released from any further duties or liability thereunder with respect to such funds and such Owner.

The Developer points out that a conversion from a co-op to a condominium is different from the more normal situation where a developer has constructed a new building and is offering units to the public for the first time. The lessee of a unit in the co-op may withdraw at any time prior to closing without any liability except to pay the expenses incurred to date. The payment of \$600 is a "Deposit". If the costs of the conversion exceed \$600, then the converting party must pay the excess to Escrow. If such costs are less than \$600, then Escrow will refund the unused deposit to the Owner.

The foregoing is only a summary of some of the key terms of the Escrow Agreement. It is incumbent upon an Owner who wishes to convert to read the executed Escrow Agreement with care.