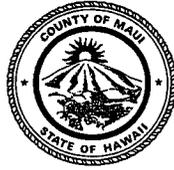


CHARMAINE TAVARES  
Mayor



BRIAN T. MOTO  
Corporation Counsel

**DEPARTMENT OF THE CORPORATION COUNSEL**  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
TELEPHONE: (808) 270-7740 FAX 270-7152

November 7, 2008

MEMO TO: Bill Kauakea Medeiros, Co-Chair  
Michael P. Victorino, Co-Chair  
Public Works and Facilities Committee

F R O M: David A. Galazin, Deputy Corporation Counsel **DAG**

SUBJECT: **WAILUKU COUNTRY ESTATES SUBDIVISION APPROVAL PROCESS**  
(PWF-84)

This memorandum is in response to your memorandum dated October 17, 2008. You have requested assistance regarding claims made by Daneford M. Wright, in a letter to the County Council dated September 29, 2008, that the County of Maui ("County") is in potential violation of Section 205-4.6, Hawaii Revised Statutes ("HRS"), for the County's approval of the Wailuku Country Estates Subdivision ("Subdivision").<sup>1</sup> This memorandum addresses the claims regarding HRS Section 205-4.6 solely as Mr. Wright has raised them, and we offer no opinion on any of the other allegations made by Mr. Wright or any other legal matters pertaining to the Subdivision.

**I. BACKGROUND**

According to information provided by the Department of Public Works ("Department"), the Department granted final approval to the Subdivision on December 27, 2002, after CGM, LLC ("Subdivider"), the applicant for the Subdivision, executed an "Agreement for Subdivision Approval" and a "Subdivision Bond" agreement (collectively, "Agreements").<sup>2</sup> Under the terms of the Agreements, if the Subdivider failed to complete all the subdivision improvements required by the Department by December 16, 2003, or

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<sup>1</sup> See Exhibit "A".

<sup>2</sup> See Exhibit "B".

Bill Kauakea Medeiros, Co-Chair  
Michael P. Victorino, Co-Chair  
Public Works and Facilities Committee  
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such extension as might be granted by the County, the County might complete the improvements and recover costs incurred from the bond and the Subdivider.

Since the execution of the Agreements, the Subdivider has not completed all of the improvements. The Department has granted the Subdivider an extension to complete the remaining improvements by December 31, 2008.

Mr. Wright's letter raised a number of allegations regarding the Subdivision, some of which are beyond the scope of this memorandum. Concerning HRS Section 205-4.6, Mr. Wright states, in relevant part:

By the County Of [sic] Maui's failure not to do their [sic] fiduciary duty and the developers [sic] failure not to meet all stipulations and requirements set forth in the bond and contractual documents, the County has nullified the final subdivision approval due to breach of contract and bond by the developers [sic] failure to meet the stipulations and requirements for final subdivision approval, [sic] It is now the counties [sic] lawful duty to implement and enforce HRS 205-4.6 or the county will be in violation of state law and can be fined 10,000.00 dollars or more if violation continues [sic]. . . By enforcing HRS 205-4.6 which is the law due to the breach of contractual stipulations and requirement agreements that the developer failed to do to obtain final subdivision approval [sic]. The County will then be in compliance with HRS 205-4.6 which was established and implemented from 06/2003, [sic]

In summary, Mr. Wright alleges that, because the Subdivider has not yet completed the Subdivision improvements, the Subdivision's final approval is now void under contract law, and, before the Department can grant final approval to the Subdivision again, the Department must ensure that there are no private restrictions limiting or prohibiting agricultural activities on any portion of the Subdivision classified as agricultural lands, pursuant to HRS Section 205-4.6.

**II. HRS SECTION 205-4.6 APPLIES ONLY TO LAND CONVEYANCES RECORDED AFTER JULY 8, 2003**

HRS Section 205-4.6 states, in its entirety:

**Private restrictions on agricultural uses and activities; not allowed.** Agricultural uses and activities as defined in sections 205-2(d) and 205-4.5(a)

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on lands classified as agricultural shall not be restricted by any private agreement contained in any deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances after July 8, 2003, that subject such agricultural lands to any servitude, including but not limited to covenants, easements, or equitable and reciprocal negative servitudes. Any such private restriction limiting or prohibiting agricultural use or activity shall be voidable, subject to special restrictions enacted by the county ordinance pursuant to section 46-4; except that restrictions taken to protect environmental or cultural resources, agricultural leases, utility easements, and access easements shall not be subject to this section.

For purposes of this section, "agricultural leases" means leases where the leased land is primarily utilized for purposes set forth in Section 205-4.5(a).

This statute was not yet enacted when the Department granted the Subdivision final approval in 2002. By its own terms, HRS Section 205-4.6 applies only to agreements and deeds recorded after July 8, 2003. The Declaration of Covenants, Conditions, and Restrictions pertaining to the Subdivision was recorded in the Bureau of Conveyances on February 27, 2003, and, therefore, is not subject to HRS Section 205-4.6.

**III. EVEN IF HRS SECTION 205-4.6 WERE APPLICABLE TO THE SUBDIVISION, HRS SECTION 205-4.6 PROVIDES THAT AGRICULTURAL RESTRICTIONS ARE VOIDABLE, NOT VOID**

Even assuming, for the sake of argument, that HRS Section 205-4.6 applied in this instance, the statute provides that an impermissible restriction on agricultural uses or activities is "voidable". Black's Law Dictionary (8<sup>th</sup> Edition, 2004) defines "voidable" as:

**voidable, adj.** Valid until annulled; esp., (of a contract) capable of being affirmed or rejected at the option of one of the parties. This term describes a valid act that may be voided rather than an invalid act that may be ratified.

HRS Section 205-4.6, if applicable to a lot in the Subdivision, would allow the lot owner to have such agricultural restrictions voided, but the statute would not automatically void those restrictions absent some legal action by a party with standing to assert such action.

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Michael P. Victorino, Co-Chair  
Public Works and Facilities Committee  
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**IV. THE DEPARTMENT'S SUBDIVISION APPROVAL PROCESS IS AN IMPLEMENTATION OF LOCAL LAW, AND NOT MERELY A CONTRACTUAL ARRANGEMENT**

Section 8-5.3, Revised Charter of the County of Maui (1983), as amended ("Charter"), reads, in part:

Powers, Duties, and Functions. The director of public works shall:

2. Approve proposed subdivision plans, which are in conformity with the subdivision ordinance.

Sections 18.20.190 and 18.20.200, Maui County Code ("MCC") read as follows:

**18.20.190 Final approval prior to completion of construction.** A subdivider may secure final approval prior to completion of construction by entering into an agreement with the county, signed by the director and the department of public works and/or board of water supply wherein the subdivider agrees to make, install and complete all required improvements within a specified time (not to exceed one year) and file with the county a surety bond or other security as specified in this chapter, to assure the county the actual construction and installation of the improvements shown on the approved construction drawings specifications. The director shall, after the execution and acceptance of the agreement and bond, grant approval of the final plat. The subdivider may then proceed to record the final plat and sell the lots or transfer any interest therein prior to completion of said improvements.

**18.20.200 Completion of construction--Agreement.**

A. The owner or owners of the subdivision shall submit an agreement to the director who shall refer the document to the county attorney for approval as to form and legality. The agreement shall specify that the subdivider shall complete all improvements and utilities to the satisfaction of the director of public works and/or the board of water supply, and shall provide that if the subdivider shall fail to so complete such work or any portion thereof within the time specified or such extension of time under specified conditions or for the termination of the agreement and upon a reversion of the

Bill Kauakea Medeiros, Co-Chair  
Michael P. Victorino, Co-Chair  
Public Works and Facilities Committee  
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subdivision or part thereof to its original acreage, the department of public works and/or the board of water supply may complete the same and recover the full cost and expense thereof from the subdivider.

B. This agreement shall allow partial acceptance of improvements and partial release of surety where the director is satisfied that the public interest is not prejudiced thereby.

Section 8-5.3(2) of the Charter states that the Director of Public Works ("Director") "*shall . . . approve*" (emphasis added) a subdivision that is in conformity with the subdivision ordinance (Title 18, MCC). MCC Section 18.20.190 likewise says that the Director "*shall . . . grant approval*" (emphasis added) of the final subdivision plat after the subdivision applicant executes an approved agreement and bond. The Subdivider executed the Agreements, which were approved as to form and legality by this office. Consequently, the Director approved the Subdivision pursuant to the Charter and Title 18, MCC.

Under MCC Section 18.20.200, and the terms of the Agreements, if the Subdivider fails to complete the required improvements within the time allotted, the County's recourse is to cause the improvements to be completed and recover the costs thereof from the bond and the Subdivider. MCC Section 18.20.200 does not provide for the revocation of final subdivision approval if a subdivider fails to complete required improvements. MCC Section 18.20.200(B) does allow the Director to approve partial acceptance of improvements and partial release of surety where the Director is satisfied that the public interest is not prejudiced thereby.

APPROVED FOR TRANSMITTAL:

  
BRIAN T. MOTO  
Corporation Counsel

S:\ALL\DAG\Council\Re D Wright PWF comments 11-7-08.wpd

cc: Milton M. Arakawa, Director of Public Works  
Ralph M. Nagamine, Development Services Administration

# *Daneford M. Wright*

*1970 Puaehala Rd.  
Wailuku, Hawaii 96793  
Phone (808) 385-7148  
Danefordwright@yahoo.com*

September 29, 2008

County Council of Maui  
250 South High Street  
Wailuku, Maui, Hawaii 96793

Dear Council Members,

This letter is to help inform the council of the issues at Wailuku Country Estates as well as the proper solutions according to law. The following will first be the issues: The County has a fiduciary duty to the home owners, which has been breached by releasing the 20,800,000.00 dollar bond. This bond was released according to a letter from public works on 10/25/04 and a bond for 1,250,000.00 was established for the retention basin off site. The stipulations and requirements set forth in the bond, contracts and other documentation in the files of Wailuku Country Estates required the County Of Maui to do their fiduciary responsibilities by cashing the bond and completing and dedicating the subdivision. Due to the developer's failure to complete the subdivision required by these contracts, bond and other documents by 12/16/03 and with the one year extension from public works, the County failed to do their fiduciary duty which caused the following problems.

1. No completion and dedication of subdivision.
2. Home owners paying developers cost due to the board members appointed by the developer, to maintain sewer lift stations, lighting, security, insurance on the roads, road side maintenance and other cost that the developer was to pay until final subdivision completion and the county was to enforce this.
3. Home owners are not able to have rights to vote out board due to no completion and dedication of subdivision because of the counties failure to comply with bond stipulations and requirements. The developer holds B class which still controls the board and have violated our rights.
4. Due to this failure by the County, we have a board that have been violating the Bylaws and changing many items in the CC&R's, which has caused hardship on owner's ability to farm and other problems.

By the County Of Maui's failure not to do their fiduciary duty and the developers failure not to meet all stipulations and requirements set forth in the bond and contractual documents, the County has nullified the final subdivision approval due to the breach of contract and bond by the developers failure to meet the stipulations and requirements for final subdivision approval, It is now the counties lawful duty to implement and enforce HRS 205-4.6 or the county will be in violation of state law and can be fined 10,000.00 dollars or more if violation continues.

Because the County is responsible to make sure we had adequate water for this subdivision to perform agriculture activities which is in compliance to HRS 205. The water company under the association will go over to the county to operate, maintain and provide the Wailuku Country Estates with adequate water at agriculture rate, with 95.00 dollars a month for 5,000 gallons per day and charge overage at agriculture rate for who goes over the allotment. This will provide the County with positive revenues to apply to your budget.  $187 \text{ lots} \times 95.00 = \$17,765.00$  which will help the board of water supplies budget, while the same crew that maintains our portable water can maintain the agriculture water system.

**EXHIBIT " A "**

Solutions are as follows: 1. By the county now accepting and dedicating the roads, park, sewer system, water systems and utilities also any other systems of electric lighting etc. with final subdivision approval. This will correct the counties fiduciary duties to the bond and contractual responsibilities. 2. By enforcing HRS 205-4.6 which is the law due to the breach of contractual stipulations and requirement agreements that the developer failed to do to obtain final subdivision approval. The County will then be in compliance with HRS 205-4.6 which was established and implemented from 06/2003, This will nullify the association and restrictive documents as stated in the section of HRS 205-4.6, and the County would correct the situation of the home owners with no fault to the County, because the developer did not meet his requirement to the County to obtain the pre final subdivision approval. This will give the County the legal grounds and no one from Wailuku Country Estates will be able to sue.

It is my hope that the County Council looks at this to correct the liability situation the County would be in, I believe that all the solutions I have suggested will be positive ones and would resolve all issues with Wailuku Country Estates home owners and the County can put this to rest without costing the tax payers.

I know the corporation council has a policy not to admit your wrong, but with what I am suggesting will work to the best interest for everyone. What I've suggested will allow the county to be without blame and would put the problem with the developer. I look for the best win win solution to every problem and this is the best and only solution for the County without going into a law suit.

Sincerely,

Mr. Daneford M. Wright

TMK No. (2) 3-3-002:001

LUCA File No. 3.1723

AGREEMENT FOR SUBDIVISION APPROVAL

THIS AGREEMENT, made and entered into this 27th day of  
December, 2002, by and between CGM LLC A HAWAII LIMITED LIABILITY COMPANY,  
whose residence address is SUITE 115, 270 WAIEHA BEACH ROAD,  
WAILUKU, HI 96793 and whose mailing address  
is P.O. BOX 1237 KAMUKA, HI 96743,  
hereinafter called the "Subdivider", and the COUNTY OF MAUI,  
through its DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT, and/or  
its DEPARTMENT OF WATER SUPPLY, hereinafter called the "County",

W I T N E S S E T H :

WHEREAS, the Subdivider has agreed to provide certain  
improvements for the subdivision of land identified in Land Use and  
Codes Administration File No. 3.1723 and  
incorporated herein by reference and made a part hereof and situate  
at Tax Map Key No. (2) 3-3-002:001, containing an area of  
approximately 455.498 Acres, (the "Property") and  
known as WAILUKU COUNTRY ESTATES,  
hereinafter sometimes called the "Subdivision", all in accordance  
with the rules, regulations, requirements and ordinances of the  
County of Maui on or before the 16th day of December,  
2003, or such extensions as may be granted by the County; and

**EXHIBIT " B "**

WHEREAS, the said improvements are more particularly designated on the approved construction plans of said subdivision, which construction plans are incorporated herein by reference and made a part hereof; and

WHEREAS, the Subdivider desires to receive final approval of said subdivision in accordance with the subdivision ordinance of the County of Maui by submitting a surety bond, certified check, or other approved security to guarantee the construction of said improvements;

NOW, THEREFORE, it is hereby agreed by the parties hereto:

1. That the Subdivider shall complete the above-mentioned improvements on or before the 16th day of December, 2003, in accordance with the above-mentioned Land Use and Codes Administration File No., construction plans and the rules, regulations, requirements and ordinances of the County of Maui and any other applicable law.

2. That the surety bond, certified check or other approved security in the amount of TWENTY MILLION  
EIGHT HUNDRED THOUSAND AND NO /100 DOLLARS  
(\$ 20,800,000.<sup>00</sup>), which accompanies this agreement is for the purpose of guaranteeing that the Subdivider shall construct the hereinabove-mentioned improvements.

3. That should the Subdivider fail to complete the work required at the time specified, or such extension as may be granted by the County, the County may cause all required work which is

unfinished to be completed and shall recover the full cost and expenses thereof from the parties executing the bond and the Subdivider, it being understood that in the event such cost and expense exceeds the amount of the bond or other approved security the Subdivider shall be liable for such amount beyond the limit of such bond or other security.

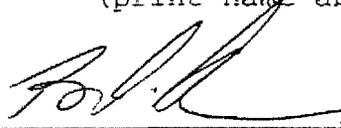
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

SUBDIVIDER:

CGM. LLC

(print name above)

By

  
name: BRIAN ANDERSON  
Its MANAGER

By \_\_\_\_\_

name:  
Its

By \_\_\_\_\_

name:  
Its

By \_\_\_\_\_

name:  
Its

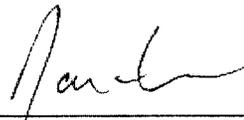
By \_\_\_\_\_

name:  
Its

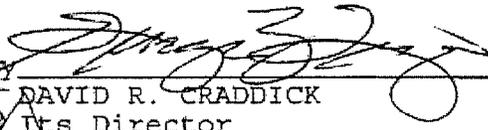
By \_\_\_\_\_  
name:  
Its

COUNTY OF MAUI:

DEPARTMENT OF PUBLIC WORKS AND WASTE  
MANAGEMENT

By  \_\_\_\_\_  
DAVID GOODE  
Its Director

DEPARTMENT OF WATER SUPPLY

By  \_\_\_\_\_  
DAVID R. CRADDICK  
Its Director

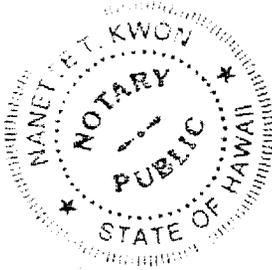
APPROVED AS TO FORM  
AND LEGALITY:

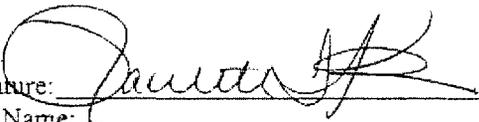
  
\_\_\_\_\_  
Gregory J. Gameau  
Deputy Corporation Counsel  
County of Maui  
A:\FORMS\Subdivapvrev.wpd (09/00)

STATE OF HAWAII )  
 )  
COUNTY OF MAUI )

SS:

On December 3, 2002, before me personally appeared BRIAN A. ANDERSON, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Signature:   
Print Name: \_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: **NANETTE T. KWON**  
**EXPIRATION DATE: AUGUST 1, 2003**

STATE OF HAWAII )  
 ) SS.  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument and acknowledged that \_\_\_\_\_ executed the same as \_\_\_\_\_ free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii.

My commission expires:\_\_\_\_\_

STATE OF HAWAII )  
 ) SS.  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii.

My commission expires:\_\_\_\_\_

STATE OF HAWAII )  
County of Maui ) SS.

On this 3rd day of December, 2003, before me personally appeared Brian A. Anderson and \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that they are the partners of \_\_\_\_\_, a general partnership organized under the laws of the State of \_\_\_\_\_ and said \_\_\_\_\_ acknowledged that they executed the foregoing instrument as their free act and deed as such general partners.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii.

My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
\_\_\_\_\_) SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that they are the \_\_\_\_\_ and \_\_\_\_\_, respectively, of \_\_\_\_\_, a \_\_\_\_\_ corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officers acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii.

My commission expires: \_\_\_\_\_

STATE OF HAWAII                    )  
                                          )  SS.  
COUNTY OF MAUI                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally appeared DAVID GOODE, to me personally known, who being by me duly sworn, did say that he is the Director of Public Works and Waste Management of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Title 18 of the Maui County Code, the Subdivision Ordinance, and the said DAVID GOODE acknowledged the said instrument to be the free act and deed of the said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii.

My commission expires:\_\_\_\_\_

STATE OF HAWAII                    )  
                                          )  SS.  
COUNTY OF MAUI                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me appeared DAVID R. CRADDICK, to me personally known, who being by me duly sworn did say that he is the Director of Water Supply of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed in behalf of said County of Maui pursuant to rules and regulations of the Department of Water Supply, and the said DAVID R. CRADDICK acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

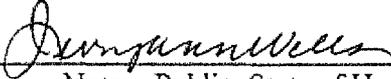
\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii.

My commission expires:\_\_\_\_\_

STATE OF HAWAII            )  
                                          )     SS.  
COUNTY OF MAUI            )

On this 27th day of December 2002, before me appeared GEORGE Y. TENGAN, to me personally known, who, being by me duly sworn, did say that he is the Deputy Director of the Department of Water Supply of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the County of Maui, and that the said instrument was signed and sealed in behalf of the said County of Maui pursuant to rules and regulations of the Department of Water Supply, and the said GEORGE Y. TENGAN acknowledged the said instrument to be the free act and deed of the said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public, State of Hawaii  
JERRY ANN WELLS  
My commission expires: 4/19/2006.

ls

TMK: (2) 3-3-002-001

LUCA File No. 3.1723

SUBDIVISION BOND

KNOW ALL MEN BY THESE PRESENTS:

That CGM LLC,

whose residence address/principal place of business is Suite 115, 270 Waiehu Beach Road, Wailuku, HI 96793

and whose post office address is Post Office Box 1237 Kamuela, HI 96743,

hereinafter called "Principal", and AMERICAN MOTORISTS INSURANCE COMPANY,

whose principal place of business is 475 Sansome Street, San Francisco, CA 94111 and whose post

office address is No Post Office Box

, hereinafter called "Surety",

are held and firmly bound unto the COUNTY OF MAUI and/or the DEPARTMENT OF WATER SUPPLY OF THE COUNTY OF MAUI, hereinafter collectively called the "Obligees", their successors and assigns, in the full and just sum of TWENTY MILLION EIGHT HUNDRED THOUSAND &

NO AND NO/100 DOLLARS (\$20,800,000.00), for

the payment of which to the said Obligees, their successors and assigns, well and truly to be made, we do hereby bind ourselves and our respective heirs, devisees, executors, administrators, personal representatives, assigns and/or successors, jointly and severally firmly by these presents.

Signed, sealed, delivered and dated this 20th day of November, 2002, at Wailuku.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the said principal, as Subdivider, has submitted for approval to the Director of Public Works and Waste Management of the County of Maui copies of a preliminary plat contained in LUCA File No. 3.1723 incorporated herein by reference and made a part hereof showing the subdivision of land situate at Tax Map Key No. (2) 3-3-002-001, containing an area of approximately 456 Acres, which property is more particularly described in LUCA File No. 3.1723 (the "Property") and known as Wailuku Country Estates hereinafter called the "Subdivision"; and

WHEREAS, the said preliminary plat has been approved by said Director of Public Works and Waste Management, and construction plans showing details of improvements proposed to be installed or constructed by the said principal within the said Subdivision have been submitted to and approved by the Obligees, which said construction plans are made a part of this bond the same as though set forth herein; and

WHEREAS, the above-named principal has entered into an agreement with the Obligees, dated the 27th day of December, 2002, to complete the aforementioned improvements within said Subdivision within the time therein specified, or such extension as may be mutually agreed upon; and, upon default, the Obligees may cause the same to be completed and recover the costs thereof from the principal, which said agreement is made a part of this bond the same as though set forth herein; and

WHEREAS, the said principal has applied to the said Obligees for final approval of the subdivision map for recordation;

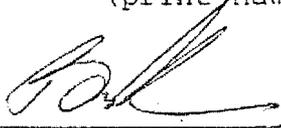
NOW, THEREFORE, if the above bounden principal shall fully and faithfully do and perform all of the things agreed by him to be done and performed according to the terms of said agreement and shall construct and install all of the improvements within said Subdivision in accordance with the said construction plans therefor on or before the 16th day of December, 20<sup>03</sup>, then upon final approval of all said improvements by the Obligees, this obligation shall be void; otherwise, it shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on this 27th day of December, 2002.

PRINCIPAL:

CGM LLC

(print name above)

By 

name: BRIAN ANDERSON  
Its MANAGER

By \_\_\_\_\_

name:  
Its

By \_\_\_\_\_

name:  
Its

SURETY:

AMERICAN MOTORISTS INSURANCE COMPANY

(print name above)

By Francis Wirt  
name: Francis Wirt  
Its Attorney-in-fact

By \_\_\_\_\_  
name:  
Its

By \_\_\_\_\_  
name:  
Its

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
Gregory J. Bameau  
Deputy Corporation Counsel  
County of Maui

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STATE OF HAWAII )  
County of Maui ) SS.

On this 30 day of November, 2002, before me personally appeared Brian A. Anderson, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
NOTARY PUBLIC, State of Hawaii.

My commission expires: ANGELA M. RODRIGUES  
Expiration Date: June 14, 2004

STATE OF HAWAII )  
 ) SS.  
 )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii.

My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
 ) SS.  
 )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
before me personally appeared \_\_\_\_\_ and \_\_\_\_\_  
to me personally known, who being by me  
duly sworn, did say that they are the partners of \_\_\_\_\_  
under the laws of the State of \_\_\_\_\_ and said \_\_\_\_\_  
acknowledged  
that they executed the foregoing instrument as their free act and  
deed as such general partners.

IN WITNESS WHEREOF, I have hereunto set my hand and  
official seal.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii.

My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
City & County of Honolulu ) SS.  
 )

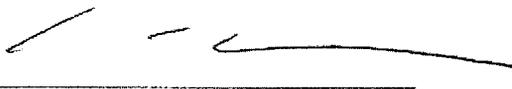
On this 2nd day of December, 2002, before  
me personally appeared Francis Wirt and ----  
to me personally known, who being by me duly  
sworn, did say that ~~they are~~ <sup>he is</sup> the Attorney-in-fact ~~xxxx~~  
-----, respectively, of AMERICAN MOTORISTS  
INSURANCE COMPANY, an Illinois corporation;  
that the seal affixed to the foregoing instrument is the corporate  
seal of said corporation, and that said instrument was signed and  
sealed on behalf of said corporation by authority of its Board of  
Directors, and the said officers acknowledged said instrument to be  
the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and  
official seal.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii.  
First Judicial Circuit, Arlene A. Tanaka  
My commission expires: 2/27/2004

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

On this 2nd day of December, 2002 before me appeared **Francis Wirt**, to me personally known, who, being by me duly sworn, did say that he is the Attorney-in-Fact of the **AMERICAN MOTORISTS INSURANCE COMPANY**, a corporation of the State of **Illinois**, duly appointed under Power of Attorney dated the 29<sup>th</sup> day of **November, 2001** which power of attorney is now in full force and effect; and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed on behalf of said corporation under the authority of its Board of Directors and said **Francis Wirt**, acknowledges said instrument to be the free act and deed of said corporation.



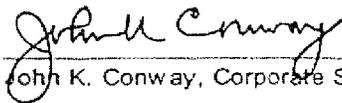
\_\_\_\_\_  
**Arlene A. Tanaka**  
Notary Public  
STATE OF HAWAII  
First Judicial Circuit  
My commission expires: 2/27/2004

L-J'

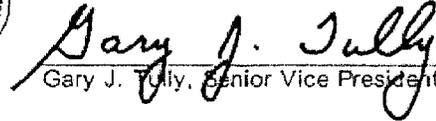
In Testimony Whereof, the Company has caused this instrument to be signed and their corporate seals to be affixed by their authorized officers, this November 29, 2001.

Attested and Certified:

Lumbermens Mutual Casualty Company  
American Motorists Insurance Company  
American Manufacturers Mutual Insurance Company

  
John K. Conway, Corporate Secretary

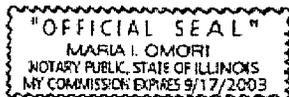


  
Gary J. Tully, Senior Vice President

STATE OF ILLINOIS SS

COUNTY OF LAKE SS

I, Maria I. Omori, a Notary Public, do hereby certify that Gary J. Tully and John K. Conway personally known to me to be the same persons whose names are respectively as Senior Vice President and Corporate Secretary of the Lumbermens Mutual Casualty Company, the American Motorists Insurance Company, and the American Manufacturers Mutual Insurance Company, Corporations organized and existing under the laws of the State of Illinois, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seals and delivered the said instrument as the free and voluntary act of said corporations and as their own free and voluntary acts for the uses and purposes therein set forth.





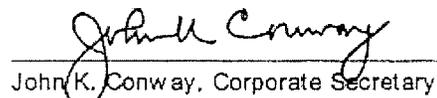
Maria I. Omori, Notary Public  
My commission expires 9-17-03

CERTIFICATION

I, J. K. Conway, Corporate Secretary of the Lumbermens Mutual Casualty Company, the American Motorists Insurance Company, and the American Manufacturers Mutual Insurance Company, do hereby certify that the attached Power of Attorney dated November 29, 2001 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said Gary J. Tully, who executed the Power of Attorney as Senior Vice President, was on the date of execution of the attached Power of Attorney the duly elected Senior Vice President of the Lumbermens Mutual Casualty Company, the American Motorists Insurance Company, and the American Manufacturers Mutual Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Lumbermens Mutual Casualty Company, the American Motorists Insurance Company, and the American Manufacturers Mutual Insurance Company on this 2nd day of December, 20 02.



  
John K. Conway, Corporate Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

Home Office: Long Grove, IL 60049

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