

Exhibit 10

This is a copy of Bureau of Conveyances
Document No. 2008-007224, and / or
Land Court Document No. _____,
affecting Certificate of Title No. _____,
recorded on 1-17-08 at 8:01 o'clock a.m.

TITLE GUARANTY OF HAWAII, INCORPORATED

LAND COURT SYSTEM

REGULAR SYSTEM

Return by: Mail () Pickup () To:

WALTON D. Y. HONG
ATTORNEY AT LAW
A Law Corporation
3135 AKAHI STREET, SUITE A
LIHUE, KAUAI, HAWAII 96766-1106

TITLE OF DOCUMENT:

MEMORANDUM OF ENFORCEMENT AND SETTLEMENT AGREEMENT

PARTIES TO DOCUMENT:

KLAUS H. BURMEISTER and ULRIKE H. BURMEISTER, Trustees of the
Burmeister Family Trust, Dated January 21, 1994
29 Chancellor Place
Berkeley, CA 94705

COUNTY OF KAUAI, a political subdivision of the State of Hawaii
4444 Rice Street, Suite A473
Lihue, HI 96766

PROPERTY DESCRIPTION

LIBER/PAGE

TAX KEY: (4th) 5-8-8-34

DOCUMENT NO.:
TRANSFER CERTIFICATE OF
TITLE NO(S):

MEMORANDUM OF ENFORCEMENT AND SETTLEMENT AGREEMENT

This Agreement, made and entered into as of this _____ day of August, 2007, by and between KLAUS H. BURMEISTER and ULRIKE H. BURMEISTER, Trustees of the Burmeister Family Trust, Dated January 21, 1994, whose mailing address is 29 Chancellor Place, Berkeley, CA 94705, herein called the "Owners", and the COUNTY OF KAUAI, a political subdivision of the State of Hawaii, whose mailing address is 4444 Rice Street, Suite A473, Lihue, HI 96766, by and through its PLANNING DIRECTOR, herein called the "County",

Witnesseth:

Whereas, the Owners are the owners of that certain parcel of land situated at Haena, Island and County of Kauai, State of Hawaii, known as Lot 21-A-1 of the Wainiha Hui Land, and more particularly identified as Kauai Tax Map Key: 5-8-8-34, herein called "Parcel 34"; and

Whereas, Parcel 34 contains four (4) single family residences, of which the residence on the northeastern corner of Parcel 34, herein called "Residence #4, is less than forty (40) feet from the shoreline; and

Whereas, the County is willing to permit Residence #4 to remain without reconfiguration or enlargement until such time

that the crest of the active beach berm fronting Residence #4 reaches any portion of Residence No. 4, thereafter requiring the said residence to be removed or relocated, but not to exceed a maximum of three residences to be then existing on Parcel 34. For the purposes of this Memorandum, the "crest of the active beach berm" shall mean the top of the slope of the beach as affected by natural erosion processes; and

Whereas, the Owners and the County entered into that certain Enforcement and Settlement Agreement of the same date herewith, setting forth, *inter alia*, the terms and conditions as to the removal or relocation of Residence #4 on Parcel 34, and wish to record a memorandum of the said Enforcement and Settlement Agreement in the Bureau of Conveyances to place the same as a restriction on Parcel 34,

Now, therefore, for and in consideration of the terms, covenants and conditions herein contained and on the part of the parties to be observed and performed, the parties hereto mutually agree as follows:

1. The parties acknowledge the entering into of that certain Enforcement and Settlement Agreement of the same date herewith by the parties hereto, and the terms and conditions thereof;

2. The said Enforcement and Settlement Agreement of same date herewith is incorporated by reference and made a part of this Memorandum of Enforcement and Settlement Agreement;

3. The terms and conditions of the said Enforcement and Settlement Agreement shall run with Parcel 34 and shall be binding upon and inure to the benefit of the parties, and their respective successors and assigns.

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

[Rest of page intentionally left blank.]

OWNERS:

Klaus H. Burmeister, Jr.
KLAUS H. BURMEISTER,
Trustee of the Burmeister
Family Trust, Dated
January 21, 1994

Ulrike H. Burmeister, Jr.
ULRIKE H. BURMEISTER,
Trustee of the Burmeister
Family Trust, Dated
January 21, 1994

COUNTY OF KAUAI

COUNTY OF KAUAI

By [Signature]
Its: Planning Director

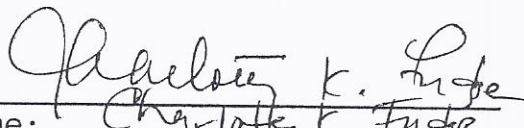
APPROVED AS TO FORM AND LEGALITY:

[Signature]
Deputy
County Attorney, County of Kauai

Memorandum of Enforcement and Settlement Agreement, Kauai
TMK: 5-8-8-034.

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this 14th day of August, 2007, before me appeared KLAUS H. BURMEISTER and ULRIKE H. BURMEISTER, to me personally known, who, being by me duly sworn, did say that they are the Trustees of the Burmeister Family Trust, Dated January 21, 1994, and that they executed the foregoing instrument and acknowledged that they executed the same as their free act and deed as said Trustees on behalf of the said trust.

6-5

Name: Charlotte E. Fudge
Notary Public, Fifth Judicial
Circuit, State of Hawaii

My Commission expires: 7.9.2011

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this _____ day of _____, 2007, before me appeared IAN A. COSTA, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the COUNTY OF KAUAI, a political subdivision of the State of Hawaii; that the foregoing instrument was signed in behalf of said County; and said IAN A. COSTA acknowledged the instrument to be the free act and deed of said COUNTY OF KAUAI.

Name: _____
Notary Public, Fifth Judicial
Circuit, State of Hawaii

My Commission expires:

STATE OF HAWAII)
) SS.
COUNTY OF KAUAI)

On this 11th day of JANUARY, 2008,
before me personally appeared **IAN K. COSTA**, to me personally
known, who, being by me duly sworn or affirmed, did say that he
is the Planning Director of the PLANNING DEPARTMENT OF THE
COUNTY OF KAUAI; and that said instrument was signed on behalf
of said PLANNING DEPARTMENT OF THE COUNTY OF KAUA'I, and said
IAN K. COSTA, acknowledged that he executed said instrument to
be the free act and deed of said PLANNING DEPARTMENT OF THE
COUNTY OF KAUAI. Said Department has no seal.

Notary Public, State of Hawaii



Allison A. Hiramaka

My commission expires: July 3, 2011

COPY

ENFORCEMENT AND SETTLEMENT AGREEMENT

This Agreement, made and entered into as of this JAN 07 2008
Pluf day of ~~August, 2007~~, by and between KLAUS H. BURMEISTER and
ULRIKE H. BURMEISTER, Trustees of the Burmeister Family Trust,
Dated January 21, 1994, whose mailing address is 29 Chancellor
Place, Berkeley, CA 94705, herein called the "Owners", and the
COUNTY OF KAUAI, a political subdivision of the State of
Hawaii, whose mailing address is 4444 Rice Street, Suite A473,
Lihue, HI 96766, by and through its PLANNING DIRECTOR, herein
called the "County",

Witnesseth:

Recitals:

1. The Owners are the owners of that certain parcel of
land situated at Haena, Island and County of Kauai, State of
Hawaii, known as Lot 21-A-1 of the Wainiha Hui Land, and more
particularly identified as Kauai Tax Map Key: 5-8-8-34, herein
called "Parcel 34";

2. Prior to the adoption of the Comprehensive Zoning
Ordinance ("CZO") by the County in 1972, the Owners'
predecessor in title constructed four single family residences
on the Parcel 34, which residences are identified on the survey

map attached hereto as Exhibit "A" and made a part hereof as "Residence #1" through "Residence #4", respectively.

3. The CZO allows for a total of three single family residences on Parcel 34;

4. Parcel 34 also contains a laundry building, which laundry building lacks the sideyard setback of five feet required under the CZO;

6. The four residences on the Parcel 34 were built prior to 1980 and used for transient vacation rental purposes since acquisition by the Owners;

7. An issue has arisen with respect to whether additions were made to Residences #1 through #3, with or without necessary permits, as noted in that certain Zoning Compliance Notice from the County Planning Department, dated June 24, 2004, and which can be cured by obtaining a zoning and building permit for the expansion of non-conforming structures which shall conform to the regulations for the district in which it is located.

8. On or about April 17, 2006, the Owners made application for zoning permits and building permits for Residences #1, #2 and #3, as well as requests for Special Management Area permits for the same and the wooden fence and

gate at the end of One One Road on Parcel 34 and on the abutting Parcel 39 (identified as Kauai Tax Map Key: 5-8-08-39) hereinafter mentioned.

9. Based on a survey of the crest of the beach berm fronting Parcel 34 as of August 13, 2007, as shown on the survey map by Wagner Engineering Services, Inc., being Exhibit "A" hereto, Residences #1, #2 and #3 are situated considerably more than 40' feet from the crest of the beach berm.

10. Residence #4 is within forty feet of the crest of the beach berm, and is deemed a non-conforming structure.

11. Another issue has arisen with respect to the replacement of a wooden fence and gate at the end of One One Road on Parcel 34 and Parcel 39 by the Owners without necessary permits, thereby blocking vehicular access to Parcel 34, as noted in that certain Notice of Violation from the County Planning Department, dated September November 10, 2004.

12. It is the intention of the parties and underlying purpose of this agreement that the Residence #4 is too close to the shoreline and shall be removed at such time the crest of the active beach berm reaches Residence #4, while respecting the non-conforming status of Residences #1, #2 and #3 and the ability to use Residence #4 to replace any of the other three

residences to maintain the three-unit density allowed under the law.

13. In view of the pending matters involving Parcel 34 aforesaid, the parties have reached a settlement to resolve all outstanding issues regarding Parcel 34 and Parcel 39, and wish to set forth their agreement by written instrument.

Terms of Agreement

For and in consideration of the terms, covenants and conditions herein contained on the part of the parties to be performed and observed, the parties do hereby mutually agree as follows:

1. The allowable density for Parcel 34 is three single family residences;

2. Zoning permits and Special Management Area permits shall be issued for Residences #1, #2 and #3 and for the fence/gate at the end of One One Road on Parcels 34 and 39 by the County simultaneously with the execution of this Agreement by the County, and the same shall thereafter be deemed in full compliance with County zoning requirements;

3. Residence #4 shall be permitted to remain in its present location until the crest of the active beach berm fronting Residence #4 reaches any portion of Residence #4, at

which time Residence #4 shall at the Owners' expense be removed or, as set forth hereinafter, relocated. Until Residence #4 is removed or relocated, it shall not be enlarged or reconfigured; however, ordinary maintenance and upkeep may be performed on Residence #4 until its removal or relocation. For the purposes of this Agreement, the "crest of the active beach berm" shall mean the top of the slope of the beach as affected by natural erosion processes;

4. If any one of Residences #1, #2 or #3 shall be destroyed, it shall not be replaced if Residence #4 is still existing in its present location. If any one of Residences #1, #2 or #3 shall be destroyed, Residence #4 can either (a) continue to remain in place without replacing the destroyed residence, or (b) be relocated or rebuilt on Parcel 34 to replace the destroyed residence, provided that it is sited in accordance with current County ordinances. If any one of Residences #1, #2 or #3 shall be destroyed, and Residence #4 is not remaining at that time, the destroyed residence can be rebuilt in accordance with current County ordinances;

5. The Owners shall also remove a section from the end of the existing laundry building on Parcel 34 so as to comply with the five (5) feet sideyard setback requirements of the

zoning ordinance;

6. Except as otherwise set forth herein, the Owners shall not be required to obtain any other permits from the County for all existing structures and improvements on the parcels;

7. Compliance with the foregoing requirements of the Owners as set forth herein shall cure any and all outstanding building or zoning violations at this time as to any and all structures currently existing on Parcel 34, as well as the fence on Parcel 39.

8. The agreements and covenants contained in this Agreement shall run with the land, and be binding upon and inure to the benefit of the parties hereto, and their respective heirs, personal representatives, legal representatives, successors and assigns;

9. Either party shall have the right to enforce the terms and conditions of this Agreement by action at law or in equity, including but not limited to specific performance and injunctive relief, as may be deemed appropriate and necessary;

10. In the event of any controversy, claim or dispute between the parties arising out of or relating to this Agreement, the prevailing party shall be able to collect from

the losing party, the prevailing party's reasonable expenses and costs, including without limitation the prevailing party's reasonable attorney's fees and costs.

11. Short Form Memorandum. This Agreement shall not be recorded in the Bureau of Conveyances. However, a memorandum of this Agreement shall be recorded in the Bureau of Conveyances of the State of Hawaii.

IT IS AGREED AND UNDERSTOOD that the term "Owners", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals, associations or corporations, and their respective successors, successors in trust, heirs, personal representatives and assigns, according to the text thereof.

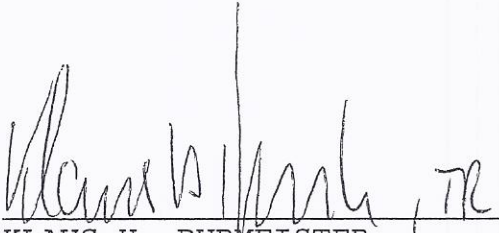
The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of


the counterparts may be discarded and the remaining pages assembled as one document.

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

[rest of page intentionally left blank.]

OWNERS:


KLAUS H. BURMEISTER,
Trustee of the Burmeister
Family Trust, Dated
January 21, 1994


ULRIKE H. BURMEISTER,
Trustee of the Burmeister
Family Trust, Dated
January 21, 1994

COUNTY OF KAUAI

COUNTY OF KAUAI

By _____
Its: _____

APPROVED AS TO FORM AND LEGALITY:

County Attorney, County of Kauai

Enforcement and Settlement Agreement, TMK: 5-8-08-34.

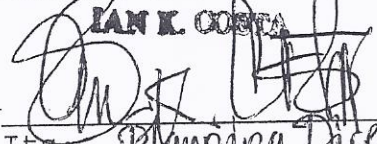
OWNERS:

KLAUS H. BURMEISTER,
Trustee of the Burmeister
Family Trust, Dated
January 21, 1994

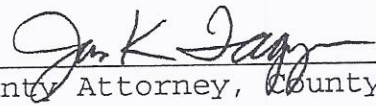
ULRIKE H. BURMEISTER,
Trustee of the Burmeister
Family Trust, Dated
January 21, 1994

COUNTY OF KAUAI

COUNTY OF KAUAI

By  **IAN K. COSTA**
Its. Planning Director

APPROVED AS TO FORM AND LEGALITY:

Deputy 
County Attorney, County of Kauai

Enforcement and Settlement Agreement, TMK: 5-8-08-34.

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this 14th day of August, 2007, before me appeared KLAUS H. BURMEISTER and ULRIKE H. BURMEISTER, to me personally known, who, being by me duly sworn, did say that they are the Trustees of the Burmeister Family Trust, Dated January 21, 1994, and that they executed the foregoing instrument and acknowledged that they executed the same as their free act and deed as said Trustees on behalf of the said trust.

Charlotte K. Fudge
Name: Charlotte K. Fudge
Notary Public, Fifth Judicial
Circuit, State of Hawaii

My Commission expires: 7-9-2011

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

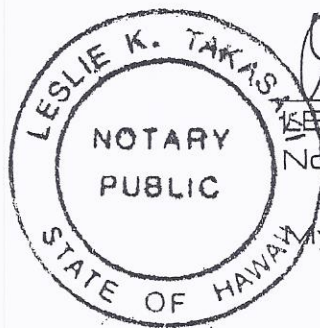
On this _____ day of _____, 2007, before me appeared IAN A. COSTA, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the COUNTY OF KAUAI, a political subdivision of the State of Hawaii; that the foregoing instrument was signed in behalf of said County; and said IAN A. COSTA acknowledged the instrument to be the free act and deed of said COUNTY OF KAUAI.

Name: _____
Notary Public, Fifth Judicial
Circuit, State of Hawaii

My Commission expires:

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this day of JAN 07 2008, before me appeared IAN K. COSTA, to me personally known, who being by me duly sworn, did say that he is the Planning Director of the PLANNING DEPARTMENT of the COUNTY OF KAUAI; and that said instrument was executed on behalf of the PLANNING DEPARTMENT; and that said IAN K. COSTA acknowledged that he executed the same as his free act and deed of the PLANNING DEPARTMENT of the COUNTY OF KAUAI. Said Department has no seal.



Leslie K. Takasaki

LESLIE K. TAKASAKI
Notary Public, State of Hawaii

My commission expires: 11-04-11

EXHIBIT A

