

## CONDOMINIUM PUBLIC REPORT

Prepared &  
Issued by:

Developer Schuler Homes, Inc.

Address 828 Fort Street Mall, 4th Floor, Honolulu, Hawaii 96813

Project Name(\*): Halelani Village at Puhi, Phase IB

Address: Hanalima Street adjacent to Puhi Road, Puhi, Lihue, Kauai, Hawaii 96766

Registration No. 3012

Effective date: June 17, 1994

Expiration date: July 17, 1995

### Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

### Type of Report:

       **PRELIMINARY:**  
(yellow)

The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.

  X   **FINAL:**  
(white)

The developer has legally created a condominium and has filed complete information with the Commission.

☐ No prior reports have been issued.

☒ This report supersedes all prior public reports.

☐ This report must be read together with \_\_\_\_\_

       **SUPPLEMENTARY:**  
(pink)

This report updates information contained in the:

☐ Preliminary Public Report dated: \_\_\_\_\_

☐ Final Public Report dated: \_\_\_\_\_

☐ Supplementary Public Report dated: \_\_\_\_\_

And ☐ Supersedes all prior public reports

☐ Must be read together with \_\_\_\_\_

☐ This report reactivates the \_\_\_\_\_  
public report(s) which expired on \_\_\_\_\_

(\*) Exactly as named in the Declaration  
FORM: RECO-30 286/986/189/1190/892

**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

☐ Required and attached to this report      ☒ Not Required - disclosures covered in this report.

**Summary of Changes from Earlier Public Reports:**

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

☐ No prior reports have been issued by the developer.

☒ Changes made are as follows:

1. As anticipated in the preliminary public report, the project land has been conveyed to the developer, and the developer is now the fee simple owner of the project land. A copy of the deed conveying the project land to the developer is on file with the Real Estate Commission.
2. As also anticipated in the preliminary public report, the boundaries of the project land have been adjusted by way of a consolidation and resubdivision with adjoining lands, resulting in a reduction in the land area of the project land to approximately 171,456 square feet. Since the boundary adjustment has been completed, various project documents (including the condominium declaration and the specimen apartment deed), have been revised to remove reference to the developer's right to effect such a boundary adjustment.
3. Certain parking stall assignments have changed (see Exhibit B to this public report). Specifically, the parking stalls for apartments Q101HC, Q102HC, Q103, Q104, Q201, Q202, Q203, Q204, R101, R102, R103, R104, R201, R202, R203, and R204 have been reassigned. Also, apartments Q101HC and Q102HC are now designated as handicap accessible apartments and apartments R101 and R102 are no longer designated as handicap accessible apartments.
4. Certain terms of the "Buy-Back" option in favor of the Kauai County Housing Agency ("KCHA") have changed. (See Exhibit L to this Public Report.) Specifically, the interest accruing on the purchaser's original cash investment equity in the apartment, for purposes of calculating the "Option Purchase Price", has been increased from 1% to 7% per annum. Also the form of the buy-back option has been revised to correspond with the terms of the applicable County ordinance.

**IMPORTANT NOTES:**

1. Halelani Village at Puhi, Phase IB is an affordable housing project. Prospective purchasers are advised and should be aware that there are certain eligibility and "buy-back" provisions applicable to apartments in the project. See pages 20-21 and Exhibits K and L of this public report for additional information.
2. Halelani Village at Puhi, Phase IB is intended to be the second phase of a five phase overall condominium development that ultimately may be "merged" for administrative purposes. See page 16 of this public report for additional information.

## TABLE OF CONTENTS

	<u>page</u>
Preparation of this Report .....	1
Expiration Date of Reports .....	1
Type of Report .....	1
Disclosure Abstract .....	2
Summary of Changes from Earlier Public Reports .....	2
Table of Contents .....	3
General Information on Condominiums .....	4
Operation of the Condominium Project .....	4
 I. PERSONS CONNECTED WITH THE PROJECT .....	 5
Developer .....	
Attorney for Developer .....	
General Contractor .....	
Real Estate Broker .....	
Escrow Company .....	
Condominium Managing Agent .....	
 II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS .....	 6
A. Declaration .....	6
B. Condominium Map (File Plan) .....	6
C. Bylaws .....	6
D. House Rules .....	7
E. Changes to Condominium Documents .....	7
 III. THE CONDOMINIUM PROJECT .....	 8
A. Interest to be Conveyed to Buyer .....	8
B. Underlying Land .....	9
C. Buildings and Other Improvements .....	10
D. Common Elements, Limited Common Elements, Common Interest .....	13
E. Encumbrances Against Title .....	14
F. Construction Warranties .....	15
G. Status of Construction .....	16
H. Project Phases .....	16
 IV. CONDOMINIUM MANAGEMENT .....	 17
A. Management of the Common Elements .....	17
B. Estimate of Initial Maintenance Fees .....	17
C. Utility Charges for Apartments .....	17
 V. MISCELLANEOUS .....	 18
A. Sales Documents Filed with the Real Estate Commission .....	18
B. Buyer's Right to Cancel Sales Contract .....	18
C. Additional Information Not Covered Above .....	20
D. Signature of Developer .....	22
 EXHIBIT A: Description of Buildings .....	
EXHIBIT B: Parking Stalls .....	
EXHIBIT C: Common Elements .....	
EXHIBIT D: Limited Common Elements .....	
EXHIBIT E: Common Interests .....	
EXHIBIT F: Encumbrances Against Title .....	
EXHIBIT G: Buildings and Common Elements Warranty .....	
EXHIBIT H: Estimated Initial Maintenance Fees/Maintenance Fee Disbursements .....	
EXHIBIT I: Summary of Sales Contract .....	
EXHIBIT J: Summary of Escrow Agreement .....	
EXHIBIT K: Owner-Occupant Affidavit and Housing Application .....	
EXHIBIT L: Deed Restrictions and Buy-Back Option .....	

## **General Information On Condominiums**

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. 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 or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owner/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

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

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged, or encumbered, and they may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

## **Operation of the Condominium Project**

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment 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 an apartment owner. The Board of Directors and officers can take certain actions without a vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely 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 buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

## I. PERSONS CONNECTED WITH THE PROJECT

Developer: Schuler Homes, Inc. Phone: (808) 521-5661  
Name (Business)  
828 Fort Street Mall, 4th Floor  
Business Address  
Honolulu, Hawaii 96813

Names of officers or general partners of developers who are corporations or partnerships:

James K. Schuler, President, Secretary, Treasurer  
Michael T. Jones, Executive Vice President  
Pamela S. Jones, Vice President of Finance  
Harvey L. Goth, Senior Vice President  
Thomas A. Bevilacqua, Assistant Secretary

Real Estate Broker: Prosser Realty, Inc. Phone: (808) 245-4711  
Name (Business)  
4379 Rice Street  
Business Address  
Lihue, Kauai, Hawaii 96766

Escrow: Security Title Corporation Phone: (808) 521-9511  
Name (Business)  
Suite 1200, Pacific Tower, 1001 Bishop Street  
Business Address  
Honolulu, Hawaii 96813

General Contractor: Bay Pacific, Inc. Phone: (808) 246-9477  
Name (Business)  
3501 Rice Street, #207  
Business Address  
Lihue, Kauai, Hawaii 96766

Condominium Managing Agent: Chaney Brooks & Company Phone: (808) 544-1600  
Name (Business)  
606 Coral Street, P.O. Box 212  
Business Address  
Honolulu, Hawaii 96813

Attorney for Developer: Case & Lynch Phone: (808) 547-5400  
(Dennis M. Lombardi/Scott D. Radovich)  
Name (Business)  
Grosvenor Center, Mauka Tower  
737 Bishop Street, Suite 2500/2600  
Business Address  
Honolulu, Hawaii 96813

## II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

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

The Declaration for this condominium is:

☐ Proposed  
☐ Recorded - Bureau of Conveyances Document No. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
☒ Filed - Land Court Document Number 2141413

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]:

- B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

☐ Proposed  
☐ Recorded - Bureau of Conveyances Condo Map No. \_\_\_\_\_  
☒ Filed - Land Court Condo Map No. 1024

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

- C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment 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 which affect how the condominium project will be governed.

The Bylaws for this condominium are:

☐ Proposed  
☐ Recorded - Bureau of Conveyances Document No. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
☒ Filed - Land Court Document No. 2141414

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

- D. **House Rules.** The Board of Directors may adopt 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.

The House Rules for this condominium are:

☐ Proposed                      ☒ Adopted                      ☐ Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents**

Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>	
Declaration (and Condo Map)	75%*	<u>75%</u>	o Certain provisions reserving rights to the Declarant can be amended only with the Declarant's consent
Bylaws	65%	<u>65%</u>	
House Rules	---	<u>Majority Vote of Board of Directors</u>	

\* The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

2. **Developer:**

☐ No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

☒ Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

- A. Prior to the conveyance of any apartment, the Developer may amend the condominium documents to reflect changes in the Condominium and the apartments and common and limited common elements as long as such changes do not materially diminish the value of any apartment or jeopardize a purchaser's loan commitment.
- B. Upon completion of the Project, the Developer may amend the Condominium Declaration to file the "as built" verified statement required by Section 514A-12 of the Condominium Property Act.
- C. The developer may amend the condominium documents to adopt an FHA Regulatory Agreement and/or to meet other requirements qualifying the Condominium for VA Home Loan Guarantee and/or FHA Home Loan programs.

### III. THE CONDOMINIUM PROJECT

#### A. Interest to be Conveyed to Buyer:

- ☒ Fee Simple: Individual apartments and the common elements, which includes the underlying land, will be in fee simple.
- ☐ Leasehold or Subleasehold: Individual apartments and the common elements, which includes the underlying land will be leasehold.

Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_

Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:     ☐ Monthly                      ☐ Quarterly  
                                 ☐ Semi-Annually           ☐ Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per ☐ Month ☐ Year.

#### For Subleaseholds:

- ☐ Buyer's sublease may be cancelled if the master lease between the sublessor and fee owner is:  
                         ☐ Canceled                      ☐ Foreclosed

- ☐ As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

- ☐ Individual Apartments in Fee Simple Common Interest in the Underlying Land in Leasehold or Subleasehold:

Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provisions.

Lease Term Expires: \_\_\_\_\_

Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:     ☐ Monthly                      ☐ Quarterly  
                                 ☐ Semi-Annually           ☐ Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per ☐ Month ☐ Year.



☐ Other:

### **IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

#### **B. Underlying Land:**

Address: Hanalima Road adjacent to Puhi Road Tax Map Key: (4) 3-3-003:portions 29, 30 and 31  
Puhi, Lihue, Kauai 96766 (TMK)

☒ Address ☒ TMK is expected to change because the Project has not yet been assigned a street address, and a separate Tax Map Key parcel number has not yet been assigned to the Project site.

Land Area: 171,455 ☒ square feet ☐ acre(s) Zoning: R-10

Fee Owner: Schuler Homes, Inc.  
Name  
828 Fort Street Mall, 4th Floor  
Address  
Honolulu, Hawaii 96813

Sublessor: \_\_\_\_\_  
Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_

C. **Buildings and Other Improvements:**

1. ☒ New Building(s) ☐ Conversion of Existing Building(s) ☐ Both New Building(s) and Conversion

2. Number of Buildings: 8 Floors Per Building two (2)

☒ Exhibit A contains further explanations.

3. **Principal Construction Material:**

☒ Concrete ☐ Hollow Tile ☒ Wood

☒ Other Glass and other building materials

4. **Permitted Uses by Zoning:**

	No. of Apts.	Use Determined By Zoning		No. of Apts.	Use Determined By Zoning
<input checked="" type="checkbox"/> Residential	<u>84</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Other: _____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?

☒ Yes ☐ No

5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

[ X ] Pets: Reasonable number of common household pets, such as, cats, aquarium fish and birds; but no livestock or poultry and no animals classified as "pests" or prohibited from importation under state statutes.

[ X ] Number of Occupants: No more than 2 persons per bedroom, not including infant children and otherwise only in accordance with any limitations imposed by state or municipal law or ordinance.

[ X ] Other: Apartments shall be used for residential purposes only; no "timesharing" permitted

[ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: <u>0</u>		Stairways: <u>0 interior; 21 exterior</u>		Trash Chutes: <u>0</u>
Apt. Type	Quantity	BR/Bath	Net Living Area(sf)*	Lanai/Patio(sf)
<u>A-1</u>	<u>16</u>	<u>2/1-1/2</u>	<u>750</u>	<u>93</u>
<u>B-1</u>	<u>44</u>	<u>2/2</u>	<u>750</u>	<u>50</u>
<u>D</u>	<u>24</u>	<u>2/1</u>	<u>651</u>	<u>85</u>
Total Apartments	<u>84</u>			

*\*Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.*

*Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.*

**Boundaries of Each Apartment:** The perimeter of each of the apartments is established by the floor area computed in accordance with Condominium Rule 16-107-6. This floor area is (i) the net living area of the enclosed portion of the apartment measured from the interior undecorated surface of the apartment perimeter walls, plus (ii) the lanai area. Each apartment includes: all walls, partitions, floors, ceilings and other improvements enclosed within its perimeter; the adjacent lanai shown on the Condominium Map; all air space within the perimeter and the floors and ceilings of the apartment; the interior decorated or finished surfaces of the perimeter walls, floors and ceilings; all appliances originally furnished with the apartment including a water heater and related piping which services the apartment (even if located outside of the perimeter); all pipes, plumbing, wires, conduits or other utility or service lines serving only the apartment; and all glass, windows and window frames, doors and door frames along the perimeter of the apartment. An apartment does not include any common elements within it.

**Permitted Alterations to Apartments:** Unless otherwise prohibited by the Condominium Declaration or the By-Laws or the Condominium Property Act, an Apartment Owner may make additions, alterations or improvements solely within his or her apartment or within a limited common elements appurtenant to his or her apartment at his or her sole cost and expense. No Owner of any apartment may make any alteration, additions, repairs or improvements to his or her apartment which may affect the common elements or change the exterior appearance of the buildings, or to any of the common elements except with the prior written permission of the Board, or in accordance with the Rules and Regulations, if applicable provisions are stated therein. No Owner shall do any work to his or her apartment which might jeopardize the soundness or safety of any part of the Project, reduce the value thereof or impair any easement or hereditament, nor may any Owner add any material structure or excavate any basement or cellar without the prior consent of seventy-five percent of the Owners including the consent of all Owners whose apartments or limited common elements appurtenant thereto are directly affected. The installation of solar energy devices as defined by Section 468B-1 of the Hawaii Revised Statutes or material additions to or alterations of an apartment made within such apartment or within a limited common element appurtenant to the apartment shall require approval only by the Board.

7. Parking Stalls:

Total Parking Stalls: 173

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>TOTAL</u>
Assigned (for each unit)	<u>          </u>	<u>116*</u>	<u>          </u>	<u>52</u>	<u>          </u>	<u>          </u>	<u>168</u>
Guest	<u>          </u>	<u>          </u>	<u>          </u>	<u>5</u>	<u>          </u>	<u>          </u>	<u>5</u>
Unassigned	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
Extra for Purchase	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
Other:	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
Total Covered & Open	<u>116</u>		<u>57</u>				

Each apartment will have the exclusive use of at least two (2) parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

\* Parking Stall Nos. 73HC and 75HC are handicap accessible stalls.

☐ Commercial parking garage permitted in condominium project.

☒ Exhibit B contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities.

☐ There are no recreational or common facilities.

☐ Swimming pool                      ☐ Storage Area                      ☐ Recreation Area

☐ Laundry Area                      ☐ Tennis Court                      ☐ Trash Chute

☒ Other: Trash receptacle areas (6)

9. Compliance With Building Code and Municipal Regulations; Cost to Cure Violations

☒ There are no violations.                      ☐ Violations will not be cured.

☐ Violations and cost to cure are listed below.                      ☐ Violations will be cured by \_\_\_\_\_

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations  
(For conversions of residential apartments in existence for at least five years):

(Not applicable)

11. Conformance to Present Zoning Code

a. ☒ No variances to zoning code have been granted.

☐ Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>X</u>	<u>                    </u>	<u>                    </u>
Structures	<u>X</u>	<u>                    </u>	<u>                    </u>
Lot	<u>X</u>	<u>                    </u>	<u>                    </u>

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

☒ described in Exhibit C.

☐ as follows:

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

☐ There are no limited common elements in this project.

☒ The limited common elements and the apartments which may use them, as described in the Declaration are:

☒ described in Exhibit D.

☐ as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

☒ described in Exhibit E.

☐ as follows:

- E. 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 an apartment in the project.

Exhibit F describes the encumbrances against the title contained in the title report dated May 4, 1994 and issued by First American Title Insurance Company.

### Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

[ X ] There are no blanket liens affecting title to the individual apartments. [See below]

[ ] There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. Buyer's interest will be affected only if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit If Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
The Developer may obtain a construction loan which would be secured by a blanket mortgage lien to which all contracts for the purchase of apartments will be subject and subordinate. The construction mortgage lien will contain provisions for the release of individual apartments upon conveyance.	The Buyer's contract will be subject to cancellation and the Buyer may not be able to purchase the apartment, but all deposits made by the Buyer will be refunded.

### **F. Construction Warranties:**

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

#### 1. Building and Other Improvements:

The Developer's sole warranty will be provided in the form attached to this Public Report at Exhibit G.

#### 2. Appliances:

The Developer makes no warranty as to appliances or other consumer products installed in any apartment or in the common elements. If there are any applicable manufacturer's or dealer's warranties relating to such appliances or other consumer products, the Developer will endeavor to assign and pass on to each apartment owner the benefit of such warranties.

**G. Status of Construction and Estimated Completion Date:**

Construction on the Project commenced on January 3, 1994. The estimated completion date of the Project is August 30, 1994.

**H. Project Phases:**

The developer ☒ has ☐ has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

This Project is the second phase of an overall project expected to consist of five (5) phases containing a total of 504 apartment units. The multi-family building types and apartment unit types in all of the phases contemplated are expected to be substantially the same, although the mix of building unit types may vary.

As each phase is developed, the Developer has reserved the right to merge it with previously developed phases in a manner that will allow all merged phases to share the common elements in all phases and to have a common, unified administration under one Association of Owners. Each merged phase will remain a legally separate and distinct condominium project.

The right to effect such "Administrative Merger" has been reserved to the Developer for a period of five (5) years from the date of the Declaration for this Phase IB. After that period, a merger of phases can only be accomplished with the consent and participation of the apartment owners.

The Developer is not required to follow the overall plan of development and merger, and does not represent or warrant that any such other condominium projects will be developed, or, if developed, will be merged with this Project. See paragraph 19 of the Condominium Declaration for details of any such merger, and for easement and other rights reserved to the Developer with respect to the construction, maintenance, operation and merger of such other condominium projects.



#### IV. CONDOMINIUM MANAGEMENT

- A. **Management of the Common Elements:** The Association of Apartment 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.

**Initial Condominium Managing Agent:** When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

☒ not affiliated with the Developer ☐ the Developer or the Developer's affiliate.  
☐ self-managed by the Association of Apartment Owners ☐ other \_\_\_\_\_

B. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, your apartment may be liened and 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 H contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

C. **Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

☐ None ☒ Electricity ☐ Gas ☒ Water  
(common areas only)  
☒ Sewer ☐ Television Cable ☒ Other Refuse collection

## V. MISCELLANEOUS

### A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

☒ [ X ] Notice to Owner Occupants

☒ [ X ] Specimen Sales Contract

Exhibit I contains a summary of the pertinent provisions of the sales contract.

☒ [ X ] Escrow Agreement dated July 6, 1992, amended to include this Project by letter dated November 19, 1993

Exhibit J contains a summary of the pertinent provisions of the escrow contract.

☐ [ ] Other \_\_\_\_\_

### B. Buyer's Right to Cancel Sales Contract:

#### 1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyers. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report, Supplementary Report to a Final Report: Sales made by the developer are binding if:

A) The Developer delivers to the buyer a copy of:

- 1) Either the Final Report OR the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission;  
AND
- 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;

B) The buyer is given an opportunity to read the report(s); AND

C) One of the following has occurred:

- 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
- 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
- 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited elements; or (2) the amenities available for buyer's use; AND
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime.
  - C) Bylaws of the Association of Apartment Owners.
  - D) House Rules.
  - E) Condominium Map.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other: Specimen Apartment Deed

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P.O. Box 541, Honolulu, Hawaii 96809, at a nominal cost.

This Public Report is a part of Registration No. 3012 filed with the Real Estate Commission on December 7, 1993.

Reproduction of Report. When reproduced, this report must be on:

☐ yellow paper stock ☒ white paper stock ☐ pink paper stock

C. Additional Information Not Covered Above

Halelani Village at Puhi, Phase IB is being developed and marketed in cooperation with the Kauai County Housing Agency ("KCHA"), an agency of the County of Kauai (the "County"), and is intended to make available affordable housing to prospective purchasers with incomes that do not exceed 120% of the median income (adjusted for family size) for the County of Kauai ("Affordable Income Purchasers"). As a result, apartments in the Project will be sold at prices below the market value of comparable housing units as determined by KCHA and the Developer, and the units will be made available only to persons who qualify as Affordable Income Purchasers. The prices of units will range from \$92,000.00 to \$122,000.00.

In addition, to be eligible to purchase an apartment in the Project, an applicant for purchase must:

1. Be a U.S. citizen or permanent resident alien;
2. Be a bona fide resident of the State of Hawaii;
3. Be at least 18 years of age;
4. Not own property anywhere that is suitable for dwelling unit purposes;
5. Not have previously purchased a dwelling unit from a County program; however, the County may, on an individual basis, allow a person who had previously purchased a dwelling unit to reapply, provided that the first dwelling was repurchased by the County pursuant to the provisions of the County's or the State's Restrictions on Sale or Transfer, and use (buyback);
6. Represent that the applicant intends to become an owner-occupant of the apartment and agree that the apartment will be occupied by the applicant and will not be rented;
7. Submit personal information, including income tax returns, by which KCHA will evaluate the applicant's eligibility to purchase; and
8. Together with any co-applicant and/or spouse must not have annual gross income exceeding the income limits listed below (buyers having an annual gross income under the income limits are also eligible):

<u>Family Size</u>	<u>80% of median income</u>	to	<u>120% of median income</u>
1	\$25,400		\$38,100
2	\$29,000		\$43,500
3	\$32,650		\$48,950
4	\$36,250		\$54,400
5	\$39,150		\$58,730

A complete description of the eligibility requirements and the required personal information, representations and agreements is specifically contained in an "Owner-Occupant Affidavit" form and a "Housing Application" form, both of which must be completed and executed by all prospective purchasers. Copies of these forms, together with an instruction sheet, are attached to this Public Report as Exhibit "K". PROSPECTIVE PURCHASERS SHOULD REVIEW THESE FORMS THOROUGHLY BEFORE APPLYING TO PURCHASE AN APARTMENT IN THE PROJECT.

Prospective purchasers should also be aware that because of the favorable pricing of apartments and in order to enforce the owner-occupant agreements of the purchaser, ***EACH DEED TO AN APARTMENT WILL CONTAIN RESTRICTIONS ON THE USE, OCCUPANCY AND TRANSFER OF THE APARTMENT AND A "BUY-BACK" OPTION IN FAVOR OF THE KCHA WHICH WILL REMAIN IN EFFECT FOR A PERIOD OF EITHER TEN YEARS OR ONE YEAR.*** In essence, the deed restrictions and option provide that during the period of time prescribed in the deed (either ten years or one year) if the purchaser wishes to sell the apartment, or if the purchaser leases or rents the apartment, or if the purchaser ceases to use the apartment as the purchaser's principal residence, the KCHA will have the option to "buy back" the apartment at a limited price equal to: (i) the original cost of the apartment to the Purchaser, plus (ii) the original cost of improvements to the apartment made by the purchaser, plus (iii) interest on the purchaser's original cash investment equity in the apartment calculated at the rate of seven percent (7%) per annum. The full text of the restrictions and option in favor of the KCHA is attached to this Public Report as Exhibit "L" and is also contained in the "Specimen Deed" on file with the Real Estate Commission. PROSPECTIVE PURCHASERS SHOULD REVIEW THOROUGHLY AND CONSIDER WITH CARE THE FULL TEXT, AND IMPLICATIONS OF THE RESTRICTIONS AND OPTION PROVISIONS SET FORTH IN EXHIBIT "L" AND THE SPECIMEN DEED.

To implement the marketing program, eligible applicants for purchase will be evaluated by the KCHA based on their income level and family size. In addition, the prescribed period of time during which the deed restrictions on use, occupancy and transfer and the buy-back option in favor of the KCHA will remain in effect and will differ for the 2 price range groups. The restriction and buy-back periods are as follows:

Apartment		
Price Range:	\$92,000 - \$98,000	\$109,000 - \$122,000
Restriction and		
Option Period:	10 years	1 year

Subject to availability, an eligible purchaser will be allowed to select and purchase an apartment in the price range group at the purchaser's choice. PROSPECTIVE PURCHASERS SHOULD BE AWARE THAT THERE ARE A CERTAIN NUMBER OF APARTMENTS IN EACH PRICE RANGE GROUP. WHEN ALL APARTMENTS IN A CERTAIN PRICE RANGE GROUP HAVE BEEN SOLD, NO FURTHER APARTMENTS WILL BE AVAILABLE IN THAT GROUP.

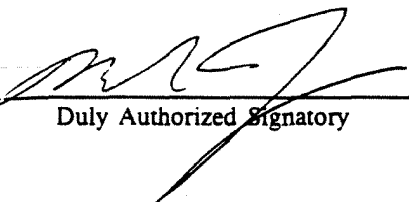
As set forth in Exhibit "K", PROSPECTIVE PURCHASERS SHOULD ALSO BE AWARE THAT AFTER ELIGIBILITY TO PURCHASE HAS BEEN DETERMINED, THE ORDER OF PRIORITY FOR SELECTING A UNIT TO PURCHASE WILL BE DETERMINED BY A LOTTERY. Prospective purchasers are not required to attend the lottery, and the results of the lottery will be mailed.

In addition, preference will be given to certain prospective purchasers, as follows:

1. Employees of Grove Farm Company, Inc. and its affiliated companies, as to 15% of the units;
2. Residents of the County of Kauai;
3. Larger families;
4. Persons displaced by County government action;
5. Handicapped persons, as to 5% of the units; and
6. Single parents or single heads of households, as to 5% of the units.

- D. 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 buyers 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.

Schuler Homes, Inc.  
Name of Developer

By:  April 27, 1994  
Duly Authorized Signatory Date

Michael T. Jones, Executive Vice President  
print name & title of person signing above

Distribution:

Department of Finance, County of Kauai  
Planning Department, County of Kauai  
Federal Housing Administration

## EXHIBIT "A"

### Description of Buildings

The Project shall contain eight wood-framed buildings (3 of which shall each contain eight apartments and 5 of which shall each contain twelve apartments). Each building shall have two stories or levels. None of the buildings shall have a basement. The buildings shall be constructed principally of concrete, wood, glass and related building materials.

There shall be four different building types in the Project, designated on the Condominium Map as Building Types 1, 3, 4, and 5. Each Building Type 1 shall contain eight apartments, all of which are Type A-1 apartments. Each Building Type 3 shall contain twelve apartments, all of which are Type B-1 apartments. Each Building Type 4 shall contain twelve apartments, all of which are Type D apartments. Building Type 5 shall contain eight apartments, all of which are Type B-1 apartments.

Each building is identified on the Condominium Map with a capital letter designation (for example, "M"). The following is a list of all of the Project's buildings by building type and letter designation:

<u>Building Type</u>	<u>Building(s)</u>
1	M, Q
3	S, T, U
4	N, P
5	R

**EXHIBIT "B"**  
**PARKING STALLS**

Each apartment shall have appurtenant to it the exclusive right to use the parking stall(s) designated below, located as shown on the Condominium Map.

APT. NO.	STAL L #1	STAL L #2	APT. NO.	STAL L #1	STALL #2	APT. NO.	STALL #1	STALL #2	APT. NO.	STALL #1	STALL #2
M101	6	7	M102	1	2	M103	11C	71C	M104	12	13
M201	8C	3	M202	4	5	M203	9C	70C	M204	72C	10C
N101	25	26	N102	22	58C	N103	21	59C	N104	18	65C
N105	64C	17	N106	14	68C	N201	27	24	N202	28	23
N203	20	60C	N204	61C	19	N205	16	67C	N206	15	66C
P101	44C	43	P102	45C	42	P103	35	53C	P104	38	33
P105	37	32	P106	57C	29	P201	41	46C	P202	40	52C
P203	36	47C	P204	39	34	P205	31	54C	P206	55C	30
Q101HC	74	75HC	Q102HC	73HC	123	Q103	121	122	Q104	115	111
Q201	113	114	Q202	119	120	Q203	117	118	Q204	116	112
R101	86	87	R102	83	84	R103	80	81	R104	78	79
R201	88	48C	R202	85	49C	R203	82	50C	R204	76	77
S101	141	142	S102	145	138	S103	136	143	S104	134	125
S105	127	132	S106	128	131	S201	140C	147	S202	146	139
S203	137	144	S204	135C	124	S205	126	133	S206	129	130C
T101	159	103C	T102	105C	158C	T103	155	106C	T104	161	154C
T105	109	151	T106	149C	148	T201	160	102C	T202	104C	157
T203	156	107C	T204	162C	153	T205	152	108	T206	110	150
U101	93C	172	U102	94C	171C	U103	170	95C	U104	96C	168
U105	165	98C	U106	163	101C	U201	173	89	U202	90	97C
U203	91	169	U204	167	92C	U205	99C	166C	U206	164	100C

**NOTES:**

1. A parking stall marked with a "C", as shown on the list above and on the Condominium Map, indicates a parking stall that is "compact" in size. A parking stall marked with a number only without additional letter designation as shown on the Condominium Map, indicates a parking stall that is "standard" in size. A parking stall marked with an "HC" indicates a parking stall that is oversized for the handicapped. The additional "C", and "HC" markings appearing on the list above and/or the Condominium Map are for informational purposes only and do not



constitute part of the legal identification of a parking stall, the sole means of legal identification being the numerical designation of the parking stall.

2. The Project contains 5 "guest" or "visitor" parking stalls numbered 51C, 56C, 62C, 63C and 69C as shown in the Condominium Map.
3. Those stalls designated as "visitor" or "guest" stalls will remain common elements. The other stalls may be transferred between Apartments in the manner provided for in the Condominium Declaration, as long as at least two stalls are appurtenant to each Apartment. The parking stalls initially assigned to an apartment will be stated in the Apartment Deed from the Developer.

## EXHIBIT "C"

### COMMON ELEMENTS

The common elements of the Project shall specifically include, but are not limited to, the following:

1. The land, in fee simple, described in Exhibit "A" attached to the Declaration of Condominium Property Regime, subject to the easements and restrictions described in said Exhibit "A".
2. All foundations, floor slabs, columns, girders, beams, supports, load-bearing walls, main walls, interior walls separating adjacent apartments in the same building (except the inner decorated surfaces of such walls), and roofs of the building all exterior stairs, stairways, landings, and railings (except lanai railings); and other building appurtenances, including but not limited to, the electrical cabinets and compartments for water heaters located on the exteriors of the buildings.
3. All yards, grounds, landscaping, fences, and refuse areas and facilities.
4. All sidewalks, pathways, parking areas, parking stalls (including five (5) "guest" or "visitor" parking stalls numbered 51C, 56C, 62C, 63C, and 69C on the Condominium Map) and the driveways and roads within the Project.
5. All ducts, electrical equipment, transformers, wiring and other central and appurtenant installations for power, light, water, sewer, cable television and telephone all pipes, plumbing, wires, conduits or other utility or service lines which are utilized by or serve more than one apartment, including any such lines which run through any apartment and central air conditioning and like utilities, if installed.
6. All the benefits, if any, inuring to the land or to the Project from all easements shown on the Condominium Map or listed in Exhibit "A" to the Condominium Declaration.
7. All other portions of the land and improvements that are not specifically designated for use by one or more specific apartments, but which are intended for common use, and all other devices and installations the use of which exists for, is rationally allocated to or is necessary to the existence, upkeep and safety of more than one apartment or the Project as a whole.

## EXHIBIT "D"

### LIMITED COMMON ELEMENTS

Certain apartments shall have appurtenant thereto easements for the exclusive use of certain limited common elements as follows:

1. Parking Stalls:

Each apartment shall have appurtenant to it, as a limited common element, the exclusive right to use such parking stall(s) as designated on Exhibit "B" to this Public Report.

2. Private Patio or Yard:

Each private patio or yard area is a limited common element appurtenant to the first floor apartment which such area adjoins as shown on the the Condominium Map.

3. Water Heaters:

Each compartment containing water heaters and located on the exterior of a multi-unit building is a limited common element appurtenant to the ground floor apartment and the second story apartments above them which are served by the water heaters contained in the compartment.

4. Concrete Pad:

The concrete pad outside the door of each ground floor apartment is a limited common element appurtenant to that apartment. Each stairway and second story landing providing access to a second story apartment is a limited common element appurtenant to that apartment; provided, that those stairways which lead to two second story apartment shall be limited common elements appurtenant to both of the apartments so served, but the second story landing directly adjacent is a limited common element appurtenant only to that apartment.

5. Mailboxes:

Each mailbox bearing the same designation as an apartment is a limited common element appurtenant to that apartment.

**EXHIBIT "E"**

**COMMON INTERESTS**

Type and Number of Apartments	Apartment Number	Undivided Common Interest of Each Apartment
A-1 (16)	M101, M102, M103, M104, M201, M202, M203, M204, Q101HC, Q102HC, Q103, Q104, Q201, Q202, Q203, Q204	.0123762 (1.23762%)
B-1 (43)	R101, R102, R103, R104, R201, R202, R203, R204, S101, S102, S103, S104, S105, S106, S201, S202, S203, S204, S205, S206, T101, T102, T103, T104, T105, T106, T201, T202, T203, T204, T205, T206, U101, U102, U103, U104, U105, U106, U201, U202, U203, U204, U205	.0123762 (1.23762%)
B-1 (1)	U206	.0123802 (1.23802%)
D (24)	N101, N102, N103, N104, N105, N106, N201, N202, N203, N204, N205, N206, P101, P102, P103, P104, P105, P106, P201, P202, P203, P204, P205, P206	.0107260 (1.07260%)

**EXHIBIT "F"**

**ENCUMBRANCES AGAINST TITLE**

1. For real property taxes that may be due and owing, reference is made to the Director of Finance, County of Kauai.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions as contained in:

**DECLARATION OF LAND USE COMMISSION CONDITIONS**

Dated: May 29, 1990  
Land Court Document No.: 1737704  
Regular System Document No.: 90-088395

4. **RIGHT-OF-ENTRY**

In Favor of: Citizens Utilities Company, a Delaware corporation  
Dated: May 18, 1990  
Land Court Document No.: 1765530  
Purpose: Right-of-Entry and easement for utility purposes

5. Reserving to the Grantor (Grove Farm Company, Incorporated, a Hawaii corporation), its successors and its specific assigns, nonexclusive perpetual easements and rights of way for access and for transmission facilities and appurtenances for landscaping, sewer, electrical power, gas, telephone, cable and television lines, water, drainage, flowage and other similar services over, across, under and through Easement 321 and Easement 322, including, without limiting the generally of the foregoing, the right to enter upon those premises or the foregoing Lots to construct, reconstruct, install, operate, maintain, repair and replace such streets, roads, lines, pipes, facilities, structures and appurtenances as may be necessary for the aforesaid purposes, and the right to grant any such easements or rights of way to governmental agencies or utility or service companies, these reserved rights to be exercised in a manner that will cause the least practicable interference with the use and occupancy of the premises by Grantee, its successors and assigns; provided, however, that the rights hereby reserved shall terminate automatically with respect to each roadway lot upon its conveyance to a governmental authority for use as a public road, with the exception of those rights reserved for sewer and similar utility services, which rights Grantor shall terminate only upon the conveyance or assignment of the same to the appropriate governmental agency, utility, or entity formed for the purpose of providing such services, who, upon such conveyance will return such rights, as reserved in:

**DEED**

Dated: December 22, 1992  
Document No. 1985475  
to which reference is hereby made

**NOTES:**

- a) By Land Court Order No. 110664, recorded on February 19, 1993, Easement 321 was deleted. Grove Farm Company, Incorporated, holder of certain rights and easements in Easement 321 pursuant to the reservations and covenants contain in the foregoing Deed, by Joinder herein and Schuler Homes, Inc. and Grove Farm Properties, Inc. approves and consents to same on the express condition that the rights, privileges and easements reserved by Grove Farm Company, Incorporated on, over and under Easement 321 under the terms of the Deed filed as Document No. 1985475 are hereby retained and reserved over and under Lot 1166, which Lot shall be substituted for Easement 321 and on the further documentation as it may be reasonably request to confirm the rights and easements retained by Grove Farm Company, Incorporated, in the substituted Lot and such other roadway lots created by the consolidation and resubdivided as may be reasonably required.
  - b) Easement 322 now affects Lot 1360, by Land Court Order No. 110664, recorded on February 19, 1993.
6. Reservation in favor of Grantor (Grove Farm Company, Incorporated, a Hawaii corporation), of an easement for the right of passage of surface water and drainage on and over the Lots, subject to a County approved drainage plan, which easement and right are herein specifically reserved in favor of Grantor, its successors and assigns, together with the right to enter on to the premises to construct, reconstruct, install, operate, maintain, repair and replace the improvements thereon located or required, as Grantor deems appropriate or advisable or as may be necessary for aforesaid purposes, together with the right to license or grant on a non-exclusive or exclusive basis said easements and rights to whomsoever Grantor determines appropriate, these reserved rights to be exercised in a manner that will cause the least practicable interference with the use and occupancy of the premises by Grantee, its successors and assigns., as reserved in:

**DEED**

Dated: December 22, 1992  
Document No. 1985475  
to which reference is hereby made

7. The premises may periodically be affected by various adverse conditions and hazards and by noise, dust, smoke, soot, ash, odor, other adverse environmental conditions (including but not limited to those attributable to winddrift and other weather factors) created by surrounding prospective, historical and existing agricultural, industrial, construction, and other non-residential uses and activities, which uses and activities are specifically acknowledged by Grantee and include specifically, but are not limited to, (a) cane milling, burning, harvesting and tending, fertilization and pest and weed control; (b) construction, grading improvement, and maintenance of adjacent and surrounding properties, including roadways; (c) irrigation of any and all surrounding lands and common areas, if any, with treated effluent; (d) the husbandry of livestock, including swine; and (e) use of certain lands at Halehaka, located in the Lihue/Puhi area, as a landfill., as reserved in:

**DEED**

Dated: December 22, 1992  
Document No. 1985475  
to which reference is hereby made

8. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions contained in:

**DEED**

Dated: April 4, 1994  
Land Court Document No.: 2138240

9. Easement 391, area 4,603 square feet, as shown on Map 112, as set forth by Land Court Order No. 116056, filed on March 29, 1994. Easement 393, area 32,707 square feet, as shown on Map 112, as set forth by Land Court Order No. 116056, filed on March 29, 1994.
10. Easement 393, area 32,707 square feet, as shown on Map 112, as set forth by Land Court Order No. 116056, filed on March 29, 1994.
11. Any rights that might exist by reason of the fact that a stream might pass through a portion of the land herein described.

12. The covenants, agreements, obligations, conditions, easements and other provisions contained in the following:

**DECLARATION OF CONDOMINIUM PROPERTY REGIME OF HALELANI VILLAGE AT PUHI, PHASE IB**

Dated: April 26, 1994  
Document No.: 2141413

Condominium Map No. 1024, to which reference is hereby made.

13. **BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF HALELANI VILLAGE AT PUHI, PHASE IB**

Dated: April 26, 1994  
Document No.: 2141414



**EXHIBIT "G"**

**Buildings and Common Elements Warranty**

[form attached]

Warranty of Construction

and Urban Development  
Office of Housing  
Federal Housing Commissioner

OMB Approval No. 2502-0058 (Rev. 3-77)



Builder's Name, Address & Phone No.

FHAVA Case Number:

Name(s) of Purchaser(s)/Owner(s)

Property Address:

For good and valuable consideration, and in accordance with Section 801 of the Housing Act of 1954, and Public Law 85-857 (38 U.S.C. 3702), the undersigned Warrantor hereby warrants to the Purchaser(s) or Owner(s) identified in the caption hereof, and to his/her successors or transferees, that:

The dwelling located on the property identified in the caption hereof is constructed in substantial conformity with the plans and specifications (including any amendments thereof, or changes and variations therein) which have been approved in writing by the Federal Housing Commissioner or the Secretary of Veterans Affairs on which the Federal Housing Commissioner or the Secretary of Veterans Affairs based the valuation of the dwelling. Provided, however, That this warranty shall apply only to such instances of substantial nonconformity as to which the Purchaser(s)/Owner(s) or his/her (their) successors or transferees shall have given written notice to the Warrantor at any time or times within one year from the date of original conveyance of title to such Purchaser(s)/Owner(s) or the date of initial occupancy, whichever first occurs. Provided further, however, That in the event

(1) the Purchaser(s)/Owner(s) acquired title to the captioned property prior to the completion of construction of the dwelling thereon, such notice of nonconformity to the Warrantor may be given any time within one year from the date of completion or initial occupancy of such dwelling, whichever first occurs, or (2) where it has been necessary to postpone improvements such notice of nonconformity to the Warrantor as to such incomplete items may be given at any time within one year from the date of full completion of each of such items.

The term "dwelling" as used herein shall be deemed to include: improvements or appurtenances set forth in the plans and specifications upon which the Federal Housing Commissioner or the Secretary of Veterans Affairs has based the valuation of the property, except: those constructed by a municipality or other government authority.

The undersigned Warrantor further warrants to the Purchaser(s)/Owner(s) or his/her (their) successors or transferees, the property against defects in equipment, material, or workmanship and materials supplied or performed by the Warrantor or any subcontractor or supplier at a user resulting in noncompliance with standards of quality as measured by acceptable trade practices. This warranty shall continue for a period of one year from the date of original conveyance of title to such Purchaser(s) or from the date of full completion of each of any items completed after conveyance of title. The Warrantor shall remedy, at the Warrantor's expense, any defect(s) of equipment, material, or workmanship furnished by the Warrantor. Warrantor shall restore any work damaged in fulfilling the terms and conditions of this warranty.

If a manufactured (mobile) home was erected on this property, the Warrantor further warrants that (1) the property (other than the manufactured unit itself) complies with the submitted construction exhibits; (2) the manufactured home sustained no hidden damage during transportation and erection; and (3) if the home was manufactured in separate sections, the sections were properly joined and sealed.

Manufacturer's Name, Address & Phone No:

This warranty shall be in addition to, and not in derogation of, all other rights and privileges which such Purchaser(s)/Owner(s) or his/her (their) successors or transferees may have under any other law or instrument, and shall survive the conveyance of title, delivery of possession of the property, or other final settlement made by the Purchaser(s)/Owner(s), and shall be binding on the Warrantor notwithstanding any provision to the contrary contained in the contract of purchase or other writing executed by the Purchaser(s)/Owner(s) or his/her (their) successors or transferees heretofore or contemporaneously with the execution of this agreement or prior to final settlement.

This warranty is executed for the purpose of inducing the Federal Housing Commissioner or the Secretary of Veterans Affairs to make a guarantee or to insure a mortgage on the captioned property, and the person signing for the Warrantor represents and certifies that he/she is authorized to execute the same by the warrantor and by his/her signature the Warrantor is duly bound under the terms and conditions of warranty. The FHA Commissioner or the Secretary of Veterans Affairs reserves the right to make a final determination as to whether a defect exists and whether the builder must remedy the defect.

Warrantor's Title, Signature & Date:

Purchaser(s)' acknowledgement:

Signature(s) of Purchaser(s) & Date:

X

X

Builder's Name, Address & Phone No.

X

Purchaser Note: Any notice of nonconformity must be delivered to the warrantor within the period or periods set forth above.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729)

**EXHIBIT "H"**  
**ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS  
HALELANI VILLAGE AT PUHI - PHASE I-B**

**Estimate of Initial Maintenance Fees:**

<b><u>Apartment</u></b>	<b><u>Monthly x 12 months = Yearly Total</u></b>	
<b>A-1, B-1</b>	<b>\$188.91</b>	<b>\$2,266.92</b>
<b>D</b>	<b>\$163.01</b>	<b>\$1,956.12</b>

---

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

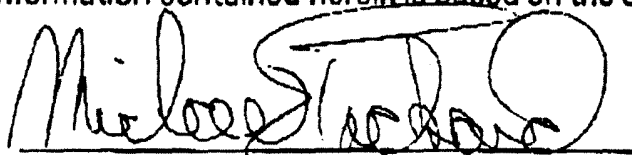
EXHIBIT A

HALELANI VILLAGE AT PUHI, PHASE 1B  
84 UNITS

ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS:

	<u>Monthly</u> x 12 months	=	<u>Yearly</u> Total
<b>Utilities and Services</b>			
Electricity			
(Common Elements Only)	\$ 350.00		\$ 4,200.00
Refuse Collection	840.00		10,080.00
Water/Sewer	3,825.00		45,900.00
<b>Maintenance, Repairs &amp; Supplies</b>			
Buildings	500.00		6,000.00
Grounds	1,900.00		22,800.00
<b>Management</b>			
Management Fee	1,570.00		18,840.00
Payroll and Payroll Tax	1,226.00		14,712.00
Office Expenses	115.00		1,380.00
Insurance	2,359.00		28,302.00
Reserves	2,265.00		27,180.00
Audit and Tax Preparation	150.00		1,800.00
<b>Taxes and Government Assessments</b>			
	35.00		420.00
<b>Other</b>			
	100.00		1,200.00
<b>Total</b>	<b>\$15,235.00</b>		<b>\$182,820.00</b>

We, Chaney, Brooks & Company, as Managing Agents for the condominium project, hereby certify that the above estimates of initial maintenance fee assessments and the monthly cash operating costs were prepared in accordance with generally accepted accounting principals. The information contained herein is based on the data available to us at this time.



Michael E. Packard, CPM®, PCAM®  
Executive Vice President/Chief Operating Officer

Date

4/28/94

**EXHIBIT "I"**  
**SUMMARY OF SALES CONTRACT**

The Deposit Receipt, Reservation and Sales Agreement (the "Sales Contract") contains the price and other terms and conditions under which a purchaser will agree to buy an apartment in the Project. Among other things, the Sales Contract states:

- (a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of an apartment.
- (b) The purchaser acknowledges having received and read a public report (either preliminary or final) for the Project prior to signing the Sales Contract.
- (c) That the Developer makes no representations concerning rental of an apartment, income or profit from an apartment, or any other economic benefit to be derived from the purchase of an apartment.
- (d) That the Sales Contract may be subordinate to the lien of a construction lender.
- (e) That the purchaser's money will be held in escrow, under the terms of the Escrow Agreement.
- (f) Requirements relating to the purchaser's financing of the purchase of an apartment.
- (g) That the apartment and the Project will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.
- (h) That, except to the extent of a limited warranty in the form attached as Exhibit "G" to this Public Report, the Developer makes no warranties regarding the apartment, the Project or anything installed or contained in the apartment or the Project.
- (i) That the Project will be subject to ongoing construction and sales activities which may result in certain annoyances to the purchaser.
- (j) That the purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
- (k) That the Developer has reserved certain rights and powers relating to the Project and the purchaser acknowledges and consents to the exercise of such rights and powers.
- (l) That except under certain circumstances, as set forth in the Sales Contract, all interest on deposits toward the purchase price shall be the property of the Developer.

The Sales Contract contains various other important provisions relating to the purchase of an apartment in the Project. Purchasers and prospective purchasers should carefully read the specimen Sales Contract on file with the Real Estate Commission.

**EXHIBIT "I"**

**Page 2 of 2**

## EXHIBIT "J"

### SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement sets up an arrangement under which the deposits a purchaser makes pursuant to a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

- (a) Escrow will let the purchaser know when payments are due.
- (b) Escrow will arrange for the purchaser to sign all necessary documents.
- (c) Except under certain circumstances as set forth in the Sales Contract, all deposits toward the purchase price shall be the property of the Developer.
- (d) The purchaser will be entitled to a refund of his or her funds only under certain circumstances as set forth in the Sales Contract.

The Escrow Agreement also establishes the procedures for the retention and disbursement of a purchaser's funds and says what will happen to the funds upon a default under the Sales Contract. The Escrow Agreement contains various other important provisions and establishes certain charges with which a purchaser should be familiar. Purchasers and prospective purchasers should carefully read the signed Escrow Agreement on file with the Real Estate Commission.

Exhibit "K"

**HALELANI VILLAGE AT PUHI, PHASE IB**  
**a fee simple condominium project**

**FOR DEVELOPER'S USE (chronological system):**

COMPLETED AFFIDAVIT SUBMITTED DATE : \_\_\_\_\_  
TIME : \_\_\_\_\_  
EARNEST MONEY DEPOSIT SUBMITTED DATE : \_\_\_\_\_  
TIME : \_\_\_\_\_  
RESERVATION # : \_\_\_\_\_  
APARTMENT # : \_\_\_\_\_  
CONDOMINIUM MAP # : \_\_\_\_\_  
DECLARATION OF CONDOMINIUM PROPERTY  
REGIME RECORDED AS DOCUMENT # : \_\_\_\_\_

**NOTICE TO ALL PERSONS SIGNING THE AFFIDAVIT**

This Affidavit is being provided to you pursuant to Part VI of the Condominium Property Act (Chapter 514A of the Hawaii Revised Statutes). Part VI is referred to as the "Owner-Occupant Law" in this Affidavit, and various Sections of Part VI are referenced in this Affidavit. This Affidavit is a legal document that contains promises which are binding on you. If these promises are broken you could be subject to various penalties that are described in the Owner-Occupant Law and in this Affidavit. Therefore, it is strongly recommended that you seek the advice of an attorney or the Developer's representatives if you do not understand anything contained in the Affidavit, or have questions about anything contained in the Affidavit, or do not understand the references to the Owner-Occupant Law or other provisions of the Condominium Property Act which are contained in this Affidavit.

SPECIMEN



**AFFIDAVIT OF INTENT TO PURCHASE AND RESIDE IN AN OWNER-OCCUPANT  
DESIGNATED CONDOMINIUM RESIDENTIAL UNIT**

We, the undersigned "owner-occupants," on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, do hereby declare that it is our intention to purchase and reside in a condominium residential unit designated for an "owner-occupant" in the Halelani Village at Puhi, Phase 1B condominium project ("Project") proposed by Schuler Homes, Inc. ("Developer").

We understand, affirm, represent and agree by signing this Affidavit that:

1. It is our intent to reserve and purchase an owner-occupant designated residential unit ("designated unit") pursuant to section 514A-103 of the Owner-Occupant Law, and upon closing escrow, to reside in the designated unit as our principal residence for 365 consecutive days.

2. The term "owner-occupant" as used herein is defined in section 514A-101 of the Owner-Occupant Law as:

"...any individual in whose name sole or joint legal title is held in a residential unit which, simultaneous to such ownership, serves as the individual's principal residence, as defined by the state department of taxation, for a period of not less than three hundred and sixty-five consecutive days, provided that the individual retains complete possessory control of the premises of the residential unit during this period. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases or assigns the premises for any period of time to any other person in whose name legal title is not held." (Emphasis added).

3. We understand that if two or more prospective owner-occupants intend to reside jointly in the same designated unit, only one owner-occupant's name shall be placed on the reservation list for either the chronological system or the lottery system.

4. Should we require financing from a financial institution to purchase the designated unit, the financing shall be an owner-occupant mortgage loan. The financial institution is required to take all reasonable steps necessary to determine whether the borrower intends to become an owner-occupant.

5. At any time after obtaining adequate financing or a commitment for adequate financing up until the expiration of this Affidavit (365 days after recordation of the instrument conveying the designated unit to us), we shall notify the Real Estate Commission immediately upon any decision to cease being an owner-occupant of the designated unit.

6. At closing of escrow, we shall file a claim for and secure an owner-occupant property tax exemption with the appropriate county office for the designated unit.

7. We have personally executed this Affidavit and we are all of the prospective owner-occupants for the designated unit. This Affidavit shall not be executed by an attorney-in-fact.

8. This Affidavit shall be reaffirmed by us no earlier than our receipt for the Project's Final Public Report and no later than the closing of escrow for the unit. The developer shall cancel our sales contract or reservation if we fail to make the reaffirmation. If the sales contract has become binding

1) _____	_____	_____
Purchaser's signature	Print Name	date
2) _____	_____	_____
Purchaser's signature	Print Name	date
3) _____	_____	_____
Purchaser's signature	Print Name	date

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me personally  
appeared \_\_\_\_\_ and \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_ to me known to be the person(s)  
described in and who executed the foregoing instrument and acknowledged that they executed the same  
as their free act and deed as owner-occupants.

\_\_\_\_\_  
Notary Public, State of Hawaii

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

**REAFFIRMATION**  
(Leave Section Blank Until After Receipt for the Final Public Report)

We represent and affirm that we have received the Final Public Report for the condominium  
project identified on page one of the attached Affidavit.

By signing this Reaffirmation we represent, warrant and confirm that we have read, understand,  
agree to and reaffirm all the statements set forth in the attached Affidavit. We reaffirm that we are and  
will be the owner-occupants of the designated unit, and that the designated unit will be our principal  
residence for 365 consecutive days after recordation of the instrument conveying the designated unit to  
us.

**REAFFIRMATION OF OWNER-OCCUPANTS:**

- |                                   |                     |               |
|-----------------------------------|---------------------|---------------|
| 1) _____<br>Purchaser's signature | _____<br>Print Name | _____<br>date |
| 2) _____<br>Purchaser's signature | _____<br>Print Name | _____<br>date |
| 3) _____<br>Purchaser's signature | _____<br>Print Name | _____<br>date |

STATE OF HAWAII

)

) SS.

COUNTY OF \_\_\_\_\_

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me personally  
appeared \_\_\_\_\_ and \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_ to me known to be the person(s)  
described in and who executed the foregoing instrument and acknowledged that they executed the same  
as their free act and deed as owner-occupants.

\_\_\_\_\_  
Notary Public, State of Hawaii

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

**EXHIBIT "L"**

**DEED RESTRICTIONS AND BUY-BACK OPTION**  
**(from Specimen Apartment Deed)**

**ONE YEAR**  
**RESTRICTIONS ON SALE OR TRANSFER, AND USE**  
**Section 2-1.16, Kauai County Code 1987**

**Real Property; General Provisions of Restrictions on Sale or Transfer, and Use.**

(1) **Title and Purpose.** The County shall implement an anti-speculative buy-back provision that shall be known as the "Restrictions on Sale or Transfer, and Use." These restrictions shall apply to the sale or transfer of any real property and apply to the use of any real property acquired, financed, developed, constructed, or sold pursuant to this Section and which are sold on the condition that the purchaser accepts the restrictions on the sale or transfer, and use in the real property purchased.

(2) **Relevance to State Law.** The restrictions on sale or transfer, and use imposed by the County are in a form substantially equivalent to the provisions of Sections 201E-221, 222, and 223, Hawaii Revised Statutes. These restrictions on sale or transfer, and use clarify the intent of its various provisions and impose provisions that are more stringent.

(3) **Severalty.** If any part of this Subsection is declared by the Count to be invalid, the sale shall not affect the validity of the Subsection as a whole, or any part thereof other than the part so declared invalid.

(4) **Duration of Restrictions.** Where the restrictions on sale or transfer, and use of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date of original purchase without the mutual consent of the purchaser and the KCHA. The subsequent sale of any real property repurchased by the County pursuant to Subsection (g), shall incorporate the restrictions on sale or transfer, and use and shall apply for the same period of time as an original purchase.

(5) **Modification of Restrictions.** No real property purchaser shall be entitled to modify the restrictions on sale or transfer, and use of the real property, without the written permission of the holder of a duly-recorded first mortgage on the real property and the owner of the fee simple or leasehold interest in the land, unless the holder of the first mortgage or the owner is the County.

(6) **Uniformity of Restrictions.** Restrictions on sale or transfer, and use of real property shall be made as uniform as possible in application to purchasers of all real property, and restrictions shall be conformed with agreement of the purchaser to reflect change or repeal made by any subsequent ordinance, rule or regulation. Real property purchasers shall be permitted at their election to sell or transfer real property subject to restrictions in effect at the time of their sale or transfer.

(7) Public Notice of Amendment to Restrictions. The KCHA shall notify purchasers of any substantial change in restrictions made by ordinance, rule or regulation not more than one hundred eighty days after a change in restrictions, and such notice shall clearly state the enacted or proposed new provisions, the date or dates upon which they are to be effective, and offer to each purchaser of real property sold prior to such effective date an opportunity to modify the existing contract or other instrument to incorporate the most recent provisions. The notice shall be published at least three times in a newspaper of general circulation in the County newspaper.

**(8) Waiver to Comply to Federal Law Or Regulation. The KCHA shall be authorized to waive any of the restrictions on sale or transfer, and use in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants. For the purposes of these restrictions, the United States Department of Housing and Urban Development shall be defined as and considered a mortgage holder.**

**[(8)] (9)** Application of Restrictions. The provisions of this Subsection shall be incorporated in any deed, lease, instrument, rule, or regulation relating to restrictions on use, sale or transfer of real property purchased from the County through its KCHA.

**(g) Real Property; Restrictions on Sale or Transfer, Waiver of Restrictions.**

(1) Restrictions on Sale or Transfer. The following restrictions shall apply to the sale or transfer of any real property purchased through the KCHA from the County whether on fee simple or leasehold property.

(A) For a period of one year after the purchase of a dwelling unit, during the five-year construction period after the purchase of a vacant lot, and for a period of one year from the occupancy of a dwelling unit constructed by or for the purchaser on the purchase of a vacant lot, whether original or subsequent, and whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to sell or to transfer title to the real property or the lease, the County shall have the first option to purchase the real property or lease at a price which shall not exceed the sum of:

(i) The original cost to the purchaser;

(ii) The cost of any improvements added by the purchaser;

(iii) The original purchaser's sweat equity, if applicable, as established by Resolution adopted by the Council; and

(iv) Simple interest on the purchaser's cash investment equity in for the property at the rate of seven percent a year.

(B) The County may purchase the unit either outright, free and clear of all liens and encumbrances, or by transfer subject to an existing mortgage.

(i) If by outright purchase, the County shall insure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the purchaser.

(ii) In any purchase by transfer subject to an existing mortgage, the County shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the purchaser to obtain funds for the purchase of the real property and any other mortgages which were created with the approval and consent of the County. In such cases, the amount to be paid to the purchaser by the County shall be the difference between the above-mentioned price and the principle balance of all mortgages outstanding and assumed at the time of transfer of title to the County.

(C) After the end of the first year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the real property or assign the property to any person free from any price restrictions; provided that the purchaser shall be required to pay to the County the sum of:

(i) The balance of any mortgage note, agreement of sale, or other amount owing to the County;

(ii) Any subsidy made by the County in the acquisition, financing, development, construction, and sale of real property, and any other amount expended by the County not counted as cost in the original sales price but charged to the real property by good accounting practice as determined by the KCHA whose books shall be prima facie evidence of the correctness of the costs; and

(iii) Interest on the subsidy and any other amount expended at the rate of seven percent a year computed as to the subsidy, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase, or execution of agreement of sale, of the property; and provided that if any proposed sale or transfer will not generate an amount sufficient to pay the County the sum computed under this paragraph the County shall have the first option to purchase the real property at a price which shall not exceed the sum as computed under Subsection (g)(1)(A).

(D) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the Housing Agency, the subsidy described in Subsections (g)(1)(C)(ii) and any interest accrued pursuant to Subsection (g)(1)(C)(iii) may be paid at any time.

(2) Waiver of Restrictions. Provided that the restrictions prescribed in Subsection (g)(1) above shall be reimposed as on an original sale and shall be fully effective and applicable to the subsequent owner or transferee, effective the date of sale or transfer of the real property, the restrictions prescribed in Subsection (g)(1) may be waived if:

(A) The purchaser wished to transfer title to the real property or lease by devise or through the laws of descent to an immediate family member who would otherwise qualify under rules established by the KCHA and who accept the restrictions on sale or transfer, and use; or

(B) The KCHA determines, in accordance with adopted rules, that the sale or transfer of the real property would be at a price and upon terms that preserves the intent of this Subsection without the necessity of the County to repurchase the real property and that the subsequent owner or transferee accept the restrictions on sale or transfer, and use.

(3) Foreclosure of Real Property.

(A) The restrictions prescribed in Subsection (g)(1) shall be automatically extinguished and shall not attach in subsequent transfer or title when a mortgage holder becomes the owner of the real property or leasehold interest pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering title or leasehold interest of real property encumbered by the first option to purchase in favor of the KCHA, prior to commencing mortgage foreclosure proceedings, shall notify the KCHA of:

(i) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default, and

(ii) Any intention of the mortgagee to foreclose the mortgage under Chapter 667, Hawaii Revised Statutes.

(B) The County and its KCHA shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to Subsection (g)(1)(A) less any amounts determined to be customary and actual costs and expenses of transfer pursuant to default.

(4) Application of Restrictions. The provisions of this Subsection shall be incorporated in any deed, lease, mortgage, agreement of sale, or any other instrument of conveyance issued by the County.

**(h) Real Property; Restrictions on Use.**

(1) Occupancy Requirements. Real property purchased from the County through its KCHA requires that a dwelling unit shall be occupied by the purchaser at all times during the one-year restriction period set forth in Subsection (g).

(A) Dwelling units purchased from the County begin the one-year restriction period from the date of purchase; and

(B) Vacant lots purchased from the County require the purchaser to build or have built a dwelling unit on the vacant lot and that the dwelling unit shall be completed and shall be occupied by the purchaser within five years from the date of purchase of the vacant lot. Upon occupancy of the completed dwelling unit, the one-period restrictions on sale or transfer, Subsection (g), and the applicable one-year restrictions on use, Subsection (h), shall begin.



(2) Verification of Occupancy. From time to time the KCHA may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of Subsection (h)(1) shall be sufficient reason for the County, at its option, to purchase the real property as provided by Subsection (g)(1)(A).

(3) Foreclosure of Real Property. The restrictions prescribed in subsection (h)(1) shall be automatically extinguished and shall not attach in subsequent transfers of title as prescribed in Subsection (g)(3).

(4) Application of Restrictions. Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by the County shall expressly contain the restrictions on use as prescribed in this Subsection.

**ACCEPTANCE OF RESTRICTIONS:**

The undersigned purchaser(s) acknowledge that he, she, or they understand and agree to all of the restrictions on sale or transfer, and use of real property contained herein as they apply to the real property purchased from the County of Kauai through its Housing Agency.

BUYER: _____	Date _____
_____	Date _____
_____	Date _____
_____	Date _____

**TEN YEAR**  
**RESTRICTIONS ON SALE OR TRANSFER, AND USE**  
**Section 2-1.16, Kauai County Code 1987**

**Real Property; General Provisions of Restrictions on Sale or Transfer, and Use.**

(1) Title and Purpose. The County shall implement an anti-speculative buy-back provision that shall be known as the "Restrictions on Sale or Transfer, and Use." These restrictions shall apply to the sale or transfer of any real property and apply to the use of any real property acquired, financed, developed, constructed, or sold pursuant to this Section and which are sold on the condition that the purchaser accepts the restrictions on the sale or transfer, and use in the real property purchased.

(2) Relevance to State Law. The restrictions on sale or transfer, and use imposed by the County are in a form substantially equivalent to the provisions of Sections 201E-221, 222, and 223, Hawaii Revised Statutes. These restrictions on sale or transfer, and use clarify the intent of its various provisions and impose provisions that are more stringent.

(3) Severalty. If any part of this Subsection is declared by the Count to be invalid, the sale shall not affect the validity of the Subsection as a whole, or any part thereof other than the part so declared invalid.

(4) Duration of Restrictions. Where the restrictions on sale or transfer, and use of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date or original purchase without the mutual consent of the purchaser and the KCHA. The subsequent sale of any real property repurchased by the County pursuant to Subsection (g), shall incorporate the restrictions on sale or transfer, and use and shall apply for the same period of time as an original purchase.

(5) Modification of Restrictions. No real property purchaser shall be entitled to modify the restrictions on sale or transfer, and use of the real property, without the written permission of the holder of a duly-recorded first mortgage on the real property and the owner of the fee simple or leasehold interest in the land, unless the holder of the first mortgage or the owner is the County.

(6) Uniformity of Restrictions. Restrictions on sale or transfer, and use of real property shall be made as uniform as possible in application to purchasers of all real property, and restrictions shall be conformed with agreement of the purchaser to reflect change or repeal made by any subsequent ordinance, rule or regulation. Real property purchasers shall be permitted at their election to sell or transfer real property subject to restrictions in effect at the time of their sale or transfer.

(7) Public Notice of Amendment to Restrictions. The KCHA shall notify purchasers of any substantial change in restrictions made by ordinance, rule or regulation not more than one hundred eighty days after a change in restrictions, and such notice shall clearly state the enacted or proposed new provisions, the date or dates upon which they are to be effective, and offer to each purchaser of real property sold prior to such effective date an opportunity to modify the existing contract or other instrument to incorporate the most recent provisions. The notice shall be published at least three times in a newspaper of general circulation in the County newspaper.

**(8) Waiver to Comply to Federal Law Or Regulation. The KCHA shall be authorized to waive any of the restrictions on sale or transfer, and use in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants. For the purposes of these restrictions, the United States Department of Housing and Urban Development shall be defined as and considered a mortgage holder.**

**[(8)] (9) Application of Restrictions.** The provisions of this Subsection shall be incorporated in any deed, lease, instrument, rule, or regulation relating to restrictions on use, sale or transfer of real property purchased from the County through its KCHA.

**(g) Real Property; Restrictions on Sale or Transfer, Waiver of Restrictions.**

**(1) Restrictions on Sale or Transfer.** The following restrictions shall apply to the sale or transfer of any real property purchased through the KCHA from the County whether on fee simple or leasehold property.

**(A)** For a period of ten years after the purchase of a dwelling unit, during the five-year construction period after the purchase of a vacant lot, and for a period of ten years from the occupancy of a dwelling unit constructed by or for the purchaser on the purchase of a vacant lot, whether original or subsequent, and whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to sell or to transfer title to the real property or the lease, the County shall have the first option to purchase the real property or lease at a price which shall not exceed the sum of:

**(i)** The original cost to the purchaser;

**(ii)** The cost of any improvements added by the purchaser;

**(iii)** The original purchaser's sweat equity, if applicable, as established by Resolution adopted by the Council; and

**(iv)** Simple interest on the purchaser's cash investment equity in for the property at the rate of seven percent a year.

**(B)** The County may purchase the unit either outright, free and clear of all liens and encumbrances, or by transfer subject to an existing mortgage.

**(i)** If by outright purchase, the County shall insure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the purchaser.

**(ii)** In any purchase by transfer subject to an existing mortgage, the County shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the purchaser to obtain funds for the purchase of the real property and any other mortgages which were created with the approval and consent of the County. In such cases, the amount to be paid to the purchaser by the County shall be

the difference between the above-mentioned price and the principle balance of all mortgages outstanding and assumed at the time of transfer of title to the County.

(C) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the real property or assign the property to any person free from any price restrictions; provided that the purchaser shall be required to pay to the County the sum of:

(i) The balance of any mortgage note, agreement of sale, or other amount owing to the County;

(ii) Any subsidy made by the County in the acquisition, financing, development, construction, and sale of real property, and any other amount expended by the County not counted as cost in the original sales price but charged to the real property by good accounting practice as determined by the KCHA whose books shall be prima facie evidence of the correctness of the costs; and

(iii) Interest on the subsidy and any other amount expended at the rate of seven percent a year computed as to the subsidy, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase, or execution of agreement of sale, of the property; and provided that if any proposed sale or transfer will not generate an amount sufficient to pay the County the sum computed under this paragraph the County shall have the first option to purchase the real property at a price which shall not exceed the sum as computed under Subsection (g)(1)(A).

(D) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the Housing Agency, the subsidy described in Subsections (g)(1)(C)(ii) and any interest accrued pursuant to Subsection (g)(1)(C)(iii) may be paid at any time.

(2) Waiver of Restrictions. Provided that the restrictions prescribed in Subsection (g)(1) above shall be reimposed as on an original sale and shall be fully effective and applicable to the subsequent owner or transferee, effective the date of sale or transfer of the real property, the restrictions prescribed in Subsection (g)(1) may be waived if:

(A) The purchaser wished to transfer title to the real property or lease by devise or through the laws of descent to an immediate family member who would otherwise qualify under rules established by the KCHA and who accept the restrictions on sale or transfer, and use; or

(B) The KCHA determines, in accordance with adopted rules, that the sale or transfer of the real property would be at a price and upon terms that preserves the intent of this Subsection without the necessity of the County to repurchase the real property and that the subsequent owner or transferee accept the restrictions on sale or transfer, and use.

(3) Foreclosure of Real Property.

(A) The restrictions prescribed in Subsection (g)(1) shall be automatically extinguished and shall not attach in subsequent transfer or title when a mortgage holder becomes the owner of the real property or leasehold interest pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering title or leasehold interest of real property encumbered by the first option to purchase in favor of the KCHA, prior to commencing mortgage foreclosure proceedings, shall notify the KCHA of:

(i) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default, and

(ii) Any intention of the mortgagee to foreclose the mortgage under Chapter 667, Hawaii Revised Statutes.

(B) The County and its KCHA shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to Subsection (g)(1)(A) less any amounts determined to be customary and actual costs and expenses of transfer pursuant to default.

(4) Application of Restrictions. The provisions of this Subsection shall be incorporated in any deed, lease, mortgage, agreement of sale, or any other instrument of conveyance issued by the County.

(h) **Real Property; Restrictions on Use.**

(1) Occupancy Requirements. Real property purchased from the County through its KCHA requires that a dwelling unit shall be occupied by the purchaser at all times during the ten-year restriction period set forth in Subsection (g).

(A) Dwelling units purchased from the County begin the ten-year restriction period from the date of purchase; and

(B) Vacant lots purchased from the County require the purchaser to build or have built a dwelling unit on the vacant lot and that the dwelling unit shall be completed and shall be occupied by the purchaser within five years from the date of purchase of the vacant lot. Upon occupancy of the completed dwelling unit, the ten-period restrictions on sale or transfer, Subsection (g), and the applicable ten-year restrictions on use, Subsection (h), shall begin.

(2) Verification of Occupancy. From time to time the KCHA may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of Subsection (h)(1) shall be sufficient reason for the County, at its option, to purchase the real property as provided by Subsection (g)(1)(A).

(3) Foreclosure of Real Property. The restrictions prescribed in subsection (h)(1) shall be automatically extinguished and shall not attach in subsequent transfers of title as prescribed in Subsection (g)(3).

(4) Application of Restrictions. Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by the County shall expressly contain the restrictions on use as prescribed in this Subsection.

**ACCEPTANCE OF RESTRICTIONS:**

The undersigned purchaser(s) acknowledge that he, she, or they understand and agree to all of the restrictions on sale or transfer, and use of real property contained herein as they apply to the real property purchased from the County of Kauai through its Housing Agency.

BUYER: _____	Date _____
_____	Date _____
_____	Date _____
_____	Date _____