

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer D.R Horton-Schuler Homes, LLC, a Delaware limited liability company, dba Schuler Homes
Address 828 Fort Street Mall, 4th Floor, Honolulu, Hawaii 96813
Project Name (\*): Moana Kai
Address: Hawaii Kai Drive, Honolulu, Hawaii 96825

Registration No. 5282 Effective date: February 25, 2004
Expiration date: November 25, 2004

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. 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.
X CONTINGENT FINAL: (green) The developer has legally created a condominium and has filed information with the Commission for this report which EXPIRES NINE (9) MONTHS after the above effective date.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
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

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

FORM: RECO-30 1297 / 0298 / 0800 / 0203 / 0104

**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:

**SPECIAL ATTENTION**

This Contingent Final Public Report has been prepared by the Developer pursuant to §514A-39.5, HRS. The Real Estate Commission issued this report before the developer submitted certain documents and information as more fully set forth in the statutory notice below. Sales contract executed pursuant to this report **are binding on the buyer under those conditions specified immediately below** and in Part V. B. of this report found on pages 18 & 19 of this report. This report expires nine (9) months after the effective date of the report and may not be extended or renewed.

**STATUTORY NOTICE**

"The effective date for the Developer's Contingent Final Public Report was issued before the Developer submitted to the Real Estate Commission: the executed and recorded deed or master lease for the project site; the executed construction contract for the project; the building permit; satisfactory evidence of sufficient funds to cover the total project cost; or satisfactory evidence of a performance bond issued by a surety licensed in the State of not less than one hundred percent of the cost of construction, or such other substantially equivalent or similar instrument or security approved by the Commission. Until the Developer submits each of the foregoing items to the Commission, all Purchaser deposits will be held by the escrow agent in a federally-insured, interest-bearing account at a bank, savings and loan association, or trust company authorized to do business in the State. If the Developer does not submit each of the foregoing items to the Commission and the Commission does not issue an effective date for the Final Public Report before the expiration of the Contingent Final Public Report, then:

- (1) The Developer will notify the Purchaser thereof by certified mail; and
- (2) Either the Developer or the Purchaser shall thereafter have the right under Hawaii law to rescind the Purchaser's sales contract. In the event of a rescission, the Developer shall return all of the Purchaser's deposits together with all interest earned thereon, reimbursement of any required escrow fees, and, if the Developer required the Purchaser to secure a financing commitment, reimburse any fees the Purchaser incurred to secure that financing commitment." (§514A-64.5, HRS)

The developer is not required to submit but has for this registration submitted the following documents and information:

1. The executed and recorded deed for the project site.
2. The letter relating to the availability of funds to complete the project.

This public report does not constitute approval of the Project by the Real Estate Commission, or any other government agency, nor does it ensure that all applicable County codes, ordinances and subdivision requirements have been complied with.

Facilities and improvements normally associated with County approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for, and services such as County street maintenance and trash collection will not be available for interior roads and driveways.

**THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.**

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## **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 owners/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 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 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 the 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 a 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: D.R. Horton-Schuler Homes, LLC, a Delaware Phone: (808) 521-5661  
Limited liability company, dba Schuler Homes (Business)  
Name\*  
828 Fort Street, 4<sup>th</sup> Floor  
Business Address  
Honolulu, Hawaii 96813

**Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):**

**D.R. Horton, Sole Director and Vice President; James K. Schuler, President, CEO & Chairman; Michael T. Jones, Executive Vice President; Samuel R. Fuller, Vice President and Treasurer; Galen Lee, Vice President of Finance; Harvey L. Goth, Senior Vice President; Mary K. Flood, Vice President Sales and Marketing; Frank S. Payne, Vice President of Operations; Donald J. Tomnitz, Vice President; Alan D. Labbe, Assistant Secretary; Paul W. Buchschacher, Assistant Secretary; Ted I. Harbour, Assistant Secretary; Paul Hunter-Perkins, Assistant Secretary. All officers are officers of Vertical Construction Corporation, the Developer's manager.**

Real Estate Broker\*: Schuler Realty Hawaii, Inc. Phone: (808)526-3588  
Name (Business)  
828 Fort Street Mall, 4<sup>th</sup> Floor  
Business Address  
Honolulu, Hawaii 96813

Escrow Title Guaranty Escrow Services, Inc: Phone: (808)521-0211  
Name (Business)  
235 Queen Street  
Business Address  
Honolulu, Hawaii 96813

General Contractor\*: Vertical Construction Corporation Phone: (808) 521-5661  
Name (Business)  
828 Fort Street Mall, 4<sup>th</sup> Floor  
Business Address  
Honolulu, Hawaii 96813

Condominium: Managing Agent\*: Hawaiiiana Management Company, Ltd. Phone: (808) 593-9100  
Name (Business)  
711 Kapiolani Boulevard, Suite 700  
Business Address  
Honolulu, Hawaii 96813

Attorney for Developer: Case Bigelow & Lombardi Phone: (808) 547-5400  
Dennis M. Lombardi, Esq. (Business)  
Name  
737 Bishop Street, Suite 2600  
Business Address  
Honolulu, Hawaii 96813

\*For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

**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. 2004-010239  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

Amendment to Declaration of Condominium Property Regime of Moana Kai (Condominium Map No. 3700) filed as Document No. 2004-033120.

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. 3700  
 Filed - Land Court Condo Map No. \_\_\_\_\_

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. 2004-010240  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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>
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. The Project consists of eighty-four (84) residential Residences. The Private Yard Areas associated with each Residence are not subdivided lots but rather exclusive limited common elements.
- B. Upon completion of the Project, the Developer may amend the Declaration and the Condominium Map (if necessary) to file the "as built" verified statement required by Section 514A-12 of the Condominium Property Act.
- C. Until all of the Residences have been sold, the Developer may amend the Declaration, the Bylaws and/or the Condominium Map to make such amendments as may be required by law, by the Real Estate Commission, by the title insurance company, by a mortgage lender, or by any governmental agency (including the VA, HUD, FNMA and/or FHLMC), provided that no such amendments change the common interest appurtenant to a Residence or substantially change the design, location or size of a Residence.
- D. Until all of the Residences have been sold and the "as built" verified statement is filed, the Developer may amend the Declaration and the Condominium Map to (i) reflect alterations in any Residence which has not been sold; and (ii) reflect minor changes in any Residence or in the common elements which do not affect the physical location, design or size of any Residence which has been sold.
- E. The Developer reserves the right to alter the product mix within this project, sometimes hereinafter referred to as "Community".
- F. Developer has reserved the right to alter the location, size and design of any unsold Residences as described in Section III.H. p. 16. Such changes could result in a modification of an Owner's common interest and voting rights.
- G. Developer has reserved (1) the right to construct off street parking stall "carport" style cover/roofs in locations determined by Developer's sole and absolute discretion, and (2) the right to amend the Condominium Map to reflect such additions to the Common Area.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.

Leasehold or Sub-leasehold: Individual apartments and the common elements, which include 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 there negotiated 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 Sub-leaseholds:

Buyer's sublease may be canceled 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 Sub-leasehold:

**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 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

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: Hawaii Kai Drive Tax Map Key (TMK): (1) 3-9-008-040  
Honolulu, Hawaii 96825 (1) 3-9-008-047

Address  TMK is expected to change because the property has not yet been assigned specific street addresses.

Land Area: 5.729\*  square feet  acre(s) Zoning: A-2

\*Approximately 10,000 square feet will be removed from the Community by subsequent amendment to the declaration.

Fee Owner: D.R. Horton-Schuler Homes, LLC, a Delaware  
Limited liability company, dba Schuler Homes  
 Name  
828 Fort Street Mall 4th Floor  
 Address  
Honolulu, Hawaii 96813

Lessor: N/A  
 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: 13 Floors Per Building: 2 or 3

Exhibit B-1 contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other Wood frames, metal, glass and other building materials

4. Uses Permitted by Zoning:

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

Pets: Reasonable number of common household pets, such as small dogs, cats, aquarium fish and birds. No livestock or poultry and no animals classified as "pests" or prohibited from importation under state statutes.

Number of Occupants: No more than 2 persons per bedroom, not including children under 5 years old; no more than 3 persons per bedroom, including children under 5 years old; and otherwise only in accordance with any limitations imposed by state or municipal laws or ordinances.

Other: Residences shall be used for residential purposes only; no "time sharing" permitted.

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Lanai Area (sf)**</u>	<u>Entry Area (sf)</u>	<u>Net Garage Area (sf)**</u>
<u>A/A-R</u>	<u>16</u>	<u>3/2 ½</u>	<u>1,550</u>	<u>N/A</u>	<u>28</u>	<u>351</u>
<u>B/B-R</u>	<u>16</u>	<u>3/2 ½</u>	<u>1,651</u>	<u>39</u>	<u>18</u>	<u>229</u>
<u>C/C-R</u>	<u>16</u>	<u>3/2 ½</u>	<u>1,725</u>	<u>42</u>	<u>11</u>	<u>224</u>
<u>D/D-R</u>	<u>8</u>	<u>2/2</u>	<u>1,237</u>	<u>42</u>	<u>72</u>	<u>202</u>
<u>E/E-R</u>	<u>8</u>	<u>2/2</u>	<u>1,241</u>	<u>42</u>	<u>72</u>	<u>197</u>
<u>F/F-R</u>	<u>10</u>	<u>3/2 ½</u>	<u>1,522</u>	<u>N/A</u>	<u>29</u>	<u>349</u>
<u>G/G-R</u>	<u>10</u>	<u>3/2 ½</u>	<u>1,513</u>	<u>N/A</u>	<u>26</u>	<u>349</u>

Total Number of Apartments: 84

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

\*\*The lanai and garage areas may also sometimes include storage areas.

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.

Limits of Residences. Each Residence includes all walls, columns and partitions which are not load-bearing within the Residence's perimeter walls (including the garage, if any, associated therewith, as shown on the Condominium Map), the inner decorated or finished surfaces of all walls, floors, ceilings, doors, door frames and window frames along the perimeters, all windows along the perimeters, the air space within the perimeter, the lanais, if any, shown on the Condominium Map to the inner decorated or finished surfaces of the perimeter walls of such lanais and to the interior edge of the exterior railings or other boundaries of such lanais, the entry court or area, if any, shown on the Condominium Map to the inner decorated or furnished surfaces of the perimeter walls of such entry court or area and to the interior edge of other boundaries of such entry court or area, the exterior storage areas, if any, shown on the Condominium Map, all rollers, locks, handles, tracks, and appurtenant hardware associated with all windows, doors and exterior automobile garage doors, if any, and all sliding or swinging screen doors and all glass window screens and all fixtures originally installed in the Residence, and all pipes, plumbing (including water heaters), wires, conduits and other utility or service lines and facilities servicing only the Residence. The Residences shall not include the undecorated or unfinished surfaces of the perimeter party or non-party walls, the undecorated or unfinished surfaces of the doors, door frames and window frames along the perimeters, the interior load-bearing columns, girders, beams

and walls, the undecorated or unfinished surfaces of the floors and ceiling surrounding each Residence, the exterior edge of the exterior railings or other exterior boundaries of the lanais, if any, shown on the Condominium Map, or any pipes, shafts, wires, conduits or other utility or service lines running through an Residence which are utilized for or serve more than one Residence, all of which are deemed common elements as provided in this Declaration.

Permitted Alterations to Apartments: Alterations or additions solely within a Residence or within a limited common element appurtenant to and for the exclusive use of a Residence shall require the written approval of the Department of Planning and Permits, the Board of Directors and all Residence owners directly affected, as determined by the Board of Directors. Any alteration or addition different in any material respect from the Condominium Map shall be commenced only pursuant to an amendment to the Declaration, as provided in Section M of the Declaration.

Apartments Designated for Owner-Occupants Only: Fifty percent (50%) of residential apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 181

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		TOTAL
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
	N/A						
Assigned (for each unit)	<u>1 or 2*</u>						<u>168</u>
Guest	<u>13*</u>						<u>13</u>
Unassigned							
Extra for Purchase							
Other:							
Total Covered & Open:	<u>181</u>						<u>181</u>

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

Each home has at least a one car enclosed garage and a second off street parking stall or driveway parking tandem to assigned garage parking. The second parking stall may be covered or uncovered. Homes types with a 2 car enclosed garage will not be assigned an additional parking stall.

*\*Includes compact and standard stalls. Compact(s) stalls are shown on the condominium map.*

Commercial parking garage permitted in condominium project.

Exhibit \_\_\_\_\_ 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/Enclosure(s)

Other: Homes with only a one car garage will be assigned an additional parking stall as noted on the Condominium Map). These stalls may be covered or uncovered.

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 \_\_\_\_\_  
(Date)

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):

N/A

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   B-2  .

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 use them, as described in the Declaration, are:

described in Exhibit B-3.

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 project. 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 C.

as follows:

The common interest and easements appurtenant to each Home shall have a permanent character and shall not be altered except as noted in Section F of the Declaration. The common interest, voting rights and easements appurtenant to each Home may be altered (diminished or increased) by a Recorded amendment to this Declaration: (a) as may be determined necessary by Developer, without the consent of any party, to correct typographical or mathematical errors in the statement of such common interests, (b) filed by Developer, without the joinder of any party, upon the alteration of the Community as permitted pursuant to Section F or Section M.3 of the Declaration as set forth in subpart H of this report, and/or (c) upon the action or consent of all Owners of Homes affected thereby, and the consent of the holders of any mortgage affecting such Homes as shown in the Association's records of ownership, or who have given the Board notice of their interest. The common interest and appurtenant easements shall not be separated from the Home to which they appertain and shall be deemed to be conveyed or encumbered with that Home even though such interest or easements are not expressly mentioned in the conveyance or other instrument. The common elements shall remain undivided and the right to partition or divide any part of the common elements shall not exist except as provided in the Act. In that the development of the Community will proceed incrementally, Section F also provides that common expense will be allocated based on common interests of the Homes in each increment as new increments are created within the Community. Initially, common expenses will be borne by Increment 1 Home owners in proportion to the common interest of the Increment 1 Home owners. Section M.3 allows the Developer prior to the sale of all Homes and the filing of an "as built" certificate to (a) make alterations in the Community which change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any Home (and the limited common elements appurtenant thereto) in the Community which is not sold and the conveyance thereof recorded which right includes the ability to change the overall "product mix" (e.g., change the model home type and size of a Private Yard Area); and (b) make other alterations in the Community which make minor changes in any Home in the Community or in the common elements which do not affect the physical location, design or size of any Home which has been sold and the conveyance thereof recorded.

- 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 A describes the encumbrances against the title contained in the title report dated December 30, 2003 and issued by Title Guaranty Hawaii, Inc.

**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.

There are no blanket liens affecting title to the individual apartments.

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. The buyer's interest will be affected 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>
None	None

**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 as Exhibit D.

2. **Appliances:**

The Developer makes no warranty as to appliances or other consumer products installed in any Residence or in the common elements. If there are 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 Residence owner the benefit of such warranties.

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

Construction shall commence in March 2004 and should be completed by approximately June 2005.

H. **Project Phases:**

The developer [X] 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):

1. To make alterations in the Community (and to amend the Declaration and the Condominium Map accordingly) which change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any Residence (and the limited common elements appurtenant thereto) in the Community which is not sold and the conveyance thereof Recorded, including specifically the right to alter the mix of model home types (increase or decrease the number of model home types); and
2. To make other alterations in the community (and to amend the Declaration and the Condominium Map accordingly) which make minor changes in any Residence in the community or in the common elements which do not affect the physical location, design or size of any Residence which has been sold and the conveyance thereof recorded.
3. To develop the community in increments on a building by building basis.



## 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:

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit F contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated January 12, 2004  
Exhibit G contains a summary of the pertinent provisions of the escrow agreement.
- Other Exhibit "H" is a Residence Selection Form; Notice of Chronological Reservation System and  
Receipt of Owner-Occupied Affidavit Form

### 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 buyer. 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.

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

- A) The Developer delivers to the buyer a copy of:
  - 1) Either the Contingent Final Public Report **OR** the Supplementary Public Report which has superseded the Contingent 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.

Final Report or 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 Public 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 common 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 issued an effective date by the Hawaii Real Estate Commission.
- B) Declaration of Condominium Property Regime, as amended.
- C) Bylaws of the Association of Apartment Owners, as amended.
- D) House Rules, if any.
- E) Condominium Map, as amended.
- 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 \_\_\_\_\_

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

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)  
 Website to access unofficial copy of laws: [www.hawaii.gov/dcca/hrs](http://www.hawaii.gov/dcca/hrs)  
 Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

This Public Report is a part of Registration No. 5282 filed with the Real Estate Commission on January 16, 2004.

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

YELLOW paper stock       WHITE paper stock       PINK paper stock       GREEN paper stock

C. **Additional Information Not Covered Above**

1. All prospective purchasers should also be aware that the private yard areas available to certain homes in the Community are not subdivided lots, but are exclusive use areas appurtenant to the home(s).

2. Prospective purchasers should be aware that the performance bond provided by the developer pursuant to Hawaii Revised Statutes 514A-40(5) is from Honsador, a material house and not a licensed surety. While the Real Estate Commission has accepted such bonds contingent on certain conditions first being fulfilled by escrow and the developer before full release of buyer's funds, prospective purchasers are urged to inquire into this matter if it is a concern to them.

3. The Moana Kai Community is benefited by the Entrance Road and the Drainage Facility System (defined as the "Common Road and "Drain System" in the Cost Sharing Agreement described in the Declaration). The Entrance Road and the Drainage Facility System are subject to the Maintenance Declaration. The Maintenance Declaration provides that the "Maintenance Association" shall serve as the governing body for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Maintenance Property, which includes the Entrance Road and Drainage Facility System. The organization and operation of the Maintenance Association is controlled by the Maintenance Declaration and the articles and bylaws of the Kaluanui Maintenance Association. The Association shall be a member of the Maintenance Association, and shall be represented by a single voting representative, elected by the Moana Kai Board of Directors. The Moana Kai Association's voting representative shall be entitled to cast a single vote on behalf of the Association, with a voting unit weight equal to 41.34% of the total votes (eg. the voting units attributable to the Community is its proportionate share of the common expenses of the Maintenance Association). In addition to the foregoing, the Moana Kai Community is served by a submeter to a "master" water meter which serves this Community and surrounding communities that are subject to the Maintenance Declaration described above. The Maintenance Declaration Association has a right to monitor the water usage for the Moana Kai Community by reading the submeter. The Moana Kai Association will be billed for its actual water usage and associated municipal sewer fees, if any, by the Maintenance Association. The charges levied by the Maintenance Association (for the Entrance Road and Drain System or water usage charge) shall be included in the common area maintenance expenses for the Moana Kai Community. Each voting representative's vote shall be binding on the individual Owners represented by the voting representative.

4. Developer has specifically reserved the right, without limitation, to utilize utility service to the Community (such as water service and sewer service lines) to serve adjacent and separate developments outside of the Community provided Declarant submeters such use, and may use roadways in the Community to serve adjacent developments provided the association controlling such development shares pro rata in the cost of maintenance and repair of the roadway and reimburses the Association for any submetered use. The easement retained in the Declaration and the reserved rights shall be exercised in a manner that will not materially impair or interfere with the use of any Home. In the event of a submetered use (such as water service), the Association shall be entitled to confirm submeter readings. Each Owner, by purchasing a Home, consents to any such designation, granting, conveyance, transfer, cancellation, relocation and reservation of easements and/or rights of way as provided above without the necessity of any Owner or those claiming by, through or under an Owner entering into any further agreement respecting such action or document; provided, however, that such Owner and those claiming by, through or under an Owner agrees to join in and execute such documents and instruments and do such other things as may be necessary or convenient to effect the same promptly at the request of Developer without payment of additional consideration.

5. Certain portions of the Community may be affected by an adjacent park. Buyer is aware that noise from the park may cause a disturbance. You are responsible for investigating noise levels in and around the Community to determine for yourself that you are satisfied with the acoustics and noise levels within your Unit and within the Community as a whole. Pesticides and fertilizers may be used in the maintenance of the park and may have long term effects on the land, water and environment. Seller makes no guaranty as to these matters now or in the future. Buyers may use the portion of the private park described in the Declaration of Access and Use (Private Park) ("Park Declaration"). Pursuant to the Park Declaration, the Association is responsible for the maintenance of its portion of the private park and is entitled to seek recovery of 50% of its cost relating to the maintenance of the private park from Hawaii Intergenerational Community Development Association.

6. There is an adjacent archaeological site identified as Site 50-80-15-2900 in the Revised Data Recovery Plan for Archaeological Excavation at Site 2900, Maunaloa Ahupua'a, Oahu island (TMK (1) 3-9-08) dated July 1994.

7. The Buyer should be aware that the Community is located adjacent to a steep hillside which presents a risk of rockslide. A portion of the hillside described as a Hillside Buffer Area and shown on the Subdivision Map is subject to an easement benefiting the Association that permits periodic rock cleaning. Even with such periodic maintenance, rockslides are possible. Buyers should expect continued construction activity on the Community lands and adjacent lands.

8. Use of Easement Areas. You may landscape the easement area(s) as long as you do not interfere with the use of the easement area(s) affecting your Home. The grantee of the easement area, whether it is HECO, the Moana Kai Association, the Maintenance Association, or an agency of the City and County, will have the right to trim and keep trimmed any plants within the easement area that may be in the way. Also, you may not be permitted to construct other structures in the area depending on the nature of the easement. Such structures may require the grantee's approval. Additionally, should the grantee determine that it must remove any plants or foliage within the easement area, it may NOT be obligated to replace them, but rather will only be obligated to restore the surface of the ground within the easement area as much as the grantee determines is reasonably possible.

9. The common elements of the Community do not include and the Association has no right, title or interest to any building area or floor area ratio ("FAR") described in the Land Use Ordinance for the City and County of Honolulu applicable to the Community site except to the extent such building area and FAR have been utilized in constructing the improvements shown on the Condominium Map.

- 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.

D.R. Horton-Schuler Homes, LLC, a Delaware Limited liability company dba Schuler Homes  
Printed Name of Developer

By:  January 15, 2004  
Duly Authorized Signatory\* Date

MICHAEL T. JONES, Executive Vice President  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, City and County of Honolulu

Planning Department, City and County of Honolulu

***\*Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership(LLP) by the general partner; Limited Liability Company(LLC) by the manager or member; and for an individual by the individual.***

EXHIBIT "A"

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. GRANT

TO : CITY AND COUNTY OF HONOLULU  
DATED : May 28, 1974  
RECORDED : Liber 10448 Page 200  
GRANTING : an easement for flowage purposes as shown on the map attached thereto

3. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : UNILATERAL AGREEMENT AND DECLARATION FOR  
CONDITIONAL ZONING  
DATED : July 3, 1986  
RECORDED : Liber 19645 Page 696  
PARTIES : HAWAII KAI DEVELOPMENT COMPANY and the TRUSTEES  
UNDER THE WILL AND OF THE ESTATE OF BERNICE PAUAHI  
BISHOP

Said Agreement was amended by instruments dated June 23, 2000, recorded as Document No. 2000-112963, and dated November 28, 2000, recorded as Document No. 2000-167451.

4. Flowage Easement (to be cancelled upon construction of adequate drainage facilities) in favor of the City and County of Honolulu, as stated in instrument dated May 1, 1994, recorded as Document No. 97-070019.

5. Matters as shown on survey map prepared by Alden S. Kajioka, Land Surveyor, with ControlPoint Surveying, Inc., dated September 8, 2000.

Encroachments or any other matters which a survey prepared after September 8, 2000 would disclose.

6. The failure to comply with the following covenants, conditions and reservations of which Maunalua Associates, Inc., a Hawaii corporation, and the Trustees of the Estate of Bernice Pauahi Bishop, and their respective successors and assigns, shall be beneficiaries, as contained in LIMITED WARRANTY DEED dated December 19, 2000, recorded as Document No. 2000-177612, as amended by SUPPLEMENTAL DECLARATION dated December 19, 2000, recorded as Document No. 2000-177616:

(A) The height of structures developed on all of the land shall not exceed that permitted by the City and County of Honolulu.

(B) The total number of individual condominium, apartment, townhouse or single-family living units ("Units") to be constructed, maintained, or permitted on the land shall not be more than 115 Units even if more Units are permitted by governmental authorities.

- (C) All projects and subdivisions within the various developments upon the land shall be given Hawaiian place names and the Trustees of the Estate of Bernice Pauahi Bishop ("Bishop Estate") shall be a beneficiary of this covenant.
- (D) Prior to any development of the land or any portion thereof, the Owner of such land to be developed will cause to be performed at its sole cost and expense such archaeological studies of the land as may be required from time to time by any applicable laws, rules, regulations or ordinances of the State of Hawaii and/or City and County of Honolulu as required under Condition 5 of the Unilateral Agreement. The owner of the land shall promptly notify Bishop Estate of any object of historical interest and all antiquities, including all specimens of Hawaiian or other ancient art or handicraft, which may be found on the land and which are not required to be turned over to the State of Hawaii and/or the City and County of Honolulu. After the finding or discovery of same, the owner of the land shall make all such objects and antiquities available to Bishop Estate for Bishop Estate's inspection. In the event Bishop Estate, in its sole discretion, elects to cause any such objects or antiquities to be removed, Bishop Estate may do so provided that the cost of such removal shall be borne solely by Bishop Estate.

FIRST AMENDMENT TO SUPPLEMENTAL DECLARATION dated as of August 14, 2001, recorded as Document No. 2001-126995.

- 7. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : AGREEMENT FOR ISSUANCE OF CONDITIONAL USE PERMIT UNDER SECTION 21-5.380 OF THE LAND USE ORDINANCE (LUO)  
 DATED : December 19, 2000  
 RECORDED : Document No. 2000-177617  
 PARTIES : HAWAII KAI ELDERCARE, LLC

- 8. GRANT

TO : KEAKU, LLC  
 DATED : December 19, 2000  
 RECORDED : Document No. 2000-177620  
 GRANTING : a perpetual non-exclusive easement for drainage purposes as shown on the map attached thereto

- 9. -As to Tax Key (1) 3-9-008-40:-

- (A) GRANT

TO : CITY AND COUNTY OF HONOLULU  
 DATED : December 19, 1973  
 RECORDED : Liber 10448 Page 183  
 GRANTING : an easement(s) for drainage purposes over the following described easement area(s):

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 4475, Land Commission Award 7713, Apana 30 to Victoria Kamamalu) situate, lying and being at Maunaulua, Honolulu, City and County of Honolulu, State of

Hawaii, being DRAIN EASEMENT "D-4", 20 feet wide, for storm drain purposes, and thus bounded and described:

Beginning at the northeast corner of this easement, and on the south side of Lot 143 of Kaluanui 4 (Mariners Ridge), Unit 4-A-1 of File Plan 1213, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KOKO HEAD 3" being 9,420.25 feet north and 123.21 feet east, thence running by azimuths measured clockwise from true South:

1. 18° 16'            56.00    feet along the remainder of R.P. 4475, L.C.Aw. 7713, Apana 30 to V. Kamamalu;
2. 108° 16'           20.00    feet along the remainder of R.P. 4475, L.C.Aw. 7713, Apana 30 to V. Kamamalu;
3. 198° 16'           60.62    feet along the remainder of R.P. 4475, L.C.Aw. 7713, Apana 30 to V. Kamamalu;
4. 301° 16'           20.53    feet along Lot 143 of Kaluanui 4 (Mariners Ridge), Unit 4-A-1 of File Plan 1213 to the point of beginning and containing an area of 1,166 square feet, more or less.

(B) The archaeological site identified as Site 50-80-15-2900 in the Revised Data Recovery Plan for Archaeological Excavation at Site 2900, Maunaloa Ahupua'a, Oahu island (TMK (1) 3-9-08) dated July 1994; and the requirements of any remediation or preservation plans recommended in such Revised Data Recovery Plan or required by applicable federal, state, or county laws or regulations.

10. -As to Tax Key (1) 3-9-008-047:-

(A) GRANT

TO                                :    CITY AND COUNTY OF HONOLULU  
DATED                            :    December 19, 1973  
RECORDED                        :    Liber 10448 Page 183  
GRANTING                        :    an easement(s) for drainage purposes over the following described easement area(s):

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 4475, Land Commission Award 7713, Apana 30 to Victoria Kamamalu) situate, lying and being at Maunaloa, Honolulu, City and County of Honolulu, State of Hawaii, being DRAIN EASEMENT "D-5", 12.00 feet wide, for storm drain purposes, and thus bounded and described:

Beginning at the northeast corner of this easement, and on the south side of Lot 143 of Kaluanui 4 (Mariners Ridge), Unit 4-A-1 of File Plan 1213, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KOKO HEAD 3" being 9,367.64 feet north and 214.81 feet east, thence running by azimuths measured clockwise from true South:

1. 24° 10'            16.00    feet along the remainder of R.P. 4475, L.C.Aw. 7713, Apana 30 to V. Kamamalu;

- 2. 114° 10'      12.00      feet along the remainder of R.P. 4475, L.C.Aw. 7713, Apana 30 to V. Kamamalu;
- 3. 204° 10'      16.00      feet along the remainder of R.P. 4475, L.C.Aw. 7713, Apana 30 to V. Kamamalu;
- 4. Thence along Lot 143 of Kaluanui 4 (Mariners Ridge), Unit 4-A-1 of File Plan 1213 on a curve to the left with a radius of 228.00 feet, the chord azimuth and distance being
  - 294° 10'      12.00      feet to the point of beginning and containing an area of 191 square feet, more or less.

- (B) Any claim or boundary dispute which may exist or arise by reason of the failure of the GRANT OF EASEMENT (1-F-2) (ACCESS, CONSTRUCTION AND MAINTENANCE OF DRAINAGE FACILITY) dated December 19, 2000, recorded as Document No. 2000-177621, referred to in Schedule C to locate with certainty the boundaries of the easement area(s) described in said instrument.
- (C) The easement area(s) are not easements of record. There shall be no liability by reason of the failure to comply with applicable subdivision ordinances, laws or regulations.
- (D) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT            :            AMENDED AND RESTATED COST SHARING AGREEMENT  
 DATED                    :            December 19, 2000  
 RECORDED               :            Document No. 2000-177622  
 PARTIES                 :            HAWAII KAI ELDERCARE, LLC, and KEAKU, LLC

By ASSIGNMENT AND ASSUMPTION OF AMENDED AND RESTATED COST SHARING AGREEMENT dated March 5, 2002, recorded as Document No. 2002-039414, KEAKU, LLC, a Hawaii limited liability company, assigned its rights under said Agreement to D.R. HORTON - SCHULER HOMES, LLC, a Hawaii limited liability company, dba SCHULER HOMES. Consent thereto given by HAWAII KAI ELDERCARE, LLC, a Hawaii limited liability company, by instrument dated March 5, 2002, recorded as Document No. 2002-039415.

By ASSIGNMENT AND ASSUMPTION OF COST SHARING AGREEMENTS dated September 27, 2002, recorded as Document No. 2002-171819, the rights of HAWAII KAI ELDERCARE, LLC, in said Agreement were assigned to D.R. HORTON - SCHULER HOMES, LLC, a Hawaii limited liability company, dba SCHULER HOMES.

- (E) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT            :            MAINTENANCE DECLARATION  
 DATED                    :            December 19, 2000  
 RECORDED               :            Document No. 2000-177629  
 PARTIES                 :            HAWAII KAI ELDERCARE, LLC, KEAKU, LLC,

HAWAII INTERGENERATIONAL COMMUNITY  
DEVELOPMENT ASSOCIATION, 21ST CENTURY  
HOMES, INC., and INVESTMENT PARTNERS,  
INC.

By ASSIGNMENT AND ASSUMPTION OF MAINTENANCE DECLARATION dated March 5, 2002, recorded as Document No. 2002-039413, KEAKU, LLC, a Hawaii limited liability company, assigned its rights under said Declaration to D.R. HORTON - SCHULER HOMES, LLC, a Delaware limited liability company, dba SCHULER HOMES.

By ASSIGNMENT OF RIGHTS dated September 27, 2002, recorded as Document No. 2002-171817, the rights of HAWAII KAI ELDERCARE, LLC, in said Declaration, were assigned to D.R. HORTON - SCHULER HOMES, LLC, a Hawaii limited liability company, dba SCHULER HOMES.

END OF EXHIBIT "A"

**EXHIBIT "B-1"**

**DESCRIPTION OF BUILDINGS AND RESIDENCES**

**DESCRIPTION OF BUILDINGS**

There shall be two (2) different building types in the Community, designated as Complex Building Types I and II,. Complex building Type I shall have three stories or levels and Complex Building Type II shall have two stories. Building Type I has eight (8) residences and Complex Building Type II has four (4) residences. Building Type I has a reverse configuration.

Each building is identified on the Condominium Map by a number designation. The following is a list of all of the Community's buildings by building type and number designation:

<u>Building Type</u>	<u>Buildings</u>
I	1, 2, 3, 5, 6, 8, 9, 10
II	4, 7, 11, 12, 13

**DESCRIPTION OF RESIDENCES**

The Community shall contain 84 Residences in 13 buildings. None of the Residences or buildings have a basement. The Residences and buildings shall be constructed principally of metal, wood, glass and related building materials.

There are seven (7) different model types in the Community, designated as Model Types A through G, inclusive, Model Types A, B, C, F and G have reverse models. A description of each model type is as follows:

**Model Types A/A-R**

These Model Types are two-story Residences containing three bedrooms, two and one-half bathrooms, living/dining area, kitchen, two-car garage and other improvements as shown on the Condominium Map. These Model Types contain a net living area of approximately 1,550 square feet, entry area of approximately 28 square feet, and a garage area of approximately 351 square feet. There are 16 of these Model Type Residences in the Community.

**Model Types B/B-R**

These Model Types are three-story Residences containing three bedrooms, two and one-half bathrooms, living/dining area, kitchen, family room, lanai, a one-car garage and other improvements as shown on the Condominium Map. These Model Types contain a net living area of approximately 1,651 square feet, an entry area of approximately 18 square feet, a lanai area of 39 square feet, and a garage area of approximately 229 square feet. There are 16 of these Model Type Residences in the Community.

### Model Types C/C-R

These Model Types are three-story Residences containing three bedrooms, two and one-half bathrooms, living/dining room, kitchen, family room, lanai, one-car garage and other improvements as shown on the Condominium Map. These Model Types contain a net living area of approximately 1,725 square feet, an entry area of approximately 11 square feet, a lanai area of 42 square feet, and a garage area of approximately 224 square feet. There are 16 of these Model Type Residences in the Community.

### Model Types D

These Model Types are one-story Residences containing two bedrooms, two bathrooms, living/dining area, kitchen, lanai, a one-car garage and other improvements as shown on the Condominium Map. A portion of the master bedroom of this model type may be converted into a third bedroom. These Model Types contain a net living area of approximately 1,237 square feet, entry area of approximately 72 square feet, a lanai area of 42 square feet, and a garage area of approximately 202 square feet. There are 8 of these Model Type Residences in the Community.

### Model Types E

These Model Types are one-story Residences containing two bedrooms, two bathrooms, living/dining room, kitchen, lanai, a one-car garage and other improvements as shown on the Condominium Map. These Model Types contain a net living area of approximately 1,241 square feet, an entry area of approximately 72 square feet, a lanai area of 42 square feet, and a garage area of approximately 197 square feet. There are 8 of these Model Type Residences in the Community.

### Model Type F/F-R

These Model Types are two-story Residences containing three bedrooms, two and one-half bathrooms, living/dining rooms, kitchen, family room, patio, a two-car garage and other improvements as shown on the Condominium Map. These Model Types contain a net living area of approximately 1,522 square feet, an entry area of approximately 29 square feet, and a garage area of approximately 349 square feet. There are 10 Model Type F Residences in the Community.

### Model Type G/G-R

These Model Types are two-story Residences containing three bedrooms, two and one-half bathrooms, living/dining area, kitchen, family room, patio, a two-car garage and other improvements as shown on the Condominium Map. These Model Types contain a net living area of approximately 1,513 square feet, an entry area of 26 square feet, and a garage area of approximately 349 square feet. There are 10 Model Type G Residences in the Community.

### **ORIGINAL APPLIANCES, FIXTURES AND ADDITIONS:**

In its original condition, each residence will have carpeting (except in the kitchen, the bathroom(s) and other areas having continued exposure to water, which shall have sheet vinyl flooring), range, range hood/microwave, refrigerator/freezer, washer, dryer, water heater, garbage disposal, garage door openers, central air conditioning and dishwasher.

**LOCATION AND NUMBERING OF APARTMENTS:**

Each Residence shall be designated by a number, indicating "Building Number, followed by numbers ("1", "2", "3", "4," etc.) designating the Building Number. The Residence numbers will follow the Building Number (e.g. 1-1, 1-2, 1-3, etc.). The Residence numbers and locations are more fully illustrated on the Condominium Map.

**ACCESS TO COMMON ELEMENTS:**

Each residence in the Community has immediate access to the common elements of the Community or to a walkway or stairway leading to the common elements of the Community.

**END OF EXHIBIT "B-1"**

## EXHIBIT "B-2"

### DESCRIPTION OF COMMON ELEMENTS

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

1. The Land and those improvements to the Land, excluding the Residences and Private Yard Areas, but including without limitation the Community Access Road, the entrance road, the Landscape Easement, exterior lighting fixtures located along and/or adjacent to the Community Access Road, Private Park, the common area landscaping and similar improvements.
2. All structural components, such as foundations, girders, columns, beams, floor slabs, supports, main walls, load-bearing walls, floors, ceilings (except the inner or decorated surfaces of such walls, floors and ceilings), roofs, exterior stairs and stairways, landings, railings, entrances and exits (other than the entry courts or entry areas included in the definition of a residence) of the buildings and/or Residences, doors, door frames, windows, window frames, and other building appurtenances; provided, however, that all rollers, locks, handles, tracks and appurtenant hardware associated with all windows, doors and exterior garage doors, if any, and all sliding screen doors and all glass and window screens shall be the responsibility of the Residence owners.
3. All yards, grounds, gardens, planters, plants, landscaping, refuse facilities, loading area, barbecue areas, designated children's play areas, and recreational facilities, if any.
4. All fences and walls as shown on the Condominium Map, including those fences and walls defined as "Party Walls" in the Declaration.
5. All drainage facilities or swales, pipes, shafts, wires, conduits or other utilities or service lines running through a Residence, or Private Yard Area which are utilized for or serve more than one Residence, or Private Yard Area or other features of the Community.
6. All sidewalks, pathways, curbs, and parking areas (including, without limitation covered and uncovered off street parking stalls, but excluding the interior of garages) and 13 "Guest" parking stalls numbered G1 through G11, inclusive, 11A, and 28A, as shown on the Condominium Map.
7. All ducts, electrical equipment, transformers, wiring, pipes and other central and appurtenant transmission facilities and installations over, under and across the Community or individual Private Yard Areas which are utilized by or serve more than one Residence or for services such as power, light, water, gas, sewer, drainage, telephone and radio and television signal distribution, if any.
8. All areas, rooms, spaces, structures, housings, chutes, shafts or facilities of the Community within or outside of the buildings, which are for common use or which serve more than one Residence, such as electrical, maintenance, service, security, machine, mechanical and equipment rooms and the equipment, machinery and facilities therein.

9. All the benefits, if any, inuring to the land or to the Community from all easements, if any, shown on the Condominium Map or listed in Exhibit "A" attached to the Declaration of Condominium Property Regime.
10. Any and all apparatus and installations of common use and all other parts of the Community necessary or convenient to its existence, maintenance and safety, or normally in common use.
11. All other parts of the Community not included in the definition of a Residence or Private Yard Area.

**END OF EXHIBIT "B-2"**

## EXHIBIT "B-3"

### DESCRIPTION OF LIMITED COMMON ELEMENTS

Each Residence shall have appurtenant to the Residence easements for the exclusive use of certain limited common elements as follows:

1. Private Yard Area:

The land area appurtenant to each Residence, as described in this Declaration and as shown on the Condominium Map, and bearing the same Private Yard Area number as the unit number assigned to the Residence, is a limited common element. Private Yard Areas are not legally subdivided lots. Private Yard Area includes the fenced yard area to the rear and sides of the Residence bearing the same number as the Private Yard Area, but excludes any fencing and land beneath the Residence.

2. Group Mailbox and Trash Locations:

Each Residence is provided with a designated mailbox. Individual mailboxes will be located at group mailbox clusters located at the rear of each building, facing the Community Access Road. Group Trash Bins will be located at several locations along the Community Access Road.

3. Parking Stall Assignments:

Each Residence has either a one car or two car garage as a component of the Residence. The Condominium Map identifies each stall by a parking stall number. Each Residence with a single car garage shall have appurtenant to it, as a limited common element, the exclusive right to use one (1) additional parking stall as designated in the following chart. Certain additional assigned parking stalls are located directly fronting the garage of the Residence (where shown on the Condominium Map). The particular parking stalls that initially will be appurtenant to the particular Residence are as follows:

**MOANA KAI PARKING STALL CHART**

<b>UNIT#</b>	<b>STALL #1</b>	<b>STALL # 2</b>	<b>UNIT #</b>	<b>STALL #1</b>	<b>STALL #2</b>
1-1	1	2C	7-1	113C	114
1-2	5	14	7-2	111	112C
1-3	3	12	7-3	109C	110
1-4	4	13	7-4	107	108C
1-5	6	15	8-1	131C	132
1-6	7	16	8-2	128	136
1-7	8	17	8-3	130	138
1-8	9C	10	8 4	129	137
2-1	18	19C	8-5	127	135
2-2	22	31	8-6	126	134
2-3	20	29	8-7	125	133
2-4	21	30	8-8	123	124C
2-5	23	32	9-1	139	140C
2-6	24	33	9-2	143	151
2-7	25	34	9-3	141	149
2-8	26C	27	9-4	142	150
3-1	35	36C	9-5	144	152
3-2	39	47	9-6	145	153
3-3	37	45	9-7	146	154
3-4	38	46	9-8	147C	148
3-5	40	48	10-1	155	156C
3-6	41	49	10-2	159	167
3-7	42	50	10-3	157	165C
3-8	43C	44	10-4	158	166C
4-1	51	52C	10-5	160	168
4-2	53C	54	10-6	161	169
4-3	55	56C	10-7	162	170
4-4	57C	58	10-8	163C	164
5-1	68	67C	11-1	115	116C
5-2	64	72	11-2	117C	118
5-3	66	74	11-3	119	120C
5-4	65	73	11-4	121C	122
5-5	63	71	12-1	99	100C
5-6	62	70	12-2	101C	102
5-7	61	69	12-3	103	104C
5-8	59	60C	12-4	105C	106
6-1	91C	92	13-1	75	76C
6-2	88	96	13-2	77C	78
6-3	90	98	13-3	79	80C
6-4	89	97	13-4	81C	82
6-5	87	95			
6-6	86	94			
6-7	85	93			
6-8	83	84C			

Parking stalls may be "compact" and "standard" in size, but may not be labeled as such on the Condominium Map. A parking stall marked with a handicap emblem, as shown on the Condominium Map, indicates a parking stall that is suited for use by persons with disabilities.

**END OF EXHIBIT "B-3"**

**EXHIBIT "C"**

**COMMON INTERESTS FOR INCREMENTS 1 & 2\***

(assuming both increments are constructed)

Model Type	Residence Number	Undivided Common Interest of Each Residence
A/AR (16)	1-1, 1-8, 2-1, 2-8, 3-1, 3-8, 5-1, 5-8, 6-1, 6-8, 8-1, 8-8, 9-1, 9-8, 10-1, 10-8	.012317
B/BR (16)	1-3, 1-7, 2-3, 2-7, 3-3, 3-7, 5-3, 5-7, 6-3, 6-7, 8-3, 8-7, 9-3, 9-7, 10-3, 10-7	.012368
C/CR (16)	1-4, 1-6, 2-4, 2-6, 3-4, 3-6, 5-4, 5-6, 6-4, 6-6, 8-4, 8-6, 9-4, 9-6, 10-4, 10-6	.012784
D (8)	1-2, 2-2, 3-2, 5-5, 6-5, 8-5, 9-2, 10-2	.009916
E (8)	1-5, 2-5, 3-5, 5-2, 6-2, 8-2, 9-5, 10-5	.009911
F/FR (10)	4-1, 4-4, 7-1, 7-4, 11-4, 11-1, 12-4, 12-1, 13-4, 13-1	.012132
G/GR (10)	4-2, 4-3, 7-2, 7-3, 11-3, 11-2, 12-3, 12-2, 13-3, 13-2	.012056

**COMMON INTEREST FOR INCREMENT 1 ONLY**

Model Type	Residence Number	Allocation of Common Expenses Until Addition of Future Increments
A/AR (8)	1-1, 1-8, 2-1, 2-8, 3-1, 3-8, 5-1, 5-8	.025887
B/BR (8)	1-3, 1-7, 2-3, 2-7, 3-3, 3-7, 5-3, 5-7	.025994
C/CR (8)	1-4, 1-6, 2-4, 2-6, 3-4, 3-6, 5-4, 5-6	.026867
D (4)	1-2, 2-2, 3-2, 5-5	.020841
E (4)	1-5, 2-5, 3-5, 5-2	.020828
F/FR (4)	4-1, 4-4, 13-1, 13-4	.025498
G/GR (4)	4-2, 4-3, 13-2, 13-3	.025337

\* The Developer contemplates that the development shall proceed in two increments. The Developer may alter the number of Residences within an Increment (by increasing or decreasing the number of Residences within an Increment) or construct the Community in one (1) or more Increments in Developer's discretion. Increment 1 shall consist of 40 Residences, and Increment 2 shall consist of 44 Residences. The Private Yard Areas associated with each Residence are not subdivided lots, but rather exclusive limited common elements.

**END OF EXHIBIT "C"**

# EXHIBIT "D"

## HOME BUILDER'S LIMITED WARRANTY

Administered by Professional Warranty Service Corporation

Throughout this **HOME BUILDER'S LIMITED WARRANTY**, referred to hereinafter as the "**LIMITED WARRANTY**", the words "**YOU**" and "**YOUR**" refer to the **HOMEOWNER** and **HOMEOWNERS ASSOCIATION**. The words "**WE**", "**US**" and "**OUR**" refer to the **BUILDER**. The other words and phrases which appear in boldface uppercase type also have special meaning. Refer to the Section X. **Definitions**, so that **YOU** will understand the terminology applicable to this **LIMITED WARRANTY**.

This **LIMITED WARRANTY** establishes an agreed method for determining when a **CONSTRUCTION DEFECT** exists and a clear understanding of **OUR** responsibilities for remedying any such **CONSTRUCTION DEFECT**. This **LIMITED WARRANTY** also helps distinguish a **CONSTRUCTION DEFECT** that is **OUR** responsibility from those minor imperfections that can reasonably be expected in a **HOME** or the **COMMON ELEMENTS** or result from normal wear and tear or are routine **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** maintenance responsibilities.

This **LIMITED WARRANTY** contains the procedures **YOU** must use to notify **US** of a condition in **YOUR HOME** or the **COMMON ELEMENTS**, which **YOU** believe may constitute a **CONSTRUCTION DEFECT**. In the event a condition occurs in the **HOME** or the **COMMON ELEMENTS** that **YOU** believe may constitute a **CONSTRUCTION DEFECT**, **YOU** agree to submit any request for warranty performance under this **LIMITED WARRANTY**. Based on the information **YOU** provide, and where **WE** deem it necessary information obtained from **OUR** onsite investigation inspection and/or testing of the **HOME** or the **COMMON ELEMENTS**, **WE** will determine whether **WE** agree with **YOU** that the condition constitutes a **CONSTRUCTION DEFECT**. If **WE** determine that the condition reported by **YOU** is a **CONSTRUCTION DEFECT**, **WE** will remedy the condition in accordance with the remedies prescribed in this **LIMITED WARRANTY**. **WE** will make this determination in accordance with Section III, **OUR Coverage Obligations**, contained in this **LIMITED WARRANTY**.

If **WE** determine that a condition does not constitute a **CONSTRUCTION DEFECT** that is **OUR** responsibility and therefore deny **YOUR** request for warranty performance, **YOU** have the right to initiate binding arbitration that will irrevocably determine whether the condition constitutes a **CONSTRUCTION DEFECT** that is **OUR** responsibility. If this binding arbitration determines that the condition does constitute a **CONSTRUCTION DEFECT** that is **OUR** responsibility, **WE** will resolve the problem in accordance with the remedies prescribed in this **LIMITED WARRANTY**. The arbitrator will make a determination based on the language contained in Section III, **OUR Coverage Obligations**.

Enclosed with this **LIMITED WARRANTY** is a Limited Warranty Validation Form. The Limited Warranty Validation Form provides the dates on which the warranty coverage period begins and expires. It is important that this form is retained with the **LIMITED WARRANTY**. Liability under this **LIMITED WARRANTY** is limited to the amount shown on the Limited Warranty Validation Form.

All express or implied warranties other than this **LIMITED WARRANTY**, including any oral or written statement or representation made by **US** or any other person, and any implied warranty of habitability, merchantability or fitness, are hereby disclaimed by **US** and are waived by **YOU**. In addition, **YOU** waive the right to seek damages or other legal or equitable remedies from **US**, **OUR** subcontractors, agents, vendors, suppliers, design professionals and materialmen, under any other common law or statutory theory of liability, including but not limited to negligence and strict liability. **YOUR** only remedy in the event of a **CONSTRUCTION DEFECT** in or to the **HOME** or the **COMMON ELEMENTS** or to the real property on which the **HOME** or the **COMMON ELEMENTS** is situated is the coverage provided to **YOU** under this **LIMITED WARRANTY**. There may be instances where an additional **PWC** administered Builder's Limited Warranty is issued together with this **LIMITED WARRANTY**. If both of these warranties are issued to **YOU**, **YOU** agree to request warranty performance under either warranty relative to warrantable issues on the **HOME** or the **COMMON ELEMENTS**. **YOU** may not collect twice relative to the same defect and amounts paid or expended by **US** for warranty performance under either warranty will reduce the limit of liability remaining under both warranties simultaneously.

**WE** have contracted with **PWC** for certain administrative services relative to this **LIMITED WARRANTY**. **PWC's** sole responsibility is to provide administrative services. Under no circumstances or conditions is **PWC** responsible for fulfilling **OUR** obligations under this **LIMITED WARRANTY**.

If any provision of this **LIMITED WARRANTY** is determined to be unenforceable, such a determination will not affect the remaining provisions. If this **LIMITED WARRANTY** or any provision herein is determined to be unenforceable as to a **HOMEOWNERS ASSOCIATION** or a specific **HOMEOWNER**, such a determination will not affect the enforceability of this **LIMITED WARRANTY** or such provision as to any other **HOMEOWNERS ASSOCIATION** or any other **HOMEOWNER**. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this **LIMITED WARRANTY**.

## I. Coverage Limit

The amount shown on the Limited Warranty Validation Form is **OUR** limit of liability. It is the most **WE** will pay or expend for all covered **CONSTRUCTION DEFECTS** regardless of the number of requests for warranty performance made against this **LIMITED WARRANTY**. Once **OUR** limit of liability has been paid, no further requests for warranty performance can be made against this **LIMITED WARRANTY** or any other **PWC** administered Builder's Limited Warranty issued for the **HOME** or the **COMMON ELEMENTS**.

## II. Warranty Coverage

Coverage under this **LIMITED WARRANTY** is expressly limited to **CONSTRUCTION DEFECTS** which occur during the **WARRANTY PERIOD** indicated on the Limited Warranty Validation Form and are reported by **YOU** in accordance with the notification requirements of Section VII, **Procedure to Request US To Perform Under This LIMITED WARRANTY**.

**Coverage** During the **WARRANTY PERIOD** indicated on the Limited Warranty Validation Form that is attached to and made part of this **LIMITED WARRANTY**, **WE** warrant the **HOME** and the **COMMON ELEMENTS** will be free of **CONSTRUCTION DEFECTS**. To be eligible for coverage **WE** must receive written notice from **YOU** of the alleged **CONSTRUCTION DEFECT** as soon as it is reasonably possible after **YOU** have become aware or should have become aware of a **CONSTRUCTION DEFECT** but in no event later than thirty (30) days after the expiration of the coverage.

## III. OUR Coverage Obligations

All notices of alleged **CONSTRUCTION DEFECTS**, and complaints under this **LIMITED WARRANTY** must be made by **YOU** in writing. Telephonic or face-to-face discussion will not protect **YOUR** rights under this **LIMITED WARRANTY** (see Section VII, **Procedure to Request US To Perform Under This LIMITED WARRANTY**).

In the event **YOU** allege a **CONSTRUCTION DEFECT** occurs during the **WARRANTY PERIOD**, upon receiving written notice from **YOU**, **WE**, or a third party designated by **US** or acting on **OUR** behalf, will inspect, investigate and/or test (including destructive testing) the alleged **CONSTRUCTION DEFECT** to determine if a **CONSTRUCTION DEFECT** exists. Upon confirmation of a **CONSTRUCTION DEFECT**, **WE**, or a third party designated by **US** or acting on **OUR** behalf, will (1) repair or replace the **CONSTRUCTION DEFECT**, (2) pay to **YOU** the actual amount it would cost **US** to repair or replace the **CONSTRUCTION DEFECT** or (3) **PAY** to **YOU** an amount equal to the diminution in fair market value caused by the **CONSTRUCTION DEFECT**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** authorized representative's sole option.

**WE** will have been considered to have breached this **LIMITED WARRANTY** only if **WE** fail to resolve a **CONSTRUCTION DEFECT** in accordance with the terms and conditions of this **LIMITED WARRANTY**.

**A. Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined**

In the event YOU believe that a flaw in the HOME or the COMMON ELEMENTS constitutes a CONSTRUCTION DEFECT, the following factors will be considered by US in determining whether the condition constitutes a CONSTRUCTION DEFECT. Should either YOU or WE elect to initiate binding arbitration, these factors will be considered by the arbitrator in rendering a decision:

1. Any performance standards or guidelines or other documents or manuals that contain OUR building standards, that were provided to YOU at or prior to closing on the HOME, or in the case of the HOMEOWNERS ASSOCIATION, prior to transferring title to all the COMMON ELEMENTS. Absent such standards, the Residential Construction Performance Guidelines published by the National Association of Home Builders, in effect at the time of closing on the HOME, or in the case of the HOMEOWNERS ASSOCIATION, at the time of transferring title to all the COMMON ELEMENTS shall apply. Absent a specific standard in the documents identified above, building practices and standards in use in the region of the country in which the HOME or the COMMON ELEMENTS are located shall apply;
2. Consideration as to whether the magnitude of the flaw or imperfection:
  - materially affects the structural integrity of the HOME or COMMON ELEMENTS; or
  - has an obvious and material negative impact on the appearance of the HOME or COMMON ELEMENTS; or
  - jeopardizes the life or safety of the occupants; or
  - results in the inability of the HOME or the applicable COMMON ELEMENTS to provide the functions that can reasonably be expected in such a HOME or COMMON ELEMENT.
3. Consideration as to whether a condition is the result of normal wear and tear (conditions that are normal wear and tear, or are caused by normal wear and tear are not CONSTRUCTION DEFECTS);
4. Consideration as to whether the condition was caused by, or in any way resulted from, the failure of the HOMEOWNER or HOMEOWNERS ASSOCIATION to perform normal or routine maintenance (any condition that is determined to be a HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance issue, or any condition that results from improper or inadequate HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance, is not a CONSTRUCTION DEFECT);
5. Consideration as to whether the condition was caused by the HOMEOWNER or HOMEOWNERS ASSOCIATION or their representatives, other than US, after the HOMEOWNER took possession of the HOME or the COMMON ELEMENTS (WE and YOU conducted a walk through inspection just prior to closing on the HOME. Damage that was caused by YOU or YOUR representatives is not a CONSTRUCTION DEFECT, for example, a large, visible scratch on marble tile in the entry foyer that was not noted in the walk through inspection, but was reported after furniture was moved into the HOME, will not be considered a CONSTRUCTION DEFECT);
6. Recognition that any condition resulting directly or indirectly from or worsened by changes, additions, alterations or other actions or omissions by the HOMEOWNER or HOMEOWNERS ASSOCIATION or their agents, other than US, will not be considered a CONSTRUCTION DEFECT (this includes changes to the topography, drainage or grade of the property);
7. Any Exclusions contained in this LIMITED WARRANTY.

## IV. Homeowner Maintenance Obligations

Maintenance of the **HOME** and the **COMMON ELEMENTS** is **YOUR** responsibility. All homes and common elements require periodic maintenance to prevent premature deterioration, water intrusion and to ensure adequate performance of the **SYSTEMS**. **WE** will make a "Homeowner Maintenance Manual" or similar publication available to **YOU** upon request. Whether from this document or others that are readily available to **YOU**, **YOU** must understand and perform the maintenance that the **HOME** and **COMMON ELEMENTS** require. As stated in other sections of this **LIMITED WARRANTY**, **WE** are not responsible for **HOME** or **COMMON ELEMENTS** maintenance issues or for damage that results from **YOUR** failure to maintain the **HOME** or the **COMMON ELEMENTS**.

## V. Coverage Limitations

When **WE** or a third party designated by **US** or acting on **OUR** behalf, repair or replace a **CONSTRUCTION DEFECT** the repair or replacement will include the repair or replacement of only those surfaces, finishes and coverings that were damaged by the **CONSTRUCTION DEFECT** that were part of the **HOME** or the **COMMON ELEMENTS** when title was first transferred by **US**. Surfaces, finishes and coverings that require repair or replacement in order for **US** or a third party designated by **US** to repair or replace **CONSTRUCTION DEFECTS** will be repaired or replaced. The extent of the repair and replacement of these surfaces, finishes or coverings will be to approximately the same condition they were in prior to the **CONSTRUCTION DEFECT**, but not necessarily to a like new condition.

When repairing or replacing surfaces, finishes and coverings, the repair or replacement will attempt to achieve as close a match with the original surrounding areas as is reasonably possible, but an exact match cannot be guaranteed due to such factors as fading, aging and unavailability of the same materials.

In the case where a **CONSTRUCTION DEFECT** exists and the **HOME** is rendered uninhabitable and the **CONSTRUCTION DEFECT** is repaired or replaced, the repair or replacement shall include the reasonable cost of the **HOMEOWNER'S** alternative shelter until the **HOME** is made habitable.

## VI. Exclusions

- A. This **LIMITED WARRANTY** does not cover:
1. Any **CONSTRUCTION DEFECTS** or other damages resulting, either directly or indirectly, from the following causes or occurring in the following situations:
    - a. Fire;
    - b. Lightning;
    - c. Explosion;
    - d. Riot and Civil Commotion;
    - e. Smoke;
    - f. Hail;
    - g. Aircraft;
    - h. Falling Objects;
    - i. Vehicles;
    - j. Floods;
    - k. Earthquake;
    - l. Landslide or mudslide originating on property other than the site of the **HOME** or the **COMMON ELEMENTS** or other property developed by the **BUILDER**;
    - m. Mine subsidence or sinkholes;

- n. Changes in the underground water table not reasonably foreseeable by the **BUILDER**;
  - o. Volcanic eruption; explosion or effusion;
  - p. Wind including:
    - (i). Gale force winds;
    - (ii). Hurricanes;
    - (iii). Tropical storms;
    - (iv). Tornadoes;
  - q. Insects, animals or vermin;
  - r. Changes of the grading of the ground by anyone other than **US** or **OUR** agents, or subcontractors which results in surface drainage towards the **HOME** or other improper drainage or permits water to pond or become trapped in localized areas against the foundation or otherwise;
  - s. Changes, additions, or alterations made to the **HOME** or the **COMMON ELEMENTS** by anyone after the **WARRANTY PERIOD** begins, except those made or authorized by **US**;
  - t. Any defect in material or workmanship supplied by anyone other than **US** or **OUR** agents, or subcontractors;
  - u. Improper maintenance, negligence or improper use of the **HOME** or the **COMMON ELEMENTS** by **YOU** or anyone other than **US** that results in rot, dry rot, moisture, rust, mildew or any other damage;
  - v. Dampness or condensation due to **YOUR** failure to maintain adequate ventilation;
  - w. Damage resulting from the weight and/or performance of any type of waterbed or other furnishings which exceeds the load-bearing design of the **HOME** or the **COMMON ELEMENTS**;
  - x. Normal wear and tear or normal deterioration of materials;
  - y. Economic damages due to the **HOME'S** or the **COMMON ELEMENTS'** failure to meet consumer expectations.
2. Any costs arising from, or any **CONSTRUCTION DEFECT** resulting from the actual, alleged or threatened discharge, dispersal, release or escape of **POLLUTANTS**. ~~WE~~ will not cover costs or expenses arising from the uninhabitability of the **HOME** or the **COMMON ELEMENTS** or health risk due to the proximity of **POLLUTANTS**. ~~WE~~ will not cover costs, or expenses resulting from the direction of any governmental entity to test, clean-up, remove, treat, contain or monitor **POLLUTANTS**;
- 3. Any costs arising from, or any **CONSTRUCTION DEFECT** resulting from the effects of electromagnetic fields (EMF's) or radiation;
  - 4. Any damage to personal property that does not result from a **CONSTRUCTION DEFECT**;
  - 5. Any "**CONSEQUENTIAL OR INCIDENTAL DAMAGES**";
  - 6. Any damage to **CONSUMER PRODUCTS**;
  - 7. Any **CONSTRUCTION DEFECT** as to which **YOU** have not taken timely and reasonable steps to protect and minimize damage after **WE** or **OUR** authorized representative have provided **YOU** with authorization to prevent further damage;
  - 8. Any damage to the extent it is incurred after or as a result of **YOUR** failure to notify **US** in a reasonably timely manner after **YOU** have become aware or should have become aware of the **CONSTRUCTION DEFECT** or condition causing such damage.
  - 9. Any costs or obligations paid or incurred by **YOU** in violation of Section VII. C. below;
  - 10. Any non-conformity with local building codes, regulations or requirements that has not resulted in a **CONSTRUCTION DEFECT**. While **WE** acknowledge **OUR** responsibility to build in accordance with applicable building codes, this **LIMITED WARRANTY** does not cover building code violations in the absence of a **CONSTRUCTION DEFECT**;

11. Any deviation from plans and specifications that has not resulted in a **CONSTRUCTION DEFECT**.
- B. **OUR LIMITED WARRANTY** does not cover any **CONSTRUCTION DEFECT** which would not have occurred in the absence of one or more of the excluded events or conditions listed in Exclusions, Section VI. A.1 a. – A.1.q., A.2. or A.3. above, regardless of:
1. the cause of the excluded event or condition; or
  2. other causes of the loss or damage; or
  3. whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage.

## **VII. Procedure to Request US To Perform Under This LIMITED WARRANTY**

If **YOU** become aware of a condition that **YOU** believe is a **CONSTRUCTION DEFECT** under this **LIMITED WARRANTY**, **YOU** have the following responsibilities:

### **A. Notification**

**YOU** must notify **US** in writing as soon as it is reasonably possible after **YOU** have become aware or should have become aware of a **CONSTRUCTION DEFECT**, but in no event may **YOUR** written notice of a **CONSTRUCTION DEFECT** or **YOUR** written request for warranty performance be postmarked or received by **US** later than thirty (30) days after this **LIMITED WARRANTY** has expired.

If the written notice is postmarked or received by **US** more than thirty (30) days after the expiration of this **LIMITED WARRANTY**, **WE** shall have no obligation to remedy the **CONSTRUCTION DEFECT**. In order to establish a record of timely notification, **WE** recommend that written notice should always be sent by Certified Mail, return receipt requested.

### **B. Cooperate With US**

**YOU** must give **US** and any third parties acting on **OUR** behalf reasonable help in inspecting, investigating, testing (including destructive testing), monitoring, repairing, replacing or otherwise correcting an alleged **CONSTRUCTION DEFECT**. Help includes, but is not limited to, granting reasonable access to the **HOME** or **COMMON ELEMENTS** for the forgoing purposes. If **YOU** fail to cooperate or provide such reasonable access to the **HOME** or **COMMON ELEMENTS**, **WE** will have no obligation to do any of the foregoing.

### **C. Do Not Make Voluntary Payments**

**YOU** agree not to make any voluntary payments or assume any obligations or incur any expenses for the remedy of a condition **YOU** believe is a **CONSTRUCTION DEFECT** without prior written approval from **US**, or other parties authorized to act on **OUR** behalf. **WE** will not reimburse **YOU** for costs incurred where **YOU** did not obtain prior written approval.

However, **YOU** may incur reasonable expenses in making repairs in an **EMERGENCY CONDITION** without prior written approval, provided the repairs are solely for the protection of the **HOME** or **COMMON ELEMENTS** from further damage or to prevent an unsafe living condition and provided **YOU** notify **US** as soon as is reasonably possible. To obtain reimbursement for repairs made during an **EMERGENCY CONDITION**, **YOU** must provide **US** with an accurate written record of the repair costs.

#### D. Sign A Release

When **WE** or a third party designated by **US** or acting on **OUR** behalf have completed repairing, replacing or paying **YOU** as to any **CONSTRUCTION DEFECTS** or other related damage to the **HOME** or the **COMMON ELEMENTS** covered by this **LIMITED WARRANTY**. **YOU** must sign a full release of **OUR** obligation for the **CONSTRUCTION DEFECTS**. The release shall be applicable to the **CONSTRUCTION DEFECTS** and shall not prevent **YOU** from notifying **US** should **YOU** become aware of a subsequent **CONSTRUCTION DEFECT**.

#### E. If YOU Disagree With US

If **YOU** believe **WE** have not responded to **YOUR** request for warranty performance to **YOUR** satisfaction or in a manner that **YOU** believe this **LIMITED WARRANTY** requires, **YOU** may provide written notice to **PWC** requesting Mediation. Upon **PWC's** receipt of written notice from **YOU**, **PWC** may review and mediate **YOUR** request by communicating with **YOU**, **US**, and any other individuals or entities that **PWC** believes may possess relevant information. If after forty-five (45) days, **PWC** is unable to successfully mediate **YOUR** request for warranty performance, or at any earlier time when **PWC** determines that **YOU** and **WE** are at an impasse, **PWC** will notify **YOU** that **YOUR** request for warranty performance remains unresolved and that **YOU** may elect to initiate Binding Arbitration. Binding Arbitration as described in the following section is the sole remedy for the resolution of disputes between **YOU** and **US** as set forth in the following section.

### VIII. Binding Arbitration Procedure

Any disputes between **YOU** and **US**, or parties acting on **OUR** behalf, including **PWC**, related to or arising from this **LIMITED WARRANTY**, the design or construction of the **HOME** or the **COMMON ELEMENTS** or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS** will be resolved by binding arbitration. Binding arbitration shall be the sole remedy for resolving any and all disputes between **YOU** and **US**, or **OUR** representatives. Disputes subject to binding arbitration include, but are not limited to:

- A. Any disagreement that a condition in the **HOME** or the **COMMON ELEMENTS** is a **CONSTRUCTION DEFECT** and is therefore covered by this **LIMITED WARRANTY**;
- B. Any disagreement as to whether a **CONSTRUCTION DEFECT** has been corrected in compliance with this **LIMITED WARRANTY**;
- C. Any alleged breach of this **LIMITED WARRANTY**;
- D. Any alleged violation of consumer protection, unfair trade practice, or any other statute;
- E. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and any other claims arising in equity or from common law;
- F. Any dispute concerning the issues that should be submitted to binding arbitration;
- G. Any dispute concerning the timeliness of **OUR** performance and/or **YOUR** notifications under this **LIMITED WARRANTY**;
- H. Any dispute as to the payment or reimbursement of the arbitration filing fee;
- I. Any dispute as to whether this **LIMITED WARRANTY**, or any provision hereof, including, but not limited to any waiver hereunder, is unenforceable;
- J. Any other claim arising out of or relating to the sale, design or construction of **YOUR HOME** or the **COMMON ELEMENTS**, including, but not limited to any claim arising out of, relating to or based

on any implied warranty or claim for negligence or strict liability not effectively waived by this **LIMITED WARRANTY**.

The arbitration shall be conducted by Construction Arbitration Services, Inc., or such other reputable arbitration service that **PWC** shall select, at its sole discretion, at the time the request for arbitration is submitted. The rules and procedures of the designated arbitration organization, that are in effect at the time the request for arbitration is submitted, will be followed. A copy of the applicable rules and procedures will be delivered to **YOU** upon request.

This arbitration agreement shall be governed by the United States Arbitration Act (9 U.S.C. §§ 1 – 16) to the exclusion of any inconsistent state law, regulation or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

Each party shall bear its own attorneys fees and costs (including expert costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between **YOU** and **US**. This filing fee shall be no more than the amount charged by the arbitration service to **PWC** for each arbitration. Contact **PWC** to determine the arbitration filing fee in effect at the time an arbitration is being requested. The arbitrator shall, as part of any decision, award to the party prevailing at the arbitration any applicable filing fees or other arbitration fees paid by that party.

The process for **YOU** to initiate arbitration is described below.

**Step 1** YOU complete a Binding Arbitration Request Form and mail it to PWC along with the appropriate arbitration filing fee. A Binding Arbitration Request Form is attached to this **LIMITED WARRANTY**. **YOUR** Binding Arbitration Request Form must be received no later than ninety (90) days after this **LIMITED WARRANTY** expires. **YOU** must still notify **US** of an alleged **CONSTRUCTION DEFECT** as soon as it is reasonably possible after **YOU** have become aware or should have become aware of the **CONSTRUCTION DEFECT**, but in no event later than thirty (30) days after expiration of this **LIMITED WARRANTY**. Please Note that while **YOU** have thirty (30) days after this **LIMITED WARRANTY** expires to notify **US** and ninety (90) days after it expires to file for arbitration, this time period does not extend the **WARRANTY PERIOD** for **CONSTRUCTION DEFECTS**. Additionally, no investigation, inspection, testing, repair, replacement, or payment, nor any promise of same by **US** under this **LIMITED WARRANTY**, nor any dispute resolution efforts, shall extend the term of this **LIMITED WARRANTY** or extend or toll any statutes of limitations or any of **YOUR** rights or remedies.

**Step 2** PWC Will Arrange the Arbitration Proceeding. The arbitrator or arbitration organization will notify **YOU** of the time, date and location of the arbitration hearing. Most often the hearing will be conducted at the **HOME** or the **COMMON ELEMENTS** or some other location that is agreeable to all the parties to the dispute. In scheduling the hearing the arbitrator will set a time and date that is reasonably convenient to all the parties.

**Step 3** The Arbitration Hearing. The parties at the arbitration hearing will include the arbitrator, **YOU**, **US** and/or a third party designated by **US** or acting on **OUR** behalf. Any party to the proceeding may be represented at the hearing. All persons who are parties to the arbitration, as well as representatives and witnesses, are entitled to attend hearings.

After evidence is presented by **YOU**, **US** or **OUR** representatives, a decision will be rendered by the arbitrator. The decision is final and binding on **YOU** and **US**. The arbitrator first will determine whether any claimed or alleged **CONSTRUCTION DEFECT** exists and whether it is **OUR** responsibility. Second, if the arbitrator finds **US** responsible for a **CONSTRUCTION DEFECT**, the arbitrator will determine the scope of any repair or replacement, **OUR** cost of any such repair or replacement, and the diminution in fair market value, if any, caused by such **CONSTRUCTION DEFECT**. Based upon the arbitrator's decision, **WE** shall choose whether **WE** shall (1) repair, replace the **CONSTRUCTION DEFECT**, (2) pay to **YOU** the actual amount it would cost **US** to repair or replace the **CONSTRUCTION DEFECT** or (3) **PAY** to **YOU** an amount equal to the diminution in fair market value caused by

the **CONSTRUCTION DEFECT**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** authorized representative's sole option. In addition, the arbitrator shall render a decision resolving any other disputed matters or issues related to or arising from this **LIMITED WARRANTY**, the design or construction of the **HOME** or the **COMMON ELEMENTS** or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS**.

**Step 4** **OUR Arbitration Performance Obligations.** **WE** will comply with the arbitrator's decision no later than 60 days from the date of the award or other such date as may be specified or allowed in the decision. However, delays caused by circumstances beyond **OUR** or **OUR** representative's control shall be excused.

**Step 5.** **If YOU believe WE Have Failed To Comply With The Award.** **YOU** should contact **PWC** at its mailing address specified in this **LIMITED WARRANTY** if **YOU** believe **WE** have not complied with the arbitrator's award. **PWC** will mediate this dispute and if it cannot be resolved, will advise **YOU** that a compliance inspection arbitration is available to determine whether **WE** have performed adequately under the original arbitration award. **PWC** will communicate these findings to both **US** and **YOU**. If it is determined that **WE** have not properly performed, **WE** will be obligated to immediately comply.

**PWC's** sole responsibility is to administer this **LIMITED WARRANTY** on **OUR** behalf and as such **PWC** assumes no other liabilities in connection with this **LIMITED WARRANTY**. Under no condition or circumstance is **PWC** responsible for fulfilling any of **OUR** obligations under this **LIMITED WARRANTY**.

## IX. General Conditions

### A. Separation of This **LIMITED WARRANTY** From The Contract Of Sale

This **LIMITED WARRANTY** is separate and independent of the contract between **YOU** and **US** for the construction and/or sale of the **HOME** or transfer of the **COMMON ELEMENTS**. The provisions of this **LIMITED WARRANTY** shall in no way be restricted or expanded by anything contained in the construction and/or sales contract or other documents between **YOU** and **US**.

### B. Transfer to Subsequent **HOMEOWNERS**

This **LIMITED WARRANTY** will transfer to new owners of the **HOME** for the remainder of the **WARRANTY PERIOD**. **YOU** agree to provide this **LIMITED WARRANTY** to any subsequent purchaser of the **HOME** as a part of the contract of sale of the **HOME**. **OUR** duties under this **LIMITED WARRANTY** to the new **HOMEOWNER** will not exceed the limit of liability then remaining, if any.

### C. Transfer of Manufacturer's Warranties

**WE** assign to **YOU** all the manufacturer's warranties on all appliances, fixtures and items of equipment that **WE** installed in the **HOME**. Should an appliance or item of equipment malfunction **YOU** must follow the procedures set forth in that manufacturer's warranty to correct the problem. **OUR** obligation under this **LIMITED WARRANTY** is limited to the workmanlike installation of such appliances and equipment. **WE** have no obligation for appliances and equipment defined as **CONSUMER PRODUCTS**.

### D. Recovery Rights

If **WE** or a third party designated by **US** or acting on **OUR** behalf repairs, replaces or pays **YOU** as to a **CONSTRUCTION DEFECT**, or other related damage to the **HOME** or the **COMMON ELEMENTS** covered by this **LIMITED WARRANTY**, **WE** are entitled, to the extent of **OUR** payment, to take over **YOUR** related rights of recovery from other people and organizations, including but not limited to, other warranties and insurance. **YOU** have an obligation not to make it harder for **US** to enforce these rights. **YOU** agree to sign any papers, deliver them to **US**, and do anything else that is necessary to help **US** exercise **OUR** rights.

## E. General Provisions

1. If any provision of this **LIMITED WARRANTY** is determined to be unenforceable, such a determination will not affect the remaining provisions. If this **LIMITED WARRANTY** or any provision herein is determined to be unenforceable as to a **HOMEOWNERS ASSOCIATION** or a specific **HOMEOWNER**, such a determination will not affect the enforceability of this **LIMITED WARRANTY** or such provision as to any other **HOMEOWNERS ASSOCIATION** or any other **HOMEOWNER**. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this **LIMITED WARRANTY**.
2. This **LIMITED WARRANTY** and the binding arbitration process are binding on **YOU** and **US**. It is also binding on **YOUR** and **OUR** heirs, executors, administrators, successors, and assigns, subject to paragraph B of the **General Conditions**.
3. As may be appropriate, the use of the plural in this **LIMITED WARRANTY** includes the singular, and the use of one gender includes all genders.

## X. Definitions

**BUILDER** means the individual, partnership, corporation or other entity, which participates in the Warranty Program administered by the Professional Warranty Service Corporation and provides **YOU** with this **LIMITED WARRANTY**. Throughout this document the **BUILDER** is also referred to as "**WE**", "**US**" and "**OUR**".

**COMMON ELEMENTS** means the property as specified in the recorded Covenants, Conditions and Restrictions as common area and any other property as to which the **HOMEOWNERS ASSOCIATION** has standing under the law to make a claim. This may include, but is not limited to, streets, slopes, the structure or components of enclosure or other parts of the **HOME**, corridors, lobbies, vertical transportation elements, rooms, balconies, clubhouses or other spaces that are for the common use of the residents of the development in which the **HOME** is located. **SYSTEMS** serving two or more **HOMES**, and the outbuildings that contain parts of such **SYSTEMS** are also included in this definition.

**CONSEQUENTIAL OR INCIDENTAL DAMAGES** means any loss or injury other than:

- A. **OUR** cost to correct a **CONSTRUCTION DEFECT** including the correction of those surfaces, finishes and coverings damaged by the **CONSTRUCTION DEFECT**;
- B. **OUR** cost of repair or replacement of furniture, carpet or personal property damaged by the **CONSTRUCTION DEFECT**. Should replacement be necessary, **OUR** obligation is limited to replacement with items providing the same function and quality and that are readily available at the time the item is being replaced.
- C. **OUR** costs of removal or replacement in order to repair or replace a **CONSTRUCTION DEFECT**;
- D. The reasonable cost of the **HOMEOWNER'S** alternative shelter where the **HOME** is uninhabitable due to a **CONSTRUCTION DEFECT** or where the **HOME** is rendered uninhabitable by the repair of the **CONSTRUCTION DEFECT**.

Diminished fair market value is considered "**CONSEQUENTIAL OR INCIDENTAL DAMAGE**" and is excluded under this **LIMITED WARRANTY** unless **WE** elect this remedy in lieu of the repair, replacement or other payment as to a **CONSTRUCTION DEFECT**.

**CONSTRUCTION DEFECT(S)** means a flaw in the materials or workmanship used in constructing the **HOME** that:

- materially affects the structural integrity of the **HOME** or the **COMMON ELEMENTS**; or
- has an obvious and material negative impact on the appearance of the **HOME** or the **COMMON ELEMENTS**;

or

- jeopardizes the life or safety of the occupants; or
- results in the inability of the **HOME** or the applicable **COMMON ELEMENTS** to provide the functions that can reasonably be expected in a residential dwelling.

**WE** and any arbitrator assigned to rule relative to a **CONSTRUCTION DEFECT** will consider both this definition and

Section III – A. (Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined) in determining the existence of a CONSTRUCTION DEFECT. A flaw is a CONSTRUCTION DEFECT if either WE or an arbitrator conducting a binding arbitration hearing declares the flaw to be a CONSTRUCTION DEFECT. OUR obvious and visible failure to complete the construction of the HOME or COMMON ELEMENTS, or any portion of the HOME or COMMON ELEMENTS, is not a CONSTRUCTION DEFECT.

**CONSUMER PRODUCT** means any item of equipment, appliance or other item defined as a CONSUMER PRODUCT in the Magnuson-Moss Warranty Act (15 U.S.C. §. 2301, et seq.) Examples of Consumer Products include, but are not limited to dishwasher, garbage disposal, gas or electric cook-top, range, range hood, refrigerator or refrigerator/freezer combination, gas oven, electric oven, microwave oven, trash compactor, garage door opener, clothes washer and dryer, hot water heater and thermostat.

**EMERGENCY CONDITION** means an event or situation that creates the imminent threat of damage to the HOME or COMMON ELEMENTS, or results in an unsafe living condition due to a CONSTRUCTION DEFECT that YOU (or as applicable, the HOMEOWNERS ASSOCIATION) become aware of at a point in time other than OUR normal business hours and YOU were unable to obtain OUR or OUR authorized representative's prior written approval to initiate repairs to stabilize the condition or prevent further damage.

**HOME** means a single family residence either attached or detached covered by this LIMITED WARRANTY or a condominium or cooperative unit in a multi-unit residential structure/building covered by this LIMITED WARRANTY.

**HOME BUILDER'S LIMITED WARRANTY** means only this express warranty document provided to YOU by US.

**HOMEOWNER** means the first person(s) to whom a HOME (or a unit in a multi-unit residential structure/building) is sold, or for whom such HOME is constructed, for occupancy by such person or such person's family, and such person's(s)' successors in title to the HOME, or mortgagees in possession and any representative of such person(s) who has standing to make a claim on that person(s) behalf, including any class representative or HOMEOWNERS ASSOCIATION making a claim in a representative capacity.

**HOMEOWNERS ASSOCIATION** means a profit or nonprofit corporation, unincorporated association, organization, partnership, assessment district, limited liability company, limited liability partnership or other entity of any kind that owns, manages, maintains, repairs, administers, or is otherwise responsible for and has standing to make a claim as to any part of the COMMON ELEMENTS.

**POLLUTANTS** means all solid, liquid, or gaseous irritants or contaminants. The term includes, but is not limited to, petroleum products, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, radon gas, and waste materials, including materials to be recycled.

**PWC** means Professional Warranty Service Corporation, which administers the warranty program in which WE participate. As such, PWC assumes no other liabilities in connection with this LIMITED WARRANTY. The PWC mailing address is:

**Professional Warranty Service Corporation  
P.O. Box 800      Annandale, VA 22003-0800**

**SYSTEMS** means the following:

- (a) Plumbing system - gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; and water, gas and sewer services piping and their extensions to the tie-in of a public utility connection or on-site well and sewage disposal system.
- (b) Electrical system - all wiring, electrical boxes, switches, outlets, and connections up to the public utility connection.
- (c) Heating, Cooling, and Ventilation system - all duct-work; steam, water and refrigerant lines; and registers, connectors, radiation elements and dampers.

**WARRANTY PERIOD** shall commence on the date the title to the HOME is transferred to the first HOMEOWNER. Notwithstanding anything to the contrary set forth in this LIMITED WARRANTY, the WARRANTY PERIOD for the COMMON ELEMENTS of an individual structure/building commences on the date the title for the first HOME in the structure/building is transferred to the first HOMEOWNER or as concerns clubhouses or outbuildings or other COMMON ELEMENTS not part of the HOME the date the title to these structures is transferred to the

**HOMEOWNERS ASSOCIATION.** The dates the **WARRANTY PERIOD** begins and ends are indicated on the Limited Warranty Validation Form, which is attached to and made part of this **LIMITED WARRANTY**.

**WE, US, OUR** means the **BUILDER**.

**YOU, YOUR** means the **HOMEOWNER** and the **HOMEOWNERS ASSOCIATION**.

**SAMPLE**

**BINDING ARBITRATION REQUEST FORM**

Dear Homeowner (Homeowners Association):

Prior to requesting binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY, you should have sent your builder a clear and specific written request outlining the situation or condition that you are herein submitting to binding arbitration. If you have taken this step and believe the builder has not properly responded in accordance with the HOMEBUILDER'S LIMITED WARRANTY, fill out this form and send it to PWC along with the arbitration filing fee. Be sure to attach a copy of all pertinent correspondence between you and your builder relative to the issue.

The information you need to fill out this form can be found on the Limited Warranty Validation Form. However, if you do not know the answers to any questions, write "Don't Know." Please do not leave any item blank.

Your name: \_\_\_\_\_

Address: \_\_\_\_\_

CITY

STATE

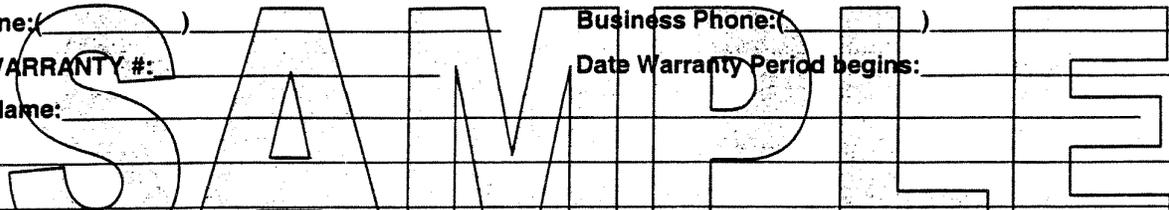
ZIP

Home Phone: (\_\_\_\_) \_\_\_\_\_ Business Phone: (\_\_\_\_) \_\_\_\_\_

LIMITED WARRANTY #: \_\_\_\_\_ Date Warranty Period begins: \_\_\_\_\_

Builder's Name: \_\_\_\_\_

Address: \_\_\_\_\_



Describe the dispute that you wish to submit to binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY. If the dispute is relative to a construction defect please include information on when the construction defect(s) first occurred or when you first noticed the construction defect. (Attach additional sheets, if necessary).

I/we are hereby requesting PWC to initiate a binding arbitration to resolve the dispute described herein above.

\_\_\_\_\_  
Signature Date Signature Date

INSTRUCTIONS: Photo-copy this form and complete the fields.  
Obtain the required arbitration filing fee by contacting PWC at 1-800/850-2799.  
Send this Binding Arbitration Request Form and the arbitration filing fee to:

**PROFESSIONAL WARRANTY SERVICE CORPORATION  
P. O. BOX 800  
ANNANDALE, VIRGINIA 22003-0800**

## SUBSEQUENT HOME BUYER ACKNOWLEDGMENT AND TRANSFER

Any coverage remaining under the HOME BUILDER'S LIMITED WARRANTY applicable to the home specified on the Limited Warranty Validation Form is transferred to the subsequent homeowner. Any obligations under the HOME BUILDER'S LIMITED WARRANTY to any subsequent homeowner shall not exceed the limit of liability remaining at the time of transfer, if any.

The undersigned home buyer(s) hereby acknowledge and agree:

I/we acknowledge that I have reviewed, understand and agree to all the terms of the HOME BUILDER'S LIMITED WARRANTY document (PWC Form No. 117)

I/we understand and acknowledge that Professional Warranty Service Corporation ("PWC") is not the warrantor of the HOME BUILDER'S LIMITED WARRANTY.

I/we understand that I/we am responsible for the maintenance of the home including maintenance of the grade of the land surrounding the home, and that the builder shall not be responsible for any defect of damage to the home which is the result of my/our failure to maintain the home.

I/we acknowledge and agree to the Binding Arbitration Procedure contained in the HOME BUILDER'S LIMITED WARRANTY.

Signature(s) of Subsequent Home Buyer(s): \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

Print above name(s): \_\_\_\_\_

Re-issuance of the Limited Warranty Validation Form with the name(s) of the new Home Buyer(s) is not necessary for you to receive the coverage remaining under the HOME BUILDER'S LIMITED WARRANTY. Upon receipt of this signed form, PWC will update its records to reflect the name(s) of the new homeowner(s). If you want PWC to issue another Limited Warranty Validation Form with your name(s) on the form, please check the box below and send a check in the amount of \$20.00 made payable to "PWC" with your submission of this form.

YES, re-issue the Limited Warranty Validation Form in the above name(s) (check box) Initial \_\_\_\_\_

Address of Home: \_\_\_\_\_

Limited Warranty No.: \_\_\_\_\_

INSTRUCTIONS: Photo-copy this form. Provide information requested, sign, fill in Limited Warranty # in the space provided (this number is provided on the Limited Warranty Validation Form), and provide a telephone number where you can be reached (\_\_\_\_\_) \_\_\_\_\_. If you want the Limited Warranty Validation Form reissued in your name, enclose your check to PWC in the amount of \$20.00 (check box above and initial). To reach PWC by phone, call: 1-800/850-2799.

Mail this form and a photocopy of applicable settlement/closing documents indicating transfer of title, to:

PROFESSIONAL WARRANTY SERVICE CORPORATION P.O. BOX 800 ANNANDALE, VA 22003-0800

**EXHIBIT "E"**

**ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS**

Estimate of Initial Maintenance Fees:

Apartment

Monthly Fee x 12 months = Yearly Total

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

**Estimate of Maintenance Fee Disbursements  
Moana Kai Condo  
Incr 1  
(40 units)**

	Monthly Fee	Yearly Total
<b>Utilities and Services</b>		
Electricity	\$240.00	\$2,880.00
Water	\$1,200.00	\$14,400.00
Sewer	\$2,400.00	\$28,800.00
<b>Maintenance/Repairs and Supplies</b>		
Landscape/Janitorial	\$1,850.00	\$22,200.00
Tree Trimming	\$100.00	\$1,200.00
Pest Control	\$360.00	\$4,320.00
Refuse	\$920.00	\$11,040.00
Fire Systems	\$18.00	\$216.00
Repairs & Purchases	\$50.00	\$600.00
Cleaning Dryer Ducts	\$75.00	\$900.00
Backflow Prevention Sewer	\$200.00	\$2,400.00
Electrical Lighting	\$25.00	\$300.00
<b>Professional Services</b>		
Admin/Supplies/Service	\$400.00	\$4,800.00
Education	\$10.00	\$120.00
Property Management Services	\$678.00	\$8,136.00
Design Review Services	\$300.00	\$3,600.00
Audit and Tax Return Preparation	\$50.00	\$600.00
Legal Fees	\$50.00	\$600.00
<b>Insurance and Government Assessments</b>		
Property	\$3,000.00	\$36,000.00
Liability	\$100.00	\$1,200.00
Umbrella	\$150.00	\$1,800.00
Director and Officer	\$150.00	\$1,800.00
Fidelity Bond	\$30.00	\$360.00
General Excise Tax	\$20.00	\$240.00
Condo Registration	\$20.00	\$240.00
Reserves*	\$1,800.00	\$21,600.00
Moana Kai Maintenance Association	\$760.00	\$9,120.00
<b>TOTAL</b>	<b>\$14,956.00</b>	<b>\$179,472.00</b>

I, Emory Bush, as agent for/and/or employed by Hawaiiana Management Company, the condominium managing agent/developer for the Moana Kai Condo project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
Signature

1-8-04  
Date

Pursuant to 514A-83.6, Hawaii Revised Statutes, a new association created after January 1, 1993 need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. The Developer has not conducted a reserve study for the Project. The budget amount for Reserves is an estimate only.

ESTIMATE OF INITIAL MAINTENANCE FEES

Moana Kai Condo  
Incr 1  
(40 units)

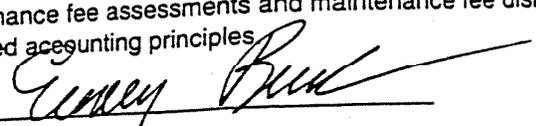
Estimate of Initial Maintenance Fees:		Monthlv Fee	Yearly Total
Apartment			
Residence A/AR	2.588700%	\$387.17	\$4,645.99
Residence A/AR	2.588700%	\$387.17	\$4,645.99
Residence A/AR	2.588700%	\$387.17	\$4,645.99
Residence A/AR	2.588700%	\$387.17	\$4,645.99
Residence A/AR	2.588700%	\$387.17	\$4,645.99
Residence A/AR	2.588700%	\$387.17	\$4,645.99
Residence A/AR	2.588700%	\$387.17	\$4,645.99
Residence A/AR	2.588700%	\$387.17	\$4,645.99
Residence B/BR	2.599400%	\$388.77	\$4,665.20
Residence B/BR	2.599400%	\$388.77	\$4,665.20
Residence B/BR	2.599400%	\$388.77	\$4,665.20
Residence B/BR	2.599400%	\$388.77	\$4,665.20
Residence B/BR	2.599400%	\$388.77	\$4,665.20
Residence B/BR	2.599400%	\$388.77	\$4,665.20
Residence B/BR	2.599400%	\$388.77	\$4,665.20
Residence B/BR	2.599400%	\$388.77	\$4,665.20
Residence B/BR	2.599400%	\$388.77	\$4,665.20
Residence B/BR	2.599400%	\$388.77	\$4,665.20
Residence C/CR	2.686700%	\$401.82	\$4,821.87
Residence C/CR	2.686700%	\$401.82	\$4,821.87
Residence C/CR	2.686700%	\$401.82	\$4,821.87
Residence C/CR	2.686700%	\$401.82	\$4,821.87
Residence C/CR	2.686700%	\$401.82	\$4,821.87
Residence C/CR	2.686700%	\$401.82	\$4,821.87
Residence C/CR	2.686700%	\$401.82	\$4,821.87
Residence D	2.084100%	\$311.70	\$3,740.38
Residence D	2.084100%	\$311.70	\$3,740.38
Residence D	2.084100%	\$311.70	\$3,740.38
Residence D	2.084100%	\$311.70	\$3,740.38
Residence E	2.082800%	\$311.50	\$3,738.04
Residence E	2.082800%	\$311.50	\$3,738.04
Residence E	2.082800%	\$311.50	\$3,738.04
Residence E	2.082800%	\$311.50	\$3,738.04
Residence F/FR	2.549800%	\$381.35	\$4,576.18
Residence F/FR	2.549800%	\$381.35	\$4,576.18
Residence F/FR	2.549800%	\$381.35	\$4,576.18
Residence F/FR	2.549800%	\$381.35	\$4,576.18
Residence G/GR	2.533700%	\$378.94	\$4,547.28
Residence G/GR	2.533700%	\$378.94	\$4,547.28
Residence G/GR	2.533700%	\$378.94	\$4,547.28
<b>TOTALS</b>	<b>100.000000%</b>	<b>\$14,956.00</b>	<b>\$174,924.72</b>

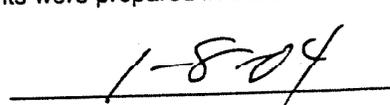
The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency

**Estimate of Maintenance Fee Disbursements**  
**Moana Kai Condo**  
**Incr 1 and 2**  
**(84 units)**

	Monthly Fee	Yearly Total
<b>Utilities and Services</b>		
Electricity	\$510.00	\$6,120.00
Water	\$2,520.00	\$30,240.00
Sewer	\$5,040.00	\$60,480.00
<b>Maintenance/Repairs and Supplies</b>		
Landscape/Janitorial	\$3,700.00	\$44,400.00
Tree Trimming	\$200.00	\$2,400.00
Pest Control	\$756.00	\$9,072.00
Refuse	\$1,932.00	\$23,184.00
Fire Systems	\$36.00	\$432.00
Repairs & Purchases	\$100.00	\$1,200.00
Cleaning Dryer Ducts	\$150.00	\$1,800.00
Backflow Prevention Sewer	\$420.00	\$5,040.00
Electrical Lighting	\$50.00	\$600.00
<b>Professional Services</b>		
Admin/Supplies/Service	\$800.00	\$9,600.00
Education	\$20.00	\$240.00
Property Management Services	\$1,250.00	\$15,000.00
Design Review Services	\$600.00	\$7,200.00
Audit and Tax Return Preparation	\$50.00	\$600.00
Legal Fees	\$50.00	\$600.00
<b>Insurance and Government Assessments</b>		
Property	\$5,000.00	\$60,000.00
Liability	\$200.00	\$2,400.00
Umbrella	\$300.00	\$3,600.00
Director and Officer	\$300.00	\$3,600.00
Fidelity Bond	\$60.00	\$720.00
General Excise Tax	\$40.00	\$480.00
Condo Registration	\$35.00	\$420.00
Reserves*	\$3,780.00	\$45,360.00
Moana Kai Maintenance Association	\$1,596.00	\$19,152.00
<b>TOTAL</b>	<b>\$29,495.00</b>	<b>\$353,940.00</b>

I, Emory Bush, as agent for/and/or employed by Hawaiiana Management Company, the condominium managing agent/developer for the Moana Kai Condo project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
 \_\_\_\_\_  
 Signature

  
 \_\_\_\_\_  
 Date

Pursuant to 514A-83.6, Hawaii Revised Statutes, a new association created after January 1, 1993 need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. The Developer has not conducted a reserve study for the Project. The budget amount for Reserves is an estimate only.

ESTIMATE OF INITIAL MAINTENANCE FEES

Moana Kai Condo  
Incr 1 and 2  
(84 units)

Estimate of Initial Maintenance Fees:		Monthly Fee	Yearly Total
Apartment			
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence A/AR	1.23170%	\$363.29	\$4,359.48
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence B/BR	1.23680%	\$364.79	\$4,377.53
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence C/CR	1.27840%	\$377.06	\$4,524.77
Residence D	0.99160%	\$292.47	\$3,509.67

ESTIMATE OF INITIAL MAINTENANCE FEES

Moana Kai Condo  
Incr 1 and 2  
(84 units)

Residence D	0.99160%	\$292.47	\$3,509.67
Residence D	0.99160%	\$292.47	\$3,509.67
Residence D	0.99160%	\$292.47	\$3,509.67
Residence D	0.99160%	\$292.47	\$3,509.67
Residence D	0.99160%	\$292.47	\$3,509.67
Residence D	0.99160%	\$292.47	\$3,509.67
Residence D	0.99160%	\$292.47	\$3,509.67
Residence E	0.99110%	\$292.32	\$3,507.90
Residence E	0.99110%	\$292.32	\$3,507.90
Residence E	0.99110%	\$292.32	\$3,507.90
Residence E	0.99110%	\$292.32	\$3,507.90
Residence E	0.99110%	\$292.32	\$3,507.90
Residence E	0.99110%	\$292.32	\$3,507.90
Residence E	0.99110%	\$292.32	\$3,507.90
Residence E	0.99110%	\$292.32	\$3,507.90
Residence F/FR	1.21320%	\$357.83	\$4,294.00
Residence F/FR	1.21320%	\$357.83	\$4,294.00
Residence F/FR	1.21320%	\$357.83	\$4,294.00
Residence F/FR	1.21320%	\$357.83	\$4,294.00
Residence F/FR	1.21320%	\$357.83	\$4,294.00
Residence F/FR	1.21320%	\$357.83	\$4,294.00
Residence F/FR	1.21320%	\$357.83	\$4,294.00
Residence F/FR	1.21320%	\$357.83	\$4,294.00
Residence F/FR	1.21320%	\$357.83	\$4,294.00
Residence F/FR	1.21320%	\$357.83	\$4,294.00
Residence G/GR	1.20560%	\$355.59	\$4,267.10
Residence G/GR	1.20560%	\$355.59	\$4,267.10
Residence G/GR	1.20560%	\$355.59	\$4,267.10
Residence G/GR	1.20560%	\$355.59	\$4,267.10
Residence G/GR	1.20560%	\$355.59	\$4,267.10
Residence G/GR	1.20560%	\$355.59	\$4,267.10
Residence G/GR	1.20560%	\$355.59	\$4,267.10
Residence G/GR	1.20560%	\$355.59	\$4,267.10
Residence G/GR	1.20560%	\$355.59	\$4,267.10
Residence G/GR	1.20560%	\$355.59	\$4,267.10
<b>TOTALS</b>	<b>100.00000%</b>	<b>\$29,495.00</b>	<b>\$353,940.00</b>

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

**EXHIBIT "F"**

**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 a Residence 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 a residence.
- (b) That the purchaser acknowledges having received and read a public report (either contingent or final) for the Project prior to signing the Sales Contract.
- (c) That the Developer makes no representations concerning rental of a residence, income or profit from a residence, or any other economic benefit to be derived from the purchase of a residence.
- (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 a residence.
- (g) That the residence 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 form attached as Exhibit "D" to this Public Report, the Developer makes no warranties regarding the residence, the Project or anything installed or contained in the residence 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.
- (m) If the purchaser defaults, Developer may retain purchaser's deposits and bring on action against purchaser. If the Developer defaults, purchasers may bring an action against Developer. All actions are subject to the rules of the Dispute Prevention Resolution, Inc., as provided in the Sales Contract.

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

**END OF EXHIBIT "F"**

**EXHIBIT "G"**

**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. Provided that the purchaser is not in default under the Sales Contract and the Sales Contract contains a financing provision, purchaser's deposits, less escrow cancellation fees and third party lender fees, is refundable to purchaser if purchaser fails to qualify for a mortgage loan. Otherwise, all deposits toward the purchase price shall be the property of the Developer. The purchaser will be entitled to a refund of his or her funds only under certain circumstances.

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.

**END OF EXHIBIT "G"**

**EXHIBIT "H"**

**MOANA KAI  
AFFIDAVIT OF INTENT TO PURCHASE AND RESIDE IN AN OWNER-OCCUPANT  
DESIGNATED FEE SIMPLE TOWNHOME RESIDENCE**

We, the undersigned "owner-occupants", on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, do hereby declare that it is our intention to purchase and reside in a designated fee simple townhome residence designated for an "owner-occupant" in MOANA KAI townhome residence ("Community") proposed by D.R. Horton-Schuler Homes, LLC, a Delaware limited liability company, dba Schuler Homes ("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 townhome residence ("designated residence") pursuant to section 514A-103 of the Owner-Occupant Law, and upon closing escrow, to reside in the designated residence 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 residence 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 residence 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 residence, 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 residence, 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 residence to us), we shall notify the Real Estate Commission immediately upon any decision to cease being an owner-occupant of the designated residence.

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 residence.

7. We have personally executed this Affidavit and we are all of the prospective owner-occupants for the designated residence. 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 Community's Final Public Report and no later than the closing of escrow for the residence. The developer shall cancel our sales contract or reservation if we fail to make the reaffirmation. If the sales contract has become binding pursuant to section 514A-62 of the Condominium Property Act, we may be considered to be in default under our sales contract, and the Developer may exercise the default or other remedies provided for in the sales contract and any other remedies provided by law.

9. We shall not sell or offer to sell, lease or offer to lease, rent or offer to rent, assign or offer to assign, convey or otherwise transfer any interest in the designated residence until at least 365 consecutive days have elapsed since the recordation of the instrument conveying title to the designated residence to us. Furthermore, we understand that we have the burden of proving our compliance with the law.





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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

\_\_\_\_\_  
Type or print name: \_\_\_\_\_  
Notary Public, State of Hawaii.  
My commission expires: \_\_\_\_\_

**END OF EXHIBIT "H"**