

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: **Developer:** D.R. Horton-Schuler Homes, LLC, a Delaware limited liability company dba D.R. Horton-Schuler Division
Address: 828 Fort Street Mall, 4th Floor, Honolulu, Hawaii 96813
Project Name (*): Ho`okena at Puhi
Address: Hanalima Street, Puhi, Lihue, Hawaii 96766
Registration No. 5871 **Effective date:** November 9, 2006
Expiration date: December 9, 2007

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. A Final Public Report will be issued by the developer when complete information is filed.
- FINAL:** (white) The developer has legally created a condominium and has filed complete information with the Commission.
 - No prior reports have been issued.
 - This report supersedes all prior public reports
 - This report must be read together with _____
- SUPPLEMENTARY:** (pink) This report updates information contained in the: _____
 - Preliminary Public Report dated: _____
 - Final Public Report dated: _____
 - Supplementary Public Report dated: _____
- And Supersedes all prior public reports.
- Must be read together with _____
- This report reactivates the _____ public report(s) which expired on _____

(*) Exactly as named in the Declaration

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

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report Not Required - Disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

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

No prior reports have been issued by the developer.
 Changes made are as follows

1. The name of the law firm for the Attorney for Developer in Section I has been changed to Case Lombardi & Pettit.
2. The recording information of the declaration (and the amendments), condominium map (and the amendment), and bylaws were included in Section II, paragraphs A, B, and C.
3. Section II.D was revised to note the adoption of the House Rules.
4. The square footage chart (Section III, paragraph C.6) were updated as follows:

<u>Apt. Type</u>	<u>Preliminary Public Report</u>			<u>Final Public Report</u>		
	<u>Lanai/Patio (sf)</u>	<u>Entry Area (sf)</u>	<u>Garage (sf)</u>	<u>Lanai/Patio (sf)</u>	<u>Entry Area (sf)</u>	<u>Garage (sf)</u>
A/AR	71	21	0	65	19	0
A/A1R	71	21	0	63	18	0
B/BR*	84	59	0	69	54	0
B1/B1R*	84	59	0	68	53	0
C/CR	79	59	0	63	52	0
C1/C1R	79	87	0	62	81	0
D/DR	45	25	373	0	25	372
E/ER	15	66	202	0	50	204

*Apt. types B/BR and B1/B1R were combined in the preliminary public report with a quantity of 12 total. These apt. types have been separated with a quantity of 6 each.

5. The commencement and completion dates of construction in Section III.G were updated.
6. The date of payment of maintenance fees by Developer was updated in Section IV.B.
7. Exhibit "A" was updated to conform to the title report.
8. Exhibits "B-1", "B-2", "B-3" and "C" were updated to conform to the amendment to declaration and, if applicable, the amended condominium map.
9. Reference to Exhibit "N" was added in Section V.A.
10. The housing agreement with the County of Kauai has been finalized. The information contained in Sections III.C.6 and Exhibits J through M, inclusive, were updated to conform to the agreement.
11. Section V.C.5 was revised to include the recording of the Grant of Roadway and Utility Easement; Maintenance Agreement dated August 9, 2006, filed as Document No. 3470395.
12. Exhibit "E" (Estimate of Initial Maintenance Fees and Estimate of Maintenance Fee Disbursements) was updated.
13. Section I and Exhibit "N" were updated with the names of the current officers and directors of developer.

Pursuant to HRS §514-A-63(a), purchasers have the right of rescission of their sales contract if there is a material change in the project which directly, substantially, and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project available for such purchaser's use.

You may exercise a right of cancellation by following the instructions in the Receipt for Public Report(s) and Notice of Right to Cancel.

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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 owner/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

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

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

In some condominium projects, some common elements are reserved for the exclusive use of the owners of 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 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 limited liability company, Phone: (808) 521-5661
dba D.R. Horton-Schuler Division (Business)
Name*
828 Fort Street Mall, 4th 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):

Donald R. Horton, Chairman of the Board; Donald J. Tomnitz, Vice Chairman, President & Chief Executive Officer; Samuel R. Fuller, Senior Executive Vice President; Bill W. Wheat, Executive Vice President & Chief Financial Officer; Stacey H. Dwyer, Executive Vice President & Treasurer; James K. Schuler, Senior Vice President & Region President; Michael T. Jones, Vice President of the Company & Division President; R. Dale Eggleston, Vice President; Joan L. Fleming, Vice President; Mary K. Flood, Vice President of Sales & Marketing; Galen Lee, Vice President of Finance; Donald J. Tomnitz, Vice President; Paul W. Buchschacer, Assistant Secretary; Ted I. Harbour, Assistant Secretary; Paula D. Hunter-Perkins, Assistant Secretary; Alan D. Labbe, Assistant Secretary; Thomas B. Montano, Assistant Secretary; and David T. Morice, Assistant Secretary. All officers are officers of Vertical Construction Corporation, the Developer's manager.

Real Estate Broker*: D.R. Horton-Schuler Homes, LLC, Phone: (808) 521-5661
a Delaware limited liability company (Business)
Name
828 Fort Street Mall, 4th Floor
Business Address
Honolulu, Hawaii 96813

Escrow Title Guaranty Escrow Services, Inc. Phone: (808) 245-3381
Name (Business)
4414 Kukui Grove St., #104
Business Address
Lihue, Hawaii 96766

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

Condominium Managing Agent*: Hawaiiana Management Company, Ltd. Phone: (808) 593-9100
Name (Business)
711 Kapiolani Blvd., Ste. 700
Business Address
Honolulu, Hawaii 96813

Attorney for Developer: Case Lombardi & Pettit Phone: (808) 547-5400
Dennis M. Lombardi, Esq. (Business)
Name
737 Bishop Street, Suite 2600
Business Address
Honolulu, Hawaii 96813-3283

* 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:

<input type="checkbox"/>	Proposed		Document No.	_____
<input type="checkbox"/>	Recorded -	Bureau of Conveyances:	Book	_____ Page _____
<input checked="" type="checkbox"/>	Filed -	Land Court:	Document No.	<u>3446726</u>

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 Ho'okena at Puhi Condominium Map No. 1827 dated August 4, 2006, filed as Document No. 3470393

Amendment to Declaration of Condominium Property Regime of Ho'okena at Puhi Condominium Map No. 1827 dated September 22, 2006, filed as Document No. 3487350

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:

<input type="checkbox"/>	Proposed		
<input type="checkbox"/>	Recorded -	Bureau of Conveyances	Condo Map No. _____
<input checked="" type="checkbox"/>	Filed -	Land Court	Condo Map No. <u>1827</u>

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

Amendment to Condominium Map for Ho'okena at Puhi Condominium Map No. 1827 dated August 4, 2006, filed as Document No. 3470394.

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:

<input type="checkbox"/>	Proposed		Document No.	_____
<input type="checkbox"/>	Recorded -	Bureau of Conveyances:	Book	_____ Page _____
<input checked="" type="checkbox"/>	Filed -	Land Court:	Document No.	<u>3446727</u>

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>67</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 56 Residences, to be built, in as many separate construction increments as Developer shall solely determine. Developer contemplates, however, that development shall proceed in one single phase. The Private Yard Areas associated with any 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 or building in which it is located.
- 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". Developer has reserved the right to alter the location, size and design of any unsold Residences as described in Section III.H.

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 the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____ Rent Renegotiation Date(s): _____

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per Month Year

For 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: Hanalima Street Tax Map Key (TMK): (4) 3-3-03:036
Puhi, Lihue, Hawaii 96766

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

Land Area: 176,399 [x] square feet [] acre(s) Zoning: R-4, R-6, R-10, R-20, O, C-G

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 bird. No livestock or poultry and no animals classified as "pests" or prohibited from importation under state statutes.

Number of Occupants: Only in accordance with any limitations imposed by state or municipal laws or ordinance.

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: 1: Models D/DR and E/ER Trash Chutes: 0

Apt. Type	Quantity	BR/Bath	Net Living Area (sf) *	Lanai/Patio (sf)	Entry Area (sf)	Garage (sf)
A/AR	6	3/2	974	65	19	0
A1/A1R	6	3/2	969	63	18	0
B/BR	6	2/2	788	69	54	0
B1/B1R	6	2/2	788	68	53	0
C/CR	5	2/2	785	63	52	0
C1/C1R	6	2/2	752	62	81	0
D/DR	10	3/2½	1,398	0	25	372
E/ER	10	3/2½	1,357	0	50	204

Total Number of Apartments: 56

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

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

Boundaries of Each Apartment:

Note regarding Net Living Areas: Throughout the Ho'okena at Puhi documentation, the area of individual Residences is generally expressed as "net living area" square footage. This measurement represents the architect's best estimate of the interior square footage of the Residence as measured from the interior of each Residence's perimeter and demising walls. This measurement is based upon the plans for the construction of the Residence and different architects performing the same measurement may obtain a larger or smaller result.

Residences followed by a "/R" represent a reverse floor plan configuration from that reflected on the condominium map.

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 a 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 or to 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 Board of Directors and all Residence owners directly affected thereby, as determined by the Board of Directors, and, where appropriate, the Ho'okena at Puhi Community Association Design Review Committee. 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.

All Apartments Designated for Owner-Occupants Only: Initially, one hundred percent (100%) of the Residences will be designated for owner-occupants only in accordance with and to satisfy affordable housing conditions mandated by the Kauai County Housing Authority ("KCHA Affordable Housing Conditions") pursuant to Kauai County Ordinance No. PM-206-90. These conditions are set forth in the attached letters from KCHA dated April 25, 2005, June 2, 2005 and October 20, 2005, attached as Exhibit "J" ("KCHA" Letters). Some of the KCHA Affordable Housing Conditions conflict with the owner-occupant requirements set forth in Chapter 514A of the Hawaii Revised Statutes ("HRS"). Pursuant to HRS § 514A-108(d), Developer is electing to waive certain Chapter 514A requirements to the extent that such provisions conflict with the KCHA Affordable Housing Conditions, including, but not limited to, the following Chapter 514A provisions as explained below.

- (i) HRS § 514A-103 Designation of residential apartments. Developer waives these provisions to the extent that it requires that at least fifty percent (50%) of the residential units be offered to owner-occupants. In lieu of this requirement, Developer will offer one hundred percent (100%) of the residential units to owner-occupants satisfying the qualifications established by KCHA.
- (ii) HRS § 514A-104 Apartment selection, requirements and § 514A-105 Sale of residential apartments; developer requirements. Developer waives these provisions to the extent that such provisions (a) restrict the time to (i) compile a list of prospective owner-occupants, (ii) conduct the lottery, (iii) offer the units for sale and (b) specify the documents that must be submitted to be eligible for the lottery. In lieu of these requirements, and to satisfy the KCHA Affordable Housing Conditions, sales of Residences in the Community will be made initially only to qualified buyers who satisfy KCHA's qualification and eligibility requirements. Qualification and eligibility will be determined based on a buyer's housing application and submission of those items specified in Exhibit "K" to the public report, which include without limitation, the Housing Application Form, the Owner-Occupant Affidavit, buyer's Tax Returns, Proof of Residency, and Pre-Qualification Letter. Buyer applicants submitting incomplete forms will be disqualified.

Sales of Residences will proceed as follows:

- (1) First, at the election of KCHA and prior to publication of the availability of the homes for sale to the public, to buyers who: (i) are Kauai residents, (ii) are first-time home buyers, (iii) meet KCHA's income qualification eligibility requirements (the family's income may not exceed 140% of the Kauai Median Household Income), and (iv) have registered with the Kauai County Housing Agency's Home-Buyer Priority List program and completed the required home-ownership education classes, and have otherwise prequalified per KCHA eligibility requirements to purchase a home in the Community (the "KCHA Offering Period"). All units sold within the KCHA Offering Period will be subject to the Ho'okena restrictions on sale, transfer, occupancy and use established pursuant to the Section 2-1.16, Kauai County Code 1987 and which establish a 10-Year buyback restriction which gives the County of Kauai the right to purchase the unit at the original cost, the cost of improvements added, and 1% annual interest for ten (10) years after purchase should Purchaser sell or transfer ownership of the Home during this time. A copy of the deed restriction is attached as Exhibit "L" to the public report.

(2) Thereafter, following publication of a public announcement regarding the availability of homes in the Community for sale, homes will be offered for sale to prospective owner occupants in two (2) restricted sales periods of 60-days each:

(a) During the first 60-day period ("**Initial Restricted Sales Period**"), all sales will be restricted to buyers who: (i) are Kauai residents, (ii) are owner-occupants, (iii) are first-time home buyers, and (iv) meet KCHA's income qualification eligibility requirements (the family's income may not exceed 140% of the Kauai Median Household Income). All units sold within the Initial Restricted Sales Period will be subject to the Ho'okena restrictions on sale, transfer, occupancy and use established pursuant to the section 2-1.16, Kauai County Code 1987 and which establish a 10-Year buyback restriction which gives the County of Kauai the right to purchase the unit at the original cost, the cost of improvements added, and 1% annual interest for ten (10) years after purchase should Purchaser sell or transfer ownership of the Home during this time. A copy of the deed restriction is attached as Exhibit "L" to the public report.

(b) During the second 60-day period ("**Second Restricted Sales Period**"), all sales will be restricted to buyers who: (i) are Kauai residents and (ii) are owner-occupants, without any restriction on income or first-time buyer status. All units sold within the Second Restricted Sales Period will be subject to the Ho'okena restrictions on sale, transfer, occupancy and use established pursuant to the section 2-1.16, Kauai County Code 1987 and which establish a 6-Year buyback restriction which gives the County of Kauai the right to purchase the unit at the original cost, the cost of improvements added, and 1% annual interest for six (6) years after purchase should Purchaser sell or transfer ownership of the Home during this time. A copy of the deed restriction is attached as Exhibit "M" to the public report.

(3) At the conclusion of the Second Restricted Sales Period, any remaining units will be sold on the open market to any prospective purchaser who are owner occupants (the "**General Public Offering Period**"), without regard to income qualification, Kauai residency or first time buyer status; subject, however, to the County of Kauai's first option to purchase any units remaining unsold at the conclusion of the Second Restricted Sales Period prior to the units being offered on the open market. All sales during General Public Offering Period may be made subject to developer's private transfer restriction period of one year described in the Shared Appreciation Addendum and Declaration of Covenants Restricting Sale of Property attached as Exhibit "I" to the public report.

(iii) Developer waives any additional Chapter 514A requirements that are not specifically identified herein but conflict with the KCHA Affordable Housing Conditions.

Fifty percent (50%) of residential apartments must be so designated; developer has a right to substitute similar 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.

Developer has _____ elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 127

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	30	55	n/a	27	n/a	n/a	112
Accessible	n/a	2	n/a	n/a	n/a	n/a	2
Guest	n/a	9	n/a	3	n/a	n/a	12
Accessible	n/a	1	n/a	n/a	n/a	n/a	1
Unassigned	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Extra for Purchase	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Other: Accessible	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total Covered & Open	97		30		n/a		127

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.

* Residence Types D/DR includes a two-car enclosed garage and Residence Types E/ER include a one-car enclosed garage and one uncovered parking stall in the private driveway that serves the garage.

Commercial parking garage permitted in condominium project.

Exhibit "B-3" 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: Mail Boxes

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 M.3 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 the 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 the Developer, without the joinder of any party, upon the alteration of the Community as permitted pursuant to 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. 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 August 21, 2006 and issued by Title Guaranty of 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". Prospective purchaser's should read the Limited Warranty with care to understand the coverage, limitations and exclusions, and procedures.

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 approximately September of 2006, and should be completed by approximately June 2007.

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):

Alteration of the Community: The Developer has reserved the right in its sole and absolute discretion:

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, to the elevations or exterior of the Home, 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 make alterations of the Community Common Elements permitted by Section U of the Declaration.

Multi-Increment Phase: The Developer has reserved the right to develop this Community in increments as set forth in Section II. E.2 and page 20 of this Public Report.

IV. CONDOMINIUM MANAGEMENT

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

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

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

not affiliated with the Developer the Developer or the Developer's affiliate
 self-managed by the Association of Apartment Owners Other: _____

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

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your apartment and the apartment may be sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit "E" contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

NOTE: The Estimated Maintenance Fee Disbursements for the Ho'okena at Puhi Association have been compiled by Hawaiiana Management, Inc., a licensed property manager on the basis of its standard budget assumptions. Although the property manager makes every effort to estimate the actual cost of operation, certain budget items, especially insurance in today's insurance market, may change. The Buyer is aware that such amounts are only estimates and may change for reasons beyond the control of Seller, and the Buyer hereby specifically accepts and approves any such changes. The Buyer is also aware that such estimates do not include the Buyer's obligation for payment of real property taxes. The Buyer understands that such estimates are not intended to be and do not constitute any representation or warranty by the Seller, including but not limited to any representation or warranty as to the accuracy of such estimates. Buyer understands that Seller has not independently confirmed the accuracy or content of the estimates prepared by the licensed independent managing agent. Further, the Developer advises that costs and expenses of maintenance and operation of a condominium community are very difficult to estimate initially and even if such maintenance charges have been accurately estimated, such charges will tend to increase in an inflationary economy and as the improvements age. Maintenance charges can vary depending on services desired by homeowners and may increase significantly depending on the level of services eventually selected by the Association's Board of Directors. The Buyer should examine the maintenance charges schedule to see what services are included in the schedule and address these issues with its Board upon its formation. Buyers should also be aware that the estimates provided are as of the date reflected in the Managing Agent's certification and do not reflect the actual charges that may be incurred upon the formation of the Association and the actual contracting for such services such as insurance and maintenance, etc.

NOTE: By purchasing a Home at Ho'okena at Puhi, the Residence Owner will also become a member of the Ho'okena at Puhi Community Association and be required to pay membership dues to that Association.

NOTE: The Developer intends to pay all of the actual common expenses until March 31, 2007. Accordingly, Residence Owners shall not be obligated for the payment of their respective shares of the common expenses until after that time. From and after such date Residence Owners will be obligated to pay their respective shares of the common expenses allocated to their Residence.

C. **Utility Charges for Apartments:**

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

None Electricity (Common Elements only Common Elements & Apartments)
 Gas (Common Elements only Common Elements & Apartments)
 Water Sewer* Television Cable

Other Refuse Collection

(*) Water and sewer charges may be separately assessed to the Residences and uses may be submetered.

V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

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

- [X] Notice to Owner Occupants
- [X] Specimen Sales Contract
Exhibit "F" contains a summary of the pertinent provisions of the sales contract.
- [X] Escrow Agreement dated December 15, 2005
Exhibit "G" contains a summary of the pertinent provisions of the escrow agreement.
- [X] Other Exhibit "H" is the Owner-Occupant Affidavit Form
Exhibit "I" is the Shared Appreciation Addendum and Declaration of Covenants Restricting Sale of Property
Exhibit "J" contains the Kaua'i County Housing Authority Letters re. Affordable Housing Sales Program
Exhibit "K" contains the Affordable Housing Application/Owner-Occupant Affidavit/Eligibility Requirements
Exhibit "L" contains the Deed Restriction for the 10-Year Buyback in favor of the County of Kaua'i
Exhibit "M" contains the Deed Restriction for the 6-Year Buyback in favor of the County of Kaua'i
Exhibit "N" contains the Affiliation Disclosure

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.

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 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 may be 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:
 - Owner-Occupant Affidavit Form (attached as Exhibit "H")
 - Shared Appreciation Addendum and Declaration of Covenants Restricting Sale of Property (attached as Exhibit "I")
 - Kaua'i County Housing Authority Letters re. Affordable Housing Sales Program (attached as Exhibit "J")
 - Affordable Housing Application/Owner-Occupant Affidavit/Eligibility Requirements (attached as Exhibit "K")
 - Deed Restriction for the 10-Year Buyback in favor of the County of Kaua'i (attached as Exhibit "L")
 - Deed Restriction for the 6-Year Buyback in favor of the County of Kaua'i (attached as Exhibit "M")
 - Affiliation Disclosure(attached as Exhibit "N")

Copies of the Condominium and sales documents and amendments made by the developer are available through the developer or through the developer's agents, 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
Website to access unofficial copy of laws: www.hawaii.gov/dcca/hrs
Website to access rules: www.hawaii.gov/dcca/har

This Public Report is a part of Registration No. 5871 filed with the Real Estate Commission on December 22, 2005.

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C. Additional Information Not Covered Above

1. Prospective Purchasers should be aware that the community is subject to certain Affordable Housing Requirements pursuant to County Ordinance No. PM-206-90 as described in Section III.C.6 of this report.
2. All prospective purchasers should also be aware that the Private Yard Area(s) available to certain Homes within the Ho`okena at Puhi Community are not subdivided lots, but are exclusive use areas appurtenant to a Home.
3. Developer may revise the specimen deed and sales contract for the Ho`okena at Puhi Community to conform with any future amendments that may be made to the Declaration and the community.
4. Each prospective purchaser should review the Condominium Map Site Plan (Sheets CPR-0.1 and CPR-0.2) so that they may identify easement areas benefiting the Ho`okena at Puhi Community, which easement areas may affect the use of the Private Yard Area. All easements affecting the Community may or may not be shown on the Site Plan.
5. All prospective purchasers should also be aware that ownership within the Community will be subject to shared roadway easements designated as Easement 444 and Easement 509 on the condominium map for access and utility purposes as described in the Grant of Roadway and Utility Easement; Maintenance Agreement dated August 9, 2006, filed as Document No. 3470395 ("Grant of Easement"). Pursuant to the Grant of Easement, owners will be responsible for the shared cost to maintain and repair said easements through the Ho`okena Association as follows:
 - (a) The "Roadway Easement" consists of (i) Easement 444, an improved access road located on Lot 1525 as shown on Map 132 of Land Court Application No. 1087 (as amended) (the "Halemalu Lot") that is shared with adjacent communities known as Halemalu at Puhi ("Halemalu Community") and Halelani Village at Puhi, Phase I ("Halelani Community"); and (ii) that portion of Easement 509, an improved access road also located on the Halemalu Lot and is shared with only the Halemalu Community, as shown on Exhibit "F" (sometimes "Portion Easement 509") to the Declaration. The cost to maintain and repair the Roadway Easement (the "Roadway Maintenance Expense") shall be shared with these communities on a pro rata basis as set out in the Declaration.
 - (b) The Community shall be responsible to pay a proportionate share of this expense (the "Proportionate Share") of the Roadway Maintenance Expense as specified in the Declaration. The Community's Proportionate Share of the Roadway Maintenance Expense as applied to Easement 444 shall be 43.851% and the Community's Proportionate Share of the Roadway and Maintenance Expense as applied to Easement 509 shall be 50.00%. The Community shall not be responsible for any cost attributable to the maintenance or repair of any portion of Easement 509 not included within Portion Easement 509.
 - (c) Notwithstanding the foregoing, the Ho`okena Community shall be responsible for 100% of the cost to maintain and repair any pipes, sewers, drains, walls, light fixtures or other improvements located on or under the Roadway Easement specifically for the use or benefit of the Community. The Halelani Community shall bear 100% of the cost to maintain and repair any pipes, sewers, drains, walls, light fixtures or other improvements located on or under the Roadway Easement specifically for the use or benefit of the Halelani Community. The Halemalu Community shall bear 100% of the cost to maintain and repair any pipes, sewers, drains, walls, light fixtures or other improvements located on or under the Roadway Easement specifically for the use or benefit of the Halemalu Community.
 - (d) The Ho`okena Association shall pay its Proportionate Share of the expenses in such amounts and at such times as shall be assessed by the Halemalu Community Association. Acting jointly, the Halelani Community Association and the Halemalu Association are empowered to authorize capital improvements to that portion of the Roadway Easement located within Easement 444. The Halemalu Association is empowered to authorize capital improvements to that portion of the Roadway Easement located within Portion Easement 509.
 - (e) Declarant reserves the right to record a Grant of Roadway and Utility Easement; Maintenance Agreement as Declarant deems appropriate granting to the Community Association for the benefit of the Ho`okena Association a perpetual non-exclusive easement for access and utility purposes on, over and under the Roadway Easement, which grant shall govern the maintenance, repair and administration of Portion Easement 509.
6. 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.

7. It is currently contemplated that this Community will be developed in a single phase. However, Developer reserves the right to develop the Community in separate construction increments, if necessary.

EXHIBIT "A"

1. DESIGNATION OF EASEMENT "388"

SHOWN: on Map 112, as set forth by Land Court Order No. 116056,
filed March 29, 1994

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

INSTRUMENT: DECLARATION OF LAND USE COMMISSION
CONDITIONS
DATED: May 29, 1990
FILED: Land Court Document No. 1737704
RECORDED: Document No. 90-088395

General Assignment of Declarant's Rights dated February 20, 2002, recorded as Document No. 2002-031023, by and between SCHULER HOMES, INC., a Delaware corporation, "Assignor", and D.R. HORTON - SCHULER HOMES, LLC, a Delaware limited liability company, doing business as Schuler Homes, "Assignee".

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

INSTRUMENT: DEED (AFFORDABLE BULK PARCELS)
DATED: December 22, 1992
FILED: Land Court Document No. 1985475

4. RIGHT-OF-ENTRY

TO: CITIZENS UTILITIES COMPANY, whose interest is now
held by KAUAI ISLAND UTILITY CO-OP
DATED: June 10, 1992
RECORDED: Document No. 93-063735
GRANTING: a right-of-entry for utility purposes

5. The terms and provisions contained in the following:

INSTRUMENT: DEED (Schuler Homes, Inc., Lot 1511, Puhi)
DATED: June 28, 1995
FILED: Land Court Document No. 2247000

6. GRANT

TO: PUHI SEWER AND WATER CO., INC.
DATED: January 14, 2002
FILED: Land Court Document No. 2771693
GRANTING: an easement over Easement "388" for utility purposes

7. DESIGNATION OF EASEMENT "664"

SHOWN : on Map 177, as set forth by Land Court Order No. 165736
filed April 12, 2006

8. DESIGNATION OF EASEMENT "665"

SHOWN : on Map 177, as set forth by Land Court Order No. 165736
filed April 12, 2006

9. The terms and provisions contained in the following:

INSTRUMENT: DECLARATION OF CONDOMINIUM PROPERTY
REGIME OF HO'OKENA AT PUHI
DATED: June 27, 2006
FILED: Land Court Document No. 3446726
MAP: 1827 and any amendments thereto

Said Declaration was amended by instruments dated August 4, 2006, filed as Land Court Document No. 3470393, dated August 4, 2006, filed as Document No. 3470394, dated August 4, 2006, filed as Document No. 3470394, and dated September 22, 2006, filed as Document No. 3487350.

10. The terms and provisions contained in the following:

INSTRUMENT: BYLAWS OF THE ASSOCIATION OF HOME OWNERS
OF HO'OKENA AT PUHI
DATED: June 27, 2006
FILED: Land Court Document No. 3446727

11. WAIVER AND RELEASE

DATED: June 8, 2006
RECORDED: Document No. 2006-112188
BY: D.R. Horton-Schuler Homes, LLC, a Delaware limited
liability company, dba D.R. HORTON-SCHULER
DIVISION
WITH: DEPARTMENT OF WATER, COUNTY OF KAUAI, a
political subdivision of the State of Hawaii
RE: water improvements

12. GRANT OF ROADWAY AND UTILITY EASEMENT; MAINTENANCE AGREEMENT
dated August 9, 2006, filed Document No. 3470395.

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 Building Types I and II. Building Types I and II have two (2) stories or two (2) levels. Building Type I has twelve (12) Residences, and Building Type II has four (4) Residences. Building Types I and II have reverse building plans and are designated on the Condominium Map as Type I and Type II, respectively.

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	4, 6, 7
II	1, 2, 3, 5, 8

DESCRIPTION OF RESIDENCES

The Community shall contain fifty-six (56) Residences in eight (8) buildings. There are no basements in any of the Residences. The Residences and buildings shall be constructed principally of metal, wood, glass, concrete, and related building materials.

There are eight (8) different Unit types in the Community, designated as Unit types A/AR, A1/A1R, B/BR, B1/B1R, C/CR, C1/C1R, D/DR, and E/ER and these unit types have reverse floor plans. A description of each Unit type is as follows:

Unit Type A/AR

Unit type A/AR is a single-story Residence located on the first floor containing three bedrooms, two bathrooms, living/dining room, kitchen, lanai, entry, and other improvements as shown on the Condominium Map. This Unit type contains a net living area of approximately 974 square feet, an entry area of approximately 19 square feet, and a lanai of approximately 65 square feet. There are six (6) Unit type A/AR Residences in the Community.

Unit Type A1/A1R

Unit type A1/A1R is a single-story Residence located on the second floor containing three bedrooms, two bathrooms, living/dining room, kitchen, lanai, entry, and other improvements as shown on the Condominium Map. This Unit type contains a net living area of approximately 969 square feet, and entry area of approximately 18 square feet, and a lanai of approximately 63 square feet. There are six (6) Unit type A1/A1R Residences in the Community.

Unit Type B/BR

Unit type B/BR is a single-story Residences located on the first floor containing two bedrooms, two bathrooms, living room, kitchen/nook, lanai, entry, and other improvements as shown on the Condominium Map. This Unit type contains a net living area of approximately 788 square feet, an entry area of approximately 54 square feet, and a lanai of approximately 69 square feet. There are six (6) Unit type B/BR Residences in the Community.

Unit Type B1/B1R

Unit type B1/B1R is a single-story Residences located on the second floor containing two bedrooms, two bathrooms, living room, kitchen/nook, lanai, entry, and other improvements as shown on the Condominium Map. This Unit type contains a net living area of approximately 788 square feet, an entry area of approximately 53 square feet, and a lanai of approximately 68 square feet. There are six (6) Unit type B1/B1R Residences in the Community.

Unit Type C/CR

Unit type C/CR is a single-story Residence located on the first floor containing two bedrooms, two bathrooms, living room, kitchen, lanai, entry, and other improvements as shown on the Condominium Map. This Unit type contains a net living area of approximately 785 square feet, an entry area of approximately 52 square feet, and a lanai of approximately 63 square feet. There are six (6) Unit type C/CR Residences in the Community.

Unit Type C1/C1R

Unit type C1/C1R is a single-story Residence located on the second floor containing two bedrooms, two bathrooms, living room, kitchen, lanai, entry, and other improvements as shown on the Condominium Map. This Unit type contains a net living area of approximately 752 square feet, an entry area of approximately 81 square feet, and a lanai of approximately 62 square feet. There are six (6) Unit type C1/C1R Residences in the Community.

Unit Type D/DR

Unit type D/DR is a two-story Residence containing three bedrooms, two and one-half bathrooms, living/dining area, kitchen, foyer, laundry area, family room, concrete patio, entry, attached two-car garage and other improvements as shown on the Condominium Map. This Unit type contains a net living area of approximately 1,398 square feet, an entry area of approximately 25 square feet, and a two-car garage area of approximately 372 square feet. There are ten (10) Unit type D/DR Residences in the Community.

Unit Type E/ER

Unit type E/ER is a two-story Residence containing three bedrooms, two and one-half bathrooms, living/dining area, kitchen, foyer, laundry area, concrete patio, entry, attached one-car garage and other improvements as shown on the Condominium Map. This Unit type contains a net living area of approximately 1,357 square feet, an entry area of approximately 50 square feet, and a one-car garage area of approximately 204 square feet. There are ten (10) Unit type E/ER 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, refrigerator/freezer, water heater, garbage disposal, garage door openers, and dishwasher.

LOCATION AND NUMBERING OF RESIDENCES:

Each Residence shall be designated by a number comprised of the Building number ("1," "2," "3," "4," etc.) followed by the Residence number (e.g. 101, 102, 103, 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, exterior lighting fixtures located along and/or adjacent to the Community Access Road, including without limitation the Shared Access Drive and Easement 444 as described in Section E.14 of this Declaration, the common area landscaping and similar improvements.
2. 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.
3. 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.
4. All yards, grounds, gardens, planters, plants, landscaping, refuse facilities, loading areas, barbecue areas, designated children's play areas, and recreational facilities, if any.
5. All fences and walls as shown on the Condominium Map.
6. All drainage facilities, drainage or flowage easements, 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, including any utilities located within Easement 444 as shown on the Condominium Map unless dedicated to a municipality and/or granted to a third-party.
7. All sidewalks, pathways, curbs, trash receptacle areas, mailboxes and guest, special parking areas, or loading areas as labeled on the Condominium Map. "Guest" parking stalls may be labeled with a "G" and a parking stall number on the Condominium Map.
8. 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.
9. 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, flowage, telephone and radio and television signal distribution, if any, including without limitation easement(s) for sewer purposes and as shown on the Condominium Map.

10. 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.
11. All other parts of the Community not included in the definition of a Residence or Private Yard Area.
12. The Entry Sign Monument identifying the Community as shown on the Condominium Map, which may be covered by a grant of easement in favor of the Association.

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 Areas include the land beneath the Residence bearing the same number as the Private Yard Area, the yard area in front of, to the rear and/or sides of the Residence as demarked (at the sole election of Declarant) by (1) fencing of the yard area or rear yard and/or front yard areas of the Residence; (2) appropriate physical monuments at the corners of the Private Yard Area and/or locations shown on the Condominium Map; or (3) by metes and bounds noted on the Condominium Map or contained in a Supplemental Declaration.

2. Parking Stall Assignments:

All Residences have at least two (2) assigned parking stalls. Unit Type D/DR has a two-car garage as a component of the Residence. Unit Type E/ER has a one-car garage as a component of the Residence with one additional uncovered stall located on the driveway serving the garage in the area identified as a parking stall on the Condominium Map. The Condominium Map identifies each stall by a parking stall number. The particular parking stalls that initially will be appurtenant to the particular Residence are as follows:

HO'OKENA AT PUHI PARKING STALL CHART

UNIT#	STALL #1	STALL # 2	UNIT #	STALL #1	STALL #2
101	15	16	607	88	93C
102	17	18	608	84	91C
103	19	20	609	82	89C
104	21	22	610	80	85C
201	29	30	611	76	77
202	27	28	612	64	73C
203	25	26	701	105	1C
204	23	24	702	7	3C
301	37	38	703	8	5C
302	35	36	704	100	103C
303	33	34	705	11	99C
304	31	32	706	13	97C
401	63	62C	707	104	2C
402	59	61C	708	101	4C
403	57	41C	709	9	6C
404	53	54	710	10	102C
405	49	50	711	12	98C
406	45	46	712	95	96C
407	60	39C	801	113	114
408	58	40C	802	111	112
409	55	56	803	109	110
410	51	52	804	107	108
411	47	48			
412	43	44			
501	71	72			
502	69	70			
503	67	68			
504	65	66			
601	94	14C			
602	87	92C			
603	83	90C			
604	81	86C			
605	78C	79			
606	74	75			

GUEST PARKING STALLS

STALL #	STALL #	STALL #
G1	G7	G13
G2	G8	106 (Handicap)
G3 (Handicap)	G9	42 (Handicap)
G4	G10	
G5	G11	
G6	G12	

Parking stalls may be "compact" and "standard" in size, but may not be labeled as such on the Condominium Map. Parking stalls with a handicap emblem indicates stalls that are handicap accessible.

END OF EXHIBIT "B-3"

EXHIBIT "C"

COMMON INTERESTS

Unit Type	Residence Number	Undivided Common Interest of Each Residence
A/AR (6 units)	401, 406, 601, 606, 701, 706	0.016826
A1/A1R (6 units)	407, 412, 607, 612, 707, 712	0.016743
B/BR and B1/B1R (12 units)	402, 405, 408, 411, 602, 605, 608, 611, 702, 705, 708, 711	0.013612
C/CR (6 units)	403, 404, 603, 604, 703, 704	0.013561
C1/C1R (6 units)	409, 410, 609, 610, 709, 710	0.012991
D/DR (10 units)	101, 104, 201, 204, 301, 304, 501, 504, 801, 804	0.024151
E/ER (10 units)	102, 103, 202, 203, 302, 303, 502, 503, 802, 803	0.023442

* The Developer contemplates that the development shall proceed in a single phase. The Developer may alter the number of Residences (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. 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

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**.

SAMPLE
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.

SAMPLE

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:

SAMPLE

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).

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: _____

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

Estimated Common Expenses

Ho'okena at Puhi
(56 units)

	Monthly	Annual
<u>Utilities and Services</u>		
Electricity (common elements only)	\$1,800.00	\$21,600.00
Water	\$1,800.00	\$21,600.00
Sewer	\$2,800.00	\$33,600.00
Telephone	\$0.00	\$0.00
<u>Maintenance, Repairs and Supplies</u>		
Buildings	\$400.00	\$4,800.00
Grounds Maintenance	\$2,000.00	\$24,000.00
Tree Trimming	\$50.00	\$600.00
Pool Maintenance	\$0.00	\$0.00
Pest Control	\$250.00	\$3,000.00
Maintenance	\$250.00	\$3,000.00
Supplies	\$100.00	\$1,200.00
Trash Collection	\$1,680.00	\$20,160.00
<u>Management</u>		
Site Manager/Maintenance	\$0.00	\$0.00
Management Fee	\$1,032.00	\$12,384.00
Design Review Services	\$200.00	\$2,400.00
Office Supplies/Education Expenses	\$200.00	\$2,400.00
Payroll Preparation	\$0.00	\$0.00
<u>Insurance</u>		
Property	\$4,485.00	\$53,820.00
Compr. General Liability	\$214.00	\$2,568.00
Umbrella	\$266.00	\$3,192.00
D & O	\$80.00	\$960.00
Bond	\$40.00	\$480.00
Medical	\$0.00	\$0.00
Worker's Comp.	\$0.00	\$0.00
TDI	\$0.00	\$0.00
<u>Taxes and Government Assessments</u>	\$200.00	\$2,400.00
<u>Professional Services/Legal/Other</u>	\$25.00	\$300.00
<u>Audit and Tax Preparation</u>	\$52.00	\$624.00
<u>Roadway Easement</u>	\$300.00	\$3,600.00
Reserves	\$560.00	\$6,720.00
Total	\$18,784.00	\$225,408.00

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

Signature

Date

Pursuant to 514B-148.7b, Hawaii Revised Statutes, a new association 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.

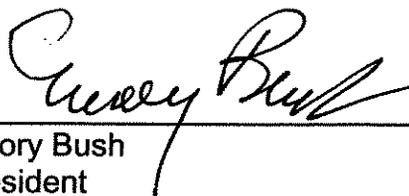
CERTIFICATE

I, the undersigned, duly sworn on oath, depose and affirm as follows:

1. That I am the President for Hawaiiana Management Company, Ltd., a Hawaii corporation, designated by the Developer of the Ho'okena at Puhi condominium project (the "Project") to act as the Managing Agent for the management and administration of the Project.

2. That I hereby certify that the breakdown of the annual maintenance charges and the monthly estimated cost for each unit in the Project, as set forth in Exhibit "1" attached hereto and hereby incorporated herein by reference, were determined pursuant to a reserve study conducted in accordance with Section 514B-148 of the Hawaii Revised Statutes and Chapter 107 of the Hawaii Administrative Rules, and are reasonable estimates for the one-year period commencing September 1, 2006, based on generally accepted accounting principles.

DATED: Honolulu, Hawaii, this 5th day of September, 2006.



Name: Emory Bush
Title: President
Hawaiiana Management Company, Ltd.

Subscribed and sworn to before me
this 5th day of September, 2006.



Typed or Printed Name: **Annie C. Kekoolani**
Notary Public, State of Hawaii

My commission expires: 02-16-2010

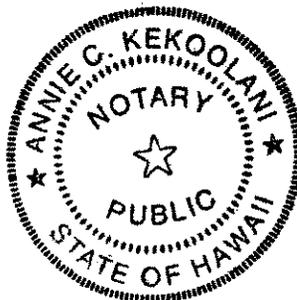


EXHIBIT "F"

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 Community. 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 Community 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 Community 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 Community or anything installed or contained in the residence or the Community.
- (i) That the Community 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 Community 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 Community. Purchasers and prospective purchasers should carefully read the specimen Sales Contract on file with the Real Estate Commission.

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS-CONTAINED IN THE PURCHASE AGREEMENT. WHILE A BUYER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF BUYER'S RIGHTS AND OBLIGATIONS UNDER THE PURCHASE AGREEMENT, BUYER MUST REFER TO THE PURCHASE AGREEMENT TO DETERMINE BUYER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE PURCHASE AGREEMENT, THE PURCHASE AGREEMENT WILL CONTROL.

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"

HO'OKENA AT PUHI AFFIDAVIT OF INTENT TO PURCHASE AND RESIDE IN AN OWNER-OCCUPANT DESIGNATED FEE SIMPLE TOWNHOME CONDOMINIUM 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 condominium residence designated for an "owner-occupant" in HO'OKENA AT PUHI townhome condominium residence ("Community") proposed by D.R. Horton – Schuler Homes, LLC, a Delaware limited liability company, dba D.R. Horton-Schuler Division ("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 condominium 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.

EXHIBIT "I"

Shared Appreciation Addendum and Declaration of Covenants Restricting Sale of Property

**HO`OKENA AT PUHI
SHARED APPRECIATION ADDENDUM
Condominium Residence No. _____**

This Addendum amends that Fee Simple Home Purchase Agreement (the "Sales Contract"), reference dated _____, by and between D.R. Horton-Schuler Homes, LLC dba D.R. Horton-Schuler Division ("Seller") and _____ ("Buyer") for the purchase of Residence No. _____ ("Residence") at the Ho`okena at Puhi community ("Community"). Buyer and Seller agree as follows:

1. REPRESENTATION REGARDING OCCUPANCY OR INVESTMENT

Buyer to initial either A or B:

_____/_____**A.** Buyer hereby represents and warrants that Buyer is purchasing the Residence to be owned and occupied by Buyer as Buyer's **primary residence** and not for investment purposes or rental. Buyer acknowledges that any misrepresentation in this respect of this issue will be a material default of the Sales Contract that entitles Seller to all remedies thereunder including, but not limited to, a termination of the Sales Contract and retention of any deposits made by Buyer as liquidated damages. Additionally, Buyer understands that if Buyer is applying for FHA or VA financing, such misrepresentation on any FHA or VA application form may result in criminal penalties, including, but not limited to, a fine or imprisonment or both under the provisions of federal law. Buyer further acknowledges that this representation and warranty must be renewed at close of escrow (hereafter "Closing") by signing the Declaration of Covenants Restricting Resale or Rental of Property hereinafter defined.

_____/_____**B.** Buyer hereby represents and warrants that Buyer is purchasing the Residence to be owned and occupied as Buyer's **secondary residence** and not for investment purposes or rental. Buyer acknowledges that any misrepresentation in this respect will be a material default of the Sales Contract that entitles Seller to all remedies thereunder including, but not limited to, a termination of the Sales Contract and retention of any deposits made by Buyer as liquidated damages. Additionally, Buyer understands that if Buyer is applying for FHA or VA financing, such misrepresentation on any FHA or VA application form may result in criminal penalties, including but not limited to a fine or imprisonment or both under the provisions of federal law. Buyer further acknowledges that this representation and warranty must be renewed at Closing by signing the Declaration of Covenants Restricting Resale or Rental of Property hereinafter defined. Buyer acknowledges that Seller can, in its sole and absolute discretion, prohibit or limit the number of secondary residence purchases in the subdivision.

If Buyer represents and warrants to Seller that Buyer will occupy the Residence pursuant to paragraphs A or B above and Seller becomes aware through any source that Buyer's representation and warranty to occupy the Residence is not true (for example, but without limitation, Buyer is actively marketing the Residence for sale or rent, Buyer informs Seller's salesperson, or Buyer's lender indicates that Buyer is purchasing for investment purposes), Seller shall have the right, in its sole discretion, to either (a) increase the amount that Buyer must pay as an earnest money deposit ("Deposits") or (b) terminate the Sales Contract by written notice to Buyer of the same, in which event such activity shall be deemed a material default of the Sales Contract and Seller shall be entitled to retain any Deposits made by Buyer as liquidated damages. Buyer shall be deemed to be actively marketing the Residence for sale

or rent if Buyer lists the Residence for sale, advertises the Residence for sale or rent or solicits buyers or renters for the Residence.

2. COVENANTS RESTRICTING RENTAL OF PROPERTY. If Buyer represents and warrants to Seller that Buyer will occupy the Residence pursuant to paragraph A or B above, the following applies to Buyer's use of the Residence. The following covenants shall apply to any Buyer other than a Buyer that purchases the Residence using FHA or VA financing.

a. Buyer hereby agrees and covenants not to rent the Residence for a period of 365 days after recordation of the conveyance document (hereafter the "Owner Occupant Period"). Buyer and Seller recognize and acknowledge that it is impossible to determine accurately the amount of any damages that Seller will incur if Buyer breaches this Paragraph 2(a) and, therefore, in the event of any such breach, Buyer shall pay Seller as liquidated damages, and not as a penalty, \$20,000.00 if Buyer rents the Residence prior to the expiration of such Owner Occupant Period. Further, and in addition to any restriction set forth in any recorded covenant, condition or restriction affecting the Residence, Buyer shall not place a "for rent" or "for sale" sign on the Residence until the expiration of the Owner Occupant Period (collectively the "Rental Covenant").

b. Buyer hereby agrees to occupy Buyer's new home during the Owner Occupant Period. Buyer also agrees that the conveyance of the Residence shall be made subject to a transfer restriction during the Owner Occupant Period that provides in the event Buyer elects to sell or to market for sale the Residence during the Owner Occupant Period, Seller shall have a priority lien on the Residence (the "Shared Appreciation Lien") in the amount of 50% of the amount by which the net re-sale price of the Residence exceeds the Purchase Price, defined in the Sales Contract. The Shared Appreciation Lien shall be payable at the closing of any re-sale of the Residence that occurs during the Owner Occupant Period or for a period of 90 days thereafter (the "Transfer Restriction Period"). The Shared Appreciation Lien shall expire, automatically without further action of the parties, at the conclusion of the Transfer Restriction Period. The Shared Appreciation Lien shall be enforceable as if it were a mortgage and Seller shall be entitled to all of the remedies at law and equity in respect of this mortgage lien right.

c. Buyer's covenant not to sell and not to rent, Buyer's obligation to pay liquidated damages to Seller if Buyer breaches the rental covenant, the foregoing Shared Appreciation Lien and transfer restriction and the foregoing restriction on displaying "for rent" or "for sale" sign shall be set forth in a separate Declaration of Covenants Restricting Resale or Rental of Property (the "Use Restriction Covenant") that shall be executed by Buyer at Closing and shall be recorded upon Closing as an encumbrance upon the Residence. The Use Restriction Covenant shall be subordinate to all mortgages or mortgage or home equity loans on the Residence.

3. RELEASE OF COVENANTS.

a. Seller may in its reasonable discretion, based on proof satisfactory to Seller, waive the foregoing Use Restriction Covenant and Shared Appreciation Lien under certain extenuating circumstances, including but not limited to the following:

- i. A transfer by Buyer where the spouse or one or more children of Buyer become the only co-owner with Buyer of the Residence;

- ii. A transfer by Buyer into a revocable inter vivos trust in which Buyer is a beneficiary;
- iii. A transfer resulting from the decree of dissolution of marriage or legal separation or from a property settlement agreement incident to such decree;
- iv. A transfer, conveyance, pledge, assignment or other hypothecation of the Residence to secure the performance of an obligation, which transfer, conveyance, pledge, assignment or hypothecation will be released or reconveyed upon the completion of such performance;
- v. A transfer by Buyer where (1) at the time of transfer Buyer is occupying the Residence as Buyer's place of residence and (2) the transfer is necessary to facilitate Buyer's relocation of his place of residence in order to accommodate a job transfer or to accommodate a change in employment location greater than twenty-five miles; and
- vi. A transfer resulting from circumstances beyond the control of Buyer.
- vii. An unforeseeable transfer of Buyer, if Buyer is in a branch of the United States Armed Forces.

b. Seller may release the foregoing restrictions and the Shared Appreciation Lien in favor of the Seller if the Residence is financed under a federally subsidized mortgage program and such restrictions and Shared Appreciation Lien would jeopardize the federal government's ability to recapture any interest credit subsidies. Similarly, the Seller may waive any of the foregoing restrictions and the Shared Appreciation Lien in favor of the Seller in order to comply with or conform to the requirements of federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

c. The foregoing restrictions and the Shared Appreciation Lien in favor of the Seller shall not apply in the case of a partial transfer of title to the Residence to a surviving Buyer by operation of law upon the death of a Buyer who held title to the Residence in joint tenancy or tenancy by the entirety with the surviving Buyer, provided that the restriction and Shared Appreciation Lien shall remain in full force and effect with regard to any subsequent transfer by the surviving Buyer.

d. The foregoing restrictions and the Shared Appreciation Lien in favor of the Seller shall be automatically extinguished and shall not apply in subsequent transfers of title to the Residence when a mortgage holder or other party becomes the owner of the Residence pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced. The term "mortgage holder" as used herein shall include the United States Department of Housing and Urban Development, Federal Housing Administration, the United States Department of Agriculture, the Farmers Home Administration or other federal or state agencies engaged in housing activity, the Administrator of Veterans Affairs, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, and any private mortgage lender, private mortgage insurer and their successors, grantees and assigns.

All defined terms herein shall have the same meaning as set forth in the Sales Contract.

All other terms and conditions of this Sales Contract Addendum shall remain in full force and effect. The undersigned acknowledges receipt of a fully completed copy of this addendum.

BUYER:

Date: _____

Date: _____

ACCEPTED BY SELLER:

D.R. HORTON -- SCHULER HOMES, LLC,
a Delaware limited liability company
dba D.R. HORTON-SCHULER DIVISION

Mary K. Flood
Vice President/Sales & Marketing

Date: _____

Return by Mail [] Pickup []

Total Pages:

DECLARATION OF COVENANTS RESTRICTING RESALE OR RENTAL OF PROPERTY

This Declaration of Covenants Restricting Resale or Rental of Property (the "Declaration of Covenants") is made on _____, by _____, the owner ("Owner") and D.R. HORTON-SCHULER HOMES, LLC, a Delaware limited liability company, dba D.R. Horton – Schuler Division ("Seller").

A. Owner has purchased from Seller the property described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. Seller desires to ensure the availability of "owner occupied" financing for its communities and provide as many people as possible with the opportunity for home ownership. Accordingly, as partial consideration paid to Seller by Owner for the purchase of the Property, Owner agreed to enter into this Declaration of Covenants that provides, among other things, that Owner will not resell or rent the Property for one (1) year from the date of recordation of the conveyance document (hereinafter "Closing").

C. Upon execution, this Declaration of Covenants shall be recorded in the Bureau of Conveyances of the State of Hawaii and/or the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

ARTICLE I
DECLARATION

1.1 Restriction on Rental of Property. Owner, for itself, its successors, and its assigns, hereby declares and agrees that it shall not lease, rent or otherwise transfer its rights, title, or interest in the Property during the period beginning as of even date herewith and expiring one (1) year from Closing (the "Owner Occupant Period"), without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion.

1.2 Resale and Transfer Restriction Period. During the Owner Occupant Period, Owner shall not sell, offer for sale or transfer the Property to a third party except as permitted by this Declaration of Covenants. If Owner sells or offers for sale the Property and transfers the Property to a third party during the Owner Occupant Period or for a period of 90 days thereafter (the "Transfer Restriction Period"), Seller shall have a priority lien on the Property (the "Shared Appreciation Lien") in the amount of 50% of the amount by which the net re-sale price of the Property, defined below, exceeds the Adjusted Purchase Price, also defined below. The Shared Appreciation Lien shall be payable at the closing of any re-sale of the Property that occurs during the Transfer Restriction Period. The Shared Appreciation Lien shall expire, automatically without further action of the parties, at the conclusion of the Transfer Restriction Period. Seller's Shared Appreciation Lien shall be enforceable as if it were a mortgage and Seller shall be entitled to all of the remedies at law and equity in respect of this mortgage lien right. "Net re-sale price of the Property" means the gross sales price of the Property, less sales commissions not exceeding six percent (6%) of the gross sales price and less customary closing costs incurred in the State of Hawaii in an amount not exceeding one percent (1%) of the gross sales price.

The "Adjusted Purchase Price" shall not exceed the sum of:

- (A) The original cost of the Property to the Owner,
- (B) The cost of any capital improvements added to the Property by the Owner; and
- (C) Simple interest on the original cost of the Property and the cost of the Owner's capital improvements calculated at the rate of one percent (1%) per annum.

1.3 Sign Restriction. Owner, its successors and assigns shall not place a "for sale" or "for rent" sign on the Property during the Owner Occupant Period.

1.4 Liquidated Damages. Owner acknowledges and agrees that if Owner breaches its obligation under Section 1.1 or Section 1.3, the damages sustained by Seller shall be difficult to calculate with any precision. Accordingly, if Owner or any of its successors or assigns leases, rents or otherwise licenses during the Owner Occupant Period any rights, title, or interest in the Property without Seller's written consent, Owner shall pay to Seller as liquidated damages the sum of \$20,000.00.

1.5 Covenants Run with the Property. These covenants shall run with the Property and shall bind and be a charge on the Property, Owner, and Owner's heirs, successors, and assigns from the date hereof until the expiration of the Restriction Period.

1.6 Consideration. Owner's execution of this Declaration of Covenants is partial consideration for Seller's agreement to execute the purchase contract by which the Property was conveyed by Seller to Owner.

ARTICLE II LIEN AND SUBORDINATION TO LENDER

2.1 Grant of Lien to Seller. Without limitation of the Shared Appreciation Lien set forth in Section 1.2, Owner hereby grants to Seller a lien against the Property (the "Lien") to secure Owner's obligations hereunder. Seller may promptly initiate proceedings to foreclose the Lien if Owner defaults in its obligation to pay Seller liquidated damages in the amount of \$20,000.00 under the Declaration of Covenants. Owner agrees that all of Seller's reasonable costs and expenses of foreclosure, including reasonable attorney's fees and interest at the rate of 15% per annum from the date of said default, shall become additional indebtedness owed by Owner to Seller that is secured by this Lien. Owner hereby waives any "home" exemption or other exemption now or hereafter existing or enacted under either Hawaii or federal law. No transfer of any rights, title or interest in the Property shall relieve Owner from the personal obligation to pay liquidated damages, together with interest, costs, and other reasonable attorneys' fees, pursuant to this Declaration of Covenants; provided, however, that Owner's obligations under this Declaration of Covenants shall not extend to any breach of this Declaration of Covenants by Owner's successor(s) in title.

2.2 Subordination to Lender. This Declaration of Covenants shall have priority over all liens or claims created subsequent to the recordation of this Declaration of Covenants except for (i) tax liens for real property taxes on the Property; (ii) assessments on the Property in favor of any municipal or other governmental body and (iii) any lien of all mortgages or home equity loans encumbering the Property.

ARTICLE III EXCEPTIONS

3.1 Seller's Exceptions. Seller may in its reasonable discretion, based on proof satisfactory to Seller, waive the foregoing covenant under certain extenuating circumstances, including but not limited to the following:

- a. A transfer by Owner where the spouse or one or more children of Owner become the only co-owner of the Property;
- b. A transfer by Owner into a revocable inter vivos trust in which Owner is a beneficiary;
- c. A transfer resulting from the decree of dissolution of marriage or legal separation or from a property settlement agreement incident to such decree;
- d. The transfer, conveyance, pledge, assignment or other hypothecation of the Property to secure the performance of an obligation, which transfer, conveyance, pledge, assignment or hypothecation will be released or reconveyed upon the completion of such performance;
- e. The transfer by Owner where (1) at the time of transfer Owner is occupying the Property as Owner's place of residence and (2) the transfer is necessary to

facilitate Owner's relocation of his place of residence in order to accommodate a job transfer or to accommodate a change in reemployment location greater than twenty-five miles; and

- f. A transfer resulting from circumstances beyond the control of Owner.
- g. An unforeseeable transfer of Buyer, if Buyer is in a branch of the United States Armed Forces.

ARTICLE IV MISCELLANEOUS

4.1 Remedies. In addition to its right of foreclosure under Section 2.1, Seller shall have all other remedies of a legal or equitable nature provided by Hawaii law, including, but not limited to, the right to initiate an action to enjoin any rental of this Property during the Owner Occupant Period.

4.2 Attorneys' Fees. Seller shall be entitled to reimbursement by Owner of all of Seller's reasonable costs and attorneys' fees if it prevails in any action to enforce the provisions of this Declaration of Covenants.

4.3 Governing Law and Venue. This Declaration of Covenants shall be construed according to the laws of the State of Hawaii, and venue for any action hereunder shall be in any court of competent jurisdiction located in the county in which the Property is located.

4.4 Severability. If any provision of this Declaration of Covenants is held invalid or void by a court of competent jurisdiction, such provision shall be deemed severable from the remainder of this Declaration of Covenants and shall in no other way affect the enforceability of any other provision herein.

4.5 Captions. The titles, headings, and captions used in this Declaration of Covenants are for convenience of reference and are not to be interpreted to affect the meaning of any of the provisions herein.

(THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, Owner and D.R. Horton-Schuler Homes, LLC, dba D.R. Horton – Schuler Division have executed this Declaration of Covenants effective as of the date first written above.

OWNER:

SELLER:

D.R. HORTON – SCHULER HOMES, LLC,
a Delaware limited liability company,
dba D.R. Horton – Schuler Division

By VERTICAL CONSTRUCTION CORPORATION,
a Delaware corporation
Its Manager

By _____

Its

STATE OF HAWAII

)
) SS.
)

Owner

COUNTY OF KAUAI

On _____, before me personally appeared _____, to me personally known, who, being by me duly sworn, 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 _____
My commission expires: _____

STATE OF HAWAII)
) SS.
COUNTY OF KAUAI)

On _____, before me personally appeared _____,
to me personally known, who, being by me duly sworn, 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: _____

EXHIBIT A

[property description]

EXHIBIT "J"

Kaua`i County Housing Authority Letters on Affordable
Housing Sales Program for Ho`okena

Got 20 05 03:09P

P. 1

EXHIBIT "J"

Bryan J. Baptista
Mayor

Gary K. Hou
Administrative Assistant



Bernard P. Carvalho Jr.
Director

Kenneth N. Rainforth
Executive on Housing

OFFICES OF COMMUNITY ASSISTANCE
KAUAI COUNTY HOUSING AGENCY

hookena 03

April 25, 2005

Honorable Chair Bill "Kaipo" Asing
and Council Members
Kauai County Council
4396 Rice Street
Lihue, Kauai, Hawaii 96766

Attention: Community Assistance Committee Chair Shaylene Iseri-Carvalho

Dear Chair Asing:

Subject: Affordable Housing Sales Program for Halelani Village Phase 1E (Ho'okena);
Completion of Grove Farm Properties' Affordable Housing Requirements for
County Ordinance No. PM-206-90

On October 18, 2001, representatives from Grove Farm Properties and Schuler Homes made a presentation to the County Council to describe their plans to produce and sell the final units needed to satisfy the affordable housing condition imposed on Grove Farm pursuant to Ordinance No. PM-206-90. In this presentation, Schuler Homes informed the Council that they believed they had saturated the market with townhouse style condominiums at Halelani Village and, alternatively, proposed to build duplex style units on the two remaining phases of the once-envisioned 500-unit Halelani Village complex. The duplex style proposal was approved (Communication C 2001-359) and the 60 unit project known as Halemalu was built and sold by 2003.

On September 8, 1999, the County Council agreed to adopt an 'affordable housing credit system' (Communication C-333-99) to measure the satisfaction of the 60% affordable housing requirement imposed on Grove Farm's Lihue-Puhi project. The presentation concluded that duplex units could produce enough affordable housing credits to satisfy the 1014 credits needed to comply with the zoning ordinance. However, topographical constraints reduced the number of units in Halemalu (Halelani Village Phase 1D) to 60 units and more severe topographical constraints in the Phase 1E area will make development of further duplex style units impractical.

In addition, the estimated 1,474 total units that Grove Farm has already developed and anticipates to be developed is substantially less than the original potential density 1,690 units. As a result, a total of approximately 63% affordable housing credits has been achieved without



Pilikoi Building
4444 Rice Street Suite 330
Lihue Hawaii 96766

Development Section (808) 241-4444
FAX (808) 241-4495 TDD (808) 241-4411

Section 8 (HUD) (808) 241-4440
FAX (808) 241-4496

C 2005-187

Kauai County Council
April 25, 2005
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including the final 56 units to be developed at Halelani Village Phase 1E. However, Schuler Homes proposes to develop the final 56 units at Halelani Village Phase 1E as additional affordable housing for eligible Kauai households earning up to 140% of the Kauai median household income. The final Halelani Village phase, known as Ho'okena will provide Grove Farm an additional 79.32 affordable housing credits, increasing the total affordable housing credit percentage to almost 69%. This will complete Grove Farm's affordable housing obligations pursuant to Ordinance No. PM-206-90 (see attached Grove Farm Affordable Housing Conditions Analysis).

We have been discussing the final phase of Halelani Village with Schuler Homes for approximately 18 months. To qualify as affordable housing, we propose the following provisions and marketing procedures for the sale of 56 units in the Ho'okena project meet the requirements imposed by Ordinance No. PM 206-90:

- 120-140% Median Income. All 56 of the units need to be households whose incomes do not exceed 140% of the Kauai Median Household Income.
- Sales Prices. Within each of the following group of units, the average sales prices shall not exceed the affordable price limits for households earning 140% of the Kauai median household income (see attached Housing Agency's Affordable For-Sale Housing Prices schedule):

	<u>Unit Size</u>	<u>Average Price</u>	<u>No. of Units</u>
-	2-Bedroom Units	\$259,150	24
-	3-Bedroom Units	\$291,050	12
-	Large 3-Bedrm Units	\$305,200	20
		Total	56

- 90-Day/30-Day Restricted Sales Period. All sales must be restricted to Kauai resident, income qualified, first-time buyers for a period of 90-days. If any units remain unsold after the initial 90-day period, sales will then be restricted for an additional 30 days to Kauai residents, without restriction on income or first-time buyer status. Any units that remain unsold after 120 days, may be sold on the open market.
- First come, first served or Lottery. Unit sales will initially be based on the date and time of receipt of a potential buyer's reservation/sales contract. This "first come, first served" method needs to be clearly communicated to the public. However, if demand for units exceeds the number of units available during the initial 90-day restricted sales period and 56 or more potential qualified buyers apply, a lottery will be conducted.
- Preference groups. No group, such as Grove Farm employee, handicapped, single parent head-of-household, etc., will be given a preference to buy, with the possible exception for the following:

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April 25, 2005
Page 3

- Registered Home-Buyer & Home-Ownership Education Graduate. In the near future, the Housing Agency intends to obtain administrative and legislative approval to establish a "Kauai resident first-time home buyer list" that will give first preference to buy in any affordable housing project sponsored by or required by the County over the next five years. To obtain the preference, a Kauai resident would register their household information with the Housing Agency and must complete a qualified home-ownership education course, approved by the Housing Agency, prior to being given the preference.

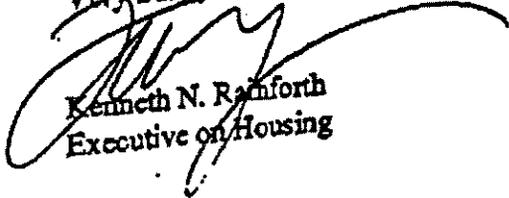
- Family Size. There will be no restriction on family size as to which size unit is appropriate. Any size household can buy any of the units.
- 6-Year Buyback. All units sold within the initial 90-day restricted sales period will be subject to a 6-Year Buyback restriction giving the County the right to purchase the unit at the original cost, the cost of improvements added, and 1% annual interest.
- No Shared Appreciation. The County will not impose a shared appreciation program.

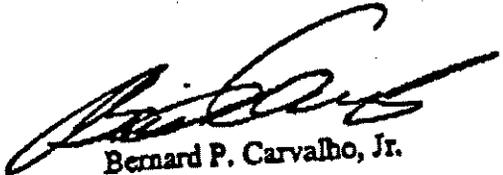
Schuler Homes has begun the permitting process for the Ho'okena project. They hope to be able to begin site work this summer and commence building construction by early next year, with sales to begin soon thereafter.

The Kauai County Housing Agency requests the Kauai County Council to acknowledge that the above marketing procedures conform to the intent of the affordable housing conditions imposed on Grove Farm by Ordinance No. PM-206-90 by approving this communication.

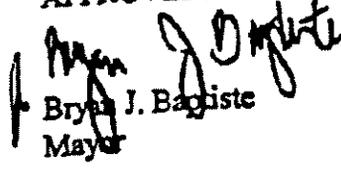
Thank you for your assistance with this matter.

Very truly yours,


Kenneth N. Rainforth
Executive on Housing


Bernard P. Carvalho, Jr.
OCA Director

APPROVED:


Bryan J. Bagiste
Mayor

cc: Robert Q. Bruhl,
Schuler Homes

Grove Farm Affordable Housing Conditions Analysis

03/21/05 10/2005ah11

Required Affordable Housing	Kauai County Ordinance PM-206-90		Credits Per Grove Farm Adopted Credit System		
	Units	Percent	Credits	Percent	Actual Units
Total Units or Credits	1890	100.0%		100.0%	1474
20 "self-help" for below 80% KMHI	20	1.2%	57.75	3.9%	20
30% of Units for 80-120% KMHI	497	26.4%	407.48	27.6%	322
30% of Units for 120-140% KMHI	497	26.4%	549.18	37.3%	275
Total Affordable	1014	50.0%	1014.37	68.8%	617
40% Market Units	676	40.0%			857

Sold Units		Adopted Grove Farm County Credit System			
	Housing Unit Count	Credit Index	Total Credits	Credit Sub-Totals	
120-140% Single Family - Hokualei Estates					
	18	1.78	31.88		
2-Bedroom/2-Bath : Small Lot	34	1.98	68.30		
2-Bedroom/2-Bath : Typical Lot	120	2.23	267.60		
3-Bedroom/2-Bath : Typical Lot	17	2.38	40.48	408.04	
3-Bedroom/2-Bath : Large Lot					
50-80% Single Family - Hokualei Estates					
	8	2.84	15.84		
2-Bedroom/2-Bath : Small Lot	8	2.93	17.56		
2-Bedroom/2-Bath : Typical Lot	8	3.05	24.38	57.75	
3-Bedroom/2-Bath : Small Lot					
	209				
80-120% Multifamily - Halelani Village					
	4	1.00	4.00		
1-Bedroom/1-Bath	37	1.00	37.00		
2-Bedroom/1-Bath	89	1.12	99.68		
Phase 1A 2-Bedroom/1.5-Bath	147	1.24	182.28		
Phase 1B 2-Bedroom/2-Bath	15	1.38	20.70	343.68	
Phase 1C 3-Bedroom/2-Bath					
	292			Sold Sub-Total	807.48
120-140% Duplex & Single Family - Halemalu					
	2	1.78	3.52		
2-Bedroom/2-Bath : Small Lot	2	2.03	4.06		
3-Bedroom/2-Bath : Small Lot	15	2.10	31.50		
3-Bedroom/2.5-Bath : Small Lot	10	2.24	22.40		
4-Bedroom/2.5-Bath : Small Lot	1	2.32	2.32	63.80	
4-Bedroom/3-Bath : Small Lot					
80-120% Duplex & Single Family - Halemalu					
	2	1.78	3.52		
2-Bedroom/2-Bath : Small Lot	2	2.03	4.06		
3-Bedroom/2-Bath : Small Lot	15	2.10	31.50		
3-Bedroom/2.5-Bath : Small Lot	10	2.24	22.40		
4-Bedroom/2.5-Bath : Small Lot	1	2.32	2.32	63.80	
4-Bedroom/3-Bath : Small Lot					
	60			Sold Sub-Total	127.60
Future New Units					
120-140% Multifamily - Halelani Village					
	24	1.24	29.76		
2-Bedroom/2-Bath	12	1.38	16.56		
3-Bedroom/2-Bath	20	1.65	33.00	79.32	
3-Bedroom/2.5-Bath					
	58			Future Sub-Total	79.32
	617				
Total Units					1014.37
					Total Credits

Bryan J. Baptiste
Mayor

Gary K. Heu
Administrative Assistant



Bernard P. Carvalho Jr.
Director

Kenneth N. Rainforth
Executive on Housing

OFFICES OF COMMUNITY ASSISTANCE
KAUAI COUNTY HOUSING AGENCY

June 2, 2005

hookena 04

Mr. Ian K. Costa
Director of Planning
County of Kauai
Department of Planning
4444 Rice Street, Suite 473
Lihue, Kauai, Hawaii 96766

Attention: Bryan Mamaclay

Dear Mr. Costa:

Subject: D.R. Horton/Schuler Homes Halelani Village Phase 1E (Ho'okena);
Qualified Affordable Housing in Satisfaction of County Ordinance No.
PM-206-90 (Grove Farm Properties)

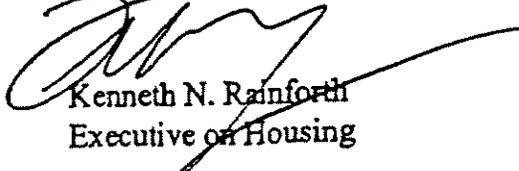
On May 12, 2005, the Kauai County Council approved a sales and marketing plan (Communication No. C 2005-187, as amended, copy attached) for Halelani Village Phase 1E (Ho'okena) to qualify the 56 unit multifamily project as affordable housing in satisfaction of Grove Farm Properties' housing conditions pursuant to County Ordinance No. PM-206-90. This project represents the last affordable housing units required of Grove Farm Properties.

The project is being developed by D.R. Horton/Schuler Homes and is an approved affordable housing project. The unit prices are affordable to families earning 140% of Kauai median household income and the Housing Agency is responsible to qualify prospective buyers. The County's anti-speculative buyback provision will be a deed restriction on all qualified sales.

Upon completion of the project and all unit sales, the Housing Agency will issue a letter to Grove Farm Properties acknowledging satisfaction of the entire 60% affordable housing requirements imposed pursuant to County Ordinance No. PM-206-90.

Please contact me if you have any questions regarding this matter.

Very truly yours,


Kenneth N. Rainforth
Executive on Housing

cc: Grove Farm, Mike Furukawa
Schuler Homes, Bob Bruhl



Bryan J. Baptiste
Mayor

Gary K. Heu
Administrative Assistant



Bernard P. Carvalho Jr.
Director

Kenneth N. Rainforth
Executive on Housing

OFFICES OF COMMUNITY ASSISTANCE
KAUAI COUNTY HOUSING AGENCY

Ho'okena 03

April 25, 2005

Honorable Chair Bill "Kaipo" Asing
and Council Members
Kauai County Council
4396 Rice Street
Lihue, Kauai, Hawaii 96766

Attention: Community Assistance Committee Chair Shaylene Iseri-Carvalho

Dear Chair Asing:

Subject: Affordable Housing Sales Program for Halelani Village Phase 1E (Ho'okena);
Completion of Grove Farm Properties' Affordable Housing Requirements for
County Ordinance No. PM-206-90

On October 18, 2001, representatives from Grove Farm Properties and Schuler Homes made a presentation to the County Council to describe their plans to produce and sell the final units needed to satisfy the affordable housing condition imposed on Grove Farm pursuant to Ordinance No. PM-206-90. In this presentation, Schuler Homes informed the Council that they believed they had saturated the market with townhouse style condominiums at Halelani Village and, alternatively, proposed to build duplex style units on the two remaining phases of the once-envisioned 500-unit Halelani Village complex. The duplex style proposal was approved (Communication C 2001-359) and the 60 unit project known as Halemalu was built and sold by 2003.

On September 8, 1999, the County Council agreed to adopt an 'affordable housing credit system' (Communication C-333-99) to measure the satisfaction of the 60% affordable housing requirement imposed on Grove Farm's Lihue-Puhi project. The presentation concluded that duplex units could produce enough affordable housing credits to satisfy the 1014 credits needed to comply with the zoning ordinance. However, topographical constraints reduced the number of units in Halemalu (Halelani Village Phase 1D) to 60 units and more severe topographical constraints in the Phase 1E area will make development of further duplex style units impractical.

In addition, the estimated 1,474 total units that Grove Farm has already developed and anticipates to be developed is substantially less than the original potential density 1,690 units. As a result, a total of approximately 63% affordable housing credits has been achieved without



SOCIAL HOUSING
OPPORTUNITY

including the final 56 units to be developed at Halelani Village Phase 1E. However, Schuler Homes proposes to develop the final 56 units at Halelani Village Phase 1E as additional affordable housing for eligible Kauai households earning up to 140% of the Kauai median household income. The final Halelani Village phase, known as Ho'okena will provide Grove Farm an additional 79.32 affordable housing credits, increasing the total affordable housing credit percentage to almost 69%. This will complete Grove Farm's affordable housing obligations pursuant to Ordinance No. PM-206-90 (see attached Grove Farm Affordable Housing Conditions Analysis).

We have been discussing the final phase of Halelani Village with Schuler Homes for approximately 18 months. To qualify as affordable housing, we propose the following provisions and marketing procedures for the sale of 56 units in the Ho'okena project meet the requirements imposed by Ordinance No. PM 206-90:

- 120-140% Median Income. All 56 of the units need to be households whose incomes do not exceed 140% of the Kauai Median Household Income.
- Sales Prices. Within each of the following group of units, the average sales prices shall not exceed the affordable price limits for households earning 140% of the Kauai median household income (see attached Housing Agency's Affordable For-Sale Housing Prices schedule):

<u>Unit Size</u>	<u>Average Price</u>	<u>No. of Units</u>
- 2-Bedroom Units	\$259,150	24
- 3-Bedroom Units	\$291,050	12
- Large 3-Bedrm Units	\$305,200	20
	Total	56
- 90-Day/30-Day Restricted Sales Period. All sales must be restricted to Kauai resident, income qualified, first-time buyers for a period of 90-days. If any units remain unsold after the initial 90-day period, sales will then be restricted for an additional 30 days to Kauai residents, without restriction on income or first-time buyer status. Any units that remain unsold after 120 days, may be sold on the open market.
- First come, first served or Lottery. Unit sales will initially be based on the date and time of receipt of a potential buyer's reservation/sales contract. This "first come, first served" method needs to be clearly communicated to the public. However, if demand for units exceeds the number of units available during the initial 90-day restricted sales period and 56 or more potential qualified buyers apply, a lottery will be conducted.
- Preference groups. No group, such as Grove Farm employee, handicapped, single parent head-of-household, etc., will be given a preference to buy, with the possible exception for the following:

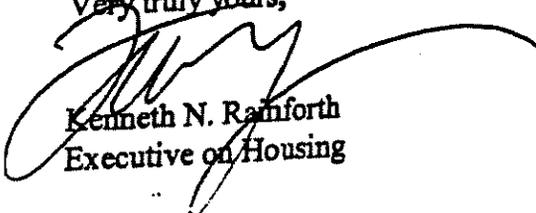
- Registered Home-Buyer & Home-Ownership Education Graduate. In the near future, the Housing Agency intends to obtain administrative and legislative approval to establish a "Kauai resident first-time home buyer list" that will give first preference to buy in any affordable housing project sponsored by or required by the County over the next five years. To obtain the preference, a Kauai resident would register their household information with the Housing Agency and must complete a qualified home-ownership education course, approved by the Housing Agency, prior to being given the preference.
- Family Size. There will be no restriction on family size as to which size unit is appropriate. Any size household can buy any of the units.
- 6-Year Buyback. All units sold within the initial 90-day restricted sales period will be subject to a 6-Year Buyback restriction giving the County the right to purchase the unit at the original cost, the cost of improvements added, and 1% annual interest.
- No Shared Appreciation. The County will not impose a shared appreciation program.

Schuler Homes has begun the permitting process for the Ho'okena project. They hope to be able to begin site work this summer and commence building construction by early next year, with sales to begin soon thereafter.

The Kauai County Housing Agency requests the Kauai County Council to acknowledge that the above marketing procedures conform to the intent of the affordable housing conditions imposed on Grove Farm by Ordinance No. PM-206-90 by approving this communication.

Thank you for your assistance with this matter.

Very truly yours,


Kenneth N. Rainforth
Executive on Housing

Bernard P. Carvalho, Jr.
OCA Director

APPROVED:

cc: Robert Q. Bruhl,
Schuler Homes

Bryan J. Baptiste
Mayor

Grove Farm Affordable Housing Conditions Analysis

03/21/05

lg2005ah11

Required Affordable Housing	Kauai County Ordinance PM-206-90		Credits Per Grove Farm Adopted Credit System		
	Units	Percent	Credits	Percent	Actual Units
Total Units or Credits	1690	100.0%		100.0%	1474
20 "self-help" for below 80% KMHI	20	1.2%	57.75	3.9%	20
30% of Units for 80-120% KMHI	497	29.4%	407.46	27.6%	322
30% of Units for 120-140% KMHI	497	29.4%	549.16	37.3%	275
Total Affordable	1014	60.0%	1014.37	68.8%	617
40% Market Units	676	40.0%			857

Sold Units	Adopted Grove Farm County Credit System			
	Housing Unit Count	Credit Index	Total Credits	Credit Sub-Totals
120-140% Single Family - Hokulei Estates				
2-Bedroom/2-Bath : Small Lot	18	1.76	31.68	
2-Bedroom/2-Bath : Typical Lot	34	1.95	66.30	
3-Bedroom/2-Bath : Typical Lot	120	2.23	267.80	
3-Bedroom/2-Bath : Large Lot	17	2.38	40.46	406.04
50-80% Single Family - Hokulei Estates				
2-Bedroom/2-Bath : Small Lot	8	2.84	15.84	
2-Bedroom/2-Bath : Typical Lot	8	2.93	17.55	
3-Bedroom/2-Bath : Small Lot	8	3.05	24.36	57.75
	209			
80-120% Multifamily - Halelani Village				
1-Bedroom/1-Bath	4	1.00	4.00	
Phases 1A 2-Bedroom/1-Bath	37	1.00	37.00	
Phases 1B 2-Bedroom/1.5-Bath	89	1.12	99.68	
Phases 1C 2-Bedroom/2-Bath	147	1.24	182.28	
3-Bedroom/2-Bath	15	1.38	20.70	343.66
	292			Sold Sub-Total 807.45
120-140% Duplex & Single Family - Halemalu				
2-Bedroom/2-Bath : Small Lot	2	1.76	3.52	
3-Bedroom/2-Bath : Small Lot	2	2.03	4.06	
3-Bedroom/2.5-Bath : Small Lot	15	2.10	31.50	
4-Bedroom/2.5-Bath : Small Lot	10	2.24	22.40	
4-Bedroom/3-Bath : Small Lot	1	2.32	2.32	63.80
80-120% Duplex & Single Family - Halemalu				
2-Bedroom/2-Bath : Small Lot	2	1.76	3.52	
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3-Bedroom/2.5-Bath : Small Lot	15	2.10	31.50	
4-Bedroom/2.5-Bath : Small Lot	10	2.24	22.40	
4-Bedroom/3-Bath : Small Lot	1	2.32	2.32	63.80
	60			Sold Sub-Total 127.60
Future New Units				
120-140% Multifamily - Halelani Village				
2-Bedroom/2-Bath	24	1.24	29.76	
Phases 1E 3-Bedroom/2-Bath	12	1.38	16.56	
3-Bedroom/2.5-Bath	20	1.65	33.00	79.32
	56			Future Sub-Total 79.32
	617			
Total Units				1014.37
				Total Credits

AFFORDABLE HOUSING PROGRAM

6.000% Conventional Mortgage Rate

\$57,900 Kauai Median Household Income

Effective : 02/11/05

2005

KAUAI COUNTY HOUSING AGENCY

√2005limits

03/10/05

AFFORDABLE FOR-SALE HOUSING PRICES

Income & Price Limits	FAMILY SIZE							
	1	2	3	4	5	6	7	8
Based on percent of Kauai Median Household Income								
HUD Very Low Income	22,600	25,850	29,050	32,300	34,900	37,450	40,050	42,650
Single Family Price	55,300	69,600	83,600	97,900	109,300	120,500	131,900	143,300
Multi-Family Price	20,200	34,500	48,500	62,800	74,200	85,400	96,800	108,200
HUD Low Income	36,200	41,350	46,500	51,700	55,800	59,950	64,100	68,200
Single Family Price	115,000	137,600	160,200	183,000	201,000	219,200	237,400	255,400
Multi-Family Price	79,900	102,500	125,100	147,900	165,900	184,100	202,300	220,300
80% Income	32,450	37,100	41,700	46,350	50,050	53,750	57,450	61,150
Single Family Price	98,500	118,900	139,100	159,500	175,800	192,000	208,300	224,500
Multi-Family Price	63,400	83,800	104,000	124,400	140,700	156,900	173,100	189,400
100% Income	40,550	46,350	52,150	57,900	62,550	67,200	71,800	76,450
Single Family Price	134,100	159,500	185,000	210,200	230,600	251,000	271,200	291,600
Multi-Family Price	99,000	124,400	149,900	175,100	195,500	215,900	236,100	256,500
120% Income	48,650	55,600	62,550	69,500	75,050	80,600	86,155	91,750
Single Family Price	169,600	200,100	230,600	261,100	285,500	309,900	334,200	358,800
Multi-Family Price	134,500	165,000	195,500	226,000	250,400	274,700	299,100	323,700
140% Income	56,750	64,850	73,000	81,100	87,550	94,050	100,550	107,000
Single Family Price	205,200	240,700	276,500	312,100	340,400	368,900	397,400	425,700
Multi-Family Price	170,100	205,600	241,400	276,900	305,200	333,800	362,300	390,600

Conventional 30-year fixed rate mortgage, 5.0% down payment, 30% loan to income ratio, \$250 tax & insurance, mortgage insurance and \$200 maintenance fee on multifamily.

LOT Only Sales Price: 80% Income 100% Income 120% Income 140% Income

(based on family of 4) 67,000 86,000 106,000 125,000

KAR 20050310

Ho'okena Sales Program

hookena 05

October 20, 2005

The Kauai County Council agreed to the following sales program affordable housing units for Halelani Village Phase 1E, or Ho'okena, on May 12, 2005. Construction and sale of the 56 units in Ho'okena by D.R. Horton, Schuler Homes Division, shall be credited to Grove Farm Properties' Affordable Housing Requirements pursuant to County Ordinance No. PM-206-90, provided the following marketing and sales procedures are used:

- X 120-140% Median Income. All 56 of the units need to be households whose incomes do not exceed 140% of the Kauai Median Household Income.
- X Sales Prices. Within each of the following group of units, the average sales prices shall not exceed the affordable price limits for households earning 140% of the Kauai median household income (see attached Housing Agency's Affordable For-Sale Housing Prices schedule):

<u>Unit Size</u>	<u>Average Price</u>	<u>No. of Units</u>
2-Bedroom Units	\$259,150	24
3-Bedroom Units	\$291,050	12
Large 3-Bedrm Units	\$305,200	<u>20</u>
	Total	56

- X First 60-Day Restricted Sales Period. All sales must be restricted to Kauai resident, income qualified, first-time buyers for a period of 60-days. All units sold within the initial 60-day restricted sales period will be subject to a County 10-Year Buyback restriction giving the County the right to purchase the unit at the original cost, the cost of improvements added, and 1% annual interest.
- X Second 60-Day Restricted Sales Period. If any units remain unsold after the initial 60-day period, sales will then be restricted for an additional 60 days to Kauai residents, without restriction on income or first-time buyer status. All units sold within the subsequent 60-day restricted sales period will be subject to a County 6-Year Buyback restriction giving the County the right to purchase the unit at the original cost, the cost of improvements added, and 1% annual interest.
- X Unrestricted Sales. Any units that remain unsold after 120 days, may be sold on the open market, to anyone and without resale restrictions. Prior to any units being offered on the open market, the County shall have the first option to purchase any unsold units.
- X Lottery. A lottery will be conducted for all Kauai affordable housing purchasers who qualify for the initial 60-day sales period to determine the sequence for selection of units to purchase. A separate lottery will be conducted for all Kauai resident housing purchasers who qualify for the subsequent 60-day sales period to

determine the sequence for selection of units to purchase.

X Preference groups. No group, such as Grove Farm employee, handicapped, single parent head-of-household, etc., will be given a preference to buy, with the possible exception that D.R. Horton and the County may agree to give a preference for participants in the County's "Home-Buyer Priority List Program" who have registered with the Housing Agency and have complete a qualified home-ownership education course.

X Family Size. There will be no restriction on family size as to which size unit is appropriate. Any size household can buy any of the units.

* No Shared Appreciation. The County will not impose a shared appreciation program.

EXHIBIT "K"

Affordable Housing Application/Owner-Occupant Affidavit/Eligibility Requirements



HOUSING APPLICATION FORM

APPLICATIONS WILL NOT BE PROCESSED UNLESS COMPLETELY FILLED OUT. ONLY ONE (1) APPLICATION WILL BE ACCEPTED PER HOUSEHOLD. APPLICATIONS MUST BE MAILED OR DELIVERED TO D.R. HORTON-SCHULER HOMES, LLC; 3-4221 KUHIO HIGHWAY; LIHUE, HI 96715

APPLICANT:
(Use full last & first names and middle initials)

CO-APPLICANT/SPOUSE:
(Use full last & first names and middle initials)

Full Name: _____
(Last) (First) (M.I.)

Full Name: _____
(Last) (First) (M.I.)

Social Security Number: _____

Social Security Number: _____

Date of Birth: _____

Date of Birth: _____

Marital Status: Single _____ Married _____ Divorced _____

Marital Status: Single _____ Married _____ Divorced _____

Occupation: _____

Occupation: _____

Business Phone: _____ Home Phone: _____

Business Phone: _____ Home Phone: _____

Resident Mailing Address: _____

Resident Mailing Address: _____

HOUSEHOLD COMPOSITION: All members of the household that will reside in the dwelling unit purchased from the County. Include applicant and co-applicant.

Name	Last	First	Social Security No.	Sex	Age	Relation
1.	_____	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____	_____
8.	_____	_____	_____	_____	_____	_____

Total Family Size: _____ Cash Available for Downpayment: \$ _____

Employer: _____ Monthly Income: \$ _____

Spouse/Co-Applicant's Employer: _____ Monthly Income: \$ _____

Other Employment: _____ Monthly Income: \$ _____

Interest/Dividend: _____ Monthly Income: \$ _____

Other: _____ Monthly Income: \$ _____

Total Family Monthly Income: \$ _____

Total annual gross household income: (Monthly gross income x 12) \$ _____

Monthly Payments:
Monthly Housing Expense (Rent, etc.) \$ _____ /mo

Monthly Utilities \$ _____ /mo

Monthly Bills – Auto(s) Balance: \$ _____ \$ _____ /mo

Monthly Bills – Charge Cards Balance: \$ _____ \$ _____ /mo

Monthly Bills – Credit Union Balance: \$ _____ \$ _____ /mo

Monthly Bills – Other Balance: \$ _____ \$ _____ /mo

Monthly Bills – Other Balance: \$ _____ \$ _____ /mo

Total Balance: \$ _____ \$ _____ /mo

ELIGIBILITY REQUIREMENTS FOR PURCHASE:
APPLICANT/SPOUSE

APPLICANT CO-

	APPLICANT		CO-	
	Yes	No	Yes	No
1. I will live in the home purchased in Ho'okena at Puhi.	()	()	()	()
2. I understand and accept the restriction on the sale or transfer, and use (buyback) of the dwelling unit	()	()	()	()
3. I do not own any interest in real estate suitable for residential use. If I own any interest in real estate, I will complete the County's <u>Real Estate Disclosure Statement</u> available from D.R. Horton-Schuler Homes, LLC	()	()	()	()
4. I agree to inform D.R. Horton-Schuler Homes, LLC and the Kauai County Housing Agency of any changes in information provided in this application, especially concerning the applications household characteristic, place of residence, mailing address and telephone numbers.	()	()	()	()



OWNER OCCUPANT AFFIDAVIT

We, the undersigned "Owner-Occupants" on this _____ day of _____, 20____, declare that we are a "Gap Group Income Purchaser", who will be "Owner-Occupants" in Ho'okena at Puhi, a fee-simple single family community (the "Community").

We understand and agree that:

- The term "Gap Group Income Purchaser" as used in this document, means a buyer whose gross annual income (including the income of all members of such buyer's household) does not exceed 140% of the median income (adjusted for family size) for the County of Kaua'i as most recently determined by the U.S. Department of Housing and Urban Development. The following are current income limits (for 2005) by family size for the Community. The buyer(s) can be below these limits and still qualify:

<u>Family Size</u>	<u>140%</u>	<u>Family Size</u>	<u>140%</u>
1	\$56,750	5	\$87,550
2	\$64,850	6	\$94,050
3	\$73,000	7	\$100,550
4	\$81,100	8	\$107,000

- By signing this document, we represent that we are a "Gap Group Income Purchaser" within the meaning of those terms, as defined in paragraph 1 above.
- By signing this document, we represent that we intend to buy a residential unit in the Community and to become an owner-occupant of the unit.
- By signing this document, we understand and agree that the residential unit, which we purchase in the Community, must be occupied by us and are not to be rented. The individuals below will occupy the unit:

<u>Name</u>	<u>Age</u>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____

- By signing this document, we authorize the County of Kaua'i, by designated employees of the Kaua'i County Housing Agency, to periodically verify compliance with each of the provisions herein.
- By signing this document, we understand that the making of any false statements, knowingly, in connection with this Affidavit shall constitute unsworn falsification to authorities and be punishable as such.
- By signing this document, we represent that we do not own a majority interest in any real estate suitable for residential purposes within or without the State of Hawai'i. If we own any real estate, we will complete the County's Real Estate Disclosure Statement available from D.R. Horton-Schuler Homes, LLC upon request.

THIS DOCUMENT MUST BE SIGNED IN FRONT OF A NOTARY PUBLIC.

OWNER-OCCUPANT(S)

ADDRESS _____	PURCHASER _____
CITY, STATE, ZIP CODE _____	PURCHASER _____
PHONE NO. (RESIDENCE) _____	PURCHASER _____
PHONE NO. (BUSINESS) _____	PURCHASER _____

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:



AFFORDABLE HOUSING INFORMATION

Thank you for your interest in Ho'okena at Puhi. We at D.R. Horton-Schuler Homes, LLC are pleased to introduce one of the newest affordable housing community on Kaua'i.

ELIGIBILITY REQUIREMENTS

1. Applicants must not own any real estate suitable for residential use, prior to closing of a home in Ho'okena at Puhi.
2. Applicants must be first time buyers and/or Kaua'i residents during certain restricted sales periods as described in the Sales Period provisions set forth below.
3. Applicants must abide by the Buyback Restriction outlined in Section 2-1.16, Kaua'i County Code 1987, relating to Sale or Transfer, and Use (buyback) of the land and dwelling unit.
4. Applicants must have the ability to finance the purchase with their own resources, including cash requirements and qualifying for the mortgage loan.
5. Applicants must be owner-occupants at all times.
6. Applicant's Annual Gross Household Income must not exceed 140% of the Kaua'i Median Household Income listed below:

<u>Family Size</u>	<u>140%</u>	<u>Family Size</u>	<u>140%</u>
1	\$56,750	5	\$87,550
2	\$64,850	6	\$94,050
3	\$73,000	7	\$100,550
4	\$81,100	8	\$107,000

"Annual Gross Household Income" means the total amount of annual income of the applicant or co-applicant/spouse and any other household member over 18 years of age not claimed as a dependent, from all sources before deductions. Social Security benefits, COLA, BAQ and VHA are considered income.

"Household" means (1) a group of persons regularly living together consisting of two or more persons related by blood, marriage, adoption, or by operations of law, including foster children; (2) a single person; or (3) one or more individuals living with another person determined essential to their well-being. Applicants claiming family size by reason of pregnancy must submit a doctor's certificate with their Housing Application.

7. There will be no restriction on family size as to which size unit is appropriate. Any size household can buy any of the units.
8. Applicants are advised that the making of any false statements knowingly, in connection with this application is a crime punishable by a fine of up to \$2,000.00 or imprisonment for up to one (1) year or both as applicable under the provisions of the Hawaii Penal Code, Part V, Section 710-1063. D.R. Horton-Schuler Homes, LLC may initiate all legal remedies for the enforcement of this provision including immediate repurchase, foreclosure and eviction.
9. Should Buyer sell or change title to their home during the restriction period, the County of Kaua'i has first option to purchase the home at the original cost, plus cost of any improvements, plus interest at the rate of one percent (1%) a year.

REQUIRED DOCUMENTS

The following Buyer information forms are required by D.R. Horton-Schuler Homes, LLC and the County of Kaua'i, and must be filled out completely by all parties. Applicants submitting incomplete forms will be disqualified. These forms must be mailed or delivered in person to D.R. Horton-Schuler Homes, LLC 3-4221 Kuhio Highway; Lihue, HI 96715.

1. Owner-Occupant Affidavit

Read and complete the necessary information. This form must be signed by all parties in front of a Notary Public. Do not sign this form without a Notary Public present.

2. Housing Application Form

This two page form must be completely filled out. All information will be kept confidential and will be submitted to the County of Kaua'i and a Lender for their review and approval.

3. W-2 and Tax Returns

(a) Submit copy of 2005 W-2 for all wages for all household members. (b) Submit copies of two (2) most recent federal income tax returns (2003 and 2004 or 2004 and 2005). Tax returns must be signed with all schedules attached to the application. Income eligibility shall be based on W-2 and tax return information. **TAX RETURNS MUST BE SIGNED BY ALL PARTIES.**

4. Proof of Residency

Kaua'i Residency is established with a Kaua'i address on your tax return and/or pay stub. Other documentation to prove residency may be submitted, such as a rental agreement or utility bill.

5. Pre-Qualification Letter

A Pre-Qualification Letter must be obtained from DHI Mortgage by calling 1-808-545-4701. In order for DHI Mortgage to provide this free letter, they require two (2) most recent federal income tax returns and two (2) most recent paystubs. They will also need to verify Applicant's assets and run a credit report. Applicants are not required to use DHI Mortgage and may use a lender of their choice.

SALES PERIOD

1. KCHA Offering Period.

At the election of the Kaua'i County Housing Agency (KCHA) and prior to publication of the availability of the homes for sale to the public, households who are Kaua'i residents, income qualified, first-time buyers who are registered with the KCHA's Home-Buyer Priority List program, who have completed the required home-ownership education classes, and have otherwise pre-qualified per KCHA eligibility requirements to purchase a home in Ho'okea at Puhi, may be provided the first opportunity to purchase. All sales in this "KCHA Offering Period" will be subject to a County 10-Year Buyback restriction giving the County the right to purchase the unit at the original cost, the cost of improvements added, and 1% annual interest.

2. First 60-Day Restricted Sales Period.

All sales must be restricted to Kaua'i resident, income qualified, first-time buyers for a period of 60-days. All units sold within the initial 60-day restricted sales period will be subject to a County 10-Year Buyback restriction giving the County the right to purchase the unit at the original cost, the cost of improvements added, and 1% annual interest.

3. Second 60-Day Restricted Sales Period.

If any units remain unsold after the initial 60-day period, sales will then be restricted for an additional 60-days to Kaua'i residents, without restriction on income or first-time buyer status. All units sold within the subsequent 60-day restricted sales period will be subject to a County 6-Year Buyback restriction giving the County the right to purchase the unit at the original cost, the cost of improvements added, and 1% annual interest.

4. Unrestricted Sales.

Any units that remain unsold after 120 days, may be sold on the open market, to anyone and without resale restrictions. Prior to any units being offered on the open market, the County shall have the first option to purchase any unsold units.

SALES PROCESS

1. Applicants submit completed forms as described above, including: Owner-Occupant Affidavit; Housing Application Form; Tax Returns; Proof of Residency; and Pre-Qualification Letter.
2. D.R. Horton-Schuler Homes, LLC, the County of Kaua'i and a Lender will review all Applicants and determine eligibility.
3. D.R. Horton-Schuler Homes, LLC will provide eligible Buyers with a Lottery Application, which must be completed in full and returned by the specified date.
4. A lottery may be held for the KCHA Offering Period (KCHA Home-Buyer Priority List) to determine the sequence for selection of units to purchase. A second lottery will be held for any remaining homes for all who qualify for the First 60-day sales period to determine the sequence for selection of units to purchase. A separate lottery will be conducted for all Kaua'i resident housing purchasers who qualify for the subsequent 60-day sales period to determine the sequence for selection of units to purchase.
5. D.R. Horton-Schuler Homes, LLC will assist Buyers in the selection of their homes.

IMPORTANT NOTES

1. **Before submitting a form, every blank must be filled in. If blanks do not apply to you, write the word "none" in the blank.**
2. **Incomplete forms will be disqualified.**
3. **At all stages of the application process buyer is responsible for notifying D.R. Horton-Schuler Homes, LLC of any changes in mailing address and telephone numbers. Please phone 245-2303.**

If you have any questions, please call, D.R. Horton-Schuler Homes, LLC at 245-2303.

If there are any questions that D.R. Horton-Schuler Homes, LLC are not able to answer, please call the KAUA'I COUNTY HOUSING AGENCY at (808) 241-4444.



Offered by D.R. Horton - Schuler Homes, LLC (R)
3-4221 Kuhio Highway Lihue, HI 96715
Phone: 245-2303 Fax: 245-2305
www.drhortonhawaii.com

D-R-HORTON D.R.H. HONOLULU
America's Builder
SCHULER DIVISION

EXHIBIT "L"

Deed Restriction for 10-Year Buyback in favor of the County of Kaua'i

HO'OKENA RESALE & OCCUPANCY RESTRICTION

TEN (10) YEAR BUYBACK RESTRICTION. For the first sixty (60) days of project sales, all sales shall only be to Kauai resident, income qualified, first-time buyers that are certified by the Kauai County Housing Agency as eligible to purchase an affordable dwelling unit in the Halelani Village Phase 1E Project, known as Ho'okena at Puhi, and all sales shall be subject to a TEN (10) YEAR deed restriction on sale and occupancy pursuant to the following Section 2-1.16, Kauai County Code 1987. The sale of the 56 units in Ho'okena at Puhi, developed and sold by D.R. Horton, Schuler Homes Division, shall be credited to Grove Farm Properties' affordable housing requirements pursuant to County Ordinance No. PM-206-90.

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

(f) Real Property; General Provisions of Restrictions on Sale or Transfer, and Use.

(1) **Title and Purpose.** The County shall implement an anti-speculative buy-back provision that shall be known as the "Restrictions on Sale or Transfer, and Use." These restrictions shall apply to the sale or transfer of any real property and apply to the use of any real property acquired, financed, developed, constructed, or sold by the County pursuant to this Section and which are sold on the condition that the purchaser accepts the restrictions on the sale or transfer, and use in the real property purchased. The restrictions shall also apply to privately developed real property that is sold to satisfy an affordable housing requirement and which, by mutual agreement between the County and the private developer, requires that such sales be subject to the County's Restrictions on Sale or Transfer, and Use.

(2) **Relevance to State Law.** The restrictions on sale or transfer, and use are in a form substantially equivalent to the provisions of Sections 201G-127, 129, and 130, Hawaii Revised Statutes. These restrictions on sale or transfer, and use clarify the intent of various provisions of State law and utilize provisions that are in some cases more stringent.

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

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

(A) For real property acquired, financed, developed, constructed, or sold by the County through the KCHA, the restrictions shall apply for a period of ten (10) years during which the dwelling unit is occupied by the owner, and

(B) For real property sold by a private developer satisfying an affordable housing requirement that by mutual agreement between the County and the private developer is subject to these restrictions, the restrictions may apply for a period of less than the ten (10) year occupancy period, with the time period of the restriction established either pursuant to adopted policy guidelines or written agreement between the developer and the County.

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

(6) **Uniformity of Restrictions.** Restrictions on sale or transfer, and use of real property shall be made as uniform as possible in application and restrictions shall be conformed with agreement of the owner to reflect change or

repeal made by any subsequent ordinance, rule or regulation. Real property owners shall be permitted at their election to sell or transfer real property subject to restrictions in effect at the time of their sale or transfer.

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

(8) Market-Oriented Real Property. The restrictions on sale or transfer, and use shall not apply to market-priced real property in an economically integrated housing project.

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

(10) Release of Repurchase Right and Occupancy Requirement. If the real property is financed under a federally subsidized mortgage program and these restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies that were provided to the owner; or if the real property is in poor condition and the resale of the property, with or without repairs and rehabilitation to correct deficiencies, may be construed to expose the County to an unacceptable amount of economic or liability risk; or if the calculated repurchase price of the real property is comparable to or above the unrestricted market value of the property, the County may decline its first option to purchase the real property subject to the restrictions on sale or transfer, and use; and the owner may then transfer the real property to any subsequent owner or transferee, without buyer, price, or occupancy restriction, and the restrictions on sale or transfer, and use, shall be automatically extinguished and shall not attach in subsequent transfers of title, provided that:

(A) The County will decline its first option to purchase for a period of time not to exceed one (1) year, during which time of the release, the real property owner must sell or transfer title; and

(B) Upon the sale or transfer of the real property, the owner shall be required to pay any amount owing the County, including any mortgage note or other loan, any subsidy or deferred sales price, interest on any amount owing, and the County's share of any net appreciation pursuant to the County's Shared Appreciation Program, if applicable.

(11) Mortgage Consents. The Executive on Housing shall consent to mortgages and liens on the property for the purpose of financing, re-financing, purchase of the fee simple title, repayment of a subsidy or deferred sales price, payment of the County's share of appreciation for real property subject to the County's Shared Appreciation Program, construction of essential or modest capital improvements, or catastrophic household medical expenditures of an emergency or life-threatening nature, provided the total principal balance of all mortgages and liens does not exceed the amount prescribed by Subsection (g)(1)(A). However, in the case of re-financing a federally subsidized mortgage, the Executive on Housing shall consent to the re-finance of a loan in excess to the amount prescribed by Subsection (g)(1)(A) and up to a total amount that does not exceed the principal balance of all mortgages and liens that have obtained the County's prior consent and accrued interest credit subsidy. In addition, the Executive on Housing may consent to mortgages or liens in excess of the amount prescribed by Subsection (g)(1)(A) that are created solely for the purpose of enabling the owner to add capital improvements to the real property that are essential or modest and which shall proportionately increase the amount prescribed in Subsection (g)(1)(A) when completed.

(12) The County's interest created by the provisions of these restrictions shall constitute a lien on the real property and shall be superior to any other mortgage or lien, except those mortgages or liens:

- (A) Created solely for the purchase of the real property;
- (B) Insured or held by a federal housing agency; or
- (C) Created with the written consent of the County.

(13) Subsidy or Deferred Sales Price. In any sale by the County of real property for which a subsidy or deferred sales price was made by the County, as described in Subsection (g)(1)(C)(ii), the amount, a description of the cost items, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the County.

(14) Application of Restrictions. The provisions of Subsections 2-1.16(f), (g) and (h), herein shall be incorporated in any deed, lease, agreement of sale, or other instrument of conveyance, rule or regulation relating to restrictions on sale or transfer, and use of real property purchased from the County through its KCHA or real property privately developed and sold to satisfy an affordable housing requirement and, by mutual agreement between the County and the private developer, is subject to these restrictions.

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

(1) Restrictions on Sale or Transfer. The following restrictions shall apply to the sale or transfer of any real property purchased through the KCHA from the County or real property privately developed and sold to satisfy an affordable housing requirement and, by mutual agreement between the County and the private developer, is subject to these restrictions whether on fee simple or leasehold property.

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

(i) The original cost to the owner;

(ii) The cost of any capital improvements added by the owner, provided that for a vacant lot owner, the cost of a dwelling unit constructed by an owner-builder, including a participant in a County sponsored self-help housing project, shall be the initial building assessment value determined by the County's Real Property Tax Division, Department of Finance or the total documented cost of construction, whichever is greater; and

(iii) Simple interest on the original cost to the owner and the cost of capital improvements added to the property by the owner at the rate of one percent a year.

(B) The County may purchase the unit either free and clear of all mortgages and liens or subject to existing mortgages and liens.

(i) If the real property is conveyed free and clear of all mortgages and liens, it shall be conveyed to the County only after all mortgages and liens are released.

(ii) If the real property is conveyed subject to existing mortgages and liens, the County shall assume the seller's obligation on any first mortgage created for the sole purpose of purchasing the real property and for any other mortgage or lien that the County has consented to in writing. The amount paid by the County to the seller shall be the difference, if any, between the purchase price determined by the provisions in Subsection (g)(1)(A) and the total of the outstanding principal balances of the mortgages and liens assumed by the County.

(iii) If the real property is financed under a federally subsidized mortgage program, in lieu of the release of these restrictions pursuant to Subsection (f)(10), the County, at its sole option, may purchase the property for a sum in excess of the amounts prescribed in Subsection (g)(1)(A) and equal to the sum of mortgagee's principal balance plus accrued interest credit subsidy.

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

(i) The balance of any mortgage note, agreement of sale, or other amount owing to the County, including the County's share of any net appreciation on real property subject to the County's Shared Appreciation Program, if applicable;

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

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

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

(2) Waiver of Restrictions. The restrictions prescribed in Subsection (g)(1) may be waived by the Executive on Housing if:

(A) The owner wishes to transfer title to the real property or lease by devise or through the laws of descent to an immediate family member who would otherwise qualify under rules established by the KCHA and who accept the restrictions on sale or transfer, and use, which shall be reinstated with the effective date of the original purchase, and provided that the immediate family member accept reinstatement of the County's Shared Appreciation Program, if applicable; or

(B) The sale or transfer of the real property would be at a price and upon terms that preserve the anti-speculative intent of these restrictions without the necessity of the County to repurchase the real property and that the sale or transfer is to a subsequent owner or transferee determined eligible by the KCHA, provided that the subsequent owner or transferee accept the restrictions on sale or transfer, and use, which shall be reinstated as of the new effective date of the subsequent purchase, and further provided that the subsequent owner or transferee accept reinstatement of the County's Shared Appreciation Program, if applicable.

(3) Foreclosure of Real Property.

(A) The restrictions on sale or transfer, and use shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgagee or other party becomes the owner of the real property or leasehold interest pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced or when a mortgage is assigned to a federal housing

agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering title or leasehold interest of real property encumbered by the first option to purchase in favor of the County, prior to commencing mortgage foreclosure proceedings, shall notify the County in writing of:

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

(ii) Any intention of the mortgagee to foreclose the mortgage under Chapter 667, Hawaii Revised Statutes, provided that the mortgagee's failure to provide such written notice to the KCHA shall not affect such holder's rights under the mortgage.

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

(h) Real Property; Restrictions on Use.

(1) **Occupancy Requirements.** Real property purchased from the County through its KCHA or real property privately developed and sold to satisfy an affordable housing requirement and, by mutual agreement between the County and the private developer, is subject to these restrictions requires that the dwelling unit shall be occupied by the owner at all times during the applicable restriction period, except in a hardship circumstance where a temporary occupancy waiver is provided by the Executive on Housing or occupancy is temporarily suspended as a result of a natural disaster that renders the dwelling unit non-habitable.

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

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

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

(3) **Release of Repurchase Right or Foreclosure of Real Property.** The restrictions prescribed in Subsection (h)(1) shall be automatically extinguished and shall not attach in subsequent transfers of title as prescribed in Subsection (g)(3) or Subsection (g)(4).

(4) **Waiver of Restrictions.** The restrictions prescribed in Subsection (h)(1) may be temporarily waived by the Executive on Housing for a period of time up to one (1) year for a hardship circumstance, during which time the dwelling unit may be rented or leased, provided that:

(A) The hardship circumstance is an unforeseeable job or military transfer, a temporary educational sabbatical, a serious illness of the owner or a member of the owner's household, or such other hardship circumstance as determined by the KCHA on a case by case basis;

(B) The waiver may be granted only to qualified residents who have paid resident State income taxes during all years in which they occupied the dwelling and who shall continue to pay resident State income taxes during the waiver period;

(C) The term of the Restriction on Sale or Transfer, and Use shall be extended by one day for each day that the owner occupancy requirement is waived;

(D) The term of the waiver may be extended or other waivers may be approved at other time periods provided the total occupancy waiver period may not exceed ten (10) years.

(E) The County may recover all relevant administrative expenses and attorney's fees from the owner; and

(F) Failure to re-occupy the dwelling unit by the owner at the end of the temporary waiver period shall be sufficient reason for the County, at its option, to purchase the real property as provided in Subsection (g)(1)(A).

ACCEPTANCE OF RESTRICTIONS:

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

BUYERS:	_____	Date _____
	_____	Date _____
	_____	Date _____
	_____	Date _____

** End **

EXHIBIT "M"

Deed Restriction for 6-Year Buyback in favor of the County of Kaua'i

HO'OKENA RESALE & OCCUPANCY RESTRICTION

SIX (6) YEAR BUYBACK RESTRICTION. For the second sixty (60) days of project sales, all sales shall only be to Kauai resident buyers that are certified by the Kauai County Housing Agency as eligible to purchase an affordable dwelling unit in the Halelani Village Phase 1E Project, known as Ho'okena at Puhi, and all sales shall be subject to a SIX (6) YEAR deed restriction on sale and occupancy pursuant to the following Section 2-1.16, Kauai County Code 1987. The sale of the 56 units in Ho'okena at Puhi, developed and sold by D.R. Horton, Schuler Homes Division, shall be credited to Grove Farm Properties' affordable housing requirements pursuant to County Ordinance No. PM-206-90.

RESTRICTIONS ON SALE OR TRANSFER, AND USE

Section 2-1.16, Kauai County Code 1987

(f) Real Property; General Provisions of Restrictions on Sale or Transfer, and Use.

- (1) **Title and Purpose.** The County shall implement an anti-speculative buy-back provision that shall be known as the "Restrictions on Sale or Transfer, and Use." These restrictions shall apply to the sale or transfer of any real property and apply to the use of any real property acquired, financed, developed, constructed, or sold by the County pursuant to this Section and which are sold on the condition that the purchaser accepts the restrictions on the sale or transfer, and use in the real property purchased. The restrictions shall also apply to privately developed real property that is sold to satisfy an affordable housing requirement and which, by mutual agreement between the County and the private developer, requires that such sales be subject to the County's Restrictions on Sale or Transfer, and Use.
- (2) **Relevance to State Law.** The restrictions on sale or transfer, and use are in a form substantially equivalent to the provisions of Sections 201G-127, 129, and 130, Hawaii Revised Statutes. These restrictions on sale or transfer, and use clarify the intent of various provisions of State law and utilize provisions that are in some cases more stringent.
- (3) **Severalty.** If any part of this Subsection is declared by the Court to be invalid, the same shall not affect the validity of the Subsection as a whole, or any part thereof other than the part so declared invalid.
- (4) **Duration of Restrictions.** Where the restrictions on sale or transfer, and use of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date of original purchase without the mutual consent of the owner and the Kauai County Housing Agency (KCHA). The subsequent sale of any real property repurchased by the County pursuant to Subsection (g), shall incorporate the restrictions on sale or transfer, and use and shall apply for the same period of time as an original purchase. The period of time that the restrictions on sale or transfer, and use shall apply is as follows:
 - (A) For real property acquired, financed, developed, constructed, or sold by the County through the KCHA, the restrictions shall apply for a period of ten (6) years during which the dwelling unit is occupied by the owner, and
 - (B) For real property sold by a private developer satisfying an affordable housing requirement that by mutual agreement between the County and the private developer is subject to these restrictions, the restrictions may apply for a period of less than the ten (6) year occupancy period, with the time period of the restriction established either pursuant to adopted policy guidelines or written agreement between the developer and the County.
- (5) **Modification of Restrictions.** No real property owner shall be entitled to modify the restrictions on sale or transfer, and use of the real property, without the written permission of the holder of a duly-recorded first mortgage on the real property and the owner of the fee simple or leasehold interest in the land, unless the holder of the first mortgage or the owner is the County.

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

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

(8) Market-Oriented Real Property. The restrictions on sale or transfer, and use shall not apply to market-priced real property in an economically integrated housing project.

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

(10) Release of Repurchase Right and Occupancy Requirement. If the real property is financed under a federally subsidized mortgage program and these restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies that were provided to the owner; or if the real property is in poor condition and the resale of the property, with or without repairs and rehabilitation to correct deficiencies, may be construed to expose the County to an unacceptable amount of economic or liability risk; or if the calculated repurchase price of the real property is comparable to or above the unrestricted market value of the property, the County may decline its first option to purchase the real property subject to the restrictions on sale or transfer, and use; and the owner may then transfer the real property to any subsequent owner or transferee, without buyer, price, or occupancy restriction, and the restrictions on sale or transfer, and use, shall be automatically extinguished and shall not attach in subsequent transfers of title, provided that:

(A) The County will decline its first option to purchase for a period of time not to exceed one (1) year, during which time of the release, the real property owner must sell or transfer title; and

(B) Upon the sale or transfer of the real property, the owner shall be required to pay any amount owing the County, including any mortgage note or other loan, any subsidy or deferred sales price, interest on any amount owing, and the County's share of any net appreciation pursuant to the County's Shared Appreciation Program, if applicable.

(11) Mortgage Consents. The Executive on Housing shall consent to mortgages and liens on the property for the purpose of financing, re-financing, purchase of the fee simple title, repayment of a subsidy or deferred sales price, payment of the County's share of appreciation for real property subject to the County's Shared Appreciation Program, construction of essential or modest capital improvements, or catastrophic household medical expenditures of an emergency or life-threatening nature, provided the total principal balance of all mortgages and liens does not exceed the amount prescribed by Subsection (g)(1)(A). However, in the case of re-financing a federally subsidized mortgage, the Executive on Housing shall consent to the re-finance of a loan in excess to the amount prescribed by Subsection (g)(1)(A) and up to a total amount that does not exceed the principal balance of all mortgages and liens that have obtained the County's prior consent and accrued interest credit subsidy. In addition, the Executive on Housing may consent to mortgages or liens in excess of the amount prescribed by Subsection (g)(1)(A) that are created solely for the purpose of enabling the owner to add capital improvements to the real property that are essential or modest and which shall proportionately increase the amount prescribed in Subsection (g)(1)(A) when completed.

(12) The County's interest created by the provisions of these restrictions shall constitute a lien on the real property and shall be superior to any other mortgage or lien, except those mortgages or liens:

- (A) Created solely for the purchase of the real property;
- (B) Insured or held by a federal housing agency; or
- (C) Created with the written consent of the County.

(13) Subsidy or Deferred Sales Price. In any sale by the County of real property for which a subsidy or deferred sales price was made by the County, as described in Subsection (g)(1)(C)(ii), the amount, a description of the cost items, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the County.

(14) Application of Restrictions. The provisions of Subsections 2-1.16(f), (g) and (h), herein shall be incorporated in any deed, lease, agreement of sale, or other instrument of conveyance, rule or regulation relating to restrictions on sale or transfer, and use of real property purchased from the County through its KCHA or real property privately developed and sold to satisfy an affordable housing requirement and, by mutual agreement between the County and the private developer, is subject to these restrictions.

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

(1) Restrictions on Sale or Transfer. The following restrictions shall apply to the sale or transfer of any real property purchased through the KCHA from the County or real property privately developed and sold to satisfy an affordable housing requirement and, by mutual agreement between the County and the private developer, is subject to these restrictions whether on fee simple or leasehold property.

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

(i) The original cost to the owner;

(ii) The cost of any capital improvements added by the owner, provided that for a vacant lot owner, the cost of a dwelling unit constructed by an owner-builder, including a participant in a County sponsored self-help housing project, shall be the initial building assessment value determined by the County's Real Property Tax Division, Department of Finance or the total documented cost of construction, whichever is greater; and

(iii) Simple interest on the original cost to the owner and the cost of capital improvements added to the property by the owner at the rate of one percent a year.

(B) The County may purchase the unit either free and clear of all mortgages and liens or subject to existing mortgages and liens.

(i) If the real property is conveyed free and clear of all mortgages and liens, it shall be conveyed to the County only after all mortgages and liens are released.

(ii) If the real property is conveyed subject to existing mortgages and liens, the County shall assume the seller's obligation on any first mortgage created for the sole purpose of purchasing the real

property and for any other mortgage or lien that the County has consented to in writing. The amount paid by the County to the seller shall be the difference, if any, between the purchase price determined by the provisions in Subsection (g)(1)(A) and the total of the outstanding principal balances of the mortgages and liens assumed by the County.

(iii) If the real property is financed under a federally subsidized mortgage program, in lieu of the release of these restrictions pursuant to Subsection (f)(10), the County, at its sole option, may purchase the property for a sum in excess of the amounts prescribed in Subsection (g)(1)(A) and equal to the sum of mortgagee's principal balance plus accrued interest credit subsidy.

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

(i) The balance of any mortgage note, agreement of sale, or other amount owing to the County, including the County's share of any net appreciation on real property subject to the County's Shared Appreciation Program, if applicable;

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

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

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

(2) Waiver of Restrictions. The restrictions prescribed in Subsection (g)(1) may be waived by the Executive on Housing if:

(A) The owner wishes to transfer title to the real property or lease by devise or through the laws of descent to an immediate family member who would otherwise qualify under rules established by the KCHA and who accept the restrictions on sale or transfer, and use, which shall be reinstated with the effective date of the original purchase, and provided that the immediate family member accept reinstatement of the County's Shared Appreciation Program, if applicable; or

(B) The sale or transfer of the real property would be at a price and upon terms that preserve the anti-speculative intent of these restrictions without the necessity of the County to repurchase the real property and that the sale or transfer is to a subsequent owner or transferee determined eligible by the KCHA, provided that the subsequent owner or transferee accept the restrictions on sale or transfer, and use, which shall be reinstated as of the new effective date of the subsequent purchase, and further provided that the subsequent owner or transferee accept reinstatement of the County's Shared Appreciation Program, if applicable.

(3) Foreclosure of Real Property.

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

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

(ii) Any intention of the mortgagee to foreclose the mortgage under Chapter 667, Hawaii Revised Statutes, provided that the mortgagee's failure to provide such written notice to the KCHA shall not affect such holder's rights under the mortgage.

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

(h) Real Property; Restrictions on Use.

(1) **Occupancy Requirements.** Real property purchased from the County through its KCHA or real property privately developed and sold to satisfy an affordable housing requirement and, by mutual agreement between the County and the private developer, is subject to these restrictions requires that the dwelling unit shall be occupied by the owner at all times during the applicable restriction period, except in a hardship circumstance where a temporary occupancy waiver is provided by the Executive on Housing or occupancy is temporarily suspended as a result of a natural disaster that renders the dwelling unit non-habitable.

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

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

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

(3) **Release of Repurchase Right or Foreclosure of Real Property.** The restrictions prescribed in Subsection (h)(1) shall be automatically extinguished and shall not attach in subsequent transfers of title as prescribed in Subsection (g)(3) or Subsection (g)(4).

(4) **Waiver of Restrictions.** The restrictions prescribed in Subsection (h)(1) may be temporarily waived by the Executive on Housing for a period of time up to one (1) year for a hardship circumstance, during which time the dwelling unit may be rented or leased, provided that:

(A) The hardship circumstance is an unforeseeable job or military transfer, a temporary educational sabbatical, a serious illness of the owner or a member of the owner's household, or such other hardship circumstance as determined by the KCHA on a case by case basis;

(B) The waiver may be granted only to qualified residents who have paid resident State income taxes during all years in which they occupied the dwelling and who shall continue to pay resident State income taxes during the waiver period;

(C) The term of the Restriction on Sale or Transfer, and Use shall be extended by one day for each day that the owner occupancy requirement is waived;

(D) The term of the waiver may be extended or other waivers may be approved at other time periods provided the total occupancy waiver period may not exceed ten (6) years.

(E) The County may recover all relevant administrative expenses and attorney's fees from the owner; and

(F) Failure to re-occupy the dwelling unit by the owner at the end of the temporary waiver period shall be sufficient reason for the County, at its option, to purchase the real property as provided in Subsection (g)(1)(A).

ACCEPTANCE OF RESTRICTIONS:

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

BUYERS: _____ Date _____
_____ Date _____
_____ Date _____
_____ Date _____

**** End ****

EXHIBIT "N"

DEVELOPER AFFILIATIONS

1. The Developer is a Delaware limited liability company and is managed by Vertical Construction Corporation.

A. Vertical Construction Corporation is a Delaware corporation whose officers are as follows: Donald R. Horton, Chairman of the Board; Donald J. Tomnitz, Vice Chairman, President & Chief Executive Officer; Samuel R. Fuller, Senior Executive Vice President; Bill W. Wheat, Executive Vice President & Chief Financial Officer; Stacey H. Dwyer, Executive Vice President & Treasurer; James K. Schuler, Senior Vice President & Region President; Michael T. Jones, Vice President of the Company & Division President; R. Dale Eggleston, Vice President; Joan L. Fleming, Vice President; Mary K. Flood, Vice President of Sales & Marketing; Galen Lee, Vice President of Finance; Donald J. Tomnitz, Vice President; Paul W. Buchschacer, Assistant Secretary; Ted I. Harbour, Assistant Secretary; Paula D. Hunter-Perkins, Assistant Secretary; Alan D. Labbe, Assistant Secretary; Thomas B. Montano, Assistant Secretary; and David T. Morice, Assistant Secretary. All officers are officers of Vertical Construction Corporation, the Developer's manager.

2. The Developer is the Real Estate Broker for the Project (RB #18340).

A. The Hawaii licensed principal broker for Developer as Real Estate Broker for the Project is Mary Flood.

3. Vertical Construction Corporation is the General Contractor for the Project (CT #18288).

B. The Hawaii licensed Responsible Managing Employee for Vertical Construction Corporation, as General Contractor for the Project, is Alan Labbe.

END OF EXHIBIT "N"