

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer GENTRY HOMES, LTD.
Address 560 North Nimitz Highway, Suite 210, Honolulu, Hawaii 96817-5315

Project Name (\*): MONTECITO/TUSCANY II (Tuscany, Phase 4)
Address: Kanela Street, Ewa Beach, Hawaii 96706

Individual street addresses are listed on page 2.

Registration No. 5731 Effective date: July 29, 2005
Expiration date: August 29, 2006

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:

- X 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.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
SUPPLEMENTARY (pink) This report updates information contained in the:
And [ ] Supersedes all prior public reports

(\* ) Exactly as named in the Declaration

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

FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104

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

Required and attached to this report  
report.

Not Required - disclosures covered in this

**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 report 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:

**THIS PUBLIC REPORT ONLY COVERS THE FOLLOWING UNITS,  
ALL OF WHICH ARE CONTAINED IN THIS PHASE:**

**STREET ADDRESSES BY UNIT NO.**

<b>Unit No.</b>	<b>Street Address</b>	<b>Unit No.</b>	<b>Street Address</b>
T-55	91-2276 Kanela Street	T-66	91-2244 Kanela Street
T-56	91-2274 Kanela Street	T-67	91-2242 Kanela Street
T-57	91-2272 Kanela Street	T-68	91-2240 Kanela Street
T-58	91-2270 Kanela Street	T-69	91-2246 Kanela Street
T-59	91-2268 Kanela Street	T-70	91-2250 Kanela Street
T-60	91-2264 Kanela Street	T-71	91-2256 Kanela Street
T-61	91-2262 Kanela Street	T-72	91-2260 Kanela Street
T-62	91-2258 Kanela Street	T-73	91-2278 Kanela Street
T-63	91-2254 Kanela Street	T-74	91-2280 Kanela Street
T-64	91-2252 Kanela Street	T-75	91-2282 Kanela Street
T-65	91-2248 Kanela Street		

**SPECIAL ATTENTION:**

MONTECITO/TUSCANY II is a CONDOMINIUM PROJECT, **not** a single-family subdivision. The yard areas, consisting of the land appurtenant to and under the apartments are designated as LIMITED COMMON ELEMENTS and are not legally subdivided lots. The lines on the Condominium Map delineating the designated yard areas should **not** be construed to be the property lines of legally subdivided lots.

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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 a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: GENTRY HOMES, LTD. Phone: (808) 599-5558  
Name\* (Business)  
560 North Nimitz Highway, Suite 210  
Business Address  
Honolulu, Hawaii 96817

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):

- Robert W. Brant -- President/CEO
- Toshimasa Hosoda -- Senior Vice President - Planning
- John Shaw -- Senior Vice President - Architecture
- Dawn Suyenaga -- Vice President/Secretary
- Michael J. Brant -- Vice President -- Engineering
- Richard N. Hobson -- Vice President -- Sales and Marketing
- Quentin Machida -- Assistant Vice President
- Victoria Slovak -- Treasurer

Real Estate Broker\*: GENTRY HOMES, LTD. Phone: (808) 599-5558  
Name (Business)  
560 North Nimitz Highway, Suite 210  
Business Address  
Honolulu, Hawaii 96817

Escrow: ISLAND TITLE CORPORATION Phone: (808) 531-0261  
Name (Business)  
1132 Bishop Street, Suite 400  
Business Address  
Honolulu, Hawaii 96813

General Contractor\*: GENTRY BUILDERS, LLC Phone: (808) 599-5558  
Name (Business)  
560 North Nimitz Highway, Suite 210  
Business Address  
Honolulu, Hawaii 96817

Condominium Managing Agent\*: HAWAIIANA MANAGEMENT COMPANY, LTD. Phone: (808) 593-6871  
Name (Business)  
711 Kapiolani Boulevard, Suite 700  
Business Address  
Honolulu, Hawaii 96813

Attorney for Developer: Dawn Suyenaga Phone: (808) 599-5558  
Name (Business)  
560 North Nimitz Highway, Suite 210  
Business Address  
Honolulu, Hawaii 96817

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

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

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 is:

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

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

C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium is:

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

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

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed       Adopted       Developer does not plan to adopt House Rules

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

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

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>51%</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: SEE EXHIBIT "A".

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 Subleasehold: 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 Subleasehold:

- 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: Kanela Street Tax Map Key (TMK): (1) 9-1-10:007 (portion)  
Ewa Beach, Hawaii 96706 (Individual street addresses are listed on page 2 of this report.)  
 Address  TMK is expected to change because pending subdivision

Land Area: 10.661  square feet  acre(s) Zoning: A-1

Fee Owner: GENTRY HOMES, LTD., a Hawaii corporation  
 Name  
560 North Nimitz Highway, Suite 210  
 Address  
Honolulu, Hawaii 96817

Lessor: N/A  
 Name  
 Address

**C. Buildings and Other Improvements:**

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

2. Number of Buildings: 21 Floors Per Building 2

Exhibit "B" contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other composition siding; composition shingles

4. Uses Permitted by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted By Zoning</u>	
<input checked="" type="checkbox"/> Residential	<u>21</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other:	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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

Yes  No.

5. Special Use Restrictions:

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

- Pets: Dogs, cats and other household pets limited to two in number and subject to compliance with provisions of House Rules.
- Number of Occupants: \_\_\_\_\_  
Apartment cannot be used for transient or hotel use. The apartment cannot be
- Other: sold, rented or used for "timeshare", "time interval", "vacation license" or "travel club membership".
- There are no special use restrictions.

6. Interior (fill in appropriate numbers): The following buildings are the **new** buildings created by Tuscany, Phase 4. For the entire MONTECITO/TUSCANY II project, please see Exhibit "B".

Elevators: None Stairways: One per apt. Trash Chutes: None

Apt. Type	Quantity	Br/Bath	Net Living Area (sf)*	Net Other Area (sf)	(Identify)
1	2	3 Bdrm/2 ½ Bath	1,175.93	364.83	garage
2	5	4 Bdrm/2 ½ Bath	1,404.00	396.67	garage
3	7	4 Bdrm/2 ½ Bath	1,438.73	367.91	garage
4	5	5 Bdrm/3 Bath	1,523.31	193.50	garage
5	2	4 Bdrm/ 2 ½ Bath	1,484.85	442.92	garage

Total Number of Apartments: 21 new apartments created by Tuscany, Phase 4.

\*\* NOTE: Fenced courtyard configurations and sizes may vary due to job site conditions.

\* **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: Each apartment includes the spaces within the underside of the concrete slabs, the outside of the roofs and the outer surfaces of the perimeter walls of the respective apartments. The Apartments do NOT include any pipes, wires, ducts or other utility or service line that services **more than one apartment**. Such pipes and utilities shall be deemed common elements.

Permitted Alterations to Apartments: Additions, alterations or improvements solely within an apartment or within a limited common element appurtenant to and for the exclusive use of the apartment may be made by the apartment owner only with the approval of the Board of Directors of the Association of Apartment Owners.

Optional floor plans exist for all plan types and are shown on the Condominium Map. Buyers may choose optional floor plans subject to certain construction cut-off dates.

**NOTE: There is a five foot (5 ft.) set back requirement along the back yard areas of Apt. T-60 to T-67, inclusive and along the side yard area of Apt. T-59. Only landscaping (no cement, no buildings) can be in this five-foot (5 ft) set back area. Apt. T-63 is not eligible for the optional covered lanai due to insufficient rear yard setback. Apt. T-59 is only eligible for the shortened version of the optional covered lanai.**

Apartments Designated for Owner-Occupants Only:

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has elected to provide the information in a published announcement or advertisement. Developer plans to designate fifty percent (50%) of the residential apartments in the Project for sale to Owner-Occupants only as required by section 514A-102, HRS. Developer will show the designation in the Owner-Occupants' Pre-Sale Notice to be published in Hawaii Hochi, Ltd. upon the issuance of this preliminary public report.

7. Parking Stalls:

Total Parking Stalls: 49

	<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)	<u>16*</u>	<u>6</u>	<u>21*</u>	<u>        </u>	<u>---</u>	<u>---</u>	<u>43</u>
Guest	<u>---</u>	<u>6</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>6</u>
Unassigned	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>
Extra for Purchase	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>
Other:	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>
Total Covered & Open	<u>28</u>	<u>        </u>	<u>21</u>	<u>        </u>	<u>0</u>	<u>        </u>	<u>49</u>

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

**\* Note:** All apartments (**except for the Tuscany, Plan 4**) include a garage that meets the City and County of Honolulu standards to accommodate one full sized and one compact sized parking stall. The Tuscany, Plan 4 apartments include a garage that accommodates one compact sized parking stall. The Tuscany, Plan 4 apartments also come with a standard size parking stall located adjacent to the garage. Buyers with oversized vehicles (a van, a truck) or whose cars are not a compact size, should inspect the garage thoroughly to ensure that the garage can accommodate their vehicles. Apartments T-57, T-64, T-67, T-71 and T-75 have an additional parking stall located adjacent to the garage that is full sized and uncovered. Apartment T-58 has an assigned parking stall located adjacent to their limited common yard area, as shown on the Condominium Map, for their exclusive use.

Commercial parking garage permitted in condominium project.

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

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool                       Storage Area                       Recreational Area

Laundry Area                       Tennis Court                       Trash Chute/Enclosures(s)

Other: recreational facilities. [See Paragraph 6 on page 20B.]

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. Conditions and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations (For conversions of residential apartments in existence for at least five years):  
NOT APPLICABLE.

11. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

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

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

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

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

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

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

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

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

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

described in Exhibit C

as follows:

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

There are no limited common elements in this project.

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

described in Exhibit \_\_\_\_\_ .

as follows:

- (a) Driveway appurtenant to the apartment;
- (b) Apartments T-57, T-64, T-67, T-71 and T-75 have an additional uncovered parking stall adjacent to the Apartment;
- (c) Apartment T-58 has an additional uncovered parking stall adjacent to the limited common yard area;
- (d) Mailbox bearing the same designations as the apartment;
- (e) Yard areas as shown on the Condominium Map; and
- (f) All other common elements which are rationally related to less than all of the apartments in the Project.

**NOTE: Each apartment and the limited common elements referenced above do not comprise a legally subdivided individual lot.**

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 interest for the apartments in this project as described in the Declaration, are:

described in Exhibit B

as follows:

E. **Encumbrance 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 C describes the encumbrances against the title contained in the title report dated July 1, 2005 \_\_\_\_\_ and issued by Island Title Corporation \_\_\_\_\_.

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.

[X] 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>
Mortgage	Lender has priority over Buyer's rights under a sales contract, and has a right to terminate sales contracts upon foreclosure of its mortgage before an apartment sale is closed. Should the lender terminate Buyer's sales contract, Buyer shall be entitled to a refund of all deposits, less escrow cancellation fee.

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 apartment and related common elements will be covered by a Limited Warranty. The Limited Warranty will be for a ten (10) year period which will commence on the recording date of the deed to the Buyer. The coverage amount will be the base sales price of the Unit. The Limited Warranty will be substantially similar to the sample Limited Warranty attached as Exhibit "H". Developer reserves the right to make changes to the Limited Warranty without further notification to Buyer. Developer's obligations under the Limited Warranty are expressly conditioned on prompt notification by Buyer or the Association to Developer of any defects in the Unit. In addition, Developer will not be responsible for damage to the Unit or common elements arising out of the failure of Buyer or the Association to take reasonable and prudent steps to maintain the property or to prevent damage or further damage to the Property. ROUTINE MAINTENANCE WORK IS NOT COVERED BY ANY WARRANTY.
2. **Appliances:** Warranties on appliances furnished with an apartment are not provided by the Developer. The execution and delivery of the apartment deed will operate as an assignment from the Developer to the Buyer of the respective manufacturers' or dealers' warranties, if any.

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

Construction is expected to commence in late July 2005 and is expected to be completed in November 2005.

H. **Project Phases:**

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

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

Tuscany, Phase 4 is the first phase of the MONTECITO/TUSCANY II condominium project. The Developer intends to complete MONTECITO/TUSCANY II in approximately six phases, for a total of 116 units, but is not obligated to build beyond Tuscany, Phase 4. Developer has already created a 124 condominium project called "MONTECITO/TUSCANY" on adjacent land. It is the Developer's intent to merge MONTECITO/TUSCANY II with MONTECITO/TUSCANY. Both MONTECITO/TUSCANY II and MONTECITO/TUSCANY are covered by a joint development agreement and share common infrastructure such as roadways and utilities. The Developer further intends to create another 116 apartment condominium project on land adjacent to MONTECITO/TUSCANY II but not covered by a joint development agreement and to merge this condominium project with MONTECITO/TUSCANY II so that the three condominium projects combined will have a total of 356 units. The Developer has also reserved the right to annex the land under these additional condominium projects in lieu of doing a merger. The merger may be either an administrative or ownership merger. See Exhibit "A" for additional information.



**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).

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

## V. MISCELLANEOUS

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

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

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit F contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated October 12, 2004  
Exhibit G contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

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

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

Preliminary Report: Sales made by the developer are not binding on the prospective 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 Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission: **AND**
  - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
- B) The buyer is given an opportunity to read the report(s); **AND**
- C) One of the following has occurred:
  - 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
  - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
  - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

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

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

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

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules, if any.
  - E) Condominium Map, as amended.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other Declaration of Merger; Consent; Ewa by Gentry Community Area Declaration of Covenants, Conditions and Restrictions (See Paragraph 7 on page 20C)

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

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

This Public Report is a part of Registration No. 5731 filed with the Real Estate Commission on July 18, 2005.

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

YELLOW paper stock                       WHITE paper stock                       PINK paper stock

### C. ADDITIONAL INFORMATION NOT COVERED ABOVE

1. Developer must report certain information to the City and County of Honolulu (the “City”) pursuant to affordable housing requirements imposed by the City. We will require information from you regarding income and household size to provide to the City for information purposes.
2. Construction of MONTECITO/TUSCANY II will be ongoing while units are being occupied. This ongoing construction will create dust, noise and increased traffic in the vicinity of occupied units. Certain hazardous conditions relating to the construction may also exist for a period of time. Additionally development of the areas around MONTECITO/TUSCANY II will cause dust in and around the Project for several years as development in Ewa by Gentry continues. Buyer understands that Developer will make efforts to minimize the dust but that it is an inevitable result of the ongoing construction.
3. Sales activities for MONTECITO/TUSCANY II and neighboring communities will be ongoing. This will result in increased traffic and noise in the vicinity of the sales office. Portions of the common areas may be used for signage and other sales activities for a period of time while sales are ongoing.
4. Buyer understands and acknowledges that certain activities will occur on and about MONTECITO/TUSCANY II (“Activities Affecting MONTECITO/TUSCANY II”) as follows:
  - (a) MONTECITO/TUSCANY II is bordered on the ewa side by Keaunui Drive a major road that will eventually be dedicated to the City and County of Honolulu. MONTECITO/TUSCANY II is bordered on the mauka and Diamond Head sides by residential communities. The makai side of MONTECITO/TUSCANY II borders on open undeveloped space which will be developed into residential communities. The Diamond Head side of MONTECITO/TUSCANY II also borders a future drainage detention basin. Current plans are that the drainage detention basin will be approximately twenty feet (20 ft.) deep with a surrounding perimeter fence. This drainage detention basin will collect water runoff from the surrounding communities. Seller intends to convey this drainage detention basin to the Ewa by Gentry Community Association when the facility is completed. Because MONTECITO/TUSCANY II borders on open undeveloped space, there may also be pests, such as cockroaches and rodents, for a period of time. Units on the ewa side of MONTECITO/TUSCANY II may experience additional noise, dust and other nuisances due to the proximity of Keaunui Drive.
  - (b) MONTECITO/TUSCANY II is located in the vicinity of the West Loch Branch of the Lualualei Naval Magazine (“West Loch”) which in the event of military action may be a sensitive area. The Navy has denoted an area east of MONTECITO/TUSCANY II as an Explosive Safety Hazard Zone in connection with munitions which may be loaded onto ships at West Loch. The Navy has represented that the boundary of said area represents the probable limit of any impact on the adjacent community. This area, which extends to West Loch, will have restricted development required by the Navy. The Navy has leased portions of this area for agricultural use, which will create dust and noise. Because this area is undeveloped, there may also be pests, such as cockroaches and rodents, for a period of time. Geiger Road and Iroquois Point Road may also be used by the Navy to transport aircraft and munitions.
  - (c) MONTECITO/TUSCANY II is located upon land previously used for the cultivation of sugar cane. Land near or adjacent to MONTECITO/TUSCANY II may continue to be used for the cultivation and harvesting of agricultural products, which may cause dust and noise. Crops may be burned when seasonally appropriate. The Hawaii Right-to-Farm Act (H.R.S. Ch. 165) and Hawaii law limit the types of farm activities that may be deemed a nuisance.

(d) MONTECITO/TUSCANY II is located in the vicinity of a commercial airport (Honolulu International Airport) and a possible future airport at the former Barber's Point Naval Air Station and Buyer is aware that there is a likelihood of noise from planes passing overhead or nearby. The 1987 Noise Contour Map of the Honolulu International Airport Master Plan shows MONTECITO/TUSCANY II located in an area subject to the noise levels of 55 Ldn.

(e) MONTECITO/TUSCANY II is located near the Honouliuli Wastewater Treatment Plant, which generates odors and noise and which will be expanded in the future to accommodate increased usage.

(f) Mold and mold spores are present throughout the environment, and residential home construction is not, and cannot be, designed to exclude mold spores. All mold is not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. Moisture is the only mold growth factor that can be controlled in a residential setting. Buyer should take positive steps to reduce or eliminate the occurrence of moisture in and around the house upon the Property. Developer is not responsible for any mold or mold spores present in the environment or in the house upon the Property.

(g) The Federal Emergency Management Agency ("FEMA") has not yet reviewed MONTECITO/TUSCANY II area to determine whether the Property is within a flood hazard zone. If FEMA later determines that the Property is within a flood hazard area, then your lender may require you to obtain flood insurance.

(h) The Coral Creek Golf Course has been constructed on the west side of Fort Weaver Road. The Coral Creek Golf Course is also a designated flowage easement for drainage purposes. The Hawaii Prince Golf Club Course has been constructed on the east side of Fort Weaver Road. Both the Coral Creek Golf Course and the Hawaii Prince Golf Club Course are collectively referred to as the "golf courses".

There may be hazards that may cause injuries and damages to persons and/or property on MONTECITO/TUSCANY II such as errant or stray golf balls, the use of reservoirs and water hazards up to six feet (6 ft.) deep, periodic spraying or other treatment of the area with pesticides, insecticides, herbicides, fungicides and fertilizers, surface water runoff, noise, dust and unpleasant odors. Irrigation of the golf courses may be with water from storm retention basins or reclaimed water from the Honouliuli Wastewater Treatment Plant. Any reclaimed water is required to be treated according to Department of Health guidelines. Tournaments and other special events held on the golf courses may also impact the community. Buyer waives any rights or claims which Buyer might otherwise have against the Seller, Coral Creek Golf, Inc., Seibu Hawaii, Inc. and any future owners/operators of the golf courses because of these conditions.

Owners in MONTECITO/TUSCANY II will not have an ownership interest, a right to use any facilities or a right to enter the property by virtue of their ownership of a Home nor by membership in the Ewa by Gentry Community Association.

(i) Many homes in the Ewa by Gentry community have been developed to meet the City and County of Honolulu's (the "City's") affordable housing requirements. Homes that meet the City's definition of "affordable" are or will be located in various communities throughout Ewa by Gentry, including the communities of MONTECITO/TUSCANY II. Some of the homes in the Coronado and Palm Villas condominium projects are subject to shared appreciation and buy/back provisions and rental restrictions associated with the affordable housing requirements, and there may be other communities that will be developed in the future in Ewa by Gentry that will have similar restrictions.

(j) Water used to irrigate the common area landscaping in the Ewa by Gentry community will come from either a nonpotable well service or may be from reclaimed water from the Honouliuli Wastewater Treatment Plant. Any reclaimed water is required to be treated according to Department of Health guidelines.

(k) A development consisting of light industrial and commercial uses will be built in the future along Geiger Road across from the Honouliuli Wastewater Treatment Plant. This development may result in increased traffic, noise and other impacts in the vicinity.

(l) Fort Weaver Road is a major thoroughfare for Ewa and Ewa Beach residents traveling to or from the H-1 Freeway. Commuters may experience delays on Fort Weaver Road and on roads feeding into it, particularly during peak morning and evening hours.

These Activities Affecting MONTECITO/TUSCANY II may cause some unpleasant odors, surface water runoff, noise, dust, smoke and other unpleasant effects that may bother or be a nuisance to Buyer and other occupants and invitees of the Project. In the Apartment Deed, each Buyer, for himself, his heirs, personal and legal representatives and assigns, will release, indemnify, defend and hold harmless Developer, the Thomas H. Gentry Trust, a California Trust dated February 11, 1986, as amended, and related entities, the Trustees under the Will and of the Estate of James Campbell, Deceased, and Oahu Sugar Company, Limited, Coral Creek Golf, Inc., Seibu Hawaii, Inc. and any future owners and/or operators of the golf courses, and their respective officers, directors, employees, agents, successors, successors-in-trust, and assigns from any and all liability, claims, losses, damages, or expenses, including attorneys' fees, arising from any such impairment of the use and enjoyment of the Property, loss of market value of the Property, or property damage or personal injury to the property or person of Buyer, or Buyer's tenants, lessees, family, servants, guests, invitees, licensees, agents, employees, or other persons who may use the Property. However, the person or entity whose actions or omissions are the direct cause of any damage to Buyer shall be responsible for the consequences or results of its own gross negligence, willful misconduct or violation of applicable law. Buyer hereby irrevocably agrees to suffer and permit all actions and consequences incident to the Activities affecting MONTECITO/TUSCANY II described above.

5. MONTECITO/TUSCANY II is part of an overall area covered by that certain Agreement for Issuance of Conditional Use Permit Under Section 4.40-21 of the Land Use Ordinance (LUO) dated \_\_\_\_\_ and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. \_\_\_\_\_ (the "Joint Development Area"). The Joint Development Area includes all current and future phases of MONTECITO/TUSCANY II and MONTECITO/TUSCANY. The estimated total number of units in the Joint Development Area at full build-out is 240. The Joint Development Area was designed to operate as a cohesive, integrated multi-family community that includes shared common facilities and infrastructure, including but not limited to potable water, non-potable well system, irrigation, drain, sewer and electrical systems, visitor parking stalls, roadways and landscaping. Developer reserves the right to administratively merge MONTECITO/TUSCANY II and MONTECITO/TUSCANY for the purposes of sharing common area costs shared by the various communities (such as roadways, street lighting and landscaping). The use and cost of maintaining and operating the shared infrastructure and facilities will be shared among all owners on a pro rata basis. If the condominium projects in the Joint Development Area have different building types that require different maintenance and reserve assessments, the condominium association will set up cost centers such that each community is responsible only for the maintenance of its building type.

The Developer also intends to merge the MONTECITO/TUSCANY II and MONTECITO/TUSCANY with a future 116 apartment condominium project to be built on an adjacent lot (collectively the "Merged Area") so that the total number of units in the entire merged condominium project would be 356.

6. Lot 2, Map \_\_\_\_\_, Land Court Application No. 1069 will have a Recreation Center built on it for the use of all residents living in the Merged Area. The Recreation Center is expected to open in Fall 2005. The Recreation Center will consist of a swimming pool, three (3) pavilions and landscaped areas. Developer intends to convey the Recreation Center to the several associations of apartment owners within the Merged Area as tenants in common. Each association's ownership share of the Recreation Center will be based upon the association's proportionate share of the total number of apartments in the Merged Area. The several

associations of apartment owners shall have the duty and obligation to accept and maintain the Recreation Center at the common expense of all of the owners of apartments within the Merged Area.

7. All apartment owners in MONTECITO/TUSCANY II are automatically members of the Ewa by Gentry Community Association, a non-profit Hawaii corporation. All owners are therefore subject to the restrictions, covenants and conditions of the Ewa by Gentry Community Area Declaration of Covenants, Conditions and Restrictions which govern the entire Ewa by Gentry community. The Community Association enforces the provisions of the Declaration of Covenants, Conditions and Restrictions to ensure a well maintained, safe and aesthetically pleasing community. A copy of the Declaration of Covenants, Conditions and Restrictions is available at the sales office. The Declaration of Covenants, Conditions and Restrictions can also be viewed online at [www.ebgca.net](http://www.ebgca.net) under the "Introduction" section. Each owner pays dues to the Community Association in the amount of approximately \$55 per quarter for a total of \$220 a year. The maintenance fees reflected in Exhibit "E" of this public report do not include the dues payable to the Ewa by Gentry Community Association.

8. The sizes and configurations of the limited common areas and common areas reflected on the Condominium Map are approximations only. Actual sizes and configurations may vary due to the placement and location of utilities and due to varying terrain surrounding each building.

9. There is a five foot (5 ft.) setback requirement along the back yard areas of Apartments T-60 to T-67, inclusive and along the sideyard of Apartment T-59. Only landscaping is allowed in this five foot (5ft) setback area. Apartment T-63 will not be able to have the optional covered lanai because of the setback requirement. Apartment T-59 will only be able to have a shortened version of the optional covered lanai because of the setback requirement.

10. Each MONTECITO/TUSCANY II home has an attached garage. The garage (for all plans **except the Tuscan, Plan 4**) meets City and County of Honolulu standards to accommodate one full sized and one compact sized parking stall. The Tuscan, Plan 4 apartment type includes a garage that meets City and County of Honolulu standards to accommodate one compact sized parking stall. All Tuscan Plan 4 type apartments also come with a limited common element adjacent standard parking stall. Buyers who have an oversized vehicle (a van, a truck) or who have more than one full sized vehicle should inspect the garage thoroughly to ensure that the garage can accommodate their vehicles. Garages shall be used for parking operational vehicles only and for incidental storage. Some homes may have an additional parking area in the limited common area adjacent to the home. The additional parking area is for vehicles only and may not be used for storage purposes.

11. Water used to irrigate the common area landscaping in MONTECITO/TUSCANY II (which include portions of the front yard of each unit) will come from either a nonpotable well service or may be from reclaimed water from the Honouliuli Wastewater Treatment Plant. Any reclaimed water is required to be treated according to Department of Health guidelines.

12. Not all homes in MONTECITO/TUSCANY II will have curbside trash collection. Specifically, the buyers of Apartment T-59 will need to take their trash can to the designated trash collection area in front of Apartment T-58 as shown on the Condominium Map and on the individual apartment plan. Trash cans can be put out for trash collection the night before trash is collected and must be removed by the end of that day.

**13.** MONTECITO/TUSCANY II is serviced by a private drainage system that connects to the City and County of Honolulu's municipal sewer system. As such, Federal regulations prohibit the following from being discharged into the Project's drainage system:

- (a) domestic wastewater;
- (b) industrial wastewater;
- (c) any debris, refuse or solid waste or yard waste;
- (d) chlorinated swimming pool water;
- (e) washwater from vehicle and equipment cleaning; and
- (f) oil and petroleum products.

Owners are prohibited from discharging any of the above into the Project's drainage system.

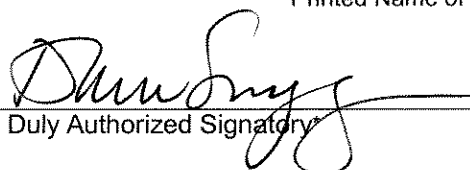
The Association is solely responsible for the maintenance and upkeep of the Project's drainage system. It shall cooperate with the Developer in assuming the Developer's National Pollutant Discharge Elimination System (NPDES) Permit No. H10021229 and shall be responsible for enforcing the terms and conditions of the NPDES Permit.



- D. The developer declares subject to the penalties set forth in section 514A-49(b) that his project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

GENTRY HOMES, LTD.

Printed Name of Developer

By  July 18, 2005  
 Duly Authorized Signatory Date

DAWN SUYENAGA, Vice President/Secretary

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, City & County of Honolulu

Planning Department, City & County of Honolulu

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

## EXHIBIT "A"

### THE DEVELOPER'S RESERVED RIGHTS TO CHANGE THE CONDOMINIUM DOCUMENTS

**DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights outlined in this Exhibit "A" are necessary and/or helpful to developing the Project in phases. The Developer may exercise the Developer's Reserved Rights stated in the Declaration separately or in one or more combinations and at one or more times, at the Developer's sole discretion. The Developer has no duty or obligation to exercise the Developer's Reserved Rights. The Developer may exercise the Developer's Reserved Rights until the earlier of (i) December 31, 2010 or (ii) the date when the Developer records a document giving up all of the Developer's Reserved Rights (the "Development Period").

The Developer may exercise any of the Developer's Reserved Rights stated in this Exhibit "A" and in Sections 17 through 17E, inclusive of the Declaration without being required to obtain the approval, consent, or joinder of anyone else and without the knowledge of anyone else. This includes but is not limited to the Association of Apartment Owners, any lender, or any other Apartment Owner or other person acquiring an interest in the Project. When a person or entity acquires an interest in an Apartment or any other interest in the Project, said person or entity automatically:

**A.** Takes said person's or entity's interest subject to the Developer's Reserved Rights and each and every exercise and/or assignment of them;

**B.** Acknowledges, approves, consents to, agrees to and accepts (i) the Developer's Reserved Rights and the exercise of them from time to time; (ii) that such exercise may change the Project; (iii) that such exercise may result in the recalculation of the common interest of some or all Apartments in some cases; (iv) that the Developer can file and/or record any and all documents that the Developer deems necessary or convenient to the exercise of its rights, including but not limited to any amendment to the condominium documents.

**C.** Agrees, promptly after being asked to do so, to join in, consent to, sign, have notarized, deliver and record all documents and do all other things that the Developer in its sole discretion determines to be necessary or convenient to the exercise of the Developer's Reserved Rights or to accomplish the purpose for which those rights were reserved (as determined by the Developer).

**D.** Appoints the Developer as said person's or entity's attorney-in-fact with full power of substitution to execute such documents and do such other things on said person's or entity's behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such party. The Developer cannot use its power of attorney under this Exhibit "A" to waive or release any right an Owner or other interested person might have under the Act, to cancel the purchase of an Apartment, or to mortgage an Owner's Apartment.

**1. DEVELOPER'S RESERVED RIGHT TO CREATE NEW APARTMENTS.** Any other provision in the Declaration or the By-Laws notwithstanding, the Developer shall have the right (but not the obligation) at its sole discretion under this Section, to create one or more New Apartments in the Project and to create and designate common elements and limited common elements appurtenant to any New Apartment. The Developer may do this more than once and at any time prior to the expiration of the Development Period.

**1.1 Limits on Developer's Reserved Rights to Create New Apartments.** The Developer's Reserved Rights in this Section are subject to the following terms and conditions:

A. Developer may only create New Apartments in the Undeveloped Land Area and/or in the Merged Area (both as defined in the Declaration).

B. The total number of Apartments in the Project may not exceed the limits contained in the zoning code applicable to the Land.

C. The Developer must pay all costs of creating the New Apartments and designating or converting the use of common elements or limited common elements.

**1.2 Extent of Developer's Reserved Right to Create New Apartments.** Subject to the above limitation, the Developer's Reserved Rights to create New Apartments include the right to do anything necessary or convenient to create the New Apartments or to designate or convert the use of common elements or limited common elements, including but not limited to the right to do the following:

A. to execute and record one or more amendments to the Declaration and Condominium Map, that describes the New Apartments. The amendment shall include a certificate signed by a registered architect or professional engineer as specified in Section 514A-12 of the Act;

B. to allocate a portion of the common interest currently assigned to the Reserved Unit (currently designated as Apartment T-69) to the New Apartments by executing and recording an amendment to the Declaration;

C. to designate or convert the use of common elements or limited common elements to New Apartments by recording an amendment to the Declaration;

D. to amend any previously recorded deed or other document conveying or encumbering an Apartment so that it conforms with the revised Declaration and/or to record a new deed or conveyance document for that purpose. For example, if the Developer creates New Apartments, it may need to adjust the common interest of each existing Apartment. If so, the Office of the Assistant Registrar of the Land Court of the State of Hawaii may require the Developer to change the deeds for existing Apartments to reflect the such change in common interest or it may require that the Developer issue replacement deeds reflecting such change in common interest.

**1.3 Impact of Exercise of Developer's Reserved Right to Create New Apartments.** Upon the recordation of an amendment to the Declaration and the Condominium Map as outlined above, the following will take place:

A. The New Apartments will become condominium Apartments and will be part of the Project for all intents and purposes. The limited common elements will be appurtenant to the New Apartments to which they are assigned. The owner of a New Apartment may deed it, lease it or otherwise encumber it just the same as if the New Apartment had been created from the beginning of the Project.

B. The Developer will be the owner of each New Apartment and its common interest until the Developer conveys it to someone else. Nobody else except the Developer will have any legal or equitable rights in or to the New Apartments and its common elements.

C. The Owners of all Apartments (including the New Apartments) will have the right to use the common elements of the Project to the same extent and subject to the same limits, just as if the Project had been developed with the New Apartments from the beginning.

**2. DEVELOPER'S RESERVED RIGHT TO CONSTRUCT NEW IMPROVEMENTS.** Any other provision in the Declaration or the By-Laws notwithstanding, the Developer shall have the right (but not

the obligation) at its sole discretion under this Section, at any time to design, designate, develop, build, add to and complete new improvements (“New Improvements”) on the Land. The Developer may do this more than once and at any time prior to the expiration of the Development Period.

**2.1 Limits on Developer’s Reserved Rights to Construct New Improvements.** The Developer’s reserved rights in this Section are subject to the following terms and conditions:

**A.** A licensed architect or engineer must prepare plans and specifications for the New Improvements. The Developer must obtain all necessary governmental approvals and permits for the New Improvements. The design and construction of the New Improvements must be substantially consistent in design and construction with the existing improvements of the Project as determined by the Developer in its sole discretion. The Developer must build the New Improvements substantially in accordance with the plans and specifications.

**B.** The plans and specifications for the New Improvements shall not require any material change to or the demolition of any existing Apartment or limited common element, except if that Apartment and limited common element is owned by the Developer. The Developer has a right to connect to, use, relocate and/or realign improvements to the Project to provide electricity, hot and cold water, air conditioning and other utilities and services, and when applicable, to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the common elements of the Project as necessary and desirable. The Developer must do this in a way that does not cause any permanent interruption in the service of utilities to any other part of the Project.

**C.** The Developer must pay all costs and expenses for the design, development and construction of the New Improvements. The Developer makes no promise as to when construction of any new phase will commence or be completed. Until construction of any new phase is substantially completed, the cost associated with any New Apartments, common elements and limited common elements shall be the sole responsibility of the Developer. Developer shall be solely responsible for all costs and expenses to reasonably maintain, repair, upkeep and provide security for the Undeveloped Land Area. For safety and other reasons, the Developer intends to fence off, screen or otherwise secure the Undeveloped Land Area and to severely limit and restrict access to such Undeveloped Land Area by all other Apartment Owners and any other person. Each Apartment Owner and every other interested person: (i) agrees to stay out of the Undeveloped Land Area and any specifically fenced areas until access to such area is specifically authorized by the Developer, and to see that the Apartment Owner’s representatives, licensees and invitees also do so; (ii) acknowledges and agrees that the ongoing construction will result in noise, dust and increased traffic in and around the Project for a period of time; (iii) acknowledges and agrees that care must be taken around construction sites, as certain hazardous conditions relating to the construction may exist for a period of time.; (iv) acknowledges and agrees that Developer will make efforts to minimize dust but that dust and debris is an inevitable result of the ongoing construction; (v) waives any rights, claims or actions which the Apartment Owner might otherwise have against the Developer as a result of any damage to Apartment Owners’ real or personal property, any inconvenience, annoyance or nuisance cause by any such ongoing activities.

**D.** The Developer shall arrange and pay for builder’s risk insurance and general liability insurance. The insurance must stay in effect during the entire construction period. Developer must provide the Managing Agent proof of insurance via a certificate of insurance showing the Association as the certificate holder.

**E.** The Developer shall amend the Declaration and the Condominium Map to designate and show any New Improvements. Upon the recordation of such an amendment the New Improvements will be part of the condominium project as though they had been built at the beginning.

**2.2 Extent of Developer's Reserved Rights to Construct New Improvements.** Subject to the above limitations, the Developer shall have the absolute right to do the following :

- A.** To have the exclusive right to control, manage, and conduct the design, development, construction, addition and completion of the New Improvements on the Land even after Developer deeds Apartments to others.
- B.** To remove, change or add common elements or to convert the use of common elements to another purpose.
- C.** To connect the New Improvements to utilities of the Project.
- D.** To build a fence around the construction area and to have the exclusive use and control of the area enclosed by the fence, and to make all Apartment Owners, their representatives, licensees and invitees stay out of that area until the construction is finished.
- E.** To obtain all permits, licenses, and approvals necessary or convenient to the development, construction, completion and/or operation and use of the Project.
- F.** To coordinate the work and activities of the contractors, subcontractors, architects, engineers, laborers, suppliers, and others to complete the Project in accordance with the Developer's objectives on time, costs and quality.
- G.** To exercise all rights and make all decisions of the "Owner" or the "developer" or similar contracting party (including but not limited to all rights and decisions with respect to litigation and arbitration of claims arising thereunder or in connection therewith, and the compromise thereof) with respect to all contracts now or later signed in connection with the development and construction of the Project.
- H.** To review and approve necessary or desirable changes and requests for changes and change orders with respect to the Project.
- I.** To publish and file the notice of completion in accordance with Section 507-43 of the Hawaii Revised Statutes, as amended.
- J.** To approve and direct the replacement of any New Improvements that are under construction and that are damaged by fire or something else. This includes the right to settle any insurance claims made under any insurance policy that the Developer buys or arranges.
- K.** To amend the Declaration and Condominium Map as necessary or convenient to show the New Improvements.
- L.** To amend any previously recorded deed or other document conveying or encumbering an Apartment so that it conforms with the revised Declaration and/or to record a new deed or conveyance document for that purpose.

**3.3 Restricted Access to Construction Site.** During the construction period, each Apartment Owner must: (a) remain outside of any fenced construction area; (b) not directly or indirectly do or attempt to do anything that would or could affect or interfere with the development, construction and completion of the New Improvements.

**4. DEVELOPER'S RESERVED RIGHT TO ADD LAND AND/OR EFFECT MERGER.** Any other provision in the Declaration notwithstanding, the Developer shall have the right (but not the

obligation) at its sole discretion under this Section, at any time to add real property to the Project by amending the Declaration, By-Laws, Condominium Map and any other documents that the Developer deems necessary or convenient to effect such addition of real property to the Project. Specifically, the Developer may (but is not obligated to) add the Original Property and a portion of the Additional Land specified in that certain Declaration of Merger. Should Developer add the Original Property and a portion of the Additional Land to the Project, the common interest for the Apartments developed in the Merged Area shall be as described in Exhibit "C" of the Declaration. If Developer, in its sole discretion, does not subject the Original Property and a portion of the Additional Land to the Declaration, then Developer reserves the right to effect either a legal merger or an administrative merger of the Original Property and all or a portion of the Additional Land with the Project pursuant to the terms of the Declaration of Merger.

**5. DEVELOPER'S RESERVED RIGHT TO WITHDRAW LAND.** Any other provision in this Declaration notwithstanding, the Developer shall have the right (but not the obligation) at its sole discretion under this Section, at any time to withdraw real property from the Project by amending the Declaration, By-laws and Condominium Map. Upon such withdrawal as set forth in this Section and with no further action required, no Apartment Owner, mortgagee, lien holder, Apartment purchaser and any other person who may have an interest in the Project or any Apartment (other than the Developer and the holder of any blanket mortgage covering the Land prior to the Declaration) shall have any legal or equitable interest in the withdrawn land. It is the intent of this provision that upon such withdrawal, legal title to the withdrawn land will be vested solely in the Developer. If deemed necessary to effect the intent of this Section, each Apartment Owner, mortgagee, lien holder and any other person who may have an interest in the Project or any Apartment shall, if requested by the Developer, unconditionally quitclaim and/or release its interest, if any, in the withdrawn land to the Developer.

In exercising the foregoing right, the Developer may at any time (i) execute, file and process to final approval an application with the City and County of Honolulu for the legal subdivision of the withdrawn land from the Land covered by the Declaration; (ii) execute and record a petition and any supporting documentation for such subdivision in the Land Court of the State of Hawaii; (iii) execute and record any amendments to the Declaration, the Condominium Map and the By-Laws to note the withdrawal of real property from the Land; and (iv) execute, apply for and obtain from the Real Estate Commission of the State of Hawaii a public report or amendment to public report noting the withdrawal of land from the Project. The withdrawn land shall be deemed deleted from the Project for all purposes upon the recordation in the Bureau of Conveyances of an amendment to the Declaration and the Condominium Map that sets forth the withdrawal of real property.

**6. DEVELOPER'S RESERVED RIGHT TO SUBDIVIDE AND/OR CONSOLIDATE LAND.** Any other provision in the Declaration notwithstanding, the Developer shall have the right (but not the obligation) at its sole discretion under this Section, at any time to subdivide the Land and/or consolidate the Land with other real property in order to effect the addition or withdrawal of land as described in Sections 4 and 5 above, by amending the Declaration, By-Laws, Condominium Map and any other document that the Developer deems necessary or convenient to effect such subdivision or consolidation.

END OF EXHIBIT "A"

EXHIBIT "B"

**APARTMENT DESCRIPTION AND COMMON INTEREST**

<b>Apt. No.</b>	<b>Plan Type</b>	<b>Net Living Area (sq. ft.)</b>	<b>Net Covered Entry (sq. ft.)</b>	<b>Net Garage Area (sq. ft.)</b>	<b>Common Interest</b>
T-55	Tuscany – Plan 2	1,404.00	15.57	396.67	0.862
T-56	Tuscany – Plan 3	1,438.73	31.07	367.91	0.862
T-57	Tuscany – Plan 4	1,523.31	16.91	193.50	0.8625
T-58	Tuscany – Plan 5	1,484.85	27.71	442.92	0.86275
T-59	Tuscany – Plan 5	1,484.85	27.71	442.92	0.86275
T-60	Tuscany – Plan 3	1,438.73	31.07	367.91	0.862
T-61	Tuscany – Plan 1	1,175.93	23.59	364.83	0.862
T-62	Tuscany – Plan 3	1,438.73	31.07	367.91	0.862
T-63	Tuscany – Plan 2	1,404.00	15.57	396.67	0.862
T-64	Tuscany – Plan 4	1,523.31	16.91	193.50	0.8625
T-65	Tuscany – Plan 3	1,438.73	31.07	367.91	0.862
T-66	Tuscany – Plan 2	1,404.00	15.57	396.67	0.862
T-67	Tuscany – Plan 4	1,523.31	16.91	193.50	0.8625
T-68	Tuscany – Plan 3	1,438.73	31.07	367.91	0.862
T-69	Tuscany – Plan 1	1,175.93	23.59	364.83	82.756*
T-70	Tuscany – Plan 3	1,438.73	31.07	367.91	0.862
T-71	Tuscany – Plan 4	1,523.31	16.91	193.50	0.8625
T-72	Tuscany – Plan 2	1,404.00	15.57	396.67	0.862
T-73	Tuscany – Plan 3	1,438.73	31.07	367.91	0.862
T-74	Tuscany – Plan 2	1,404.00	15.57	396.67	0.862
T-75	Tuscany – Plan 4	1,523.31	16.91	193.50	0.8625

**NOTE:** All of the interest that will later be allocated to future phases of MONTECITO/TUSCANY II is currently allocated to Apartment T-69 (the "Reserved Unit") so that the total common interest adds up to one hundred percent (100%).

Upon the creation of an additional phase of MONTECITO/TUSCANY II as specified in Section 4 of the Declaration, the Reserved Unit will be redesignated to be a unit in the new phase and Apartment T-69 will have a common interest of 0.862.

As nearly as practicable, the common interest for each residential Apartment was determined on a per unit basis. Developer reserves the right to make adjustments so that the total common interest count equals exactly one hundred percent (100%).

**NOTE:** During the Development Period, the Developer shall be responsible for all costs associated with the undeveloped land area and the Reserved Unit. The Developer will prorate the cost of operating the Recreation Center based on a per unit basis and based on a total unit count of 356 (the number of units in the Merged Area). All other costs for the Project shall be allocated to the apartment owners on a per unit basis.

DESCRIPTION OF FLOOR PLANS

**Tuscany, Plan 1 (3 Bedroom, 2 ½ Bath)**

Two story three bedroom, two and one-half bath Apartment with the kitchen, dining room, living room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom,

a master bathroom, two additional bedrooms and another bathroom. The Apartment also includes an entry porch and a two car garage containing one standard and one compact parking stall. An optional covered lanai built off of the dining room is depicted on the Option 1 drawings of the Condominium Map. Developer shall indicate when it files the "as-built" verified statement referenced in Section 19.3(a), which Apartments were built with an optional covered lanai. All Apartments have a fenced back yard limited common element. The Apartment has a net living area of approximately 1,175.93 square feet, a net entry porch area of approximately 23.59 square feet and a net garage area of approximately 364.83 square feet.

**Tuscany, Plan 2 (4 Bedroom, 2 ½ Bath)**

Two story four bedroom, two and one half bath Apartment with the kitchen, dining room, living room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes an entry porch and a two car garage containing one standard and one compact parking stall. An optional covered lanai built off of the dining room is depicted on the Option 1 drawings of the Condominium Map. An optional expanded Master Bedroom, which combines the Master Bedroom with Bedroom No. 2, is depicted on the Option 2 drawings of the Condominium Map. Developer shall indicate when it files the "as-built" verified statement referenced in Section 19.3(a), which Apartments were built with optional floor plans. All Apartments have a fenced back yard limited common element. The Apartment has a net living area of approximately 1,404.00 square feet, a net entry porch area of approximately 15.57 square feet and a net garage area of approximately 396.67 square feet.

**Tuscany, Plan 3 (4 Bedroom, 2 ½ Bath)**

Two story four bedroom, two and one half bath Apartment with the kitchen, dining room, living room, laundry room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes an entry porch and a two car garage containing one standard and one compact parking stall. An optional covered lanai built off of the dining room is depicted on the Option 1 drawings of the Condominium Map. An optional expanded Master Bedroom, which combines the Master Bedroom with Bedroom No. 2, is depicted on the Option 2 drawings of the Condominium Map. Developer shall indicate when it files the "as-built" verified statement referenced in Section 19.3(a), which Apartments were built with optional floor plans. All Apartments have a fenced back yard limited common element. The Apartment has a net living area of approximately 1,438.73 square feet, a net entry porch area of approximately 31.07 square feet and a net garage area of approximately 367.91 square feet.

**Tuscany, Plan 4 (5 Bedroom, 3 Bath)**

Two story five bedroom, three bath Apartment with the kitchen, dining room, living room, laundry room, bathroom and a bedroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes an entry porch and a one car garage containing one compact parking stall. An optional covered lanai built off of the dining room is depicted on the Option 1 drawings of the Condominium Map. An optional expanded Master Bedroom, which combines the Master Bedroom with Bedroom No. 2, is depicted on the Option 2 drawings of the Condominium Map. Developer shall indicate when it files the "as-built" verified statement referenced in Section 19.3(a), which Apartments were built with optional floor plans. All Apartments have a fenced back yard limited common element, an appurtenant uncovered standard size parking stall located adjacent to the garage. The Apartment has a net living area of approximately 1,523.31 square feet, a net entry porch area of approximately 16.91 square feet and a net garage area of approximately 193.50 square feet.

**Tuscany, Plan 5 (4 Bedroom, 2 ½ Bath)**

Two story four bedroom, two and one half bath Apartment with the kitchen, dining room, living room, laundry room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes a two car garage containing one standard and one compact parking stall. An optional covered lanai built



off of the dining room is depicted on the Option 1 drawings of the Condominium Map. An optional expanded Master Bedroom, which combines the Master Bedroom with Bedroom No. 2, is depicted on the Option 2 drawings of the Condominium Map. Developer shall indicate when it files the "as-built" verified statement referenced in Section 19.3(a), which Apartments were built with optional floor plans. All Apartments have a fenced back yard limited common element. The Apartment has a net living area of approximately 1,484.85 square feet, a net entry porch area of approximately 27.71 square feet and a net garage area of approximately 442.92 square feet.

#### **The Reserved Unit**

The Apartment is a two story three bedroom, two and one-half bath Apartment with the kitchen, dining room, living room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, two additional bedrooms and another bathroom. The Apartment also includes an entry porch and a sales office area. The Apartment has a net floor area of approximately 1,175.93 square feet and the balance of the relative square footage of the living area to be developed in the future phases as provided in Section 17A.2(B) of the Declaration.

**NOTE:** The sizes and configurations of the fenced yard reflected on the Condominium Map are approximations only. Actual sizes and configurations may vary due to the placement and location of utilities and due to varying terrain surrounding each building.

END OF EXHIBIT "B"

## EXHIBIT "C"

### COMMON ELEMENTS

1. The land covered by Lot \_\_\_\_\_, Map \_\_\_\_\_ of Land Court Application 1069. The land is further described in Exhibit "A" of the Declaration; *(Developer is currently in the process of subdividing Lot 15774, Map 1225, into a remaining bulk lot and the lots that will make up MONTECITO/TUSCANY II. A Land Court petition and map has been submitted but has not yet been issued. Developer will fill in the Land Court Lots, when it submits the Final Public Report for this project.)*
2. All yards, grounds, planting areas, gates, fences, retaining walls (if any), trash collection areas and walkways;
3. All access lanes, roads, curbs, sidewalks and street lights;
4. Installations for services such as pipes, cables, conduits, ducts, electrical equipment, wiring and other central appurtenant transmission facilities and installations over, under or across the Project which serve more than one Apartment for services such as power, light, gas, hot water, cold water, sewage, drainage, telephone, radio and television signal distribution, if any;
5. Any apparatus and installations existing for common use, such as tanks, pumps, irrigation lines, motors, fans, compressors, ducts, vents and other such installations and apparatus; and
6. All other parts of the Project necessary or convenient to its existence, maintenance and safety or normally in common use.

END OF EXHIBIT "C"

**EXHIBIT "D"**  
**ENCUMBRANCES AGAINST TITLE**

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. Abutters right of access acquired by the State of Hawaii in Civil No. 62550 in the Circuit Court of the First Circuit, State of Hawaii, by Amended Final Order of Condemnation dated April 1, 1987 and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1455569. *(This encumbrance will be removed upon final subdivision.)*
3. Restriction of access rights as set forth by Land Court Order No. 86200, Map 422, Land Court Application No. 1069 filed in said Office of the Assistant Registrar on September 11, 1987. *(This encumbrance will be removed upon final subdivision.)*
4. Restrictions, covenants and conditions as contained in that certain Ewa by Gentry Community Area Declaration of Covenants, Conditions and Restrictions dated July 21, 1988, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1568352, as amended by instrument dated May 30, 1989, recorded in the Office of said Assistant Registrar as Document No. 1652869, as further amended by instrument dated June 21, 1991, recorded in the Office of the Assistant Registrar as Document No. 1888053, and as may be further amended from time to time. The Project was made subject to the above Declaration of Covenants, Conditions and Restrictions by that certain Declaration of Addition of Real Property dated July 20, 2000 and recorded in said Office of the Assistant Registrar as Document No. 2639394.
5. Terms and provisions of that certain unrecorded Master Lease with Options to Purchase Real Property, as amended and restated, by and between Gentry Development Company, a Hawaii limited partnership (now known as Gentry Investment Properties) as Lessor/Optionor and Gentry Homes, Ltd., a Hawaii corporation, as Lessee/Optionee, a short form of which was dated March 16, 1995 and recorded in said Office of the Assistant Registrar as Document No. 2234674. Said Option Agreement was amended by that certain Short Form Amendment to Master Lease with Options to Purchase Real Property dated July 26, 2004 but effective September 1, 2002 and recorded in said Office of the Assistant Registrar as Document No. 3143734. *(Gentry Homes, Ltd., intends to acquire the property, prior to the recordation of the condominium documents.)*
6. The designation of Easement 1500, for access purposes, as shown on Map 432 of Land Court Application No. 1069, as set forth by Land Court Order No. 89384, recorded in said Office of the Assistant Registrar on April 25, 1988. *(This encumbrance will be removed upon further subdivision.)*
7. Access rights in favor of Lot 4197, Map 432, Land Court Application No. 1069 over Easement 1500, as set forth by Land Court Order No. 89384, recorded in said Office of the Assistant Registrar on April 25, 1988. *(This encumbrance will be removed upon further subdivision.)*
8. Grant of Non-exclusive Easement (access) dated December 29, 1988 in favor of Seibu Hawaii, Inc., a Hawaii corporation dated December 29, 1988 and filed in said Office of the Assistant Registrar as Document No. 1604419. *(This encumbrance will be removed upon further subdivision.)*
9. The designation of Easement 1989, for waterline purposes, as shown on Map 453 of Land Court Application No. 1069, as set forth by Land Court Order No. 92212, recorded in said Office of the

Assistant Registrar on December 30, 1988. *(This encumbrance will be removed upon further subdivision.)*

10. Covenants, conditions, restrictions and other provisions set forth in that certain Declaration of Restrictions dated August 22, 1989 and recorded in said Office of the Assistant Registrar as Document No. 1661671.
11. Grant of Non-Exclusive Easement in favor of the City and County of Honolulu, a municipal corporation of the State of Hawaii, and the Board of Water Supply, City and County of Honolulu dated February 20, 1992 and recorded in said Office of the Assistant Registrar as Document No. 1918380. *(This encumbrance will be removed upon further subdivision.)*
12. Grant of Easement for utility purposes in favor of Hawaiian Electric Company, a Hawaii corporation, dated December 15, 1993 and recorded in said Office of the Assistant Registrar as Document No. 2125164. Said grant was partially cancelled by that certain instrument dated September 22, 2003 and recorded in said Office of the Assistant Registrar as Document No. 3002891.
13. Grant of Non-Exclusive Easement for water and waterlines over and through a portion of Easement "1989" in favor of the City and County of Honolulu, a municipal corporation of the State of Hawaii, and the Board of Water Supply, City and County of Honolulu dated March 3, 1994 and recorded in said Office of the Assistant Registrar as Document No. 2237817.
14. The designation of Easement 7590, for electrical purposes, as shown on Map 1098, Land Court Application No. 1069, as set forth by Land Court Order No. 143691, recorded in said Office of the Assistant Registrar on October 23, 2001. *(This encumbrance will be removed upon further subdivision.)*
15. The designation of Easement 7591, for drainage purposes, as shown on Map 1098, Land Court Application No. 1069, as set forth by Land Court Order No. 143691, recorded in said Office of the Assistant Registrar on October 23, 2001. *(This encumbrance will be removed upon further subdivision.)*
16. The designation of Easement 7592, for drainage purposes, as shown on Map 1098, Land Court Application No. 1069, as set forth by Land Court Order No. 143691, recorded in said Office of the Assistant Registrar on October 23, 2001. *(This encumbrance will be removed upon further subdivision.)*
17. The designation of Easement 7593, for drainage purposes, as shown on Map 1098, Land Court Application No. 1069, as set forth by Land Court Order No. 143691, recorded in said Office of the Assistant Registrar on October 23, 2001. *(This encumbrance will be removed upon further subdivision.)*
18. The designation of Easement 7594, for drainage purposes, as shown on Map 1098, Land Court Application No. 1069, as set forth by Land Court Order No. 143691, recorded in said Office of the Assistant Registrar on October 23, 2001. *(This encumbrance will be removed upon further subdivision.)*
19. Grant of Easement dated September 23, 2003, for transmission and distribution of electricity, in favor of Hawaiian Electric Company, Inc., a Hawaii corporation dated September 23, 2003 and recorded in said Office of the Assistant Registrar as Document No. 3002892.

20. Declaration of Covenants, Conditions and Restrictions on Use and Reservations (Fairways Properties) dated September 30, 2003, recorded in said Office of the Assistant Registrar as Document No. 3002894;
21. Terms and conditions of that certain Deed and Use Restrictions dated September 30, 2003, recorded in said Office of the Assistant Registrar as Document No. 3002895;
22. Terms and conditions of that certain Declaration of Confirmation of certain Exceptions, Reservations and Encumbrances Affecting Property (Fairways Properties) dated September 30, 2003 and recorded in the Bureau of Conveyances as Document No. 2003-212181.
23. Terms and conditions of that certain notice of Imposition of Conditions by the Land Use Commission dated December 1, 2003 and recorded in the Bureau of Conveyances as Document No. 2003-269381.
24. Declaration of Land Use Conditions dated February 9, 2004, recorded in said Office of the Assistant Registrar as Document No. 3068154;
25. Unilateral Agreement and Declaration for Conditional Zoning dated March 16, 2004, recorded in said Office of the Assistant Registrar as Document No. 3084363;
26. The designation of Easement 8175, for utility and flowage purposes, as shown on Map 1192, Land Court Application No. 1069, as set forth by Land Court Order No. 155327, recorded in said Office of the Assistant Registrar on March 5, 2004. *(This encumbrance will be removed upon further subdivision.)*
27. The designation of Easement 8239, for telephone purposes, as shown on Map 1200, Land Court Application No. 1069, as set forth by Land Court Order No. 156222, recorded in said Office of the Assistant Registrar on May 7, 2004. *(This encumbrance will be removed upon further subdivision.)*
28. The designation of Easement 8242, for water purposes, as shown on Map 1200, Land Court Application No. 1069, as set forth by Land Court Order No. 156222, recorded in said Office of the Assistant Registrar on May 7, 2004. *(This encumbrance will be removed upon further subdivision.)*
29. The designation of Easement 8243, for sewer purposes, as shown on Map 1200, Land Court Application No. 1069, as set forth by Land Court Order No. 156222, recorded in said Office of the Assistant Registrar on May 7, 2004. *(This encumbrance will be removed upon further subdivision.)*
30. The designation of restriction of vehicular access rights, as shown on Map 1200, Land Court Application No. 1069, as set forth by Land Court Order No. 156222, recorded in said Office of the Assistant Registrar on May 7, 2004. *(This encumbrance will be removed upon further subdivision.)*
31. Mortgage made by Gentry Investment Properties, a Hawaii limited partnership and Gentry Homes, Ltd., a Hawaii corporation, in favor of Bank of Hawaii, a Hawaii corporation, as agent dated August 1, 2004 and recorded in said Office of the Assistant Registrar as Document No. 3148449. *[Developer intends to record a document to release this encumbrance prior to conveyance of apartment to buyer.]*
32. Assignment of Sales Contracts and Sales Proceeds made by Gentry Homes, Ltd. in favor of Bank of Hawaii, a Hawaii corporation, as agent dated August 1, 2004 and recorded in said Bureau of Conveyances as Document No. 2004-162053. *[Developer intends to record a document to release this encumbrance prior to conveyance of apartment to buyer.]*
33. Financing Statement made by Gentry Investment Properties, a Hawaii limited partnership and Gentry Homes, Ltd., a Hawaii corporation in favor of Bank of Hawaii, a Hawaii corporation, as agent recorded

on August 9, 2004 in said Bureau of Conveyances as Document No. 2004-162054. *[Developer intends to record a document to release this encumbrance prior to conveyance of apartment to buyer.]*

34. The designation of Easement 8315, for drainage and flowage purposes, as shown on Map 1222, Land Court Application No. 1069, as set forth by Land Court Order No. 158691, recorded in said Office of the Assistant Registrar on October 27, 2004. *(This encumbrance will be removed upon further subdivision.)*
35. The designation of Easement 8321, for electrical purposes, as shown on Map 1225, Land Court Application No. 1069, as set forth by Land Court Order No. 159313, recorded in said Office of the Assistant Registrar on December 13, 2004. *(This encumbrance will be removed upon further subdivision.)*
36. The designation of Easement 8322, for future utilities and drainage purposes, as shown on Map 1225, Land Court Application No. 1069, as set forth by Land Court Order No. 159313, recorded in said Office of the Assistant Registrar on December 13, 2004. *(This encumbrance will be removed upon further subdivision.)*
37. Grant of Easement for switch vault sites and communication lines within Easement 8239, in favor of Verizon Hawaii, Inc., a Hawaii corporation, dated January 14, 2005 and recorded in said Office of the Assistant Registrar as Document No. 3220373.
38. The designation of Easement 8499, for future utilities and drainage purposes, as shown on Map 1237, Land Court Application No. 1069, as set forth by Land Court Order No. 161976, recorded in said Office of the Assistant Registrar on June 17, 2005. *(This encumbrance will be removed upon further subdivision.)*
39. Terms, provisions, covenants and conditions of that certain Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance (LUO) dated \_\_\_\_\_, recorded in said Office of the Assistant Registrar as Document No. \_\_\_\_\_.
40. Terms and provisions of that certain Declaration of Merger; Consent dated \_\_\_\_\_, recorded in said Office of the Assistant Registrar as Document No. \_\_\_\_\_.
41. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the Declaration of Condominium Property Regime of MONTECITO/TUSCANY II dated \_\_\_\_\_ recorded in said Office of the Assistant Registrar as Document No. \_\_\_\_\_ and Condominium Map No. \_\_\_\_\_, to which reference is hereby made.
42. By-Laws of the Association of Apartment Owners of MONTECITO/TUSCANY II dated \_\_\_\_\_ and recorded in said Office of the Assistant Registrar as \_\_\_\_\_.
43. Real property taxes due and payable, refer to Director of Finance, City and County of Honolulu.

END OF EXHIBIT "D"

EXHIBIT "E"

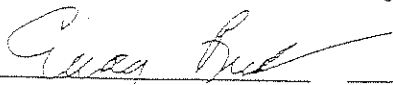
Estimated Budget and Initial Maintenance Fee Schedule for  
All Phases of Montecito and Tuscany  
(356 units)

3-10-05

	Monthly	Annually
<b>Administration</b>		
Tax Preparation/Audit	\$100	\$1,200
Legal Fees	\$500	\$6,000
Property Management/Accounting	\$2,583	\$30,996
Design Review	\$300	\$3,600
Mgmt. Office Expenses	\$1,400	\$16,800
AOAC Office Expenses	\$225	\$2,700
Condo Registration (Bi-annual)	\$155	\$1,860
Miscellaneous Expenses(1)	\$70	\$840
<b>Payroll &amp; Benefits</b>		
Site Manager	\$3,281	\$39,372
Rec Center Manager	\$2,457	\$29,484
Payroll-Maintenance	\$3,150	\$37,800
Payroll Taxes	\$680	\$8,160
Workers Compensation	\$648	\$7,776
TDI	\$44	\$528
Health Care	\$270	\$3,240
Payroll Preparation	\$125	\$1,500
<b>Maintenance, Repair, Supplies</b>		
Grounds/Yards & Common	\$11,000	\$132,000
Landscape/Irrigation Extras	\$450	\$5,400
Contract Pool	\$153	\$1,836
Cleaning Supplies	\$125	\$1,500
Pest Control	\$200	\$2,400
Pool Supplies	\$655	\$7,860
Miscellaneous Repairs & Purchases(2)	\$450	\$5,400
<b>Utilities</b>		
Electricity	\$900	\$10,800
Water	\$5,000	\$60,000
Sewer	\$12,000	\$144,000
Telephone	\$125	\$1,512
Propane Fuel	\$35	\$420
<b>Insurance</b>		
Master Policy	\$16,000	\$192,000
<b>Taxes &amp; Government Assessments</b>		
GET	\$30	\$360
Reserves	\$7,200	\$86,400
<b>TOTAL DISBURSEMENTS</b>	<b>\$70,312</b>	<b>\$843,741</b>
Monthly Maintenance Fee Amount	\$197.51/unit	

(1) Recording secretary, tally clerk  
(2) Misc. fence & electric repairs

I, Emory Bush, as agent for/and/or employed by Hawaiiana Management Company, Ltd. the condominium managing agent/developer for the Montecito/Tuscany (Area 33 and Area 39), hereby certify that the above initial estimated budget and maintenance fee schedule was prepared in accordance with generally accepted accounting principles.

 3-10-05  
Signature Date

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

**EXHIBIT "F"**

**SUMMARY OF SALES CONTRACT**

The Sales Contract contains the price and other terms and conditions under which a buyer will agree to buy an apartment in the Project. Among other things, the Sales Contract states the following:

1. Seller is selling MONTECITO/TUSCANY II pursuant to affordable housing requirements imposed by the City and County of Honolulu (the "City"). Seller will require information from Buyer regarding income and household size to provide to the City for information purposes.
2. Buyer must live in the apartment for at least 365 consecutive days.
3. Buyer has certain obligations if Buyer wants a mortgage loan to cover part of the purchase price.
4. Buyer's money will be held in escrow, under the terms of the Escrow Agreement.
5. Buyer will not receive interest on deposits made under the Sales Contract.
6. The apartment will be subject to various other legal documents which Buyer should examine.
7. The Project will be subject to ongoing construction and sales activities which may result in certain annoyances to Buyer.
8. Seller has no control over certain activities on adjacent property owned by others including agriculture, military, utility and aviation. These activities may cause some inconveniences to Buyer. Buyer will indemnify Seller and the owners of the properties involved except in cases of negligence or willful misconduct.
9. Under certain circumstances where the apartment is ready for occupancy and Buyer has not completed his financing arrangements for the purchase of the apartment, Buyer will be responsible for all of Seller's expenses as a result of Buyer's delay.



10. In the event of default prior to closing under the sales contract:

By Buyer:

- a. Seller may cancel the sales contract and retain Buyer's initial deposit;
- b. Seller may file a lawsuit for damages;
- c. Seller may file a lawsuit for "specific performance"; and
- d. Buyer shall be responsible for expenses incurred.

By Seller:

- a. Buyer may file a lawsuit for "specific performance";
- b. Buyer may cancel the sales contract and Seller will return all deposits, without interest;
- c. Buyer has all remedies available at law and in equity.

END OF EXHIBIT "F"

**EXHIBIT "G"**

**SUMMARY OF ESCROW AGREEMENT**

The Escrow Agreement describes the arrangement under which the deposits a buyer makes under a Sales Contract will be held by a neutral party ("Escrow"). The following are relevant terms stated in the agreement:

1. Interest on Buyer's deposits will accrue in favor of the Seller and not the Buyer unless the parties specifically provide otherwise.
2. Escrow will arrange for Buyer to sign all necessary documents.
3. The Escrow Agreement describes the conditions upon which a refund will be made to a buyer.
4. The Escrow Agreement describes what will happen to a buyer's funds if a party defaults under the Sales Contract.
5. The Escrow Agreement contains various other provisions and establishes certain charges with which the Buyer should become acquainted.

**END OF EXHIBIT "G"**

**EXHIBIT "H"**

EXHIBIT "H"

# 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.

## 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 HOME BUILDER'S LIMITED WARRANTY, fill out this form and send it to PWC along with the arbitration filing fee. Be sure to attach a copy of all pertinent correspondence between you and your builder relative to the issue.

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

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

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

CITY

STATE

ZIP

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

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

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

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

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

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

Signature

Date

Signature

Date

INSTRUCTIONS: Photo-copy this form and complete the fields.

Obtain the required arbitration filing fee by contacting PWC at 1-800/850-2799.

Send this Binding Arbitration Request Form and the arbitration filing fee to:

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



# SUBSEQUENT HOME BUYER ACKNOWLEDGMENT AND TRANSFER

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

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

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

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

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

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

**SAMPLE**

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

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

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

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

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

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

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

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

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

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