

**DEVELOPER'S PUBLIC REPORT  
FOR A CONDOMINIUM**

CONDOMINIUM PROJECT NAME	HOLOMUA
Project Address	1315 Kalakaua Avenue Honolulu, Hawaii 96826
Registration Number	6751
Effective Date of Report	<b>February 26, 2009</b>
Developer(s)	KRC Partners LLC

**Preparation of this Report**

The Developer prepared this report to disclose relevant information, including "material facts", that are reasonably known to the Developer about the condominium project covered by this report. This report has been prepared pursuant to the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended from time to time. The law defines "material facts" to mean "any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale."

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts or all pertinent changes, or both, about the project have been fully or adequately disclosed; and (3) is not the Commission's judgment of the value or merits of the project.

This report may be used by the Developer for promotional purposes only if it is used in its entirety. No person shall advertise or represent that the Commission has approved or recommended the project, this report or any of the documents submitted with Developer's application for registration of this project.

This report will be amended if, after the effective date of this report, any changes, either material or pertinent changes, or both, occur regarding the information contained in or omitted from this report. In that case, the Developer is required to submit immediately to the Commission an amendment to this report or an amended Developer's Public Report, clearly reflecting the changes, including any omitted material facts, together with such supporting information as may be required by the Commission. In addition, the Developer may choose at any time to change or update the information in this report. Annually, at least thirty days prior to the anniversary date of the Effective Date of this report, the Developer shall file an annual report to update the material contained in this report. If there are no changes, the Developer is required to state that there are no changes. The Developer's obligation to amend this report or to file annual reports ends when the initial sales of all units in the project have been completed.

Purchasers are encouraged to read this report carefully and to seek professional advice before signing a sales contract for the purchase of a unit in the project.

Signing a sales contract may legally bind a purchaser to purchase a unit in the project, though a purchaser may have rights to cancel or rescind a sales contract under particular circumstances that may arise.

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

## SPECIAL ATTENTION

1. Affordable Housing Project Under HRS Chapter 201H. This Project is being developed, in part, as an "affordable" project and, accordingly, prospective purchasers of certain designated affordable units have to meet certain income limits and other qualifications. The City Council of the City and County of Honolulu has approved the Project as a project to be developed, in part, pursuant to Hawaii Revised Statutes ("HRS") Chapter 201H, as amended. Pursuant to HRS Chapter 201H, 51% of the units in the Project will be sold as "Affordable Units", with certain eligibility, owner-occupant and re-sale requirements and restrictions imposed by the Hawaii Housing Finance and Development Corporation ("HHFDC"), as described in Exhibits M, N, O and Q of this Public Report.
2. HHFDC Development Agreement. The Developer and HHFDC have entered into a Development Agreement relating to the Project. The Development Agreement provides, among other things, that the Developer shall provide housing opportunities for buyers who qualify based on certain financial criteria. Among other things, the criteria require that buyers (including their families) of the Affordable Units not have household incomes greater than 140% of the HUD Median Income.
3. Use, Sale and Transfer Restrictions and Shared Appreciation Equity Program. The Developer's transfer of an Affordable Unit to a buyer will be made subject to (and the deed will so provide) certain restrictions, including, without limitation: (a) restrictions on use, sale and transfer of the Affordable Unit pursuant to HRS Sections 201H-47, 48, 49, 50 and 51, which provide for, among other things, a first option in favor of HHFDC to purchase the Affordable Unit for a period of 10 years in the event the buyer wishes to sell and/or transfer the Affordable Unit, whether by lease, assignment of lease, deed or agreement of sale, or in the event the buyer violates a covenant requiring the buyer to occupy the Affordable Unit; and (b) a shared appreciation equity program under which HHFDC would be entitled to a percentage share of the Affordable Unit's appreciation in value upon a sale of the Affordable Unit. No Unit restricted with the HHFDC Buy-Back Restriction (described in Exhibit M) or the HHFDC Shared Appreciation Equity Program (described in Exhibit M) shall be leased or rented. See Exhibits M, O and Q of this Public Report.
4. No Financing Contingency. It is very important for buyers to understand that **THERE IS NO FINANCING CONTINGENCY** for the purchase of a unit in the Project after the 30-day cancellation period has expired. That means **if the buyer does not cancel the Sales Contract prior to the end of the 30-day cancellation period, then the buyer will have waived any financing contingency and will be obligated to purchase the unit, even if the buyer is not able to obtain a loan for the buyer's purchase of the unit (due to higher interest rates, a change in the buyer's financial status or otherwise).** If the buyer does not cancel the Sales Contract during the 30-day cancellation period, and if the buyer fails to close the sale of the unit, whether for failure to obtain financing or for any other reason, then the buyer will be in default and **the buyer's deposits will be subject to forfeiture.**
5. Home Ownership Counseling Program. Pursuant to Hawaii Administrative Rules Section 15-174-77, as an express condition for closing the purchase of an Affordable Unit, each buyer of an Affordable Unit must, prior to closing, complete the Home Ownership Counseling Program approved by HHFDC. If, after a buyer's 30-day cancellation period has ended, the buyer fails or refuses to complete the Home Ownership Counseling Program before the scheduled closing date, then the buyer will be in default of the Sales Contract, and the Developer, in addition to any other remedies available to it, will have the right to cancel the Sales Contract, all or portions of the buyer's deposits (and all interest) will be subject to forfeiture, and the Developer will be entitled to pursue such other remedies as allowed pursuant to the Sales Contract. A "Certificate of Accomplishment" of the Home Ownership Counseling Program shall be provided to Escrow

Agent (defined below), a copy of which (along with other closing documents) shall be provided to HHFDC.

6. Initial Sale of Market-Priced Units. For an initial period of 30 calendar days, the Developer must offer all of the Project's market-priced units (i.e., those units that are not designated as Affordable Units) to prospective buyers who are "qualified residents". HRS Section 201H-32 defines a "qualified resident" as someone who is (a) a citizen of the United States or a resident alien, (b) domiciled in the State of Hawaii and shall physically reside in the unit, and (c) at least 18 years of age. After that initial 30-day period is over, the Developer can sell the remaining market-priced units to any buyer.
7. Parking Stalls. Every unit will have at least one assigned parking stall and there will be a minimum of 10 guest parking stalls. The Developer will have control over the parking stalls that are not designated for guest parking and that have not been assigned to a particular unit. See Section 1.4 on page 4 for more important information regarding parking stalls and assignments.
8. Use of Deposits. The Developer has reserved the right to have buyers' deposits disbursed from escrow prior to closing of the buyers' unit purchases to pay certain project costs. See Section 5.6 on pages 14 and 15 for important information on this potential use of deposits.
9. Resale Marketing Restriction. As set forth in Section G.2 of the Declaration, so long as the Developer owns a unit in the Project, no "open houses" or other on-Project advertising or marketing shall be permitted with respect to the sale of a unit that is not owned by the Developer; provided, however, that, subject to applicable HHFDC restrictions, unit owners shall be permitted to list their units for sale in the Multiple Listing Service ("MLS") and to show their units by appointment to persons responding to the MLS listing.
10. Views Not Assured. Each Buyer acknowledges and agrees that the Developer has made no, and makes no, representations or warranties with respect to the presence or continued existence of any views or view planes from any portion of the Project or any Unit. There are currently a number of buildings in the vicinity of the Project that are tall enough to impact whatever views there may be from the Project. The majority of the units on the Mauka side of the Project face into the Kulana Hale building that is located on the adjacent property. Unit buyers are advised to consider the impact of these buildings.
11. Interest on Deposits. All interest earned, if any, on the Buyer's deposits shall accrue to the credit of the Developer and, upon a refund of the Buyer's deposits, the Buyer shall not be entitled to any interest earned on such deposits. At Closing, all interest earned, if any, on the Buyer's deposits shall be credited to the Developer and not to the Buyer or to the purchase price of the unit.

NOTE: Exhibits M, N, O and Q should be read with care. They vitally affect buyer's rights and obligations with respect to the use and sales of their units.

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## **General Information On Condominiums**

A condominium is a special form of ownership of real property. To create a condominium in Hawaii after July 1, 2006, the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, must be followed. 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 and/or the building(s) and other improvements are leased to the purchaser. The lease for the land usually requires that at the end of the lease term, the lessees (unit owners) deliver their interest in the land to the lessor (fee property owner).

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

You will be entitled to exclusive ownership and possession of your unit. Subject to the documents governing them, condominium units may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift or operation of law.

Your unit will, however, be part of the group of units that comprise the condominium project. Study the project's Declaration of Condominium Property Regime, Bylaws of the Association of Unit Owners, Condominium Map and House Rules, if any, which are being concurrently delivered to you with this report. These documents contain important information on the use and occupancy of the units and the common elements of the project, as well as the rules and regulations of conduct for unit owners, tenants and guests.

## **Operation of the Condominium Project**

The Association of Unit Owners is the entity through which unit owners may take action with regard to the administration, management and operation of the condominium project. Each unit 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 a unit owner. The Board and officers can take certain actions without the vote of the unit owners. For example, the Board may hire and fire employees, increase or decrease maintenance fees, adopt budgets for revenues, expenses and reserves and regulate the use, maintenance, repair and replacement of common elements. Some of these actions may significantly impact the unit owners.

Until there is a sufficient number of purchasers of units to elect a majority of the Board, it is likely at first 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 purchasers should understand that it is important to all unit owners that the transition of control from the Developer to the unit owners be accomplished in an orderly manner and in a spirit of cooperation.

## 1. THE CONDOMINIUM PROJECT

### 1.1 The Underlying Land

Fee Simple or Leasehold Project	<input checked="" type="checkbox"/> Fee Simple	<input type="checkbox"/> Leasehold (attach Leasehold Exhibit)
Developer is the Fee Owner	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Fee Owner's Name if Developer is not the Fee Owner	Not Applicable	
Fee Owner's Address	615 Piikoi Street, Suite 808 Honolulu, Hawaii 96814	
Address of Project	1315 Kalakaua Avenue Honolulu, Hawaii 96826	
Address of Project is expected to change because	Not Applicable	
Tax Map Key (TMK)	(1) 2-4-6:17 and 18	
Tax Map Key is expected to change because	When the condominium project is created, the TMK numbers may change to reflect the individual units.	
Land Area	21,339 square feet	
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	Not Applicable	

### 1.2 Buildings and Other Improvements

Number of Buildings	One
Floors Per Building	23 (16 floors of units and 7 floors of parking)
Number of New Building(s)	One
Number of Converted Building(s)	None
Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	Concrete, steel, and related building materials

### 1.3 Unit Types and Sizes of Units

Unit Type	Quantity	BR/Bath	Net Living Area	Net Other Areas	Other Areas (lanai, garage, etc.)	Total Area
<b>See Exhibit A</b>						

**Total Number of Units 176**

Note: Net Living Area is the floor area of the unit measured from the interior surface of the perimeter walls of the unit. Other documents and maps may give floor area figures that differ from those above because a different method of determining floor area may have been used.

**1.4 Parking Stalls**

Total Parking Stalls in the Project:	211
Number of Guest Stalls in the Project:	10
Number of Parking Stalls Assigned to Each Unit:	At least one
Attach <b>Exhibit B</b> specifying the Parking Stall number(s) assigned to each unit and the type of parking stall(s) (regular, compact or tandem and indicate whether covered or open).	
If the Developer has reserved any rights to assign or re-assign parking stalls, describe such rights.	
<p>The Developer shall have the right: (i) to sell and convey or otherwise designate any parking stall not designated as a Limited Common Element to be appurtenant to and/or for the exclusive use of any Unit in the Project as a Limited Common Element for that Unit; (ii) to designate any parking stall not designated as a Limited Common Element for use as a guest parking stall for the Project; (iii) to use, or allow others to use, any parking stall not designated as a Limited Common Element; and (iv) to assign or change the assignments of individual parking stalls to individual Units that have not been conveyed by the Developer.</p>	

**1.5 Boundaries of the Units**

Boundaries of the units: **See Exhibit C.**

**1.6 Permitted Alterations to the Units**

Permitted alterations to the unit (if the unit is defined as a non-physical or spatial portion of the project, also describe what can be built within such portion of the project): **See Exhibit D** of this Public Report.

**1.7 Common Interest**

**Common Interest:** Each unit will have a percentage interest in the common elements appurtenant to each unit. This interest is called the "common interest". Except as otherwise provided in the Declaration or Bylaws, it is used to determine each unit'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 unit owners. The common interest for each unit in this project, as described in Declaration, is:

Described in **Exhibit E**

As follows:

**1.8 Recreational and Other Common Facilities (Check if applicable):**

<input type="checkbox"/>	Swimming pool
<input type="checkbox"/>	Laundry Area
<input type="checkbox"/>	Storage Area
<input type="checkbox"/>	Tennis Court
<input type="checkbox"/>	Recreation Area
<input checked="" type="checkbox"/>	Trash Chute/Enclosure(s)
<input type="checkbox"/>	Exercise Room
<input type="checkbox"/>	Security Gate
<input type="checkbox"/>	Playground
<input checked="" type="checkbox"/>	Other (describe): Activity room with kitchen and toilet; barbecue area



**1.9 Common Elements**

<b>Common Elements:</b> Common elements are those parts of the condominium project other than the individual units and any other real estate for the benefit of unit owners. Although the common elements are owned jointly by all unit owners, those portions of the common elements that are designated as limited common elements (see Section 1.10 below) may be used only by those units to which they are assigned. In addition to the common facilities described in Section 1.8 above, the common elements for this project, as described in the Declaration, are set forth below.	
Described in <b>Exhibit F</b> .	
Described as follows:	
<b>Common Element</b>	<b>Number</b>
Elevators	Three
Stairways	Two fire exit stairways
Trash Chutes	One

**1.10 Limited Common Elements**

<b>Limited Common Elements:</b> A limited common element is a portion of the common elements that is reserved for the exclusive use of one or more but fewer than all units in the project.
Described in <b>Exhibit G</b>
Described as follows:

**1.11 Special Use Restrictions**

The Declaration and Bylaws may contain restrictions on the use and occupancy of the units. Restrictions for this project include, but are not limited to, those described below.	
<input checked="" type="checkbox"/>	<b>Pets:</b> Except as set forth in the Project Rules, no animals may be kept at the Project. The Project Rules state that, subject to certain limitations (for example on numbers and weight), dogs, cats, small birds or fish are allowed at the Project. See the Bylaws and Project Rules for more details.
<input checked="" type="checkbox"/>	<b>Number of Occupants:</b> The Project Rules state that unless such occupancy restrictions are prohibited by applicable law, occupancy is limited to no more than two persons per bedroom in each Unit, not including children under the age of five years, but in no event shall the number of occupants per bedroom exceed three, including children under the age of five years.
<input checked="" type="checkbox"/>	<b>Other:</b> HHFDC Shared Appreciation Equity Program and HHFDC 10-Year Use, Sale and Transfer Restriction (pursuant to HRS Chapter 201H). See <b>Exhibits O and Q</b> for more details.
<input type="checkbox"/>	There are no special use restrictions.

**1.12 Encumbrances Against Title**

An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of a unit in the project. Encumbrances shown may include blanket liens which will be released prior to conveyance of a unit (see Section 5.3 on Blanket Liens).
<b>Exhibit H</b> describes the encumbrances against title contained in the title report described below.
Date of the title report: December 1, 2008
Company that issued the title report: Title Guaranty of Hawaii, Incorporated

**1.13 Uses Permitted by Zoning and Zoning Compliance Matters**

Uses Permitted by Zoning				
	Type of Use	No. of Units	Use Permitted by Zoning	Zoning
<input checked="" type="checkbox"/>	Residential	176	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	BMX-3 Community Business Mixed Use
<input type="checkbox"/>	Commercial		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Mix Residential/Commercial		<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(Specify)		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Variances to zoning code have been granted.			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Describe any variances that have been granted to zoning code.			See Exhibit P to this Public Report.	

**1.14 Other Zoning Compliance Matters**

Conforming/Non-Conforming Uses, Structures and Lots	
<p>In general, a non-conforming use, structure or lot is a use, structure or lot that was lawful at one time but that does not now conform to present zoning requirements. Under present zoning requirements, limitations may apply to extending, enlarging or continuing the non-conformity and to altering and repairing non-conforming structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.</p> <p>If a variance has been granted or if uses, structures or lots are either non-conforming or illegal, the purchaser should consult with county zoning authorities as to possible limitations that may apply in situations such as those described above.</p> <p>A purchaser may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot.</p>	

	Conforming	Non-Conforming	Illegal
Uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Structures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lot	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<p>If a non-conforming use, structure or lot exists in this project, this is what will happen under existing laws or codes if the structure is damaged or destroyed: See Exhibit P to this Public Report.</p>
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**1.15 Conversions**

<p><b>Developer's statements regarding units that may be occupied for residential use and that have been in existence for five years or more.</b></p>	<p><input type="checkbox"/> <b>Applicable</b>  <input checked="" type="checkbox"/> <b>Not Applicable</b></p>
<p>Developer's statement, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units:</p>	
<p>Developer's statement of the expected useful life of each item reported above:</p>	
<p>List of any outstanding notices of uncured violations of any building code or other county regulations:</p>	
<p>Estimated cost of curing any violations described above:</p>	

<p><b>Verified Statement from a County Official</b></p>	
<p>Regarding any converted structures in the project, attached as <b>Exhibit ____</b> is a verified statement signed by an appropriate county official which states that either:</p>	
<p>(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:</p> <ul style="list-style-type: none"> <li>(i) Any variances or other permits that have been granted to achieve compliance;</li> <li>(ii) Whether the project contains any legal non-conforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and</li> <li>(iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance;</li> </ul> <p style="text-align: center;">or</p> <p>(B) Based on the available information, the county official cannot make a determination with respect to the foregoing matters in (A) above.</p>	
<p>Other disclosures and information:</p>	

**1.16 Project In Agricultural District**

<p><b>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii?</b>  <b>If answer is "Yes", provide information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable state and county land use laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation.</p>	
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable county real property tax laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation and state whether there are any penalties for noncompliance.</p>	
<p>Other disclosures and information:</p>	

**1.17 Project with Assisted Living Facility**

<p><b>Does the project contain any assisted living facility units subject to Section 321-11(10), HRS?</b>  <b>If answer is "Yes", complete information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Licensing requirements and the impact of the requirements on the costs, operations, management and governance of the project.</p>	
<p>The nature and the scope of services to be provided.</p>	
<p>Additional costs, directly attributable to the services, to be included in the association's common expenses.</p>	
<p>The duration of the provision of the services.</p>	
<p>Other possible impacts on the project resulting from the provision of the services.</p>	
<p>Other disclosures and information.</p>	

## 2. PERSONS CONNECTED WITH THE PROJECT

<p><b>2.1 Developer(s)</b></p>	<p>Name: KRC Partners LLC          Business Address: 615 Piikoi Street, Suite 808          Honolulu, Hawaii 96814          Business Phone Number: 808-237-5289          E-mail Address: <a href="mailto:dbierwert@thmhawaii.com">dbierwert@thmhawaii.com</a></p>
<p>Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary).</p>	<p>KRC Partners Holdings LLC ("KP Holdings"), Manager          David L. Bierwert, Manager of KRC Partners Holdings LLC          Samuel J. Chung, Manager of KRC Partners Holdings LLC          Serge M. Krivatsy, Manager of KRC Partners Holdings LLC</p>
<p><b>2.2 Real Estate Broker</b></p>	<p>Name: Concepts Unlimited, Inc.          dba Concepts Unlimited GMAC Real Estate          Business Address: 975 Kapiolani Blvd          Honolulu, HI 96814          Business Phone Number: 808-593-1888          E-mail Address: <a href="mailto:frank.leslie@gmachawaii.com">frank.leslie@gmachawaii.com</a>          License Number: RB-14485</p>
<p><b>2.3 Escrow Depository</b></p>	<p>Name: Title Guaranty Escrow Services, Inc.          Business Address: 235 Queen Street          Honolulu, HI 96813          Business Phone Number: 808-521-0211</p>
<p><b>2.4 General Contractor</b></p>	<p>Name: Nordic PCL Construction Inc.          Business Address: 1099 Alakea Street, Suite 1560          Honolulu, HI 96813          Business Phone Number: 808-541-9101          License Number: ABC-17</p>
<p><b>2.5 Condominium Managing Agent</b></p>	<p>Name: Hawaiiana Management Company, Ltd.          Business Address: 711 Kapiolani Blvd., Suite 700          Honolulu, HI 96813          Business Phone Number: 808-593-9100</p>
<p><b>2.6 Attorney for Developer</b></p>	<p>Name: Schneider Tanaka Radovich Andrew &amp; Tanaka, LLLC          Attn.: David F. Andrew          Business Address: 1100 Alakea Street, Suite 2100          Honolulu, Hawaii 96813          Business Phone Number: 808-792-4200</p>

### 3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances (Regular System) or filing in the Office of the Assistant Registrar of the Land Court, or both, a Declaration of Condominium Property Regime, a Condominium Map and the Bylaws of the Association of Unit Owners. The Condominium Property Act (Chapter 514B, HRS), the Declaration, Bylaws and House Rules control the rights and obligations of the unit owners with respect to the project and the common elements, to each other, and to their respective units.

#### 3.1 Declaration of Condominium Property Regime

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

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	February 18, 2009	2009-024196

#### Amendments to Declaration of Condominium Property Regime

Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.2 Bylaws of the Association of Unit Owners

The Bylaws of the Association of Unit Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Unit 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 that affect how the condominium project will be governed.

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	February 18, 2009	2009-024197

#### Amendments to Bylaws of the Association of Unit Owners

Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.3 Condominium Map

The Condominium Map contains a site plan and floor plans, elevations and layout of the condominium project. It also shows the floor plan, unit number and dimensions of each unit.

Land Court Map Number	
Bureau of Conveyances Map Number	4776
Dates of Recordation of Amendments to the Condominium Map:	

### 3.4 House Rules

The Board of Directors may adopt rules and regulations (commonly called "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. Changes to House Rules do not need to be recorded to be effective.

The House Rules for this project:

Are Proposed	<input type="checkbox"/>
Have Been Adopted and Date of Adoption	<input checked="" type="checkbox"/> February 19, 2009
Developer does not plan to adopt House Rules	<input type="checkbox"/>

### 3.5 Changes to the Condominium Documents

Changes to Condominium Documents: Changes to the Declaration, Bylaws and Condominium Map are effective only if they are duly adopted and recorded. Where permitted, the minimum percentages of the common interest that must vote for or give written consent to changes to the Declaration, Bylaws and Condominium Map are set forth below. The percentages for any individual condominium project may be more than the minimum set by law if the Declaration or Bylaws for the project so provide.

Document	Minimum Set by Law	This Condominium
Declaration	67%	67%
Bylaws	67%	67%

### 3.6 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents

<input type="checkbox"/>	No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).
<input checked="" type="checkbox"/>	Developer has reserved the right to change the Declaration, Bylaws, Condominium Map and House rules (if any) and to add to or merge the project or to develop the project in one or more phases, and such rights are summarized as follows:  See <b>Exhibit I</b>

## 4. CONDOMINIUM MANAGEMENT

### 4.1 Management of the Common Elements

**Management of the Common Elements:** The Association of Unit 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.

The Initial Condominium Managing Agent for this project is (check one):

<input checked="" type="checkbox"/>	Not affiliated with the Developer
<input type="checkbox"/>	None (self-managed by the Association)
<input type="checkbox"/>	The Developer or an affiliate of the Developer
<input type="checkbox"/>	Other (explain)

**NOTE:** The Developer, on behalf of the Association, has entered into a Management Agreement with Hawaiiana Management Company, Ltd. for the management of the Project. As set forth in the Bylaws, the Association shall be required to accept the Association's obligations under the Management Agreement.

### 4.2 Estimate of the Initial Maintenance Fees

**Estimate of the Initial Maintenance Fees:** The Association will make assessments against your unit 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 unit and the unit 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 J** contains a breakdown of the estimated annual maintenance fees and the monthly estimated maintenance fee for each unit, certified to have been based on generally accepted accounting principles, with the Developer's statement as to when a unit owner shall become obligated to start paying the unit owner's share of the common expenses.

### 4.3 Utility Charges to be Included in the Maintenance Fee

If checked, the following utilities are included in the maintenance fee:

<input checked="" type="checkbox"/>	Electricity for the common elements
<input type="checkbox"/>	Gas
<input checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer
<input type="checkbox"/>	TV Cable
<input checked="" type="checkbox"/>	Other (specify) refuse collection; telephone for elevator, activity room and enterphone

### 4.4 Utilities to be Separately Billed to Unit Owner

If checked, the following utilities will be billed to each unit owner and are not included in the maintenance fee:

<input checked="" type="checkbox"/>	Electricity for the unit only
<input type="checkbox"/>	Gas for the unit only
<input type="checkbox"/>	Water
<input type="checkbox"/>	Sewer
<input checked="" type="checkbox"/>	TV cable
<input checked="" type="checkbox"/>	Other (specify) – telephone service for units



## 5. SALES DOCUMENTS

### 5.1 Sales Documents Filed with the Real Estate Commission

Sales Documents on file with the Commission include, but are not limited to, the following:	
<input checked="" type="checkbox"/>	Specimen Sales Contract <b>Exhibit K</b> contains a summary of the pertinent provisions of the two versions of the sales contracts, including, but not limited to, any rights reserved by the Developer.
<input checked="" type="checkbox"/>	Escrow Agreement dated: December 24, 2008 Name of Escrow Company: Title Guaranty Escrow Services, Inc. <b>Exhibit L</b> contains a summary of the pertinent provisions of the escrow agreement.
<input type="checkbox"/>	Other

### 5.2 Sales to Owner-Occupants

If this project contains three or more residential units, the Developer shall designate at least fifty percent (50%) of the units for sale to Owner-Occupants.

<input type="checkbox"/>	The sales of units in this project are subject to the Owner-Occupant requirements of Chapter 514B.*
<input type="checkbox"/>	Developer has designated the units for sale to Owner-Occupants in this report. See <b>Exhibit</b> ____.
<input type="checkbox"/>	Developer has or will designate the units for sale to Owner-Occupants by publication.

\*Pursuant to HRS Section 514B-99.5(a)(1), because the Project is being developed pursuant to HRS Chapter 201H, the Owner-Occupant requirements of HRS Chapter 514B do not apply to the sales of units in the Project. Sales of the Affordable Units will be subject to the owner-occupant requirements relating to projects developed under HRS Chapter 201H. There will also be an initial 30-day period during which the market-priced units must be offered to "qualified residents".

### 5.3 Blanket Liens

Blanket Liens: A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project or more than one unit that secures some type of monetary debt (such as a loan) or other obligation. Blanket liens (except for improvement district or utility assessments) must be released as to a unit before the developer conveys the unit to a purchaser. The purchaser's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the unit to the purchaser.	
<input type="checkbox"/>	There are <u>no blanket liens</u> affecting title to the individual units.
<input checked="" type="checkbox"/>	There are <u>blanket liens</u> that may affect title to the individual units.

<u>Type of Lien</u>	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
Existing mortgages and future mortgages for project construction (as well as related financing statements), securing loans to the Developer.	The loans are secured by mortgages, which will be released as to the unit being conveyed at the time of conveyance. If there is a default and foreclosure of a mortgage prior to conveyance, the buyer's contract will be subject to cancellation and the buyer may lose the right to buy the unit. Unless the buyer's deposit has been released to help pay for project construction costs (as described in Section 5.6 below), the buyer will receive his/her deposit back, less a cancellation fee. If there is a default, foreclosure and cancellation and if the buyer's deposit has been released to help pay for construction costs, then the buyer may lose his/her deposit.

The buyer subordinates the buyer's interest arising under the Sales Contract to the security interests of the lender, including, but not limited to, any lien, mortgage or charge securing the loan, any other loan that may be made to finance the costs of construction and other costs during such construction and all interest to be paid by the Developer on the loan and the other loans, until the recordation of the unit deed.

**5.4 Construction Warranties**

Construction Warranties: Warranties for individual units and the common elements, including the beginning and ending dates for each warranty (or the method of calculating them), are as set forth below:

Building and Other Improvements: None, but note the following: The Developer makes no warranties itself with respect to the building or other improvements. However, unit owners (for the units) and the Association (for the common elements) will have the benefit of the remaining term of those warranties given to the Developer by the general contractor for the project. The general contractor's warranty to the Developer will be one year from the date of substantial completion of the project. This means that a warranty claim must be made to the general contractor within that one-year period. As such, depending on when the buyer takes title to the unit, the warranty for the buyer may not be in effect for a full year after the buyer takes title. In fact, if the buyer takes title to the unit more than one year after substantial completion of the project, the buyer will not gain any benefit from the one-year warranty. Also, depending on when the Association takes control of the common element, the warranty for the Association may not be in effect for a full year after the Association takes control of the common element. If the Association takes control of the common elements more than one year after substantial completion of the project, the Association will not gain any benefit from the one-year warranty.

Developer shall provide each initial unit owner and the Association with an Owner's Guidebook containing product information and/or information on any warranty that is available to the buyer and the Association, including the process, if any, for submitting a claim under such warranty, as well as the names and contact numbers of subcontractors and materialmen provided by the general contractor.

Developer disclaims any implied warranty of habitability, any implied warranty of merchantability, any implied warranty of fitness for a particular purpose or use, any implied warranty of workmanship, and any other express or implied warranties, with respect to the units, the Project, or the common elements thereof.

Appliances: None, but note the following: The Developer makes no warranties itself with respect to appliances or other consumer products installed in any unit or in the common elements. However, unit owners (for the appliances in the units) and the Association (for any appliances in the common elements) will have the benefit of the remaining term of those warranties given to the Developer by the general contractor for the appliances originally installed in the unit by the general contractor. The general contractor's warranty to the Developer for such appliances will be one year from the date of substantial completion of the project. This means that a warranty claim must be made to the general contractor within that one-year period. As such, depending on when the buyer takes title to the unit, the appliance warranty for the buyer may not be in effect for a full year after the buyer takes title. If the buyer takes title to the unit more than one year after substantial completion of the project, the buyer will not gain any benefit from the one-year warranty. Also, depending on when the Association takes control of a common element appliance, the warranty for the Association may not be in effect for a full year after the Association takes control of the appliance. If the Association takes control of the appliance more than one year after substantial completion of the project, the Association will not gain any benefit from the one-year warranty.

Developer disclaims any implied warranty of habitability, any implied warranty of merchantability, any implied warranty of fitness for a particular purpose or use, any implied warranty of workmanship, and any other express or implied warranties, with respect to any appliances and furnishings contained within the units or the Project.

## 5.5 Status of Construction, Date of Completion or Estimated Date of Completion

### Status of Construction:

Construction of the building (and the units therein) is anticipated to begin in approximately July 2009. Construction of the building is estimated to be complete in approximately December 2010. However, except as set forth below and in the sales contracts for individual units, no warranties or representations are made as to when the building or individual units will be completed.

**Completion Deadline:** If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.

**Completion Deadline for any unit not yet constructed, as set forth in the sales contract:**

1. Subject to the occurrence of force majeure (defined in the sales contract), the developer agrees that construction of the units that are sold pursuant to the "99-Unit Version" of the Sales Contract (referenced in **Exhibit K** below) will be completed on or before three years after the applicable sales contract "becomes binding" (as described in Section 514B-89 of the Act).
2. Subject to the occurrence of force majeure (defined in the sales contract), the developer agrees that construction of the units that are sold pursuant to the "2-Year Completion Version" of the Sales Contract (referenced in **Exhibit K** below) will be completed on or before two years after the applicable buyer signs the applicable sales contract.

**Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:**

## 5.6 Developer's Use of Purchaser Deposits to Pay for Project Construction Costs Before Closing or Conveyance

The Developer is required to deposit all moneys paid by purchasers in trust under a written escrow agreement with a Hawaii licensed escrow depository. Escrow shall not disburse purchaser deposits to the Developer or on behalf of the Developer prior to closing, except if a sales contract is canceled or if Developer has met certain requirements, which are described below.

### 5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance

The Developer hereby declares by checking the box to the left that it shall use its own funds to complete the construction of the condominium project by the date indicated in Section 5.5 of this report, and the Developer, pursuant to its own analysis and calculations, certifies that it has sufficient funds to complete the construction of the condominium project.

*If this box is checked, Sections 5.6.2, which follows below, will not be applicable to the project.*

**5.6.2 Purchaser Deposits Will Be Disbursed Before Closing**

Hawaii law provides that, if certain statutory requirements are met, purchaser deposits in escrow under a binding sales contract may be used before closing to pay for certain project costs. For this project, the Developer indicates that purchaser deposits may be used for the following purposes (check applicable box):

<input checked="" type="checkbox"/>	For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person; or
<input type="checkbox"/>	For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses.

In connection with the use of purchaser deposits (check Box A or Box B):

<p><b>Box A</b> <input type="checkbox"/></p>	<p>The Developer has submitted all information and documents required by law and the Commission prior to the disbursement of purchaser deposits before closing. This means that the Developer may use such deposits before closing. If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>If Box A is checked, you should read and carefully consider the following notice, which is required by law:</p> <p><b><u>Important Notice Regarding Your Deposits:</u></b> Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.</p>
<p><b>Box B</b> <input checked="" type="checkbox"/></p>	<p>The Developer has <u>not</u> submitted all information and documents required by law and the Commission, and, until all such information and documents are submitted, thus, the Developer cannot use purchaser deposits.</p> <p>If the Developer later submits all information and documents required by law and the Commission for the use of purchaser deposits, then the Developer must provide an amendment to this report or an amended developer's public report to each purchaser who has signed a sales contract. At such time, the <b><u>Important Notice Regarding Your Deposits</u></b> set forth immediately above will apply to all purchasers and will be restated in the amendment to this report or an amended developer's public report. When an effective date for such an amendment or an amended developer's public report is issued, <b><u>you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment.</u></b> (This, however, does not affect your right to rescind for material changes or any other right you may have to rescind or cancel the sales contract, as described in Section 5.8 below.) If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>You should understand that, although the <b><u>Important Notice Regarding Your Deposits</u></b> set forth above does not currently apply to you, it might apply to you in the future, and, therefore, you should read and carefully consider it now to ensure that you understand the risk involved in deciding whether to proceed with your purchase.</p>

**Material House Bond.** If the Developer has submitted to the Commission a completion or performance bond issued by a material house instead of a surety as part of the information provided prior to the use of purchaser deposits prior to closing or conveyance of a unit, the Developer shall disclose the same below and disclose the impact of any restrictions on the Developer's use of purchaser deposits.

## 5.7 Rights Under the Sales Contract

Before signing the sales contract, prospective purchasers should carefully review all documents relating to the project. These include but are not limited to the documents listed below. Items 2, 3 and 4 are made a part of this public report, as well as Item 5, if any, and are being delivered to you with this report.

1.	<b>Developer's Public Report</b>
2.	<b>Declaration of Condominium Property Regime (and any amendments)</b>
3.	<b>Bylaws of the Association of Unit Owners (and any amendments)</b>
4.	<b>Condominium Map (and any amendments)</b>
5.	House Rules, if any
6.	Escrow Agreement
7.	Hawaii's Condominium Property Act (Chapter 514B, HRS, as amended) and Hawaii Administrative Rules (Chapter 16-107, adopted by the Real Estate Commission, as amended), provided that rules and regulations under Chapter 514B have not yet been adopted.
8.	Other: None

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 514B, HRS) and the Administrative Rules (Chapter 107, HAR), 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 rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

## 5.8 Purchaser's Right to Cancel or Rescind a Sales Contract

A purchaser's right to cancel a sales contract or to rescind a sales contract may arise under varying circumstances. In the sections below, some circumstances that will give rise to a purchaser's right to cancel or rescind are described, together with what a purchaser must do if the purchaser wishes to exercise any of the rights.

### 5.8.1 When a Sales Contract becomes Binding and Purchaser's 30-Day Right to Cancel a Sales Contract

A sales contract signed by a purchaser and the developer will not become binding on a purchaser or the Developer until the following events have taken place:

- (1) The purchaser has signed the sales contract.
- (2) The Developer has delivered to the purchaser a true copy of the developer's public report with an effective date issued by the Commission, together with all amendments to the report as of the date of delivery, and the project's recorded Declaration and Bylaws, House Rules (if any), the Condominium Map and any amendments to them to date (all of which are a part of the developer's public report). If it is impracticable to include a letter-sized Condominium Map, the Developer must provide written notice of an opportunity to examine the Condominium Map.
- (3) The Developer has delivered to the purchaser a notice of the purchaser's 30-day cancellation right on a form prescribed by the Commission.
- (4) The purchaser does at least one of the following:
  - (a) Waives the purchaser's right to cancel the sales contract within 30 days from receipt of the notice of the purchaser's 30-day cancellation right; or

- (b) Allows the 30-day cancellation period to expire without exercising the right to cancel; or
- (c) Closes the purchase of the unit before the 30-day cancellation period expires.

The purchaser or the Developer may cancel the sales contract at any time during the 30-day cancellation period, and the sales contract will be canceled and the purchaser's deposits returned to the purchaser, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

### **5.8.2 Right to Cancel a Sales Contract if Completion Deadline Is Missed**

In addition to the purchaser's 30-day cancellation right described in Section 5.8.1 above, when a sales contract is signed before completion of construction of a project, the purchaser will have the right to cancel if the unit is not completed by certain deadlines. In conversion projects, there must be a deadline for completion of any required repairs. Every sales contract shall contain an agreement of the Developer that the completion of construction shall occur on or before the completion deadline, and that completion deadline is set forth in this report in Section 5.5. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. Upon a cancellation, the purchaser's deposits shall be refunded, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.00.

### **5.8.3 Purchaser's Right to Rescind a Binding Sales Contract After a Material Change**

If a "material change" in a project occurs after a purchaser has signed a sales contract that has become binding, the purchaser will have a 30-day right to rescind after notification and description of the material change. A material change is defined in the Condominium Property Act to be any change that "directly, substantially and adversely affects the use or value of (1) a purchaser's unit or appurtenant limited common elements; or (2) those amenities of the project available for the purchaser's use."

The purchaser will be informed of the material change by the developer on a form prescribed by the Commission containing a description of the material change.

After notice of the material change, the purchaser may waive the right to rescind by:

- (1) Checking the waiver box on the rescission form; or
- (2) Letting the 30-day rescission period expire, without taking any action to rescind; or
- (3) Closing the purchase of the unit before the 30-day rescission period expires.

The rescission form must be signed by all purchasers of the affected unit and delivered to the developer no later than midnight of the 30<sup>th</sup> calendar day after the purchasers received the rescission form from the developer. Purchasers who validly exercise the right of rescission shall be entitled to a prompt and full refund of any moneys paid.

A rescission right shall not apply in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the project's Declaration.

These provisions shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies.

## 6. MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT

1. Owner-Occupancy Requirement. The Affordable Units in the Project are subject to certain restrictions imposed by the Hawaii Housing Finance and Development Corporation ("HHFDC"), which require, among other things, that each Affordable Unit owner also be the occupant of such owner's unit. These restrictions grant HHFDC the right to repurchase the Affordable Unit in the event the owner-occupancy requirement is violated or in the event the Affordable Unit owner desires to sell or transfer the Affordable Unit. These restrictions are more particularly set forth in Exhibit M attached hereto and will be among the conditions set forth in the deed from the Developer to the buyer of the Affordable Unit.

2. Eligibility Requirements. Prospective purchasers of Affordable Units must meet all the eligibility requirements of HHFDC in order to purchase an Affordable Unit in this Project. Accordingly, such purchasers must comply with all HHFDC requirements in addition to the requirements contained in the Sales Contract. See Exhibit N attached hereto.

NOTE: Exhibits M, N, O and Q should be read with care. They vitally affect buyer's rights and obligations with respect to the use and sale of their Affordable Units.

3. Condominium Living. In any multi-family dwelling/structure, sound may be audible between units. Due to the proximity of one unit to another and of units to common elements, various noises and vibrations inherent in the occupancy of a unit within a multi-family condominium project (including plumbing, impact, automobiles in the parking garage and driveways (including the squeaking of rubber tires), elevator operation, adjacent neighbors, wind-related noises and other types of noises) may result. Further, the Project is located in an area where noise and vibration levels may exceed ordinary noise and vibration level standards for other residential areas. There is also the possibility of smells (e.g., barbeque odors, other cooking odors, perfumes, and other odors), smoke (from tobacco and other smoking substances), fumes and other nuisances being transmitted between units and from the common elements.

4. Mold. Mold and mold spores are present throughout the environment and the process of constructing dwellings is not, and cannot be, designed to exclude mold spores. If the growing conditions are favorable, mold can grow in the Unit. Once the buyer takes ownership of the Unit, the buyer shall assume responsibility for taking appropriate steps to reduce or eliminate mold growth in the Unit.

5. Inspection of Unit. There shall be a unit inspection program for each buyer. The requirements and procedures for the inspection program are set forth in the sales contract that Buyer will sign to purchase the Unit. The existence of defects or damages to the Unit shall not affect the Buyer's obligations to make the required payments and consummate the purchase of the Unit, provided any such defects or damages do not render the Unit uninhabitable.

6. Developer's Remedies for Buyer's Delay. In addition to other remedies the Developer shall have, in the event closing of the sale of the Unit does not occur as called for in the sales contract by reason of the Buyer's failure to comply with any provision of the sales contract, the Buyer shall pay to the Developer \$300.00 per day through and including the actual date of closing.

7. Developer's Default/Buyer's Remedy. If the developer materially defaults under the 99-Unit Version of the sales contract prior to Closing, then, subject to certain conditions set forth in the 99-Unit Version of the sales contract and if the Buyer is not in material default under the 99-Unit Version of the sales contract, the Buyer shall be entitled, as the Buyer's sole and exclusive remedy, to terminate the 99-Unit Version of the sales contract and to receive a refund of all deposits (with interest earned thereon, if any), plus liquidated damages in the amount of \$5,000.00. The Developer's Default provision in the 2-Year Completion Version of the sales contract contains different provisions and does not include the liquidated damages provision. Refer to Exhibit K of this Public Report – Summary of Specimen Sales Contract.



8. Views Not Assured. Each Buyer acknowledges and agrees that the Developer has made no, and makes no, representations or warranties with respect to the presence or continued existence of any views or view planes from any portion of the Project or any Unit, and further understands and acknowledges (a) that the completion of the Project and the future development of land adjacent to or in the immediate vicinity of the Project may have a detrimental effect on the views from the Units and from other parts of the Project, (b) that there are no view easements or rights appurtenant to the Units or the Project, and (c) that views from the Units and the Project are not assured in any way. There are currently a number of buildings in the vicinity of the Project that are tall enough to impact whatever views there may be from the Project. The majority of the units on the Mauka side of the Project face into the Kulana Hale building that is located on the adjacent property. Buyers are advised to consider the impact of these buildings.

9. Negotiation, Mediation and Arbitration. Except as specifically permitted in the sales contract that Buyer will sign to purchase the Unit, no judicial or administrative (inclusive of arbitration) proceeding shall be commenced or maintained by the Buyer. The sales contract sets forth very specific requirements and prohibitions with respect to resolving disputes, including requirements relating to negotiation, mediation and arbitration.

10. Developer's Right to Change Documents. The Developer reserves the right to revise and/or amend the Declaration, the Bylaws, the Condominium Map, the Project Rules and other documents for certain reasons and subject to certain limitations, as set forth in the sales contract. By signing the sales contract, the Buyer will be agreeing to execute all documents and to do all things necessary or convenient to effect such rights.

11. Developer Makes No Promises or Warranty About the Amount of Monthly Maintenance Fees. By signing a sales contract, Buyer will be representing and agreeing that Buyer has had an opportunity to examine and has approved the estimate of monthly maintenance fees and assessments for the Project as shown in this Public Report. Buyer is aware that such amounts are only estimates and may change for reasons beyond the control of Developer, and Buyer specifically accepts and approves any changes in such estimates. Buyer is also aware that such estimates do not include Buyer's obligation for payment of real property taxes or utilities billed directly to Buyer. Buyer understands and agrees that such estimates are not intended to be and do not constitute any representation, warranty or promise by Developer, including, but not limited to, any representation, warranty or promise as to the accuracy of such estimates.

12. Management Agreement. The Developer, on behalf of the Association, has entered into a Management Agreement with Hawaiiana Management Company, Ltd. for the management of the Project. As set forth in the Bylaws, the Association shall be required to accept the Association's obligations under the Management Agreement.

13. Developer Makes No Representations or Promises About Rentals or Other Economic Benefits. By signing a sales contract, Buyer will be agreeing that neither Developer nor any salesperson or other person affiliated with or in any way related to Developer has talked to Buyer at all about any rental income or rental, management or sales services for Buyer's unit. If Buyer wants to rent or sell the unit, how Buyer does it will be up to Buyer. Buyer will also be agreeing that neither Developer nor any salesperson or other person affiliated with or in any way related to Developer has talked to Buyer at all about income from the unit or any other economic benefit to be derived from the purchase or ownership of the unit or about the tax effects of buying the unit. Buyer is advised to contact his or her own advisers on all such matters.

14. Real Property Taxes. There may be a period of time after closing where the City and County of Honolulu will issue just one real property tax bill for the entire Project for a particular fiscal year. That means that separate tax bills will not be issued to the individual unit owners for that fiscal year. Consequently, the real property taxes assessed against the Project for that fiscal year would be common

expenses of the Project that will be paid by the Association and billed to the individual unit owners. Unit owners will be responsible for paying their proportionate share of the real property taxes for that year based on their unit's common interest. As a further result of the delay in issuing individual tax bills, at closings, the Developer will allocate real property taxes among the Units based on the ratio of their respective common interests and shall collect the respective post-closing pro rata amounts from the buyers at closing. Developer shall be responsible for any real property taxes attributable to the units prior to closing. Once the County issues separate real property tax bills to the Project's unit owners, the unit owners will be responsible for paying their respective bills.

15. Resident Manager's Unit. Unit 810 is initially designated as the resident manager's unit. Accordingly, Unit 810 is not available for sale to the general public. This unit shall be sold to a third party who shall be required by recorded covenant (in the deed of the unit) or by contract to rent the unit to the Project's Association of Unit Owners for use as a resident manager's unit. The amount of the rent shall be based on the negotiated market rate for such a unit, plus the maintenance fees for the unit. Until all units in the Project are sold and conveyed, the Developer shall have the right to change which unit shall be the resident manager's unit.

16. Restrictions on Pets and Occupancy. In Section 1.11 (on page 5) of this Public Report, there is a brief description of the Project's restrictions on pets and occupancy. Because these restrictions on pets and occupancy are in the Project Rules rather than the Project's Declaration or Bylaws, they are subject to amendment by the Board of Directors at any time and without vote of the unit owners.

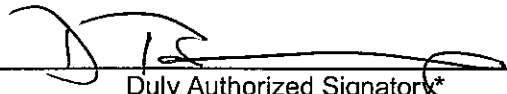
EACH BUYER AGREES TO ACCEPT EACH CONDITION, CIRCUMSTANCE AND RISK DESCRIBED ABOVE, ELSEWHERE IN THIS PUBLIC REPORT AND IN ANY OF THE OTHER REPORTS OR INFORMATION PROVIDED BY DEVELOPER, AND FURTHER AGREES THAT NEITHER DEVELOPER, NOR DEVELOPER'S MEMBERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, PROPERTY MANAGERS, AGENTS, OR ANY OF THEIR RESPECTIVE SUCCESSORS OR ASSIGNS, SHALL BE RESPONSIBLE FOR CORRECTING ANY SUCH CONDITIONS.

The Developer declares subject to the penalties set forth in Section 514B-69, HRS, that this project conforms to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the project is located, all in accordance with Sections 514B-5 and -32(a)(13), HRS.

For any conversion, if any variances have been granted, they are specified in Section 1.14 of this report, and, if purchaser deposits are to be used by the Developer to cure any violations of zoning, permitting requirements or rules of the county in which the project is located, the violation is specified in Section 1.15 of this report, along with the requirements to cure any violation, and Section 5.5 specifies the date by which the cure will be completed.

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 purchasers 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. The Developer hereby agrees promptly to amend this report to report and include either or all material facts, material or pertinent changes to any information contained in or omitted from this report and to file annually a report to update the material contained in this report at least 30 days prior to the anniversary date of the effective date of this report.

KRC Partners LLC, a Hawaii limited liability company  
By KRC Partners Holdings LLC, Its Manager  
\_\_\_\_\_  
Printed Name of Developer

By:  \_\_\_\_\_  
Duly Authorized Signatory\*

December 26, 2008  
Date

\_\_\_\_\_  
David L. Bierwert, Its Manager  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, City and County of Honolulu

Planning Department, City and County of Honolulu

**\*Must be signed for a corporation by an officer; for a partnership or limited liability partnership (LLP) by the general partner; for a limited liability company (LLC) by the manager or an authorized member; and for an individual by the individual.**

EXHIBIT A  
Unit Types and Sizes of Units

<u>Unit Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)*</u>	<u>Identify</u>	<u>Total Area</u>
01	16	1/1	546	38	Lanai	584
02	16	1/1	354	32	Lanai	386
03	16	2/1	693	42	Lanai	735
04	15	2/2	739	42	Lanai	781
05	16	2/2	701	37	Lanai	738
06	15	2/2	744	47	Lanai	791
07	16	1/1	619	50	Lanai	669
08	15	2/2	752	36	Lanai	788
09	16	1/1	524	38	Lanai	562
10	16	1/1	513	30	Lanai	543
11	16	2/1	705	33	Lanai	738
804	1	2/2	739	569	Lanai	1,308
806	1	2/2	744	538	Lanai	1,282
808	1	2/2	752	540	Lanai	1,292

\*\* The approximate net area of each Unit as set forth above is measured from the interior surface of the unit's perimeter walls and includes all of the walls, columns, shafts and partitions within its perimeter walls, whether load-bearing or non-load-bearing and whether among the Common Elements or not. The floor areas shown are approximate only.

Other documents and maps may give floor area figures that differ from those above because a different method of determining the floor area may have been used. The areas of the units are likely to vary somewhat. Even units of the same type may differ in their actual areas. The actual area of a particular unit as built may vary somewhat from the figure shown above.

EXHIBIT B  
Parking Stall Assignments

Unit No.	Parking Stall(s)	Unit No.	Parking Stall(s)
801	626	1207	608
802	519c	1208	408
803	433	1209	610
804	434	1210	403
805	112c	1211	118c
806	501	1401	603
807	627	1402	530c
808	502	1403	333
809	631	1404	334
810	108	1405	228c
811	614	1406	401
901	621	1407	604
902	518c	1408	402
903	427	1409	605
904	609	1410	332
905	309HC	1411	229c
906	432	1501	426
907	431	1502	419c
908	507HC	1503	322
909	307HC	1504	326
910	509	1505	207HC
911	622	1506	327
1001	615	1507	601
1002	517c	1508	331
1003	416	1509	602
1004	420	1510	409HC
1005	114c	1511	217c
1006	421	1601	532
1007	616	1602	418c
1008	422	1603	315
1009	620	1604	316
1010	415	1605	330c
1011	113c	1606	320
1101	611	1607	533
1102	528c	1608	321
1103	411	1609	534
1104	412	1610	314
1105	119c	1611	219c
1106	413	1701	526
1107	612	1702	417c
1108	414	1703	311
1109	613	1704	407HC
1110	410	1705	607HC
1111	120c	1706	312
1201	606	1707	527
1202	529c	1708	313
1203	404	1709	531
1204	405	1710	310
1205	230c	1711	329c
1206	406	1801	520

Unit No.	Parking Stall(s)	Unit No.	Parking Stall(s)
1802	428c	2107	511
1803	304	2108	423
1804	305	2109	512
1805	629c	2110	211
1806	306	2111	701
1807	521	2201	202
1808	308	2202	318c
1809	522	2203	204
1810	303	2204	325
1811	630c	2205	704
1901	231c	2206	324
1902	429c	2207	508
1903	233	2208	323
1904	234	2209	510
1905	617c	2210	203
1906	301	2211	703
1907	515	2301	127
1908	302	2302	317c
1909	516	2303	129
1910	232	2304	225
1911	628c	2305	706
2001	216	2306	224
2002	430c	2307	505
2003	221	2308	223
2004	222	2309	506
2005	619c	2310	128
2006	226	2311	705
2007	513	2401	109
2008	227	2402	328c
2009	514	2403	111
2010	220	2404	126
2011	618c	2405	710
2101	210	2406	125
2102	319c	2407	503
2103	212	2408	124
2104	425	2409	504
2105	702	2410	110
2106	424	2411	708

**Note:** All parking stalls are covered, except stall numbers 626, 627 and 702, which are uncovered. If a parking stall is marked with a "c" on the list above, then it is a parking stall that is "compact" in size. If a parking stall is marked with an "HC" on the list above, then it is a parking stall that is handicapped accessible. A parking stall not marked with a "c" or an "HC" on the list above is a parking stall that is regular (or "standard") in size. Any additional "c" or "HC" markings appearing on the list above are for informational purposes only and do not constitute part of the legal identification of a parking stall, the sole means of legal identification being the numerical designation of the parking stall.

EXHIBIT C  
Boundaries of the Units

Each Unit shall be deemed to include (a) all walls, columns, and partitions that are not load-bearing within the Unit's perimeter walls, (b) the surface area immediately interior (i.e., towards the interior of the Unit) from the undecorated or unfinished surfaces of all floors, ceilings, doors, door frames, window frames, interior load-bearing columns, girders, beams, and perimeter party or perimeter non-party walls (meaning that the entirety of all paint, wall paper, and floor covering (and, in the case of the floors, everything on top of the foundation or floor slab (whether made of concrete or other material)) is included as part of the Unit), (c) any doors or panels along the perimeter walls of such Unit, (d) all windows, including the glass or other material comprising the window, (e) the air space within the perimeter of the described area, (f) all appliances and fixtures, and replacements thereof, installed in the Unit, (g) all pipes, plumbing, shafts, ducts, pumps, wires, conduits, and other utility or service lines and facilities running through such Unit that are utilized for and serve only that Unit, (h) all cranks, rollers, and other window or sliding door hardware, and (i) all parts and appurtenances of any air conditioning unit that serves only the Unit (even if a portion of the air conditioning unit protrudes outside an exterior wall of the Unit). Anything in the previous sentence to the contrary notwithstanding, the respective Units shall not be deemed to include (u) the lanai shown on the Condominium Map, (v) the foundation or floor slab (whether made of concrete or other material), (w) the sub-surface portions of the ceilings (as opposed to the "surface areas" described above), (x) the sub-surface portions of the interior load-bearing columns, girders, and beams (as opposed to the "surface areas" described above), (y) any pipes, plumbing, shafts, ducts, pumps, wires, conduits, and other utility or service lines and facilities running through a Unit that are utilized for or serve more than one Unit, or (z) the exterior of any window frames, all of which are deemed Common Elements or Limited Common Elements, as appropriate.

EXHIBIT D  
Permitted Alterations to the Units

Following are relevant provisions from Section L of the Project's Declaration of Condominium Property Regime:

"2. Alterations to Units. The provisions of this Section L.2 apply to Alterations made to the Units or to Limited Common Elements appurtenant to the Units.

(a) Alterations Permitted. Notwithstanding anything to the contrary contained in this Declaration, including, without limitation, Section L.1, and except as otherwise provided by law, each Unit Owner shall have the following rights:

(i) Additions or Alterations Solely Within a Unit or Limited Common Element Not Requiring Board Approval. Each Unit Owner shall have the right, at any time and from time to time, at such Unit Owner's sole cost and expense, and without the consent of any other Person (unless governmental agencies require such consent), except Declarant, if Declarant owns a Unit in the Project, to make any of the following Alterations solely affecting and solely within, as applicable, the Owner's Unit or Limited Common Elements over which such Owner has sole control: (A) to install, maintain, remove, and rearrange partitions and other non-structural walls from time to time within such Unit or Limited Common Element as long as not readily visible from outside of the Unit or the Limited Common Element; (B) to finish, change, alter, or substitute any plumbing, electrical, or other fixtures attached to the ceilings, floors, or walls as shall be appropriate for the utilization of such Unit or Limited Common Element by such Owner or the Occupants thereof, provided there is no adverse effect on other Units or Limited Common Elements; (C) to paint, paper, panel, plaster, tile, finish, carpet, re-carpet, and otherwise change the appearance of any walls, floors, or ceilings of the Unit or Limited Common Element not readily visible from outside of the Unit or the Limited Common Element, subject to limitations on installation and replacement of hard floor surfaces in certain Units set forth in this Declaration and/or the Project Rules, and do or cause to be done such other work on the interior surfaces of the ceilings, floors, and walls of such Unit or Limited Common Elements; (D) to install, remove, rearrange, paint, finish, change, alter or substitute counters and cabinets within such Unit as long as not readily visible from outside of the Unit; and (E) to make Alterations to the Unit or Limited Common Elements that are not readily visible from outside of the Unit or the Limited Common Element to facilitate handicapped accessibility within the Unit or Limited Common Element.

(ii) Alterations to a Unit or Limited Common Element Requiring Board Approval. Each Unit Owner, only with the written consent of the Board of Directors (which consent shall not be unreasonably withheld), Declarant, if Declarant owns a Unit in the Project, and appropriate agencies of the State of Hawaii and the County (if such agencies so require), and with the written consent of all other Owners directly affected (as determined by the Board), shall have the right, at any time and from time to time, at such Unit Owner's sole cost and expense, and without the consent of any other Person, to make Alterations to the Unit or Limited Common Elements over which such Owner has sole control that are not covered under subsection (i) above or that are not "nonmaterial additions and alterations" (as defined in §514B-140 of the Act), including, without limitation, Alterations adversely affecting other Units or Limited Common Elements, Alterations that are readily visible from outside of the Unit or the Limited Common Element, and installation or replacement of hard floor surfaces beyond what was installed by Declarant.

(iii) Combining of Adjacent Units. A Unit Owner who owns two adjacent Units that are on the same level of the building and are separated by a Common Element wall shall have the right, at any time and from time to time at such Owner's sole cost and expense, and with the written consent of the Board of Directors (which consent shall not be unreasonably withheld), appropriate agencies of the State of Hawaii and the County (if such agencies so require), Declarant (if Declarant owns a Unit in the Project), and all other Owners directly affected (as determined by the Board), to alter or



remove all or portions of the intervening wall, if (A) the structural integrity of the building is not thereby adversely affected, and (B) the finish of the Common Element then remaining is then restored to a condition substantially comparable to that of the Common Element prior to such alterations, and (C) all construction activity necessary to any such alteration or removal shall be completed within a reasonable period of time after the commencement thereof, subject to extension for delays beyond the control of the Owner or its contractors, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence (as determined by the Board). The Owner may install a door or doors to such opening or openings in the intervening Common Element, may seal hallways, and may make other reasonable Alterations approved by applicable governmental authorities. Before the termination of the common ownership of any such adjacent Units, if the intervening wall shall have been altered or removed pursuant to the foregoing provisions and/or any entry to hallways sealed, the Owner of the Units shall be obligated to restore such intervening wall, floor, ceiling, and/or hallway entries to substantially the same condition they existed prior to such alteration or removal. The combining of adjacent Units shall not affect, or otherwise require the alteration of, the Common Interest allocable to any Unit. (As used above, "adjacent Units" does not include Units that are located above and beneath one another on different floors.)

(iv) No Division of Units. Other than Declarant and Units owned by Declarant, no Unit Owner shall divide a Unit into two or more Units; provided that this shall not prevent an Owner who had previously combined such Owner's adjacent Units (pursuant to subsection (iii) above) from restoring the adjacent units to substantially the same condition they existed prior to such combination.

(b) Prohibited Alterations. Nothing contained in Section L.2(a) shall authorize any Alteration that would: (i) jeopardize the soundness, safety, or structural integrity of any part of the Project; (ii) reduce the value of the Project or any Unit (unless authorized by the Owner of the affected Unit(s)); (iii) unreasonably interfere with or disturb the rights of other Owners (other than temporary inconveniences during the Alteration); (iv) materially increase the transfer of sounds, air, odors, or smoke to other Units or the Common Elements; (v) significantly increase the rate of fire insurance on the building or the contents of the building to an extent that all Unit Owners would be materially affected; (vi) affect or impair any easement or rights of any of the other Owners; or (vii) interfere with or deprive any non-consenting Owner of the use or enjoyment of those Common Elements used or available for use by such non-consenting Owner; subject, however, to the exclusive use of the Limited Common Elements. Further, nothing in this Section L shall prohibit the Board from effecting such changes within a Unit or Limited Common Element, or to require the same, in order that the building may continue to comply with applicable laws, including any fire code requirements.

(c) Board Approval Required. Anything in this Declaration, the Bylaws or the Rules to the contrary notwithstanding and in addition to the Alterations described in subsections (a)(ii) and (iii) above, none of the following actions can be taken by Persons other than Declarant without the prior written consent of the Board and Declarant (if Declarant owns a Unit in the Project): (i) Alterations that affect (or may affect) a structural component of any part of the Project; (ii) Alterations to a Unit's interior or exterior that are readily visible from the exterior of the Unit; (iii) Alterations to Common Elements; and (iv) any penetration by more than two inches of an exterior wall, an area separation wall, a floor, a roof or a ceiling. As examples, but without limitation, the following shall require the prior written approval of the Board and Declarant (if Declarant owns a Unit in the Project): the installation of any replacement or additional air conditioning units (aside from what was originally included in the Unit); the placement of exterior signs; and the installation of wiring or other devices for electrical or telephone installations that protrude through Common Element walls, Common Element windows or the ceiling above a Unit by more than two inches.

(d) General Requirements for Alterations.

(i) Approval Procedures. With respect to Alterations that require approval of the Board, the Board shall have the right and authority to establish such procedures that it deems appropriate for Owners to follow before any such Alteration to a Unit, to the Unit's Limited Common Elements or to the Common Elements can commence. The Board shall also have the right to form an architectural review committee to process any Alteration to a Unit or the Unit's Limited Common Elements. Further, the Board shall have the right to effect such changes within a Unit or Limited Common Element, or to require the same, in order that the building may continue to comply with applicable laws, including any fire code requirements.

(ii) Performance and Labor and Materials Payment Bond. With respect to Alterations that require approval of the Board, if the Alterations have an estimated cost of more than \$100,000 (C.P.I. Adjusted), then the Owner of the Unit shall obtain a performance and labor and materials payment bond (or other form of security acceptable to the Board), naming as obligees the Board, the Association and collectively all Unit Owners and their respective Mortgagees, as their interests may appear, for a penal sum of not less than 100% of the estimated cost of such construction.

(iii) Plans and Specifications. With respect to Alterations that require approval of the Board, all plans and specifications for any such Alterations shall be prepared by a Hawaii-licensed architect or professional engineer and conform with all applicable laws and ordinances, and all Alterations, the cost of which is expected to exceed \$100,000 (C.P.I. Adjusted), shall be undertaken by a building contractor licensed in the State of Hawaii.

(iv) Insurance. During the entire course of any physical Alteration that requires approval of the Board, the Owner making such Alteration will cause to be maintained at such Owner's expense builder's all-risk insurance in an amount not less than the estimated cost of construction. The Association and the other Unit Owner(s) shall be named as additional insureds.

(v) Certain Alterations Must Be Completed Within a Reasonable Time. All construction activity relating to any Alterations affecting the exterior of the building or otherwise readily visible from outside the Unit or Limited Common Element being altered shall be completed within a reasonable period of time after the commencement thereof, subject to extension for delays beyond the control of the Owner or its contractors, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence (as determined by the Board).

(e) Withholding of Board or Declarant Approval. Where applicable, the Board may withhold its approval to any request for an Alteration based upon: the terms of this Declaration or the Bylaws; the potential or perceived effect such proposed Alteration may have on the appearance, safety or integrity of the Project; considerations of applicable zoning and other requirements; or the terms of any permits, agreements or authorizations pursuant to which the Project has been designed and constructed. Declarant may withhold its approval to any request for an Alteration for any reason within its sole discretion."

EXHIBIT E  
Common Interests

Unit Type (Number of Units)	Unit Numbers	Undivided Common Interest of Each Unit*
01 (16)	801, 901, 1001, 1101, 1201, 1401, 1501, 1601, 1701, 1801, 1901, 2001, 2101, 2201, 2301, 2401	0.004953 (0.4953%)
02 (16)	802, 902, 1002, 1102, 1202, 1402, 1502, 1602, 1702, 1802, 1902, 2002, 2102, 2202, 2302, 2402	0.003211 (0.3211%)
03 (16)	803, 903, 1003, 1103, 1203, 1403, 1503, 1603, 1703, 1803, 1903, 2003, 2103, 2203, 2303, 2403	0.006286 (0.6286%)
04 (15)	904, 1004, 1104, 1204, 1404, 1504, 1604, 1704, 1804, 1904, 2004, 2104, 2204, 2304, 2404	0.006704 (0.6704%)
05 (16)	805, 905, 1005, 1105, 1205, 1405, 1505, 1605, 1705, 1805, 1905, 2005, 2105, 2205, 2305, 2405	0.006359 (0.6359%)
06 (15)	906, 1006, 1106, 1206, 1406, 1506, 1606, 1706, 1806, 1906, 2006, 2106, 2206, 2306, 2406	0.006749 (0.6749%)
07 (16)	807, 907, 1007, 1107, 1207, 1407, 1507, 1607, 1707, 1807, 1907, 2007, 2107, 2207, 2307, 2407	0.005615 (0.5615%)
08 (15)	908, 1008, 1108, 1208, 1408, 1508, 1608, 1708, 1808, 1908, 2008, 2108, 2208, 2308, 2408	0.006822 (0.6821%)
09 (16)	809, 909, 1009, 1109, 1209, 1409, 1509, 1609, 1709, 1809, 1909, 2009, 2109, 2209, 2309, 2409	0.004753 (0.4753%)
10 (16)	810, 910, 1010, 1110, 1210, 1410, 1510, 1610, 1710, 1810, 1910, 2010, 2110, 2210, 2310, 2410	0.004653 (0.4653%)
11 (16)	811, 911, 1011, 1111, 1211, 1411, 1511, 1611, 1711, 1811, 1911, 2011, 2111, 2211, 2311, 2411	0.006395 (0.6395%)
804 (1)	804	0.006704 (0.6704%)
806 (1)	806	0.006749 (0.6749%)
808 (1)	808	0.006822 (0.6822%)

\* The common interests for the Units may change (increase or decrease) in connection with: (i) a change by the Developer in the unit floor plan(s) for any or all of the units; and (ii) an increase or decrease in the number of units in the Project (e.g., if one or more units are divided into additional units or are combined into fewer units).

EXHIBIT F  
Common Elements

The Common Elements of the Project shall specifically include, but are not limited to, the following, some of which are also Limited Common Elements:

1. The land described in Exhibit "A" to the Declaration (as may be amended), in fee simple.
2. All structural components of the building, such as the foundation, girders, columns, beams, floor slabs, supports, main walls, parapet walls, load-bearing walls, floors, ceilings (except the immediate interior surface area of such walls, floors and ceilings), roof, exterior stairs and stairways, landings, railings and other building appurtenances.
3. All yards, trees, grounds, gardens, planters, plants, landscaping, barbecue areas, refuse facilities, and recreational amenities not located within a Unit.
4. All sidewalks, walkways, walkway railings, elevators, pathways, retaining walls, entry gates, entry monuments, driveways, roads, parking areas and parking stalls.
5. The entry area outside the entry door of each Unit.
6. All ducts, electrical equipment, vents, shafts, lines, conduits, cables, transformers, wiring, pipes and other central and appurtenant transmissions facilities and installations over, under and across the Project to the point of their respective connections to the Units that are utilized by or serve more than one Unit for services such as, but not limited to, those providing power, light, water, irrigation, gas, sewer, refuse, drainage, telephone, and radio and television signal distribution, if any.
7. All areas, rooms, spaces, structures, housings, chutes, shafts or facilities of the Project within or outside of the building that are for common use or that serve more than one Unit, such as electrical, telephone, maintenance, service, elevator, security, machine, mechanical and equipment rooms and the equipment, machinery and facilities therein.
8. All the benefits, if any, inuring to the Land or to the Project from all easements, if any, shown on the Condominium Map or listed in Exhibit "A" to the Declaration.
9. Any and all apparatus and installations existing for common use by more than one Unit, and any and all other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use.
10. All other parts of the Project not included in the definition of a Unit.

EXHIBIT G  
Limited Common Elements

Certain Common Elements, called "Limited Common Elements", are designated and set aside for the exclusive use of certain Units, and, subject to exceptions set forth in the Declaration, such Units shall have appurtenant thereto easements for the exclusive use of such Limited Common Elements as follows:

1. Parking Stalls:

Each Unit shall have appurtenant to it, as a Limited Common Element, the exclusive right to use the parking stall(s) as described in Exhibit B above, located as shown on the Condominium Map, or such other parking stall as may be designated by amending the Declaration.

2. Mailboxes:

Each mailbox or mail slot bearing the same identification as a Unit (or otherwise appurtenant to a Unit) is a Limited Common Element appurtenant to that Unit.

3. Lanais:

Certain Units shall have, as a Limited Common Element, the lanai that is appurtenant to the Unit, the location of which is depicted on the Condominium Map, from the exterior surface of all perimeter walls that separate the interior of the Units from the lanais to the interior edge of the exterior railings or other boundaries of the lanais. Notwithstanding anything to the contrary contained in the project documents, even though each lanai is a Limited Common Element appurtenant to and for the exclusive use of its respective Unit, the Association shall be responsible for maintenance and repair of the area from the exterior edge of the exterior railings or other boundaries of the lanais and for any structural repair for the lanais.

EXHIBIT H  
Encumbrances Against Title

1. Real property taxes that may be due and owing. For more information, contact the Real Property Assessment Office, Department of Finance, City and County of Honolulu.
2. Title to all mineral and metallic mines reserved to the State of Hawaii.
3. Easement of right-of-way reserved for ingress and egress to and from Young Street and to and from Beretania Street, as set forth in Partition Deed dated October 28, 1944, recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau") in Book 1884, Page 387.
4. 5-foot building setback line as shown on survey map prepared by Wayne M. Teruya, Licensed Professional Land Surveyor No. 6297, dated September 28, 2007.
5. The following encroachments s shown on survey map prepared by Wayne M. Teruya, Licensed Professional Surveyor No. 6297, dated September 28, 2007: (a) Tow away sign from Tax Key (1) 2-4-006-016 extends onto Parcel First by 0.3 feet; (b) AC unit from Tax Key (1) 2-4-006-005 extends onto Parcel Second by 0.8 feet; (c) Electrical conduit from Tax Key (1) 2-4-006-006 onto Parcel Second by 0.3 feet; and (d) HT box extends onto Parcel First by 1.7 feet.
6. Mortgage, by KRC Partners LLC in favor of Central Pacific Bank, dated December 20, 2007, recorded in the Bureau as Document No. 2007-223915.
7. UCC Financing Statement, by KRC Partners LLC (as debtor) in favor of Central Pacific Bank (as secured party), recorded in the Bureau on December 31, 2007, as Document No. 2007-223916.
8. Mortgage, by KRC Partners LLC in favor of Pacific Rim Bank, dated July 1, 2008, recorded in the Bureau as Document No. 2008-108642.
9. Assignment of Rents, from KRC Partners LLC to Pacific Rim Bank, dated July 1, 2008, recorded in the Bureau as Document No. 2008-108643.
10. UCC Financing Statement in favor of Pacific Rim Bank, recorded July 7, 2008, recorded in the Bureau as Document No. 2008-108644.
11. Declaration of Condominium Property Regime of Holomua, dated February 18, 2009, recorded in the Bureau as Document No. 2009-024196.
12. Bylaws of the Association of Unit Owners of Holomua, dated February 18, 2009, recorded in the Bureau as Document No. 2009-024197.
13. Condominium Map No. 4776.
14. Terms and provisions of the [Deed and Reservation of Rights and Easements and Grant of Special Power of Attorney (applicable to market-priced units)] [Deed And Reservation Of Rights And Easements, With Use, Sale And Transfer Restriction And Shared Appreciation Equity Program; Grant Of Special Power Of Attorney (applicable to HHFDC affordable units)] by which unit buyers will take title to their respective units.

EXHIBIT I  
Developer's Reserved Rights

The following summary is not intended to be a complete and exhaustive explanation of all the rights reserved under the documents governing the project (the "Project Documents") and otherwise. It is intended to be a general summary. If any conflict or difference exists between this summary and any of the Project Documents, the Project Documents shall control.

1. Developer's Rights Regarding Operation, Maintenance, Etc. Developer shall have the unilateral right to designate, delete, grant, use, convey, transfer, cancel, accept, relocate, and otherwise deal with any easements and/or rights-of-way over, under, across, or through the Common Elements of the Project for any reasonable purpose, which may include, but shall not be limited to, those purposes that are necessary for the operation, care, upkeep, maintenance, or repair of any Unit, the Common Elements, or any easements for utilities or for any public or private purpose.

2. Developer's Rights Regarding Utilities, Access, Etc. Developer shall have a nonexclusive easement for access and utility purposes over, under, across, along, and upon the Project's parking garage and access ways, together with the right to designate, delete, grant, convey, transfer, assign, cancel, accept, relocate, realign, reserve, and otherwise deal with any easements and rights of way at any time (perpetual or otherwise) for utilities (including, without limitation, water, gas, electric power, and communication utilities, electromagnetic, and optical transmission facilities), sanitary and storm sewers, drainage, cable television transmission facilities, refuse disposal, landscape development and maintenance, driveways, parking areas, access roadways and other purposes, over, across, under and through any Units still owned by Developer and the Common Elements of the Project, including, without limiting the generality of the foregoing, the right of entry to construct, reconstruct, operate, maintain, repair, and relocate such lines, facilities, and appurtenances and to grant, assign, and/or transfer any such easements or rights of way to governmental or quasi-governmental authorities, utility or service companies, owner's associations, or other entities and the right to grant, dedicate, designate, use, and enjoy easements and/or rights of way for access purposes appurtenant to any portion of the Project.

3. Ongoing Construction and Sales Activities. Construction activity by the Developer and others may continue at the Project after the Buyer has occupied the Unit and this activity may result in noise, dust, traffic congestion, vibration and other nuisances, hazards or annoyances to the Buyer for an extended period, and may temporarily limit the Buyer's access to portions of the Project. The Developer, and its agents, employees, contractors, and licensees, shall have the right and an easement to conduct extensive sales, leasing, rental, marketing, and other commercial activities on and at the Project, including the use of any Unit (and appurtenant Limited Common Elements) owned by the Developer (and any other Unit, with the express permission of the Owner of such Unit) and the Common Elements (excluding Limited Common Elements exclusively appurtenant to Units not owned by the Developer) for model units, sales, leasing, rental, marketing, and other commercial activities, temporary occupancy and management offices, access, parking and the posting and maintenance of banners, signs, and other advertisements and sales displays relating to such sales, leasing, rental, marketing and other commercial activities. Any temporary sales center located on the Project is reserved at no cost or charge for the exclusive use of the Developer and its agents as an office for sales and other uses. These reserved rights shall continue until 90 days after the closing of the sale of the last Unit in the Project.

4. Punchlist. Developer shall have an easement over, under, and upon, and the right to use, any portion of the Project, including the Common Elements, Limited Common Elements, and any Unit, as may be reasonably necessary or convenient for the completion of improvements to and correction of defects and other "punchlist" items in the Project.

5. Nuisances Related to Construction, Sale, Etc. Developer shall have an easement over, under, and upon all portions of the Project to create and cause noise, dust, traffic congestion, vibration, odors, and other nuisances or annoyances created by and resulting from any work connected with or incidental to the development, construction, and sale of any Unit or other improvement to the Project.

6. Relating to Developer's Units. Developer reserves the right to: (a) transfer the exclusive use rights associated with a Limited Common Element appurtenant to any Unit owned by Developer to another Unit owned by Developer; (b) redesignate and/or convert Limited Common Elements appurtenant to any Unit owned by Developer to Common Elements, and, upon such redesignation and/or conversion, the Association and/or the other Owners shall accept any such redesignation and/or conversion and shall not have any right to refuse or reject any such redesignation and/or conversion; (c) alter, maintain, repair, and/or replace any Limited Common Element appurtenant to any Unit owned by Developer; and (d) retain ownership of such Units as Developer in Developer's sole discretion shall determine.

7. Alterations by Developer. The provisions cited in Exhibit D of this public report above shall not apply to Alterations or other modifications to a Unit or a Unit's Limited Common Elements that are made by or on behalf of Developer. The rights of Developer ("Declarant" under the Declaration) to make Alterations and other modifications to a Unit or a Unit's Limited Common Elements are set forth in Section L.4 of the Declaration, which provides the following:

"4. Alterations by Declarant. The provisions of Section L.1 through L.3 above shall not apply to Alterations or other modifications that are made by or on behalf of Declarant. Declarant's right to make Alterations and other modifications to the Project is set forth in this Section L.4.

(a) Declarant's Reserved Rights. Any other provision in this Declaration to the contrary notwithstanding and without limiting any other provision in this Declaration, prior to (i) the time that the fee simple interest in all Units in the Project have been sold and the conveyance thereof Recorded, and (ii) the Recording by Declarant of the "as built" statement (with plans, if applicable) required by Section 514B-34 of the Act with respect to all Units in the Project, Declarant shall have the right, from time to time, without being required to obtain the consent or joinder of any Person or group of Persons, including the Association, any Unit Owner, or any Mortgagee, lienholder, Unit purchaser, or any other Person who may have an interest in the Project, to do the following:

(i) Pre-Closing Alterations. To make Alterations or other modifications in the Project (and, if appropriate, to amend this Declaration and the Condominium Map accordingly) that change the Unit type of, change the floor plan of (including, without limitation, establishing a new floor plan), change the configuration of, decrease or increase the size of, or change the location of any Unit and/or the Limited Common Elements appurtenant thereto, the conveyance of which has not been Recorded.

(ii) Post-Closing Alterations. To make other Alterations or other modifications in the Project (and, if appropriate, to amend this Declaration and the Condominium Map accordingly) that make minor changes in any Unit in the Project or in the Common Elements, which do not affect the physical location, design or size of any Unit the conveyance of which has not been Recorded.

(b) Division of Units.

(i) With respect to any Unit owned by Declarant, Declarant shall have the right to divide such Unit (or to consolidate and divide such consolidated Units) to create two or more separate Units and thereby possibly increase the number of Units in the Project. Such division of Units by Declarant shall occur by, and the newly created Units shall be deemed a part of the Project for all purposes upon: (a) amending the Condominium Map and EXHIBIT "B" and EXHIBIT "C" hereto to



reflect such division; (b) amending relevant provisions of this Declaration and/or the Bylaws to (1) designate which Limited Common Elements appurtenant to the divided Unit(s) shall be appurtenant to the Units resulting from such division, (2) convert, as Declarant shall deem appropriate, portions of the divided Unit(s) to Common Element or Limited Common Element status to facilitate such division, and (3) allocate, as Declarant shall deem appropriate, the Common Interest of the divided Unit(s) among the newly created Units; and (c) making such other amendments to the Project Documents as Declarant deems necessary or appropriate to effectuate the division of the Unit. The amendments to the Project Documents need only be executed by Declarant.

(ii) The newly created Units shall have the right to use the Common Elements in the Project to the same extent and subject to the same limitations as are imposed upon a Unit as though the newly created Units had been developed as part of the original Project.

(iii) Until the conveyance by Declarant of a newly created Unit thereby added to the Project, Declarant shall for all purposes be deemed the "Unit Owner" as to such newly created Unit, and no other Unit Owner, Mortgagee, lienholder, Unit purchaser, or any other Person (other than Declarant and the holder of any Mortgage covering the newly created Unit) shall have any legal or equitable interest in such newly created Unit and the Common Interest appurtenant thereto. Additionally, in connection with the creation of the newly created Units, Declarant shall have the right: to assign and re-assign parking stalls, except for parking stalls that may have already been conveyed by Declarant to a Unit Owner; to enter upon the Project with employees, agents, and contractors for all purposes reasonably necessary for or useful to constructing and completing the newly created Units; to connect the newly created Units to utilities of the Project; and to market and sell the newly created Units. Declarant may apply for and obtain from the Real Estate Commission effective dates for one or more amended public reports describing the changes made in the Project pursuant to the terms of this Section L.

(c) Consolidation of Units. With respect to any two adjacent Units owned by Declarant, Declarant shall have the right, at any time and from time to time at Declarant's sole cost and expense, to consolidate such Units into a single Unit and thereby decrease the number of Units in the Project, provided that the Common Interest appurtenant to the newly created Unit shall equal the sum of the Common Interests of the Units being consolidated. Such consolidation shall occur by: (i) amending the Condominium Map and EXHIBIT "B" and EXHIBIT "C" hereto to reflect such consolidation; (ii) amending relevant provisions of this Declaration and the Bylaws to designate the Common Interests of the previously separate Units to the consolidated Unit; and (iii) making such other amendments to this Declaration, the Bylaws, the Condominium Map, and other Project Documents as Declarant deems necessary or appropriate to effectuate the consolidation of the Units. In no event shall any such amendment affect the Common Interest appurtenant to any Units other than the consolidated Units. The amendments to this Declaration, the Bylaws and the Condominium Map referenced herein need only be executed by Declarant."

8. Relating to Parking Stalls. Developer reserves the right: (i) by way of an amendment to the Declaration executed only by Developer and duly Recorded, to sell and convey or otherwise designate any parking stall not designated herein as a Limited Common Element to be appurtenant to and/or for the exclusive use of any Unit in the Project as a Limited Common Element for that Unit; (ii) to designate any parking stall not designated herein as a Limited Common Element for use as a guest parking stall for the Project; (iii) to use, or allow others to use, as Developer shall deem appropriate, any parking stall not designated herein as a Limited Common Element; and (iv) by way of an amendment to the Declaration executed only by Developer and duly Recorded, to assign or change, from time to time, the assignments of individual parking stalls to individual Units that have not been conveyed by Developer.

9. Exercise Of Association Rights/Developer Control Period. Developer shall exercise all of the rights and incidents of membership in the Association, including voting, attributable to a Unit until closing of the sale of that Unit occurs; provided, however, that, notwithstanding the foregoing or anything

else in the Declaration or the Bylaws to the contrary, Developer shall control the Association and appoint and remove the officers and members of the Board until no later than the earlier of: (a) 60 days after conveyance of 75% of the Units to Unit Owners other than Developer or an affiliate of the Developer; (b) two years after Developer has ceased to offer Units for sale in the ordinary course of its business; (c) two years after any right to add new units to the Project was last exercised by the Developer; or (d) the day Developer, after giving written notice to Unit Owners, records an instrument voluntarily surrendering all rights to control activities of the Association. If Developer voluntarily surrenders its right to control activities of the Association, then Developer may require that specified actions of the Association or the Board, as described in a recorded instrument executed by Developer, be approved by Developer before they become effective. As part of the exercise of Developer's control, Developer shall be entitled to appoint the initial Managing Agent on behalf of the Association.

10. Assignment of Rights by Developer. Developer may transfer or assign all or any portion of Developer's rights under the Declaration to third persons, in whole or part, either directly or as security for financing relating to the development of the Project; provided, however, that such rights shall not be transferred except by an instrument expressly referencing the rights contained in the Declaration that are being transferred or assigned. No deed of the Project land in whole or part and no Unit Deed shall transfer or assign any of Developer's rights under the Declaration unless reference is expressly made to said transfer or assignment. Once transferred or assigned, the transferee, successor or assignee may have and exercise all of the rights under the provisions of the Declaration so transferred or assigned, but only to the extent so transferred or assigned by Developer.

11. Amendment to Declaration and Map.

(a) Any provision of Declaration Section R to the contrary notwithstanding (except Section R.7 relating to HHFDC approval requirements), and until the recording of Unit conveyances or agreements of sale with respect to all of the Units in the Project in favor of persons other than Developer, Developer may amend the Declaration, the Bylaws and/or the Condominium Map, without the approval, consent or joinder of any person or group of persons, including the Association, any Unit owner or any mortgagee, occupant, lienholder, Unit purchaser, or any other person who may have an interest in the Project, to make such amendments (a) to correct any misstatements of fact in the Project Documents, to correct typographical errors, to correct mathematical errors in the statement of common interests, or to correct errors in the legal description of the land, (b) as may be required by law, by the Real Estate Commission, by the County, by HHFDC, by any title insurance company issuing a title insurance policy on the Project or any of the Units, by any institutional lender lending funds on the security of the Project or any of the Units, or by any governmental agency (including, without limitation, FNMA and/or FHLMC), and (c) to conform the Declaration to updated requirements or standards of any governmental agency (including, without limitation, FNMA and/or FHLMC).

(b) Any provision of Declaration Section R to the contrary notwithstanding (except Section R.7 relating to HHFDC approval requirements), Developer may amend the Declaration (and when appropriate the Condominium Map) without the approval, consent or joinder of any person or group of persons, including the Association, any Unit owner or any mortgagee, occupant, lienholder, Unit purchaser or any other person who may have an interest in the Project or in any Unit, to file a certification of a licensed architect, engineer, or surveyor certifying that the final recorded Condominium Map fully and accurately depicts the layout, location, boundaries, dimensions and numbers of the Units substantially as built, or that any revised plans being filed simultaneously with the amendment involve only immaterial changes to the layout, location, boundaries, dimensions and numbers of the Units substantially as built or such other changes as Developer is permitted to make pursuant to the Declaration.

(c) Any provision of Declaration Section R to the contrary notwithstanding (except Section R.7 relating to HHFDC approval requirements), Developer may amend the Declaration (and when appropriate the Condominium Map) as provided in the Declaration without the approval, consent or

joinder of any person or group of persons, including the Association, any Unit owner or any mortgagee, lienholder, Unit purchaser or any other person who may have an interest in the Project or in any Unit.

(d) As set forth in Section R.7 of the Declaration, before Developer can make any amendment to the Declaration and/or the Condominium Map that includes a "material change" (as that term is defined in HRS Section 514B-3), the Developer must get the written approval of the HHFDC (which approval can be made part of the amendment or be in a separate document); provided, however, the HHFDC shall provide a written response to Developer's request for consent to the amendment within 10 business days after such request was delivered to the HHFDC.

12. Defects. In the event that the Association, the Board or any owner or owners (each a "claimant") claim, contend, or allege that any portion of a Unit, the Common Elements, and/or any other improvements constructed on the land are defective or that Developer or other "Covered Parties" (as defined in Section T.2 of the Declaration) were negligent or are otherwise liable for defects in the planning, design, engineering, grading, construction, installation, management, or other development thereof (an "Alleged Defect"), Developer reserves the right and an easement for itself and all other applicable Covered Parties to inspect, evaluate, repair, replace, and/or otherwise cure such Alleged Defect as set forth in the Declaration.

AS NOTED, THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL THE RIGHTS RESERVED UNDER THE CONDOMINIUM DOCUMENTS AND OTHERWISE. WHILE A BUYER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF SUCH RESERVED RIGHTS, BUYER MUST REFER TO THE SALES CONTRACT, THE CONDOMINIUM DECLARATION, AND THE BYLAWS TO DETERMINE THE ACTUAL RIGHTS RESERVED. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE SALES CONTRACT, DECLARATION OR THE BYLAWS, THE SALES CONTRACT, DECLARATION OR BYLAWS, AS APPLICABLE, WILL CONTROL.

#### SPECIAL NOTICE REGARDING CHANGES UNDER THIS PUBLIC REPORT

CHANGES TO THE PROJECT AND THE PROJECT'S DOCUMENTS MADE IN ACCORDANCE WITH THE DEVELOPER'S EXERCISE OF THE RIGHTS RESERVED TO THE DEVELOPER IN THE DECLARATION, AS MAY BE DISCLOSED IN THIS PUBLIC REPORT, **SHALL NOT** BE DEEMED TO BE CHANGES THAT RENDER THIS PUBLIC REPORT MISLEADING AS TO PURCHASERS IN ANY MATERIAL RESPECT AND WILL NOT GIVE ANY PURCHASER WHO HAS WAIVED OR IS DEEMED TO HAVE WAIVED THE RIGHT TO CANCEL SUCH PURCHASER'S SALES CONTRACT UNDER THIS PUBLIC REPORT ANY ADDITIONAL RIGHTS TO CANCEL SUCH PURCHASER'S SALES CONTRACT.

EXHIBIT J  
Estimate of Initial Maintenance Fees\*

<b>Unit Type**</b>	<b>Monthly Fee for Common Expenses</b>	<b>Annual Fee for Common Expenses</b>
01	\$271.73	\$3,260.76
02	\$176.16	\$2,113.92
03	\$344.86	\$4,138.32
04	\$367.80	\$4,413.60
05	\$348.87	\$4,186.44
06	\$370.27	\$4,443.24
07	\$308.05	\$3,696.60
08	\$374.27	\$4,491.24
09	\$260.76	\$3,129.12
10	\$255.27	\$3,063.24
11	\$350.84	\$4,210.08
804	\$367.80	\$4,413.60
806	\$370.27	\$4,443.24
808	\$374.27	\$4,491.24

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

\* Pursuant to HRS Section 514B-41(b), unit owners shall not be obligated for the payment of their share of the Project's common expenses until such time as the Developer sends the unit owners written notice that, after a specified date, the unit owners shall be obligated to pay for the portion of common expenses that is allocated to their respective units. The Developer shall mail the written notice to the owners, the Association, and the Managing Agent at least 30 days before the specified date.

\*\*See Exhibit E of this Public Report for a list of units by unit type

ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS:

	<u>Monthly Fee x 12 months = Yearly Total</u>	
<b>Utilities and Services</b>		
Electricity (common elements only)	\$ 10,000.00	\$ 120,000.00
Refuse Collection	\$ 1,400.00	\$ 16,800.00
Water (units and common elements)	\$ 2,500.00	\$ 30,000.00
Sewer (units and common elements)	\$ 5,500.00	\$ 66,000.00
Telephone (entry phones, elevator phones, manager phone)	\$ 225.00	\$ 2,700.00
<b>Maintenance, Repairs and Supplies</b>		
Building	\$ 8,160.00	\$ 97,920.00
Elevator Maintenance	\$ 2,500.00	\$ 30,000.00
Pest Control	\$ 200.00	\$ 2,400.00
<b>Management</b>		
Management Fee	\$ 1,842.00	\$ 22,104.00
Manager salary and housing	\$ 6,070.00	\$ 72,840.00
Security	\$ 6,370.00	\$ 76,440.00
Admin. Services/Supplies (payroll preparation, newsletter, website)	\$ 1,035.00	\$ 12,420.00
Insurance (property, flood, liability, D&O, etc.)	\$ 4,000.00	\$ 48,000.00
Reserves (*)	\$ 4,400.00	\$ 52,800.00
Taxes and Government Assessments	\$ 410.00	\$ 4,920.00
Legal and Audit Fees	\$ 250.00	\$ 3,000.00
<b>TOTAL</b>	<b>\$ 54,862.00</b>	<b>\$ 658,344.00</b>

I, Ted Walkey, employed by HAWAIIANA MANAGEMENT COMPANY, LTD. ("HMC"), the condominium managing agent for the Holomua condominium project, hereby certifies that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

Ted Walkey  
Signature

12/23/08  
Date

**NOTE:** The Estimated Maintenance Fee Disbursements have been compiled for the Developer on the basis of standard budget assumptions. Although every effort has been made to estimate the actual cost of operation, certain budget items, especially insurance in today's insurance market, may change. The buyer must be aware that such amounts are only estimates and may change for reasons beyond the control of Developer, and, by taking title to a unit, the buyer accepts and approves any such changes. The buyer must also be aware that such estimates do not include the buyer's obligation for payment of real property taxes or utilities that are charged directly to the unit owner or insurance paid directly by the unit owner. The buyer understands that such estimates are not intended to be and do not constitute any representation or warranty by the Developer, including relating to the accuracy of the estimates. The costs and expenses of maintenance and operation of a condominium project are very difficult to estimate initially and even if such maintenance charges have been accurately estimated, such charges will tend to increase in an inflationary economy and as the improvements age. The Buyer should examine the

maintenance charges schedule to see what services are included in the schedule. Buyers should also be aware that the estimates provided are as of the date reflected in the schedule and do not reflect the actual charges that may be incurred upon the formation of the Association and the actual contracting for such services such as insurance and maintenance, etc.

(\*) Pursuant to HRS §514B-148, a new association need not collect estimated replacement reserves until the fiscal year beginning after the Association's first annual meeting. To obtain the "Reserves" figure above, the Developer did not conduct a reserve study in accordance with HRS §514B-148 or HAR §16-107-65. The figure is an estimate from HMC, based on reasonable projections of reserve requirements. Reserve funds shall be considered a common expense, assessed to the unit owners as provided in the Declaration.

**CERTIFICATE**

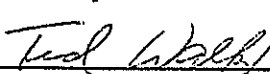
I, the undersigned, duly sworn on oath, depose and affirm as follows:

1. I am the Senior Vice President, Operations for Hawaiiana Management Company, Ltd., a Hawaii corporation, designated by the Developer of the Holomua condominium project (the "Project") to act as the Managing Agent for the management and administration of the Project.

2. I hereby certify that the breakdown of the annual maintenance charges and the monthly estimated cost for each unit in the Project, as set forth in Exhibit "J" attached hereto and hereby incorporated herein by reference, were determined in accordance with Section 514B-148 of the Hawaii Revised Statutes and Chapter 107 of the Hawaii Administrative Rules, and are reasonable estimates for the one-year period commencing January 1, 2009, based on generally accepted accounting principles.

3. As permitted pursuant to Section 514B-148(b), new associations need not collect estimated 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.

DATED: Honolulu, Hawaii, this 29<sup>th</sup> day of December, 2008.

  
Name: TED WALKEY  
Title: SENIOR VICE PRESIDENT,  
OPERATIONS

Subscribed and sworn to before me  
this 29<sup>th</sup> day of December, 2008.

State of Hawaii  
City & County of Honolulu

Date: December 29, 2008 # of Pages: 3

Doc. Description: Certificate of Managing Agent & Estimated  
Annual Disbursements for: Holomua

  
Notary Signature  
Name: Bruce A. Howe

No. & Expiration: 94-155 : 03-06-2010

First Circuit, State of Hawaii

**NOTARY CERTIFICATION**

## EXHIBIT K

### Summary of Specimen Sales Contracts

There are two forms of the specimen Deposit Receipt and Sales Agreement (the "Sales Contract"), in order to comply with two discrete exemptions from the federal Department of Housing and Urban Development, Interstate Land Sales Registration program, as described in the Interstate Land Sales Full Disclosure Act ("ILSFDA") 15 U.S.C. 1700, et seq., and 24 Code of Federal Regulations ("CFR") Sections 1710.5 and 1710.6. One Sales Contract (the "99-Unit Version" of the Sales Contract) applies to 99 of the units sold and the other Sales Contract (the "2-Year Completion Version" of the Sales Contract) applies to the sale of all other units. Ninety-nine of the units sold in the Project shall be sold under the "One Hundred Lot" exemption (Section 15 U.S.C. 1702(b)(1) of the ILSFDA and 24 CFR 1710.6). All other units sold in the Project shall be sold under the "Improved Lot" exemption (Section 15 U.S.C. 1702(a)(2) of the ILSFDA). The latter exemption requires that such units be sold with the condition that the Developer will complete construction of each such unit within a period of two years from the date that the Sales Contract for that particular unit is signed; provided, however, that said two-year period is subject to certain exceptions allowed under statutory and regulatory provisions

Specimens of the Sales Contracts have been submitted to the Real Estate Commission. ALL BUYERS AND PROSPECTIVE BUYERS SHOULD CAREFULLY READ, IN FULL, THE SALES CONTRACT THAT APPLIES TO THEIR PROPOSED PURCHASE, because the summary set forth below is NOT A COMPLETE DESCRIPTION of its contents. Both Sales Contracts contain, among others, the following terms and provisions (which may be modified or otherwise limited by provisions that are not summarized below):

A. The Developer has engaged Title Guaranty Escrow Services, Inc. ("Escrow") to handle Buyer's funds and to close the transaction in accordance with the terms of the Sales Contract.

B. The total purchase price, method of payment and additional sums that must be paid in connection with the purchase of a Unit will be included. The purchase price does not include closing costs, all of which will be paid by Buyer. Closing costs include, among other things, Escrow's fees, cost of a preliminary title report, cost of preparation of the Deed, real property taxes for the remainder of the year, maintenance fees and other prorations, notary fees, conveyance taxes, title insurance for Buyer, costs for drafting of any notes and mortgages, all recording costs or fees, loan fees, all other applicable mortgage costs, and, for buyers of Affordable Units, cost to prepare the Memorandum of Shared Appreciation Equity Agreement and appraisal fees. Buyer shall pay as additional sums the Association start-up fees, estimated reserves and other fees, as provided in the Sales Contract.

C. The "Scheduled Closing Date" shall be determined as follows: (a) if, on the date the Sales Contract is accepted by the Developer, the unit is not available for occupancy (as determined by the Developer), then the Scheduled Closing Date shall be a date that is within 60 calendar days after the unit is available for occupancy, which date shall be selected by the Developer and specified in a written notice to the buyer; or (b) if, on the date the Sales Contract is accepted by the Developer, the unit is available for occupancy, then the Scheduled Closing Date shall be a date mutually acceptable to Buyer and the Developer, but in no event more than 60 calendar days after the date the Sales Contract is accepted by the Developer. All payments not previously made pursuant to the terms of the Sales Contract shall be due and payable 10 days prior to the Scheduled Closing Date (though the portion of the purchase price coming from mortgage loan proceeds shall be paid into Escrow at least two days before the Scheduled Closing Date), and, if not paid at the time and in the manner set forth in the Sales Contract, shall result in a default by buyer under the Sales Contract.

D. The Sales Contract includes provisions relating to Buyer's remedies in the event of a default by Developer.



E. In addition to other remedies the Developer shall have, in the event closing of the sale of the Unit does not occur as called for in the Sales Contract by reason of the Buyer's failure to comply with any provision of the Sales Contract, the Buyer shall pay to the Developer \$300.00 per day through and including the actual date of closing.

F. Article IV, Section B of the Sales Contract has certain requirements relating to Buyer's financing of the purchase price. Within 5 days after Buyer signs the Sales Contract, Buyer shall apply for a "Qualification Letter" from a financial institution designated by the Developer. The purpose of the Qualification Letter is to confirm Buyer's ability (i) to make that portion of the purchase price that Buyer intends to pay in cash and (ii) to obtain a mortgage loan for that portion of the purchase price that Buyer intends to finance. If Buyer intends to finance any portion of the total purchase price, then Buyer must perform certain "Mortgage Loan Acts" relating to the obtaining of financing for the purchase of the Unit. If, after Buyer's cancellation period has expired, Buyer fails to perform its obligations under Article IV, Section B, then the default provision in the Sales Contract shall apply, some or all of the Buyer's deposits will be subject to forfeiture, and the Developer will be entitled to pursue such other remedies as allowed pursuant to law and/or the Sales Contract.

G. There is no financing contingency for the purchase of a unit in the Project after the 30-day cancellation period has expired. That means **if the Buyer does not cancel the Sales Contract prior to the end of the 30-day cancellation period, then the Buyer will have waived any financing contingency and will be obligated to purchase the unit, even if the Buyer is not able to obtain a loan for the Buyer's purchase of the unit (due to higher interest rates, a change in the Buyer's financial status or otherwise).**

H. The Sales Contract describes or references various rights reserved in the Declaration in favor of Developer, the Association and other owners and contains certain other provisions to which the Buyer consents. Among the reserved rights in favor of the Developer are those summarized in Exhibit I of this public report, which summary is incorporated here. In addition to the Declaration, the Unit and the Project will be subject to various other legal documents that the Buyer should examine. The Developer may change these documents under certain circumstances.

I. The Sales Contract will provide that Buyer acknowledges having received the Public Report for the Project prior to signing the Sales Contract.

J. Buyer agrees that it will not assign the Sales Contract, or sell the Unit, or advertise the Unit for sale prior to closing under the Sales Contract, and that any assignment or sale attempted by Buyer prior to closing without Developer's prior written consent is void.

K. Buyer expressly acknowledges, consents to and approves all of the disclaimers, disclosures, and other matters described in the Sales Contract, and Buyer assumes any and all risks in connection with each of those matters. Buyers should review the Sales Contract (including, specifically, Article IV) carefully to fully understand the matters set forth therein.

L. Buyer has examined and approved the estimate of monthly maintenance charges for the Project and the estimated maintenance fees for the Unit that the Buyer is interested in buying, as shown in the Public Report. Buyer is aware that such amounts are only estimates and may change for reasons beyond the control of Developer, and Buyer hereby specifically accepts and approves any such changes.

M. Buyer shall not be entitled to possession of the Unit as the owner thereof until Buyer has completed all required payments, has executed all documents relating to the purchase, has performed the remaining terms and conditions of the Sales Contract to be performed as of the Closing, the Developer turns over possession of the Unit and Closing has occurred.

N. If Buyer defaults in making any payment or fails to perform or shall breach any other obligation of Buyer and then fails to cure the default within a specified period after notice of the default or breach, then Developer may terminate the Sales Contract. In the event of such default or breach and termination, Developer's remedy for Buyer's default or breach shall be determined as set forth in the Sales Contract.

O. The Buyer acknowledges that Buyer has entered into the Sales Contract without any reference or representation by Developer or any representative of Developer that Developer or the managing agent will provide, directly or indirectly, any services relating to the rental or sale of the Unit purchased. The Buyer also acknowledges that the Developer makes no representations concerning rental of a Unit, income or profit from a Unit, or any other economic benefit to be derived from the purchase of a Unit.

P. The Developer makes no warranties regarding the Unit, the Project or anything installed or contained in the Unit or the Project.

**Q. Developer may use Buyers' funds deposited with Escrow to pay for certain construction and other expenses of the Project prior to closing of the sale. By signing a Sales Contract, Buyer shall be acknowledging and agreeing that, once Developer has met certain specific requirements, Developer is authorized to use Buyer's funds in Escrow for the construction of the Project and for other expenses of the Project, as set forth in the Escrow Agreement and in accordance with Hawaii statutory requirements pertaining to the use of purchaser's funds prior to closing.**

R. Buyer specifically acknowledges that Developer has reserved the right for itself, its sales representatives and prospective Buyers to utilize the common elements of the Project for ingress and egress and to show the common elements to other prospective buyers. Buyer also specifically acknowledges and accepts certain enumerated conditions regarding ongoing development and marketing of the Project, as well as any inconvenience or annoyance that Buyer may experience as a result of such conditions. Buyer also expressly waives any rights, claims or actions that Buyer might otherwise have against Developer or third parties as a result of such circumstances.

S. Except as specifically permitted in the Sales Contract and the Declaration, no judicial or administrative (inclusive of arbitration) proceeding shall be commenced or maintained by the Buyer. Certain disputes against and between certain persons (including, without limitation, Developer) must go through the process of negotiation, mediation and arbitration and, if applicable, a process by which an opportunity is given to cure certain alleged defects.

T. The Project will be subject to ongoing construction and sales activities that may result in certain annoyances to the Buyer.

U. All interest on deposits toward the purchase price shall be the property of the Developer.

V. Buyer specifically acknowledges and agrees that the Declaration contains reservations of certain rights and certain other provisions under which Buyer consents to certain actions by Developer and others, as more particularly described in the Sales Contract and the Declaration.

W. Buyer subordinates Buyer's interest arising under the Sales Contract to the security interests of the Developer's lender, including, but not limited to, any lien, mortgage or charge securing the loan, any other loan that may be made to finance the costs of construction and other costs during such construction and all interest to be paid by the Developer on the loan and the other loans, until the recordation of the unit deed. This means that if the Developer's lender forecloses, Buyers may lose their right to purchase their Unit.

X. If the Unit is an "Affordable Unit", then it is being sold as an affordable housing unit in accordance with affordable housing requirements set forth by the Hawaii Housing Finance and Development Corporation of the State of Hawaii ("HHFDC") and is subject to certain restrictions imposed by HHFDC. Those restrictions require Buyer to meet certain qualifications as a prerequisite to purchase. BUYER SHOULD CAREFULLY READ EXHIBITS A, B and C ATTACHED TO THE AFFORDABLE HOUSING ADDENDUM TO THE SALES CONTRACT BEFORE ENTERING INTO THE SALES CONTRACT. BY ENTERING INTO THE SALES CONTRACT SUCH BUYER AGREES TO ACCEPT AND ABIDE BY THESE RESTRICTIONS.

Y. Buyer acknowledges and agrees that, pursuant to the terms of the Development Agreement between Developer and HHFDC, Developer is developing the Project with assistance from HHFDC for the purpose of providing housing opportunities for qualified buyers. As a condition for such assistance from HHFDC, Developer is required to sell the Affordable Units in the Project subject to the restrictions on the use, sale and transfer of such units and subject to a shared appreciation equity program in favor of HHFDC. In connection therewith, Buyer understands and agrees as follows:

(1) Buyer understands that the Affordable Units may be sold only to buyers who meet all of HHFDC's eligibility requirements, household income requirements and project requirements (called an "Eligible Buyer").

If buyer signs the Sales Contract, but is not (or no longer remains) an Eligible Buyer, then the default provision in the Sales Contract shall apply, some or all of the Buyer's deposits will be subject to forfeiture, and the Developer will be entitled to pursue such other remedies as allowed pursuant to law and/or the Sales Contract.

(2) The transfer of the Property to buyer will be made subject to (and the Unit Deed will so provide) restrictions on use, sale and transfer of the Property pursuant to Sections 201H-47, 48, 49, 50 and 51 of the Hawaii Revised Statutes, as amended (the "HHFDC's Use, Sale and Transfer Restrictions") which provide for, among other things, a first option in favor of HHFDC to purchase the Property for a period of 10 years in the event buyer wishes to sell and/or transfer the Property, whether by lease, assignment of lease, deed or agreement of sale, or in the event buyer violates a covenant requiring buyer to occupy the Property. The HHFDC's Use, Sale and Transfer Restrictions are attached as Exhibit B to the Affordable Housing Addendum to the Sales Contract and will also be incorporated in an exhibit to the Unit Deed.

(3) The transfer of the Property to buyer will also be made subject to a shared appreciation equity program (the "SAE Program") under which HHFDC would be entitled to a percentage share of the Property's appreciation in value. The terms and conditions of the SAE Program are described in a disclosure statement prepared by HHFDC, a copy of which is attached as Exhibit C to the Affordable Housing Addendum to the Sales Contract and will also be incorporated in an exhibit to the Unit Deed.

(4) Each buyer shall be required to pay the cost of the appraisal ordered by HHFDC in connection with the SAE Program. The buyer's payment for the appraisal shall be non-refundable (even if closing does not occur). It is estimated, but not guaranteed, that the cost of the appraisal will not exceed \$500.00.

(5) As an express condition for closing the purchase of the unit, each buyer must complete the Homeownership Counseling Program (sponsored by Developer and approved by HHFDC) prior to Closing. If, after the buyer's 30-day cancellation period has ended, the buyer fails or refuses to complete the Home Ownership Counseling Program before the scheduled closing date, then the buyer will be in default under the Sales Contract, and Developer, in addition to any other remedies available to it, will have the right to cancel the Sales Contract, in which event the buyer will forfeit its deposits and all

interest thereon. Developer shall provide the escrow agent with a "Certificate of Accomplishment" as evidence of the buyer's successful completion of a Homeownership Counseling Program. A copy of the Certificate will be provided to HHFDC as a condition of closing. Buyer acknowledges and agrees that Developer shall be solely responsible and liable for the Home Ownership Counseling Program, and/or for any representations or promises made by Developer in connection with the Home Ownership Counseling Program.

(6) Buyer authorizes Escrow to furnish a copy of buyer's Final Escrow Closing statement to HHFDC for purposes of determining buyer's original purchase price for purposes of the SAE Program and the HHFDC's Use, Sale and Transfer Restrictions. Buyer shall provide Escrow with a copy of buyer's Home Ownership Counseling Program Certificate of Accomplishment.

(7) Buyer acknowledges and agrees that HHFDC shall be solely responsible for the administration of HHFDC's Use, Sale and Transfer Restrictions and the SAE Program, for the observance and performance of HHFDC's obligations, for the enforcement of HHFDC's rights under the Use, Sale and Transfer Restrictions and the SAE Program, for actions taken by HHFDC or failure by HHFDC to take action in connection with the Use, Sale and Transfer Restrictions and the SAE Program. Buyer assumes all risk of HHFDC's and buyer's administration, observance, performance and enforcement of or failure to administer, observe, perform or enforce HHFDC's Use, Sale and Transfer Restrictions and the SAE Program, or any term or provision thereof. Buyer agrees to indemnify, defend and hold Developer, its agents, successors and assigns, harmless from and against any and all liability, claims, losses, damages, expenses and costs, including attorneys' fees, incurred by or through Buyer arising out of or resulting from the administration, observance, performance and enforcement of or the failure to administer, observe, perform or enforce HHFDC's Use, Sale and Transfer Restrictions and the SAE Program, or any term or provision thereof.

(8) Buyer agrees to indemnify, defend and hold the State of Hawaii, HHFDC and their officers, employees, and agents harmless from and against any and all liability, claims, losses, damages, expenses and costs, including attorneys' fees, incurred by or through Buyer arising out of or resulting from Developer's development of the Project.

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

EXHIBIT L  
Summary of Escrow Agreement

The Escrow Agreement has been submitted to the Real Estate Commission. ALL BUYERS AND PROSPECTIVE BUYERS SHOULD CAREFULLY READ, IN FULL, THE ESCROW AGREEMENT, because the summary set forth below is NOT A COMPLETE DESCRIPTION of its contents.

The Escrow Agreement contains, among others, the following terms and conditions (which may be modified or otherwise limited by provisions that are not summarized below):

A. When a Buyer shall enter into a reservation or a sales contract for the reservation or purchase of a unit in the Project ("Sales Contract"), it shall require the payments of deposits due thereunder to be made to Escrow, and that an executed copy of the reservation or Sales Contract shall be delivered to Escrow. Developer shall also promptly pay over to Escrow all monies (including checks) received by Developer from or on behalf of the Buyers in connection with the reservation or Sales Contract.

B. Escrow shall receive, deposit and hold in one or more escrow accounts and disburse as set forth in the Escrow Agreement (a) all payments received by it under reservations and Sales Contracts, and (b) such sums received by it under the Escrow Agreement from or for the account of Developer. All funds and instruments received from Buyers or prospective Buyers shall be held by Escrow in accordance with the provisions contained in Chapter 514B of the Hawaii Revised Statutes. Escrow shall deposit all funds so received in a federally insured account at a financial institution authorized to do business in the State of Hawaii.

C. Except as may otherwise be set forth in the Escrow Agreement (including, but not limited to, the right to use buyer deposits for various development-related costs), no disbursement of a Buyer's funds held by Escrow under the Escrow Agreement shall be made unless and until the following conditions have been fulfilled:

(a) the Real Estate Commission (the "Commission") has issued an effective date for a Public Report on the Project;

(b) the buyer has been given a copy of the Public Report (and all other required documents);

(c) the buyer has been given a notice of the buyer's 30-day cancellation right, which notice complies with Section 514B-86 of the Act;

(d) the buyer has either waived the buyer's right to cancel the Sales Contract or is deemed to have waived the purchaser's right to cancel the Sales Contract; and

(e) Escrow has been advised that the Sales Contract has become binding and that the requirements of Sections 514B-86 and 514B-87 of the Act have been met.

D. Subject to the conditions set forth in the Escrow Agreement, buyer deposits that are held in escrow pursuant to a binding Sales Contract may be disbursed by Escrow before closing to pay for Project construction costs, for architectural, engineering, finance, and legal fees, and for other incidental expenses of the Project only if the applicable conditions for such disbursement set forth in Section 514B-92(b) of the Act have been met and there are sufficient funds to make the payments.

E. Unless otherwise provided in the Escrow Agreement, each Buyer shall be entitled to a return of his or her funds, without interest and less any cancellation fee, and Escrow shall pay such funds to such Buyer, promptly after request for return by the Buyer if: (i) Seller and the Buyer make a written request to Escrow to return to the Buyer the Buyer's funds held by Escrow; or (ii) either Seller or Buyer notifies Escrow in writing that it is exercising any option to cancel or rescind the Sales Contract pursuant to any valid right of cancellation or rescission available to the canceling or rescinding party; provided, however, that no funds shall be returned to a Buyer at the Buyer's request prior to receipt by Seller of written notice from Escrow of Escrow's intent to make such refund to the Buyer.

F. Upon the return of the funds to the Buyer, Escrow shall return to Developer such Buyer's Sales Contract and any conveyance documents already delivered to Escrow. The Buyer shall then have no further rights or obligations under the Sales Contract. Other documents delivered to Escrow relating to the sale of the unit identified in such Sales Contract will be returned to the person from whom or entity from which they were received.

G. If a Buyer breaches the Sales Contract by failing to make a required payment to Escrow or if a Buyer fails to perform a matter being handled by Escrow, Escrow shall notify Developer of such failure. If Developer then notifies Escrow that Developer has terminated the Sales Contract due to such breach, then Escrow shall treat all funds of the Buyer as funds of Developer and not as funds of the Buyer. Then, upon request by Developer, Escrow shall pay such funds to Developer, less any escrow cancellation fee, and such funds shall be considered liquidated damages for Developer.

H. Upon the cancellation of any Sales Contract as specified above, Escrow shall be entitled to a cancellation fee of up to \$250. Depending on the reason for the cancellation, the cancellation fee may be the sole expense of the individual Buyer and not the obligation of Developer.

\* \* \* \* \*

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

## EXHIBIT M

### Special Use Restrictions

Section U of the Declaration provides as follows:

"U. HHFDC Restrictions

1. Chapter 201H HHFDC Buy-Back Restrictions. The HHFDC Affordable Units are subject to the provisions of Chapter 201H (the "HHFDC Buyback Restrictions"). The HHFDC Buy-Back Restrictions provide, among other things, for a first option in favor of HHFDC to purchase a HHFDC Affordable Unit for a period of 10 years from the date the HHFDC Affordable Unit was first conveyed by Declarant to a third-party buyer if the Owner of the HHFDC Affordable Unit desires to sell or transfer the HHFDC Affordable Unit or if the Owner of such Unit violates a covenant that requires the Owner to occupy the HHFDC Affordable Unit. For each HHFDC Affordable Unit, after the first conveyance of the HHFDC Affordable Unit by Declarant to a qualified purchaser (pursuant to the HHFDC Buy-Back Restrictions) (called "Declarant's Initial Conveyance"), and continuing thereafter (a) until the HHFDC Buy-Back Restrictions are released by HHFDC, or (b) until the 10<sup>th</sup> year from the date of Recordation of the Deed of Declarant's Initial Conveyance, whichever shall first occur, all conveyances of the HHFDC Affordable Unit shall be subject to the HHFDC Buy-Back Restrictions, and each such subsequent conveyance of the HHFDC Affordable Unit shall incorporate the HHFDC Buy-Back Restrictions and shall contain the covenant of the grantee thereunder to observe and perform the HHFDC Buy-Back Restrictions. The HHFDC Buy-Back Restrictions are attached as EXHIBIT "D" to this Declaration and are made a part hereof. The HHFDC Buy-Back Restrictions will also be incorporated into the Unit Deed of each HHFDC Affordable Unit as an exhibit thereto. By acceptance of a Unit Deed, all Owners of HHFDC Affordable Units will be deemed to have acknowledged and agreed that they (y) have read, reviewed, approved and accepted all of the terms and conditions of the HHFDC Buy-Back Restrictions, and (z) accept title to their respective Unit subject to the HHFDC Buy-Back Restrictions.

2. HHFDC Shared Appreciation Equity Program. For each HHFDC Affordable Unit, after Declarant's Initial Conveyance of the Unit and continuing thereafter until the restrictions under the HHFDC Shared Appreciation Equity Program are released by HHFDC or terminate under certain foreclosure circumstances as provided in the HHFDC Shared Appreciation Equity Program, all conveyances of that HHFDC Affordable Unit shall be subject to the restrictions of the HHFDC Shared Appreciation Equity Program. Upon any sale, non-permitted transfer, rental or non-owner-occupancy of the HHFDC Affordable Unit by the Unit Owner, HHFDC shall be entitled to HHFDC's share of the appreciation in value of the HHFDC Affordable Unit. The terms and conditions of the HHFDC Shared Appreciation Equity Program, pursuant to Chapter 201H, and Hawaii Administrative Rules, Title 15, Subtitle 14, Chapter 174, Subchapter 9, are described in EXHIBIT "E" attached hereto and made a part hereof, and will be incorporated into each HHFDC Affordable Unit's Deed as an exhibit thereto. A Memorandum of the HHFDC Shared Appreciation Equity Program Agreement will also be Recorded at the Bureau against title to each HHFDC Affordable Unit. By acceptance of a Unit Deed, each HHFDC Affordable Unit Owner will be deemed to have acknowledged and agreed that they have read, reviewed, approved and accepted all of the terms and conditions of the HHFDC Shared Appreciation Equity Program and that they accept title to the Unit subject to the HHFDC Shared Appreciation Equity Program.

3. Liability for HHFDC Buy-Back Restrictions and Shared Appreciation Equity Program. By acceptance of a Unit Deed, each Owner of a HHFDC Affordable Unit acknowledges and agrees that such Owner is obligated to comply with the terms and conditions of the HHFDC Buy-Back Restrictions and the HHFDC Shared Appreciation Equity Program. Declarant shall not be responsible or liable: (a) for the administration of the HHFDC Buy-Back Restrictions or the HHFDC

Shared Appreciation Equity Program; (b) for the observance or performance by HHFDC of its obligations or for the enforcement by HHFDC of its rights under the HHFDC Buy-Back Restrictions or the HHFDC Shared Appreciation Equity Program; (c) for any actions taken by HHFDC or the failure of HHFDC to take any action in connection with the HHFDC Buy-Back Restrictions or the HHFDC Shared Appreciation Equity Program; or (d) for the obligations of, or to otherwise comply with, the HHFDC Buy-Back Restrictions or the HHFDC Shared Appreciation Equity Program.

4. Owner Indemnities. Each Owner shall indemnify, defend and hold Declarant, its agents, successors and assigns, harmless from and against any and all liability, claims, losses, damages, expenses and costs, including attorneys' fees, incurred by or through the Owner arising out of or resulting from the administration, observance, performance and enforcement of or the failure to administer, observe, perform or enforce HHFDC's Buy-Back Restrictions and the HHFDC Shared Appreciation Equity Program, or any term or provision thereof. Further, each Owner shall indemnify, defend and hold the State of Hawaii, HHFDC and their officers, employees, and agents harmless from and against any and all liability, claims, losses, damages, expenses and costs, including attorneys' fees, incurred by or through the Owner arising out of or resulting from Declarant's development of the Project."





8. Check box, as applicable:
- That applicant (s) **has not purchased** a property sponsored by the Hawaii Housing Authority under Chapter 359G, HRS, or sponsored by HFDC under Chapter 201E, HRS, or sponsored by HCDCH under Chapter 201G, HRS, or sponsored by HHFDC under Chapter 201H, HRS;
  - That applicant (s) **has purchased** a property sponsored by the Hawaii Housing Authority under Chapter 359G, HRS, or sponsored by HFDC under Chapter 201E, HRS, or sponsored by HCDCH under Chapter 201G, HRS, or sponsored by HHFDC under Chapter 201H, HRS, and is eligible again under Title 15, Chapter 174, Hawaii Administrative Rules of HHFDC;
9. For **Project Preference** only, check box, as applicable:
- That applicant (s) has a HHFDC approved Construction Defect Preference;
  - That applicant (s) has a HHFDC approved Handicap Preference (for multi-family projects only) and that a handicapped person(s) is physically residing with the applicant (or applicant and spouse) now and shall physically reside in the property purchased under Chapter 201H, HRS;
  - That applicant (s) has a HHFDC approved Public Housing Preference and is physically residing in a public housing project administered by the Hawaii Housing Finance and Development Corporation or the Hawaii Public Housing Authority;
  - That applicant (s) has a HHFDC approved Displacement or Relocation Preference;
10. That applicant (s) has a **household size** of \_\_\_\_\_ who shall physically reside in the property purchased under Chapter 201H, HRS;
11. That applicant (s) has \_\_\_\_\_ **dependent(s)** and all household members are related by blood, marriage or operation of law and/or legal custody and shall physically reside in the property purchased under Chapter 201H, HRS;
12. That applicant (s) acknowledges that the State income tax return and Federal income tax return submitted to the HHFDC are the true and correct copies.
13. The HHFDC is relying on the income information provided, including incomes of other household members, to establish eligibility of the undersigned applicant (s) in meeting the income requirements for the Project;
14. That applicant (s) acknowledges that there are no changes in applicant's marital status, household size requirement, family members eligibility, handicap preference, displacement preference, State residency requirements, resident alien requirements or any other change that affects the HHFDC's eligibility and/or preference requirements;
15. That applicant (s) makes this affidavit in support of his/her application to purchase a property according to HHFDC eligibility requirements and preference, if any, and qualify under Chapter 201H, HRS and Title 15, Chapter 174, Hawaii Administrative Rules of the HHFDC; and
16. That applicant (s) understands that the statements made in this Affidavit are made under oath and will be relied upon by the HHFDC in its review of the application to purchase. Applicant (s)



EXHIBIT O

\*As a condition of Closing, the Buyer will be required to sign this document with the specific values and percentages applicable to Buyer's Unit.

HOLOMUA  
Project

Project Model No. \_\_\_\_\_

Apt. No. \_\_\_\_\_

THE HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION'S  
**SHARED-APPRECIATION PROGRAM**

**PLEASE READ THIS DOCUMENT CAREFULLY**

\*\*\*\*\*

The apartment ("Home") which you are purchasing is part of a residential condominium ("Project") known as HOLOMUA, which is being developed by KRC Partners LLC, ("Developer") with assistance from the **Hawaii Housing Finance and Development Corporation ("HHFDC")**. HHFDC provided such assistance to Developer to further the interest of the State of Hawaii by providing affordable housing opportunities to its people.

For the opportunity which HHFDC has created to enable you to purchase the Home for less than its current fair market value, you are agreeing to pay to HHFDC a share of the net appreciation which you realize or are deemed to have realized if and when you sell or transfer the Home.

SUMMARY OF THE SHARED APPRECIATION PROGRAM

This is a summary of HHFDC's Shared Appreciation Program ("Program"). You should read this entire document carefully. The terms which are in quotations (" ") are defined below.

When you purchase the Home, the deed will contain your agreement to pay HHFDC a share of any "Net Appreciation" which you realize or are deemed to have realized if and when you sell or transfer the Home.

This document describes what constitutes a sale or transfer of the Home and how the "Net Appreciation" will be determined.

Based on "Your Original Purchase Price" and the "Original Fair Market Value" for the Home, you will be entitled to \_\_\_\_\_% of the Net Appreciation, and HHFDC will be entitled to \_\_\_\_\_% of the Net Appreciation if you should later sell or transfer the Home.

This means, as an example only, that if you should later sell or transfer the Home and realize or are then deemed to have realized a Net appreciation of \$ \_\_\_\_\_, HHFDC's share of the "Net Appreciation" will be \_\_\_\_\_% of that amount or approximately \$ \_\_\_\_\_.

1. MEANING OF WORDS

- A. "Original Fair Market Value" means the amount of \$\_\_\_\_\_, which represents the fair market value of the Home (as built but without any additional or upgraded improvements that you may have ordered) as determined by
- ( ) a Federal Housing Administration ("FHA") appraisal
  - ( ) an appraisal obtained by HHFDC.
- B. "Your Original Purchase Price" means the amount of \$\_\_\_\_\_, which represents the basic purchase price for which you are purchasing the Home from Developer but which does not include the cost or value of any additional or upgraded improvements that you may have ordered.

If the Original Fair Market Value is based on the appraisal obtained by HHFDC and is higher than the FHA appraisal (if a FHA appraisal is also obtained), you will have the right and option to either (i) complete the purchase of the Home regardless of the difference in the appraisals or (ii) not to complete the purchase of the Home for that reason, any earnest money deposit which you have paid will be returned to you less any actual expenses for which you are responsible to pay and you will not incur any cancellation penalty.

- C. "HHFDC's Percentage Share" means \_\_\_\_\_%, which represents the percentage that results from the following calculation:

Original Fair Market Value minus Your Original Purchase Price

divided by

Original Fair Market Value

rounded to the nearest one percent.

- D. "Your Percentage Share" means \_\_\_\_\_% which represents the difference between 100% minus HHFDC's Percentage Share.

**FOR FHA GRADUATED MORTGAGE ONLY:** If the home was financed with a FHA graduated payment mortgage, any recovery of any accrued negative amortization shall be first collected from the sale of the home, including your share of the net appreciation, and if not fully paid from your proceeds, then any balance due for the negative amortization may be collected from the State's share of the net appreciation.

- E. "Fair Market Value" means the fair market value of the Home as determined by an appraisal obtained and performed in the manner described below in Section 3, if and when you subsequently sell or transfer the Home.

F. "Net Appreciation" means the result of the following calculation:

$$\begin{array}{r} \text{Fair Market Value of the Home} \\ \text{minus Your Original Purchase Price} \end{array}$$

2. HHFDC'S SHARE OF THE NET APPRECIATION DUE ON SALE OR TRANSFER OF THE HOME

Except for a "Permitted Transfer", as that term is defined below, you agree that if and when all or any part of or interest in the Home is sold or transferred or if you shall be divested of title or any interest in the Home, in any manner, voluntarily or involuntarily, including a judicial or non-judicial foreclosure sale, HHFDC will immediately be entitled to be paid a share of the Net Appreciation equal to:

$$\text{HHFDC's Percentage Share X the Net Appreciation}$$

You agree to give HHFDC written notice as soon as you have reached an agreement or understanding for the sale or transfer of the Home together with the specific terms of such sale or transfer. You shall pay HHFDC's Percentage Share of the Net Appreciation on the effective date of such sale or transfer. If HHFDC's share of the Net Appreciation is not paid when due, interest on HHFDC's share of the Net Appreciation will accrue at the simple annual rate of 12% until paid. In addition, HHFDC will be entitled to be paid reasonable attorneys' fees and costs to enforce its rights hereunder. The obligation to pay HHFDC's share of the Net Appreciation will survive any Permitted Transfer with respect to you and to any person or entity who acquires any interest in the Home as a result of Permitted Transfer.

A sale or transfer of the Home will be deemed to have taken place upon the occurrence of any one of the following events:

- A. When you sell or transfer the Home or any legal or beneficial right, title or ownership interest in the Home, including by way of an agreement of sale or a lease with an option to purchase the Home;
- B. When you no longer use the Home as your principal residence, but continue to retain legal and/or equitable title to the Home; or
- C. When you rent the Home or any part of the Home to someone else, but continue to retain legal and/or equitable title to the Home.

HHFDC may, but is not required to, extend the time by when HHFDC's Share of the Net Appreciation will become due and payable for a period not exceeding one year if the Home is covered by a First Mortgage (as that term is defined below in Section 7, which is insured or held by FHA).

HHFDC may extend the time when HHFDC's Share of Net Appreciation will become due and payable for a period not exceeding a total of ten years if the transfer is temporary and occurs:

- (i) When you no longer use the Home as your principal residence, but continue to retain legal and/or equitable title to the Home; or
- (ii) When you rent the Home or any part of the Home to someone else, but continue to retain legal and/or equitable title to the Home; and

HHFDC determines, in HHFDC's sole discretion, that the temporary transfer is necessary because of adverse circumstances involving you, such as, an unforeseen job or military transfer, a temporary educational sabbatical, a serious illness or other hardship circumstances as determined by the HHFDC. The extension may be provided if you are a qualified resident who pays resident state income taxes during the period you own the Home and will continue to pay resident state income taxes during the temporary extension period. You must notify and obtain HHFDC's consent prior to the temporary transfer. If you fail to reoccupy the Home as your principal residence at the end of the extension period, HHFDC's Share of Net Appreciation will be immediately due and payable.

The following transfers ("Permitted Transfers") will not result in HHFDC's share of the Net Appreciation becoming due and payable. However, you must still notify HHFDC and obtain HHFDC's consent prior to a Permitted Transfer.

- A. The creation of a lien or other encumbrance which does not relate to a transfer of rights of occupancy in the Home provided that the total amount of all liens and other encumbrance which are secured by the Home must not exceed 80% of the sum of
  - (i) Your Original Purchase Price plus
  - (ii) Your Original Percentage Share of the Net Appreciation, as determined by an appraisal obtained by HHFDC at your cost and expense.

For example, based on the amounts shown in the hypothetical example on page 6 below as Your Original Purchase Price and Your Percentage Share of the Net Appreciation, the total amount of all liens and other encumbrances, including the first mortgage loan cannot exceed \$ 262,400.00 (which is 80% of the sum of the hypothetical amounts shown as Your Original Purchase Price and Your Percentage Share of the Net Appreciation).

- B. A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- C. A transfer to a relative resulting from your death;
- D. A transfer where your spouse or children become an owner of the Home;
- E. A transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which your spouse becomes an owner of the Home; and

- F. A transfer into an inter vivos trust in which you are and remain the primary beneficiary and which does not relate to a transfer of rights of occupancy in the Home. This means that you must continue to use the Home as your principal residence after the transfer.

However, if the first mortgage is guaranteed or held by the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC"), (i) the foregoing Permitted Transfers may result in your being required to make immediate payment in full of all sums secured by such a first mortgage unless prohibited by federal laws; and (ii) with respect to a transfer described above in (c), (d) and (e), the mortgage may require the transferee to occupy the Home as the transferee's principal residence as a condition for not exercising any right to require you to make immediate payment in full of all sums secured by such a first mortgage.

### 3. DETERMINATION OF FAIR MARKET VALUE BY APPRAISAL

Whenever it shall become necessary to determine the Net Appreciation, HHFDC will select an appraiser who has any of the qualifications set forth below and who shall prepare a written appraisal of the Fair Market Value of the Home within 45 calendar days after you have given HHFDC written notice that you will be selling or transferring the Home together with the terms of such sale or transfer. The appraisal shall be based on the original floor plan and improvements and lot size when you buy the Home together with the terms of such sale or transfer. The appraisal shall be based on the original floor plan and improvements and lot size when you buy the Home. The appraisal shall not include the value of any improvements which you may have added to the Home after the date of the Deed. Items of repair and maintenance shall not be considered to be improvements. You will pay the cost of HHFDC's appraisal.

HHFDC will send to you by first class mail a copy of the written appraisal no later than 10 business days after the appraisal has been completed together with a notice informing you that you may procure an independent appraisal within 45 calendar days if you dispute HHFDC's appraisal.

If you do not dispute HHFDC's appraisal, that appraisal will be used to determine the Fair Market Value of the Home. If you dispute HHFDC's appraisal, you may at your own expense procure an appraisal by an independent appraiser who has any of the qualifications set forth below. You must send a copy of your appraisal to HHFDC within the earlier of (i) 10 business days after it has been completed or (ii) 45 calendar days after you have received HHFDC's appraisal. If your appraisal is lower than HHFDC's appraisal, the Fair Market Value of the Home will be taken to be one-half the sum of the two appraisals. If your appraisal is not lower, HHFDC's appraisal will govern.

All appraisals will be made only by an appraiser having one or more of the following qualifications: (i) State of Hawaii licensed appraiser, or (ii) State of Hawaii certified appraiser.



4. CANCELLATION OF HHFDC'S RIGHT TO A SHARE OF THE NET APPRECIATION

Subject to the provisions of Section 7 below, HHFDC's right to be paid a share of the Net Appreciation will continue in full force and effect and will constitute a lien on the Home until one or both of the following events have occurred:

- (i) You have sold or transferred the Home; and
- (ii) HHFDC has been fully paid its share of the Net Appreciation and any other amounts which you are obligated to pay to HHFDC.

Thereafter, HHFDC will sign and cause to be recorded a document which need only be signed by HHFDC and which acknowledges that your obligation to pay HHFDC a share of the Net Appreciation has been fully satisfied.

5. SALE OR TRANSFER OF THE HOME TO HHFDC PURSUANT TO THE HAWAII REVISED STATUTES, SECTION 201H-47

The provisions of the Program will not apply if HHFDC exercises, pursuant to Hawaii Revised Statutes Section 201H-47, HHFDC's first option to purchase the Home during the restriction period after you have purchased the Home. HHFDC's first option is described in Section I of Exhibit "B".

If you elect to pay all or any part of HHFDC's share of Net Appreciation in advance without having to sell or transfer the Home and HHFDC exercises its option to purchase the Home, all funds received by HHFDC will be reimbursed to you with no interest.

6. PAYMENT OF HHFDC'S PERCENTAGE SHARE OF NET APPRECIATION IN ADVANCE

You may elect to pay all or any part of HHFDC's share of the Net Appreciation at any time and in advance without having to sell or transfer the Home. If you pay only a part of HHFDC's share of the Net Appreciation in advance, Your Original Purchase Price will be increased after the payment has been made for the purpose of making any later calculation to determine the balance of HHFDC's share of the Net Appreciation. Your original Purchase Price, as increased, will be referred to as "Your Adjusted Purchase Price", which will be equal to the sum of:

Your Original Purchase Price  
plus Partial Payment Amount divided by HHFDC's Percentage Share  
plus Any prior increase(s) to Your Original Purchase Price

Your Adjusted Purchase Price will be substituted for the "Your Original Purchase Price" for any subsequent calculation of the Net Appreciation Under Section 1, F above.

## 7. FIRST MORTGAGEE PROTECTION

The foregoing provisions shall not apply with respect to:

- A. The first purchase money mortgage ("First Mortgage"), if any, which is being placed on the Home to enable you to finance the purchase of the Home.
- B. The first purchase money mortgagee ("First Mortgagee") named in the First Mortgage, including the first purchase money mortgagee's successors and assigns.
- C. The rights of the First Mortgagee to foreclose or take title pursuant to the remedies in the First Mortgage, to accept a deed in lieu of foreclosure in the event of your default, as mortgagor under the First Mortgage, or to sell or lease the Home acquired by the First Mortgagee.
- D. Any person or persons acquiring the Home as a result of foreclosure or by a deed in lieu of foreclosure of the First Mortgage or any successor, transferee, or assignee of such person or persons.

You must provide notice to HHFDC of the First Mortgage and to cause the holder of the First Mortgage to provide written notice to HHFDC of any default under the First Mortgage. However, if the First Mortgage is (i) insured or held by FHA or (ii) guaranteed or held by FNMA or FHLMC, your failure to cause the holder of the First Mortgage to provide written notice to HHFDC of any default under the First Mortgage or any failure of the holder of the First Mortgage to provide such written notice shall not affect such holder's rights under this paragraph 7.

HHFDC will subordinate any lien or contingent lien rights that HHFDC may have under the program to the lien of the First Mortgage. Any holder of the First Mortgage or any person who acquires legal title to the home as a result of a foreclosure or a deed in lieu of foreclosure of the First Mortgage shall acquire legal title free of such lien or contingent lien rights that HHFDC may have under the program. The provisions of the program shall be null and void upon a conveyance of the Home through a foreclosure sale or a deed in lieu of foreclosure.

## 8. TAX CONSEQUENCES

The program may have income tax or estate planning consequences depending upon your personal financial and tax situation. For further information, you should consult with your own accountant, attorney, or other financial adviser and discuss any tax consequences which might affect you.

9. HYPOTHETICAL EXAMPLE AND WORKSHEET

A. Hypothetical Example: The following is a hypothetical example of how the Program works. The amounts for the following (i) Original Fair Market, (ii) Your Original Purchase Price, and (iii) Fair Market Value are only assumptions. The example assumes that the price for which you sell the Home is equal to the Fair Market Value of the Home.

(1)	Original Fair Market Value		\$300,000
(2)	Your Original Purchase Price		240,000
(3)	HHFDC's Percentage Share		20%
	$\$300,000$	-	$\$240,000$ = $\$60,000$ divided by $\$300,000$
	(Original Fair Market Value)	(Your Original Purchase Price)	(Equity) (Original Fair Market Value)
	[A. (1)]	[A. (2)]	[A. (1)]
(4)	Your Percentage Share		80%
	100%	-	20%
			[A. (3)]
(5)	Fair Market Value (at subsequent sale or transfer)		350,000
(6)	Net Appreciation		110,000
	Fair Market Value of the Home	[A. (5)]	\$350,000
	<u>Minus</u> Your Original Purchase Price	[A. (2)]	<240,000>
(7)	HHFDC's Share of the Net Appreciation		22,000
	20%	X	\$110,000
	[A. (3)]		[A. (6)]
(8)	Your Share of the Net Appreciation		88,000
	80%	X	\$110,000
	[A. (4)]		[A. (6)]

If you made a partial payment of \$10,000 toward HHFDC's share of the Net Appreciation in advance.

(9)	Your Adjusted Purchase Price would be		290,000
	Your Original Purchase Price	[A. (2)]	\$240,000
	<u>plus</u> \$10,000 divided by 20%	[A. (3)]	50,000
(10)	Net Appreciation (if you later sell)		60,000
	Fair Market Value of the Home	[A. (5)]	\$350,000
	- Your Adjusted Purchase Price	[A. (9)]	290,000
(11)	HHFDC's Share of the Net Appreciation		12,000
	20%	X	\$60,000
	[A. (3)]		[A. (10)]

B. Worksheet:

You can use the following worksheet to see how the Shared Appreciation Program works. To do so, you must estimate the amounts for the following items: (i) Original Fair Market, (ii) Your Original Purchase Price, and (iii) Fair Market Value. Assume that the price for which you sell the Home is equal to the Fair Market Value of the Home.

- (1) Original Fair Market Value \$\_\_\_\_\_
- (2) Your Original Purchase Price \_\_\_\_\_
- (3) HHFDC's Percentage Share \_\_\_\_\_%
- \$\_\_\_\_\_ - \$\_\_\_\_\_ = \$\_\_\_\_\_ divided by \$\_\_\_\_\_
- (Original Fair (Your Original (Equity) (Original Fair  
Market Value) Purchase Price) Market Value)  
[B. (1)] [B. (2)] [B. (1)]
- (4) Your Percentage Share \_\_\_\_\_%
- 100% - \_\_\_\_\_%
- [B. (3)]
- (5) Fair Market Value (at subsequent sale or transfer) 350,000
- (6) Net Appreciation \_\_\_\_\_
- Fair Market Value of the Home [B. (5)] \$\_\_\_\_\_
- Minus Your Original Purchase Price [B. (2)] <\_\_\_\_\_>
- (7) HHFDC's Share of the Net Appreciation \_\_\_\_\_
- \_\_\_\_\_ % X \$\_\_\_\_\_
- [B. (3)] [B. (6)]
- (8) Your Share of the Net Appreciation \_\_\_\_\_
- \_\_\_\_\_ % X \$\_\_\_\_\_
- [B. (4)] [B. (6)]

If you made a partial payment of \$10,000 toward HHFDC's share of the Net Appreciation in advance.

- (9) Your Adjusted Purchase Price would be \_\_\_\_\_
- Your Original Purchase Price [B. (2)] \$\_\_\_\_\_
- plus \$10,000 divided by 20% [B. (3)] \_\_\_\_\_
- (10) Net Appreciation (if you later sell) \_\_\_\_\_
- Fair Market Value of the Home [B. (5)] \$\_\_\_\_\_
- Your Adjusted Purchase Price [B. (9)] \_\_\_\_\_
- (11) HHFDC's Share of the Net Appreciation \_\_\_\_\_
- \_\_\_\_\_ % X \$\_\_\_\_\_
- [B. (3)] [B. (10)]

## 10. NOTICE AND ACKNOWLEDGEMENT

By signing below, you agree and admit, as follows:

- A. You have read this document.
- B. You understand that if you sell or transfer the Home, HHFDC will be entitled to be paid immediately its share of the appreciation or equity in the Home.  
  
You understand when a sale or transfer of the Home has or will be deemed to have taken place.
- C. If the Home is sold or transferred and you do not pay HHFDC its share of the Net Appreciation in the Home, HHFDC may take legal action which may result in the foreclosure sale of the Home.
- D. If the First Mortgage is insured or held by FHA, FHA may not be able to help you.
- E. You understand that the Home you are purchasing will be encumbered by the Shared Appreciation Equity (SAE) Program as a deed restriction.
- F. You understand that the SAE Program may limit additional financing that can be secured by the Home.

During HHFDC's buyback restriction period, HHFDC will consent to additional financing and subordinate the SAE Program under the following conditions:

- 1. When the total loan amount to be secured by the Home does not exceed your original purchase price.
- 2. When the total loan amount to be secured by the Home exceeds your original purchase price, the loan funds that exceed your original purchase price will be used for the following purpose:
  - a). Certain new refinancing/mortgage loan closing costs.
  - b). Payment of deferred interest amount from the original FHA graduated mortgage loan.
  - c). Certain property capital improvements.
  - d). Payment of subsidy, deferred land value or deferred sales price.
  - e). Payment of HHFDC's share of Net Appreciation of the Home under the SAE Program.
- 3. And, except for item 2.(e) above, the total liens and encumbrances (including mortgages) does not exceed 80% of the sum of your share of appreciation of the property plus your original purchase price for the Home.

After the end of HHFDC's buyback restriction period, you may obtain additional financing without any limitation on the use of the loan funds, provided that, the total liens and encumbrances to be secured by the Home does not exceed 80% of the sum of your original purchase price plus your share of appreciation in the Home.

- G. You understand that you must notify HHFDC in writing when you intend to pay all or part of HHFDC's share of Net Appreciation. If full payment will be made due to a sale of the Home, the terms and conditions of the sale will need to be provided.

HHFDC will select an appraiser who will prepare a written appraisal report. HHFDC will compute the share of Net Appreciation amount that is due and payable and notify you in writing within 45 days of receipt of your notification to pay HHFDC's share of Net Appreciation.

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Buyer's Signature

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Buyer's Signature

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Buyer's Signature

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Buyer's Signature



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 08-241, FD1

## RESOLUTION

(Apo)

**AUTHORIZING EXEMPTIONS FROM CERTAIN REQUIREMENTS RELATING TO THE HOLOMUA AFFORDABLE RESIDENTIAL FOR-SALE CONDOMINIUMS AT HONOLULU, OAHU, HAWAII, TAX MAP KEYS 2-4-6: 17 AND 18.**

WHEREAS, THM Partners LLC, through its affiliate KRC Partners LLC, with the approval of the Hawaii Housing Finance and Development Corporation ("HHFDC"), proposes to develop a 176-unit for-sale, multifamily development on 0.49 acre of land located at 1315 Kalakaua Avenue, between South Beretania Street and Young Street, at Honolulu, Oahu, identified as Tax Map Keys: 2-4-6: 17 and 18, which is owned by the KRC Partners LLC, to be known as Holomua (the "Development"); and

WHEREAS, the proposed 24-story high-rise condominium building will contain eighty (80) one-bedroom units and ninety six (96) two-bedroom units, a lobby area, mailroom, manager's office and storage room, covered parking for every unit, and an activity room with kitchen and toilet; and

WHEREAS, upon completion of the building, ninety (90) of the units (being 51% of the total number of units in the Development) will be sold to families with household incomes at or below one hundred forty (140) percent of Oahu's median income; and

WHEREAS, the Development will help address the critical need for affordably priced housing within Honolulu's urban core with convenient access to employment centers, public transportation, retail amenities, schools, healthcare facilities, parks, and other goods and services; and

WHEREAS, the council is empowered to and authorized to approve the Development, which may include exemptions from statutes, ordinances, charter provisions and rules of any government agency relating to planning, zoning, construction standards for subdivision, development and improvement of land and the construction of units thereon pursuant to Section 201H-38 of the Hawaii Revised Statutes ("HRS"); and

WHEREAS, the council has reviewed the preliminary plans, and the outline specifications dated September 2008, for the Development, submitted to the council by the HHFDC; and

WHEREAS, the developer has submitted to the council proposed revisions to the Development, summarized in Exhibit A attached hereto and by reference made a part hereof; and



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
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## RESOLUTION

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WHEREAS, the granting of the exemptions is necessary for the timely and successful implementation of the Development; and

WHEREAS, the exemptions meet minimum requirements of health and safety; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that it approves the Development in modified form incorporating all of the revisions set forth in Exhibit A, which approval includes exemptions from certain requirements for the Development as set forth in the preliminary plans and specifications for the Development and as modified herein, as follows:

Land Use Ordinance

1. Exemption from Section 21-3.120-2(b) and Table 21-3.4 of the Land Use Ordinance ("LUO"), relating to height, to allow the Development to exceed the current allowable maximum height of 150 feet and build to a maximum height of 205 feet.
2. Exemption from Section 21-3.120-2(b) and Table 21-3.4 of the LUO, relating to density, to allow the Development to exceed the maximum allowable density (FAR) of 2.5 (maximum 3.5 with bonuses), which allows a maximum building floor area of 53,348 square feet (74,687 square feet with bonuses) and build to a maximum FAR of 7.5 and a building floor area of up to 160,000 square feet.
3. Exemption from Section 21-3.120-2(b) and Table 21-3.4 of the LUO, relating to side yards, to allow the parking levels of the Development to encroach into the required 10-foot side yard setback by about 10 feet along the north side of the property and between 0 to 5 feet along the southerly side of the property.
4. Exemption from Section 21-3.120-2(b) and Table 21-3.4 of the LUO, relating to rear yards, to allow the parking levels of the Development to encroach into the required 10-foot rear yard setback by about 10 feet for a distance of 27 feet and another 5 feet for a distance of about 37 feet.
5. Exemption from Section 21-3.120-2(b) and Table 21-3.4 of the LUO, relating to side yards, to allow a loading space of the Development to encroach into the required 10-foot side yard setback by about 10 feet along the north side of the property.





**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
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No. 08-241, FD1

## RESOLUTION

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6. Exemption from Section 21-3.120-2(c)(5)(A) of the LUO, relating to street setbacks, to allow a 60-foot high and 30-foot wide section at the top of the Development to encroach into the street setback area.
7. Exemption from Section 21-6.20 and Table 21-6.1 of the LUO, relating to off-street parking, to allow for less than the minimum required off-street parking spaces (currently estimated at 266 stalls) and allowing developer to provide up to 245 and no less than 211 total parking stalls; provided that the maximum height of the parking wall along the mauka boundary of the property shall not exceed 58 feet, as measured from ground level.

### Primary Urban Center Development Plan Guidelines

8. Exemption from Primary Urban Center ("PUC") Development Plan policies and guidelines as they relate to scenic views (PUC 3.1.1.2; Map A.1; Policy 3.1.2; and Guideline 3.1.3.3).
9. Exemption from PUC Development Plan policies and guidelines as they relate to plazas (PUC Policy 3.1.2 and Guideline 3.1.3.7).
10. Exemption from PUC Development Plan policies and guidelines as they relate to maximum building heights (PUC Policy 3.2.2.3).
11. Exemption from PUC Development Plan policies and guidelines as they relate to pedestrian amenities (PUC Policy 3.2.2.3).

### Application Fees and Infrastructure and/or Public Works Fees and Charges

12. Exemption from Section 14-12.12 of the Revised Ordinances of Honolulu ("ROH") to allow exemption from the private storm drain connection license fee.
13. Exemption from Section 14-14.4 of the ROH to allow exemption from the fees for grading and grubbing permits.
14. Exemption from Sections 18-6.1 and 18-6.2 of the ROH to allow exemption from plan review and building permit fees, estimated at \$2,500 and \$170,500+, respectively.
15. Deferral from Section 14-10.3 of the ROH to allow deferral of payment of the residential wastewater system connection fees and facility charges until funding from the construction loan is available and sales of the individual condominium



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CITY AND COUNTY OF HONOLULU  
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No. 08-241, FD1

## RESOLUTION

units are closed. The residential wastewater system connection fees and facility charges are estimated to be approximately \$605,000.

### Park Dedication

16. Exemption from Chapter 22, Article 7 of the ROH to allow exemption from the park dedication requirements.

### Board of Water Supply Rules and Regulations

17. Deferral from Sections 1-102, 2-202(2) and 2-202(3) of the Board of Water Supply Rules and Regulations to allow deferral of payment of the water systems connection charges and facility charges for resource development, transmission and storage until funding from the construction loan is available and sales of the individual condominium units are closed. The BWS water systems connection charges and facility charges are estimated to be approximately \$270,000; and

BE IT FURTHER RESOLVED that in the event of any conflict between the foregoing exemptions, or the preliminary plans and specifications submitted to the council by the HHFDC, and Exhibit A, Exhibit A shall prevail; and

BE IT FURTHER RESOLVED that as used in this Resolution,

- a. References to the Hawaii Housing Finance and Development Corporation shall be deemed to include any successor agency;
- b. References to specific statutes, ordinances, or regulations shall be deemed to include any respective successor statutes, ordinances, or regulations; and

BE IT FURTHER RESOLVED that this Resolution shall be void unless construction of the Development commences no later than 24 months after the approval date of this Resolution; and

BE IT FURTHER RESOLVED that the exemptions granted for this Development are not transferable to any other real property; and

BE IT FURTHER RESOLVED that the final plans and specifications for the Development shall be deemed approved if those plans and specifications do not substantially deviate from the preliminary plans and outline specifications submitted to the council, except to comply with any modifications made by the council herein;



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 08-241, FD1

**RESOLUTION**

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provided that minor modifications to the design character or specifications of the building and or landscaping, may be approved by the Hawaii Housing Finance and Development Corporation, if such modifications are consistent with the prevailing neighborhood character; and

BE IT FURTHER RESOLVED that no action may be prosecuted or maintained against the City and County of Honolulu, its officials or employees, on account of actions taken by them in reviewing, approving, or modifying the plans and specifications or in granting these exemptions; and

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Hawaii Housing Finance and Development Corporation, 677 Queen Street, Suite 300, Honolulu, Hawaii 96813 and THM Partners LLC, a Hawaii limited liability company, at 615 Piikoi Street, Suite 808, Honolulu, Hawaii 96814.

INTRODUCED BY:

Barbara Marshall (BR)

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DATE OF INTRODUCTION:

October 17, 2008  
Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers

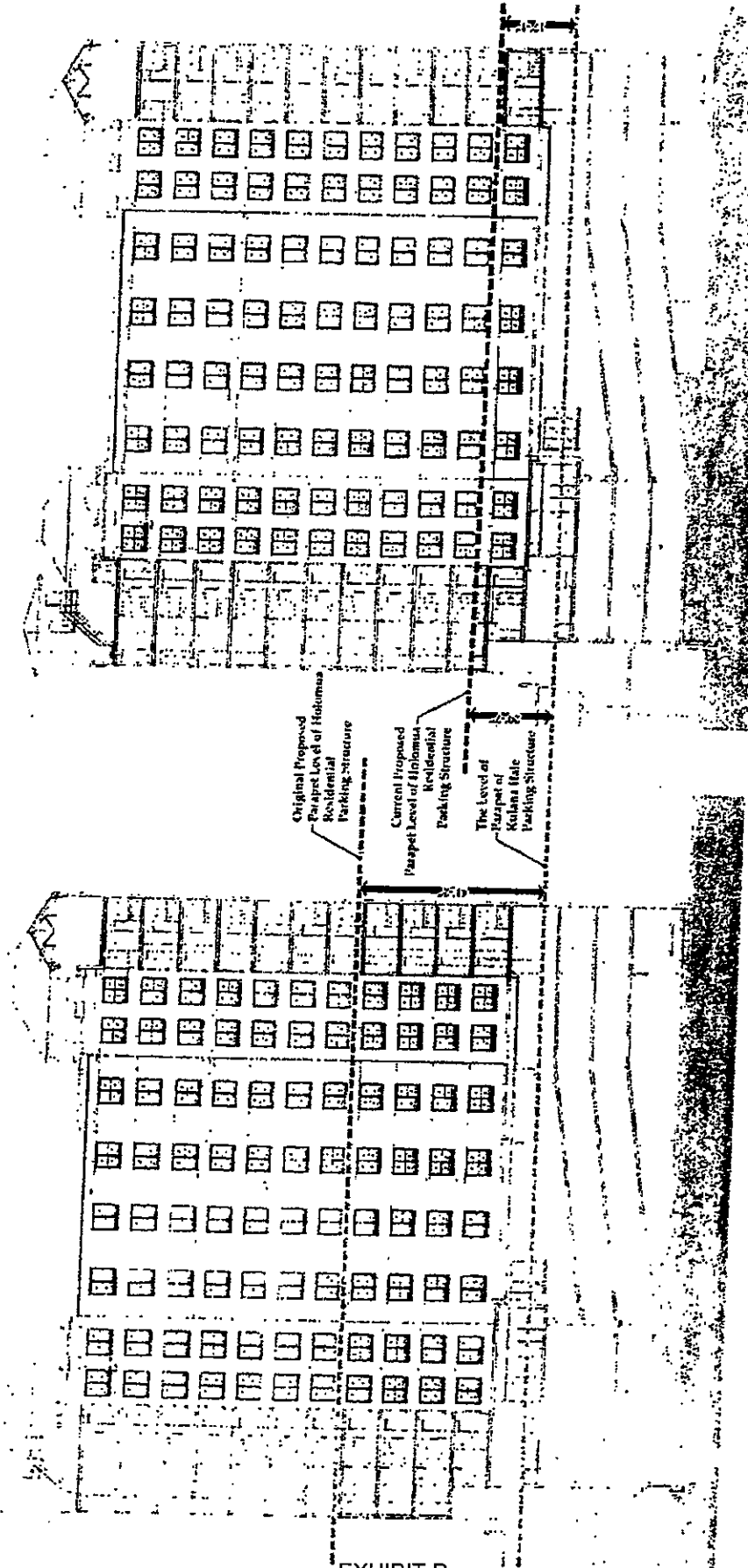
EXHIBIT A

REVISIONS TO HOLOMUA PROJECT

**Holomua  
Summary of Developer Concessions**

<b>Potential Revision No. 1</b>			
<b>Item</b>	<b>Original Design</b>	<b>Proposed Concession</b>	<b>Difference</b>
<b>Mauka Parking Wall</b>			
Reduced Mauka Parking wall height by eliminating one level of parking and removing top deck from parking structure.			
<b>Holomua Changes:</b>			
Parking Levels	8	7	-1
Parking Wall Height	41'2"	17'1" to 20'7"	20'7" to 24'1"
Parking Stalls	245	211	-34
Large Mauka Lanais (No.)	4	0	-4
<b>Effects on Kulana Hale:</b>			
Affected Floors	4	1	-3
Affected Units	32	8	-24
<b>Mauka Parking Wall Landscaping</b>	None	Landscaped	Increased Aesthetics
<b>Overall Building Height (Approximate)</b>	220 ft.	200 ft.	-20 ft.
<b>Comments:</b>			
1. The elimination of one level of parking significantly diminishes the impact of the mauka parking wall on Kulana Hale. The number of affected floors drops from 4 to 1 and the number of affected units from 32 to 8.			
2. The developer is adversely impacted in that there are now 34 fewer parking stalls to be sold alongside units in Holomua. Any potential savings associated with the reduced parking is more than offset by the reduced sales revenue and slower absorption of units as a result of fewer stalls.			
3. Another adverse impact to Holomua is the elimination of large lanai areas previously planned for use by the residents of the units immediately above the parking structure.			
4. The residents of Kulana Hale and nearby projects also benefit from the overall reduction in Holomua's building height from 220 ft. to 200 ft.			





Original Design

Proposed Revision

Parkings Pavilium Level Study

Holomua



NOT TO SCALE

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

RESOLUTION 08-241, FD1

Introduced: 10/17/08 By: BARBARA MARSHALL (BR)

Committee: ZONING

Title: RESOLUTION AUTHORIZING EXEMPTIONS FROM CERTAIN REQUIREMENTS RELATING TO THE HOLOMUA AFFORDABLE RESIDENTIAL FOR-SALE CONDOMINIUMS AT HONOLULU, OAHU, HAWAII, TAX MAP KEYS 2-4-6: 17 AND 18.



ZONING	10/28/08	CR-319 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION. (NOTE: 201H AUTOMATICALLY TAKES EFFECT IF NO ACTION IS TAKEN BY THE COUNCIL WITHIN 45 DAYS; DEADLINE: 11/24/08)			
COUNCIL	11/12/08	CR-319 ADOPTED. RESOLUTION AMENDED TO FD1 ON THE COUNCIL FLOOR AND SUBSEQUENTLY ADOPTED AS RESOLUTION 08-241, FD1.			
	APO Y	CACHOLA Y	DELA CRUZ Y	DJOU Y	GARCIA Y
	KOBAYASHI N	MARSHALL E	OKINO Y	TAM Y	

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

DENISE C. DE COSTA, CITY CLERK

TODD APO, CHAIR AND PRESIDING OFFICER

EXHIBIT Q

**HHFDC'S USE, SALE AND TRANSFER RESTRICTIONS**

**Section 201H-47, Hawaii Revised Statutes - Real Property; restrictions on transfer; waiver of restrictions.**

(a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

- (1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, the Hawaii Housing Finance and Development Corporation ("corporation") shall have the first option to purchase the real property at a price that shall not exceed the sum of:
  - (A) The original cost to the purchaser, as defined in rules adopted by the corporation;
  - (B) The cost of any improvements added by the purchaser, as defined in rules adopted by the corporation; and
  - (C) Simple interest on the original cost and capital improvements to the purchaser at the rate of one percent a year.

- (2) The corporation may purchase the real property either:
  - (A) By conveyance free and clear of all mortgages and liens; or
  - (B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in subparagraph (B), the corporation shall acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing.

The corporation's interest created by this subsection shall constitute a statutory lien on the real property and shall be superior to any other mortgage or lien except for:

- (i) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;
- (ii) Any mortgage insured or held by a federal housing agency; and
- (iii) Any mortgage or lien created for any other purpose, provided that the corporation has previously consented to it in writing.

The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by paragraph (1)(A) to (C), and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation.

- (3) A purchaser may refinance real property developed and sold under this chapter provided that the purchaser shall not refinance the real property, within ten years from the date of purchase, for an amount in excess of the purchase price as determined by paragraph (1)(A) to (C).
- (4) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property free from any price restrictions; provided that the purchaser shall be required to pay to the corporation the sum of:
  - (A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;
  - (B) Any subsidy or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the real property, and any other amount



expended by the corporation not counted as cost under Section 201H-45 but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;

- (C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent a year computed as to the subsidy or deferred sales price, if applicable, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase, or execution of the agreement of sale, of the real property; and provided further that if any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the real property at a price which shall not exceed the sum as computed under paragraph (1) and (2); and
  - (D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91 when applicable; and
  - (5) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in paragraph (4)(B) and any interest accrued pursuant to subsection (4)(C) may be paid, in part or in full, at any time.
- (b) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, and if the corporation does not exercise the option to purchase the real property as provided in subsection (a), then the corporation shall require the purchaser to sell the real property to a "qualified resident" as defined in section 201H-32, and upon the terms that preserve the intent of this section and sections 201H-49 and 201H-50, and in accordance with rules adopted by the corporation.
  - (c) The corporation may waive the restrictions prescribed in subsection (a) or (b) if:
    - (1) The purchaser wishes to transfer title to the real property by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation; or
    - (2) The sale or transfer of the real property would be at a price and upon terms that preserve the intent of this section without the necessity of the State repurchasing the real property; provided that, in this case, the purchaser shall sell the unit or lot and sell or assign the property to a person who is a "qualified resident" as defined in Section 201H-32; and provided further that the purchaser shall pay to the corporation its share of appreciation in the unit as determined in rules adopted pursuant to chapter 91 when applicable.
  - (d) The corporation may release the restrictions prescribed in subsection (a) or (b) if the real property is financed under a federally subsidized mortgage program and the restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies provided to the homeowner.
  - (e) The restrictions prescribed in this section and sections 201H-49 to 201H-51 shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the real property pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering real property or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation in writing of:
    - (1) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default, and

- (2) Any intention of the mortgagee to foreclose the mortgage under chapter 667; provided that the mortgagee's failure to provide written notice to the corporation shall not affect the holder's rights under the mortgage. The corporation shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C).
- (f) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of real property for which a subsidy or deferred sales price was made by the corporation, the amount of the subsidy or deferred sales price described in subsection (a)(4)(B), a description of the cost items that constitute the subsidy or deferred sales price, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the corporation.
- (g) This section need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.
- (h) The corporation is authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

**Section 201H-48, Hawaii Revised Statutes - Exception of current owners in corporation projects.**

The corporation may allow a person who is a current owner of a multi-family dwelling unit in a project sponsored by the corporation to apply for the purchase of a larger dwelling unit in a project sponsored by the corporation if the applicant's current family size exceeds the permissible family size for the applicant's current dwelling unit, as determined by prevailing county building or housing codes. The applicant shall be required to sell the applicant's current dwelling unit back to the corporation. Notwithstanding any law to the contrary, any applicant, as it pertains to for-sale housing, shall be a "qualified resident" who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is domiciled in the State and shall physically reside in the dwelling unit purchased under this chapter;
- (4) In the case of purchase of real property in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; and
- (5) Except for the applicant's current residence, meets the following qualifications:
  - (A) Is a person who either oneself or together with the person's spouse or a household member, does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land; and
  - (B) Is a person whose spouse or a household member does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71.

**Section 201H-49, Hawaii Revised Statutes - Real Property; restrictions on use.**

- (a) Real property purchased under this chapter shall be occupied by the purchaser at all times during the ten-year restriction period set forth in section 201H-47, except in hardship circumstances where the inability to reside on the property arises out of unforeseeable job or military transfer, a

temporary educational sabbatical, serious illness of the person, or in other hardship circumstances as determined by the corporation on a case-by-case basis.

The corporation may waive the owner-occupancy requirement for a total of not more than ten years after the purchase of the dwelling, during which time the dwelling unit may be rented or leased. Waivers may be granted only to qualified residents who have paid resident state income taxes during all years in which they occupied the dwelling, who continue to pay resident state income taxes during the waiver period, and whose inability to reside on the property does not stem from a natural disaster. The ten year owner-occupancy requirement shall be extended by one month for every month or fraction thereof that the owner-occupancy requirement is waived.

The corporation shall adopt rules under chapter 91 to implement the letter and spirit of this subsection and to prescribe necessary terms and conditions. The rules shall include:

- (1) Application and approval procedures for the waivers;
- (2) Exceptions authorized by this subsection;
- (3) The amounts of rents that may be charged by persons allowed to rent or lease a dwelling unit; and
- (4) Schedules of fees needed to cover administrative expenses and attorney's fees.

No qualified resident who fails to reoccupy a dwelling unit after any waiver period shall receive more than the maximum to which the person would be entitled under section 201H-47. Any person who disagrees with the corporation's determination under this section shall be entitled to a contested case proceeding under chapter 91.

- (b) From time to time the corporation may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of subsection (a) shall be sufficient reason for the corporation, at its option, to purchase the unit as provided in subsection 201H-47(a)(1), (2), or (4), as applicable.
- (c) Any deed, lease, agreement of sale, or other instrument of conveyance issued by the corporation shall expressly contain the restrictions on use prescribed in this section.
- (d) The restrictions prescribed in subsection (a) shall terminate and shall not attach in subsequent transfers of title if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.
- (e) Subsections (a) to (c) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.
- (f) The corporation shall be authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

**Section 201H-50, Hawaii Revised Statutes - Restrictions on use, sale, and transfer of real property; effect of amendment or repeal.**

- (a) Restrictions on the use, sale, and transfer of real property shall be made as uniform as possible in application to purchasers of all real property, and restrictions shall be conformed with agreement of the purchaser to reflect change or repeal made by any subsequent legislative act, ordinance, rule, or regulation. Purchasers shall be permitted at their election to sell or transfer real property subject to restrictions in effect at the time of their sale or transfer.
- (b) The corporation, any department of the State, or any county housing agency maintaining restrictions, through contract, deed, other instrument, or by rule, shall notify purchasers of any substantial change in restrictions made by law, ordinance, rule, or regulation not more than one hundred eighty days after a change in restrictions, and the notice shall clearly state the enacted or proposed new provisions, the date or dates upon which they are to be effective, and offer to each purchaser of real property constructed and sold prior to the effective date an opportunity to modify

the existing contract or other instrument to incorporate the most recent provisions. The public notice shall be given at least three times, in a newspaper of general circulation, in the State for state agencies and at least three times in a county newspaper for county agencies.

- (c) For all purchasers of real property prior to June 25, 1990, where the restrictions on use and transfer of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date of original purchase.
- (d) No purchaser shall be entitled to modify the restrictions on use, transfer, or sale of the real property, without the written permission of the holder of a duly-recorded first mortgage on the dwelling unit and the owner of the fee simple or leasehold interest in the land underlying the unit, unless the holder of the first mortgage or the owner is an agency of the State or its political subdivisions.
- (e) This section shall apply to all real property developed, constructed, and sold pursuant to this chapter and similar programs in the State or its political subdivisions and which are sold on the condition that the purchaser accepts restrictions on the use, sale, or transfer of interest in the real property purchased.
- (f) The provisions of this section shall be incorporated in any deed, lease, instrument, rule, or regulation relating to restrictions on use, sale, or transfer of dwelling units, entered into after June 20, 1977.
- (g) The restrictions of this section shall terminate as to a particular real property and shall not attach in subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

**Section 201H-51, Hawaii Revised Statutes - Corporation's right to repurchase or rent real property; authority to seek recovery.**

- (a) Notwithstanding any provisions to the contrary, during the period in which the restrictions in section 201H-47 are in effect, the following provisions shall apply when dwelling units developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction defect, or when vacant lands developed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial soil defect:
  - (1) The corporation shall have the right, but not the obligation, to repurchase a dwelling unit or land which has a defect, regardless of whether or not the owner wishes to sell; provided that such repurchases shall be in accordance with the following provisions:
    - (A) The corporation may repurchase a dwelling unit or land if:
      - (i) The dwelling unit or land is deemed unsafe by the county building department;
      - (ii) The defects are irreparable; or
      - (iii) In the opinion of the corporation, the defect is of such magnitude that it will take longer than a year to repair.
    - (B) The corporation's purchase price shall be based on the formula set forth in Section 201H-47(a)(1);
    - (C) After repairs to the unit or land are completed, the former owner shall have the first right of refusal to repurchase the real property;
    - (D) The corporation shall give preference in all other projects of the corporation to all owners whose real property is repurchased by the corporation under this subsection, and the corporation may waive certain eligibility requirements for these owners; and
    - (E) If the corporation exercises its right to purchase defective real property against an owner's wishes pursuant to this paragraph, the corporation shall provide relocation assistance to that owner as provided in chapter 111;

- (2) If the corporation does not opt to purchase defective real property, the corporation shall also have the right, but not the obligation, to enter into a contract to repair a dwelling unit which has a construction defect or land which has a soil defect. During the period that the real property is being repaired, the corporation shall rent that real property from the owner for an amount not to exceed the owner's present mortgage payments; and
- (3) If the corporation does not execute either a contract to repurchase the real property or an agreement to repair and rent the real property within ninety days after written notice is given to the corporation of a construction defect, the owner may pursue any other available legal remedies.

For the purposes of this subsection, "substantial construction defect" includes but is not necessarily limited to: structural defects such as shifting foundations and bearing walls; structural deficiencies due to the use of defective or undersized materials; and defects affecting the health and safety of occupants; and "substantial soil defect" means shifting, sliding, or sinking ground of such degree as to affect the dwelling unit on the land or the health and safety of the occupants of the land.

- (b) If moneys are expended by the corporation pursuant to subsections (a)(1) and (2), the corporation shall have the authority to take necessary legal action against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657.
- (c) If real property developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, is found to have a substantial construction or soil defect, the corporation shall have the right, but not the obligation, to file or caused to be filed a legal action on behalf of or by, the owner or lessee of the real property for the recovery of damages or for injunctive relief against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657. Additionally, notwithstanding any provision of rule 23 of the Hawaii rules of civil procedure, the corporation may file or cause to be filed a legal action brought under this subsection as a class action on behalf of or by at least two owners or lessees of real property that have similar substantial construction or soil defects.
- (d) Nothing in this chapter shall be construed so as to diminish the rights or remedies of the corporation otherwise provided under common law, by statute or by contract.
- (e) The corporation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.
- (f) This section shall not apply to a particular real property and shall not apply after subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.
- (g) If any subsection, sentence, clause, or phrase of this section, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining subsections, sentences, clauses, and phrases of this section, or the application of this section to other persons or transactions or circumstances, shall not be affected. The legislature hereby declares that it would have passed this section and each subsection, clause, or phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses, or phrases of this section, or its application to any person or transaction or other circumstance, be declared unconstitutional or invalid.

## NOTICE AND ACKNOWLEDGEMENT

By signing below, you agree, understand and admit, as follows, that:

1. You have read this HHFDC's Use, Sale And Transfer Restrictions document. This Program is more commonly referred to as the "Buyback" restrictions. The property purchased shall be subject to the buyback restrictions.
2. If there are any subsequent changes to this restriction, you have an option to adopt the effective change.
3. For a period of ten (10) years after the purchase, the Hawaii Housing Finance and Development Corporation ("HHFDC") shall have the first option to purchase the real property according to Section 201H-47(a)(1), Hawaii Revised Statutes, (the buy-back formula) and not based on current fair-market value of the property.

If you seek to transfer the property, you shall notify the HHFDC in writing of such request. The HHFDC will, within sixty (60) days, notify you in writing of its decision to either waive the right to purchase the property or purchase the property. In the event the HHFDC determines that it will purchase the property, the purchase will close within ninety (90) days of such notification, provided that this time limit may be extended if you fail to comply with all of the terms and conditions relating to the purchase procedures.

4. Under Section 201H-49, Hawaii Revised Statutes, the real property purchased under this chapter shall be occupied by the purchaser at all times during the ten-year restriction period.
5. The buyback restrictions will automatically terminate ten years from the date of purchase or the date the deed or lease is recorded at the Bureau of Conveyances, State of Hawaii.
6. After the end of the tenth year from the date of purchase, you may sell the real property or assign the property free from any buyback restrictions; provided that you shall be required to pay the HHFDC the balance of any mortgage note, agreement of sale, any deferred sales price including interest, HHFDC's share of appreciation in the property or other amount owing to the HHFDC.
7. A "qualified resident" means a person who:
  - A. Is a citizen of the United States or a resident alien;
  - B. Is at least eighteen (18) years of age;
  - C. Is domiciled in the State and shall physically reside in the dwelling unit purchased under Chapter 201H, HRS;

- D. In the case of purchase of real property in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; and
  - E. Meets the following qualifications:
    - (1) Is a person who either oneself, or together with a spouse or household member, does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or more than a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land; and
    - (2) Is a person whose spouse or household member does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to Section 580-71.
8. During the first ten (10) years from the date of purchase, the buyback will limit additional financing which may be secured by the property. The HHFDC will consent to additional financing when:
- A. The total mortgage amount does not exceed the original sales price paid for the property;
  - B. The total mortgage amount exceeds the original sales price paid for the property and the amount that exceeds the original sales price will be used for the following:
    - (1) Certain property capital improvements;
    - (2) Payment of a subsidy, deferred land value or deferred sales price;
    - (3) Payment of HHFDC's net share of appreciation for the property as required by the Shared Appreciation Equity (SAE) Program; or
    - (4) Purchase of HHFDC's leased fee interest for the property.

If the property is also restricted by the SAE, the SAE will establish the maximum loan amount to which HHFDC will consent. The SAE provides that the total liens and encumbrances secured by the property must not exceed 80% of the sum of your original sales price plus your share of appreciation of the property.

After the end of the buyback period, additional financing may be obtained without any limitation on the use of the loan proceeds. But if the property is restricted with the SAE, the total loan amount must not exceed the above 80% limit.

In consenting to any additional financing, the HHFDC will work with the lender or mortgage broker you select.

These guidelines are subject to change without notice. Therefore, you should contact the HHFDC for current financing guidelines when you decide to obtain additional financing for the property.

9. You may contact the HHFDC whenever you have any questions regarding the sale or transfer, occupancy requirements, rental or additional financing guidelines for the property.

Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, HI 96813  
ATTN: Real Estate Services Section  
Tel. No.: 587-0511

10. You may wish to consult with your attorney, estate planner, accountant or financial adviser to discuss any consequences which may affect your personal situation.

_____	_____	_____	_____
Buyer	Date	Buyer	Date
_____	_____	_____	_____
Buyer	Date	Buyer	Date