

RC

BENJAMIN J. CAYETANO
GOVERNOR



ANTHONY J.H. CHING
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION

P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

July 12, 2001

Mr. Harvey L. Goth
Senior Vice President
Schuler Homes, Inc.
828 Fort Street Mall, 4th Floor
Honolulu, Hawaii 96813

Dear Mr. Goth:

Subject: Filing of 2000 Annual Report for LUC Docket No. A88-628/
Finance Realty Company, Limited (Kapolei Knolls)

This is to acknowledge receipt of the 2000 annual report for the subject docket as transmitted by your letter dated July 11, 2001.

Upon completion of our review of the annual report, we will submit our comments to you, if necessary.

Please feel free to contact Russell Kumabe of my staff at (808) 587-3822, should you require clarification or any further assistance.

Sincerely,

for ANTHONY J. H. CHING
Executive Officer



SCHULER HOMES, INC.

COPY

LAND USE COMMISSION
STATE OF HAWAII

2001 JUL 12 A 9:15

July 11, 2001

Land Use Commission
State of Hawaii
P.O. Box 2359
Honolulu, Hawaii 97804-3822

RE: LUC Docket No. A88-628 (Kapolei Knolls)

Pursuant to Condition No. 11 of the referred to Docket, a report is required to be filed as of the 20th of November of each year with the Land Use Commission (LUC), the Office of State Planning and the City and County of Honolulu, Department of Planning and Permitting.

This annual report is submitted for the period ending November 20, 2000.

SECTION 1 - General Progress of the Project:

The entire project consists of 425 homes. Phase I comprises 213 lots and to date 144 have been started, and 112 sold and 86 closed,

SECTION 2 - Conditions Imposed by the Decision and Order and Efforts Made/Planned Toward Compliance:

1. **Petitioner, as it has offered in order to address affordable housing concerns, shall make contributions as follows: (As amended by Orders dated April 7, 1993 and August 8, 1997).**
 - a. Petitioner shall contribute the sum of \$1,488,572.00 to the Housing Finance and Development Corporation, State of Hawaii for the development of affordable housing programs.
 - b. The aforesaid sum be paid in two installments.
 - (1) \$744,286.00 upon acquiring the building permit for the construction of the first house in the project, and
 - (2) \$744,286.00 upon sale of the first house.

- c. Notwithstanding the aforementioned, full payment hereof shall be made no later than sixty (60) months after the effective date of zoning approval which occurred on June 29, 1992.
- d. The sum agreed to shall be reduced by the amount of corresponding value of any affordable housing requirement which may be required by the City and County of Honolulu for Petitioner's project.
- e. Petitioner may also satisfy the affordable housing requirements in a manner that otherwise meets with the approval of the State Housing Finance and Development Corporation (pursuant to the Affordable Housing Guidelines, effective 7/1/92 as periodically amended) and City and County of Honolulu. Said requirements shall take into consideration affordable on-site or off-site housing units, for sale or rental, cash payments or other in lieu contributions, that satisfy the then current housing needs.

Efforts Made/Planned Toward Compliance:

LUC Decision and Order:

On June 23, 1997, Finance Realty, Ltd. (Realty) as agent for Schuler Homes, Inc. (Schuler), petitioned the Land Use Commission (LUC) with respect to Docket #A88-628 for Kapolei Knolls to amend Condition 1 of the Decision and Order ("D&O") to provide that the affordable housing opportunities for low and moderate income residents of the State of Hawaii shall be to the satisfaction of the City and County of Honolulu. The petition was heard at the LUC meeting of July 31, 1997 and the Order granting the amendment of the D & O was approved by the LUC on August 8, 1997.

Unilateral Agreement:

On July 14, 1997, Realty, as agent for Schuler, filed an application to amend the Unilateral Agreement for Kapolei Knolls (Ordinance 92-81). The amendment proposed an option to fulfill the affordable housing condition by providing rental housing units that are affordable to "low and moderate income" households making 80% or less than the Median Income for the area. This would be in lieu of providing units for sale to low and moderate income households, as defined above, and "gap group" households making between 80% and 120% of the Median Income for the area.

The proposed amendment (Bill 114) was adopted by the Honolulu City Council on October 20, 1999 and signed into law by Mayor Harris on November 4, 1999 as Ordinance 99-60.

Present Status:

As indicated in Realty's Letter Agreement with DHCD, the affordable condition for Kapolei Knolls is to be met in whole or in part by a rental project to be developed off-site in Makakilo. On December 23, 1999, the construction loans for the project closed and funded the acquisition of the site for Phase I of Palehua Terrace, an 84 unit affordable rental. Funding for the project will come from the combination of a State of Hawaii Rental Housing Trust Fund loan, a Central Pacific Bank interim construction loan, advances on the sale of low income housing tax credits by Multi-Family Investments, Inc. (a subsidiary of Kaufman & Broad) and developer equity (Realty).

The 84 units in Phase I were completed and lease-up commenced as of November 2000. Phase II (64 units) will file an application for low income housing tax credits with the HCDCH when that Agency issues its RFP which is anticipated to occur about November of 2001.

2. **Petitioner shall participate in the funding and construction of transportation improvements necessitated by the proposed development and identified by the State Department of Transportation. In addition, Petitioner shall coordinate transportation improvements with Housing Finance and Development Corporation, adjoining land owners, and developers and/or other Federal, State and City agencies on a schedule accepted and approved by the State Department of Transportation.**

Efforts Made/Planned Toward Compliance

Schuler Homes Inc., is a participant in the Ewa Transportation Master Plan (ETMP) Planning Group and is also a member of the Leeward Oahu Transportation Management Association. The Ewa Transportation Master Plan Planning Group is working with the transportation infrastructure needs of the entire Kapolei area. The Leeward Oahu Transportation Management Association, a registered non-profit organization, addresses the problem of ridership and the expeditious moving of people. Both of these agencies are sanctioned by the State Department of Transportation. Participation in the activities of these agencies shall continue.

It is intended that contributions to transportation improvements necessitated by the proposed development and identified by the State Department of Transportation as the Farrington Highway Improvements Project will be funded in part by Finance Realty. The other two contributors to this project are the HFDC and the Estate of James Campbell. Construction of the Farrington Highway improvement is substantially complete with only clean-up items remaining to be done.

3. **Petitioner shall provide drainage improvements for the subject property and shall coordinate off-site improvements with the Estate of James Campbell, the Naval Air Station Barbers Point, Finance Realty, the Housing Finance and Development Corporation, adjoining land owners and developers, and/or other Federal, State and City agencies.**

Efforts Made/Planned Toward Compliance

Coordination will continue with the Housing Finance and Development Corporation and other developers on the off-site improvements needed for the Kapolei area. The majority of off-site improvements are being done with the Farrington Highway Improvement.

4. **Petitioner shall coordinate, with the Honolulu Board of Water Supply, Department of Land and Natural Resources, the Ewa Plains Water Development Corp., the Housing Finance and Development Corporation, adjoining land owners and developers, and/or other affected Federal, State and City agencies, measures designed to obtain the required water for the project. In the event that water is not available due to insufficient supply, Petitioner shall fund on an equitable basis, necessary water source, storage, transmission facilities, and filtration system development.**

Efforts Made/Planned Toward Compliance

As stated in last report, this condition has been complied with.

5. **Petitioner shall inform all prospective purchasers of: (a) possible odor, noise, and dust pollution resulting from the adjacent Farrington Highway, the Makakilo Drive/Barbers Point Access Road, and surrounding agricultural operations, and (b) the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, which limits the circumstances under which pre-existing farming activities may be deemed a nuisance.**

Efforts Made/Planned Toward Compliance

All prospective purchasers will be informed of: (a) possible odor, noise, and dust pollution resulting from the adjacent Farrington Highway, the Makakilo Drive/Barbers Point Access Road, and surrounding agricultural operations, and (b) the Hawaii Right-to Farm-Act, Chapter 165, Hawaii Revised Statutes.

6. **Petitioner shall participate in an air quality monitoring program as specified by the State Department of Health.**

Efforts Made/Planned Toward Compliance

The Department of Health, which had the opportunity to review the Development Plan Amendment and the Zoning application before the City, has not required an air monitoring program for the project.

7. **Petitioner shall be responsible for implementing effective sound attenuation measures to bring noise levels from vehicular traffic on the adjacent H-1 Freeway and Farrington Highway down to acceptable levels. Petitioner shall coordinate its actions with the Department of Health, the Department of Transportation and appropriate County agencies.**

Efforts Made/Planned Toward Compliance

If necessary, Schuler Homes, Inc., will cause sound attenuation measures to be installed to bring noise levels from the adjoining H-1 Freeway and Farrington Highway down to acceptable levels and coordinate its actions with the Department of Health, the Department of Transportation and the appropriate County Agencies.

8. **Petitioner shall inform each prospective purchaser of residential property of possible noise impact from Barbers Point Naval Air Station and Honolulu International Airport or other sources and will provide covenants in the deed to such purchaser wherein such purchaser, its successors and assigns, will release and discharge the State of Hawaii and the City and County of Honolulu from all liability, and provide that such purchaser, its successors and assigns, will not file suit against the State of Hawaii and the City and County of Honolulu on account of, or resulting from, any inconvenience, disturbance and/or injury due to aircraft and other vehicular traffic noise in the area affecting such purchaser of the property. Such covenants shall run with the land.**

Efforts Made/Planned Toward Compliance

Attached as Exhibit "A" is a sample copy of the deed.

9. **Petitioner shall provide its pro rata share for school facilities as may be required by and to the satisfaction of the State Department of Education.**

Efforts Made/Planned Toward Compliance

Schuler Homes will comply with the requirements of this condition. See attached Exhibit "B".

10. **Petitioner shall immediately stop work and contact the State Historic Preservation Office should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings, or walls be encountered during the project's development.**

Efforts Made/Planned Toward Compliance

Schuler Homes, Inc., shall comply with this Condition 10.

11. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning and the City and County of Honolulu Department of General Planning in connection with the status of the Project and Petitioner's progress in complying with the conditions imposed.

Efforts Made/Planned Toward Compliance

Schuler Homes, Inc., will comply with this Condition 11.

12. **Petitioner shall develop the Property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the subject Property.**

Efforts Made/Planned Toward Compliance

Schuler Homes, Inc., will comply with this Condition 12.

13. **Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in**

Land Use Commission
July 10, 2001
Page Seven

the subject Property covered by the approved Petition prior to the development of the Property.

Efforts Made/Planned Toward Compliance

Schuler Homes, Inc., will comply with this Condition 13.

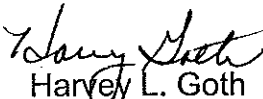
14. **The Commission may fully or partially release these conditions as to all or any portion of the property upon timely motion, and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.**

Efforts Made/Planned Toward Compliance

Request for full or partial release will be made upon fulfillment of any of the aforementioned conditions or upon assurance to the Commission that Petitioner shall satisfy conditions.

The foregoing sets forth the status and progress of this project to November 20, 2000. Should you have any questions, please contact the undersigned at 521-5661.

Sincerely,


Harvey L. Goth
Senior Vice President

HLG/lt

cc: Robert Miyasato, Finance Realty – w/o attachments
Randall Fujiki, City & County - Dept. of Planning & Permitting
Dr. Seiji Naya, State of Hawaii – Dept. of Budget & Economics
Lester Chuck, State of Hawaii – Dept. of Education

After Recordation, Return By: Mail Pickup

TMK No.:

**KAPOLEI KNOLLS
WARRANTY DEED AND RESERVATION OF RIGHTS**

THIS DEED is made this _____ day of _____, 19____, by and between SCHULER HOMES, INC., a Delaware corporation, the address of which is 828 Fort Street Mall, 4th Floor, Honolulu, Hawaii 96813 (hereinafter called the "Grantor"), and _____, whose address is _____ (hereinafter collectively called the "Grantee");

WITNESSETH THAT

The Grantor, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to the Grantor paid by the Grantee, receipt of which is acknowledged, and of the promises and covenants hereinafter set forth and on the part of the Grantee to be faithfully observed and performed, does hereby grant, bargain, sell and convey unto the Grantee, as _____, all that certain real property in the residential subdivision known as "Kapolei Knolls" (sometimes referred to herein as the "Community") situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, more particularly described as Lot [LOT NUMBER], area [AREA] square feet, as shown on Map _____, which real property is more particularly described in Exhibit A (the "Property" or the "Lot"), and the

reversions, remainders, rents, issues and profits thereof and all of the estate, title and interest of the Grantor, both at law and in equity, therein and thereto,

TOGETHER with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or to be held and enjoyed therewith, including, without limiting the generality of the foregoing, the rights, easements and privileges with respect to use of private roadway facilities, if any, as may be set forth in Exhibit A, and the right of access therefrom to a public roadway, subject to the terms, covenants, conditions and reservations therein contained,

SUBJECT, HOWEVER, TO the easements, restrictions, liens and other encumbrances on or affecting the Property as set forth in Exhibit A, EXCEPTING AND RESERVING unto the Grantor, its successors and assigns, each and all of those easements, restrictions, reservations, covenants, liens, acknowledgments, and other encumbrances set forth in the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (Property CC&Rs) (the "Master Declaration"), the KAPOLEI KNOLLS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Community Declaration"), the contents of which Community and Master Declarations shall in all respect control over this instrument, this KAPOLEI KNOLLS WARRANTY DEED AND RESERVATION OF RIGHTS (sometimes this "Deed") and the exhibits attached thereto and the Exhibit A attached hereto, and which shall run with the land, burden the Property and benefit the Grantor and the Estate of James Campbell, deceased, (to the extent specified in the Master Declaration) and the lands owned by the Grantor and the Estate of James Campbell, deceased, surrounding the Property;

AND FURTHER EXCEPTING AND RESERVING the benefits and burdens of the reciprocal appurtenant easements, for encroachment and maintenance purposes, as between each Lot in the Community or as between adjacent Lots as set forth in the Community Declaration.

TO HAVE AND TO HOLD the same, together with all rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto the Grantee, absolutely and forever and in fee simple, according to the tenancy and estate set forth herein.

The Grantor hereby covenants and agrees with the Grantee that the Grantor is lawfully seized in fee simple of the Property hereby conveyed; that the same is free and clear of and from all encumbrances except as herein set forth and except for the lien of real property taxes not yet by law required to be paid; that the Grantor has good right and title to sell and convey the Property in the manner herein set forth; and the Grantor will WARRANT AND DEFEND the same unto the Grantee forever against the lawful claims and demands of all persons, except as herein mentioned.

The Grantee hereby covenants and agrees, for the benefit of the Grantor and the Kapolei Knolls Community Association (defined in the Community Declaration), and their respective successors and assigns, that Grantee and Grantee's family, lessees, tenants, servants,

guests, invitees, licensees, employees, or other persons who may occupy or otherwise use the Property or improvements to the Property with Grantee's permission will, at all times, observe, perform, comply with and abide by all of the covenants, agreements, obligations, conditions and other provisions herein set forth, and the Grantee covenants to indemnify, hold harmless and defend the Grantor for any failure to so comply with, observe and perform any such covenant, condition, restriction or other provision contained the Master Declaration and/or the Community Declaration, described in Exhibit A, and any existing or future supplement(s) and/or amendments to either of the foregoing, including without limitation the Rules and Regulations of the Design Review Committee, described in the Community Declaration ("Design Guidelines").

By acquiring ownership of the Property hereby conveyed, the Grantee, for the Grantee and for the Grantee's family, lessees, tenants, servants, guests, invitees, licensees, employees, or other persons who may occupy or otherwise use the Property or improvements to the Property, acknowledges and agrees that the Grantee has received, read and understood both the Master Declaration and the Community Declaration, and acknowledges, agrees with and accepts the disclosures, conditions, covenants, easements and reservations of rights contained in the Master Declaration and Community Declaration; and the Grantee hereby covenants and agrees that the Grantee will observe and perform all of the terms, covenants, conditions and provisions required to be observed and performed by an Owner under the Master Declaration, the Community Declaration and the Design Guidelines; and the Grantee further covenants and agrees that the Grantee's family, lessees, tenants, servants, guests, invitees, licensees, employees, or other persons who may occupy or otherwise use the Property or improvements to the Property will abide by all of the applicable terms, covenants, conditions and provisions set forth in the Master Declaration, the Community Declaration and the Articles of Incorporation (defined in the Community Declaration), Bylaws (defined in the Community Declaration), the Design Guidelines, and any other duly adopted rules and regulations of the Kapolei Knolls Community Association, hereinafter defined.

The Grantee acknowledges and agrees that the Community (sometimes the "Kapolei Knolls residential subdivision") is within and a part of an area intended to be developed as a master planned community known as the Kapolei Knolls Community, as described in the Community Declaration, and that the Property hereby conveyed and the Community are subject and subordinate to the terms and provisions of the Master Declaration and the Community Declaration, as either exists or may hereafter be amended. Without limiting the Master Declaration or the Community Declaration, the respective contents of which shall control over this instrument, the Community Declaration provides, among other things, for the establishment the Kapolei Knolls Community Association (hereinafter the "Kapolei Knolls Community Association"), in which Grantee is a member, by virtue of the ownership of the Property. The Community Declaration further provides for the levy against the Property and the payment by Grantee of various regular and special assessments, and the right to lien the Lot for non-payment of assessments made on behalf of the Kapolei Knolls Community Association.

The Grantor acknowledges and accepts that the Property and the Community are subject to following specific disclosures and conditions set forth in the Community Declaration:

(i) the land of the Project was used previously for commercial agricultural and farming operations and in connection therewith, fertilizer and pesticides, among other things, may have been applied to and used upon the land of the Project or lands adjacent thereto; (ii) the Project is located near or adjacent to properties which are or may be used for agricultural, farming, animal husbandry or related uses (the "Agricultural and Farming Properties"), commercial and other purposes; (iii) further development, construction and sale of residential, commercial, industrial, recreational and public projects by the Developer and others is ongoing and may continue within the Project and within the vicinity of the Project for an indefinite period; (iv) certain lands within the surrounding area may be irrigated with treated effluent, reclaimed water or other sources of nonpotable water; (v) the land of the Project is subject to potential adverse soil conditions, (vi) the Project is located within the vicinity of Barbers Point Naval Air Station, Iroquois Point Naval Station, the Honolulu International Airport, Air Installation Compatible Use Zone, H-1 Freeway, Farrington Highway, Campbell Industrial Park, the Energy Easement Corridor, and Navy water tank storage; (vii) lands adjacent to the Project are used for sanitary or other landfill activities, rock processing and crushing, quarrying (gravel pit), including the storage and use of munitions or other explosives, park-and-ride facilities, and sewage treatment plants; (viii) easements shall be retained over the Property for some or all of the foregoing described uses, including, specifically, easements permitting the commencement, continuation and resulting effects of the foregoing uses.

In addition to the foregoing and other matters set forth in the Master Declaration and the Community Declaration, the Grantee, for the Grantee and for the Grantee's family, lessees, tenants, servants, guests, invitees, licensees, employees, or other persons who may occupy or otherwise use the Lot or improvements to the Lot, acknowledges and agrees that the Master Declaration, the Community Declaration and the Design Guidelines contain various reservations in favor of the "Declarant" under the foregoing respective declarations, as well as disclosures, covenants, undertakings, waivers of rights, disclaimers, limitations, requirements and restrictions, all of which are binding upon all owners of Lots within the Kapolei Knolls residential subdivision and which are detailed in the Community Declaration and include, but are not limited to: (a) specific limitations, restrictions, and requirements pertaining to the construction, installation, repair, modification, maintenance and/or appearance of improvements, landscaping (which must be installed within a limited time at Grantee's cost), private roadways, sewer, drain and electrical improvements and facilities, and boundary fences and walls, among others; (b) specific disclosures and disclaimers concerning the plans for the development and use of all or any part of the Kapolei Knolls Community, which may change at any time without notice to the Grantee; (c) specific provisions disclosing and authorizing continued extensive construction and sales activities within and around the Community, which may result in, among other things, noise, dust, vibration and other nuisances, disturbances, annoyances, hazards and effects, and providing for the acceptance by Grantee of any and all nuisance, inconvenience, irritation, annoyance and risk of damage attributable thereto, and further providing for the agreement by Grantee to suffer and permit all actions and consequences incidental to such ongoing construction and sales activities; (d) specific provisions detailing and disclosing various adverse environmental hazards, conditions or circumstances, including without limitation, noise, dust, smoke, soot, ash, odor, noxious vapors, surface water runoff, or other adverse environmental conditions, described in the Community Declaration or the Master Declaration, which may affect the Property, and providing for Grantee's

acceptance of the possibility of the occurrence of the same, assumption of the risk of such occurrence and damage attributable thereto, and the express waiver of all claims against Grantor, the Kapolei Knolls Community Association, the State of Hawaii, the City and County of Honolulu, and others arising out of or in connection with such adverse conditions or circumstances, including the right to seek damages or the abatement or elimination thereof; (e) specific provisions reserving by or on behalf of Grantor, and/or others various rights and easements affecting the Property, and affording the Grantor the right to make specific grants thereof without joinder by Grantee; and (f) specific limitations on the scope, nature and location of improvements, and the need for preconstruction approval of the proposed design of improvements, which include special setbacks restrictions for various lots in the Community.

Notwithstanding the foregoing, Grantee acknowledges and understands that the Property may be impacted by possible noise from Barbers Point Naval Air Station and Honolulu International Airport or other sources, and Grantee covenants and agrees on behalf of Grantee and Grantee's successors and assigns, that Grantee does hereby release and discharge the State of Hawaii and the City and County of Honolulu on account of, or resulting from, any inconvenience, disturbance and/or injury due to aircraft and other vehicular traffic noise in the area affecting such purchaser of the property. Such covenants shall run with the land.

The Grantor hereby grants the Grantee a non-exclusive right of entry for access purposes over, upon and across the roadway lots owned by the Grantor and more specifically described in Exhibit A attached hereto (the "Roadway Lots"); provided, however, that such right of entry shall automatically terminate upon dedication of the Roadway Lots to the City and County of Honolulu, the State of Hawaii or any other governmental authority. The Grantee, for the Grantee and the Grantee's family, lessees, tenants, servants, guests, invitees, licensees, employees, or other persons who may occupy or otherwise use the Property or improvements to the Property, acknowledges, covenants and agrees that: (a) the Grantor may continue to use the Roadway Lots for construction and sales activities within the Community, which may from time to time result in noise, vibration and other hazards and inconveniences to the Grantee; (b) the Grantee shall use the Roadway Lots with due care for public and private safety; (c) the Grantee shall indemnify and hold harmless the Grantor, its affiliates, officers, directors, representatives, employees and agents, from and against any and all loss, damage, costs, expenses, including attorneys' fees, liability, demands, or causes of action resulting from nuisance, injury, harm or death to persons or property arising out of or in any way connected with the right of entry granted by the Grantor pending dedication as aforesaid, except any loss or damage caused by the gross negligence or wilful misconduct of the Grantor; and (d) the Grantee fully realizes and assumes all risks of using the Roadway Lots prior to dedication of the Roadway Lots as aforesaid, including, but not limited to, the dangers associated with construction equipment and workers on or near the Roadways, the dangers resulting from the condition of the Roadways, and the dangers of collision with other vehicles and pedestrians using the Roadways.

The Grantor hereby further grants the Grantee a non-exclusive right of entry to the park more specifically described in the Community Declaration (the "Park"), which is currently owned by the Grantor and will be dedicated to the Kapolei Knolls Community Association more

specifically described in the Community Declaration attached hereto (the "Park"); subject to the provisions of the Community Declaration and applicable Kapolei Knolls Homeowners Association Rules for Park Use on the condition that the Grantee and the Grantee's family, lessees, tenants, servants, guests, invitees, licensees, employees, or other persons who may occupy or otherwise use the Park do so with due care for public and private safety. The Grantee shall indemnify and hold harmless the Grantor, its affiliates, officers, directors, representatives, employees and agents, from and against any and all loss, damage, costs, expenses, including attorneys' fees, liability, demands, or causes of action resulting from nuisance, injury, harm or death to persons or property arising out of or in any way connected with the right of use of the Park, except any loss or damage caused by the gross negligence or wilful misconduct of the Grantor. The Grantee fully realizes and assumes all risks of using the Park including, but not limited to, the dangers associated with use of children's play facilities, if any, thereon, as well as equipment and workers on or near the Park, and the condition of the Park, as well as the dangers of injury from others using the Park.

Grantee on behalf of Grantee and Grantee's successors and assigns agrees that in the event Grantee or any other person with an interest in the Community shall have any claim or cause of action arising out of or in any way related to the Declaration (and all rules and regulations promulgated pursuant to the foregoing), the design, orientation of the improvements to the Lot or the Lot as they relate to exposure to the sun and/or wind, development, construction, sales, marketing, financing, delivery of the Community or any Lot, improvements to the Lot, warranties, or any other activity with respect to the Community or the Lot, against any of those persons hereinafter named, such claim or cause of action shall be resolved pursuant to negotiation, mediation and/or arbitration as provided in the Community Declaration. Matters not capable of resolution via negotiation and mediation shall be submitted for determination by a single arbitrator in accordance with the Commercial Arbitration Rules or the Construction Industry Rules, as may be applicable, of the Dispute Prevention and Resolution, Inc. If the parties to the arbitration cannot agree upon a single arbitrator, said arbitrator shall be selected in accordance with the Commercial Arbitration Rules. Any such claim or cause of action shall be subject to arbitration regardless of whether the claim is against Grantor, Grantor's real estate broker, agent or attorney, the architects, engineers, or other design consultants for the Community, the contractor, subcontractors, sub-subcontractors, material suppliers of other persons involved with the Community, their officers, directors, agents, servants, employees or representatives, the managing agent, if any, and their respective officers, directors, agents, servants, employees or representatives (the "Covered Parties"), provided that such person(s) has entered into an agreement or otherwise agree to arbitrate such disputes; or if such claim or cause of action is filed jointly and severally against other parties, it shall be subject to arbitration whether or not such other parties are willing to submit to arbitration as herein provided. Any arbitration shall be conducted in the City and County of Honolulu, and shall be governed by the laws of the State of Hawaii. No punitive damages shall be awarded in any claim against Grantor or any other Covered Parties. The arbitrator may award attorneys' fees and costs, including expert witness fees, to the prevailing party. Further, no award for damages attributable to emotional distress or a multiple of actual damages based upon any theory of law may be awarded in any claim against Seller or any of the other Covered Parties by the arbitrator. The award rendered by the arbitrator shall be final and

a judgment may be entered upon it in accordance with H.R.S. Chapter 658 in the Circuit Court of the First Circuit, State of Hawaii.

The Grantor and the Grantee further mutually agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

The Grantor and the Grantee mutually agree that the terms "Grantor" and "Grantee" as and when used in this Deed, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter gender, the singular or plural number, individuals or corporations, and each of their respective heirs, devisees, personal representatives, successors, successors in trust and assigns, according to the context thereof. If this Deed is signed by two or more persons or parties as the Grantee, all covenants of the Grantee contained in this Deed shall be deemed joint and several. Each and every acknowledgment, acceptance, appointment, agreement and covenant of the Grantee contained in this Deed shall run with the Property hereby conveyed and constitute an equitable servitude and lien thereon, and each and every person or party hereafter acquiring from the Grantee any interest in the Property shall be deemed to make such acknowledgments, acceptances, appointments, agreements and covenants by and upon such acquisition.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed this Deed as of the day and year first above written.

SCHULER HOMES, INC.,
a Delaware corporation

By _____
Its Executive Vice President

Grantor

Grantee

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

On this _____ day of _____, 19____, before me personally appeared **MICHAEL T. JONES**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

My commission expires: _____

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

On this _____ day of _____, 19____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

My commission expires: _____

EXHIBIT "A"
(Property Description)



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

June 17, 1996

OFFICE OF BUSINESS SERVICES

Mr. Harvey L. Goth
Senior Vice President
Schuler Homes, Inc.
828 Fort Street Mall, 4th Floor
Honolulu, Hawaii 96813

Dear Mr. Goth:

SUBJECT: Fair-Share Contribution
State Land Use Docket A88-628
Kapolei Knolls Subdivision

In response to your letter of May 20, 1996 relating to the units to be built at Kapolei Knolls, TMK: 9-1-16: por 4, we agree to the basic statements as indicated:

- 1) Schuler Homes will pay \$500 per unit for which a sale is closed. The payments will be made in lumps of 50 units for a total of \$25,000. Since you do not know for sure how many total units will be built at this point, we ask that after 400 units are closed, the remainder be paid in a lump after 425 units are closed based on the total number of units requested on your subdivision map, less 400 units. We do not want to wait too long for the last payment since you may not reach an additional 50 units after 400.
- 2) Schuler Homes agrees to pay the difference between \$500 and the amount determined by a "Fair Share" study per unit not to exceed \$850 per unit. This amount not to exceed 4 percent increase per year in the CPI differential.

The Department of Education (DOE) will use the funds to supplement the Capital Improvements Program (CIP) funded by the State Legislature. However, it is not expected that these funds will be a significant portion of the cost of facilities required due to the students generated by this subdivision. We assure that the funds will be spent on CIP projects only for schools serving the Kapolei

EXHIBIT "B"

Knolls subdivision.

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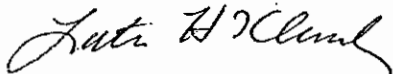
June 17, 1996

Per your request, we will inform the Department of Land Utilization that we have worked out a satisfactory agreement which allows the approval of preliminary subdivision based on the the first 208 lots (204 housing units). Please inform us prior to seeking preliminary subdivision for the remainder of the lots. We would be able to be prepared to approve the future subdivision in a more timely manner with advanced notice.

We will also be able to inform the State Land Use Commission (SLUC) of the current status of this project. Please provide us with a copy of your annual report to the SLUC from this date forward.

If there are any questions, please call me at 733-4860.

Sincerely,



Lester H. T. Chuck
Facilities Director

cc: A. Suga
A. Maeda, Leeward
P. Onishi, C&C DLU
E. Ueda, SLUC