

**KOA RIDGE
MALINA AT KOA RIDGE – PHASE I**

City’s Restrictions on Transfer, Use and Sale

The unit will be subject to and encumbered by the restrictions on transfer, use and sale (the “City’s Transfer, Use and Sale Restrictions”), as follows:

A. Transfer of Unit.

1. Notice of Intent. If the original purchaser or subsequent owner wishes to transfer title to the unit during the Restriction Period, the original purchaser or subsequent owner shall notify the City and County of Honolulu (the “City”) in writing of the intent to transfer title to the unit (the “Notice of Intent”). The Notice of Intent shall be sent to the City at the following address:

City and County of Honolulu
Department of Budget and Fiscal Services
530 S. King Street, 2nd Floor
Honolulu, Hawaii 96813

2. Fair Market Value of Unit. The original purchaser or subsequent owner shall be responsible for establishing the fair market value of the unit, and may do so by submitting, together with the Notice of Intent, an appraisal of the unit which is dated no earlier than sixty (60) days prior to the date of the Notice of Intent.
3. City’s Response to the Notice of Intent. The City shall respond to the Notice of Intent by: (a) agreeing to purchase the unit; (b) requiring the sale of the unit to a qualified resident, or (c) waiving its right to purchase the unit or require the sale of the unit to a qualified resident. The City shall notify the owner of its decision within forty-five (45) days of receipt of the Notice of Intent.

4. City’s Purchase of the Unit.

- a. If the City elects to purchase the unit, the purchase price of the unit shall not be less than the following:
 1. The cost to the purchaser or subsequent owner;
 2. The cost of any improvements added by the purchaser or subsequent owner; and
 3. Fifty percent (50%) of the appreciation in value of the unit.
- b. The term “cost to the purchaser or subsequent owner” means the purchase price of the unit, the reasonable costs of sale, and any negative amortization if the unit was financed with a graduated payment mortgage.
- c. The term “appreciation in value of the unit” means the difference between (i) the fair market value of the unit, and (ii) the sum of the cost to the purchaser or subsequent owner and the cost of any improvements added by the purchaser or subsequent owner.
- d. The City may purchase the unit either outright, free and clear of all liens and encumbrances, or by transfer subject to an existing mortgage. If by outright purchase, the City shall ensure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the owner.
- e. In any purchase by transfer subject to an existing mortgage, the City shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the owner to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the City. In these cases, the amount to be paid to the owner by the City shall be the difference between the price as determined herein and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the City.

5. Sale to a Qualified Resident.

- a. If the City elects to require the original purchaser or subsequent owner to sell the unit to a qualified resident, the original purchaser or subsequent owner shall sell the unit to a qualified resident whose household income is in the same target group as the original purchaser. Accordingly, for purposes of example only, if the original purchaser qualified under the 120% Income Group, i.e., the original purchaser’s annual household income did not exceed 120% of the Area Median Income for the City and County of Honolulu, as adjusted by household size, at the time of the purchase of the unit, the qualified resident would need to qualify under the then 120% Income Group, as adjusted by household size, at the time of the qualified resident’s purchase of the unit.
- b. The purchase price of the unit shall be established by the City as provided by Section 2-10 of City & County of Honolulu Affordable Housing Rules for Unilateral Agreements adopted February 12, 2010, effective February 28, 2010 (“AH Rules”) and on terms that preserve the intent of Section 5-3 of the AH Rules, it being understood for avoidance of doubt that the terms and provisions of Section A.4 shall not be used to determine the purchase price of the unit for sale to a qualified resident.

- c. In the event of a sale to a qualified resident, the original purchaser or subsequent owner selling the unit may retain 100% of the appreciation in value of the unit, if any.
 - d. The transferee of the unit shall take title to the unit subject to the restrictions on transfer, use and sale as set forth herein, for the remainder of the Restriction Period.
- 6. Waiver of Right to Purchase Unit or Require Sale of Unit to a Qualified Resident.
 - a. The City may elect to waive its right to purchase the unit or require sale of the unit to a qualified resident. A waiver by the City will be determined on each separate request and may include consideration of the following criteria:
 - 1. The original purchaser or subsequent owner wishes to transfer title to the unit by devise or through the laws of descent to a family member who would otherwise qualify under the AHA; or
 - 2. The City determines that the sale or transfer of the unit would be at a price and upon terms that preserve the intent of the restrictions on transfer, use and sale as set forth herein without the necessity of the City to repurchase the unit.
 - b. Unless waived by the City, the transferee of the unit shall take title to the unit subject to the restrictions on transfer, use and sale as set forth herein, for the remainder of the Restriction Period.
- B. Occupancy of Unit as Principal Residence.
 - 1. Principal Residence. The unit shall be occupied as the Grantee's principal residence at all times during the Restriction Period.
 - 2. Verification of Use as Principal Residence. The City, the Grantor, or an affordable housing provider designated by the City, shall have the right during the Restriction Period to verify owner-occupancy of the unit as a principal residence.
 - 3. Violation. Violation of Section B.1 shall be sufficient reason for the City, at its option, to purchase the unit as provided in Section A hereof and/or to seek financial recourse from the original purchaser or subsequent owner of the unit, which financial recourse may include the appreciated value of the unit.
- C. Liens and Mortgages. During the Restriction Period, only liens and mortgages consented to in advance by the City and created for the purpose of financing, refinancing, purchase of the fee (if applicable), repayment of subsidy (if applicable), maintenance and repair of the unit or essential improvements, or other household expenditures of an emergency or life-threatening nature may be placed on the unit.
- D. Restrictions on Transfer, Use and Sale Terminate at end of Restriction Period. The restrictions on transfer, use and sale as set forth herein shall automatically terminate at the end of the Restriction Period and be of no further force and effect without the necessity of recording a release. After the end of the Restriction Period, the original purchaser or subsequent owner may sell, lease or transfer the unit free and clear of any of the restrictions on transfer, use and sale as set forth herein.
- E. Restrictions on Transfer, Use and Sale Not Applicable to Units Under Federally Subsidized Mortgage Program. The restrictions on transfer, use and sale as set forth herein shall not apply to units financed under a federally subsidized mortgage program.
- F. Restrictions on Transfer, Use and Sale Extinguished in the Event of Foreclosure, etc. The restrictions on transfer, use and sale as set forth herein shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder becomes the owner of a unit pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced.