

# IMPORTANT - - Read This Developer Prepared Report Before Buying

This Report Is Not a Commission Approval or Disapproval of This Condominium Project

## AMENDMENT 1 TO THE DEVELOPER'S PUBLIC REPORT FOR A CONDOMINIUM

CONDOMINIUM PROJECT NAME:	SKY ALA MOANA WEST
PROJECT ADDRESS:	1388 Kapiolani Boulevard, Honolulu, Hawaii 96814
REGISTRATION NUMBER:	8308
EFFECTIVE DATE OF REPORT:	May 15, 2020
THIS AMENDMENT:	<p><input checked="" type="checkbox"/> Must be read together with</p> <p><input checked="" type="checkbox"/> Developer's Public Report: Effective Date <u>March 20, 2019</u></p> <p><input type="checkbox"/> Amended Report: Effective date _____</p> <p><input type="checkbox"/> Supersedes all prior amendments: Includes all prior amendment(s) and <u>must</u> be read together with</p> <p><input type="checkbox"/> Developer's Public Report: Effective Date _____</p> <p><input type="checkbox"/> Amended Report: Effective date _____</p>
DEVELOPER(S):	JL Avalon Capbridge, LLC

### Preparation of this Amendment

The Developer prepared this amendment pursuant to the Condominium Property Act, Section 514B-56, Hawaii Revised Statutes ("HRS"), as amended from time to time. Section 514B-56, HRS, requires that after the Hawaii Real Estate Commission ("Commission") has issued an effective date for the Developer's Public Report, if there are any changes, either material or pertinent changes, or both, regarding the information contained in or omitted from the Developer's Public Report, or if the Developer desires to update or change the information set forth in the Developer's Public Report, the Developer shall immediately submit to the Commission an amendment to the Developer's Public Report or an amended Developer's Public Report clearly reflecting the change, together with such supporting information as may be required by the Commission, to update the information contained in the Developer's Public Report.

The law defines "material change" as used in parts IV and V of Chapter 514B, HRS, as 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.

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*For all sales information, please contact the Developer and real estate broker on page 9 of the Developer's Public Report.*

*Individuals with special needs may request this material by calling the State of Hawaii Real Estate Commission at 586-2644.*

The law defines "pertinent change", as determined by the commission, as a change not previously disclosed in the most recent public report that renders the information contained in the public report or in any disclosure statement inaccurate, including, but not limited to (1) the size, construction materials, location, or permitted use of a unit or its appurtenant limited common element, (2) the size, use, location, or construction materials of the common elements of the project, or (3) the common interest appurtenant to the unit. A pertinent change does not necessarily constitute a material change.

The filing of an amendment to the Developer's Public Report or an amended Developer's Public Report, in and of itself, shall not be grounds for a purchaser to cancel or rescind a sales contract. A purchaser's right to cancel or rescind a sales contract shall be governed by sections 514B-86 and 514B-87, HRS, the terms and conditions of the purchaser's contract for sale, and applicable common law.

This Amendment has not been prepared or issued by the Commission or any other governmental agency. The issuance by the Commission of an effective date for this amendment to the 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, material changes, or pertinent changes 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.

The law defines "material facts" as 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 amendment may be used by the Developer for promotional purposes only if it is used with the last Developer's Public Report in its entirety.

Prospective purchasers and purchasers are encouraged to read this amendment carefully and to seek professional advice.

Summary of Changes from Earlier Developer's Public Report are Described Beginning on the Next Page

### Summary of Changes from Earlier Developer's Public Report:

This summary contains a general description of the changes, if any, made by the Developer since the last Developer's Public Report was issued an effective date. It is not necessarily all inclusive. Prospective purchasers and purchasers must read this amendment together with the last Developer's Public Report with the effective date as noted on the top of page 1 if they wish to know the specific changes that have been made.

Changes made are as follows (include a description of what the change is and page number and or exhibit alphabet or number; additional pages may be used):

1. Acquisition of Land. Developer has acquired the fee simple interest in all of the land underlying the Project. Accordingly:
  - a. Section 4 on page 1b (Ownership of Real Property) is deleted in its entirety and replaced with a new Section 4 on page 1b which discusses certain covenants, conditions, and restrictions imposed upon a portion of the real property acquired;
  - b. Section 1.1 on page 3 (The Underlying Land) has been updated to reflect the current ownership of the underlying land; and
  - c. Section 4 of Exhibit "I" (Summary of Sales Contract) is deleted in its entirety.
2. Encumbrances Against Title.
  - a. Section 1.12 on page 5 (Encumbrances Against Title) has been updated to reflect the date of the updated title report; and
  - b. Exhibit "F" (Encumbrances Against Title) has been updated to reflect the encumbrances noted on the updated title report.
3. Changes to Developer. Section 2.1 on page 9 has been updated to provide the new contact information for Developer and the new authorized signatories for Developer.
4. Change in Real Estate Broker. Section 2.2 on page 9 has been updated to provide contact information for the new real estate broker for the Project.
5. Change in Managing Agent.
  - a. Section 2.5 on page 9 has been updated to provide that Developer has not yet selected a managing agent for the Project; and
  - b. Section 4.1 on page 12 has been updated to indicate that the managing agent is to be determined.
6. Deregistration of Land. The land underlying the Project has been deregistered from Land Court by instruments recorded October 15, 2019 and recorded at the Bureau as Document Nos. A-72270690 to A-72270699, inclusive.

Changes continued:

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**The Developer declares subject to the penalties set forth in Section 514B-69, HRS, that this project continues to conform 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 as amended, 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 as amended, along with the requirements to cure any violation. 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 as amended and the exhibits attached to this report (if any) as amended 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, belief, true, correct, and complete. The Developer hereby agrees to promptly 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 as amended at least 30 days prior to the anniversary date of the effective date of this report.

\_\_\_\_\_  
JL Avalon Capbridge LLC  
Printed Name of Developer



\_\_\_\_\_  
Duly Authorized Signatory\*

\_\_\_\_\_  
May 13, 2020  
Date

\_\_\_\_\_  
Timothy Lee, its Authorized Representative  
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.**

**\*\*In the event of multiple Developers, each Developer must sign on their own signature page.**

## Special Attention - - Significant Matters

Use this page for special or significant matters which should be brought to the purchaser's attention. Subject Headings and page numbers where the subject is explained must be used.

The Developer's inclusion of a disclosure or an explanation of any or all of the following applicable significant matters in this part of the Developer's Public Report shall not be construed to constitute the Commission's:

- Approval or disapproval of the project;
- Representation that the Developer has fully or adequately disclosed either all material facts or all pertinent changes, or both, concerning the project;
- Representation that the Developer's disclosures of other material facts elsewhere in this report are less important; or
- Judgment of the value or merits of the project.

The Commission reserves the right to request that the Developer include these special and significant matters elsewhere in the Developer's Public Report.

1. **Project Information.** The Project is located in the City and County of Honolulu, State of Hawaii. It is currently expected to consist of three hundred ninety (390) residential units and two (2) commercial units for a total of three hundred ninety-two (392) units located in a single forty-three (43) story building as set forth in the Declaration and shown on the Condominium Map. One (1) residential unit (Residential Unit No. 909) is currently reserved for sale to the Association as a resident manager's unit, and the other three hundred eighty-nine (389) residential units will be offered and sold as market-priced units.

The Project is being developed in Spatial Unit 1 of the Sky Ala Moana condominium project, created by that certain Master Declaration of Condominium Property Regime Establishing Spatial Units for Sky Ala Moana dated March 15, 2019 and filed with the Office as Document No. T-10668207, as the same may be amended from time to time (the "**Master Declaration**"). The Association of the Project, and not individual unit owners, will be a member of the Association of Unit Owners of Sky Ala Moana, and shall be governed by the Master Declaration and the Bylaws of the Association of Unit Owners of Sky Ala Moana dated March 15, 2019 and filed with the Office as Document No. T-10668208, as the same may be amended from time to time (the "**Master Bylaws**"). Developer anticipates developing a second project in Spatial Unit 2 (the "**Sky East Project**"), which Sky East Project is anticipated to include commercial units, affordable housing units, and hotel units.

2. **Permit.** The Project is located in the Transit-Oriented Development Special District, as a project within a quarter mile of the future rail transit station at Ala Moana Center, and has been approved as an Interim Planned Development-Transit Project by the issuance of Special District Permit No. 2018/SDD-25 (the "**Permit**"). The Permit allows for more flexible design and building standards than would normally be permitted by the underlying BMX-3 District, subject to certain conditions. Upon Project completion, the Association of Unit Owners of the Project will be required to ensure continued compliance with the requirements of the Permit.
3. **Shared Parking Structure and Amenities; Reciprocal Easement Agreement.** The Project and the Sky East Project will share a common parking podium, and accordingly, certain portions of the Project and the Sky East Project will be integrated. Owners in the Project will have access to the recreational amenities in the Sky East Project, and the Project and the Sky East Project will share the parking podium. However, Owners in the Sky East Project **will not** have access to the recreational amenities located in the Project. Accordingly, the total number of parking stalls and the number of guest stalls show in Section 1.4 of this Public Report include parking for both Projects. Owners in the Project and the Sky East Project will share in the cost of maintaining these parking areas and amenities through the payment of a Reciprocal Easement

Reimbursement and a Recreational Facilities Reimbursement, as further set forth in the Declaration of Reciprocal Easements and Irrevocable Facilities License dated March 15, 2019, and filed with the Office as Document No. T-10668210, as the same may be amended from time to time (the "**Reciprocal Easement Agreement**").

4. **Covenants, Conditions, and Restrictions.** The land underlying the Project is adjacent to the Pacific Guardian Tower. In developing the Pacific Guardian Tower, the prior owner entered into an Agreement for Issuance of Conditional Use Permit Under Section 4.40-17 of the Land Use Ordinance (LUO) dated November 21, 1987, filed at the Office as Document No. 1524861 (the "**Joint Development Agreement**"), which allowed for the joint development of a portion of the land underlying the Project (the "**Project Land**") and the land underlying the Pacific Guardian Tower (the "**PG Land**"). In connection with Developer's acquisition of the Project Land by Limited Warranty Deed dated August 8, 2019 and filed at the Office as Document No. T-10811168, Developer entered into that certain Declaration of Covenants, Conditions and Restrictions and Agreement to Grant Easement of the same date, filed at the Office as Document No. T-10811169 (the "**CC&Rs**"). Because the development of the Pacific Guardian Tower was dependent upon the Joint Development Agreement, under the CC&Rs, Developer (a) agreed to grant the owner of the PG Land an easement for pedestrian access purposes and service access to a utility room over the Project Land along the common boundary with the PG Land; (b) agreed that development on the Project Land would not affect the parking or loading requirements of the PG Land, create any nonconformities on the PG Land, violate any covenants and conditions affecting the PG Land, or adversely affect any development rights of the PG Land; and (c) agreed not to cancel the Joint Development Agreement.
5. **Reserved Rights of Developer.** Exhibit "G" to this Public Report sets forth a summary of certain reserved rights of Developer. These rights will continue even after completion of the Project and closings of the sales of units and title is transferred to owners. Prospective purchasers should note that among those rights that are reserved to Developer is the right to change the units and amenities in the Project. Generally, these changes, if made, are not "material changes" that will permit a purchaser to rescind a sales contract. Note, however, that if such a change results in a decrease in net living area of a unit by more than two percent (2%), it will be deemed to be a material change that would permit a purchaser to rescind the sale. Further, in no event will any modification result in less than one (1) parking stall being assigned to a unit.

By signing a Limited Warranty Unit Deed, Encumbrances and Reservation of Rights with Power of Attorney for Sky Ala Moana West, a purchaser consents to the exercise by Developer of any of Developer's reserved rights and the appointment of Developer as the purchaser's attorney-in-fact. See Section D of Exhibit "L" for more information.

6. **Dispute Resolution; Waivers.** The following provisions apply to the resolution of covered disputes arising in connection with a sales contract or the Declaration, respectively:
  - A. **Sales Contract (Section E.35):** The following provisions apply to the resolution of Disputes (as defined below):
    1. **PURPOSE AND EXCLUSIVITY.** THE PURPOSE OF THESE DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES (THE "PROCEDURES") IS TO PROVIDE SELLER AND ITS MANAGERS, MEMBERS, OFFICERS, AGENTS, EMPLOYEES, BROKERS, OTHER REPRESENTATIVES, AND PURCHASER OR OTHER OWNER OF AN INTEREST IN THE UNIT AND ANY PERSONS CLAIMING THEREUNDER (COLLECTIVELY, FOR PURPOSES OF THIS SECTION, THE "PARTIES") WITH A MECHANISM TO RESOLVE DISPUTES THAT ARISE IN CONNECTION WITH THE SALES CONTRACT. THE PARTIES AGREE THAT THESE PROCEDURES SHALL BE THE METHOD EMPLOYED TO RESOLVE ALL DISPUTES.
      - a. **DEFINITION.** A "DISPUTE" MEANS AND INCLUDES ANY AND ALL ACTIONS, CLAIMS OR DISPUTES BETWEEN OR AMONG THE PARTIES WITH RESPECT TO, ARISING OUT OF, OR RELATING TO THE SALES CONTRACT, WHERE THE TOTAL AMOUNT IN

CONTROVERSY (INCLUDING ALL CLAIMS AND COUNTERCLAIMS) IS GREATER THAN THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,500.00). A DISPUTE SHALL NOT INCLUDE CONSTRUCTION DEFECTS COVERED UNDER THE CONTRACTOR REPAIR ACT, CHAPTER 672E OF THE HAWAII REVISED STATUTES (THE "CONTRACTOR REPAIR ACT").

b. PRE-CLOSING DISPUTE. NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY AND SUBJECT TO SECTIONS E.33 AND E.34 OF THE SALES CONTRACT, ANY DISPUTE SOLELY BETWEEN SELLER AND PURCHASER ARISING OUT OF OR INCIDENT TO THE SALES CONTRACT MAY BE PURSUED IN A COURT OF COMPETENT JURISDICTION IN HONOLULU, HAWAII, WITHOUT THE OBLIGATION OF DISCUSSION OR MEDIATION, PROVIDED THAT SUCH CLAIM IS FILED PRIOR TO THE SCHEDULED CLOSING DATE IN THE SALES CONTRACT.

c. DISCUSSION. ANY PERSON WITH A DISPUTE SHALL NOTIFY THE PARTY TO WHOM THE DISPUTE IS DIRECTED IN WRITING OF THE DISPUTE, WHICH WRITING SHALL DESCRIBE THE NATURE OF THE DISPUTE AND ANY PROPOSED REMEDY (THE "DISPUTE NOTICE"). WITHIN A REASONABLE PERIOD AFTER RECEIPT OF THE DISPUTE NOTICE, WHICH PERIOD SHALL NOT EXCEED TWENTY-ONE CALENDAR (21) DAYS, THE PARTIES TO THE DISPUTE, REPRESENTED BY INDIVIDUALS WITH DECISION MAKING AUTHORITY, SHALL MEET AT A MUTUALLY ACCEPTABLE LOCATION WITHIN OR NEAR THE PROJECT TO DISCUSS THE DISPUTE. THE PARTIES TO THE DISPUTE SHALL NEGOTIATE IN GOOD FAITH IN AN EFFORT TO RESOLVE THE DISPUTE.

d. MEDIATION. IF THE PARTIES CANNOT RESOLVE SUCH DISPUTE PURSUANT TO THE PROCEDURES DESCRIBED IN SECTION 1.c. ABOVE WITHIN THIRTY (30) CALENDAR DAYS AFTER THE COMMENCEMENT OF DISCUSSIONS, THE MATTER SHALL BE SUBMITTED TO MEDIATION BY AND PURSUANT TO THE PROCEDURES ADOPTED BY DISPUTE PREVENTION AND RESOLUTION, INC. ("DPR") IN HONOLULU, HAWAII, OR ANY SUCCESSOR ENTITY THERETO, OR TO ANY OTHER ENTITY OFFERING MEDIATION SERVICES THAT IS ACCEPTABLE TO THE PARTIES.

(i) PARTIES PERMITTED AT SESSIONS. PERSONS OTHER THAN THE PARTIES, THEIR AUTHORIZED REPRESENTATIVES, AND THE MEDIATOR MAY ATTEND THE MEDIATION SESSIONS ONLY WITH THE CONSENT OF THE MEDIATOR; PROVIDED, HOWEVER, SUCH PERMISSION AND CONSENT SHALL NOT BE REQUIRED TO ALLOW PARTICIPATION OF SUCH PARTIES' LIABILITY INSURERS IN THE MEDIATION TO THE EXTENT REQUIRED UNDER SUCH PARTIES' LIABILITY INSURANCE POLICY.

(ii) RECORD. THERE SHALL BE NO STENOGRAPHIC RECORD OF THE MEDIATION PROCESS.

(iii) EXPENSES. THE EXPENSES OF WITNESSES SHALL BE PAID BY THE PARTY PRODUCING SUCH WITNESSES. ALL OTHER EXPENSES OF THE MEDIATION INCLUDING, BUT NOT LIMITED TO, THE FEES AND COSTS CHARGED BY THE MEDIATOR AND THE EXPENSES OF ANY WITNESSES OR THE COST OF ANY PROOF OR EXPERT ADVICE PRODUCED AT THE DIRECT REQUEST OF THE MEDIATOR, SHALL BE BORNE EQUALLY BY THE PARTIES TO THE MEDIATION UNLESS THEY AGREE OTHERWISE. EACH PARTY TO THE MEDIATION SHALL BEAR ITS OWN ATTORNEYS' FEES AND COSTS IN CONNECTION WITH SUCH MEDIATION.

(iv) NO JUDICIAL INTERVENTION. IF A PARTY INSTITUTES LITIGATION PRIOR TO OBSERVING THE PROCEDURES SET FORTH IN SECTIONS 1.c AND 1.d ("PROHIBITED LITIGATION"), SUCH PARTY SHALL BE RESPONSIBLE FOR ALL REASONABLE EXPENSES AND FEES (INCLUDING ATTORNEYS' FEES) INCURRED BY THE OTHER PARTY IN OBTAINING A STAY OR DISMISSAL OF THE PROHIBITED LITIGATION.

(v) CONFIDENTIALITY. ALL NEGOTIATIONS, MEDIATION PROCEEDINGS, AND ANY DISCOVERY CONDUCTED PURSUANT TO THESE PROCEDURES ARE CONFIDENTIAL. ALL PROCEEDINGS CONDUCTED PURSUANT TO THESE PROCEDURES SHALL BE TREATED FOR ALL PURPOSES AS COMPROMISE AND SETTLEMENT NEGOTIATIONS WITHIN THE MEANING OF RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND RULE 408 OF THE HAWAII RULES OF EVIDENCE.

e. FURTHER RESOLUTION. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE PURSUANT TO THE PROCEDURES DESCRIBED IN SECTIONS 1.c AND 1.d ABOVE, EACH PARTY SHALL HAVE THE RIGHT TO PURSUE THE RIGHTS AND REMEDIES AVAILABLE TO SUCH PARTY AT LAW OR IN EQUITY. IF A DISPUTE PROCEEDS IN COURT, SUCH ACTION SHALL BE BROUGHT EXCLUSIVELY IN THE FEDERAL OR STATE COURTS LOCATED IN HONOLULU, HAWAII. THE PARTIES HEREBY AGREE THAT THE COURT SHALL APPLY HAWAII SUBSTANTIVE LAW AND APPLICABLE STATUTES OF LIMITATIONS AND WILL HONOR CLAIMS OF PRIVILEGE RECOGNIZED BY LAW.

f. WAIVER OF JURY TRIAL. THE PARTIES ACKNOWLEDGE THAT THE PROCEDURES SET FORTH IN THE SALES CONTRACT ARE A MATERIAL INDUCEMENT FOR THEM TO ENTER INTO THE SALES CONTRACT. ACCORDINGLY, WITH RESPECT TO ANY DISPUTE, THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL ON ANY CLAIM OR CAUSE OF ACTION THAT IS BASED UPON OR ARISES OUT OF SUCH DISPUTE.

g. WAIVER OF CLASS-WIDE CLAIMS. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE ADJUDICATION OF ANY DISPUTE SHALL BE BY AND BETWEEN THE PARTIES ONLY. THE PARTIES EXPRESSLY WAIVE ANY AND ALL RIGHTS TO PURSUE CLASS-WIDE CLAIMS RELATING TO ANY DISPUTE. THE PARTIES ACKNOWLEDGE AND AGREE ANY DISPUTE SHALL NOT BE CONSOLIDATED WITH THE CLAIMS OF ANY OTHER PERSON.

h. STATUTES OF LIMITATION. THE APPLICABLE STATUTE OF LIMITATIONS SHALL NOT BE TOLLED BY ANYTHING CONTAINED IN THESE PROCEDURES. NOTWITHSTANDING THE PROHIBITION ON LITIGATION, A PARTY MAY COMMENCE AN ACTION SOLELY FOR THE PURPOSE OF TOLLING THE STATUTES OF LIMITATION, PROVIDED SUCH PARTY IMMEDIATELY STAYS THE ACTION TO RESOLVE THE DISPUTE PURSUANT TO THE PROCEDURES DESCRIBED IN SECTIONS 1.c AND 1.d ABOVE.

g. SURVIVAL; SUCCESSORS AND ASSIGNS. THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS SECTION SHALL SURVIVE THE CONVEYANCE OF THE UNIT PURSUANT TO THE SALES CONTRACT AND THE TERMINATION OR EXPIRATION OF THE SALES CONTRACT. THESE PROCEDURES, AND THE RIGHTS, DUTIES, AND OBLIGATIONS OF THE PARTIES, SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS.

h. THIRD-PARTY BENEFICIARY. IT IS THE INTENT OF SELLER AND PURCHASER THAT THE CONTRACTORS, SUBCONTRACTORS, DESIGN PROFESSIONALS, ENGINEERS AND SUPPLIERS WHO PROVIDED LABOR, SERVICES, OR MATERIALS TO THE PROJECT, AND SELLER'S AGENTS AND ATTORNEYS, SHALL BE THIRD-PARTY BENEFICIARIES UNDER THIS SECTION, AND SHALL BE ENTITLED TO ENFORCE THE PROVISIONS OF THIS SECTION.

**B. Declaration (Section XXXIX):**

The following provisions apply to the resolution of Disputes (as defined below):

1. **DISPUTES.** The purpose of this Section is to provide the Owners, Association, Board, Managing Agent, Developer and their respective Representatives (collectively, for purposes of

this Section, the "**Parties**") with a mechanism to resolve Disputes (as defined below). A "**Dispute**" means and includes any and all actions, claims or disputes between or among the Parties with respect to, arising out of, or relating to the Declaration. A Dispute shall not include: (a) claims for construction defects governed by the Contractor Repair Act, Chapter 672E of the Hawaii Revised Statutes; (b) actions seeking equitable relief involving threatened property damage or the health or safety of Owners or any other persons; (c) actions to collect assessments; (d) personal injury claims; or (e) actions against the Association, the Board, or any Director, Officer, agent, employee, or other persons for amounts in excess of THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,500.00) if insurance coverage under a policy of insurance procured by the Association or the Board would be unavailable for defense or judgment because mediation was pursued.

2. **DISCUSSION.** Any Party with a Dispute shall notify the party to whom the Dispute is directed in writing of the Dispute, which writing shall describe the nature of the Dispute and any proposed remedy (the "**Dispute Notice**"). Within a reasonable period of time after receipt of the Dispute Notice, which period shall not exceed twenty-one (21) calendar days, the Parties to the Dispute shall meet at a mutually acceptable location within or near the Project to discuss the Dispute. The Parties to the Dispute shall negotiate in good faith in effort to resolve the Dispute.

3. **MEDIATION.** If the Parties cannot resolve such Dispute by discussion pursuant to Section 2 above within thirty (30) calendar days after the commencement of such discussion, the matter shall be submitted to mediation by and pursuant to the procedures adopted by Dispute Prevention and Resolution, Inc. ("**DPR**") in Honolulu, Hawaii, or to any successor entity thereto, or to any other entity offering mediation services that is acceptable to the Parties.

i. **Parties Permitted at Sessions.** Persons other than the Parties, their authorized representatives and the mediator may attend the mediation sessions only with the consent of the mediator; provided, however, such permission and consent shall not be required to allow participation of such Parties' liability insurers in the mediation to the extent required under such Parties' liability insurance policy.

ii. **Record.** There shall be no stenographic record of the mediation process.

iii. **Expenses.** The expenses of witnesses shall be paid by the Party producing such witnesses. All other expenses of the mediation including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses, or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties unless they agree otherwise. Each Party shall bear its own attorneys' fees and costs in connection with such mediation.

iv. **No Judicial Intervention.** If a Party institutes litigation prior to observing the procedures set forth in Sections 2 and 3 ("**Prohibited Litigation**"), such Party shall be responsible for all reasonable expenses and fees (including attorneys' fees) incurred by the other Party in obtaining a stay or dismissal of the Prohibited Litigation.

v. **Confidentiality.** All negotiations, mediation proceedings, and any discovery conducted pursuant to these procedures are confidential. All proceedings conducted pursuant to these procedures shall be treated for all purposes as compromise and settlement negotiations within the meaning of Rule 408 of the Federal Rules of Evidence and Rule 408 of the Hawaii Rules of Evidence.

4. **FURTHER RESOLUTION.** If the Parties are unable resolve a Dispute pursuant to the procedures described in Sections 2 and 3 above, each Party shall have the right to pursue all rights and remedies available to such Party at law or in equity. If a Dispute proceeds in court, such action shall be brought exclusively in the federal or state courts located in Honolulu, Hawaii. The Parties hereby agree that the court shall apply Hawaii substantive law and applicable statutes of limitations and will honor claims of privilege recognized by law.

5. **STATUTES OF LIMITATION.** The applicable statute of limitations shall not be tolled, or otherwise suspended, by anything contained in these procedures. Notwithstanding the prohibition on litigation, a Party may commence an action solely for the purpose of tolling the statutes of limitation, provided such Party immediately stays the action to resolve the Dispute pursuant to the procedures described in Sections 2 and 3 above.

6. **UNENFORCEABILITY.** If any part of this Section is held to be unenforceable, it shall be severed and shall not affect either the duties to mediate hereunder or any other part of this Section.

The following are provisions in the Declaration (Section XLV.A) regarding the waiver of certain rights:

1. **WAIVER OF CERTAIN DAMAGES.** WITH RESPECT TO ALL DISPUTES, EACH OWNER, THE ASSOCIATION, THE BOARD, MANAGING AGENT, DEVELOPER AND EACH OF THEIR REPRESENTATIVES WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO RECOVER PUNITIVE, EXEMPLARY, TREBLE, OR OTHER MULTIPLE DAMAGES.

2. **WAIVER OF JURY TRIAL.** EACH OWNER, THE ASSOCIATION, THE BOARD, MANAGING AGENT, DEVELOPER, AND EACH OF THEIR REPRESENTATIVES UNCONDITIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY CLAIM, CAUSE OF ACTION, OR DISPUTE. THE PARTIES AGREE THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN COURT SHALL BE DECIDED BY A JUDGE AND NOT BY A JURY.

3. **WAIVER OF CLASS ACTION.** EACH OWNER, THE ASSOCIATION, THE BOARD, MANAGING AGENT, DEVELOPER AND EACH OF THEIR REPRESENTATIVES UNCONDITIONALLY WAIVE ANY RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS PERTAINING TO ANY DISPUTE. THE PARTIES UNCONDITIONALLY AGREE THAT ANY DISPUTE WILL BE ADJUDICATED ON AN INDIVIDUAL BASIS. ALL PARTIES TO THE LITIGATION MUST BE INDIVIDUALLY NAMED. THERE WILL BE NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE LITIGATED ON A CLASS ACTION OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC OR OTHER PERSONS SIMILARLY SITUATED, AND THE PARTIES ARE SPECIFICALLY BARRED FROM DOING SO.

7. **Warranties.** Developer is developing the Project, but it is not the general contractor or an affiliate of the general contractor building the Project. Developer makes no warranties, express or implied, about the units or the Project, or about consumer products or anything else installed or contained in the units or the Project. This includes, but is not limited to, warranties of merchantability, habitability, workmanlike construction, fitness for a particular purpose, or sufficiency of design.
8. **Commercial Director Consent Rights.** The Commercial Director (who is the Director elected to the Board by the Commercial Unit Class) has certain consent rights as to certain aspects of the Project. For instance, the consent of the Commercial Director is required where capital updates are contemplated for the Project, the cost of which exceeds five percent (5%) of the budget.
9. **Limitation of Purchaser's Recovery in the Event of a Developer Default.** If Developer defaults under the sales contract, the purchaser must provide written notice of such default to Developer. If Developer fails to cure the default within thirty (30) calendar days after it receives notice of the default, and if the purchaser is not then in material default under the sales contract, then the purchaser may terminate the sales contract and receive a refund of payments made under the agreement together with any interest earned thereon.

**SEE BOX B ON PAGE 15 AND SECTION 6 ON PAGES 19 THROUGH 19d IN THIS REPORT FOR OTHER SIGNIFICANT MATTERS AND IMPORTANT DISCLOSURES THAT SHOULD BE CAREFULLY REVIEWED BY PURCHASER.**

## 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		
Address of Project	1388 Kapiolani Boulevard Honolulu, Hawaii 96814	
Address of Project is expected to change because (describe)	N/A	
Tax Map Key (TMK)	(1) 2-3-016: 003, :004, and :008	
Tax Map Key is expected to change because	The Project will obtain a master Tax Map Key, and the individual units will be assigned a separate Tax Map Key.	
Land Area (square feet or acres)	70,000 square feet	
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)		

### 1.2 Buildings and Other Improvements

Number of Buildings	1
Floors Per Building	43
Number of New Building(s)	1
Number of Converted Building(s)	0
Principle Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	Concrete, steel and glass

### 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
See Exhibit "A"						

<b>392</b>	<b>Total Number of Units</b>
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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.

### 1.9 Common Elements

**Common Elements:** 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 Exhibit "E"

Described as follows:

Common Element	Number
Elevators	5 (1 shared with Sky East Project)
Stairways	3
Trash Chutes	1

### 1.10 Limited Common Elements

**Limited Common Elements:** 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 Exhibit "E".

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"/>	Pets: dogs, cats or other typical household pets and service animals are permitted in Residential Units pursuant to the limitations in Section VI.M of the Declaration and the House Rules (see Exhibit "K")
<input checked="" type="checkbox"/>	Number of Occupants: See Declaration, Section VI.C.2 (See also Section C.2 of Exhibit "D")
<input checked="" type="checkbox"/>	Other: Other: See Exhibit "D"; House Rules and restrictions on home-based businesses described in Exhibit "D", paragraph C.1
<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).

Exhibit "F" describes the encumbrances against title contained in the title report described below.

Date of the title report: March 6, 2020

Company that issued the title report: Title Guaranty of Hawaii, LLC

## 2. PERSONS CONNECTED WITH THE PROJECT

<b>2.1 Developer(s)</b>	Name: JL Avalon Capbridge, LLC  Business Address: 1440 Kapiolani Boulevard, Suite 1509 Honolulu, Hawaii 96814  Business Phone Number: (808) 445-9080 E-mail Address: info@jlamanoana.com
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).	JL Ala Moana LLC is the member of JL Avalon Capbridge, LLC  Timothy Lee is an Authorized Representative to execute documents on behalf of JL Avalon Capbridge, LLC
<b>2.2 Real Estate Broker*</b>	Name: Associated Real Estate Advisors LLC Business Address: 1440 Kapiolani Boulevard, Suite 1509 Honolulu, Hawaii 96814  Business Phone Number: (808) 517-4373 E-mail Address: info@skyalamoana.com
<b>2.3 Escrow Depository*</b>	Name: Title Guaranty Escrow Services, Inc. Business Address: 235 Queen Street Honolulu, Hawaii 96813  Business Phone Number: (808) 521-0211
<b>2.4 General Contractor</b>	Name: To be determined Business Address:  Business Phone Number:
<b>2.5 Condominium Managing Agent</b>	Name: To be determined Business Address:  Business Phone Number:
<b>2.6 Attorney for Developer</b>	Name: Imanaka Asato; Attn: Owen T. Iida Business Address: 745 Fort Street, 17 <sup>th</sup> Floor Honolulu, Hawaii 96813  Business Phone Number: (808) 521-9500

\* If different units have different agents, attach an addendum as page 9a listing each unit's respective agents.

## 4. CONDOMINIUM MANAGEMENT

### 4.1 Management of the Common Elements

<b>Management of the Common Elements:</b> 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 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 checked="" type="checkbox"/>	Other (specify): To be determined

### 4.2 Estimate of the Initial Maintenance Fees

<b>Estimate of the Initial Maintenance Fees:</b> 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 "H" 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 checked="" type="checkbox"/>	Gas for the common elements
<input checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer
<input checked="" type="checkbox"/>	TV Cable
<input checked="" type="checkbox"/>	Other (specify): Internet, Reciprocal Easement Reimbursement, Recreational Facilities Reimbursement

### 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 type="checkbox"/>	TV Cable
<input type="checkbox"/>	Other (specify):

**EXHIBIT "F"**

**ENCUMBRANCES AGAINST TITLE**

1. Mineral and water rights of any nature.

2. -AS TO ITEM I:-

(A) The terms and provisions contained in the following:

INSTRUMENT : AGREEMENT FOR ISSUANCE OF CONDITIONAL USE PERMIT UNDER  
SECTION 4.40-17 OF THE LAND USE ORDINANCE (LUO)

DATED : November 21, 1987  
FILED : Land Court Document No. 1524861

(B) The terms and provisions contained in the following:

INSTRUMENT : WARRANTY DEED

DATED : February 6, 2001  
FILED : Land Court Document No. 2681857

(Not noted on Transfer Certificate(s) of Title referred to herein)

(C) The terms and provisions contained in the following:

INSTRUMENT : LIMITED WARRANTY DEED

DATED : August 8, 2019  
FILED : Land Court Document No. T-10811168

(D) The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND AGREEMENT TO GRANT EASEMENT

DATED : August 8, 2019  
FILED : Land Court Document No. T-10811169

3. The terms and provisions contained in the following:

INSTRUMENT: DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR SKY  
ALA MOANA

DATED : March 15, 2019  
FILED : Land Court Document No. T-10668207  
MAP : 2437 and any amendments thereto

4. The terms and provisions contained in the following:

INSTRUMENT: BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF SKY ALA  
MOANA

DATED : March 15, 2019

FILED : Land Court Document No. T-10668208

5. The terms and provisions contained in the following:

INSTRUMENT: DECLARATION OF RECIPROCAL EASEMENTS AND IRREVOCABLE  
FACILITIES LICENSE

DATED : March 15, 2019

FILED : Land Court Document No. T-1668210

6. The terms and provisions contained in the following:

INSTRUMENT: DECLARATION OF CONDOMINIUM PROPERTY REGIME OF SKY ALA  
MOANA WEST

DATED : March 15, 2019

FILED : Land Court Document No. T-10669266

MAP : 2438 and any amendments thereto

7. The terms and provisions contained in the following:

INSTRUMENT: BY-LAWS OF THE ASSOCIATION OF UNIT OWNERS OF SKY ALA  
MOANA WEST

DATED : March 15, 2019

FILED : Land Court Document No. T-10669267

8. Any unrecorded leases and matters arising from or affecting the same.

9. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the project land.

## EXHIBIT "I"

### SUMMARY OF SALES CONTRACT

Capitalized terms have the same meanings ascribed to such terms in the Sales Contract ("Sales Contract").

The specimen Sales Contract, filed with the State of Hawaii Real Estate Commission, provides for, among other things, a description of the Unit to be sold, the purchase price, the closing costs, the time, manner and place of payment, Purchaser's obligations regarding financing, Seller's warranties and disclaimers regarding the Condominium Map and the Project, and the remedies of Seller and Purchaser in the event of a default under the Sales Contract.

Among other provisions, the specimen Sales Contract provides:

1. Purchaser shall receive: (i) a true copy of the Public Report for the Project with an effective date issued by the Commission and all amendments thereto, the recorded Declaration, the recorded Bylaws, the House Rules and the Condominium Map, or be provided written notice regarding an opportunity to examine the Condominium Map, and the Notice of Right to Cancel advising Purchaser of Purchaser's right to cancel the Sales Contract, the delivery of which is required by Hawaii Revised Statutes, Section 514B-86. Purchaser shall also have been given an opportunity to read said report.

2. Purchaser may cancel the Sales Contract within thirty (30) days of Purchaser's receipt of the Public Report ("Rescission Period"). It is understood that Purchaser may, at any time after Purchaser's receipt of the Notice of Right to Cancel and the documents described in Paragraph 1 above and of Purchaser's execution of the Sales Contract, waive Purchaser's right to cancel the Sales Contract. If Purchaser shall fail to execute the Notice of Right to Cancel within thirty (30) days of Purchaser's receipt of the Public Report, Purchaser shall be deemed to have waived Purchaser's right to cancel the Sales Contract (by Purchaser's failure to give said written notice of cancellation). The conveyance of the Unit to the Purchaser within the thirty (30) day period referenced above shall also be treated as a waiver by Purchaser of Purchaser's right to cancel the Sales Contract.

3. Seller shall complete construction of the Unit to permit normal occupancy of the Unit within five (5) years from the date Purchaser signs a binding contract ("Completion Deadline"). If the Project is not completed by the Completion Deadline, subject to causes of *force majeure*, Purchaser may cancel his or her Sales Contract at any time thereafter, and Purchaser shall be entitled to a prompt refund of all monies paid, plus any interest earned thereon, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.00.

4. [INTENTIONALLY DELETED]

5. Seller has entered into an Escrow Agreement, summarized in Exhibit "J" herein, with Title Guaranty Escrow Services, Inc. ("Escrow"), covering the deposit with Escrow of all funds paid by the Purchaser under the Sales Contract and the disbursement of the funds by Escrow. Escrow may charge a cancellation fee on account of escrow services performed not to exceed \$250.00.

6. The Sales Contract requires Purchaser to pay the Total Purchase Price by a series of payments prior to Closing, including an initial payment when Purchaser signs the Sales Contract, a second deposit and a third deposit. Purchaser shall then deposit the remaining balance due on the date specified in the Pre-Closing Notice or three (3) business days prior to the Closing Date, subject to loan requirements set forth in the Sales Contract. Seller may also assess a late fee up to 12% per annum.

7. Within ten (10) calendar days after the Contract Date, Purchaser must submit to one of the financial institutions designated by Seller from time to time ("Qualification Agent") an application for a qualification letter, together with such additional information and documents as Qualification Agent shall require or deem necessary or appropriate to confirm (i) Purchaser's ability to pay the Total Purchase Price from Purchaser's own funds, or (ii) Purchaser's ability to obtain a mortgage loan in an amount at least equal to the portion of the Total Purchase Price to be paid by mortgage loan proceeds ("Qualification Letter").

8. If Purchaser shall have applied for a Qualification Letter and diligently pursued such application as provided in the Sales Contract, and Purchaser does not obtain a Qualification Letter in form and content acceptable to Seller (in Seller's sole discretion) within thirty (30) calendar days of the Contract Date, then and in such event, Purchaser shall have the right and option to terminate the Sales Contract at any time up to thirty (30) calendar days after the end of that period, and Seller shall have the right to terminate the Sales Contract at any time up to thirty (30) calendar days after the end of that period, and in either case, Escrow shall refund to Purchaser all monies previously paid by Purchaser, less any Cancellation Fee. Except as provided in this Section, Purchaser's obligations under this Sales Contract are not subject to or contingent on financing.

9. The Sales Contract provides that Purchaser may earn interest on Purchaser's deposits, pursuant to the requirements and limitations as set forth in the Sales Contract.

10. The Sales Contract provides that Purchaser will pay a non-refundable, non-transferable "start-up" fee for the Association of Unit Owners in an amount equivalent to three (3) months' estimated maintenance fees for the Unit; plus two (2) month's estimated maintenance fees for the Unit as an advance payment for the initial two (2) month's maintenance fees payable by a Unit Owner. These start-up fees are one-time assessments at Closing and are not advance payments of common expenses or assessments, and shall be in addition to the normal monthly assessments. In addition, Purchaser is responsible for all closing costs in connection with the sale, including, without limitation, the escrow fee, cost of a preliminary title report, cost of preparation of the Unit Deed, cost of establishing separate escrow account(s), real property tax prorations and other customary prorations, all acknowledgment fees, conveyance and transfer taxes of all types, title insurance, if requested by Purchaser, cost of any lender's title insurance, appraisal fees, costs for drafting of any notes and mortgages, all recording costs or fees, the cost of drafting any revisions or addenda to the Sales Contract, loan fees, credit report costs and all other applicable mortgage costs, provided that it is understood that this sale is not subject to or conditioned upon Purchaser obtaining a loan.

11. Regardless of the status of construction of the Project and in order to accommodate a bulk closing or series of bulk closings of the Units by Seller, Seller intends to pre-close a bulk number of units from time to time, upon not less than thirty (30) calendar days' prior written notice to Purchaser (the "Seller's Pre-Closing Notice"). Seller's Pre-Closing Notice may establish a schedule with differing dates for certain requirements for the pre-closing to be met by Purchaser. Purchaser shall execute all necessary documents for such pre-closing, including irrevocable escrow instructions, and deposit the same with Escrow no later than the date specified in Seller's Pre-Closing Notice, and Purchaser further agrees to pay into Escrow all sums due from Purchaser at closing, excluding only any loan proceeds, if applicable, upon the date specified in Seller's Pre-Closing Notice.

12. Purchaser or Purchaser's agent shall inspect the Unit on a date and at a time specified by Seller in a written notice to Purchaser. Upon completion of such inspection, Purchaser shall sign or cause its agent to sign an inspection checklist to be furnished by Seller or the contractor, which shall list all defects or damages to the Unit, if any. If Purchaser or its agent fails to inspect (or permit inspection of) Purchaser's Unit on the date and time specified by Seller or other warrantors, then Purchaser acknowledges that such conduct will constitute a waiver of Purchaser's inspection rights under the Sales Contract. Purchaser agrees to accept possession of the Unit despite the existence of defects or damage to the Unit, including appliances, which do not render the Unit uninhabitable. Seller will cooperate with and assist Purchaser in having legitimately-listed defects or damage corrected or repaired within a reasonable time thereafter.

13. Purchaser authorizes Seller to make, and Purchaser specifically approves, the following changes to the Project Documents and the Project after the Effective Date:

A. Any such changes as may be required by law, any title insurance company, lender, or governmental agency; provided, however, that such changes shall not constitute a change in the Project which directly, substantially and adversely affects the use or value of the Unit or the Limited Common Elements appurtenant thereto or the amenities of the Project available for Purchaser's use; and is not made pursuant to a right reserved to Seller under the Declaration ("Material Change"), or increase the Total Purchase Price.

B. Any non-Material Change that the Seller and/or the Project Architect, in their sole and absolute discretion, deem appropriate, to the Common Elements, including, without limitation, the roadways, parking areas, and landscaping, or any change for reasons related to financial feasibility, efficiency, or aesthetics;

furthermore, the Project Architect may increase or decrease the thickness of any foundation, wall, column, or floor slab, or make other changes to Seller's Plans and Specifications (as defined and discussed further in Section E.38.f of the Sales Contract), which could result in the dimensions of Purchaser's Unit or any appurtenant Limited Common Element thus affected becoming smaller or larger, or resulting in a building height or elevation different from that shown on the Condominium Map or stated in the Declaration or the Public Report; provided that the variance in the net living area of the Unit shall not exceed two percent (2%) of the net living area represented in the Project Documents. Further, the Project Architect may make changes necessary to correct any design errors or shortcomings.

C. Any Material Change made while Purchaser is under a binding Sales Contract; provided that applicable rescission rights shall be given to Purchaser in accordance with Section 514B-87 of the Hawaii Revised Statutes, as amended, as further described in Section E.28 of the Sales Contract.

D. Any changes made pursuant to the rights reserved by Seller as Developer under the Declaration, as more fully explained in Section E.15.c. of the Sales Contract.

14. The Sales Contract provides that it shall not be construed as a present transfer of any rights or of any interest in the Unit, but rather states that it is an agreement to transfer in the future. By execution of the Sales Contract, the Purchaser agrees to waive, relinquish and subordinate the priority or superiority of any lien or other legal or equitable interest arising under the Sales Contract in favor of the lien or charge on the Project of the security interests of the Lender, including but not limited to any lien, mortgage or charge securing a loan made to finance the acquisition of the land and the costs of construction (if applicable) and any and all advances therefore until the filing of the Unit Deed.

15. The Sales Contract provides that it may not be assigned by Purchaser without the written consent of Seller. See Sales Contract for definition of what constitutes an "assignment". Any assignment of the Sales Contract by Purchaser without the consent of Seller is void and of no legal effect. Notwithstanding the foregoing, Purchaser may assign its rights under the Sales Contract to affiliated entities for estate planning purposes without the consent of Seller, provided that any such assignment shall not release Purchaser from its obligations under the Sales Contract. In the event that Purchaser decides to make such an assignment for estate planning purposes, Purchaser shall provide written notice thereof to Seller at least twenty (20) calendar days prior to the Pre-Closing Date, as defined in the Sales Contract, and shall provide to Seller copies of such documents as Seller, in its sole and absolute discretion, deems necessary to complete Closing.

16. SELLER MAY IN THE FUTURE FILE A PUBLIC REPORT AMENDMENT FOR AUTHORIZATION FOR THE USE PURCHASER'S DEPOSIT 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 PURCHASERS' FUNDS PRIOR TO CLOSING.

17. Seller is developing the Project, but is not the general contractor or an affiliate of the general contractor who is building the Project. TO THE EXTENT PERMITTED BY LAW, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, ABOUT THE UNITS OR THE PROJECT, OR ABOUT CONSUMER PRODUCTS OR ANYTHING ELSE INSTALLED OR CONTAINED IN THE UNITS OR THE PROJECT. THIS INCLUDES, BUT IS NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION, FITNESS FOR A PARTICULAR PURPOSE, OR SUFFICIENCY OF DESIGN.

18. HAWAII REVISED STATUTES, CHAPTER 672E ("CHAPTER 672E" OR "THE CONTRACTOR REPAIR ACT"), AS AMENDED, CONTAINS IMPORTANT REQUIREMENTS PURCHASER MUST FOLLOW BEFORE PURCHASER MAY FILE A LAWSUIT OR COMMENCE OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED PURCHASER'S UNIT. NINETY (90) DAYS BEFORE PURCHASER FILES PURCHASER'S LAWSUIT OR COMMENCES ANY ACTION, PURCHASER MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS PURCHASER ALLEGES ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. PURCHASER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE

BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW, AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT PURCHASER'S ABILITY TO FILE A LAWSUIT OR COMMENCE ANY OTHER ACTION AGAINST THE CONTRACTOR. CHAPTER 672E APPLIES TO ANY CIVIL ACTION, INCLUDING THE INITIATION OF AN ARBITRATION PROCEEDING. REFERENCE TO CHAPTER 672E OR THE CONTRACTOR REPAIR ACT DOES NOT MEAN THAT PURCHASER HAS A RIGHT TO FILE A LAWSUIT WHENEVER CHAPTER 672E MAY APPLY.

d. Appliances and Fixtures. All appliances and fixtures originally sold with the Unit (or their replacements) shall remain in the Unit at the Repurchase Closing and shall be part of the property purchased by Seller from Purchaser.

19. The Section E.35 of the Sales Contract includes the following provision:

DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES.

NOTICE TO PURCHASER:

The following provisions apply to the resolution of Disputes (as defined below):

a. PURPOSE AND EXCLUSIVITY. THE PURPOSE OF THESE DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES (THE "**PROCEDURES**") IS TO PROVIDE SELLER AND ITS MANAGERS, MEMBERS, OFFICERS, AGENTS, EMPLOYEES, BROKERS, AND OTHER REPRESENTATIVES, AND PURCHASER OR OTHER OWNER OF AN INTEREST IN THE UNIT, AND ANY PERSONS CLAIMING THEREUNDER (COLLECTIVELY, FOR PURPOSES OF THIS SECTION, THE "**PARTIES**"), WITH A MECHANISM TO RESOLVE DISPUTES THAT ARISE IN CONNECTION WITH THIS SALES CONTRACT. THE PARTIES AGREE THAT THESE PROCEDURES SHALL BE THE METHOD EMPLOYED TO RESOLVE ALL DISPUTES.

i. DEFINITION. A "**DISPUTE**" MEANS AND INCLUDES ANY AND ALL ACTIONS, CLAIMS, OR DISPUTES BETWEEN OR AMONG THE PARTIES WITH RESPECT TO, ARISING OUT OF, OR RELATING TO THIS SALES CONTRACT, WHERE THE TOTAL AMOUNT IN CONTROVERSY (INCLUDING ALL CLAIMS AND COUNTERCLAIMS) IS GREATER THAN THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,500.00). A DISPUTE SHALL NOT INCLUDE CONSTRUCTION DEFECTS COVERED UNDER THE CONTRACTOR REPAIR ACT.

ii. PRE-CLOSING DISPUTE. NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY AND SUBJECT TO **SECTIONS E.33 AND E.34** HEREIN, ANY DISPUTE SOLELY BETWEEN SELLER AND PURCHASER ARISING OUT OF OR INCIDENT TO THIS SALES CONTRACT MAY BE PURSUED IN A COURT OF COMPETENT JURISDICTION IN HONOLULU, HAWAII, WITHOUT THE OBLIGATION OF DISCUSSION OR MEDIATION, PROVIDED THAT SUCH CLAIM IS FILED PRIOR TO THE SCHEDULED CLOSING DATE HEREIN.

iii. DISCUSSION. ANY PERSON WITH A DISPUTE SHALL NOTIFY THE PARTY TO WHOM THE DISPUTE IS DIRECTED IN WRITING OF THE DISPUTE, WHICH WRITING SHALL DESCRIBE THE NATURE OF THE DISPUTE AND ANY PROPOSED REMEDY (THE "**DISPUTE NOTICE**"). WITHIN A REASONABLE PERIOD AFTER RECEIPT OF THE DISPUTE NOTICE, WHICH PERIOD SHALL NOT EXCEED TWENTY-ONE CALENDAR (21) DAYS, THE PARTIES TO THE DISPUTE, REPRESENTED BY INDIVIDUALS WITH DECISION MAKING AUTHORITY, SHALL MEET AT A MUTUALLY ACCEPTABLE LOCATION WITHIN OR NEAR THE PROJECT TO DISCUSS THE DISPUTE. THE PARTIES TO THE DISPUTE SHALL NEGOTIATE IN GOOD FAITH IN AN EFFORT TO RESOLVE THE DISPUTE.

iv. MEDIATION. IF THE PARTIES CANNOT RESOLVE SUCH DISPUTE PURSUANT TO THE PROCEDURES DESCRIBED IN **SECTION E.35.a.iii** ABOVE WITHIN THIRTY (30) CALENDAR DAYS AFTER THE COMMENCEMENT OF DISCUSSIONS, THE MATTER SHALL

BE SUBMITTED TO MEDIATION BY AND PURSUANT TO THE PROCEDURES ADOPTED BY DISPUTE PREVENTION AND RESOLUTION, INC. ("DPR") IN HONOLULU, HAWAII, OR ANY SUCCESSOR ENTITY THERETO, OR TO ANY OTHER ENTITY OFFERING MEDIATION SERVICES THAT IS ACCEPTABLE TO THE PARTIES.

(a) PARTIES PERMITTED AT SESSIONS. PERSONS OTHER THAN THE PARTIES, THEIR AUTHORIZED REPRESENTATIVES, AND THE MEDIATOR MAY ATTEND THE MEDIATION SESSIONS ONLY WITH THE CONSENT OF THE MEDIATOR; PROVIDED, HOWEVER, SUCH PERMISSION AND CONSENT SHALL NOT BE REQUIRED TO ALLOW PARTICIPATION OF SUCH PARTIES' LIABILITY INSURERS IN THE MEDIATION TO THE EXTENT REQUIRED UNDER SUCH PARTIES' LIABILITY INSURANCE POLICY.

(b) RECORD. THERE SHALL BE NO STENOGRAPHIC RECORD OF THE MEDIATION PROCESS.

(c) EXPENSES. THE EXPENSES OF WITNESSES SHALL BE PAID BY THE PARTY PRODUCING SUCH WITNESSES. ALL OTHER EXPENSES OF THE MEDIATION INCLUDING, BUT NOT LIMITED TO, THE FEES AND COSTS CHARGED BY THE MEDIATOR AND THE EXPENSES OF ANY WITNESSES OR THE COST OF ANY PROOF OR EXPERT ADVICE PRODUCED AT THE DIRECT REQUEST OF THE MEDIATOR, SHALL BE BORNE EQUALLY BY THE PARTIES TO THE MEDIATION UNLESS THEY AGREE OTHERWISE. EACH PARTY TO THE MEDIATION SHALL BEAR ITS OWN ATTORNEYS' FEES AND COSTS IN CONNECTION WITH SUCH MEDIATION.

(d) NO JUDICIAL INTERVENTION. IF A PARTY INSTITUTES LITIGATION PRIOR TO OBSERVING THE PROCEDURES SET FORTH IN **SECTIONS E.35.a.iii AND E.35.a.iv ("PROHIBITED LITIGATION")**, SUCH PARTY SHALL BE RESPONSIBLE FOR ALL REASONABLE EXPENSES AND FEES (INCLUDING ATTORNEYS' FEES) INCURRED BY THE OTHER PARTY IN OBTAINING A STAY OR DISMISSAL OF THE PROHIBITED LITIGATION.

(e) CONFIDENTIALITY. ALL NEGOTIATIONS, MEDIATION PROCEEDINGS, AND ANY DISCOVERY CONDUCTED PURSUANT TO THESE PROCEDURES ARE CONFIDENTIAL. ALL PROCEEDINGS CONDUCTED PURSUANT TO THESE PROCEDURES SHALL BE TREATED FOR ALL PURPOSES AS COMPROMISE AND SETTLEMENT NEGOTIATIONS WITHIN THE MEANING OF RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND RULE 408 OF THE HAWAII RULES OF EVIDENCE.

v. FURTHER RESOLUTION. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE PURSUANT TO THE PROCEDURES DESCRIBED IN **SECTIONS E.35.a.iii AND E.35.a.iv** ABOVE, EACH PARTY SHALL HAVE THE RIGHT TO PURSUE THE RIGHTS AND REMEDIES AVAILABLE TO SUCH PARTY AT LAW OR IN EQUITY, EXCEPT AS OTHERWISE STATED HEREIN. IF A DISPUTE PROCEEDS IN COURT, SUCH ACTION SHALL BE BROUGHT EXCLUSIVELY IN THE FEDERAL OR STATE COURTS LOCATED IN HONOLULU, HAWAII. THE PARTIES HEREBY AGREE THAT THE COURT SHALL APPLY HAWAII SUBSTANTIVE LAW AND APPLICABLE STATUTES OF LIMITATIONS AND WILL HONOR CLAIMS OF PRIVILEGE RECOGNIZED BY LAW.

vi. WAIVER OF JURY TRIAL. THE PARTIES ACKNOWLEDGE THAT THE PROCEDURES SET FORTH HEREIN HAVE BEEN A MATERIAL INDUCEMENT FOR THEM TO ENTER INTO THIS SALES CONTRACT. ACCORDINGLY, WITH RESPECT TO ANY DISPUTE, THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL ON ANY CLAIM OR CAUSE OF ACTION THAT IS BASED UPON OR ARISES OUT OF SUCH DISPUTE.

vii. WAIVER OF CLASS-WIDE CLAIMS. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE ADJUDICATION OF ANY DISPUTE SHALL BE BY AND BETWEEN THE PARTIES ONLY. THE PARTIES EXPRESSLY WAIVE ANY AND ALL RIGHTS TO PURSUE CLASS-WIDE CLAIMS RELATING TO ANY DISPUTE. THE PARTIES ACKNOWLEDGE AND AGREE THAT ANY DISPUTE SHALL NOT BE CONSOLIDATED WITH THE CLAIMS OF ANY OTHER PERSON.

viii. STATUTES OF LIMITATION. THE APPLICABLE STATUTE OF LIMITATIONS SHALL NOT BE TOLLED BY ANYTHING CONTAINED IN THESE PROCEDURES. NOTWITHSTANDING THE PROHIBITION ON LITIGATION, A PARTY MAY COMMENCE AN ACTION SOLELY FOR THE PURPOSE OF TOLLING THE STATUTES OF LIMITATION, PROVIDED SUCH PARTY IMMEDIATELY STAYS THE ACTION TO RESOLVE THE DISPUTE PURSUANT TO THE PROCEDURES DESCRIBED IN **SECTIONS E.35.a.iii AND E.35.a.iv** ABOVE.

ix. SURVIVAL; SUCCESSORS AND ASSIGNS. THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS SECTION SHALL SURVIVE THE CONVEYANCE OF THE UNIT PURSUANT TO THIS SALES CONTRACT AND THE TERMINATION OR EXPIRATION OF THIS SALES CONTRACT. THESE PROCEDURES, AND THE RIGHTS, DUTIES, AND OBLIGATIONS OF THE PARTIES, SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS.

x. THIRD-PARTY BENEFICIARY. IT IS THE INTENT OF SELLER AND PURCHASER THAT THE CONTRACTORS, SUBCONTRACTORS, DESIGN PROFESSIONALS, ENGINEERS AND SUPPLIERS WHO PROVIDED LABOR, SERVICES, OR MATERIALS TO THE PROJECT, AND SELLER'S AGENTS AND ATTORNEYS, SHALL BE THIRD-PARTY BENEFICIARIES UNDER THIS SECTION, AND SHALL BE ENTITLED TO ENFORCE THE PROVISIONS OF THIS SECTION.

END OF NOTICE TO PURCHASER

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THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS OR DISCLOSURES CONTAINED IN THE SALES CONTRACT. THE SALES CONTRACT CONTAINS OTHER DISCLOSURES ABOUT THE CHANGES THAT MAY BE MADE BY DEVELOPER IN THE PROJECT AND ABOUT OTHER ITEMS AFFECTING ENJOYMENT AND USE OF THE PROJECT. AS SUCH, THIS SUMMARY IS A GENERAL SUMMARY OF SOME OF THE PURCHASER'S RIGHTS AND OBLIGATIONS UNDER THE SALES CONTRACT, PURCHASER MUST REFER TO THE SALES CONTRACT TO DETERMINE PURCHASER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE SALES CONTRACT, THE SALES CONTRACT WILL CONTROL.