

1100 ALA MOANA

PURCHASE AGREEMENT & DEPOSIT RECEIPT

CALIFORNIA STATUTORY DISCLAIMER

WARNING: THE CALIFORNIA BUREAU OF REAL ESTATE HAS NOT QUALIFIED, INSPECTED OR EXAMINED THIS OFFERING, INCLUDING, BUT NOT LIMITED TO, THE CONDITION OF TITLE, THE STATUS OF BLANKET LIENS ON THE PROJECT (IF ANY), ARRANGEMENTS TO ASSURE PROJECT COMPLETION, ESCROW PRACTICES, CONTROL OVER PROJECT MANAGEMENT, RACIALLY DISCRIMINATORY PRACTICES (IF ANY), TERMS, CONDITIONS, AND PRICE OF THE OFFER, CONTROL OVER ANNUAL ASSESSMENTS (IF ANY), OR THE AVAILABILITY OF WATER, SERVICES, UTILITIES, OR IMPROVEMENTS. IT MAY BE ADVISABLE FOR YOU TO CONSULT AN ATTORNEY OR OTHER KNOWLEDGEABLE PROFESSIONAL WHO IS FAMILIAR WITH REAL ESTATE AND DEVELOPMENT LAW IN THE STATE WHERE THIS SUBDIVISION IS SITUATED.

Purchaser's Initials _____

ACKNOWLEDGMENT OF RECEIPT, OPPORTUNITY TO REVIEW, AND ACCEPTANCE OF PROJECT DOCUMENTS

THE FOLLOWING DOCUMENTS ARE REFERRED TO IN THIS PURCHASE AGREEMENT & DEPOSIT RECEIPT ("**PURCHASE AGREEMENT**") AND FORM AN ESSENTIAL PART OF THIS PURCHASE AGREEMENT. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS RECEIVED COPIES OF EACH OF THE FOLLOWING DOCUMENTS AND THAT PURCHASER HAS HAD A FULL AND COMPLETE OPPORTUNITY TO READ, REVIEW AND EXAMINE EACH OF THE FOLLOWING DOCUMENTS, WHICH MAY BE AMENDED AND SUPPLEMENTED FROM TIME TO TIME (TOGETHER, "**PROJECT DOCUMENTS**").

1. State of Hawaii Developer's Public Report ("**Public Report**")
2. Declaration of Condominium Property Regime of 1100 Ala Moana ("**Declaration**")
3. Bylaws of the Association of Unit Owners of 1100 Ala Moana ("**Bylaws**")
4. Condominium Map
5. Rules and Regulations of the Association of Unit Owners of 1100 Ala Moana ("**House Rules**")
6. Form of Limited Warranty Unit Deed, Encumbrances and Reservation of Rights with Power of Attorney ("**Unit Deed**")
7. Escrow Agreement
8. Community Covenant for Ward Village ("**Master Declaration**")
9. By-Laws of Ward Village Owners Association ("**Master By-Laws**")

DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES

AFTER CLOSING, ALL DISPUTES BETWEEN THE PARTIES, AS THOSE TERMS ARE DEFINED IN SECTION E.37 HEREIN, 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), SHALL BE SUBJECT TO THE DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES SET FORTH IN SECTION E.37. PURCHASERS SHOULD CAREFULLY READ SECTION E.37 AS IT SETS FORTH CERTAIN REQUIREMENTS, PROCEDURES, RELEASES, AND WAIVERS THAT AFFECT THE PROSECUTION AND RESOLUTION OF DISPUTES THAT MAY ARISE BETWEEN THE PARTIES.

Purchaser's Initials _____

This Purchase Agreement is made by and between VICTORIA PLACE, LLC, a Delaware limited liability company, whose address is 1240 Ala Moana Boulevard, Suite 200, Honolulu, Hawaii 96814 ("**Seller**"), and "**Purchaser**" named in **Section B**, below. This Purchase Agreement, which includes Sections A through E and the exhibit(s) attached hereto and any amendments and/or addenda attached hereto, shall be effective and binding in accordance with **Section D.6**, below. All capitalized terms used herein and not otherwise defined shall have the meaning set forth in **Exhibit A** attached hereto and made a part hereof, or in the Declaration. The purchase and sale transaction described in this Purchase Agreement is to be administered by Title Guaranty Escrow Services, Inc., a Hawaii licensed escrow corporation ("**Escrow**"), and is made with reference to the following facts:

A. DESCRIPTION OF THE PROPERTY COVERED BY THIS PURCHASE AGREEMENT.

Unit No. _____ within the 1100 Ala Moana condominium project, also known as "Victoria Place" ("**Project**") located at Tax Map Key Nos. (1) 2-3-001:129, 130 and :131 in Kaka'ako, City and County of Honolulu, State of Hawaii, as described in the Declaration of Condominium Property Regime of 1100 Ala Moana dated October 2, 2019 and recorded in the State of Hawaii Bureau of Conveyances ("**Bureau**") as Document No. A-72400470A thru A-72400470D, as the same maybe amended from time to time ("**Declaration**"), and depicted on that certain Condominium Map No. 6022 recorded in said Bureau, as the same may be amended from time to time ("**Condominium Map**");

TOGETHER WITH the undivided percentage interest in the Common Elements, as set forth in the Declaration, and the Limited Common Element(s) (as defined in the Declaration) appurtenant to the Unit, as described in Exhibit B to the Declaration, including, without limitation, the Limited Common Element Parking Stall No(s). and Storage Room No(s)., if any, in Exhibit B to the Declaration;

TOGETHER WITH any appliances that may be included with the Unit, as more particularly described in **Section E.3**; and

TOGETHER WITH AND/OR SUBJECT TO certain other easements and/or any other encumbrances recorded against the Project described or reserved in the Declaration and Purchaser's Limited Warranty Unit Deed, Encumbrances and Reservation of Rights with Power of Attorney ("**Unit Deed**").

The description provided under this **Section A** shall collectively be called the "**Unit**".

B. INFORMATION CONCERNING PURCHASER.

Purchaser certifies and affirms that the information provided below is correct and complete and agrees to inform Seller immediately if any of those details are changed. If, as a result of incorrect information provided by Purchaser or a change in the identity of the Purchaser, the Unit Deed is prepared incorrectly and must be redrawn, Purchaser agrees to pay all costs involved in such redrafting. The name of the Purchaser shall be noted as Purchaser's full legal name, no initials. In the case of multiple purchasers, the individual person named in the first information section below shall be the main contact person for purposes of this Agreement. Delivery of the Developer's Public Report and Receipt for Public Report to such person, or a signed receipt from such person shall constitute full and proper delivery of the Developer's Public Report and sufficient evidence of receipt by all Purchasers.

Complete if Purchaser is an individual person or persons:

Full Name: _____ Country: _____
Address: _____ Zip Code: _____
City: _____ State: _____
Res. Phone: _____ Bus. Phone: _____ Cell Phone: _____ Fax No.: _____
E-Mail: _____
() Single () Married If married, will vesting of title include spouse? () Yes () No
If yes, enter full name of spouse: _____

Full Name: _____ Country: _____
Address: _____ Zip Code: _____
City: _____ State: _____
Res. Phone: _____ Bus. Phone: _____ Cell Phone: _____ Fax No.: _____
E-Mail: _____
() Single () Married If married, will vesting of title include spouse? () Yes () No
If yes, enter full name of spouse: _____

Complete if Purchaser is a Trust:

Full Name of Trust: _____
Full Name of Trustee(s): _____
Address: _____ Zip Code: _____
City: _____ State: _____
Res. Phone: _____ Bus. Phone: _____ Cell Phone: _____
Fax No.: _____ Email: _____

Complete if Purchaser is a corporation, partnership, limited liability company or limited liability partnership:

Full name of corporation, partnership, limited liability company or limited liability partnership: _____
() corporation () general partnership () limited partnership () limited liability company
() limited liability partnership
State of incorporation/formation: _____
Federal identification no. (FEIN): _____
Business address: _____
City: _____ State: _____

Print full name(s) of authorized officer(s), partner(s), member(s) or manager(s) signing this Agreement:

Full Name: _____
Position/Title: _____
Mailing Address: _____ Zip Code: _____
City: _____ State: _____
Res. Phone: _____ Bus. Phone: _____ Cell Phone: _____
Fax No.: _____ Email: _____

Full Name: _____
Position/Title: _____
Mailing Address: _____ Zip Code: _____
City: _____ State: _____
Res. Phone: _____ Bus. Phone: _____ Cell Phone: _____
Fax No.: _____ Email: _____

(NOTE: The following documents shall be delivered by Purchaser to Seller or Escrow not less than thirty (30) calendar days prior to the Closing Date, or on such other date determined by Seller: (i) if Purchaser is a corporation, a resolution of the board of directors of such corporation authorizing the purchase hereunder and declaring which officer(s) is (are) authorized to execute this Purchase Agreement and all documents in connection herewith; (ii) if Purchaser is a partnership or limited partnership, (a) a copy of the Partnership Agreement or Limited Partnership Agreement (as applicable), and (b) a copy of the partnership or limited partnership registration statement filed with the DCCA or, for partnerships formed outside the State, a copy of the partnership or limited partnership registration statement filed with the government official or entity in the jurisdiction in which the partnership was formed;

(iii) if Purchaser is a limited liability company, (a) a copy of the Operating Agreement, and (b) a copy of the Articles of Organization filed at the DCCA or, for limited liability companies formed outside the State, a copy of the Articles of Organization filed with the government official or entity in the jurisdiction in which the limited liability company was formed; (iv) if Purchaser is a limited liability partnership, (a) a copy of the Partnership Agreement, and (b) a copy of the Certificate of Limited Partnership filed at the DCCA, or, for limited liability partnerships formed outside the State, a copy of the Certificate of Limited Partnership filed with the government official or entity in the jurisdiction in which the limited liability partnership was formed; and (v) if Purchaser is a trustee, a copy of the trust instrument or short form thereof, with an appropriate recitation as to the authority of the trustee.) PURCHASER ACKNOWLEDGES AND AGREES THAT IF PURCHASER IS A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP OR OTHER ENTITY THAT IS NOT A NATURAL PERSON, SELLER MAY REQUIRE, AS A CONDITION TO ACCEPTANCE OF THIS PURCHASE AGREEMENT, THAT PURCHASER'S OBLIGATIONS UNDER THIS PURCHASE AGREEMENT BE GUARANTEED BY A FINANCIALLY RESPONSIBLE PERSON WHO IS ACCEPTABLE TO SELLER, IN ITS SOLE DISCRETION.

C. NATURE OF TENANCY.

The manner of vesting of title is at the discretion of Purchaser and can have significant legal and tax consequences. If Purchaser is unable to choose a manner of vesting at this time, Purchaser shall advise Seller and Escrow as soon as possible, but no later than fifteen (15) calendar days prior to the Pre-Closing Date, of how Purchaser will take title to the Unit. The information appearing in **Section B** hereof and any vesting information provided to Escrow by Purchaser will be used for preparing the Unit Deed. Purchaser affirms that the information is correct and complete and agrees to inform Seller immediately if any of those details are changed. If, as a result of incorrect information provided by Purchaser or a change in the identity of the Purchaser, the Unit Deed is prepared incorrectly and must be redrawn, the Purchaser agrees to pay all costs involved in such redrafting.

Please check one:

- ☐ () Severalty (one purchaser; individual or entity)
- ☐ () Tenants in Common (two or more persons; no rights of survivorship)
- ☐ () Joint Tenants (two or more persons with rights of survivorship)
- ☐ () Tenants by the Entirety (married couple or reciprocal beneficiaries with rights of survivorship)
- ☐ () In Trust (trustee(s) on behalf of trust entity)
- ☐ () To be determined

In the event that Purchaser fails to designate the nature of tenancy at least fifteen (15) calendar days prior to the Pre-Closing Date, Purchaser, if a sole owner, will take title as a tenant in severalty; multiple purchasers other than married couples or reciprocal beneficiaries with rights of survivorship will take title as tenants in common; Purchaser, if a married couple or reciprocal beneficiaries with rights of survivorship, will take title as tenants by the entirety. If Purchaser consists of more than one married couple or reciprocal beneficiaries with rights of survivorship, the individuals in a married couple or reciprocal beneficiaries with rights of survivorship will take title as tenants by the entirety as to each other, and each married couple or reciprocal beneficiaries with rights of survivorship will be a tenant in common with every other couple, individual, corporation, limited liability company, partnership or limited liability partnership. Whenever a couple, individual, corporation, limited liability company, partnership or limited liability partnership takes title with another couple, individual, corporation, limited liability company, partnership or limited liability partnership as tenants in common, each tenant in common will take an equal interest, unless otherwise specified.

D. TOTAL PURCHASE PRICE; SCHEDULE AND METHOD OF PAYMENT; ADDITIONAL SUMS TO BE PAID; ETC.

Purchaser agrees to pay the Total Purchase Price set forth under **Section D.1** below according to the Schedule and Method of Payment set forth under **Section D.2** below.

1. Total Purchase Price. The Total Purchase Price for the Unit is \$_____

2. Schedule and Method of Payment. Payment shall be made by () all cash **OR** () cash down payment and the difference by way of a mortgage loan. The payment schedule shall be as follows:

(a) Initial Deposit	\$ _____	Initial Deposit of five percent (5%) of the Total Purchase Price due upon Purchaser's execution of this Purchase Agreement.
(b) Second Deposit	\$ _____	Second Deposit of five percent (5%) of the Total Purchase Price due no later than thirty (30) calendar days after the Initial Deposit.
(c) Third Deposit	\$ _____	Third Deposit of ten percent (10%) of the Total Purchase Price due one hundred twenty (120) calendar days after the Initial Deposit.
(d) Balance Due	\$ _____	Being the remaining balance of the Total Purchase Price, payable by Purchaser on the earlier of: (a) the Pre-Closing Date (defined in Section E.8), or (b) four (4) business days prior to the Closing Date; provided that if a portion of the balance of the Total Purchase Price is being paid from the proceeds of Purchaser's mortgage loan, the mortgage loan proceeds shall be paid no later than the date specified in Seller's Pre-Closing Notice (if applicable), but in no event later than two (2) business days prior to the Closing Date.

Reason for purchase (for mortgagee's use in processing Purchaser's loan application):

() Primary Residence () Second Home () Investment
(Owner-Occupant)

IF PURCHASER DOES NOT MAKE PAYMENT ON TIME, MEANING ON THE DUE DATES SET FORTH IN **SECTION D.2** ABOVE, OR IF PURCHASER HAS INSUFFICIENT FUNDS TO COVER ANY CHECK PAYMENTS, SELLER, AT ITS OPTION, MAY CANCEL PURCHASER'S PURCHASE AGREEMENT AND EXERCISE ITS REMEDIES AS SET FORTH IN **SECTION E.35** OF THE "**GENERAL TERMS AND CONDITIONS**" HEREIN, AND MAY CHARGE PURCHASER A LATE CHARGE OF TWELVE PERCENT (12%) PER ANNUM, PRORATED DAILY, BASED ON THE AMOUNT OF SUCH PAYMENT.

SELLER INTENDS TO SUBSEQUENTLY AMEND THE PUBLIC REPORT, PURSUANT TO SECTION 514B-92 OF THE HAWAII REVISED STATUTES, AS AMENDED, FOR THE USE OF PURCHASER'S FUNDS TO PAY FOR CERTAIN CONSTRUCTION AND PROJECT COSTS PERMITTED BY STATUTE. IF SELLER SUBMITS AN

AMENDMENT TO THE PUBLIC REPORT WITH ALL THE INFORMATION AND DOCUMENTS REQUIRED BYLAW AND THE COMMISSION FOR THE USE OF PURCHASER'S DEPOSITS TO PAY SUCH COSTS, THEN PURCHASER WILL NOT HAVE THE RIGHT TO RESCIND OR CANCEL THE PURCHASE AGREEMENT BY REASON OF SUCH SUBMISSION AND AMENDMENT. AT SUCH TIME, DEPOSITS MAY BE DISBURSED BEFORE CLOSING TO PAY FOR PROJECT COSTS, CONSTRUCTION COSTS, PROJECT ARCHITECTURAL, ENGINEERING, FINANCE, AND LEGAL FEES, AND OTHER INCIDENTAL EXPENSES OF THE PROJECT. WHILE SELLER AT SUCH TIME MAY HAVE SUBMITTED SATISFACTORY EVIDENCE THAT THE PROJECT SHOULD BE COMPLETED, IT IS POSSIBLE THAT THE PROJECT MAY NOT BE COMPLETED. IF THE DEPOSITS ARE DISBURSED TO PAY PROJECT COSTS AND THE PROJECT IS NOT COMPLETED, THERE IS A RISK THAT PURCHASER'S DEPOSITS WILL NOT BE REFUNDED. PURCHASER SHOULD CAREFULLY CONSIDER THIS RISK IN DECIDING WHETHER TO PURCHASE THE UNIT.

PURCHASER AGREES TO THE USE OF PURCHASER'S DEPOSIT FOR SUCH PURPOSES IN ACCORDANCE WITH THE ESCROW AGREEMENT, AND DIRECTS ESCROW TO DISBURSE SUCH FUNDS UPON DIRECTION FROM SELLER, SELLER'S LENDER OR AN OTHERWISE QUALIFIED FINANCIALLY DISINTERESTED PERSON. SELLER HAS NO OBLIGATION TO PAY INTEREST TO PURCHASER ON ANY FUNDS USED BY SELLER FOR THOSE PURPOSES PERMITTED BY LAW. PURCHASER FURTHER ACKNOWLEDGES THAT ANY ATTEMPT BY PURCHASER TO PREVENT SELLER FROM USING PURCHASER'S FUNDS OR TO PREVENT ESCROW FROM DISBURSING PURCHASER'S FUNDS AS PERMITTED UNDER THE ACT AND THE ESCROW AGREEMENT MAY RESULT IN ADDITIONAL COSTS, DELAYS, AND OTHER DAMAGES TO SELLER. ACCORDINGLY, ANY SUCH ACTIONS BY PURCHASER SHALL CONSTITUTE A BREACH OF THIS PURCHASE AGREEMENT. SELLER MAY PURSUE LEGAL ACTION FOR ANY ACTUAL AND CONSEQUENTIAL DAMAGES CAUSED BY REASON OF PURCHASER'S ACTIONS IN VIOLATION HEREOF. SELLER AND PURCHASER HEREBY IRREVOCABLY INSTRUCT ESCROW TO MAKE DISBURSEMENTS FROM PURCHASER'S DEPOSITS AS MAY BE PERMITTED BY THE ESCROW AGREEMENT.

3. Additional Sums to be Paid. In addition to the Total Purchase Price set forth above, (a) a Project start-up fee (being a non-refundable, non-transferable "**start-up**" fee for the Association) in an amount equivalent to two (2) months' estimated maintenance fees for the Unit; (b) one (1) month's estimated maintenance fees for the Unit as an advance payment for the initial month's maintenance fees payable by a Unit Owner; and (c) all estimated closing costs and prorations payable by Purchaser, as estimated by Escrow, shall be payable by Purchaser to Escrow on the earlier of (i) the Pre-Closing Date as instructed in Seller's Pre-Closing Notice pursuant to **Section E.8** of the "**General Terms and Conditions**" below, or (ii) four (4) business days prior to the Closing Date. If Purchaser has pre-closed and, thereafter, but prior to the Closing Date, Escrow determines that additional amounts are due to fully pay all such closing costs and prorations, then, and in such event, Purchaser shall pay the additional amounts to Escrow within five (5) business days of Purchaser's receipt of such notice from Escrow. If any excess amounts are prepaid by Purchaser with respect to closing costs and prorations, then such excess amounts shall be refunded to Purchaser by Escrow within a reasonable period of time after the Closing Date. For purposes of this Purchase Agreement, the Project start-up fee is not an advance payment of future maintenance fee assessments, but rather is intended to and shall be used to fund and pay for all costs and expenses typically associated with the opening of a new residential building, including, by way of example and not limitation, office furniture and equipment for the Managing Agent (including computer(s) and Developer pre-paid software programs and subscriptions procured for the operation and management of the association), initial maintenance supplies and equipment for the Project, association employee payroll, capital expenditures and reserves, pool equipment, furnishings, artwork and decoration for the Recreational Amenities and other Common Elements, communications equipment for Association staff, secured entry fobs or cards, and the initial premiums for the Project insurance. Seller shall have the right to use the Project start-up fees to pay for these costs and expenses and/or to be reimbursed for the cost of the same if previously purchased and paid for by Seller. Any surplus funds shall be deposited with the Association.

4. Purchase Agreement. Seller agrees to sell and Purchaser agrees to purchase the Unit described in **Section A** above for the Total Purchase Price and in accordance with the "**Schedule and Method of Payment**" described in **Section D.2** above. THE PURCHASE AND SALE OF THE UNIT IS SUBJECT TO AND IN CONSIDERATION OF THE "**GENERAL TERMS AND CONDITIONS**" SET FORTH IN **SECTION E** OF THIS PURCHASE AGREEMENT, WHICH BY

THIS REFERENCE ARE MADE A PART HEREOF AND INCORPORATED HEREIN FOR ALL PURPOSES. PURCHASER ACKNOWLEDGES HAVING READ THIS PURCHASE AGREEMENT IN FULL AND IS AWARE OF AND ACCEPTS THE TERMS, CONDITIONS AND LIMITATIONS AND DISCLAIMER OF WARRANTIES DESCRIBED HEREIN AND ACKNOWLEDGES THAT THIS PURCHASE AGREEMENT IS COMPRISED OF **SECTIONS A THROUGH E**, TOGETHER WITH **EXHIBIT A** ATTACHED HERETO AND MADE A PART HEREOF, AND ANY ADDENDA AND/OR AMENDMENTS TO THIS PURCHASE AGREEMENT.

5. Acceptance by Seller. The signature of the Project Broker on this Purchase Agreement only acknowledges receipt of the payment(s) paid with this Purchase Agreement and does not constitute acceptance of the Purchase Agreement by Seller. **In other words, receipt of Purchaser's funds do not constitute Seller's acceptance of this offer to purchase. Seller may hold Purchaser's deposit check uncashed if and until Seller accepts this Purchase Agreement. This Purchase Agreement shall not be deemed accepted and shall not be of any force and effect until it has been accepted and executed by Seller, which shall be at Seller's sole discretion, and delivered to Purchaser and Escrow. Seller's sales agents are not authorized to accept this offer to purchase on behalf of Seller.** If Seller does not accept this Purchase Agreement within a reasonable time after Purchaser's execution, then this Purchase Agreement shall be automatically revoked and all funds Purchaser has deposited with Seller shall be promptly refunded to Purchaser. When accepted by Seller, this Purchase Agreement constitutes the sole contract between Purchaser and Seller regarding the purchase of the Unit. There are no collateral understandings, representations or agreements, oral or written, between Seller and Purchaser, other than those contained herein. No sales representative, employee or other agent of Seller has the authority to modify the terms of this Purchase Agreement or to make any agreements, representations or promises on behalf of Seller. Therefore, although Purchaser has had, and in the future may have, conversations with sales representatives or other agents of Seller, none of the information contained in such conversations, including representations, promises or statements of any kind, shall be binding upon Seller unless the same are added by written addenda attached hereto and executed by Purchaser and Seller.

6. Binding Agreement; Delivery of Hawaii Developer's Public Report.

Pursuant to Section 514B-86 of the Hawaii Revised Statutes, Purchaser has the right to cancel this Purchase Agreement at any time up to midnight of the thirtieth (30th) calendar day after the contract is executed by Purchaser and the Public Report and Notice of Right to Cancel are delivered to Purchaser. If Purchaser shall fail to take any action to cancel this Purchase Agreement within the thirty (30)-day cancellation period, Purchaser shall be deemed to have waived Purchaser's right to cancel this Purchase Agreement (by Purchaser's failure to give said written notice of cancellation within the thirty (30)-day period). The conveyance of the Unit to the Purchaser within the thirty (30)-day cancellation period referenced above shall also be treated as a waiver by Purchaser of Purchaser's right to cancel this Purchase Agreement.

Purchaser acknowledges that Purchaser has received and reviewed a copy of the Public Report along with the Receipt of Public Report and Notice of Right to Cancel, and any applicable amendments to the report, for the Project prior to signing this Purchase Agreement. Purchaser agrees that Purchaser either has or will read the remaining Project Documents for the Project prior to the date that Purchaser's statutory rescission period expires. Purchaser agrees to consult Purchaser's advisor or counsel if Purchaser does not understand any provision in any of the Project Documents and Purchaser acknowledges that Seller and/or Seller's designated agent will not and did not provide legal interpretation of the Project Documents or legal advice. Purchaser further understands and accepts that upon Purchaser's waiver or deemed waiver of the statutory rescission period under Section 514B-86 of the Hawaii Revised Statutes, as amended, Purchaser shall be deemed to have reviewed, approved and accepted the terms of all of said Project Documents. Purchaser acknowledges and accepts that nonmaterial amendments and amended public reports are not subject to Section 514B-86 of the Hawaii Revised Statutes and instead are governed by Section 514B-56 of the Hawaii Revised Statutes, as amended.

7. Completion Deadline. Seller shall complete construction of the Unit so as to permit normal occupancy of the Unit within six (6) years from the date Purchaser signs a binding contract (the "**Completion Deadline**"). Notwithstanding the foregoing, such six (6) year period shall be extended for any period of time during which Seller is actually and necessarily delayed in beginning or completing construction by Force Majeure. If

completion of the construction of the Unit does not occur on or before the Completion Deadline, as the same may be extended by reason of Force Majeure, Purchaser may cancel this Purchase Agreement at any time thereafter. In the event of cancellation because of Seller's failure to complete the Unit by the Completion Deadline, as Purchaser's sole remedy, Purchaser shall be entitled to a prompt refund of all monies paid, plus any interest earned thereon, less any Cancellation Fee and other costs associated with the purchase, up to a maximum of Two Hundred Fifty and No/100 Dollars (\$250.00). If Purchaser shall fail to cancel this Purchase Agreement within thirty (30) calendar days of the expiration of the Completion Deadline, Seller will thereafter have the right to cancel this Purchase Agreement; provided that should Seller elect to cancel this Purchase Agreement pursuant to this **Section D.7**, Purchaser shall be entitled to a prompt and full refund of all moneys paid, plus any interest earned thereon.

8. **Agency Disclosure.** In connection with the sale of the Unit pursuant to the Public Report, Purchaser acknowledges that Ward Village Properties, LLC, and all of its salespersons and brokers (the "**Project Broker**"), represent Seller and not Purchaser, unless the Project Broker is acting as a dual agent (representing both Seller and Purchaser) and has so advised Seller and Purchaser. Purchaser acknowledges that Ward Village Properties, LLC is an affiliate of the Seller. By initialing below, Purchaser acknowledges that written disclosures relating to agency have been provided prior to signing this Purchase Agreement.

Purchaser's Initials _____

9. **Deed Preparation Disclosure.** Purchaser acknowledges and is aware the Seller will prepare the Unit Deeds for conveyance of the Unit from Seller to Purchaser inhouse and will charge a fee for such service. The estimated fee for deed preparation shall be \$500.00 per deed, plus tax and will be disclosed on the Purchaser's closing statement. Purchase agrees to review the Unit Deed with Purchaser's legal counsel prior to executing the same.

Purchaser's Initials _____

10. **Purchaser's Broker.** Purchaser is (____)/is not (____) represented by a real estate broker. If Purchaser is represented by a real estate broker, such representation shall be evidenced by (i) insertion of such broker's name below, and (ii) a Cooperating Brokerage Agreement signed by Seller or Project Broker, and by Purchaser and Purchaser's broker, and referring specifically to this Purchase Agreement.

Name of Purchaser's broker (write "none" if
Purchaser is not represented)

License No. and State of License

Company Name of Purchaser's Broker

Address of Purchaser's Broker

Telephone No. of Purchaser's Broker

E-mail for Purchaser's Broker

If no name is written in the space above, Purchaser represents and warrants that no real estate broker or other person represented Purchaser or was engaged by Purchaser in connection with Purchaser's purchase of the Unit. Except with respect to Purchaser's broker listed above (if any), Purchaser hereby agrees to indemnify and hold harmless Seller and the Project Broker against any liability including, reasonable costs and attorneys' fees, resulting from claims for brokerage commissions from any broker or any other party with whom Purchaser has dealt.

11. Effective Date. The "**Effective Date**" of this Agreement shall be the date on which all of the following have occurred: (a) Purchaser executes this Purchase Agreement; (b) Seller delivers to Purchaser (i) a true copy of the Public Report with an effective date issued by the Commission and all amendments thereto, which shall include the Public Report itself and the Project's recorded Declaration, Bylaws and Condominium Map, and House Rules, and all amendments to said documents, if any, and (ii) the Notice of Right to Cancel; and (c) Seller executes and accepts this Agreement, as evidenced by Seller's signature below.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, Purchaser has executed this Purchase Agreement as of the date indicated below.

Purchaser's Signature

Purchaser's name (print)

Date signed by Purchaser: _____

Purchaser's Signature

Purchaser's name (print)

Date signed by Purchaser: _____

Purchaser's Signature

Purchaser's name (print)

Date signed by Purchaser: _____

Purchaser's Signature

Purchaser's name (print)

Date signed by Purchaser: _____

This Purchase Agreement is accepted by Seller.

VICTORIA PLACE, LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

Date signed by Seller: _____

This Purchase Agreement was reviewed by Project Broker.

WARD VILLAGE PROPERTIES, LLC,
a Delaware limited liability company

Reviewed By: _____

Name: _____

Its: _____

Date reviewed by Project Broker: _____

E. GENERAL TERMS & CONDITIONS OF THIS PURCHASE AGREEMENT.

The general terms and conditions set forth herein shall be an integral part of the Purchase Agreement and together with the preceding **Sections A through D** and exhibit(s) attached hereto shall constitute the entire Purchase Agreement entered into between the Purchaser and Seller. In consideration of the respective covenants and agreements contained in this Purchase Agreement, Seller and Purchaser agree as follows:

INFORMATION CONCERNING THE PROJECT AND THE UNIT

1. Project Information. The Project is located in Kaka'ako in the City and County of Honolulu ("**County**"), State of Hawaii. The Project is currently expected to consist of three hundred and fifty (350) Units, including one (1) Resident Manager Unit, and is intended to be located in a single forty (40) story building (Levels 1 through 40) as set forth in the Declaration and shown on the Condominium Map. The Project will be situated on approximately 102,427 square feet of land (after the consolidation and resubdivision set forth in **Section E.28.h(xiv)** herein). Seller submitted the land and all buildings and improvements built or to be built thereon to a condominium property regime under Hawaii Revised Statutes Chapter 514B, as amended, pursuant to the Declaration.

2. Description of Unit. Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, in fee simple, the Unit in accordance with the terms of this Purchase Agreement. The Unit shall be sold in accordance with and subject to all of the applicable limited warranties, terms, covenants, provisions, easements, rights, reservations, agreements and encumbrances and other provisions contained herein and in the Project Documents.

3. Appliances and Furnishings Included with the Unit. All units will include the following appliances and furnishings: kitchen cabinets and countertops, cooktop, oven, microwave, dishwasher, refrigerator and freezer, bathroom vanities and countertop, washing machine and clothes dryer. Purchaser understands that materials used in the construction of the Unit, such as wood, paint, marble, quartzite, tile, stone and the like, are subject to shading, the gradation of which may vary from samples, models or color charts, and from piece to piece, and Seller will not be liable for such variation. Purchaser further understands that all included appliances and furnishings are final and absolute, and no additions, deletions, substitutions or changes may be made.

PAYMENT TERMS, INTEREST ON DEPOSITS, CLOSING AND OCCUPANCY

4. Payment of Total Purchase Price. For the Unit, Purchaser agrees to pay the Total Purchase Price and all other amounts due hereunder, in immediately available funds denominated in United States Dollars, in the amounts and on the dates set forth in **Section D.2** above. The Initial Deposit shall be made by payment to Escrow through the Project Broker. Subsequent payments required under this Purchase Agreement shall be made by Purchaser directly to Escrow. Purchaser hereby authorizes Purchaser's mortgagee(s) to disburse the proceeds of any mortgage loan(s) to Escrow.

5. Interest on Contract Deposit. Purchaser understands and agrees that in order for Purchaser to receive interest on Purchaser's Initial Deposit, Second Deposit and/or Third Deposit (collectively, "**Contract Deposit**"), Purchaser Escrow must receive (a) written instruction from Purchaser to establish an interest bearing account, (b) complete certain documents sent from Escrow to Purchaser, including Federal tax form(s), (c) provide Escrow certain other requested information, such as Purchaser's social security number, or FEIN number and (d) pay an administrative fee of fifty and no/100 dollars (\$50.00) to Escrow for each separate account created. Any interest earned will be credited to Purchaser's escrow account upon Closing; provided that should Closing not occur, Purchaser shall not receive any interest accrued on Purchaser's Contract Deposit held in Escrow or a credit, unless otherwise provided herein. The amount of interest calculated under this **Section E.5** shall begin to accrue (i) as to the Initial Deposit, on the date this Purchase Agreement is executed by Seller and upon expiration of any rescission period or deemed waiver thereof, and upon Escrow's deposit of the same into an interest bearing account; and (ii) as to the Second Deposit and the Third Deposit, on the date Escrow deposits the same into an interest bearing account. No interest shall be paid on such deposits (a) prior to Seller's execution of this Purchase Agreement; (b)

during any rescission period given pursuant to the Public Report, unless waived; (c) prior to Escrow's deposit of the same into an interest bearing account; (d) on funds held by Escrow during the sixty (60) calendar days immediately preceding the scheduled Closing Date to accommodate a bulk closing of units by Seller; or **(e) as may be used by Seller to pay for construction costs and other expenses as provided in Section 514B-92 of the Hawaii Revised Statutes, as amended, upon the disbursement of said funds by Escrow.**

6. Purchaser's Financial Status; No Financing Contingencies.

a. Purchaser's Ability to Make Payments. Purchaser represents that Purchaser is able to make, when due, all of the payments required under **Section D** of this Purchase Agreement. Purchaser shall, within thirty (30) calendar days after acceptance of this offer by Seller, give Seller personal information and financial data (hereinafter the "**Financial Data**") from Purchaser's bankers or accountants, or others, as Seller may require, to demonstrate Purchaser's ability to make the cash payments due on the dates and in the amounts described in **Section D.2** above. The Financial Data shall include, but not be limited to: (i) if Purchaser intends to purchase the Unit with cash, Purchaser shall provide Seller with proof of liquid assets in the form of a letter from a certified public accountant or banker, or provide Seller with a current bank or brokerage statement; or (ii) if Purchaser intends to finance the purchase of the Unit, Purchaser shall provide Seller with an acceptable letter from a qualified lender stating that the lender has reviewed Purchaser's financial information and performed underwriting, together with a current financial statement, income verification, and written authorization to Seller to access Purchaser's credit report. Purchaser authorizes Seller to make credit inquiries about Purchaser. In the event that Seller, in its sole discretion, rejects Purchaser's Financial Data as unacceptable, Seller shall notify Purchaser of such rejection in writing within sixty (60) calendar days after Seller has received such Financial Data, in which event Seller may cancel this Purchase Agreement and Purchaser shall receive a refund of all sums paid hereunder, with accrued interest, and less any Cancellation Fee.

Purchaser represents that the Financial Data to be submitted in connection with this Purchase Agreement to Seller shall be true and accurate, and that Purchaser is financially capable of making all required payments at the required times set forth herein. Purchaser agrees to notify Seller immediately of any adverse change to Purchaser's creditworthiness which affects Purchaser's ability to obtain cash or a mortgage loan required to close the purchase of the Unit under this Purchase Agreement. Purchaser acknowledges and confirms that it is the sole responsibility of Purchaser to remain qualified for the loan and Purchaser shall not take or fail to take any action with the purpose or intent of subsequently obtaining a loan denial from the lender. In addition, if requested to do so by Seller, Purchaser will confirm in writing that Purchaser's financial condition has not changed, or, if it has changed, Purchaser shall provide information reasonably requested by Seller to confirm Purchaser's then-current financial status. In the event that Seller shall determine, after review of any financial information submitted by Purchaser, in its reasonable discretion, that Purchaser is unable to pay such sums as may be due at the time required or as a result of any change in Purchaser's financial condition, Seller may declare Purchaser in default of this Purchase Agreement, whereupon Seller will be entitled to exercise its remedies as set forth in **Section E.35** of this Purchase Agreement.

b. No Financing Contingencies; Additional Escrow Fees. If Purchaser plans to pay any portion of the Total Purchase Price by way of a mortgage loan from a bank, insurance company, savings and loan association, credit union or other established lending institution authorized to make mortgage loans in the State and selected by Purchaser to finance the purchase of the Unit ("**Mortgage Lender**") Purchaser shall be solely responsible for securing such financing. PURCHASER'S OBLIGATIONS UNDER THIS PURCHASE AGREEMENT ARE NOT CONTINGENT OR CONDITIONED ON PURCHASER'S ABILITY TO SECURE FINANCING FROM A MORTGAGE LENDER OR ON PURCHASER'S ABILITY TO SELL PURCHASER'S CURRENT RESIDENCE OR ANY OTHER PROPERTY OR ASSETS. The sale and purchase of the Unit are not contingent upon Purchaser's ability to retain the interest rate quoted at the time of approval of the Financial Data or the mortgage loan, and Purchaser will be required to pay the interest charged by Mortgage Lender at Closing. No financing by Seller of any portion of the Total Purchase Price is available. Escrow may charge an additional escrow fee for the administration, handling and processing of a purchaser's loan with a lender located outside Hawaii, and Purchaser shall be fully responsible for any such additional escrow fee.

7. Unit Deed. At Closing, after payment by Purchaser of the Total Purchase Price and performance by Purchaser of all of Purchaser's other obligations under this Purchase Agreement, Seller agrees to provide Purchaser a duly executed Unit Deed for the Unit and Purchaser agrees to execute and accept such Unit Deed and thereby acquire fee simple title to the Unit.

8. Pre-Closing. Purchaser acknowledges that Seller intends to, and agrees that Seller may, prepare for Closing by requiring Purchaser to have all documents necessary for Closing executed and deposited with Escrow at any time prior to the Closing Date selected by Seller ("**Pre-Closing**"). Purchaser acknowledges that regardless of the status of construction of the Project, Seller may require Pre-Closing on a date selected by Seller, within Seller's sole discretion ("**Pre-Closing Date**"). To accommodate a bulk closing of the units by Seller, the Pre-Closing Date may be set up to one hundred eighty (180) calendar days prior to the Closing Date. To accomplish this, any time after the Effective Date of this Purchase Agreement, and upon receiving not less than thirty (30) calendar days' prior written notice of Pre-Closing ("**Pre-Closing Notice**") from Seller, Purchaser's mortgagee(s) or Escrow, Purchaser agrees to take and complete any action that may be necessary to enable Closing, and Purchaser will execute at Pre-Closing all documents required for Closing, including, without limitation, the Unit Deed and all promissory notes, mortgages and other loan documents necessary for Purchaser's financing of the Unit, all receipts for notices and disclosures, the conveyance tax certificate and a closing statement based on Seller's estimate of the date the Unit will be available for occupancy. This Purchase Agreement shall constitute Seller's and Purchaser's written authorization to Escrow to date all documents, to add filing information and to adjust the estimated prorations in accordance with the provisions of this Purchase Agreement. Purchaser may be permitted by Seller to execute documents on another island within the State or outside of the State and return the same by registered or certified mail, return-receipt requested.

As set forth in **Section C** above, in the event that Purchaser fails to designate the type of tenancy for the vesting of title at least fifteen (15) calendar days prior to the Pre-Closing Date, purchasers who are sole owners will take title as tenants in severalty; multiple purchasers other than married couples will take title as tenants in common; and married couple purchasers will take title as tenants by the entirety. If Purchaser consists of more than one married couple, or a couple and an individual, corporation or partnership, the couple (or each couple if there are more than one) will take title as tenants by the entirety as to each other, and the couple (or each couple if there are more than one) will be a tenant in common with every other couple, individual, corporation or partnership. Whenever a couple, individual, corporation or partnership takes title with another couple, individual, corporation or partnership as tenants in common, each tenant in common will take an equal interest, unless Purchaser specifies otherwise at least fifteen (15) calendar days prior to the Pre-Closing Date.

In the event that Purchaser requests changes to the Unit Deed and other documents required for Closing later than fifteen (15) calendar days prior to the Pre-Closing Date, Purchaser may be assessed a document revision fee for such changes.

If Purchaser is a trust, partnership, corporation, limited liability company or other business entity, Purchaser will be required to furnish appropriate resolutions and other evidence of authority to purchase the Unit and execute documents as Seller or Escrow may reasonably request, including, but not limited to, the documents set forth in the Note to **Section B** above.

9. Inspection of Unit by Purchaser. Prior to Closing, Seller shall, with notice to Purchaser, schedule a date for Purchaser or Purchaser's designated agent to attend an inspection appointment at the Project ("**Inspection**"). Purchaser agrees to attend the Inspection appointment at Purchaser's sole expense. At the Inspection, Purchaser shall inspect the Unit with Seller, at which time the parties will complete the checklist specifying any work required to complete the Unit ("**Unit Punchlist**") in accordance with this Purchase Agreement.

Purchaser agrees to accept possession of the Unit despite the existence of such defects or damage to the Unit, including, but not limited to, any defects in carpets, appliances, flooring, walls, furniture and fixtures. Seller will cooperate with and assist Purchaser in having legitimately-listed defects or damage corrected or repaired within a reasonable time thereafter by the responsible warrantor. This obligation shall survive Closing. Purchaser agrees to indemnify Seller for any damages or losses, including interest and attorneys' fees, resulting from any refusal to make such inspection, sign the Unit Punchlist, or accept possession of the Unit upon request by Seller (unless the

Unit is uninhabitable), and if Purchaser shall make any such refusal, Purchaser shall be deemed to be in default under this Purchase Agreement. Purchaser acknowledges that it is Purchaser's responsibility to cooperate with Seller or other warrantors and to permit inspection, and that if Purchaser fails to inspect (or permit inspection of) Purchaser's Unit on the date(s) and time(s) specified by Seller or other warrantors, then Purchaser acknowledges that such conduct will constitute a waiver of Purchaser's inspection rights hereunder. Seller shall use its best efforts to have the responsible warrantor complete all work required under the Unit Punchlist within ninety (90) calendar days from the date of the Inspection by Purchaser; provided, however, that Seller shall have a reasonable amount of time beyond said ninety (90) day period to correct those items on the Unit Punchlist that are beyond Seller's reasonable control. The fact that Seller must still complete the work contemplated under the Unit Punchlist shall not delay or postpone Purchaser's obligation to close this sale and to pay the balance of the Total Purchase Price, nor shall the foregoing grant Purchaser the right to have any portion of the Total Purchase Price placed in Escrow pending completion of those items set forth on the Unit Punchlist.

10. Closing Date; Closing Title Insurance; Remedies for Default in Payment; Prorations; Refunds. The "**Closing Date**" shall be that date selected by Seller, in Seller's sole and absolute discretion, for the transfer of title to the Unit from Seller to Purchaser by way of the recordation of the Unit Deed upon payment by Purchaser to Seller of the Total Purchase Price ("**Closing**"); provided, however, that the Closing Date shall not be prior to the completion of construction of Purchaser's Unit as certified by Solomon Cordwell Buenz ("**Project Architect**"). On the Closing Date, Seller and Purchaser shall be required to perform their respective obligations to sell and purchase the Unit under this Purchase Agreement. The parties agree that Seller may extend the Closing Date in its sole discretion. Seller or Escrow shall notify Purchaser of the Closing Date within a reasonable time, no less than ten (10) business days prior to the scheduled Closing Date. Purchaser expressly acknowledges that on the Closing Date, the construction of other units and portions of the Common Elements may not be fully completed, and that the appliances and furnishings for the Unit contained in any fixtures and/or appliance package may not yet be available, and that such circumstances shall not in any way affect Purchaser's obligations to make the required payments (including maintenance fees and start-up fees) and to accept the Unit.

Prorations and adjustments shall be made between Purchaser and Seller through Escrow on the basis of a thirty (30)-day month as of the Closing Date for non-delinquent real property taxes and assessments. If the amount of real property taxes is unavailable for the current year, Seller shall estimate such taxes and assessments taking into consideration the existing tax rate, the Total Purchase Price, the City and County of Honolulu's tax and assessment formula, and such other information and factors as shall be deemed reasonable under the circumstances by Seller. Risk of loss shall transfer from Seller to Purchaser on the Closing Date.

The Total Purchase Price, any closing costs that are Purchaser's responsibility, and any other amounts that are Purchaser's responsibility under this Purchase Agreement shall be due and payable in full as provided in **Sections D.2 and D.3**. If such amounts are not paid on said dates due to: (i) Purchaser's failure to complete (in a timely and diligent manner) all things of every description required of Purchaser to be undertaken in order for said payment to be made to Escrow on said date; or (ii) the failure of Purchaser's Mortgage Lender to make such payment to Escrow on the Closing Date, then such nonpayment shall result in a default by Purchaser under this Purchase Agreement. In the event of any default with respect to any payment hereunder, in addition to any other remedies permitted under this Purchase Agreement, a late charge of one percent (1%) per month (or the maximum lesser rate, if any, permitted by law), prorated on a thirty (30)-day month basis, shall accrue from the due date of such payment until such payment, together with such late charges, is paid. Seller's acceptance of any of such late charges, late payments, or both, or failure to exercise any other right or remedy, shall not constitute a waiver of any of such defaults or of any of such rights, including, without limitation, the right to cancel this Purchase Agreement, and will not constitute a modification of this Purchase Agreement.

If, at Purchaser's request, Seller agrees, in its sole and absolute discretion, to extend the Closing Date, Purchaser agrees to pay an "**Agreement Extension Fee**" equal to one percent (1%) (or the maximum lesser rate, if any, permitted by law) of the Total Purchase Price per month in advance, directly to Seller (unless otherwise directed by Seller). The Agreement Extension Fee is non-refundable and shall not be applied to any other amounts due from Purchaser; provided however, that the Agreement Extension Fee shall be earned by Seller on a *per diem* basis and any unearned portion of the Agreement Extension Fee shall be returned to Purchaser at Closing or applied, in Seller's sole discretion, to the Total Purchase Price. If Purchaser fails to pay the Agreement Extension Fee on

time or to close this sale on the Closing Date chosen by Seller, Seller shall have the right to terminate this Purchase Agreement and keep all previously paid Agreement Extension Fees, and Escrow shall distribute the Contract Deposit and any interest accrued thereunder to Seller in accordance with **Section E.35** below.

If, on the Closing Date, Purchaser fails to make the payments required by this Section or otherwise fails to consummate this sale, then, without limiting any other remedies that Seller may have as a result of Purchaser's failure to make such payments or consummate this sale on a timely basis, all common expenses, real property taxes and other prorated expenses for the Unit shall be prorated as though Closing had occurred on the Closing Date and paid by Purchaser, regardless of when the Closing of the sale of the Unit actually occurs.

Except as otherwise provided by law, if Purchaser is entitled to a return of funds, Escrow shall deliver to Purchaser notice thereof by certified or registered mail, addressed to Purchaser at the address shown in **Section B** above or any address later made known in writing to Escrow by Purchaser. IF PURCHASER SHALL NOT HAVE CLAIMED SUCH REFUND WITHIN SIXTY (60) CALENDAR DAYS FROM THE DATE SAID NOTICE IS MAILED, ESCROW SHALL THEREAFTER DEPOSIT SUCH FUNDS INTO A SPECIAL ACCOUNT IN A BANK OR OTHER DEPOSITORY SELECTED BY ESCROW, IN THE NAME OF SELLER, AS TRUSTEE FOR THE BENEFIT OF SUCH PURCHASER. After having sent Seller written notice of the foregoing acts, Escrow shall thereupon be released from further liability with respect to such funds and Purchaser.

11. Closing Costs. Purchaser will pay all closing costs associated with this purchase and 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, Impact Fees (described in **Section E.28.h(xix)** herein), title insurance, if requested by Purchaser, cost of any lender's title insurance, appraisal fees, costs for the drafting of any notes and mortgages, all recording costs or fees, the cost of drafting any revisions or addenda to this Purchase Agreement, 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. On the date set forth in **Section D.2(d)**, Purchaser shall pay one (1) month's maintenance fee assessment to the Association, plus a non-refundable, non-transferable start-up fee to the Association in an amount equal to two (2) months' maintenance fee assessments as start-up costs, the closing costs provided for herein and any prorations. The 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. These start-up fees shall be held, accounted for and expended as funds of the Association for the benefit of all of its members by Seller and the initial Managing Agent. The start-up fees are further described in **Section D.3** above.

12. Occupancy. Delivery of possession of the Unit to Purchaser shall be deemed to have occurred when Seller makes the Unit keys available for pick up by Purchaser, which shall take place after the Closing Date, but not before the date of issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy by the City and County of Honolulu Department of Planning and Permitting ("**DPP**") covering the Unit. Purchaser agrees that keys for the Unit will not be issued to Purchaser and Purchaser shall not be entitled to occupy the Unit until after such Closing Date and the issuance of the temporary certificate of occupancy covering the Unit.

PROJECT AND SALES DOCUMENTS; SELLER'S RIGHT TO MAKE CHANGES

13. Escrow Agreement; Use of Funds Prior to Closing. Seller has entered into an agreement with Escrow, which by this reference is incorporated herein and made a part hereof, covering the deposit with Escrow of all funds paid by Purchaser under this Purchase Agreement and the disbursement of such funds by Escrow, among other things ("**Escrow Agreement**"). All payments to be made hereunder, other than the Initial Deposit made through the Project Broker, shall be paid by Purchaser to Escrow pursuant to the Escrow Agreement. Purchaser hereby acknowledges that Purchaser has examined and approves the terms of the Escrow Agreement, and hereby assumes the benefits and obligations set forth therein. Purchaser understands and agrees that Escrow may charge Purchaser a cancellation fee in the event this Purchase Agreement is canceled, as provided in the Escrow Agreement ("**Cancellation Fee**"). **Purchaser acknowledges and agrees that, upon issuance of an effective date for the Public Report by the Commission, and Seller's submission to the Commission of the information required under Section 514B-92 of the Hawaii Revised Statutes, as amended, and the requirements under the Escrow Agreement, Seller is authorized to use Purchaser's deposits in Escrow for the construction costs of the Project and**

for other expenses of the Project, as set forth in the Escrow Agreement and in accordance with the statutory requirements of the Act pertaining to the use of purchasers' funds prior to Closing. Purchaser agrees to the use of Purchaser's deposits for such purposes in accordance with the Escrow Agreement, and directs Escrow to disburse such funds upon direction from Seller, Seller's lender or an otherwise qualified financially disinterested person. Seller has no obligation to pay interest to Purchaser on any funds used by Seller to pay construction costs or for those purposes permitted by law.

14. Purchaser's Approval and Acceptance of Project Documents. Purchaser acknowledges receiving copies of, and having had a full opportunity to read and review, and hereby approves and accepts, the following documents pertaining to the Project: the Public Report, the Declaration, the Bylaws, the Condominium Map, the House Rules, the specimen Unit Deed, the Escrow Agreement, the Master Declaration and the Master By-Laws. Purchaser acknowledges that Purchaser shall make Purchaser's own due diligence inspection of all other documents of record and reflected in the Unit Deed and/or updated title report. It is understood and agreed that this sale is in all respects subject to said documents, and the encumbrances noted therein.

15. Seller Has the Right to Make Certain Changes to the Project Documents and to the Project.

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

(i) Any change as may be required by law, any title insurance company, Mortgage Lender or governmental agency; provided, however, that such change shall not (1) constitute a change in the Project which (a) 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 (b) is not made pursuant to a right reserved to Seller under the Declaration ("**Material Change**"), or (2) increase the Total Purchase Price.

(ii) Any non-Material Change that 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.27**), which could result in the configuration or dimensions of Purchaser's Unit or any appurtenant Limited Common Element thus affected becoming different, 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.

(iii) Any Material Change made while Purchaser is under a binding Purchase Agreement; 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.30**.

(iv) Any changes made pursuant to the rights reserved by Seller as Developer under the Declaration, as more fully explained in **Section E.15.c.** below.

b. Eminent Domain. No taking by eminent domain (or transfer by Seller under threat of eminent domain) of an easement right or of a portion of the Common Elements which does not in any such case substantially interfere with or diminish the practical enjoyment and use by Purchaser of the Common Elements shall be deemed grounds for cancellation of this Purchase Agreement.

c. Seller has Certain Reserved Rights. Purchaser specifically acknowledges and agrees that Seller has the right to exercise reservations of certain rights in favor of Seller contained within the Declaration, and agrees that Seller has the right to exercise such rights as provided in said Declaration. The reserved rights are also summarized in Exhibit "G" to the Public Report and the Unit Deed. In addition to the right to modify the Project as set forth above, Seller has various additional reserved rights set forth in the Declaration, including, without

limitation, the right to: grant and receive easements; alter, subdivide and consolidate units; construct improvements within the units and/or their limited common elements; install and maintain telecommunications equipment, receive revenue therefrom, and to enter into agreements to market telecommunications equipment within the Project; not develop and/or construct all of the recreational amenities and to modify, relocate, reconfigure and remove recreational amenities; install signage; modify the Project and amend the condominium documents and map; convert limited common elements to units; recharacterize and redesignate limited common elements; modify the Project and amend the documents to satisfy County and HCDA permits, agreements and subdivision of land; participate in condemnation by HART of portions of the Land, if necessary, and keep any condemnation proceeds associated therewith, convey property to the Association; conduct sales activities; consolidate, subdivide, and withdraw land; alter the number of floors and/or units in the Project; grant easements and to dedicate limited common elements to the Master Association; establish public financing districts for Ward Village; and to assign all or a portion of the reserved rights in the Declaration. Through the exercise of these reserved rights, Seller may alter the configuration of and decrease or increase the number of rooms in and the size of a unit, make other minor changes in the Unit or any of the other units or the Common Elements of the Project. Seller may also increase or decrease the number and/or location of parking stalls and/or storage rooms which may be assigned to the Unit. **The list and description of Developer's reserved rights in this Section is not exhaustive and Purchaser should carefully review Seller's reserved rights summarized in the Public Report and set forth in the Declaration.**

16. Construction of Unit and Project. Seller is not acting as a contractor for Purchaser in the construction of the Unit. Issuance of a temporary certificate of occupancy or other alternative approval of occupancy of the Unit by the relevant local governmental authority is conclusive evidence of Seller's completion of the Unit. Seller is not constructing the Unit specifically for Purchaser, nor to the precise specifications or design of a model or appurtenances, if any, displayed to or visited by Purchaser. Seller is constructing the Unit as part of the Project. Any model shown to Purchaser is displayed only for illustration and Seller shall not thereby be required to deliver the Unit in exact accordance therewith. None of the appurtenances and furnishings shown in any model is included in this Purchase Agreement, unless Seller agrees in writing to deliver the same for part of the Total Purchase Price. The usable or living area, location and configuration of the Unit and all Improvements of the Project may vary from that shown or displayed to Purchaser in any drawings, plans or models when the final Improvements are installed. The location, size, height and composition of all Improvements to be constructed as a part of the Project or adjacent thereto shall be determined by Seller in its sole and absolute discretion. Despite models or drawings displayed to Purchaser, Seller has made no representations, warranties or assurances to Purchaser regarding the size, ceiling, height, location or composition of any Improvement to be constructed on or adjacent to the Project. Seller may substitute the materials, appliances and other items in the Unit and the Project with materials, appliances and other items of substantially equal quality and utility. Such substitutions may include kitchen appliances, household fixtures, electrical outlets and switches, hardware, wall and floor surfaces, painting and other similar items. Seller may make such substitutions without adjustment to the Total Purchase Price. Purchaser's consultation by Seller or Seller's agents shall not waive Seller's rights to make any change contemplated or provided herein. If Seller is unable to complete or install in the Unit any optional item, decorator item, fixture, furnishing or other Improvement, and such failure is caused by circumstances beyond Seller's reasonable control, Closing shall not be delayed so long as occupancy of the Unit is approved by the applicable governmental authority. The incomplete items shall be completed by Seller as soon as reasonably possible after Closing.

WARRANTIES AND DISCLAIMERS

17. Insulation. The location, type, thickness and R-value (according to the manufacturer(s) thereof) of the insulation in the building are as follows:

- a. All exterior walls of the building(s) shall have a minimum R-value of 13.
- b. The roof assemblies of the building(s) shall have a minimum R-value of 20.
- c. The glazing of the building(s) shall have a minimum R-value of 2.5.

The R-value of insulation is a measurement of the insulation's resistance to heat flow that is determined using tests designed by the American Society of Testing and Materials. The R-values provided to purchasers will indicate minimums. Purchaser acknowledges that the R-Value information to be provided to Purchaser is based solely upon information supplied by the manufacturer or installer and Seller does not represent or warrant the accuracy of this information. Purchaser further acknowledges that the R-value may vary based upon normal construction variance and constitutes only one element of the total energy package. Seller reserves the right to use different types of insulation with different thicknesses and R-values in accordance with the provisions of **Section E.16** above.

18. Limited Warranty. To the extent obtained by Seller from the general contractor for the Project, and to the extent the same is assignable to Purchaser, at Closing, Purchaser shall receive a limited warranty from the general contractor for the Project warranting the materials and workmanship relating to the Purchaser's Unit to be free from defects for a period of **one (1) year** from the date of substantial completion of Purchaser's Unit. The one (1)-year warranty period for such warranty shall begin from the date of substantial completion of Purchaser's Unit, and, therefore, should Closing occur after such one-year period has expired as to such Unit, no such warranty shall be extended to Purchaser. In no event shall all or any portion of such limited warranty be deemed to come from Seller, and Seller shall have no obligation or liability related to such limited warranty.

The execution, delivery and recordation of Purchaser's Unit Deed shall constitute an assignment without recourse by Seller to Purchaser of such warranty and the assignment without recourse by Seller to Purchaser of any other warranties relating to the Unit. Seller may assign such warranties described herein to future purchasers if such warranties are still in effect at the time the Unit is conveyed. Seller, however, makes no representation or warranty whatsoever as to whether such warranties can be further transferred. Any rights to inspection of the Unit described in **Section E.9** herein conferred on Purchaser by Seller pursuant to this Purchase Agreement shall not extend to any future purchasers of such Unit. In addition, Seller shall assign to Purchaser, without recourse, any manufacturer's or dealer's warranties covering the furnishings and appliances in the Unit. In no event shall all or any portion of such warranties be deemed to come from Seller, and Seller shall have no obligations or liabilities related to such warranties.

HAWAII REVISED STATUTES, CHAPTER 672E ("CHAPTER 672E" OR "THE CONTRACTOR REPAIR ACT"), 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. This **Section E.18** shall survive Closing and shall not be merged with the Unit Deed.

19. Seller Makes No Warranties or Promises Except as Expressly Stated in this Purchase Agreement. Except as otherwise expressly stated in this Purchase Agreement, Purchaser acknowledges that Seller has made no warranties, express or implied, with respect to (a) the Unit, its quality or grade, (b) any Common Element or anything installed therein, its quality or grade, or (c) any other portion of the Project, its quality or grade, or any other aspect thereof. Seller, not being the manufacturer of any of the furnishings and appliances in the Project, disclaims any express or implied warranty of any kind whatsoever with respect to such furnishings or appliances, including the merchantability of such furnishings and appliances or their fitness for a particular purpose. Seller disclaims any express or implied warranty of any kind whatsoever with respect to the materials, workmanship or any other matters relating to Purchaser's Unit or any other portion of the Project, including, without limitation, fitness for a particular use, to the fullest extent allowed under applicable law. As to any implied warranty that cannot be disclaimed entirely, all secondary, incidental, and consequential damages are specifically excluded, disclaimed, and made unavailable.

20. Improvements. Seller shall be responsible for extending roads, sewer, electrical lines and water lines to the Project at Seller's expense. Purchaser shall be responsible for any connection fees, utility deposits, and use fees charged by governmental entities and/or utility companies, but shall not be responsible for impact fees, benefits assessments, or similar development expenses related to the installation of infrastructure by Seller.

21. The Condominium Map, Artist's Renderings and Building Plans and Specifications are NOT Warranties. The Condominium Map, as the same may be amended from time to time, is intended only to show the (a) unit numbers, (b) approximate layout, location and dimensions of units, (c) approximate elevation of the Project, and (d) parking plan and any other detail that is specifically required to be shown under Section 514B-33 of the Hawaii Revised Statutes, as amended. The Condominium Map is not intended to and shall not be interpreted as creating any obligation to construct or install any other Improvements, amenities or facilities as may be depicted thereon, and no person may rely in any way on any other detail or other matter depicted thereon. In no event, whether before or after the Effective Date, shall the building plans and specifications or any artist's renderings or models constitute a representation or warranty in any way.

22. Estimate of Initial Maintenance Fees. Seller's estimate of initial monthly maintenance fees, as shown in the Public Report, was prepared based upon information believed to be accurate and correct at the time it was prepared. Seller makes no warranty or promise regarding the accuracy of these amounts, however. PURCHASER AGREES THAT SUCH ESTIMATES ARE NOT INTENDED TO BE AND DO NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY BY SELLER, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF SUCH ESTIMATES. Purchaser also acknowledges and agrees that such maintenance fees may increase due to increases in insurance premiums, utility costs, maintenance services, management fees, and other costs.

23. Owner-Occupant Requirements. If Purchaser is purchasing the Unit pursuant to Part V, Subpart B of the Act, Hawaii Revised Statutes §§ 514B-95 through 514B-99.5 (the "**Owner-Occupant Law**"), governing sales to prospective owner-occupants, the following additional terms and conditions shall apply.

a. Notification of Change in Owner-Occupant Status. At any time after obtaining Purchaser's mortgage loan, up until the expiration of the owner-occupant affidavit executed by Purchaser pursuant to Section 514B-97, Hawaii Revised Statutes, Purchaser shall notify the Commission immediately upon any decision to cease being an owner-occupant of the Unit.

b. Restriction on Transfer; Burden. Purchaser may not sell or offer to sell, lease or offer to lease, rent or offer to rent, assign or offer to assign, convey or otherwise transfer any interest in the Unit until at least three hundred sixty-five (365) consecutive calendar days have elapsed since the recordation of the Unit Deed. In the event of any dispute, Purchaser shall have the burden of proving compliance with this condition.

c. Seller Must Report Violations. Purchaser understands that it is the affirmative duty of Seller, any employee or agent of Seller, and any real estate licensee, to report immediately to the Commission any person who violates or attempts to violate the Owner-Occupant Law. Seller, any agent or employee of Seller, or any real estate licensee shall not violate or aid any person in violating the Owner-Occupant Law.

d. Verification of Owner-Occupant Status; Fine. Purchaser understands that the Commission may require verification of Purchaser's owner-occupant status. If Purchaser fails to submit such verification, Purchaser may be fined in an amount equal to the profit made from any sale, assignment or transfer of the Unit.

24. Securities Laws and Regulations. Purchaser understands and agrees that:

a. Seller, its officers, employees, agents, and/or any other real estate brokers or real estate salespersons representing Seller, and any of their respective affiliated, agents, employees or representatives (collectively for purposes of this **Section E.24, "Seller and/or its Agents"**) have made no representations: (i) regarding the possibility or probability of economic benefit from the purchase and ownership of the Unit; (ii) to

the effect that Seller or the Managing Agent of the Project will provide services relating to the rental or sale of the Unit; or (iii) as to the possible advantages of the ownership or the rental of the Unit under federal and state tax laws. Seller and/or its Agents have not made any representations regarding any economic benefit to be derived from the ownership, rental or tax treatment of the Unit. The tax treatment may vary with individual circumstances, and Seller and/or its Agents recommend that Purchaser consult Purchaser's own attorney, accountant or other tax counsel for advice regarding tax treatment. Purchaser further agrees and acknowledges that Purchaser has not been induced or solicited by Seller and/or its Agents to purchase the Unit in the Project as a "**security**" as defined under federal or state securities laws and regulations.

b. Purchaser agrees that Seller may, as a condition to Closing, require Purchaser and any licensed real estate salesperson participating in the sale to sign additional documents to satisfy Seller that no representations contrary to the provisions of this **Section E.24** have been made up to and including the Closing Date.

c. This agreement of Purchaser under this **Section E.24** shall survive Closing, and shall bind Purchaser and Purchaser's heirs, personal representatives, successors and assigns. In the event of Purchaser's breach of the agreement contained in this **Section E.24**, the parties understand and agree that the injury to Seller will be uncertain as to nature and amount and difficult and expensive to ascertain. Therefore, in the event of a breach of said agreement by Purchaser, the parties agree that Seller may obtain an injunction from any court of competent jurisdiction enjoining Purchaser from breaching said agreement. Seller may, in addition to obtaining injunctive relief, pursue any other remedies, including seeking damages caused by such breach, as are permitted in law or equity. All costs and expenses, including reasonable attorneys' fees, incurred by Seller in connection with a breach of said agreement by Purchaser, shall be borne by Purchaser.

25. Ongoing Sales Activities after Purchaser has Occupied Purchaser's Unit; Model Units. Purchaser specifically acknowledges that: (a) Seller's sales activities, which may include the use of model unit(s), signs and extensive sales displays and activities, and hosting functions at and utilizing the Recreational Amenities and the Amenity Deck may continue in the Project during the Development Period; (b) Seller reserves the right to utilize unassigned or guest parking spaces described in the Declaration for parking for prospective purchasers until the sale of the last unsold unit described in the Declaration; (c) Seller also reserves the right for itself, its sales representatives and prospective purchasers to utilize the Common Elements for ingress and egress to such parking spaces and model unit(s) in order to show the Common Elements to prospective purchasers; and (d) Purchaser agrees to take possession and close the sale of the Unit upon completion of the Unit, even though the Common Elements of the Project have not been completed, so long as Purchaser is given vehicular access to the Project. Purchaser hereby accepts the foregoing conditions set forth in this **Section E.25**, as well as any inconvenience or annoyance including, but without limitation, construction work, dust, noise, and related debris, which Purchaser may experience as a result of such conditions, and hereby expressly waives any rights, claims or actions that Purchaser might otherwise have against Seller as a result of such circumstances. Seller reserves the right, in its sole discretion, to designate one or more units as model units for sales and display purposes.

Prior to delivery of possession of the Unit, Purchaser shall not trespass upon the Project site. Purchaser hereby acknowledges that Purchaser's execution of this Purchase Agreement constitutes Purchaser's agreement to remain outside of any fenced or posted construction areas, and any other areas in which ongoing work is being performed pending completion, and Purchaser agrees to exert diligent efforts to prohibit entry into such areas by members of Purchaser's household and by Purchaser's tenants and invitees, and to indemnify, defend and save harmless Seller, the Association, other unit owners and the contractors and agents or any of them from and against any and all loss or liability on account of any such entry. Violation of this provision shall constitute a default and, in addition to Seller's other remedies, Purchaser agrees that Seller shall have the right to remove Purchaser from the premises by any lawful means.

26. Seller is Authorized to Act on Behalf of the Association. Purchaser acknowledges that Seller is authorized to exercise all powers of the Association until the first meeting of the Association. After the first meeting of the Association, Seller shall continue to have the right to appoint and remove the Officers and members of the Board of the Association, provided that this period of "developer control" shall terminate no later than the earlier of: (a) sixty (60) calendar days after the conveyance of units to which are appurtenant seventy-five percent (75%) of the Common Interest to Owners other than Seller or an affiliate of Seller; (b) two (2) years after

Seller has ceased to offer units for sale in the ordinary course of business; (c) two (2) years after any right to add new units was last exercised; or (d) the day Seller, after giving written notice to unit owners, records an instrument in the Bureau voluntarily surrendering all rights to control the activities of the Association (the period prior to termination of such developer control being herein referred to as the "**Developer Control Period**"). Purchaser further authorizes Seller to exercise all the rights and incidents of membership in the Association attributable to the Unit contracted for herein until the recordation of Purchaser's Unit Deed.

27. Seller's Plans and Specifications. Seller agrees to construct the Unit in substantial conformance with the plans and specifications on file at Seller's sales office ("**Seller's Plans and Specifications**"), which Purchaser may inspect upon reasonable notice. Purchaser understands that the Unit may be the reverse or mirror image of the floor plan shown on Seller's Plans and Specifications, Seller's sales materials or other materials, and that units of the same unit type may not be identical. Statements of the approximate net living area of the units and approximate areas of the Common Elements and/or Limited Common Elements located within the Project may be made in Seller's Plans and Specifications, the Condominium Map, and the Declaration. Purchaser acknowledges that there are various methods for calculating the area of a unit and that, depending on the method of calculation, the quoted area may vary by more than a nominal amount. For example, architects often measure the area of a unit from the outside edge of the exterior walls to the mid-point of the interior walls. Another method, typically used in condominium maps, measures the area of a unit from the inside edge of exterior walls to the inside edge of interior walls and is referred to as the "net living area" of a unit. So long as the Unit is constructed substantially in accordance with Seller's Plans and Specifications, Purchaser will have no right to rescind this Purchase Agreement, nor will Purchaser be entitled to any claim for breach of this Purchase Agreement or adjustment of the Total Purchase Price on account of alleged discrepancies in square footage calculations.

Purchaser further acknowledges and agrees that it is common for pre-construction plans and specifications for any unit or building to be changed and adjusted from time to time to accommodate ongoing "in the field" construction needs. These changes and adjustments are necessary in order to permit all components of the units and the building to be integrated into a well-functioning and aesthetically pleasing product in an expeditious manner. Because of the foregoing, Purchaser understands and agrees that changes in the approximate net living area of units and in the location of telephone, electric, cable television and other utility outlets, windows, doors, walls, partitions, lighting fixtures, electric panel boxes and the general layout of the Unit are subject to changes made by Seller in its sole discretion. Purchaser acknowledges and agrees that it is to Purchaser's benefit to allow Seller to make such changes to the Unit and the Project, and that such changes may result in an increase or decrease in the net living area of the Unit, as well as a corresponding adjustment to the common interest appurtenant to the Unit, as represented in the Declaration. ACCORDINGLY, PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES THAT VARIATIONS IN THE NET LIVING AREA OF THE UNIT OF UP TO TWO PERCENT (2%) OF THE TOTAL NET LIVING AREA OF THE UNIT, AND THE CORRESPONDING ADJUSTMENT TO THE COMMON INTEREST APPURTENANT TO THE UNIT, AS SUCH VALUES ARE REPRESENTED IN THE CONDOMINIUM DOCUMENTS, SHALL NOT CONSTITUTE A MATERIAL CHANGE WHICH WOULD GIVE RISE TO RESCISSION RIGHTS AS SET FORTH IN SECTION E.30.

28. Additional Disclosures; Disclaimers and Releases. Without limiting any other provision in the Project Documents, the following is a summary of some items that should be carefully considered by a purchaser before owning a unit in the Project. Purchaser should carefully review the Project Documents and consider each of the following items before submitting an offer to purchase the Unit. Purchaser shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following, and such acknowledgment and agreement shall be deemed to survive Closing:

a. Security Disclaimer. The Association and/or the Managing Agent may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it might otherwise be.

The Association, the Managing Agent and Seller shall not in any way be considered insurers or guarantors of security within the Project, and neither the Association, nor the Managing Agent, nor Seller, nor any successor, shall be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of security measures undertaken. Purchaser acknowledges that the Association, the Board, the Managing Agent, Seller and any successor, do not represent or warrant that any fire protection system or other security system designed or

installed according to the guidelines established by Seller or the Association may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, terrorism or otherwise, nor that fire protection or burglar alarm systems or other security systems will in all cases provide the detection or protection for which the system was designed or intended. Purchaser acknowledges and understands that the Managing Agent, the Association, its Board and committees, Seller and any successor, are not insurers, and that each Owner, his or her family, agents, guests, or other Occupants of a unit assume all risks for loss or damage to persons, units and the contents of units, and further acknowledges that the Managing Agent, the Association, its Board and committees, Seller and any successor, have made no representations or warranties, nor will Purchaser rely upon any representation or warranty, expressed or implied, including any warranty of merchantability, as to the fitness of any alarm systems or other security systems recommended or installed, or any security measure undertaken within the Project.

b. Nonliability for Net Living Area Calculation. By signing and accepting the Unit Deed, the Purchaser shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any variances in the net living area from that which may have been disclosed at any time prior to Closing, whether included as part of Seller's promotional materials or otherwise. Without limiting the generality of the foregoing, Seller does not make any representation or warranty as to the actual size, configuration, dimensions (including ceiling heights, as applicable) or net living area of any unit, and Purchaser shall be deemed to have fully waived and released any such warranty and claims for losses or damages resulting from any variances between any represented or otherwise disclosed net living area and the actual net living area of units.

c. Nonliability for Mold Development. Mold and mold spores are present throughout the environment, and residential condominium construction cannot practicably be designed to exclude the introduction of mold spores. All molds are not necessarily harmful, but certain strains of mold have been found to have adverse health effects on susceptible persons. Moisture is the primary mold growth factor that must be addressed. Affirmative steps taken by Purchaser to minimize or control moisture can minimize or eliminate mold growth in the Project. Owners and the Association should take steps to reduce or eliminate the occurrence of mold growth and thereby minimize any possible adverse health effects that may be caused by mold. Seller cannot ensure that mold and mold spores will not be present in the Project. The failure of Owners or the Association to take steps to minimize mold growth may increase the risk of mold growth and mold spores being present in the Project. Seller shall not be liable for any actual, special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory, with respect to the presence and/or existence of mold, mildew and/or microscopic spores at the Project, unless caused solely by the gross negligence or willful misconduct of Seller.

d. Flood Zone (AE). The Project is located in a Flood Zone (Zone AE) per the City and County of Honolulu and as such, federal flood insurance may be required for the Project and/or the individual units in the Project. Location in a flood zone exposes the Project to a greater risk of flood damage. Seller intends to obtain a FEMA Flood Map exemption as a result of raising the ground level entrances into the building and exceeding the minimum floor elevation applicable to the Land, but Seller cannot assure that Seller will be able to obtain such FEMA Flood Map exemption. If Seller does not obtain the exemption, then federal flood insurance may be required.

e. Tsunami Evacuation Zone. The project is located in the Tsunami Evacuation Zone. In the event of a tsunami warning, Owners and other occupants will be asked to evacuate the Project.

f. Trade Name. The Developer has created a trade name for the Project. The legal project name will continue to be "1100 Ala Moana," however, the trade name that will be used to sell and market the Project is "Victoria Place."

g. Resident Manager Unit. The Developer is the Owner of Unit No. 609, which is initially intended to be used as the Resident Manager Unit. The Developer may sell, pledge, lease, assign, convey, mortgage and/or transfer Unit No. 609 to a third party or to the Association, in its sole discretion. This means that the Association may not have first preference to purchase the Resident Manager's Unit and the Developer may relocate the Resident Manager to another Unit in the Project. The Developer does not guaranty, warrant or

represent that Unit No. 609 will continue to be used as a Resident Manager Unit or be utilized to serve the Project or its Owners.

h. Additional Disclosures. Without limiting any other provision in the Declaration, the Association and, by acquiring title to the Unit, or by possession or occupancy of the Unit, Purchaser shall, on behalf of Purchaser and on behalf of Purchaser's tenants, employees, family members, guests and other invitees, conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following, which acknowledgement and agreement shall survive Closing. By signing and accepting a Unit Deed, each Owner and every other Person who has any interest in the Project or who has the right to use the Project or any part of it waives, releases and discharges any rights, claims or actions that such Person may have, now or in the future, against Seller, and its representatives, licensees, successors and assigns, and arising directly or indirectly out of or from the disclosures below:

(i) Condominium Living. Living in a multi-story, high-rise condominium building entails living in very close proximity to other persons, businesses, restaurants, and shopping areas, with attendant limitations on solitude and privacy. Walls, floors, and ceilings have been designed to meet applicable building codes. Owners should still anticipate hearing noise from adjacent Units within the Project, however, including, but not limited to, noise from showers, bathtubs, sinks, toilets, washing machines, or other sources of running water and/or plumbing fixtures. Also, Owners may hear noise from such items: vacuum cleaners, stereos or televisions, or from people socializing, or enjoying the Recreational Amenities. Finally, Owners may experience substantial levels of sound, music, noise, odors, vibrations, and other nuisances from retail and commercial establishments in the Project, the master planned community, and/or in close vicinity of the Project, including, without limitation, the Ward Entertainment Center and the Victoria Ward Park. Owners may also experience light entering the Units from commercial lighting in the vicinity, Victoria Ward Park and from street lights located in close proximity to the windows and doors for the Units.

(ii) Ward Village and Victoria Ward Park. The Project is also directly adjoining a planned open space park area called "Victoria Ward Park", the largest community park in Ward Village, the master development. Owner may experience (a) hearing loud music from restaurants or other outlets in Ward Village, (b) higher vehicle and pedestrian traffic and noise levels from concert events or performances at restaurants, outlets or in Victoria Ward Park; (c) hearing voices and conversations of people picnicking or relaxing in Victoria Ward Park and talking outside retail and/or food and beverage establishments in Ward Village; and (f) noises from special events taking place near the Project on the street, in Ward Village in general and in Victoria Ward Park. Such noises shall not be deemed a "nuisance," as such noises and/or uses are deemed to be common and accepted occurrences in a centrally located high-rise condominium mixed-use setting like Ward Village.

(iii) Noise; Traffic; Construction. Being in a central shopping, entertainment, and commuter district like Ward Village means noise, dust, vibration, and/or pedestrian and vehicular traffic are higher than average. Each Owner and every other Person who has any interest in the Project or who has the right to use the Project or any part of it waives, releases, and discharges any rights, claims, or actions that such Owner or Person may have, now or in the future, against Developer, and their Representatives, licensees, successors, and assigns, and arising directly or indirectly out of or from such noise, dust, vibrations, and/or additional traffic, including, without limitation, construction and operation of the County's planned elevated rail transit project, if constructed, which could be constructed in close proximity to the Project. Traffic, noises and uses which are typically encountered in a high-rise condominium and commercial-mixed use destination, include, but are not limited to transient noise and guest or pedestrian traffic from the street and opening and closing of car doors. Furthermore, normal construction activities shall not be considered a "nuisance." Development of Ward Village will continue for many more years, which means Owners may experience heavy vehicle and equipment noise, drilling, dredging and other potentially loud construction noises, dust and road blocks. By accepting a Unit Deed to a Unit, an Owner acknowledges that the Project is adjacent to high-traffic roads, businesses, Victoria Ward Park and retail/entertainment facilities, and that noise, lights, pedestrian and vehicular traffic, dust and odors common to such activities and related commercial activities as well as construction activities, may exist on or near the Project, at any time and from time to time. Each Owner, by acceptance of a Unit Deed or other conveyance of his or her Unit, hereby acknowledges and agrees to the above disclosures. Developer does not make any representation or warranty as to the level of sound

transmission at the Project, traffic or construction activities and each Owner hereby waives and expressly releases any claim for loss or damage resulting from such activities.

(iv) Views. Purchaser acknowledges that there are no protected views in the Project, and the Unit is not assured the existence or unobstructed continuation of any particular view. Any view from the Unit is not intended as part of the value of the Unit, and is not guaranteed, and Seller makes no representation or warranty regarding the effect of the view on the value of the Unit. The views from the Unit or Project may change, be affected, or obstructed by (i) construction or installation of buildings, improvements, structures, walls and/or landscaping by Seller or owners of property outside the Project; and/or (ii) the growth of trees, landscaping and/or vegetation within or outside the Project. By signing and accepting a Unit Deed, Purchaser waives, releases and discharges any rights, claims or actions that Purchaser may have, now or in the future, against Seller and its representatives, licensees, successors and assigns, and arising directly or indirectly out of or from any such change or obstruction of views by reason of such further development or growth.

(v) Continuing Activities. Purchaser understands and agrees that Seller is engaged in a sales and development program, and that certain elements of the Project may not be completed, and that completion of such items may be deferred by Seller in its sole and absolute discretion; provided normal access and parking facilities will be provided for units conveyed to third parties. As an integrated structure consisting of a variety of uses that may be changed from time to time, alterations, construction, remodeling, repair and changes of uses of portions of the Project may occur from time to time.

(vi) Tax and Insurance Estimates. Any sum estimated for taxes or insurance affecting the Unit or Project may increase or decrease depending upon fluctuation of real property taxes or insurance rates.

(vii) Uses Changes. Except as expressly set forth in the Project Documents, Seller makes no representations or warranties with respect to the (a) nature of any Improvements to be initially or subsequently contained in the Project, (b) initial or subsequent uses of any portion of the Project, or (c) services and amenities (and the costs of such services or amenities) which may be provided to Owners.

(viii) Marketing Materials. Any marketing materials used by Seller in the promotion and sales of the units and of the Project are not a representation or warranty by Seller of any unit layout, décor, coloring, furnishings or fixtures provided with any unit or the types of amenities provided in the Project. The marketing materials are intended to give a purchaser a general idea of the standard and quality of the Project, and are not intended to represent the precise décor, coloring, furnishing, fixtures or amenities that will be included in the Project. Seller has registered a trade name, "Victoria Place", to market the Project and may include the same in all marketing materials when referring to the Project.

(ix) Condominium Map. Nothing in the Condominium Map is intended to be or is a representation or warranty by Seller.

(x) Warranties. 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.**

Purchaser's Initials _____

(xi) Proposed Honolulu Rail Transit Project; Potential HART Condemnation. The Honolulu Rail Transit Project ("**Rail Project**") is a proposed 20-mile elevated rail line with twenty-one (21) stations that is not yet complete. If completed, a portion of the proposed Rail Project is currently planned to be located within the close proximity of the Project, which, in such event, is likely to cause noise, dust, vibrations, traffic congestion, view impairment, and/or other inconveniences or nuisances associated with the development, construction, and operation of such Rail Project ("**Rail Effects**"). By signing and accepting the Unit Deed, Purchaser accepts the Rail Effects and waives any claims or rights of action or suits against Seller or Seller's successors and assigns arising from any impairment of Purchaser's use and enjoyment of the Unit or the Project, or from any

inconvenience, property damage or personal injury arising directly or indirectly from the Rail Effects. HART has the authority to condemn lands in Ward Village for the Rail Project. The Developer has long anticipated this threat for condemnation and had to accordingly incorporated the Rail Project into the master Ward Village development plans and various condominium project developments through its efficient and strategic design, project budgeting and pricing, and reserves for numerous condemnation court hearings. Although the Developer has not actually received an indication that HART will take any portion of the Land, if all or any portion of the Project is "taken" or sold under the threat of condemnation by HART before the end of the Development Period, the Developer shall have the reserved right to and until the end of the Development Period to receive all the proceeds payable for or on the account of the condemnation of any portion of the Land. Every Owner of a Unit in the Project and all holders of liens affecting any of the Units and each and every other party acquiring an interest in the Project, or any part thereof, by acquiring such Unit, lien, or other interest, appoints Developer and its assigns his or her attorney-in-fact with full power of substitution to execute, deliver, and record such documents and instruments and to collect any proceeds and do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest upon any transfer of any Unit or any interest therein, whether by deed, Mortgage, or any other instrument of conveyance.

(xii) Easements Pursuant to the Master Declaration. During the Development Period (as such term is defined in the Declaration), to the extent set forth in the Master Declaration, Developer shall have the right to grant easements through the Common Elements, for purposes set forth in the Master Declaration, including, without limitation, easements to access certain areas of the Project and easements for maintenance and landscaping for and for use of certain areas of the Project by the Master Association, for recreational use, use for park space, or pedestrian and/or bicycle access or other purposes. Such areas or portions thereof may also be dedicated to the public or dedicated for use by the public pursuant to the Master Declaration; provided that the Master Association shall maintain the easement and use areas and shall be responsible for any costs associated with the use, maintenance and upkeep of such areas pursuant to the Master Declaration. Seller may, without being required to obtain the consent or joinder of any Owner, lienholder or other persons, execute, deliver and record any deed and/or amendments to this Declaration and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers or privileges.

(xiii) Burial Treatment Plan and Preservation Plan; Soil Disclosure. Since 2014, multiple historic preservation studies and archeological studies, including Archeological Inventory Surveys ("AIS"), have been conducted for the Project Land and surrounding parcels, all of which have been accepted by the State Historic Preservation Division of the Department of Land and Natural Resource ("SHPD"). Such studies identified a number of historic properties, including, without limitation, various Native Hawaiian human burial sites and skeletal remains located within, or in the immediate vicinity of or close proximity to, the Project Land boundaries. Archeological, non-human findings were discovered on the Land. Based on this past historic preservation and archeological review, Developer, in consultation with the SHPD, the Oahu Island Burial Council and cultural descendants, has developed mitigation commitments and preservation plans. In order to continue to facilitate the identification and treatment of any burials or human skeletal remains that might be discovered during subsurface disturbance and mitigate the development's effect on any non-burial archaeological deposits that might be uncovered, Cultural Surveys Hawai'i, Inc., on behalf of Victoria Ward, Limited and The Howard Hughes Corporation, drafted and submitted an Archaeological Monitoring Plan, pursuant to Hawaii Administrative Rules, Chapter 13-279-3, as amended ("**Monitoring Plan**"). Pursuant to the Monitoring Plan, Developer is required to retain an on-call or on-site archaeologist, as determined by SHPD, to be present during Project construction that has the authority to stop work immediately to perform archaeological sampling and recording if any historic properties, including human remains, are encountered during construction. In a letter dated November 18, 2014, SHPD formally acknowledged compliance with Chapter 6E, Hawaii Revised Statutes (the State of Hawaii Historic Preservation Program) for the Project site and approval of the Monitoring Plan.

Developer's environmental consultant prepared a Construction Environment Hazard Management Plan (C-EHMP) for TMK Nos. -128, -129, -130, -131 to summarize potential environmental hazards, identify chemicals of potential concern, and outline steps to proper handling and disposal of contaminated soil during construction.

Based on the C-EHMP, the site contains organochlorine pesticides Heptachlor, Dieldrin, and Technical Chlordane, which are suspected to have been applied beneath the building slabs of the former retail complex and parking as a means of termite prevention. Developer intends to encapsulate impacted soil in accordance with Hawaii Department of Health Technical Guidance Manual.

Notwithstanding any remediation efforts and any "no further action" determination, by acquiring a Unit in the Project, each Owner will be deemed to acknowledge each Owner's understanding of these disclosures, and Developer shall not be liable for any actual, special, incidental or consequential damages based on any legal theory or whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory, with respect to the prior existence of such conditions on the Land.

(xiv) Subdivision and Withdrawal of a Portion of the Land; Developer not the Current Landowner. Victoria Ward, Limited, a Delaware corporation is the current fee owner ("**Landowner**") of a portion of the land described in the Declaration and currently subject to the condominium property regime ("**Unsubdivided Land**"). Developer, jointly with Landowner, intends to subdivide the Unsubdivided Land and upon completion withdraw certain subdivided portions thereof from the condominium property regime, to create the final land underlying the Project ("**Project Land**"). The Unsubdivided Land is 112,057 square feet. After subdivision, the final Project Land will be 102,427 square feet. The Unsubdivided Land and Project Land are depicted in Exhibit "O" to the Public Report. Thereafter, Landowner will convey the Project Land to Developer, which is an affiliate of Landowner. The conveyance or transfer of the Project Land to Developer and the entering into any agreements by, between, or among Landowner and/or Developer to complete such transfer shall not constitute a material change in the Project. In the event that Landowner does not convey or otherwise transfer its fee simple interest in the Project Land to Developer prior to unit closings ("**Land Closing**"), then this Purchase Agreement shall be terminated, and Developer shall promptly refund to Purchaser all monies paid by Purchasers, plus any interest earned thereon. Developer shall not be considered in default under this Purchase Agreement for termination hereof as a result of the Land Closing not occurring. Notwithstanding Section D.2 of this Purchase Agreement, Developer shall not be permitted to use Purchaser's deposits to pay construction costs and other expenses, as provided in Section 514B-92 of the Hawaii Revised Statutes, prior to the Land Closing. Developer shall not close on any units until after the Land Closing and Developer has fee simple title to the Project Land. Landowner's joinder in, or consent to, any Project documents shall not, in any way or for any purpose, be construed to mean that Landowner is the developer of the Project or a partner with Developer in the conduct of its business or otherwise, or a joint venture, partner or a member of a joint enterprise with Developer. Landowner makes no representations or warranties of any kind, express or implied, with respect to any aspect of the Project. The statements set forth in this report and any Project documents are solely those of Developer and are not and should not be construed as statements made by or representations of Landowner, Developer, and not Landowner, shall be solely responsible for all aspects of the Project, including, without limitation, the marketing, sale, development, and construction of the Project.

(xv) Acknowledgement and Acceptance of Certain Conditions; Waiver. By signing and accepting a Unit Deed, Purchaser accepts and waives any claims or rights of action or suits against Seller or Seller's successors and assigns arising from any impairment of the Purchaser's use and enjoyment of the Unit or the Project, or from any inconvenience, property damage or personal injury arising directly or indirectly from the following:

(a) Elevators. The design of the building provides for multiple passenger elevators to provide access to the residential floors in the Project. Units located in the immediate vicinity of the elevator lobby on each level of the building may be prone to greater noise and other nuisances associated with the normal operation of the elevators than units located farther away from the elevator lobby. Also, during certain hours of the day, there may be delays in the elevator servicing each residential floor as a result of high traffic loads and/or in the event of servicing and/or repairs to one or more of the elevators in the Project.

(b) Location of Certain Units Above and/or Below the Amenity Deck and Recreational Amenities. Certain Units located on Level 6 are located directly above the Amenity Deck. As a result, such Units may be exposed to greater noise and other nuisances than the Units located on other Levels in the Project.

(c) Engineered Wood Flooring and Wood Veneer Cabinets in Units; Marble in Bathrooms. The units may have engineered wood flooring installed in a portion of each unit. Wood flooring is prone to scratching, and has special maintenance, care, and upkeep requirements, as compared to carpeting, which will need to be complied with by each of the Owners in the Project in order to maximize the enjoyment and useful life of the originally- installed engineered wood flooring in the units. The failure to comply with these special maintenance, care and upkeep requirements will result in additional costs to the Owner and detract from the Owner's enjoyment of said Owner's unit. The potential sound transmission through an engineered wood floor, when compared to carpeting, is greater, and Purchaser, by signing and accepting the Unit Deed, will thereby be deemed to acknowledge and accept that this condition may result in greater noise being heard from the units above and adjacent to Purchaser's Unit. Owners shall at all times comply with the requirements and provisions of the House Rules, as may be established from time to time by the Board, for the purpose of minimizing and softening the level of sound transmission through the engineered wood floor of each unit. Certain kitchens may also have cabinets made from natural wood veneer, which is subject to color, texture, and surface variations and aging. The failure to comply with special maintenance, care, and upkeep requirements may result in additional costs to the Owner and detract from the Owner's enjoyment of the Unit. Some of the shower walls, floors, and countertops in the bathrooms will be marble. Marble is naturally porous and tends to absorb liquid that can penetrate deeper into the stone quickly and may be hard to remove. Marble can and should be sealed when installed and again every few years to minimize staining. However, if it is not done properly or often enough, staining can still occur. Cutting or dropping objects directly on the marble can also scratch, chip and crack the surface.

(xvi) Kaka'ako Community Development District Mauka Area Plan and Rules; Planned Development Permit, Planned Development Agreement and District Wide Improvement District Assessment Program. The Project is located within the Kaka'ako Community Development District and is subject to the jurisdiction of the Hawaii Community Development Authority ("HCDA") and the Mauka Area Plan and Mauka Area Rules. The Project will be developed subject to and in compliance with the terms of various permits and agreements by and/or between Seller, or Seller's predecessors in interest, and HCDA (collectively, "**HCDA Agreements**"). Some of these HCDA Agreements impose certain responsibilities and limitations on owners within Ward Village pertaining to design, alteration, and use of the master development areas. Exhibit "M" attached to the Public Report contains a summary of the more salient HCDA Agreements. **Purchaser should make careful review of Exhibit "M" attached to the Public Report and all permits and agreements listed therein for a comprehensive understanding of such responsibilities and limitations.** Pursuant to the Declaration, Seller, as Developer, has the right, without the consent or joinder of any other person or entity, to sign and record (if appropriate) such documents or instruments (including but not limited to amendments of the Declaration, the Bylaws, or the Condominium Map), enter into such agreements and do all things that may be reasonably necessary to obtain such further permits and/or agreements as may be required by the HCDA Agreements, and/or the Mauka Area Rules, and to comply with all applicable permits, laws, rules, ordinances and other governmental requirements that pertain to the Project.

(xvii) Ward Village - Master Declaration and Master By-Laws. The Project is one of potentially over twenty high-rise condominium projects anticipated to be developed by Seller and/or its affiliates in the vicinity as part of a master planned community called "Ward Village." The Project will be part of this urban, mixed-use master community located in central Kaka'ako, Honolulu. Seller intends to substantially transform the current landscape surrounding the Project over the next decade or more to create the master planned community.

Being a part of Ward Village, the Project is subject to the Community Covenant for Ward Village ("**Master Declaration**") and By-Laws of Ward Village Owners Association ("**Master By-Laws**"), as the same may be amended and/or supplemented from time to time, and any rules and regulations promulgated thereunder, including, without limitation, any master assessments, voting rights, design restrictions and the design review process set forth therein, if applicable. By signing and accepting a Unit Deed, Purchaser agrees to carefully review, observe and comply with all covenants, conditions, restrictions and other requirements to which the Project is subject under the Master Declaration and Master By-Laws, including memberships in the Ward Village Owners Association ("**Master Association**") and the payment of such sums as may be assessed pursuant to such Master Declaration or Master By-Laws. Further, Seller shall have the reserved right, without the consent of any Owners or such Owners' mortgagees, to amend the Declaration and to amend the Master Declaration, and to enter into any agreements and to grant easements and to do all things necessary and convenient to effect and implement the purposes of such instruments, and to execute, record and deliver any and all documents necessary

to effect the same, including, but not limited to, any amendments to the Declaration and to the Condominium Map. The Public Report summarizes some of the Purchaser's obligations and responsibilities and the master declarant's rights under the master documents.

(xviii) Establishment of Community Facility Districts in Ward Village. Pursuant to the Declaration, Developer has the right to establish community facilities districts ("CFD") and/or other financing districts to finance the cost of certain infrastructure for Ward Village in the event such districts are required by the County and permitted under Hawaii Revised Statutes §46-80.1 and Revised Ordinances of Honolulu, Chapter 34, as amended. In the event that a CFD is established in Ward Village and the Project is one of the projects included within that CFD, an annual special tax ("**Special Tax**") may be levied on Owners of Units in the Project to help finance infrastructure within the CFD, which may also include debt service costs on any bonds issued to finance such infrastructure. The amount of the Special Tax shall be limited to no more than thirty percent (30%) of the annual real property tax assessed to each unit, and may be assessed as an additional amount owed on each Owner's annual real property tax assessment. Such tax is also subject to annual increases. The County has the authority to lien property that is part of the CFD for nonpayment of the Special Tax, similar to real property taxes. By signing and accepting this Agreement, Purchaser acknowledges and accepts that the Project may be subject to a CFD and the Special Tax that may be levied if the Project is one of the projects within a CFD.

(xix) School Impact Fee Districts; Potential for School Impact Fees. According to Hawaii Revised Statutes, Section 302A-1603, a new residential project within a designated State of Hawaii school impact district, which requires a County building permit or a condominium property regime approval, shall be required to contribute an impact fee (e.g., land dedication, land component impact fee or fee in lieu and construction cost component impact fee) ("**Impact Fee**"). The Project is located in the Kalihi to Ala Moana School Impact Fee District ("**School Impact Fee District**") and as such the Developer will be required to pay the Impact Fee upon County subdivision or building permit approval, or State condominium property regime approval for the Project for the School Impact Fee District at the time. **The Unit's share of the Impact Fee may be collected by Developer from Owner at Closing and will be included in the Owner's Closing Cost for the Unit.**

(xx) HCDA Permit No. KAK 19-069 Condition. As one of the conditions to HCDA's permit requirements, the Developer must provide a design plan to be approved by HCDA for pedestrian friendly improvements in the Project frontage and on the sidewalk on Auahi Street to meet the goals outlined in the HCDA's Mauka Area Plans and HCDA's Mauka Rules (Title 15, Subtitle 4, chapter 22 of the Hawaii Administrative Rules), as amended. For instance, during the approval process, HCDA may require the Developer to design a building frontage that incorporates, landscaping, art sculptures, tree canopies or awnings, educational signage, architectural features, or similar improvements for the benefit of pedestrians and the public. Such improvements may alter the aesthetics and appearance of the Project, as well as increase maintenance fees if the Association is required to maintain such improvements

MISCELLANEOUS PROVISIONS

29. New Laws and Other Events Beyond Seller's Control; Increase in Total Purchase Price. After the Effective Date and because of the adoption or enactment of any law, ordinance, rule or regulation, including but not limited to, a zoning change, required by referendum or otherwise, which would prevent the construction of the Project, the effective date of which law, ordinance, rule or regulation falls after the Effective Date, but before the Closing Date of the Purchaser's Unit ("**New Law**"), or due to any fire, earthquake, act of God, the elements, war, acts of terrorism, civil disturbances, strike or other labor disturbance, or economic controls making it impossible to obtain the necessary labor or material, or market conditions which increase the cost of necessary labor or materials, or any other event, matters or conditions beyond the control of Seller, including any litigation or threat of litigation concerning the Project, Seller determines that such conditions have resulted in or will result in increases in development and construction costs by more than ten percent (10%), then Seller may increase the Total Purchase Price by an amount not in excess of the Unit's proportionate share (based, approximately, on Seller's price list for all units in effect at the time of both Purchaser's and Seller's execution of this Purchase Agreement) of the total amount of such increases in development costs. By executing this Purchase Agreement, Purchaser acknowledges that this Purchase Agreement will be deemed to be amended to incorporate the increased Total Purchase Price upon Seller's giving notice to Purchaser of the amount of the increased Total Purchase Price,

and Purchaser shall be deemed to have approved and accepted this Purchase Agreement, as amended, without memorializing such amendment in any written instrument signed by any of Purchaser or Seller, and Purchaser hereby agrees to pay such increased Total Purchase Price; provided, however, upon receipt of the notice from Seller of the amount of the increased Total Purchase Price, Purchaser shall have thirty (30) calendar days from the date of the notice to cancel this Purchase Agreement by written notice to Seller and upon such notice to receive a refund of the Contract Deposit paid hereunder by Purchaser, with accrued interest. If notice of cancellation is not received from Purchaser within said thirty (30)-day period, Purchaser shall be bound to fulfill all of Purchaser's obligations pursuant to the terms of this Purchase Agreement, as amended, with the increased Total Purchase Price, and shall execute any documents as may be required by Escrow, including, but not limited to, an affirmation of such increased Total Purchase Price to facilitate Closing. This Purchase Agreement will also be deemed to have been amended so as to increase the payments set forth in **Sections D.1 and D.2** above by the respective new amount for such payments to be set forth in the notice from Seller.

The Hawaii real estate market continually fluctuates due to changes in economic, social and political conditions that directly affect the supply of and demand for housing. Such supply and demand may be further impacted by fluctuating prices and availability of materials and labor necessary to construct the Project. As a result, unit prices as well as the terms and conditions of sale are also subject to change. Therefore, (i) although the price of Purchaser's Unit may not change, except as set forth in the preceding paragraph, Purchaser should be aware that Seller reserves the right at any time prior to or after Closing for the sale of Purchaser's Unit and without notice to Purchaser, to increase or decrease the total purchase price of the units for sale, adjust incentives, adjust the terms and conditions of sale and/or change the number, size, location, and design of other units in the Project; (ii) Seller is not obligated to offer Purchaser the same price, incentives and/or other terms and conditions of sale that Seller has previously offered or may subsequently offer to another purchaser; (iii) Seller has neither offered nor agreed to any price protection or other similar commitment to Purchaser regarding the value or resale value of Purchaser's Unit (or any other property), and Seller shall not have any obligation or liability whatsoever to Purchaser in the event that any price changes directly or indirectly affect the value of Purchaser's Unit; and (iv) when Purchaser entered into the Purchase Agreement, Seller may have owned other properties which may have been off the market and may not have been shown to or otherwise made available for purchase by Purchaser. Seller does not have any obligation to notify Purchaser if any of such properties come on the market or are otherwise available for purchase, nor shall Seller have any obligation to notify Purchaser of any future properties Seller may develop and make available for purchase.

30. **Material Changes in the Project.** Pursuant to Section 514-87 of the Hawaii Revised Statute after this Purchase Agreement has become binding in accordance with **Section D.6**, there is a Material Change (as defined in Exhibit A attached hereto) in the Project, Purchaser may rescind this Purchase Agreement within thirty (30) calendar days of Purchaser's receipt of a copy of a Disclosure Document providing a description of the Material Change and a Rescission Notice regarding Purchaser's thirty (30)-day rescission right on a form prescribed by the Commission. In the event Purchaser rescinds this Purchase Agreement pursuant to this **Section E.30**, Purchaser shall be entitled to a prompt and full refund of all monies paid, plus any interest earned thereon.

31. **PRESALE CONTINGENCY.** PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER MAY CANCEL THIS PURCHASE AGREEMENT IF SELLER HAS NOT OBTAINED BINDING PURCHASE AGREEMENTS TO SELL AT LEAST SEVENTY PERCENT (70%) OF THE UNITS IN THE PROJECT ON OR BEFORE ONE HUNDRED EIGHTY (180) DAYS AFTER THE DATE OF THE FIRST EXECUTED PURCHASE AGREEMENT FOR PURCHASE AND SALE OF A UNIT IN THE PROJECT (THE "**PRESALE CONTINGENCY**"). THE PRESALE CONTINGENCY IS SET BY SELLER IN ITS SOLE AND ABSOLUTE DISCRETION. IF THE PRESALE CONTINGENCY FOR THE PROJECT IS NOT SATISFIED FOR ANY REASON, SELLER SHALL HAVE NO OBLIGATION TO CONSTRUCT ANY PORTION OF THE PROJECT OR TO SELL THE UNIT TO PURCHASER. IN THE EVENT SELLER ELECTS TO CANCEL THIS PURCHASE AGREEMENT PURSUANT TO THIS **SECTION E.31**, PURCHASER SHALL BE ENTITLED TO A FULL REFUND OF ALL MONIES PAID BY PURCHASER TO SELLER HEREUNDER, WITH ACCRUED INTEREST. THIS PRESALE CONTINGENCY IS FOR THE BENEFIT OF SELLER ONLY, AND NOT FOR THE BENEFIT OF PURCHASER, AND MAY BE WAIVED BY SELLER IN SELLER'S SOLE AND ABSOLUTE DISCRETION.

32. **Purchaser's Interest and Subordination.** This Purchase Agreement shall not be construed as a present transfer of any rights or of any interest in the Unit, but rather this Purchase Agreement is an agreement to transfer an interest in the future. Purchaser agrees not to record or cause to be recorded in the Bureau any form of this Purchase Agreement. Purchaser acknowledges that Seller has entered into or may enter into an

agreement with one or more lenders (the “**Lender**”) pursuant to which the Lender may loan an aggregate of up to FOUR HUNDRED AND FIFTY MILLION AND NO/100 DOLLARS (\$450,000,000.00) at an annual interest rate of up to ten (10) percentage points, or one thousand (1000) basis points, over the Lender’s chosen rate (which may be Lender’s “prime rate,” “base rate,” or other rate, Secured Overnight Financing Rate (SOFR) or may be the London Inter-Bank Offering Rate (LIBOR), or any other rate such Lender may select). The repayment provisions of the loan may call for repayment of the loan over a period of time likely not to exceed five (5) years. To secure the loan, Seller may grant to the Lender security interests covering Seller’s interest in the Project, including the Unit covered by this Purchase Agreement. Purchaser acknowledges and agrees that the loan may also be secured by the interest(s) of an affiliate(s) of Seller in another/other condominium project(s) if the loan is cross-collateralized and that all security interests obtained by the Lender in connection with such loan as well as any extensions, renewals and modifications thereof shall be and remain at all times, until the recording of the Unit Deed, a lien or charge on the Project, including the Unit covered by this Purchase Agreement, prior to and superior to any and all liens or charges on the Project arising from this Purchase Agreement or any prior agreement. PURCHASER HEREBY INTENTIONALLY WAIVES, RELINQUISHES AND SUBORDINATES THE PRIORITY OR SUPERIORITY OF ANY LIEN OR OTHER LEGAL OR EQUITABLE INTEREST ARISING UNDER THIS PURCHASE AGREEMENT 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 AND OTHER COSTS DURING SUCH CONSTRUCTION AND ANY AND ALL ADVANCES THEREFOR, WHETHER CONTRACTUAL OR VOLUNTARY, UNTIL THE RECORDING OF THE UNIT DEED. Purchaser further undertakes and agrees to execute and deliver any further documentation or subordination agreement required by the Lender to evidence this subordination and hereby irrevocably appoints Seller as Purchaser’s attorney-in-fact to execute any such instrument on behalf of Purchaser, should Purchaser fail or refuse to do so within ten (10) business days after request is made or mailed. Said power of attorney is coupled with an interest, shall be irrevocable, and shall not be affected by the disability of the Purchaser. Purchaser also consents to Seller’s assignment by way of security of Seller’s interests in this Purchase Agreement and in Purchaser’s Contract Deposit to the Lender and agrees that in the event of passage of Seller’s interest therein pursuant to said assignment, Purchaser will, at Lender’s option, perform to, attorn to and recognize Lender (and its successors in interest, if any) as Seller hereunder, with all of the rights of Seller hereunder, all as if the Lender were the original Seller hereunder. Purchaser further understands and agrees that the Lender has the right under certain circumstances set forth or to be set forth in the mortgage instrument, the security agreement and any other loan documents pertaining to said agreement between Seller and Lender to foreclose its mortgage and/or enforce its other remedies thereunder or under such other loan documents or possessed at law, and Purchaser hereby agrees in such case that: (a) the Managing Agent of the Project is hereby irrevocably appointed by Purchaser as Purchaser’s agent for acceptance of service of process during the term of this Purchase Agreement (which power is coupled with an interest and shall not be affected by the disability of the Purchaser), and any service of process upon said Managing Agent shall be deemed to be effective service of process upon Purchaser as though Purchaser has been personally served therewith; and (b) the rights of Purchaser hereunder are purely contractual in nature, enforceable only against Seller and its legal successors and assigns and not against the real property, Improvements and/or appurtenances thereto which are the subject of said mortgage instrument, security agreement or other loan documents, and Purchaser expressly acknowledges and agrees that Purchaser need not be named a party defendant or plaintiff in any cause of action or suit by Lender to foreclose and/or otherwise enforce its rights under said mortgage instrument or security agreement or other loan documents, nor does Purchaser have any right to be served with process in connection therewith or to be notified of the pendency thereof.

33. Administration and Management of Project. Purchaser acknowledges that Seller has retained Hawaiiana Management Company, Ltd. as the initial Managing Agent for the Project. During the duration of the Developer Control Period, as discussed in **Section E.26, Seller shall have the right to replace Hawaiiana Management Company, Ltd. and any other Managing Agent at any time in Seller’s sole discretion. In the event the Managing Agent changes, the maintenance fees and services for the Project may change.** The Managing Agent shall have the authority, subject to the provisions of the Declaration and Bylaws, to assume control and responsibility for the physical, fiscal and administrative management of the Project, at the expense of the Association.

34. Assignment of Purchase Agreement; No “Flipping” of this Purchase Agreement. This Purchase Agreement may not be assigned by Purchaser. Any assignment of this Purchase Agreement by Purchaser is void

and of no legal effect. For the purposes of this **Section E.34**, an assignment shall mean, but shall not be limited to: (i) the transfer of Purchaser's interest in this Purchase Agreement to one or more other Persons or other entities; (ii) the inclusion of additional persons or entities as purchasers under this Purchase Agreement; and (iii) where Purchaser is a corporation, partnership, limited liability company or other legal entity, the transfer of a controlling interest in Purchaser. As used herein, "**controlling interest**" shall mean (a) the sale of more than fifty percent (50%) of the ownership or other beneficial interest in such entity, or (b) the transfer of interests in such entity sufficient to allow the recipient thereof to control the day-to-day operations of such entity or otherwise control or influence the management of, or otherwise manage, set policies or direct the actions of such entity. Notwithstanding the foregoing, Purchaser may assign his/her rights under this Purchase Agreement to affiliated entities for estate planning purposes without the consent of Seller; provided that any such assignment shall not release Purchaser from his/her obligations under this Purchase Agreement. 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 fifteen (15) calendar days prior to the Pre-Closing Date and shall provide to Seller and/or Escrow copies of such documents as Seller and/or Escrow, in their sole and absolute discretion, deem necessary to complete Closing.

35. **SELLER'S REMEDIES UPON PURCHASER'S DEFAULT.** IN THE EVENT PURCHASER SHALL HAVE DELIVERED THE CONTRACT DEPOSIT (OR PORTION THEREOF REQUIRED TO BE DELIVERED) OR ANY OTHER CONSIDERATION MONIES RELATED TO THE PURCHASE OF THE UNIT PURSUANT TO THIS PURCHASE AGREEMENT, AND SHALL FAIL TO COMPLY WITH OR PERFORM ANY OF THE COVENANTS, AGREEMENTS OR OTHER OBLIGATIONS TO BE PERFORMED BY PURCHASER UNDER THE TERMS AND PROVISIONS OF THIS PURCHASE AGREEMENT, INCLUDING, WITHOUT LIMITATION, DELIVERY OF THE CONTRACT DEPOSIT (OR ANY PORTION THEREOF) TO ESCROW ON OR PRIOR TO THE DEPOSIT DELIVERY DUE DATE, SELLER MAY PROVIDE PURCHASER WITH WRITTEN NOTICE OF SUCH DEFAULT OR BREACH AND THE OPPORTUNITY FOR PURCHASER TO REMEDY SUCH DEFAULT OR BREACH WITHIN TWENTY (20) CALENDAR DAYS AFTER THE DATE OF RECEIPT OF SUCH NOTICE. IF PURCHASER HAS NOT REMEDIED SUCH DEFAULT OR BREACH WITHIN SUCH TWENTY (20)-DAY PERIOD, SELLER SHALL BE ENTITLED TO ANY REMEDY AVAILABLE IN LAW OR IN EQUITY INCLUDING, WITHOUT LIMITATION, (I) SPECIFIC PERFORMANCE OF THIS PURCHASE AGREEMENT AND THE TERMS AND CONDITIONS SET FORTH THEREIN, OR (II) TERMINATION OF THIS PURCHASE AGREEMENT UPON WRITTEN NOTICE TO PURCHASER, WHEREUPON SELLER SHALL BE PAID THE ENTIRE CONTRACT DEPOSIT, AND ALL ACCRUED INTEREST, AND ANY OTHER MONETARY CONSIDERATION CONTRIBUTED BY PURCHASER RELATED TO THE PURCHASE OF THIS UNIT AS FIXED AND FULL LIQUIDATED DAMAGES. PURCHASER ACKNOWLEDGES THAT IT IS IMPOSSIBLE TO MORE PRECISELY ESTIMATE THE SPECIFIC DAMAGES TO BE SUFFERED BY SELLER FOR WHICH LIQUIDATED DAMAGES ARE PAYABLE PURSUANT TO THIS PURCHASE AGREEMENT, BUT THAT THE APPLICABLE SUM STIPULATED AS THE AMOUNT OF THE LIQUIDATED DAMAGES IS A REASONABLE AMOUNT.

36. **PURCHASER'S REMEDIES UPON SELLER'S DEFAULT.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS PURCHASE AGREEMENT, IF SELLER SHALL BE IN DEFAULT UNDER THE TERMS AND PROVISIONS OF THIS PURCHASE AGREEMENT, PURCHASER SHALL PROVIDE WRITTEN NOTICE TO SELLER OF ANY SUCH DEFAULT BY SELLER. IF SELLER DOES NOT THEREAFTER CURE OR COMMENCE CURING THE DEFAULT (IF IMPRACTICAL TO CURE THE ENTIRE DEFAULT) WITHIN THIRTY (30) CALENDAR DAYS OF SELLER'S RECEIPT OF PURCHASER'S WRITTEN NOTICE, PURCHASER MAY, PROVIDED THAT PURCHASER IS NOT THEN IN MATERIAL DEFAULT UNDER THIS PURCHASE AGREEMENT, ELECT TO TERMINATE THIS PURCHASE AGREEMENT BY WRITTEN NOTICE TO SELLER, IN WHICH EVENT PURCHASER'S CONTRACT DEPOSIT AND ANY OTHER AMOUNTS PAID BY PURCHASER TO SELLER UNDER THIS PURCHASE AGREEMENT SHALL BE RETURNED TO PURCHASER UPON DEMAND, WITH ACCRUED INTEREST DESCRIBED IN **SECTION E.5** HEREOF. THE REFUND OF PURCHASER'S CONTRACT DEPOSIT AND OTHER AMOUNT PAID BY PURCHASER UNDER THE PURCHASE AGREEMENT SHALL BE PURCHASER'S ONLY DAMAGES AND ITS SOLE REMEDY IN THE EVENT OF SELLER'S DEFAULT HEREUNDER.

DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES; WAIVERS

NOTICE TO PURCHASER

PURCHASER _____

37. **PURPOSE AND EXCLUSIVITY.** THE PURPOSE OF THESE DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES (THE "**PROCEDURES**") IS TO PROVIDE SELLER AND ITS OFFICERS, AGENTS, EMPLOYEES, BROKERS, OTHER REPRESENTATIVES OR ANY CONTRACTOR OR SUBCONTRACTOR, DESIGN PROFESSIONAL, ENGINEER OR SUPPLIER WHO PROVIDED LABOR, SERVICES OR MATERIALS TO THE PROJECT OR ANY PURCHASER OR OTHER OWNER OF AN INTEREST IN THE UNIT AND ANY PERSONS CLAIMING THEREUNDER (COLLECTIVELY FOR PURPOSES

OF THIS **SECTION E.37**, THE "**PARTIES**") WITH A MECHANISM TO RESOLVE DISPUTES THAT MAY DEVELOP IN THE FUTURE CONCERNING THIS PURCHASE AGREEMENT, THE UNDERLYING TRANSACTION, THE PROJECT, AND/OR THE UNIT. THE PARTIES AGREE THAT THESE PROCEDURES SHALL BE REQUIRED IN THE PROSECUTION AND RESOLUTION OF ALL DISPUTES, AND THAT THE GOAL OF THE PARTIES IN AGREEING TO THESE PROCEDURES IS TO UTILIZE ALTERNATIVE DISPUTE RESOLUTION AS THE PRIMARY AND PRINCIPAL MEANS OF RESOLVING DISPUTES AND THEREBY REDUCING THE NEED FOR LITIGATION. ALL PROVISIONS OF THESE PROCEDURES ARE TO BE INTERPRETED WITH THIS PURPOSE IN MIND.

a. DEFINITION. "DISPUTES" MEANS AND INCLUDES ANY AND ALL ACTIONS, CLAIMS OR DISPUTES BY, BETWEEN OR AMONG THE PARTIES: (A) THAT ARISE OUT OF: THE PROJECT; THIS PURCHASE AGREEMENT; DOCUMENTS RELATING TO THE ASSOCIATION; ANY OTHER AGREEMENTS BETWEEN THE PARTIES; THE SALE OF A UNIT; THE USE OR CONDITION OF ANY IMPROVEMENT OR ANY PORTION THEREOF; THE DESIGN OR CONSTRUCTION OF ANY IMPROVEMENT OR ANY PORTION THEREOF; OR ANY CONDITION ON OR AFFECTING THE PROJECT OR ANY PORTION THEREOF; INCLUDING WITHOUT LIMITING THE FOREGOING, CONSTRUCTION DEFECTS, SURVEYS, SOILS CONDITIONS, GRADING, SPECIFICATIONS, INSTALLATION OF IMPROVEMENTS OR DISPUTES WHICH ALLEGE BREACH OF IMPLIED OR EXPRESS WARRANTIES AS TO THE CONDITION OF ANY IMPROVEMENT OR THE PROJECT; AND (B) 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). NOTWITHSTANDING ANYTHING ELSE IN THIS **SECTION E.37** TO THE CONTRARY, ANY ACTION OR CLAIM BY OR BETWEEN SELLER AND PURCHASER ARISING OUT OF OR INCIDENT TO THIS PURCHASE AGREEMENT THAT IS RAISED OR OTHERWISE ASSERTED BEFORE THE CLOSING DATE NEED NOT BE SUBMITTED TO ALTERNATIVE DISPUTE RESOLUTION AS PROVIDED HEREIN, AND SELLER AND PURCHASER SHALL BE FREE TO PURSUE SUCH ACTION OR CLAIM AS OTHERWISE PROVIDED HEREIN, IN PROCEEDINGS BEFORE ANY COURT OF COMPETENT JURISDICTION WITHOUT FIRST SUBMITTING SUCH ACTION OR CLAIM TO THE PROCEDURES SPECIFIED IN THIS **SECTION E.37**. PURCHASER AND SELLER AGREE THAT ANY JUDICIAL PROCEEDINGS INITIATED UNDER THE PRECEDING SENTENCE SHALL BE CONDUCTED IN HONOLULU, HAWAII. FURTHERMORE, NOTWITHSTANDING THE FOREGOING, THESE PROCEDURES ARE NOT MEANT TO LIMIT (i) THE RIGHTS OF THE ASSOCIATION OR ITS BOARD TO PURSUE THEIR LEGAL REMEDIES IN THE CASE OF ANY DELINQUENCY IN THE PAYMENT OF MAINTENANCE FES, (ii) THE ENFORCEMENT OF THE PROVISION OF THE DECLARATION, BYLAWS, OR HOUSE RULES, AS AMENDED FROM TIME TO TIME, (iii) THE RIGHTS AND REMEDIES OF ANY LENDER THAT SEEKS TO ENFORCE ITS REMEDIES AGAINST THE DEVELOPER, ANY OWNER, THE ASSOCIATION, OR ANY OTHER PARTY, AND (iv) ANY CONTRACT THAT THE SELLER MAY ENTER INTO WITH A CONTRACTOR TO BUILD THE PROJECT.

b. KNOWING RELEASES AND WAIVERS. THE PARTIES ACKNOWLEDGE THAT THE PROCEDURES HAVE BEEN A MATERIAL INDUCEMENT FOR THEM TO ENTER INTO THIS PURCHASE AGREEMENT. TO ACCOMPLISH THE PURPOSE OF THESE PROCEDURES, THE PARTIES, WITH RESPECT TO ANY DISPUTE, AND ANY PROHIBITED LITIGATION REFERRED TO IN **SUBSECTION f** BELOW, HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY AGREE TO THE FOLLOWING RELEASES, WAIVERS AND PROVISIONS:

(i) WAIVER OF JURY TRIAL. THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL ON ANY CLAIM, COUNTERCLAIM, OR CAUSE OF ACTION, WHETHER STATUTORY OR BROUGHT IN TORT OR IN CONTRACT, THAT IS BASED UPON OR ARISING OUT OF SUCH DISPUTE, OR SUCH PROHIBITED LITIGATION.

(ii) WAIVER AND RELEASE OF DAMAGES. THE PARTIES WAIVE AND RELEASE ANY AND ALL RIGHTS THAT ANY OF THEM MAY HAVE TO RECOVER ANY TYPE OF PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES, OR TREBLE OR OTHER MULTIPLE DAMAGES PROVIDED FOR BY ANY STATUTE OR RULE. NOTHING CONTAINED IN THESE PROCEDURES SHALL PRECLUDE THE RECOVERY OF OTHER DAMAGES OR ATTORNEYS' FEES AND COSTS AS AND TO THE EXTENT PROVIDED ELSEWHERE IN THIS PURCHASE AGREEMENT, EXCEPT WHERE OTHERWISE PROHIBITED BY LAW.

(iii) WAIVER OF CLASS ACTIONS AND CONSOLIDATION. THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO INITIATE OR PARTICIPATE IN ANY CLASS ACTION ARISING OUT OF, RELATING TO, OR CONCERNING SUCH DISPUTE OR SUCH PROHIBITED TRANSACTION. THE PARTIES AGREE THAT ALL

PROCEEDINGS GOVERNED BY THESE PROCEDURES SHALL BE BROUGHT SOLELY ON AN INDIVIDUAL BASIS, AND MAY NOT BE CONSOLIDATED OR JOINED WITH PROCEEDINGS INVOLVING CLAIMS ASSERTED BY ANY OTHER PARTY, PERSON, OR ENTITY.

c. DISPUTE NOTICE AND NEGOTIATIONS. EXCEPT FOR DISPUTES RELATING TO CONSTRUCTION DEFECTS, WHICH SHALL BE GOVERNED BY THE CONTRACTOR REPAIR ACT, CHAPTER 672E OF THE HAWAII REVISED STATUTES (THE “**CONTRACTOR REPAIR ACT**”), 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 SIXTY (60) DAYS, THE PARTIES TO THE DISPUTE, REPRESENTED BY INDIVIDUALS WITH DECISION-MAKING AUTHORITY, SHALL MEET AT A MUTUALLY ACCEPTABLE PLACE WITHIN OR NEAR THE PROJECT TO DISCUSS THE DISPUTE. THE PARTIES TO THE DISPUTE SHALL NEGOTIATE IN GOOD FAITH IN AN ATTEMPT TO RESOLVE THE DISPUTE. THE PARTIES AGREE THAT, EXCEPT FOR DISPUTES GOVERNED BY THE CONTRACTOR REPAIR ACT, THE DISPUTE NOTICE AND NEGOTIATIONS PROCESS SET FORTH IN THIS **SUBSECTION c** MUST CONDUCTED AND COMPLETED BEFORE ANY PARTY MAY INITIATE FURTHER PROCEEDINGS ON THE DISPUTE.

d. MEDIATION. IF THE PARTIES TO THE DISPUTE CANNOT RESOLVE SUCH DISPUTE PURSUANT TO THE CONTRACTOR REPAIR ACT OR THE PROCEDURES DESCRIBED IN SUBSECTION c ABOVE, THE MATTER SHALL BE SUBMITTED TO MEDIATION PURSUANT TO THE PROCEDURES ADOPTED BY DISPUTE PREVENTION AND RESOLUTION, INC. (DPR) LOCATED IN HONOLULU, HAWAII (EXCEPT AS SUCH PROCEDURES ARE MODIFIED BY THE PROVISIONS OF THIS **SECTION d**) OR ANY SUCCESSOR THERETO OR TO ANY OTHER ENTITY OFFERING MEDIATION SERVICES THAT IS ACCEPTABLE TO THE PARTIES. THE MEDIATOR SHALL BE SELECTED WITHIN FIFTEEN (15) DAYS OF THE SUBMITTAL OF THE DISPUTE TO MEDIATION. NO PERSON SHALL SERVE AS A MEDIATOR IN ANY DISPUTE IN WHICH THE PERSON HAS ANY FINANCIAL OR PERSONAL INTEREST IN THE RESULT OF THE MEDIATION, EXCEPT BY THE WRITTEN CONSENT OF ALL PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION. PRIOR TO ACCEPTING ANY APPOINTMENT, THE PROSPECTIVE MEDIATOR SHALL DISCLOSE ANY CIRCUMSTANCES LIKELY TO CREATE A PRESUMPTION OF BIAS OR TO PREVENT A PROMPT COMMENCEMENT OF THE MEDIATION PROCESS. THE PARTIES AGREE THAT THE MEDIATION PROCESS SET FORTH IN THIS SUBSECTION d AND ITS SUBPARTS MUST BE CONDUCTED AND COMPLETED BEFORE ANY PARTY MAY INITIATE FURTHER PROCEEDINGS ON THE DISPUTE.

(i) POSITION LETTER; PRE-MEDIATION CONFERENCE. WITHIN TEN (10) DAYS OF THE SELECTION OF THE MEDIATOR, EACH PARTY TO THE DISPUTE PARTICIPATING IN THE MEDIATION SHALL SUBMIT A LETTER SETTING FORTH A CONCISE DESCRIPTION OF ITS POSITION WITH REGARD TO THE ISSUES THAT NEED TO BE RESOLVED. SUCH LETTER SHALL BE OF A LENGTH AND MEET THE FORMATTING SPECIFICATIONS ESTABLISHED BY THE MEDIATOR, PROVIDED, HOWEVER, THAT IN NO EVENT SHALL THE MEDIATOR REQUIRE SUCH LETTER TO BE LESS THAN FIVE (5) SINGLE-SPACED PAGES. THE MEDIATOR SHALL HAVE THE RIGHT TO SCHEDULE A PRE-MEDIATION CONFERENCE AND ALL PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION SHALL ATTEND UNLESS OTHERWISE AGREED. THE MEDIATION SHALL BE COMMENCED WITHIN TEN (10) DAYS FOLLOWING THE SUBMITTAL OF THE LETTER AND SHALL BE CONCLUDED WITHIN FIFTEEN (15) DAYS FROM THE COMMENCEMENT OF THE MEDIATION, UNLESS THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION MUTUALLY AGREE TO EXTEND THE MEDIATION PERIOD. THE MEDIATION SHALL BE HELD IN HONOLULU, HAWAII OR SUCH OTHER PLACE AS IS MUTUALLY ACCEPTABLE TO THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION.

(ii) CONDUCT OF MEDIATION. THE MEDIATOR HAS DISCRETION TO CONDUCT THE MEDIATION IN THE MANNER THAT THE MEDIATOR BELIEVES IS MOST APPROPRIATE FOR REACHING A SETTLEMENT OF THE DISPUTE. THE MEDIATOR IS AUTHORIZED TO CONDUCT JOINT AND SEPARATE MEETINGS WITH THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION AND TO MAKE ORAL AND WRITTEN RECOMMENDATIONS FOR SETTLEMENT. WHENEVER NECESSARY, THE MEDIATOR MAY ALSO OBTAIN EXPERT ADVICE CONCERNING TECHNICAL ASPECTS OF THE DISPUTE, PROVIDED THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION AGREE AND ASSUME THE EXPENSES OF OBTAINING SUCH ADVICE. THE

MEDIATOR DOES NOT HAVE THE AUTHORITY TO IMPOSE A SETTLEMENT ON THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION.

(iii) PARTIES PERMITTED AT SESSIONS. PERSONS OTHER THAN THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION, 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 INSURER IN THE MEDIATION TO THE EXTENT REQUIRED UNDER SUCH PARTIES' LIABILITY INSURANCE POLICY.

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

(v) EXPENSES. THE EXPENSES OF WITNESSES FOR EITHER SIDE 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.

e. NONBINDING ARBITRATION. IF THE PARTIES TO THE DISPUTE CANNOT RESOLVE SUCH DISPUTE PURSUANT TO THE PROCEDURES DESCRIBED IN **SUBSECTIONS c and d**, ABOVE, THE MATTER SHALL BE SUBMITTED TO NONBINDING ARBITRATION BEFORE DPR OR ANY SUCCESSOR THERETO OR ANY OTHER ENTITY OFFERING ARBITRATION SERVICES THAT IS ACCEPTABLE TO SUCH PARTIES (ANY ONE OF THEM "**DISPUTE AGENCY**") AND PURSUANT TO THE DISPUTE AGENCY'S RULES AND PROCEDURES (EXCEPT AS SUCH RULES ARE MODIFIED BY THE PROVISIONS OF THIS SECTION). THE PARTIES ACKNOWLEDGE AND AGREE THAT THE ARBITRATION OF ANY DISPUTES 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. PURSUANT TO HAWAII REVISED STATUTES, SECTION 658A-10(c), THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE ARBITRATION OF ANY DISPUTE SHALL NOT BE CONSOLIDATED WITH THE CLAIMS OF ANY OTHER PARTY, PERSON, OR ENTITY. ALL ARBITRATION PROCEEDINGS SHALL BE CONDUCTED IN HONOLULU, HAWAII OR SUCH OTHER PLACE AS IS MUTUALLY ACCEPTABLE TO THE PARTIES TO THE DISPUTE PARTICIPATING IN THE NONBINDING ARBITRATION. THE PARTIES AGREE THAT THE NONBINDING ARBITRATION PROCESS SET FORTH IN THIS **SUBSECTION e** AND ITS SUBPARTS MUST BE CONDUCTED AND COMPLETED BEFORE ANY PARTY MAY INITIATE FURTHER PROCEEDINGS ON THE DISPUTE.

(i) SELECTION OF ARBITRATOR. ALL DISPUTES SHALL BE HEARD BY A SINGLE ARBITRATOR, WHO SHALL EITHER BE A FORMER JUDGE WITH SUBSTANTIAL EXPERIENCE IN RESIDENTIAL REAL ESTATE LITIGATION MATTERS OR A LICENSED ATTORNEY WITH AT LEAST TEN (10) YEARS EXPERIENCE IN RESIDENTIAL REAL ESTATE TRANSACTIONS AND/OR LITIGATION INVOLVING RESIDENTIAL REAL ESTATE; PROVIDED, HOWEVER, THAT IF THE DISPUTE RELATES TO A CONSTRUCTION DEFECT, THE ARBITRATOR SHALL EITHER BE A FORMER JUDGE WITH SUBSTANTIAL EXPERIENCE IN CONSTRUCTION DEFECT LITIGATION OR A LICENSED ATTORNEY WITH AT LEAST TEN (10) YEARS EXPERIENCE IN CONSTRUCTION DEFECT LITIGATION. THE ARBITRATOR SHALL BE SELECTED IN THE MANNER SET FORTH IN THE RULES OF THE DISPUTE AGENCY WITHIN TEN (10) DAYS AFTER THE SUBMITTAL OF THE MATTER TO ARBITRATION.

(ii) POSITION STATEMENTS. WITHIN TEN (10) DAYS AFTER THE SELECTION OF THE ARBITRATOR, THE PARTY WHO REQUESTED ARBITRATION OF THE DISPUTE SHALL FILE WITH THE ARBITRATOR AND SERVE ON THE OTHER PARTY (AND COUNSEL) A POSITION STATEMENT SETTING FORTH A DESCRIPTION OF THE FACTS UNDERLYING THE DISPUTE, THE NATURE OF THE DISPUTE, THE QUESTION(S) TO BE RESOLVED AND THE RELIEF REQUESTED. WITHIN TEN (10) DAYS AFTER THE SERVICE OF THE INITIAL POSITION STATEMENT, THE OTHER PARTY(IES) SHALL FILE AND SERVE WHATEVER COUNTER-POSITION STATEMENT MAY BE APPROPRIATE TO PRESERVE AND ASSERT SUCH PARTY'S POSITION SETTING FORTH A DESCRIPTION OF THE FACTS UNDERLYING THE DISPUTE, THE NATURE OF THE DISPUTE, THE QUESTION(S) TO BE RESOLVED AND THE RELIEF REQUESTED. TEN (10) DAYS AFTER SERVICE OF THE COUNTER-POSITION STATEMENT, ALL PARTIES SHALL FILE AND SERVE A RESPONSE TO THE POSITION STATEMENTS FILED BY THE OTHER, WHICH RESPONSES SHALL CONTAIN A SHORT

DESCRIPTION OF THE RESPONSE TO THE POSITIONS BEING ASSERTED, INCLUDING ANY DEFENSES OF AN AFFIRMATIVE NATURE. ANY QUESTION ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE SHALL BE SET FORTH IN THE RESPONSES OR BE FOREVER BARRED. THE ARBITRATOR MAY PERMIT A POSITION STATEMENT, COUNTER-POSITION STATEMENT, OR RESPONSE TO BE AMENDED TO ADD A QUESTION TO BE RESOLVED OR DEFENSE ONLY UPON PRESENTATION OF A REASONABLE BASIS THEREFOR.

(iii) CONDUCT OF ARBITRATION HEARING. UNLESS A HEARING IS WAIVED IN WRITING BY ALL PARTIES, ALL DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR AFTER A HEARING CONDUCTED IN ACCORDANCE WITH THESE PROCEDURES. THE ARBITRATOR MAY, IN THE ARBITRATOR'S SOLE DISCRETION, LIMIT TESTIMONY AND ARGUMENT, BOTH LEGAL AND FACTUAL. THE HEARING SHALL BE COMMENCED AT A TIME AND PLACE SELECTED BY THE ARBITRATOR IN HONOLULU, HAWAII, UNLESS OTHERWISE AGREED TO BY THE PARTIES IN WRITING, TO AFFORD EACH PARTY ADEQUATE PREPARATION FOR PRESENTING ITS POSITION AS TO THE DISPUTE BEING ARBITRATED, BUT IN NO EVENT LATER THAN SIXTY (60) DAYS AFTER THE FILING OF THE LAST OF THE PARTIES' RESPONSES. UNLESS OTHERWISE AGREED IN WRITING BY THE PARTIES, THE HEARING SHALL BE CONCLUDED WITHIN TWENTY (20) DAYS OF COMMENCEMENT OF THE HEARING.

(iv) RECORD. UNLESS OTHERWISE AGREED TO BY THE PARTIES, THERE SHALL BE NO STENOGRAPHIC RECORD OF THE ARBITRATION PROCEEDINGS.

(v) POWERS OF THE ARBITRATOR. THE ARBITRATOR SHALL HAVE THE POWER TO CONSIDER ALL DISPUTES SUBMITTED TO ARBITRATION HEREUNDER IN ACCORDANCE WITH THESE PROCEDURES, PROVIDED THAT THE REQUIREMENTS OF **SUBSECTIONS c and d** HAVE BEEN SATISFIED FOR SUCH DISPUTES. THE ARBITRATOR SHALL NOT HAVE THE POWER TO CONSIDER ANY DISPUTE THAT WAS NOT SUBMITTED TO ARBITRATION BY THE PARTIES. THE PARTIES AGREE THAT IN ANY ARBITRATION PROCEEDING CONDUCTED UNDER THESE PROCEDURES, THE ARBITRATOR SHALL APPLY HAWAII LAW, SHALL FOLLOW THE TERMS OF THE DECLARATION, AND SHALL ONLY HAVE THE POWER TO PROVIDE IN THE ADVISORY AWARD FOR ANY REMEDY THAT WOULD HAVE BEEN AVAILABLE TO A COURT DECIDING THE SAME MATTER, SUBJECT TO THE LIMITATIONS AND REMEDIES CONTAINED IN THESE PROCEDURES. THE ARBITRATOR MAY EXTEND ANY OF THE DEADLINES SET FORTH IN THIS **SUBSECTION e** UPON THE REQUEST OF EITHER PARTY FOR GOOD CAUSE; PROVIDED, HOWEVER, THAT THE ARBITRATOR SHALL ISSUE THE ARBITRATION AWARD IN THE TIME PRESCRIBED BY **SUBSECTION e(ix).**

(vi) DISCOVERY. THE SCOPE, METHODS, AND DURATION OF DISCOVERY SHALL BE WITHIN THE SOLE DISCRETION OF THE ARBITRATOR SUBJECT, HOWEVER, TO THE PROVISIONS OF THIS **SECTION e(vi).** DISCOVERY SHALL NOT BE PERMITTED AS A MATTER OF RIGHT BUT ONLY TO THE EXTENT NECESSARY IN ACCORDANCE WITH HAWAII REVISED STATUTES § 658A-17(c), AS AMENDED, TO ACHIEVE THE PURPOSE OF THESE PROCEDURES, SET FORTH IN THIS SECTION. TO FACILITATE SUCH DISCOVERY, THE ARBITRATOR SHALL HAVE THE POWER TO ISSUE SUBPOENAS FOR THE ATTENDANCE OF WITNESSES AND PRODUCTION OF DOCUMENTS AS PERMITTED BY HAWAII REVISED STATUTES §658A-17(a), AS AMENDED. THE PARTIES TO THE DISPUTE SHALL COOPERATE TO THE GREATEST EXTENT POSSIBLE SO AS TO AVOID THE NECESSITY FOR THE ISSUANCE OF SUBPOENAS.

(vii) OTHER EVIDENCE. NEITHER HAWAII NOR THE FEDERAL RULES OF EVIDENCE OR CIVIL PROCEDURE WILL BE APPLICABLE, EXCEPT THAT THE ATTORNEY-CLIENT PRIVILEGE AND THE WORK PRODUCT DOCTRINE UNDER HAWAII LAW SHALL APPLY.

(viii) EXPENSES AND FEES. EXCEPT AS AND TO THE EXTENT PROVIDED ELSEWHERE IN THIS PURCHASE AGREEMENT, EACH PARTY SHALL BEAR ITS OWN ATTORNEY'S FEES. ALL OTHER PROPER COSTS AND EXPENSES OF THE ARBITRATION, INCLUDING WITHOUT LIMITATION, WITNESSES' FEES AND THE FEES OF THE ARBITRATOR, SHALL BE CHARGED TO A PARTY OR PARTIES IN SUCH AMOUNTS AS THE ARBITRATOR DECIDES AT THE TIME OF THE AWARD. NOTWITHSTANDING THE FOREGOING, IF THE ARBITRATOR DECIDES THAT A PARTY'S CLAIMS ARE FRIVOLOUS, SUCH PARTY SHALL SOLELY BE RESPONSIBLE FOR ALL PROPERTY COSTS AND EXPENSES OF THE ARBITRATION, INCLUDING, WITHOUT LIMITATION, THE OTHER PARTY'S REASONABLE ATTORNEYS' FEES.

(ix) ADVISORY ARBITRATION AWARD; NONBINDING. THE ARBITRATOR SHALL ISSUE A WRITTEN ADVISORY DECISION ON THE MERITS OF THE ISSUE(S) FRAMED BY THE POSITION STATEMENT,

COUNTER-POSITION STATEMENT AND RESPONSES WITHIN THIRTY (30) DAYS AFTER THE CLOSE OF THE HEARING. **THE ADVISORY AWARD OF THE ARBITRATOR SHALL NOT BE FINAL OR BINDING ON THE PARTIES AND MAY NOT BE CONFIRMED OR ENTERED AS A JUDGMENT IN ANY COURT. FOLLOWING THE ARBITRATOR'S ISSUANCE OF AN ADVISORY AWARD, ANY PARTY TO THE ARBITRATION MAY INITIATE FURTHER DISPUTE RESOLUTION PROCEEDINGS, INCLUDING JUDICIAL ACTION IN A COURT OF COMPETENT JURISDICTION. THE ADVISORY AWARD MAY NOT BE INTRODUCED OR CITED AS EVIDENCE IN ANY SUBSEQUENT PROCEEDINGS. AS SET FORTH IN SUBSECTION g BELOW, NOTHING IN THESE PROCEDURES MAY BE USED OR PRESENTED IN ANY SUBSEQUENT PROCEEDINGS AS EVIDENCE.**

f. NO JUDICIAL INTERVENTION. THE PARTY BRINGING ANY LITIGATION NOT PERMITTED UNDER THESE PROCEDURES WITHOUT FOLLOWING THESE REQUIRED PROCEDURES ("**PROHIBITED LITIGATION**") SHALL BE RESPONSIBLE FOR ALL REASONABLE EXPENSES AND FEES (INCLUDING THOSE OF ATTORNEYS, EXPERTS, AND OTHER PROFESSIONALS) INCURRED BY THE OTHER PARTY AS A RESULT OF SUCH PROHIBITED LITIGATION.

g. CONFIDENTIALITY. ALL NEGOTIATIONS, MEDIATIONS, ARBITRATION PROCEEDINGS, AND ANY DISCOVERY CONDUCTED PURSUANT TO THESE PROCEDURES ARE CONFIDENTIAL. ALL PROCEEDINGS CONDUCTED PURSUANT TO **SUBSECTIONS c, d and e** OF 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. ANY BREACH OF THIS CONFIDENTIALITY PROVISION FOR REASON OF FILING LITIGATION IN COURT SHALL BE CONSIDERED PROHIBITED LITIGATION AND SHALL BE SUBJECT TO **SECTION f** ABOVE.

h. STATUTES OF LIMITATION. NOTHING IN THIS **SECTION 37** SHALL BE CONSIDERED TO TOLL, STAY, REDUCE OR EXTEND ANY APPLICABLE STATUTE OF LIMITATIONS; PROVIDED, HOWEVER, THAT ANY PARTY SHALL BE ENTITLED TO COMMENCE A LEGAL ACTION WHICH IN THE GOOD FAITH DETERMINATION OF THE PARTY IS NECESSARY TO PRESERVE THAT PARTY'S RIGHTS UNDER ANY APPLICABLE STATUTE OF LIMITATIONS, PROVIDED THAT THE PARTY COMMENCING SUCH ACTION SHALL TAKE NO FURTHER STEPS IN PROCESSING THE ACTION UNTIL IT HAS COMPLIED WITH THE PROCEDURES DESCRIBED IN **SUBSECTIONS c, d and e** ABOVE.

i. SURVIVAL; SUCCESSORS AND ASSIGNS. THE RIGHTS AND OBLIGATIONS OF THE PARTIES PURSUANT TO THIS **SECTION 37** SHALL SURVIVE THE CONVEYANCE OF THE UNIT PURSUANT TO THIS PURCHASE AGREEMENT, INCLUDING, SPECIFICALLY AS TO ANY CONTRACTORS OR SUBCONTRACTORS, THE COMPLETION OF ANY WORK BY ANY CONTRACTORS OR SUBCONTRACTORS. THIS **SECTION E.37** 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.

PURCHASER _____ SELLER _____

38. Time; Non-Waiver. Time is of the essence of this Purchase Agreement. No action or failure to act on the part of Seller shall constitute a waiver of any of Seller's rights or of any term or condition of this Purchase Agreement, nor shall such action or failure to act constitute approval of or acquiescence in any breach hereunder, except as the parties hereto shall agree in writing.

39. Notices. Unless specific method of delivery is required by law, notices required or permitted hereunder between the parties shall be in writing and shall be either (a) delivered personally; (b) sent by facsimile; (c) sent by United States mail or overnight courier (i.e., FedEx) to the address set forth herein (or such more recent address of which the mailing party may have notice); or (d) sent electronically by email to the address set forth above. Notices shall be deemed delivered (i) immediately when personally delivered, sent via email or sent through facsimile; provided no "error" or "no delivery" message has been received by sender; (ii) two (2) business days after deposited by sending party in the United States mail; or (iii) two (2) business days after being sent by overnight courier. Purchaser agrees to notify Seller in writing of any change in Purchaser's address or email address set forth hereinabove within five (5) business days after the change thereof. Personal delivery, facsimile, mailing, courioring or emailing of a notice to any officer of a corporate party if an Entity Purchaser, or to any one Person if joint Purchasers, shall be deemed sufficient delivery of the notice. Unless otherwise received by the other

party in writing, personal delivery, facsimile, mailing, couriering or emailing to the party's real estate broker identified in this Purchase agreement shall be deemed sufficient notice.

40. This Purchase Agreement is Binding on the Successors of the Parties and Purchaser is Responsible Individually and Together. Subject to the terms of **Section E.34** hereof, the terms "**Purchaser**" and "**Seller**" include the persons named and their respective heirs, successors, personal representatives, administrators or permitted assigns. The singular includes the plural and vice versa and the use of any gender includes the other as common Sense shall require. If this Purchase Agreement is signed by more than one person as Purchaser, the contract obligations shall be joint and several.

41. Hawaii Law Governs this Purchase Agreement. The laws of the State of Hawaii shall govern all matters with respect to this Purchase Agreement, including all matters related to the formation, construction and performance of this Purchase Agreement.

42. Captions. The captions of the sections of this Purchase Agreement are for convenience only and do not amplify or limit in any way the provisions hereof.

43. Effect of Partial Invalidity on this Purchase Agreement. In the event that any provision of this Purchase Agreement is illegal, void or unenforceable for any reason, the remaining terms of this Purchase Agreement shall remain in full force and effect.

44. Brokers. Purchaser acknowledges that Project Broker has disclosed that it is a licensed real estate broker and represents only Seller in this transaction, and does not represent Purchaser. Purchaser was represented in his or her purchase of the Unit by Purchaser's broker, if any, who is identified in **Section D.9** of this Purchase Agreement and the Cooperating Brokerage Agreement, if any. Purchaser agrees that Seller is not responsible for any representations or statements of Purchaser's broker that are inconsistent with those set forth in this Purchase Agreement, the Public Report and other Project Documents. If Purchaser has indicated in **Section D.9**, above, that Purchaser is not represented by a broker, Purchaser represents and warrants that no real estate broker or other person represented Purchaser or was engaged by Purchaser in connection with Purchaser's purchase of the Unit and Purchaser agrees to indemnify, defend and hold Seller and the Project Broker harmless against any and all claims to the contrary.

45. Marketing Materials Proprietary. All sales and marketing materials provided to Purchaser in connection with the sale of the Unit or otherwise are the property of Seller, and may not be used by Purchaser in any fashion whatsoever. Any use of such material in any way by Purchaser will entitle Seller to enjoin such use and to pursue other remedies against Purchaser, independently of the obligations set forth in this Purchase Agreement. Purchaser will be responsible to pay for all costs incurred by Seller in enforcing its proprietary rights in and to such material, including any and all attorneys' fees and costs incurred by Seller. This right will survive Closing of the sale of the Unit to Purchaser.

46. Prohibition Against Marketing Unit Prior to Closing. Prior to Closing, Purchaser, Purchaser's Broker, and any other Person(s) who may be representing Purchaser in Purchaser's purchase of the Unit shall not sell or offer to sell, publicize, list, market, or solicit for prospective purchasers the Unit or Purchaser's interest under this Purchase Agreement. Any such activity shall be a breach of this Purchase Agreement and Purchaser shall be subject to the penalties set forth herein.

47. Waiver of Trial by Jury. **SELLER AND PURCHASER, TO THE EXTENT THEY MAY LEGALLY DO SO, HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS PURCHASE AGREEMENT, OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO, THE DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE EXTENT THEY MAY LEGALLY DO SO, SELLER AND PURCHASER HEREBY AGREE THAT ANY SUCH CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING SHALL BE RESOLVED AND DECIDED WITHOUT A JURY, AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH**

ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE OTHER PARTY OR PARTIES HERETO TO WAIVER OF ITS OR THEIR RIGHT TO TRIAL BY JURY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE CLOSING.

48. WAIVER OF CLASS ACTION. TO THE EXTENT PERMITTED BY LAW, PURCHASER 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.

49. Mandatory Seller Disclosure. Seller is exempt from the provisions of Chapter 508D of the Hawaii Revised Statutes, as amended, regarding mandatory Seller disclosures regarding sales of residential real property. Information pertaining to the Project is contained in the Public Report for the Project.

50. This is the Entire Agreement; Certain Obligations to Continue. This Purchase Agreement and any addenda attached hereto constitute the entire agreement between the parties and supersedes and cancels all prior negotiations, representations, understandings and agreements, both written and oral, of the parties hereto. No fact sheets, informational material, advertising material or other documents which purport to describe the Unit or the Project in any manner beyond or different from the description set forth in the Declaration, the Bylaws, and the Public Report shall be valid or enforceable against Seller unless signed by Seller and no variations of this Purchase Agreement shall be valid or enforceable unless approved by the parties in writing and attached hereto as an addendum. Unless performed at or before Closing, provisions of this Purchase Agreement shall survive the execution and filing of the Unit Deed.

51. Counterpart and Electronic Signatures. This Purchase Agreement may be executed in any number of counterparts, each of which shall for all purposes, be deemed to be an original and all of which shall constitute but one and the same Purchase Agreement. Further, the parties agree that when this Purchase Agreement is executed by any party, a facsimile copy or electronic copy of that signature or a DocuSign® signature shall be deemed to be an original signature for any and all purposes.

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EXHIBIT A
DEFINITIONS

When used in this Purchase Agreement with initial capital letters, the terms listed below will have the following meanings:

"ACT" means the Condominium Property Act codified under Chapter 514B of the Hawaii Revised Statutes, as amended.

"AGREEMENT EXTENSION FEE" means that certain fee, equal to one percent (1%) of the Total Purchase Price per month in advance, to be paid by Purchaser pursuant to **Section E.10** of this Purchase Agreement in the event that Seller agrees, in its sole and absolute discretion, to extend the Closing Date.

"AMENITY DECK" means the portions of Level 5 of the building, which are comprised of certain Recreational Amenities, as depicted on the Condominium Map.

"ASSOCIATION" means the Association of Unit Owners of 1100 Ala Moana as established pursuant to the Declaration and Bylaws.

"BOARD" means the Board of Directors of the Association.

"BUREAU" means the Bureau of Conveyances of the State of Hawaii.

"BYLAWS" means the Bylaws of the Association of Unit Owners of 1100 Ala Moana dated October 2, 2019 recorded at the Bureau as Document No. A-72400471A thru A-72400471B, as the same may be amended from time to time.

"CANCELLATION FEE" means the fee which may be charged by Escrow to Purchaser for cancellation of the Purchase Agreement. .

"CLOSING" shall mean the transfer of the Unit from Seller to Purchaser by way of the filing of the Unit Deed upon payment by Purchaser to Seller of the Total Purchase Price.

"CLOSING DATE" shall mean that date selected by Seller, as described in **Section E.10** of this Purchase Agreement, upon which Purchaser and Seller shall perform their respective obligations to purchase and sell the Unit.

"COMMISSION" means the Real Estate Commission of the State of Hawaii.

"COMMON ELEMENTS" means those portions of the Project designated as Common Elements in the Declaration.

"COMPLETION DEADLINE" means the date upon which Seller shall complete construction of Purchaser's Unit set forth in **Section D.7** of the Purchase Agreement, as the same may be extended by reason of Force Majeure.

"CONDOMINIUM MAP" means Condominium Map No. 6022, which may be amended from time to time.

"CONTRACT DEPOSIT" means the Initial Deposit and, if delivered, the Second Deposit and the Third Deposit, as set forth in **Section D.2** above, or any other deposit added by amendment to addendum to this Purchase Agreement.

"CONTRACTOR REPAIR ACT" means Chapter 672E of the Hawaii Revised Statutes, as amended. "COUNTY" means the City and County of Honolulu.

"DCCA" means the State of Hawaii Department of Commerce and Consumer Affairs.

"DECLARATION" means the Declaration of Condominium Property Regime of 1100 Ala Moana, dated October 2, 2019, recorded at the Bureau as Document No. A-72400470A thru A-72400470D, as the same may be amended from time to time.

"DEVELOPER CONTROL PERIOD" means the period described in **Section E.26** and as set forth in the Declaration, during which Seller shall continue to have the right to appoint and remove Officers and members of the Board.

"DISCLOSURE DOCUMENT" means an amended Public Report or other document, which discloses a Material Change in the Project to Purchaser pursuant to Section 514B-87 of the Hawaii Revised Statutes, as amended.

"DISPUTE AGENCY" has the meaning set forth under **Section E.37.e**.

"DISPUTE NOTICE" has the meaning set forth under **Section E.37.c**.

"DISPUTES" has the meaning set forth under **Section E.37.a**.

"DPP" means the Department of Planning and Permitting, City and County of Honolulu.

"EFFECTIVE DATE" means that date this Purchase Agreement becomes binding pursuant to the provisions of **Section D.6** of this Purchase Agreement.

"ESCROW" means Title Guaranty Escrow Services, Inc., a Hawaii corporation. Unless otherwise agreed, references to Escrow shall be to Escrow at its Honolulu office at 235 Queen Street, Honolulu, Hawaii 96813, phone: (808) 521-0211.

"ESCROW AGREEMENT" means the Escrow Agreement by and between Seller and Escrow dated August 20, 2019, as the same may be amended and/or supplemented.

"FINANCIAL DATA" means the personal information and financial data from Purchaser's bankers, or accountants, or others, as Seller may require demonstrating Purchaser's ability to make cash payments due at the times and in the amounts described in **Section D.2** of this Purchase Agreement.

"FORCE MAJEURE" means fire, flooding, hurricane, tsunami, the elements, war, civil disturbances, strikes or other labor disturbances or economic controls making it impossible to obtain the necessary labor or material, or any other events, matters or conditions beyond the control of Seller that are legally supportable in Hawaii as rendering completion of the Project impossible.

"HART" is a semi-autonomous local government agency established in 2011 by a charter amendment to plan, design, construct and operate and maintain Honolulu's high-capacity, fixed guided rapid transit system.

"HCDA" means the Hawaii Community Development Authority.

"HCDA AGREEMENTS" means the permits and agreements by and/or between Seller or Seller's predecessors in interest, and the HCDA in accordance with which the Project shall be developed. The HCDA Agreements referenced in **Section E.28.h(xvi)** of this Purchase Agreement and further described and summarized in the Declaration and Public Report.

"HCDA MAUKA AREA PLAN" means the Kaka'ako Community Development District Mauka Area Plan, effective February 14, 1990, as amended.

"HCDA MAUKA AREA RULES" or "MAUKA AREA RULES" means the Kaka'ako Community Development District Rules for the Mauka Area under Title 15, Subtitle 4, Chapter 22 of the Hawaii Administrative Rules.

"HOUSE RULES" means the Rules and Regulations of the Association, as may be amended from time to time.

"LAND" means the final land area underlying the Project.

"LENDER" means the lender or lenders with whom Seller has or will enter into one or more agreements in order to finance construction of the Project.

"LIMITED COMMON ELEMENTS" means those portions of the Common Elements designated in the Declaration as being appurtenant to one or more (but less than all) units in the Project.

"MASTER ASSOCIATION" means the association of Ward Village incorporated as Ward Village Owners Association.

"MASTER BY-LAWS" means that certain By-Laws of Ward Village Owners Association recorded as Exhibit E to the Master Declaration, as amended, which governs the Master Association's internal affairs, such as voting, elections, meetings, etc.

"MASTER DECLARATION" means that certain Community Covenants for Ward Village dated September 13, 2013 and recorded in said Bureau as Document No. A-50040794, as amended, which imposes certain covenants, conditions and restrictions on the Project and certain adjoining lands owned by Developer and created obligations that are binding upon the Master Association and all present and future owners of properties in Ward Village.

"MATERIAL CHANGE" means a change in the Project which (1) 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 (2) is not made pursuant to a right reserved to Seller under the Declaration.

"MORTGAGE LENDER" means a bank, insurance company, savings and loan association, credit union or other established lending institution authorized to make mortgage loans in the State of Hawaii, and selected by Purchaser to finance this transaction, if any.

"NEW LAW" means any law, ordinance, rule or regulation, including, but not limited to, a zoning change, required by referendum or otherwise, which would prevent the construction of the Project, the effective date of which law, ordinance, rule or regulation falls after the Effective Date but before the Closing Date of Purchaser's Unit.

"NOTICE OF RIGHT TO CANCEL" means notice of the prospective purchaser's thirty-day cancellation right on a form prescribed by the Commission, upon which the prospective purchaser may indicate that he/she has had an opportunity to read the Public Report, understands the Public Report, and exercises the right to cancel or waives the right to cancel.

"OWNER-OCCUPANT LAW" means Part V, Subpart B of the Hawaii's Condominium Property Regime Act (Hawaii Revised Statutes, Section 514B-95 et seq).

"PARTIES" means Seller, its officers, agents, employees, brokers, other representatives or any contractor or subcontractor, design professional, engineer or supplier who provided labor, service or materials to the Project or any purchaser or other owner of an interest in the unit and any Persons claiming thereunder.

"PD PERMIT" means Planned Development Permit No. KAK 19-069 issued by HCDA on October 2, 2019.

"PRE-CLOSING" means the execution and delivery of documents in Escrow prior to the actual Closing Date as set forth in **Section E.8** of this Purchase Agreement.

"PRE-CLOSING DATE" means the date selected by Seller, in Seller's sole discretion, requiring Pre-Closing.

"PRE-CLOSING NOTICE" means the thirty (30)-calendar day advance written notice of Pre-Closing given by Seller to Purchaser any time after the Effective Date of the Purchase Agreement.

"PRESALE CONTINGENCY" means Seller's right to cancel the Purchase Agreement if Seller has not obtained binding purchase agreements to sell that certain percentage of units in the Project on or before one hundred eighty (180) calendar days after the date of the first executed purchase agreement for a unit in the Project, as set forth in **Section E.31** of this Purchase Agreement.

"PROCEDURES" means the dispute notification and resolution procedures set forth in **Section E.37** of this Purchase Agreement.

"PROJECT" means the "1100 Ala Moana", also known as "Victoria Place" condominium project located at Kaka'ako, Honolulu, City and County of Honolulu, Hawaii.

"PROJECT ARCHITECT" means Solomon Cordwell Buenz, or such other architect for the Project as Seller may designate from time to time.

"PROJECT BROKER" means Ward Village Properties, LLC, or such other broker for the Project as Seller may designate from time to time. The Project Broker is an affiliate of Seller and both are under the same ownership umbrella.

"PROJECT DOCUMENTS" means the Condominium Map, Declaration, Bylaws, House Rules, Unit Deed, Purchase Agreement, Escrow Agreement, Master Declaration, Master By-Laws, and all other documents required to be filed with the Commission in conjunction with the development and sale of the Project, as the same may be amended and/or supplemented from time to time.

"PUBLIC REPORT" means the Developer's Public Report for the Project for which the Commission has issued an effective date, as the same may be amended from time to time.

"PURCHASE AGREEMENT" means this Purchase Agreement, together with (where applicable) any addenda attached hereto or any subsequent amendment(s).

"PURCHASER'S BROKER" means the real estate broker designated by Purchaser to represent Purchaser in the purchase and sale of the Unit, as set forth under **Section D.8** of this Purchase Agreement.

"RECREATIONAL AMENITIES" means those recreational amenities located on the Amenity Deck on Level 5 of the building, as well as those recreational amenities located on Level 1 of the building, available for the use and enjoyment of the Owners.

"RESCISSION NOTICE" means the notice of Purchaser's thirty (30)-day rescission right on a form prescribed by the Commission, upon which Purchaser may indicate that he/she has had an opportunity to read the Disclosure Document, understands the Disclosure Document, and exercises his/her right to rescind the Purchase Agreement or waives the right to rescind the Purchase Agreement.

"SELLER" or "DEVELOPER" means VICTORIA PLACE, LLC, a Delaware limited liability company, and its successors and assigns.

"SELLER AND/OR ITS AGENTS" means Seller, its officers, employees, agents, and/or any other real estate brokers or real estate salespersons representing Seller, if any, and any of their respective affiliated agents, employees or representatives.

"SELLER'S PLANS AND SPECIFICATIONS" means the plans and specifications on file at Seller's sales office, which Purchaser may inspect upon reasonable notice.

"STATE" means the State of Hawai'i.

"TOTAL PURCHASE PRICE" means the amount set forth in **Section D.1** of this Purchase Agreement.

"UNIT" means the Unit described in **Sections A** and **E.2** of this Purchase Agreement.

"UNIT DEED" means the Limited Warranty Unit Deed with Covenants, Encumbrances and Reservation of Rights with Power of Attorney for 1100 Ala Moana. The Unit Deed is the legal document that Purchaser and Seller will sign to transfer fee simple ownership of the Unit at Closing to Purchaser. A specimen copy of the Unit Deed has been supplied to Purchaser; copies are also available from the Project Broker.

"UNIT PUNCHLIST" means that certain checklist completed by Purchaser during an inspection of the Unit prior to Closing specifying any work required to complete the Unit in accordance with **Section D.9** of this Purchase Agreement.