

IMPORTANT - - Read This Developer Prepared Report Before Buying

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

CONDOMINIUM PUBLIC REPORT

Prepared &
Issued by:

Developer MASAKATSU KATSURA, Trustee of the Masakatsu Katsura Revocable Trust dated August 23, 1994 and MIEKO KATSURA, Trustee of the Mieke Katsura Revocable Trust dated August 23, 1994

Business Address: 6496 Puupilo Road, Kapaa, Kauai, Hawaii 96746

Project Name (*): MOANA RANCH CONDO

Address: 6490 Puupilo Road, Kapaa, Kauai, Hawaii 96746

Registration No. 3594

Effective date: November 13, 2018

Expiration date: December 13, 2019

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

Expiration Date of Reports: Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

Type of Report:

- PRELIMINARY:**
(yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.
- FINAL:**
(white) The developer has legally created a condominium and has filed complete information with the Commission.
- No prior reports have been issued.
 This report supersedes all prior public reports.
 This report must be read together with: _____
- SUPPLEMENTARY:**
(pink) This report updates information contained in the:
- Preliminary Public Report dated: _____
 Final Public Report dated: November 1, 1996
 Supplementary Public Report dated: _____
- And
- Supersedes all prior public reports.
 Must be read together with: _____
 This report reactivates the _____
public report(s) which expired on _____

(*) Exactly as named in the Declaration

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

FORM: RECO-30 286/986/189/1190/892/0197/1099/0800/0203/0104/0107/0816/0317

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

- Required and attached to this report Not Required - Disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

No prior reports have been issued by the developer.

Changes made are as follows:

1. This Public Report only covers Unit D, which is owned by the Developer.
2. A dwelling was constructed for Unit D. A Fourth Amendment to Declaration of Condominium Public Report and Amendment to Condominium Map were recorded to reflect the dwelling for Unit D.
3. The Escrow Agent is Title Guaranty Escrow Services, Inc.
4. The Real Estate Agent is Oceanfront Sotheby's International Realty.

SPECIAL NOTICE;

THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF RESIDENTIAL DWELLING UNITS, OR OTHER STRUCTURES, WHICH MAY BE BUILT UPON THE PROPERTY. THEREFORE, UNLESS THE PURCHASER IS PURCHASING AN EXISTING RESIDENTIAL DWELLING, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE ALSO IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE. PRIOR TO PURCHASE, THE PROSPECTIVE PURCHASER IS ADVISED TO REVIEW THIS CONDOMINIUM PROJECT WITH THE RESPECTIVE KAUAI COUNTY PLANNING OFFICES TO RECEIVE THE MOST RECENT DIRECTIVES CONCERNING DEVELOPMENT, REPLACEMENT, EXPANSION, OR CONSTRUCTION OF ANY TYPE OF STRUCTURE FOR THIS CONDOMINIUM PROJECT IN THE FUTURE.

1. This Public Report does not constitute an approval of the project by the Real Estate Commission or any other governmental agency, nor does ensure that all county codes, ordinances and subdivisions requirements have necessarily been complied with.
2. This Project does not involve the sale of individual subdivided lots. The land area beneath and immediate adjacent to each unit as shown on the condominium map is designated as a limited common element and does not represent a legally subdivided lot. The dotted lines on the condominium map merely represent the approximate location of the limited common element assigned to each unit.
3. Facilities and improvement normally associated with County approved subdivisions may not necessarily be provided for and services such as County street maintenance and trash collection will not be available for interior roads.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS FOR FURTHER INFORMATION REGARDING THE FORGOING.

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General Information On Condominiums

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

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

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

Operation of the Condominium Project

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer Name*: **MASAKATSU KATSURA**, Trustee of the Masakatsu Katsura Revocable Trust dated August 23, 1994 and **MIEKO KATSURA**, Trustee of the Mieke Katsura Revocable Trust dated August 23, 1994 Phone: (808) 823-8558
(Business)

Business Address: 6496 Puupilo Road
Kapaa, Kauai, Hawaii 96746

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):

Real Estate Broker*: **Oceanfront Sotheby's International Realty** Phone: (808) 652-8383
James R. O'Connor (Business)

Business Address: 4244 Kilauea Road
Kilauea, Kauai, Hawaii 96754

Escrow*: **Title Guaranty Escrow Services, Inc.** Phone: (808) 521-0211
(Business)

Business Address: 235 Queen Street
Honolulu, Hawaii 96813

General Contractor*: Phone: _____
(Business)

Business Address:

Condominium Managing Agent*: **Self Managed by Association of Unit Owners** Phone: _____
(Business)

Business Address:

Attorney For Developer*: **Michael H. Sakai** Phone: (808) 531-4171
(Business)

Business Address: 705 South King Street, Suite 208-2
Honolulu, Hawaii 96813

* For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

**II. CREATION OF THE CONDOMINIUM;
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

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

The Declaration for this condominium is:

Proposed

Recorded - Bureau of Conveyances: Document No. 96-069647
Book _____ Page _____

Filed - Land Court: Document No. _____

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]:

First Amendment to Declaration dated July 29, 1996, recorded as Document No. 96-114599

Second Amendment to Declaration dated October 3, 1996, recorded as Document No. 96-146966

Third Amendment to Declaration dated July 27, 1998, recorded as Document No. 98-129171

Fourth Amendment to Declaration dated August 21, 2018, recorded as Document No. A-68760570

B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

Proposed

Recorded - Bureau of Conveyances Condo Map No. 2401

Filed - Land Court Condo Map No. _____

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

Amendment dated August 21, 2018, recorded October 24, 2018, as Document No. A-68760570.

C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

Proposed

Recorded Bureau of Conveyances: Document No. 96-069648
Book _____ Page _____

Filed - Land Court: Document No. _____

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

- Proposed Adopted Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents** Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>N/A</u>

* The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

2. **Developer:**

- No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.
- Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.
- Leasehold or Sub-leasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____ Rent Renegotiation Date(s): _____

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per: Month Year

For Sub-leaseholds:

- Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is: Cancelled Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.
- Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Sub-leasehold:

Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____ Rent Renegotiation Date(s): _____

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per: Month Year

Other:

IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

B. Underlying Land:

Address: 6490 Puupilo Road, Kapaa, Kauai, Hawaii 96746 Tax Map Key (TMK): (4) 4-2-022-023 (CPR No. 0004)

Address TMK is expected to change because:

Land Area: 24.539 Square Feet Acre(s) Zoning: AG

Fee Owner Name:

Business Address: 6496 Puupilo Road, Kapaa, Kauai, Hawaii 96746

Lessor Name:

Business Address:

C. Buildings and Other Improvements:

- 1. New Building(s)
 Conversion of Existing Building(s)
 Both New Building(s) and Conversion
- 2. Number of Buildings: five Floors Per Building: Units A & D – Two; Units B, C, & E: One
 Exhibit A contains further explanations.
- 3. Principal Construction Material:
 Concrete Hollow Tile Wood
 Other glass and other allied materials

4. Uses Permitted by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted By Zoning</u>	
<input checked="" type="checkbox"/> Residential	<u>1</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Other: storage structures	<u>4</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?

- Yes No

5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

- Pets only two domestic pets permitted per apartment.
- Number of Occupants _____
- Other _____
- There are no special use restrictions

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 1 Trash Chutes: 0

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Net Other Area (sf)	Identify
A	<u>1</u>	<u>4/4</u>	<u>2898</u>	<u>921 / 80</u>	<u>Lanai/Storage</u>
B	<u>1</u>	<u>0/0</u>	_____	<u>48</u>	<u>Storage</u>
C	<u>1</u>	<u>0/0</u>	_____	<u>48</u>	<u>Storage</u>
D	<u>1</u>	<u>2/2.5</u>	<u>2084</u>	<u>758 / 777</u>	<u>Lanai/Garage</u>
E	<u>1</u>	<u>0/0</u>	_____	<u>48</u>	<u>Storage</u>

Total Number of Apartments: 5 See Exhibit A

*** Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.**

Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.

Boundaries of Each Apartment:

The boundary of each apartment is the exterior finished surfaces of the units' perimeter walls, roofs, foundations, windows and frames, doors, beams, post entries and cesspools, if any.

Permitted Alterations to Apartments:

Each apartment owner may alter the structure and any other improvements located within the apartment's limited common land area as provided in paragraphs 7.0 and 15.0 of the Declaration of Condominium Property Regime, as amended.

Apartments Designated for Owner-Occupants Only:

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has _____ elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 10

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		TOTAL
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	<u>2</u>						<u>2</u>
Guest							
Unassigned							
Extra for Purchase							
Other: _____							
Total Covered & Open:	<u>10</u>		<u>0</u>		<u>0</u>		<u>10</u>

Each apartment will have the exclusive use of at least 2 parking stall(s).
Buyers are encouraged to find out which stall(s) will be available for their use.

- Commercial parking garage permitted in condominium project.
- Exhibit _____ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

- There are no recreational or common facilities.
- Swimming Pool Storage Area Recreation Area
- Laundry Area Tennis Court Trash Chute/Enclosure(s)
- Other:

9. Compliance With Building Code and Municipal Regulations; Cost to Cure Violations

- There are no violation Violations will not be cured
- Violation and cost to cure are listed below: Violations will be cured by: _____
(Date)

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations (For conversions of residential apartments in existence for at least five years):

The residential structure identified as Unit A is in excellent condition. Its useful remaining life is estimated to be 50 years.

11. Conformance to Present Zoning Code

- a. No variances to zoning code have been granted
 Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	X		
Structures	X		
Lot	X		

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

- described in Exhibit B
 as follows:

2. **Limited Common Elements:** Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project.

The limited common elements and the apartments which use them as described in the Declaration, are:

described in Exhibit B

as follows:

3. **Common Interest:** Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit _____

as follows:

Unit A - 20%
Unit B - 20%
Unit C - 20%
Unit D - 20%
Unit E - 20%
 100%

E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit C describes the encumbrances against the title contained in the title report dated August 10, 2018 and issued by Title Guaranty of Hawaii, Inc. .

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

- There are no blanket liens affecting title to the individual apartments.
- There are blanket liens affecting title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage	If a foreclosure occurs, purchaser's interest in a sales contract may be terminated. Purchaser's deposits will be refunded, less escrow cancellation fees.

F. Construction Warranties:

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. **Building and Other Improvements:**
None. There are no warranties, express or implied.

2. **Appliances:**
None. There are no warranties, express or implied.

G. **Status of Construction and Date of Completion or Estimated Date of Completion:**

Apartment D dwelling was constructed in 2004. Based on public records, Unit A was constructed in 1985.

H. **Project Phases:**

The developer has has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

IV. CONDOMINIUM MANAGEMENT

A. **Management of the Common Elements:** The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

- not affiliated with the Developer
- self-managed by Association of Apartment Owners
- the Developer or Developer's affiliate
- Other: _____

B. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your apartment and the apartment may be sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit D contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

C. **Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

- None
- Electricity (Common Elements only Common Elements & Apartments)
- Gas (Common Elements only Common Elements & Apartments)
- Water Sewer Television Cable
- Other:

V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

- Notice to Owners Occupants
- Specimen Sales Contract
Exhibit E contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated August 15, 2018
Exhibit F contains a summary of the pertinent provisions of the escrow agreement.
- Other

B. Buyer's Right to Cancel Sales Contract:

1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if:

- A) The Developer delivers to the buyer a copy of:
 - 1) Either the Final Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
 - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
- B) The buyer is given an opportunity to read the report(s); **AND**
- C) One of the following has occurred:
 - 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
 - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
 - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. **Rights Under the Sales Contract:** Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
 - B) Declaration of Condominium Property Regime, as amended.
 - C) Bylaws of the Association of Apartment Owners, as amended.
 - D) House Rules, if any.
 - E) Condominium Map, as amended.
 - F) Escrow Agreement.
 - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
 - H) Other _____

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. The Condominium Property Regime law (Chapter 514A, HRS) and the Administrative Rules (Chapter 107) are available online. Please refer to the following sites:

Website to access official copy of laws: www.capitol.hawaii.gov

Website to access unofficial copy of laws: www.hawaii.gov/dcca/hrs

Website to access rules: www.hawaii.gov/dcca/har

This Public Report is a part of Registration No. 3594 filed with the Real Estate Commission on August 2, 1996.

Reproduction of Report. When reproduced, this report must be on:

YELLOW paper stock

WHITE paper stock

PINK paper stock

C. **Additional Information Not Covered Above**

1. NOT A SUBDIVISION. This is a condominium project which should not be confused with a subdivision. A purchaser of an apartment unit will be conveyed an apartment unit together with an "undivided" percentage interest in the common elements of the project. The entire parcel of land upon which the project is situated is designated as a common element. That portion of the common element which each purchaser has the exclusive right to use is called a limited common element or area, but is not a separate, legally subdivided lot.


2. MAINTENANCE FEES. All costs of every kind pertaining to each apartment and its respective limited common element, including but not limited to, cost of landscaping, maintenance, repair, replacement and improvement shall be borne entirely by the respective apartment owner. The cost of maintaining the common roadway will be a common expense, however there should be minimal maintenance required for it.

Section 514A-86, Hawaii Revised Statutes, requires the Association of Apartment Owners purchase fire insurance to cover the improvements of the Project, and that premiums be common expense. Developer anticipates that that the Association will elect to permit individual apartment owners to obtain and maintain separate policies of fire insurance and name the Association as an additional insured. In such cases, fire insurance premiums will be the responsibilities of individual apartment owners and not common expenses. Developer estimates such annual premium expense to be about \$7,000.00 for Unit D which is the only apartment covered by this Public Report. There are no estimates for the insurance costs for Units B, C, D and E. This estimate was prepared in accordance with generally accepted accounting principles.

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

MASAKATSU KATSURA, Trustee of that certain unrecorded Masakatsu Katsura Revocable Living Trust dated August 23, 1994 and MIEKO KATSURA, Trustee of that certain unrecorded Miekeo Katsura Revocable Living Trust dated August 23, 1994

Printed Name of Developer

By:  _____ November 2, 2018
Duly Authorized Signatory Date

MASAKATSU KATSURA, Trustee / Developer/ Owner
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Kauai


Planning Department, County of Kauai

****Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner; Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.***

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MASAKATSU KATSURA, Trustee of that certain unrecorded Masakatsu Katsura Revocable Living Trust dated August 23, 1994 and MIEKO KATSURA, Trustee of that certain unrecorded Mieke Katsura Revocable Living Trust dated August 23, 1994

 Printed Name of Developer

By: 

 Duly Authorized Signatory*

November 2, 2018

 Date

MIEKO KATSURA, Trustee / Developer/ Owner

 Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

****Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner; Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.***

EXHIBIT "A"

Description of Apartments

The Project consists of the following five (5) apartments:

a. Unit A. Unit A consists of one freehold estate consisting of one two-story residential structure, without a basement. The first floor of the unit contains a playroom with wet bar, office hobby/work area, one bedroom and two bathrooms. The second floor of the unit contains a foyer, living room, dining room, kitchen, three bedrooms, two bathrooms, and a storage room. The second level is serviced by an exterior stairway which leads to the first level. There is also a stairwell on the interior of the unit. The net living area of the unit is 2,898 square feet, the lanais/decks contain approximately 921 square feet, and the storage areas contain approximately 80 square feet.

b. Unit B. Unit B consists of one freehold estate consisting of one agricultural storage structure. The net area of the structure is approximately 48 square feet.

c. Unit C. Unit B consists of one freehold estate consisting of one agricultural storage structure. The net area of the structure is approximately 48 square feet.

d. Unit D. Unit D consists of one freehold estate containing a 2-story residential dwelling without a basement consisting of 1 bedroom, 1 and 1/2 bathrooms, a kitchen, a dining/living room, study, entry, garage with storage and bathroom, and lanai on the ground level. The second floor contains 1 bedroom, 1 bathroom, exercise loft, and a lanai and deck. The net living area of this unit is approximately 2,084 square feet on the first floor and approximately 928 square feet on the second floor, the lanais on the first floor are approximately 478 square feet and 280 square feet on the second floor, and the garage with storage and bathroom is approximately 772 square feet. This dwelling is constructed principally of wood, plaster, concrete and other allied building materials and is constructed on a concrete slab foundation. Unit D also has a storage building consisting of one room. This storage structure contains approximately 192 square feet of area. The storage building is constructed principally of wood and has wooden post on concrete block footings. The location of each of the foregoing structures are as shown on the Amended Condominium Map."

e. Unit E. Unit B consists of one freehold estate consisting of one agricultural storage structure. The net area of the structure is approximately 48 square feet.

f. Parking. There is sufficient area for the parking of at least two (2) cars within the limited common element land area of each unit.

EXHIBIT "B"

Common Elements

The common elements of the Project and which the units have immediate access to include:

- a. The land in fee simple.
- b. The common driveway.
- c. The central and appurtenant installations for services such as power, light, gas, telephone, sewer, drainage (including drainage from the roof), hot and cold water and like utilities which more than one unit and any easements for such utility services.
- d. All other parts of the Project existing for the common use or necessary to the existence, maintenance and safety of the Project, including any common sewer facilities.

Limited Common Elements

The land area delineated and designated in the Condominium Map are limited common elements of a unit and consist of the following:

- a. Unit A. The land area surrounding and under Unit A which is delineated in the condominium map as Limited Common Land Area is a limited common element of Unit A and is for the exclusive use of Unit A and consists of approximately 4.505 acres. The limited common area is divided by the common element roadway whereby one portion consist of 3.382 acres and the other portion consist of 1.123 acres.
- b. Unit B. The land area surrounding and under Unit B which is delineated in the condominium map as Limited Common Land Area is a limited common element of Unit B and is for the exclusive use of Unit B and consists of approximately 4.823 acres.
- c. Unit C. The land area surrounding and under Unit C which is delineated in the condominium map as Limited Common Land Area is a limited common element of Unit C and is for the exclusive use of Unit C and consists of approximately 4.539 acres.
- d. Unit D. The land area surrounding and under Unit D which is delineated in the condominium map as Limited Common Land Area is a limited common element of Unit D and is for the exclusive use of Unit D and consists of approximately 4.877 acres.

e. Unit E. The land area surrounding and under Unit E which is delineated in the condominium map as Limited Common Land Area is a limited common element of Unit E and is for the exclusive use of Unit E and consists of approximately 4.671 acres.

EXHIBIT "C"

Encumbrances Against Title

1. Mineral and water rights of any nature.

2. A 200-foot wide flood line setback, as shown on map prepared by Masao Fujishige, Registered Professional Land Surveyor, dated October 31, 1971.

3. The terms and provisions contained in the following:

INSTRUMENT : LAND PATENT GRANT NUMBER 9493

DATED : May 21, 1928

The foregoing includes, but is not limited to, matters relating to water reservation.

4. The terms and provisions contained in the following:

INSTRUMENT : FARM DWELLING AGREEMENT

DATED : May 14, 1980
RECORDED : Liber 14747 Page 492
PARTIES : MAHOGANY GARDENS INC. and the COUNTY OF KAUAI PLANNING DEPARTMENT

5. Grant in favor of MASAKATSU KATSURA and MIEKO KATSURA, husband and wife, dated February 8, 1994, recorded as Document No. 94-059575; granting a non-exclusive easement for vehicular and pedestrian ingress and egress and utility purposes over and across Easement "2".

6. WAIVER AND RELEASE

DATED : July 21, 1995
RECORDED : Document No. 95-098004
BY : MASAKATSU KATSURA
WITH : DEPARTMENT OF PUBLIC WORKS, COUNTY OF KAUAI
RE : water service

7. GRANT in favor of CITIZENS UTILITIES COMPANY, whose interest is now held by KAUAI ISLAND UTILITY CO-OP, dated May 4, 1995, recorded as Document No. 95-141047; granting a right-of-entry for utility purposes.

8. GRANT in favor of CITIZENS UTILITIES COMPANY, whose interest is now held by KAUAI ISLAND UTILITY CO-OP, and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, now known as HAWAIIAN TELCOM, INC., dated September 14, 1995, recorded as Document No. 96-004116; granting a perpetual right and easement for utility purposes over Easement "E1" (20 feet wide).

9. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY
REGIME FOR "MOANA RANCH CONDO"
CONDOMINIUM PROJECT

DATED : January 8, 1996

RECORDED : Document No. 96-069647

MAPS : 2401 and any amendments thereto

Said Declaration was amended by instruments dated July 29, 1996, recorded as Document No. 96-114599, dated October 3, 1996, recorded as Document No. 96-145966, dated July 29, 1998, recorded as Document No. 98-129171, and dated August 21, 2018, recorded as Document No. A-68760570.

10. The terms and provisions contained in the following:

INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF APARTMENT
OWNERS

DATED : January 8, 1996

RECORDED : Document No. 96-069648

11. The terms and provisions contained in Apartment Deed dated January 8, 2002, recorded as Document No. 2002-016051.

12. NOTICE OF DEDICATION

DATED : Effective January 1, 2001

RECORDED : Document No. 2000-184624

BY : MASAKATSU KATSURA, Trustee of the Masakatsu Katsura Trust, and MIEKO KATSURA, Trustee of the Mieko Katsura Trust
RE : dedication of land for Agriculture purposes
PERIOD : 10 years

13. The terms and provisions contained in the following:

INSTRUMENT : FARM DWELLING AGREEMENT

DATED : January 23, 2003
RECORDED : Document No. 2003-038319
PARTIES : MASAKATSU KATSURA and MIEKO KATSURA, "Applicant(s)", and the COUNTY OF KAUAI PLANNING DEPARTMENT, "Department"

14. NOTICE OF DEDICATION

DATED : Effective January 1, 2012
RECORDED : Document No. 2011-151201
BY : MIEKO KATSURA, Trustee of the Mieko Katsura Revocable Trust, and MASAKATSU KATSURA, Trustee of the Masakatsu Katsura Revocable Trust
RE : dedication of land for Agriculture purposes
PERIOD : 20 years

15. MORTGAGE

MORTGAGOR : MIEKO KATSURA, Trustee of the Mieko Katsura Revocable Trust dated August 23, 1994, and MASAKATSU KATSURA, Trustee of the Masakatsu Katsura Revocable Trust dated August 23, 1994

MORTGAGEE : AMERICAN SAVINGS BANK, F.S.B., a federal savings bank

DATED : January 19, 2016
RECORDED : Document No. A-58700352

16. Real Property Taxes as may be due and owing.

EXHIBIT "D"

ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>		
A	\$ 40.00	x 12	= \$ 480.00
B	\$ 40.00	x 12	= \$ 480.00
C	\$ 40.00	x 12	= \$ 480.00
D	\$ 40.00	x 12	= \$ 480.00
E	\$ 40.00	x 12	= \$ 480.00

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

Estimate of Maintenance Fee Disbursements:

Monthly Fee x 12 months = Yearly Total

Utilities and Services

- Air Conditioning
- Electricity
 - common elements only
 - common elements and apartments
- Elevator
- Gas
 - common elements only
 - common elements and apartments
- Refuse Collection
- Telephone
- Water and Sewer

Maintenance, Repairs and Supplies

Building 40.00 x 12 = \$ 480.00
Grounds

Management

- Management Fee
- Payroll and Payroll Taxes
- Office Expenses

Insurance

\$160.00 x 12 = \$1920.00

Reserves(*)


Taxes and Government Assessments

Audit Fees

Other \$200.00 x = \$2400.00

TOTAL

I, TAD MIURA, SR., as agent for/and/or employed by Masakatsu and Rieko Katsura, the condominium managing agent/developer for the Moana Ranch Condo condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.


Signature

8/1/18
Date

(*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

EXHIBIT "E"

Summary of Sales Contract

The Sales Contract contains the purchase price, description and location of the unit and other terms and conditions under which a Purchaser will agree to buy a unit in the Project.

Among other things, the Sales Contract:

1. Provides a section for financing to be completed and agreed to by the parties which will set forth how Purchaser will pay the purchase price.
2. Identifies the escrow agent and states that purchaser's deposit will be held in escrow until the Sales Contract is closed or canceled.
3. Requires that Purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
4. Permits the Developer without the consent or approval of a purchaser to modify the Declaration, Bylaws Condominium Map or other documents provided that purchaser may cancel the Sales Contract and obtain a refund if such modification:
 - a. substantially and materially impairs the use and enjoyment of the unit;
 - b. substantially and materially alters the arrangement of the rooms or usable space of a unit or building;
 - c. renders unenforceable a purchasers' loan commitment;
 - d. increases the purchaser's share of common expenses or maintenance fees;
 - e. reduces the obligations of Developer of common expenses on unsold units.
5. Provides that the Developer is selling the units in "AS-IS WHERE-IS" condition. This means that the Developer is not making any warranties or representations with respect to the unit and Project.
6. If purchaser dies (any one of them) prior to closing, Developer has the right to return purchaser's funds, less any escrow cancellation fees and cost, and cancel the Sales Contract.

7. Provides that the closing cost shall be paid as follows:
 - a. By purchaser: title insurance, title report, drafting of unit deed and any note and mortgage, purchaser notary fees, recording fees, one-half of escrow fees, and also a start fee for common expenses, if any.
 - b. By Developer: Developer notary fees, conveyance taxes and one-half of escrow fees.

8. Provides the following remedies, in the event of default under the Sales Contract:

by purchaser:

- a. Developer may bring an action against purchaser for breach of contract;
- b. Developer may retain initial deposit;
- c. Purchaser shall be responsible for expenses incurred.

by Developer:

- a. Purchaser may bring an action against Developer for breach of Contract and for return of all deposits;
- b. Developer shall be responsible for expenses incurred.

Any awards to the prevailing party in any action are subordinate to escrow's expenses.

9. Provides that purchaser may not assign his/her interest in the Sales Contract without the prior written consent of Developer.

The Sales Contract contains various other provisions which purchaser should become acquainted with. If there is a conflict between the terms of this summary and the Sales Contract, the latter shall control.

EXHIBIT "F"

Summary of Escrow Agreement

The Escrow Agreement sets up an arrangement under which the deposits which a purchaser makes under a Sales Contract will be held by a neutral party ("Escrow"). Escrow is Title Guaranty Escrow Services, Inc. Under the Escrow Agreement dated August 15, 2018, these things will or may happen:

(a) Developer or Escrow will let purchasers know when payments are due and all monies received from a purchaser will be deposited in Escrow. Any interest earned on the deposits will belong to Developer.

(b) Escrow will arrange for purchasers to sign all necessary documents.

(c) The Escrow Agreement specifies when purchaser funds may be disbursed upon closing of a sale. The conditions include:

i) Escrow receives the purchasers' signed "Receipt for Public Report(s) and Notice of Right to Cancel";

ii) Escrow receives a certification from the Developer that the Sales Contract is effective and that the rescission right requirements in favor of purchasers have been complied with by the Developer; and

iii) The unit deed conveying the unit to the purchaser has been recorded in the Bureau of Conveyances.

(d) The Escrow Agreement says under what conditions a refund will be made to a purchaser. Refunds can occur under the following situations:

i) If Purchaser elects to cancel the transaction in accordance with the "Notice of Right to Cancel". The Notice provides that purchasers may cancel the Sales Contract if the signed notice is mailed, sent by telegram or faxed to the Developer before (1) the apartment is conveyed to purchaser or (2) midnight of the 30th day after delivery of the Public Report(s) to me, whichever is earlier.

ii) The Developer and purchaser agree to terminate the Sales Contract;

iii) if the Developer exercises any right to cancel the transaction which it may have reserved.

NOTE: If a transaction is cancelled, the purchaser must return all documents to the Developer.

(e) The Escrow Agreement says what will happen to a purchaser's funds upon a default under the Sales Contract. If a purchaser defaults, all deposits previously placed into Escrow will be forfeited by purchaser and Escrow may release such funds to Developer. See paragraph 11 of Escrow Agreement.

The Escrow Agreement contains various other provisions and establishes certain charges with which the purchaser should become acquainted. If there are any conflicts between the terms of this summary and the Escrow Agreement, the latter shall control.