

REQUEST FOR LEGAL SERVICES

RUSH

RECEIVED CORPORATION COUNSEL

Date: April 16, 2018
From: Yukilei Sugimura, Chair
Policy, Economic Development, and Agriculture Committee

2018 APR 16 PM 3: 22

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: David Galazin, Esq.

Subject: Acquisition of Ueoka Building Condominium Units A, B, and C (PEA-72)

Background Data: Please revise resolution authorizing acquisition and purchase and sale agreement in accordance with marked up hard copy provided. Please provide a signed hard copy in your response.

Work Requested: [] FOR APPROVAL AS TO FORM AND LEGALITY
[X] OTHER: Revise resolution and purchase and sale agreement

Form with signature of Yukilei Sugimura and contact information for Traci Fujita. Includes a vertical stamp: RECEIVED OFFICE OF THE COUNTY COUNSEL 2018 APR 18 AM 11:49

- [] ROUTINE (WITHIN 15 WORKING DAYS) [] RUSH (WITHIN 5 WORKING DAYS)
[] PRIORITY (WITHIN 10 WORKING DAYS) [x] URGENT (WITHIN 3 WORKING DAYS)

[] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES):

REASON:

FOR CORPORATION COUNSEL'S RESPONSE

Table with columns: ASSIGNED TO: DAG, ASSIGNMENT NO. 2017-0098, BY: MJA

TO REQUESTOR: [] APPROVED [] DISAPPROVED [] OTHER (SEE COMMENTS BELOW)
[] RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE):

DEPARTMENT OF THE CORPORATION COUNSEL

Date 4.18.18

By [Signature] (Rev. 7/03)

pea:ltr:072acc01:tntf

Attachment

Resolution

No. _____

AUTHORIZING THE ACQUISITION OF REAL PROPERTY LOCATED AT 2103 WELLS STREET, WAILUKU, MAUI, HAWAII, AND APARTMENTS A, B AND C OF THE UEOKA BUILDING CONDOMINIUM

WHEREAS, the County of Maui and Makawao Management LLC desire to enter into a REAL PROPERTY PURCHASE AND SALE AGREEMENT, attached hereto as Exhibit "1", for the purchase of real property located at Wailuku, Maui, Hawaii; and

WHEREAS, MAKAWAO MANAGEMENT LLC ("Owner"), is the owner in fee simple of that certain real property located at 2103 Wells Street, Wailuku, Maui, Hawaii 96793, consisting of approximately 10,718 square feet, also known as the Ueoka Building Condominium, and identified for real property tax purposes as tax map key numbers (2) 3-4-008:048, CPR 0001 (Apartment A), (2) 3-4-008:048, CPR 0002 (Apartment B), and (2) 3-4-008:048, CPR 0003 (Apartment C) described in that certain Declaration of Condominium Property Regime dated September 30, 2002, and recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2002-195071 ("Property"); and

WHEREAS, a preliminary title report for the Property was prepared by Title Guaranty of Hawaii, Inc., attached hereto as Exhibit "A" to Exhibit "1"; and

WHEREAS, the County of Maui ("County") commissioned an appraisal by a disinterested appraiser, Paradise Appraisals, LLC, said appraisal attached hereto as Exhibit "B" to Exhibit "1"; and

WHEREAS, the Director of Finance negotiated the purchase of the Property; and

WHEREAS, the Director of Finance has determined that acquisition of the Property is in the public interest; and

WHEREAS, part of Owner's inducement to agree to the sale was the threat of eminent domain proceedings; and

WHEREAS, County desires to purchase and Owner desires to sell the Property for the amount of ONE MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,600,000.00); and

Resolution No. _____

WHEREAS, Section 3.44.015(C), Maui County Code, requires that the Council authorize by resolution any acquisition of real property with a purchase price that exceeds TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00); now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council finds that the acquisition of the Property is in the public interest; and
2. That pursuant to Section 3.44.015(C), Maui County Code, the Council authorizes the acquisition of the Property for an amount not to exceed ONE MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,600,000.00), exclusive of closing costs and expenses; and
3. That it does hereby authorize the Mayor or the Mayor's duly authorized representative, to execute all necessary documents in connection with the acquisition of the Property; and
4. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Prosecuting Attorney, and Makawao Management LLC.

APPROVED AS TO FORM
AND LEGALITY:



DAVID A. GALAZIN

Deputy Corporation Counsel
County of Maui
2017-0098/2016-0809
PEA-72 2018-04-16 Revised Resolution

REAL PROPERTY PURCHASE AND SALE AGREEMENT

This Real Property Purchase and Sale Agreement ("**Agreement**") made this _____ day of _____, 2018, by and between **MAKAWAO MANAGEMENT LLC** (hereinafter referred to as "**Owner**" and/or "**Seller**"), and the **COUNTY OF MAUI**, a political subdivision of the State of Hawaii (hereinafter referred to as "**County**" and/or "**Buyer**").

RECITALS

(a) Seller is the owner of the fee simple interest in that certain parcel of land located at 2103 Wells Street, Wailuku, Maui, Hawaii, identified as Tax Map Key No. (2) 3-4-008:048-0001, 0002 & 0003, and containing an area of approximately 10,718 square feet, such fee simple interest being more particularly described below and within the attached Preliminary Report and Appraisal attached hereto as Exhibits "A" and "B". In addition, Seller is the owner of the improvements known as that certain Condominium Project known as the "THE UEOKA BUILDING CONDOMINIUM" (herein called the "Project") described herein and in the Declaration of Condominium Property Regime dated September 30, 2002, recorded October 31, 2002 in the Bureau of Conveyances, State of Hawaii, as Document No. 2002-195071 consisting of Apartments No. A (3,283 SF), B (1,326 SF) & C (1,723 SF).

AGREEMENT

The parties, intending to be legally bound, agree as follows:

1. DEFINITIONS.

For purposes of this Agreement, the following terms have the meanings specified or referred to in this Section 1:

"**Buyer**" is defined in the first paragraph of this Agreement.

"**Buyer's Closing Documents**" is defined in Section 4.3.

"**Closing**" is defined in Section 4.1.

"**Closing Date**" means the date and time as of which the Closing actually takes place.

"**Closing Payment**" is defined in Section 2.1(b)

"**Consent**" means any approval, consent, ratification, waiver, or other authorization (including any Governmental Authorization).

Real Property Purchase Agreement: 2103 Wells Street, Wailuku, Maui, Hawaii 96793
TMK: (2) 3-4-008:048:0001, 0002 & 0003

“**DCCA**” means the Department of Commerce and Consumer Affairs of the State of Hawaii.

“**Effective Date**” shall mean the date when this Agreement has been signed by Buyer and Seller.

“**Encumbrance**” means any charge, claim, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind, including any restriction on use, transfer, receipt of income, or exercise of any other attribute of ownership.

“**Escrow Agent**” means Title Guaranty Escrow Services, Inc. – Main Branch, 235 Queen Street, Honolulu, HI 96813: Attention: Ann Oshiro, Assistant Vice President, Escrow Officer.

“**Governmental Authorization**” means any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body (defined below) or pursuant to any Legal Requirement (defined below).

“**Governmental Body**” means any: (a) federal, state, local, or municipal government; or (b) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature over the Property.

“**Hazardous Materials**” means and includes any and all radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, and any and all other substances or materials defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances” under, or for the purposes of, the Hazardous Materials Laws.

“**Hazardous Materials Laws**” means and includes all federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq. the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any similar state or local laws or ordinances and the regulations now or hereafter adopted, published and or promulgated pursuant thereto.

“**Knowledge**” means an individual is actually aware of a particular fact or other matter, without imposing any duty of inquiry or investigation.

“Legal Requirement(s)” means any federal, state, local, or municipal administrative order, constitution, law, ordinance, regulation, statute, or treaty.

“New Encumbrance” is defined in Section 3.4.

“Order” means any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Body or by any arbitrator.

“Person” means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, or other entity or Governmental Body.

“Proceeding” means any action, arbitration, hearing, litigation, or suit (whether civil, criminal, or administrative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Body.

“Property” is defined in Section 2.1.

“Purchase Price” is defined in Section 2.1(b).

“Real Property” is defined in Section 2.1(a).

“Seller” is defined in the first paragraph of this Agreement.

“Seller’s Closing Documents” is defined in Section 4.2.

“Title Company” means Title Guaranty of Hawaii, Inc., or such other title company authorized to do business in the State of Hawaii chosen by Seller and acceptable to Buyer.

“Title Report” is defined in Section 3.3.

“Title Policy” is defined in Section 7.3.

2. SALE OF PROPERTY.

2.1 Sale of Property. Subject to the terms and conditions of this Agreement, at the Closing, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the following described Real and Personal Property (collectively the **“Property”**):

(a) Real Property. The fee simple real estate described in the Title Report, and Appraisal, attached hereto as Exhibits “A” and “B” respectively, together with the improvements, fixtures, appurtenant easements, and other real property interests appurtenant to such fee simple estate.

(b) Purchase Price. The purchase price (the "**Purchase Price**") for the Property shall be ONE MILLION SIX HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,600,000.00). At Closing, Buyer shall pay Seller, through Escrow Agent, an amount (the "**Closing Payment**") equal to ONE MILLION SIX HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,600,000.00) plus or minus net adjustments and prorations provided for in this Agreement. The Closing Payment shall be made in cash or other immediately available federal funds to Escrow Agent by the deadline specified by the Escrow Agent.

3. BUYER'S REVIEW OF THE PROPERTY.

3.1 Property Survey. Seller shall, at its own expense, provide a boundary survey of the Property specifically shown in Exhibit "D" attached hereto, within 30 days of execution of the Purchase Agreement ("**Survey**").

3.2 Due Diligence. Prior to the Closing Date, Buyer and its agents and professional advisors have had the opportunity to conduct all investigations and tests that it desired with respect to the Property; and is satisfied with the results of its investigations and tests.

3.3 Title Report. Attached hereto as Exhibit "A" is a Preliminary Report for the Property from the Title Company (collectively, the "**Title Report**").

3.4 Procedure For Buyer's Title Objections. All matters referred to in the Title Report and Survey shall be hereinafter referred to as the "**Permitted Exceptions**". Buyer shall have ten (10) working days to review and request changes to the "**Permitted Exceptions**". If at Closing Seller is unable to convey title subject only to the Permitted Exceptions, Buyer may terminate this Agreement.

Notwithstanding the foregoing, if the Property is to be conveyed subject to any encumbrance that materially and adversely affects the Property and was first placed upon the Property after the date of the Title Report (a "**New Encumbrance**") and is not attributable to Buyer, Buyer shall have the right to terminate this Agreement by giving written notice to Seller and Escrow Agent within ten (10) days after Buyer is provided with a copy of the New Encumbrance unless Seller agrees within five (5) days after receipt of such notice to remove the New Encumbrance prior to Closing. If Buyer terminates this Agreement in accordance with the foregoing, the parties hereto shall be released from all further obligations and liabilities hereunder. If Seller and Escrow Agent do not receive such notice prior to the expiration of said ten (10) day period, Buyer shall be deemed to have waived its objection to the New Encumbrance and Buyer's right to terminate this Agreement pursuant to this paragraph, the New Encumbrance will be deemed to be a Permitted Exception and this Agreement shall continue in effect subject to the other provisions hereof.

3.5 Condition of Property; Property to be Purchased "As Is". As a material inducement to Seller to execute this Agreement, Buyer acknowledges and agrees that, except as expressly provided in this Agreement, Buyer waives any contingencies to the Closing of this Agreement. In addition Buyer agrees that as of the Closing Date: (a) Buyer will have had an opportunity to fully examine and inspect the Property, including the physical condition of the Property and a determination as to the presence of any Hazardous Materials; (b) Buyer will have accepted the physical condition, value, financing status, use, leasing, operation, tax status, income and expenses of the Property; (c) the Property will be purchased by Buyer "AS IS" and "WITH ALL FAULTS" and, Buyer shall assume responsibility for the physical condition of the Property and its compliance with all applicable Legal Requirements, and shall assume all liability and responsibility resulting from any violation of the Hazardous Materials Laws occurring either prior to the Closing Date, to the extent arising on a portion of the Property under control of Buyer at the time of such violation or after the Closing; (d) Buyer recognizes that the Property is not new and was constructed prior to the adoption of current Hazardous Materials Laws and acknowledges that: (i) the Seller does not have actual knowledge of materials used during the construction of the residences, but that the construction may have included such hazardous materials normal at the time including asbestos and lead paint and that this is to be accepted by Buyer, construed and consistent with the "AS IS" clause in subparagraph (c) above, the Property shall be sold in the same condition that it is in on the date of this Agreement; and (ii) Seller will not be required to take any action with respect to the Property, including, but not limited to the repair or replacement of any part of the Property; and (e) Buyer has decided to purchase the Property solely on the basis of its own independent investigation. Seller has not made, does not make, and has not authorized anyone else to make any representation as to the present or future physical condition, value, financing status, use, leasing, operation, tax status, income and expenses or any other matter or thing pertaining to the Property, except as expressly set forth in this Agreement, and Buyer acknowledges that no such representation has been made and that in entering into this Agreement Buyer does not rely on any representation other than those expressly set forth in this Agreement.

3.6 Disclaimer. Except as expressly set forth in this Agreement, Seller makes no warranty or representation, express or implied or arising by operation of law, including, without limitation, any warranty of condition, habitability, merchantability, or fitness for a particular purpose of the Property. Seller shall not be liable for or bound by any verbal or written statements, representations, real estate broker's "setups" or information pertaining to the Property furnished by any real estate broker, agent, employee, servant or any other Person unless the same are specifically set forth in this Agreement or in any document delivered by Seller pursuant to this Agreement or at Closing.

4. CLOSING AND PRORATIONS.

4.1 Closing. Recordation of the documents necessary to complete the purchase and sale provided for in this Agreement (the "**Closing**") shall occur prior to December 31, 2018.

4.2 Seller's Closing Documents and Requirements. Not later than two (2) business days prior to Closing, Seller will deposit with the Escrow Agent, the following documents, in each case duly executed by Seller or the appropriate Person, and if applicable, acknowledged and in recordable form ("**Seller's Closing Documents**"):

(a) A Warranty Deed in the form customarily used in the State of Hawaii transferring to Buyer the Property specifically shown in Exhibit "C" attached hereto (the "**Deed**"), to be recorded and provided to Buyer and Seller.

(b) A certificate of non-foreign status, upon request of Buyer, in form and content required by law certifying that Seller is not a "foreign person" as such term is used under Section 1445 of the Internal Revenue Code.

(c) A certificate of resident status in form and content required by law certifying Seller is a "resident person" as such term is used in H.R.S. Section 235-68.

(d) A certificate of good standing for Seller issued by the DCCA not more than ten (10) business days before the Closing Date, upon request of Buyer.

4.3 Buyer's Closing Documents and Requirements. At the Closing, Buyer will deposit with the Escrow Agent, the following funds and documents, in each case duly executed by Buyer or the appropriate Person, and if applicable, acknowledged and in recordable form ("**Buyer's Closing Documents**"):

(a) The Closing Payment as required by Section 2.1(b)

(b) A Warranty Deed in the form customarily used in the State of Hawaii transferring to Buyer the Property specifically shown in Exhibit "C" attached hereto (the "**Deed**"), to be recorded and provided to Buyer and Seller.

4.4 Expenses.

(a) Seller's Expenses. Seller shall pay (a) the fees of any counsel representing Seller in connection with this transaction; (b) fifty percent (50%) of any escrow fees charged by the Escrow Agent; (c) sixty percent (60%) of the premium for standard coverage title insurance; and (d) all other costs and expenses incident to this transaction and the closing thereof not expressly provided above.

(b) Buyer's Expenses. Buyer shall pay (a) the fees of any counsel representing Buyer in connection with this transaction; (b) fifty percent (50%) of any

escrow fees charged by the Escrow Agent; (c) forty percent (40%) of the premium for standard coverage title insurance; and (d) all other costs and expenses incident to this transaction and the closing thereof not expressly provided above.

4.5 Adjustments and Prorations. All receipts and disbursements of the Property will be prorated on the Closing Date and the Purchase Price will be adjusted on the following basis:

(a) Property Taxes and Other Expenses. All real and personal property ad valorem taxes, installments of special assessments, if any, for the year of closing and all other expenses of operating the Property for the year of Closing shall be prorated between Buyer and Seller so that Seller bears all such costs up to the Closing Date and Buyer bears all such expenses from and after the Closing Date.

(b) Post-Closing Adjustments. If at any time within thirty (30) days following the Closing either party discovers any items which should have been included in the adjustments and prorations described in this section but which were inadvertently omitted therefrom, or any material error in the computation of such adjustments, such items may be presented for proper adjustment as of the Closing Date without interest thereon. Further, items otherwise not capable of determination prior to the Closing Date, for periods prior to the Closing Date, shall be determined and adjusted without interest thereon within thirty (30) days of the Closing Date.

5. REPRESENTATIONS AND WARRANTIES OF SELLER.

Seller represents and warrants to Buyer that:

5.1 Organization and Good Standing. Seller's estate is in good standing under the laws of the State of Hawaii.

5.2 Authority. This Agreement constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms. Upon the execution and delivery by Seller of the Seller's Closing Documents, the Seller's Closing Documents will constitute the legal, valid, and binding obligations of Seller, enforceable against Seller in accordance with their respective terms. Seller's Personal Representative has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and the Seller's Closing Documents and to perform its obligations under this Agreement and the Seller's Closing Documents. Neither the execution nor delivery of this Agreement by Seller nor the consummation or performance of any of Seller's obligations hereunder will contravene, conflict with, or result in a violation or breach of any provision of any agreement to which Seller is a party.

6. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer represents and warrants to Seller that:

6.1 Organization and Good Standing. Buyer is political subdivision of the State of Hawaii.

6.2 Authority. This Agreement constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Upon the execution and delivery by Buyer of the Buyer's Closing Documents, the Buyer's Closing Documents will constitute the legal, valid, and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms. Buyer has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and the Buyer's Closing Documents and to perform its obligations under this Agreement and the Buyer's Closing Documents. Neither the execution nor delivery of this Agreement by Buyer nor the consummation or performance of any of Buyer's obligations hereunder will contravene, conflict with, or result in a violation or breach of any provision of any agreement to which Buyer is a party.

7. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE.

Buyer's obligation and authority to purchase and close this transaction is subject to the approval of the Maui County Council no later than November 30, 2018 in accordance with the provisions and requirements of Chapter 3.44 of the Maui County Code.

Buyer's obligation to purchase the Property and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

7.1 Accuracy of Representations. All of Seller's representations and warranties in this Agreement must have been accurate in all material respects as of the date of this Agreement, and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.

7.2 Seller's Performance. All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing must have been duly performed and complied with in all material respects. Each document required to be delivered pursuant to Section 4.2 must have been delivered.

7.3 Title Policy. Buyer shall have received a commitment from the Title Company to issue a fee simple owner's policy (the "**Title Policy**") effective as of the Closing, in the amount of the purchase price, insuring that Buyer is the owner of the fee simple interest in the Real Property, subject to no Encumbrances other than the Permitted Exceptions.

8. CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE.

Seller's obligation to sell the Property and to take the other actions required to be taken by Seller at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller, in whole or in part):

8.1 Accuracy of Representations. All of Buyer's representations and warranties in this Agreement must have been accurate in all material respects as of the date of this Agreement and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.

8.2 Buyer's Performance. All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing must have been performed and complied with in all material respects. Buyer must have delivered each of the documents required to be delivered by Buyer pursuant to Section 4.3 and must have made the cash payments required to be made by Buyer pursuant to Section 2.1.

9. GENERAL PROVISIONS.

9.1 Expenses. Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its respective expenses, fees, and costs incurred in connection with the preparation, execution, and performance of this Agreement and the contemplated transactions, including all fees and expenses of agents, representatives, counsel, and accountants. In the event of termination of this Agreement, the obligation of each party to pay its own expenses will be subject to any rights of such party arising from a breach of this Agreement by another party. In any case where this Agreement is terminated without the fault of either party, the Buyer and Seller shall share equally any cancellation fees charged by Escrow Agent. In the event of a dispute arising out of this Agreement, the prevailing party in any Proceeding may be entitled to recover its costs and expenses and reasonable attorneys' fees, including such costs and expenses on appeal, unless otherwise agreed upon and/or ordered by court and subject to Maui County Code Chapter 3.16.

9.2 Notices. Any notice or demand to Seller or Buyer provided for or permitted by this Agreement shall be given in writing (unless otherwise expressly provided), and may be: (a) mailed as registered or certified mail, addressed to such party at its post office address herein specified or the last such address designated by such party in writing to the other; or, (b) delivered personally within the State of Hawaii to any one of Seller or Buyer or any officer of a party if such party is a corporation or any general partner of a party if such party is a partnership, or any manager or member of a party if such party is a limited liability company, as the case may be; (c) sent by facsimile transmission (herein "Fax") to the Fax number, if any, of such party as specified herein or such other Fax number designated by such party in writing to the other or (d) delivered

by Federal Express or other reliable overnight courier. Any such written notice shall be deemed received at the time of such personal delivery or receipt of the Fax (as evidenced by a confirmation slip indicating the fax was sent to the appropriate number set forth below), or at 5:00 P.M. (Hawaii Standard Time) on the third business day after being deposited with the United States mail as aforesaid, or on the next business day after being sent by overnight courier, as the case may be.

The initial address for each party is as follows:

To Seller: MAKAWAO MANAGEMENT LLC
 P.O. Box 747
 Koloa, Hawaii 96756

With a copy to: COLLIERS INTERNATIONAL
 P.O. Box 3138
 Wailuku, Hawaii 96793
 Attn: Charles Buckingham
 Tel: (808) 280-1178

To Buyer: COUNTY OF MAUI
 Kalana O Maui Building
 200 South High Street
 Wailuku, Maui 96793
 Attn: Director of Finance
 Tel: (808) 270-7844
 Fax: (808) 270-7878

Rejection or other refusal to accept, or inability to deliver because of changed address of which no written notice was received, will constitute receipt of the notice or other communication.

9.3 Jurisdiction of Service of Process. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the courts of the State of Hawaii, County of Maui, or, if it has or can acquire jurisdiction, in the United States District Court for the District of Hawaii, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or Proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

9.4 Further Assurances. The parties agree: (a) to furnish upon request to each other such further information; (b) to execute and deliver to each other such other documents; and (c) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

9.5 Waiver. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

9.6 Entire Agreement and Modification. This Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment.

9.7 Construction. This Agreement and any certificates or documents delivered pursuant to this Agreement will be construed without regard to which party drafted the document or any particular provision therein.

9.8 Assignments, Successors, and No Third-Party Rights. Buyer may not assign its rights and obligations hereunder to any other person without the prior written consent of Seller which may be withheld in Seller's sole discretion. In the event of any permitted assignment, the assignee shall assume in writing all of the assignor's obligations hereunder. The assignor shall in no event be released from its obligations hereunder by reason of any assignment. This Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the parties. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their successors and permitted assigns.

9.9 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

9.10 Section Headings, Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

9.11 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

9.12 Governing Law. This Agreement will be governed by the laws of the State of Hawaii without regard to conflicts of laws principles.

9.13 Brokers. Buyer represents it has not engaged or contracted with any person entitled to any brokerage commission or finder's fee in connection with this transaction. Seller represents it has engaged or contracted with any person entitled to any brokerage commission or finder's fee in connection with this transaction. Subject to Chapter 3.16 Maui County Code, each party agrees to indemnify the other party against any claim asserted against or adjudged against the other party, for any brokerage commission or finder's fee or any like compensation occasioned by or as a result of any act or omission of the indemnifying party, including all attorney's fees, costs, expenses and any other fees incurred by, charged against or adjudicated against, the other party, whether or not suit is filed, which are related to this indemnity agreement or enforcement thereof.

9.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

9.15 Dispute Prevention Resolution. In the event of a dispute arising out of or relating to this Agreement or the services to be rendered hereunder, the parties to this Agreement agree to attempt to resolve such dispute in the following manner. First, the parties agree to attempt to resolve such dispute(s) through direct negotiations between representatives of each party. Second, if the dispute or any issues remain unresolved after attempts to negotiate, the parties agree to submit the dispute to a mutually agreed upon mediator, provided, however, if the dispute is not resolved within thirty (30) days after demand by either Seller or Buyer, Buyer and Seller shall have the right to exercise all remedies available at law or in equity.

9.16 No Party Deemed Drafter. The parties hereby represent that they have reviewed this Agreement and all of the documents memorializing the transaction contemplated herein and agree that no party shall be deemed to be the drafter of this Agreement and further that in the event that this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision hereof against either party as drafter of this Agreement and shall in no way define, limit or describe the scope or intent of any provision of this Agreement.

9.17 Exhibits. The following exhibits are attached hereto, incorporated herein, and made a part hereof:

- | | |
|-------------|---|
| Exhibit "A" | Title Report of TMK (2) 3-4-008:048:0001, 0002 & 0003
2103 Wells Street, Wailuku, Maui, Hawaii 96793 |
| Exhibit "B" | Appraisal |
| Exhibit "C" | Warranty Deed |
| Exhibit "D" | Survey |

Signatures begin on the following page.

IN WITNESS WHEREOF, Seller and Buyer have executed this REAL PROPERTY PURCHASE AND SALE AGREEMENT on the _____ day of _____, 2018.

SELLER & OWNER:

MAKAWAO MANAGEMENT LLC

By: _____

Name: RAYMOND MILLER

Title: Manager

BUYER:

COUNTY OF MAUI

By: _____
ALAN M. ARAKAWA
Its: Mayor

By: _____
MARK R. WALKER
Its: Director of Finance

APPROVAL RECOMMENDED:

JOHN D. KIM
Prosecuting Attorney

APPROVED AS TO FORM AND LEGALITY:

DAVID A. GALAZIN
Deputy Corporation Counsel
County of Maui
2017-0098/2016-0809
PEA-72 2018-04-16 Revised RP P&S Agreement

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this ____ day of _____, 2018, before me personally appeared RAYMOND MILLER, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii
Printed Name: _____
My commission expires: _____

(Official Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: Real Property Purchase and Sale Agreement	
Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization	
No. of Pages: _____ Jurisdiction: _____ (in which notarial act is performed)	
_____ Signature of Notary	_____ Date of Notarization and Certification Statement
_____ Printed Name of Notary	
(Official Stamp or Seal)	

Real Property Purchase Agreement: 2103 Wells Street, Wailuku, Maui, Hawaii 96793
TMK: (2) 3-4-008:048:0001, 0002 & 0003

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this ____ day of _____, 2018, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said County of Maui.

Notary Public, State of Hawaii

Printed Name: _____

My commission expires: _____

(Official Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: Real Property Purchase and Sale Agreement	
Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization	
No. of Pages: _____ Jurisdiction: Second Circuit (in which notarial act is performed)	
_____ Signature of Notary	_____ Date of Notarization and Certification Statement
_____ Printed Name of Notary	
(Official Stamp or Seal)	

Real Property Purchase Agreement: 2103 Wells Street, Wailuku, Maui, Hawaii 96793
TMK: (2) 3-4-008:048:0001, 0002 & 0003

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this ____ day of _____, 2018, before me before me personally appeared MARK R. WALKER, to me personally known, who, being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and executed the foregoing as his free act and deed, and in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

Printed Name: _____

My commission expires: _____

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Real Property
Purchase and Sale Agreement

Doc. Date: _____ or Undated at time of
notarization

No. of Pages: _____ Jurisdiction: Second Circuit
(in which notarial act is
performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

(Official Stamp or Seal)

Real Property Purchase Agreement: 2103 Wells Street, Wailuku, Maui, Hawaii 96793
TMK: (2) 3-4-008:048:0001, 0002 & 0003

Exhibit "A"

Title Report of TMK (2) 3-4-008:048:0001, 0002 & 0003

Exhibit "B"

APPRAISAL

EXHIBIT "B"

EXHIBIT "C"

WARRANTY DEED

EXHIBIT "C"

EXHIBIT "D"

SURVEY

EXHIBIT "C"