

**RICHARD T. BISSEN, JR.**  
Mayor

**MARCY MARTIN**  
Acting Director

**MARIA E. ZIELINSKI**  
Deputy Director



**DEPARTMENT OF FINANCE**  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov](http://www.mauicounty.gov)

July 12, 2024

Honorable Richard T. Bissen, Jr.  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

*Richard T. Bissen, Jr.* 7-16-24  
Mayor Date

For Transmittal to:

Honorable Tasha Kama, Chair  
and Members of the Housing and Land Use Committee  
200 South High Street  
Wailuku, Hawaii 96793

Dear Committee Chair Kama:

**SUBJECT: RESOLUTION 24-115, AUTHORIZING AN AMENDMENT TO  
RESOLUTION 24-46, FD1, TO ADD LOTS TO THE GRANT  
OF LEASE OF COUNTY REAL PROPERTY TO COUNCIL  
FOR NATIVE HAWAIIAN ADVANCEMENT (HLU-31)**

This transmission is in receipt to your letter dated July 10, 2024, requesting responses to the following:

1. Who owns lots 27-33, 52, and 53 - the County or Na Hale O Maui?

**Response:** Lots 27 – 33, 52 and 53 are still owned by the County of Maui. The Donation of County Real Property Agreement dated December 19, 2022 was amended effective May 8, 2024 to defer conveyance until completion of the Maui Wildfires temporary housing project. (See Attachment)

Honorable Tasha Kama, Chair

July 12, 2024

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2. If Na Hale O Maui owns lots 27-33, 52, and 53:
  - a. Please advise when the County's Real Property Tax Assessment website will be updated to reflect the correct ownership

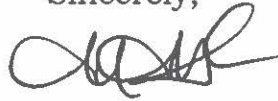
**Response:** N/A

- b. Please confirm whether Na Hale O Maui is requesting the extension of the lease agreement to May 31, 2027, with two one-year options to extend

**Response:** N/A

Should you have any questions, please feel free to contact me at extension 7476 or Deputy Director Maria Zielinski at extension 7212.

Sincerely,



MARCY MARTIN  
Acting Director of Finance

Attachment

**AMENDED AND RESTATED DONATION OF COUNTY REAL PROPERTY**  
**AGREEMENT**  
**(THE FAIRWAYS AT MAUI LANI)**

This Grant of County Real Property Agreement (“**Agreement**”) made effective May 8, 2024, 2024 (“**Effective Date**”), by and between **COUNTY OF MAUI**, a political subdivision of the State of Hawaii (hereinafter referred to as “**County**” and/or “**Grantor**”), and **HOUSING AND LAND ENTERPRISE OF MAUI, DBA NA HALE O MAUI**, a Community Land Trust, a Hawaii Non-Profit Corporation (hereinafter referred to as “**NHOM**” and/or “**Grantee**”).

**RECITALS**

WHEREAS, COUNTY is the owner of the fee simple interest in the parcels of real property described in the Title Reports, attached hereto as Exhibit “A” and incorporated herein, and shown on the map attached hereto as Exhibit “B” and incorporated herein, and identified as follows:

<b>Tax Map Key Number</b>	<b>Lot Number</b>	<b>Area (Square Feet)</b>
(2) 3-8-096:001	Lot 1	9,122
(2) 3-8-096:002	Lot 2	8,580
(2) 3-8-096:003	Lot 3	8,680
(2) 3-8-096:004	Lot 4	8,543
(2) 3-8-096:005	Lot 5	8,590
(2) 3-8-096:006	Lot 6	8,574
(2) 3-8-096:007	Lot 7	8,571
(2) 3-8-096:024	Lot 24	10,027
(2) 3-8-096:025	Lot 25	9,109
(2) 3-8-096:026	Lot 26	13,322
(2) 3-8-096:027	Lot 27	12,807
(2) 3-8-096:028	Lot 28	11,477
(2) 3-8-096:029	Lot 29	8,260
(2) 3-8-096:030	Lot 30	7,884

(2) 3-8-096:031	Lot 31	6,914
(2) 3-8-096:032	Lot 32	9,525
(2) 3-8-096:033	Lot 33	11,994
(2) 3-8-096:052	Lot 52 (Roadway Lot)	4,041
(2) 3-8-096:053	Lot 53 (Roadway Lot)	3,193

WHEREAS Parties entered into that certain Donation of County Real Property Agreement bearing an effective date of December 19, 2022 (“Effective Date”) concerning those certain parcels of real property;

WHEREAS, due the August 2023 Maui Wildfires, the County is collaborating with non-profit agencies to create temporary housing for survivors on County-owned parcels, including those located at the Fairways at Maui Lani (“Project”);

WHEREAS, in order to support housing for the Project, the Parties have agreed to certain revisions to the Agreement to reduce the number of parcels to those lots identified below as Lots 1-7, with the understanding that the remaining lots will be donated to NHOM upon the completion of the Project; and

WHEREAS, the parcels of real property subject to this Agreement are identified as follows:

<b>Tax Map Key Number</b>	<b>Lot Number</b>	<b>Area (Square Feet)</b>
(2) 3-8-096:001	Lot 1	9,122
(2) 3-8-096:002	Lot 2	8,580
(2) 3-8-096:003	Lot 3	8,680
(2) 3-8-096:004	Lot 4	8,543
(2) 3-8-096:005	Lot 5	8,590
(2) 3-8-096:006	Lot 6	8,574
(2) 3-8-096:007	Lot 7	8,571

NOW THEREFORE, the Parties wish to amend and restate the Agreement as follows:



## 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:

**“Acquisition Value”** is the Assessed Value as of the Effective Date.

**“Business Day”** means any day on which the Bureau of Conveyances of the State of Hawaii is open for the recording of documents.

**“Closing”** is defined in Section 4.1.

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

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

**“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 NHOM and County.

**“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 Old Republic Title & Escrow of Hawaii – Kahului Branch, 33 Lono Avenue, Suite 195, Kahului, Hawaii 96732: Attention: Darnell Ho’okano, Escrow Officer.

**“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.

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

**“Grantee’s Closing Documents”** is defined in Section 4.3.

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

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

**“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.

**“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.

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

**“Title Company”** means Old Republic National Title Insurance Company, or such other title company authorized to do business in the State of Hawaii chosen by County and acceptable to NHOM.

**“Title Report”** is defined in Section 3.3.

**“Title Policy”** is defined in Section 8.3.

2. GRANT OF PROPERTY.

2.1 Grant of Property. Subject to the terms and conditions of this Agreement, at the Closing, County agrees to grant to NHOM and NHOM agrees to accept from County the following described Property (collectively the “**Property**”):

(a) Real Property. The fee simple real estate identified in the table below:

<b>Tax Map Key Number</b>	<b>Lot Number</b>	<b>Area (Square Feet)</b>
(2) 3-8-096:001	Lot 1	9,122
(2) 3-8-096:002	Lot 2	8,580
(2) 3-8-096:003	Lot 3	8,680
(2) 3-8-096:004	Lot 4	8,543
(2) 3-8-096:005	Lot 5	8,590
(2) 3-8-096:006	Lot 6	8,574
(2) 3-8-096:007	Lot 7	8,571

and described as Lots 1 thru 7 in the Title Reports attached as **Exhibit “A”** and shown on **Exhibit “B”**, and subject to the Declaration of Covenants, Conditions and Restrictions described in **Exhibit “C”**, together with all of the improvements, fixtures, appurtenant easements, and other real property interests appurtenant to such fee simple estate;

(b) Personal Property. All development rights and permits for the Property, to the extent County has the right to assign the same;

2.2 Acquisition Value. County and NHOM agree that the Acquisition Value is the Assessed values of the Properties as of the Effective Date. The Acquisition Value is solely for the purpose of issuing Title Insurance. The parties agree that the Acquisition Value is allocated between the parcels comprising the Property as set forth on **Exhibit “D”**.

3. NHOM’S REVIEW OF THE PROPERTY.

3.1 Property Survey. File Plan No. 2448 designating the Property is attached as **Exhibit “B”**. NHOM may elect at its expense to have NHOM’s own survey prepared (the “**Survey**”).

3.2 Due Diligence. Prior to the Effective Date of this Agreement, NHOM 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”** are Preliminary Reports for the Property from the Title Company (collectively the **“Title Report”**).

3.4 Procedure for Grantee’s Title Objections. All matters referred to in this Agreement and the Exhibits hereto, the Title Reports (**Exhibit “A”**), the Survey (if any), and the Declaration of Covenants, Conditions and Restrictions (**Exhibit “C”**) shall be hereinafter referred to as the **“Permitted Exceptions”**. If at Closing Grantor is unable to convey title subject only to the Permitted Exceptions, Grantee 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 Grantee or a Permitted Exception, Grantee shall have the right to terminate this Agreement by giving written notice to Grantor and Escrow Agent within ten (10) business days after Grantee is provided with a copy of the New Encumbrance unless Grantor agrees within five (5) days after receipt of such notice to remove the New Encumbrance prior to Closing. If Grantee terminates this Agreement in accordance with this provision, the parties hereto shall be released from all further obligations and liabilities hereunder. If Grantor and Escrow Agent do not receive such notice prior to the expiration of said ten (10) day period, Grantee shall be deemed to have waived its objection to the New Encumbrance and Grantee’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”. Grantee agrees that as of the Closing Date: (a) Grantee will have had an opportunity to fully examine and inspect the Property, including the physical condition of the Property; (b) Grantee will have accepted the physical condition, value, financing status, use, leasing, operation, tax status, income and expenses of the Property.

#### 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 on a mutually agreeable date (the **“Closing Date”**) after approval of this transaction by the Maui County Council as described in Section 8, but no later than June 30, 2024 (the **“Outside Closing Deadline”**). If closing does not occur by the Outside Closing Deadline, either party may terminate this Agreement by written notice to the other whereupon the parties shall have no further obligations hereunder. The Outside Closing Deadline may be extended only by mutual agreement of the parties.

4.2 Grantor’s Closing Documents and Requirements. Not later than two (2) business days prior to Closing, County will deposit with the Escrow Agent, the following documents, in each case duly executed by County, and if applicable, acknowledged and in recordable form (**“County’s Closing Documents”**):



(a) A Declaration of Covenants in the form attached as **Exhibit "C"**, to be recorded prior to Closing.

(b) A Limited Warranty Deed for all parcels in the form customarily used in the State of Hawaii transferring to NHOM the Property to be recorded at Closing ("Deed").

(c) Exemption from Conveyance Tax Certificates (Form P-64B) for each parcel ("**Conveyance Tax Forms**").

(d) Certified copy of Resolution 22-84, approving the transaction contemplated by this Agreement.

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

(a) A Declaration of Covenants, Conditions and Restrictions in the form attached as **Exhibit "C"**, to be recorded prior to or at Closing.

(b) A Limited Warranty Deed for all parcels in the form customarily used in the State of Hawaii transferring to NHOM the Property to be recorded at Closing ("Deed").

(c) Exemption from Conveyance Tax Certificates (Form P-64B) for each parcel ("**Conveyance Tax Forms**").

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

(e) Certified resolutions of Grantee's directors (and shareholders, if required) approving the transaction contemplated by this Agreement.

#### 4.4 Expenses.

(a) Grantor's Expenses. County shall pay the fees of any counsel representing County in connection with this transaction.

(b) NHOM's Expenses. NHOM shall pay (a) the fees of any counsel representing County in connection with this transaction; (b) the premium for the issuance of the Title Policy (defined below) in the amount of the Acquisition Value; (c) the escrow fees charged by the Escrow Agent; (d) recording fees for the Deed and any other recordable documents to be delivered at Closing; (e) all Maui Lani Community Association transfer fees; and (f) all other costs and expenses incident to the Closing of this transaction and not expressly provided above.

#### 5. ADDITIONAL TERMS.

*This section intentionally left blank.*



6. REPRESENTATIONS AND WARRANTIES OF NHOM.

NHOM represents and warrants to County that:

6.1 Organization and Good Standing. NHOM is a Non-Profit Corporation duly organized, validly existing, and in good standing under the laws of the State of Hawaii and duly authorized to conduct business in the State of Hawaii.

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

7. REPRESENTATIONS AND WARRANTIES OF.

County represents and warrants to NHOM that:

7.1 Organization and Good Standing. County is political subdivision of the State of Hawaii

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

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

County's obligation and authority to grant and close this transaction is subject to the approval of the Maui County Council in accordance with the provisions and requirements of Chapter 3.44 and Chapter 3.48 of the Maui County Code.

NHOM's obligation to accept the Property and to take the other actions required to be taken by NHOM 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 NHOM, in whole or in part):

8.1 Accuracy of Representations. All of County'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 County's Performance. All of the covenants and obligations that County 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.

8.3 Title Policy. NHOM shall have received a commitment from the Title Company to issue a fee simple standard owner's policy (the "**Title Policy**") effective as of the Closing, in the amount of the Acquisition Value, insuring that NHOM is the owner of the fee simple interest in the Property, and that title to the Property is marketable and clear of Encumbrances other than the Permitted Exceptions.

## 9. CONDITIONS PRECEDENT TO NHOM'S OBLIGATION TO CLOSE.

County's obligation to donate the Property and to take the other actions required to be taken by County 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 County, in whole or in part):

9.1 Accuracy of Representations. All of NHOM'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.

9.2 NHOM's Performance. All of the covenants and obligations that NHOM 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. NHOM must have delivered each of the documents required to be delivered by NHOM pursuant to Section 4.3.

9.3 Council Approval. The Maui County Council must have approved all aspects of this transaction as described in Section 8, without additional conditions, terms or requirements.

## 10. GENERAL PROVISIONS.

10.1 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 NHOM and County 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 approval by the Maui County Council, pursuant to Maui County Code Chapter 3.16.

10.2 Notices. Any notice or demand to County or NHOM 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 County or NHOM 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 County:       County Of MAUI  
                      Department of Finance  
  
                      Kalana O Maui Building  
                      200 South High Street  
                      Wailuku, Maui 96793  
                      Attn: Director of Finance  
                      Tel: (808) 270-7722  
                      Fax: (808) 270-7878

To NHOM:       HOUSING & LAND ENTERPRISE OF MAUI  
                      DBA NA HALE O MAUI  
                      190 N. Church Street  
                      Wailuku, Maui 96793  
                      Attn: Cassandra Abdul, Executive Director  
                      Tel: (808) 244-6110  
                      Fax: (808) 244-6115

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.

10.3 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.

10.4 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.

10.5 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.

10.6 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.

10.7 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.

10.8 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.

10.9 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.

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

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

10.12 Brokers. County and NHOM each represent it has not engaged or contracted with any person entitled to any brokerage commission or finder's fee in connection with this transaction.

10.13 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.

10.14 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.

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

Exhibit "A"	Title Reports
Exhibit "B"	Map of the Property
Exhibit "C"	Declaration of Covenants, Conditions and Restriction
Exhibit "D"	Allocation of Acquisition Value

**Signatures begin on the following page.**



IN WITNESS WHEREOF, GRANTOR and GRANTEE have executed this DONATION OF COUNTY REAL PROPERTY AGREEMENT as of the date first set forth above.

**GRANTOR:**

**County OF MAUI**

By: \_\_\_\_\_

RICHARD T. BISSEN, JR.

Its: Mayor

By: \_\_\_\_\_

MARIA E. ZIELINSKI

Its: Acting Director of Finance

**APPROVAL RECOMMENDED:**

\_\_\_\_\_  
LORI TSUHAKE

Director of Housing and Human Concerns

**APPROVED AS TO FORM AND LEGALITY:**


\_\_\_\_\_  
KRISTINA C. TOSHIKIYO

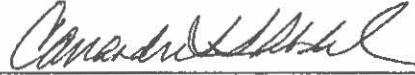
Deputy Corporation Counsel

County of Maui

**ACCEPTED BY GRANTEE:**

**HOUSING AND LAND ENTERPRISE OF  
MAUI, a Hawaii Non-Profit Corporation, dba Na  
Hale O Maui**

By:   
DAWN DEREGO  
Its: President

By:   
CASSANDRA J.L. ABDUL  
Its: Executive Director

STATE OF HAWAII

)  
) SS:  
)

COUNTY OF MAUI

)

On this 7 day of May, 2024, before me personally appeared Cassandra J.L. abdm, 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: \_\_\_\_\_ DARNELL K. HOOKANO  
Commission Expires 2/26/2026

My commission expires: \_\_\_\_\_

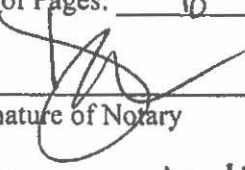
(Official Stamp or Seal)

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description: Amended and Restated  
Donation of County Real Property Agreement (the Fairways at Maui  
Lani)

Doc. Date: \_\_\_\_\_ or Undated at time of notarization

No. of Pages: 18 Jurisdiction: Second Circuit  
(in which notarial act is performed)

  
Signature of Notary

5/7/24  
Date of Notarization and  
Certification Statement

Darnell K Hookano  
Printed Name of Notary



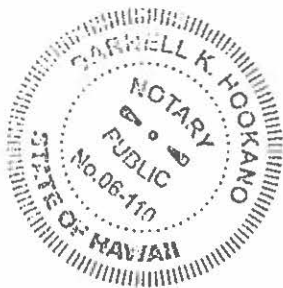
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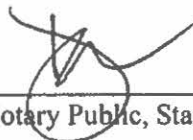
STATE OF HAWAII

COUNTY OF MAUI

)  
) SS:  
)

On this 7 day of May, 2024, before me personally appeared Dawn DeRigo, 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: \_\_\_\_\_ DARNELL K. HOOKANO  
Commission Expires 2/26/2026

My commission expires: \_\_\_\_\_

(Official Stamp or Seal)

**NOTARY CERTIFICATION STATEMENT**

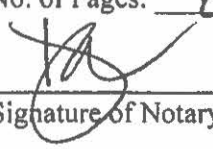
Document Identification or Description: Amended and Restated  
Donation of County Real Property Agreement (the Fairways at Maui  
Lani)

Doc. Date: \_\_\_\_\_ or Undated at time of notarization

No. of Pages: 8 Jurisdiction: Second Circuit  
(in which notarial act is performed)

Signature of Notary

Date of Notarization and  
Certification Statement

  
Darnell K. Hookano

Printed Name of Notary

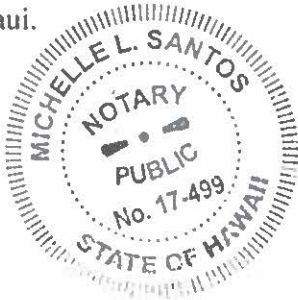


(Official Stamp or Seal)

STATE OF HAWAII  
COUNTY OF MAUI

)  
) SS:  
)

On this 8th day of May, 2024, before me personally appeared RICHARD T. BISSEN, JR., 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 RICHARD T. BISSEN, JR. acknowledged the said instrument to be the free act and deed of said County of Maui.



Michelle L. Santos

Notary Public, State of Hawaii

MICHELLE L. SANTOS

Printed Name: \_\_\_\_\_

My commission expires: 12-03-2025

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Amended and Restated  
Donation of County Real Property Agreement (the Fairways at Maui  
Lani)

Doc. Date: 05-08-2024 or ☐ Undated at time of notarization

No. of Pages: 47

Jurisdiction: Second Circuit  
(in which notarial act is performed)

Michelle L. Santos

Signature of Notary

05-08-2024

Date of Notarization and  
Certification Statement

MICHELLE L. SANTOS

Printed Name of Notary



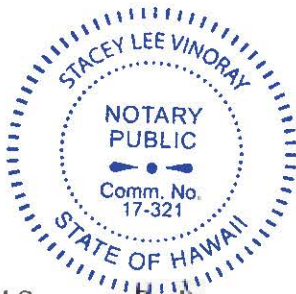
(Official Stamp or Seal)



STATE OF HAWAII  
COUNTY OF MAUI

)  
) SS:  
)

On this 7<sup>th</sup> day of May, 2024, before me before me personally appeared MARIA E. ZIELINSKI, 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.



(Official Stamp or Seal)

Stacey Lee Vinoray  
Notary Public, State of Hawaii  
Printed Name: Stacey Lee Vinoray  
My commission expires: 08/20/2025

#### NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Amended and Restated  
Donation of County Real Property Agreement (the Fairways at Maui  
Lani)

Doc. Date: \_\_\_\_\_ or ☒ Undated at time of notarization

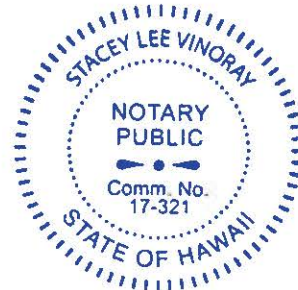
No. of Pages: 47

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)

Exhibit “A”

Title Reports



**OLD REPUBLIC**  
TITLE & ESCROW OF HAWAII

33 Lono Avenue, Suite 195  
Kahului, HI 96732  
(808) 871-2800 Fax: (808) 871-8828

## PRELIMINARY REPORT

E- UPDATE

COUNTY OF MAUI  
200 S. High Street  
Wailuku, HI 96793

Our Order Number 6829001739-DH

When Replying Please Contact:

Buyer:

HOUSING AND LAND ENTERPRISE OF MAUI DBA  
NA HALE O MAUI

Darnell Hookano  
Escrow Officer  
[dhookano@ortc.com](mailto:dhookano@ortc.com)  
(808) 871-2800

Property Address:

Puumakani St, Kahului, HI 96732

In response to the above referenced application for a policy of title insurance, OLD REPUBLIC TITLE & ESCROW OF HAWAII, as issuing Agent of Old Republic National Title Insurance Company, hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in Exhibit I attached. Copies of the Policy forms should be read. They are available from the office which issued this report.

**Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit I of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.**

**It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.**

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of February 5, 2024, at 8:00 AM

**OLD REPUBLIC TITLE & ESCROW OF HAWAII**  
For Exceptions Shown or Referred to, See Attached

OLD REPUBLIC TITLE & ESCROW OF HAWAII  
**ORDER NO. 6829001739-DH**  
E- UPDATE

The form of policy of title insurance contemplated by this report is:

CLTA Standard Coverage Policy -1990; AND ALTA Loan Policy - 2006. A specific request should be made if another form or additional coverage is desired.

The estate or interest in the land hereinafter described or referred or covered by this Report is:

Fee Simple

Title to said estate or interest at the date hereof is vested in:

COUNTY OF MAUI, a political subdivision of the State of Hawaii

The land referred to in this Report is situated in the State of Hawaii, and described as follows:

See Legal Description Exhibit.

At the date hereof exceptions to coverage in addition to the Exceptions and Exclusions in said policy form would be as follows:

1.

- A. Taxes and assessments, general and special, which are a lien, whether due, payable, delinquent or otherwise, for the fiscal year 2022 - 2023:

Tax Map Key : 2-3-8-096-001

- B. Taxes and assessments, general and special, which are a lien, whether due, payable, delinquent or otherwise, for the fiscal year 2022 - 2023:

Tax Map Key : 2-3-8-096-002

- C. Taxes and assessments, general and special, which are a lien, whether due, payable, delinquent or otherwise, for the fiscal year 2022 - 2023:

Tax Map Key : 2-3-8-096-003

- D. Taxes and assessments, general and special, which are a lien, whether due, payable, delinquent or otherwise, for the fiscal year 2022 - 2023:

Tax Map Key : 2-3-8-096-004

OLD REPUBLIC TITLE & ESCROW OF HAWAII  
**ORDER NO. 6829001739-DH**  
E- UPDATE

- E. Taxes and assessments, general and special, which are a lien, whether due, payable, delinquent or otherwise, for the fiscal year 2022 - 2023:

Tax Map Key : 2-3-8-096-005

- F. Taxes and assessments, general and special, which are a lien, whether due, payable, delinquent or otherwise, for the fiscal year 2022 - 2023:

Tax Map Key : 2-3-8-096-006

- G. Taxes and assessments, general and special, which are a lien, whether due, payable, delinquent or otherwise, for the fiscal year 2022 - 2023:

Tax Map Key : 2-3-8-096-007

2. Mineral and water rights of any nature in favor of the State of Hawaii.

3. Agreement for : ELEVATION AGREEMENT  
Executed By : A&B PROPERTIES, INC.,  
and Between : COUNTY OF MAUI, through its DEPARTMENT OF WATER SUPPLY, a  
political subdivision of the State of Hawaii

On the terms, covenants and conditions contained therein,

Dated : September 16, 1980  
Recorded : October 6, 1980 in the Bureau of Conveyances, State of Hawaii, in  
Book 15037, Page 310

4. CERTIFICATE  
Dated : June 02, 1983  
Recorded : June 02, 1983 in the Bureau of Conveyances, State of Hawaii, in  
Book 17086, Page 382  
By : A&B PROPERTIES, INC., a Hawaii corporation  
Re : Reclassification of approximately 680 acres from Agricultural District  
to Urban District



OLD REPUBLIC TITLE & ESCROW OF HAWAII  
**ORDER NO. 6829001739-DH**  
E- UPDATE

5. Agreement for : SUBDIVISION AGREEMENT (LARGE LOTS)  
Executed By : ALEXANDER & BALDWIN, INC.  
and Between : COUNTY OF MAUI, a body politic and corporate and a political  
subdivision of the State of Hawaii

On the terms, covenants and conditions contained therein,

Dated : February 14, 1989  
Recorded : April 6, 1989 in the Bureau of Conveyances, State of Hawaii, in Book  
23036, Page 373

6. Agreement for : AGREEMENT TO DEFER SUBDIVISION REQUIREMENTS  
Executed By : ALEXANDER & BALDWIN, INC., a Hawaii corporation  
and Between : DEPARTMENT OF WATER SUPPLY OF THE COUNTY OF MAUI

On the terms, covenants and conditions contained therein,

Dated : September 27, 1989  
Recorded : November 7, 1989 in the Bureau of Conveyances, State of Hawaii, in  
Book 23584, Page 9

7. Agreement for : SUBDIVISION AGREEMENT (LARGE LOTS)  
Executed By : ALEXANDER & BALDWIN, INC., a Hawaii corporation  
and Between : COUNTY OF MAUI, a body politic and corporate and a political  
subdivision of the State of Hawaii

On the terms, covenants and conditions contained therein,

Dated : August 29, 1989  
Recorded : November 20, 1989 in the Bureau of Conveyances, State of Hawaii,  
in Book 23899, Page 689

8. UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL USE  
Dated : November 28, 1989  
Recorded : December 7, 1989 in the Bureau of Conveyances, State of Hawaii,  
in Book 23963, Page 712  
By : MAUI LANI PARTNERS, a Hawaii general partnership

9. Terms and provisions as contained in an instrument,

Entitled : DECLARATION OF COVENANTS AND RESTRICTIONS  
Dated : January 30, 1990  
Recorded : January 31, 1990 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 90-014464

OLD REPUBLIC TITLE & ESCROW OF HAWAII  
**ORDER NO. 6829001739-DH**  
E- UPDATE

Said Declaration was amended by the following instruments:

DATED:	RECORDED:	DOCUMENT NO.:
-/-/1990	December 27, 1990	90-197551
May 18, 1994	May 20, 1994	94-085713

10. Agreement for : SUBDIVISION AGREEMENT (LARGE LOTS)  
Executed By : ALEXANDER & BALDWIN INC., a Hawaii corporation and MAUI LANI  
PARTNERS, a Hawaii general partnership  
and Between : COUNTY OF MAUI, Department of Public Works, a body politic and  
corporate and a political subdivision of the State of Hawaii

On the terms, covenants and conditions contained therein,

Dated : March 22, 1991  
Recorded : in the Bureau of Conveyances, State of Hawaii, as Document No. 91-  
051286

11. Agreement for : SUBDIVISION AGREEMENT (LARGE LOTS)  
Executed By : MAUI LANI PARTNERS, A Hawaii general partnership  
and Between : COUNTY OF MAUI

On the terms, covenants and conditions contained therein,

Dated : June 19, 1991  
Recorded : June 26, 1991 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 91-085078

12. Agreement for : SUBDIVISION AGREEMENT (LARGE LOTS)  
Executed By : MAUI LANI PARTNERS, a Hawaii general partnership  
and Between : COUNTY OF MAUI

On the terms, covenants and conditions contained therein,

Dated : June 19, 1991  
Recorded : June 26, 1991 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 91-085079

13. ACKNOWLEDGMENT  
Dated : May 29, 1991  
Recorded : June 26, 1991 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 91-085080  
By : MAUI LANI PARTNERS  
Re : Sewage system capacity

OLD REPUBLIC TITLE & ESCROW OF HAWAII  
**ORDER NO. 6829001739-DH**  
E- UPDATE

14. Encroachments, namely, a roof iron fence, four (4) chain-link fences, two (2) CMU walls, and two (2) wire fences, along the Northern boundary of Lot 11-B, as shown on survey map prepared by Reed M. Ariyoshi, Registered Professional Land Surveyor, with Warren S. Unemori Engineering, Inc., dated December 20, 1995, as contained in that certain Deed, recorded May 5, 1997 in the Bureau of Conveyances, State of Hawaii, as Document No. **97-058230**.

Note: Unable to determine if these encroachments affect any of the Lots described in the attached legal description.

15. **AGREEMENT**  
Dated : July 17, 1995  
Recorded : July 20, 1995 in the Bureau of Conveyances, State of Hawaii, as Document No. **95-094052**  
  
By and  
Between : COUNTY OF MAUI, MAUI LANI PARTNERS, a Hawaii general partnership and HRT, LTD., a Hawaii corporation  
Re : Drainage and erosion control plan and traffic improvements

16. Agreement for : HOLD-HARMLESS AGREEMENT  
Executed By : MAUI LANI PARTNERS (MLP) and HRT, LTD., (HRT)  
and Between : COUNTY OF MAUI

On the terms, covenants and conditions contained therein,

Dated : July 11, 1995  
Recorded : July 20, 1995 in the Bureau of Conveyances, State of Hawaii, as Document No. **95-094053**

Re: Wastewater treatment capacity

17. Agreement for : SUBDIVISION AGREEMENT (LARGE LOTS)  
Executed By : MAUI LANI PARTNERS (MLP) and HRT, LTD. (HRT)  
and Between : COUNTY OF MAUI

On the terms, covenants and conditions contained therein,

Dated : July 11, 1995  
Recorded : July 20, 1995 in the Bureau of Conveyances, State of Hawaii, as Document No. **95-094143**

18. Agreement for : DEFERRAL OF SUBDIVISION REQUIREMENTS AGREEMENT  
On the terms, covenants and conditions contained therein,

Dated : July 3, 1995  
Recorded : July 27, 1995 in the Bureau of Conveyances, State of Hawaii, as Document No. **95-097157**



OLD REPUBLIC TITLE & ESCROW OF HAWAII  
**ORDER NO. 6829001739-DH**  
E- UPDATE

19. Terms and provisions as contained in an instrument,

Entitled : DEED  
Dated : September 6, 1995  
Recorded : September 8, 1995 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 95-116076

The foregoing includes, but is not limited to, matters relating to agricultural activities, including sugar cane burning on nearby lands, and proposes golf course on adjacent property.

20. Agreement for : RECIPROCAL EASEMENT  
Executed By : HRT, LTD., a Hawaii corporation  
and Between : MAUI LANI PARTNERS, a Hawaii general partnership

On the terms, covenants and conditions contained therein,

Dated : September 6, 1995  
Recorded : September 8, 1995 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 95-116080

DECLARATION TO PARTIALLY RELEASE RECIPROCAL EASEMENT AGREEMENT; JOINDER

Dated : June 15, 2004  
Recorded : June 15, 2004 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 2004-119615

By and  
Between : MAUI LANI PARTNERS, a Hawaii general partnership  
Re : Upon the conveyance of a Subdivided Residential Lot to a  
residential lot buyer for his or her use, the Reciprocal Easement  
Agreement shall be released from and no longer be applicable to  
such conveyed Subdivided Residential Lot

21. Agreement for : HOLD-HARMLESS AGREEMENT  
On the terms, covenants and conditions contained therein,

Dated : October 4, 1996  
Recorded : October 18, 1996 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 96-149386

OLD REPUBLIC TITLE & ESCROW OF HAWAII  
**ORDER NO. 6829001739-DH**  
E- UPDATE

22. Terms and provisions as contained in an instrument,

Entitled : MAUI LANI DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS  
Dated : January 22, 1997  
Recorded : January 23, 1997 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 97-010578

The foregoing replaces and restates in its entirety that certain MAUI LANI DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS dated February 13, 1996, recorded  
February 15, 1996 in the Bureau of Conveyances, State of Hawaii, as Document No. 96-  
020854.

Said Declaration was amended by the following instruments:

DATED:	RECORDED:	DOCUMENT NO.:
September 17, 1997	September 24, 1997	97-128719
August 3, 2001	August 22, 2001	2001-131425
October 18, 2001	October 30, 2001	2001-171089

Liens and charges for upkeep and maintenance as provided in the above mentioned  
Covenants, Conditions and Restrictions, if any, where no notice thereof appears on record.

23. HOLD-HARMLESS AGREEMENT

Dated : November 10, 1998  
Recorded : December 1, 1998 in the Bureau of Conveyances, State of Hawaii,  
as Document No. 98-179083

By and  
Between : COUNTY OF MAUI and MAUI LANI HOMES, a Hawaii general  
partnership  
Re : Adequate wastewater treatment



24. HOLD-HARMLESS AGREEMENT

Dated : November 8, 1999  
Recorded : February 2, 2000 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 2000-014015  
By and  
Between : COUNTY OF MAUI and MAUI LANI HOMES, a Hawaii general  
partnership  
Re : Adequate wastewater treatment

25. EASEMENT "F"

For: Drainage purposes affecting lot 1  
As shown on File Plan No. 2267

26. Terms and provisions as contained in an instrument,

Entitled : LIMITED WARRANTY DEED AND RESERVATION OF RIGHTS AND  
EASEMENTS  
Dated : June 15, 2004  
Recorded : June 15, 2004 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 2004-119618

The foregoing includes, but is not limited to, matters relating to agricultural activities.

27. Easement "L-1"

For: Landscaping purposes affecting Lot 1  
As shown on File Plan No. 2448

28. Any unrecorded and subsisting leases.

29. Rights and claims of parties in possession.

30. Any claim of lien for services, labor or material arising from an improvement or work under construction or completed at the date hereof.

31. This report does not offer or include any coverage against matters relating to the exercise of Native Hawaiian customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural or religious purposes, and access, water gathering rights, as reserved, existing or established under the Constitution, law and usage of the State of Hawaii, except to the extent that a notice of same affecting the land has been recorded in the public records at date of policy and is not excepted in Schedule B, and the Company will not pay any loss or damage, costs, attorney's fees or expenses which arise by reason of such matters.

To obtain information on such matters, please contact: your legal counsel on Native Hawaiian rights.

32. The requirement that this Company be provided with a suitable Owner's Declaration (form ORT 174). The Company reserves the right to make additional exceptions and/or requirements upon review of the Owner's Declaration.

33. Prior to the issuance of any policy of title insurance, the Company will require the following evidence, satisfactory to the Company, with respect to HOUSING AND LAND ENTERPRISE OF MAUI:

- (a) Documentation as to the due formation and continued existence under the laws of the State of its incorporation or organization.
- (b) Copies of its by-laws, operating agreement, or partnership agreement, as applicable, and any amendments thereto, together with a current list of all members or partners, as applicable.
- (c) Documents from the board of directors or members authorizing this transaction and identifying the officers or individuals authorized to execute documents required for this transaction on behalf of the entity.
- (d) The same documentation for each entity member or partner of HOUSING AND LAND ENTERPRISE OF MAUI.

The Company reserves the right to make additional exceptions and/or requirements upon examination of the foregoing.

----- **Informational Notes** -----

- A. There is hereby omitted from any covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions, any covenants or restrictions, if any, based upon race, color, religion, sex, including gender identity or expression, sexual orientation, handicap, disability, age, marital status, familial status, national origin, ancestry, source of income, etc., as set forth in applicable state or federal law, unless and only to the extent that said covenant or restriction is permitted by applicable law. Lawful restrictions under state or federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

## **LEGAL DESCRIPTION EXHIBIT**

The land referred to in this Report is situated in the State of Hawaii, and described as follows:

All that certain parcel of land situate at Wailuku, Island and County of Maui, State of Hawaii, described as follows:

Lots 1 thru 7 as delineated on the map entitled "THE FAIRWAYS AT MAUI LANI", which said map was filed in the Bureau of Conveyances of the State of Hawaii as File Plan No. 2448, described in Schedule 1 attached hereto.

Together with a grant of drainage and flowage easements over Lot 11-E-3-A-1 of the Maui Lani (Large-Lot) Subdivision, LUCA File No. 3.2231, TMK No. (2) 3-8-007:134 in favor of Lots 1 to 55, inclusive, of the Fairways at Maui Lani Subdivision, as shown on File Plan No. 2448, as set forth in Grant of Drainage and Flowage Easements dated March 13, 2019 recorded April 03, 2019 in the Bureau of Conveyances, State of Hawaii as Document No. [A-70320722](#).

Together with a grant of drainage and flowage easements over Lot 11-E-3-A-1 of the Maui Lani (Large-Lot) Subdivision, LUCA File No. 3.2231, TMK No. (2) 3-8-007:134 in favor of Lots 1 to 55, inclusive, of the Fairways at Maui Lani Subdivision, as shown on File Plan No. 2448, as set forth in Grant of Drainage and Flowage Easements dated March 13, 2019 recorded April 03, 2019 in the Bureau of Conveyances, State of Hawaii as Document No. [A-70320723](#).

Being a portion of the property described in the following:

### **LIMITED WARRANTY DEED**

Recorded	:	November 29, 2011 in the Bureau of Conveyances, State of Hawaii, as Document No. <a href="#">2011-200595</a>
Grantor	:	VP&PK (ML), LLC, a Hawaii limited liability company
Grantee	:	COUNTY OF MAUI, a political subdivision of the State of Hawaii

SCHEDULE "1"

LOT NUMBER	AREA
1	9,122 square feet
2	8,580 square feet
3	8,680 square feet
4	8,543 square feet
5	8,590 square feet
6	8,574 square feet
7	8,571 square feet



Exhibit I

**CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990 (11/09/18)**

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses which arise by reason of:

1. (a) Any law, ordinance, or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the land;
  - (ii) the character, dimensions, or location of any improvement now or hereafter erected on the land;
  - (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or
  - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing-business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**EXCEPTIONS FROM COVERAGE**

**SCHEDULE B - PART I**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material unless such lien is shown by the public records at Date of Policy.

Exhibit I

**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY OF TITLE INSURANCE (06/17/06)**

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

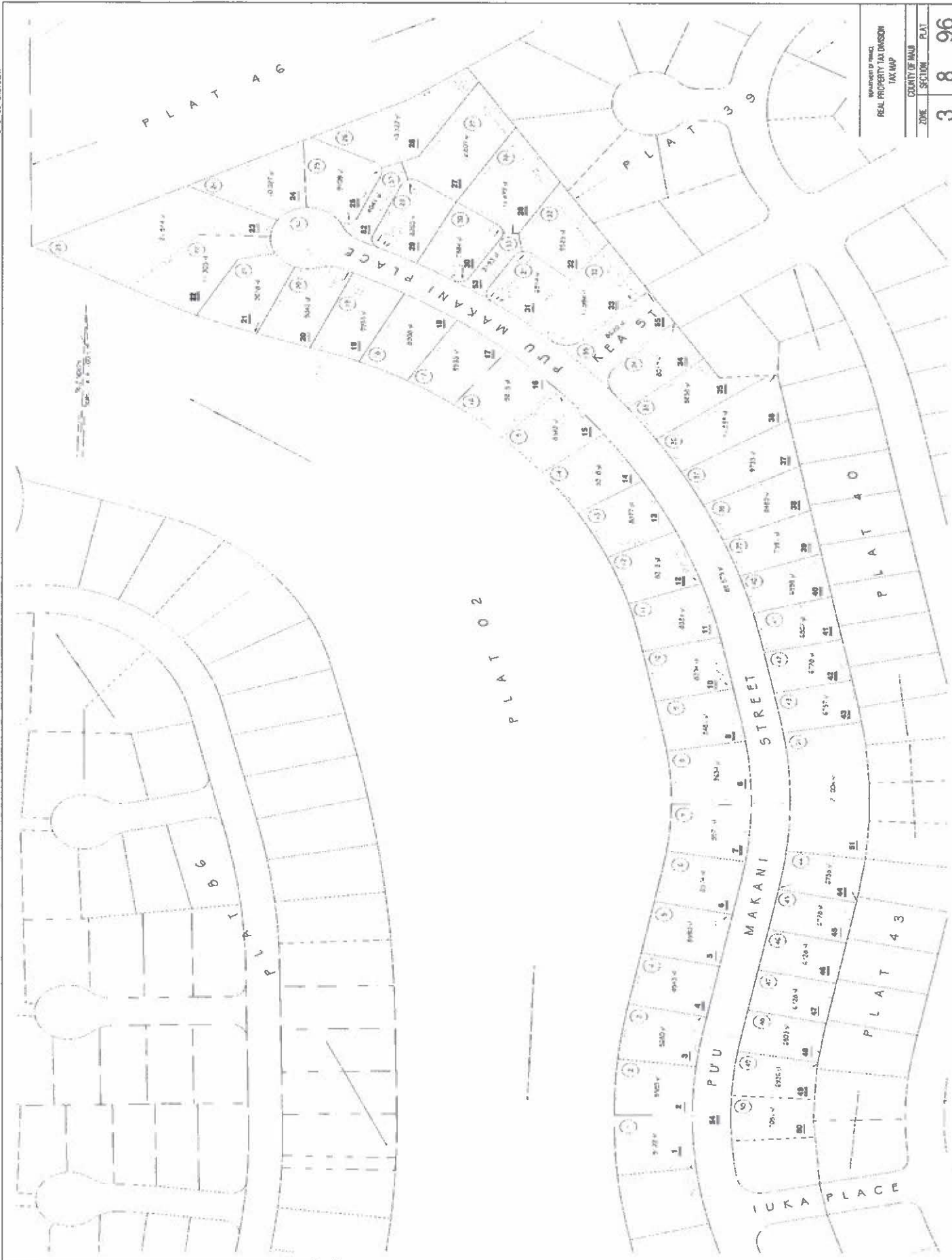
The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

**SCHEDULE B - PART I**

Except as provided in Schedule B - Part II, this policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material unless such lien is shown by the Public Records at Date of Policy.



REPRESENTED BY MAP  
REAL PROPERTY TAX DIVISION  
TAX MAP

COUNTY OF MAUI			PLAT	
ZONE	SECTION			
3	8		8	96

FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE

P.P. 2446 THE FAIRWAYS AT MAUI LANE WAILUKU, MAUI, HAWAII (formerly par. 3-8-97-136)

PRINTED

Exhibit "B"

Map of the Property  
File Plan 2448







Exhibit "C"

Declaration of Covenants, Conditions and Reservations

(Maui Lani Fairways Lots Granted to Housing & Land Enterprise, dba Na Hale O Maui

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL ☒:

COUNTY OF MAUI

DEPARTMENT OF FINANCE

200 S. HIGH STREET

WAILUKU, HAWAII 96793

TYPE OF DOCUMENT:

(TOTAL PAGES: \_\_\_\_\_)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (MAUI LANI FAIRWAY LOTS  
GRANTED TO HOUSING & LAND ENTERPRISE, DBA NA HALE O MAUI)

PARTIES TO DOCUMENT:

DECLARANT: COUNTY OF MAUI

TAX MAP KEY AND LOT NUMBERS FOR PROPERTY: (2) 3-8-096:001 THROUGH 007

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**(Maui Lani Fairway Lots granted to Housing & Land Enterprise,**  
**dba Na Hale O Maui)**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this  
“**Declaration**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (the “**Effective Date**”)  
by the County of Maui, whose address is 200 S. High Street, Wailuku, Hawaii 96793  
(hereinafter referred to as “**Declarant**”).

### RECITALS:

A. Declarant is the owner of that certain parcel of land situate, lying and being at Kahului, Maui, Hawaii, designated on the tax maps of the Second Taxation Division of the State of Hawaii as (2) 3-8-096:001 through 007, inclusive (the "Property"), and more particularly described in Exhibit A attached hereto.

B. Declarant intends to convey the designated lots to Housing & Land Enterprise of Maui, dba Na Hale O Maui ("NHOM"), a Hawaii nonprofit corporation, whose purpose is to secure and preserve a permanent supply of affordable housing alternatives for low and moderate income households in Maui County (80% to 140% Area Medium Income).

C. In connection with the conveyance of the Property to NHOM concurrently herewith, Declarant wishes to subject the Property to the provisions of this Declaration restricting the use of the Property as set forth below.

D. The term Property refers both to the Property, inclusive of all lots, as well as each individual lot.

### ARTICLE 1: DECLARATION AND PERMITTED USES

1.1 Declaration. For the purposes set forth in this Declaration, Declarant declares that the Property is and shall be subject to the covenants, conditions and restrictions set forth in this Declaration, until this Declaration is terminated or withdrawn by Declarant, or Declarant's successors or assigns. All covenants, conditions and restrictions set forth in this Declaration are made for the benefit of the Property, Declarant and the residents of the County of Maui; and shall operate as covenants running with and touching the land described in Exhibit A attached hereto, and shall apply to and bind the respective owners and successors in interest of any of the owners from time to time of the Property, and all lessees, sublessees, licensees or vendees of all or any portion of the Property, and shall be enforceable as such in accordance with the terms and provisions of this Declaration.

1.2 Permitted Uses. NHOM, its successors and assigns, shall hold the title to the Property in perpetuity, and shall develop and offer the improvements on the lots for sale as residential homes for low and moderate income households in Maui County (80% to 140% Area Medium Income), consistent with NHOM's guidelines.

1.3 Change in Use. Any change, expansion or modification to the permitted uses shall be subject to (i) the prior written approval of Declarant, which approval may be withheld in Declarant's sole discretion, and (ii) the consent of the Maui County Council.

1.4 Abandonment; Condemnation. In the event that the Property is abandoned, then in addition to any other remedy available to Declarant, Declarant may undertake to acquire the Property by condemnation. In such action, the parties agree that the value of the Property shall be \$1.00 and the value of the improvements thereon constructed by the owner of the Property after the date of this Declaration shall be the tax assessed value thereof determined by the

County of Maui for the fiscal year in which the condemnation proceedings are initiated. For purposes of this Agreement, the Property will be deemed to be "abandoned" in the event the Property is not utilized for a permitted use for a period of twelve (12) consecutive months, excluding periods of non-use due to force majeure and renovations.

## ARTICLE 2: DECLARANT REMEDIES

2.1 Remedies. Declarant and only Declarant shall have the right, power, and authority to enforce the covenants under this Declaration. Declarant's sole remedy under this Declaration shall be the enforcement of the foregoing covenants at law or in equity, including, without limitation, specifically enforcing the performance thereof. Declarant shall have no obligation to enforce any of the provisions of this Declaration. The failure to enforce any provision hereof shall not constitute a waiver of any right to enforce such provision or any other provision hereof.

2.2 Certain Protections. No violation or breach of or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair (a) the conveyance of the Property by Declarant to NHOM; or (b) any lien of any mortgage taken in good faith and for value, or (c) the title or interest acquired in the Property by any purchaser upon the foreclosure of any mortgage or other lien on the Property. Any such purchaser on foreclosure shall, however, take subject to all provisions of this Declaration.

## ARTICLE 3: MISCELLANEOUS

3.1 No Third Party Beneficiaries. This Declaration is not intended, and shall not be deemed or construed, to confer any rights, power or privileges on any person or entity other than Declarant.

3.2 Governing Law; Venue. The interpretation, construction and enforcement of this Declaration, and all matters relating hereto, shall be governed by the laws of the State of Hawaii. Any judicial proceeding brought by any party on any dispute arising out of this Declaration or any matter related thereto shall be brought in the Second Circuit Court of the State of Hawaii.

3.3 Notices. Any notices, requests, demands, consents and other communications provided for or contemplated under this Declaration may be given sufficiently for all purposes in writing and: (a) mailed as registered or certified mail, addressed to such party at its post office address specified below or the last such address designated by such party in writing to the other; or (b) delivered personally.

Declarant:

The County of Maui  
200 S. High Street  
Wailuku, Hawaii 96793  
Attention: Department of Finance

Na Hale O Maui:

190 North Church Street  
Wailuku, Hawaii 96793  
Attention: Cassandra Abdul, Executive Director

3.4 Severability. If any term, provision, covenant or condition of this Declaration should be held by any court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Declaration shall remain in full force and effect.

3.5 Amendment; Termination. Except as otherwise specifically provided herein, the terms, covenants, conditions and restrictions set forth in this Declaration may only be amended or terminated, in whole or in part, upon the written approval thereof by the Declarant and NHOM and the recordation of a written instrument in the Bureau of Conveyances of the State of Hawaii or in the Land Court of the State of Hawaii, if applicable, setting forth such amendment or termination signed by the Declarant with the joinder of the owner of the Property.

*[The Remainder of This Page Intentionally Left Blank;  
Signature Page Follows]*



IN WITNESS WHEREOF, the undersigned has caused this Declaration to be duly executed and delivered as of the Effective Date.

COUNTY OF MAUI

By: \_\_\_\_\_  
RICHARD T. BISSEN, JR.  
Its Mayor

REVIEWED AND APPROVED:

\_\_\_\_\_  
LORI A. TSUHAKO  
Director of the Department  
of Housing and Human Concerns

ACCEPTED:

\_\_\_\_\_  
MARIA E. ZIELINSKI  
Acting Director of Finance

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
KRISTINA C. TOSHIKIYO  
Deputy Corporation Counsel  
LF2022-0321

STATE OF HAWAII )  
 ) SS:  
COUNTY OF MAUI )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me personally appeared RICHARD T. BISSEN, JR., 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 RICHARD T. BISSEN, JR. acknowledged the said instrument to be the free act and deed of said County of Maui.

\_\_\_\_\_  
Name:

Notary Public, State of Hawaii

My commission expires:

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Declaration of Covenants,  
Conditions and Restrictions (Maui Lani Fairway Lots granted to Housing  
& Land Enterprise dba Na Hale O Maui)

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)

**EXHIBIT A**

**Property Description**

All of that certain parcels of land situate at Wailuku, Island and County of Maui, State of Hawaii, being LOTS 8 to 23, inclusive of "THE FAIRWAYS AT MAUI LANI", as shown on File Plan No. 2448, filed in the Bureau of Conveyances of the State of Hawaii, described as:

LOT NUMBER	AREA (SQ FT)	TAX MAP KEY
1	9,122	(2) 3-8-096-001
2	8,580	(2) 3-8-096-002
3	8,680	(2) 3-8-096-003
4	8,543	(2) 3-8-096-004
5	8,590	(2) 3-8-096-005
6	8,574	(2) 3-8-096-006
7	8,571	(2) 3-8-096-007

Exhibit “D”

Allocation of Acquisition Value

**THE FAIRWAYS AT MAUI LANI  
ALLOCATION OF ACQUISITION VALUE  
NA HALE O MAUI**

<b>LOT #</b>	<b>Tax Map Key</b>	<b>Acres</b>	<b>Area (SF)</b>	<b>Assessed 2024</b>
1	(2) 3-8-096-001-0000	0.2094	9,122	\$528,100.00
2	(2) 3-8-096-002-0000	0.1970	8,580	\$522,500.00
3	(2) 3-8-096-003-0000	0.1993	8,680	\$523,600.00
4	(2) 3-8-096-004-0000	0.1961	8,543	\$522,200.00
5	(2) 3-8-096-005-0000	0.1972	8,590	\$522,700.00
6	(2) 3-8-096-006-0000	0.1968	8,574	\$522,500.00
7	(2) 3-8-096-007-0000	0.1968	8,571	\$522,500.00
<b>TOTAL</b>		<b>1.3926</b>	<b>60,660</b>	<b>\$3,664,100.00</b>



## HLU Committee

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**From:** finance <finance@co.maui.hi.us>  
**Sent:** Wednesday, July 17, 2024 10:45 AM  
**To:** HLU Committee  
**Cc:** Marcy Martin; Michelle Santos; Stacey Vinoray  
**Subject:** Response to HLU-31  
**Attachments:** MT#10678 Response to 031afn01(2).pdf

You don't often get email from finance@co.maui.hi.us. [Learn why this is important](#)

Aloha HLU Committee:

Please find attached the corrected transmittal to include all pages of the attachment to the department's response letter dated, 07/12/2024, from Acting Finance Director, Marcy Martin.  
Should you have any questions, please contact me at extension 7476.

Stacey Vinoray  
Private Secretary  
County of Maui, Department of Finance  
200 S. High St, Wailuku, HI 96793  
(808) 270-7476