

MERCHANT HOROVITZ & TILLEY

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Waikapu Development Venture LLC

LAND USE COMMISSION
STATE OF HAWAII

2018 OCT 12 A 8:49

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of:

**EMMANUEL LUTHERAN CHURCH OF
MAUI**

To Amend the Land Use District Boundary of
Certain Lands Situated at Wailuku, Island of
Maui, State of Hawai'i, Consisting of 25.263
Acres from the Agriculture District to the
Urban District, Tax Map Key No. 3-5-002:011.

DOCKET NO. A07-773

1. MOTION TO APPROVE SALE OF A
PORTION OF THE PETITION AREA;
2. MOTION TO ALLOW FOR
SUBDIVISION OF PETITION AREA;
AND
3. MOTION TO BIFURCATE

**AFFIDAVIT OF WILLIAM FRAMPTON
EXHIBITS 1 TO 3; CERTIFICATE OF
SERVICE**

HEARING

DATE: November 15, 2018

TIME: TBD

LOCATION: Maui Arts & Cultural Center
Meeting Room, Maui, Hawaii

- 1. MOTION TO APPROVE SALE OF A PORTION OF THE PETITION AREA;**
- 2. MOTION TO ALLOW FOR SUBDIVISION OF PETITION AREA; AND**
- 3. MOTION TO BIFURCATE**

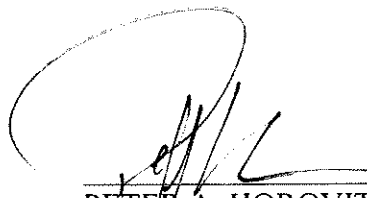
I. RELIEF SOUGHT

Intervenor WAIKAPU DEVELOPMENT VENTURE, LLC ("**Intervenor**"), by and through its legal counsel, MERCHANT HOROVITZ, LLC, hereby respectfully requests that the STATE OF HAWAII LAND USE COMMISSION issue an order modifying the Commission's *Findings of Fact, Conclusions of Law, and Decision and Order* filed March 7, 2008, to (1) allow for the sale of a portion of the Petition Area, and (2) allow for the subdivision of the Petition Area. Upon such subdivision and sale, Intervenor also requests that the pending docket be bifurcated, and the portion of the Petition Area sold to Intervenor be released from the pending docket. By separate motion Intervenor will request that the Commission approve the use of the portion of the Petition Area acquired for a workforce housing project approved recently approved with reasonable and appropriate conditions by the County of Maui.


II. GROUND FOR MOTION

This Motion is made pursuant to Chapter 205, Hawaii Revised Statutes and Title 15, Subtitle 3, Chapter 15 of the Hawaii Administrative Rules ("**HAR**"), §§ 15-15-70 and 15-15-94, the other authorities and arguments stated in the attached Memorandum in Support of Motion, and the pleadings and files herein.

Petitioner requests a hearing on this Motion under HAR § 15-15-70(c).



PETER A. HOROVITZ
Attorneys for Intervenor
**WAIKAPU DEVELOPMENT VENTURE,
LLC**

Dated: Wailuku, Hawai'i, October , 2018.

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of:

EMMANUEL LUTHERAN CHURCH OF
MAUI

To Amend the Land Use District Boundary of
Certain Lands Situated at Wailuku, Island of
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MEMORANDUM IN SUPPORT OF MOTION

MEMORANDUM IN SUPPORT OF MOTION

I. BACKGROUND AND STANDARD

The Land Use Commission of the State of Hawaii ("**Commission**") reclassified approximately 25.263-acres of land in Wailuku ("**Petition Area**") into the State Land Use Urban District by Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A07-773, filed on March 7, 2008 ("**D&O**"). The petitioner in that matter was EMMANUEL LUTHERAN CHURCH OF MAUI, a Hawaii nonprofit corporation ("**Petitioner**"), which is the current fee simple owner of the Petition Area.

The purpose of the D&O was to allow EMMANUEL LUTHERAN CHURCH OF MAUI ("Emanuel Church") to develop a new church and school campus (the "Project") on Petition Area owned by Emmanuel Church consisting of 25.263 acres, more or less, and bearing Tax Map Key No. (2) 3-5-002:011 (the "Petition Area").

Among other things, the D&O required:

1. That construction of the proposed Project be completed within ten (10)

years of entry of the D&O. See D&O at pg. 42, ¶ 2.

2. That Emmanuel Church secure prior approval of the Commission before selling any portion of the Petition Area. See D&O at pg. 48, ¶ 20.
3. That the Commission retained the authority to fully or partially release any of the conditions of the D&O as to any or all of the Petition Area. See D&O at pg. 48, ¶ 21.

At hearing on May 9, 2018, the Commission heard Intervenor's Motion to be Copetitioner or in the Alternative to Become a Party, or in the Alternative to Intervene filed hererin on April 12, 2018 (the "Intervention Motion"). As set forth therein, the Intervention Motion was based upon Intervenor's existing contract to purchase a portion of the Petition Area from EMMANUAL LUTHERAN CHURCH OF MAUI ("Petitioner") for a Workforce Housing Project under HRS 201H (the "201H Project"). Given the conditions set forth in the D&O, the sale of a portion of the Petition Area was subject to Commission approval.

Also on May 9, 2018, the Commission heard Petitioner's Motion for Extension of Time to Complete Project filed herein on April 9, 2018 ("Petitioner's Motion for Extension"). As detailed therein and at hearing, Petitioner reasonably believed that its intended school/church project could be completed on the portion of the Petition Area to be retained by it. It also offered testimony to the effect that the infusion of capital from the sale of a portion of the Petition Area would provide necessary capital towards the fundraising necessary to implement its project.

The Commission granted the Intervention Motion, granting intervenor status. The Commission continued Petitioner's Motion for Extension for a period of six (6) months, with the Commission's chair having discretion to extend that period for an additional six (6) months. The extension was for the purpose of (1) allowing Intervenor to process its 201H application with the

Maui County Council, and (2) To allow the parties to provide further testimony relevant to the intended time-lines of their respective projects.

Intervenor filed its Application for Affordable Workforce Housing Subdivision (the “201H Application”) and the 201H Application was scheduled for hearing before the Land Use Committee of the Maui County Council on August 1, 2018, August 22, 2018, and August 28, 2018.¹ The 201H Application passed out of committee with unanimous support. The full Maui County Council took up the 201H Application and the Land Use Committee’s unanimous recommendation on September 7, 2018 and the matter passed unanimously. The Maui County Council adopted Resolution No. 18-150 (the “Resolution”) approving the 201H Application with modifications, one of which is that Intervenor obtain Commission approval for the use of a portion of the Petition Area for the 201H project within six (6) months of the Resolution, by March 7, 2019.²

HAR § 15-15-94(b) provides that “[f]or good cause shown, the [C]ommission may act to modify or delete any of the conditions imposed or modify the [C]ommission's order.” “The term ‘good cause’ has been defined to mean ‘a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.’” *Miller v. Tanaka*, 80 Hawai‘i 358, 363, 910 P.2d 129, 134 (Ct. App. 1995) (citation omitted). “Good cause’ also ‘depends upon [the] circumstances of [the] individual case, and [a] finding of its existence lies largely in [the]

¹ The August 22, 2018 Committee hearing was scheduled the day Hurricane Lane passed through the State. All State and County offices were closed, but the Committee held an abbreviated hearing for the 201H Application nonetheless although not all members were in attendance. The Committee decided to postpone its vote until the next week to allow the opportunity for all members to be present. On August 28, 2018 the 201H Application passed out of Committee unanimously.

² Given the timing requirements of requests relating to 201H applications, Intervenor’s motion to approve the use of a portion of the Petition Area for a 201H project will be filed closer in time to the hearing date. The present motion therefore only addresses permission to subdivide and sell a portion of the Petition Area, and to bifurcate the docket, releasing the portion sold to Intervenor from the present docket.

discretion of [the] officer or court to which [the] decision is committed. "' *Id.* at 363-64, 910 P.2d at 134-35 (citation omitted). "As a general rule, 'good cause' means a substantial reason; one that affords a legal excuse. " *State v. Estencion*, 63 Haw. 264, 267, 625 P.2d 1040, 1042 (1981) (citations omitted). There is good cause to amend D&O Condition No. 1 to allow for the development of the Updated ELC Project and the Waikapu Affordable Workforce Housing Development.

II. MOTION TO APPROVE SALE OF A PORTION OF THE PETITION AREA

The D&O require that Petitioner obtain Commission approval to sell any portion of the Petition Area. See D&O at pg. 48 ¶20. In Petitioner's Motion to Extend and subsequent testimony thereon, Petitioner demonstrated a strong need for the capital infusion to clear existing debt from the Property. While Emmanuel Church has undertaken significant fundraising activities, the financial downturn in the years after the D&O, as well as its inability to as yet sell its existing Kahului campus, have left a shortfall. Selling unnecessary portions of the Petition Area is required in order to address the financial realities of their project.

Additionally, Petitioner has demonstrated that its intended church and school campus will fit within the portion of the Petition Area it intends to retain. Accordingly, the surplus land under contract to Intervenor is truly that, surplus. As Petitioner has the ability to sell its surplus land in furtherance of its development, it should be allowed to do so.

Intervenor is under contract to purchase a subdivided portion of the Petition Area upon (1) subdivision and (2) approval of the Commission. A true and correct copy of the relevant purchase contract is attached hereto as Exhibit 1 (the "Purchase Contract"). There were various addendums to the Purchase Contract that extended the closing date thereunder to accommodate the subdivision and actions before this Commission. Those addendums are not attached.

III. MOTION TO ALLOW FOR SUBDIVISION OF PETITION AREA

In order to sell a portion of the Petition Area, Petitioner must be allowed to subdivide. In furtherance of the 201H Application, Intervenor is processing a large-lot subdivision of the Petition Area to create the 12.5 acre parcel to be conveyed up Intervenor upon (1) Commission approval Petitioner's right to convey, and (2) completion of the large lot subdivision.

The large lot subdivision was submitted for processing on June 1, 2018 the ("Subdivision Application"). The Subdivision Application contemplates the creation of two lots. Lot 1-B with an area of 12.763 acres to be retained by Petitioner, and Lot 1-A with an area of 12.5 acres to be conveyed to Intervenor in furtherance of the Purchase Contract. A true and correct copy of communication from the County of Maui granting preliminary subdivision approval is attached hereto as Exhibit 2. The current timeline and status is set forth in Exhibit 3 attached hereto and incorporated herein by reference. It is anticipated that final subdivision approval will be granted by December, 2018. At that point, subject to this Commission's action, Petitioner will be in a position to sell a portion of the Petition Area to Intervenor, and Intervenor will be in position to close the sale of the same.

IV. MOTION TO BIFURCATE AND RELEASE

As directed at the hearing on the Intervention Motion and Petitioner's Motion for Extension, Intervenor processed its 201H Application to completion with the County of Maui. That approval, granted September 7, 2018 by County Resolution, is subject to the Commission's approval of the 201H use on a portion of the Petition Area.

Assuming the Commission grants Intervenor's request (by separate motion to be filed) to approve the 201H use on a subdivided portion of the Petition Area, it would be wholly appropriate to bifurcate the present docket and release Intervenor and the portion of the Petition

Area from jurisdiction of the pending docket so that Petitioner's ongoing efforts to construct a school and church campus, and Intervenor's construction activities relating to its 201H project may be addressed separately.

Additionally, as a condition of the County's approval of the 201H Application, Intervenor is to break ground within 2 years of the issuance of the County's Resolution (September 7, 2018) and must complete construction within 4 years of the same. As Petitioner and Intervenor will be moving forward on separate timelines and separate projects, their dockets before this Commission should not be intertwined. Furthermore, any jurisdiction that the Commission retains with regard to the 201H Application may necessarily flow to future home-owners or their community association which equitably and legally should not be subject to conditions relating to Petitioner's church and school development.

V. SUMMARY AND CONCLUSION

Based on the foregoing, HAR §§ 15-15-70, 15-15-94, and the records and files in this Docket, Intervenor respectfully requests that the Commission issue an order amending D&O Condition No. 20 to allow for the sale of a portion of the Petition Area to Intervenor. Intervenor further requests modification of the D&O to allow for the subdivision of the Petition Area pursuant to the Subdivision Application. Intervenor specifically requests the following:

(a) the deletion of D&O Condition No. 18 (requiring Commission approval prior to the sale of any portion of the Petition Area);

(b) recognition of right to subdivide the Petition Area and recognition of Intervenor as the successor in interest to a portion of the Petition Area as requested;

(c) the bifurcation of this Docket A07-773 to allow for separate management and processing of the ELC Project and the 201H Project as may be appropriate.

Intervenor reserves rights under HAR § 15-15-70(a) to modify this request before, during, or after the close of the hearing on this Motion.

DATED: Wailuku, Hawaii, October ^{gu} , 2018.

A handwritten signature in black ink, appearing to read 'P. Horovitz', is written over a horizontal line.

PETER A. HOROVITZ

Attorneys for Intervenor
Waikapu Development Venture LLC

BEFORE THE LAND USE COMMISSION

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In the Matter of the Petition of:

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To Amend the Land Use District Boundary of
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DOCKET NO. A07-773

AFFIDAVIT OF WILLIAM FRAMPTON

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WILLIAM FRAMPTON, being duly sworn on oath, deposes and says:


1. I am a manager of WAIKAPU DEVELOPMENT VENTURE, LLC, a Hawaii limited liability company ("**Intervenor**").
2. I am competent and authorized to testify to the matters set forth herein, and unless otherwise indicated, I make this affidavit (the "**Affidavit**") based upon personal knowledge
3. Intervenor is under contract to purchase a subdivided portion of the Petition Area upon (1) subdivision and (2) approval of the Commission. A true and correct copy of the relevant purchase contract is attached hereto as Exhibit 1 (the "**Purchase Contract**"). There have been various addendums to the Purchase Contract which extended the closing date to accommodate both the subdivision and the present action before the Commission. Those addendums are not attached.
4. The large lot subdivision was submitted for processing on June 1, 2018 the ("**Subdivision Application**"). A true and correct copy of the preliminary subdivision approval

letter from the County of Maui appears as the attached Exhibit "2." The Subdivision Application contemplates the creation of two lots; Lot 1-B with an area of 12.763 acres to be retained by Petitioner, and Lot 1-A with an area of 12.5 acres to be conveyed to Intervenor in furtherance of the Purchase Contract.

5. The current timeline and status is set forth in Exhibit 3 attached hereto and incorporated herein by reference. It is anticipated that final subdivision approval will be granted by the end of December 2018 which will allow Intervenor to close on the purchase of Lot 1-A in January, 2019 and construction will occur in 2020-2021.

Further affiant sayeth naught.

EXECUTED: Wailuku, Hawai'i, October 8, 2018.


WILLIAM FRAMPTON

STATE OF HAWAII

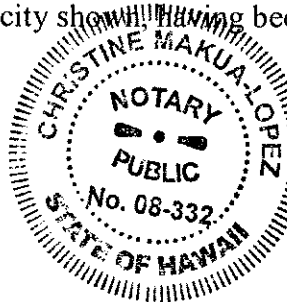
)

) ss.

COUNTY OF MAUI

)

On this 8th day of October, 2018, before me personally appeared WILLIAM FRAMPTON, 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.



Name: Christine Makua-Lopez
Notary Public, State of Hawaii
My commission expires: 8/10/20

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **AFFIDAVIT OF WILLIAM FRAMPTON**

Document Date: October 8, 2018

No. of Pages: 3

Jurisdiction (in which notarial act is performed): 2nd Circuit

Signature of Notary [Signature] Date of Notarization and Certification Statement 10/8/18

Printed Name of Notary Christine Makua-Lopez

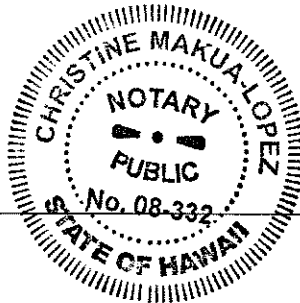


EXHIBIT 1



COMMERCIAL REAL PROPERTY PURCHASE AND SALE AGREEMENT (PSA)

Hawaii Association of REALTORS® Standard Form
Revised 2/14 (NC) For Release 11/16



COPYRIGHT AND TRADEMARK NOTICE: This copyrighted Hawaii Association of REALTORS® Standard Form is licensed for use by the entire real estate industry on condition that there shall be no alteration of the printed portions, pagination, or paragraph numbers or breaks. The use of this form is not intended to identify the real estate licensee as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the National Association of REALTORS® and who subscribe to its Code of Ethics.

NAR CODE OF ETHICS: Buyer and Seller are aware that the National Association of REALTORS® holds its members accountable for their actions through a strict professional Code of Ethics, which includes a grievance system to address complaints. Non-members are not held to the same standards as members, nor are they required to participate in the grievance system.

Reviewed By: _____
Principal Broker/Broker-in-Charge **Keoni Fursse, R(PB)**

Reference Date: **November 18, 2016** Purchase Price: **\$1,150,000.00** (See Paragraph D-2)

Closing Date: The Scheduled Closing Date shall be as set forth in Paragraph F-2.

Property Reference or Address: **0 Honoapiilani Hwy**
Wailuku, HI (See Paragraph E-1)

Tax Map Key: Div. **2** /Zone **3** /Sec. **5** /Plat **002** /Parcel(s) **011** /CPR _____ (if applicable).

IDENTIFICATION OF PARTIES:

IDENTIFICATION OF BROKERAGE FIRMS:

Buyer: <u>William Frampton etal/assigns</u>	Brokerage Firm: <u>Kokua Realty, LLC</u>
	Agent Name: <u>Keoni Fursse</u>
Street _____	Street <u>296 Alamaha St Ste A</u>
Address: _____	Address: <u>Kahului, HI 96732-2412</u>
Phone: _____	Phone: <u>(808) 280-6556</u>
Fax: _____	Fax: <u>(808) 877-5078</u>
E-mail: _____	E-mail: <u>keoni@kokuarealty.com</u>

Seller: <u>Emmanuel Lutheran Church Maui</u>	Brokerage Firm: <u>Kokua Realty, LLC</u>
	Agent Name: <u>Uvette J. Sakamoto</u>
Street _____	Street <u>296 Alamaha St Ste A</u>
Address: _____	Address: <u>Kahului, HI 96732-2412</u>
Phone: _____	Phone: <u>(808) 269-5000</u>
Fax: _____	Fax: <u>(808) 877-5078</u>
E-mail: _____	E-mail: <u>uvette@kokuarealty.com</u>

CONTRACT: This is more than a receipt for money. It is a legally binding contract for the purchase of real estate. Read it carefully. Handwritten or typed provisions herein shall supersede any printed provisions if there is a conflict. FILL IN ALL BLANKS. WRITE "NA" IF NOT APPLICABLE. ITEMS WITH CHECK-OFF BOXES ARE OPTIONAL. ALL OTHERS ARE STANDARD PROVISIONS.

DS
WF 11/21/2016
BUYER'S INITIALS & DATE

DS
MR 11/23/2016
SELLER'S INITIALS & DATE

©Hawaii Association of REALTORS®
Commercial Real Property Purchase and Sale
Agreement
Produced in conjunction with the Hawaii CCIM Chapter
RR501 Rev. 2/14

Kokua Realty LLC, 296-A Alamaha St. Kahului, HI 96732
Phone: (808)270-9116 Fax: (808)877-5078

Kara Heen

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Page 1 of 11



0 Honoapiilani

SECTION A: AGENCY DISCLOSURE

A-1 Agency. Buyer and/or Seller in a real estate transaction in Hawaii may retain a real estate Brokerage Firm as their agent. In such case, Buyer and/or Seller is represented by the Brokerage Firm and all of its licensees. Hawaii law requires real estate licensees to disclose orally or in writing to Seller and/or Buyer whom the licensee represents. The form of representation may be one of the following:

- (a) **Seller's Agent.** Brokerage Firm represents Seller only unless a disclosed dual agency exists. Seller's Agent owes the highest duties to Seller, including confidentiality, loyalty, and due care and diligence.
- (b) **Buyer's Agent.** Brokerage Firm represents Buyer only unless a disclosed dual agency exists. Buyer's Agent owes the highest duties to Buyer, including confidentiality, loyalty, and due care and diligence.
- (c) **Dual Agent.** Brokerage Firm represents both Buyer and Seller. This commonly occurs when licensees in the Brokerage Firm representing Seller have Buyer clients looking for types of property similar to Seller's property. In such event, the Brokerage Firm and all of its licensees represent both Buyer and Seller and are dual agents. Dual agents must remain neutral in negotiations and must not advance the interest of one party over the other. **A separate Dual Agency Consent Addendum is required under Hawaii law.**
- (d) **No Agency Representation** (see A-2(d) below).

A-2 Disclosure.

- (a) **Seller Representation:** Seller is represented by the Brokerage Firm Kokua Realty, LLC and all its licensees. Brokerage Firm is ☒ is not ☐ a member of the National Association of REALTORS®.
- (b) **Buyer Representation:** Buyer is represented by the Brokerage Firm Kokua Realty, LLC and all its licensees. Brokerage Firm is ☒ is not ☐ a member of the National Association of REALTORS®.
- (c) **Dual Agency Representation:** Seller and Buyer are represented by the Brokerage Firm Kokua Realty, LLC and all its licensees. Brokerage Firm is ☒ is not ☐ a member of the National Association of REALTORS®. **A separate Dual Agency Consent Addendum is required.**
- (d) **No Agency Representation:**
 - ☐ Seller is a Customer and is not represented by a Brokerage Firm.
 - ☐ Buyer is a Customer and is not represented by a Brokerage Firm.

It is recommended that Customers seek legal counsel prior to signing a PSA.

If requested, a licensee may present a Customer's PSA to Seller and report Seller's response. A licensee cannot, however, negotiate for or otherwise advise a Customer in the transaction.

Buyer and Seller acknowledge that oral or written disclosure relative to agency representation was provided to them before the signing of this PSA.

WF (Buyer's initials)

MR (Seller's initials)

SECTION B: EARNEST MONEY DEPOSIT

B-1 Earnest Money. Buyer shall deposit with Escrow (identified in Paragraph F-4), the sums set forth below (the "Earnest Money") in good funds on or before the deadlines required by this Paragraph B-1 or as otherwise agreed in writing by the parties. Buyer shall pay (from sources other than the Earnest Money or any interest accruing thereon) any and all escrow or other fees charged by Escrow pursuant to Paragraph F-6. All interest accruing on such sum shall become a part of the Earnest Money and shall be distributed as Earnest Money in accordance with the terms of this PSA.

- ☒ (a) An initial Earnest Money deposit in the amount of \$ 50,000.00 shall be paid within 5 business days of the Acceptance Date (or as otherwise agreed in writing by the parties) (defined in Paragraph S-1).
- ☐ (b) An additional Earnest Money deposit in the amount of \$ _____ shall be paid within _____ business days after the end of the Inspection Period (see Paragraph J-2).

B-2 Interest on Earnest Money. (Choose (a) OR (b))

- ☐ (a) Buyer to Earn Interest. The parties instruct Escrow to place Buyer's deposit(s) in an interest-bearing account with all interest to be credited to Buyer at closing. Buyer shall pay any processing fee required by Escrow and all costs of setting up, maintaining and closing the account. Fees/costs may exceed the interest earned.
- ☒ (b) Buyer not to Earn Interest. Buyer hereby waives the right to place Buyer's deposits in an interest-bearing account. Buyer understands any interest earned on such deposits shall belong to Escrow.

WF 11/21/2016
BUYER'S INITIALS & DATE

MR 11/23/2016
SELLER'S INITIALS & DATE

SECTION C: ADDENDA

C-1 **Addenda.** The following addenda, if checked, are attached to and made a part of this PSA.

[☒] Existing "As Is" Condition [☐] Other _____
 [☒] Other Dual Agency [☐] Other _____
 [☐] Other _____ [☐] Other _____

SECTION D: OFFER TO BUY AND PURCHASE PRICE

D-1 **Offer to Buy.** Buyer offers to buy the Property described below on the terms and conditions contained herein, acknowledges receipt of a copy of the PSA, and agrees that this PSA shall be binding on Buyer if accepted by Seller on or before:

Date November 23, 2016 Time 4:00 AM [☐] PM [☒].

D-2 **Purchase Price.** Purchase price for the Property in U.S. Dollars shall be paid as follows:

\$ 50,000.00 Initial cash deposit of Earnest Money ("B-1(a)").
 \$ _____ Additional cash deposit of Earnest Money ("B-1(b)").
 \$ 525,000.00 Balance of down payment (or balance of purchase price if all cash) paid into Escrow before closing.

\$ 575,000.00 TOTAL CASH FUNDS FROM BUYER (exclusive of closing costs).

\$ 575,000.00 By way of New first mortgage at terms and conditions acceptable to Buyer.

\$ _____

\$ 1,150,000.00 TOTAL PURCHASE PRICE

Failure to make any of the scheduled deposits herein shall constitute a default, and the termination provisions of Paragraph O-1 shall apply.

SECTION E: PROPERTY

E-1 **Description.** Tax Map Key: Div. 2 /Zone 3 /Sec. 5 /Plat 002 /Parcel(s) 011 /CPR _____ (if applicable).

All of that [☒] fee simple [☐] leasehold Property zoned Public Quasi situated at the address set forth above described as follows: Approximately twelve (12.5) acres of vacant land in Wailuku, Maui, Hawaii.

The full legal description will be provided in the title report.

"Property" includes all improvements and fixtures except those owned by tenants and except as listed below:

SECTION F: CLOSING

F-1 **Closing.** For purposes of this PSA, "Closing" shall be the date when all appropriate conveyance documents are recorded. Buyer and Seller agree to promptly execute appropriate or customary documents when requested by Escrow.

F-2 **Scheduled Closing Date. (Choose Paragraph F-2(a) OR F-2(b))**

[☐] (a) _____, _____ or
 [☒] (b) 30 days after the end of Inspection Period. If the Scheduled Closing Date falls on a day the Bureau of Conveyances of the State of Hawaii is closed, closing will be on the next day when documents can be recorded.

DS
 WF 11/21/2016
 BUYER'S INITIALS & DATE

DS
 MR 11/23/2016
 SELLER'S INITIALS & DATE

F-3 Change to the Scheduled Closing Date. (Choose Paragraph F-3(a) OR F-3(b))

- ☐ (a) **Extensions. There is no automatic right to extend.** If, for reasons beyond Buyer's or Seller's control, a party cannot perform its obligation to close by the Scheduled Closing Date, then such party may extend the Scheduled Closing Date up to _____ () days by delivery of written notice to the other party prior to the Scheduled Closing Date. Thereafter, **time shall be of the essence**, and if a party fails to perform by the extended Scheduled Closing Date, such party shall be considered in default and the other party may elect to terminate this PSA pursuant to Paragraph O-1. The extended Scheduled Closing Date may not be further extended unless Buyer and Seller agree in writing. This provision relates only to the extension of the Scheduled Closing Date.
- ☒ (b) **Time is of the Essence.** Time is of the essence and the Scheduled Closing Date may not be extended unless Buyer and Seller agree in writing.

F-4 Escrow. This transaction shall be escrowed by: Fidelity National, Branch _____ ("Escrow").

Escrow officer: _____ Phone No.: _____ Fax No.: _____

Escrow officer email address: _____

Within the time period set forth in Paragraph B-1, Seller shall open an account with Escrow and provide Escrow with a copy of this PSA and escrow instructions.

F-5 Prorations and Closing Adjustments. At closing, Escrow shall prorate the following, if applicable, as of the date of closing: real property tax, lease rents, interest on assumed obligations, tenant rents, common area expenses and other items customarily prorated in commercial real estate transactions in Hawaii. When applicable, Escrow shall charge to Seller and credit to Buyer the amount of any tenant security deposits. Seller and Buyer agree to cooperate and use their best efforts to complete such prorations or adjustments that are not available at Closing no later than thirty (30) days after Closing. Such items of income and expense for the period prior to the date of Closing will be for the account of Seller and such items of income and expense for the period on and after Closing will be for the account of Buyer, all as determined by the accrual method of accounting, except that rent shall be prorated only to the extent actually collected. Bills received after Closing to the extent they relate to expenses incurred for services performed prior to Closing shall be paid by Seller, and those which relate to services performed after Closing (except as otherwise agreed to by the parties in writing) shall be paid by Buyer; provided, however, that Buyer's obligations under this PSA to assume and pay for services rendered after Closing pursuant to any service contracts shall not apply to any service contract that Buyer elected not to assume during the Inspection Period.

F-6 Closing Costs. The following allocates customary closing costs and **are not intended to be an all-inclusive list**. Escrow may charge the appropriate party other closing costs as agreed and directed in writing by the parties.

Charge to Buyer, if applicable:

50% of the premium for standard coverage title insurance and any additional costs relating to the issuance of extended coverage policy and endorsements (including a lender's policy)
 Cost of drafting of agreement of sale or mortgage and note
 Cost of obtaining Buyer's consents
 Buyer's notary fees
 50% of Escrow's fees
 Any fees pertaining to any Buyer financing

Charge to Seller, if applicable:

50% of the premium for standard coverage title insurance
 Cost of drafting of conveyance documents and bills of sale
 Cost of obtaining Seller's consents
 Seller's notary fees
 Conveyance tax
 50% of Escrow's fees
 Recording fees
 FIRPTA (Federal withholding)
 HARPTA (State withholding)

F-7 Assessments. For purposes of Paragraphs F-7(a), F-7(b), and F-7(c), an assessment is defined as any obligation (not including prorations in Paragraph F-5) levied against the Property by a governmental body or any other entity with a legal right to assess. Assessments, if any, shall be charged as follows:

- (a) Any lump sum assessments levied against the Property prior to the Acceptance Date shall be paid by Seller ☒ or assumed by Buyer ☐.
- Exceptions, if any: _____
- (b) Any assessments against the Property authorized as of the Acceptance Date which are being paid in installments shall be paid in full by Seller ☒ or pro-rated by Escrow as of the date of closing ☐.
- Exceptions, if any: _____
- (c) If a new assessment is authorized against the Property between the Acceptance Date and the Scheduled Closing Date, such assessment shall be paid as Buyer and Seller shall agree, and if Buyer and Seller cannot reach an agreement within five (5) days of both parties being aware of the new assessment, either party may terminate this PSA and the termination provisions of Paragraph O-2 shall apply.

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11/21/2016

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MR

11/23/2016

SELLER'S INITIALS & DATE

- ☐ **NA]F-8 Lessor or Other Consents.** The obligations of Buyer or Seller hereunder are conditioned upon obtaining consents of the following lessor or other identified person or entity prior to Closing or such earlier time as may be required by this PSA: _____ . Neither Buyer nor Seller may waive this condition without the consent of the other. Buyer and Seller agree to cooperate and take all reasonable action to obtain such consents.

F-9 Risk of Loss.

- (a) **Minor Damage.** In the event of loss or damage to the Property or any portion thereof that is not "major" (as hereinafter defined), Seller shall notify Buyer within five (5) days of Seller being made aware of such loss or damage, and this PSA shall remain in full force and effect provided Seller performs any necessary repairs or, at Seller's option, assigns to Buyer all of Seller's right, title and interest to any claims and proceeds Seller may have with respect to any casualty insurance policies or condemnation awards relating to the Property. In the event that Seller elects to perform repairs upon the Property, Seller shall use reasonable efforts to complete such repairs promptly and the Scheduled Closing Date shall be extended for a reasonable time in order to allow for the completion of such repairs. If Seller elects to assign to Buyer Seller's title and interest to any claims and proceeds Seller may have with respect to any casualty insurance policies, the Purchase Price shall be reduced by an amount equal to the deductible amount under Seller's insurance policy and Seller shall be fully released from any additional claims. Upon Closing, full risk of loss with respect to the Property shall pass to Buyer, subject to the terms and conditions of this PSA.
- (b) **Major Damage.** In the event of a "major" loss or damage, Seller shall notify Buyer in writing of such damage within five (5) days of Seller being made aware of such loss or damage. In such event, Buyer may terminate this PSA by written notice to Seller within thirty (30) days of the loss or damage, in which event the Earnest Money shall be returned to Buyer. If Buyer does not elect to terminate this PSA within ten (10) days after Seller sends Buyer written notice of the occurrence of major loss or damage, then Buyer shall be deemed to have elected to proceed with Closing, in which event Seller shall, at Seller's option, either (1) perform any necessary repairs, or (2) assign to Buyer all of Seller's right, title and interest to any claims and proceeds Seller may have with respect to any casualty insurance policies or condemnation awards relating to the Property. In the event that Seller elects to perform repairs upon the Property, Seller shall use reasonable efforts to complete such repairs promptly and the Scheduled Closing Date shall be extended for a reasonable time in order to allow for the completion of such repairs. If Seller elects to assign to Buyer Seller's title and interest to any claims and proceeds Seller may have with respect to any casualty insurance policies, the Purchase Price shall be reduced by an amount equal to the deductible amount under Seller's insurance policy. Upon Closing, full risk of loss with respect to the Property shall pass to Buyer.
- (c) **Definition of "Major" Loss or Damage.** For purposes of this PSA, "major" loss or damage refers to the following: (1) loss or damage to the Property or any portion thereof such that the cost of repairing or restoring the Property to a condition substantially identical to that of the Property prior to the event of damage would be, in the opinion of a contractor reasonably selected by Buyer, equal to or greater than an amount equal to five percent (5%) of the Purchase Price; or (2) any loss due to a condemnation which impairs the current use of the Property.

- F-10 Possession.** Seller agrees to give Buyer possession at Closing or _____ **xxxx** _____, subject to tenant leases, if any.

SECTION G: TITLE

- G-1 Preliminary Title Report.** Within Seven (7) days after the Acceptance Date, Seller shall cause Fidelity National (the "Title Company") to deliver a preliminary title report (the "Title Report") on the Property to Buyer.

- G-2 Title.** Seller agrees to convey the Property with warranties vesting marketable title in Buyer, free and clear of all liens and encumbrances EXCEPT: (a) easements, covenants, conditions, reservations or restrictions now of record and (b) _____ .

☒ **G-3 Title Objections; Permitted Exceptions; Cure of Title Objections.**

- (a) **Title Objections.** Buyer shall have ten (10) days prior to the expiration of the Inspection Period to send written notice of any objections that Buyer may have in regard to the Title Report.
- (b) **Permitted Exception.** Any item contained in the Title Report to which Buyer does not so object shall be deemed a "Permitted Exception".
- (c) **Cure of Title Objections.** In the event Buyer shall timely notify Seller of objections to any item contained in the Title Report, Seller shall have the right, but not the obligation, to cure the Title Objections. Seller shall inform Buyer in writing (the "Seller's Title Cure Notice") not later than five (5) business days after receipt of Title Objections whether Seller shall cure such objections. Unless otherwise expressly stated, Seller's failure to deliver Seller's Title Cure Notice shall be deemed Seller's election not to cure the Title Objections, and Buyer's election not to terminate this PSA prior to the expiration of the Inspection Period in accordance with Paragraphs J-2 and O-2 shall be deemed Buyer's waiver of any objections that Seller has not elected to cure.

- ☒ **G-4 Vesting and Tenancy.** Title shall vest in Buyer(s) as follows (provide full legal names and marital status for individuals, trust information, name and form of business entity, etc.):

- ☐ (a) _____
- ☒ (b) to be determined by Buyer by written notice to Seller and Escrow Officer not later than five (5) business days prior to Closing.

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MR 11/23/2016
SELLER'S INITIALS & DATE

SECTION H: FINANCING CONTINGENCIES

- [X] H-1 **Financing Contingency.** Buyer's obligation to buy the Property is subject to Buyer obtaining the loan (the "Loan") described in this PSA. Buyer is obligated to use Buyer's commercially reasonable efforts to obtain the Loan.

Buyer is obligated to deliver to Seller a conditional loan commitment letter not later than 150 days after the Acceptance Date, and a final loan approval letter not later than 30 days after the end of the Inspection Period.

If Buyer does not obtain the conditional loan commitment letter or the final loan commitment letter within the time periods specified above, Buyer may terminate this PSA by providing written notice of such failure and Buyer's termination of this PSA to Seller and Escrow on or before expiration of such specified time periods.

Buyer may increase the amount of Buyer's Cash Funds and thereby reduce the amount of the Loan or waive this Financing Contingency and purchase the Property on an all cash basis. If Buyer elects either of these two options, Buyer shall promptly give written notice of such election to Escrow and to Seller, together with evidence of Buyer's ability to do so.

- H-2 **Seller's Right to Terminate PSA for Financing Contingency.** If Paragraph H-1 is applicable, Seller's obligation to sell the Property is contingent upon Buyer using Buyer's commercially reasonable efforts to obtain the Loan within the time periods specified in Paragraph H-1 above. If any such obligation is not met by the end of the applicable time period, Seller may elect to terminate this PSA by delivering to Buyer written notice of termination within Seven (7) days (seven days if left blank) of the expiration of the time period or the date stated in Paragraph H-1, and Paragraph O-2 ("Termination Provision") shall apply. However, this right of Seller to terminate shall no longer apply if Buyer has elected to proceed pursuant to Paragraph H-1 and has provided Seller with reasonable assurance of Buyer's ability to do so. Seller shall have the right to inquire with Buyer's lender regarding the status of Buyer's financing.

SECTION I: CONTINGENCY PROCEDURES

- I-1 **Contingencies.** Buyer's obligation to buy and Seller's obligation to sell the Property may be subject in this PSA to satisfaction of one or more conditions (each called a "Contingency").

As used in this PSA, the term "Benefited Party" shall mean (a) Buyer, as to each Contingency which must be satisfied before Buyer is required to close on the purchase of the Property from Seller; and (b) Seller, as to each Contingency which must be satisfied before Seller is required to close on the sale of the Property to Buyer.

If a Contingency is not satisfied within the specified time period for meeting such Contingency ("Contingency Period"), the Benefited Party may elect to terminate this PSA and Paragraph O-2 ("Termination Provision") shall apply; or to waive the Contingency. **Unless otherwise expressly stated, the time period within which all Contingencies in this PSA must be satisfied shall be 5:00 PM, Hawaii Standard Time, on the last day of the Inspection Period identified in Paragraph J-2.**

If the Benefited Party wishes to terminate this PSA because a Contingency for that party's benefit has not been satisfied, the Benefited Party must deliver to Escrow a written notice terminating this PSA prior to the expiration of the Contingency Period or such other termination period which may be set forth in a specific contingency in this PSA. **If the Benefited Party fails to deliver the written notice to Escrow within such time period, the Contingency shall be deemed to be waived.**

Each party understands the requirement to act upon each Contingency according to the strict deadlines described therein.

SECTION J: INSPECTION; MAINTENANCE AND WARRANTIES

- J-1 **Inspection of Property.** At Buyer's sole cost and expense Buyer may (personally or by any expert, professional, or other representative of Buyer's choice): (a) inspect the Property or any portion thereof; (b) inspect all fixtures and improvements included in the sale; (c) inspect, investigate the Property, including, but not limited to all public records relating to the Property; (d) inspect all applicable laws and regulations which may affect the Property; and (e) inspect all financial and administrative records of Seller pertaining to the ownership and operation of the Property, except appraisals, material relating to negotiations with other buyers and material that is attorney-client privileged.

On or before 5 days after the Acceptance Date, Seller shall deliver to Buyer copies of the following documents (applicable only if checked), to the extent such documents are in the possession or control of Seller.

- [X] Plans and Specifications
 [] Ground Lease
 [] Rent Roll
 [X] Tenant Leases
 [] Financial Statements for _____ years & Year-to-date
 [] Inventory of Tangible Personal Property
 [] Management Contracts
 [] Service Contracts
 [X] Existing Surveys
 [X] Soils Report

- [X] Environmental Report(s)
 [X] Architectural Report
 [X] Structural Engineering Report
 [] Electrical Engineering Report
 [] Mechanical Engineering Report
 [] Building Maintenance Reports
 [] ADA Report
 [] Condominium Documents
 [] Other:
 [X] Other: All other reports & studies

WF 11/21/2016
 BUYER'S INITIALS & DATE

MR 11/23/2016
 SELLER'S INITIALS & DATE

J-2 BUYER'S RIGHT TO INSPECT THE PROPERTY AND TO TERMINATE THIS PSA BECAUSE BUYER IS NOT SATISFIED WITH THE PROPERTY ENDS ON 270 DAYS AFTER ACCEPTANCE ("INSPECTION PERIOD").

Seller shall provide Buyer and Buyer's representatives reasonable access to the Property during the Inspection Period, including Seller's records (except for excluded records described above) for this purpose, during reasonable hours with reasonable prior notice to Seller. The obligation of Buyer to purchase the Property is contingent upon Buyer's approval of the results of such inspection on or before the expiration of the Inspection Period. All inspections must be completed within the Inspection Period. In consideration of Seller making the Property and records available, Buyer agrees to perform a thorough investigation of the Property, including but not limited to any investigation deemed prudent by Buyer relating to the following: building improvements, environmental matters, mold, termite infestation, compliance with the Americans with Disabilities Act and any pending assessments against the Property. Buyer agrees that Buyer will rely on Buyer's own due diligence investigation and not upon information provided by Seller, Seller's Brokerage Firm, or Buyer's Brokerage Firm.

If Buyer disapproves of the results within such time period, Buyer may elect to terminate this PSA pursuant to Paragraph O-2. **If Buyer fails to elect to terminate prior to the end of the Inspection Period, Buyer shall have waived this contingency.**

Prior to the expiration of the Inspection Period, Seller may make changes to existing tenant leases and/or enter into new tenant lease agreements without the approval of the Buyer, however, Seller shall provide Buyer with at least five (5) days advance written notice that Seller intends to execute such documents along with copies of such documents. After the expiration of the Inspection Period, Seller shall not, without the written consent of Buyer, make any changes to existing tenant leases, enter into any new leases that extend beyond the Scheduled Closing Date, or enter into any other agreements that cannot be terminated upon forty-five (45) days' notice. The existing tenant leases will be assigned to Buyer at Closing and Buyer will assume the obligations of the Seller under the existing tenant leases, either as part of the instrument conveying the Property to Buyer or in a separate instrument, as elected by Seller. Seller will use commercially reasonable efforts to obtain estoppel certificates from all tenants on the Property, dated not earlier than thirty (30) days prior to Closing; provided, however, delivery of such estoppel certificates shall not be a condition of Closing unless otherwise specified in this PSA.

Buyer agrees to indemnify, defend and hold Seller, Seller's Brokerage Firm, and Buyer's Brokerage Firm harmless from any actions, suits, liens, claims, damages, expenses, losses and liability for damage to personal or real property or personal injury to the extent arising from or attributable to any acts performed by Buyer or Buyer authorized agents in exercising Buyer's inspection rights, if any, under this PSA (excluding any and all losses, claims, suits, damages and expenses, including reasonable attorneys' fees resulting from the mere discovery of, disclosure of, or injury or death resulting from, any pre-existing physical or environmental condition on, in, under or about the Property). This agreement to indemnify Seller, Seller's Brokerage Firm, and Buyer's Brokerage Firm shall survive any termination of this PSA.

☒ **J-3 Property Condition Maintenance.** Seller shall maintain the Property in the same condition and repair as when Buyer inspected the Property pursuant to Paragraph J-1.

☒ **J-4 Existing Warranties, Plans, etc.** Seller shall provide to Buyer at closing all existing warranty documents in Seller's possession covering the improvements and personal property being sold to Buyer; and, to the extent legally permissible, all originals and copies in Seller's possession of as-built blueprints, specifications, and copies of architectural or engineering drawings relating to the Property.

Buyer understands: (a) any warranties delivered by Seller to Buyer represent obligations of other persons, not Seller; (b) the warranties and other documents are provided for informational purposes only; (c) the warranties and other documents may not reflect improvements as built; and (d) Seller does not promise that any such warranties are transferable to Buyer, and that Buyer must contact the providers of such warranties to determine whether the warranties are transferable to Buyer.

SECTION K: SURVEY

☐ **NA]K-1 Survey.** Within _____ () days after the Acceptance Date, Seller shall, at Seller's sole cost and expense, provide Buyer with a current map (with surveyor's stamp and dated after the Acceptance Date) and accompanying report to show the perimeters of the Property and the location of any improvements in the vicinity of the perimeter Property lines. This survey and map may not address whether improvements on the Property are in compliance with State and/or County requirements, and/or subdivision covenants, conditions, and restrictions. If Buyer objects to any matters shown in such survey, Buyer shall notify Seller pursuant to Paragraph K-2 below.

☐ Buyer elects to have an ALTA survey prepared and agrees to pay the increase in cost to obtain an ALTA survey.

☐ **NA]K-2 Survey Objections; Permitted Exceptions; Cure of Survey Objections.**

(a) **Survey Objections.** Buyer shall have ten (10) days prior to the expiration of the Inspection Period to send written notice of any objections that Buyer may have in regard to the Survey.

(b) **Permitted Exception.** Any matter shown on the Survey to which Buyer does not so object shall be deemed a "Permitted Exception".

(c) **Cure of Survey Objections.** In the event Buyer shall timely notify Seller of objections to any matter shown on the Survey, Seller shall have the right, but not the obligation, to cure the Survey Objections. Seller shall inform Buyer in writing (the "Seller's Survey Cure Notice") not later than five (5) business days after receipt of Survey Objections whether Seller shall cure such objections. Unless otherwise expressly stated, Seller's failure to deliver Seller's Survey Cure Notice shall be deemed Seller's election not to cure the Survey Objections, and Buyer's election not to terminate this PSA prior to the expiration of the Inspection Period in accordance with Paragraphs J-2, and O-2 shall be deemed Buyer's waiver of any objections that Seller has not elected to cure.

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WF 11/21/2016
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BS
MR 11/23/2016
SELLER'S INITIALS & DATE

SECTION L: ASBESTOS AND HAZARDOUS MATERIALS

- L-1 **Asbestos Disclosure.** Buyer is aware that asbestos materials are hazardous to one's health, particularly if asbestos fibers are released into the air and inhaled. In the past (before 1979, but possibly since) asbestos was a commonly used insulation material in heating facilities and in certain types of floor and ceiling materials, shingles, plaster products, cement and other building materials. Buyer is aware that Buyer should make appropriate inquiry into the possible existence of asbestos on the Property. Structures having "popcorn" or "cottage cheese" type ceilings may contain asbestos fibers or asbestos-containing material. Such ceilings should not be disturbed since it could release asbestos fibers in the air. Any disturbance should be done only by licensed abatement contractors.
- L-2 **Hazardous Waste and Toxic Substances Disclosure.** Buyer is aware that federal and state laws place strict liability on property owners for dangers caused by hazardous waste management and may require that such owner pay for the cost of the cleanup of hazardous substances and other toxic substances. Buyer is aware that Buyer should make appropriate inquiries into the past use of the Property and should seek an environmental assessment to ascertain the possible existence of such hazardous substances or materials on or under the Property. Buyer is aware Buyer may have liability for hazardous substances located on or under the Property even if Buyer did not cause such substances to be on or under the Property.
- [X] L-3 Buyer [X] Seller [] will perform a Phase I Environmental Assessment at its sole cost and expense. Seller shall complete an Environmental Questionnaire required by the person/entity performing the Phase I Environmental Assessment.

SECTION M: INTERNAL REVENUE CODE SECTION 1031 EXCHANGE

- [X] M-1 **Right to Exchange/Cooperation.** Either Seller or Buyer may assign all of its right, title and interest in this PSA with respect to all or any portion of the Property to an affiliated entity and/or a qualified intermediary in order to facilitate a like-kind exchange transaction, which includes the Property, pursuant to Section 1031 of the Internal Revenue Code. Seller and Buyer will remain liable under this PSA, subject to the limits set forth herein, following any such assignment and shall indemnify, defend and hold the other party harmless from any additional cost, liability or expense suffered or incurred by reason of such assignment or cooperation with the exchange. Seller and Buyer further agree to cooperate with the other in effecting such transaction, including, without limitation, consenting in writing to the assignment of this PSA to any such qualified intermediary and/or any affiliated entity; provided that any such exchange transaction, and the related documentation, shall: (a) not require the other party to execute any contract (other than as set forth above), make any commitment, or incur any obligations, contingent or otherwise, to third parties which would expand the obligations beyond this PSA or incur any additional costs, (b) not delay the Closing or the transaction contemplated by this PSA, or (c) not include acquiring title to any other property. The obligations of Seller and Buyer under this Paragraph shall survive the Closing and shall not be merged therein.

SECTION N: ELECTRONIC (Digital or Fax) SIGNATURES AND COUNTERPARTS

- N-1 Electronically executed copies of this PSA and any related documents shall be fully binding and effective for all purposes whether or not originally executed documents are transmitted to Escrow. Electronic signatures on documents will be treated the same as original signatures; however, each party agrees to promptly forward original executed documents (if any) to Escrow. The parties understand that conveyance, mortgage and other recordable documents must be delivered in original form and will not be acceptable if signed only electronically.
- N-2 This PSA and any addenda and related documents may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so signed, shall be deemed to be an original, and all of which taken together shall constitute one and the same document, binding upon all of the parties, notwithstanding that all of the parties do not sign the original or the same counterpart.

SECTION O: TERMINATION PROVISIONS

- O-1 **Termination Due to Default.** In the event that Buyer is in default for failure to perform Buyer's obligations under this PSA (Seller not being in default), Seller may retain the initial deposit and all additional deposits provided for herein as liquidated damages. Buyer shall be responsible for any costs incurred in accordance with this PSA.

In the event that Seller is in default for failure to perform Seller's obligations under PSA (Buyer not being in default), Buyer may (a) seek specific performance of this PSA or (b) if the remedy of specific performance is not available, bring an action for damages for breach of contract. Seller shall be responsible for any costs incurred in accordance with this PSA.

In addition to the foregoing remedies, Buyer and Seller agree to the following additional remedies, if any:

US
WF 11/21/2016
BUYER'S INITIALS & DATE

US
MR 11/23/2016
SELLER'S INITIALS & DATE

- O-2 **Termination Due to Contingencies.** If the party for whose benefit a contingency exists, elects to terminate this PSA because the contingency has not been satisfied, that benefited party shall deliver to the other party a written notice of termination. If the benefited party so terminates this PSA, Buyer and Seller shall promptly execute all cancellation documents requested by Escrow. Buyer shall return to Seller all documents delivered by Seller to Buyer in connection with Buyer's inspection of the Property, and Escrow shall, unless otherwise agreed to in this PSA, return to Buyer all deposits previously made, less the amount of any escrow expenses or fees chargeable to Buyer. Thereafter, neither Buyer nor Seller shall have any further rights or obligations under this PSA.
- O-3 **Attorneys' Fees.** In the event of default by a party and/or a legal action or arbitration (including a claim by a Brokerage Firm for commission), the prevailing party shall be entitled to recover all costs incurred including reasonable attorney's fees.

SECTION P: TRANSACTIONS INVOLVING FOREIGN OR NON-RESIDENT BUYER AND SELLER

- P-1 **HARPTA Withholding Required if Seller is a Non-Resident of the State of Hawaii.** Under Hawaii law, if Seller is a non-resident person or entity (corporation, partnership, trust, or estate) of the State of Hawaii, Buyer must withhold a specified percentage of the "amount realized" by Seller on the sale of the Property and forward the amount with the appropriate form to the State Department of Taxation. Such withholding may not be required if Seller obtains and provides Buyer with an authorized exemption or waiver from withholding. If Seller does not provide Buyer with a certificate of exemption or waiver from HARPTA not later than two (2) business days prior to Closing, Escrow is hereby authorized and instructed to withhold/collect from Seller the required amount at closing and forward it to the State Department of Taxation.
- P-2 **FIRPTA Withholding Required if Seller is a Foreign Person.** Under the Internal Revenue Code, if Seller is a foreign person or entity (non-resident alien, corporation, partnership, trust, or estate), Buyer must generally withhold a specified percentage of the "amount realized" by Seller on the sale of the Property and forward this amount to the Internal Revenue Service ("IRS"). Such withholding may not be required if Seller obtains and provides Buyer with an authorized exemption or waiver from withholding. If Seller does not provide Buyer with a certificate of exemption or waiver from FIRPTA not later than two (2) business days prior to Closing, Escrow is hereby authorized and instructed to withhold/collect from Seller the required amount at closing and forward it to the IRS.
- P-3 **Additional Disclosures Required by Foreign Buyers and Sellers.** Buyer and Seller understand that under statutes and ordinances such as the Agricultural Foreign Investment Disclosure Act of 1978, and the International Investment and Trade in Services Survey Act, among others, disclosures are required by foreign Buyers and/or Sellers under certain conditions.
- P-4 **Government Restrictions Disclosure.** Buyer is aware that the Property is subject to all applicable federal, state and county laws, statutes, regulations, codes, ordinances, rules, procedures, restrictions, and requirements, including but not limited to, those concerning land use, zoning, building permits and requirements, setbacks, height limitations, and allowable uses.

SECTION Q: SPECIAL TERMS

[X] Q-1 (Please number)

Q-1(a). Starting April 1, 2017, Escrow is authorized to deduct \$3,500.00 per month until Closing from the Earnest Money Deposit as non-refundable monthly payments which shall be credit to Purchase Price.

Q-1(b). It is Buyer's intent to create a 2-lot subdivision with Buyer receiving one 12.5-Acre lot and Seller receiving one 12.763 acre lot. The exact size of all lots is approximate and subject to changing in the final subdivision process. Buyer discloses they will be seeking a deferral agreement of improvements until the start of development of Buyer's project.

Q-1(c). Buyer has the right to extend Closing for 90 days by providing Seller with forty-five (45) days prior written notice. If the Closing is extended, Buyer shall continue to make monthly payments from Escrow of \$3,500/month.

Q-1(d). Seller agrees to cooperate with Buyer with all governmental applications. All applications and due diligence shall be done by Buyer, at Buyer's sole expense. In addition, if required by Buyer, Seller shall be the applicant on any governmental permits, subdivisions, and anything else required by Buyer.

(See attached Addendum for additional Special Terms).

06

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11/21/2016

BUYER'S INITIALS & DATE

05

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11/23/2016

SELLER'S INITIALS & DATE

SECTION R: BROKERAGE FIRMS SERVICES AND DISCLAIMERS

- R-1 **Scope of Service.** Seller's Brokerage Firm and Buyer's Brokerage Firm, including their owners, agents and employees (collectively the "Brokerage Firms"), recommend that Buyer and Seller each consult their own accountant, appraiser, architect, attorney, contractor, estate planner, insurance advisor, land use professional, surveyor, environmental consultant, title insurer, zoning expert, and other professionals should they have any questions within those fields about this sale. Buyer and Seller understand and acknowledge that neither party is relying upon the Brokerage Firms for any of the foregoing services or advice.
- R-2 **Disclaimers by Brokerage Firms.** Buyer and Seller understand that the Brokerage Firms have not made any representations or warranties, and have not rendered any opinions about: (a) the legal or tax consequences of this transaction; (b) the legality, validity, correctness, status or lack of any building permits which may have been required for the Property; (c) the size of any improvements on the Property, or the land area of the Property or the location of the boundaries; (d) the existence or non-existence of mold, asbestos or hazardous materials on the Property; (e) compliance of the Property with law, including but not limited to the Americans with Disabilities Act and land use laws.
- R-3 **Obligations.** Brokerage Firms shall not be held liable to either Buyer or Seller for the failure of either Buyer or Seller to perform their obligations pursuant to this PSA.
- [] R-4 **Disclosure of Real Estate Licensing Status.** Hawaii law requires that licensees disclose that they hold a real estate license in any transaction in which they are purchasing or selling real property as a principal, or in which they are buying for themselves, immediate relatives, or an entity in which they have an interest. If applicable, the licensee(s) in this transaction disclose the following: _____

SECTION S: "ACCEPTANCE DATE", OTHER DEFINITIONS, MISCELLANEOUS

- S-1 As used in this PSA, the term "**Acceptance Date**" means the date on which this PSA becomes binding upon the parties (i.e. when both parties have signed this PSA.)
- S-2 As used in this PSA, the term "**day**" means a calendar day unless the term "business day" is used. The term business day shall mean Monday through Friday except Federal or Hawaii holidays. All dates and times are based on Hawaii Standard Time (UTC-10). Unless otherwise specified in writing in this PSA, contingencies herein shall expire at 5:00 PM HST on the day stated.
- S-3 **Time is of the Essence.** Except as otherwise provided in this PSA, time is of the essence in the performance by all parties in their respective obligations to this PSA.
- S-4 **Complete Agreement.** This PSA constitutes the entire agreement between Buyer and Seller and supersedes and cancels any and all prior negotiations, representations, warranties, understandings or agreements (both written and oral) of Buyer and Seller. No variation or amendment of this PSA shall be valid or enforceable without written approval by Buyer and Seller. All agreements and representations about the Property must be set forth in writing and the parties agree that to be effective any representation made by a Brokerage Firm or any party hereto must be set forth in writing in this PSA or an amendment hereto. Buyer and Seller shall each hold harmless and release the Brokerage Firm(s) from any claims based upon any alleged representation which is not set forth in writing as stated in this paragraph.
- S-5 **Assignment.** Buyer shall not have any right to assign any of its rights, or to delegate any duties or obligations under this PSA without the prior written consent of Seller except that consent shall not be required in the event Buyer assigns its rights under this PSA to an entity where Buyer owns at least fifty percent (50%) of the controlling interest. For the purposes of this paragraph, assignment and/or delegation shall be deemed to include any sale, transfer, assignment or other event which, directly or indirectly, results in a change of fifty percent (50%) or more in the controlling interest in Buyer. This PSA, and each and every term and provision hereof, shall inure to the benefit of, and be binding upon and enforceable against, Buyer and its respective legal representatives, successors, and permitted assigns.
- S-6 **Representations and Warranties.** Each party hereby represents and warrants to the other as follows:
- If it is an entity, it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization, and is qualified to conduct business, and is in good standing in the state(s) in which it conducts business.
 - It is in compliance with all laws, rules and regulations that govern the operation of a business in which it is involved.
 - It has all the requisite power and authority to carry on its business as it is now being conducted.
 - It has been duly authorized by all necessary action on its part and possesses all the requisite power and authority to execute, deliver and perform this PSA and to hereby consummate the transactions contemplated herein.
 - It knows of no reason why it cannot consummate the transactions contemplated herein.
 - There are no actions, suits or proceedings existing, pending or, to the knowledge of it, threatened against or affecting it before any court, arbitrator or governmental or administrative body or agency that would affect the validity or enforceability of this PSA or that would affect the performance of its obligations hereunder.

BS

WF

11/21/2016

BUYER'S INITIALS & DATE

DS

MR

11/23/2016

SELLER'S INITIALS & DATE

Offer Date November 18, 2016, 8:00 [] AM [] PMBuyer's Name William Frampton et al/assignsSignature William FramptonTitle Buyer

Buyer's Name _____

Signature _____

Title _____

Buyer's Name _____

Signature _____

Title _____

SECTION T: ACCEPTANCE OR COUNTER OFFER

- [] T-1 **ACCEPTANCE OF OFFER.** Seller agrees to sell the Property at the price and terms offered above and acknowledges receipt of a copy of this PSA.
- [] T-2 **COUNTER OFFER.** Seller agrees to sell the Property at the price and terms offered above as amended by the attached Counter Offer and acknowledges receipt of a copy of the PSA.

IN EITHER EVENT:

T-3 Seller agrees to pay to Kokua Realty, LLC at Closing a commission for the sale of the Property pursuant to the commission agreement with Seller's Brokerage Firm, or in the amount of 6% of the purchase price + GET. Seller instructs Escrow to pay the commission directly to Brokerage Firm at closing in U.S. Dollars. These instructions cannot be changed without the written agreement of such identified Brokerage Firm and Seller. Seller further consents to such Brokerage Firm's sharing of the commission with another real estate Brokerage Firm which may have provided services to Buyer for this transaction.

Acceptance Date 11/23/16, 10:00 [X] AM [] PMSeller's Name Emmanuel Lutheran Church MauiSignature Michael ReileyTitle PresidentSeller's Name Michael Reiley

Signature _____

Title _____

Seller's Name _____

Signature _____

Title _____

Seller is a Foreign Person [] Non-Hawaii Resident [] Owner/Occupant [] Other []

DS
WF

11/21/2016

BUYER'S INITIALS & DATE

DS
MR

11/23/2016

SELLER'S INITIALS & DATE

ASSIGNMENT OF PURCHASE CONTRACT
0 Honoapiilani Highway, Wailuku, HI 96793

THIS ASSIGNMENT OF PURCHASE CONTRACT ("Assignment") is dated this 6th day of April, 2018, and is executed by and between WILLIAM FRAMPTON, a Hawaii resident (the "Assignor"), WAIKAPU DEVELOPMENT VENTURE LLC, a Hawaii limited liability company (the "Assignee"), and EMMANUEL LUTHERAN CHURCH OF MAUI, a Hawaii non-profit corporation (the "Seller").

W I T N E S S E T H:

That Seller and Assignor are parties to that certain Commercial Real Property Purchase and Sale Agreement reference dated November 18, 2016, together with any extensions and addenda thereof (collectively "Purchase Contract").

That the Assignor hereby assigns to the Assignee all of the right, title and interest of the Assignor in, to and under the Purchase Contract. This Assignment is an outright, immediate and absolute assignment of the Assignor's right, title and interest in said Purchase Contract.

That Seller hereby consents to the assignment of the Purchase Contract as described herein, and hereby releases Assignor from any and all future liabilities relating in any way to the Purchase Contract, except to the extent that the same relates to events occurring prior to the date of the Assignment.

AND THE ASSIGNOR warrants to the Assignee that the Assignor now is the lawful holder of said Purchase Contract with full right and title to assign the same; that said Purchase Contract is valid and enforceable and has not been altered, modified or amended in any manner whatsoever; that there are no outstanding assignments of said Purchase Contract; and that there are no existing defaults under said Purchase Contract.

AND, in consideration of the premises, the Assignor and Assignee covenant and agree that:

(1) The Assignor will execute and deliver to the Assignee, during the effectiveness of this Assignment, such further instruments as the Assignee may deem necessary to make this Assignment and the several covenants of the Assignor effective.

(2) Assignee hereby assumes all obligations of Assignor under said Purchase Contract for the performance and payment of all obligations arising or accruing from and after the date of this Assignment. Assignor agrees to indemnify, defend and hold harmless Assignee against all breaches and failures by Assignor with respect to any payment or performance which shall have accrued or was due prior to the date of this Assignment.

(3) It is hereby mutually agreed that the transfer herein and the covenants contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, and that the covenant of any two or more persons herein shall be joint and several unless a contrary intention shall be clearly expressed elsewhere herein. The term "Purchase Contract" herein shall mean and include the Purchase Contract assigned hereby, as it may have been amended to the date hereof.

The parties hereto agree that this instrument may be executed in counterparts and via facsimile or other electronic means, each of which shall be deemed an original, and said counterparts, facsimiles or electronic signatures shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the Assignor, Assignee and Seller have executed these presents effective as of the day and year first above written.

William Frampton

WILLIAM FRAMPTON

"Assignor"

WAIKAPU DEVELOPMENT VENTURE LLC

Peter A. Horovitz

By: Peter A. Horovitz

Its: Manager

"Assignee"

EMMANUEL LUTHERAN CHURCH OF MAUI

Michael F. Reiley

By: Michael Reiley

Its: President

"Seller"

Assignment of Contract

Adobe Sign Document History

04/06/2018

Created:	04/06/2018
By:	Peter Horovitz (pah@mhmaui.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA7qInckuVce1BXUpADni7Smq0rB-8gzh1

"Assignment of Contract" History









-  Document uploaded by Peter Horovitz (pah@mhmaui.com) from Acrobat
04/06/2018 - 3:07:12 PM PDT - IP address: 107.167.137.10
-  Document e-signed by Peter Horovitz (pah@mhmaui.com)
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04/06/2018 - 3:26:33 PM PDT - IP address: 67.53.32.118
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EXHIBIT 2

WAIKAPU DEVELOPMENT VENTURE LLC

Detailed Timeline for Completion of Updated Project

	KEY DATES / TIMING	ACTION ITEM/KEY EVENTS
1.	July 2016	Project Vision & Goal: Maui-Based Project Team (<i>"the Team"</i>) of William Frampton, Vince Bagoyo and Peter Horovitz formulated the Project Vision and Goal, to acquire suitable/appropriate subject property to develop a 100% Affordable Housing Project to develop quality, solid, dependable, attainable housing for local families and residents.
2.	July 2016 - December 2016	Initial Meetings/Discussions with Emmanuel Lutheran Church of Maui and Due Diligence: The Team had initial meetings and preliminary discussions with ELC to explore the Team's Vision and Goal; and also conducted thorough review/research, analysis and assessment regards to the practicality, financial feasibility, and estimated timeline (<i>"Due Diligence"</i>) of the proposed Project Vision and Goal; which may involve several concurrent/simultaneous elements/phases: (1) Acquisition/Purchase of a portion (approx. 12.5-acre) of subject property owned by Emmanuel Lutheran Church of Maui (<i>"ELC"</i>); (2) ELC and the Team request Approval from State Land Use Commission regards existing SLUC Petition; including proposed Amendment of Conditions/Timeline; Proposed sale of portion of Subject Property to the Team, and ultimate proposed Bi-furcation. (3) The Team would seek County Council Approval of Proposed 201-H Affordable Housing Project. (4) The Team would File Two (2) Lot Subdivision to create subject property regards to the Proposed Sale/Acquisition of approx. 12.5 Acres.
3.	November 21, 2016	Purchase and Sale Agreement (the "PSA") executed between Emmanuel Lutheran Church of Maui ("ELC"), as seller, and William Frampton, as buyer, for the sale of an approximately 12.5-acre portion of the Petition Area. PSA ultimately assigned to Waikapu Development Venture, LLC ("WDV").
4.	February 2017	<u><i>Request for Proposals:</i></u> WDV transmits Request for Proposal ("RFP") to several qualified local professionals/consultants to form Project Team to implement Project Vision and Goal; including:



		architect, land use planner, civil engineer, traffic engineer, archaeologist, market/economic analyst, and flora/fauna specialist.
5.	March 2017	<u>Select Project Team</u> : WDV executes proposals/contracts and forms Project Team comprised of qualified local professionals/consultants.
6.	March 2017 – May 2017	<u>Alternative Design Analysis for Master Plan</u> : Work with Architect and Project Team to explore/analyze several conceptual/preliminary designs for Master plan; several differing plans provide range of scopes/sizes/scales of the housing project; including total unit count, unit types/sizes/densities, affordable house price ranges, infrastructure/utility needs; traffic flow/pattern analysis, pedestrian access/circulation, community park/open-space network, etc.
7.	March 2017 – May 2017	<u>Community Outreach</u> : Arrange for initial Community Outreach meetings with various public and private agencies/groups - such as: <i>Maui Department of Housing & Human Concerns ("DHHC")</i> ; <i>Planning Department</i> ; <i>Waikapu Community Association</i> ; <i>F.A.C.E. Maui</i> ; and <i>Maui Division of Catholic Charities</i> - to present/share the proposed Vision and Goal and project's Conceptual Master Plan; receive valuable comments and input/feedback towards improving design of Master Plan; and help to avoid unnecessary adverse impacts to the nearby/surrounding community's environmental and socio-economic resources.
8.	June 2017 - July 2017	<u>Select Final Design of Master Plan</u> : After thorough assessment/analysis with project consultants and professionals; as well as valuable input/feedback from various Public Agencies and Community Groups, Final Design of Master Plan is selected.
9.	July 2017 – October 2017	<u>Preparation of Studies/Reports for 201-H Application</u> : Project Team initiates preparation of professional studies and technical reports that are necessary to complete and thorough analysis of all factors, elements, and aspects of the proposed Affordable Housing Project; including: preliminary engineering report, traffic analysis, market demand study/feasibility, archaeological report, flora/fauna inventory and assessment, etc.
10.	January 2018	<u>Early Consultation & Government Agency Review Process RE: 201-H Application</u> – Under coordination of Maui DHHC, WDV transmits required number of copies of <i>DRAFT</i> 201-H Affordable

		Housing Application to Maui DHHC for their subsequent transmittal of said application to all relevant County and State Agencies for agency review and comment.
11.	April 6, 2018	Mr. Frampton's rights under PSA assigned to WDV (with the consent of ELC).
12.	April 9, 2018	ELC's Motion for Extension of Time to Complete Project filed with the Land Use Commission. Included with this Motion was a copy of WDV's draft Application for Affordable Workforce Housing Subdivision.
13.	April 12, 2018	WDV's Motion to be a Co-Petitioner, or in the Alternative to Become a Party, or in the Alternative to Intervene (" WDV's Party Motion ") filed with the Commission.
14.	April 19, 2018	ELC's Memorandum in Support of WDV's Party Motion filed with the Commission.
15.	May 9, 2018	Hearing on ELC's and WDV's Motions held by the Land Use Commission.
16.	June 1, 2018	Large lot subdivision application filed with County to subdivide Petition Area into Lot A-1 (12.5 acres) and Lot A-2 (12.763 acres).
17.	June 4, 2018	<u>File Application for Two (2) Lot Subdivision and Preliminary Subdivision Plat with County Department Public Works</u> : WDV filed Application and Preliminary Plat for Two (2) Lot Subdivision with County Public Works to subdivide Petition Area into Lot A-1 (12.5 acres) and Lot A-2 (12.763 acres). County Public Works issues letter to note formal "Acceptance" of the said Application and Preliminary Subdivision Plat. County assigns <i>File Number</i> to Application of <u>Subdivision File No. 3.2390</u> ; and the 45-Day deadline for Preliminary approval begins.
18.	June 6, 2018	<u>COUNTY'S ALL DIRECTOR'S MEETING</u> : Under guidance/coordination of the County DHHC, the "All-Directors Meeting" was held at the Mayor's Lounge on the 9th Floor of the County Building in order to conduct a comprehensive review and assessment of the Proposed 201-H Residential Affordable Housing Project; including the proposed "List of Exemptions." This effort helped to assemble the pertinent Directors and/or Division Heads of several key County Departments and Agencies at one meeting; along with our Project Team of Professional Consultants so that we could help to ensure that the approval of our proposed project, along with the List of Exemptions, would not

		result in inadvertent adverse impacts upon the health, safety, and welfare of our community. Attending the meeting were representatives from several important County Departments and Divisions, including: <i>Fire and Public Safety</i> ; DHHC; <i>Parks & Recreation</i> ; <i>Planning Department</i> ; <i>Police Department</i> ; <i>Public Works</i> , <i>Environmental Management</i> ; <i>Department of Transportation</i> ; and <i>Department of Water Supply</i> .
19.	June 22, 2018	Land Use Commission grants WDV's Party Motion and admits WDV as an intervenor.
20.	July 2018	<u><i>FOLLOW-UP/DETAILED AGENCY REVIEW</i></u> : After the June 6, 2018 <i>County Director's Meeting</i> ; WDV met with (1) Dept. Public Works Engineering Div., & Highways/Roadways Maintenance Div; (2) Dept. Water Supply Engineering Div.; (3) Dept. Fire & Public Safety Fire Prevention Bureau; and (4) Department of Planning - Current Div. & Long Range Div. for detailed analysis and discussions in order to address requested modifications to project design identified in pre-consultation meetings.
21.	July 16, 2018	County DSA issues <i>Preliminary Subdivision Approval</i> of Two (2) Lot Subdivision
22.	July 25, 2018	<i>Formal Filing of 201-H Application</i> - WDV files its final 201-H Application for Affordable Workforce Housing Subdivision with the DHHC in order for DHHC's subsequent transmittal of said 201-H Application to County Council for approval Council's 45-Day Timeline to take action begins.
23.	August 1, 22, & 28, 2018	<i>Maui County Council Land Use Committee Hearings</i> - WDV's 201-H Application is referred to Maui County Council Land Use Committee ("LUC") for public hearing and review. . The Council LUC met on August 1, 2018 and August 22, 2018; and reconvened on August 28, 2018 to review and make formal recommendation to the County Council regarding proposed 201-H Application.
24.	August 28, 2018	<u><i>LUC Unanimously Votes to Recommendation Approval</i></u> : Council LUC Unanimously Votes (8-0, 1 excused) to recommend the full Council's Adoption of WDV's 201-H Application.
25.	September 7, 2018	County Council Votes Unanimously (8-0, 1 excused) to Adopt Resolution No. 18-150
26.	October, 2018	ELC files detailed timeline for development of the ELC Project with the Land Use Commission.

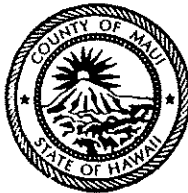
27.	October, 2018	WDV files Motion to Approve Sale, Motion to Allow Subdivision, Motion to Bifurcate Docket, with the Land Use Commission.
28.	October 22, 2018	WDV's Motion to Approve WDV 201H Project filed with the Land Use Commission.
29.	November 7, 2018	<u>WDV's Housing Development Agreement</u> : Anticipated approval by DHHC of WDV's <u>Housing Development Agreement</u> and said document is filed for recordation at Bureau of Conveyances.
30.	November 15, 2018	Land Use Commission hearing on ELC's and WDV's respective motions. WDV must obtain State Land Use Commission approval to utilize portion of ELC's urbanized property for 201H project not later than 6 months after County Resolution.
31.	December 2018	County Public Works issues Final Subdivision Approval Letter and Final Plat for 2-Lot of large lot Subdivision.
32.	December 2018 / January 2019	Parties Close on PSA for sale of Lot A-1 to WDV.
<u>WDV'S CONSTRUCTION PLANS</u>		
33.	December 2018	<u>Topographic Survey</u> - WDV executes proposal from Licensed Surveyor to prepare detailed <u>Topographic Survey</u> of Lot A-1, and subsequently transmits said survey to Civil Engineer for preparing Construction Plans.
34.	January 2019	<u>Prepare Constructions Plans for Site Work and Grading</u> - After Detailed Topo Survey complete, Civil Engineer begins preparing Construction Plans for 74 Lot Subdivision per 201-H Plans (i.e. grading/grubbing plans and civil work including: roadways, curb, gutter, sidewalk, water, wastewater, electric/cable/phone).
35.	February 2019	<u>Early Consultation with County Agencies and Request new County Policy RE: "Fast Track Designation"</u> - Meeting with Public Works and other key reviewing agencies to insure the Project will receive " Fast Track " priority designation during approval process (per 100% Affordable); additional meetings to review preliminary plans and assess if any issues.

36.	March/April 2019	<i>File Grading/Grubbing Plans & Site/Civil Construction Plans</i> - File Detailed Construction Plans and Bonding (i.e. grading/grubbing plans and civil work including: roadways, curb, gutter, sidewalk, water, wastewater, electric/cable/phone)
37.	May/June 2019	<i>Preliminary Bids/Estimates</i> - Meetings with qualified Contractors to review plans and timeline;
<u>WDV SITE WORK/CIVIL CONSTRUCTION</u>		
38.	Q2-Q4 2019	Prepare Detailed Construction Plans for the Affordable Houses (Single-Family and Duplex Units); building and obtain County approval and required permits for construction.
39.	Q3 2019	Obtain DLNR-SHPD approval of Monitoring Plan for ELC property prior to ground-breaking activities.
40.	Q3 2019	Prepare Soil Analysis Study of ELC property in consultation with the State Department of Health Hazard Evaluation and Emergency Response Office.
41.	Q3-Q4 2019	Site Blessing; then Dust/Silt Fence; then Grading/Grubbing plans. Per County Resolution 18-150, construction <u>must begin within 2 years of resolution</u> , and <u>completion deadline is 4 years from resolution</u> .
42.	2019-2020	Complete Site Work/Infrastructure/Utilities, including wastewater, water, electric/phone/cable.
43.	2020-2021	Construct Houses. Per County Resolution 18-150 deadline to complete construction is <i>September 7, 2020</i>
<u>FAMILIES/RESIDENTS QUALIFY FOR AFFORADBLE HOUSINES & SELECTION</u>		
44.	Q3-Q4 2019	Begin working with Residents to <i>confirm eligibility</i> for <i>County Residential Workforce Housing Requirements</i> ; Assist Potential Buyers with Sign-Up for <i>Homebuyer Education Course</i> ;

45.	Q4 2019 Q1 2020	Encourage Potential Buyers to <i>Meet with Qualified Lenders</i> to Prepare for Financing and request <i>Pre-Qualification Letter</i> ; Interested/Qualified Buyers to <i>Complete Sales Application Packages</i>
46.	Q2 2020	<i>Sales Lottery</i> to select Qualified Buyers, Notify Selected Buyers; Buyers to <i>Review/Execute Sales Contract</i> and Provide Deposit/Fees
47.	Q3 2020	Buyers Move into first phase of homes

EXHIBIT 3

DAVID C. GOODE
Director



GLEN A. UENO, P.E., P.L.S.
Development Services Administration

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
DEVELOPMENT SERVICES ADMINISTRATION
250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

July 16, 2018

Mr. Mark Matsuda, P.E.
OTOMO ENGINEERING, INC.
305 S. High Street, Suite 102
Wailuku, Hawaii 96793

RECEIVED
JUL 16 2018

SUBJECT: **WAIKAPU EAST SUBDIVISION NO. 3**
TMK: (2) 3-5-002:011
SUBDIVISION FILE NO. 3.2390

OTOMO ENGINEERING, INC.

Dear Mr. Matsuda:

Preliminary approval was granted to the subject subdivision on July 16, 2018. Final approval shall be contingent upon compliance with the following conditions:

1. Submit a recommendation for final subdivision approval from Maui Electric Company (MECO). For further information, please contact MECO at 871-2390.
2. Requirements/comments from the State of Hawaii, Department of Transportation, Highways Division (DOT):

Show "no vehicular access permitted" along the frontage of Honoapiilani Highway.

If you have any questions, please contact DOT at 873-3535.

3. Requirements/comments from the State of Hawaii, Department of Health:

We have no comments to offer.

If you have any questions, please contact Patti Kitkowski at 984-8230.

4. Submit a recommendation for final approval from the State of Hawaii, Department of Land and Natural Resources, Historic Preservation Division (SHPD). For further information, please contact Dr. Susan Lebo, Archaeology Branch Chief, at (808) 692-8019 or susan.a.lebo@hawaii.gov.



Mr. Mark Matsuda, P.E.

SUBJECT: **WAIKAPU EAST SUBDIVISION NO. 3**
SUBDIVISION FILE NO. 3.2390

July 16, 2018

Page 2 of 7

5. Submit a recommendation for final subdivision approval from the Department of Public Works, Engineering Division. For further information, please contact the Engineering Division at 270-7745.
6. Requirements/comments from the Department of Environmental Management:
 - a. Solid Waste Division comments:
 - 1) None.
 - b. Wastewater Reclamation Division (WWRD) comments:
 - 1) Although wastewater system capacity is currently available as of June 7, 2018, the developer should be informed that wastewater system capacity cannot be ensured until the issuance of the building permit.
 - 2) Wastewater contribution calculations are required before building permit is issued.
 - 3) Developer is not required to pay assessment fees for this area at the current time.
 - 4) Developer is required to fund any necessary off-site improvements to collection system and wastewater pump stations.
 - 5) Show or list minimum slope of new sewer laterals.
 - 6) Plans should show the installation of a single service lateral and advanced riser for each lot. Any request for waiver of this requirement shall be made submitted in writing for approval by WWRD.
 - 7) Indicate on the plans the ownership of each easement (in favor of which party). NOTE: County will not accept sewer easements that traverse private property.
 - 8) Kitchen facilities within the proposed project shall comply with pre-treatment requirements (including grease interceptors, sample boxes, screens, etc.).
 - 9) Non-contact cooling water and condensate should not drain to the wastewater system.

If you have any questions, please contact Michael Miyamoto at 270-8230.

Mr. Mark Matsuda, P.E.

**SUBJECT: WAIKAPU EAST SUBDIVISION NO. 3
SUBDIVISION FILE NO. 3.2390**

July 16, 2018

Page 3 of 7

7. Requirements/comments from the Department of Planning:

- a. Submit one PDF copy (on a compact disk) of the final subdivision plat with the following additional information (not normally on the final plat): topography.
- b. In the final plat notes section, include notes similar to the following:
 - 1) The subdivision contains the designations:
 - a) State Land Use URBAN (Conditional A07-773);
 - b) Maui Island Plan URBAN;
 - c) Community Plan PUBLIC/QUASI-PUBLIC;
 - d) County Zoning P-1 PUBLIC/QUASI-PUBLIC (Conditional Ordinance No. 3686); and
 - e) Flood Zone X.
- c. Obtain the following approval from the Department of Planning Current Division and submit a copy of the resulting approval to the Department of Planning Zoning and Enforcement Division:
 - 1) An approved Change in Zoning (CIZ) and an approved District Boundary Amendment (DBA) Compliance Report, showing subdivision conformance with the change in zoning conditions of Ordinance 3686 and the district boundary amendment conditions of Docket No. A07-773. To obtain this approval, submit to the Current Division a report containing verification that all conditions have been satisfied; if any conditions are not satisfied, include documentation showing your progress with a timeline for completion.
- d. Submit a statement indicating whether grading will be done as part of this subdivision. If yes; provide a PDF copy (on a compact disk) of the approved grading/elevation plans.
- e. Analysis of the Countywide Policy Plan, Maui Island Plan, & Community Plan:
 - 1) Submit a detailed analysis showing how your subdivision is consistent with each of the following documents: Countywide Policy Plan, Maui Island Plan, and relevant Community Plan. For each document:
 - a) Identify the page number and the specific wording of each standard, goal, objective, policy, or action which are relevant to your subdivision.
 - b) Provide an analysis showing how your subdivision is consistent with each standard, goal, objective, policy, or action identified in # (a) above.
 - 2) For your information, the Countywide Policy Plan (CCP), Maui Island Plan (MIP), and Community Plan (CP) documents are available at:
 - a) CCP: <http://www.mauicounty.gov/index.aspx?NID=420>
 - b) MIP: <http://www.mauicounty.gov/index.aspx?NID=1503>
 - c) CP: <http://www.mauicounty.gov/index.aspx?NID=1523>

Mr. Mark Matsuda, P.E.

SUBJECT: **WAIKAPU EAST SUBDIVISION NO. 3**
SUBDIVISION FILE NO. 3.2390

July 16, 2018

Page 4 of 7

- f. This subdivision is part of a planned greenway which is intended to provide a safe pedestrian and bicycle connection (separated from roadways) between the areas of Waikapu and the Kehalani commercial area. A large portion of this greenway route is already built within parcels neighboring this subdivision. The area remaining to be constructed crosses through the parcel of this subdivision and the adjacent parcel to the north. For this greenway to fulfill its purpose, the portion crossing through this subdivision must also be designed and constructed to connect with the existing route. Therefore, construct the portion which crosses this parcel between the existing greenway adjacent to the southern lot line and to a point adjacent to the drainageway along the northern lot line. We have provided two options for when the greenway shall be completed:
- 1) Prior to final subdivision approval of this two lot subdivision; or
 - 2) Upon development of one of the resulting two lots, whichever lot is developed first. If this option is chosen, provide satisfactory assurance that this will happen such as a construction bond.

If you have any questions, please contact Paul Critchlow at 270-7253.

8. Requirements/comments from the Department of Water Supply:

- a. According to the department's "Administrative Rule" (Title 16, Chapter 201) effective 1/29/18:

"Large quantities of water" means"

(d) In a department potable water system where the estimated three year forecast for water usage is below 88 percent of the department's maximum reliable capacity, an applicant's request for water service from the department for new or additional uses is more than 120,000 gallons per day.

This subdivision is zoned public/quasi-public, which falls under the commercial zoning designation shown on Table 100-18 of the department's Water System Standards (2002). This table indicates average daily demand for commercial zones at 6,000 gallons/acre. Therefore, the total water service requested for this subdivision is 151,578 gallons/day (75,018 gallons/day for Lot A-1 and 76,560 gallons/day for Lot A-2). This amount is greater than the allowed 120,000 gallons per day and may require "special conditions" as defined in the Administrative Rules.

- b. As discussed above, daily water usage shall be based on the department's Water System Standards (2002). However, for large lot subdivisions, as defined in section 18.16.270, Maui County Code, daily water usage may be based on the minimum requirements for one dwelling per lot. If applicable, provide written confirmation from DSA that the project meets the criteria of section 18.16.270.

Mr. Mark Matsuda, P.E.

SUBJECT: **WAIKAPU EAST SUBDIVISION NO. 3**
SUBDIVISION FILE NO. 3.2390

July 16, 2018

Page 5 of 7

- c. Provide fire protection in accordance with the standards.
- d. Provide water service to each lot in accordance with the standards.
- e. The subdivider shall deliver to the department perpetual easements required for the water system improvements.
- f. Water system development fees will be charged upon application for water meters.
- g. The applicant should be advised that the department's processing of this subdivision does not in any way imply that water service for the subdivision will be available. Approval of water service to each lot will be subject to rules and regulations of the department at the time water service is applied for.
- h. We are deferring action on the subject subdivision based on the Water Availability code (Maui County Code, Chapter 14.12). The applicant is required to obtain a written verification of long term reliably supply of water from the director of the Department of Water Supply.

If you have any questions, please contact the Department of Water Supply at 270-7835.

9. Requirements/comments from the Department of Parks and Recreation:

The Department of Parks and Recreation allows a one-time three-lot exemption for a development which has not been used yet. Therefore, the subject 2-lot subdivision is exempt from the park and playgrounds requirement.

If you have any questions, please contact Robert Halvorson at 270-7387.

10. Submit a recommendation for final subdivision approval from the Department of Fire and Public Safety. For further information, please contact Fire at 244-9161.

11. Requirements/comments from the Department of Housing and Human Concerns (DHHC):

Not applicable. Does not meet applicability as set forth in 2.96.030(A), MCC.

If you have any questions, please contact DHHC at 270-7805.

12. Comply with Section 18.12.040(B) of the Maui County Code. Provide written verification from the Director of Department of Water Supply (DWS) that the subdivision is in compliance of this code.

For further information, please contact DWS at 270-7835.

Mr. Mark Matsuda, P.E.

SUBJECT: **WAIKAPU EAST SUBDIVISION NO. 3**
SUBDIVISION FILE NO. 3.2390

July 16, 2018

Page 6 of 7

13. In accordance with Section 18.12.030(E)(13.a.) of the Maui County Code (MCC), submit a letter from all governmental agencies with an easement, lease or license affecting the land subdivided consenting to the preparation and recording of the final plat. If there are none, please indicate this in writing.
14. In accordance with Section 18.12.040 MCC, submit a tax clearance certificate (issued by Department of Finance, Real Property Assessment Division) to show written proof that all taxes and assessments on the tract are paid to date. An "Application for Tax Clearance for Subdividers" form can be obtained from the Real Property Assessment Division website. NOTE: The tax clearance certificate shall be valid at the time of final subdivision approval.
15. Design and construct the drainage facilities to the requirements of the Department of Public Works. A detailed final drainage report and site specific erosion control plan shall be submitted with the construction plans for review and approval. The drainage report shall include, but not be limited to, hydrologic and hydraulic calculations, and the schemes for disposal of runoff waters. The site specific erosion control plan shall show the location and details of structural and non-structural best management measures. The drainage and erosion control plans shall provide verification that the grading and all runoff water generated by the project will not have an adverse effect on the adjacent and downstream properties.
16. Comply with Section 18.20.135 (Post-construction stormwater quality best management practices) MCC, wherein it states, "Post-construction stormwater quality best management practices, as may be required by the director, shall be implemented for all subdivisions.
17. In accordance with Section 18.12.040 (A) MCC, submit a complete title report issued by a licensed title company showing all persons vested with record title in the land subdivided.
18. If improvements are required, submit construction plans and drainage and soil erosion control reports for review and approval by the applicable agencies. In accordance with Section 18.24.010(D) MCC, a construction plan review fee (\$200/lot) shall be paid upon submission of the construction plans.

When the construction plans are approved, post construction requirements will be noted on the construction plan approval letter. The post construction requirements will need to be completed prior to final subdivision approval.

Contact the Development Services Administration, Civil Construction Section at 270-7242 if you have any questions or for the appropriate number of plans and reports to submit.

Mr. Mark Matsuda, P.E.

SUBJECT: **WAIKAPU EAST SUBDIVISION NO. 3**
SUBDIVISION FILE NO. 3.2390

July 16, 2018

Page 7 of 7

19. Submit fifteen prints of the final plat in accordance with Chapter 18.12 (Final Plat) MCC. The final plat shall include all revisions addressing the comments noted on the enclosed preliminary plat. The final plats shall be folded into 8 1/2" x 11" sized sheets.

Condition nos. 12 and 17 shall be submitted prior to or in conjunction with the final plat.

20. Submit a digital copy of the final plat to the standards of the Real Property Assessment (RPA) Division. If you have any questions, please contact RPA at 270-6225.

Please review the enclosed sheet titled "Planning for Mail Delivery, A Guide for Hawaii Developers" from the United States Postal Service. For further information, please contact the local Growth Coordinator at (808) 423-3908.

Within one year from the date of preliminary approval of the subdivision, the final plat must be filed unless an extension of time is granted.

Please be forewarned that applications for an extension of time shall be made in writing to the Department of Public Works. Therefore, a time extension request must be made no later than July 16, 2019. In addition, a "good cause" reason for any time extension shall be stated in the request. Time extension requests which are not in compliance with both of these requirements, will result in the subdivision being deemed null and void.

If you have any questions regarding this letter, please contact Lesli Otani of our Development Services Administration at 270-7252.

Sincerely,



For DAVID C. GOODE
Director of Public Works

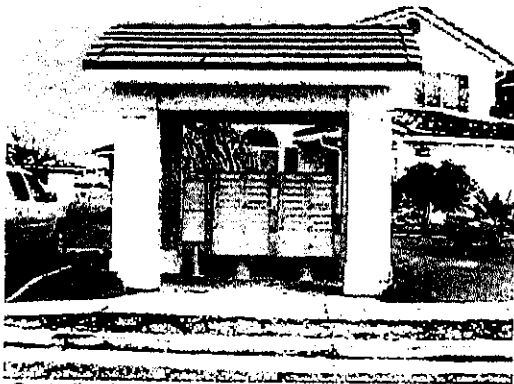
Enclosures: Preliminary Plat
Planning for Mail Delivery, A Guide for Hawaii Developers

File S:\DSA\Subd\Reg3\3#2390-1.pre.doc

C: Dept. of Finance, Real Property Assessment Div. (unmarked preliminary plat only)
Dept. of Finance, Tax Map Div. (unmarked preliminary plat only)
Dept. of Environmental Management, Wastewater Reclamation Division
Dept. of Water Supply, SD 18-25
Dept. of Planning
Dept. of Parks and Recreation
Dept. of Housing and Human Concerns
State DOT, Highways Division
State DLNR, SHPD
State Dept. of Health
Maui Electric Company

PLANNING FOR MAIL DELIVERY

A Guide for Hawaii Developers



Centralized equipment installed by Developer

Introduction

The US Postal Service and Hawaii's Developers are in business to serve the needs of an expanding population.

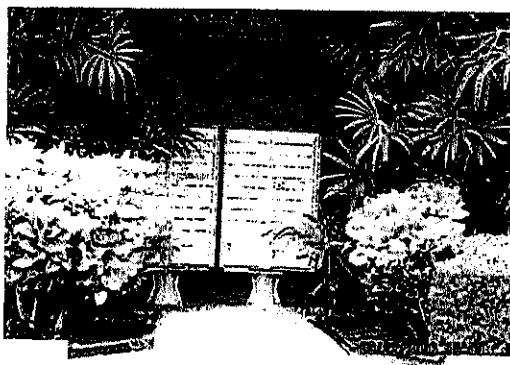
For Developers, there are many phases of planning involved for new buildings and residences. The US Postal Service also needs planning to serve the expanding population with daily mail delivery.

The US Postal Service in Honolulu has a Growth Management Program Coordinator to assist you in planning mail service.

We offer guidance in establishing the mode of delivery, and the type and location of mailbox receptacles for your project. Contact the local Growth Management Coordinator for assistance.

Delivery Mode

The preferred mode for both residential and business customers is at a central location. "Centralization" is now the key to providing mail delivery in a secure, cost effective and beneficial manner.



Centralized equipment at Shopping Mall

Advantages of Developer/Builder Purchased Centralized Delivery Equipment

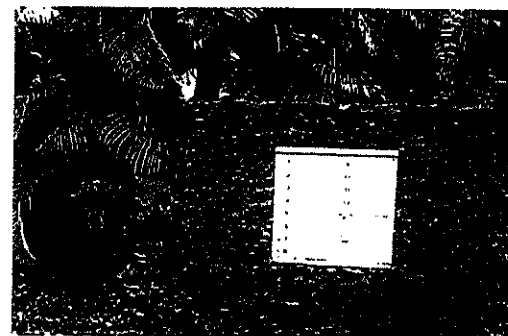
- Centralized delivery equipment is neat, uniform, and can be placed in a framework designed to blend with and maintain the aesthetics of the surrounding community.
- In many situations, with the use of centralized delivery equipment, the USPS may waive the "50% improved" requirement in new developments. This means delivery service may be established prior to 50% of residents moving in to a new development.

- Centralized delivery equipment provides the advantage of individually locking compartments for each customer, which affords additional security and privacy in comparison to unlocked curbside mailboxes. Parcel lockers and a secure outgoing mail receptacle are also included for customer convenience.



Centralized equipment installed by Developer

- Centralized delivery equipment purchased by the developer or builder can be installed in a number of attractive ways, including additional structures, lighting and landscaping.



Custom Box installed by Developer

Contact the local Growth Coordinator for more information at (808) 423-3908.

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of:

EMMANUEL LUTHERAN CHURCH OF
MAUI

To Amend the Land Use District Boundary of
Certain Lands Situated at Wailuku, Island of
Maui, State of Hawai'i, Consisting of 25.263
Acres from the Agriculture District to the
Urban District, Tax Map Key No. 3-5-002:011.

DOCKET NO. A07-773

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following, via United
States mail, postage prepaid, on OCT - 9 2018 :

JENNIFER A. LIM, ESQ.
DEREK A. SIMON, ESQ.
Carlsmith Ball LLP
1001 Bishop Street, Suite 2100
Honolulu, Hawaii 96813

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EMMANUEL LUTHERAN
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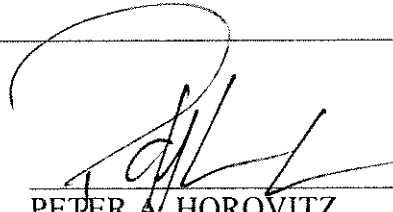
MICHELE CHOUTEAU McLEAN
Director, Planning Department
County of Maui
2200 Main Street, Suite 315
Wailuku, Hawaii 96793

DAWN T. APUNA, ESQ.
Office of the Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

LEO ASUNCION
Director, Office of Planning
State of Hawaii
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

DATED: Wailuku, Maui, Hawaii

OCT - 9 2018

A handwritten signature in black ink, appearing to read 'Peter A. Horovitz', is written over a horizontal line.

PETER A. HOROVITZ
Attorney for Intervenor
**WAIKAPU DEVELOPMENT VENTURE,
LLC**