

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of and effective the 28 day of NOV, 2019, by Maui Oceanview LP ("MOLP") on the one hand, and the West Maui Preservation Association, Inc. ("WMPA"), on the other hand. The signatories of this Agreement are hereinafter referred to individually as a "Party" or jointly as the "Parties."

This Agreement is made as a compromise and settlement between the Parties and is intended to effect a complete and final resolution of all claims, differences, and/or concerns described below.

Recitals

WHEREAS, MOLP acquired approximately three hundred four (304) acres of land located on the west side of Maui in the Lahaina region between Kapalua and Ka'anapali in or around the Spring of 2016 (the "Property");

WHEREAS, MOLP is currently seeking approval from several regulatory bodies, including the Land Use Commission of Hawaii, to develop the Property in an effort to facilitate the construction of commercial and retail spaces; single and multi-family affordable and market rate housing units; an approximately ten (10) acre regional sport park; a community-wide potable water system that provides water through wholly-owned groundwater wells, connecting to third-party groundwater/well-water sources, and/or connecting to Maui County, Hawaii's potable water system; a wastewater treatment system and/or a system that connects to the Lahaina wastewater treatment plant; and an elementary school (the "Project").

WHEREAS, MOLP intends to develop the Property in multiple Phases;

WHEREAS, the WMPA has expressed concerns regarding certain aspects of the Project (the "Concerns");

WHEREAS, MOLP and the WMPA conferred in good faith and jointly developed a resolution that resolves the WMPA's concerns regarding the Project;

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Design Elements of Project

1. MOLP shall modify the Project's design to add pet friendly features within the Project. MOLP shall construct a fully-fenced dog park on the Property at or before the time fifty percent (50%) of residential units have been built.

2. MOLP shall ensure, as is commercially reasonable, that the residential neighborhoods within the Project are built in a manner that is aesthetically pleasing. MOLP shall design features of rental apartment buildings that are consistent with Hawaiian architectural aesthetics.

3. MOLP shall preserve certain gulches located within the Property, including Mahinahina Gulch, Pulepule Gulch, Kahanaiki Gulch, and Pohaku-Kaanapali Gulch. MOLP shall create multiple open-space pocket parks through the various phases of the Property's development, including a ten (10) acre regional multi-sport park in the southern portion of the Project.

4. MOLP shall construct roof-top solar power or equivalent on-site solar energy electrical generation for each single-story rental and for sale residential buildings. MOLP shall make its best efforts to implement rooftop solar or equivalent for any "Live Work" buildings constructed, which will be two stories in height.

Transportation Matters

5. MOLP shall construct miles of sidewalks and special lanes set aside for walking, hiking, and bicycle riding.

6. MOLP shall submit an application to the appropriate County of Maui department to obtain approval for the placement of two (2) bus stops within the Property at certain populated areas. MOLP shall install covered bus stops for bus stops established in the manner required by the County of Maui.

7. MOLP shall make a one-time payment to a community advocacy group, as designated by WMPA, to advocate for and/or facilitate the relocation of the Honoapiilani Highway between the Pali and Olowalu town away from the shoreline in the amount of \$100,000 when the report payments are due.

7.a. WMPA is a 501(c)(3) tax exempt public charity non profit corporation and is organized for the purpose of preserving, protecting, and restoring the natural and cultural environment of West Maui. Developer will donate \$100,000 to WMPA as follows. Within 30 days after Developer obtain approval from the LUC, Developer will pay \$30,000. Within 30 days of obtaining its first building or grading permits, Developer will pay \$35,000. Within one year of obtaining its first building or grading permits, Developer will pay the remaining \$35,000.

No HOA Fees for Affordable Rental Units

8. MOLP shall prohibit the assessment of homeowner's association fees on units designated as affordable multifamily residential rental units and accessory dwelling units on the Property.

9. MOLP shall prohibit the use of any part of the Property for transient vacation rental use including bed and breakfast home use or other short-term rental use. These prohibitions shall be specifically recorded on the title and shall be enforceable by any owner, party to this agreement, or their successors and assigns.

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Soliciting of Maui Based Contractors

10. MOLP shall solicit bids from qualified Maui-based contractors for various construction services required to develop the Project. MOLP shall not be required to accept bids solicited and shall retain complete authority to contract with or hire whichever contractors it, in its sole discretion, chooses.

Wastewater Matters

11. MOLP shall either: (1) construct an on-site private wastewater treatment system that possesses adequate capacity to serve residential and commercial demands contemplated by the project (the "Wastewater System"), or (2) connect to the County of Maui's Lahaina Wastewater Reclamation Facility and return treated R1 water back to the Property for fire-flow and landscape irrigation needs.

If an on-site system is constructed, the Wastewater System: (1) shall utilize organic membrane filtration technology, (2) shall not discharge treated effluents into injection wells, and (3) MOLP shall reuse the treated R1 water within the Property for fire-flow and/or landscape irrigation needs to the extent such re-use is approved by relevant State and County authorities. The Wastewater System, if constructed, shall use comparable filtering technology to other membrane technology-based systems including, but not limited to, the Organica system proposed by the Waikapu Country Town project in the County of Maui.

Public Elementary School

12. MOLP shall commit to meeting with Dowling Company to discuss financing ideas to provide financing for and construction of a public elementary school on the Property.

Affordable Housing

13. MOLP shall construct three hundred (300) affordable residential units for long term rental use (the "Affordable Rental Units"). Long term rental as used herein is defined as any rental agreement that has a minimum term of six months. The Affordable Rental Units shall be developed as follows:

- a. One hundred (100) Affordable Rental Units shall be rented to individuals or families with annual income at or less than 80% but higher than 60% of the Average Median Income level as determined by the U.S. Department of Housing and Urban Development in its annually published affordable housing guidelines ("AMI");
- b. One hundred (100) Affordable Rental Units shall be rented to individual or families with annual income at or less than 100% but higher than 80% of the AMI;
- c. One hundred (100) Affordable Rental Units shall be rented to individuals or families with annual income at or less than 120% of the AMI.

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14. MOLP shall construct one hundred (100) apartment units for sale (the "Affordable Sale Units"). The Affordable Sale Units shall be sold as follows:

- a. Twenty (20) Affordable Sale Units shall be offered for sale to individuals or families with annual income at 60% of AMI as published by the Maui Affordable Housing Sales Guidelines at the time of sale;
- b. Twenty (20) Affordable Sale Units shall be offered for sale to individuals or families with annual income at or less than 80% but higher than 60% of AMI as published by the Maui Affordable Housing Sales Guidelines at the time of sale;
- c. Forty (40) Affordable Sale Units shall be offered for sale to individuals or families with annual income at or less than 100% but higher than 80% of AMI as published by the Maui Affordable Housing Sales Guidelines at the time of sale;
- d. Twenty (20) Affordable Sale Units shall be offered for sale to individuals or families with annual income at or less than 120% but higher than 100% of AMI as published by the Maui Affordable Housing Sales Guidelines at the time of sale; and
- e. Prices sold to buyers are to be determined by Maui County Affordable Housing Sales Guidelines rules and regulations and as dictated in the Workforce Housing Agreement between Pulelehua and County of Maui.
- f. All individuals or families will be required to independently qualify to purchase the above-described Affordable Sale Units.
- g. Affordable Sale Units that are not the subject of a sale contract within ninety (90) days of their being offered to eligible purchasers shall be shifted to the next higher income category (i.e. from 60% of AMI to 80% of AMI). If an Affordable Sale Units moves through all income categories described herein without selling, it shall be added to the Affordable Rental Unit pool for the income category it was originally offered for sale.

15. MOLP shall have available upon development: (1) forty (40) Affordable Sale Units and eighty (80) Affordable Rental Units by the completion of Phase I of the Project; (2) forty (40) Affordable Sale Units, one hundred thirty (130), Affordable Rental Units, and ten (10) affordable Live Work rental units by the completion of Phase II of the Project; and (3) twenty (20) Affordable Sale Units and eighty (80) Affordable rental units by the completion of Phase III of the Project. This provision is contingent upon approval by the County of Maui and MOLP shall be permitted to adjust the ratio of Affordable Sale Units and Affordable Rental Units between Phase II and Phase III of the Project in consultation with WMPA and as approved by the County of Maui.

16. MOLP warrants the planned one hundred (100) single family lots shall include the right to construct an Accessory Dwelling Unit. MOLP shall put in deed restrictions affecting these one hundred single family lots such that any rental of accessory dwelling units from homeowners of these lots to third party tenants, except where the tenant is a relative of the homeowner, are charged monthly rents that do not exceed the allowable rents at the time such rents are due for Affordable Rental Units at the 100% of AMI level for Maui County .

17. Tenants of Affordable Rental Units shall not have to pay for water or electricity provided to their respective Affordable Rental Units. Individual submeters shall be installed for each

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Affordable Rental Unit and in any instance where the consumption of water or electricity exceeds the average consumption amounts for similar size units within Pulelehua by more than 15% for more than 2 consecutive months or 3 months a year, such renters shall pay for such excess consumption. This right of MOLP shall be included in the Lease Agreement for the Affordable Renters within Pulelehua.

18. MOLP shall be subject to a thirty (30) year affordability agreement with the County of Maui (the "Affordability Agreement"). The Affordability Agreement shall set forth pre-defined discounts applicable to Affordable Rental Units. Upon the expiration of an Affordability Agreement, the County of Maui shall hold a Right of First Refusal permitting it to: (1) purchase the Project at prevailing market value or (2) comply with one of the provisions set forth in Section 18A below. This provision shall in substance be incorporated into the terms of the Workforce Housing Agreement to be executed between MOLP and the County of Maui. After thirty (30) days the owner may request funding from the County for maintenance of the unit.

18A. Upon expiration of the Affordability Agreement, the owner must do one of the following:

- a. Follow the process outlined in the Workforce Housing Agreement between MOLP and the County of Maui. To the extent such an Agreement is not in contravention or has provisions for the following, MOLP further agrees that it will:
- b. Inform the County that the owner intends to continue renting the Affordable Rental Unit but will no longer do so at an affordable rate. After informing the County, the owner must offer the County the opportunity to appraise the unit, after which the County will have the option to purchase the unit at appraised value. In this scenario, MOLP shall do this for all Affordable Rental Units and not selective individual Affordable Rental units.
- c. Enter into an agreement with the County stating that the owner intends to continue renting the Affordable Rental Units at an affordable rate.
- d. Enter into an agreement with the County, should the County elect to do the same, to allow the County to invest in new funding to renovate and remodel the Affordable Rental Units at Pulelehua for the purpose of bringing the units up to current housing standards to allow such Affordable Rental Units to remain in the affordable rental pool. If the current or future owner no longer desires to maintain this agreement with the County, they may terminate it by selling their interest in the unit to the County at the then appraised market value.

19. The Affordable Sale Units shall be put in a managed appreciation resale model as approved or adopted by the County of Maui or WMHRT (a "Resale Model"). Buyer(s) of units that receive a loan grant from the to-be-formed WMRHT shall put the housing unit in a managed appreciation resale model as approved or adopted by the County of Maui or WMHRT, unless unit is on the Department of Hawaiian Home Lands. All such restrictions and conditions adopted by the County of Maui or WMHRT shall be recorded against title as a covenant that runs with the land.

20. To the extent allowed under applicable Housing law, Affordable Sale Units and Affordable Rental Units shall first be offered to residents of Maui who otherwise qualify for this affordable housing (as set forth in Section 12, 13, and 15 of this Agreement), with at least one person in residence that is employed within the County of Maui for an average of thirty (30) hours per week.

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21. For selection of eligible buyers to the Affordable Sale Units, WMRHT shall form an advisory committee to assist MOLP in selecting eligible purchasers for the Affordable Sale Units. MOLP is not obligated to accept such recommendations except those that are legal under all federal, State and county Housing laws and as agreed to between Pulelehua and the County in its Workforce Housing Agreement.

22. MOLP shall develop three single family use lots (the "Cost Units") and shall sell these three lots to a non-profit organization "at cost." In this section, "at cost" shall mean the total amount of money paid or incurred in connection with the development of the Cost Units for sale. The Cost Units shall conform with any applicable Pulelehua rules and regulations. Any occupants of the Cost Units shall follow Pulelehua rules and pay the same dues paid by other single-family lot owners.

West Maui Revolving Housing Trust

23. MOLP shall pay One Million Six Hundred Thousand Dollars (\$1,600,000.00 USD) to WMRHT within five (5) days of breaking ground on Phase I of the Project. MOLP shall have no other involvement in the management, control, or operations of WMRHT.

24. WMPA shall be responsible to incorporate and establish the WMRHT, including filing all necessary documents and Bylaws, before the time MOLP is required to make the payment described in Section 21 of this Agreement. WMPA shall ensure that the Bylaws of the WMRHT expressly provide for the management and operations of the WMRHT and include the following terms:

a. WMRHT shall be a non-profit corporation established under Hawai'i state law and limited in purpose to lend portions of down payments in loan grants to assist long-term West Maui residents and other native Hawaiians ("Identified Recipients") in purchasing affordable homes located in the West Maui region. West Maui refers to the two historic moku/districts of Lahaina and Kaanapali bounded in the north to include and end in the Kahakuloa Valley and bounded in the south to include and end in the ahupua'a of Ukumehame.

b. WMRHT shall have a board consisting of three (3) trustees. Kai Nishiki, or in the case where she is unable to fulfill her duties to WMPA, another WMPA representative, shall select and appoint the initial trustees and shall approve the selection of each successor trustee. The term of each trustee shall be three (3) years. No trustee shall serve for more than two (2) consecutive full terms.

c. WMRHT shall identify Identified Recipients to be awarded "housing down payment loan grants" to assist Identified Recipients in making down payments for affordable houses ("Grants"). Awarding of grants must occur by the affirmative vote of a majority of trustees. Each year, the WMRHT shall determine the number of Grants it intends to award. However, the WMRHT is not required to award a specific number of Grants during any particular year. The amount of a grant shall not exceed the minimum down payment required by an Identified Recipient to purchase an affordable house—as determined by reasonably prevailing standards in the relevant geographic region. Recipients

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must be otherwise qualified homebuyers, and Grants awarded will be paid directly to the escrow company overseeing the Identified Recipient's purchase of an affordable house.

d. Recipients shall agree to repay WMRHT their previously awarded Grants if they subsequently resell their affordable house and must participate willingly in a Managed Appreciation Resale Model adopted either by the County in its Workforce Housing Agreement with MOLP or WMRHT. The terms and conditions of this agreement shall be recorded as a restrictions or encumbrances on the title.

e. WMRHT shall also receive a portion of any profit, in an amount to be determined by WMRHT, that a Recipient receives if they subsequently resell their affordable house under the terms of the MARM the homeowner agreed to. WMRHT shall be authorized to receive these funds and use the same to award additional Loan Grants and or Trust operations.

f. The WMRHT may not spend more than 2% annually of the beginning balance of its available funds on administrative overhead and related costs, unless required to do so by applicable laws related to tax exempt non-profit organizations.

g. Identified Recipients shall reimburse WMRHT for any legal and/or administrative fees it incurs in connection with a Grant upon the closing on Recipient's affordable house purchase. However, WMRHT's reimbursable expenses shall not exceed 1% of the total purchase price of the Recipient's affordable house.

h. WMRHT shall remain active to disburse and/or receive funds as they become available.

i. WMRHT's funds shall be deposited in interest-bearing accounts with FDIC insured banks or NCUA insured credit unions domiciled and operating within the state of Hawai'i. No more than 1% of the WMRHT's cash on deposit shall be outside the insured limits of the FDIC and/or NCUA program.

General Provisions

25. So long as the design or plan of the Project are not significantly altered and MOLP complies with all representation and promises made within this Agreement, WMPA shall not oppose MOLP's efforts to obtain all required regulatory approvals for the Project. West Maui Preservation Association shall publicly manifest approval of settlement agreement terms by providing testimony at public hearings or open meetings of regulators or authoring mutually acceptable letters of support for the Project, if required to effectuate settlement terms.

26. This Agreement is the result of compromise and shall never be construed as an admission by any Party of any liability, wrongdoing, or responsibility on their part or on the part of their predecessors, successors, parents, subsidiaries, affiliates, members, agents, managers, attorneys, officers, directors, or employees.

27. The Parties agree that they will work cooperatively to resolve any issues and/or concerns regarding the Parties' respective obligations under this Agreement. Should a Party contend that another Party violated its respective obligations under this Agreement (a "Default"), the defaulting-party shall: (1) be given written notice of the alleged Default ("Notice") and (2) have a period of thirty (30) days from the date it receives Notice to cure and/or remedy the alleged Default. Each

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Party acknowledges and agrees that the sole and exclusive remedy for any alleged Default shall be: (1) specific performance of the terms and conditions of this Agreement and/or (2) an injunction prohibiting any actions from being taken in contravention of this Agreement. In any dispute resolution proceeding between the Parties in connection with this Agreement, the prevailing Party will be entitled to recover its reasonable attorney's fees and costs in such proceeding from the other Party.

28. The Parties hereby consent to the exclusive jurisdiction of the Circuit Court of the Second Circuit, state of Hawai'i to resolving any and all disputes that may arise regarding the enforcement or clarification of obligations under this Agreement that cannot otherwise be resolved, as contemplated herein. This Agreement and the rights and obligations of the Parties hereto will be governed by and interpreted in accordance with the laws of the State of Hawaii.

29. In the event that MOLP shall be delayed, hindered, or prevented from the performance of any duties, obligations, or conditions provided for and required under this Agreement by reason of fires, volcanic eruptions, tsunamis, abnormal rains, flood(s), embargo(es), war(s), acts of God, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, or other reasons of a like nature not the fault of MOLP, then performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

30. This Agreement sets forth and constitutes the entire agreement between the Parties with respect to its subject matter and supersedes any and all prior agreements, understandings, promises, warranties, and representations made by each Party to the other concerning their subject matter. This Agreement may be modified only by a written document signed by all Parties. No waiver of this Agreement or of any of its promises, obligations, terms, or conditions shall be valid unless it is written and signed by the Party against whom the waiver is to be enforced. The Parties expressly disclaim reliance on any representation not contained in writing in this agreement.

31. This Agreement is binding on the Parties and their predecessors, successors, parents, subsidiaries, affiliates, assignees, agents, directors, officers, employees, and shareholders. Each of the signatories of this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of his or her respective Party and, by his or her signature, to bind that Party to this Agreement.

32. The invalidity of any portion of this Agreement shall not invalidate the remainder. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the Parties shall amend this Agreement and/or take other action necessary to achieve the intent of this Agreement in a manner consistent with the laws of the State of Hawaii.

33. The Parties cooperated in the drafting of this Agreement, and if it is finally determined that any provision in this Agreement is ambiguous, that provision shall not be presumptively construed against any Party.

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34. Each Party acknowledges that it has read all the terms of this Agreement, had an opportunity to consult with counsel of its own choosing, or voluntarily waived such opportunity, and enters these terms voluntarily and without duress.

35. Each Party will execute any additional documents reasonably necessary to effectuate the provisions of this Agreement.

Agreed:

MAUI OCEANVIEW LP

West Maui Preservation Association,

By: Maui Oceanview GP, Inc.,
a Texas corporation, its sole general partner

By: Kai Nishiki, President

By: Paul Cheng
Name: Paul Cheng,
Its: President
Date: November 28, 2019

By: Kai Nishiki
Name: Kai Nishiki,
Its: President
Date: November 29, 2019

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