

**COUNCIL OF THE COUNTY
OF MAUI, POLICY
COMMITTEE, COMMITTEE
REPORT NO. 12-143**

APPENDIX

D-1

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

December 7, 2012

Committee
Report No.

12-143

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy Committee, having met on November 20, 2012, and November 26, 2012, makes reference to County Communication 12-225, from the Director of Environmental Management, transmitting a proposed resolution entitled "AUTHORIZING THE PURCHASE OF LAND LOCATED AT PULEHU ROAD, KAHULUI, ISLAND AND COUNTY OF MAUI, PURSUANT TO CHAPTER 3.44, MAUI COUNTY CODE".

The purpose of the proposed resolution is to authorize the purchase of approximately 28.486 acres ("28 acres") described as Lot 2-A-1 of the Central Maui Sanitary Landfill Subdivision (TMK: (2) 3-8-003:019 (portion)), located at Pulehu Road, Kahului, Maui, for \$813,000, pursuant to Chapter 3.44, Maui County Code. The Department of Environmental Management is considering the land as a possible location for the expansion of the Central Maui Landfill.

Your Committee notes that the purchase agreement for the property is attached as Exhibit "1" to the proposed resolution. The proposed resolution also attaches a preliminary title report, an appraisal dated August 25, 2011, and a License Agreement. The License Agreement would allow Alexander & Baldwin, LLC ("A&B") to harvest any crop being grown on the property until the harvest is completed (estimated at March 2014).

Your Committee notes that the appraised value of the property is \$713,000. Your Committee questioned the \$100,000 differential in the appraised value and the purchase price. The Deputy Director of Environmental Management noted that the price was negotiated with A&B to compensate the company for its anticipated expenses in relocating an access roadway, interior roadways, gates, water facilities, and other infrastructure onto other adjacent properties owned by A&B. The Deputy Director also advised that an updated appraisal as of November 2012 valued the property at \$752,000.

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The Deputy Director further noted that the Department is considering the possibility of using the property to warehouse materials, handle green waste, and accommodate a materials recovery facility and abandoned vehicle storage yard.

Grant Chun, Vice President, A&B Properties, Inc., informed your Committee that the proposed transaction had been initiated by the County, and that A&B has agreed to sell the land to assist the County in its efforts to address the County's solid waste needs. He described the historical efforts to identify land in the vicinity of the existing Central Maui Landfill for expansion purposes.

Your Committee noted that an approximately 22-acre portion of the 28 acres is designated as Important Agricultural Lands ("IAL"). Your Committee discussed how that designation may impact the use of the property for landfill expansion purposes. Your Committee was satisfied with the options presented to pursue use of the 28 acres for the public purpose of landfill expansion.

Your Committee also questioned the references to a "remainder parcel" in the purchase agreement. Your Committee was advised that the 28 acres had been subdivided and consolidated with County-owned land in anticipation of the sale, and that the County and A&B are, therefore, co-tenants of approximately 179.962 acres now known as Lot 1-A-1.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed resolution, approved as to form and legality, to clarify these issues and incorporate nonsubstantive revisions. The revised proposed resolution describes the consolidation of lots and the subsequent designation of the 28 acres as a portion of Lot 1-A-1. It also clarifies that the intent of the purchase agreement is to sell all of A&B's interest in Lot 1-A-1, which includes the 28 acres, to the County.

A Deputy Corporation Counsel noted that if the Council approves the purchase, that approval would extend to the consolidation and resubdivision process outlined in the proposed resolution.

As a result of concerns expressed with the subdivision process, the Chair of your Committee stated that all departments in the future should seek the advice of the Department of the Corporation Counsel before signing documents, to ensure that no legislative action is required before departments are authorized to sign.

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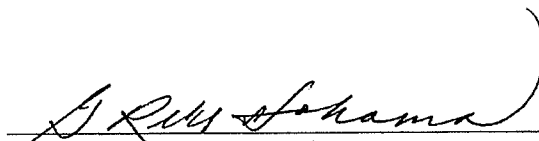
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Your Committee voted 5-0 to recommend adoption of the revised proposed resolution and filing of the communication. Committee Chair Hokama and members Baisa, Mateo, Victorino, and White voted "aye". Committee Vice-Chair Carroll and members Cochran, Couch, and Pontanilla were excused.

Your Policy Committee RECOMMENDS the following:

1. That Resolution 12-122, as revised herein and attached hereto, entitled "AUTHORIZING THE PURCHASE OF LAND LOCATED AT PULEHU ROAD, KAHULUI, ISLAND AND COUNTY OF MAUI, PURSUANT TO CHAPTER 3.44, MAUI COUNTY CODE", be ADOPTED; and
2. That County Communication 12-225 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



G. RIKI HOKAMA, Chair

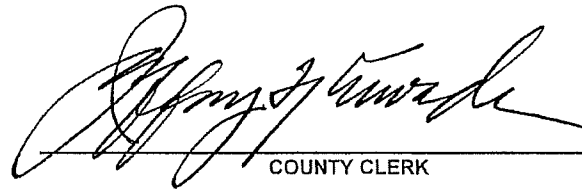
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is **HEREBY CERTIFIED** that the recommendations contained in **COMMITTEE REPORT NO. 12-143** were adopted by the Council of the County of Maui, State of Hawaii, on the 7th day of December, 2012, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
ROLL CALL	Aye	Excused	Aye	Aye	Aye	Aye	Excused	Excused	Aye



COUNTY CLERK

Resolution

No. 12-122

AUTHORIZING THE PURCHASE OF LAND LOCATED AT
PULEHU ROAD, KAHULUI, ISLAND AND COUNTY OF MAUI,
PURSUANT TO CHAPTER 3.44, MAUI COUNTY CODE

WHEREAS, by way of the Fiscal Year 2012 Budget Ordinance, the Maui County Council appropriated \$1,500,000 from the Bond fund to the Wailuku-Kahului Community Plan Area for purposes of the capital improvement project known as the "Central Maui Solid Waste Facility", with Phase I of said project being the acquisition of 25 acres of land near the Central Maui Landfill, located on Pulehu Road in Kahului, Island of Maui; and

WHEREAS, on November 9, 2010, the County of Maui's Department of Public Works received an application for a limited subdivision, pursuant to Section 18.12.050, Maui County Code, and assigned said application Subdivision File No. 3.2253. Said application was submitted by the County of Maui and Alexander & Baldwin, Inc. (now known and hereafter referred to as Alexander & Baldwin, LLC, a Hawaii limited liability company), requesting the consolidation of two parcels of real property located within the Central Maui Sanitary Landfill Subdivision, specifically Lot 1-A (being approximately 151.476 acres owned by the County of Maui) and Lot 2-A-1 (being approximately 91 acres owned by Alexander & Baldwin, LLC). Said application further requested the resubdivision of said lots into Lot 1-A-1 (approximately 179.962 acres owned by Alexander & Baldwin, LLC, and the County of Maui) and Lot 2-A-1-A (approximately 63 acres owned by Alexander & Baldwin, LLC). Said Subdivision File No. 3.2253 was given final approval on June 27, 2011; and

WHEREAS, Alexander & Baldwin, LLC, has agreed to sell all of its fee simple interest in Lot 1-A-1, to the County of Maui and has entered into a Real Property Purchase and Sale Agreement to that effect, attached hereto as Exhibit "1" ("Agreement"); and

Resolution No. 12-122

WHEREAS, an appraisal by ACM Consultants, Inc., completed August 23, 2011, for the County, shows that the appraised value of Alexander & Baldwin, LLC's fee simple interest in Lot 1-A-1 is \$713,000; and

WHEREAS, the agreed-to price for all of Alexander & Baldwin, LLC's fee simple interest in Lot 1-A-1 is \$813,000, plus expenses as set forth in Section 4.4(b) of the Agreement; and

WHEREAS, Maui County Code Section 3.44.015.B, provides that, in the case of real property with a purchase price that exceeds \$100,000, the County Council shall authorize the acquisition by passage of a resolution; and


WHEREAS, the Council finds that acquisition of all of Alexander & Baldwin, LLC's fee simple interest in Lot 1-A-1 is in the public interest; now therefore,

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

1. That, pursuant to Section 3.44.015.B, Maui County Code, the Council hereby approves the acquisition of all of Alexander & Baldwin, LLC's fee simple interest in Lot 1-A-1 of the Central Maui Sanitary Landfill Subdivision for \$813,000, plus expenses as set forth in Section 4.4(b) of the Agreement; and

2. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Director of Environmental Management, and Alexander & Baldwin, LLC.

APPROVED AS TO FORM
AND LEGALITY:



RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui

REAL PROPERTY PURCHASE AND SALE AGREEMENT

This Real Property Purchase and Sale Agreement ("**Agreement**") made this _____ day of _____, 2012, by and between **ALEXANDER & BALDWIN, LLC**, a Hawaii limited liability company, formerly known as Alexander & Baldwin, Inc. (hereinafter referred to as "**Owner**" and/or "**Seller**"), and **COUNTY OF MAUI**, a political subdivision of the State of Hawaii (hereinafter referred to as "**County**" and/or "**Buyer**").

RECITALS

(a) Seller's Lot 2-A-1 of the Central Maui Sanitary Landfill Subdivision was consolidated with the County's Lot 1-A, and subsequently resubdivided (Subdivision File No. 3.2253), such that Seller and the County are owners of fee simple interests in that certain parcel of land described as Lot 1-A-1, located at Pulehu Road in Kahului, Maui, Hawaii; Tax Map Key No. (2) 3-8-03:019. Said Lot 1-A-1 contains a total area of approximately 179.962 acres, with Seller's ownership interest in said Lot 1-A-1 equivalent to an area of approximately 28.486 acres, such fee simple interest being more particularly described below and within the attached Legal Description and Survey, Title Report, and Appraisal attached hereto as Exhibit "AA", "A", and "B".

(b) Seller desires to sell, and Buyer desires to purchase said fee simple interest for the consideration and on the terms set forth in this Agreement.

AGREEMENT

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

1. DEFINITIONS.

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

"**ALTA Insurance**" means American Land Title Association title insurance.

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

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

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

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

"**Closing Payment**" is defined in Section 2.1(d).

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

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TMK: (2) 3-8-003-:019

"DCCA" means the Department of Commerce and Consumer Affairs of the State of Hawaii.

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

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

"Escrow Agent" means Title Guaranty Escrow Services, Inc. – Kahului Branch, 80 South Puunene Avenue, Kahului, HI 96732: Attention: Michael Gamberdell, Branch Manager.

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

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

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

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

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

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TMK: (2) 3-8-03: 019 (portion)

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

"**New Encumbrance**" is defined in Section 3.4.

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

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

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

"**Property**" is defined in Section 2.1.

"**Purchase Price**" is defined in Section 2.1(d).

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

"**Remainder Parcel**" is defined as the remaining portion of Lot 1-A-1 that does not include the Property.

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

"**Seller's Closing Documents**" is defined in Section 4.2.

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

"**Title Report**" is defined in Section 3.3.

"**Title Policy**" is defined in Section 7.3.

2. SALE OF PROPERTY.

2.1 Sale of Property. Subject to the terms and conditions of this Agreement, at the Closing, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller all of Seller's interest in the following described Property (collectively the "**Property**"):

(a) Real Property. The fee simple estate described in the Legal Description and Survey, Title Report, and Appraisal, attached hereto as Exhibits "AA,"

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"A," and "B" respectively, together with the improvements, fixtures, appurtenant easements, and other real Property interests appurtenant to such fee simple estate but expressly reserving unto the Seller and Seller's affiliates, a waterline easement in the general location shown on Exhibit "E" attached hereto and made a part hereof (the "**Waterline Easement**"), which will be specifically located and designated prior to Closing (the "**Real Property**");

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

(c) Subdivision. The Property, which was originally a portion of Lot 2-A-1 of the Central Maui Sanitary Landfill Subdivision (the "**Landfill**"), has been subdivided from said Lot 2-A-1 and consolidated with other real property owned by Buyer identified as Lot 1-A of the Landfill such that Lot 1-A and the Property now comprise new Lot 1-A-1 of the Landfill. Final approval of said subdivision and consolidation (the "**Subdivision**") is evidenced by that letter from David C. Goode, County of Maui Department of Public Works, dated June 27, 2011, attached hereto as Exhibit "D." To the extent that Seller has acquired an interest in the Remainder Parcel, Seller shall quitclaim its interest in the Remainder Parcel to Buyer at Closing. To the extent that Buyer has acquired an interest in Lot 2-A-1-A of the Landfill, Buyer shall quitclaim its interest in Lot 2-A-1-A to Seller. The parties acknowledge that it appears that Lot 1-A-1 is currently identified by the County of Maui Real Property Tax Division online GIS maps as Tax Map Key No. (2) 3-8-003-019. Seller is making no representation as to the accuracy of the tax map key number.

(d) Purchase Price. The purchase price (the "**Purchase Price**") for the Property shall be EIGHT HUNDRED THIRTEEN THOUSAND AND NO/100 DOLLARS (\$813,000.00). At Closing, Buyer shall pay Seller, through Escrow Agent, an amount (the "**Closing Payment**") equal to EIGHT HUNDRED THIRTEEN THOUSAND AND NO/100 DOLLARS (\$813,000.00), plus or minus net adjustments and prorations provided for in this Agreement. The Closing Payment shall be made in cash or other immediately available federal funds to Escrow Agent by the deadline specified by the Escrow Agent.

2.2 Threat of Condemnation. Buyer acknowledges that Seller has agreed to convey the Property to Buyer in accordance with the terms of this Agreement pursuant to the threat of the exercise or the exercise of the power of eminent domain.

3. BUYER'S REVIEW OF THE PROPERTY.

3.1 Property Survey. Buyer shall, at its own expense, obtain a survey map and metes and bounds description of the Property in a form as may be required by the Title Company to issue the Title Policy ("**Survey**").

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

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

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

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

3.5 Condition of Property; Property to be Purchased "As Is". As a material inducement to Seller to execute this Agreement, Buyer acknowledges and agrees that, except as expressly provided in this Agreement, Buyer waives any contingencies to the Closing of this Agreement. In addition Buyer agrees that as of the Closing Date: (a) Buyer will have had an opportunity to fully examine and inspect the Property, including the physical condition of the Property; (b) Buyer will have accepted the physical condition, value, financing status, use, leasing, operation, tax status, income and expenses of the Property; (c) the Property will be purchased by Buyer "AS IS" and "WITH ALL FAULTS" and, Buyer shall assume responsibility for the physical condition of the Property and its compliance with all applicable Legal Requirements, and shall assume all liability and responsibility resulting from any violation of the Hazardous Materials Laws occurring either prior to the Closing Date, to the extent arising on a portion of the Property under control of Buyer at the time of such violation or after the Closing; (d) Buyer recognizes that the Property is not new and acknowledges that: (i) consistent with the "AS IS" clause in subparagraph (c) above, the Property shall be sold in the same condition that it is in on the date of this Agreement; and (ii) Seller will not be required to take any action with respect to the Property, including, but not limited to the

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repair or replacement of any part of the Property; and (e) Buyer has decided to purchase the Property solely on the basis of its own independent investigation. Seller has not made, does not make, and has not authorized anyone else to make any representation as to the present or future physical condition, value, financing status, use, leasing, operation, tax status, income and expenses or any other matter or thing pertaining to the Property, except as expressly set forth in this Agreement, and Buyer acknowledges that no such representation has been made and that in entering into this Agreement Buyer does not rely on any representation other than those expressly set forth in this Agreement.

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

4. CLOSING AND PRORATIONS.

4.1 Closing. Recordation of the documents necessary to complete the purchase and sale provided for in this Agreement (the "**Closing**") will occur on such date as the parties may mutually agree upon (the "**Closing Date**"); provided, however, if the Maui County Council has not given such approval on or before December 31, 2012, this Agreement shall automatically terminate.

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

(a) A limited warranty deed in the form customarily used in the State of Hawaii transferring to Buyer the Property, specifically including the Agricultural Exceptions shown in Exhibit "C" attached hereto (the "**Deed**"), to be recorded and provided to Buyer and Seller. By the Deed, Seller shall also quitclaim its interest in the Remainder Parcel.

(b) A license agreement (the "**License Agreement**") allowing Seller or its affiliates, for a license fee of \$1.00 per year, to continue to farm the existing sugar cane crop on the Property and harvest the same, which is anticipated to occur approximately in March 2014. At the County's sole discretion said License Agreement may be extended for an additional two-year period on the same terms and conditions.

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The License Agreement shall substantially be in the form as attached hereto as Exhibit "F."

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

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

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

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

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

- (a) The Closing Payment as required by Section 2.1(d)
- (b) The Deed
- (c) The License Agreement

4.4 Expenses.

(a) Seller's Expenses. Seller shall pay (a) the fees of any counsel representing Seller in connection with this transaction; (b) the fee for the issuance of the Title Policy (defined below) in the amount of the Acquisition Price; (c) one-half of any escrow fees charged by the Escrow Agent; and (d) recording fees for the Deed.

(b) Buyer's Expenses. Buyer shall pay (a) the fees of any counsel representing Buyer in connection with this transaction; (b) the incremental premiums charged by the Title Company for the ALTA extended coverage portion of the Title Policy (including any endorsements thereto required or requested by Buyer) to be issued to Buyer by the Title Company at Closing; (c) one-half of any escrow fees charged by the Escrow Agent; and (d) all other costs and expenses incident to this transaction and the closing thereof not expressly provided above.

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

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

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

5. REPRESENTATIONS AND WARRANTIES OF SELLER.

Seller represents and warrants to Buyer that:

5.1 Organization and Good Standing. Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Hawaii and is duly authorized to conduct business in the State of Hawaii.

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

5.3 Development Assistance. If it becomes desirable or necessary in the future, Seller will assist and support Buyer in Buyer's application for a Special Permit pursuant to HRS § 205-6 for proposed non-agricultural uses of the Property and/or support Buyer's petition to remove the Important Agricultural Lands (IAL) designation from that portion of the Property currently designated IAL. Seller's assistance and support identified within this subsection 5.3 shall be provided by Seller at its own expense, without additional compensation by Buyer. Seller shall not be required to reimburse Buyer for any expenses incurred by Buyer.

6. REPRESENTATIONS AND WARRANTIES OF BUYER.

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Buyer represents and warrants to Seller that:

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

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

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

Buyer's obligation and authority to purchase and close this transaction is subject to the approval of the Maui County Council in accordance with the provisions and requirements of Chapter 3.44 of the Maui County Code, and further, subject to said Maui County Council's approval to fund the purchase.

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

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

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

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

Real Property Purchase Agreement: Pulehu Road, Kahului, Maui, Hawaii
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8. CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE.

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

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

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

9. RISK OF LOSS; EMINENT DOMAIN.

9.1 Casualty or Taking. Seller and Buyer hereby waive the Uniform Vendor and Purchaser Risk Act, H.R.S. Chapter 508. If, prior to the Closing, the Property is damaged by fire, vandalism, acts of God or other casualty or cause ("**Casualty**"), or the Property is taken or made subject to condemnation, eminent domain or other governmental acquisition proceedings (a "**Taking**") then the procedures of this Section 9 shall apply.

9.2 Obligated to Close. If the cost of required repair or replacement related to or arising out of the Casualty or if the value of the Taking is \$100,000.00 or less, or the Taking is by the County of Maui or any agency or instrumentality thereof, Buyer shall proceed to close and take the Property as diminished by such events. In the case of a Casualty there shall be no adjustment of the Purchase Price and all insurance proceeds otherwise payable to Seller on account of such casualty shall be paid to Buyer. In the case of a Taking, there will be no adjustment of the Purchase Price and all awards otherwise payable to Seller shall be paid to Buyer.

9.3 Buyer's Option to Close. If the cost of repair or replacement related to or arising out of the Casualty or if the value of the Taking is greater than \$100,000.00 and the Taking is not by the County of Maui or any agency or instrumentality thereof, Buyer, at its sole option, may elect either to (a) terminate this Agreement by written notice to Seller given at or prior to the Closing; or (b) proceed to close in the manner set forth in Section 9.2.

9.4 Determination of Cost of Casualty or Taking. The cost of repair or replacement related to or arising out of the Casualty or the value of the Taking shall be

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determined by Seller and Buyer, or, if they are unable to agree, by an independent appraiser selected by two other appraisers, each of which shall be selected by Seller and Buyer.

9.5 Insurance and Awards. If, pursuant to the preceding Sections, Buyer is either obligated or elects to take the Property as it is together with the insurance or condemnation proceeds or the right to receive the same, Seller agrees to cooperate with Buyer in any loss adjustment or condemnation negotiations, legal actions and agreements with the insurance company or the condemning authority, and to assign to Buyer at the Closing its rights to such insurance or condemnation proceeds and will not settle any insurance claims, condemnation awards or legal actions relating thereto without Buyer's prior written consent.

9.6 Termination. If this Agreement is terminated pursuant to this Section 9, the parties hereto shall be released from all further obligations and liabilities hereunder, and the parties shall enter into a co-tenancy agreement to set forth each party's rights and obligations in the Property, until such time that the Property is consolidated with Lot 2-A-1-A of the Landfill or such other parcel as Seller may reasonably require.

10. GENERAL PROVISIONS.

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

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

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

The initial address for each party is as follows:

To Seller: ALEXANDER & BALDWIN, LLC
 c/o A & B PROPERTIES, INC.
 822 Bishop Street
 Honolulu, Hawaii 96813
 Attn: Richard B. Stack
 Tel: (808) 525-5424
 Fax No.: (808) 525-8447

And to:

ALEXANDER & BALDWIN, LLC
822 Bishop Street
Honolulu, Hawaii 96813
Attn: Charles W. Loomis
Tel: (808) 525-8451
Fax No.: (808) 525-6678

To Buyer: COUNTY OF MAUI
 Kalana O Maui Building
 200 South High Street
 Wailuku, Maui 96793
 Attn: Mayor and Director of Finance
 Tel: (808) 270-7855
 FAX: (808) 270-7874

And to:

COUNTY OF MAUI
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
2200 Main Street
One Main Plaza Building, Suite 100
Wailuku Hawaii 96793
Tel: (808) 270-8230
Fax No.: (808) 270-8234

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

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

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

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

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

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

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

Real Property Purchase Agreement: Pulehu Road, Kahului, Maui, Hawaii
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exclusive benefit of the parties to this Agreement and their successors and permitted assigns.

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

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

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

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

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

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

10.15 Dispute Prevention Resolution. In the event of a dispute arising out of or relating to this Agreement or the services to be rendered hereunder, the parties to this Agreement agree to attempt to resolve such dispute in the following manner. First, the parties agree to attempt to resolve such dispute(s) through direct negotiations between representatives of each party. Second, if the dispute or any issues remain unresolved after attempts to negotiate, the parties agree to submit the dispute to a mutually agreed upon mediator, provided, however, if the dispute is not resolved within

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TMK: (2) 3-8-03: 019 (portion)

thirty (30) days after demand by either Seller or Buyer, Buyer and Seller shall have the right to exercise all remedies available at law or in equity.

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

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

Exhibit "AA"	Legal Description
Exhibit "A"	Title Report of TMK (2) 3-8-003: 019 (por) Pulehu Road, Puunene, Maui, Hawaii
Exhibit "B"	Appraisal
Exhibit "C"	Agricultural Exceptions
Exhibit "D"	Subdivision Approval Letter
Exhibit "E"	General Location of Waterline Easement
Exhibit "F"	License Agreement

Signatures begin on the following page.

Real Property Purchase Agreement: Pulehu Road, Kahului, Maui, Hawaii
TMK: (2) 3-8-03: 019 (portion)

IN WITNESS WHEREOF, Seller and Buyer have executed this REAL
PROPERTY PURCHASE AND SALE AGREEMENT on the ____ day of
_____, 2012.

SELLER & OWNER:

ALEXANDER & BALDWIN, LLC,
a Hawaii limited liability company

By: _____

Its


NELSON H.S. CHUN
SENIOR VICE PRESIDENT

By: _____

Its


CHARLES W. LOOMIS
ASST. SECRETARY

Real Property Purchase Agreement: Pulehu Road, Kahului, Maui, Hawaii
TMK: (2) 3-8-03: 019 (portion)

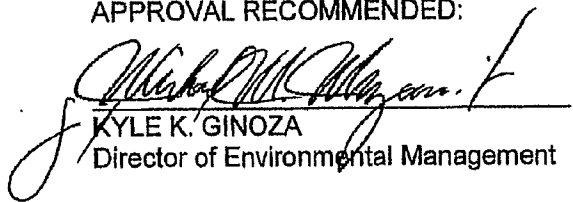
BUYER:

COUNTY OF MAUI


By: _____
ALAN M. ARAKAWA
Its: Mayor

By: _____
DANILO F. AGSALOG
Its: Director of Finance

APPROVAL RECOMMENDED:


KYLE K. GINOZA
Director of Environmental Management

APPROVED AS TO FORM AND LEGALITY:


RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui

Real Property Purchase Agreement: Pulehu Road, Kahului, Maui, Hawaii
TMK: (2) 3-8-003-:019

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS:

On this 16th day of November, 2012, before me personally appeared NELSON N.S. CHUN, 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.



(Official Stamp or Seal)

Suzanne K. McGuigan
Notary Public, State of Hawaii

Printed Name: SUZANNE K. MCGUIGAN

My commission expires: 8/18/2013

NOTARY CERTIFICATION STATEMENT

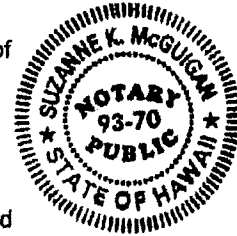
Document Identification or Description: Real Property Purchase and Sale Agreement

Doc. Date: _____ or Undated at time of notarization.

No. of Pages: 46 Jurisdiction: First Circuit
(in which notarial act is performed)

Suzanne K. McGuigan 11/16/12
Signature of Notary Date of Notarization and Certification Statement

SUZANNE K. MCGUIGAN
Printed Name of Notary



(Official Stamp or Seal)

Real Property Purchase Agreement: Pulehu Road, Kahului, Maui, Hawaii 96784
TMK: (2) 3-8-03: 019 (portion)

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS:

On this 16th day of November, 2012, before me personally appeared CHARLES W. LOOMIS, 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.



(Official Stamp or Seal)

Suzanne K. McGuigan
Notary Public, State of Hawaii

Printed Name: SUZANNE K. MCGUIGAN

My commission expires: 11/18/2013

NOTARY CERTIFICATION STATEMENT

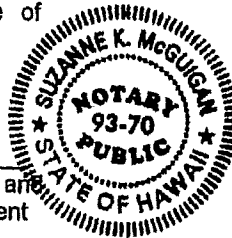
Document Identification or Description: Real Property Purchase and Sale Agreement

Doc. Date: _____ or Undated at time of notarization.

No. of Pages: 86 Jurisdiction: First Circuit
(in which notarial act is performed)

Suzanne K. McGuigan
Signature of Notary

11/16/12
Date of Notarization and Certification Statement



SUZANNE K. MCGUIGAN

Printed Name of Notary

(Official Stamp or Seal)

Real Property Purchase Agreement: Pulehu Road, Kahului, Maui, Hawaii 96784
TMK: (2) 3-8-03: 019 (portion)

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this ___ day of _____, 20___, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said County of Maui.

Notary Public, State of Hawaii

Printed Name: _____

My commission expires: _____

(Official Stamp or Seal)

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

Real Property Purchase Agreement: Pulehu Road, Kahului, Maui, Hawaii
TMK: (2) 3-8-03: 019 (portion)

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this ___ day of _____, 20___, before me personally appeared DANILO F. AGSALOG, to me personally known, who, being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and executed the foregoing as his free act and deed, and in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

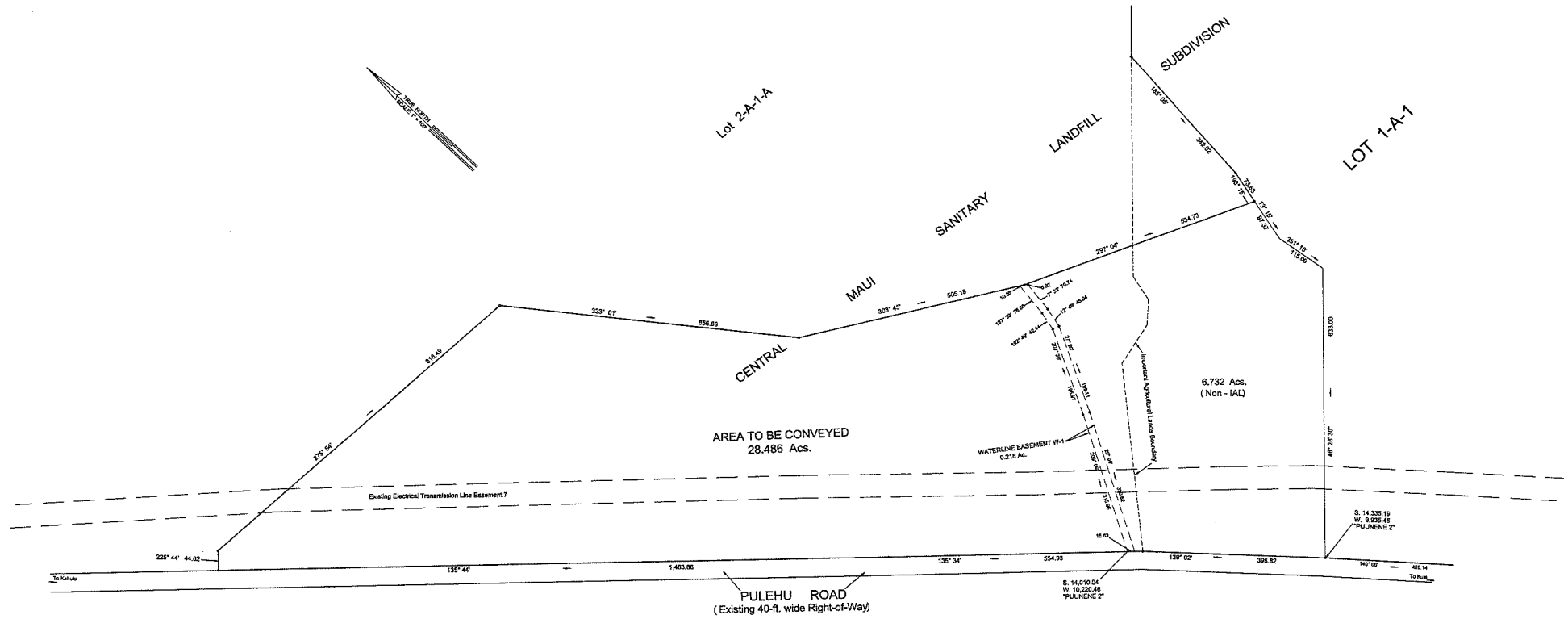
Printed Name: _____

My commission expires: _____

(Official Stamp or Seal)

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Signature of Notary	Date of Notarization and Certification Statement
_____ (Official Stamp or Seal)	
Printed Name of Notary	

Real Property Purchase Agreement: Pulehu Road, Kahului, Maui, Hawaii
TMK: (2) 3-8-03: 019 (portion)



CENTRAL MAUI SANITARY LANDFILL SUBDIVISION

DESIGNATION OF EASEMENT W-1 OVER AND ACROSS LOT 1-A-1

Being a portion of Grant 3343 to Claus Spreckels
 PUUNENE, WAILUKU, MAUI, HAWAII

SCALE: 1 inch = 100 feet DATE: September 12, 2012

Prepared by: AEB Properties, Inc.
 Kahala, Maui, Hawaii

This work was prepared by me or under my supervision.

Ken T. Nomura
 Licensed Professional Land Surveyor
 Certificate No. LS-7153
 Expiration Date: 4/30/2014

- NOTES:
1. Azimuths and coordinates referred to Government Survey Triangulation Station "PUUNENE 2"
 2. Easement W-1 is for waterline purposes in favor of Alexander & Baldwin, LLC.
 3. Existing Electrical Transmission Line Easement 7 is in favor of Maui Electric Company, Limited per C.M. No. 88-0228 (2) and recorded in Document No. 88-171196.