

RUSH MOORE LLP
A Limited Liability Law Partnership

SUSAN TIUS 2873
MONICA K. S. CHOI 8936
745 Fort Street, Suite 800
Honolulu, Hawaii 96813-3862
Telephone: (808) 521-0406
Facsimile: (808) 521-0497
Email: Stius@rmhawaii.com; mchoi@rmhawaii.com

General Counsel for DANE S. FIELD, TRUSTEE

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re

KUPONO RESORT LLC,

Debtor.

Case No. 25-00652

Chapter 7

TRUSTEE'S MOTION TO: (A)
APPROVE BIDDING AND SALE
PROCEDURES FOR DEBTOR'S
REAL PROPERTY; (B) AUTHORIZE
AN AUCTION, IF APPLICABLE, TO
DETERMINE THE HIGHEST AND
BEST OFFER; (C) SCHEDULE A
HEARING TO APPROVE THE
SALE; AND (D) FOR RELATED
RELIEF; MEMORANDUM IN
SUPPORT OF MOTION; EXHIBIT
"1"; DECLARATION OF DANE S.
FIELD

Hearing Date and Time

February 23, 2026 at 10:30 a.m.

Judge: Honorable Robert J. Faris

**TRUSTEE’S MOTION TO: (A) APPROVE BIDDING AND
SALES PROCEDURES FOR DEBTOR’S REAL PROPERTY;
(B) AUTHORIZE AN AUCTION, IF APPLICABLE, TO DETERMINE THE
HIGHEST AND BEST OFFER; (C) SCHEDULE A HEARING
TO APPROVE THE SALE; AND (D) FOR RELATED RELIEF**

DANE S. FIELD (“Trustee”), Trustee of the Chapter 7 Estate of KUPONO RESORT LLC (“Debtor”) moves this Court for entry of an Order regarding the Estate’s property identified as Unit No. 2, and its appurtenant undivided common interests, of the “Kukui‘ula Parcel X Condominium” condominium project (“Project”), and the land upon designated as Tax Map Key No. (4) 2-6-015-011-0002, CPR 2, which Project is situate on and described as all of that certain parcel of land, identified as Lot 11-C of the “Kukui‘ula Parcel X Subdivision”, Island and County of Kaua‘i, State of Hawai‘i (the “Property”). This Motion requests entry of an Order:

(1) approving Trustee’s Bidding and Sales Procedures (the “Bidding Procedures”), attached as Exhibit “1” to the Memorandum in Support of Motion submitted herewith;

(2) permitting Trustee and Trustee’s Court-approved agents to implement and use the Bidding Procedures for purposes of marketing and selling the Property,

(3) authorizing an auction, if applicable, (4) scheduling a further hearing to consider final approval of the sale of the Property free and clear of liens, claims and interests to the highest and best bidder with all such liens, claims and interests attaching to the sales proceeds in the order of validity, priority and amount and on substantially the terms set forth in the Real Property Purchase and Sale Agreement attached as Exhibit

“A” to the Bidding Procedures; and (5) granting such other and further relief as this Court deems just and proper.

This Motion is based upon Sections 105(a) and 363 of the Bankruptcy Code, Rules 2002, 6004 and 9013 of the Federal Rules of Bankruptcy Procedure and LBR 6004-1 and 9013-1(c), the Memorandum in Support of Motion; Exhibit “1” and Declaration of DANE S. FIELD in Support of Motion filed herewith, the records and files in the case and such other and further matters as may be presented herein.

DATED: Honolulu, Hawai‘i, January 26, 2026.

/s/ Susan Tius
SUSAN TIUS
MONICA K. S. CHOI
General Counsel for DANE S. FIELD,
Trustee

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re

KUPONO RESORT LLC,

Debtor.

Case No. 25-00652
(Chapter 7)

MEMORANDUM IN SUPPORT OF MOTION

DANE S. FIELD (“Trustee”), the duly appointed Chapter 7 Trustee of the Estate of KUPONO RESORT LLC (“Debtor”), submits this Memorandum in support of the Trustee’s Motion To: (A) Approve Bidding and Sales Procedures for Debtor’s Real Property; (B) Authorize An Auction, if Applicable, To Determine The Highest And Best Offer; (C) Schedule A Hearing To Approve The Sale; and (D) For Related Relief (the “Motion”) filed herewith.

I. JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory basis for the relief requested herein is 11 U.S.C. §§ 105(a) and 363.

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II. BANKRUPTCY AND FACTUAL BACKGROUND

A. **General Background**

On July 28, 2025 (“Petition Date”), Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On October 27, 2025, the case was voluntarily converted to Chapter 7 and Dane S. Field appointed as Trustee.

Debtor’s Estate owns property identified as Unit No. 2, and its appurtenant undivided common interests, of the “Kukui‘ula Parcel X Condominium” condominium project (“Project”), and the land upon designated as Tax Map Key No. (4) 2-6-015-011-0002, CPR 2 , which Project is situate on and described as all of that certain parcel of land, identified as Lot 11-C of the “Kukui‘ula Parcel X Subdivision”, Island and County of Kaua‘i, State Hawai‘i (the “Property”). Trustee seeks to sell the Property. The Estate will quitclaim whatever Debtor owns that may be transferrable without any conditions to the transfer, including, but not limited to no approvals or consents from the State of Hawai‘i, County of Kaua‘i, any state, county or local planning commissions, including Class IV Zoning Permits, Special Management Use Permits, Project Development Use Permits, Variance Permits, shoreline setback determinations and/or any consent by the master developer and/or prior owner or seller of the subject parcel including but not limited to Kukui‘ula Development Company (Hawaii), LLC (excluding required Court approval). The Trustee will not define Debtor’s rights and interests nor take any action dealing with

third parties to analyze, identify, define, achieve, etc. any such rights and interests.

Trustee holds Estate funds of approximately \$4,048.66 in cash. Other than the Property, there are no other assets listed in the Schedules. The Property does not generate revenue. The Trustee has obtained an annual liability insurance policy at an annual cost of approximately \$833.40.

J & E Koch Revocable Trust held a pre-petition mortgage lien claim against the Property (“Secured Claim”). On November 11, 2025, the Secured Claim was assigned to Parcel X Development, LLC (“Secured Creditor”). On November 17, 2025, Secured Creditor filed a proof of claim, designated as Claim No. 5, in the total amount, as of July 27, 2025, of \$5,318,750 plus accruing interest at the rate of 15% per annum/stating monthly interest accruals of \$62,500, together with late payment penalties and reasonable attorneys’ fees as allowed by applicable law. *See* Proof of Claim No. 5 for Parcel X Development, LLC, Section 2 Assignors’ Representations and Warranties of the Note and Mortgage Purchase Agreement attached thereto, PDF p. 8 of 53.

On November 17, 2025, the County of Kaua‘i (the “County”) filed a proof of claim, designated as Claim No. 4, for Kaua‘i real property taxes and Kukui‘ula Facilities District fees (collectively, “Property Taxes”). The proof of claim reflects a tax assessed value of \$23,679,700 for the Property. As of December 31, 2025, the County claims \$220,666.07 plus accruing interest of 10% per annum, and,

additional amounts accrue on the next installment deadline of February 20, 2026 (for the tax period 1/1/26 – 6/30/26), totaling \$413,556.00. There is a one-time penalty of 10% if an installment of Property Taxes is not timely paid and additional interest of 1% per month on the unpaid amounts. The Estate is without funds to pay delinquent and accruing Property Taxes. There will be accruals of interest and the one-time penalty due for the February 20, 2026, installment. The Property Taxes are a senior encumbrance on the Property.

The preliminary title report for the Property dated November 26, 2025, prepared by First American Title for the Property (“the Title Report”), which is attached as Exhibit “A” to the Real Property Purchase and Sale Agreement for the Property, reflects an encumbrance for “Any lien or any claim of a lien against the Property for unpaid assessments in favor of Association of Apartment Owners of Kukui‘ula Parcel X Condominium and/or their successors and assigns or any other appropriate entity regarding assessments, transfer fees and other requirements that may be due or imposed upon the contemplated transaction pursuant to the above document(s).” The “above documents” are the senior encumbrances shown on the Title Report.

On December 2, 2025, the Court entered an Order approving the Trustee’s employment of Hilco Real Estate, LLC and Summers Realty, Inc. (collectively, “Hilco”) pursuant to a Real Estate Consulting, Advisory Services, and Co-Broker

Agreement dated November 28, 2025 (“Services Agreement”) authorizing Trustee’s retention of Hilco to assist the Trustee with marketing and listing the Property for sale on behalf of the Estate, Dkt. #44. The basic terms of the Services Agreement are:

- A commission of 4%, shared 2.5% for Hilco and 1.5% for Summers. If there is a buyer's broker, both sides will provide 0.5% for said broker;
- The Estate will reimburse Hilco for all reasonable and customary reimbursable expense as defined in the Services Agreement in connection with performance of the services, capped at \$30,000;
- The term is 6 months from entry of the Order approving the retention under the Services Agreement; and
- Marketing of the Property through a sales process including an auction if there are two or more Successful Bids for the Property and seeking of a Court Order approving the highest and best bid for sale of the Property free and clear of liens, claims and interests with the same to attach to the sales proceeds in order of priority, validity and amount.

III. PROPOSED BIDDING AND SALE PROCEDURES

The Trustee’s duties include collecting and reducing to money the property of the estate and closing of the estate as expeditiously as is compatible with the best interests of parties in interest. Section 704(a) of the Bankruptcy Code. Trustee, given the significant accruals of interest and penalties on the Property Taxes, interest and attorneys’ fees on the Secured Claim, maintaining insurance on the Property and the lack of Estate funds, seeks Court approval of bidding procedures that minimize the Estate’s time for holding of the Property and expedites moving forward with marketing activities and closing of a sale.

Trustee seeks to sell the Property via a managed, two-step sales process as set

forth in the Bidding and Sales Procedures attached as Exhibit “1” (“Bidding Procedures”). Pursuant to the Bidding Procedures, if Trustee receives one (1) Qualified Bid, prior to the Bid Deadline, then Trustee will evaluate that Qualified Bid to determine if it is the Successful Bid. Trustee shall not be required to hold an Auction if he receives only one (1) Qualified Bid.

If Trustee receives two (2) or more Qualified Bids prior to the Bid Deadline, Trustee shall hold an Auction to determine the Successful Bid. At such Auction, Trustee shall select the highest or otherwise best Qualified Bid as the Successful Bid, considering, among other things, the financial and contractual terms relevant to the transaction, including those factors affecting speed and certainty of consummating the transaction, or the overall value to be provided thereby to the Estate.

Trustee shall be authorized, but not obligated, in an exercise of his business judgment to select a Qualified Bidder to act as a stalking horse bidder (“Stalking Horse Bidder”) in connection with the sale process for the Property and/or any ultimate Auction. Any agreement with a Stalking Horse Bidder may provide for seeking approval from the Court for the Stalking Horse Bidder to receive reimbursement of actual, reasonable, and necessary due diligence expenses to be determined by the Court (the “Expense Reimbursement”), and, if provided for in the agreement with a Stalking Horse Bidder, may further seek court approval for a reasonable “break-up” fee to be determined by the Court (the “Break-Up Fee”) (the

Expense Reimbursement and Break-Up Fee collectively are the “Stalking Horse Protections”); provided, that any overbid of an agreement with the Stalking Horse must be sufficient to satisfy any Stalking Horse Protections approved by the Court.

Secured Creditor will be permitted, if it chooses, to exercise its right to credit bid in accordance with Section 363(k) of the Bankruptcy Code. Any credit bid must be accompanied by an offer of sufficient amount of cash to pay for the Estate’s administrative expenses, closing costs and a substantial distribution to unsecured creditors.

Trustee will file and notice a hearing of a Motion to Approve Sale to Successful Bidder of Real Property Free and Clear of Liens, Claims and Interests seeking approval of the Successful Bid. The instant Motion requests that the Court schedule a tentative hearing date for such anticipated Motion.

Trustee, with the guidance of Hilco and after consulting with counsel for Debtor and Secured Creditor, has developed the Bidding Procedures to solicit offers and conduct a sale process that is controlled, fair, and in an open fashion and encourages participation by financially capable bidders. If Trustee receives competing qualified bids, the Bidding Procedures provide the Trustee an opportunity to schedule an Auction with respect to such bids and then select the highest or otherwise best bid. The Bidding Procedures also provide the Trustee with the flexibility and opportunity to assess and compare bids to ensure that the Estate

receives the best consideration for the Property.

Trustee will exercise his independent discretion in connection with the bidding and sale process and proposed Auction. Trustee will determine whether a Potential Bidder is a Qualified Bidder. Trustee will determine the Successful Bidder. Trustee will decide any issues of discretion under the Bidding Procedures. Trustee promptly after any Auction will file a duly noticed hearing Motion requesting that the sale be approved free and clear of liens, claims and interests with the same to transfer and attach to the sales proceeds in order of validity, priority and amount. No further bidding on the Property will be allowed after the Trustee determines the Successful Bidder.

Absent approval of and Trustee's proceeding with the bidding procedures, the Estate's equity will continue to be rapidly diminished. The Property needs to be marketed and sold expeditiously. Accordingly, the Bidding Procedures should be approved.

III. LEGAL ARGUMENT

A. The Proposed Bidding Procedures Are Fair and Reasonable.

The proposed Bidding Procedures are fair and reasonable in view of the exigent circumstances of the case and will maximize the realization of the Estate's equity in the Property. Among other things, Trustee has taken into consideration the nature of the Property as non-revenue producing, the nominal Estate funds, the

accruals of interest and penalties on the Property Taxes and interest and legal expense on the Secured Claim and the cost of maintenance of insurance.

Trustee believes that the Bidding Procedures provide a necessary and actual benefit to the Estate. The Bidding Procedures establish the parameters under which the value of the Property may be tested at an Auction. The terms and conditions for permitting of any Auction will enable the Trustee to realize the maximum value of the Property, and thus ensure that conduct of any Auction is in the best interest of the Estate and creditors.

Trustee reserves the right to market the Property over a longer time, if necessary, but the Bidding Procedures process would be the best way to liquidate the Property if a successful bidder can be obtained. *See* Field Decl., attached hereto.

IV. REQUESTED RELIEF

Based on the foregoing, Trustee requests that the court enter an Order: (1) granting the Motion and approving Trustee's Bidding and Sales Procedures attached as Exhibit "1" to this Memorandum; (2) permitting Trustee and Trustee's Court-approved agents to implement and use the procedures for purposes of marketing and selling the Property; (3) authorizing an auction, if applicable; (4) scheduling a further hearing to consider final approval of the sale of the Property free and clear of liens, claims and interests to the highest and best bidder with all such liens, claims and interests attaching to the sales proceeds in the order of validity, priority and amount

and on substantially the terms set forth in the Real Estate Purchase and Sale Agreement attached as Exhibit “1” to the Bidding Procedures; and (5) granting such other and further relief as this Court deems just and proper.

DATED: Honolulu, Hawai‘i, January 26, 2026.

/s/ Susan Tius
SUSAN TIUS
MONICA K. S. CHOI
General Counsel for DANE S. FIELD,
Trustee

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In Re

KUPONO RESORT, LLC

Debtor.

Case No. 25-00652
(Chapter 7)

BIDDING AND SALE PROCEDURES; EXHIBIT 1

Below are the bidding and sale procedures (the “Bidding Procedures”)¹ to be employed by Dane S. Field (“Trustee”), Chapter 7 Trustee of Kuponono Resort LLC (the “Debtor”), debtor in the above-captioned Chapter 7 case (the “Case”) with respect to the proposed disposition (the “Sale”) of the property of the Debtor.

These Bidding Procedures provide interested parties with the opportunity to complete diligence, to submit competing bids for the Property (as defined below), and to participate in an auction, if applicable, to be conducted by the Trustee and Hilco Real Estate, LLC (“HRE”) and Summers Realty, Inc. (“SRI”) (HRE and SRI shall be referred to collectively as “Hilco”), as Real Estate Agent herein. The key dates and deadlines for the sale process, which are subject to change depending on

¹ All capitalized terms not otherwise defined herein shall have the same meanings ascribed in the Bidding Procedures Motion and its exhibits.

the schedule of the Bankruptcy Court and other reasonable delays, are as follows²:

1/19/26 -1/23/26	Commence Advertising
1/22/26 – 1/26/26	File Motion to Approve Bidding and Sale Procedures, provide notice of hearing and entry of Order Granting Motion
2/6/26 at 1 p.m. HST	Selection of Stalking Horse Bidder (“Stalking Horse Deadline”); Seller shall file a Notice of Stalking Horse Bidder with the Bankruptcy Court within three (3) business days after executing any Stalking Horse Agreement.
2/23/2026	Hearing on Motion to Approve Bidding and Sale Procedures
4/13/26 at 2 p.m. HST	Qualified Bid Deadline
4/15/26	Notice of Designation of Qualified Bidders
4/17/26 at 1 p.m. HST	Auction Date (if applicable)
4/20/2026	File and provide notice of hearing on Motion to Approve Sale to Successful Bidder Free and Clear of Liens, Claims and Interest, With All Faults, Known and Unknown (“Sale Approval Motion”)
5/18/26 to 5/22/26	Sale Approval Hearing
The later of 6/8/2026 or the first business day from 14 days after entry of the Sale Approval Order	Deadline to Close Sale

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² These dates are subject to change in the Trustee’s discretion and in consideration of the Court’s availability and calendar.

PROPERTY TO BE SOLD

1. Trustee intends to enter into a Sale, through a Court-approved sale under Section 363 of the Bankruptcy Code (the “Sale”), regarding the Property, described in the form of Purchase and Sale Agreement; Exhibit “1” attached hereto (collectively, the “Property”), which constitutes substantially all of the Estate’s assets. The Estate shall retain all rights and title to any assets that are not subject to a bid approved by the Bankruptcy Court at the Sale Hearing (as defined herein).

THE BIDDING PROCESS

2. Below is the general process to be employed by Trustee, Hilco and Trustee’s Counsel to determine the highest and best offer for the Property:

- a. From and after the Bankruptcy Court’s entry of an Order Granting the Motion to Approve Bidding and Sales Procedures (“Bidding Procedures Order”), Trustee, through his professionals, shall take reasonable steps to market the Property to any person who may be willing and qualifies to purchase the Property.
- b. Seller shall be authorized, but not obligated, in an exercise of its business judgment to (a) select a Qualified Bidder (as defined below) to act as a stalking horse bidder (a “Stalking Horse Bidder”) in connection with the sale process for the Property and/or any ultimate Auction; and [(b) in connection with any stalking horse agreement with a Stalking Horse Bidder, Debtor may seek approval from the Court for Stalking Horse reimbursement of actual, reasonable, and necessary due diligence expenses to be determined by the Court (the “Expense Reimbursement”), and if provided for under the stalking horse agreement, may further seek court approval for a reasonable “break-up” fee to be determined by the Court (the “Break-Up Fee”) (the Expense Reimbursement and Break-Up Fee each are a “Stalking Horse Protection,” and collectively are the “Stalking Horse Protections”); provided, that any overbid must be sufficient to satisfy any Stalking Horse Protections approved by the Court]. Selection of the Stalking Horse Bidder shall take place by February

6, 2026 at 1:00 p.m. Hawaii Standard Time. Seller shall file a Notice of Stalking Horse Bidder with the Bankruptcy Court within three (3) business days after executing any Stalking Horse Agreement.

- c. Trustee shall conduct the bidding process and related marketing and due diligence services with support from his advisors.
- d. Hilco shall maintain a data room available to facilitate due diligence and all other information reasonably requested in response to requests from Potential Bidders (the “Due Diligence Information”). If determined advisable by Trustee, the Due Diligence Information will only be provided to parties executing a Confidentiality Agreement or Non-Disclosure Agreement in a form approved by Trustee (as described below). Trustee shall have no obligation to comply with any due diligence request he deems onerous, unreasonable, or impractical.
- e. Trustee and Trustee’s Counsel will prepare and include in the data room (i) a form of a purchase and sale agreement (the “Form PSA”); and (ii) a form of a proposed sale order (the “Form Sale Order”).
- f. Any person interested in making an offer to purchase the Property by signing at the end of these Bidding Procedures shall acknowledge it has read, understands and will comply and agrees with these Bidding Procedures. Any such interested person may make, and Trustee shall consider, a bid for the Property in accordance with these Bidding Procedures.
- g. Only Qualified Bids (as defined below) shall be considered by Trustee and Hilco.
- h. If Trustee receives one (1) Qualified Bid, prior to the Bid Deadline, then Trustee will evaluate that Qualified Bid to determine if it is the Successful Bid. For the avoidance of doubt, Trustee shall not be required to hold an Auction if he receives only one (1) Qualified Bid.
- i. If Trustee receives two (2) or more Qualified Bids prior to the Bid

Deadline, Trustee may hold an Auction (described below) to determine the Successful Bid. After such Auction, Trustee shall select the highest or otherwise best Qualified Bid as the Successful Bid, considering, among other things, the financial and contractual terms relevant to the Sale, including those factors affecting speed and certainty of consummating the Sale.

- j. In the event of and upon failure to consummate the Sale because of a breach on the part of the Successful Bidder (as defined below) after an order entered at the Sale Hearing, Trustee shall be permitted to (i) retain the Successful Bidder's Deposit (as defined below) as liquidated damages, and (ii) select the next highest or otherwise best Qualified Bid by a Back-up Bidder to be the Successful Bid and to consummate the Sale without further order of the Bankruptcy Court.
- k. All Qualified Bidders (as defined below) shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Trustee, the Debtor, Sale Order, the Auction, or the construction and enforcement of documents relating to any Sale and to have waived any right to a jury trial in connection with any disputes relating to the Trustee or his counsel, the Estate, the Case, the Bidding Procedures, the Form PSA, the Form Sale Order, the Auction, or the construction and enforcement of documents relating to the Sale.
- l. Trustee may deviate from these Bidding Procedures, if he determines that it is in the best interest of the Estate.

PARTICIPATION REQUIREMENTS

3. **Qualified Bid Requirements.** Unless waived by Trustee, any person desiring to participate in the Auction (each, a "Potential Bidder") must satisfy each of the conditions set forth below, as determined by Trustee. A competing bid (the "Bid") will not be considered qualified for the Auction if such Bid does not satisfy each of the following conditions (collectively, a "Bid Package"):

- a. Each Bid must be substantially based on the Form PSA, detail the key terms of the proposed offer, be signed by an authorized

representative of such Potential Bidder, and include any proposed revisions to the Form Sale Order, along with a redline showing proposed changes to the Form PSA, and a redline showing proposed changes to the Form Sale Order.

- b. Each Bid must not be conditioned on obtaining financing and must include written evidence from which Trustee can reasonably conclude that the Potential Bidder has the necessary financial ability to close the Sale on or before the later of June 8, 2026 or ten days after entry of a final sale approval order. Each bid must indicate the source of cash consideration, checks, and cash equivalents, as applicable, including funding commitments, and confirm that such consideration is not subject to any contingencies. Each Bid must be accompanied by sufficient and adequate financial and other information (the “Adequate Assurance Information”) to demonstrate, to the reasonable satisfaction of the Trustee that such Potential Bidder has the financial wherewithal and ability to consummate the sale of the Property. The Bid must also identify a contact person that Trustee may contact to obtain additional information to support Potential Bidder’s Bid.
- c. Each Bid shall remain open, enforceable and irrevocable in accordance with the terms of these Bidding Procedures until Trustee accepts a Successful Bid.
- d. Each Bid must include written evidence reasonably acceptable to Trustee demonstrating appropriate corporate or other authorization evidencing the legal power of the Potential Bidder to submit a binding Bid and consummate the proposed Sale.
- e. Each Bid shall fully disclose the identity of the entity that will be bidding or participating in connection with such Bid.
- f. Each Bid shall provide that all of the Estate’s Property is being purchased “as is, where is, with all faults known and unknown” and that such Potential Bidder is not relying upon any representation or warranty from Trustee, the Estate, Trustee’s professionals or any person or entity, except as otherwise provided

in the Form PSA, if any.

- g. Each Bid must contain no: (a) contingencies of any kind or character, (b) indemnities, (c) purchase price adjustments, or (d) qualification relating to due diligence, financing, or board or other approval.
- h. Each Bid shall contain no conditions to closing of the Sale on the receipt of any third-party approvals including but not limited to approvals or consents from the State of Hawai'i, County of Kaua'i, any state, county or local planning commissions, including Class IV Zoning Permits, Special Management Use Permits, Project Development Use Permits, Variance Permits, shoreline setback determinations and/or any consent by the master developer and/or prior owner or seller of the subject parcel including but not limited to Kukui'ula Development Company (Hawaii), LLC (excluding required Court approval).
- i. Each Bid must provide that the Bid is irrevocable after it is accepted by the Trustee as the Successful Bid and, if applicable, the Back-up Bid (as defined herein) accepted by the Trustee.
- j. Each Bid shall provide an express statement that: (a) the Potential Bidder agrees to all terms of the Bidding Procedures; (b) the Potential Bidder has not engaged in any collusive discussion or actions with any other Potential Bidder and will provide an affidavit or declaration establishing the bidder's good faith within the meaning of Section 363(m) of the Bankruptcy Code; and (c) the Potential Bidder has obtained the appropriate corporate or other authorization to legally bind the Potential Bidder to submit the Bid and consummate the proposed Sale, provided that, if the Potential Bidder is an entity specially formed for the purpose of effectuating the Sale, then the Potential Bidder must furnish written evidence reasonably acceptable to Trustee of the submission of the Bid and consummation of the Sale by the equity holder(s) of such Potential Bidder.
- k. Each Bid must be received by Hilco on or before the Bid Deadline.

4. **Qualified Bidder.** A Potential Bidder will be considered a “Qualified Bidder” if such Potential Bidder delivers to Hilco the documents described above on or before the Bid Deadline and Trustee determines that such Potential Bidder is likely (based on availability of financing, experience and other considerations) to be able to consummate the Sale. A Bid received from a Qualified Bidder shall constitute a “Qualified Bid” for the Property. Upon such a determination, Trustee shall provide notice by email of his determination to such Potential Bidder and without disclosure of the identity and Bid amount to each existing Qualified Bidder.

5. **Credit Bids.** Debtor’s Secured Creditor, Parcel X Development, LLC, (“Secured Creditor”) may, no later than the Bid Deadline, elect to participate in these Bidding Procedures pursuant to its credit bid rights under Section 363(k) of the Bankruptcy Code and that it be deemed as a Qualified Bidder by providing, or causing its representatives or advisors to provide on its behalf, written notice by email to Trustee, Trustee’s Counsel and Hilco. The Secured Creditor is not required to take any additional steps to be a Qualified Bidder other than to provide the written notice required by this paragraph.

ACCESS TO TRUSTEE’S DILIGENCE MATERIALS

6. As promptly as practicable after Trustee and Hilco determine that a party is a Diligence Party, Trustee and Hilco will deliver to the Diligence Party access to Hilco’s confidential electronic data room. Hilco will afford any Diligence Party the time and opportunity to conduct reasonable due diligence before the Bid Deadline, subject to such deadline. Notwithstanding the foregoing, Trustee reserves the right, in the exercise of his business judgment, to withhold any diligence materials that Trustee determines are sensitive or otherwise not appropriate for disclosure to a Diligence Party. Neither Trustee nor his representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Diligence Party. The Secured Creditor shall be a Diligence Party without taking any additional steps.

7. Each Diligence Party and Qualified Bidder shall comply with all reasonable requests for additional information and due diligence access by Trustee or his advisors regarding such Diligence Party or Qualified Bidder and its contemplated Sale. Except with respect to the Secured Creditor, failure by a Diligence Party to comply with requests for additional information and due diligence access may be a basis for Trustee to determine that such Diligence Party is not a Qualified Bidder. Except with respect to the Secured Creditor, failure by a

Qualified Bidder to comply with requests for additional information and due diligence access may be a basis for Trustee to determine that a bid made by such Qualified Bidder is not a Qualified Bid. Trustee reserves the right, in his reasonable discretion, to permit a Diligence Party or Qualified Bidder to remedy any such failure to comply.

BID DEADLINE AND REQUIREMENTS

8. **Bid Deadline.** A Potential Bidder that desires to make a bid shall deliver written copies of its Bid Package by email so that such is **actually received** no later than **April 13, 2026 at 2:00 p.m. Hawaii Standard Time** (the “**Bid Deadline**”) by (i) Trustee, Dane S. Field (dfield1963@spectrum.net) (ii) Trustee’s Counsel, Susan Tius (stius@rmhawaii.com) and Monica K. S. Choi (mchoi@rmhawaii.com) of Rush Moore LLP and (iii) Trustee’s professionals, Jefferey Azuse (jazuse@hilcoglobal.com) and Stephen Madura (smadura@hilcoglobal.com) of Hilco Real Estate, LLC and Tom Summers (tom@summersrealty.net) of Summers Realty, Inc.

9. **Bid Rejection.** In determining whether a bid is a Qualified Bid, Trustee may reject any bid, including a bid that: (a) fails to satisfy the debts owed to the County of Kauai for real property taxes and Kukui‘ula Facilities District fees, and the Secured Creditor, and/or fails to cover the costs attributable to any sale including the Trustee’s fees, Trustee’s counsel’s fees, broker fees, other Trustee’s professionals’ fees and other costs of sale; (b) is on terms that are materially more burdensome or conditional than the terms of the PSA; (c) requires Trustee to indemnify the Potential Bidder or any other person; (d) includes non-cash consideration other than the Secured Creditor’s credit bid rights; (e) is subject to any due diligence, financing condition or other contingencies or conditions that are not included in the PSA; or (f) is received after the Bid Deadline.

10. **Initial Bid.** After the Bid Deadline, Trustee shall determine which Qualified Bid represents the then highest or otherwise best value to the Estate (the “**Initial Bid**”). On **April 15, 2026**, Trustee shall notify all of the Qualified Bidders by email of the highest bid received during the Bid Deadline, and that shall be the opening bid plus the Minimum Overbid, as defined below, at the Auction.

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AUCTION

11. **When Applicable.** If Trustee receives two (2) or more Qualified Bids on or prior to the Bid Deadline, Trustee and Hilco shall conduct a competitive auction (the “Auction”) to determine the highest and best offer. **The Auction, if one is necessary, will be held in a location to be announced, commencing on April 17, 2026 at 1:00 p.m. Hawaii Standard Time.**

12. **Participation by Video.** At the request of any Qualified Bidder at least 72 hours prior to the commencement of such Auction, Trustee will establish a video connection to allow participants to participate virtually. Such participation instructions will be circulated to all Qualified Bidders at least 24 hours prior to the commencement of such Auction.

13. **Participation.** Only Qualified Bidders (and their professionals) are eligible to participate in the Auction. No later than 24 hours prior to the Auction, each Qualified Bidder must inform Trustee whether it intends to participate in the Auction and whether such participation will be in-person or by video.

14. **Auction Procedures.** Trustee and his professionals shall direct and preside over the Auction, which may be transcribed or recorded. Other than as expressly set forth in the Bidding Procedures, Trustee and Hilco may conduct the Auction in the manner they determine will result in the highest or otherwise best offer for the Property. The Auction shall be governed by the following procedures:

- a. **Attendance.** Unless otherwise determined by Trustee, only Trustee, Trustee’s professionals, any Qualified Bidders, and each of their representatives and advisors will be entitled to attend the Auction, and only the Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction. Trustee and his professionals shall direct and preside over the Auction. Other than as expressly set forth herein, Trustee may conduct the Auction in the manner he determines will result in the highest or otherwise best offer for any of the Property.
- b. **Qualified Bidder Acknowledgements; No Collusion.** Each Qualified Bidder participating in the Auction must confirm that (i) it has not engaged in any collusion with respect to the bidding or sale of any of the Property described herein, (ii) it has reviewed,

understands, and accepts the Bidding Procedures, (iii) it has consented to the core jurisdiction of the Bankruptcy Court (as described more fully below), and (iv) its Qualified Bid is a bona fide offer, made as a purchaser in good-faith within the meaning of Section 363(m) of the Bankruptcy Code and that it intends to consummate the Sale if selected as the Successful Bidder.

- c. Initial Bid. At the start of the Auction, Trustee and Hilco shall announce the Initial Bid for the Auction, which shall be the highest and/or otherwise best Qualified Bid received by the Bid Deadline, and the other material terms of the Auction.
- d. Minimum Overbid. The Auction shall begin with the Initial Bid and proceed in minimum additional cash increments of \$50,000.00 (the “Minimum Overbid”). Trustee reserves the right to announce reductions or increases in the Minimum Overbid at any time during the Auction. An “Overbid” is any bid made at the Auction in accordance with the requirements set forth in the Bidding Procedures. Any Overbid must include, in addition to the amount and the form of consideration of the Overbid, a description of all changes requested by the Bidder to the Form PSA or Form Sale Order, as the case may be, in connection therewith.
- e. Bid Deposit. Immediately prior to the Auction, each Bidder confidentially shall show Trustee or Trustee’s professionals the cashier’s checks in the name of the Bidder as payee, in the total amount representing five (5) percent of the total high Qualified Bid of such Bidder as of the conclusion of the auction *providing* that no Deposit is required for any credit bid component of the Secured Creditor’s bid.. At the close of the Auction the Successful Bidder and any Back-up Bidder will endorse the deposit checks to the Trustee for the Trustee’s deposit into a non-interest-bearing escrow. The deposited funds will be held and released as provided below.
- f. Consideration of Overbids. Trustee reserves the right, in his reasonable business judgment, to make one or more continuances of the Auction to, among other things: facilitate discussions between Trustee and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed;

and give Qualified Bidders the opportunity to provide Trustee with such additional evidence as Trustee, in his reasonable business judgment, may require to determine that the Qualified Bidder has sufficient internal resources, or has received sufficient debt and/or equity funding commitments, to consummate the proposed Sale at the prevailing Overbid amount.

- g. Bidding Disclosure. The Auction shall be conducted such that all Bids will be made and received in one room, on an open basis, and all Qualified Bidders will be entitled to be present for all bidding with the understanding that the true identity of each bidder will be fully disclosed to all other Qualified Bidders and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Bidders throughout the entire Auction.
- h. Bidding Conclusion. The Auction shall continue in one or more rounds of bidding and will conclude after (i) each participating Qualified Bidder has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid or bids, and (ii) there is only one (1) offer that Trustee determines is the Successful Bid (defined below).
- i. No Post-Auction Bids. No bids will be considered for any purpose after the Auction has concluded, absent further order of the Court.
- j. Additional Procedures. Trustee, in the exercise of his fiduciary duties, as applicable, for the purpose of maximizing value for the Estate from the sale process, may modify the Auction Procedures and implement additional procedural rules for conducting the Auction.

SELECTION OF SUCCESSFUL BID

15. **Successful Bid Selection**. The Auction (if applicable) shall continue until there is only one Qualified Bid for the Property that Trustee determines, in his reasonable business judgment, (i) is the highest or otherwise best Qualified Bid at the Auction and (ii) is in the best interest of the Estate, after considering relevant factors and potential alternatives, including, among other things, (a) the amount of the purchase price, (b) the form of consideration being offered, (c) the likelihood of the Qualified Bidder's ability to close a Sale (including obtaining any regulatory

approvals) and the timing thereof, and the cost to the Estate of any delay, (d) the net benefit to the Estate, and (e) the number, type, and nature of any changes to the Form PSA or the Form Sale Order. Thereafter, Trustee shall select such Qualified Bid as the overall highest or otherwise best Qualified Bid (such Bid, the “Successful Bid,” and the Bidder submitting such Successful Bid, the “Successful Bidder”). Trustee will announce the Successful Bid before the conclusion of the Auction. Nothing herein shall require the Trustee to select any bid as the successful bid. The Trustee reserves the right to reject all bids and determine no bid as the Successful Bid for any reason, including but not limited to that each bid fails to satisfy the debts owed to the County of Kauai, the Kukui‘ula Facilities District and Parcel X Development, LLC, and/or fails to cover the costs attributable to any sale including the Trustee’s fees, Trustee’s counsel’s fees, broker fees, other Trustee’s professionals’ fees and other costs of sale.

16. **Successful Bid Acknowledgement.** Within two (2) business days after the conclusion of the Auction (if applicable), and if no Auction is held, as soon as practicable, but in no event later than two (2) business days following the date scheduled for the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

THE SALE HEARING

17. **Sale Hearing.** On or about **April 20, 2026**, Trustee shall file a Motion to Approve the Sale of Property to Successful Bidder, Free and Clear of Liens, Claims and Interests, With All Faults, Known and Unknown” (the “Sale Approval Motion”) with the Bankruptcy Court. No further bidding will be allowed at the Sale Hearing, absent further order of the Court.

The proposed Sale Hearing will be requested to be held on a date sometime between **May 18, 2026 to May 22, 2026**, or as soon thereafter as the calendar of the Bankruptcy Court permits. The Sale Approval Motion shall provide, at a minimum: (a) the identity of the Successful Bidder; (b) the Property to be sold to the Successful Bidder; (c) the consideration to be paid by the Successful Bidder; (d) the date and time of the Sale Hearing; (e) the deadline for objections to the proposed Sale; (f) any other information Trustee determines, in his business judgment, is necessary to include in the Sale; and (g) a request for a finding under Section 363(m) of the Bankruptcy Code that the Successful Bidder is a purchaser of the Property in good faith. Trustee shall serve the Sale Approval Motion on all parties appearing in the case and any other party required by order of the

Bankruptcy Court or applicable Bankruptcy Rules.

18. **Successful Bidder Objections.** All objections as to the proceedings of the Auction and the Successful Bidder's revisions to the Form PSA and the Form Sale Order (the "Successful Bidder Objections"), and the identity of the Successful Bidder must be filed by 14 calendar days prior to the Sale Hearing (the "Final Objection Deadline").

19. **Replies.** All replies to any Successful Bidder Objections or the Sale Approval Motion must be filed by seven (7) calendar days prior to the Sale Hearing (the "Reply Deadline").

BACK-UP BIDDER

20. **Back-Up Bidding.** At the conclusion of the Auction, Trustee may designate the second highest and best Qualified Bidder to serve as the "Back-Up Bidder" and such Qualified Bidder shall remain obligated to close the Sale on the terms set forth in its last bid (the "Back-Up Bid") in the event that the Sale with the Successful Bidder does not close. The Back-Up Bidder shall be obligated to close on the Back-Up Bid within two (2) business days after the originally scheduled closing date, or such other time period as agreed to by the Back-Up Bidder and Trustee (the "Back-Up Release Date"). In the event of and upon failure to consummate the Sale because of a breach on the part of the Back-up Bidder, Trustee shall be permitted to retain the Back-Up Bidder's Deposit as liquidated damages.

RETURN OF DEPOSIT

21. **Return Date.** The Deposits submitted by the Successful Bidder or the Back-Up Bidder will be deposited in a non-interest-bearing escrow account and held to be applied against the payment of the purchase price upon the closing of the Sale with the Successful Bidder or, if applicable, the Back-up Bidder or, as described above, release to the Trustee as liquidated damages. The Deposit of the Back-Up Bidder will not be returned until two (2) business days following the closing of the Sale to the Successful Bidder.

RESERVATION OF RIGHTS

22. **Sellers' Reservation of Rights.** Trustee, in his reasonable discretion, may (a) determine, which Qualified Bid, if any, is the highest or otherwise best

offer and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures or the terms and conditions of any Sale, or (iii) contrary to the best interests of the Estate and creditors.

FREE AND CLEAR OF ANY AND ALL LIENS, CLAIMS AND INTERESTS, WITH ALL FAULTS, KNOWN AND UNKNOWN

23. **Sale Free and Clear.** Except as otherwise provided in the Bidding Procedures Motion and any exhibits thereto, all of the Estate's rights, title, and interest in and to the Estate's Property subject thereto shall be sold free and clear of all liens, claims and interests thereon and there against and with all faults, known and unknown (collectively, the "Interests") in accordance with Section 363 of the Bankruptcy Code, with such Interests to attach to the proceeds of the sale of the Property in order of validity, priority and amount. No sale under Section 363 shall occur without approval by the Bankruptcy Court.

FIDUCIARY DUTIES

24. **Fiduciary Duties.** Notwithstanding anything to the contrary contained herein, nothing in the Bidding Procedures will prevent Trustee from exercising his fiduciary duties under or otherwise complying with applicable law.

EXECUTION & COUNTERPARTS

25. This Agreement may be executed in any number of identical counterparts, any or all of which may contain the signatures of less than all of the parties, and all of which shall be construed together as but a single instrument. This Agreement may be executed (whether by original ("wet-ink") signature or an electronic signature (including through e-sign services providers such as DocuSign)) and the signature pages transmitted by electronic image scan transmission (such as emailing a "pdf" file), or other electronic transmission. The delivery of such signature pages via electronic image scan transmission, or other electronic transmission shall constitute effective execution and delivery hereof.

I acknowledge I have read, understand and will comply with and to these Bidding and Sales Procedures.

[Signature page follows.]

POTENTIAL BIDDER:

[Legal Name of Individual or Entity]

By: _____

Name: _____

Title (if entity): _____

REAL PROPERTY PURCHASE AND SALE AGREEMENT

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT (the “Agreement”) is made and dated as of this day of _____ by and between DANE S. FIELD, Chapter 7 Trustee for the Estate of KUPONO RESORT LLC, (“Seller” or “Trustee”) and [], a [] (together with its permitted assigns hereunder, “Buyer”). The Buyer and Seller are each a “Party” to this Agreement and may be referred to collectively as “Parties.”

BACKGROUND

On July 28, 2025, Kupono Resort LLC (“Debtor”) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Hawaii (the “Bankruptcy Court”), Case No. 25-00652. On October 27, 2025, the case was voluntarily converted to a case under Chapter 7 and Dane S. Field was appointed as Trustee.

The Parties intend that the transaction contemplated hereunder is subject to Bidding and Sales Procedures which, if applicable, include an auction and overbid process on terms that are proposed by Seller and acceptable to Seller, as approved by the Bankruptcy Court (“Bidding Procedures”).

The Parties acknowledge that the transaction contemplated hereunder is subject to the authorization and, ultimately, approval of the Bankruptcy Court pursuant to an Order entered by the Bankruptcy Court, in accordance with Sections 105 and 363, and other applicable provisions of the Bankruptcy Code, which has not been stayed and is otherwise effective (the “Sale Approval Order”).

Buyer wants to buy and Seller wants to sell to Buyer, subject to the Bidding Procedures, all of Seller’s interest in the

Unit No. 2, and its appurtenant undivided common interests, of the “Kukui‘ula Parcel X Condominium” condominium project (“Project”), designated as Tax Map Key No. (4) 2-6-015-011-0002, CPR 2 (the “Property”), which Project is situate on that certain parcel of land, identified as Lot 11-C of the “Kukui‘ula Parcel X Subdivision”, Island and County of Kauai, State Hawaii, as more particularly described in the Property Description attached to the Preliminary Title Report in **Exhibit “A”** attached hereto and incorporated herein by reference.

The Trustee’s duties under Section 704(a) of the Bankruptcy Code include collecting and reducing to money the property of the estate and closing of the estate as expeditiously as is compatible with the best interests of parties in interest. As such, the following waivers and limitations in connection with the transaction are required, reasonable and a material part of the Seller’s consideration.

LIMITATION OF SELLER’S LIABILITY AND BUYER’S WAIVER OF IMPORTANT RIGHTS:

BUYER AGREES THAT BUYER IS BUYING THE PROPERTY “AS IS, WHERE IS, WITH ALL FAULTS, KNOWN AND UNKNOWN, AND LIMITATIONS” (AS MORE FULLY SET FORTH IN THIS AGREEMENT).

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS AGREEMENT, AND AS A MATERIAL PART OF THE CONSIDERATION FOR THE SALE OF THE PROPERTY TO BUYER, SELLER'S LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST THE SELLER IN ALL CIRCUMSTANCES AND FOR ALL CLAIMS, CAUSES OF ACTION, WHETHER ADMINISTRATIVE OR JUDICIAL, LOSSES, COSTS (INCLUDING ANY AND ALL REASONABLE ATTORNEYS' FEES, COURT COSTS, AND REASONABLE COSTS OF INVESTIGATION, LITIGATION, AND SETTLEMENT), SANCTIONS, CURTAILMENTS, INTEREST, LIABILITIES, PENALTIES, FINES, AND/OR DAMAGES, OF ANY KIND WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FIXED OR CONTINGENT, JOINT OR SEVERAL, CRIMINAL OR CIVIL, OR IN LAW OR IN EQUITY (COLLECTIVELY, "CLAIMS") ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR THE SALE OF THE PROPERTY TO BUYER INCLUDING, BUT NOT LIMITED TO, SELLER'S BREACH OR TERMINATION OF THIS AGREEMENT, THE CONDITION OF THE PROPERTY, SELLER'S TITLE TO THE PROPERTY, THE OCCUPANCY STATUS OF THE PROPERTY, THE SIZE, SQUARE FOOTAGE, BOUNDARIES, OR LOCATION OF THE PROPERTY, ANY COST OR EXPENSE INCURRED BY BUYER IN CONDUCTING ITS INVESTIGATION AND/OR DUE DILIGENCE IN PREPARATION FOR THE PURCHASE OF THE PROPERTY, OBTAINING OTHER ACCOMMODATIONS, MOVING, STORAGE OR RELOCATION EXPENSES, OR ANY OTHER COSTS OR EXPENSES INCURRED BY BUYER IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO NO MORE THAN A RETURN OF BUYER'S DEPOSIT (AS HEREINAFTER DEFINED) IF THE SALE TO BUYER DOES NOT CLOSE AS FURTHER SET FORTH HEREIN.

BUYER SHALL NOT BE ENTITLED TO A RETURN OF BUYER'S DEPOSIT IF BUYER BREACHES THIS AGREEMENT.

BUYER AGREES THAT SELLER SHALL NOT BE LIABLE TO BUYER UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES WHATSOEVER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER LEGAL OR EQUITABLE PRINCIPLE, THEORY, OR CAUSE OF ACTION ARISING OUT OF OR RELATED IN ANY WAY TO ANY CLAIM, INCLUDING, BUT NOT LIMITED TO, THE AFOREMENTIONED CLAIMS.

ANY REFERENCE TO A RETURN OF BUYER'S DEPOSIT CONTAINED IN THIS AGREEMENT SHALL MEAN A RETURN OF THE DEPOSIT, LESS ANY ESCROW CANCELLATION FEES APPLICABLE TO BUYER UNDER THIS AGREEMENT AND LESS FEES AND COSTS PAYABLE FOR SERVICES AND

PRODUCTS PROVIDED DURING ESCROW AT BUYER'S REQUEST. TO THE FULLEST EXTENT PERMITTED BY LAW BUYER WAIVES ANY CLAIMS THAT THE PROPERTY IS UNIQUE AND BUYER ACKNOWLEDGES THAT A RETURN OF ITS DEPOSIT CAN ADEQUATELY AND FAIRLY COMPENSATE BUYER FOR ALL CLAIMS. UPON RETURN OF THE DEPOSIT TO BUYER, THIS AGREEMENT SHALL BE TERMINATED, AND BUYER AND SELLER SHALL HAVE NO FURTHER LIABILITY, OBLIGATION, OR RESPONSIBILITY TO EACH OTHER IN CONNECTION WITH THIS AGREEMENT. IF THE SALE TO BUYER CLOSES, THEN BUYER AND SELLER SHALL HAVE NO FURTHER LIABILITY, OBLIGATION, OR RESPONSIBILITY TO EACH OTHER IN CONNECTION WITH THIS AGREEMENT.

SELLER'S LIMITATION OF LIABILITY AND BUYER'S WAIVERS PROVIDED IN THIS AGREEMENT ARE A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY SELLER UNDER THIS AGREEMENT AS NEGOTIATED AND AGREED TO BY BUYER AND SELLER.

BUYER FURTHER WAIVES THE FOLLOWING, TO THE FULLEST EXTENT PERMITTED BY LAW:

- (A) ALL RIGHTS TO FILE AND MAINTAIN AN ACTION AGAINST SELLER FOR SPECIFIC PERFORMANCE;
- (B) RIGHT TO RECORD A LIS PENDENS, NOTICE OF PENDENCY OF ACTION OR SIMILAR NOTICE AGAINST THE PROPERTY OR TO RECORD THIS AGREEMENT OR A MEMORANDUM THEREOF IN THE REAL PROPERTY RECORDS;
- (C) RIGHT TO INVOKE ANY EQUITABLE REMEDY THAT WOULD PREVENT SELLER FROM CONVEYING THE PROPERTY TO A THIRD-PARTY BUYER;
- (D) ANY CLAIMS ARISING FROM THE ADJUSTMENTS OR PRORATIONS OR ERRORS IN CALCULATING THE ADJUSTMENTS OR PRORATIONS THAT ARE OR MAY BE DISCOVERED AFTER CLOSING;
- (E) ANY REMEDY OF ANY KIND THAT BUYER MIGHT OTHERWISE BE ENTITLED TO AT LAW OR EQUITY AGAINST THE SELLER (INCLUDING, BUT NOT LIMITED TO, RESCISSION OF THIS AGREEMENT), EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT;
- (F) ANY RIGHT TO A TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT;
- (G) ANY RIGHT TO AVOID THE SALE OF THE PROPERTY OR REDUCE THE PRICE OR HOLD SELLER LIABLE FOR ANY CLAIMS ARISING OUT OF OR RELATED IN ANY WAY TO THE CONDITION, CONSTRUCTION, REPAIR,

OR TREATMENT OF THE PROPERTY, OR ANY DEFECTS, APPARENT OR LATENT, THAT MAY NOW OR HEREAFTER EXIST WITH RESPECT TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY CLAIMS AGAINST THE SELLER RELATING TO ANY ORDINANCES AND ANY REPAIR/IMPROVEMENT/ALTERATION COSTS REQUIRED THEREUNDER;

- (H) ANY CLAIMS AGAINST THE SELLER ARISING OUT OF OR RELATING IN ANY WAY TO ENCROACHMENTS, PROTRUSIONS, EASEMENTS, BOUNDARIES, SHORTAGES IN AREA OR ANY OTHER RELATED MATTER;
- (I) ANY CLAIMS AGAINST THE SELLER ARISING OUT OF OR RELATING IN ANY WAY TO THE SQUARE FOOTAGE, SIZE, OR LOCATION OF THE PROPERTY, OR ANY INFORMATION PROVIDED ON THE MULTIPLE LISTING SERVICE, OR BROCHURES OR WEB SITES OF SELLER, AUCTIONEER OR SELLER'S AGENT OR BROKER OR ANY STATEMENTS, ACTIONS OR CONDUCT OF AUCTIONEER OR SELLER'S AGENT OR BROKER; AND
- (J) ANY CLAIMS AGAINST THE SELLER ARISING OUT OF OR RELATING IN ANY WAY TO TENANTS OR OCCUPANTS OF THE PROPERTY OR TO ANY (I) CONTAMINATION (WHETHER PRESENTLY EXISTING OR HEREAFTER OCCURRING) OF THE IMPROVEMENTS, FACILITIES, SOIL, GROUNDWATER, SURFACE WATER, AIR OR OTHER ELEMENTS ON, OF OR UNDER THE PROPERTY BY HAZARDOUS MATERIALS (AS HEREINAFTER DEFINED); (II) RELEASE, DEPOSIT, DISCHARGE, EMISSION, GROWTH, LEAKING, LEACHING, SPILLING, SEEPING, MIGRATING, INJECTING, PUMPING, POURING, EMPTYING, ESCAPING, DUMPING, DISPOSING OR OTHER MOVEMENT OF HAZARDOUS MATERIALS (AS HEREINAFTER DEFINED) IN, ON, UNDER OR WITH RESPECT TO THE PROPERTY; (III) PAST, PRESENT OR FUTURE NONCOMPLIANCE WITH HAZARDOUS WASTE LAWS (AS DEFINED IN SECTION 9.12 BELOW, WHICH TERM WILL IN ALL CASES BE INTERPRETED TO INCLUDE ANY FEDERAL, STATE, OR LOCAL LAW, STATUTE, ORDINANCE, OR REGULATION, WHETHER NOW OR HEREAFTER IN EFFECT, PERTAINING TO HEALTH, INDUSTRIAL HYGIENE, THE ENVIRONMENT OR THE ENVIRONMENTAL CONDITIONS ON, UNDER, OR ABOUT THE PROPERTY); (IV) PERSONAL INJURY, PROPERTY DAMAGE, DEATH, ILLNESS, SICKNESS, DISEASE OR RELATED OCCURRENCES OR CONDITIONS RESULTING FROM THE PRESENCE, EXISTENCE, USE, TREATMENT OR DISPOSAL OF HAZARDOUS MATERIALS (AS HEREINAFTER DEFINED); AND (V) RESPONSE, REMEDIATION, REMOVAL, CORRECTIVE ACTION, OR CLEANUP OF HAZARDOUS MATERIALS (AS HEREINAFTER DEFINED) TOGETHER WITH ANY INSPECTION, INVESTIGATION, STUDY, MONITORING, ASSESSMENT, AUDIT, SAMPLING AND TESTING,

LABORATORY OR OTHER ANALYSIS, OR EVALUATION RELATING TO
HAZARDOUS MATERIALS (AS HEREINAFTER DEFINED).

THE ABOVE PROVISIONS SHALL SURVIVE THE CLOSING OF THE TRANSACTION
CONTEMPLATED HEREBY, OR THE EARLIER TERMINATION OF THE AGREEMENT.

SELLER'S INITIALS _____ BUYER'S INITIALS _____

ARTICLE 1 PURCHASE PRICE AND BIDDING PROCEDURES

Section 1.1 Agreement to Sell and Purchase.

Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Property, subject to the terms of this Agreement and the Sale Approval Order.

Section 1.2 Purchase Price.

The "Purchase Price" of the Property is \$[] payable in immediately available federal funds at Closing defined in Section 6.1.

- (a) On or before the Effective Date (defined in Section 9.14), as a condition to the effectiveness of this Agreement, Trustee shall deposit Buyer's Deposit with as Escrow Agent (the "Escrow Agent"), Attn: Phone: () immediately available federal funds in the amount of \$ (the "Deposit"). The Debtor's Secured Creditor, Parcel X Development, LLC (the "Secured Creditor") may assert its credit bid rights under Bankruptcy Code §363(k). To the extent the Secured Creditor exercises said credit bid rights, no Deposit shall be required from the Secured Creditor for any credit bid component of the Secured Creditor's bid.
- (b) The Deposit will be applied to the Purchase Price at Closing; or, if this Agreement does not close, the Deposit will be delivered as provided in this Agreement. Escrow Agent shall, promptly upon receipt, place the Deposit in a federally insured, non-interest-bearing account. Buyer shall promptly execute and deliver to Escrow Agent all forms reasonably requested by Escrow Agent with respect to the Deposit.
- (c) Escrow Agent is authorized and directed to pay the Deposit to the Party entitled to receive the Deposit under the terms of this Agreement. Seller or Buyer, as appropriate, shall deliver a letter of instruction to Escrow Agent directing the disbursement of the Deposit to the Party entitled to receive the Deposit promptly upon receipt of a demand from that Party.

Section 1.3 Overbid Procedure, Bankruptcy Court Approval; Sale Approval Order.

Buyer agrees and acknowledges that the sale of the Property to Buyer in accordance with this Agreement is subject to an overbid auction (if any, the "Auction") in accordance with the Bidding

Procedures. At the conclusion of the Auction, if any, Seller agrees to request that the Bankruptcy Court approve the sale of the Property to the best bidder or bidders taking into account such terms of sale as Seller may consider in its reasonable business judgment and determined by the Bankruptcy Court (the “Successful Bidder”) and, in the event the Successful Bidder fails to close, the sale of the Property to the second best qualified bidder taking into account such terms of sale as Seller may consider in its reasonable business judgment and determined by the Bankruptcy Court (the “Backup Bidder”). The Backup Bidder shall be legally obligated to close the transaction, as if such Backup Bidder had been the Successful Bidder; and shall be subject to the same forfeiture of its Deposit and liquidated damages provisions as would apply to the Successful Bidder. No bidder other than the two best bidders shall be bound to close the transaction. If both the Successful Bidder and the Backup Bidder fail to close, Seller, in its sole discretion, may conduct a new auction sale to the extent there is any buyer willing to be a bidder at such auction. The Buyer agrees and acknowledges that the Seller has no obligations under this Agreement until entry of the Sale Approval Order or any other such order approving this Agreement. The Seller retains the right to modify the Bidding Procedures in its sole discretion or as required by the Bankruptcy Court.

Section 1.4 Reserved.

ARTICLE 2 TITLE INSURANCE, OTHER INFORMATION, AND SURVEY

Section 2.1 Title Insurance.

- (a) Buyer, at its sole cost and expense, may cause First American Title & Escrow, _____, Attn: _____ (the “**Title Company**”) to agree to issue to Buyer as soon as practicable after Closing, an Owner Policy of Title Insurance for the Real Property and Improvements (the “**Owner Policy**”), it being understood and agreed that (i) Seller will have no obligation to cause Title Company to issue the Owner Policy or take any action with respect to the issuance of the Owner Policy, and (ii) the issuance of the Owner Policy will not be a condition to Closing. Buyer may request that Title Company issue, but Seller has no obligation to cause Title Company to issue, other available endorsements to the Owner Policy. Buyer, at its sole option, may pay for the issuance of available endorsements to the Owner Policy, it being understood that Seller has no obligation to cause or pay for the issuance of any such endorsements. Buyer may pay the premiums charged for and costs associated with obtaining extended coverage, modifications and endorsements to the Owner Policy and for any loan policy or endorsements required by Buyer’s lender.
- (b) If Buyer elects to obtain the Owner Policy, then Buyer, at its expense, shall cause the Title Company to furnish within five (5) days after the Effective Date a title insurance commitment covering the Real Property issued by Title Company through Title Company (the “**Commitment**”), together with copies of all documents referenced as title exceptions in the Commitment.

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Section 2.2 Other Information.

BUYER AGREES AND ACKNOWLEDGES THAT IT HAS RECEIVED CERTAIN MATERIALS FROM SELLER IN CONNECTION WITH AND PRIOR TO ENTRY INTO THIS AGREEMENT. BUYER AGREES AND ACKNOWLEDGES THAT IT HAD THE ABILITY TO PERFORM INDEPENDANT DUE DILIGENCE REGARDING THE PROPERTY PRIOR TO THE EFFECTIVE DATE AND BUYER HAS, AND HEREBY DOES (I) EXPRESSLY WAIVE ANY “DUE DILIGENCE PERIOD”, “OPTION PERIOD”, “INSPECTION PERIOD”, “FREE LOOK PERIOD” OR SIMILAR PERIOD WITH RESPECT TO ITS REVIEW AND INSPECTION OF THE PROPERTY, AND (II) ACKNOWLEDGES AND AGREES THAT THE DEPOSIT WILL, AS OF THE EFFECTIVE DATE, BE FULLY NON-REFUNDABLE TO THE BUYER UNLESS EXPRESSLY PROVIDED OTHERWISE HEREIN.

All documents and materials delivered from Seller to Buyer pursuant to this Agreement (including pursuant to Section 2.1 or this Section 2.2 and in any data room or due diligence database) shall be referred to herein after as “**Seller’s Materials**”. It is the Parties’ express understanding and agreement that Seller’s Materials are provided by Seller only for Buyer’s convenience in making its own examination and determination as to whether it wishes to purchase the Property, and, in doing so, Buyer shall rely exclusively on its own independent investigation and evaluation of every aspect of the Property and not on any materials supplied by Seller. Buyer (i) shall not have the right to rely on Seller’s Materials, including but not limited to, any existing environmental reports or studies, and Seller advises Buyer to conduct its own studies and environmental investigations of the Property; and (ii) expressly disclaims any intent to rely on Seller’s Materials provided to it by Seller in connection with its inspection and agrees that it shall rely solely on its own independently developed or verified information. Notwithstanding anything in this Agreement to the contrary, Seller’s Materials are being delivered to Buyer for review without any representation or warranty whatsoever by Seller as to the truthfulness or accuracy of same, and Buyer hereby expressly waives any such representation or warranty.

All information provided by Seller to Buyer or obtained by Buyer relating to the Property in the course of its inspection of the Property or the above referenced due diligence items, including, without limitation, any environmental assessment or audit, if any, shall be treated as confidential information by Buyer and Buyer shall instruct all of its employees, agents, representatives and contractors as to the confidentiality of all such information. Buyer shall be liable for all damage or injury to any person or property resulting from any failure to keep all such information confidential, whether occasioned by the acts of Buyer or any of its employees, agents or representatives, and Buyer shall, and hereby does, indemnify and hold harmless Seller from any liability resulting therefrom. This paragraph shall survive the Closing or termination of this Agreement.

Section 2.3 Survey.

If the Buyer desires for any reason, to obtain a new or updated survey, the Buyer may obtain and deliver to Seller and Title Company, at Buyer’s expense an ALTA survey (the “**Survey**”) of the Property prepared by a registered professional engineer or land surveyor. If the Buyer obtains the Survey, the Buyer shall provide a copy of the Survey to the Seller within one (1) business day of receipt.

ARTICLE 3 INSPECTION

Section 3.1 Inspection.

- (a) Until the commencement of the Auction, if any, Buyer may enter the Property to conduct inspections of the Real Property and Improvements. Buyer must notify Seller of its intention to enter the Property at least forty-eight (48) hours prior to each intended entry and obtain Seller's prior approval, which shall not be unreasonably withheld, delayed or conditioned, of the proposed scope of the inspections and tests. No invasive testing or inspections may be performed without prior written approval of Seller, which approval may be withheld or given in Seller's sole and absolute discretion.

Seller may, at his option, have a representative present for each inspection or test. All consultants who perform inspections or testing at the Property on behalf of Buyer are subject to Seller's prior reasonable approval.

- (b) Prior to any entry on the Property, Buyer shall deliver to Seller a reasonably satisfactory certificate of insurance evidencing that Buyer (and any consultant, contractor, agent or other party entering onto the Property by, through, under or on behalf of Buyer) has commercial general liability insurance, on an occurrence basis, with aggregate and individual limits of at least \$2,000,000.00 and \$1,000,000.00, respectively, each issued by an insurance company licensed to do business in Hawaii and with an AM Best Company rating of at least A-/IX and a reasonably satisfactory form of endorsement evidencing the fact that Seller is named as additional insured under such liability insurance policies. All such insurance policies must be primary with respect to any liability insurance carried by Seller.
- (c) Buyer shall perform, and shall cause its agents, employees, and contractors to perform, all inspections and reviews of the Property so as not to cause any damage, loss, cost, or expense to, or claims against Seller or the Property. Buyer shall, at its expense, promptly repair any damage to the Property caused by or attributable to Buyer's inspections or testing to the condition existing prior to the inspection or testing. Buyer shall indemnify, defend, and hold Seller, attorneys, and its brokers and their respective agents and employees harmless from any damage, loss, cost, expense (including, without limitation, reasonable legal fees, court costs, and expenses), or claims caused by, attributable to, or resulting from the entry onto the Property by Buyer, its agents, employees, contractors, or consultants. Buyer shall cause any lien filed against the Property by

a consultant, contractor, subcontractor, or other person or entity arising by, through, or under Buyer or otherwise attributable to Buyer's inspection, testing, and review of the Property to be released of record (whether through payment or bonding) within ten (10) days after receipt of notice from Seller of the filing of any lien. The terms of this **Section 3.1(c)** survive the Closing or any termination of this Agreement.

ARTICLE 4

SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS

Section 4.1 Seller's Representations and Warranties.

Seller represents and warrants to Buyer that, subject to Seller's receipt of the Required Approvals (defined below), (i) Seller shall have received all required judicial approvals required for the Seller's execution, delivery and performance of its obligations under this Agreement and Seller will have the authority to execute and deliver this Agreement and to perform its obligations under this Agreement, (ii) the person executing this Agreement on behalf of Seller is duly authorized to do so, and (iii) Seller will have full power and authority to sell and convey the Property as of the Closing Date. The term "**Required Approvals**" means entry of the Sale Approval Order by the Bankruptcy Court in a form acceptable to the Seller.

Section 4.2 Survival of Representations and Warranties.

The representations and warranties in **Section 4.1** will (i) not survive the Closing and (ii) will be deemed to have merged with the Deed (as hereinafter defined). Buyer acknowledges that it has been afforded the opportunity to inspect the Property and conduct all investigations and studies Buyer deems necessary and prudent for the purpose of acquiring the Property. Accordingly, Buyer confirms that so long as Seller complies with its obligations under this Agreement, Buyer will be unconditionally obligated to complete the Closing in accordance with the requirements of this Agreement. At Closing, Buyer will be deemed to have waived any defaults of Seller (including any (a) breaches, failures to perform, or defaults in the covenants or other obligations of Seller herein, and/or (b) inaccuracies, misrepresentations, or breaches of the Seller's representations or warranties in this Agreement) that arose prior to or during the term of this Agreement.

Section 4.3 Knowledge Standard.

Seller has no actual knowledge of the Property. Buyer acknowledges that Seller is the Chapter 7 Trustee and that Seller disclaims personal knowledge or responsibility for the accuracy of any information provided concerning the Property.

ARTICLE 5

BUYER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 5.1 Buyer's Representations and Warranties.

Buyer represents and warrants to Seller, which representations and warranties are also deemed to be made on and as of the Closing Date:

- (a) Buyer is validly existing and in good standing under the laws of the State of _____, and is, to the extent necessary, qualified to do business in Hawaii.
- (b) Buyer has the authority to execute this Agreement and to perform its obligations under this Agreement. The person executing this Agreement on behalf of Buyer is duly authorized to do so.
- (c) There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under other debtor relief laws contemplated by, pending, or threatened against Buyer.
- (d) Buyer is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the “**Order**”) and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury (“**OFAC**”) and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the “**Orders**”).
- (e) To Buyer’s knowledge, neither Buyer nor any beneficial owner of Buyer:
 - (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the “**Lists**”);
 - (ii) has been determined by competent authority to be subject to the prohibitions contained in the Orders; or
 - (iii) is owned or controlled by, or acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

Section 5.2 Buyer’s Covenants. Buyer covenants and agrees:

- (a) to make its policies, procedures and practices regarding compliance with the Orders, if any, available to Seller for its review and inspection during normal business hours and upon reasonable prior notice; and
- (b) that if Buyer obtains knowledge that Buyer or any of its beneficial owners becomes listed on the Lists or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Buyer shall immediately notify Seller in writing, and in such event, Seller shall have the right to terminate this Agreement without penalty or liability to Buyer immediately upon delivery of written notice thereof to Buyer.

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ARTICLE 6 CLOSING AND PRORATIONS

Section 6.1 Closing Date.

The “**Closing**” of this Agreement will take place on the later of June 8, 2026 or the first business day from fourteen days (14) after entry of the Sale Approval Order which is not subject to a stay (the “**Closing Date**”). Hawaii closings are upon recordation at 8:01 a.m. in the State of Hawaii Bureau of Conveyances. The Parties will cooperate with the Title Company in signing documents and taking all necessary or appropriate actions to ensure Closing occurs on such date.

Section 6.2 Closing Matters.

- (a) Expressly conditioned upon Buyer’s compliance with all its obligations under this Agreement, Seller shall deliver at Closing a Trustee’s Quitclaim Condominium Deed (the “**Deed**”), duly executed and acknowledged by Seller in the form attached to this Agreement as **Exhibit “B”**.
- (b) Neither the availability of the Owner’s Title Insurance to Buyer nor Seller’s delivery of possession of the Property is a condition of closing.
- (c) At Closing, Buyer shall deliver to Title Company as a condition precedent to the obligation of Seller to perform its obligations under this Agreement (by wire transfer or other immediately available federal funds), the Purchase Price, subject to applicable prorations, credits and credit bids.
- (d) Seller and Buyer shall execute and deliver to the appropriate parties any additional documents and instruments that, in the mutual opinion of Buyer’s counsel and Seller’s counsel are necessary to consummate this transaction; provided, however, Buyer shall be obligated to deliver any documentation ordered by the Bankruptcy Court or which may be reasonably requested by the Title Company to the extent that such documentation is a requirement for the Title Company’s issuance of the Owner’s Policy.

Section 6.3 Prorations.

- (a) Real Property Taxes and assessments against the Property will be prorated at Closing as of 12:01 a.m., HST, on the Closing Date.
- (b) All income and expenses of the Property will be prorated at Closing as of 12:01 a.m., HST on the Closing Date on an accrual basis. All other income and expense items subject to proration pertaining to the period prior to the Closing Date will be allocated to Seller and all income and expense items subject to proration pertaining to the period starting on the Closing Date will be allocated to Buyer.
- (c) Notwithstanding anything herein which may be interpreted to the contrary, in no event will Seller be obligated or required to make post-closing adjustments to the prorations of taxes, expenses and/or other prorated amounts after the Closing Date. All prorations calculated and/or determined by the Parties on the Closing Date will

be final.

Section 6.4 Closing Costs.

Costs of closing this transaction will be allocated between Seller and Buyer as follows:

- (a) Buyer shall pay, if any: (i) escrow fees or similar charges of Title Company, (ii) the costs, incurred by Buyer in connection with the performance of its obligations under this Agreement, (iii) the cost of recording the Deed; (iv) the cost of providing the Commitment and the basic premium for the Owner Policy, together with any premiums related to any endorsements or modifications to the Owner Policy requested by Buyer and any costs related to the issuance of any title insurance policy, (v) the cost of the Survey, if any, and (vi) any and all transfer fees and sales, intangibles, and conveyance taxes (or equivalents) related to the Closing.
- (b) Seller shall pay the costs, if any, incurred by Seller in connection with the performance of its obligations under this Agreement and the Bidding Procedures as provided by this Agreement.
- (c) All other expenses incurred by Seller or Buyer with respect to the Closing, including, but not limited to, legal fees of Buyer and Seller (except in the event of litigation), will be borne and paid exclusively by the Party incurring same, without reimbursement, except to the extent otherwise specified in this Agreement, including as provided by the Bidding Procedures.

ARTICLE 7
DEFAULTS AND REMEDIES

Section 7.1 DEFAULT/REMEDIES. If this Agreement is breached for any reason, then the Parties will rely exclusively upon the following remedies:

- (a) Buyer's Default. If the transaction contemplated by this Agreement fails to be completed by reason of any default of Buyer or if Buyer breaches any covenant of Buyer set forth in this Agreement, as determined by Seller in its reasonable discretion, then this Agreement may be terminated upon Seller's written notice to Buyer. In such event, (1) Seller shall be released from obligation to sell the Property to Buyer, and (2) Buyer and Seller expressly agree that it would be extremely difficult or impractical to determine Seller's actual damages as a result of such a default by Buyer, and therefore the Parties agree that Seller shall retain as liquidated damages and not as a penalty and as a reasonable pre-estimate of Seller's actual damages for breach of this Agreement an amount equal to the Deposit and that such liquidated amount represents reasonable compensation to Seller. Notwithstanding all of the foregoing, Seller retains the right to proceed against Buyer for enforcement of Buyer's indemnification/defense/hold harmless obligations under this Agreement. In addition to any default by Buyer with respect to any of its obligations hereunder, Buyer shall be considered in default under this Agreement:
 - (a) if Buyer shall, on or prior to the Closing Date, (i) apply for or consent to the

appointment of a receiver, trustee or liquidator for itself or for any of its property, (ii) admit in writing an inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated bankrupt or insolvent, or if a petition for reorganization is granted, or (v) file a voluntary petition as an answer seeking reorganization as an arrangement with creditors, or take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or file an answer admitting the material allegations of a petition filed against it in any proceedings under any such law; (b) if any such petition filed against Buyer in any proceeding under such law is consented to or is not dismissed, canceled or terminated within thirty (30) days of the filing thereof or remains outstanding at the Closing Date; or (c) if a receiver, liquidator or trustee shall be appointed for Buyer or any of Buyer's property by order of a court of competent jurisdiction and shall not have been discharged within thirty (30) days or remains outstanding at the Closing Date.

- (b) **Seller's Default.** Additionally, if the transaction contemplated by this Agreement fails to be completed by reason of any default of Seller which continues for ten (10) days after Seller's receipt of notice default from Buyer, then this Agreement may be terminated upon Buyer's written notice to Seller. In either such event, as Buyer's sole and exclusive remedy (Buyer hereby waiving all other remedies, whether arising at law or in equity), the Deposit shall be returned to Buyer, free and clear of any claims by Seller, and the parties shall thereafter have no further rights or obligations hereunder except for any expressly surviving rights or obligations in this Agreement. Buyer specifically acknowledges and agrees that a termination of this Agreement by Seller pursuant to any right of termination granted in this Agreement if applicable, does not constitute a default by Seller under this Agreement.
- (c) **Waiver Of Specific Performance Remedy.** As a material part of the consideration to be paid or received by Seller and Buyer under this Agreement, Buyer waives all rights to file and maintain an Action against Seller for specific performance and to record a lis pendens, Notice of Pendency of Action or any such similar notice against the Property if a dispute arises concerning this Agreement. Buyer agrees that the Property is not unique and that in the event of Seller's default or material breach of the Agreement, Buyer can be adequately and fairly compensated solely by receiving a return of Buyer's Deposit. Upon return of Buyer's Deposit, this Agreement shall be terminated, and Buyer and Seller hereby irrevocably instruct Title Company to return all other funds and documents to the Party that deposited them without further direction.

SELLER'S INITIALS _____ *BUYER'S INITIALS* _____

Section 7.2 **DISPUTE RESOLUTION.**

Without limitation of any Party's right to appeal any order of the Bankruptcy Court, the Parties agree that (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected

with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding; *provided, however*, that, if Bankruptcy Court lacks jurisdiction or authority to adjudicate any legal action, suit or proceeding (the “**Action**”) arising out of or relating to this Agreement or the Parties, such Action shall be heard and determined in a Hawaii federal court, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such action or proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. The Parties consent to service of process by mail (in accordance with **Section 9.1**) or any other manner permitted by law.

SELLER’S INITIALS _____ BUYER’S INITIALS _____

ARTICLE 8 TAKINGS AND CONDEMNATION PROCEEDINGS

Risk of all loss, destruction or damage to the Property, or any portion thereof, from any and all causes whatsoever from the Effective Date (except loss, destruction or damage caused by Buyer or Buyer’s agents, Agreement, or licensees, or others acting for or on behalf of Buyer) until consummation of the Closing shall be borne by Seller. In the event any portion of the Property is taken by eminent domain by any competent authority for any public or quasi-public use or purpose, Seller shall give prompt written notice thereof to Buyer. If and only if the applicable condemnation or eminent domain proceedings involve the taking of a Material Portion of the Property, Buyer may, within the later of ten (10) days of receipt of notice of any such eminent domain proceedings (the “**Loss Termination Period**”), terminate this Agreement and receive a full refund of the Deposit by giving written notice to Seller, or if Buyer fails to give written notice of such termination within the Loss Termination Period, Buyer shall be deemed to have waived this provision and elected to proceed to Closing. The term “**Material Portion**”, as used herein, shall mean (i) more than ten percent (10%) of the Real Property, or (ii) a taking or condemnation that materially affects access in, within or otherwise to the Real Property or any portion thereof. If condemnation proceedings are begun (whether relating to a Material Portion of the Real Property or not) and, despite such condemnation, Buyer is required, chooses or is otherwise deemed to have chosen to proceed to Closing then: (i) Buyer will accept the remaining Real Property and Improvements subject to the condemnation proceedings; (ii) Seller has no liability with respect to any portion of the Real Property and Improvements that is condemned, or with respect to any costs or expenses incurred by Buyer as a result of any condemnation proceedings; (iii) Seller has no obligation to defend or otherwise appear in any condemnation proceedings; and (iv) Seller shall assign to Buyer at Closing all of the rights and interests of Seller in and to any condemnation awards or insurance proceeds which may be paid or payable to on account of any such occurrence.

ARTICLE 9 MISCELLANEOUS

Section 9.1 Notices.

All notices, requests, approvals, consents, and other communications required or permitted under

this Agreement (“**Notices**”) must be in writing and are effective:

- (a) on the next business day after delivery, on a business day, to a nationally recognized overnight courier service for prepaid overnight delivery;
- (b) three (3) days after being deposited on a business day in the United States mail, certified, return receipt requested, postage prepaid, or
- (c) upon receipt if delivered by any method other than the methods specified above; in each instance addressed to Buyer or Seller, as the case may be, at the following addresses, or to any other address either Party may designate by ten (10) days’ prior notice to the other Party:

Seller: Dane S. Field, Trustee
c/o Susan Tius, Esq., Monica K. S. Choi, Esq.
Rush Moore LLP
745 Fort Street, Suite 800
Honolulu, Hawaii 96813
(808) 521-0400
Email: stius@rmhawaii.com; mchoi@rmhawaii.com

With a copy to: Hilco Global
Attn: Jeff Azuse
5 Revere Drive, Suite 410
Northbrook, Illinois 60062
Tel. (847) 418-2703

Email: jazuse@hilcoglobal.com

-and-

Hilco Real Estate, LLC
Attn: Steve Madura
5 Revere Drive, Suite 410
Northbrook, Illinois 60062
Tel. (847) 504-2478
Email: smadura@hilcoglobal.com

-and-

Summers Realty, Inc.
Attn: Tom Summers
1310 Inia Street, Suite A
Kapa‘a, Hawai‘i 96746
Tel. (808) 693-2533
Email: tom@summersrealty.net

//

Buyer: _____
Attention: _____
Telephone: _____
E-Mail: _____

With a copy to: _____
Attention: _____
Telephone: _____
E-Mail: _____

Each Party shall use commercially reasonable efforts to send a copy of any notice of termination under this Agreement to Title Company on the same date and by the same method(s) as it is sent to the other Party. The failure to send a copy of any termination notice to Title Company does not invalidate an otherwise valid termination notice.

Section 9.2 Performance.

Time is of the essence in the performance of this Agreement.

Section 9.3 Binding Effect.

This Agreement is binding upon and inures to the benefit of the successors and permitted assigns of the Parties.

Section 9.4 Entire Agreement.

This Agreement embodies the complete Agreement between the Parties and cannot be varied except by written agreement of Seller and Buyer and approval of the Bankruptcy Court.

Section 9.5 Assignment.

- (a) This Agreement may not be assigned by Buyer without the prior written consent of Seller (which Seller may grant or withhold in its sole discretion) except to an Affiliate (as hereinafter defined) of Buyer. Any assignee of Buyer's interest in this Agreement is bound by all approvals and waivers, actual and deemed, by Buyer prior to the assignment, and must assume in writing all of Buyer's obligations under this Agreement. Buyer is not released from the obligations created under this Agreement as a result of any permitted assignment.
- (b) Upon any assignment of this Agreement, Buyer shall promptly deliver to Seller a fully executed original of the assignment of this Agreement and the assumption by the assignee of Buyer's obligations under this Agreement, which assignment must include the federal tax identification number of the assignee.
- (c) No consent given by Seller to any transfer or assignment of Buyer's rights or obligations under this Agreement may be construed as a consent to any transfer or assignment of Buyer's rights or obligations. No transfer or assignment in violation of this **Section 9.5** is valid or enforceable.

- (d) An “**Affiliate**” of an entity is any entity that controls, is controlled by, or is under common control with the entity in question. The term “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities or otherwise.

Section 9.6 Commissions.

Each Party hereby warrants to the other Party that it has not dealt with any real estate broker or salesman in the negotiation of this Agreement except Hilco Real Estate, LLC and Summers Realty, Inc.

Buyer shall indemnify, defend, and hold harmless the Seller against any real estate commissions due by virtue of the execution or Closing of this Agreement, the obligation or asserted claim for which arises from actions taken or claimed to be taken by or through the indemnifying party. The provisions of this **Section 9.6** survive the Closing or any earlier termination of this Agreement.

Section 9.7 Headings.

Section headings or captions are used in this Agreement for convenience only and do not limit or otherwise affect the meaning of any provision of this Agreement. Section 9.8 Holidays, Etc. Whenever any time limit or date provided herein falls on a Saturday, Sunday, or legal holiday under the laws of the State of Hawaii or on a day when federal banks are closed, then that date is extended to the next day that is not a Saturday, Sunday, or legal holiday or a day when federal banks are closed. The term “**business day**” as used in this Agreement means any day that is not a Saturday, Sunday, or legal holiday under the laws of the State of Hawaii or a day when federal banks are closed.

Section 9.9 Legal Fees.

If there is litigation, arbitration, or mediation concerning the interpretation or enforcement of this Agreement or any portion of this Agreement, the prevailing Party is entitled to recover from the losing Party its reasonable legal fees, court costs, and expenses. The provisions of this **Section 9.9** survive the Closing or any earlier termination of this Agreement. For the avoidance of doubt, if the Buyer is the prevailing Party such legal fees, court costs, and expenses shall be subject to review and approval by the Bankruptcy Court.

Section 9.10 Governing Law.

EXCEPT TO THE EXTENT THE MANDATORY PROVISIONS OF THE BANKRUPTCY CODE APPLY, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF HAWAII APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY IN SUCH STATE WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OR CHOICE OF LAWS OR ANY OTHER LAW THAT WOULD MAKE THE LAWS OF ANY OTHER JURISDICTION OTHER THAN THE STATE OF HAWAII APPLICABLE HERETO.

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Section 9.11 Severability.

If any provision in this Agreement is unenforceable in any respect, the remainder of this Agreement remains enforceable and, in lieu of the unenforceable provision, there will be added to this Agreement an enforceable provision as similar in terms to the unenforceable clause as may be possible.

Section 9.12 Disclaimers, Waivers, and Releases.

Buyer acknowledges and agrees that:

- (a) **SELLER, FOR ITSELF AND ON BEHALF OF ALL SELLER AFFILIATES, SPECIFICALLY DISCLAIMS, AND BUYER EXPRESSLY WAIVES, ANY WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS, TO, OR CONCERNING: (I) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, AND THE SUITABILITY OF THE REAL PROPERTY AND IMPROVEMENTS FOR ANY AND ALL ACTIVITIES AND USES THAT BUYER MAY ELECT TO CONDUCT THEREON; (II) MATTERS OF TITLE; (III) THE NATURE, ENFORCEABILITY, AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION, OR OTHERWISE RELATING TO THE REAL PROPERTY AND IMPROVEMENTS; (IV) THE COMPLIANCE OF THE REAL PROPERTY AND IMPROVEMENTS OR THE OPERATION THEREOF WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR OTHER BODY, INCLUDING, WITHOUT LIMITATION, THE AMERICANS WITH DISABILITIES ACT OR THE FAIR HOUSING ACT, AS AMENDED FROM TIME TO TIME; (V) WHETHER THE IMPROVEMENTS (IF ANY) ARE BUILT IN A GOOD AND WORKMANLIKE MANNER; (VI) ZONING TO WHICH THE REAL PROPERTY AND IMPROVEMENTS OR ANY PORTION THEREOF MAY BE SUBJECT; (VII) THE AVAILABILITY OF ANY UTILITIES TO THE REAL PROPERTY AND IMPROVEMENTS OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE, GAS, ELECTRIC, PHONE, AND CABLE; (VIII) USAGES OF ADJOINING PROPERTY; (IX) ACCESS TO THE REAL PROPERTY AND IMPROVEMENTS OR ANY PORTION THEREOF; (X) THE VALUE, COMPLIANCE WITH ANY PLANS AND SPECIFICATIONS PROVIDED BY SELLER, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, SUITABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE REAL PROPERTY AND IMPROVEMENTS OR ANY PORTION THEREOF, OR ANY INCOME, EXPENSES, CHARGES, LIENS, ENCUMBRANCES, RIGHTS, OR CLAIMS ON OR AFFECTING OR PERTAINING TO THE REAL PROPERTY AND IMPROVEMENTS OR ANY PART THEREOF; (XI) THE EXISTENCE OR NON- EXISTENCE OF**

UNDERGROUND STORAGE TANKS; (XII) ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE REAL PROPERTY AND IMPROVEMENTS; (XIII) THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE REAL PROPERTY AND IMPROVEMENTS; (XIV) THE EXISTENCE OF VESTED LAND USE, ZONING, OR BUILDING ENTITLEMENTS AFFECTING THE REAL PROPERTY AND IMPROVEMENTS; (XV) TAX CONSEQUENCES (INCLUDING, BUT NOT LIMITED TO, THE AMOUNT OF, USE OF, OR PROVISIONS RELATING TO ANY TAX CREDITS); (XVI) WARRANTIES (EXPRESS OR IMPLIED) OF CONDITION REGARDING THE FITNESS OF THE REAL PROPERTY AND IMPROVEMENTS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TENANTABILITY, HABITABILITY, OR SUITABILITY FOR ANY INTENDED USE; (XVII) ANY ENVIRONMENTAL CONDITIONS THAT MAY EXIST ON THE REAL PROPERTY AND IMPROVEMENTS, INCLUDING, WITHOUT LIMITATION, THE EXISTENCE OR NON-EXISTENCE OF PETROLEUM PRODUCTS, PETROLEUM RELATED PRODUCTS, FUNGI OF ALL FORMS AND TYPES, "HAZARDOUS SUBSTANCES," "HAZARDOUS MATERIALS," "TOXIC SUBSTANCES," OR "SOLID WASTES" AS THOSE TERMS (WHICH ARE COLLECTIVELY REFERRED TO IN THIS AGREEMENT AS "HAZARDOUS MATERIALS") ARE DEFINED IN THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED BY SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986, THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 ("RCRA"), AND THE HAZARDOUS MATERIALS TRANSPORTATION ACT, AND STATE ENVIRONMENTAL LAWS, AND IN THE REGULATIONS PROMULGATED PURSUANT TO THOSE LAWS, ALL AS AMENDED (COLLECTIVELY, THE "HAZARDOUS WASTE LAWS") AND BUYER RELEASES AND WAIVES ANY CLAIMS OR CAUSES OF ACTION AGAINST SELLER, SELLER'S AGENTS AND SELLER'S AFFILIATES BASED IN WHOLE OR IN PART ON ANY VIOLATION OF, OR ARISING WITH RESPECT TO, ANY FEDERAL, STATE, OR LOCAL STATUTE, ORDINANCE, RULE, OR REGULATION RELATING THERETO; AND (XVIII) THE FINANCIAL EARNING CAPACITY OR HISTORY OR EXPENSE HISTORY OF THE OPERATION OF THE REAL PROPERTY AND IMPROVEMENTS.

- (b) BUYER SHALL PERFORM ALL INVESTIGATIONS OF THE PROPERTY IT DEEMS NECESSARY PRIOR TO THE EFFECTIVE DATE AND WILL RELY SOLELY ON ITS OWN INVESTIGATIONS. ANY PLANS OR SPECIFICATIONS PROVIDED BY SELLER ARE PROVIDED SOLELY FOR CONVENIENCE AND BUYER IS RELYING SOLELY ON ITS OWN PHYSICAL INVESTIGATION OF THE PROPERTY AND IS NOT RELYING ON THE ACCURACY OF ANY PLANS OR SPECIFICATIONS. BUYER ACCEPTS THE PROPERTY AS CONSTRUCTED REGARDLESS OF WHETHER THE IMPROVEMENTS AS CONSTRUCTED CONFORM

TO ANY PLANS OR SPECIFICATIONS. BUYER ACKNOWLEDGES THAT THE IMPROVEMENTS AS CONSTRUCTED MAY NOT AND VERY LIKELY DO NOT CONFORM IN ALL RESPECTS TO THE PLANS AND SPECIFICATIONS AND BUYER HEREBY WAIVES ANY CLAIMS IT MAY HAVE AS A RESULT OF ANY NON-CONFORMITY OF ANY IMPROVEMENTS AS ACTUALLY CONSTRUCTED WITH THE PLANS AND SPECIFICATIONS. BUYER IS NOT AND WILL NOT RELY ON ANY INFORMATION PROVIDED OR NOT PROVIDED TO BUYER BY SELLER TO MAKE A DECISION CONCERNING THE PURCHASE OR NON-PURCHASE OF THE PROPERTY. ALL SELLER INFORMATION (DEFINED BELOW) IS SUBJECT TO BUYER'S VERIFICATION AND, REGARDLESS OF BUYER'S FAILURE TO SO VERIFY THE SELLER INFORMATION, BUYER WILL NOT HOLD SELLER OR ANY SELLER AFFILIATE LIABLE FOR OR MAKE ANY CLAIMS AGAINST SELLER OR ANY SELLER AFFILIATE AS TO THE ACCURACY OR INACCURACY OF ANY SELLER INFORMATION.

- (c) BUYER REPRESENTS AND WARRANTS TO SELLER THAT BUYER'S OPPORTUNITY FOR INSPECTION AND INVESTIGATION OF THE PROPERTY (AND OTHER PARCELS IN PROXIMITY THERETO) WILL BE ADEQUATE TO ENABLE BUYER TO MAKE BUYER'S OWN DETERMINATION WITH RESPECT TO THE ACQUISITION OR NON-ACQUISITION OF THE PROPERTY AND THE PRESENCE OR DISPOSAL ON OR BENEATH THE REAL PROPERTY AND IMPROVEMENTS (AND OTHER PARCELS IN PROXIMITY THERETO) OF HAZARDOUS MATERIALS. BUYER ACCEPTS THE RISK OF THE PRESENCE OR DISPOSAL OF HAZARDOUS MATERIALS ON OR NEAR THE REAL PROPERTY AND IMPROVEMENTS.**
- (d) NO REPRESENTATIONS HAVE BEEN MADE BY SELLER, ANY SELLER AFFILIATE, OR THEIR AGENTS, BROKERS, OR EMPLOYEES, AND BUYER HAS NOT RELIED ON THE INFORMATION SUPPLIED BY SELLER IN ENTERING INTO, CONTINUING THE EFFECTIVENESS OF, OR CLOSING UNDER THIS AGREEMENT OTHER THAN SELLER'S REPRESENTATIONS AND WARRANTIES SPECIFIED IN SECTION 4.1. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ACKNOWLEDGES, WARRANTS, AND REPRESENTS TO SELLER THAT NEITHER SELLER NOR ANY SELLER AFFILIATE, OR THEIR AGENTS, BROKERS, OR EMPLOYEES HAVE MADE ANY REPRESENTATION OR STATEMENT TO BUYER CONCERNING THE PROPERTY'S INVESTMENT POTENTIAL OR RESALE AT ANY FUTURE DATE, AT A PROFIT OR OTHERWISE, NOR HAS SELLER OR ANY SELLER AFFILIATE OR THEIR AGENTS, BROKERS, OR EMPLOYEES RENDERED ANY ADVICE OR EXPRESSED ANY OPINION TO BUYER REGARDING ANY INCOME TAX CONSEQUENCES OF OWNERSHIP OF THE PROPERTY.**

- (e) **BUYER REPRESENTS AND WARRANTS TO SELLER THAT BUYER IS RELYING SOLELY ON BUYER'S INDEPENDENT ANALYSIS AND INVESTIGATION OF THE PROPERTY AND BUYER ASSUMES THE RISK THAT AN ADVERSE CONDITION OF THE PROPERTY MAY NOT HAVE BEEN REVEALED BY ITS OWN DUE DILIGENCE. SELLER HAS NO DUTY TO INFORM, ADVISE, OR OTHERWISE PROVIDE INFORMATION TO BUYER THAT SELLER MAY HAVE REGARDING THE PROPERTY EXCEPT AS EXPRESSLY REQUIRED IN THIS AGREEMENT. ANY INFORMATION, DOCUMENTS, OR REPORTS SUPPLIED OR MADE AVAILABLE BY SELLER, WHETHER WRITTEN OR ORAL, OR IN THE FORM OF MAPS, SURVEYS, PLATS, SOIL REPORTS, ENGINEERING STUDIES, ENVIRONMENTAL STUDIES, OPERATION STATEMENTS, RENT ROLLS, OR OTHER INSPECTION REPORTS PERTAINING TO THE PROPERTY (INCLUDING, WITHOUT LIMITATION, THE REPORTS) (COLLECTIVELY "SELLER INFORMATION") ARE BEING DELIVERED TO BUYER ON AN AS-IS, WHERE IS, AND WITH ALL FAULTS BASIS, SOLELY AS A COURTESY. SELLER HAS NEITHER VERIFIED THE ACCURACY OF ANY STATEMENTS OR OTHER INFORMATION IN ANY OF THE SELLER INFORMATION, NOR ANY METHOD USED TO COMPILE THE SELLER INFORMATION, NOR THE QUALIFICATIONS OF THE PERSON(S) PREPARING THE SELLER INFORMATION. SELLER MAKES NO, AND BUYER WAIVES ANY, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW AS TO THE ACCURACY, COMPLETENESS, OR ANY OTHER ASPECT OF THE SELLER INFORMATION.**
- (f) **NEITHER SELLER NOR ANY SELLER AFFILIATE IS RESPONSIBLE OR LIABLE TO BUYER OR ANY SUCCESSOR OR ASSIGNEE OF BUYER, AND BUYER, ON ITS OWN BEHALF AND ON BEHALF OF ITS SUCCESSORS AND ASSIGNS, RELEASES AND COVENANTS NOT TO SUE SELLER OR ANY SELLER AFFILIATE FOR ANY CONSTRUCTION DEFECTS, ERRORS, OR OMISSIONS, OR ON ACCOUNT OF ANY OTHER CONDITIONS AFFECTING THE PROPERTY, KNOWN OR UNKNOWN. BUYER IS PURCHASING THE PROPERTY AS IS, WHERE IS, AND WITH ALL FAULTS. BUYER RELEASES SELLER AND ALL SELLER AFFILIATES AND THEIR EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, AND AGENTS FOR ANY COST, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION, OR CAUSE OF ACTION ARISING FROM OR RELATED TO ANY CONSTRUCTION DEFECTS, ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING THE PROPERTY, KNOWN OR UNKNOWN. THIS RELEASE WILL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESS TERMS AND PROVISIONS, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO UNKNOWN CLAIMS, DAMAGES, AND CAUSES OF ACTION. THIS COVENANT RELEASING SELLER AND ALL SELLER AFFILIATES IS A**

**COVENANT RUNNING WITH THE PROPERTY AND IS BINDING UPON
BUYER, ITS SUCCESSORS AND ASSIGNS.**

**THE PROVISIONS OF THIS SECTION 9.12 SURVIVE THE CLOSING OR ANY
EARLIER TERMINATION OF THIS AGREEMENT.**

Section 9.13 Rule of Construction.

Each Party and its counsel have reviewed this Agreement. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party may not be employed in the interpretation of this Agreement or any amendments, schedules, or exhibits to this Agreement.

Section 9.14 Effective Date.

The “**Effective Date**” of this Agreement is the date that both parties have executed, or initialed any changes to, the final version of this Agreement and the Deposit is deposited with the Title Company in accordance with **Section 1.2**. This Agreement is not binding on the Seller or the Buyer until entry of an order of the Bankruptcy Court approving this Agreement.

Section 9.15 Execution & Counterparts.

This Agreement may be executed in any number of identical counterparts, any or all of which may contain the signatures of less than all of the parties, and all of which shall be construed together as but a single instrument. This Agreement may be executed (whether by original (“wet-ink”) signature or an electronic signature (including through e-sign services providers such as DocuSign)) and the signature pages transmitted by electronic image scan transmission (such as emailing a “pdf” file), or other electronic transmission. The delivery of such signature pages via electronic image scan transmission, or other electronic transmission shall constitute effective execution and delivery hereof.

Section 9.16 No Recording.

Buyer covenants that neither it nor any successor or assign will record in any public records this Agreement or any memorandum or affidavit relating to this Agreement. In addition to Seller’s remedies in **Section 7.1**, if Buyer breaches this **Section 9.16**, Buyer will record a release of any such memorandum or affidavit no later than five (5) days after request by Seller. This **Section 9.16** survives the Closing or earlier termination of this Agreement and Seller may enforce specific performance of Buyer’s obligations under this **Section 9.16**.

Section 9.17 Continued Marketing.

Seller may continue marketing the Property to third parties consistent with the Bidding Procedures until Seller’s holding of the Auction.

Section 9.18 Waiver of Jury Trial.

**TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BUYER AND SELLER
IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION,**

PROCEEDING, OR COUNTERCLAIM (WHETHER BASED ON AGREEMENT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE PROVISIONS OF THIS AGREEMENT OR ANY DOCUMENT DELIVERED IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY, WHETHER NOW EXISTING OR HEREAFTER ARISING. EACH OF BUYER AND SELLER AGREES AND CONSENTS THAT EITHER PARTY MAY FILE AN ORIGINAL COUNTERPART OR COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

Section 9.19 Required Approvals.

Buyer acknowledges that, notwithstanding the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby shall be subject to Seller's obtaining the Required Approvals on or prior to Closing. Seller shall notify Buyer in writing ("**Seller's Approval Notice**") prior to Closing whether or not it has obtained the Required Approvals. If Seller's Approval Notice indicates that Seller was unable to obtain the Required Approvals or Seller fails to deliver Seller's Approval Notice, the Deposit shall be refunded to Buyer, this Agreement shall terminate and thereafter be null and void, and the parties hereto shall be relieved of any further obligations to one another.

Section 9.20 Indemnity.

From and after the Closing, Buyer shall assume, be responsible for, shall pay on a current basis, and hereby agrees to release, defend, indemnify and hold harmless Seller and its Affiliates, and all of its and their respective stockholders, partners, members, directors, officers, managers, employees, attorneys, agents and representatives (collectively, "**Seller Indemnified Parties**") from and against any and all any and all Claims (as defined by the Bankruptcy Code), causes of actions, payments, charges, judgments, assessments, losses, monetary damages, penalties, fines, fees, taxes, assessments, duties, levies, imposts, unclaimed property and escheat obligations or other similar charges imposed by a Governmental Unit (as defined by the Bankruptcy Code), interest obligations, deficiencies, debts, obligations, costs and expenses and other liabilities (whether absolute, accrued, contingent, fixed or otherwise, or whether known or unknown, or due or to become due or otherwise), including any amounts paid in settlement, interest, court costs, costs of investigators, attorneys' fees, legal or other expenses incurred in connection therewith relating to any individual, firm, corporation, company, partnership, joint venture, limited partnership, limited liability company, association, trust, estate, labor union, organization, Governmental Unit (as defined by the Bankruptcy Code), or any other entity or incurred, directly or indirectly, in the investigation or defense of any of the same or in asserting, presenting or enforcing any of their respective rights hereunder arising from, based upon, related to or associated with:

- (a) the Property and this Agreement.
- (b) any breach by Buyer of its covenants, obligations or Agreements under this Agreement.

PROVIDED HOWEVER, THE INDEMNIFICATION IN THIS SECTION 9.20 SHALL NOT APPLY TO THE EXTENT ARISING OUT OF OR RESULTING FROM THE FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF THE SELLER OR ANY SELLER INDEMNIFIED PARTY. BUYER AND SELLER ACKNOWLEDGE THAT THIS STATEMENT IS CONSPICUOUS.

[Signature page follows.]

EXECUTED by Seller on this the ____ day of _____.

SELLER:

**DANE S. FIELD, CHAPTER 7 TRUSTEE
FOR THE ESTATE OF KUPONO RESORT LLC,
CASE NO. 25-00652, U.S. BANKRUPTCY COURT,
DISTRICT OF HAWAII**

EXECUTED by Buyer on this the ____ day of _____.

BUYER:

_____,
a _____

By: _____
Name: _____
Title: _____



Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Issuing Agent: First American Title Company, Inc.
Issuing Office: 1177 Kapiolani Boulevard, Honolulu, HI 96814
Issuing Office's ALTA® Registry ID:
Commitment Number: 1-7337593
Issuing Office File Number: 1-7337593
Property Address: An address is not yet assigned,
Revision Number: 1 - 11/26/2025

SCHEDULE A

1. Commitment Date: October 28, 2025 at 8:00 a.m.
2. Policy to be issued:
 - a. 2021 ALTA Policy - form(s) To Be Determined
Proposed Insured: To Be Determined
Proposed Amount of Insurance: \$0.00
The estate or interest to be insured: See Item 3 below
3. The estate or interest in the Land at the Commitment Date is:

Fee Simple
4. The Title is, at the Commitment Date, vested in:

Kupono Resort LLC, a Hawaii limited liability company
5. The Land is described as follows:

See Exhibit A attached hereto and made a part hereof

First American Title Company, Inc.

By:

Authorized Signatory

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SCHEDULE B, PART I—Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. If the mortgage in favor of Jeffrey J. Koch and Elizabeth A. Koch, Trustees of the J&E Koch Revocable Trust Number 1 dated November 19, 2010, and any amendments thereto, shown as Item No. 39, in Schedule B, Section Two, is to be paid off and omitted from the title insurance policy, a proper and recordable form of Release of Mortgage must be provided at the time the transaction is recorded.
6. A release of the Notice of Pendency of Action shown as Item No. 40 of Schedule B, Section Two, be recorded in the Official Records.
7. With respect to Kupono Resort LLC, a limited liability company:
 1. A copy of its operating agreement and any amendments thereto;
 2. A certified copy of its articles of organization and any certificate of correction, certificate of amendment, or restatement of articles of organization;
 3. If it is a foreign limited liability company, evidence that the limited liability company is properly formed and is in good standing in the State or Country of its incorporation;
 4. With respect to any deed, mortgage, lease, subordination agreement or other document or instrument executed by such limited liability company and presented for recordation by the Company or upon which the Company is asked to rely, that such document or instrument be executed in accordance with one of the following, as appropriate:
 - i. If the limited liability company properly operates through officers appointed or elected pursuant to the terms of a written operating agreement, such document must be executed by at least two duly elected or appointed officers, as follows: the chairman of the board, the president or any vice president, and any secretary, assistant secretary, the chief financial officer or any assistant treasurer;
 - ii. If the limited liability company properly operates through a manager or managers identified in the articles of organization and/or duly elected pursuant to the terms of a written operating agreement, such document must be executed by at least two

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- such managers or by one manager if the limited liability company properly operates with the existence of only one manager.
5. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.
 8. Order by Bankruptcy Court, Bankruptcy No. 25-00652, on the subject transaction.

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SCHEDULE B, PART II—Exceptions

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This Commitment and the Policy treat any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

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

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8. Real property tax assessments for the fiscal year 2025-2026:

Tax Map Key No.: (4) 2-6-015-011-0002
Property Class: 7

First Installment:	\$139,118.24, DELINQUENT
Penalty:	\$13,911.82
Interest:	\$4,590.90
Amount Paid:	\$0.00
Amount Due:	\$157,620.96, through November 2025
Second Installment:	\$139,118.24, PAYABLE

Note: Verification should be made with the Office of the Director of Finance on the delinquent taxes shown above. Posting may not be current and information provided is not always accurate.

9. Kukui`ula CFD Assessments for the fiscal year 2025-2026:

First Installment:	\$53,771.69, DELINQUENT
Penalty:	\$5,377.17
Interest:	\$1,774.47
Amount Paid:	\$0.00
Amount Due:	\$60,923.33, through November 2025
Second Installment:	\$53,771.69, PAYABLE

Note: Verification should be made with the Office of the Director of Finance on the delinquent taxes shown above. Posting may not be current and information provided is not always accurate.

10. Title to all mineral and metallic mines reserved to the State of Hawaii.

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11. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Deed recorded March 31, 2003 as Regular System Document No. 2003-058405 of Official Records.
12. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration of Conditions recorded November 5, 2003 as Regular System Document No. 2003-244116 of Official Records.
13. A Grant of Easement for utility purpose, in favor of Kauai Island Utility cooperative, recorded March 18, 2005 as Regular System Document No. 2005-054267 of Official Records.
14. The terms and provisions contained in the Agreement recorded April 22, 2005 as Regular System Document No. 2005-080268 of Official Records.
15. Waiver, Release and Indemnity Agreement for TMK: (4) 2-6-015-001 (POR.)(Kukutula Village), recorded September 24, 2007 as Regular System Document No. 2007-169452 of official records
16. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Deed with Covenants recorded November 05, 2007 as Regular System Document No. 2007-194398 of Official Records.
17. A Grant of Easement for utility purpose, in favor of Kukui'ula Village LLC, a delaware limited liability company, recorded November 05, 2007 as Regular System Document No. 2007-194399 of Official Records.

Document(s) declaring modifications thereof recorded as Regular System Document No. A-45800601 of Official Records.

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18. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Kukui'ula Trail System Declaration recorded March 05, 2008 as Regular System Document No. 2008-034082 of Official Records.
19. Waiver, Release and Indemnity Agreement FOR TMK: (4) 2-6-015-011 (Electrical Enclosures For Kukui Ula Village) recorded July 18, 2008 as Regular System Document No. 2008-115168 of official records
20. A Grant of Easement for utility purpose, in favor of Kauai Island Utility Cooperative, recorded November 12, 2008 as Regular System Document No. 2008-172462 of Official Records.
21. Conveyance of Water Facility for TMK (4) 2-6-15: 010 recorded August 17, 2009 as Regular System Document No. 2009-126467 of official records
22. Certificate of Formation of County of Kaua'i Community Facilities District No. 2008-1 (Kukui'ula Development Project) recorded September 27, 2010 as Regular System Document No. 2010-143092 of official records
23. Restriction of vehicle access into and from Lawai Road, as shown on the map prepared by Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi & Associates Inc., dated February 2, 2011, last revised August 3, 2011, approved by the Planning Department, County of Kauai, on September 13, 2011, and set forth in Affidavit of Erik S. Kaneshiro recorded September 22, 2011 as Regular System Document No. 2011-154371 of official records
24. Designation of Easement "SA" for sewer and access purposes as shown on the map prepared by Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi & Associates Inc., dated February 2, 2011, last revised August 3, 2011, approved by the Planning Department, County of Kauai, on September 13, 2011, and described in Affidavit of Erik S. Kaneshiro recorded September 22, 2011 as Regular System Document No. 2011-154371 of official records
25. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration of Covenants, Conditions and Restrictions For PM-2004-370 Zoning Map Modifications recorded February 16, 2021 as Regular System Document No. A-77170975 of Official Records.

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26. Mineral and Water Rights of any nature in favor of the State of Hawaii, as set forth or disclosed by the Instrument recorded February 17, 2021 as Regular System Document No. A-77180601 of Official Records.
27. Restriction of vehicular access as described in or disclosed by the Instrument recorded February 17, 2021 as Regular System Document No. A-77180601 of Official Records.
28. Regular System Condominium Map No. 6185.
29. The terms and provisions contained in or incorporated by reference in the Declaration of Condominium Property Regime, as may be amended. Said Declaration was recorded February 17, 2021 as Regular System Document No. A-77180601 of Official Records.
30. The terms and provisions contained in or incorporated by reference in the Condominium By-Laws, as may be amended. Said By-Laws were recorded February 17, 2021 as Regular System Document No. A-77180602 of Official Records.
31. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration of Covenants, Conditions, Restrictions and Easements for Parcel X recorded February 22, 2021 as Regular System Document No. A-77230491 of Official Records.
32. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration of Easements and Covenant to Share Costs for Kukui'ula and Parcel X recorded February 22, 2021 as Regular System Document No. A-77230492 of Official Records.
33. The terms and provisions contained in the Grant of Easement recorded February 22, 2021 as Regular System Document No. A-77230493 of Official Records.
34. The terms and provisions contained in the Grant of Easement recorded February 22, 2021 as Regular System Document No. A-77230494 of Official Records.
35. The terms and provisions contained in the Declaration of Easement (Access and Sewer) recorded March 23, 2021 as Regular System Document No. A-77520017 of Official Records.

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36. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Limited Warranty Unit Deed with Reservations and Covenants recorded March 29, 2021 as Regular System Document No. A-77580039 of Official Records.
37. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes, as disclosed by Limited Warranty Unit Deed with Reservations and Covenants recorded March 29, 2021 as Regular System Document No. A-77580039 of Official Records.
38. Survey by Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi, Associates, Inc., dated November 26, 2020, Job No. none, as disclosed by Limited Warranty Unit Deed with Reservations and Covenants recorded March 29, 2021 as Regular System Document No. A-77580039 of Official Records, , discloses the following:
(A) Easement A affecting Unit 2;
(B) Proposed Access Easement affecting Unit 4 of the Project; and
(C) Proposed pump Station E (20,200 square feet), affecting Unit 3 of the Project.
39. A Grant of Easement wastewater purposes, in favor of Kukui'ula South Shore Community Services, LLC, a Hawaii limited liability company, recorded October 22, 2021 as Regular System Document No. A-79650639 of Official Records.
- The interest of Kukui'ula South Shore Community Services, LLC is assigned to Hawaii Water Service Company, Inc., a Hawaii corporation, by Quitclaim Assignment and Assumption of Grants of Easement and Quitclaim Bill of Sale of Partial Interest in Improvements recorded December 4, 2024 as Regular System Document No. A-9104000477 of Official Records.
40. The terms and provisions contained in the Grant of Wastewater Easement and Quitclaim Bill of Sale of Partial Interest in Improvements recorded October 22, 2021 as Regular System Document No. A-79650639 of Official Records.
41. A mortgage to secure an original principal indebtedness of \$5,000,000.00, and any other amounts or obligations secured thereby.
Dated: January 5, 2022
Mortgagor: Kuponu Resort LLC, a Hawaii Limited Liability Company
Mortgagee: Jeffrey J. Koch and Elizabeth A. Koch, Trustees of the J&E Koch Revocable Trust Number 1 dated November 19, 2010, and any amendments thereto
Recorded January 12, 2022 as Regular System Document No. A-80470530 of Official Records.

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According to the public records, the foregoing document was assigned to Parcel X Development, LLC, a Delaware limited liability company, by assignment recorded November 13, 2025 as Regular System Document No. A-9448000663 of Official Records.

42. Notice of Pendency of Action filed in the Fifth Circuit Court, State of Hawaii, with Civil No. 5CCV-25-0000084, on a suit to foreclosure. A certified copy of said Notice was recorded July 28, 2025 as Regular System Document No. A 9340000629 of Official Records.

Affects Mortgage recorded as Regular System Document No. A-80470530 of Official Records.

43. Proceedings pending in the Bankruptcy Court of the 9th District of the U.S. District Court, Hawaii, entitled in re: Kupono Resort LLC, debtor, Case No. 25-00652, wherein a petition for relief was filed under Chapter 7 on July 28, 2025.
44. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a current and accurate survey would disclose.
45. Any and all leases, subleases and/or tenancy agreements, the rights thereunder and encumbrances thereto.
46. Any lien or claim of lien for unpaid assessments in favor of the Association of Apartment Owners of Kukui'ula Parcel X Condominium.

Note: Please contact the Association of Apartment Owners of Kukui'ula Parcel X Condominium and/or their successors and assigns or any other appropriate entity regarding assessments, transfer fees and other requirements that may be due or imposed upon the contemplated transaction pursuant to the above document(s). Reference is made to the recorded document(s) for full particulars.

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EXHIBIT A

The Land referred to herein below is situated in the County of Kauai, State of Hawaii, and is described as follows:

All the premises comprising a portion of "Kukui'ula Parcel X Condominium" Condominium Project (herein called the "project") consisting of that certain parcel of land more fully described herein, and the improvements and appurtenances thereof, as described and established by the declaration of condominium property regime recorded February 17, 2021 as Regular System Document No. A-77180601, as may be amended, of official records (herein called the "declaration"), described as follows:

First: Unit No. 2 of that certain project as shown on the plans thereof recorded as Regular System Condominium Map No. 6185

Together with appurtenant easements as follows:

(a) Non-exclusive easement in the common elements designed for such purposes for ingress to, egress from, utility services for and support of said unit; in the other common elements for use according to their respective purposes;

(b) Easements to use other limited common elements appurtenant thereto designated for its use by the Declaration;

Second: An undivided 54.89% interest in all common elements of the project and in the land on which said Project is located, as established for said unit by the Declaration, or such other percentage interest as hereinafter established for said unit by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof.

Being the premises conveyed by Limited Warranty Unit Deed with Reservations and Covenants recorded March 29, 2021 as Regular System Document No. A-77580039 of Official Records.

Grantor: Kukui'ula Development Company (Hawaii), LLC, a Hawaii limited liability company

Grantee: Kupono Resort LLC, a Hawaii limited liability company

The land upon which said condominium project is situate is more particularly described as follows:

All of that certain parcel of land (being portion (s) of the land (s) described in and covered by Royal Patent Number 6714, Land Commission Award Number 7714-B, Apana 2 to M. Kekuaiwa no M. Kekuanaoa and Royal Patent Number 6448, Land Commission Award Number 5482 to Ino) situate, lying and being at Koloa (Makai), Koloa, Kona, Island and County of Kauai, State of Hawaii, being Lot 11-C of the "KUKUI'ULA PARCEL X SUBDIVISION", same being portions of Lots 10 and 11 of the "Kukui'ula Large-Lot Subdivision III", as shown on map prepared by Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi & Associates Inc., dated February 2, 2011, last revised August 3, 2011, approved by the Planning Department, County of Kauai, on September 13, 2011, and thus bounded and described as per

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survey dated September 20, 2011:

Beginning at the southeast corner of this parcel of land, being also the south corner of Lot 10-A of Kukui'ula Parcel X Subdivision, and on the northwest side of Lawa'i Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAHIAWA" being 10,578.33 feet south and 20,399.61 feet east thence running by azimuths measured clockwise from true South:

1. 30° 45' 331.97 feet along the northwest side of Lawa'i Road, along remainder of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa;
2. 32° 31' 46.33 feet along same; Thence along same, on a curve to the right with a radius of 350.00 feet, the chord azimuth and distance being:
3. 67° 00' 30" 396.40 feet;
4. 101° 30' 810.62 feet along the north side of Lawa'I Road, along remainder of R.P. 6714, 5. L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa;
5. 205° 28' 418.11 feet along Lot 11-D of Kukui'ula Parcel X Subdivision, along remainder of R.P. 6714, L.C. Aw. 7714-B, Ap 2. to M. Kekuaiwa no M. Kekuanaoa;
6. 95° 49' 406.32 feet along same;
7. 193° 08' 342.47 feet along same;
8. 277° 36' 156.00 feet along same;
9. 198° 18' 114.00 feet along same;
10. 133° 35' 158.00 feet along same;
11. 200° 47' 249.00 feet along same;
12. 162° 35' 251.00 feet along same;
13. 189° 32' 30" 90.69 feet along Lot 11-B of Kukui'ula Parcel X Subdivision, along remainder of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa;
14. 261° 26' 172.57 feet along same;
15. 180° 38' 102.08 feet along same; Thence along same, on a curve to the right with a radius of 276.00 feet, the chord azimuth and distance being:
16. 192° 42' 30" 115.47 feet;

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17. 204° 47' 219.04 feet along same; Thence along Lot 11-A of Kukui'ula Parcel X Subdivision, along remainder of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa not M. Kekuanaoa, on a curve to the left with a radius of 478.00 feet, the chord azimuth and distance being:

18. 290° 10' 15" 36.21 feet;

19. 288° 00' 136.58 feet along same; Thence along same, on a curve to the right with a radius of 522.00 feet, the chord azimuth and distance being:

20. 289° 32' 30" 28.09 feet;

21. 291° 05' 250.74 feet along same; Thence along same, on a curve to the left with a radius of 478.00 feet, the chord azimuth and distance being:

22. 286° 57' 68.91 feet;

23. 282° 49' 98.59 feet along same; Thence along same, on a curve to the left with a radius of 978.00 feet, the chord azimuth and distance being:

24. 276° 00' 16" 232.01 feet; Thence along same, on a curve to the left with a radius of 32.00 feet, the chord azimuth and distance being:

25. 224° 38' 54" 44.89 feet;

Thence along Lot 19 (Ala Kalanikaumaka) of Kukui'ula Large-Lot Subdivision III, along remainder of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa, on a curve to the left with a radius of 1,230.00 feet, the chord azimuth and distance being:

26. 357° 39' 08" 105.25 feet;

Thence along Lot 10-A of Kukui'ula Parcel X Subdivision, along remainder of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa, on a curve to the left with a radius of 32.00 feet, the chord azimuth and distance being:

27. 132° 04' 27" 43.68 feet;

Thence along same, on a curve to the right with a radius of 1,022.00 feet, the chord azimuth and distance being:

28. 95° 49' 15" 241.54 feet;

Thence along same, on a curve to the left with a radius of 830.00 feet, the chord azimuth and distance being:

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29. 356° 23' 27" 354.55 feet;
30. 344° 03' 30" 322.42 feet along same;
31. 29° 03' 30" 19.80 feet along same;
32. 344° 03' 30" 60.00 feet along same;
33. 299° 03' 30" 19.80 feet along same;
34. 344° 03' 30" 14.23 feet along same;
35. 345°06' 30" 458.56 feet along Lot 10-A of Kukui'ula Parcel X Subdivision, along remainders of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa and R.P. 6448, L.C. Aw. 5482 to Ino;
36. 304° 40' 328.50 feet along Lot 10-A of Kukui'ula Parcel X Subdivision, along remainder of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa, to the point of beginning and containing an area of 45.413 acres, more or less.

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ALTA COMMITMENT FOR TITLE INSURANCE
issued by
FIRST AMERICAN TITLE INSURANCE COMPANY

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.


THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, First American Title Insurance Company, a Nebraska Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Amount of Insurance and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

FIRST AMERICAN TITLE INSURANCE COMPANY


Sally F. Tyler, President


Lisa W. Cornehl, Secretary

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COMMITMENT CONDITIONS

1. DEFINITIONS

- a. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.
- b. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.
- c. "Land": The land described in Item 5 of Schedule A and improvements located on that land that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- d. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.
- e. "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- f. "Proposed Amount of Insurance": Each dollar amount specified in Schedule A as the Proposed Amount of Insurance of each Policy to be issued pursuant to this Commitment.
- g. "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- h. "Public Records": The recording or filing system established under State statutes in effect at the Commitment Date under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term "Public Records" does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.
- i. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.
- j. "Title": The estate or interest in the Land identified in Item 3 of Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:
- a. the Notice;
 - b. the Commitment to Issue Policy;
 - c. the Commitment Conditions;
 - d. Schedule A;

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- e. Schedule B, Part I—Requirements; and
- f. Schedule B, Part II—Exceptions; and
- g. a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company is not liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

- a. The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - i. comply with the Schedule B, Part I—Requirements;
 - ii. eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
 - iii. acquire the Title or create the Mortgage covered by this Commitment.
- b. The Company is not liable under Commitment Condition 5.a. if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- c. The Company is only liable under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- d. The Company's liability does not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Condition 5.a. or the Proposed Amount of Insurance.
- e. The Company is not liable for the content of the Transaction Identification Data, if any.
- f. The Company is not obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- g. The Company's liability is further limited by the terms and provisions of the Policy to be issued to the Proposed Insured.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT; CHOICE OF LAW AND CHOICE OF FORUM

- a. Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- b. Any claim must be based in contract under the State law of the State where the Land is located and is restricted to the terms and provisions of this Commitment. Any litigation or other proceeding brought by the Proposed Insured against the Company must be filed only in a State or federal court having jurisdiction.

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- c. This Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
 - d. The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
 - e. Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
 - f. When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.
- 7. IF THIS COMMITMENT IS ISSUED BY AN ISSUING AGENT**
The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for closing, settlement, escrow, or any other purpose.
- 8. PRO-FORMA POLICY**
The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.
- 9. CLAIMS PROCEDURES**
This Commitment incorporates by reference all Conditions for making a claim in the Policy to be issued to the Proposed Insured. Commitment Condition 9 does not modify the limitations of liability in Commitment Conditions 5 and 6.
- 10. CLASS ACTION**
ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS COMMITMENT, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS COMMITMENT, ANY BREACH OF A COMMITMENT PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS COMMITMENT, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING. ANY POLICY ISSUED PURSUANT TO THIS COMMITMENT WILL CONTAIN A CLASS ACTION CONDITION.
- 11. ARBITRATION**
The Policy contains an arbitration clause. Provided that this does not supersede Hawaii's Uniform Arbitration Act, Hawaii Revised Statutes, Chapter 658A and subject to the provisions of said act, all arbitrable matters when the Proposed Amount of Insurance is \$2,000,000 or less may be arbitrated at the election of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the ALTA arbitration rules at

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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<http://www.alta.org/arbitration>.

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Total Pages: _____

TITLE OF DOCUMENT:

QUITCLAIM CONDOMINIUM DEED

PARTIES TO DOCUMENT:

GRANTOR: DANE S. FIELD, Trustee as hereinafter stated

GRANTEE:

PROPERTY DESCRIPTION:

Unit No. 2
"Kukui'ula Parcel X Condominium"
Condominium Map No. 6185
Island of Kauai

LIBER/PAGE/DOCUMENT NO.:

A-77580039

LAND COURT DOCUMENT NO.:

TRANSFER CERTIFICATE OF TITLE
NO(S) .:

Tax Map Key No.: (4) 2-6-015-011-0002

QUITCLAIM CONDOMINIUM DEED

THIS INDENTURE executed this _____ day of _____, 2026, by and between DANE S. FIELD, Trustee, duly appointed as hereinafter stated, hereinafter called the "Grantor", and _____ [Grantee's name(s) and marital or entity status], whose address is _____, hereinafter called the "Grantee",

W I T N E S S E T H :

THAT WHEREAS, DANE S. FIELD is the duly appointed Trustee of the Bankruptcy Estate of Kuponu Resort LLC, in the United States Bankruptcy Court for the District of Hawaii in that certain proceeding entitled "In re Kuponu Resort LLC, Debtor.", designated as Case No. 25-00652 (Chapter 7) in the files of said Court;

NOW, THEREFORE, Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to Grantor paid by Grantee, receipt whereof is hereby acknowledge, does by these presents RELEASE, REMISE and FOREVER QUITCLAIM all of the right, title and interest of Grantor in and to all of the real and personal property (if any) described in Exhibit "A" hereto attached and expressly made a part hereof, unto Grantee, as _____ [tenancy];

This conveyance is executed by said DANE S. FIELD, Trustee as aforesaid, pursuant to the terms and provisions of that certain "Order Granting Trustee's Motion for Approval of Sale of Real Property identified as TMK No. (4) 2-6-015-011-0002, Free and Clear of All Liens, Claims and Interests and for Related Relief", [need to insert actual title of Order] dated _____ in the United States Bankruptcy Court for the District of Hawaii in that certain proceeding entitled "In re Kuponu Resort LLC, Debtor", designated as Case No. 25-00652 (Chapter 7) in the files of said Court.

Grantee understands and agrees that the property described in said Exhibit "A" is being conveyed AS IS, WHERE IS, AND WITH ALL FAULTS. Grantor makes no representations or warranties, either express or implied, with respect to any matter relating to the property described in said Exhibit "A", including without limitation, no express warranty, no warranty of merchantability, no warranty of fitness for any particular purpose and no implied or statutory warranty whatsoever with respect to said property, any personal property or any fixture.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, corporations or partnerships, and their and each of their respective successors, successors in trust, heirs, personal representatives and assigns, according to the context thereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

This document may be executed in counterparts. Each counterpart shall be executed by one or more of the parties to this document and the several counterparts shall constitute one document to the same effect as though the signatures of all of the parties were upon the same document.

IN WITNESS WHEREOF, Grantor and Grantee have executed these presents the day and year first above written.

DANE S. FIELD, duly appointed Trustee
of the Bankruptcy Estate of Kuponu
Resort LLC, in the United States
Bankruptcy Court for the District of
Hawaii in that certain proceeding
entitled "In re Kuponu Resort LLC,
Debtor.", designated as Case No. 25-
00652 (Chapter 7)

"Grantor"

"Grantee"

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

On this _____ day of _____, 2026,
before me personally appeared DANE S. FIELD, to me personally
known, who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and
deed of such person(s), and if applicable in the capacity shown,
having been duly authorized to execute such instrument in such
capacity.

NOTARY CERTIFICATION: This _____ page Quitclaim
Condominium Deed, dated _____, was subscribed
and sworn to before me this _____ day of _____,
2026, in the First Circuit of the State of Hawaii, by
_____ (notary name).

Type or print name:
Notary Public, in and for said
County and State.

My commission expires: _____

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

On this _____ day of _____, 2026,
before me personally appeared _____, to
me personally known, who, being by me duly sworn or affirmed, did
say that such person(s) executed the foregoing instrument as the
free act and deed of such person(s), and if applicable in the
capacity shown, having been duly authorized to execute such
instrument in such capacity.

NOTARY CERTIFICATION: This _____ page Quitclaim
Condominium Deed, dated _____, was subscribed
and sworn to before me this _____ day of _____,
2026, in the First Circuit of the State of Hawaii, by
_____ (notary name).

Type or print name:
Notary Public, in and for said
County and State.

My commission expires: _____

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

On this _____ day of _____, 2026,
before me personally appeared _____, to
me personally known, who, being by me duly sworn or affirmed, did
say that such person(s) executed the foregoing instrument as the
free act and deed of such person(s), and if applicable in the
capacity shown, having been duly authorized to execute such
instrument in such capacity.

NOTARY CERTIFICATION: This _____ page Quitclaim
Condominium Deed, dated _____, was subscribed
and sworn to before me this _____ day of _____,
2026, in the First Circuit of the State of Hawaii, by
_____ (notary name).

Type or print name:

Notary Public, in and for said
County and State.

My commission expires: _____

EXHIBIT A

All the premises comprising a portion of "Kukui'ula Parcel X Condominium" condominium project (herein called the "Project") consisting of that certain parcel of land more fully described herein, and the improvements and appurtenances thereof, as described and established by the Declaration of Condominium Property Regime recorded February 17, 2021 in the Bureau of Conveyances of the State of Hawaii as Document No. A-77180601, as may be amended (herein called the "Declaration"), described as follows:

First: Unit No. 2 of that certain project as shown on the plans thereof recorded as Condominium Map No. 6185.

Together with appurtenant easements as follows:

(a) Non-exclusive easement in the common elements designed for such purposes for ingress to, egress from, utility services for and support of said unit; in the other common elements for use according to their respective purposes;

(b) Easements to use other limited common elements appurtenant thereto designated for its use by the Declaration;

Second: An undivided 54.89% interest in all common elements of the project and in the land on which said Project is located, as established for said unit by the Declaration, or such other percentage interest as hereinafter established for said unit by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof.

Being the premises conveyed by Limited Warranty Unit Deed with Reservations and Covenants recorded March 29, 2021 in the Bureau of Conveyances of the State of Hawaii as Document No. A-77580039 from Kukui'ula Development Company (Hawaii), LLC, a Hawaii limited liability company to Kupono Resort LLC, a Hawaii limited liability company.

The land upon which said condominium project is situate is more particularly described as follows:

All of that certain parcel of land (being portion (s) of the land (s) described in and covered by Royal Patent Number 6714, Land Commission Award Number 7714-B, Apana 2 to M. Kekuaiwa no M. Kekuanaoa and Royal Patent Number 6448, Land Commission Award Number 5482 to Ino) situate, lying and being at Koloa (Makai),

Koloa, Kona, Island and County of Kauai, State of Hawaii, being Lot 11-C of the "KUKUI'ULA PARCEL X SUBDIVISION", same being portions of Lots 10 and 11 of the "Kukui'ula Large- Lot Subdivision III", as shown on map prepared by Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi & Associates Inc., dated February 2, 2011, last revised August 3, 2011, approved by the Planning Department, County of Kauai, on September 13, 2011, and thus bounded and described as per survey dated September 20, 2011:

Beginning at the southeast corner of this parcel of land, being also the south corner of Lot 10-A of Kukui'ula Parcel X Subdivision, and on the northwest side of Lawa'i Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAHIAWA" being 10,578.33 feet south and 20,399.61 feet east thence running by azimuths measured clockwise from true South:

1. 30° 45' 331.97 feet along the northwest side of Lawa'i Road, along remainder of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa;
2. 32° 31' 46.33 feet along same; Thence along same, on a curve to the right with a radius of 350.00 feet, the chord azimuth and distance being:
3. 67° 00' 30" 396.40 feet;
4. 101° 30' 810.62 feet along the north side of Lawa'I Road, along remainder of R.P. 6714, 5. L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa;
5. 205° 28' 418.11 feet along Lot 11-D of Kukui'ula Parcel X Subdivision, along remainder of R.P. 6714, L.C. Aw. 7714-B, Ap 2. to M. Kekuaiwa no M. Kekuanaoa;
6. 95° 49' 406.32 feet along same;
7. 193° 08' 342.47 feet along same;
8. 277° 36' 156.00 feet along same;
9. 198° 18' 114.00 feet along same;
10. 133° 35' 158.00 feet along same;
11. 200° 47' 249.00 feet along same;

12. 162° 35' 251.00 feet along same;

13. 189° 32' 30" 90.69 feet along Lot 11-B of Kukui'ula Parcel X Subdivision, along remainder of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa;

14. 261° 26' 172.57 feet along same;

15. 180° 38' 102.08 feet along same; Thence along same, on a curve to the right with a radius of 276.00 feet, the chord azimuth and distance being:

16. 192° 42' 30" 115.47 feet;

17. 204° 47' 219.04 feet along same; Thence along Lot 11-A of Kukui'ula Parcel X Subdivision, along remainder of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa not M. Kekuanaoa, on a curve to the left with a radius of 478.00 feet, the chord azimuth and distance being:

18. 290° 10' 15" 36.21 feet;

19. 288° 00' 136.58 feet along same; Thence along same, on a curve to the right with a radius of 522.00 feet, the chord azimuth and distance being:

20. 289° 32' 30" 28.09 feet;

21. 291° 05' 250.74 feet along same; Thence along same, on a curve to the left with a radius of 478.00 feet, the chord azimuth and distance being:

22. 286° 57' 68.91 feet;

23. 282° 49' 98.59 feet along same; Thence along same, on a curve to the left with a radius of 978.00 feet, the chord azimuth and distance being:

24. 276° 00' 16" 232.01 feet; Thence along same, on a curve to the left with a radius of 32.00 feet, the chord azimuth and distance being:

25. 224° 38' 54" 44.89 feet;

Thence along Lot 19 (Ala Kalanikaumaka) of Kukui'ula Large-Lot Subdivision III, along remainder of R.P. 6714, L.C. Aw. 7714-B,

Ap. 2 to M. Kekuaiwa no M. Kekuanaoa, on a curve to the left with a radius of 1,230.00 feet, the chord azimuth and distance being:

26. 357° 39' 08" 105.25 feet;

Thence along Lot 10-A of Kukui'ula Parcel X Subdivision, along remainder of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa, on a curve to the left with a radius of 32.00 feet, the chord azimuth and distance being:

27. 132° 04' 27" 43.68 feet;

Thence along same, on a curve to the right with a radius of 1,022.00 feet, the chord azimuth and distance being:

28. 95° 49' 15" 241.54 feet;

Thence along same, on a curve to the left with a radius of 830.00 feet, the chord azimuth and distance being:

29. 356° 23' 27" 354.55 feet;

30. 344° 03' 30" 322.42 feet along same;

31. 29° 03' 30" 19.80 feet along same;

32. 344° 03' 30" 60.00 feet along same;

33. 299° 03' 30" 19.80 feet along same;

34. 344° 03' 30" 14.23 feet along same;

35. 345° 06' 30" 458.56 feet along Lot 10-A of Kukui'ula Parcel X Subdivision, along remainders of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa and R.P. 6448, L.C. Aw. 5482 to Ino;

36. 304° 40' 328.50 feet along Lot 10-A of Kukui'ula Parcel X Subdivision, along remainder of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa, to the point of beginning and containing an area of 45.413 acres, more or less.

Subject, however, to the following:

1. Title to all mineral and metallic mines reserved to the State of Hawaii.

2. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of March 31, 2003 as aforesaid as Document No. 2003-058405.
3. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration of Conditions recorded November 5, 2003 as aforesaid as Regular System Document No. 2003-244116.
4. A Grant of Easement for utility purpose, in favor of Kauai Island Utility cooperative, recorded March 18, 2005 as aforesaid as Document No. 2005-054267.
5. The terms and provisions contained in the Agreement recorded April 22, 2005 as aforesaid as Document No. 2005-080268.
6. Waiver, Release and Indemnity Agreement for TMK: (4) 2-6-015-001 (POR.) (Kukuiula Village), recorded September 24, 2007 as aforesaid as Document No. 2007-169452.
7. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Deed with Covenants recorded November 05, 2007 as aforesaid as Document No. 2007-194398.
8. A Grant of Easement for utility purpose, in favor of Kukui'ula Village LLC, a Delaware limited liability company, recorded

November 05, 2007 as aforesaid as Document No. 2007-194399, as amended by Document No. A-45800601.

9. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Kukui'ula Trail System Declaration recorded March 05, 2008 as aforesaid as Document No. 2008-034082.
10. Waiver, Release and Indemnity Agreement FOR TMK: (4) 2-6-015-011 (Electrical Enclosures For Kukui Ula Village) recorded July 18, 2008 as aforesaid as Document No. 2008-115168.
11. A Grant of Easement for utility purpose, in favor of Kauai Island Utility Cooperative, recorded November 12, 2008 as aforesaid as Document No. 2008-172462.
12. Conveyance of Water Facility for TMK (4) 2-6-15: 010 recorded August 17, 2009 as aforesaid as Document No. 2009-126467.
13. Certificate of Formation of County of Kaua'i Community Facilities District No. 2008-1 (Kukui'ula Development Project) recorded September 27, 2010 as aforesaid as Document No. 2010-143092.
14. Restriction of vehicle access into and from Lawai Road, as shown on the map prepared by Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi & Associates Inc., dated February 2, 2011, last revised August 3, 2011, approved by the Planning Department, County of Kauai, on September 13, 2011, and set forth in Affidavit of Erik S. Kaneshiro recorded September 22, 2011 as aforesaid as Document No. 2011-154371.
15. Designation of Easement "SA" for sewer and access purposes as shown on the map prepared by Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi & Associates Inc., dated February 2, 2011, last revised August 3, 2011, approved by the Planning Department, County of Kauai, on September 13,

2011, and described in Affidavit of Erik S. Kaneshiro recorded September 22, 2011 as aforesaid as Document No. 2011-154371.

16. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration of Covenants, Conditions and Restrictions For PM-2004-370 Zoning Map Modifications recorded February 16, 2021 as aforesaid as Document No. A-77170975.
17. Mineral and Water Rights of any nature in favor of the State of Hawaii, as set forth or disclosed by the Instrument recorded February 17, 2021 as aforesaid as Document No. A-77180601.
18. Restriction of vehicular access as described in or disclosed by the Instrument recorded February 17, 2021 as aforesaid as Document No. A-77180601.
19. Regular System Condominium Map No. 6185.
20. The terms and provisions contained in or incorporated by reference in the Declaration of Condominium Property Regime, as may be amended. Said Declaration was recorded February 17, 2021 as aforesaid as Document No. A-77180601.
21. The terms and provisions contained in or incorporated by reference in the Condominium By-Laws, as may be amended. Said By-Laws were recorded February 17, 2021 as aforesaid as System Document No. A-77180602.
22. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration of Covenants, Conditions, Restrictions and Easements for

Parcel X recorded February 22, 2021 as aforesaid as Document No. A-77230491.

23. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration of Easements and Covenant to Share Costs for Kukui'ula and Parcel X recorded February 22, 2021 as aforesaid as Document No. A-77230492.
24. The terms and provisions contained in the Grant of Easement recorded February 22, 2021 as aforesaid as Document No. A-77230493.
25. The terms and provisions contained in the Grant of Easement recorded February 22, 2021 as aforesaid as Document No. A-77230494.
26. The terms and provisions contained in the Declaration of Easement (Access and Sewer) recorded March 23, 2021 as aforesaid as Document No. A-77520017.
27. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Limited Warranty Unit Deed with Reservations and Covenants recorded March 29, 2021 as aforesaid as Document No. A-77580039.
28. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes, as disclosed by Limited Warranty Unit Deed with Reservations and Covenants recorded March 29, 2021 as aforesaid as Document No. A-77580039.

29. Survey by Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi, Associates, Inc., dated November 26, 2020, Job No. none, as disclosed by Limited Warranty Unit Deed with Reservations and Covenants recorded March 29, 2021 as aforesaid as Document No. A-77580039, discloses the following:

- (A) Easement A affecting Unit 2;
- (B) Proposed Access Easement affecting Unit 4 of the Project; and
- (C) Proposed pump Station E (20,200 square feet), affecting Unit 3 of the Project.

30. A Grant of Easement wastewater purposes, in favor of Kukui'ula South Shore Community Services, LLC, a Hawaii limited liability company, recorded October 22, 2021 as aforesaid as Document No. A-79650639.

The interest of Kukui'ula South Shore Community Services, LLC is assigned to Hawaii Water Service Company, Inc., a Hawaii corporation, by Quitclaim Assignment and Assumption of Grants of Easement and Quitclaim Bill of Sale of Partial Interest in Improvements recorded December 4, 2024 as aforesaid as Document No. A-9104000477.

31. The terms and provisions contained in the Grant of Wastewater Easement and Quitclaim Bill of Sale of Partial Interest in Improvements recorded October 22, 2021 as aforesaid as Document No. A-79650639.

32. Any lien or claim of lien for unpaid assessments in favor of the Association of Apartment Owners of Kukui'ula Parcel X Condominium.

33. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a current and accurate survey would disclose.

34. Any and all leases, subleases and/or tenancy agreements, the rights thereunder and encumbrances thereto.

END OF EXHIBIT A

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re

KUPONO RESORT LLC,

Debtor.

Case No. 25-00652
(Chapter 7)

DECLARATION OF DANE S. FIELD

I, DANE S. FIELD, hereby declare as follows:

1. I have personal knowledge of facts stated in this Declaration and if called as a witness in this action, I could and would testify to all matters set forth herein of my own knowledge.

2. I am the duly appointed Trustee of the Chapter 7 Estate of KUPONO RESORT LLC (“Debtor”), the above-named Debtor, and submit this Declaration in support of the Trustee’s Motion To: (A) Approve Bidding and Sales Procedures for Debtor’s Real Property; (B) Authorize An Auction, if Applicable, To Determine The Highest And Best Offer; (C) Schedule A Hearing To Approve The Sale; and (D) For Related Relief (the “Motion”) and Memorandum in Support of Motion (the “Memorandum”) filed herewith. Terms used in this Declaration that are not defined shall have the meanings given them in the Memorandum in Support of Motion submitted herewith.

3. The statements in the Memorandum are true and correct to the best of

my information and belief and reflect my understanding and knowledge of the matters and issues regarding the Estate and case.

4. Attached to the Memorandum as Exhibit “1” is the proposed Bidding and Sales Procedures (“Bidding Procedures”) to which is attached a form of the Real Property Purchase and Sale Agreement (“PSA”) that will be provided to Potential Bidders. The PSA attaches as Exhibits thereto a preliminary title report for the Property dated November 26, 2025, prepared by First American Title for the Property (the “Title Report”), and a form of Trustee’s Quitclaim Condominium Deed for the Property.

5. I have reviewed the Proofs of Claim filed in the case to date which state holders of claims in the amounts reflected in the Memorandum.

6. Trustee reserves the right to market the Property over a longer time, if necessary, but the Bidding Procedures process would be the best way to liquidate the Property if a successful bidder can be obtained. The proposed Bidding Procedures are fair and reasonable in view of the exigent circumstances of the case. Among other things, this is because of the nature of the Property as non-revenue producing, the nominal funds in the Estate, the significant claims against the Property for accruals of interest and penalties on the Property Taxes and the interest and legal expense claimed on the Secured Claim, and the need to maintain liability insurance on the Property. Therefore, I believe that the proposed Bidding Procedures are in

the best interest of the Estate and request the Court approve the requested relief.

I declare under penalty of perjury under the laws of the State of Hawai‘i and the United States that the foregoing is true and correct.

Executed this 26th day of January, 2026, at Honolulu, Hawai‘i.

/s/ Dane S. Field, Trustee

DANE S. FIELD

Trustee of the Chapter 7 Estate of KUPONO
RESORT LLC