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Chapter 11 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re:
SALVADOR CACHO CORDERO,

Debtor.

Case No. 17-01071
(Chapter 11)

Hearing
Date: September 17, 2018
Time: 2:00 p.m.
Judge: Hon. Robert J. Faris

**MOTION FOR ORDER APPROVING (1) SALE OF REAL PROPERTY
FREE AND CLEAR OF LIENS AND ENCUMBRANCES (1794 S. KIHEI
ROAD); AND (2) DISBURSEMENT OF PROCEEDS;
EXHIBITS “A”- “B”**

Richard A. Yanagi, the duly appointed and Chapter 11 Trustee (the
“Trustee”) for the estate of Salvador Cacho Cordero (the “Debtor”), by and
through his undersigned counsel, hereby moves this Court, pursuant to 11 U.S.C.

§§ 105 and 363(b) and Federal Rules of Bankruptcy Procedure 2002, 6004, and 9014 and LBR 6004-1, for an order as follows:

- (a) Approving the sale of the Debtor's interest in real property commonly referred to as 1794 S. Kihei Road, Kihei, Hawaii free and clear of liens and encumbrances for \$2.2 million to Michael Russell and Nathan St. Cyr (collectively, the "Buyer") or their nominee, substantially on the terms set forth in Exhibit "A" hereto;
- (b) Authorizing the Trustee to accept overbids for the Property at the hearing on the Motion on the terms described herein and authorizing payment at closing of a \$10,000.00 break-up fee to Buyer in the event that Buyer is not the winning bidder for the 1794 S. Kihei Property; and
- (c) Authorizing the Trustee to disburse the proceeds of the sale to pay (i) any ordinary and customary closing costs of sale including, standard seller's title policy, real property taxes, conveyance tax, and recordation fees; (ii) a commission of 5% to be split between the Trustee's realtor, Moffett Properties, and the Buyer's realtor, McEntire Realty; (iii) hold the balance of the proceeds pending further order of the Court or agreement with the secured creditor, First Hawaiian Bank ("FHB") regarding an allocation of proceeds.¹

In support of this motion (the "Motion"), the Trustee respectfully represents as follows:

¹ FHB is owed approximately \$1.9 million pursuant to various notes signed by the Debtor and others. FHB holds mortgages on: (a) the Aloha Marketplace, (b) the Hookahi Property, and (c) an apartment building located at 758 Lower Main Street, Wailuku Hawaii ("Lower Main Property") which is not property of the Debtor's bankruptcy estate. On November 28, 2017, the Court granted FHB relief from the automatic stay to foreclose on the Lower Main Property. *See* dkt. #47. However, the Trustee is informed that a \$1.6 million private sale of the Lower Main Property which would have resulted in FHB's total secured debt being reduced substantially failed to close, and that a sale of the Lower Main Property will likely not close until later in the summer. The Trustee is further informed that FHB would allow the Trustee to hold the Aloha Marketplace sale proceeds pending disposition of the Lower Main Property.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND INFORMATION

3. On October 15, 2017 (the “Petition Date”), the Debtor commenced this case by filing a voluntary petition for reorganization under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”) with the United States Bankruptcy Court for the District of Hawaii (the “Court”).

4. At a hearing held on January 16, 2018, the Court approved First Hawaiian Bank’s *Motion to Appoint Chapter 11 Trustee or in the Alternative, to Convert Case to Chapter 7*.

5. On January 17, 2018, the Trustee was appointed as chapter 11 trustee of the Debtor’s estate. *See* dkt. #91.

6. As of the Petition Date, the Debtor (through his revocable living trust) and his non-debtor wife Ann Lou S. Cordero (“Ann”) as trustee of the Ann Lou S. Cordero Trust, dated March 28, 1992, owned seven properties located on the island of Maui:

(a) 291 Hookahi Street, Units 101-110, and 201-210, Wailuku, HI 96793 (“Hookahi Property”), consisting of approximately 20 commercial units

(b) 1794 South Kihei Road, Kihei, HI 96753 (“Aloha Marketplace”), consisting of approximately 22 commercial units

(c) 1764B South Kihei Road, Kihei, HI 96753 (“1764 South Kihei”), consisting of a single family residence and a cottage

(d) 205 Kono Place, Kahului, HI 96732, single family residence²

(e) 217 Kono Place, Kihei, HI 96753, single family residence

(f) 300 Kaulawahine Street, Kahului, HI 96732, single family residence³

(g) 457 One Street, Kahului, HI 96732, Debtor’s residence plus a cottage (which is rented out).

7. On January 22, 2018, the Court entered an order authorizing the Trustee to employ Choi & Ito as counsel. *See* dkt. #110.

8. On April 20, 2018, the Court entered its order authorizing the Trustee to employ Moffett Properties to assist the Trustee with marketing and selling the Aloha Marketplace and 1764 South Kiehi properties. *See* dkt. # 142.

9. Through Moffett Properties, the Trustee has received three offers as follows: (1) the offer from Buyer, (2) a \$3 million offer from Shalom Amar to purchase both 1794 and 1764 S. Kihei properties subject to various contingencies; and (3) a \$2.4 million cash offer from a neighbor to purchase both properties. The

² The bankruptcy estate’s interest in 205 Kono Property was abandoned back to the Debtor in May 2018. *See* dkt. #150.

³ The 300 Kaulawahine Property was sold in June 2018. *See* Dkt. #154.

Trustee has determined in his business judgment that the Buyer's offer for the Aloha Marketplace is the highest and best offer. The co-owner of the property, Ann agrees.

10. The Trustee, Ann and the Buyer have entered into a purchase agreement, counteroffer, and bankruptcy addendum (collectively, the "Purchase Agreement") for the sale of the Aloha Marketplace (1794 S. Kihei Property) for \$2.2 million, subject to Court approval. A true and correct copy of the Purchase Agreement is attached to the Motion as Exhibit "A".

11. The Purchase Agreement contemplates that Buyer will finance \$1,525,000.00 of the \$2,200,000.00 purchase price, and also requires that the seller (Trustee and Ann) provide a parking license agreement for at least 12 parking spaces on the adjacent church property which the Trustee understands will be provided.

12. Attached as Exhibit "B" to the Motion is a true and correct copy of a preliminary title report for the Aloha Marketplace dated as of June 7, 2018, which shows that the Debtor's Trust and Ann's Trust holding the fee simple title to the 1794 S. Kihei Property as tenants in severalty. The Preliminary Title Report show that the 1794 S. Kihei Property is encumbered by:

- a. a first mortgage in favor of FHB in the original principal amount of \$1,417,500.00.

b. a second mortgage in favor of FHB in the original principal amount of \$600,000.00.

Both of the mortgages in favor of FHB are cross-collateralized with the Hookahi Property and the Lower Main Property.

RELIEF REQUESTED

Approval of Bankruptcy Sale

13. Section 363(b) of the Bankruptcy Code provides in pertinent part that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). In general, a debtor or trustee may use property of the estate outside of the ordinary course of its business where the use of such property represents an exercise of the debtor's sound business judgment. *See, e.g., In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)); *see also Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) (citing *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983)).

14. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *In re*

Integrated Resources, Inc., 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the . . . Debtor’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”).

15. The Trustee believes that the proposed transaction is favorable to the estate. The Buyer’s offer is the highest and best offer received by the Trustee for the Aloha Marketplace.

16. Section 363 of the Bankruptcy Code, authorizes the Trustee to sell property, after notice and hearing, free and clear of liens, if any one of the five requirements of section 363(f) is met. Section 363(f) provides that:

The Trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if – (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

17. If any one of the five requirements of section 363(f) is met, a sale free and clear of liens should be authorized. *Citicorp Homeowner Services, Inc. v. Elliott (In re Elliott)*, 94 B.R. 343, 345 (E.D. Pa. 1988).

18. The Trustee anticipates that FHB will not object to the sale, thus satisfying Section 363(f)(2). Also, the purchase price is greater than the value of all liens on the Aloha Marketplace, thus satisfying Section 363(f)(3).

19. Pursuant to Rule 6004(h) the Trustee also requests that the Court waive the fourteen (14) day stay and authorize the Trustee to close the sale of the Property immediately upon the entry of the Sale.

20. Finally, the Trustee seeks authority to disburse the sales proceeds to pay: (i) any ordinary and customary closing costs of sale including, standard seller's title policy, real property taxes, conveyance tax, recordation fees, and any realtor's commission; (ii) a commission of 5% to be split between the Trustee's realtor, Moffett Properties, and the Buyer's realtor, McEntire Realty; and (iii) to hold the net proceeds pending agreement with FHB or further order of the Court.

Authority to Accept Overbids and Pay a \$10,000 Breakup Fee

21. Consistent with the goal of maximizing the value to the estate, the Trustee has instructed his realtor to continue showing the Aloha Marketplace property. The bankruptcy addendum attached to the Purchase Agreement specifically contemplates that the sale to Buyer is subject to overbids.

22. The Trustee requests authority to accept overbids prior to or at the hearing on the Motion, subject to the following qualifications:

(a) Bidder must contact the Trustee's realtor at least two business days before the hearing and demonstrate to the Trustee's satisfaction that bidder is qualified;

(b) Bids cannot be subject to financing contingency greater than 80% of the purchase price;

(c) First overbid must be 2% higher than \$2,200,000.00 (i.e., \$2,244,000.00), with subsequent overbids in increments of \$1,000.00; and

(d) Any high bidder other than Buyer must deposit 10% of the bid price in a cashier's check at the conclusion of the auction.

23. The Trustee also seeks authority to pay a break-up fee in the amount of \$10,000.00 (the "Break-up Fee") at closing in the event that Buyer is not the winning bidder.

24. The Trustee believes that the bidding procedures are fair and reasonable in view of, among other things, the fact that the efforts of the Buyer will have increased the chances that the Trustee will receive a higher offer for the 1794 S. Kihei Property for the benefit of this bankruptcy estate and its creditors.

25. Historically, bankruptcy courts have approved bid protections similar to those proposed pursuant to the Bidding Procedures proposed here under the "business judgment rule," under which the courts defer to the actions of

corporations taken in good faith and in the exercise of honest judgment. *See, e.g., In re 955 Fifth Ave. Associates, L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1992).

26. The bid protections set forth herein satisfy the “business judgment rule.” The bid protections proposed herein encourage a potential purchaser to act as a “stalking horse,” who invests time, money and effort to negotiate with the Trustee despite the risks and uncertainties of the bankruptcy process.

27. One important component of the proposed Bidding Procedures is the “overbid” provision, pursuant to which any initial offer for the 1794 S. Kihei Property must be in an amount of at least \$44,000.00 more than the Buyer’s purchase price. A minimum initial overbid is necessary both to compensate a prospective purchaser for the risk that it assumes in foregoing a known outcome, and to ensure that there is an increase in the net proceeds received by the estate, after deducting the Break-Up Fee to be paid to the prospective purchaser in the event of a prevailing overbid. Case law supports minimum overbids that are up to 10% of the initial purchase price as fair and reasonable. *See, In re Wintex, Inc.*, 158 B.R. 540, 543 (D. Mass. 1992) (observing, in the context of a 10% overbid provision, that “debtor may avoid the increased cost and complexity associated with considering additional bids unless the additional bids are high enough to justify their pursuit”); *In re Tempo Technology Corp.*, 202 B.R. 363, 369 (D. Del. 1996) (overbid price of \$1.4 million in cash where original purchase price was

\$150,000 cash plus \$3 million in stock of the purchaser and \$500,000 of assumed liabilities). The proposed overbid here is approximately 0.45% of the Purchase Price.

28. In order to compensate the Buyer for the time, effort, expense, and risk that it has incurred and will incur in conducting due diligence and negotiating, documenting, and seeking to consummate the sale transaction, the Bidding Procedures provide that, if a sale of the 1794 S. Kihei Property to a party other than the Buyer is consummated by the Trustee and Ann, the Trustee and Ann will pay the Buyer the Break-Up Fee.

29. Topping and other termination fees are a normal and, in many cases, necessary component of significant sales conducted under section 363 of the Bankruptcy Code. *See, Integrated Resources Inc.*, 147 B.R. at 659-60 (“Break-up fees are important tools to encourage bidding and to maximize the value of debtor’s assetsIn fact, because the . . . corporation ha(s) a duty to encourage bidding, break-up fees can be necessary to discharge [such] duties to maximize values.”) Specifically, “[b]reak-up fees and other strategies may be legitimately necessary to convince a ‘white knight’ to enter the bidding by providing some form of compensation for the risks it is undertaking.” *In re 955 Fifth Ave Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (quotation omitted).

30. The proposed Break-Up Fee is reasonable and provides an actual benefit to the estate. The Buyer has indicated that it is a condition to its offer that the bidding procedures, including, without limitation, payment of the Break-Up Fee be approved by the Court. As explained above, the Buyer's offer represents the highest and best bid for the 1794 S. Kihei Property that the Trustee has been able to obtain. Unless the Bidding Procedures proposed herein are approved, the Trustee is not confident that the auction will generate superior offers. Therefore, the auction process is essential in this case in order to give the estates the opportunity to maximize value for the benefit of all constituencies.

31. The Trustee submits that the Bidding Procedures provide a necessary and actual benefit to these estates. The Bidding Procedures establish the parameters under which the value of the 1794 S. Kihei Property may be tested at a public auction. The terms and conditions of the auction will enable the Trustee and Ann to realize the maximum value of the 1794 S. Kihei Property, and thus ensure that the Auction is in the best interests of this estate and its creditors.

CONCLUSION.

WHEREFORE, the Trustee respectfully requests that the Court enter an order:

(a) approving the proposed sale and waiving the 14-day stay provision contained in Bankruptcy Rule 6004(h); (b) authorizing the distribution/payment

of sales proceeds as set forth above; (c) approving the bidding procedures and protections described herein, including the break-up fee; and (d) granting any other and further relief that this Court deems just and proper.

DATED: Honolulu, Hawaii, August 17, 2018.

/s/ Chuck C. Choi

CHUCK C. CHOI

ALLISON A. ITO

Attorneys for Richard Yanagi, Ch. 11
Trustee

EXHIBIT A



COMMERCIAL REAL PROPERTY PURCHASE AND SALE AGREEMENT (PSA) Hawaii Association of REALTORS® Standard Form Revised 12/17 For Release 5/18



COPYRIGHT AND TRADEMARK NOTICE: THIS COPYRIGHTED HAWAII ASSOCIATION OF REALTORS® STANDARD FORM IS LICENSED FOR USE UNDER TERMS OF THE HAWAII ASSOCIATION OF REALTORS® STANDARD FORM LICENSE AGREEMENT LOCATED AT http://www.hawaii Realtors.com/standard-form-policy.

NAR CODE OF ETHICS: Buyer and Seller are aware that the National Association of REALTORS® holds its members accountable for their actions through a strict professional Code of Ethics, which includes a grievance system to address complaints.

Reviewed By: Principal Broker/Broker-in-Charge Don McEntire R PB

Reference Date: 20180704 Purchase Price: \$2,150,000.00 (See Paragraph D-2)

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

Property Reference or Address: 1794 S. Kihei Rd Kihei, Hi 96753 (See Paragraph E-1)

Tax Map Key: Div. 2 /Zone 3 /Sec. 9 /Plat 012 /Parcel(s) 021 /CPR (if applicable).

IDENTIFICATION OF PARTIES:

IDENTIFICATION OF BROKERAGE FIRMS:

Buyer: Michael Russell Nathan St Cyr Street 5150 Lower Honoapiilani Hwy Address: Lahaina, Hi 96761 Phone: 760-505-9987 Fax: E-mail: reachmichaelrussell@gmail.com

Brokerage Firm: McEntire Realty Agent Name: Bruce Robert Travis R (S) Street 161 Wailea Ike C-104 Address: Wailea, Hi 96753 Phone: 808-280-1333 Fax: 874-8677 E-mail: brucertravis@yahoo.com

Seller: Bankruptcy Estate of Salvador Cacho Cordero Ann Lou S. Cordero Living Trust Street Address: Phone: Fax: E-mail:

Brokerage Firm: Moffett Properties Agent Name: William B. Moffett Street 4560 Lower Honoapiilani Rd. Address: Lahaina, HI 96761 Phone: 669-0454 Fax: E-mail: 870-6794

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

DS MR NS 7/4/2018 1:54:51 PM PDT BUYER'S INITIALS & DATE

X A Lou C 7/12/18 SELLER'S INITIALS & DATE

©Hawaii Association of REALTORS® Commercial Real Property Purchase and Sale Agreement Produced in conjunction with the Hawaii CCIM Chapter RR501 Rev. 12/17

DS RAY 7/20/2018



Makana Wailea Real Estate Inc, 161 Wailea Ike Pl., #C-104 Kihei, HI 96753 Phone: (808)280-1333 Fax: Bruce Travis

ALOHA MARKET

SECTION A: AGENCY DISCLOSURE

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

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

A-2 Disclosure.

- (a) Seller Representation: Seller is represented by the Brokerage Firm Moffett Properties and all its licensees. Brokerage Firm is [] is not [] a member of the National Association of REALTORS®.
(b) Buyer Representation: Buyer is represented by the Brokerage Firm McEntire Realty and all its licensees. Brokerage Firm is [] is not [] a member of the National Association of REALTORS®.
(c) Dual Agency Representation: Seller and Buyer are represented by the Brokerage Firm and all its licensees. Brokerage Firm is [] is not [] a member of the National Association of REALTORS®. A separate Dual Agency Consent Addendum is required.
(d) No Agency Representation: [] Seller is a Customer and is not represented by a Brokerage Firm. [] Buyer is a Customer and is not represented by a Brokerage Firm.

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

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

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

MR NS (Buyer's initials)

RAY (Seller's initials)

SECTION B: EARNEST MONEY DEPOSIT

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

- [X] (a) An initial Earnest Money deposit in the amount of \$ 10,000.00 shall be paid within 3 business days of the Acceptance Date (or as otherwise agreed in writing by the parties) (defined in Paragraph S-1).
[X] (b) An additional Earnest Money deposit in the amount of \$ 15,000.00 shall be paid within 3 business days after the end of the Inspection Period (see Paragraph J-2).

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

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

MR NS 7/4/2018 1:54:51 PM PDT BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE RAY 01 Rev. 12/17 For Release 5/18

SECTION C: ADDENDA

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

- [X] Existing "As Is" Condition [] Other
[X] Other 1031 Exchange [] Other
[] Other [] Other

SECTION D: OFFER TO BUY AND PURCHASE PRICE

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

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

- \$ 10,000.00 Initial cash deposit of Earnest Money ("B-1(a)").
\$ 15,000.00 Additional cash deposit of Earnest Money ("B-1(b)").
\$ 512,500.00 Balance of down payment (or balance of purchase price if all cash) paid into Escrow before closing.
\$ 537,500.00 TOTAL CASH FUNDS FROM BUYER (exclusive of closing costs).
\$ 1,612,500.00 By way of a new first mortgage at prevailing rates and terms
\$ 2,150,000.00 TOTAL PURCHASE PRICE

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

SECTION E: PROPERTY

E-1 Description. Tax Map Key: Div. 2 /Zone 3 /Sec. 9 /Plat 012 /Parcel(s) 021 /CPR (if applicable). All of that [X] fee simple [] leasehold Property zoned B-2 commercial situated at the address set forth above described as follows: An approximate 16,940 sf lot with a building with approximately 5,500 sf

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

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

To be determined in escrow

SECTION F: CLOSING

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

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

- [] (a) or
[X] (b) 60 days after the end of Inspection Period. If the Scheduled Closing Date falls on a day the Bureau of Conveyances of the State of Hawaii is closed, closing will be on the next day when documents can be recorded.

DS MR NS 7/4/2018 1:54:51 PM PDT BUYER'S INITIALS & DATE

DS [Signature] 7/19/18 SELLER'S INITIALS & DATE

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

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

F-4 **Escrow.** This transaction shall be escrowed by: Fidelity Title, Branch Wailea ("Escrow").

Escrow officer: Tori LaPolla Phone No.: 891-2404 Fax No.: 808-891-2498

Escrow officer email address: tori.lapolla@fnf.com

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

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

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

Charge to Buyer, if applicable:

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

Charge to Seller, if applicable:

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

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

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

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SELLER'S INITIALS & DATE

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

F-9 **Risk of Loss.**

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

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

SECTION G: TITLE

G-1 **Preliminary Title Report.** Within Ten (10) days after the Acceptance Date, Seller shall cause Fidelity (the "Title Company") to deliver a preliminary title report (the "Title Report") on the Property to Buyer.

G-2 **Title.** Seller agrees to convey the Property with warranties vesting marketable title in Buyer, free and clear of all liens and encumbrances EXCEPT: (a) easements, covenants, conditions, reservations or restrictions now of record and (b) no exceptions. Free and clear

[x] G-3 **Title Objections; Permitted Exceptions; Cure of Title Objections.**

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

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

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

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SECTION H: FINANCING CONTINGENCIES

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

Buyer is obligated to deliver to Seller a conditional loan commitment letter not later than 21 days after the Acceptance Date, and a final loan approval letter not later than 45 days after the end of the Inspection Period.

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

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

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

SECTION I: CONTINGENCY PROCEDURES

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

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

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

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

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

SECTION J: INSPECTION; MAINTENANCE AND WARRANTIES

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

On or before 10 days after the Acceptance Date, Seller shall deliver to Buyer copies of the following documents (applicable only if checked), to the extent such documents are in the possession or control of Seller.

- Plans and Specifications
Ground Lease
Rent Roll
Tenant Leases
Financial Statements for years & Year-to-date
Inventory of Tangible Personal Property
Management Contracts
Service Contracts
Existing Surveys
Soils Report
Environmental Report(s)
Architectural Report
Structural Engineering Report
Electrical Engineering Report
Mechanical Engineering Report
Building Maintenance Reports
ADA Report
Condominium Documents
Other:
Other:

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J-2 BUYER'S RIGHT TO INSPECT THE PROPERTY AND TO TERMINATE THIS PSA BECAUSE BUYER IS NOT SATISFIED WITH THE PROPERTY ENDS ON THIRTY (30) DAYS FROM ACCEPTANCE DATE ("INSPECTION PERIOD").

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

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

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

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

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

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

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

SECTION K: SURVEY

[x] K-1 **Survey.** Within ~~Forty-Fiv~~ (45) days after the Acceptance Date, Seller shall, at Seller's sole cost and expense, provide Buyer with a current map (with surveyor's stamp and dated after the Acceptance Date) and accompanying report to show the perimeters of the Property and the location of any improvements in the vicinity of the perimeter Property lines. This survey and map may not address whether improvements on the Property are in compliance with State and/or County requirements, and/or subdivision covenants, conditions, and restrictions. If Buyer objects to any matters shown in such survey, Buyer shall notify Seller pursuant to Paragraph K-2 below.

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

[x] K-2 **Survey Objections; Permitted Exceptions; Cure of Survey Objections.**

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

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SECTION L: ASBESTOS AND HAZARDOUS MATERIALS

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

SECTION M: INTERNAL REVENUE CODE SECTION 1031 EXCHANGE

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

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

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

SECTION O: TERMINATION PROVISIONS

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

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

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

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O-2 **Termination Due to Contingencies.** If the party for whose benefit a contingency exists, elects to terminate this PSA because the contingency has not been satisfied, that benefited party shall deliver to the other party a written notice of termination. If the benefited party so terminates this PSA, Buyer and Seller shall promptly execute all cancellation documents requested by Escrow, Buyer shall return to Seller all documents delivered by Seller to Buyer in connection with Buyer's inspection of the Property, and Escrow shall, unless otherwise agreed to in this PSA, return to Buyer all deposits previously made, less the amount of any escrow expenses or fees chargeable to Buyer. Thereafter, neither Buyer nor Seller shall have any further rights or obligations under this PSA.

O-3 **Attorneys' Fees.** In the event of default by a party and/or a legal action or arbitration (including a claim by a Brokerage Firm for commission), the prevailing party shall be entitled to recover all costs incurred including reasonable attorney's fees.

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

P-1 **HARPTA Withholding Required if Seller is a Non-Resident of the State of Hawaii.** Under Hawaii law, if Seller is a non-resident person or entity (corporation, partnership, trust, or estate) of the State of Hawaii, Buyer must withhold a specified percentage of the "amount realized" by Seller on the sale of the Property and forward the amount with the appropriate form to the State Department of Taxation. Such withholding may not be required if Seller obtains and provides Buyer with an authorized exemption or waiver from withholding. If Seller does not provide Buyer with a certificate of exemption or waiver from HARPTA not later than two (2) business days prior to Closing, Escrow is hereby authorized and instructed to withhold/collect from Seller the required amount at closing and forward it to the State Department of Taxation.

P-2 **FIRPTA Withholding Required if Seller is a Foreign Person.** Under the Internal Revenue Code, if Seller is a foreign person or entity (non-resident alien, corporation, partnership, trust, or estate), Buyer must generally withhold a specified percentage of the "amount realized" by Seller on the sale of the Property and forward this amount to the Internal Revenue Service ("IRS"). Such withholding may not be required if Seller obtains and provides Buyer with an authorized exemption or waiver from withholding. If Seller does not provide Buyer with a certificate of exemption or waiver from FIRPTA not later than two (2) business days prior to Closing, Escrow is hereby authorized and instructed to withhold/collect from Seller the required amount at closing and forward it to the IRS.

P-3 **Additional Disclosures Required by Foreign Buyers and Sellers.** Buyer and Seller understand that under statutes and ordinances such as the Agricultural Foreign Investment Disclosure Act of 1978, and the International Investment and Trade in Services Survey Act, among others, disclosures are required by foreign Buyers and/or Sellers under certain conditions.

P-4 **Government Restrictions Disclosure.** Buyer is aware that the Property is subject to all applicable federal, state and county laws, statutes, regulations, codes, ordinances, rules, procedures, restrictions, and requirements, including but not limited to, those concerning land use, zoning, building permits and requirements, setbacks, height limitations, and allowable uses.

SECTION Q: SPECIAL TERMS

[]Q-1 (Please number)

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SECTION R: BROKERAGE FIRMS SERVICES AND DISCLAIMERS

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

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

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

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7/19/18
 SELLER'S INITIALS & DATE

Offer Date July 4, 2018, 5 []AM [X]PM

Buyer's Name Michael Russell

Signature Michael Russell 7/4/2018 5:51:53

Title Buyer

Buyer's Name Nathan St Cyr

Signature Nathan St Cyr 7/4/2018 1:54:51

Title Buyer

Buyer's Name _____

Signature _____

Title _____

SECTION T: ACCEPTANCE OR COUNTER OFFER

[] T-1 **ACCEPTANCE OF OFFER.** Seller agrees to sell the Property at the price and terms offered above and acknowledges receipt of a copy of this PSA.

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

IN EITHER EVENT:

T-3 Seller agrees to pay to Moffett Properties LLC at Closing a commission for the sale of the Property pursuant to the commission agreement with Seller's Brokerage Firm, or in the amount of 5% of sales price. Seller instructs Escrow to pay the commission directly to Brokerage Firm at closing in U.S. Dollars. These instructions cannot be changed without the written agreement of such identified Brokerage Firm and Seller. Seller further consents to such Brokerage Firm's sharing of the commission with another real estate Brokerage Firm which may have provided services to Buyer for this transaction.

Acceptance Date 7/20/2018, _____ []AM []PM

Seller's Name Bankruptcy Estate of Salvador Cacho Cordero

Signature Richard A. Yanagi

Title Richard A. Yanagi, Chapter 11 Trustee

Seller's Name Ann Lou S. Cordero Living Trust

Signature Ann Lou S. Cordero

Title Ann Lou S. Cordero, Trustee

Seller's Name _____

Signature _____

Title _____

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



COMMERCIAL EXISTING "AS IS" CONDITION ADDENDUM
Hawaii Association of REALTORS® Standard Form
Revised 12/17 For Release 5/18



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EXISTING "AS IS" CONDITION ADDENDUM is made a part of PSA (the "PSA"):

The PSA Reference Date: July 2, 2018

Property Reference: 1794 S. Kihei Rd, Kihei, HI 96753

Address

Tax Map Key: Div. 2 /Zone 3 /Sec. 9 /Plat 012 /Parcel 021 /CPR (if applicable).

Except as is otherwise expressly provided in the PSA, Seller hereby specifically disclaims any and all warranties (oral or written) concerning (i) the nature and condition of the Property and its suitability for any and all activities and uses that Buyer may elect to conduct on the Property;

Except as otherwise expressly provided in the PSA, Buyer expressly acknowledges that, in consideration of the agreements of Seller in the PSA, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, ANY IMPROVEMENTS LOCATED ON THE PROPERTY OR ANY SOIL CONDITIONS RELATED TO THE PROPERTY.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PSA, BUYER, FOR BUYER AND BUYER'S SUCCESSORS AND ASSIGNS, HEREBY RELEASES SELLER FROM AND WAIVES ANY AND ALL CLAIMS AND LIABILITIES AGAINST SELLER FOR, RELATED TO, OR IN CONNECTION WITH, ANY ENVIRONMENTAL CONDITION AT THE PROPERTY (OR THE PRESENCE OF ANY MATTER OR SUBSTANCE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY), INCLUDING, BUT NOT LIMITED TO, CLAIMS AND/OR LIABILITIES RELATING TO (IN ANY MANNER WHATSOEVER) ANY HAZARDOUS, TOXIC OR DANGEROUS MATERIALS OR SUBSTANCES LOCATED IN, AT, ABOUT OR UNDER THE PROPERTY, OR FOR ANY AND ALL CLAIMS OR CAUSES OF ACTION (ACTUAL OR THREATENED) BASED UPON, IN CONNECTION WITH OR ARISING OUT OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, 42 U.S.C. §9601 ET SEQ. ("CERCLA");

BUYER REPRESENTS TO SELLER THAT BUYER HAS CONDUCTED, OR WILL CONDUCT BEFORE CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY AND WILL RELY SOLELY ON SAME AND NOT ON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES, AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THE PSA.

©Hawaii Association of REALTORS®
Commercial Existing "AS IS" Condition Addendum
Produced in conjunction with the Hawaii CCIM Chapter
RR504 Rev. 12/17



Makana Wailea Real Estate Inc, 161 Wailea Ike Pl., #C-104 Kihei, HI 96753
Phone: (808)280-1333 Fax: Bruce Travis

ALOHA MARKET

Buyer acknowledges and agrees that the provisions contained in this Existing "As Is" Condition Addendum are a material factor in Seller's acceptance of the Purchase Price and that Seller is unwilling to sell the Property to Buyer unless Seller is released as expressly set forth above. **BUYER, WITH BUYER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THE PSA AND UNDERSTANDS THEIR SIGNIFICANCE AND EFFECT. BUYER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THE PSA ARE AN INTEGRAL PART OF THE PSA, AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO BUYER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THE PSA. THE TERMS AND CONDITIONS OF THIS EXISTING "AS IS" CONDITION ADDENDUM WILL EXPRESSLY SURVIVE THE CLOSING AND WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS.**

Additional Comments: SELLER TO PARTICIPATE WITH BUYER IN AN IRC 1031 TAX DEFERRED EXCHANGE

Buyer's Name Michael Russell
DocuSigned by:
Signature Michael Russell 7/4/2018 5:51:53 PM PD
Title Buyer 1C1CF217BBA5410...

Buyer's Name Nathan St Cyr
DocuSigned by:
Signature [Signature] 7/4/2018 1:54:51 PM F
Title Buyer B38A36C403734CF...

Buyer's Name _____
Signature _____
Title _____
Date _____

Seller's Name Bankruptcy Estate of Salvador Cacho Cordero
DocuSigned by:
Signature Richard A. Yanagi
Title Richard A. Yanagi, Chapter 11 Trustee EE7CDA1F5C8F102...

Seller's Name ANN LOU S CORDERO Ann Lou S. Cordero Living Trust
Signature [Signature]
Title Ann Lou S. Cordero, Trustee

Seller's Name _____
Signature _____
Title _____
Date _____



COUNTER OFFER
Hawaii Association of REALTORS® Standard Form
Revised 12/17 For Release 5/18



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Reviewed by: William B Moffett
Name of Principal Broker/Broker-in-Charge
DocuSigned by: William B. Moffett
Signature
Moffett Properties
Brokerage Firm

Counter Offer Reference Date: July 30, 2018 Submitted by: [] Buyer [X] Seller

Purchase Contract Reference Date: July 17, 2018

Seller's Name: Bankruptcy Estate of Salvador, Ann Lou S. Cordero Living Trust
Cacho Cordero

Buyer's Name: Michael Russell + NATHAN St Cyr
1794 S. Kihei Road

Property Reference or Address: Kihei, HI 96753 ("Property")

Tax Map Key: Div. 2 /Zone 3 /Sec. 9 /Plat 012 /Parcel 021 /CPR (if applicable).

This Counter Offer cancels and supersedes any and all prior Counter Offers. All previous Counter Offers that have not been fully executed are null and void. All terms and conditions from any prior Counter Offers that are to be retained must be restated in this Counter Offer.

INSTRUCTIONS:

- 1. To Accept this Counter Offer: Complete the boxed section entitled "Acceptance of Counter Offer".
2. To Make a NEW Counter Offer: Complete a new Counter Offer form with a new Counter Offer Reference Date.
3. Alternatively, Buyer may submit a new Purchase Contract.

FILL IN ALL CHECK BOXES. Write "NC" if no change and "X" if there is a change. In the blanks provided, clearly identify the specific change(s), deletion(s) or addition(s) which comprise the terms of this Counter Offer.

[NC] SECTION A: AGENCY DISCLOSURE

[X] SECTION B: INITIAL EARNEST MONEY DEPOSIT RECEIPT B-1(a) change to \$25,000. B-1(b) Change to \$25,000

[X] SECTION C: ADDENDA (add or delete) Add: Bankruptcy Addendum

SECTION D: OFFER TO BUY AND PURCHASE PRICE

[X] D-2 Purchase Price. The Purchase Price for the Property in U.S. dollars shall be paid as follows:

\$ 25,000.00 Initial earnest money deposit from Paragraph B-1
\$ 25,000.00 Additional deposit, if any, paid into Escrow on or before
\$ 625,000.00 Balance of down payment (or balance of purchase price if all cash) paid into Escrow before closing.
\$ 675,000.00 TOTAL CASH FUNDS FROM BUYER (exclusive of closing costs).
\$ 1,525,000.00 By way of A new first mortgage at prevailing rates and terms.
\$ 2,200,000.00 TOTAL PURCHASE PRICE

Failure by Buyer to make any of the scheduled deposits as required under Paragraph D-2 above shall constitute a default, and Seller may elect to terminate the Purchase Contract pursuant to Paragraph O-1.

BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE

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Counter Offer
RR204 Rev. 12/17



8/3/2018



Moffett Properties, 4560 Lower Honoapiilani Rd. Lahaina, HI 96761
Phone: (808)870-6794 Fax: (808)442-0761 William Moffett Jr.

1794 S. Kihei Road

[X] The following Sections of the Purchase Contract (E to S) and/or terms and conditions of any Addenda, are amended as follows. Please reference the appropriate Section, Paragraph, Subparagraph, or Addenda.

- F-2) Closing date, Change to: See Bankruptcy Addendum.
- F-4) Escrow, Change to: Nicole Yasuda, First American Title Honolulu
- H-1) Change to 21 days and 28 days.
- J-1) Delete all. J-2) Change to 20 days. J-3) Change to NA. J-4) Change to NA
- K-1) Change to NA. K-2) Change to NA.
- Q-1) Add, "Within 5 days of acceptance seller shall provide Estoppel agreements on the commercial property from all tenants". Q-2) Add, "Within 10 days of acceptance Seller shall provide a parking licence agreement with no less than 12 parking spaces on the church property".

THIS COUNTER OFFER CANCELS AND SUPERSEDES ANY AND ALL PRIOR COUNTER OFFERS TO THE REFERENCED PURCHASE CONTRACT.

The undersigned agree to sell/buy the above described Property on the terms and conditions set forth in the Purchase Contract, as amended by this Counter Offer and acknowledge receipt of a copy of this Counter Offer. This Counter Offer can be withdrawn at any time prior to delivery of a written acceptance to the undersigned's Brokerage Firm.

EXPIRATION: This Counter Offer shall expire at 4:00 []AM [X]PM on August 7, 2018
Bankruptcy Estate of Salvador Cacho Cordero

DocuSigned by:
Richard A. Yanagi
Signature of Party **Submitting** Counter Offer
[] Buyer or [X] Seller
Title Richard A. Yanagi, Chapter 11 Trustee
Date: 8/3/2018 []AM []PM.

Ann Lou Cordero
Signature of Party **Submitting** Counter Offer
[] Buyer or [X] Seller
Title Ann Lou S. Cordero, Trustee

ACCEPTANCE OF COUNTER OFFER: I/We accept this Counter Offer and agree to sell/buy the Property on the terms and conditions in the Purchase Contract, as modified by this Counter Offer, and acknowledge receipt of a copy of this Counter Offer.

Acceptance Date: 8-7-18 2:50 []AM [X]PM.

[Signature]
Signature of Party **Accepting** Counter Offer
[X] Buyer or [] Seller

[Signature]
Signature of Party **Accepting** Counter Offer
[X] Buyer or [] Seller

NOTE: THERE IS NO WARRANTY ON PLAIN LANGUAGE. An effort has been made to put this agreement into plain language. But there is no promise that it is in plain language. In legal terms, THERE IS NO WARRANTY, EXPRESSED OR IMPLIED, THAT THIS AGREEMENT COMPLIES WITH CHAPTER 487A OF THE HAWAII REVISED STATUTES. This means that the Hawaii Association of REALTORS® is not liable to any Buyer, Seller, or other person who uses this form for any damages or penalty because of any violation of Chapter 487A. People are cautioned to see their own attorneys about Chapter 487A (and other laws that may apply).

**BANKRUPTCY ADDENDUM
TO SALE CONTRACT BETWEEN RICHARD A.
YANAGI, CHAPTER 11 TRUSTEE, AND ANN LOU S.
CORDERO, TRUSTEE, AS SELLER, AND
MICHAEL RUSSELL AND NATHAN ST CYR, AS
BUYER**

This Bankruptcy Addendum is made by and among (1) RICHARD A. YANAGI, in his capacity as bankruptcy trustee ("Trustee") in the Chapter 11 case of SALVADOR CACHO CORDERO, case no. 17-01071, which is pending in the United States Bankruptcy Court for the District of Hawaii (the "Court"), (2) Ann Lou S. Cordero, trustee of the Ann Lou S. Cordero Trust ("Ann", and collectively with Trustee, "Seller") and (3) Michael Russell and Nathan St Cyr (collectively, "Buyer"), or his/her/their nominee, is made a part of the Purchase Contract dated July 4, 2018 (the "Sale Contract") relating to that certain real property located at 1794 South Kihei Road, Kihei, HI 96753 and identified with Tax Map Key No. (2) 3-9-12:021 (the "Property"). The parties agree that the Sale Contract is modified as follows:

1. Buyer understands that the Sale Contract is not binding on the Seller until it is approved by the Court. Buyer also agrees that other parties may bid on the Property. The Trustee will seek, on the next available Court date, approval to sell the Property to Buyer, to pay a \$10,000.00 breakup fee to Buyer in the event Buyer is not the winning bidder, and require a minimum initial overbid of at least \$44,000.00 (i.e., 2% above the Buyer's proposed Purchase Price), and require subsequent overbids in \$1,000.00 increments. If overbidding for the Property occurs, Buyer shall not be required to increase Buyer's deposit under the Sale Contract if Buyer's bid is the high bid approved by the court.
2. Paragraph F-2 of the Sale Contract is hereby deleted in its entirety and replaced as follows: "Closing shall be on the first business day following the fifteenth calendar day from entry of the order approving the sale, provided that no appeal nor tolling motion having been filed, or such other time as Seller and Buyer may agree, whichever is later."
3. Paragraph F-4 of the Sale Contract change to Nicole Yasuda.
4. The Trustee has no information regarding Property and is unable to make any disclosures concerning the Property.

79452

5. Second paragraph of H-1 of the Sale Contract is changed to read as follows "Buyer is obligated to deliver to Seller a conditional loan commitment letter not later than 21 days after the Acceptance Date, and a final loan approval letter not later than 28 days after the end of the Inspection Period.
6. Paragraph J-1 of the Sale Contract is deleted in its entirety.
7. Paragraph J-2 of Sale Contract change to 20 days.
8. Paragraphs J-3, and J-4 of the Sale Contract are hereby deleted in their entirety.
9. Paragraphs K-1 through K-2 of the Sale Contract are hereby deleted in their entirety.
10. Notwithstanding any provision in the Sale Contract to the contrary, including but not limited to paragraph O-3 of the Sale Contract, any disputes between the parties regarding the Sale Contract shall be decided solely by the Court.
11. Add new Q-1 as follows: "Within 5 days of acceptance, Seller shall provide Estoppel agreements from all tenants on the commercial property."
12. Add new Q-2 as follows: "Within 10 days of acceptance, Seller shall provide a parking license agreement with no less than 12 parking spaces on the adjacent church property."
13. Buyer is aware that the property is to be conveyed via Quitclaim Deed. The subject property shall be sold 'AS IS, WHERE IS AND WITH ALL FAULTS.'" Except for the limited warranties of title described below, Seller makes no representations or warranties, either express or implied, with respect to the any matter relating to the subject property. 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 THE SUBJECT PROPERTY, ANY PERSONAL PROPERTY, OR ANY FIXTURE.
14. Except as amended herein, there are no further amendments to the Sale Contract.

- 15. This instrument may be signed in any number of counterparts and by different parties in separate counterparts, each of which when so signed will be considered an original, and all of them put together will form one and the same document, binding upon all of the parties, even though all signatures are not on one copy of the instrument. Electronic copies (including electronic or email, facsimile or similar digital copy, photo or image collectively referred to as "Electronic Copies") of this instrument and any related documents will be fully binding and effective for all purposes whether or not originally executed documents are transmitted to Seller, Buyer, or Escrow. Electronic signatures on documents or Electronic Copies will be treated the same as original signatures. If requested, each party agrees that it will promptly forward a "wet-ink" copy of this instrument to Escrow.

Dated: 8/3/2018

DocuSigned by:
Richard A. Yanagi
 By EE7CDA4F5C9F462...
 Richard A. Yanagi, Chapter 11 Trustee
 for the Bankruptcy Estate of Salvador
 Cacho Cordero (Case No. 17-01071),
 and not individually

Dated: 8/1/18

By *Ann Lou Cordero*
 Ann Lou S. Cordero, Trustee for
 the Ann Lou S. Cordero Trust

Dated: 8.7.18

By *Michael H. Russell*
 Michael Russell

Dated: 8.7.18

By 
 Nathan St Cyr

EXHIBIT B



First American Title

First American Title Company, Inc.

**1177 Kapiolani Boulevard
Honolulu, HI 96814**

June 22, 2018

Additional Information Required
To Be Determined

Phone:
Fax:
Customer Reference:

Title Officer: Corey Sumida
Phone: (808)457-3781
Fax No.: (808)545-6180
E-Mail: csumida@firstam.com
Order Number: 5728682

Buyer: TO BE DETERMINED
Owner: Cordero Trust
Property: 1794 South Kihei Road
Kihei, Hawaii 96732

PRELIMINARY REPORT

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

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Exhibit A attached. **The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.** Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

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

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

First American Title

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

Dated as of June 07, 2018 at 8:00 A.M.

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

TO BE DETERMINED

A specific request should be made if another form or additional coverage is desired.

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

Sal C. Cordero, as Trustee of the Sal C. Cordero Trust, an unrecorded Revocable Living Trust dated March 28, 1992, as to an undivided 50% interest and Ann Lou S. Cordero, as Trustee of the Ann Lou S. Cordero Trust, an unrecorded Revocable Living Trust dated March 28, 1992, as to an undivided 50% interest, said Trustees with powers to sell, lease, mortgage and other powers, as Tenants in Common

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

Fee Simple.

The Land referred to herein is described as follows:

(See attached Legal Description)

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

1. Real property tax assessments for the fiscal year 2017-2018:

Tax Map Key No.: (2) 3-9-012-021-0000
Class No.: 3

First Installment:	\$3,522.80, PAID
Second Installment:	\$3,522.79, DELINQUENT
Penalty:	\$352.28
Interest:	\$155.00
Amount Paid:	\$0.00
Amount Due:	\$4,030.07, through June 2018

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.

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

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 recorded as [Book 19674 Page 343](#) of Official Records.
4. Terms and provisions as contained in that certain Sal C. Cordero Trust, an unrecorded Revocable Living Trust dated March 28, 1992.
5. Terms and provisions as contained in that certain Ann Lou S. Cordero Trust, an unrecorded Revocable Living Trust dated March 28, 1992.
6. Limited vehicular access, as shown on or disclosed by the survey map dated September 28, 1987, revised August 21, 1997, prepared by Reed M. Ariyoshi, Land Surveyor, with Engineering Inc., as set forth or disclosed by the Warranty Deed to Trust recorded October 14, 2003 as Regular System Document No. [2003-224339](#) of Official Records.
7. A mortgage to secure an original principal indebtedness of \$1,417,500.00, and any other amounts or obligations secured thereby.
Dated: October 10, 2002
Mortgagor: Susan Kuwada, wife of Jeffrey Kuwada
Mortgagee: First Hawaiian Bank, a Hawaii Corporation
Recorded October 10, 2002 as Regular System Document No. [2002-179910](#) of Official Records.

A document, disclosing that the mortgage and/or the obligation secured thereby has been modified, was recorded February 07, 2014 as Regular System Document No. [A-51510109A](#) thru A-51510109B of Official Records.

8. The Absolute Assignment of Rentals and Lessor's Interest in Leases, as additional security for the payment of the indebtedness secured by the mortgage recorded October 10, 2002 as Regular System Document No. [2002-179910](#) of Official Records, which was recorded October 10, 2002 as Regular System Document No. [2002-179911](#) of Official Records.

A document, disclosing that the mortgage and/or the obligation secured thereby has been modified, was recorded February 07, 2014 as Regular System Document No. [A-51510109A](#) thru A-51510109B of Official Records.

9. The Absolute Assignment of Rentals and Lessor's Interest in Leases, as additional security for the payment of the indebtedness secured by the mortgage recorded October 10, 2002 as Regular System Document No. [2002-179910](#) of Official Records, which was recorded August 31, 2005 as Regular System Document No. [2005-173796](#) of Official Records.

A document, disclosing that the mortgage and/or the obligation secured thereby has been modified, was recorded February 07, 2014 as Regular System Document No. [A-51510109A](#) thru A-51510109B of Official Records.

10. A financing statement;

Debtor: Sal C. Cordero and Ann Lou S. Cordero
Secured Party: First Hawaiian Bank, a Hawaii Corporation
Recorded August 31, 2005 as Regular System Document No. [2005-173798](#) of Official Records.

A continuation statement was recorded June 24, 2010 as Regular System Document No. [2010-088928](#) of Official Records.

A continuation statement was recorded June 19, 2015 as Regular System Document No. [A-56481003](#) of Official Records.

A document, disclosing that the mortgage and/or the obligation secured thereby has been modified, was recorded February 07, 2014 as Regular System Document No. [A-51510109A](#) thru A-51510109B of Official Records.

11. A mortgage to secure an original principal indebtedness of \$600,000.00, and any other amounts or obligations secured thereby.
Dated: August 14, 2008
Mortgagor: Sal C. Cordero, as Trustee of the Sal C. Cordero Trust, an unrecorded Revocable Living Trust dated March 28, 1992, and Ann Lou S. Cordero, as Trustee of the Ann Lou S. Cordero Trust, an unrecorded Revocable Living Trust dated March 28, 1992
Mortgagee: First Hawaiian Bank, a Hawaii corporation
Recorded August 19, 2008 as Regular System Document No. [2008-130675](#) of Official Records.

A document, disclosing that the mortgage and/or the obligation secured thereby has been modified, was recorded February 07, 2014 as Regular System Document No. [A-51510109A](#) thru A-51510109B of Official Records.

12. The Absolute Assignment of Rentals and Lessor's Interest in Leases, as additional security for the payment of the indebtedness secured by the mortgage recorded August 19, 1992 as Regular System Document No. [2008-130675](#) of Official Records, which was recorded August 19, 2008 as Regular System Document No. [2008-130676](#) of Official Records.

A document, disclosing that the mortgage and/or the obligation secured thereby has been modified, was recorded February 07, 2014 as Regular System Document No. [A-51510109A](#) thru A-51510109B of Official Records.

13. Notice of Pendency of Action filed in the Second Circuit Court, State of Hawaii, with Civil No. 17-1-0267 (2), on a suit to foreclose Mortgage recorded October 10, 2002 as Regular System Document No. [2002-179910](#) and Mortgage recorded August 19, 2008 as Regular System Document No. [2008-130675](#) both of Official Records. A certified copy of said Notice was recorded July 05, 2017 as Regular System Document No. [A-63950728](#) of Official Records.

14. Findings of Fact, Conclusions of Law and Order Granting Plaintiff'S Motion for Summary Judgment as to All Claims and All Parties, Interlocutory Decree of Foreclosure and Order of Sale Exhibits."A" — "C" filed in the Second Circuit Court, State of Hawaii, with Civil No. 17-1-0267 (2), re: Foreclosure. A certified copy of said Findings of Fact, Conclusions of Law and Order Granting Plaintiff'S Motion for Summary Judgment as to All Claims and All Parties, Interlocutory Decree of Foreclosure and Order of Sale Exhibits."A" — "C" was recorded October 13, 2017 as Regular System Document No. [A-64950728](#) of Official Records.

15. Proceedings pending in the Bankruptcy Court of the Ninth District of the U.S. District Court, Hawaii, entitled in re: Salvador Cacho Cordero, debtor, Case No. 17-01071, wherein a petition for relief was filed under Chapter 11 on October 15, 2017.

16. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a current and accurate survey would disclose.
17. Any and all leases, subleases and/or tenancy agreements, the rights thereunder and encumbrances thereto.

INFORMATIONAL NOTES

Note: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

LEGAL DESCRIPTION

Real property in the County of Maui, State of Hawaii, described as follows:

ALL OF THAT CERTAIN PARCEL OF LAND KNOWN AS LOT 77-A-1 OF THE WAIHOLI-KEOKEA BEACH LOTS, BEING A PORTION OF LAND PATENT GRANT 13,415 TO FRANK AND REBECCA M. AKINA, SITUATE AT WAIHOLI-KEOKEA, (KIHEI), MAUI, HAWAII.

BEGINNING AT A 3/4 INCH PIPE AT THE NORTHEASTERLY CORNER OF THIS PARCEL OF LAND, BEING THE NORTHWESTERLY CORNER OF LOT 77-A-2 (ROAD WIDENING LOT) OF THE WAIHOLI-KEOKEA BEACH LOTS [TMK: (2) 3-9-12: PORTION OF 21] AND A POINT ON THE SOUTHWESTERLY BOUNDARY LINE OF LAND PATENT GRANT 9862 TO THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS [TMK: (2) 3-9-12:31], THE COORDINATES OF SAID POINT OF BEGINNING REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "PUU O KALI" BEING 1,701.24 FEET NORTH AND 22,843.90 FEET WEST AND RUNNING BY AZIMUTHS MEASURED CLOCKWISE FROM TRUE SOUTH; THENCE,

1. 346° 02' 00" 55.80 FEET ALONG THE NORTHWESTERLY PROPERTY BOUNDARY LINE OF LOT 77-A-2 OF THE WAIHOLI-KEOKEA BEACH LOTS [TMK: (2) 3-9-12:PORTION OF 21] TO A 3/4 INCH PIPE (FOUND); THENCE,

2. FOLLOWING ALONG THE SAME, ALONG THE ARC OF A CURVE CONCAVE TO THE RIGHT, HAVING A RADIUS OF 30.00 FEET, THE CHORD AZIMUTH AND DISTANCE BEING 35° 03' 15" FOR 45.30 FEET TO A " " ON CONCRETE (SET); THENCE,

3. 84° 04' 30" 122.04 FEET ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF WAIMAHAIHAI STREET TO AN "X" CUT ON CONCRETE (FOUND); THENCE,

4. 174° 04' 30" 141.77 FEET ALONG THE EASTERLY PROPERTY BOUNDARY LINE OF LOT 75 OF THE WAIHOLI-KEOKEA BEACH LOTS [TMK: (2) 3-9-12:22] TO A 1/2 INCH PIPE (FOUND); THENCE,

5. 284° 03' 00" 153.15 FEET ALONG THE SOUTHWESTERLY PROPERTY BOUNDARY LINE OF LAND PATENT GRANT 9862 TO THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS [TMK: (2) 3-9-12:31] TO THE POINT OF BEGINNING AND CONTAINING AN AREA OF 16,940 SQUARE FEET, MORE OR LESS.

BEING ALL OF THE PREMISES CONVEYED BY:

(1) WARRANTY DEED RECORDED NOVEMBER 26, 2004 AS REGULAR SYSTEM DOCUMENT NO. 2004-238755 OF OFFICIAL RECORDS.

GRANTOR: SUSAN Y. C. KUWADA, TRUSTEE OF THE SUSAN Y. C. KUWADA REVOCABLE TRUST DATED AUGUST 25, 2003

GRANTEE: SUSAN Y. C. KUWADA, TRUSTEE OF THE SUSAN Y. C. KUWADA REVOCABLE TRUST DATED AUGUST 25, 2003, AS TO AN UNDIVIDED 50% INTEREST AND SAL C. CORDERO, AS TRUSTEE OF THE SAL C. CORDERO TRUST, AN UNRECORDED REVOCABLE LIVING TRUST DATED MARCH 28, 1992, AS TO AN UNDIVIDED 25% INTEREST AND ANN LOU S. CORDERO, AS TRUSTEE OF THE ANN LOU S. CORDERO TRUST, AN UNRECORDED REVOCABLE LIVING TRUST DATED MARCH 28, 1992, AS TO AN UNDIVIDED 25% INTEREST AS TENANTS IN COMMON

(2) WARRANTY DEED AND ASSUMPTION OF MORTGAGE RECORDED AUGUST 31, 2005 AS REGULAR SYSTEM DOCUMENT NO. 2005-173795 OF OFFICIAL RECORDS.

GRANTOR: SUSAN Y. C. KUWADA, TRUSTEE OF THE SUSAN Y. C. KUWADA REVOCABLE TRUST

DATED AUGUST 25, 2003

GRANTEE: SAL C. CORDERO, AS TRUSTEE OF THE SAL C. CORDERO TRUST, AN UNRECORDED REVOCABLE LIVING TRUST DATED MARCH 28, 1992, AS TO AN UNDIVIDED 25% INTEREST, AND ANN LOU S. CORDERO, AS TRUSTEE OF THE ANN LOU S. CORDERO TRUST, AN UNRECORDED REVOCABLE LIVING TRUST DATED MARCH 28, 1992, AS TO AN UNDIVIDED 25% INTEREST AS TENANTS IN COMMON

TMK(S): (2) 3-9-012-021-0000

EXHIBIT A
LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)

CLTA/ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)
EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 - (a) building;
 - (b) zoning;
 - (c) land use;
 - (d) improvements on the Land;
 - (e) land division; and
 - (f) environmental protection.This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
 - (a) that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
 - (b) that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
 - (c) that result in no loss to You; or
 - (d) that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - (a) to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - (b) in streets, alleys, or waterways that touch the Land.This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows: For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 16: 1% of Policy Amount or \$2,500.00 (whichever is less)	\$10,000.00
Covered Risk 18: 1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 19: 1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 21: 1% of Policy Amount or \$2,500.00 (whichever is less)	\$5,000.00

2006 ALTA LOAN POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14);or

- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
 5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
 6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
 7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

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

EXCEPTIONS FROM COVERAGE

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

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

2006 ALTA OWNER'S POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 or 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

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

EXCEPTIONS FROM COVERAGE

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

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

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07-26-10)

EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.

PRIVACY POLICY

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information – particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re:

SALVADOR CACHO CORDERO,

Debtor.

Case No. 17-01071

(Chapter 11)

DECLARATION OF TRUSTEE IN SUPPORT OF MOTION

I, RICHARD A. YANAGI, hereby declare under penalty of perjury that

1. I am the duly appointed chapter 11 trustee in the above referenced case. I have personal knowledge of the facts stated herein and would competently testify thereto if called as a witness.

2. I make this declaration in support of the *Motion for Order Approving (a) Sale of Real Property Free and Clear of Lien and Encumbrance (1794 S. Kihei Road); and (b) Disbursement of Sales Proceeds; Exhibits "A" - "B"* (the "Motion"). Terms used herein and not otherwise defined shall have the meaning given them in the Motion.

3. Attached as Exhibit A to the Motion is a true and correct copy of the Purchase Agreement.

4. Attached as Exhibit B to the Motion is a true and correct copy of the title report for the 1794 S. Kihei property.

5. I have reviewed factual assertions made in the Motion. These facts are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury, that the foregoing is true and correct.

DATED: Honolulu, Hawaii August 17, 2018.

/s/ Richard A. Yanagi
RICHARD A. YANAGI