



**COMMERCIAL REAL PROPERTY PURCHASE AND SALE
AGREEMENT (PSA)
Hawaii Association of REALTORS® Standard Form
Revised 2/14 (NC) For Release 11/16**



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

Reviewed By: _____
Principal Broker/Broker-in-Charge

Reference Date: _____ Purchase Price: _____ (See Paragraph D-2)

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

Property Reference or Address _____ (See Paragraph E-1)

Tax Map Key: Div. ____/Zone ____/Sec. ____/Plat ____/Parcel(s) ____/CPR ____ (if applicable).

IDENTIFICATION OF PARTIES:

IDENTIFICATION OF BROKERAGE FIRMS:

Buyer: _____

Street _____
Address: _____
Phone: _____
Fax: _____
E-mail: _____

Brokerage Firm: _____
Agent Name: _____
Street _____
Address: _____
Phone: _____
Fax: _____
E-mail: _____

Seller: _____

Street _____
Address: _____
Phone: _____
Fax: _____
E-mail: _____

Brokerage Firm: _____
Agent Name: _____
Street _____
Address: _____
Phone: _____
Fax: _____
E-mail: _____

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.

BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE



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 _____ 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 _____ 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.

_____ (Buyer's initials)

_____ (Seller's initials)

SECTION B: EARNEST MONEY DEPOSIT

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

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

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

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

BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE

SECTION C: ADDENDA

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

[] Existing "As Is" Condition [] Other _____
[] Other _____ [] 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:

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

\$ _____ TOTAL CASH FUNDS FROM BUYER (exclusive of closing costs).

\$ _____ By way of _____

\$ _____

\$ _____ **TOTAL PURCHASE PRICE**

Failure to make any of these 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. ____/Zone ____/Sec. ____/Plat ____/Parcel(s) ____/CPR ____ (if applicable).

All of that [] fee simple [] leasehold Property zoned _____ situated at the address set forth above described as follows: _____

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

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

SECTION F: CLOSING

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

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

[] (a) _____, _____ or
[] (b) _____ 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.

BUYER'S INITIALS & DATE

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: _____, Branch _____ ("Escrow").

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

Escrow officer email address: _____

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

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

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

Charge to Buyer, if applicable:

50% of the premium for standard coverage title insurance and any additional costs relating to the issuance of extended coverage policy and endorsements (including a lender's policy)

Cost of drafting of agreement of sale or mortgage and note

Cost of obtaining Buyer's consents

Buyer's notary fees

50% of Escrow's fees

Any fees pertaining to any Buyer financing

Charge to Seller, if applicable:

50% of the premium for standard coverage title insurance

Cost of drafting of conveyance documents and bills of sale

Cost of obtaining Seller's consents

Seller's notary fees

Conveyance tax

50% of Escrow's fees

Recording fees

FIRPTA (Federal withholding)

HARPTA (State withholding)

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

(a) Any lump sum assessments levied against the Property prior to the Acceptance Date shall be paid by Seller [] or assumed by Buyer [].

Exceptions, if any: _____

(b) Any assessments against the Property authorized as of the Acceptance Date which are being paid in installments shall be paid in full by Seller [] or pro-rated by Escrow as of the date of closing [].

Exceptions, if any: _____

(c) If a new assessment is authorized against the Property between the Acceptance Date and the Scheduled Closing Date, such assessment shall be paid as Buyer and Seller shall agree, and if Buyer and Seller cannot reach an agreement within five (5) days of both parties being aware of the new assessment, either party may terminate this PSA and the termination provisions of Paragraph O-2 shall apply.

BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE

[] 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 _____ () days after the Acceptance Date, Seller shall cause _____ (the "Title Company") to deliver a preliminary title report (the "Title Report") on the Property to Buyer.

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

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

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

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

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

BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE

SECTION H: FINANCING CONTINGENCIES

[] 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 _____ days after the Acceptance Date, and a final loan approval letter not later than _____ 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 _____ () 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 _____ 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.

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

BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE

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

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

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

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

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

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

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

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

SECTION K: SURVEY

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

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

[] 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.

BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE

SECTION L: ASBESTOS AND HAZARDOUS MATERIALS

L-1 **Asbestos Disclosure.** Buyer is aware that asbestos materials are hazardous to one's health, particularly if asbestos fibers are released into the air and inhaled. In the past (before 1979, but possibly since) asbestos was a commonly used insulation material in heating facilities and in certain types of floor and ceiling materials, shingles, plaster products, cement and other building materials. Buyer is aware that Buyer should make appropriate inquiry into the possible existence of asbestos on the Property. Structures having "popcorn" or "cottage cheese" type ceilings may contain asbestos fibers or asbestos-containing material. Such ceilings should not be disturbed since it could release asbestos fibers in the air. Any disturbance should be done only by licensed abatement contractors.

L-2 **Hazardous Waste and Toxic Substances Disclosure.** Buyer is aware that federal and state laws place strict liability on property owners for dangers caused by hazardous waste management and may require that such owner pay for the cost of the cleanup of hazardous substances and other toxic substances. Buyer is aware that Buyer should make appropriate inquiries into the past use of the Property and should seek an environmental assessment to ascertain the possible existence of such hazardous substances or materials on or under the Property. Buyer is aware Buyer may have liability for hazardous substances located on or under the Property even if Buyer did not cause such substances to be on or under the Property.

[] 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

[] 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:

_____.

BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE

SECTION R: BROKERAGE FIRMS SERVICES AND DISCLAIMERS

R-1 **Scope of Service.** Seller's Brokerage Firm and Buyer's Brokerage Firm, including their owners, agents and employees (collectively the "Brokerage Firms"), recommend that Buyer and Seller each consult their own accountant, appraiser, architect, attorney, contractor, estate planner, insurance advisor, land use professional, surveyor, environmental consultant, title insurer, zoning expert, and other professionals should they have any questions within those fields about this sale. Buyer and Seller understand and acknowledge that neither party is relying upon the Brokerage Firms for any of the foregoing services or advice.

R-2 **Disclaimers by Brokerage Firms.** Buyer and Seller understand that the Brokerage Firms have not made any representations or warranties, and have not rendered any opinions about: (a) the legal or tax consequences of this transaction; (b) the legality, validity, correctness, status or lack of any building permits which may have been required for the Property; (c) the size of any improvements on the Property, or the land area of the Property or the location of the boundaries; (d) the existence or non-existence of mold, asbestos or hazardous materials on the Property; (e) compliance of the Property with law, including but not limited to the Americans with Disabilities Act and land use laws.

R-3 **Obligations.** Brokerage Firms shall not be held liable to either Buyer or Seller for the failure of either Buyer or Seller to perform their obligations pursuant to this PSA.

[]R-4 **Disclosure of Real Estate Licensing Status.** Hawaii law requires that licensees disclose that they hold a real estate license in any transaction in which they are purchasing or selling real property as a principal, or in which they are buying for themselves, immediate relatives, or an entity in which they have an interest. If applicable, the licensee(s) in this transaction disclose the following: _____

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

S-1 As used in this PSA, the term "**Acceptance Date**" means the date on which this PSA becomes binding upon the parties (i.e. when both parties have signed this PSA.)

S-2 As used in this PSA, the term "**day**" means a calendar day unless the term "business day" is used. The term business day shall mean Monday through Friday except Federal or Hawaii holidays. All dates and times are based on Hawaii Standard Time (UTC-10). Unless otherwise specified in writing in this PSA, contingencies herein shall expire at 5:00 PM HST on the day stated.

S-3 **Time is of the Essence.** Except as otherwise provided in this PSA, time is of the essence in the performance by all parties in their respective obligations to this PSA.

S-4 **Complete Agreement.** This PSA constitutes the entire agreement between Buyer and Seller and supersedes and cancels any and all prior negotiations, representations, warranties, understandings or agreements (both written and oral) of Buyer and Seller. No variation or amendment of this PSA shall be valid or enforceable without written approval by Buyer and Seller. All agreements and representations about the Property must be set forth in writing and the parties agree that to be effective any representation made by a Brokerage Firm or any party hereto must be set forth in writing in this PSA or an amendment hereto. Buyer and Seller shall each hold harmless and release the Brokerage Firm(s) from any claims based upon any alleged representation which is not set forth in writing as stated in this paragraph.

S-5 **Assignment.** Buyer shall not have any right to assign any of its rights, or to delegate any duties or obligations under this PSA without the prior written consent of Seller except that consent shall not be required in the event Buyer assigns its rights under this PSA to an entity where Buyer owns at least fifty percent (50%) of the controlling interest. For the purposes of this paragraph, assignment and/or delegation shall be deemed to include any sale, transfer, assignment or other event which, directly or indirectly, results in a change of fifty percent (50%) or more in the controlling interest in Buyer. This PSA, and each and every term and provision hereof, shall inure to the benefit of, and be binding upon and enforceable against, Buyer and its respective legal representatives, successors, and permitted assigns.

S-6 **Representations and Warranties.** Each party hereby represents and warrants to the other as follows:

- (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.

BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE

Offer Date _____, _____ AM/PM Buyer's Name _____

Signature _____

Title _____

Buyer's Name _____

Signature _____

Title _____

Buyer's Name _____

Signature _____

Title _____

SECTION T: ACCEPTANCE OR COUNTER OFFER

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

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

IN EITHER EVENT:

T-3 Seller agrees to pay to _____ 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 _____. 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 _____, _____ AM/PM Seller's Name _____

Signature _____

Title _____

Seller's Name _____

Signature _____

Title _____

Seller's Name _____

Signature _____

Title _____

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

BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE