STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 11, 2014

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 08MD-120

MAUI

Acquisition of Private Lands for Expansion of Maui Veterans Cemetery, Makawao, Island of Maui, Tax Map Key: (2) 2-4-002: por.009, Cancellation of Governor's Executive Order No. 3279 for Existing Makawao Veterans Cemetery Site, Tax Map Key: (2) 2-4-002:por.009, and Set Aside to County of Maui for Control and Management of Makawao Veterans Cemetery Site, Makawao, Island of Maui, Tax Map Key: (2) 2-4-002:009.

APPLICANT AGENCY:

State of Hawaii Department of Accounting and General Services (DAGS) on behalf of Department of Defense Office of Veteran Services.

PRIVATE LANDOWNER:

Jordan Santos, a married man, has expressed his intent to sell the subject property to the State of Hawaii.

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, Hawaii Revised Statutes, as amended, and Chapter 101, HRS, as may be necessary.

LOCATION:

Privately-owned lands situated at Makawao, District and Island of Maui, identified by Tax Map Key: (2) 2-4-002: por.009, as shown on the attached map and description labeled Exhibit "A-1".

AREA:

10.0 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Maui CZO: 5-Agricultural (all island)

CURRENT USE:

Vacant and unencumbered.

CONSIDERATION:

One-time payment of $765,000.00 as determined by independent appraiser, subject to review and approval by the Chairperson.

PURPOSE:

For military veterans cemetery development purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 343-5(a)(1), HRS, an environmental assessment (EA) is not required where State or county funds are being used for the acquisition of unimproved real property. As the subject lands are unimproved, an EA is not required. However, inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

Applicant shall be responsible for the following. The Department may assist with review or procurement, as necessary.

1) Payment for the appraisal cost to determine the value of the properties to be acquired;
2) Processing and obtaining subdivision approval at Applicant's own cost;
3) Providing survey maps and descriptions for the privately-owned property according to State DAGS standards and at Applicant's own cost;
4) Obtaining a title report for the privately-owned property at Applicant's own cost and subject to review and approval by the Department;
5) Paying for and conducting a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conducting a Phase II environmental sampling and analysis plan and performing any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

REMARKS:

On November 30, 2012, under agenda item D-10 (attached hereto as Exhibit "B-1") the Land Board granted approval in principle for the acquisition of land to expand the Maui Veterans Cemetery. The current submittal requests final approval from the Land Board and summarizes due diligence completed or underway to support the acquisition.

The existing Maui Veterans Cemetery in Makawao, Maui, under the control and management of the County of Maui pursuant to Executive Order No. 3279, is nearing full occupancy. The Hawaii Department of Defense (DOD) Office of Veterans Services (OVS) has been seeking an expansion site for some time to address this impending need for more burial space for veterans.

In 2008, DOD OVS brought a proposed acquisition of expansion land for the cemetery to the attention of the Department, requesting follow up and assistance. The OVS reported that Mr. Jordan Santos of Makawao was offering to sell a 10.0 acre parcel immediately adjacent to the existing Veterans Cemetery to the State for the purpose of the much-needed cemetery expansion. It was later disclosed that Mr. Santos was in negotiations with then-landowner Paul Turner to purchase the subject 10.0 acres and adjacent lands, and that due diligence for the transaction was still underway.

In 2011, the DOD obtained an appropriation of $5.3 million from the Hawaii State Legislature for the acquisition, planning and design, and construction of the cemetery expansion, and also applied to the U.S. Department of Veterans Affairs (VA) Veterans Cemetery Grants Program which provides grants to States for cemetery development, though not for the acquisition of land, which States must provide.

To obtain some assurance for the State to justify commencement of its due diligence for the proposed purchase from the proposed seller, staff sought written documentation of Mr. Santos' intent.

In January 2012, Mr. Santos signed a letter from the Department documenting his interest and desire to sell and convey the land, once he acquired it, to the State for the cemetery expansion, and acknowledgment that the sales price could be "no higher than the fair market value of the land as determined by the State's appraisal process" pursuant to the requirements of §171-30, Hawaii Revised Statutes.

On November 30, 2012, staff took the proposed acquisition to the Land Board which granted its approval in principle under agenda item D-10. Since that time, the DOD OVS, DAGS, and the Department have been working closely together on due diligence to support the proposed acquisition.

In federal Fiscal Year 2013, commencing October 1, 2012, the VA had ranked the Maui Veterans Cemetery as #1 on its national Priority List of 95 Pending State and Tribal Government Cemetery Construction Grant Pre-applications, which serves as the VA's basis for awarding grants during each fiscal year. However, since acquisition was not accomplished during FY2013, the VA downlisted the project to #5 of a list of 87 pending pre-applications for FY2014.

In April 2013, in accordance with §171-30, HRS, an appraisal contracted by the State determined fair market value of the subject property as a stand-alone property with standard amenities to be $765,000.00. Seller had informed the appraiser that he would deliver at closing the following three items: access easement, utility easement, and fire protection water from Baldwin Avenue to the subject property.

In July 2013, a Phase I environmental site assessment of the subject property was completed for use by the State of Hawaii. Subsequently Phase II multi-incremental soil sampling was conducted to further investigate possible recognized environmental concerns (RECs). No hazardous materials were found on the subject property at or above HDOH Tier 1 Environmental Action Levels for Unrestricted and/or Commercial/Industrial land use, therefore no further action (NFA) was required.

The Paul Turner Subdivision defining the property being purchased by Jordan Santos was finally approved by Maui County on October 15, 2013. An administrative subdivision to create the 10 acre lot being offered to the State by Mr. Santos for the Veterans Cemetery expansion was approved January 9, 2014 by the Department of Public Works (DPW), County of Maui.

On January 31, 2014, Mr. Santos acquired the subject property and surrounding lands adjacent to the Maui Veterans Cemetery from Mr. Turner, as he had intended. A deed and preliminary title report were subsequently provided to the State to evidence this acquisition and to formalize the offer of the subject property.

Since an update for the Phase I environmental site assessment is needed to meet EPA requirements as summarized in the ASTM International Practice E 1527-13, the State's environmental consultant made a site visit to the subject property on March 5, 2014. The consultant identified a new REC consisting of a small stockpile of concrete debris, characterized as improper disposal of regulated solid waste. The proposed Seller subsequently acknowledged he had created the debris pile while preparing a new fence line along the boundary, and has agreed to remove it.

At this time, closure is pending the delivery of certain items on which the appraisal of fair market value, referenced above, was based:

1) The property is not environmentally impaired.
Current status: Upon removal of the new solid waste debris pile by the Seller, the environmental consultant will revisit the site, make a determination as to final condition of the subject property, and complete the update of the Phase 1 Environmental Site Assessment.

2) The State has requested a release of the Limited Warranty Deed with Covenants, Reservations and Restrictions dated November 28, 2008, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-181293.
Current Status: Seller has agreed to deliver said release upon closing.

3) An existing access easement would be conveyed across Lot 1 of the adjacent State-owned Maui Veterans Cemetery.
Current status: The easement will be written into the State's Warranty Deed property description, but not shown on the Deed map since its location is described but not precisely defined in the recorded historical documentation. The County subdivision map was amended on January 24, 2014 to show new data defining the easement location across Lot 1, however, the State has asked Maui County to revise this to reflect the same information provided on the State's Warranty Deed map (Exhibit "A-1"), to be consistent with previously recorded documentation.

4) Access, electricity, and fire protection water would be made available from the adjacent access roadway to Lot B of the Paul Turner Subdivision.
Current status: Construction for installation of fire protection water and an electrical stub-out has not yet begun. The Seller reports that County approval for both are still pending, so delivery may not be possible for some time. However, at closing the seller will be asked to deliver an easement for access, electrical line and stub-out and fire protection water from Baldwin Avenue through Lot B, which would be terminable upon seller successfully completing the improvements and dedication to the County and Utility as the case may be.

Because the appraisal was based on the subject property as a stand-alone property with its highest and best use as a single family residence, absent the promised fire protection water and electrical stub-out, the appraised value of $765,000.00 could not be justified. To address these outstanding items, Staff recommends the Land Board consider the following conditions for post-closing obligations, summarized below and more fully described in the Agreement for Purchase and Sale, attached hereto as Exhibit "C-1".

1) Not later than thirty-six (36) months after the Closing

Date, Seller will, at no cost to Buyer,

(i) construct an underground waterline for fire protection and a hydrant in the approximate location on TMK (2) 2-4-002:007, within three hundred fifty (350) feet of the Property; and

(ii) construct electrical service with a stub-out on the Existing Cemetery Land.

2) Fifty Thousand Dollars ($50,000.00) of the purchase price shall be retained in escrow to ensure Seller's compliance (hereinafter "retained funds"). The retained funds shall be released from escrow to Seller upon escrow's receipt of written confirmation signed by the Maui County Director of Public Works that said waterline, hydrant and electrical service with stub-out are completed.

3) If Seller fails to fully comply with his obligations within thirty-six months of the Closing Date, the retained funds shall be released from escrow to the Buyer. The Buyer shall also have all remedies available at law and in equity for breach of contract.

4) Seller's thirty-six month deadline may be extended by mutual written agreement between Seller and Buyer if, at the end of the thirty-six (36) months, Seller's completion has been delayed by circumstances beyond Seller's control, provided that such extension(s) shall not exceed twenty-four (24) months in the aggregate.

It should be noted that the State's first proposal to the Seller was to withhold $100,000.00, the estimated cost of construction for the outstanding obligations, or have Seller post a bond for the post-closing obligations. However, Seller would not agree to either alternative, citing his intentions to deliver the outstanding items within four years of closing, and to dedicate the fire protection water line and hydrant to Maui County Department of Water Supply, and the electrical line to Maui Electric Company.

As of March 2014, the OVS reported that about 126 burial sites remain in the existing Veterans Cemetery. Burials occur at the average rate of 10 per month, so the Cemetery will reach full capacity in about another year.

In the meantime, in recognition of this urgency, the DOD Engineering Branch and DAGS Public Works have advanced planning and design for the anticipated expansion site, to allow construction to commence as soon as possible after acquisition. (However, should this acquisition fail to reach closure, the plans would have to be abandoned, as they are site-specific.) Bid documents for the cemetery expansion project are essentially

complete at this time, and the necessary permits are being processed for approval in anticipation of the State receiving title to the subject property.

The cemetery expansion project is also dependent upon federal funding from the VA, but those grant awards can only be made to States which have already acquired the land to be developed.

In light of these factors, in addition to the urgency of the need for cemetery expansion to allow burial services for veterans to continue to be available on Maui, it would be most advantageous to close on this acquisition as soon as possible.

The State's standard Warranty Deed prepared for this acquisition is attached hereto as Exhibit "D-1".

Subsequent to its acquisition by the State of Hawaii, the subject property will be consolidated with the existing Maui Veteran Cemetery property, and set aside to the County of Maui for operation by its Department of Public Works along with the existing Veterans Cemetery.

Due to timing and other considerations, Staff scheduled this matter before the BLNR at the earliest possible date with recommendations that Staff believes fair based on these particular facts and circumstances.

RECOMMENDATION: That the Board:

1. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:

   A. The standard terms and conditions of the most current deed, together with a terminable easement provision or document form, as the case may be and as may be amended from time to time;

   B. Review and approval by the Department of the Attorney General;

   C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order No. 3279, subject to the following:

A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;

B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;

C. Review and approval by the Department of the Attorney General; and

D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Maui County under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;

B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;

C. Review and approval by the Department of the Attorney General; and

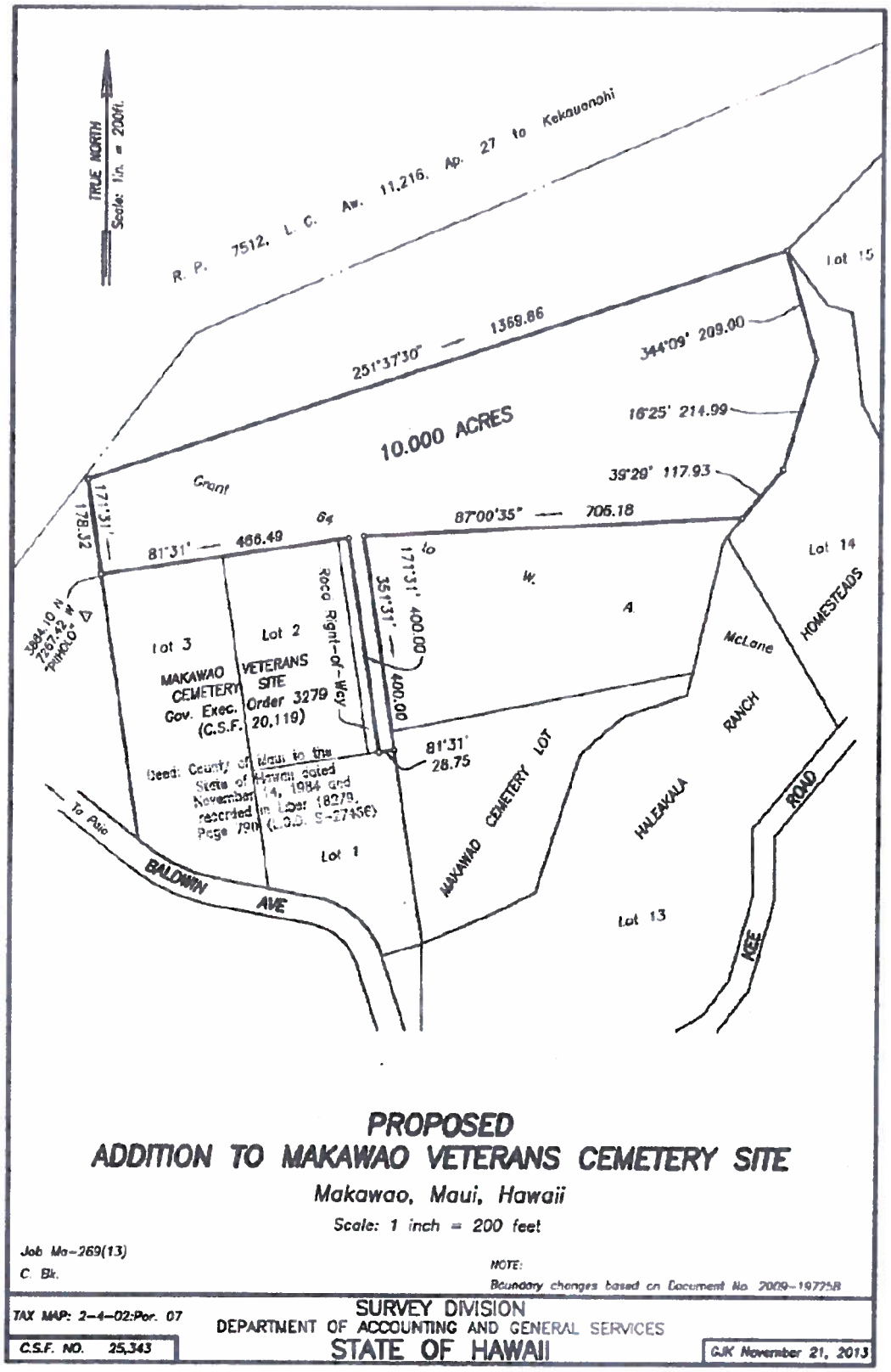
D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barbara Lee
Project Development Specialist

APPROVED FOR SUBMITTAL:

William J. Aila, Jr., Chairperson



PROPOSED
ADDITION TO MAKAWAO VETERANS CEMETERY SITE
Makawao, Maui, Hawaii
Scale: 1 inch = 200 feet

Job Ma-269(13)
C. Blk.

NOTE:
Boundary changes based on Document No. 2009-197758

TAX MAP: 2-4-02:Por. 07
C.S.F. NO. 25,343

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

GJK November 21, 2013

EXHIBIT "A-1"

AMENDED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 30, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 08MD 120

MAUI

Approval in Principle for Acquisition of Private Lands and Set Aside to County of Maui for Expansion of Maui Veterans Cemetery, Makawao, Island of Maui, Tax Map Key: (2) 2-4-002: por.007.

APPLICANT AGENCY:

State of Hawaii Department of Accounting and General Services on behalf of Department of Defense Office of Veteran Services.

PRIVATE LANDOWNER:

Jordan Santos, a married man, is in the process of acquiring a tract of land including the subject property from current landowner Paul Turner, and, upon its acquisition, has expressed his intent to immediately sell the subject property to the State of Hawaii.

LEGAL REFERENCE:

Sections 107-10, 171 11 and 171-30, Hawaii Revised Statutes, as amended, and Chapter 101, HRS, as may be necessary.

LOCATION:

Privately owned lands situated at Makawao, District and Island of Maui, identified by Tax Map Key: (2) 2-4-002: por.007, as shown on the attached map and description labeled Exhibit A.

AREA:

10.0 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Maui CZO: S-Agricultural (all island)

As Amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
November 30, 2012

D-10

EXHIBIT "B-1"

CURRENT USE:

Vacant and unencumbered.

CONSIDERATION:

One time payment to be determined by independent appraiser, subject to review and approval by the Chairperson.

PURPOSE:

For military veterans cemetery development purposes.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 343-5(a)(1), HRS, an environmental assessment (EA) is not required where State or county funds are being used for the acquisition of unimproved real property. As the subject lands are unimproved, an EA is not required. However, inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

Applicant shall be responsible for the following:

1) Payment for the appraisal cost to determine the value of the properties to be acquired;
2) Processing and obtaining subdivision approval at Applicant's own cost;
3) Providing survey maps and descriptions for the privately-owned property according to State DAGS standards and at Applicant's own cost;
4) Obtaining a title report for the privately-owned property at Applicant's own cost and subject to review and approval by the Department;
5) Paying for and conducting a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conducting a Phase II environmental sampling and analysis plan and performing any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

REMARKS:

The Office of Veteran Services (OVS) of the Hawaii State Department of Defense (DOD) reports that the existing 7.0 acre Veterans Cemetery in Makawao, Maui, under the control and management of the County of Maui pursuant to Executive Order No. 3279, is imminently nearing full occupancy. With an estimated only one to two years of capacity remaining, the urgency of securing an expansion site only increases as time goes by.

DOD also reports that an opportunity to acquire land immediately adjacent to the existing cemetery site has been offered by Mr. Jordan Santos of Makawao. He is currently in the process of acquiring a tract of land adjacent to the Veterans Cemetery from private landowner Paul Turner, and has expressed his intention, upon its acquisition, to immediately sell a 10.0 acre portion to the State of Hawaii for the Veterans Cemetery expansion. The two parties have agreed to detail the planned transactions in escrow instructions to ensure that their wishes are followed as referenced in Exhibit B.

The DOD obtained a legislative appropriation of $5.3 million in 2011 for the acquisition, planning and design, and construction of the cemetery expansion, and has since been working closely with the Department of Accounting and General Services (DAGS) Planning Branch on plans for the expenditure of those funds.

In June 2012, a subdivision application for the 10.0 acres was submitted by the current landowner to the County of Maui, which the County estimated would take approximately six months to process. DAGS staff are poised to implement the planning and design process as soon as acquisition is completed.

Maui County has agreed to take over operations and management of the Veterans Cemetery expansion via a set aside by Executive Order of the subject property. A letter from their Department of Public Works is attached for reference as Exhibit C.

As time is of the essence, DOD and DAGS would like to obtain preliminary approval from the Land Board to help expedite the due diligence requirements of the planned acquisition.

RECOMMENDATION: That the Board:

1. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:

   A. The standard terms and conditions of the most current deed document form, as may be amended from time to time;

   B. Review and approval by the Department of the Attorney

General;

C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Maui County under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;

B. Disapproval by the Legislature by two thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;

C. Review and approval by the Department of the Attorney General; and

D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barbara Lee
Project Development Specialist

APPROVED FOR SUBMITTAL:

William J. Aila, Jr., Chairperson

Land Board Meeting: November 30, 2012; D-10: Approved as Amended:

Approved as amended by staff at the meeting. Recommendation No. 3 was added as follows:

3. Authorize the department to assist the Applicant with with the Requirements noted above, and if necessary and appropriate the actual procurement of one or more of the Requirements.

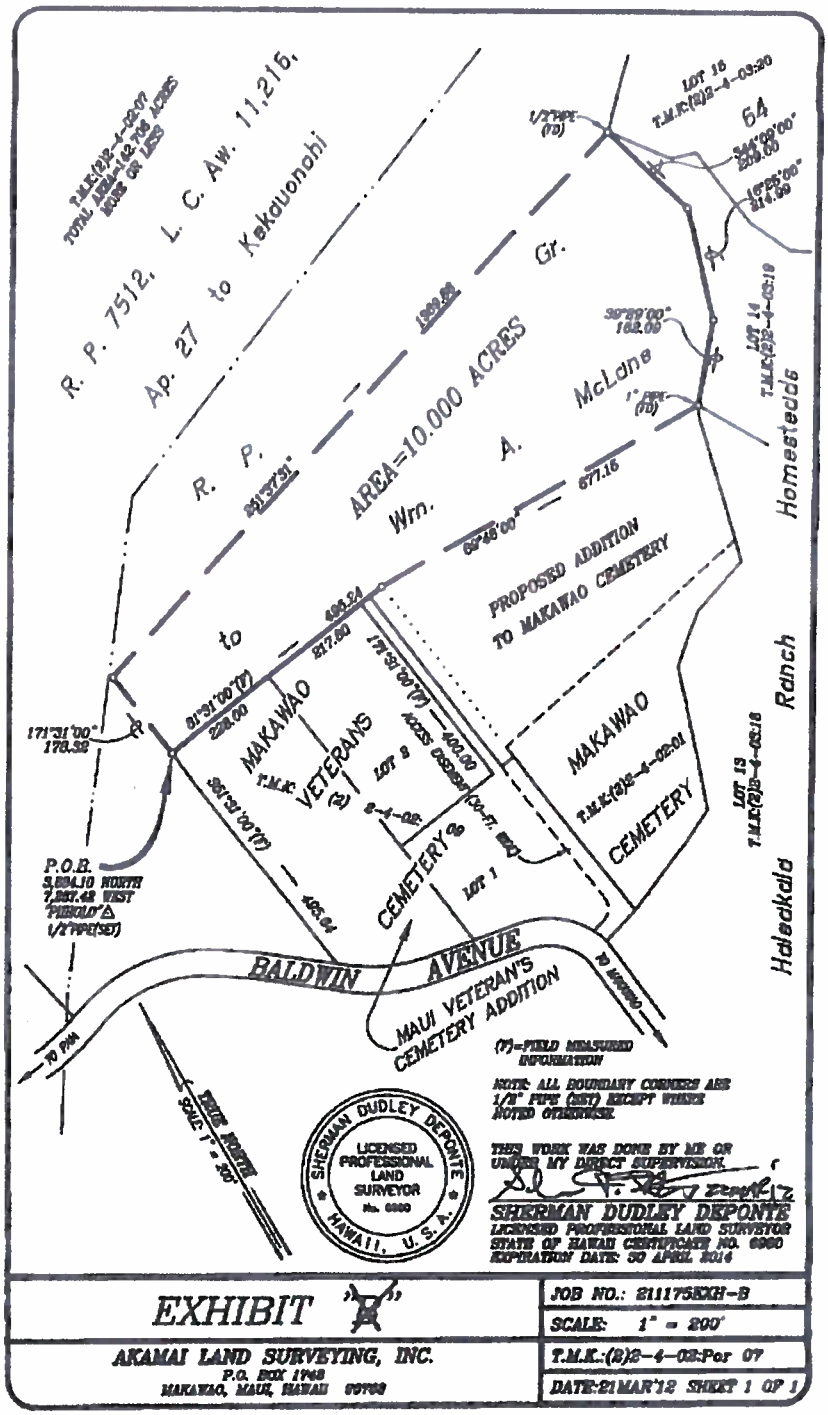

R. P. 7512, L. C. Aw. 11,216,
Ap. 27 to Kekauonohi
R. P. Gr.
AREA=10.000 ACRES
to Wm. A. McLane
PROPOSED ADDITION TO MAKAWAO CEMETERY
MAKAWAO VETERANS CEMETERY
MAKAWAO CEMETERY
Homesteads
Ranch
Haleakala
BALDWIN AVENUE
MAUI VETERAN'S CEMETERY ADDITION
P.O.B.
(F)=FIELD MEASURED INFORMATION
NOTE: ALL BOUNDARY CORNERS ARE 1/2" PIPE (SET) EXCEPT WHERE NOTED OTHERWISE.
THIS WORK WAS DONE BY ME OR UNDER MY DIRECT SUPERVISION.
SHERMAN DUDLEY DEPONTE
LICENSED PROFESSIONAL LAND SURVEYOR
STATE OF HAWAII CERTIFICATE NO. 6960
EXPIRATION DATE: 30 APRIL 2014
SHERMAN DUDLEY DEPONTE
LICENSED PROFESSIONAL LAND SURVEYOR
HAWAII, U.S.A.
EXHIBIT
JOB NO.: 211175EXH-B
SCALE: 1" = 200'
AKAMAI LAND SURVEYING, INC.
P.O. BOX 1748
MAKAWAO, MAUI, HAWAII 96768
T.M.K.:(2)2-4-02:Por 07
DATE:21MAR'12 SHEET 1 OF 1

EXHIBIT "A"

EXHIBIT B

RE: ESCROW INSTRUCTIONS

Regarding the purchase of 10.00 acres, more or less, of land at Makawao, Island of Maui, Hawaii, by the State of Hawaii, as Grantee, from Jordan Santos, a married man, as Grantor.

Escrow instructions have not yet been finalized as of this date, however, the State of Hawaii minimally requires the following instructions or their equivalent be included:

- Once deposited into escrow, the State of Hawaii funds shall not be released to the Grantor until the State of Hawaii, as Grantee, executes the deed for the subject property and duly records the same at the Bureau of Conveyances, Department of Land and Natural Resources.
- If closing is not accomplished by <<DATE TO BE SPECIFIED>>, the State of Hawaii funds shall be returned to the State of Hawaii.
- These instructions shall be mutually irrevocable.

ALAN M. ARAKAWA
Mayor

DAVID C. GOODE
Director

ROWENA M. DAGDAG-ANDAYA
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

October 30, 2012

Mr. Ronald P. Han, Jr., Director
State of Hawaii Office of Veterans' Services
459 Patterson Road, E-Wing, Room No. 1-A103
Honolulu, Hawaii 96819-1522

Dear Mr. Han:

SUBJECT: EXPANSION OF MAKAWAO VETERANS CEMETERY

Pursuant to my October 12, 2012 letter to Neal S. Mitsuyoshi, Chief Engineering Officer, Department of Defense, advising him that the County of Maui Department of Public Works has submitted plans to its subdivision office for the creation of a new ten (10) acre lot to expand the Makawao Veterans Cemetery, the County of Maui would like to assure the State of Hawaii Office of Veterans' Services that it will be responsible for the maintenance of the expanded ten (10) acres.

Planning and coordination of the subdivision of the ten (10) acre parcel for the State to purchase is currently being handled by the County and the private land owner with the intent to re-consolidate this ten (10) acre parcel with the original seven (7) acre Makawao Veterans Cemetery. The State will then be able to return the 17 acre parcel back to the County by Executive Order.

Should you have any questions, please feel free to call me at (808) 270-7845.

Sincerely,

DAVID C. GOODE
Director of Public Works

DCG:jso
xc: Alan M. Arakawa, Mayor
Brian Hashiro, Highways Division Chief
Neal S. Mitsuyoshi, Chief Engineering Officer, Department of Defense
Russell Y. Tsuji, Land Administrator, Department of Land and Natural Resources
s:\rhan_ maintenance of expanded makawao veterans cemetery

EXHIBIT "C"

AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS

EXHIBIT "C-1"

AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS

(TMK (2) 2-4-002: Portion of 09)

TO: TITLE GUARANTY ESCROW SERVICES INC.
KAHULUI BRANCH
80 Puunene Avenue
Kahului, Hawaii 96732

Escrow No.: _____
Escrow Officer: _____

THIS AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made and entered into as of the _____ day of _____, 20___, (the "Effective Date"), and is executed by and between JORDAN J. SANTOS and CARLENE A. SANTOS, whose address is Haiku, Hawaii 96708 ("Seller"), and the STATE OF HAWAII, by its Board of Land and Natural Resources, whose business address is 1151 Punchbowl Street, Honolulu, Hawaii 96813 ("Buyer").

RECITALS:

A. Seller is the owner in fee simple of Lot 4-A, situated in Haliimaile, Makawao, Hamakuapoko, Maui, Hawaii, described on **Exhibit "A"**, attached hereto, the location and general configuration of which are shown on the map attached hereto as **Exhibit "B"** (collectively referred to as the "Property");

B. Buyer owns the Makawao Veterans Cemetery, consisting of three (3) lots, situated in Haliimaile, Makawao, Hamakuapoko, Maui, Hawaii, described as Lots 1, 2 and 3 on the map attached hereto as **Exhibit "B"** (collectively referred to as the "Existing Cemetery Land");

C. The purpose of this Agreement is to set forth the terms and conditions of the purchase and sale transaction involving the Property.

D. The parties acknowledge that while the purchase and sale transaction set forth in this Agreement has been voluntarily and mutually agreed upon by both parties, (i) the Buyer has reserved, and has not waived, its right to condemn the Property by eminent domain if Seller had not voluntarily entered into a purchase agreement, or if for any reason Seller shall fail to convey the Property to the Buyer as required by this Agreement; and (ii) eminent domain was put forth during the course of negotiations as a possible course of action for the Buyer to acquire title to the Property. Seller has entered into and negotiated this Agreement willingly and in good faith, but with the understanding that this sale is being made under threat of condemnation.

AGREEMENT: For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Seller and Buyer hereby agree as follows, and escrow is instructed as follows:

1. Purchase and Sale. Seller agrees to sell and transfer to Buyer, and Buyer agrees to purchase from Seller, the Property on all of the terms and conditions set forth below. The purchase price for the Property is $765,000.00, and shall be paid in full, in cash, at closing.

2. Contingencies. Buyer's obligation to close the purchase and sale is contingent upon the following conditions being satisfied prior to the Closing Date:

(a) Approval by the Board of Land and Natural Resources, which approval is subject to the Board's sole discretion;

(b) All legislative, funding and allotment approvals to pay for Buyer's purchase;

(c) Buyer's receipt of a binding commitment to issue a Hawaii standard owner's title insurance policy in the full amount of the purchase price as of the close of escrow, subject only to the Permitted Encumbrances (defined below);

(d) Buyer being satisfied with Buyer's own investigation as to the environmental condition and all other aspects of the Property;

(e) Seller removing from the Property all concrete debris, and concrete and green waste rubbish piles identified in the updated Phase I Environmental Site Assessment; and

(f) Seller obtaining a release of the Limited Warranty Deed with Covenants, Reservations and Restrictions dated November 28, 2008, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-181293.

Buyer and Seller shall proceed to obtain satisfaction of all of said conditions as soon as practicable.

If any such conditions shall not have been satisfied by _____, 2014 (or as may be extended by mutual agreement between the parties), Buyer or Seller, by written notice to the other, shall have the right to terminate this Agreement, in which event the parties shall have no further liability or obligation to each other under this Agreement.

3. Title. Attached hereto as **Exhibit "C"** is a title report dated March ___, 2014, issued by Title Guaranty of Hawaii, Inc. (the "Title Report") relating to the Property. The following items shown on Schedule B to the Title Report **shall not** be deemed "Permitted Encumbrances":

(a) The Limited Warranty Deed with Convenants, Reservations and Restrictions dated November 28, 2008, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-181293;

(b) Real Property Taxes, if any, that may be due and owing through the Closing Date; and

(c) Unrecorded leases.

All matters shown on the Title Report that are not "Permitted Encumbrances" shall be released on the Closing Date (as a condition of closing), and the form and conent of the release document to be recorded on the Closing Date shall be subject to review and approval of the Buyer's legal counsel.

4. Closing and Transfers. The Closing Date shall be _____, 2014 (the "Closing Date"). The Closing Date may be changed by mutual agreement between the parties. At closing, the Property will be conveyed to Buyer by Seller by Warranty Deed (in the form attached hereto as **Exhibit "D"**.

As provided in Section 2(c), at Buyer's election the closing transaction shall be contingent upon Title Guaranty of Hawaii, Inc. agreeing to issue a Hawaii standard owner's title insurance policy insuring title to the Property in the full amount of the purchase price as of the close of escrow, subject only to the Permitted Encumbrances, and with such endorsements as the Buyer may reasonably require.

5. Condition of the Property. Buyer and Seller agree that, prior to the Closing Date, as defined in Section 4:

(a) Buyer shall have had the opportunity to study all aspects or circumstances of the Property, which Buyer deems material or relevant;

(b) Buyer shall have had access to the Property; and

(c) Buyer shall have had the opportunity to make all inspections and verifications which Buyer deems necessary for the completion of Buyer's due diligence review for the transaction covered by this Agreement.

(d) In deciding to go forward with this land purchase Buyer is relying on the results of Buyer's investigations and not upon any representations or warranties of Seller, except as expressly set forth in this Agreement or in the Warranty Deed.

6. Brokers and Finders. Each party hereby warrants and represents to the other that it has not engaged any agent, broker or finder in connection with this transaction and that no brokerage commissions or agency fees shall be owed or payable to any broker or agent with respect to any of the transactions described in this Agreement.

7. Escrow. Each of the transactions under this Agreement shall be administered through Title Guaranty Escrow Services, Inc., Kahului Branch, acting as escrow agent for Buyer and Seller.

8. Allocations of Closing Costs and Prorations. With respect to the Property being acquired by Buyer, the Buyer shall not be required to pay any prorated real property taxes.

Otherwise, real property taxes shall be prorated as of midnight on the date preceding the close of escrow. Seller is authorized to seek a refund of any prepaid property taxes from the County taxing authority after the closing.

Buyer shall pay one-half (1/2) of the escrow fees charged by escrow, all of the recording fees for recording the deed to the Property, and all costs incurred for title report and owner's title insurance policy which the Buyer elects to acquire; and Seller shall pay one-half of the escrow fees charged by escrow, all of the conveyance tax (if applicable), the cost of preparing the deed and the cost of actions necessary to clear the title to the Property in accordance with Section 3 above.

9. Default. Each party agrees that in the event said party shall breach its obligations under this Agreement, the other party may terminate this Agreement and shall have all remedies available at law or in equity, including without limitation specific performance and/or a claim for damages, with respect to said breach.

10. Warranties. Seller hereby warrants and represents to the Buyer as follows:

(a) Seller has full power and authority to execute this Agreement and all closing documents, and upon execution by Seller and delivery to the Buyer, and Buyer's acceptance hereof, this Agreement shall be a valid and binding obligation of the Seller.

(b) Neither the execution, delivery or performance by Seller of this Agreement or any documents to be executed and delivered in connection herewith, nor the consummation of the exchanges, purchases, sales and transfers hereunder, results or will result in any violation of or conflict with (i) any agreement with or legal duty of the Seller to any third party, or (ii) any federal, state or local law, rule or regulation.

(c) There is no litigation, arbitration, condemnation proceeding or other legal or administrative suit, action or proceeding of any kind pending or threatened against or involving the Seller or the Property to be transferred by the Seller pursuant to this Agreement.

(d) There are no recorded or unrecorded leases or occupancy agreements with respect to the Property to be transferred by the Seller under this Agreement.

(e) The representations and warranties of the Seller set forth in this Section 10 shall survive the Closing Date.

11. Seller's Post-Closing Covenant. After the Closing Date, Seller hereby agrees to do the following things, as binding and enforceable covenants of Seller, which will survive the Closing Date:

Not later than thirty-six (36) months after the Closing Date, Seller will, at no cost to Buyer, (i) construct an underground waterline for fire protection and a hydrant in the approximate location on TMK (2) 2-4-002:007, within three hundred fifty (350) feet of the Property, as shown on the map attached hereto as **Exhibit "E"** conforming to specifications set

forth on the plan attached hereto as **Exhibit "F"**, and (ii) construct electrical service with a stub-out on the Existing Cemetery Land in the location shown, and to the specifications stated, on **Exhibit "G"** attached hereto. Fifty Thousand Dollars ($50,000.00) of the purchase price shall be retained in escrow to ensure Seller's compliance (hereinafter "retained funds"). The retained funds shall be released from escrow to Seller upon escrow's receipt of written confirmation signed by the Maui County Director of Public Works that said waterline, hydrant and electrical service and stub-out are completed.

If Seller fails to fully comply with his obligations under this Section 11 within thirty-six months of the Closing Date, the retained funds shall be released from escrow to Buyer. The Buyer shall also have all remedies available at law and in equity for breach of contract.

Seller's thirty-six (36) month deadline may be extended by mutual written agreement between Seller and Buyer if, at the end of the thirty-six (36) months, Seller's completion has been delayed by circumstances beyond Seller's control, such as a force majeure event or delays by the County of Maui in approving construction plans or inspecting and approving the completed work, notwithstanding Seller's good faith and diligent efforts to satisfy said deadline, provided that such extension(s) shall not exceed twenty-four (24) months in the aggregate.

This covenant set forth in this Section 11 shall survive the Closing Date.

12. Closing Obligations. On or before the Closing Date, each party shall deposit into escrow:

(a) Sufficient funds to cover all financial obligations of said party with respect to the transaction and its closing as set forth in this Agreement.

(b) All documents, instruments and agreements called for hereunder or which are necessary in order to cause the conveyance of the Property to the Buyer in accordance with the terms and conditions of this Agreement.

(c) A certificate that Seller is a resident person within the meaning of Section 235-68 of the Hawaii Revised Statutes and Section 1445 of the Internal Revenue Code of 1986.

13. Escrow Instructions. These escrow instructions are irrevocable and may be amended by mutual agreement of Buyer and Seller.

Once deposited into escrow, the Buyer's funds shall not be released to the Seller, as Grantor, until the Buyer, as Grantee, executes the deed for the Property and duly records the same at the Bureau of Conveyances of the State of Hawaii. If closing is not accomplished by the Closing Date, the Buyer's funds shall be returned to the Buyer.

Provided that the parties have performed their obligations hereunder with respect to the transaction including, without limitation, timely deliveries specified above, escrow shall take the following actions in the following order on the Closing Date:

(a) Cause the recordation of the deed and other recordable closing document with respect to said transfer.

(b) Deliver the purchase price to the Seller (plus or minus Seller's share of prorations and closing costs and the amount to be retained in escrow under Section 11), and the reimbursements to Seller under Section 1 above.

(c) Deliver to Buyer a conformed copy of the recorded deed.

(d) Pay all closing costs and prorations for which either party is responsible from the funds deposited by said party.

(e) As soon as possible after the Closing Date cause the owner's title policy to be issued to the Buyer.

(f) Escrow shall be responsible for timely complying, on behalf of each party, with all transaction reporting requirements, including, without limitation, filing or submitting as appropriate an Internal Revenue Service Form 1099 for each transaction contemplated herein. Escrow shall prepare certificates in compliance with the requirements of the Foreign Investment in Real Property Tax Act and documents required by HRS Section 235-68 in order to permit the close of escrow to occur without Buyer being required to withhold any portion of the consideration to be transferred to the Seller with respect to said transfer.

14. Notices. Any notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been given when received if given personally or by overnight courier service with confirmation of delivery, or by United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

To Buyer:	State of Hawaii Board of Land and Natural Resources 1151 Punchbowl Street, Room 220 Honolulu, Hawaii 96813 Attention: Russell Tsuji
To Seller:	Jordan J. Santos Carlene A. Santos Haiku, Hawaii 96708
With a Copy to:	Thomas D. Welch, Jr., Esq. Mancini, Welch & Geiger, LLP 305 E. Wakea Avenue, Suite 200 Kahului, Hawaii 96732

Each of the foregoing shall be entitled to specify a different address by giving notice of the aforesaid to the other.

15. Entire Agreement. This Agreement and the Exhibits hereto constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties in connection with the subject matter hereof. No supplements, amendments, or modifications of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver or termination of this Agreement shall be binding unless executed in writing by the party who, pursuant to the terms of this Agreement, has the right to waive any rights, conditions, or obligations hereunder, or has the right to terminate this Agreement. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision herein (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

16. Binding on Successors. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their assigns, heirs, administrators, executors or successors.

17. Interpretation. The parties hereto acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. In the event of an ambiguity in or dispute regarding the interpretation of same, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the draftsman. The use of any term of gender or the neuter thereof shall be interpreted as applicable to the party to whom or to which it refers. This Agreement is intended to benefit only the parties hereto and no other person or entity, other than Buyer and Seller, has or shall acquire any rights hereunder.

18. Exhibits. The documents referred to hereinabove and Exhibits attached hereto are incorporated herein by reference as if set forth in full.

19. Execution of Documents. Each party agrees to execute and deliver such other documents and instruments and to take such further actions as may be reasonably necessary to fully carry out the intent and purposes of this Agreement.

20. Headings. The headings contained in this Agreement have been inserted for convenience only and in no way define or limit the scope or interpretation of this Agreement.

21. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement.

22. Facsimile Signatures. Facsimile signatures to this Agreement shall be deemed and given full force and effect as an original executed copy.

23. Governing Law. This Agreement has been entered into and executed in the State of Hawaii and shall be interpreted in accordance with the laws of said State. The parties hereto agree that all disputes or controversies arising out of this Agreement, and any claim for relief or other legal proceeding filed to interpret or enforce the respective rights of the parties hereunder, shall be filed in the Second Circuit Court of the State of Hawaii. The parties to this Agreement, and each of them, hereby consent and submit to the in personam jurisdiction of the State courts of Hawaii for purposes of litigating any action arising from this Agreement.

24. Time is of the Essence. Time is of the essence with respect to each and every provision herein in which time is a factor.

25. Reasonable Approvals. Any approval or consent required hereunder shall not be unreasonably withheld, conditioned, or delayed unless specifically provided to the contrary herein.

26. Severability. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining provisions of this Agreement shall not be affected thereby.

IN WITNESS WHEREOF, the parties have caused this Agreement to be entered into as of the date first written above.

Approved by the Board of Land
and Natural Resources at its meeting
held on _____.

_____
JORDAN J. SANTOS

_____
CARLENE A. SANTOS

"Seller"

STATE OF HAWAII

By _____
William J. Aila, Jr.
Chairperson
Board of Land and Natural Resources

"Buyer"

APPROVED AS TO LEGALITY AND FORM:

_____
Julie H. China
Deputy Attorney General
Dated: _____

EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 7512, Land Commission Award Number 11,216, Apana 27 to M. Kekauonohi and Royal Patent Grant Number 64 to William A. McLane) situate, lying and being at Hamakuapoko, District of Makawao, Island and County of Maui, State of Hawaii, being LOT 4-A, portion of Lot 4 of the "Paul Turner Subdivision" Subdivision File No. 2.3234, and thus bounded and described:

Beginning at a 1/2 inch pipe (found) at the northeasterly corner of this parcel of land, being also the southeasterly corner of Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) and the northerly corner of Lot 14 and the westerly corner of Lot 15 of the Haleakala Homesteads, the coordinates of said point of beginning are based on field located coordinates and referred to Government Survey Triangulation Station "PIIHOLO", being 4,492.29 feet north and 5,993.71 feet west and running by azimuths measured clockwise from true South; thence,

1.	344°	09'	00"	209.00	feet along the Northwesterly side of Lot 14 of the "Haleakala Ranch Homesteads" to a 1/2 inch pipe (found); thence,
2.	16°	25'	00"	214.99	feet along the same, to a 1/2 inch pipe (found); thence,
3.	39°	29'	00"	117.93	feet along the same, to a 1/2 inch pipe (found); thence,
4.	87°	00'	35"	706.18	feet along the Northerly side of Lot 5 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) to a 1/2 inch pipe (found); thence,
5.	351°	31'	00"	400.00	feet along the Westerly side of Lot 5 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) to a 1/2 inch pipe (found); thence,

6.	81°	31'	00"	28.75	feet along the Northerly side of Lot 4-B of the "Paul Turner Subdivision" (Subdivision File No. 2.3234), to a 1/2 inch pipe (found); thence,
7.	171°	31'	00"	400.00	feet along the Easterly side of Lot 4-B of the "Paul Turner Subdivision" (Subdivision File No. 2.3234) to a 1/2 inch pipe (found); thence,
8.	81°	31'	00"	466.49	feet along the Northerly side of Lot 4-B of the "Paul Turner Subdivision" (Subdivision File No. 2.3234) to a 1/2 inch pipe (found); thence,
9.	171°	31'	00"	178.32	feet along the Easterly side of Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) to a 1/2 inch pipe (found); thence,
10.	251°	37'	30"	1,369.86	feet along the Southerly side of Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) to the point of beginning and containing an area of 10.000 acres, more or less.

Together with a 20-foot easement and right of way for ingress and egress through, over and across Lot 1, as reserved in Deed dated December 9, 1949, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 2283 on Page 281.

Together with a 20-foot wide non-exclusive easement and right of way for the construction, maintenance, and use of an underground waterline for fire protection and a hydrant over and across Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186), Tax Map Key No. (2) 2-4-002: por. 07. This easement shall expire upon successful dedication of the waterline to the County of Maui.

Being the premises acquired by the Seller herein by Warranty Deed of Paul Turner, a married man, dated January 31, 2014, recorded in the said Bureau of Conveyances as Document No. A-51490275.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature in favor of the State of Hawaii.

2. The terms and provisions contained in Deed dated December 9, 1949, recorded in the said Bureau of Conveyances in Liber 2283 on Page 281.

3. Any claim or boundary dispute which may exist or arise by reason of the failure of the Deed dated December 9, 1949, recorded in the said Bureau of Conveyances in Liber 2283 on Page 281 referred to herein to locate with certainty the boundaries of the 20-foot easement and right of way for ingress and egress through, over and across Lot 1 described in said instrument.

4. The terms and provisions contained in Unilateral Agreement and Declaration for Construction of a Farm Dwelling on Lands Zoned County Agricultural District or Designated State Agricultural District dated March 26, 2010, recorded in the said Bureau of Conveyances as Document No. 2010-051126, by Paul Henry Turner.

5. The terms and provisions contained in Agreement for Allocation of Future Subdivision Potential dated September 23, 2013, recorded in the said Bureau of Conveyances as Document No. A-50290027, by and between Paul Turner, Makawao Cemetery Association, State of Hawaii (County of Maui), "Subdivider", and the County of Maui, "County".

6. Any and all existing roadways, trails, easements, rights of way, flumes, irrigation ditches, drainage reserves and flooding limits.

7. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or

gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

END OF EXHIBIT "A"

Tax Key: (2) 2-4-002: Portion of 09

EXHIBIT "B"

[Map Showing Location and Configuration of Lot 4-A]

EXHIBIT "C"

[Title Report]

EXHIBIT "D"

[Form of Warranty Deed]

LAND COURT SYSTEM REGULAR SYSTEM

RETURN BY MAIL ( ) PICKUP ( ) TO:

TAX KEY: (2) 2-4-002: Portion of 09 Total No. of Pages: _____

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective as of the _____ day of _____, 2014, JORDAN J. SANTOS and CARLENE A. SANTOS, husband and wife, whose address is Haiku, Maui, Hawaii 96708, hereinafter referred to as the "Grantor," in consideration of the sum of SEVEN HUNDRED SIXTY FIVE THOUSAND AND NO/100 DOLLARS ($765,000.00), being paid to the Grantor by the STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Grantee," does hereby grant and convey unto the Grantee, the Grantee's successors and assigns, that certain parcel of land situate at Makawao, Hamakuapoko, Maui, Hawaii, bearing Tax Map Key designation (2) 2-4-002:Portion of 09, and containing an area of 10.000 acres, more or less, as more particularly described in Exhibit "A" and delineated on Exhibit

"B," both attached hereto and made parts hereof (hereinafter, the "Property").

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in anyways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances, except as noted herein and referred to in Exhibit "A" attached hereto and made a part hereof.

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described Property that it has a good and lawful right to convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, except as noted herein and referred to in Exhibit "A" attached hereto, and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever, except as aforesaid.

AND, the Grantor grants and conveys unto the Grantee a 20-foot wide non-exclusive easement and right of way from Baldwin Avenue to the Property for the construction, maintenance, and use of an underground waterline for fire protection and a hydrant, over and across Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186), Tax Map Key No. (2) 2-4-002: por. 07. This easement shall expire upon successful dedication of the waterline to the County of Maui.

AND, the Grantor warrants that if any lender or governmental agency shall ever require testing to ascertain whether there has been any release of hazardous materials by Grantor on or adjacent to the Property, as determined by Grantee in its sole discretion, then the Grantor shall be responsible for the reasonable costs thereof. In addition, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of any hazardous material on said property placed or released by Grantor.

The Grantor agrees to indemnify, defend, and hold Grantee harmless, from any damages and claims resulting from the release of hazardous materials on or about the Property occurring while the Grantor was in possession of the Property, if caused by the Grantor or persons acting through or under the Grantor.

For the purpose of this deed "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

The Grantor shall be responsible for payment of all real property taxes up to the date of execution of this Warranty Deed.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed this _____ day of _____, 2014, and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be executed this _____ day of _____, 2014, both effective as of the day, month, and year first above written.

GRANTOR:

_____
JORDAN J. SANTOS

_____
CARLENE A. SANTOS

Approved by the Board of Land and Natural Resources at its meeting held on _____, 2014.

STATE OF HAWAII

By_____
Chairperson
Board of Land and Natural Resources

APPROVED AS TO LEGALITY
AND FORM:

_____
Julie H. China
Deputy Attorney General

Dated: _____

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20___, before me personally appeared JORDAN J. SANTOS and CARLENE A. SANTOS, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Print Name: _____
Notary Public, State of Hawaii.

My commission expires: _____

Date of Document: _____ # Pages: _____
or ☐ Undated at time of notarization

Name: _____ Second Circuit

Doc. Description:

_____
Notary Signature Date

NOTARY CERTIFICATION

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

On this _____ day of _____, 20___, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Print Name: _____
Notary Public, State of Hawaii.

My commission expires: _____

Date of Document: _____ # Pages: _____
or ☐ Undated at time of notarization

Name: _____ First Circuit

Doc. Description:

_____
Notary Signature Date

NOTARY CERTIFICATION

EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 7512, Land Commission Award Number 11,216, Apana 27 to M. Kekauonohi and Royal Patent Grant Number 64 to William A. McLane) situate, lying and being at Hamakuapoko, District of Makawao, Island and County of Maui, State of Hawaii, being LOT 4-A, portion of Lot 4 of the "Paul Turner Subdivision" Subdivision File No. 2.3234, and thus bounded and described:

Beginning at a 1/2 inch pipe (found) at the northeasterly corner of this parcel of land, being also the southeasterly corner of Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) and the northerly corner of Lot 14 and the westerly corner of Lot 15 of the Haleakala Homesteads, the coordinates of said point of beginning are based on field located coordinates and referred to Government Survey Triangulation Station "PIIHOLO", being 4,492.29 feet north and 5,993.71 feet west and running by azimuths measured clockwise from true South; thence,

1.	344°	09'	00"	209.00	feet along the Northwesterly side of Lot 14 of the "Haleakala Ranch Homesteads" to a 1/2 inch pipe (found); thence,
2.	16°	25'	00"	214.99	feet along the same, to a 1/2 inch pipe (found); thence,
3.	39°	29'	00"	117.93	feet along the same, to a 1/2 inch pipe (found); thence,
4.	87°	00'	35"	706.18	feet along the Northerly side of Lot 5 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) to a 1/2 inch pipe (found); thence,
5.	351°	31'	00"	400.00	feet along the Westerly side of Lot 5 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) to a 1/2 inch pipe (found); thence,

6.	81°	31'	00"	28.75	feet along the Northerly side of Lot 4-B of the "Paul Turner Subdivision" (Subdivision File No. 2.3234), to a 1/2 inch pipe (found); thence,
7.	171°	31'	00"	400.00	feet along the Easterly side of Lot 4-B of the "Paul Turner Subdivision" (Subdivision File No. 2.3234) to a 1/2 inch pipe (found); thence,
8.	81°	31'	00"	466.49	feet along the Northerly side of Lot 4-B of the "Paul Turner Subdivision" (Subdivision File No. 2.3234) to a 1/2 inch pipe (found); thence,
9.	171°	31'	00"	178.32	feet along the Easterly side of Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) to a 1/2 inch pipe (found); thence,
10.	251°	37'	30"	1,369.86	feet along the Southerly side of Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) to the point of beginning and containing an area of 10.000 acres, more or less.

Together with a 20-foot easement and right of way for ingress and egress through, over and across Lot 1, as reserved in Deed dated December 9, 1949, recorded in the Bureau of Conveyances of the State of Hawaii as Liber 2283 Page 281.

Together with a 20-foot wide non-exclusive easement and right of way for the construction, maintenance, and use of an underground waterline for fire protection and a hydrant over and across Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186), Tax Map Key No. (2) 2-4-002: por. 07. This easement shall expire upon successful dedication of the waterline to the County of Maui.

Being the premises acquired by the Grantor herein by

Warranty Deed of Paul Turner, a married man, dated January 31, 2014, recorded in the said Bureau of Conveyances as Document No. A-51490275.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature in favor of the State of Hawaii.

2. The terms and provisions contained in Deed dated December 9, 1949, recorded in the said Bureau of Conveyances in Liber 2283 on Page 281.

3. Any claim or boundary dispute which may exist or arise by reason of the failure of the Deed dated December 9, 1949, recorded in the said Bureau of Conveyances in Liber 2283 on Page 281 referred to herein to locate with certainty the boundaries of the 20-foot easement and right of way for ingress and egress through, over and across Lot 1 described in said instrument.

4. The terms and provisions contained in Unilateral Agreement and Declaration for Construction of a Farm Dwelling on Lands Zoned County Agricultural District or Designated State Agricultural District dated March 26, 2010, recorded in the said Bureau of Conveyances as Document No. 2010-051126, by Paul Henry Turner.

5. The terms and provisions contained in Agreement for Allocation of Future Subdivision Potential dated September 23, 2013, recorded in the said Bureau of Conveyances as Document No. A-50290027, by and between Paul Turner, Makawao Cemetery Association, State of Hawaii (County of Maui), "Subdivider", and the County of Maui, "County".

6. Any and all existing roadways, trails, easements, rights of way, flumes, irrigation ditches, drainage reserves and flooding limits.

7. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

END OF EXHIBIT "A"

Tax Key: (2) 2-4-002: Portion of 09

EXHIBIT "B"

EXHIBIT "E"

[Map Showing Locations of Underground Waterline and Hydrant]

EXHIBIT "F"

[Specifications of Underground Waterline and Hydrant]

EXHIBIT "G"

[Location and Specifications of Electrical Service Stub-Out]

STATE'S
WARRANTY DEED

EXHIBIT "D-1"

LAND COURT SYSTEM REGULAR SYSTEM

RETURN BY MAIL ( ) PICKUP ( ) TO:

TAX KEY: (2) 2-4-002: Portion of 09 Total No. of Pages: _____

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective as of the _____ day of _____, 2014, JORDAN J. SANTOS and CARLENE A. SANTOS, husband and wife, whose address is Haiku, Maui, Hawaii 96708, hereinafter referred to as the "Grantor," in consideration of the sum of SEVEN HUNDRED SIXTY FIVE THOUSAND AND NO/100 DOLLARS ($765,000.00), being paid to the Grantor by the STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Grantee," does hereby grant and convey unto the Grantee, the Grantee's successors and assigns, that certain parcel of land situate at Makawao, Hamakuapoko, Maui, Hawaii, bearing Tax Map Key designation (2) 2-4-002:Portion of 09, and containing an area of 10.000 acres, more or less, as more particularly described in Exhibit "A" and delineated on Exhibit

"B," both attached hereto and made parts hereof (hereinafter, the "Property").

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in anyways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances, except as noted herein and referred to in Exhibit "A" attached hereto and made a part hereof.

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described Property that it has a good and lawful right to convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, except as noted herein and referred to in Exhibit "A" attached hereto, and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever, except as aforesaid.

AND, the Grantor grants and conveys unto the Grantee a 20-foot wide non-exclusive easement and right of way from Baldwin Avenue to the Property for the construction, maintenance, and use of an underground waterline for fire protection and a hydrant, over and across Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186), Tax Map Key No. (2) 2-4-002: por. 07. This easement shall expire upon successful dedication of the waterline to the County of Maui.

AND, the Grantor warrants that if any lender or governmental agency shall ever require testing to ascertain whether there has been any release of hazardous materials by Grantor on or adjacent to the Property, as determined by Grantee in its sole discretion, then the Grantor shall be responsible for the reasonable costs thereof. In addition, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of any hazardous material on said property placed or released by Grantor.

The Grantor agrees to indemnify, defend, and hold Grantee harmless, from any damages and claims resulting from the release of hazardous materials on or about the Property occurring while the Grantor was in possession of the Property, if caused by the Grantor or persons acting through or under the Grantor.

For the purpose of this deed "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

The Grantor shall be responsible for payment of all real property taxes up to the date of execution of this Warranty Deed.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed this _____ day of _____, 2014, and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be executed this _____ day of _____, 2014, both effective as of the day, month, and year first above written.

GRANTOR:

_____
JORDAN J. SANTOS

_____
CARLENE A. SANTOS

Approved by the Board of Land and Natural Resources at its meeting held on _____, 2014.

STATE OF HAWAII

By_____
Chairperson
Board of Land and Natural Resources

APPROVED AS TO LEGALITY
AND FORM:

_____
Julie H. China
Deputy Attorney General

Dated: _____

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20___, before me personally appeared JORDAN J. SANTOS and CARLENE A. SANTOS, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Print Name: _____
Notary Public, State of Hawaii.

My commission expires: _____

Date of Document: _____ # Pages: _____
or ☐ Undated at time of notarization

Name: _____ Second Circuit

Doc. Description:

_____
Notary Signature Date

NOTARY CERTIFICATION

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

On this _____ day of _____, 20___, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Print Name: _____
Notary Public, State of Hawaii.

My commission expires: _____

Date of Document: _____ # Pages: _____
or ☐ Undated at time of notarization

Name: _____ First Circuit

Doc. Description:

_____
Notary Signature Date

NOTARY CERTIFICATION

EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 7512, Land Commission Award Number 11,216, Apana 27 to M. Kekauonohi and Royal Patent Grant Number 64 to William A. McLane) situate, lying and being at Hamakuapoko, District of Makawao, Island and County of Maui, State of Hawaii, being LOT 4-A, portion of Lot 4 of the "Paul Turner Subdivision" Subdivision File No. 2.3234, and thus bounded and described:

Beginning at a 1/2 inch pipe (found) at the northeasterly corner of this parcel of land, being also the southeasterly corner of Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) and the northerly corner of Lot 14 and the westerly corner of Lot 15 of the Haleakala Homesteads, the coordinates of said point of beginning are based on field located coordinates and referred to Government Survey Triangulation Station "PIIHOLO", being 4,492.29 feet north and 5,993.71 feet west and running by azimuths measured clockwise from true South; thence,

1.	344°	09'	00"	209.00	feet along the Northwesterly side of Lot 14 of the "Haleakala Ranch Homesteads" to a 1/2 inch pipe (found); thence,
2.	16°	25'	00"	214.99	feet along the same, to a 1/2 inch pipe (found); thence,
3.	39°	29'	00"	117.93	feet along the same, to a 1/2 inch pipe (found); thence,
4.	87°	00'	35"	706.18	feet along the Northerly side of Lot 5 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) to a 1/2 inch pipe (found); thence,
5.	351°	31'	00"	400.00	feet along the Westerly side of Lot 5 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) to a 1/2 inch pipe (found); thence,

6.	81°	31'	00"	28.75	feet along the Northerly side of Lot 4-B of the "Paul Turner Subdivision" (Subdivision File No. 2.3234), to a 1/2 inch pipe (found); thence,
7.	171°	31'	00"	400.00	feet along the Easterly side of Lot 4-B of the "Paul Turner Subdivision" (Subdivision File No. 2.3234) to a 1/2 inch pipe (found); thence,
8.	81°	31'	00"	466.49	feet along the Northerly side of Lot 4-B of the "Paul Turner Subdivision" (Subdivision File No. 2.3234) to a 1/2 inch pipe (found); thence,
9.	171°	31'	00"	178.32	feet along the Easterly side of Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) to a 1/2 inch pipe (found); thence,
10.	251°	37'	30"	1,369.86	feet along the Southerly side of Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) to the point of beginning and containing an area of 10.000 acres, more or less.

Together with a 20-foot easement and right of way for ingress and egress through, over and across Lot 1, as reserved in Deed dated December 9, 1949, recorded in the Bureau of Conveyances of the State of Hawaii as Liber 2283 Page 281.

Together with a 20-foot wide non-exclusive easement and right of way for the construction, maintenance, and use of an underground waterline for fire protection and a hydrant over and across Lot 2 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186), Tax Map Key No. (2) 2-4-002: por. 07. This easement shall expire upon successful dedication of the waterline to the County of Maui.

Being the premises acquired by the Grantor herein by

Warranty Deed of Paul Turner, a married man, dated January 31, 2014, recorded in the said Bureau of Conveyances as Document No. A-51490275.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature in favor of the State of Hawaii.

2. The terms and provisions contained in Deed dated December 9, 1949, recorded in the said Bureau of Conveyances in Liber 2283 on Page 281.

3. Any claim or boundary dispute which may exist or arise by reason of the failure of the Deed dated December 9, 1949, recorded in the said Bureau of Conveyances in Liber 2283 on Page 281 referred to herein to locate with certainty the boundaries of the 20-foot easement and right of way for ingress and egress through, over and across Lot 1 described in said instrument.

4. The terms and provisions contained in Unilateral Agreement and Declaration for Construction of a Farm Dwelling on Lands Zoned County Agricultural District or Designated State Agricultural District dated March 26, 2010, recorded in the said Bureau of Conveyances as Document No. 2010-051126, by Paul Henry Turner.

5. The terms and provisions contained in Agreement for Allocation of Future Subdivision Potential dated September 23, 2013, recorded in the said Bureau of Conveyances as Document No. A-50290027, by and between Paul Turner, Makawao Cemetery Association, State of Hawaii (County of Maui), "Subdivider", and the County of Maui, "County".

6. Any and all existing roadways, trails, easements, rights of way, flumes, irrigation ditches, drainage reserves and flooding limits.

7. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

END OF EXHIBIT "A"

Tax Key: (2) 2-4-002: Portion of 09

EXHIBIT "B"