

AUCTION PURCHASE CONTRACT TO BUY AND SELL REAL ESTATE

RECOMMENDATION OF LEGAL AND TAX COUNSEL

THIS PURCHASE CONTRACT BECOMES A LEGALLY BINDING CONTRACT FOR THE PURCHASE OF REAL ESTATE UPON EXECUTION BY THE PARTIES. READ IT CAREFULLY. HANDWRITTEN PROVISIONS IN THIS PURCHASE CONTRACT SHALL SUPERSEDE ANY PRINT PROVISIONS IF THERE IS A CONFLICT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

THIS CONTRACT TO PURCHASE REAL ESTATE AT PUBLIC AUCTION, made and entered into as of this ____ day of _____, 20____, by and between:

SELLER:

With an address of:

and **BUYER:**

With an address of:

HIGH BIDDER

Buyer acknowledges they are High Bidder on the Property (as hereinafter defined) on this auction date, and Seller acknowledges they are the owner seller of the same on the same date. Seller and Buyer are subject to the following terms, covenants and conditions of this Auction Purchase Contract:

PROPERTY

Seller agrees to sell and Buyer agrees to purchase the real estate legally described as:

TAX KEY:

And with a physical property address of:

CLOSING

The closing shall take place on or before _____.

INCLUSIONS AND EXCLUSIONS

There are no inclusions or exclusions of personal property. This sale is for the sale of REAL PROPERTY.

AS IS, WHERE IS, WITH ALL FAULTS

Buyer hereby acknowledges, understands and accepts that the Property is being sold and transferred as is, where is and with all faults at closing.

NO BUYER CONTINGENCIES

This purchase contract is not contingent upon the Buyer obtaining financing or any other buyer contingencies.

TOTAL PURCHASE PRICE.

WINNING BID PRICE: \$ _____
BUYER'S PREMIUM: \$ _____
TOTAL PURCHASE PRICE: \$ _____

BUYER DEPOSITS

Buyer hereby tenders a non-refundable Buyer Deposit of \$50,000.00, payable to TITLE GUARANTY HAWAII to be held in escrow upon acceptance for delivery to Seller at the time of closing or as otherwise provided herein. The balance of the Total Purchase Price shall be paid by Buyer to TITLE GUARANTY HAWAII in Good Funds no later than FOUR (4) days before closing. All Buyer Deposits will be held without accruing interest for Buyer or for Seller.

APPOINTMENT AND LIABILITY OF TITLE GUARANTY HAWAII

Seller and Buyer acknowledge and appoint Title Guaranty Hawaii as the Escrow Agent. The parties acknowledge that Title Guaranty Hawaii hereunder acts at the request and convenience of the parties. When acting in such capacity Title Guaranty Hawaii shall not be deemed to be the agent of either of the parties hereto and Title Guaranty Hawaii shall not be liable to either of the parties for any acts or omissions of Title Guaranty Hawaii on its part unless taken or suffered in bad faith, in willful disregard of this Contract, or involving gross negligence. Seller and Buyer shall, jointly and severally, indemnify, defend and hold harmless Title Guaranty Hawaii from and against all costs, claims, and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Title Guaranty Hawaii duties hereunder, except with respect to acts or omissions taken or suffered by Title Guaranty Hawaii in bad faith, in willful disregard of this Contract, or involving gross negligence on the part of Title Guaranty Hawaii. In no event shall Title Guaranty Hawaii be liable for unearned interest with respect to the Buyers Deposits.

RELEASE OF BUYER'S PREMIUM

Buyer and Seller authorize TITLE GUARANTY HAWAII to release the portion of Buyer's Premium due to Malama Auctions & Realty for payment of marketing and auction services once the buyer deposits are determined good funds.

TITLE

Seller has provided prior to the bidding at the auction a preliminary certificate of title for Buyer to review, which covers the entire Property to be auctioned this date. Buyer will be purchasing the Property free and clear of liens and encumbrances except as reflected in said preliminary certificate of title posted at the auction.

TITLE INSURANCE

Seller agrees to convey the Property with warranties vesting marketable title in Buyer, free and clear of all liens and encumbrances EXCEPT:

easements, covenants, conditions, reservations, and restrictions now of record, including but not limited to, those documents relating to a condominium, cooperative, PUD, subdivision, homeowner's/community association, or cluster development. Buyer will purchase the Owner's Title Insurance Policy. Buyer to pay 50% and Seller to pay 50% of standard owner's title insurance policy

CLOSING COSTS, DOCUMENTS, ESCROW SERVICES

Buyer and Seller shall pay their respective closing costs and all other items required to be paid at closing including Hawaii General Excise Tax where applicable. Buyer and Seller will sign and complete all customary or reasonably required documents before closing. The escrow service fee will be shared equally by Seller and Buyer.

PRORATIONS / CLOSING ADJUSTMENTS

Based on a thirty (30) day proration, Escrow shall prorate the following, if applicable, as of the date of closing: real property tax, lease rents, interest on assumed obligations, mortgage and other insurance premiums, tenant rents, maintenance, private sewer, marina, and/or association fees.

FINAL SETTLEMENT

Unless otherwise agreed in writing by Seller and Buyer, all proration figures shall be final.

NOTICE OF CONVEYANCE TAX

Pursuant to Conveyance Tax Law, Chapter 247, Hawaii Revised Statutes, a higher conveyance tax must be paid if Buyer is ineligible to file a county real property tax homeowner's exemption on the Property. Buyer declares that Buyer is purchasing the Property:

_____ as Buyer's principal residence

or

_____ as other than Buyer's principal residence.

ASSESSMENTS

An assessment is defined as any obligation (not including prorations and closing adjustments above) levied against the Property by a homeowner's association, governmental body, or any other entity with a legal right to assess. Assessments, if any, shall be charged as follows: Any lump sum assessments levied against the Property prior to the date of this Purchase Contract shall be paid by Seller, unless the assessments are to be paid in installments, in which case they shall be prorated by Escrow as of the closing date. If any assessments are authorized against the Property for the benefit of the real property from Purchase Contract date until closing, they shall be the responsibility of the Buyer.

CONSENTS

Buyer and Seller may be required to obtain consents of lessors, homeowner or condominium associations, co-op boards, existing lenders, vendors, or other entities. Buyer or Seller shall cooperate and take all reasonable action to obtain such consents. If Buyer or Seller fail to do so, they shall be in default of this contract.

POSSESSION

The possession of the property shall be delivered to Buyer at closing.

TRANSFER OF PERSONAL PROPERTY, IF ANY

The personal property to be conveyed at closing, if any, shall be conveyed, without warranty, by Seller, free and clear of all personal property taxes and assessments (except personal property taxes and assessments for the year of closing), liens and encumbrances. Conveyance shall be by bill of sale or other applicable legal instrument, without warranty.

SELLER'S OBLIGATION TO DISCLOSE

Pursuant to Hawaii Revised Statutes Chapter 508D (for the sale of residential real property), Seller is obligated to fully and accurately disclose in writing to Buyer any fact, defect, or condition, past or present, that would be expected to measurably affect the value of the Property to a reasonable person (a "material fact").

WRITTEN PROPERTY DISCLOSURE

Seller *is* providing a property disclosure.

INSPECTION

Buyer acknowledges that Buyer was responsible for making their own thorough inspection of the Property and Inclusions at its own expense, as well as thoroughly researching any information available about the Property and its surroundings, prior to the date of this Purchase Contract. Prior to signing this Contract, Buyer acknowledges that Buyer or any designee was afforded the right to have an inspection(s) of the physical condition of the Property and Inclusions, at Buyer's expense and Buyers Bid Price was made with respect to their personal satisfaction of the property with or without consideration of any representation as to market value. This Contract is NOT contingent upon any further inspections by Buyer and Buyer is purchasing the property. An independent property inspection has been made available to the buyer.

AS IS, WHERE IS, WITH ALL FAULTS

THERE IS NO WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO ANY ASPECT, FIXTURE OR CONDITION OF THE PROPERTY AND THE INCLUSIONS INCLUDING, WITHOUT LIMITATION, THE EXISTENCE OF HAZARDOUS WASTE OR MATERIALS THEREON, OR THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE, TO BUYER BEYOND THOSE EXPRESSLY PROVIDED IN THIS CONTRACT.

Buyer acknowledges that Seller has made no representations of any material fact concerning the Property beyond those expressly provided in this Contract, that Buyer has had an adequate opportunity to inspect and investigate the Property; and, that Buyer has made a thorough independent examination and inspection of the Property, and is relying solely upon their own examination and inspection thereof. Buyer further acknowledges that Seller has made no representations or warranties with respect to any survey and whether the boundary lines of the Property are accurate, nor any representation as to the size of the parcel or the number of square feet or frontage of the Property. Buyer has had an adequate opportunity to examine and inspect the boundaries of the Property and will make their own determination as to acreage, square footage, and/or frontage, and whether the location of improvements and boundaries are accurate and is purchasing the Property in reliance upon their own determination thereof and regardless of whether or not said location of improvements and boundaries are accurate. Seller makes no warranty or representation with respect to the legal description as may be used herein. Buyer acknowledges further that Seller is not responsible or liable to obtain or provide a survey of the Property to Buyer. Accordingly, buyer is purchasing The Property "AS IS, WHERE IS AND WITH ALL FAULTS." Buyer understands that Seller makes no warranty or representation of any kind, either express or implied or arising by operation of law, as to the condition, quality, serviceability or merchantability of fitness for a particular purpose of the Property or any portion thereof, and in no event shall Seller be liable for consequential damages. Buyer acknowledges that Seller has not agreed to perform any work on or about the Property as a condition of Buyer's purchase of the same. Buyer understands that by entering into this Purchase Contract and agreeing to accept the Property and pertinent structures in an "as is, where is and with all faults" condition, that Buyer is buying the Property subject to any and all recorded easements, leases, covenants and restrictions of record.

OCEANFRONT SOTHEBY'S INTERNATIONAL REALTY ESTATE DISCLOSURE

This agreement is solely between Buyer and Seller. The auctioneer(s)/broker(s)/ sales agent(s) shall not be liable for any existing or arising defects or deficiencies in the Property, improvements or other appurtenant structure thereon, nor for any information provided to the Buyer from sources deemed reliable. The Buyer acknowledges that it has conducted its own independent investigations, inspections, inquiries and due diligence concerning the property.

PURCHASE CONTRACT REVIEW

Buyer acknowledges that a copy of this Purchase Contract, exclusive of Buyer's Bid Price, was made available to Buyer or Buyer's representative for review. And that Buyer is satisfied with the terms and conditions of this Purchase Contract and that Buyer's Bid Price was made accordingly.

DISCLOSURES / LEAD-BASED PAINT

Buyer acknowledges they had access to review property reports, disclosures and other property information which may or may not have included a Seller's Lead-Based Paint Disclosure Form. Buyer agrees to waive the 10 day post inspection for lead-based paint. Buyer also agrees to waive their right to acknowledge receipt of any disclosures by way of their signature upon any such disclosure. Buyer waives their right to rescind the Contract to Purchase with respect to

lead-based paint and other disclosures.

TIME OF ESSENCE, DEFAULT AND REMEDIES

Time is of the essence upon each party to perform as this contract stipulates. If any payment due, including the Purchase Price, hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as provided for in this contract, there shall be the following remedies:

BUYER AGREES default by Buyer shall entitle Seller to court costs and reasonable attorneys' fees incurred in enforcing the provisions of this Purchase Contract. If Buyer fails to perform any obligation imposed by this Purchase Contract, Seller may serve written notice of default upon Buyer.

BUYER AGREES if such default is not corrected within ten (10) days thereafter, then, at the option of Seller, Seller may terminate said Purchase Contract and shall be entitled to retain Buyer Deposits paid hereunder as liquidated damages. The foregoing remedy in the event of a default is not intended to be the exclusive remedy of Seller, and Seller shall have the right to seek all other remedies available at law or equity, including but not limited to specific performance.

SELLER AGREES in the event of Seller's failure to perform its obligations imposed by this Purchase Contract then, Buyer shall serve upon Seller written notice to correct such default. Should Seller fail to correct such default within ten (10) days of receipt of such notice, Buyer's sole remedy hereunder shall be to declare this Contract terminated and receive a refund of all Buyers Deposits.

Title Guaranty Hawaii upon receiving an affidavit from Seller or Buyer stating that this Purchase Contract has been terminated according to the default provisions above and proof of proper notice by either party, upon default or otherwise, and requesting that Title Guaranty Hawaii pay over all Buyer Deposits, shall notify the other party in writing of said affidavit and shall, in the event that the other party does not object in writing within five (5) business days, deliver the Buyer Deposits as directed in the affidavit. In the event that the other party objects within the five (5) day period to the payment of the Buyer Deposits, Title Guaranty Hawaii shall retain the deposit until the parties have reached written agreement on the disposition of the Buyer Deposits or a court of law has ordered the disposition of the same. Title Guaranty Hawaii shall be entitled to file an interpleader action in the event of dispute regarding the disposition of the Buyer Deposits.

CONDITION OF IMPROVEMENTS AT CLOSING

The risk of destruction or substantial damage by fire or Act of God prior to delivery of deed is assumed by Seller. Seller agrees that on possession, the Real Estate shall be in the same condition as it is on the date of this contract, except for ordinary wear and tear. If the Real Estate should be damaged or destroyed by fire or other casualty and if, prior to Closing, the real Estate shall not be repaired or restored by and at the Sellers expense, to a condition as good

as it was prior to the damage or destruction, then Buyer, at their option, may terminate this contract by written notice to Seller and all Buyer Deposits shall be returned to Buyer. While this contract is pending, Sellers shall not change any existing lease or enter into any new lease, nor make any substantial alterations or repairs without the consent of the Buyer.

TITLE TO BE TAKEN

Buyer at closing shall take title as the stated Purchaser in this Purchase Contract unless written notice is given to Title Guaranty Hawaii to take title as another entity.

HEIRS, SUCCESSORS AND ASSIGNS

This Purchase Contract shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, successors and permitted assigns, provided, however, that Buyer may not assign its rights or obligations hereunder without the prior written consent of the Seller.

COMMISSIONS AND BUYERS PREMIUM FEE

Depending upon the structure of each individual contract, Oceanfront Sotheby's International Realty may receive commissions from the Seller and also receive a portion of the Buyer's Premium paid by the Buyer. SELLERS Listing Commission may be earned in whole or in part by Oceanfront Sotheby's International Realty and may be shared with another cooperating Real Estate Broker for assisting in the sales process with the Seller or Buyer. Oceanfront Sotheby's International Realty does not represent the agency capacity of any assisting Real Estate Broker in this sales process. Any such agency relationship shall be between the Seller or Buyer and their respective Real Estate Broker. In the event that any other Real Estate Broker(s) working with the Buyer is entitled to commission, fee or other compensation relating to the sale of the Property as a result of Buyer's dealings with such Real Estate Broker(s), the Purchase Price in this Purchase Contract shall remain the same and Buyer hereby agrees to indemnify and hold Oceanfront Sotheby's International Realty harmless from the payment of any such commission, fee or compensation which obligation of Buyer shall survive closing. However, if Buyer's Real Estate Broker properly registered their client, per the broker guidelines issued, a Commission shall be paid to the Cooperative Buyer Broker of the stipulated fee at the closing of the transaction per the Buyer Broker guidelines issued Oceanfront Sotheby's International Realty. The valid Buyer Broker registration must have been received when Purchaser registered to bid AND PART OF THEIR BIDDER REGISTRATION.

EXECUTION; AUTHORITY

The individual(s) signing this Contract on behalf of Buyer represent and warrant that either: (a) he or she is (are) the same person(s) named as Buyer on Page 1 of this Contract; OR (b) he or she has (they have) full authority to execute this Contract on behalf of the Buyer named on Page 1 of this Contract.

NOTICES

Any notices required or permitted to be sent pursuant to this Contract shall be sent via certified mail return receipt requested to the address of the Seller or Buyer contained herein and, if to the Seller, a copy shall be sent by certified mail return receipt requested to Oceanfront Sotheby's International Realty.

JURISDICTION

This Purchase Contract shall be constructed in accordance with the laws of the State of Hawaii. The venue of any action or suit relating to this Purchase Contract shall be in a court located in Kauai County, Hawaii. Any provision of this Purchase Contract which is unenforceable or invalid or the inclusion of which would affect the validity, legality, or enforcement of this Purchase Contract shall be of no effect, but all the remaining provisions of this Purchase Contract shall remain in full force and effect.

ENTIRE AGREEMENT

This Purchase Contract is the entire agreement and no other representations, warranties or agreements have been made by either of the parties.

MODIFICATION, SURVIVAL

No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

REAL ESTATE AGENCY DISCLOSURE

Buyer and/or Seller in a real estate transaction in Hawaii may retain a real estate brokerage as their agent. In such case, Buyer and/or Seller is represented by the Brokerage Firm and all of its licensees. Hawaii real estate licensees to disclose orally or in writing to Seller and/or Buyer whom the licensee represents.

LISTING BROKER: Oceanfront Sotheby's International Realty

SELLING BROKER, _____ is performing duties and the buyer agent

AGENCY ACKNOWLEDGEMENT

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

SELLER'S INITIALS AND DATE

BUYER'S INITIALS AND DATE

SIGNATURES

By signing below, Buyer and Seller agree to the terms and conditions of this contract.

SELLER SIGNATURE: _____

DATE _____

SELLER SIGNATURE: _____

DATE _____

BUYER SIGNATURE: _____

DATE _____

BUYER PRINTED NAME _____

BUYER SIGNATURE: _____

DATE _____

BUYER PRINTED NAME _____

DATE _____

Oceanfront Sotheby's International Realty
James R. O'Connor