

Terms of Transaction

| | | |
|----------------------------------|---|---|
| Transferors | - | Craig Hill and Todd Domeck |
| Terms | - | Sale of membership interests of Hill and Domeck in Lahaina Railroad LLC by assignment |
| | - | Sale of all interest in rolling stock by Hill in AS IS-WHERE IS and WITH ALL FAULTS condition |
| Purchase Price- | | Assumption of all obligations of Lahaina Railroad LLC, Hill and Domeck under License and Right of Entry Agreement dated November 21, 2019 and Purchase, Lease and Remediation Agreement dated December 19, 2018 |
| | - | Removal and Remediation provisions attached |
| | - | Payment of a commission of \$150,000 to Missouri Rail Group LLC |
| | - | Dismissal without prejudice of Lahaina Railroad LLC and with prejudice of Domeck and Hill in lawsuit styled <i>Kaanapali Land Management Corp. v. Lahaina Railroad LLC, et al.</i> , Civil No 2CCV-21-0000250 pending in the Second Judicial Circuit, State of Hawaii |
| Condition to Closing | - | Agreement with Kaanapali Land Management Corp. on assumption of obligations of Lahaina Railroad, Hill and Domeck and dismissal of lawsuit |
| | - | Due diligence inspection of property and rolling stock |
| | - | Indemnification of Hill and Domeck for any obligation to Kaanapali Land Management |
| Due Diligence/ KLMCo Consent- | | Period of 90 days from execution of purchase of membership interest agreement |
| Initial Deposit - | | \$10,000 to an escrow account at a location to be determined and approved by Kaanapali Land Management |
| Purchase and Sale Agreement- | | To be agreed upon by Buyer and Seller |

ARTICLE B. REMOVAL AND REMEDIATION

In further consideration of the Recitals and KLMC's willingness to enter into this Agreement, LRL hereby covenants as follows with respect to certain of the Railroad Assets and the land upon which they are situated.

1. **LRL'S REMOVAL AND REMEDIATION OBLIGATIONS.** Subject only to delays caused by Force Majeure, no later than (a) the date that is five years after the Effective Date and (b) as to the Lahaina South Station Property (as defined below) only, the date that is two years after the Effective Date (the "**Remediation Completion Date(s)**"), LRL shall, at LRL's sole cost and expense, conduct and complete the obligations set forth in this Section 1 of Article B (the "**Removal and Remediation Obligations**").

(a) **Removal of Railroad Assets.** LRL shall, at LRL's sole cost and expense and in accordance and compliance with all applicable Regulations, completely remove and properly dispose of (to the satisfaction of all federal, State and County governmental agencies having jurisdiction) any and all Railroad Assets from the following sites owned by KLMC or a KLMC-Related Entity or in which KLMC or a KLMC-Related Entity has easement or other rights and/or obligations (collectively, the "**Removal and Remediation Sites**"), and shall restore the surface of the Removal and Remediation Sites to a level, clean and safe condition as reasonably directed by KLMC consistent with the condition of adjacent lands:

(i) the portion of Tax Map Key Parcel (2) 4-4-06:85 within which is located the planned train turnaround (approximately as depicted on **Exhibit "I-1"** to this Agreement);

(ii) the portion of Tax Map Key Parcel (2) 4-5-12:65 within which is located a portion of the railroad track that runs along Honoapiilani Highway (approximately as depicted on **Exhibit "I-2"** to this Agreement);

(iii) the portion of Tax Map Key Parcel (2) 4-5-07:37 within which is located the sliver of railroad track near the existing Lahaina Station (approximately as depicted on **Exhibit "I-3"** to this Agreement), the portion of Tax Map Key Parcel (2) 4-5-07:29 that comprises the Lahaina train station parking lot within which is located railroad tracks (approximately as depicted on **Exhibit "I-4"** to this Agreement), and the portion of Tax Map Key Parcel (2) 4-5-07:14 within which is located railroad tracks, a train turnaround and ancillary railroad equipment (approximately as depicted on **Exhibit "I-5"** to this Agreement) (collectively, the "**Lahaina South Station Property**");

(iv) the portion of Tax Map Key Parcel (2) 4-5-13:29 within which is located railroad tracks (approximately as depicted on **Exhibit "I-6"** to this Agreement); and

(v) such other location(s), if any, within which Railroad Assets are or have been located or situated, or have been otherwise affected by Railroad Assets and/or operation of the Railroad, as may be identified by KLMC in writing to LRL within ninety calendar days after the Effective Date.

Without limiting the foregoing, in the event Closing does not occur in accordance with this Agreement, the Removal and Remediation Sites shall include all other portions of the Existing Lease properties and the Purchase Land within which Railroad Assets are or have been located or situated.

(b) **Environmental Remediation**. Prior to the applicable Remediation Completion Date, LRL shall, at LRL's sole cost and expense, cause any and all Hazardous Materials within the Removal and Remediation Sites to be (i) properly removed from the Removal and Remediation Sites, (ii) properly transported by duly licensed hazardous material transporters to duly licensed facilities, and (iii) properly disposed, all in full accordance with all Hazardous Materials Laws and to the satisfaction of all federal, State and County governmental agencies having jurisdiction. Upon such disposal, LRL shall provide KLMC with copies of manifests reflecting LRL's proper disposal of the removed Hazardous Materials. Promptly upon completion of such removal and disposal of the Hazardous Materials from the Removal and Remediation Sites and prior to the applicable Remediation Completion Date, LRL shall cause, at LRL's sole cost and expense, an environmental audit of the Removal and Remediation Sites to be conducted by a duly licensed environmental professional approved by KLMC to determine whether any further remedial action is necessary (the "**Environmental Audit**"). If the Environmental Audit or if any federal, State or County governmental agency shall recommend or require further remediation or the closure, detoxification, decontamination or other clean up of the Removal and Remediation Sites, LRL shall, at LRL's sole cost and expense, cause such additional actions to be taken prior to the Remediation Completion Date (to the satisfaction of all federal, State and County governmental agencies having jurisdiction). Without limiting the foregoing, LRL further shall, at LRL's sole cost and expense, obtain "no further action" letter(s), and/or participate in and fully and completely comply with any and all applicable disclosure and remediation program(s), as applicable, in connection with the recommendations or requirements of the Environmental Audit and/or any federal, State or County governmental agency having jurisdiction.

(c) **Right-of-Entry-Agreement**. Prior to any entry by or on behalf of LRL onto the Removal and Remediation Sites, LRL shall execute a right-of-entry agreement (the "**Removal and Remediation Sites Right-of-Entry Agreement**") in the form attached as **Exhibit "J"** to this Agreement, which Removal and Remediation Sites Right-of-Entry Agreement shall contain, among other things, LRL's release and indemnification of KLMC and KLMC-Related Entities. LRL agrees to and shall observe and comply with all of the terms and conditions in the Removal and Remediation Sites Right-of-Entry Agreement.

2. **INDEMNIFICATION**. Without limiting the provisions of Article A Section 13, LRL agrees to and shall indemnify, defend and hold harmless KLMC and all KLMC-Related Entities from and against any and all Claims imposed upon, suffered or incurred by or asserted against

KLMC or KLMC-Related Entities by reason of (a) the performance of LRL's obligations under this Article B and/or LRL's noncompliance with the provisions of this Article B or legal requirements relating to LRL's obligations under this Article B, (b) any investigation and handling (including the defense) of any Claims relating to LRL's obligations under this Article B, whether or not any lawsuit or other form of legal proceeding shall have been commenced in respect thereof, and (c) KLMC's enforcement of this provision, whether or not suit is brought therefor.

3. **ENVIRONMENTAL LIABILITY INSURANCE**. Prior to commencing any work relating to the Removal and Remediation Obligations, LRL shall obtain an environmental liability insurance policy with minimum coverage of \$2,000,000, providing coverage for the Removal and Remediation Obligations and LRL's indemnity obligations under this Article B and naming KLMC and the KLMC-Related Entities as additional insureds. LRL shall maintain such policy until the date that is three years after the Remediation Completion Date. Prior to commencing any work relating to the Removal and Remediation Obligations, LRL shall deliver evidence of such coverage to KLMC in the form of a certificate of insurance and a copy of the insurance policy, and shall thereafter provide KLMC such evidence upon receipt of KLMC's written request therefor.

4. **CONFIDENTIALITY**. Without limiting the provisions of Article C, Section 12, LRL shall not disclose any information relating to the Removal and Remediation Sites and/or LRL's obligations under this Article B, including without limitation the Removal and Remediation Obligations and information obtained and produced pursuant to this Article B, to any person or entity other than in accordance with this Article B and the Confidentiality Agreement (as defined below), and LRL shall treat all such information as strictly confidential.

5. **ENFORCEMENT OF OBLIGATIONS**. In the event of LRL's breach of its obligations under this Article B, KLMC shall have all remedies available to it at law and in equity; including without limitation all remedies available to it under the 2016 Rental Agreement and/or the 2018 Holiday Operations License Agreement. Without limiting the foregoing, KLMC shall have the right, but no obligation whatsoever, to pursue any and all claims and remedies against RRHI (and/or LRL, to the extent of its interests therein) under the Existing Lease; provided only that such remedies shall not materially and detrimentally interfere with LRL's timely performance of the Removal and Remediation Obligations in accordance with this Article B.

6. **SURVIVAL/ASSIGNMENT/MEMORANDUM OF OBLIGATIONS**. The provisions of this Article B shall be binding on LRL, whether or not Closing occurs, and shall survive termination of Article A of this Agreement. If Closing occurs, the provisions of this Article B shall not be merged into the Deed or the Lease and shall survive Closing. At Closing, KLMC and LRL shall execute and record against title to the Purchase Lands an instrument setting forth LRL's obligations hereunder (the "**Memorandum of Removal and Remediation Obligations**"), in the form attached as **Exhibit "K"** to this Agreement.

EXHIBIT "I-1"



EXHIBIT "I-2"



EXHIBIT "I-4"



EXHIBIT "I-5"



EXHIBIT "I-6"



EXHIBIT "J"

RIGHT OF ENTRY AGREEMENT AND RELEASE OF LIABILITY

This RIGHT OF ENTRY AGREEMENT AND RELEASE OF LIABILITY (this "**Agreement**") is made as of _____ (the "**Effective Date**"), by and between **KAANAPALI LAND MANAGEMENT CORP.**, a Hawaii corporation ("**Owner**"), and **LAHAINA RAILROAD LLC**, a Hawaii limited liability company ("**Permittee**").

RECITALS

- A. Owner and Permittee are parties to that certain Purchase, Lease and Remediation Agreement dated _____ (the "**Remediation Agreement**") relating to certain portions of real property situate at Lahaina, County of Maui, Hawaii owned by Owner. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings specified in the Remediation Agreement.
- B. Permittee has requested permission of Owner to enter onto the Removal and Remediation Sites to conduct and complete the Removal and Remediation Obligations pursuant and subject to the terms and conditions set forth in the Remediation Agreement (the "**Permitted Purpose**"). As used in this Agreement, "**Property**" shall mean and refer to the Removal and Remediation Sites, which are identified and depicted on **Exhibit "1"** attached hereto and made a part hereof.
- C. Owner is willing to grant such permission to Permittee, solely for the Permitted Purpose and during the limited period from the Effective Date through the earlier of (a) the later of the Remediation Completion Dates to occur and (b) termination of this Agreement pursuant to the terms hereof (such limited period being referred to herein as the "**Permit Period**") and on the other terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Owner and Permittee hereby agree as follows:

27. Owner hereby grants to Permittee and Permittee's employees, agents, consultants and contractors (collectively, "**Representatives**") a right of entry to enter the Property during the Permit Period solely for the Permitted Purpose, all at Permittee's sole cost and expense and subject to the terms and provisions of this Agreement. Permittee and its Representatives shall be allowed onto the Property only between the hours of 7:00 a.m. to 6:00 p.m. Mondays through Fridays, excluding holidays.

28. Permittee will abide by and fully comply with, and will cause each of its Representatives to abide by and fully comply with, this Agreement and all laws, statutes, rules, regulations and ordinances now or hereafter made by any federal, state or local governmental authority, and all rules and regulations made by Owner, while upon, occupying or using the Property. Prior to a Representative's entry upon the Property pursuant to this Agreement, Permittee shall notify Owner of the identity of the Representative and provide to Owner a copy of the contract(s) with such Representative for any work to be performed relating to the Property and evidence of such Representative's compliance with Section 10 of this Agreement.

29. Permittee acknowledges and agrees that the Property and adjacent or nearby lands have historically been used for agricultural, industrial, conservation and/or riparian purposes and have not been maintained in a safe condition. Therefore, the Property and adjacent or nearby lands may contain dangerous or hidden conditions that could cause injury or death. Permittee agrees that any and all entries upon the Property are at Permittee's own risk and Permittee shall take all necessary precautions to assure the safety of any persons entering onto the Property pursuant to this Agreement, and Permittee shall be solely responsible for the safety of Permittee and its Representatives. Permittee shall also be solely responsible for the protection of any or all personal property and vehicles that may be brought onto the Property by Permittee and/or its Representatives. Permittee, on behalf of itself and each of its Representatives, hereby assumes all known and unknown risks associated with entry onto the Property. Permittee forever releases and discharges Owner and Owner-Related Entities (as defined below) from any and all liability and claims related to, and Owner shall incur no liability or obligation of any nature to Permittee or its Representatives, as a result of Permittee's or its Representative's entry upon, occupancy, and/or use of the Property or Permittee's or its Representative's activities thereupon.

30. Permittee acknowledges and agrees that Permittee's rights hereunder with respect to the Property are nonexclusive and that the rights and actions of Permittee and its Representatives hereunder shall be subject to the rights and interests of Owner and/or other users or occupants of the Property. Permittee and its Representatives shall not interfere with the activities of Owner and/or other users and occupants of the Property.

31. In the event Permittee's (or its Representatives') activities shall in any way be outside the scope of or in breach of this Agreement, Permittee will remove all of Permittee's (and its Representatives') property from the Property promptly upon the request by Owner to do so, and, without limiting any other rights and remedies of Owner, Owner may immediately terminate this Agreement.

32. Permittee shall compensate Owner for any damages to crops or facilities on the Property caused by Permittee or proximately resulting from the acts or negligence of Permittee (or its Representatives) in the course of their activities on the Property. Permittee shall not be considered to be an independent contractor, employee or agent of Owner as a consequence of this Agreement or the performance thereof.

33. Permittee will give Owner's Representative (as defined below) at least three business days prior written notice prior to any intended entry onto the Property for the Permitted Purpose. Such notice shall be accompanied with such maps and other reasonable detail as Owner's Representative may reasonably require in order that Owner may understand the location and character of the

activities to be so performed, and Permittee may not conduct any such activity until Owner has given its written consent thereto, which consent shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed, but may be subject to such conditions as Owner may reasonably impose to protect Owner's interests. Permittee and its Representatives shall not enter the Property prior to receipt of Owner's written consent required as set forth above for any reason other than the Permitted Purpose. Any such entry shall be subject to Owner's scheduling requirements and shall, at Owner's election, be accompanied by a representative of Owner. Prior to Permittee's (or its Representatives') entry upon the Property pursuant to this Agreement, Permittee and Owner shall establish appropriate security measures and protocols relating to entry upon and exit from the Property by Permittee and its Representatives. Permittee shall, and shall cause its Representative to, abide by such measures and protocol. Without limiting the foregoing, Permittee shall exercise due care for public and private safety.

34. Permittee agrees to indemnify, defend and hold Owner, the Owner-Related Entities, their respective parents, partners, members, stockholders, subsidiaries and affiliates, and any officer, director, member, representative, employee and/or agent thereof (each an "**Indemnified Party**"), harmless against any and all losses, injuries, damages, costs, expenses (including without limitation attorneys' fees and litigation costs), liabilities, demands, penalties, fines, judgments or causes of action or other remedies and relief, arising out of or in any way connected with the Permittee's or its Representative's entry upon, occupancy, and/or use of the Property or Permittee's or its Representative's activities thereupon. The foregoing indemnification and other protection shall apply regardless of whether the intentional, reckless, negligent or other acts or omissions of the Indemnified Party(ies) caused or contributed to the losses, damages, etc., suffered. This indemnification shall include, but not be limited to, loss or destruction of property, including loss of use and/or value thereof, bodily injury, personal injury, sickness or disease, or death sustained by any person. Such obligations of Permittee hereunder shall not be limited by the availability, limits, or coverage of insurance carried or required herein, or required by law to be carried. This indemnity shall survive the expiration or earlier termination of this Agreement.

35. The term "**Owner-Related Entities**" shall mean and refer to the following: Pioneer Mill Company, LLC, a Delaware limited liability company, KLC Holding Corp., a Delaware corporation, PM Land Company, LLC, a Delaware limited liability company, Kaanapali Farm Services, Inc., a Hawaii corporation, MauiGrown Coffee Distributors, LLC, an Illinois limited liability company, Kaanapali Land, LLC, a Delaware limited liability company, KLC Land Company, LLC, a Hawaii limited liability company, NB Lot 3, LLC, a Delaware limited liability company, Oahu MS Development Corp., a Hawaii corporation, Amfac Property Investment Corp., a Hawaii corporation, Oahu Sugar Company, LLC, a Delaware limited liability company, Lahaina Land Company, LLC, a Hawaii limited liability company, Kaanapali Roads, LLC, a Hawaii limited liability company, and Ka'anapali Coffee Farms Lot Owners Association, a Hawaii non-profit corporation.

36. Permittee shall carry and maintain, at Permittee's own expense, and shall cause all of its Representatives entering on the Property to maintain or be covered by all of the following:

- a. Workers' compensation insurance affording statutory limits, and employers' liability coverage with limits of not less than \$1,000,000 covering all persons admitted to the Property under the terms of this Agreement.

- b. Commercial general liability insurance, including contingent liability, contractual liability and products and completed operations liability, covering all activities conducted on the Property. The limits of liability shall be not less than:

Bodily Injury and Property Damage Liability
\$1,000,000 each occurrence/\$5,000,000 aggregate; and

Personal Injury Liability
\$1,000,000 each occurrence/\$5,000,000 aggregate.

- c. Comprehensive automobile liability insurance covering all owned, hired or non-owned vehicles, including the loading or unloading thereof on the Property:

Bodily Injury and Property Damage Liability
\$1,000,000 each accident.

- d. Umbrella Coverage. Umbrella liability insurance covering all activities under this Agreement:

\$10,000,000 each occurrence
\$10,000,000 general aggregate

- e. Environmental Liability Insurance policy with minimum coverage of \$2,000,000, providing coverage for the Removal and Remediation Obligations and Permittee's indemnity obligations under this Agreement and the Remediation Agreement.

All of the foregoing liability insurance shall be issued on an occurrence basis and include the condition that it is primary and that any such insurance maintained by Owner and any other additional insured is excess and non-contributory. All policies shall be written by companies reasonably acceptable to Owner and authorized to do business in the State of Hawaii.

Owner, the Owner-Related Entities, their respective managers, officers, directors and employees and Owner's mortgagee (if any) shall be included as additional insureds on all policies (except for workers' compensation policy). All policies shall provide for prior notice of material change in coverage, cancellation or nonrenewal and coverages shall be primary and not excess or contributory to any similar coverage carried by Owner or any other additional insured. Permittee and each of its Representatives, as a condition to entry upon the Property, waives all rights of action and subrogation against Owner and the Owner-Related Entities to the extent of any insurance recoveries that may be obtained by Permittee for damages to Permittee's property caused by fire or other peril covered by insurance. Each policy of insurance provided for herein shall have attached thereto (i) an endorsement that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior written notice to Owner and (ii) an endorsement to the effect that no action or omission of a party thereto shall affect the obligation of the insurer to pay the full amount of any loss sustained to the other party hereto and any other parties insured under such policy, and the certificate(s) of insurance shall so state. **Permittee shall, prior to any entry upon the Property pursuant to this Agreement, deliver to Owner evidence of the above insurance coverage in the form of current**

certificates of insurance and full copies of the insurance policies, and shall thereafter provide such evidence upon receipt of Owner's request therefore. Permittee and its Representatives shall not enter on the Property for any reason until Permittee has furnished Owner with the required evidence of insurance.

37. Permittee shall, upon expiration or termination of this Agreement, repair any damage to the Property and any adjoining lands of Owner or Owner-Related Entities caused by such entry, occupancy and/or use thereof, restore such property to as good a condition as such property was prior to such entry, remove all of Permittee's and its Representatives' materials, facilities and equipment therefrom. Permittee shall further prevent the accumulation of and remove any and all debris, trash or waste generated by Permittee or any of its Representatives on the Property.

38. Where the purpose of this Agreement is to provide access over roads or trails owned or controlled by Owner, Permittee shall continually maintain and repair any damage to such roads or trails to the degree of repair and maintenance practiced or otherwise required by Owner.

39. "**Owner's Representative**", for purposes of this Agreement, is Jeff Rebugio (telephone no. (808) 661-9652; e-mail address: jeff@kaanapaliland.com), or such other individual identified as such by Owner, in writing delivered to Permittee from time to time. Questions relating to the operation of this Agreement shall be referred to Owner's Representative.

40. Permittee agrees that Owner and Owner-Related Entities shall not be liable for any damages suffered by Permittee and/or its Representatives in any way relating to the presence of **Hazardous Materials** (defined below) on, under or within the Property. As used herein, the term "**Hazardous Material**" means and includes, without limitation, inflammable explosives, radioactive materials, asbestos, organic compounds (including polychlorinated biphenyls), pollutants, contaminants, hazardous wastes, toxic substances or related materials and any substances defined as or included in the definitions for "hazardous substances", "hazardous wastes", "extremely hazardous wastes", "hazardous materials", or "toxic substances" under the following laws, ordinances and regulations ("Hazardous Materials Laws"): Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, as the same may be amended from time to time, any similar federal, Hawaii State and local laws and ordinances, and regulations now or hereafter adopted, accomplished and promulgated pursuant thereto applying to the Property.

41. Permittee shall indemnify, defend and hold harmless each Indemnified Party from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the Property, damages caused by loss or restriction of usable area, or any damages caused by adverse impact on marketing of the Property, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising on or after the date of this Agreement and arising as a result Permittee's entry onto the Property and activities conducted thereon by Permittee and or its Representatives, and/or Permittee's noncompliance with the provisions of this Agreement or legal requirements relating to the Removal and Remediation Obligations.

42. Without limiting the provisions of Section 18, Permittee specifically agrees that all Environmental Testing and Environmental Testing Documentation (as defined below) shall be treated as strictly confidential by Permittee, except as may otherwise be required by the Remediation Agreement or applicable law, and that neither Permittee nor any of its Representatives shall disclose to, discuss with, or deliver to (in original, copy or draft form) Owner or any Owner-Related Entities any aspect of the Environmental Testing or the Environmental Testing Documentation, or any other information about the environmental condition of the Property, without the prior written consent of Owner, which consent may be withheld in the sole and absolute discretion of Owner; provided, however, that Permittee shall deliver Environmental Testing Documentation to Owner as and to the extent required under the Remediation Agreement or requested in writing by Owner's Representative (the foregoing covenant of Permittee is referred to herein as "**Permittee's Environmental Confidentiality Obligation**"). Permittee's Environmental Confidentiality Obligation shall survive any termination of this Agreement. As used herein: "**Environmental Testing**" means and includes any and all reviews, inspections, investigations, assessments, tests and other examinations and/or evaluations in connection with or relating in any way to the environmental condition of the Property or any portion(s) thereof, including without limitation the presence of Hazardous Materials and/or compliance with Hazardous Materials Laws; "**Environmental Testing Documentation**" means and includes all studies, reports, test results and other information obtained by or through Permittee, whether written or oral, in connection with any Environmental Testing.

43. Permittee acknowledges that Owner has not made any representations or warranties whatsoever concerning the condition of the Property or its suitability (or safety) for the Permitted Purpose.

44. Neither Permittee nor any of its Representatives shall cause, or commit any act or neglect that causes, the Property (or any portion thereof) to become subject to any attachment, judgment, lien, charge or encumbrance of any kind. Permittee shall immediately cause any such attachment, judgment, lien, charge or encumbrance to be immediately discharged by paying the amount claimed or by posting a sufficient bond to cause such removal, at Permittee's expense. If Permittee fails to do so within ten (10) business days after written demand from Owner, Owner shall be entitled to take such steps as Owner deems necessary to discharge and remove same, including payment of amounts claimed due and owing, and seek reimbursement of all such amounts paid, and all costs and expenses relating thereto, including, without limitation, reasonable attorneys' fees and costs of litigation.

45. Without limiting Permittee's Environmental Confidentiality Obligation, Permittee and its Representatives shall strictly comply with the terms of that certain Confidentiality Agreement dated July 14, 2016 between Owner and Permittee (the "**Confidentiality Agreement**"), and a default by Permittee thereunder shall constitute a default by Permittee under this Agreement. Permittee shall instruct its Representatives and others engaged by it in connection with the transactions contemplated in this Agreement to abide by Permittee's Environmental Confidentiality Obligation and the confidentiality provisions of this Section. All information, studies and reports relating to the Property obtained by Permittee, either by examinations of Permittee or its Representatives, or as disclosed to it by or through Owner, shall be kept confidential by Permittee and its Representatives. The terms of this Section shall survive expiration or earlier termination of this Agreement.

46. It is expressly understood and agreed that the failure of Owner to insist in any one or more instances upon strict performance of any of the terms and conditions of this Agreement, or to exercise any rights herein conferred, shall not be deemed a waiver or relinquishment of Owner's right to assert or rely upon such terms, conditions, or rights in any other instance.

47. Permittee binds itself, its successors, assigns and legal representatives to the other party to this Agreement and to the heirs, personal representatives, successors, assigns and legal representatives of such other party in respect of all covenants of this Agreement. Permittee shall not assign, subcontract or otherwise transfer its interest in or obligations under this Agreement without the written consent of Owner, which Owner may withhold in its sole discretion. Owner may assign its interest in this Agreement without the prior consent of Permittee, and upon such assignment and assumption by the assignee, Owner will be released from any obligations hereunder. Subject to the foregoing, this Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

48. This Agreement shall at all times be construed under the laws of the State of Hawaii, and any action brought to enforce any provision of this Agreement or under this Agreement shall be brought in any court of competent jurisdiction in the State of Hawaii.

49. If any term or provision of this Agreement or the application thereof to any persons or circumstances shall to any extent or for any reason be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

50. This Agreement may be amended only by written instruments signed by both Owner and Permittee. Except as otherwise expressly provided in this Agreement, all acknowledgments, agreements, covenants and obligations of Permittee under this Agreement shall survive expiration or termination of this Agreement.

51. In the event that Owner seeks to enforce the terms and provisions of this Agreement, or to remove Permittee or any of its Representatives from the Property, Owner shall, in addition to any other recovery to which Owner may be entitled hereunder under law, be entitled to recover its reasonable attorneys' fees and costs in any litigation or other proceeding brought for such purpose.

52. Nothing in this Agreement shall be deemed to modify or waive any rights of Owner or obligations of Permittee under that certain Rental Agreement dated November 24, 2016 by and between Owner and Permittee (as Tenant), as it may be amended in accordance with the terms thereof.

53. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument.

Owner and Permittee have executed this Agreement as of the Effective Date.

KAANAPALI LAND MANAGEMENT CORP.,
a Hawaii corporation

By _____

Name:

Title:

Owner

LAHAINA RAILROAD LLC,
a Hawaii limited liability company

By _____
Name:
Title:

By _____
Name:
Title:

Permittee

EXHIBIT "K"

AFTER RECORDATION, RETURN BY: MAIL () PICKUP ()

Total Pages: _____

Tax Map Key Nos. *See Exhibit "A"*

MEMORANDUM OF REMOVAL AND REMEDIATION OBLIGATIONS

This MEMORANDUM OF REMOVAL AND REMEDIATION OBLIGATIONS (this "**Memorandum**") is made as of _____ (the "**Effective Date**") by **KAANAPALI LAND MANAGEMENT CORP.**, a Hawaii corporation ("**KLMC**"), the address of which is 275 Lahainaluna Road, Lahaina, Hawaii 96761, and **LAHAINA RAILROAD LLC**, a Hawaii limited liability company ("**LRL**"), the address of which is _____,

RECITALS

A. KLMC and LRL are parties to that certain unrecorded Purchase, Lease and Remediation Agreement dated _____ (the "**Agreement**"), which provides for, among other things, LRL's acquisition of the real property described in **Exhibit "A"** attached hereto and made a part hereof (the "**Purchase Property**").

B. The Agreement also provides for LRL to conduct and complete the Removal and Remediation Obligations (as defined in the Agreement) with respect to certain property owned by KLMC or an affiliate of KLMC.

C. This Memorandum is to provide public notice of the Removal and Remediation Obligations by recording this Memorandum against title to the Purchase Property.

MEMORANDUM

NOW THEREFORE, in consideration of the Recitals and other good and valuable consideration, KLMC and LRL hereby agree as follows:

1. Memorandum. KLMC and LRL hereby execute this Memorandum for the sole purpose of providing public notice of LRL's Removal and Remediation Obligations.
2. Enforcement of Obligations. In the event of LRL's breach of any Removal and Remediation Obligation, KLMC shall have all remedies available to it at law and in equity.
3. Release of this Memorandum. Upon completion of the Removal and Remediation Obligations to the reasonable satisfaction of KLMC and upon request therefor by LRL, KLMC shall execute a release of this Memorandum and record the same with the Bureau of Conveyances of the State of Hawaii.
4. Counterparts. This Memorandum may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument.

KLMC and LRL have executed this Memorandum as of the Effective Date.

KAANAPALI LAND MANAGEMENT CORP.,
a Hawaii corporation

By _____

Name:

Title:

KLMC

LAHAINA RAILROAD LLC,
a Hawaii limited liability company

By _____
Name:
Title:

By _____
Name:
Title:

LRL

STATE OF HAWAII)
) SS.
COUNTY OF _____)

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

Further, I certify, as of this date, as follows:

Date of Document: _____
Number of Pages: _____
Document Description: Memorandum of Removal and Remediation Obligations
Jurisdiction/Judicial Circuit Where Signed: _____

Type or print name: _____
Date: _____
Notary Public, State of Hawaii
My commission expires: _____

STATE OF HAWAII)
) SS.
COUNTY OF _____)

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

Further, I certify, as of this date, as follows:

Date of Document: _____

Number of Pages: _____

Document Description: Memorandum of Removal and Remediation Obligations

Jurisdiction/Judicial Circuit Where Signed: _____

Type or print name: _____

Date: _____

Notary Public, State of Hawaii

My commission expires: _____

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

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

Further, I certify, as of this date, as follows:

Date of Document: _____

Number of Pages: _____

Document Description: Memorandum of Removal and Remediation Obligations

Jurisdiction/Judicial Circuit Where Signed: First Judicial Circuit

Type or print name: _____
Date: _____
Notary Public, State of Hawaii
My commission expires: _____

EXHIBIT "A"

[description of the Purchase Property to be inserted]