

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2019

Or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file number 001-06510
MAUI LAND & PINEAPPLE COMPANY, INC.
(Exact name of registrant as specified in its charter)

Hawaii
(State or other jurisdiction
of incorporation or organization)

99-0107542
(IRS Employer
Identification No.)

200 Village Road
Lahaina, Maui, Hawaii 96761
(Address of principal executive offices) (Zip Code)

(808) 877-3351
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|--|-------------------|---|
| Common Stock, without Par Value | MLP | NYSE |

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell Company (as defined in Rule 12b-2 of the Exchange Act). Yes No

\$69,248,551
(Aggregate market value of common stock
held by non-affiliates of the company on June 30, 2019)

19,301,779
(Number of shares of common stock
outstanding at February 10, 2020)

**Portions of registrant's Proxy Statement for registrant's 2020 Annual Meeting of Shareholders
are incorporated by reference into Part III, Items 10-14 of this Annual Report on Form 10-K**
(Documents incorporated by reference)

FORWARD-LOOKING STATEMENTS

This annual report on Form 10-K, or annual report, filed by Maui Land & Pineapple Company, Inc. with the Securities and Exchange Commission, or SEC, contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, which statements are subject to considerable risks and uncertainties. Forward-looking statements include all statements that are not statements of historical facts contained in this annual report and can be identified by words such as “may,” “will,” “project,” “might,” “expect,” “believe,” “anticipate,” “intend,” “could,” “would,” “estimate,” “continue” or “pursue,” or the negative or other variations thereof or comparable terminology. In particular, forward-looking statements contained in this annual report relate to, among other things, our future events, future financial performance, results of operations, strategic plans and objectives, and recent accounting pronouncements. We caution you that the foregoing list may not include all of the forward-looking statements made in this annual report.

Although we believe that our opinions and expectations reflected in the forward-looking statements are reasonable as of the date of this annual report, we cannot guarantee future results, levels of activity, performance or achievements, and our actual results may differ substantially from the views and expectations set forth in this annual report. Thus, you should not place undue reliance on any forward-looking statements. New factors emerge from time to time, and it is not possible for us to predict which factors will arise. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Further, any forward-looking statements speak only as of the date made and, except as required by law, we undertake no obligation to publicly revise our forward-looking statements to reflect events or circumstances that arise after the date of this annual report.

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PART I**Item 1. BUSINESS****Overview**

Maui Land & Pineapple Company, Inc. is a Hawaii corporation and the successor to a business organized in 1909. Depending upon the context, the terms “Company,” “we,” “our,” and “us,” refer to either Maui Land & Pineapple Company, Inc. alone, or to Maui Land & Pineapple Company, Inc. and its subsidiaries collectively. The Company consists of a landholding and operating parent company, its principal subsidiary, Kapalua Land Company, Ltd. and certain other subsidiaries.

We own approximately 23,000 acres of land on the island of Maui, Hawaii and develop, sell, and manage residential, resort, commercial, agricultural and industrial real estate through the following business segments:

- **Real Estate**—Our real estate operations consist of land planning and entitlement, development and sales activities. This segment also includes the operations of Kapalua Realty Company, Ltd., a general brokerage real estate company located in the Kapalua Resort.
- **Leasing**—Our leasing operations include residential, resort, commercial, agricultural and industrial land and property leases, licensing of our registered trademarks and trade names, sales of potable and non-potable water in West and Upcountry Maui, and stewardship and conservation efforts.
- **Resort Amenities**—We manage the operations of the Kapalua Club, a private, non-equity club program providing our members special programs, access and other privileges at certain amenities at the Kapalua Resort.

Additional information and operating results pertaining to the above business segments can be found under the heading “Description of Business” in this Item 1 and in Note 10 to our financial statements set forth in Item 8 of this annual report.

Description of Business**Real Estate**

Our Real Estate segment includes all land planning, entitlement, development and sales activities of our landholdings on Maui. Our principal real estate development is the Kapalua Resort, a master-planned, destination resort and residential community located in West Maui encompassing approximately 3,000 acres. The following is a summary of our landholdings in acres as of December 31, 2019:

| | West Maui | Upcountry Maui | Total |
|------------------------|----------------------|---------------------------|---------------|
| Fully entitled urban | 900 | | 900 |
| Agricultural zoned | 10,800 | 2,100 | 12,900 |
| Conservation/watershed | 9,000 | | 9,000 |
| | <u>20,700</u> | <u>2,100</u> | <u>22,800</u> |

Real Estate Planning and Entitlements – Appropriate entitlements must be obtained for land that is intended for development. Securing proper land entitlements is a process that requires obtaining county, state and federal approvals, which can take many years to complete and entails a variety of risks. The entitlement process requires that we satisfy all conditions and restrictions imposed in connection with such governmental approvals, including, among other things, construction of infrastructure improvements, payment of impact fees – for conditions such as schools, public parks and traffic mitigation – restrictions on permitted uses of the land, and provision of affordable housing. We actively work with the community, regulatory agencies, and legislative bodies at all levels of government in an effort to obtain necessary entitlements consistent with the needs of the community.

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We have approximately 1,200 acres of land on Maui that are in various stages of the development process. The following is a summary of our development projects as of December 31, 2019:

| Location | Approximate Number of Acres | Zoned for Planned Use | Anticipated Completion Dates | Deferred Development Costs (millions) | Projected Costs to Complete (millions) |
|------------------|------------------------------------|------------------------------|-------------------------------------|--|---|
| Kapalua Resort | 900 | Yes | 2021 - 2039 | \$5.9 | \$500 - \$1,000 |
| Hali`imaile Town | 300 | No | 2029 - 2034 | \$0.6 | \$100 - \$200 |

We are engaged in planning, permitting and entitlement activities for our development projects, and we intend to proceed with construction and sales of the following projects, among others, when internal and external factors permit:

- *Kapalua Resort:* We began development of the Kapalua Resort in the early 1970's. Today, the Kapalua Resort is an internationally recognized world-class destination resort and residential community. We presently have entitlements to develop a variety of projects in the Kapalua Resort. Two that are currently planned include Kapalua Mauka and Kapalua Central Resort.

Kapalua Mauka is a long-term expansion project of the Kapalua Resort which is located directly upslope of the existing resort development. As presently planned, it encompasses 800 acres and includes up to 639 residential units with extensive amenities, including up to 27 additional holes of golf. State and County land use entitlements have been secured for this project.

Kapalua Central Resort is a commercial town center and residential community located in the core of the Kapalua Resort. It is comprised of 46 acres and is planned to include up to 61,000 square feet of commercial space and 188 condominium and multi-family residential units. State and County land use entitlements have been secured for this project. In February 2020, we entered into an agreement to sell the Kapalua Central Resort project for \$43.9 million, or the Kapalua Central Resort Sale. The closing of the transaction is contingent upon, among other things, the satisfaction of certain customary closing conditions, including a due diligence period ending on July 31, 2020 and a closing date 45 days after the last day of the due diligence period.

- *Hali`imaile Town:* An expansion of an existing plantation town in Upcountry Maui, this project is contemplated to be a holistic traditional community with agriculture and sustainability as core design elements. The project includes 290 acres classified as "Small Town" in the long-range County of Maui Island Plan. This designation allows the potential for residential, industrial and commercial development at a moderate density. We are in the early stages of this project's development and securing State and County land use entitlements are expected to take several years.

Projected development costs are expected to be financed by debt financing, private investment, joint ventures with other development or construction companies, or a combination of these methods.

Real Estate Sales – Our wholly-owned subsidiary, Kapalua Realty Company, Ltd., provides licensed, general brokerage services for properties in the Kapalua Resort and surrounding areas.

Revenues from our Real Estate segment totaled \$0.9 million, or approximately 9% of our total operating revenues for the year ended December 31, 2019.

The price and market for luxury and other real estate in Maui are highly cyclical and influenced significantly by interest rates, the general real estate markets in the mainland United States and specifically the West Coast, the popularity of Hawaii as a vacation destination and second-home market, the general condition of the economy in the United States and Asia, and the relationship of the dollar to foreign currencies. Our Real Estate segment faces substantial competition from other land owners and developers on the island of Maui, as well as in other parts of Hawaii and the mainland United States.

Leasing

Our Leasing segment operations include residential, resort, commercial, agricultural and industrial land and property leases, licensing of the our registered trademarks and trade names, sales of potable and non-potable water in West and Upcountry Maui, and stewardship and conservation efforts.

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Commercial and Industrial Leases – We are the owner and lessor of approximately 184,000 square feet of commercial, retail and light industrial properties, including restaurants, retail outlets, office buildings, warehouses and Kapalua Resort activities. The following summarizes information related to our commercial and industrial leases as of December 31, 2019:

| | Total Square Footage | Average Occupancy Percentage | Lease Expiration Dates |
|-----------------|-------------------------------------|---|-----------------------------------|
| Kapalua Resort | 57,000 | 93% | 2020 - 2048 |
| Other West Maui | 14,000 | 93% | 2020 - 2023 |
| Upcountry Maui | 113,000 | 91% | 2020 - 2023 |

Agricultural Leases – We are the lessor of approximately 5,800 acres of diversified agriculture, renewable energy, eco tours, and activities land leases in West and Upcountry Maui.

Trademark and Trade Name Licensing – We currently have licensing agreements for the use of our registered Kapalua and other trademarks and trade names with several different companies, mainly in conjunction with our agricultural, commercial and industrial leases.

Potable and Non-Potable Water Systems – We own and operate several potable water wells, non-potable irrigation water ditches, reservoirs and transmission systems serving the Kapalua Resort, the County of Maui, and agricultural users in West and Upcountry Maui.

Stewardship and Conservation – We manage the conservation of a 9,000-acre nature and watershed preserve in West Maui. A portion of our stewardship and conservation efforts is subsidized by the State of Hawaii, the County of Maui, and other organizations.

Revenues from our Leasing segment totaled \$8.1 million, or approximately 81% of our total operating revenues for the year ended December 31, 2019.

Our Leasing segment operations are highly sensitive to economic conditions including tourism and consumer spending levels and faces substantial competition from other property owners in Maui and Hawaii. The amount of rainfall and the level of development in the Kapalua Resort area also affect the demand for our potable and non-potable water..

Resort Amenities

Our Resort Amenities segment includes the operations of the Kapalua Club, a private, non-equity club providing its members special programs, access and other privileges at certain of the amenities at the Kapalua Resort including a 30,000 square foot full-service spa and a private pool-side dining beach club.

Revenues from our Resort Amenities segment totaled \$1.0 million, or approximately 10% of our total operating revenues for the year ended December 31, 2019.

The viability of the Kapalua Club is principally dependent on the overall appeal and success of the Kapalua Resort. The resort faces competition from other resort destination communities on Maui and other parts of Hawaii.

Employees

As of December 31, 2019, we had 11 full-time employees, none of whom are members of a collective bargaining group.

Available Information

Our internet address is www.mauiland.com. Information about the Company is also available on www.kapalua.com. Reference in this annual report to these website addresses does not constitute incorporation by reference of the information contained on the websites. We make available free of charge on or through our website our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and other reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. We also make available through our website all filings of our executive officers and directors on Forms 3, 4 and 5 pursuant to Section 16 of the Exchange Act. These filings are also available on the SEC's website at www.sec.gov.

Item 1A. RISK FACTORS

The following is a summary of certain risks we face in our business. They are not the only risks we face. Additional risks that we do not yet know of or that we currently believe are immaterial may also impair our business operations. If any of the events or circumstances described in the following risks actually occurs, our business, financial condition or results of operations could suffer, and the trading price of our common stock could decline. In assessing these risks, investors should also refer to the other information contained or incorporated by reference in our other filings with the SEC.

Risks Related to our Business

Unstable macroeconomic market conditions could materially and adversely affect our operating results.

Our operations and performance depend significantly on worldwide economic conditions. Uncertainty about global economic conditions poses a risk to our business as consumers, tourists and real estate investors postpone or reduce spending in response to tighter credit markets, energy costs, negative financial news, reduced consumer confidence, and/or declines in income or asset values, which could have a material negative effect on the demand for our products and services. Other factors that could influence demand include increases in fuel costs, conditions in the residential real estate and mortgage markets, interest rates, labor costs, access to credit on reasonable terms, geopolitical issues, and other macroeconomic factors affecting consumer spending behavior. These and other economic factors could have a material adverse effect on demand for our products and services and on our financial condition and operating results.

In addition, in the event that current equity or credit market conditions deteriorate, or if our expenses increase unexpectedly, it may become necessary for us to raise additional capital in the form of a debt or equity financing, or a combination of the two. A downturn in industry, market or economic conditions could make debt or equity financing more difficult, more costly, and, in the case of an equity financing, more dilutive to our existing stockholders. Failure to secure any necessary financing in a timely manner and on favorable terms could have a material adverse effect on our ability to execute our current business strategy, as well as our financial performance and stock price.

Real estate investments are subject to numerous risks and we are negatively impacted by downturns in the real estate market.

We are subject to the risks that generally relate to investments in real property because we develop and sell real property, primarily for residential use. The market for real estate on Maui and in Hawaii generally tends to be highly cyclical and is typically affected by numerous changes in local, national and worldwide conditions, especially economic conditions, many of which are beyond our control, including the following:

- periods of economic uncertainty and weakness in Hawaii and in the United States generally;
- uncertainties and changes in U.S. social, political, regulatory and economic conditions or laws and policies, and concerns surrounding ongoing developments in the European Union, the Middle East and Asia;
- high unemployment rates and low consumer confidence;
- the general availability of mortgage financing, including the effect of more stringent lending standards for mortgages and perceived or actual changes in interest rates;
- energy costs, including fuel costs, which could impact the cost and desirability of traveling to Hawaii;
- local, state and federal government regulation, including eminent domain laws, which may result in a taking for less compensation than what we believe our property is worth;
- the popularity of Maui in particular and Hawaii in general as a vacation destination or second home market;
- the relationship of the dollar to foreign currencies;

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- tax law changes, including limits or potential elimination of the deductibility of certain mortgage interest expenses, real property taxes and employee relocation expenses; and/or
- acts of God, such as tsunamis, hurricanes, earthquakes and other natural disasters.

Changes in any of the foregoing could have a material adverse effect on our business by causing a more significant general decline in the market for residential or luxury real estate, which, in turn, could adversely affect our development plans, revenues and profitability. During low periods of demand, real estate may remain on hand for much longer than expected or be sold at lower than expected returns, or even at a loss, which could impair our liquidity and ability to proceed with development projects and negatively affect our operating results. Sustained adverse changes to our development plans could result in impairment charges or write-offs of deferred development costs, which could have a material adverse impact on our financial condition and results of operations. In addition, in the current economic environment, equity real estate investments may be difficult to sell quickly and we may not be able to adjust our portfolio of properties quickly in response to economic or other conditions.

Because we are located in Hawaii and therefore apart from the mainland United States, our financial results are more sensitive to certain economic factors, such as spending on tourism and increased fuel and travel costs, which may adversely impact and materially affect our business, financial condition and results of operations.

Our businesses are dependent on attracting visitors to the Kapalua Resort, to Maui, and to the State of Hawaii as a whole. Economic factors that affect the number of visitors, their length of stay or expenditure levels will affect our financial performance. Factors such as worldwide economic uncertainty and weakness, the level of unemployment in Hawaii and the mainland United States, natural disasters, substantial increases in the cost of energy, including fuel costs, and events in the airline industry that may reduce passenger capacity or increase traveling costs could reduce the number of visitors to the Kapalua Resort and negatively affect a potential buyer's demand for our future property developments, each of which could have a material adverse impact on our business, financial condition and results of operations. In addition, the threat, or perceived threat, of heightened terrorist activity in the United States or other geopolitical events, or the threat, or perceived threat, of the spread of contagious diseases, such as the Coronavirus, could negatively affect a potential visitor's choice of vacation destination or second home location or result in travel bans that could, as a result, have a material adverse impact on our business, financial condition and results of operations.

We have previously been involved in joint ventures and may be subject to risks associated with future joint venture relationships.

We have previously been involved in partnerships, joint ventures and other joint business relationships, and may initiate future joint venture projects. A joint venture involves certain risks such as:

- our actual or potential lack of voting control over the joint venture;
- our ability to maintain good relationships with our joint venture partners;
- a venture partner at any time may have economic or business interests that are inconsistent with ours, especially in light of economic uncertainty and weakness;
- a venture partner may fail to fund its share of operations and development activities, or to fulfill its other commitments, including providing accurate and timely accounting and financial information to us; and
- a joint venture or venture partner could lose key personnel.

In connection with our joint venture projects, we may be asked to guarantee the joint venture's obligations, or to indemnify third parties in connection with a joint venture's contractual arrangements. If we were to become obligated under such arrangements or become subject to the risks associated with joint venture relationships, our business, financial condition and results of operations may be adversely affected.

If we are unable to complete land development projects within forecasted time and budget expectations, if at all, our financial results may be negatively affected.

We intend to develop resort and other properties as suitable opportunities arise, taking into consideration the general economic climate. New project developments have a number of risks, including risks associated with:

- construction delays or cost overruns that may increase project costs;

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- receipt of zoning, occupancy and other required governmental permits and authorizations;
- development costs incurred for projects that are not pursued to completion;
- earthquakes, tsunamis, hurricanes, floods, fires or other natural disasters that could adversely impact a project;
- defects in design or construction that may result in additional costs to remedy or require all or a portion of a property to be closed during the period required to rectify the situation;
- ability to raise capital;
- impact of governmental fines and assessments such as park fees or affordable housing requirements;
- governmental restrictions on the nature or size of a project or timing of completion; and
- the potential lack of adequate building/construction capacity for large development projects.

If any development project is not completed on time or within budget, this could have a material adverse effect on our financial results.

If we are unable to obtain required land use entitlements at reasonable costs, or at all, our operating results would be adversely affected.

The financial performance of our Real Estate segment is dependent upon our success in obtaining land use entitlements for proposed development projects. Obtaining all of the necessary entitlements to develop a parcel of land is often difficult, costly and may take several years, or more, to complete. In some situations, we may be unable to obtain the necessary entitlements to proceed with a real estate development or may be required to alter our plans for the development. Delays or failures to obtain these entitlements may have a material adverse effect on our financial results.

If we are unable to successfully compete with other developers of real estate in Maui, our financial results could be materially adversely affected.

Our real estate products face significant competition from other luxury resort real estate properties on Maui, and from other residential property in Hawaii and the mainland United States. In many cases, our competitors are larger than us and have greater access to capital. If we are unable to compete with these competitors, our financial results could be materially adversely affected.

We may be subject to certain environmental regulations under which we may have additional liability and experience additional costs for land development.

Various federal, state, and local environmental laws, ordinances and regulations regulate our properties and could make us liable for the costs of removing or cleaning up hazardous or toxic substances on, under, or in property we currently own or operate or that we previously owned or operated. These laws could impose liability without regard to whether we knew of, or were responsible for, the presence of hazardous or toxic substances. The presence of hazardous or toxic substances, or the failure to properly clean up such substances when present, could jeopardize our ability to develop, use, sell or rent our real property or to borrow using our real property as collateral. If we arrange for the disposal or treatment of hazardous or toxic wastes, we could be liable for the costs of removing or cleaning up wastes at the disposal or treatment facility, even if we never owned or operated that facility. Certain laws, ordinances and regulations, particularly those governing the management or preservation of wetlands, coastal zones and threatened or endangered species, could limit our ability to develop, use, sell or rent our real property.

Changes in weather conditions or natural disasters could adversely impact and materially affect our business, financial condition and results of operations.

Natural disasters could damage our resort and real estate holdings, resulting in substantial repair or replacement costs to the extent not covered by insurance, a reduction in property values, or a loss of revenue, each of which could have a material adverse impact on our business, financial condition and results of operations. Our competitors may be affected differently by such changes in weather conditions or natural disasters depending on the location of their assets or operations.

Our insurance coverages may be inadequate to cover any losses we incur.

We maintain various insurance coverages for our business. We have engaged experts to assist us in the determination of our insurance policy terms, including coverage limits and deductibles, based on an evaluation of the level of potential risk, exposure and costs involved. This may result in insurance coverage that may not be sufficient to cover the full value of our losses in certain catastrophic or unforeseen circumstances. In addition, securing coverage in the event we file a claim under our insurance policies may involve substantial time, effort, resources and the risk that the insurance carrier may deny or dispute coverage under the policy. Under such circumstances, we may not receive insurance proceeds or the insurance proceeds we receive may not fully cover business interruptions or losses and our operating results, liquidity and financial condition could be adversely affected.

Unauthorized use of our trademarks could negatively impact our businesses.

We have several trademarks that we have registered in the United States and in several foreign countries. To the extent that our exclusive use of these trademarks is challenged, we intend to vigorously defend our rights. If we are not successful in defending our rights, our businesses could be adversely impacted.

Market volatility of asset values and interest rates affect the funded status of our defined benefit pension plans and could, under certain circumstances, have a material adverse effect on our financial condition.

We have a defined benefit pension plan which was frozen with respect to benefits and the addition of participants in 2011. The funded status and our ability to satisfy the future obligations of the plan is affected by, among other things, changes in interest rates, returns from plan asset investments, and actuarial assumptions including the life expectancies of the plan's participants. If we are unable to adequately fund or meet our future obligations with respect to the plan, our business, financial condition and results of operations may be adversely affected.

Changes in U.S. accounting standards may adversely impact us.

The regulatory boards and government agencies that determine financial accounting standards and disclosures in the U.S., including the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB) (collectively, the "Boards") and the SEC, continually change and update the financial accounting standards we must follow.

In February 2016, the Boards issued an Accounting Standards Update (ASU), which changes certain aspects of accounting for leases for both lessees and lessors. Since February 2016, several additional ASUs have been issued to clarify implementation issues. The final update became effective on January 1, 2019. Such potential impacts from the adoption of the ASU include, without limitation:

- Significant changes to our balance sheet relating to the recognition of operating leases as assets or liabilities based on existing lease terms and whether we are the lessor or lessee;
- Significant changes in the timing of revenue recognition (related to lease arrangements in which we are the lessor) or expense recognition (related to the lease arrangements in which we are the lessee), stemming from the potential classification of financing or sales-type leases under the new ASU, for leases that were classified as operating leases under the previous accounting standards; and
- Significant fluctuations in our reported results of operations.

In addition, the new accounting update could make leasing/re-leasing of our spaces less attractive to our potential and current tenants, which could reduce overall occupancy of our properties. Under the previous guidance, our tenants do not reflect operating leases with us as a liability on their balance sheets, but only provide a disclosure of future minimum payments associated with the operating lease in the footnotes to their financial statements. The new lease standard will require that lessees record on the balance sheets their rights and obligations pertaining to operating leases with a term of over 12 months. Changes in lease accounting standards could potentially impact the structure and terms of future leases since our tenants may seek to limit lease terms to avoid recognizing lease obligations in their financial statements. The new rules may also make lease renewal options less attractive because, under certain circumstances, the rules will require a tenant to assume that a renewal right will be exercised and accrue a liability relating to the longer lease term. Shorter lease terms and a reduction in rentable square feet leased may lead to a reduction in occupancy rates and decline in rental revenue, which would have an adverse effect on our results of operations.

In May 2014, the FASB issued an ASU on recognition of revenue arising from contracts with customers and subsequently issued an ASU on recognition of gains and losses from the transfer of nonfinancial assets in contracts with noncustomers. The updates became effective for us on January 1, 2018. The core principle underlying the revenue recognition ASU is that an entity will recognize revenue to represent the transfer of goods and services to customers in an amount that reflects the consideration to which the entity expects to be entitled in such exchange. This requires entities to identify contractual performance obligations and determine whether revenue should be recognized at a point in time or over time, based on when control of goods and services transfers to a customer.

Any difficulties in the implementation of changes in accounting principles, including the ability to modify our accounting systems and to update our policies, procedures, information systems, and internal controls over financial reporting, could result in materially inaccurate financial statements, which in turn could harm our operating results or cause us to fail to meet our reporting obligations. The adoption of new accounting standards could also affect the calculation of our credit facility covenants. We cannot be assured that we will be able to work with our lenders to amend our credit facility covenants in response to changes in accounting standards.

Security incidents through cyber attacks, cyber intrusions, or other methods could disrupt our information technology networks and related systems, cause a loss of assets or loss of data, give rise to remediation or other expenses, expose us to liability under federal and state laws, and subject us to litigation and investigations, which could result in substantial reputational damage and materially and adversely affect our business, financial condition, results of operations, cash flows, and the market price of our common stock.

Information technology, communication networks, and related systems are essential to the operation of our business. We use these systems to manage our tenant, vendor and customer relationships, internal communications, accounting and record-keeping systems, and many other key aspects of our business. Our operations rely on the secure processing, storage, and transmission of confidential and other information in our computer systems and networks, which also depend on the strength of our procedures and the effectiveness of our internal controls.

A security incident may occur through physical break-ins, breaches of our secure network by an unauthorized party, software vulnerabilities, malware, computer viruses, attachments to emails, employee theft or misuse, social engineering, or inadequate use of security controls. Outside parties may attempt to fraudulently induce our employees to disclose sensitive information or transfer funds via illegal electronic spamming, phishing, spoofing or other tactics. Additionally, cyber attackers can develop and deploy malware, credential theft or guessing tools, and other malicious software programs to gain access to sensitive data or fraudulently obtain assets we hold.

We have implemented security measures to safeguard our systems and data and to manage cyber security risk. We monitor and develop our information technology networks and infrastructure, and invest in the development and enhancement of our controls designed to prevent, detect, address, and mitigate the risk of unauthorized access, misuse, computer viruses, and other events that could have a security impact. We conduct periodic security awareness trainings for our employees to educate them on how to identify and alert management regarding phishing emails, spoofed or manipulated electronic communications, and other critical security threats. We've implemented internal controls around our treasury function including enhanced payment authorization procedures, verification requirements for new vendor set-up and vendor information changes, and bolstered outgoing payment notification processes and account reconciliation procedures.

While, to date, we are not aware of having experienced a significant security incident or cyber attack, there can be no assurance that our actions, security measures, and controls designed to prevent, detect, or respond to intrusion; to limit access to data; to prevent loss, destruction, alteration, or exfiltration of business information; or to limit the negative impact from such attacks can provide absolute security against a security incident.

A principal reason that we cannot provide absolute protection from security incidents is that it may not always be possible to anticipate, detect, or recognize threats to our systems, or to implement effective preventive measures against all security incidents due to, among other things, the frequent change in techniques used in cyber attacks, which may not be recognized until launched, and the wide variety of sources from which a cyber attack can originate. We may not be able to immediately address the consequences of a security incident due to a cyber attack.

The extent of a particular cyber attack and the steps that we may need to take to investigate the attack may not be immediately clear. Therefore, in the event of an attack, it may take a significant amount of time before such an investigation can be completed. During an investigation, we may not necessarily know the extent of the damage incurred or how best to remediate it, and certain errors or actions could be repeated or compounded before they are discovered and remediated, which could further increase the costs and consequences of a cyber attack.

Even if we are not targeted directly, cyber attacks on the U.S. government, financial markets, financial institutions, or other businesses, including our tenants, vendors, software creators, cloud providers, and other third parties with whom we do business, could disrupt our normal business operations and networks.

We maintain insurance to protect ourselves against certain losses incurred in the event of a security incident or disruption of our information systems. However, we cannot be certain that the coverage will be adequate to compensate us for all damages that may arise. In addition, we cannot be certain that such insurance coverages will remain available to us in the future on commercially reasonable terms, or at all.

Risks Related to Indebtedness

We have entered into a credit agreement for a \$15.0 million revolving line of credit facility with a bank. The credit facility has a maturity date of December 31, 2021 and its terms include certain financial and operating covenants, which if we fail to satisfy, could accelerate our repayment obligations and adversely affect our operations and financial results.

The terms of our credit facility include covenants requiring among other things, a minimum of \$2.0 million in liquidity (as defined), a maximum of \$45.0 million in total liabilities and a limitation on new indebtedness. Our ability to continue to borrow under our credit facility to fund our business initiatives depends upon our ability to comply with these covenants.

Interest on our credit facility is calculated at the London Interbank Offered Rate (LIBOR) plus 3.50%. In the future, use of LIBOR may be discontinued and we cannot be certain how long LIBOR will continue to be a viable benchmark interest rate. Our credit agreement states that in the event that any law or regulation makes it unlawful for interest to be calculated using LIBOR, then interest will be calculated based on the bank's prime rate, which rate may not necessarily be the best or lowest rate charged by the bank from time to time. Use of the bank's prime rate could result in increased borrowing costs or volatility in interest rates.

Our business initiatives for the next twelve months include investing in our operating infrastructure and continued planning and entitlement efforts on our development projects. At times, this may require borrowing under our credit facility or other indebtedness, repayment of which may be dependent on selling of our real estate assets at acceptable prices in condensed timeframes.

Our indebtedness could have the effect of, among other things, increasing our exposure to general adverse economic and industry conditions, limiting our flexibility in planning for, or reacting to, changes in our business and industry, and limiting our ability to borrow additional funds.

Risks Relating to our Stock

Our stock price has been subject to significant volatility.

In 2019, the low and high share prices of our common stock ranged from \$9.64 to \$12.48. Our stock price has been, and may continue to be, subject to significant volatility. Among others, including the risks and uncertainties discussed in this annual report, the following factors, some of which are out of our control, may cause the market price of our common stock to continue to be volatile:

- our quarterly or annual earnings or those of other companies in our industry;
- actual or unanticipated fluctuations in our operating results;
- the relatively low volume of trading in our stock; and
- the lack of significant securities analysts coverage of our stock.

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Fluctuations in the price of our common stock may also be exacerbated by economic and other conditions in Maui in particular, or conditions in the financial markets generally.

Share ownership by our affiliates make it more difficult for third parties to acquire us or effectuate a change of control that might be viewed favorably by other shareholders.

As of February 10, 2020, affiliates of our company owned, in the aggregate, approximately 65% of our outstanding shares. As a result, if these affiliates were to oppose a third party's acquisition proposal for, or a change in control of, the Company, these affiliates may have sufficient voting power to be able to block or at least delay such an acquisition or change in control from taking place, even if other shareholders would support such a sale or change of control.

Trading in our stock over the last twelve months has been limited, so investors may not be able to sell as much stock as they want at prevailing prices.

The average daily trading volume in our common stock for the year ended December 31, 2019 was approximately 9,000 shares. If limited trading in our stock continues, it may be difficult for investors to sell their shares in the public market at any given time at prevailing prices. Moreover, the market price for shares of our common stock may be made more volatile because of the relatively low volume of trading in our common stock. When trading volume is low, significant price movement can be caused by the trading in a relatively small number of shares. Volatility in our common stock could cause stockholders to incur substantial losses.

We do not anticipate declaring any cash dividends on our common stock.

We have not declared or paid regular cash dividends on our common stock. Our current policy is to retain all funds and any earnings for use in the operation and expansion of our business. The payment of cash dividends by us is restricted by our credit facility which contains covenants prohibiting us from paying any cash dividends without the lender's prior approval. If we do not pay dividends, our stock may be less valuable to you because a return on your investment will only occur if our stock price appreciates.

If we do not meet the continued listing requirements of the New York Stock Exchange (NYSE), our common stock may be delisted.

Our common stock is currently listed on the NYSE. If we are unable to maintain compliance with the NYSE's continued listing standards the NYSE may take action to delist our common stock. Delisting could negatively impact us by, among other things, reducing the liquidity and market price of our common stock, reducing the number of investors willing to hold or acquire our common stock, and limiting our ability to issue additional securities or obtain additional financing in the future, and might negatively impact our reputation and, as a consequence, our business. In addition, if our common stock is delisted, it would violate the covenants of our credit facility.

We may need additional funds which, if available, could result in significant dilution to our stockholders, have superior rights to our common stock and contain covenants that restrict our operations.

If unanticipated contingencies or other unforeseen circumstances arise, it may be necessary for us to raise additional capital either through public or private equity or debt financing. We cannot say with any certainty that we will be able to obtain the additional needed funds on reasonable terms, or at all. If we were to raise capital through the issuance of our common stock or securities convertible or exercisable into our common stock, our existing stockholders may suffer significant dilution. If we issued preferred equity or debt securities, these securities could have rights superior to holders of our common stock and could contain covenants that will restrict our operations. If additional funds are raised through a bank credit facility or the issuance of debt securities, the holder of such indebtedness would have rights senior to the rights of equity holders and the terms of such indebtedness could impose restrictions on our operations.

Item 1B. UNRESOLVED STAFF COMMENTS

None.

Item 2. PROPERTIES

Most of our land was acquired from 1911 to 1932 and, accordingly, has a relatively low cost basis. The following is a summary of our landholdings as of December 31, 2019:

| | Acres |
|----------------|--------|
| West Maui | 20,700 |
| Upcountry Maui | 2,100 |
| Total | 22,800 |

Our West Maui landholdings are comprised of several, largely contiguous parcels that extend from the sea to the top of the second largest mountain on Maui, at an elevation of approximately 5,700 feet. It includes approximately 900 acres within the 3,000-acre Kapalua Resort. The remaining lands are mainly former pineapple fields, gulches, undeveloped coastal and forest areas, and our 9,000-acre conservation watershed preserve.

Our Upcountry Maui landholdings are situated at elevations between 1,000 and 2,000 feet above sea level on the slopes of Haleakala, a volcanic-formed mountain on the island that rises above 10,000 feet in elevation.

We have pledged certain of our real estate properties in the Kapalua Resort as security for borrowings under our credit facility.

In February 2020, we entered into an agreement to sell the Kapalua Central Resort project for \$43.9 million. The closing of the Kapalua Central Resort Sale is contingent upon, among other things, the satisfaction of certain customary closing conditions, including a due diligence period ending on July 31, 2020 and a closing date 45 days after the last day of the due diligence period.

We own our corporate office located in the Kapalua Resort. We believe our facilities are suitable and adequate for our business and have sufficient capacity for the purposes for which they are currently being used or intended to be used. Additional information regarding our real estate properties can be found under the heading “Business” in Item 1 of this annual report.

Item 3. LEGAL PROCEEDINGS

On December 31, 2018, the State of Hawaii Department of Health (“DOH”) issued a Notice and Finding of Violation and Order (“Order”) for alleged wastewater effluent violations related to our Upcountry Maui wastewater treatment facility. The facility was built in the 1960’s to serve approximately 200 single-family homes developed for workers in our former agricultural operations. The facility is made up of two 1.5-acre wastewater stabilization ponds and surrounding disposal leach fields.

The Order resulted from an inspection by DOH officials in June 2018. The Order includes, among other requirements, payment of a \$230,000 administrative penalty and development of a new wastewater treatment plant, which become final and binding – unless a hearing is requested to contest the alleged violations and penalties. We have requested such a hearing, which has been deferred pending the outcome of ongoing discussions and negotiations with various governmental and private entities to resolve the matter.

We are presently unable to estimate the amount, or range of amounts, of any probable liability, if any, related to the Order and no provision has been made in the accompanying financial statements.

From time to time, we are a party to various claims, complaints and other legal actions that have arisen in the normal course of our business activities. We believe the outcome of these pending legal proceedings, in the aggregate, is not likely to have a material adverse effect on our operations, financial position or cash flows.

Item 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

Item 5. MARKET FOR REGISTRANT’S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock is traded on the NYSE under the symbol “MLP.” Our ability to declare dividends is restricted by the terms of our credit agreement. We do not intend to pay any cash dividends on our common stock in the foreseeable future. As of February 10, 2020, there were 236 shareholders of record of our common stock, which do not include beneficial owners of our common stock whose shares are held in the names of various securities brokers, dealers and registered clearing agencies.

Unregistered Sales of Equity Securities

None.

Repurchases

None.

Securities Authorized For Issuance Under Equity Compensation Plans

The information regarding securities authorized for issuance under our equity compensation plans is set forth in Item 12 of this annual report.

Item 6. SELECTED FINANCIAL DATA

Because we are a smaller reporting company, as defined in Item 10(f)(1) of Regulation S-K, we are not required to provide the information required by this Item.

Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with the forward-looking statements disclaimer set forth at the beginning of this annual report, the risk factors set forth in Item 1A of this annual report, and our financial statements and the notes to those statements set forth in Item 8 of this annual report.

RESULTS OF OPERATIONS

Comparison of Years Ended December 31, 2019 and 2018

CONSOLIDATED

| | Year Ended December 31, | |
|---|-------------------------------------|----------|
| | 2019 | 2018 |
| | (in thousands except share amounts) | |
| <i>Operating revenues</i> | \$ 10,045 | \$ 8,860 |
| <i>Operating costs and expenses</i> | (5,443) | (6,916) |
| <i>General and administrative</i> | (2,254) | (2,896) |
| <i>Share-based compensation</i> | (1,732) | (1,540) |
| <i>Depreciation</i> | (1,412) | (1,490) |
| <i>Operating loss</i> | (796) | (3,982) |
| <i>Pension and other postretirement expense</i> | (1,016) | (514) |
| <i>Interest expense</i> | (198) | (156) |
| <i>Income tax benefit (expense)</i> | (4,999) | 4,999 |
| <i>Income (loss) from Continuing Operations</i> | (7,009) | 347 |
| <i>Income (loss) from Discontinued Operations</i> | (3,357) | 151 |
| <i>Net income (Loss)</i> | \$ (10,366) | \$ 498 |
| <i>Income (loss) from Continuing Operations per Common Share</i> | \$ (0.37) | \$ 0.02 |
| <i>Income (loss) from Discontinuing Operations per Common Share</i> | \$ (0.17) | \$ 0.01 |
| <i>Net Income (loss) per Common Share</i> | \$ (0.54) | \$ 0.03 |

REAL ESTATE

| | Year Ended December 31, | |
|-------------------------------------|-------------------------|------------|
| | 2019 | 2018 |
| | (in thousands) | |
| <i>Operating revenues</i> | \$ 915 | \$ 446 |
| <i>Operating costs and expenses</i> | (1,185) | (2,770) |
| <i>Operating loss</i> | \$ (270) | \$ (2,324) |

Included in our real estate operating revenues were sales commissions from resales of properties owned by private residents in the Kapalua Resort and surrounding areas by our wholly-owned subsidiary, Kapalua Realty Company, Ltd. totaling \$0.9 million and \$0.4 million for the years ended December 31, 2019 and 2018, respectively.

The decrease in real estate operating costs and expenses for the year ended December 31, 2019 compared to the year ended December 31, 2018 was mainly due to a decrease in legal defense, mediation and settlement costs incurred in the lawsuits with respect to the project formerly known as The Ritz-Carlton Club and Residences, Kapalua Bay, which were settled in late 2018 and early 2019.

Real estate development expenditures were \$278,000 and \$395,000 in 2019 and 2018, respectively.

Real estate development and sales are cyclical and depend on a number of factors. Results for one period are therefore not necessarily indicative of future performance trends in this business segment. Following the closing of the diligence period, among the satisfaction of other contingencies, we expect to receive \$43.9 million in proceeds from the Kapalua Central Resort Sale.

LEASING

| | Year Ended December 31, | |
|-------------------------------------|-------------------------|----------|
| | 2019 | 2018 |
| | (in thousands) | |
| <i>Operating revenues</i> | \$ 8,148 | \$ 7,266 |
| <i>Operating costs and expenses</i> | (3,228) | (3,037) |
| <i>Operating income</i> | \$ 4,920 | \$ 4,229 |

Leasing operating revenues for the year ended December 31, 2019 were comprised of \$6.0 million of revenues from commercial, agricultural and industrial leases, \$0.9 million of licensing fees from our registered trademarks and trade names, and \$1.2 million of revenue from potable and non-potable water system sales. This compares to \$5.3 million of revenues from commercial, agricultural and industrial leases, \$0.9 million of licensing fees from our registered trademarks and trade names, and \$1.1 million of revenue from potable and non-potable water system sales for the year ended December 31, 2018. The increase in leasing revenues during the year ended December 31, 2019 compared to the year ended December 31, 2018 was driven primarily from increased percentage rent and improved renegotiated lease terms from our commercial leasing portfolio.

The increase in leasing operating costs and expenses for the year ended December 31, 2019 compared to the year ended December 31, 2018 was primarily due to higher repairs and maintenance costs for our commercial leasing portfolio properties and non-potable irrigation ditch and transmission systems.

Our leasing operations face substantial competition from other property owners in Maui and Hawaii.

RESORT AMENITIES

| | Year Ended December 31, | |
|-------------------------------------|-------------------------|----------|
| | 2019 | 2018 |
| | (in thousands) | |
| <i>Operating revenues</i> | \$ 982 | \$ 1,148 |
| <i>Operating costs and expenses</i> | (1,030) | (1,109) |
| <i>Operating income (loss)</i> | \$ (48) | \$ 39 |

Our Resort Amenities segment includes the operations of the Kapalua Club, a private, non-equity club providing its members special programs, access and other privileges at certain of the amenities at the Kapalua Resort including a 30,000 square foot full-service spa and a private pool-side dining beach club. The Kapalua Club does not operate any resort amenities and the member dues collected are primarily used to pay contracted fees to provide access for its members to the spa, beach club and other resort amenities.

The decrease in resort operating revenues and operating costs and expenses for the year ended December 31, 2019 compared to the year ended December 31, 2018 was primarily due to the closure of the Kapalua Plantation Golf Course for renovations from February to December 2019.

INTEREST EXPENSE

Interest expense was \$0.2 million for 2019 and 2018. Our average interest rates on borrowings was 5.77% for 2019, compared to 5.91% for 2018, and average borrowings were \$1.8 million in 2019 compared to \$1.3 million in 2018.

INCOME TAXES

In December 2017, The Tax Cuts and Jobs Act of 2017 (TCJA) was signed into law. The law includes significant changes to the U.S. corporate income tax system, including a Federal corporate rate reduction from 35% to 21%, elimination of Alternative Minimum Tax (AMT) and refund of AMT credit carryforward, limitations on the deductibility of interest expense and executive compensation, and the transition of U.S. international taxation from a worldwide tax system to a territorial tax system. The TCJA also establishes new tax laws that will affect future periods, including, but not limited to: (1) reducing the U.S. federal corporate tax rate; (2) limiting deductible interest expense; (3) modifying the tax treatment of like-kind exchanges; (4) generally eliminating U.S. federal income taxes on dividends from foreign subsidiaries; (5) imposing a new provision designed to tax global intangible low-tax income; (6) creating the base erosion anti-abuse tax, a new minimum tax; (7) limiting the use of Net Operating Loss (NOL) carryforwards created in tax years beginning after December 31, 2017; (8) modifying the limitations on the use of foreign tax credits to reduce our U.S. income tax liability; and (9) further restricting the deductibility of certain executive compensation and fringe benefits.

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In accordance with TCJA, \$91.3 million of AMT NOL carry forwards were eliminated at December 31, 2018 and \$5.0 million of income tax benefit recognized from its unused AMT credit carry forwards. In December 2019, we received notice that a portion of the refund, \$2.5 million, was applied by the U.S. Department of the Treasury toward a “Non-Tax Federal Debt.” We believe the refund was misapplied in error and intend to pursue collection of the amount; however, we have recognized a reserve for the entire \$5.0 million income tax benefit from our unused AMT credit carry forwards at December 31, 2019, until such time that we have further clarification on this matter.

DISCONTINUED OPERATIONS

In December 2019, we entered into an Asset Purchase Agreement to sell the assets of Kapalua Water Company, Ltd. and Kapalua Waste Treatment Company, Ltd. located in the Kapalua Resort for a purchase price of approximately \$3.8 million in addition to a potential Capital Expenditures Adjustment, as defined in the agreement, to be determined at closing. The sale is subject to certain closing conditions, including completion of due diligence and approval by the Hawaii Public Utilities Commission (PUC). As part of the agreement, the purchaser commits to serve the future expansion areas of Kapalua as they are developed. Furthermore, we agree to deliver water from our wells and ditches to certain delivery points at defined rates over an initial period of 20 years.

Under terms of the agreement, the purchase price will not include approximately \$3.6 million of water system infrastructure and other related assets conveyed to us by the owner of a 125-acre portion of the Kapalua Mauka project. Accordingly, upon classification of the Kapalua Water Company and Kapalua Waste Treatment Company assets as held for sale at December 31, 2019, these assets were written-down to its fair value and included as part of our discontinued operations for the year ended December 31, 2019.

LIQUIDITY AND CAPITAL RESOURCES

Liquidity

We had cash on hand of \$0.7 million and \$0.6 million as of December 31, 2019 and 2018, respectively. We also had \$14.0 million and \$13.8 million of available credit under a \$15.0 million revolving line of credit facility with First Hawaiian Bank (Credit Facility) as of December 31, 2019 and 2018, respectively.

The Credit Facility was extended in December 2019 and matures on December 31, 2021. Interest on borrowings is calculated at LIBOR plus 3.50%. We have pledged our 800-acre Kapalua Mauka project and approximately 30,000 square feet of commercial leased space in the Kapalua Resort as security for the Credit Facility. Net proceeds from the sale of any collateral are required to be repaid toward outstanding borrowings and will permanently reduce the Credit Facility’s revolving commitment amount. There are no commitment fees on the unused portion of the Credit Facility.

The terms of the Credit Facility include various representations, warranties, affirmative, negative and financial covenants and events of default customary for financings of this type. Financial covenants include a minimum liquidity (as defined) of \$2.0 million, a maximum of \$45.0 million in total liabilities, and a limitation on new indebtedness.

As of December 31, 2019, we were in compliance with the covenants under the Credit Facility.

Cash Flows

Net cash flow provided by our operating activities totaled \$1.8 million for the year ended December 31, 2019. Interest payments on our long-term debt totaled \$0.1 million for the year ended December 31, 2019.

We were not required to make any minimum funding contributions to our defined benefit pension plan during 2019. We expect to make \$0.5 million in minimum funding contributions in 2020.

Future Cash Inflows and Outflows

Our business initiatives for the next twelve months include investing in our operating infrastructure and continued planning and entitlement efforts on our development projects. At times, this may require borrowing under our Credit Facility or other indebtedness, repayment of which may be dependent on selling of our real estate assets at acceptable prices in condensed timeframes.

Our indebtedness could have the effect of, among other things, increasing our exposure to general adverse economic and industry conditions, limiting our flexibility in planning for, or reacting to, changes in our business and industry, and limiting our ability to borrow additional funds.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Our accounting policies are described in “Summary of Significant Accounting Policies,” Note 1 to our financial statements set forth in Item 8 of this annual report. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires the use of accounting estimates. Some of these estimates and assumptions involve a high level of subjectivity and judgment and therefore the impact of a change in these estimates and assumptions could materially affect the amounts reported in our financial statements. The accounting policies and estimates that we have identified as being critical to our financial statements are as follows:

- Our long-lived assets are reviewed for impairment if events or circumstances indicate that the carrying amount of the long-lived asset may not be recoverable. These asset impairment loss analyses contain uncertainties because they require management to make assumptions and apply considerable judgments to, among others, estimates of the timing and amount of future cash flows, expected useful lives of the assets, uncertainty about future events, including changes in economic conditions, changes in operating performance, changes in the use of the assets, and ongoing costs of maintenance and improvements of the assets; thus, the accounting estimates may change from period to period. If management uses different assumptions or if different conditions occur in future periods, our financial condition or future operating results could be materially impacted.
- Deferred development costs, principally predevelopment costs and offsite development costs related to various projects in the planning stages by our real estate segment, totaled \$ 8.5 million at December 31, 2019. Based on our future development plans for the Kapalua Resort and other properties, and the estimated value of these future projects, we have concluded that our deferred development costs will be recoverable from our future development projects. Our assumptions and estimates could be subject to significant change because of the long-term nature of our development plans and the uncertainty of when or if certain projects will be developed.
- Assets are classified as held for sale when management approves and commits to a plan to sell the property; the property is available for immediate sale in its present condition, subject only to terms that are usual and customary; an active program to locate a buyer and other actions required to complete the plan to sell have been initiated; the sale of the property is probable and is expected to be completed within one year; the property is being actively marketed for sale at a price that is reasonable in relation to its current fair value; and actions necessary to complete the plan of sale indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn. Assets held for sale are stated at the lower of net book value or estimated fair value less cost to sell.
- Sales of real estate assets that are considered central to our ongoing major operations are classified as real estate sales revenue, along with any associated cost of sales, in our consolidated statements of operations and comprehensive loss. Sales of real estate assets that are considered peripheral or incidental transactions to our ongoing major or central operations are reflected as net gains or losses in our consolidated statements of operations and comprehensive loss.
- If the sale of a real estate asset represents a strategic shift that has, or will have, a major effect on our operations, such as the discontinuance of a business segment, then the operations of the property, including any interest expense directly attributable to it, are classified as discontinued operations, and amounts for all prior periods presented are reclassified from continuing operations to discontinued operations. The disposal of an individual property generally will not represent a strategic shift and, therefore, will typically not meet the criteria for classification as discontinued operations.

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- Determining pension expense and obligations for our defined benefit pension plan utilizes actuarial estimates of participants' age at retirement, life span, the long-term rate of return on investments and other factors. In addition, pension expense is sensitive to the discount rate utilized to value the pension obligation. These assumptions are subject to the risk of change as they require significant judgment and have inherent uncertainties that management or its consulting actuaries may not control or anticipate. A detailed discussion of our defined benefit pension plans is contained in Note 6 to our financial statements set forth in Item 8 of this annual report.
- Management calculates the income tax provision, current and deferred income taxes, and tax credits along with the valuation allowance based upon various complex estimates and interpretations of income tax laws and regulations. Deferred tax assets and tax credits are reduced by a valuation allowance to the extent that it is more likely than not that they will not be realized. To the extent we begin to generate taxable income in future years, and it is determined the valuation allowance is no longer required, the tax benefit for the remaining deferred tax assets and tax credits will be recognized at such time. A detailed discussion of our income taxes is contained in Note 8 to our financial statements set forth in Item 8 of this annual report.
- Our results of operations could be affected by significant litigation or contingencies adverse to the Company, including, but not limited to, liability claims, environmental matters, and contract terminations. We record accruals for legal matters when the information available indicates that it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. We make adjustments to these accruals to reflect the impact and status of negotiations, settlements, rulings, advice of legal counsel and other information and events that may pertain to a particular matter. Predicting the outcome of claims and lawsuits and estimating related costs and exposure involves substantial uncertainties that could cause actual costs to vary materially from those estimates. In making determinations of likely outcomes of litigation matters, we consider many factors. These factors include, but are not limited to, the nature of specific claims, our experience with similar types of claims, the jurisdiction in which the matter is filed, input from outside legal counsel, the likelihood of resolving the matter through alternative dispute resolution mechanisms and the matter's current status. A detailed discussion of significant litigation matters and contingencies is contained in Note 12 to our financial statements set forth in Item 8 of this annual report.

IMPACT OF INFLATION AND CHANGING PRICES

Most of the land we own was acquired from 1911 to 1932 and is carried at cost. At the Kapalua Resort, some of the fixed assets were constructed and placed in service in the mid-to-late 1970's. Depreciation expense would be considerably higher if fixed assets were stated at current replacement cost.

OFF-BALANCE SHEET ARRANGEMENTS

As of December 31, 2019, we did not have any significant off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K.

Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Because we were a smaller reporting company, as defined in Item 10(f)(1) of SEC Regulation S-K in 2019, we are not required to provide the information required by this Item.

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Maui Land & Pineapple Company, Inc.

Opinions on the Consolidated Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of Maui Land & Pineapple Company, Inc. and its subsidiaries (the “Company”) as of December 31, 2019 and 2018, and the related consolidated statements of operations and comprehensive loss, changes in stockholders’ equity, and cash flows for each of the years in the two-year period ended December 31, 2019 and the related notes (collectively referred to as the “consolidated financial statements”). We also have audited the Company’s internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of their operations and their cash flows for each of the years in the two-year period ended December 31, 2019 in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the COSO.

Basis for Opinions

The Company’s management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company’s consolidated financial statements and an opinion on the Company’s internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

Definition and Limitations of Internal Control over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ ACCUITY LLP

We have served as the Company's auditor since 2014.

Honolulu, Hawaii
February 28, 2020

MAUI LAND & PINEAPPLE COMPANY, INC. & SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

| | December 31, | |
|---|----------------------------------|------------------|
| | 2019 | 2018 |
| | (in thousands except share data) | |
| ASSETS | | |
| CURRENT ASSETS | | |
| Cash | \$ 683 | \$ 624 |
| Accounts receivable, less allowance of \$35 and \$34 for doubtful accounts | 1,173 | 989 |
| Current portion of income tax receivable | - | 2,499 |
| Prepaid expenses and other assets | 101 | 37 |
| Assets held for sale | 7,597 | 7,908 |
| Total Current Assets | <u>9,554</u> | <u>12,057</u> |
| PROPERTY | | |
| Land | 5,073 | 5,058 |
| Land improvements | 13,153 | 14,499 |
| Buildings | 23,439 | 24,658 |
| Machinery and equipment | 10,495 | 10,354 |
| Construction in progress | 4 | 106 |
| Total Property | 52,164 | 54,675 |
| Less accumulated depreciation | 32,445 | 33,150 |
| Property, net | <u>19,719</u> | <u>21,525</u> |
| OTHER ASSETS | | |
| Deferred development costs | 8,504 | 10,790 |
| Income tax receivable | - | 2,500 |
| Other noncurrent assets | 1,342 | 1,320 |
| Total Other Assets | <u>9,846</u> | <u>14,610</u> |
| TOTAL ASSETS | <u>\$ 39,119</u> | <u>\$ 48,192</u> |
| LIABILITIES & STOCKHOLDERS' EQUITY | | |
| CURRENT LIABILITIES | | |
| Current portion of long-term debt | \$ - | \$ 1,235 |
| Accounts payable | 1,356 | 2,024 |
| Payroll and employee benefits | 928 | 814 |
| Current portion of accrued retirement benefits | 165 | 165 |
| Other current liabilities | 503 | 552 |
| Total Current Liabilities | <u>2,952</u> | <u>4,790</u> |
| LONG-TERM LIABILITIES | | |
| Long-term debt | 1,035 | - |
| Accrued retirement benefits | 9,702 | 9,871 |
| Deposits | 2,674 | 2,558 |
| Other noncurrent liabilities | 64 | 54 |
| Total Long-Term Liabilities | <u>13,475</u> | <u>12,483</u> |
| COMMITMENTS & CONTINGENCIES (Note 12) STOCKHOLDERS' EQUITY | | |
| Common stock--no par value, 43,000,000 shares authorized; 19,238,081 and 19,125,521 shares issued and outstanding | 80,606 | 79,411 |
| Additional paid in capital | 9,184 | 9,246 |
| Accumulated deficit | (46,300) | (35,934) |
| Accumulated other comprehensive loss | (20,798) | (21,804) |
| Total Stockholders' Equity | <u>22,692</u> | <u>30,919</u> |
| TOTAL LIABILITIES & STOCKHOLDERS' EQUITY | <u>\$ 39,119</u> | <u>\$ 48,192</u> |

See Notes to Consolidated Financial Statements

MAUI LAND & PINEAPPLE COMPANY, INC. & SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
AND COMPREHENSIVE LOSS

| | Years Ended December 31, | |
|--|---|-------------------|
| | 2019 | 2018 |
| | (in thousands except per share amounts) | |
| OPERATING REVENUES | | |
| Real estate | \$ 915 | \$ 446 |
| Leasing | 8,148 | 7,266 |
| Resort amenities and other | 982 | 1,148 |
| Total Operating Revenues | 10,045 | 8,860 |
| OPERATING COSTS AND EXPENSES | | |
| Real estate | 1,185 | 2,770 |
| Leasing | 3,228 | 3,037 |
| Resort amenities and other | 1,030 | 1,109 |
| General and administrative | 2,254 | 2,896 |
| Share-based compensation | 1,732 | 1,540 |
| Depreciation | 1,412 | 1,490 |
| Total Operating Costs and Expenses | 10,841 | 12,842 |
| OPERATING LOSS | (796) | (3,982) |
| Pension and other post-retirement expenses | (1,016) | (514) |
| Interest expense | (198) | (156) |
| Income tax (expense) benefit | (4,999) | 4,999 |
| INCOME (LOSS) FROM CONTINUING OPERATIONS | (7,009) | 347 |
| Income (Loss) from discontinued operations, net of income taxes of \$0 | (3,357) | 151 |
| NET INCOME (LOSS) | (10,366) | 498 |
| Pension, net of income taxes of \$0 | 1,006 | (1,550) |
| COMPREHENSIVE LOSS | \$ (9,360) | \$ (1,052) |
| EARNINGS (LOSS) PER COMMON SHARE--BASIC AND DILUTED | | |
| Continuing Operations | \$ (0.37) | \$ 0.02 |
| Discontinued Operations | \$ (0.17) | \$ 0.01 |
| Net Income (Loss) | \$ (0.54) | \$ 0.03 |

See Notes to Consolidated Financial Statements

MAUI LAND & PINEAPPLE COMPANY, INC. & SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY

For the Years Ended December 31, 2019 and 2018

(in thousands)

| | Common Stock | | Additional Paid in Capital | Accumulated Deficit | Accumulated Other Comprehensive Loss | Total |
|---|---------------|------------------|----------------------------------|------------------------|---|------------------|
| | Shares | Amount | | | | |
| Balance, January 1, 2018 | 19,040 | \$ 78,584 | \$ 9,246 | \$ (36,432) | \$ (20,254) | \$ 31,144 |
| Share-based compensation expense | | | 563 | | | 563 |
| Issuance of shares for incentive plan | 71 | 845 | | | | 845 |
| Vested restricted stock issued | 64 | 563 | (563) | | | - |
| Shares cancelled to pay tax liability | (50) | (581) | | | | (581) |
| Other comprehensive loss-pension (Note 6) | | | | | (1,550) | (1,550) |
| Net income | | | | 498 | | 498 |
| Balance, December 31, 2018 | <u>19,125</u> | <u>\$ 79,411</u> | <u>\$ 9,246</u> | <u>\$ (35,934)</u> | <u>\$ (21,804)</u> | <u>\$ 30,919</u> |
| Share-based compensation expense | | | 705 | | | 705 |
| Issuance of shares for incentive plan | 77 | 951 | | | | 951 |
| Vested restricted stock issued | 66 | 705 | (705) | | | - |
| Shares cancelled to pay tax liability | (55) | (653) | | | | (653) |
| Stock option exercised | 25 | 192 | (62) | | | 130 |
| Other comprehensive income-pension (Note 6) | | | | | 1,006 | 1,006 |
| Net loss | | | | (10,366) | | (10,366) |
| Balance, December 31, 2019 | <u>19,238</u> | <u>\$ 80,606</u> | <u>\$ 9,184</u> | <u>\$ (46,300)</u> | <u>\$ (20,798)</u> | <u>\$ 22,692</u> |

See Notes to Consolidated Financial Statements

MAUI LAND & PINEAPPLE COMPANY, INC. & SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS

| | Years Ended December 31, | |
|--|--------------------------|---------------|
| | 2019 | 2018 |
| | (in thousands) | |
| CASH FLOWS FROM OPERATING ACTIVITIES | | |
| Cash receipts from customers and other receipts | \$ 16,834 | \$ 14,841 |
| Cash paid to vendors | (13,523) | (12,352) |
| Cash paid for payroll and taxes | (1,433) | (1,529) |
| Cash paid for interest | (106) | (78) |
| NET CASH PROVIDED BY OPERATING ACTIVITIES | 1,772 | 882 |
| CASH FLOWS FROM INVESTING ACTIVITIES | | |
| Purchases of property | (712) | (311) |
| Payments for other assets | (278) | (395) |
| NET CASH USED IN INVESTING ACTIVITIES | (990) | (706) |
| CASH FLOWS FROM FINANCING ACTIVITIES | | |
| Proceeds from long-term debt | 1,500 | 500 |
| Payments of long-term debt | (1,700) | (500) |
| Debt and common stock issuance costs and other | (653) | (581) |
| Stock options exercised | 130 | - |
| NET CASH USED IN FINANCING ACTIVITIES | (723) | (581) |
| NET INCREASE (DECREASE) IN CASH | 59 | (405) |
| CASH AT BEGINNING OF YEAR | 624 | 1,029 |
| CASH AT END OF YEAR | \$ 683 | \$ 624 |
| SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION: | | |
| Net income (loss) | \$ (10,366) | \$ 498 |
| Adjustments to reconcile net income (loss) to net cash provided by operating activities: | | |
| Depreciation and amortization | 1,496 | 1,559 |
| Share-based compensation | 705 | 563 |
| Impairment charges | 3,643 | - |
| Disposal of property | 55 | - |
| Changes in operating assets and liabilities: | | |
| Accounts receivable, net | (184) | 165 |
| Retirement liabilities | 837 | 455 |
| Accounts payable | (668) | 1,328 |
| Income taxes receivable | 2,499 | (2,499) |
| Other operating assets and liabilities | 3,755 | (1,187) |
| NET CASH PROVIDED BY OPERATING ACTIVITIES | \$ 1,772 | \$ 882 |

SUPPLEMENTAL NON-CASH INVESTING AND FINANCING ACTIVITIES:

- Common stock issued to certain members of the Company's management totaled \$951,000 and \$845,000 in 2019 and 2018, respectively.

See Notes to Consolidated Financial Statements.

MAUI LAND & PINEAPPLE COMPANY, INC. & SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

BASIS OF CONSOLIDATION

The consolidated financial statements include the accounts of Maui Land & Pineapple Company, Inc. and its principal subsidiary Kapalua Land Company, Ltd. and other subsidiaries (collectively, the “Company”). The Company’s principal operations include the development, sale and leasing of real estate, sales of potable and non-potable water, and the management of a private club membership program at the Kapalua Resort. All significant intercompany balances and transactions have been eliminated in consolidation.

COMPREHENSIVE LOSS

Comprehensive loss includes all changes in stockholders’ equity, except those resulting from capital stock transactions. Comprehensive losses include adjustments to the Company’s defined benefit pension plan obligations.

ACCOUNTS RECEIVABLE AND ALLOWANCE FOR DOUBTFUL ACCOUNTS

Receivables are recorded net of an allowance for doubtful accounts. The Company estimates future write-offs based on delinquencies, credit ratings, aging trends, and historical experience. The Company believes the allowance for doubtful accounts is adequate to cover anticipated losses; however, significant deterioration in any of the aforementioned factors or in general economic conditions could change these expectations, and accordingly, the Company’s financial condition and/or its future operating results could be materially impacted. Credit is extended after evaluating creditworthiness and no collateral is generally required from customers.

ASSETS HELD FOR SALE

Assets are classified as held for sale when management approves and commits to a plan to sell the property; the property is available for immediate sale in its present condition, subject only to terms that are usual and customary; an active program to locate a buyer and other actions required to complete the plan to sell have been initiated; the sale of the property is probable and is expected to be completed within one year; the property is being actively marketed for sale at a price that is reasonable in relation to its current fair value; and actions necessary to complete the plan of sale indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn. Assets held for sale are stated at the lower of net book value or estimated fair value less cost to sell.

DEFERRED DEVELOPMENT COSTS

Deferred development costs consist primarily of design, entitlement and permitting fees and real estate development costs related to various planned projects. Deferred development costs are written off if management decides that it is no longer probable that the Company will proceed with the related development project. There were no impairments in deferred development costs in 2019 or 2018.

PROPERTY AND DEPRECIATION

Property is stated at cost. Major replacements, renewals and betterments are capitalized while maintenance and repairs that do not improve or extend the life of an asset are charged to expense as incurred. When property is retired or otherwise disposed of, the cost of the property and the related accumulated depreciation are written off and the resulting gains or losses are included in income. Depreciation is provided over the estimated useful lives of the respective assets using the straight-line method generally over three to 40 years.

LONG-LIVED ASSETS

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. When such events or changes occur, an estimate of the future cash flows expected to result from the use of the assets and their eventual disposition is made. If the sum of such expected future cash flows (undiscounted and without interest charges) is less than the carrying amount of the asset, an impairment loss is recognized in an amount by which the assets’ net book values exceed their fair value. These asset impairment loss analyses require management to make assumptions and apply considerable judgments regarding, among others, estimates of the timing and amount of future cash flows, expected useful lives of the assets, uncertainty about future events, including changes in economic conditions, changes in operating performance, changes in the use of the assets, and ongoing cost of maintenance and improvements of the assets, and thus, the accounting estimates may change from period to period. If management uses different assumptions or if different conditions occur in future periods, the Company’s financial condition or its future operating results could be materially impacted. Impairments of \$3.6 million were recorded in 2019 and none in 2018.

ACCRUED RETIREMENT BENEFITS

The Company's policy is to fund retirement benefit costs at a level at least equal to the minimum amount required under federal law, but not more than the maximum amount deductible for federal income tax purposes.

The under-funded status of the Company's defined benefit pension plan is recorded as a liability in its consolidated balance sheet and changes in the funded status of the plan is recorded in the year in which the changes occur, through comprehensive income. A pension asset or liability is recognized for the difference between the fair value of plan assets and the projected benefit obligation as of year-end.

Deferred compensation plans for certain former management employees provide for specified payments after retirement. A liability has been recognized based on the present value of estimated payments to be made.

REVENUE RECOGNITION

The Company recognizes revenue to represent the transfer of goods and services to customers in an amount that reflects the consideration to which the Company expects to be entitled in such exchange. This requires the Company to identify contractual performance obligations and determine whether revenue should be recognized at a point in time or over time, based on when control of goods and services transfers to a customer. Operating results pertaining to the Company's business segments are summarized in Note 10 to the consolidated financial statements.

A customer is distinguished from a noncustomer by the nature of the goods or services that are transferred. Customers are provided with goods or services that are generated by a company's ordinary output activities, whereas noncustomers are provided with nonfinancial assets that are outside of a company's ordinary output activities. This distinction may not significantly change the pattern of income recognition but determines whether that income is classified as revenue (contracts with customers) or other gains/losses (contracts with noncustomers) in the Company's consolidated financial statements. The Company's revenue streams for the period were generated as ordinary output activities to customers as defined by the guidance and were properly classified as revenues.

The Company uses the five-step model to recognize revenue from customer contracts. The five-step model requires the Company (i) identify the contract with the customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, including variable consideration to the extent that it is probable that a significant future reversal will not occur, (iv) allocate the transaction price to the respective performance obligations in the contract, and (v) recognize revenue when (or as) the Company satisfies the performance obligation.

For each contract that involves variable consideration, the transaction price of the contract is considered the most likely outcome in estimating possible consideration amounts. The information used to determine the transaction price is similar to the information used in establishing prices of goods or services.

The Company is also required to determine if it controls the goods or services prior to the transfer to the customer in order to determine if it should account for the arrangement as a principal or agent. Principal arrangements, where the Company controls the goods or services provided, will result in the recognition of the gross amount of consideration expected in the exchange. Agent arrangements, where the Company simply arranges but does not control the goods or services being transferred to the customer, will result in the recognition of the net amount the Company is entitled to retain in the exchange.

Revenues from the Company's real estate segment consist of sales of real estate and commission income from providing brokerage services. Revenues from sales of real estate are recognized in the period in which sufficient cash has been received, collection of the balance is reasonably assured, performance obligations have been performed and risks of ownership have passed to the buyer. Commission income is recognized upon settlement of a real estate transaction.

Sales of real estate assets that are considered central to the Company's ongoing major operations are classified as real estate sales revenue, along with any associated cost of sales, in the Company's consolidated statements of operations and comprehensive loss. Sales of real estate assets that are considered peripheral or incidental transactions to the Company's ongoing major or central operations are reflected as net gains or losses in the Company's consolidated statements of operations and comprehensive loss. There were no real estate sales recognized in 2019 or 2018.

Leasing revenues are recognized on a straight-line basis over the terms of the leases. Lease income may include certain percentage rents determined in accordance with the terms of the leases. Lease income arising from rents that are contingent upon the sales of the tenant exceeding a defined threshold are recognized only after the defined sales thresholds are achieved. Reimbursements received for real estate taxes, general excise taxes, insurance and common area maintenance expenses are recognized as revenue as provided in the underlying lease terms.

Revenue from resort amenities consist of annual dues received from the Kapalua Club membership program. Member services include access, special programs, and other privileges at certain of the amenities at the Kapalua Resort. Annual membership dues are recognized on a straight-line basis over one year. Performance obligations for services are satisfied by relying on information received from the Company's employees and vendors who have rendered services in accordance with the terms and conditions of the membership program.

Other revenues included in discontinued operations are recognized when delivery has occurred or services have been rendered, the sales price is fixed or determinable, and collectability is reasonably assured. As discussed in Note 9 to the consolidated financial statements, revenue from discontinued operations reflect services provided by the Kapalua Water Company and Kapalua Waste Treatment Company previously included in a Utilities segment in prior periods.

Contract assets and liabilities were not considered significant to the Company at December 31, 2019 and 2018.

The Company estimates credit losses on accounts receivable from customers by considering relevant information (past, current, and future) in assessing the collectability of cash flows. The expected credit losses of the Company's accounts receivable are summarized in Note 11 to the consolidated financial statements.

Economic factors affecting the nature, amount, timing, and uncertainty of the Company's revenue and cash flows are identified as Risks and Uncertainties in this Note 1.

RECENT ACCOUNTING PRONOUNCEMENTS – LEASE ACCOUNTING

In February 2016, the FASB issued ASU 2016-02 that sets out the principles for the recognition, measurement, presentation, and disclosure of leases for both parties to a lease agreement (i.e., lessees and lessors). Subsequently, the FASB issued additional ASUs that further clarified the original ASU. The ASUs became effective for the Company on January 1, 2019. Upon adoption of the lease ASUs, the Company elected the following practical expedients:

- Package of practical expedients – requires the Company not to reevaluate its existing or expired leases as of January 1, 2019.
- Optional transition method practical expedient – requires the Company to apply the lease ASU prospectively from the adoption date of January 1, 2019.
- Land easements practical expedient – requires the Company to account for land easements existing as of January 1, 2019, under the accounting standards applied to them prior to January 1, 2019.
- Single component practical expedient – requires the Company to account for lease and nonlease components associated with that lease under the lease ASU, if certain criteria are met.
- Short-term leases practical expedient – for operating leases with a term of 12 months or less in which the Company is the lessee, this expedient allows the Company to not record on its balance sheets the related lease liabilities, taxes collected from lessees, lessor costs paid directly by lessee to a third party and right-of-use assets.

Lessor accounting

Under the lease ASUs, each lease agreement is evaluated to identify the lease components and nonlease components at lease inception. The total consideration in the lease agreement will be allocated to the lease and nonlease components based on their relative standalone selling prices. Lessors continue to recognize the lease revenue component using an approach that is substantially equivalent to previous guidance for operating leases (straight-line basis).

On January 1, 2019, the Company elected the single component practical expedient, which required the Company, by class of underlying asset, not to allocate the total consideration to the lease and nonlease components based on their relative stand-alone selling prices. This single component practical expedient requires the Company to account for the lease component and nonlease component(s) associated with that lease as a single component if (i) the timing and pattern of transfer of the lease component and the nonlease component(s) associated with it are the same and (ii) the lease component would be classified as an operating lease if it were accounted for separately. If it is determined that the lease component is the predominant component, the Company accounts for the single component as an operating lease in accordance with the lease ASUs. Conversely, the Company is required to account for the combined component if it is determined that the nonlease component is the predominant component.

As a result of this assessment, rental revenues and tenant recoveries from the lease of real estate assets that qualify for this expedient are accounted for as a single component under the lease ASUs, with tenant recoveries primarily as variable consideration. Tenant recoveries that do not qualify for the single component practical expedient and are considered nonlease components are accounted for under the revenue recognition ASUs. The Company's operating leases commencing or modified after January 1, 2019, for which the Company is the lessor qualified for the single component practical expedient accounting under the lease ASUs. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

Costs to execute leases

The lease ASUs requires that lessors and lessees capitalize, as initial direct costs, only those costs that are incurred due to the execution of a lease (e.g. commissions paid to leasing brokers). Under the lease ASU, allocated payroll costs and other costs such as legal costs incurred as part of the leasing process prior to the execution of a lease will no longer qualify for classification as initial direct costs but will instead be expensed as incurred. Under the package of practical expedients that the Company elected on January 1, 2019, it was not required to reassess whether initial direct leasing costs capitalized prior to the adoption of the lease ASUs in connection with the leases that commenced prior to January 1, 2019, qualify for capitalization under the lease ASUs. Effective January 1, 2019, costs that the Company incurs to negotiate or arrange a lease regardless of its outcome, such as fixed employee compensation, tax, or legal advice to negotiate lease terms, and costs related to advertising or soliciting potential tenants will be expensed as incurred.

Lessee accounting

Under the lease ASUs, lessees are required to apply a dual approach by classifying leases as either finance or operating leases based on the principle of whether the lease is effectively a financed purchase of the leased asset by the lessee. This classification will determine whether the lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease, which corresponds to a similar evaluation performed by lessors. In addition to this classification, a lessee is also required to recognize a right-of-use asset and a lease liability for all leases regardless of their classification, whereas a lessor is not required to recognize a right-of-use asset and a lease liability for any operating leases.

In 2019, the Company recognized rent expense of approximately \$69,000 for these leases. As of December 31, 2019, the present value of the remaining contractual payments under the office and equipment leases are \$43,000. All of the aforementioned leases for which the Company is the lessee are currently classified as operating leases. A right-of-use asset and lease liability has been recorded in Other current assets and Other current liabilities, respectively.

Under the package of practical expedients that the Company elected upon adoption of the lease ASUs, all of its operating leases existing as of January 1, 2019, for which the Company is the lessee, continue to be classified as operating leases subsequent to the adoption of the lease ASUs. The Company has also evaluated the effect of the lease ASUs on the calculation of its debt covenants as of December 31, 2019 and noted no significant effect on the calculation.

OPERATING COSTS AND EXPENSES

Real estate, leasing, resort amenities, and general and administrative costs and expenses are reflected exclusive of depreciation and pension and other post-retirement expenses.

INCOME TAXES

The Company accounts for uncertain tax positions in accordance with the provisions of FASB Accounting Standards Codification (ASC) Topic 740. This interpretation prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return (Note 8).

The Company's provision for income taxes is calculated using the liability method. Deferred income taxes are provided for all temporary differences between the financial statement and income tax bases of assets and liabilities using tax rates enacted by law or regulation. A valuation allowance is established for deferred income tax assets if management believes that it is more likely than not that some portion or all of the asset will not be realized through future taxable income.

The Company recognizes accrued interest related to unrecognized tax benefits as interest expense and penalties in general and administrative expenses in its consolidated statements of operations and comprehensive loss and such amounts are included in income taxes payable on the Company's consolidated balance sheets.

SHARE-BASED COMPENSATION PLANS

The Company accounts for share-based compensation, including grants of shares of common stock, as compensation expense over the service period (generally the vesting period) in the consolidated financial statements based on their fair values. The impact of forfeitures that may occur prior to vesting is estimated and considered in the amount recognized.

USE OF ESTIMATES AND RECLASSIFICATIONS

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Future actual amounts could differ from these estimates. Certain amounts in the December 31, 2018 consolidated statements of operations and comprehensive loss were reclassified to conform to the December 31, 2019 presentation. Such amounts had no impact on net income (loss) and comprehensive loss previously reported.

CONCENTRATION OF CREDIT RISK

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of cash deposits. Accounts at each institution are insured by the Federal Deposit Insurance Corporation (“FDIC”) up to \$250,000. At December 31, 2019 and December 31, 2018, the Company had deposits in excess of the FDIC limit. No losses have been accrued to date.

RISKS AND UNCERTAINTIES

Factors that could adversely impact the Company’s future operations or financial results include, but are not limited to the following: periods of economic weakness and uncertainty in Hawaii and the mainland United States; high unemployment rates and low consumer confidence; uncertainties and changes in U.S. social, political, regulatory and economic conditions or laws and policies and concerns surrounding ongoing developments in the European Union, Middle East, and Asia; the general availability of mortgage financing, including the effect of more stringent lending standards for mortgages and perceived or actual changes in interest rates; risks related to the Company’s investments in real property, the value and salability of which could be impacted by the economic factors discussed above or other factors; the popularity of Maui in particular and Hawaii in general as a vacation destination or second-home market; increased energy costs, including fuel costs, which affect tourism on Maui and Hawaii generally; untimely completion of land development projects within forecasted time and budget expectations; inability to obtain land use entitlements at a reasonable cost or in a timely manner; unfavorable legislative decisions by state and local governmental agencies; impact of governmental fines and assessments; the cyclical market demand for luxury real estate on Maui and in Hawaii generally; increased competition from other luxury real estate developers on Maui and in Hawaii generally; failure of future joint venture partners to perform in accordance with their contractual agreements; environmental regulations; acts of God, such as tsunamis, hurricanes, earthquakes and other natural disasters; the spread of contagious diseases, such as the Coronavirus; the Company’s location apart from the mainland United States, which results in the Company’s financial performance being more sensitive to the aforementioned economic risks; failure to comply with restrictive financial covenants in the Company’s credit arrangements; and an inability to achieve the Company’s short and long-term goals and cash flow requirements.

LEGAL CONTINGENCIES

The Company is party to claims and lawsuits as well as threatened or potential actions or claims concerning matters arising from the conduct of its business activities. The outcome of claims or litigation and the timing of ultimate resolution are inherently difficult to predict and significant judgment may be required in the determination of both the probability of loss and whether the amount of the loss is reasonably estimable. The Company’s estimates are subjective and are based on the status of legal and regulatory proceedings, the merit of the Company’s defenses and consultation with external legal counsel. An accrual for a potential litigation loss is established when information related to the loss contingency indicates both that a loss is probable and that the amount of loss can be reasonably estimated. Refer to Note 12 of the Notes to Consolidated Financial Statements for further information regarding the Company’s legal proceedings.

ACCOUNTING STANDARDS NOT YET ADOPTED

In June 2016, the FASB issued ASU 2016-13 to update the methodology used to measure current expected credit losses (“CECL”). This ASU applies to financial assets measured at amortized cost, including loans, held-to-maturity debt securities, net investments in leases, and trade accounts receivable as well as certain off-balance sheet exposures, such as loan commitments. This ASU requires consideration of a broader range of reasonable and supportable information to explain credit loss estimates. The guidance must be adopted using a modified retrospective transition method through a cumulative-effect adjustment to retained earnings/(deficit) in the period of adoption. ASU 2019-10 was subsequently issued delaying the effective date to the first quarter of 2023. The Company is in the process of assessing the impact of the ASU on its consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13 related to fair value measurement disclosures. This ASU removes the requirement to disclose the amount of and reasons for transfers between Levels 1 and 2 of the fair value hierarchy, the policy for determining that a transfer has occurred, and valuation processes for Level 3 fair value measurements. Additionally, this ASU modifies the disclosures related to the measurement uncertainty for recurring Level 3 fair value measurements (by removing the requirement to disclose sensitivity to future changes) and the timing of liquidation of investee assets (by removing the timing requirements in certain instances). The guidance also requires new disclosures for Level 3 financial assets and liabilities, including the amount and location of unrealized gains and losses recognized in other comprehensive income/(loss) and additional information related to significant unobservable inputs used in determining Level 3 fair value measurements. This ASU will be effective beginning in the first quarter of the Company’s fiscal year 2020. Early adoption of the guidance in whole is permitted. Alternatively, companies may early adopt removed or modified disclosures and delay adoption of the additional disclosures until their effective date. Certain of the amendments in this ASU must be applied prospectively upon adoption, while other amendments must be applied retrospectively upon adoption. The Company is in the process of assessing the impact of the ASU on its consolidated financial statements.

In August, 2018, the FASB issued ASU 2018-14 which amends ASC 715 to add, remove, and clarify disclosure requirements related to defined benefit pension and other postretirement plans. The ASU’s changes related to disclosures are part of the FASB’s disclosure framework project which was aimed to improve the effectiveness of disclosures in notes to financial statements. This ASU is effective for public business entities for annual reporting periods ending after December 15, 2020, with early adoption permitted. The Company expects to adopt the new disclosure requirements on January 1, 2021.

In August 2018, the FASB issued ASU 2018-15 related to accounting for implementation costs incurred in hosted cloud computing service arrangements. Under the new guidance, implementation costs incurred in a hosting arrangement that is a service contract should be expensed or capitalized based on the nature of the costs and the project stage during which such costs are incurred. If the implementation costs qualify for capitalization, they must be amortized over the term of the hosting arrangement and assessed for impairment. Companies must disclose the nature of any hosted cloud computing service arrangements. This ASU also provides guidance for balance sheet and income statement presentation of capitalized implementation costs and statement of cash flows presentation for the related payments. The ASU will be effective beginning in the first quarter of 2020. The Company will prospectively adopt this guidance and does not expect a significant impact on its financial statements and related disclosures.

In December 2019, the FASB issued ASU 2019-12 to simplify the accounting in ASC 740, *Income Taxes*. This guidance removes certain exceptions related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period, and the recognition of deferred tax liabilities for outside basis differences. The guidance also clarifies and simplifies other areas of ASC 740. This ASU will be effective beginning in the first quarter of 2021. Early adoption is permitted. Certain adjustments in this update must be applied on a prospective basis, certain amendments must be applied on a retrospective basis, and certain amendments must be applied on a modified retrospective basis through a cumulative-effect adjustment to retained earnings/(deficit) in the period of adoption. The Company is currently evaluating the impact this ASU will have on our financial statements and related disclosures as well as the timing of adoption.

EARNINGS (LOSS) PER COMMON SHARE

Basic net income per common share is computed by dividing net income by the weighted-average number of common shares outstanding. Diluted net income per common share is computed similar to basic net income per common share except that the denominator is increased to include the number of additional common shares that would have been outstanding if the dilutive potential common shares from share-based compensation arrangements had been issued.

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Potentially dilutive shares arise from non-qualified stock options to purchase common stock and non-vested restricted stock. The treasury stock method is applied to determine the number of potentially dilutive shares for non-vested restricted stock and stock options assuming that the shares of non-vested restricted stock are issued for an amount based on the grant date market price of the shares and that the outstanding stock options are exercised.

| | Year Ended December 31, | |
|----------------------|-------------------------|------------|
| | 2019 | 2018 |
| Basic and diluted | 19,201,663 | 19,091,679 |
| Potentially dilutive | 7,678 | 27,500 |

On March 6, 2019, the Company's Chairman & Chief Executive Officer exercised a non-qualified stock option to acquire 25,000 shares of the Company's stock at an exercise price of \$5.20 per share. The stock option was granted on March 9, 2009 and vested 20% annually beginning March 9, 2010 through March 9, 2014. The stock option had an expiration date of March 9, 2019.

2. ASSETS HELD FOR SALE

At December 31, 2019 and 2018 assets held for sale consisted of the following:

| | 2019 | | 2018 | |
|---|----------------|-------|------|-------|
| | (in thousands) | | | |
| Kapalua Resort, 46-acre Kapalua Central Resort project | \$ | 2,938 | \$ | - |
| Kapalua Resort, Kapalua Water Company and Kapalua Waste Treatment Company assets | | 4,503 | | 7,696 |
| Upcountry Maui, 630-acre parcel of agricultural land | | 156 | | 156 |
| Upcountry Maui, 33-acre parcel of agricultural land and wastewater treatment facility | | - | | 56 |
| | \$ | 7,597 | \$ | 7,908 |

None of the above assets held for sale have been pledged as collateral under the Company's credit facility.

In February 2020, the Company entered into an agreement to sell the Kapalua Central Resort project for \$43.9 million. The closing of the transaction is contingent upon, among other things, the satisfaction of certain customary closing conditions, including a due diligence period ending on July 31, 2020 and a closing date 45 days after the last day of the due diligence period.

In December 2019, the Company entered into an agreement to sell the Kapalua Water Company and Kapalua Waste Treatment Company assets for a purchase price of approximately \$3.8 million in addition to a potential Capital Expenditures Adjustment, as defined in the agreement, to be determined at closing. The closing of the transaction is contingent upon, among other things, the satisfaction of certain customary closing conditions, and approval by the Hawaii Public Utilities Commission (PUC).

The value of the Upcountry Maui, 33-acre parcel of agricultural land and wastewater treatment facility was considered fully impaired and written down to zero at March 31, 2019.

3. PROPERTY

Land

Most of the Company's 22,800 acres of land were acquired between 1911 and 1932 and is carried in its balance sheets at cost. Approximately 20,700 acres of land are located in West Maui and comprise a largely contiguous parcel that extends from the sea to an elevation of approximately 5,700 feet. This parcel includes approximately 900 acres within the Kapalua Resort, a master-planned, destination resort and residential community located in West Maui encompassing approximately 3,000 acres. The Company's remaining 2,100 acres of land are located in Upcountry Maui in an area commonly known as Hali'imaile and are mainly comprised of leased agricultural fields, including related processing and maintenance facilities.

Land Improvements

Land improvements are comprised primarily of roads, utilities, and landscaping infrastructure improvements at the Kapalua Resort. Also included is the Company's potable and non-potable water systems in West Maui. The majority of the Company's land improvements were constructed and placed in service in the mid-to-late 1970's or conveyed in 2017. Depreciation expense would be considerably higher if these assets were stated at current replacement cost.

Buildings

Buildings are comprised of restaurant, retail and light industrial spaces located at the Kapalua Resort and Hali'imaile which are used in the Company's leasing operations. The majority of the buildings were constructed and placed in service in the mid-to-late 1970's. Depreciation expense would be considerably higher if these assets were stated at current replacement cost.

Machinery and Equipment

Machinery and equipment are mainly comprised of zipline course equipment installed in 2008 at the Kapalua Resort and used in the Company's leasing operations.

4. LONG-TERM DEBT

Long-term debt is comprised of amounts outstanding under the Company's \$15.0 million revolving line of credit facility with First Hawaiian Bank (Credit Facility). The Credit Facility matures on December 31, 2021. Interest on borrowings is at LIBOR plus 3.50%, or 5.19% and 5.84% at December 31, 2019 and December 31, 2018, respectively. The Company has pledged its 800-acre Kapalua Mauka project and approximately 30,000 square feet of commercial leased space in the Kapalua Resort as security for the Credit Facility. Net proceeds from the sale of any collateral are required to be repaid toward outstanding borrowings and will permanently reduce the Credit Facility's revolving commitment amount. There are no commitment fees on the unused portion of the Credit Facility.

The terms of the Credit Facility include various representations, warranties, affirmative, negative and financial covenants and events of default customary for financings of this type. Financial covenants include a minimum liquidity (as defined) of \$2.0 million, a maximum of \$45.0 million in total liabilities, and a limitation on new indebtedness. The Credit Facility also contains covenants restricting the payment of cash dividends without the lender's prior approval.

The Company believes that it is in compliance with the covenants under the Credit Facility as of December 31, 2019.

5. LEASING ARRANGEMENTS

The Company leases land primarily to agriculture operators and space in commercial buildings, primarily to restaurant and retail tenants through 2048. In addition, the Company provides potable and non-potable water to West and Upcountry Maui areas. These operating leases generally provide for minimum rents and, in some cases, licensing fees, percentage rentals based on tenant revenues, and reimbursement of common area maintenance and other expenses. Certain leases allow the lessee an option to extend or terminate the agreement. There are no leases allowing a lessee an option to purchase the underlying asset. Total leasing income for the years ended December 31, 2019 and 2018 were as follows:

| | 2019 | 2018 |
|--|-----------------|-----------------|
| | (in thousands) | |
| Minimum rentals | \$ 2,863 | \$ 2,720 |
| Percentage rentals | 1,779 | 1,544 |
| Licensing fees | 912 | 903 |
| Other (primarily common area recoveries) | 1,353 | 1,056 |
| Water system sales | 1,241 | 1,043 |
| | <u>\$ 8,148</u> | <u>\$ 7,266</u> |

Property at December 31, 2019 and 2018 includes leased property of \$42.5 million (before accumulated depreciation of \$28.4 million and \$27.2 million, respectively).

Future minimum rental income during the next five years and thereafter is as follows:

| | (in thousands) | |
|------------|----------------|-------|
| 2020 | \$ | 3,066 |
| 2021 | \$ | 2,618 |
| 2022 | \$ | 1,852 |
| 2023 | \$ | 855 |
| 2024 | \$ | 326 |
| Thereafter | \$ | 1,840 |

6. ACCRUED RETIREMENT BENEFITS

Accrued Retirement Benefits at December 31, 2019 and 2018 consisted of the following:

| | 2019 | 2018 |
|--|----------------|----------|
| | (in thousands) | |
| Defined benefit pension plans | \$ 7,658 | \$ 7,971 |
| Non-qualified retirement plans | 2,209 | 2,065 |
| Total | 9,867 | 10,036 |
| Less current portion | (165) | (165) |
| Non-current portion of accrued retirement benefits | \$ 9,702 | \$ 9,871 |

The Company had two defined benefit pension plans which cover substantially all of its former bargaining and non-bargaining full-time, part-time and intermittent employees. In 2011, pension benefits under both plans were frozen. The Company also has unfunded non-qualified retirement plans covering ten of its former executives. The non-qualified retirement plans were frozen in 2009 and future vesting of additional benefits was discontinued. During the fourth quarter of 2018, the Company merged the two defined benefit pension plans to streamline the administration of the frozen plan.

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The measurement date for the Company's benefit plan disclosures is December 31st of each year. The changes in benefit obligations and plan assets for 2019 and 2018, and the funded status of the plans and assumptions used to determine benefit information at December 31, 2019 and 2018 were as follows:

| | 2019 | 2018 |
|---|-------------------|--------------------|
| | (in thousands) | |
| Change in benefit obligations: | | |
| Benefit obligations at beginning of year | \$ 51,306 | \$ 56,453 |
| Interest cost | 2,096 | 1,974 |
| Actuarial loss (gain) | 4,706 | (3,096) |
| Benefits paid | (3,980) | (4,025) |
| Benefit obligations at end of year | 54,128 | 51,306 |
| Change in plan assets: | | |
| Fair value of plan assets at beginning of year | 41,290 | 48,442 |
| Actual return on plan assets | 6,814 | (3,114) |
| Employer reimbursement for retirement benefits | - | (118) |
| Employer contributions | 160 | 105 |
| Benefits paid | (3,980) | (4,025) |
| Fair value of plan assets at end of year | 44,284 | 41,290 |
| Funded status | \$ (9,844) | \$ (10,016) |
| Accumulated benefit obligations | \$ 54,128 | \$ 51,306 |
| Weighted average assumptions used to determine benefit obligations at December 31st: | | |
| Discount rate | 3.10% - 3.14% | 4.28% |
| Expected long-term return on plan assets | 5.00% | 5.00% |
| Rate of compensation increase | n/a | n/a |

Accumulated other comprehensive loss of \$20.8 and \$21.8 million at December 31, 2019 and 2018, respectively, represent the net actuarial loss which has not yet been recognized as a component of pension expense. In 2020, \$0.8 million of net actuarial loss is expected to be recognized as a component of net pension expense.

Components of net periodic benefit cost and other amounts recognized in comprehensive income were as follows:

| | 2019 | 2018 |
|---|-------------------|-----------------|
| | (in thousands) | |
| Pension and other benefits: | | |
| Interest cost | \$ 2,096 | \$ 1,974 |
| Expected return on plan assets | (1,965) | (2,319) |
| Recognized net actuarial loss | 865 | 786 |
| Pension expense | \$ 996 | \$ 441 |
| Other changes in plan assets and benefit obligations recognized in comprehensive income: | | |
| Net (gain) loss | \$ (141) | \$ 2,314 |
| Recognized gain | (865) | (764) |
| Total recognized (gain) loss in comprehensive income | \$ (1,006) | \$ 1,550 |
| Weighted average assumptions used to determine net periodic benefit cost: | | |
| Discount rate | 4.28% | 3.59% - 3.64% |
| Expected long-term return on plan assets | 5.00% | 5.00% |
| Rate of compensation increase | n/a | n/a |

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The expected long-term rate of return on plan assets was based on a building-block approach. Historical markets are studied and long-term historical relationships between equities and fixed income are presumed consistent with the widely accepted capital market principle that assets with higher volatility generate a greater return over the long run. Current market factors, such as inflation and interest rates, are evaluated before long-term capital markets are determined. Diversification and rebalancing of plan assets are properly considered as part of establishing long-term portfolio returns.

The fair values of the Company's pension plan assets at December 31, 2019 and 2018, by asset category, were as follows:

| | 2019 Fair Value Measurements (in thousands) | | |
|--------------------------------|---|---|------------------|
| | Quoted Prices in Active Markets for Identical Assets (Level 1) | Significant Other Observable Inputs (Level 2) | Total |
| | AHGT pooled equity funds | \$ - | \$ 12,714 |
| AHGT pooled fixed income funds | - | 30,548 | 30,548 |
| Cash management funds | - | 1,022 | 1,022 |
| | <u>\$ -</u> | <u>\$ 44,284</u> | <u>\$ 44,284</u> |

| | 2018 Fair Value Measurements (in thousands) | | |
|--------------------------------|---|---|------------------|
| | Quoted Prices in Active Markets for Identical Assets (Level 1) | Significant Other Observable Inputs (Level 2) | Total |
| | AHGT pooled equity funds | \$ - | \$ 10,665 |
| AHGT pooled fixed income funds | - | 29,635 | 29,635 |
| Cash management funds | - | 990 | 990 |
| | <u>\$ -</u> | <u>\$ 41,290</u> | <u>\$ 41,290</u> |

Aon Hewitt Group Trust (AHGT) pooled equity and fixed income funds: Pooled equity and fixed income funds consist of various AHGT Funds offered through private placements. The units are valued daily using net asset values (NAV). NAV are based on the fair value of each fund's underlying investments. Level 1 assets are priced using quotes for trades occurring in active markets for the identical asset. Level 2 assets are priced using observable inputs for the asset (for example, interest rates and yield curves observable at commonly quoted intervals, volatilities, prepayment speeds, loss severities, credit risks, and default rates) or inputs that are derived principally from or corroborated by observable market data by correlation or other means (market-corroborated inputs).

An administrative committee consisting of certain senior management employees administers the Company's defined benefit pension plans. The pension plan assets are allocated among approved asset types based on the plans current funded status and other characteristics set by the administrative committee, and subject to liquidity requirements of the plans.

Estimated future benefit payments are as follows (in thousands):

| | |
|-------------|-----------|
| 2020 | \$ 4,080 |
| 2021 | \$ 3,985 |
| 2022 | \$ 3,870 |
| 2023 | \$ 3,754 |
| 2024 | \$ 3,652 |
| 2025 - 2029 | \$ 16,605 |

The Company expects to make minimum required contributions of \$542,000 to its pension plans in 2020. No required minimum contributions were made in 2019 or 2018.

7. SHARE-BASED COMPENSATION

The Company's directors, officers and certain members of management receive a portion of their compensation in shares of the Company's common stock granted under the Company's 2017 Equity and Incentive Award Plan (Equity Plan). Share-based compensation is valued based on the average of the high and low share price on the date of grant. Shares are issued upon execution of agreements reflecting the grantee's acceptance of the respective shares subject to the terms and conditions of the Equity Plan. Restricted shares issued under the Equity Plan vest quarterly and have voting and regular dividend rights but cannot be disposed of until such time as they are vested. All unvested restricted shares are forfeited upon the grantee's termination of directorship or employment from the Company.

Share-based compensation is determined and awarded annually to the Company's officers and certain members of management based on their achievement of certain predefined performance goals and objectives under the Equity Plan. Such share-based compensation is comprised of an annual incentive paid in shares of common stock and a long-term incentive paid in restricted shares vesting quarterly over a period of three years.

Share-based compensation totaled \$1.7 million and \$1.5 million for 2019 and 2018, respectively. Included in these amounts were \$705,000 and \$563,000 of restricted shares of common stock which vested during 2019 and 2018, respectively.

8. INCOME TAXES

GAAP prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return.

In December 2017, The Tax Cuts and Jobs Act of 2017 (TCJA) was signed into law. In accordance with TCJA, the Company eliminated \$91.3 million of AMT NOL carry forwards at December 31, 2018 and recognized \$5.0 million of income tax benefit from its unused AMT credit carry forwards. In December 2019, the Company received notice that a portion of the refund, \$2.5 million, was applied by the U.S. Department of the Treasury toward a "Non-Tax Federal Debt." The Company believes the refund was misapplied in error and intends to pursue collection of the amount; however, the Company has recognized a reserve for the entire \$5.0 million income tax benefit from its unused AMT credit carry forwards at December 31, 2019, until such time that it has further clarification on this matter.

Reconciliations between the total income tax benefit and the amount computed using the statutory federal rate of 21% for the years ended December 31, 2019 and 2018 were as follows:

| | 2019 | 2018 |
|--|-----------------|-------------------|
| | (in thousands) | |
| Federal income tax benefit at statutory rate | \$ (1,127) | \$ (945) |
| Adjusted for: | | |
| AMT refundable credits | - | (4,999) |
| Valuation allowance | 6,111 | 986 |
| Permanent differences and other | 15 | (41) |
| Income tax expense (benefit) | <u>\$ 4,999</u> | <u>\$ (4,999)</u> |

Deferred tax assets were comprised of the following temporary differences as of December 31, 2019 and 2018:

| | 2019 | 2018 |
|---|----------------|-------------|
| | (in thousands) | |
| Net operating loss and tax credit carryforwards | \$ 29,545 | \$ 24,239 |
| Joint venture and other investments | (27) | (27) |
| Accrued retirement benefits | 3,010 | 3,055 |
| Property net book value | 3,300 | 2,266 |
| Deferred revenue | 697 | 666 |
| Stock compensation | - | 16 |
| Reserves and other | (10) | 189 |
| Total deferred tax assets | 36,515 | 30,404 |
| Valuation allowance | (36,515) | (30,404) |
| Net deferred tax assets | <u>\$ -</u> | <u>\$ -</u> |

Valuation allowances have been established to reduce future tax benefits not expected to be realized. The change in the deferred tax asset related to accrued retirement benefits and the valuation allowance includes the pension adjustment included in accumulated other comprehensive loss, which is not included in the current provision. Net Operating Loss (NOL) carryforwards created in tax years beginning after December 31, 2017 are limited by the TCJA. The Company had approximately \$71.7 million in federal NOL carry forwards at December 31, 2019, that expire from 2029 through 2034. The Company had approximately \$85.7 million in state NOL carry forwards at December 31, 2019, that expire from 2029 through 2034. The Company had approximately \$3.7 million in federal and state NOL carry forwards at December 31, 2019 that do not expire.

9. DISCONTINUED OPERATIONS

In December 2019, the Company entered into an Asset Purchase Agreement to sell the PUC-regulated assets of Kapalua Water Company, Ltd. and Kapalua Waste Treatment Company, Ltd. located in the Kapalua Resort for a purchase price of approximately \$3.8 million in addition to a potential Capital Expenditures Adjustment, as defined in the agreement, to be determined at closing. The sale is subject to certain closing conditions, including completion of due diligence and PUC approval. As part of the agreement, the purchaser commits to serve the future expansion areas of Kapalua as they are developed. Furthermore, the Company agrees to deliver water from its wells and ditches to certain delivery points at defined rates over an initial period of 20 years.

Under terms of the agreement, the purchase price will not include approximately \$3.6 million of water system infrastructure and other related assets conveyed to the Company by the owner of a 125-acre portion of the Kapalua Mauka project. Accordingly, upon classification of the Kapalua Water Company and Kapalua Waste Treatment Company assets as held for sale at December 31, 2019, these assets were written-down to fair value and included as part of the Company's discontinued operations for the year ended December 31, 2019. The fair value of the assets was measured using Level 3 inputs, including the provisions set forth in the agreement

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Upon entering the agreement, the Company classified the following assets as Assets Held for Sale:

| | December 31 | |
|----------------------------|-----------------|-----------------|
| | 2019 | 2018 |
| | (in thousands) | |
| Property, net | \$ 4,425 | \$ 7,696 |
| Deferred development costs | 78 | - |
| Total Assets | <u>\$ 4,503</u> | <u>\$ 7,696</u> |

The results related to the operation of these assets have been reported as discontinued operations in 2019 and 2018 as follows:

| | 2019 | 2018 |
|--|-------------------|---------------|
| | (in thousands) | |
| Operating revenues | \$ 2,415 | \$ 2,177 |
| Operating costs and expenses | (1,875) | (1,746) |
| Depreciation expense | (283) | (280) |
| Loss from classification to held for sale | (3,614) | - |
| Income (loss) from discontinued operations | <u>\$ (3,357)</u> | <u>\$ 151</u> |

Capital expenditures in discontinued operations were \$626,000 and \$155,000 in 2019 and 2018, respectively.

10. SEGMENT INFORMATION

The Company's reportable operating segments are comprised of the discrete business units whose operating results are regularly reviewed by the Company's Chief Executive Officer – its chief decision maker – in assessing performance and determining the allocation of resources. Reportable operating segments in 2019 are as follows:

- Real Estate includes the development and sale of real estate inventory and the operations of Kapalua Realty Company, a general brokerage real estate company located within the Kapalua Resort.
- Leasing primarily includes revenues and expenses from real property leasing activities, license fees and royalties for the use of certain of the Company's trademarks and brand names by third parties, and the cost of maintaining the Company's real estate assets, including conservation activities. The operating segment also includes the management of ditch, reservoir and well systems that provide potable and non-potable water to West and Upcountry Maui areas.
- Resort Amenities include a membership program that provides certain benefits and privileges within the Kapalua Resort for its members.

The results of discontinued operations discussed in Note 9 were included in the Utilities segment in prior periods. The Utilities segment previously consisted of the operations of Kapalua Water Company and Kapalua Waste Treatment Company, water and sewage transmission services for the Kapalua Resort, and the management of ditch, reservoir, and well systems in the West and Upcountry Maui areas.

The Company's reportable operating segment results are measured based on operating income (loss), exclusive of interest, depreciation, general and administrative, share-based compensation, pension and other postretirement expenses.

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Condensed consolidated financial information for each of the Company's reportable segments for the years ended December 31, 2019 and 2018 were as follows:

| | Real Estate | Leasing | Resort Amenities | Other (2) | Consolidated |
|---|-------------|-----------|------------------|-----------|--------------|
| 2019 | | | | | |
| Operating revenues (1) | \$ 915 | \$ 8,148 | \$ 982 | \$ - | \$ 10,045 |
| Operating costs and expenses | (1,185) | (3,228) | (1,030) | - | (5,443) |
| Depreciation expense | | (1,352) | (49) | (11) | (1,412) |
| General and administrative and other expenses | (1,069) | (1,102) | (479) | (1,336) | (3,986) |
| Operating income (loss) | (1,339) | 2,466 | (576) | (1,347) | (796) |
| Pension and other post-retirement expenses | | | | | (1,016) |
| Interest expense | | | | | (198) |
| Income tax expense | | | | | (4,999) |
| Loss from continuing operations | | | | | \$ (7,009) |
| Capital expenditures (3) | \$ 278 | \$ 86 | \$ - | \$ 626 | \$ 990 |
| Assets (4) | \$ 13,789 | \$ 17,995 | \$ 1,039 | \$ 6,296 | \$ 39,119 |

| | Real Estate | Leasing | Resort Amenities | Other (2) | Consolidated |
|---|-------------|-----------|------------------|-----------|--------------|
| 2018 | | | | | |
| Operating revenues (1) | \$ 446 | \$ 7,266 | \$ 1,148 | \$ - | \$ 8,860 |
| Operating costs and expenses | (2,770) | (3,037) | (1,109) | - | (6,916) |
| Depreciation expense | - | (1,424) | (57) | (9) | (1,490) |
| General and administrative and other expenses | (1,145) | (1,222) | (531) | (1,538) | (4,436) |
| Operating income (loss) | (3,469) | 1,583 | (549) | (1,547) | (3,982) |
| Pension and other post-retirement expenses | | | | | (514) |
| Interest expense | | | | | (156) |
| Income tax benefit | | | | | 4,999 |
| Income from continuing operations | | | | | \$ 347 |
| Capital expenditures (3) | \$ 395 | \$ 156 | \$ - | \$ 155 | \$ 706 |
| Assets (4) | \$ 13,634 | \$ 18,778 | \$ 1,099 | \$ 14,681 | \$ 48,192 |

- (1) Amounts are principally revenues from external customers and exclude equity in earnings of affiliates.
(2) Consists primarily of miscellaneous transactions, unallocated general and administrative, and pension and other post-retirement expenses. Includes assets related to discontinued operations of \$4.5 million and \$7.7 million at December 31, 2019 and 2018, respectively
(3) Primarily includes expenditures for property and deferred costs.
(4) Segment assets are located in the United States.

11. RESERVES

Allowance for doubtful accounts for 2019 and 2018 were as follows:

| Description | Balance at Beginning of Year | Increase | Decrease | Balance at End of Year |
|---------------------------------|------------------------------|----------|----------|------------------------|
| (in thousands) | | | | |
| Allowance for Doubtful Accounts | | | | |
| 2019 | \$ 34 | \$ 1 | \$ - | \$ 35 |
| 2018 | \$ 40 | \$ - | \$ (6) | \$ 34 |

12. COMMITMENTS AND CONTINGENCIES

On December 31, 2018, the State of Hawaii Department of Health (“DOH”) issued a Notice and Finding of Violation and Order (“Order”) for alleged wastewater effluent violations related to the Company’s Upcountry Maui wastewater treatment facility. The facility was built in the 1960’s to serve approximately 200 single-family homes developed for workers in the Company’s former agricultural operations. The facility is made up of two 1.5-acre wastewater stabilization ponds and surrounding disposal leach fields.

The Order resulted from an inspection by DOH officials in June 2018. The Order includes, among other requirements, payment of a \$230,000 administrative penalty and development of a new wastewater treatment plant, which become final and binding – unless a hearing is requested to contest the alleged violations and penalties. The Company has requested such a hearing, which has been deferred pending the outcome of ongoing discussions and negotiations with various governmental and private entities to resolve the matter.

The Company is presently unable to estimate the amount, or range of amounts, of any probable liability, if any, related to the Order and no provision has been made in the accompanying consolidated financial statements.

In addition, from time to time, the Company is the subject of various other claims, complaints and other legal actions which arise in the normal course of the Company’s business activities. The Company believes the resolution of these other matters, in the aggregate, is not likely to have a material adverse effect on the Company’s consolidated financial position or operations.

13. FAIR VALUE MEASUREMENTS

GAAP establishes a framework for measuring fair value and requires certain disclosures about fair value measurements to enable the reader of the consolidated financial statements to assess the inputs used to develop those measurements by establishing a hierarchy for ranking the quality and reliability of the information used to determine fair values. GAAP requires that financial assets and liabilities be classified and disclosed in one of the following three categories:

Level 1: Quoted market prices in active markets for identical assets or liabilities.

Level 2: Observable market-based inputs or unobservable inputs that are corroborated by market data.

Level 3: Unobservable inputs that are not corroborated by market data.

The Company considers all cash on hand to be unrestricted cash for the purposes of the consolidated balance sheets and consolidated statements of cash flows. The fair value of receivables and payables approximate their carrying value due to the short-term nature of the instruments. The valuation is based on settlements of similar financial instruments all of which are short-term in nature and are generally settled at or near cost. The fair value of debt was estimated based on borrowing rates currently available to the Company for debt with similar terms and maturities. The carrying amount of debt at December 31, 2019 and 2018 was \$1,035,000 and \$1,235,000, respectively, which approximated fair value. The fair value of debt was measured using the Level 2 inputs, noted above. See Note 6 for the classification of the fair value of pension assets. See Note 9 for the classification of the fair value of assets held for sale from discontinued operations.

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

Item 9A. CONTROLS AND PROCEDURES

EVALUATION OF DISCLOSURE CONTROLS AND PROCEDURES

Our management, with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of December 31, 2019. We maintain disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow for timely decisions regarding required disclosure. Our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of December 31, 2019, our principal executive officer, principal financial officer, principal accounting officer concluded that, as of such date, our disclosure controls and procedures were effective.

MANAGEMENT'S ANNUAL REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Our management has the responsibility for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act, as a process designed by, or under the supervision of, the Company's principal executive, principal financial officer, principal accounting officer, and effected by our Board of Directors, management and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. Our internal controls over financial reporting include those policies and procedures that:

- Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that receipts and expenditures of the Company are being made only in accordance with authorizations of our management and directors; and
- Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting only provides reasonable assurance with respect to financial statement presentation and preparation. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2019. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control—Integrated Framework (2013)*. Based on its assessments, management believes that, as of December 31, 2019, the Company's internal control over financial reporting is effective.

The effectiveness of our internal control over financial reporting as of December 31, 2019 has been audited by Accuity LLP, an independent registered public accounting firm as stated in their report which is set forth in Part II, Item 8 of this annual report on Form 10-K.

CHANGES IN INTERNAL CONTROLS OVER FINANCIAL REPORTING

We have reviewed and updated our internal controls and related procedures related to our change in filing status from an accelerated filer in January 2018 to a smaller reporting company in September 2018. Except as otherwise noted, there has been no significant changes in our internal controls over financial reporting (as such term is defined in Exchange Act Rule 13a-15(f) or 15d-15(f)) during the fiscal fourth quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal controls over financial reporting.

Item 9B. OTHER INFORMATION

None.

PART III

Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Incorporated herein by reference from the Company's definitive proxy statement, which will be filed no later than 120 days after the close of our fiscal year ended December 31, 2019.

Item 11. EXECUTIVE COMPENSATION

The information set forth under "Executive Compensation," and "Director Compensation" in the Maui Land & Pineapple Company, Inc. Proxy Statement, to be filed no later than 120 days after the close of our fiscal year ended December 31, 2019, is incorporated herein by reference.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information set forth under "Security Ownership of Certain Beneficial Owners" in the Maui Land & Pineapple Company, Inc. Proxy Statement, to be filed no later than 120 days after the close of our fiscal year ended December 31, 2019, is incorporated herein by reference.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information set forth under “Certain Relationship and Related Transactions,” and “Director Independence” in the Maui Land & Pineapple Company, Inc. Proxy Statement, to be filed no later than 120 days after the close of our fiscal year ended December 31, 2019, is incorporated herein by reference.

Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information set forth under “Independent Registered Public Accounting Firm” in the Maui Land & Pineapple Company, Inc. Proxy Statement, to be filed no later than 120 days after the close of our fiscal year ended December 31, 2019, is incorporated herein by reference.

PART IV

Item 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a)1. Financial Statements

The following Financial Statements of Maui Land & Pineapple Company, Inc. and subsidiaries and Report of Independent Registered Public Accounting Firm are included in Item 8 of this annual report:

| | |
|---|----|
| Consolidated Balance Sheets as of December 31, 2019 and 2018 | 20 |
| Consolidated Statements of Operations and Comprehensive Loss for the Years Ended December 31, 2019 and 2018 | 21 |
| Consolidated Statements of Changes in Stockholders' Equity for the Years Ended December 31, 2019 and 2018 | 22 |
| Consolidated Statements of Cash Flows for the Years Ended December 31, 2019 and 2018 | 23 |
| Notes to Consolidated Financial Statements | 24 |

(a)3. Exhibits

| Exhibit Number | Exhibit Description | Incorporated by Reference | | | | |
|----------------|--|---------------------------|-----------|------------|-------------|----------------|
| | | Form | File No. | Exhibit | Filing Date | Filed Herewith |
| 3.1 | Restated Articles of Associated, as currently in effect | 10-Q | 001-06510 | 3.1 | 8/4/2010 | |
| 3.2 | Amended Bylaws, as currently in effect | 10-K | 001-06510 | 3.2 | 3/2/2012 | |
| 10.1# | Maui Land & Pineapple Company, Inc. Executive Severance Plan | 10-Q | 001-06510 | 10.1 | 4/28/2017 | |
| 10.11# | 2017 Equity and Incentive Award Plan | DEF 14A | 001-06510 | Appendix A | 3/28/2017 | |
| 10.22 | Loan Agreement, by and among the Company and First Hawaiian Bank, dated June 6, 2016 | 8-K | 001-06510 | 10.1 | 6/11/2014 | |
| 10.24 | Credit Agreement, by and between the Company and First Hawaiian Bank, dated August 5, 2016 | 10-Q | 001-06510 | 10.1 | 8/11/2016 | |
| 10.25 | Third Loan Modification Agreement, by and between the Company and First Hawaiian Bank, dated December 31, 2019 | | | | | X |
| 10.30 | Asset Purchase Agreement, by and between the Company and Hawaii Water Service, Inc., dated December 20, 2019 | | | | | X |
| 10.40 | Description of Capital Stock | | | | | X |
| 21.1 | Subsidiaries of the Company | | | | | X |
| 23.1* | Consent of Accuity LLP, Independent Registered Public Accounting Firm, dated February 28, 2020 | | | | | X |
| 24.1 | Power of Attorney (included on the signature page of this report) | | | | | X |
| 31.1* | Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended. | | | | | X |
| 31.2* | Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended. | | | | | X |
| 32.1* | Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. | | | | | X |
| 32.2* | Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. | | | | | X |
| 101.INS | XBRL Instance Document | | | | | X |
| 101.SCH | XBRL Taxonomy Extension Schema Document | | | | | X |
| 101.CAL | XBRL Taxonomy Extension Calculation document | | | | | X |
| 101.DEF | XBRL Taxonomy Extension Definition Linkbase | | | | | X |
| 101.LAB | XBRL Taxonomy Extension labels Linkbase Document | | | | | X |
| 101.PRE | XBRL Taxonomy Extension Presentation Link Document | | | | | X |

* This certification shall not be deemed to be “filed” for the purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, nor shall it be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

** This certification shall not be deemed to be “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall it be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent that the registrant specifically incorporates it by reference.

Indicates a management contract or compensatory plan or arrangement.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on February 28, 2020.

MAUI LAND & PINEAPPLE COMPANY, INC.

By: /s/ Warren H. Haruki

Warren H. Haruki
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below hereby constitutes and appoints Warren H. Haruki and Tim T. Esaki, and each or either of them, acting individually, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this annual report, and to file the same, with all exhibits thereto and other documents in connection therewith, with the SEC, granting unto said attorney-in-fact and agent, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or any of them, or their or his or her substitutes, may lawfully do or cause to be done or by virtue hereof.

Pursuant to the requirements of the Exchange Act, as amended, this annual report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| | | |
|----|---|-------------------------|
| By | <u>/s/ Warren H. Haruki</u> Warren H. Haruki, Chairman of the Board & Chief Executive Officer (Principal Executive Officer) | Date: February 28, 2020 |
| By | <u>/s/ Stephen M. Case</u> Stephen M. Case, Director | Date: February 28, 2020 |
| By | <u>/s/ David A. Heenan</u> David A. Heenan, Director | Date: February 28, 2020 |
| By | <u>/s/ Anthony P. Takitani</u> Anthony P. Takitani, Director | Date: February 28, 2020 |
| By | <u>/s/ Arthur C. Tokin</u> Arthur C. Tokin, Director | Date: February 28, 2020 |
| By | <u>/s/ Tim T. Esaki</u> Tim T. Esaki, Chief Financial Officer (Principal Financial Officer) | Date: February 28, 2020 |
| By | <u>/s/ Scott Kodama</u> Scott Kodama, Interim Controller (Principal Accounting Officer) | Date: February 28, 2020 |

THIRD LOAN MODIFICATION AGREEMENTRecitals:

- (1) MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation, is called the "Borrower".
 - (2) FIRST HAWAIIAN BANK, a Hawaii corporation, is called the "Lender".
 - (3) Lender made a revolving credit facility (the "Credit Facility") in favor of the Borrower up to the Revolving Loan Commitment, pursuant to the terms of a Credit Agreement dated August 4, 2016, by and between the Borrower and the Lender, as amended and restated by that certain Amended and Restated Credit Agreement dated December 30, 2016 (as amended and restated, the "Amended and Restated Credit Agreement"). Capitalized terms that are not otherwise defined herein shall have the meanings given to them in the Amended and Restated Credit Agreement.
 - (4) The Credit Facility is evidenced by that certain Note dated August 4, 2016, executed by the Borrower, as Maker, and payable to the order of the Lender, as Payee, in the principal amount of \$27,000,000 (the "Note").
 - (5) Pursuant to that certain Loan Modification Agreement dated December 30, 2016, by and between the Lender and the Borrower, among other things, the Revolving Loan Commitment was reduced to \$10,000,000.
 - (6) Pursuant to that certain Second Loan Modification Agreement dated March 16, 2017, by and between the Lender and the Borrower, the Revolving Loan Commitment was increased from \$10,000,000 to \$15,000,000.
 - (7) The Amended and Restated Credit Agreement provides for two (2) consecutive options of one (1) year each to extend the Original Term of the Credit Facility, subject to satisfaction of certain conditions.
 - (8) The parties to this Agreement agree that as of December 20, 2019, the outstanding principal balance due under the Note was \$1,035,439.57.
 - (9) The Borrower has requested that the Credit Facility be amended to change the extension option from two (2) consecutive options of one (1) year each to one (1) option of two (2) years to December 31, 2021. The Lender is willing to accommodate the request under the terms and conditions of this Agreement.
-

Agreements:

NOW, THEREFORE, in consideration of the premises and intending to be legally bound, the parties do hereby agree as follows:

1. Amended and Restated Credit Agreement. Section 1.2(e) of the Amended and Restated Credit Agreement is hereby amended in its entirety to read as follows:

“Option to Extend Maturity Date.

(i) Extension Option. The Borrower shall have one (1) option (the “Extension Option”) of two (2) years to extend the Original Term of the Credit Facility, subject to the following conditions and as more particularly described in this Section 1.2(e):

- (A) No Default or Event of Default shall have occurred and be continuing;
- (B) The Borrower shall have complied with all Debt Yield requirements set forth in Section 4.15(d)
- (C) The Borrower shall provide the Lender with at least forty-five (45) days’ written notice of its intent to exercise the Extension

Option; and

(D) Upon exercise of the Extension Option, the Borrower shall pay an extension fee in the amount of one-fourth percentage points (.25%) of the Revolving Loan Commitment for the applicable Extension Option.

(ii) Extension Option Terms and Conditions. The Extension Option, if duly exercised and if all conditions thereof are duly satisfied, shall extend the Maturity Date by two (2) years from December 31, 2019 (the “Extension Date”) to December 31, 2021 (said period being referred to herein as the “Extension Period”). In addition to the terms and conditions set forth in Section 1.2(e)(i) above, the Extension Option shall be subject to the following additional terms and conditions:

(A) Prior to the Extension Date, the Lender shall have received an updated appraisal, dated no earlier than sixty (60) days prior to the Extension Date, showing the value of the Primary Mortgaged Property (exclusive of any released property and rounded upward to the nearest \$1000 increment) to be no less than the amount necessary to cause the Loan to Value Ratio with respect to the Primary Mortgaged Property only, to be no more than sixty-five percent (65%) (i.e., based on a Revolving Loan Commitment of \$15,000,000, the required value of the Primary Mortgaged Property would be no less than \$23,077,000). If the appraised value is less than such amount, the Borrower may exercise the Extension Option, but the Revolving Loan Commitment shall be reduced to a level sufficient to cause the Loan to Value Ratio for the Extension Period to be no more than 65%, and the extension fee for the Extension Option shall be correspondingly reduced.

(B) [RESERVED].

(C) The Borrower shall have at all times prior to the Extension Date complied with the financial covenants of the Loan, including the Debt Yield requirements described in Section 4.15(d).”

All references in the Amended and Restated Credit Agreement to (a) the Extension Option shall refer to the Extension Option as amended hereby, (b) the “First Extension Date” and the “First Extension Period” are hereby amended to the “Extension Date” and “Extension Period”, respectively, and (c) the second Extension Option, the “Second Extension Date” and the “Second Extension Period” are hereby deleted.

2. Acknowledgment by Borrower. The Borrower hereby confirms that its respective representations, warranties and agreements to the Lender under the Environmental Indemnity Agreement remain in full force and effect and apply to the Credit Facility, as amended and restated, and the Loan Documents.

3. Enlargement. Any provision contained in the Loan Documents to the contrary notwithstanding, all terms and provisions of the Loan Documents, including the provisions for acceleration upon or after default, are hereby enlarged and extended to include and constitute security for the observance of the terms of this Agreement and the Amended and Restated Credit Agreement, as further amended hereby. All references in the Loan Documents to the “Credit Agreement” are hereby enlarged and expanded to mean the Amended and Restated Credit Agreement, as further amended hereby.

4. Modification. This Agreement is a modification only and not a novation. In all other respects, the terms and conditions of the Amended and Restated Credit Agreement, as hereby modified, are hereby ratified and confirmed and shall remain in full force and effect.

5. Reaffirmation. The Borrower confirms and reaffirms all of its representations, warranties and covenants in the Loan Documents.

6. No Claims. The Borrower agrees and acknowledges that there are no claims, defenses or offsets that may be asserted by the Borrower that may reduce any amounts outstanding under the Loan Documents arising prior to the Effective Date. In consideration of the Lender’s agreements herein, the Borrower agrees that any such claims, defenses and offsets are hereby released.

7. Costs and Expenses. In consideration of, and as a condition to, the agreements contained herein, the Borrower shall promptly reimburse the Lender upon demand for all costs and expenses, including recordation fees and reasonable attorneys’ fees, incurred by the Lender in connection with this transaction.

8. Other Terms and Conditions.

(a) This Agreement shall be effective as of December 31, 2019 (the “Effective Date”), when the following conditions have been satisfied:

(i) this Agreement has been executed and delivered to the Lender by the Borrower; and

(ii) the Borrower has provided the Lender with evidence that the Borrower has the authority to amend the Credit Facility as provided in this Agreement, and to perform its obligations under the Amended and Restated Credit Agreement, as amended.

(b) The rights, duties and obligations hereunder shall be binding upon, and inure to the benefits of, the parties hereto and their respective successors and assigns.

(c) Within five (5) days of the Lender’s request, the Borrower shall execute and deliver such further documents and do such other acts as the Lender may reasonably deem necessary to carry out the purposes of this Agreement.

(d) This Agreement may be executed in counterparts, each of which shall be an original instrument and all of which shall together constitute one and the same agreement.

[The following page is the signature page.]

IN WITNESS WHEREOF, the parties hereto have caused this Second Loan Modification Agreement to be duly executed as of the Effective Date.

FIRST HAWAIIAN BANK

By: /s/ JOYCE Y. SAKAI
Joyce Y. Sakai
Senior Vice President

Lender

MAUI LAND & PINEAPPLE COMPANY, INC.

By: /s/ TIM T. ESAKI
Tim T. Esaki
Chief Financial Officer

Borrower

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (“Agreement”), is made and entered into as of this 20th of December, 2019 (the “Effective Date”), by and between HAWAII WATER SERVICE COMPANY, INC., a Hawaii corporation or its designee entity (“Purchaser”), KAPALUA WATER COMPANY, LTD., a Hawaii corporation (“KWC”), KAPALUA WASTE TREATMENT COMPANY, LTD, a Hawaii corporation (“KWTC”) (KWC and KWTC, jointly and severally, “Seller”), and MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation (“MLP”) (collectively “Parties”).

WHEREAS, KWC and KWTC are wholly-owned subsidiaries of MLP;

WHEREAS, KWC is a utility company regulated by the Public Utilities Commission of the State of Hawaii (“Commission”), currently providing potable and non-potable water services to residential and commercial customers located in Kapalua;

WHEREAS, KWTC is a utility company regulated by the Commission, currently providing wastewater collection and transmission services from residential and commercial customers located in Kapalua to the wastewater treatment plant located in Lahaina operated by the County of Maui (“Lahaina Wastewater Treatment Plant”);

WHEREAS, KWC and KWTC, provide water services and wastewater services, respectively (collectively, the “Business”), within the areas identified in **Exhibit A-1** (Service Area of KWC) and **Exhibit A-2** (Service Area of KWTC) attached hereto and incorporated herein by reference (collectively, the “Service Areas”).

WHEREAS, KWC and KWTC are or at Closing will be the owners of:

(a) the facilities, equipment, fixtures and other property necessary and to operate the Business (collectively, the “Assets”) identified and more specifically described in **Exhibit B-1** (Assets of KWC), **Exhibit B-2** (Assets of KWTC), and **Exhibit C** (Capital Expenditure Projects for KWC and KWTC currently being made by Aqua Engineers, Inc. (“Operator”), the company that currently provides Seller with operation and maintenance services under certain existing agreements (the “Aqua O&M Agreements”) attached hereto and incorporated herein by reference);

(b) the perpetual easements in which the Assets are or shall be located, and the rights-of-way, rights of entry and licenses necessary and desirable to conduct the Business and to access, operate, maintain, remove and replace the Assets (collectively, the “Easements”);

(c) the parcels of real estate owned in fee simple by KWC that are identified as Lots 26 and 31 of the "Honolua Ridge -- Phase I" subdivision (TMKs (2) 4-2-8-26 & -27) and Lot 27 of the "Honolua Ridge -- Phase II" subdivision (TMKs (2) 4-2-9-27) (collectively, the "Real Property") and

(d) the intangible and other right described herein necessary or desirable to operate the Business (collectively, the "Rights").

WHEREAS, because KWC and KWTC are regulated utility companies in the State of Hawaii and subject to the rules and regulations thereof, the sale of the Assets, together with the Real Property, the Easements and the Rights (collectively, the "Acquired Assets") are subject to the review and approval of the Commission; and

WHEREAS, Seller desires to sell to Purchaser all of the Acquired Assets, and Purchaser desires to purchase from Seller the same as an on-going business (the "Contemplated Transaction"), pursuant to the terms and conditions described herein at the closing ("Closing").

NOW, THEREFORE, AND FOR VALUABLE CONSIDERATION, the sufficiency and receipt thereof which is hereby acknowledged by the Parties, and in consideration of the mutual covenants and promises set forth in this Agreement, the Parties hereby agree as follows:

1. **PURCHASE AND SALE OF ACQUIRED ASSETS.** Subject to the terms and conditions set forth in this Agreement, Seller and MLP agree to sell, assign, transfer and deliver to Purchaser, and Purchaser agrees to purchase and accept from Seller, at Closing, all of Seller's and MLP's right, title and interest in the Acquired Assets free and clear of all liens and encumbrances as set forth below.

1.1. Acquired Assets. The Acquired Assets include, without limitation:

(a) all fixed assets recorded on each of KWC and KWTC's balance sheet, together with any other tangible or intangible assets useful or necessary for the continued operations of the Business (including but not limited to spare parts, inventory, etc.), free and clear of all liens and encumbrances except as provided below with respect to the Real Property, as set forth in **Exhibits B-1, B-2, and C** attached hereto and incorporated herein by reference, including, but not limited to, the following:

(1) all potable and non-potable water transmission facilities, pumping equipment, conduits, connections, tanks, mains, pipelines, meters and other equipment and appliances used and/or owned by KWC for the provision of potable and non-potable water to the Service Areas (collectively, "Water System");

(2) all wastewater collection and transmission equipment and facilities, wells, pumping equipment, conduits, connections, tanks, lagoons, sewage pumping stations, mains, pipelines, meters, and other equipment and appliances used and/or owned by KWTC for the provision of wastewater collection and transmission from the Service Areas to the connection to the county sewer system located on or near Lower Honoapiilani Road by the parking lot for Merriman's Kapalua, One Bay Club Place, Lahaina, HI 96761 (collectively, "Wastewater System");

- (b) the goodwill and other Rights relating to the Business;
- (c) rights to use potable and non-potable water from current source(s) utilized by KWC in the provision of water services to the Service Areas, as further described in the forms attached hereto and incorporated herein by reference as said agreements may be modified pursuant to Sections 3.5 and 3.6 of this Agreement:
 - i. **Exhibit D**, Water Delivery Agreement (Non-Potable Water); and
 - ii. **Exhibit E**, Water Delivery Agreement (Well Water) (collectively, the “Water Delivery Agreements”);
- (d) the Easements, whether transferred at Closing or after Closing, as explained more fully in Section 4.3 below, and other easements, licenses rights-of-way or rights of entry necessary or desirable to build, construct, reconstruct, rebuild, repair, maintain and operate the Water System and the Wastewater System (collectively, the “Systems”);
- (e) the Certificates of Public Convenience Necessity (“CPCNs”) issued to KWC and KWTC (pursuant to Commission approval of transfer of same) to enable continuing operation of the Systems in the Service Areas;
 - (f) any contributions in aid of construction (“CIAC”), as reflected in KWC’s and KWTC’s accounting records;
 - (g) any manufacturer or service warranties related to equipment and other utility assets comprising the Systems;
 - (h) customer deposits, if any, held by KWC or KWTC related to the Business; any deposits by KWC or KWTC held by government agencies, contractors, lessors and other vendors; and any accounts receivable and rights to payment for services provided after the Closing Date;
 - (i) all assignable existing contracts relating to the Business (including, but not limited to existing contracts with Seller’s service providers), books, files, financial records, tax returns, and accounts, for the Business, excluding the Aqua O&M Agreements which Seller shall terminate prior to or at Closing;
 - (j) all prepaid rent, utilities, taxes and other prepaid expenses and/or security deposits given;

(k) all payments from insurance contracts and/or policies for casualty to the Assets occurring between the Effective Date and the Closing Date which Seller has not already applied to restore, repair or replace the damaged Assets;

(l) all other intangible assets owned by KWC or KWTC and used in the Business, including but not limited to vehicles, office and computer equipment, software, furniture, fixtures, and other equipment, any propriety rights or designs, and any intellectual trade secrets;

(m) the telephone number(s), email addresses and website urls used by the Business;

(n) all existing inventory of KWC and KWTC including, but not limited to component parts and spare parts;

(o) all rights to the trade names "Kapalua Water Company" and "Kapalua Waste Treatment Company", as more specifically set forth below in Section 1.3;

(p) any customer and vendor lists of the Business;

(q) all licenses, authorizations, and other approvals necessary or required to provide authorized services, or to operate the Business and/or related to the Business;

(r) all claims against third parties, if any, arising from ownership of the Acquired Assets that exist at Closing; and

(s) all other property which includes, without limitation, all customer service contracts and all site plans, plans and specifications, "as-built" plans and drawings, and, to the extent transferable, permits and other governmental reviews, approvals and entitlements related to the Systems and much of the foregoing as have been heretofore prepared, applied for, obtained or otherwise are in the name or possession of, under the control of or available to KWC, KWTC or MLP, relating to the Business.

(t) the right, subject to Hawaii Public Utilities Commission approval, to provide wastewater and potable and non-potable water services to the "Kapalua Mauka" future expansion area (TMK 4-2-001-042 and TMK 4-3-001-006) that is more particularly described in the County of Maui's zoning code as "West Maui Project District 2 -- Kapalua Mauka".

(u) the Real Property, subject to only those liens and encumbrances deemed acceptable by Purchaser prior to the end of the Due Diligence Period.

1.2. Excluded Assets. Notwithstanding anything contained in Section 1.1 to the contrary, the Acquired Assets shall not include the following assets, properties or rights of Seller or MLP relating to the Business ("Excluded Assets"):

(a) all cash and accounts receivable of the Business existing immediately prior to the Closing (except for cash associated with CIAC set forth in Section 1.1(f) or customer deposits set forth in Section 1.1(h)); and

(b) Seller's internal corporate governance records and items, including, without limitation, corporate minute and stock books, and corporate seal; and

(c) The existing potable water wells and Honolua Ditch owned by MLP that are the source of potable and non-potable water, respectively, used by KWC in the operation of its Business, and the transmission infrastructure and storage facilities (including the Kapalua Plantation Reservoir and the Village Reservoir (collectively, the "Reservoirs")) located between those sources and the points of water delivery under the Water Delivery Agreements, all of which are owned and retained by MLP.

1.3. Only Certain Liabilities Being Assumed; Retained Liabilities. Except those liabilities and service commitments expressly as described in Schedule 1.3 hereof ("Assumed Liabilities"), Purchaser will not assume or be obligated to satisfy or perform any of the liabilities, or commitments, whether fixed or contingent, which relate to the Seller's Business prior to the Closing Date, the Acquired Assets or the Excluded Assets including any other liabilities, obligations or commitments of Seller and MLP whether fixed or contingent, or known or unknown, including but not limited to Seller's tax, environmental and water quality liabilities that exist prior to the Closing Date including without limitation taxes arising from the sale of the Acquired Assets ("Retained Liabilities") which shall remain the sole responsibility of Seller and MLP and be paid, performed and discharged solely by Seller and MLP.

1.4 Use of Name. Effective as of Closing, Purchaser shall be entitled to utilize the trade names "Kapalua Water Company" and "Kapalua Waste Treatment Company". Upon request by Purchaser, Seller shall change its corporate names and consent to Purchaser's registration of such name with the Department of Commerce and Consumer Affairs, of the State of Hawaii, Business Registration Division.

2. PURCHASE PRICE. In consideration of the sale of the Acquired Assets, Purchaser will, in full payment thereof, pay to Seller a total price of THREE MILLION EIGHT HUNDRED THIRTY-FOUR THOUSAND FIVE HUNDRED THIRTY-NINE DOLLARS (\$3,834,539.00) ("Purchase Price"), as may be adjusted by the Capital Expenditures Adjustment, as set forth in Section 2.1 below.

The Purchase Price is calculated as follows:

| CATEGORY | DESCRIPTION | AMOUNT |
|--------------------------|--|---|
| Rate Base Assets | Capital cost of Acquired Assets owned by KWC (Exhibit B-1) and KWTC (Exhibit B-2), being the original cost of such assets net of accumulated depreciation from the in-service date to the Effective Date, and related contribution in aid of construction, advances in aid of construction, deferred income taxes, and Commission adjustments for excess capacity. | KWC: \$1,197,786.00 KWTC: <u>\$136,753.00</u> \$1,334,539.00 These calculations are subject to Purchaser's verification during the Due Diligence Period. |
| Additional Consideration | Additional consideration paid by Purchaser for intangible assets of KWC and KWTC | \$2,500,000.00 |

2.1. Modification of Purchase Price Pursuant to Seller's Capital Expenditures. Purchaser and Seller agree that at Closing the Purchase Price shall be adjusted by the following amounts (collectively, the "Capital Expenditures Adjustment"):

(a) accumulated depreciation of the Acquired Assets included in Seller's rate base from the Effective Date to the Closing Date (as defined in Section 6 below) shall be deducted from the Purchase Price;

(b) capital expenditures made and funded by KWC, KWTC and/or MLP for projects or assets that are placed in service and approved for inclusion in the rate base of KWC or KWTC from and after the Effective Date through the Closing Date and included in Acquired Assets (including projects listed in **Exhibit C**), reduced by the depreciation accumulated from the date placed in-service to the Closing Date, shall be added to the Purchase Price; and

(c) accumulated depreciation of the Assets other than those listed in the preceding paragraphs from the Effective Date to the Closing Date shall be deducted from the Purchase Price.

2.2 Escrow. The purchase and sale of the Assets shall be conducted through escrow at Title Guaranty Escrow Services, Inc., Main Branch attn: Jeremy Trueblood ("Escrow") pursuant to instructions consistent with the provisions of this Agreement. All amounts payable to Seller (other than the amounts specified in Section 4.3(d)) shall be released by Escrow only upon Seller's delivery to Escrow and Purchaser of an approved Report of Bulk Sale or Transfer (Form G-8A) from the State of Hawaii Department of Taxation dated no earlier than ten (10) days prior to the Closing Date indicating that all taxes due and payable by Seller, including all taxes due under the relevant provisions of Hawaii law and under Form G-8A, have been paid, and the satisfaction of all conditions to Closing.

3. **PURCHASER'S REVIEW OF THE BUSINESS, THE ACQUIRED ASSETS, REAL PROPERTY AND EASEMENTS.**

3.1 **Due Diligence Period.** Purchaser shall conduct Purchaser's review of the Acquired Assets, Easements, and Seller's business beginning upon the execution of this Agreement and for a period of 60 days, with up to three 30 day extensions if requested by Purchaser (the "**Due Diligence Period**"). In addition to the specific documents and records referenced in Sections 3.2 and 3.3, Seller and MLP shall give Purchaser and its counsel, accountants and other representatives, on reasonable prior notice, access during normal business hours to all properties, books, accounts, records, contracts and documents of or relating to the Business, the Acquired Assets and operations, excluding only privileged documents. Seller and MLP shall furnish to Purchaser and its representatives and consultants such additional data and information concerning the Business, operations and the Assets that may be reasonably requested as part of a customary due diligence review ("**Due Diligence Review**"). Notwithstanding any of the foregoing, in no event, shall the fact that Purchaser had the opportunity to conduct the Due Diligence Review be used by Seller or MLP as a defense or otherwise to Purchaser's enforcement of a Seller or MLP representation, warranty or covenant

3.2 **Seller's Documents and Records.**

(a) **Documents in KWC's, KWTC's or MLP's Possession.** Within five (5) business days of the Effective Date, Seller and MLP shall provide to Purchaser, all non-privileged material documents in the possession of KWC, KWTC or MLP which pertain to the ownership or operation of the Business and the Acquired Assets, including the following (collectively, the "**Available Due Diligence Materials**"):

- (1) site plans, plans and specifications, "as-built" plans and drawings regarding the Assets;
- (2) existing water purchase agreements;
- (3) the Sewer Agreement dated April 23, 1987, by and between the County of Maui, Seller and KWTC, as supplemented by the Lahaina Wastewater Reclamation Facility Expansion Agreement dated January 20, 1994, for the treatment of wastewater at its Lahaina Wastewater Treatment Plant (collectively, the "**Wastewater Treatment Agreement**");
- (4) copies of all existing and proposed leases, easements, rights-of-way, rights of entry, licenses, and other agreements affecting the Easements and Real Property;
- (5) existing contracts pertaining to the Business, excluding the Aqua O&M Agreements;

(6) copies of all existing water and wastewater customer agreements (“Customer Agreements”) and all written notice of adequate capacity to provide potable or non-potable water or wastewater services to new customers in the Service Areas (“Will Serve Letters”);

(7) existing surveys and maps, including but not limited to the makai easement map prepared by Warren S. Unemori Engineering, Inc. (“WSUE”), attached as **Exhibit F-1**, and mauka easement map, also prepared by WSUE, attached as **Exhibit F-2**, both reflecting, in reasonable detail, the location of the Easements in proximity to the Assets (collectively, the “Easement Map”);

(8) listing of misaligned and missing Easements;

(9) existing financial statements of Seller including balance sheets income statements and retained earnings statements for the previous three fiscal years, and year-to-date financial statement by month;

(10) Commission Annual Reports for the three previous years;

(11) Consumer Confidence Reports, water quality laboratory analysis, and any notices of violation and inspection reports from Hawaii Department of Health for the three previous years; and

(12) Title reports, for the Real Property and the Easements (if any for the Easements) from Title Guaranty of Hawaii, Inc.

(b) Additional Documents. Within thirty (30) days of the Effective Date, Seller shall provide Purchaser with the following (“Additional Due Diligence Documents”):

(1) a complete list of all Easements that have been granted and recorded to date;

(2) an updated list that identifies those areas over which, to the best of Seller’s or MLP’s knowledge, recorded easements are necessary to build, construct, reconstruct, rebuild, repair, maintain and operate the Systems, but have not yet been obtained;

(3) Real Property related documents including but not limited to deeds, and existing title reports and title policies for all Real Properties and Easements, encumbrances, leases, land use permits, certificates of occupancy;

(4) Commission approved tariffs, rules of service, and orders and all files and filings relating to Commission matters.

3.3 Inspection; Inspection Indemnity. During the Due Diligence Period, Purchaser and Purchaser's employees, agents, consultants, advisors, or other representatives (collectively "Purchaser's Representatives") shall have the right, upon reasonable notice to Seller and at times reasonably convenient to Seller and Purchaser, to perform reasonable non-destructive inspections and tests of the Acquired Assets. Prior to any such entry Purchaser shall provide Seller with a certificate of liability insurance in form acceptable to Seller naming Seller and MLP as additional insureds. Purchaser agrees that it will engage such consultants as it deems necessary to complete such inspections and testing. Without limiting the generality of the foregoing, at any time prior to the expiration of the Due Diligence Period, Purchaser may engage a reputable third-party environmental consulting company to perform a Phase I and Phase 2 environmental assessment and/or any non-destructive testing of the soil, groundwater, building components, tanks, containers and equipment on the Real Property or Easements, as Purchaser deems necessary or appropriate to confirm the condition of such properties. Any investigation or examination of the Acquired Assets is performed at the sole risk and expense of Purchaser, and Purchaser shall be solely responsible for the negligent acts or omissions of any of Purchaser's Representatives while performing such testing and inspection. Purchaser shall defend, indemnify and hold Seller harmless from and against all claims for personal injury, wrongful death or property damage against Seller, or the Acquired Assets arising from or as a result of, any negligent act or omission of Purchaser or Purchaser's Representatives, in connection with any inspection or examination of the Acquired Assets or the books and records of the Business by Purchaser or Purchaser's Representatives, except to the extent arising from or as a result of the negligent or willful misconduct of Seller, MLP or their respective officers, directors, employees, consultants or any other representatives. This obligation to indemnify shall survive closing or termination of this Agreement.

3.4 Purchaser's Right to Waive or Terminate. During the Due Diligence Period, Purchaser will review the Acquired Assets and various aspects of Purchaser's potential acquisition of the Acquired Assets. Purchaser may accept the condition of the Acquired Assets and waive the time remaining in the Due Diligence Period by issuing to Seller a written notification of acceptance of the Acquired Assets prior to the expiration of the Due Diligence Period. In addition, the Parties agree that Purchaser, in Purchaser's sole and unreviewable discretion, may terminate this Agreement for any reason by written notice received by Seller on or before 4:00 p.m., Hawaii time, on the last day of the Due Diligence Period. If the last day of the Due Diligence Period falls on a Saturday, Sunday or holiday, the Due Diligence Period shall end on the next following business day. If Purchaser exercises such right of termination, the Parties agree that the Parties shall have no further obligations to each other under this Agreement except with respect to the obligations set forth in Section 3.3 (Inspection; Inspection Indemnity) above.

3.5 Non-Potable Water Delivery Agreement. A draft Agreement for Water Delivery (Non-Potable Water) is attached as **Exhibit D**. The Parties agree to act in good faith and diligently pursue completion of negotiations of a final form of non-potable water delivery agreement, in form and substance acceptable to the Parties for execution and delivery at Closing, at least five (5) business days prior to the end of the Due Diligence Period. If the Parties are unable to reach agreement on the Agreement for Water Delivery (Non-Potable Water), either Party may prior to the end of the Due Diligence Period terminate this Agreement.

3.6 Potable Water Delivery Agreement. A draft Agreement for Water Delivery (Well Water) is attached as **Exhibit E**. The Parties agree to act in good faith and diligently pursue completion of negotiations of a final form of potable water delivery agreement, in form and substance acceptable to the Parties for execution and delivery at Closing, at least five (5) business days prior to the end of the Due Diligence Period. If the Parties are unable to reach agreement on the Agreement for Water Delivery (Well Water), either Party may prior to the end of the Due Diligence Period terminate this Agreement.

3.7 Negotiation of Assignment of Existing Wastewater Treatment Agreement with County of Maui. The Parties have agreed to execute the Assignment and Assumption of Wastewater Treatment Agreement attached hereto as **Exhibit H** and incorporated herein by reference, to be effective as of the Closing Date if the Contemplated Transactions close. Seller shall use commercially reasonable efforts to assist Purchaser in obtaining the acknowledgement of the County of Maui, that no consent is required from the County of Maui, and of the Assignment and Assumption of Wastewater Treatment Agreement.

3.8 Negotiation of Operation and Maintenance Service Agreement for Wells and Reservoirs. The Parties agree to use commercially reasonable efforts to negotiate in good faith the definitive terms and form of an Operations and Maintenance Service Agreement for Purchaser to operate and maintain the Kapalua Potable Well 1 & 2 and related infrastructure (the "O&M Agreement for Wells and Reservoirs"), in form and substance acceptable to the Parties for execution and delivery at Closing, at least five (5) business days prior to the end of the Due Diligence Period. If the Parties are unable to reach agreement on the O&M Agreement for Wells and Reservoirs, either Party may prior to the end of the Due Diligence Period terminate this Agreement.

3.9 Negotiation of Operation and Maintenance Service Agreement for Ditch System. The Parties agree to use commercially reasonable efforts to negotiate in good faith the definitive terms and form of an Operations and Maintenance Service Agreement for Purchaser to operate and maintain the West Maui Honokohau Ditch system, the Reservoirs and related infrastructure (the "O&M Agreement for Ditch System"), in form and substance acceptable to the Parties for execution and delivery at Closing, at least five (5) business days prior to the end of the Due Diligence Period. If the Parties are unable to reach agreement on the O&M Agreement for Ditch System, either Party may prior to the end of the Due Diligence Period terminate this Agreement.

4. PARTIES' PRE-CLOSING COVENANTS AND ACTIVITIES.

4.1 Continued Operation and Management of the Business.

(a) Seller shall, and MLP shall cause Seller, without making any commitments or agreements on behalf of Purchaser, to keep its business organization intact, to preserve its present relationships with suppliers, customers and others having business relationships with it and to operate the Business in the ordinary course of business consistent with its prior practices and to maintain the Acquired Assets in good condition and repair. Without limiting the generality of the foregoing, Seller shall not and MLP shall cause Seller not to do, or agree to do, any of the following acts without the prior written consent of Purchaser:

- (1) enter into any contract or agreement with, make any commitment on behalf of or for the benefit of, or make any distribution of money or property to, in each case MLP or any person or entity related to or affiliated with MLP;
- (2) Enter into any contract or transaction not in the ordinary course of business, except, however, Purchaser shall not unreasonably withhold written consent in the event that a contract or transaction is necessary to correct an interruption in service to any customer(s);
- (3) Enter into any contract or transaction in the ordinary course of business involving an amount exceeding ten thousand dollars (\$10,000) individually or twenty thousand dollars (\$20,000) in the aggregate, except, however, Purchaser shall not unreasonably withhold written consent in the event that a contract or transaction is necessary to correct an interruption in service to any customer(s);
- (4) Sell or dispose of any capital assets with a net book value in excess of one thousand dollars (\$1,000) individually or two thousand dollars (\$2,000) in the aggregate; or
- (5) Make a distribution of money or property to MLP or any person or entity affiliated with MLP (whether as a dividend or otherwise) or incur any indebtedness to MLP or any person or entity affiliated with MLP.

(b) Seller shall continue to carry its existing insurance, subject to variations in amounts required by the ordinary operations of its business.

(c) No later than January 31, 2020, Seller shall provide Purchaser true and correct copies of all Will Serve letters and customer agreements executed by Seller up to and including the date such copies are provided to Purchaser (the “Will Serve Disclosure Date”) and, further, Seller shall obtain the prior written approval of Purchaser for any new Will Serve Letters and customer agreements that Seller wishes to enter into during the period from the Will Serve Disclosure Date to the Closing Date.

(d) Provided that Purchaser shall elect to proceed with the Contemplated Transaction, the Parties agree that they will use commercially reasonable efforts to jointly secure Commission authorization for the Contemplated Transaction (which shall include any Commission authorization necessary) for: (1) the expansion of such services to Kapalua Mauka (as defined in Section 4.4 below); (2) the relocation of the site office and storage area (as provided in Section 4.5 below); (3) the Agreement for Water Delivery (Non-Potable Water) described in Section 3.5 above; (4) the Agreement for Water Delivery (Well Water) described in Section 3.6 above; and (5) the assignment of the Wastewater Treatment Agreement to Purchaser. Additionally, the Parties agree to use their best efforts to amend the tariff for KWC to limit the liability of Purchaser for inadequate flow surface water resulting from events beyond Purchaser’s reasonable control. To this end, the Parties agree to file an Application for Commission authorization with 15 business days of Seller’s receipt of Purchaser’s decision to proceed with the Contemplated Transaction and to diligently prosecute such Commission authorization. The legal and other costs of seeking Commission authorization shall be shared equally between Seller and Purchaser.

(e) As of the Closing, there will be no action, suit, proceeding, claim arbitration, or investigation, audit, or inquiry, at law or in equity, before or by any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, pending or, to the knowledge of Seller or MLP, threatened, against the Business which materially affects the Business or relates to the Acquired Assets, other than the pending Hawaii Commission on Water Resources proceedings regarding the Honolulu Ditch and West Maui streams from which it draws.

(f) Except as may otherwise be provided herein, the Business shall be in compliance with any and all county, state or federal health, environmental, or similar laws, rules and regulations applicable to the operation of the Systems.

4.2 [RESERVED].

4.3. Pre-closing and Post-closing Easements. Provided Purchaser shall elect to proceed with the Contemplated Transaction, Seller and MLP jointly and severally agree as follows:

(a) Existing Easements. During the Due Diligence Period, Purchaser may conduct such investigations as it desires with respect to all easements held by Seller for the System that will be assigned to Purchaser at Closing ("Existing Easements"), including securing such commitments from Title Guaranty of Hawaii, LLC, to insure Purchaser's interest in the Existing Easements at Closing.

(b) Agreed Easement Actions. Seller and Purchaser acknowledge that Seller holds certain recorded perpetual easements covering various areas of the Systems located on lands not owned by Seller, but does not currently have easements necessary for all aspects of the Systems located on lands held by Seller, MLP or third-parties, as the case may be or to allow Purchaser physical access to the Systems ("Missing Easements"), or that there may be existing easements that are not correctly aligned with the KWC or KWTC lines or facilities that they are intended to cover ("Misaligned Easements"). No later than five (5) days before the end of the Due Diligence Period, Seller and Purchaser shall mutually agree on (a) a list of the Missing Easements that Seller and MLP will pursue pursuant to this Section, and (b) a list of the Misaligned Easements and the specific amendments necessary to address them that Seller and MLP will pursue pursuant to this Section (collectively, the "Agreed Easement Actions"). If the Parties are unable to reach agreement on the Agreed Easement Actions, either Party may prior to the end of the Due Diligence Period terminate this Agreement.

(c) Seller's and MLP's Obligation to Diligently Pursue. Provided Purchaser shall elect to proceed with the Contemplated Transaction at the end of the Due Diligence Period, Seller and MLP will exercise commercially reasonable efforts to complete the Agreed Easement Actions prior to Closing and after Closing for a period of two (2) years. Agreed Easement Actions with respect to Missing Easements shall be deemed complete when Seller or MLP have secured recorded grants of easement in form reasonably acceptable to Purchaser and for which Title Guaranty of Hawaii is willing to insure ("Insurable Easements"). Agreed Easement Actions with respect to Misaligned Easements shall be deemed complete when Seller or MLP have completed the specific agreed actions on the list of Agreed Easement Actions. All Easements granted by MLP over its own lands after the end of the Due Diligence Period shall be made on Purchaser's standard Grant of Easement form, attached hereto as **Exhibit 4.3(a)**.

(d) Seller's List of Easements Obtained Prior to Closing. At least thirty (30) days prior to Closing, Seller shall provide an updated true, complete and correct list of all Agreed Easement Actions that have been completed ("Pre-closing Easements"), and a list of all Agreed Easement Actions that have not been completed ("Post-closing Easements").

(e) Seller's Obligation at Closing. At Closing, Seller and MLP shall assign to Purchaser all of its right, title and interest in the Existing Easements and the Pre-closing Easements. Post-closing, Purchaser agrees to cooperate with Seller to secure the Post-closing Easements, and to execute such related and necessary documentation as is usual and customary. For the avoidance of doubt, Post-closing Easements includes amendments to existing easements and new grants to address misaligned easements as well as new grants for Systems in locations not covered by any grant.

(f) Optional Post-closing Easement Deposit. In consideration of the commitments in this Section 4.3, at Closing Purchaser may elect to instruct Escrow to retain from the Purchase Price, a sum equal to the estimated sum necessary to pursue, process, grant and record any Post-closing Easements (“Post-closing Easement Deposit”). For purposes of establishing the Post-closing Easement Deposit, Seller and Purchaser agree that \$100,000 will be retained by Escrow for each Post-closing Easement. When Seller or MLP complete each Post-Closing Easement (as such completion is defined in Section 4.3(c)), Escrow shall promptly disburse to Seller or MLP from the Easement Deposit the amount of \$100,000, less reasonable expenses of escrow, conveyance and recordation paid by Escrow with respect to the Post-Closing Easement in question. Seller and MLP agree that Seller and MLP shall exercise commercially reasonable efforts to obtain and record all Post-closing Easements or Assignments to Purchaser of the Post-closing Easements within twenty four (24) months of the Closing Date. Seller, MLP and Purchaser agree that if, despite such efforts on the part of Seller and MLP, Seller and MLP are still unable to obtain all of the Post-closing Easements twenty four (24) months following Closing, Purchaser shall have the right, following notice to Seller, to have Escrow disburse to Purchaser all or any portion of the Post-closing Easement Deposit remaining for the Post-closing Easements which Seller or MLP have not then yet completed and Purchaser elects to pursue on its own. Following Escrow’s release of the Post-closing Easement Deposit to Purchaser, Purchaser shall thereafter be responsible for obtaining the applicable Post-closing Easements represented by the Post-closing Easement Deposit retained by Purchaser. Seller and MLP shall thereafter be released from any further obligation to pursue the applicable Post-closing Easement(s) and Seller and MLP shall have no further obligation or liability with respect to the Post-closing Easements except that Seller and MLP shall not be released with respect to their lands or lands of Seller, MLP or any of their respective owners, affiliates or related parties, and as to unrelated third-parties, Seller and MLP shall cooperate and assist Purchaser, including without limitation by exercise of any rights held by Seller or MLP to obtain or grant easements, unless commercially unreasonable.

(g) Good Faith Efforts to Provide all Easements. Notwithstanding the foregoing provisions of Sections 4.3, so as to minimize the need to pursue Post-closing Easements, Seller and MLP, jointly and severally, shall use good faith efforts to assign and provide to Purchaser at Closing all easements necessary to operate the Systems.

4.4. Agreement to Expand Service Areas to Include Future Kapalua Developments and the Construction of All Related Water and Wastewater Infrastructures in Future Kapalua Developments. As part of the Application that KWC and KWTC will jointly file with the Commission for approval of the sale of the Acquired Assets to Purchaser, transfer of the CPCNs to Purchaser, and any other transfer that is part of the Contemplated Transaction, the Parties further agree to expand the Service Areas to include the provision of water and wastewater services to Seller's future developments in Kapalua, including Kapalua Mauka (Maui Tax Map Key Parcels 4-2-001:042 and 4-3-001:006). After Closing, MLP shall have the option to have Purchaser construct or have constructed all water and wastewater utility infrastructure serving the Service Areas, including infrastructure reasonably designated by Seller to serve future Kapalua developments, including but not limited to Kapalua Mauka (Maui Tax Map Key Parcels 4-2-001:042 and 4-3-001:006) Central Resort (Maui Tax Map Key Parcel 4-2-004:049) and Lot 1D (Maui Tax Map Key Parcel 4-2-004:037) ("New System Infrastructure"). Any such construction that MLP requests Purchaser to undertake shall be subject to applicable Commission approved financing requirements, rules, and tariffs, which may require that MLP or other landowners and developers bear all or some of such expense of construction through contributions in aid of construction or otherwise in accordance with Commission approved rules and tariffs. Seller and MLP shall provide Purchaser with necessary land and easements to provide utility service to the Service Areas at no additional cost to Purchaser. MLP reserves the right to construct or cause others to construct New System Infrastructure, in which case (i) the design shall be pursuant to plans and specifications approved by Purchaser and all construction in conformance with such Purchaser approved plans and specifications and (ii) upon completion, Purchaser shall have the right to inspect and approve, in its sole discretion, all New System Infrastructure prior to any dedication thereof to Purchaser.

4.5 Identification and Agreement for Purchaser's Acquisition of New Office and Storage Area. **Exhibit J** (Purchaser's Proposed Location for New Office and Storage Area) attached hereto and incorporated herein reflects the location acceptable to Purchaser for a new office and storage area within the Service Areas. The Parties shall diligently pursue to completion, negotiations for the lease or conveyance of the fee simple interest in a subdivided lot of the property identified in Exhibit J and proper zoning for construction and use as Purchaser's office and storage area, in form and substance acceptable to the Parties for execution and delivery at Closing, at least five (5) business days prior to the end of the Due Diligence Period. Seller agrees that Purchaser shall be permitted to occupy the current operator's onsite office and storage area until such time as Purchaser has completed the acquisition and construction of the new office and storage area.

4.6 Notifications. Between the date of this Agreement and the Closing, Seller shall promptly notify Purchaser in writing if Seller or MLP become aware of (i) any fact or condition that causes or constitutes a breach of any of Seller's or MLP's representations and warranties made as of the date of this Agreement or (ii) the occurrence after the date of this Agreement of any fact or condition that would or be reasonably likely to (except as expressly contemplated by this Agreement) cause or constitute a breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or Seller's or MLP's discovery of, such fact or condition. Such delivery shall not affect any rights of either party under Section 10 under this Agreement.

4.7 Filing of HI DOTAX Form D-37. Seller agrees Purchaser may file Hawaii State Tax Department Form D-37 at any time prior to Closing but after the receipt of a non-appealable Commission order approving the Contemplated Transactions.

5. **CAPITAL EXPENDITURES.**

5.1 Expenditures by the Business. All capital expenditures funded by Seller on behalf of the Business between the Effective Date and the Closing Date shall be subject to Purchaser's pre-approval and shall result an increase in the Purchase Price as set forth in Section 2 above.

6. **CLOSING**. Closing shall occur at Title Guaranty of Hawaii, located at the Main Office, Honolulu, Hawaii or at some other mutually agreeable location, on the date agreeable to both Seller and Purchaser, within thirty (30) business days after the receipt of all final non-appealable orders issued by the Commission approving the Contemplated Transaction, which date must allow for reasonable coordination of billing cycles, (the "Closing Date"). Time is of the essence with respect to closing this Agreement.

6.1. Closing Costs. Subject to the prorations described in Section 6.3, all closing costs related to the purchase of the Acquired Assets will be divided evenly between Purchaser and Seller and include, but are not limited to, escrow fees, recording fees, conveyance taxes and any other related fees related to Closing. Taxes related to Seller's compliance with the Bulk Sales laws as described in Section 6.2(a)(6) shall be the responsibility of Seller.

6.2. Deliveries at Closing. Unless the parties agree to handle specific matters outside of Escrow, the following shall be done through Escrow to effect the Closing:

(a) Seller's Deliveries. Not later than two (2) business days prior to Closing, Seller shall deposit or cause to be deposited with Escrow, the following funds, items and documents, in each case duly executed by Seller, MLP or the appropriate person, and if applicable, acknowledged and in recordable form:

- (1) [intentionally deleted];
- (2) Limited Warranty deeds for Real Property in forms mutually agreed to during the Due Diligence Period;
- (3) An original and two (2) copies of a Bill of Sale in forms mutually agreed to during the Due Diligence Period;

(4) Any required assignment/assumption agreements, including but not limited to those related to Customer Agreements and Will Serve Letters (in forms mutually agreed to during the Due Diligence Period), the Pre-closing Easements, and the Assignment and Assumption of the Wastewater Treatment Agreement attached as **Exhibit H**) and all third-party consents as may be necessary for the assignment of the same;

(5) Possession of the Acquired Assets not already in Purchaser's possession;

(6) a Tax Clearance Certificate for Seller issued by the Department of Taxation of the State of Hawaii not more than fifteen (15) days prior to the Closing Date and a Report of Bulk Sale or Transfer (Form G-8A) from the State of Hawaii Department of Taxation dated not more than ten (10) days prior to the Closing Date and containing the certification of the Director of Taxation that all taxes, penalties and interest by Seller on the date of the certificate have been paid; provided that if the certificate of the Director of Taxation has not been received by the scheduled Closing Date the Parties agree to extend the Closing Date until the earliest practical date after the Director's certificate is received; provided in no event shall the Closing Date be extended beyond thirty (30) days beyond the 24 month period described in Section 10.1(e);

(7) The Agreement for Purchaser's Acquisition of New Office and Storage Location described in Section 4.5 above;

(8) The mutually acceptable non-potable water delivery agreement as described in Section 3.5 above;

(9) The mutually acceptable potable water delivery agreement as described in Section 3.6 above;

(10) The Assignment and Assumption of the Waste Water Treatment Agreement described in Section 3.7 and attached hereto as Exhibit H;

(11) The mutually acceptable O&M Agreement for Wells and Reservoirs described in Section 3.8 above;

(12) The mutually acceptable O&M Agreement for Ditch System described in Section 3.9 above;

(11) Estimated funds to pay for its share of the costs of Closing;

(12) A certificate of non-foreign status in form and content required by law certifying that Seller is not a “foreign person” as such term is used under Section 1445 of the Internal Revenue Code;

(13) A certificate of resident status in form and content required by law certifying Seller is a “resident person” as such term is used in H.R.S. Section 235-68;

(14) A search conducted by the Title Company confirming that no financing statements or liens have been recorded against the Acquired Assets except for such financing statements and liens that will be released at Closing;

(15) a Good Standing Certificate for Seller issued by the Director of the Department of Commerce and Consumer Affairs for the State of Hawaii, dated not more than five (5) calendar days prior to the Closing Date; and

(16) Such other documents as Purchaser may reasonably request for the purpose of: (i) evidencing the accuracy of any of Seller’s and MLP’s representations and warranties; (ii) evidencing the performance by Seller or MLP or the compliance by Seller or MLP with any covenant or obligation required to be performed or complied with by Seller or MLP; (iii) evidencing the satisfaction of any condition referred to in Article 9; (iv) otherwise facilitating the consummation or performance of any of the Contemplated Transactions, including without limitation a Certificate of an offer of Seller in the form mutually agreed to during the Due Diligence Period, or (v) such other documents and instruments as shall be reasonably necessary to effect the transactions contemplated hereby, or as may be reasonably requested by Purchaser or its counsel.

(b) Purchaser's Deliveries. Not later than two (2) business days prior to Closing, Purchaser will deposit with Escrow, the following funds and documents, in each case duly executed by Purchaser or the appropriate person, and if applicable, acknowledged and in recordable form:

(1) The total Purchase Price pursuant to Section 2 above;

(2) Any required assignment/assumption agreements, including but not limited to those related to the Pre-closing Easements, and Assignment and Assumption of the Wastewater Treatment Agreement;

- (3) Agreement for Purchaser's Acquisition of New Office and Storage Location described in Section 4.5 above;
- (4) The non-potable water delivery agreement described in Section 3.5 above;
- (5) The potable water delivery agreement described in Section 3.6 above;
- (6) The Assignment and Assumption of the Waste Water Treatment Agreement described in Section 3.7 and attached hereto as Exhibit H;
- (7) The mutually acceptable O&M Agreement for Wells and Reservoirs described in Section 3.8 above;
- (8) The mutually acceptable O&M Agreement for Ditch System described in Section 3.9 above;
- (7) Estimated funds to pay for its share of the costs of Closing;
- (8) a Good Standing Certificate for Purchaser issued by the Director of the Department of Commerce and Consumer Affairs for the State of Hawaii, dated not more than five (5) calendar days prior to the Closing Date; and
- (9) such other documents as Seller may reasonably request for the purpose of: (i) evidencing the accuracy of any of Purchaser's representations and warranties; (ii) evidencing the performance by Purchaser of, or the compliance by Purchaser of or with, any covenant or obligation required to be performed or complied with by Purchaser; (iii) evidencing the satisfaction of any condition referred to in Article 9; or (iv) otherwise facilitating the consummation or performance of any of the Contemplated Transactions, including without limitation a Certificate of an officer of Purchaser in a form mutually agreed to during the Due Diligence Period, or (v) such other documents and instruments as shall be reasonably necessary to effect the transactions contemplated hereby, or as may be reasonably requested by Seller or its counsel

6.3 Closing Prorations.

- (a) Insurance. Purchaser shall pay to Seller the unexpired premium of any insurance policies assigned by Seller to Purchaser; provided, however, Purchaser shall have the option to decline to have the insurance assigned, in which event no adjustment shall be made for insurance.

(b) Revenues. The Parties acknowledge that billing for residential customers' sewer charges are billed in advance. However, for commercial customers, a monthly minimum service charge is billed in advance and the sewer treatment charge, which is based on the customer's billed water usage, will be billed in a subsequent billing period. The Parties agree to cooperate with each other to allow the proper sewer charges to be assessed to customers in accordance with the Closing, the intent being that Purchaser and Seller shall each be entitled to sewer revenues including the sewer treatment charge properly allocated for pre-closing and post-closing periods of ownership.

(c) Prepaid Real Property Taxes. Purchaser shall pay to Seller the prorated amount of any real property taxes paid by Seller in connection with any Real Property.

(d) Other Expenses. Except as may otherwise set forth in this Agreement, Closing expenses will be prorated and apportioned as is customary at the Closing.

(e) Time of Prorations. Prorations shall be made as of 12:01 a.m. on the date of the Closing, with Purchaser to be entitled to all revenues (except as set forth above) and to be charged for all expenses for such day. All prorations shall be final. If the amount of any prorated item is not known at Closing, the parties agree that such items shall be prorated at Closing upon the basis of the best information available, and shall be adjusted when the actual amount (s) of such items are known, with appropriate charges and credits to be made. If subsequent to the Closing, any adjustment pursuant to this Section 6.3 shall be necessitated, then either party hereto who is entitled to additional monies shall give written notice to the other party of such additional amounts as may be owing, and such amount shall be paid within five (5) days from receipt of the invoice. The provisions of this Section 6.3(e) shall survive the closing of the Contemplated Transaction.

7. **REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller and MLP jointly and severally represent and warrant to Purchaser as follows:

7.1. **Organization, Standing and Qualifications.**

KWC and KWTC are corporations, duly organized, validly existing and in good standing under the laws of the State of Hawaii; and have all requisite corporate power and authority and is entitled to carry on the Business as now being conducted and to own, lease or operate its properties as and in the places where the Business is now conducted. Seller is engaged in the business of a water and wastewater utility serving areas in Kapalua, Maui, Hawaii, and with respect to which, it holds valid permits issued by the State of Hawaii and Maui County. There are no dissolution, disassociation, winding-up, liquidation or bankruptcy proceedings pending or threatened against Seller or MLP. There are no events which could result in a dissolution of Seller or MLP. Seller is not doing business in any state other than Hawaii. Seller does not own, directly or indirectly, any interest or investment (whether equity or debt) in or control any corporation, partnership, business, trust, joint venture or other entity. Complete and accurate copies of the governing documents of Seller, as currently in effect, are attached as Exhibit 7.1. There are no contracts relating to the issuance, sale or transfer of any equity securities or other securities of Seller. MLP is the sole shareholder of KWC and KWTC.

7.2. **Authorization of Agreement.** Upon receipt of the approval of Seller's Board of Directors and of MLP, no approvals or consents of any person other than the Commission are necessary for or in connection with the performance of Seller's and MLP's obligations hereunder. No other corporate proceeding on the part of KWC, KWTC or MLP is necessary to authorize this Agreement and the Contemplated Transaction. This Agreement has been duly and validly executed by an authorized officer of KWC, KWTC and MLP and along with any and all documents and agreements to be executed and delivered by KWC, KWTC and MLP, as the case may be, are valid and binding on KWC, KWTC and MLP in accordance with their respective terms.

7.3. **Assets of Business.**

(a) All of the assets required to operate the Business are included with the Acquired Assets and Seller has sole, exclusive, good and marketable title to all of the Acquired Assets, which shall be conveyed free and clear of all liens, mortgages, pledges, encumbrances, and any other restrictions or defects in title excepting only those liabilities and obligations, if any, which are expressly to be assumed by Purchaser hereunder.

(b) Except for such covenants, representations and warranties that are expressly set forth in this Agreement or in the documents to be delivered at the Closing the Easements and Acquired Assets are being sold "as is, where is."

7.4 **Licenses.** To Seller's actual knowledge and to MLP's actual knowledge, Seller possesses and holds in its name all licenses, permits, consents, franchises, approvals, authorization, qualifications, and orders of all Governmental Bodies required to enable Seller to conduct its business as presently conducted and to own, lease and operate its assets as presently owned, leased and operated. To Seller's or MLP's knowledge, all of the Licenses held by Seller are in full force and effect and there is no default of any provision thereof which would affect the ability of Seller to engage in its business. No action is pending or, to Seller's or MLP's knowledge, threatened, seeking the suspension, modification, cancellation, revocation or limitation of any License and, to Seller's or MLP's knowledge, there is no basis for such actions.

7.5 Financial Statements. The Seller financial statements delivered to Purchaser pursuant to this Agreement are true and correct in all material respects, fairly present the financial position of Seller as of the respective dates of the balance sheets included in the Seller financial statements, and the results of its operations for the respective periods indicated.

7.6 Liabilities. Except as set forth in the Seller's financial statements there are to neither Seller's actual knowledge or MLP's actual knowledge, any liabilities, fixed or contingent, known or unknown, to which Seller, its business or assets are subject, other than those incurred in the ordinary course of business consistent with past practices. Seller is not a party to, nor are its Assets bound by, any agreement not entered into in the ordinary course of business, or any indenture, mortgage, deed of trust, lease or any agreement that is unusual in nature, duration or amount (including, without limitation, any agreement requiring the performance by Seller of any obligation for a period of time extending beyond one year from the Closing Date, calling for consideration of more than \$5,000, or requiring purchase at prices in excess of prevailing market prices). Seller is not a party to, nor is Seller or any of its assets bound by, any agreement that is materially adverse to the business, assets, prospects or financial condition of Seller. Except as disclosed to Purchaser, there are no royalty obligations, warranty and guarantee obligations, product liability obligations, or easement maintenance obligations with respect to the Acquired Assets.

7.7 Leases, Liens and Encumbrances: Real Property. Seller is not a party to any agreement for the lease of real property, and Seller owns all tangible personal property and other assets necessary to conduct the Business as now conducted not subject to any lien or encumbrance. Schedule 7.7 contains a correct legal description, street address (if any) and tax parcel identification number of all Real Property including tracts, parcels and subdivided lots and easements which Seller is using in the Business. Seller has good title to such Real Property. The Real Property may have the following encumbrances: (i) liens for taxes for the current tax year which are not yet due and payable; and (ii) those Encumbrances deemed acceptable to Purchaser during the Due Diligence Period. True and complete copies of (A) all deeds, existing title insurance policies and surveys of or pertaining to the Real Property, and (B) all instruments, agreements and other documents evidencing, creating or constituting any encumbrances on the Real Property have been delivered to Purchaser.

7.8 Customer Agreements and Will Serve Letters. The customer agreements and will serve letters identified in **Exhibit N** attached hereto and incorporated herein by reference represent all existing customer agreements and will serve letters issued by Seller. True, correct and complete copies of these customer agreements and will serve letters have been provided to Purchaser.

7.9 Payment of Taxes. Seller has filed all federal, state and local tax returns required to be filed, and has paid all taxes owed by Seller including all taxes shown by those returns to be due and payable with respect to the Business. Seller have made (or will make as of the Closing) timely payment of all applicable taxes. There are no Encumbrances on any of the Acquired Assets that arose in connection with any failure (or alleged failure) to pay any Tax. Seller has withheld and paid all taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, member, stockholder, or other third party. Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed. There are no audits or examinations of any tax returns pending or threatened that relate to Seller's operation of the Utility Systems or the Acquired Assets. Seller is not a party to any action or proceeding by any governmental body for the assessment or collection of taxes relating to the operation of the Utility Systems or Acquired Assets, nor has such event been asserted or threatened.

7.10. No Adverse Conditions. Except as disclosed by Seller to Purchaser in writing, to neither Seller's actual knowledge or MLP's actual knowledge, there is no legal action, suit, claim, investigation, or other proceeding, whether civil, criminal, or administrative, is pending or threatened against or affecting KWC, KWTC, MLP or the Acquired Assets.

7.11. Adequate Advice. Seller and MLP have had the opportunity to receive independent tax and legal advice, at Seller's cost, with respect to the advisability of executing this Agreement.

7.12. No Broker's Fees. Seller will not have any liability or obligation to pay any fees or commission to any broker, finder, or agent with respect to the Contemplated Transaction for which Purchaser could become liable or obligated.

7.13. Compliance with Laws. To the best of actual Seller's or MLP's knowledge, Seller is in compliance with, and not in violation of, all applicable laws, rules, regulations, and ordinances affecting the Business and the Acquired Assets.

7.14 No Hazardous Waste. Neither Seller or MLP have received written notice from any government agency alleging that Acquired Assets (a) contain, or have been contaminated by or used for the storage, disposal or release of "Hazardous Materials" or (b) contain any underground storage tanks. To Seller's or MLP's actual knowledge there are no Hazardous Materials on any of the Acquired Assets or used in connection with the Business or Acquired Assets, other than Hazardous Materials that are used in the ordinary course of business, and which are not required under current law to be remediated or disposed of in their current state. For purposes of this Agreement, the term "**Hazardous Materials**" includes, without limitation, asbestos, any substance containing more than 0.1 percent asbestos, the group of compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, petroleum and petroleum by-products, pollutants, effluents, contaminants, hazardous materials, hazardous wastes, hazardous or toxic substances, and any materials included in the definitions of hazardous or toxic waste, materials or substances (regardless of concentration) in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery act of 1976, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental laws, ordinances, rules, or regulations.

7.15 Compliance with Water Quality Requirements. Neither Seller or MLP have received written notice from a governmental agency alleging current or pending violations of applicable federal, state and local water quality regulations and requirements.

7.16 Environmental Matters. Neither Seller or MLP have received written notice from a governmental agency alleging that Seller is not in compliance with all Environmental Laws. To Seller's knowledge and to MLP's knowledge there are no pending or threatened claims arising pursuant to any Environmental Law which relate to any of the Acquired Assets or the Business. For purposes of this Agreement, "**Environmental Law**" means any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty that requires or relates to: (a) advising appropriate authorities, employees or the public of intended or actual releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment; (b) preventing or reducing to acceptable levels the release of pollutants or hazardous substances or materials into the environment; (c) reducing the quantities, preventing the release or minimizing the hazardous characteristics of wastes that are generated; (d) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the environment when used or disposed of; protecting resources, species or ecological amenities; (e) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances; and (f) cleaning up pollutants that have been released, preventing the threat of release or paying the costs of such clean up or prevention; or making responsible parties pay private parties, or groups of them, for damages done to their health or the environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

7.17 Conduct of Business in Ordinary Course. From the Effective Date until the Closing Date, there has not been nor will there be any:

(a) Transaction by KWC, KWTC or MLP (on behalf of the Business), except in the ordinary course of business as conducted on that date consistent with past practices;

(b) Capital expenditure by KWC, KWTC or MLP except as otherwise provided in this Agreement;

(c) Obligation incurred by KWTC, KWC or MLP (on behalf of the Business), except trade or business obligations incurred in the ordinary course of business consistent with past practices and the payment of Purchaser's invoices described in Section 4.2 above;

(d) Cancellation or compromise by KWC, KWTC or MLP (on behalf of the Business), of any debt or claim, except in the ordinary course of business consistent with past practices;

(e) Material Adverse Change in the financial condition, liabilities, assets, business, or results of operations of Seller. For purposes of this Agreement, Material Adverse Change means with respect to KWC or KWTC any event, change, development, or occurrence that, individually or together with any other event, change, development, or occurrence, is materially adverse to their respective Business, condition (financial or otherwise), assets, results of operations, or prospects.

(f) Destruction, damage to or loss of any assets of Seller (if used by Seller in providing utility service), whether or not covered by insurance, that materially and adversely affects the financial condition, business or operations of the Business;

(g) Sale or transfer of any asset of Seller (if used by Seller in providing utility services), except in the ordinary course of business consistent with past practices;

(h) Execution, creation, amendment or termination of any material contract, agreement or license to which KWC, KWTC or MLP on behalf of the Business is a party, except in the ordinary course of business consistent with past practices;

(i) Waiver or release of any right or claim of KWC, KWTC or MLP (on behalf of the Business), material to the Business or the Systems, except in the ordinary course of business;

(j) Mortgage, pledge or other encumbrance of any asset of KWTC, KWC or MLP (if used by KWC or KWTC in providing utility services);

(k) Cancellation or the giving of notice of cancellation of any insurance policy insuring KWC or KWTC, its Business or assets;

(l) Other event or condition within Seller's or MLP's control of any character that has or might reasonably have a material and adverse effect on the financial condition, assets, business or results of operations of KWC or KWTC; or

(m) Agreement by KWC, KWTC or MLP (on behalf of the Business), to do any of the things described in the preceding clauses (a) through (l) except as agreed to in writing by Purchaser.

7.18 Tax Returns. Within the times and in the manner prescribed by law, KWC, KWTC or MLP (on behalf of the Business), has filed or caused to be filed all federal, state and local tax returns required by law, on a consolidated or individual basis, as appropriate, and has paid all taxes, assessments and penalties due and payable. These tax returns reflect KWC's, KWTC's and Seller's liability for taxes applicable to KWC and KWTC operations for the periods covered thereby.

7.19 Agreement Will Not Cause Breach or Violation. Neither the entering into this Agreement nor the consummation of the Contemplated Transaction will directly or indirectly (with or without notice or lapse of time) result in or constitute any of the following: (a) a default or any event that would be a default, breach or violation of (i) the Articles of Incorporation or By-Laws of Seller or MLP or (ii) any material lease, franchise, license, promissory note, conditional sales contract, commitment, indenture, mortgage, deed of trust, or other agreement, instrument, or arrangement to which Seller or MLP is a party or by which Seller, MLP, the Business or its assets are bound, (b) an event that would permit any party to terminate any material agreement or policy of insurance of Seller, (c) the creation of imposition of any lien, charge or encumbrance on any of the Acquired Assets, or (d) the violation of any permit, license, law, regulation, ordinance, judgment, order or decree applicable to or affecting Seller, MLP, or the Business, its assets or financial condition which would have an adverse effect on the Systems or give any governmental body the right to revoke, withdraw, suspend, cancel, terminate or modify, any governmental authorization that is held by Seller or that otherwise relates to the Acquired Assets or to the Business. Other than the approval of the Commission and, potentially, the County with respect to the Assignment and Assumption of Wastewater Agreement, neither Seller nor MLP is required to give any notice to or obtain any consent from any person, entity or governmental body in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

7.20 Duration of Representation and Warranties. The representation and warranties made hereinabove will be correct and accurate in all material respects as of the Closing and shall survive the Closing for a period of three (3) years.

7.21 Disclosure. To Seller's actual knowledge and to MLP's actual knowledge, no representation or warranty or other statement made by Seller or MLP in this Agreement, any Schedule to this Agreement or supplement hereto or any document delivered in connection with this Agreement or otherwise in connection with the Contemplated Transactions contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

7.23 Insurance. During the Due Diligence Period Seller shall provide Purchaser with a list of all policies or binders of fire, liability, product liability, worker's compensation, vehicular and other insurance held by or on behalf of the Seller. Such policies and binders are valid and binding in accordance with their terms, are in full force and effect, and insure against risks and liabilities to an extent and in a manner customary in the industries in which the Seller operates. Seller is not in default with respect to any provision contained in any such policy or binder and has not failed to give any notice or present any claim under any such policy or binder in due and timely fashion. Except as disclosed by Seller in writing, there are no outstanding unpaid claims under any such policy or binder, and the Seller has not received any notice of cancellation or non-renewal of any such policy or binder. Except as disclosed by Seller in writing, the Seller has not received any notice from any of its insurance carriers that any insurance premiums will or may be materially increased in the future or that any listed insurance coverage will or may not be available in the future on substantially the same terms as now in effect, and to Seller's actual knowledge and to MLP's actual knowledge, there is no basis for the issuance of any such notice or for any such action.

7.24 Solvency. Seller is not now insolvent and will not be rendered insolvent by any of the Contemplated Transactions by this Agreement. As used herein, "insolvent" means that the sum of the debts and other probable liabilities of Seller exceeds the present fair saleable value of the Seller's assets.

8. **REPRESENTATIONS AND WARRANTIES OF PURCHASER.**

Purchaser represents and warrants to Seller as follows:

8.1. Organization, Standing and Qualifications. Purchaser is a corporation, duly organized, validly existing and in good standing under the laws of the State of Hawaii; it has all requisite corporate power and authority and is entitled to carry on its business as now being conducted and to own, lease or operate its properties as and in the places where such business is now conducted.

8.2. No Adverse Conditions. No legal action, suit, claim, investigation, or other proceeding, whether civil, criminal, or administrative, is pending or threatened against Purchaser that would adversely affect its ability to consummate the Contemplated Transaction.

8.3. Adequate Advice. Purchaser has had the opportunity to receive independent tax and legal advice, at Purchaser's cost, with respect to the advisability of executing this Agreement.

8.4. No Broker's Fees. Purchaser has no liability or obligation to pay any fees or commission to any broker, finder, or agent with respect to the Contemplated Transaction for which Seller could become liable or obligated. If Purchaser has retained a broker, any fees or commissions owing to said broker are solely the obligation of Purchaser.

8.5. Agreement Will Not Cause Breach or Violation. Neither the entry into this Agreement nor the consummation of the Contemplated Transaction will result in or constitute any of the following: (a) a default or any event that, with notice or lapse of time, or both, would be a default, breach or violation of the Articles of Incorporation or By-Laws of Purchaser or of any material lease, franchise, license, promissory note, conditional sales contract, commitment, indenture, mortgage, deed of trust, or other agreement, instrument, or arrangement to which Purchaser or is a party or by which Purchaser or its assets are bound, or (b) the violation of any permit, license, law, regulation, ordinance, judgment, order or decree applicable to or affecting Purchaser or its business, assets or financial condition which would have a material adverse effect on its business.

8.6. Duration of Representation and Warranties. The representation and warranties made hereinabove will be correct and accurate in all material respects as of the Closing Date and shall survive the Closing Date for a period of three (3) years.

9. CONDITIONS PRECEDENT TO OBLIGATIONS TO CLOSE.

9.1. Conditions to Purchaser's Obligation. All obligations of Purchaser hereunder are subject at the option of Purchaser, to the fulfillment of each of the following conditions at or prior to the Closing, and Seller and MLP shall exert their best efforts to cause such condition to be so fulfilled:

(a) All representations and warranties of Seller and MLP contained herein shall be true and correct in all material respects at and as of the date of the Closing (said representations and warranties to survive Closing), except for changes in ordinary course of business after the date hereof;

(b) All covenants, agreements and obligations required by the terms of this Agreement to be performed by Seller or MLP at or before the Closing shall have been duly and properly performed in all material respects and all deliverables to be provided by Seller and MLP at Closing as described in Section 6.2(a) shall have been duly executed and delivered;

(c) No action, suit or proceeding shall be pending or threatened before any court, governmental agency or authority to enjoin, restrain or prohibit this Agreement or the consummation of the Contemplated Transaction or threaten the Acquired Assets in a material manner;

(d) No Material Adverse Change shall have occurred with respect to the operation, condition, finances or prospects of the Business or the Acquired Assets since the Effective Date;

(e) That approval for the transfer of the Acquired Assets and the Contemplated Transaction, including (i) the existing water wheeling agreement with the golf course, and (ii) the ability of Purchaser to serve the Kapalua future expansion area, have been duly and properly obtained from the Commission in form and content acceptable to Purchaser in its sole and absolute discretion;

(f) That DOH authorization for Purchaser to operate the Systems shall be in full force and effect on the Closing;

(g) That the transfers of the Acquired Assets, except for Post-closing Easements, concurrently close;

(h) That all material agreements, consents, and approvals of any persons necessary to the consummation of the Contemplated Transaction, or otherwise pertaining to the matters covered by it, shall have been obtained by Seller or Purchaser as the case may be, and delivered to the Parties; including without limitation, approval of the Commission and the consent of the County of Maui to the Assignment and Assumption of Wastewater Agreement (or in lieu thereof evidence to Purchaser's sole satisfaction that the County of Maui's consent is not required) ;

(i) that Purchaser has been satisfied with the conclusions and results of its due diligence;

(j) that Purchaser has received approval of its Board of Directors no later than the end of the Due Diligence Period;

(k) Purchaser shall be satisfied with all inspections and investigations concerning title to and surveys of the Real Property, Easements, Water Rights and other Acquired Assets. Failure of Purchaser to be satisfied under this section is not a breach of this Agreement by Seller.

(l) that Purchaser shall have received an irrevocable commitment from a title company of its choice for an ALTA Extended Owner's policy of title insurance for the Real Property and Easements to be issued to and acceptable to Purchaser, including such endorsements and in such amounts as Purchaser may reasonably require, effective as of the Closing Date.

9.2. Conditions to Seller's Obligation. All obligations of Seller hereunder are subject at the option of Seller, to the fulfillment of each of the following conditions at or prior to the Closing, and Purchaser shall exert its best efforts to cause such condition to be so fulfilled:

(a) All representations and warranties of Purchaser contained herein shall be true and correct in all material respects at and as of the date of the Closing (said representations and warranties to survive Closing);

(b) All covenants, agreements and obligations required by the terms of this Agreement to be performed by Purchaser at or before the Closing shall have been duly and properly performed in all material respects and all deliverables to be provided by Purchaser at Closing as described in Section 6.2(b) shall have been duly executed and delivered;

(c) No action, suit or proceeding shall be pending or threatened before any court, governmental agency or authority to enjoin, restrain or prohibit this Agreement or the consummation of the Contemplated Transaction; and

(d) [intentionally omitted].

(e) That all material agreements, consents, and approvals of any persons necessary to the consummation of the Contemplated Transaction, or otherwise pertaining to the matters covered by it, shall have been obtained by Seller, and delivered to Purchaser.

(f) That approval for the transfer of the Acquired Assets and the Contemplated Transaction, including the ability of Purchaser to serve the Kapalua future expansion area, have been duly and properly obtained from the Commission in form and content acceptable to Seller in its discretion.

(g) That Seller has received approval of its Board of Directors no later than the end of the Due Diligence Period.

10. TERMINATION.

10.1. This Agreement may be terminated in the manner provided below, by written notice given by the party desiring to terminate to the other party:

(a) by mutual agreement of Purchaser and Seller at any time prior to the Closing;

(b) By Purchaser prior to the completion of its Due Diligence Period;

(c) by either Seller or Purchaser at any time prior to the Closing if a material default or breach shall be made by the other party hereto with respect to the due and timely performance of any of its covenants and agreements contained herein, or with respect to the due compliance with any of its representations, warranties or covenants, and such default cannot be cured and has not been waived;

(d) by either Seller or Purchaser if the conditions to such party's obligation to close have not all occurred in all material respects on or before the date established under this Agreement or, in the absence thereof, by scheduled Closing date, unless the failure results primarily from such party itself breaching any representation, warranty, agreement, obligation, or covenant contained in this Agreement; and

(e) by either party if approval for the transfer of the Acquired Assets and the Contemplated Transaction have not been duly and properly obtained from the Commission in form and content acceptable to Purchaser and Seller within 24 months of the date of this Agreement;

10.2. Effect of Termination. In the event this Agreement is terminated as provided in the foregoing section, all obligations of the parties hereunder shall terminate, except for Sections 3.3 (Inspection; Inspection Indemnity), 4.2 (Capital Project Expenditures) and 12.9 (Specific Performance) shall survive; and provided further that if this Agreement is so terminated by a party because one or more of the conditions to such party's obligations hereunder is not satisfied as a result of another party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies for breach of contract or otherwise, including, without limitation, damages relating thereto, shall also survive such termination unimpaired.

11. POST-CLOSING OBLIGATIONS AND COVENANTS. Seller, MLP and Purchaser agree as follows with respect to the period following the Closing ("Post-closing"):

11.1. Prepaid Assets. All prepaid rent, utilities, taxes and other prepaid expenses and security deposits given ("Prepaid Assets") as of Closing shall be transferred to Purchaser. If Seller or MLP receives any payments which include amounts attributable to sales, deliveries or services made or performed by Purchaser after the Closing, Seller or MLP, as the case may be, shall promptly pay such amounts to Purchaser.

11.2. Transfer of Telephone Number. Purchaser shall be responsible for transferring the telephone number of the Business to Purchaser. Seller shall have no liability for any telephone charges from and after the Closing.

11.3. Obligations Related to Post-closing Easements. Seller's and MLP's obligations as set forth in Section 4.3 shall survive Closing.

11.4. Preservation of Records. The Parties agree that they shall preserve and keep the records of the Systems acquired pursuant to this Agreement for a period of four (4) years from the Closing, or for any longer period as may be required by any government agency or ongoing audit, administrative proceeding or litigation, and shall make such records available to the other as may be reasonably required by the other in connection with, among other things, the filing of any tax return or report by, or any insurance claims by, legal proceedings against or governmental investigations (including tax audits) of Purchaser or Seller. In the event that a party wishes to destroy such records after that time, it shall first give 90 days prior written notice to the other party and the other party shall have the right, at its option and expense, upon prior written notice given within that 90-day period, to take possession of the records within 180 days after the date of such notice.

11.5 Litigation Support. From and after the Closing, Purchaser shall provide Seller, at Purchaser's cost, with such cooperation and access to records and personnel as Seller may reasonably request in connection with Seller's defense of any litigation or other judicial or quasi-judicial proceeding or investigation, whether commenced or threatened, involving Seller's prior ownership or operation of the Acquired Assets or the Systems.

11.6 Accounts Payable. From and after the Closing, Seller agrees to pay all accounts payable which were incurred by Seller in the ordinary course up to the Closing as well as all Retained Liabilities.

11.7 Rate Case Application. After Closing, Seller and MLP shall cooperate with Purchaser to develop support for filing a rate case application within two (2) years after the Closing Date.

11.8 Survival and Indemnification.

(a) Subject to Section 7.20 and Section 8.6, all representations, warranties, covenants and obligations of the Parties in this Agreement and any other certificate or document delivered pursuant to this Agreement shall survive the Closing and the consummation of the Contemplated Transactions, subject to Section 11.8(c)-(d).

(b) Seller and MLP jointly and severally agree to indemnify, defend and hold harmless Purchaser and Purchaser's representatives, officers, directors, employees and agents ("Purchaser Indemnitees") against any and all losses, claims, liabilities, damages, actions, costs or expenses, including attorney's fees and costs (the "Seller Indemnified Losses") arising from, in connection with, or with respect to the following items:

1. Any breach of any representation, warranty, covenant or agreement of Seller or MLP contained in this Agreement, or any agreement, certificate or document executed and delivered by them, or their affiliates pursuant hereto or in connection with any of the transactions contemplated in this Agreement;

2. Any failure by Seller to satisfy, perform or pay the Retained Liabilities;

3. Any and all actions, suits, proceedings, claims or demands by third parties (“Third Party Claims”) and losses, liabilities, expenses or judgments relating thereto, directly resulting from or arising from matters relating to Seller, its Business or the Acquired Assets which occurred or are alleged to have occurred prior to the Closing other than those specifically assumed by Purchaser as set forth in this Agreement.

(c) If the Closing occurs, Seller and MLP will have liability (for indemnification or otherwise) with respect to any breach of (i) a covenant or obligation to be performed or complied with or (ii) a representation or warranty only if on or before 5 P.M. Hawaii Standard Time on the third anniversary of the Closing Date, Purchaser notifies Seller or Seller’s designee (such designee to be provided by Seller as appropriate) of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Purchaser.

(d) If the Closing occurs, Purchaser will have liability with respect to any breach of (i) a covenant or obligation to be performed or complied with, or (ii) a representation or warranty, only if on or before 5 P.M. Hawaii Standard Time on the third anniversary of the Closing Date, Seller or Seller’s designee notifies Purchaser of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Seller or Seller’s designee.

(e) Subject to subsections (c) and (d) above, the provisions of this Section 11.8 shall survive the Closing and be enforceable regardless of whether the liability is based upon past, present or future acts, claims, liabilities or legal requirements and regardless of whether any person or entity (including the person or entity from whom relief is sought) alleges or proves the sole, concurrent, contributory, or comparative negligence of the person or entity seeking relief, the sole or concurrent strict liability imposed upon the person or entity seeking relief.

12. MISCELLANEOUS.

12.1. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered if sent by overnight courier to, or served personally upon, the party for whom it is intended, or (b) on the fourth business day after mailing, if mailed by registered or certified mail (return receipt requested, postage prepaid), to such party at its address as hereinafter shown. Between the Effective Date and the last day of the Due Diligence Period, or if Purchaser shall elect to proceed with the Contemplated Transaction, the Closing Date, notices and communications, except for notices of the other party’s default under this Agreement, may be provided by email to the addressee’s email address below, and is deemed to have been received by the addressee within thirty (30) minutes after the time sent (as recorded on the sender’s email) unless the sender receives an automated message that the email has not been delivered. If the email is sent after 5 p.m., Hawaii Standard Time, or on a day which is not a business day, the email shall be deemed to have been received at 9 a.m. on the next business day. For purposes hereof, the effectiveness of any notice or other communication shall not be defeated by the failure of the recipient to accept delivery of such notice.

To Seller and MLP: Maui Land & Pineapple Company, Inc.
Attention: Paulus Subrata
200 Village Road
Lahaina, Hawaii 96761
Email: psubrata@kapalua.com
Telephone: (808) 757-2666

To Purchaser: Hawaii Water Service Company, Inc.
Attention: General Manager
P.O. Box 384809
Waikoloa, HI 96738

With a CC: Hawaii Water Service Company, Inc.
Attention: General Counsel
1720 N. First Street
San Jose, CA 95112

Any party may change the address to which notices or other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

12.2. Non-assignability of Agreement. Except for Purchaser's assignment of this agreement to an affiliate of Purchaser, this Agreement shall not be assignable by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Purchaser in its sole and absolute discretion may assign its interest in this Agreement to an affiliate or subsidiary; provided, however, that all obligations of Purchaser under this Agreement shall be assumed by such assignee.

12.3. No Third Party Beneficiaries. The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the Parties hereto and their permitted successors and assigns, and they shall not be construed as conferring any rights on any other persons.

12.4. Entire Agreement. This Agreement and the instruments to be delivered by the parties pursuant to the provisions hereof constitute the entire agreement between the parties, other than (i) that certain Confidentiality Agreement between MLP and Purchaser dated October 29, 2019 (the "Confidentiality Agreement") and (ii) that certain Indemnity Agreement between MLP and Purchaser dated November 15, 2019 (the "Indemnity Agreement"). This Agreement supersedes all prior agreements and understandings between the parties with respect to the subject matter other than the Confidentiality Agreement and the Indemnity Agreement. Any amendments, alternative or supplementary provisions to this Agreement, or waiver of any term or provision hereof must be made in writing and duly executed by an authorized representative or agent of each of the parties hereto.

12.5. Counterparts, Telefacsimile/Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one instrument. Telefacsimile signatures or signatures affixed to the Agreement which are transmitted electronically via e-mail to the other party shall be fully binding and effective for all purposes (subject to the execution of this Agreement by all parties), whether or not the originally executed Agreement is delivered to the other party. Each party, however, agrees to promptly forward the executed Agreement bearing its original signature to the other party.

12.6. Counsel, Legal and Closing Fees. Each party shall be responsible for its own counsel and legal fees provided, as stated in Section 4.1(d) costs of legal counsel in seeking Commission authorization of the Contemplated Transaction shall be shared equally, including in the event of the use of joint legal counsel in such case. Notwithstanding the foregoing, at closing, Purchaser shall reimburse Seller its actual out of pocket attorney fees incurred over a threshold amount of \$75,000. Purchaser's reimbursement to Seller shall not exceed a cap of \$75,000. All other closing costs shall be borne by Purchaser and Seller on 50%-50% basis except as otherwise provided herein.

12.7. Governing Law. The internal laws of the State of Hawaii shall govern the interpretation and construction of this Agreement.

12.8. Further Assurances. The parties hereto shall execute such further documents and perform such further acts as may be necessary to transfer and convey the Acquired Assets to Purchaser, on the terms herein contained, and to otherwise comply with the terms of this Agreement and consummate the Contemplated Transaction.

12.9. Specific Performance. Seller and MLP each acknowledge and agree that Purchaser will be irreparably harmed and that there will be no adequate remedy at law in the event of a violation by Seller or MLP of any of its covenants or agreements which are contained in this Agreement. It is accordingly agreed that, in addition to any other remedies which may be available upon the breach of such covenants and agreements, Purchaser shall have the right to obtain injunctive relief to restrain any breach or threatened breach of or otherwise to obtain specific performance of Seller or MLP's covenants or agreements contained in this Agreement.

12.10. Mediation. Any and all matters in dispute arising from or relating to this Agreement, or the breach thereof, which remain unresolved after direct negotiation between the Parties, shall first be submitted to confidential mediation in accordance with the Rules, Procedures and Protocols for Mediation of Dispute Prevention & Resolution, Inc., then in effect. The parties agree that a good faith attempt to resolve all issues in mediation for a minimum of 30 days, but not more than 90 days, is a precondition to further adversarial proceedings of any kind. Each Party shall bear their own respective costs of such mediation, including attorneys' fees.

12.11. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

12.12. Board Approval. Seller's and Purchaser's obligations under this Agreement are subject to the approvals of Seller's and Purchaser's Board of Directors. Seller and Purchaser shall obtain approvals of this Agreement by their respective Board of Directors prior to end of the Due Diligence Period.

12.13. Public Announcements. Any public announcement press release or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued as the Parties may mutually agree upon, however Seller and MLP acknowledge that Purchaser is a subsidiary of a U. S. publicly traded corporation and that U. S. Securities and Exchange Commission ("SEC") rules require that announcements be made in a manner that meets SEC Regulatory Fair Disclosure requirements. In the event of any conflict between the previous sentence and similar provisions in the Confidentiality Agreement, the preceding sentence shall control. Seller and Purchaser will consult with each other concerning the means by which Seller's employees, customers, suppliers and others having dealings with Seller will be informed of the Contemplated Transactions, and Purchaser will have the right to be present for any such communication.

12.14. Time is of the Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

12.15. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

12.16. Amendment. This Agreement may be amended, modified or supplemented only by written agreement of the Parties.

12.17. Further Assurances. The Parties shall cooperate reasonably with each other and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions.

12.18 Recovery of Litigation Costs. If any legal action or other proceeding is brought by Seller, MLP or Purchaser for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

12.19 MLP Guaranty. In consideration of the benefits to be provided pursuant to this Agreement to Seller, MLP does hereby guarantee the full, faithful and timely payment and performance by Seller of all the agreements, covenants and other obligations of Seller under this Agreement. If Seller shall default at any time in the payment of any amount due or perform any obligation required to be performed by either under this Agreement, then MLP, at its expense, shall on demand of Purchaser, fully and promptly, and well and truly, pay and or perform all such obligations of Seller under or pursuant this Agreement, and all damages and expenses (including attorneys' fees and costs) that may arise in consequence of Seller's non-performance under this Agreement. MLP hereby waives all requirements of notice of the acceptance of these obligations and all requirements of notice of breach or nonperformance by Seller.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

MLP:
MAUI LAND & PINEAPPLE COMPANY, INC.,
a Hawaii corporation

By /s/ Warren H. Haruki
Name: Warren H. Haruki
Title: Chairman & CEO

By /s/ Paulus Subrata
Name: Paulus Subrata
Title: Vice President

KWC:
KAPALUA WATER COMPANY, LTD., a Hawaii
corporation

By /s/ Paulus Subrata
Name: Paulus Subrata
Title: Vice President

Purchaser:
HAWAII WATER SERVICE COMPANY, INC., a
Hawaii corporation

By /s/ Thomas Smegal
Name: Thomas Smegal
Title: Vice President, CFO

By /s/ Martin Kropelnicki
Name: Martin Kropelnicki
Title: President and CEO

KWTC:
**KAPALUA WATER TREATMENT COMPANY,
LTD.,** a Hawaii corporation

By /s/ Paulus Subrata
Name: Paulus Subrata
Title: Vice President

EXHIBIT A-1

SERVICE AREAS OF KWC

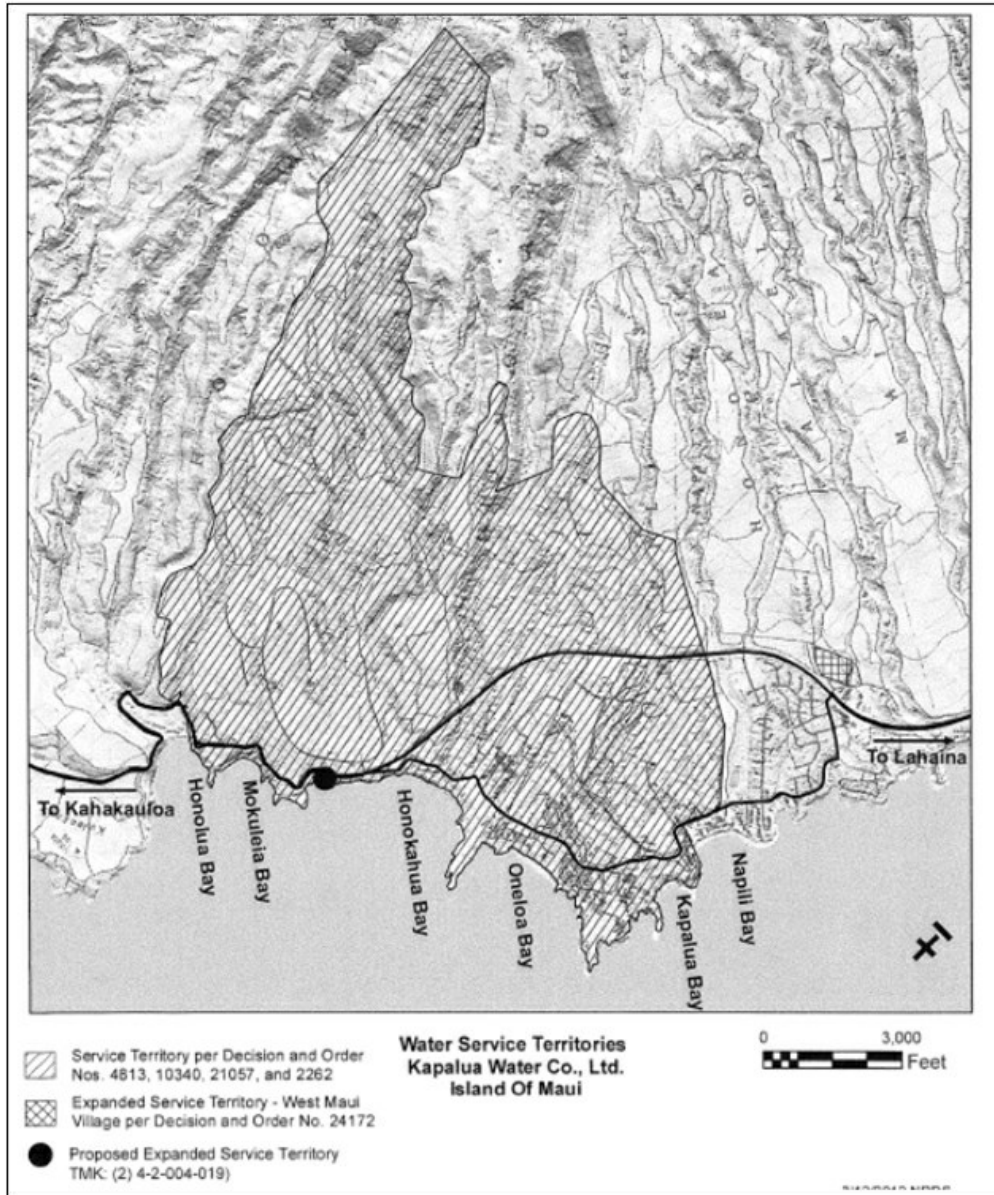


EXHIBIT A-2

SERVICE AREAS OF KWTC

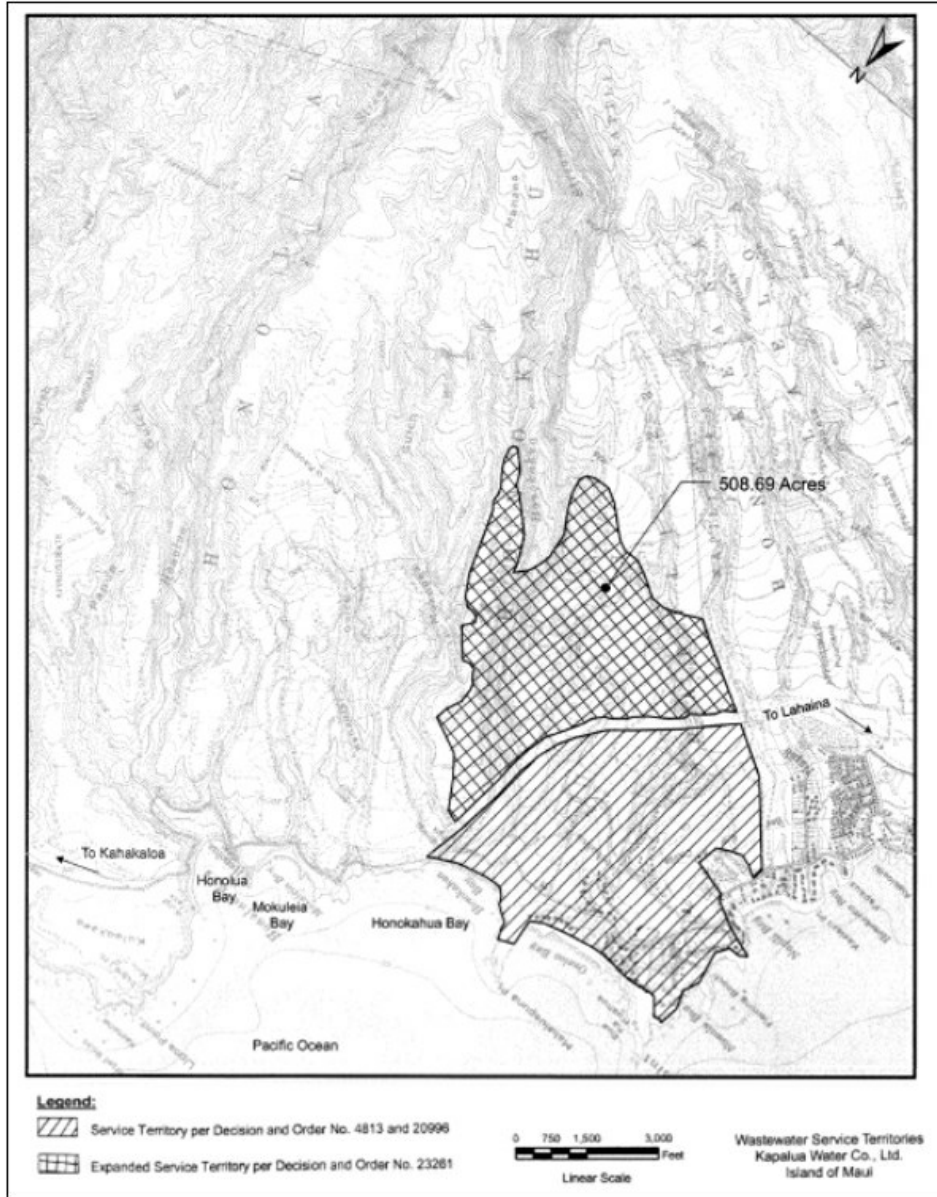


EXHIBIT B-1
ASSET LISTING OF KAPALUA WATER COMPANY, LTD

| Description | Year Acquired | ACTIVITY AND BALANCES TO CLOSING (6-30-19) | | | |
|---|---------------|--|--|----------------------------|--------------------------|
| | | PLANT AMOUNT 12-31-18 | ADDITIONAL DEPRE EXP To 06-30-19 | ACCUM DEPRE 06-30-19 | NET PLANT 06-30-19 |
| Included in the 2008 Rate Case - Plant with Balances & Fully Depreciated | | | | | |
| Generator & Tank Building | 1993 | 65,259 | 1,088 | 56,241 | 9,018 |
| Control Tank | 1993 | 56,538 | 942 | 49,000 | 7,538 |
| Dual Water System | 1994 | 69,932 | 874 | 43,416 | 26,516 |
| Hydrant | 1986 | 21,043 | - | 21,043 | - |
| Controls Replacement | 2006 | 26,631 | 666 | 17,088 | 9,543 |
| 4" Trash Pump | 2007 | 60,847 | - | 60,847 | - |
| Mains, Hydrants & Valves | F/D | 5,494 | - | 5,494 | - |
| Clay Valve | 1996 | 11,969 | - | 11,969 | - |
| Mains, Hydrants & Valves | 1979 | 19,130 | - | 19,130 | - |
| Transfer From Ridge A | 1979 | 23,026 | - | 23,026 | - |
| Transfer From Ridge B | 1979 | 196,393 | - | 196,393 | - |
| --Honolua Phase 1 - Submersible Booster Pump (P) | | | | | |
| --Honolua Phase 1 - Submersible Booster Pump (P) | | | | | |
| --Honolua Phase 2 - Submersible Booster Pump (P) | | | | | |
| --Honolua Phase 2 - Submersible Booster Pump (P) | | | | | |
| --1.0 MG Tank - Concrete Reservoir (P) | | | | | |
| --0.1 MG Tank - Plantation Estates II (P) | | | | | |
| --0.04 MG Tank - Honolua Ridge Phase I (P) | | | | | |
| --0.03 MG Tank - Honolua Ridge Phase I (P) | | | | | |
| --0.03 MG Tank - Honolua Ridge Phase II (P) | | | | | |
| --Plantation Estates I Offsite Submersible Pump (NP) | | | | | |
| --Plantation Estates II Offsite Submersible Pump (NP) | | | | | |
| --Honolua Phase 1 - Submersible Booster Pump (NP) | | | | | |
| --Honolua Phase 1 - Submersible Booster Pump (NP) | | | | | |
| --Honolua Phase 2 - Submersible Booster Pump (NP) | | | | | |
| --Honolua Phase 2 - Submersible Booster Pump (NP) | | | | | |
| --Tank 0.04 MG Glass/Steel - Plantation Estates II (NP) | | | | | |
| --Tank 0.01 MG Glass/Steel - Plantation Estates II (NP) | | | | | |
| --Tank 0.01 MG Glass/Steel - Honolua Ridge I (NP) | | | | | |
| --Tank 0.57 MG Glass/Steel - Honolua Ridge I (NP) | | | | | |
| --Tank 0.15 MG Glass/Steel - Honolua Ridge II (NP) | | | | | |
| Transfer from Golf Villas A | 1979 | 20,387 | - | 20,387 | - |
| Transfer From Golf Villas | 1979 | 232,924 | - | 232,924 | - |
| Transfer From IronWoods | 1979 | 347,614 | 4,345 | 343,993 | 3,621 |
| Transfer From IronWoods | 1979 | 7,328 | - | 7,328 | - |
| Villa Links 8" Line | 1982 | 40,459 | 506 | 37,003 | 3,456 |
| Pipelines | 1993 | 395,909 | 4,949 | 256,277 | 139,632 |
| Dual Water System | 1994 | 1,345,422 | 16,818 | 824,071 | 521,351 |
| --Water meters (Total 591) | | | | | |
| --Village Reservoir 4.5 MG Kapalua Village (NP) | | | | | |
| --Plantation Reservoir 8 MG - Irrigation (NP) | | | | | |
| Pump - Pipeline Addl cost | 1994 | 24,078 | 241 | 12,079 | 11,999 |
| 12 Dual Irrigation Line/Loop/Valve | 1998 | 41,855 | - | 41,855 | - |
| Water Tank Exterior | 2008 | 155,773 | 5,192 | 116,829 | 38,944 |
| Sub Total Page 1 | | 3,168,011 | 35,621 | 2,396,394 | 771,617 |
| After 2008 Rate Case - Additions | | | | | |
| Meter Replacements | 2009 | 32,090 | - | 32,090 | - |
| Meter Replacements | 2008 | 63,757 | 2,125 | 44,630 | 19,127 |
| CH2MILL GIS Program | 2007 | 97,794 | - | 97,794 | - |
| Relocate 12" Waterline from Kap | 2009 | 199,493 | 6,650 | 134,103 | 65,390 |
| SCADA System Controls at KWC | 2016 | 192,679 | 4,817 | 27,296 | 165,383 |
| Mahana Potable & Non-Potable | 2017 | 3,998,800 | 49,985 | 199,940 | 3,798,860 |
| -- Mahana Potable | | | | | |
| ----Transmission line | | | | | |
| ----Distribution Lines | | | | | |
| ----Service Connections | | | | | |
| ----Meters | | | | | |
| ----Pumping Equipment | | | | | |
| ----Mahana Estates - Booster Pump | | | | | |
| ----Mahana Estates - Booster Pump | | | | | |
| ----0.1 MG Tank - Mahana Estates | | | | | |
| ----1.0 MG Tank - Concrete Reservoir | | | | | |
| --Mahana Non-Potable | | | | | |
| ----Transmission line | | | | | |
| ----Distribution Lines | | | | | |
| ----Service Connections | | | | | |
| ----Meters | | | | | |
| ----Pumping Equipment | | | | | |

-----Mahana Estates - Booster Pump

-----Mahana Estates - Booster Pump

-----Tank 0.13 MG Mahana Estates

-----Tank 0.03 MG Mahana Estates

| | | | | | |
|--|------|---------------------|------------------|---------------------|----------------------------|
| CWIP at 12/31/18: | | - | - | - | - |
| --Water meter service lateral replacement | 2019 | 106,336 | - | - | 106,336 |
| --Potable & Non-potable water highway bypass | | 69,932 | - | - | 69,932 |
| Sub Total Page 2 | | <u>4,760,881</u> | <u>63,577</u> | <u>535,853</u> | <u>4,225,029</u> |
| TOTAL PLANT | | \$ 7,928,892 | \$ 99,198 | \$ 2,932,247 | \$ 4,996,646 |
| Less: CIAC - Mahana Potable & Non-Potable | 2017 | (3,998,800) | (49,985) | (199,940) | (3,798,860) |
| RATE BASE | | <u>\$ 3,930,092</u> | <u>\$ 49,213</u> | <u>\$ 2,732,307</u> | <u>\$ 1,197,786</u> |

EXHIBIT B-2

ASSET LISTING OF
KAPALUA WASTE TREATMENT COMPANY, LTD

| Description | Year Acquired | Plant Balance as of 12/31/17 | Accumulated Depreciation | | | Net Plant 6/30/2019 | |
|---|------------------|------------------------------------|--------------------------|----------------------|----------------------------|---------------------------|-----------------|
| | | | At 12/31/17 | 2018 Depreciation | Depreciation to 6/30/19 | | At 6/30/2019 |
| Included in the 2008 Rate Case - Plant with Balances & Fully Depreciated | | | | | | | |
| 75HP Motor | 2003 | 7,180 | 7,180 | - | - | 7,180 | - |
| Emergency Generator - Lift Station | 1980 | 6,386 | 6,386 | - | - | 6,386 | - |
| Lift Station - Electrical System | 1978 | 76,880 | 76,880 | - | - | 76,880 | - |
| Village Sewer Extension | 1982 | 36,675 | 32,167 | 917 | 458 | 33,542 | 3,133 |
| Transfer Switch for Lift Station | 1986 | 5,980 | 5,980 | - | - | 5,980 | - |
| Force Main Conversion | 1986 | 31,458 | 31,458 | - | - | 31,458 | - |
| Renovation SPS 2 | 1989 | 29,272 | 29,272 | - | - | 29,272 | - |
| Backup Pump Motor SPS 3 | 1994 | 7,684 | 7,684 | - | - | 7,684 | - |
| Pump Station 3 Generator | 1999 | 33,969 | 15,711 | 849 | 425 | 16,985 | 16,984 |
| Rebuild 75HP Pump Motor | 2003 | 5,101 | 5,101 | - | - | 5,101 | - |
| Submersible Sewage Pump | 2001 | 5,150 | 5,150 | - | - | 5,150 | - |
| Kohler Diesel Generator | 2002 | 28,746 | 28,746 | - | - | 28,746 | - |
| Motor Control Unit - Lift Station | 2005 | 8,101 | 8,101 | - | - | 8,101 | - |
| Emergency Generator - Lift Station | 2006 | 23,491 | 13,605 | 1,175 | 587 | 15,367 | 8,124 |
| Transfer from Ironwoods | 1979 | 119,691 | 113,956 | 2,992 | 1,496 | 118,444 | 1,247 |
| Transfer from Ridge | 1979 | 80,648 | 76,784 | 2,016 | 1,008 | 79,808 | 840 |
| --SPS #2 - Pump Station | | | | | | | |
| --SPS #2 - Pump #1 | | | | | | | |
| --SPS #2 - Pump #2 | | | | | | | |
| --SPS #3 - Pump Station | | | | | | | |
| --SPS #3 - Pump #1 | | | | | | | |
| --SPS #3 - Pump #2 | | | | | | | |
| --SPS #5 - Pump Station | | | | | | | |
| --SPS #5 - Pump #1 | | | | | | | |
| --SPS #5 - Pump #2 | | | | | | | |
| --Collection System Flush | | | | | | | |
| Sub Total Page 1 | | 506,412 | 464,160 | 7,949 | 3,975 | 476,084 | 30,327 |
| After 2008 Rate Case - Additions | | | | | | | |
| Mahana Wastewater System | 2017 | 2,682,200 | 33,528 | 67,055 | 33,528 | 134,110 | 2,548,090 |
| Station 5 Pump Replace | 2018 | 14,975 | - | 1,123 | 749 | 1,872 | 13,103 |
| Smith & Loveless Pump Motor | 2018 | 6,196 | - | 258 | 310 | 568 | 5,628 |
| Pump Station 2 Generator Replacement | 2018 | 91,243 | - | 507 | 3,041 | 3,548 | 87,695 |
| Sub Total Page 2 | | 2,794,614 | 33,528 | 68,943 | 37,628 | 140,098 | 2,654,516 |
| TOTAL PLANT | | 3,301,026 | 497,687 | 76,892 | 41,602 | 616,182 | 2,684,843 |
| Less: CIAC - Mahana Wastewater System | | (2,682,200) | (33,528) | (67,055) | (33,528) | (134,110) | (2,548,090) |
| RATE BASE | | \$ 618,826 | \$ 464,160 | \$ 9,837 | \$ 8,075 | \$ 482,072 | \$ 136,753 |

EXHIBIT C

CAPITAL EXPENDITURE PROJECTS FOR
KWC AND KWTC

Kapalua Water Company, Ltd.
Kapalua Waste Treatment Company, Ltd.
Capital Projects
To be Completed in 2019 to 2021

| | (1) | (2) |
|---|---------------------------------------|---|
| <u>Line #</u> | <u>Name</u> | <u>Description</u> |
| <u>KAPALUA WATER COMPANY</u> | | |
| 1 | Water Meters | Replace approximately 500 meters and boxes ranging in size from 5/8" to 4" in Kapalua Makai |
| 2 | Potable and Non-potable Service Lines | Replace aging service lines in Pineapple Hill with new copper lines |
| 3 | Potable and Non-potable Service Lines | Replace aging service lines in Kapalua Pl. with new copper lines |
| 4 | Potable and Non-potable Bypass | Connect the potable waterline from the wall to the non-potable line before the chlorination station and create a bypass |
| 5 | Complete Potable Well #3 | Refresh the Well #3 capacity study and install pump/housing |
| 6 | | |
| 7 | | |
| 8 | | |
| 9 | | |
| <u>KAPALUA WASTE TREATMENT COMPANY</u> | | |
| 10 | Collection System Flush | Wastewater collection line flush is recommended to eliminate blockages before they occur |
| 11 | Pump stations | Replace pump/motors at three KWT pump stations |
| 12 | | |
| 13 | | |

Term Sheet Attachments 10-2-18

EXHIBIT D

AGREEMENT FOR WATER DELIVERY
(NON-POTABLE WATER)

THIS AGREEMENT ("Agreement") is made and entered into on this ____ day of _____, 2019 ("Effective Date"), by and between MAULAND & PINEAPPLE COMPANY, INC., a Hawaii corporation, whose address is P. O. Box 187, Kahului, Hawaii 96733, hereinafter called "MLP", and [_____] WATER COMPANY, a _____ corporation], whose address is _____, hereinafter called "Water Company".

RECITALS:

- A. MLP is the owner and operator of a water collection and transmission system (the "Ditch System") that collects untreated surface and transports it via the Honokohau Ditch and related infrastructure.
- B. Water Company is a regulated public utility company.
- C. Concurrently herewith, Water Company has acquired from MLP a non-potable water distribution system (the "Non-Potable System") that Water Company will use to serve consumers within its designated service area at the Kapalua Resort at Kapalua, Maui, Hawaii (the "Service Area").
- D. The parties desire to enter into this Agreement to formalize and set forth the terms and conditions upon which MLP will provide water from its Ditch System for Water Company's use and distribution via the Non-Potable System.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Delivery of Water; Delivery Points.** Subject to the terms and conditions herein, MLP does hereby undertake and agree to deliver from the Ditch System to Water Company, for the term of this Agreement, non-potable water in such quantities as Water Company may require to meet its service obligations in the Service Area. MLP shall deliver water to the Water Company at the delivery points shown on the map attached as Exhibit A, or such other locations as the parties may mutually agree to from time to time (each a "Delivery Point").

2. **Water Delivery Charges.** Water Company will pay to MLP for all water delivered to Water Company at the initial rate of \$260.00 per million gallons (i.e., \$0.26 per thousand gallons) plus the Hawaii general excise tax thereon, payable monthly in arrears (or such other time periods as may be mutually agreed upon by the parties in writing). Payments for each calendar month, or portion thereof, shall be due and payable no later than the 10th calendar day of the following month. On the third anniversary of the date of this Agreement, and each subsequent third anniversary, the rate then in effect shall be increased by a percentage equal to the percentage increase over the preceding twelve months in the Consumer Price Index for All Urban Consumers (CPI-U) for Honolulu published by the U.S. Department of Labor – Bureau of Labor Statistics (1982-84=100) ("CPI"); provided that if such index is discontinued MLP shall have the right to reasonably designate an alternative index of inflation, provided that the adjusted rate shall never be less than the rate payable for the immediately preceding period. Water Company shall pay to MLP together with each payment required hereunder which is subject to the State of Hawaii general excise tax on gross income, as it may be amended from time to time, or any successor or similar tax, an amount which, when added to such payment (currently 4.166% of each such payment), shall yield to MLP, after deduction of all such tax payable by MLP with respect to all such payments, a net amount equal to that which MLP would have realized from such payments had no such tax been imposed.

3. **Water Meters.** Water Company shall, at its own expense, install and maintain suitable meters or gauges at accessible locations at each Delivery Point to assure an accurate and documented measurement of all water delivered to the Water Company. Together with each monthly payment under this Agreement, Water Company shall provide to MLP an accurate and complete written report of all water delivered at each Delivery Point. Representatives of MLP shall have access to such meters and all records of meter readings at all reasonable times for the purpose of checking the same and verifying Water Company's reports.

4. **Term.** The term of this Agreement commences on the date of this Agreement and terminates on the 20th anniversary of such date, whereupon this Agreement shall automatically renew for successive 10-year terms unless terminated by mutual agreement of the parties. Notwithstanding the foregoing, MLP's obligation to deliver irrigation water pursuant to this Agreement shall terminate if Water Company permanently ceases operation of the Non-Potable System or develops wells or other alternative sources of water adequate to meet Water Company's service obligations.

5. **Limits on Use.** Water delivered pursuant to this Agreement shall be used only for irrigation and other non-potable uses within the Service Area and may not be transmitted to or used at any lands outside of the Service Area. Water Company acknowledges that water delivered pursuant to this Agreement is not treated or suitable for human consumption and Water Company shall at all times take reasonable precautions to prevent any such use.

6. **Seller's Warranties, Representations & Covenants.** MLP warrants and represents to Water Company (a) that MLP is the owner in fee simple or holds recorded easements for all of the lands underlying the portions of the Ditch System necessary to deliver water to the Delivery Point, and (b) that MLP currently holds, and will use commercially reasonable efforts to at all times maintain, all permits and approvals required by law for the operation of the Ditch System, including those required by the Commission on Water Resource Management of the State of Hawaii and the County of Maui. Notwithstanding the foregoing, Water Company acknowledges that the Commission on Water Resource Management is currently working on amended Interim Instream Flow Standards for surface water sources that feed the Ditch System and that the outcome of that process, or subsequent similar processes, may affect the amount of water available to Water Company from the Ditch System, and Water Company assumes all risk of the same. Except as set forth throughout this Agreement, MLP makes no warranties, express or implied, as to the Ditch System, the quantity or quality of Ditch System water available to Water Company, or any other matters. Water Company expressly acknowledges and agrees that water in the Ditch System may contain soil, sediments, vegetation, debris and other contaminants and Water Company assumes all risk of the same.

7. **Ditch System Maintenance.** MLP will exercise commercially reasonable efforts to manage, repair and maintain the Ditch System in condition adequate for the reliable delivery of water to the Non-Potable System in accordance with this Agreement. Notwithstanding the foregoing, Water Company acknowledges that the Ditch System includes stream diversions, tunnels, ditches, siphons and other improvements that are very old and that in case of major casualty to or other failure of such components repair or replacement may not be possible at a commercially reasonable cost, so MLP makes no assurances as to its ability to continually maintain the Ditch System in case of such events.

8. **Force Majeure.** Water Company and MLP agree and understand that the ability of MLP and Water Company to perform their respective obligations under this Agreement are made expressly subject to earthquake, hurricanes, drought, landslides, tunnel or ditch collapse, casualty to the Ditch System, or other natural disasters or events which render MLP's Ditch System temporarily or permanently inoperable, actions of the federal, state and county governments or agencies thereof, including without limitation enactment or enforcement of laws or governmental regulations, strikes, lock-outs, unavailability of labor or materials, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, acts of God, or other causes beyond MLP's and/or Water Company's respective control. Neither party shall have any liability for failure or inability to perform its obligations hereunder to the extent such failure or inability is caused by any such cause or event.

9. **Use Priorities.** MLP has existing commitments to the County of Maui Department of Water Supply ("County") to provide a maximum of 2.5 MGD of water from the Ditch System that DWS uses at its Mahinahina Weir treatment plant to produce potable water for the DWS municipal system, and that MLP may from time to time upon the County's request commit additional Ditch System water to such use. Water Company acknowledges and agrees that the County's potable needs take priority in case drought or other conditions or events reduce the total flows in the Ditch System below levels necessary to meet the demands of all users. Water Company further acknowledges that MLP has existing commitments for irrigation water delivery to the owner of the golf courses and related facilities at the Kapalua Resort and other third-party irrigation water users, and in case of drought or other shortage Water Company and such other users shall have equal priority for the Ditch System's available capacity (after satisfaction of the County's potable needs).

10. **Pipe Fee.** In consideration of, and an essential inducement to MLP's entry into this Agreement, Water Company agrees that MLP may continue to use the Non-Potable System to deliver Ditch System water to the Kapalua Resort golf courses, golf academy and related golf facilities. MLP shall pay Water Company a "pipe fee" for such use, calculated as follows: [To be negotiated].

11. **Condemnation.** If the Ditch System or any part thereof shall be taken or condemned by any authority having the power of eminent domain, MLP shall be solely entitled to all compensation and damages payable with respect to the taking of the Ditch System, but Water Company shall be entitled to seek compensation and damages from the condemning authority for the loss of Water Company's rights and interests under this Agreement, including inverse condemnation damages arising from the diminution in value of the Non-Potable System from the loss of rights to obtain water from the Ditch System.

12. **Defaults and Remedies.** If a party fails to perform any of the terms, covenants and agreements contained herein, if such failure continues for a period of thirty (30) days after written notice, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person for specific performance, injunctive relief and/or monetary damages, including without limitation, reasonable attorneys' fees, costs and expenses. Amounts due hereunder shall bear interest from the date due until the date paid at the rate of 1% per month.

13. **Indemnity.** Water Company agrees to indemnify, defend and hold MLP and its officers, directors, agents and employees harmless from and against any and all claims, losses, liabilities, damages attorneys' fees and costs arising from or related to the delivery of water under this Agreement, except to the extent caused by MLP's proven (not merely alleged) gross negligence or willful misconduct.

14. **Attorney's Fees.** Should any party hereto employ an attorney for the purpose of enforcing or construing this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, whether incurred at the trial or appellate level, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding.

15. **Notices.** All communications hereunder will be in writing and shall be deemed duly communicated when delivered in person, or four (4) days after being sent by certified or registered mail, postage prepaid, addressed to:

if to MLP, to:

Maui Land & Pineapple Company, Inc.
200 Village Road
Lahaina, Hawaii 96761
Attention: President

if to Water Company, to:

16. **Assignment.** Except for an assignment made by Water Company in connection with the transfer by Water Company of the Non-Potable System, Water Company may not assign any rights hereunder without the prior written consent of MLP, which consent may be withheld in MLP's sole discretion. Except for an assignment made by MLP in connection with the transfer of the Ditch System subject to the terms and conditions of this Agreement, or to an affiliate or subsidiary of MLP that operates the Ditch System, MLP may not assign any rights hereunder without the prior written consent of Water Company, which consent may be withheld by Water Company in its sole discretion.

17. **Binding Effect.** This Agreement shall be binding on, and shall inure to the benefit of, the parties and their successors and permitted assigns.

18. **Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the delivery of non-potable water to Water Company and supersedes all prior agreements, correspondence and negotiations.

19. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original; such counterparts shall together constitute but one agreement. A facsimile copy of a signature shall constitute an original signature for purposes of the execution of this Agreement.

20. **Amendment.** No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

DATED: _____, 2019.

MAUI LAND & PINEAPPLE COMPANY, INC.

By _____
Name:
Its:

MLP

By _____
Name:
Its:

Water Company

EXHIBIT A - MAP OF DELIVERY POINTS TO THE WATER COMPANY'S NON-POTABLE SYSTEM [TO BE ATTACHED]

EXHIBIT E

AGREEMENT FOR WATER DELIVERY
(WELL WATER)

THIS AGREEMENT ("Agreement") is made and entered into on this ____ day of _____, 2019 ("Effective Date"), by and between MAULAND & PINEAPPLE COMPANY, INC., a Hawaii corporation, whose address is P. O. Box 187, Kahului, Hawaii 96733, hereinafter called "MLP", and [_____] WATER COMPANY, a _____ corporation], whose address is _____, hereinafter called "Water Company".

RECITALS:

- A. MLP is the owner of the Kapalua No. 1, 2 & 3 wells shown on the map attached hereto as Exhibit A ("Wells").
- B. Water Company is a regulated public utility company.
- C. Concurrently herewith, Water Company has acquired from MLP a potable water distribution system (the "Potable System") that Water Company will use to serve consumers within its designated service area at the Kapalua Resort at Kapalua, Maui, Hawaii (the "Service Area").
- D. The parties desire to enter into this Agreement to formalize and set forth the terms and conditions upon which MLP will provide water from its Wells for Water Company's use and distribution via the Potable System.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Delivery of Water; Delivery Points.** Subject to the terms and conditions herein, MLP does hereby undertake and agree to deliver water from the Wells to Water Company. MLP shall deliver water to the Water Company at the delivery points shown on the map attached as Exhibit A, or such other locations as the parties may mutually agree to from time to time (each a "Delivery Point"). Water Company shall not without MLP's prior approval draw more than 1.0 million gallons per day ("MGD") of water from the Wells in the aggregate.

2. **Water Delivery Charges.** Water Company will pay to MLP for all water delivered to Water Company at the following initial rates: (a) for total draws of water from the Wells in any calendar month between zero and 45 million gallons, \$2.59 per thousand gallons; (b) for total draws of water from the Wells in any calendar month between 45 million gallons and 60 million gallons (if permitted), \$3.12 per thousand gallons; and (c) for total draws of water from the Wells in any calendar month in excess of 60 million gallons (if permitted), \$3.63 per thousand gallons; all plus the Hawaii general excise thereon, payable monthly in arrears (or such other time periods as may be mutually agreed upon by the parties in writing). Payments for each calendar month, or portion thereof, shall be due and payable no later than the 10th calendar day of the following month. On the third anniversary of the date of this Agreement, and each subsequent third anniversary, the rates then in effect shall be increased by a percentage equal to the percentage increase over the preceding twelve months in the Consumer Price Index for All Urban Consumers (CPI-U) for Honolulu published by the U.S. Department of Labor – Bureau of Labor Statistics (1982-84=100) ("CPI"); provided that if such index is discontinued MLP shall have the right to reasonably designate an alternative index of inflation, provided that the adjusted rate shall never be less than the rate payable for the immediately preceding period. Water Company shall pay to MLP together with each payment required hereunder which is subject to the State of Hawaii general excise tax on gross income, as it may be amended from time to time, or any successor or similar tax, an amount which, when added to such payment (currently 4.166% of each such payment), shall yield to MLP, after deduction of all such tax payable by MLP with respect to all such payments, a net amount equal to that which MLP would have realized from such payments had no such tax been imposed.

3. **Water Meters**. Water Company shall, at its own expense, install and maintain suitable meters or gauges at accessible locations at each Delivery Point to assure an accurate and documented measurement of all water delivered to the Water Company. Together with each monthly payment under this Agreement, Water Company shall provide to MLP an accurate and complete written report of all water delivered at each Delivery Point. Representatives of MLP shall have access to such meters and all records of meter readings at all reasonable times for the purpose of checking the same and verifying Water Company's reports.

4. **Term**. The term of this Agreement commences on the date of this Agreement and terminates on the 20th anniversary of such date, whereupon this Agreement shall automatically renew for successive 10-year terms unless terminated by mutual agreement of the parties. Notwithstanding the foregoing, MLP's obligation to deliver water pursuant to this Agreement shall terminate if Water Company permanently ceases operation of the Potable System, proposes to dedicate the Potable System to the County of Maui or other governmental entity, or develops new wells adequate to meet Water Company's service obligations.

5. **Limits on Use**. Water delivered pursuant to this Agreement shall be used only within the Service Area and may not be transmitted to or used at any lands outside of the Service Area.

6. **Seller's Warranties, Representations & Covenants**. MLP warrants and represents to Water Company (a) that MLP is the owner in fee simple of the Wells, and (b) that MLP currently holds, and will use commercially reasonable efforts to at all times maintain, all permits and approvals required by law for the operation of the Wells, including those required by the Commission on Water Resource Management of the State of Hawaii and the County of Maui. Except as set forth throughout this Agreement, MLP makes no warranties, express or implied, as to the Wells, the quantity or quality of Wells water available to Water Company, or any other matters. Water Company accepts the water delivered under this agreement "as is" and Water Company shall be solely responsible for any treatment necessary to render such water useable for Water Company's intended uses.

7. **Wells Maintenance**. MLP will exercise commercially reasonable efforts to manage, repair and maintain the Wells, their pumps, and the transmission lines from the Wells to the Delivery Points in condition adequate for the reliable delivery of water to the Potable System in accordance with this Agreement.

8. **Force Majeure**. Water Company and MLP agree and understand that the ability of MLP and Water Company to perform their respective obligations under this Agreement are made expressly subject to earthquake, hurricanes, drought, landslides, casualty to the Wells, or other natural disasters or events which render the Wells temporarily or permanently inoperable, actions of the federal, state and county governments or agencies thereof, including without limitation enactment or enforcement of laws or governmental regulations, strikes, lock-outs, unavailability of labor or materials, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, acts of God, or other causes beyond MLP's and/or Water Company's respective control. Neither party shall have any liability for failure or inability to perform its obligations hereunder to the extent such failure or inability is caused by any such cause or event.

9. **Condemnation.** If the Wells or any part thereof shall be taken or condemned by any authority having the power of eminent domain, MLP shall be solely entitled to all compensation and damages payable with respect to the taking of the Wells, but Water Company shall be entitled to seek compensation and damages from the condemning authority for the loss of Water Company's rights and interests under this Agreement, including inverse condemnation damages arising from the diminution in value of the Potable System from the loss of rights to obtain water from the Wells.

10. **Defaults and Remedies.** If a party fails to perform any of the terms, covenants and agreements contained herein, if such failure continues for a period of thirty (30) days after written notice, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person for specific performance, injunctive relief and/or monetary damages, including without limitation, reasonable attorneys' fees, costs and expenses. Amounts due hereunder shall bear interest from the date due until the date paid at the rate of 1% per month.

11. **Indemnity.** Water Company agrees to indemnify, defend and hold MLP and its officers, directors, agents and employees harmless from and against any and all claims, losses, liabilities, damages attorneys' fees and costs arising from or related to the delivery of water under this Agreement, except to the extent caused by MLP's proven (not merely alleged) gross negligence or willful misconduct.

12. **Attorney's Fees.** Should any party hereto employ an attorney for the purpose of enforcing or construing this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, whether incurred at the trial or appellate level, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding.

13. **Notices.** All communications hereunder will be in writing and shall be deemed duly communicated when delivered in person, or four (4) days after being sent by certified or registered mail, postage prepaid, addressed to:

if to MLP, to:

Maui Land & Pineapple Company, Inc.
200 Village Road
Lahaina, Hawaii 96761
Attention: President

if to Water Company, to:

14. **Assignment.** Except for an assignment made by Water Company in connection with the transfer by Water Company of the Potable System to a transferee other than the County of Maui or another governmental entity, Water Company may not assign any rights hereunder without the prior written consent of MLP, which consent may be withheld in MLP's sole discretion. Except for an assignment made by MLP in connection with the transfer of the Wells subject to the terms and conditions of this Agreement, or to an affiliate or subsidiary of MLP that operates the Wells, MLP may not assign any rights hereunder without the prior written consent of Water Company, which consent may be withheld by Water Company in its sole discretion.

15. **Binding Effect.** This Agreement shall be binding on, and shall inure to the benefit of, the parties and their successors and permitted assigns.

16. **Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the delivery of Well water to Water Company and supersedes all prior agreements, correspondence and negotiations.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original; such counterparts shall together constitute but one agreement. A facsimile copy of a signature shall constitute an original signature for purposes of the execution of this Agreement.

18. **Amendment.** No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

DATED: _____, 2019.

**MAULAND & PINEAPPLE COMPANY,
INC.**

By _____
Name:
Its:

MLP

By _____
Name:
Its:

Water Company

EXHIBIT A - MAP OF THE WELLS AND DELIVERY POINTS TO THE WATER COMPANY'S POTABLE SYSTEM [TO BE ATTACHED]

EXHIBIT F-1

MAKAI EASEMENT MAP
PREPARED BY WARREN S. UNEMORI ENGINEERING, INC.

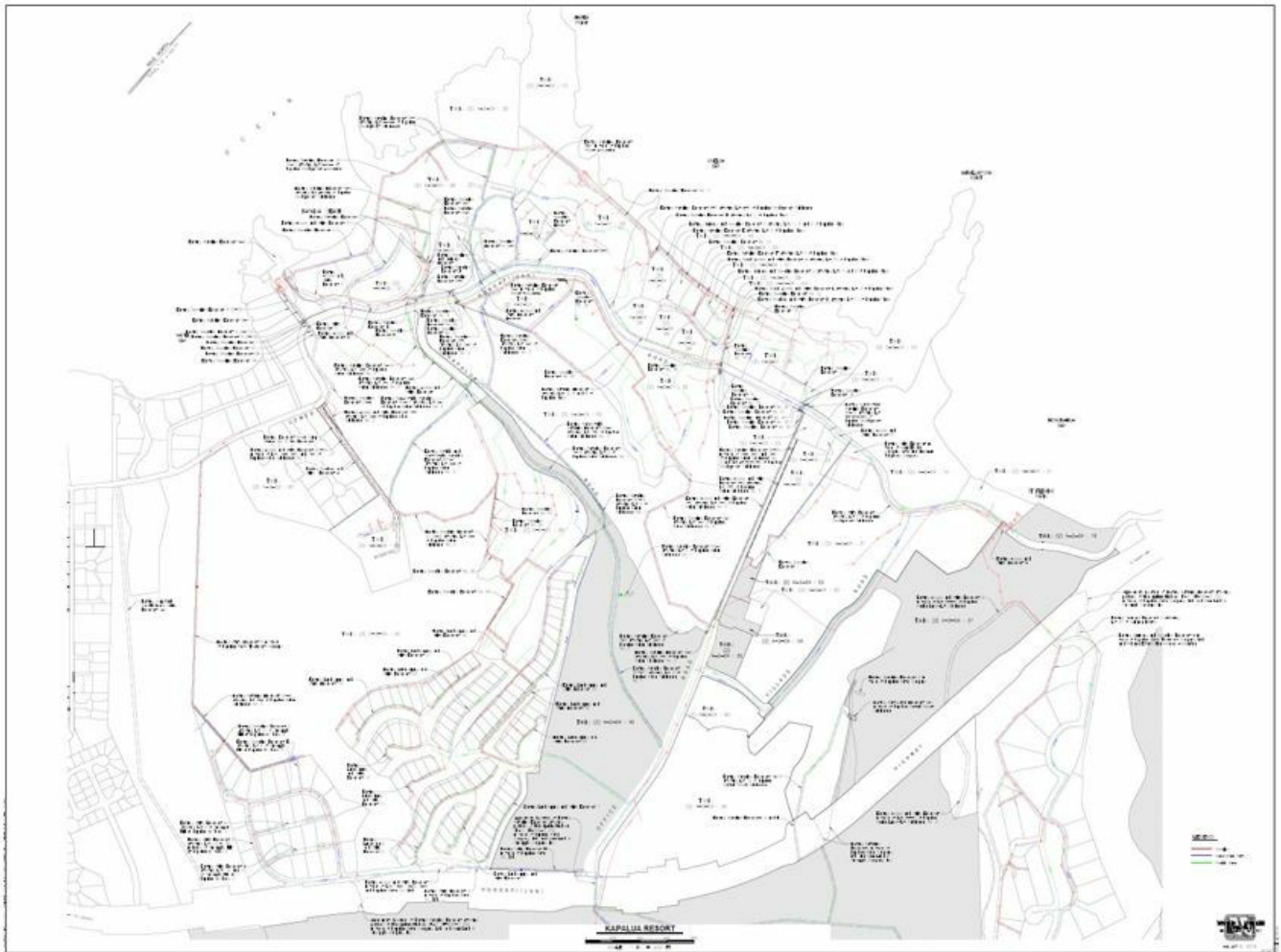


EXHIBIT F-2

MAUKA EASEMENT MAP
PREPARED BY WARREN S. UNEMORI ENGINEERING, INC.

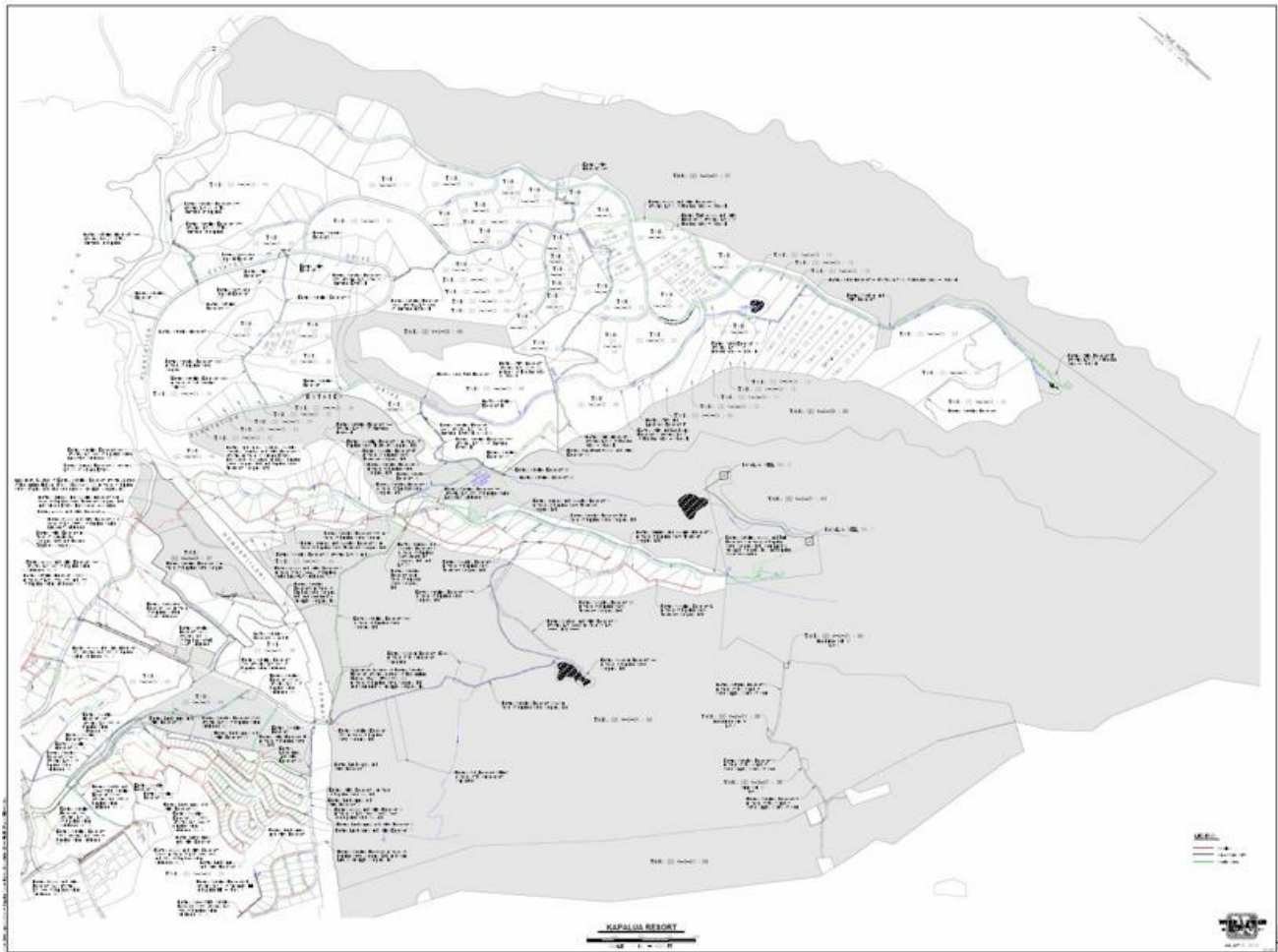


EXHIBIT G

[RESERVED]

EXHIBIT H

**ASSIGNMENT AND ASSUMPTION
OF WASTEWATER TREATMENT AGREEMENT**

**ASSIGNMENT AND ASSUMPTION
OF SEWER AGREEMENT AND EXPANSION AGREEMENT**

This Assignment and Assumption of Sewer Agreement and Expansion Agreement (this "**Assignment**") is made as of _____, 2019 (the "**Effective Date**"), by and between MAUI LAND & PINEAPPLE COMPANY, INC. ("**ML&P**"), a Hawaii corporation and KAPALUA WASTE TREATMENT COMPANY, LTD. ("**KWTC**"), a Hawaii corporation (ML&P and KWTC shall collectively be referred to herein as the "**Assignor**"), and HAWAII WATER SERVICE COMPANY, INC. a Hawaii limited liability company, doing business as "Kapalua Waste Treatment Company" ("**Assignee**").

Recitals:

(a) Assignor and the County of Maui, a political subdivision of the State of Hawaii (the "**County**"), are parties to that certain Sewer Agreement dated April 23, 1987 (the "**Sewer Agreement**"), which sets forth the terms and conditions upon which the County will accept wastewater from Assignor for treatment at the County's Lahaina Wastewater Treatment Plant ("**Lahaina Facility**"). A copy of the Sewer Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

(b) Assignor and the County also entered into that certain Lahaina Wastewater Reclamation Facility Expansion Agreement dated January 20, 1994 (the "**Expansion Agreement**") which, among other things, increased the amount of wastewater that KWTC could dispose at the County's Lahaina Facility from 300,000 gallons per day (average daily flow) to 680,000 gallons per day (average daily flow). A copy of the Expansion Agreement is attached hereto as **Exhibit B** and incorporated herein by reference.

(c) Pursuant to that certain Asset Purchase Agreement having an effective date of December 20, 2019, by and between Assignor and Assignee (the "**Purchase Agreement**"), Assignor has agreed to assign to Assignee the Sewer Agreement and the Expansion Agreement pursuant to the terms and conditions as set forth below.

Assignments:

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Assignment.** Effective as of the Effective Date, Assignor hereby assigns, sells, transfers and sets over to Assignee all of Assignor's right, title, and interest in and to the Sewer Agreement and Expansion Agreement, to have and to hold the same unto Assignee and its successors and assigns.

2. **Assumption.** Effective as of the Effective Date, Assignee hereby accepts the above assignment of the Sewer Agreement and Expansion Agreement, and hereby assumes and agrees to perform the duties and obligations of Assignor under the Sewer Agreement and Expansion Agreement, but only to the extent first arising on or after the Effective Date. Any liability or obligation arising out of any breach of the Sewer Agreement or Expansion Agreement by Assignor or any act or omission of Assignor that occurred prior to the Effective Date shall remain the sole responsibility of Assignor. Any claim, liability or obligation arising out of any breach of the Sewer Agreement or Expansion Agreement by Assignee or any act or omission of Assignee, to the extent occurring on or after the Effective Date, shall be the sole responsibility of Assignee.

3. **Further Actions.** Each of the parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of the other party hereto, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Assignment.

4. **Successors and Assigns.** This Assignment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

5. **Counterparts.** This Assignment may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. The submission of a signature page transmitted by facsimile or similar electronic transmission facility (e.g., e-mail) shall be considered as an "original" signature page for purposes of this Assignment so long as the original signature page is thereafter transmitted by mail or by other delivery service and the original signature page is substituted for the facsimile signature page in the original and duplicate originals of this Assignment.

[Signatures are on following page.]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the Effective Date.

MAUI LAND & PINEAPPLE COMPANY, INC,
a Hawaii corporation

By _____
Name:
Its:

**KAPALUA WASTE TREATMENT
COMPANY, LTD.,** a Hawaii corporation

By _____
Name:
Its:

Assignor

HAWAII WATER SERVICE COMPANY, INC.,
a Hawaii limited liability company

By _____
Name:
Its:

Assignee

**ACKNOWLEDGED ON THIS ____ DAY OF
_____, 20__.**

**COUNTY OF MAUI, through its Department
Of Environmental Management**

By _____
Name: _____
Title: _____

EXHIBIT I

[RESERVED]

EXHIBIT J

PURCHASER'S PROPOSED LOCATION FOR NEW OFFICE AND STORAGE AREA

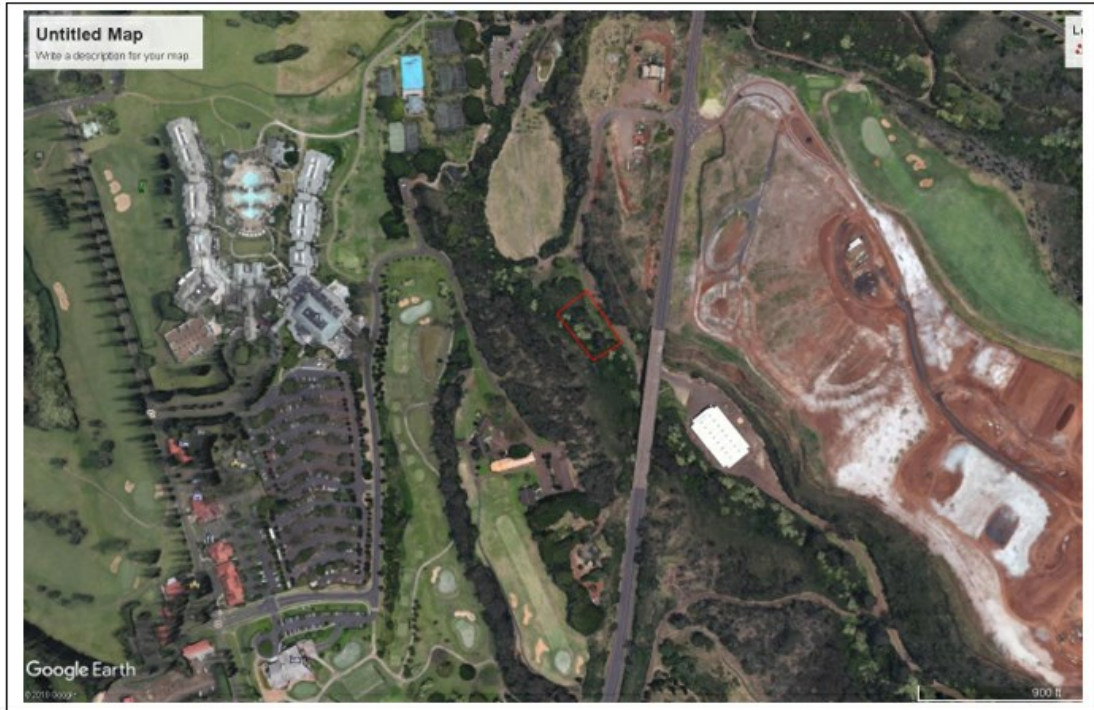


EXHIBIT K

RESERVED

EXHIBIT L

[RESERVED]

EXHIBIT M

**FORM OF ASSIGNMENT AND ASSUMPTION OF
CUSTOMER AGREEMENTS AND
WILL SERVE LETTERS**

Seller to prepare form within 15 days for Purchaser's review and approval.

EXHIBIT N

**LIST OF
CUSTOMER AGREEMENTS AND
WILL SERVE LETTERS**

| AGREEMENT | CUSTOMER | SERVICE |
|---|-------------------------------------|--|
| Agreement for Water Delivery (Kapalua Bay Golf Course) dated September 30, 2010 | TY Management Corporation | Non-potable water |
| Water Service Connection Agreement effective January 31, 2012, amended by First Amendment of Water Service Agreement (Engel) dated April 22, 2014 | William E. Engel and Marla A. Engel | Potable water |
| KWC Water Transmission Agreement dated September 30, 2010 | TY Management Corporation | Backup non-potable water storage and transmission system |
| Agreement for Water Delivery (Kapalua Plantation Golf Course) dated March 27, 2009 | TY Management Corporation | Non-potable water |
| Agreement for Water Delivery Between Maui Pineapple Company, Ltd. And Kapalua Land Company, Ltd., dated June 21, 2006, amended by Amendment to Agreement for Water Delivery Between Maui Pineapple Company, Ltd., and Kapalua Land Company, Ltd., dated November 7, 2007, (assigned by Maui Pineapple Company, Ltd. To Maui Land & Pineapple Company, Inc. by Assignment of Agreement for Water Delivery dated December 30, 2007), and Second Amendment to Agreement for Water Delivery Between Maui Land & Pineapple Company, Inc. and Kapalua Land Company, Ltd., dated March 27, 2009. | Kapalua Land Company, Ltd. | Non-potable water |
| Will Serve Commitment for Kapalua Bay Golf Course, Lahaina, Maui, TMK (2) 4-2-004-24, 43 & 36 dated September 30, 2010 | TY Management Corporation | Wastewater disposal services |
| Memorandum of KWC Water Transmission Agreement Kapalua Bay Golf Course and Golf Academy dated September 30, 2010 | TY Management Corporation | Non-potable water lines, infrastructure and easements |
| Will Serve Commitment KWC for Kapalua Bay Golf Course and Golf Academy, Lahaina, Maui, TMK (2) 4-2-004-24, 43, 36 & 48 dated September 30, 2010 | TY Management Corporation | Potable and Non-potable water |
| Will Serve Commitment KWT for Kapalua Bay Golf Course and Golf Academy, Lahaina, Maui, TMK (2) 4-2-004-24, 43 & 36 dated September 30, 2010 | TY Management Corporation | Wastewater |
| Will Serve Commitment KWC for Lot 1C-1-A, Kapalua Central Resort Subdivision, Lahaina, Maui, dated 2019 | TY Management Corporation | Potable and Non-potable water |
| Will Serve Commitment KWT for Lot 1C-1-A, Kapalua Central Resort Subdivision, Lahaina, Maui, dated 2019 | TY Management Corporation | Wastewater |
| Kapalua Wastewater Allocation for Kapalua Bay Residences, Lahaina, Maui, TMK (2)4-2-004-027 | KWT | Wastewater allocation |
| Will Serve Commitment KWC for Kapalua Site 6.0, Lahaina, Maui, TMK (2)4-2-004-048 dated 2019 | Ensign Peak Investment LLC | Potable and Non-potable water |
| Will Serve Commitment for Kapalua Plantation Golf Course, Lahaina, Maui, TMK (2) 4-2-005-37, 38, 39, 43, 44, 45, 47 & 49 dated March 27, 2009freser | TY Management Corporation | Potable and Non-potable water |

PURCHASER'S STANDARD GRANT OF EASEMENT FORM

LAND COURT

REGULAR SYSTEM

(AREA ABOVE RESERVED FOR RECORDING INFORMATION)

After Recordation, Return by Mail or Pick-up (Phone #: _____) to:

Hawaii Water Service Company, Inc.
P. O. Box 384809
Waikoloa, Hawaii 96738

DOCUMENT CONTAINS __ PAGES

| | |
|---|--|
| TITLE OF DOCUMENT: GRANT OF EASEMENT | |
| PARTIES TO DOCUMENT: | |
| GRANTOR: | |
| GRANTEE: | HAWAII WATER SERVICE COMPANY, INC. P.O. Box 384809 Waikoloa, Hawai'i 96738 |
| AFFECTS TAX MAP KEY: | |

GRANT OF EASEMENT
([INSERT HAWAII ENTITY NAME])

THIS GRANT OF EASEMENT is made on _____, by and between _____ whose mailing address is _____ (“Grantor”) and HAWAII WATER COMPANY, INC., whose principal place of business is 68-1845 Waikoloa Road, Waikoloa, Hawai‘i 96738 and mailing address is P.O. Box 384809, Waikoloa, Hawai‘i 96738 (“Grantee”).

WITNESSETH:

THAT Grantor, in consideration of the sum of Ten Dollars (\$10.00) to it paid by Grantee, the receipt of which is hereby acknowledged, and the covenants and agreements herein contained and on the part of Grantee, its successors and assigns, to be observed and performed, does hereby grant unto Grantee, its successors and assigns, a right in the nature of a perpetual, non-exclusive easement for the construction, installation, reinstallation, operation, use, maintenance, replacement, improvement, repair and removal of water pipelines, meters, valves, hydrants, pumps and other appurtenances and related equipment necessary or convenient to Grantee’s business as a public water utility (said water pipelines, meters, valves, hydrants, pumps and other appurtenances and related equipment hereinafter referred to as the “Facilities”) over, under, upon, across, and through that certain Easement _____, more particularly described on **Exhibit A** attached hereto and shown on **Exhibit A** (the “**Easement Area**”). The Easement Area is located on those certain premises situate at _____, District of _____, Island and County of _____, State of Hawai‘i, described in **Exhibit B** attached hereto (the “**Property**”);

TOGETHER, ALSO, with the right of ingress and egress to and from the Easement Area over the land of Grantor for all purposes in connection with the exercise of the rights hereby granted;

TO HAVE AND TO HOLD the same unto Grantee, its successors and assigns, forever.

AND in consideration of the rights hereby granted and the covenants and agreements herein contained, Grantee hereby agrees to keep all Facilities of Grantee in the Easement Area in good condition and repair, subject to ordinary wear and tear. In the event Grantee damages the surface of the Easement Area or improvements thereon, permitted by this Grant of Easement and installed by or for Grantor, Grantee shall, at Grantee’s cost, repair the damage caused by Grantee and restore the surface of the Easement Area as nearly as is reasonably possible to the condition in which such surface area and improvements existed immediately prior to such damage by Grantee. In no event shall Grantee be obligated to repair damage caused by activities or causes other than the activities of Grantee.

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED by and between the parties hereto:

(A) That any Facilities constructed, installed, reinstalled, maintained, repaired or removed by Grantee within the Easement Area shall be and remain the property of Grantee.

(B) That Grantee shall have no obligation to relocate any of the Facilities constructed, maintained or installed within the Easement Area. In the event that development plans of Grantor or Grantor's heirs, personal representatives, successors and assigns require the relocation of any portion of the Facilities, Grantor may relocate the Facilities provided that (a) Grantor obtains Grantee's prior written approval of Grantor's plans and specifications for such relocation which consent may be withheld in Grantee's sole discretion; (b) Grantee shall have the right to inspect and approve the relocated Facilities; (c) Grantor shall bear all costs and expenses of such relocation, including, without limitation, all attorneys' fees and other costs associated with amending this Grant of Easement and/or any necessary governmental approvals; and (d) Grantor shall perform all such relocation work without causing any material interruption of or interference with Grantee's services and operations. Alternatively, upon prior written agreement of Grantee and Grantor, Grantee may be permitted to relocate the Facilities to the location specified by Grantor, and Grantor shall reimburse Grantee for all costs and expenses of such relocation. In the event of any such relocation, Grantor and Grantee shall execute such documents as are reasonably necessary to dedicate the relocated Facilities to Grantee and to amend this Grant of Easement to cover the relocated Facilities.

(C) That Grantor shall not engage in activities that damage or are reasonably likely to damage, Grantee's Facilities. Without limiting the foregoing, Grantor shall not perform or permit any digging, tunneling or other forms of construction activity within or on the Easement Area which may disturb the compaction of the soil or unearth Grantee's Facilities located within the Easement Area or endanger the lateral support to such Facilities.

(D) That Grantor shall not at any time during the continuance of this Grant of Easement erect any building foundation of any kind below the surface of the land within the Easement Area or at any time erect any building or structure of any kind, other than roads, walks, curbs, driveways, fences (but not walls with footings or foundations) or appurtenances thereof, on the surface of the Easement Area. The owner of a fence in the Easement Area shall be solely responsible for the removal and replacement of such fence if removal is required in order for Grantee to exercise any of its rights under this Grant of Easement. If the owner of a fence fails to remove the fence at the request of Grantee, Grantee shall have the right to remove the fence and recover the cost of such removal from the owner. Only lawn grass shall be planted within the Easement Area and no tree shall be planted within twenty (20) feet of the Facilities. Grantee shall have the right to require Grantor and its successor and assigns to remove any tree that is planted on property owned by Grantor and within twenty (20) feet of the Facilities, and Grantor shall pay for repairs to the Facilities if such tree damages the Facilities.

(E) That if at any time the Easement Area, or any part thereof, shall be condemned or taken by any authority exercising the power of eminent domain, Grantee shall have the right to claim and recover from the condemning authority, but not from Grantor, such compensation as is payable for the easement and right of way for the Facilities of Grantee used in connection with the water system, which shall be payable to Grantee. All other compensation and damages payable for or on account of the Easement Area so taken or condemned shall be paid to and be the property of Grantor.

(F) Grantee shall have the right to assign its rights herein to any corporation or other entity which controls, is controlled by, or is under common control with Grantee, or to any corporation or other entity resulting from a merger, sale, reorganization or consolidation with Grantee, or to any person or entity which acquires a controlling interest in Grantee's stock, either by private sale or as the result of a public stock offering, or substantially all of the assets of Grantee as a going concern without obtaining Grantor's written consent.

(G) That Grantor covenants with Grantee that Grantor is the fee simple owner of the Property and that Grantor has good right and title to grant the Easement Area, and that Grantor will and its successors and assigns shall warrant and defend the same unto Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons.

(H) The term "Grantor," or any pronouns used in place thereof, shall mean and include Grantor and its successors and assigns, and the term "Grantee," or any pronouns used in place thereof, shall mean and include Grantee and its successors and assigns. When referring to the parties hereto, reference herein to the singular shall include the plural, the plural the singular, and reference to any gender shall include either or both of the other genders.

(I) The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument the day and year first above written.

[INSERT NAME OF GRANTOR]

By _____
Name:
Its _____

[INSERT HAWAII ENTITY NAME],
a Hawai'i corporation

By _____
Name:
Its General Manager

STATE OF HAWAII)
)SS.
COUNTY OF HAWAII)

On this ____ day of _____, 20____, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument and acknowledged that _____ executed the same as _____'s free act and deed, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawai'i

Print name

My commission expires: _____

| NOTARY CERTIFICATION | |
|------------------------|---------------------|
| Doc. _____ | No. of Pages: _____ |
| Date: _____ | |
| Notary Name: _____ | _____ Circuit |
| Doc. _____ | |
| Description: _____ | |
| _____ | |
| _____ | |
| _____ | |
| Notary Signature _____ | Date _____ |



STATE OF HAWAII)
)SS.
COUNTY OF HAWAII)

On this ____ day of _____, 20____, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument and acknowledged that _____ executed the same as _____'s free act and deed, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawai'i

Print name

My commission expires: _____

| NOTARY CERTIFICATION | |
|------------------------|---------------------|
| Doc. _____ | No. of Pages: _____ |
| Date: _____ | _____ Circuit |
| Notary Name: _____ | |
| Doc. _____ | |
| Description: _____ | |
| _____ | |
| _____ | |
| _____ | |
| Notary Signature _____ | Date _____ |



EXHIBIT A

DESCRIPTION OF THE EASEMENT AREA AND MAP OF THE EASEMENT AREA

EXHIBIT B

DESCRIPTION OF THE PROPERTY

EXHIBIT 7.1

SELLER'S CURRENT ORGANIZATIONAL DOCUMENTS

To be delivered within five days.

DESCRIPTION OF CAPITAL STOCK

The following is a summary of all material characteristics of the capital stock of Maui Land & Pineapple Company, Inc. (“we,” “our” or “us”) as set forth in our articles of association, as restated, or our Charter, and our bylaws, as amended, or our Bylaws. The summary does not purport to be complete and is qualified in its entirety by reference to our Charter and our Bylaws, copies of which have been filed as exhibits to our filings with the Securities and Exchange Commission.

Common Stock

General. We may issue shares of our common stock from time to time. We are currently authorized to issue 43,000,000 shares of common stock, with no par value per share.

Dividend Rights. Holders of common stock are entitled to receive such dividends as may be declared by the board of directors out of funds legally available therefor.

Voting Rights. The holders of our common stock are entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders. The holders of common stock are not entitled to cumulative voting rights with respect to the election of directors, and as a consequence, minority stockholders will not be able to elect directors on the basis of their votes alone.

No Preemptive, Conversion or Similar Rights. Holders of common stock have no preemptive rights and no right to convert their common stock into any other securities.

Right to Receive Liquidation Distributions. In the event of a liquidation, dissolution or winding up, holders of the common stock are entitled to share ratably in all assets remaining after payment of all outstanding debt and liabilities.

Hawaii Law and Certain Certificate of Incorporation and Bylaw Provisions

The provisions of Hawaii law, our Charter and our Bylaws may have the effect of delaying, deferring or discouraging another person from acquiring control of us by means of a tender offer, a proxy contest or otherwise, or removing incumbent officers and directors. These provisions, summarized below, are expected to discourage certain types of coercive takeover practices and takeover bids that our board of directors may consider inadequate and to encourage any person seeking to acquire control of us to first negotiate with our board of directors.

Unanimous Shareholder Action by Written Consent; Special Meetings

Any action required or permitted to be taken by our shareholders must be effected at a duly called annual or special meeting of our shareholders or, as provided in Section 414-124 of the Hawaii Business Corporation Act, or HBCA, by unanimous written consent in lieu of a meeting. Further, our Bylaws provide that special meetings may be called only the President or any two directors or the holders of not less than one-fourth of our capital stock issued and outstanding and entitled to vote as such special meeting.

Certain Provisions of the HBCA and Other Hawaii Statutes

As a Hawaii corporation, we are governed by the HBCA and more broadly the Hawaii Revised Statutes, or the HRS. The provisions of the HRS summarized below may delay, deter or prevent unsolicited acquisitions or changes of control of our Company, including transactions that might result in a premium being paid over the market price for shares of our common stock or that some shareholders might otherwise consider to be in their best interests.

Control Share Acquisitions.

Under Chapter 414E of the HRS, a person who proposes to make a “control share acquisition” in an “issuing public corporation” must obtain approval of the acquisition, in the manner specified in Section 414E-2 of the HRS, by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, exclusive of the shares beneficially owned by the acquiring person, and must consummate the proposed control share acquisition within 180 days after shareholder approval. If a control share acquisition is made without the requisite shareholder approval, the statute provides that (i) the shares acquired may not be voted for a period of one year from the date of acquisition and (ii) the shares will be nontransferable on the corporation’s books for one year after acquisition and the corporation, during the one-year period, has the right to call the shares for redemption either at the price at which the shares were acquired or at book value per share as of the last day of the fiscal quarter ended prior to the date of the call for redemption.

Under Chapter 414E of the HRS, “control share acquisition” means, subject to specified exceptions, the acquisition of shares of an *issuing* public corporation resulting in beneficial ownership of the acquiring person of one of the following ranges of voting power in the election of directors:

- At least ten percent but less than twenty percent;
- At least twenty percent but less than thirty percent;
- At least thirty percent but less than forty percent;
- At least forty percent but less than a majority; or
- At least a majority.

Acquisitions that are approved by resolution of the board of directors before the acquisition occurs and acquisitions that the board of directors of the issuing public corporation determines, by resolution before the acquisition occurs, does not constitute a control share acquisition are not subject to the foregoing requirements.

An “issuing public corporation” means a corporation incorporated in Hawaii which has (i) 100 or more shareholders and (ii) its principal place of business or its principal office in Hawaii, or that has substantial assets located in Hawaii.

Corporate Take-Overs.

Chapter 417E of the HRS, the Hawaii Corporate Take-Overs Act (the “HCTA”), generally applies to take-over offers made to residents of the State of Hawaii in cases where the offeror would become the beneficial owner of more than 10% of any class of equity securities of a target company, or where an offeror that already owns more than 10% of any class of equity securities of the target company would increase its beneficial ownership by more than 5% (subject to certain exceptions). Under the HCTA, no offeror may acquire from any Hawaii resident equity securities of a target company at any time within two years following the last purchase of securities pursuant to a take-over offer with respect to the same class of securities, including but not limited to acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapitalization, reorganization, or any other similar transaction, unless the holders of the equity securities are afforded, at the time of the acquisition, a reasonable opportunity to dispose of the securities to the offeror upon substantially equivalent terms as those provided in the earlier take-over offer. The HCTA requires that any person making a take-over offer file a registration statement with the Hawaii Commissioner of Securities and comply with certain other procedural requirements.

A “take-over offer” is an offer to acquire any equity securities of a target company from a Hawaii resident pursuant to a tender offer or request or invitation for tenders.

A “target company” is an issuer of publicly traded equity securities that is organized under the laws of the State of Hawaii or has at least 20% of its equity securities beneficially held by Hawaii residents and has substantial assets in Hawaii.

The HCTA does not apply if the offer has been approved in writing by the board of directors of the target company, if the offeror is the issuer of the securities, if the offeror does not acquire more than 2% of any class of equity securities of the issuer during the preceding 12 month period, or if the offer involves an exchange of securities that is registered or exempt from registration under the HCTA.

Charter and Bylaw Provisions. Our Charter and our Bylaws also include a number of other provisions that may have the effect of deterring hostile takeovers or delaying or preventing changes in control or our management as follows:

- Our Bylaws provide that all stockholder action must be effected at a duly called meeting of stockholders and not by a consent in writing.
- Our Bylaws provide that stockholders seeking to present proposals before a meeting of stockholders, or to nominate candidates for election as directors at a meeting of stockholders, must provide timely notice in writing. Our Bylaws also specify requirements as to the form and content of a stockholder's notice. These provisions may delay or preclude stockholders from bringing matters before a meeting of stockholders or from making nominations for directors at a meeting of stockholders, which could delay or deter takeover attempts or changes in management.
- Our Bylaws provide that all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of our directors then in office, even if less than a quorum, if not filled by the stockholders holding a majority of the shares of all capital stock in the case of a director removal at a special meeting of stockholders.

Maui Land & Pineapple Company, Inc.—Subsidiaries
As of December 31, 2019

| <u>Name</u> | <u>State of Incorporation</u> | <u>Percentage of Ownership</u> |
|---------------------------------------|-----------------------------------|------------------------------------|
| Maui Pineapple Company, Ltd. | Hawaii | 100 |
| Kapalua Land Company, Ltd. | Hawaii | 100 |
| Kapalua Realty Company, Ltd. | Hawaii | 100 |
| Kapalua Advertising Company, Ltd. | Hawaii | 100 |
| Kapalua Water Company, Ltd. | Hawaii | 100 |
| Kapalua Waste Treatment Company, Ltd. | Hawaii | 100 |
| Kapalua Bay Holdings, LLC | Delaware | 51 |
| Kapalua Bay, LLC | Delaware | 100 |

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statements No. 333-133898 and No. 333-112932 on Form S-8, and Registration Statement No. 333-150244 on Form S-3 of our report dated February 28, 2020, relating to the consolidated financial statements and internal controls of Maui Land & Pineapple Company, Inc. and subsidiaries (which report expresses unqualified opinions), appearing in this Annual Report on Form 10-K of Maui Land & Pineapple Company, Inc. for the years ended December 31, 2019 and 2018.

/s/ ACCUITY LLP

Honolulu, Hawaii
February 28, 2020

CERTIFICATION

I, Warren H. Haruki, certify that:

1. I have reviewed this Annual Report on Form 10-K of Maui Land & Pineapple Company, Inc. (the “Registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the Registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the Registrant’s internal control over financial reporting that occurred during the Registrant’s most recent fiscal quarter (the Registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant’s internal control over financial reporting; and
5. The Registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant’s auditors and the audit committee of the Registrant’s board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant’s ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant’s internal control over financial reporting.

Date: February 28, 2020

By: _____
/s/ WARREN H. HARUKI
Warren H. Haruki
Chairman of the Board &
Chief Executive Officer
Maui Land & Pineapple Company, Inc.

CERTIFICATION

I, Tim T. Esaki, certify that:

1. I have reviewed this Annual Report on Form 10-K of Maui Land & Pineapple Company, Inc. (the “Registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the Registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the Registrant’s internal control over financial reporting that occurred during the Registrant’s most recent fiscal quarter (the Registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant’s internal control over financial reporting; and
5. The Registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant’s auditors and the audit committee of the Registrant’s board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant’s ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant’s internal control over financial reporting.

Date: February 28, 2020

By: _____
/s/ TIM T. ESAKI
Tim T. Esaki
Chief Financial Officer
Maui Land & Pineapple Company, Inc.

CERTIFICATION

In connection with the Annual Report of Maui Land & Pineapple Company, Inc. (the "Company") on Form 10-K for the fiscal year ended December 31, 2019 as filed with the Securities and Exchange Commission on February 28, 2020 (the "Report"), I, Warren H. Haruki, Chairman of the Board and Chief Executive Officer of the Company, certify, pursuant to Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 780(d)) and 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: _____
 /s/ WARREN H. HARUKI
 Warren H. Haruki
 Chairman of the Board
 Chief Executive Officer

February 28, 2020

This certification accompanies this Report pursuant to Rule 13a-14(b) or Rule 15d-14(b) under the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934.

CERTIFICATION

In connection with the Annual Report of Maui Land & Pineapple Company, Inc. (the "Company") on Form 10-K for the fiscal year ended December 31, 2019, as filed with the Securities and Exchange Commission on February 28, 2020 (the "Report"), I, Tim T. Esaki, Chief Financial Officer of the Company, certify, pursuant to Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 780(d)) and 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: _____
/s/ TIM T. ESAKI
Tim T. Esaki
Chief Financial Officer

February 28, 2020

This certification accompanies this Report pursuant to Rule 13a-14(b) or Rule 15d-14(b) under the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934.