

The Escrow Instructions and General Provisions (the "Escrow Instructions") under which this escrow will be processed are printed below. Please read them carefully. If you have any questions, please contact your escrow officer. Any requested changes to these Escrow Instructions must be in writing, received and accepted by Escrow and all other parties to this escrow within ten (10) days of the date of Escrow's opening letter. Otherwise, all of the Escrow Instructions on these pages will govern this transaction.

**ESCROW INSTRUCTIONS**

To: Title Guaranty Escrow Services, Inc. ("Escrow")

The Parties agree to the sale and purchase, refinance, or exchange, of the referenced property.

Escrow will collect and hold all documents and funds delivered to Escrow pursuant to the Contract, Lender's Instructions, if applicable, and these Escrow Instructions. If the Parties have not delivered to Escrow all appropriate and necessary documents, Escrow is authorized to have them prepared for execution. When Escrow has obtained said documents and funds and when required conditions to the closing of the escrow transaction have been satisfied, Escrow is authorized to deliver or record, or both, said documents and to apply and disburse the funds delivered to Escrow pursuant to the Contract, Lender's Instructions, if applicable, these Escrow Instructions and the closing statement.

**ESTIMATED CLOSING STATEMENTS ONLY**

The estimated closing statement is based upon a proration of charges as of a specified date and the understanding that all necessary payments will be current to that date by the Parties. If the proration date changes or the necessary payments have not been kept current, Escrow is authorized to close this transaction and to make all necessary payments and adjust all prorations to the date of closing, unless another date has been agreed upon by the Parties.

**CONTROLLED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT**

This is to give notice that Title Guaranty Escrow Services, Inc. has a business relationship with Title Guaranty of Hawaii, LLC. The nature of the relationship is that a majority interest in the two (2) companies is owned by the same individuals or entities. Because of this relationship, this referral may provide Title Guaranty Escrow Services, Inc. a financial or other benefit.

We have estimated charges or a range of charges by Title Guaranty of Hawaii, LLC for the following settlement services: (please note that the Title Insurance Premium reflects the basic premium for a Hawaii Standard Owners title policy; if buyer desires title coverage other than standard owners coverage, the premium may differ. If other title coverage is desired, buyer shall instruct Escrow in writing):

Owner's Policy	\$ _____
UCC Report:	\$ 50.00 plus GE tax, if applicable (EST)
Loan Policy:	\$ _____ (EST)

You are NOT required to use Title Guaranty of Hawaii, LLC for title services in connection with your loan or purchase, sale or refinance of the subject property. There are other title service providers. You should determine that you are receiving acceptable services and rates for those services. Unless otherwise instructed in writing, Escrow will use Title Guaranty of Hawaii, LLC and its underwriters, Chicago Title Insurance Company, Fidelity National Title Insurance Company, Commonwealth Land Title Insurance Company, and First American Title Insurance Company for those services.

# GENERAL PROVISIONS

(continued)

## 1. DEFINITIONS

"Contract" means the agreement (including amendments, if any) received by Escrow pertaining to this transaction. "Lender's Instructions" means instructions received by Escrow from a Lender pertaining to this transaction. "Escrow" means Title Guaranty Escrow Services, Inc., a Hawaii corporation. "Party" means each Buyer and Seller as identified in the Contract; Borrower; Lender; and, in any exchange transaction, each Principal. Unless otherwise agreed to in writing by the relevant parties, all notices and communications must be in writing and may be delivered by: U.S. Mail, courier service, hand-delivery, facsimile or other electronic transmission.

## 2. PRORATIONS AND ADJUSTMENTS

All prorations and/or adjustments called for in this escrow are to be made on the basis of a thirty (30) day month unless otherwise instructed in writing. Escrow is to use information contained on last available tax statement, rental statement as provided by the Seller, mortgagee's statement and policy delivered into escrow for the prorations provided for herein. TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.

## 3. UTILITIES/POSSESSION

Transfer of utilities and possession of the premises are to be settled by the parties directly and outside escrow.

## 4. PREPARATION AND RECORDATION OF INSTRUMENTS

Real estate documents required for this transaction may be prepared by an attorney designated by a Party. If the Party does not designate the attorney to prepare the documents, Escrow is authorized to select the attorney to prepare the documents. The attorney is not the agent of Escrow, and the Parties are solely responsible for consulting and obtaining their own legal advice regarding all instruments in connection with this escrow.

Escrow Holder is authorized to obtain, record and deliver the necessary instruments to carry out the terms and conditions of this escrow and to order the policy of title insurance to be issued at close of escrow as called for in these instructions. Close of escrow shall mean the date instruments are recorded.

The Federal Financial Privacy Act of 1978 requires that lenders, agreement of sale collection agencies, property management firms, condominium associations, homeowner associations, and lessors be furnished with authorization which will allow them to disclose the status of accounts and to deliver to Escrow any information concerning this transaction.

## 5. AUTHORIZATION TO FURNISH COPIES

Escrow is authorized to furnish copies of these instructions, supplements, amendments, notices of cancellations, closing statements and applicable tax documents (only when any and all Taxpayer Identification Numbers are redacted), to the Real Estate Broker(s) and Lender(s) named in this escrow.

## 6. RIGHT OF CANCELLATION

Any Party instructing Escrow to cancel this escrow shall file notice of cancellation with Escrow in writing. Escrow shall, within two (2) working days thereafter, deliver, one (1) copy of such notice to each of the other Parties at the addresses stated in this escrow. UNLESS WRITTEN OBJECTION TO CANCELLATION IS FILED WITH ESCROW BY A PARTY WITHIN TEN (10) DAYS AFTER DATE OF SUCH DELIVERY, ESCROW IS AUTHORIZED TO EITHER COMPLY WITH SUCH NOTICE AND DEMAND PAYMENT OF ESCROW'S CANCELLATION CHARGES OR PROCEED UNDER THE DISPUTES PARAGRAPH 22. If written objection is filed, Escrow is authorized to hold all money and instruments in this escrow and take no further action until otherwise directed, either by the Parties' mutual written instructions, or by final order of a court of competent jurisdiction.

## 7. PERSONAL PROPERTY

No examination or insurance as to the amount or payment of personal property taxes is required unless specifically requested.

The parties to the escrow hereby acknowledge that they are indemnifying the Escrow against any and all matters relating to any "Bulk Sales" requirements, and instruct Escrow to proceed with the closing of escrow without any consideration of matter of any nature whatsoever regarding "Bulk Sales" being handled through escrow.

## 8. RIGHT OF RESIGNATION

Escrow has the right to resign upon written notice delivered to the Parties herein. If such right is exercised, all funds and documents shall be returned to the Party who deposited them and Escrow shall have no liability hereunder.

## 9. DEPOSITS AND INSURANCE

To avoid delays, not less than forty-eight (48) hours prior to a scheduled disbursement, deposits need to be made by wire transfer or cashier's check drawn on a Hawaii financial institution. Escrow shall verify that all deposits have been cleared by the financial institution to which they are submitted before funds can be disbursed. Funds received in this escrow may be deposited with other escrow funds in any Federally-insured Hawaii financial institution. The Parties acknowledge that Federal law and regulations limit the amount of insurance on insured deposit accounts per depositor. For insurance coverage, see [www.fdic.gov](http://www.fdic.gov). Escrow may have other deposit accounts in the financial institution in which the funds for this escrow are deposited. The cumulative effect of other accounts of Escrow may limit the amount of insurance available for the funds deposited in this escrow. The Parties agree that Escrow has no liability in the event of failure, insolvency or inability of a financial institution to pay any funds so deposited, including earnings thereon. The sole responsibility of Escrow is to make the deposit.

# GENERAL PROVISIONS

(continued)

## 10. INTEREST ON DEPOSITS

Hawaii law provides that when Escrow holds funds in escrow, any earnings on those funds shall accrue to the credit of the Buyer in the transaction unless written instructions to the contrary are given to Escrow by the Parties. To defray the costs of special handling and accounting for such earnings, an administrative fee of Fifty And No/100 Dollars (\$50.00) will be added to the normal escrow fees, to be paid by the Party to whom the earnings are paid. Because in many instances the administrative charge will exceed any accrued earnings, unless the Parties otherwise instruct Escrow in writing, the Parties will be deemed to have waived the right to receive such earnings and these Escrow Instructions constitute written instructions to Escrow not to open and hold the funds in an earnings accrual account, in which case the Fifty And No/100 Dollar (\$50.00) charge will not be applicable, and the funds may be placed in deposits in financial institutions, as permitted by Hawaii law. All earnings on the deposits will accrue and be payable to Escrow. If the Parties instruct Escrow to open an earnings accrual account, the Fifty And No/100 Dollar (\$50.00) charge will be applicable and the Party to whom the earnings accrue must supply the applicable Social Security Number or other Tax Identification number. A minimum of two (2) business days will be required prior to closing to withdraw and disburse invested funds. Further, in such event, the Party entitled to the earnings and not Escrow will be responsible for any early withdrawal penalty.

## 11. ESTIMATED AND FINAL CLOSING STATEMENTS

In most instances, each Party's estimated closing statement and final closing statement will differ. Copies of such statements will be furnished to the Party named therein and such Party's real estate agent. Escrow shall send the applicable closing statements to the appropriate lending institutions in compliance with governmental guidelines.

## 12. DELIVERY/RECEIPT

Delivery to Parties as used in these instructions unless otherwise stated herein is to be by hand in person to the Party, regular mail, email or fax to any of the contact information provided in these instructions. If delivered by regular mail receipt is determined to be seventy-two (72) hours after such mailing. All documents, balances and statements due to the undersigned may be delivered to the contact information shown herein. All notices, change of instructions, communications and documents are to be delivered in writing to the Escrow Office as set forth herein.

## 13. STATE/FEDERAL CODE NOTIFICATIONS

According to federal Law, the Seller, when applicable, will be required to complete a sales activity report that will be utilized to generate a 1099 statement to the Internal Revenue Service.

Escrow shall have no liability and no responsibility with respect to withholding of taxes on the disposition of real estate pursuant to Section 235-68, Hawaii Revised Statutes, as amended ("HARPTA"), advising the Parties as to the requirements of such Section, determining whether the transferor is a non-resident under such Section, or obtaining a resident affidavit or other exemption from withholding under HARPTA. If Escrow is requested to transmit HARPTA forms and/or payments to the State of Hawaii Department of Taxation, Escrow may charge a handling fee for this accommodation.

## 14. NON-RESIDENT ALIEN

The Foreign Investment in Real Property Tax Act (FIRPTA), Title 26 U.S.C., Section 1445, and the regulations thereunder, provide in part, that a transferee (buyer) of a U.S. real property interest from a foreign person must withhold a statutory percentage of the amount realized on the disposition, report the transaction and remit the withholding to the Internal Revenue Service (IRS) within twenty (20) days after the transfer. Escrow will not determine nor aid in the determination of whether the FIRPTA withholding provisions are applicable to the subject transaction, nor act as a Qualified Substitute under state or federal law, nor furnish tax advice to any Party to the transaction. Escrow will not determine nor aid in the determination of whether the transaction will qualify for an exception or an exemption and is not responsible for the filing of any tax forms with the IRS as they relate to FIRPTA, nor responsible for collecting and holding of any documentation from the buyer or seller on the buyer's behalf for the purpose of supporting a claim of an exception or exemption. Escrow is not an agent for the buyer for the purposes of receiving and analyzing any evidence or documentation that the seller in the subject transaction is a U.S. citizen or resident alien. Escrow is not responsible for the payment of this tax and/or penalty and/or interest incurred in connection therewith and such taxes are not a matter covered by a Policy of title insurance to be issued to the buyer or a lender. Escrow is not responsible for the completion of any IRS documents or related forms related to the referenced statute. The buyer is advised: they must independently make a determination of whether the contemplated transaction is subject to the withholding requirement; bear full responsibility for compliance with the withholding requirement if applicable and/or for payment of any tax, interest, penalties and/or other expenses that may be due on the subject transaction; and they are responsible for the completion of any and all forms, including but not limited to applicable IRS documentation, and the mailing of those forms. The buyer is advised any forms, documents, or information received from Escrow is not tax or legal advice and should not be construed as such nor treated as a complete representation of FIRPTA requirements. Buyer should seek outside counsel from a qualified individual to determine any and all implications of the referenced statute. If Escrow is requested to transmit FIRPTA forms and/or payments to the IRS, Escrow may charge a handling fee for this accommodation.

## 15. ENCUMBRANCES

Escrow is to act upon any statements furnished by a lienholder or his agent without liability or responsibility for the accuracy of such statements. Any adjustments necessary because of a discrepancy between the information furnished Escrow and any amount later determined to be correct shall be settled between the Parties direct and outside of escrow.

# GENERAL PROVISIONS

(continued)

## 16. ENVIRONMENTAL ISSUES

Escrow has made no investigation concerning said property as to environmental/toxic waste issues. Any due diligence required or needed to determine environmental impact as to forms of toxification, if applicable, will be done directly and by principals outside of escrow. Escrow is released of any responsibility and/or liability in connection therewith.

## 17. USURY

Escrow is not to be concerned with any questions of usury in any loan or encumbrance involved in the processing of this escrow and is hereby released of any responsibility or liability therefor.

## 18. DISCLOSURES

Escrow's knowledge of matters affecting the property, provided such facts do not prevent compliance with these instructions, does not create any liability or duty to any Party, in addition to these instructions, including without limitation any duty to disclose such matters.

Escrow is neither responsible for, nor assumes any liability for the obligation of any Party to comply with disclosure requirements under Federal and Hawaii law, including without limitation, Haw. Rev. Stat. 508-D; 514B, Part V; 516-71; and 516D-11.

## 19. CLARIFICATION OF DUTIES

Escrow serves ONLY as an escrow holder in connection with these instructions and cannot give legal or financial advice to any Party hereto. Escrow is not a title abstractor or title insurer and makes no representation as to any condition of the title to property.

Escrow is not to be held accountable or liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to the identity, authority or rights of any person executing the same. Escrow's duties hereunder shall be limited to the proper handling of such money and the proper safekeeping of such instruments, or other documents received by Escrow, and for the disposition of same in accordance with the written instructions accepted by Escrow.

## 20. WRITTEN INSTRUCTIONS TO ESCROW

Escrow's sole responsibility shall be to comply with the written instructions given to Escrow by the Parties and accepted by Escrow. Any amendment to these Escrow Instructions must be in writing and accepted by Escrow. As between the Parties and Escrow, if there is any conflict between the Contract or Lender's Instructions and these Escrow Instructions, these Escrow Instructions will control except as amended in writing and accepted by Escrow.

## 21. TERMINATION OF AGENCY OBLIGATION

If there is no action taken on this escrow within six (6) months after the "time limit date" as set forth in the escrow instructions or written extension thereof, Escrow's agency obligation shall terminate at Escrow's option and all documents, monies or other items held by Escrow shall be returned to the Parties depositing same. In the event of cancellation of this escrow, whether it be at the request of any of the principals or otherwise, the fees and charges due Escrow including expenditures incurred and/or authorized shall be borne equally by the parties hereto (unless otherwise agreed to specifically).

## 22. DISPUTES

If any dispute arises with respect to this transaction, or any demand is received by Escrow and Escrow is unable to comply or if Escrow is uncertain as to its duties hereunder, Escrow may at its sole election and without any liability: (1) await, without taking any action, the determination of such dispute by the Parties; or (2) file a suit in interpleader or institute other action in any court of competent jurisdiction for the purpose of having the respective rights and duties of Escrow and the Parties adjudicated. The Parties shall be liable to Escrow for all costs and expenses, including reasonable attorney's fees, incurred by Escrow in connection with any dispute or legal action. The Parties agree that such fees and expenses can be deducted from the funds held in Escrow. The Parties agree to indemnify and hold Escrow harmless against liabilities, damages and costs incurred by Escrow, including reasonable attorney's fees and costs, except to the extent that such liabilities, damages and costs were caused by the gross negligence or willful misconduct of Escrow.

## 23. RELEASE OF MORTGAGES

If on the date of recordation, Escrow does not hold a release of mortgage, Escrow will charge a Release Processing Fee of Fifty-Five And No/100 Dollars (\$55.00). This fee will cover the follow-up and processing of any such release. The fee will be charged to the Seller.

## 24. SIGNATORY OF DOCUMENTS

These Escrow Instructions and other instructions, agreements, approvals or notices regarding this transaction may be signed in counterparts, and unless otherwise required in writing by a Party or by Escrow, a facsimile or electronically-transmitted signature or communication as permitted by the Uniform Electronic Transactions Act, shall be as binding and effective for all purposes as the original. Escrow shall have no duty to inquire into or have responsibility for the form, content, due execution, genuineness, validity, sufficiency or enforceability of any agreement, documents, certification, or other papers received by Escrow. The Parties acknowledge that Escrow will assume that all papers received by it have been signed by the proper person, that each such person had capacity and authority to so sign, and that such papers have been signed by the persons whose signatures purport to appear thereon.

## 25. ELECTRONIC DELIVERY

Escrow reserves the right to electronically deliver (e-record) original documents for recording in accordance with the Bureau of Conveyances, Title 13 Chapter 16 Hawaii Admin Rules, as revised. Paper originals of recorded documents will be destroyed after recordation.

## **GENERAL PROVISIONS**

(continued)

### **26. FEES AND CHARGES**

The Parties agree to pay all charges, including the fees of Escrow, incurred in connection with this transaction, even if the transaction does not close. The Parties further agree that all consent fees and other fees required to be paid in advance in order to process this transaction may be paid by Escrow prior to closing from funds held in escrow. Escrow is not responsible for payment of third party service vendors.

### **27. PROCEEDS TO TITLE HOLDERS**

Escrow will issue proceeds payable to the current vested owner of record and/or Buyer/Borrower acquiring title to said transaction. Exceptions will be made for proceeds paid in connection with IRS 1031 Exchange transactions.

### **28. REQUESTED INFORMATION**

Documents relating to this escrow, including your personal information, may be disclosed if Escrow is served with a subpoena or court order.

### **29. HAWAII LAW GOVERNS RIGHTS AND DUTIES OF ESCROW**

Hawaii Law shall govern the rights and duties of Escrow hereunder. In the event of an action to enforce the terms hereof, each Party agrees to submit to the jurisdiction of the courts of the State of Hawaii or the United States District Court for the District of Hawaii and waives any objections to venue with respect to actions brought in such courts. The liability of all Parties shall be joint and several unless otherwise expressly stated. All duties, rights and benefits shall inure to and be binding upon the Parties and their respective heirs, personal representatives, successors and assigns.

## **END OF ESCROW INSTRUCTIONS**