

ALAN M. ARAKAWA
MAYOR



DAVID THYNE
FIRE CHIEF

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2018 DEC 10 AM 10:40

COUNTY OF MAUI
DEPARTMENT OF FIRE & PUBLIC SAFETY

OFFICE OF THE MAYOR

200 DAIRY ROAD
KAHULUI, HI 96732
PHONE: (808) 270-7561
FAX: (808) 270-7919

December 10, 2018

RECEIVED
2018 DEC 11 AM 8:24
OFFICE OF THE
COUNTY CLERK

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

For Transmittal to:

Honorable Mike White
Council Chair
Maui County Council
200 South High Street
Wailuku, Maui, Hawaii 96793

APPROVED FOR TRANSMITTAL


Mayor 12/10/18
Date

SUBJECT: AUTHORIZING THE ACCEPTANCE OF LAND FROM PULAMA LANAI FOR THE LANAI FIRE STATION EXPANSION AND THE LAND ON WHICH THE LANAI FIRE STATION IS SITUATED

Dear Chair White,

Enclosed is a proposed resolution to accept land from Pulama Lanai for the Lanai Fire Station.

Please contact my office at (808) 270-7561 should you have any questions or concerns regarding the attached resolution.

Sincerely,

DAVID C. THYNE
Fire Chief

COUNTY COMMUNICATION NO. 18-446

Resolution

No. _____

AUTHORIZING THE ACCEPTANCE OF LAND FROM PULAMA LANAI
FOR THE LANAI FIRE STATION EXPANSION AND THE
LAND ON WHICH THE LANAI FIRE STATION IS SITUATED

WHEREAS, Lanai Resorts, LLC dba Pulama Lanai (“Pulama”) is the owner of the parcel on which the County’s Lanai Fire Station is situated, identified as Tax Map Key No. (2)4-9-014-012, area approximately 13,650 square feet (“Lanai Fire Station Parcel”); and

WHEREAS, the County desires to expand the current Lanai Fire Station;
and

WHEREAS, the area which the County desires to utilize for its fire station expansion, approximately 0.313 acres, is part of a larger parcel, Tax Map Key No. (2)4-9-014-013, area approximately 7.681 acres; and

WHEREAS, the area which the County desires to utilize for its fire station expansion is described and shown on Exhibit “1”, attached hereto and made a part hereof (“Fire Station Expansion Parcel”); and

WHEREAS, Pulama is willing to donate the Lanai Fire Station Parcel along with Fire Station Expansion Parcel; and

WHEREAS, the details of this transaction are outlined in the Memorandum of Understanding attached hereto as Exhibit”2”; and

WHEREAS, in accordance with Section 3.44.015(D), Maui County Code, the Council may, by Resolution, authorize the acceptance of gifts or donations of real property; now, therefore;

BE IT RESOLVED by the Council of the County of Maui:

1. That pursuant to Section 3.44.015(D), Maui County Code, authorizes the acceptance of the Lanai Fire Station Parcel and the Fire Station Expansion Parcel from Pulama; and

Resolution No. _____

2. That it does hereby authorize the Mayor of the County of Maui, or the Mayor's duly authorized representative, to execute all necessary documents to fulfill the intent of this Resolution; and

3. That the County of Maui expresses its gratitude to Lanai Resorts, LLC dba Pulama Lanai; and

4. That certified copies of this Resolution be transmitted to the Mayor, Fire Chief, Finance Director and Lanai Resorts, LLC dba Pulama Lanai.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui
2014-2826
2018-11-07 Resolution

Being Lot 744-B-1, area 13,650 Sq. Ft. or 0.313 Acre, as shown on Map 80, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 862 of Castle & Cooke, Inc. and being a portion of the land described in Transfer Certificate of Title No. 96990 issued to Castle & Cooke, Inc.

Situate at Lanai City, Island of Lanai, Hawaii.



R. M. TOWILL CORPORATION

Description prepared by:

Dan L.M. Akita 4/30/16
Dan L.M. Akita Expiration Date
Licensed Professional Land Surveyor
Certificate Number 12749
Land Court Certificate Number 312

2024 North King Street, Suite 200
Honolulu, Hawaii 96819
August 6, 2014

- 1 -

2024 North King Street
Suite 200
Honolulu HI 96819-3470
Telephone 808 842 1133
Fax 808 842 1937
eMail mtowill@hawaii.r.com



R. M. TOWILL CORPORATION
SINCE 1930
Exhibit "1"

Planning
Engineering
Environmental Services
Photogrammetry
Surveying
Construction Management

LOT 1169-B

BEING A PORTION OF LOT 1169 (MAP 149)
OF LAND COURT APPLICATION 862

AT LANAI CITY, ISLAND OF LANAI, HAWAII

Beginning at the Southeast corner of this parcel of land, being also the Southwest corner of Lot 744-B-1 (Map 80) of Land Court Application 862, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POHOULA" being 9,666.21 feet South and 865.89 feet East, thence running by azimuths measured clockwise from true South:


- | | | | |
|----|----------|--------|--|
| 1. | 67° 00' | 150.00 | feet along Lot 1170 (Map 149) of Land Court Application 862; |
| 2. | 157° 00' | 91.00 | feet along proposed Lot 1169-A, being a portion of Lot 1169 (map149) of Land Court Application 862; |
| 4. | 247° 00' | 150.00 | feet along proposed Lot 1169-A, being a portion of Lot 1169 (map149) of Land Court Application 862; |
| 5. | 337° 00' | 91.00 | feet along Lot 744-B-1 (Map 80) of Land Court Application 862 to the point of beginning and containing an area of 0.313 acres, more or less; |

This description does not purport a legally subdivided lot.

R. M. TOWILL CORPORATION

Description prepared by:

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Honolulu, Hawaii 96819
August 6, 2014

 4/30/16
Dan L.M. Akita Expiration Date
Licensed Professional Land Surveyor
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- 1 -

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Telephone 808 842 1133
Fax 808 842 1837
eMail rmtowill@hawaii.rr.com



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SINCE 1930

Planning
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Environmental Services
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**PROPOSED
LAND COURT
STATE OF HAWAII
LAND COURT APPLICATION 862**

**SUBDIVISION OF LOT 1169
AS SHOWN ON MAP 149
INTO LOTS 1169-A AND 1169-B**

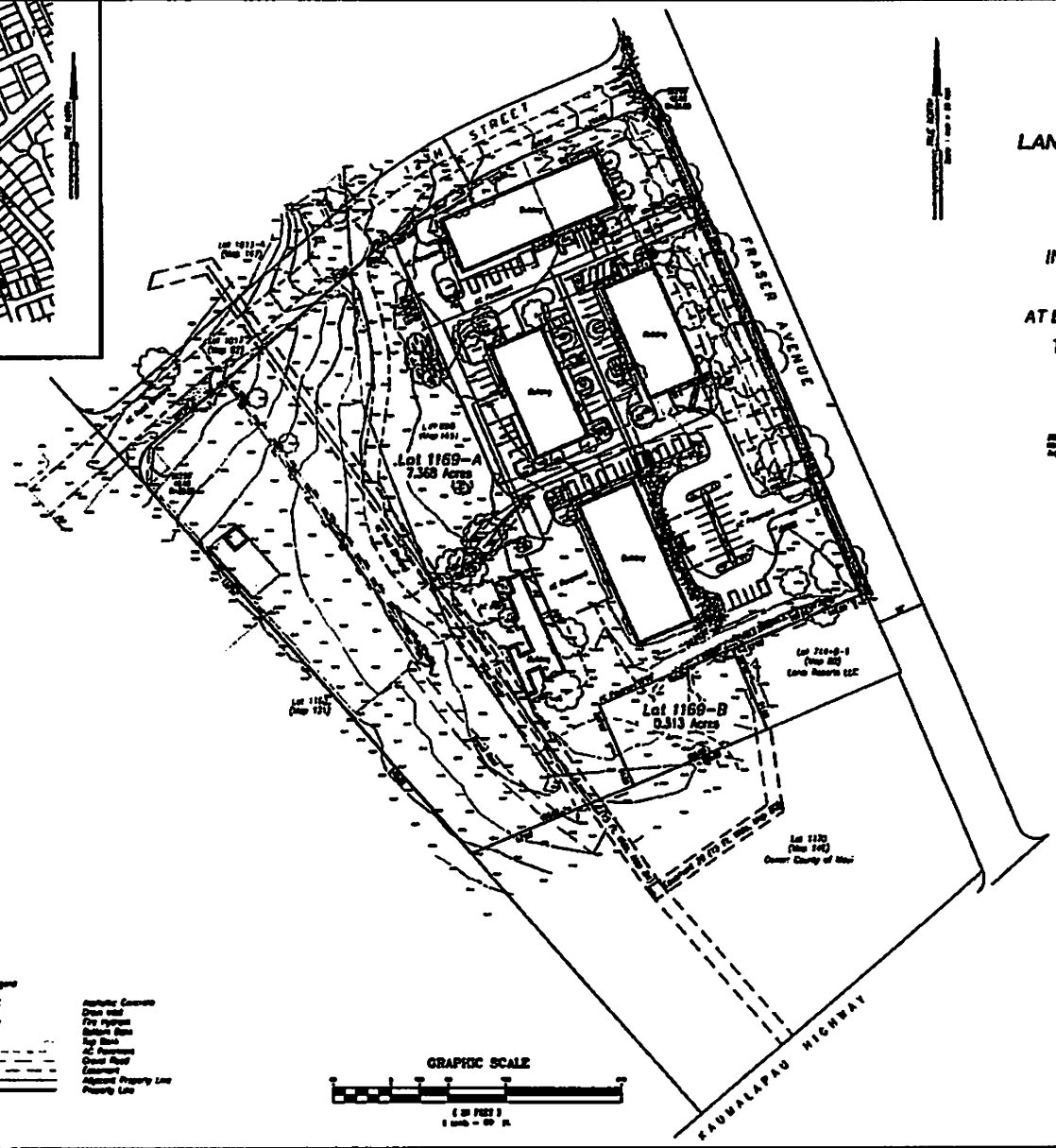
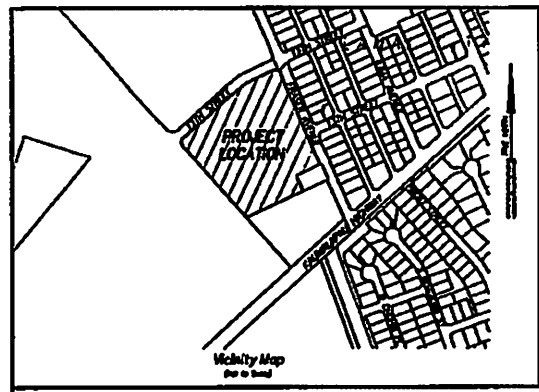
**AT LANAI CITY, ISLAND OF LANAI, HAWAII
TAX MAP KEY: (2) 4-9-014: 013**



R. M. TOWELL CORPORATION
Professional Engineer License No. 12345
State of Hawaii
12345 Lanai City, HI 96743

Map made by R. M. Towell Corporation
April 1, 2012

OFFICE: LANAI RECORDS LLC
ADDRESSES: 1214 FRASER AVE., LANAI CITY, HI 96743
810 LETA (OFFICE BUILDING) ST LANAI CITY, HI 96743
1225 FRASER AVE. ST LANAI CITY, HI 96743



- Notes**
1. Jurisdiction referred to Department Survey Inspection Station 7000247.
 2. Pursuant to state County Data Station 24429523, the County of Hawaii is not responsible for any errors, omissions (including but not limited to encroachments, easements, retained water, or easement encroachments), or any other interests in real property shown on this map or shown on these plans, unless the State County Council has accepted its jurisdiction by a resolution entered by a majority of Council's members at a regular or special meeting of the State County Council.
 3. Easement 25 for Sewer Easement affecting Lots 1169 in favor of the County of Hawaii.
 4. Easement 21 for Sewer Easement affecting Lots 1169 and 1170 in favor of the County of Hawaii.
 5. Areas
Shaded Land Use District areas
County Zoning 0-1 1290 meters
 6. Shaded Property shown in Plat 200 2, as shown on Final Encumbrance Map Map Number 1200322607, effective date, September 21, 2012.

Legend

---	Asphalt Concrete
---	Open Area
---	7/8" Asphalt
---	Bituminous Seal
---	Top Soil
---	4" Concrete
---	Open Road
---	Easement
---	Adjacent Property Line
---	Property Line



MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is made as of _____ (the "Effective Date"), by and between LANA'I RESORTS, LLC dba Pūlama Lāna'i, a Hawaii limited liability company, whose mailing address is 733 Bishop Street, Suite 2000, Honolulu, Hawaii 96813 ("Pūlama"), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose mailing address is 200 South High Street, Wailuku, Hawaii 96793 ("County").

Recitals:

WHEREAS, pursuant to a certain lease agreement between Castle & Cooke, Inc., a Hawaii corporation, as Lessor, and County, as Lessee, dated February 22, 1988, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1542121 (the "Lease"), demising that certain parcel of land situate in Lanai City, Island of Lanai, County of Maui, State of Hawaii, being more particularly described as Lot 744-B-1, as shown on Map 80, on file in Land Court with Land Court Application No. 862, as noted on Transfer Certificate of Title No. 96,990 (the "Leased Premises"), the County has been utilizing the Leased Premises for its fire station; and

WHEREAS, in 2012, Pūlama acquired from Castle & Cooke, Inc. the fee simple interest in the Leased Premises and all rights and obligations of the Lessor under the Lease; and

WHEREAS, Pūlama is the fee owner of that certain parcel located adjacent to the Leased Premises; and

WHEREAS, the County desires to acquire, and Pūlama desires to convey to the County, the Leased Premises and a portion of the above described adjacent parcel in similar shape and size as the Leased Premises (the "Adjacent Parcel", and together with the Leased Premises, the "Property") in fee simple for fire station and other County purposes subject to the terms and conditions as set forth below;

NOW, THEREFORE, Pūlama and the County agree as follows:

Agreement:

1. Conveyance. Upon fulfillment of the conditions precedent set forth in paragraph 2, below, (i) Pūlama and County shall file a termination of the Lease and (ii) Pūlama shall convey the Property by limited warranty deed (the "Deed") to County for a total purchase price of \$10.00. County will be responsible for any and all costs associated with conveyance taxes payable in connection with the conveyance of the Property and all recording fees and other costs, if any, for the termination of the Lease and the recordation of the Deed.

2. Conditions Precedent. The parties agree that prior to the conveyance of the Property and termination of the Lease, the following conditions shall apply:

a. Pūlama shall obtain a preliminary plat stamped by a Hawaii professional land surveyor which includes all information necessary to indicate the general objectives to subdivide the Adjacent Property (the "Survey"). The lot size and metes and bounds description of the Adjacent Property shall be solely determined by Pūlama.

b. County shall use good faith efforts to obtain all necessary government approvals, including without limitation an order from the Land Court of the State of Hawaii, to subdivide the Adjacent Property as shown on the Survey. County shall also use good faith efforts to obtain, at its sole cost and expense, any and all necessary government approvals for use of the Property as a fire station or other County uses.

3. **Condition of Property; Disclaimer.** The Property will be conveyed to the County "as is" and, upon conveyance, County will have decided to purchase the Property solely on the basis of its own independent investigation concerning the condition of the Property and the suitability and acceptability of the Property for County's intended purposes, including but not limited to: (i) the physical condition, size, dimensions, location and topography of the Property, (ii) the accuracy of any maps, floor plans, abstracts, sketches, drawings, schedules, or other documents relating to the Property, (iii) the availability or adequacy of access to the Property, or of water, sewage, gas, electrical or other utilities necessary for the use of the Property, (iv) County's proposed use of the Property, (v) the ability of County to obtain any necessary governmental approvals or permits for County's intended use or development of the Property, (vi) the compliance or non-compliance of the Property with any Environmental Law (as defined below), (vii) the zoning of the Property, and (viii) all other matters concerning the ownership, management, condition, use, development or sale of the Property. As used herein: "Environmental Law" refers to any and all federal, state or local laws, ordinances, rules or other requirements of any governmental body relating to environmental conditions or industrial hygiene, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 1801, et seq., the Clean Water Act, as amended, 33 U.S.C. Section 1251, the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq., the Safe Drinking Water Act, as amended, 42 U.S.C. Sections 300f through 300j, and the Hawaii Environmental Response Law, Hawaii Revised Statutes, Chapter 128D.

Upon conveyance of the Property, County shall release, remise, acquit and forever discharge Pūlama and its affiliates, successors and assigns, and their respective affiliates, members, managers, directors, officers, shareholders, partners, employees, agents, representatives, consultants and attorneys, from and against, and hereby waives, any and all claims, causes of actions, suits, legal or administrative orders or proceedings, demands, damages, punitive damages, losses, costs, liabilities and expenses, whether known or unknown, arising out of or in any way relating to, the following: (i) the physical condition of the Property; (ii) the existence or presence of any Hazardous Materials (defined below) on, under or about the Property and/or the release or discharge of any Hazardous Materials from the Property; (iii) the violations of any applicable statutes or laws with regard to the Property, including any

Environmental Law; and (iv) any and all other matters regarding the Property, in each case whether existing prior to or after conveyance of the Property. As used herein, "Hazardous Materials" means and includes any and all substances regulated by, or defined as included in the definition of "hazardous substances," "hazardous wastes", "hazardous materials", or "toxic substances" under, any Environmental Law.

Pūlama has not made, does not make, and has not authorized anyone else to make any representation as to the present or future physical condition, value, financing status, or use pertaining to the Property and County acknowledges that no such representation has been made. Pūlama makes no warranty or representation, express or implied or arising by operation of law, including, without limitation, any warranty of condition, habitability, merchantability, or fitness for a particular purpose of the Property. Pūlama shall not be liable for or bound by any verbal or written statements, representations, or information pertaining to the Property furnished by any agent, employee, servant or any other person.

4. General Conditions.

a. **Term.** The term of this MOU shall automatically expire three years after the Effective Date or upon Conveyance as set forth in Paragraph 1, whichever is sooner (the "Term"). County may request an extension of the Term by submitting a written request to Pūlama no later than thirty (30) days prior to the expiration of the Term which Pūlama may grant or deny in its sole discretion.

b. **Binding Effect.** This MOU, and each and every term and provision hereof, shall inure to the benefit of, and be binding upon and enforceable against, Pūlama and County and their respective successors and assigns.

c. **Applicable Law.** This MOU shall be governed by, and construed in accordance with, the laws of the State of Hawaii.

d. **Counterparts.** This MOU may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signature of all the parties. Each executed counterpart shall be deemed an original, but all of which together shall constitute one and the same MOU.

e. **Facsimile/E-mail Signatures.** Pūlama and County agree that facsimile and *.pdf email signatures on this MOU and any other documents related to this MOU shall be binding and effective for all purposes and treated in the same manner as physical signatures; provided however that the parties acknowledge that physical signatures are required on all documents to be recorded as provided herein.

[Signatures are on the next page.]

IN WITNESS WHEREOF, the Pūlama and County have caused this MOU to be executed by their duly authorized officers as of the Effective Date.

**LANA'I RESORTS, LLC dba Pūlama Lāna'i,
a Hawaii limited liability company**

By: 

KURT MATSUMOTO
Chief Operating Officer

Pūlama

COUNTY OF MAUI

By: _____
ALAN M. ARAKAWA
Mayor

County