

REQUEST FOR LEGAL SERVICES

RECEIVED

By Corporation Counsel at 8:07 am, Nov 18, 2022

Date: November 17, 2022

From: Yuki Lei K. Sugimura, Chair

Infrastructure and Transportation Committee

TRANSMITTAL

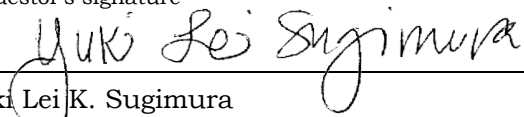
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael Hopper, Esq.

Subject: RESOLUTION 22-145, APPROVING WATERLINE EASEMENT IN THE SANDHILLS ESTATES SUBDIVISION (WAILUKU) (IT-101)

Background Data: Please review the attached revised proposed resolution. Please transmit response to it.committee@mauicounty.us with a reference to IT-101.

Work Requested: ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY

☐ [] OTHER:

Requestor's signature  Yuki Lei K. Sugimura	Contact Person <u>Laksmi Abraham</u> (Telephone Extension: <u>7659</u>)
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☐ [] ROUTINE (WITHIN 15 WORKING DAYS)

☐ [] RUSH (WITHIN 5 WORKING DAYS)

☐ [] PRIORITY (WITHIN 10 WORKING DAYS)

☐ [] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 23, 2022

REASON: For posting for December 2, 2022, Council Meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: MJH	ASSIGNMENT NO. 2021-0015	BY: maa
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TO REQUESTOR: ☒ [X] APPROVED ☐ [] DISAPPROVED ☐ [] OTHER (SEE COMMENTS BELOW)

☐ [] RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE):

DEPARTMENT OF THE CORPORATION COUNSEL

Date 11/23/2022

By MJH

(Rev. 7/03)

it:ltr:101acc01:lma

Attachment

Resolution

No. 22-145

APPROVING DISPOSITION OF NONEXCLUSIVE WATERLINE EASEMENT DUE TO RELOCATION OF WATERLINE IMPROVEMENTS IN THE SANDHILLS ESTATES SUBDIVISION

WHEREAS, the County of Maui is the holder of that certain Nonexclusive Waterline Easement dated August 26, 1952, and recorded in the Bureau of Conveyances of the State of Hawai'i on January 5, 1953, in Liber 2654 at Page 179 ("Existing Easement"), attached as Exhibit "1"; and

WHEREAS, the purpose of the Existing Easement provided the Department of Water Supply with a right and easement to construct, install, maintain, operate, repair, remove, replace, and reinstall an underground water pipeline or pipelines situated at Wailuku, Maui, Hawai'i; and

WHEREAS, due to the development of the Sandhills Estates Subdivision, the waterline improvements were removed from within the developable lots of the subdivision and relocated into roadways; and

WHEREAS, the Existing Easement traverses portions of private parcels of land within the Sandhills Estates Subdivision, including Lot 86 of the subdivision; and

WHEREAS, the County of Maui does not anticipate installing a waterline in the Existing Easement; and

WHEREAS, the County of Maui and the Owner of Lot 86 desire to partially cancel the Existing Easement only as to the portion located within Lot 86 through a Partial Cancellation of Easement, attached as Exhibit "2"; and

WHEREAS, the Existing Easement is considered "real property," under Section 3.44.010, Maui County Code; and

WHEREAS, the disposition of a portion of the Existing Easement by way of cancellation is in the public interest because it reduces the potential maintenance burden and liabilities to the County of Maui in having an unused easement; and

Resolution No. _____

WHEREAS, disposition of real property under Section 3.44.020 requires the authorization of the Council by resolution; and

WHEREAS, under Section 3.44.030(A), disposition of real property must be made at public auction unless the Council finds that it is in the best interest to dispose of the real property in another manner and adopts a resolution to that effect, approved by two-thirds of its members; now therefore,

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

1. That it finds that disposition of a portion of the Existing Easement by cancellation is in the public interest and waives the requirement for disposition by public auction;
2. That it approves the disposition of a portion of the Existing Easement by cancellation as described in Exhibit "2"; and
3. That certified copies of this Resolution be transmitted to the Mayor, Director of Water Supply, and Director of Finance.

APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper

Deputy Corporation Counsel
County of Maui

it:misc:101areso01:lma

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Chris P. Lee".

Upon the request of the Mayor.

THIS INDENTURE, made this 26th day of August, 1952, by and between HAWAIIAN COMMERCIAL AND SUGAR COMPANY, LIMITED, a Hawaii corporation, hereinafter called the "Grantor," party of the first part, and COUNTY OF MAUI, a political subdivision of the Territory of Hawaii, hereinafter called the "Grantee," party of the second part, and MAUI COUNTY WATERWORKS BOARD, COUNTY OF MAUI, Territory of Hawaii, hereinafter called the "Board," party of the third part,

W I T N E S S E T H:

That the Grantor, in consideration of the sum of ONE DOLLAR (\$1) to it paid by the Board, the receipt whereof is hereby acknowledged, and of the covenants hereinafter contained and on the part of the Board to be observed and performed, does hereby grant unto the Grantee the right and easement, to be exercised and enjoyed by the Board, to enter upon and to construct, install, maintain, operate, repair, remove, replace and reinstall an underground water pipe line or pipe lines under, over and across that certain piece or parcel of land (hereinafter referred to as the "easement area") described as follows:

Being a portion of R. F. 445, L. C. Aw. 7713 to V. Kamamalu, situated at Kalua, Wailuku, Island and County of Maui, said Territory, ten (10) feet wide, five (5) feet on each side of the center line of said 10-foot strip of land, said center line being particularly described as follows:

Beginning at a point on the Wailuku Sugar Company-Hawaiian Commercial & Sugar Company Compromise Boundary, the coordinates of which point of beginning being 312.50 feet north, 32.59 feet west referred to U. S. C. & G. S. Trig. Station "Luke" and running by azimuths measured clockwise from true south:

1. 270° 50' 30" 402.05 feet;
2. 225° 00' 30" 203.00 feet;
3. 270° 00' 310.72 feet;
4. 257° 25' 30" 1561.50 feet to a point on the westerly boundary of the Kahului Tank Lot conveyed to the County

of Maui by instrument dated December 2, 1932, and recorded in the Bureau of Conveyances of said Territory in Liber 1194, page 187, said center line having a total length of 2497.57 feet.

TO HAVE AND TO HOLD the aforesaid easement unto the Grantee, its successors and assigns.

PROVIDED, HOWEVER, that if the said Board shall fail to install a pipe line or pipe lines through, under or across the above described easement area or portion thereof within two years from the date hereof or shall in the future remove its said pipe line or pipe lines from said easement area or portion thereof and for a period of two or more years fail to install a pipe line or pipe lines therein or thereunder, or should said easement be abandoned and remain unused by the Board for a period of two years, then and in any of such events the rights granted hereunder as to said portions of said easement area shall thereupon terminate without any action on the part of the Grantor and full unencumbered title to such portion of said easement area so unused or so abandoned shall revert and revest in the Grantor.

AND, in consideration of the rights hereby granted and the acceptance thereof, the Board hereby covenants and agrees:

That said pipe line or pipe lines shall be laid, installed and maintained at a depth of not less than twenty-four (24) inches below the surface of the easement area and that after the original construction and installation thereof or any subsequent repair work thereto has been completed the surface of the ground and any road, walk or curb above the same shall be restored to its original condition, to the extent that such restoration is reasonably possible; and

That the Board shall indemnify and save harmless the Grantor against all loss or damage to property and from all liability for injury to or death of persons when such loss, damage, injury or death is caused by the negligent construction, maintenance or operation of said pipe line or pipe lines.

IT IS FURTHER UNDERSTOOD AND AGREED that this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided that neither the Grantee nor the Board shall assign any right hereby granted otherwise than to a duly created or established legal successor of either the said Grantee or the said Board without the written consent of the Grantor.

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

HAWAIIAN COMMERCIAL AND SUGAR COMPANY, LIMITED

By [Signature]
Its VICE-PRESIDENT
By [Signature]
Its TREASURER
Grantor

COUNTY OF MAUI

By [Signature]
Chairman and Executive Officer
of the Board of Supervisors
Grantee

MAUI COUNTY WATERWORKS BOARD,
COUNTY OF MAUI

By [Signature]
Its President
By [Signature]
Its Secretary
Board

TERRITORY OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 26th day of August, 1952, before me appeared E. B. WIGHTMAN and JAS. F. MORGAN, to me personally known, who, being by me duly sworn, did say that they are the VICE-PRESIDENT and TREASURER, respectively, of HAWAIIAN COMMERCIAL AND SUGAR COMPANY, LIMITED, a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said E. B. WIGHTMAN and JAS. F. MORGAN severally acknowledged the instrument to be the free act and deed of said corporation.

Al. Kaim Young
Notary Public, First Judicial
Circuit, Territory of Hawaii
My commission expires: Dec. 18, 1953

TERRITORY OF HAWAII

COUNTY OF MAUI

SS:

On this 5th day of December, 1952, before me appeared Eddie Tam, to me personally known to be the Chairman and Executive Officer of the Board of Supervisors of the COUNTY OF MAUI; that the seal affixed to the foregoing instrument is the seal of the County of Maui, and that the said instrument was signed and sealed on behalf of the said County of Maui by authority of its Board of Supervisors, and the said Eddie Tam acknowledged the said instrument to be the free act and deed of said County of Maui.

Kimiko O. O'Brien
Notary Public, Second Judicial
Circuit, Territory of Hawaii
My commission expires: June 30, 1953

TERRITORY OF HAWAII

COUNTY OF MAUI

SS:

On this 31st day of October, 1952, before me appeared D. T. FLEMING and D. H. TOKUNAGA, to me personally known, who, being by me duly sworn, did say that they are President and Secretary, respectively, of the MAUI COUNTY WATERWORKS BOARD, COUNTY OF MAUI, and that the foregoing instrument was signed on behalf of said Board by authority of the members of said Board and said D. T. FLEMING and D. H. TOKUNAGA severally acknowledged the said instrument to be the free act and deed of said Board.

E. H. Miyajima
Notary Public, Second Judicial
Circuit, Territory of Hawaii
My commission expires: June 30, 1953

Entered of Record JAN - 5 1953
and compared.

Mark W. Buckstein Registrar of Conveyances

By

Clerk.

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REGULAR SYSTEM

COUNTY OF MAUI
Department of Water Supply
Engineering Division
200 South High Street, 5th Floor
Wailuku, Hawaii 96793

PARTIAL CANCELLATION OF EASEMENT
(Waterline)

OWNERS: MARK HENRY MATTOS, TRUSTEE
CANDIS GAY MATTOS, TRUSTEE
411 Huala Place
Hilo, Hawaii 96720

COUNTY: COUNTY OF MAUI
200 South High Street
Wailuku, Hawaii 96793

Total No. of Pages

**PARTIAL CANCELLATION OF EASEMENT
(Waterline)**

THIS PARTIAL CANCELLATION OF EASEMENT, is made this ____ day of _____, 20____, by and between MARK HENRY MATTOS and CANDIS GAY MATTOS, Trustees under the Revocable Trust of Mark Henry Mattos and Candis Gay Mattos dated August 14, 2019, whose address is 411 Huala Place, Hilo, Hawaii 96720, (hereinafter referred to as the "Owners"), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, the principal office and mailing address of which is 200 South High Street, Wailuku, Hawaii 96793 (hereinafter referred to as the "County").

W I T N E S S E T H:

WHEREAS, the County is the holder of an existing 10-foot wide easement for water pipeline purposes, dated August 26, 1952 and recorded in the State of Hawaii Bureau of Conveyances in Liber 2654, Page 177, as described in Exhibit "A", attached hereto and made a part hereof, hereinafter referred to as the "Existing Waterline Easement"; and

WHEREAS, Owners own that certain parcel of land situate at Wailuku, Island and County of Maui, State of Hawaii, known as Lot 86 of the Sandhills Estates Subdivision, designated as Tax Map Key No. (2) 3-8-089:086 and more particularly shown on Exhibit "B", attached hereto and made a part hereof; and

WHEREAS, the Existing Waterline Easement traverses portions of private parcels of land within the Sandhills Estates Subdivision, including Owners' Lot 86; and

WHEREAS, offsite waterline improvements were completed within the internal subdivision roadways and the County does not anticipate installing a waterline in the Existing Waterline Easement; and

WHEREAS, the County and Owners desire to partially cancel the Existing Waterline Easement only as it relates to the Existing Waterline Easement located within Owners' Lot 86, as shown in Exhibit "C";

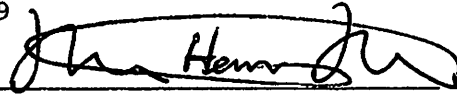
NOW, THEREFORE, the County and the Owners do hereby agree that the Existing Waterline Easement is partially cancelled and shall be of no further force or effect only as to the portion of the Existing Waterline Easement located within Owners' Lot 86.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed on the day and year first written above.

GRANTOR:

REVOCABLE TRUST OF MARK HENRY MATTOS
AND CANDIS GAY MATTOS, DATED AUGUST
14, 2019

By


MARK HENRY MATTOS
Its Trustee

REVOCABLE TRUST OF MARK HENRY MATTOS
AND CANDIS GAY MATTOS, DATED AUGUST
14, 2019

By


CANDIS GAY MATTOS
Its Trustee

GRANTEE:

COUNTY OF MAUI

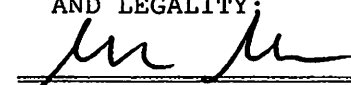
By

MICHAEL P. VICTORINO
Its Mayor

APPROVED:


JEFFREY T. PEARSON, P.E.
Director of Water Supply

APPROVED AS TO FORM
AND LEGALITY:


JENNIFER M.P.E. OANA
Deputy Corporation Counsel

STATE OF Hawaii)
) SS.
COUNTY OF Hawaii)

On this 20th day of July, 2021, before me personally appeared MARK HENRY MATTOS, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Cory T. Watanabe
Notary Public, State of Hawaii

Print Name: CORY T. WATANABE

My Commission Expires: 3/7/2022

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>undated</u>	# Pages:	<u>2 n.p. & 12</u>
Notary Name:	<u>CORY T. WATANABE</u>	Judicial Circuit:	<u>Third</u>
Doc. Description:	<u>Partial Cancellation of Easement</u>		
Notary Signature:	<u>Cory T. Watanabe</u>		
Date:	<u>7/20/21</u>		

(Stamp or Seal)

STATE OF Hawaii)
) SS.
COUNTY OF Hawaii)

On this 20th day of July, 2021, before me personally appeared CANDIS GAY MATTOS, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Cory T. Watanabe

Notary Public, State of Hawaii

Print Name: CORY T. WATANABE

My Commission Expires: 3/7/2022

NOTARY PUBLIC CERTIFICATION		
Doc. Date: <u>undated</u>	# Pages: <u>12</u>	<u>WHP</u>
Notary Name: <u>CORY T. WATANABE</u>	Judicial Circuit: <u>Third</u>	
Doc. Description: <u>Partial Cancellation of Easement</u>		
[Stamp or Seal]		
Notary Signature: <u>Cory T. Watanabe</u>		
Date: <u>7/20/21</u>		

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this ____ day of _____, 20____, before me personally appeared MICHAEL P. VICTORINO, to me personally known, who, being by me duly sworn or affirmed, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said MICHAEL P. VICTORINO acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____ _____ _____ _____	[Stamp or Seal]
Notary Signature: _____	
Date: _____	

EXHIBIT A

FILED 2654 PAGE 177

THIS INDENTURE, made this 26th day of August, 1952, by and between HAWAIIAN COMMERCIAL AND SUGAR COMPANY, LIMITED, a Hawaii corporation, hereinafter called the "Grantor," party of the first part, and COUNTY OF MAUI, a political subdivision of the Territory of Hawaii, hereinafter called the "Grantee," party of the second part, and MAUI COUNTY WATERWORKS BOARD, COUNTY OF MAUI, Territory of Hawaii, hereinafter called the "Board," party of the third part,

W I T N E S S E T H:

That the Grantor, in consideration of the sum of ONE DOLLAR (\$1) to it paid by the Board, the receipt whereof is hereby acknowledged, and of the covenants hereinafter contained and on the part of the Board to be observed and performed, does hereby grant unto the Grantee the right and easement, to be exercised and enjoyed by the Board, to enter upon and to construct, install, maintain, operate, repair, remove, replace and reinstall an underground water pipe line or pipe lines under, over and across that certain piece or parcel of land (hereinafter referred to as the "easement area") described as follows:

Being a portion of R. F. 44.5, L. C. Aw. 7713 to V. Kamamalu, situated at Kalua, Wailuku, Island and County of Maui, said Territory, ten (10) feet wide, five (5) feet on each side of the center line of said 10-foot strip of land, said center line being particularly described as follows:

Beginning at a point on the Wailuku Sugar Company-Hawaiian Commercial & Sugar Company Compromise Boundary, the coordinates of which point of beginning being 312.50 feet north, 32.59 feet west referred to U. S. C. & G. S. Trig. Station "Luke" and running by azimuths measured clockwise from true south:

1. 270° 50' 30" 402.05 feet;
2. 225° 00' 30" 203.00 feet;
3. 270° 00' 310.72 feet;
4. 251° 25' 30" 1501.50 feet to a point on the westerly boundary of the Kahului Tank Lot conveyed to the County

of Maui by instrument dated December 2, 1932, and recorded in the Bureau of Conveyances of said Territory in Liber 1194, page 167, said center line having a total length of 2497.57 feet.

TO HAVE AND TO HOLD the aforesaid easement unto the Grantee, its successors and assigns.

PROVIDED, HOWEVER, that if the said Board shall fail to install a pipe line or pipe lines through, under or across the above described easement area or portion thereof within two years from the date hereof or shall in the future remove its said pipe line or pipe lines from said easement area or portion thereof and for a period of two or more years fail to install a pipe line or pipe lines therein or thereunder, or should said easement be abandoned and remain unused by the Board for a period of two years, then and in any of such events the rights granted hereunder as to said portions of said easement area shall thereupon terminate without any action on the part of the Grantor and full unencumbered title to such portion of said easement area so unused or so abandoned shall revert and revest in the Grantor.

AND, in consideration of the rights hereby granted and the acceptance thereof, the Board hereby covenants and agrees:

That said pipe line or pipe lines shall be laid, installed and maintained at a depth of not less than twenty-four (24) inches below the surface of the easement area and that after the original construction and installation thereof or any subsequent repair work thereto has been completed the surface of the ground and any road, walk or curb above the same shall be restored to its original condition, to the extent that such restoration is reasonably possible; and

That the Board shall indemnify and save harmless the Grantor against all loss or damage to property and from all liability for injury to or death of persons when such loss, damage, injury or death is caused by the negligent construction, maintenance or operation of said pipe line or pipe lines.

IT IS FURTHER UNDERSTOOD AND AGREED that this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided that neither the Grantee nor the Board shall assign any right hereby granted otherwise than to a duly created or established legal successor of either the said Grantee or the said Board without the written consent of the Grantor.

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

HAWAIIAN COMMERCIAL AND SUGAR
COMPANY, LIMITED

By

[Signature]
its VICE-PRESIDENT

By

[Signature]
its TREASURER

Grantor

COUNTY OF MAUI

By

[Signature]
Chairman and Executive Officer
of the Board of Supervisors

Grantee

MAUI COUNTY WATERWORKS BOARD,
COUNTY OF MAUI

By

[Signature]
its President

By

[Signature]
its Secretary

Board

TERRITORY OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 26th day of August, 1952, before me appeared E. B. WIGHTMAN and JAS. F. MORGAN, to me personally known, who, being by me duly sworn, did say that they are the VICE-PRESIDENT and TREASURER, respectively, of HAWAIIAN COMMERCIAL AND SUGAR COMPANY, LIMITED, a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said E. B. WIGHTMAN and JAS. F. MORGAN severally acknowledged the instrument to be the free act and deed of said corporation.

Ad. Kean Young
Notary Public, First Judicial
Circuit, Territory of Hawaii
My commission expires: Oct. 18, 1953

TERRITORY OF HAWAII

COUNTY OF MAUI

SS:

On this 5th day of December, 1952, before me appeared Eddie Tam, to me personally known to be the Chairman and Executive Officer of the Board of Supervisors of the COUNTY OF MAUI; that the seal affixed to the foregoing instrument is the seal of the County of Maui, and that the said instrument was signed and sealed on behalf of the said County of Maui by authority of its Board of Supervisors, and the said Eddie Tam acknowledged the said instrument to be the free act and deed of said County of Maui.

Kimiko Oshiro
Notary Public, Second Judicial
Circuit, Territory of Hawaii
My commission expires: June 30, 1953

TERRITORY OF HAWAII

COUNTY OF MAUI

SS:

On this 31st day of October, 1952, before me appeared D. T. FLEMING and D. H. TOKUNAGA, to me personally known, who, being by me duly sworn, did say that they are President and Secretary, respectively, of the MAUI COUNTY WATERWORKS BOARD, COUNTY OF MAUI, and that the foregoing instrument was signed on behalf of said Board by authority of the members of said Board and said D. T. FLEMING and D. H. TOKUNAGA severally acknowledged the said instrument to be the free act and deed of said Board.

E. H. Miyajima
Notary Public, Second Judicial
Circuit, Territory of Hawaii
My commission expires: June 30, 1953.

Entered of Record, JAN - 5 1953
and compared.

Mark W. Buckstein Registrar of Conveyances

By

Clerk.

EXHIBIT "C"

