

COUNCIL OF THE COUNTY OF MAUI
PARKS, RECREATION, ENERGY, AND
LEGAL AFFAIRS COMMITTEE

December 15, 2017

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Parks, Recreation, Energy, and Legal Affairs Committee, having met on November 28, 2017, makes reference to County Communication 17-436, from the Director of Parks and Recreation, transmitting the following:

1. A proposed resolution entitled "AUTHORIZING A GRANT OF A LEASE OF COUNTY RECREATIONAL SPACE TO HAWAIIAN KAMALI'I, INC."

The purpose of the proposed resolution is to grant a 20-year lease of County recreational space to Hawaiian Kamali'i, Inc. for the 9,135 square feet of land upon which their canoe hale is located at Hoaloha Park, Kahului, Maui, Hawaii, which, if granted, would require the termination of their existing "License to Occupy" for property that includes the land occupied by the canoe hale.

2. A proposed resolution entitled "AUTHORIZING A GRANT OF A LEASE OF COUNTY RECREATIONAL SPACE TO NA KAI EWALU CANOE CLUB."

The purpose of the proposed resolution is to grant a 20-year lease of County recreational space to Na Kai Ewalu, for the 8,709 square feet of land upon which their canoe hale is located at Hoaloha Park, Kahului, Maui, Hawaii.

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The Director also transmitted a copy of the License to Occupy, dated December 21, 1994, between the County, Hawaiian Canoe Club, Inc., and Hawaiian Kamali'i, Inc. for tax map keys (2) 3-7-008:017 ("Parcel 17") and (2) 3-7-008:008 ("Parcel 8"). The License to Occupy grants exclusive use of a portion of Parcel 17, nonexclusive use of the remainder of Parcel 17, and an easement for nonexclusive use of Parcel 8 for access from Kaahumanu Avenue to Parcel 17, and is in effect until 2034. The License provides for the exclusive use of the land occupied by both the Hawaiian Kamali'i, Inc. and Na Kai Ewalu canoe club hale and a ten-foot perimeter around each hale.

At the request of the Chair of your Committee, the Director of Parks and Recreation transmitted revised proposed resolutions, entitled "AUTHORIZING A GRANT OF A LEASE OF COUNTY RECREATIONAL SPACE TO HAWAIIAN KAMALI'I, INC.," and "AUTHORIZING A GRANT OF A LEASE OF COUNTY RECREATIONAL SPACE TO NA KAI EWALU," approved as to form and legality by the Department of the Corporation Counsel, correcting the tax map key for the property and incorporating nonsubstantive revisions.

In his response, the Director said the proposed leases will not alter the County's or the canoe clubs' responsibilities regarding homeless and security-related issues at Hoaloha Park.

Your Committee questioned whether it would be feasible to sell, rather than lease, the land to the two clubs. A Deputy Corporation Counsel said the option to purchase had not been explored and all parties were satisfied with the prospect of long-term leases.

David Ward, President, Hawaiian Kamali'i, Inc., and Keone Ball, President, Na Kai Ewalu, said Hoaloha Park is used for a variety of recreational activities and not used exclusively by the canoe clubs. The proposed leases would enable the lessees to secure their hale and promote their safe use, including the safety of keiki using the premises. Mr. Ward and Mr. Ball also requested consideration of a longer lease term than the proposed 20 years, if your Committee felt it appropriate.

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Your Committee discussed the possibility of extending the length of the proposed leases. Your Committee noted the Warranty Deed transferring Parcel 17 from A&B-Hawaii, Inc. to the County, dated May 18, 1994, provides the Parcel must be used for park and recreational purposes, and that one of those purposes must consist of organized Hawaiian outrigger canoeing activities.

Your Committee also noted an appreciation for the canoe clubs' stewardship of the land upon which their canoe hale are located. Your Committee further noted both clubs have been recognized on various occasions for outstanding community achievements.

Your Committee recommended the proposed leases be revised by extending their terms from 20 years to 50 years.

Your Committee also revised the proposed leases to incorporate a special condition in paragraph H, the "Additional Covenants, Terms and Conditions," to require the lessees to maintain a policy of general liability insurance naming the County and Alexander and Baldwin, LLC as an additional insured, against liability for personal injury or property damage arising out of the use of the easement area on Parcel 8. Your Committee also revised the proposed leases by adding an exhibit describing the easement.

The Deputy said a document terminating the existing License to Occupy will be recorded with the State of Hawaii Bureau of Conveyances.

Your Committee voted 8-0 to recommend adoption of the revised proposed resolutions and filing of the communication. Committee Chair Guzman, Vice-Chair King, and members Atay, Carroll, Crivello, Hokama, Sugimura, and White voted "aye." Committee member Cochran was excused.

COUNCIL OF THE COUNTY OF MAUI
**PARKS, RECREATION, ENERGY, AND
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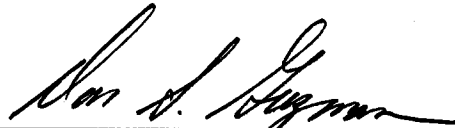
**Committee
Report No. _____**

Your Committee is in receipt of revised proposed resolutions, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Parks, Recreation, Energy, and Legal Affairs Committee RECOMMENDS the following:

1. That Resolution _____, as revised herein and attached hereto, entitled "AUTHORIZING A GRANT OF A LEASE OF COUNTY RECREATIONAL SPACE TO HAWAIIAN KAMALI'I, INC.," be ADOPTED;
2. That Resolution _____, as revised herein and attached hereto, entitled "AUTHORIZING A GRANT OF A LEASE OF COUNTY RECREATIONAL SPACE TO NA KAI EWALU," be ADOPTED; and
3. That County Communication 17-436 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



DON S. GUZMAN, Chair

Resolution

No. _____

AUTHORIZING A GRANT OF A LEASE OF COUNTY RECREATIONAL SPACE TO HAWAIIAN KAMALI'I, INC.

WHEREAS, Hawaiian Kamali'i, Inc., a Hawaii nonprofit corporation, desires to obtain a lease of certain County real property identified as Tax Map Key Number (2) 3-7-008:017 (por.), an area of approximately 9,135 square feet, to perpetuate and preserve the art of Hawaiian canoe paddling and traditional Hawaiian values, character development, and physical fitness; and

WHEREAS, the proposed Lease of County Recreational Space is attached hereto and by reference made a part hereof as Exhibit "1"; and

WHEREAS, Hawaiian Canoe Club, Inc., Hawaiian Kamali'i, Inc. and the County of Maui entered into a "License to Occupy" dated December 21, 1994 and recorded with the Bureau of Conveyances, State of Hawaii, on January 5, 1995; and

WHEREAS, Hawaiian Kamali'i, Inc., doing business as Hawaiian Canoe Club, exercised its option to extend the License to Occupy until December 31, 2034; and

Resolution No. _____

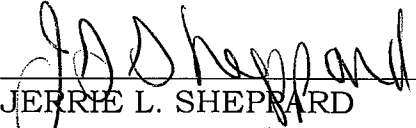
WHEREAS, Hawaiian Kamali'i, Inc. wishes to enter into the proposed Lease attached hereto as Exhibit "1" and terminate its License to Occupy; and

WHEREAS, pursuant to Maui County Code Section 3.36.090, the Council of the County of Maui may authorize the grant of a lease of County real property by resolution; now, therefore,

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

1. That pursuant to Section 3.36.090, Maui County Code, the grant of the Lease is hereby authorized; and
2. That the Mayor and the Director of Finance or their authorized representatives may execute the Lease; and
3. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Director of Parks and Recreation, and Hawaiian Kamali'i, Inc.

APPROVED AS TO FORM
AND LEGALITY:


JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui
LF 2017-0217

W I T N E S S E T H:

WHEREAS, the Lessor is the owner of that certain parcel of land of which Lessee desires to lease a portion, described below as the "Premises", to provide for the perpetuation and preservation of the art of Hawaiian canoe paddling by providing an environment rooted in traditional Hawaiian values that promotes personal growth, character development, and achievement in physical fitness; and

WHEREAS, Lessee has occupied the Premises as a tenant since 1994 pursuant to a "License to Occupy" with the County of Maui, dated December 21, 1994, which was recorded with the State of Hawaii Bureau of Conveyances on January 5, 1995. Lessee has invested in and improved the Premises and adjacent areas to meet its needs during said occupancy; and

WHEREAS, the County of Maui supports Lessee and hopes to assist Lessee by replacing the License to Occupy, dated December 21, 1994, with this Lease so that Lessee may continue to conduct its activities on the Premises; NOW, THEREFORE,

Lessor, for and in consideration of Lessee's covenants and agreements set forth herein, does hereby agree to grant a lease to Lessee and Lessee hereby accepts said lease on the terms and conditions set forth below:

A. Premises. The leased area consists of approximately 9,135 square feet, more or less, situated on the area identified as Tax Map Key Number (2)3-7-008:017, more particularly described

as "Easement A" in Exhibits "A" and "B", attached hereto and by reference incorporated herein, hereinafter referred to as the "Premises."

B. Use of Premises. Lessee shall have exclusive use of the Premises to perpetuate and preserve the art of Hawaiian canoe paddling activities and conduct activities including but not limited to recreational and competitive canoe paddling and regattas, cultural and educational youth programs, community events, club fundraising events, meetings, and celebrations, which are intended to promote personal growth, character development, and achievement in physical fitness, in an environment rooted in traditional Hawaiian values. Lessee shall have non-exclusive use of the areas immediately adjacent to the Premises for such activities. Non-exclusive use means these areas remain open to the public. The use of the Premises for any other purpose shall require the prior written approval of Lessor, through its Director of the Department of Parks and Recreation ("Director"). Lessee may obtain a permit from the Director for temporary exclusive use of any other portion of Tax Map Key Number (2) 3-7-008:017, also referred to as Parcel 17, as set forth in Section G. No commercial activities are allowed on the Premises. No subleasing or letting of the Premises is allowed.

C. Term. This Lease shall commence upon execution and expire fifty years thereafter, unless sooner terminated as provided herein.

D. Rent. Lessor reserving and the Lessee yielding and paying to the Lessor the nominal rental amount of ONE DOLLAR (\$1.00) per annum, payable to the County of Maui, Department of Finance, at Lessor's address designated herein or as otherwise designated in writing by Lessor, in advance, within ninety (90) days of execution of this lease, the receipt and sufficiency of which is hereby acknowledged.

E. Parking lot and areas adjacent to the Premises. Lessee may have temporary, non-exclusive use of the parking lot serving Hoaloha Park, and all areas of Parcel 17 adjacent to the Premises. Lessee shall not restrict the public's use of or access to the parking lot or the other areas of Hoaloha Park unless Lessee obtains a permit as described in Section G. herein.

F. No disturbance. Lessee acknowledges and confirms that the Premises is located within Hoaloha Park, a public park facility used by the general public. Lessee and anyone claiming under Lessee, shall limit their activities to the Premises covered by this Agreement and will exercise its rights in a manner causing as little interference as reasonably possible with the use of Hoaloha Park and its parking lot. Lessee and anyone claiming under Lessee shall obey reasonable rules, regulations, instructions and/or directions of Lessor and Lessor's officers, employees, or agents applicable to Hoaloha Park.

G. Permit Required. If Lessee desires to have temporary, exclusive use of the parking lot, other areas of Hoaloha Park, or

Parcel 17, Lessee shall apply for a use permit with the Department of Parks and Recreation. Any event open to the public requires notice to the Department of Parks and Recreation Permit Office, DPRpermits@co.maui.hi.us, (808) 270-7389, no less than three months prior to the event to determine if additional permitting is required.

H. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C" attached hereto and by reference made a part hereof. In addition, the following special condition applies:

Special Condition 1: Lessee is required to maintain a policy of general liability insurance naming the County of Maui and Alexander and Baldwin, LLC ("A&B") as an additional insured, against liability for personal injury or property damage arising out of the use of the Easement Area, pertaining to Tax Map Key (2) 3-7-008:008, as more specifically set forth in Exhibit "D", attached hereto and incorporated herein. The initial amount of such insurance shall be at least One Million Dollars (\$1,000,000.00), combined single limit per occurrence and shall be subject to periodic increase based upon inflation, increased liability awards, lender requirements, and other relevant factors as reasonably determined by A&B. The policy shall contain: (a) a cross-liability endorsement, (b) a provision that such coverage is primary and non-contributing with any other policy in the event of overlapping coverage, (c) a contractual liability endorsement,

(d) liquor liability coverage (if liquor is sold, served or consumed on Parcel 17), and (e) a provision that no cancellation or reduction in coverage shall be effective until thirty (30) days after written notice to A&B and the Director, Department of Parks and Recreation. Lessee shall deliver to A&B and the Director a renewal certificate or binder of such policy at least twenty (20) days prior to expiration thereof. This condition shall run with the Easement Area and shall be binding upon and shall inure to the benefit of A&B, its successors and permitted assigns.

I. Grant requirements. Within three (3) weeks after the end of the fiscal year, Lessee shall transmit to the Department of Parks and Recreation a report, using Exhibit "E", containing the following information for the quarter, and then annually thereafter:

1. Program status summary;
2. Program data summary;
3. Summary of participant characteristics;
4. Changes in real property tax assessment for the real property;
5. Earnings from the grant of real property; and
6. Narrative report.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the date set forth above.

LESSOR:

COUNTY OF MAUI

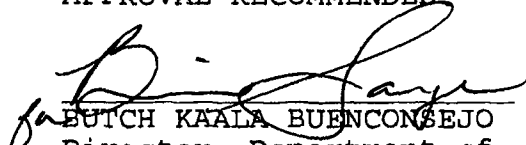
By

ALAN M. ARAKAWA
Its Mayor


By

MARK R. WALKER
Its Director of Finance

APPROVAL RECOMMENDED:


BUTCH KAALA BUENCONSEJO
Director, Department of
Parks and Recreation

APPROVED AS TO FORM
AND LEGALITY:


JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui
2017-0217 Rev. Lease 11-30-2017

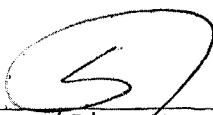
LESSEE:

HAWAIIAN KAMALI`I, INC.

By 
(Signature)

David L. Ward
(Print Name)

Its President & Board of Directors
(Title)

By 
(Signature)

Diane L. Ho
(Print Name)

Its BOARD MEMBER
(Title)

STATE OF HAWAII)
)
 COUNTY OF MAUI) SS.

On this _____ day of _____, 20____, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn, 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 pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA 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.

 Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

Notary Signature: _____	
Date: _____	

STATE OF HAWAII)
) SS.
 COUNTY OF MAUI)

On this _____ day of _____, 20____, before me appeared MARK R. WALKER, to me personally known, who being by me duly sworn, did say that he is the Director of Finance 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 pursuant to Section 9-18 of the Charter of the County of Maui; and the said MARK R. WALKER 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.

 Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

Notary Signature: _____	
Date: _____	

STATE OF Hawaii)
County of Maui) SS.

On this 19th day of December, 2017, before me personally appeared David Livingstone Ward, 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.

18

Mabellyne L. Makekau

Notary Public, State of Hawaii

Print Name: MABELLYNE L. MAKEKAU

My commission expires: 1-19-2019

NOTARY PUBLIC CERTIFICATION	
Doc. Date:	# Pages: <u>37</u>
Notary Name: <u>MABELLYNE L. MAKEKAU</u>	Judicial Circuit: <u>Second</u>
Doc. Description: <u>Hawaiian Kamali'i Inc.</u>	
<u>Lease of county Recreational Space</u>	
Notary Signature: <u>Mabellyne L. Makekau</u>	
Date: <u>12/1/2017</u>	

Stamp LL

STATE OF Hawaii)
County of Maui) SS.

On this 1st day of December, 2017, before me personally appeared Diane Lynne Ho, 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.


LS



Notary Public, State of Hawaii

Print Name: MABELLYNE L. MAKEI'AU

My commission expires: 1-19-2019

NOTARY PUBLIC CERTIFICATION	
Doc. Date:	# Pages: <u>37</u>
Notary Name: <u>MABELLYNE L. MAKEI'AU</u>	Judicial Circuit: <u>Second</u>
Doc. Description: <u>Hawaiian Kamali'i Inc.</u>	
<u>Lease of County Recreational</u>	
<u>Space</u>	
(Stamp of <u>LS</u>)	
Notary Signature: 	
Date: <u>12/1/2017</u>	

Land Description
Structure Easement "A"

All of that certain parcel of land being a portion of TMK: (2) 3-7-008:017 being also a portion of Royal Patent 4475 of Land Commission Award 7713, Apana 23 to V. Kamamalu.

Situate at
Kalua, Kahului, Wailuku, Island and County of Maui, State of Hawaii

Beginning at the southwesterly corner of this parcel of land the corner of said point refer to Government Survey Triangulation Station "LUKE" being 4,177.11 feet North and 9,275.13 feet East and running by azimuths measured clockwise from True South and lying 186°51' and 149.60 feet from the southerly corner of TMK: (2) 3-7-008:017, being a point on the easterly side of Lot 2 of Maui Hukilau Hotel Subdivision, Subdivision No. 3.829 (TMK: (2) 3-7-003:002), being also the westerly corner of Lot 1 of First Hawaiian Bank Subdivision, Subdivision No. 3.1074 (TMK: (2) 3-7-008:008, the corner of said point refer to Government Survey Triangulation Station "LUKE" being 4,028.57 feet North and 9,257.28 feet East; thence, from said point of beginning:

1. 160°35' 103.30 feet along portion of Royal Patent 4475 of Land Commission Award 7713, Apana 23 to V. Kamamalu; thence,
2. 250°35' 88.43 feet along same; thence,
3. 340°35' 103.30 feet along same; thence,
4. 70°35' 88.43 feet along same to the point of beginning and containing an area of 9,135 Sq. Ft. more or less

This description was prepared by me or under my direct supervision.



Leslie K. T. Lau
Registered Professional Land Surveyor
State of Hawaii Certificate Number LS12978
License Expiration Date: 30 April 2018

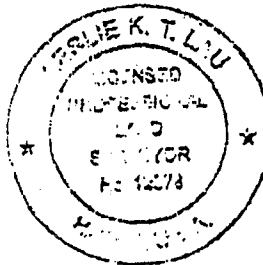
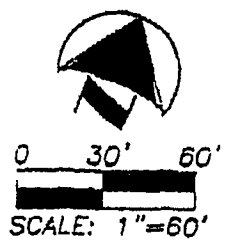


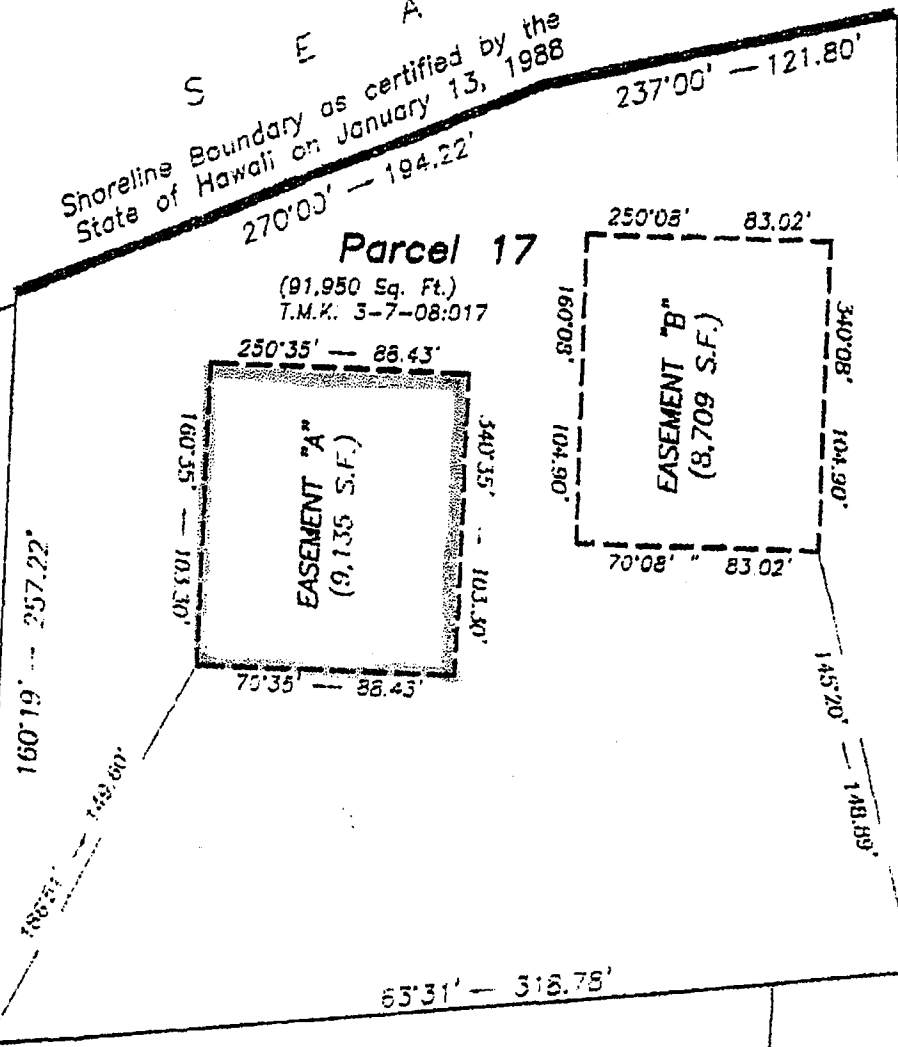
EXHIBIT "A"

S E A
 Shoreline Boundary as certified by the
 State of Hawaii on January 13, 1988



Parcel 17

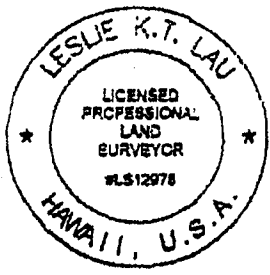
(91,950 Sq. Ft.)
 T.M.K. 3-7-08:017



"LUKE"
 4,028.57 N.
 9,257.28 E.

"LUKE"
 4,170.73 N.
 9,542.61 E.

This map was prepared by me or under
 my direct supervision.



Leslie K.T. Lau
 Registered Professional Land Surveyor
 State Of Hawaii Certificate Number LS12978
 License Expiration Date: 30 April 2014

	<p>CDF Engineering LLC P.O. Box 2985 Wailuku, HI 96783 Office: (808) 891-2400 Fax: (808) 879-2402 E-Mail: jakc@cdfengineers.com</p>	<p>STRUCTURE EASEMENT "A" & "B" Situated at Kalua, Kahului, Wailuku, Island and County of Maui</p>	<p>EXHIBIT SHEET 1 OF 1</p>
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Tax Map Key: 3-7-08:17 Project: HOALOHA_PARK

EXHIBIT " B "

RESERVATIONS, COVENANTS, TERMS AND CONDITIONS

RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

1. Minerals and Waters.

A. All minerals as hereinafter defined, in, on or under the Premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such materials by any means whatsoever including strip mining. "Minerals" as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver bauxite, bauxitic clay, dispore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and without limitation thereon all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of Lessee's permitted activities on the Premises and not for sale to others.

B. All surface and ground water appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the Premises as may be required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the State of Hawaii of the rights reserved in this paragraph, just compensation shall be paid to Lessee for any of Lessee's improvements taken.

2. Prehistoric and Historic Remains. All prehistoric and historic remains found on the Premises, this Lease shall be subject to the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Status, over prehistoric or historic remains found in, on, or under the land.

LESSEE HEREIN COVENANTS AND AGREES WITH LESSOR AS FOLLOW:

1. Taxes, Assessments, Etc. Lessee shall pay or cause to be paid, prior to delinquency, any taxes and assessments, of every description, as to said Premises, or any part thereof, including any improvements thereon; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term. Without limiting the generality

EXHIBIT "C"

of the foregoing, Lessees shall also be responsible for the payment of any Hawaii general excise tax (or successor tax) imposed upon the payment of all sums by Lessee under this Lease. Lessee shall remain current in payment of all taxes, rents, or other obligations to the United States, the State of Hawaii, or any of its political subdivisions, including the County of Maui.

2. Utility Services. Lessee shall pay, prior to delinquency, all charges for water, sewer, gas, electricity, telephone and other services or utilities used by Lessee on the Premises during the term of the Lease unless otherwise expressly agreed in writing by Lessor.

3. No Residential Use. Lessee, its agents, employees and invitees, shall not use the Premises as temporary or permanent residence. Lessee shall not permit or allow any person to live on the Premises.

4. Indemnification. To the extent permitted by law, Lessee shall indemnify, release, and hold harmless the County, its departments, agencies, officers, directors, employees, and agents from any and all manner of actions and claims, suits, damages, judgments, costs and expense, including reasonable attorney's fees, arising from the Lessee's use of the Premises or arising from the construction of Lessee's improvements, from the failure of Lessee to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions of this Lease, or from any act or negligence or omission to act of Lessee, its agents, contractors, servants, employees, concessionaires or licensees in or about the demised Premises or in any connection with this Lease. In case any action or proceeding be brought against Lessor by reason of any such claim, even though such claim be based on alleged fault of Lessor, Lessee agrees to pay the reasonable costs and expenses thereof, secured against Lessee by reason of such action or proceeding. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

5. Costs of Litigation. In case Lessor without any fault on their part, is made a party to any litigation commenced by or against Lessee (other than condemnation proceedings), Lessee shall pay all costs and expenses, including attorney's fees, incurred by or imposed on Lessor. Lessee shall pay all costs and expenses, including attorney's fees, which may be incurred by or paid by Lessor in enforcing the covenants, obligations, rules, regulations, provisions, terms and conditions of this Lease, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

6. Assumption of Risk and Liability. Lessee, as a material part of the consideration to Lessor for this Lease, does hereby assume all risk of bodily injury, wrongful death and/or property damage, business interruption or economic loss occasioned by any accident, fire, or nuisance made or suffered on the Premises, and hereby waives any and all claims against Lessor. All inventory, property, vehicles, approved improvements and equipment of Lessee shall be kept, placed or stored at the sole risk of Lessee, and Lessor shall not be responsible or liable for any damage thereto or loss or theft thereof, including subrogation claims by Lessee's insurance carriers.

7. "As Is" Condition. Lessor has not made and shall not make, any representation or warranty, implied or otherwise, with respect to the condition of the premises, including but not limited to (a) any express or implied warranty of merchantability or fitness for any particular purpose or (b) any dangerous or defective conditions existing upon the premises, whether or not such conditions are known to Lessor or reasonably discoverable by Lessee. Lessee accepts the Premises in a completely "as is" condition, with full assumption of the risks, and consequences of such conditions.

8. Mortgage. Lessee may mortgage or create a security interest in the demised premises or any portion thereof with the prior written approval of the Director, Department of Parks and Recreation, provided that, in the case of default the leasehold interest may be foreclosed only by judicial action pursuant to Chapter 667, Hawaii Revised Statutes, and the leasehold interest shall be transferred to the purchaser by assignment of lease for the remainder of the lease term only.

9. Liens. Lessee shall not commit or suffer any act of neglect whereby the Premises, or any part thereof, or the estate of Lessee in the same, shall become subject to any attachment, judgment, lien, charge, or encumbrance (hereinafter collectively called "Lien"), whatsoever. In the event that any Lien shall attach to or encumber the Premises, or if an application for a Lien is filed in any court of competent jurisdiction, Lessee shall bond against or discharge the same within ten (10) days after written request by Lessor. Lessee shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom, including attorney's fees.

10. Rules and Regulations. Lessor excepts and reserves the right, from time to time, to adopt reasonable rules and regulations pertaining to Lessee's use of the Premises, which rules and regulations shall be binding upon Lessee upon notice thereof to Lessee. For enforcement of such rules and regulations, if any,

Lessor shall have all remedies in this Agreement and any other remedies allowed by law.

11. Alterations and Improvements. Lessee shall make no alterations to any structure on the Premises or construct any building or make any other improvements on the Premises without the prior written approval of the Director, Department of Parks and Recreation. Alterations or improvements on the Premises approved by the Director, Department of Parks and Recreation, made by and paid for by Lessee, with the exception of fixtures which cannot be removed without damage to the Premises, shall, unless otherwise provided by written agreement between the Parties, be the property of Lessee.

12. Fixed Improvements. Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind or description except with the prior written approval of Lessor and upon those conditions the Lessor may impose, including any adjustment of rent, unless otherwise provided in this Lease. All improvements of whatever kind or nature located on the Premises prior to, or on the commencement date of this Lease shall be, and at all times remain, the property of the Lessor.

13. Repair and Maintenance. Lessee shall at its own expense at all times during the term of this Lease, substantially repair and maintain, and keep all improvements now or hereafter built or made on the Premises in good and safe repair, order, and condition, reasonable wear and tear excepted.

14. Sanitation. Lessee shall keep the Premises and improvements in a strictly clean, sanitary and orderly condition.

15. Waste and Unlawful, Improper or Offensive Use of Premises. Lessee shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the Premises, or any part thereof, nor, without the prior written consent of the Director, Department of Parks and Recreation, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees growing on the Premises at the commencement of the this Lease, as well as any trees that are growing on the Premises during the duration of the this Lease.

Lessee shall not allow the Premises to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

16. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production storage, sale, disposal or transportation of

any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental regulation (hereinafter collectively referred to as "hazardous substances"). Prior to commencing use of the Premises for any activity involving the storage, use, or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of this Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Premises and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the Premises which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of cognizant governmental authorities; and (d) surrender possession of the Premises to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Premises during the term of this Lease. Lessee shall indemnify and hold harmless Lessor from and against any and all claims relating to hazardous materials arising from this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

17. Rights of Way and Easements. Lessor reserves the right, to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee which were damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry. Lessor further reserves the right to authorize public access over,

across, under and through the Premises.

18. Access to Information. Lessee shall provide Lessor with access to Lessee's books, records, assets, facilities, and all other information relative to the use of the Premises, as deemed necessary in the judgment of Lessor.

19. Liability Insurance, Required Coverage. In order to protect itself as well as the County under the indemnification agreement set forth herein, the Lessee shall obtain, pay for, and keep in force throughout the period of this Lease comprehensive liability insurance issued by an insurance company (the "Carrier") authorized to do business in the State of Hawaii (an "Admitted Carrier"), or by a company not authorized to do business in the State of Hawaii (a "Non-Admitted Carrier") only through a general insurance agent or broker licensed in the State of Hawaii. The Carrier shall be rated no less than "A-" as established by "AM Best" or "Standard and Poor" ratings.

The insurance policy, as evidenced by issuance of a "Policy Endorsement", shall name the County of Maui, its departments, agencies, officers, directors, employees and agents as "Additional Insured", and shall include a duty to defend the County, its departments, agencies, officers, directors, employees and agents against any loss, liability, claims, and demands for injury or damage, including but limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with Lessee's actions and/or use of Premises.

Unless otherwise agreed to by the, the insurance policy shall contain the following minimum requirements:

- 1) No less than a Combined Single Limit ("CSL") of liability coverage of \$1,000,000;
- 2) No erosion of limit by payment of defense costs; and
- 3) Minimum annual aggregate limit of \$2,000,000.

Prior to or upon the execution of this Agreement, Lessee shall furnish the Lessor with a copy of the insurance policy certificate together with the required endorsements verifying such insurance coverage. If the scheduled expiration date of a current insurance policy is sooner than the specified termination date of this Lease, the Lessee shall, upon renewal of the insurance policy, provide the County with a copy of the renewed insurance policy certificate together with the required endorsements throughout the term of this Lease. Unless waived by the County, the insurance policy shall expressly state that the coverage provided under such policy shall not be cancelled or terminated, unless the Carrier has first given Lessor thirty (30) calendar days prior written

notice of the intended cancellation or termination.

20. Property Insurance. Lessee shall, unless otherwise agreed to by the Director, Department of Parks and Recreation, procure and, during the entire term of this Lease, keep in force and effect special form property insurance covering all of Lessee's leasehold improvements, trade fixtures, inventory, equipment and personal property from time to time in, on or upon the Premises, in an amount not less than the full replacement cost thereof without deduction for depreciation, providing protection against all risks of loss not otherwise excluded for the Premises, together with insurance against sprinkler damage, vandalism, and malicious mischief, including demolition and debris removal and extended coverage, hurricane/wind coverage, and with inflation guard endorsement, if available in any insurance company qualified to do business in the State of Hawaii and shall, from time to time, deposit promptly with Lessor the policy and premium receipts therefor or a current certificate that such insurance is in full force and effect and shall not be cancelled without written notice to Lessor sixty (60) days prior to the effective date of such cancellation. All such policies shall be made payable to Lessor and Lessee as their interests may appear (it being understood and agreed that Lessor's interest shall be limited to permanent fixtures and other installations which are not removable by Lessee upon the termination of this Lease), and shall provide for a deductible of not more than \$5,000.00. All policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate in accordance with the provisions of this Lease.

21. Fire Insurance. Lessee shall, unless otherwise agreed to by the Director, Department of Parks and Recreation, procure, at its own cost and expense, and maintain during the period of this Lease, a policy or policies of fire insurance, on all buildings and improvements on the Premises, against loss or damage by fire in an amount equal to one hundred percent (100%) of the replacement value of the Premises as established by the insurance appraiser and as approved by the Director of Finance, and shall pay premiums thereon at the time and place the same are payable. The policy or policies of insurance shall be made payable in the case of loss to the County of Maui, as its interest may appear, and shall be deposited with the County. Any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible be used by Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the County; provided, however that with the approval of the County, Lessee may surrender this Lease and Lessee shall then receive that portion of said proceeds which constitute the proportionate value of permanent improvements made by Lessee, if any, in relation to the

unexpired term of this Lease and useful life of the improvements at the time of the loss, if any, with the County retaining the remaining proceeds of said proceeds.

22. Condemnation. If at any time during the term of this Lease any portion of the leased Premises should be condemned or required for public purposes by the State of Hawaii or the United States, Lessee shall be entitled to receive from the condemning authority the proportionate value of Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of this Lease; provided that Lessee may, in the alternative, remove and relocate Lessee's improvements to the remainder of the Premises occupied by Lessee. Lessee shall not by reason of the condemnation be entitled to any claim against Lessor for condemnation or indemnity for its interest in this Lease and all compensation payable or to be paid for or on account of this Lease by reason of the condemnation, except as aforesaid as to Lessee's improvements, shall be payable to and be the sole property of Lessor. Where the portion taken renders the remainder unsuitable for the use or uses for which the land was leased, Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability therefor; provided that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by Lessor. The foregoing right of Lessor shall not be exclusive of any other to which Lessor may be entitled by law.

23. Lessor's Lien. Lessor shall have a lien on all the buildings and improvements placed on the Premises by Lessee, on all property kept or used on the Premises, whether the same is exempt from execution or not, and on the premises, whether the same is exempt from execution or not, and on the rents of all improvements and buildings situated on the Premises for all costs, attorney's fees, rent reserved, taxes, and assessments paid by Lessor on behalf of Lessee and for the payment of all money as provided in this Lease to be paid by Lessee, and such lien shall continue until the amounts are paid.

24. Assignment. Lessee may not assign the Lease for the remainder of the Lease term.

25. Sublease. Lessee may not sublease the premises without written authorization of Lessor.

26. Lessee's Right to Terminate. If Lessee is not in default of the terms of this Lease to be observed and performed, Lessee may terminate this Lease by giving Lessor at least sixty (60) days prior written notice of such termination.

27. Surrender of Premises. At the expiration, revocation, cancellation or termination of this Lease, Lessee shall peaceably surrender the Premises, together with all improvements existing or constructed thereon, unless provided otherwise. On or before the last day of the term or the sooner termination thereof, Lessee, if not then in default, shall remove all trade fixtures, operating equipment and other personal property of Lessee from the Premises and repair any damage occasioned by any such removal. Property not so removed shall be deemed abandoned by Lessee.

28. Termination. If Lessee becomes bankrupt, dissolves, becomes inactive, or abandons the leased Premises for a period of four (4) consecutive months, or if this Lease and the leased Premises shall be attached or otherwise taken by operation of law, or if any assignment be made of Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions, and such failure shall continue for a period of more than thirty (30) days after delivery by Lessor of a written notice of such breach or default, by personal service, registered mail or certified mail to Lessee at Lessee's last known address, all rights granted hereunder to Lessee shall cease and this Lease shall terminate without prejudice to any other remedy or right of action for arrears of rent or damages or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of Lessor, subject to any valid mortgages against the property.

29. Covenant Against Discrimination. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, sex, sexual orientation, age, religion, color, ancestry, national origin, disability, marital status, arrest and court record, assignment of income for child support obligations, and National Guard participation.

30. ADA Compliance. Lessor makes no representations or warranties, express or implied, as to the Premises or any existing improvements thereon, regarding compliance with the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§12101-12213 (2000), as amended. Lessee shall be responsible for complying with the ADA and Lessee shall defend, indemnify and hold harmless Lessor against any and all claims regarding non-compliance with any requirement of the ADA. All costs relating to any required improvements or modifications to the Premises, and any existing

improvements thereon, shall be borne by Lessee. Notwithstanding any other provision of this Lease to the contrary, any improvements to the Premises constructed by Lessee shall be in compliance with the ADA.

31. Compliance with Laws. Lessee shall comply with all federal, state, and county laws pertaining to the Premises and activities conducted on the Premises, now in force or which may hereinafter be in force.

32. Interpretation Under Hawaii Law. This Lease is made and entered into in the State of Hawaii, and shall in all respects be interpreted, enforced, and governed under the laws of the State of Hawaii.

33. Gender. The use of any gender shall include all genders, and if there be more than one Lessee or Lessor, then all words used in the singular shall extend to and include the plural.

34. Paragraph Headings. The paragraph headings throughout this lease are for the convenience of Lessor and Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

35. Time of the Essence. Time is of the essence of this Lease and all of the terms, provisions, covenants, and conditions hereof.

36. Notices. All notices or demands that are required or may be given under this Lease by one party to another party, or that are required by law, shall be in writing and shall be deemed to have been validly given or served in the following manner: (a) by delivery to the intended addressee; or (b) by depositing the notice with a reputable private courier service for next business day delivery to the intended recipient at its address set forth on the first page of this Lease or at such other address as a party shall have designated for such purpose by notice to the other party or parties; or (c) by depositing the notice with the United States Postal Service for delivery, postage prepaid, registered or certified mail, return receipt requested, to the intended recipient at its address set forth on the first page of this Lease or at such other address as a party shall have designated for such purpose by notice to the other party or parties.

A notice shall be deemed received upon personal delivery to the designated address or three days after being deposited with a private courier service or with the United States Postal Service as described, supra. Rejection of or refusal to accept a notice or the inability to give notice because a notice of a change in address was not given as required by this Paragraph shall be deemed

to be receipt of the notice sent when tendered as provided by this Paragraph.

If a party has designated an agent for service of process, notice to the agent shall conclusively be deemed service on the party. A party shall have the right from time to time to change its address for receipt of notice and to specify any other address within the United States of America by giving written notice of the change in address to the other party or parties at least fifteen (15) days in advance. A notice of change of address is effective under this Lease only when actually received.

37. Assistance of Legal Counsel. The Parties represent and certify to each other that they have been advised to seek the advice of legal counsel and have done so. The Parties have carefully read and fully understand all of the provisions of this Lease, and have thoroughly discussed all aspects of this Lease with their respective counsel. The parties are voluntarily entering into this Lease and no party or its agents, representatives, or attorneys have made any representations concerning the terms or effects of this Lease other than those contained herein.

END OF EXHIBIT "C"

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE NOV. 09 1994 TIME 8:45

DOCUMENT NO. _____

94 183977

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail Pickup To:

COUNTY OF MAUI
DEPARTMENT OF FINANCE
200 South High Street
Wailuku, Maui, Hawaii 96793

AFFECTS TMK: (2) 3-7-8-8 AND TMK: (2) 3-7-8-17

EASEMENT

EXHIBIT "D"

EASEMENT

THIS EASEMENT ("Easement"), made this 18th day of October, 1974, by and between A&B-HAWAII, INC., a Hawaii corporation, whose mailing address is 822 Bishop Street, Honolulu, Hawaii 96813, hereinafter called "Grantor", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose business and post office address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter called "Grantee",

W I T N E S S E T H :

That the Grantor, for good and valuable consideration, receipt of which is hereby acknowledged, and the covenants hereinafter contained to be observed and performed by the parties hereto, does hereby grant and convey unto the Grantee, its successors and assigns, a perpetual non-exclusive easement affecting land situate at Kalua, Kahului, Wailuku, Island and County of Maui, State of Hawaii, designated as Tax Map Key No. (2)3-7-8-8, more particularly depicted in Exhibit "A" attached hereto and made a part hereof, hereinafter referred to as the "Easement Area", for ingress and egress between the public roadway known as Kaahumanu Avenue to that certain property designated as Tax Map Key No. (2)3-7-8-17 ("Parcel 17") in order for Grantee and others to use Parcel 17 for recreational purposes and for providing utility and sewer service to Parcel 17. The Easement Area shall only be used for such access, utility and sewer purposes and all other uses, including, without limitation, parking in the Easement Area, are prohibited.

TO HAVE AND TO HOLD, unto the Grantee and its successors and assigns for the purposes hereinabove provided and for so long as so used and not otherwise.

EXCEPTING AND RESERVING, HOWEVER, from this grant the right of the Grantor, full use of the land within the Easement Area and

the right to grant to others easements for any purposes within the Easement Area, subject to the rights of the Grantee herein set forth.

In consideration of the rights hereby granted and the acceptance thereof and the obligations hereby assumed, the parties hereto do further mutually covenant and agree as follows:

1. That the Grantee will use due care and diligence in the use and maintenance of the Easement Area, in keeping and maintaining the same in good and safe condition and repair and in the exercise of its rights hereunder. The Grantee will comply with all laws and ordinances and governmental rules and regulations in its use and maintenance of the Easement Area, and shall not commit, suffer, or permit to be committed any waste, nuisance, unlawful, improper, or offensive use of the Easement Area.

2. That the Grantee will, to the extent permitted by law, indemnify and hold harmless the Grantor from and against any and all claims, demands or actions against the Grantor for loss or damage or injury to persons or property (including all damages, costs, attorneys' fees, expenses and liabilities incurred in or resulting from any such claim, demand or action), arising out of the maintenance or use of the Easement Area for the purposes permitted under this Easement, or in any other manner in connection with this Easement, not caused by either (a) the acts of another to whom Grantor has granted an easement covering the Easement Area or (b) the negligence of the Grantor or its agents or employees acting within the course and scope of their employment.

3. That if at any time the Easement Area or any part thereof or interest therein, shall be taken or condemned by any authority having the power of eminent domain, then and in every such case all compensation and damages payable for or on account of such part of the Easement Area so taken or condemned, shall be payable solely to the Grantor and the interest of the Grantee in

the Easement Area or such part so taken or condemned shall thereupon cease.

4. That the Grantor has not made and does not make any representation or warranty with respect to the condition of the Easement Area, and the Grantee accepts the Easement Area in "as is" condition.

5. That the Grantee acknowledges the Easement Area is adjacent to, nearby or in the vicinity of lands being, or which in the future may be, actively used for the growing, harvesting and processing of sugar cane and other agricultural products (such growing, harvesting and processing activities being herein collectively called the "Agricultural Activities"), which activities may from time to time bring about upon the Easement Area or result in smoke, dust, noise, heat, agricultural chemicals, particulates and similar substances and nuisances (collectively, the "Agricultural By-Products").

The Grantee hereby assumes complete risk of and forever releases the Grantor from all claims for damages (including, but not limited to, consequential, special, exemplary and punitive damages) and nuisances occurring on the Easement Area and arising out of any Agricultural Activities or Agricultural By-Products. Without limiting the generality of the foregoing, the Grantee hereby, with full knowledge of its rights, forever: (a) waives any right to require the Grantor, and releases the Grantor from any obligation, to take any action to correct, modify, alter, eliminate or abate any Agricultural Activities or Agricultural By-Products, and (b) waives any right to file any suit or claim against the Grantor for injunction or abatement of nuisances occurring on the Easement Area and arising out of any Agricultural Activities or Agricultural By-Products.

Any Agricultural Activities or Agricultural By-Products, and any claim, demand, action, loss, damage, liability, cost or expense arising therefrom, shall not constitute a breach of any covenant or warranty of the Grantor under this easement or be the basis for a suit or other claim for injunction or abatement of

nuisances occurring on the Easement Area and arising out of any Agricultural Activities or Agricultural By-Products, and the Grantee hereby forever waives any right to file any such suit or claim.

As used in this section regarding Agricultural Activities, all references to the "Grantor" shall mean and include the Grantor and all parent, subsidiary, sister and other affiliated companies of the Grantor, in their respective capacities as the current owner of the Easement Area, the owner of the lands on which the Agricultural Activities are or may be conducted, and the person conducting or who may conduct the Agricultural Activities, and all successors and assigns of the Grantor and its parent, subsidiary, sister and affiliated companies.

Each of the foregoing covenants, agreements, acknowledgments, waivers and releases shall constitute covenants running with the land. Each such covenant, agreement, acknowledgment, waiver and release shall be binding upon, and all references to "Grantee" shall mean and include, the Grantee, its successors and assigns, and all persons now or hereafter acquiring any right, title or interest in or to the Easement Area (or any portion thereof) or occupying all or any portion of the Easement Area. By accepting any right, title or interest in the Easement Area (or any portion thereof) or by occupying all or any portion of the Easement Area, each such person automatically shall be deemed to have made and agreed to, and shall be bound by, observe and be subject to, each of the foregoing covenants, agreements, acknowledgments, waivers and releases.

6. That this Easement and all rights herein granted will automatically terminate in the event that a) the Easement Area, or any portion or portions thereof, is unused by the Grantee for the purposes contemplated by this Easement for a period of twenty-four (24) consecutive months, or b) ownership of Parcel 17 reverts to the Grantor or its successors and assigns. The Grantee shall, without delay following the Grantor's request,

execute and file an appropriate release and termination of this Easement with the Bureau of Conveyances of the State of Hawaii.

7. That this Easement is upon the condition that should the Grantee fail faithfully to observe or perform any of the covenants, agreements, or conditions herein contained, and on the part of the Grantee to be observed and performed, within thirty (30) days after written notice of breach thereof, the Grantor may at once without legal process at its option terminate this Easement and record an appropriate instrument reflecting such termination, without prejudice to any other right of action or remedy for any such breach or by any other breach of covenant or condition. In the event of such breach, the Grantor shall have the right to at once without legal process remove any of the Grantee's property on said lands, or property placed thereby or through the Grantee and store the same in a public warehouse or any other place at the risk and cost and for the account of the Grantee. Should the Grantor at any time terminate this Easement for any breach, in addition to any other remedy it may have, it may recover from the Grantee all costs and damages it may incur by reason of such breach, including reasonable attorneys' fees.

8. That the Grantee shall not assign the rights and privileges herein granted, or any part thereof or interest therein, without the prior written consent of the Grantor.

9. That the Grantor may, in its sole discretion, at any time upon not less than thirty (30) days' notice to the Grantee, relocate all or a portion of the Easement Area without any liability to the Grantee, so long as reasonable access to Parcel 17 continues to be provided. The costs of such relocation shall be borne by the Grantor, and the Grantee shall fully and promptly cooperate with the Grantor in effecting such relocation. After any such relocation, this Easement shall continue in full force and effect with respect to the area or premises to which the Easement Area is relocated and the parties shall promptly enter into an amendment of this Easement to reflect the new Easement Area.

10. That in the event the Grantee grants possession or use of all or any portion of Parcel 17 to any party by lease, license, easement or otherwise the Grantee shall require that party to maintain a policy of general liability insurance insuring that party, and naming the Grantor as an additional insured, against liability for personal injury or property damage arising out of the use of the Easement Area. The initial amount of such insurance shall be at least One Million Dollars (\$1,000,000.00), combined single limit per occurrence and shall be subject to periodic increase based upon inflation, increased liability awards, lender requirements, and other relevant factors as reasonably determined by the Grantor. The policy shall contain: (a) a cross-liability endorsement, (b) a provision that such coverage is primary and non-contributing with any other policy in the event of overlapping coverage, (c) a contractual liability endorsement, (d) liquor liability coverage (if liquor is sold, served or consumed on Parcel 17), and (e) a provision that no cancellation or reduction in coverage shall be effective until thirty (30) days after written notice to the Grantor. That policy shall be issued by insurer licensed in Hawaii or reasonably approved by Grantor. The party shall deliver to the Grantor a renewal certificate or binder of such policy at least twenty (20) days prior to expiration thereof.

11. The foregoing covenants and agreements shall run with the Easement Area and shall be binding upon and shall inure to the benefit of the Grantor and its successors and assigns and the Grantee and its successors and permitted assigns.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused these presents to be duly executed as of the day and year first above written.

A&B-HAWAII, INC.

By 
R. K. SASAKI
Its SENIOR VICE PRESIDENT

By 
SUMNER TSUCHIDA
Its ASST. SECRETARY

"Grantor"

COUNTY OF MAUI

By 
LINDA CROCKETT LINGLE
Its Mayor

"Grantee"

APPROVED AS TO FORM
AND LEGALITY


WILLIAM B. KOLLER
Deputy Corporation Counsel
County of Maui


Attorney for Grantor

STATE OF HAWAII)
CITY & COUNTY OF HONOLULU) SS:

On this 11th day of May 1994, before me appeared R. K. SASAKI and SUMAETSUHA, to me personally known, who, being by me duly sworn, did say that they are the SENIOR VICE PRESIDENT and ASST. SECRETARY, respectively, of A&B-HAWAII, INC., a Hawaii corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and said Officers acknowledged said instrument to be the free act and deed of said corporation.

cs Buzanne K. McGuffin
Notary Public, State of Hawaii
My Commission Expires: 2/18/97

STATE OF HAWAII)
COUNTY OF MAUI) SS:

On this 18th day of October 1994, before me appeared LINDA CROCKETT LINGLE, to me personally known, who, being by me duly sworn, did say that she is the Mayor of the COUNTY OF MAUI, a political subdivision of the State of Hawaii; that said instrument was signed on behalf of said County of Maui by authority of its Council, and the said Mayor acknowledged said instrument to be the free act and deed of said County of Maui.

15 Ann K. Parnell
Notary Public, State of Hawaii
My Commission Expires: 10/19/98

DESCRIPTION

EASEMENT "E"
FIRST HAWAIIAN BANK SUBDIVISION

All of that certain parcel of land, being an easement for access purposes over and across a portion of Lot 1 of the First Hawaiian Bank Subdivision, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 23 to V. Kamamalu situated at Kahului, Island and County of Maui, State of Hawaii.

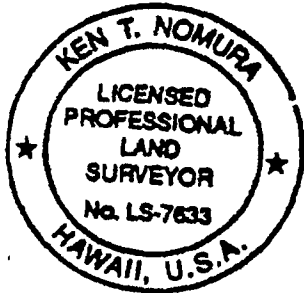
Beginning at a point at the Southwesterly corner of this easement, on the Northerly side of Kaahumanu Avenue [F.A.P. No. F 032-1 (1)], the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,824.07 feet North and 9,351.85 feet East and running by azimuths measured clockwise from True South:

1. 160° 16' 226.78 feet over and across Lot 1 of the First Hawaiian Bank Subdivision to a point;
2. 243° 31' 20.15 feet along the remainder of R.P 4475, L.C.Aw. 7713, Ap. 23 to V Kamamalu (TMK: 3-7-08:17) to point;
3. 340° 16' 228.49 feet over and across Lot 1 of First Hawaiian Bank Subdivision to point;
4. Thence along the Northerly side of Kaahumanu Avenue [F.A.P. N 032-1 (1)] on a curve to the with a radius of 4,940.00 feet chord azimuth and distance 68° 23' 12" 20.02 feet to the point of beginning containing an area of 4,555 Feet.

EASEMENT "E"
FIRST HAWAIIAN BANK SUBDIVISION

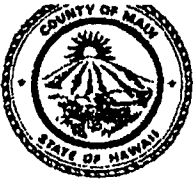
Prepared by A&B Properties, Inc.
Kahului, Hawaii

This work was prepared by me or under my supervision.



Ken T. Nomura 9/26/94
Registered Professional Land Surveyor LS-7633

ME



DEPARTMENT OF PARKS AND RECREATION

700 Hali'a Nakoa Street, Unit 2, Wailuku, Hawaii 96793

ANNUAL REAL PROPERTY GRANT REPORT

Report Period: Fiscal Year July 1, _____ - June 30, _____

ORGANIZATION: _____

Tax Map Key Number(s): _____

Department of Parks and Recreation's Mission: The purpose of the Department of Parks and Recreation is to provide safe, satisfying and cost-effective recreational opportunities for the residents of and visitors to Maui County.

INSTRUCTIONS

Provide a narrative response to each question below for each quarter and fiscal year.

I. Program Data/Status Summary

- a. List each program goal/benchmark for the leased/licensed site and how it contributes towards the Parks Department's mission (noted above).
- b. What objectives/action steps were completed this fiscal year for each goal?
- c. What measurable outcomes were achieved this fiscal year?
- d. Were your organization's programs/activities open to the public? If so, how were they promoted to residents and visitors?
- e. Give actual number of people attended at activities, programs and events on property for each quarter of the fiscal year.
- f. What objectives/actions steps will be accomplished during the next fiscal year?

II. Narrative Report

- a. What program challenges occurred this fiscal year and how were they addressed and/or resolved?
- b. Describe any staff changes in your organization.
- c. Were there any fundraising activities on leased/licensed property? If so, please indicate how many, type of activity, primary beneficiary of the fundraising, and how your organization participated and benefited from the activity.
- d. Describe improvements on the property, its condition, and your risk evaluation program. How often are site inspections done and by who?
- e. Disclosure of any organizational conflict of interest and criminal violations.
- f. Were audits done this fiscal year? When is the next audit planned for your organization?

Please submit the following information with this report:

- a. Board of Directors' Minutes.
- b. Updated list of Board of Directors
- c. Financial status report including but not limited to the total revenue generated on the property leased/licensed.
- d. Update Tenant Contact Information Form.
- e. Current Liability Insurance Certificate naming the County of Maui as additional insured.

Report Prepared by: _____
Print Name/Title Signature Date

EXHIBIT " E "

Resolution

No. _____

AUTHORIZING A GRANT OF A LEASE OF COUNTY RECREATIONAL SPACE TO NA KAI EWALU

WHEREAS, Na Kai Ewalu, a Hawaii nonprofit corporation, desires to obtain a lease of certain County real property identified as Tax Map Key Number (2) 3-7-008:017 (por.), an area of approximately 8,709 square feet, to provide education for children and adults in the Hawaiian art of canoe paddling as a recreational sport for personal growth and character development, and to promote Hawaiian cultural values; and

WHEREAS, the proposed Lease of County Recreational Space is attached hereto and by reference made a part hereof as Exhibit "1"; and

WHEREAS, Na Kai Ewalu had no lease with the County and was using the property described in Exhibit "1" pursuant to Hawaiian Kamali`i, Inc.'s "License to Occupy" dated December 21, 1994, and now desires to be a direct Lessee; and

WHEREAS, both Hawaiian Kamali`i Inc. and Na Kai Ewalu desire to operate with individual property agreements with the County; and


WHEREAS, pursuant to Maui County Code Section 3.36.090, the Council of the County of Maui may authorize the grant of a lease of County real property by resolution; now, therefore,

Resolution No. _____

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

1. That pursuant to Section 3.36.090, Maui County Code, the grant of the Lease is hereby authorized; and
2. That the Mayor and the Director of Finance or their authorized representatives may execute the Lease; and
3. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Director of Parks and Recreation, and Na Kai Ewalu.

APPROVED AS TO FORM
AND LEGALITY:



JERRIE L. SHEPARD
Deputy Corporation Counsel
County of Maui
LF 2017-0218

W I T N E S S E T H:

WHEREAS, the Lessor is the owner of that certain parcel of land of which Lessee desires to lease a portion, described below as the "Premises", to provide education for children and adults in the Hawaiian art of canoe paddling as a recreational sport, for personal growth and character development and as a vehicle for awareness of Hawaiian cultural values; and

WHEREAS, Lessee has used the Premises since 1994 in cooperation with Hawaiian Kamalii, Inc., which held a License to Occupy the Premises, dated December 21, 1994, which was recorded with the State of Hawaii Bureau of Conveyances on January 5, 1995. Lessee has invested in and improved the Premises and adjacent areas to meet its needs during this prior use. The two canoe clubs now desire to lease their respective Premises under separate leases; and

WHEREAS, the County of Maui supports Lessee and hopes to assist Lessee by granting this Lease so that Lessee may continue to conduct its activities on the Premises; NOW, THEREFORE,

Lessor, for and in consideration of Lessee's covenants and agreements set forth herein, does hereby agree to grant a lease to Lessee and Lessee hereby accepts said lease on the terms and conditions set forth below:

A. Premises. The leased area comprises approximately 8,709 square feet, more or less, situated on the area identified as Tax Map Key Number (2)3-7-008:017, more particularly described

as "Easement B" in Exhibits "A" and "B" attached hereto and by reference incorporated herein, hereinafter referred to as the "Premises."

B. Use of Premises. Lessee shall have exclusive use of the Premises to conduct education, training and community competitions in outrigger canoe paddling; conduct intergenerational cultural programs in paddle making and oli; hold community meetings and kokua days for club members; and conduct club meetings and club fundraising events. Lessee shall have non-exclusive use of the areas immediately adjacent to the Premises for such activities. Non-exclusive use means those areas remain open to the public. The use of the Premises for any other purpose shall require the prior written approval of Lessor, through its Director of the Department of Parks and Recreation ("Director"). Lessee may obtain a permit from the Director for temporary exclusive use of any other portion of Tax Map Key Number (2) 3-7-008:017, also referred to as Parcel 17, as set forth in Section G. No commercial activities are allowed on the Premises. No subleasing or letting of the Premises is allowed.

C. Term. This Lease shall commence upon execution and expire fifty years thereafter, unless sooner terminated as provided herein.

D. Rent. Lessor reserving and the Lessee yielding and paying to the Lessor the nominal rental amount of ONE DOLLAR (\$1.00) per annum, payable to the County of Maui, Department of

Finance, at Lessor's address designated herein or as otherwise designated in writing by Lessor, in advance, within ninety (90) days of execution of this lease, the receipt and sufficiency of which is hereby acknowledged.

E. Parking lot and areas adjacent to the Premises. Lessee may have temporary, non-exclusive use of the parking lot serving Hoaloha Park, and all areas of Parcel 17 adjacent to the Premises. Lessee shall not restrict the public's use of or access to the parking lot or the other areas of Hoaloha Park, unless Lessee obtains a permit as described in Section G. herein.

F. No disturbance. Lessee acknowledges and confirms that the Premises is located within Hoaloha Park, a public park facility used by the general public. Lessee and anyone claiming under Lessee, shall limit their activities to the Premises covered by this Agreement and will exercise its rights in a manner causing as little interference as reasonably possible with the use of Hoaloha Park and its parking lot. Lessee and anyone claiming under Lessee shall obey reasonable rules, regulations, instructions and/or directions of Lessor and Lessor's officers, employees, or agents applicable to Hoaloha Park.

G. Permit Required. If Lessee desires to have temporary, exclusive use of the parking lot, other areas of Hoaloha Park, or Parcel 17, Lessee shall apply for a use permit with the Department of Parks and Recreation. Any event open to the public requires notice to the Department of Parks and Recreation Permit Office,

DPRpermits@co.maui.hi.us, (808) 270-7389, no less than three months prior to the event to determine if additional permitting is required.

H. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "C" attached hereto and by reference made a part hereof. In addition, the following special condition applies:

Special Condition 1: Lessee is required to maintain a policy of general liability insurance naming the County of Maui and Alexander and Baldwin, LLC ("A&B") as an additional insured, against liability for personal injury or property damage arising out of the use of the Easement Area, pertaining to Tax Map Key (2) 3-7-008:008, as more specifically set forth in Exhibit "D", attached hereto and incorporated herein. The initial amount of such insurance shall be at least One Million Dollars (\$1,000,000.00), combined single limit per occurrence and shall be subject to periodic increase based upon inflation, increased liability awards, lender requirements, and other relevant factors as reasonably determined by A&B. The policy shall contain: (a) a cross-liability endorsement, (b) a provision that such coverage is primary and non-contributing with any other policy in the event of overlapping coverage, (c) a contractual liability endorsement, (d) liquor liability coverage (if liquor is sold, served or consumed on Parcel 17), and (e) a provision that no cancellation or reduction in coverage shall be effective until thirty (30) days

after written notice to A&B and the Director, Department of Parks and Recreation. Lessee shall deliver to A&B and the Director a renewal certificate or binder of such policy at least twenty (20) days prior to expiration thereof. This condition shall run with the Easement Area and shall be binding upon and shall inure to the benefit of A&B, its successors and permitted assigns.

I. Grant requirements. Within three (3) weeks after the end of the fiscal year, Lessee shall transmit to the Department of Parks and Recreation a report, using Exhibit "E", containing the following information for the quarter, and then annually thereafter:

1. Program status summary;
2. Program data summary;
3. Summary of participant characteristics;
4. Changes in real property tax assessment for the real property;
5. Earnings from the grant of real property; and
6. Narrative report.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the date set forth above.

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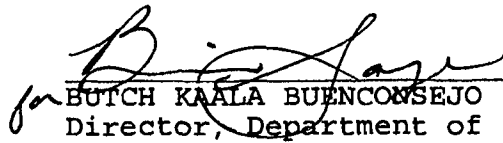
LESSOR:

COUNTY OF MAUI


By _____
ALAN M. ARAKAWA
Its Mayor

By _____
MARK R. WALKER
Its Director of Finance

APPROVAL RECOMMENDED:

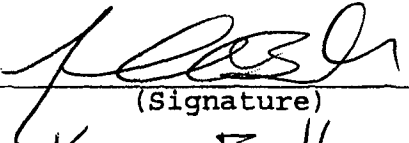

BUTCH KAALA BUENCONSEJO
Director, Department of
Parks and Recreation

APPROVED AS TO FORM
AND LEGALITY:



JERRIE L. SHEPARD
Deputy Corporation Counsel
County of Maui
2017-0218 Rev Lease 11.30.17

LESSEE:

NA KAI EWALU

By 
(Signature)
Keone Ball
(Print Name)

Its President
(Title)

By 
(Signature)
Anthony Nelson
(Print Name)

Its Vice President
(Title)

STATE OF HAWAII)
)
 COUNTY OF MAUI) SS.

On this _____ day of _____, 20____, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn, 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 pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA 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.

[Signature]

 Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

Notary Signature: _____	
Date: _____	

STATE OF HAWAII)
) SS.
 COUNTY OF MAUI)

On this _____ day of _____, 20____, before me appeared MARK R. WALKER, to me personally known, who being by me duly sworn, did say that he is the Director of Finance 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 pursuant to Section 9-18 of the Charter of the County of Maui; and the said MARK R. WALKER 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.

(Notary Seal)

 Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

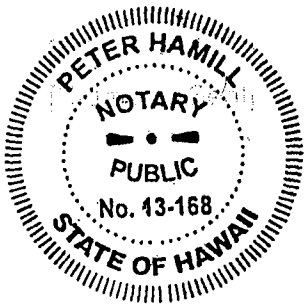
NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

Notary Signature: _____	
Date: _____	

STATE OF Hawaii)
Muni.) SS.

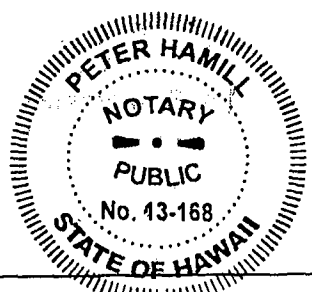
On this 1st day of December, 2017, before me personally appeared Keone Bull, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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



Peter Hamill
Notary Public, State of Hawaii
Print Name: Peter Hamill
My commission expires: 5/12/2021

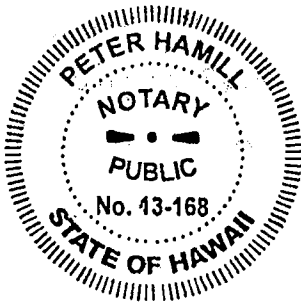
NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>12/1/17</u>	# Pages: <u>37</u>
Notary Name: <u>Peter Hamill</u>	Judicial Circuit: <u>2</u>
Doc. Description: <u>Na Kai Ewaku</u>	
<u>Lease of county Recreational</u>	
<u>Space</u>	
Notary Signature: <u>Peter Hamill</u>	
Date: <u>12/1/17</u>	

A circular notary seal for Peter Hamill, Notary Public, State of Hawaii, No. 13-168. The seal features a central emblem with a scale of justice and a gavel, surrounded by the text "PETER HAMILL", "NOTARY PUBLIC", and "STATE OF HAWAII".

STATE OF Hawaii)
County of Maui) SS.

On this 21th day of December, 2017, before me personally appeared Anthony Nelson, 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.



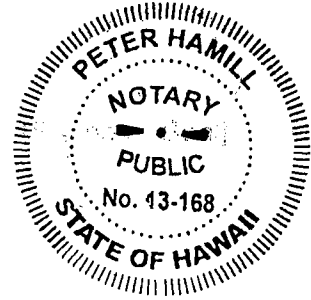
A handwritten signature of Peter Hamill in black ink.

Notary Public, State of Hawaii

Print Name: Peter Hamill

My commission expires: 5/12/2021

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>12/14/17</u>	# Pages: <u>37</u>
Notary Name: <u>Peter Hamill</u>	Judicial Circuit: <u>2</u>
Doc. Description: <u>Na Kai Ewaku Lease of County Recreational Space</u>	
Notary Signature:	
Date: <u>12/14/17</u>	



Land Description

Structure Easement "B"

All of that certain parcel of land being a portion of TMK: (2) 3-7-008:017 being also a portion of Royal Patent 4475 of Land Commission Award 7713, Apana 23 to V. Kamamalu.

Situate at
Kalua, Kahului, Wailuku, Island and County of Maui, State of Hawaii

Beginning at the southeasterly corner of this parcel of land the corner of said point refer to Government Survey Triangulation Station "LUKE" being 4,293.19 feet North and 9,457.92 feet East and running by azimuths measured clockwise from True South and lying 145°20' and 148.89 feet from the easterly corner of TMK: (2) 3-7-008:017, being a point on the northerly side of Lot 2 of First Hawaiian Bank Subdivision, Subdivision No. 3.1074 (TMK: (2) 3-7-008:027), being also the southerly corner of TMK: (2) 3-7-008:025, the corner of said point refer to Government Survey Triangulation Station "LUKE" being 4,170.73 feet North and 9,542.61 feet East; thence, from said point of beginning:

1. 70°08' 83.02 feet along portion of Royal Patent 4475 of Land Commission Award 7713, Apana 23 to V. Kamamalu; thence,
2. 160°08' 104.90 feet along same; thence,
3. 250°08' 83.02 feet along same; thence,
4. 340°08' 104.90 feet along same to the point of beginning and containing an area of 8,709 Sq. Ft. more or less.

This description was prepared by me or under my direct supervision.

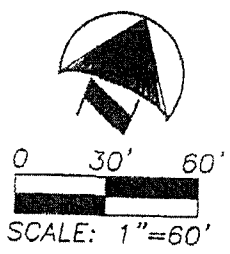


Leslie K.T. Lau
Registered Professional Land Surveyor
State of Hawaii Certificate Number LS12978
License Expiration Date: 30 April 2018



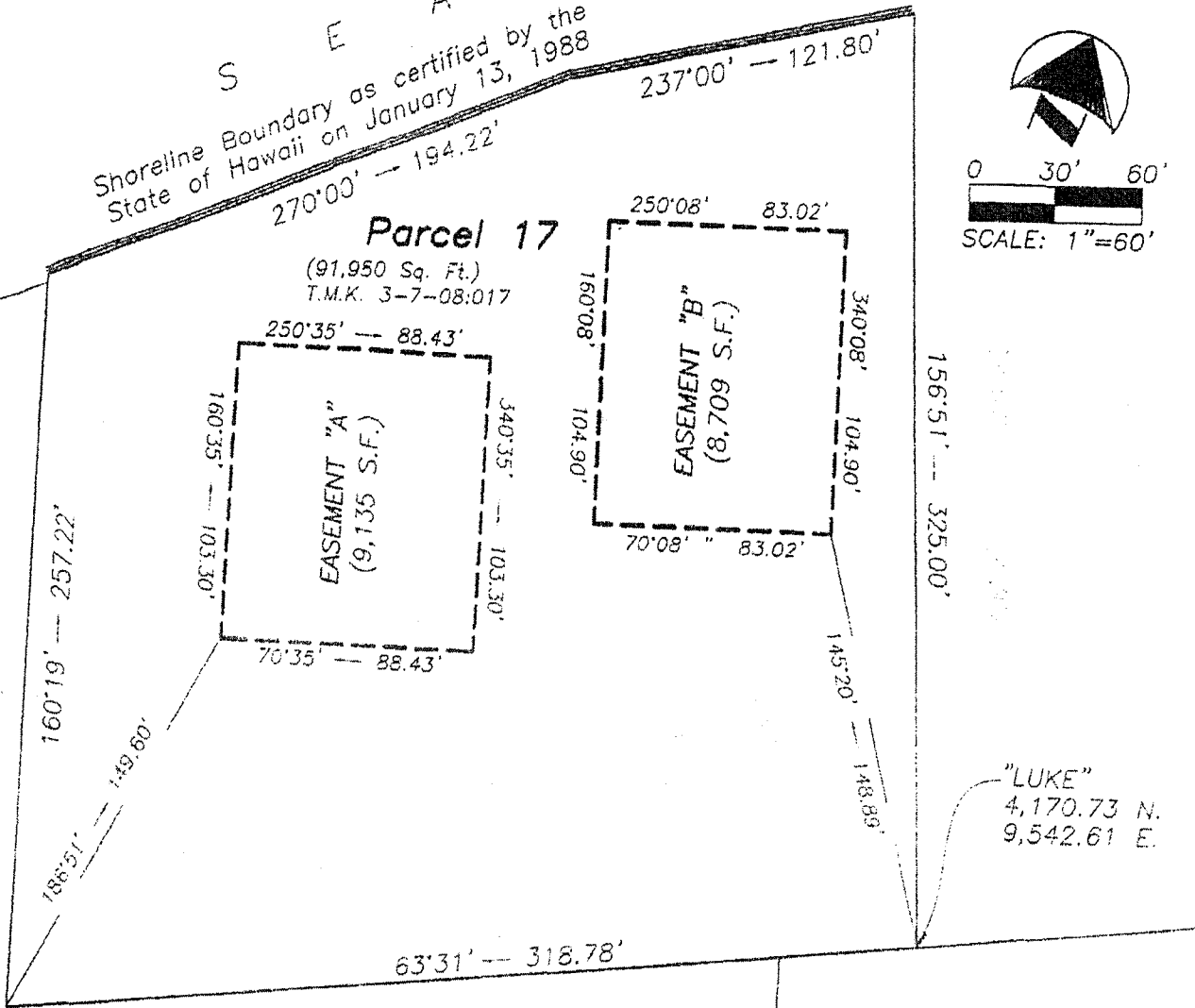
EXHIBIT " A "

S E A
 Shoreline Boundary as certified by the
 State of Hawaii on January 13, 1988



Parcel 17

(91,950 Sq. Ft.)
 T.M.K. 3-7-08:017



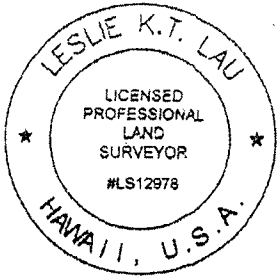
EASEMENT "A"
 (9,135 S.F.)

EASEMENT "B"
 (8,709 S.F.)

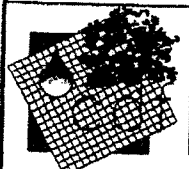
"LUKE"
 4,028.57 N.
 9,257.28 E.

"LUKE"
 4,170.73 N.
 9,542.61 E.

This map was prepared by me or under
 my direct supervision.



Leslie K.T. Lau
 Registered Professional Land Surveyor
 State Of Hawaii Certificate Number LS12978
 License Expiration Date: 30 April 2014



CDF Engineering LLC
 P.O. Box 2985 Wailuku, HI 96793
 Office: (808) 891-2400 Fax: (808) 879-2402
 E-Mail: jake@cdfengineers.com

STRUCTURE EASEMENT "A" & "B"
 Situated at Kalua, Kahului, Wailuku,
 Island and County of Maui

EXHIBIT
B

Tax Map Key: 3-7-08:17 Project: HOALOHA_PARK

SHEET 1 OF 1

EXHIBIT " B "

RESERVATIONS, COVENANTS, TERMS AND CONDITIONS

RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

1. Minerals and Waters.

A. All minerals as hereinafter defined, in, on or under the Premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such materials by any means whatsoever including strip mining. "Minerals" as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver bauxite, bauxitic clay, dispore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and without limitation thereon all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of Lessee's permitted activities on the Premises and not for sale to others.

B. All surface and ground water appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the Premises as may be required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the State of Hawaii of the rights reserved in this paragraph, just compensation shall be paid to Lessee for any of Lessee's improvements taken.

2. Prehistoric and Historic Remains. All prehistoric and historic remains found on the Premises, this Lease shall be subject to the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

LESSEE HEREIN COVENANTS AND AGREES WITH LESSOR AS FOLLOW:

1. Taxes, Assessments, Etc. Lessee shall pay or cause to be paid, prior to delinquency, any taxes and assessments, of every description, as to said Premises, or any part thereof, including any improvements thereon; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term. Without limiting the generality

EXHIBIT "C"

of the foregoing, Lessees shall also be responsible for the payment of any Hawaii general excise tax (or successor tax) imposed upon the payment of all sums by Lessee under this Lease. Lessee shall remain current in payment of all taxes, rents, or other obligations to the United States, the State of Hawaii, or any of its political subdivisions, including the County of Maui.

2. Utility Services. Lessee shall pay, prior to delinquency, all charges for water, sewer, gas, electricity, telephone and other services or utilities used by Lessee on the Premises during the term of the Lease unless otherwise expressly agreed in writing by Lessor.

3. No Residential Use. Lessee, its agents, employees and invitees, shall not use the Premises as temporary or permanent residence. Lessee shall not permit or allow any person to live on the Premises.

4. Indemnification. To the extent permitted by law, Lessee shall indemnify, release, and hold harmless the County, its departments, agencies, officers, directors, employees, and agents from any and all manner of actions and claims, suits, damages, judgments, costs and expense, including reasonable attorney's fees, arising from the Lessee's use of the Premises or arising from the construction of Lessee's improvements, from the failure of Lessee to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions of this Lease, or from any act or negligence or omission to act of Lessee, its agents, contractors, servants, employees, concessionaires or licensees in or about the demised Premises or in any connection with this Lease. In case any action or proceeding be brought against Lessor by reason of any such claim, even though such claim be based on alleged fault of Lessor, Lessee agrees to pay the reasonable costs and expenses thereof, secured against Lessee by reason of such action or proceeding. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

5. Costs of Litigation. In case Lessor without any fault on their part, is made a party to any litigation commenced by or against Lessee (other than condemnation proceedings), Lessee shall pay all costs and expenses, including attorney's fees, incurred by or imposed on Lessor. Lessee shall pay all costs and expenses, including attorney's fees, which may be incurred by or paid by Lessor in enforcing the covenants, obligations, rules, regulations, provisions, terms and conditions of this Lease, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

6. Assumption of Risk and Liability. Lessee, as a material part of the consideration to Lessor for this Lease, does hereby assume all risk of bodily injury, wrongful death and/or property damage, business interruption or economic loss occasioned by any accident, fire, or nuisance made or suffered on the Premises, and hereby waives any and all claims against Lessor. All inventory, property, vehicles, approved improvements and equipment of Lessee shall be kept, placed or stored at the sole risk of Lessee, and Lessor shall not be responsible or liable for any damage thereto or loss or theft thereof, including subrogation claims by Lessee's insurance carriers.

7. "As Is" Condition. Lessor has not made and shall not make, any representation or warranty, implied or otherwise, with respect to the condition of the premises, including but not limited to (a) any express or implied warranty of merchantability or fitness for any particular purpose or (b) any dangerous or defective conditions existing upon the premises, whether or not such conditions are known to Lessor or reasonably discoverable by Lessee. Lessee accepts the Premises in a completely "as is" condition, with full assumption of the risks, and consequences of such conditions.

8. Mortgage. Lessee may mortgage or create a security interest in the demised premises or any portion thereof with the prior written approval of the Director, Department of Parks and Recreation, provided that, in the case of default the leasehold interest may be foreclosed only by judicial action pursuant to Chapter 667, Hawaii Revised Statutes, and the leasehold interest shall be transferred to the purchaser by assignment of lease for the remainder of the lease term only.

9. Liens. Lessee shall not commit or suffer any act of neglect whereby the Premises, or any part thereof, or the estate of Lessee in the same, shall become subject to any attachment, judgment, lien, charge, or encumbrance (hereinafter collectively called "Lien"), whatsoever. In the event that any Lien shall attach to or encumber the Premises, or if an application for a Lien is filed in any court of competent jurisdiction, Lessee shall bond against or discharge the same within ten (10) days after written request by Lessor. Lessee shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom, including attorney's fees.

10. Rules and Regulations. Lessor excepts and reserves the right, from time to time, to adopt reasonable rules and regulations pertaining to Lessee's use of the Premises, which rules and regulations shall be binding upon Lessee upon notice thereof to Lessee. For enforcement of such rules and regulations, if any,

Lessor shall have all remedies in this Agreement and any other remedies allowed by law.

11. Alterations and Improvements. Lessee shall make no alterations to any structure on the Premises or construct any building or make any other improvements on the Premises without the prior written approval of the Director, Department of Parks and Recreation. Alterations or improvements on the Premises approved by the Director, Department of Parks and Recreation, made by and paid for by Lessee, with the exception of fixtures which cannot be removed without damage to the Premises, shall, unless otherwise provided by written agreement between the Parties, be the property of Lessee.

12. Fixed Improvements. Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind or description except with the prior written approval of Lessor and upon those conditions the Lessor may impose, including any adjustment of rent, unless otherwise provided in this Lease. All improvements of whatever kind or nature located on the Premises prior to, or on the commencement date of this Lease shall be, and at all times remain, the property of the Lessor.

13. Repair and Maintenance. Lessee shall at its own expense at all times during the term of this Lease, substantially repair and maintain, and keep all improvements now or hereafter built or made on the Premises in good and safe repair, order, and condition, reasonable wear and tear excepted.

14. Sanitation. Lessee shall keep the Premises and improvements in a strictly clean, sanitary and orderly condition.

15. Waste and Unlawful, Improper or Offensive Use of Premises. Lessee shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the Premises, or any part thereof, nor, without the prior written consent of the Director, Department of Parks and Recreation, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees growing on the Premises at the commencement of the this Lease, as well as any trees that are growing on the Premises during the duration of the this Lease.

Lessee shall not allow the Premises to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

16. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production storage, sale, disposal or transportation of

any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental regulation (hereinafter collectively referred to as "hazardous substances"). Prior to commencing use of the Premises for any activity involving the storage, use, or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of this Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Premises and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the Premises which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of cognizant governmental authorities; and (d) surrender possession of the Premises to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Premises during the term of this Lease. Lessee shall indemnify and hold harmless Lessor from and against any and all claims relating to hazardous materials arising from this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

17. Rights of Way and Easements. Lessor reserves the right, to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee which were damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.

Lessor further reserves the right to authorize public access over,

across, under and through the Premises.

18. Access to Information. Lessee shall provide Lessor with access to Lessee's books, records, assets, facilities, and all other information relative to the use of the Premises, as deemed necessary in the judgment of Lessor.

19. Liability Insurance, Required Coverage. In order to protect itself as well as the County under the indemnification agreement set forth herein, the Lessee shall obtain, pay for, and keep in force throughout the period of this Lease comprehensive liability insurance issued by an insurance company (the "Carrier") authorized to do business in the State of Hawaii (an "Admitted Carrier"), or by a company not authorized to do business in the State of Hawaii (a "Non-Admitted Carrier") only through a general insurance agent or broker licensed in the State of Hawaii. The Carrier shall be rated no less than "A-" as established by "AM Best" or "Standard and Poor" ratings.

The insurance policy, as evidenced by issuance of a "Policy Endorsement", shall name the County of Maui, its departments, agencies, officers, directors, employees and agents as "Additional Insured", and shall include a duty to defend the County, its departments, agencies, officers, directors, employees and agents against any loss, liability, claims, and demands for injury or damage, including but limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with Lessee's actions and/or use of Premises.

Unless otherwise agreed to by the, the insurance policy shall contain the following minimum requirements:

- 1) No less than a Combined Single Limit ("CSL") of liability coverage of \$1,000,000;
- 2) No erosion of limit by payment of defense costs; and
- 3) Minimum annual aggregate limit of \$2,000,000.

Prior to or upon the execution of this Agreement, Lessee shall furnish the Lessor with a copy of the insurance policy certificate together with the required endorsements verifying such insurance coverage. If the scheduled expiration date of a current insurance policy is sooner than the specified termination date of this Lease, the Lessee shall, upon renewal of the insurance policy, provide the County with a copy of the renewed insurance policy certificate together with the required endorsements throughout the term of this Lease. Unless waived by the County, the insurance policy shall expressly state that the coverage provided under such policy shall not be cancelled or terminated, unless the Carrier has first given Lessor thirty (30) calendar days prior written

notice of the intended cancellation or termination.

20. Property Insurance. Lessee shall, unless otherwise agreed to by the Director, Department of Parks and Recreation, procure and, during the entire term of this Lease, keep in force and effect special form property insurance covering all of Lessee's leasehold improvements, trade fixtures, inventory, equipment and personal property from time to time in, on or upon the Premises, in an amount not less than the full replacement cost thereof without deduction for depreciation, providing protection against all risks of loss not otherwise excluded for the Premises, together with insurance against sprinkler damage, vandalism, and malicious mischief, including demolition and debris removal and extended coverage, hurricane/wind coverage, and with inflation guard endorsement, if available in any insurance company qualified to do business in the State of Hawaii and shall, from time to time, deposit promptly with Lessor the policy and premium receipts therefor or a current certificate that such insurance is in full force and effect and shall not be cancelled without written notice to Lessor sixty (60) days prior to the effective date of such cancellation. All such policies shall be made payable to Lessor and Lessee as their interests may appear (it being understood and agreed that Lessor's interest shall be limited to permanent fixtures and other installations which are not removable by Lessee upon the termination of this Lease), and shall provide for a deductible of not more than \$5,000.00. All policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate in accordance with the provisions of this Lease.

21. Fire Insurance. Lessee shall, unless otherwise agreed to by the Director, Department of Parks and Recreation, procure, at its own cost and expense, and maintain during the period of this Lease, a policy or policies of fire insurance, on all buildings and improvements on the Premises, against loss or damage by fire in an amount equal to one hundred percent (100%) of the replacement value of the Premises as established by the insurance appraiser and as approved by the Director of Finance, and shall pay premiums thereon at the time and place the same are payable. The policy or policies of insurance shall be made payable in the case of loss to the County of Maui, as its interest may appear, and shall be deposited with the County. Any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible be used by Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the County; provided, however that with the approval of the County, Lessee may surrender this Lease and Lessee shall then receive that portion of said proceeds which constitute the proportionate value of permanent improvements made by Lessee, if any, in relation to the

unexpired term of this Lease and useful life of the improvements at the time of the loss, if any, with the County retaining the remaining proceeds of said proceeds.

22. Condemnation. If at any time during the term of this Lease any portion of the leased Premises should be condemned or required for public purposes by the State of Hawaii or the United States, Lessee shall be entitled to receive from the condemning authority the proportionate value of Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of this Lease; provided that Lessee may, in the alternative, remove and relocate Lessee's improvements to the remainder of the Premises occupied by Lessee. Lessee shall not by reason of the condemnation be entitled to any claim against Lessor for condemnation or indemnity for its interest in this Lease and all compensation payable or to be paid for or on account of this Lease by reason of the condemnation, except as aforesaid as to Lessee's improvements, shall be payable to and be the sole property of Lessor. Where the portion taken renders the remainder unsuitable for the use or uses for which the land was leased, Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability therefor; provided that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by Lessor. The foregoing right of Lessor shall not be exclusive of any other to which Lessor may be entitled by law.

23. Lessor's Lien. Lessor shall have a lien on all the buildings and improvements placed on the Premises by Lessee, on all property kept or used on the Premises, whether the same is exempt from execution or not, and on the premises, whether the same is exempt from execution or not, and on the rents of all improvements and buildings situated on the Premises for all costs, attorney's fees, rent reserved, taxes, and assessments paid by Lessor on behalf of Lessee and for the payment of all money as provided in this Lease to be paid by Lessee, and such lien shall continue until the amounts are paid.

24. Assignment. Lessee may not assign the Lease for the remainder of the Lease term.

25. Sublease. Lessee may not sublease the premises without written authorization of Lessor.

26. Lessee's Right to Terminate. If Lessee is not in default of the terms of this Lease to be observed and performed, Lessee may terminate this Lease by giving Lessor at least sixty (60) days prior written notice of such termination.

27. Surrender of Premises. At the expiration, revocation, cancellation or termination of this Lease, Lessee shall peaceably surrender the Premises, together with all improvements existing or constructed thereon, unless provided otherwise. On or before the last day of the term or the sooner termination thereof, Lessee, if not then in default, shall remove all trade fixtures, operating equipment and other personal property of Lessee from the Premises and repair any damage occasioned by any such removal. Property not so removed shall be deemed abandoned by Lessee.

28. Termination. If Lessee becomes bankrupt, dissolves, becomes inactive, or abandons the leased Premises for a period of four (4) consecutive months, or if this Lease and the leased Premises shall be attached or otherwise taken by operation of law, or if any assignment be made of Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions, and such failure shall continue for a period of more than thirty (30) days after delivery by Lessor of a written notice of such breach or default, by personal service, registered mail or certified mail to Lessee at Lessee's last known address, all rights granted hereunder to Lessee shall cease and this Lease shall terminate without prejudice to any other remedy or right of action for arrears of rent or damages or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of Lessor, subject to any valid mortgages against the property.

29. Covenant Against Discrimination. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, sex, sexual orientation, age, religion, color, ancestry, national origin, disability, marital status, arrest and court record, assignment of income for child support obligations, and National Guard participation.

30. ADA Compliance. Lessor makes no representations or warranties, express or implied, as to the Premises or any existing improvements thereon, regarding compliance with the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§12101-12213 (2000), as amended. Lessee shall be responsible for complying with the ADA and Lessee shall defend, indemnify and hold harmless Lessor against any and all claims regarding non-compliance with any requirement of the ADA. All costs relating to any required improvements or modifications to the Premises, and any existing

improvements thereon, shall be borne by Lessee. Notwithstanding any other provision of this Lease to the contrary, any improvements to the Premises constructed by Lessee shall be in compliance with the ADA.

31. Compliance with Laws. Lessee shall comply with all federal, state, and county laws pertaining to the Premises and activities conducted on the Premises, now in force or which may hereinafter be in force.

32. Interpretation Under Hawaii Law. This Lease is made and entered into in the State of Hawaii, and shall in all respects be interpreted, enforced, and governed under the laws of the State of Hawaii.

33. Gender. The use of any gender shall include all genders, and if there be more than one Lessee or Lessor, then all words used in the singular shall extend to and include the plural.

34. Paragraph Headings. The paragraph headings throughout this lease are for the convenience of Lessor and Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

35. Time of the Essence. Time is of the essence of this Lease and all of the terms, provisions, covenants, and conditions hereof.

36. Notices. All notices or demands that are required or may be given under this Lease by one party to another party, or that are required by law, shall be in writing and shall be deemed to have been validly given or served in the following manner: (a) by delivery to the intended addressee; or (b) by depositing the notice with a reputable private courier service for next business day delivery to the intended recipient at its address set forth on the first page of this Lease or at such other address as a party shall have designated for such purpose by notice to the other party or parties; or (c) by depositing the notice with the United States Postal Service for delivery, postage prepaid, registered or certified mail, return receipt requested, to the intended recipient at its address set forth on the first page of this Lease or at such other address as a party shall have designated for such purpose by notice to the other party or parties.

A notice shall be deemed received upon personal delivery to the designated address or three days after being deposited with a private courier service or with the United States Postal Service as described, supra. Rejection of or refusal to accept a notice or the inability to give notice because a notice of a change in address was not given as required by this Paragraph shall be deemed

to be receipt of the notice sent when tendered as provided by this Paragraph.

If a party has designated an agent for service of process, notice to the agent shall conclusively be deemed service on the party. A party shall have the right from time to time to change its address for receipt of notice and to specify any other address within the United States of America by giving written notice of the change in address to the other party or parties at least fifteen (15) days in advance. A notice of change of address is effective under this Lease only when actually received.

37. Assistance of Legal Counsel. The Parties represent and certify to each other that they have been advised to seek the advice of legal counsel and have done so. The Parties have carefully read and fully understand all of the provisions of this Lease, and have thoroughly discussed all aspects of this Lease with their respective counsel. The parties are voluntarily entering into this Lease and no party or its agents, representatives, or attorneys have made any representations concerning the terms or effects of this Lease other than those contained herein.

END OF EXHIBIT "C"

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE NOV. 09 1994 TIME *8:45*

DOCUMENT NO. 94 183977

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail Pickup To:

COUNTY OF MAUI
DEPARTMENT OF FINANCE
200 South High Street
Wailuku, Maui, Hawaii 96793

AFFECTS TMK: (2) 3-7-8-8 AND TMK: (2) 3-7-8-17

EASEMENT

EXHIBIT "D"

EASEMENT

THIS EASEMENT ("Easement"), made this 18th day of October, 1974, by and between A&B-HAWAII, INC., a Hawaii corporation, whose mailing address is 822 Bishop Street, Honolulu, Hawaii 96813, hereinafter called "Grantor", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose business and post office address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter called "Grantee",

W I T N E S S E T H :

That the Grantor, for good and valuable consideration, receipt of which is hereby acknowledged, and the covenants hereinafter contained to be observed and performed by the parties hereto, does hereby grant and convey unto the Grantee, its successors and assigns, a perpetual non-exclusive easement affecting land situate at Kalua, Kahului, Wailuku, Island and County of Maui, State of Hawaii, designated as Tax Map Key No. (2)3-7-8-8, more particularly depicted in Exhibit "A" attached hereto and made a part hereof, hereinafter referred to as the "Easement Area", for ingress and egress between the public roadway known as Kaahumanu Avenue to that certain property designated as Tax Map Key No. (2)3-7-8-17 ("Parcel 17") in order for Grantee and others to use Parcel 17 for recreational purposes and for providing utility and sewer service to Parcel 17. The Easement Area shall only be used for such access, utility and sewer purposes and all other uses, including, without limitation, parking in the Easement Area, are prohibited.

TO HAVE AND TO HOLD, unto the Grantee and its successors and assigns for the purposes hereinabove provided and for so long as so used and not otherwise.

EXCEPTING AND RESPRVING, HOWEVER, from this grant the right of the Grantor, full use of the land within the Easement Area and

the right to grant to others easements for any purposes within the Easement Area, subject to the rights of the Grantee herein set forth.

In consideration of the rights hereby granted and the acceptance thereof and the obligations hereby assumed, the parties hereto do further mutually covenant and agree as follows:

1. That the Grantee will use due care and diligence in the use and maintenance of the Easement Area, in keeping and maintaining the same in good and safe condition and repair and in the exercise of its rights hereunder. The Grantee will comply with all laws and ordinances and governmental rules and regulations in its use and maintenance of the Easement Area, and shall not commit, suffer, or permit to be committed any waste, nuisance, unlawful, improper, or offensive use of the Easement Area.

2. That the Grantee will, to the extent permitted by law, indemnify and hold harmless the Grantor from and against any and all claims, demands or actions against the Grantor for loss or damage or injury to persons or property (including all damages, costs, attorneys' fees, expenses and liabilities incurred in or resulting from any such claim, demand or action), arising out of the maintenance or use of the Easement Area for the purposes permitted under this Easement, or in any other manner in connection with this Easement, not caused by either (a) the acts of another to whom Grantor has granted an easement covering the Easement Area or (b) the negligence of the Grantor or its agents or employees acting within the course and scope of their employment.

3. That if at any time the Easement Area or any part thereof or interest therein, shall be taken or condemned by any authority having the power of eminent domain, then and in every such case all compensation and damages payable for or on account of such part of the Easement Area so taken or condemned, shall be payable solely to the Grantor and the interest of the Grantee in

the Easement Area or such part so taken or condemned shall thereupon cease.

4. That the Grantor has not made and does not make any representation or warranty with respect to the condition of the Easement Area, and the Grantee accepts the Easement Area in "as is" condition.

5. That the Grantee acknowledges the Easement Area is adjacent to, nearby or in the vicinity of lands being, or which in the future may be, actively used for the growing, harvesting and processing of sugar cane and other agricultural products (such growing, harvesting and processing activities being herein collectively called the "Agricultural Activities"), which activities may from time to time bring about upon the Easement Area or result in smoke, dust, noise, heat, agricultural chemicals, particulates and similar substances and nuisances (collectively, the "Agricultural By-Products").

The Grantee hereby assumes complete risk of and forever releases the Grantor from all claims for damages (including, but not limited to, consequential, special, exemplary and punitive damages) and nuisances occurring on the Easement Area and arising out of any Agricultural Activities or Agricultural By-Products. Without limiting the generality of the foregoing, the Grantee hereby, with full knowledge of its rights, forever: (a) waives any right to require the Grantor, and releases the Grantor from any obligation, to take any action to correct, modify, alter, eliminate or abate any Agricultural Activities or Agricultural By-Products, and (b) waives any right to file any suit or claim against the Grantor for injunction or abatement of nuisances occurring on the Easement Area and arising out of any Agricultural Activities or Agricultural By-Products.

Any Agricultural Activities or Agricultural By-Products, and any claim, demand, action, loss, damage, liability, cost or expense arising therefrom, shall not constitute a breach of any covenant or warranty of the Grantor under this easement or be the basis for a suit or other claim for injunction or abatement of

nuisances occurring on the Easement Area and arising out of any Agricultural Activities or Agricultural By-Products, and the Grantee hereby forever waives any right to file any such suit or claim.

As used in this section regarding Agricultural Activities, all references to the "Grantor" shall mean and include the Grantor and all parent, subsidiary, sister and other affiliated companies of the Grantor, in their respective capacities as the current owner of the Easement Area, the owner of the lands on which the Agricultural Activities are or may be conducted, and the person conducting or who may conduct the Agricultural Activities, and all successors and assigns of the Grantor and its parent, subsidiary, sister and affiliated companies.

Each of the foregoing covenants, agreements, acknowledgments, waivers and releases shall constitute covenants running with the land. Each such covenant, agreement, acknowledgment, waiver and release shall be binding upon, and all references to "Grantee" shall mean and include, the Grantee, its successors and assigns, and all persons now or hereafter acquiring any right, title or interest in or to the Easement Area (or any portion thereof) or occupying all or any portion of the Easement Area. By accepting any right, title or interest in the Easement Area (or any portion thereof) or by occupying all or any portion of the Easement Area, each such person automatically shall be deemed to have made and agreed to, and shall be bound by, observe and be subject to, each of the foregoing covenants, agreements, acknowledgments, waivers and releases.

6. That this Easement and all rights herein granted will automatically terminate in the event that a) the Easement Area, or any portion or portions thereof, is unused by the Grantee for the purposes contemplated by this Easement for a period of twenty-four (24) consecutive months, or b) ownership of Parcel 17 reverts to the Grantor or its successors and assigns. The Grantee shall, without delay following the Grantor's request,

execute and file an appropriate release and termination of this Easement with the Bureau of Conveyances of the State of Hawaii.

7. That this Easement is upon the condition that should the Grantee fail faithfully to observe or perform any of the covenants, agreements, or conditions herein contained, and on the part of the Grantee to be observed and performed, within thirty (30) days after written notice of breach thereof, the Grantor may at once without legal process at its option terminate this Easement and record an appropriate instrument reflecting such termination, without prejudice to any other right of action or remedy for any such breach or by any other breach of covenant or condition. In the event of such breach, the Grantor shall have the right to at once without legal process remove any of the Grantee's property on said lands, or property placed thereby or through the Grantee and store the same in a public warehouse or any other place at the risk and cost and for the account of the Grantee. Should the Grantor at any time terminate this Easement for any breach, in addition to any other remedy it may have, it may recover from the Grantee all costs and damages it may incur by reason of such breach, including reasonable attorneys' fees.

8. That the Grantee shall not assign the rights and privileges herein granted, or any part thereof or interest therein, without the prior written consent of the Grantor.

9. That the Grantor may, in its sole discretion, at any time upon not less than thirty (30) days' notice to the Grantee, relocate all or a portion of the Easement Area without any liability to the Grantee, so long as reasonable access to Parcel 17 continues to be provided. The costs of such relocation shall be borne by the Grantor, and the Grantee shall fully and promptly cooperate with the Grantor in effecting such relocation. After any such relocation, this Easement shall continue in full force and effect with respect to the area or premises to which the Easement Area is relocated and the parties shall promptly enter into an amendment of this Easement to reflect the new Easement Area.

10. That in the event the Grantee grants possession or use of all or any portion of Parcel 17 to any party by lease, license, easement or otherwise the Grantee shall require that party to maintain a policy of general liability insurance insuring that party, and naming the Grantor as an additional insured, against liability for personal injury or property damage arising out of the use of the Easement Area. The initial amount of such insurance shall be at least One Million Dollars (\$1,000,000.00), combined single limit per occurrence and shall be subject to periodic increase based upon inflation, increased liability awards, lender requirements, and other relevant factors as reasonably determined by the Grantor. The policy shall contain: (a) a cross-liability endorsement, (b) a provision that such coverage is primary and non-contributing with any other policy in the event of overlapping coverage, (c) a contractual liability endorsement, (d) liquor liability coverage (if liquor is sold, served or consumed on Parcel 17), and (e) a provision that no cancellation or reduction in coverage shall be effective until thirty (30) days after written notice to the Grantor. That policy shall be issued by insurer licensed in Hawaii or reasonably approved by Grantor. The party shall deliver to the Grantor a renewal certificate or binder of such policy at least twenty (20) days prior to expiration thereof.

11. The foregoing covenants and agreements shall run with the Easement Area and shall be binding upon and shall inure to the benefit of the Grantor and its successors and assigns and the Grantee and its successors and permitted assigns.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused these presents to be duly executed as of the day and year first above written.

A&B-HAWAII, INC.

By 
R. K. SASAKI
Its SENIOR VICE PRESIDENT

By 
Sumai Teupa
Its ASST. SECRETARY

"Grantor"

COUNTY OF MAUI

By 
LINDA CROCKETT LINGLE
Its Mayor

"Grantee"

APPROVED AS TO FORM
AND LEGALITY


WILLIAM B. KOLLER
Deputy Corporation Counsel
County of Maui


Attorney for Grantor

STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

On this 17th day of May 1994, before me appeared K. K. SASAKI and SUMAETSUHA, to me personally known, who, being by me duly sworn, did say that they are the SENIOR VICE PRESIDENT and ASST. SECRETARY, respectively, of A&B-HAWAII, INC., a Hawaii corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and said Officers acknowledged said instrument to be the free act and deed of said corporation.

CS

Burgess K. McQuinn
Notary Public, State of Hawaii
My Commission Expires: 2/18/97

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this 18th day of October 1994, before me appeared LINDA CROCKETT LINGLE, to me personally known, who, being by me duly sworn, did say that she is the Mayor of the COUNTY OF MAUI, a political subdivision of the State of Hawaii; that said instrument was signed on behalf of said County of Maui by authority of its Council, and the said Mayor acknowledged said instrument to be the free act and deed of said County of Maui.

CS

Anna K. Perreault
Notary Public, State of Hawaii
My Commission Expires: 10/19/98

DESCRIPTION

EASEMENT "E"
FIRST HAWAIIAN BANK SUBDIVISION

All of that certain parcel of land, being an easement for access purposes over and across a portion of Lot 1 of the First Hawaiian Bank Subdivision, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 23 to V. Kamamalu situated at Kahului, Island and County of Maui, State of Hawaii.

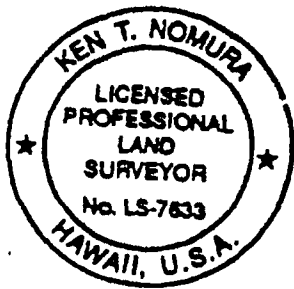
Beginning at a point at the Southwesterly corner of this easement, on the Northerly side of Kaahumanu Avenue [F.A.P. No. F 032-1 (1)], the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,824.07 feet North and 9,351.85 feet East and running by azimuths measured clockwise from True South:

1. 160° 16' 226.78 feet over and across Lot 1 of the First Hawaiian Bank Subdivision to a point;
2. 243° 31' 20.15 feet along the remainder of R.P. 4475, L.C.Aw. 7713, Ap. 23 to V Kamamalu (TMK: 3-7-08:17) to point;
3. 340° 16' 228.49 feet over and across Lot 1 of First Hawaiian Bank Subdivision to point;
4. Thence along the Northerly side of Kaahumanu Avenue [F.A.P. F 032-1 (1)] on a curve to the with a radius of 4,940.00 feet chord azimuth and distance 68° 23' 12" 20.02 feet to the point of beginning containing an area of 4,555 Feet.

EASEMENT "E"
FIRST HAWAIIAN BANK SUBDIVISION

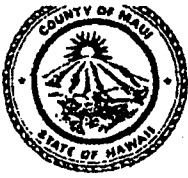
Prepared by A&B Properties, Inc.
Kahului, Hawaii

This work was prepared by me or under my supervision.



Ken T. Nomura 9/26/94
Registered Professional Land Surveyor LS-7633

ME



DEPARTMENT OF PARKS AND RECREATION

700 Hali'a Nako'a Street, Unit 2, Wailuku, Hawaii 96793

ANNUAL REAL PROPERTY GRANT REPORT

Report Period: Fiscal Year July 1, _____ - June 30, _____

ORGANIZATION: _____

Tax Map Key Number(s): _____

Department of Parks and Recreation's Mission: The purpose of the Department of Parks and Recreation is to provide safe, satisfying and cost-effective recreational opportunities for the residents of and visitors to Maui County.

INSTRUCTIONS

Provide a narrative response to each question below for each quarter and fiscal year.

I. Program Data/Status Summary

- a. List each program goal/benchmark for the leased/licensed site and how it contributes towards the Parks Department's mission (noted above).
- b. What objectives/action steps were completed this fiscal year for each goal?
- c. What measurable outcomes were achieved this fiscal year?
- d. Were your organization's programs/activities open to the public? If so, how were they promoted to residents and visitors?
- e. Give actual number of people attended at activities, programs and events on property for each quarter of the fiscal year.
- f. What objectives/actions steps will be accomplished during the next fiscal year?

II. Narrative Report

- a. What program challenges occurred this fiscal year and how were they addressed and/or resolved?
- b. Describe any staff changes in your organization.
- c. Were there any fundraising activities on leased/licensed property? If so, please indicate how many, type of activity, primary beneficiary of the fundraising, and how your organization participated and benefited from the activity.
- d. Describe improvements on the property, its condition, and your risk evaluation program. How often are site inspections done and by who?
- e. Disclosure of any organizational conflict of interest and criminal violations.
- f. Were audits done this fiscal year? When is the next audit planned for your organization?

Please submit the following information with this report:

- a. Board of Directors' Minutes.
- b. Updated list of Board of Directors
- c. Financial status report including but not limited to the total revenue generated on the property leased/licensed.
- d. Update Tenant Contact Information Form.
- e. Current Liability Insurance Certificate naming the County of Maui as additional insured.

Report Prepared by: _____
Print Name/Title Signature Date

EXHIBIT " E "