

D-1

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

April 27, 2007

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No: 04KD-179  
KAUAI

Amend Prior Board Action of October 28, 2005 (D-3), Grant of Perpetual Non-Exclusive Easement to the Department of Water, County of Kauai for Overflow Drainage and Channel Purposes, Omao, Koloa, Kauai, TMK: (4) 2-7-04: 11

BACKGROUND:

The Board, at its October 28, 2005 meeting under agenda item D-3, approved the Grant of Perpetual Non-Exclusive Easement to the Department of Water, County of Kauai for Overflow Drainage and Channel Purposes. This easement is for the newly built 0.5 million-gallon water tank on Governor's Executive Order 683 to the County of Kauai. (Exhibit A)

REMARKS:

After review of the final easement documents by the Department of Water's Legal Adviser Amy Esaki, and upon recommendation by the Department of the Attorney General, it was mutually agreed to request amendments to the Board submittal approved on October 28, 2005, agenda item D-3. (Exhibit B)

RECOMMENDATION: That the Board:

1. Amend its prior Board action of October 28, 2005, under agenda item D-3, and, as applicable, that the standard form of the easement document be amended for this disposition, to provide for the following:
  - A. Amend the reference to the Applicant from "Department of Water" to "Board of Water Supply," per HRS §54-27. (See Exhibit C)
  - B. Amend standard easement document to reflect changes requested by the Board of Water Supply, as follows:
    - Page 3, Item 7. This paragraph, which begins with the phrase, "Should future development necessitate a relocation of the easement . . . ," shall be deleted in

its entirety since the function of this easement is for draining and flushing of water from the newly constructed water tank. The drainage culvert was constructed under the water tank and will exit at the lowest point within the easement, making it impossible to relocate the drainage culvert.

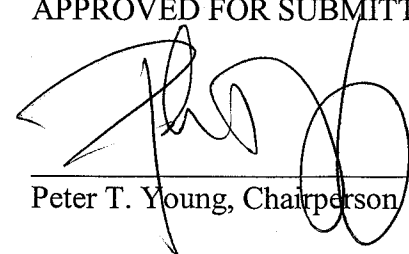
- Page 4, Item 10, line 5. This paragraph, which begins with the phrase, "These easement rights shall cease and terminate ..." shall be amended to read from "... for a consecutive period of one (1) year" to "... for a consecutive period of two (2) years." This will be consistent with the County Ordinance §18-4.3 entitled "Easement Rights" and all other grant of easements to the County. (See Exhibit D)
  - Page 6, Item 15, line 3. Amend from "giving reasonable notice" to read "giving of one (1) year advance written notice."
  - Page 7, Item 19, line 2. Add the phrase "other than overflow drainage line and channel" so that the sentence then reads "Grantee shall not construct, place or maintain any building or structure other than overflow drainage line and channel over and upon the easement area."
  - Page 9, Paragraph 1. For this notarization paragraph, make the changes necessary to replace Bryan J. Baptiste, the Mayor of the County of Kauai, with Lynn McCray, the Chairperson of the Board Water Supply.
  - Page 9, Paragraph 2. This notarization paragraph can be deleted entirely, as the County Clerk of the County of Kauai is only needed if the Mayor of the County of Kauai is executing the Easement document.
2. All other terms and conditions listed in the October 28, 2005 approval not inconsistent with the above shall remain the same.

Respectfully Submitted,



 Thomas H.Oi  
Kauai District Land Agent

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson

1-7

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 28, 2005

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:04KD-179

Kauai

Grant of Perpetual Non-Exclusive Easement to the Department of Water, County of Kauai for Overflow Drainage and Channel Purposes and Issuance of a Construction and Management Right-of-Entry, Omao, Koloa, Kauai, Tax Map Key: (4) 2-7-04:11.

APPLICANT:

Department of Water, County of Kauai mailing address is P.O. Box 1706, Lihue, HI 96766.

LEGAL REFERENCE:

Section 171-13 and 95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Omao situated at Omao, Koloa, Kauai, identified by Tax Map Key: (4) 2-7-04:11, as shown on the attached map labeled Exhibit A.

AREA:

2,302 square feet, more or less.

ZONING:

State Land Use District: Rural  
County of Kauai CZO: R-2

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by General Lease No. S-5560, William D. Medeiros,

**EXHIBIT "A"**

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

*October 28, 2005*

D-3

Lessee, for pasture purposes. Lease to expire on December 1, 2013.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove overflow drainage line and channel over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement acceptance notice for the subject project was published in the OEQC's Environmental Notice on January 8, 2005. The agency has determined that this project will not have significant environmental impacts and has issued a FONSI.

DCCA VERIFICATION:

Not applicable. The Applicant is a government agency.

APPLICANT REQUIREMENTS:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

On February 11, 1936, Governor Executive Order No. 683 was issued to the County of Kauai for a tank site for Koloa Water Works. A 0.2 million gallon (mg) water tank was constructed on this site. By letter dated June 14, 2004 the Department of Water has determined that the existing 0.2 mg needs to be replaced with a 0.5 mg water tank to provide adequate water service to the Koloa area. The developers in the Koloa area will be absorbing the cost of constructing the new 0.5 mg water tank, which upon completion will be turned over to the Department of Water. The increase in the size of the new water tank and the limited area of the site requires the new water tank to be semi-buried at about 12 feet below the existing ground. It is impossible to construct an overflow drainage line within the tank site.

**EXHIBIT "A"**

REMARKS:

The Department of Water is requesting a perpetual non-exclusive easement for the overflow drainage line and channel. It will be 15 feet wide and 300 feet long along the west property line of General Lease No. S-5560.

Comments were solicited from Department of Health, DLNR agencies: Historic Preservation, Water Resource Management, Federal agencies: NCRS, County of Kauai agencies: Planning Department, Public Works, and OHA. Historic Preservation responded, indicating no historic properties will be affected by this undertaking. Mr. William Medeiros has no objections to the granting of the easement.

The Department of Water is also requesting an immediate right-of-entry to commence design and construction of this project.

RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Department of Water, County of Kauai covering the subject area for overflow drainage and channel purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
  - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 2-7-04: 14, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a construction and management right-of-entry to Department of Water its employees, agents and contractors covering the subject area under the terms and conditions cited above, which are by this reference


**EXHIBIT "A"**

October 28, 2005

incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

*ost for*  
  
\_\_\_\_\_  
Thomas H. Oi  
Kauai District Land Agent

APPROVED FOR SUBMITTAL:


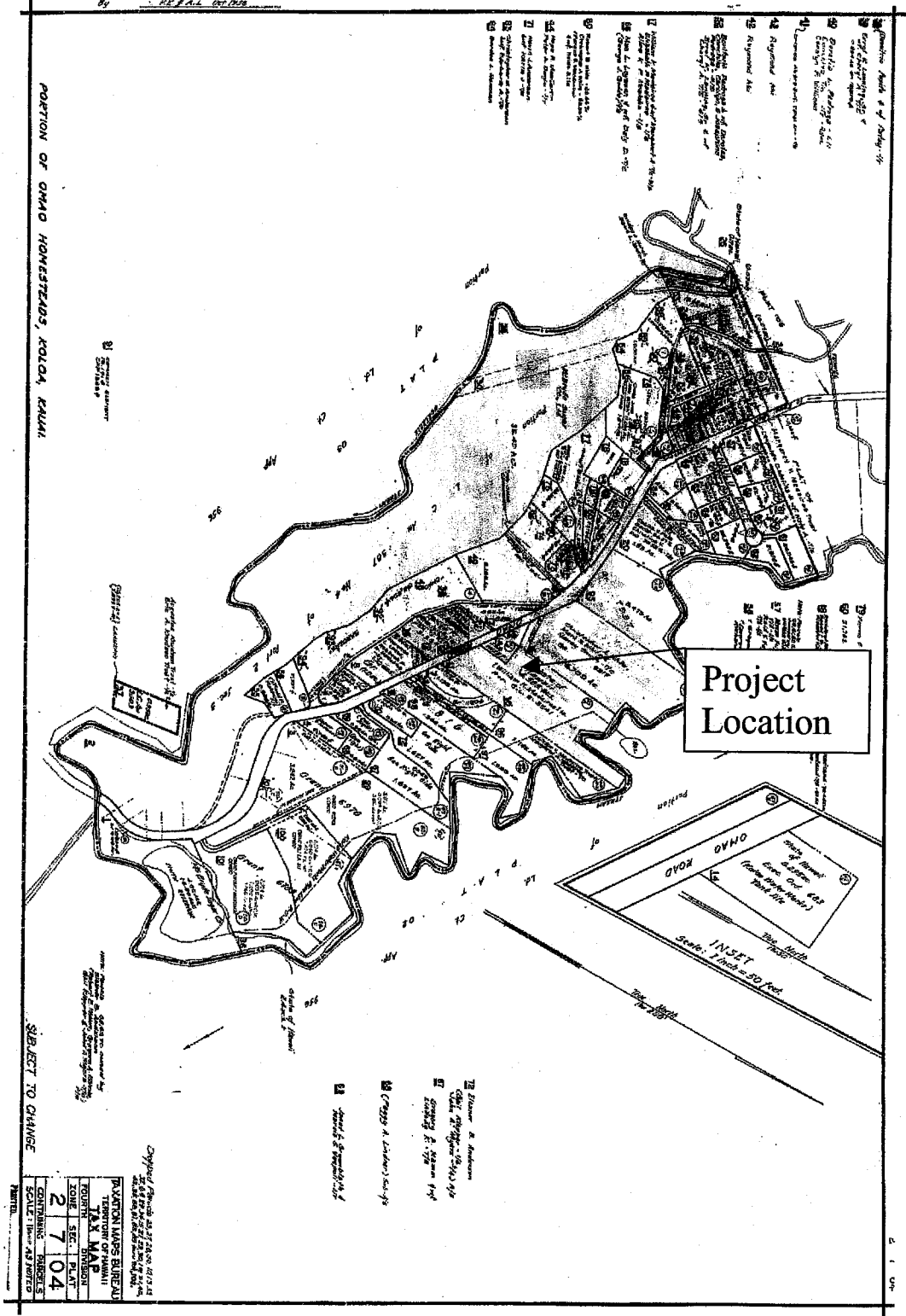
  
\_\_\_\_\_  
Peter T. Young, Chairperson

EXHIBIT "A"



**EXHIBIT A**

**EXHIBIT "A"**

**ESAKI SURVEYING AND MAPPING, INC.**  
 1810 Holladay Street  
 1347 West 14th Street  
 Ft. Collins, CO 80504  
 Ph: (970) 224-0023 Fax: (970) 224-0024

CIVIL ENGINEERS - SURVEYORS - PLANNERS

NO.	DATE	DESCRIPTION	BY



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION

DATE: APRIL 20, 2008

PROJECT: OMAO WATER SYSTEM 0.5 MG. RESERVOIR AND CONNECTING PIPE LINES  
 Tax Map Key: (4) 2-7-04: 14  
 Chaco, Kalam, Kanat, Hanraft  
 CLIENT: BRANT CONSTRUCTION, INC.

PLAN AND PROFILE DRAIN LINE

APPENDED

THIS DRAWING IS THE PROPERTY OF ESAKI SURVEYING AND MAPPING, INC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OR MODIFICATION OF THIS DRAWING WITHOUT THE WRITTEN CONSENT OF ESAKI SURVEYING AND MAPPING, INC. IS STRICTLY PROHIBITED.

SHEET

TRUE NORTH  
 Scale 1" = 7.50'

EASEMENT

G.L. S-5560

(4) 2-7-04: 16

(4) 2-7-04: 8

PLAN

SCALE: HORIZONTAL  
 1" = 20'  
 VERTICAL  
 1" = 4'

EXHIBIT "B"

PROFILE

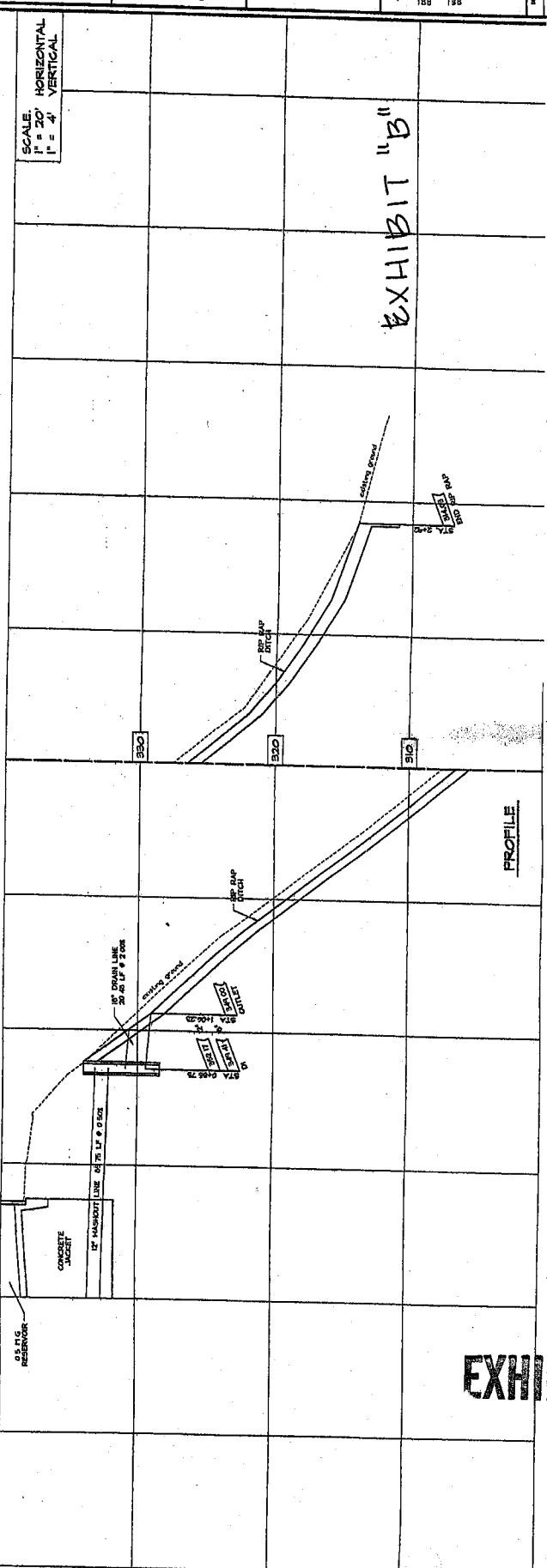
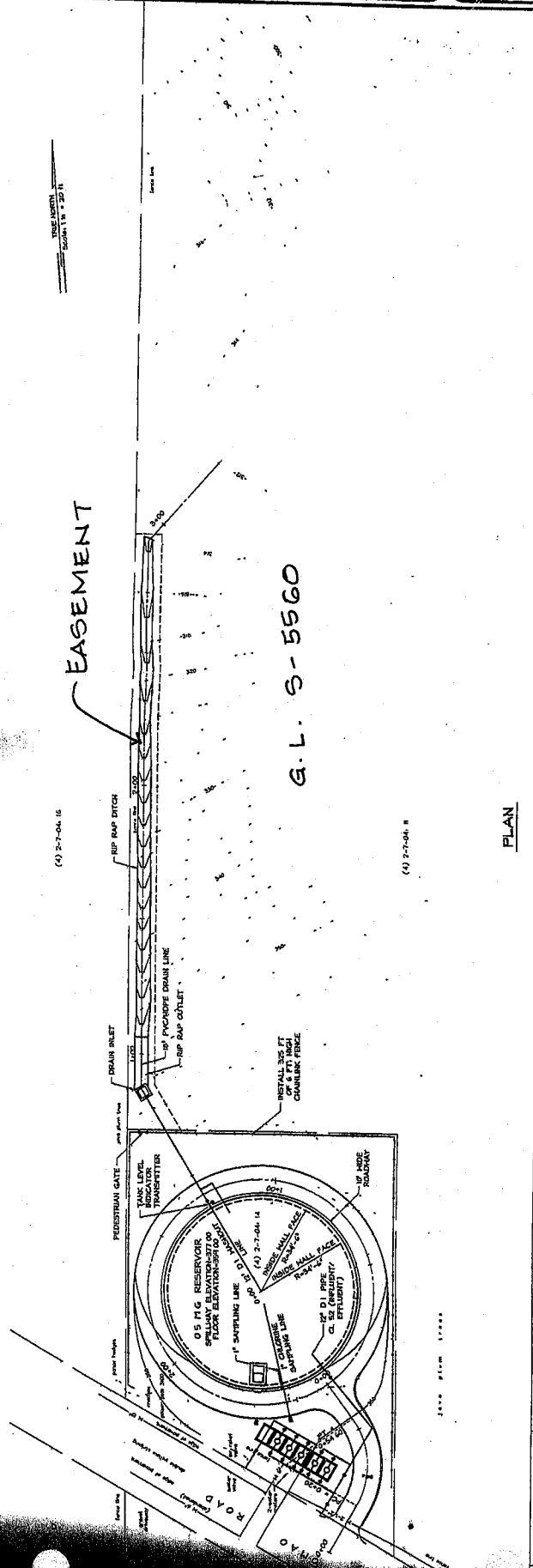


EXHIBIT "A"



in, over, under and across that certain parcel of land ("easement area") situate at Omao, Koloa, Kauai, Hawaii, being identified as "Perpetual Non-Exclusive Easement for Overflow Drainage and Channel Purposes," containing an area of 3,596 square feet, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 24,374 and dated December 13, 2006, TOGETHER WITH the rights of ingress and egress to and from the easement area for all purposes in connection with the rights hereby granted.

TO HAVE AND TO HOLD the easement rights unto the Grantee, its successors and assigns, in perpetuity, SUBJECT, HOWEVER, to the following terms, conditions and covenants:

1. The Grantee shall at all times with respect to the easement area use due care for public safety and agrees to indemnify, defend, and hold the Grantor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of the Grantee relating to the Grantee's use, occupancy, maintenance, or enjoyment of the easement area; 2) any failure on the part of the Grantee to maintain the easement area and sidewalks, roadways and parking areas adjacent thereto in the Grantee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Grantee to maintain the easement area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Grantee's non-observance or non-performance of any of the terms, covenants, and conditions of this grant of non-exclusive easement or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

2. The Grantor reserves unto itself, its successors and assigns, the full use and enjoyment of the easement area and to grant to others rights and privileges for any and all purposes affecting the easement area, provided, however, that the rights herein reserved shall not be exercised by the Grantor and similar grantee(s) in any manner which interferes unreasonably with the herein Grantee in the use of the easement area for the purposes for which this easement is granted.

3. All improvements placed in or upon the easement area by the Grantee shall be done without cost or expense to the

Grantor and shall remain the property of the Grantee and may be removed or otherwise disposed of by the Grantee at any time; provided, that the removal shall be accomplished with minimum disturbance to the easement area which shall be restored to its original condition, or as close thereto as possible, within a reasonable time after removal.

4. Upon completion of any work performed in or upon the easement area, the Grantee shall remove therefrom all equipment and unused or surplus materials, if any, and shall leave the easement area in a clean and sanitary condition satisfactory to the Grantor.

5. This easement shall run with the land and shall inure to the benefit of the real property described as tax map key no. (4)2-7-004:014, providing that the Grantee shall be required to carry liability insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee's estate, when this easement is sold, assigned, conveyed, or otherwise transferred, shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document.

6. The Grantee shall keep the easement area and the improvements thereon in a safe, clean, sanitary, and orderly condition, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the easement area.

7. Should future development necessitate a relocation of the easement granted herein, or any portion thereof, the relocation shall be accomplished at the Grantee's own cost and expense; provided, however, that if other lands of the Grantor are available, the Grantor will grant to the Grantee without payment of any monetary consideration, a substitute easement of similar width within the reasonable vicinity of the original alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law.

8. The Grantee covenants, for itself, its successors and assigns, that the use and enjoyment of the land herein granted shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

9. The Grantee, in the exercise of the rights granted herein, shall comply with all of the requirements of the federal, state, and county authorities and shall observe all county ordinances and state and federal laws, rules and regulations, now in force or which may hereinafter be in force.

10. These easement rights shall cease and terminate, and the easement area shall automatically be forfeited to the Grantor, without any action on the part of the Grantor, in the event of non-use or abandonment by the Grantee of the easement area, or any portion thereof, for a consecutive period of one (1) year.

11. The Grantee shall, upon termination or revocation of this easement peaceably deliver unto the Grantor possession of the premises, together with all improvements existing or constructed thereon or Grantee shall remove such improvements and shall restore the premises to its original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantee, at the option of the Grantor. If the Grantee does not remove the improvements or restore the premises to the satisfaction of the Grantor, the Grantor may effect such action and the Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the termination or revocation of this easement, should the Grantee fail to remove any and all of Grantee's personal property from the premises, after notice thereof, the Grantor may remove any and all of Grantee's personal property from the premises, and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Grantee and the Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the easement.

12. In case the Grantor shall, without any fault on its part, be made a party to any litigation commenced by or against the Grantee as a result of this grant of non-exclusive easement (other than condemnation proceedings), the Grantee shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the Grantor; furthermore, the Grantee shall pay all costs, including reasonable attorney's fees and expenses, which may be incurred by or paid by the Grantor in enforcing the covenants and conditions of this grant of non-exclusive easement, or in the collection of delinquent rental, fees, taxes, and any and all other applicable charges attributed to said easement area.

13. The Grantee shall not cause or permit the escape,

disposal or release of any hazardous materials except as permitted by law. Grantee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the easement area any such materials except to use in the ordinary course of Grantee's business, and then only after written notice is given to Grantor of the identity of such materials and upon Grantor's consent which consent may be withheld at Grantor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantee, then the Grantee shall be responsible for the reasonable costs thereof. In addition, Grantee shall execute affidavits, representations and the like from time to time at Grantor's request concerning Grantee's best knowledge and belief regarding the presence of hazardous materials on the easement area placed or released by Grantee.

The Grantee agrees to indemnify, defend, and hold Grantor harmless, from any damages and claims resulting from the release of hazardous materials on the easement area occurring while Grantee is in possession, or elsewhere if caused by Grantee or persons acting under Grantee. These covenants shall survive the expiration or earlier termination of this easement.

For the purpose of this easement "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Time is of the essence in this agreement and if the Grantee shall abandon the premises, or if this easement and premises shall be attached or taken by operation of law, or if any assignment is made of the Grantee's property for the benefit of creditors, or if Grantee shall fail to observe and perform any of the covenants, terms, and conditions contained in this easement and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) calendar days after delivery by the Grantor of a written notice of breach or default, by personal service, registered mail or certified mail to the Grantee at its last known address and to each mortgagee or holder of record having a security interest in

the premises, the Grantor may, subject to the provisions of section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this easement without prejudice to any other remedy or right of action for any preceding or other breach of contract; and in the event of termination, at the option of Grantor, all improvements shall remain and become the property of the Grantor or shall be removed by Grantee.

15. The Grantor reserves the right to withdraw the easement for public use or purposes, at any time during this grant of easement upon the giving of reasonable notice by the Grantor and without compensation.

16. The Grantee shall not mortgage or pledge the premises, any portion, or any interest in this easement without the prior written approval of the Chairperson of the Board of Land and Natural Resources and any mortgage or pledge without such approval shall be null and void.

17. In the event the Grantor seeks to forfeit the privilege, interest, or estate created by this easement, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) calendar days, from the date of receipt of the Grantor's notice, or within an additional period allowed by Grantor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Grantor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Grantor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Grantor in instituting or

prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any disposition shall be applied, first, to reimburse the Grantor for costs and expenses in connection with the disposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the Grantor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon disposition which exceeds the fair market value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

18. The Grantee shall at all times during the term of this easement keep trim all vegetation growing within, over, or onto the easement area so that it does not present a threat to public safety.

19. Grantee shall not construct, place or maintain any building or structure over and upon the easement area.

20. The Grantee shall comply with all applicable federal and state environmental impact regulations.

21. The Grantee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Grantee's, its invitee's, or its agent's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and its surrounding waters of such pollutant or contaminant and restore to the Grantor's satisfaction the areas affected by such pollution or contamination, all at the Grantee's own cost and expense.

22. The easement area is encumbered by General Lease No. S-5560 to William D. Medeiros, as "Lessee," and therefore this grant of easement is subject to the Lessee's approval. The Lessee had no objection to the granting of this easement as indicated on the State of Hawaii, Board of Land and Natural Resources' Submittal dated October 28, 2005. \_\_\_\_\_

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Indenture to be executed as of the day, month, and year first above written.

Approved by the Board of Land and Natural Resources at its meeting held on October 28, 2005.

STATE OF HAWAII

By \_\_\_\_\_  
Chairperson  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:

GRANTOR

\_\_\_\_\_  
Deputy Attorney General

Dated: \_\_\_\_\_

DEPARTMENT OF WATER, COUNTY OF  
KAUAI

By \_\_\_\_\_  
Its \_\_\_\_\_

And By \_\_\_\_\_  
Its \_\_\_\_\_

GRANTEE

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

Dated: \_\_\_\_\_

STATE OF HAWAII )  
 ) SS.  
COUNTY OF KAUAI )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
before me appeared BRYAN J. BAPTISTE, to me personally known,  
who, being by me duly sworn, did say that he is the Mayor of the  
COUNTY OF KAUAI, a political subdivision of the State of Hawaii;  
that the seal affixed to the foregoing instrument is the seal of  
said COUNTY OF KAUAI, and that said instrument was signed and  
sealed on behalf of said COUNTY OF KAUAI by authority of its  
Charter; and said BRYAN J. BAPTISTE, acknowledged said instrument  
to be the free act and deed of said COUNTY OF KAUAI.

\_\_\_\_\_  
Notary Public, State of Hawaii  
\_\_\_\_\_

My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
 ) SS.  
COUNTY OF KAUAI )

On this \_\_\_\_\_ day of \_\_\_\_\_,  
before me appeared PETER A. NAKAMURA, to me personally known,  
who, being by me duly sworn, did say that he is the County Clerk  
of the COUNTY OF KAUAI, a political subdivision of the State of  
Hawaii; that the seal affixed to the foregoing instrument is the  
seal of said COUNTY OF KAUAI; that the foregoing instrument was  
signed and sealed on behalf of said COUNTY OF KAUAI by authority  
of its Charter; and said PETER A. NAKAMURA acknowledged said  
instrument to be the free act and deed of said COUNTY OF KAUAI.

\_\_\_\_\_  
Notary Public, State of Hawaii  
\_\_\_\_\_

My commission expires: \_\_\_\_\_

# KAUAI COUNTY CHARTER

## DEPARTMENT OF WATER

### ARTICLE XVII

#### Section 17.01: ORGANIZATION.

→ There shall be a department of water supply consisting of a board of water supply, a manager and chief engineer and the necessary staff.

#### Section 17.02: BOARD OF WATER SUPPLY ORGANIZATION.

The board of water supply shall consist of seven members, four of whom shall be appointed by the mayor with the approval of the council. The State District Engineer of the department of transportation, the County Engineer, and the planning director shall be ex-officio voting members of the board. The ex-officio members shall not serve as chair or vice-chair of the board. The board shall hold at least one regular meeting each month. It shall adopt rules and regulations necessary for the conduct of its business.

#### Section 17.03: POWERS AND DUTIES OF THE BOARD.

The board shall manage, control and operate the waterworks of the county and all property thereof for the purpose of supplying water to the public, and shall collect, receive, expend and account for all sums of money derived from the operations thereof and all other monies and property provided for use or benefit of such waterworks.

- A. The board shall maintain accounts to show its complete financial status and the activities of management and operation including current projects. It shall submit a written report quarterly to the mayor and council on its financial status and operations.
- B. Review the State's and County's general plans with the board's general plan for water sources and system. The board shall transmit such review and plans through the mayor to the council. The board's general plan for water sources and system shall implement the County's general plan.
- C. The board may provide for a reserve fund, issue revenue bonds, provide for payment of bonds, expend bond funds and other funds, establish rates and charges, acquire property, sue and be sued and engage in and undertake all other activities as provided for in Chapter 145-A, Revised Laws of Hawaii 1955, and as may be hereafter provided for by law.
- D. The board may make and, from time to time, alter, amend and repeal rules and regulations relating to the management, control, operation, preservation and protection of the waterworks. Such rules and regulations shall have the force and effect of law. Penalties for the violation of any rule or regulation shall be set forth in the rules and regulations.

#### Section 17.04: STAFF.

The board shall appoint an engineer duly registered under Hawaii State laws pertaining to registration of engineers. He shall be known as the manager and chief engineer and shall be the head of the department. He shall have had a minimum of five (5) years of training and experience in an engineering position, at least three (3) years of which shall have been in a responsible administrative capacity. He shall have the powers and duties prescribed by the board.

sewerage services, communications, transportation, television cable service, or other public utility services. (Ord. No. 347, April 6, 1978; Sec. 18-4.2, 1978 Cumulative Supplement; Ord. No. 569, April 30, 1990)

→ **Sec. 18-4.3 Easement Rights.**

In the event that any utility facility has any easement rights in, on, over or under County property and the use of the County property for utility facility purposes shall cease for any continuous period of two (2) years, any easement rights shall automatically terminate and revert back to the County unless there is a contrary provision in any law, franchise or regulation having the force of law and having precedence over County ordinances. (Ord. No. 347, April 6, 1978; Sec. 18-4.3, 1978 Cumulative Supplement)

**Sec. 18-4.4 Authorization For Placement And Relocation; County Indemnification; And Penalty**

(a) No person or entity shall place, erect, construct, remove, relocate or change the position of any utility facility on County property without first obtaining authorization from the County Engineer.

(b) As required by the County Engineer, any person or entity who places or relocates a utility facility on County property shall enter into an Agreement of Indemnity with the County.

(c) Any person convicted of violating any provision of this Section is guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars (\$500) for each offense. A separate offense is committed upon each day during or on which a violation occurs or continues. (Ord. No. 569, April 30, 1990)

**Sec. 18-4.5 Removal, Relocation, Replacement, Or Reconstruction Of Utility Facility.**

(a) Whenever, as the result of the work of construction, reconstruction, or maintenance of any County property, it is necessary to provide for or require the removal, relocation, replacement, or reconstruction of any existing utility facility located in, on, over, or under County property, the utility shall bear the first ten thousand dollars (\$10,000) cost of the removal, relocation, replacement or reconstruction of its facilities and the balance of the cost shall be borne equally by the owner and the County computed in accordance with Section 264-33(c), H.R.S. when the adjustment is made without changing the type of construction. If a change in the type of construction (i.e. overhead to underground) is requested by the County, the additional costs involved will be borne by the County.

(b) Whenever five hundred (500) or more voters registered in the last general election petition the County requesting the removal, relocation, replacement or reconstruction of any existing utility facility located in or