

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

November 16, 2007

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

LOD 13201

Oahu

Informational Briefing regarding installation of signage by Hilton Hawaiian Village, LLC, Kalia, Waikiki, Oahu, Tax Map Key (1) 2-3-037:021 (por.)

APPLICANT:

Hilton Hawaiian Village, LLC ("Hilton"), a domestic limited liability company, whose business and mailing address is 2005 Kalia Road, Honolulu, Hawaii 96815.

LEGAL REFERENCE:

Sections 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kalia situated at, Waikiki, Oahu, identified by Tax Map Key: (1) 2-3-037:021 (por.), as shown on the attached map labeled Exhibit A.

AREA:

2.722 acres, more or less. The signage will be placed by Hilton at specific locations within this area as agreed to by Hilton and Land Division staff, subject to the approval of the Chairperson.

ZONING:

State Land Use District: Urban
City and County of Honolulu LUO: Public Precinct

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Land Office Deed ("LOD") 13201 (see remarks).

CHARACTER OF USE:

Educational and public warning signage/language purposes to be displayed around the Duke Kahanamoku Lagoon (the "Lagoon").

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

Not Applicable. The signage installation is for educational and public warning purposes, pursuant to LOD 13201, which requires Hilton to maintain the Lagoon (including the water quality of the Lagoon), and to maintain the Lagoon's infrastructure. The briefing is being requested by Hilton in furtherance of and compliance with Hilton's maintenance responsibilities pursuant to LOD 13201.

COLLATERAL SECURITY DEPOSIT:

None.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the underlying lagoon restoration project was published in the OEQC's Environmental Notice on December 23, 2005 with a finding of no significant impact (FONSI).

Conservation District Use Permit OA-3297 was approved May 26, 2006.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

This submittal concerns the proposal by Hilton to place educational and public warning signage/language in the area around the Duke Kahanamoku Lagoon, in furtherance of and compliance with its maintenance responsibilities pursuant to LOD 13201. See letter of Hilton, dated October 25, 2007, attached as Exhibit B.

Hilton is the Grantee of the Indenture and Deed (now referred to as LOD 13201), dated September 22, 1955, executed by the Territory of Hawaii and Hilton's predecessor-in-interest, Kaiser Community Homes. Under the terms of LOD 13201, Hilton is required (1) to maintain the Lagoon (including the water quality of the Lagoon) and (2) to maintain the Lagoon's infrastructure, such as the pumps that service the Lagoon.

The attached letter from Hilton provides substantive detail and supporting authority from Hawaii Revised Statutes and the applicable Hawaii Administrative rules for the signage language. Staff is in agreement that the proposed signage is necessary to educate and inform the public about protecting these new improvements, which ultimately benefit the public due to its ability to use the lagoon area.

Hilton's letter of October 25, 2007 contained Exhibits that exceed 300 pages in number. Exhibit A is a copy of LOD 13201. Exhibit B is the Proposed Language for the Lagoon Signage. Exhibit C is a copy of the Unencumbered Public Lands Rules, Chapter 221 of Title XII of the Hawaii Administrative Rules. Exhibit D is a copy of Hawaii Revised Statutes, Sections 171-58.5 and 520-4. Exhibit E is a copy of Resolution No. 02-226, CD1, FD1 of the City Council of the City and County of Honolulu, approving a conceptual plan for a planned development-resort project for the construction of a high rise tower and other improvements at Hilton Hawaiian Village, Waikiki, Oahu. Exhibit F is a copy of Resolution No. 02-225, CD1 of the City Council of the City and County of Honolulu, granting a special management area use permit for construction of a high rise tower and other improvements at Hilton Hawaiian Village, Waikiki, Oahu. Exhibit G is a copy of a cover letter dated April 18, 2006 and Resolution No. 06-106 of the City Council of the City and County of Honolulu, granting a special management area use permit for the restoration of the Duke Kahanamoku Lagoon and landside improvements (Waikiki). Exhibit H is a copy of the site utility layout plan for the lagoon project. Exhibit I is a copy of Conservation District Use Permit No. OA-3297. Exhibit J is a copy of a cover letter to Dan A. Polhemus of the Division of Aquatic Resources and the Final Aquatic Species Management and Monitoring Program for the Duke Kahanamoku

Lagoon, Hilton Hawaiian Village, Waikiki, Oahu. Exhibit K is a copy of the Final Environmental Assessment & Finding of No Significant Impact for the Duke Kahanamoku Lagoon Restoration Project. All of exhibits are available for review upon request, however, for purposes of economy, staff is circulating only Hilton's Exhibit B (herein Exhibit C) that details the proposed language for the signage.

The cost of purchasing, installing, and maintaining the signage will be borne by Hilton pursuant to its maintenance responsibilities.

Hilton will be required to comply with the City and County of Honolulu's signage regulations and approval process.

Other than comments from the Attorney General's Office, no agency or community comments were solicited as the signage will not affect the character of use of the property and is solely to facilitate Hilton's compliance with its maintenance responsibilities. The Attorney General's Office noted that the prohibition against animals in the Lagoon needs to be clarified to allow for seeing eye dogs as provided by HAR 13-221-22(a). They also questioned whether the language of the signage was sufficient to provide notice to the public that the prohibitions in the signage constituted violations under the Department's rules.

RECOMMENDATION: That the Board:


Authorize staff to assist Hilton, as may be needed, to determine and finalize the wording of and appropriate locations for the signage proposed by Hilton, for use in the Duke Kahanamoku Lagoon area, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- a. That Hilton and staff address and resolve the concerns raised by the Attorney General's Office regarding the language of the signage;
- b. That Hilton acknowledge and assume the primary responsibility for monitoring and enforcing the prohibitions identified in the proposed signage, with the understanding that assistance from or intervention by the Department will be requested and provided as circumstances may require such action;
- c. That Hilton notify the Department as soon as practicable, whenever its staff or agents witness or are informed of a violation in the Duke Kahanamoku Lagoon area that is believed to be a violation of State laws or Departmental rules that may require enforcement action by the Department; and

- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



 Steve Molmen
Supervising Land Agent

APPROVED FOR SUBMITTAL:


for Laura H. Thielen, Chairperson

October 25, 2007

VIA E-MAIL AND HAND-DELIVERY

Ms. Laura Thielen, Chairperson, and Members
Board of Land and Natural Resources, State of Hawaii
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: **Proposed Signage Language for Duke Kahanamoku Lagoon, Oahu,
TMK No. (1) 2-3-37:021**

Dear Ms. Thielen and Members:

On behalf of Hilton Hawaiian Village, LLC ("**Hilton**"), the owner of the Hilton Hawaiian Village Beach Resort & Spa, please accept this submittal to the Board of Land and Natural Resources (the "**Board**" or "**DLNR**") proposing educational and public warning signage/language to be displayed around the Duke Kahanamoku Lagoon (the "**Lagoon**").

As you may be aware, under the Indenture and Deed, dated September 22, 1955, executed by the State of Hawaii and Hilton's predecessor-in-interest (the "**1955 Deed**"), Hilton is required (1) to maintain the Lagoon (including the water quality of the Lagoon) and (2) to maintain the Lagoon's infrastructure, such as the pumps that service the Lagoon. For ease of reference, a copy of the 1955 Deed is enclosed as Exhibit A.

In order to satisfy Hilton's obligations under the 1955 Deed, Hilton has recently completed approximately \$18 million in improvements to the Lagoon (the "**Lagoon Improvements**"). The Lagoon Improvements include (i) the installation of various public amenities (such as a water feature, tropical landscaping, park benches, lighting and a paved meandering sidewalk), (ii) the construction of a new water circulation system to maintain the Lagoon's water quality, and (iii) the emplacement of a geotextile liner to seal existing Lagoon sediments. The Lagoon Improvements have enhanced not only the water quality of the Lagoon, but also the beauty of Waikiki Beach.

Hilton is committed to meeting its obligations set forth in the 1955 Deed. However, to ensure that Hilton can meet its commitments under the 1955 Deed, Hilton desires kokua from the public when the public uses the Lagoon in order to avoid damage to the Lagoon and the Lagoon Improvements caused by inadvertent public misuse. Examples of preventable damage to the Lagoon and the Lagoon Improvements include the puncturing of the geotextile liner by umbrella poles planted in the sand and the introduction of foreign materials (such as chemicals) into the

EXHIBIT " B "

Lagoon. Accordingly, Hilton respectfully requests that certain educational and warning signage (the “**Lagoon Signage**”) be placed at various locations around the Lagoon in order to protect the Lagoon and the Lagoon Improvements from preventable damage and to safeguard the water quality of the Lagoon. To that end, Hilton respectfully submits to the DLNR for its consideration proposed language for the Lagoon Signage (the “**Proposed Language**”) setting forth guidelines for the use of the Lagoon by the public, enclosed as Exhibit B.

The Proposed Language has been fashioned upon the existing rules governing Public Use of Unencumbered Public Lands under based upon existing Hawaii Administrative Rules (“**HAR**”) Title 13, Chapter 221,¹ enclosed as Exhibit C, and other relevant Hawaii Revised Statutes (“**HRS**”),² enclosed as Exhibit D. Below is a chart that identifies the pertinent sections of HAR and HRS that were utilized in drafting the Proposed Language.

	Description of Proposed Language / Guideline	HAR/HRS Reference
1.	Use or possession fireworks, firecracker, and other explosive devises, except with written permission from the DLNR, is prohibited.	HAR § 13-221-17
2.	Motorized vehicles other than those used for maintenance of the beach, landscaping, and the Lagoon, are prohibited.	HAR § 13-221-26
3.	No animals permitted in the Lagoon.	HAR § 13-221-11
4.	Camping, overnight habitation, and the use of camping-related equipment are prohibited.	HAR § 13-221-15
5.	Barbeques, open flames, and other similar potentially dangerous activities are limited to areas designated by the DLNR.	HAR § 13-221-20
6.	Group activities on the sand surrounding the Lagoon and on the island, without the permission of the DLNR, are prohibited.	HAR § 13-221-5
7.	Audio devices that create excessive noise and the use of signs to advertise, display, post, or distribute commercial information are prohibited.	HAR §§ 13-221-13 and 13-221-45

¹ A true and complete copy of Hawaii Administrative Rules (“HAR”), Chapter 13, is enclosed as Exhibit C.

² A true and complete copy of Hawaii Revised Statute (“HRS”) §§ 171-58.5 and 52-4, are enclosed as Exhibit D.

	Description of Proposed Language / Guideline	HAR/HRS Reference
8.	No digging of any holes deeper than two (2) feet or longer into the sand in and surrounding the Lagoon.	HAR § 13-221-28
9.	No digging of any holes and no inserting any poles or sharp devices (such as umbrellas or tent poles) deeper than two (2) feet into the sand in and surrounding the Lagoon.	HAR § 13-221-28
10.	The release of chemicals into the Lagoon and surrounding sand is prohibited.	HAR §§ 13-221-28, 30
11.	The release of foreign species of marine and plant life is prohibited.	HAR §§ 13-221-28, 30
12.	No taking of sand and/or other man-made features from public lands is allowed. This includes landscape plantings, outdoor lighting improvements, benches, and moveable boardwalk components.	HAR §13-221-28, HRS § 171-58.5
13.	No Lifeguard on Duty / Swim at your own risk.	HRS § 520-4

Finally, to ensure that the Board has a complete file on the Lagoon and the Lagoon Improvements, the following documents are also enclosed:

1. Resolution 02-226, CD1, FD1 Approving A Conceptual Plan for a Planned Development-Resort Project for the Construction of a High Rise Tower and Other Improvements at Hilton Hawaiian Village, Waikiki, Oahu, approved August 7, 2002, enclosed as Exhibit E.
2. Resolution No 02-225, CD 1 Granting Special Management Area Use Permit for Construction of a High Rise Tower and Other Improvements at Hilton Hawaiian Village, Waikiki, Oahu, approved August 7, 2002, enclosed as Exhibit F.
3. Resolution 06-106 Granting Special Management Area Use Permit for the Restoration of the Duke Kahanamoku Lagoon and Landside Improvements (Waikiki), approved April 12, 2006, enclosed as Exhibit G.
4. Site Utility Layout Plan, depicting the boundary line of the Lagoon, enclosed as Exhibit H.

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5. Conservation District Use Permit (CDUP) OA-3297, approved May 26, 2006, enclosed as Exhibit I.
6. Final Aquatic Species Management and Monitoring Program for the Duke Kahanamoku Lagoon, Hilton Hawaiian Village, Waikiki O'ahu, prepared November 2006, enclosed as Exhibit J.
7. Final Environmental Assessment and Finding of No Significant Impact for the Duke Kahanamoku Lagoon Restoration project, prepared November 2005, enclosed as Exhibit K.

Thank you in advance for your time and consideration. Please contact me or Lane Hornfeck of Starn O'Toole Marcus & Fisher, should you have any questions regarding this submittal.

Respectfully submitted,

Gerhard Seibert

Enclosures

ec: Lane Hornfeck, Esq.

EXHIBIT B

Proposed Language for the Lagoon Signage

- (1) No Lifeguard on Duty.
- (2) Members of the Public May Use the Lagoon at Your Own Risk.
- (3) No Fishing.
- (4) No Disposal or Dumping of Chemicals, Foreign Marine Species, or Plant Life into the Lagoon.
- (5) No Animals Allowed in the Lagoon.
- (6) No Climbing on Water Features and Fountains.
- (7) No Motorized Vehicles Allowed.
- (8) No Removal of Sand or Any Other Man-Made Features from the Lagoon.
- (9) No Digging of Any Holes Deeper than Two (2) Feet in the Sand Surrounding the Lagoon.
- (10) No Inserting of Any Poles (Such as Umbrella, Tent or Other Sharp Devices) Longer than Two (2) Feet in the Sand Surrounding the Lagoon.
- (11) No Overnight Camping and No Use of Camping-Related Equipment.
- (12) No Fireworks or Explosives without Written Permission of the Department of Land and Natural Resources of the State of Hawaii.
- (13) No Excessive Noise or Loud Music.
- (14) No Advertising or Solicitation.
- (15) No Barbeques and Open Flames, Except In Areas Designated by the Department of Land and Natural Resources of the State of Hawaii.
- (16) No Use of the Lagoon Beach or Island for Group Activities without a Use Permit from the Department of Land and Natural Resources of the State of Hawaii.

~~EXHIBIT~~ A

L00 13201

(SECOND ORIGINAL)

INDENTURE AND DEED

THIS INDENTURE executed this 22nd day of September, 1955, by and between the TERRITORY OF HAWAII, hereinafter called the "Grantor", and KAISER COMMUNITY HOMES, a California corporation authorized to do business in the Territory of Hawaii, having its principal place of business and post office address at 1441B Chase Street, Suite 1, Panorama City, California, and its office in said Territory at 2005 Kalia Road, Honolulu, Hawaii, hereinafter called the "Grantee",

W I T N E S S E T H:

WHEREAS, Grantor has expended considerable sums of money in the development of Waikiki Beach and desires to expend further public funds in said development by constructing an artificial beach and groin in the area seaward of the land hereinafter described; and

WHEREAS, the construction of said public beach and groin would interfere with the littoral rights appurtenant to the lands of Grantee abutting said area; and

WHEREAS, Grantor is willing to convey to Grantee that certain area, hereinafter described, provided that Grantee will waive and relinquish all claims for compensation or damages against Grantor heretofore made in connection with Grantee's said property, that Grantee will grant, convey, release and relinquish to Grantor all littoral rights appurtenant to or connected with its said lands, that Grantee will agree to the construction of said public

EXHIBIT "D"

beach and groin, and that the owners of other shore lands abutting said area will do all of the same; and

WHEREAS, by Public Law 199, dated August 1, 1958, Chapter 441, 84th Congress, First Session, the Commissioner of Public Lands of the Territory of Hawaii, with the concurrence of the Board of Harbor Commissioners and the approval of two-thirds of the Board of Public Lands and of the Governor of the Territory of Hawaii, is authorized and empowered to convey to the owners of certain shore lands, of whom the Grantee is one, all or a certain portion of a certain tidelands area described in said Public Law, which tideland area includes the land hereinafter described as Parcel 2, upon the fulfillment of certain conditions; and

WHEREAS, the Board of Harbor Commissioners, at its meeting held September 21, 1958, has concurred in, and two-thirds of the Board of Public Lands of the Territory of Hawaii, at its meeting held September 9, 1958, and the Governor of the Territory of Hawaii, have approved the conveyance of said land, and the conditions referred to have been or are fulfilled by this indenture and by one or more indentures of like tenor made by and between the Grantor and the owners of other shore lands abutting on the tidelands area described in said Public Law;

NOW, THEREFORE, for and in consideration of the release and covenants of and the conveyance by the Grantee, hereinafter set forth, the Grantor does hereby give, grant, bargain and sell unto the Grantee, its successors and assigns, forever and in fee simple, the following property:

PARCEL 2

Being the area lying westerly of and adjacent to Land Court Application 314, situate at Kalia, Waikiki, Honolulu, Oahu, Territory of Hawaii,

Being a portion of the area transferred to the Territory of Hawaii by Presidential Executive Order 1856 dated October 27, 1922.

Being also a portion of the area described in Public Law 199, 84th Congress and approved August 1, 1955.

Beginning at an "→" cut in face of seawall, at the south corner of this parcel of land, being also the west corner of Land Court Application 1885, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNOHONUE" being 10981.48 feet South and 3588.81 feet East, as shown on Government Survey Registered Map 4070, and running by a azimuths measured clockwise from True South:-

1. 151° 36' 78.00 feet;
2. 241° 54' 99.00 feet;
3. Thence on a curve to the left with a radius of 100.00 feet, the chord azimuth and distance being: 200° 45' 141.42 feet;
4. 155° 45' 99.81 feet;
5. Thence on a curve to the left with a radius of 100.00 feet, the chord azimuth and distance being: 110° 45' 141.42 feet;
6. 65° 45' 15.00 feet;
7. 155° 45' 75.00 feet;
8. 245° 34' 30" 310.99 feet along Parcel 1;

Thence along highwater mark of Land Court Application 314 for the next four (4) courses, the direct azimuths and distances between points along said highwater mark being:

9. 325° 00' 55.00 feet;
10. 334° 10' 125.00 feet;
11. 336° 18' 180.00 feet;
12. 334° 00' 98.42 feet to a "+" cut in top of stonewall;

- | | | |
|-----|---------|--|
| 13. | 61° 39' | 60.00 feet along Land Court Application 1653 to a 2½" pipe in concrete; |
| 14. | 61° 46' | 67.74 feet along Land Court Application 1653 to a spike in face of seawall; |
| 15. | 61° 56' | 273.88 feet along face of seawall along highwater mark of Land Court Application 1653 to the point of beginning and containing an Area of 2.722 acres. |

excepting and reserving, however, all littoral rights of whatsoever nature or kind which are or may be thereunto appertaining.

Together with a perpetual easement over and across courses numbered 2 to 7, inclusive, of the above description of said parcel and any beach abutting upon said courses, for access to the lagoon hereinafter mentioned; provided, however, that such easement for access shall not include the right to erect or maintain any structure over or upon or to make any excavation in said courses or said beach.

And also an easement over and across the makai (westerly) boundaries of the following parcels of land for access to Crescent Beach, hereinafter mentioned; and the sea:

Lot 3, area 82,478 square feet, shown on Map 2 filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application 264, being a portion of the land described in Transfer Certificate of Title No. 61,396;

The land registered in Land Court Application 624, area 79,896 square feet, shown on Map 2 of said Application filed in said office, being a portion of the land described in Transfer Certificate of Title No. 61,396; and

The land registered in Land Court Application No. 1653, area 83,309 square feet, shown on Map 1, filed in said office, being a portion of the land described in Transfer Certificate of Title No. 61,398.

Provided, however, that said easement for access shall not include the right to erect or maintain any structure over or upon or to make any excavation in said Crescent Beach or the sea.

TO HAVE AND TO HOLD the same together with all of the rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto the Grantee, its successors and assigns forever.

GRANTOR and GRANTEE hereby covenant and agree as follows:

A. That Registered Map No. 4070 dated September 21, 1955, filed in the Office of the Surveyor of the Territory of Hawaii, copies of which map have been furnished to the Grantee, has been prepared as an aid to the interpretation of the following covenants and depicts the improvements, intended by the parties that are referred to in the following covenants. In the event that changes are hereinafter made in the following covenants by mutual agreement of the Grantor and the Grantee, said changes, insofar as it is possible so to do, shall be depicted on said map and revised copies thereof shall be furnished to the Grantee.

B. Grantor, for itself, its successors and assigns, hereby covenants and agrees with Grantee as follows:

1. Grantor shall subject to the availability of funds construct Crescent Beach, the approximate location and configuration of which beach is shown on Registered Map No. 4070, and bordered thereon in yellow. Said beach, shall be

approximately 150 feet in width, shall be located on the seaward side of the shoreline lying in front of and between Land Court Application 1653 and Dewey Way, shown on said map, and run seaward (westerly) from said shoreline, as nearly as practicable as shown on Registered Map No. 4070. The Grantor shall permanently maintain said beach after its construction in the general location and configuration shown on Registered Map No. 4070, to the extent that it is able to control the action of natural forces thereupon, and the adjacent swimming area abutting its seaward (southerly) side, which swimming area is shown on Registered Map No. 4070 crosshatched in green, as a public beach and swimming area so long as and to the extent that appropriations are and may from time to time be available therefor. Grantor shall within six (6) months after completion of performance by Grantee under covenants C 2 and C 3 hereof, construct that part of the said Crescent Beach as is shown on Registered Map No. 4070 crosshatched in black and adjacent swimming area.

2. Grantor shall subject to the availability of funds fill the area, marked "Recreation Area" and bordered in pink on Registered Map No. 4070, lying between the abovementioned Crescent Beach and the southerly side of the Ala Moana Yacht Harbor, with the exception of the lagoon abutments, hereinafter described, within the recreation area, to an elevation not exceeding 7.0 feet above mean lower low water, (+7.0 M.L.L.W.). Except for the portion thereof marked "Proposed Roadway" and shown on Registered Map No. 4070, said filled area shall be used as and for a recreation area, subject to the covenants hereinbelow mentioned.

3. Grantor shall not construct or erect nor permit the construction or erection of any building or structure

exceeding elevation 29 feet above the level of mean lower low water (±29.0 M.L.L.W.) on that portion of the recreation area marked "Buildings Area" and crosshatched with brown lines on Registered Map No. 4070, lying westerly of a line across said recreation area parallel to and 1000 feet westerly from course numbered 4 of the description of Parcel 2 hereinabove, which line is marked "Division Line" and shown on Registered Map No. 4070, and any building or structures erected thereon shall be restricted to yacht clubs, swimming clubs, bath houses, seafood restaurants and outbuildings incidental thereto and such buildings and structures of a like nature as will contribute to the use of said area as a recreation area. No hotels or apartment houses shall be built nor be permitted to be built thereon.

4. Grantor shall not construct or erect nor permit the construction or erection of any building on that portion of said recreation area, marked "No Buildings Area" on Registered Map No. 4070, lying between the Division Line referred to in the preceding paragraph, the lagoon hereinafter described, Crescent Beach, and the southerly side of Ala Moana Yacht Harbor, nor in the area covered by said lagoon, whether or not the same may be filled at some subsequent date.

5. Grantor shall construct, within sixty (60) days of the commencement by the Grantee of the construction of the lagoon and lagoon abutments hereinafter mentioned, and maintain a culvert connecting the sea and the lagoon hereinafter described, with not less than two separated outlets from said culvert in the lagoon, and one or more culverts connecting either or both of those portions of the Ala Moana Yacht Harbor marked "Water Area A" and "Water Area B" and crosshatched in orange on Registered Map No. 4070 and the lagoon hereinafter

described, with not less than two separated inlets to said culvert or culverts in the lagoon, for the purpose of permitting adequate water circulation through said lagoon.

6. Grantor shall permit Grantee to maintain said lagoon and culverts and any beach within and around the perimeter of said lagoon to the extent that the same are located upon land owned by the Grantor.

7. Grantor shall, within three (3) months after the completion by the Grantee of the lagoon and lagoon abutments hereinafter mentioned, construct a sand beach not less than 75 feet in width (save where the same abuts the Proposed Roadway shown on said Registered Map No. 4070 in which segment said beach may be narrower) contiguous to and around the exterior of the perimeter of the lagoon hereinafter described in approximately the manner shown for said beach, marked "Lagoon Beach" and colored in blue on said Registered Map No. 4070, and shall cover the floor of said lagoon with sand for a width of not less than 75 feet contiguous to and around the interior of the perimeter of said lagoon.

8. Grantor shall, within two (2) weeks of the date hereof or the execution of a similar indenture and deed by the owners of Lot B, Land Court Application No. 1549 (whichever date is later), furnish the Grantee final engineering plans and specifications for the dredging and construction of the lagoon and lagoon abutments to be dredged and constructed by the Grantee, hereinafter mentioned.

9. Grantor shall permit Grantee to install and maintain electric power lines under lands of the Grantor in the vicinity of said lagoon in locations to be mutually agreed upon for the purpose of furnishing electric power for the pumps to be maintained by Grantee, as hereinafter provided.

C. Grantee, for itself, its successors and assigns, hereby covenants and agrees with Grantor as follows, these covenants to run with the land described as Parcel 2, hereinabove:

1. Grantee consents to the construction of said Crescent Beach, recreation area, lagoon and lagoon beach, hereinabove or hereinbelow mentioned. Grantee also consents to the demolition and removal of the pier shown and marked "Pier" on Registered Map No. 4070, in the filling and construction of said Crescent Beach.

2. Grantee shall within six (6) months after the Grantor has furnished it with final engineering plans and specifications therefor dredge and construct a lagoon and lagoon abutments in accordance with said plans and specifications. The lagoon shall be dredged to a depth of not less than 7.7 feet (-7.7 M.L.L.W.) and not more than 12 feet (-12.0 M.L.L.W.), and shall be in the approximate location and configuration shown on the attached map as "Lagoon" and colored in green thereon. Said lagoon shall be of a maximum length, in an easterly-westerly direction, of 650 feet and a maximum width, in a northwesterly-southeasterly direction, of 480 feet. The perimeter of said lagoon, as shown on said registered Map No. 4070 except along the northwesterly segment of the same near the proposed roadway, represents the mean low water mark of the same. The abutments around the exterior perimeter of said lagoon to be constructed by the Grantee shall be composed of fill evenly sloped from the perimeter of said lagoon to a level of not more than 6 feet above mean lower low water (+6.0 M.L.L.W.) at a distance of not more than 75 feet from said perimeter (or at the southerly line of the proposed roadway where the same is closer than 75 feet to said

perimeter) and thence at the same level for an additional distance of 50 feet (except to the extent that the full additional distance of 50 feet cannot be obtained within the limits imposed by the southerly line of the proposed roadway and the southerly courses, numbered 13 through 15, of the above description of Parcel 2).

3. Grantee shall, within the period mentioned next above, fill the area described in Parcel 2 hereinabove to the approximate grade of the Grantee's properties adjoining it on the easterly and southerly sides of the same, save within the area thereof to be covered by a portion of the lagoon beach, where the grade shall slope to mean low water mark of the lagoon. Any material dredged in constructing said lagoon in excess of that necessary for constructing the lagoon abutments may be used by Grantee for the purpose of filling Parcel 2 and for the purpose of filling Parcel 1 if permitted by the owners thereof.

The Grantee, within one (1) month after completion of performance by Grantor under covenants B 5 and B 7 hereof, shall install and thereafter, subject only to the provisions of paragraph D 1, hereinbelow, shall perpetually operate and maintain necessary pumps and valves, to be situated on the property of the Grantor in locations mutually agreed upon, to provide circulation of water in said lagoon adequate to keep the same clean and sanitary at all times.

D. It is mutually covenanted and agreed by the Grantor and Grantee, that:

1. In the event that satisfactory maintenance of the lagoon proves to be physically impracticable by reason of excessive costs or inability to maintain proper sanitary conditions therein the foregoing covenants numbered B 5, B 6, and C 4 shall be terminated and the Grantor and Grantee

shall have no further obligation with respect thereto.

In such event, the Grantor shall, however,

- (a) Fill the lagoon and lagoon beach to the grade of the surrounding properties. The lagoon shall then become a part of the "No Buildings" portion of the recreation area, and the easement hereinabove granted for access to the lagoon shall become an easement for access to said recreation area.
- (b) Convey to the Grantee, its successors and assigns a non-exclusive easement for foot passage 20 feet wide from the junction of courses numbered 7 and 8 of the description of Parcel 2, hereinabove described, along, contiguous to and on the westerly side of courses numbered 1 to 7, inclusive, of said description of Parcel 2, hereinabove described, for access to Crescent Beach and the sea; provided, however, that said easement shall not include the right to erect or maintain any structure over or upon or to make any excavation in the area covered by said easement.

2. That certain agreement known as the Waikiki Agreement entered into on October 19, 1928, between Grantor and various property owners, including Grantee's predecessors in title, said agreement being recorded in the Bureau of Conveyances of the Territory of Hawaii in Book 1047, Pages 176-202, and noted on Transfer Certificate of Title Nos. 58110 and 61306 issued to the Grantee, is hereby and herewith terminated as between the Grantor and Grantee.

3. Grantor's obligation to perform those covenants under B, above, as to which a time limit for performance is stated shall be subject to its ability to perform the same.

with funds currently available therefor, to wit, the sum of One Hundred Forty Thousand Dollars (\$140,000.00).

And in consideration of the foregoing conveyance by and covenants of the Grantor, the Grantee hereby gives, grants, bargains, sells, conveys, releases and relinquishes unto Grantor any and all littoral rights appurtenant to the following shoreline properties of the Grantee, bordering on the land described as Parcel 2 above and upon a portion of Crescent Beach:

1. Any and all littoral rights appurtenant to Lot 85, area 344,453 square feet, as shown on Map 3 filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 314 of John Fna Estate Trustees, being all of the land described in Transfer Certificate of Title No. 88,110 issued to the Grantee.

2. Any and all littoral rights appurtenant to Lot 3, area 82,478 square feet, as shown on Map 2 filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 264 of Frances Tasmania Bickerton, being a portion of the land described in Transfer Certificate of Title No. 61,396 issued to the Grantee.

3. Any and all littoral rights appurtenant to that certain parcel of land being all of the land registered in Land Court Application No. 624 of Sophie Gressaty, area 79,596 square feet, as shown on Map 2 filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with said Land Court Application, being a portion of the land described in Transfer Certificate of Title No. 61,396, issued to the Grantee.

4. Any and all littoral rights appurtenant to that certain parcel of land being all of the land registered in Land Court Application No. 1653 of Associated Hotels (Hawaii) Limited, area 83,309 square feet, as shown on Map 1 filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with said Land Court Application, being a portion of the land described in Transfer Certificate of Title No. 61,396 issued to the Grantee.

Excepting and reserving, however, from the conveyance of any and all littoral rights under items 2, 3 and 4 above, a perpetual easement for access across the makai (westerly) boundaries of the lands described therein for access to Crescent Beach and the sea; but without including as part of said easement the right to erect or maintain any structure over or upon or to make any excavation in said Crescent Beach abutting said makai boundaries or the sea; said easement being the same easement hereinabove granted by the Grantor to the Grantee.

TO HAVE AND TO HOLD the same together with all rights and privileges belonging or appertaining thereto unto the Grantor, its successors and assigns, forever.

And Grantee for itself, its successors and assigns does hereby remise, release and forever discharge Grantor, its successors and assigns of and from any and all manner of action or actions, cause and causes of action, suits, controversies and trespasses, damages, claims and demands of whatsoever kind or nature to, against or in connection with the property of Grantee, hereinabove described, the littoral rights of which are hereinabove conveyed by the Grantee to the Grantor, heretofore claimed or existing, in law or equity, which the Grantee has had by reason of any matter, cause or

thing whatsoever having been done or omitted to be done by the Grantor.

IN WITNESS WHEREOF, the TERRITORY OF HAWAII has caused these presents to be duly executed by Marguerite K. Ashford, its Commissioner of Public Lands, and countersigned by Samuel Wilder King, Governor of Hawaii, A. D. Castro, Chairman, Board of Public Lands of the Territory of Hawaii, and Ben H. Nutter, Chairman, Board of Harbor Commissioners, pursuant to the authority so to do in them vested by the aforesaid Public Law 109, dated August 1, 1955, Chapter 441, 84th Congress, First Session, and all other laws enabling them so to do, and KAISER COMMUNITY HOMES has caused these presents to be executed and its corporate seal to be hereunto affixed by its proper officer in that behalf duly authorized, on the day and year first above written.

TERRITORY OF HAWAII

By Marguerite K. Ashford
Commissioner of Public Lands
Grantor

KAISER COMMUNITY HOMES

By Henry Kaiser
Its Chairman of the Board
Grantee

COUNTERSIGNED:

Samuel Wilder King
Governor, Territory of Hawaii

A. D. Castro
Chairman, Board of Public Lands

Ben H. Nutter
Chairman, Board of Harbor Commissioners

APPROVED AS TO FORM

Charles R. Ashford
Special Agent
OK enclava -14-
at 7:00

TERRITORY OF HAWAII }
CITY AND COUNTY OF HONOLULU } SS:

On this 28th day of September, 1955, before me personally appeared MARGUERITE K. ASHFORD, COMMISSIONER OF PUBLIC LANDS, to me known to be the person who executed the foregoing instrument and acknowledged to me that she executed the same as her free act and deed as COMMISSIONER OF PUBLIC LANDS of the Territory of Hawaii and that she executed the same on behalf of the Territory of Hawaii.

Peggie R. Jensen
Notary Public, First Judicial
Circuit, Territory of Hawaii.

My commission expires 1-25-57

TERRITORY OF HAWAII }
CITY AND COUNTY OF HONOLULU } SS:

On this 22nd day of September, 1955, before me appeared HENRY J. KAISER to me personally known, who, being by me duly sworn, did say that he is the Chairman of the Board of KAISER COMMUNITY HOMES and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said HENRY J. KAISER acknowledged said instrument to be the free act and deed of said corporation.

George K. H. Lee
Notary Public, First Judicial
Circuit, Territory of Hawaii.

My commission expires 8/1/59

CONSENT AND PARTIAL RELEASE BY MORTGAGEES

KNOW ALL MEN BY THESE PRESENTS:

That we, JEROME ZUCKER, husband of Byung Ok Zucker, of Honolulu, City and County of Honolulu, Territory of Hawaii, and LILLIAN ZUCKER and ROSE ZUCKER, both unmarried, of New York City, New York, the mortgagees of:

(1) Lot 3, area 82,478 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 264 of Francis Tasmania Bickerton; and

(2) An area of 79,596 square feet, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 624 of Sophie Cressaty; and

(3) An area of 83,509 square feet, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 1653 of Associated Hotels (Hawaii), Limited;

Being a portion of the land described in Transfer Certificate of Title No. 61,396 issued to Kaiser Community Homes, the Grantee named in the attached and foregoing Indenture and Deed, under that certain Mortgage dated June 6, 1955, filed in said Office of the Assistant Registrar as Document No. 175,340 and noted on said Transfer Certificate of Title No. 61,396, for consideration received, do hereby remise, release and discharge from the lien of said

mortgage any and all littoral rights appurtenant to the properties described in said mortgage, and any accretion thereto, and do hereby consent to the execution of the attached and foregoing Indenture and Deed; provided, however, that this partial release and consent shall not in any wise affect the right, title and interest held by them in and to the remainder of the property described in said mortgage nor authorize nor be deemed to authorize any other or further conveyance of the same, or any part thereof, without the release thereof and consent thereto by the Mortgagees.

IN WITNESS WHEREOF, the Mortgagees have hereunto set their hands this 30 day of September, 1955.

JEROME ZUCKER
LILLIAN ZUCKER
ROSE ZUCKER

By

J. Russell Cades
J. Russell Cades
Their Attorney in Fact

TERRITORY OF HAWAII
CITY AND COUNTY OF HONOLULU

} SS:

On this 30th day of September, 1955, before me personally appeared J. RUSSELL CADES, to me personally known, who being by me duly sworn, did say that he is the Attorney in Fact for JEROME ZUCKER, LILLIAN ZUCKER and ROSE ZUCKER, duly appointed under three Powers of Attorney dated March 3, 1953, May 9, 1955 and May 9, 1955, respectively, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii as Documents Nos. 17946, 17538 and 17534, respectively, which Powers of Attorney are now in full force and effect; that the foregoing instrument was executed by said J. RUSSELL CADES in the names and on behalf of JEROME ZUCKER, LILLIAN ZUCKER and ROSE ZUCKER as their Attorney in Fact, and he acknowledged that he executed the same as the free act and deed of said JEROME ZUCKER, LILLIAN ZUCKER and ROSE ZUCKER.

Friede H. Robert
Notary Public, First Judicial
Circuit, Territory of Hawaii

My commission expires 6-30-57

CONSENT AND PARTIAL RELEASE BY MORTGAGEE

KNOW ALL MEN BY THESE PRESENTS:

That OCCIDENTAL LIFE INSURANCE COMPANY OF CALIFORNIA, a California corporation duly licensed to do business in the Territory of Hawaii, whose Honolulu address is Beretania and Piliok Streets, Honolulu, City and County of Honolulu, Territory of Hawaii, the mortgagee of Lot 85, area 344,458 square feet, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 314, being all of the land described in Transfer Certificate of Title No. 58,110 issued to Kaiser Community Homes, the Grantee named in the attached and foregoing Indenture and Deed, under that certain Mortgage dated May 24, 1954, and that certain Correction Mortgage dated June 23, 1954, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii as Documents Nos. 161,494 and 162,837, respectively, and noted on said Transfer Certificate of Title No. 58,110, for consideration received, does hereby remise, release and discharge from the lien of said Mortgage and Correction Mortgage any and all littoral rights appurtenant to said Lot 85 and any accretion thereto and does hereby consent to the execution of the attached and foregoing Indenture and Deed; provided, however, that this partial release and consent shall not, in any wise, affect the right, title, and interest held by it in and to the remainder of the property described in said Mortgage and Correction Mortgage nor authorize nor be deemed to authorize any other or further conveyance of the same, or any part thereof, without the release thereof and consent thereto by the Mortgagee.

[Handwritten signature]

