

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

April 25, 2014

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

Ref: GL 6011

Oahu

Authorize the Chairperson to Enter into Maintenance Agreement Regarding the Lessee's Improvements over the Board of Water Supply's Water Pipeline; 4 Wheels Auto, LLC, Lessee; Kapalama, Honolulu, Oahu, Tax Map Key (1) 1-5-033:portion of 018.

BACKGROUND:

Pursuant to a public auction held in 2011, 4 Wheels Auto, LLC became the lessee of the 65-year term General Lease No. 6011, and operates a used cars sale lot on the property. The property is subject to a perpetual non-exclusive water pipeline easement in favor of the Board of Water Supply ("BWS"), as shown on **Exhibit 1**. Lessee is planning to improve the security of the property by installing new perimeter fencing, and portions of the proposed fencing will be over the water pipeline easement. In the process of obtaining the building permit, BWS requests the Lessee entering a maintenance agreement ("Agreement") stipulating the respective responsibilities. In addition, BWS requests the State execute the Agreement as fee owner. A copy of the Agreement is attached as **Exhibit 2**.

Staff does not have objection to the Agreement except Condition 5 stipulating, "[t]he State further agrees that any conveyance of its property shall be subject to this [Agreement]". This condition, as is, will encumber the parcel even beyond the term of GL 6011. At most, the Agreement shall only be applicable for the 65-year term or any sooner termination, whichever is earlier. Staff understands any revision to the Agreement requires the counsel of BWS to review and approve. Therefore, staff recommends the Board authorize the Chairperson to negotiate with BWS and execute, if appropriate, the Agreement, subject to the comment mentioned above.

RECOMMENDATION: That the Board authorize the Chairperson to negotiate with BWS and execute, if appropriate, the Agreement, subject to the comment mentioned above, further subject to the following conditions:

- A. Review and approval by the Department of the Attorney General; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:



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William J. Aifa Jr., Chairperson





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After recordation return by mail ( ) or pickup (X) to:

Board of Water Supply  
Land Section Ph: 748-5910

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Title or type of Document: MAINTENANCE AGREEMENT

State: STATE OF HAWAII, by its Board of Land and Natural Resources

Lessee: 4 WHEELS AUTO LLC, a Hawaii limited liability company

BWS: BOARD OF WATER SUPPLY  
630 SOUTH BERETANIA STREET  
HONOLULU, HAWAII 96843

Tax Map Key: (1) 1-5-033: 018

**EXHIBIT " 2 "**

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT made by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, whose mailing address is P. O. Box 621, Honolulu, Hawaii 96809 (hereinafter the "State"), and 4 WHEELS AUTO LLC, a Hawaii limited liability company, whose business address is P. O. Box 17600, Honolulu, Hawaii 96817 (hereinafter the "Lessee"), and the BOARD OF WATER SUPPLY, City and County of Honolulu whose address is 630 South Beretania Street, Honolulu, Hawaii 96843 (hereinafter the "BWS");

WITNESSETH:

WHEREAS, the State owns that certain parcel of land at Kapalama, Honolulu, State of Hawaii, bearing Tax Map Key 1-5-033:018, as shown on Exhibit "A," attached hereto and made a part hereof; and

WHEREAS, the BWS has a perpetual easement for water pipeline purposes over a portion of said parcel, designated as Parcel B (CSF 17,484);

WHEREAS, the Lessee desires to construct a fence over a portion of said water pipeline easements and agrees to pay for repairs to said improvements as provided herein.

NOW, THEREFORE, for TEN AND NO/100 DOLLARS (\$10.00) paid to BWS, the receipt of which is hereby acknowledged, and other good and valuable consideration, the BWS, State and Lessee agree as hereinafter set forth all upon the following terms and conditions:

1. BWS shall permit the Lessee to construct improvements within the easement area, as shown on Exhibit "B", attached hereto and made a part hereof.
2. Lessee shall maintain and repair any damage to their improvements constructed within the easement area, which is caused by a main break or results from any repairs made to BWS's water pipeline and/or appurtenances located within the easement area.
3. Lessee shall not obstruct the BWS's right of ingress and egress to the easement area and shall be responsible for any additional cost to the BWS when said improvements interferes with its efforts to maintain and repair its water pipeline and appurtenances.
4. That except as otherwise provided herein, Lessee, their heirs, personal representatives or assigns, shall defend, indemnify and save harmless the BWS and all of its officers, agents or employees, against all loss or damage to the improvements within the easement area.

5. The State further agrees that any conveyance of its property shall be subject to this Maintenance Agreement.

6. That when more than one person is involved in the grant of this indenture and the covenants herein contained, the terms "State," "Lessee" and "BWS" and related verbs and pronouns in the singular shall include the plural. Where appropriate, the masculine gender shall be deemed to include feminine or neuter genders.

7. This Maintenance Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their said respective heirs, personal representatives, successors and assigns.

This Maintenance Agreement may be executed in counterparts, each of which shall, for all purposes, be deemed to be an original and all of which shall constitute but one and the same Maintenance Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Maintenance Agreement to be executed on this 30 day of December, 2013.

APPROVED AS TO FORM:

STATE OF HAWAII

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

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

STATE

APPROVED AS TO CONTENTS:

4 WHEELS AUTO LLC,  
a Hawaii limited liability company

\_\_\_\_\_  
Board of Water Supply

  
Name: \_\_\_\_\_  
It's Masid Modares, Member

LESSEE

APPROVED AS TO FORM:

BOARD OF WATER SUPPLY  
City and County of Honolulu

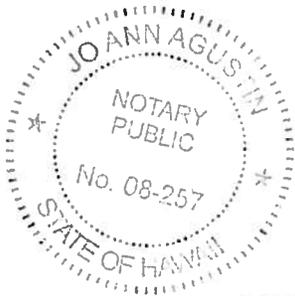
\_\_\_\_\_  
Marilyn C. Ushijima  
Deputy Corporation Counsel

By \_\_\_\_\_  
ERNEST Y. W. LAU  
Manager and Chief Engineer

BWS

STATE OF HAWAII )  
 ) SS.  
City and County of Honolulu )

On this 30 day of December, 2013, before me appeared Masid Modaresi to me personally known, who, being by me duly sworn, did say that he is the member of the 4 WHEELS AUTO LLC and that said 3 page instrument entitled Maintenance Agreement and dated 12/30/2013 was signed in behalf of said 4 WHEELS AUTO LLC in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jo Ann Agustin

Print Name: Jo Ann Agustin  
Notary Public, State of Hawaii

My commission expires: July 6 2016

Doc. Date: 12/30/2013 # Pages 3

Notary Name: JO ANN AGUSTIN First Circuit

Doc. Description: Maintenance

Agreement

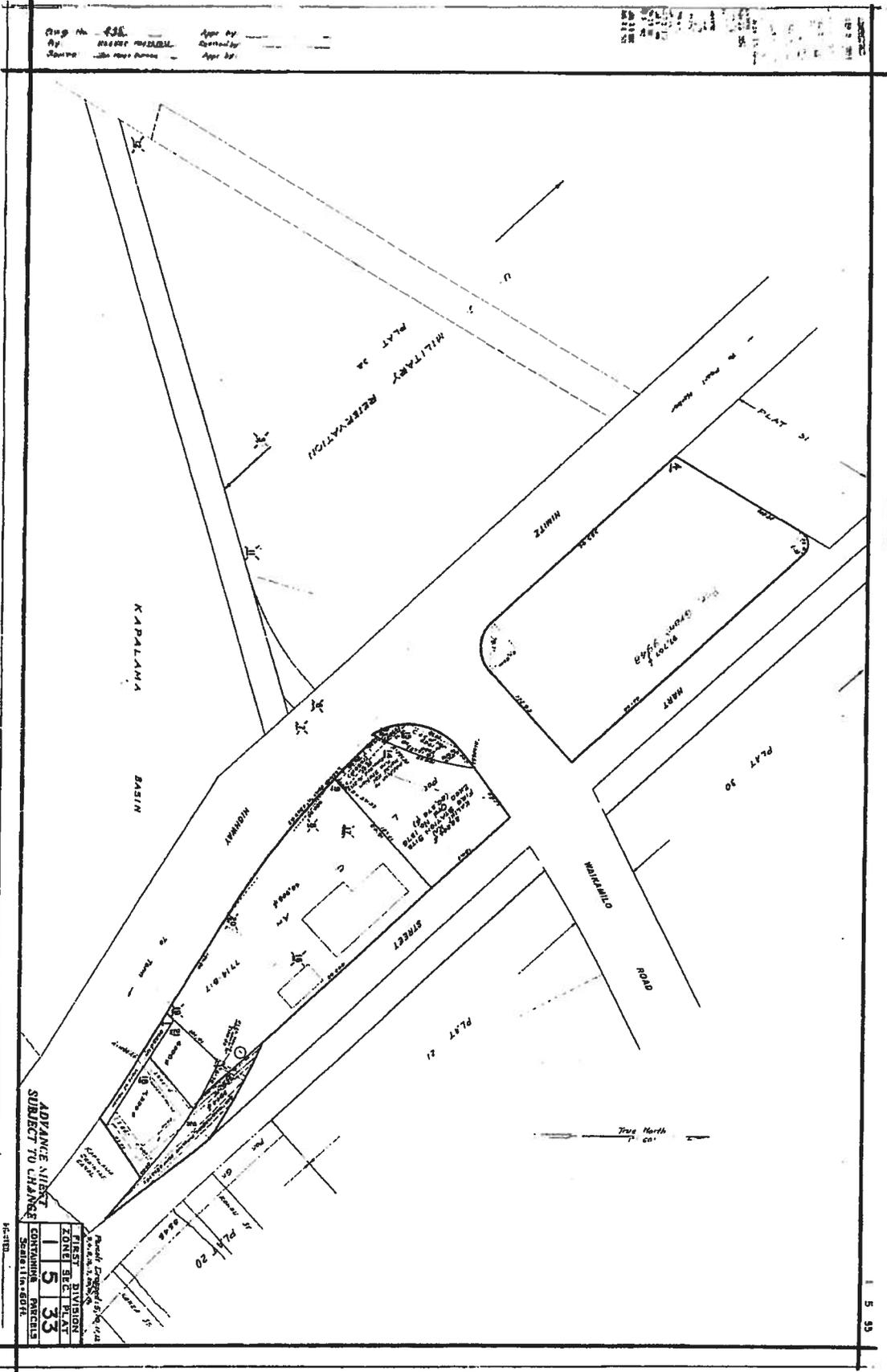
Jo Ann Agustin 12/30/2013  
Notary Signature Date

STATE OF HAWAII                    )  
  ) SS.  
City and County of Honolulu    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared ERNEST Y. W. LAU to me personally known, who, being by me duly sworn, did say that he is the Manager and Chief Engineer of the BOARD OF WATER SUPPLY, City and County of Honolulu and that the seal affixed to the foregoing instrument is the seal of said BOARD OF WATER SUPPLY and that said \_\_\_\_\_ page instrument entitled Maintenance Agreement and dated \_\_\_\_\_ was signed and sealed in behalf of said BOARD OF WATER SUPPLY by authority of its BOARD, and said ERNEST Y. W. LAU acknowledged said instrument to be the free act and deed of said BOARD OF WATER SUPPLY, City and County of Honolulu.

\_\_\_\_\_  
Print Name: Joan M. White  
Notary Public, State of Hawaii

My commission expires: September 26, 2014



ADVANCE SHEET  
 SUBJECT TO CHANGE  
 FIRST DIVISION  
 ZONE 5E PLAT  
 533  
 CONTAINING PARCELS  
 SHOWN HEREON  
 15-3121

**EXHIBIT A**

