

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

July 27, 2012

Ref No.: LOD 28603

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

OAHU

Forfeiture of Grant of Non-Exclusive Easement, Created By Land Office Deed No. 28603, Masaharu Edamura, Grantee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-013: portions of 001, 018, 021, 022.

PURPOSE:

Forfeiture of Grant of Non-Exclusive Easement, Created By Land Office Deed No. 28603, Masaharu Edamura, Grantee

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Land situated at Waimanalo, Koolaupoko, Oahu, identified as Tax Map Key: (1) 4-1-013: portions of 001, 018, 021, 022, shown on the attached map labeled as Exhibit A.

AREA:

33,577 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over,

under and across State-owned land for access and utility purposes.

TERM OF EASEMENT:

Perpetual, commencement as of February 24, 2003

REMARKS:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in Grant of Non-Exclusive Easement created by LOD No. S-28603, Masaharu Edamura, Grantee, was served a Notice of Default by certified mail dated July 1, 2009 for:

- Failure to keep lease rental payments current
- Failure to post required performance bond
- Failure to post required fire insurance policy
- Failure to post required liability insurance policy
- Other: \_\_\_\_\_

Said notice, accepted by the Lessee on July 7, 2009, offered the Grantee a sixty day cure period to correct the default. This cure period expired on September 7, 2009. As of the current date, this breach has not been cured.

By way of a letter dated, July 21, 2011, (attached as Exhibit B), staff noted that the subject property had been developed into a condominium project, consisting of separate ownership. Staff also cited the subject easement condition that requires general liability insurance from the current owners.

Subsequently, staff had met with Mr. Masaharu Edamura and his two sons, all of whom are now the current owners of the abutting private property, to discuss this matter. At the meeting, the Edamuras advised that the liability insurance costs were too high for them to afford and inquired if the subject road is a county public road.

Staff requested the State abstractor's assistance to ascertain the State interests of the subject area, notwithstanding an easement has actually been issued. Based on the abstractor's review attached as Exhibit C, the State's interest is verified and the issue of the public road becomes moot. In short, the Grantee is in default for lack of insurance.


The Grantees have made no further attempts to follow-up with staff since the meeting. Breach of Condition Five (5) of the subject easement requesting liability insurance continues to remain uncured as of the date of this writing.

Staff now brings this forfeiture request to the Board for its approval.


RECOMMENDATION: That the Board:

1. Authorize the cancellation of Grant of Non-Exclusive Easement created by LOD No. S-28603 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under Grant of Non-Exclusive Easement created by LOD No. S-28603 to be applied to any past due amounts;
3. Terminate the Grant of Non-Exclusive Easement created by LOD No. S-28603 and all rights of Grantee and all obligations of the Grantor, as of the Board date, provided that any and all obligations of the Grantee which have accrued up to said effective date or which are stated in the easement to survive termination shall endure past such termination date until duly fulfilled, and further provided that Grantor reserves all other rights and claims allowed by law; and
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under Grant of Non-Exclusive Easement created by LOD No. S-28603 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,

  
\_\_\_\_\_  
Timmy Chee  
Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
William J. Aila Jr., Chairperson

W

TARY

RESERVATION

MARCELS 5 & 6 owned by Ronald M. Florence & wf Elaine S. - 7/8 unless otherwise noted.

MARCEL 15 owned by Joseph Aruda, Jr & wf Emma A. - 7/8 - 8/16 Heine Aruda, et al Trust - 1/16

MARCEL 18 owned by Joseph Aruda, Jr & wf Emma A. - 7/8 - 8/16 Heine Aruda, et al Trust - 1/16

16 Robert T. Lee & wf Ida S. - 7/8 (Edwin S. Lou & wf Sandra E. - 7/8) 1/16 (Lawrence H. Kim & wf Betty Lou - 7/8) Sub-1/16

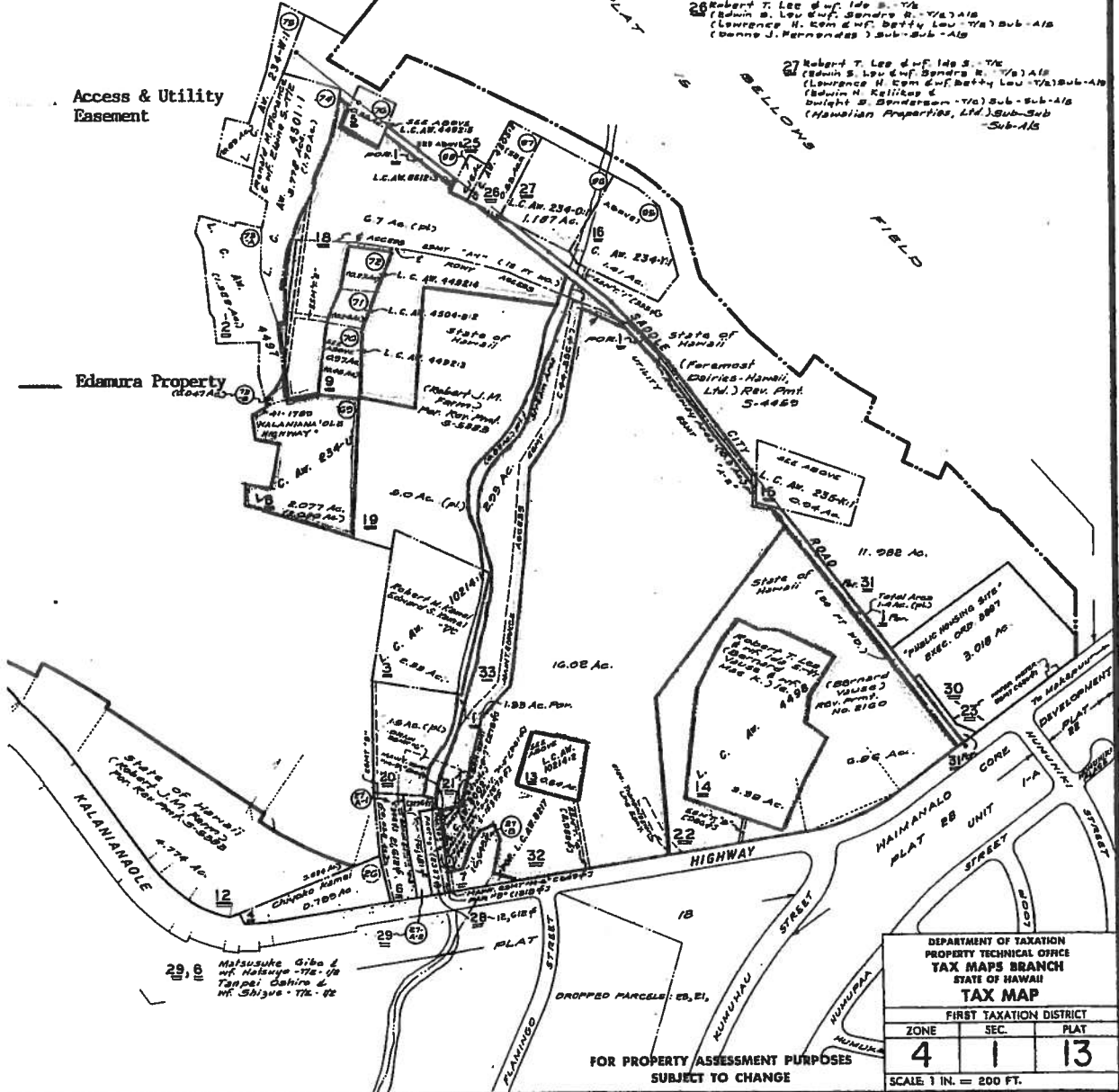
25 Robert T. Lee & wf Ida S. - 7/8 (Edwin S. Lou & wf Sandra E. - 7/8) 1/16 (Lawrence H. Kim & wf Betty Lou - 7/8) Sub-1/16 (Mary S. Enlow) Sub-Sub-1/16

26 Robert T. Lee & wf Ida S. - 7/8 (Edwin S. Lou & wf Sandra E. - 7/8) 1/16 (Lawrence H. Kim & wf Betty Lou - 7/8) Sub-1/16 (Donna J. Fernandes) Sub-Sub-1/16

27 Robert T. Lee & wf Ida S. - 7/8 (Edwin S. Lou & wf Sandra E. - 7/8) 1/16 (Lawrence H. Kim & wf Betty Lou - 7/8) Sub-1/16 (Edwin M. Kellikop & Dwight S. Spenser - 7/8) Sub-Sub-1/16 (Hawaiian Properties, Ltd.) Sub-Sub-1/16

Access & Utility Easement

Edamura Property (1007A)



DEPARTMENT OF TAXATION  
PROPERTY TECHNICAL OFFICE  
TAX MAPS BRANCH  
STATE OF HAWAII  
TAX MAP

FIRST TAXATION DISTRICT		
ZONE	SEC.	PLAT
4	1	13

SCALE 1 IN. = 200 FT.

FOR PROPERTY ASSESSMENT PURPOSES  
SUBJECT TO CHANGE

10461(0)

EXHIBIT "A" 99



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

July 21, 2011

Ref. No.: LOD 28603

Mssrs. Masaharu and Joe Edamura  
Waimanalo, Hawaii 96795

Mr. Ken and Helen Edamura  
Waimanalo, Hawaii 96795

Dear Grantees:

Subject: Grant of Non-Exclusive Easement, Waimanalo, Koolaupoko, Oahu, Tax Map  
Key: (1) 4-1-013:008

Pursuant to a review of the county public records, we have noted that the subject property has been developed into a condominium project, consisting of separate ownership. Pursuant to condition 5 of the subject easement, you are the current Grantees. Condition 5 of the subject easement states: "Throughout the term of this easement (unless sooner abandoned or otherwise terminated herein) this easement shall run with the land and shall inure to the benefit of the real property described as tax map key no. (1) 4-1-013:8, 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 assignment 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."

Condition 18 of the subject easement states: "The Grantee shall procure and maintain, at its cost and expense, in full force and effect throughout the term of this easement, commercial general liability insurance, or its equivalent, in an amount of at least \$300,000 for each occurrence and \$500,000 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire easement area, including all grounds and all roadways or sidewalks on or adjacent to the easement in the use or control of the Grantee."

To date we have not received the required general liability insurance coverage for the subject easement. We ask that each condominium unit owner notify their insurance carrier to include the general liability insurance coverage requested. Also, please furnish current insurance certificates to this office within thirty (30) days from the date of this letter.

EXHIBIT "B"

Should you have any questions, you may contact us at 587-0408.

Sincerely,



Timmy Chee  
Land Agent





STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

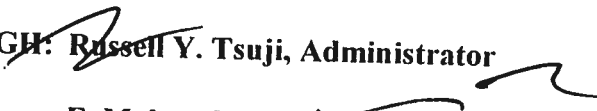
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

May 9, 2012

10461(O)

**MEMORANDUM**

**TO:** Timmy Chee, Oahu Land Agent

**THROUGH:**  Russell Y. Tsuji, Administrator

**FROM:**  E. Mahoe Collins, State Abstractor

**SUBJECT:** State of Hawaii's Ownership in and to TMK: (1) 4-1-13: 1, 18, 21 and 22 situate, lying and being at Waimanalo, Koolaupoko, Oahu.

We have been requested to determine the State of Hawaii's ownership interests, if any, in and to the subject properties designated as Tax Map Key Parcels (1) 4-1-13: 1, 18, 21 [now 32 and 33] and 22, as shown colored in green on the map attached hereto as Exhibit A.

We note by the records of the City and County of Honolulu Real Property and Treasury Divisions that designated parcel 21 was dropped into parcels 32 and 33.

An examination of the records and files located in the State Survey Office and the Land Division of the Department of Land and Natural Resources reveal that the subject premises, as situated, lying and being portions of the Government (Crown) Land of Waimanalo are owned by the State of Hawaii, pursuant to Section 5(b) of the Admissions Act of March 18, 1959 (Pub L 86-3, 73 Stat 4).

By grant of easement dated February 24, 2003 and recorded as Document No. 2003-033708 (LOD 28603), the State of Hawaii, by its Board of Land and Natural Resources granted unto Masaharu Edamura the owner of Tax Map Key Parcel (1) 4-1-13: 08, the following non-exclusive and perpetual easement rights:

Right, privilege, and authority to construct, use, maintain, and repair a right-of-way over, under, and across state-owned land for access and utility purposes, in, over, under and across that certain parcel of land ("easement area") identified as "Perpetual Non-Exclusive Access and Utility Easement", containing an area of 33,577 square feet, more or less, as described and delineated by survey map and description designated CSF 23,364 dated September 23, 2002.

**EXHIBIT "C"**

10461(O)  
Page Two

Said "Perpetual Non-Exclusive Access and Utility Easement" adjoining TMK Parcels (1) 4-1-13: 22, 32 and 33, and affecting portions of TMK Parcels (1) 4-1-13: 01, 33 and 18, is subject to the terms, conditions and covenants, therein set forth (see Exhibit B).

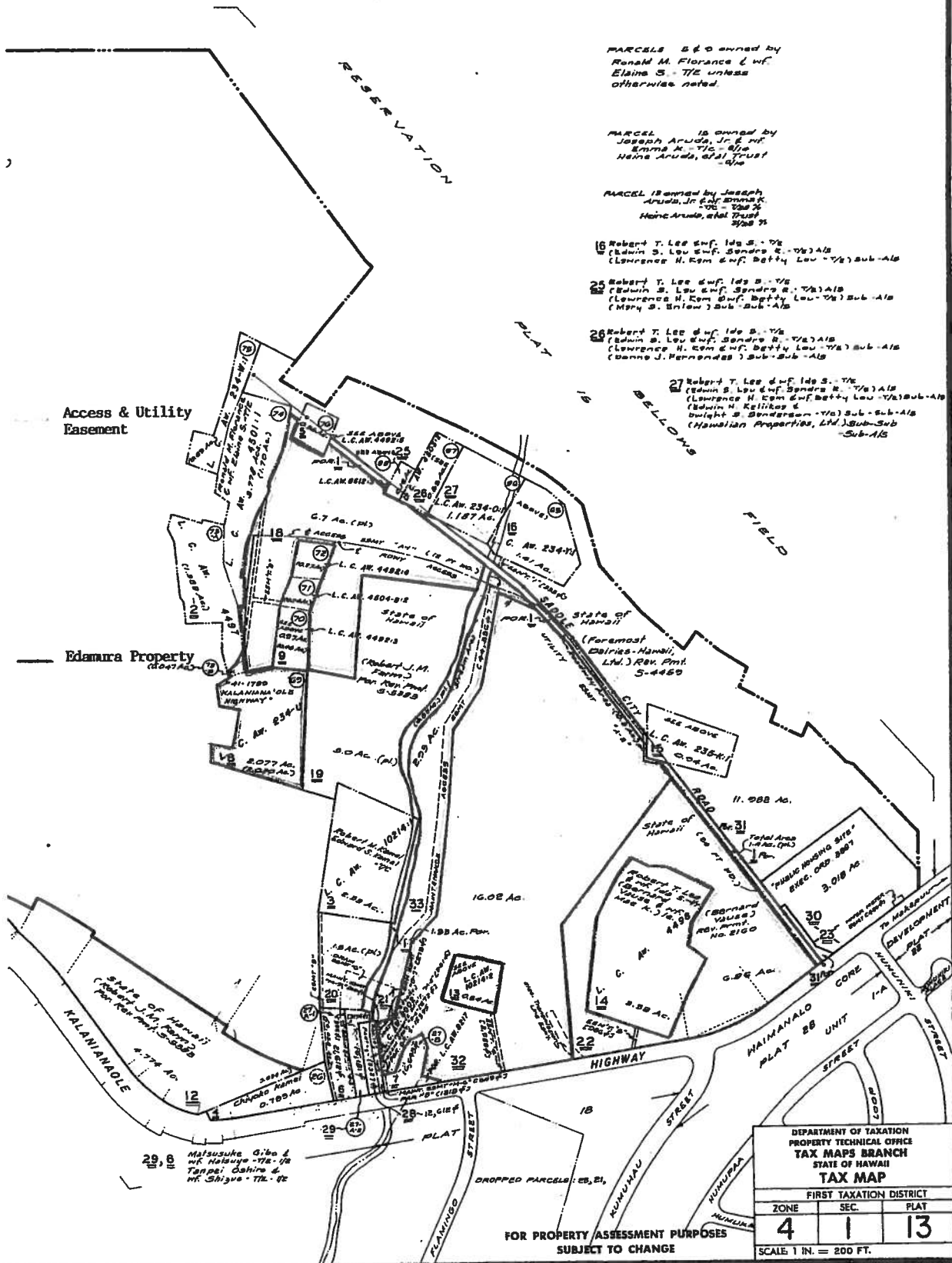
We find that the subject real properties, (1) 4-1-13: 1, 18, 21 [now 32 and 33] and 22, are owned in fee by the State of Hawaii and subject to the trust as provided in the Admissions Act of March 18, 1959 (Pub L 86-3, Stat 4).

If you have any questions, please feel free to call me at 587-0458.

Enclosures



TARY



PARCELS 24 & 25 owned by  
Ronald M. Florence & wf.  
Elaine S. - 7/8 unless  
otherwise noted.

PARCEL 15 owned by  
Joseph Aruda, Jr. & wf.  
Emma M. - 7/8  
Heine Aruda, et al Trust  
3/28 75

PARCEL 18 owned by Joseph  
Aruda, Jr. & wf Emma M.  
- 7/8  
Heine Aruda, et al Trust  
3/28 75

16 Robert T. Lee & wf. Ida S. - 7/8  
(Edwin S. Lou & wf. Sandra E. - 7/8) sub-1/8  
(Lawrence H. Kom & wf. Betty Lou - 7/8) sub-1/8

25 Robert T. Lee & wf. Ida S. - 7/8  
(Edwin S. Lou & wf. Sandra E. - 7/8) sub-1/8  
(Lawrence H. Kom & wf. Betty Lou - 7/8) sub-1/8  
(Mary S. Brien) sub-sub-1/8

26 Robert T. Lee & wf. Ida S. - 7/8  
(Edwin S. Lou & wf. Sandra E. - 7/8) sub-1/8  
(Lawrence H. Kom & wf. Betty Lou - 7/8) sub-1/8  
(Danna J. Fernandes) sub-sub-1/8

27 Robert T. Lee & wf. Ida S. - 7/8  
(Edwin S. Lou & wf. Sandra E. - 7/8) sub-1/8  
(Lawrence H. Kom & wf. Betty Lou - 7/8) sub-1/8  
(Edwin H. Keliok &  
Dwight S. Sanderson - 7/8) sub-sub-1/8  
(Hawaiian Properties, Ltd.) sub-sub-1/8

Access & Utility Easement

Edamara Property

FOR PROPERTY ASSESSMENT PURPOSES  
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION  
PROPERTY TECHNICAL OFFICE  
TAX MAPS BRANCH  
STATE OF HAWAII  
TAX MAP

FIRST TAXATION DISTRICT		
ZONE	SEC.	PLAT
4	1	13

SCALE 1 IN. = 200 FT.

Exhibit A

10461(0)



R-642 STATE OF HAWAII  
 BUREAU OF CONVEYANCES  
 RECORDED  
 FEB 25, 2003 08:02 AM  
 Doc No(s) 2003-033708



/s/ CARL T. WATANABE  
 REGISTRAR OF CONVEYANCES

14 1/1 Z1

LAND COURT SYSTEM }  
 Return by Mail ( ) Pickup (x) To: REGULAR SYSTEM

DEPT. OF LAND AND NATURAL RESOURCES  
 LAND DIVISION

LOD No. 28,603 Total Number of Pages: 14  
 Tax Map Key Nos. (1)4-1-013:  
 Pors. 1, 18, 21, & 22

GRANT OF NON-EXCLUSIVE EASEMENT

THIS INDENTURE, made and entered into this 24th day of February, 2003, by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the "Grantor," and MASAHIKO HONANUIA married and sole proprietor, whose address is \_\_\_\_\_ i Boulevard, Suite 604, Honolulu, Hawaii 96814, hereinafter referred to as the "Grantee."

WITNESSETH THAT:

The Grantor, pursuant to Section 171-13, Hawaii Revised Statutes, for good and valuable consideration, the receipt of which is hereby acknowledged, and of the terms, conditions, and covenants herein contained, and on the part of the Grantee to be observed and performed, does hereby grant unto the Grantee, the following non-exclusive and perpetual easement rights:

Right, privilege, and authority to construct, use, maintain, and repair a right-of-way over, under, and

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DEPARTMENT OF LAND AND NATURAL RESOURCES  
 LAND DIVISION  
 P.O. BOX 521  
 HONOLULU, HAWAII 96808



Exhibit B

10461(0)

across state-owned land for access and utility purposes,

in, over, under and across that certain parcel of land ("easement area") situate at Waimanalo, Koolaupoko, Oahu, Hawaii, being identified as "Perpetual Non-Exclusive Access and Utility Easement," containing an area of 33,577 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. 23,364 and dated September 23, 2002, 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.

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2

DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809

PAELIM APPR'D  
Department of the  
Attorney General

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. (1)4-1-013:8, 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,

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3

DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809

PRELIM. APP'D  
Department of the  
Attorney General

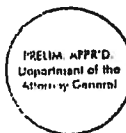
physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

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 and/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 and/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 redispense shall be applied, first, to reimburse the Grantor for costs and expenses in connection with the redispense; 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 redispense 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 procure and maintain, at its own cost and expense, in full force and effect throughout the term of this easement, commercial general liability insurance, or its equivalent, in an amount of at least \$300,000.00 for each occurrence and \$500,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire easement area, including all grounds and all roadways or sidewalks on or adjacent to the easement in the use or control of the Grantee.

The Grantee, prior to entry and use of the easement area or within fifteen (15) days after the effective date of this easement, whichever is sooner, shall furnish the Grantor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire easement term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Grantor.

The Grantor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this easement. If, in the opinion of the Grantor, the insurance provisions in this easement do not provide adequate protection for the Grantor, the Grantor may require Grantee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Grantor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time





a change in insurance is required. The Grantor shall notify Grantee in writing of changes in the insurance requirements and Grantee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Grantor incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Grantee's liability under this easement nor to release or relieve the Grantee of the indemnification provisions and requirements of this easement. Notwithstanding the policy(s) of insurance, Grantee shall be obligated for the full and total amount of any damage, injury, or loss caused by Grantee's negligence or neglect connected with this easement.

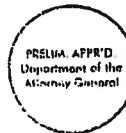
It is agreed that any insurance maintained by the Grantor will apply in excess of, and not contribute with, insurance provided by Grantee's policy.

19. The easement area shall not be used at any time by the Grantee, its guests or invitees for parking purposes.

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

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

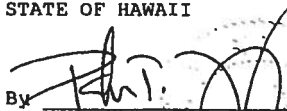
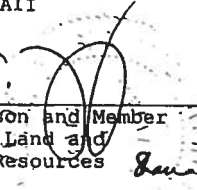
22. In the event that the Grantee is able to obtain approval for easements over those portions of "Saddle City Road" that cross over private property, the easement over state lands shall be adjusted accordingly. Furthermore, if the future adjusted easement area will alter the bed or banks of a stream channel, the Grantee will need to obtain a stream channel alteration permit from the State of Hawaii, Commission on Water Resource Management.




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.

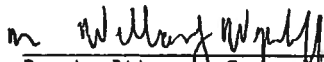
STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meetings held on November 14, 2001 and December 13, 2002.

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

 \_\_\_\_\_  
MASAHARU EJAMURA  
GRANTEE

APPROVED AS TO FORM:

  
Deputy Attorney General

Dated: 2/14/03

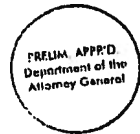
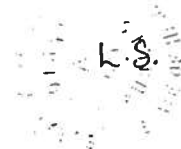


STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 9th day of January, 2003, before me personally appeared MASAHARU EDAMURA, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Susan K. Tollinger  
Notary Public, State of Hawaii  
Susan K. Tollinger

My commission expires: 01/30/03





**STATE OF HAWAII**

**SURVEY DIVISION**

**DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU**

**September 23, 2002**

**C.S.F. No. 23,364**

**PERPETUAL NON-EXCLUSIVE  
ACCESS AND UTILITY EASEMENT**

**Waimanalo, Koolaupoko, Oahu, Hawaii**

**Being a portion of the Government (Crown) land of Waimanalo.**

**Being a strip of land twelve (12.00) feet wide, and extending six (6.00) feet on each side of the following described centerline:**

**Beginning at the south end of this centerline and on the north side of Kalaniana'ole Highway, the true azimuth and distance from a street monument being: 189° 26' 40" 18.41 feet and the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIMANALO RIDGE" being 1974.41 feet South and 3071.15 feet East, thence running by azimuths measured clockwise from True South:-**

- 1. 189° 26' 40" 248.41 feet along the remainder of the Government (Crown) Land of Waimanalo;**
- 2. 185° 42' 30" 176.10 feet along the remainder of the Government (Crown) Land of Waimanalo;**
- 3. 187° 55' 289.57 feet along the remainder of the Government (Crown) Land of Waimanalo;**



**EXHIBIT "A"**

4.	191° 52' 20"	97.68 feet along the remainder of the Government (Crown) Land of Waimanalo;
5.	148° 15'	47.65 feet along the remainder of the Government (Crown) Land of Waimanalo;
6.	227° 00'	54.92 feet along the remainder of the Government (Crown) Land of Waimanalo;
7.	189° 56'	74.10 feet along the remainder of the Government (Crown) Land of Waimanalo;
8.	189° 48'	276.34 feet along the remainder of the Government (Crown) Land of Waimanalo;
9.	189° 24' 30"	139.91 feet along the remainder of the Government (Crown) Land of Waimanalo;
10.	183° 36' 50"	44.40 feet along the remainder of the Government (Crown) Land of Waimanalo;
11.	172° 05' 20"	47.00 feet along the remainder of the Government (Crown) Land of Waimanalo;
12.	160° 38' 50"	168.30 feet along the remainder of the Government (Crown) Land of Waimanalo;
13.	157° 37' 20"	41.95 feet along the remainder of the Government (Crown) Land of Waimanalo;
14.	157° 23' 30"	132.84 feet along the remainder of the Government (Crown) Land of Waimanalo;
15.	152° 41' 50"	162.26 feet along the remainder of the Government (Crown) Land of Waimanalo;
16.	149° 14' 50"	223.70 feet along the remainder of the Government (Crown) Land of Waimanalo;
17.	141° 58' 20"	49.52 feet along the remainder of the Government (Crown) Land of Waimanalo;



C.S.F. No. 23,364

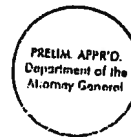
September 23, 2002

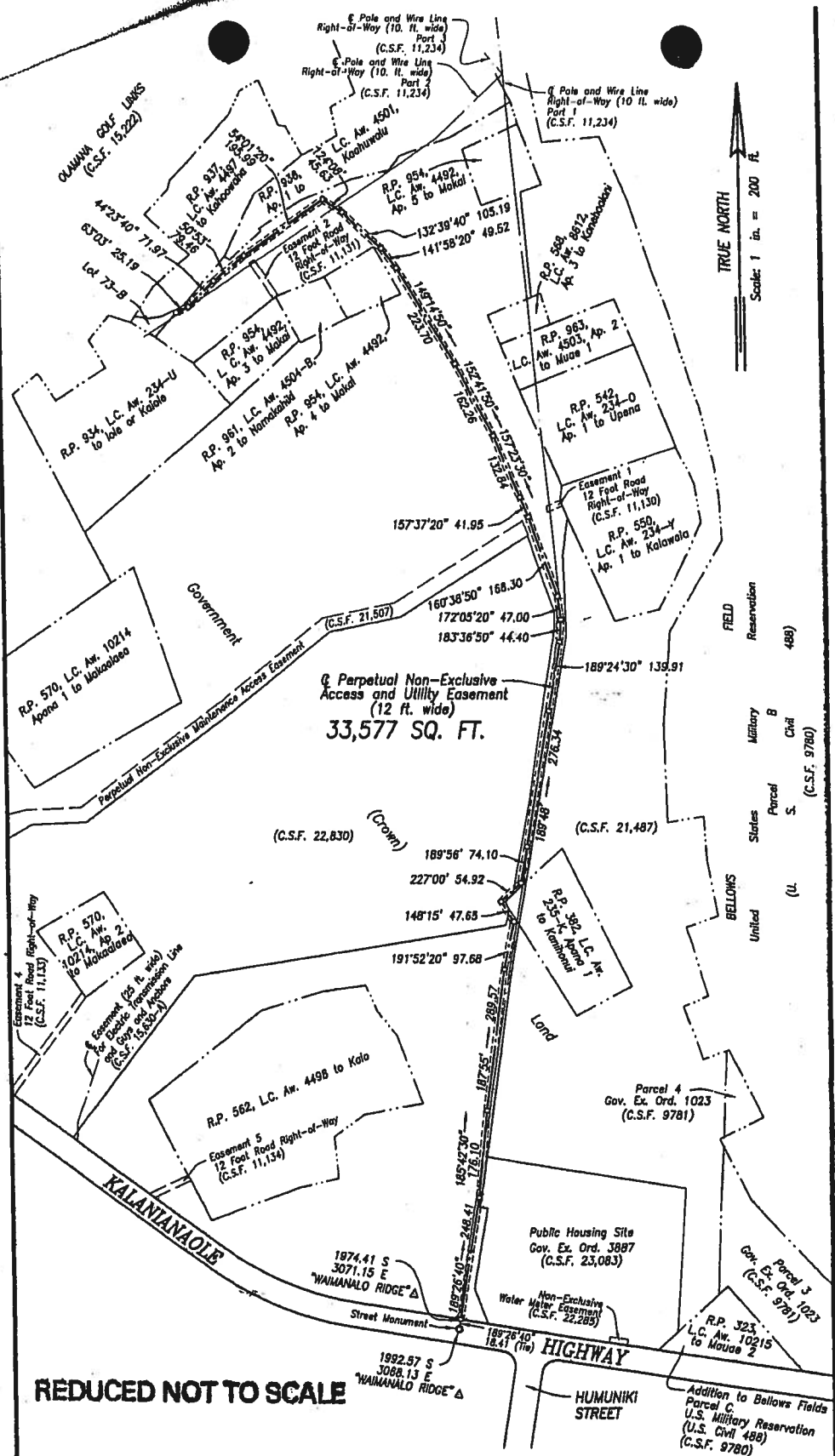
- |                  |  |
|------------------|--|
| 18. 132° 39' 40" | 105.19 feet along the remainder of the Government (Crown) Land of Waimanalo;   |
| 19. 124° 08'     | 45.63 feet along the remainder of the Government (Crown) Land of Waimanalo;  |
| 20. 54° 01' 20"  | 195.99 feet along the remainder of the Government (Crown) Land of Waimanalo;   |
| 21. 50° 53'      | 79.46 feet along the remainder of the Government (Crown) Land of Waimanalo;  |
| 22. 44° 23' 40"  | 71.97 feet along the remainder of the Government (Crown) Land of Waimanalo;  |
| 23. 63° 03'      | 25.19 feet along the remainder of the Government (Crown) Land of Waimanalo to the north end of this centerline and containing an AREA OF 33,577 SQUARE FEET. |

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: Reid K. Siarot  
Reid K. Siarot  
Land Surveyor gm

Compiled from data furn. by  
Towill Shigeoka & Assoc., Inc.  
and Govt. Survey Records.





REDUCED NOT TO SCALE

**PERPETUAL NON-EXCLUSIVE  
ACCESS AND UTILITY EASEMENT**  
Waimanalo, Koolaupoko, Oahu, Hawaii

JOB O-158(02)  
C. BK.

Scale: 1 inch = 200 feet

TAX MAP: 4-1-13: Pars. 1, 18, 21 & 22  
SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

JGL September 23, 2002

PRELIM. APPR'D.  
Department of the  
Attorney General

**EXHIBIT "B"**

8.5" X 17" = 100 S.F.