

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

October 25, 2013

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

GL No. S-5844
GL No. S-5372
Hawaii

Report on the Status of Chapter 11 Bankruptcy Case No. 12-02279, Hawaii Outdoor Tours, Inc., Debtor, Filed in the United States Bankruptcy Court, District of Hawaii, Including a Report on the Hearing before the Bankruptcy Court Scheduled for October 21, 2013. Discussion will entail at least the following:

- a. Trustee's Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs; Declaration of David C. Farmer; Exhibits "A" to "C";
- b. Secured Creditor First-Citizens Bank and Trust Company's Joinder to Trustee's Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs;
- c. State of Hawaii's Memorandum in Opposition to Trustee's Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs; and
- d. County of Hawaii's Opposition to Trustee's Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs; Exhibits A to C.

The Board may hold a discussion in Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

BACKGROUND:

Hawaii Outdoor Tours, Inc. (Lessee or Debtor), is the lessee under General Lease No. S-5844 covering the premises of the Naniloa Volcanoes Resort in South Hilo, Hawaii, and General Lease No. S-5372, which is a pasture lease in Kau, Hawaii. Lessee filed for bankruptcy on November 20, 2012 in the United States Bankruptcy Court for the District of Hawaii. The Bankruptcy Court will be hearing oral argument on Debtor's motion to assume the two leases on Monday October 21, 2013. Attached are the following:

Exhibit 1 – Trustee's Motion for Order (A) Authorizing the Assumption of

Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs; Declaration of David C. Farmer; Exhibits “A” to “C”;

Exhibit 2 – Secured Creditor First-Citizens Bank and Trust Company’s Joinder to Trustee’s Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs;

Exhibit 3 – Declaration of Russell Y. Tsuji Regarding State of Hawaii’s Memorandum in Opposition to Trustee’s Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs; Exhibits B, C, E and G;

Exhibit 4 – State of Hawaii’s Memorandum in Opposition to Trustee’s Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs; Exhibit A; and

Exhibit 5 – County of Hawaii’s Opposition to Trustee’s Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs; Exhibits A to C.

The Department of the Attorney General has requested an opportunity to brief the Board of Land and Natural Resources, in executive session, on the status of the bankruptcy proceeding, including a report on the hearing before the Bankruptcy Court scheduled for October 21, 2013.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

N

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Attorney for Trustee
DAVID C. FARMER

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAII

In re)
) CASE NO. 12-02279
) (Chapter 11)
)
)
)
 HAWAII OUTDOOR TOURS, INC.,)
)
)
) Judge: Honorable Robert J. Faris
)
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 Debtor.)
)
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**TRUSTEE'S MOTION FOR ORDER (A) AUTHORIZING THE
ASSUMPTION OF CERTAIN UNEXPIRED NON-RESIDENTIAL
REAL PROPERTY LEASES AND (B) ESTABLISHING CURE COSTS;
DECLARATION OF DAVID C. FARMER; EXHIBITS "A" TO "C"**

David C. Farmer, the duly appointed Chapter 11 Trustee (the "Trustee")
moves the Court for the entry of an order, pursuant to section 365 of Title 11 of the
United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") and Rules
2002(a) and 9006(c) of the Federal Rules of Bankruptcy Procedure (the

“Bankruptcy Rules”) (i) authorizing the Trustee to assume certain herein described unexpired non-residential real property leases with the State of Hawaii and the Eleanor Rose Benda Trust (ii) and establishing cure costs. In support of this Motion, the Trustee respectfully represents as follows:

The Debtor commenced the instant case on November 20, 2012, by the filing of a voluntary petition under Chapter 11 of the Bankruptcy Code. Declaration of David C. Farmer (“Farmer Dec.”), ¶ 1-2. At the time of the filing the Debtor was the lessee under three ground leases as follows:

1. The Eleanor Rose Benda Trust Lease, including First Amendment and Assignment (hereinafter referred to as the “Benda Trust Lease.” Farmer Dec. Exhibit “A”;
2. State of Hawaii Department of Land and Natural Resources General Lease S-5844 (hereinafter referred to as “Naniloa Lease”). Farmer Dec. Exhibit “B”;
3. State of Hawaii Department of Land and Natural Resources General Lease S-5372 (hereinafter referred to as “Ka’u Lease”). Farmer Dec. Exhibit “C”.

The Trustee is administering the Debtor's Estate and has been operating the Naniloa Volcanoes Resort Hotel and Golf Course. On Friday the 13th of September, the Board of Land and Natural Resources, State of Hawaii, determined that it would not permit any additional time to assume the State leases. Pursuant to the Stipulated Order to Extend Time for Trustee to Assume or Reject State of Hawaii and the Eleanor Rose Benda Trust Leases filed on June 4, 2013 (Docket No. 329), the Trustee has through and including Monday September 16, 2013 to seek to assume the unexpired leases. The Trustee hereby timely gives notice of the assumption of the Naniloa Lease, the Ka'u Lease and the Benda Trust Lease.¹

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. The relief sought in this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the Debtors' chapter 11 cases and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and Local Bankruptcy Rules

Basis for Relief

¹ The Trustee hopes to have a stipulation to continue the date for assumption or rejection of the Benda Trust Lease entered prior to the expiration of the date for assumption or rejection and files this motion related to the Benda Trust Lease as a protective measure.

DISCUSSION

Section 365(a) provides, in relevant part, that a trustee, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Section 365(a) does not supply a standard for determining when it is appropriate for a court to approve a debtor in possession’s determination to assume, assign or reject an executory contract. Courts, however, in deferring to the business judgment test, routinely approve motions to assume, assume and assign, or reject executory contracts and unexpired nonresidential real property leases upon a showing that a debtor’s decision to take such action will benefit the Estate and is an exercise of sound business judgment. *See, e.g., In re Pomona Valley Medical Group, Inc.*, 476 F. 3d 665, 670 (9th Cir. 2007); *In re Health Plan of Redwoods*, 286 B.R. 779, 780 (Bankr. N.D. Cal. 2002); *In re Centura Software, Corp.*, 281 B.R. 660, 672 (Bankr. N.D. Cal. 2002); *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (*superseded by statute on other grounds*); *Lubrizol Ents., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1046-47 (4th Cir. 1985).

If the Trustee has exercised sound business judgment, a Bankruptcy court should approve the proposed assumption or rejection. As a result, courts generally

will not second-guess a debtor or trustee's business judgment concerning the assumption or rejection of an executory contract or unexpired lease. *See In re Pomona Valley*, 476 F.3d at 670; *Lubrizol*, 756 F.2d at 1047.

The Trustee, in his business judgment has determined that the assumption of the Naniloa and Benda Trust Leases are in the best interests of the Debtor's estate. Declaration of David C. Farmer ¶¶ 3-9.

The lessors will be adequately protected as a result of the assumption and the principal Secured Lender's mortgagee protection cure requirements and can show that they will have sufficient cash available from the principal secured creditor First Citizens Bank plus ongoing operations to meet the postpetition financial obligations under the Leases. The Estate's ongoing operations will support the monthly lease payments of the Benda Trust lease, just as it has throughout the Bankruptcy case. Overall, the assumption of the Leases provides a positive economic benefit to the Estate. Therefore, the Court should approve the assumption of the Leases.

CURE COST

Pursuant to section 365(b)(1)(A) of the Bankruptcy Code, the Debtor must "promptly cure" all defaults, including payment of the Cure Cost. Whether a proposed cure of prepetition default under lease qualifies as "prompt cure"

ultimately depends upon facts and circumstances of each case. *See In re Embers 86th Street, Inc.*, 184 B.R. 892, 900-901 (Bankr. S.D.N.Y.1995). Courts generally review the following factors in determining whether the “prompt cure” requirement is satisfied: (i) the debtor's past financial performance; (ii) any inequitable acts by the non-debtor party; (iii) harm or prejudice suffered by the non-debtor party resulting from past defaults; and (iv) the term of the contract or lease. *Id.*, at *2. In this instance, the Debtors believe that the Leases to be assumed are valuable estate assets, the ultimate treatment of which is addressed in a sale transaction. Therefore, the deferral of the payment of the Cure Cost should still be considered “prompt” under relevant case law. Case law interpreting the term “promptly cure” considers the circumstances of a particular situation. Here, the remaining term of the Naniloa Lease is 58 years so a “prompt” cure of several years may be appropriate. *See, e.g., In re Coors of North Mississippi, Inc.*, 27 B.R. 918, 922 (Bankr. N.D. Miss.) (1983) (“in the context of this case, this court concludes that the proposed cure of the default within a period of three years meets the statutory requirement of a 'prompt cure' or 'adequate assurances of a prompt cure.'”); *In re Mulkey of Missouri, Inc.*, 5 B.R. 15, 17-18 (Bankr. W.D. Mo. 1980) (six- month period to effect a prompt cure).

Moreover, the Lessor of the Naniloa Lease has, without seeking relief from the Automatic Stay, imposed an increase in the Estate’s performance bond

requirement that constitutes a pre-petition debt and therefore the Trustee believes was subject to the automatic stay. The Trustee shall seek a Bankruptcy Court determination of the actual cure costs that are required under the Bankruptcy Code.

Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee; (ii) counsel for the Official Committee of Unsecured Creditors; (iii) the Secured Lender's counsel; (iv) counsel for the State of Hawaii and the Benda Trust; and (v) all parties entitled to receive notice under Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Trustee submit that, in light of the nature of the relief requested, no other or further notice need be given.

DATED: Honolulu, Hawaii, September 16, 2013.

/S/Timothy J. Hogan

TIMOTHY J. HOGAN

ATTORNEY FOR THE CHAPTER 11 TRUSTEE

DAVID C. FARMER

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAII

In re)
) CASE NO. 12-02279
) (Chapter 11)
)
HAWAII OUTDOOR TOURS, INC.,)
)
)
Debtor) Judge: Honorable Robert J. Faris
)
)

**DECLARATION OF DAVID C. FARMER TRUSTEE IN SUPPORT OF
TRUSTEE'S MOTION FOR A ORDER (A) AUTHORIZING THE
ASSUMPTION AND REJECTION OF CERTAIN UNEXPIRED
NON-RESIDENTIAL REAL PROPERTY LEASES
AND (B) ESTABLISHING CURE COSTS; EXHIBITS "A" TO "C"**

I, David C. Farmer make the following declaration to the best of my knowledge, information and belief under penalty of perjury. If called upon to testify regarding the matters contained herein I am competent and willing to do so.

1. This Bankruptcy case was commenced on November 20, 2012, by the filing of a voluntary petition under Chapter 11 of the Bankruptcy Code.

2. On May 14, 2013, I was appointed Chapter 11 Trustee and am serving under my special bond.

3. As Chapter 11 Trustee, I have been continuing the operations of the Debtor's principal asset the Naniloa Volcanoes Resort.

4. To the best of my knowledge, at the time of the filing the Debtor was the lessee under three ground leases as follows:

A. The Eleanor Rose Benda Trust Lease, including First Amendment and Assignment (hereinafter referred to as the "Benda Trust Lease," a true and correct copy of which is attached as Exhibit "A");

B. State of Hawaii Department of Land and Natural Resources General Lease S-5844 (hereinafter referred to as "Naniloa Lease" a true and correct copy of which is attached as Exhibit "B"); and

C. State of Hawaii Department of Land and Natural Resources General Lease S-5372 (hereinafter referred to as "Ka'u Lease") (a true and correct copy of which is attached as Exhibit "C").

5. I am administering the Debtor's Estate and have been operating the Naniloa Volcanoes Resort Hotel and Golf Course.

6. On Friday the 13th of September, the Board of Land and Natural Resources, State of Hawaii, determined that it would not permit any additional time to assume the State leases.

7. Pursuant to the Stipulated Order to Extend Time for Trustee to Assume or Reject State of Hawaii and the Eleanor Rose Benda Trust Leases filed on June 4, 2013 (Docket No. 329) the Estate has through and including Monday September 16, 2013 to seek to assume the unexpired leases.

8. I have considered the factors related to the assumption or rejection of the leases that are the subject of the instant motion and based on my own analysis, investigation and after consultation with my attorney I have decided that the assumption of the Naniloa Lease, Ka'u Lease and the Benda Trust lease are in the best interest of the Estate and its creditors.

9. At the time of the filing of this motion, I or my attorney have had discussions with three parties regarding the funding of the cure costs and believe that the Estate can promptly cure the monetary defaults.

28 U.S.C. § 1746 DECLARATION

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Honolulu, Hawaii, September 16, 2013.

/S/David C. Farmer
DAVID C. FARMER

Pl 5372
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RECEIVED
CLAIM DIVISION
2013 OCT -7 PM 2:34
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

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FIRST-CITIZENS BANK & TRUST COMPANY,
a North Carolina commercial bank

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re:

HAWAII OUTDOOR TOURS, INC.
dba Naniloa Volcanoes Resort and
Naniloa Volcanoes Golf Club,

Debtor and Debtor-in-
Possession.

Bk. No. 12-02279
(Chapter 11)

DATE: October 21, 2013
TIME: 9:30 a.m.
JUDGE: Hon. Robert J. Faris

**SECURED CREDITOR FIRST-CITIZENS BANK & TRUST COMPANY'S
JOINDER TO TRUSTEE'S MOTION FOR ORDER (A) AUTHORIZING
THE ASSUMPTION OF CERTAIN UNEXPIRED NON-RESIDENTIAL
REAL PROPERTY LEASES AND (B) ESTABLISHING CURE COSTS**

EXHIBIT 2

10.7.13 W. : HDLO

SECURED CREDITOR FIRST-CITIZENS BANK & TRUST COMPANY, by and through its undersigned attorneys, Case Lombardi & Pettit, a Law Corporation, hereby submits this joinder to the Trustee's Motion for Order (A) Authorizing Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs [Docket No. 367] electronically filed herein on September 16, 2013.

DATED: Honolulu, Hawaii, October 3, 2013

/s/ Ted N. Pettit
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

HAWAII OUTDOOR TOURS, INC.
dba Naniloa Volcanoes
Resort and Naniloa
Volcanoes Golf Club,

Debtor.

CASE NO. 12-02279
(Chapter 11)

Re: Docket Entry No. 367

HEARING:

DATE: October 21, 2013

TIME: 9:30 a.m.

JUDGE: Honorable Robert J.
Faris

518964

DECLARATION OF RUSSELL Y. TSUJI REGARDING
STATE OF HAWAII'S MEMORANDUM IN OPPOSITION TO TRUSTEE'S
MOTION FOR ORDER (A) AUTHORIZING THE ASSUMPTION OF
CERTAIN UNEXPIRED NON-RESIDENTIAL REAL PROPERTY LEASES
AND (B) ESTABLISHING CURE COSTS; EXHIBITS B, C, E, AND

G

EXHIBIT 3

1. I am the Administrator of the Land Division of the State of Hawaii, Department of Land and Natural Resources (hereinafter, "DLNR").

2. I have reviewed the records of the DLNR and am competent to testify as to the matters stated herein.

3. As part of my duties, I have been assigned to oversee the State of Hawaii General Leases Nos. S-5844 ("Naniloa Lease") and S-5372 ("Kau Lease"). Hawaii Outdoor Tours, Inc. ("Debtor") is the lessee of both the Naniloa Lease and the Kau Lease. True and correct copies of the Naniloa Lease and the Kau Lease are attached hereto as Exhibits B and C, respectively.

4. The Naniloa Lease requires the Debtor to obtain a Performance Bond¹ in the amount of twice the annual rent in favor of the DNLNR. Because the base rent at this time is \$500,000.00 annually, the Performance Bond required by the Naniloa Lease is \$1,000,000.00.

¹ The performance bond requirement is in lieu of requiring a cash security deposit; under the Naniloa Lease, the bond may be called upon to cure any defaults under that lease.

5. During 2011 and 2012, the Debtor was unable to pay the Naniloa Lease semi-annual rent installments. The DNLR accordingly drew down the Performance Bond twice. To be more specific, a Notice of Default was issued in or around February 28, 2011 for delinquent rent. In or around March 2011, the Debtor requested that the \$1,000,000.00 Performance Bond be reduced to \$500,000.00, with the understanding that \$500,000.00 from the Performance Bond would be applied directly to the annual rent for that year. On March 24, 2011, the Land Board approved the reduction of the Performance Bond with the understanding that the aforesaid \$500,000.00 would be immediately applied to the annual rent, and in the event of any future violation of a term or condition of the Naniloa Lease, the Chairperson could reinstate the Performance Bond back to the original \$1,000,000.00 amount upon thirty (30) days' written notice. The Performance Bond has since been reinstated² to the original \$1,000,000.00

² On May 10, 2013, the Land Board reinstated the Performance Bond back to the original \$1,000,000.00 amount.

amount, but as of this date, the Performance Bond remains short \$500,000.00.

6. On or about March 2, 2012, the DNLR notified Debtor of its default for failure to pay the Naniloa Lease rent for the period from February 1, 2012 and July 31, 2012. Because of the outstanding delinquent rent, on or about May 9, 2012, the DLNR called upon the Performance Bond to cure the delinquent semi-annual rental installment.

6. On or about June 1, 2012, the DNLR notified Debtor of another default under the Naniloa Lease for failing to replenish the Performance Bond to the then reduced amount of \$500,000.00.³

7. On or about August 29, 2012, the DNLR sent another notice of default to the Debtor for failing to pay the Naniloa Lease rent for the period from August 1, 2012 to January 13, 2013.⁴

³ On or about October 5, 2012, DLNR acknowledged First-Citizens Bank's cure of about \$260,000.00 of the Performance Bond under the Naniloa Lease bringing the bond account balance back to then \$500,000.00 level.

⁴ DLNR records show that in or around January 7, 2013, First Citizens Bank advanced \$262,000.00 to cover the default for Debtor's failure to pay the Naniloa Lease rent.

8. The Naniloa Lease rent for the period from August 1, 2013 to January 13, 2014 became due and is unpaid. The Naniloa Lease requires the semi-annual rental payment of \$250,000.00 to be paid in advance.

9. As of the date of this declaration, the following are defaults in the Naniloa Lease and ought to be cured immediately and certainly before the Trustee assumes any of the leases with the DLNR:

- a. Delinquent rent payment of approximately \$263,000.00;
- b. Evidence of renewal of all construction bonds⁵;
- c. Complete renovations of all facilities to applicable building codes and to a standard expected by the State or required by the Naniloa lease⁶;
- d. Release of all recorded liens by full payment⁷;
- e. Payment of all delinquent utilities bills of approximately \$245,000.00⁸;
- f. Satisfactory evidence that all Notices of Violation issued by the County of

⁵ E.g., paragraphs 41, 40 and 11 of the Naniloa Lease.

⁶ E.g., paragraphs 10, 9, 5, 6, and 7 of the Naniloa Lease.

⁷ E.g., paragraph 11 of the Naniloa Lease.

⁸ E.g., paragraph 3 of the Naniloa Lease.

Hawaii have been cured to the satisfaction of the County of Hawaii, such as those notices issued against the Naniloa hotel site⁹;

- g. Satisfactory evidence of payment in full of all amounts owed to any governmental entity or public utility for such matters as taxes, assessments, electrical, sewer and water charges¹⁰;
- h. Replenishment of the Performance Bond (\$500,000.00) back to the full \$1 million dollar level as required by the Naniloa Lease¹¹; and
- i. Payment of the State's attorneys' fees and costs with regard to any litigated matter¹².

10. DLNR sent out the following notice of default letters to the Debtor regarding the Kau Lease: November 21, 2008, December 3, 2010, May 31, 2011, November 29, 2011, and May 31, 2012. The nature of the default for all of the aforesaid notices was for delinquent rent, late charges, and interest. The amount of the delinquent rent, late charges, and

⁹ E.g., paragraph 7 of the Naniloa Lease.

¹⁰ E.g., paragraphs 2 and 3 of the Naniloa Lease.

¹¹ E.g., paragraph 18 of the Naniloa Lease and pursuant to the Land Board's decision on Item D-5 at the Land Board meeting held on May 10, 2013.

¹² E.g., paragraphs 15 and 16 of the Naniloa Lease.

interest due under the Kau Lease through November 2013 is approximately \$5,400.00.

11. As to the Naniloa Lease, DLNR sent out the following notice of default letters: March 15, 2007¹³, February 13, 2009¹⁴, August 23, 2010¹⁵, February 28, 2010¹⁶, March 2, 2012¹⁷, June 1, 2012¹⁸ and August 29, 2012¹⁹.

12. True and accurate copies of the current amounts owing on the Naniloa Lease and the Kau Lease are set forth in the rent ledgers attached hereto as Exhibit E.

13. At the September 13, 2013 Land Board meeting, the Board asked the Secured Lender's counsel if the Secured Lender would be coming forward to cure

¹³ Lack of the construction bond to cover mechanic and materialman liens, and completion.

¹⁴ Rent delinquent.

¹⁵ Rent and percentage rent report delinquent.

¹⁶ Rent delinquent.

¹⁷ Rent delinquent.

¹⁸ Performance Bond shortage.

¹⁹ Rent delinquent.

the rent default. The Secured Lender's counsel did not answer.

14. True and accurate copies of the testimony sent to the Land Board for the September 13, 2013 asking that the Board not extend the time for the trustee to assume or reject the State Leases are attached hereto as Exhibit G.

15. The State is unable to amend lease terms until expiration of the lease period.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: Honolulu, Hawaii, 10/2/13.



RUSSELL Y. TSUJI

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ELECTRONIC FILING
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Docket # 416

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STATE OF HAWAII

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

HAWAII OUTDOOR TOURS, INC.
dba Naniloa Volcanoes
Resort and Naniloa
Volcanoes Golf Club,

Debtor.

CASE NO. 12-02279
(Chapter 11)

Re: Docket Entry No. 367

HEARING:

DATE: October 21, 2013

TIME: 9:30 a.m.

JUDGE: Honorable Robert J.
Faris

518693

STATE OF HAWAII'S MEMORANDUM IN OPPOSITION TO TRUSTEE'S
MOTION FOR ORDER (A) AUTHORIZING THE ASSUMPTION OF
CERTAIN UNEXPIRED NON-RESIDENTIAL REAL PROPERTY
LEASES AND (B) ESTABLISHING CURE COSTS; EXHIBIT A

EXHIBIT 4

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3 Alan N. Resnick & Henry J. Sommer, eds., Collier on Bankruptcy ¶ 365.06 (16th ed. 2013) 10

I. INTRODUCTION

The State of Hawaii (the "State"), by its undersigned attorneys, hereby submits the following memorandum in opposition to Trustee's Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs, filed on September 16, 2013 (the "Motion"). The Trustee requests that this Court allow him to assume two state leases under the control and authority of the Department of Land and Natural Resources (the "DLNR"): (1) the "Kau" lease, encompassing unimproved property in Kau, County of Hawaii (General Lease No. S-5372); and (2) the "Naniloa" lease, encompassing the Naniloa Hotel and a nine-hole golf course in Hilo, County of Hawaii (General Lease No. S-5844) (collectively, the "State Leases").

The State opposes the Trustee's Motion for the following reasons:

1. The Trustee cannot effect a "prompt" cure of all the defaults in the State Leases.

2. The Trustee cannot provide adequate assurance of payment of lease rent such that there will not be a default on the State Leases in the near future. Currently, the Trustee has failed to pay rent for both State Leases: approximately \$260,000.00 for the Naniloa lease and \$5,000 for the Kau lease. Non-payment of rent is not the only concern on which the Trustee must give adequate assurance. The Trustee must also cure other defaults and give adequate assurance that there will not be future defaults.

II. STATEMENT OF FACTS

Hawaii Outdoor Tours, Inc. (the "Debtor") on November 20, 2012 filed a petition under Chapter 11. The Debtor's estate include two State of Hawaii leases, the particulars of which are summarized in Exhibit A. A true and accurate copy of the Naniloa Lease is attached as Exhibit B to the Declaration of Russell Tsuji filed concurrently herein. A true and accurate copy of the Kau Lease is attached as Exhibit C to the Declaration of Russell Tsuji.

A three tower complex comprising the Naniloa Hotel and a nine-hole golf course occupy the Naniloa Lease. The Kau Lease is undeveloped acreage.

A. Naniloa Lease

The Naniloa Lease requires the Debtor to obtain a Performance Bond¹ in the amount of twice the annual rent in favor of the DNLR. Because the base rent at this time is \$500,000.00 annually, the Performance Bond required by the Naniloa Lease is \$1,000,000.00.

During 2011 and 2012, the Debtor was unable to pay the Naniloa Lease semi-annual rent installments. The DNLR accordingly drew down the Performance Bond twice. To be more specific, a Notice of Default was issued in or around February 28, 2011 for delinquent rent. In or around March 2011, the Debtor requested that the \$1,000,000.00 Performance Bond be reduced to \$500,000.00, with the understanding that \$500,000.00 from the Performance Bond would be applied directly to the annual rent for that year. On March 24, 2011, the Land Board approved the reduction of the Performance Bond with the understanding that the aforesaid \$500,000.00 would be immediately applied to the annual

¹ The performance bond requirement is in lieu of requiring a cash security deposit; under the Naniloa Lease, the bond may be called upon to cure any defaults under that lease.

rent, and in the event of any future violation of a term or condition of the Naniloa Lease, the Chairperson could reinstate the Performance Bond back to the original \$1,000,000.00 amount upon thirty (30) days' written notice. On May 10, 2013, the Land Board reinstated the Performance Bond back to the original \$1,000,000.00 amount, but as of this date, the Performance Bond remains short \$500,000.00.

On or about March 2, 2012, the DNLR notified Debtor of its default for failure to pay the Naniloa Lease rent for the period from February 1, 2012 to July 31, 2012. Because of the outstanding delinquent rent, on or about May 9, 2012, the DLNR called upon the Performance Bond to cure the delinquent semi-annual rental installment.

On or about June 1, 2012, the DNLR notified the Debtor of another default under the Naniloa Lease for failing to replenish the Performance Bond to the then reduced amount of \$500,000.00.²

² On or about October 5, 2012, DLNR acknowledged First-Citizens Bank & Trust Company's (hereinafter, "Secured Lender") cure of about \$260,000.00 of the

On or about August 29, 2012, the DNLR sent another notice of default to the Debtor for failing to pay the Naniloa Lease rent for the period from August 1, 2012 to January 13, 2013.³

The Naniloa Lease rent for the period from August 1, 2013 to January 13, 2014 became due and is unpaid. The Naniloa Lease requires the semi-annual rental payment of \$250,000.00 to be paid in advance.

The DLNR sent out the following notice of default letters to the Debtor regarding the Kau Lease: November 21, 2008, December 3, 2010, May 31, 2011, November 29, 2011, and May 31, 2012. The nature of the default for all of the aforesaid notices was for delinquent rent, late charges, and interest. The amount of the delinquent rent, late charges, and interest due under the Kau Lease through November 2013 is approximately \$5,400.00.

Performance Bond under the Naniloa Lease bringing the bond account balance back to then \$500,000.00 level.

³ DLNR records show that in or around January 7, 2013, the Secured Lender advanced \$262,000.00 to cover the default for the Debtor's failure to pay the Naniloa Lease rent.

As to the Naniloa Lease, the DLNR sent out the following notice of default letters: March 15, 2007⁴, February 13, 2009⁵, August 23, 2010⁶, February 28, 2010⁷, March 2, 2012⁸, June 1, 2012⁹ and August 29, 2012¹⁰.

The Naniloa hotel can only be described as in a deplorable state of renovation and disrepair. One tower has been totally gutted for renovation; however, because of lack of funding, this tower is completely shut down.¹¹ The renovation work on the other two towers is not complete. Only fifty percent of the hotel rooms are available for guests. See Hawaii Land District Office photographs of the Kilauea Tower taken in or around April 2013, attached hereto as Exhibit D

⁴ Lack of a construction bond to cover mechanic and materialman liens, and completion.

⁵ Rent delinquent.

⁶ Rent and percentage rent report delinquent.

⁷ Rent delinquent.

⁸ Rent delinquent.

⁹ Performance Bond shortage.

¹⁰ Rent delinquent.

¹¹ No one is allowed access to the Kilauea Tower by order of the County of Hawaii Public Works Department. See Exhibit F.

to the Declaration of Gordon Heit filed concurrently herein. The Naniloa hotel may have accumulated enough County building code violations to be shut down. See Notice of Building Violations from County of Hawaii a true and accurate copy of which is attached to the Declaration of Gordon Heit as Exhibit F.

B. Assume or Reject.

On June 4, 2013, a Stipulated Order to Extend Time for Trustee to Assume or Reject State of Hawaii and Eleanor Rose Benda Trust Leases (Docket No. 329) was filed to allow the Trustee time to determine whether he should assume or reject the State Leases. The Stipulated Order extended the deadline for the Trustee to assume or reject the State Leases to September 16, 2013. Without payment of the August 1, 2013 rent, the Trustee requested that the State extend the deadline to assume or reject the State Leases to December 31, 2013. The current amounts owing on the Naniloa Lease and the Kau Lease are set forth as Exhibit E to the Declaration of Russell Tsuji.

On September 13, 2013, the State, through the Board of Land and Natural Resources, determined that it would not extend the deadline for the Trustee to assume the State Leases, prompting the Trustee to file his Motion. The Land Board received written testimony from the local Hilo community requesting that the Board deny the Trustee's request for an extension of time to assume or reject the State Leases. True and accurate copies of the testimony sent to the Land Board are attached to the Declaration of Russell Tsuji as Exhibit G. Also in attendance was the Honorable Billy Kenoi, County of Hawaii mayor, asking the Land Board not to extend the time for the Trustee to assume or reject the State Leases.¹²

C. State Tax Liability.

The Debtor had also failed to pay State of Hawaii general excise and transient accommodation taxes beginning in July 2011. Tax liens were filed in favor

¹² A video of the public portion of the September 13, 2013 Land Board meeting can be found on YouTube at: <http://www.youtube.com/watch?v=Hs7hzymbwV4>. An unknown member of the public took the video and posted it on YouTube. It appears accurate, but it is not an official recording of the Board meeting.

of the State of Hawaii, Department of Taxation, currently amounting to approximately \$504,791.73 through November 20, 2013. A true and accurate copy of the State's tax proof of claim is attached to the Declaration of Margaret Robideau filed concurrently herein as Exhibit H.

III. STANDARD OF REVIEW

A bankruptcy court applies the business judgment rule to evaluate a trustee's decision to assume or reject leases. In re Pomona Valley Med. Group, 476 F.3d 665, 670 (9th Cir. 2007). In its review, the court presumes that the trustee acted "prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Id.

IV. DISCUSSION

A. Section 365(a)

Section 365(a) allows the Trustee to assume any executory lease subject to the Bankruptcy Court's approval. Section 365(b)(1)(A) cautions that if there

are defaults on an executory lease, the trustee may not assume such lease unless the trustee:

(1) cures the default or provides adequate assurance that the default will be promptly cured;

(2) compensates or provides adequate assurance that the Trustee will promptly compensate the other party for any pecuniary loss to the party resulting from the default; and

(3) provides adequate assurance of future performance under the contract or lease.

See 3 Alan N. Resnick & Henry J. Sommer, eds., Collier on Bankruptcy ¶ 365.06 (16th ed. 2013). While it appears that the statute requires monetary defaults to be cured promptly, nonmonetary defaults appear to require a broad right to cure. See 3 Alan N. Resnick & Henry J. Sommer, eds., Collier on Bankruptcy ¶ 365.06[3][c] (16th ed. 2013). Whether a trustee has provided adequate assurance of "prompt" cure of default under the unexpired lease as required depends on all the facts and circumstances of the case. In re Embers 86th St., Inc., 184 B.R. 892 (Bankr. S.D.N.Y. 1995). It appears, however, that the consensus of the bankruptcy courts is that the Trustee must give adequate assurance

of future performance with respect to all covenants of the leases to be assumed. In re Rachels Indus., Inc., 109 B.R. 797, 803 (Bankr. W.D. Tenn. 1990).

B. The Burden of Proof is on the Trustee.

The Trustee has the burden of establishing that all of the prerequisites for assumption of the lease have been satisfied. Id. at 802; In re Crummie, 194 B.R. 230, 237 (Bankr. N.D. Cal. 1996) (“[a]ssumption of executory contracts imposes burdens upon debtors to cure defaults promptly, assure future performance, and adhere to all contract terms without adjustment...”).

To assume the lease, the Trustee must, among other things, cure all defaults under the State Leases (both monetary and non-monetary) to bring them back into compliance by their own terms. In re TreeSource Indus., Inc., 363 F.3d 994 (9th Cir. 2004); In re Building Block Child Care Ctrs., Inc., 234 B.R. 762 (B.A.P. 9th Cir. 1999).

The Trustee claims, on P. 5 of the Motion, that there will be adequate protection from cash available

from the Secured Lender plus operational proceeds to meet post-petition financial obligations.

The Trustee's assertion does not meet his burden because he does not support his statement with a firm commitment from the Secured Lender nor projections of profitability that can convince even a third party that there will be sufficient proceeds to conduct renovations, pay lease rent, and release all liens, among other things. More importantly, the Trustee does not demonstrate how and when prompt cure, especially of non-monetary defaults, will be effected.

C. The Trustee Does not Demonstrate Prompt Cure.

Case law, not the Bankruptcy Code itself, has traditionally defined the meaning of the "prompt" cure and "adequate assurance" language of sec. 365(b)(1)(A). Prompt cure has been determined to be anywhere from "immediate" (In re Lafayette Radio Electronics Corp., 9 B.R. 993 (Bankr. E.D.N.Y. 1981) to as long as "three years" (In re Coors of Northern Miss., Inc., 27 B.R.

918 (Bankr. N.D. Miss. 1983).¹³ In the case of a lease of 58 remaining years, the Trustee will argue that a lengthier period of cure is appropriate. However, with the deteriorating physical condition of the premises, as evidenced by the numerous County violations, and the downward spiral of the Trustee's cash position, prompt cure cannot take place years, rather than months away.¹⁴

By acknowledging that the Secured Lender must supplement hotel operational proceeds to fund the cure of all State Lease defaults, the Trustee acknowledges that the hotel does not have the wherewithal to pay lease payments, let alone renovation of the hotel itself. The State should not be financing the Trustee's hotel operations for an excessively extended time waiting for cure of State Lease defaults when it has been and continues to be, an involuntary lender to the Trustee. See In re Warehouse Club, Inc., 184 B.R. 316 (Bankr. N.D. Ill. 1997).

¹³ The Coors case involved a distinct element of fraud that convinced the court to allow the debtor three years to cure defaults. This is not the case here.

¹⁴ The Trustee is so short of cash that the Secured Lender agreed on a reserve account. See Tenth Stipulated Order for Cash Collateral, Docket Entry No. 407.

Moreover, the Secured Lender has not made any assurances to the Trustee or to the State that it will effect a cure or support the Trustee in his cure efforts. At the September 13, 2013 Land Board meeting, the Board asked the Secured Lender's counsel if the Secured Lender would be coming forward to cure the rent default. The Secured Lender's counsel did not answer. See Declaration of Russell Tsuji.

D. The Trustee Does not Demonstrate Adequate Assurance

The Trustee's motion can only be granted if he can show adequate assurance of cure of the following at the very least:

1. Delinquent rent payment of approximately \$263,000.00 (Exhibit D)
2. Evidence of renewal of all construction bonds (paragraphs 41, 40 and 11 of the Naniloa Lease);
3. Complete renovations of all facilities to applicable building codes and to a standard expected by the State or required by the Naniloa lease (paragraphs 10, 9, 5, 6, and 7 of the Naniloa Lease);

4. Release of all recorded liens by full payment (paragraph 11 of the Naniloa Lease);
5. Payment of all delinquent utilities bills of approximately \$245,000.00 (paragraph 3 of the Naniloa Lease);
6. Satisfactory evidence that all Notices of Violation issued by the County of Hawaii have been cured to the satisfaction of the County of Hawaii, such as those notices issued against the Naniloa hotel site (paragraph 7 of the Naniloa Lease);
7. Satisfactory evidence of payment in full of all amounts owed to any governmental entity or public utility for such matters as taxes, assessments, electrical, sewer and water charges (paragraphs 2 and 3 of the Naniloa Lease);
8. Replenishment of the Performance Bond (\$500,000.00) back to the full \$1 million dollar level as required by the Naniloa Lease (paragraph 18 of the Naniloa Lease and pursuant to the Land Board's decision on Item D-5 at the May 10, 2013 Land Board meeting); and
9. Payment of the State's attorneys' fees and costs with regard to any litigated matter (paragraphs 15 and 16 of the Naniloa Lease).

See Declaration of Russell Tsuji.

Courts have considered the following factors to determine adequate assurance such as the ones found in In re M. Fine Lumber Co., Inc., 383 B.R. 565 (Bankr. E.D.N.Y. 2008).

1. Payment history: poor. The Debtor twice drew down on the performance bond pre-petition. The Secured Lender paid the August 2012 rent payment (pre-petition). The Debtor made its only post-petition rent payment once, in February 2013. The last rent payment has been delinquent since August 1, 2013. Penalties and interest on the August 2013 payment of \$250,000.00 continue to accrue. The next rental payment is due on February 1, 2014.

2. Presence of guarantee: The Naniloa lease requires that the lessee post a performance bond of \$1 million. The Debtor, upon two requests, was allowed to draw down on the performance bond to \$500,000.00. However, given the Debtor's rent payment performance history, drawdown on the performance bond is not an option. In fact, the Board of Land and Natural

Resources decided that the Debtor should restore the performance bond back to its pre-petition amount.

3. Presence of security deposit: other than the diminished amount of the performance bond, the State does not hold a security deposit.

4. Evidence of profitability: the Debtor apparently has not been profitable for at least two years or more, certainly from the time that it failed to pay its state taxes. The Department of Taxation began to file tax liens from July 2011.

5. Earmarking of money exclusively for landlord in plan: the Trustee has yet to propose a plan.

6. General outlook in the debtor's industry: Numerous community advocates indicate that the outlook for the tourist industry is promising but the hostelry in Hilo to accommodate increased tourist traffic is inadequate. If the State can auction the State Leases off at respectable market prices, there may be an

interested party who can fulfill the terms of the lease satisfactorily.¹⁵

7. Whether the lease is at or below the prevailing rate: there is no question that the Debtor overbid the Naniloa lease. However, by law, the State, and the Debtor, by its own actions, are bound by the terms of the lease.

Even using the Embers test on p. 6 of his Motion, the Trustee is unable to demonstrate that he can promptly cure the State Lease defaults. The Trustee cursorily glosses over the Embers factors to disguise the fact that he cannot approach a satisfactory cure:

1. The Debtor's past financial performance: the Debtor was not paying its debts as due and could not pay the Naniloa lease rent several times pre-petition. The Trustee did not make the August 1, 2013 lease

¹⁵ Pursuant to Haw. Rev. Stat. § 171-14 (2011), disposition of public lands "shall be made at public auction." Lessees who have a previous lease canceled for failure to satisfy the terms and conditions of a lease in the last five years are ineligible to participate. Haw. Rev. Stat. § 171-13(2) (2011). Qualifications for potential lessees are given in the notice of auction. Haw. Rev. Stat. § 171-16(b) (2011). The State is unable to amend lease terms until expiration of the lease period. See Declaration of Russell Tsuji. See also, State v. Kahua Ranch, Ltd., 47 Haw. 28, 384 P.2d 581 (1963) (lease with terms contrary to the notice of sale as published would be unenforceable).

payment for the Naniloa Lease. The Debtor did not pay general excise and transient accommodations taxes on a regular basis.

2. Any inequitable acts by the non-debtor party: inapplicable. There is no fraud or unclean hands involved. At the September 13, 2013 Land Board meeting, however, the Trustee and his counsel painted a "doomsday" scenario of immediate shut down of the Naniloa hotel should the Board not extend the time to assume or reject the lease. At no time during their testimony did the Trustee and his counsel indicate that they were inclined to file this motion or change their minds about shuttering the Naniloa hotel on September 17, 2013.

3. Harm or prejudice suffered by the non-debtor party resulting from past defaults: The Debtor and the Trustee has cost the State a significant amount of lost revenue, unwanted publicity and criticism for the deteriorating condition of the hotel premises, incurred building violations due to lack of upkeep, maintenance,

and improvements, to name a few. The Debtor did not pay its state taxes. The Debtor subleased space in the main hotel tower to tenants who did not obtain prior approval of the State, as required in the Manilaa lease. The performance bond is down to half of what is required and the construction bond premium was due in August 2013.

4. Term of the contract or lease: the Trustee claims that because the remaining years on the State Leases are significant, prompt cure of "several" years is not out of place. However, the condition of the buildings on the hotel premises are significantly deteriorating; the County has claimed that it can close hotel operations due to building code violations, and the hotel is not operating at anywhere near full capacity. If the Trustee does not have the wherewithal to pay the semi-annual lease rent, he does not have the capital, without significant financial support from a third party, to continue hotel operations, let alone take prophylactic maintenance measures. The Trustee

does not have the funds to give adequate assurance of any kind of cure. The Trustee's August 2013 monthly operating report shows only \$168,555.99 in the operating account. See Docket Entry No. 378. In fact, the Trustee is not confident that he can pay essentials such as payroll, payroll taxes, general excise taxes, and transient accommodation taxes. See Docket Entry No. 407, Tenth Stipulation for Use of Cash Collateral, p. 32. The Trustee and the Secured Lender have agreed to "bridge financing" to tide the Trustee over to October 21, 2013. The Trustee's requested total amount, \$100,000.00 cannot be used to pay delinquent rent. See Id.

V. CONCLUSION

For all the above reasons, the State of Hawaii respectfully requests that this Court deny the Trustee's Motion to Assume any and all State of Hawaii leases.

DATED: Honolulu, Hawaii, October 7, 2013.

DAVID M. LOUIE
Attorney General of Hawaii

By: /s/ CYNTHIA M. JOHIRO
CYNTHIA M. JOHIRO
DAMIEN A. ELEFANTE
Deputy Attorneys General
Attorneys for the STATE OF
HAWAII

Lease No.	Location	Premises	Remaining Term	Delinquent Rent Amount	Defaults (Not Including Rent)
GL S-5844 Nanihoa lease	93 Banyan Dr., Hilo	Hotel (3 separate towers) & 9 hole golf course	58 years	\$263,000 (1 post-petition rent payment)	Performance Bond diminution* Tax Liens Real Property Tax Liens County of Hi Building Code Violations Deterioration and Waste of Facilities
GL S-5372 Kau lease	Kapapala, Kau	Undeveloped; no amenities	33 years	\$5,000 (6 post- & pre-petition rent payments)	Tax Liens

EXHIBIT A

File a Response to a Motion:12-02279 Hawaii Outdoor Tours, Incorporated

Type: bk

Chapter: 11 v

Office: 1 (Honolulu)

Assets: y

Judge: rjf

Case Flag: AwCNF

United States Bankruptcy Court**District of Hawaii**

Notice of Electronic Filing

The following transaction was received from Cynthia M. Johiro entered on 10/7/2013 at 3:25 PM HST and filed on 10/7/2013

Case Name: Hawaii Outdoor Tours, Incorporated**Case Number:** 12-02279**Document Number:** 416**Docket Text:**

State of Hawaii's Memorandum in Opposition to Trustee's Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs; Exhibit A . Filed by Creditor Department of Taxation, State of Hawaii. (Related document(s):[367] Motion to Assume Lease or Executory Contract filed by David C. Farmer). (Johiro, Cynthia)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**Opposition.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2967905-0]
] [052f953cd15751f654ed50bd2fe1843d19e0cf9c57302869f9046acf9fbeb96324
8d43bc5897be8fba9369e3c99ba1f211755404041ab34931c9f826f8c2846]]

12-02279 Notice will be electronically mailed to:

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12-02279 Notice will not be electronically mailed to:

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Lease No.	Location	Premises	Remaining Term	Delinquent Rent Amount	Defaults (Not Including Rent)
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EXHIBIT A

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ELECTRONIC FILING
Filed: OCT - 7 2013
Docket # 419

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Attorneys for the
STATE OF HAWAII

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

HAWAII OUTDOOR TOURS, INC.
dba Naniloa Volcanoes
Resort and Naniloa
Volcanoes Golf Club,

Debtor.

CASE NO. 12-02279
(Chapter 11)

Re: Docket Entry No. 367

HEARING:

DATE: October 21, 2013

TIME: 9:30 a.m.

JUDGE: Honorable Robert J.
Faris

518964

DECLARATION OF RUSSELL Y. TSUJI REGARDING
STATE OF HAWAII'S MEMORANDUM IN OPPOSITION TO TRUSTEE'S
MOTION FOR ORDER (A) AUTHORIZING THE ASSUMPTION OF
CERTAIN UNEXPIRED NON-RESIDENTIAL REAL PROPERTY LEASES
AND (B) ESTABLISHING CURE COSTS; EXHIBITS B, C, E, AND

1. I am the Administrator of the Land Division of the State of Hawaii, Department of Land and Natural Resources (hereinafter, "DLNR").

2. I have reviewed the records of the DLNR and am competent to testify as to the matters stated herein.

3. As part of my duties, I have been assigned to oversee the State of Hawaii General Leases Nos. S-5844 ("Naniloa Lease") and S-5372 ("Kau Lease").

Hawaii Outdoor Tours, Inc. ("Debtor") is the lessee of both the Naniloa Lease and the Kau Lease. True and correct copies of the Naniloa Lease and the Kau Lease are attached hereto as Exhibits B and C, respectively.

4. The Naniloa Lease requires the Debtor to obtain a Performance Bond¹ in the amount of twice the annual rent in favor of the DNLNR. Because the base rent at this time is \$500,000.00 annually, the Performance Bond required by the Naniloa Lease is \$1,000,000.00.

¹ The performance bond requirement is in lieu of requiring a cash security deposit; under the Naniloa Lease, the bond may be called upon to cure any defaults under that lease.

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² On May 10, 2013, the Land Board reinstated the Performance Bond back to the original \$1,000,000.00 amount.

amount, but as of this date, the Performance Bond remains short \$500,000.00.

6. On or about March 2, 2012, the DNLR notified Debtor of its default for failure to pay the Naniloa Lease rent for the period from February 1, 2012 and July 31, 2012. Because of the outstanding delinquent rent, on or about May 9, 2012, the DLNR called upon the Performance Bond to cure the delinquent semi-annual rental installment.

6. On or about June 1, 2012, the DNLR notified Debtor of another default under the Naniloa Lease for failing to replenish the Performance Bond to the then reduced amount of \$500,000.00.³

7. On or about August 29, 2012, the DNLR sent another notice of default to the Debtor for failing to pay the Naniloa Lease rent for the period from August 1, 2012 to January 13, 2013.⁴

³ On or about October 5, 2012, DLNR acknowledged First-Citizens Bank's cure of about \$260,000.00 of the Performance Bond under the Naniloa Lease bringing the bond account balance back to then \$500,000.00 level.

⁴ DLNR records show that in or around January 7, 2013, First Citizens Bank advanced \$262,000.00 to cover the default for Debtor's failure to pay the Naniloa Lease rent.

8. The Naniloa Lease rent for the period from August 1, 2013 to January 13, 2014 became due and is unpaid. The Naniloa Lease requires the semi-annual rental payment of \$250,000.00 to be paid in advance.

9. As of the date of this declaration, the following are defaults in the Naniloa Lease and ought to be cured immediately and certainly before the Trustee assumes any of the leases with the DLNR:

- a. Delinquent rent payment of approximately \$263,000.00;
- b. Evidence of renewal of all construction bonds⁵;
- c. Complete renovations of all facilities to applicable building codes and to a standard expected by the State or required by the Naniloa lease⁶;
- d. Release of all recorded liens by full payment⁷;
- e. Payment of all delinquent utilities bills of approximately \$245,000.00⁸;
- f. Satisfactory evidence that all Notices of Violation issued by the County of

⁵ E.g., paragraphs 41, 40 and 11 of the Naniloa Lease.

⁶ E.g., paragraphs 10, 9, 5, 6, and 7 of the Naniloa Lease.

⁷ E.g., paragraph 11 of the Naniloa Lease.

⁸ E.g., paragraph 3 of the Naniloa Lease.

Hawaii have been cured to the satisfaction of the County of Hawaii, such as those notices issued against the Naniloa hotel site⁹;

- g. Satisfactory evidence of payment in full of all amounts owed to any governmental entity or public utility for such matters as taxes, assessments, electrical, sewer and water charges¹⁰;
- h. Replenishment of the Performance Bond (\$500,000.00) back to the full \$1 million dollar level as required by the Naniloa Lease¹¹; and
- i. Payment of the State's attorneys' fees and costs with regard to any litigated matter¹².

10. DLNR sent out the following notice of default letters to the Debtor regarding the Kau Lease: November 21, 2008, December 3, 2010, May 31, 2011, November 29, 2011, and May 31, 2012. The nature of the default for all of the aforesaid notices was for delinquent rent, late charges, and interest. The amount of the delinquent rent, late charges, and

⁹ E.g., paragraph 7 of the Naniloa Lease.

¹⁰ E.g., paragraphs 2 and 3 of the Naniloa Lease.

¹¹ E.g., paragraph 18 of the Naniloa Lease and pursuant to the Land Board's decision on Item D-5 at the Land Board meeting held on May 10, 2013.

¹² E.g., paragraphs 15 and 16 of the Naniloa Lease.

interest due under the Kau Lease through November 2013 is approximately \$5,400.00.

11. As to the Naniloa Lease, DLNR sent out the following notice of default letters: March 15, 2007¹³, February 13, 2009¹⁴, August 23, 2010¹⁵, February 28, 2010¹⁶, March 2, 2012¹⁷, June 1, 2012¹⁸ and August 29, 2012¹⁹.

12. True and accurate copies of the current amounts owing on the Naniloa Lease and the Kau Lease are set forth in the rent ledgers attached hereto as Exhibit E.

13. At the September 13, 2013 Land Board meeting, the Board asked the Secured Lender's counsel if the Secured Lender would be coming forward to cure

¹³ Lack of the construction bond to cover mechanic and materialman liens, and completion.

¹⁴ Rent delinquent.

¹⁵ Rent and percentage rent report delinquent.

¹⁶ Rent delinquent.

¹⁷ Rent delinquent.

¹⁸ Performance Bond shortage.

¹⁹ Rent delinquent.

the rent default. The Secured Lender's counsel did not answer.

14. True and accurate copies of the testimony sent to the Land Board for the September 13, 2013 asking that the Board not extend the time for the trustee to assume or reject the State Leases are attached hereto as Exhibit G.

15. The State is unable to amend lease terms until expiration of the lease period.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: Honolulu, Hawaii, 10/2/13.



RUSSELL Y. TSUJI

Miscellaneous Documents:12-02279 Hawaii Outdoor Tours, Incorporated

Type: bk

Chapter: 11 v

Office: 1 (Honolulu)

Assets: y

Judge: rjf

Case Flag: AwCNF

United States Bankruptcy Court**District of Hawaii**

Notice of Electronic Filing

The following transaction was received from Cynthia M. Johiro entered on 10/7/2013 at 4:35 PM HST and filed on 10/7/2013

Case Name: Hawaii Outdoor Tours, Incorporated**Case Number:** 12-02279**Document Number:** 419**Docket Text:**

Declaration of Russell Y. Tsuji *Regarding State of Hawaii's Memorandum in Opposition to Trustee's Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs; Exhibits B, C, E and G.* Filed by Cynthia M. Johiro. (Related document(s): [416]). (Attachments: # (1) Exhibit(s) Exhibit B1 # (2) Exhibit(s) Exhibit B2 # (3) Exhibit(s) Exhibit B3 # (4) Exhibit(s) Exhibit C # (5) Exhibit(s) Exhibit # # (6) Exhibit(s) Exhibit G) (Johiro, Cynthia)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**Dec of Russell Tsuji Ex B C E F.PDF**Electronic document Stamp:**

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2967987-0] [567e2f5b473f144ec8f6750f271158907056f8e77590f98326506ea59bcff4e9f58fc320150c605062778ea03337960dd32eaba9159d1ba7364bfa01915a3512]]

Document description:Exhibit(s) Exhibit B1**Original filename:**HOTI Ex B1.pdf**Electronic document Stamp:**

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Document description:Exhibit(s) Exhibit B2**Original filename:**HOTI Ex B2.pdf**Electronic document Stamp:**

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Document description:Exhibit(s) Exhibit B3**Original filename:**HOTI Ex B3.pdf**Electronic document Stamp:**

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Document description:Exhibit(s) Exhibit C

Original filename:HOTI Ex C.pdf

Electronic document Stamp:

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Document description:Exhibit(s) Exhibit #

Original filename:HOTI Ex E.pdf

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Document description:Exhibit(s) Exhibit G

Original filename:HOTI Ex G.pdf

Electronic document Stamp:

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3550b3f47116992aa5f43b7f7b2618a36d082a1fa9776294cef4f8706bebb]]

12-02279 Notice will be electronically mailed to:

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12-02279 Notice will not be electronically mailed to:

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Kennth Fujiyama
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Mason M. Yamaki on behalf of Creditor Marian Rose Benda Thornton, Trustee of the Eleanor Rose Benda Trust
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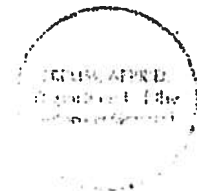
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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5844

THIS LEASE, made this 20th day of January, 2006, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and HAWAII OUTDOOR TOURS, INC., a Hawaii corporation, whose address is 421 Makalika Street, Hilo, Hawaii 96720, hereinafter referred to as the "Lessee";

WITNESSETH:

The Lessor, pursuant to Sections 171-6, 171-35, and 171-61, Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at Waiakea, South Hilo, Island of Hawaii, Hawaii, consisting of:

"Resort Site," containing an area of 6.35 acres, more or less, more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof; and

"Golf Course and Allied Facilities Site," containing a gross area of 63.775 acres, and a net area of 62.576 acres, after exclusions, more particularly described in Exhibit "C" and as shown on the map marked Exhibit "D," attached hereto and made parts hereof.

SUBJECT TO all encumbrances listed in Exhibits "A", "C", and "E" attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of SIXTY FIVE (65) years, commencing on the 1st day of February, 2006, up to and including the 31st day of January, 2071, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, rental as provided hereinbelow:

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A. Rent shall consist of Base Rent and Percentage Rent.

B. Base Rent.

1. Base Rent shall be an annual rental amount, payable in advance without notice or demand, in equal semi-annual installments on February 1st and August 1st of each and every year.

2. Base rent for each year during the first ten years of the lease term, up to and including the tenth (10th) year of the lease term, shall be FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00).

3. For the second ten years of the lease term, commencing at the beginning of the eleventh (11th) year of the lease term up to and including the twentieth (20th) year of the lease term, the annual base rent shall be an amount equal to the annual base rent for the first year of the lease term multiplied by an escalation rate of one and a half percent (1.5%), compounded annually, for each year of the first ten-year period.

4. For the third ten years of the lease term, commencing at the beginning of the twenty-first (21st) year of the lease term up to and including the thirtieth (30th) year of the lease term, the annual base rent shall be an amount equal to the annual base rent for the eleventh year of the lease term multiplied by an escalation rate of one and a half percent (1.5%), compounded annually, for each year of the second ten-year period.

C. Percentage Rent.

1. Percentage rent shall be payable annually in arrears, without notice or demand, no later than one hundred eighty (180) days after the close of each and every of Lessee's fiscal years. Each payment of percentage rent shall be accompanied by a written statement certified as correct by Lessee, or a person duly authorized by Lessee, showing in accurate detail the amount of gross receipts, by category, for the payment period, and reviewed financial statements prepared according to generally accepted accounting principles.

2. Percentage rent shall be equal to two percent (2%) of the annual gross revenue from the leased premises to the extent such amount exceeds the annual base rent.

3. The annual gross revenue shall include all revenues generated from, on, or within the leased premises, including but not limited to room revenues, food and beverage sales, retail sales, commissions, greens fees, cart and other equipment rental, club membership fees, driving range income, and the gross revenues of any sublessee or concessionaire (but not including the revenues from licensees of space for radio, television, cellular phone or other similar transmission antennas), less adjustments for:

a. Discounts, refunds and allowances made on any sale;

b. Sales and use taxes, hotel room or tourist taxes, general excise tax or other similar taxes now or in the future imposed on the sales of rooms, green and cart fees, food, beverages, merchandise or services, but only if such taxes are added to the selling price, separately stated, and collected separately from the sell price of merchandise or services, from customers;

c. Sales of fixtures, furnishings, trade fixtures or personal property that are not retail merchandise and are not sold in the ordinary course by the Lessee;

d. Charges made by credit card companies not directly or indirectly owned or controlled by the Lessee;

e. Receipts from sales of meals to employees of the Lessee consumed on the demised premises and sold to them at or below cost in the course of their employment, provided such sales are registered and recorded separately from other sales;

f. Gratuities or tips received by employees from patrons or service charges collected and turned over to employees in lieu of such employees receiving gratuities or tips from patrons;

g. Rent received from sublessees or concessionaires whose gross revenues are included in the calculation of annual gross revenue.

4. Lessee shall at all times keep and maintain accurate records of all business transactions and sales made in and from the premises. Lessor shall have the right at all reasonable times during business hours, through Lessor's duly authorized agent, attorney, or accountant, to inspect and make copies of Lessee's records, accounts, and books in any way

bearing on such sales (including copies of tax or information returns furnished any governmental authority), at the premises or at any other office of Lessee at which such books, records, and accounts may be kept, and to inspect the records, accounts and books in any way bearing on sales of any other person or firm selling goods or services in or from any part of the premises. All such information shall be held by Lessor, its agents, attorneys, and accountants in strictest confidence.

5. If an audit discloses that Lessee has underpaid the percentage rent due for any period, Lessor shall notify Lessee in writing of such deficiency and upon such notification the deficient amount shall be immediately due and payable by Lessee. If an audit by Lessor's accountant or by a licensed independent certified public accountant retained by Lessor shall disclose that rent has been underpaid by two percent (2%) or more for any period under examination, Lessor, in addition to any other remedies available in this lease or otherwise, shall be entitled to reimbursement of all costs and expenses incurred in completing any such audit in addition to any deficiency (together with applicable interest, service charge and other charges) revealed or disclosed.

6. If an audit discloses that Lessee has overpaid the percentage rent due for any period, Lessor shall notify Lessee in writing of such overpayment. Overpaid amounts shall be credited to and set off against rental amounts next due and payable following the date that such overpayment is discovered or revealed.

7. The percentage rates shall remain constant throughout the first thirty (30) years of the lease term.

D. Rental reopening. The annual base rent and percentage rent rates shall be reopened and redetermined as of the day following the expiration of the thirtieth (30th), fortieth (40th), and fiftieth (50th) years of the term.

1. Determination of base rent and percentage rent upon reopening. The base rent for any ensuing period shall be the fair market rental at the time of reopening. Except as provided herein, the provisions in Hawaii Revised Statutes, Chapter 658A, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by a staff appraisal or independent appraisal, as allowed by law, whose services shall be contracted for by the Lessor, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair market rental as

determined by Lessor's appraiser; provided, that, should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt thereof that Lessee disagrees with the fair market rental as determined by Lessor's appraiser and that Lessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. If Lessee has notified Lessor and appointed his appraiser as stated hereinabove, Lessee's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of Lessee's appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Lessor and Lessee, subject to vacation, modification or correction in accordance with the provisions of Chapter 658A, Hawaii Revised Statutes. Each party shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, or by the foregoing prescribed time, whichever is later, the Lessee shall pay the fair market rental as determined by Lessor's new appraised value until the new rent is determined and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, Lessee or Lessee's appraiser's failure to comply with the procedures set forth above shall constitute a waiver of Lessee's right to contest the new rent, and the Lessee shall pay the rent as determined by Lessor's appraiser without any retroactive adjustments. Alternatively, Lessor may treat this failure as a breach of this lease and terminate the lease.

E. Interest rate and service charge. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements listed in paragraph 48 hereunder and those improvements constructed during the term of this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including Chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

3. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal

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authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

9. Improvements. The Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Board and upon those conditions the Board may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased, on all parcels, except the golf course parcel, to be used solely for hotel and hotel-related uses (including retail, restaurant, banquet, commercial office, and spa facilities), but excluding condominium or hotel condominium uses. The golf course parcel (tax map key no. (3) 2-1-01:12) shall be used for golf course and golf course related uses (including clubhouse, restaurant and bar, cart barn and driving range) and other recreational and parking uses as may be permitted under the county zoning ordinances or land use permits obtained from the county; provided, however, that in the event the golf course parcel is withdrawn or deleted from the lease, any rights to use the golf course parcel to serve the hotel

parcels shall terminate. The Lessee, with the consent of the Department of Land and Natural Resources, may sublease portions of the subject property for uses not permitted above (e.g., telecommunication antennas), provided that the Department of Land and Natural Resources shall have the right to revise the rent based on the rent to be charged the sublessee.

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises or any portion or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease or any portion may be made in accordance with current industry standards, as determined by the Board; provided, further, that the approval of any assignment of lease shall be subject to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit "G," except that payment of an assignment premium shall not be assessed.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph. If the Lessee is a manager-managed limited liability company, any changes in the manager shall be deemed an assignment for purposes of this paragraph. If the Lessee is a member managed limited liability company, the sale or transfer of twenty percent (20%) or more of the total membership interests shall be deemed an assignment for purposes of this paragraph.

14. Subletting. Except as otherwise provided in this lease, the Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent of the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward.

15. Indemnity. The Lessee shall indemnify, defend,

and hold the Lessor 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 Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, commercial general liability insurance, in an amount of at least \$500,000.00 for each occurrence and \$1,000,000.00 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 premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease 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 Lessor.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor'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 Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

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

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

18. Bond, performance. The Lessee shall, at its own cost and expense, within fifteen (15) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements owned or placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the



premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

20. Mortgages.

a. Authorized Mortgages. Notwithstanding anything to the contrary contained in this lease, Lessee may from time to time with the prior written consent of the Chairperson, which consent shall not be unreasonably withheld, assign this lease by way of mortgage (an "Authorized Mortgage") to any bank, insurance company, or other lending institution legally permitted to make mortgage loans in the State of Hawaii, as mortgagee (an "Authorized Mortgagee"). Any Authorized Mortgagee and its permitted assigns may enforce the Authorized Mortgage and acquire title to the leasehold estate in any lawful way; may, pending foreclosure of the Authorized Mortgage (or pending sale of this lease in lieu of foreclosure of the Authorized Mortgage), take possession of and rent and operate the Premises; and may, upon foreclosure of the Authorized Mortgage (or upon such sale in lieu of foreclosure thereof), without further consent of Lessor, sell and assign the leasehold estate by assignment in which the assignee shall expressly assume and agree to observe and perform all the terms and conditions of this lease on Lessee's part to be observed and performed; and such assignee may make a purchase money mortgage of this lease to the assignor thereof; provided, that upon the execution of such assignment or mortgage a true copy thereof shall be delivered promptly to Lessor. Nothing contained in such mortgage shall release or be deemed to relieve Lessee from full and faithful observance and performance of this lease or from any liability for the nonobservance or nonperformance hereof, nor be deemed to constitute a waiver of any rights of Lessor hereunder. In the event of a conflict between this lease and the Authorized Mortgage, the provisions of this lease shall control. The Authorized Mortgagee or its assigns of the Authorized Mortgage shall be liable to perform the obligations herein imposed on Lessee only during the period such person has possession or ownership of the leasehold estate.

b. Protection of Authorized Mortgagee. So long as there shall be in existence an Authorized Mortgage of this lease, a copy of which was delivered to Lessor, Lessor shall not terminate, cancel, surrender or accept a surrender of this lease because of any default on the part of Lessee to observe or perform any of the covenants or conditions herein contained if the Authorized Mortgagee or its assigns, within one hundred

twenty (120) days from the date written notice of such default shall have been mailed by Lessor to the Authorized Mortgagee at its last address known to Lessor, shall cure such default, if the same can be cured by the payment of money, or if such is not the case, shall undertake in writing to perform and shall thereafter pay all rent and other charges as and when due under this lease and perform all other covenants of this lease capable of performance by the Authorized Mortgagee or its assigns until such time as this lease shall be sold upon foreclosure of the Authorized Mortgage commenced promptly and completed with due diligence, and any default (i) consisting of Lessee's failure promptly to discharge any lien, charge or encumbrance against the Premises junior in priority to the Authorized Mortgage or (ii) which is otherwise not susceptible to cure by the Authorized Mortgage except upon obtaining possession of the Premises or by foreclosure, shall be deemed to be duly cured if the Authorized Mortgage shall be foreclosed by appropriate action instituted within said one hundred twenty (120) day period and thereafter prosecuted in a timely manner. Lessor agrees that,

simultaneously with mailing or delivering any notice of default or breach under or with respect to this lease to Lessee, it will mail or deliver a copy thereof to the Authorized Mortgagee at such address of which Lessor may be notified in writing.

C. Insurance Policy. Lessor agrees that the name of any Authorized Mortgagee may be added as the primary loss payee to any and all insurance policies required to be carried by Lessee under this lease.

d. New Lease with an Authorized Mortgagee. In the event of termination of this lease for any reason (including, without limitation, by reason of any default by Lessee or by reason of the disaffirmance thereof by Lessee, as a debtor-in-possession, or by a receiver, liquidator or trustee for Lessee or its property), Lessor, if requested by an Authorized Mortgagee, will enter into a new lease (the "New Lease") of the Premises with such Authorized Mortgagee and/or its designees, which New Lease shall commence as of the date of termination of this lease and shall run for the remainder of the term (as if this lease had not terminated), at the same rent, additional rent, and supplemental rent (if any) and upon the same terms, provisions, covenants and agreements, and subject to the rights, if any, of any parties then in possession of any part of the Premises, provided that:

(i) the Authorized Mortgagee shall make written request upon Lessor for the New Lease within 30 days after the date of termination;

(ii) the Authorized Mortgagee shall pay to Lessor at the time of the execution and delivery of the New Lease any and all sums which would, at the time of the execution and delivery thereof be due and unpaid pursuant to this lease but for its termination, and in addition thereto any expenses, including reasonable attorneys' fees, to which Lessor shall have been subjected by reason of Lessee's default; and

(iii) the Authorized Mortgagee shall perform and observe all covenants in this lease to be performed and observed by Lessee, and shall further remedy any other conditions which Lessee under this terminated lease was obligated to perform under its terms, to the extent the same are curable or may be performed by the Authorized Mortgagee.

e. New Lease Prior to Fee Mortgages. Any New Lease shall be prior to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee of the Premises made subsequent to the Authorized Mortgage, and shall be accompanied by a quit-claim conveyance of title to the Improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Lessor after the execution of this lease) for a term of years equal to the term of the New Lease, subject to the reversion in favor of Lessor upon the expiration or earlier termination of the New Lease. Nothing herein contained shall require the Authorized Mortgagee to enter into a New Lease nor to cure any default of Lessee.

f. Foreclosure Without Lessor's Consent. Neither foreclosure of any Authorized Mortgage (or any sale thereunder), whether by judicial proceedings or by virtue of any power contained in any such Authorized Mortgage, nor any conveyance of Lessee's leasehold interest to the Authorized Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall require the consent of Lessor or constitute a breach of any provision of, or a default under, this lease, and upon such foreclosure, sale or conveyance, Lessor shall recognize the purchaser or other transferee in connection therewith as the lessee under the lease. If the Authorized Mortgagee or any designee of it becomes the lessee under this lease or under any New Lease, the Authorized Mortgagee or its designee shall be liable for the obligations of Lessee under this lease or the New Lease only to the extent that such liabilities arise during the period of time that the Authorized Mortgagee or its designee constitutes the actual beneficial holder of the leasehold interest.

g. Authorized Mortgagee's Liability Under New Lease; Restriction on Subleases. If the Authorized Mortgagee shall elect to demand a New Lease, Lessor agrees, at the request of, on behalf of and at the expense of the Authorized Mortgagee, upon a guaranty, indemnity and/or other assurance from the Authorized Mortgagee reasonably satisfactory to Lessor, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove Lessee from occupying the Premises, but not any subtenant actually occupying the Premises or any part thereof. Unless and until Lessor has received notice from the Authorized Mortgagee that the Authorized Mortgagee elects not to demand a New Lease, or until the period therefor has expired, Lessor shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of the Authorized Mortgagee.

21. Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor 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 lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Condemnation. If at any time, during the term of

this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

23. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

24. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the lands preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

25. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach

by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

26. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

27. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

28. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee of the terms, covenants, and conditions contained in



this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond and/or improvement bond requirements or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) and/or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

29. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

30. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Board may remove any and all 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 Lessee, and the Lessee 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 lease.

31. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

32. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee 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 premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor'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 Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

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

For the purpose of this lease "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 by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

33. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

34. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

35. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

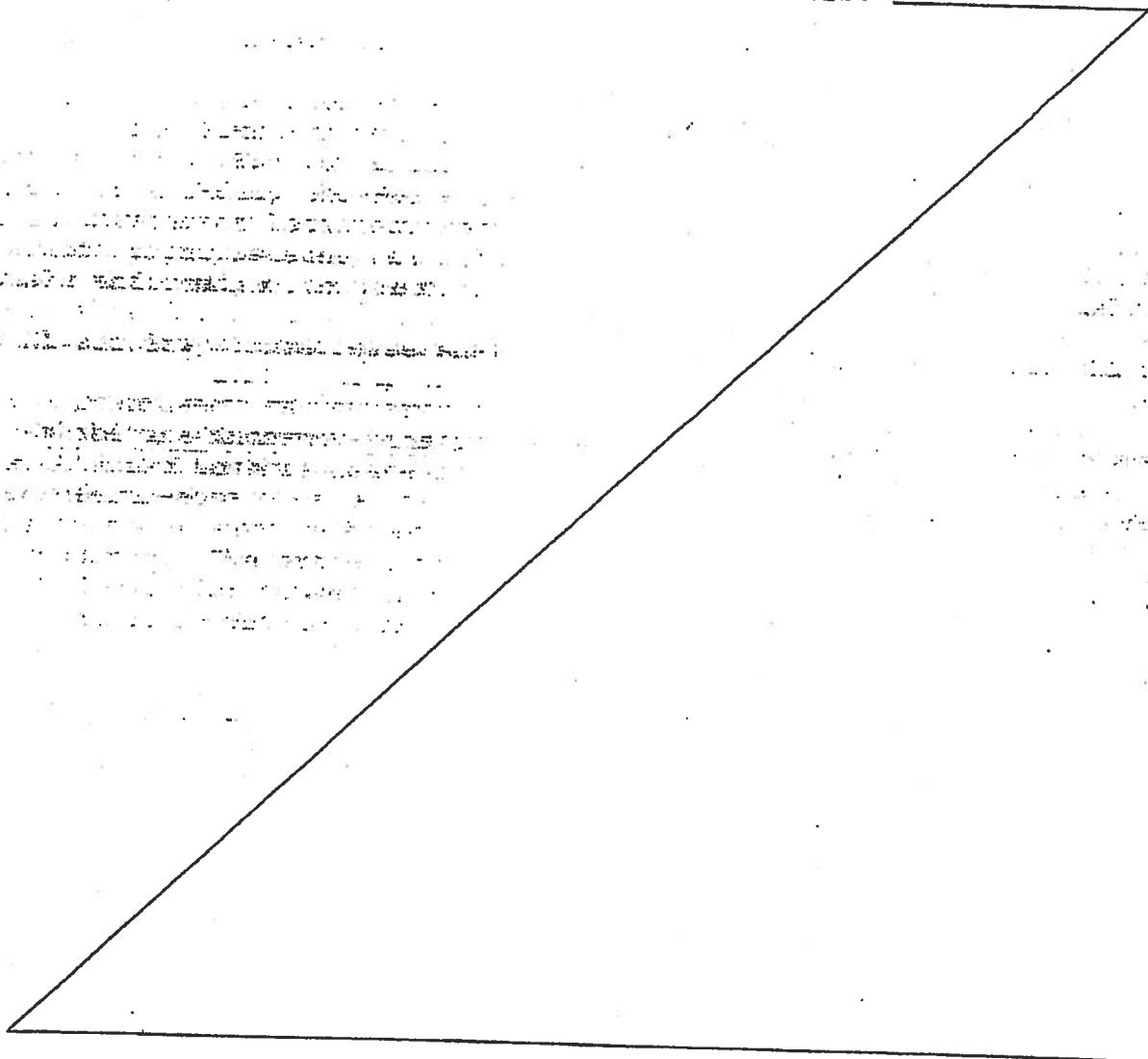
36. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

37. Time is of the essence. Time is of the essence in all provisions of this lease.

38. Archaeological sites. In the event any unanticipated historic, prehistoric, or archaeological sites or

remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes.

39. Incorporation by reference. References in this lease to various parcels of land are in accordance with those designated in the Notice of Sale and the Conduct of Sale which, together with the Special Notice to Bidders, are incorporated and made a part of this lease. The terms of this lease shall govern where there is any inconsistency between the lease terms and the terms contained in the Special Notice to Bidders.



SPECIAL CONDITIONS

40. Improvements. The Lessee shall, at its own cost and expense, within three (3) years after the commencement date of the lease, complete the renovation of the existing hotel, at a cost of not less than FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00), in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances, rules and regulations. Said amount shall represent hard costs only (including furniture, fixtures and equipment and landscaping improvements) and shall not include soft costs such as design, architectural, planning, and permitting costs. Said improvements shall be in accordance with plans submitted to the Chairperson for approval prior to construction.

41. Bond, improvement. The Lessee, upon submittal and written approval of the construction plan shall within sixty (60) days procure and deposit with the Lessor a surety bond in the amount of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00), acceptable to the Chairperson, which bond shall name the State as obligee, conditioned upon the faithful observance and performance of the building requirement contained in this lease, the completion of the building and improvements on or before the specified date of completion free from all liens and claims, and that the Lessee shall hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the building requirement.

42. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the land leased in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may

surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

43. Phase one (1) hazardous waste evaluation. Prior to the termination of this lease or the assignment of the leasehold, Lessee shall conduct a Phase One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources. Any assignment or voluntary termination by the Lessee will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed. This provision shall survive and continue in effect after termination of this lease.

44. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.

45. Environmental assessment. The Lessee shall be responsible for compliance with Chapter 343, Hawaii Revised Statutes, with respect to any improvements or increased development of the property to be undertaken by Lessee.

46. Subordination of existing subleases. This lease is subject to subleases Nos. 1 through 5, inclusive, as more particularly described in Exhibit "A" of the Board of Land and Natural Resources submittal dated April 12, 2002, item D-29, more particularly described in Exhibit "F," attached hereto and made a part hereof, as subordinate encumbrances to this lease.

47. Reserved.

48. Existing improvements. The premises has existing improvements of a 391-room mid-rise hotel and golf course, including one outdoor swimming pool, two restaurants, three cocktail lounges, six banquet rooms, a hair salon, a gift shop, and a spa facility. The improvements were originally constructed between 1965 and 1969, and renovated in the late 1980's and early 1990's.

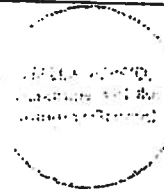
49. Hunting. No hunting shall be allowed on the premises during the term of the lease.

50. Audit and examination of books, etc. The Lessee shall, at all reasonable times, permit the Lessor and/or its authorized agents and employees, upon reasonable notice given by the Lessor, to audit, examine and to make copies of all books, accounts, records and receipts of the Lessee concerning its operations under this lease.

51. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

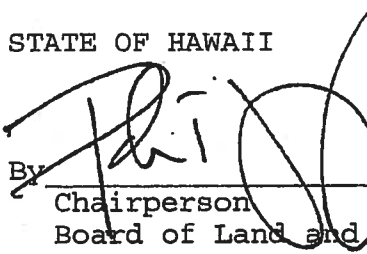
Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.
2. As used in this lease, unless clearly repugnant to the context:
 - (a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.
 - (b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.
 - (c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.
 - (d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.
 - (e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable efforts to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.
 - (f) "Days" shall mean calendar days, unless otherwise specified.



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 these presents to be executed the day, month and year first above written.

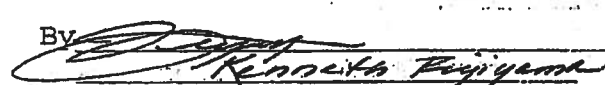
STATE OF HAWAII

By 
Chairperson
Board of Land and
Natural Resources

Approved by the Board of Land and Natural Resources at its meetings held on December 14, 2001, April 12, 2002, June 13, 2003, and July 9, 2004.

LESSOR

HAWAII OUTDOOR TOURS, INC., a
Hawaii corporation

By 
Its CEO

By _____
Its _____

LESSEE

APPROVED AS TO FORM:


Deputy Attorney General

Dated: 1/23/06

127168_1.DOC

25

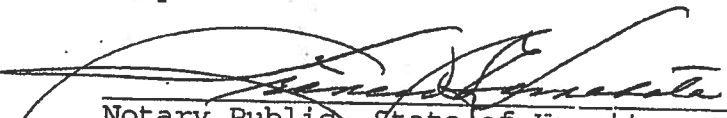
STATE OF HAWAII

)
) SS.

COUNTY OF HAWAII

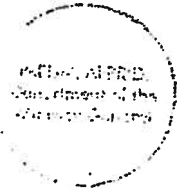
On this 18th day of January, 2006,
before me appeared Kenneth Fujiyama and _____,
to me personally known, who, being by me duly
sworn, did say that ~~they~~ are the CEO

and _____, respectively of HAWAII
OUTDOOR TOURS, INC., a Hawaii corporation, and that said
instrument was signed in behalf of said corporation by authority
of its Board of Directors, and the said Kenneth Fujiyama
and _____ acknowledged said instrument to be
the free act and deed of said corporation.



Notary Public, State of Hawaii
Frances S. Hamabata

My commission expires: 7-16-06





STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

January 26, 2005

C.S.F. No. 23,963

(REVISED - JANUARY 2005)
RESORT SITE

Waiakea, South Hilo, Island of Hawaii, Hawaii

Comprising the following:

- A. Portion of the Government (Crown) Land of Waiakea including all of Lots 5 (Revised), 6 (Revised), 7 and 8 of Ocean View Lots, Lot A and Remnant A-1 of Government Remnants.
- B. All of Land Court Application 1300, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii covered by Transfer Certificate of Title 108,763 issued to the State of Hawaii (Land Office Deed S-24138).

Beginning at the southwest corner of this parcel of land and on the north side of Banyan Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 4324.00 feet North and 10,813.61 feet East, thence running by azimuths measured clockwise from True South:-

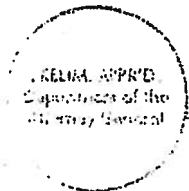
1. 128° 28' 442.42 feet along Government Remnants B-1 and Lot B, Lot 4 (Revised) of Ocean View Lots and the remainder of the Government (Crown) Land of Waiakea to highwater mark at seashore;



- 2. Thence along highwater mark at seashore, the direct azimuth and distance between points near highwater mark at seashore being:
168° 52' 122.30 feet;
- 3. 308° 28' 106.82 feet along the remainder of the Government (Crown) Land of Waiakea;
- 4. 228° 21' 30" 168.68 feet along the remainder of the Government (Crown) Land of Waiakea;
- 5. 145° 38' 26.93 feet along the remainder of the Government (Crown) Land of Waiakea to highwater mark at seashore;

Thence along highwater mark at seashore for the next four (4) courses, the direct azimuths and distances between points near highwater mark at seashore being:

- 6. 205° 04' 95.08 feet;
- 7. 257° 47' 224.00 feet;
- 8. 306° 20' 258.57 feet;
- 9. 291° 02' 30" 184.28 feet;
- 10. 52° 35' 362.20 feet along Grant 10119 to Harriet Blanche Rose;
- 11. 4° 13' 145.30 feet along Grant 10377 to Harriet Blanche Rose and Government Remnant 10377-A;



January 26, 2005

12. Thence along the north side of Banyan Drive on a curve to the left with a radius of 370.00 feet, the chord azimuth and distance being:
85° 46' 48" 166.08 feet
to the point of beginning and containing
an AREA OF 6.35 ACRES, MORE OR
LESS.

SUBJECT, HOWEVER, to the following easements as shown on plan attached hereto and made a part hereof:

1. Easement for Switching Transclosure in favor of Hilo Electric Light Co., Ltd.
2. Sewer Right-of-Way (3.00 ft. wide) in favor of the State of Hawaii, its successors and assigns.
3. Gas Line Easement (5.00 ft. wide) in favor of Honolulu Gas Co.
4. Sanitary Sewer Line Easement (5.00 ft. wide) in favor of the County of Hawaii.
5. Underground Electric Power Line Easement (5.00 ft. wide) in favor of Hilo Electric Light Co., Ltd.
6. Underground Telephone Line Easement (5.00 ft. wide) in favor of Hawaiian Telephone Co.
7. Water Pipe Line Easement (10.00 ft. wide) in favor of County of Hawaii.
8. Road Easement (30.00 ft. wide) in favor of the State of Hawaii, its successors and assigns.
9. Water Pipe Line Easement (5.00 ft. wide) in favor of County of Hawaii.



January 26, 2005

SUBJECT, ALSO, to all encumbrances that may be noted on Transfer Certificate of Title 108,763 issued to the State of Hawaii.

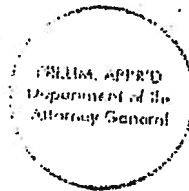
Reserving to the State of Hawaii, its successors and assigns, easement to any existing trail along seacoast within the above-described Resort Site. Said easement to be designated by the Chairman of the Board of Land and Natural Resources at such time and for such width as deemed proper and necessary.

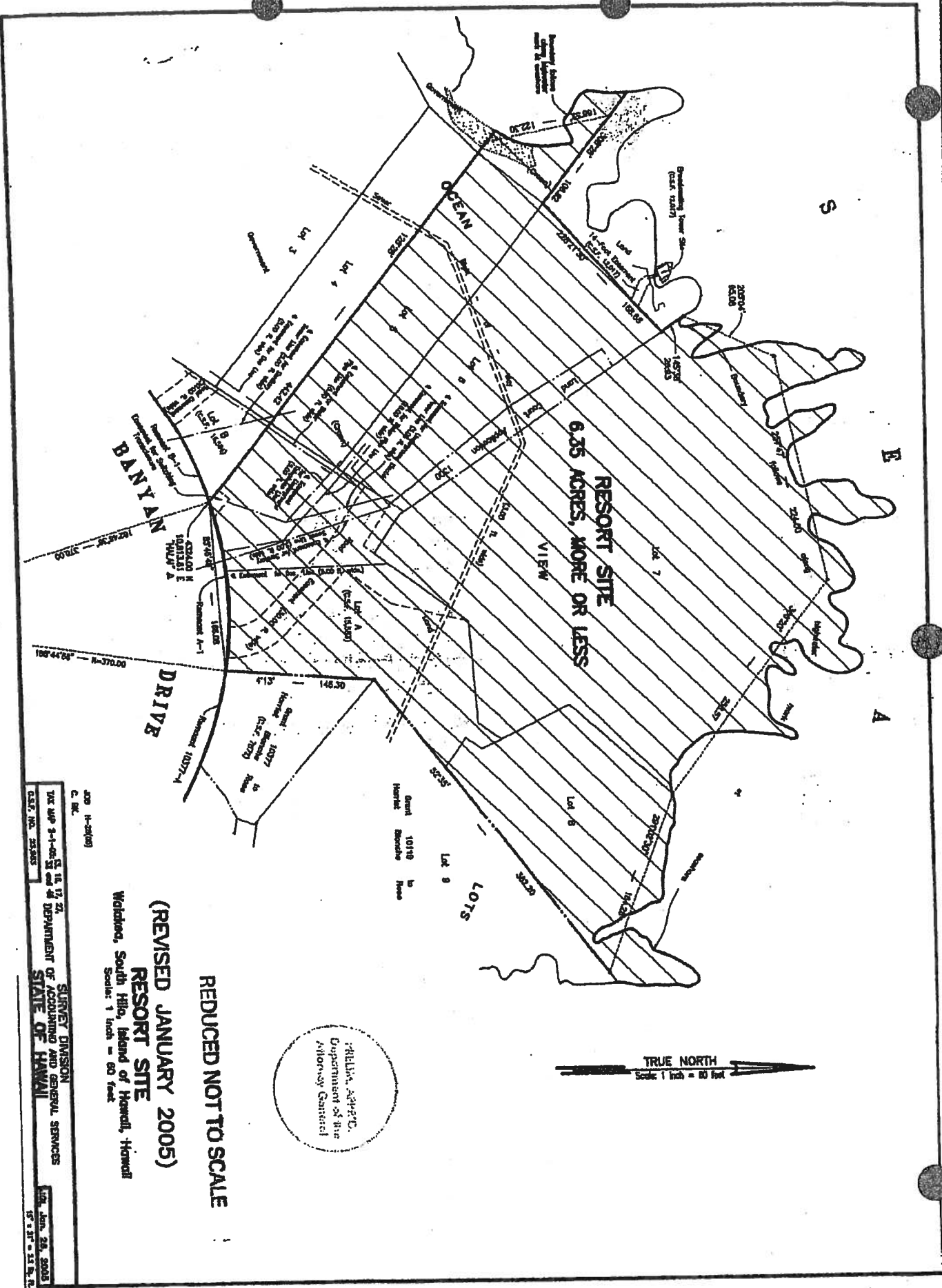
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Glenn J. Kodani
Glenn J. Kodani
Land Surveyor

gm

Compiled from CSF 23223
and other Govt. Survey Records.





TRUE NORTH
Scale: 1 inch = 60 feet

WILLIAM A. PETERSON
Department of the
Attorney General

REDUCED NOT TO SCALE

(REVISED JANUARY 2005)
RESORT SITE

Waialeale, South Hilo, Island of Hawaii, Hawaii
Scale: 1 inch = 60 feet

200 4-20(0)
C. B. K.
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII
100, Jan. 25, 2005
57° 57' 51.9" N

EXHIBIT "B"



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

C.S.F. No. 23,964
H.S.S. Plat 942-B

January 26, 2005

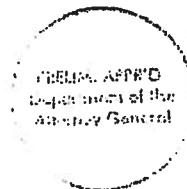
(REVISED - JANUARY 2005)
GOLF COURSE AND ALLIED FACILITIES SITE

Bounded by Kamehameha Avenue, Lihwai Street and Banyan Drive

Waiakea, South Hilo, Island of Hawaii, Hawaii

Comprising the following:

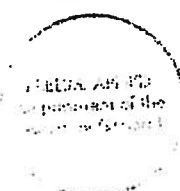
- a. Portion of the Government (Crown) Land of Waiakea.
- b. Lot 1-A as shown on Map 2 and Lots 2 and 3 as shown on Map 1 of Land Court Application 1748 covered by Transfer Certificate of Title 106,776 issued to the State of Hawaii.
- c. Lot 2 as shown on Map 1, Lot 3-B as shown on Map 2, Lot 6-A as shown on Map 4 and Lot 8 as shown on Map 2 of Land Court Application 1626 covered by Transfer Certificate of Title 106,776 issued to the State of Hawaii.
- d. Lot 1-A as shown on Map 4 of Land Court Application 428 covered by Transfer Certificate of Title 106,776 issued to the State of Hawaii.
- e. Land Commission Awards, Grants and Deeds acquired by the State of Hawaii from the Hawaii Redevelopment Agency identified by Land Office Deeds as listed on Government Survey Registered Map H.S.S. Plat 942-A attached hereto and made a part hereof.



January 26, 2005

Beginning at the southeast corner of this parcel of land, at the west corner of Grant 7521 to H. V. Patten, Trustee and on the north side of Kamehameha Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 2197.00 feet North and 10,747.67 feet East, thence running by azimuths measured clockwise from True South:-

1. 90° 00' 422.50 feet along the north side of Kamehameha Avenue;
2. 90° 00' 626.78 feet along the north side of Parcel 1 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25);
3. 180° 00' 39.74 feet along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25);
4. Thence along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25) on a curve to the left with a radius of 9060.00 feet, the chord azimuth and distance being:
86° 28' 11" 253.96 feet;
5. 85° 40' 209.17 feet along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25);



January 26, 2005

6. Thence along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25) on a curve to the right with a radius of 40.00 feet, the direct azimuth and distance being:
130° 40' 56.57 feet;
7. 175° 40' 3.33 feet along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25);
8. 175° 40' 519.23 feet along Parcels 9-A, 10, 11 and 12 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25);
9. Thence along Parcel 12 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25) on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being:
222° 50' 73.33 feet;
10. 270° 00' 458.98 feet along the south side of Banyan Drive;
11. Thence along the southeast side of Banyan Drive on a curve to the left with a radius of 350.00 feet, the chord azimuth and distance being:
231° 49' 30" 432.65 feet;
12. 193° 39' 632.46 feet along the southeast side of Banyan Drive;
13. Thence along the southeast side of Banyan Drive on a curve to the right with a radius of 190.00 feet, the chord azimuth and distance being:
215° 19' 30" 140.35 feet;
14. 237° 00' 428.33 feet along the southeast side of Banyan Drive;



January 26, 2005

15. Thence along the southeast side of Banyan Drive on a curve to the left with a radius of 350.00 feet, the chord azimuth and distance being:
233° 07' 37.5" 47.28 feet;
16. 229° 15' 15" 153.94 feet along the southeast side of Banyan Drive;
17. Thence along the south side of Banyan Drive on a curve to the right with a radius of 270.00 feet, the chord azimuth and distance being:
279° 32' 07.5" 415.36 feet;
18. 329° 49' 160.00 feet along the southwest side of Banyan Drive;
19. Thence along the southwest side of Banyan Drive on a curve to the right with a radius of 1081.80 feet, the chord azimuth and distance being:
340° 47' 30" 411.91 feet;
20. 351° 46' 484.32 feet along the southwest side of Banyan Drive;
21. 81° 46' 55.00 feet along Waiakea Peninsula Pump Station Site, Governor's Executive Order 2381;
22. 351° 46' 55.00 feet along Waiakea Peninsula Pump Station Site, Governor's Executive Order 2381;
23. 261° 46' 55.00 feet along Waiakea Peninsula Pump Station Site, Governor's Executive Order 2381;
24. 351° 46' 16.54 feet along the southwest side of Banyan Drive;
25. Thence along the west side of Banyan Drive on a curve to the right with a radius of 300.00 feet, the chord azimuth and distance being:
18° 38' 271.15 feet;

- 26. 45° 30' 218.64 feet along the northwest side of Banyan Drive;
- 27. Thence along the northwest side of Banyan Drive on a curve to the left with a radius of 450.00 feet, the chord azimuth and distance being:
31° 19' 01" 220.52 feet;
- 28. 56° 02' 48" 19.54 feet along Grant 7521 to W. H. Patten, Trustee;
- 29. 146° 02' 48" 120.00 feet along the remainder of the Government (Crown) Land of Waiakea;
- 30. 56° 02' 48" 248.91 feet along the remainder of the Government (Crown) Land of Waiakea;
- 31. 360° 00' 144.67 feet along the remainder of the Government (Crown) Land of Waiakea;
- 32. 56° 02' 48" 69.44 feet along Grant 7521 to H. V. Patten, Trustee to the point of beginning and containing a GROSS AREA OF 63.775 ACRES and a NET AREA OF 62.576 ACRES, after excluding therefrom the following:

EXCLUSION:

<u>Lot</u>	<u>Map</u>	<u>Land Court Application</u>	<u>Area</u>
1-B	4	428	0.525 Acre
3-A	2	1626	0.006 Acre
4	1	1626	0.096 Acre
7	2	1626	<u>0.572 Acre</u>
TOTAL AREA OF EXCLUSION			1.199 Acres



January 26, 2005

The above-described Golf Course and Allied Facilities Site is subject, however, to the following as shown on plan attached hereto and made a part hereof:

1. Easements A and B as shown on Map 3 and Easement C as shown on Map 4 of Land Court Application 1626.
2. Easement C as shown on Map 5 and Easement D as shown on Map 6 of Land Court Application 428.
3. Easement A as shown on Map 3 of Land Court Application 1748.
4. Perpetual Non-Exclusive Easement for Underground Fuel Oil Pipeline covered by Grant of Easement: State of Hawaii to Hawaii Electric Light Co., Inc. dated April 22, 1976 and recorded in Liber 11536, Page 85 (Land Office Deed S-26734).
5. Perpetual Non-Exclusive Easement for Underground Power Line Purposes covered by Grant of Easement: State of Hawaii to Hawaii Electric Light Co., Inc. dated April 22, 1976 and recorded in Liber 11536, Page 85 (Land Office Deed S-26734).
6. Clear Zone Easements of Hilo Airport (General Lyman Field) Extension of Runway 8-26 covered by Governor's Executive Order 2151.
7. Perpetual Non-Exclusive Easement for Drainage Purposes covered by Grant of Easement: State of Hawaii to Hawaii Electric Light Co., Inc. dated November 14, 2003 and recorded as Document No. 2003-256145 (Land Office Deed S-28684).
8. Perpetual Non-Exclusive Easements 1, 2, 3 and 6 for Transmission Line and Anchor Purposes covered by Grant of Easement: State of Hawaii to Hawaii Electric Light Co., Inc. and Verizon Hawaii, Inc. dated December 1, 2003 and recorded as Document No. 2003-272342 (Land Office Deed S-28657).

C.S.F. No. 23,964

January 26, 2005

9. Proposed Road Widening along Kamehameha Avenue as shown on plan attached hereto and made a part hereof.

Reserving, to the State of Hawaii, its successors and assigns Perpetual Non-Exclusive Easement for Sewer Line Purposes as shown on plan attached hereto and made a part hereof.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Glenn J. Kodani

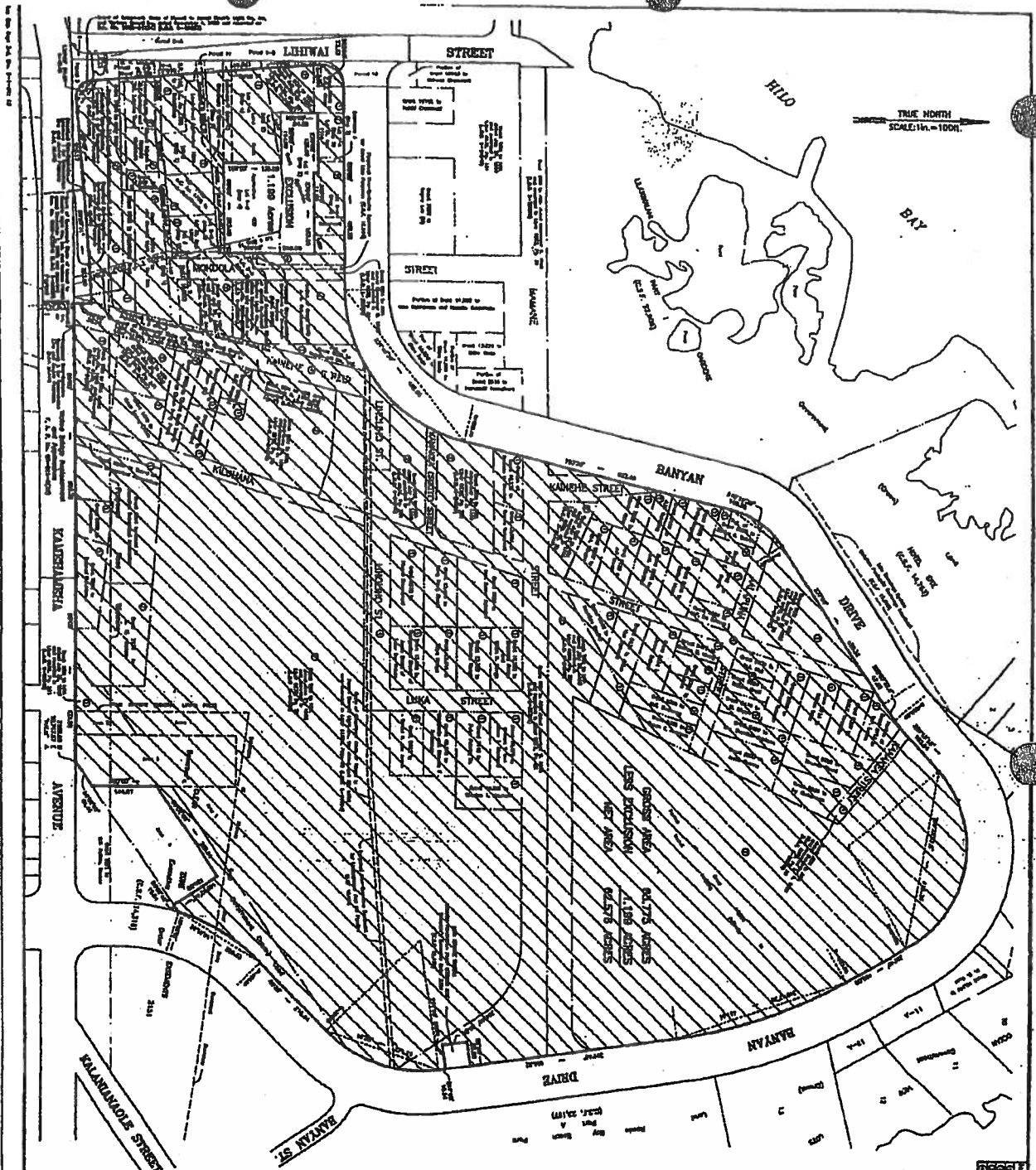
Glenn J. Kodani

Land Surveyor

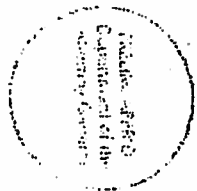
gm

Compiled from CSF 23425
and other Govt. Survey Records.

PRELIM. APPROV.
Department of the
Attorney General



Lot	Area	Owner	Area	Owner
1	0.10	State of Hawaii	1	State of Hawaii
2	0.10	State of Hawaii	2	State of Hawaii
3	0.10	State of Hawaii	3	State of Hawaii
4	0.10	State of Hawaii	4	State of Hawaii
5	0.10	State of Hawaii	5	State of Hawaii
6	0.10	State of Hawaii	6	State of Hawaii
7	0.10	State of Hawaii	7	State of Hawaii
8	0.10	State of Hawaii	8	State of Hawaii
9	0.10	State of Hawaii	9	State of Hawaii
10	0.10	State of Hawaii	10	State of Hawaii
11	0.10	State of Hawaii	11	State of Hawaii
12	0.10	State of Hawaii	12	State of Hawaii
13	0.10	State of Hawaii	13	State of Hawaii
14	0.10	State of Hawaii	14	State of Hawaii
15	0.10	State of Hawaii	15	State of Hawaii
16	0.10	State of Hawaii	16	State of Hawaii
17	0.10	State of Hawaii	17	State of Hawaii
18	0.10	State of Hawaii	18	State of Hawaii
19	0.10	State of Hawaii	19	State of Hawaii
20	0.10	State of Hawaii	20	State of Hawaii
21	0.10	State of Hawaii	21	State of Hawaii
22	0.10	State of Hawaii	22	State of Hawaii
23	0.10	State of Hawaii	23	State of Hawaii
24	0.10	State of Hawaii	24	State of Hawaii
25	0.10	State of Hawaii	25	State of Hawaii
26	0.10	State of Hawaii	26	State of Hawaii
27	0.10	State of Hawaii	27	State of Hawaii
28	0.10	State of Hawaii	28	State of Hawaii
29	0.10	State of Hawaii	29	State of Hawaii
30	0.10	State of Hawaii	30	State of Hawaii
31	0.10	State of Hawaii	31	State of Hawaii
32	0.10	State of Hawaii	32	State of Hawaii
33	0.10	State of Hawaii	33	State of Hawaii
34	0.10	State of Hawaii	34	State of Hawaii
35	0.10	State of Hawaii	35	State of Hawaii
36	0.10	State of Hawaii	36	State of Hawaii
37	0.10	State of Hawaii	37	State of Hawaii
38	0.10	State of Hawaii	38	State of Hawaii
39	0.10	State of Hawaii	39	State of Hawaii
40	0.10	State of Hawaii	40	State of Hawaii
41	0.10	State of Hawaii	41	State of Hawaii
42	0.10	State of Hawaii	42	State of Hawaii
43	0.10	State of Hawaii	43	State of Hawaii
44	0.10	State of Hawaii	44	State of Hawaii
45	0.10	State of Hawaii	45	State of Hawaii
46	0.10	State of Hawaii	46	State of Hawaii
47	0.10	State of Hawaii	47	State of Hawaii
48	0.10	State of Hawaii	48	State of Hawaii
49	0.10	State of Hawaii	49	State of Hawaii
50	0.10	State of Hawaii	50	State of Hawaii



REDUCED NOT TO SCALE

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
SURVEY DIVISION

Raid K. Sireal - Acting State Land Surveyor

(REVISED JANUARY 2005)
GOLF COURSE
AND ALLIED FACILITIES SITE

Waialeale, South Hilo, Island of Hawaii, Hawaii

For Revisions See REG. 20045
H.S.S. PLAN 948-B

EXHIBIT "D"

ADDITIONAL ENCUMBRANCES

In addition to the easements and encumbrances listed in Exhibit "C" of the Lease, the "Golf Course and Allied Facilities Site" is also subject to the following encumbrances:

1. Reservation contained in deed dated August 12, 1963, filed as Land Court Doc. No. 319847 and recorded in Liber 4632, Page 263.
2. Amended Urban Renewal Plan for the Kaiko'o Project, dated June 25, 1965, filed as Land Court Document No. 370175 and recorded in Liber 5157, Page 574.
3. Declaration of Restrictions Affecting Redevelopment Sites in the Kaiko'o Project Designated for Open Area Uses dated October 9, 1965, filed as Land Court Document No. 372717 and recorded in Liber 5166, Page 528; and dated July 1, 1963, recorded in Liber 4555, Page 17.
4. Disposition Redevelopment Agreement dated December 10, 1965, filed as Land Court Doc. No. 377384 and recorded in Liber 5211, Page 269; as amended by Amendatory Agreement dated July 22, 1966, filed as Land Court Doc 451264.
5. Covenants contained in instruments dated December 15, 1965, filed as Land Court Doc. 377875 and recorded in Liber 5211, Page 391; dated October 13, 1967, recorded in Liber 5834, page 211; dated October 2, 1969, recorded in Liber 6249, Page 113; and dated July 31, 1969, recorded in Liber 6632, Page 356.

PRELIM. APPROV.
Department of the
Attorney General

EXHIBIT "E"

LIST OF APPROVED SUBLEASES.

1. Commercial Lease dated June 1, 1995 between Nakano Co., Ltd. and Pearl Kang dba Ben & Company for approximately 792 square feet of commercial space located within the Hawaii Naniloa Hotel.
2. Sublease dated December 22, 1995 between Nakano Co., Ltd. and Fairy Islands International, Corporation for approximately 3,024 square feet of commercial space located within the Hawaii Naniloa Hotel.
3. Rooftop Site License with Option dated October 3, 1996 between Nakano Co., Ltd. and Voicestream PCS II Corporation (formerly known as Western PCS II Corporation) for a portion of TMK (3) 2-1-05:17 consisting of approximately 128 square feet on the roof of the Hawaii Naniloa Hotel.
4. Lease and Agreement Regarding Transmission Facilities dated August 27, 1998 between Nakano Co., Ltd. and Hearst-Argyle Stations, Inc. (successor to Hawaii Hearst-Argyle Television, Inc.) for approximately 304 square feet on the roof of the Hawaii Naniloa Hotel.
5. Site Agreement dated August 23, 2000 between Nakano Co., Ltd. and SprintCom, Inc. for a portion of TMK (3) 2-1-05:16 consisting of approximately 300 square feet on the roof of the Hawaii Naniloa Hotel.

WILLIAM A. ABRAHAM
Department of the
Attorney General

EXHIBIT "F"

ASSIGNMENT OF LEASE EVALUATION POLICY

1. Enabling Statute.

Act 104, effective May 24, 1989, amended Chapter 171-36(a) (5) to read in part:

"... provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;" (revision underlined)

2. Qualifying Leases.

This policy shall be applicable to the subject lease.

3. Prior Approval.

Prior to giving its consent to an assignment, DLNR must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Land Board have given their approval. Such assignments shall be entertained only if they meet the criteria set forth in Section 171-36(a) (5), HRS.

4. Qualifications of Assignee.

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

EXHIBIT "G"

18196_1.DOC

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



5. Consideration to be Paid.

Prior to review by the Attorney General and approval by the Land Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

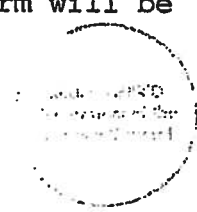
6. Payment of Premium.

The act permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 calendar days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee's operation on the premises within 30 calendar days after their purchase. Lessees shall be required to furnish evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be



from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.

The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

In cases where the lessee is unable to furnish the Department of Land and Natural Resources with evidence of the actual cost of construction of improvements because the lessee has performed the work itself, the State may determine the cost or the lessee shall have the option of paying for an appraiser, to be selected by the Department of Land and Natural Resources, to determine what the improvements would have cost if the labor had been performed by a third party rather than the lessee. The lessee shall exercise its option by giving written notice to the lessor within thirty (30) calendar days after completion of construction of the improvements. If the lessee fails to exercise its option within this period, the lessor shall have the right to determine the cost of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

7. Non-qualifying Deductions.

The statute only recognizes tangible items. Intangibles such as "goodwill", business name recognition, etc., are not deductible.

8. Subsequent Assignments.

If the consideration for any subsequent assignment includes the purchase of existing tenant owned improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the Base Year is redefined to be the date



the assignor received the Consent of the Board to occupy the premises. The holding period (redefined Base Year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (The whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.

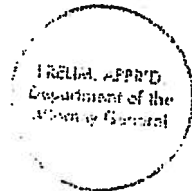
The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. Rights of Holders of Security Interest-Agricultural Leases only.

In the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.



SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations.

Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)* and divide the result by the CCI of the year construction was completed (base year) to get the adjusted cost of improvements or renovations.

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Improvements or Renovations

Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example

	Actual cost:	\$500,000
	CCI (most recent):	121.1
	CCI (base year):	102.3
1. Adjusted Cost of Improvements or Renovations	Expired term:	57 mos.
	Whole term:	408 mos.

$$\text{Actual Cost} \times \frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$$

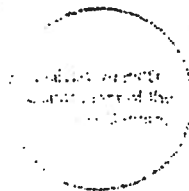
$$\$500,000 \times \frac{121.1}{102.3} = \$591,887$$

2. Depreciation

$$\$591,887 \times \frac{57 \text{ mos.}}{408 \text{ mos.}} = \$82,690$$

3. Adjusted Depreciated Cost of Improvements or Renovations

$$\$591,887 - \$82,690 = \underline{\$509,197}$$



SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture.

Multiply the actual cost of the trade fixture by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)* and divide the result by the CPI of the year in which the purchase was made (base year).

2. Depreciation.

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Trade Fixtures.

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Refrigerator

Example

	Actual cost:	\$1,510
	CPI (most recent):	118.1
	CPI (base year):	104.6
1. Adjusted Cost of Trade Fixture	Expired term:	57 mos.
	Whole term:	96 mos.
	(Anticipated life)	

$$\text{Actual Cost} \times \frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$$

$$\$1,510 \times \frac{118.1}{104.6} = \$1,705$$

2. Depreciation

$$\$1,705 \times \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1,012$$

3. Adjusted Depreciated Cost of Trade Fixture

$$\$1,705 - \$1,012 = \$ 693$$



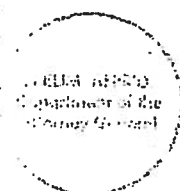
SCHEDULE C. Premium Percentages

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<u>Years</u>	<u>Percentage</u>
1 - 5	50%
6 - 10	45%
11 - 15	40%
16 - 20	35%
21 - 25	30%
26 - 30	25%
31 - 35	20%
36 - 40	15%
41 - 45	10%
46 - 50	5%
51 -	0%

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10+ years), the percentage would be 40%.

2. The Board of Land and Natural Resources may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.



SCHEDULE D. Assignment of Lease Calculations

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.
2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).
4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by no. 2 and 3 from the amount in no. 1 above.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

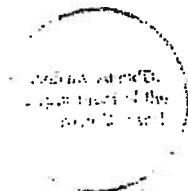
Example

A lease is being assigned 57 months after completion of the improvements at a consideration of \$600,000.

The initial cost of the improvements was \$500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was \$1,510 with the current year CPI and base year CPI being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Net Consideration:		\$600,000
2.	Adj Cost Imp/Ren:	\$591,887	
	Depreciation:	<u>- 82,690</u>	
	Adj Dep Cost Imp/Ren:		-509,197
3.	Adj Cost Trade Fixtures:	1,705	
	Depreciation:	<u>- 1,012</u>	
	Adj Dep Cost Trade Fixtures:		- 693
4.	Excess:		\$ 90,110
5.	Premium:	Percentage: 50%	\$ 45,055



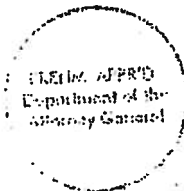
SCHEDULE E. Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.
2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.
3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).
4. Subtract the amount derived by no. 3 from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is \$1,000,000.

The consideration paid by the assignor was \$600,000 while the current year CCI and redefined base year CCI were 156.4 and 121.1, respectively. The whole term was 408 months.



No inventory was included in either consideration. However, a premium of \$45,055 was paid to the state by the previous occupant from the \$600,000 consideration.

- | | | | |
|----|---|-----------------|-------------------|
| 1. | Net Consideration <u>Received</u> : | | \$1,000,000 |
| 2. | Consideration <u>Paid</u> : | \$600,000 | |
| | Premium: | <u>- 45,055</u> | |
| | Net Consideration <u>Paid</u> : | | \$554,945 |
| 3. | Adj Value Consideration (improvements): | | |
| | \$554,945 X $\frac{156.4}{121.1}$ | = | \$716,708 |
| | Depreciation: | | |
| | \$716,708 X $\frac{107 \text{ mos.}}{408 \text{ mos.}}$ | = | <u>-187,960</u> |
| | Adj Dep Value Consideration: | | - <u>528,748</u> |
| 4. | Excess: | | \$ 471,252 |
| 5. | Premium: Percentage: | 45% | \$ <u>212,063</u> |



STATUS REPORT

This Report (and any revisions thereto) is issued for the sole benefit of the Purchaser of this Report identified in the Order No. referenced below. Title Guaranty of Hawaii, Incorporated's responsibility for any actual loss incurred by reason of any incorrectness herein is limited to the greater of \$3,500 or two times the amount paid for this Report.

SCHEDULE A

Title Guaranty of Hawaii, Incorporated, hereby reports as follows as to the title of the Parties named in Schedule A in and to the title to land described in Schedule C, subject to the matters set forth in Schedule B, based solely upon an abstract and examination of the following Indices in the State of Hawaii: (a) the Office of the Clerks of the Circuit Court of the Judicial Circuit within which the land is located; (b) the Office of the Clerk of the District Court of the United States for the District of Hawaii; (c) the Office of the Registrar of Conveyances; and (d) the Office of the Real Property Tax Assessment Division of the County within which the land is located.

HAWAII OUTDOOR TOURS, INC.,
a Hawaii corporation,
as Lessee

This report is subject to the Conditions and Stipulations set forth in Schedule D and is dated as of January 15, 2013 at 8:00 a.m.

Inquiries concerning this report
should be directed to
PATRICIA AHN.
Email pahn@tghawaii.com
Fax (808) 533-5870
Telephone (808) 521-0256.
Refer to Order No. 201301854.

**SCHEDULE B
EXCEPTIONS**

1. Real Property Taxes, if any, that may be due and owing.

Tax Key: (3) 2-1-005-013 - covers Item I, Lot 5
Tax Key: (3) 2-1-005-016 - covers Item I, Lot 7
Tax Key: (3) 2-1-005-017 - covers Item I, Lot 8
Tax Key: (3) 2-1-005-032 - covers Item I, Lot 6
Tax Key: (3) 2-1-005-046 - covers Item I, Lot A
Tax Key: (3) 2-1-005-027 - covers Item I, Application 1300
Tax Key: (3) 2-1-001-012 - covers Item II

2. Mineral and water rights of any nature in favor of the State of Hawaii.

3. Any and all matters not shown in the Indices described in Schedule A.

4. -AS TO ITEM I:-

- (A) -AS TO LOT, 5, 7 AND 8:-

Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.

- (B) The following easements as shown on map filed under C.S.F No. 23,963, Survey Division, Department of Accounting and General Services, State of Hawaii, dated January 26, 2005:

(1) Easement for Switching Transclosure in favor of Hilo Electric Light Co., Ltd.

(2) Sewer right-of-way (3.00 feet wide) in favor of the State of Hawaii, its successors and assigns.

SCHEDULE B CONTINUED

- (3) Gas Line Easement (5.00 feet wide) in favor of Honolulu Gas Company.
 - (4) Sanitary Sewer Line Easement (5.00 feet wide) in favor of the County of Hawaii.
 - (5) Underground Electric Power Line Easement (5.00 feet wide) in favor of Hilo Electric Light Company, Limited, now known as Hawaii Electric Light Company, Inc.
 - (6) Underground Telephone Line Easement (5.00 feet wide) in favor of Hawaiian Telephone Company, now known as Hawaiian Telcom, Inc.
 - (7) Water Pipe Line Easement (10.00 feet wide) in favor of the County of Hawaii.
 - (8) Road Easement (30.00 feet wide) in favor of the State of Hawaii, its successors and assigns.
 - (9) Water Pipe Line Easement (5.00 ft. wide) in favor of the County of Hawaii.
- (C) Unrecorded LEASE dated July 16, 1986, entered into by and between THE NANILOA HOTEL, a Hawaii general partnership, "Lessor", and SHAMROCK BROADCASTING, INC., dba KITV, "Lessee", relating to the use of approximately 304 square feet located on the roof of the twelve story building at the Naniloa Surf Hotel, situate in Hilo, Hawaii.

Said Lease is subject to any matters arising from or affecting the same.

SCHEDULE B CONTINUED

- (D) Reserving to the State of Hawaii, its successors and assigns, easement to any existing trail along seacoast within the above-described Resort Site. Said easement to be designated by the Chairman of the Board of Land and Natural Resources at such time and for such width as deemed proper and necessary."; as reserved in General Lease No. S-5844.

5. -AS TO ITEM II:-

(A) -AS TO PARCEL FIRST:-

- (1) Clear Zone Easements of Hilo Airport (General Lyman Field) Extension of Runway 8-26 covered by Governor's Executive Order 2151, as shown on map filed under C.S.F. No. 23,964, dated January 26, 2005.
- (2) A 10-foot underground fuel oil pipeline easement (area 16,103 square feet), as shown on the Tax Maps.
- (3) A 10-foot sewerline easement (area 2,380 square feet) as shown on the Tax Maps.
- (4) A 15-foot underground powerline easement as shown on the Tax Maps.

(B) -AS TO PARCEL SECOND:-

- (1) -AS TO LOTS 2 AND 3 (LAND COURT APPLICATION 1748):-
 - (a) Designation of Easement "A" over and across Lots 2 and 3, as shown on Map 3 of Land Court Application No. 1748, as set forth by Land Court Order No. 41535, filed March 4, 1975.

SCHEDULE B CONTINUED

- (b) Grant in favor of Hawaii Electric Light Company, Inc., dated April 22, 1976, filed as Land Court Document No. 773198, recorded in Liber 11536 at Page 85; granting an easement over said Easement "A", besides other easements.
- (2) -AS TO LOT 1-A (LAND COURT APPLICATION 428):-
- (a) Right of access in favor of Lots 3-B and 8, as shown on Map 2 of Land Court Application 1626, over Lot 1-A, as shown on Map 4 of Land Court Application No. 428, as shown on Map 4, as set forth by Land Court Order No. 21118, filed April 2, 1963.
 - (b) Designation of Easement "C" over and across Lot 1-A, as shown on Map 5 of Land Court Application No. 428, as set forth by Land Court Order No. 21309, filed May 29, 1963.
 - (c) Rights of way over and across Easement "C" located on Lot 1-A, as shown on Map 5 of Land Court Application No. 428 in favor of Lot 1-B, as set forth by instrument dated August 12, 1963, filed as Land Court Document No. 316304, recorded in Liber 4816 at Page 200.
 - (d) As to Easement "C", reservations as contained in Deed dated August 12, 1963, filed as Land Court Document No. 319847, recorded in Liber 4632 at Page 263.
 - (e) Designation of Easement "D" (20 feet wide) over and across Lot 1-A, as shown on Map 6 of Land Court Application No. 428, as set forth by Land Court Order No. 41537, filed March 4, 1975.
 - (f) Grant in Favor of HAWAII ELECTRIC LIGHT COMPANY, INC., dated April 22, 1976, filed as Land Court Document No. 773198, recorded in Liber 11536 at Page 85; granting an easement over said Easement "D", besides other easements.

SCHEDULE B CONTINUED

(3) -AS TO LOT 2 (LAND COURT APPLICATION 1626):-

Designation of Easement "B" over and across Lot 2, as shown on Map 3 of Land Court Application No. 1626, as set forth by Land Court Order No. 21310, filed May 29, 1963.

(4) -AS TO LOT 6-A (LAND COURT APPLICATION 1626):-

(a) Designation of Easement "A" over and across Lot 6, as shown on Map 3 of Land Court Application No. 1626, as set forth by Land Court Order No. 21310, filed May 29, 1963.

(b) Designation of Easement "C" over and across Lot 6-A, as shown on Map 4 of Land Court Application No. 1626, as set forth by Land Court Order No. 31375, filed February 27, 1970.

(c) Grant in favor of HAWAII ELECTRIC LIGHT COMPANY, INC., dated April 22, 1976, filed as Land Court Document No. 773198, recorded in Liber 11536 at Page 85; granting an easement over said Easements "A" and "C", besides other easements.

(5) -AS TO LOTS 2 AND 6-A (LAND COURT APPLICATION 1626):-

(a) Rights of way over and across Easements "A" and "B" located on Lots 6 and 2, respectively, as shown on Map 3 of Land Court Application No. 1626 in favor of Lot 1-A, as set forth by instrument dated August 12, 1963, filed as Land Court Document No. 316304, recorded in Liber 4816 at Page 200.

(b) As to Easements "B" and "C", reservations as contained in Deed dated August 12, 1963, filed as Land Court Document No. 319847, recorded in Liber 4632 at Page 263.

(6) -AS TO LOT 3-B (LAND COURT APPLICATION 1626):-

SCHEDULE B CONTINUED

- (a) Designation of Easement "D" over and across Lot 3-B, as shown on Map 5 of Land Court Application No. 1626, as set forth by Land Court Order No. 41536, filed March 4, 1975.
 - (b) Grant in favor of Hawaii Electric Light Company, Inc., dated April 22, 1976, filed as Land Court Document No. 773198, recorded in Liber 11536 at Page 85; granting an easement over said Easement "D", besides other easements.
- (C) -AS TO PARCELS FIRST AND SECOND:-
- (1) "AMENDED URBAN RENEWAL PLAN FOR THE KAIKO'O PROJECT, PROJECT NO. HAWAII R-4" dated June 25, 1965, filed as Land Court Document No. 370175, recorded in Liber 5157 at Page 574 adopted by the Hawaii Redevelopment Agency on June 25, 1965.
 - (2) DECLARATION OF RESTRICTIONS AFFECTING REDEVELOPMENT SITES IN THE KAIKO'O PROJECT DESIGNATED FOR OPEN AREA USES dated October 9, 1965, filed as Land Court Document No. 372717, recorded in Liber 5166 at Page 528, and dated July 1, 1963, recorded in Liber 4555 at Page 17.
 - (3) DISPOSITION-REDEVELOPMENT AGREEMENT dated December 10, 1965, filed as Land Court Document No. 377384, recorded in Liber 5211 at Page 269, by and between the HAWAII REDEVELOPMENT AGENCY, an agency of the County of Hawaii, State of Hawaii, and a public body, corporate and politic, "Agency", and the STATE OF HAWAII, by its Board of Land and Natural Resources, "Redeveloper", as amended by AMENDATORY AGREEMENT dated July 22, 1966, filed as Land Court Document No. 451264, as assigned to the State of Hawaii.

SCHEDULE B CONTINUED

(4) Covenants as contained in instruments dated December 15, 1965, filed as Land Court Document No. 377385, recorded in Liber 5211 at Page 391; dated October 13, 1967, recorded in Liber 5834 at Page 211; dated October 2, 1969, recorded in Liber 6249 at Page 113; and dated July 31, 1969, recorded in Liber 6632 at Page 356.

(5) Any and all recorded or unrecorded subleases and encumbrances thereon.

(6) GRANT

TO : HAWAII ELECTRIC LIGHT COMPANY, INC.

DATED : November 14, 2003

RECORDED : Document No. 2003-256145

GRANTING : non-exclusive and perpetual easement rights, privilege and authority to construct, use, operate, maintain and repair discharge drainage wells, over, under and across that certain parcel "easement area" containing an area of 414 square feet, more or less

(Not noted on Transfer Certificate(s) of Title referred to herein)

(7) GRANT

TO : HAWAII ELECTRIC LIGHT COMPANY, INC. and VERIZON HAWAII, INC., now known as HAWAIIAN TELCOM, INC.

DATED : December 1, 2003

RECORDED : Document No. 2003-272342

GRANTING : non-exclusive and perpetual easement rights, privilege and authority to construct, use, install, maintain, repair, replace or remove transmission pole anchors, and overhead transmission lines, etc., over, under and across those certain parcels "easement area" designated as Easements 1 to 11 inclusive, more particularly described therein

(Not noted on Transfer Certificate(s) of Title referred to herein)

SCHEDULE B CONTINUED

6. The terms and provisions contained in the following:

INSTRUMENT : GENERAL LEASE NO. S-5844
DATED : January 20, 2006
FILED : Land Court Document No. 3385990
RECORDED : Document No. 2006-021241

The foregoing includes, but is not limited to the following:

"RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. 'Minerals', as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided, that 'minerals' shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others. (b) All surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph just compensation shall be paid to the Lessee for any of Lessee's improvements taken."

"The rights of native tenants to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including Chapter 6E Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land."

SCHEDULE B CONTINUED

"4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection."

7. The terms and provisions contained in the General Lease No. S-5844 referred to in Schedule C.

The foregoing includes, but is not limited to, matters relating to mineral reservation, water reservation and use.

8. CONSTRUCTION MORTGAGE

MORTGAGOR : HAWAII OUTDOOR TOURS, INC., a Hawaii corporation

MORTGAGEE : FIRST REGIONAL BANK

DATED : January 23, 2006

FILED : Land Court Document No. 3385991

RECORDED : Document No. 2006-021243

AMOUNT : \$10,000,000.00

CONSENT : Given by the STATE OF HAWAII, by its Board of Land and Natural Resources, by instrument dated January 20, 2006, filed as Land Court Document No. 3385992, recorded as Document No. 2006-021244

Above Mortgage assigned to FIRST-CITIZENS BANK & TRUST COMPANY, a North Carolina commercial bank, dated May 3, 2012, filed as Land Court Document No. T-8186531, recorded as Document No. A-45341039, and dated May 3, 2012, filed as Land Court Document No. T-8205322.

SCHEDULE B CONTINUED

9. The terms and provisions contained in the following:

INSTRUMENT : ASSIGNMENT OF RENTS
DATED : January 23, 2006
FILED : Land Court Document No. 3385993
RECORDED : Document No. 2006-021245
PARTIES : HAWAII OUTDOOR TOURS, INC., a Hawaii corporation,
"Grantor", and FIRST REGIONAL BANK, "Lender"
RE : to secure the repayment of the promissory note
dated January 23, 2006, in the original principal
amount of \$10,000,000.00

Above Assignment of Rents assigned to FIRST-CITIZENS BANK & TRUST COMPANY, a North Carolina commercial bank, dated May 3, 2012, filed as Land Court Document No. T-8186531, recorded as Document No. A-45341039, and dated May 3, 2012, filed as Land Court Document No. T-8205322.

10. FINANCING STATEMENT

DEBTOR : HAWAII OUTDOOR TOURS, INC.
SECURED
PARTY : FIRST REGIONAL BANK
RECORDED : Document No. 2006-021246
RECORDED ON: February 1, 2006

ABOVE FINANCING STATEMENT ASSIGNED

TO : FIRST-CITIZENS BANK AND TRUST COMPANY
DATED : December 21, 2010
RECORDED : Document No. 2010-198537

CONTINUATION recorded as Document No. 2010-198538 on December 21, 2010.

SCHEDULE B CONTINUED

11. TAX LIEN

BY : REAL PROPERTY DIVISION, DEPARTMENT OF FINANCE,
COUNTY OF HAWAII

AGAINST : HAWAII OUTDOOR TOURS INC

DATED : July 25, 2011

RECORDED : Document No. 2011-118459

AMOUNT : \$135,756.90

(Not noted on Transfer Certificate(s) of Title referred to
herein)

12. TAX LIEN

BY : REAL PROPERTY DIVISION, DEPARTMENT OF FINANCE,
COUNTY OF HAWAII

AGAINST : HAWAII OUTDOOR TOURS INC

DATED : AUGUST 23, 2011

RECORDED : Document No. 2011-139606

AMOUNT : \$44,522.97`

(Not noted on Transfer Certificate(s) of Title referred to
herein)

13. TAX LIEN

BY : REAL PROPERTY DIVISION, DEPARTMENT OF FINANCE,
COUNTY OF HAWAII

AGAINST : HAWAII OUTDOOR TOURS INC

DATED : September 26, 2011

RECORDED : Document No. 2011-159801

AMOUNT : \$33,370.48

(Not noted on Transfer Certificate(s) of Title referred to
herein)

SCHEDULE B CONTINUED

14. TAX LIEN

BY : REAL PROPERTY DIVISION, DEPARTMENT OF FINANCE,
COUNTY OF HAWAII

AGAINST : HAWAII OUTDOOR TOURS INC

DATED : October 26, 2011
RECORDED : Document No. 2011-179216
AMOUNT : \$30,301.94

(Not noted on Transfer Certificate(s) of Title referred to
herein)

15. TAX LIEN

BY : REAL PROPERTY DIVISION, DEPARTMENT OF FINANCE,
COUNTY OF HAWAII

AGAINST : HAWAII OUTDOOR TOURS INC

DATED : November 23, 2011
RECORDED : Document No. 2011-200499
AMOUNT : \$27,324.80

(Not noted on Transfer Certificate(s) of Title referred to
herein)

16. TAX LIEN

BY : REAL PROPERTY DIVISION, DEPARTMENT OF FINANCE,
COUNTY OF HAWAII

AGAINST : HAWAII OUTDOOR TOURS INC

DATED : December 29, 2011
RECORDED : Document No. A-43950774
AMOUNT : \$32,263.06

(Not noted on Transfer Certificate(s) of Title referred to
herein)

SCHEDULE B CONTINUED

17. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII
AGAINST : HAWAII OUTDOOR TOURS INC
DATED : February 6, 2012
RECORDED : Document No. A-44260563
AMOUNT : \$27,857.58

(Not noted on Transfer Certificate(s) of Title referred to herein)

18. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII
AGAINST : HAWAII OUTDOOR TOURS INC
DATED : March 30, 2012
RECORDED : Document No. A-44841318
AMOUNT : \$41,291.33

(Not noted on Transfer Certificate(s) of Title referred to herein)

19. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII
AGAINST : HAWAII OUTDOOR TOURS INC
DATED : May 29, 2012
RECORDED : Document No. A-45350896
AMOUNT : \$87,184.32

(Not noted on Transfer Certificate(s) of Title referred to herein)

SCHEDULE B CONTINUED

20. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII
AGAINST : HAWAII OUTDOOR TOURS INC
DATED : June 25, 2012
RECORDED : Document No. 45630830
AMOUNT : \$35,901.16

(Not noted on Transfer Certificate(s) of Title referred to herein)

21. Pending Civil No. 12-1-0501 in the Circuit Court of the Third Circuit, State of Hawaii; FIRST-CITIZENS BANK & TRUST CO, "Plaintiff", vs. HAWAII OUTDOOR TOURS, INC., et al., "Defendant"; re: Change of venue from First Circuit Court to Third Circuit Court; First Circuit Court Civil No. 12-1-2105, Re: Foreclosure of Mortgage dated January 23, 2006, filed as Land Court Document No. 3385991, recorded as Document No. 2006-021243, and Assignment of Rents dated January 23, 2006, filed as Land Court Document No. 3385993, recorded as Document No. 2006-021245
22. Pending Bankruptcy No. 12-2279 filed in the United States Bankruptcy Court for the District of Hawaii, in the matter of the bankruptcy of HAWAII OUTDOOR TOURS INC, Debtor(s). Petition under Chapter 11 filed November 20, 2012.
23. Any unrecorded leases and matters arising from or affecting the same.
24. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

END OF SCHEDULE B

SCHEDULE C

GENERAL LEASE NO. S-5844

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

LESSEE : HAWAII OUTDOOR TOURS, INC., a Hawaii corporation

DATED : January 20, 2006

FILED : Land Court Document No. 3385990

RECORDED : Document No. 2006-021241

TERM : sixty-five (65) years, commencing on the 1st day of February, 2006, up to and including the 31st day of January, 2071

Said Lease demising the following described premises:

-ITEM I:-

-FIRST:-

All of that certain parcel of land situate, lying and being at Waiakea, District of South Hilo, Island and County of Hawaii, State of Hawaii, described as follows:

Comprising the following:

- A. Portion of the Government (Crown) Land of Waiakea, including all of Lots 5 (Revised), 6 (Revised), 7 and 8 of Ocean View Lots, Lot A and Remnant A-1 of Government Remnants.
- B. All of Land Court Application 1300, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, covered by Transfer Certificate of Title No. 108,763 issued to the State of Hawaii (Land Office Deed S-24138).

Beginning at the southwest corner of this parcel of land and on the north side of Banyan Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 4324.00 feet north and 10,813.61 feet east, thence running by azimuths measured clockwise from true South:

SCHEDULE C CONTINUED

1. 128° 28' 442.42 feet along Government Remnants B-1 and Lot B, Lot 4 (Revised) of Ocean View Lots and the remainder of the Government (Crown) Land of Waiakea to highwater mark at seashore;
 2. Thence along highway mark at seashore, the direct azimuth and distance between points near highwater mark at seashore being:
168° 52' 122.30 feet;
 3. 308° 28' 106.82 feet along the remainder of the Government (Crown) Land of Waiakea;
 4. 228° 21' 30" 168.68 feet along the remainder of the Government (Crown) Land of Waiakea;
 5. 145° 38' 26.93 feet along the remainder of the Government (Crown) Land of Waiakea to highwater mark at seashore;
- Thence along highwater mark at seashore for the next four (4) courses, the direct azimuths and distances between points near highwater mark at seashore being:
6. 205° 04' 95.08 feet;
 7. 257° 47' 224.00 feet;
 8. 306° 20' 258.57 feet;
 9. 291° 02' 30" 184.28 feet;
 10. 52° 35' 362.20 feet along Grant 10119 to Harriet Blanche Rose;

SCHEDULE C CONTINUED

11. 4° 13' 145.30 feet along Grant 10377 to Harriet Blanche Rose and Government Remnant 10377-A;
12. Thence along the north side of Banyan Drive on a curve to the left with a radius of 370.00 feet, the chord azimuth and distance being:
85° 46' 48" 166.08 feet to the point of beginning and containing an AREA OF 6.35 ACRES, MORE OR LESS.

Excepting and excluding Land Court Application 1300, as shown on Map 1, containing an area of 5,280 square feet.

-SECOND:-

All of that certain parcel of land situate at Waiakea, District of South Hilo, Island and County of Hawaii, State of Hawaii, containing an area of 5,280 square feet, more or less, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, with Land Court Application No. 1300 of Ouida Hill;

Being the land(s) described in Transfer Certificate of Title No. 108,763 issued to the STATE OF HAWAII.

-ITEM II:-

-FIRST:-

SCHEDULE C CONTINUED

All of that certain parcel of land (being portion of the Government (Crown) Land of Waiakea; Lot 1-A (Map 2) and Lots 2 and 3 (Map 1) of Land Court Application 1748; Lot 2 (Map 1), Lot 3-B (Map 2), Lot 6-A (Map 4) and Lot 8 (Map 2) of Land Court Application 1626; Lot 1-A (Map 4) of Land Court Application 428; all covered by Owner's Certificate of Title No. 106,776 issued to the State of Hawaii; and Land Commission Awards, Grants and Deeds acquired by the State of Hawaii from the Hawaii Redevelopment Agency identified by Land Office Deeds as listed on Government Survey Registered Map H.S.S. Plat 942-A) situate, lying and being at Waiakea, District of South Hilo, Island and County of Hawaii, State of Hawaii, being the GOLF COURSE AND ALLIED FACILITIES SITE, bounded and described by Kamehameha Avenue, Lihikai Street and Banyan Drive, and thus bounded and described:

Beginning at the southeast corner of this parcel of land, at the west corner of Grant 7521 to H. V. Patten, Trustee and on the north side of Kamehameha Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 2197.00 feet north and 10,747.67 feet east, thence running by azimuths measured clockwise from true South:

1. 90° 00' 422.50 feet along the north side of Kamehameha Avenue;
2. 90° 00' 626.78 feet along the north side of Parcel 1 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2) (25);
3. 180° 00' 39.74 feet along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project no. BR-019-2 (25);
4. Thence along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2 (25) on a curve to the left with a radius of 9060.00 feet, the chord azimuth and distance being:
 86° 28' 11" 253.96 feet;

SCHEDULE C CONTINUED

5. 85° 40' 209.17 feet along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25);
6. Thence along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25) on a curve to the right with a radius of 40.00 feet, the direct azimuth and distance being:
130° 40' 56.57 feet;
7. 175° 40' 3.33 feet along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25);
8. 175° 40' 519.23 feet along Parcels 9-A, 10, 11 and 12 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25);
9. Thence along Parcel 12 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25) on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being:
222° 50' 73.33 feet;
10. 270° 00' 458.98 feet along the south side of Banyan Drive;
11. Thence along the southeast side of Banyan Drive on a curve to the left with a radius of 350.00 feet, the chord azimuth and distance being:
231° 49' 30" 432.65 feet;

SCHEDULE C CONTINUED

12. 193° 39' 632.46 feet along the southeast side of Banyan Drive;
13. Thence along the southeast side of Banyan Drive on a curve to the right with a radius of 190.00 feet, the chord azimuth and distance being:
215° 19' 30" 140.35 feet;
14. 237° 00' 428.33 feet along the southeast side of Banyan Drive;
15. Thence along the southeast side of Banyan Drive on a curve to the left with a radius of 350.00 feet, the chord azimuth and distance being:
233° 07' 37.5" 47.28 feet;
16. 229° 15' 15" 153.94 feet along the southeast side of Banyan Drive;
17. Thence along the south side of Banyan Drive on a curve to the right with a radius of 270.00 feet, the chord azimuth and distance being:
279° 32' 07.5" 415.36 feet;
18. 329° 49' 160.00 feet along the southwest side of Banyan Drive;
19. Thence along the southwest side of Banyan Drive on a curve to the right with a radius of 1081.80 feet, the chord azimuth and distance being:
340° 47' 30" 411.91 feet;
20. 351° 46' 484.32 feet along the southwest side of Banyan Drive;
21. 81° 46' 55.00 feet along Waiakea Peninsula Pump Station Site, Governor's Executive Order 2381;

SCHEDULE C CONTINUED

22.	351°	46'		55.00	feet along Waiakea Peninsula Pump Station Site, Governor's Executive Order 2381;
23.	261°	46'		55.00	feet along Waiakea Peninsula Pump Station Site, Governor's Executive Order 2381;
24.	351°	46'		16.54	feet along the southwest side of Banyan Drive;
25.	Thence along the west side of Banyan Drive on a curve to the right with a radius of 300.00 feet, the chord azimuth and distance being:				18° 38' 271.15 feet;
26.	45°	30'		218.64	feet along the northwest side of Banyan Drive;
27.	Thence along the northwest side of Banyan Drive on a curve to the left with a radius of 450.00 feet, the chord azimuth and distance being:				31° 19' 01" 220.52 feet;
28.	56°	02'	48"	19.54	feet along Grant 7521 to W. H. Patten, Trustee;
29.	146°	02'	48"	120.00	feet along the remainder of Government (Crown) Land of Waiakea;
30.	56°	02'	48"	248.91	feet along the remainder of the Government (Crown) Land of Waiakea;
31.	360°	00'		144.67	feet along the remainder of the Government (Crown) Land of Waiakea;

SCHEDULE C CONTINUED

32. 56° 02' 48" 69.44 feet along Grant 7521 to H. V. Patten, Trustee to the point of beginning and containing a GROSS AREA OF 63.775 ACRES and a NET AREA OF 62.576 ACRES, after excluding therefrom the following:

EXCLUSION:

LOT	MAP	LAND COURT APPLICATION	AREA
1-B	4	428	0.525 Acre
3-A	2	1626	0.006 Acre
4	1	1626	0.096 Acre
7	2	1626	0.572 Acre
TOTAL AREA OF EXCLUSION			1.199 Acres

Excepting and excluding:

LOTS 1-A, area 6,000.0 square feet, as shown on Map 2;
 2, area 8,482.0 square feet; and
 3, area 244.0 square feet; as shown on Map 1, Land Court Application 1748;
 1-A, area 38,740.0 square feet, as shown on Map 4, Land Court Application 428;
 2, area 17,122.0 square feet, as shown on Map 1;
 6-A, area 15,093.0 square feet, as shown on Map 4;
 8, area 1,363.0 square feet; and
 3-B, area 246.0 square feet, as shown on Map 2, Land Court Application 1626

-SECOND:-

SCHEDULE C CONTINUED

All of those certain parcels of land situate at Waiakea, District of South Hilo, Island and County of Hawaii, State of Hawaii, described as follows:

LOTS	1-A,	area	6,000.0 square feet, as shown on Map 2;
	2,	area	8,482.0 square feet, and
	3,	area	244.0 square feet, as shown on Map 1, Land Court Application 1748;
	1-A,	area	38,740.0 square feet, as shown on Map 4, Land Court Application 428;
	2,	area	17,122.0 square feet, as shown on Map 1;
	6-A,	area	15,093.0 square feet, as shown on Map 4;
	8,	area	1,363.0 square feet; and
	3-B,	area	246.0 square feet, as shown on Map 2, Land Court Application 1626

the maps above referred to by numbers are filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

Being the lands described in Transfer Certificate of Title No. 106,776 issued to STATE OF HAWAII.

END OF SCHEDULE C

GENERAL NOTES

1. There is hereby omitted from any covenants, conditions and reservations contained herein any covenant or restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law. Lawful restrictions under state or federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

SCHEDULE D

CONDITIONS AND STIPULATIONS

1. This Status Report (which term shall include any revisions thereto) is a report of the record title only, based solely upon an abstract and examination of the Indices described in Schedule A as of the date of the Report. No responsibility is assumed for (a) matters which may affect the title but either were not disclosed or were incorrectly disclosed in said indices at the date hereof; or (b) matters created, suffered, assumed, or agreed to by Purchaser; or (c) matters not shown herein but actually know to Purchaser. Title Guaranty of Hawaii, Incorporated (the "Company") makes no representation as to the legal effect, validity or priority of matters shown or referred to herein.
2. If the Report is incorrect in any respect, the responsibility of the Company shall be limited to the resulting actual loss, including any attorney's fees and legal costs, but in no event shall exceed the greater of \$3,500 or two times the amount paid for the Report. Upon payment of any loss hereunder, the Company shall be subrogated to all rights the Purchaser may have against any person or property as a result of such loss.
3. If the Purchaser of this Report shall suffer an actual loss by reason of the incorrectness of the Report, the Purchaser shall promptly notify the Company in writing. After receipt of such notice, the Company shall be allowed a reasonable time in which to investigate the claim. At its sole option, the Company may litigate the validity of the claim, negotiate a settlement or pay to Purchaser the amount the Company is obligated to pay under this Report. The Company's responsibility hereunder constitutes indemnity only and nothing herein shall obligate the Company to assume the defense of the Purchaser with respect to any claim made hereunder.
4. This report is the entire contract between the Purchaser and the Company and any claim by Purchaser against the Company, arising hereunder, shall be enforceable only in accordance with the provisions herein.
5. Notice required to be given the Company shall include the Order Number of this Report and shall be addressed to Title Guaranty of Hawaii, Inc., P.O. Box 3084, Honolulu, HI 96802, Attention: Legal Department.

DATE PRINTED: 1/22/2013

STATEMENT OF ASSESSED VALUES AND REAL PROPERTY TAXES DUE

NAME OF OWNER: STATE OF HAWAII
LEASED TO : HAWAII OUTDOOR TOURS INC

TAX MAP KEY

DIVISION ZONE SECTION PLAT PARCEL HPR NO.
(3) 2 1 005 013 0000

CLASS: HOTEL AND RESORT AREA ASSESSED: 31,363 SF

ASSESSED VALUES FOR CURRENT YEAR TAXES: 2012

The records of this division show the assessed values and taxes on the property designated by Tax Key shown above are as follows:

BUILDING	\$	0
EXEMPTION	\$	0
NET VALUE	\$	0
LAND	\$	479,900 HIGHEST & BEST USE
EXEMPTION	\$	0
NET VALUE	\$	479,900
TOTAL NET VALUE	\$	479,900

Installment (1 - due 8/20; 2 - due 2/20) Tax Info As Of - 8/20/2012

Tax Year	Installment	Tax Amount	Penalty Amount	Interest Amount	Other Amount	Total Amount	
2012	2	2,363.51				2,363.51	PENDING
2012	1	2,363.51	236.35	78.00		2,677.86	DELINQUENT
2011	2	2,363.51	236.35	233.99		2,833.85	DELINQUENT
2011	1	2,363.51	236.35	389.98		2,989.84	DELINQUENT
2010	2	2,363.51	236.35	545.97		3,145.83	DELINQUENT
2010	1	2,363.51	236.35	701.96		3,301.82	DELINQUENT

Total Amount Due: 17,312.71

Penalty and Interest Computed to: 8/20/2012

2. The Assignee is required to maintain cooperator status with the appropriate Soil and Water Conservation District. Within one year of this assignment, the Assignee shall deliver a conservation plan for the premises approved by the appropriate Soil and Water Conservation District for the review and approval of the Chairperson of the Board of Land and Natural Resources.

3. The existing security being held by the Department of Land and Natural Resources ("Department") to satisfy the performance bond requirement under this general lease shall only be released upon the submission of a replacement security by the Assignee which is satisfactory to the Department.

IT IS UNDERSTOOD that except as provided herein, should there be any conflict between the terms of General Lease No. S-5372 and the terms of the assignment, the former shall control; and further, that except as provided herein, this consent shall not in any manner be construed as varying in any respect the terms and conditions of the general lease; and also that no further assignment of any interest under General Lease No. S-5372 shall be made without the written consent of the Board of Land and Natural Resources being first obtained and endorsed thereon.

FURTHERMORE, Assignor hereby acknowledges that the Lessor's consent to assignment of General Lease No. S-5372, does not release the Assignor of any and all responsibilities, obligations, liabilities, and claims respecting or arising under or out of said general lease prior to the effective date of this assignment.



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 these presents to be duly executed this 25th day of June, 1999.

Approved by the Board of Land and Natural Resources at its meeting held on March 12, 1999.

STATE OF HAWAII

By [Signature]
Chairperson and Member
Board of Land and
Natural Resources

LESSOR

[Signature]
NORA SAKAINO JAMES

ASSIGNOR

HAWAII OUTDOOR TOURS, INC., a
Hawaii corporation

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

Dated: 6/17/99

By [Signature]
~~Ken~~ Ken Fujiyama
Its General Manager

dent
up

And By _____
Its _____

ASSIGNEE

gls-5372consal\hioutdoortours\n.s.james.ek

PRELIM. APPR'D
Department of the
Attorney General

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 8th day of June, 1999, before me personally appeared NORA SAKAINO JAMES, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

Debra N. Tomono

DEBRA N. TOMONO
Expiration Date: February 16, 2001

Notary Public, State of Hawaii

My commission expires: 2/16/2001



STATE OF HAWAII

)
) SS.
)

COUNTY OF HAWAII

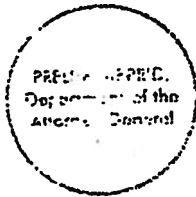
On this 8th day of June, 1999,
before me appeared Ken Fujiyama
and _____, to me
personally known, who, being by me duly sworn, did say that they
~~are~~ the General Manager and _____
~~respectively~~, of HAWAII OUTDOOR TOURS, INC., a Hawaii
corporation, and that the foregoing instrument was signed in
behalf of said corporation by authority of its Board of
Directors, and the said Ken Fujiyama
and _____ acknowledged said instrument to be
the free act and deed of said corporation.

Debra Tomono

DEBRA N. TOMONO
Expiration Date: February 16, 2001

Notary Public, State of Hawaii

My commission expires: 2/16/2001



After Recordation, Return by Mail (X) Pick-up ()

ATTN MR KEN FUJIYAMA
HAWAII OUTDOOR TOURS, INC.
P O BOX 53
HI NATL PARK, HI 96718

TG: 394663
TGES: 993020444
DEBRA N TOMONO

Tax Map Key: (3)9/8/001/002

Pages: 10

TITLE OF DOCUMENT: ASSIGNMENT OF LEASE

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OFFICE BUILDING

ASSIGNMENT OF LEASE

KNOW ALL MEN BY THESE PRESENTS:

THAT, Nora Sakaino James, unmarried, as her separate property,
of 155 Hoonanea Street, Hilo, Hawaii 96720, State of Hawai'i,

hereinafter referred to as the "ASSIGNOR," for and in consideration of the sum of

One Hundred Fifty-nine Thousand Five Hundred (\$159,500.00),

paid by Hawaii Outdoor Tours, Inc., a Hawaii corporation

of P.O. Box 53, HI National Park, HI 96718, State of Hawai'i,

hereinafter referred to as the "ASSIGNEE," the receipt of which sum is hereby acknowledged,

and for other valuable consideration, has assigned and does hereby assign, transfer and set

over unto the said Assignee, that certain indenture of lease dated June 20, 1995,

from the Board of Land and Natural Resources for and on behalf of the Government of the State

of Hawai'i, as Lessor, and known as General Lease No. S-5372; and all her right, title

and interest under and by virtue of the said lease in and to the premises therein described, being

a portion of the government land known as Portion of the Government (Crown)

Land of Kapapala, Parcel 3

situate at Kapapala, Ka'u, Island of Hawaii, Hawaii

in said lease more particularly described. (See Exhibit A for property description)

TO HAVE AND TO HOLD, the same unto the said Assignee, its successors and permitted assigns, from and after the date hereof, for and during the remaining term of said General Lease, and the rights and privileges in and under said lease, subject always to the rents,

covenants, and provisions therein contained and on the part of the Assignee to be kept, observed and performed; and to the consent of the Board of Land and Natural Resources being hereto attached.

AND, the said Assignee aforesaid, for and in consideration of the execution of this instrument of assignment from the Assignor to the Assignee, hereby accepts the said assignment and transfer of said General Lease and does hereby undertake and agree with the Assignor, and the said State of Hawai'i, that said Assignee will pay the rent reserved in said lease and keep, observe and perform all of the terms, covenants and conditions therein to be kept, observed and performed.

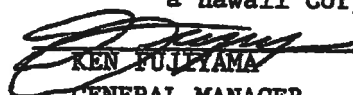
IN WITNESS WHEREOF, the said Assignor and Assignee have caused this instrument to be executed this 16 day of OCT, 1998.

ASSIGNOR:



NORA SAKAINO JAMES

ASSIGNEE:

HAWAII OUTDOOR TOURS, INC.,
a Hawaii Corporation


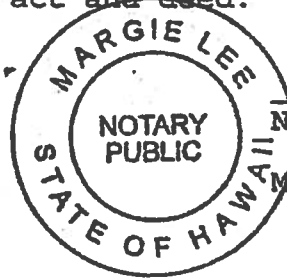
KEN FUJIYAMA
GENERAL MANAGER

STATE OF HAWAII

COUNTY OF

)
) SS.
)

On this 16th day of October, 1998,
before me appeared Nora Sakano James,
to me known to be the person(s) described in and who executed the
foregoing instrument and acknowledged that she executed the
same as her free act and deed.



Margie Lee

Notary Public, State of Hawaii

My Commission expires: 4/14/02

EXHIBIT A

PORTION OF
THE GOVERNMENT (CROWN) LAND OF KAPAPALA

PARCEL 3

Kapapala, Kau, Island of Hawaii, Hawaii

Beginning at the north corner of this parcel of land, on the west boundary of Hawaii National Park, Kilauea Section, Public Law No. 680 dated June 20, 1938 and on the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPAPALA" being 40,782.53 feet North and 21,452.82 feet East as shown on Government Survey Registered Map H.S.S. Plat 127, thence running by azimuths measured clockwise from True South:-

1. 10° 57' 07" 10,576.41 feet along the Hawaii National Park, Kilauea Section, Public Law No. 680 dated June 20, 1938 to a 2-inch pipe;
2. Thence along the 1868 Lava Crack along Hawaii National Park, Kilauea Section, Governor's Executive Order 81, the direct azimuth and distance being:
17° 43' 55" 32,497.48 feet;
3. 89° 36' 19" 2240.75 feet along the Government Land of Kaalaala to a spike;
4. 32° 24' 22" 3361.59 feet along the Government Land of Kaalaala to a spike;
5. 74° 41' 33" 1252.69 feet along the Government Land of Kaalaala to a spike;
6. 103° 25' 28" 4535.93 feet along the Government Land of Kaalaala to a spike;

EXHIBIT A

7. 83° 09' 03" 2498.28 feet along the Government Land of Kaalaala to a spike;
8. 160° 03' 58" 318.77 feet along the Government Land of Kaalaala to a spike;
9. 225° 09' 40" 2155.80 feet along the southeast side of Kau Belt Road, War Emergency Relief, Project No. W.E.R. 1(1);
10. Thence along the southeast side of Kau Belt Road, War Emergency Relief Project No. W.E.R. 1(1) on a curve to the left with a radius of 2331.83 feet, the chord azimuth and distance being:
213° 54' 40" 909.83 feet;
11. 202° 39' 40" 6413.75 feet along the southeast side of Kau Belt Road, War Emergency Relief Project No. W.E.R. 1(1);
12. 222° 38' 793.67 feet along Section A of Kaalaala-Makakupu Government Tract;
13. 128° 58' 282.45 feet along Section A of Kaalaala-Makakupu Government Tract;
14. 202° 39' 40" 6327.01 feet along the southeast side of Kau Belt Road, War Emergency Relief Project No. W.E.R. 1(1);
15. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 5689.58 feet, the chord azimuth and distance being:
207° 41' 35" 998.08 feet;
16. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 5689.58 feet, the chord azimuth and distance being:
214° 07' 30" 278.02 feet;

EXHIBIT A

17. 260° 00' 69.28 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
18. 191° 20' 113.43 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
19. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 5689.58 feet, the chord azimuth and distance being:
218° 57' 12" 374.96 feet;
20. 220° 50' 30" 230.76 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
21. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the left with a radius of 9862.14 feet, the chord azimuth and distance being:
212° 36' 15" 2826.03 feet;
22. 204° 22' 3007.93 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
23. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
205° 17' 2198.63 feet;
24. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
206° 13' 15" 49.98 feet;
25. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
208° 21' 5055.92 feet;

EXHIBIT A

26. 210° 27' 30" 4316.19 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
27. 300° 27' 30" 10.00 feet along a jog on the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
28. 210° 27' 30" 400.00 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
29. 120° 27' 30" 10.00 feet along a jog on the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
30. 210° 27' 30" 4767.98 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
31. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
211° 38' 54" 2854.13 feet;
32. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
212° 51' 33" 49.98 feet;
33. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
214° 13' 27" 3223.83 feet;
34. 305° 34' 06" 10.00 feet along a jog on the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
35. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,704.96 feet, the chord azimuth and distance being:
215° 56' 36" 899.34 feet;

EXHIBIT A

36. 126° 19' 06" 10.00 feet along a jog on the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
37. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
216° 36' 48" 707.59 feet;
38. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
217° 18' 19.9" 952.70 feet
to the point of beginning and containing an AREA OF 5,820.96 ACRES, MORE OR LESS.

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OFFICE BUILDING

ASSIGNMENT OF LEASE

KNOW ALL MEN BY THESE PRESENTS:

THAT, Nora Sakaino James, unmarried, as her separate property,
of 155 Hoonanea Street, Hilo, Hawaii 96720, State of Hawai'i,

hereinafter referred to as the "ASSIGNOR," for and in consideration of the sum of

One Hundred Fifty-nine Thousand Five Hundred (\$ 159,500.00),

paid by Hawaii Outdoor Tours, Inc.

P.O. Box 53, HI National Park, HI 96718, State of Hawai'i,

hereinafter referred to as the "ASSIGNEE," the receipt of which sum is hereby acknowledged,

and for other valuable consideration, has assigned and does hereby assign, transfer and set

over unto the said Assignee, that certain indenture of lease dated June 20, 1995,

from the Board of Land and Natural Resources for and on behalf of the Government of the State

of Hawai'i, as Lessor, and known as General Lease No. S-5372; and all her right, title

and interest under and by virtue of the said lease in and to the premises therein described, being

a portion of the government land known as Portion of the Government (Crown)

Land of Kapapala, Parcel 3

situate at Kapapala, Ka'u, Island of Hawaii, Hawaii

in said lease more particularly described.

TO HAVE AND TO HOLD, the same unto the said Assignee, its successors and
permitted assigns, from and after the date hereof, for and during the remaining term of said
General Lease, and the rights and privileges in and under said lease, subject always to the rents,

covenants, and provisions therein contained and on the part of the Assignee to be kept, observed and performed; and to the consent of the Board of Land and Natural Resources being hereto attached.

AND, the said Assignee aforesaid, for and in consideration of the execution of this instrument of assignment from the Assignor to the Assignee, hereby accepts the said assignment and transfer of said General Lease and does hereby undertake and agree with the Assignor, and the said State of Hawai'i, that said Assignee will pay the rent reserved in said lease and keep, observe and perform all of the terms, covenants and conditions therein to be kept, observed and performed.

IN WITNESS WHEREOF, the said Assignor and Assignee have caused this instrument to be executed this 16th day of October, 1998.

ASSIGNOR:

Wm Sakaino James

ASSIGNEE:

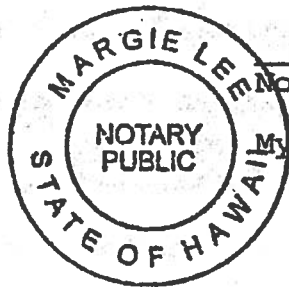
HAWAII OUTDOOR TOURS INC
[Signature]
GEN MANAGER

STATE OF HAWAII

COUNTY OF

)
) SS.
)

On this 16th day of October, 1998,
before me appeared Nora Sakano James,
to me known to be the person(s) described in and who executed the
foregoing instrument and acknowledged that she executed the
same as her free act and deed.



Margie Lee

Notary Public, State of Hawaii

My Commission expires: 4/14/02

STATE OF HAWAII)
) :ss.
COUNTY OF HAWAII)

On this 16th day of October, 1998, before me appeared

Kenneth Fujiyama

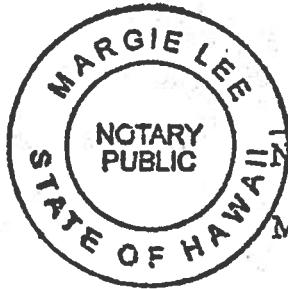
to me personally known, who, being by me duly sworn, did say that ^{he is} ~~they are~~ the _____

General Manager

respectively of Hawaii Outdoor Tours Inc

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 the said Kenneth Fujiyama

acknowledged said instrument to be the free act and deed of said corporation.



Margie Lee

Notary Public, State of Hawaii

My Commission expires: 4/14/02

WHEREAS, the reason for the divorce was due to the medical condition of Roger James Jr.; and

WHEREAS, Roger James Jr. passed away in the year of 1996; and

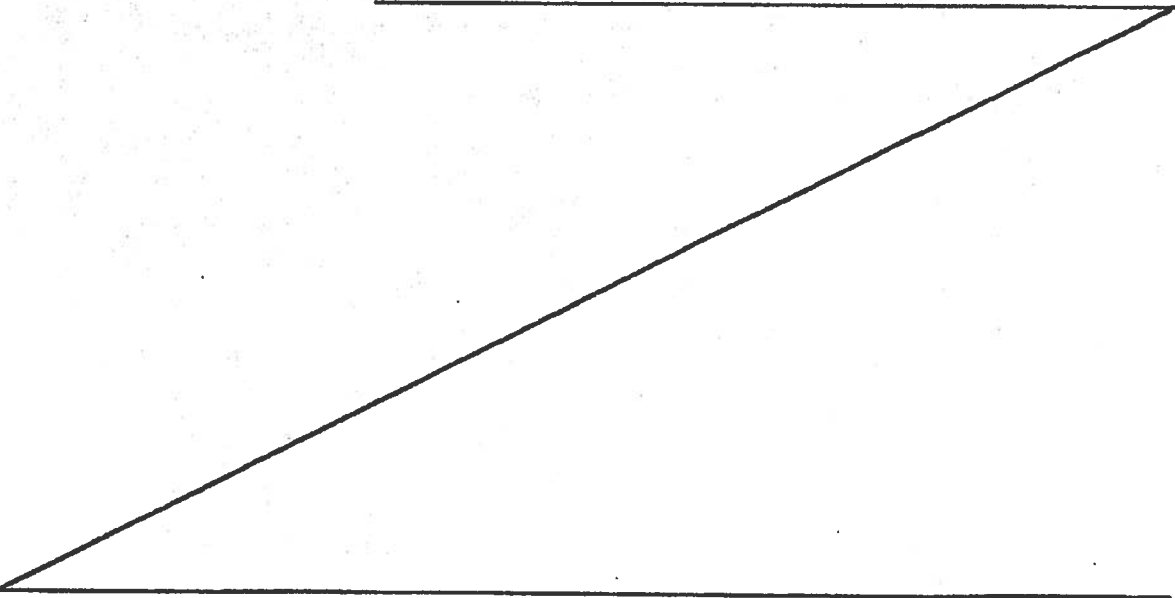
WHEREAS, the Lessee desires that the general lease be amended; and

WHEREAS, the Board of Land and Natural Resources, at its meeting held on June 14, 1996, has approved the amendment to General Lease No. S-5372 for the purpose of: designating Nora Sakaino James, unmarried, as her sole property, as Lessee.

NOW, THEREFORE, the Lessor and Lessee covenant and agree that General Lease No. S-5372 is amended for the purpose of designating Nora Sakaino James, unmarried as her sole property, as Lessee.

IN CONSIDERATION THEREOF, the Lessor and Lessee further agree that this Amendment of Lease Agreement is subject to all the covenants and conditions in the General Lease No. S-5372 dated June 20, 1995.

This Amendment, read in conjunction with the General Lease No. S-5372 sets forth the entire agreement between the Lessor and Lessee; and the general lease as amended and modified hereby shall not be altered or modified in any particular except by a memorandum in writing signed by the Lessor and Lessee.



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 these presents to be executed the day, month, and year first above written.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on

6/14/96.

By *Admiral S. Coloma-Agaran*
for Chairperson and Member
Board of Land and
Natural Resources

APPROVED AS TO FORM:

Admiral Watson
Deputy Attorney General

Dated: *October 1, 1996*

LESSOR

Nora Sakaino James
NORA SAKAINO JAMES

LESSEE

2610(7)

STATE OF HAWAII
COUNTY OF HAWAII

)
) SS.
)

L.S.

On this 10th day of Oct., 1996, before me personally appeared NORA SAKAINO JAMES, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

Kelly Imakuing
Notary Public, State of Hawaii

My commission expires: 5-16-97

2922

R-379

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

JUL 12, 1995 09:29 AM

UNRECORDED

/s/CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES
CONVEYANCE TAX: \$44.50

LAND COURT SYSTEM

Return by Mail () Pickup () To:

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5372

between

STATE OF HAWAII

and

ROGER JAMES, JR. and NORA SAKAINO JAMES,
husband and wife, tenants by the entirety, whose mailing
address is ~~Post Office BOX 176, Honokaa, Hawaii 96727~~
155 Hoananea St., Ilio, Hawaii 96720
covering

*RP
UP*

PORTION OF THE GOVERNMENT (CROWN) LAND OF KAPAPALA
PARCEL 3

situate at
Kapapala, Kau, Island of Hawaii, Hawaii
containing an area of 5,820.96 acres, more or less

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

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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5372

THIS LEASE, made this 20th day of June, 1995, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and ROGER JAMES, JR. and NORA SAKAINO JAMES, husband and wife, tenants by the entirety, whose mailing address is ~~Post Office Box 126, Honokaa, Hawaii 96727~~, hereinafter referred to as the "Lessee";

*55 Hoonanea St, Ilo, Hawaii
96720*

WITNESSETH:

The Lessor for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the lessee to be kept, observed and performed, does lease unto the lessee, pursuant to Act 237, Session Laws of Hawaii 1988, and Act 162, Session Laws of Hawaii 1994, and the Lessee does lease from the Lessor the premises identified as "Portion of The Government (Crown) Land of Kapapala, Parcel 3," situate at Kapapala, Kau, Island of Hawaii, Hawaii, containing an area of 5,820.96 acres, more or less, except that vehicle access shall not be permitted into and from Hawaii Belt Road, Federal Aid Project No. F-18(5) over and across Courses 15 to 23, inclusive, 25 to 31, inclusive and 33 to 38, inclusive, of Parcel 3, and Excepting and Reserving therefrom all existing roads and trails within Parcel 3 and such other roads, trails and other rights-of-way that may be required for public purposes, such rights-of-way to be designated by the Board of Land and Natural Resources at such times and for such widths as deemed proper and necessary, all more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," 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, respectively designated C.S.F. No. 22,116 and H.S.S. Plat 127, both dated June 8, 1994.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of thirty-five years (35), commencing on the 1st day of November, 1994, up to and including the 31st day of October, 2029, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as

provided hereinbelow, payable in advance, without notice or demand, in semi-annual installments on the first day of November and May of each and every year during the term as follows:

A. For the first four (4) years, the sum of THREE THOUSAND SIX HUNDRED TWENTY-ONE AND NO/100 DOLLARS (\$3,621.00) per annum (fair market annual lease rental of \$2,897.00 per annum plus a 25% premium rental of \$724.00 per annum).

Beginning with the fifth year of the lease term, Lessee shall pay the effective fair market annual rent only of TWO THOUSAND EIGHT HUNDRED NINETY-SEVEN AND NO/100 DOLLARS (\$2,897.00).

B. The annual rental reserved shall be reopened and redetermined as of the day following the expiration of the tenth (10th), twentieth (20th), and thirtieth (30th) years of the term.

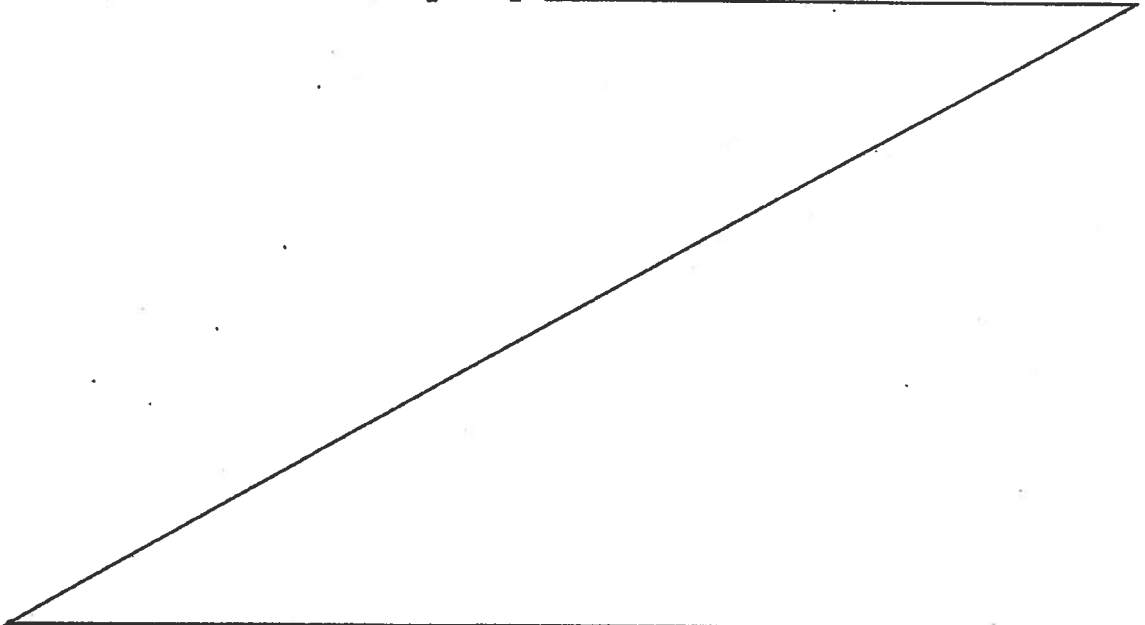
C. Determination of rental upon reopening of the annual rental. The rental for any ensuing period shall be the fair market rental at the time of reopening. Except as provided herein, the provisions in Hawaii Revised Statutes, Chapter 658, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by Lessor's appraiser; provided, that should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt thereof that Lessee disagrees with the fair market rental as determined by Lessor's appraiser and that Lessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. If Lessee has notified Lessor and appointed his appraiser as stated hereinabove, Lessee's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of Lessee's appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after

receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Lessor and Lessee, subject to vacation, modification or correction in accordance with the provisions of Sections 658-8 and 658-9, Hawaii Revised Statutes. Each party shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, or by the foregoing prescribed time, whichever is later, the Lessee shall pay the fair market rental as determined by Lessor's new appraised value until the new rent is determined and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, Lessee or Lessee's appraiser's failure to comply with the procedures set forth above shall constitute a waiver of Lessee's right to contest the new rent, and the Lessee shall pay the rent as determined by Lessor's appraiser without any retroactive adjustments. Alternatively, Lessor may treat this failure as a breach of this lease and terminate the lease.

D. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.



RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found on the premises.

3. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term.

3. Utility services. The Lessee shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

9. Improvements. The Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Board and upon those conditions the Board may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for general agricultural purposes.

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises or any portion or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest; or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease or any portion may be made if (1) it contains the personal residence of the Lessee; (2) in the case of commercial, industrial, hotel, resort, apartment and other business uses, the Lessee was required to put in substantial building improvements; (3) the Lessee becomes mentally or physically disabled; (4) extreme economic hardship is demonstrated to the satisfaction of the Lessor; or (5) it is to the corporate successor of the Lessee; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the

Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit "C." The premium on any subsequent assignments shall be based on the difference in the selling and purchase price plus the straight-line depreciated cost of any improvements constructed by the then Assignor, pursuant to the above-mentioned Evaluation Policy.

With respect to state agricultural leases, in the event of foreclosure or sale, the above-described premium shall be assessed only after the encumbrances of record and any other advances made by the holders of a security interest are paid.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium.

14. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent of the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward.

15. Indemnity. The Lessee shall indemnify, defend, and hold the Lessor 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 Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits,

damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, commercial general liability insurance, in an amount of at least \$100,000.00 for each occurrence and \$300,000.00 aggregate and \$50,000.00 for property damage, 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 premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, within thirty (30) days following the date of receipt of the executed lease, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease 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 Lessor.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor'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 Lessor shall notify Lessee in writing

of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

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

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

18. Bond, performance. The Lessee shall, at its own cost and expense, within thirty (30) days after the date of receipt of this lease document, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

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

20. Mortgage. Except as provided in this lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void.

Upon due application and with the written consent of the Lessor, the Lessee may mortgage this lease, or any interest,

or create a security interest in the leasehold of the public land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

21. Breach. Time is of the essence in this agreement and if the Lessee shall fail to pay the rent, or any part, at the times and in the manner provided within thirty (30) days after delivery by the Lessor of a written notice of breach or default, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default, by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Lessor 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 lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Right of holder of record of a security interest. In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a

security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by Lessor 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 Lessor 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 Lessor 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 arrears of rent or 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 Lessor 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 Lessor for costs and expenses in connection with the redispense; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor 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 lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

23. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the

premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

24. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

25. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the lands preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

26. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

27. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

28. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

29. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee of the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond and/or improvement bond requirements or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) and/or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

30. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Board may remove any and all 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 Lessee, and the Lessee 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 lease.

32. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

33. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee 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 premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor'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 Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

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

For the purpose of this lease "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 by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

34. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

35. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

36. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

37. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SPECIAL CONDITIONS

38. Full utilization of the land. The Lessee shall, within one year from the commencement of the lease, utilize the land under lease for agricultural purposes only, all in accordance with a plan of development and utilization which shall be submitted by the Lessee within six (6) months of the lease commencement date for approval by the Chairperson. The Lessee shall not commence any improvement work prior to approval of the plan; provided, however, that should the Chairperson fail to render a decision either for or against the plan within sixty (60) days following receipt of the plan, the Lessee may proceed with the work. The plan must discuss dates by which different increments of the plan will be completed.

39. Good husbandry and conservation program. The Lessee shall at all times practice good husbandry and carry out a program of conservation in cooperation with the appropriate Soil and Water Conservation District, with which district the Lessee shall maintain cooperative status. The conservation program shall be in accordance with a conservation plan which shall be submitted to the Chairperson for acceptance within six (6) months following the date of receipt of the executed lease. The conservation plan shall include, but not be limited to, those practices such as land clearing, cropping system, irrigation system, drainage, noxious weed control and others needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for leases with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of the Lessee in this regard shall be found to be unsatisfactory to the Chairperson, the Chairperson shall notify the Lessee and the Lessee shall be required, within sixty (60) days of the notice, to cure the fault and submit proof satisfactory to the Chairperson.

40. Boundary fences. The Lessee shall, within six (6) months of the lease commencement date, install stockproof fence along the entire outside perimeter of the land under lease where the fencing does not now exist, regardless of whether the Lessee has an interest or ownership in adjoining lands, and shall maintain these fences in good order and condition throughout the term of this lease and those now existing on the premises. The Lessee shall, wholly at its own cost and expense, stake out the boundaries wherever necessary in conformance with the legal descriptions provided in this lease. The cost of installing and maintaining the boundary fences shall be in accordance with Part II of Chapter 664, Hawaii Revised Statutes, which provides generally for the sharing of the costs by adjacent landowners or

Lessees for the purpose of confining animals of each adjacent owner or Lessee unless the adjacent land is owned and not leased by the government.

41. Exclusion of animals from forest lands. The Lessee shall at all times during the lease term keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the premises and shall take all reasonable precautions to prevent forest fires, and in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished.

42. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease; provided, further, that no withdrawal or taking shall be had of those portions of the land which are then under cultivation with crops until the crops are harvested, unless the Board pays to the Lessee the value of those crops.

43. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

44. Building construction requirements. All buildings and improvements placed and/or constructed on the lease premises, shall be in full compliance with all laws, rules and regulations of the of the Federal, State and County governments applicable thereto and in accordance with plans and specifications submitted by the Lessee to and approved by the Chairperson prior to construction. No quonset hut or similar type structure will be permitted.

45. Hunting. No hunting shall be allowed on the premises during the term of this lease, unless otherwise provided by State law.

46. Fire and extended coverage insurance. The Lessee, at its own cost and expense, shall procure and maintain at all times during the term of this lease fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the land leased in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor within thirty (30) days of the date of receipt of the executed lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

47. Commercial operations. The Lessee, its employees, customers, guests, agents and/or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the premises without the prior written approval of the Lessor and upon such terms and conditions established by the Lessor. No commercial activities whatsoever shall be allowed within the premises without the prior written approval of the Lessor.

48. Abandoned vehicles. Lessee shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the premises. Any and all abandoned vehicles within the premises shall be removed by Lessee at Lessee's cost and expense.

49. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

50. Improvement requirement. The Lessee is permitted to construct and/or place one (1) employee dwelling on the lease premises. If an employee dwelling is placed on the premises, the Lessee shall within two (2) years from the commencement date of the lease expend no less than \$3,000.00 to termite treat, paint and otherwise renovate or improve the dwelling in compliance with County, State and Federal regulations and shall be accomplished to the satisfaction of the Chairperson. Confirmation that the funds have been expended to make improvements shall be provided to the Chairperson in the form of receipts for goods and services rendered by the Lessee. Construction of a new dwelling shall be of masonry or new material in compliance with County, State and Federal regulations and in accordance with plans and specifications submitted by the Lessee to and approved by the Chairperson prior to construction.

51. Restriction on residential use. The premises, or any portion, shall not be utilized for residential purposes; except for one (1) employee dwelling as provided herein. The construction or placement of any other structure(s) on the premises for residential purposes is strictly prohibited.

Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

(f) "Days" shall mean calendar days, unless otherwise specified.


(g) "Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural, horticultural, and livestock industries of the State, as determined by the Department of Agriculture of the State of Hawaii by administrative rules.

(h) "General agriculture" means the cultivation and harvesting of truck, orchard, flower or nursery crops and the grazing and pasturing of animals other than pigs.

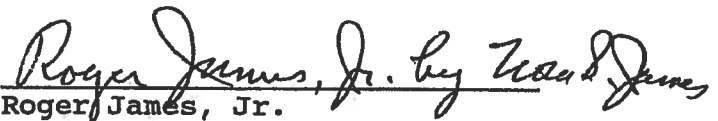
IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

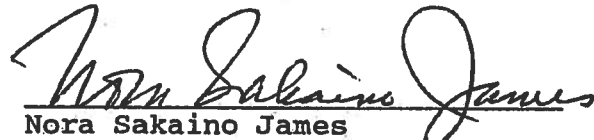
STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meetings held on September 14, 1990, June 28, 1991, August 13, 1993, January 14, 1994, and August 26, 1994.

By 
Chairperson and Member
Board of Land and
Natural Resources

LESSOR


Roger James, Jr.


Nora Sakaino James

LESSEE

APPROVED AS TO FORM:


Deputy Attorney General

Dated: March 10, 1995

13452

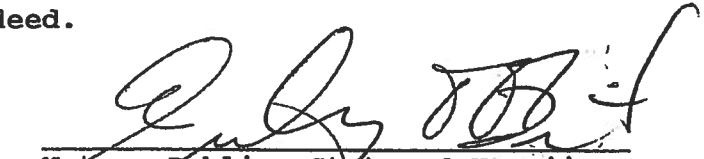
STATE OF HAWAII

COUNTY OF HAWAII

)
) SS.
)

On this 20th day of June, 1995, before me
General Power of Attorney
personally appeared ROGER JAMES, JR. and NORA SAKAINO JAMES, to
me known to be the persons described in and who executed the
foregoing instrument and acknowledged that they executed the
same as their free act and deed.

*20
JP*



Notary Public, State of Hawaii
My commission expires: 18 JAN 97

SERVE
October 17, 1930

True North
Scale: 1 in. = 2000 ft.

LAND
Parcel 1
(C.S.F. 22,110)

(CROWN)

2198.61
3° 15'
49.98

HAWAII BELT ROAD
208° 21'

F.A.P. No. P-18 (5)
210° 27' 30" — 4316.19

See Inset C

210° 27' 30" — 4767.98

211° 38' 54" — 2054.13

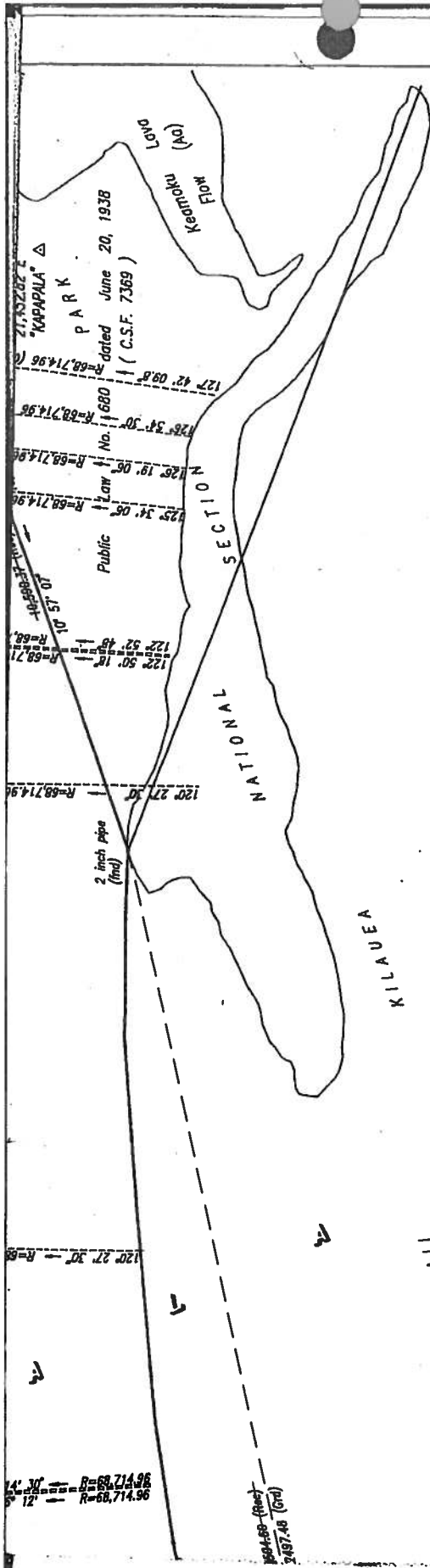
Access Permitted
212° 51' 30" — 49.98

See Inset D

211° 38' 54" — 3223.83

2 inch pipe
(Find & Appled)

HAWAII BELT ROAD
Kilauea Section
Hawaii National Park
40,782.53 N



STATE OF HAWAII
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
 SURVEY DIVISION
 Stanley T. Hasegawa - State Land Surveyor

PORTION OF THE GOVERNMENT (CROWN) LAND OF KAPAPALA
 PARCEL 3
 KAPAPALA, KAUAI ISLAND OF HAWAII, HAWAII

SCALE: 1 inch = 2000 feet

Tracing by: E.S.H., Inc. - June 8, 1994
 Job No. H-6(92)

See C.S.F. NO. 22,116 for description

H.S.S. PLAT 127

EXHIBIT "B" 21" X 32" = 4.7 Sq.Ft.

81

Order

Executive
 (C.S.F. J409)

Governor's

Notes:
 Azimuths and Coordinates are referred to
 Government Survey Triangulation Station
 "KAPAPALA"

o-o-o Denotes no vehicle access
 permitted.
 a-b-a Denotes access permitted.



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 22,116

June 8, 1994

PORTION OF
THE GOVERNMENT (CROWN) LAND OF KAPAPALA

PARCEL 3

Kapapala, Kau, Island of Hawaii, Hawaii

Beginning at the north corner of this parcel of land, on the west boundary of Hawaii National Park, Kilauea Section, Public Law No. 680 dated June 20, 1938 and on the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPAPALA" being 40,782.53 feet North and 21,452.82 feet East as shown on Government Survey Registered Map H.S.S. Plat 127, thence running by azimuths measured clockwise from True South:-

1. 10° 57' 07" 10,576.41 feet along the Hawaii National Park, Kilauea Section, Public Law No. 680 dated June 20, 1938 to a 2-inch pipe;
2. Thence along the 1868 Lava Crack along Hawaii National Park, Kilauea Section, Governor's Executive Order 81, the direct azimuth and distance being:
17° 43' 55" 32,497.48 feet;
3. 89° 36' 19" 2240.75 feet along the Government Land of Kaalaala to a spike;
4. 32° 24' 22" 3361.59 feet along the Government Land of Kaalaala to a spike;
5. 74° 41' 33" 1252.69 feet along the Government Land of Kaalaala to a spike;
6. 103° 25' 28" 4535.93 feet along the Government Land of Kaalaala to a spike;

EXHIBIT "A"

7. 83° 09' 03" 2498.28 feet along the Government Land of Kaalaala to a spike;
8. 160° 03' 58" 318.77 feet along the Government Land of Kaalaala to a spike;
9. 225° 09' 40" 2155.80 feet along the southeast side of Kau Belt Road, War Emergency Relief, Project No. W.E.R. 1(1);
10. Thence along the southeast side of Kau Belt Road, War Emergency Relief Project No. W.E.R. 1(1) on a curve to the left with a radius of 2331.83 feet, the chord azimuth and distance being:
213° 54' 40" 909.83 feet;
11. 202° 39' 40" 6413.75 feet along the southeast side of Kau Belt Road, War Emergency Relief Project No. W.E.R. 1(1);
12. 222° 38' 793.67 feet along Section A of Kaalaala-Makakupu Government Tract;
13. 128° 58' 282.45 feet along Section A of Kaalaala-Makakupu Government Tract;
14. 202° 39' 40" 6327.01 feet along the southeast side of Kau Belt Road, War Emergency Relief Project No. W.E.R. 1(1);
15. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 5689.58 feet, the chord azimuth and distance being:
207° 41' 35" 998.08 feet;
16. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 5689.58 feet, the chord azimuth and distance being:
214° 07' 30" 278.02 feet;
17. 260° 00' 69.28 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
18. 191° 20' 113.43 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);

19. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 5689.58 feet, the chord azimuth and distance being:
218° 57' 12" 374.96 feet;
20. 220° 50' 30" 230.76 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
21. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the left with a radius of 9862.14 feet, the chord azimuth and distance being:
212° 36' 15" 2826.03 feet;
22. 204° 22' 3007.93 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
23. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
205° 17' 2198.63 feet;
24. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
206° 13' 15" 49.98 feet;
25. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
208° 21' 5055.92 feet;
26. 210° 27' 30" 4316.19 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
27. 300° 27' 30" 10.00 feet along a jog on the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
28. 210° 27' 30" 400.00 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
29. 120° 27' 30" 10.00 feet along a jog on the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);

30. 210° 27' 30" 4767.98 feet along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
31. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
211° 38' 54" 2854.13 feet;
32. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
212° 51' 33" 49.98 feet;
33. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
214° 13' 27" 3223.83 feet;
34. 305° 34' 06" 10.00 feet along a jog on the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
35. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,704.96 feet, the chord azimuth and distance being:
215° 56' 36" 899.34 feet;
36. 126° 19' 06" 10.00 feet along a jog on the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5);
37. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
216° 36' 48" 707.59 feet;
38. Thence along the southeast side of Hawaii Belt Road, Federal Aid Project No. F-18(5) on a curve to the right with a radius of 68,714.96 feet, the chord azimuth and distance being:
217° 18' 19.9" 952.70 feet
to the point of beginning and containing an
AREA OF 5,820.96 ACRES, MORE OR
LESS.

22,116

C.S.P. No. _____

June 8, 1994

Vehicle access shall not be permitted into and from Hawaii Belt Road, Federal Aid Project No. F-18(5) over and across Courses 15 to 23, inclusive, 25 to 31, inclusive and 33 to 38, inclusive of the above-described Parcel 3.

Excepting and reserving therefrom all existing roads and trails within the above-described parcel of land and such other roads, trails and other rights-of-way that may be required for public purposes, such rights-of-way to be designated by the Board of Land and Natural Resources at such times and for such widths as deemed proper and necessary.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor gm

Compiled from survey and
data provided by ESH, Inc.,
CSFs 11033, 11044, 11045
and 12334 and other Govt.
Survey Records.

ASSIGNMENT OF LEASE EVALUATION POLICY

1. Enabling Statute.

Act 104, effective May 24, 1989, amended Chapter 171-36(a) (5) to read in part:

"... provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;" (revision underlined)

2. Qualifying Leases.

This policy shall be applicable to the subject lease.

3. Prior Approval.

Prior to giving its consent to an assignment, DLNR must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Land Board have given their approval. Such assignments shall be entertained only if they meet the criteria set forth in Section 171-36(a) (5), HRS.

4. Qualifications of Assignee.

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

5. Consideration to be Paid.

Prior to review by the Attorney General and approval by the Land Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

6. Payment of Premium.

The act permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 calendar days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee's operation on the premises within 30 calendar days after their purchase. Lessees shall be required to furnish evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.

The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

In cases where the lessee is unable to furnish the Department of Land and Natural Resources with evidence of the actual cost of construction of improvements because the lessee has performed the work itself, the State may determine the cost or the lessee shall have the option of paying for an appraiser, to be selected by the Department of Land and Natural Resources, to determine what the improvements would have cost if the labor had been performed by a third party rather than the lessee. The lessee shall exercise its option by giving written notice to the lessor within thirty (30) calendar days after completion of construction of the improvements. If the lessee fails to exercise its option within this period, the lessor shall have the right to determine the cost of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

7. Non-qualifying Deductions.

The statute only recognizes tangible items. Intangibles such as "goodwill", business name recognition, etc., are not deductible.

8. Subsequent Assignments.

If the consideration for any subsequent assignment includes the purchase of existing tenant owned

improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the Base Year is redefined to be the date the assignor received the Consent of the Board to occupy the premises. The holding period (redefined Base Year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (The whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.

The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. Rights of Holders of Security Interest-Agricultural Leases only.

In the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.

SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations.

Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)* and divide the result by the CCI of the year construction was completed (base year) to get the adjusted cost of improvements or renovations.

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Improvements or Renovations

Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example

	Actual cost:	\$500,000
	CCI (most recent):	121.1
	CCI (base year):	102.3
1. Adjusted Cost of Improvements or Renovations	Expired term:	57 mos.
	Whole term:	408 mos.

Actual Cost X $\frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$

$$\$500,000 \times \frac{121.1}{102.3} = \$591,887$$

2. Depreciation

$$\$591,887 \times \frac{57 \text{ mos.}}{408 \text{ mos.}} = \$82,690$$

3. Adjusted Depreciated Cost of Improvements or Renovations

$$\$591,887 - \$82,690 = \underline{\$509,197}$$

SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture.

Multiply the actual cost of the trade fixture by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)* and divide the result by the CPI of the year in which the purchase was made (base year).

2. Depreciation.

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Trade Fixtures.

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

*As published by the U.S. Department of Labor, Bureau of labor Statistics

Refrigerator

Example

	Actual cost:	\$1,510
	CPI (most recent):	118.1
	CPI (base year):	104.6
1. Adjusted Cost of Trade Fixture	Expired term:	57 mos.
	Whole term:	96 mos.
	(Anticipated life)	

$$\text{Actual Cost} \times \frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$$

$$\$1,510 \times \frac{118.1}{104.6} + \$1,705$$

2. Depreciation

$$\$1,705 \times \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1,012$$

3. Adjusted Depreciated Cost of Trade Fixture

$$\$1,705 - \$1,012 = \$ 693$$

SCHEDULE C. Premium Percentages

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<u>Years</u>	<u>Percentage</u>
1 - 5	50%
6 - 10	45%
11 - 15	40%
16 - 20	35%
21 - 25	30%
26 - 30	25%
31 - 35	20%
36 - 40	15%
41 - 45	10%
46 - 50	5%
51 -	0%

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10+ years), the percentage would be 40%.

2. The Board of Land and Natural Resources may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.

SCHEDULE D. Assignment of Lease Calculations

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.
2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).
4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by no. 2 and 3 from the amount in no. 1 above.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

A lease is being assigned 57 months after completion of the improvements at a consideration of \$600,000.

The initial cost of the improvements was \$500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was \$1,510 with the current year CPI and base year CPI being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Net Consideration:		\$600,000
2.	Adj Cost Imp/Ren:	\$591,887	
	Depreciation:	<u>- 82,690</u>	
	Adj Dep Cost Imp/Ren:		-509,197
3.	Adj Cost Trade Fixtures:	1,705	
	Depreciation:	<u>- 1,012</u>	
	Adj Dep Cost Trade Fixtures:		- <u>693</u>
4.	Excess:		\$ 90,110
5.	Premium:	Percentage: 50%	\$ 45,055

SCHEDULE E. Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.
2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.
3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).
4. Subtract the amount derived by no. 3 from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is \$1,000,000.

The consideration paid by the assignor was \$600,000 while the current year CCI and redefined base year CCI were 156.4 and 121.1, respectively. The whole term was 408 months.

No inventory was included in either consideration. However, a premium of \$45,055 was paid to the state by the previous occupant from the \$600,000 consideration.

1.	Net Consideration <u>Received</u> :		\$1,000,000
2.	Consideration <u>Paid</u> :	\$600,000	
	Premium:	<u>- 45,055</u>	
	Net Consideration <u>Paid</u> :		\$554,945
3.	Adj Value Consideration (improvements):		
	\$554,945 X $\frac{156.4}{121.1}$	=	\$716,708
	Depreciation:		
	\$716,708 X $\frac{107 \text{ mos.}}{408 \text{ mos.}}$	=	<u>-187,960</u>
	Adj Dep Value Consideration:		- <u>528,748</u>
4.	Excess:		\$ 471,252
5.	Premium:	Percentage: 45%	<u>\$ 212,063</u>

GL-5844									
HAWAII OUTDOOR TOURS, INC.									
As of 9/26/13									
\$250,000.00 billed on the 1st February/August									
	BILLING AMOUNT	BILLING PERIOD	BILLING PERIOD	INTEREST PENALTY (1% per month)	LATE FEES	TOTAL			
August 2013	249,651.61	8/1/13-1/31/14		2,496.52					
September 2013		8/1/13-1/31/14		2,496.52	50.00				
October 2013		8/1/13-1/31/14		2,496.52	50.00				
TOTAL A/O 9/30	249,651.61			7,489.56	100.00	7,589.56			
November 2013		11/01/13-11/20/13		1,610.60	50.00				
Total A/O 11/20/13				9,100.16	150.00	9,250			
Daily Interest Amount	249,651.61			80.53					

EXHIBIT E

September 13, 2013

Honorable William J. Aila Jr., Chair,
And Members of the Board of Land and Natural Resources
Kalanimoku Building Room 132
1151 Punchbowl Street
Honolulu, Hawai'i 96813

Re: Agenda Item D-10, Chapter 11 Bankruptcy Case No. 12-02279 and General Lease No. S-5844, Hawaii Outdoor Tours Inc.

Aloha Chair Aila and Board Members:

Thank you for this opportunity to urge the Board of Land and Natural Resources to firmly enforce each of the terms of lease S-5844. No special consideration should be given to lessee Hawai'i Outdoor Tours or to First Citizens Bank, which is the lien holder in this case.

We urgently need a prompt and decisive resolution to the very pressing problems caused by the deterioration of the 391-room Naniloa Volcanoes Resort.

I recently retired from a 25 year career with the Big Island Visitors bureau. We have been struggling to attract flights from the mainland USA to Hilo.

To do this we needed to attract the affluent traveler to Hilo, which is the market airlines are targeting as they plan their routes. We embarked on a marketing plan to attract visitors to Hilo and its Attractions, beginning with the Volcano, which was constantly in the news

Years ago, White sands beaches, coconut trees etc were the craze and Oahu Maui Kauai. West Hawaii became the desired destination.

The world has changed since I started in the business 45 years ago and people are seeking the experience Hilo and the National park offers. You hear the words Green, sustainable, Kindness, family, Aloha spirit and it's all here

The attractions and local experiences that visitors are looking for are available but, deluxe accommodation of at least 3star quality, with the exception of a few B and B's scattered throughout East Hawaii, are nonexistent.

UAL'S Merger with continental airlines offered the opportunity we were looking for. Flights from both LA and SF to Hilo.

The airlines took us at our word that good things were happening as we shared our vision that Hilo Hotels were in the process of being upgraded, thus making available to UAL the clientele that fit into the deluxe category. UAL created an open jaws ticket fare which allowed a passenger to enter into Hilo and depart from Kona which encourages the guest to stay in Hilo for a few days to visit the Hawaii Volcanoes National park and charming Hilo and its attractions then going on to Kona for the rest of their stay and departing from Kona without any additional cost.

However the imbalance of hotel categories between Hilo and the West Hotels remained a problem and the open jaws ticketing and related programs have not worked

EXHIBIT G

as we expected ,launched their visit to the Hawaii Volcanoes National Park from west Hawaii, leaving no with no time to see anything else. One hotel ,the Hilo Hawaiian has improved but Banyan drive needs much more to create an inviting visitor experience Nothing has happened to the once finest hotel in Hilo .

We have at least 1500 of our east Hawaii Residents traversing across Island every week. we have seen the strain of this effect the family structure which leads to other social problems

Some say Hawaii as a state, has reached its visitor carrying capacity in some places such as Oahu, with their huge numbers of international flights that land there .Its the forth largest gateway into the USA .followed by Los Angeles, at #5.

Add the convention center and its quest to attract city wide conventions and you are maxed out.

Maui has the same good fortune It has a very ,strong brand which increasingly enables them to reach their capacity at times ,That leaves Kauai And Hawaii Island with the ability to grow and accommodate these visitors.

Hawaii Island with so much room to grow is the obvious choice.

With a state target of 8.5 million visitors The HTA and JHTA recently announced their target of 2 million Japanese to Hawaii in the next year or so. Not to mention others from Asia whose numbers are increasing in double digit numbers.

Jobs are being lost, businesses are suffering, the state is collecting less transient accommodation and excise tax revenue than it should, and potential lease rent revenue is being lost to the state because of this lessee's failure to comply with the terms of the lease at this single, strategically placed resort.

The Board of Land and Natural Resources has been extremely understanding over the past eight years in its dealings with Hawai'i Outdoor Tours. To give a few examples, this lessee failed to maintain the \$1 million performance bond required by the lease. This lessee previously failed to stay current on the lease rent, and was issued notices of default. This lessee filed for bankruptcy protection a year ago, yet the lease specifically allows for termination "if the Lessee shall become bankrupt." And this lessee has allowed the historic Naniloa property to dramatically deteriorate despite clear language in the lease that requires the lessee to "keep, repair, and maintain all buildings and improvements...on the premises in good order, condition and repair...."

On Aug. 1, this lessee again failed to make the required semi-annual rent payment, and was granted an extension. Now the land board is being asked for yet another extension to delay this required payment until the end of the year.

It has been 7 years since the once pride of Hilo was acquired by Hawaii Outdoor tours,it continues to deteriote and its time to end this ,let go and move on.

I respectfully request that the board reject this request for another extension. It is time to proceed in a business-like way to enforce the requirements of the lease. Our community cannot afford to allow the unfortunate situation at the Naniloa to continue any longer.

Sincerely,

.George S Applegate

September 13, 2013

Honorable William J. Aila Jr., Chair,
And Members of the Board of Land and Natural Resources
Kalanimoku Building Room 132
1151 Punchbowl Street
Honolulu, Hawai'i 96813

Re: Agenda Item D-10, Chapter 11 Bankruptcy Case No. 12-02279 and General Lease No. S-5844, Hawaii Outdoor Tours Inc.

Aloha Chair Aila and Board Members:

Thank you for this opportunity to urge the Board of Land and Natural Resources to firmly enforce each of the terms of lease S-5844. No special consideration should be given to lessee Hawai'i Outdoor Tours or to First Citizens Bank, which is the lien holder in this case.

We urgently need a prompt and decisive resolution to the very pressing problems caused by the deterioration of the 391-room Naniloa Volcanoes Resort. Our community has been negatively affected by the deteriorating state of the resort – not just economically but also morally as the citizens of East Hawai'i live with a depressed situation located at a very prime, high potential, highly trafficked area at the Waiākea Peninsula.

The East Hawai'i community has so much to offer both the visitor and kama'āina audiences that come to or live on Hawai'i Island. From the Volcano National Park, to the 'Imiloa Astronomy Center, to the cultural and unique offerings of Hilo town. This community deserves to have an opportunity to better serve our kama'āina, our visitors, and to attract even more activities to our unique island. This is very difficult to accomplish when one of our prime locations is regarding to as a "condemnation area."

I respectfully request that the board reject this request for another extension. It is time to proceed in a business-like way to enforce the requirements of the lease. Our community cannot afford to allow the unfortunate situation at the Naniloa to continue any longer.

Mahalo nui for your consideration,



Ka'iu Kimura
Concerned Community Member

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Nancy J. Youngren
John D. Zalewski

† A Law Corporation
Daniel H. Case (Retired 2012)

Of Counsel
Frederick W. Rohlfing III

September 6, 2013

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Via Email: cynthia.m.johiro@hawaii.gov
damien.a.elefante@hawaii.gov
donna.h.kalama@hawaii.gov

Donna H. Kalama, Esq.
Dept. of the Attorney General
Land & Transportation Division
465 S. King Street, Suite 300
Honolulu, Hawaii 96813

Re: In re Hawaii Outdoor Tours, Inc. dba Nanilloa Volcanoes Resort and Naniloa Volcanoes Golf Club ("Debtor"); U.S. Bankruptcy Court, District of Hawai'i, Case No. 12-02279; General Lease S-5844, Hawaii Outdoor Tours, Inc., Lessee, South Hilo, Hawaii: Tax Map Key Nos. (3) 2-1-01:12, 2-1-05:13, 16, 17, 27, 32 & 46 (the "Lease")

Dear Counsel,

This is a joint letter from respective counsel for David C. Farmer ("Trustee"), Chapter 11 Trustee of Debtor, and First-Citizens Bank ("Bank"), the Security Interest Holder and Mortgagee, with respect to the General Lease S-5844 by and between the State of Hawaii, Department of Land and Natural Resources ("State DLNR" or "Lessor"), as lessor, and Debtor, as lessee, for the Naniloa Volcanoes Resort and Golf Club (the "Naniloa"). The Trustee was appointed by the Bankruptcy Court in May 2013.

The Trustee and Bank request that the State DLNR and the Board of Land and Natural Resources (the "Board") take the following actions at the Meeting of the Board of Land and Natural Resources on September 13, 2013 (the "Requested Actions"):

MEMBER OF LEX MUNDI, THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

29374/1/1688378.1

Cynthia M. Johiro, Esq.
Damien A. Elefante, Esq.
Donna H. Kalama, Esq.
September 6, 2013
Page 2

- (1) Extend the deadline to assume or reject the Lease from September 16, 2013, to and including December 31, 2013;
- (2) Extend the deadline for payment of the August 2013 Lease Rent from September 16, 2013, to and including December 31, 2013; and
- (3) Extend the deadline for reinstatement of the Performance Bond from \$500,000 to \$1,000,000 until December 31, 2013.

All of the forgoing Requested Actions and deadlines are subject to potential additional requests so that the Naniloa may be sold by the Trustee.

It is our understanding that the next scheduled meeting of the Board of Land and Natural Resources is on Friday, September 13, 2013 at 9:00 a.m. (the "September 13 Meeting"). It is our further understanding that the Requested Actions will be placed on the DLNR Board's Agenda for action at the September 13 Meeting. Please confirm that all three of the aforementioned Requested Actions are on the Agenda for the September 13 Meeting. Counsel for the Trustee and the Bank intend to appear at the September 13 Meeting.

It is imperative that the Requested Actions be heard and approved at this meeting for the reasons stated herein:

1. Automatic Rejection of Lease on September 16, 2013

The State DLNR's failure to approve the Requested Actions will likely result in more negative publicity, a potential shutdown of the Naniloa and loss of jobs, and a negative impact on the County of Hawaii. **September 16, 2013** is currently the Bankruptcy Court-approved deadline to assume or reject the Lease. The deadline cannot be extended by the Bankruptcy Court without the Lessor's consent. If the deadline to assume or reject is not extended prior to this date by Bankruptcy Court Order, the Lease is automatically deemed rejected. A rejection of the Lease results in substantial uncertainty for the future of the Naniloa and loss of the Bankruptcy Court's jurisdiction to administer the Chapter 11 case and property for sale.

2. Current Cash Position of Debtor

There is no current buyer for the Naniloa. Given the current cash position of the Debtor, the Lease cannot be assumed because there are monetary defaults which cannot be cured. In addition, the August Lease Rent cannot be made, and the Performance Bond cannot be replenished from its current amount of \$500,000 to the original amount of \$1,000,000. As of August 30, 2013, the unencumbered cash of the

Cynthia M. Johiro, Esq.
Damien A. Elefante, Esq.
Donna H. Kalama, Esq.
September 6, 2013
Page 3

Debtor totaled \$153,255.33. This amount is insufficient to cover the \$250,000 August Lease Rent Payment, replenish the \$500,000 increase in the Performance Bond, or pay the estimated \$1,227,000¹ in other cure amounts required to assume the Lease. The only way that these amounts can be satisfied is through a sale of the Naniloa to a third-party buyer and the use of sale proceeds to make the required Lease payment to the State DLNR.

3. Colliers International HI, LLC Employed as a Listing Broker

The Trustee and the Bank have been working to sell the Naniloa to an acceptable third-party buyer whom will pay off the amounts owed to the State DLNR under the terms and conditions of the Lease. On Friday, August 30, 2013, the Bankruptcy Court approved the Trustee's application to employ Colliers International HI, LLC ("Colliers") as the real estate broker to market and sell the Naniloa. Colliers is actively marketing the Naniloa internationally in an effort to sell the Naniloa to the highest potential buyer.

In an effort to keep the Naniloa operational as an ongoing business for the benefit of all parties, the Bank has provided funding, including but not limited to the following: (1) payment of \$262,000 for the August 2012 Lease Rent owed to the State DLNR; (2) payment of \$260,015.95 in October 2012 to replenish the State DLNR's Performance Bond to the required amount of \$500,000; and (3) \$165,000 to date to fund the Trustee's fees and his attorney's fees to keep the Debtor's Bankruptcy Case progressing toward a successful conclusion. We request that the State DLNR agree to the Requested Actions in an effort to continue the hotel and golf course operations of the Naniloa operational for the benefit of all parties.

(Continued on next page)

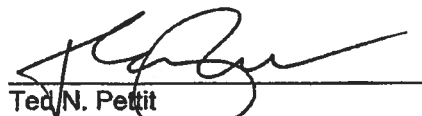
¹ Other Estimated Cure Amounts: Real Property Taxes (County of Hawaii) \$441,000; Unpaid Utilities \$245,000; State Tax Liens \$541,000

Cynthia M. Johiro, Esq.
Damien A. Elefante, Esq.
Donna H. Kalama, Esq.
September 6, 2013
Page 4

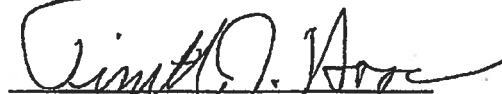
We appreciate your prompt attention and anticipated cooperation in this matter.

Yours very truly,

CASE LOMBARDI & PETTIT



Ted N. Pettit
Ryan M. Hamaguchi
Attorney for Secured Creditor
FIRST-CITIZENS BANK



TIMOTHY J. HOGAN
Attorney for Trustee
DAVID C. FARMER

cc: Christopher Muzzi, Esq. (via email: cmuzzi@hilaw.us)
Curtis Ching, Esq. (via email: curtis.b.ching@usdoj.gov)
Ramon J. Ferrer, Esq. (via email: ramonlawfirm@hotmail.com)



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September 13, 2013

Honorable William J. Alla Jr., Chair,
And Members of the Board of Land and Natural Resources
Kalanimoku Building Room 132
1151 Punchbowl Street
Honolulu, Hawai'i 96813

Re: Agenda Item D-10, Chapter 11 Bankruptcy Case No. 12-02279 and General Lease No. S-5844, Hawaii Outdoor Tours Inc.

Aloha Chair Aila and Board Members:

Thank you for this opportunity to urge the Board of Land and Natural Resources to firmly enforce each of the terms of lease S-5844. No special consideration should be given to lessee Hawai'i Outdoor Tours or to First Citizens Bank, which is the lien holder in this case.

We urgently need a prompt and decisive resolution to the very pressing problems caused by the deterioration of the 391-room Naniloa Volcanoes Resort. Enormous effort has been invested in bringing direct flights to Hilo to boost the East Hawai'i economy, yet the lingering problems at the Naniloa jeopardize all of the progress that has been made. If we lose those direct flights, the damage done by the failure at the Naniloa threatens to ripple out into the surrounding business community.

Jobs are being lost, businesses are suffering, the state is collecting less transient accommodation and excise tax revenue than it should, and potential lease rent revenue is being lost to the state because of this lessee's failure to comply with the terms of the lease at this single, strategically placed resort.

The Board of Land and Natural Resources has been extremely understanding over the past eight years in its dealings with Hawai'i Outdoor Tours. To give a few examples, this lessee failed to maintain the \$1 million performance bond required by the lease. This lessee previously failed to stay current on the lease rent, and was issued notices of default. This lessee filed for bankruptcy protection a year ago, yet the lease specifically allows for termination "if the Lessee shall become bankrupt." And this lessee has allowed the historic Naniloa property to dramatically deteriorate despite clear language in the lease that requires the lessee to "keep, repair, and maintain all buildings and improvements...on the premises in good order, condition and repair...."

On Aug. 1, this lessee again failed to make the required semi-annual rent payment, and was granted an extension. Now the land board is being asked for yet another extension

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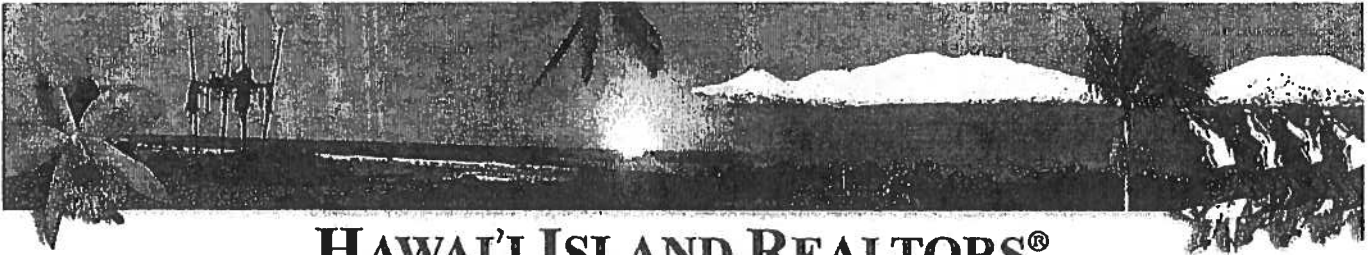
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to delay this required payment until the end of the year.

I respectfully request that the board reject this request for another extension. It is time to proceed in a business-like way to enforce the requirements of the lease. Our community cannot afford to allow the unfortunate situation at the Naniloa to continue any longer.

Sincerely,

Wailana Herbst, President
Hawaii Island REALTORS®

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September 10, 2013

Honorable William Aila Chairman & Members of the BLNR
Kalanimoku Building, Room 132
1151 Punchbowl Street
Honolulu, HI 96813

RE: Agenda Item D-10, Chapter 11 Bankruptcy Case No. 12-02279 & General Lease No. S-5844, Hawaii Outdoor Tours Inc.

Aloha Chair Aila and Members of the Board:

Thank you for allowing me the opportunity to provide input on this Agenda item.

I was born and raised in Hilo and have seen the Banyan Drive during her glory days of 60's and 70's and, unfortunately, to its current state of embarrassment. I am the President of the Crescent City Lions Club, Kumamoto Doshi Kai, Sons and Daughters of AJA Veterans at the Waiakea High School PTSA. I serve on the Boards of the Japanese Community Assn., Japanese Chamber of Commerce and Industry of Hawaii, Senior YBA, Big Island Junior Golf Assn., and the Hilo High School Alumni Assn. I am a member of the Saddle Road Task Force and County of Hawaii Liquor Commission.

I strongly urge that the Board enforce the original lease requirements and that no special consideration be given to the current lessee, Hawaii Outdoor Tours and, lienholder, First Citizens Bank. For the following reasons:

1. Current lessee has constantly violated the original lease requirements.
2. The State has been extremely lenient to the lessee, regarding their financial obligations, but the lessee has consistently failed to meet the agreed upon terms.
3. The current condition of the property is deplorable.
4. State revenues that should have been generated from this property are much less than anticipated, which hurts all Hawaii taxpayers.
5. Banyan Drive should be the hub of the Hilo Community not its armpit.

Once again, I urge the Board to enforce the original terms of the lease.

Respectfully submitted,

Dwayne T. Mukai

'1206 Malawaina Place
Hilo, HI 96720
September 11, 2013

Honorable William J. Aila Jr., Chair
and Members of the Board of Land and Natural Resources
Kalanimoku Building, Room 132
1151 Punchbowl Street
Honolulu, Hawaii 96813

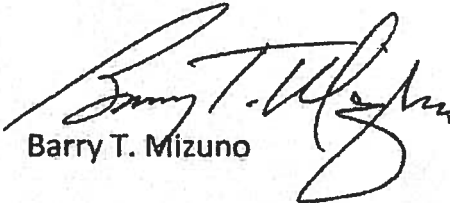
RE: Agenda Item D-10, Chapter 11 Bankruptcy Case No. 12-02279 and General Lease No. s-5844, Hawaii Outdoor Tours, Inc.

Aloha Chair Aila and Members of the Board:

Hilo has been waiting a long time for the development of a resort property we can all be proud of. We continue to wait for the once, grand Naniloa Hotel to regain the stature it deserves – a property we can recommend to our business associates, friends and relatives. You, the Land Board, has been diligent in allowing the lessee ample time to make the necessary renovations and lease payments. You have been more than fair.

As a member of the Hilo community, I am satisfied that the Board has allowed ample time and has been extremely understanding in helping a lessee to succeed. I respectfully ask the Board to stop further extension and delays and expeditiously proceed with enforcing terms of the lease. It is time to move on.

Sincerely,


Barry T. Mizuno

September 13, 2013

Honorable William J. Aila Jr., Chair,
And Members of the Board of Land and Natural Resources
Kalanimoku Building Room 132
1151 Punchbowl Street
Honolulu, Hawai'i 96813

**Re: Agenda Item D-10, Chapter 11 Bankruptcy Case No. 12-02279 and General Lease No. S-5844,
Hawaii Outdoor Tours Inc.**

Aloha Chair Aila and Board Members:

I am writing you in concern about the continued operation of the Naniloa Resort in its current condition and urge the BLNR to enforce the terms of lease S-5844. This operation and the current state of the building is a black mark on Banyan Drive and Hilo and is drawing down the general business in the area. It negates the efforts of the community and the HTA in trying to attract tourism to the area.

By not enforcing the lease, the asset will continue to deteriorate and the current value of the building will soon reach zero. The building is an eyesore. Continuing to work with a bankrupt company is pointless; Hawaii Outdoor Tours has more than enough time to remedy its lease and has failed to do so.

The Board of Land and Natural Resources has been extremely understanding over the past eight years in its dealings with Hawai'i Outdoor Tours. The lessee failed to maintain the \$1 million performance bond required by the lease. This lessee previously failed to stay current on the lease rent, and was issued notices of default. This lessee filed for bankruptcy protection a year ago, yet the lease specifically allows for termination "if the Lessee shall become bankrupt."

On Aug. 1, this lessee again failed to make the required semi-annual rent payment, and was granted an extension. Now the land board is being asked for yet another extension to delay this required payment until the end of the year.

It is time for the BLNR to face the facts and cut the cord to Hawaii Outdoor Tours and get on to finding a new direction for the property. It is highly obvious that if there were interested parties out in the business world that would come to the rescue of the Nailoa Resort they would have already been heard from, the silence speaks loudly!

Thank you for this opportunity to urge the Board of Land and Natural Resources to firmly enforce each of the terms of lease S-5844. No special consideration should be given to lessee Hawai'i Outdoor Tours or to First Citizens Bank, which is the lien holder in this case.

Sincerely

Charles J. Maas
Champ Hospitality LP
13-3526 Alapai St
Pahoa, Hawaii 96778

September 12, 2013

Honorable William J. Aila Jr., Chair,
And Members of the Board of Land and Natural Resources
Kalanimoku Building Room 132
1151 Punchbowl Street
Honolulu, Hawai'i 96813

Re: Agenda Item D-10, Chapter 11 Bankruptcy Case No. 12-02279 and General Lease No. S-5844, Hawaii Outdoor Tours Inc.

Aloha Chair Aila and Board Members:

As a resident of Hilo, I respectfully urge the Board of the Land and to firmly enforce each of the terms of lease S-5844. No further special considerations should be given to lessee Hawai'i Outdoor Tours or to First Citizens Bank, which is the lien holder in this case. A prompt and decisive resolution to the very pressing problems caused by the deterioration of the 391-room Naniloa Volcanoes Resort is needed.

The Board of Land and Natural Resources has bent over backwards in its dealings with Hawai'i Outdoor Tours over the past eight years. However the current lessee has not been able to run the hotel successfully. It's time that a new lessee is given an opportunity to do so.

The current lessee has failed to maintain the \$1 million performance bond required by the lease. This lessee previously failed to stay current on the lease rent, and was issued notices of default. This lessee filed for bankruptcy protection, yet the lease specifically allows for termination "if the Lessee shall become bankrupt." And this lessee has allowed the historic Naniloa property to dramatically deteriorate despite clear language in the lease that requires the lessee to "keep, repair, and maintain all buildings and improvements...on the premises in good order, condition and repair...."

On Aug. 1, this lessee again failed to make the required semi-annual rent payment, and was granted an extension. Now the land board is being asked for yet another extension to delay this required payment until the end of the year.

I respectfully request that the board reject this request for another extension. It is time to proceed in a business-like way to enforce the requirements of the lease. Our community cannot afford to allow the unfortunate situation at the Naniloa to continue any longer.

Sincerely,



Michael D. Miyahira
232 Pohakulani Street
Hilo, Hawaii 96720



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LOCAL 142

September 13, 2013

The Honorable William J. Aila, Jr., Chair
Board of Land and Natural Resources
1151 Punchbowl Street
Kalanimoku Building, Room 132
Honolulu, HI 96813

**RE: Hawaii Outdoor Tours, Inc.
dba Naniloa Volcanoes Resort**

Chair Aila and Members of the Board of Land and Natural Resources:

The ILWU strongly opposes the request by Hawaii Outdoor Tours, Inc. and its CEO, Ken Fujiyama, for an extension of time to pay its semi-annual rent installment and the \$500,000 increase in the performance bond. We support calling the construction bond covering the renovation of improvements at Naniloa Volcanoes Resort and ending the state lease with Hawaii Outdoor Tours, Inc.

From the outset, Hawaii Outdoor Tours failed to demonstrate the financial ability to support this valuable asset on Banyan Drive in Hilo. The company was the successful bidder for the state lease of the property formerly occupied by Hawaii Naniloa Resort, but was unable to place the required sum of \$6.1 million in escrow within 90 days of the auction. Although the money was due at the end of December 2005, Hawaii Outdoor Tours only made the required payment on February 1, 2006.

Since then, Hawaii Outdoor Tours has been delinquent in lease rent payments more than once and has failed to maintain the \$1 million performance bond required by the lease. The company also filed for Chapter 11 bankruptcy protection, raising serious concerns about the company's ability to maintain the property in accordance with standards that will attract visitors and bring value to the State's land assets.

The Naniloa property is in a prime location on Hilo's bayfront and deserves a better, more financially capable steward.

The ILWU's interest stems from more than 20 years of representing workers at Hawaii Naniloa Resort as their exclusive bargaining agent. Through the years, the hotel suffered from low occupancy rates and a decline in visitors to Hilo, but the owners and operators of the hotel maintained a respectful relationship with the ILWU in collective bargaining and honored their commitments to the employees.

“AN INJURY TO ONE IS AN INJURY TO ALL”

The Honorable William J. Aila, Jr., Chair
September 13, 2013
Page Two

When Hawaii Outdoor Tours was awarded the lease, the company summarily laid off all employees and retained fewer than 20 of the 136 bargaining unit workers to operate the hotel. The Naniloa employees were all long-time residents of Hilo, members of the community, parents and grandparents, who were loyal to the hotel and to creating a welcoming experience for visitors to Hilo. They sacrificed when times were hard and were rewarded when times were good. They struggled, along with management, to keep the hotel running.

Instead of retaining employees dedicated to the Naniloa property, Hawaii Outdoor Tours shuttled its employees from Volcano House and Nani Mau Gardens to operate the hotel. These non-union employees were expected to maintain three properties while severely understaffed. As a result, the infrastructure of all three properties suffered, perhaps leading to the loss of the federal contract for Volcano House and to the owner's bankruptcy filing.

In the seven years since Hawaii Outdoor Tours has operated the hotel, Naniloa's physical plant has suffered serious deterioration. The Crown Room, which had been the hotel's crown jewel with activities every weekend, was shut down. The banquet room on the 10th floor was similarly closed. The Polynesian Room in a building adjacent to the main hotel was left standing, unused and falling apart.

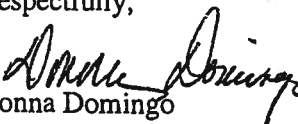
Although other bidders for the state lease were well-capitalized and proposed to spend millions of dollars on renovations to restore the hotel, the lease was awarded instead to Hawaii Outdoor Tours, which was already struggling to maintain its contract for Volcano House and to operate Nani Mau Gardens. When Hawaii Outdoor Tours took over the Naniloa, its primary objective seemed to be to cut costs, first with the layoff of most of its workforce, then with minimal investment in renovations.

Allowing an extension of time for Hawaii Outdoor Tours to come up with its semi-annual rent payment, already delinquent with \$250,000 due on August 1, 2013, and an extension of time to pay the \$500,000 increase in the performance bond will only further delay potential restoration of the hotel as a quality visitor destination and compound the debt owed to the State.

The only prudent course would be for the Board of Land and Natural Resources to call the construction bond covering the renovation of improvements at Naniloa Volcanoes Resort and end the lease with Hawaii Outdoor Tours. The ILWU urges the Board to exercise its fiduciary responsibility and allow another entity the opportunity to revive the Naniloa property and enhance the State's asset along Hilo's bayfront.

Thank you for the opportunity to offer testimony on this important matter.

Respectfully,


Donna Domingo
President



Barry K. Taniguchi
50 E. Puainako Street, Hilo Hawai'i 96720
Phone (808) 959-2817, Fax (808) 959-8050
E-mail: barry_taniguchi@ktasuperstores.com

September 12, 2013

Honorable William J. Aila Jr., Chair,
And Members of the Board of Land and Natural Resources
Kalanimoku Building Room 132
1151 Punchbowl Street
Honolulu, Hawai'i 96813

Re: Agenda Item D-10, Chapter 11 Bankruptcy Case No. 12-02279 and General Lease No. S-5844, Hawaii Outdoor Tours Inc.

Aloha Chair Aila and Board Members:

Thank you for this opportunity to ask the Board of Land and Natural Resources ("BLNR") to enforce the terms of lease S-5844. Special consideration has already been given to the lessee Hawai'i Outdoor Tours and to First Citizens Bank, the lien holder in this case.

We need a prompt and decisive resolution to the very pressing problems caused by the deterioration of the 391-room Naniloa Volcanoes Resort. Enormous effort has been invested in bringing direct flights to Hilo to boost the East Hawai'i economy, yet the lingering problems at the Naniloa jeopardize all of the progress that has been made. If we lose those direct flights, the damage done by the failure at the Naniloa threatens to ripple out into the surrounding business community.

The Board of Land and Natural Resources has been extremely understanding over the past eight years in its dealings with Hawai'i Outdoor Tours. To give a few examples, this lessee failed to maintain the \$1 million performance bond required by the lease. This lessee previously failed to stay current on the lease rent, and was issued notices of default. This lessee filed for bankruptcy protection a year ago, and the lease specifically allows for termination "if the Lessee shall become bankrupt." This lessee has allowed the property to dramatically deteriorate despite clear language in the lease that requires the lessee to "keep, repair, and maintain all buildings and improvements...on the premises in good order, condition and repair...."

Honorable William J. Aila Jr., Chair
September 12, 2013
Page 2

On Aug. 1, this lessee again failed to make the required semi-annual rent payment, and was granted an extension. Now the Land Board is being asked for yet another extension to delay this required payment until the end of the year.

I respectfully urge the BLNR to reject this request for another extension and for the other concessions. It is time to proceed in a business-like way to enforce the requirements of the lease. Our community cannot afford to allow the unfortunate situation at the Naniloa to continue any longer.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond S. Ruiz". The signature is written in a cursive style with a large, sweeping initial "R".



INTERNATIONAL LONGSHORE & WAREHOUSE UNION

LOCAL OFFICE • 451 ATKINSON DRIVE • HONOLULU, HAWAII 96814 • PHONE 949-4161

HAWAII DIVISION: 100 West Lanikaula Street, Hilo, Hawaii 96720 • OAHU DIVISION: 451 Atkinson Drive, Honolulu, Hawaii 96814
MAUI COUNTY DIVISION: 896 Lower Main Street, Wailuku, Hawaii 96793 • KAUAI DIVISION: 4154 Hardy Street, Lihue, Hawaii 96766

LOCAL 142

September 13, 2013

The Honorable William J. Aila, Jr., Chair
Board of Land and Natural Resources
1151 Punchbowl Street
Kalanimoku Building, Room 132
Honolulu, HI 96813

**RE: Hawaii Outdoor Tours, Inc.
dba Naniloa Volcanoes Resort**

Chair Aila and Members of the Board of Land and Natural Resources:

The ILWU strongly opposes the request by Hawaii Outdoor Tours, Inc. and its CEO, Ken Fujiyama, for an extension of time to pay its semi-annual rent installment and the \$500,000 increase in the performance bond. We support calling the construction bond covering the renovation of improvements at Naniloa Volcanoes Resort and ending the state lease with Hawaii Outdoor Tours, Inc.

From the outset, Hawaii Outdoor Tours failed to demonstrate the financial ability to support this valuable asset on Banyan Drive in Hilo. The company was the successful bidder for the state lease of the property formerly occupied by Hawaii Naniloa Resort, but was unable to place the required sum of \$6.1 million in escrow within 90 days of the auction. Although the money was due at the end of December 2005, Hawaii Outdoor Tours only made the required payment on February 1, 2006.

Since then, Hawaii Outdoor Tours has been delinquent in lease rent payments more than once and has failed to maintain the \$1 million performance bond required by the lease. The company also filed for Chapter 11 bankruptcy protection, raising serious concerns about the company's ability to maintain the property in accordance with standards that will attract visitors and bring value to the State's land assets.

The Naniloa property is in a prime location on Hilo's bayfront and deserves a better, more financially capable steward.

The ILWU's interest stems from more than 20 years of representing workers at Hawaii Naniloa Resort as their exclusive bargaining agent. Through the years, the hotel suffered from low occupancy rates and a decline in visitors to Hilo, but the owners and operators of the hotel maintained a respectful relationship with the ILWU in collective bargaining and honored their commitments to the employees.

“AN INJURY TO ONE IS AN INJURY TO ALL”

The Honorable William J. Aila, Jr., Chair
September 13, 2013
Page Two

When Hawaii Outdoor Tours was awarded the lease, the company summarily laid off all employees and retained fewer than 20 of the 136 bargaining unit workers to operate the hotel. The Naniloa employees were all long-time residents of Hilo, members of the community, parents and grandparents, who were loyal to the hotel and to creating a welcoming experience for visitors to Hilo. They sacrificed when times were hard and were rewarded when times were good. They struggled, along with management, to keep the hotel running.

Instead of retaining employees dedicated to the Naniloa property, Hawaii Outdoor Tours shuttled its employees from Volcano House and Nani Mau Gardens to operate the hotel. These non-union employees were expected to maintain three properties while severely understaffed. As a result, the infrastructure of all three properties suffered, perhaps leading to the loss of the federal contract for Volcano House and to the owner's bankruptcy filing.

In the seven years since Hawaii Outdoor Tours has operated the hotel, Naniloa's physical plant has suffered serious deterioration. The Crown Room, which had been the hotel's crown jewel with activities every weekend, was shut down. The banquet room on the 10th floor was similarly closed. The Polynesian Room in a building adjacent to the main hotel was left standing, unused and falling apart.

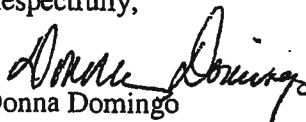
Although other bidders for the state lease were well-capitalized and proposed to spend millions of dollars on renovations to restore the hotel, the lease was awarded instead to Hawaii Outdoor Tours, which was already struggling to maintain its contract for Volcano House and to operate Nani Mau Gardens. When Hawaii Outdoor Tours took over the Naniloa, its primary objective seemed to be to cut costs, first with the layoff of most of its workforce, then with minimal investment in renovations.

Allowing an extension of time for Hawaii Outdoor Tours to come up with its semi-annual rent payment, already delinquent with \$250,000 due on August 1, 2013, and an extension of time to pay the \$500,000 increase in the performance bond will only further delay potential restoration of the hotel as a quality visitor destination and compound the debt owed to the State.

The only prudent course would be for the Board of Land and Natural Resources to call the construction bond covering the renovation of improvements at Naniloa Volcanoes Resort and end the lease with Hawaii Outdoor Tours. The ILWU urges the Board to exercise its fiduciary responsibility and allow another entity the opportunity to revive the Naniloa property and enhance the State's asset along Hilo's bayfront.

Thank you for the opportunity to offer testimony on this important matter.

Respectfully,


Donna Domingo
President

September 13, 2013

Honorable William J. Aila Jr., Chair,
And Members of the Board of Land and Natural Resources
Kalanimoku Building Room 132
1151 Punchbowl Street
Honolulu, Hawaii 96813

**Re: Agenda Item D-10 Bankruptcy Case No. 12-02279 and
General Lease No. S-5844, Hawaii Outdoor Tours Inc.**

Aloha Chair Aila and Board Members

Please, please, enforce the terms of the lease for the Naniloa Hotel and foreclose on the Naniloa Hotel for the sake of the economy of Hilo and the other lessees on the Banyan Peninsula. The Naniloa is the "flagship" property on the Banyan Peninsula and in its current operating model and physical condition is hurting the other lessees in the area as well as the community of Hilo.

Ken Fujiyama has bled the property for his own personal benefit much as he did the Volcano House. At this stage he has no risk, only the State and the other lessees are at risk.

I first worked at the Naniloa in 1947 as a waiter and have been through all the challenges at the hotel as an Executive with InterIsland Resorts. It pains me to see the condition of the hotel today.

I have attached my personal resume to show that I do have knowledge of the hospitality business.

Sincerely,


Robert N. Herkes
robertherkes@hawaiiantel.net

September 10, 2013

Honorable William J. Aila Jr., Chair,
And Members of the Board of Land and Natural Resources
Kalanimoku Building Room 132
1151 Punchbowl Street
Honolulu, Hawai'i 96813

Re: Agenda Item D-10, Chapter 11 Bankruptcy Case No. 12-02279 and General Lease No. S-5844, Hawaii Outdoor Tours Inc.

Aloha Chair Aila and Board Members:

Thank you for this opportunity to urge the Board of Land and Natural Resources to firmly enforce each of the terms of lease S-5844. No special consideration should be given to lessee Hawai'i Outdoor Tours or to First Citizens Bank, which is the lien holder in this case.

We urgently need a prompt and decisive resolution to the very pressing problems caused by the deterioration of the 391-room Naniloa Volcanoes Resort. Enormous effort has been invested in bringing direct flights to Hilo to boost the East Hawai'i economy, yet the lingering problems at the Naniloa jeopardize all of the progress that has been made. If we lose those direct flights, the damage done by the failure at the Naniloa threatens to ripple out into the surrounding business community.

Jobs are being lost, businesses are suffering, the state is collecting less transient accommodation and excise tax revenue than it should, and potential lease rent revenue is being lost to the state because of this lessee's failure to comply with the terms of the lease at this single, strategically placed resort.

The Board of Land and Natural Resources has been extremely understanding over the past eight years in its dealings with Hawai'i Outdoor Tours. To give a few examples, this lessee failed to maintain the \$1 million performance bond required by the lease. This lessee previously failed to stay current on the lease rent, and was issued notices of default. This lessee filed for bankruptcy protection a year ago, yet the lease specifically allows for termination "if the Lessee shall become bankrupt." And this lessee has allowed the historic Naniloa property to dramatically deteriorate despite clear language in the lease that requires the lessee to "keep, repair, and maintain all buildings and improvements...on the premises in good order, condition and repair...."

On Aug. 1, this lessee again failed to make the required semi-annual rent payment, and was granted an extension. Now the land board is being asked for yet another extension to delay this required payment until the end of the year.

I respectfully request that the board reject this request for another extension. It is time to proceed in a business-like way to enforce the requirements of the lease. Our community

cannot afford to allow the unfortunate situation at the Naniloa to continue any longer. To me, the Board is setting a bad precedent in permitting such defaults to continue, and our community has become the victim of this situation.

Sincerely,

Carol A. VanCamp
HC2 Box 9547
Kea'au, HI 96749
(808) 938-0828

DAVID M. LOUIE 2162
Attorney General of Hawaii

ELECTRONIC FILING
Filed: OCT - 7 2013
Docket # 417

CYNTHIA M. JOHIRO 5445
DAMIEN A. ELEFANTE 7271
Deputy Attorneys General
Department of the Attorney
General, State of Hawaii
425 Queen Street
Honolulu, HI 96813
Telephone: 586-1470
E-Mail: Cynthia.M.Johiro@hawaii.gov

Attorneys for the
STATE OF HAWAII

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

HAWAII OUTDOOR TOURS, INC.
dba Naniloa Volcanoes
Resort and Naniloa
Volcanoes Golf Club,

Debtor.

CASE NO. 12-02279
(Chapter 11)

Re: Docket Entry No. 367

HEARING:

DATE: October 21, 2013

TIME: 10:30 a.m.

JUDGE: Honorable Robert J.
Faris

518964

DECLARATION OF MARGARET ROBIDEAU REGARDING
STATE OF HAWAII'S MEMORANDUM IN OPPOSITION TO TRUSTEE'S
MOTION FOR ORDER (A) AUTHORIZING THE
ASSUMPTION OF CERTAIN UNEXPIRED NON-RESIDENTIAL
REAL PROPERTY LEASES AND (B) ESTABLISHING CURE COSTS;
EXHIBIT H

1. I am a Delinquent Tax Collection Assistant II, Collection Division, for the First Taxation District (Oahu), Department of Taxation, State of Hawaii. As such, I am authorized and empowered to compute and collect all general excise, income, and other tax liabilities due the State of Hawaii, to file tax liens upon property and rights to property belonging to any person liable to pay tax, to monitor payment of Hawaii Outdoor Tours, Inc.'s ("Debtor") outstanding tax liabilities, to file proofs of claim for outstanding tax liabilities of the Debtor, and to enforce such claims, liens, and other rights of the State of Hawaii in respect thereof.

2. As part of my duties, I have been assigned to monitor the above-captioned bankruptcy case to determine whether the Debtor have fulfilled its obligations to timely file all appropriate tax returns and to pay any tax liabilities thereon.

3. I have reviewed the records of the Department of Taxation relating to the Debtor and am competent to testify as to the matters stated herein.

4. Debtor holds a State of Hawaii general excise and transient accommodations tax licenses, No. WXXXX2353-01.

5. Attached hereto as Exhibit H is a true and accurate copy of the Department of Taxation's proof of claim filed in this case.

6. As of November 20, 2013, the balance due on the secured portion of the Department of Taxation's claim is \$504,791.73.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: Honolulu, Hawaii, OCT - 7 2013.

Margaret Robideau
MARGARET ROBIDEAU

Miscellaneous Documents:12-02279 Hawaii Outdoor Tours, Incorporated

Type: bk

Chapter: 11 v

Office: 1 (Honolulu)

Assets: y

Judge: rjf

Case Flag: AwCNF

United States Bankruptcy Court**District of Hawaii**

Notice of Electronic Filing

The following transaction was received from Cynthia M. Johiro entered on 10/7/2013 at 4:26 PM HST and filed on 10/7/2013

Case Name: Hawaii Outdoor Tours, Incorporated**Case Number:** 12-02279**Document Number:** 417**Docket Text:**

Declaration of Margaret Robideau *Regarding State of Hawaii's Memorandum in Opposition to Trustee's Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs; Exhibit H.* Filed by Cynthia M. Johiro. (Related document(s): [416]). (Johiro, Cynthia)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**Dec of Margaret Robideau Ex H.PDF**Electronic document Stamp:**

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2967969-0] [c0b97de8aac0f35c5f58fc62228ca6142bda9350bc12cd5720c0d7316d25ebcc461e7ffc20469cf7f387872294953185a6643aa78331718471e050579bb9d99b]]

12-02279 Notice will be electronically mailed to:

Johnathan Christiaan Bolton on behalf of Witness Neil T. Fujiyama
jbolton@goodsill.com, smatejko@goodsill.com

Curtis B. Ching on behalf of U.S. Trustee Office of the U.S. Trustee.
USTPRegion15.HI.ECF@usdoj.gov

Nicholas C. Dreher on behalf of Creditor First Hawaiian Bank
ndreher@cades.com

David C. Farmer
farmerd001@hawaii.rr.com, hi01@ecfcbis.com;HI01@ecfcbis.com

Ramon J. Ferrer on behalf of Debtor Hawaii Outdoor Tours, Incorporated

ramonlawfirm@hotmail.com, dale@ferrerlawfirm.com

Jeffery S. Flores on behalf of Creditor County of Hawaii
jsf@opglaw.com, sherriey@opglaw.com

Katherine A. Garson on behalf of Creditor County of Hawaii
kgarson@co.hawaii.hi.us, ecarvalho@co.hawaii.hi.us;corporationcounsel@co.hawaii.hi.us

Jerrold K. Guben on behalf of Creditor County of Hawaii
jkg@opglaw.com, julie@opglaw.com

Jerrold K. Guben on behalf of Creditor Hawaii Medical Service Association
jkg@opglaw.com, julie@opglaw.com

Ryan M. Hamaguchi on behalf of Creditor First-Citizens Bank & Trust Company
rhamaguchi@caselombardi.com, shy@caselombardi.com;user4@caselombardi.com;tnp@caselombardi.com

Timothy J. Hogan on behalf of Trustee David C. Farmer
tjh@timhogan.com, hogant001@hawaii.rr.com;timmyhogan@gmail.com

Cynthia M. Johiro on behalf of Creditor Department of Taxation, State of Hawaii
atg.tax.hbcf@hawaii.gov, cynthia.m.johiro@hawaii.gov

Joseph K. Kamelamela on behalf of Creditor County of Hawaii
jkamela@co.hawaii.hi.us, mfujiio@co.hawaii.hi.us

Kimo C. Leong on behalf of Creditor Hawaii Electric Light Company, Inc.
kcleong@hawaii.rr.com

Dana R.C. Lyons on behalf of Creditor First-Citizens Bank & Trust Company
dlyons@caselombardi.com,
shy@caselombardi.com;rhamaguchi@caselombardi.com;user4@caselombardi.com;tnp@caselombardi.com

Samuel MacRoberts on behalf of Creditor Deborah Rosenbaum
sgm@lowenthal-hawaii.com

Craig T. Masuda on behalf of Creditor County of Hawaii
cmasuda@co.hawaii.hi.us, ecarvalho@co.hawaii.hi.us;corporationcounsel@co.hawaii.hi.us

Christopher J. Muzzi on behalf of Creditor Committee The Official Committee of Unsecured Creditors (Hawaii Outdoor Tours, Inc.)
cmuzzi@hilaw.us, tcanon@hilaw.us

Teri-Ann E.S. Nagata on behalf of Creditor Developers Surety and Indemnity Company
tnagata@cades.com, rhirayama@cades.com;jogata@cades.com

Office of the U.S. Trustee.
ustpreion15.hi.ecf@usdoj.gov

Ted N. Pettit on behalf of Creditor First-Citizens Bank & Trust Company
tnp@caselombardi.com,
shy@caselombardi.com;dlyons@caselombardi.com;rhamaguchi@caselombardi.com;user4@caselombardi.com

Tom E. Roesser on behalf of Creditor Marian Rose Benda Thornton, Trustee of the Eleanor Rose Benda Trust
troesser@carlsmith.com, cimai@carlsmith.com;wharstad@carlsmith.com

Donald L. Spafford, Jr. on behalf of Interested Party Ken Direction Corporation
spafford@lava.net, spaffordECFmail@gmail.com

Miranda Tsai on behalf of Creditor Hawaii Medical Service Association
mft@opglaw.com, alison@opglaw.com

Neil J. Verbrugge on behalf of Interested Party Wagner Choi & Verbrugge
nverbrugge@hibklaw.com, jczerwinski@hibklaw.com

Keith Y. Yamada on behalf of Creditor Developers Surety and Indemnity Company
kyamada@cades.com, icamarillo@cades.com

Theodore D.C. Young on behalf of Creditor First Hawaiian Bank
tyoung@cades.com

12-02279 Notice will not be electronically mailed to:

Colliers International
220 S. King St., Ste. 1800
Honolulu, HI 96813

DACA VI LLC
1565 Hotel Circle S, #310
San Diego, CA 92108

Kennth Fujiyama
P.O. Box 1417
Hilo, HI 96721

Mason M. Yamaki on behalf of Creditor Marian Rose Benda Thornton, Trustee of the Eleanor Rose Benda Trust
121 Waiuanue Ave.
P.O. Box 686
Hilo, HI 96721-0686

FILED
U.S. BANKRUPTCY COURT
DISTRICT OF HAWAII

UNITED STATES BANKRUPTCY COURT

District of Hawaii

DISTRICT OF HAWAII
PROOF OF CLAIM

Name of Debtor:
HAWAII OUTDOOR TOURS INCORPORATED

Case Number:
12-02279

2013 MAR 21 A 10:24

MICHAEL B. DOWLING
CLERK OF COURT

NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property):
STATE OF HAWAII, DEPARTMENT OF TAXATION

COURT USE ONLY

Name and address where notices should be sent:
STATE TAX COLLECTOR, P O BOX 259, HONOLULU, HI 96809
ATTENTION: BANKRUPTCY UNIT

Check this box if this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Telephone number: (808) 587-4034 email:

Filed on: _____

Name and address where payment should be sent (if different from above):

Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

Telephone number: email:

1. Amount of Claim as of Date Case Filed: \$ 541,018.43

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: TAXES
(See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:
2 3 5 3

3a. Debtor may have scheduled account as:
(See instruction #3a)

3b. Uniform Claim Identifier (optional):
(See instruction #3b)

4. Secured Claim (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:
\$ _____

Nature of property or right of setoff: Real Estate Motor Vehicle Other
Describe:

Basis for perfection: BLANKET LIEN

Value of Property: \$ _____

Amount of Secured Claim: \$ 485,095.11

Annual Interest Rate _____% Fixed or Variable
(when case was filed)

Amount Unsecured: \$ _____

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. § 507 (a)(4).

Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5).

Amount entitled to priority:

Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7).

Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)().

\$ 55,923.32

*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

EXHIBIT 11

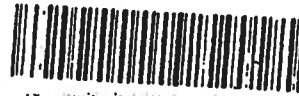
Stamp: MAR 23 2013
55,923.32



R-684

STATE OF HAWAII
BUREAU OF CONVEYANCE:
RECORDED
JUL 28, 2011 02:00 PM

Doc No(s) 2011-118459



20 2/5 22

/s/ NICKI ANN THOMPSON
REGISTRAR

Alter Recordation Return By Mail Pickup To

DEPARTMENT OF TAXATION
Compliance Division - Collection Branch
P O Box 259
Honolulu, HI 96809

STATE OF HAWAII
Department of Taxation
Compliance Division

Form D-15A (Rev. 2009)

STATE OF HAWAII - DEPARTMENT OF TAXATION
CERTIFICATE OF STATE TAX LIEN

Pursuant to the provisions of Sec 231-33, Hawaii Revised Statutes, it is hereby certified that the following named taxpayer(s) (is) (are) indebted to the State for the taxes shown below. By virtue of said statute, said taxes (including penalties, interest, and costs) constitute liens in favor of the State upon all property and rights to property belonging to said taxpayer(s):

Name(s) of Taxpayer(s): HAWAII OUTDOOR TOURS INC

Residence or business address: 121 Makalika St
Hilo HI 96720-5843

Case Number
357236

Tax Type
General Excise
Transient Accommodations

Period
See Attached Detail of Taxes
See Attached Detail of Taxes

Tax
12,848.97
122,907.98
Total: 135,756.95

Dated: Hilo, Hawaii
July 25, 2011

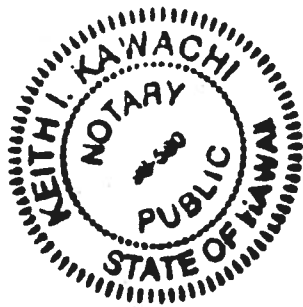
COUNTY OF HAWAII
STATE OF HAWAII

1 SS
1

Director of Taxation of the State of Hawaii

By: *G. Pavao*
G. Pavao, Delinquent Tax Collection Assistant

On this 25th day of July, 2011 before me, Keith I. Kawachi, appeared G. Pavao, to me personally known, being by me duly sworn, in the Third Circuit of the State of Hawaii, did say that he/she is a DICA for the STATE OF HAWAII, and that this 2-page Certificate of State Tax Lien, dated July 25, 2011, was signed on behalf of the STATE OF HAWAII, and that G. Pavao acknowledges that he/she executed said instrument as such DICA in the free act and deed of the STATE OF HAWAII.



Keith I. Kawachi
Keith I. Kawachi
Notary Public, Third Judicial Circuit, State of Hawaii
My Commission Expires 11/09/2011

STATE OF HAWAII - DEPARTMENT OF TAXATION
**CERTIFICATION OF STATE TAX LIEN
 ATTACHMENT**

Name(s) of Taxpayer(s): HAWAII OUTDOOR TOURS INC

Case Number: 357236

DETAIL OF TAXES INDEBTED TO THE STATE

Tax Type	Account Suffix	Period	Reference Number	Tax
General Excise	GE-01	06/11		
Transient Accommodations	TA-01	07/10		12,848.9
Transient Accommodations	TA-01	08/10		4,003.2
Transient Accommodations	TA-01	03/11		18,943.4
Transient Accommodations	TA-01	04/11		30,340.78
Transient Accommodations	TA-01	05/11		40,135.57
Transient Accommodations	TA-01	06/11		18,259.15
				11,225.82
			Total:	\$135,756.95



R-741 STATE OF HAWAII
 BUREAU OF CONVEYANCES
 RECORDED
 AUG 31, 2011 01:00 PM
 Doc No(s) 2011-139608



/s/ NICKI ANN THOMPSON
 REGISTRAR

20 9/16 22

After Recordation Return By: Mail Pickup To:

DEPARTMENT OF TAXATION
 Compliance Division - Collection Branch
 P.O. Box 259
 Honolulu, HI 96809

STATE OF HAWAII
 Department of Taxation
 Compliance Division

Form D-15 (Rev. 2009)

STATE OF HAWAII - DEPARTMENT OF TAXATION
CERTIFICATE OF STATE TAX LIEN

Pursuant to the provisions of Sec 231-33, Hawaii Revised Statutes, it is hereby certified that the following named taxpayer(s) (is) (are) indebted to the State for the taxes shown below. By virtue of said statute, said taxes (including penalties, interest, and costs) constitute liens in favor of the State upon all property and rights to property belonging to said taxpayer(s):

Name(s) of Taxpayer(s): HAWAII OUTDOOR TOURS INC
 Residence or business address: 421 Makalika St
 Hilo HI 96720-5843

Case Number	Tax Type	Account Suffix	Period	Reference Number	Tax
357236	General Excise	GE-01	07/11		16,697.53
	Transient Accommodations	TA-01	07/11		27,825.44
Total:					\$44,522.97

Dated: HILO, Hawaii
 August 23, 2011

COUNTY OF HAWAII
 STATE OF HAWAII

1 SS

Director of Taxation of the State of Hawaii

By: [Signature]
 G. Pavao, Delinquent Tax Collection Assistant

On this 23rd day of August, 2011 before me, Keith I. Kawachi, appeared G. Pavao, to me personally known, being by me duly sworn, in the Third Circuit of the State of Hawaii, did say that he/she is a DTC for the STATE OF HAWAII; and that this 1-page Certificate of State Tax Lien, dated August 23, 2011, was signed on behalf of the STATE OF HAWAII; and that G. Pavao acknowledges that he/she executed said instrument as such DTC is the free act and deed of the STATE OF HAWAII



[Signature]
 Keith I. Kawachi
 Notary Public, Third Judicial Circuit, State of Hawaii
 My Commission Expires 11-09-2014



R-745

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
SEP 30, 2011 08:02 AM

Doc No(s) 2011-159801



/s/ NICKI ANN THOMPSON
REGISTRAR

20 11/20 21

After Recordation Return By: Mail Pickup To:

DEPARTMENT OF TAXATION
Compliance Division - Collection Branch
P.O. Box 259
Honolulu, HI 96809

STATE OF HAWAII
Department of Taxation
Compliance Division

Form D-15 (Rev. 2009)

STATE OF HAWAII - DEPARTMENT OF TAXATION
CERTIFICATE OF STATE TAX LIEN

Pursuant to the provisions of Sec 231-33, Hawaii Revised Statutes, it is hereby certified that the following named taxpayer(s) (is) (are) indebted to the State for the taxes shown below. By virtue of said statute, said taxes (including penalties, interest, and costs) constitute liens in favor of the State upon all property and rights to property belonging to said taxpayer(s):

Name(s) of Taxpayer(s): HAWAII OUTDOOR TOURS INC
Residence or business address: 421 Makalika St
Hilo HI 96720-5843

Case Number	Tax Type	Account Suffix	Period	Reference Number	Tax
157236	General Excise	GE-01	08/11		11,844.92
	Transient Accommodations	TA-01	08/11		21,525.56
Total:					33,370.48

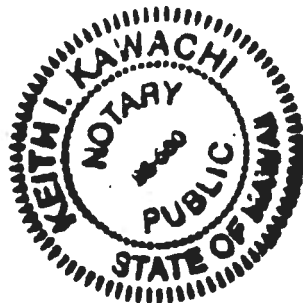
Dated: Hilo, Hawaii
September 26, 2011

COUNTY OF HAWAII) SS
STATE OF HAWAII)

Director of Taxation of the State of Hawaii

By: [Signature]
G. Pavao, Delinquent Tax Collection Assistant

On this 26th day of September, 2011 before me, Keith I. Kawachi, appeared G. Pavao, to me personally known, being by me duly sworn, in the Third Circuit of the State of Hawaii, did say that he/she is a DCA for the STATE OF HAWAII; and that this 1-page Certificate of State Tax Lien, dated September 26, 2011, was signed on behalf of the STATE OF HAWAII, and that G. Pavao acknowledges that he/she executed said instrument as such DCA is the free act and deed of the STATE OF HAWAII.



[Signature]
Keith I. Kawachi
Notary Public, Third Judicial Circuit, State of Hawaii
My Commission Expires 11/09/2014



R-778

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
OCT 31, 2011 01:00 PM
Doc No(s) 2011-179216



/s/ NICKI ANN THOMPSON
REGISTRAR

20 2/5 21

After Recordation Return By: Mail Pickup To

DEPARTMENT OF TAXATION
Compliance Division - Collection Branch
P.O. Box 259
Honolulu, HI 96809

STATE OF HAWAII
Department of Taxation
Compliance Division

Form D-15 (Rev. 2009)

STATE OF HAWAII - DEPARTMENT OF TAXATION
CERTIFICATE OF STATE TAX LIEN

Pursuant to the provisions of Sec 231-33, Hawaii Revised Statutes, it is hereby certified that the following named taxpayer(s) (is) (are) indebted to the State for the taxes shown below. By virtue of said statute, said taxes (including penalties, interest, and costs) constitute liens in favor of the State upon all property and rights to property belonging to said taxpayer(s):

Name(s) of Taxpayer(s): HAWAII OUTDOOR TOURS INC

Residence or business address: 421 Makalika St
Hilo HI 96720-5843

Case Number	Tax Type	Account Suffix	Period	Reference Number	Tax
357236	General Excise Transient Accommodations	GE-01 FA-01	09/11 09/11		10,684.03 19,617.91
Total:					\$30,301.94

Dated: Hilo, Hawaii
October 26, 2011

Director of Taxation of the State of Hawaii

COUNTY OF HAWAII
STATE OF HAWAII

By: [Signature]
G. Pavao, Delinquent Tax Collection Assistant

On this 26th day of October, 2011 before me, Keith I. Kawachi, appeared G. Pavao, to me personally known, being by me duly sworn, in the Third Circuit of the State of Hawaii, did say that he/she is a DICA for the STATE OF HAWAII, and that this 1-page Certificate of State Tax Lien, dated October 26, 2011, was signed on behalf of the STATE OF HAWAII, and that G. Pavao acknowledges that he/she executed said instrument as such DICA as the free act and deed of the STATE OF HAWAII.



[Signature]
Keith I. Kawachi
Notary Public - Third Judicial Circuit, State of Hawaii
My Commission Expires 11/09/2011



R-757

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
NOV 29, 2011 02:00 PM
Doc No(s) 2011-200499



1s/ NICKI ANN THOMPSON
REGISTRAR

20 2/2 21

1/2

After Recordation Return By: Mail Pickup To.

DEPARTMENT OF TAXATION
Compliance Division - Collection Branch
P.O. Box 259
Honolulu, HI 96809

STATE OF HAWAII
Department of Taxation
Compliance Division

Form D-15 (Rev. 2009)

STATE OF HAWAII - DEPARTMENT OF TAXATION
CERTIFICATE OF STATE TAX LIEN

Pursuant to the provisions of Sec 231-33, Hawaii Revised Statutes, it is hereby certified that the following named taxpayer(s) (is) (are) indebted to the State for the taxes shown below. By virtue of said statute, said taxes (including penalties, interest, and costs) constitute liens in favor of the State upon all property and rights to property belonging to said taxpayer(s):

Name(s) of Taxpayer(s): HAWAII OUTDOOR TOURS INC

Residence or business address: 421 Makalika St
Hilo HI 96720-5843

<u>Case Number</u>	<u>Tax Type</u>	<u>Account Suffix</u>	<u>Period</u>	<u>Reference Number</u>	<u>Tax</u>
357236	General Excise	GE-01	10/11		10,062.31
	Transient Accommodations	TA-01	10/11		17,262.19
Total:					\$27,324.50

Dated: HILO, Hawaii
November 23, 2011

Director of Taxation of the State of Hawaii

COUNTY OF HAWAII)
STATE OF HAWAII) SS

By: [Signature]
G. Pavao, Delinquent Tax Collection Assistant

On this 23rd day of November, 2011 before me, Shirley Gomes, appeared G. Pavao, to me personally known, being by me duly sworn, in the Third Circuit of the State of Hawaii, did say that he/she is a DICA for the STATE OF HAWAII, and that this 1-page Certificate of State Tax Lien, dated November 23, 2011, was signed on behalf of the STATE OF HAWAII, and that G. Pavao acknowledges that he/she executed said instrument as such DICA is the free act and deed of the STATE OF HAWAII.



[Signature]
Shirley Gomes
Notary Public, Third Judicial Circuit, State of Hawaii
My Commission Expires 11-31-2011



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

January 13, 2012 8:02 AM

Doc No(s) A-43950774



1 2/3 KEO
8-31998350

NICKI ANN THOMPSON
REGISTRAR

After Recordation Return By Mail Pickup To

DEPARTMENT OF TAXATION
Compliance Division - Collection Branch
P O Box 259
Honolulu, HI 96809

STATE OF HAWAII
Department of Taxation
Compliance Division

Form D-15 (Rev 2009)

STATE OF HAWAII - DEPARTMENT OF TAXATION
CERTIFICATE OF STATE TAX LIEN

Pursuant to the provisions of Sec 231-33, Hawaii Revised Statutes, it is hereby certified that the following named taxpayer(s) (is) (are) indebted to the State for the taxes shown below. By virtue of said statute, said taxes (including penalties, interest, and costs) constitute liens in favor of the State upon all property and rights to property belonging to said taxpayer(s):

Name(s) of Taxpayer(s): HAWAII OUTDOOR TOURS INC

Residence or business address: 421 Makalika St
Hilo HI 96720-5843

Case Number	Tax Type	Account Suffix	Period	Reference Number	Tax
357236	General Excise Transient Accommodations	GE-01 FA-01	11/11 11/11		11,509.03 20,751.01
Total:					32,263.06

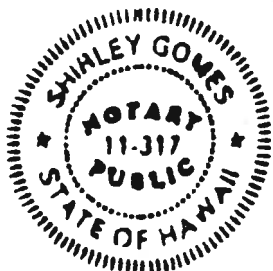
Dated: Hilo, Hawaii
December 29, 2011

COUNTY OF HAWAII)
STATE OF HAWAII) SS

Director of Taxation of the State of Hawaii

By: [Signature]
G. Pavao, Delinquent Tax Collection Assistant

On this 29th day of December, 2011 before me, Shirley Gomes, appeared G. Pavao, to me personally known, being by me duly sworn, in the Third Circuit of the State of Hawaii, did say that he/she is a DICA for the STATE OF HAWAII, and that this 1-page Certificate of State Tax Lien, dated December 29, 2011, was signed on behalf of the STATE OF HAWAII, and that G. Pavao acknowledges that he/she executed said instrument as such DICA is the true act and deed of the STATE OF HAWAII



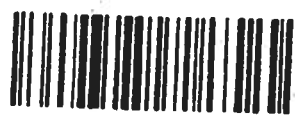
[Signature]
Shirley Gomes
Notary Public, Third Judicial Circuit, State of Hawaii
My Commission Expires 10/21/2015



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

February 13, 2012 8:02 AM

Doc No(s) A-44260583



1 2/4 KEO
8-32013735

1/3 NICKI ANN THOMPSON
REGISTRAR

After Recordation Return By: Mail Pickup To:

DEPARTMENT OF TAXATION
Compliance Division - Collection Branch
P.O. Box 259
Honolulu, HI 96809

STATE OF HAWAII
Department of Taxation
Compliance Division

2

Form D-15 (Rev. 2009)

STATE OF HAWAII - DEPARTMENT OF TAXATION
CERTIFICATE OF STATE TAX LIEN

Pursuant to the provisions of Sec 231-33, Hawaii Revised Statutes, it is hereby certified that the following named taxpayer(s) (is) (are) indebted to the State for the taxes shown below. By virtue of said statute, said taxes (including penalties, interest, and costs) constitute liens in favor of the State upon all property and rights to property belonging to said taxpayer(s):

Name(s) of Taxpayer(s): HAWAII OUTDOOR TOURS INC
Residence or business address: 421 Makalika St
Hilo HI 96720-5843

Case Number	Tax Type	Account Suffix	Period	Reference Number	Tax
357236	General Excise	GE-01	12/11		11,208.14
	Transient Accommodations	TA-01	12/11		16,649.44
Total:					\$27,857.58

Dated: Hilo, Hawaii
February 6, 2012

Director of Taxation of the State of Hawaii

COUNTY OF HAWAII) SS
STATE OF HAWAII)

By: [Signature]
G. Pavao, Delinquent Tax Collection Assistant

On this 6th day of February, 2012 before me, Shirley Gomes, appeared G. Pavao, to me personally known, being by me duly sworn, in the Third Circuit of the State of Hawaii, did say that he/she is a DTCA for the STATE OF HAWAII; and that this 1-page Certificate of State Tax Lien, dated February 6, 2012, was signed on behalf of the STATE OF HAWAII; and that G. Pavao acknowledges that he/she executed said instrument as such DTCA as the free act and deed of the STATE OF HAWAII



[Signature]
Shirley Gomes
Notary Public, Third Judicial Circuit, State of Hawaii
My Commission Expires 10/23/2015



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

April 11, 2012 1:00 PM

Doc No(s) A-44841318



1 3/7 nhtk
8-32043832

1st NICKI ANN THOMPSON
REGISTRAR

After Recordation Return By: Mail Pickup To:

DEPARTMENT OF TAXATION
Compliance Division - Collection Branch
P.O. Box 259
Honolulu, HI 96809

STATE OF HAWAII
Department of Taxation
Compliance Division

Form D-15 (Rev. 2009)

STATE OF HAWAII - DEPARTMENT OF TAXATION
CERTIFICATE OF STATE TAX LIEN

Pursuant to the provisions of Sec 231-33, Hawaii Revised Statutes, it is hereby certified that the following named taxpayer(s) (is) (are) indebted to the State for the taxes shown below. By virtue of said statute, said taxes (including penalties, interest, and costs) constitute liens in favor of the State upon all property and rights to property belonging to said taxpayer(s):

Name(s) of Taxpayer(s): HAWAII OUTDOOR TOURS INC

Residence or business address: 421 Makalika St
Hilo HI 96720-5843

Case Number	Tax Type	Account Suffix	Period	Reference Number	Tax
357236	General Excise Transient Accommodations	GE-01 TA-01	02/12 02/12		14,521.36 26,769.97
Total:					41,291.33

Dated: HILO, Hawaii
March 30, 2012

Director of Taxation of the State of Hawaii

COUNTY OF HAWAII)
STATE OF HAWAII) SS

By: [Signature]
G. Pavao, Delinquent Tax Collection Assistant

On this 30th day of March, 2012 before me, Shirley Gomes, appeared G. Pavao, to me personally known, being by me duly sworn, in the Third Circuit of the State of Hawaii, did say that he/she is a DICA for the STATE OF HAWAII, and that this 1-page Certificate of State Tax Lien, dated March 30, 2012, was signed on behalf of the STATE OF HAWAII; and that G. Pavao acknowledges that he/she executed said instrument as such DICA as the free act and deed of the STATE OF HAWAII



[Signature]
Shirley Gomes
Notary Public, Third Judicial Circuit, State of Hawaii
My Commission Expires 11/23/2015

RECEIVED BY THE DOCUMENT
 FOLLOWING
 MAY 31 2012
 JUN 01 2012
 A-45350896

After Recordation Return By: Mail Pickup To:

DEPARTMENT OF TAXATION
 Compliance Division - Collection Branch
 P.O. Box 259
 Honolulu, HI 96809

STATE OF HAWAII
 Department of Taxation
 Compliance Division

Form D-15 (Rev. 2009)

STATE OF HAWAII - DEPARTMENT OF TAXATION
CERTIFICATE OF STATE TAX LIEN

Pursuant to the provisions of Sec 231-33, Hawaii Revised Statutes, it is hereby certified that the following named taxpayer(s) (is) (are) indebted to the State for the taxes shown below. By virtue of said statute, said taxes (including penalties, interest, and costs) constitute liens in favor of the State upon all property and rights to property belonging to said taxpayer(s):

Name(s) of Taxpayer(s): HAWAII OUTDOOR TOURS INC
 Residence or business address: PO Box 1417
 Hilo HI 96721-1417

Case Number	Tax Type	Account Suffix	Period	Reference Number	Tax
357236	General Excise	GE-01	03/12		14,104.54
	General Excise	GE-01	04/12		18,051.51
	Transient Accommodations	TA-01	03/12		24,318.42
	Transient Accommodations	TA-01	04/12		30,709.85
Total:					87,184.32

Dated: Hilo, Hawaii
May 29, 2012

COUNTY OF HAWAII } SS
STATE OF HAWAII }

Director of Taxation of the State of Hawaii

By: G. Pavao
G. Pavao, Delinquent Tax Collection Assistant

On this 29th day of May, 2012 before me, Shirley Gomes, appeared G. Pavao, to me personally known, being by me duly sworn, in the Third Circuit of the State of Hawaii, did say that he/she is a DTCA for the STATE OF HAWAII, and that this 1-page Certificate of State Tax Lien, dated May 29, 2012, was signed on behalf of the STATE OF HAWAII, and that G. Pavao acknowledges that he/she executed said instrument as such DTCA in the free act and deed of the STATE OF HAWAII



Shirley Gomes
 Shirley Gomes
 Notary Public, Third Judicial Circuit, State of Hawaii
 My Commission Expires 11-31-15

THIS DOCUMENT
 FOLLOWS
 THE
 HAWAIIAN
 JUN 28 2012
 JUN 29 2012
 10:00 AM
 A-45630830

After Recordation Return By: Mail Pickup To:

DEPARTMENT OF TAXATION
 Compliance Division - Collection Branch
 P.O. Box 259
 Honolulu, HI 96809

STATE OF HAWAII
 Department of Taxation
 Compliance Division

Form D-15 (Rev. 2009)

STATE OF HAWAII - DEPARTMENT OF TAXATION
CERTIFICATE OF STATE TAX LIEN

Pursuant to the provisions of Sec 231-33, Hawaii Revised Statutes, it is hereby certified that the following named taxpayer(s) (is) (are) indebted to the State for the taxes shown below. By virtue of said statute, said taxes (including penalties, interest, and costs) constitute liens in favor of the State upon all property and rights to property belonging to said taxpayer(s):

Name(s) of Taxpayer(s): HAWAII OUTDOOR TOURS INC
 Residence or business address: PO Box 1417
 Hilo HI 96721-1417

Case Number	Tax Type	Account Suffix	Period	Reference Number	Tax
357236	General Excise	GE-01	05/12		13,642.02
	Transient Accommodations	TA-01	05/12		22,259.14
Total:					\$35,901.16

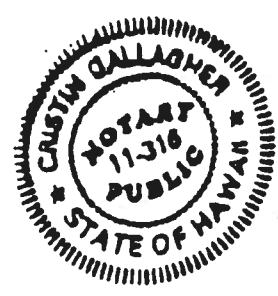
Dated: Hilo, Hawaii
 June 25, 2012

Director of Taxation of the State of Hawaii

COUNTY OF HAWAII)
 STATE OF HAWAII) SS

By: [Signature]
 G. Pavao, Delinquent Tax Collection Assistant

On this 25th day of June, 2012 before me, Cristin Gallagher, appeared G. Pavao, to me personally known, being by me duly sworn, in the Third Circuit of the State of Hawaii, did say that he/she is a DTCA for the STATE OF HAWAII; and that this 1-page Certificate of State Tax Lien, dated June 25, 2012, was signed on behalf of the STATE OF HAWAII, and that G. Pavao acknowledges that he/she executed said instrument as such DTCA as the free act and deed of the STATE OF HAWAII



Cristin Gallagher
 Cristin Gallagher
 Notary Public, Third Judicial Circuit, State of Hawaii
 My Commission Expires 10/23/2015

DAVID M. LOUIE 2162
Attorney General of Hawaii

ELECTRONIC FILING
Filed: OCT - 7 2013
Docket # 420

CYNTHIA M. JOHIRO 5445
DAMIEN A. ELEFANTE 7271
Deputy Attorneys General
Department of the Attorney
General, State of Hawaii
425 Queen Street
Honolulu, HI 96813
Telephone: 586-1470
E-Mail: Cynthia.M.Johiro@hawaii.gov

Attorneys for the
STATE OF HAWAII

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

HAWAII OUTDOOR TOURS, INC.
dba Naniloa Volcanoes
Resort and Naniloa
Volcanoes Golf Club,

Debtor.

CASE NO. 12-02279
(Chapter 11)

Re: Docket Entry No. 367

HEARING:

DATE: October 21, 2013

TIME: 9:30 a.m.

JUDGE: Honorable Robert J.
Faris

520487

DECLARATION OF GORDON C. HEIT REGARDING
STATE OF HAWAII'S MEMORANDUM IN OPPOSITION TO TRUSTEE'S
MOTION FOR ORDER (A) AUTHORIZING THE
ASSUMPTION OF CERTAIN UNEXPIRED NON-RESIDENTIAL
REAL PROPERTY LEASES AND (B) ESTABLISHING CURE COSTS;
EXHIBITS D AND F

1. I am the land agent for the Hawaii District Office of the Land Division of the State of Hawaii, Department of Land and Natural Resources (hereinafter, "DLNR").

2. I have reviewed the records of the DLNR and am competent to testify as to the matters stated herein.

3. As part of my duties, I have been assigned to oversee generally the State of Hawaii General Leases Nos. S-5844 ("Naniloa Lease") and S-5372 ("Kau Lease"). Hawaii Outdoor Tours, Inc. ("Debtor") is the lessee of both the Naniloa Lease and the Kau Lease.

4. Attached hereto as Exhibit D are true and accurate copies of pictures that I took of unfinished renovation of the Kilauea Tower, one of three towers on the Naniloa hotel premises on or about May 2013.

5. Attached hereto as Exhibit F is a true and correct copy of the Notice of Violation dated May 9, 2013 that the Hilo Land Division Office received from

the County of Hawaii, Building Division, Department of Public Works.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: Hilo, Hawaii, October 4, 2013.


GORDON C. HEIT

In re Hawaii Outdoor Tours, Inc. dba Nanihoa Volcanoes Resort and Nanihoa Volcanoes Golf Club, Bk. No. 12-02279 (Chapter 11), DECLARATION OF GORDON HEIT REGARDING STATE OF HAWAII'S MEMORANDUM IN OPPOSITION TO TRUSTEE'S MOTION FOR ORDER (A) AUTHORIZING THE ASSUMPTION OF CERTAIN UNEXPIRED NON-RESIDENTIAL REAL PROPERTY LEASES AND (B) ESTABLISHING CURE COSTS; EXHIBITS D AND F, United States Bankruptcy Court for the District of Hawaii

Miscellaneous Documents:

12-02279 Hawaii Outdoor Tours, Incorporated

Type: bk

Chapter: 11 v

Office: 1 (Honolulu)

Assets: y

Judge: rjf

Case Flag: AwCNF

United States Bankruptcy Court

District of Hawaii

Notice of Electronic Filing

The following transaction was received from Cynthia M. Johiro entered on 10/7/2013 at 4:43 PM HST and filed on 10/7/2013

Case Name: Hawaii Outdoor Tours, Incorporated

Case Number: 12-02279

Document Number: 420

Docket Text:

Declaration of Gordon C. Heit *Regarding State of Hawaii's Memorandum in Opposition to Trustee's Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs; Exhibits D and F.* Filed by Cynthia M. Johiro. (Related document(s): [416]).

(Attachments: # (1) Exhibit(s) Exhibit D # (2) Exhibit(s) Exhibit F1 # (3) Exhibit(s) Exhibit F2 # (4) Exhibit(s) Exhibit F3 # (5) Exhibit(s) Exhibit F4 # (6) Exhibit(s) Exhibit F5 # (7) Exhibit(s) Exhibit F6 # (8) Exhibit(s) Exhibit F7 # (9) Exhibit(s) Exhibit F8 # (10) Exhibit(s) Exhibit F9) (Johiro, Cynthia)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:Dec of Gordon Heit Ex D F.PDF

Electronic document Stamp:

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2968005-0] [87833c6171fbb29934730b12729be794535dbcc5374c933c6ba43068dfe13ec1a0c4c9584793bb77f726b7037da18fe181c0007a7eacd1c8f0a84f36d0f816f4]]

Document description:Exhibit(s) Exhibit D

Original filename:HOTI Ex D.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2968005-1] [5a31b90f435a41cc8a68ebc47c37f2904b41127d41a905d23749805e153650a7bd6a192b983699658cea0ab77b909d8d18848a5141476b1fdc43b12a09b5cb9f]]

Document description:Exhibit(s) Exhibit F1

Original filename:HOTI Ex F1.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2968005-2] [6c61f2497de7099d18dae691c2917ad742bfc1b5184772e8e5da0e378f505f8d7bc091c925fe60e1c646775b83b11dff54a446b3dfbd6e4a10ee40532fc0840c]]

Document description:Exhibit(s) Exhibit F2

Original filename:HOTI Ex F2.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2968005-3]
] [397658da772bf1bae57b06ffd1e73e1cc031856cc5bef43a389c84c3f21004f4bca
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Document description:Exhibit(s) Exhibit F3

Original filename:HOTI Ex F3.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2968005-4]
] [665bff51aa465e7577ae8ec67101dd7f4de06255e564f2a1f23c9f92487ec04390d
a6d0cdc28351a3378353f95ad6e9cb5efc1fec5613e28ef9b39d75d7d5a1c]]

Document description:Exhibit(s) Exhibit F4

Original filename:HOTI Ex F4.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2968005-5]
] [a24c17ba236b2fe8feaac3c187659b0c8805e980c3d6e976bcefd2b01ac866e02d
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Document description:Exhibit(s) Exhibit F5

Original filename:HOTI Ex F5.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2968005-6]
] [007975bfeafcdaf70352f8913d3448b577527fe7879e73ee930d01bc46073e75f2d
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Document description:Exhibit(s) Exhibit F6

Original filename:HOTI Ex F6.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2968005-7]
] [5235cf32876f63f53b70b11763f190d13540612b0753bccdeb47be09f37bbd9e96
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Document description:Exhibit(s) Exhibit F7

Original filename:HOTI Ex F7.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2968005-8]
] [7ac74b490ea36e0c451272c693fe191c5eda4e621e21091aad714dc05913f7277e6
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Document description:Exhibit(s) Exhibit F8

Original filename:HOTI Ex F8.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2968005-9]
] [bdd0084a8fda41296f74ba270cd976ed097de5c270c215f1177b6313a260216744e
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Document description:Exhibit(s) Exhibit F9

Original filename:HOTI Ex F9.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2968005-1
0] [2450ead5ba9d237af3933fc3383ce203ff5202171eab1b2ab3701c88fc3054a87b
d20223e40045caeb5a0954246557ba15af7320fade568ff50f73047fc6a0c9]]

12-02279 Notice will be electronically mailed to:

Johnathan Christiaan Bolton on behalf of Witness Neil T. Fujiyama
jbolton@goodsill.com, smatejko@goodsill.com

Curtis B. Ching on behalf of U.S. Trustee Office of the U.S. Trustee.
USTPRegion15.HI.ECF@usdoj.gov

Nicholas C. Dreher on behalf of Creditor First Hawaiian Bank
ndreher@caedes.com

David C. Farmer
farmerd001@hawaii.rr.com, hi01@ecfcbis.com;HI01@ecfcbis.com

Ramon J. Ferrer on behalf of Debtor Hawaii Outdoor Tours, Incorporated
ramonlawfirm@hotmail.com, dale@ferrerlawfirm.com

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jsf@opglaw.com, sherriey@opglaw.com

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kgarson@co.hawaii.hi.us, ecarvalho@co.hawaii.hi.us;corporationcounsel@co.hawaii.hi.us

Jerrold K. Guben on behalf of Creditor County of Hawaii
jkg@opglaw.com, julie@opglaw.com

Jerrold K. Guben on behalf of Creditor Hawaii Medical Service Association
jkg@opglaw.com, julie@opglaw.com

Ryan M. Hamaguchi on behalf of Creditor First-Citizens Bank & Trust Company
rhamaguchi@caselombardi.com, shy@caselombardi.com;user4@caselombardi.com;tnp@caselombardi.com

Timothy J. Hogan on behalf of Trustee David C. Farmer
tjh@timhogan.com, hogant001@hawaii.rr.com;timmyhogan@gmail.com

Cynthia M. Johiro on behalf of Creditor Department of Taxation, State of Hawaii
atg.tax.hbcf@hawaii.gov, cynthia.m.johiro@hawaii.gov

Joseph K. Kamelamela on behalf of Creditor County of Hawaii
jkamela@co.hawaii.hi.us, mfujio@co.hawaii.hi.us

Kimo C. Leong on behalf of Creditor Hawaii Electric Light Company, Inc.
kcleong@hawaii.rr.com

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dlyons@caselombardi.com,
shy@caselombardi.com;rhamaguchi@caselombardi.com;user4@caselombardi.com;tnp@caselombardi.com

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sgm@lowenthal-hawaii.com

Craig T. Masuda on behalf of Creditor County of Hawaii
cmasuda@co.hawaii.hi.us, ecarvalho@co.hawaii.hi.us;corporationcounsel@co.hawaii.hi.us

Christopher J. Muzzi on behalf of Creditor Committee The Official Committee of Unsecured Creditors (Hawaii Outdoor Tours, Inc.)
cmuzzi@hilaw.us, tcanon@hilaw.us

Teri-Ann E.S. Nagata on behalf of Creditor Developers Surety and Indemnity Company
tnagata@caedes.com, rhirayama@caedes.com;jogata@caedes.com

Office of the U.S. Trustee.
ustpreion15.hi.ecf@usdoj.gov

Ted N. Pettit on behalf of Creditor First-Citizens Bank & Trust Company
tnp@caselombardi.com,
shy@caselombardi.com;dlyons@caselombardi.com;rhamaguchi@caselombardi.com;user4@caselombardi.com

Tom E. Roesser on behalf of Creditor Marian Rose Benda Thornton, Trustee of the Eleanor Rose Benda Trust
troesser@carlsmith.com, cimai@carlsmith.com;wharstad@carlsmith.com

Donald L. Spafford, Jr. on behalf of Interested Party Ken Direction Corporation
spafford@lava.net, spaffordECFmail@gmail.com

Miranda Tsai on behalf of Creditor Hawaii Medical Service Association
mft@opglaw.com, alison@opglaw.com

Neil J. Verbrugge on behalf of Interested Party Wagner Choi & Verbrugge
nverbrugge@hibklaw.com, jczerwinski@hibklaw.com

Keith Y. Yamada on behalf of Creditor Developers Surety and Indemnity Company
kyamada@caedes.com, icamarillo@caedes.com

Theodore D.C. Young on behalf of Creditor First Hawaiian Bank
tyoung@caedes.com

12-02279 Notice will not be electronically mailed to:

Colliers International
220 S. King St., Ste. 1800
Honolulu, HI 96813

DACA VI LLC
1565 Hotel Circle S, #310
San Diego, CA 92108

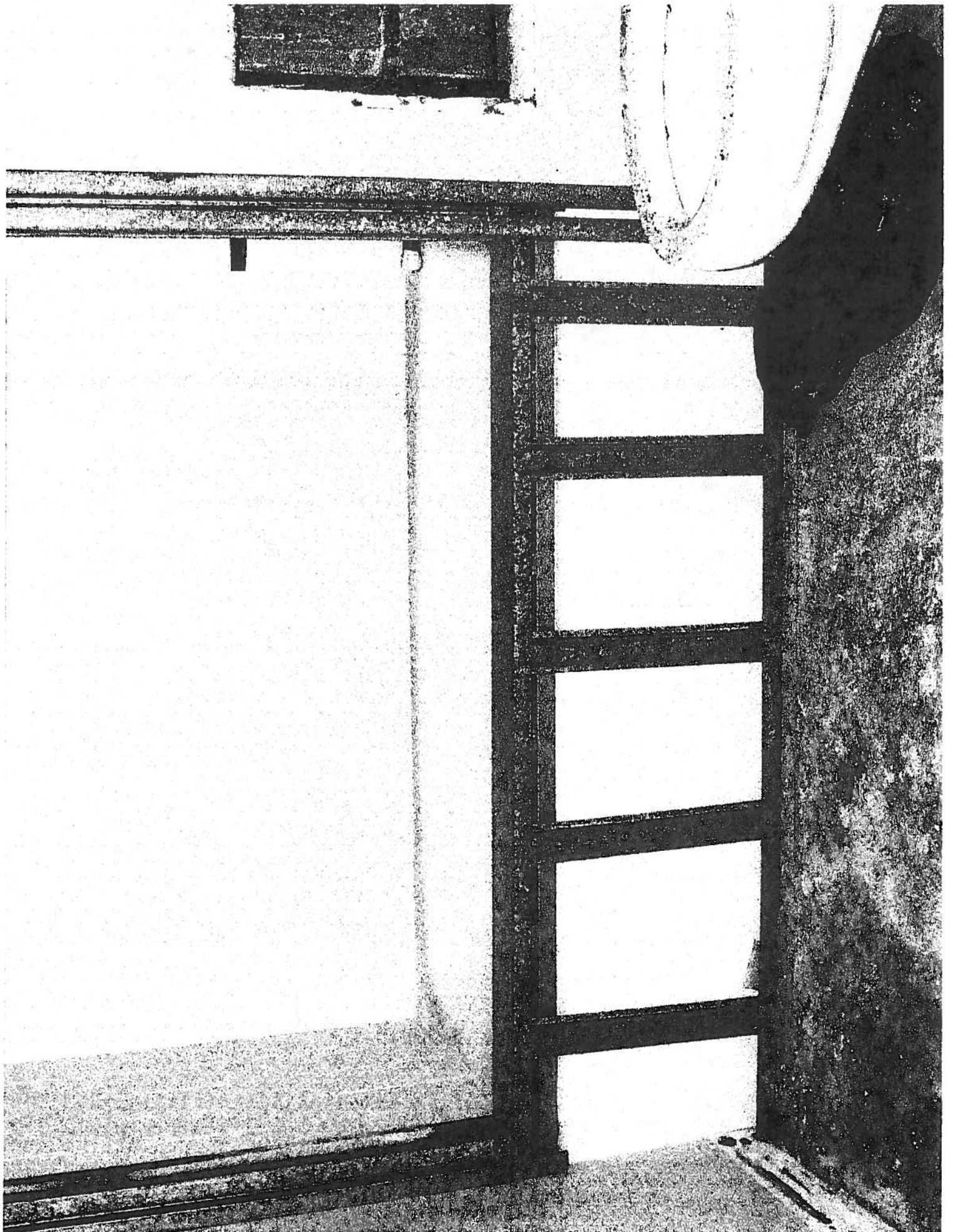
Kennth Fujiyama

P.O. Box 1417
Hilo, HI 96721

Mason M. Yamaki on behalf of Creditor Marian Rose Benda Thornton, Trustee of the Eleanor Rose Benda Trust
121 Waianuenue Ave.
P.O. Box 686
Hilo, HI 96721-0686



EXHIBIT D





BUILDING DIVISION • DEPARTMENT OF PUBLIC WORKS

101 Pauahi Street, Suite 7, Hilo, Hawai'i 96720

74-5044 Ane Keohokalole Highway, Building E, Kailua-Kona, Hawaii 96740

(808) 961-8331, Fax (808) 961-8410

(808) 327-3520, Fax (808) 327-3509

NOTICE OF VIOLATION

May 9, 2013

CERTIFIED MAIL

Mr. Ken Fujiyama
Hawaii Outdoor Tours Inc.
93 Banyan Drive
Hilo, Hawai'i 96720

P O Box 1417
Hilo, Hawai'i 96721-1417

RE: 93 Banyan Drive
Hilo, HI 96720
TMK: 2-1-005:016

Mr. Fujiyama:

The County of Hawai'i, Department of Public Works - Building Division ("DPW-BLDG") inspected the structures and/or premises at 93 Banyan Drive, Hilo, Hawaii ("subject property")¹ and found a violation of one or more provisions of the Hawai'i County Code ("HCC").

The corrective actions found within SECTION III of this letter are to be completed by September 7, 2013. Failure to complete corrective action within the specified time may result in an ORDER being issued that may impose administrative and/or civil fines and/or referral to the appropriate legal authorities for action. The BLDG Division is willing to answer your questions or discuss this matter further.

¹ See Exhibit A – Site Plan of TMK 2-1-005:016 for locations of Kilauea, Mauna Loa, Mauna Kea, and Administration Tower.

RECEIVED
LAND DIVISION
HILO, HAWAII
2013 MAY 13 P 2:35

I. BACKGROUND

As the current occupant, you have multiple open permits for the subject property with no final inspections. Occupant's open permits are as follows:

OCCUPANT'S OPEN BUILDING PERMITS

B2007-1611H	Renovations to guest rooms – Mauna Kea Tower
B2007-1612H	Renovations to guest rooms – Kilauea Tower
B2007-1613H	Renovations to guest rooms – Mauna Loa Tower
B2008-2444H	Fire sprinkler system for entire Kilauea Tower (ground to 6 th floor)
B2008-2445H	Fire sprinkler system for entire Mauna Kea tower (ground to 8 th floor)
B2009-0969H	Alteration to Mauna Kea Tower (changes to permit 2007-1611)
B2009-1771H	Fire sprinkler system for lobby/registration/office and Sandalwood Lounge
B2009-1770H	Fire sprinkler system for Mauna Loa Tower (ground to 12 th floor)
B2009-1772H	Fire sprinkler system for Crown Room

OCCUPANT'S OPEN ELECTRICAL PERMITS

E2007-2308H	Renovate Fire Alarm System
E2007-1396H	Renovation To Guest Rooms – Mauna Loa Tower
E2007-1395H	Renovation To Guest Rooms- Kilauea Tower
E2007-1394H	Renovation To Guest Rooms –Mauna Kea Tower

OCCUPANT'S OPEN PLUMBING PERMITS

M2007-1331H	Renovation to guest rooms-Mauna Kea Tower
M2007-1332H	Renovation to guest rooms-Kilauea Tower
M2007- 1333H	Renovation to guest rooms-Mauna Loa Tower
M2010- 1368H	Installation of gas for two dryers- Laundry Room

Between April 24, 2013 and April 29, 2013, several inspectors from the County of Hawaii, Department of Public Works, Building Division ("DPW-BLDG") conducted inspections at the subject property to determine if the occupant was in compliance with applicable County codes and regulations. As a result DPW-BLDG has determined that numerous violations of various sections of the Hawaii County Building, Electrical, and Plumbing Codes exist.

The numerous violations include but are not limited to the following summary of observations:

1. Building inspectors noted major code issues related to unprotected penetrations of corridors/floors/ceilings, enclosed stairways, work without permit, and change of use without required permit. (Exhibits B, C, D – Photos of Penetrations. Exhibits E, F – Photos of gutted bar and back area of Kilohana Room. Exhibit G – Photo of Gutted Former Ting Hao Restaurant, stairway to Upper Level Removed. Exhibit H – Photos of Gutted Area and Removal of Walls)
2. Electrical inspectors walked through the property and noted non-compliant conditions that pose electrocution and/or fire hazards. Also noted were portions work performed

- under electrical permit(s) were concealed without inspection(s). (See Exhibits I through V – Photos of various non-compliant electrical work)
3. Plumbing inspectors noted that in multiple guest rooms, bathtub plumbing did not comply with backflow prevention requirements. (See Exhibits W and X – Photos of tub installation indicating spout is below wall line.)

II. NOTICE OF VIOLATION

Based upon the foregoing, a review of County records, and the observations of our inspectors you are in violation as follows:

Code(s) and/or Ordinance(s) and Section(s)	Violation(s)
Hawaii County Code ("HCC"), Chapter 5 - Building, Section 5-19. Permit required (Change of use, Alterations) (Acupuncture School and Total Health Care Facility)	Unpermitted construction, alteration conversion, demolition, uses and occupancies.
HCC, Chapter 5, Section 5-40, Inspections	Work concealed and occupied without inspection
1991 Uniform Building Code ("UBC") Section 4304. Walls and Partitions.	Non-compliant building work. Safety and Fire Hazard
1991 UBC section 4304 (e). Through Penetration.	Non-compliant building work. Safety and Fire Hazard
1991 UBC section 4305(c). Floors.	Non-compliant building work. Safety and Fire Hazard
HCC, Chapter 9 - Electricity, Section 9-9. Inspection	Unapproved energizing or use of wiring
HCC, Chapter 9 - Electricity, Section 9-26. Permit required; exceptions	Unpermitted electrical work
2002 National Electrical Code ("NEC") Article 110.12(B) Mechanical Execution of Work	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 210.70 (3) Rating	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 300 All Wiring Installation	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 300.5(D)(2) Conductors Entering Buildings	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 300.11 Securing and Supporting	Non-compliant electrical work. Safety and Fire Hazard

NEC Article 314.20 In Wall or Ceiling	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 314.28 C. Covers	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 334.12 Uses Not Permitted (A)(1) and (10)d.	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 372.13 Discontinued Outlets	Non-compliant electrical work. Life and Safety
NEC Article 400.8(1) Uses Not Permitted	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 404.9(A) Provisions for General-Use Snap Switches	Non-compliant electrical work. Safety and Fire Hazard
NEC Art 406.3(F) Noninterchangeable Types	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 410.3 Live Parts	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 410.49 Lampholders in Wet or Damp Conditions	Non-compliant electrical work. Life and Safety
HCC, Chapter 17 - Plumbing, Section 17-24, Inspection required	Work concealed and in use without inspection
HCC, Chapter 17 - Plumbing, Section 17-37. Dangerous and insanitary construction, Paragraph (a), Item (6), cross-connection	Nuisance. Public Health and Safety
1997 Uniform Plumbing Code ("UPC") Section 603.2.1 Airgap	Non-compliant plumbing work, Public health and safety

The relevant sections of the Hawai'i County Code, UBC, NEC, and UPC are provided below:

HCC Chapter 5 - Building

Section 5-19. Permits Required.

No person, firm, or corporation shall erect, construct, enlarge, alter, repair, move, convert, or demolish any building or structure in the County, or cause the same to be done, without first obtaining a separate building permit for each building or structure from the building official; provided that one permit may be obtained for a dwelling and its accessories, such as fence, retaining wall, pool, storage and garage structures.

Section 5-40. Inspections.

- (a) All construction or work for which a permit is required shall be subject to inspection by the building official
- (b) It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purpose. Neither the building official nor the County shall be liable for any expense entailed in the removal or replacement of any material required to allow inspection.

Section 5-51. Buildings found to be unsafe; Notice to owner.

- (a) Whenever the building official has examined or caused to be examined any building and has determined that such building is an unsafe building:
 - (1) The building official shall commence proceedings to cause the repair, rehabilitation, vacating, removal and/or demolition of the building
 - (2) Such building shall automatically be deemed and are hereby declared to be a public nuisance;
 - (3) The building official shall give to the owner of such building written notice of violation in accordance with section 5-59 and as further described below; and
 - (4) The building official shall cause to be posted at each entrance to the buildings ordered vacated a notice to read: "DO NOT ENTER. UNSAFE TO OCCUPY. DEPARTMENT OF PUBLIC WORKS. COUNTY OF HAWAII."
- (b) The notice required by subsection (a)(3) above shall require the owner or person in charge of the building or premises, to commence the required repairs or improvements or demolition and removal of the building or structure or portions thereof within forty-eight hours, and to complete all such work within ninety days from date of notice, provided that the building official may provide for more time for completion if deemed reasonably necessary. The notice shall also require the building or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the building official.

1991 Uniform Building Code ("UBC")

UBC Section 4304. Walls and Partitions.

- (e) Through penetration. Penetrating items passing entirely through both protective membranes of bearing walls required to have a fire-resistance rating and walls requiring protected openings shall be protected with through-penetration fire stop suitable for the method of penetration.

UBC Section 4305. Floor-Ceilings or Roof-Ceilings.

- (c) Floors. Fire-resistive floors and floors which are part of a floor-ceiling assembly shall be continuous without openings or penetrations in order to completely separate one story or basement from another.

HCC Chapter 9 - Electricity

Section 9-9. Inspections.

- (a) All electrical wiring, for which a permit is required, shall be inspected and approved by the authority having jurisdiction before being concealed, energized, or used.
- (b) No person shall use, operate, or maintain, or cause or permit to be used, operated, or maintained, any electric wiring until it is approved.
- (d) No person shall conceal, enclose, or cover, or cause or permit to be concealed, enclosed, or covered, any portion of any electric wiring or equipment in any manner which will interfere with or prevent the inspection and approval thereof.
- (e) Fixtures, appliances, devices, or equipment shall not be connected to any electric wiring until the rough electric wiring, including conductors, have been inspected and approved by the authority having jurisdiction.
- (f) All obstruction, covers, plates, tapes, light fixtures, etc., which make impracticable the making of a thorough inspection of electric wiring shall be removed upon notice (either verbal or in writing) to do so, and shall be kept removed until the electric wiring has been inspected and approved.
- (g) The supervising electrician or electrical contractor shall be present on the job site upon request of the authority having jurisdiction.

Section 9-10. Nonconforming and defective installations.

Whenever any electrical installation is found to have been installed, altered, changed, or reconstructed contrary to the provisions of this chapter or any other law, whenever any electrical installation is found to be in use contrary to the provisions of this chapter or any other law, or whenever any electrical installation, which complied with the existing laws, ordinances, and regulations in effect when the electrical work therein was performed, is found to be unsafe or dangerous to persons or property, the administrative authority shall give the owner or the person in control of that installation a written notice stating the findings with respect to that installation and order the owner or other person in control to make the corrections to be set forth in the written notice. When found to be unsafe or dangerous to persons or property, the defective installation shall be disconnected from the power source and tagged as unsafe to operate until corrective action is made, inspected, and approved.

Section 9-26. Permit required; exception.

No person shall perform any electrical work or cause or permit the same to be done, unless a permit therefor has been obtained from the authority having jurisdiction with the following exceptions:

2002 National Electrical Code ("NEC")

NEC Article 110.12 Mechanical Execution of Work

Electrical equipment shall be installed in a neat and workmanlike manner.

- (C) **Integrity of Electrical Equipment and Connections.** Internal parts of electrical equipment, including busbars, wiring terminals, insulators, and other surfaces, shall not be damaged or contaminated by foreign materials such as paint, plaster, cleaners, abrasives, or corrosive residues. There shall be no damaged parts that may adversely

affect safe operation or mechanical strength of the equipment such as parts that are broken; bent; cut; or deteriorated by corrosion, chemical action, or overheating.

NEC Article 300.1 Scope (A) All Wiring Installations.

This article covers wiring methods for all wiring installations unless modified by other articles.

NEC Article 300.5(D). Underground Installations

Direct-buried conductors and cables shall be protected from damage in accordance with (1) through (5).

- (2) **Conductors Entering Buildings.** Conductors entering a building shall be protected to the point of entrance.

NEC Article 300.11 Securing and Supporting

- (A) **Secured in Place.** Raceways, cable assemblies, boxes, cabinets, and fittings shall be securely fastened in place. Support wires that do not provide secure support shall not be permitted as the sole support. Support wires and associated fittings that provide secure support and that are installed in addition to the ceiling grid support wires shall be permitted as the sole support. Where independent support wires are used, they shall be secured at both ends. Cables and raceways shall not be supported by ceiling grids.

NEC Article 312.3 Position in Wall

In walls of concrete, tile, or other noncombustible material, cabinets shall be installed so that the front edge of the cabinet is not set back of the finished surface more than 6 mm (1/4 in.). In walls constructed of wood or other combustible material, cabinets shall be flush with the finished surface or project there from.

NEC Article 314.20 In Wall or Ceiling

In walls or ceilings with a surface of concrete, tile, gypsum, plaster, or other noncombustible material, boxes shall be installed so that the front edge of the box will not be set back of the finished surface more than 6mm (1/4 in.). In walls constructed of wood or other combustible material, cabinets shall be flush with the finished surface or project there from.

NEC Article 314.28 Pull and Junction Boxes and Conduit Bodies

- (C) **Covers.** All pull boxes, junction boxes, and conduit bodies shall be provided with covers compatible with the box or conduit body construction and suitable for the conditions of use. Where metal covers are used, they shall comply with the grounding requirements of 250.110.

NEC Article 334.12 Uses Not Permitted

- (A) **Types NM, NMC and NMS.** Types NM, NMC and NMS cables shall not be used under the following conditions or in the following locations:
 - (1) As open runs in dropped or suspended ceilings in other than one- and two-family and multifamily dwellings.

- (10) Types NM and NMS cables shall not be used under the following conditions or in the following locations
- d. Where exposed or subject to excessive moisture or dampness.

NEC Article 372.13 Discontinued Outlets

When an outlet is abandoned, discontinued, or removed, the sections of circuit conductors supplying the outlet shall be removed from the raceway. No splices or reinsulated conductors, such as would be the case of abandoned outlets on loop wiring, shall be allowed in raceways.

NEC Article 400.8 Uses Not Permitted

Unless specifically permitted in 400.7, flexible cords and cables shall not be used for the following:

- (1) As a substitute for the fixed wiring of a structure

NEC Article 404.9 Provisions for General-Use Snap Switches

- (A) **Faceplates.** Faceplates provided for snap switches mounted in boxes and other enclosures shall be installed so as to completely cover the opening and, where the switch is flush mounted, seat against the finished surface.

NEC Article 406.3 General Installation Requirements

Receptacle outlets shall be located in branch circuits in accordance with Part III of Article 210. General installation requirements shall be in accordance with 406.3 (A) through (F).

- (F) **Noninterchangeable Types.** Receptacles connected to circuits that have different voltages, frequencies, or types of current (ac or dc) on the same premises shall be of such design that the attachment plugs used on these circuits are not interchangeable.

NEC Article 410.3 Live Parts

Luminaires, portable luminaires, lampholders, and lamps shall have no live parts normally exposed to contact. Exposed accessible terminals in lampholders and switches shall not be installed in metal luminaire canopies or in open bases of portable table or floor luminaires. *Exception: Cleat-type lampholders located at least 2.5 m (8 ft.) above the floor shall be permitted to have exposed terminals.*

NEC Article 410.49 Lampholders in Wet or Damp Locations

Lampholders installed in wet or damp locations shall be of the weatherproof type.

HCC Chapter 17 - Plumbing.

Section 17-24. Inspection required.

- (a) All plumbing, gas, and drainage systems shall be inspected by the authority having jurisdiction to ensure compliance with all the requirements of this code...
- (b) It shall be the duty of the applicant to cause the work to remain accessible and exposed for inspection purpose. Neither the building official nor the County shall be liable for any expense entailed in the removal or replacement of any material required to allow inspection.

Section 17-37. Dangerous and insanitary construction.

- (a) Any portion of a plumbing system found by the authority having jurisdiction to be insanitary as defined herein is hereby declared to be a nuisance. "Insanitary" means a condition which is contrary to sanitary principles or is injurious to health. Conditions to which "insanitary" shall apply include, but are not limited to, the following:
 - (6) Any connection, cross-connection, construction or condition, temporary or permanent, which would permit or make possible by any means whatsoever, for any unapproved foreign matter to enter a water distribution system used for domestic purposes.
- (b) Upon determining that any construction or work regulated by this code is dangerous, unsafe, insanitary, a nuisance or a menace to life, health or property, or otherwise in violation of this code, the authority having jurisdiction may order any person, firm or corporation using or maintaining any such condition or responsible for the use or maintenance thereof to discontinue the use or maintenance thereof or to repair, alter, change, remove, or demolish same as may be considered necessary for the proper protection of life, health, or property. In the case of any gas piping or gas appliance, the authority having jurisdiction may order any person, firm, or corporation, supplying gas to such piping or appliance, to discontinue supplying gas thereto, until such piping or appliance is made safe with respect to life, health and property,

1997 Uniform Plumbing Code

Section 603.2.1 Airgap.

The minimum airgap to afford backflow protection shall be in accordance with Table 6-3.

**TABLE 6-3
Minimum Airgaps for Water Distribution⁴**

Fixtures	When not affected by sidewalls ¹		When affected by sidewall ²	
	Inches	(mm)	Inches	(mm)
Effective openings ³ not greater than one-half (1/2) inch (12.7 mm) in diameter	1	(25.4)	1-1/2	(38)

III. CORRECTIVE ACTIONS

To be in compliance with the above-mentioned section(s), the following corrective actions are required by the deadline date of **September 7, 2013**:

- (1) You must obtain a building permit from the BLDG Division for change of use for an Acupuncture School and Total Health Care Facility. (HCC § 5-19)
- (2) You must allow the Building Inspector to post notice of the building's unsafe condition at the site. (HCC 5-51(a)(4))

- (3) You must commence with all demolition or reconstruction work and complete the same within ninety days from date of this notice; additional time for completion may be requested if deemed reasonably necessary by the BLDG Division. (HCC 5-51(b))
- (4) You must ensure compliance with all requirements of HCC § 5-51, such as refraining from entering the building except for the purpose of conducting required repair or demolition work.
- (5) You must disconnect defective electrical installations from their power source and tag as unsafe to operate until corrective action is made, inspected, and approved. (HCC 9-10)
- (6) You must discontinue use of insanitary plumbing construction (cross-connection) or cause to repair, alter, change, remove, or demolish same as may be considered necessary for the proper protection of life, health, or property. (HCC 17-37)

YOUR DEADLINE FOR COMPLIANCE IS: September 7, 2013.

The Building Division is prepared to answer your questions or discuss this matter further. Please understand that you are responsible to contact the inspector to verify the corrective action.

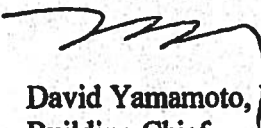
IV. WARNING

If corrective action is not completed by the deadline date of **September 7, 2013**, an **ORDER** will be issued that may impose administrative and/or civil fines and/or referral to the appropriate legal authorities for action.

V. CONCLUSION

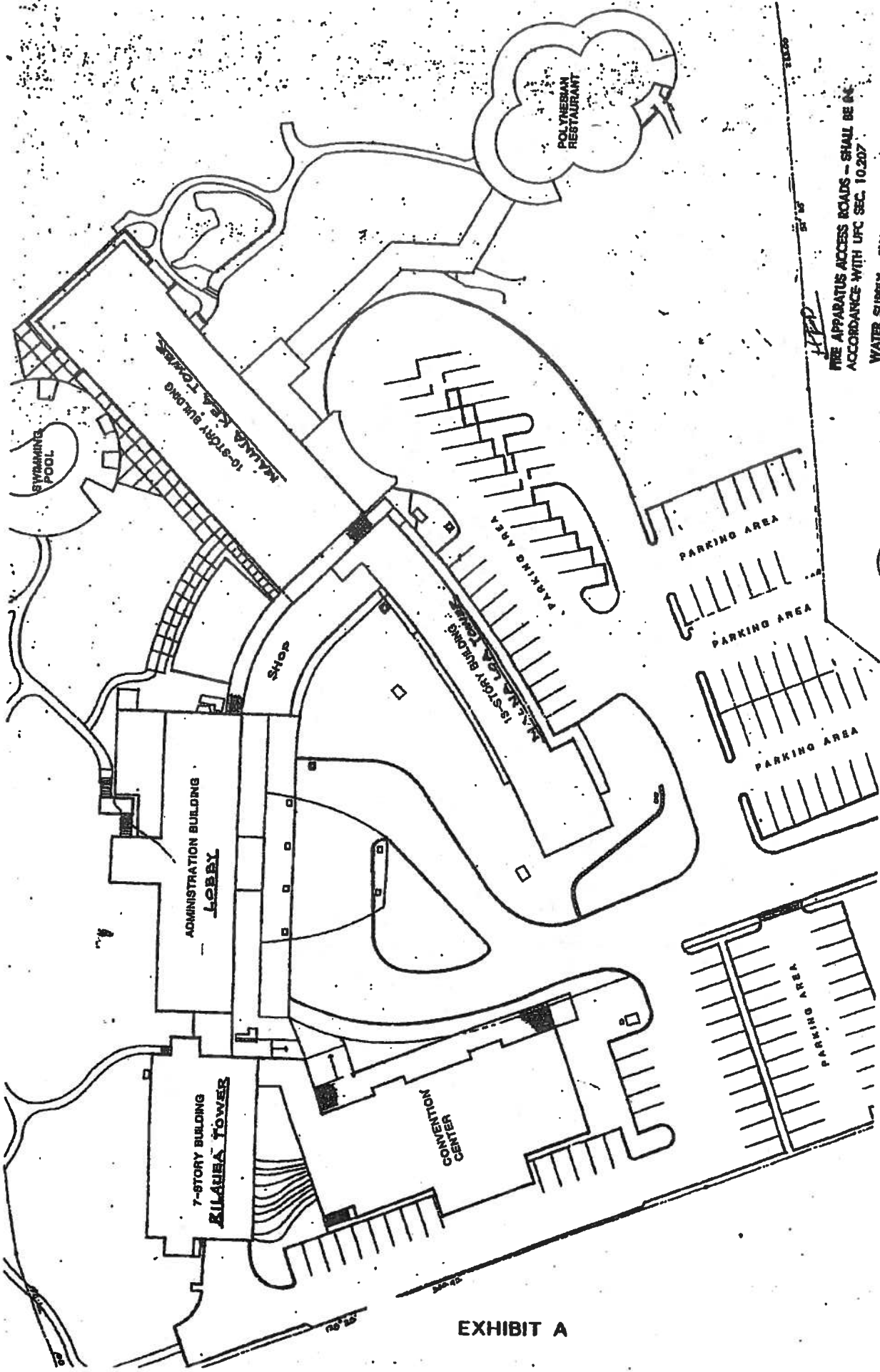
Please contact the Supervising Building Inspector, Joy Matsumoto at 961-8471; the Supervising Electrical Inspector, Gary Kaho'ohanohano at 961-8486; the Supervising Plumbing Inspector, Rodney Astrande at 961-8487, if you have any further questions regarding this matter.

Respectfully,


David Yamamoto, P.E.
Building Chief

Cc:

Warren Lee- Director
Joy Matsumoto-Supervising Building Inspector
Gary Kahoohanohano-Supervising Electrical Inspector
Rodney Astrande-Supervising Plumbing Inspector
✓ Gordon Heit, Department of Land and Natural Resources



FIRE APPARATUS ACCESS ROADS - SHALL BE IN
 ACCORDANCE WITH UPC SEC. 10.207
 WATER SUPPLY - SHALL BE IN ACCORDANCE WITH UPC SEC. 10.207

EXHIBIT A



EXHIBIT B

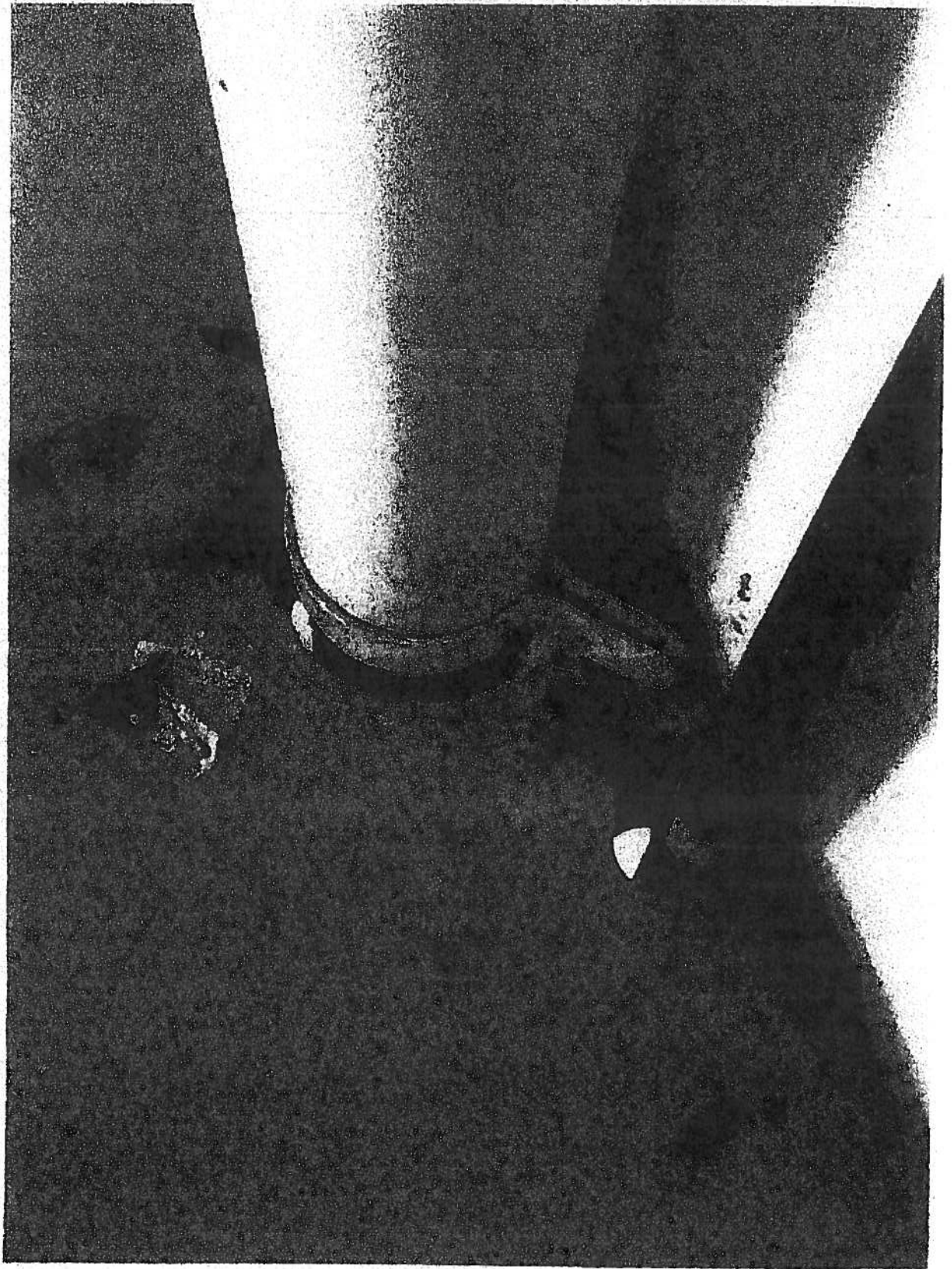


EXHIBIT C



EXHIBIT D

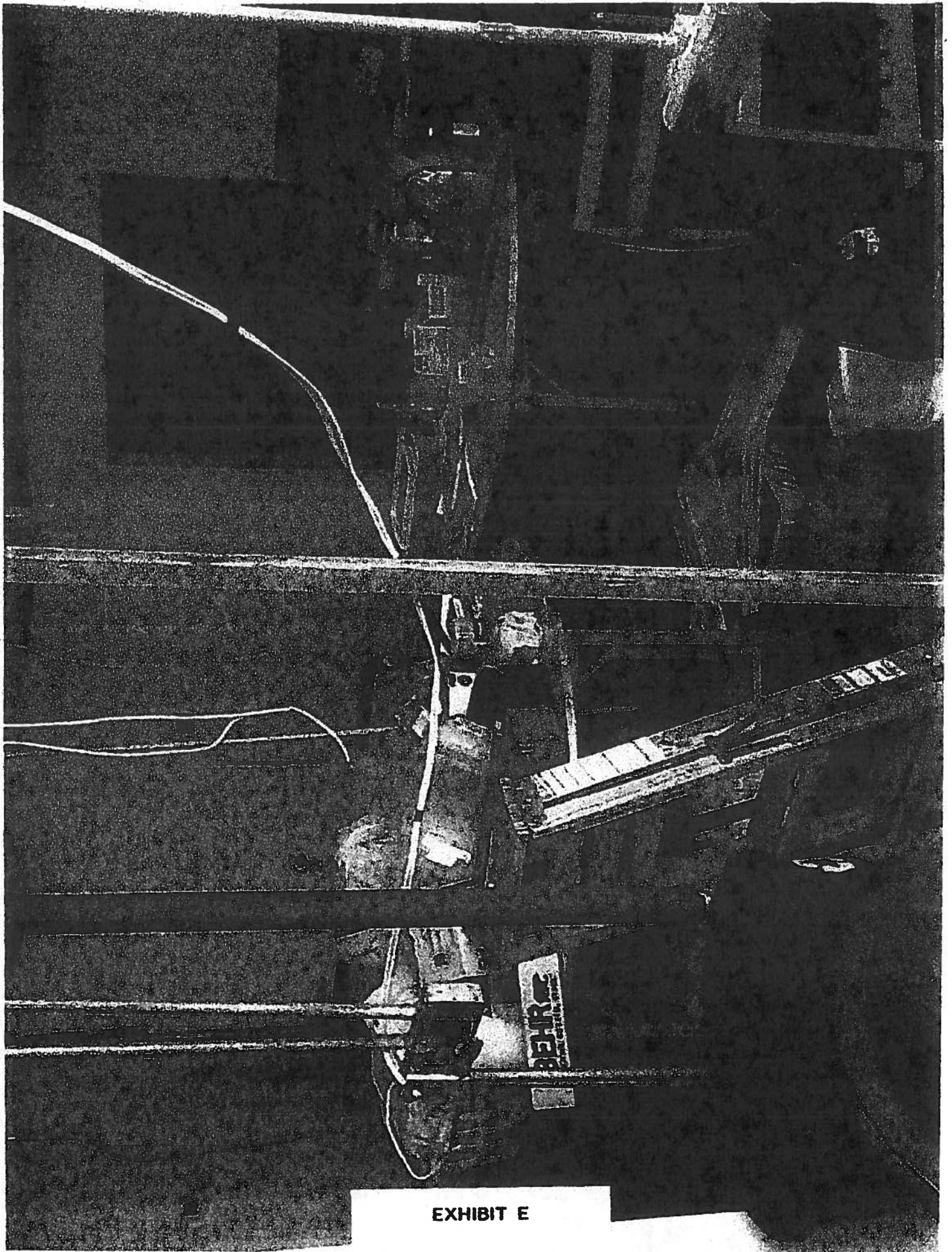


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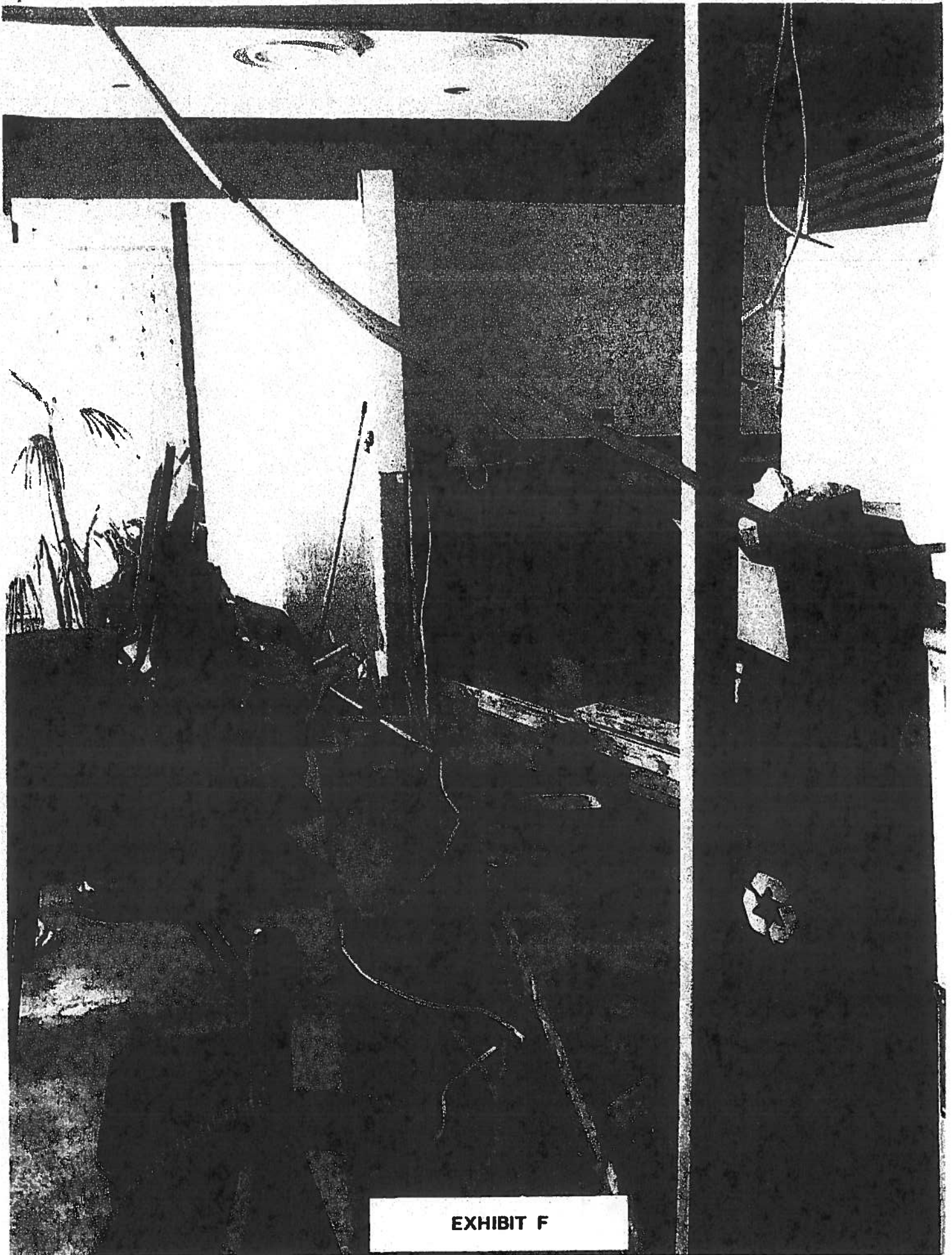


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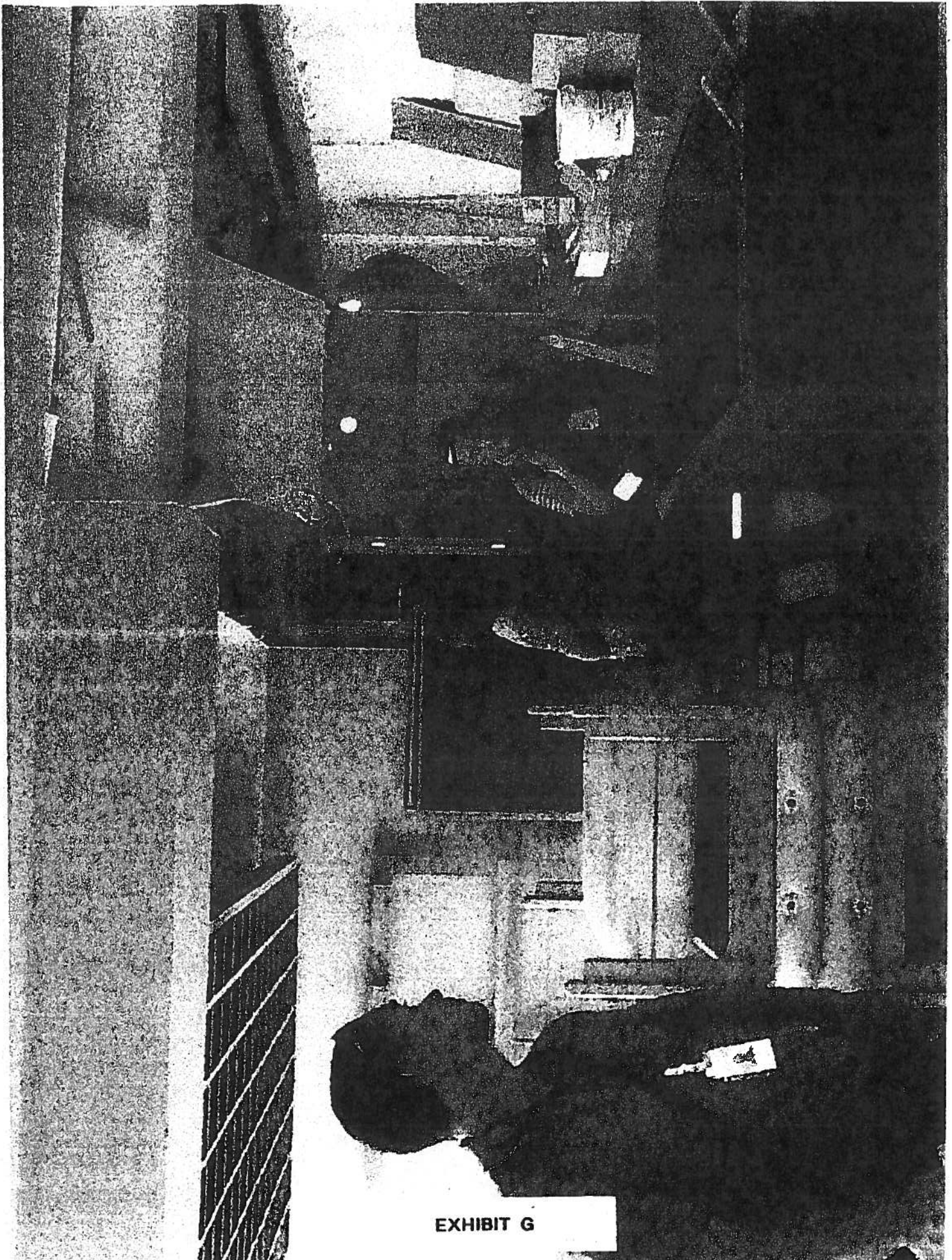


EXHIBIT G

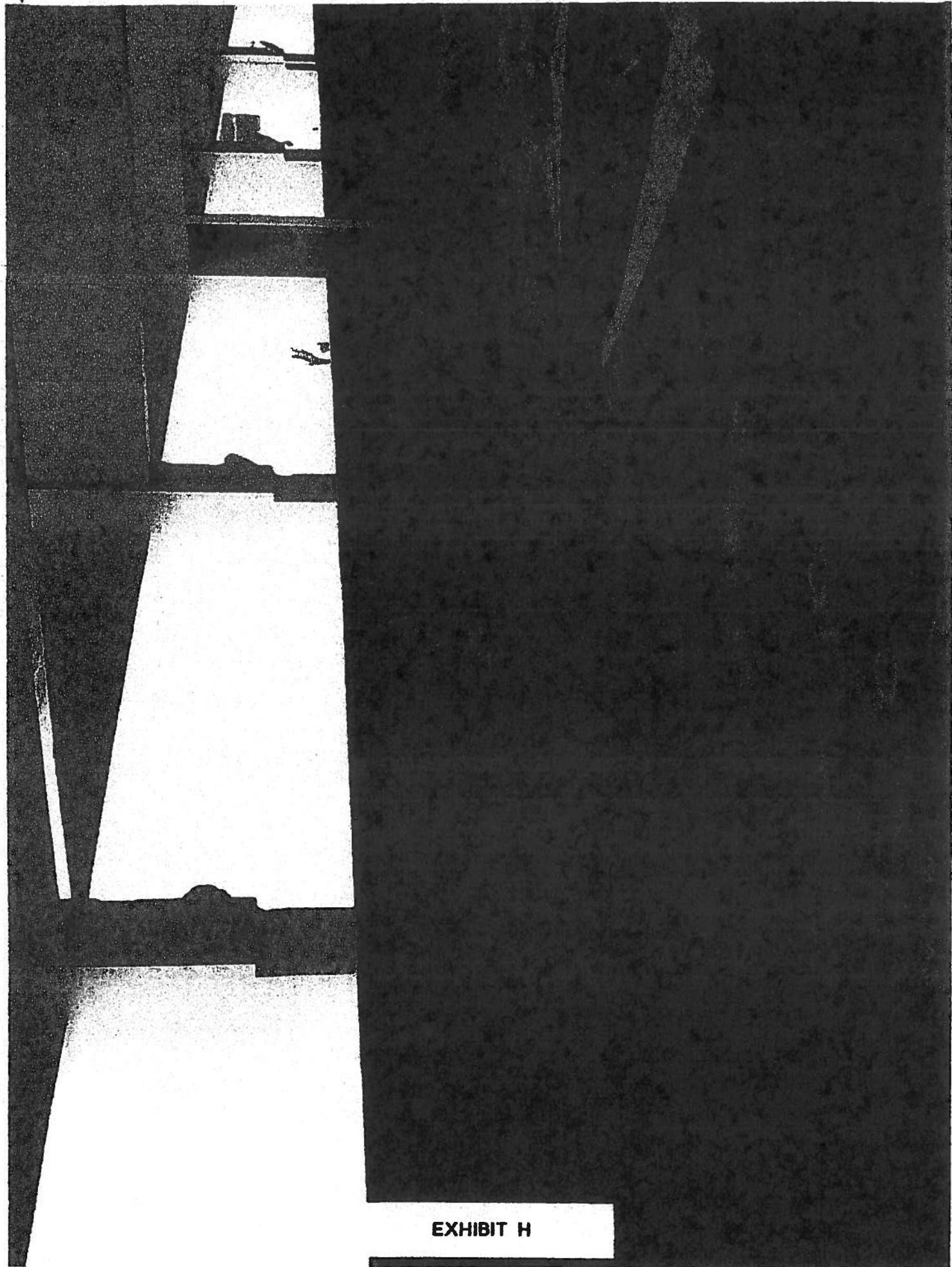


EXHIBIT H

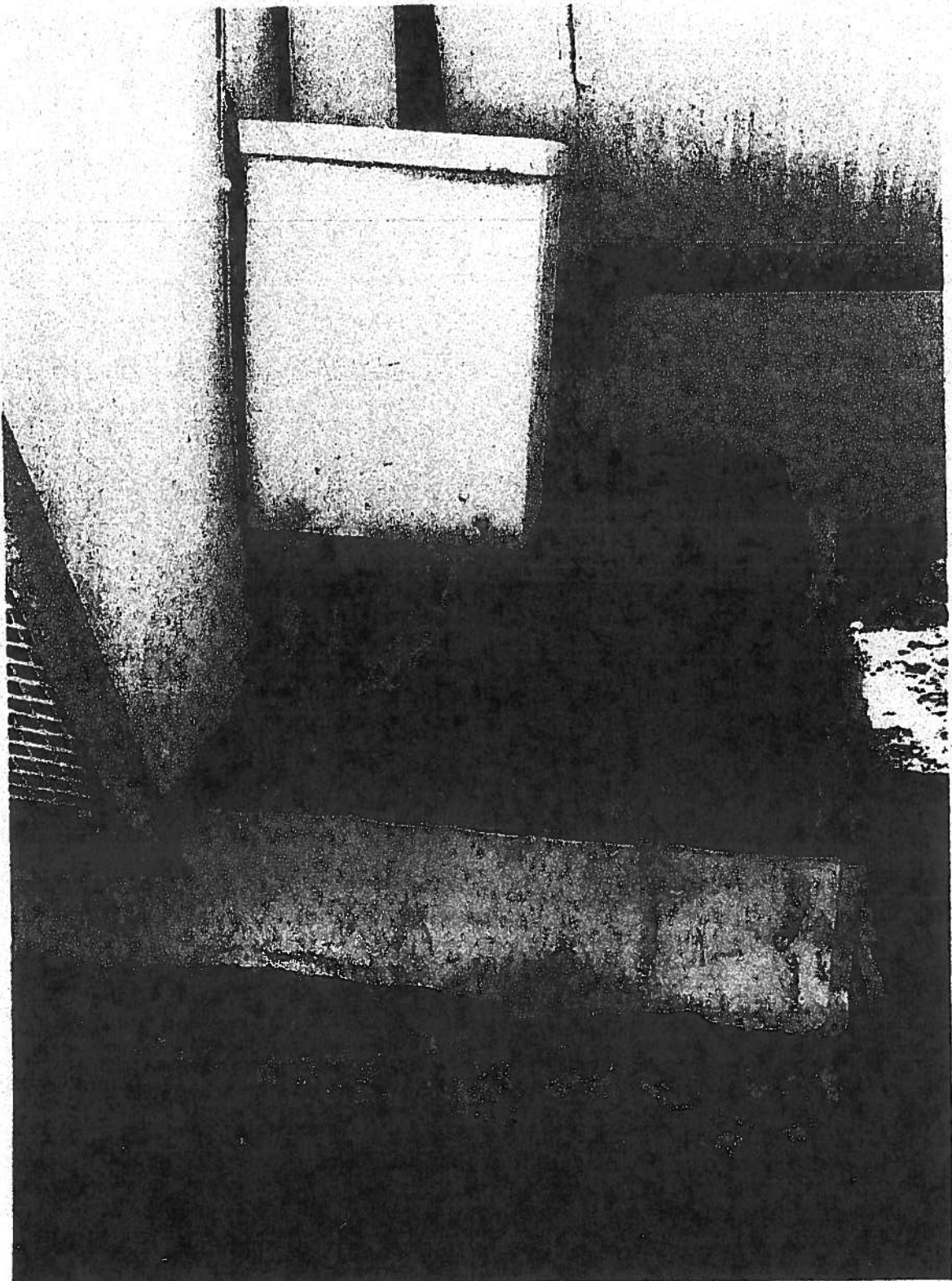


Exhibit I - ART 300.5(D)(2) Conductors Entering Building . Conductors entering a building shall be protected to the point of entrance.

EXHIBIT I

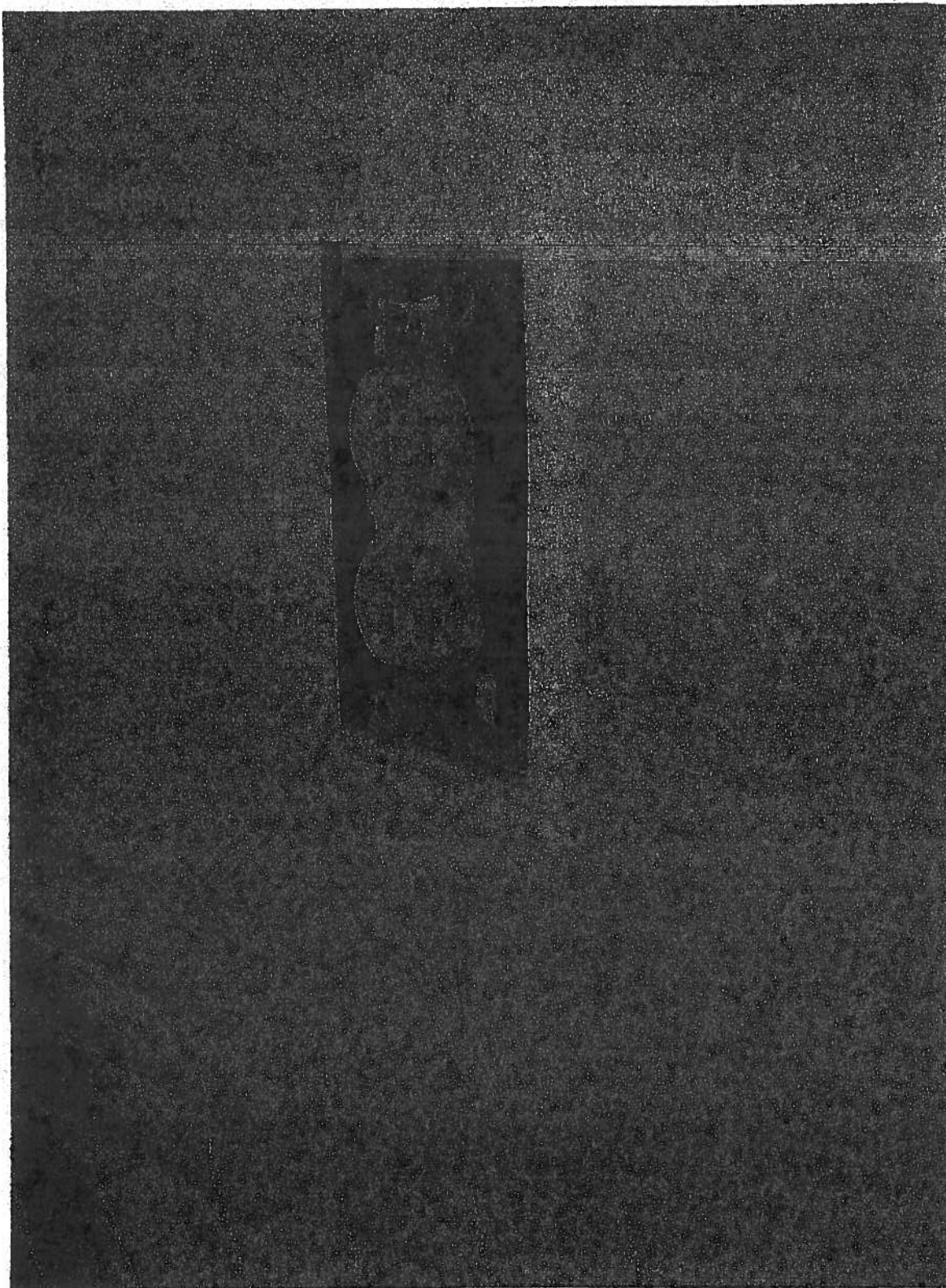


Exhibit J - Article 314.20 In wall s and ceilings constructed of wood or other combustible surface material, boxes shall be flush with the finished surface .

EXHIBIT J

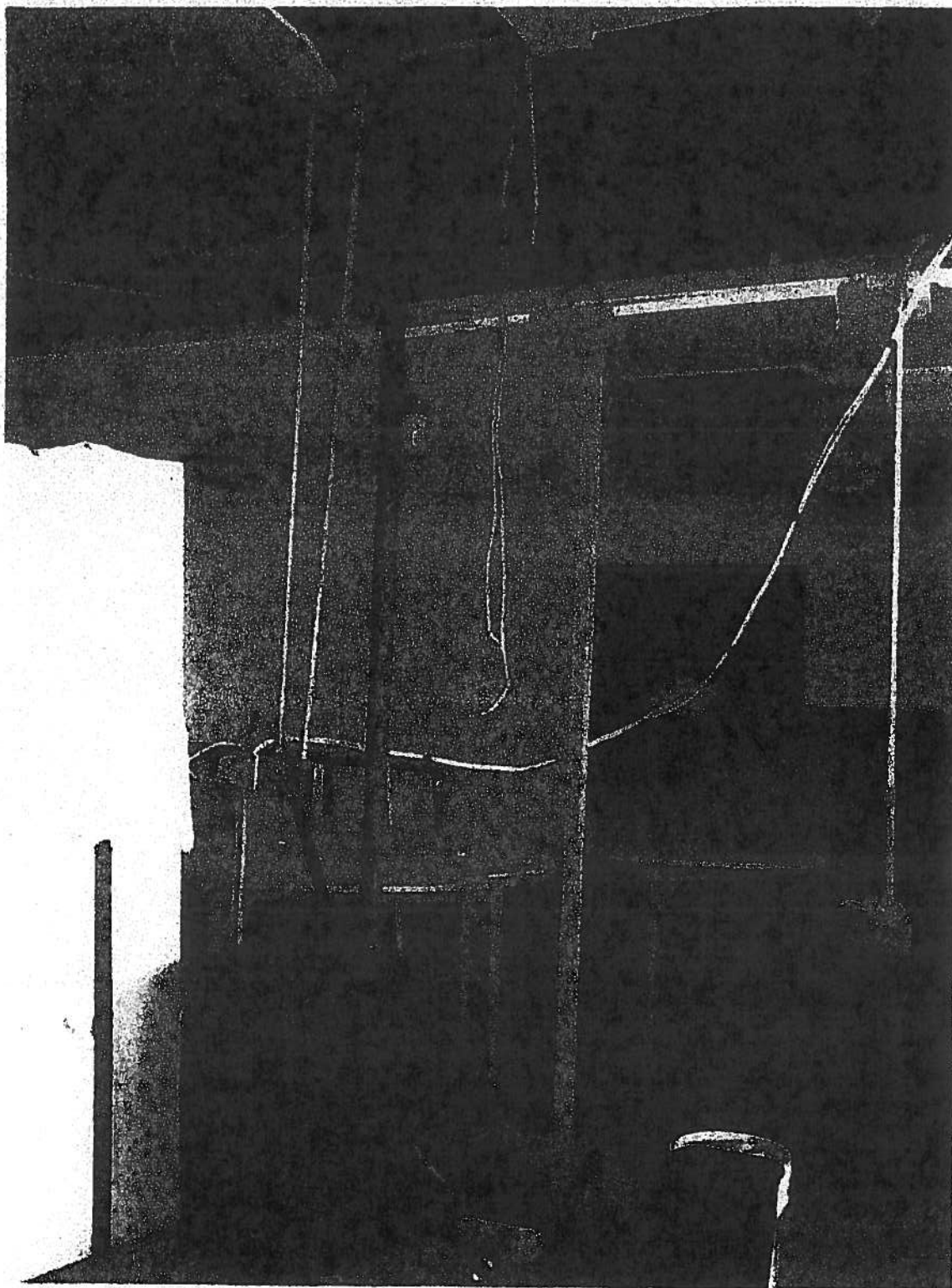


Exhibit K - ART 372.13 Discontinued outlets. Circuit conductors shall be removed from the raceway Article 334.12 (a)(1) uses not permitted. As open runs in dropped or suspended ceilings in other than one and two family and multifamily dwellings.

EXHIBIT K

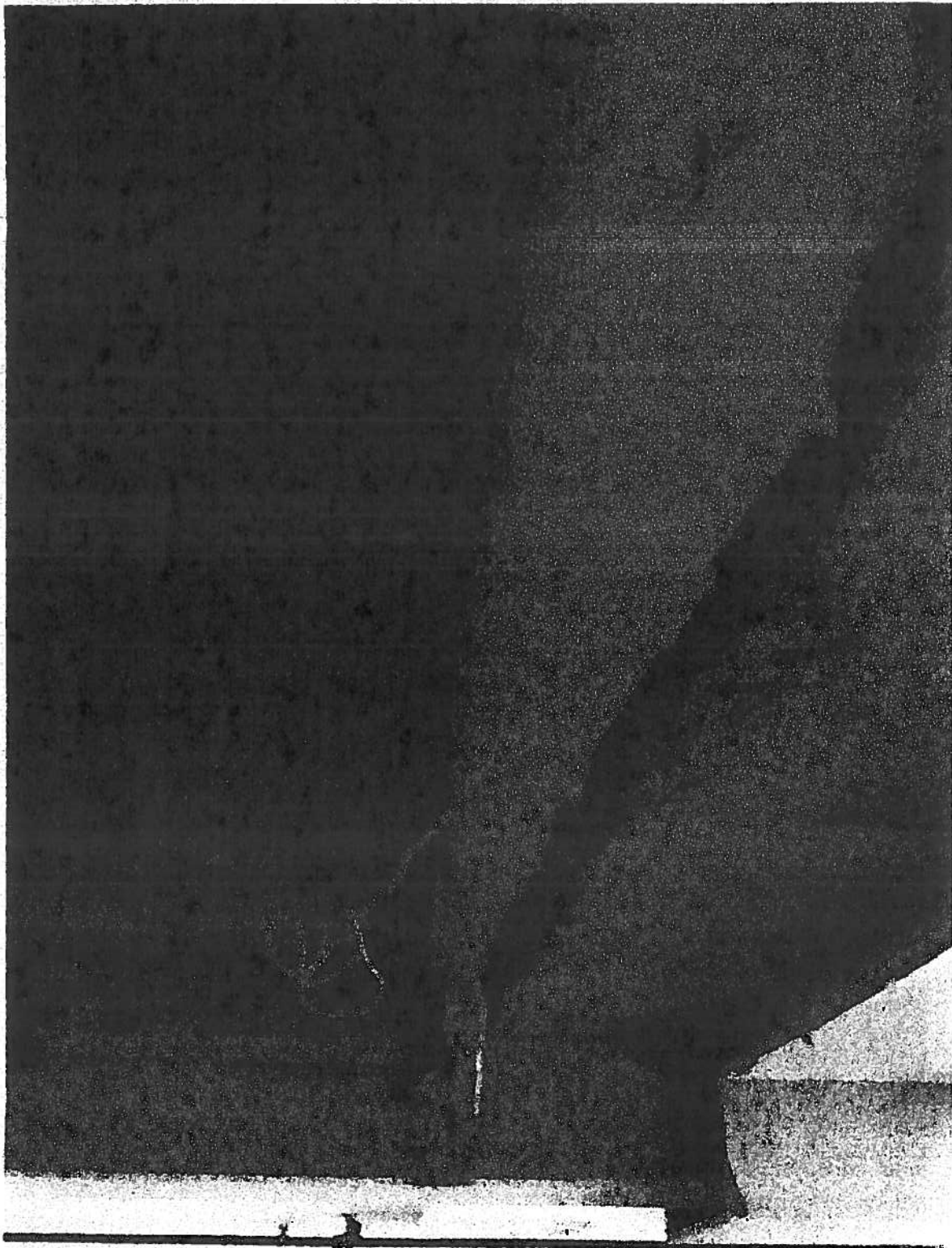


Exhibit L - Article 300 wiring method violation, Article 334.12(1) uses not permitted as open runs in dropped or suspended ceilings in other than residential structures.N/A

EXHIBIT L

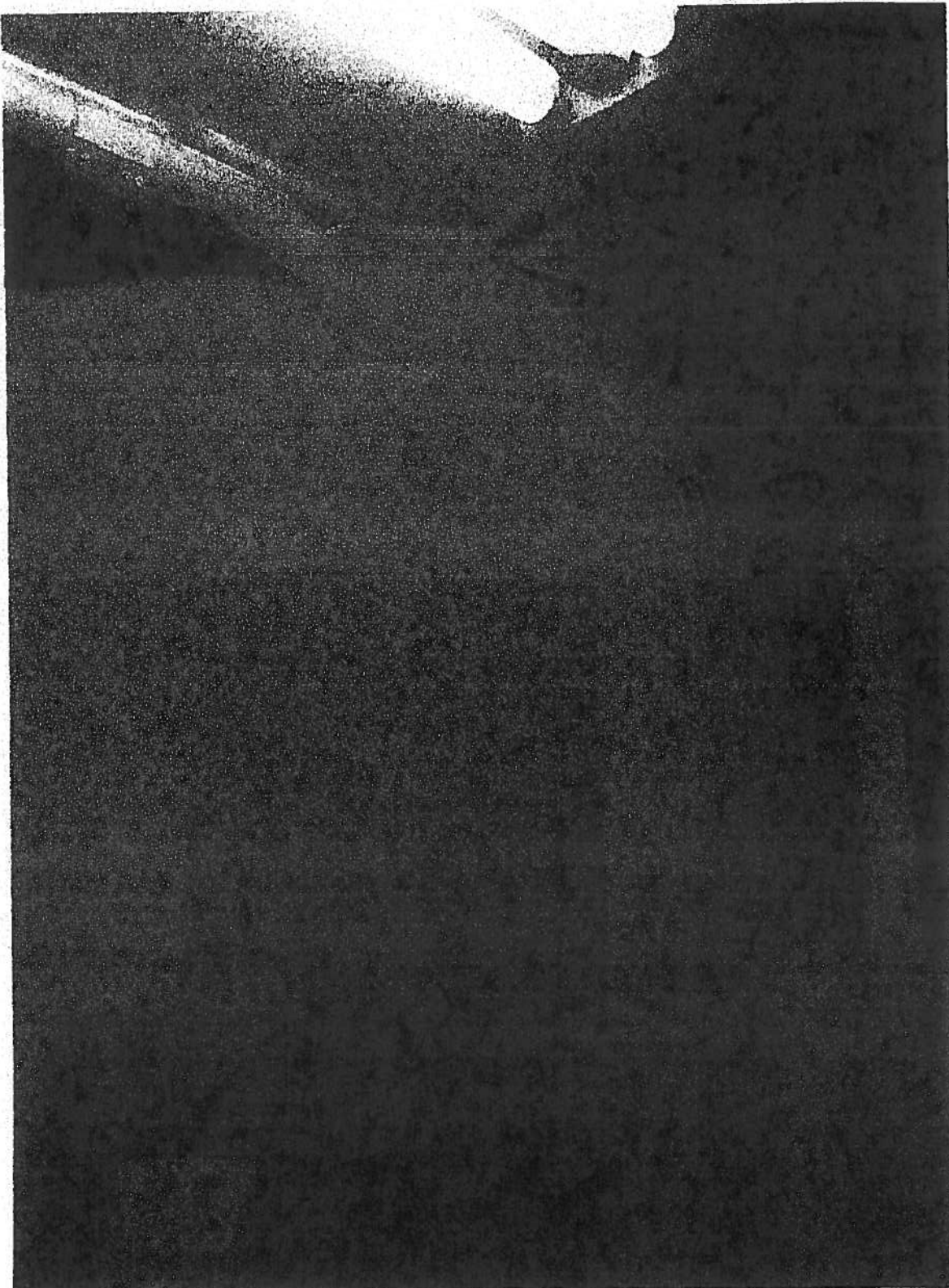


Exhibit M - Article 300 wiring method violation, Article 334.12(1) uses not permitted as open runs in dropped or suspended ceilings in other than residential structures.

EXHIBIT M

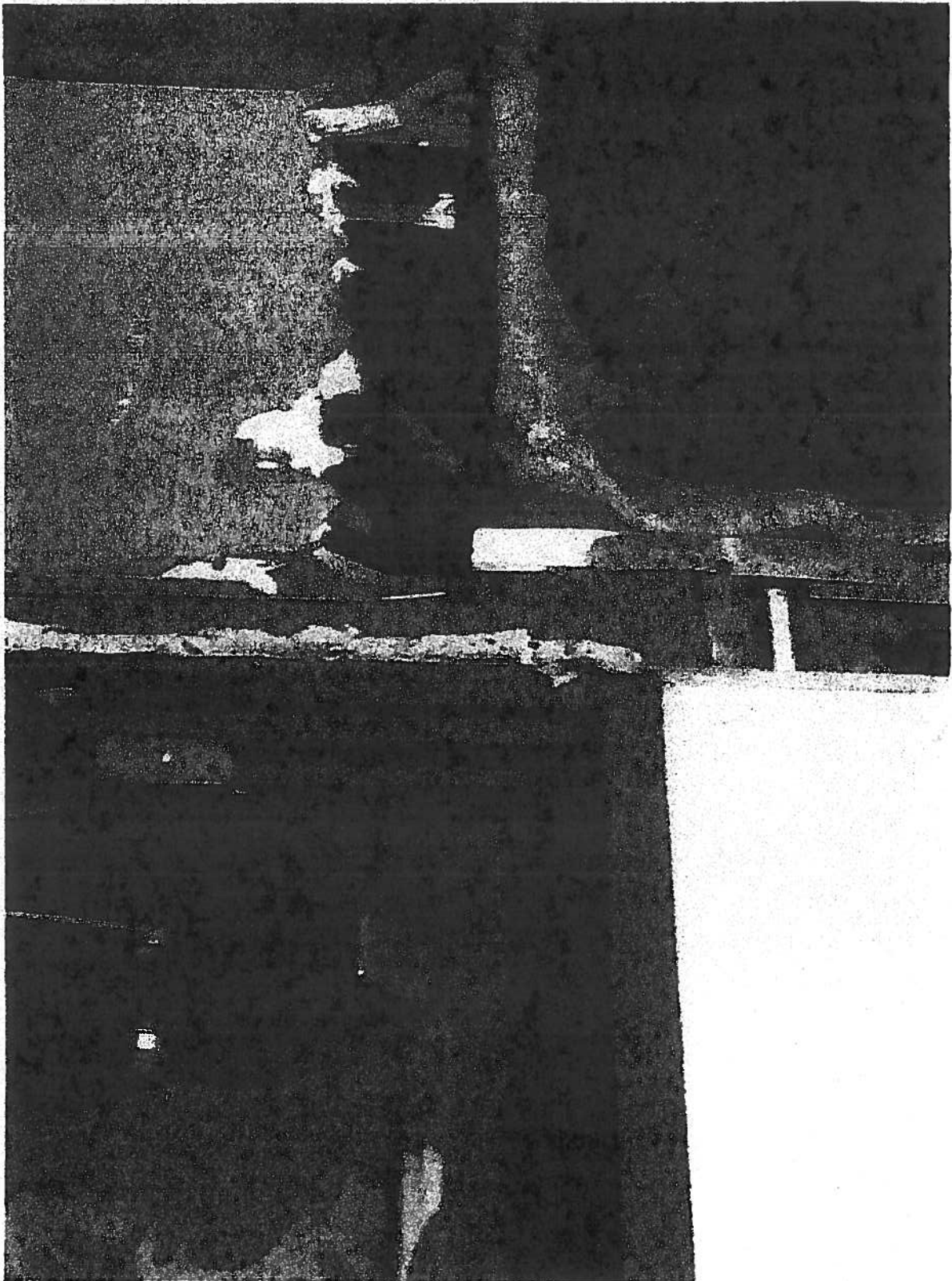


Exhibit N - ART 372.13 Discontinued outlets. Circuit conductors shall be removed from the raceway

EXHIBIT N

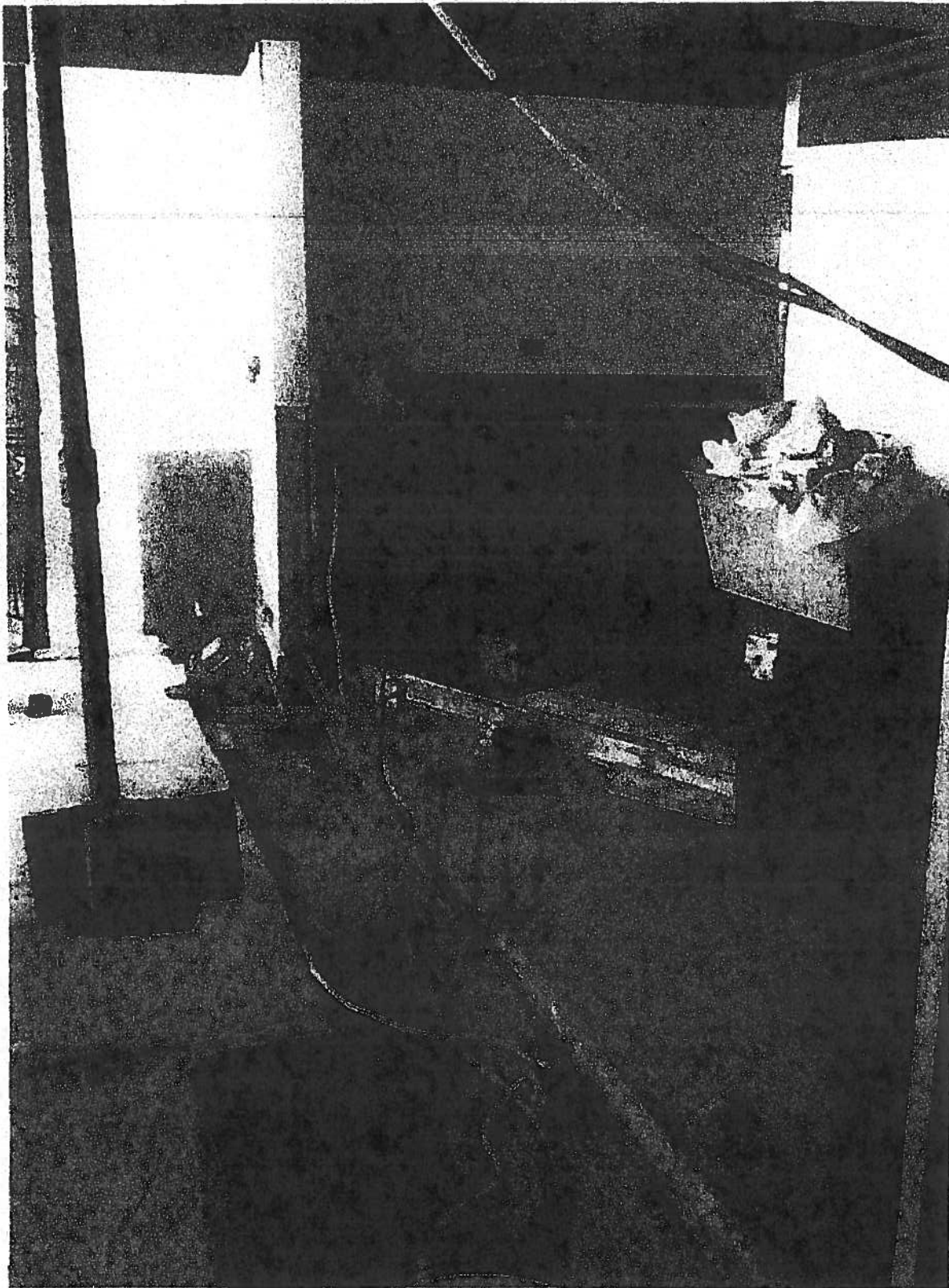


Exhibit O - ART 372.13 Discontinued outlets. Circuit conductors shall be removed from the raceway, A

EXHIBIT O

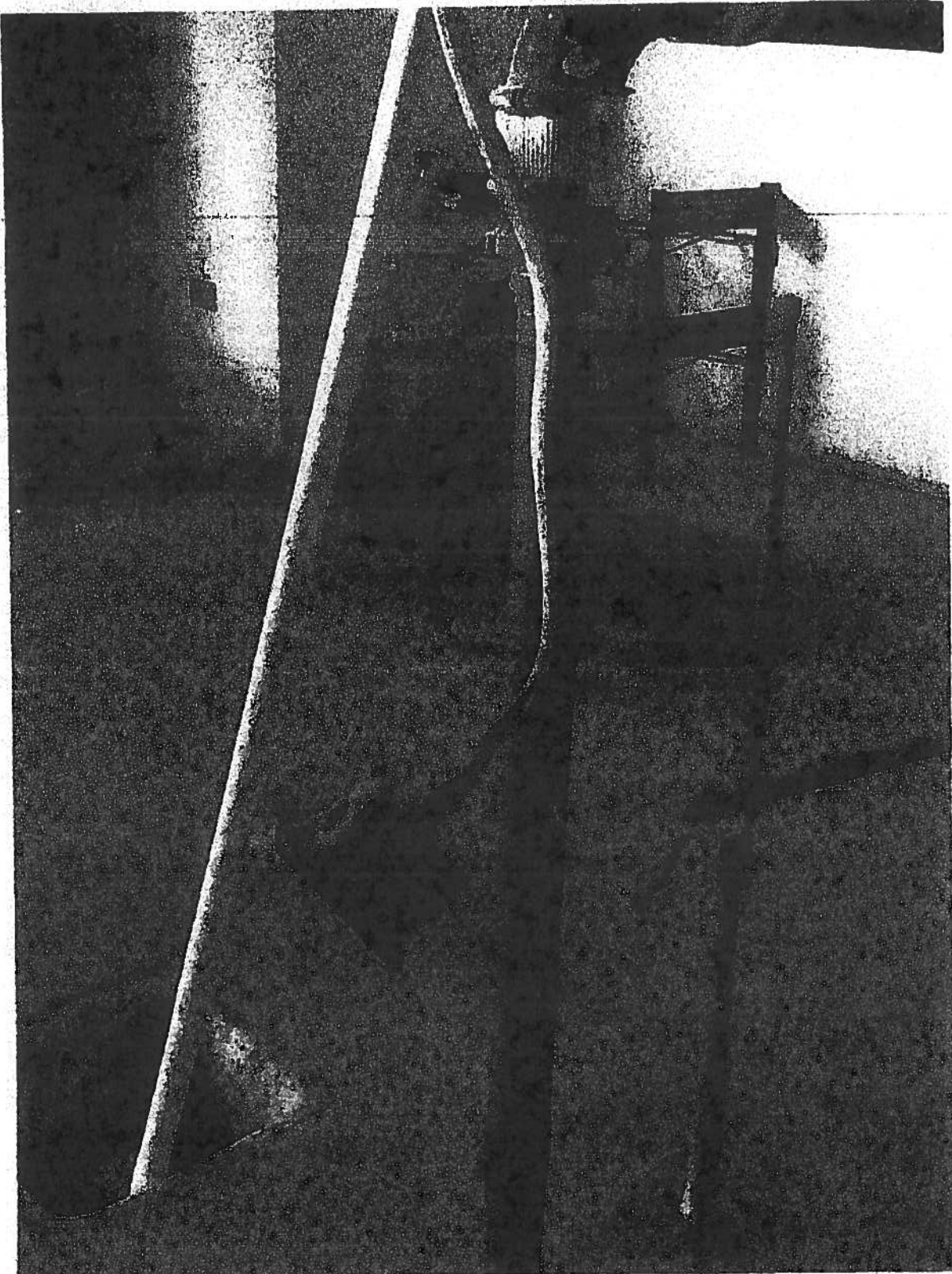


Exhibit P - ART 372.13 Discontinued outlets. Circuit conductors shall be removed from the raceway

EXHIBIT P

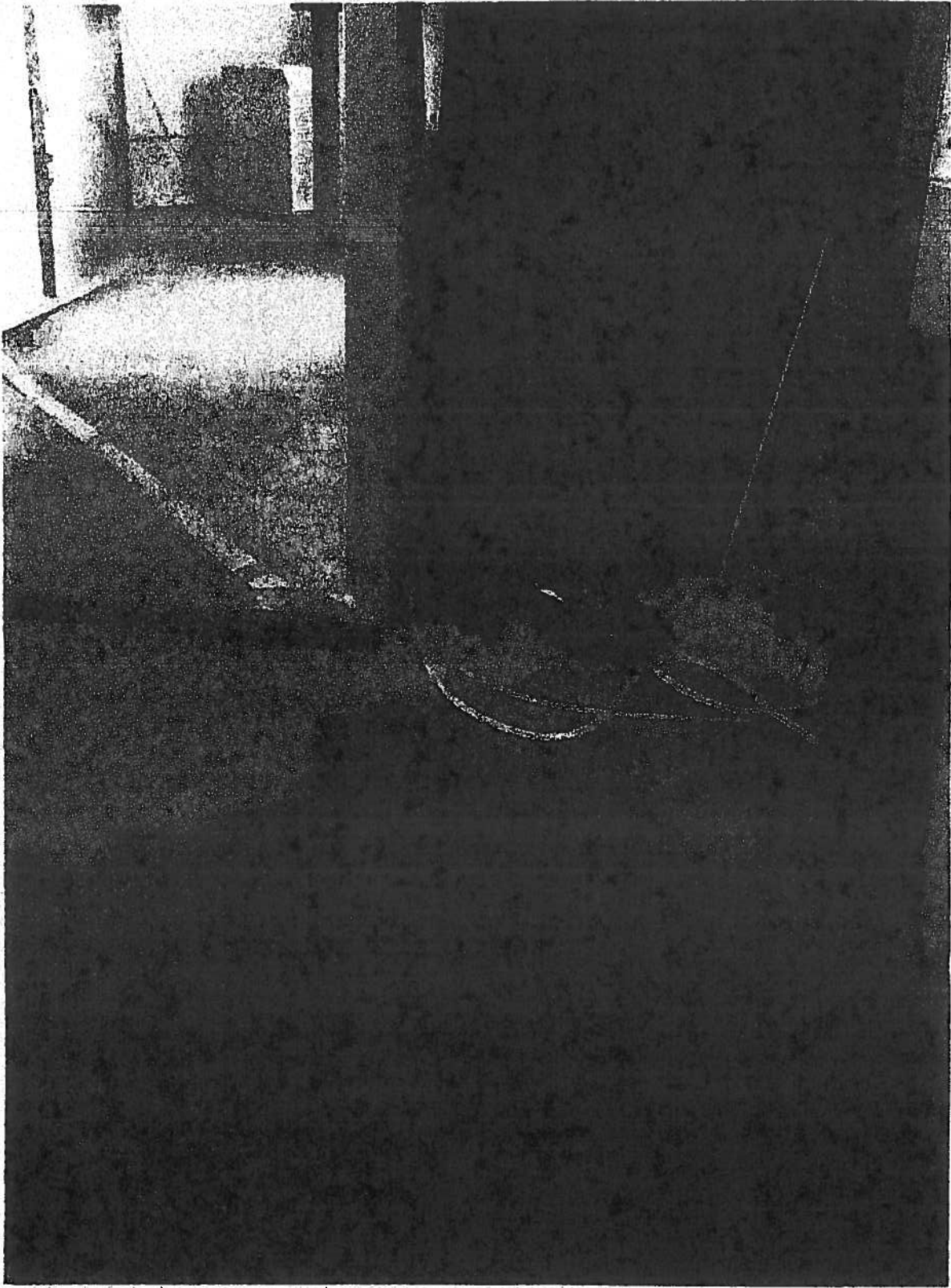


Exhibit Q - ART 400.8(1) Flexible cords uses not permitted as a substitute for fixed wiring of a structure

EXHIBIT Q

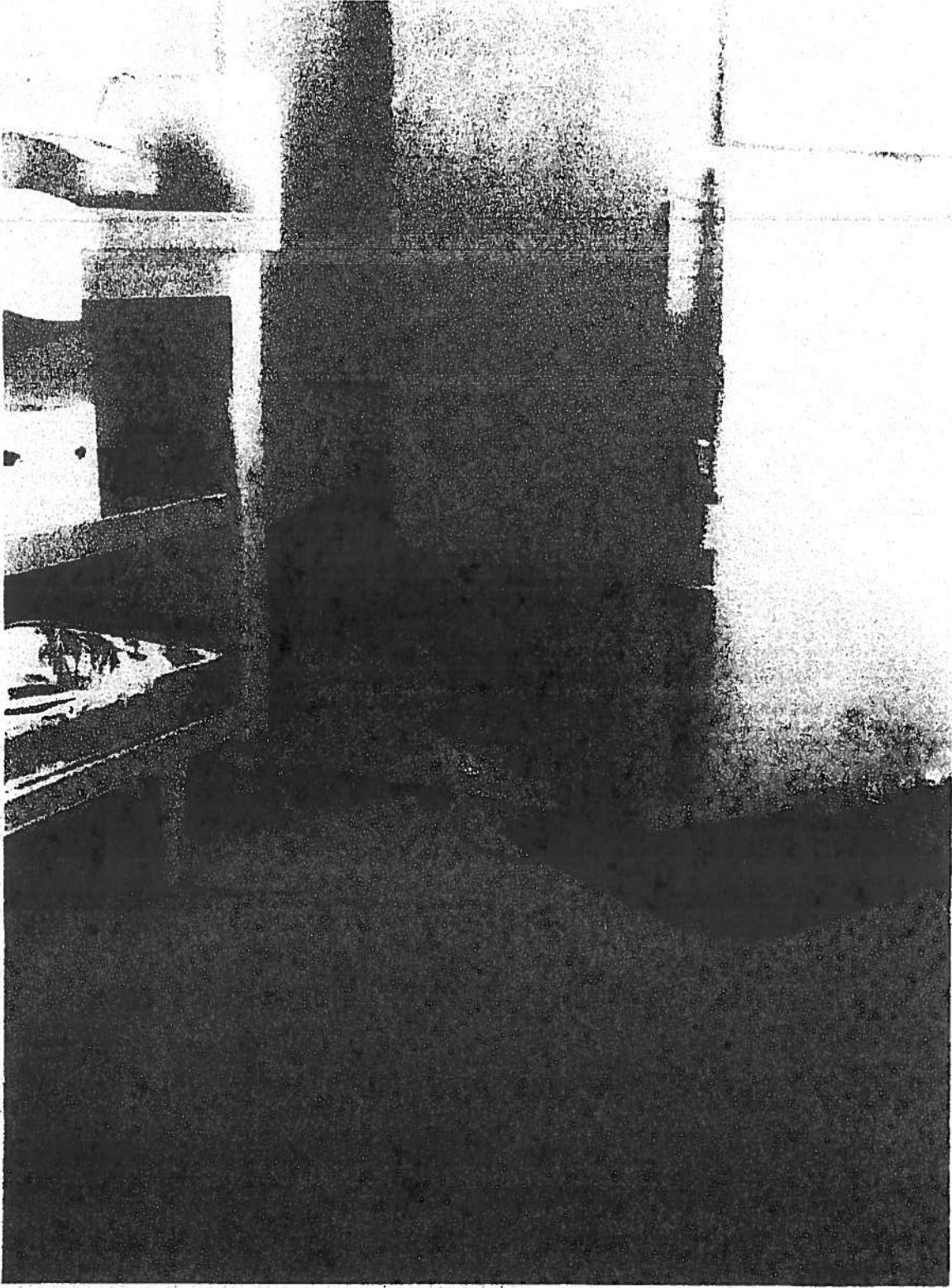


Exhibit R - ART 400.8(1) Flexible cords uses not permitted as a substitute for fixed wiring of a structure

EXHIBIT R

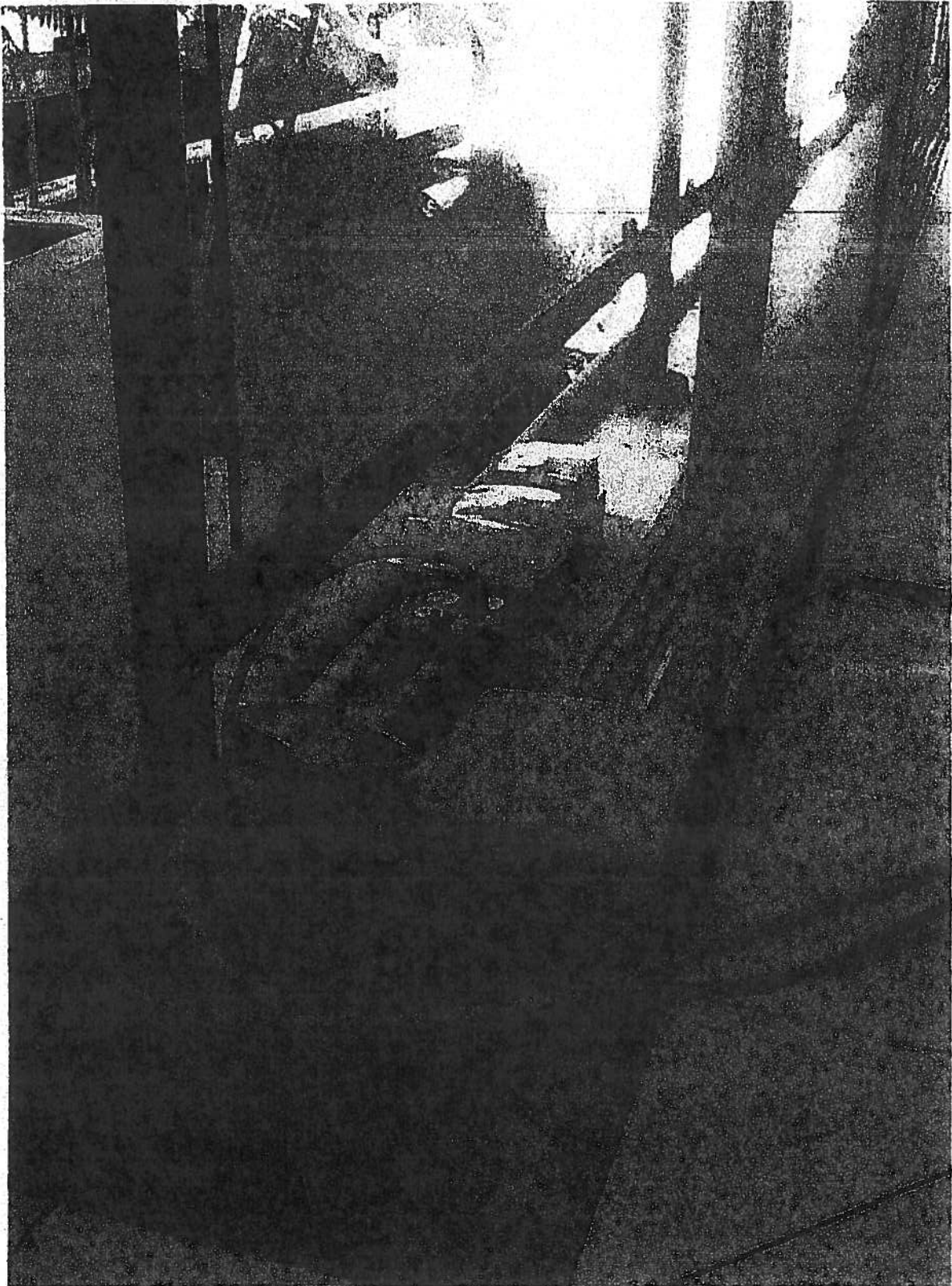


Exhibit S - ART 400.8(1) Flexible cords uses not permitted as a substitute for fixed wiring of a structure

EXHIBIT S

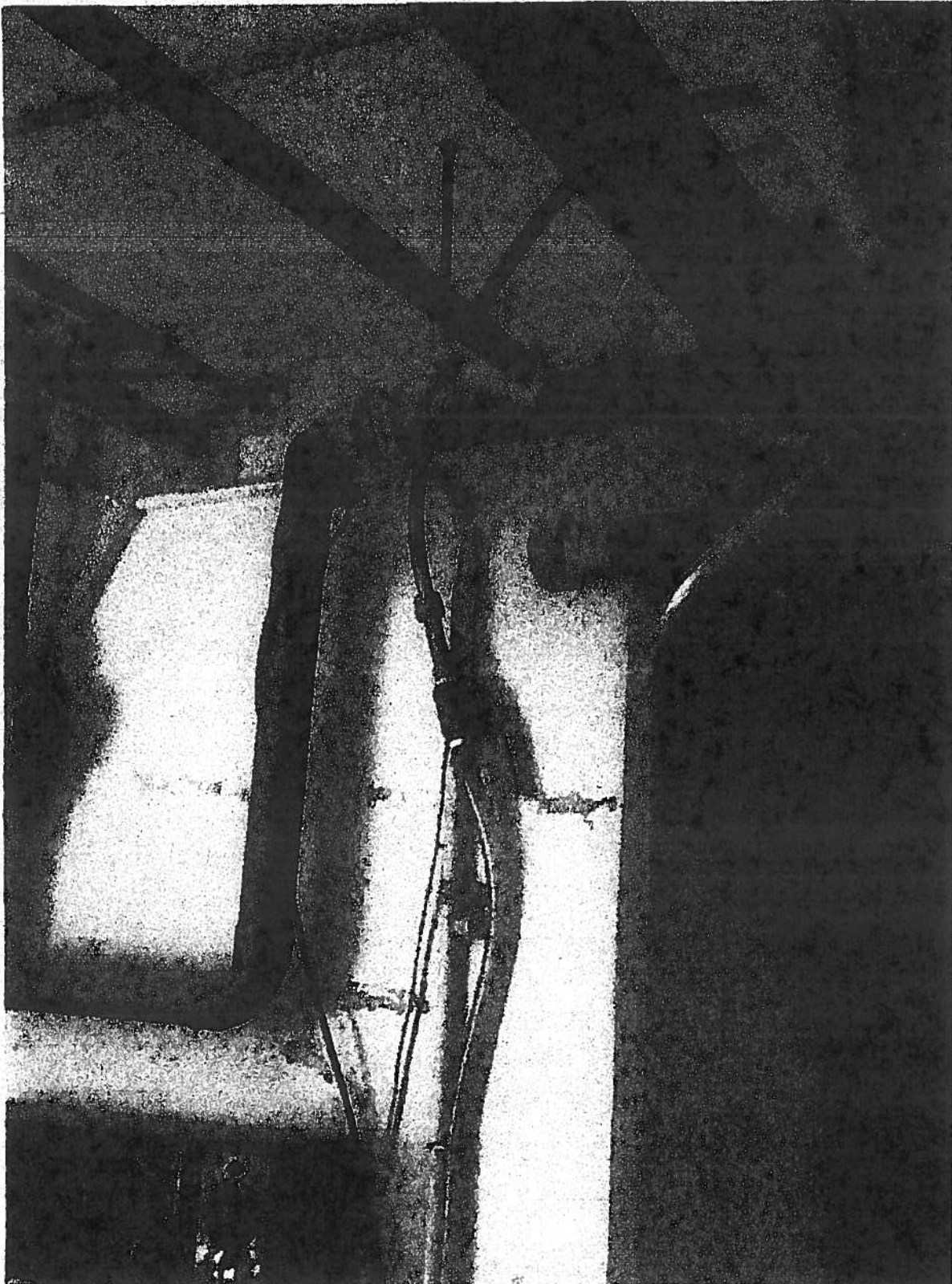


Exhibit T - ART 400.8(1) Flexible cords - uses not permitted as a substitute for fixed wiring of a structure

EXHIBIT T



Exhibit U - ART 372.13 Discontinued outlets. Circuit conductors shall be removed from the raceway, Art 410.3 Live Parts. Luminaires shall have no live parts normally exposed to contact

EXHIBIT U



Exhibit V - ART 372.13 Discontinued outlets. Circuit conductors shall be removed from the raceway, Art 410.3 Live Parts. Luminaires shall have no live parts normally exposed to contact

EXHIBIT V

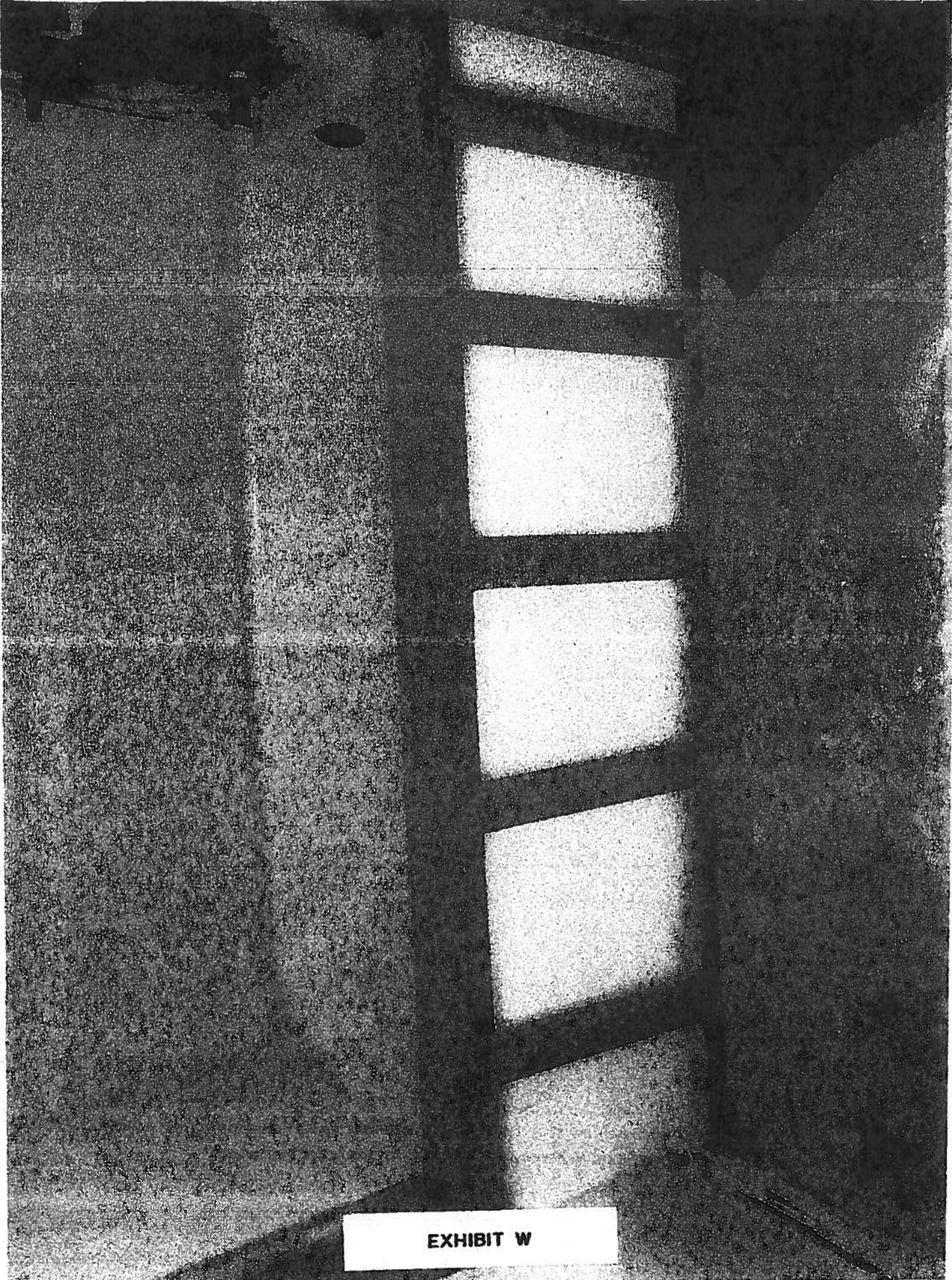


EXHIBIT W

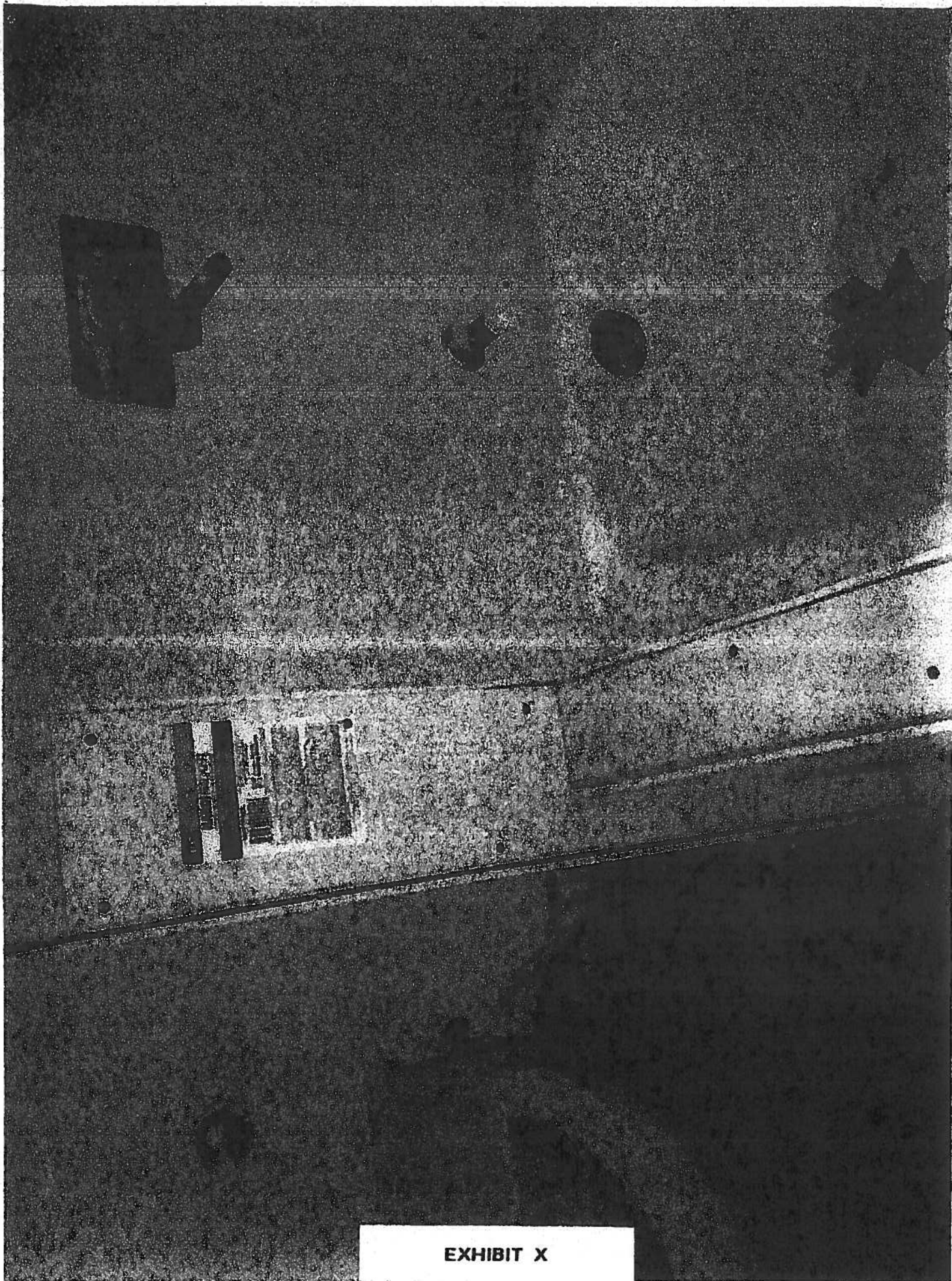


EXHIBIT X

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ELECTRONIC FILING
Filed: OCT - 7 2013
Docket # 421

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STATE OF HAWAII.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

HAWAII OUTDOOR TOURS, INC.
dba Naniloa Volcanoes
Resort and Naniloa
Volcanoes Golf Club,

Debtor.

CASE NO. 12-02279
(Chapter 11)

Re: Docket Entry No. 367

HEARING:

DATE: October 21, 2013

TIME: 9:30 a.m.

JUDGE: Honorable Robert J.
Faris

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2013, a
copy of STATE OF HAWAII'S MEMORANDUM IN OPPOSITION TO
TRUSTEE'S MOTION FOR ORDER (A) AUTHORIZING THE
ASSUMPTION OF CERTAIN UNEXPIRED NON-RESIDENTIAL REAL
PROPERTY LEASES AND (B) ESTABLISHING CURE COSTS was

duly served by first class mail unless noted
otherwise.*

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DATED: Honolulu, Hawaii, October 7, 2013 .

/s/ Tammy R. Abiva
Tammy R. Abiva, Secretary to
CYNTHIA M. JOHIRO, Deputy
Attorney General

*The notation "(ECF)" means that court records indicate service was made using the court's electronic transmission facilities.

Miscellaneous Documents:12-02279 Hawaii Outdoor Tours, Incorporated

Type: bk

Chapter: 11 v

Office: 1 (Honolulu)

Assets: y

Judge: rjf

Case Flag: AwCNF

United States Bankruptcy Court**District of Hawaii**

Notice of Electronic Filing

The following transaction was received from Cynthia M. Johiro entered on 10/7/2013 at 4:45 PM HST and filed on 10/7/2013

Case Name: Hawaii Outdoor Tours, Incorporated**Case Number:** 12-02279**Document Number:** 421**Docket Text:**

Certificate of Service . Filed by Cynthia M. Johiro. (Related document(s): [416], [417], [419], [420]). (Johiro, Cynthia)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**HOTI Cert of Service.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=1018307671 [Date=10/7/2013] [FileNumber=2968019-0]
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12-02279 Notice will be electronically mailed to:

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12-02279 Notice will not be electronically mailed to:

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Attorneys for the COUNTY OF HAWAI'I

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAII

In re

HAWAII OUTDOOR TOURS, INC.,
dba Naniloa Volcanoes Resort and
Naniloa Volcanoes Golf Club,

Debtor and
Debtor-in-Possession.

Case No. 12-02279
(Chapter 11)

Hearing:

Date: October 21, 2013

Time: 9:30 a.m.

Judge: Honorable Robert J. Faris

EXHIBIT 5

**COUNTY OF HAWAII'S OPPOSITION TO TRUSTEE'S MOTION FOR
ORDER (A) AUTHORIZING THE ASSUMPTION OF CERTAIN
UNEXPIRED NON-RESIDENTIAL REAL PROPERTY LEASES,
AND (B) ESTABLISHING CURE COSTS;
EXHIBITS A to C**

The County of Hawaii ("County"), an interested party, directly and indirectly, submits this Opposition to the Trustee's Motion for Order (a) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases, and (2) Establishing Cure Costs ("Motion").

The County submits that, as a matter of law, neither the Debtor, the Trustee nor any successor or assignee can assume the State of Hawaii, Department of Land and Natural Resources Lease (hereinafter "DLNR Lease"). Because of the inability to cure the numerous post-petition and on-going non-monetary defaults, the DLNR Lease must be "rejected" as a matter of law.

A. Assumption of a Non- Residential Lease and Cure of Post-Petition Non-Monetary Default.

A debtor may assume a non-residential lease pursuant to 11 U.S.C. § 365(b), provided that the debtor, trustee, or the assignee satisfies § 365(b)(1)(A), which provides:

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary

acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

During the bankruptcy, the Debtor or Trustee must comply with 28 U.S.C. § 959(b), which provides:

(b) Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

In addition to statutory requirements of § 365(b)(1)(A) and 28 U.S.C § 959(b), the DLNR Lease provides at § 7, as follows:

7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

As per the attached Exhibits, there are substantial monetary defaults, including waste water assessment, and the delinquent real property taxes, Exhibits

A and B,¹ which must be cured, as part of the assumption. More significantly, the Trustee must “cure” the non-monetary defaults related to the condition of the structure. See Declarations of David Yamamoto, Gantry Andrade and Robert R.K. Perreira, and the exhibits and documents attached to the Declarations.

The County has also obtained the Declaration of Gantry Andrade, Battalion Chief of the First Prevention, County of Hawai'i Fire Department. Battalion Chief Andrade described an April 24, 2013 inspection by First Prevent Bureau Fire Captain Robert R.K. Perreira, see Declaration of Robert R.K. Perreira, and Battalion Chief Andrade conducted review of the Fire Captain Perreira's inspection report.

On October 1, 2013, Battalion Chief Andrade conducted a follow-up inspection, and prepared a Report attached to his Declaration. Although there is a fire watch, whereby an employee of Naniloa Hotel patrols the premises, the fire alarm system and fire sprinkler system for portions of the hotel are still not working. The fire watch is only a temporary measure because there should be a plan to fix the alarm system and sprinkler system. The alarm and sprinkler systems for portions of the hotel are still inoperable. Neither has the Bankruptcy Trustee

¹ By separate notice, the Department of Water Supply will account for the recoupment of the \$6,000 in pre-petition security deposit against the \$25,691.35 in unpaid pre-petition water charges. See In re McMahon, 129 F.3d 93 (2nd Cir. 1997). As per Rule 3003(c)(2), F.R.Bk.P., the Department's unpaid balance of \$25,691.35 is scheduled as undisputed and is deemed allowed, as scheduled in that amount, less any recoupment from the pre-petition security deposit.

David Farmer presented or submitted to the County of Hawai‘i a plan to fix the alarm and sprinkler systems within the immediate future.

Under applicable Ninth Circuit law, In re Hathaway, 401 BR 477 (Bankr.W.D.Wash. 2009), the County is required to make claims for both monetary and non-monetary defaults before the assumption of the DLNR Lease, or the defaults and claims maybe waived, unless the defaults are “cured” or provided for in the order assuming the non-residential lease. In this case, the County would fully expect the monetary defaults, the unpaid wastewater assessment for \$1,138.79 and delinquent real property taxes of \$411,430.27, to be fully paid as a matter of course and the net Department of Water Supply pre-petition invoice be paid. However, as discussed below and as set forth in the Declaration of David Yamamoto and the other Declarations, the County submits that the Debtor cannot assume the DLNR Lease because the post-petition, on-going non-monetary defaults are incurable and must be raised now:

Debtor argues that because defaults must be cured for a lease to be assumed, entry of the Order was necessarily a finding that no uncured default existed. In re Diamond Mfg. Co., 164 B.R. 189, 198 (Bankr.S.D.Ga.1994). The non-bankruptcy party to the lease has the burden to assert any defaults prior to assignment. In re ALI Props., Inc., 334 B.R. 455, 460-461 (Bankr.D.Kan.2005). When that party has knowledge of facts sufficient to give the party notice of a pre-petition claim prior to assumption, claim preclusion bars that party's later assertion of a claim based upon a pre-petition breach. Id. at 460. And, as noted above, preclusion bars defenses as well as claims.

In re Hathaway, 401 B.R. 447, 484 (Bankr.W.D.Wash. 2009).

By this opposition, the County has identified the major monetary defaults, including the unpaid real property taxes, and, more importantly, the on-going post-petition non-monetary defaults.

As to the cure of the non-monetary defaults, as a condition of assumption of an executory contract and non-residential lease, the court in In re Empire Equities Capital Corp., 405 B.R. 687, 690-91 (Bankr.S.D.N.Y. 2009) described, the evolution of § 365(b)(1)(A) and the 2005 amendments.

Before the enactment of the 2005 Amendments to the Bankruptcy Code, courts disagreed on the effect of the cure requirements of § 365 on non-monetary defaults. Compare In re Claremont Acquisition Corp., Inc., 113 F.3d 1029, 1033 (9th Cir.1997), followed by New Breed, 278 B.R. [] at 321 [] (debtor must cure all material non-monetary defaults and if cure is impossible, contract cannot be assumed), with Eagle Ins. Co. v. BankVest Capital Corp., 360 F.3d 291, 296-301 (1st Cir.2004); In re Walden Ridge Dev., LLC, 292 B.R. 58, 66-67 (Bankr.D.N.J.2003) (debtors are relieved from the" obligation to cure non-monetary defaults altogether). This division of authority arose in part from the pre-2005 language of § 365(b)(2)(D), as the statute was ambiguous as to whether it exempted from cure all non-monetary defaults or just penalty provisions triggered by non-monetary defaults. See 3 Collier on Bankruptcy ¶ 365.05[3][c] (15th ed. rev. 2008). In 2005 Congress revised the language of § 365(b)(2)(D) by including the word "penalty" as a modifier to the word "provision," making it clear that most non-monetary defaults are not exempted from the cure requirements. 11 U.S.C. § 365(b)(2)(D).

At the same time, Congress also gave debtors limited relief from the obligation to cure non-monetary prepetition defaults, and it partially overruled the result in *Claremont*, Congress did so, however, not by rejecting *Claremont's* statutory reading of § 365(b)(2)(D) but by adding new language in § 365(b)(1)(A) that requires a cure only of defaults other than those "arising from any failure to perform non-monetary obligations under an unexpired lease of real property." 11 U.S.C. § 365(b)(1)(A) (emphasis added).⁶

⁶ Debtors only have limited time to cure such defaults under non-residential real property leases. 11 U.S.C. § 365(b)(1)(A)

As to the § 365(b)(1)(A), requirements for the cure of non-monetary defaults to assume a non-residential lease, the court in *In re Patriot Place Ltd.*, 486 B.R. 773 (Bankr.W.D.Texas 2013), wrote, as to the assumption of non-residential leases:

Significantly, §365(b)(1)(A) provides that if a nonmonetary "default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease..." 11 U.S.C. §365(b)(1)(A) (emphasis added). In short, since the Shopping Center Lease is a nonresidential (commercial) real property lease, as long as [Debtor] is not currently committing a nonmonetary default at the time of assumption, then it is performing under the lease and §365(b)(1)(A) will excuse any previous incurable nonmonetary defaults. See 3 *Collier on Bankruptcy*, § 365.06[3][c] (16th ed). As one court explained, through the 2005 amendments to the Bankruptcy Code, Congress provided debtors with limited relief from the obligation to cure nonmonetary *pre-petition defaults*, by adding new

language in §365(b)(1)(A) that requires a cure only of defaults other than those "arising from any failure to perform non-monetary obligations under an unexpired lease of real property". In re Empire Equities Capital Corp., 405 B.R. 687, 690 (Bankr. S.D.N.Y. 2009). Simply put, the cure requirement for past nonmonetary defaults under § 365(b)(1)(A) is different for real property leases (like the Shopping Center Lease) than it is for non-real property leases (like executory contracts)."

For example, if the Shopping Center Lease was not a real property lease, then any past incurable nonmonetary defaults by [Debtor] would result in the contract not being assumable in bankruptcy. See In re Escarent Entities, L.P., 423 Fed. Appx. 462, 465 (5th Cir. 2011) (where the Fifth Circuit held that § 365 precludes assumption of a contract—which was not a real property lease—if a nonmonetary default is incurable). (emphasis supplied)

486 B.R. at 797.

The Patriots Place court notes that with respect to an executory contract, after the 2005 amendment, the *pre-petition* non-monetary defaults must be "cured" before the debtor is allowed to assume an executory contract. The 2005 amendments to the Code, § 365(b)(1)(A), excused a debtor from curing a pre-petition incurable non-monetary default with respect to a non-residential lease, as a condition to assume the non-residential lease. The reason for the 2005 amendment to § 365(b)(1)(A), In re Claremont Acquisition Corp., 113 F.3d 1029 (9th Cir. 1997), involved a *pre-petition* "going-dark" clause, which could not be cured post-petition, because the default was incurable after the filing of the petition. However, while the 2005 amendments to § 365(b)(1)(A) excused a debtor from

curing pre-petition non-monetary defaults in a non-residential lease, as to post-petition non-monetary defaults, like the health and safety violations, the building and structural violations and fire violations, these post-petition on-going non-monetary defaults of the Trustee must be “cured” as part of the Trustee’s assumption of the DLNR Lease. If these post-petition non-monetary defaults cannot be cured before assumption and assignment, the assignee/purchaser must cure, or provide adequate assurance of the “cure” as a condition of the assumption and assignment.

In the case of the DLNR Lease and § 365(b)(1)(A), while the County might not be able to force the Debtor to “cure” the pre-petition non-monetary defaults as per the 2005 amendments, the defaults described in the Declarations of David Yamamoto, Gantry Andrade and Robert R.K. Perreira are clearly on-going post-petition non-monetary defaults, which must be cured, upon the assumption and assignment of the DLNR Lease, or at a minimum the purchaser/assignee must provide adequate assurance of the “cure” of these non-monetary post-petition and on-going defaults.

While, as noted above from the Patriots Place case, a pre-petition incurable non-monetary default would result in an executory contract not being assumable in bankruptcy that is not the case with respect to non-residential leases.

While a pre-petition incurable non-monetary default with respect to non-residential lease does not make the non-residential lease non-assumable, the

Trustee's operation of the hotel requires that the Trustee comply with 28 U.S.C. § 959(b), and the DLNR Lease itself, which provides,

7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

As to the County's position regarding the cure of post-petition non-monetary defaults in the DLNR Lease and § 365(b)(1)(A), the court in Patriot Place wrote,

Despite the laundry list of nonmonetary defaults [Lessor] alleged against [Debtor] in the Notice of Default, there was no or insufficient probative evidence that [Debtor] was currently engaged in any of these nonmonetary defaults now (i.e., at the time of assumption). As detailed above, Armstrong testified that [Debtor] has taken a number of remedial measures, including hiring security guards, reducing his occupancy levels, and installing sound absorbing material in [Debtor] to reduce noise. Armstrong testified that [Debtor] has removed the ice-making machine from the alley.

486 B.R. at 797-98.

In this case, as evidenced in the Declarations of David Yamamoto, Gantry Andrade and Robert R.K. Perreira, and the results of the inspections made by County officials, this Court should conduct an evidentiary hearing on those matters of public safety and interest before an assumption and assignment of the DLNR Lease. These non-monetary defaults, violations of the County of Hawaii

regulations,² may not be curable either prior to “assumption and assignment,” nor could the purchaser provide “adequate assurance of a prompt cure” of the non-monetary defaults in the DLNR Lease. The Trustee’s Motion nor his Motion to Sell recites how the Trustee, or the purchaser, plans to either cure the non-monetary defaults or, direct the purchaser to provide adequate assurance that the post-petition, on-going non-monetary defaults will be cured.

If this Court proposes to allow assumption of the DLNR Lease, the County believes that this Court should schedule an evidentiary hearing on the extent and magnitude of the non-monetary defaults and the ability of the Trustee or purchaser to “cure” the non-monetary defaults as a condition of the assumption and assignment of the DLNR Lease.

CONCLUSION

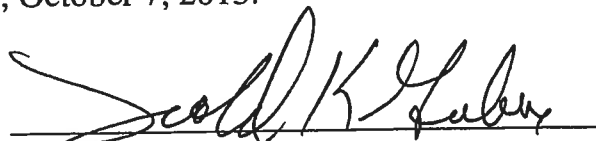
The Declarations of David Yamamoto, Gantry Andrade, and Robert R.K. Perreira, and the Exhibits attached thereto shows that non-monetary defaults are post-petition and on-going and violations of § 365(b)(1)(A) and demonstrate that the Trustee is in violation of the numerous County of Hawaii ordinances contrary to 28 U.S.C. § 959(b) and Section 7 of the DLNR Lease.³

² See Statutory Appendix for County Ordinances related to the non-monetary defaults.

³ The DLNR Lease provides,

The issue is whether, given the evidence provided by the County of the non-monetary post-petition on-going defaults, the Trustee can assume and assign the the DLNR Lease and if the Trustee assumes and assigns the DLNR Lease, whether the assignee can provide adequate assurance of the “cure”. The County submits that no assignee can provide adequate assurance of future performance and “cure” of the DLNR Lease’s defaults and on that basis, the DLNR Lease must be deemed rejected and cancelled.⁴

DATED: Honolulu, Hawaii, October 7, 2013.



LINCOLN S.T. ASHIDA
Corporation Counsel
KATHERINE A. GARSON
Assistant Corporation Counsel
JOSEPH K. KAMELAMELA
Senior Deputy Corporation Counsel
CRAIG T. MASUDA
Deputy Corporation Counsel
JERROLD K. GUBEN
JEFFERY S. FLORES
Special Deputy Corporation Counsel
COUNTY OF HAWAII

7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

⁴ See article from Hawaii Tribune Herald, article of October 7, 2013, Exhibit C.

Exhibit A

Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAI'I

In re) Case No. 12-02279
) (Chapter 11)
HAWAII OUTDOOR TOURS, INC. dba)
Naniloa Volcanoes Resort and Naniloa) DECLARATION OF BOBBY
Volcanoes Golf Club,) JEAN LEITHEAD TODD;
) EXHIBITS "A"- "C"
Debtor and Debtor-in-Possession)
)
)
)
)
)

DECLARATION OF BOBBY JEAN LEITHEAD TODD

I, BOBBY JEAN LEITHEAD TODD, declare upon penalty of perjury that:

1. I submit this Declaration based upon my personal knowledge and information from the business records maintained in the ordinary course of business.
2. I am currently employed as the Director of the County of Hawai'i Department of Environmental Management.
3. I have been an employee of the County of Hawai'i in one capacity or another since December 19, 1996.
4. As part of my duties as the Director, I am able to certify the amount owed for solid waste and wastewater.
5. Attached as Exhibit "A" is a true and correct copy of a statement showing the wastewater owed by Hawaii Outdoor Tours, Inc.

Exhibit A

6. The wastewater statement designates pre-petition delinquencies under the Acct Status column as "ibkrpt".

7. The wastewater statement designates post-petition amounts under the Acct Status column as "active". Those accounts are current, and have been paid during the pendency of the bankruptcy case.

8. Attached as Exhibit "B" is a true and correct copy of a solid waste statement showing pre-petition amounts owed by Hawaii Outdoor Tours, Inc.

9. Attached as Exhibit "C" is a true and correct copy of a solid waste statement showing post-petition amounts owed by Hawaii Outdoor Tours, Inc.

This account is current.

I do declare under penalty of law that the foregoing is true and correct.

Dated: Hilo, Hawai'i, September 30, 2013.


BOBBY JEAN LEITHEAD TODD

County of Hawai'i
Wastewater Division
MAMILOA
Effective Date: September 20, 2013

Parcel Site Address: 1713 Kamehameha Ave, Hilo, HI 96720

LISTED BY TMK#	TMK	Acct Status	WW Acct #	Current	31-60 Days	60-90 Days	91 and up	Total Due
Hawaii Outdoor Tours Inc.	2-1-001-012-0000	lbrpjt	260.89950.002	\$ -	\$ -	\$ -	\$ 242.64	\$ 242.64
Hawaii Outdoor Tours Inc.	2-1-001-012-0000	lbrpjt	260.85700.000	\$ -	\$ -	\$ -	\$ 214.31	\$ 214.31
Hawaii Outdoor Tours Inc.	2-1-001-012-0000	active	260.89950.003	\$ 38.43	\$ -	\$ -	\$ -	\$ 38.43
Hawaii Outdoor Tours Inc.	2-1-001-012-0000	active	260.85700.001	\$ 42.48	\$ -	\$ -	\$ -	\$ 42.48
TOTAL TMK 2-1-001-012				\$ 80.91	\$ -	\$ -	\$ 456.95	\$ 537.86

Parcel Site Address: 93 Banyan Dr, Hilo, HI 96720

LISTED BY TMK#	TMK	Acct Status	WW Acct #	Current	31-60 Days	60-90 Days	91 and up	Total Due
Hawaii Outdoor Tours Inc.	2-1-005-016-0000	lbrpjt	260.96600.001	\$ -	\$ -	\$ -	\$ 49,511.66	\$ 49,511.66
Hawaii Outdoor Tours Inc.	2-1-005-016-0000	active	260.96600.002	\$ 8,551.53	\$ -	\$ -	\$ -	\$ 8,551.53
TOTAL TMK 2-1-005-016				\$ 8,551.53	\$ -	\$ -	\$ 49,511.66	\$ 58,063.19

Parcel Site Address: 101 Banyan Dr, Hilo, HI 96720

LISTED BY TMK#	TMK	Acct Status	WW Acct #	Current	31-60 Days	60-90 Days	91 and up	Total Due
Hawaii Outdoor Tours Inc.	2-1-005-018-0000	lbrpjt	260.96000.001	\$ -	\$ -	\$ -	\$ 89.40	\$ 89.40
TOTAL TMK 2-1-005-018				\$ -	\$ -	\$ -	\$ 89.40	\$ 89.40

EXHIBIT "A"

Hilo Landfill S T A T E M E N T
 Sep. 11, 2013

Page 1

Account Number: 14255

HAWAII OUTDOOR TOURS, INC.
 P.O. BOX 1417
 HILO, HI 96721

MAIL TO:
 COH-DEM-Solid Waste Div.
 25 Aupuni St., #214
 Hilo, HI 96720
 PHONE: (808)981-8326
 FAX: (808)961-8086
 CHECK PAYABLE TO:
 COH - Dir. of Finance

Inv No.	Stmnt.Date*(T)	Veh ID	Date In	Description	Tons	Amount
480431	10/01/12	IN 442HCV	100112	COM - To Sort S	0.71	60.35
480786	10/05/12	IN 442HCV	100512	COM - To Sort S	0.83	70.55
481185	10/10/12	IN 442HCV	101012	COM - To Sort S	0.69	58.65
481391	10/13/12	IN 442HCV	101312	COM - To Sort S	0.8	68.00
481536	10/16/12	IN 442HCV	101612	COM - To Sort S	0.49	41.65
481774	10/18/12	IN 442HCV	101812	COM - To Sort S	1.23	104.55
481950	10/22/12	IN 442HCV	102212	COM - To Sort S	0.56	47.60
482207	10/25/12	IN 442HCV	102512	COM - To Sort S	0.46	39.10
482617	10/30/12	IN 442HCV	103012	COM - To Sort S	0.77	65.45
482694	10/30/12	IN 442HCV	103012	COM - To Sort S	0.79	67.15
482874	11/02/12	IN 442HCV	110212	COM - To Sort S	0.51	43.35
483054	11/05/12	IN 442HCV	110512	COM - To Sort S	0.6	51.00
483449	11/10/12	IN 442HCV	111012	COM - To Sort S	0.67	56.95
483593	11/13/12	IN 442HCV	111312	COM - To Sort S	0.87	73.95
483975a	11/18/12	IN 442HCV	111812	COM - To Sort Stn.	0.78	66.30
INT-00018061	05/31/13	IT	InterestBalance overdue:		914.60	13.72
INT-00018112	06/30/13	IT	InterestBalance overdue:		914.60	13.72
INT-00018168	07/31/13	IT	InterestBalance overdue:		914.60	13.72

Past due, please remit immediately

				Total Due
Current	31 to 60 Days	61 to 90 Days	91 to 120 Days	Over 120 Days
0.00	0.00	13.72	13.72	955.76
				928.32

Statement does not reflect payments received after Sep 11, 2013.

Important: PLEASE WRITE YOUR ACCOUNT NUMBER 14255 ON YOUR REMITTANCE CHECK

EXHIBIT "B"

Hilo Landfill S T A T E M E N T
 Sep. 11, 2013

Page 1

Account Number: 14254

HAWAII OUTDOOR TOURS, INC.
 P.O. BOX 1417
 HILO, HI 96721

MAIL TO:
 COH-DEM-Solid Waste Div.
 25 Aupuni St., #214
 Hilo, HI 96720
 PHONE: (808)981-8326
 FAX: (808)961-8086
 CHECK PAYABLE TO:
 COH - Dir. of Finance

Inv No.	Stmt.Date*(T)	Veh ID	Date In	Description	Tons	Amount
INT-00017954	03/31/13	IT		InterestBalance overdue: 66.30		0.99
INT-00018006	04/30/13	IT		InterestBalance overdue: 66.30		0.99
605824	07/30/13	IN	442HCV 073013	COM - To Sort S	0.62	52.70
605824	09/11/13	CA	80347			52.70-
606823	08/11/13	IN	442HCV 081113	COM - To Sort S	0.67	56.95
606823	09/11/13	CA	80347			56.95-
607142	08/14/13	IN	442HCV 081413	COM - To Sort S	0.63	53.55
607142	09/11/13	CA	80347			53.55-
607697	08/20/13	IN	442HCV 082013	COM - To Sort S	0.7	59.50
608051	08/23/13	IN	442HCV 082313	COM - To Sort S	0.79	67.15
608323	08/27/13	IN	442HCV 082713	COM - To Sort S	0.64	54.40

Past due, please remit immediately

Total Due
 183.03

Current	31 to 60 Days	61 to 90 Days	91 to 120 Days	Over 120 Days
181.05	0.00	0.00	0.00	1.98

Statement does not reflect payments received after Sep 11, 2013.

Important: PLEASE WRITE YOUR ACCOUNT NUMBER 14254 ON YOUR REMITTANCE CHECK

EXHIBIT "C"

Exhibit B

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAI'I

In re) Case No. 12-02279
) (Chapter 11)
HAWAII OUTDOOR TOURS, INC. dba)
Nanihoa Volcanoes Resort and Nanihoa) DECLARATION OF STANLEY
Volcanoes Golf Club,) A. SITKO; EXHIBIT "A"
)
Debtor and Debtor-in-Possession)
)
)
)
)
)

DECLARATION OF STANLEY A. SITKO

I, STANLEY A. SITKO, declare upon penalty of perjury that:

1. I submit this Declaration based upon my personal knowledge and information from the business records maintained in the ordinary course of business.
2. I am currently employed as the Real Property Tax Administrator for the County of Hawai'i Real Property Tax Division.
3. I have been an employee of the County of Hawai'i since July 6, 2001.
4. As part of my duties as the Real Property Tax Administrator, I certify the amount owed for real property taxes.

5. Attached as Exhibit "A" are true and correct copies of the pre-petition real property taxes owed by Hawaii Outdoor Tours, Inc.

6. Hawaii Outdoor Tours, Inc., is current on post-petition real property taxes.

I do declare under penalty of law that the foregoing is true and correct.

Dated: Hilo, Hawai'i, October 1, 2013.


STANLEY A. SITKO



COUNTY OF HAWAII
 REAL PROPERTY TAX DIVISION
 AUPUNI CENTER, 101 Pauahi Street, Suite 4
 HILO, HI 96720-4224
 TELEPHONE: (808) 961-8282

HAWAII OUTDOOR TOURS INC
 P O BOX 1417
 HILO HI 96721 1417

TAX MAP KEY / PARCEL ID
 RP 3-2-1-001-012-0000-006

PENALTY & INTEREST CALCULATED TO:
 11/20/2012

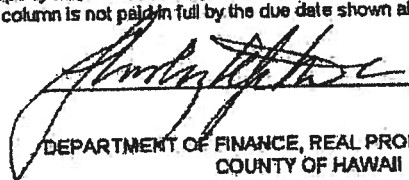
PAGE 1 OF 1

DESCRIPTION	YEAR/ CYCLE	TAX DUE DATE	TAX	PENALTY	INTEREST	OTHER	TOTAL
REAL PROPERTY	2012 - 1	8/20/2012	4,113.37	411.34	135.74	0.00	4,660.45
REAL PROPERTY	2011 - 1	8/22/2011	4,160.65	416.07	686.51	0.00	5,263.23
REAL PROPERTY	2011 - 2	2/21/2012	4,160.64	416.06	411.90	0.00	4,988.60
REAL PROPERTY	2010 - 1	8/24/2010	9,562.38	956.24	2,840.03	0.00	13,358.65
REAL PROPERTY	2010 - 2	2/22/2011	9,562.38	956.24	2,208.91	0.00	12,727.53
REAL PROPERTY TOTAL:			31,559.42	3,155.95	6,283.09	0.00	40,998.46
TOTAL:			31,559.42	3,155.95	6,283.09	0.00	40,998.46

STATE OF HAWAII) ss.
 COUNTY OF HAWAII)

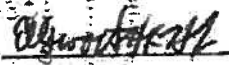
Stanley A. Sitko being duly sworn upon oath deposes and says:

That the foregoing is a true and correct statement of all real property taxes assessed against the property and that additional taxes, penalties and interest charges will continue to accrue if the amount shown in the total column is not paid in full by the due date shown above.


 DEPARTMENT OF FINANCE, REAL PROPERTY TAX DIVISION
 COUNTY OF HAWAII

Subscribed and sworn to before me
 This 25th day of September, 2013
Elisbeth Hulinee
 Notary Public, State of Hawaii
 My commission expires June 24, 2015

Copy received this _____ day of _____

Doc. Date: Unfiled # Pages: 1
 Name: Elisbeth Hulinee Circuit: 3rd
 Doc. Description: Affidavit
 Signature:  Date: 9/25/2013



COUNTY OF HAWAII
 REAL PROPERTY TAX DIVISION
 AUPUNI CENTER, 101 Pauahi Street, Suite 4
 HILO, HI 96720-4224
 TELEPHONE: (808) 961-8282

HAWAII OUTDOOR TOURS INC
 P O BOX 1417
 HILO HI 96721 1417

TAX MAP KEY / PARCEL ID
 RP 3-2-1-005-013-0000-006

PENALTY & INTEREST CALCULATED TO:
 11/20/2012

PAGE 1 OF 1

DESCRIPTION	YEAR/ CYCLE	TAX DUE DATE	TAX	PENALTY	INTEREST	OTHER	TOTAL
REAL PROPERTY	2012 - 1	8/20/2012	2,363.51	236.35	78.00	0.00	2,677.86
REAL PROPERTY	2011 - 1	8/22/2011	2,363.51	236.35	389.98	0.00	2,989.84
REAL PROPERTY	2011 - 2	2/21/2012	2,363.51	236.35	233.99	0.00	2,833.85
REAL PROPERTY	2010 - 1	8/24/2010	2,363.51	236.35	701.96	0.00	3,301.82
REAL PROPERTY	2010 - 2	2/22/2011	2,363.51	236.35	545.97	0.00	3,145.83
REAL PROPERTY TOTAL:			11,817.55	1,181.75	1,949.90	0.00	14,949.20
TOTAL:			11,817.55	1,181.75	1,949.90	0.00	14,949.20

STATE OF HAWAII } ss.
 COUNTY OF HAWAII }

Stanley A. Gitko being duly sworn upon oath deposes and says:

That the foregoing is a true and correct statement of all real property taxes assessed against the property and that additional taxes, penalties and interest charges will continue to accrue if the amount shown in the total column is not paid in full by the due date shown above.

DEPARTMENT OF FINANCE, REAL PROPERTY TAX DIVISION
 COUNTY OF HAWAII

Subscribed and sworn to before me
 This 25th day of September 2013
Ellsworth Hulihee
 Notary Public, State of Hawaii
 My commission expires June 24, 2015

Copy received this _____ day of _____

Doc. Date: 9/25/2013 # Pages: 1
 Name: Ellsworth Hulihee Circuit: 3rd
 Doc. Description: Affidavit
 Signature: Ellsworth Hulihee Date: 9/25/2013



COUNTY OF HAWAII
 REAL PROPERTY TAX DIVISION
 AUPUNI CENTER, 101 Pauahi Street, Suite 4
 HILO, HI 96720-4224
 TELEPHONE: (808) 961-8282

HAWAII OUTDOOR TOURS INC
 P O BOX 1417
 HILO HI 96721 1417

TAX MAP KEY / PARCEL ID
 RP 3-2-1-005-016-0000-006

PENALTY & INTEREST CALCULATED TO:
 11/20/2012

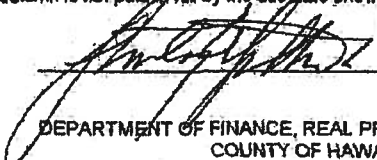
PAGE 1 OF 1

DESCRIPTION	YEAR/ CYCLE	TAX DUE DATE	TAX	PENALTY	INTEREST	OTHER	TOTAL
REAL PROPERTY	2012 - 1	8/20/2012	43,175.51	4,317.55	1,424.79	0.00	48,917.85
REAL PROPERTY	2011 - 1	8/22/2011	38,216.03	3,821.60	6,305.64	0.00	48,343.27
REAL PROPERTY	2011 - 2	2/21/2012	38,216.04	3,821.60	3,783.39	0.00	45,821.03
REAL PROPERTY	2010 - 1	8/24/2010	57,775.18	5,777.52	17,159.23	0.00	80,711.93
REAL PROPERTY	2010 - 2	2/22/2011	57,775.18	5,777.52	13,346.07	0.00	76,898.77
REAL PROPERTY TOTAL:			235,157.94	23,515.79	42,019.12	0.00	300,692.85
TOTAL:			235,157.94	23,515.79	42,019.12	0.00	300,692.85

STATE OF HAWAII) ss.
 COUNTY OF HAWAII)

Stanley A. Sittko, being duly sworn upon oath deposes and says:

That the foregoing is a true and correct statement of all real property taxes assessed against the property and that additional taxes, penalties and interest charges will continue to accrue if the amount shown in the total column is not paid in full by the due date shown above.


 DEPARTMENT OF FINANCE, REAL PROPERTY TAX DIVISION
 COUNTY OF HAWAII

Subscribed and sworn to before me

This 25th day of September, 2013


 Notary Public, State of Hawaii

Ellisor M. Hulihee

My commission expires June 24, 2015

Copy received this _____ day of _____

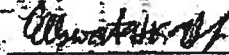
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Pages: 1

Name: Ellisor M. Hulihee

Circuit: 3rd

Doc. Description: Affidavit

Signature: 

Date: 9/25/2013



COUNTY OF HAWAII
 REAL PROPERTY TAX DIVISION
 AUPUNI CENTER, 101 Pauahi Street, Suite 4
 HILO, HI 96720-4224
 TELEPHONE: (808) 961-8282

HAWAII OUTDOOR TOURS INC
 P O BOX 1417
 HILO HI 96721 1417

TAX MAP KEY / PARCEL ID
 RP 3-2-1-005-017-0000-006

PENALTY & INTEREST CALCULATED TO:
 11/20/2012

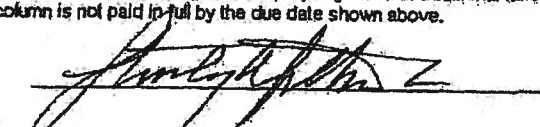
PAGE 1 OF 1

DESCRIPTION	YEAR/ CYCLE	TAX DUE DATE	TAX	PENALTY	INTEREST	OTHER	TOTAL
REAL PROPERTY	2012 - 1	8/20/2012	4,188.22	418.82	138.21	0.00	4,745.25
REAL PROPERTY	2011 - 1	8/22/2011	4,188.22	418.82	691.06	0.00	5,298.10
REAL PROPERTY	2011 - 2	2/21/2012	4,188.22	418.82	414.63	0.00	5,021.67
REAL PROPERTY	2010 - 1	8/24/2010	4,259.14	425.91	1,264.96	0.00	5,950.01
REAL PROPERTY	2010 - 2	2/22/2011	4,259.14	425.91	983.86	0.00	5,668.91
REAL PROPERTY TOTAL:			21,082.94	2,108.28	3,492.72	0.00	26,683.94
TOTAL:			21,082.94	2,108.28	3,492.72	0.00	26,683.94

STATE OF HAWAII) ss.
 COUNTY OF HAWAII)

Stanley A. Sittco being duly sworn upon oath deposes and says:

That the foregoing is a true and correct statement of all real property taxes assessed against the property and that additional taxes, penalties and interest charges will continue to accrue if the amount shown in the total column is not paid in full by the due date shown above.


 DEPARTMENT OF FINANCE, REAL PROPERTY TAX DIVISION
 COUNTY OF HAWAII

Subscribed and sworn to before me
 This 25th day of September 2013
 is Ellsworth Hulihee
 Notary Public, State of Hawaii
Ellsworth Hulihee
 My commission expires June 24, 2015

Copy received this _____ day of _____

Doc. Date: Unfiled # Pages: 1
 Name: Ellsworth Hulihee Circuit: 3rd
 Doc. Description: Affidavit
 Signature: Ellsworth Hulihee Date: 9/25/2013



COUNTY OF HAWAII
 REAL PROPERTY TAX DIVISION
 AUPUNI CENTER, 101 Pauahi Street, Suite 4
 HILO, HI 96720-4224
 TELEPHONE: (808) 961-8282

HAWAII OUTDOOR TOURS IHC
 P O BOX 1417
 HILO HI 96721 1417

TAX MAP KEY / PARCEL ID
 RP 3-2-1-005-027-0000-006

PENALTY & INTEREST CALCULATED TO:
 11/20/2012

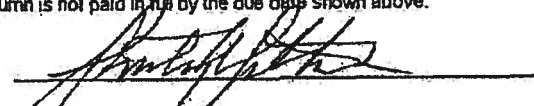
PAGE 1 OF 1

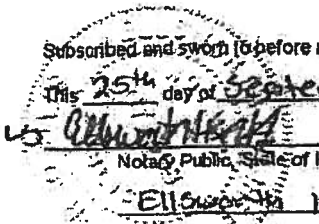
DESCRIPTION	YEAR/ CYCLE	TAX DUE DATE	TAX	PENALTY	INTEREST	OTHER	TOTAL
REAL PROPERTY	2012 - 1	8/20/2012	132.49	13.25	4.37	0.00	150.11
REAL PROPERTY	2011 - 1	8/22/2011	132.49	13.25	21.86	0.00	167.60
REAL PROPERTY	2011 - 2	2/21/2012	132.48	13.25	13.12	0.00	158.85
REAL PROPERTY	2010 - 1	8/24/2010	442.27	44.23	131.36	0.00	617.86
REAL PROPERTY	2010 - 2	2/22/2011	442.26	44.23	102.16	0.00	588.65
REAL PROPERTY TOTAL:			1,281.99	128.21	272.87	0.00	1,683.07
TOTAL:			1,281.99	128.21	272.87	0.00	1,683.07

STATE OF HAWAII) ss.
 COUNTY OF HAWAII)

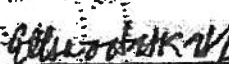
Stanley A. Sitko being duly sworn upon oath deposes and says:

That the foregoing is a true and correct statement of all real property taxes assessed against the property and that additional taxes, penalties and interest charges will continue to accrue if the amount shown in the total column is not paid in full by the due date shown above.


 DEPARTMENT OF FINANCE, REAL PROPERTY TAX DIVISION
 COUNTY OF HAWAII

Subscribed and sworn to before me
 this 25th day of September, 2013

 Notary Public, State of Hawaii
Ellsworth Hulihee
 My commission expires June 24, 2015

Copy received this _____ day of _____

Doc. Desc: Updated # Pages: 1
 Name: Ellsworth Hulihee Circuit: 3rd
 Doc. Description: Ad Valorem
 Signature:  Date: 9/25/2013



COUNTY OF HAWAII
 REAL PROPERTY TAX DIVISION
 AUPUNI CENTER, 101 Pauahi Street, Suite 4
 HILO, HI 96720-4224
 TELEPHONE: (808) 961-8282

HAWAII OUTDOOR TOURS INC
 P O BOX 1417
 HILO HI 96721 1417

TAX MAP KEY / PARCEL ID
 RP 3-2-1-005-032-0000-006

PENALTY & INTEREST CALCULATED TO:
 11/20/2012

PAGE 1 OF 1

DESCRIPTION	YEAR/ CYCLE	TAX DUE DATE	TAX	PENALTY	INTEREST	OTHER	TOTAL
REAL PROPERTY	2012 - 1	8/20/2012	2,731.41	273.14	90.14	0.00	3,094.69
REAL PROPERTY	2011 - 1	8/22/2011	2,731.41	273.14	450.68	0.00	3,455.23
REAL PROPERTY	2011 - 2	2/21/2012	2,731.40	273.14	270.41	0.00	3,274.95
REAL PROPERTY	2010 - 1	8/24/2010	2,731.41	273.14	811.23	0.00	3,815.78
REAL PROPERTY	2010 - 2	2/22/2011	2,731.40	273.14	630.95	0.00	3,635.49
REAL PROPERTY TOTAL:			13,657.03	1,365.70	2,253.41	0.00	17,276.14
TOTAL:			13,657.03	1,365.70	2,253.41	0.00	17,276.14

STATE OF HAWAII) ss:
 COUNTY OF HAWAII)

Stanley A. Sitko, being duly sworn upon oath deposes and says:

That the foregoing is a true and correct statement of all real property taxes assessed against the property and that additional taxes, penalties and interest charges will continue to accrue if the amount shown in the total column is not paid in full by the due date shown above.

DEPARTMENT OF FINANCE, REAL PROPERTY TAX DIVISION
 COUNTY OF HAWAII

Subscribed and sworn to before me
 This 25th day of September 2013

Ellsworth Huihee
 Notary Public, State of Hawaii
 My commission expires June 24, 2015

Copy received this _____ day of _____

Doc Date: Unrelated # Pages: 1
 Name: Ellsworth Huihee Circuit: 3rd
 Doc Description: Affidavit
 Signature: Date: 9/25/2013



COUNTY OF HAWAII
 REAL PROPERTY TAX DIVISION
 AUPUNI CENTER, 101 Pauahi Street, Suite 4
 HILO, HI 96720-4224
 TELEPHONE: (808) 961-8282.

HAWAII OUTDOOR TOURS INC
 P O BOX 1417
 HILO HI 96721 1417

TAX MAP KEY / PARCEL ID
 RP 3-2-1-005-046-0000-006

PENALTY & INTEREST CALCULATED TO:
 11/20/2012

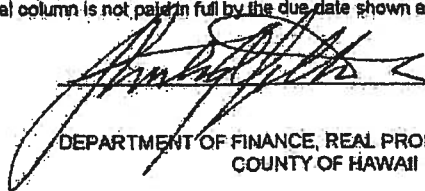
PAGE 1 OF 1

DESCRIPTION	YEAR/ CYCLE	TAX DUE DATE	TAX	PENALTY	INTEREST	OTHER	TOTAL
REAL PROPERTY	2012 - 1	8/20/2012	1,153.44	115.34	38.06	0.00	1,306.84
REAL PROPERTY	2011 - 1	8/22/2011	1,153.44	115.34	190.32	0.00	1,459.10
REAL PROPERTY	2011 - 2	2/21/2012	1,153.43	115.34	114.19	0.00	1,382.96
REAL PROPERTY	2010 - 1	8/24/2010	1,153.44	115.34	342.57	0.00	1,611.35
REAL PROPERTY	2010 - 2	2/22/2011	1,153.43	115.34	268.44	0.00	1,535.21
REAL PROPERTY TOTAL:			5,767.18	578.70	951.58	0.00	7,295.46
TOTAL:			5,767.18	578.70	951.58	0.00	7,295.46

STATE OF HAWAII) ss.
 COUNTY OF HAWAII)

Stanley A. Sitko being duly sworn upon oath deposes and says:

That the foregoing is a true and correct statement of all real property taxes assessed against the property and that additional taxes, penalties and interest charges will continue to accrue if the amount shown in the total column is not paid in full by the due date shown above.


 DEPARTMENT OF FINANCE, REAL PROPERTY TAX DIVISION
 COUNTY OF HAWAII

Subscribed and sworn to before me
 This 25th day of September, 2013
Is [Signature]
 Notary Public, State of Hawaii
Edsworth Hulinee
 My commission expires June 24, 2015

Copy received this _____ day of _____

Doc. Date: Updated # Pages: 1
 Name: Edsworth Hulinee Circuit: 3rd
 Doc. Description: Affidavit
 Signature: [Signature] Date: 9/25/2013



COUNTY OF HAWAII
 REAL PROPERTY TAX DIVISION
 AUPUNI CENTER, 101 Pauahi Street, Suite 4
 HILO, HI 96720-4224
 TELEPHONE: (808) 961-8282

HAWAII OUTDOOR TOURS INC
 P O BOX 1417
 HILO HI 96721 1417

TAX MAP KEY / PARCEL ID
 RP 3-9-8-001-002-0000-001

PENALTY & INTEREST CALCULATED TO:
 11/20/2012

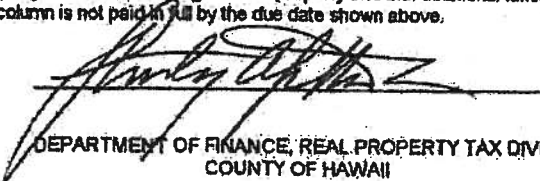
PAGE 1 OF 1

DESCRIPTION	YEAR/ CYCLE	TAX DUE DATE	TAX	PENALTY	INTEREST	OTHER	TOTAL
REAL PROPERTY	2012 - 1	8/20/2012	292.67	29.27	9.68	0.00	331.60
REAL PROPERTY	2011 - 1	8/22/2011	292.67	29.27	48.29	0.00	370.23
REAL PROPERTY	2011 - 2	2/21/2012	292.67	29.27	28.97	0.00	350.91
REAL PROPERTY	2010 - 1	8/24/2010	292.67	29.27	86.82	0.00	408.86
REAL PROPERTY	2010 - 2	2/22/2011	292.67	29.27	67.61	0.00	389.55
REAL PROPERTY TOTAL:			1,463.35	146.35	241.45	0.00	1,851.15
TOTAL:			1,463.35	146.35	241.45	0.00	1,851.15

STATE OF HAWAII) ss.
 COUNTY OF HAWAII)

Stanley A. Sittko being duly sworn upon oath deposes and says:

That the foregoing is a true and correct statement of all real property taxes assessed against the property and that additional taxes, penalties and interest charges will continue to accrue if the amount shown in the total column is not paid in full by the due date shown above.


 DEPARTMENT OF FINANCE, REAL PROPERTY TAX DIVISION
 COUNTY OF HAWAII

Subscribed and sworn to before me
 This 25th day of September 2013
 by Stanley A. Sittko
 Notary Public, State of Hawaii
Ellsworth Hulihoe
 My commission expires June 24, 2015

Copy received this _____ day of _____

Doc. Date: Undated # Pages: 1
 by: Ellsworth Hulihoe Circuit: 3rd
 Doc. Description: Affidavit
 Signature: Ellsworth Hulihoe Date: 9/25/2013

Exhibit C

Exhibit C

Naniloa failed inspections

hawaiitribune-herald.com/sections/news/local-news/naniloa-failed-inspections.html



HOLLYN JOHNSON/Tribune-Herald file photo

The vacant rooms of the Kilauea Tower overlook the grounds of the Naniloa Volcanoes Resort.



HOLLYN JOHNSON/Tribune-Herald

Ken Fugiyama, owner of Naniloa Volcanoes Resort, sits in a suite on the sixth floor of his resort in this file photo.

By TOM CALLIS

Tribune-Herald staff writer

Hawaii County is considering legal action against the Naniloa Volcanoes Resort, including closure of the troubled U.S. Bankruptcy Court - Hawaii #12-02279 Dkt # 418 Filed 10/07/13 Page 31 of 33

Banyan Drive hotel, after it failed a series of building inspections, Mayor Billy Kenoi said.

The inspections were done between April 24 and April 29 at the request of the state Board of Land and Natural Resources, Kenoi said, with follow-up inspections done last week.

A notice of violation issued May 9 to the hotel, which is going through bankruptcy and seeking a new owner, cited 24 violations of the building, electrical and plumbing codes. Among the violations are unpermitted alterations, electrical work and non-compliance with fire and safety regulations.

"We're exploring all possible legal remedies to see what we can do to address these issues," Kenoi said.

Asked if that includes closing the hotel, Kenoi said "absolutely."

"That's clearly one of the options," he said.

Kenoi said inspectors found a "series of shoddy ... maintenance and repair work" that raise "serious questions" about whether the 383-room hotel should remain open.

"The hotel guests have been staying in a building that never received final inspection after the hotel did renovations," he said, adding that some violations raise safety concerns.

A deadline of Sept. 7 was set for the hotel to come into compliance.

"They failed to do that in many cases," Kenoi said.

For his part, owner Ken Fujiyama said he thinks the violations are being exaggerated and he believes that the hotel — once a prized Hilo establishment but now in state of disrepair — is being treated unfairly.

Fujiyama said most of the violations have been resolved.

He complained that he never received a specific list of the violations and that he couldn't get a meeting with county Public Works staff.

"The problem I had with the notice was that we were not given specific items as to what the items were after numerous requests," he said.

"However, we have complied and resolved almost everything to my knowledge so that the violation notice should be finished."

Fujiyama said he doesn't believe a closure of the hotel, which is already struggling to stay afloat while it finds a new owner, would be justified.

He also didn't spare criticism of Kenoi.

"He's been trying his damndest to make the hotel fail," Fujiyama said.

The hotel's problems started long before the inspections.

Fujiyama acquired the hotel and lease with the state Department of Land and Natural Resources in 2006.

While he says he has invested millions of dollars into interior renovations, he has been criticized for failing to bring the building up to par or keep it financially solvent.

The hotel, which owes more than \$250,000 to DLNR and more than \$400,000 to Hawaii County, defaulted on its \$10 million loan with First Citizens Bank & Trust Co.

The foreclosure process started last year but was halted when the hotel declared bankruptcy last November.

Kevin Dayton, an executive assistant to Kenoi, said in a voice mail that the county has a Monday deadline to take action against the hotel.

Colliers International, which is listing the hotel for sale, has set a deadline of Oct. 18 for interested buyers to submit

sealed bids.

Fujiyama said he was unsure of how a closure over the violations would impact that process.

Kenoi said the county would expect any buyer to address any remaining issues.

Email Tom Callis at tcallis@hawaiiitribune-herald.com.

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Attorneys for the
COUNTY OF HAWAI'I

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAI'I

In re

HAWAII OUTDOOR TOURS, INC.,
dba Naniloa Volcanoes Resort and
Naniloa Volcanoes Golf Club,

Debtor and
Debtor-in-Possession.

Case No. 12-02279
(Chapter 11)

DECLARATION OF DAVID
YAMAMOTO; EXHIBITS "A" - "ZZ"

DECLARATION OF DAVID YAMAMOTO

I, DAVID YAMAMOTO, hereby declare as follows:

1. I have personal knowledge of and am competent to testify to the matters hereinafter stated.
2. I am a licensed civil engineer, and have been since July 1999.
3. I am currently employed as the Building Division Chief for the County of Hawai'i Department of Public Works Building Division ("Building Division").
4. I have been an employee of the County of Hawai'i Department of Public Works for approximately fourteen (14) years and have been in my current position as Building Division Chief since February of 2012.
5. As part of my duties as the Building Division Chief, I conduct and direct, plan and coordinate all activities related to the building, electrical and plumbing sections of the Hawai'i County Code ("HCC") as well as the sign and outdoor lighting codes. This includes but is not limited to directing, planning and coordinating building, plumbing and electrical inspections and permitting.
6. As part of my duties as Building Division Chief, I administer and enforce violations of the sections of the HCC listed in paragraph 5 above, have the authority to render interpretations of those sections of the HCC, and condemn and

reject all work done or being done or materials used or being used which do not in all respects comply with those provisions of the HCC.

7. The purpose of the sections of the HCC listed in paragraph 5 above is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings, and structures within the County of Hawai'i and certain equipment specifically regulated in the HCC.

8. Based upon my authority, I did examine or cause to be examined multiple structures on multiple properties under the control of Hawai'i Outdoor Tours, Inc., in 2013. Those properties are: Naniloa Volcanoes Resort Hotel ("Naniloa Hotel") (Tax Map Keys (3)-2-1-005-013; 016; 017, 027 and 032) located at 93 Banyan Drive in Hilo, Hawai'i; the pool and building¹ on TMK (3) 2-1-005-18 ("Benda Trust Property") and some of the structures on TMK (3) 2-1-001-012 ("Golf Course Property").

9. The first inspection of the Naniloa Hotel in 2013 was conducted on or about April 24, 2013. Present from the Building Division were inspectors from the Building, Electrical and Plumbing sections.

10. A further inspection was conducted on or about April 26, 2013. Present were inspectors from the Building, Electrical and Plumbing sections.

¹ A portion of the pool grounds are also on TMK (3) 2-1-005-017.

11. During that time a number of violations of the HCC were observed.
12. As a result of the April inspections, a Notice of Violation (“NOV”) was issued on or about May 9, 2013. The deadline for compliance with this NOV was September 7, 2013. A true and correct copy of the NOV is attached as Exhibit “A” and incorporated herein by reference.
13. On or about May 17, 2013, a meeting was held at the Naniloa Hotel. Said meeting was requested by the Bankruptcy Trustee, David Farmer. Among those present were Bankruptcy Trustee David Farmer, attorney Tim Hogan, myself, and an inspector from the Fire Department, Captain Robert Perreira.
14. At the May 17, 2013, meeting Mr. Farmer and Mr. Hogan were told that there were items that needed immediate correction at the Naniloa Hotel:
 - a. Mauna Kea – Mauna Loa Tower: Must install a temporary seal for floor/wall penetrations followed by a permanent correction;
 - b. Mauna Kea – Mauna Loa Tower: Exit signs must be installed;
 - c. Mauna Kea Tower: Combustible material must be removed;
 - d. Kilauea Tower: The use of the kitchen range hood must be discontinued or provide lawful alternatives;
 - e. Polynesian Room: The lockable exit door must be removed.
15. At the May 17, 2013, meeting, one correction of a previous violation was informally noted:

a. The electrical hazards appeared to be removed to a large extent.

16. On or about June 6, 2013, the County of Hawai'i Fire Department notified the Building Division that there was an outdoor cooking structure in place at the Naniloa Hotel.

17. On or about June 10, 2013, the Building Division conducted a partial inspection of the Naniloa Hotel to investigate the unpermitted cooking structure. Among those present were myself, Ken Fujiyama, and inspectors from the Building, Electrical and Plumbing Divisions.

18. On or about June 10, 2013, I observed that there was an outdoor cooking structure with electrical and plumbing utilities that were constructed without permits.

19. Also at the June 10, 2013, partial inspection, the following were noted regarding the items that Mr. Farmer and Mr. Hogan were told required immediate attention on May 17, 2013:

- a. Mauna Kea – Mauna Loa Tower: Installation of a temporary seal for floor/wall penetrations followed by a permanent correction were NOT addressed;
- b. Mauna Kea – Mauna Loa Tower: Exit signs were NOT installed;
- c. Mauna Kea Tower: Combustible material was only PARTIALLY removed;

d. Kilauea Tower: The use of the kitchen range hood appeared to be discontinued and cooking was occurring in the outdoor cooking structure;

e. Polynesian Room: The lockable exit door was removed.

20. On or about June 14, 2013, a follow-up letter to the May 9, 2013, Notice of Violation and May 17, 2013, meeting was sent to Bankruptcy Trustee David Farmer. A true and correct copy of the letter is attached as Exhibit "B" and is hereby incorporated by reference.

21. On or about June 19, 2013, Bankruptcy Trustee David Farmer sent a letter indicating compliance with the June 14, 2013, follow-up letter. A true and correct copy of the letter is attached as Exhibit "C."

22. On or about June 21, 2013, the Building Division conducted a follow-up walk-through inspection of the Naniloa Hotel to inspect whether the items listed in paragraph 19 above were addressed. At that time, it appeared that the items listed in paragraph 19 were addressed.

23. On or about June 25, 2013, a Notice of Violation letter was sent to Bankruptcy Trustee David Farmer, outlining additional violations of the HCC for the Naniloa Hotel, involving the temporary cooking structure. A true and correct copy of said letter is attached as Exhibit "D" and is hereby incorporated by reference.

24. A temporary building permit had been issued for the temporary cooking structure on June 18, 2013, and was intended to be allowed only up until the September 7, 2013 deadline while the kitchen range hood discrepancy was addressed. However, the electrical permit for the temporary cooking structure received final approval on June 27, 2013, and the plumbing permit for the temporary cooking structure received final approval on June 24, 2013.

25. In a letter dated August 28, 2013, addressed to me from Ken Fujiyama on Naniiloa Volcanoes Resort letterhead, Mr. Fujiyama requested a 30-day time extension from September 7, 2013, to correct a plumbing violation that was noted in the May 9, 2013, NOV letter. A true and correct copy of said letter is attached as Exhibit "E."

26. On or about August 30, 2013, a letter was received from Bankruptcy Trustee David Farmer reiterating Mr. Fujiyama's request for a 30-day extension of time to resolve a plumbing issue. A true and correct copy of said letter is attached as Exhibit "F."

27. On or about August 30, 2013, an e-mail was sent to Bankruptcy Trustee David Farmer, noting that the September 7, 2013, compliance deadline remained in effect. Bankruptcy Trustee David Farmer reiterated a request for an extension of the deadline. A true and correct copy of the e-mail exchange is attached as Exhibit "G."

28. On or about September 5, 2013, permit applications were received for Mauna Loa Tower interior alterations, Mauna Kea Tower interior alterations, and the Kilauea Tower alterations. The applications were routed to the team review process for review on September 10, 2013, for agency comments in the order received. Those permit applications were subsequently found to be severely deficient for (1) insufficient information; (2) proposed duplication of work currently with still active permits that were prepared by another design professional; and (3) the plans proposed to leave structures in substandard condition. Additionally, no electrical and plumbing permit applications were submitted despite indication in plan notes that both plumbing and electrical work had been done. (On October 3, 2013, Mr. Fujimoto submitted revised applications, which are currently being routed).

29. On or about September 5, 2013, a follow-up walk-through inspection of the Naniloa Hotel was conducted by the Building, Electrical and Plumbing Divisions.

30. At the September 5, 2013, inspection, numerous violations that were noted in the May 9, 2013, NOV which had a deadline for compliance of September 7, 2013, were still pending², including but not limited to the following unpermitted work:

a. Former spa demolition;

² Note that the kitchen range hood issue also remains unaddressed.

- b. Former Kilohana Room bar demolition;
- c. Former Ting Hao Restaurant demolition, including the removal of a stairway;
- d. New storage room adjacent to former Ting Hao Restaurant;
- e. Kīlauea Tower alterations;
- f. Change of use from beauty shop to natural health facility, and change in use from hotel room to beauty shop;

31. On or about September 30, 2013, a member of the Building Division contacted Ken Fujiyama regarding the scheduling of a further inspection of the property.

32. At that time, Mr. Fujiyama informed my staff not to conduct an inspection on that day because there was an electrical failure at the Naniloa Hotel, and there was no electricity to the Naniloa Hotel.

33. On October 1, 2013, electrical, plumbing and building inspectors from the Building Division performed further inspections of the buildings on the Naniloa Hotel property, as well as the pool and building on the Benda Trust Property and some structures on the Golf Course Property.

34. On October 1, 2013, the following violations were observed on the Naniloa Hotel property (NOTE: None of the unpermitted work as outlined in paragraph 30 has been resolved) :

a. Mauna Kea Wing:

i. Building permit required: Demolition of former spa without a required permit (HCC Section 5-19). Attached as Exhibits "H," "I," and "J" are true and correct copies of photographs that were taken on October 1, 2013, that truly and accurately depict the condition of the areas in the photographs on that day.

ii. Establishment: Total Health of Hawaii, LLC

1. Building permit required: Alteration and change of use from previous Beauty Salon to Health Spa, removed interior wall, removed some ceilings, constructed wall in opening where stairs removed without a required permit (HCC Section 5-19);
2. Electrical permit required: Electrical work performed without a required permit (HCC Section 9-26);
3. Non-conforming electrical work: Electrical outlets adjacent to sinks in massage room 1, 2, and 3 are not provided required ground fault circuit interrupter protection for personnel (2008 NEC Article 210.8(B));

4. Plumbing permit required: Installed toilet and 4 sinks without a required permit (HCC Section 17-15);
 5. Non-conforming plumbing work: mechanical vents installed are not recognized as meeting minimum standards for approved use (2006 UPC Section 301.1.1);
 6. Non-conforming plumbing work: plumbing vents do not rise vertically 6 inches above the flood-level rim of the fixture served (2006 UPC Section 905.3);
 7. Non-conforming plumbing work: Plumbing vents do not extend and terminate vertically 6 inches above the roof nor less than 1 foot from any vertical surface (2006 UPC Section 906.1).
- iii. Building permit required: Storage room at lower level adjacent to former Ting Hao Restaurant constructed without a required permit (HCC Section 5-19). Attached as Exhibit "K" is a true and correct copy of a photograph that was taken on October 1, 2013, that truly and accurately depicts the condition of the area in the photograph on that day.

iv. **Building permit required: Demolished former Ting Hao Restaurant including stairway to 2nd level without a required permit (HCC Section 5-19). Attached as Exhibit "L" is a true and correct copy of a photograph that were taken on October 1, 2013, that truly and accurately depicts the condition of the area in the photograph on that day.**

b. Mauna Loa Wing:

i. **Establishment: Dawn's Barber Shop**

1. **Building permit required: Alteration and change of use from previous Guest Room 109 without a required permit (HCC Section 5-19);**
2. **Non-conforming building work: Installed non-conforming glass French door in place of 20 minute fire rate door assembly. (2006 IBC Section 715.4);**
3. **Plumbing permit required. Removed guest room toilet and shower and installed two sinks without a required permit. HCC Section 17-15).**

c. Mauna Loa Tower/Mauna Kea Tower:

- i. **Non-conforming plumbing work: Shower-Tub Spouts submerged below flood-level rim of the tub and posing**

condition for cross-connection contamination of the domestic water system (HCC Section 17-37) Attached as Exhibit "M" is a true and correct copy of a photograph that was taken on October 1, 2013, that truly and accurately depicts the condition of the area in the photograph on that day.

d. Main Entrance Portecochere at main hotel entrance:

- i. Building permit required: The portecochere roof at the main entrance to the Naniloa Hotel was removed without required permit and leaving the columns and rafters in place (HCC Section 5-19). Attached as Exhibit "N" is a true and correct copy of a photograph that was taken on October 1, 2013, that truly and accurately depicts the condition of the area in the photograph on that day.

e. Kilauea Tower:

- i. Building permit required: Alteration work performed without a required permit (HCC Section 5-19) Attached as Exhibits "O" through "R" are true and correct copies of photographs that were taken on October 1, 2013, that truly

and accurately depict the condition of the areas in the photographs on that day.

ii. The kitchen range hood issue remains unaddressed.

f. Main Lobby/Kilauea Tower/Temporary Cooking Shed:

i. Electrical permit required: **permanent electrical power service indefinitely disrupted and provisions installed for temporary emergency generator power** (HCC Section 9-28) Attached as Exhibits “S” through “U” are true and correct copies of photographs that were taken on October 1, 2013, and/or October 2, 2013, that truly and accurately depict the condition of the areas in the photographs on those days.

ii. Non-conforming electrical work: electrical distribution panel not guarded against accidental contact with live parts by persons and to prevent physical damage (2008 NEC Article 110.27(A-B). Attached as Exhibit “V” is a true and correct copy of a photograph that was taken on October 1, 2013, that truly and accurately depicts the condition of the areas in the photograph on that day.

- iii. Non-conforming electrical work: Emergency Generator grounding electrode conductor size #8 provided, size #6 required (2008 NEC Article 250.66). Attached as Exhibit “W” is a true and correct copy of a photograph that was taken on October 1, 2013, that truly and accurately depicts the condition of the areas in the photograph on that day ;
- iv. Non-conforming electrical work: Uninsulated, ungrounded electrical service busbar is exposed to inadvertent contact by persons or maintenance equipment (2008 NEC Article 408.3(A)(2)).
- v. Non-conforming electrical work: temporary wiring is not protected from accidental damage where passing through doorways or other pinch points (2008 NEC Article 590.4(H)). Attached as Exhibits “X” through “Z” are true and correct copies of photographs that were taken on October 1, 2013, that truly and accurately depict the condition of the areas in the photographs on that day.

35. On October 1, 2013, the following violations were observed on the Benda Trust Property:

- a. Swimming Pool Area:

- i. Substandard and unsafe buildings: Swimming pool is filled with debris, stagnant water, and contains mosquito vectors; Trellis is deteriorated, collapsed, and on verge of dangerous collapse; Gate/Fence is broken, exposing the pool as an attractive nuisance potentially detrimental to children (HCC Sections 5-48 and 49). Attached as Exhibits “AA” through “CC” are true and correct copies of photographs that were taken on October 1, 2013, that truly and accurately depict the condition of the areas in the photographs on that day.
- ii. Non-conforming and defective electrical installations
 1. Electrical outlets in pool pump room are not provided required ground fault circuit interrupter protection for personnel (2008 NEC Article 210.8(B));
 2. Area fronting swimming pool and Poly Room vegetation used as means to support UF electrical cable feeding fixtures (2008 NEC Article 225.26)
Attached as Exhibit “DD” is a true and correct copy of a photograph that was taken on October 1, 2013, that truly and accurately depicts the condition of the area in the photograph on that day;

3. Pool pump room electrical conduits rusted through exposing electrical conductors (2008 NEC Article 300);
4. Unsupported box and rigid conduit in swimming pool gazebo. RMC are not securely fastened within 3 feet of each electrical device box, along conduit body and conduit termination (2008 NEC Article 344.30);
5. Extension cords used as substitute for the fixed wiring of a structure and where attached to building surfaces (2008 NEC Article 400).

b. Building that was formally a restaurant (a.k.a. Banyan Broiler Restaurant) has area where the ceiling and walls are deteriorating, vegetation growing on roof and walls, poor maintenance of structure. Attached as Exhibits "EE" through "JJ" are true and correct copies of photographs that were taken on October 1, 2013, that truly and accurately depict the condition of the areas in the photographs on that day.

- i. Non-conforming and defective electrical installations (HCC Section 9-10):

1. Exterior electrical panel used is not approved for installation in wet or damp locations (2008 NEC Article 110.3(B));
2. Types NM and NMS cables used is not approved for installation in wet or damp locations (2008 NEC Article 110.3(B));
3. Service-lateral conductors exposed to physical damage (2008 NEC 230.32).

ii. Electrical permit required. Electrical work performed.

36. On October 1, 2013, the following violations were observed on the Golf Course Property:

i. Attached as Exhibit “KK” and incorporated herein by reference is a partial site plan attached with notes (Old Maintenance building is located on the south side of property (not on the site plan) and is drawn in on the bottom of the insert).

ii. Maintenance Building

1. Building permit required. 40 x 100 feet building and 24 x 32 feet lean-to roof structures constructed without a required permit (HCC Section 5-19)

Attached as Exhibits "LL" through "QQ" are true and correct copies of photographs that were taken on October 1, 2013, that truly and accurately depict the condition of the areas in the photographs on that day.

2. Substandard building: Roof leaking, wooden structure deteriorated and both in need of repair and/or replacement (HCC Section 5-48). See Exhibits "LL" through "QQ" above.
3. Non-conforming and defective electrical installations (HCC Section 9-10) Attached as Exhibit "RR" is a true and correct copy of a photograph that was taken on October 1, 2013, that truly and accurately depicts the condition of the areas in the photograph on that day.
 - a. Underground service-lateral conductors are exposed to physical damage (2008 NEC Article 230.32);
 - b. Open wire on ceilings and walls at splices, outlet point, switch point, pull, termination are

exposed and not provided required box or
conduit body (2008 NEC Article 300.15);

4. Electrical permit required. Electrical work performed without a required permit (HCC Section 9-26).

iii. Golf Clubhouse, Restaurant, Cart Storage Building and

Proshop:

1. Building permit required. Canopy walkway enclosed along 3 sides with wood batten structure approximately 80 linear feet and 6 feet in height; open roof lanai enclosed by 55 linear feet wire mesh and decorative lattice; 16 x 60 feet metal roof structure supported by CMU wall constructed without a required permit (HCC Section 5-19). Attached as Exhibits "SS" through "WW" are true and correct copies of photographs that were taken on October 1, 2013, that truly and accurately depict the condition of the areas in the photographs on that day.
2. Substandard building. Buildings deteriorating as a result of faulty weather protection and inadequate maintenance (HCC Sections 5-48);

3. Non-conforming and defective electrical installations (HCC Section 9-10) Attached as Exhibits "XX" through "ZZ" are true and correct copies of photographs that were taken on October 1, 2013, that truly and accurately depict the condition of the areas in the photographs on that day.
- a. Illumination is not provided for working space about service equipment panel (2008 NEC Article 110.26(D));
 - b. Electrical outlets outdoors are not provided required ground fault circuit interrupter protection for personnel (2008 NEC Article 210.8(B));
 - c. Underground service-lateral conductors are exposed to physical damage (2008 NEC Article 230.32);
 - d. Direct-buried cable or conduits do not have minimum cover required (2008 NEC Article 300.5);

- e. Wire junction boxes are not rigidly and securely fastened in place (2008 NEC Article 314.23(A));
- f. Electrical pull boxes, junction boxes and conduit bodies are not provided with covers compatible or suited for conditions of use (2008 NEC Article 314.28(3)(C));
- g. Electrical cables are exposed to and unprotected from physical damage (2008 NEC Article 334.15(B));
- h. NMB electrical cables are not supported and secured (2008 NEC Article 334.30);
- i. Electrical receptacles are not provide cover plates exposing live wire (2008 NEC Section 406.5);

4. Electrical permit required. Electrical work performed without a required permit (HCC Section 9-26).

37. Based on the foregoing, numerous violations of various sections of the Hawai'i County Building, Electrical, and Plumbing Codes exist for the Naniloa, Benda Trust and Golf Course Properties.

38. Based upon the foregoing, numerous structures on the Naniloa, Benda Trust and Golf Course Properties are considered unsafe and/or substandard and create a hazard to life, health and safety.

I declare under penalty of law that the foregoing is true and correct.

Dated: Hilo, Hawai'i, October 4, 2013.


DAVID YAMAMOTO



BUILDING DIVISION • DEPARTMENT OF PUBLIC WORKS

101 Pauahi Street, Suite 7, Hilo, Hawai'i 96720

14-5044 Ane Keohokalole Highway, Building E, Kailua-Kona, Hawaii 96740

(808) 961-8331, Fax (808) 961-8410

(808) 327-3520, Fax (808) 327-3509

NOTICE OF VIOLATION

May 9, 2013

CERTIFIED MAIL

Mr. Ken Fujiyama
Hawaii Outdoor Tours Inc.
93 Banyan Drive
Hilo, Hawai'i 96720

P O Box 1417
Hilo, Hawai'i 96721-1417

RE: 93 Banyan Drive
Hilo, HI 96720
TMK: 2-1-005:016

Mr. Fujiyama:

The County of Hawai'i, Department of Public Works - Building Division ("DPW-BLDG") inspected the structures and/or premises at 93 Banyan Drive, Hilo, Hawaii ("subject property")¹ and found a violation of one or more provisions of the Hawai'i County Code ("HCC").

The corrective actions found within SECTION III of this letter are to be completed by September 7, 2013. Failure to complete corrective action within the specified time may result in an ORDER being issued that may impose administrative and/or civil fines and/or referral to the appropriate legal authorities for action. The BLDG Division is willing to answer your questions or discuss this matter further.

¹ See Exhibit A – Site Plan of TMK 2-1-005:016 for locations of Kilauea, Mauna Loa, Mauna Kea, and Administration Tower.

I. BACKGROUND

As the current occupant, you have multiple open permits for the subject property with no final inspections. Occupant's open permits are as follows:

OCCUPANT'S OPEN BUILDING PERMITS

B2007-1611H	Renovations to guest rooms – Mauna Kea Tower
B2007-1612H	Renovations to guest rooms – Kilauea Tower
B2007-1613H	Renovations to guest rooms – Mauna Loa Tower
B2008-2444H	Fire sprinkler system for entire Kilauea Tower (ground to 6 th floor)
B2008-2445H	Fire sprinkler system for entire Mauna Kea tower (ground to 8 th floor)
B2009-0969H	Alteration to Mauna Kea Tower (changes to permit 2007-1611)
B2009-1771H	Fire sprinkler system for lobby/registration/office and Sandalwood Lounge
B2009-1770H	Fire sprinkler system for Mauna Loa Tower (ground to 12 th floor)
B2009-1772H	Fire sprinkler system for Crown Room

OCCUPANT'S OPEN ELECTRICAL PERMITS

E2007-2308H	Renovate Fire Alarm System
E2007-1396H	Renovation To Guest Rooms – Mauna Loa Tower
E2007-1395H	Renovation To Guest Rooms- Kilauea Tower
E2007-1394H	Renovation To Guest Rooms –Mauna Kea Tower

OCCUPANT'S OPEN PLUMBING PERMITS

M2007-1331H	Renovation to guest rooms-Mauna Kea Tower
M2007-1332H	Renovation to guest rooms-Kilauea Tower
M2007- 1333H	Renovation to guest rooms-Mauna Loa Tower
M2010- 1368H	Installation of gas for two dryers- Laundry Room

Between April 24, 2013 and April 29, 2013, several inspectors from the County of Hawaii, Department of Public Works, Building Division ("DPW-BLDG") conducted inspections at the subject property to determine if the occupant was in compliance with applicable County codes and regulations. As a result DPW-BLDG has determined that numerous violations of various sections of the Hawaii County Building, Electrical, and Plumbing Codes exist.

The numerous violations include but are not limited to the following summary of observations:

1. Building inspectors noted major code issues related to unprotected penetrations of corridors/floors/ceilings, enclosed stairways, work without permit, and change of use without required permit. (Exhibits B, C, D – Photos of Penetrations. Exhibits E, F – Photos of gutted bar and back area of Kilohana Room. Exhibit G – Photo of Gutted Former Ting Hao Restaurant, stairway to Upper Level Removed. Exhibit H – Photos of Gutted Area and Removal of Walls)
2. Electrical inspectors walked through the property and noted non-compliant conditions that pose electrocution and/or fire hazards. Also noted were portions work performed

- under electrical permit(s) were concealed without inspection(s). (See Exhibits I through V – Photos of various non-compliant electrical work)
3. Plumbing inspectors noted that in multiple guest rooms, bathtub plumbing did not comply with backflow prevention requirements. (See Exhibits W and X – Photos of tub installation indicating spout is below wall line.)

II. NOTICE OF VIOLATION

Based upon the foregoing, a review of County records, and the observations of our inspectors you are in violation as follows:

Code(s) and/or Ordinance(s) and Section(s)	Violation(s)
Hawaii County Code ("HCC"), Chapter 5 - Building, Section 5-19. Permit required (Change of use, Alterations) (Acupuncture School and Total Health Care Facility)	Unpermitted construction, alteration conversion, demolition, uses and occupancies.
HCC, Chapter 5, Section 5-40, Inspections	Work concealed and occupied without inspection
1991 Uniform Building Code ("UBC") Section 4304. Walls and Partitions.	Non-compliant building work. Safety and Fire Hazard
1991 UBC section 4304 (e). Through Penetration.	Non-compliant building work. Safety and Fire Hazard
1991 UBC section 4305(c). Floors.	Non-compliant building work. Safety and Fire Hazard
HCC, Chapter 9 - Electricity, Section 9-9. Inspection	Unapproved energizing or use of wiring
HCC, Chapter 9 - Electricity, Section 9-26. Permit required; exceptions	Unpermitted electrical work
2002 National Electrical Code ("NEC") Article 110.12(B) Mechanical Execution of Work	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 210.70 (3) Rating	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 300 All Wiring Installation	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 300.5(D)(2) Conductors Entering Buildings	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 300.11 Securing and Supporting	Non-compliant electrical work. Safety and Fire Hazard

NEC Article 314.20 In Wall or Ceiling	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 314.28 C. Covers	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 334.12 Uses Not Permitted (A)(1) and (10)d.	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 372.13 Discontinued Outlets	Non-compliant electrical work. Life and Safety
NEC Article 400.8(1) Uses Not Permitted	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 404.9(A) Provisions for General-Use Snap Switches	Non-compliant electrical work. Safety and Fire Hazard
NEC Art 406.3(F) Noninterchangeable Types	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 410.3 Live Parts	Non-compliant electrical work. Safety and Fire Hazard
NEC Article 410.49 Lampholders in Wet or Damp Conditions	Non-compliant electrical work. Life and Safety
HCC, Chapter 17 - Plumbing, Section 17-24, Inspection required	Work concealed and in use without inspection
HCC, Chapter 17 - Plumbing, Section 17-37. Dangerous and insanitary construction, Paragraph (a), Item (6), cross-connection	Nuisance. Public Health and Safety
1997 Uniform Plumbing Code ("UPC") Section 603.2.1 Airgap	Non-compliant plumbing work, Public health and safety

The relevant sections of the Hawai'i County Code, UBC, NEC, and UPC are provided below:

HCC Chapter 5 - Building

Section 5-19. Permits Required.

No person, firm, or corporation shall erect, construct, enlarge, alter, repair, move, convert, or demolish any building or structure in the County, or cause the same to be done, without first obtaining a separate building permit for each building or structure from the building official; provided that one permit may be obtained for a dwelling and its accessories, such as fence, retaining wall, pool, storage and garage structures.

Section 5-40. Inspections.

- (a) All construction or work for which a permit is required shall be subject to inspection by the building official
- (b) It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purpose. Neither the building official nor the County shall be liable for any expense entailed in the removal or replacement of any material required to allow inspection.

Section 5-51. Buildings found to be unsafe; Notice to owner.

- (a) Whenever the building official has examined or caused to be examined any building and has determined that such building is an unsafe building:
 - (1) The building official shall commence proceedings to cause the repair, rehabilitation, vacating, removal and/or demolition of the building
 - (2) Such building shall automatically be deemed and are hereby declared to be a public nuisance;
 - (3) The building official shall give to the owner of such building written notice of violation in accordance with section 5-59 and as further described below; and
 - (4) The building official shall cause to be posted at each entrance to the buildings ordered vacated a notice to read: "DO NOT ENTER. UNSAFE TO OCCUPY. DEPARTMENT OF PUBLIC WORKS. COUNTY OF HAWAII."
- (b) The notice required by subsection (a)(3) above shall require the owner or person in charge of the building or premises, to commence the required repairs or improvements or demolition and removal of the building or structure or portions thereof within forty-eight hours, and to complete all such work within ninety days from date of notice, provided that the building official may provide for more time for completion if deemed reasonably necessary. The notice shall also require the building or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the building official.

1991 Uniform Building Code ("UBC")

UBC Section 4304. Walls and Partitions.

- (e) Through penetration. Penetrating items passing entirely through both protective membranes of bearing walls required to have a fire-resistance rating and walls requiring protected openings shall be protected with through-penetration fire stop suitable for the method of penetration.

UBC Section 4305. Floor-Ceilings or Roof-Ceilings.

- (c) Floors. Fire-resistive floors and floors which are part of a floor-ceiling assembly shall be continuous without openings or penetrations in order to completely separate one story or basement from another.

HCC Chapter 9 - Electricity

Section 9-9. Inspections.

- (a) All electrical wiring, for which a permit is required, shall be inspected and approved by the authority having jurisdiction before being concealed, energized, or used.
- (b) No person shall use, operate, or maintain, or cause or permit to be used, operated, or maintained, any electric wiring until it is approved.
- (d) No person shall conceal, enclose, or cover, or cause or permit to be concealed, enclosed, or covered, any portion of any electric wiring or equipment in any manner which will interfere with or prevent the inspection and approval thereof.
- (e) Fixtures, appliances, devices, or equipment shall not be connected to any electric wiring until the rough electric wiring, including conductors, have been inspected and approved by the authority having jurisdiction.
- (f) All obstruction, covers, plates, tapes, light fixtures, etc., which make impracticable the making of a thorough inspection of electric wiring shall be removed upon notice (either verbal or in writing) to do so, and shall be kept removed until the electric wiring has been inspected and approved.
- (g) The supervising electrician or electrical contractor shall be present on the job site upon request of the authority having jurisdiction.

Section 9-10. Nonconforming and defective installations.

Whenever any electrical installation is found to have been installed, altered, changed, or reconstructed contrary to the provisions of this chapter or any other law, whenever any electrical installation is found to be in use contrary to the provisions of this chapter or any other law, or whenever any electrical installation, which complied with the existing laws, ordinances, and regulations in effect when the electrical work therein was performed, is found to be unsafe or dangerous to persons or property, the administrative authority shall give the owner or the person in control of that installation a written notice stating the findings with respect to that installation and order the owner or other person in control to make the corrections to be set forth in the written notice. When found to be unsafe or dangerous to persons or property, the defective installation shall be disconnected from the power source and tagged as unsafe to operate until corrective action is made, inspected, and approved.

Section 9-26. Permit required; exception.

No person shall perform any electrical work or cause or permit the same to be done, unless a permit therefor has been obtained from the authority having jurisdiction with the following exceptions:

2002 National Electrical Code ("NEC")

NEC Article 110.12 Mechanical Execution of Work

Electrical equipment shall be installed in a neat and workmanlike manner.

- (C) **Integrity of Electrical Equipment and Connections.** Internal parts of electrical equipment, including busbars, wiring terminals, insulators, and other surfaces, shall not be damaged or contaminated by foreign materials such as paint, plaster, cleaners, abrasives, or corrosive residues. There shall be no damaged parts that may adversely

affect safe operation or mechanical strength of the equipment such as parts that are broken; bent; cut; or deteriorated by corrosion, chemical action, or overheating.

NEC Article 300.1 Scope (A) All Wiring Installations.

This article covers wiring methods for all wiring installations unless modified by other articles.

NEC Article 300.5(D). Underground Installations

Direct-buried conductors and cables shall be protected from damage in accordance with (1) through (5).

(2) **Conductors Entering Buildings.** Conductors entering a building shall be protected to the point of entrance.

NEC Article 300.11 Securing and Supporting

(A) **Secured in Place.** Raceways, cable assemblies, boxes, cabinets, and fittings shall be securely fastened in place. Support wires that do not provide secure support shall not be permitted as the sole support. Support wires and associated fittings that provide secure support and that are installed in addition to the ceiling grid support wires shall be permitted as the sole support. Where independent support wires are used, they shall be secured at both ends. Cables and raceways shall not be supported by ceiling grids.

NEC Article 312.3 Position in Wall

In walls of concrete, tile, or other noncombustible material, cabinets shall be installed so that the front edge of the cabinet is not set back of the finished surface more than 6 mm (1/4 in.). In walls constructed of wood or other combustible material, cabinets shall be flush with the finished surface or project there from.

NEC Article 314.20 In Wall or Ceiling

In walls or ceilings with a surface of concrete, tile, gypsum, plaster, or other noncombustible material, boxes shall be installed so that the front edge of the box will not be set back of the finished surface more than 6mm (1/4 in.). In walls constructed of wood or other combustible material, cabinets shall be flush with the finished surface or project there from.

NEC Article 314.28 Pull and Junction Boxes and Conduit Bodies

(C) **Covers.** All pull boxes, junction boxes, and conduit bodies shall be provided with covers compatible with the box or conduit body construction and suitable for the conditions of use. Where metal covers are used, they shall comply with the grounding requirements of 250.110.

NEC Article 334.12 Uses Not Permitted

(A) **Types NM, NMC and NMS.** Types NM, NMC and NMS cables shall not be used under the following conditions or in the following locations:

(1) As open runs in dropped or suspended ceilings in other than one- and two-family and multifamily dwellings.

- (10) Types NM and NMS cables shall not be used under the following conditions or in the following locations
- d. Where exposed or subject to excessive moisture or dampness.

NEC Article 372.13 Discontinued Outlets

When an outlet is abandoned, discontinued, or removed, the sections of circuit conductors supplying the outlet shall be removed from the raceway. No splices or reinsulated conductors, such as would be the case of abandoned outlets on loop wiring, shall be allowed in raceways.

NEC Article 400.8 Uses Not Permitted

Unless specifically permitted in 400.7, flexible cords and cables shall not be used for the following:

- (1) As a substitute for the fixed wiring of a structure

NEC Article 404.9 Provisions for General-Use Snap Switches

- (A) **Faceplates.** Faceplates provided for snap switches mounted in boxes and other enclosures shall be installed so as to completely cover the opening and, where the switch is flush mounted, seat against the finished surface.

NEC Article 406.3 General Installation Requirements

Receptacle outlets shall be located in branch circuits in accordance with Part III of Article 210. General installation requirements shall be in accordance with 406.3 (A) through (F).

- (F) **Noninterchangeable Types.** Receptacles connected to circuits that have different voltages, frequencies, or types of current (ac or dc) on the same premises shall be of such design that the attachment plugs used on these circuits are not interchangeable.

NEC Article 410.3 Live Parts

Luminaires, portable luminaires, lampholders, and lamps shall have no live parts normally exposed to contact. Exposed accessible terminals in lampholders and switches shall not be installed in metal luminaire canopies or in open bases of portable table or floor luminaires. *Exception: Cleat-type lampholders located at least 2.5 m (8 ft.) above the floor shall be permitted to have exposed terminals.*

NEC Article 410.49 Lampholders in Wet or Damp Locations

Lampholders installed in wet or damp locations shall be of the weatherproof type.

HCC Chapter 17 - Plumbing.

Section 17-24. Inspection required.

- (a) All plumbing, gas, and drainage systems shall be inspected by the authority having jurisdiction to ensure compliance with all the requirements of this code...
- (b) It shall be the duty of the applicant to cause the work to remain accessible and exposed for inspection purpose. Neither the building official nor the County shall be liable for any expense entailed in the removal or replacement of any material required to allow inspection.

Section 17-37. Dangerous and insanitary construction.

- (a) Any portion of a plumbing system found by the authority having jurisdiction to be insanitary as defined herein is hereby declared to be a nuisance. "Insanitary" means a condition which is contrary to sanitary principles or is injurious to health. Conditions to which "insanitary" shall apply include, but are not limited to, the following:
- (6) Any connection, cross-connection, construction or condition, temporary or permanent, which would permit or make possible by any means whatsoever, for any unapproved foreign matter to enter a water distribution system used for domestic purposes.
- (b) Upon determining that any construction or work regulated by this code is dangerous, unsafe, insanitary, a nuisance or a menace to life, health or property, or otherwise in violation of this code, the authority having jurisdiction may order any person, firm or corporation using or maintaining any such condition or responsible for the use or maintenance thereof to discontinue the use or maintenance thereof or to repair, alter, change, remove, or demolish same as may be considered necessary for the proper protection of life, health, or property. In the case of any gas piping or gas appliance, the authority having jurisdiction may order any person, firm, or corporation, supplying gas to such piping or appliance, to discontinue supplying gas thereto, until such piping or appliance is made safe with respect to life, health and property,

1997 Uniform Plumbing Code

Section 603.2.1 Airgap.

The minimum airgap to afford backflow protection shall be in accordance with Table 6-3.

**TABLE 6-3
Minimum Airgaps for Water Distribution⁴**

Fixtures	When not affected by sidewalls ¹		When affected by sidewall ²	
	Inches	(mm)	Inches	(mm)
Effective openings ³ not greater than one-half (1/2) inch (12.7 mm) in diameter	1	(25.4)	1-1/2	(38)

III. CORRECTIVE ACTIONS

To be in compliance with the above-mentioned section(s), the following corrective actions are required by the deadline date of **September 7, 2013**:

- (1) You must obtain a building permit from the BLDG Division for change of use for an Acupuncture School and Total Health Care Facility. (HCC § 5-19)
- (2) You must allow the Building Inspector to post notice of the building's unsafe condition at the site. (HCC 5-51(a)(4))

- (3) You must commence with all demolition or reconstruction work and complete the same within ninety days from date of this notice; additional time for completion may be requested if deemed reasonably necessary by the BLDG Division. (HCC 5-51(b))
- (4) You must ensure compliance with all requirements of HCC § 5-51, such as refraining from entering the building except for the purpose of conducting required repair or demolition work.
- (5) You must disconnect defective electrical installations from their power source and tag as unsafe to operate until corrective action is made, inspected, and approved. (HCC 9-10)
- (6) You must discontinue use of insanitary plumbing construction (cross-connection) or cause to repair, alter, change, remove, or demolish same as may be considered necessary for the proper protection of life, health, or property. (HCC 17-37)

YOUR DEADLINE FOR COMPLIANCE IS: September 7, 2013.

The Building Division is prepared to answer your questions or discuss this matter further. Please understand that you are responsible to contact the inspector to verify the corrective action.

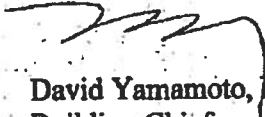
IV. WARNING

If corrective action is not completed by the deadline date of **September 7, 2013**, an **ORDER** will be issued that may impose administrative and/or civil fines and/or referral to the appropriate legal authorities for action.

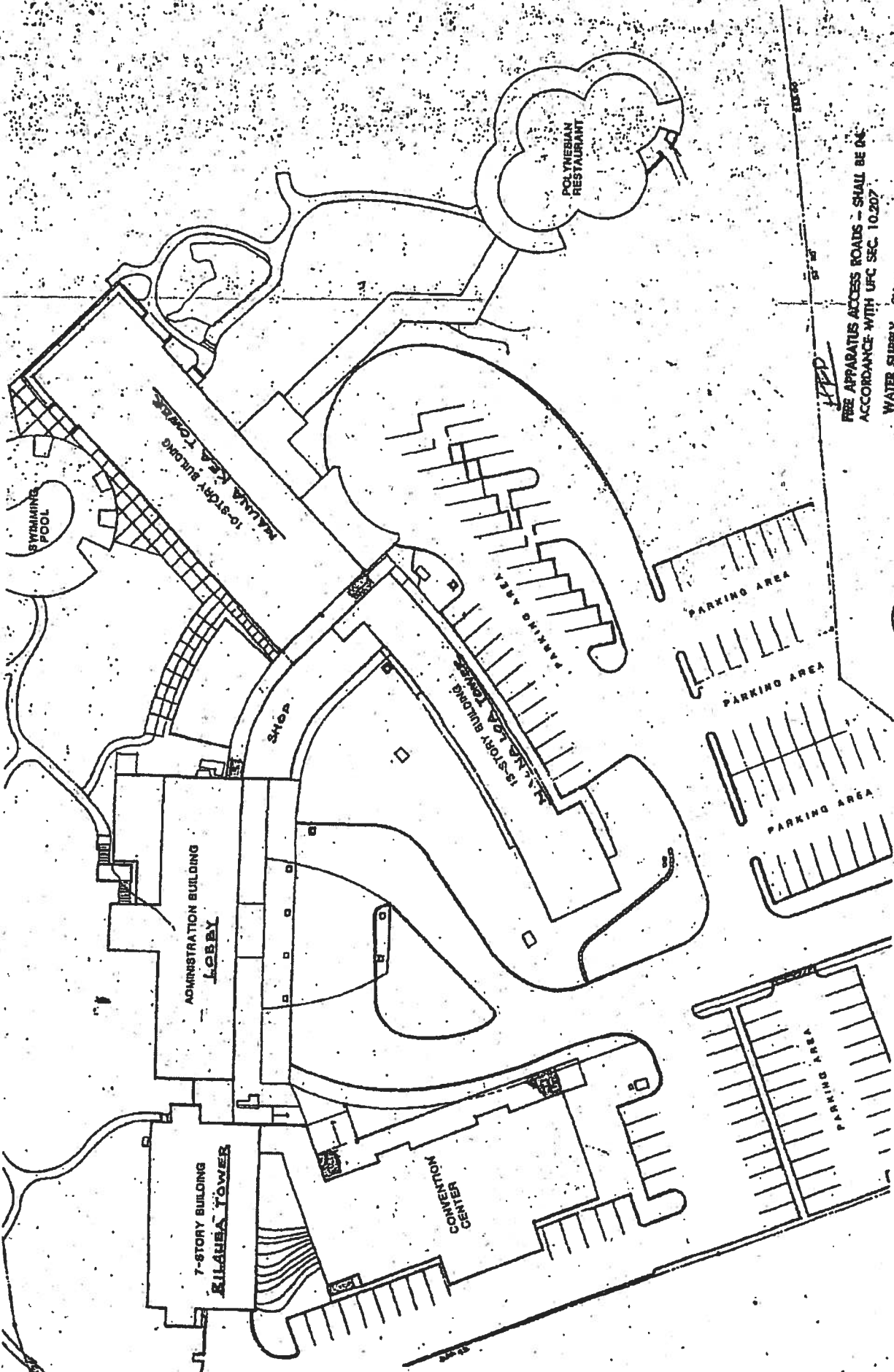
V. CONCLUSION

Please contact the Supervising Building Inspector, Joy Matsumoto at 961-8471; the Supervising Electrical Inspector, Gary Kaho'ohanohano at 961-8486; the Supervising Plumbing Inspector, Rodney Astrande at 961-8487, if you have any further questions regarding this matter.

Respectfully,


David Yamamoto, P.E.
Building Chief

Cc:
Warren Lee- Director
Joy Matsumoto-Supervising Building Inspector
Gary Kahoohanohano-Supervising Electrical Inspector
Rodney Astrande-Supervising Plumbing Inspector
Gordon Heit, Department of Land and Natural Resources



FREE APPARATUS ACCESS ROADS -- SHALL BE IN ACCORDANCE WITH UFC SEC. 10.207
 WATER SUPPLY -- SHALL BE IN ACCORDANCE WITH UFC SEC. 10.207



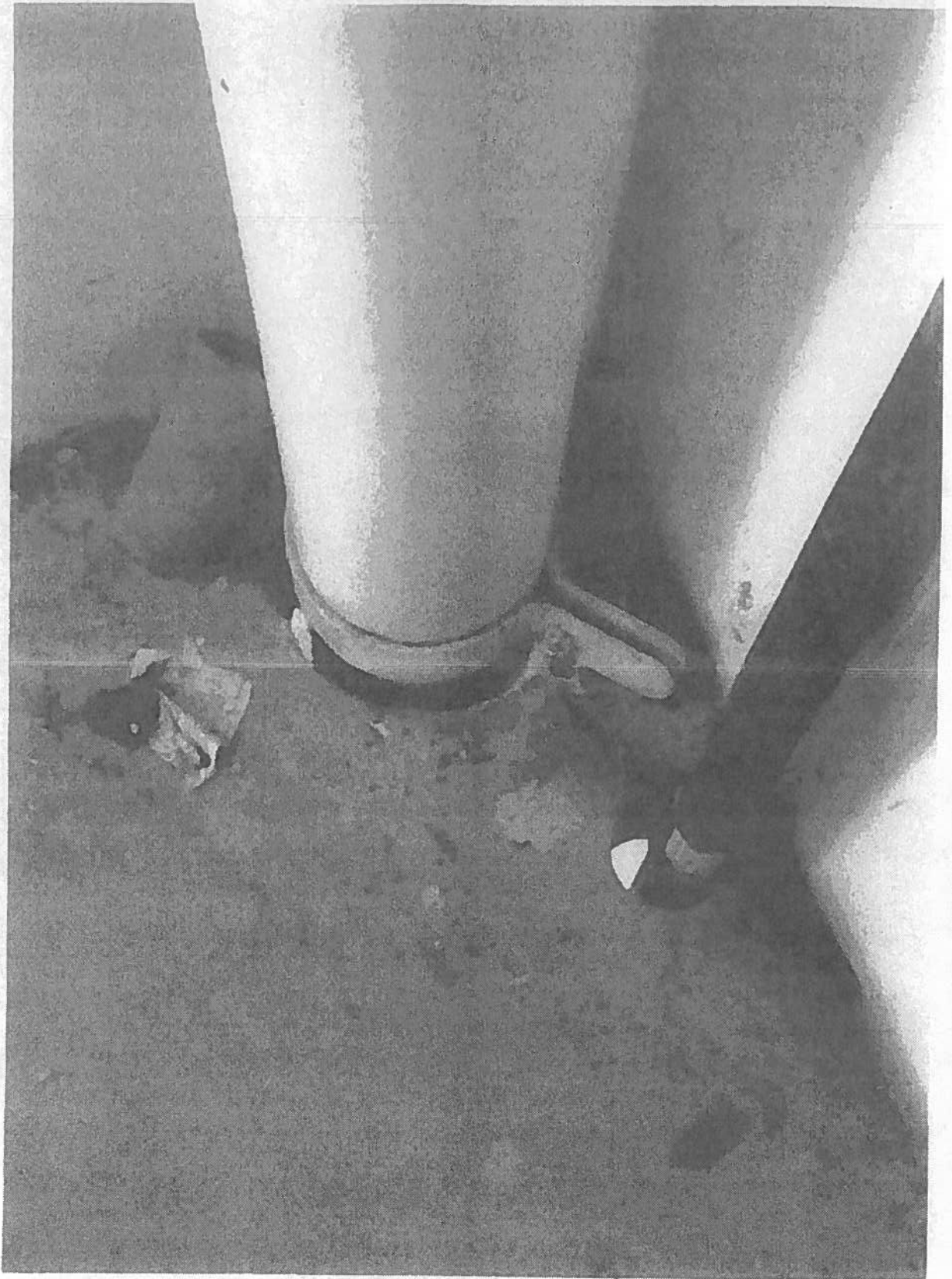


EXHIBIT C



EXHIBIT D

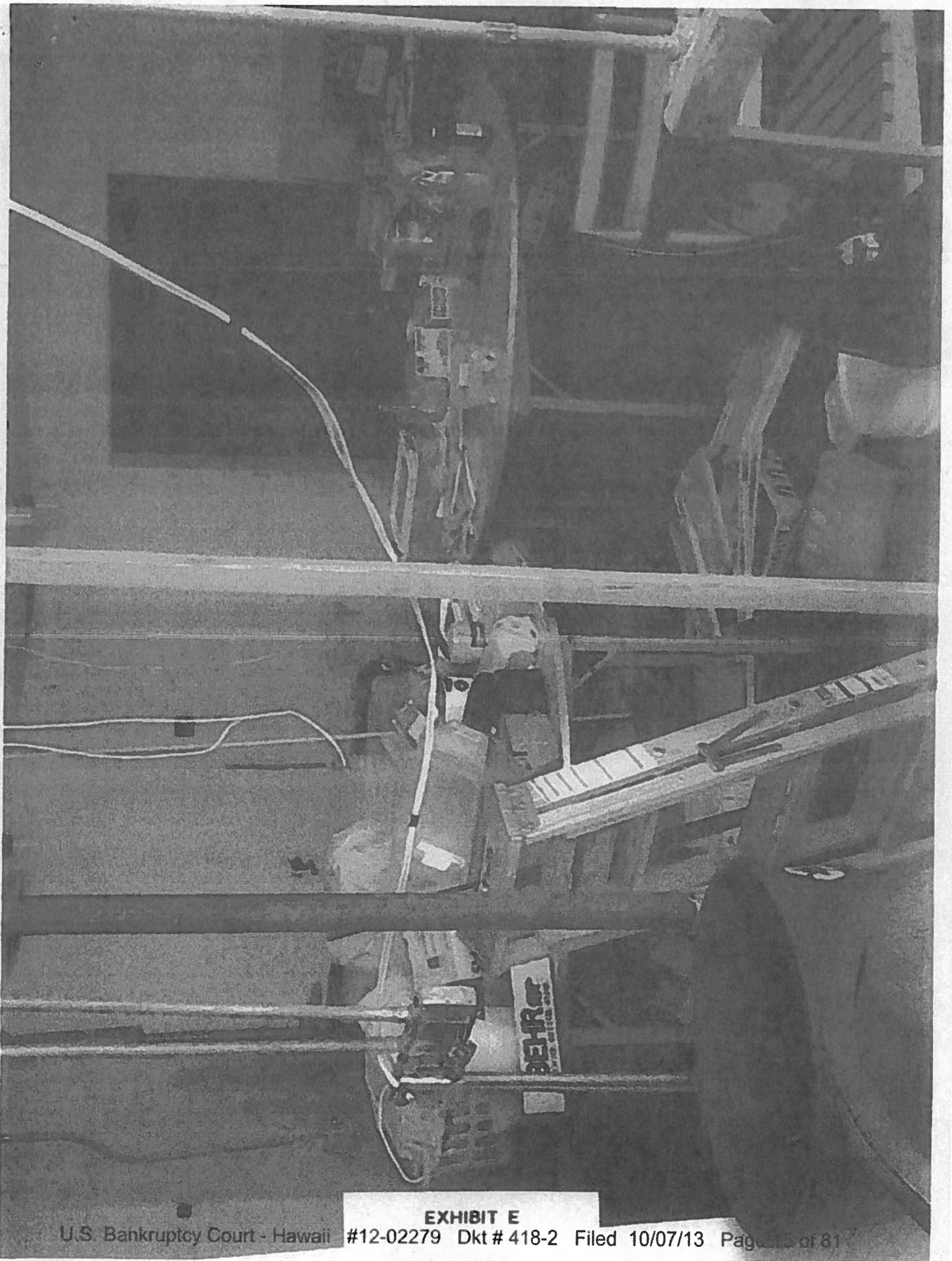
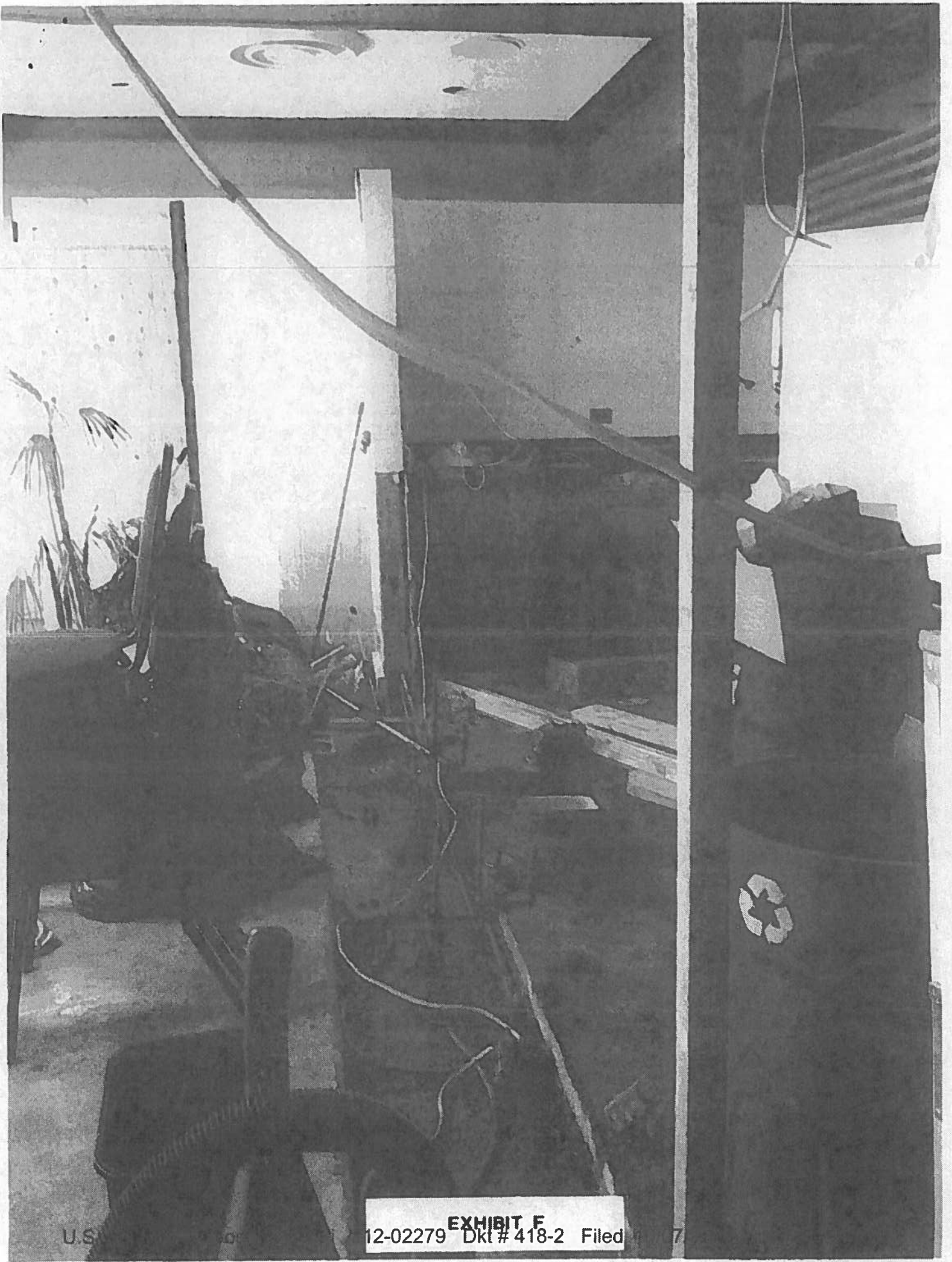


EXHIBIT E



U.S.

EXHIBIT F
12-02279 Dkt # 418-2 Filed 7

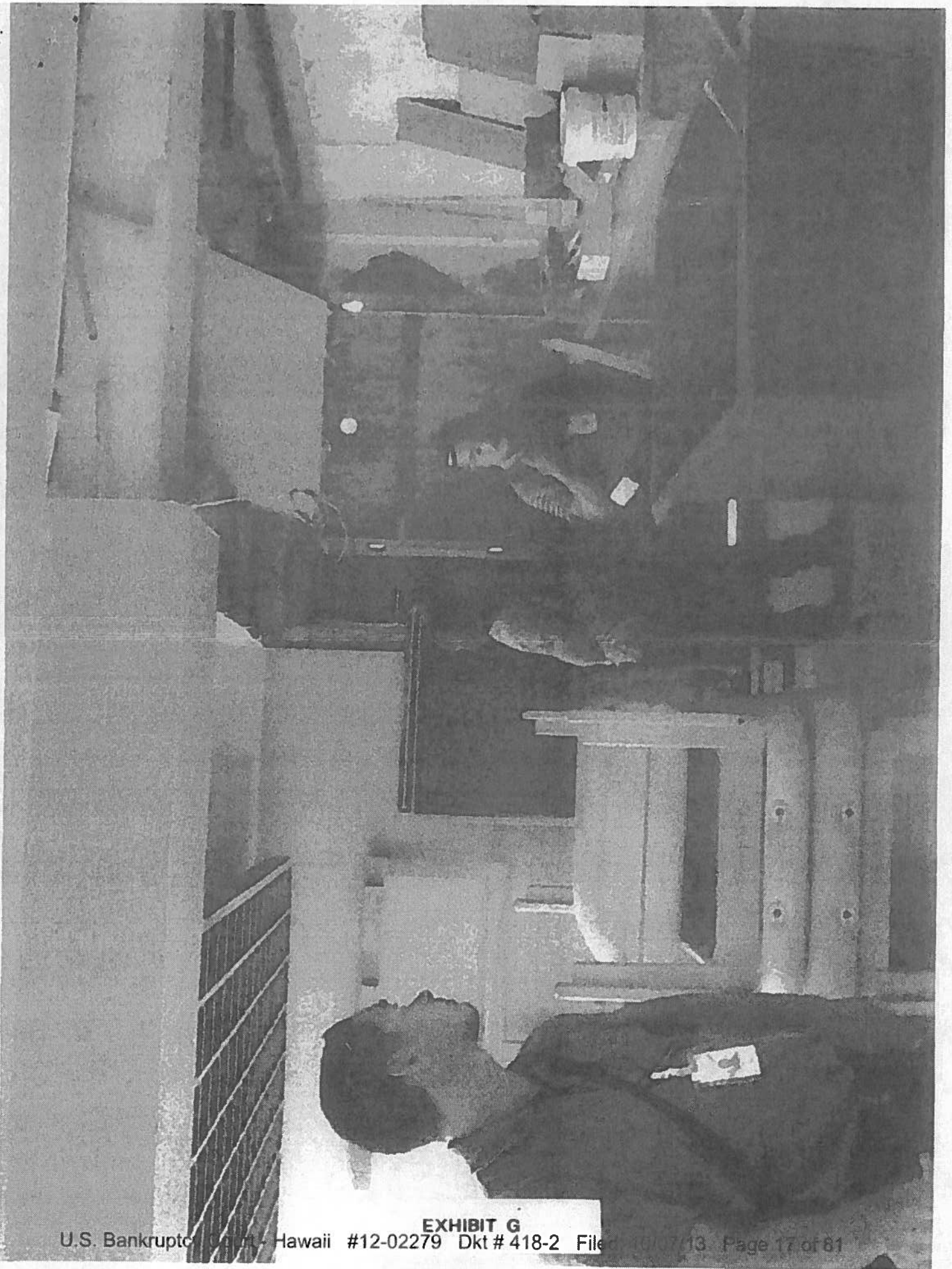
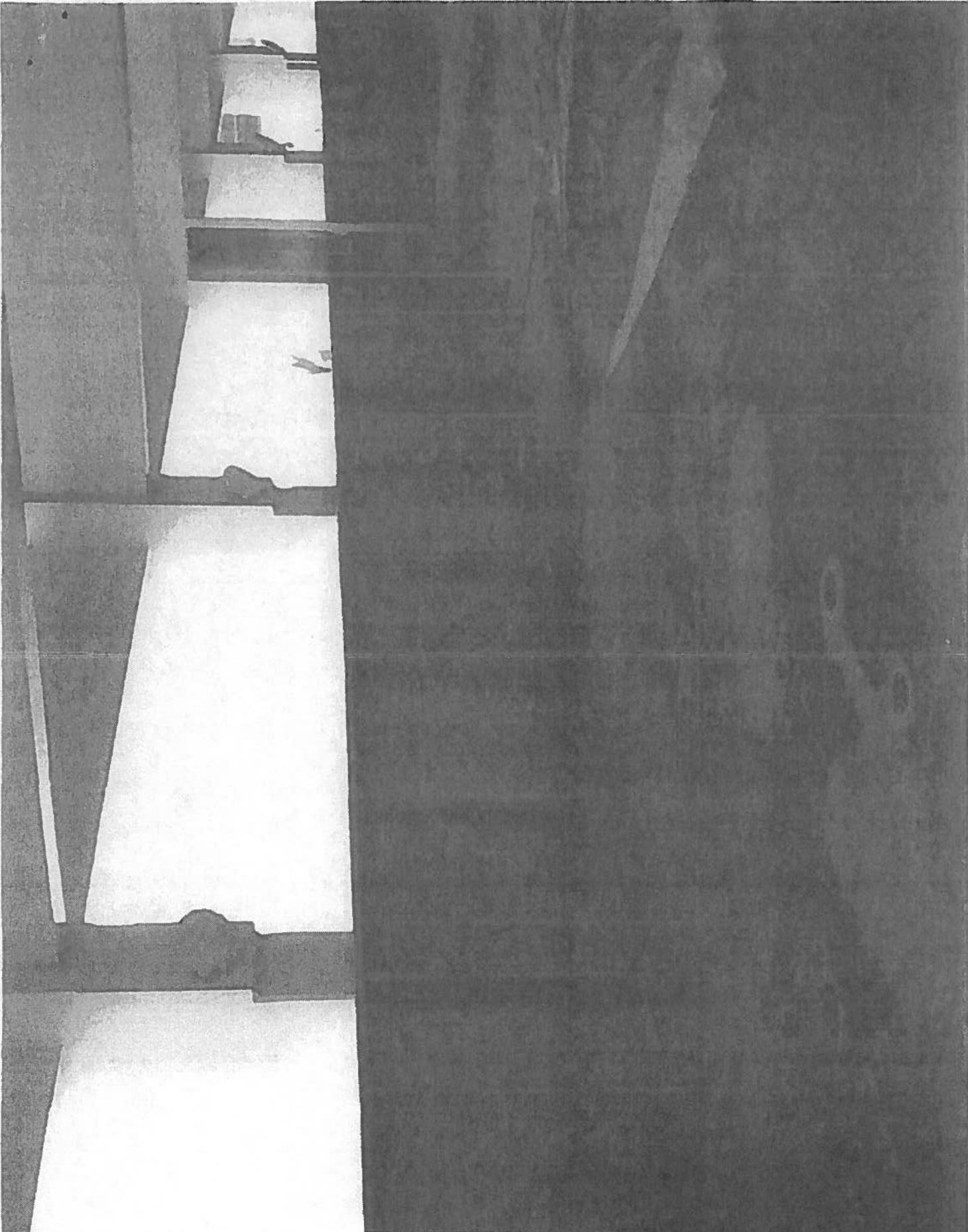


EXHIBIT G



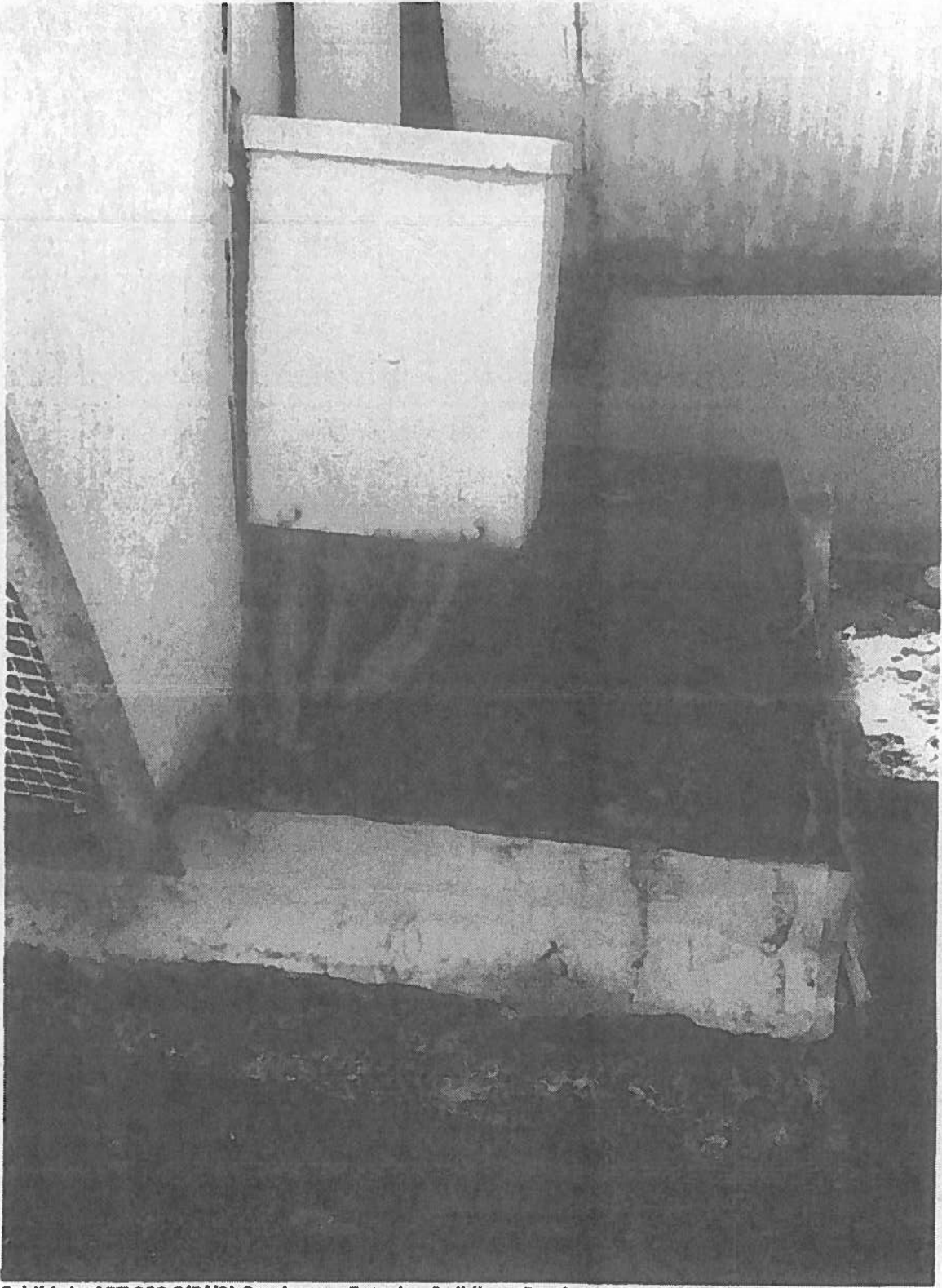


Exhibit I - ART 300.5(D)(2) Conductors Entering Building . Conductors entering a building shall be protected to the point of entrance.

EXHIBIT I

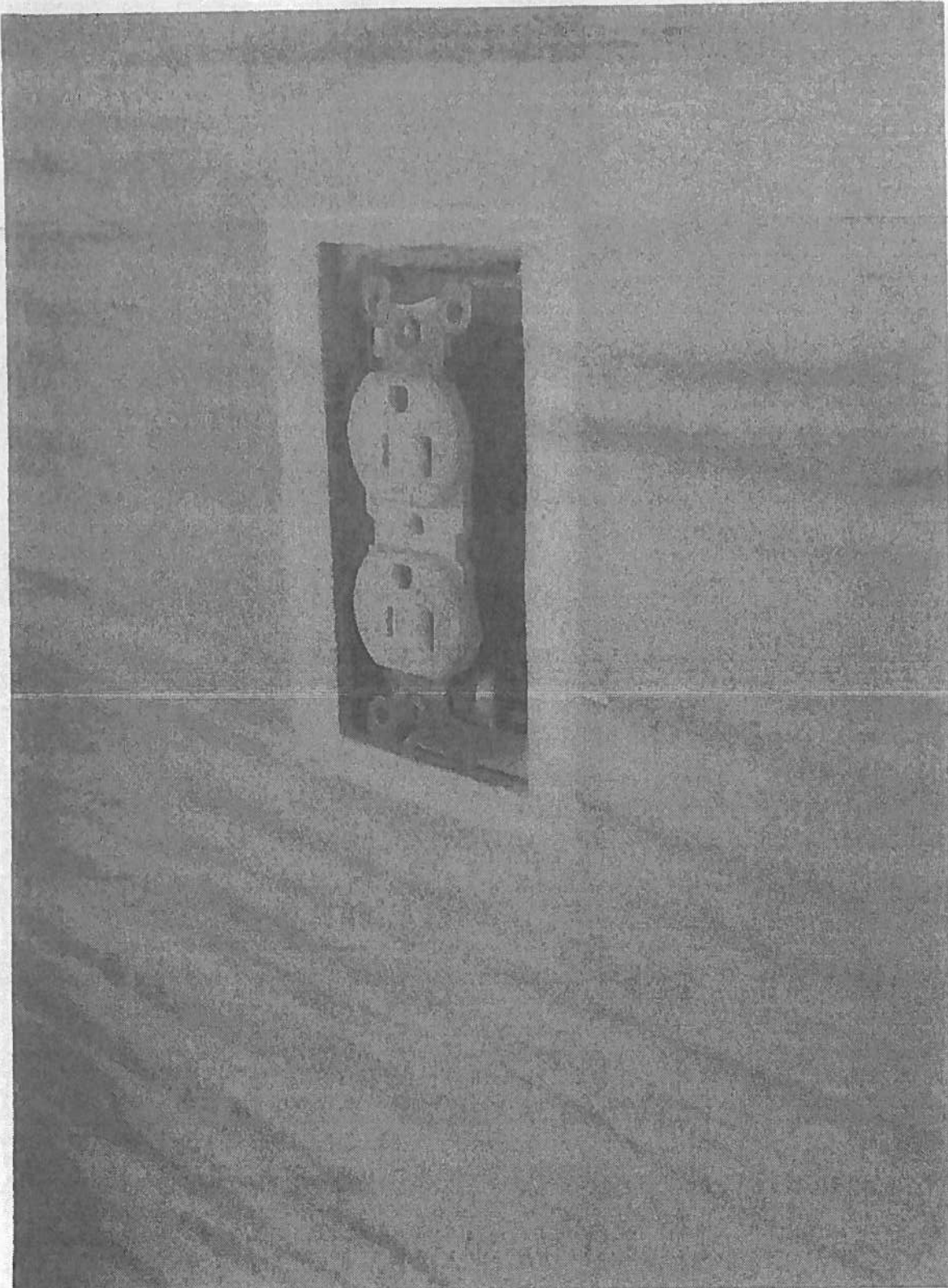


Exhibit J - Article 314.20 In wall s and ceilings constructed of wood or other combustible surface material, boxes shall be flush with the finished surface .

EXHIBIT J

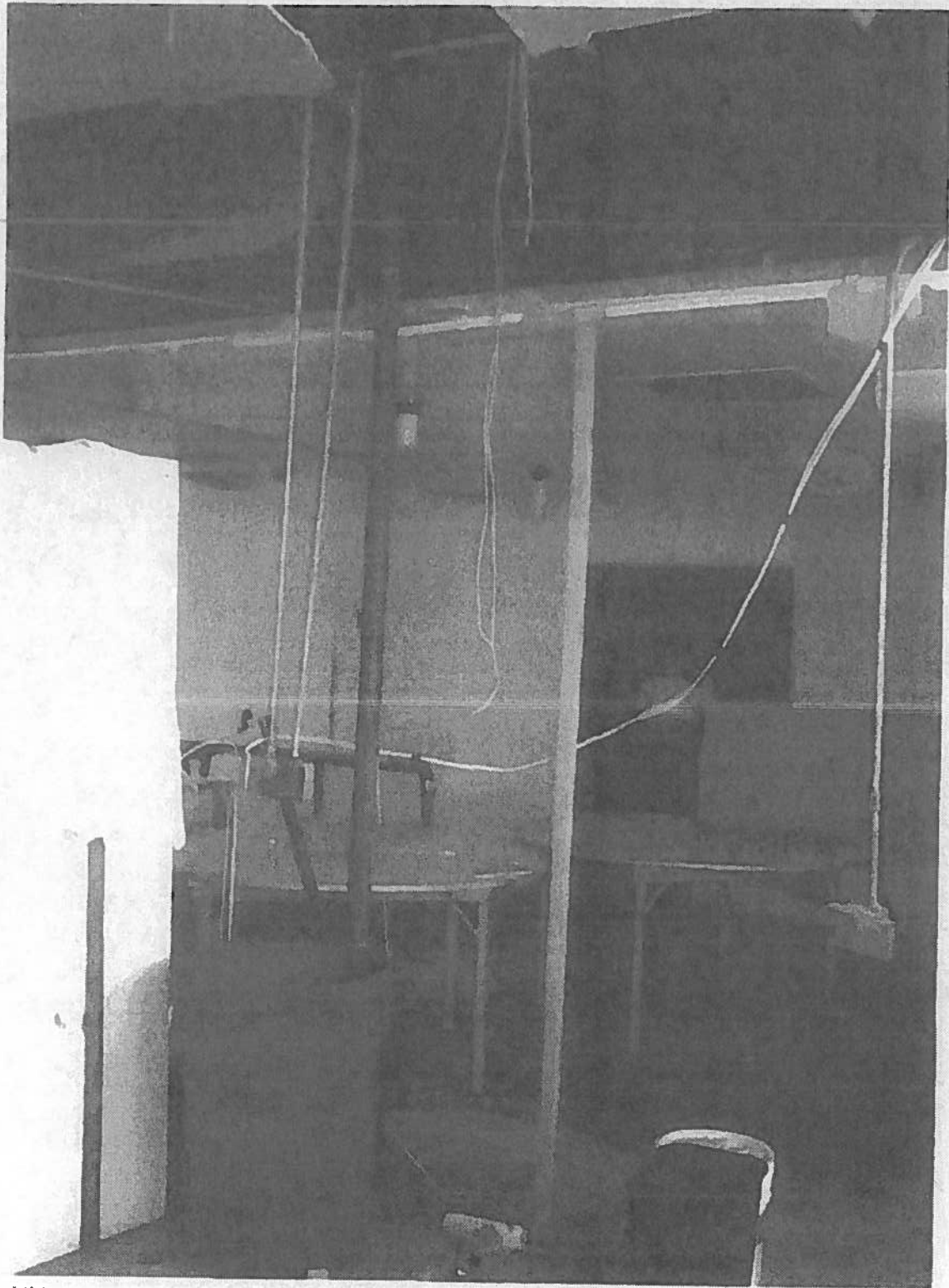


Exhibit K - ART 372.13 Discontinued outlets. Circuit conductors shall be removed from the raceway Article 334.12 (a)(1) uses not permitted. As open runs in dropped or suspended ceilings in other than one and two family and multifamily dwellings.

EXHIBIT K

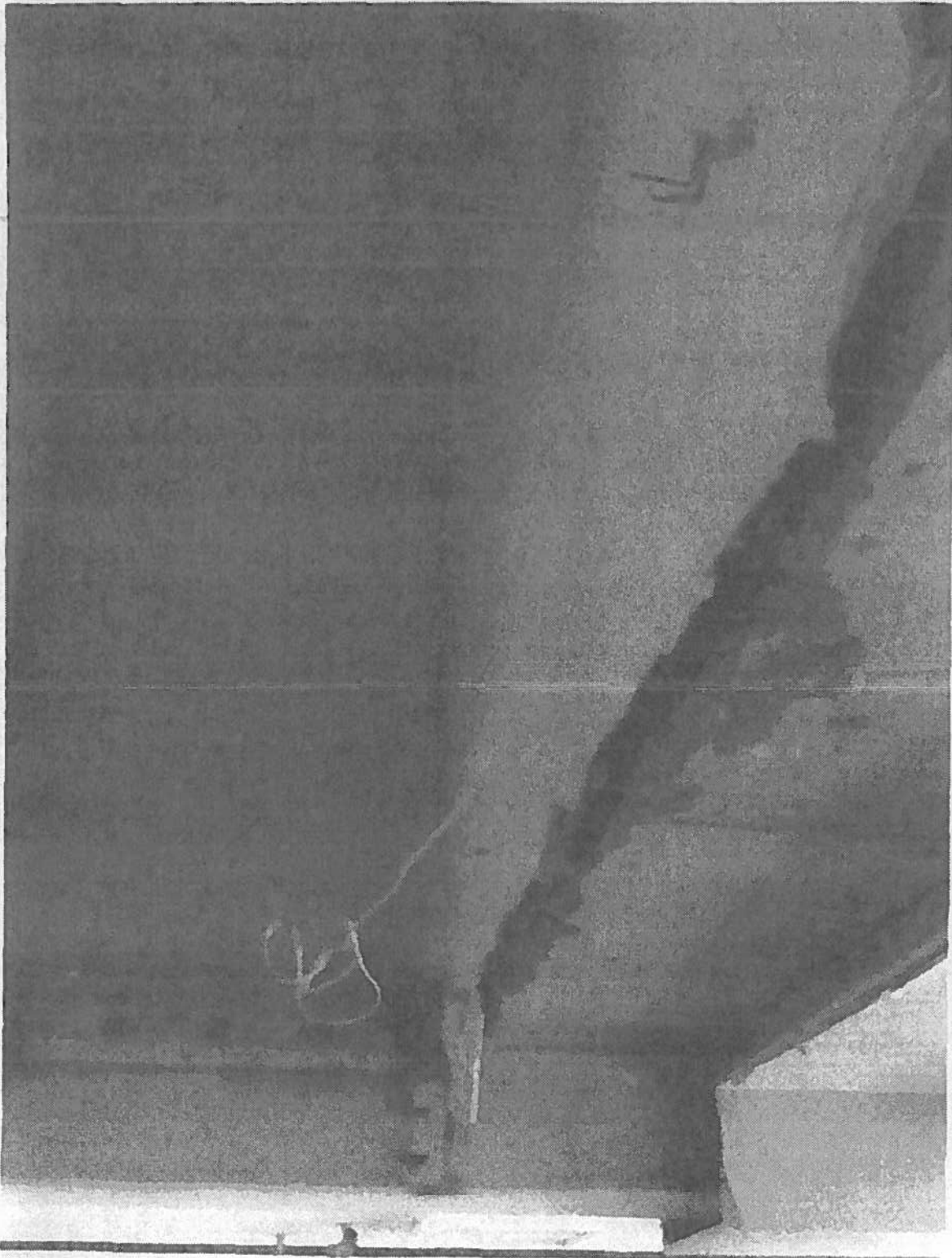


Exhibit L - Article 300 wiring method violation, Article 334.12(1) uses not permitted as open runs in dropped or suspended ceilings in other than residential structures.N/A

EXHIBIT L

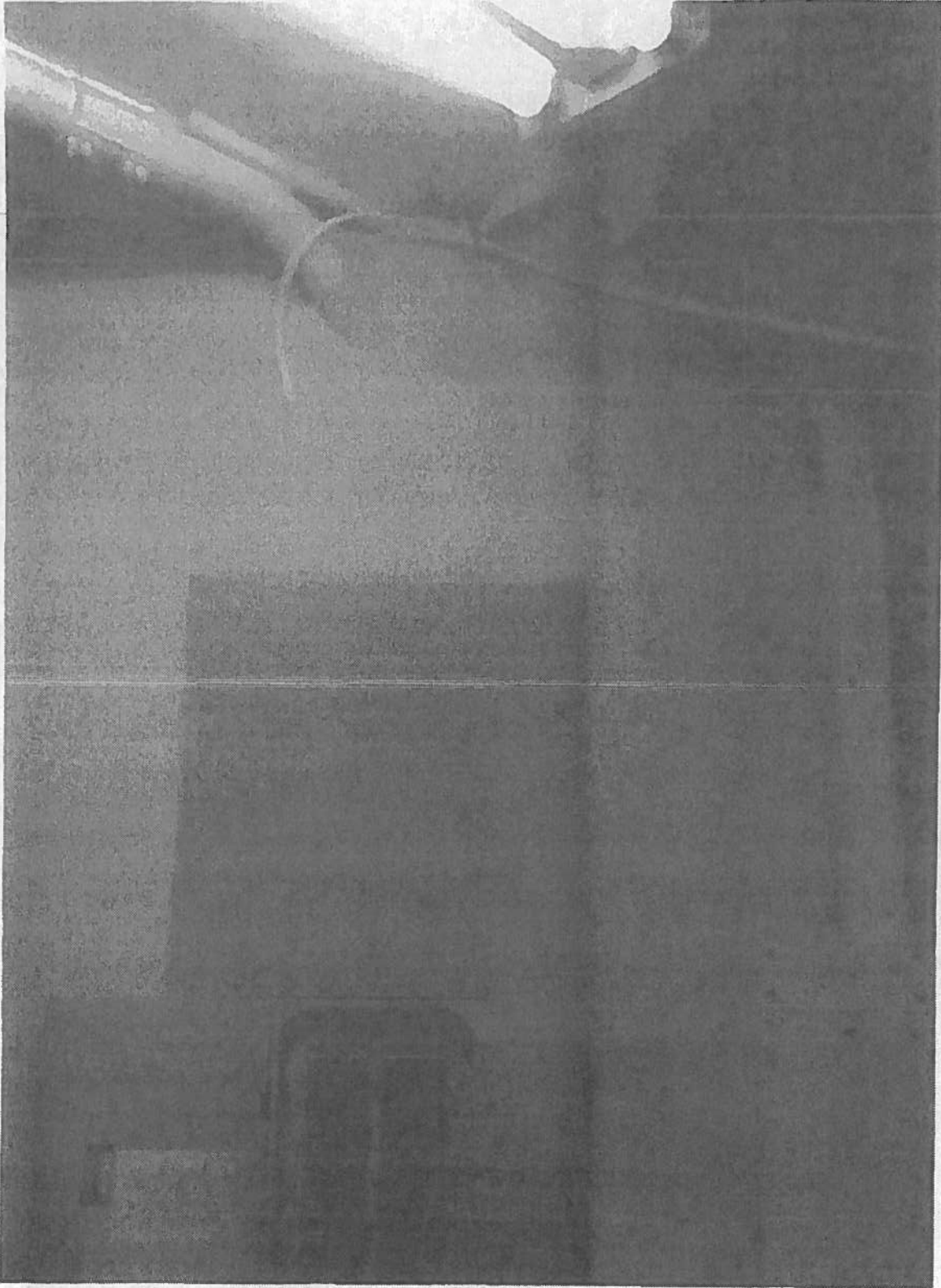


Exhibit M - Article 300 wiring method violation, Article 334.12(1) uses not permitted as open runs in dropped or suspended ceilings in other than residential structures.

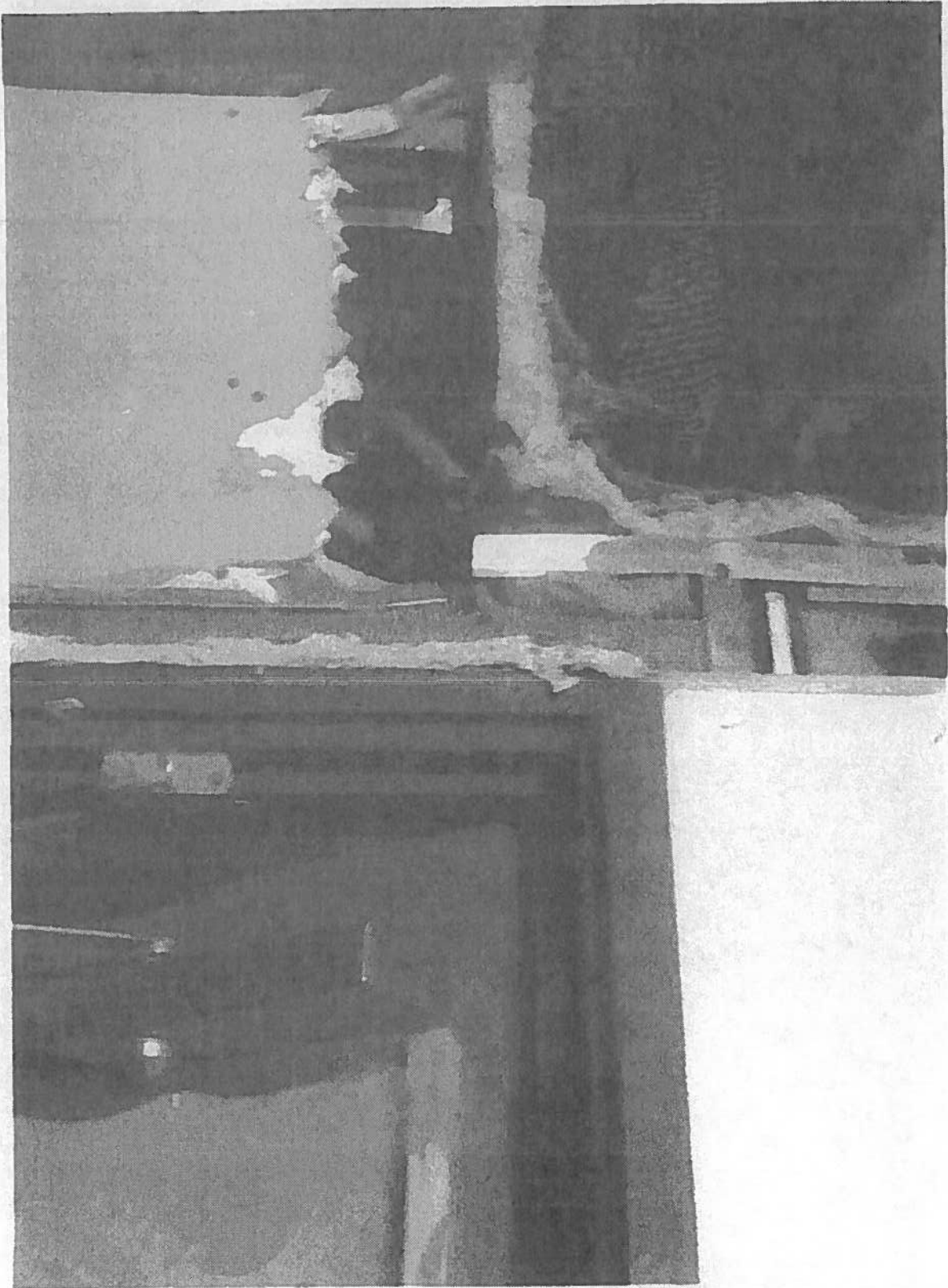


Exhibit N - ART 372.13 Discontinued outlets. Circuit conductors shall be removed from the raceway

EXHIBIT N

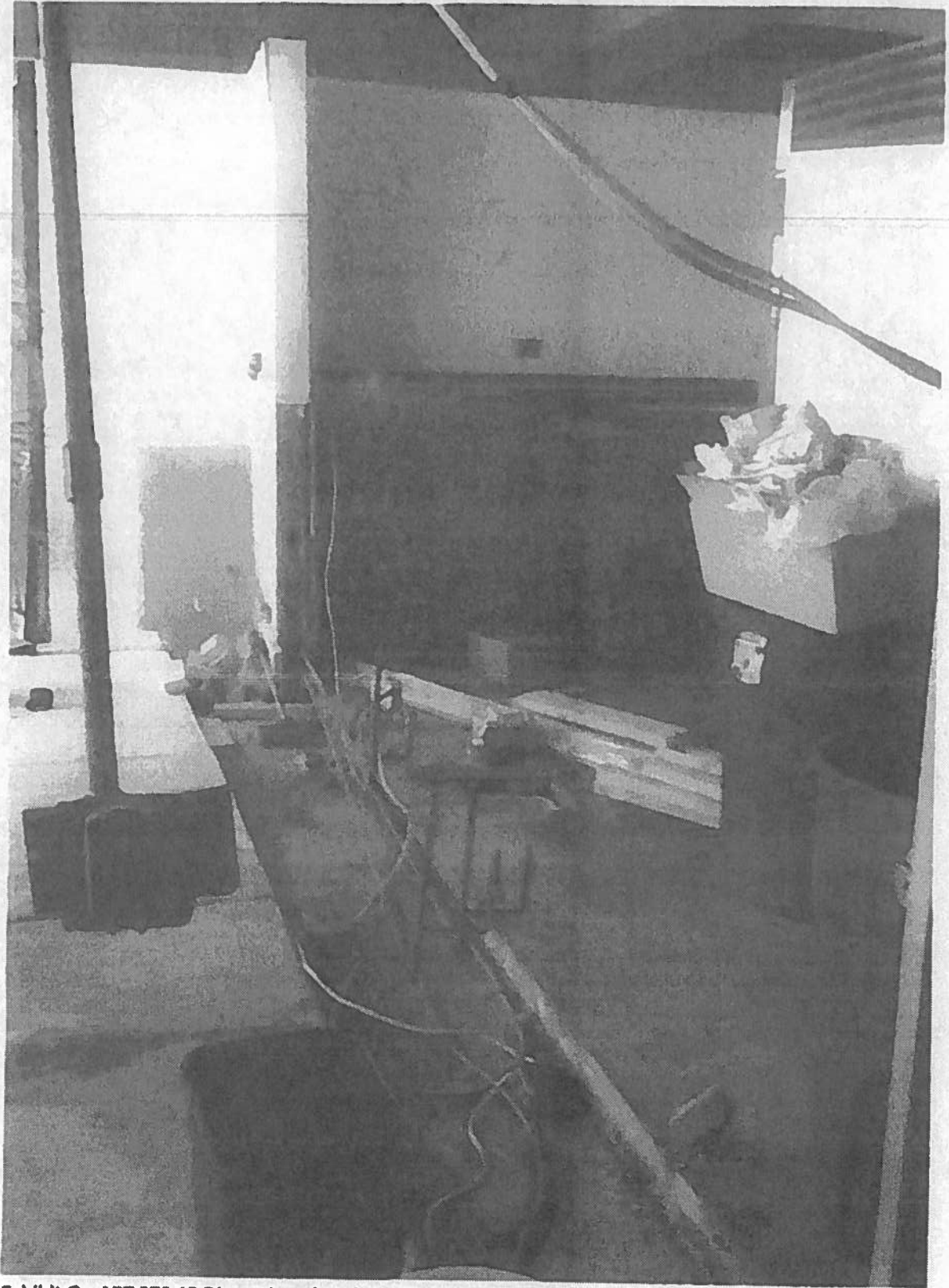


Exhibit O - ART 372.13 Discontinued outlets. Circuit conductors shall be removed from the raceway, A

EXHIBIT O



Exhibit P - ART 372.13 Discontinued outlets. Circuit conductors shall be removed from the raceway

EXHIBIT P

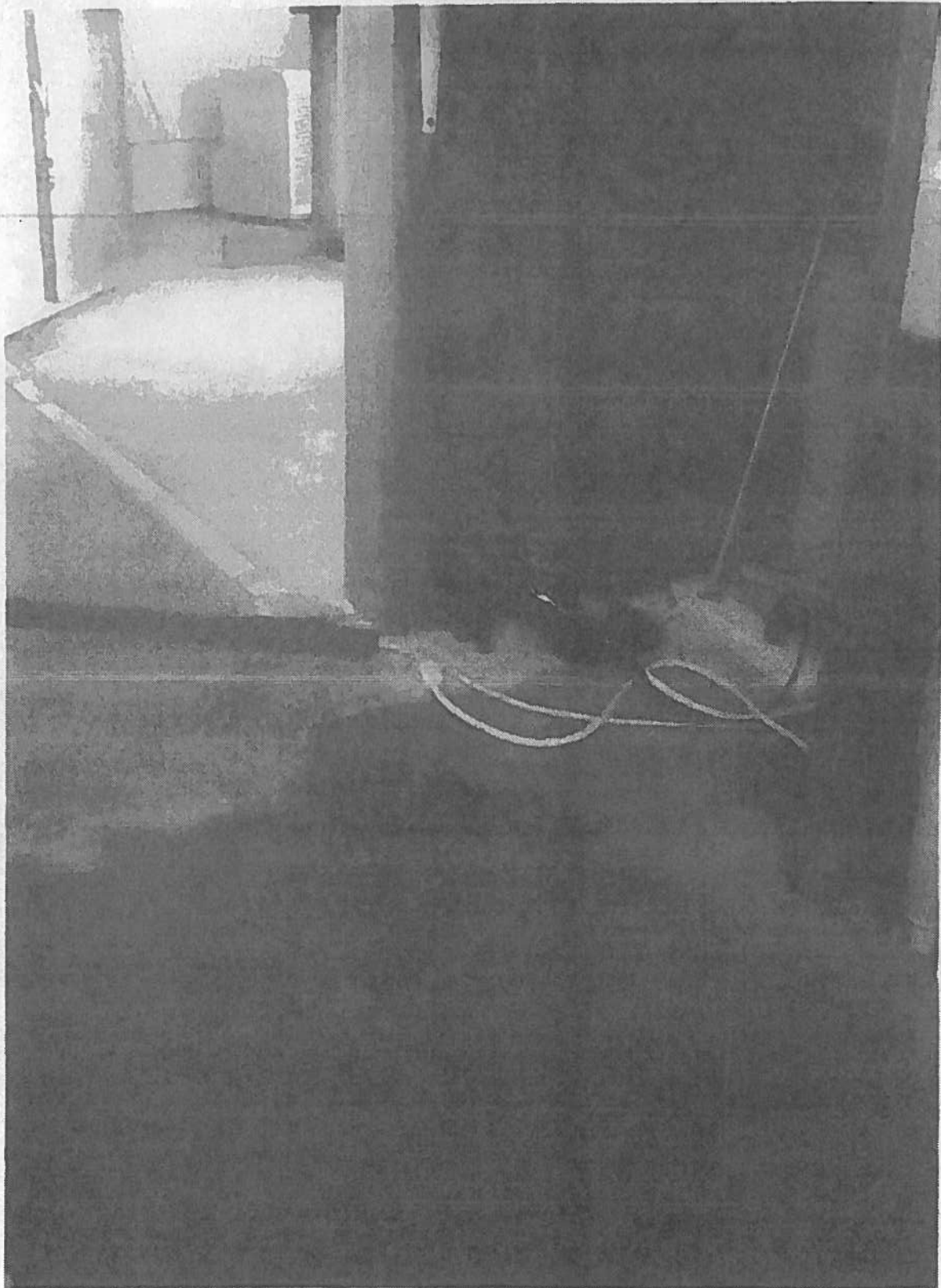


Exhibit Q - ART 400.8(1) Flexible cords uses not permitted as a substitute for fixed wiring of a structure

EXHIBIT Q

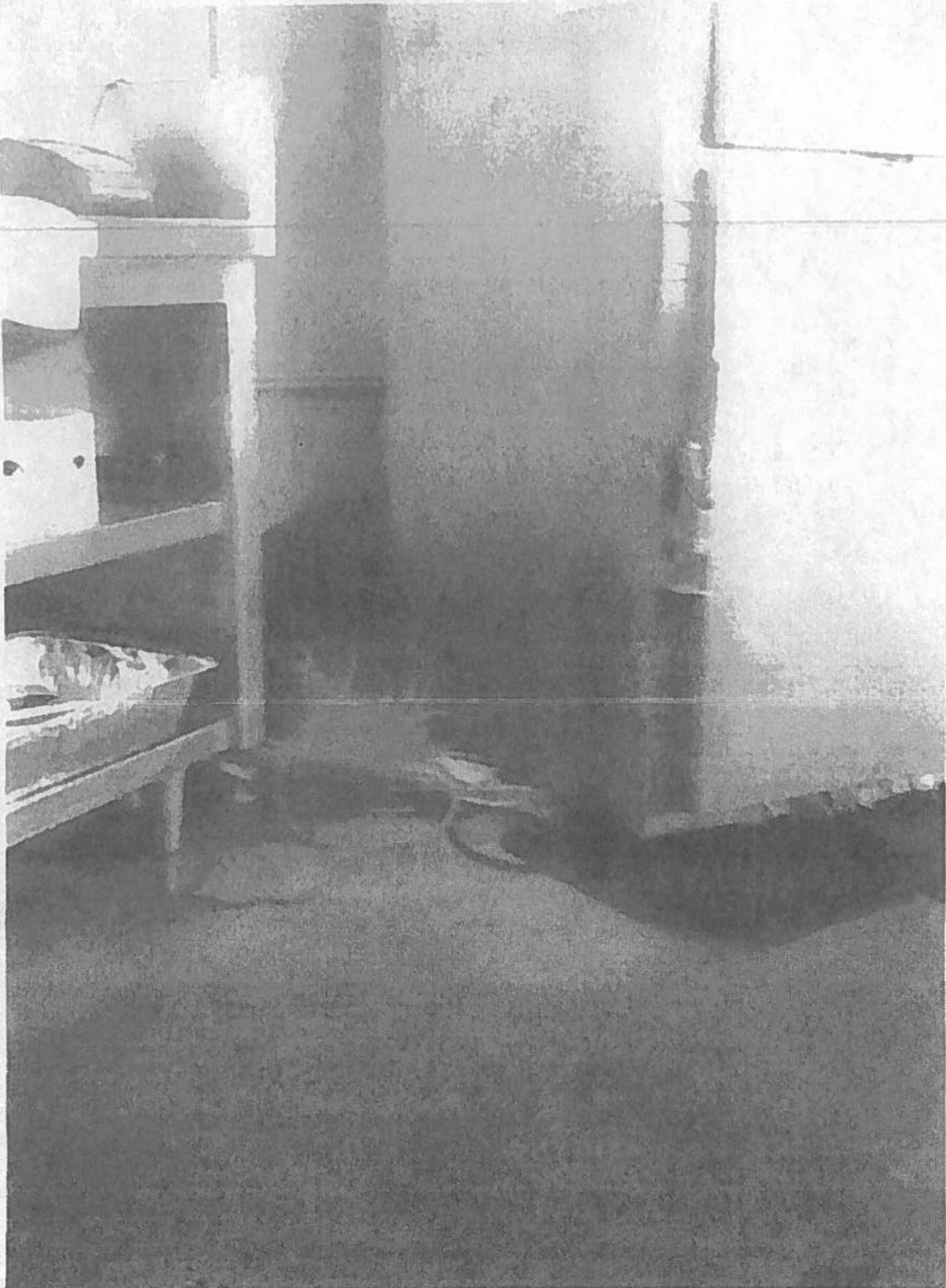


Exhibit R - ART 400.8(1) Flexible cords uses not permitted as a substitute for fixed wiring of a structure

EXHIBIT R

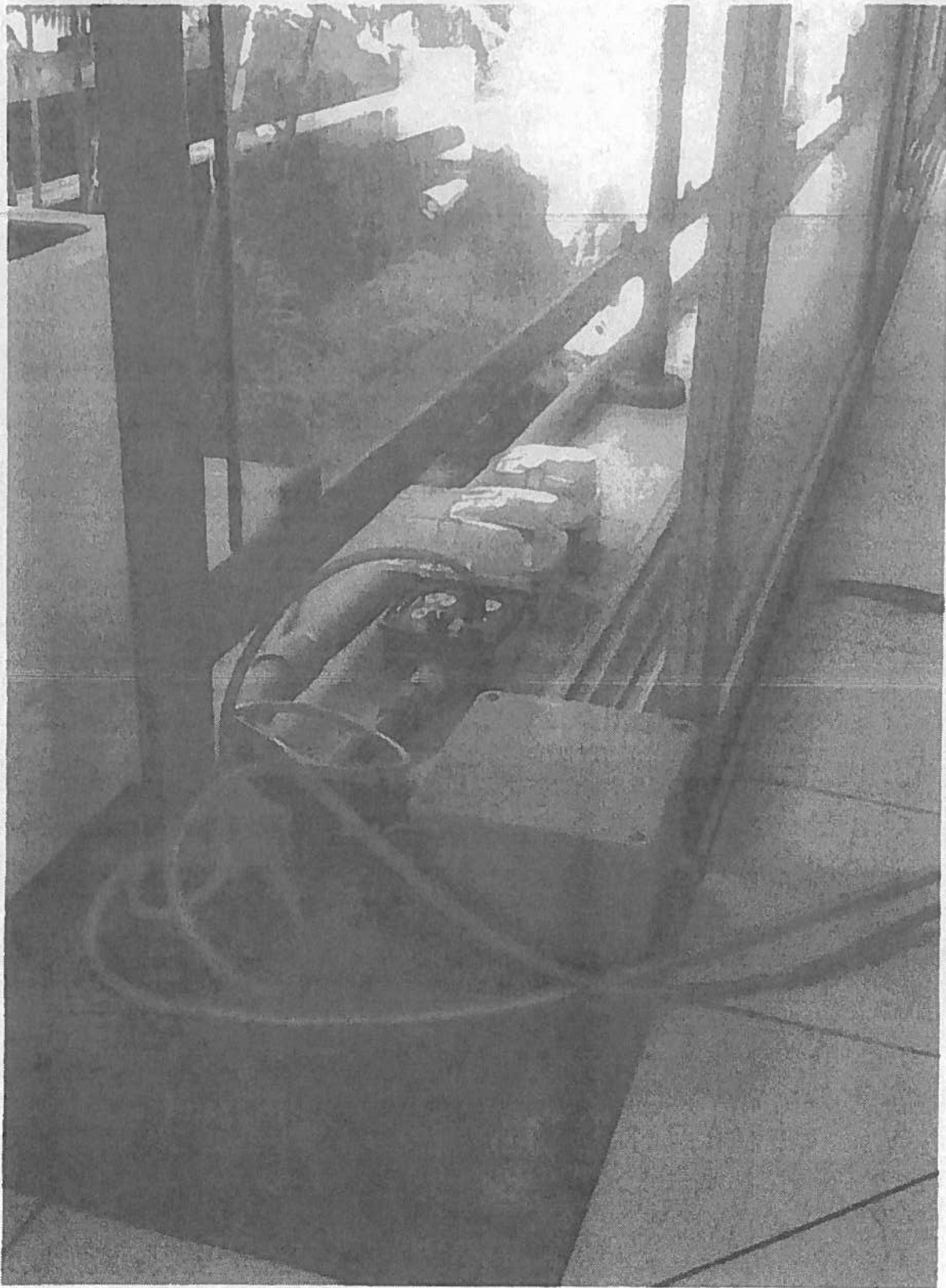


Exhibit S - ART 400.8(1) Flexible cords uses not permitted as a substitute for fixed wiring of a structure

EXHIBIT S

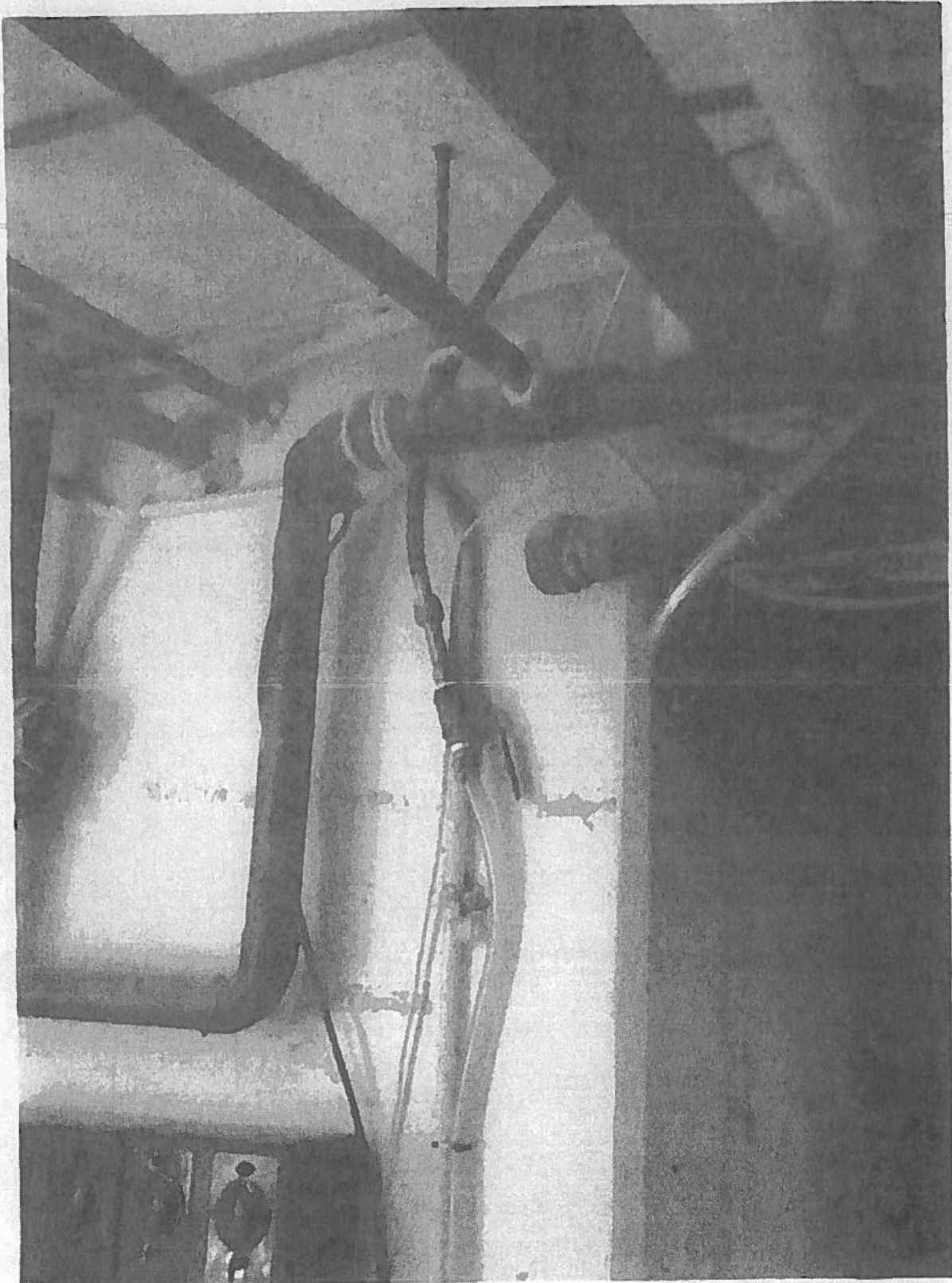


Exhibit T - ART 400.8(1) Flexible cords uses not permitted as a substitute for fixed wiring of a structure

EXHIBIT T



Exhibit U - ART 372.13 Discontinued outlets. Circuit conductors shall be removed from the raceway, Art 410.3 Live Parts. Luminaires shall have no live parts normally exposed to contact

EXHIBIT U



Exhibit V - ART 372.13 Discontinued outlets. Circuit conductors shall be removed from the raceway, Art 410.3 Live Parts. Luminaires shall have no live parts normally exposed to contact

EXHIBIT V

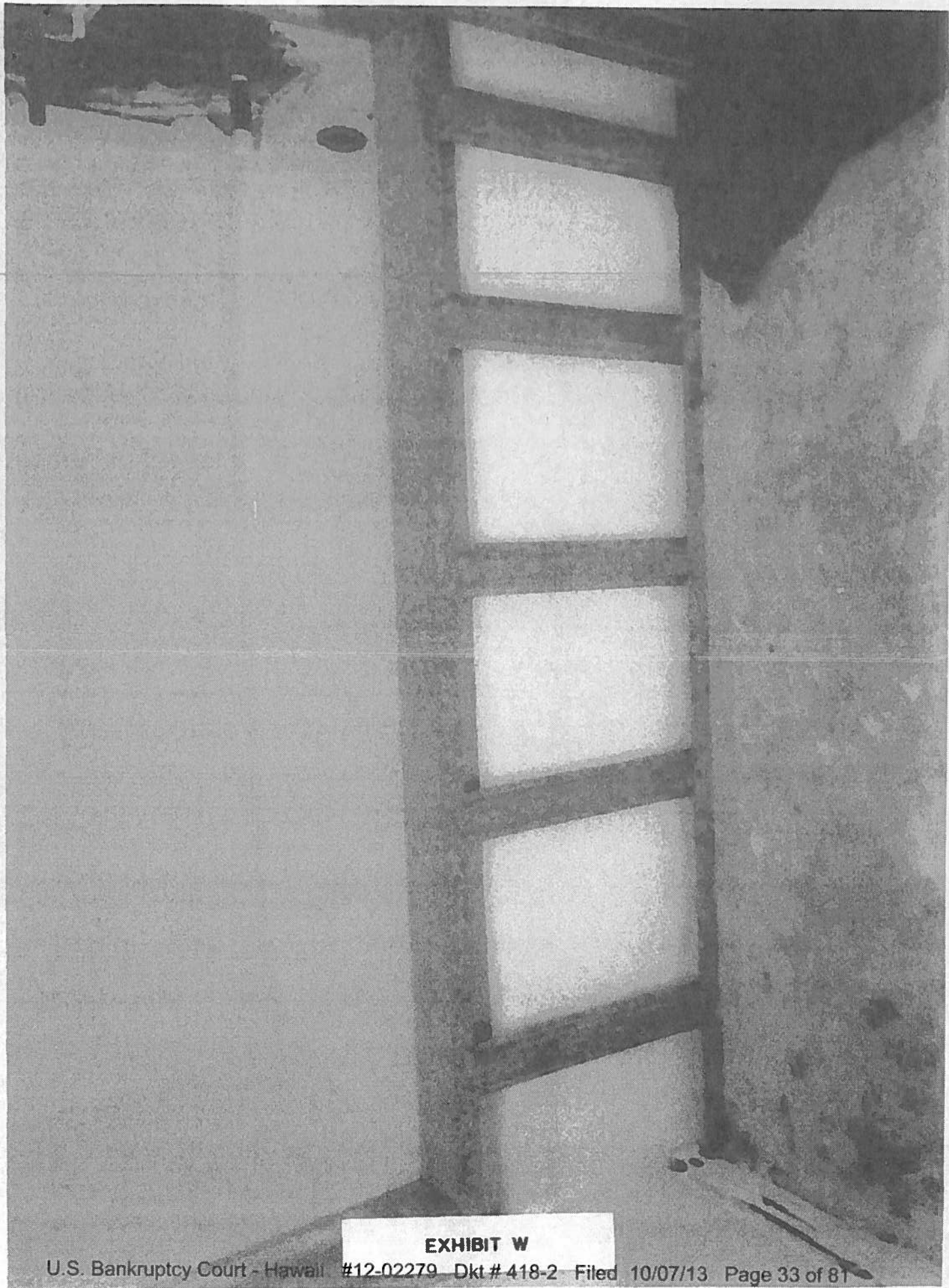


EXHIBIT W



BUILDING DIVISION • DEPARTMENT OF PUBLIC WORKS

101 Pauahi Street, Suite 7, Hilo, Hawaii'i 96720
74-5044 Ane Keohokalole Highway, Building E, Kailua-Kona, Hawaii 96740

(808) 961-8331, Fax (808) 961-8410
(808) 323-4720, Fax (808) 327-3509

June 14, 2013

CERTIFIED MAIL

Mr. David C. Farmer, Esq.
David C Farmer Attorney at Law LLLC
225 Queen Street, Suite 15A
Honolulu, Hawaii 96813

RE: 93 Banyan Drive
Hilo, HI 96720
TMK: 2-1-005:016

Mr. Farmer,

This letter is a follow-up to the Notice of Violation dated May 9, 2013 and our meeting of May 17, 2013. In the meeting of May 17th, discussed were the following "immediate" corrections necessary to remedy unsafe building conditions while more permanent corrections were completed:

1. Mauna Kea - Mauna Loa Towers: commence immediately to install temporary firestopping material (fiberglass stuffing secured in place with 1-hour rated board) at unprotected penetrations in rated walls/floors. Concurrently commence immediately to purchase of required firestopping material followed with installation upon receipt of materials.
2. Mauna Kea - Mauna Loa Towers: commence immediately to install required illuminated exit signs;
3. Polynesian Room: commence immediately to remove restricted (lockable) exit door;
4. Kilauea Tower: commence to immediately discontinue use of kitchen range hood to include disconnect or provide lawful alternatives to discontinued use.
5. Mauna Kea work shop: commence immediately to remove combustible materials.

A review inspection performed on June 10, 2013 revealed that (1) the Polynesian Room restricted exit door issue was addressed and (2) the Mauna Kea Tower workshop removal of combustible material was partially addressed. Additionally, since May 17, 2013, an outdoor structure with electrical and water utilities used for cooking was constructed without required building electrical or plumbing permits. (Exhibit Y1 through Y6 - Photos of Unpermitted Kitchen Structure). The construction requires permits in accordance with Chapter 5 -

Page 1 of 2

Building, Section 5-19; Chapter 9 – Electricity, Section 9-26; Chapter 17 – Plumbing, Section 17-15, in addition to any other governmental agency approval.

There was no appreciable evidence except as noted above that immediate corrections necessary to remedy impending unsafe building conditions were in the process of being addressed. Subsequent to the County's Notice of Violation dated May 9, 2013 and our meeting on May 17, 2013, **ALL REQUIRED IMMEDIATE CORRECTIONS SHALL BE FULLY INSTALLED AND COMPLETED by NOON OF JUNE 21, 2013, or the Kilauea Tower Kitchen, Mauna Kea and Mauna Loa buildings shall be deemed unsafe and ordered to be vacated on June 24, 2013.** Signs will be posted at each entrance to these facilities and/or buildings, "DO NOT ENTER. UNSAFE TO OCCUPY. DEPARTMENT OF PUBLIC WORKS. COUNTY OF HAWAII." You must also obtain the required permits for building, electrical, plumbing in addition to any other governmental agency approval for the recently constructed outdoor cooking structure.

Please contact the Building Division Chief, David Yamamoto, P.E., at 961-8331, if you have any further questions regarding this matter.

Respectfully,



David Yamamoto, P.E.
Building Chief

Cc:

Mr. Ken Fujiyama
Warren Lee, Director
Joy Matsumoto, Supervising Building Inspector
Gary Kahoohanohano, Supervising Electrical Inspector
Rodney Astrande, Supervising Plumbing Inspector
Gantry Andrade, Battalion Chief, Fire Prevention
Gordon Heit, Department of Land and Natural Resources
Department of Health, Sanitation Branch - Hilo



EXHIBIT Y1

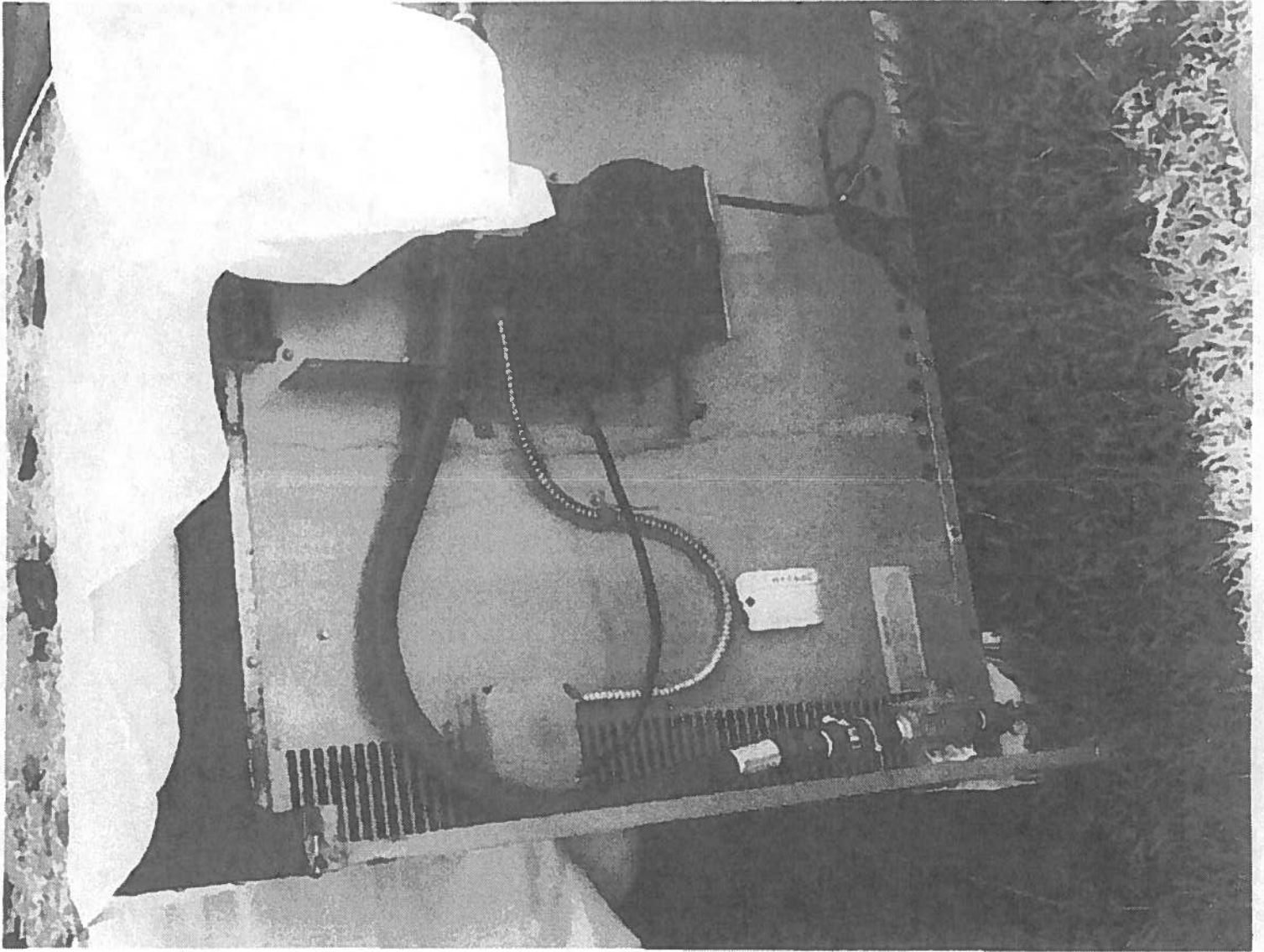


EXHIBIT Y2

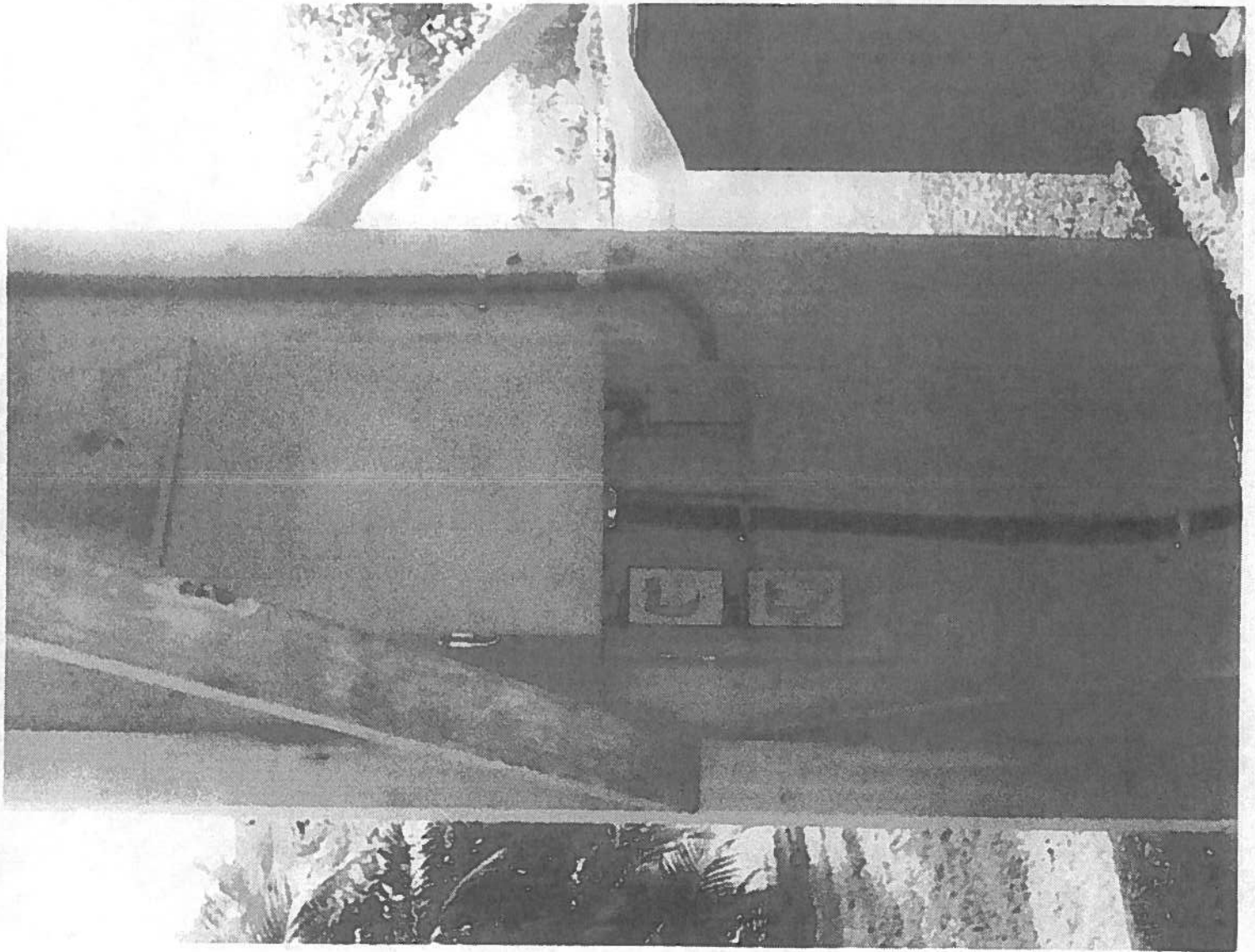


EXHIBIT Y3

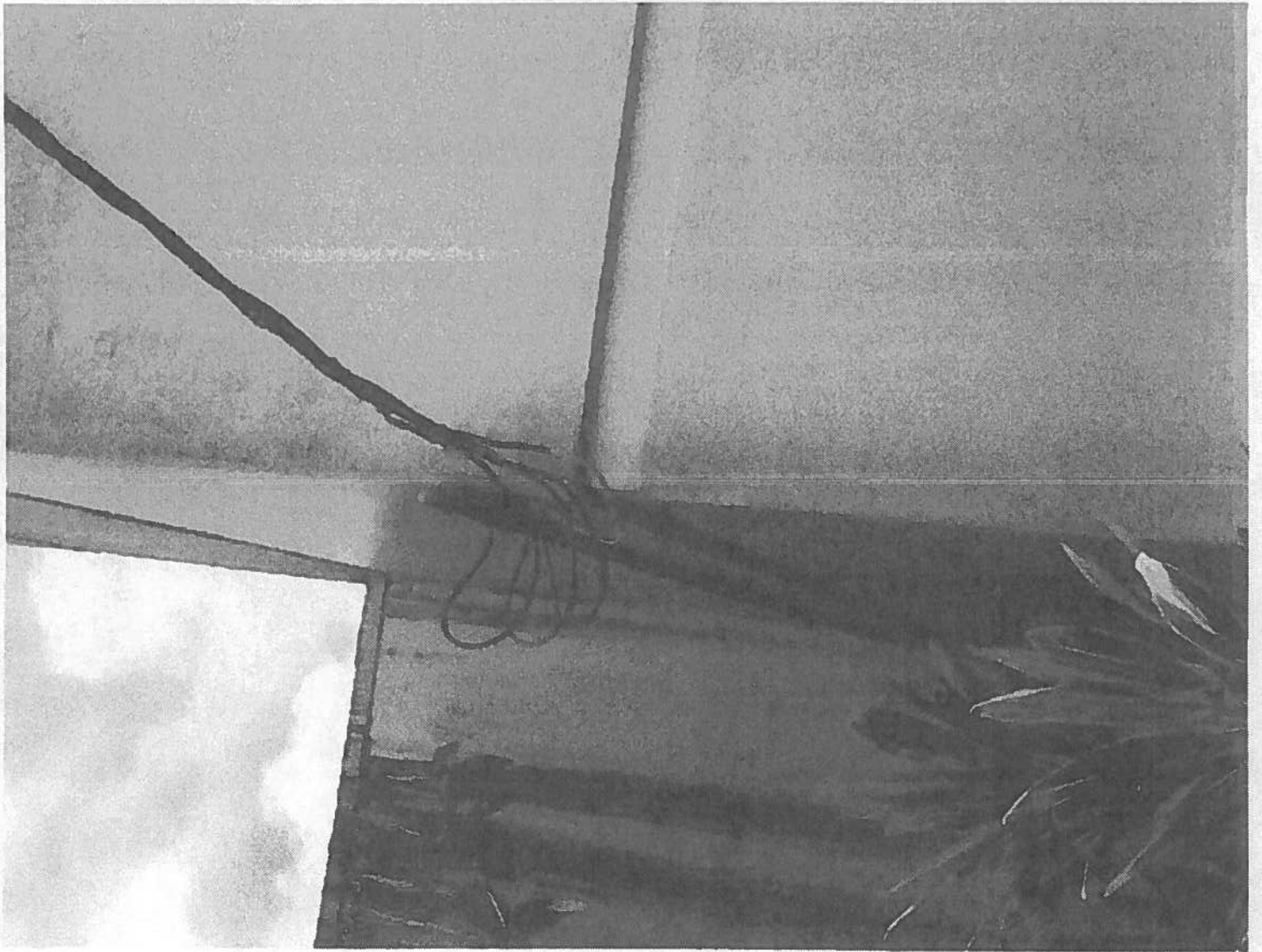


EXHIBIT Y4

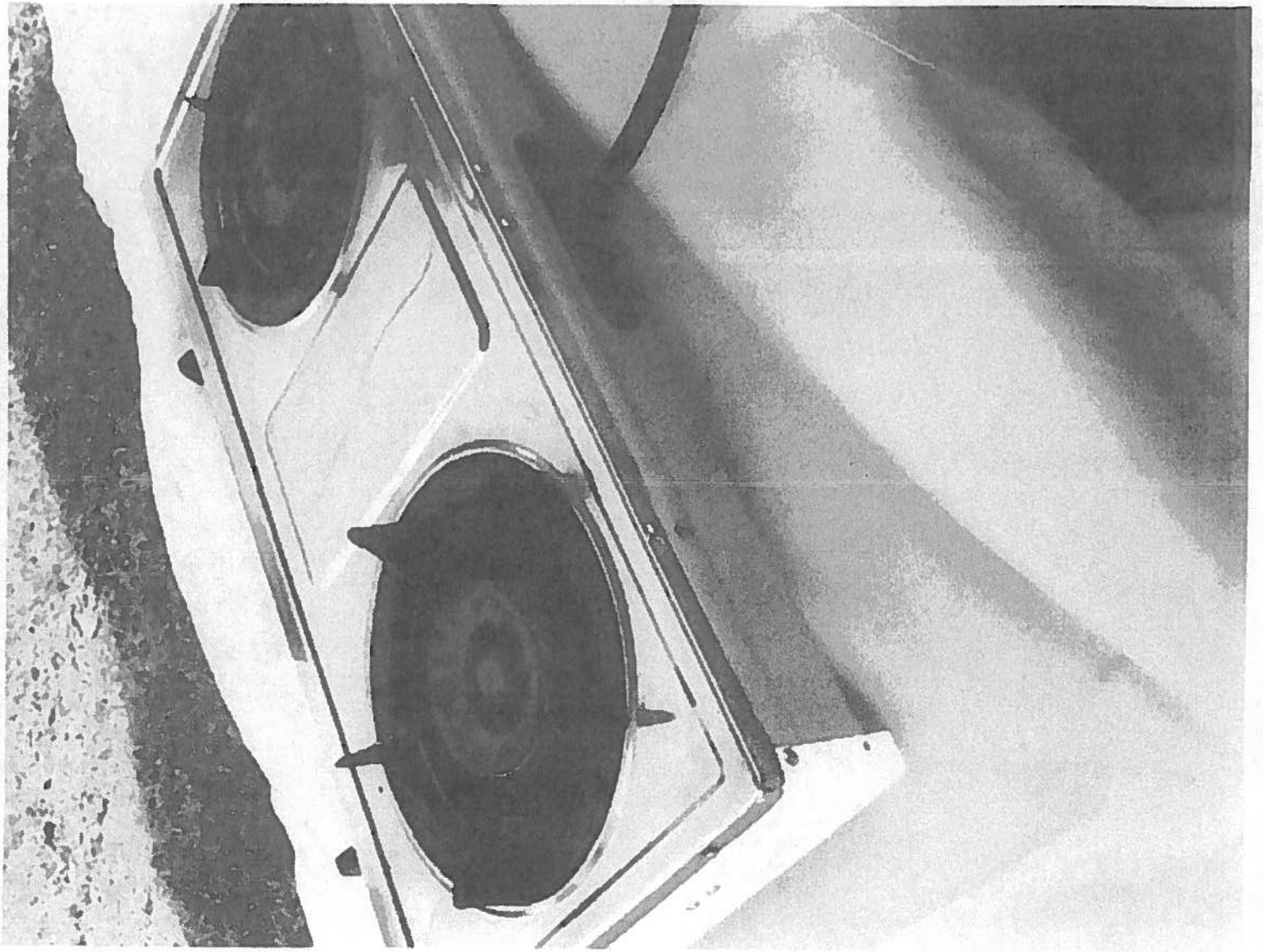


EXHIBIT Y5

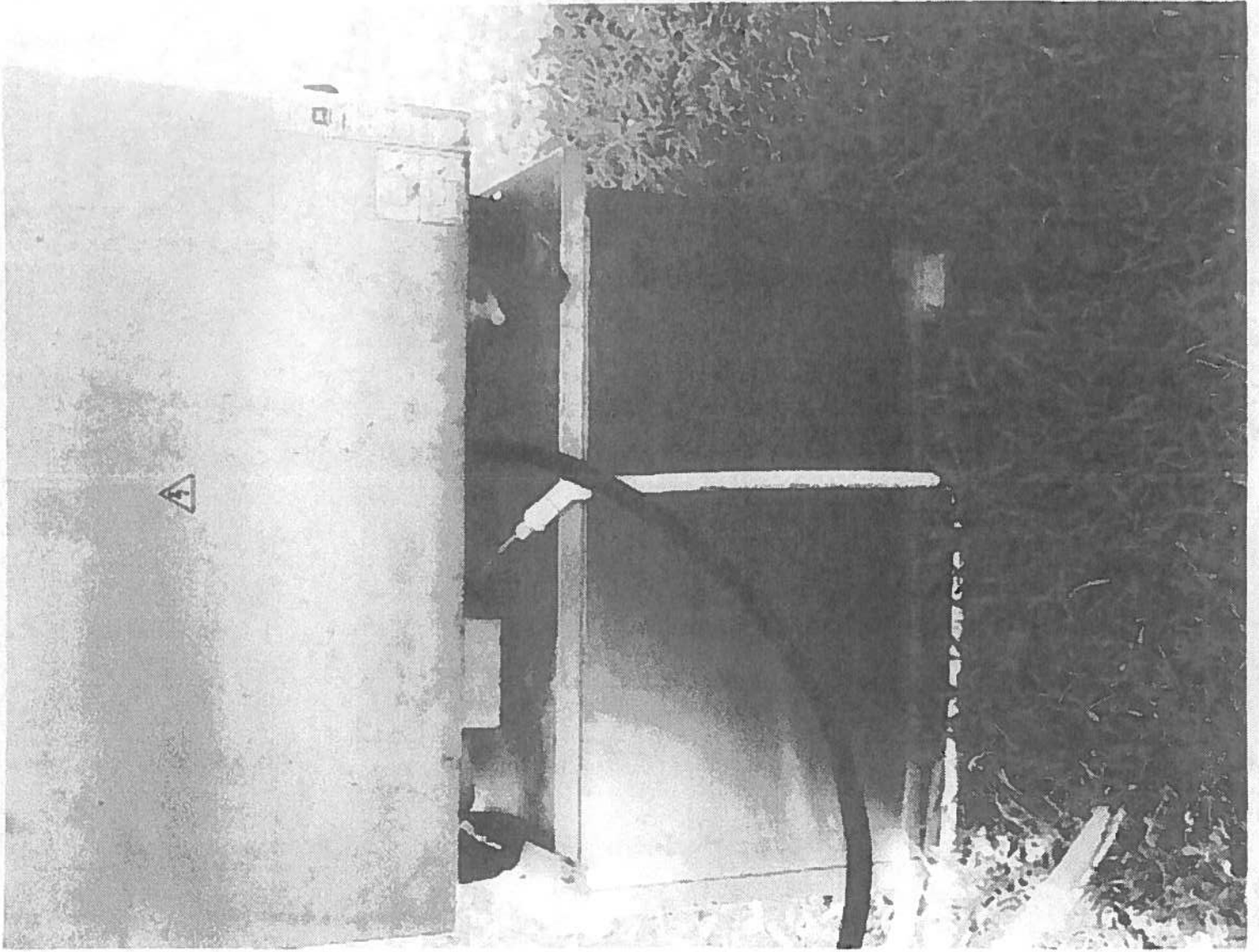


EXHIBIT Y6

DAVID C. FARMER

ATTORNEY AT LAW

A LIMITED LIABILITY LAW COMPANY L.L.C.

225 Queen Street
Suite 15A
Honolulu, Hawaii 96813

Tele: (808) 222-3133
Fax: 1 (866) 559-2922
email: farmerd001@gmail.com

June 19, 2013

County of Hawai'i
Department of Public Works, Building Division
101 Pauahi Street, Suite 7
Hilo, Hawai'i 96720

ATT: David Yamamoto, P.E.
Building Chief

Via email: dyamamoto@co.hawaii.hi.us
Via fax: (808) 961-8410

Re: 93 Banyan Drive, Hilo, HI 96720; TMK: 2-1-005:016

Dear Yamamoto:

This is in response to your letter dated June 14, 2013, as a follow-up to the Notice of Violation dated May 9, 2013, and our meeting of May 17, 2013.

1. **Mauna Kea-Mauna Loa Towers:**

Mauna Kea Tower: Permanent fire stopping material installation completed (see attached)

Mauna Loa Tower: same

2. **Mauna Kea Tower:** Illuminated exit signs installed (see attached).

Mauna Loa Tower: same

3. **Polynesian Room:** restricted (lockable) exit door padlock and hasp removed (see attached).

4. **Kilauea Tower:** Use of kitchen range hood including disconnection completed as verified by the Fire Department (see attached).

5. **Mauna Kea work shop:** All combustible materials removed (see attached).

6. **Outdoor cooking structure:** Temporary structure permit obtained (see attached).

EXHIBIT "C"

David Yamamoto
June 19, 2013
Page 2

Please confirm at your earliest convenience that all your concerns in your letter have been addressed satisfactorily.

Very truly yours,

/s/ David C. Farmer

cc: (with attachments via emails only)

Warren Lee, Director: wlee@co.hawaii.hi.us
Joy Matsumoto, Supervising Building Inspector: jmatsumoto@co.hawaii.hi.us
Gary Kaho'ohanohano, Supervising Electrical Inspector: gkahoohanohano@co.hawaii.hi.us
Rodney Astrande, Supervising Plumbing Inspector: rastrande@co.hawaii.hi.us
Gantry Andrade, Battalion Chief, Fire Prevention: gandrade@co.hawaii.hi.us
Gordon Heit, Department of Land and Natural Resources: Gordon.c.heit@hawaii.gov
Ted N. Pettit, Esq.: TNP@caselombardi.com
Dana R. Lyons, Esq.: DRL@caselombardi.com
Ryan M. Hamaguchi, Esq.: RMH@caselombardi.com
Cynthia M. Johiro, Esq.: Cynthia.M.Johiro@hawaii.gov
Damien A. Elefante, Esq.: Damien.A.Elefante@hawaii.gov
Christopher J. Muzzi, Esq.: cmuzzi@hilaw.us
Timothy J. Hogan, Esq.: tjh@timhogan.com

DCF:lf



BUILDING DIVISION • DEPARTMENT OF PUBLIC WORKS

101 Pauahi Street, Suite 7, Hilo, Hawai'i 96720

14-5044 Ane Keohokalole Highway, Building E, Kailua-Kona, Hawaii 96740

(808) 961-8331, Fax (808) 961-8410

(808) 327-3520, Fax (808) 327-3509

NOTICE OF VIOLATION

CERTIFIED MAIL

June 25, 2013

David C. Farmer, Esq.
David C Farmer Attorney at Law LLC
225 Queen Street, Suite 15A
Honolulu, Hawaii 96813

RE: 93 Banyan Drive
Hilo, HI 96720
TMK: 2-1-005:016

Mr. Farmer:

The County of Hawai'i, Department of Public Works - Building Division ("DPW-BLDG") inspected the structures and/or premises at 93 Banyan Drive, Hilo, Hawaii ("subject property")¹ and found a violation of one or more provisions of the Hawai'i County Code ("HCC").

Pursuant to the HCC, certain corrective actions must be taken immediately. The remainder of the corrective actions required must be completed by September 22, 2013. Please see SECTION III of this letter for more details regarding corrective actions required. Failure to complete corrective action within the specified time may result in an ORDER being issued that may impose administrative and/or civil fines and/or referral to the appropriate legal authorities for action. The BLDG Division is willing to answer your questions or discuss this matter further.

The Temporary Cooking Shed is deemed unsafe and shall be vacated forthwith. Signs will be posted on the temporary cooking shed, "DO NOT ENTER. UNSAFE TO OCCUPY. DEPARTMENT OF PUBLIC WORKS. COUNTY OF HAWAII." You must disconnect defective electrical installations from their power source and tag as unsafe to operate until corrective action is made, inspected, and approved. (HCC 9-10). You must also obtain building, electrical, and plumbing permit final inspection approvals prior to any use of the Temporary Cooking Shed structure.

I. BACKGROUND

As the current occupant and operator of the subject property, our June 14, 2013 letter cited you for having an outdoor structure with electrical and water utilities used for cooking (Temporary Cooking Shed) which was constructed without required building, electrical, or plumbing permits. See Exhibit A. Since our June 14, 2013 letter, our records show that the required permits were acquired. On or about June 21, 2013, several inspectors from the County of Hawaii, Department of Public Works, Building Division ("DPW-BLDG") conducted inspections of the structure to determine if the occupant was in compliance with applicable County codes and regulations. It has also come to our attention that you have been utilizing this structure prior to obtaining necessary approvals. See Exhibit B. Within this illegal structure you have been preparing food and serving said food to guests of the hotel. As a result DPW-BLDG has determined that numerous violations of various sections of the Hawaii County Building, Electrical, and Plumbing Codes. Further, the numerous violations confirmed by DPW-BLDG are considered dangerous and create a hazard to life and safety; as such, DPW-BLDG has determined that this structure is unsafe.

The numerous violations include but are not limited to the following summary of observations:

1. Building inspectors noted major code issues related to the structure itself (See Exhibits C through E), and no inspection and approval prior to commencing with use of the structure.
2. Electrical inspectors noted major code issues related to unsafe and dangerous electrical work (See Exhibits F through H) and no wiring inspections and approval prior to commencing with connection, energizing and use of electrical equipment.
3. Plumbing inspectors noted that there was *no inspection* and approval prior to commencing with use of the plumbing fixture (See Exhibit H). We also noted that means for wastewater disposal have not been provided.

II. NOTICE OF VIOLATION

Based upon the foregoing, a review of County records, and the observations of our inspectors you are in violation as follows:

Code(s) and/or Ordinance(s) and Section(s)	Violation(s)
HCC, Chapter 5, Section 5-40, Inspections	Work occupied without inspection
HCC Chapter 5 – Building, Section 5-49, Unsafe Building	Unsafe Building

Code(s) and/or Ordinance(s) and Section(s)	Violation(s)
2006 International Building Code ("2006 IBC), Section 1604.8.1. Anchorage	Non-compliant building work. Unsafe and Dangerous Hazard
HCC, Chapter 9 - Electricity, Section 9-9. Inspection	Unapproved energizing or use of wiring
HCC, Chapter 9 - Electricity, Section 9-10. Nonconforming and defective installations.	Non-compliant electrical work. Life and Safety Hazard
2008 National Electrical Code ("2008 NEC") Article 110.20, Enclosure Types	Non-compliant electrical work. Unsafe and Dangerous Hazard
2008 NEC Article 210.8, Ground-Fault Circuit-Interrupter Protection for Personnel	Non-compliant electrical work. Unsafe and Dangerous Hazard
HCC, Chapter 17 - Plumbing, Section 17-24, Inspection required	Work in use without inspection

The relevant sections of the Hawai`i County Code, UBC, NEC, and UPC are provided below:

HCC Chapter 5 - Building

Section 5-40. Inspections.

- (a) All construction or work for which a permit is required shall be subject to inspection by the building official.
- (b) It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purpose. Neither the building official nor the County shall be liable for any expense entailed in the removal or replacement of any material required to allow inspection.

Section 5-51. Buildings found to be unsafe; Notice to owner.

- (a) Whenever the building official has examined or caused to be examined any building and has determined that such building is an unsafe building:
 - (1) The building official shall commence proceedings to cause the repair, rehabilitation, vacating, removal and/or demolition of the building
 - (2) Such building shall automatically be deemed and are hereby declared to be a public nuisance;
 - (3) The building official shall give to the owner of such building written notice of violation in accordance with section 5-59 and as further described below; and
 - (4) The building official shall cause to be posted at each entrance to the buildings ordered vacated a notice to read: "DO NOT ENTER. UNSAFE TO OCCUPY. DEPARTMENT OF PUBLIC WORKS. COUNTY OF HAWAII."

- (b) The notice required by subsection (a)(3) above shall require the owner or person in charge of the building or premises, to commence the required repairs or improvements or demolition and removal of the building or structure or portions thereof within forty-eight hours, and to complete all such work within ninety days from date of notice, provided that the building official may provide for more time for completion if deemed reasonably necessary. The notice shall also require the building or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the building official.

2006 International Building Code ("2006 IBC")

2006 IBC Section 1604.8 Anchorage, Subsection 1604.8.1 General

Anchorage of the roof to walls and columns, and of walls and columns to foundations, shall be provided to resist the uplift and sliding forces that result from the application of the prescribed loads.

HCC Chapter 9 - Electricity

Section 9-9. Inspections.

- (a) All electrical wiring, for which a permit is required, shall be inspected and approved by the authority having jurisdiction before being concealed, energized, or used.
- (b) No person shall use, operate, or maintain, or cause or permit to be used, operated, or maintained, any electric wiring until it is approved.
- (d) No person shall conceal, enclose, or cover, or cause or permit to be concealed, enclosed, or covered, any portion of any electric wiring or equipment in any manner which will interfere with or prevent the inspection and approval thereof.
- (e) Fixtures, appliances, devices, or equipment shall not be connected to any electric wiring until the rough electric wiring, including conductors, have been inspected and approved by the authority having jurisdiction.
- (f) All obstruction, covers, plates, tapes, light fixtures, etc., which make impracticable the making of a thorough inspection of electric wiring shall be removed upon notice (either verbal or in writing) to do so, and shall be kept removed until the electric wiring has been inspected and approved.
- (g) The supervising electrician or electrical contractor shall be present on the job site upon request of the authority having jurisdiction.

Section 9-10. Nonconforming and defective installations.

Whenever any electrical installation is found to have been installed, altered, changed, or reconstructed contrary to the provisions of this chapter or any other law, whenever any electrical installation is found to be in use contrary to the provisions of this chapter or any other law, or whenever any electrical installation, which complied with the existing laws, ordinances, and regulations in effect when the electrical work therein was performed, is found to be unsafe or dangerous to persons or property, the administrative authority shall

give the owner or the person in control of that installation a written notice stating the findings with respect to that installation and order the owner or other person in control to make the corrections to be set forth in the written notice. When found to be unsafe or dangerous to persons or property, the defective installation shall be disconnected from the power source and tagged as unsafe to operate until corrective action is made, inspected, and approved.

2008 National Electrical Code ("2008 NEC")

NEC Article 110.20 Enclosure Types

Enclosures (other than surrounding fences or walls) of switchboards, panelboards, industrial control panels, motor control centers, meter sockets, and motor controllers, rated not over 600 volts nominal and intended for such locations, shall be marked with an enclosure-type number as shown in Table 110.20.

2008 NEC Article 210.8, Ground-Fault Circuit-Interrupter Protection for Personnel, (B) Other Than Dwelling Units.

All 125-volt, single-phase 15- and 20-ampere receptacles installed in locations specified in (1) through (5) shall have ground-fault circuit-interrupter protection for Personnel: (1) Bathrooms; (2) Kitchens; (3) Rooftops; (4) Outdoors; (5) Sinks.

HCC Chapter 17 - Plumbing.

Section 17-24. Inspection required.

- (a) All plumbing, gas, and drainage systems shall be inspected by the authority having jurisdiction to ensure compliance with all the requirements of this code.
- (b) It shall be the duty of the applicant to cause the work to remain accessible and exposed for inspection purpose. Neither the building official nor the County shall be liable for any expense entailed in the removal or replacement of any material required to allow inspection.

III. CORRECTIVE ACTIONS

To be in compliance with the above-mentioned sections, the following corrective actions must be taken **immediately**:

- (1) All defective, unsafe electrical installations identified must be disconnected from their power source and tagged as unsafe for use. (HCC § 9-10)
- (2) You must allow the Building Inspector to post notice of the building's unsafe condition at the site. (HCC § 5-51(a)(4))
- (3) You must ensure compliance with all requirements of HCC § 5-51, such as refraining from entering the building except for the purpose of conducting required repair or demolition work.

To be in compliance with the above-mentioned section(s), the following corrective actions are required by the deadline date of **September 22, 2013**:

- (1) You must commence with all demolition or reconstruction work and complete the same within ninety days from date of this notice; additional time for completion may be requested if deemed reasonably necessary by the BLDG Division. (HCC § 5-51(b))
- (2) Defective, unsafe electrical installations must be corrected, inspected, and approved. (HCC § 9-10)
- (3) You must obtain building, electrical and plumbing permit final inspection approvals prior to any use of the Temporary Cooking Shed structure.

YOUR DEADLINE FOR COMPLIANCE IS: September 22, 2013.

The Building Division is prepared to answer your questions or discuss this matter further. Please understand that you are responsible to contact the inspector to verify the corrective action.

IV. WARNING

If corrective action is not completed by the deadline date of **September 22, 2013**, an **ORDER** will be issued that may impose administrative and/or civil fines and/or referral to the appropriate legal authorities for action.

V. CONCLUSION

Signs will be posted on the temporary cooking shed, "DO NOT ENTER. UNSAFE TO OCCUPY. DEPARTMENT OF PUBLIC WORKS. COUNTY OF HAWAII." You must disconnect defective electrical installations from their power source and tag as unsafe to operate until corrective action is made, inspected, and approved. (HCC 9-10). You must also obtain building, electrical, and plumbing permit final inspection approvals prior to any use of the Temporary Cooking Shed structure.

Please contact the Building Chief, David Yamamoto, P.E., at 961-8466, if you have any further questions regarding this matter.

Respectfully,



David Yamamoto, P.E.
Building Chief

David C. Farmer, Esq.
June 25, 2013
Page 7

cc: Ken Fujiyama
ec: Warren Lee, DPW Director
Joy Matsumoto, Supervising Building Inspector
Gary Kahooohanohano, Supervising Electrical Inspector
Rodney Astrande, Supervising Plumbing Inspector
Gantry Andrade, Battalion Chief, Fire Prevention
Gordon Heit, Department of Land and Natural Resources
Department of Health, Wastewater Branch – Hilo
Department of Health, Sanitation Branch - Hilo

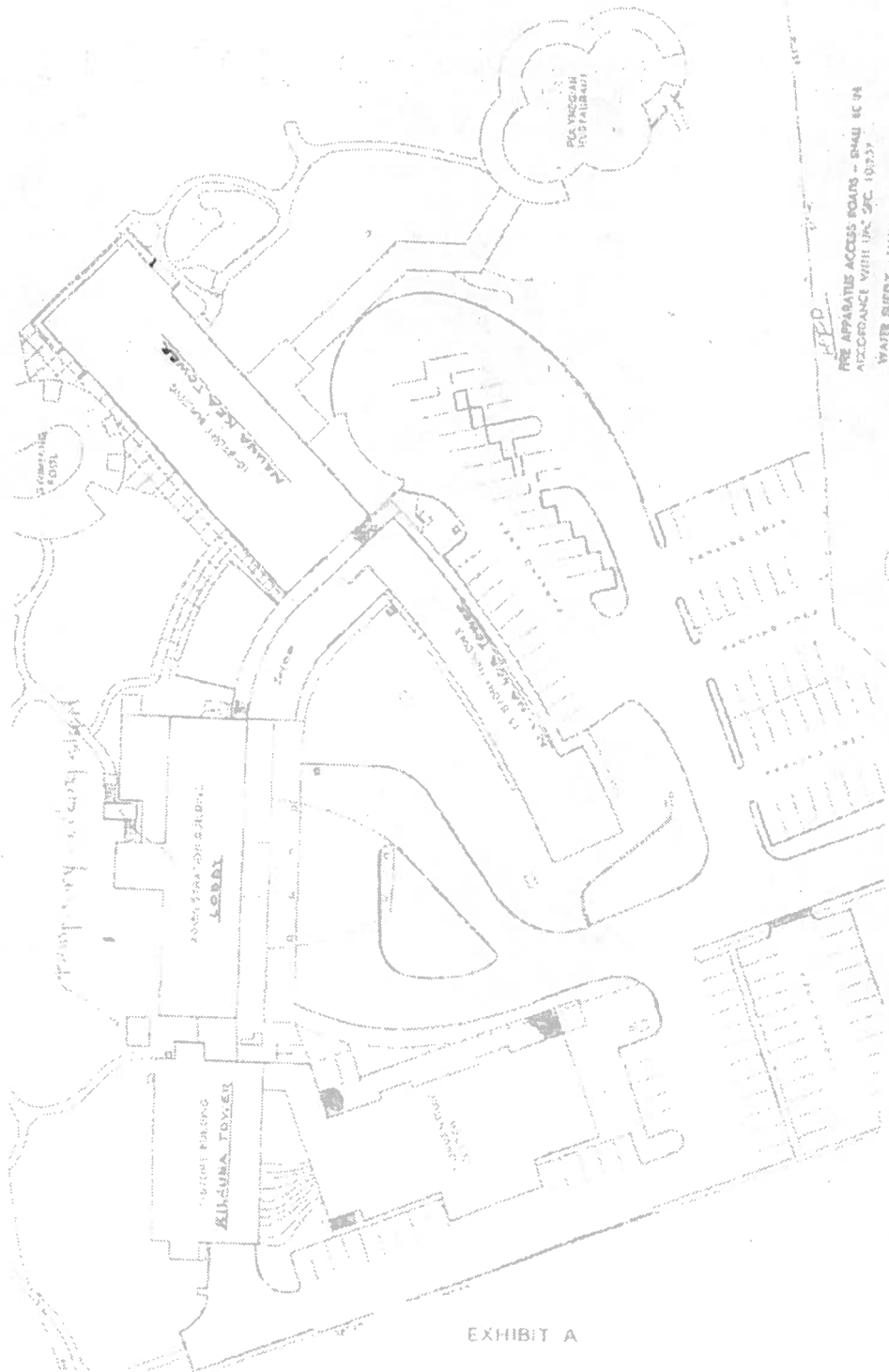


EXHIBIT A

David C. Farmer, Esq.
June 25, 2013
Page 9

FROM: FIRE DISPATCH

FAX TO: 808618577

May 24 2013 08:48:01 P1

85/23/2013 15:25 8869696672

NANILOA VOLCANOES

PAGE 01/01

*Naniiloa Volcanoes Resort
93 Banyan Drive
Hilo, Hawaii 96720*

*Phone (808) 969-3333
Fax (808) 969-6632*

MEMORANDUM:

by fax to 881-8677

TO Fire Dispatch
County of Hawaii
Fire Department

FROM Frances Hamabeta fo
Kenneth Fujiyama

DATE May 23, 2013

RE Dates & Times of Open Cooking

MESSAGE:

Listed below are the dates and times of anticipated open cooking at 93 Banyan Drive, Hilo:

May 24, 2013	6am - 1: Noon
May 25 - 26, 2013	6am - 10am
May 27, 2013	6am - 1 pm
May 28, 2013	6am - 11am
May 29, 2013	6am - 1pm
May 30, 2013	6am - 10am & 2pm - 7pm
June 1, 2013	6am - 10am
June 2, 2013	6am - 1pm
June 3 - 8, 2013	6am - 10am
June 9, 2013	6am - 10am & 3pm - 7pm
June 10 - 14, 2013	6am - 10am
June 15, 2013	6am - 10am & 2pm - 8pm
June 16, 2013	5am - 2pm

*Photos are available in CB; see left for Mrs - See CB for
Candice Burns*

EXHIBIT B

Page 9 of 15



EXHIBIT C



EXHIBIT D



Exhibit E



Exhibit F



Exhibit G



Exhibit H

NANILOA VOLCANOES RESORT

**93 Banyan Drive
Hilo, Hawaii 96720**

Phone (808) 969-3333

Fax (808) 969-6633

August 28, 2013

Mr. David Yamamoto, Building Chief
County of Hawaii
Department of Public Works - Building Division
Aupuni Center
101 Pauahi Street, Suite 7
Hilo, Hawaii 96720-4224

Re: Notice of Violation
Section 603.2.1 Airgap

Dear Mr. Yamamoto:

It took our plumber a while to figure out the most effective and permanent ways to resolve the problem where the outlet of our tub faucet is lower than the top of the tub. He has come up with two solutions.

The first would be to remove the faucet, plug the pipeline then capping the hole in the tile. This would be the faster fix. This would be an inconvenience to our hotel guests as the only source of water would be from the shower heads. In order to do this we estimate that it could take up to 7-10 working days. The working area to cut and plug the faucet line is within a chase that has limited working space and would require our smallest worker to do the work effectively.

The second option is for us to remove the faucet, shorten the water feed line to the faucet so we can raise the faucet outlet height 2" to 3" above the exterior wall of the tub. One major problem with this is the new hole that must be cut into the tile and hardy board lines up with a metal frame that supports the hardy board and tile. This frame must be cut about 1½ inches which takes up a lot of time. The old hole of the faucet location must also be plugged with a circular shape tile than chaulked. Our estimated time to do the actual installation will take our plumber approximately 21 working days.

We would prefer to do the second option but may start with option 1 for the sake of time.

I would like a 30 day extension of time beyond September 7, 2013 to complete either option 1 or 2.

Sincerely,



Ken Fujiyama
CEO

cc: Rodney Astrande
David Farmer, Trustee
Tim Hogan, Esq.

DAVID C. FARMER

ATTORNEY AT LAW

A LIMITED LIABILITY LAW COMPANY LLLC

225 Queen Street
Suite 15A
Honolulu, Hawaii 96813

Tele: (808) 222-3133
Fax: 1 (866) 559-2922
email: farmerd001@hawaii.rr.com

August 30, 2013

Mr. David Yamamoto, Building Chief
County of Hawaii, Department of Public Works - Building Division
Aupuni Center, 101 Pauahi Street, Suite 7
Hilo, Hawaii 96720-4224

Via email: yamamoto@co.hawaii.hi.us

Re: Notice of Violation Section 603.2.1 Airgap

Dear Mr. Yamamoto:

I am responding to your concern that the letter that Mr. Fujiyama sent on August 28, 2013 lacked the proper authority to make the request for an extension of the compliance date regarding the notice of violation.

As was stated in Mr. Fujiyama's letter, there appear to be two effective and permanent ways to resolve the problem where the outlet of a tub faucet is lower than the top of the tub.

The first option would be to remove the faucet, plug the pipeline then capping the hole in the tile. This would be the faster fix but would be an inconvenience to our hotel guests as the only source of water would be from the shower heads. In order to do this, we estimate that it could take up to 7-10 working days. The working area to cut and plug the faucet line is within a chase that has limited working space and would require our smallest worker to do the work effectively.

The second option is to remove the faucet and shorten the water feed line to the faucet to raise the faucet outlet height 2 to 3 inches above the exterior wall of the tub. One major problem with this is the new hole that must be cut into the tile and hardy board lines up with a metal frame that supports the hardy board and tile. This frame must be cut about 1^{1/2} inches, a process that involves substantial time. The hole of the faucet location must also be plugged with a circular shape tile and then calked. Our estimated time to do the actual installation will take our plumber approximately 21 working days.

We would prefer to do the second option but may start with option 1 for the sake of time. On behalf of the Bankruptcy Estate, I respectfully request a 30 day extension of time beyond the September 7, 2013 deadline to complete either option 1 or 2.

Sincerely,

/s/ David C. Farmer, Trustee

cc: Rodney Astrande (rstrande@co.hawaii.hi.us)
Tim Hogan, Esq. (tjh@timhogan.com)

EXHIBIT "F"

David Yamamoto

From: David C. Farmer <farmerd001@hawaii.rr.com>
Sent: Friday, August 30, 2013 9:28 AM
To: 'David Yamamoto'
Cc: 'Christopher J. Muzzi'; 'Cynthia.M.Johiro@hawaii.gov'; 'Dana R. Lyons'; 'Ryan M. Hamaguchi'; Stephanie Yoder; 'Ted Pettit'; 'Tim Hogan'
Subject: RE: Letter from Ken Fujiyama
Importance: High

Dear Mr. Yamamoto:

Please consider the information and request in Mr. Fujiyama's letter to be mine and authorized by me.

We look forward to your office's substantive response at your earliest convenience, given the pending deadline date.

From: David Yamamoto [<mailto:dyamamoto@co.hawaii.hi.us>]
Sent: Friday, August 30, 2013 6:39 AM
To: farmerd001@hawaii.rr.com
Subject: FW: Letter from Ken Fujiyama

Mr. Farmer,

We received and are forwarding to your attention the attached letter from Mr. Ken Fujiyama dated August 28, 2013.

By email dated August 16, 2013, you informed DPW that you are "[. . .] the Chapter 11 Trustee since being appointed by the Bankruptcy Court on May 14, 2013. Mr. Fujiyama has not been in control of the estate or had any authority over the property since then." Accordingly, the September 7, 2013, compliance deadline stated within the Notice of Violation dated May 9, 2013, remains in effect

Respectfully,

David Yamamoto

From: Frances Hamabata [<mailto:frances@hottours.us>]
Sent: Wednesday, August 28, 2013 3:50 PM
To: dyamamoto@co.hawaii.hi.us; rastrande@co.hawaii.hi.us
Cc: 'David C. Farmer'; 'Tim Hogan'
Subject: Letter from Ken Fujiyama

Aloha,

Attached is Ken Fujiyama's letter dated August 28, 2013.

Frances S. Hamabata
Executive Secretary

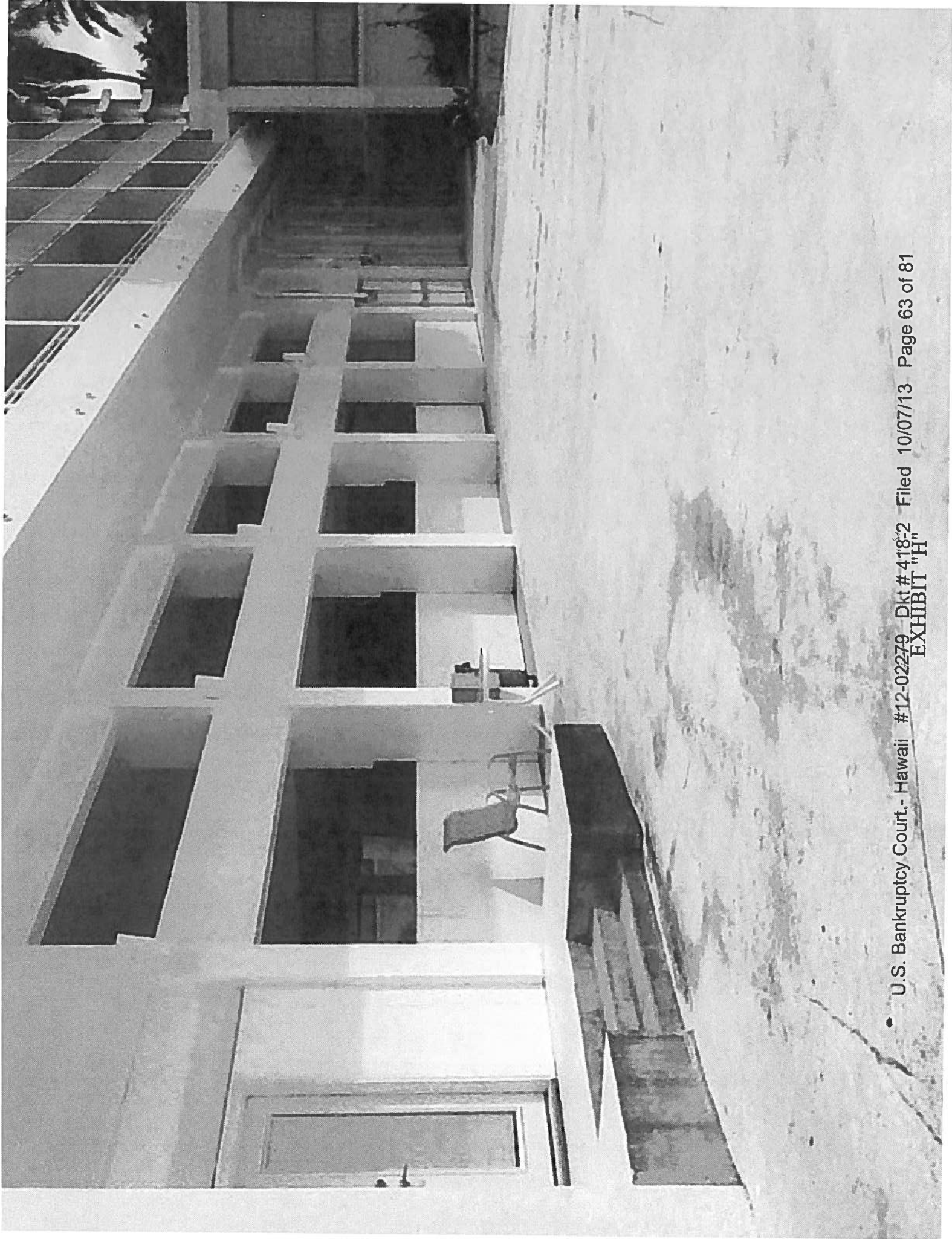




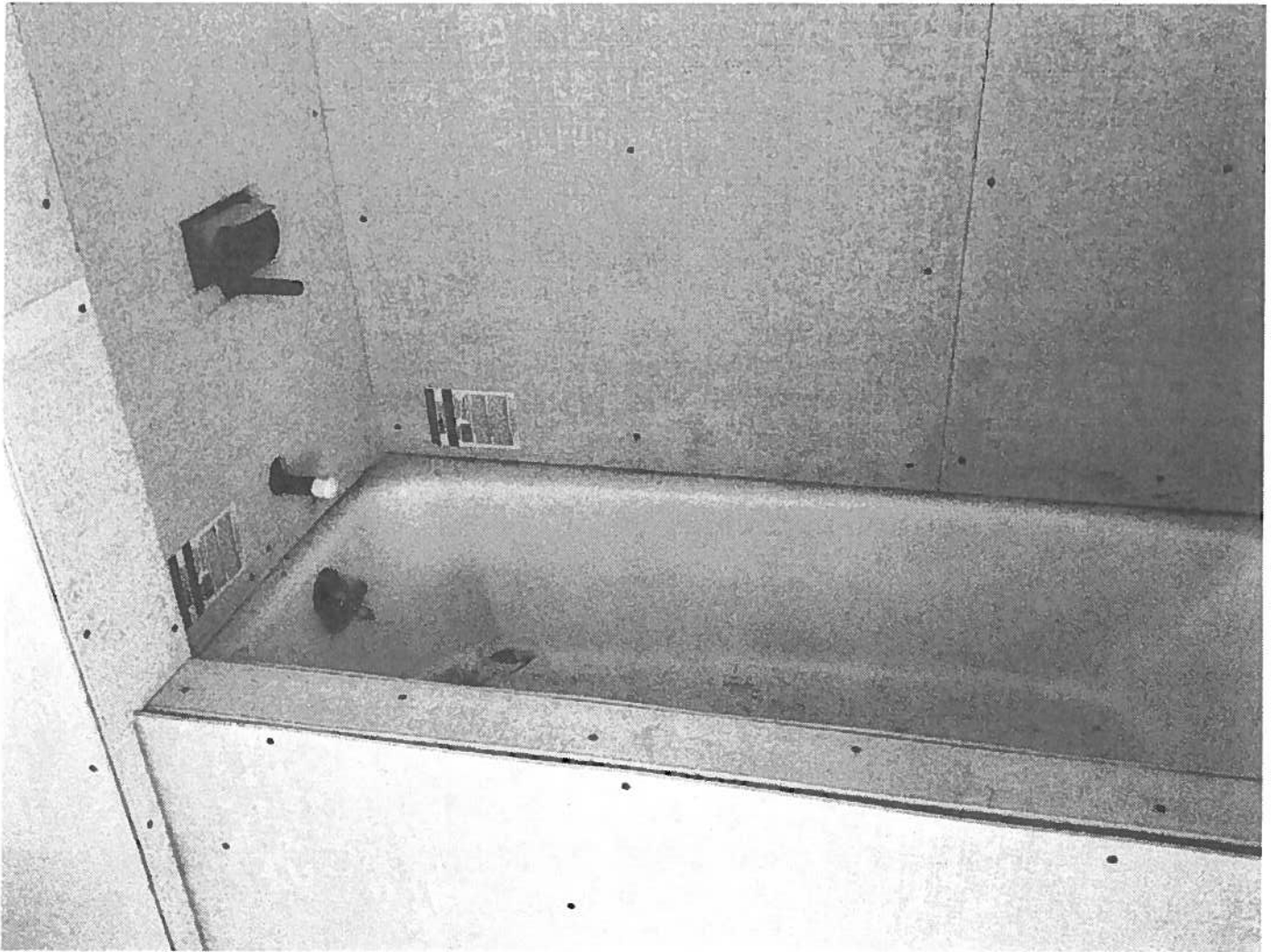




EXHIBIT "K"



EXHIBIT "L"



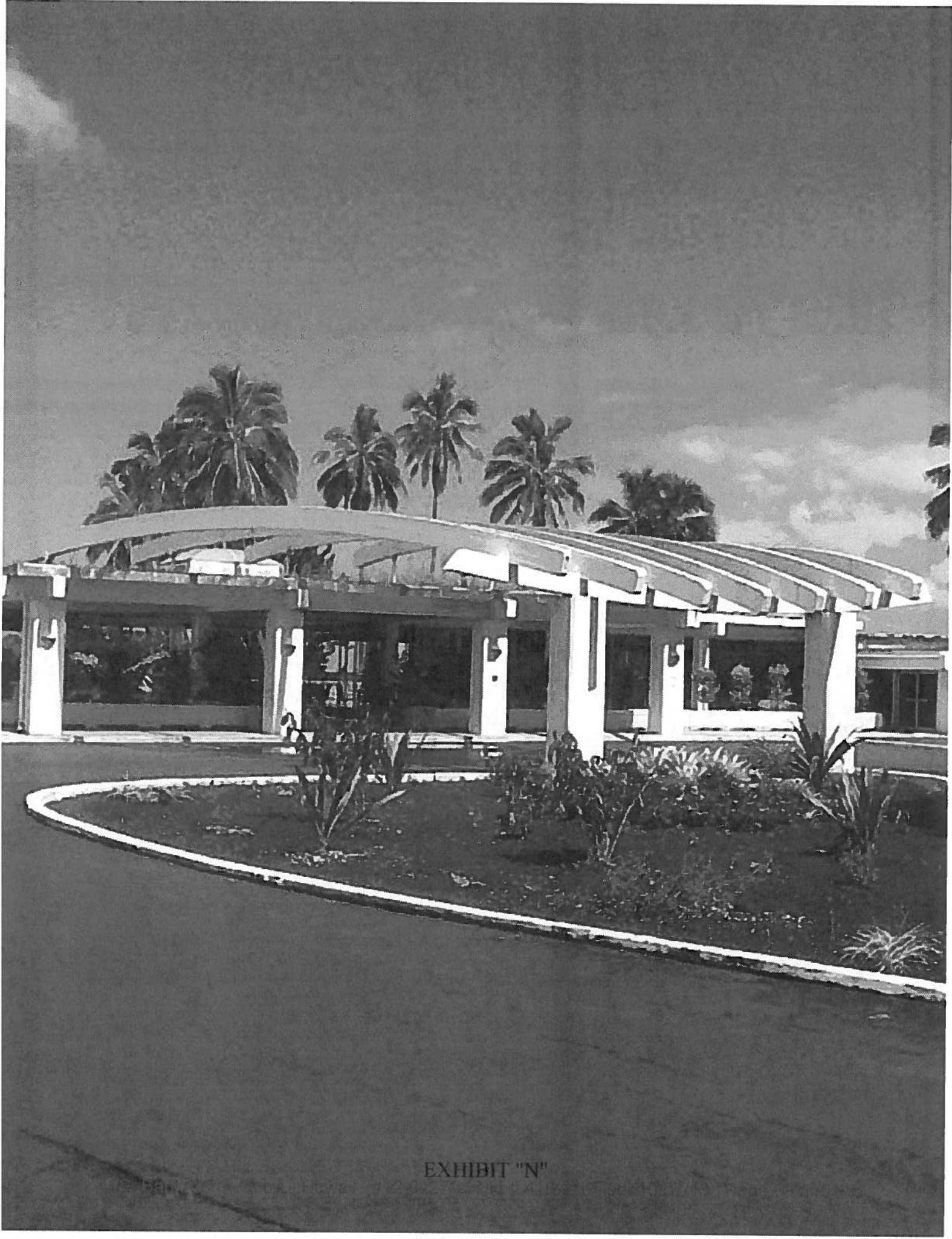


EXHIBIT "N"



EXHIBIT "O"

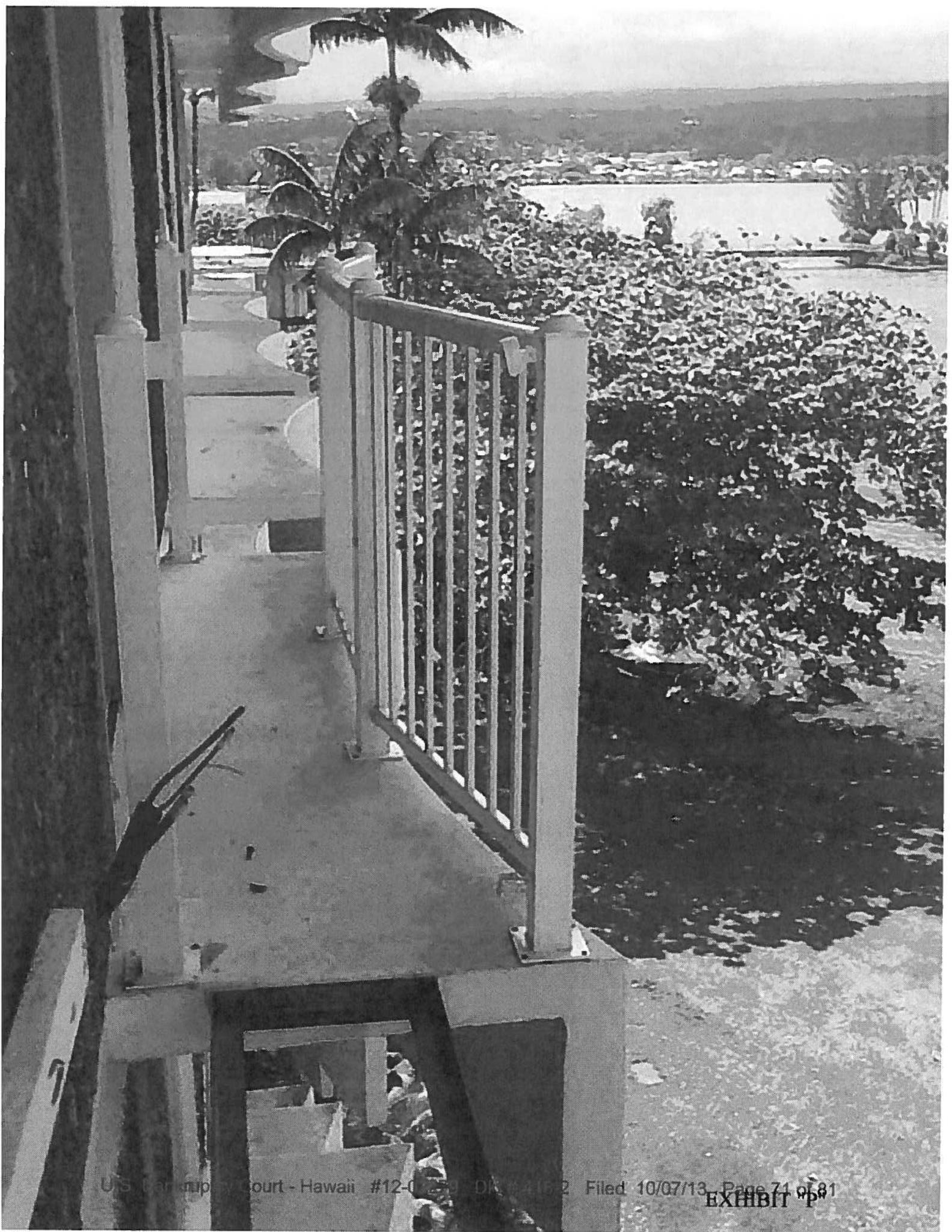




EXHIBIT "R"



EXHIBIT "S"





EXHIBIT "U"



**PER ARTICLE
110.27 (A-B)
GUARDING OF
LIVE PARTS
AGAINST
ACCIDENTAL
CONTACT AND
TO PREVENT
PHYSICAL
DAMAGE**

EXHIBIT "V"

Naniola Temp
Generator
Installation /
Grounding
Electrode and
conductor



EXHIBIT "W"



EXHIBIT "X"



EXHIBIT "Y"

**TEMPORARY
WIRING SHALL
BE
PROTECTED
FROM
ACCIDENTAL
DAMAGE
WHERE
PASSING
THROUGH
DOORWAYS
OR OTHER
PINCH POINTS
PER NEC 2008
ART.590.4
SECTION H**

EXHIBIT "Z"



EXHIBIT "AA"

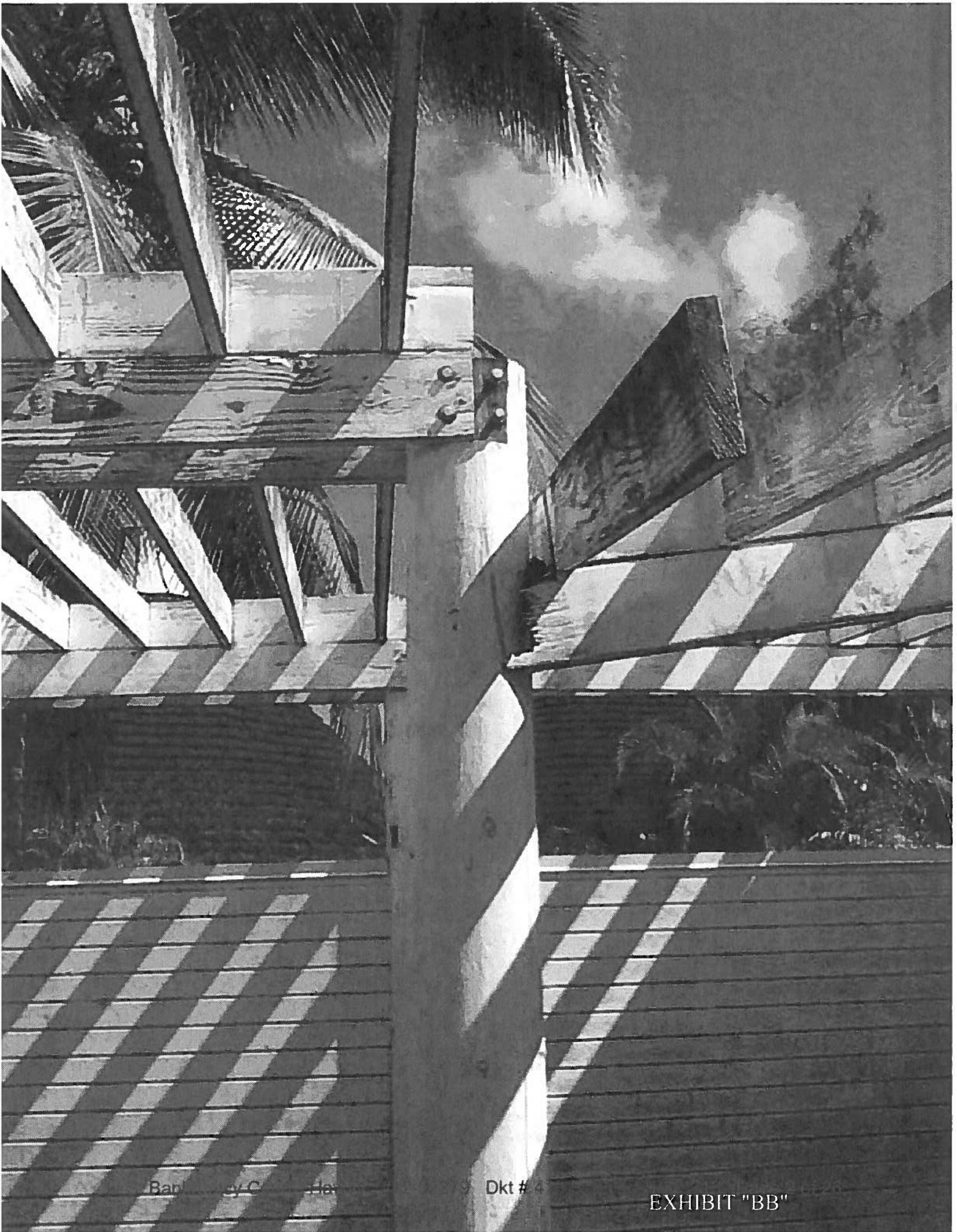




EXHIBIT "CC"



EXHIBIT "EE"



EXHIBIT "FF"

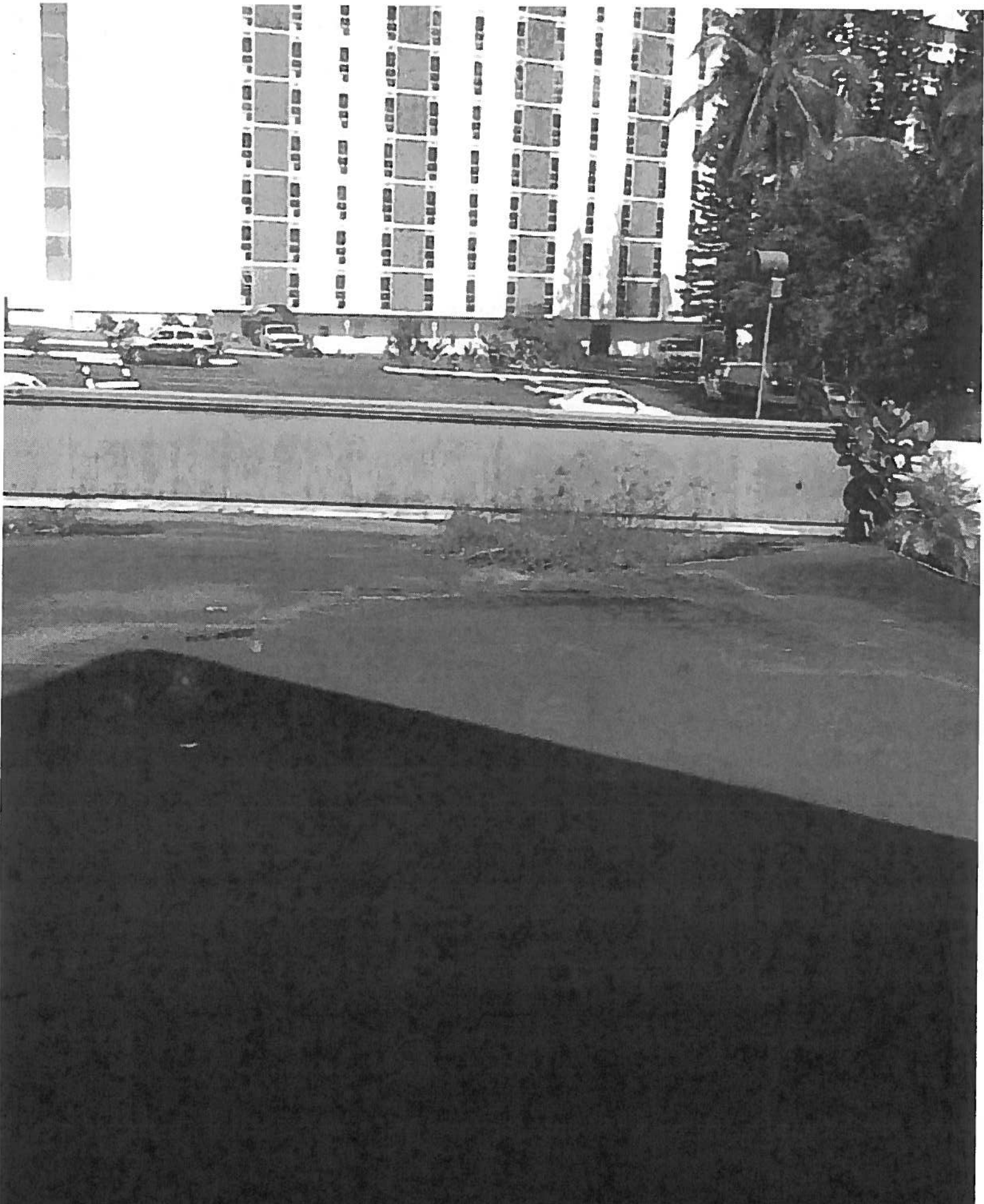


EXHIBIT "GG"

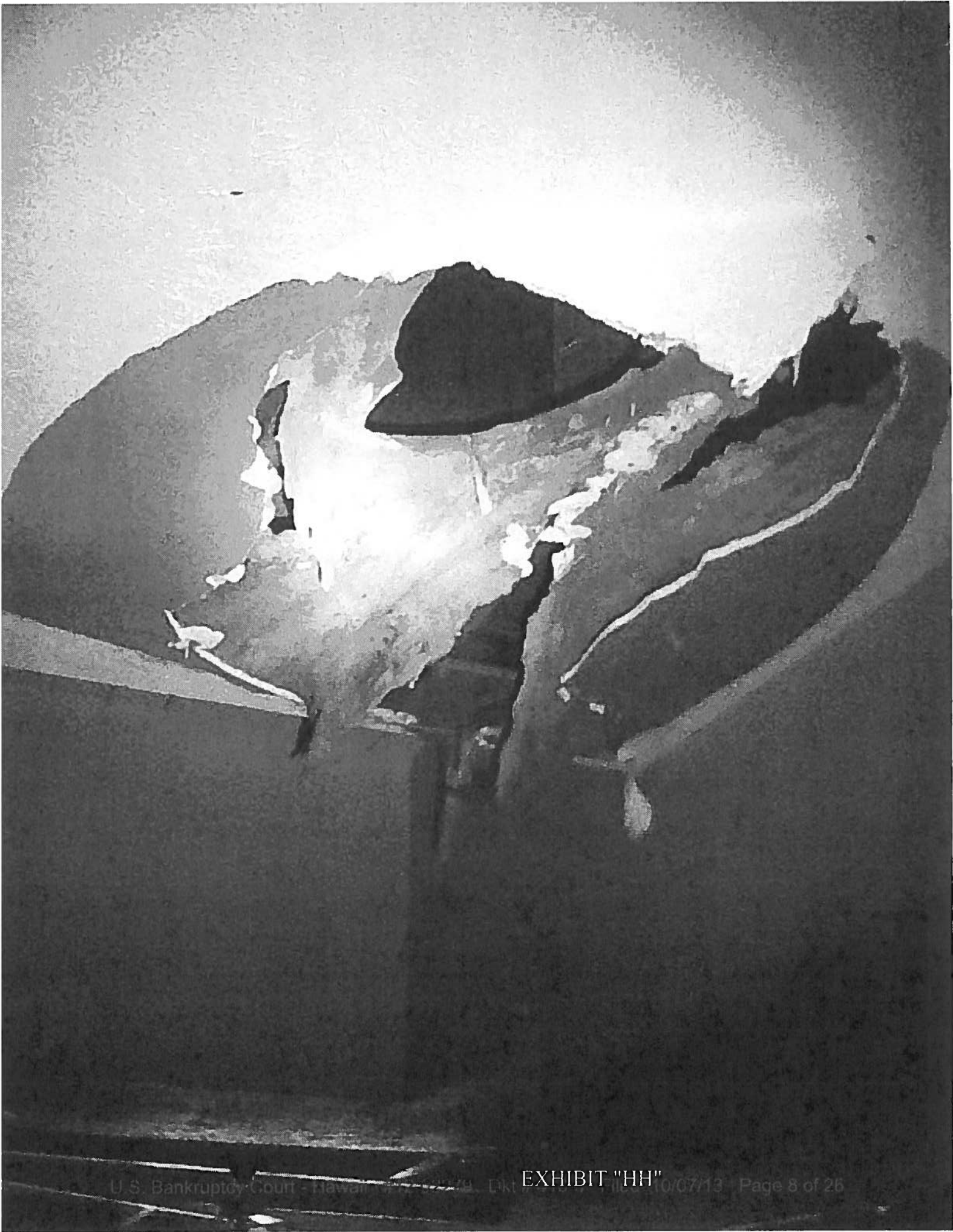


EXHIBIT "HH"







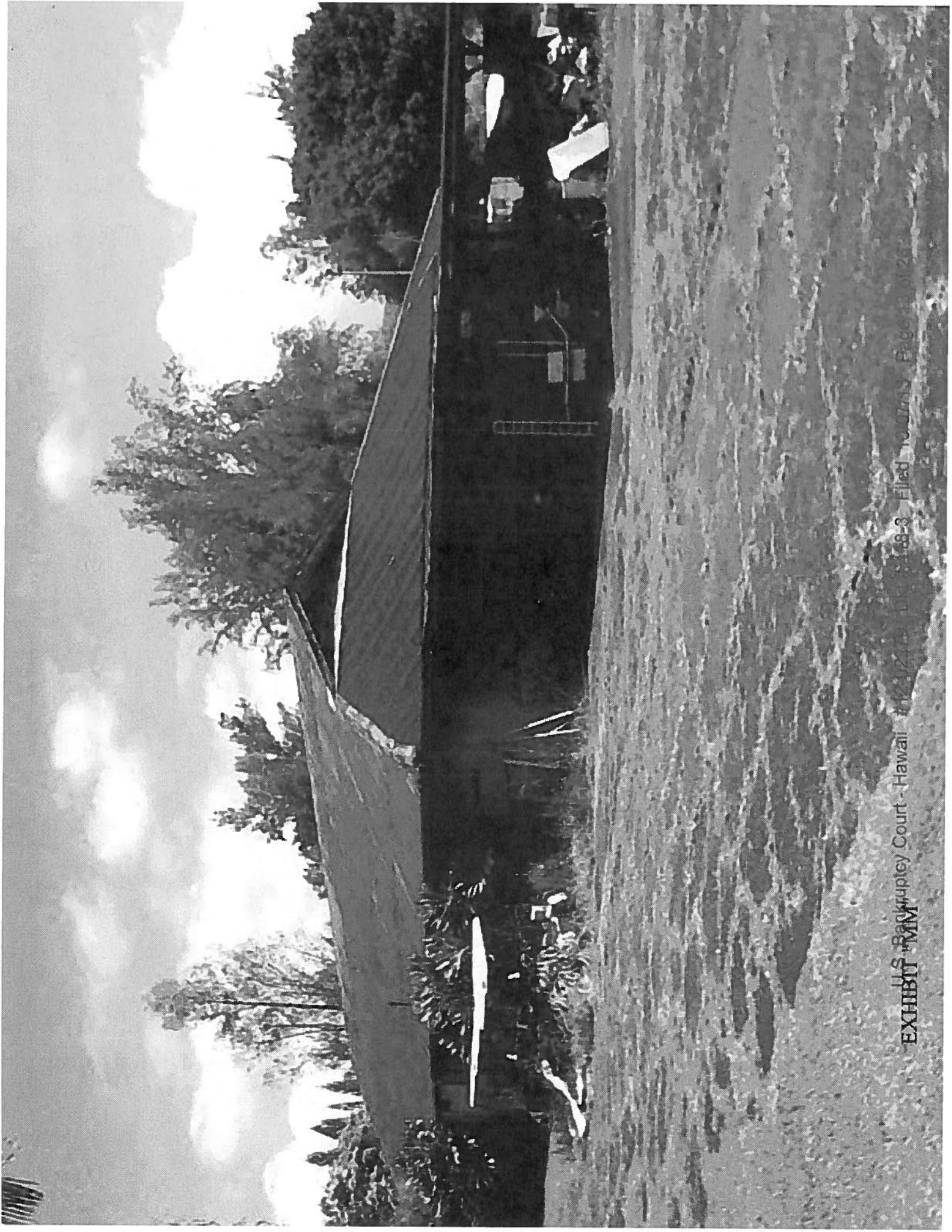


EXHIBIT 10007743 Filed 10/07/13 Page 13 of 26





EXHIBIT "OO"





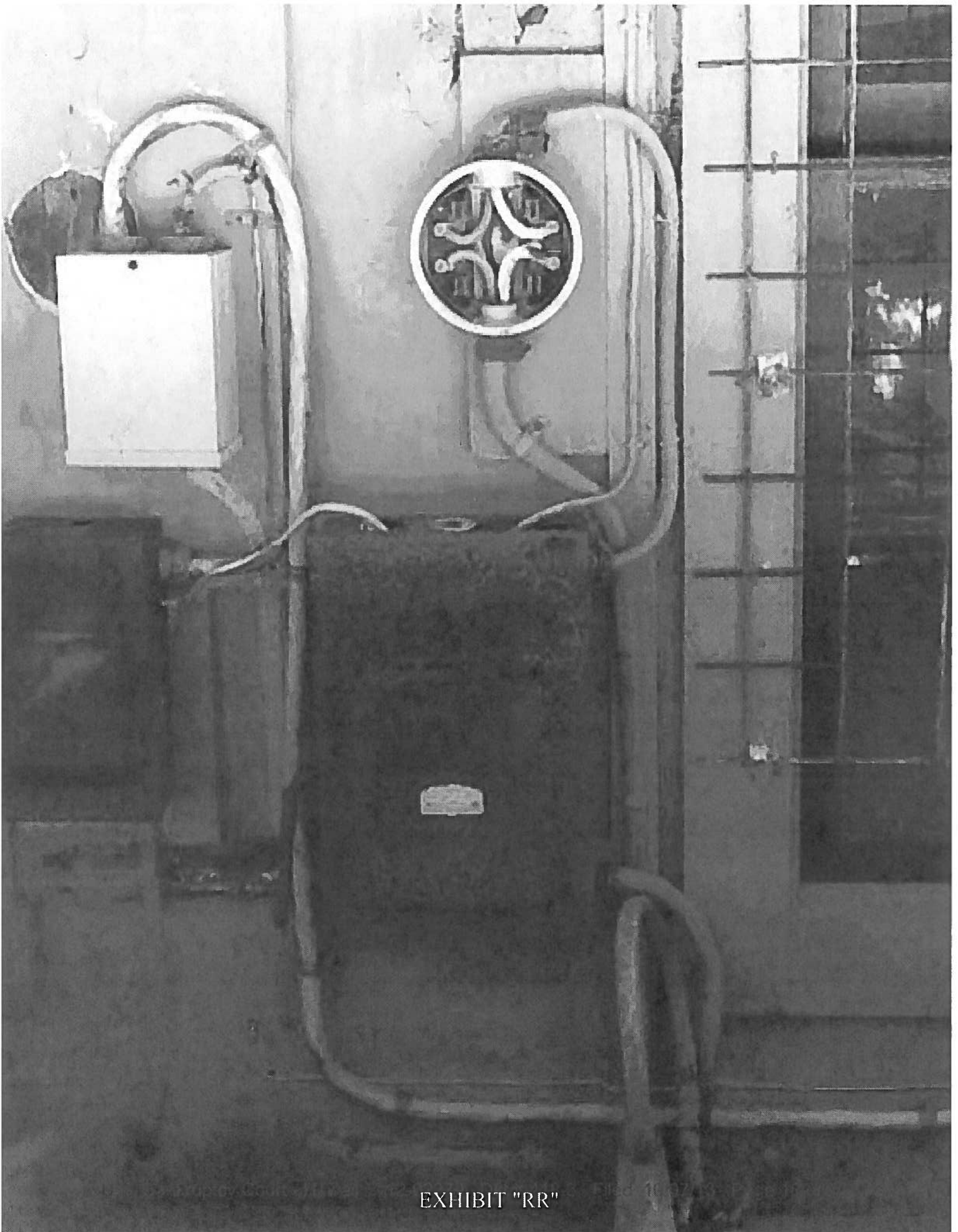
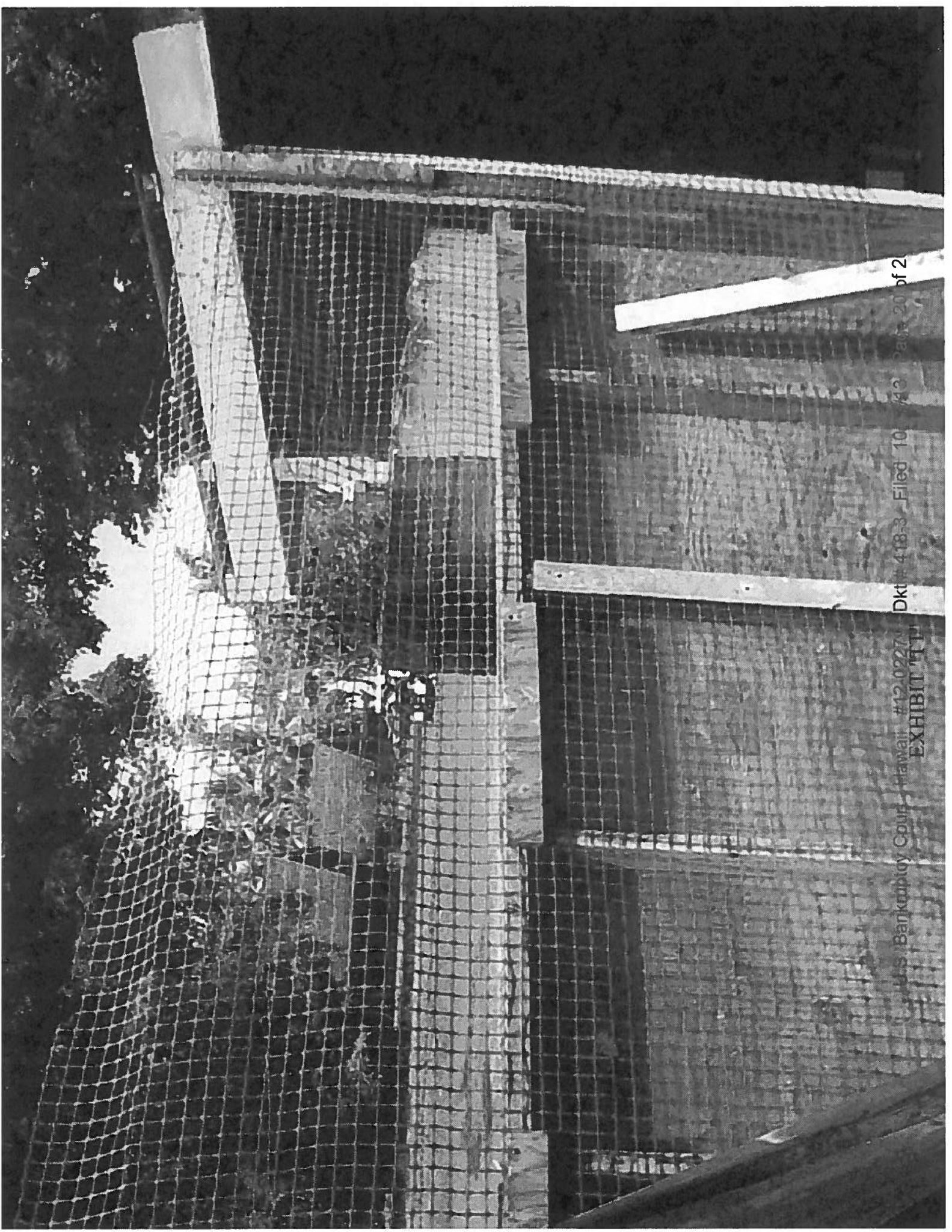


EXHIBIT "RR"



EXHIBIT "SS"



U.S. Bankruptcy Court - Hawaii #12-02273
EXHIBIT "F"
Dkt# 418-3 Filed 10/14/13 Page 20 of 2



EXHIBIT "UU"





Open wiring
through out former
golf course
restaurant and
office



Open wiring
through out former
golf course
restaurant

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAI'I

In re) Case No. 12-02279
) (Chapter 11)
HAWAII OUTDOOR TOURS, INC. dba)
Nanihoa Volcanoes Resort and Nanihoa) DECLARATION OF ROBERT
Volcanoes Golf Club,) R.K. PERREIRA; EXHIBIT "A"
)
Debtor and Debtor-in-Possession)
)
)
)
)
)
)
)

DECLARATION OF ROBERT R.K. PERREIRA

I, ROBERT R.K. PERREIRA, declare upon penalty of perjury that:

1. I have personal knowledge of and am competent to testify to the matters hereinafter stated.

2. I am currently employed as the Prevention Bureau Fire Captain for the County of Hawai'i Fire Department.

3. I have been an employee of the County of Hawai'i Fire Department for the past 17 years (approximately) and have been in my current position as Prevention Bureau Fire Captain since May 1, 2009.

4. As part of my duties as the Prevention Bureau Fire Captain, I conduct and direct fire safety inspections.

5. I conducted two inspections of the Nanihoa Volcanoes Resort Hotel ("Nanihoa") located at 93 Banyan Drive in Hilo, Hawai'i.

6. The first inspection I completed was on Wednesday, April 24, 2013.
7. Following the inspection, the Naniloa Management was made aware of the Fire Code violations requiring corrective action.
8. Attached as Exhibit "A" is a true and correct copy of my list of Fire Code violations that was appended to my inspection report.
9. On information and belief, on April 26, 2013, Battalion Chief Gantry Andrade met with Ken Fujiyama, handed him the inspection report and attachment, and verbally explained the violations to him.
10. The Naniloa was told that they needed to have an approved fire watch until such time as the fire sprinkler and alarm systems are compliant with all legal requirements.
11. A fire watch is supposed to be a temporary measure for any fire system that is down for more than 4 hours while permanent fixes are made. The Naniloa does have pending permits for their fire sprinkler system and fire alarm. However, such permits have been open and pending since 2007 for the fire alarm system and between 2008 and 2009 for various fire sprinkler systems.
12. On May 17, 2013 I attended a meeting with Bankruptcy Trustee David Farmer ("Farmer") and attorney Timothy J. Hogan. At that meeting, I told Farmer I needed a time-line for the fire sprinkler and fire alarm completion. At that time, Farmer told me that they were not going to continue working to complete the fire alarm and sprinkler system.

13. On Tuesday, September 24, 2013, I conducted a second inspection of the Naniloa. Several of the violations I originally noted on April 24, 2013 have not been corrected:

- a. None of the fire-sprinkler issues have been addressed although the fire watch is in place and is being conducted.
- b. Eight (8) fire extinguishers were missing. (On September 24, 2013 I notified management of this issue and they indicated that they would be correcting this issue).
- c. None of the fire alarm issues have been addressed, although the fire watch is in place and is being conducted.
- d. None of the kitchen hood and duct issues have been addressed. The temporary measure that was taken was that the Naniloa removed all cooking equipment and are supposedly not using the kitchen hood and duct system.
- e. The exit, electrical and permit issues are being addressed by the Building Division of the Department of Public Works of the County of Hawai'i.

I do declare under penalty of law that the foregoing is true and correct.

Dated: Hilo, Hawai'i, October 2, 2013.



ROBERT R.K. PERREIRA

Inspection Attachment for Naniloa Hotel conducted on 4-24-13

Fire sprinkler issues:

- Fire sprinkler installation does not comply with NFPA 13. Sprinkler system needs to be installed and maintained throughout all structures.
- Fire sprinkler system needs to be tested and maintained annually.
- Fire sprinkler system needs to be properly monitored by the fire alarm system.
- Main fire sprinkler riser by front of hotel needs to be clear of vegetation and water control valve needs to be chained in the open position.
- Fire department connections need to be labeled properly and maintained along with the fire sprinkler system.
- The following is a list of areas that the sprinkler coverage is insufficient. Kilohana room, kitchen, west wing above the kitchen, lobby/front desk area and surrounding space, wood shop area, art studio area, Poly room, Crown room and ground floor dining area.
- Protective clips on fire sprinkler heads shall be removed.

Note: There may be other areas that lack fire sprinkler coverage and it shall be the responsibility of Naniloa Hotel Management to have a licensed Fire Sprinkler Contractor/Fire Protection Engineer to design, obtain permits, install and conduct acceptance testing of the fire sprinkler system to meet the requirements of NFPA 13 and all applicable county codes.

Fire extinguisher issues:

- Fire extinguishers shall conform to NFPA 10. They shall be serviced annually and shall be accessible within 75 feet of travel distance. There are numerous locations that fire extinguishers need to be installed. Kitchen area, main floors, kitchen area, front desk area and the wood shop area.

Note: There may be other areas that lack fire extinguishers and it shall be the responsibility of Naniloa Hotel management to have an approved fire extinguisher contractor service and install fire extinguishers as necessary.

Fire alarm issues:

- Fire Alarm system shall be installed according to NFPA 72 and all applicable county codes.
- Fire alarm system needs to be installed throughout property and serviced annually.
- Fire alarm system shall monitor the sprinkler system as required in NFPA 72 and NFPA 13.
- Fire Alarm system shall be monitored 24 hours a day by hotel management or by an approved central monitoring station.
- Old fire alarm components that are abandoned and not functioning shall be removed.

Note: The current fire alarm system does not meet the requirements of NFPA 72 and the County of Hawaii Fire Code. Currently numerous areas have no fire alarm installed. The Naniloa hotel management shall have a licensed electrical engineer design the fire alarm system to meet NFPA 72 and the Hawaii County

EXHIBIT "A"

Fire code, and then obtain proper permits, install, and conduct acceptance testing of the fire alarm system.

Kitchen Hood & Duct issues:

- The access panels for the duct system are not constructed according to NFPA 96. It appears that access holes for cleaning were cut at every floor level and were not properly secured. Make shift materials were used to close off the access panels, which does not seal the access hole properly.
- It appears the exhaust vent does not provide sufficient air movement as the smoke from cooking escapes from the front of the hood filling the kitchen area with smoke.
- Kitchen Hood fire suppression system shall be serviced every six months last servicing was June of 2012.
- Hood over oven is closed off and does not provide for heat removal. Also old fire suppression system not in use shall be removed completely.

Exit issues:

- All exits, exit pathways and exit egress shall be maintained in it's designed and approved state. Exits shall be kept clear.
- Any change of exits, closing off of areas shall require a permit from the County Building Dept. (example construction area above kitchen)
- All exit doors shall remain operable, clear and accessible. No surface mounted bolts or locks shall be installed on any exit door.
- All illuminated exit signs shall be operable.
- All emergency lighting shall be operable. Test monthly and repair as needed.

Electrical issues:

- Extension cords shall not be used as permanent wiring. Remove extension cords from areas as addressed.
- Obtain permits for all electrical work being done.
- All electrical wiring shall conform to NFPA 70 and the adopted county electrical code.
- Electrical panel in Crown room missing cover.

Permit issues:

- Kilohana room is being used as a classroom for adults; walls have been installed without permits. Room is being divided into three rooms by construction of two walls, extension cords are being used to power electrical equipment as no electrical wiring provided with the wall construction.
- Old ground floor spa area is being used as wood shop with storage of combustibles. Please see the Building department for permitting issues.

Other issues:

- **LPG tanks shall not be stored or used inside buildings.**
- **Cooking/frying shall be done under an approved hood system.**
- **Areas under demolition/construction shall be kept in a safe condition, access to these areas shall be clear and storage of combustible material shall be neat and orderly.**

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Attorneys for the
COUNTY OF HAWAII

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

HAWAII OUTDOOR TOURS, INC.,
dba Naniloa Volcanoes Resort and
Naniloa Volcanoes Golf Club,

Debtor and
Debtor-in-Possession.

Case No. 12-02279
(Chapter 11)

DECLARATION OF GANTRY
ANDRADE; EXHIBIT "A"

DECLARATION OF GANTRY ANDRADE

I, Gantry Andrade, hereby declare as follows:

1. I have personal knowledge of and am competent to testify to the matters hereinafter stated.
2. I am currently employed as the Battalion Chief of the Fire Prevention Bureau for the County of Hawai'i Fire Department.
3. I have been an employee of the County of Hawai'i Fire Department for the past 22 years and have been in my current position as Fire Prevention Bureau Battalion Chief since November 2011.
4. As part of my duties as the Fire Prevention Bureau Battalion Chief, I oversee the enforcement of the Hawai'i County Fire Code and the Hawai'i State Fire Code. I supervise all of the Hawai'i County Fire Inspectors whose position description includes fire investigations, code enforcement inspections, construction plan reviews, and public education.
5. On information and belief, on April 24, 2013, Fire Prevention Bureau Fire Captain Robert R.K. Perreira conducted an inspection of the Naniloa Volcanoes Resort Hotel ("Naniloa") located at 93 Banyan Drive in Hilo, Hawai'i.
6. On April 26, 2013, I met with Ken Fujiyama to review and discuss Fire Captain Pereira's inspection report and attachment. I verbally explained all of

the violations in detail. Aside from receiving a copy of the inspection report, Mr. Fujiyama and his maintenance person took their own hand written notes.

7. Over the past few years, several fire sprinkler inspections of the Naniloa were completed, and portions of the system were approved on a floor by floor basis. However, the entire fire sprinkler system has never completed a final acceptance test by the Hawai'i Fire Department.

8. Regarding the fire sprinkler issues noted on April 24, 2013, I explained to Mr. Fujiyama that the entire building's sprinkler system needed to be completed prior to it receiving final approval. I also advised him to follow up with the building department to assure that all prior permits were still valid.

9. Regarding the kitchen hood and duct issues, I took Mr. Fujiyama and his maintenance person to visualize as well as explain the severity of the hazard surrounding the petrified grease build up within the kitchen duct system. Per Mr. Fujiyama, a contractor was hired but due to the severity of the task, that project was discontinued. An entire new duct system was recommended. I agreed.

10. The Naniloa was told that they needed to have an approved fire watch until the fire sprinkler system passes the final acceptance test. Fire watch parameters were explained in detail.

11. A fire watch is a temporary measure for any fire system that is down for more than 4 hours. The AHJ has the authority to discontinue the fire watch if

the time frame for such repairs are not clear or unreasonable. The fire watch may also be discontinued if the AHJ deems that the parameters and safety intent of the fire watch is not being met.

12. On October 1, 2013, I conducted inspections of the structure on TMK 3-2-1-005-018 (noted on my report as the "Banyan Broiler") and the structures across Banyan Drive from the Naniloa on the Golf Course (noted as the "Golf Clubhouse" "Old CJ's Restaurant" and "Golf Course [sic] Maintenance" on the Fire Inspection Record Addendum attached to the Fire Inspection Record attached as Exhibit A and hereby incorporated by reference.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS THAT THE FOREGOING IS TRUE AND CORRECT.

Executed this 4th day of October 2013.


GANTRY ANDRADE



**HAWAII FIRE DEPARTMENT
FIRE PREVENTION BUREAU**

HILO: 25 Aupuni St. Suite 2501, Hilo, HI 96720 (808) 932-2913 or (808) 932-2914
KONA: 74-5044 Ane Keohokalole Hwy, Bldg E. Kailua-Kona, HI 96740 (808) 323-4760

RE-INSPECTION DATE
Pending

Fire Inspection Record

Pass Fail

GENERAL INFORMATION

Business Location: 93 Banyan Dr.
Business Name: Nanihoa Resort
Primary Contact: Ken Fujiyama Phone: 969-3333
E-Mail Address: ken@hottours.us Fax: _____
Mailing Address: Same as location
City: Hilo State: HI Zip Code: 96720

INSPECTION

Inspection Type: C.O. Annual Re-inspection
Exits Egress and Signs Satisfactory Yes No Electrical Use Satisfactory Yes No N/A
Comments: See second page

Extinguishers Satisfactory Yes No Date Inspected: _____
Portable Fire Extinguishers Inspected by: Hilo Fire Extinguisher
Comments: Extinguishers shall be serviced annually.
Extinguishers shall be mounted 4" to 5' from finished floor in an accessible and visible location.

Fire Alarm Panel Satisfactory Yes No N/A Date Inspected: _____
Inspected by: _____ Inspection Report Maintained on Site Yes No N/A
Comments: _____

Automatic Sprinkler System Satisfactory Yes No N/A Date Inspected: _____
Inspected by: _____ System Tagged Yes No N/A
Comments: _____

Hood Suppression System Satisfactory Yes No N/A Date Inspected: _____
Inspected by: _____ System Tagged Yes No N/A
Kitchen Hood & Ducting Clean Yes No N/A Date Cleaned: _____
Cleaned by: _____ System Tagged Yes No N/A

All above-described deficiencies shall be corrected forthwith. Failure to comply may result in an order or notice of evacuation or stop-use to any premises, building or vehicle or portion thereof which has or is a fire hazard. Upon completion or if you have any questions, call the Fire prevention bureau as referenced above. Photos of minor corrections may be submitted for re-inspection by email at gandrade@co.hawaii.hi.us

INSPECTOR: Gantry Andrade BUSINESS REP: Ken Fujiyama

BUSINESS REP SIGNATURE: Not available DATE: 10/1/13

INSPECTOR SIGNATURE: Gantry Andrade DATE: 10/1/13

Revised 2/5/2013

EXHIBIT "A"



**HAWAII FIRE DEPARTMENT
FIRE PREVENTION BUREAU**

HILO: 25 Aupuni St. Suite 2501, Hilo, HI 96720 (808) 932-2913 or (808) 932-2914
KONA: 74-5044 Ane Keohokalole Hwy, Bldg E. Kailua-Kona, HI 96740 (808) 323-4760

Fire Inspection Record Addendum

GENERAL INFORMATION

Business Name: Naniloa Resort

Date of Inspection: 10/1/13

INSPECTION

GOLF CLUBHOUSE; Electrical discrepancies noted however, Public works electrical inspectors on site documenting those discrepancies.

OLD CJ's RESTAURANT; Un-occupied. Only used for storage. No current portable fire extinguisher noted. Inadequate exits due to patio enclosure.

BANYAN BROILER; Un-occupied. Only used for storage. Hood suppression remains but o/c and no tag.

GOLF COORSE MAINTENANCE; Extinguisher need to mounted and serviced annually, extinguisher last serviced on 1/11 by HFE. Establish a safe means of egress from the rear of the building to the exterior.

NOTE; Per Owner all building except golf clubhouse are proposed to be demolished. Clubhouse may be included not heard verbally by HFD.

PICTURES

Revised 2/5/2013

Statutory Appendix 1

Hawai'i County Code, Chapter 5 Building

Chapter 5

BUILDING

Article 1. General Provisions.

- Section 5-1. Title and purpose.
- Section 5-2. Scope.
- Section 5-3. International Building Code adopted.
- Section 5-4. Definitions.
- Section 5-5. Reference to the State of Hawai'i Building Code Title 3, Chapter 180 of the Hawai'i Administrative Rules, International Building Code; conflicting provisions.
- Section 5-6. Existing structures.
- Section 5-7. Reserved.
- Section 5-8. Reserved.
- Section 5-9. Reserved.

Article 2. Administration and Enforcement.

Division 1. Administration.

- Section 5-10. Department having jurisdiction.
- Section 5-11. Duties of the Administrative Authority.
- Section 5-12. Compliance with this code and other laws.
- Section 5-13. Adoption of rules.
- Section 5-14. Right of entry.
- Section 5-15. Deputies.
- Section 5-16. Limited liability of authorized personnel.
- Section 5-17. Reserved.
- Section 5-18. Reserved.

Division 2. Permits.

- Section 5-19. Permit required.
- Section 5-20. Application for permit.
- Section 5-21. Posting of building permit.
- Section 5-22. Expiration.
- Section 5-23. Reserved.
- Section 5-24. Reserved.

Division 3. Construction Documents.

- Section 5-25. Construction documents required.
- Section 5-26. Package homes.
- Section 5-27. Requirements for plans and specifications.
- Section 5-28. Issuance of permits.
- Section 5-29. Reserved.
- Section 5-30. Reserved.

Division 4. Fees.

Section 5-31.	Permit fees.
Section 5-32.	Refunds.
Section 5-33.	Compliance with Hawai'i Revised Statutes.
Section 5-34.	Exemption.
Section 5-35.	Table 1-A.
Section 5-36.	Fees for extra and courtesy inspections.
Section 5-37.	Reserved.
Section 5-38.	Reserved.
Section 5-39.	Reserved.

Division 5. Inspections.

Section 5-40.	Inspections.
Section 5-41.	Inspection requests.
Section 5-42.	Required inspections.
Section 5-43.	Final inspection.
Section 5-44.	Special inspections.
Section 5-45.	Certificate of occupancy.
Section 5-46.	Reserved.
Section 5-47.	Reserved.

Division 6. Substandard and Unsafe Buildings.

Section 5-48.	Substandard buildings.
Section 5-49.	Unsafe buildings.
Section 5-50.	Examination of buildings or structures reported dangerous or damaged.
Section 5-51.	Buildings found to be unsafe; Notice to owner.
Section 5-52.	Restricted use signs.
Section 5-53.	Action upon noncompliance.
Section 5-54.	Remedies cumulative.
Section 5-55.	Reserved.
Section 5-56.	Reserved.
Section 5-57.	Reserved.

Division 7. Violations, Enforcement, and Penalties.

Section 5-58.	General provisions.
Section 5-59.	Notice of violation.
Section 5-60.	Administrative enforcement.
Section 5-61.	Penal enforcement.
Section 5-62.	Injunctive action.
Section 5-63.	Reserved.
Section 5-64.	Reserved.

Division 8. Variances and Appeals.

- Section 5-65. Variances.
- Section 5-66. Appeals regarding alternative materials and methods of construction.
- Section 5-67. Other appeals.
- Section 5-68. Rules; Adoption by board of appeals.
- Section 5-69. Reserved.
- Section 5-70. Reserved.

Article 3. Installation Requirements.

- Section 5-71. Amendments to adopted International Building Code.
- Section 5-72. Reserved.
- Section 5-73. Reserved.

Article 4. Adoption, Amendment, and Addition of Appendices.

Division 1. Appendices of International Building Code Adopted.

- Section 5-74. Appendices not applicable.
- Section 5-75. Appendices adopted.
- Section 5-76. Amendments to Appendix C; Group U - Agricultural Buildings.
- Section 5-77. Reserved.

Division 2. Appendices Added to the International Building Code.

- Section 5-78. Appendices added to the International Building Code.
- Section 5-79. Appendix L; Factory-built Housing.
- Section 5-80. Appendix M; Thatch Material on Exterior of Buildings; Protection Against Exposure Fires.
- Section 5-81. Appendix U; Hawai'i Hurricane Sheltering Provisions for New Construction.
- Section 5-82. Appendix W; Hawai'i Wind Design Provisions for New Constructions.
- Section 5-83. Appendix X; Indigenous Hawaiian Architecture Structures.

Article 5. Adoption of the International Energy Conservation Code.

- Section 5-84. International Energy Conservation Code adopted.

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Chapter 5**BUILDING****Article 1. General Provisions.****Section 5-1. Title and purpose.**

- (a) This chapter shall be known as the “building code,” may be cited as such, and will be referred to herein as “this code.”
- (b) The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within this jurisdiction and certain equipment specifically regulated herein.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-2. Scope.

The provisions of this code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures within the County inland of the shoreline high-water line, except work located primarily in a public way, public utility towers, bridges, and poles, mechanical equipment not specifically regulated in this code, and hydraulic flood control structures.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-3. International Building Code adopted.

- (a) The “International Building Code, 2006 Edition” as copyrighted and published in 2006 by the International Code Council, Incorporated, as it is adopted and amended by Chapter 180 of Title 3, of the Hawai‘i Administrative Rules entitled “State Building Code” (the “HAR”), as such chapter may be amended or superseded from time to time, (the “IBC”) is hereby adopted by reference as set forth in this chapter, subject to the amendments set forth in article 3 and article 4 of this chapter. Copies of the “International Building Code, 2006 Edition” and amendments thereto shall be available for public inspection at the department of public works and the office of the county clerk.
- (b) Chapter 1 of the IBC, relating to Administration, is hereby excluded from adoption and shall be of no force or effect, with the exception of:
 - (1) Section 104.9 (Approved materials and equipment);
 - (2) Section 104.10 (Modifications); and
 - (3) Section 104.11 (Alternative materials, design and methods of construction and equipment).
- (c) The appendices to the IBC shall not apply unless specifically adopted by Chapter 180 of the Hawai‘i Administrative Rules or by this chapter, as provided in article 4 of this chapter:
 - (1) Appendices of the IBC adopted, as provided in article 4, division 1 of this chapter:
 - (A) Appendix C, Group U-Agricultural Buildings; and
 - (B) Appendix I, Patio Covers.
 - (2) Appendices added to the IBC, as provided in article 4, division 2 of this chapter:
 - (A) Appendix L, Factory-Built Housing;
 - (B) Appendix M, Thatch Material on Exterior of Buildings - Protection Against Exposure Fires;
 - (C) Appendix U, Hawai‘i Hurricane Sheltering Provisions for New Construction;
 - (D) Appendix W, Hawai‘i Wind Design Provisions for New Constructions; and
 - (E) Appendix X, Indigenous Hawaiian Architecture Structures.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-4. Definitions.

As used in this code, unless otherwise specified:

“Administrative Authority” means the director of the department of public works, or the director’s authorized representative(s).

“Assistant” means the authorized representative(s) of the administrative authority.

“Owner-builder” means owners or lessees of property who build or improve structures on their property for their own use, or for use by their immediate family. This definition shall not preempt owner-builder by exemption as defined by section 444-2.5, Hawai’i Revised Statutes.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-5. Reference to the State of Hawai’i Building Code Title 3, Chapter 180 of the Hawai’i Administrative Rules, International Building Code; conflicting provisions.

If any provisions of this code conflict with or contravene provisions of the State of Hawai’i Building Code that have been incorporated by reference, the provisions of this code shall prevail as to all matters and questions arising out of the subject matter of that provision.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-6. Existing structures.

- (a) Buildings in existence at the time of the adoption of this code may have their existing use or occupancy continued if such use or occupancy was legal at the time of the adoption of this code, provided such continued uses do not constitute a hazard to the general safety and welfare of the occupants and the public.
- (b) Additions, Alterations and Repairs. When additions, alterations or repairs within any twelve-month period exceeds fifty percent of the replacement value of an existing building or structure, such building or structure shall be made to conform to the requirements for new buildings or structures.
 - (1) Additions, alterations and repairs not exceeding fifty percent of the replacement value of an existing building or structure and complying with the requirements for new buildings or structures may be made to such building or structure within any twelve-month period without making the entire building or structure comply. The new construction shall conform to the requirements of this code for new building of like area, height and occupancy. Such building or structure, including new additions, shall not exceed the areas and heights specified in this code.
 - (2) Alterations or repairs, not exceeding twenty-five percent of the value of an existing building or structure, which are non structural and do not affect any member or part of the building or structure having required fire resistance, may be made with the same materials of which the building or structure is constructed.
 - (3) Exceptions:
 - (A) The installation or replacement of glass in hazardous locations, as specified in Section 2406, shall be as required for new installations.
 - (B) Without limitation to the prescribed percentages, the building official may require reengineering analysis, documentation or inspections to assure the structural integrity or safety of the existing structure.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-7. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-8. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-9. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Article 2. Administration and Enforcement.**Division 1. Administration.****Section 5-10. Department having jurisdiction.**

Unless otherwise provided for by law, the department of public works shall have jurisdiction over and administer all matters covered by this code.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-11. Duties of the Administrative Authority.

The administrative authority shall maintain public office hours necessary to efficiently administer the provisions of this code and amendments thereto and shall perform the following duties:

- (1) Shall enforce the provisions of this code and shall have authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code;
- (2) Require submission of, examine, and check plans and specifications, drawings, descriptions, and diagrams necessary to show clearly the character, kind, and extent of work covered by applications for a permit, and upon approval, shall issue the permit applied for;
- (3) Administer and enforce the provisions of this code in a manner consistent with the intent thereof and shall inspect all plumbing and drainage work authorized by any permit to assure compliance with provisions of this code or amendments thereto, approving or condemning said work in whole or in part as conditions require;
- (4) Issue upon request a certificate of approval for any work approved by the administrative authority;
- (5) Condemn and reject all work done or being done or materials used or being used which do not in all respects comply with the provisions of this code and amendments thereto;
- (6) Order changes in workmanship and materials essential to obtain compliance with all provisions of this code;
- (7) Investigate any construction or work regulated by this code and issue such notices and orders as provided in this code; and
- (8) Keep a complete record of all essential transactions.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-12. Compliance with this code and other laws.

Any approval or permit issued pursuant to the provisions of this code shall comply with all applicable requirements of this code. The granting of a permit or variance under this code does not dispense with the necessity to comply with any law, ordinance, regulation or any other provision of the Hawai'i County Code to which a permittee may also be subject.

- (1) "Wherever in this code reference is made to the ICC Electrical Code, means the Hawai'i County Code, Chapter 9, Electrical."
- (2) "Wherever in this Code reference is made to the International Fuel Gas Code, the provisions in the International Fuel Gas Code shall be deemed only guidelines and not mandatory."
- (3) "Wherever in this Code reference is made to the International Mechanical Code, the provisions in the International Mechanical Code shall be deemed only guidelines and not mandatory."
- (4) "Wherever in this code reference is made to the International Plumbing Code, means the Hawai'i County Code, Chapter 17, Plumbing."

- (5) "Wherever in this Code reference is made to the International Property Maintenance Code, the provisions in the International Property Maintenance Code shall be deemed only guidelines and not mandatory."
- (6) "Wherever in this code reference is made to the International Fire Code, means the Hawai'i County Code, Chapter 26, Fire Code."
- (7) "Wherever in this code reference is made to the International Energy Conservation Code, as adopted by the County of Hawai'i."
- (8) Other Laws. Any provisions of this code to the contrary notwithstanding, the following shall be at all times in full force and effect, and in situations of conflicting requirements, the stricter shall be complied with:
 - (A) Hawai'i Revised Statutes;
 - (B) Rules and regulations of the State Department of Land Utilization;
 - (C) Ordinance of the County of Hawai'i;
 - (D) Rules and regulations of the Planning Department;
 - (E) Subdivision rules and regulations adopted pursuant to the subdivision chapter of the County Code;
 - (F) Rules and regulations of the County Department of Water Supply;
 - (G) Public health regulations, State Department of Health;
 - (H) Rules and regulations of the State Department of Labor and Industrial Relations;
 - (I) Fire Chapter of the County Code;
 - (J) Airport zoning regulations of the State Director of Transportation;
 - (K) All materials specified in this code shall not contain asbestos.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-13. Adoption of rules.

The administrative authority may adopt rules pursuant to chapter 91, Hawai'i Revised Statutes, necessary for the purposes of this code.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-14. Right of entry.

Upon presentation of proper credentials, the administrative authority or such person's assistants may enter at reasonable times any building or premises in the County to perform any duty imposed by this code, provided that such entry shall be made in such a manner as to cause the least possible inconvenience to the persons in possession. An order of a court authorizing such entry shall be obtained in the event such entry is denied or resisted.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-15. Deputies.

- (a) In accordance with the prescribed procedures and with the approval of the administrative authority, the building official shall have the authority to appoint technical officers, inspectors, plan examiners and other personnel necessary to support this code enforcement agency. The building official may deputize such inspectors or employees as may be necessary to carry out the functions of this code enforcement agency. Such employees shall have powers as delegated by the building official.
- (b) The building official may deputize volunteers to temporarily carry out functions of the code enforcement agency in the event of a major natural disaster.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-16. Limited liability of authorized personnel.

The authorized personnel charged with the enforcement of this code, acting in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance shall not thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties. A suit brought against the authorized personnel because of such act or omission performed by the authorized personnel in the enforcement of any provision of this code or other pertinent laws or ordinances implemented through the enforcement of this code shall be defended by the County until final termination of such proceedings, and any judgment resulting there from shall be assumed by the County.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-17. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-18. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Division 2. Permits.**Section 5-19. Permit required.**

- (a) No person, firm, or corporation shall erect, construct, enlarge, alter, repair, move, convert, or demolish any building or structure in the County, or cause the same to be done, without first obtaining a separate building permit for each building or structure from the building official; provided that one permit may be obtained for a dwelling and its accessories, such as fence, retaining wall, pool, storage and garage structures.
- (b) Permits will be further required for, but not limited to, the following:
 - (1) All Television/Radio Communication Towers, etc., not regulated by the Public Utility Commission.
 - (2) Complete new installations of all solar water heating systems, or the complete replacement of existing system with all new components, or relocating of panels from roof to ground or vice versa, along with plumbing and electrical permits.
 - (3) Construction or renovation of Handicap Accessible routes from parking lot to building or from building to building on a lot.
 - (4) Water tanks or catchments intended for potable/household use, regardless of height or size. For additional requirements where water tank or catchment systems are used as means of fire protection, see Chapter 26 of the Hawai'i County Code.
 - (5) Retaining walls four feet and higher. Stepped or terraced retaining walls 8'-0" of each other are considered to be one wall when determining wall height.

EXCEPTIONS: A permit is not required for:

- (1) Work located primarily in a public way, public utility towers, bridges, and poles, mechanical equipment not specifically regulated in this code, and hydraulic flood control structures.
- (2) Temporary structures used during the construction of a permitted structure, temporary buildings, platforms, and fences used during construction or for props for films, television or live plays and performances.
- (3) Re-roofing work with like material and installation of siding to existing exterior walls which will not affect the structural components of the walls for Groups R-3 and U Occupancies.
- (4) Temporary tents or other coverings used for private family parties or for camping on approved campgrounds.
- (5) Television and radio equipment (i.e. antennas, dishes) accessory to R-1 and R-3 Occupancies. Supports or towers for television and radio equipment 6'-0" or less in height.

- (6) Awnings projecting up to 4 feet and attached to the exterior walls of buildings of Group R-3 or U Occupancy; provided that the awnings do not violate the provisions for "yards" in Chapter 25 (Zoning) of the Hawai'i County Code.
 - (7) Standard electroliers not over 35 feet in height above finish grade.
 - (8) Installation of wallpaper or wall covering which are exempted under the provisions of Section 801.1, Interior Finishes, Chapter 8, IBC.
 - (9) Repairs which involve only the replacement of component parts of existing work with similar materials for the purpose of maintenance, and which do not aggregate over \$4,000 in valuation in any twelve-month period, and do not affect any electrical or mechanical installations.
 - (10) Painting and decorating.
 - (11) Installation of floor covering.
 - (12) Cabinet work for R-3 Occupancy and individual units of R-1 and U Occupancies which are not regulated (under Section 310.3.12 Cooking Unit Clearances of this code). Wall mounted shelving not affecting fire resistance or structural members of wall. This is dealing with clearances to cabinets and range clearance to combustible.
 - (13) Work performed under the jurisdiction of Federal Government and/or located in Federal property.
 - (14) Swimming pools for one and two-family dwelling units less than 24" in depth
 - (15) Department of Transportation, Harbors, - section 266-2, Hawai'i Revised Statutes.
 - (16) Fences 6'-0" or less in height.
 - (17) Detached structures for animal shelters, storage sheds, towers, and similar uses not more than 6'-0" in height.
 - (18) One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed a) 120 square feet (11 m²); b) does not exceed 600 square feet for agricultural zoned lands. (Building cannot be located within building setback as required by the Zoning, Chapter 25 of Hawai'i County Code. Verify setback requirements with the Planning Department).
 - (19) Detached decks or platforms less than 30" in height above grade. (Building cannot be located within building setback as required by the Zoning, Chapter 25 of Hawai'i County Code. Verify setback requirements with the Planning Department).
 - (20) Playground equipment, excluding assembly or similar waiting areas.
 - (21) Replacement of solar water heating components (i.e. panels, tanks) in the same location and of the same type, however; plumbing and/or electrical permits required.
 - (22) Wells and Reservoirs – Hawai'i Revised Statutes, chapter 178. Check requirements of other governmental agencies.
 - (23) Work performed under the jurisdiction or control of the State Department of Accounting and General Services (DAGS).
 - (24) Water tanks or catchment systems 5,000 gallons or less in size with a height to width ratio of not more than 2:1, to be used strictly for non-potable/household purposes such as agriculture, irrigation or stock, and that are independent of the potable/household system.
- (2012, Ord. No. 12-27, sec. 2.)

Section 5-20. Application for permit.

To obtain a permit, the applicant shall first file an application therefore in writing on a form furnished by the building division for that purpose. Such application shall:

- (1) Identify and describe the work to be covered by the permit for which application is made.
- (2) Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
- (3) Indicate the use and occupancy for which the proposed work is intended.
- (4) Be accompanied by construction documents and other information as required by section 5-25.

- (5) State the valuation of the proposed work.
- (6) Be signed by the applicant/owner, or the applicant's/owner's authorized agent to be consent to the permit application.
- (7) Give such other data such as but not limited to the following: Occupancy Group; Types of Construction; Major floor area; Accessible floor area; Setbacks; Distance to nearest building, etc.; other information as may be required by the building official.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-21. Posting of building permit.

Work requiring a permit shall not be commenced until the permit holder or an agent of the permit holder shall have posted, in a conspicuous place on the site, the building permit. The building permit shall be readily visible for the building official to identify and make all required inspections. Failure to comply with this provision shall subject the violator to a \$25 fine.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-22. Expiration.

- (a) Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void (i) three years after the date of issuance, or (ii) one hundred eighty days from the date of issuance if the building or work authorized by the permit is not commenced by such date. A permit shall expire if the building or work authorized by the permit is suspended or abandoned for a period of one hundred eighty days or more at any time after the work has commenced. In the event of strikes or other causes beyond the control of the builder, the building official may extend the aforementioned three year or one hundred eighty day periods. The extension of time granted shall be a reasonable length of time but in no case exceed six months. Requests for an extension must be made in writing to the building official. No exceptions will be allowed for building permits issued prior to the adoption of this code.
- (b) Upon expiration of a permit, all work shall cease and shall not be recommenced until a new permit is obtained. The building official may waive the requirements for submittal of plans and specifications in connection with a permit renewal if the work previously permitted remains the same, no amendments have been made to the building code affecting the work, and previously approved plans are still on file. When the building official determines that plans need not be submitted, the original plans, stamped and approved by the building official, shall be the renewed permit plans.
- (c) An owner-builder permit shall expire by limitation and become null and void five years after the date of issuance. If the building or work authorized by the permit is suspended or abandoned any time after the work has commenced, the building official, upon request, may suspend the permit expiration until such a time that the owner-builder is ready to re-commence building or work authorized by approved permit.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-23. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-24. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Division 3. Construction Documents.

Section 5-25. Construction documents required.

- (a) Two sets of plans and specifications shall be submitted for dwelling (R-3 Occupancy) and accessory structures for dwellings. Three sets of plans and specifications shall be submitted for all other occupancies.

- (b) Plans, specifications, engineering calculations, diagrams, soil investigation reports, code search, special inspection and structural observation programs and other data shall constitute the submittal documents and shall be submitted in one or more sets with each application for permit.
 - (c) All plans and specifications relating to work which affects the public safety or health and for which a building permit is required shall be prepared, designed and stamped by a duly registered professional engineer or architect in accordance with chapter 464, Hawai'i Revised Statutes. For residential (R-3 Occupancies) and accessory (U Occupancies) only, plans and specifications shall be designed and stamped by a professional architect or structural engineer when any of the following applies:
 - (1) Single story structure and more than 600 square feet of floor area for R-3 Occupancy.
 - (2) Single story or two-story structure of mixed occupancies (R-3 and U Occupancies) with more than 1,200 square feet of total floor area. Item #1 criteria applies.
 - (3) Structures of R-3 or U Occupancies that are three or more stories in height.
 - (4) Flood Zone.
 - (5) Structural members are concrete, masonry or steel.
 - (d) All plans for retaining walls over 4 feet in height shall be designed and stamped by a professional architect or engineer in the structural or civil branches, pursuant to chapter 464, Hawai'i Revised Statutes.
 - (e) All plans for post and pier type construction with/without perimeter foundation walls of R-3 Occupancies shall be designed and stamped by a professional architect or structural engineer.
 - (f) All U Occupancies greater than 600 square feet shall be designed and stamped by a professional architect or structural engineer.
 - (g) All wood trusses of more than 24'-0" spans shall be designed and stamped by a professional architect or structural engineer. All pre-engineered trusses and metal trusses shall be designed and stamped by a professional architect or structural engineer.
 - (h) The building official may require plans, computations, and specifications to be prepared and designed by an engineer or architect licensed by the State of Hawai'i to practice as such. This requirement may be imposed when prescriptive requirements of the building code are not being adhered to.
- (2012, Ord. No. 12-27, sec. 2.)

Section 5-26. Package homes.

In lieu of compliance with those provisions of section 5-25 pertaining to dwellings, model package homes (homes manufactured in a factory and ready to be assembled on the job site) may be pre-approved as follows by the Hawai'i County Department of Public Works-Building Division (DPW-Building Division).

- (1) Pre-approval shall be limited to three typical model home designs per manufacturer per year, with no revisions. Any revisions to the pre-approved plans will require submittal of the entire particular revised plans and documents for approval. Minimum square footage shall be 900 square feet and maximum square footage shall be 1,400 square feet living area (not including carport/garage). Maximum 2-car carport/garage may be included.
- (2) Pre-approval is good for one calendar year (January to December) for the calendar year in which approval is requested. All model pre-approved shall expire by December 31 of each calendar year.
- (3) When submitting for pre-approval, applicant shall submit six sets of complete working drawings and specifications along with package home seal and authorizing signature.
- (4) There shall be a one time plan review fee based on the actual valuation of the dwelling to be paid by the package model home manufacturer who is submitting the plans for pre-approval. Fees will be charged per model submitted, per section 5-35, table 1-A, item E. All other occupancies shall be based on valuation and the schedule below.
- (5) When submitting for building permit under pre-approved plans, the owner/contractor shall:
 - (A) Submit two sets of complete working drawings showing the pre-approved model number along with the manufacturer's wet seal and authorizing signature. DPW-Building Division will verify seal and signature.

- (B) Obtain approvals from other approving department/agencies.
- (6) Approval from DPW-Building Division will be given within forty-eight hours.
- (7) Pre-approved construction drawings will not be required to be individually stamped by a duly registered engineer or architect in accordance with chapter 464, Hawai'i Revised Statutes.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-27. Requirements for plans and specifications.

- (a) Plans and specifications shall be drawn to scale upon substantial paper and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and all relevant laws, ordinances, rules and regulations. The first sheet of each set of plans shall give the tax map key number of the work site and the name and address of the owner and person who prepared the plans, along with occupancy and type of construction, and floor area computations. Plans shall include a plot plan showing the location of the proposed building and every existing building on the property. The following information shall be included in the code search information which will be part of the plans submitted, that is the basis of the building design which includes but is not limited to the following: Type of Construction; Occupancy; Basic Allowable Floor Areas; Separation for Mixed Occupancy; etc. In lieu of detailed specifications, the building official may approve references on the plans to a specific section or part of this code or other ordinances or laws.
- (b) Computations, stress diagrams, and other data sufficient to show the correctness of the plans, shall be submitted when required by the building official.
- (c) All plans other than R-3 and U occupancies shall have on the plans information of occupancy, type of construction, floor area computations, allowable area increases, separation wall if used, fire resistive substitution, fire sprinkler, exits, etc. Information shall show code search information for building design.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-28. Issuance of permits.

- (a) The application, plans and specifications filed by an applicant for a permit shall be reviewed by the building official. Plans shall be reviewed by any other appropriate department of the County and the State to verify compliance with laws and ordinances under their jurisdiction. If the building official finds that the work described in an application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this code and other pertinent laws and ordinances, and the fees have been paid, the building official shall issue a permit therefore to the applicant; provided that no permit shall be issued for the moving of any building or structure or portion thereof which has deteriorated or has been damaged to an extent greater than fifty percent of the cost of replacement (new) of such building or structure.

Exception. The Building Division will waive the requirements of plan and specification review by the building official of pre-approved R-3 Occupancy package model homes previously approved by the department of public works.

- (b) When the building official issues the permit, the building official shall endorse in writing or stamp on all sets of plans and specifications "REVIEWED." Such reviewed plans and specifications shall not be changed, modified, or altered without authorization from the building official, and all work shall be done in accordance with the approved plans.
- (c) The building official may issue a permit for the construction of part of the building or structure before the entire plans and specifications for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this code. The holder of such permit shall proceed at the holder's own risk without assurance that the permit for the entire building or structure will be granted.

- (d) The building permit shall be posted in a conspicuous place on the site during the progress of work.
 - (e) No permit issued shall authorize any person or contractor to do work upon any phase of the building, structure or project unless specifically identified in the permit application, including any attachment or amendments thereto, as the contractor or subcontractor designated to do that particular phase of work.
 - (f) If there is a change in the designation of any contractor for any phase of work subsequent to the issuance of a permit, the permittee shall submit the change in writing to the building official requesting approval of the change, and include a non-refundable payment of \$25 for the transferring of the building permit.
- (2012, Ord. No. 12-27, sec. 2.)

Section 5-29. Reserved.
(2012, Ord. No. 12-27, sec. 2.)

Section 5-30. Reserved.
(2012, Ord. No. 12-27, sec. 2.)

Division 4. Fees.

Section 5-31. Permit fees.

A permit shall not be valid until the fees prescribed by law have been paid, nor shall an amendment to a permit be released until the addition fee, if any, has been paid.

- (1) The fee for each permit shall be as set forth in section 5-35, Table 1A – BUILDING PERMIT FEES.
- (2) The determination of value or valuation under any of the provisions of this code shall be made by the building official. The valuation to be used in computing the permit fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent work or permanent equipment.
- (3) When work for which a permit is required by this code has commenced without obtaining said building permit, the fees specified shall be doubled, but the payment of such double fee shall not relieve any person from fully complying with the requirements of this code in the execution of the work nor from any other penalties prescribed in this code.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-32. Refunds.

Refunds for permits shall be made in accordance with section 2-12 of the Hawai'i County Code.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-33. Compliance with Hawai'i Revised Statutes.

Identity of Licenses. It shall be unlawful for any permittee to perform or allow to be performed, any work covered by the permit issued in violation of chapter 444, Hawai'i Revised Statutes, relating to the licensing of contractors.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-34. Exemption.

- (a) The County, all agencies of the County, and contractors with the County, shall be exempted from the requirement of paying any permit fees.
- (b) Habitat for Humanity Hilo and Habitat for Humanity Kona shall be exempt from the requirement of paying any permit fee. This exemption shall not apply to penalty fees when required under this chapter.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-35. Table 1-A.

TABLE 1-A – BUILDING PERMIT FEES	
Fees shall be as follows:	
A. County of Hawai'i, Department of Public Works, Building Division pre-approved single-family dwelling package model homes or single family dwelling with architect or structural engineer stamp 900 s.f. - 1,100 s.f. (living area only with one car or two car carport).	\$150.00
B. County of Hawai'i, Department of Public Works, Building Division pre-approved single-family dwelling package model homes or single-family dwelling with architect or structural engineer stamp 1,101 s.f. - 1,400 s.f. (living area only with one car or two car carport).	\$200.00
C. Dwellings over 1,401 s.f. including all single-family model homes with no minimum s.f. requirement which is part of a development. (To include all enclosed areas under roof except for areas listed under "D").	\$20.00 per 100 sq. ft. or fraction thereof
D. Carport, garages, porches, patios or lanais and detached U structures.	\$10.00 per 100 sq. ft. or fraction thereof
E. All other occupancies shall be based on valuation and the schedule below:	
\$0 to \$500	\$10.00
\$501 to \$2,000	\$10.00 for the first \$500 plus \$1.50 for each additional \$100 or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	\$32.50 for the first \$2,000 plus \$7.50 for each additional \$1,000 or fraction thereof, to and including \$25,000.
\$25,001 to \$50,000	\$205.00 for the first \$25,000 plus \$6.00 for each additional \$1,000 or fraction thereof, to and including \$50,000.
\$50,001 and up	\$355.00 for the first \$50,000 plus \$3.00 for each additional \$1,000 or fraction thereof.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-36. Fees for extra and courtesy inspections.

- (a) A fee of \$50 shall be assessed upon the permittee or requestor for each extra inspection made. "Extra inspection" means a requested or scheduled inspection wherein the work to be inspected is not complete or ready for inspection.
- (b) A fee of \$50 shall be assessed upon the requestor or property owner for each courtesy inspection made. "Courtesy inspection" means a requested inspection wherein no permit has been issued or for general requirements regarding the health, safety, or welfare of people.
- (c) The administrative authority has the authority to waive inspection fees.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-37. Reserved.
(2012, Ord. No. 12-27, sec. 2.)

Section 5-38. Reserved.
(2012, Ord. No. 12-27, sec. 2.)

Section 5-39. Reserved.
(2012, Ord. No. 12-27, sec. 2.)

Division 5. Inspections.

Section 5-40. Inspections.

- (a) All construction or work for which a permit is required shall be subject to inspection by the building official. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of any other ordinance. Inspections presuming to give authority to violate or cancel the provisions of this code or of any other ordinances shall not be valid.
 - (b) It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the building official nor the County shall be liable for any expense entailed in the removal or replacement of any material required to allow inspection.
 - (c) A survey of the lot may be required by the building official to verify that the structure is located in accordance with the approved plans.
- (2012, Ord. No. 12-27, sec. 2.)

Section 5-41. Inspection requests.

- (a) Whenever any work regulated by this chapter, or any portion thereof, is ready for inspection, the building official shall be notified by the permit holder that same is ready for inspection. The notice shall be in writing on forms furnished by the authority having jurisdiction, by e-mail to the area inspectors or may be faxed or by telephone at the option of the building official. The notice shall be filed with the department not less than forty-eight hours and not more than seventy-two hours before any such inspection is desired.
- (b) The building official shall proceed to inspect the same or to make inspection arrangements or notify the contractor of a reschedule within forty-eight hours, not including weekends or holidays, after receipt of such notice. When work conforms in all respects with the provisions of this chapter, a notice granting authority to proceed with installations shall be given.
- (c) No permitted work shall be covered or concealed until forty-eight hours have expired after a scheduled inspection or until the building official has approved the installation and given permission to cover or conceal the same. If the permitted work is covered or concealed without an inspection, the licensed contractor will provide verification that the concealed work complies with all the provisions of this chapter in a letter stamped and signed by an architect or structural engineer licensed in the State of Hawaii. Should the building official condemn any of said work or equipment as not being in accordance with the provisions of this chapter, notice in writing to that effect shall be given to the permit holder engaged in the work or posted at the jobsite.

- (d) Within a reasonable time thereafter, the work or equipment shall be altered or removed as required, and necessary changes shall be made so that all such work and equipment may fully comply with the provisions of this chapter before further work is connected on or with the condemned work or equipment. In default, the general contractor or owner builder shall be liable to the penalties provided in this chapter, and any and every owner, contractor or other person engaged in construction of the building or structure, or otherwise, covering or allowing to be covered such portion of work or equipment, or removing any notice not to cover same placed thereon by the building official shall likewise be liable to the penalties provided for in this chapter.
 - (e) Owner builders will be required to have inspections, unless done by a licensed contractor or certified by licensed architects/engineers.
- (2012, Ord. No. 12-27, sec. 2.)

Section 5-42. Required inspections.

The building official, upon notification from the permit holder or the permit holder's agent, shall make the following inspection and shall either approve that portion of the construction as completed or shall notify the permit holder or the permit holder's agent if the same fails to comply with this code:

- (1) Footing and foundation inspections shall be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. Materials for the foundation shall be on the job, except where concrete is ready mixed in accordance with ASTM C 94, the concrete need not be on the job.
- (2) Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel and building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.
- (3) Framing inspections shall be made after the roof deck or sheathing, all framing, fireblocking and bracing are in place and pipes, chimneys and vents to be concealed are complete and the rough electrical, plumbing, heating wires, pipes and ducts are approved.
- (4) Lathing inspections, to be made after all lathing and gypsum board, interior and exterior, in construction required to be fire-resistive is in place but before any plastering is applied or before gypsum board joints and fasteners are taped and finished.

Exception: Lath and gypsum board installed in Group R, Division 3 and Group U Occupancies.
(2012, Ord. No. 12-27, sec. 2.)

Section 5-43. Final inspection.

The final inspection shall be made after all work required by the building permit is completed.
(2012, Ord. No. 12-27, sec. 2.)

Section 5-44. Special inspections.

For special inspections, see Section 1704 and 1707.
(2012, Ord. No. 12-27, sec. 2.)

Section 5-45. Certificate of occupancy.

- (a) Certificate Requirement. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

Exception: Group R, Division 3 and Group U occupancies will not be issued a certificate of occupancy.

- (b) **Certificate Issuance.** After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the department of public works, the building official shall issue a certificate of occupancy that contains the following:
- (1) The building permit number.
 - (2) The address of the structure.
 - (3) The name and address of the owner.
 - (4) A description of that portion of the structure for which the certificate is issued.
 - (5) A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
 - (6) The name of the building official.
 - (7) The edition of the code under which the permit was issued.
 - (8) The use and occupancy, in accordance with the provisions of chapter 3.
 - (9) The type of construction as defined in chapter 6.
 - (10) The design occupant load.
 - (11) If an automatic sprinkler system is provided, whether the sprinkler system is required.
 - (12) Any special stipulations and conditions of the building permit.
- (c) **Temporary Certificate.** The building official is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The building official shall set a time period during which the temporary certificate of occupancy is valid.
- (d) **Revocation.** The building official is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-46. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-47. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Division 6. Substandard and Unsafe Buildings.

Section 5-48. Substandard buildings.

Any building or portion thereof in which there exists any of the following listed conditions to an extent that it endangers the life, limb, health, property, safety or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a "substandard building:"

- (1) Inadequate sanitation shall include but not limited to the following:
 - (A) Lack of, or improper water closet, lavatory, bathtub or shower in a dwelling unit.
 - (B) Lack of, or improper water closets, lavatories, and bathtubs or showers in a hotel.
 - (C) Lack of, or improper kitchen sink in a habitable building.
 - (D) Lack of hot and cold water to basins, sinks, tubs and showers in R-1 Occupancies.
 - (E) Lack of hot and cold water to basins, sinks, tubs and showers in a dwelling unit or efficiency living unit.
 - (F) Lack of, or improper operation of required ventilating equipment.

- (G) Lack of minimum amounts of natural light and ventilation required by this code.
 - (H) Room area or space dimensions less than the minimum required by this code.
 - (I) Lack of required lighting.
 - (J) Dampness of habitable rooms as determined by the Health Department.
 - (K) Infestations of insects, vermin or rodents as determined by the health officer.
 - (L) General dilapidation or improper maintenance.
 - (M) Lack of connection to required sewage disposal system.
 - (N) Lack of adequate garbage and rubbish storage and removal facilities as determined by the health officer.
- (2) Structural hazards shall include but not be limited to the following:
- (A) Deteriorated or inadequate foundations.
 - (B) Defective or deteriorating flooring or floor supports.
 - (C) Flooring or floor supports of insufficient size to carry imposed loads with safety.
 - (D) Members of walls, partitions or other vertical supports that split, lean, or buckle due to defective material or deterioration.
 - (E) Members of walls, partitions or other vertical supports that are of insufficient size to carry imposed loads with safety.
 - (F) Members of ceiling, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration.
 - (G) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads safely.
 - (H) Fireplaces or chimneys that separate, bulge or settle due to defective material or deterioration.
 - (I) Fire places or chimneys which are of insufficient size or strength to carry imposed loads with safety.
- (3) Presence of a nuisance including:
- (A) Any public nuisance known at common law or in equity jurisprudence.
 - (B) Any attractive nuisance which may prove detrimental to children whether in a building or on the premises of a building. This includes any unfenced man-made swimming pools, abandoned wells, shafts, or basements; any structurally unsound fences; and any debris or vegetation affecting the structural stability of structures.
 - (C) Whatever is dangerous to human life or is detrimental to health, as determined by the health officer.
 - (D) Overcrowding a room with occupants.
 - (E) Insufficient ventilation or illumination.
 - (F) Inadequate or unsanitary sewage or plumbing facilities.
 - (G) Uncleanliness, as determined by the health officer.
 - (H) Whatever renders air, food or drink unwholesome or detrimental to the health of human beings, as determined by the health officer.
- (4) Faulty weather protection, which shall include but not be limited to, the following:
- (A) Deteriorating, crumbling or loose plaster.
 - (B) Deteriorating or ineffective waterproofing of exterior walls, roof, foundations, or floors, including broken windows or doors.
 - (C) Defective or lack of weather protection for exterior wall covering, including lack of paint, weathering due to lack of paint or other approved protective covering.
 - (D) Broken, rotted, split or buckled exterior wall covering or roof coverings.
- (5) Inadequate Maintenance. Any building or portion thereof which is determined to be an unsafe building in accordance with this code.

(6) Inadequate Exits. All buildings or portions thereof not provided with adequate exit facilities as required by this code except those buildings or portions thereof whose exit facilities conformed with all applicable laws at the time of its construction and which have been adequately maintained. When an unsafe condition exists through lack of, or improper location of exits, additional exits may be required to be installed.

(7) Any building or portion thereof that is not being occupied or used as intended or permitted.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-49. Unsafe buildings.

All substandard buildings which are structurally unsafe or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard or abandonment, as specified in this code or any other effective ordinance are, for the purpose of this chapter, "unsafe buildings."

(2012, Ord. No. 12-27, sec. 2.)

Section 5-50. Examination of buildings or structures reported dangerous or damaged.

The building official shall examine or cause to be examined every building or portion thereof appearing to the building official to be or having been reported as dangerous or damaged.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-51. Buildings found to be unsafe; Notice to owner.

(a) Whenever the building official has examined or caused to be examined any building and has determined that such building is an unsafe building:

- (1) The building official shall commence proceedings to cause the repair, rehabilitation, vacating, removal and/or demolition of the building;
- (2) Such building shall automatically be deemed and are hereby declared to be a public nuisance;
- (3) The building official shall give to the owner of such building written notice of violation in accordance with section 5-59 and as further described below; and
- (4) The building official shall cause to be posted at each entrance to the buildings ordered vacated a notice to read: "DO NOT ENTER. UNSAFE TO OCCUPY. DEPARTMENT OF PUBLIC WORKS. COUNTY OF HAWAII."

(b) The notice required by subsection (a)(3) above shall require the owner or person in charge of the building or premises, to commence the required repairs or improvements or demolition and removal of the building or structure or portions thereof within forty-eight hours, and to complete all such work within ninety days from date of notice, provided that the building official may provide for more time for completion if deemed reasonably necessary. The notice shall also require the building or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the building official.

(c) The notice required by subsection (a)(4) above shall remain posted until the required repairs, demolition or removal are completed. Such notice shall not be removed without written permission of the building official, and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-52. Restricted use signs.

In the event of a major natural disaster, the building official may post "Restricted Use" placards at each entrance to a building or portion of a building if an inspection warrants such posting. Entry or occupancy in a building or portion of a building posted with a "Restricted Use" placard shall be limited to the restrictions stated on the placard. Placards shall not be removed or altered unless authorized by the building official.
(2012, Ord. No. 12-27, sec. 2.)

Section 5-53. Action upon noncompliance.

In case the owner shall fail, neglect, or refuse to comply with the notice to repair, rehabilitate, or demolish and remove a building or portion thereof, the building official may order the owner of the building prosecuted as a violator of the provisions of this code.
(2012, Ord. No. 12-27, sec. 2.)

Section 5-54. Remedies cumulative.

Nothing contained herein shall be construed to limit or restrict the building official from instituting, on behalf of the County, any other legal or equitable proceedings, in addition to those specified herein, to obtain compliance with the notice to repair, rehabilitate, or to demolish and remove said building or structure or portion thereof, and to recover the cost of such work from owner to attach a lien to the property. The remedies provided in this code shall be cumulative and not exclusive.
(2012, Ord. No. 12-27, sec. 2.)

Section 5-55. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-56. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-57. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Division 7. Violations, Enforcement, and Penalties.**Section 5-58. General provisions.**

- (a) It shall be unlawful for any person, firm, corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or structure or cause or permit the same to be done in violation of this code.
 - (b) Failure to comply with any provision of this code, any rule adopted pursuant to this code, or with conditions imposed as part of any permit or variance from the provisions of this code, shall constitute a violation of this code.
- (2012, Ord. No. 12-27, sec. 2.)

Section 5-59. Notice of violation.

- (a) Whenever the administrative authority determines that there exists a violation of any provision of this code, the administrative authority shall serve a notice of violation upon the parties responsible for the violation, which may include, but shall not be limited to the owner and any lessee of the property where the violation is located, to make the building or portion thereof comply with the requirements of this code. Such notice of violation shall include:

- (1) The date of the notice;
 - (2) The name and address of the person noticed, and the location of the violation;
 - (3) The section number of the ordinance, code or rule which has been violated;
 - (4) The nature of the violation; and
 - (5) The deadline for compliance with the notice.
- (b) Proper service of such notice shall be by personal service, registered mail, or certified mail upon the owner of record, provided, that if such notice is by registered mail or certified mail, the designated period within which the owner or person in charge is required to comply with the order of the building official shall begin as of the date the owner or person in charge receives such notice.
- (2012, Ord. No. 12-27, sec. 2.)

Section 5-60. Administrative enforcement.

- (a) If the administrative authority determines that any person, firm or corporation is not complying with a notice of violation, the administrative authority may have the party responsible for the violation served, by mail or delivery, with an order pursuant to this division.
 - (b) Contents of the Order.
 - (1) The order may require the parties responsible for the violation, including but not limited to the owner/lessee of the property where the violation is located, to do any or all of the following:
 - (A) Correct the violation within the time specified in the order;
 - (B) Pay a civil fine not to exceed \$1,000 in the manner, at the place and before the date specified in the order;
 - (C) Pay a civil fine not to exceed \$1,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.
 - (2) The order shall advise the party responsible for the violation that the order shall become final thirty calendar days after the date of its delivery. The order shall also advise that the administrative authority's action may be appealed to the board of appeals.
 - (c) Effect of Order; Right to Appeal. The provisions of the order issued by the administrative authority under this section shall become final thirty calendar days after the date of the delivery of the order. The party responsible for the violation may appeal the order to the board of appeals as provided by section 5-67 below. The appeal must be received in writing on or before the date the order becomes final. However, an appeal to the board of appeals shall not stay any provision of the order.
 - (d) Judicial Enforcement of Order. The administrative authority may institute a civil action in any court of competent jurisdiction for the enforcement of any final order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by such final order, the administrative authority need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been paid.
- (2012, Ord. No. 12-27, sec. 2.)

Section 5-61. Penal enforcement.

- (a) General Provisions. The provisions of this section are in addition to any other applicable remedy or penalty provided by law.
- (b) In case the parties responsible for violating any provisions of this code fail, neglect, or refuse to comply or correct a violation, the administrative authority may submit the matter to the proper authority for penal enforcement.
- (c) Any person, firm or corporation violating any provisions of this code shall, upon conviction, be deemed guilty of a petty misdemeanor and each person so convicted shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provision of this code is committed, continued or permitted; and upon conviction of any such violation, such person shall be punishable by a fine of not more than \$1,000, or by imprisonment for not more than thirty days, or by both fine and imprisonment.

- (d) Any officer or inspector designated by the administrative authority, who has been deputized by the chief of police as a special officer for the purpose of enforcing the provisions of the building, plumbing, electrical or housing codes (hereinafter referred to as “authorized personnel”), pursuant to section 803-6, Hawai‘i Revised Statutes, may arrest without warrant alleged violators by issuing a summons or citation in accordance with the procedure specified in this section. Nothing in this section shall be construed as barring such authorized personnel from initiating prosecution by warrant or such other judicial process as is permitted by statute or rule of court.
 - (e) Any authorized personnel designated by the administrative authority, upon making an arrest for a violation of the building, plumbing, electrical or housing codes, may take the name and address of the alleged violator and shall issue to the violator in writing a summons or citation hereinafter described, notifying the violator to answer the complaint to be entered against the violator at a place and at a time provided in the summons or citation.
 - (f) There shall be provided for use by authorized personnel a form of summons or citation for use in citing violators of the building, plumbing, electrical or housing codes which does not mandate the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed to include all necessary information to make the same valid within the laws and regulations of the State of Hawai‘i and County of Hawai‘i.
 - (g) In every case when a citation is issued, the original of the same shall be given to the violator; provided, that the administrative judge of the district court may prescribe by giving to the violator a copy of the citation and provide for the disposition of the original and any other copies.
 - (h) Every citation shall be consecutively numbered and each copy shall bear the number of its respective original.
- (2012, Ord. No. 12-27, sec. 2.)

Section 5-62. Injunctive action.

The County may maintain an action for an injunction to restrain or remedy any violation of the provisions of this code and may take any other lawful action to prevent or remedy any violation.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-63. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-64. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Division 8. Variances and Appeals.

Section 5-65. Variances.

Whenever strict application of any provision of this code, except for the provisions relating to materials, methods of construction, equipment, fixtures, devices, or appliances, would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, the owner may petition the board of appeals for a variance from the provision. In granting a variance, the board of appeals shall prescribe any conditions that it deems to be necessary or desirable. No variance from the strict application of this code shall be granted by the board of appeals unless it finds that all of the following are present:

- (1) That there are special circumstances or conditions applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or building and do not apply generally to lands or buildings in the neighborhood or surrounding property, and that the circumstances or conditions are such that the strict application of the provisions of this code would deprive the applicant of the reasonable use of the land or building;
- (2) That the granting of the variance is necessary for the reasonable use of the land or building and that the variance granted is the minimum variance that will accomplish this purpose; and
- (3) That the granting of the variance will be consistent with the intent and purpose of this code, and will not be injurious to persons or property, will not create additional fire hazards, and otherwise will not be detrimental to the public welfare. In making its determination, the board of appeals shall take into account the character, use and type of occupancy and construction of adjoining buildings, buildings on adjoining lots, and the building or land involved.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-66. Appeals regarding alternative materials and methods of construction.

Any person denied the use of new or alternate materials, methods of construction, equipment, fixtures, devices, or appliances by the administrative authority, may, within thirty days after the administrative authority's decision, appeal the decision to the board of appeals. In considering an appeal, the board may require any reasonable test of the proposed material, method of construction, equipment, fixture, device, or appliance, and the appellant shall pay all expenses necessary for the test. The board of appeals may affirm the decision of the administrative authority or it may reverse the decision if it finds:

- (1) That the new or alternate materials, methods of construction, equipment, fixtures, devices, or appliances meet standards established by this code;
- (2) That permitting the requested use will not jeopardize the safety of persons or property; and
- (3) That the requested use will not be contrary to the intent and purpose of this code.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-67. Other appeals.

Any person aggrieved by the decision of the administrative authority in the administration or application of this code, other than that prescribed in sections 5-65 and 5-66, may, within thirty days after the date of the administrative authority's decision, appeal the decision to the board of appeals. The board of appeals may affirm the decision of the administrative authority, or it may reverse or modify the decision if the decision is:

- (1) In violation of this code or other applicable law;
- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-68. Rules; Adoption by board of appeals.

The board of appeals shall adopt rules pursuant to chapter 91, Hawai'i Revised Statutes, necessary for the purposes of this article.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-69. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-70. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Article 3. Installation Requirements.**Section 5-71. Amendments to adopted International Building Code.**

The International Building Code, 2006 Edition, adopted and incorporated by reference into this code as provided in section 5-3 of this chapter, shall be subject to the amendments hereinafter set forth.

- (1) Amending Section 202. Section 202 is amended by adding the following definitions:

“BUILDING. A building is any structure used or intended for supporting any use or occupancy. The term shall include but not be limited to any structure mounted on wheels such as a trailer, wagon or vehicle which is parked and stationary for any 24-hour period, and is used for business or living purposes; provided, however, that the term shall not include a push cart or push wagon which is readily movable and which does not exceed 25 square feet in area, nor shall the term include a trailer or vehicle, used exclusively for the purpose of selling any commercial product therefrom, which hold a vehicle license and actually travels on public or private streets.

BUILDING OFFICIAL is the director of the County department of public works or the director’s authorized deputy.

CARPORT is a private garage which is at least 100 percent open on one side and with 50 percent net openings on another side or which is provided with an equivalent of such openings on two or more sides.

A private garage which is 100 percent open on one side and 25 percent open on another side with the latter opening so located to provide adequate cross ventilation may be considered a carport when approved by the building official.

EXISTING BUILDING is a building for which a legal building permit has been issued, or one which complied with this Code in effect at the time the building was erected.

FAMILY shall be as defined in the Zoning Code except that a nursing, care home, or other similar facility with not more than five patients may be considered a family under this code.

FIRE CODE. The State Fire Code as adopted by the State Fire Council.”

- (2) Amending Section 308.2. Section 308.2 is amended to read as follows:

“**308.2 Group I-1.** This occupancy shall include buildings, structures or parts thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services in an assisted living facility.

The residents participate in fire drills, are self starting, and may require some physical assistance from up to one staff to reach a point of safety in an emergency situation. Facilities with residents who require assistance by more than one staff member, are not self starting, who are bedridden beyond 14 days, or require intermittent nursing care beyond 45 days, shall reside on the first floor in all Type III, IV, and V construction, or shall be classified as Group I-2.

A facility such as the above with five or fewer persons shall be classified as a Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2. A facility such as above, housing at least six and not more than 16 persons, shall be classified as Group R-4.”

- (3) Amending Section 308.3. Section 308.3 is amended to read as follows:

“308.3 Group I-2. This occupancy shall include buildings and structures used for personal, medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than five persons who are not capable of self-preservation. This group shall include, but not be limited to, the following:

- Hospitals
- Nursing homes (both intermediate-care facilities and skilled nursing facilities)
- Mental hospitals
- Detoxification facilities
- Specialized Alzheimer’s Facilities or areas
- Assisted Living Facilities (with residents beyond group I-1 limitations for capability)

A facility such as the above with five or fewer persons shall be classified as Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2.”

- (4) Amending Section 310.1. Section 310.1 is amended to read as follows:

“310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the International Residential Code in accordance with Section 101.2. Residential occupancies shall include the following:

R-1 Residential occupancies where the occupants are primarily transient in nature, including:

- Boarding houses (transient)
- Hotels (transient)
- Motels (transient)

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, and facilities providing personal care services that have residents that are capable of self evacuation in an emergency situation, including:

Apartment houses
 Boarding houses (not transient)
 Convents
 Dormitories
 Facilities providing personal care services (with residents that are capable of self evacuation)
 Fraternities and sororities
 Hotels (nontransient)
 Monasteries
 Motels (nontransient)
 Vacation timeshare properties

Facilities providing personal care services with 16 or fewer occupants are permitted to comply with the construction requirements for Group R-3.

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I including:

Buildings that do not contain more than two dwelling units.

Adult facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.

Child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.

Congregate living facilities with 16 or fewer persons.

Adult and child care facilities that are within a single-family home are permitted to comply with the International Residential Code in accordance with Section 101.2.

R-4 Residential occupancies shall include buildings arranged for occupancy as assisted living facilities including more than five but not more than 16 occupants, excluding staff. Residents shall meet the ability to evacuate requirements and other limitations as required in Group I-1.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code, or shall comply with the International Residential Code.”

- (5) Amending Section 310.2. The definition of “Personal Care Service” in Section 310.2 is amended to read as follows:

“PERSONAL CARE SERVICE. The care of residents who do not require chronic or convalescent, health, medical or nursing care. Personal care involves responsibility for the safety of the resident while inside the building. The types of facilities providing personal care services shall include, but not be limited to, the following: assisted living facilities, residential care facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities.”

- (6) Amending Section 310.2. The definition of “Residential Care/Assisted Living Facilities” in Section 310.2 is amended to read as follows:

“ASSISTED LIVING FACILITIES. A building or part thereof housing persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care services and are licensed by the State.”

- (7) Adding Section 310.3. Section 310.3 is added as an interim provision until the International Residential Codes are adopted, to read as follows:

“310.3.1 Dwellings and Lodging Houses. Congregate residences (each accommodating 10 persons or less).

310.3.2 Construction, Height and Allowable Area. Buildings or parts of building classed Group R because of the use or character of the occupancy shall be limited to the types of construction set forth in Table 503 and shall not exceed allowable height as allowed by the IBC.

310.3.3 Location on Property. For fire-resistive protection of exterior walls and openings, as determined by location on property, see Section 503, Section 601, Section 704, Section 705 and Section 715 of the IBC.

310.3.4 Access and Exit Facilities and Emergency Escapes. Exits shall be provided as specified in Chapter 10.

Access to, and egress from, buildings required to be accessible shall be provided as specified in Chapter 11.

Basements in dwelling units and every sleeping room below the fourth story shall have at least one operable window or door approved for emergency escape or rescue which shall open directly into a public street, public alley, yard or exit court. The units shall be operable from the inside to provide a full clear opening without the use of separate tools.

All escape or rescue windows shall have a minimum net clear openable area of 5.7 square feet. The minimum net clear openable height dimension shall be 24 inches. The minimum net clear openable width dimension shall be 20 inches. When windows are provided as a means of escape or rescue they shall have a finished sill height of not more than 44 inches above the floor.

Bars, grilles, grates or similar devices may be installed on emergency escape or rescue windows or doors, provided:

- (1) The devices are equipped with approved released mechanisms which are operable from the inside without the use of a key or special knowledge or effort; and
- (2) The building is equipped with smoke detectors installed in accordance with Section 310.3.10.

Exceptions:

- (1) Glass jalousie blade windows and fixed glass may be used for emergency escape or rescue.
- (2) Escape or rescue windows in Group R, Division 1 Occupancies opening into an exterior exit balcony serving more than two dwelling units or hotel guest rooms shall have a finished sill height not more than 68 inches above the floor.

310.3.5 Light, Ventilation and Sanitation.

(a) **General.** For the purpose of determining the light or ventilation required by this section, any room may be considered as a portion of an adjoining room when half of the area of the common wall is open and unobstructed and provides an opening of not less than one tenth of the floor area of the interior room or 25 square feet, whichever is greater.

Exterior openings for natural light or ventilation required by this section shall open directly onto a public way or a yard or court located on the same lot as the building.

Exceptions:

- (1) Required windows may open into a roofed porch where the porch:
 - (A) Abuts a public way, yard or court; and
 - (B) Has a ceiling height of not less than 7 feet; and
 - (C) Has a longer side at least 65 percent open and unobstructed.
- (2) Skylights.

(b) **Light.** Guest rooms and habitable rooms within a dwelling unit or congregate residence shall be provided with natural light by means of exterior glazed opening with an area not less than one tenth of the floor area of such rooms with a minimum of 5 square feet.

(c) **Ventilation.** Guest rooms and habitable rooms within a dwelling unit or congregate residence shall be provided with natural ventilation by means of an openable exterior opening with an area of not less than one twentieth of the floor area of such rooms with a minimum of 5 square feet.

In lieu of required exterior opening for natural ventilation, a mechanical ventilating system may be provided. Such system shall be capable of providing two air changes per hour in all guest rooms, dormitories, habitable rooms and in public corridors. One fifth of the air supply shall be taken from the outside.

Bathrooms, water closet compartments, laundry rooms and similar rooms shall be provided with natural ventilation by means of openable exterior openings with an area not less than one twentieth of the floor area of such rooms with a minimum of 1½ square feet.

In lieu of required exterior openings for natural ventilation in bathrooms containing a bathtub or shower or combination thereof, laundry rooms and similar rooms, a mechanical ventilation system connected directly to the outside capable of providing five air changes per hour shall be provided. The point of discharge of exhaust air shall be at least 3 feet from any opening into the building. Bathrooms which contain only a water closet or lavatory or combination thereof, and similar rooms may be ventilated with an approved mechanical recirculating fan or similar device designed to remove odors from the air.

(d) **Sanitation.** Every building shall be provided with at least one water closet. Hotels or subdivisions thereof where both sexes are accommodated shall contain at least two separate toilet facilities which are conspicuously identified for male or female use, each of which contains at least one water closet. The water closet stool shall be located in a clear space not less than 30 inches in width. The clear space in front of the water closet stool shall not be less than 24 inches.

Dwellings shall be provided with a kitchen equipped with a kitchen sink. Dwelling units, congregate residences and lodging houses shall be provided with a bathroom equipped with facilities consisting of a water closet, lavatory and either a bathtub or shower. Each sink, lavatory and either a bathtub or shower shall be equipped with hot and cold running water necessary for its normal operation.

No dwelling or dwelling unit containing two or more guests rooms shall have room arrangements such that access to a bathroom or water closet compartment intended for use by occupants of more than one sleeping room can be had only by going through another sleeping room, nor shall room arrangements be such that access to a sleeping room can be had only by going through another sleeping room or a bathroom or water closet compartment.

310.3.6 Yards and Courts.

(a) **Scope.** This section shall apply to yards and courts having required windows opening therein.

(b) **Yards.** Yards shall not be less than 3 feet in width for one-story and two-story buildings. For buildings more than two stories in height, the minimum width of the yard shall be increased at the rate of 1 foot for each additional story. For buildings exceeding 14 stories in height, the required width of the yard shall be computed on the basis of 14 stories.

(c) **Courts shall not be less than 3 feet in width.** Courts having windows opening on opposite sides shall not be less than 6 feet in width. Courts bounded on three or more sides by the walls of the building shall not be less than 10 feet in length unless bounded on one end by a public way or yard. For buildings more than two stories in height, the court shall be increased 1 foot in width and 2 feet in length for each additional story. For buildings exceeding 14 stories in height, the required dimensions shall be computed on the basis of 14 stories.

Adequate access shall be provided to the bottom of all courts for cleaning purposes. Every court more than two stories in height shall be provided with a horizontal air intake at the bottom not less than 10 square feet in area and leading to the exterior of the building unless abutting a yard or public way. The construction of the air intake shall be as required for the court walls of the building, but in no case shall be less than one-hour fire resistive.

310.3.7 Room dimensions.

(a) **Ceiling Heights.** Habitable space shall have a ceiling height of not less than 7 feet 6 inches except as otherwise permitted in this section. Kitchens, halls, bathrooms and toilet compartments may have a ceiling height of not less than 7 feet measured to the lowest projection from the ceiling. Where exposed beam ceiling members are spaced at less than 48 inches on center, ceiling height shall be measured to the bottom of these members. Where exposed beam ceiling members are spaced at 48 inches or more on center, ceiling height shall be measured to the bottom of the deck supported by these members, provided that the bottom of the members is not less than 7 feet above the floor.

If any room in a building has a sloping ceiling, the prescribed ceiling height for the room is required in only one half the area thereof. No portion of the room measuring less than 5 feet from the finished floor to the finished ceiling shall be included in any computation of the minimum area thereof.

If any room has a furred ceiling, the prescribed ceiling height is required in two thirds the area thereof, but in no case shall the height of the furred ceiling be less than 7 feet.

(b) **Floor Area.** Dwelling units and congregate residences shall have at least one room which shall have not less than 120 square feet of floor area. Other habitable rooms except kitchens shall have an area of not less than 70 square feet. Efficiency dwelling units shall comply with the requirements of Section 310.3.8.

(c) **Width.** Habitable rooms other than kitchen shall not be less than 7 feet in any dimension.

310.3.8 Efficiency Dwellings Units.

An efficiency dwelling unit shall conform to the requirements of the code except as herein provided:

- (1) The unit shall have a living room of not less than 220 square feet of superficial floor area. An additional 100 square feet of superficial floor area shall be provided for each occupant of such unit in excess of two.
- (2) The unit shall be provided with a separate closet.

- (3) The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches in front. Light and ventilation conforming to this code shall be provided.
- (4) The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.

310.3.9 Shaft and Exit Enclosures.

Exits shall be enclosed as specified in Section 1020. Elevator shafts, vent shafts, dumbwaiter shafts, clothes chutes and other vertical openings shall be enclosed and the enclosure shall be as specified in Section 707.

310.3.10 Smoke Detectors.

(a) **General.** Dwelling units, congregate residences and hotel or lodging house guest rooms that are used for sleeping purposes shall be provided with smoke detectors. Detectors shall be installed in accordance with the approved manufacturer's instructions.

(b) **Additions, alterations or repairs to Group R Occupancies.** When the valuation of an addition, alteration or repair to a Group "R Occupancy sleeping room exceeds \$1,000 and a permit is required, or when one or more sleeping rooms are added or created in existing Group R Occupancies, smoke detectors shall be installed in accordance with subsections (c), (d), and (e) of this section.

(c) **Power Source.** In new construction, required smoke detectors shall receive their primary power from the building wiring when such wiring is served from a commercial source and shall be equipped with a battery backup. The detector shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Smoke detectors may be solely battery operated when installed in existing buildings; or in buildings without commercial power; or in buildings which undergo alterations, repairs or additions regulated by subsection (b) of this section.

(d) **Location within dwelling units.** In dwelling units, a detector shall be installed in each sleeping room and at a point centrally located in the corridor or area giving access to each separate sleeping area. When the dwelling unit has more than one story and in dwellings with basements, a detector shall be installed on each story and in the basement. In dwelling units where a story or basement split into two or more levels, the smoke detector shall be installed on the upper level, except that when the lower level contains a sleeping area, a detector shall be installed on each level. When sleeping rooms are on an upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. In dwellings units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by 24 inches or more, smoke detectors shall be installed in the hallway and in the adjacent room. Detectors shall sound an alarm audible in all sleeping areas of the dwelling unit in which they are located.

(c) **Location in efficiency dwelling units, congregate residences and hotels.** In efficiency dwelling units, hotel suites and in hotel and congregate residences sleeping rooms, detectors shall be located on the ceiling or wall of the main room or each sleeping room. When sleeping rooms within an efficiency dwelling unit or hotel suite are on an upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. When actuated, the detector shall sound an alarm audible within the sleeping area of the dwelling unit, hotel suite or sleeping room in which it is located.

310.3.11 Fire Alarm Systems. Fire alarm systems shall comply with the Fire Code and be approved by the fire chief.

310.3.12 Cooking Unit Clearance.

(a) **Minimum Vertical Clearance.** There shall be a minimum vertical clearance of not less than 30 inches between the cooking top of domestic oil, gas, and electric ranges and the underside of unprotected combustible material above such ranges. When the underside of such combustible material is protected with insulated millboard of at least ¼ inch thick covered with sheet metal of not less than 0.021 inch thick (No 28 U.S. gauge) or a metal ventilating hood, the distance shall be not less than 24 inches.

(b) **Minimum Horizontal Clearance.** The minimum horizontal clearance from edge of the burner head(s) of top (or surface) cooking unit to combustible walls extending above the cooking surface shall be not less than 12 inches.

Exception: Walls of combustible materials to be installed within 12 inches of a cooking unit shall be provided with protection equivalent to ½-inch gypsum wallboard covered with laminated plastic. The height of the laminated plastic shall be 12 inch minimum.

(c) **Alternate Materials.** Where alternate materials other than as specified in subsections (a) and (b) are used as approved by the building official, the surface of such material shall have a smooth nonabsorbent finish.”

- (8) Amending Section 403.8. Section 403.8 is amended to read as follows:

“**403.8 Fire command station.** Fire command stations shall comply with the Fire Code and be approved by the fire chief.”

- (9) Adding Section 419.4. Section 419.4 is added to read as follows:

“**419.4 Group I-1 Assisted Living Facilities.** Group I-1 Assisted Living Facilities shall comply with the provisions of Sections 419.4.1 and 419.4.2.

419.4.1 Building Story Limitations. Buildings shall not exceed one story in Type VB construction, two stories in Types IIB, III, IV, and VA construction, and three stories in Type IIA construction, including any allowable automatic sprinkler increases. Other construction type limitations on stories shall be limited by the provisions of Chapter 5.

4.19.4.2 Group I-1 Smoke Barriers. Group I-1 occupancies shall be provided with at least one smoke barrier in accordance with Section 709. Smoke barriers shall subdivide every story used by residents for sleeping or treatment into at least two smoke compartments. Each compartment shall have not more than 16 sleeping rooms, and the travel distance from any point in a smoke compartment to a smoke barrier door shall not exceed 150 feet (45,720 mm). At least 10 square feet (0.93 m²) of refuge area per resident shall be provided within the aggregate area of corridors, treatment rooms, or other low hazard common space rooms on each side of each smoke barrier.”

- (10) Amending Section 903.2.5. Section 903.2.5 is amended to read as follows:
“903.2.5 Group I. An automatic sprinkler system shall be provided throughout buildings with Group I fire area.”
- (11) Amending Section 903.2.7. Section 903.2.7 is amended to read as follows:
“903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.
Exception: R-3 residential occupancies.”
- (12) Amending Section 911.1. Section 911.1 is amended to read as follows:
“911.1 Features. Where required by other sections of this code, a fire command center for fire department operations shall be provided and shall comply with the Fire Code and be approved by the fire chief.”
- (13) Amending Section 1008.2. Section 1008.2 is amended to read as follows:
“1008.2 Gates. Gates serving the means of egress system shall comply with the requirements of this section. Gates used as a component in a means of egress shall conform to the applicable requirements for doors.
Exceptions:
(1) Horizontal sliding or swinging gates exceeding the 4-foot (1219 mm) maximum leaf width limitation are permitted in fences and walls surrounding a stadium.
(2) Security gates may be permitted across corridors or passageways in school buildings if there is a readily visible durable sign on or adjacent to the gate, stating ‘THIS GATE IS TO REMAIN SECURED IN THE OPEN POSITION WHENEVER THIS BUILDING IS IN USE’. The sign shall be in letters not less than one inch high on a contrasting background. The use of this exception may be revoked by the building official for due cause.”

- (14) Repealing and Replacing Chapter 11. Chapter 11 is deleted in its entirety and replaced to read as follows:

“Chapter 11 - Accessibility

1101 Scope. Buildings or portions of buildings shall be accessible to persons with disabilities in accordance with the following regulations:

- (1) For construction of buildings or facilities of the State and County Governments, compliance with section 103-50, Hawai‘i Revised Statutes, administered by the Disability and Communication Access Board, State of Hawai‘i.
- (2) Americans with Disabilities Act, administered and enforced by the U.S. Department of Justice.
- (3) Fair Housing Act, administered and enforced by the U.S. Department of Housing and Urban Development.
- (4) Other pertinent laws relating to disabilities shall be administered and enforced by agencies responsible for their enforcement.

Prior to the issuance of a building permit, the owner (or the owner’s representative, professional architect, or engineer) shall submit a statement that all requirements, relating to accessibility for persons with disabilities, shall be complied with.”

- (15) Adding Section 1203.2.2. Section 1203.2.2 is added to read as follows:

“1203.2.2 Unvented Attic Spaces. The attic space shall be permitted to be unvented when the design professional determines it would be beneficial to eliminate ventilation openings to reduce salt-laden air and maintain relative humidity 60 percent or lower to:

- (1) Avoid corrosion to steel components,
- (2) Avoid moisture condensation in the attic space, or
- (3) Minimize energy consumption for air conditioning or ventilation by maintaining satisfactory space conditions in both the attic and occupied space below.”

- (16) Amending Section 1603.3. Section 1603.3 is amended to read as follows:

“1603.3 Live loads posted. Where the live loads for which each floor or portion thereof of a commercial or industrial building is or has been designed to exceed 100 psf (4.80 kN/m²), such design live loads shall be conspicuously posted by the owner in that part of each story in which they apply, using durable signs. It shall be unlawful to remove or deface such notices.”

Intentionally left blank.

- (17) Amending Section 1611.1. Section 1611.1 is amended to read as follows:

“1611.1 Design rain loads. Each portion of a roof shall be designed to sustain the load of rainwater that will accumulate on it if the primary drainage system for that portion is blocked plus the uniform load caused by water that rises above the inlet of the secondary drainage system at its design flow. The design rainfall rate shall be based on the 100-year 1-hour rainfall rate indicated in Figure 1611.1 as published by the National Weather Service or on other rainfall rates determined from approved local weather data.”

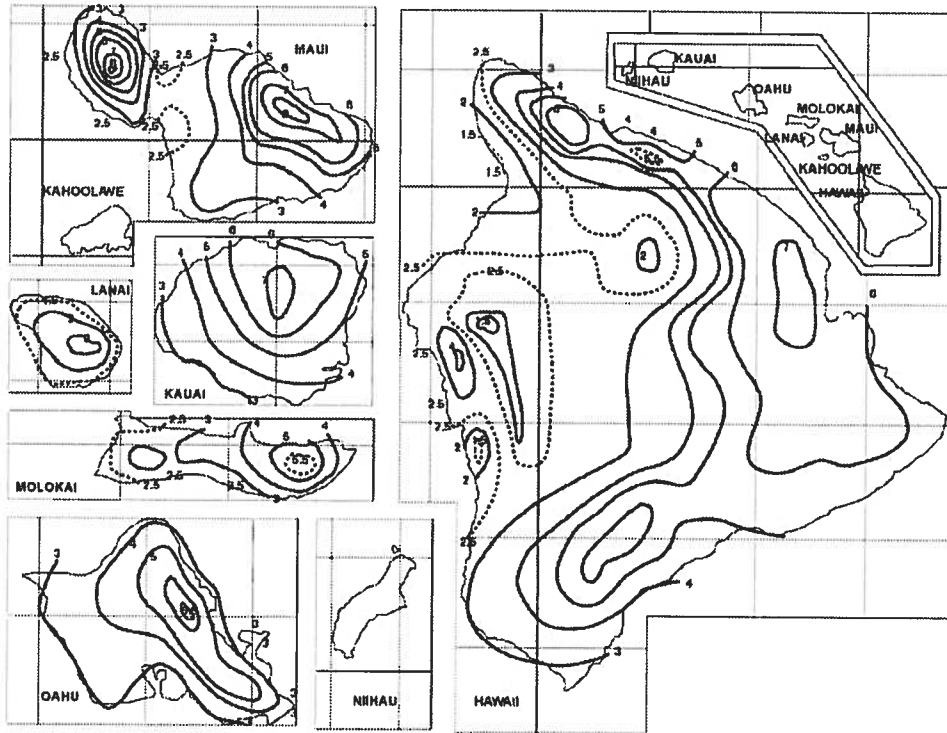


FIGURE 1611.1—continued
100-YEAR, 1-HOUR RAINFALL (INCHES) HAWAII

For SI: 1 inch = 25.4 mm.

Source: National Weather Service, National Oceanic and Atmospheric Administration, Washington D.C.

- (18) Amending Table 1613.5.6(1). Table 1613.5.6(1) is amended to read as follows:

TABLE 1613.5.6(1)
SEISMIC DESIGN CATEGORY BASED ON
SHORT-PERIOD RESPONSE ACCELERATIONS

VALUE OF S_{DS}	Occupancy Category		
	I or II	III	IV
$S_{DS} < 0.167g$	A	A	A
$0.167g \leq S_{DS} < 0.33g$	B	B	C
$0.33g \leq S_{DS} < 0.50g$	C	C	D
$0.50 \leq S_{DS} < 0.60g$	C	D	D
$0.60g \leq S_{DS}$	D	D	D

- (19) Amending Table 1613.5.6(2). Table 1613.5.6(2) is amended to read as follows:

TABLE 1613.5.6(2)
SEISMIC DESIGN CATEGORY BASED ON
1-SECOND PERIOD RESPONSE ACCELERATION

VALUE OF S_{DI}	Occupancy Category		
	I or II	III	IV
$S_{DI} < 0.067g$	A	A	A
$0.067g \leq S_{DI} < 0.133g$	B	B	C
$0.133g \leq S_{DI} < 0.20g$	C	C	D
$0.20g \leq S_{DI} < 0.25g$	C	D	D
$0.25g \leq S_{DI}$	D	D	D

- (20) Amending Section 1702. The definition of “Structural Observation” in Section 1702 is amended to read as follows:

“STRUCTURAL OBSERVATION. Structural Observation defined in accordance with Hawai‘i Administrative Rules of the Department of Commerce and Consumer Affairs, Title 16, Chapter 115, implementing Hawai‘i Revised Statutes chapter 464. Structural observation does not include or waive the responsibility for the inspection required by Section 109, 1704 or other sections of this code.”

- (21) Amending Section 1704.1. Section 1704.1 is amended to read as follows:

“1704.1 General. Where application is made for construction as described in this section, the owner or the registered design professional in responsible charge acting as the owner’s agent shall employ one or more special inspectors to provide inspections during construction on the types of work listed under Sections 1704 and 1707. The special inspector shall be a qualified person who shall demonstrate competence, to the satisfaction of the building official, for inspection of the particular type of construction or operation requiring special inspection. These inspections are in addition to the inspections specified in Section 109.

Exceptions:

- (1) Special inspections are not required for work of a minor nature or as warranted by conditions in the jurisdiction as approved by the building official.
- (2) Special inspections are not required for building components unless the design involves the practice of professional engineering or architecture as defined by applicable state statutes and regulations governing the professional registration and certification of engineers or architects.
- (3) Unless otherwise required by the building official, special inspections are not required for occupancies in Group R-3 as applicable in Section 101.2 and occupancies in Group U that are accessory to a residential occupancy including, but not limited to, those listed in Section 312.1.”

- (22) Amending Section 1704.1.1. Section 1704.1.1 is amended to read as follows:
- “**1704.1.1 Statement of special inspections.** The construction drawings shall include a complete list of special inspections required by this section.”
- (23) Amending Section 1704.1.2. Section 1704.1.2 is amended to read as follows:
- “**1704.1.2 Report requirement.** Special inspectors shall keep records of inspections. The special inspector shall furnish inspection reports to the owner, and licensed engineer or architect of record. Reports shall indicate that work inspected was done in conformance to approved construction documents. Discrepancies shall be brought to the immediate attention of the contractor for correction, then, if uncorrected, to the licensed engineer or architect of record and to the building official. The special inspector shall submit a final signed report to the owner and licensed engineer or architect of record, stating whether the work requiring special inspection was, to the best of the inspector’s knowledge, in conformance to the approved plans and specifications and the applicable workmanship provisions of this code. Prior to the final inspection required under Section 109.3.10, the licensed engineer or architect of record shall submit a written statement verifying receipt of the final special inspection reports and documenting that there are no known unresolved code requirements that create significant public safety deficiencies.”
- (24) Repealing Section 1705. Section 1705 is deleted in its entirety.
- (25) Amending Section 1709. Section 1709 is amended to read as follows:
- “**1709 Structural Observations.** Structural observations shall be performed in accordance with Hawai‘i Revised Statutes, chapter 464, section 5, administered and enforced by the department of commerce and consumer affairs.”
- (26) Amending Section 1808.2.7. Section 1808.2.7 is amended to read as follows:
- “**1808.2.7 Splices.** Splices shall be constructed so as to provide and maintain true alignment and position of the component parts of the pier or pile during installation and subsequent thereto and shall be of adequate strength to transmit the vertical and lateral loads and moments occurring at the location of the splice during driving and under service loading. Splices occurring in the upper 10 feet (3048 mm) of the embedded portion of the pier or pile shall be capable of resisting at allowable working stresses the moment and shear that would result from an assumed eccentricity of the pier or pile load of 3 inches (76 mm), or the pier or pile shall be braced in accordance with Section 1808.2.5 to other piers or piles that do not have splices in the upper 10 feet (3048 mm) of embedment.”
- (27) Adding Section 2104.1.9. Section 2104.1.9 is added to read as follows:
- “**2104.1.9 Cleanouts.** Cleanouts shall be provided for all grout pours over 5 feet 4 inches in height. Special provisions shall be made to keep the bottom and sides of the grout spaces, as well as the minimum total clear area required by ACI 530.1-05/ASCE 6-05/TMS 602-05 clean and clear prior to grouting.

Exception: Cleanouts are not required for grout pours 8 feet or less in height providing all of the following conditions are met:

- (1) The hollow masonry unit is 8-inch nominal width or greater with specified compressive strength f_m less than or equal to 1,500 psi;
- (2) Fine grout is used complying with ASTM C-476 minimum compressive strength of 2,500 psi; and
- (3) Special Inspection is provided.”

- (28) Amending Section 2303.1.8. Section 2303.1.8 is repealed and replaced in its entirety to read as follows:

“2303.1.8 Preservative-treated wood. Structural lumber, including plywood, posts, beams, rafters, joists, trusses, studs, plates, sills, sleepers, roof and floor sheathing, flooring and headers of new wood-frame buildings and additions shall be:

- (1) Treated in accordance with AWWA Standard U1 (UC1 thru UC4B) for AWWA Standardized Preservatives, all marked or branded and monitored by an approving agency. Incising is not required, providing that the retention and penetration requirements of these standards are met.
- (2) For SBX disodium octaborate tetrahydrate (DOT), retention shall be not less than 0.28 pcf B_2O_3 (0.42 pcf DOT) for exposure to Formosan termites. All such lumber shall be protected from direct weather exposure as directed in AWWA UC1 and UC2.
- (3) For structural glued-laminated members made up of dimensional lumber, engineered wood products, or structural composite lumber, pressure treated in accordance with AWWA U1 (UC1 thru UC4B) or by Light Oil Solvent Preservative (LOSP) treatment standard as approved by the building official. Water based treatment processes as listed in paragraphs 1 and 2 are not allowed to be used on these products unless specified by a structural engineer for use with reduced load values and permitted by the product manufacturer.
- (4) For structural composite wood products, treated by non-pressure processes in accordance with AWWA Standard U1 (UC1, UC2 and UC3A) or approved by the building official.

2303.1.8.1 Treatment. Wood treatment shall include the following:

- (1) A quality control and inspection program which meets or exceeds the current requirements of AWWA Standards M2-01 and M3-03;
- (2) Inspection and testing for the treatment standards as adopted by this code shall be by an independent agency approved by the building official, accredited by the American Lumber Standards Committee (ALSC) and contracted by the treating company;
- (3) Field protection of all cut surfaces with a preservative, which shall be applied in accordance with AWWA Standard M-4-02 or in accordance with the approved preservative manufacturer’s ICC-Evaluation Services report requirements.

2303.1.8.2 Labeling. Labeling shall be applied to all structural lumber 2 inches or greater nominal thickness, with the following information provided on each piece as a permanent ink stamp on one face or on a durable tag permanently fastened to ends with the following information:

- (1) Name of treating facility;
- (2) Type of preservative;
- (3) AWPA use category;
- (4) Quality mark of third party inspection agency;
- (5) Retention minimum requirements; and
- (6) Year of treatment.

All lumber less than 2 inches in nominal thickness, shall be identified per bundle by means of a label consisting of the above requirements. Labels measuring no less than 6 inches by 8 inches shall be placed on the lower left corner of the strapped bundle.

2303.1.8.3 Moisture Content of Treated Wood. When wood pressure treated with a water-borne preservative is used in enclosed locations where drying in service cannot readily occur, such wood shall be at a moisture content of 19 percent or less before being covered with insulation, interior wall finish, floor covering or other material.”

- (29) Amending Section 2304.9.5. Section 2304.9.5 is amended to read as follows:

“2304.9.5 Fasteners in non-borate-preservative-treated and fire-retardant-treated wood. Fasteners for preservative-treated and fire-retardant-treated wood, other than Borate (SBX, ZB) or LSOP treatments as approved in Section 2303.1.8 Preservative-Treated Wood, shall be of hot dipped zinc-coated galvanized steel, stainless steel, silicone bronze or copper. The coating weights for zinc-coated fasteners shall be in accordance with ASTM A 153.

Exception: Fasteners other than nails, timber rivets, wood screws and lag screws shall be permitted to be of mechanically deposited zinc-coated steel with coating weights in accordance with ASTM B 695, Class 55 minimum.

Fastenings for wood foundations shall be as required in AF&PA Technical Report No. 7.”

- (30) Amending Section 2304.11. Section 2304.11 is amended to read as follows:

“2304.11 Protection against decay and termites.

2304.11.1 General. Where required by this section, protection from decay and termites shall be provided by the use of naturally durable or preservative-treated wood.

2304.11.2 Wood used above ground. Structural lumber installed above ground shall be preservative-treated wood in accordance with Section 2303.1.8.

2304.11.2.1 Soil Treatment and Termite Barriers. Where structural lumber of wood frame buildings or structures are supported directly on the ground by a concrete slab, or concrete and/or masonry foundation Formosan subterranean termite protection shall be provided by either chemically treating the soil beneath and adjacent to the building or structure by a Hawai'i licensed pest control operator, or stainless steel termite barrier, or other termite protection measures approved by the Building Official.

All soil treatment, stainless steel termite barrier, and termite protection measures shall be installed according to manufacturer's recommendations for control of Formosan subterranean termites.

2304.11.3 Wood in Ground Contact. Wood supporting permanent buildings and structures, which is in direct soil contact or is embedded in concrete or masonry in direct contact with earth shall be treated to the appropriate commodity specification of AWP Standard U1.

Wood in direct soil contact but not supporting any permanent buildings or structures shall be treated to the appropriate commodity specification of AWP Standard U1 for ground contact.

2304.11.4 Retaining Walls. Wood in retaining or crib wall shall be treated to AWP Standard U1.

2304.11.5 Wood and Earth Separation. Where wood is used with less than 6-inch vertical separation from earth (finish grade), it shall be treated for ground-contact use.

Where planter boxes are installed adjacent to wood frame walls, a 2-inch-wide (51 mm) air space shall be provided between the planter and the wall. Flashings shall be installed when the air space is less than 6 inches (152 mm) in width. Where flashing is used, provisions shall be made to permit circulation of air in the air space. The wood-frame wall shall be provided with an exterior wall covering conforming to the provisions of section 2304.6.

2304.11.6 Under-Floor Clearance for Access and Inspection. Minimum clearance between the bottom of floor joists or bottom of floors without joists and the ground beneath shall be 24 inches; the minimum clearance between the bottom of girders and the ground beneath shall be 18 inches.

Exception: Open slat wood decks shall have ground clearance of at least 6 inches for any wood member.

Accessible under-floor areas shall be provided with a minimum 18 inch-by 24 inch access opening, effectively screened or covered. Pipes, ducts and other construction shall not interfere with the accessibility to or within under-floor areas.

2304.11.7 Wood used in retaining walls and cribs. Wood installed in retaining or crib walls shall be preservative treated in accordance with AWPA U1 (Commodity Specifications A or F) for soil and fresh water use.

2304.11.8 Weather Exposure. All portions of timbers (over 5-inch nominal width) and glued-laminated timbers that form structural supports of a building or other structure shall be protected by a roof, eave, overhangs, flashings, or similar coverings.

All wood or wood composite panels, in weather-exposed applications, shall be of exterior type.

2304.11.9 Water Splash. Where wood-frame walls and partitions are covered on the interior with plaster, tile or similar materials and are subject to water splash, the framing shall be protected with approved waterproof paper conforming to section 1404.2.

2304.11.10 Pipe and Other Penetrations. Insulations around plumbing pipes shall not pass through ground floor slabs. Openings around pipes or similar penetrations in a concrete or masonry slab, which is in direct contact with earth, shall be filled with non-shrink grout, BTB, or other approved physical barrier.”

- (31) Amending Section 2308.1. Section 2308.1 is amended to read as follows:

“**2308.1 General.** The requirements of this section are intended for conventional light-frame construction. Other methods are permitted to be used, provided a satisfactory design is submitted showing compliance with other provisions of this code. Interior nonload-bearing partitions, ceilings and curtain walls of conventional light-frame construction are not subject to the limitations of this section. Alternatively, compliance with AF&PA WFCM shall be permitted subject to the limitations therein and the limitations of this code.”

- (32) Amending Section 2701.1. Section 2701.1 is amended to read as follows:

“**2701.1 Scope.** This chapter governs the electrical components, equipment and systems used in buildings and structures covered by this code. Electrical components, equipment and systems shall be designed and constructed in accordance with the provisions of the National Electrical Code, NFPA 70.”

- (33) Amending Section 2901.1. Section 2901.1 is amended to read as follows:

“**2901.1 Scope.** The provisions of this chapter and the Uniform Plumbing Code shall govern the erection, installation, alteration, repairs, relocation, replacement, addition to, use or maintenance of plumbing equipment and systems. Plumbing systems and equipment shall be constructed, installed and maintained in accordance with the Uniform Plumbing Code and adopted amendments. Private sewage disposal systems shall conform to the International Private Sewage Disposal Code.”

(34) Amending Section 3001.1. Section 3001.1 is amended to read as follows:

“3001.1 Scope. This chapter shall be a guideline and governs the design, construction, installation, alteration and repair of elevators and conveying systems and their components. If this chapter conflicts with another applicable law of the jurisdiction, then said applicable law shall prevail over this chapter.”

(35) Amending Section 3109.3. Section 3109.3 is amended to read as follows:

“3109.3 Public swimming pools. Public swimming pools shall be completely enclosed by a fence at least 4 feet (1219 mm) in height or a screen enclosure. Openings in the fence shall not permit the passage of a 4-inch-diameter (102 mm) sphere. The fence or screen enclosure shall be equipped with self-closing and self-latching gates.

EXCEPTION: Swimming, dipping, or wading pools located on the premises of a hotel are not required to be enclosed.”

(36) Amending Section 3405.1. Section 3405.1 is amended to read as follows:

“3405.1 Conformance. The installation or replacement of glass shall be as required by Chapter 24 for new installations.”

(37) Amending Section 3410.3.2. Section 3410.3.2 is amended to read as follows:

“3410.3.2 Compliance with other codes. Buildings that are evaluated in accordance with this section shall comply with the State Fire Code.”

(2012, Ord. No. 12-27, sec. 2.)

Section 5-72. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-73. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

Article 4. Adoption, Amendment, and Addition of Appendices.

Division 1. Appendices of International Building Code Adopted.

Section 5-74. Appendices not applicable.

Provisions in the appendices of the International Building Code, 2006 Edition, shall not apply unless specifically adopted.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-75. Appendices adopted.

The following appendices of the IBC are hereby adopted and incorporated by reference herein and made a part of this code, subject to the amendments hereinafter set forth in this article:

- (1) Appendix C, Group U-Agricultural Buildings; and
- (2) Appendix I, Patio Covers.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-76. Amendments to Appendix C; Group U – Agricultural Buildings.

Section C101, General, is amended by adding the following:

“C101.2 Horticulture buildings. Buildings and structures of Group U Occupancy for horticultural use with covering of wire screen, cheesecloth, or non-rigid plastic sheets are not required to conform to the requirements of Chapters 4-9, 11-26, 28, 30, 31, 34 and 35 of this code when located in areas zoned for agricultural use and not part of any other structure.

C101.3 Fences.

C101.3.1 General. Fences shall be constructed in accordance with this code and all applicable County and State regulations.

C101.3.2 Barbed or razor wire fences. Barbed or razor wire shall not be used for construction of any fence.

Exceptions:

(a) Barbed or razor wire may be used in fences enclosing the following premises, provided that barbed or razor wire shall be placed along or above the height of 6 feet from the ground, subject to the approval of the fire department:

- (1) Any “public utility” as defined in section 269-1, Hawai‘i Revised Statutes;
- (2) Premises in industrial zoned districts and used for storage or handling of hazardous materials, and premises zoned I-2 or I-3, intensive or waterfront industrial districts which are used for industrial purposes and are not adjacent to premises used for other purposes;
- (3) Zoos for keeping animals and birds for public view or exhibition;
- (4) Jails, prisons, reformatories, and other institutions which are involved in law enforcement or military activities where security against entry is an important factor.

(b) Barbed wire may be used in premises used for pasturing cattle or raising swine or to keep pigs or other wild animals out.

Section C101.3.3 Construction barrier. See Section 3306 for fences allowed during construction or demolition.”

(2012, Ord. No. 12-27, sec. 2.)

Section 5-77. Reserved.

(2012, Ord. No. 12-27, sec. 2.)

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Division 2. Appendices Added to the International Building Code.

Section 5-78. Appendices added to International Building Code.

The following appendices are hereby added to the International Building Code and made a part of this code, as set forth in full in this article:

- (1) Appendix L, Factory-Built Housing;
- (2) Appendix M, Thatch Material on Exterior of Buildings – Protection Against Exposure Fires;
- (3) Appendix U, Hawai'i Hurricane Sheltering Provisions for New Construction;
- (4) Appendix W, Hawai'i Wind Design Provisions for New Constructions; and
- (5) Appendix X, Indigenous Hawaiian Architecture Structures.

(2012, Ord. No. 12-27, sec. 2.)

Section 5-79. Appendix L; Factory-built Housing.

Appendix L is added to read as follows:

**“APPENDIX L
FACTORY-BUILT HOUSING**

**SECTION L101
APPLICABILITY**

L101.1 Purpose. These provisions are applicable to the design, construction, installation and transportation of factory-built housing (FBH) within the County. Unless otherwise specified this article shall be applicable only to FBH which is sold or offered for sale to first users as defined below.

Exception: Manufactured homes manufactured and certified in accordance with the Manufactured Home Construction and Safety Standards as promulgated by the United States Department of Housing and Urban Development. Foundation, exterior stairs, additions and accessory structures shall comply with Article 1, Adoption of the International Building Code and International Residential Code for One- and Two-Family Dwellings.

All provisions of the building, housing, electrical and plumbing codes shall be applicable unless indicated otherwise in this article.

L101.2 Definitions. The following terms are defined for specialized use within this article:

“Factory-built housing” means any structure or portion thereof designed primarily for residential occupancy by human beings, which is either entirely prefabricated or assembled at a place other than the building site.

“First user” means a person, firm or corporation who initially installs FBH within this State. A person who subsequently purchases an installed FBH is not a first user within the meaning of this definition.

“Insignia of approval” means a tag, tab, stamp, label or other device issued by the building official to indicate compliance with the statutes and these rules.

“Installation” means the assembly of FBH on site and the process of affixing FBH to land, a foundation or an existing building.

“Manufacture” means the process of making, fabricating, constructing, forming or assembling a product from raw, unfinished or semi-finished materials to produce FBH.

“Site” means the parcel of land on which FBH is installed.

L101.3 Building permit required. No person shall install FBH or cause the foregoing to be done without first obtaining a building permit from the building official for each FBH.

L101.4 Building permit fee. A fee for each building permit as set forth in section 5-35 of this chapter, shall be paid to the building official. The fee shall be based on the valuation of the building in place complete including the cost of carport, fences, walls, etc.

L101.5 Insignia of approval.

(a) FBH manufactured in this County which is sold or offered for sale to first users within this County shall bear the insignia of approval issued by the building official indicating that the FBH is in compliance with this article.

(b) FBH manufactured outside the county shall bear the insignia of approval issued by any governmental or inspectional agency approved by the building official.

L101.6 Performance of plumbing and electrical work.

(a) All electrical and plumbing work performed within this state shall comply with State of Hawai‘i contracting and licensing laws and regulations.

(b) All electrical and plumbing work to be performed at the factory outside of this state must be accomplished:

- (1) By licensed electricians or plumbers, respectively, of the county in which the factory is located, if the manufacturer does not submit a quality control manual which is approved by the building official; or
- (2) Under the supervision of a licensed supervising electrician or master plumber, respectively, of the county in which the factory is located, if the manufacturer submits a quality control manual which is approved by the building official.

L101.7 Plans and specifications.

(a) For each model of FBH, three sets of plans and specifications shall be submitted and approval obtained prior to fabrication.

(b) With each application for a building permit, three sets of installation plans and specifications including the plot plan shall be submitted.

(c) Preparation of plans and observation of construction shall be by a professional architect or structural engineer licensed in the State of Hawai'i.

L101.8 Inspections.

(a) FBH manufactured outside of the County shall be inspected by an approved third party inspectional agency.

(b) The building official may make periodic in-plant inspections to verify that the FBH produced comply with the plans as approved by the building official.

(c) Special inspectors shall be hired as required by the building code. Once construction has been completed, the special inspector shall submit a final signed special inspection report along with a copy of the third party inspection worksheet showing special inspection done at the manufacturing plant.

L101.9 Manufacturer's label. A manufacturer's label on a metal plate showing the manufacturer's name, serial number of the building, manufacture date, design load criteria, and third party inspection stamp shall be securely fastened on the FBB.

L101.10 Transporting Factory-Built Housing. The transportation of FBH shall be governed by the provisions of the County and State traffic codes."

(2012, Ord. No. 12-27, sec. 2.)

Section 5-80. Appendix M; Thatch Material on Exterior of Buildings - Protection Against Exposure Fires.

Appendix M is added to read as follows:

**“APPENDIX M
THATCH MATERIAL ON EXTERIOR OF BUILDINGS;
PROTECTION AGAINST EXPOSURE FIRES**

**SECTION M101
GENERAL**

M101.1 General. Thatched materials used on the roof on a building shall be protected by manually operated sprinkler heads, with adequate water supply, pipe size, and sprinkler head spacing in accordance with sprinkler system requirements set forth in this section.

Thatched materials used on the wall of a building shall be protected by manually operated outside sprinklers. Size and spacing of sprinklers and pipe size shall be in accordance with Chapter 7, “Outside Sprinklers and Protection Against Exposure Fires,” of the National Fire Codes of the National Fire Protection Association. Controls shall be set forth in this section.

**SECTION M102
APPLICABILITY**

M102.1 Applicability. Thatched material on the exterior of buildings shall be permitted only upon buildings located in areas zone for resort (V Resort-Hotel by the Planning Department) uses which primarily service the tourist trade when approved by the building official.

The thatched material permitted in this section shall be used for decorative purposes on the roof or wall of buildings. The building, independent of the thatched material, shall comply with all applicable provisions of this appendix.

When thatched material is used as permitted in this section, and an appropriate permit is obtained therefore, outside sprinklers for protection against exposure fires shall be required as hereinafter provided.

**SECTION M103
SPRINKLER**

M103.1 General. Sprinklers shall be located at the high point of the roof. Upright or pendant sprinklers shall be used for gable roofs. Sidewall sprinklers shall be used for shed roofs.

M103.2 Spacing of Sprinklers. The maximum width of roof with one row of sprinklers shall be as follows:

Roof Slope	Orifice Size (In inches)	Width of Roof
1:3 or greater	3/8	15'
1:3 or greater	1/2	20'
1:3 or greater	17/32	25'
Less than 1:3	3/8	10'
Less than 1:3	1/2	15'
Less than 1:3	17/32	20'

Maximum spacing of sprinklers on branch lines (along ridge) shall be as follows: 3/8- inch orifice – 6 feet; 1/2-inch orifice – 8 feet; 17/32-inch orifice – 10 feet.

Conical roofs may be protected with one sprinkler at the apex if the diameter of the roof does not exceed the width of roof referred to in this section.

Where the width of a roof exceeds the width allowed for one row of sprinklers, as provided in the table in this section, two or more rows of sprinklers shall be required. The rows of sprinklers shall be placed such that the entire roof area is protected.

M103.3 Areas Protected. Each area (zone) of thatched material that is separated from another thatched area by an open space of 20 feet or more or by incombustible construction of 20 feet or more shall be considered a separate area (zone).

Risers to each separate zone shall not be less than that shown in subsection M103.5, Riser and Pipe Size, except as modified as follows:

- (1) More than one zone may be protected by one valve, if the supply is adequate.
- (2) If one area (zone) is larger than can be protected with the existing supply, the zones can be subdivided into subzones if the following criteria are met: An area of at least 800 square feet is protected by the subzone control valve; there is at least a 10 percent overlap in coverage of adjoining subzones; and operation of the manual control valves will automatically transmit an alarm to the fire department.

M103.4 Water Supply. The sprinkling system shall have a separate connection to the water main in the street, to an approved automatic fire-extinguishing system supply line, to a wet standpipe supply line, or to a domestic supply of adequate size. The water supply required shall be determined from either of the following:

- (1) Flow per sprinkler for the largest zone, with residual pressure at the highest sprinkler at 15 pounds per square in with all heads operating, shall be as follows:

Orifice Size (In inches)	Gallons Per Minute
3/8	15
1/2	20
17/32	25

- (2) The flow shall be hydraulically calculated so as to discharge at least 0.11 gallons per minute per square foot of surface area to be sprinkled.

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M103.5 Riser and Pipe Size. Pipe sizes shall be determined from the flow as calculated in subsection M103.4, Water Supply. However, no pipe less than one inch in size shall be used. The following table may be used in conjunction with this flow calculated for the selection of pipe or riser sizes.

Orifice Size (In inches)	Pipe or Riser Size							
	1"	1-1/4"	1-1/2"	2"	2-1/2"	3"	3-1/2"	4"
	No. of Sprinklers							
3/8	3	4	7	11	21	37	40	40
1/2	2	3	5	8	15	27	40	40
17/32	1	2	4	6	11	19	30	38

M103.6 Number of Sprinklers Served. The number of sprinklers on a branch line shall not exceed six. Center feet shall be used for six or more sprinklers. The number of sprinklers under control of each control valve shall not exceed forty. At the location of each valve, there shall be a drain connection and a 1/4-inch valve test connection to accommodate pressure gauge.

M103.7 Material Installed Above Grade. Piping shall be galvanized steel schedule 40 with galvanized malleable iron fittings or hard drawn copper with silver solder fittings. Pipes shall be securely fastened to the structure.

Valves shall be manual type approved and listed by the Underwriters' Laboratories or by other approved testing agencies. Valves shall be installed outdoors and so located as to be readily accessible in case of fire. Signs indicating the use of valves shall be conspicuously posted.

M103.8 Local Alarm. Any one system with 20 or more sprinklers under control of one valve shall be complemented with a local fire alarm, either electrically or mechanically operated."

(2012, Ord. No. 12-27, sec. 2.)

Section 5-81. Appendix U; Hawai‘i Hurricane Sheltering Provisions for New Construction.

Appendix U is added to read as follows:

**“APPENDIX U
HAWAI‘I HURRICANE SHELTERING PROVISIONS FOR NEW
CONSTRUCTION**

Section U101. Community Storm Shelters.

Chapter 4 is amended by adding Section 421 to read as follows:

**“SECTION 421
COMMUNITY STORM SHELTERS**

421.1 General. In addition to other applicable requirements in this code, community storm shelters and the following specific Occupancy Category IV buildings shall be constructed in accordance with ICC/NSSA-500:

- (1) Designated earthquake, hurricane or other emergency shelters.
- (2) Designated emergency preparedness, communication, and operation centers and other facilities required for emergency response.

421.1.1 Scope. This section applies to the construction of storm shelters constructed as separate detached buildings or constructed as safe rooms within buildings for the purpose of providing safe refuge from storms that produce high winds, such as hurricanes. Such structures shall be designated to be hurricane shelters.

421.2 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

COMMUNITY STORM SHELTER. A building, structure, or portions(s) thereof, constructed in accordance with ICC 500-08 ICC/NSSA Standard on the Design and Construction of Storm Shelters and designated for use during a severe wind storm event such as a hurricane.”

Section U102. Hawai‘i Residential Safe Room.

Chapter 4 is amended by adding Section 422 to read as follows:

**“SECTION 422
HAWAI‘I RESIDENTIAL SAFE ROOM**

422.1 Performance-Based Design Criteria. The Residential Safe Room shall meet the minimum performance specifications of Sections 422.1.1 through 422.9, and the owner of the Residential Safe Room shall comply with Section 422.10.

422.1.1 Intent and Scope. The intent of the Residential Safe Room is to temporarily provide an enhanced protection area that is either: (1) fully enclosed within a dwelling or within an accessory structure to a residence; or (2) a separate structure outside of the dwelling that meets standards pursuant to 422.1.2.1 or 422.1.2.2. All Residential Safe Rooms shall be designed and constructed to withstand the wind pressures, windborne debris impacts, and other requirements of this section.

422.1.2 Alternative Standards.

- (1) **Manufactured Safe Room Designs Subject to Approval.** A manufactured safe room or safe room kit may be substituted if documentation is submitted and approved by the building official. The safe room shall be engineered, tested, and manufactured to meet or exceed the criteria of this section.

- (2) FEMA 320 Shelter Designs Permitted. It shall be permissible to build FEMA Shelters of up to 64 square feet of floor area with walls up to 8 feet long that are built in accordance with construction details of FEMA 320.

422.2 Site Criteria. Residential Safe Rooms shall not be constructed within areas subject to stream flooding, coastal flooding or dam failure inundation within any of the following areas:

- (1) FEMA Special Flood Hazard Areas (SFHA) subject to rainfall runoff flooding or stream or flash flooding;
- (2) Coastal zones "V" or "A" identified in the Flood Insurance Rate Map (FIRM) issued by FEMA for floodplain management purposes, in which the flood hazard are tides, storm surge, waves, tsunamis, or a combination of these hazards; and
- (3) Areas subject to dam failure inundation as determined by the Department of Land and Natural Resources.

422.3 Maximum Occupancy. The safe room is permitted to be used for a maximum occupancy based on at least 15 square feet per person with a maximum of 8 persons in a room of up to 128 square feet of floor area.

422.4 Provisions for Exiting. The room shall be equipped with an inward-swinging door and an impact-protected operable window suitable for a means of alternative exiting in an emergency.

422.5 Design for Dead, Live, Wind, Rain, and Impact Loads.

422.5.1 Structural Integrity Criteria.

- (1) The safe room shall be built with a complete structural system and a complete load path for vertical and lateral loads caused by gravity and wind.
- (2) The building that the safe room is built within shall be assumed to be destroyed by the storm and shall not be taken as offering any protective shielding to the safe room enclosure.
- (3) The ceiling structure and wall shall be capable of supporting a superimposed debris load of the full weight of any building floors and roof above, but not less than 125 psf.
- (4) The safe room enclosure shall be capable of simultaneously resisting lateral and uplift wind pressures corresponding to a 160 mph 3-second peak gust, determined in accordance with ASCE Standard 7, Minimum Design Loads for Buildings and Other Structures, calculated using load and importance Factors of 1.0. The site exposure factor shall be based on exposure C. The gust factor and the directionality factor shall be taken as 0.85. Topographic wind amplification caused by mountainous terrain shall be considered in accordance with the building code. Internal pressure shall be determined in accordance with ASCE – 7.
- (5) The safe room shall be anchored to a foundation system capable of resisting the above loading conditions.

422.5.2 Windborne Debris Impact Protection of Building Enclosure Elements. The entire enclosure of the safe room, including all walls, ceilings, and openings, fixed or operable windows, and all entry doors into the safe room, shall meet or exceed Level D requirements of ASTM E 1996 (Table 422.5-1). Any wall or ceiling penetration greater than 4 square inches shall be considered an opening.

Exception: Electrical outlet boxes and interior lighting switches not penetrating more than 2.5-inches into the interior wall surface and a plumbing piping or conduit not greater than 1.5-inch in diameter shall be exempted from this requirement.

422.5.3 Cyclic Pressure Loading of Glazing and Protective Systems. Impact protective systems shall meet the ASTM E 1996 cyclic pressure requirement for the loading given in Table 422.5-1.

Table 422.5-1 – Windborne Debris Protection and Cyclic Pressure Criteria for Residential Safe Rooms

ASTM E 1996 Missile Level Rating	Debris Missile Size	Debris Impact Speed	Enclosure Wall Ceiling, and Floor Cyclic Air Pressure Testing - maximum inward and maximum outward pressures
D	2 x 4 weighing 9.0 lb. +/- 0.25 lb., and with min. length 8 ft. +/- 4-inch	50 ft./sec. or at least 34 mph	35 psf inward 45 psf outward

422.6 Ventilation. The room shall be naturally ventilated to allow the enclosure to have approximately one air change every 2 hours. This requirement may be satisfied by 12 square inches of venting per occupant. There shall be at least two operable vents. The vents shall be protected by a cawling or other device that shall be impact tested to comply with ASTM E 1996 Level D. Alternatively, the room shall be evaluated to determine if the openings are of sufficient area to constitute an open or partially enclosed condition as defined in ASCE 7.

422.7 Communications. The safe room shall be equipped with a phone line and telephone that does not rely on a separate electrical power outlet. Alternatively, a wireless telephone shall be permitted to rely on an Uninterruptible Power Supply (UPS) battery device.

422.8 Construction Documents. Construction documents for the Residential Safe Room shall be directly prepared by a Hawai'i licensed professional structural engineer.

422.9 Special Inspection. The construction or installation of the safe room shall be verified for conformance to the drawings in accordance with Chapter 17.

422.10 Notification. The owner of the safe room shall notify the State Department of Defense and county civil defense agency of the property's Tax Map Key or Global Positioning System coordinates."

Section U102. State and County-owned Public High Occupancy Buildings - Design Criteria for Enhanced Hurricane Protection Areas.

Chapter 4 is amended by adding Section 423 to read as follows:

**“SECTION 423
STATE AND COUNTY-OWNED HIGH OCCUPANCY BUILDINGS -
DESIGN CRITERIA FOR ENHANCED HURRICANE PROTECTION
AREAS**

423.1 Intent. The purpose of this section is to establish minimum life safety design criteria for enhanced hurricane protection areas in high occupancy state- and county-owned buildings occupied during hurricanes of up to Saffir Simpson Category 3.

423.2 Scope. This section shall apply to state- and county-owned buildings which are of Occupancy Category III and IV defined by Table 1604.5 and of the following specific occupancies:

- (1) Enclosed and partially enclosed structures whose primary occupancy is public assembly with an occupant load greater than 300.
- (2) Health care facilities with an occupant load of 50 or more resident patients, but not having surgery or emergency treatment facilities.
- (3) Any other state- and county-owned enclosed or partially enclosed building with an occupant load greater than 5,000.
- (4) Hospitals and other health care facilities having surgery or emergency treatment facilities.

Exception: Facilities located within flood zone V and flood zone A that are designated by the owner to be evacuated during hurricane warnings declared by the National Weather Service, shall not be subject to these requirements.

423.3 Site Criteria.

423.3.1 Flood and Tsunami Zones. Comply with ASCE 24-05, Flood Resistant Design and Construction, based on provisions for Occupancy Category III.

- (1) Floor slab on grade shall be 1.5 foot above the Base Flood Elevation of the county's flood hazard map, or at higher elevation as determined by a modeling methodology that predicts the maximum envelope and depth of inundation including the combined effects of storm surge and wave actions with respect to a Category 3 hurricane.

- (2) Locate outside of V and Coastal A flood zones unless justified by site-specific analysis or designed for vertical evacuation in accordance with a method approved by the building official. When a building within a V or Coastal A zone is approved, the bottom of the lowest structural framing member of any elevated first floor space shall be 2 feet above the Base Flood Elevation of the county's flood hazard map, or at higher elevation as determined by a modeling methodology that predicts the maximum envelope and depth of inundation including the combined effects of storm surge and wave actions with respect to a Category 3 hurricane.
- (3) Locate outside of Tsunami evacuation zones unless justified by site-specific analysis or designed for vertical evacuation in accordance with a method approved by the building official.

423.3.2 Emergency Vehicle Access. Provide at least one route for emergency vehicle access. The portion of the emergency route within the site shall be above the 100-year flood elevation.

423.3.3 Landscaping and Utility Laydown Impact Hazards. Landscaping around the building shall be designed to provide standoff separation sufficient to maintain emergency vehicle access in the event of mature tree blowdown. Trees shall not interfere with the functioning of overhead or underground utility lines, nor cause laydown or falling impact hazard to the building envelope or utility lines.

423.3.4 Adjacent Buildings. The building shall not be located within 1,000 feet of any hazardous material facilities defined by Table 1604.5. Unanchored light-framed portable structures shall be not permitted within 300 feet of the building.

423.4 Enhanced Hurricane Protection Area Program Requirements.

423.4.1 Applicable Net Area. At least 50 percent of the net square feet of a facility shall be constructed to qualify as an enhanced hurricane protection area. The net floor area shall be determined by subtracting from the gross square feet the floor area of excluded spaces, exterior walls, columns, fixed or movable objects, equipment or other features that under probable conditions cannot be removed or stored during use as a storm shelter.

423.4.2 Excluded spaces. Spaces such as mechanical and electrical rooms, storage rooms, attic and crawl spaces, shall not be considered as net floor area permitted to be occupied during a hurricane.

423.4.3 Occupancy Capacity. The occupancy capacity shall be determined by dividing the net area of the enhanced hurricane protection area by 15 square feet net floor area per person.

423.4.4 Toilets and hand washing facilities. Provide a minimum of 1 toilet per 50 enhanced hurricane protection area occupants and a minimum of 1 sink per 100 enhanced hurricane protection area occupants, as determined per Section 423.4.3, located within the perimeter of the enhanced hurricane protection area. These required toilet and hand-washing facilities are not in addition to those required for normal occupancy and shall be included in the overall facility fixture count.

423.4.5 Accessibility. Where the refuge occupancy accommodates more than 50 persons, provide an ADA-accessible route to a shelter area at each facility with a minimum of 1 wheelchair space for every 200 enhanced hurricane protection area occupants determined per Section 423.4.3.

423.5 Design Wind, Rain, and Impact Loads.

423.5.1 Structural Design Criteria. The building Main Wind Force Resisting System and structural components shall be designed per ASCE 7 for a 115 mph minimum peak 3-second gust design speed with a load factor of 1.6, and an Importance Factor for Occupancy Category III. Topographic and directionality factors shall be the site-specific values determined per Appendix W. Design for interior pressure based on the largest opening in any exterior facade or roof surface.

423.5.2 Windborne Debris Missile Impact for Building Enclosure Elements. Exterior glazing and glazed openings, louvers, roof openings and doors shall be provided with windborne debris impact resistance or protection systems conforming to ASTM E1996-05 Level D, i.e., 9 lb. 2 X 4 @ 50 fps (34 mph).

423.5.3 Cyclic Pressure Loading of Impact Resistive Glazing or Windborne Impact Protective Systems. Resistance to the calculated maximum inward and outward pressure shall be designed to conform to ASTM E1996-05.

423.5.4 Windows. All unprotected window assemblies and their anchoring systems shall be designed and installed to meet the wind load and missile impact criteria of this section.

423.5.5 Window Protective Systems. Windows may be provided with permanent or deployable protective systems, provided the protective system is designed and installed to meet the wind load and missile impact criteria and completely covers the window assembly and anchoring system.

423.5.6 Doors. All exterior and interior doors subject to possible wind exposure and/or missile impact shall have doors, frames, anchoring devices, and vision panels designed and installed to resist the wind load and missile impact criteria or such doors, frames, anchoring devices, and vision panels shall be provided with impact protective systems designed and installed to resist the wind load and missile impact criteria of this section.

423.5.7 Exterior envelope. The building enclosure, including walls, roofs, glazed openings, louvers and doors, shall not be perforated or penetrated by windborne debris, as determined by compliance with ASTM E1996-05 Level C.

423.5.8 Parapets. Parapets shall satisfy the wind load and missile impact criteria of the exterior envelope.

423.5.9 Roofs.

423.5.9.1 Roof Openings. Roof openings (e.g., HVAC fans, ducts, skylights) shall be provided with protection for the wind load and missile impact criteria of Sections 423.5.2 and 423.5.3.

423.5.9.2 High Wind Roof Coverings. Roof coverings shall be specified and designed according to the latest ASTM Standards for high wind uplift forces.

423.5.9.3 Roof Drainage. Roofs shall have adequate slope, drains and overflow drains or scuppers sized to accommodate 100-year hourly rainfall rates in accordance with Section 1611.1, but not less than 2-inches per hour for 6 continuous hours.

423.6 Ventilation.

423.6.1 Mechanical ventilation. Mechanical ventilation as required per the International Mechanical Code. Air intakes and exhausts shall be designed and installed to meet the wind load and missile impact criteria of Sections 423.5.2 and 423.5.3.

423.6.2 HVAC Equipment anchorage. HVAC equipment mounted on roofs and anchoring systems shall be designed and installed to meet the wind load criteria. Roof openings for roof-mounted HVAC equipment shall have a 12-inch-high curb designed to prevent the entry of rain water.

423.7 Standby Electrical System Capability. Provide a standby emergency electrical power system per Chapter 27 and NFPA 70 Article 700 Emergency Systems and Article 701 Legally Required Standby Systems, which shall have the capability of being connected to an emergency generator or other temporary power source. The emergency system capabilities shall include:

- (1) An emergency lighting system,
- (2) Illuminated exit signs,
- (3) Fire protection system(s), alarm and sprinkler, and
- (4) Minimum mechanical ventilation for health/safety purposes.

423.7.1 Emergency Generator. When emergency generators are pre-installed, the facility housing the generator, permanent or portable, shall be an enclosed area designed to protect the generators from wind and missile impact. Generators hardened by the manufacturer to withstand the area's design wind and missile impact criteria shall be exempt from the enclosed area criteria requirement.

423.8 Quality assurance.

423.8.1 Information on Construction Documents. Construction Documents shall include design criteria, the occupancy capacity of the enhanced hurricane protective area, and Project Specifications shall include opening protection devices. Floor plans shall indicate all enhanced hurricane protection area portions of the facility and exiting routes there from. The latitude and longitude coordinates of the building shall be recorded on the construction documents.

423.8.2. Special Inspection. In addition to the requirements of Chapter 17, special inspections shall include at least the following systems and components:

- (1) Roof cladding and roof framing connections.
- (2) Wall connections to roof and floor diaphragms and framing.
- (3) Roof and floor diaphragm systems, including collectors, drag struts and boundary elements.
- (4) Vertical windforce-resisting systems, including braced frames, moment frames and shear walls.
- (5) Windforce-resisting system connections to the foundation.
- (6) Fabrication and installation of systems or components required to meet the impact-resistance requirements of Section 1609.1.2.

Exception: Fabrication of manufactured systems or components that have a label indicating compliance with the wind-load and impact-resistance requirements of this code.

423.8.3 Quality Assurance Plan. A construction quality assurance program shall be included in the Construction Documents, including:

- (1) The materials, systems, components and work required to have special inspection or testing by the building official or by the registered design professional responsible for each portion of the work.
- (2) The type and extent of each special inspection.
- (3) The type and extent of each test.
- (4) Additional requirements for special inspection or testing for seismic or wind resistance.
- (5) For each type of special inspection, identification as to whether it will be continuous special inspection or periodic special inspection.

423.8.4 Peer Review. Construction Documents shall be independently reviewed by a Hawai'i-licensed Structural Engineer. A written opinion report of compliance shall be submitted to State Civil Defense, the Building Official, and the owner.

423.9 Maintenance. The building shall be periodically inspected every three years and maintained by the owner to ensure structural integrity and compliance with this section. A report of inspection shall be furnished to State Civil Defense.

423.10 Compliance Re-certification when Altered, Deteriorated, or Damaged. Alterations shall be reviewed by a Hawai'i-licensed structural engineer to determine whether any alterations would cause a violation of this section. Deterioration or damage to any component of the building shall require an evaluation by a Hawai'i-licensed structural engineer to determine repairs necessary to maintain compliance with this section."

(2012, Ord. No. 12-27, sec. 2.)

Section 5-82. Appendix W; Hawai'i Wind Design Provisions for New Constructions.

Appendix W is added to read as follows:

**"APPENDIX W
HAWAI'I WIND DESIGN PROVISIONS FOR NEW CONSTRUCTIONS**

W101 Revisions to Chapter 16. When Appendix W is adopted, wind design shall be in accordance with Chapter 16 as amended by Sections W101.1 through W101.10.

W101.1 Revisions to Section 1603.1. Section 1603.1 is amended to read as follows:

"1603.1 General. Construction documents shall show the size, section, and relative locations of structural members with floor levels, column centers and offsets dimensioned. The design loads and other information pertinent to the structural design required by Sections 1603.1.1 through 1603.1.8 shall be indicated on the construction documents.

Exception: Construction documents for buildings constructed in accordance with the conventional light-frame construction provisions of Section 2308 shall indicate the following structural design information:

- (1) Floor and roof live loads.
- (2) Ground snow load, P_g .
- (3) Basic wind speed (3-second gust) and Effective wind speed V_{eff} (3-second gust), miles per hour (mph)(km/hr) and wind exposure.
- (4) Seismic design category and site class.
- (5) Flood design data, if located in flood hazard areas established in Section 1612.3."

W101.2 Revisions to Section 1603.1.4. Section 1603.1.4 is amended to read as follows:

"1603.1.4 Wind Design Data. The following information related to wind loads shall be shown, regardless of whether wind loads govern the design of the lateral-force-resisting system of the building:

- (1) Basic wind speed (3-second gust), miles per hour (km/hr), V , and effective windspeed V_{eff} .

- (2) Wind importance factor I, and building category.
- (3) Wind exposure, if more than one wind exposure is utilized, the wind exposure for each applicable wind direction shall be indicated.
- (4) The applicable internal pressure coefficient.
- (5) Components and cladding. The design wind pressures in terms of psf (kN/m²) used for the design of exterior components, and cladding not specifically designed by the registered design professional.”

W101.3 Revisions to Section 1609.1.1. Section 1609.1.1 is amended to read as follows:

“1609.1.1 Determination of wind loads. Wind loads on every building or structure shall be determined in accordance with Chapter 6 of ASCE 7. Minimum values for Directionality Factor, K_d , Velocity Pressure Exposure Coefficient, K_z , and Topographic Factor, K_{zt} , shall be determined in accordance with Section 1609. The type of opening protection required, the basic wind speed and the exposure category for a site is permitted to be determined in accordance with Section 1609 or ASCE 7. Wind shall be assumed to come from any horizontal direction and wind pressures shall be assumed to act normal to the surface considered.

Exceptions:

- (1) Subject to the limitations of Section 1609.1.1.1, the provisions of SBCCI SSTD 10 shall be permitted for applicable Group R-2 and R-3 buildings.
- (2) Subject to the limitations of Section 1609.1.1.1, residential structures using the provisions of the AF & PA WFCM.
- (3) Designs using NAAMM FP 1001.
- (4) Designs using TIA/EIA-222 for antenna-supporting structures and antennas.”

W101.4 Revisions to Section 1609.1.2. Section 1609.1.2 is amended to read as follows:

“1609.1.2 Protection of openings. In wind-borne debris regions, glazing in building shall be impact-resistant or protected with an impact-resistant covering meeting the requirements of an approved impact-resisting standard or ASTM E 1996 and of ASTM E 1886 referenced therein as follows:

- (1) Glazed openings located within 30 feet (9144 mm) of grade shall meet the requirements of the Large Missile Test of ASTM E 1996.
- (2) Glazed openings located more than 30 feet (9144 mm) above grade shall meet the provisions of the Small Missile Test of ASTM E 1996.

Exceptions:

- (1) Wood structural panels with a minimum thickness of 7/16 inch (11.1 mm) and a maximum panel span of 8 feet (2438 mm) shall be permitted for opening protection in one- and two-story buildings. Panels shall be precut so that they shall be attached to the framing surrounding the opening containing the product with the glazed opening. Panels shall be secured with the attachment hardware provided.

Attachments shall be designed to resist the components and cladding loads determined in accordance with the provisions of ASCE 7. Attachment in accordance with Table 1609.1.2 is permitted for buildings with a mean roof height of 33 feet (10,058 mm) or less where wind speeds do not exceed 130 mph (57.2 m/s).

- (2) Glazing in Occupancy Category I buildings as defined in Section 1604.5, including greenhouses that are occupied for growing plants on a production or research basis, without public access shall be permitted to be unprotected.
- (3) Glazing in Occupancy Category II, III or IV buildings located over 60 feet (18,288 mm) above the ground and over 30 feet (9,144 mm) above aggregate surface roofs located within 1,500 feet (458 m) of the building shall be permitted to be unprotected.
- (4) Glazing in Occupancy Category II and III buildings that can receive positive external pressure in the lower 60 feet (18,288 mm) shall be assumed to be openings unless such glazing is impact-resistant or protected with an impact-resistant system.

Exception: Glazing in Occupancy Category III buildings defined by Table 1604.5 of the following occupancies shall be provided with windborne debris protection:

- (a) Covered structures whose primary occupancy is public assembly with an occupant load greater than 300.
- (b) Health care facilities with an occupant load of 50 or more resident patients, but not having surgery or emergency treatment facilities.
- (c) Any other public building with an occupant load greater than 5,000.

1609.1.2.1 Building with openings. Where glazing is assumed to be an opening in accordance with Section 1609.1.2, the building shall be evaluated to determine if the openings are of sufficient area to constitute an open or partially enclosed building as defined in ASCE 7. Open and partially enclosed buildings shall be designed in accordance with the applicable provisions of ASCE 7. Partially enclosed Occupancy R-3 buildings shall also include a residential safe room in accordance with Section 422, Hawai'i Residential Safe Room.

1609.1.2.2 Louvers. Louvers protecting intake and exhaust ventilation ducts not assumed to be open that are located within 30 ft (9,144 mm) of grade shall meet requirements of an approved impact-resisting standard or the Large Missile Test of ASTM E 1996.

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**TABLE 1609.1.2
WIND-BORNE DEBRIS PROTECTION FASTENING SCHEDULE
FOR WOOD STRUCTURAL PANELS ^{a,b,c}**

FASTENER TYPE	FASTENER SPACING		
	Panel span ≤ 4 feet	4 feet < Panel span ≤ 6 feet	6 feet < Panel span ≤ 8 feet
No. 6 screws	16"	12"	9"
No. 8 screws	16"	16"	12"

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 pound = 0.454 kg,
1 mile per hour = 1.609 km/h.

- a. This table is based on a maximum wind speed (3-second gust) of 130 mph and mean roof height of 33 feet or less.
- b. Fasteners shall be installed at opposing ends of the wood structural panel. Fasteners shall be located a minimum of 1 inch from the edge of the panel.
- c. Fasteners shall be long enough to penetrate through the exterior wall covering a minimum of 1.75 inches into wood wall framing; a minimum of 1.25 inches into concrete block or concrete; or into steel framing by at least three threads. Fasteners shall be located a minimum of 2.5 inches from the edge of concrete block or concrete.
- d. Where screws are attached to masonry or masonry/stucco, they shall be attached utilizing vibration-resistant anchors having a minimum withdrawal capacity of 490 pounds."

W101.4.1 Revisions to Section 1609.2. Section 1609.2 is amended to read as follows:

"1609.2 Definitions. The following words and terms shall, for the purposes of Section 1609, have the meanings shown herein.

HURRICANE-PRONE REGIONS. Areas vulnerable to hurricanes defined as:

- (1) The U.S. Atlantic Ocean and Gulf of Mexico coasts where the basic wind speed is greater than 90 mph (40 m/s) and
- (2) Hawai'i, Puerto Rico, Guam, Virgin Islands and American Samoa.

WIND-BORNE DEBRIS REGION. Portions of hurricane-prone regions that are within 1 mile (1.61 km) of the coastal mean high water line where the basic wind speed is 110 mph (48 m/s) or greater; or portions of hurricane-prone regions where the basic wind speed is 120 mph (53 m/s) or greater."

W101.5 Revisions to Section 1609.3. Section 1609.3 is amended to read as follows:

"1609.3 Basic wind speed and Topographic and Directionality Factors. The basic wind speed, in mph, for the determination of the wind loads shall be determined by Figure 1609.

Special wind regions near mountainous terrain and valleys are accounted within the Topographic Factor defined in Section 1609.3.3. Wind speeds derived from simulation techniques shall only be used in lieu of the basic wind speeds given in Figure 1609 when, (1) approved simulation or extreme-value statistical-analysis procedures are used (the use of regional wind speed data obtained from anemometers is not permitted to define the hurricane wind speed risk in Hawai'i) and (2) the design wind speeds resulting from the study shall not be less than the resulting 700-year return period wind speed divided by $\sqrt{1.6}$."

W101.6 Addition of Section 1609.3.2. Section 1609.3.2 is added to read as follows:

"1609.3.2 Effective basic wind speed conversion. For Section 2308.10.1, the provisions of ASCE Section 6.4, and the exceptions permitted under Section 16099.1.1, the basic wind speed value used for determination of the wind loads, shall be the Effective Basic Wind Speed, V_{eff} , determined by Figure 1609.1.1.1, which adjusts the basic wind speed for special topographic wind regions."

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W101.7 Addition of Effective Wind Speed Contour Maps. Figure 1609.1.1.1(a) is added as follows:

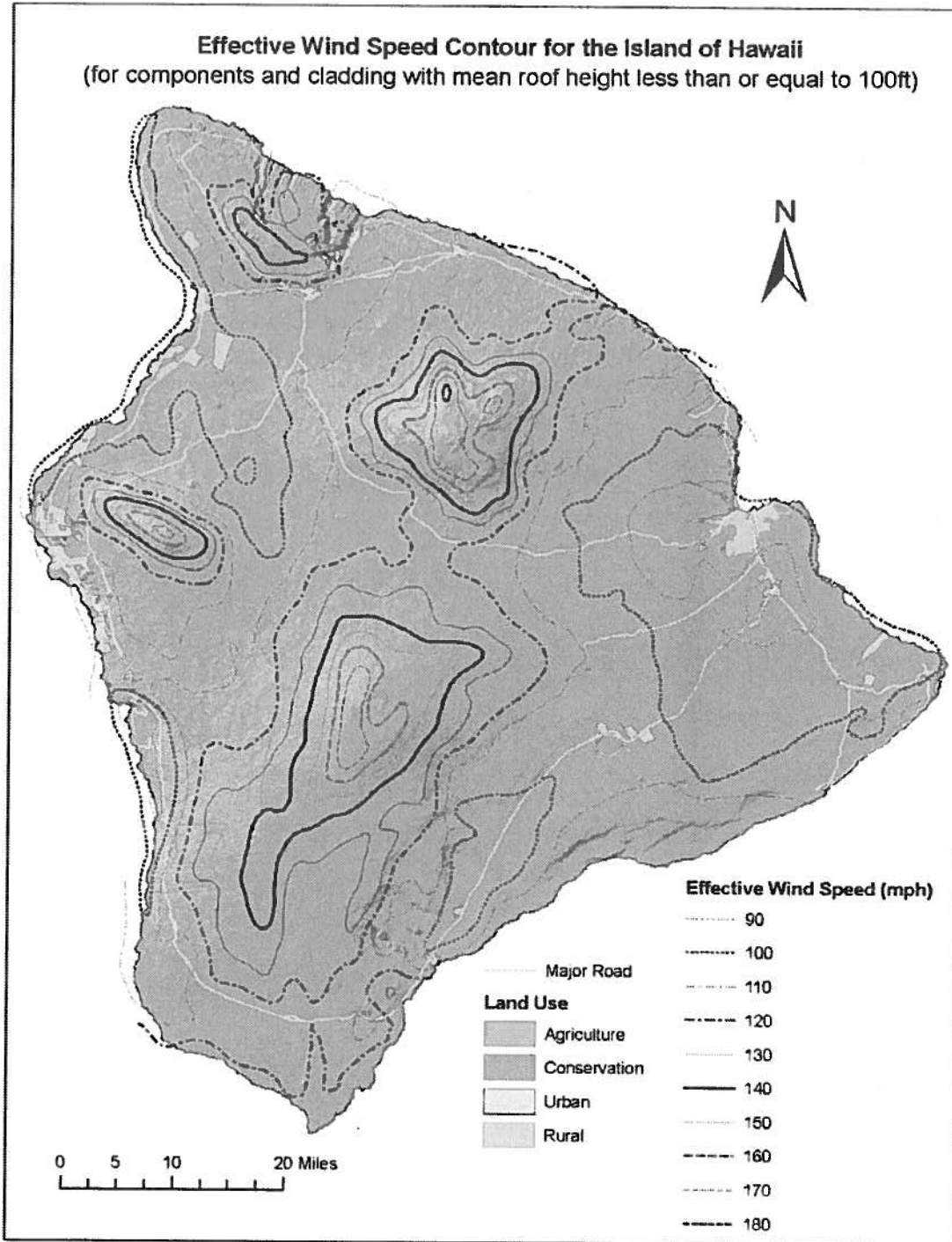


Figure 1609.1.1.1(a) County of Hawai'i Effective Basic Wind Speed, V_{eff} , for Components and Cladding for Buildings less than 100 ft. tall

W101.8 Addition of Section 1609.3.3. Section 1609.3.3 is added to read as follows:

“1609.3.3 Topographic Effects. Wind speed-up effects caused by topography shall be included in the calculation of wind loads by using the factor K_{zt} , where K_{zt} is given in Figure 1609.3.3(a).

Exception: Site-specific probabilistic analysis of directional K_{zt} based on wind-tunnel testing of topographic speed-up shall be permitted to be submitted for approval by the Building Official.”

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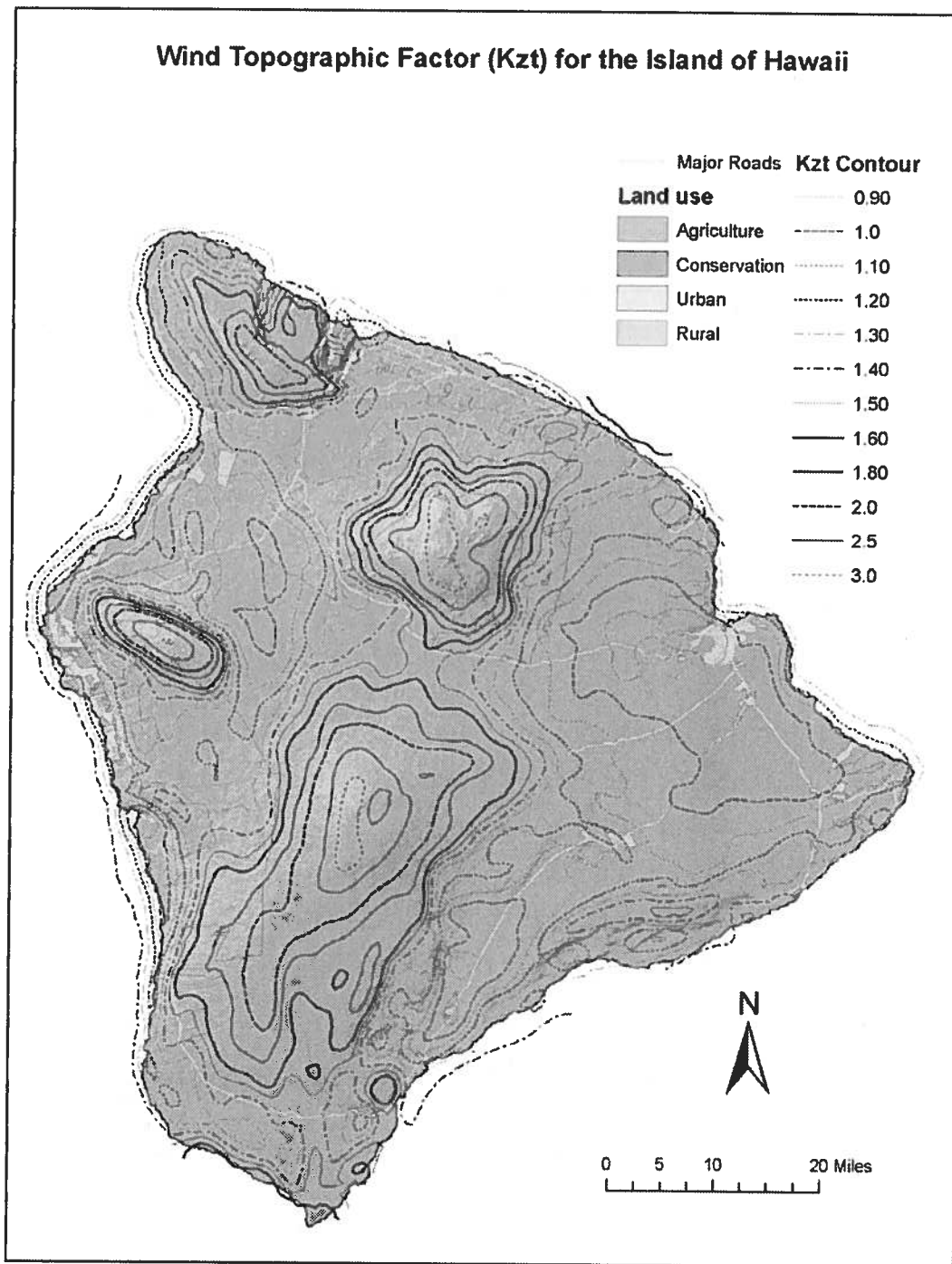


Figure 1609.3.3(a) County of Hawai'i Peak Gust Topographic Factor K_{zt}

W101.9 Directionality Factor. Section 1609.3.4 is added to read as follows:

“1609.3.4 Directionality Factor. The wind directionality factor, K_d , shall be determined from Tables 1609.3.4(a) and 1609.3.4(b).

Table 1609.3.4(a)(1) K_d Values for Main Wind Force Resisting Systems Sited in Hawai'i County^{a,b}

Topographic Location on the Island of Hawai'i	Main Wind Force Resisting Systems		Main Wind Force Resisting Systems with totally independent systems in each orthogonal direction		Biaxially Symmetric and Axisymmetric Structures of any Height and Arched Roof Structures
	Mean Roof Height less than or equal to 100 ft.	Mean Roof Height greater than 100 ft.	Mean Roof Height less than or equal to 100 ft.	Mean Roof Height greater than 100 ft.	
Sites in North Kohala, South Kohala, South Kona, South Hilo, and Puna Districts at an elevation not greater than 3000 ft.	0.65	0.70	0.70	0.75	0.85
All other sites	0.70	0.80	0.75	0.80	0.95

^a The values of K_d for other non-building structures indicated in ASCE-7 Table 6-4 shall be permitted.

^b Site-specific probabilistic analysis of K_d based on wind-tunnel testing of topography and peak gust velocity profile shall be permitted to be submitted for approval by the Building Official, but K_d shall have a value not less than 0.65.

Table 1609.3.4(b)(1) K_d Values for Components and Cladding of Buildings Sited in Hawai'i County^{a,b}

Topographic Location on the Island of Hawai'i	Components and Cladding		
	Mean Roof Height less than or equal to 100 ft.	Mean Roof Height greater than 100 ft.	Occupancy Category IV Buildings and Structures
Sites in North Kohala, South Kohala, South Kona, South Hilo, and Puna Districts at an elevation not greater than 3000 ft.	0.65	0.70	0.75
All other sites	0.75	0.80	0.85

^a The values of K_d for other non-building structures indicated in ASCE-7 Table 6-4 shall be permitted.

^b Site-specific probabilistic analysis of K_d based on wind-tunnel testing of topography and peak gust velocity profile shall be permitted to be submitted for approval by the Building Official, but in any case subject to a minimum value of 0.65.”

W101.10 Addition of Exposure category maps. Section 1609.4.4 is added to read as follows:

“1609.4.4 Exposure category maps. Exposure categories are permitted to be determined using Figure 1609.4.4(a).

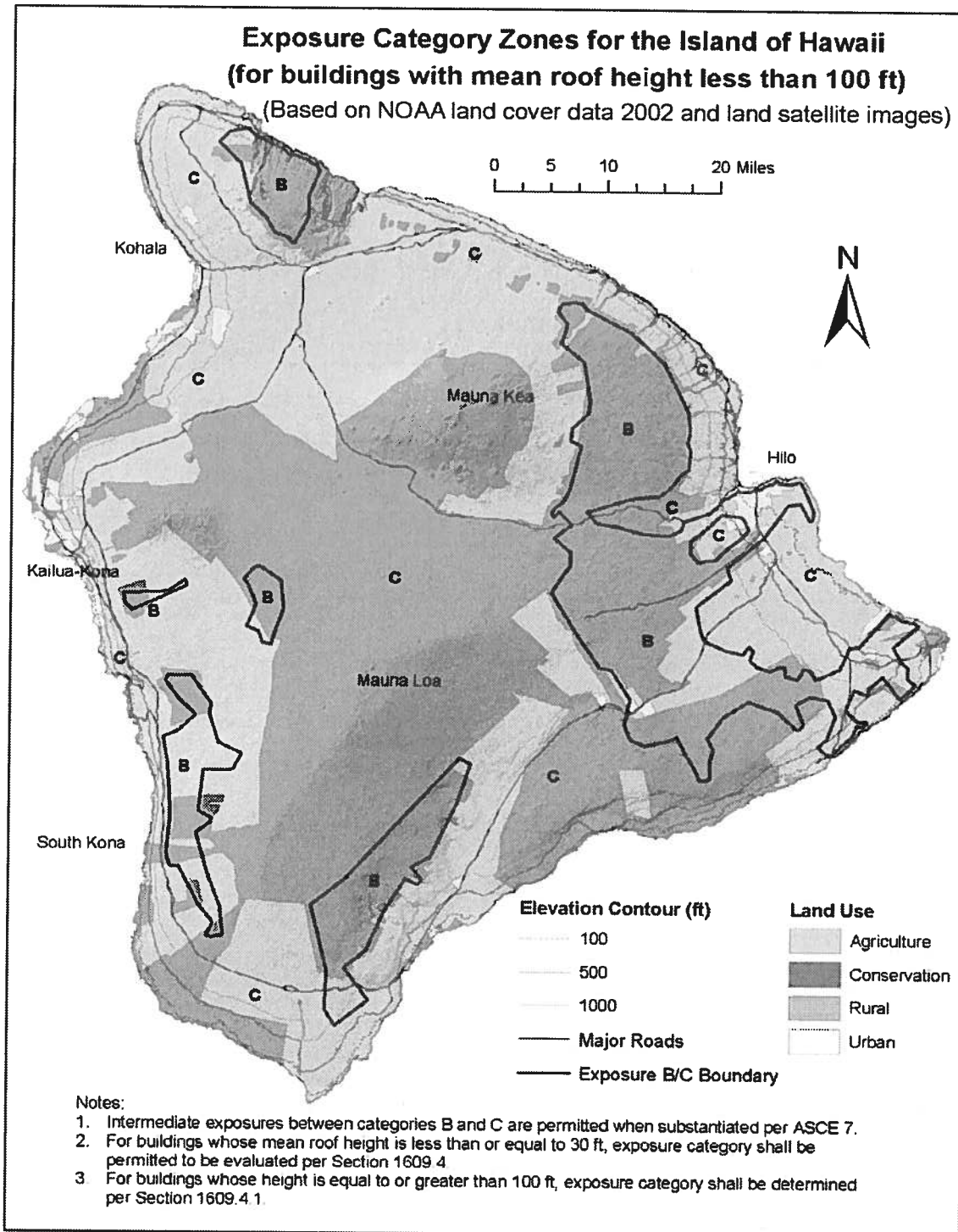


Figure 1609.4.4(a) Exposure Category Zones for Hawai'i County

W102 Revisions to Chapter 23. When Appendix W is adopted, wood construction shall be in accordance with Chapter 23 as amended by Sections W102.1 and W102.2.

W102.1 Revisions to Section 2308.2.1. Section 2308.2.1 is amended to read as follows:

“2308.2.1 Basic wind speed greater than 100 mph. Where the Effective Basic Wind Speed exceeds 100 mph, the provisions of the AF&PA WFCM, or the SBCCI SSTD 10 are permitted to be used.”

W102.2 Revisions to Table 2308.10.1. Table 2308.10.1 is amended to read:

**TABLE 2308.10.1
REQUIRED RATING OF APPROVED UPLIFT CONNECTORS (pounds)^{a,b,c,d,e,f,g,h,i}**

Effective Basic Wind Speed <i>V_{eff}</i> , 3-sec gust	Roof Span (feet)							Overhangs (pounds/ft) ^d
	12	20	24	28	32	36	40	
85	-72	-120	-144	-168	-192	-216	-240	-38.55
90	-91	-152	-182	-213	-243	-274	-304	-43.22
100	-131	-218	-262	-305	-349	-392	-436	-53.36
110	-175	-292	-350	-409	-467	-526	-584	-64.56
120	-240	-400	-480	-560	-640	-720	-800	-76.83
130	-304	-506	-607	-708	-810	-911	-1012	-90.17

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 mile per hour = 1.61 km/hr, 1 pound = 0.454 Kg, 1 pound/foot = 14.5939 N/m.

a. The uplift connection requirements are based on a 30-foot mean roof height located in Exposure B. For Exposure C and for other mean roof heights, multiply the above loads by the adjustment coefficients below.

EXPOSURE	Mean Roof Height (feet)									
	15	20	25	30	35	40	45	50	55	60
B	1.00	1.00	1.00	1.00	1.05	1.09	1.12	1.16	1.19	1.22
C	1.21	1.29	1.35	1.40	1.45	1.49	1.53	1.56	1.59	1.62

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 mile per hour = 1.61 km/hr, 1 pound = 0.454 Kg, 1 pound/foot = 14.5939 N/m.

- b. The uplift connection requirements are based on the framing being spaced 24 inches on center. Multiply by 0.67 for framing spaced 16 inches on center and multiply by 0.5 for framing spaced 12 inches on center.
- c. The uplift connection requirements include an allowance for 10 pounds of dead load.
- d. The uplift connection requirements do not account for the effects of overhangs. The magnitude of the above loads shall be increased by adding the overhang loads found in the table. The overhang loads are also based on framing spaced 24 inches on center. The overhang loads given shall be multiplied by the overhang projection and added to the roof uplift value in the table.
- e. The uplift connection requirements are based upon wind loading on end zones as defined in Figure 6-2 of ASCE 7. Connection loads for connections located a distance of 20 percent of the least horizontal dimensions of the building from the corner of the building are permitted to be reduced by multiplying the table connection value by 0.7 and multiplying the overhang load by 0.8.
- f. For wall-to-wall and wall-to-foundation connections, the capacity of the uplift connector is permitted to be reduced by 100 pounds for each full wall above. (For example, if a 500-pound rated connector is used on the roof framing, a 400-pound rated connector is permitted at the next floor level down.)
- g. Interpolation is permitted for intermediate values of basic wind speeds and roof spans.
- h. The rated capacity of approved tie-down devices is permitted to include up to a 60-percent increase for wind effects where allowed by material specifications.
- i. *V_{eff}* is given by Figure 1609.1.1.1.”

(2012, Ord. No. 12-27, sec. 2.)

Section 5-83. Appendix X; Indigenous Hawaiian Architecture Structures.
Appendix X is added to read as follows:

**“APPENDIX X
INDIGENOUS HAWAIIAN ARCHITECTURE STRUCTURES
SECTION X101
GENERAL**

X101.1 Scope. The provisions of this appendix shall apply exclusively to Indigenous Hawaiian Architecture Structures. The purpose of these provisions is to acknowledge and establish procedures for designing and constructing indigenous Hawaiian architecture structures.

X101.2 Publications incorporated by reference. The following publications are incorporated by reference and made a part of these provisions. Where there is a conflict between Appendix X and the referenced documents, Appendix X shall prevail.

- (1) “Hawaiian Thatched House” (1971), by Russell A. Apple, published by the United States Department of the Interior,
- (2) “Hale Construction Standards” (2000), by Francis Sinenci and Bill Sides,
- (3) “The Hawaiian Grass House in Bishop Museum” (1988), by Catherine C. Summers, and
- (4) “Arts and Crafts of Hawaii, Section II, Houses” (1957) by Te Rangi Hiroa (Peter H. Buck)

X101.3 Definitions. For purposes of this appendix, the following words and terms shall have the meanings shown herein. Refer to Chapter 2 for general definitions.

CERTIFIED HALE BUILDER. means a person who has obtained a certificate of completion for satisfactorily completing a course in Hawaiian hale construction from the University of Hawai‘i, or any of its community colleges, or as approved by the Building Official.

GROUP OF STRUCTURES. A group of indigenous Hawaiian architecture structures that are in close proximity to each other and have an aggregate floor area of 1,800 square feet or less.

INDIGENOUS HAWAIIAN ARCHITECTURE STRUCTURE or HALE. A structure that is consistent with the design, construction methods and uses of structures built by Hawaiians in the 1800’s, which uses natural materials found in the Hawaiian islands, and complies with this appendix and references.

SEPARATION. The clear distance between two structures.

SETBACK. The clear distance between a structure and a property line.

**SECTION X201
MATERIAL REQUIREMENTS**

X201.1 Hale Materials. Hale shall be constructed using only materials grown and harvested in the State of Hawai‘i.

X201.2 Wood Framing Material. The wood members for the hale, such as posts and rafters, shall be, but not limited to hardwoods of unmilled, straight sections of trunks or branches of the following species:

- (1) Casaurina equisetifolia (ironwood).
- (2) Prosopis-allid (kiawe).
- (3) Eucalyptus robusta (cucalyptus).
- (4) Psidium cattleianum (strawberry guava).
- (5) Metrosideros polymorpha (ohia).
- (6) Rizophora mangle (mangrove).

Exception: Ardisia elliptica (inkberry) may be used only for roof purlins as an alternative to specified woods listed in Items 1 through 6.

X201.3 Roofing and Siding. Thatched roofing and siding materials for the hale may be any grass or leaf material grown and harvested in the State of Hawai‘i, to include but not be limited to pili, kualohia, pueo, kawelu, sugar-cane leaves, and ti leaves.

X201.4 Cord. Natural or synthetic cord used for lashing structural members of the hale shall be 400 pound test. Cord used for tying floating purlins and thatched materials shall be 100 pound test. All cord used on the hale shall be shades of green, tan, brown or black.

X201.5 Metal Prohibited. Metal shall not be used for the construction of the hale.

**SECTION X202
SIZE AND LOCATION**

X202.1 Height and Size Limitation. Hale shall be one-story, detached structure(s) not to exceed 1,800 square feet. Hale shall not exceed the size indicated in Table X202.1.

**Table X202.1 – Maximum Size of Hale
(feet)**

hale halawai	hale ku‘ai	hale noa	hale wa‘a
30 X 60	14 X 20	14 X 24	30 X 60

X202.2 Zoning Requirements. Hale shall comply with minimum yard requirements in chapter 25, Zoning Code, Hawai‘i County Code.

X202.3 Minimum Separation. The minimum separation between a hale and another structure shall be at least 10 feet for a one-story structure; 15 feet for a two-story structure; or a distance equal to the height of the hale, whichever is more. The minimum separation between two hale shall be at least 10 feet or a distance equal to the height of the taller hale.

X202.4 Hale Noa. Hale noa structures may only be constructed on property where a separate residence exists on the property.

**SECTION X203
ALLOWABLE AND PROHIBITED USES**

X203.1 Allowable uses. To the extent permitted by other applicable law, allowable uses for hale structures shall be in accordance with Table X203.1.

Table X203.1 – Allowable Use for Each Hale Type

Use	hale halawai	Hale ku'ai	hale noa	hale wa'a
eating (ai)	Allowed	Allowed	Not permitted	Allowed
assembling (halawai)	Allowed	Allowed	Not permitted	Allowed
sleeping (moe)	Not permitted	Not permitted	Allowed	Not permitted
retailing (e.g., fruits) (ku'ai)	Allowed	Allowed	Not permitted	Allowed
storage (papa'a)	Not permitted	Allowed	Not permitted	Allowed

X203.2 Prohibited Uses and Activities. The following uses and activities shall be prohibited from occurring within or near the hale:

- (1) Cooking.
- (2) Open flames.
- (3) Generators.
- (4) Extension cords.
- (5) Electrical switches, fixtures, or outlets.
- (6) Plumbing faucets, fixtures, or drains.
- (7) Power tools.
- (8) No screen, mesh, plastic or any other similar material shall be attached to the hale.
- (9) Hale shall not be used as a food establishment as defined in the administrative rules adopted by the State of Hawai'i, Department of Health.

X203.3 Maintenance. The hale shall be maintained by the owner to ensure structural integrity. Repairs for maintenance of the hale shall not require additional building permits.

**SECTION X301
FIRE PROTECTION**

X301.1 Fire Protection Classifications. Fire protection for Indigenous Hawaiian architecture structures shall be as required in Table X301.1.

Table X301.1 – Fire Protection Requirements Based on Setback

CLASS	SETBACK REQUIREMENTS	FIRE PROTECTION REQUIREMENTS
A	The structure (or a group of structures) is: 1. Located at least 100 feet from any existing structure on the same or neighboring properties; and 2. Located at least 100 feet from any property line, except as follows: a. If the property line abuts a public way, the 100 feet minimum setback for that property line shall be reduced by the width of the public way, b. If the property line abuts the shoreline, the minimum setback for that property line shall be the shoreline setback, or c. For any hale ku'ai in the agricultural district that is less than 200 square feet, that is completely open on three sides, and that is used as an agricultural products stand and if the property line abuts a public way, the minimum setback for that property line shall be 15 feet.	No fire protection is required for the structure.
B	The structure (or a group of structures) that conforms to applicable zoning setback requirements but does not satisfy Class A setback requirements.	Automatic fire sprinkler system shall be installed in accordance with design standards in Section X301.2. An electrical permit is required for fire sprinklers systems.

X301.2 Automatic Fire Sprinklers. The design standards for automatic fire sprinklers for Class B indigenous Hawaiian architecture structures shall be in accordance with NFPA 13.

Exception: The design standards for automatic fire sprinklers for Class B indigenous Hawaiian architecture structures shall be permitted as follows:

- (1) 18 gallons per minute for a single head at 140 square feet maximum coverage of roof area.
- (2) 13 gallons per minute for each subsequent head at 140 square feet maximum coverage of roof area per head.
- (3) The minimum supply pressure at the base of the riser shall not be less than 40 pounds per square inch.
- (4) The minimum residual pressure at the highest sprinkler shall be not less than 12 pounds per square inch.

- (5) Sprinkler head spacing shall not exceed 14 feet.
- (6) Sprinkler heads shall be open type upright, pendent, or sidewall with 1/2-inch or 17/32-inch orifice and have a wax corrosion resistant coating.
- (7) The total number of sprinklers on a branch shall not exceed 6 heads.
- (8) The total number of sprinklers shall not exceed the quantity shown in the following table:

Piping Size	Number of Sprinklers
1 inch diameter	2 sprinklers
1¼ inch diameter	3 sprinklers
1½ inch diameter	5 sprinklers
2 inch diameter	10 sprinklers
2½ inch diameter	30 sprinklers
3 inch diameter	60 sprinklers

- (9) The above pipe schedule shall not apply to hydraulically designed systems.
- (10) The water density shall not be less than 0.10 gpm per square foot.
- (11) The source of water may be by domestic water meters, detector check meter, underground well, storage tank, swimming pool, ponds, etc., but must meet the design requirements for adequate pressure and duration.
- (12) Water supply shall be sufficient to provide 30 minutes duration.
- (13) If domestic water meters are used as the source of water for the fire sprinklers, without a storage tank and booster pump, the maximum number of heads shall not exceed the following table:

Size of Water Meter	Number of Sprinklers
5/8 inch water meter	1 sprinkler
¾ inch water meter	2 sprinklers
1 inch water meter	3 sprinklers
1½ inch water meter	7 sprinklers
2 inch water meter	11 sprinklers
3 inch water meter	27 sprinklers

- (14) The piping material shall be hard drawn copper with silver solder or brazed fittings, or carbon steel with corrosion-resistant coatings. Plastic pipes shall not be allowed, except for below grade supply pipes.
- (15) Fire sprinkler system shall be actuated by smoke detectors located at the highest points of the roof and spaced as recommended by the manufacturer.
- (16) Flow control valves shall be either hydraulically or electrically operated with a manual override switch.
- (17) Where the width of a roof exceeds the width allowed for one row of sprinklers, two or more rows of sprinklers shall be placed such that the entire roof area is protected.
- (18) Prevailing wind direction shall be considered in the placement of sprinklers.

- (19) Deflectors for sprinklers shall be parallel with the roof surface or tilted slightly towards the peak of the roof.
- (20) Fire sprinklers system shall have a local alarm activated by a smoke detector.

X301.3 Certification of Water Supply. For any hale that requires fire protection pursuant to X301.1, the applicant shall provide a certification from a licensed engineer or a licensed C-20 contractor that the water supply for the fire sprinkler system has been tested and is capable of delivering the required fire flow for 30 minutes duration.

X302 Smoke Alarm. Any hale used for sleeping shall have an approved battery operated smoke alarm installed in the hale.

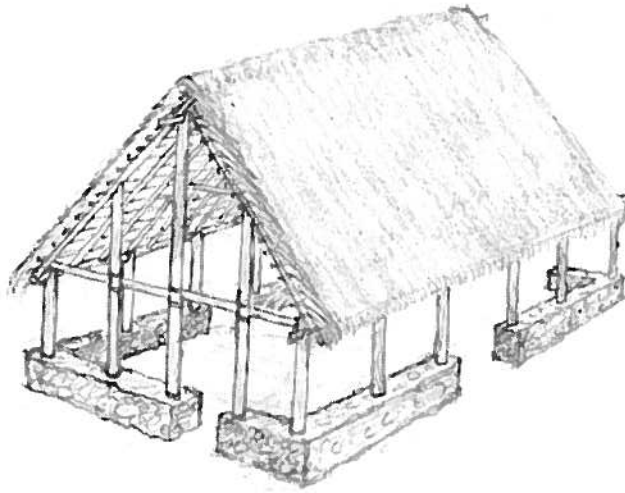
SECTION X401 DESIGN STANDARDS

X401.1 General Design standards. All types of hale shall be designed and constructed in accordance with the standards set out in this section.

- (1) The minimum diameter size of all structural members shall be measured at the member's midpoint, except that the minimum diameter size of posts shall be measured at the smaller end. For structure sizes not specifically shown in the tables, the requirements in the next larger width size shall be applicable.
- (2) The specifications for structural members were estimated based on no wind loads. Hale shall be constructed to allow all thatching materials to separate from the structure prior to adding significant loads.
- (3) The mix formula for mortar specified in these rules shall be one part portland cement, four parts clean sand, and sufficient fresh water to make the mixture workable.
- (4) Every hale, except hale noa, shall have at least two sides completely open.
- (5) Lashing and thatching methods shall comply with illustrations found in "Arts and Crafts of Hawai'i" or "The Hawaiian Grass House in Bishop Museum."

X402 Allowable Designs. Hale shall be designed and constructed in accordance with the requirements in Sections 402.1 through 402.4.

X402.1 Hale Halawai. Each end of the Hale Halawai may be open or thatched. The ends may also be constructed with a thatched roof hip as an alternate design. Hale Halawai shall be designed in accordance with the following schematics and illustrations. Structural components for Hale Halawai shall meet the size and spacing requirements in Table X402.1(a). Foundations for Hale Halawai shall be designed in accordance with Table X402.1(b).



HALE HALAWAI
Open End Style



HALE HALAWAI
Thatched End Style

FRAMING SCHEMATIC

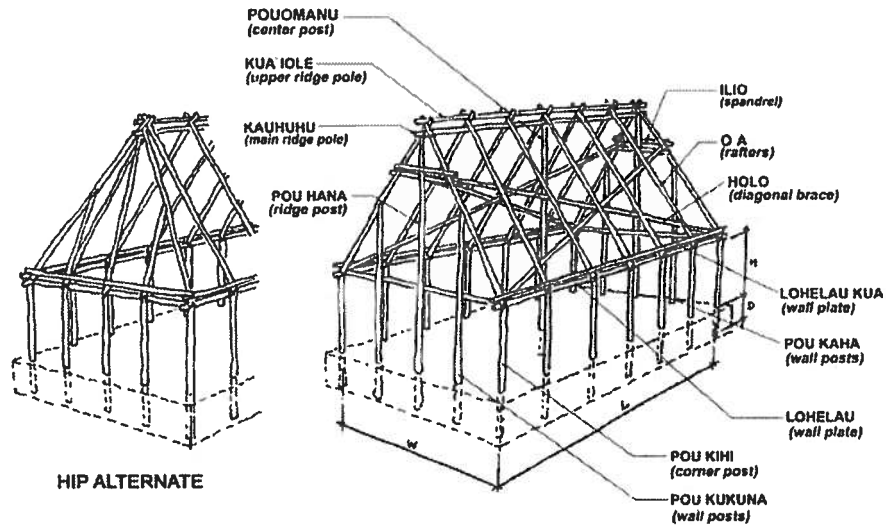


Table X402.1(a) – Size and Spacing Requirements for Structural Components used in Hale Halawai

Size W x L x H	<i>pou kihi</i>	<i>pou kukuna & pou kaha</i>	<i>pou hana</i>	<i>pouomanu</i>	<i>o'a</i>	<i>kuaiole & holo</i>	<i>kauhuhu</i>	<i>lohelau</i>	Maximum post spacing (feet)	Maximum rafter spacing (feet)
12' x 20' x 7'	4	3½	4	4	3½	2½	3	3	5	3
14' x 24' x 7'	4	4	4½	4½	3½	2½	3	3½	5	3
24' x 30' x 7'	5	4½	4½	4½	4	2½	3	3½	5	3
25' x 50' x 7'	5½	5	5½	5½	4	2½	3	3½	5	3
30' x 60' x 7'	6	5½	6	6	4½	2½	3	4	5	3

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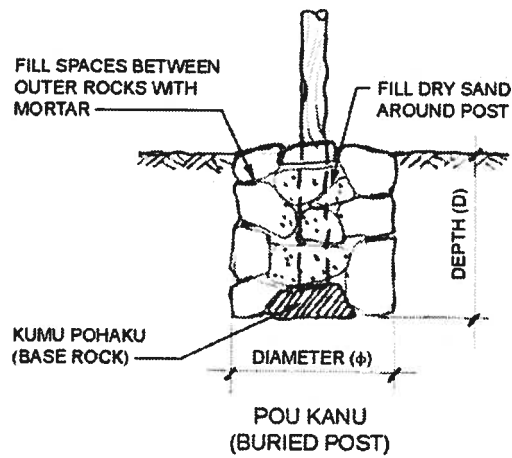
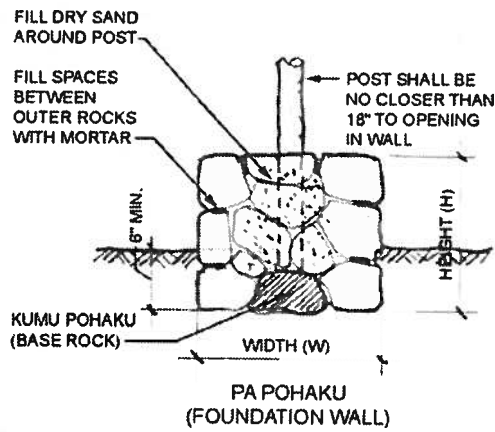
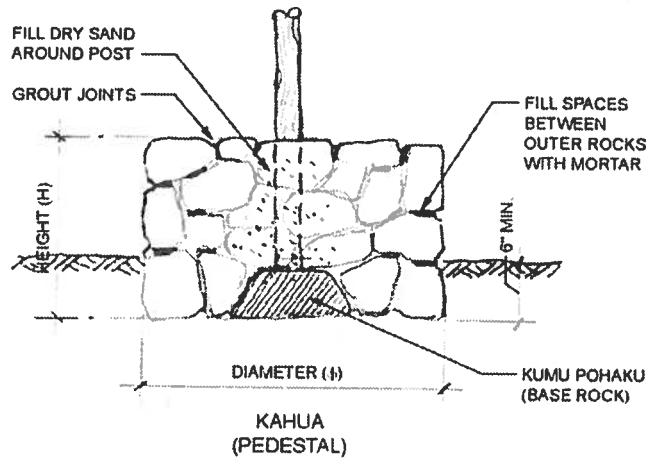
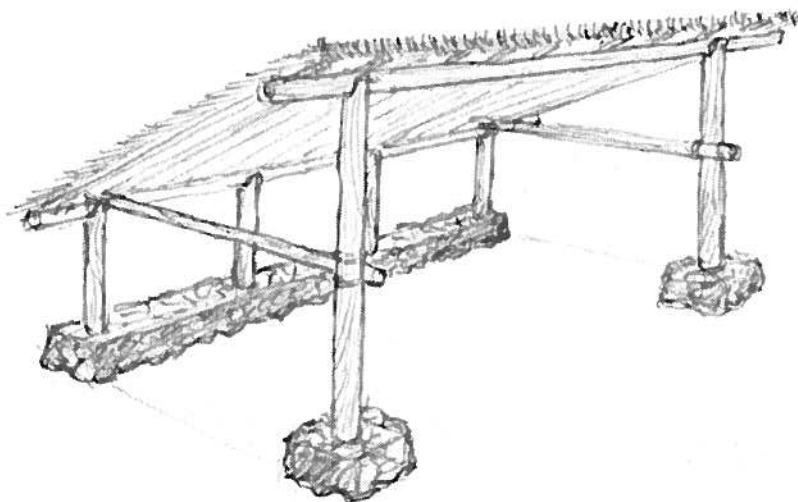


Table X402.1(b) – Foundation Design for Hale Halawai

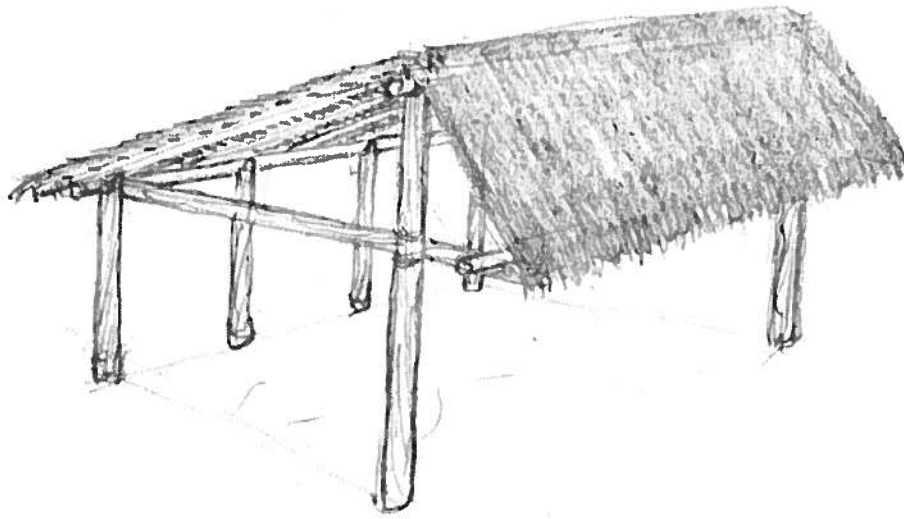
Size (W x L x H)	Foundation Type		
	kahua Diameter x Height	pa pohaku Width x Height x Length	pou kanu Diameter x Depth
12' x 20' x 7'	3'6"φ x 24"H	2'6"W x 2'8"H x 4'0"L	30"φ x 2'8"D
14' x 24' x 7'	3'8"φ x 24"H	2'6"W x 2'8"H x 4'0"L	30"φ x 2'9"D
24' x 30' x 7'	4'0"φ x 30"H	3'0"W x 3'0"H x 4'0"L	36"φ x 3'0"D
25' x 50' x 7'	4'0"φ x 30"H	3'0"W x 3'0"H x 4'0"L	36"φ x 3'0"D
30' x 60' x 7'	4'0"φ x 30"H	3'0"W x 3'3"H x 4'0"L	36"φ x 3'3"D

X402.2 Hale Ku'ai. Hale Ku'ai shall be designed in accordance with the following schematics and illustrations. Structural components for Hale Ku'ai shall meet the size and spacing requirements in Table X402.2(a). Foundations for Hale Ku'ai shall be designed in accordance with Table X402.2(b).



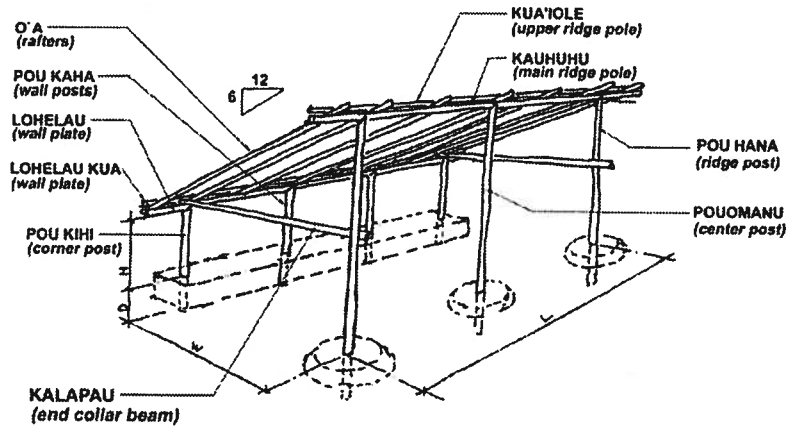
**HALE KU'AI
SHED STYLE**

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**HALE KU'AI
GABLE STYLE**

FRAMING SCHEMATIC 1



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FRAMING SCHEMATIC 2

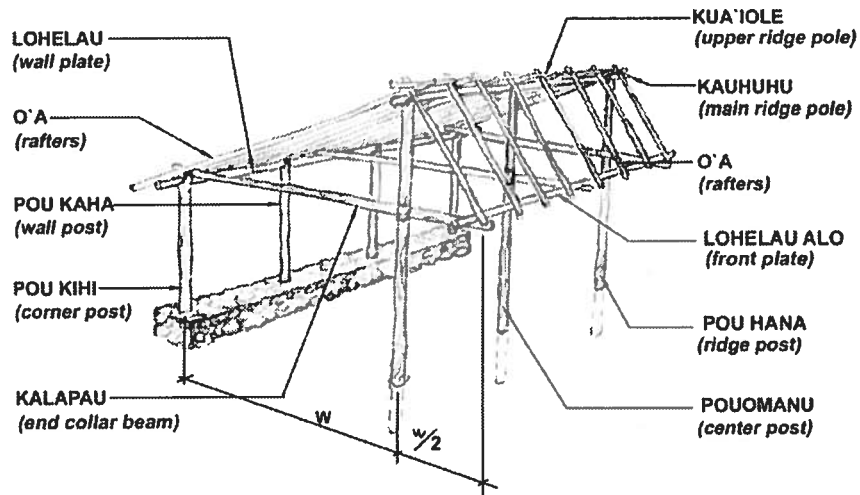


Table X402.2(a) – Size and Spacing Requirements for Structural Components used in Hale Ku‘ai

Size (W x L x H)	<i>pou kihi</i> ^a	<i>pou kaha</i> ^a	<i>pou hana</i> ^b	<i>pou manu</i> ^b	<i>o'a</i>	<i>kuaiole & holo</i>	<i>kauhuhu</i>	<i>lohelau</i>	Maximum rafter spacing (feet)
	Minimum Diameter (inches)								
5' x 10' x 5'	4	3	3	4	3	2	3	2	4
9' x 12' x 5'	4	3	3	4	3	2	3½	2	4
12' x 16' x 5'	4½	3½	4	4	3½	2	4	2½	4
14' x 20' x 5'	4½	3½	4	4	3½	2½	4½	2½	4

^a The maximum post spacing for pou kihi and pou kaha is five feet.

^b The maximum post spacing for pou hana and pouomanu is twelve feet.

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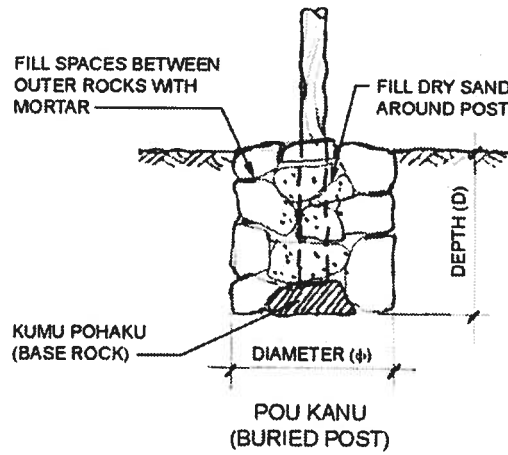
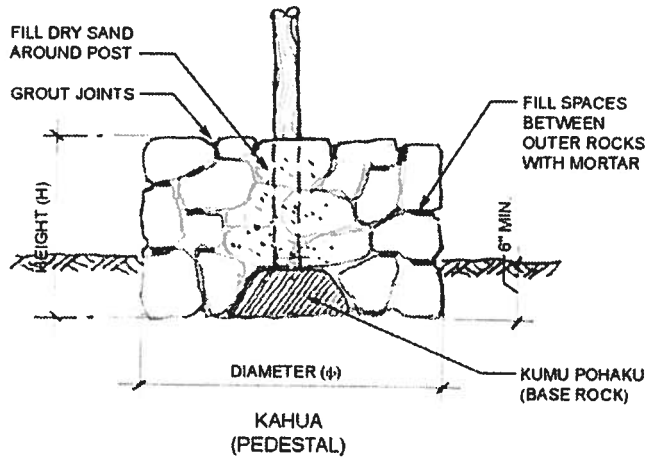
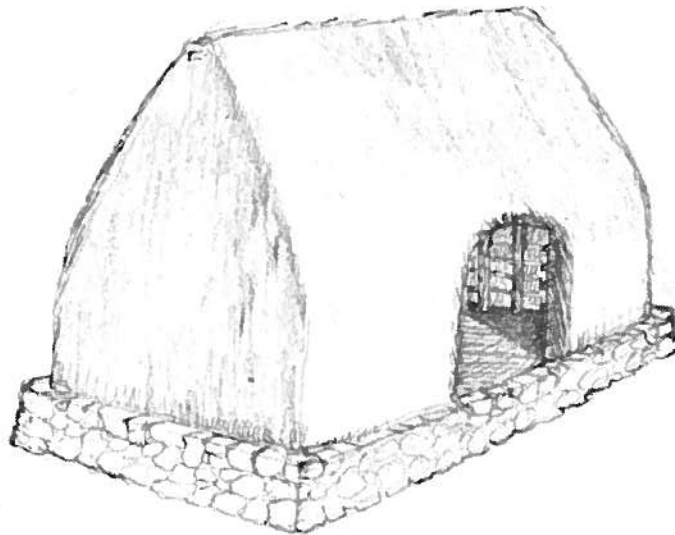


Table X402.2(b) – Foundation Design for Hale Ku'ai

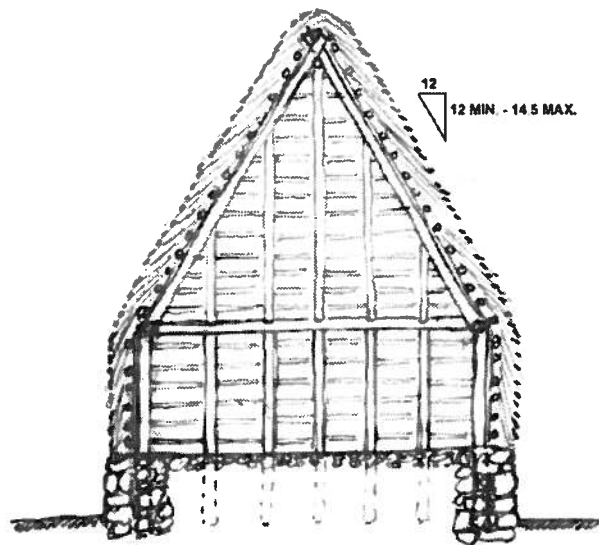
Size (W x L x H)	Foundation Type		
	kahua Diameter x Height	pa pohaku Width x Height x Length	pou kanu Diameter x Depth
5' x 10' x 5'	3'0"φ x 24"H	2'6"W x 2'0"H x 4'0"L	30"φ x 2'6"D
9' x 12' x 5'	3'4"φ x 24"H	2'6"W x 2'0"H x 4'0"L	30"φ x 2'6"D
12' x 16' x 5'	3'6"φ x 24"H	2'6"W x 2'8"H x 4'0"L	30"φ x 2'8"D
14' x 20' x 5'	3'8"φ x 24"H	2'6"W x 2'8"H x 4'0"L	30"φ x 2'9"D

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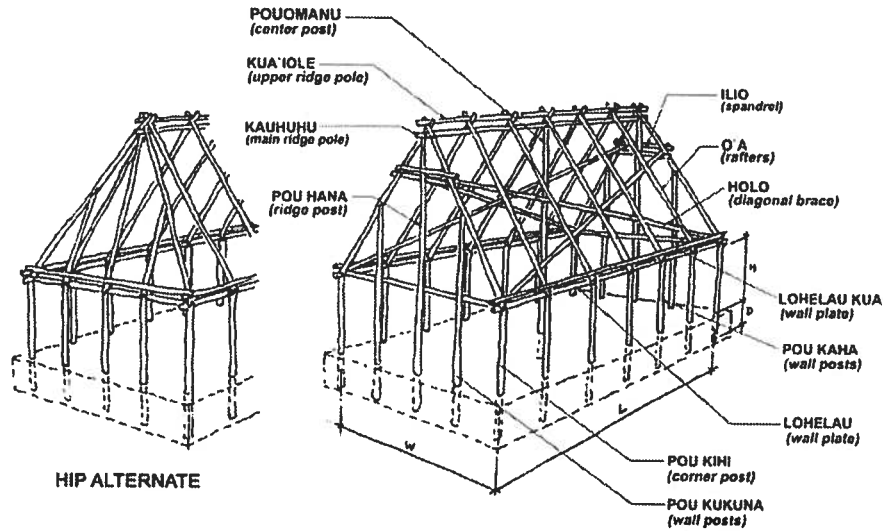
402.3 Hale Noa. Hale Noa shall have at least two openings. One opening shall be at least 3 feet wide and 5 feet high, and the other opening shall be at least 2 feet wide and 3 feet high. Hale Noa shall be designed in accordance with the following schematics and illustrations. Structural components for Hale Noa shall meet the size and spacing requirements in Table X402.3(a). Foundations for Hale Noa shall be designed in accordance with Table X402.3(b).



HALE NOA



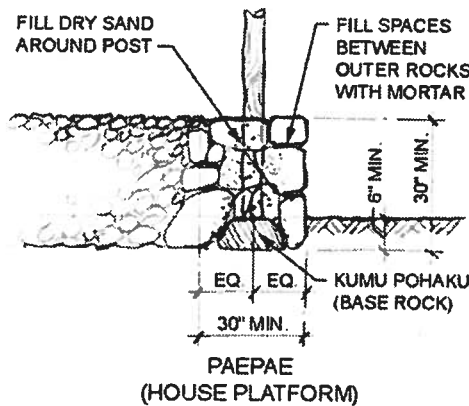
SECTION VIEW



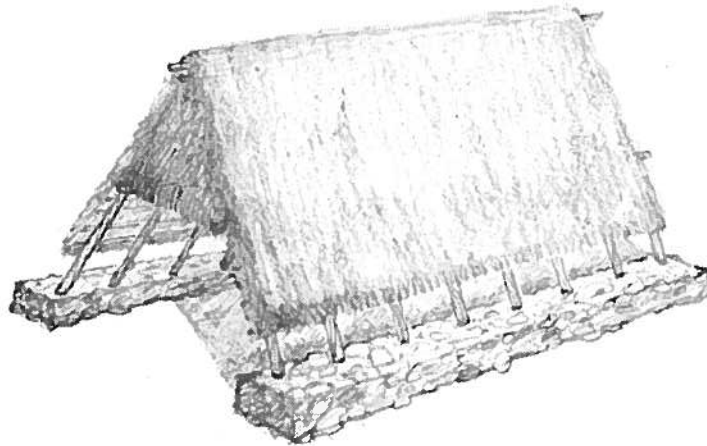
FRAMING SCHEMATIC

Table X402.3(a) – Size and Spacing Requirements for Structural Components used in Hale Noa

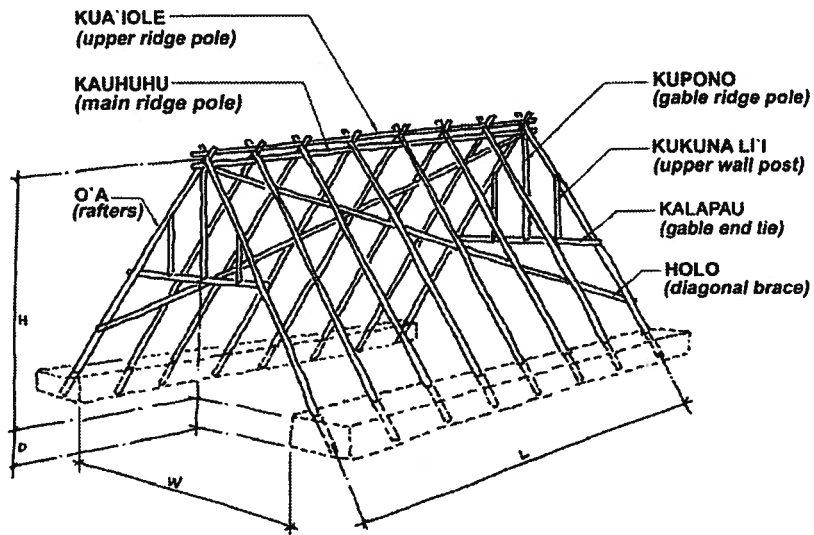
Size W x L x H	<i>pou kiki</i>	<i>pou kukuna & pou kaha</i>	<i>pou hana</i>	<i>pouomanu</i>	<i>o'a</i>	<i>kuaiole & holo</i>	<i>kauhuhu</i>	<i>lohelau</i>	Maximum post spacing (feet)	Maximum rafter spacing (feet)
	Minimum Diameter (inches)									
9' x 12' x 7'	3½	3	4	3	3	2½	3½	2½	6	4
12' x 20' x 7'	4	4½	4	3	3½	2½	3½	2½	6	4
4' x 24' x 7'	5½	4½	4	3	3½	2½	3½	3	6	4



402.4 Hale Wa'a. Hale Wa'a shall be designed in accordance with the following schematics and illustrations. Structural components for Hale Wa'a shall meet the size and spacing requirements in Table X402.4.



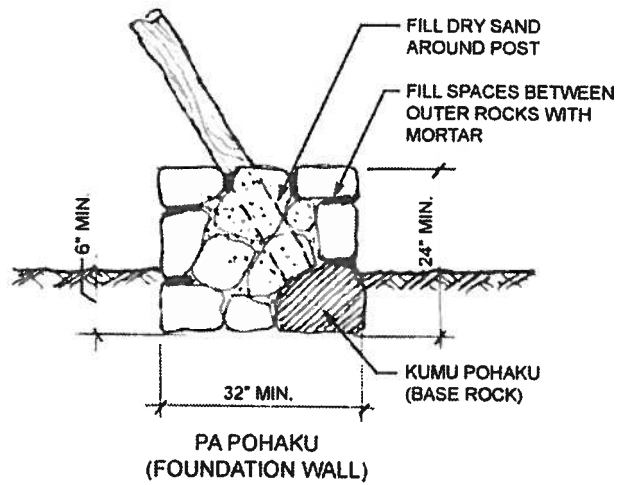
HALE WA'A



FRAMING SCHEMATIC

Table X402.4 – Size and Spacing Requirements for Structural Components used in Hale *Wa'a*

Size (W x L)	<i>o'a</i>	<i>kuaiole & holo</i>	<i>kauhuhu</i>	Spacing between Rafters	Minimum ridge Height (H)
20' x 60'	4"	3"	4"	4' to 5'	22½'
25' x 60'	5"	3"	4"	4' to 5'	27½'
30' X 60'	5½"	3"	4"	4' to 5'	27½'



(2012, Ord. No. 12-27, sec. 2.)

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Article 5. Adoption of the International Energy Conservation Code.

Section 5-84. International Energy Conservation Code adopted.

The “2006 International Energy Conservation Code”, March 2007 Edition, published by the INTERNATIONAL CODE COUNCIL, INC., Publications, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795 is adopted by reference and made a part of this code, subject to the amendments hereinafter set forth in this article. Copies of the 2006 International Energy Conservation Code, March 2007 Edition, and amendments thereto shall be available for public inspection at the department of public works and the office of the county clerk.

- (1) Amending Section 101.1. Section 101.1 is amended to read:

“**Section 101.1 Title.** This code shall be known as the International Energy Conservation Code of the County of Hawai‘i, and shall be cited as such. It is referred to herein as ‘this code.’”

- (2) Amending Section 202. Section 202, General Definitions, is amended by adding a definition for “Fully Shaded Windows” to read:

“FULLY SHADED WINDOWS. Windows protected from direct solar heat gain by a projection factor of no less than 1.0.”

- (3) Amending Table 402.1.1. Table 402.1.1 is amended by amending Floor R-Value for Climate Zone 1 and adding footnote h to read:

“TABLE 402.1.1 INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT”^a

Climate Zone	Fenestration U-Factor	Skylight ^b U-Factor	Glazed Fenestration SHGC	Ceiling R-Value	Wood Frame Wall R-Value	Mass Wall R-Value	Floor R-Value	Basement ^c Wall R-Value	Slab ^d R-Value & Depth	Crawl Space Wall R-Value
1	1.20	0.75	0.40	30 ^h	13	3	0	0	0	0
2	0.75	0.75	0.40	30	13	4	13	0	0	0
3	0.65	0.65	0.40 ^e	30	13	5	19	0	0	5 / 13
4 except Marine	0.40	0.60	NR	38	13	5	19	10 / 13	10, 2 ft	10 / 13
5 and Marine 4	0.35	0.60	NR	38	19 or 13+5 ^g	13	30 ^f	10 / 13	10, 2 ft	10 / 13
6	0.35	0.60	NR	49	19 or 13+5 ^g	15	30 ^f	10 / 13	10, 4 ft	10 / 13
7 and 8	0.35	0.60	NR	49	21	19	30 ^f	10 / 13	10, 4 ft	10 / 13

For SI: 1 foot = 304.8 mm.

- a. R-values are minimums. U-factors and SHGC are maximums. R-19 shall be permitted to be compressed into a 2 × 6 cavity.
- b. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.
- c. The first R-value applies to continuous insulation, the second to framing cavity insulation; either insulation meets the requirement.
- d. R-5 shall be added to the required slab edge R-values for heated slabs.

- e. There are no SHGC requirements in the Marine zone.
 - f. Or insulation sufficient to fill the framing cavity, R-19 minimum.
 - g. "13+5" means R-13 cavity insulation plus R-5 insulated sheathing. If structural sheathing covers 25 percent or less of the exterior, insulating sheathing is not required where structural sheathing is used. If structural sheathing covers more than 25 percent of exterior, structural sheathing shall be supplemented with insulated sheathing of at least R-2.
 - h. The ceiling insulation alternative in Section 402.1.1.1 can be used as an equivalent alternative for R-30."
- (4) Amending Section 402.1.1. Section 402.1.1 is amended by adding Section 402.1.1.1 to read:
- "402.1.1.1 Ceiling insulation alternative.** When Table 402.1.1 requires R-30 for insulation of ceiling areas, the following alternate methods of insulation and construction are acceptable:
- (1) The opaque portions of roof assemblies shall include at least one of the following:
 - (1.1) R-19 insulation between roof or ceiling framing members;
 - (1.2) Two inches of foam board insulation;
 - (1.3) A radiant barrier as provided in Subsection 5 and ventilation as provided in Subsection 4;
 - (1.4) A cool roof as provided in Subsection 6 and a radiant barrier as provided in Subsection 5; or
 - (1.5) Roof heat gain factor is less than 0.05 when calculated in accordance with Subsection 8.
 - (2) For the purpose of this section, the following terms shall be defined as follows:
 - (2.1) NET FREE VENT AREA. Net free vent area means the total area through which air can pass in a screen, grille face or register.
 - (2.2) ROOF AREA. Roof area means attic floor area; or, if there is no attic, "roof area" means the horizontal projection of roof area measured from the outside surface of the exterior walls.
 - (2.3) GROSS AREA OF OPAQUE ROOF SURFACES. Gross area of opaque roof surfaces means the total surface of the roof assembly exposed to outside air or unconditioned spaces. The opaque roof assembly shall exclude skylight surfaces, service openings, and overhangs.
 - (3) Plans shall indicate insulation type, thickness, and location; ventilation opening types, sizes and locations; radiant barrier location; and roof surface type as appropriate, depending on the option selected from Subsection 1.
 - (4) For compliance with Subsection 1.3, additional ventilation of the space containing a radiant barrier shall be provided by at least one of the following:
 - (4.1) A baffled ridge vent installed in accordance with the manufacturer's instructions in addition to lower inlet openings to provide a total of no less than one square foot of net free vent area for each 300 square feet of roof area. No less than 30 percent of the total vent area shall be in either the ridge vent or the lower half of the ventilated space.
 - (4.2) A solar-powered exhaust fan that provides at least one cubic foot per minute of airflow for each square foot of roof area.

- (4.3) Upper and lower vents with total net free vent area of at least one square foot for each 150 square feet of roof area. At least 30 percent of the total vent area shall be in the upper half of the ventilated space and at least 30 percent of the total vent area shall be in the lower half of the ventilated space.
- (5) For compliance with Subsections 1.3 or 1.4, a radiant barrier shall have an emissivity of no greater than 0.05 as tested in accordance with ASTM E-408. The radiant barrier shall be installed with the shiny side facing down and with a minimum air gap thickness of $\frac{3}{4}$ inch below. The radiant barrier may be securely attached to the roof framing or may be laminated to the bottom of the roof sheathing.
- A radiant barrier is a sheet of material with a low emissivity on at least one side that is used to reduce radiant heat transfer. Radiant barriers typically have a shiny metallic appearance.
- (6) For compliance with Subsection 1.4, a cool roof shall have an infrared emissivity of no less than 0.75 when tested in accordance with ASTM E-408 and a high solar reflectance. Alternatively, the corresponding Solar Radiance Index (SRI) for a cool roof can be used. The manufacturer's test results shall be acceptable for compliance. A cool roof has both a light color (high solar reflectance) and a high emissivity (can reject heat back to the environment). White painted surfaces and other smooth white coatings typically meet these requirements. Surfaces that do not meet the requirements include unpainted metal and metalized roof coatings (silver appearance).
- (7) At building sites higher than a 2,400-foot elevation, only Subsections 1.1 or 1.2 shall be acceptable for compliance.
- (8) For purposes of compliance with Subsection 1.5, the Roof Heat Gain Factor (RHGF) shall be calculated as described in Equation 8-1.

Equation 8-1

$$RHGF = U_r \times \alpha \times RB$$

Where:

RHGF = Roof Heat Gain Factor [Btu/ft²-h-°F]

U_r = overall thermal transmittance value for the gross area of opaque roof surfaces [Btu/ft²-h-°F]

α = roof surface absorptivity. Between 0.3 and 1.0 [unitless]

RB = Radiant Barrier credit. Equals 0.33 if a radiant barrier is installed and 1.00 otherwise [unitless]. Radiant barrier installation must comply with subsection 8.1 to qualify for Radiant Barrier credit.

- (8.1) To qualify for the radiant barrier credit (RB) described in Subsection 8, the installation of the radiant barrier must meet the following criteria:
- (8.1.1) The emissivity of the radiant barrier must be 0.10 or less. The manufacturer must provide test data or documentation of the emissivity as tested in accordance with ASTM E-408.

- (8.1.2) The radiant barrier must be securely installed in a permanent manner using one of the following installation methods:
- (8.1.2.1) The radiant barrier shall be draped with the shiny side facing down over the top cord of the truss before the roof deck is installed. A minimum air gap of $\frac{3}{4}$ inch must be provided between the radiant barrier and the roof deck above at the center of the span. A minimum $\frac{3}{4}$ inch air gap must also be provided between the radiant barrier and the ceiling or insulation below.
 - (8.1.2.2) The radiant barrier shall be stretched with the shiny side facing down between the top cords of the truss and stapled or otherwise secured at each side. A minimum air space of $\frac{3}{4}$ inch above and below is required.
 - (8.1.2.3) For attic installations only, the radiant barrier shall be stapled or otherwise secured to the bottom surface of the top cord of the truss and draped below with the shiny side facing down. A minimum air space of $\frac{3}{4}$ inch above and below is required.
 - (8.1.2.4) For open beam ceiling construction only, the radiant barrier shall be laid on top of the roof deck with the shiny side facing up and a minimum $\frac{3}{4}$ inch air gap between the radiant barrier and the roofing material above. The roof slope must be greater than or equal to 14° from horizontal.
- (8.1.3) At least one square foot of free area for ventilation shall be provided per 150 square feet of attic floor area, or in the case of vaulted or open-beam ceilings, per 150 square feet of ceiling area. In vaulted or open beam ceilings, the air space shall be vented with vent area approximately evenly distributed between the top and the bottom. In vaulted ceilings, vents shall be provided for each air space between rafters.”

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- (5) Amending Table 402.1.3. Footnote b is added to Table 402.1.3 to read:

“TABLE 402.1.3 EQUIVALENT *U*-FACTORS”

Climate Zone	Fenestration <i>U</i> -Factor	Skylight <i>U</i> -Factor	Ceiling <i>U</i> -Factor	Frame Wall <i>U</i> -Factor	Mass Wall <i>U</i> -Factor	Floor ^b <i>U</i> -Factor	Basement Wall <i>U</i> -Factor	Crawl Space Wall <i>U</i> -Factor
1	1.2	0.75	0.035	0.082	0.197	0.064	0.360	0.477
2	0.75	0.75	0.035	0.082	0.165	0.064	0.360	0.477
3	0.65	0.65	0.035	0.082	0.141	0.047	0.360	0.136
4 except Marine	0.40	0.60	0.030	0.082	0.141	0.047	0.059	0.065
5 and Marine 4	0.35	0.60	0.030	0.060	0.082	0.033	0.059	0.065
6	0.35	0.60	0.026	0.060	0.06	0.033	0.059	0.065
7 and 8	0.35	0.60	0.026	0.057	0.057	0.033	0.059	0.065

- a. Nonfenestration *U*-factors shall be obtained from measurement, calculation or an approved source.
b. Including framed floors and knee walls.”

- (6) Amending Section 402.2.2. Section 402.2.2 is amended to read:

“402.2.2 Ceilings without attic spaces. Where Section 402.1.1 would require insulation levels above R-30 and the design of the roof/ceiling assembly does not allow sufficient space for the required insulation, the minimum required insulation for such roof/ceiling assemblies shall be R-19.”

- (7) Amending Section 402.3.3. Section 402.3.3 is amended to read:

“402.3.3 Glazed fenestration exemption. Fully shaded windows, north-facing windows and up to 15 square feet (1.4 m²) of glazed fenestration per dwelling unit shall be permitted to be exempt from *U*-factor and SHGC requirements in Section 402.1.1.”

- (8) Amending Section 402.4.1. Section 402.4.1 is amended by adding Section 402.4.1.1 to read:

“402.4.1.1. Non-conditioned building exemption. Non-conditioned residential buildings are exempt from compliance with Section 402.4. The free-vent fenestration area of non-conditioned buildings shall be no less than 14 percent of the floor area. All interior doors shall be capable of being secured in the open position and ceiling fan stub-ins shall be provided to living areas and bedrooms.”

- (9) Amending Section 402.4.2. Section 402.4.2 is amended to read:

“402.4.2 Fenestration air leakage. Windows, skylights and sliding glass doors shall have an air infiltration rate of no more than 0.3 cfm per square foot (1.5 L/s/m²), and swinging doors no more than 0.5 cfm per square foot (2.6 L/s/m²), when tested according to NFRC 400 or AAMA/WDMA/CSA 101/I.S.2/A440 by an accredited, independent laboratory and listed and labeled by the manufacturer.

Exceptions:

- (1) Site-built windows, skylights and doors;
- (2) Jalousie windows shall not exceed 1.2 cfm per square foot (6.1 L/s/m²).”

- (10) Amending Section 403. Section 403 is amended by adding Section 403.7 to read:

“403.7 Residential pools. Residential pools shall be provided with energy conserving measures in accordance with Sections 403.7.1 through 403.7.3.

403.7.1 Pool heaters. All pool heaters shall be equipped with a readily accessible on-off switch to allow shutting off the heater without adjusting the thermostat setting. Pool heaters fired by liquid propane or natural gas shall not have continuously burning pilot lights.

403.7.2 Time switches. Time switches that can automatically turn off and on heaters and pumps according to a preset schedule shall be installed on swimming pool heaters and pumps.

Exceptions:

- (1) Where public health standards require 24-hour pump operation;
- (2) Where pumps are required to operate solar- and waste-heat-recovery pool heating systems.

403.7.3 Pool covers. Heated pools shall be equipped with a vapor retardant pool cover on or at the water surface. Pools heated to more than 90°F (32°C) shall have a pool cover with a minimum insulation value of R-12.

Exception: Pools deriving over 60 percent of the energy for heating from site-recovered energy or solar energy source.”

- (11) Amending section 503.2.9. Section 503.2.9 is amended by repealing section 503.2.9 in its entirety and replaced to read as follows:

“503.2.9 Mechanical systems commissioning and completion requirements.

503.2.9.1 System commissioning. Commissioning is a process that verifies and documents that the selected building systems have been designed, installed, and function according to the owner’s project requirements and construction documents. Drawing notes shall require commissioning and completion requirements in accordance with this section. Drawing notes may refer to specifications for further requirements. Copies of all documentation shall be given to the owner.

503.2.9.1.1 Commissioning plan. A commissioning plan shall include as a minimum the following items:

- (1) A detailed explanation of the original owner’s project requirements,
- (2) A narrative describing the activities that will be accomplished during each phase of commissioning, including guidance on who accomplishes the activities and how they are completed,

- (3) Equipment and systems to be tested, including the extent of tests,
- (4) Functions to be tested (for example calibration, economizer control, etc.),
- (5) Conditions under which the test shall be performed (for example winter and summer design conditions, full outside air, etc.), and
- (6) Measurable criteria for acceptable performance.

503.2.9.1.2 Systems adjusting and balancing. All HVAC systems shall be balanced in accordance with generally accepted engineering standards. Air and water flow rates shall be measured and adjusted to deliver final flow rates within 10 percent of design rates. Test and balance activities shall include as a minimum the following items:

- (1) Air systems balancing: Each supply air outlet and zone terminal device shall be equipped with means for air balancing in accordance with the requirements of Chapter 6 of the 2006 International Mechanical Code, International Code Council, Publications, 4051 West Flossmoor Road, Country Club Hills, IL. 60478-5795. Discharge dampers are prohibited on constant volume fans and variable volume fans with motors 10 hp (18.6 kW) and larger. Air systems shall be balanced in a manner to first minimize throttling losses then, for fans with system power of greater than 1 hp, fan speed shall be adjusted to meet design flow conditions.

Exception: Fan with fan motors of 1 hp or less.

- (2) Hydronic systems balancing: Individual hydronic heating and cooling coils shall be equipped with means for balancing and pressure test connections. Hydronic systems shall be proportionately balanced in a manner to first minimize throttling losses, then the pump impeller shall be trimmed or pump speed shall be adjusted to meet design flow conditions. Each hydronic system shall have either the ability to measure pressure across the pump, or test ports at each side of each pump.

Exception: Pumps with pump motors of 5 hp or less.”

- (12) Amending Section 505.7. Section 505.7 is amended to read:

“505.7 Electrical energy consumption. (Mandatory). In buildings having individual dwelling or subtenant units, provisions shall be made to determine the electrical energy consumed by each tenant by separately metering individual dwelling and subtenant units. Tenants shall have ready physical access to meters. Meters shall display kWh consumption and be calibrated in accordance with ANSI C12.1-2008.”

- (13) Amending Chapter 6. Chapter 6, Referenced Standards, is amended by adding the following specifications to the ANSI and ASTM categories, to read:

“ANSI Standard reference number	Title	Referenced in code section number
C12.1-2008	Electric Meters Code for Electricity Metering.....	505.7

ASTM Standard reference number	Title	Referenced in code section number
E 408-2008	Standard Test Methods for Total Normal Emittance of Surfaces Using Inspection Meter Techniques.....	402.1.1.1 #5, 402.1.1.1 #6, 402.1.1.1 #8.1.1”

(2012, Ord. No. 12-27, sec. 2.)

Statutory Appendix 2

Hawai'i County Code, Chapter 9 Electricity

Chapter 9

ELECTRICITY

Article 1. General Provisions.

- Section 9-1. Title.
- Section 9-2. Purpose.
- Section 9-3. Scope; exceptions.
- Section 9-4. Similar provisions; greater safety to prevail.
- Section 9-5. Definitions.

Article 2. Administration and Enforcement.

- Section 9-6. Administration and enforcement.
- Section 9-7. Nonliability of the County or its employees for damages.
- Section 9-8. Right of entry.
- Section 9-9. Inspections.
- Section 9-10. Nonconforming and defective installations.
- Section 9-11. Request for inspection.
- Section 9-12. Final inspection required.
- Section 9-13. Permanent electrical service.

Article 3. National Electrical Code.

Division 1. General.

- Section 9-14. National Electrical Code adopted.
- Section 9-15. Compliance; standards of performance.
- Section 9-16. Qualification to perform work.

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Chapter 9**ELECTRICITY****Article 1. General Provisions.****Section 9-1. Title.**

This chapter shall be known and may be cited as the County electrical code.
(1994, Ord. No. 94-72, sec. 3.)

Section 9-2. Purpose.

The purpose of this chapter is to reduce the hazards to persons and property from electrical causes. To accomplish this, the requirements set forth herein are intended to provide a minimum standard for electrical installations in the County.
(1994, Ord. No. 94-72, sec. 3.)

Section 9-3. Scope; exceptions.

The provisions of this chapter shall apply to all electrical work and installations in the County, with exceptions as noted in the 2008 National Electrical Code as adopted by the State of Hawai'i and the following:

- (1) Electrical work on buildings or premises owned by or under the direct control of the Federal government.
- (2) Electrical work by employees of a public utility within the State under a franchise or charter granted by the State which is regulated by the public utility commission and, while so employed, pursuant to section 448E-13, Hawai'i Revised Statutes.
- (3) The provisions of this chapter shall not apply to public State and County road right-of ways for utility installations, street lighting, traffic signal or police and fire alarm where installed outside the proposed premises or boundary lines in a subdivision under development, or an approved subdivision, where the work is in the planned or actual roadways or other common infrastructure areas.
- (4) Existing electrical installations which complied with the laws, ordinances and regulations in effect when the electrical work thereon was performed, provided that such installations shall be subject to the provisions of section 9-4.
- (5) All buildings moved into or relocated within the County shall comply with all requirements of this chapter for new buildings and all unused or abandoned wiring and devices shall be removed.
- (6) Electrical work related to work regulated by chapter 397, Hawai'i Revised Statutes, as amended relating to the Elevator Code, but not including electrical work for the supply of power to the control panels of elevators, dumbwaiters, escalators, moving walks, and manlifts.
- (7) Replacement or repair of devices and apparatus of air conditioning, refrigeration, and heating systems, except electrical work on overcurrent devices which are not physically attached to, or physically mounted on, such systems.
- (8) The construction, alteration or repair of electrical devices commonly used in the home such as portable appliances as defined in section 9-5.

(1994, Ord. No. 94-72, sec. 3; Am 2005, Ord. No. 05-129, sec. 1; Am. 2011, Ord. No. 11-69, sec. 1.)

Section 9-4. Similar provisions; greater safety to prevail.

If there are two or more provisions in this chapter or any other chapter, ordinance or statutes, covering the same subject matter, the provisions which provide the greater safety to life or limb, property or public welfare shall prevail.

(1994, Ord. No. 94-72, sec. 3.)

Section 9-5. Definitions.

As used in this chapter, the following words shall have the meaning ascribed to them unless it is apparent from the context that a different meaning is intended:

“Apprentice” means any person who performs electrical work under the direct supervision and in the presence of a supervising electrician, supervising specialty electrician, journeyman electrician, or journeyman specialty electrician.

“Assistant” means the authorized representative(s) of the authority having jurisdiction.

“Authority having jurisdiction” means the director of public works of the County or the director’s authorized representative.

“Board” means the board of appeals.

“Demolition” means removal of electrical work when a demolition building permit is issued.

“Department” means the department of public works of the County.

“Ductline” means electrical conduit installation.

“Electrical contractor” means any person who is licensed under the provisions of chapter 444, Hawai‘i Revised Statutes, and possesses a valid, and active license qualifying such person to perform electrical work.

“Electrical specialty contractor” means any person who is licensed under the provision of chapter 444, Hawai‘i Revised Statutes, and possesses a valid, and active license qualifying such person to perform electrical specialty work.

“Electrical specialty work” means the installation of any electronic equipment, electronic controls, including but not limited to public address systems, intercommunication systems, music distribution systems, CATV systems, master and program clock systems, electronic teaching devices, fire and security systems, telephone, computer, and data systems.

“Electrical wiring” means any conductor, material, device, fitting, apparatus, appliance, fixture, or equipment constituting a part of or connected to any electrical installation, attached or fastened to any building, structure, or premises and which installation or portion thereof is designed, intended, or used to generate, transmit, transform, or utilize electrical energy within the scope and purpose of the National Electrical Code.

“Electrical work” means the installation, alteration, reconstruction, or repair of electrical wiring.

“Emergency electrical work” means the repair of electrical wiring to restore electrical service to a building following a fire, to remedy a power failure, and to protect persons and property against short circuiting and open circuits.

“Inundation level” means the maximum expected water level due to flooding by rainfall runoff, wind, waves, and tsunamis as established by the authority having jurisdiction.

“Journeyman electrician” means any person who has been licensed by the board of electricians and plumbers as a journeyman electrician under the provisions of chapter 448E, Hawai‘i Revised Statutes.

“Journeyman specialty electrician” means any person who has been licensed by the board of electricians and plumbers as a journeyman specialty electrician under the provisions of chapter 448E, Hawai‘i Revised Statutes.

“Maintenance work” means the keeping in repair and operation of any electrical installation, apparatus, fixture, appliance, or equipment.

“Permanent electrical service” means permanent power as provided by the serving utility company after notification by the authority having jurisdiction.

“Person” means any individual, firm, partnership, association or corporation. However, a firm, partnership, association or corporation is not included within the meaning of person found in the definitions for journeyman electrician, journeyman specialty electrician, supervising electrician, and supervising specialty electrician.

“Portable appliances” means any device that is readily moveable and cord/plug connected.

“Supervising electrician” means any person licensed by the board of electricians and plumbers as a supervising electrician under the provisions of chapter 448E, Hawai‘i Revised Statutes.

“Supervising specialty electrician” means any person licensed by the board of electricians and plumbers as a supervising specialty electrician under the provisions of chapter 448E, Hawai‘i Revised Statutes.

“Water-tight,” when referring to construction below the inundation level, means constructed to exclude moisture and withstand the hydraulic pressure resulting from the anticipated depth of inundation.

(1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 2; Am. 2011, Ord. No. 11-69, secs. 2, 3, and 4; Ord. No. 11-114, sec. 1.)

Article 2. Administration and Enforcement.

Section 9-6. Administration and enforcement.

Unless otherwise provided for by law, the department of public works of the County shall have jurisdiction over and administer all matters covered by this chapter.

(1994, Ord. No. 94-72, sec. 3.)

Section 9-7. Nonliability of the County or its employees for damages.

(a) This chapter shall not be construed to relieve from or lessen the responsibility of such person owning, operating or installing any electrical wires, appliances, apparatus, construction, or equipment for damages to anyone injured by any defect therein.

(b) Neither the County nor any department, board, commission, officer, employee, or the authority having jurisdiction shall be held liable or responsible for any damage or injury caused by or resulting from the issuance of any permit issued, or any inspection or approval or issuance of a certificate of inspection, made under the provisions of this chapter.

(c) The authorized personnel charged with the enforcement of this code, acting in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance shall not thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties. A suit brought against the authorized personnel because of such act or omission performed by the authorized personnel in the enforcement of any provision of this code or other pertinent laws or ordinances implemented through the enforcement of this code shall be defended by the County until final termination of such proceedings, and any judgment resulting there shall be assumed by the County.

(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, secs. 3 and 5.)

Section 9-8. Right of entry.

Upon presentation of proper credentials, the authority having jurisdiction or such person’s assistants may enter at reasonable times any building or premises in the County to perform any duty imposed by this code provided that such entry shall be made in such a manner as to cause the least possible inconvenience to the persons in possession. An order of a court authorizing such entry shall be obtained in the event such entry is denied or resisted.

(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, secs. 3 and 6.)

Section 9-9. Inspections.

(a) All electrical wiring, for which a permit is required, shall be inspected and approved by the authority having jurisdiction before being concealed, energized, or used. All fees required by this chapter shall be paid by the permit applicant prior to the energizing or use of such wiring.

(b) No person shall use, operate, or maintain, or cause or permit to be used, operated, or maintained, any electric wiring until it is approved.

- (c) No serving agency shall supply or cause or permit to be supplied, permanent electric energy to any electric service until the service has been inspected and approved by the authority having jurisdiction.
 - (d) No person shall conceal, enclose, or cover, or cause or permit to be concealed, enclosed, or covered, any portion of any electric wiring or equipment in any manner which will interfere with or prevent the inspection and approval thereof.
 - (e) Fixtures, appliances, devices, or equipment shall not be connected to any electric wiring until the rough electric wiring, including conductors, have been inspected and approved by the authority having jurisdiction.
 - (f) All obstructions, covers, plates, tapes, light fixtures, etc., which make impracticable the making of a thorough inspection of electric wiring shall be removed upon notice (either verbal or in writing) to do so, and shall be kept removed until the electric wiring has been inspected and approved.
 - (g) The supervising electrician or electrical contractor shall be present on the job site upon request of the authority having jurisdiction.
- (1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 3; Am. 2011, Ord. No. 11-69, secs. 3 and 7.)

Section 9-10. Nonconforming and defective installations.

Whenever any electrical installation is found to have been installed, altered, changed, or reconstructed contrary to the provisions of this chapter or any other law, whenever any electrical installation is found to be in use contrary to the provisions of this chapter or any other law, or whenever any electrical installation, which complied with the existing laws, ordinances, and regulations in effect when the electrical work therein was performed, is found to be unsafe or dangerous to persons or property, the administrative authority shall give the owner or the person in control of that installation a written notice stating the findings with respect to that installation and order the owner or other person in control to make the corrections to be set forth in the written notice. When found to be unsafe or dangerous to persons or property, the defective installation shall be disconnected from the power source and tagged as unsafe to operate until corrective action is made, inspected, and approved.

(1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 4.)

Section 9-11. Request for inspection.

- (a) Whenever any work regulated by this chapter, or any portion thereof, is ready for inspection, the authority having jurisdiction shall be notified by the permit holder that same is ready for inspection. The notice shall be in writing on forms furnished by the authority having jurisdiction, by e-mail to the area inspectors or may be faxed or by telephone at the option of the authority having jurisdiction. The notice shall be filed with the department not less than forty-eight hours and not more than seventy-two hours before any such inspection is desired.
- (b) The authority having jurisdiction shall proceed to inspect the same or notify the contractor of a reschedule within forty-eight hours, not including weekends or holidays, after receipt of such notice. When work conforms in all respects with the provisions of this chapter, a notice granting authority to proceed with installations shall be given.
- (c) No electrical wiring shall be covered or concealed until forty-eight hours have expired after the scheduled inspection or until the authority having jurisdiction has approved the installation and given permission to cover or conceal the same. If the permitted work is covered or concealed without inspection, the electrical contractor will provide verification that the concealed work complies with all the provisions of this chapter. Should the authority having jurisdiction condemn any of said work or equipment as not being in accordance with the provisions of this chapter, notice in writing to that effect shall be given to the permit holder engaged in the work or posted at the job site.

- (d) Within a reasonable time thereafter, the work or equipment shall be altered or removed as required, and necessary changes shall be made so that all such work and equipment may fully comply with the provisions of this chapter before further work is connected on or with the condemned work or equipment. In default, the electrical contractor shall be liable to the penalties provided in this chapter, and any and every owner, contractor or other person engaged in construction of the building or structure, or otherwise, covering or allowing to be covered such portion of work or equipment, or removing any notice not to cover same placed thereon by the authority having jurisdiction shall likewise be liable to the penalties provided for in this chapter.

(1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 5; Am. 2011, Ord. No. 11-69, secs. 3 and 8.)

Section 9-12. Final inspection required.

- (a) A final inspection is required after all work required by the electrical permit is completed and complies with all the requirements of this chapter.
- (b) A certificate of inspection may be issued upon request by the electrical contractor on record, provided all fees required by this chapter have been satisfied.
- (c) The supervising electrician shall be present on the job site upon the request of the authority having jurisdiction.

(1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 6; Am. 2011, Ord. No. 11-69, sec. 9.)

Section 9-13. Permanent electrical service.

Permanent electrical service shall be authorized by the authority having jurisdiction upon completion of the following requirements:

- (1) All permanent service equipment shall be inspected by the authority having jurisdiction;
- (2) For non residential installations, all rooms containing permanent service equipment shall be completed and securable by means of a temporary or permanent door and lock system;
- (3) For residential installations, permanent service equipment shall be installed on permanent buildings, meter poles or meter pedestals with provisions for locking out the main service disconnects; and
- (4) The electrical contractor shall be responsible and in control of all permanent power access and usage.

(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, secs. 10 and 11.)

Article 3. National Electrical Code.

Division 1. General.

Section 9-14. National Electrical Code adopted.

The National Electrical Code, 2008 Edition, copyrighted 2007 by the National Fire Protection Association, One Batterymarch Park, Quincy, Massachusetts, 02169-7471, is hereby adopted by reference and made a part hereof. A copy of this code shall be kept on file and be available for public inspection in the clerk's office. The scope, technical specifications, and exemptions set forth in this code are hereby adopted as the standard for electrical work covered by this chapter, provided there are no specific provisions in any other section of this chapter covering the particular matter.

(1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 7; Am. 2011, Ord. No. 11-69, sec. 12.)

Section 9-15. Compliance; standards of performance.

- (a) No person shall do or cause to be done any electrical work which does not comply with the provisions of this chapter.
- (b) No person shall perform any work covered by this chapter in violation of the provisions of chapter 448E, Hawai'i Revised Statutes.

(1994, Ord. No. 94-72, sec. 3.)

Section 9-16. Qualification to perform work.

- (a) It shall be unlawful for any permit applicant to perform or allow to be performed any work covered by the permit issued under this chapter in violation of chapter 444, Hawai'i Revised Statutes, relating to the licensing of contractors, and chapter 448E, Hawai'i Revised Statutes, relating to the licensing of electricians and plumbers.
 - (b) Any person engaged in a business involving performance of electrical work covered by this chapter, shall maintain a place of business in a business or industrial zone in accordance to the provisions of chapter 25, with a listed telephone number and be principally engaged in said business during the normal business hours for said place of business.
- (1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 8.)

Division 2. Violations, Enforcement, and Penalties.**Section 9-16.1. General provisions.**

- (a) It shall be unlawful for any person, firm, or corporation to perform any electrical work or permit the same to be done in violation of this code.
 - (b) Failure to comply with any provision of this code, any rule adopted pursuant to this code, or with conditions imposed as part of any permit or variance from the provisions of this code, shall constitute a violation of this code.
- (2011, Ord. No. 11-69, sec. 12; Am. 2011, Ord. No. 11-114, sec. 2.)

Section 9-16.2. Notice of violation.

- (a) Whenever the authority having jurisdiction determines that there exists a violation of any provision of this code, the authority having jurisdiction shall serve a notice of violation upon the parties responsible for the violation, which may include, but shall not be limited to the owner and any lessee of the property where the violation is located, to make the building or portion thereof comply with the requirements of this code. Such notice of violation shall include:
 - (1) The date of the notice;
 - (2) The name and address of the person noticed, and the location of the violation;
 - (3) The section number of the ordinance, code or rule which has been violated;
 - (4) The nature of the violation; and
 - (5) The deadline for compliance with the notice.
 - (b) Proper service of such notice shall be by personal service, registered mail, or certified mail upon the owner of record, provided, that if such notice is by registered mail or certified mail, the designated period within which the owner or person in charge is required to comply with the order of the authority having jurisdiction shall begin as of the date the owner or person in charge receives such notice.
- (2011, Ord. No. 11-69, sec. 12; Am. 2011, Ord. No. 11-114, sec. 2.)

Section 9-16.3. Administrative enforcement.

- (a) If the authority having jurisdiction determines that any person, firm or corporation is not complying with a notice of violation, the authority having jurisdiction may have the party responsible for the violation served, by mail or delivery, with an order pursuant to this division.
- (b) Contents of the Order.
 - (1) The order may require the parties responsible for the violation, including but not limited to the owner/lessee of the property where the violation is located, to do any or all of the following:
 - (A) Correct the violation within the time specified in the order;
 - (B) Pay a civil fine not to exceed \$1,000 in the manner, at the place and before the date specified in the order;

- (C) Pay a civil fine not to exceed \$1,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.
- (2) The order shall advise the party responsible for the violation that the order shall become final thirty calendar days after the date of its delivery. The order shall also advise that the authority having jurisdiction's action may be appealed to the board of appeals.
- (c) Effect of order; right to appeal. The provisions of the order issued by the authority having jurisdiction under this section shall become final thirty calendar days after the date of the delivery of the order. The party responsible for the violation may appeal the order to the board of appeals as provided by section 9-19. The appeal must be received in writing on or before the date the order becomes final. However, an appeal to the board of appeals shall not stay any provisions of the order.
- (d) Judicial enforcement of order. The authority having jurisdiction may institute a civil action in any court of competent jurisdiction for the enforcement of any final order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by such final order, the authority having jurisdiction need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been paid.
- (2011, Ord. No. 11-69, sec. 12; Am. 2011, Ord. No. 11-114, sec. 2.)

Section 9-16.4. Criminal prosecution.

- (a) General provisions. Any person, firm or corporation violating any of the provisions of this code shall be deemed guilty of a petty misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provisions of this code is committed, continued or permitted; and upon conviction of any such violation, such person shall be punishable by a fine of not more than \$1,000, or by imprisonment for not more than thirty days, or by both fine and imprisonment.
- (b) Any officer or inspector designated by the authority having jurisdiction, who has been deputized by the chief of police as a special officer for the purpose of enforcing the provisions of the building, plumbing, electrical or housing codes (hereinafter referred to as "authorized personnel"), pursuant to Section 803-6, Hawai'i Revised Statutes, may arrest without warrant alleged violators by issuing a summons or citation in accordance with the procedure specified in this section. Nothing in this section shall be construed as barring such authorized personnel from initiating prosecution by warrant or such other judicial process as is permitted by statute or rule of court.
- (c) Any authorized personnel designated by the authority having jurisdiction, upon making an arrest for a violation of the building, plumbing, electrical or housing codes, may take the name and address of the alleged violator and shall issue to the violator in writing a summons or citation hereinafter described, notifying the violator to answer the complaint to be entered against the violator at a place and at a time provided in the summons or citation.
- (d) There shall be provided for use by the authority having jurisdiction a form of summons or citation for use in citing violators of this chapter which does not mandate the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed to include all necessary information to make the same valid within the laws and regulations of the State of Hawai'i and County of Hawai'i.
- (e) In every case when a citation is issued, the original of the same shall be given to the violator; provided, that the administrative judge of the district court may prescribe by giving to the violator a copy of the citation and provide for the disposition of the original and any other copies.
- (f) Every citation shall be consecutively numbered and each copy shall bear the number of its respective original.
- (2011, Ord. No. 11-69, sec. 12; Am. 2011, Ord. No. 11-114, sec. 2.)

Section 9-16.5. Injunctive action.

The County may maintain an action for an injunction to restrain or remedy any violation of the provisions of this code and may take any other lawful action to prevent or remedy any violation. (2011, Ord. No. 11-69, sec. 12.)

Division 3. Variances and Appeals.**Section 9-17. Variances.**

Whenever strict application of any provision of this code, except for the provisions relating to materials, methods of construction, equipment, fixtures, devices, or appliances, would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, the owner may petition the board of appeals for a variance from the provision. In granting a variance, the board of appeals shall prescribe any conditions that it deems to be necessary or desirable. However no variance from the strict application of this code shall be granted by the board of appeals unless it finds that all of the following are present:

- (1) That there are special circumstances or conditions applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or building and do not apply generally to lands or buildings in the neighborhood or surrounding property, and that the circumstances or conditions are such that the strict application of the provisions of this code would deprive the applicant of the reasonable use of the land or building;
- (2) That the granting of the variance is necessary for the reasonable use of the land or building and that the variance granted is the minimum variance that will accomplish this purpose; and
- (3) That the granting of the variance will be consistent with the intent and purpose of this code, and will not be injurious to persons or property or create additional fire hazards, and will not otherwise be detrimental to the public welfare. In making its determination, the board of appeals shall take into account the character, use and type of occupancy and construction of adjoining buildings, buildings on adjoining lots, and the building or land involved.

(1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 9; 2011, Ord. No. 11-69, sec. 12.)

Section 9-18. Appeals regarding alternate materials and methods of construction.

Any person denied the use of new or alternate materials, methods of construction, equipment, fixtures, devices, or appliances by the authority having jurisdiction, may, within thirty days after the authority having jurisdiction's decision, appeal the decision to the board of appeals. In considering an appeal, the board may require any reasonable test of the proposed material, method of construction, equipment, fixture, device, or appliance, and the appellant shall pay all expenses necessary for the test. The board of appeals may affirm the decision of the authority having jurisdiction, or it may reverse the decision if it finds:

- (1) That the new or alternate materials, methods of construction, equipment, fixtures, devices, or appliances meet standards established by this code;
- (2) That permitting the requested use will not jeopardize the safety of persons or property; and
- (3) That the requested use will not be contrary to the intent and purpose of this code.

(1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 10; Am. 2011, Ord. No. 11-69, secs. 3 and 12.)

Section 9-19. Other appeals.

Any person aggrieved by the decision of the authority having jurisdiction in the administration or application of this code, other than that prescribed in sections 9-17 and 9-18, may, within thirty days after the date of the authority having jurisdiction's decision, appeal the decision to the board of appeals. The board of appeals may affirm the decision of the authority having jurisdiction, or it may reverse or modify the decision if the decision is:

- (1) In violation of this code or other applicable law;
- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
or
- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

(1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 02-129, sec. 11; Am. 2011, Ord. No. 11-69, secs. 3 and 12; Ord. No. 11-114, sec. 2.)

Section 9-20. Rules; Adoption of rules by the board of appeals.

The board of appeals shall adopt rules pursuant to chapter 91, Hawai'i Revised Statutes, necessary for the purposes of this article.

(1994, Ord. No. 94-72, Am. 2011, Ord. No. 11-69, sec. 12; Ord. No. 11-114, sec. 2.)

Section 9-21. Reserved.

(1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 12; Am. 2011, Ord. No. 11-69, sec. 12.)

Section 9-22. Prior offenses.

Nothing contained in any provision of this chapter shall apply to an act done or omitted, or to an offense committed at any time before the enactment of this chapter. Such act or omission shall be governed by, and any such offense shall be punished according to the provisions existing when such act, omission or offense occurred in the same manner as if this chapter had not been enacted.

(1994, Ord. No. 94-72, sec. 3.)

Article 4. Modifications to National Electrical Code.

Section 9-23. Deleting Annex H, Administration and Enforcement of the 2008 NEC.

(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, sec. 13.)

Section 9-24. Amending the National Electrical Code by adding material; rain water and sea water flooding standards.

The National Electrical Code is amended by adding the following:

Rain Water and Sea Water Flooding Standards. The following paragraphs shall supplement the requirements of the National Electrical Code for electrical work subject to inundation by rainfall run-off or sea waves in areas designated as FLOOD ZONE by a Federal, State, or County agency. All installations shall comply with chapter 27, Floodplain Management Ordinance.

1. Services:

- a. Location. Service equipment shall be located above the inundation level or shall be installed in water-tight enclosure, room, or vault, and shall be readily accessible in any case.
- b. Ground Fault Protection. Ground fault protection shall be provided for all grounded wye electrical services.

2. Ground Fault Protection:

- a. Approved ground fault circuit protection shall be provided for all feeder and branch circuits below or extending into inundation level.

3. **Wiring Method and Material:**
 - a. **Distribution Equipment.** Equipment such as transformers, fuses, panelboards, switchboards, disconnects, circuit breakers, controllers and other devices used for control, disconnecting means, ground fault protection, or overcurrent protection shall be located above the inundation level, unless made of water-tight construction.
4. The director of public works shall have the authority to consider exceptions to the provisions of the requirements of this section and may grant variance from the provisions thereof, if local topographic conditions clearly indicate that the possibility of flooding is not present.
5. Contractor will provide a certified bench mark on jobsite for flood zone elevation reference point.
6. Residential and nonresidential electrical only permit application requirements: Electrical design drawings stamped and signed by an electrical engineer registered in the State of Hawai'i. Plans shall include a site or plot plan showing the certified flood zone elevation mark.

(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, sec. 13.)

Section 9-25. Reserved.

(1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 13; Am. 2011, Ord. No. 11-69, sec. 13.)

Article 5. Permits for Electrical Work.

Division 1. Application, Issuance and Contents.

Section 9-26. Permit required; exceptions.

No person shall perform any electrical work or cause or permit the same to be done, unless a permit therefor has been obtained from the authority having jurisdiction with the following exceptions:

- (1) Electric work and installations to which the provisions of this chapter are expressly declared to be not applicable.
- (2) Installation of any portable motor or other portable appliance energized by means of a cord or cable having an attachment plug, and if such cord or cable is permitted by this chapter.
- (3) Repair of any fixed motor, water heater, air conditioning controls or other appliance, or replacement of any fixed motor with another having the same horsepower rating and situated at the same location.
- (4) Replacement of receptacles and switches.
- (5) Maintenance work by a licensed electrician per chapter 448E, Hawai'i Revised Statutes.
- (6) Emergency electrical work by a person to whom a permit may be issued (see sections 9-28 and 9-41 of this chapter).
- (7) The provisions of the foregoing exceptions shall not apply to any repairs or replacement of electrical devices, apparatus, or appliances which were originally installed without a permit, when such permit is required for the original installation, or when energized by or a part of any hazardous or illegal wiring system.
- (8) The foregoing exceptions from permit requirements shall not be deemed to allow any electrical wiring to be done in a manner contrary to other provisions of this chapter.

(1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 14; Am. 2011, Ord. No. 11-69, secs. 3 and 14.)

Section 9-27. Permit scope.

- (a) The issuance of a permit is not an approval or an authorization of work specified therein. A permit is merely an application for inspection, the issuance of which entitles the permittee to inspection of the work which is prescribed therein.
- (b) Neither the issuance of a permit nor the approval by the authority having jurisdiction of any document shall constitute an approval of any violation of any provision of this chapter or of any other law or ordinance, and a permit or other document purporting to give authority to violate any law shall not be valid with respect thereto.

(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, sec. 3.)

Section 9-28. Emergency work.

When emergency electrical work is commenced without a permit, an application for a permit for the work shall be made pursuant to the provisions of section 9-30, as soon as possible after the work is commenced.

(1994, Ord. No. 94-72, sec. 3.)

Section 9-29. Separate permits required.

A separate electrical permit shall be obtained for each building permit.

(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, sec. 15.)

Section 9-30. Permit application; filing; content.

- (a) To obtain a permit, the applicant shall file an application on forms furnished by the authority having jurisdiction. The application shall contain all information necessary to the lawful enforcement of the provisions of this chapter.
- (b) The application shall be accompanied by approved plans and specifications or a suitable diagram when and as required by section 9-33.

(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, sec. 3.)

Section 9-31. Permit issuance; fees.

When the authority having jurisdiction determines that the information on the application and plans is in conformance with this chapter, the authority having jurisdiction shall issue a permit upon receipt of the total fees.

(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, sec. 3.)

Section 9-32. Permit application; immediate action not required.

Nothing contained in this chapter shall be construed to require the authority having jurisdiction to immediately accept or reject any application, whenever it is necessary to investigate the proposed wiring and premises as to its compliance with this chapter, or it is necessary to check plans and specifications accompanying the application.

(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, sec. 3.)

Section 9-33. Plans and specifications requirements; deviations.

- (a) Plans and specifications giving such details of the proposed installation as may be required by the authority having jurisdiction shall be filed with the application. Such plans and specifications shall bear the approval of a professional electrical engineer registered in the State of Hawai'i.

EXCEPTIONS:

- (1) If the demand load of the proposed installation is less than thirty kilovoltamperes, this requirement shall be applicable only if the authority having jurisdiction so directs.

- (2) For single family dwellings, plans and specifications shall not be required provided the installation meets all of the following criteria:
 - (A) The installation shall not be located in a rain water or sea water flood zone; and
 - (B) Service size disconnect does not exceed 200 amperes.
 - (b) Installation of photovoltaic systems shall require:
 - (1) A building permit for residential and non residential installations;
 - (2) Electrical design drawings and specifications bearing the approval of an electrical engineer registered in the State of Hawai'i for residential and non residential installations; and
 - (3) Plans and specifications for building work bearing the approval of an architect or structural engineer registered in the State of Hawai'i for non residential installations only.
 - (c) No person shall materially deviate from any reviewed plan or specifications or fail, neglect or refuse to comply herewith, unless permission to do so has first been obtained from the electrical engineer on record. Revised drawings and or a letter approving such deviations shall be submitted to the authority having jurisdiction for review.
- (1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 15; Am. 2011, Ord. No. 11-69, secs. 3 and 16; Am. 2012, Ord. No. 12-149, sec. 1.)

Section 9-34. Issuance.

If the authority having jurisdiction is satisfied that the installation described in the application will conform to the provisions of this chapter and all pertinent laws, and the fee prescribed in division 2 of this article has been paid, the authority having jurisdiction may issue a permit to the persons specified in section 9-35.

(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, sec. 3.)

Section 9-35. Persons to whom permit may be issued.

A permit to do electrical work regulated by this chapter may be issued only to:

- (1) A contractor who is licensed under the provisions of chapter 444, Hawai'i Revised Statutes, and possesses a valid, unexpired, unrevoked license which qualifies the contractor to perform electrical or electrical specialty work.
- (2) A permit may also be issued to a homeowner for electrical work on a single-family dwelling which the owner will personally occupy and use exclusively for living purposes, provided the owner is a journeyman electrician, journeyman specialty electrician, supervising electrician, or supervising specialty electrician licensed under chapter 448E, Hawai'i Revised Statutes. Only one such permit may be issued to such homeowner unless the authority having jurisdiction finds the strict application would result in practical difficulty and hardship and that the granting of a second permit would not be contrary to the purpose of the Code. This does not preclude the homeowner from obtaining additional permits for the same building or accessory building on the same lot.
- (3) A supervising electrician or supervising specialty electrician:
 - (A) Who is employed as a maintenance electrician by someone other than a contractor described above;
 - (B) Who is employed by the County or State; or
 - (C) Who is applying for electrical work for such person's own dwelling.
- (4) A journeyman electrician licensed per chapter 448E, Hawai'i Revised Statutes, and employed by the County of Hawai'i.

(1994, Ord. No. 94-72, sec. 3; Am. 2005, Ord. No. 05-129, sec. 16; Am. 2011, Ord. No. 11-69, secs. 3 and 17.)

Section 9-36. Permit content; posting; time limit for suspension of work.

Every permit shall be issued in such form and detail as shall be prescribed by the authority having jurisdiction, shall specify the geographical location of the premises whereon the work authorized thereby is to be done, shall be valid only for the location so specified, and shall be conspicuously posted by the holder thereof on the premises. If the work authorized by any permit is continuously suspended for a period of one hundred twenty days, such permit shall thereupon, and thereafter, be null and void.
(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, secs. 3 and 18.)

Section 9-37. Permit transferability.

No permit shall be assigned, transferred or loaned to another by the person to whom it was issued.
(1994, Ord. No. 94-72, sec. 3.)

Section 9-38. Suspension or revocation of permit.

The authority having jurisdiction may, in writing, suspend or revoke a permit issued under provisions of this chapter whenever the permit has been issued in error or on the basis of incorrect information supplied, or in violation of any ordinance, regulation or provision of this chapter. In such event, the permit fee shall not be refunded.
(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, sec. 3.)

Division 2. Fees and Charges.

Section 9-39. Fee payment.

A fee in accordance with the schedule set forth in this division shall be paid to the director of finance for each electrical permit.
(1994, Ord. No. 94-72, sec. 3.)

Section 9-39.1. Refunds.

Refunds for permits shall be made in accordance with section 2-12 of the Hawai'i County Code.
(2011, Ord. No. 11-69, sec. 19.)

Section 9-40. Fee schedule.

(a) Issuing Permits.

A fee shall be paid for issuing each permit in addition to all other charges specified herein..... \$5 each

(b) Service Installations.

For required size of service equipment of single phase construction (including meter loop).

Not over 100 amperes	\$ 8
Over 100 but not over 200 amperes	10
Over 200 but not over 400 amperes	12
Over 400 amperes	14

For required size of service equipment of three phase construction (including meter loop).

Not over 100 amperes	\$10
Over 100 but not over 200 amperes	12
Over 200 but not over 400 amperes	14
Over 400 amperes	16

(c) Feeder Circuits.

For required size of feeder equipment.

Not over 100 amperes	\$ 6
Over 100 but not over 200 amperes	8
Over 200 but not over 400 amperes	10
Over 400 amperes	12

(d) Wiring circuits in or about commercial and industrial buildings, including hotels, multiple-family dwellings and apartment house.

Each circuit for general light and convenience outlets	\$ 4
Each outlet for radio and television antenna system and loudspeaker	1
Control wiring air conditioning and refrigeration for each compressor unit	6
Fire and burglar alarm system	30
For any other type of circuits and outlets	12

(e) Wiring circuits in or about a single-family dwelling.

Each circuit of the first five circuits for general lighting and convenience outlets	\$ 6
Each additional circuit for such outlets	4
Fire and burglar alarm system	6
For any other type of circuits and outlets	4

(f) Cooking Appliances.

Single- and multiple-family dwellings and apartments:

For each electric range circuit	\$ 6
For each built-in counter-top range circuit	6
For each built-in oven circuit	6

NOTE: For the purpose of this code, "range" shall mean a complete self-contained, freestanding, cooking unit, containing top cooking units and ovens, which is connected to one outlet; a "built-in counter-top range" shall mean an assembly of cooking units which is installed in a counter and connected to an outlet separately from an oven; a "built-in oven" shall mean an oven for the preparation of food in a residence and which is connected to a separate outlet. Each oven and each counter-top cooking unit assembly shall be served by separate branch circuits.

- (g) Commercial Cooking Appliances. (Bakers, restaurants, cafeterias, and other establishments preparing food for sale to public.)

Range, fry-kettles, oven steam table broiler, roaster and other cooking devices:	
For each circuit not over 12 kw	\$ 6
For each circuit over 12 kw but not over 24 kw	8
For each circuit over 24 kw	10

- (h) Heaters.

(1) Single- and Multiple-Family Dwellings and Apartments.	
For each water heater circuit.....	\$ 6
For each air heater circuit, capacity up to 1,650 watts.....	4
For each air heater circuit, capacity 1,650 watts or more	6

- (2) Commercial or Industrial.

Water heaters:	
Each circuit	\$ 6

Air and/or space heaters:	
For each circuit not over 5 kw	\$ 6
For each circuit over 5 kw but not over 15 kw	8
For each circuit over 15 kw	10

Electric kilns:	
For each circuit not over 6 kw	\$ 6
For each circuit over 6 kw but not over 12 kw	8
For each circuit over 12 kw but not over 24 kw	10
For each circuit over 24 kw	12

Electric furnaces:	
For each circuit not over 12 kw	\$ 8
For each circuit over 12 kw but not over 24 kw	10
For each circuit over 24 kw but not over 48 kw	12
For each circuit over 48 kw but not over 96 kw	14
For each circuit over 96 kw	16

Infra-red heat-treating and paint baking:	
For each circuit not over 5 kw	\$ 6
For each circuit over 5 kw but not over 15 kw	8
For each circuit over 15 kw but not over 50 kw	10
For each circuit over 50 kw but not over 100 kw	16
For each circuit over 100 kw	4

- (i) Laundry Dryer Circuit.
 - (1) Single- and Multiple-Family Dwellings and Apartments.
For each circuit \$ 6
 - (2) Commercial Laundry Dryer Circuit.
For each circuit, the fee shall be \$4 plus any additional charge for driving motor according to HP as set forth in the schedule under section 9-40(o).

- (j) High Potential Gas Tube Lighting and Signs.
 - For each sign or decorative outline tubing..... \$ 6
 - For gas tubing lighting (exclusive of fluorescent lighting)..... 4
 - For each flasher in connection with a sign 4
 - For installing flasher on an existing sign 6
 - For connecting a sign after moving to a new location 6
 - For reconnecting a removed sign at the previous location 6

- (k) Temporary Lights.
 - Not over 50 lamps..... \$ 8
 - Over 50 but not over 100 lamps 14
 - Each succeeding 100 lamps or fraction thereof..... 6

- (l) Permanent Decorative Lighting, etc.
 - Decorative lighting, and footlights borders and strips in theatres,
where 100 or less sockets are installed \$12
 - Additional 50 sockets or fraction thereof 8

- (m) Portable Electric Signs.

A “portable electric sign” means a small advertising contrivance operated with electricity and used in interior of buildings only which is capable of being moved or removed at will without damaging or altering the structure or finish at or adjacent to the location thereof, and which is not attached or fastened in place by nails, screws, bolts, conductors, wiring enclosures or in any other manner. No fee shall be required for such portable electric signs when the outlet and circuit to which it is attached has been installed pursuant to a valid permit.

- (n) Lighting Fixtures.
 - For each set of ten fixtures or fraction thereof:
(Fees to be charged only when circuit wiring is excluded.) \$ 8

(o) Motors.

For each separate motor fixed:

Not over 1/3 HP	\$ 4
Over 1/3 HP but not over 1 HP	6
Over 1 HP but not over 3 HP	8
Over 3 HP but not over 8 HP	10
Over 8 HP but not over 15 HP	12
Over 15 HP but not over 50 HP	14
Over 50 HP but not over 100 HP	16
Over 100 HP	40

(p) Temporary Motors, Installation.

First 2 circuits	\$12
Each additional circuit	8

No fee shall be required for moving any temporary construction motor from one place to another, when such temporary motor is attached to an outlet for which a permit has been issued and the permit fee therefor has been once paid.

Temporary motor installations for carnival rides, etc., a flat fee of \$50 shall be charged.

(q) Generators, Capacitors, Reactors, Transformers Fixed, and all other alternate energy power sources. For the purpose of this subsection 1 kw is equivalent to 1 kva.

Not more than 5 kw	\$10
Over 5 kw but not over 15 kw	24
Over 15 kw.....	40

(r) Miscellaneous.

Each motion picture projection machine using 35 mm or larger film	\$30
Each X-ray machine outlet.....	10
Each dental chair outlet.....	12
Each electric organ outlet.....	8
Each electric welder outlet.....	10
Each street lighting standard or fixture.....	8
Each transfer switch (double throw).....	20

For conduit and raceway installation, a fee of \$6 shall be charged for each two hundred lineal feet of conduit and raceway or any fraction thereof. (Fees are to be charged only when circuit wiring is excluded.)

(s) Repairs, Alterations, Additions.

Permit fees for additions to or alterations of existing work shall be the same as for new work.

Permit fees for repair or for work for which a permit is required but for which no fee is herein provided shall be \$5.

(1994, Ord. No. 94-72, sec. 3.)

Section 9-41. Additional fee for work begun without permits.

Where work for which a permit is required by this chapter is started or proceeded prior to obtaining of said permit, the fee shall be \$100 plus the fees specified by section 9-40, or the fees specified by section 9-40 shall be doubled, whichever is greater, but payment of such fee shall not relieve any persons from fully complying with the requirements of this chapter in the execution of the work nor from any other penalties prescribed herein. This provision does not apply to emergency work when proved to the satisfaction of the authority having jurisdiction that such work was urgently necessary and it was not practical to obtain a permit therefor before the commencement of work. In all such cases a permit must be obtained as soon as it is practical to do so, and if there be an unreasonable delay in obtaining such a permit, the penalty will be charged.

(1994, Ord. No. 94-72, sec. 3; Am. 2011, Ord. No. 11-69, sec. 3.)

Section 9-41.1. Amnesty Period.

(REPEALED. 2006, Ord. No. 06-122, sec. 2)

Section 9-41.2. Requirements for as built work.

Penalty fees per section 9-41 shall apply. Residential and Nonresidential work will require electrical as built drawings certifying that all work has been installed and complies with all applicable ordinances and codes. These drawings shall bear the stamp and signature of an electrical engineer duly licensed in the State of Hawaii.

(2011, Ord. No. 11-69, sec. 20.)

Section 9-42. Permit fee exemptions.

- (1) The County and all contractors performing work under authority of the County shall be exempt from the requirements to pay permit fees.
- (2) Habitat for Humanity Hilo and Habitat for Humanity Kona shall be exempt from the requirement of paying any permit fee. This exemption shall not apply to penalty fees when required under this chapter.

(1994, Ord. No. 94-72, sec. 3; Am. 2007, Ord. No. 07-113, sec. 3.)

Section 9-43. Additional and miscellaneous inspections.

For a requested or scheduled inspection wherein the work to be inspected is not complete or ready for inspection, the permit holder of the permit shall pay the director of finance \$50 for each inspection. For a requested inspection wherein no permit has been issued or for general requirements regarding the health, safety or welfare of the people, the person requesting the inspection shall pay the director of finance \$50 for each inspection.

(1994, Ord. No. 94-72, sec. 3.)

Statutory Appendix 3

Hawai'i County Code, Chapter 17 Plumbing

Chapter 17

PLUMBING

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* **Editor's Note:** Chapter 17, "Plumbing," was repealed and replaced in its entirety, pursuant to Ordinance 07-84.

Chapter 17**PLUMBING****Article 1. General Provisions.****Section 17-1. Title and purpose.**

- (a) This chapter shall be known as the “plumbing code,” may be cited as such, and will be referred to herein as “this code.”
- (b) The purpose of this code is to provide for the protection of the public health and safety by establishing minimum regulations for the installation, alteration, or repair of plumbing, gas, and drainage systems and the inspection thereof.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 1)

Section 17-2. Scope.

The provisions of this code shall apply to all new construction, relocated buildings, and to any alterations, repairs, or reconstruction within the property lines of the premises, except as provided for otherwise in this code.

(2007, Ord. No. 07-84, sec. 2)

Section 17-3. Definitions.

As used in this code, unless otherwise specified:

“Authority having jurisdiction” means the director of the department of public works, or the director’s authorized representative(s).

“Assistant” means the authorized representative(s) of the authority having jurisdiction.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, secs. 2 and 8.)

Section 17-4. Reference to the Uniform Plumbing Code; conflicting provisions.

If any provisions of this code conflict with or contravene provisions of the Uniform Plumbing Code that have been incorporated by reference, the provisions of this code shall prevail as to all matters and questions arising out of the subject matter of that provision.

(2007, Ord. No. 07-84, sec. 2)

Section 17-5. Reserved.

(2007, Ord. No. 07-84, sec. 2)

Section 17-6. Reserved.

(2007, Ord. No. 07-84, sec. 2)

Article 2. Administration and Enforcement.**Division 1. Administration.****Section 17-7. Department having jurisdiction.**

Unless otherwise provided for by law, the department of public works shall have jurisdiction over and administer all matters covered by this code.

(2007, Ord. No. 07-84, sec. 2)

Section 17-8. Duties of the authority having jurisdiction.

The authority having jurisdiction shall maintain public office hours necessary to efficiently administer the provisions of this code and amendments thereto and shall perform the following duties:

- (1) Require submission of, examine, and check plans and specifications, drawings, descriptions, and diagrams necessary to show clearly the character, kind, and extent of work covered by applications for a permit, and upon approval, shall issue the permit applied for;
 - (2) Administer and enforce the provisions of this code in a manner consistent with the intent thereof and shall inspect all plumbing and drainage work authorized by any permit to assure compliance with provisions of this code or amendments thereto, approving or condemning said work in whole or in part as conditions require;
 - (3) Issue upon request a certificate of approval for any work approved by the authority having jurisdiction;
 - (4) Condemn and reject all work done or being done or materials used or being used which do not in all respects comply with the provisions of this code and amendments thereto;
 - (5) Order changes in workmanship and materials essential to obtain compliance with all provisions of this code;
 - (6) Investigate any construction or work regulated by this code and issue such notices and orders as provided in this code; and
 - (7) Keep a complete record of all essential transactions.
- (2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8)

Section 17-9. Compliance with this code and other laws.

Any approval or permit issued pursuant to the provisions of this code shall comply with all applicable requirements of this code. The granting of a permit or variance under this code does not dispense with the necessity to comply with any law, ordinance, regulation or any other provision of the Hawai'i County Code to which a permittee may also be subject.

(2007, Ord. No. 07-84, sec. 2)

Section 17-10. Adoption of rules.

The authority having jurisdiction may adopt rules pursuant to chapter 91, Hawai'i Revised Statutes, necessary for the purposes of this code.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-11. Right of entry.

Upon presentation of proper credentials, the authority having jurisdiction or such person's assistants may enter at reasonable times any building, or premises in the County to perform any duty imposed by this code, provided that such entry shall be made in such a manner as to cause the least possible inconvenience to the persons in possession. An order of a court authorizing such entry shall be obtained in the event such entry is denied or resisted.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-12. Limited liability of authorized personnel.

The authorized personnel charged with the enforcement of this code, acting in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance shall not thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties. A suit brought against the authorized personnel because of such act or omission performed by the authorized personnel in the enforcement of any provision of this code or other pertinent laws or ordinances implemented through the enforcement of this code shall be defended by the County until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by the County.

(2007, Ord. No. 07-84, sec. 2)

Section 17-13. Nonliability of the County or its employee for damages.

- (a) This chapter shall not be construed to relieve from or lessen the responsibility of such person owning, operating or installing any plumbing, gas, or drainage systems for damages to anyone injured by any defect therein.
- (b) Neither the County nor any department, board, commission, officer, employee, or the authority having jurisdiction shall be held liable or responsible for any damage or injury caused by or resulting from the issuance of any permit issued, or any inspection or approval or issuance of a certificate of inspection, made under the provisions of this chapter.
- (c) The authorized personnel charged with the enforcement of this code, acting in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance shall not thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties. A suit brought against the authorized personnel because of such act or omission performed by the authorized personnel in the enforcement of any provision of this code or other pertinent laws or ordinances implemented through the enforcement of this code shall be defended by the County until final termination of such proceedings, and any judgment resulting there shall be assumed by the County.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 3; Ord. No. 11-121, sec. 1.)

Section 17-14. Reserved.

(2007, Ord. No. 07-84, sec. 2)

Division 2. Permits.**Section 17-15. Permit required.**

- (a) It shall be unlawful for any person to install, remove, alter, repair or replace or cause to be installed, removed, altered, repaired or replaced any plumbing, gas or drainage piping work or any fixture or water heating or treating equipment in a building or premises without first obtaining a permit to do such work from the authority having jurisdiction.
- (b) A separate permit shall be obtained for each building or structure.
- (c) No person shall allow any other person to do or cause to be done any work under a permit secured by a permittee except individuals in such permittee's employ.
- (d) Plumbing permits shall be posted in a conspicuous place on the job site. Permits shall remain posted until the plumbing work has passed a final inspection by the authority having jurisdiction. Failure to comply with this provision shall subject the violator to a \$25 fine.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-16. Work not requiring permit.

- (a) No permit shall be required in the case of any repair work as follows: the stopping of leaks in drains, soil, waste or vent pipe, provided, however, that should any trap, drainpipe, soil, waste or vent pipe be or become defective and it becomes necessary to remove and replace the same with new material in any part or parts, the same shall be considered as such new work and a permit shall be procured and inspection made as provided in this code. No permit shall be required for the clearing of stoppages or the repairing of leaks in pipes, valves, or fixtures, when such repairs do not involve or require the replacement or rearrangement of valves, pipes, or fixtures.
- (b) No permit shall be required in the case of any replacement work for the following: the replacement or repair of disposals, faucets and fixtures, to include sinks and water closets, for non-commercial residential and County government occupancies only. Permits however shall be required when such repairs do involve or require the replacement or rearrangement of valves or pipes. All repair or replacement work shall be done by licensed plumbers in accordance with section 444, Hawai'i Revised Statutes.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 4; Ord. No. 11-121, sec. 2.)

Section 17-17. Persons to whom permits may be issued.

- (a) Except as provided in subsection (b) of this section, no permit shall be issued to any person to do or cause to be done any work regulated by this code, except to a person holding a valid, unexpired, and unrevoked “Plumbing Contractor's License” as provided for in chapter 444, Hawai‘i Revised Statutes, or to the representative of a gas utility.
- (b) A permit may also be issued to a home owner for plumbing work on a single-family dwelling which the owner will personally occupy and use exclusively for living purposes, provided the owner is a person licensed under chapter 448E, Hawai‘i Revised Statutes. Only one such permit may be issued to such a home owner, unless the authority having jurisdiction finds that strict application would result in practical difficulty and hardship and that the granting of a second permit would not be contrary to the purpose of the code. This does not preclude the home owner from obtaining additional permits for the same building or accessory building on the same lot.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-18. Application for permit.

- (a) **Application.** Any person legally entitled to apply for and receive a permit shall make such application on forms provided for that purpose. Such person shall give a description of the character of work proposed to be done, and the location, tax map key, ownership, occupancy, and use of the premises in connection therewith. The authority having jurisdiction may require plans, specifications, or drawings and such other information as the authority having jurisdiction may deem necessary. Appropriate permit application fees, as set out in section 17-28, shall be submitted with the permit application.
- (b) **Plans Required.** Plumbing permit applications shall be accompanied by three sets of plans for approval by the authority having jurisdiction. Two sets shall be retained by the authority having jurisdiction and the other set shall be returned to the applicant, which shall be kept at such building or site whenever work authorized is in progress. Other plans, drawings, or specifications may be required as indicated under subsection (a). Plans are not required for one and two-family dwelling units. The authority having jurisdiction may waive the requirement for submission of plans for other occupancies when deemed unnecessary. The approval of plans by an architect or engineer, licensed with the State of Hawai‘i, shall be according to State statutes and when required by the authority having jurisdiction as indicated under subsection (a).
- (c) **Issuance.** If the authority having jurisdiction determines that the plans, specifications, drawings, descriptions, or information furnished by the applicant are in compliance with this code, the authority having jurisdiction shall issue the permit applied for upon payment of the required fee. The plumbing permit card shall be posted in a conspicuous place at the job site during construction.
- (d) **Validity.** The issuance or granting of a permit or approval of plans and specifications shall not be construed to be a permit for or an approval of, violations of the provisions of this code, or other State or County laws, including rules and regulations. No permit presuming to give authority to violate or cancel the provisions of this code, or other State or County laws, including rules and regulations, shall be valid, except insofar as the work or use, which it authorizes is lawful. The issuance of a permit based upon plans and specifications shall not prevent the authority having jurisdiction from thereafter requiring the correction of errors in the plans and specifications or from preventing any plumbing work being carried on under that permit when in violation of this code, or other State or County laws, including rules and regulations, or from revoking any certificate of approval when issued in error.
- (e) **Expiration.** Every permit issued by the authority having jurisdiction under the provisions of this code shall expire by limitation and become null and void, if the work authorized by such permit is not commenced within one hundred twenty days from the date of issuance, or if the work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of one hundred twenty days; provided, however, that a permit issued for work on construction having a valid building permit, shall expire only when such building permit expires.

Where a permit expires, before work can be recommenced, a new permit shall be obtained, and the fee shall be one-half the amount required for a new permit, provided no changes have been made or will be made to the original plans and specifications of such work; and provided, further, that the suspension or abandonment has not exceeded one year.

- (f) Suspension or Revocation. The authority having jurisdiction may, in writing, suspend or revoke a permit issued under provisions of this code whenever the permit is issued in error, or on the basis of incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of this code.
- (g) Refunds. Refunds of permit fees shall be made in accordance with the provisions of section 2-12. (2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-19. Amnesty period.

(REPEALED. 2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 5; Ord. No. 11-121, sec. 3.)

Section 17-20. Reserved.

(2007, Ord. No. 07-84, sec. 2)

Division 3. Qualifications of Persons Performing Work.

Section 17-21. General provisions.

- (a) It shall be unlawful for any person to perform any work covered by this code in violation of those provisions of chapter 448E, Hawai'i Revised Statutes, relating to the licensing of electricians and plumbers.
- (b) Unlicensed persons may perform work covered by this code providing such work performance is not in violation of chapter 444, Hawai'i Revised Statutes. (2007, Ord. No. 07-84, sec. 2)

Section 17-22. Reserved.

(2007, Ord. No. 07-84, sec. 2)

Section 17-23. Reserved.

(2007, Ord. No. 07-84, sec. 2)

Division 4. Inspections.

Section 17-24. Inspection required.

- (a) All plumbing, gas, and drainage systems shall be inspected by the authority having jurisdiction to ensure compliance with all the requirements of this code. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of any other ordinance. Inspections presuming to give authority to violate or cancel the provisions of this code or of any other ordinance shall not be valid.
- (b) It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the authority having jurisdiction nor the County shall be liable for any expense entailed in the removal or replacement of any material required to perform the inspection. (2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, secs. 6 and 8.)

Section 17-25. Notification to authority having jurisdiction that work is ready for inspection.

- (a) It shall be the duty of the person doing the work authorized by the permit to notify the authority having jurisdiction orally or in writing, that said work is ready for inspection. The authority having jurisdiction may require that every request for inspection be filed and ready at least forty-eight hours before such inspection is desired. Such request may be in writing or by phone at the option of the authority having jurisdiction.
- (b) It shall be the duty of the person doing the work authorized by the permit, to make sure that the work will stand the tests prescribed elsewhere in this code, before giving the above notification.
- (c) It shall be the duty of the person requesting any inspections required by this code to provide access to and means for proper inspection of such work.
- (d) Whenever any work regulated by this chapter, or any portion thereof, is ready for inspection, the authority having jurisdiction shall be notified by the permit holder that same is ready for inspection. The notice shall be in writing on forms furnished by the authority having jurisdiction, by e-mail to the area inspectors or may be faxed or by telephone at the option of the authority having jurisdiction. The notice shall be filed with the department not less than forty-eight hours and not more than seventy-two hours before any such inspection is desired.
- (e) The authority having jurisdiction shall proceed to inspect the same or notify the contractor of a reschedule within forty-eight hours, not including weekends or holidays, after receipt of such notice. When work conforms in all respects with the provisions of this chapter, a notice granting authority to proceed with installations shall be given.
- (f) No plumbing work shall be covered or concealed until forty-eight hours have expired after the scheduled inspection or until the authority having jurisdiction has approved the installation and given permission to cover or conceal the same. If the permitted work is covered or concealed without inspection, the plumbing contractor will provide verification that the concealed work complies with all the provisions of this chapter. Should the authority having jurisdiction condemn any of said work or equipment as not being in accordance with the provisions of this chapter, notice in writing to that effect shall be given to the permit holder engaged in the work or posted at the job site.
- (g) Within a reasonable time thereafter, the work or equipment shall be altered or removed as required, and necessary changes shall be made so that all such work and equipment may fully comply with the provisions of this chapter before further work is connected on or with the condemned work or equipment. In default, the plumbing contractor shall be liable to the penalties provided in this chapter, and any and every owner, contractor or other person engaged in construction of the building or structure, or otherwise, covering or allowing to be covered such portion of work or equipment, or removing any notice not to cover same placed thereon by the authority having jurisdiction shall likewise be liable to the penalties provided for in this chapter.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, secs. 7 and 8.)

Section 17-26. Reserved.

(2007, Ord. No. 07-84, sec. 2)

Section 17-27. Reserved.

(2007, Ord. No. 07-84, sec. 2)

Division 5. Fees.

Section 17-28. Permit fees.

- (a) Schedule of Fees
 - (1) Permit application fee \$10
 - (2) In addition:
 - For each plumbing fixture or trap (including drainage and vent piping)..... \$ 4

- For installation, alteration, or repair of each building sewer, building drain, or vent piping..... \$20
 - For each industrial waste injector, grease interceptor, sewage ejector, and grinder pump, including its trap and vent..... \$12
 - For installation, alteration, or repair of water piping and/or water treating equipment \$ 4
 - For vacuum breakers or backflow protective devices installed subsequent to the installation of the piping or equipment served..... \$12
 - For each lawn sprinkler system on any one valve including backflow protection devices thereof..... \$12
 - For each electric water heater, solar or gas water heater, and/or vent..... \$ 4
 - For each new installation, alteration, or repairing of gas piping systems, house piping, and/or exterior piping for lamps, luau torches, and other miscellaneous equipment..... \$12
 - For each gas appliance..... \$ 4
 - For each medical gas piping serving one to five inlet(s) or outlet(s) for a specific gas..... \$50
 - For each additional medical gas inlet(s) or outlet(s)..... \$ 4
- (b) Where work for which a permit is required by this code is begun prior to obtaining a permit, the application fee shall be \$100 plus the additional fees specified in subsection (a). Payment of such fees shall not relieve any person, firm, or corporation from the obligation to comply with the requirements of this code.
- This provision shall not apply to emergency work performed under circumstances that did not allow time to obtain a permit. To qualify for this exception, it must be proved to the satisfaction of the authority having jurisdiction that the unpermitted work was urgently necessary and that it was not practical to obtain a permit therefore before the commencement of the work. In all such cases a permit must be obtained as soon as it is practical to do so. Any delay in obtaining a permit as soon as it is practical to do so will subject the petitioner to the doubled permit fees.
- (c) The County and all agencies and contractors doing County jobs shall be exempt from the requirement to pay any permit fee except for fees imposed pursuant to subsection (b), when applicable.
 - (d) Habitat for Humanity Hilo and Habitat for Humanity Kona shall be exempt from the requirement of paying any permit fee, except for fees imposed pursuant to subsection (b), when applicable. This exemption shall not apply to penalty fees when required under this chapter.
- (2007, Ord. No. 07-84, sec. 2; Am. 2007, Ord. No. 07-113, sec. 4; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-29. Inspection fees.

- (a) A fee of \$50 shall be assessed upon the permittee or requestor for each extra inspection made. “Extra inspection” means a requested or scheduled inspection wherein the work to be inspected is not complete or ready for inspection.
 - (b) A fee of \$50 shall be assessed upon the requestor or property owner for each courtesy inspection made. “Courtesy inspection” means a requested inspection wherein no permit has been issued or for general requirements regarding the health, safety, or welfare of people.
 - (c) The authority having jurisdiction has the authority to waive inspection fees.
- (2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-30. Reserved.
(2007, Ord. No. 07-84, sec. 2)

Section 17-31. Reserved.
(2007, Ord. No. 07-84, sec. 2)

Division 6. Violations, Enforcement, and Penalties.

Section 17-32. General provisions.

- (a) It is unlawful for any person, firm, or corporation to install, alter, repair, remove, replace, or maintain any plumbing, gas or drainage piping work or any fixture, gas appliance or water heating or treating equipment, or cause or permit the same to be done, in violation of this code.
 - (b) Failure to comply with any provision of this code, any rule adopted pursuant to this code, or with conditions imposed as part of any permit or variance from the provisions of this code, shall constitute a violation of this code.
- (2007, Ord. No. 07-84, sec. 2)

Section 17-33. Notice of violation.

Whenever any person, firm or corporation violates any provision of this code, the authority having jurisdiction shall serve a notice of violation upon the parties responsible for the violation, including but not limited to the owner/lessee of the property where the violation is located, to make the building or structure or portion thereof comply with the requirements of this code. Such notice of violation shall include:

- (1) The date of the notice;
- (2) The name and address of the person noticed, and the location of the violation;
- (3) The section number of the ordinance, code or rule which has been violated;
- (4) The nature of the violation; and
- (5) The deadline for compliance with the notice.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-34. Administrative enforcement.

- (a) If the authority having jurisdiction determines that any person, firm or corporation is not complying with a notice of violation, the authority having jurisdiction may have the party responsible for the violation served, by mail or delivery, with an order pursuant to this division.
- (b) Contents of the Order.
 - (1) The order may require the parties responsible for the violation, including but not limited to the owner/lessee of the property where the violation is located, to do any or all of the following:
 - (A) Correct the violation within the time specified in the order;
 - (B) Pay a civil fine not to exceed \$1,000 in the manner, at the place and before the date specified in the order;
 - (C) Pay a civil fine not to exceed \$1,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.
 - (2) The order shall advise the party responsible for the violation that the order shall become final thirty calendar days after the date of its delivery. The order shall also advise that the authority having jurisdiction's action may be appealed to the board of appeals.
- (c) Effect of Order; Right to Appeal. The provisions of the order issued by the authority having jurisdiction under this section shall become final thirty calendar days after the date of the delivery of the order. The party responsible for the violation may appeal the order to the board of appeals as provided by section 5-1.0.5*, Hawai'i County Building Code (chapter 5). The appeal must be received in writing on or before the date the order becomes final. However, an appeal to the board of appeals shall not stay any provision of the order.

*Editor's Note: Section 5-1.0.5 was repealed. See section 5-67.

- (d) **Judicial Enforcement of Order.** The authority having jurisdiction may institute a civil action in any court of competent jurisdiction for the enforcement of any final order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by such final order, the authority having jurisdiction need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-35. Criminal prosecution.

- (a) **General Provisions.** Any person, firm or corporation violating any of the provisions of this code shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provisions of this code is committed, continued or permitted; and upon conviction of any such violation, such person shall be punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both fine and imprisonment.
- (b) Any officer or inspector designated by the authority having jurisdiction, who has been deputized by the chief of police as a special officer for the purpose of enforcing the provisions of the building, plumbing, electrical or housing codes (hereinafter referred to as "authorized personnel"), may arrest without warrant alleged violators by issuing a summons or citation in accordance with the procedure specified in this section. Nothing in this section shall be construed as barring such authorized personnel from initiating prosecution by warrant or such other judicial process as is permitted by statute or rule of court.
- (c) Any authorized personnel designated by the authority having jurisdiction, upon making an arrest for a violation of the building, plumbing, electrical or housing codes, may take the name and address of the alleged violator and shall issue to the violator in writing a summons or citation hereinafter described, notifying the violator to answer the complaint to be entered against the violator at a place and at a time provided in the summons or citation.
- (d) There shall be provided for use by authorized personnel a form of summons or citation for use in citing violators of the building, plumbing, electrical or housing codes which does not mandate the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed to include all necessary information to make the same valid within the laws and regulations of the State of Hawai'i and County of Hawai'i.
- (e) In every case when a citation is issued, the original of the same shall be given to the violator; provided, that the administrative judge of the district court may prescribe by giving to the violator a copy of the citation and provide for the disposition of the original and any other copies.
- (f) Every citation shall be consecutively numbered and each copy shall bear the number of its respective original.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-36. Injunctive action.

The County of Hawai'i may maintain an action for an injunction to restrain or remedy any violation of the provisions of this code and may take any other lawful action to prevent or remedy any violation.

(2007, Ord. No. 07-84, sec. 2)

Section 17-37. Dangerous and insanitary construction.

- (a) Any portion of a plumbing system found by the authority having jurisdiction to be insanitary as defined herein is hereby declared to be a nuisance. "Insanitary" means a condition which is contrary to sanitary principles or is injurious to health. Conditions to which "insanitary" shall apply include, but are not limited to, the following:
- (1) Any trap which does not maintain a proper trap seal.

- (2) Any opening in a drainage system, except where lawful, which is not provided with an approved water-sealed trap.
 - (3) Any plumbing fixture or other waste discharging receptacle or device, which is not supplied with water sufficient to flush it and maintain it in a clean condition.
 - (4) Any defective fixture, trap, pipe, or fitting.
 - (5) Any trap directly connected to a drainage system, the seal of which is not protected against siphonage and back-pressure by a vent pipe, unless otherwise allowed by this code.
 - (6) Any connection, cross-connection, construction or condition, temporary or permanent, which would permit or make possible by any means whatsoever, for any unapproved foreign matter to enter a water distribution system used for domestic purposes.
 - (7) The foregoing enumeration of conditions to which the term "insanitary" shall apply, shall not preclude the application of that term to conditions that are, in fact, insanitary.
- (b) Upon determining that any construction or work regulated by this code is dangerous, unsafe, insanitary, a nuisance or a menace to life, health or property, or otherwise in violation of this code, the authority having jurisdiction may order any person, firm or corporation using or maintaining any such condition or responsible for the use or maintenance thereof to discontinue the use or maintenance thereof or to repair, alter, change, remove, or demolish same as may be considered necessary for the proper protection of life, health, or property. In the case of any gas piping or gas appliance, the authority having jurisdiction may order any person, firm, or corporation, supplying gas to such piping or appliance, to discontinue supplying gas thereto, until such piping or appliance is made safe with respect to life, health, or property. Every such order shall be in writing, addressed to the owner, agent, or person responsible for the premises in which such conditions exists, and shall specify the date or time for compliance with such order.
- (c) Refusal, failure, or neglect to comply with any such notice or order shall be considered a violation of this code.
- (d) When any plumbing system is maintained in violation of this code and in violation of any notice issued pursuant to the provisions of this section, or where a nuisance exists in any building or on a lot on which a building is situated, the authority having jurisdiction may institute any appropriate action or proceeding in any court of competent jurisdiction to prevent, restrain, correct, or abate the violation or nuisance. (2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-38. Remedies cumulative.

The remedies provided in this code shall be cumulative and not exclusive. (2007, Ord. No. 07-84, sec. 2)

Section 17-39. Reserved.

(2007, Ord. No. 07-84, sec. 2)

Section 17-40. Reserved.

(2007, Ord. No. 07-84, sec. 2)

Division 7. Variances and Appeals.

Section 17-41. Variances.

Whenever strict application of any provision of this code, except for the provisions relating to materials, methods of construction, equipment, fixtures, devices, or appliances, would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, the owner may petition the board of appeals for a variance from the provision. In granting a variance, the board of appeals shall prescribe any conditions that it deems to be necessary or desirable. No variance from the strict application of this code shall be granted by the board of appeals unless it finds that all of the following are present:

- (1) That there are special circumstances or conditions applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or building and do not apply generally to lands or buildings in the neighborhood or surrounding property, and that the circumstances or conditions are such that the strict application of the provisions of this code would deprive the applicant of the reasonable use of the land or building;
- (2) That the granting of the variance is necessary for the reasonable use of the land or building and that the variance granted is the minimum variance that will accomplish this purpose; and
- (3) That the granting of the variance will be consistent with the intent and purpose of this code, and will not be injurious to persons or property, will not create additional fire hazards, and otherwise will not be detrimental to the public welfare. In making its determination, the board of appeals shall take into account the character, use and type of occupancy and construction of adjoining buildings, buildings on adjoining lots, and the building or land involved.

(2007, Ord. No. 07-84, sec. 2)

Section 17-42. Appeals regarding alternative materials and methods of construction.

Any person denied the use of new or alternate materials, methods of construction, equipment, fixtures, devices, or appliances by the authority having jurisdiction, may, within thirty days after the authority having jurisdiction's decision, appeal the decision to the board of appeals. In considering an appeal, the board may require any reasonable test of the proposed material, method of construction, equipment, fixture, device, or appliance, and the appellant shall pay all expenses necessary for the test. The board of appeals may affirm the decision of the authority having jurisdiction or it may reverse the decision if it finds:

- (1) That the new or alternate materials, methods of construction, equipment, fixtures, devices, or appliances meet standards established by this code;
- (2) That permitting the requested use will not jeopardize the safety of persons or property; and
- (3) That the requested use will not be contrary to the intent and purpose of this code.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-43. Other appeals.

(a) Any person aggrieved by the decision of the authority having jurisdiction in the administration or application of this code, other than that prescribed in sections 17-41 and 17-42, may, within thirty days after the date of the authority having jurisdiction's decision, appeal the decision to the board of appeals. The board of appeals may affirm the decision of the authority having jurisdiction, or it may reverse or modify the decision if the decision is:

- (1) In violation of this code or other applicable law;
- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-44. Rules; adoption by board of appeals.

The board of appeals shall adopt rules pursuant to chapter 91, Hawai'i Revised Statutes, necessary for the purposes of this article.

(2007, Ord. No. 07-84, sec. 2)

Section 17-45. Reserved.

(2007, Ord. No. 07-84, sec. 2)

Section 17-46. Reserved.

(2007, Ord. No. 07-84, sec. 2)

Article 3. Installation Requirements.**Section 17-47. Uniform Plumbing Code adopted.**

The "International Association of Plumbing and Mechanical Officials Uniform Plumbing Code, 2006 Edition," published by the International Association of Plumbing and Mechanical Officials, 5001 E. Philadelphia Street, Ontario, California 91761-2816, including appendices, is adopted by reference and made a part of this code. This incorporation by reference includes all parts of the Uniform Plumbing Code, except for part 1, relating to Administration, and is subject to the amendments hereinafter set forth.

- (1) Amending Section 204.0. Section 204.0 is amended by amending the definition of "Building Drain" to read:

"Building Drain – That part of the lowest piping of a drainage system that receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning five (5) feet (1524 mm) outside the building wall."
- (2) Adding a new definition to Section 205.0. A definition of "Control Valve (Water)" is added to read:

"Control Valve (Water) – A control valve is any type of valve which can change the flow rate of water, which includes compression stop valves."
- (3) Adding a new definition to Section 210.0. A definition of "Health Officer" is added to read:

"Health Officer – Health Officer shall mean the Director of Health of the Department of Health, State of Hawai'i, or the Director's authorized agent."
- (4) Adding a new definition to Section 221.0. A definition of "Single-Stack System" is added to read:

"Single-Stack System – A specially designed plumbing system wherein a common stack serves as a drainage pipe as well as a vent pipe."
- (5) Adding Section 314.8. Section 314.8 is added to read:

"314.8 Seismic Supports. Where earthquake loads are applicable in accordance with the building code, plumbing piping supports shall be designed and installed for the seismic forces in accordance with the building code."
- (6) Deleting Section 412.0, Table 4-1 and Table A. Section 412.0, Table 4-1 and Table A are deleted in their entirety, and replaced to read:

"412.0 Minimum Number of Required Fixtures. Plumbing fixtures shall be provided for the type of building occupancy and in the minimum number required in Chapter 29 of the International Building Code."
- (7) Amending Section 715.1. Section 715.1 is amended to read:

"715.1 The building sewer, beginning five (5) feet (1524 mm) from any building or structure, shall be of such materials as prescribed in this code."

- (8) Adding Section 911.0. Section 911.0 is added to read:

“911.0 Single Stack System. When approved by the authority having jurisdiction, a single-stack system based on engineered studies and tests may be used in lieu of other related provisions in this code. Plans and specifications of such systems shall be prepared and stamped by a State of Hawai‘i licensed mechanical engineer.”

- (9) Amending Section 1101.11.1. Section 1101.11.1 is amended to read:

“1101.11.1 Primary Roof Drainage. Roof areas of a building shall be drained by roof drains or gutters. The location and sizing of drains and gutters shall be coordinated with the structural design and pitch of the roof. Unless otherwise required by the authority having jurisdiction, roof drains, gutters, vertical conductors or leaders, and horizontal storm drains for primary drainage shall be sized based on a storm of sixty (60) minutes duration and 100-year return period. Refer to the National Weather Service rainfall map for 100-year, 60 minute storms at various locations.”

- (10) Amending Section 1301.1. Section 1301.1 is amended by adding two new sentences at the end to read:

“The provisions of Chapter 13 Health Care Facilities and Medical Gas and Vacuum Systems shall be used as REFERENCE ONLY, for the design and construction of medical gas and vacuum systems. This Chapter will not be regulated or enforced by the County of Hawai‘i. Responsibility shall be by the company and mechanical engineer who designs and sizes the system.”

- (11) Amending Section 1327.0 Testing and Inspection. Section 1327.0 is amended by replacing the term “Authority Having Jurisdiction” with “Certified Medical Gas System Verifier” (Individuals who have successfully passed a National Inspection Testing Certification Service competency examination in accordance with ASSE Series 6000 Standard, Section 6030) for all instances in Sections 1327.1 to 1327.15.

- (12) Amending Section 1601.0 (A). Section 1601.0 (A) is amended to read:

“(A) The provisions of this chapter shall apply to the construction, alteration, and repair of gray water systems for underground landscape irrigation. Installations shall be allowed only in single-family dwellings or as allowed by the Health Officer. The system shall have no connection to any potable water system and shall not result in any surfacing of the gray water. Except as otherwise provided for in this chapter, the provisions of this code shall be applicable to gray water installation.”

- (13) Amending Section 1601.0 (D). Section 1601.0 (D) is amended to read:

“(D) No permit or approval for any gray water system shall be issued until a plot plan with appropriate data or design plans satisfactory to the authority having jurisdiction has been submitted and approved for use. When there is insufficient lot area or inappropriate soil conditions for adequate absorption of the gray water, as determined by the authority having jurisdiction, no gray water system shall be permitted.”

- (14) Amending Section 1601.0 (E). Section 1601.0 (E) is amended to read:
- “(E) No permit or approval shall be issued for a gray water system on any property in a geologically sensitive area as determined by the Health Officer.”
- (15) Amending Section 1603.0. Section 1603.0 is amended to read:
- “**1603.0 Permit or Approval.** It shall be unlawful for any person to construct, install, or alter, or cause to be constructed, installed, or altered any gray water system in a building or on a premises without first obtaining a permit or approval to do such work from the Health Officer.”
- (16) Amending Section 1604.0. Section 1604.0 is amended by amending the opening paragraph to read:
- “**1604.0 Drawings and Specifications.** The Health Officer may require any or all of the following information to be included with or in the plot plan before a permit or approval is issued for a gray water system, or at any time during the construction thereof:”
- (17) Amending Section 1604.0 (A). Section 1604.0 (A) is amended to read:
- “(A) Plot plan drawn to scale and completely dimensioned, showing lot lines and structures, direction and approximate slope of surface, location of all present or proposed retaining walls, drainage channels, water supply lines, wells, paved areas and structures on the plot, number of bedrooms and plumbing fixtures in each structure, location of private sewage disposal system or building sewer connecting to the public sewer, and location of the proposed gray water system.”
- (18) Amending Section 1607.0. Section 1607.0 is amended to read:
- “**1607.0 Required Area of Subsurface Irrigation/Disposal Fields** (See Figure 16-5.) The Health Officer may require that each valved zone shall have a minimum effective irrigation area in square feet as determined by Table 16-2 for the type of soil found in the excavation, based upon a calculation of estimated gray water discharge pursuant to Section 1606.0 of this chapter, or the size of the holding tank, whichever is larger. The area of the irrigation/disposal field shall be equal to the aggregate length of the perforated pipe sections within the valved zone multiplied the width of the proposed irrigation/ disposal field. Each proposed gray water system shall include at least three (3) valved zones, and each zone shall be in compliance with the provisions of the section. No excavation for an irrigation/disposal field shall extend within three (3) vertical feet of the highest known seasonal groundwater, nor to a depth where gray water may contaminate the groundwater or ocean water. The applicant shall supply evidence of groundwater depth to the satisfaction of the Health Officer.”

- (19) Amending Section 1608.0. Section 1608.0 is amended to read:

“1608.0 Determination of Maximum Absorption Capacity.

(A) Wherever practicable, irrigation/disposal field size shall be computed from Table 16-2 and Table 16-3, or Water Demand based on Evapotranspiration (ET) data.

(B) In order to determine the absorption quantities of questionable soils other than those listed in Tables 16-2 and 16-3, the proposed site may be subjected to percolation tests acceptable to the authority having jurisdiction.

(C) When a percolation test is required, no gray water system shall be permitted if the test shows the absorption capacity of the soil is not acceptable as determined by the Health Officer or is less than eighty-three hundredths (0.83) gallons per square foot (33.8 L/m²) or more than five and twelve hundredths (5.12) gallons per square foot (208.5 L/m²) of leaching area per twenty-four (24) hours.

(D) The following formula can be used to estimate the square footage of landscape to be irrigated based on ET data:

$$LA = \frac{GW}{ET \times PF \times 0.62}$$

Where: GW = estimated gray water produced (gallons per week)

LA = landscaped area (ft²)

ET = evapotranspiration (inches per week)

PF = plant factor, based on climate and type of plants

0.62 = conversion factor (from inches of ET to gallons per week).”

- (20) Amending Section 1611.0. Section 1611.0 is amended to read:

“1611.0 Irrigation/Disposal Field Construction. (See Figure 16-5.)

The Health Officer may permit subsurface drip irrigation, mini-leach field or other equivalent irrigation methods which discharge gray water in a manner which ensures that the gray water does not surface. Design Standards for subsurface drip irrigation systems and mini-leach field irrigation systems are as follows:

- (A) Standards for a subsurface drip irrigation system:

- (1) Minimum 140 mesh (115 micron) filter with a capacity of 25 gallons per minute, or equivalent, filtration, sized appropriately to maintain the filtration rate, shall be used. The filter back-wash and flush discharge shall be caught, contained and disposed of to the sewer system, septic tank, or with approval of the authority having jurisdiction, a separate mini-leach field sized to accept all the back wash and flush discharge water. Filter backwash water and flush water shall not be used for any purpose. Sanitary procedures shall be followed when handling filter back-wash and flush discharge of gray water.

- (2) Emitters shall have a minimum flow path of 1200 microns and shall have a coefficient of manufacturing variation (Cv) of no more than seven percent. Irrigation system design shall be such that the emitter flow variation shall not exceed plus or minus ten percent. Emitters shall be recommended by the manufacturer for subsurface use and gray water use, and shall have demonstrated resistance to root intrusion.
 - (3) Each irrigation zone shall be designed to include no less than the number of emitters specified in Table 16-3, or through a procedure designated by the Health Officer. Minimum spacing between emitters is 14 inches in any direction.
 - (4) The system design shall provide user controls, such as valves, switches, timers, and other controllers as appropriate, to rotate the distribution of gray water between irrigation zones.
 - (5) All drip irrigation supply lines shall be polyethylene tubing or PVC class 200 pipe or better and schedule 40 fittings. All joints shall be properly solvent-cemented, inspected and pressure tested at 40 psi, and shown to be drip tight for five minutes, before burial. All supply lines will be buried at least eight inches deep. Drip feeder lines can be poly or flexible PVC tubing and shall be covered to a minimum depth of nine inches.
 - (6) Where pressure at the discharge side of the pump exceeds 20 pounds per square inch (psi), a pressure reducing valve able to maintain downstream pressure no greater than 20 psi shall be installed downstream from the pump and before any emission device.
 - (7) Each irrigation zone shall include a flush valve/anti-siphon valve to prevent back siphonage of water and soil.
- (B) Standards for a mini-leach field system:
- (1) Perforated sections shall be a minimum three (3) inch (80 mm) diameter and shall be constructed of perforated high-density polyethylene pipe, perforated ABS pipe, perforated PVC pipe, or other approved materials, provided that sufficient openings are available for distribution of the gray water in to the trench area. Material, construction, and perforation of the pipe shall be in compliance with the appropriate absorption fields drainage piping standards and shall be approved by the Health Officer.
 - (2) Filter material, clean stone, gravel, slag, or similar filter material acceptable to the authority having jurisdiction, varying in size from three-quarter (3/4) inch (20 mm) to two and one-half (2-1/2) inch (65 mm) shall be placed in the trench to the depth and grade required by this section. The perforated section shall be laid on the filter material in an approved manner. The perforated section shall then be covered with filter material to the minimum depth required by this section. The filter material shall then be covered with untreated building paper, straw, or similar porous material to prevent closure of voids with earth backfill. No earth backfill shall be placed over the filter material cover until after inspection and acceptance.”

(21) Deleting Chart for Section 1611.0 (C). The corresponding chart for Section 1611.0 (C) is deleted.

(22) Amending Section 1612.0 (A). Section 1612.0 (A) is amended to read:

“(A) Other collection and distribution systems such as laundry only gray water systems may be approved by the local Health Officer.”

(23) Amending Table 16-1. Table 16-1, Location of Gray Water Systems, is amended as follows:

A) Deleted “100% expansion area” as relating to “Disposal Field.”

B) Changed the values for the following Irrigation/Disposal Field:

- Building Structures
- Water Supply Wells
- Disposal Field

As amended, Table 16-1 shall read:

**“Table 16-1
Location of Gray Water System**

Minimum Horizontal Distance in Clear Required From:	Holding Tank		Irrigation/Disposal Field	
	Feet	(mm)	Feet	(mm)
Building structures ¹	5 ²	(1,524 mm)	5	(1,524 mm)
Property line adjoining private property	5	(1,524 mm)	5	(1,524 mm)
Water supply wells ³	50	(15,240 mm)	1000	(304,800 mm)
Streams and lakes ³	50	(15,240 mm)	50 ⁴	(15,240 mm)
Sewage pits or cesspools	5	(1,524 mm)	5	(1,524 mm)
Disposal field	5	(1,524 mm)	5	(1,524 mm)
Septic tank	0	(0)	5	(1,524 mm)
On-site domestic water service line	5	(1,524 mm)	5	(1,524 mm)
Pressurized public water main	10	(3,048 mm)	10 ⁵	(3,048 mm)

Note: When irrigation/disposal fields are installed in sloping ground, the minimum horizontal distance between any part of the distribution system and the ground surface shall be fifteen (15) feet (4,572 mm).

- ¹ Including porches and steps, whether covered or uncovered, breezeways, roofed porte cocheres, roofed patios, carports, covered walks, covered driveways, and similar structures or appurtenances.
- ² The distance may be reduced to zero feet for aboveground tanks when first approved by the authority having jurisdiction.
- ³ Where special hazards are involved, the distance required shall be increased as may be directed by the authority having jurisdiction.
- ⁴ These minimum clear horizontal distances shall also apply between the irrigation/disposal field and the ocean mean higher hightide line.
- ⁵ For parallel construction/for crossings, approval by the authority having jurisdiction shall be required.”

(24) Adding Table 16-3. A new Table 16-3 is added as follows:

**“Table 16-3
Subsurface Drip Design Criteria for Six Typical Soils**

Type of Soil	Maximum Emitter Discharge (gal/day)	Minimum Number of Emitters per gdp of gray water production
Sand	1.8	0.6
Sandy loam	1.4	0.7
Loam	1.2	0.9
Clay loam	0.9	1.1
Silty Clay	0.6	1.6
Clay	0.5	2.0”

(25) Amending Section 1614.0. Section 1614.0 is amended to read:

“1614.0 Definitions.

Reclaimed water is water that, as a result of tertiary treatment of domestic wastewater, is at all times oxidized, then filtered, and then exposed, after the filtration process, to:

(1) A disinfection process that, when combined with the filtration process, has been demonstrated to inactivate and/or remove 99.999 percent of the plaque-forming units of F-specific bacteriophage MS2, or polio virus in the wastewater. A virus that is at least resistant to disinfection as polio virus may be used for purposes of demonstration; and

(2) A disinfection process that limits the concentration of fecal coliform bacteria to the following criteria:

- (i) The median density measure in the disinfected effluent does not exceed 2.2 per 100 milliliters utilizing the bacteriological results of the last seven days for which analyses have been completed; and
- (ii) The density does exceed 23 per 100 milliliters in more than one sample in any 30-day period; and
- (iii) No sample shall exceed 200 per 100 milliliters.

The level of treatment and quality of the reclaimed water shall be approved by the Department of Health.

Specifically excluded from this definition is gray water, which is defined in Part I of this chapter.

For the purposes of this section, the words “reclaimed” and “recycled” may be used interchangeably.”

- (26) Amending Section K1 (A). Appendix K is amended by adding at the end of Section K1 (A) the following:
- “Construction plans for private sewage disposal systems shall be prepared by or under the supervision of a Hawai‘i licensed engineer registered in the State of Hawai‘i. All private sewage disposal systems shall be constructed or modified by a person meeting the requirements of chapter 444, Hawai‘i Revised Statutes and any pertinent rules promulgated by the department of commerce and consumer affairs, State of Hawai‘i.”
- (27) Amending Section K1 (E). Appendix K is amended by amending Section K 1 (E) to read:
- “(E) The lot area shall not be less than 10,000 square feet except for lots created and recorded before August 30, 1991. For lots less than 10,000 square feet which were created and recorded before August 20, 1991, only one private sewage disposal system shall be allowed. The total wastewater flow into one private sewage disposal system shall not exceed 1,000 gallons, and one private sewage disposal system shall not serve more than five bedrooms, whether they are in one dwelling unit or two. For buildings, other than dwellings with highly variable wastewater flow rates, such as but not limited to schools, parks, and churches, the private sewage disposal system may exceed a design flow rate of 1,000 gallons per day.”
- (28) Amending Section K1 (J). Appendix K is amended by adding at the end of Section K 1 (J) the following:
- “Aerobic systems shall be required for the direct disposal of sewage to groundwater.”
- (29) Amending Section K 2. Appendix K is amended by amending Section K 2 to read:
- “K 2 Capacity of Septic Tanks.**
The liquid capacity of all septic tanks shall conform to Tables K-2 and K-3 as determined by the number of bedrooms in dwelling occupancies and the estimated waste/sewage design flow rate or the number of plumbing fixture units as determined from Table 7-3 of this Code, whichever is greater in other building occupancies. The capacity of any one septic tank and its drainage system shall be limited by the soil structure classification, as specified in Table K-4.”
- (30) Amending Section K 3. Appendix K is amended by amending Section K 3 to read:
- “K 3 Area of Disposal Fields and Seepage Pits.**
The minimum effective absorption area in disposal fields in square feet (m²) of sidewall, shall be predicated on the required septic tank capacity in gallons (liters) and/or estimated waste/sewage flow rate, whichever is greater, and shall conform to Table K-4 as determined for the type of soil found in the excavation. The minimum effective absorption area could also be based upon a flow of 200 gallons per bedroom per day in accordance with Table K-6. Soil percolation tests shall be conducted at a minimum depth of three feet.”

- (31) Amending Section K4 (C). Appendix K is amended by amending the first sentence of Section K4 (C) to read:

“(C) When a percolation test is required, the test shall be conducted at a minimum depth of three feet, and no private disposal system shall be permitted to serve a building if that test shows the absorption capacity of the soil is less than 0.83 gallons per square foot (33.8 L/m²) or more than 5.12 gallons per square foot (208 L/m²) of leaching area per 24 hours.”

- (32) Amending Section K5 (N)(1). Appendix K is amended by amending Section K5 (N)(1) to read:

“(1) The septic tank shall be certified by IAPMO or a third party certification body accredited in accordance with ISO Guide 65, entitled “General Requirements for bodies operating product certification systems.””

- (33) Amending Section K7 (C). Appendix K is amended by amending the first sentence of Section K 7(C) to read:

“(C) Each seepage pit shall be circular in shape and shall have an excavated diameter of not less than six (6) feet (1,829 mm).”

- (34) Amending Table K-1. Appendix K is amended by amending Table K-1, Location of Sewage Disposal System, as follows:

The minimum horizontal distances are revised to be consistent with Hawai‘i Administrative Rules Chapter 11-62 “Wastewater Systems” distances. The revision to Table K-1 is limited to increasing from 100 feet to 1,000 feet the minimum horizontal distance in clear from a water supply well to a disposal field.

As amended, Table K-1 shall read:

Intentionally left blank.

**“TABLE K-1
Location of Sewage Disposal System**

Minimum Horizontal Distance In Clear Required From:	Building Sewer	Septic Tank	Disposal Field	Seepage Pit or Cesspool
Buildings or structures ¹	2 feet (610 mm)	5 feet (1,524 mm)	8 feet (2,438 mm)	8 feet (2,438 mm)
Property line adjoining private property	Clear ²	5 feet (1,524 mm)	5 feet (1,524 mm)	8 feet (2,438 mm)
Water supply wells	50 feet ³ (15,240 mm)	50 feet (15,240 mm)	1,000 feet (304,800 mm)	150 feet (45.7 m)
Streams and other bodies of water	50 feet (15,240 mm)	50 feet (15,240 mm)	100 feet ⁷ (30,480 mm) ⁷	150 feet ⁷ (45.7 m) ⁷
Trees	-	10 feet (3,048 mm)	-	10 feet (3,048 mm)
Seepage pits or cesspools	-	5 feet (1,524 mm)	5 feet (1,524 mm)	12 feet (3,658 mm)
Disposal Field	-	5 feet (1,524 mm)	4 feet ⁴ (1,219 mm)	5 feet (1,524 mm)
On-site domestic water service line	1 foot ⁵ (305 mm)	5 feet (1,524 mm)	5 feet (1,524 mm)	5 feet (1,524 mm)
Distribution box	-	-	5 feet (1,524 mm)	5 feet (1,524 mm)
Pressure public water main	10 feet ⁶ (3,048 mm)	10 feet (3,048 mm)	10 feet (3,048 mm)	10 feet (3,048 mm)

Note: When disposal fields and/or seepage pits are installed in sloping ground, the minimum horizontal distance between any part of the leaching system and ground surface shall be fifteen (15) feet (4,572 mm).

- ¹ Including porches and steps, whether covered or uncovered, breezeways, roofed porte cocheres, roofed patios, carports, covered walks, covered driveways, and similar structures or appurtenances.
- ² See also Section 313.3 of the Uniform Plumbing Code.
- ³ All drainage piping shall clear domestic water supply wells by at least fifty (50) feet (15,240 mm). This distance may be reduced to not less than twenty-five (25) feet (7,620 mm) when the drainage piping is constructed of materials approved for use within a building.
- ⁴ Plus two (2) feet (610 mm) for each additional one (1) foot (305 mm) of depth in excess of one (1) foot (305 mm) below the bottom of the drain line. (See also Section K 6.)
- ⁵ See Section 720.0 of the Uniform Plumbing Code.
- ⁶ For parallel construction - For crossings, approval by the Health Department shall be required.
- ⁷ These minimum clear horizontal distances shall also apply between disposal fields, seepage pits, and the mean high tide line.”

(35) Amending Table K-2. Appendix K is amended by amending Table K-2, Capacity of Septic Tanks, as follows:

- A) Under column “Single-Family Dwellings-Number of Bedrooms,” delete “1 or 2 and 3” and replace with “4 or less”; also delete “or 6” from “5 or 6.”
- B) Under column “Multiple Dwelling Units or Apartments-One Bedroom Each,” delete “3 through 10.”
- C) Delete entire column “Other Uses: Maximum Fixture Units Served per Table 7-3.”

D) Under “Minimum Septic Tank Capacity in Gallons/Liters” delete the first two rows, amend the third and fourth rows, and delete rows five through eleven.

E) Delete “*Note: Extra Bedroom, 150 gallons (568 liters) each. Extra dwelling units over 10: 250 gallons (946 liters) each. Extra fixture units over 100: 25 gallons (95 liters) per fixture unit.”

As amended, Table K-2 shall read:

**“TABLE K-2
Capacity of Septic Tanks**

Single-Family Dwellings – Number of Bedrooms	Multiple Dwelling Units or Apartments – One Bedroom Each	Minimum Septic Tank Capacity in	
		Gallons	(Liters)
4 or less	--	1,000	(3,785)
5	2 units	1,250	(4,731)

Septic tank sizes in this table include sludge storage capacity and the connection of domestic food waste disposal units without further volume increase.”

Intentionally left blank.

(36) Adding Table K-6. Appendix K is amended by adding a new Table K-6 as follows:

**“TABLE K-6
Minimum Required Absorption Area**

Percolation Rate (min/inch) Less than or equal to	Required Absorption Area (ft2/bedroom or 200 gallons)	Percolation Rate (min/inch) Less than or equal to	Required Absorption Area (ft2/bedroom or 200 gallons)
1	70	31	253
2	85	32	257
3	100	33	260
4	115	34	263
5	125	35	267
6	133	36	270
7	141	37	273
8	149	38	277
9	157	39	280
10	165	40	283
11	170	41	287
12	175	42	290
13	180	43	293
14	185	44	297
15	190	45	300
16	194	46	302
17	198	47	304
18	202	48	306
19	206	49	308
20	210	50	310
21	214	51	312
22	218	52	314
23	222	53	316
24	226	54	318
25	230	55	320
26	234	56	322
27	238	57	324
28	242	58	326
29	246	59	328
30	250	60	330”

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, secs. 9 and 10.)

Section 17-48. Reserved.
(2007, Ord. No. 07-84, sec. 2)

Section 17-49. Reserved.
(2007, Ord. No. 07-84, sec. 2)

Article 4. Plumbing Work Within Special Flood Hazard Areas.**Section 17-50. General applicability.**

The provisions of this article shall apply to the construction of any new plumbing system, renovation and major alteration, addition, or reconstruction of existing plumbing system within any special flood hazard area as identified by chapter 27, Hawai'i County Code.

(2007, Ord. No. 07-84, sec. 2)

Section 17-51. Exemptions.

The provisions of this article shall not apply to the following:

- (1) Any plumbing system serving a building or structure exempted from chapter 27, Hawai'i County Code;
- (2) Any plumbing system serving a building or structure which has been granted a flood control variance pursuant to article 2, chapter 27, Hawai'i County Code; or
- (3) Any plumbing system lawfully existing prior to November 8, 1993, subject to the provisions of chapter 27, Hawai'i County Code.

(2007, Ord. No. 07-84, sec. 2)

Section 17-52. Definitions.

For the purpose of this article, the following words and terms are defined in the same manner as those words and terms are defined in section 27-12, Hawai'i County Code:

- (1) Base flood elevation.
- (2) Flood or flooding.
- (3) Special flood hazard area.

(2007, Ord. No. 07-84, sec. 2)

Section 17-53. Drainage (plumbing) systems.

- (a) Drainage systems that have openings below the base flood elevation shall be provided with an automatic backwater valve installed in each discharge line passing through a building exterior wall, except backwater valves may be deleted if the fixture drainage openings are located at or above a floor level which is above the surrounding ground level.
- (b) Drainage systems for emergency servicing facilities that are required to remain in operation during a flood shall be provided with a sealed holding tank and the necessary isolation and diversion piping and appurtenances to withhold or postpone sewage discharge to the sewer system during the flood. The holding tank shall be sized for storage of at least one hundred fifty percent of the anticipated demand for a twenty-four hour period. Vents provided for such holding tank shall terminate at an elevation of at least one foot above the base flood elevation.
- (c) All pipes in a plumbing vent system shall terminate at an elevation of at least one foot above the base flood elevation.
- (d) All pipe openings through exterior walls below the base flood elevation shall be floodproofed to prevent infiltration of flood water through spaces between pipes and wall construction materials by use of embedded collars, sleeves, waterstops, or other means as may be approved by the authority having jurisdiction.

(2007, Ord. No. 07-84, sec. 2; Am. 2011, Ord. No. 11-70, sec. 8.)

Section 17-54. Private sewage disposal/treatment.

An individual private sewage disposal system or a treatment facility may be permitted in a special flood hazard area when the design and location of such system or facility is approved by the State department of health. In addition to complying with public health regulations and administrative rules of the State department of health, any such new or replacement sewage disposal system shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

(2007, Ord. No. 07-84, sec. 2)

Section 17-55. Water supply systems.

- (a) Potable water supply systems that are located in a special flood hazard area shall be designed and installed in such a manner as to prevent contamination from flood waters up to the base flood elevation. Location and construction of private water supply wells shall comply with rules and regulations of the department of water supply of the County of Hawai'i.
- (b) Potable water supply tanks, filters, softeners, heaters, and all water-supplied appliances and fixtures located below the base flood elevation shall be protected against contamination by covers, walls, copings, or castings. All vent pipes serving the water supply system shall terminate at an elevation of at least one foot above the base flood elevation.
- (c) Backflow preventers or devices approved by the department of water supply shall be installed on water service lines as close to the property control valve as possible to protect the public water system from backflow or back siphonage of flood waters or other contaminants in the event of a line break. Devices shall be installed at accessible locations and shall be maintained in good working condition by the owner. The backflow preventers or devices shall be subject to periodic testing as prescribed in the rules and regulations of the department of water supply.
- (d) An approved double-check valve assembly shall be used in lieu of any vacuum breaker, permitted, or otherwise required under this chapter when located below the regulatory flood elevation.
- (e) Air relief valves are permitted on private pipelines only when installed at least one foot above the base flood elevation.

(2007, Ord. No. 07-84, sec. 2)

Section 17-56. Plumbing piping under buildings.

Plumbing piping under buildings constructed on stilts shall be securely anchored against lateral movement and flotation and protected against damage by flood water and debris. Protection shall be provided by the structural enclosure of such piping or by attaching such piping to the downstream side of structural members which are large enough to provide this protection.

(2007, Ord. No. 07-84, sec. 2)