Forfeiture of Grant of Easement Bearing Land Office Deed No. S-28685, to Randall S. Sohler, Grantee, Kanaio, Makawao, Maui, Tax Map Key:(2) 2-1-003: Portion of 050.

PURPOSE:
Forfeiture of Grant of Easement Bearing Land Office Deed No. S-28685, Randall S. Sohler, Grantee.

LEGAL REFERENCE:
Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:
Portion of Government lands of Kanaio situated at Makawao, Maui, identified by Tax Map Key: (2) 2-1-003: Portion of 050, as shown on the attached map labeled Exhibit 1.

AREA:
2,927 sf, more or less.

TRUST LAND STATUS:
Section 5(b) lands of the Hawaii Admission Act

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

CHARACTER OF USE:
Access and Utility purposes.
TERM OF LEASE:


REMARKS:

On June 8, 2012, under agenda item D-8, (attached as Exhibit - A) staff requested Board approval for the forfeiture of Grant of Easement bearing Land Office Deed Number S-28685 to Mr. Randall S. Sohler, for Access and Utility purposes. This request was due to Mr. Sohler’s failure to post the required liability insurance policy (Condition #18, Insurance Requirement). The requested action was deferred for up to ninety (90) days to allow staff to notify the other property shareholders of the default and time to resolve it.

Pursuant to the Board’s recommendation, staff sent notices to all shareholders listed on the County of Maui’s Real Property tax website with a listed address (Exhibit - B). Notices were also posted at the main entrance gate and at every structure on the benefiting property identified as TMK: (2) 2-1-003:027. To date, staff received one response from the listed property owners, Mr. Sheldon Holokai Jr.

Mr. Holokai was informed of the current default status of Mr. Sohler’s access and utility easement. He informed staff that it was his understanding that Mr. Sohler had passed away a couple of years ago, but before his passing he had sold off his interest to the property. Mr. Holokai further indicated that although he has a share in the property, he rarely visits the area and has no plan to start using it. Therefore, at this time he isn’t interested in obtaining a new easement in his name for access and utility purposes. Mr. Holokai was informed of the fact that once this easement was cancelled there would be no legal access to the property over the adjacent government land (parcel 050). He acknowledged that he understood and indicated that if there should ever be a time that he chooses to begin utilizing the property, he would then submit a request for an appropriate disposition to access the property.

RECOMMENDATION: That the Board:

1. Authorize the forfeiture of Land Office Deed No. S-28685 in the manner specified by law;

2. Authorize the retention of all sums heretofore paid or pledged under Land Office Deed No. S-28685 to be applied to any past due amounts;

3. Terminate Land Office Deed No. S-28685 and all rights of Grantee and all obligations of the Grantor effective as of April 22, 2016, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until
duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and

4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under Land Office Deed No. S-28685, and to pursue all other rights and remedies as appropriate.

5. Authorize staff to procure services to have the existing steel gate situate within the easement area (Government land) removed and properly disposed of.

Respectfully Submitted,

[Signature]

Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:

[Signature]

Suzanne D. Case, Chairperson
STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813  

June 8, 2012

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

Forfeiture of Grant of Easement Bearing Land Office Deed No. S-28685, Randall S. Sohler, Grantee, Kanaio, Makawao, Maui, Tax Map Key: (2) 2-1-003: Portion of 050.

PURPOSE:
Forfeiture of Grant of Easement Bearing Land Office Deed No. S-28685, Randall S. Sohler, Grantee.

LEGAL REFERENCE:
Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:
Portion of Government lands of Kanaio situated at Makawao, Maui, identified by Tax Map Key: (2) 2-1-003: Portion of 050, as shown on the attached map labeled Exhibit 1.

AREA:
2,927 square feet, more or less.

TRUST LAND STATUS:
Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:
Access and Utility purposes.

REMARKS:
At its meeting of March 22, 2002 under Item No. D-2, the Board of Land and Natural Resources approved issuance of a perpetual, non-exclusive easement to Mr. Randall S. Sohler for access and utility purposes to benefit his property at Tax Map Key No.: (2) 2-1-003:027. The subject easement encumbered an area of 2,979 square feet of State land, further identified by Tax Map Key: (2) 2-1-003:050.

[Approved by the Board of Land and Natural Resources at its meeting held on June 8, 2015]
Pursuant to the authority granted to the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in Land Office Deed S-28685, Randall S. Sohler, Lessee, was served a Notice of Default via certified mail dated November 9, 2010, for (refer to Exhibit 2):

1. Failure to post required liability insurance policy
   (Condition #18, Insurance Requirement)

Said notice was received by Mr. Sohler on November 10, 2010 and informed him that his liability insurance policy had expired on October 6, 2010. Grantee had a sixty-day cure period to correct the default. This cure period expired on January 9, 2011.

To date Mr. Sohler has not posted the required liability insurance and has not contacted staff to apprise of the status of his disposition.

A 2011 review of County of Maui Real Property Tax records indicated that Randall Sohler sold his benefiting property by means of warranty deed at Tax Map Key No.: (2) 2-1-003:027 on April 13, 2010. The deed was recorded with the Bureau of Conveyances under document no. A2010059524 (refer to Exhibit 3). Staff has been unsuccessful in locating the new owners Michael B. Draaijers and Cheryl Sellers. A notification letter dated July 20, 2011 was mailed to their address on record but was later returned by the postmaster as undeliverable.

Pursuant to a recent site inspection of the subject easement area, the portion of State land encumbered by LOD No. S-28685 is tied to a very long, undeveloped dirt and rocky road driveway which is servicing multiple habitable structures at Tax Map Key: (2) 2-1-003:027. County records do currently indicate that the benefiting property (parcel 27) is owned by a large number of persons. The thirty-two (32) parties on the Real Property Tax Office records are listed as owners of this benefiting property. In an attempt to contact parties of interest at parcel 027, staff posted notices on a steel gate at the entrance of the easement area (refer to Exhibit #4). The April 5, 2012 notice requested the landowners or users of the access easement to come forward and contact the Maui district office. To date, staff has received no response.

Page 4, paragraph 10 of Land Office Deed S-28685, does allow for the termination of the easement rights due to abandonment by the Grantee, Mr. Sohler.

Also, in light of multiple owners of the benefit property, Staff is requesting that the Board approve the forfeiture of Land Office Deed No. 28685 due to non-compliance with the terms and conditions of the access easement document originally issued to Mr. Randall S. Sohler.
RECOMMENDATION: That the Board:

1. Authorize the forfeiture of Grant of Easement bearing Land Office Deed No. S-28685 in the manner specified by law;

2. Authorize the retention of all sums heretofore paid or pledged under Land Office Deed No. S-28685 to be applied to any past due amounts;

3. Terminate the Land Office Deed No. S-28685 and all rights of Grantee and all obligations of the Grantor effective as of May 25, 2012, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the Land Office Deed to survive termination shall endure past such termination date until duly fulfilled, and further provided that Grantor reserves all other rights and claims allowed by law;

4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under Land Office Deed No. S-28685 and to pursue all other rights and remedies as appropriate.

5. Authorize staff to procure services to have the existing steel gate situated within the easement area removed and properly disposed of.

Respectfully Submitted,

Larry Paecheco, Land Agent

APPROVED FOR SUBMITTAL:

William J. Aila, Jr., Chairperson

Land Board Meeting: June 8, 2012; D-8: Deferred:

Deferred up to ninety (90) days to allow staff to notify the other holders of the easement of the default and to resolve.
Ref: MD-LOD28685

CERTIFIED MAIL: 7009 0820 0001 6775 0622

RANDALL S. SOHLER
KULA, HI 96790

Dear Grantee:

NOTICE OF DEFAULT

Pursuant to the authority granted me by the Board of Land and Natural Resources at its meeting of January 11, 1980, and the breach provision contained in Grant of Non-Exclusive Easement (Land Office Deed No. S-28685), you are hereby served a Notice of Default on said easement for failure to do the following:

X Post required Liability Insurance Policy
(Expired: 10/06/2010)

You are hereby given sixty (60) days from the date of receipt of this letter to cure the above-described breach.

Your failure to act on the above matter may result in the following:

1. Cancellation of Grant of Non-Exclusive Easement (Land Office Deed No. S-28685).

2. Retention of all sums heretofore paid under Grant of Non-Exclusive Easement (Land Office Deed No. S-28685) as liquidated damages.

3. Termination of all your rights and obligations under Grant of Non-Exclusive Easement (Land Office Deed No. S-28685).

EXHIBIT 2
We therefore urge your fullest cooperation. Should you have any questions, please contact Mr. Daniel Ornellas of our Maui District Land Office at (808) 984-8103.

Sincerely,

LAURA H. THIELEN
Chairperson

cc: Land Board Member
    District Office
    Central Office
Ref: MD-LOD28685

CERTIFIED MAIL: 7009 0820 0001 6775 0622

RANDALL S. SOHLER
KULA, HI 96790

Dear Grantee:

NOTICE OF DEFAULT

Notice is hereby given by the Board of Land and Natural Resources at its meeting held in Grant of Non-Exclusive Easement (Land Office Deed No. S-28685) dated February 2004, that a Notice of Default on said

1. Article Addressed to:
Randall S. Sohler
Kula, HI 96790

2. Article Number
MD-LOD28685 NOD kck

3. Service Type
Certified Mail

4. Restricted Delivery? (Extra Fee) Yes

3. Termination of all your rights and obligations under Grant of Non-Exclusive Easement (Land Office Deed No. S-28685).
Bureau of Conveyances - Official Public Records

Document Number A2010059524

No. of Pages: 4 pages
Fee: $4.00
Recording Date: 2010-05-03
Description: DEED
Grantor: SOHLER RANDALL
Grantee: DRAAUERS MICHAEL B SELLERS CHERYL
TMK: 2-2-1-003-027-
Notes: 50.75 ACRE PARCEL GR 2994

EXHIBIT "3"
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
54 High Street, Room 101
Wailuku, Hawaii 96793
PHONE: (808) 984-8103
FAX: (808) 984-8111
April 5, 2012

NOTICE

To Whom It May Concern:

Map Key: (2) 2-1-003:050 por., Kanaio, Makawao, Maui.

NOTICE IS HEREBY POSTED stating that a portion of this roadway encumbers government
lands identified as TMK (2) 2-1-003:050 por., and is subject to the terms and conditions of Land
Office Deed (LOD) S-28685 and Hawaii Revised Statutes Chapter 171 which provides for the
management of activities on government lands.

PLEASE BE ADVISED that the current holder of LOD S-28685 has abandoned their
responsibilities related to the use of government lands.

USERS OF THIS GOVERNMENT EASEMENT ARE HEREBY NOTIFIED that if you do not
come forward to claim responsibility for the use of government lands, then LOD-S-28685 shall
be cancelled by the Board of Land and Natural Resources (BLNR).

Current landowners/users are encouraged to contact the Maui
District Land Office as soon as possible. If we do not receive a
response within 30 days from the date listed above, then measures
will be taken which shall render TMK (2) 2-1-003:027 land locked
from the government right-of-way known as Pilani Highway. Reestablishment of an authorized right-of-way shall require
approval by the BLNR and payment of just consideration to the
State of Hawaii. Please contact the Maui District Land Office at
(808) 984-8103 to clear this matter.

By: Daniel Omellas
District Land Agent

cc: District Board Member
    County of Maui
    Central / District Files

EXHIBIT 4
Photos depict Notice to the easement users at LOD-S-28655, 1 MK: (2) 2-1-003, portion of 050.

Notice posted at the gate of the first residence on the privately owned property above the easement area.
### Owner and Parcel Information

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### Legal Information

- **Owner Name**: ANKOLIA, EMMA
- **Mailing Address**: OLLIVER, BC V0H 1TO, CANADA
- **Location Address**: CANADA
- **Property Type**: AGRICULTURAL
- **Neighborhood Code**: 2143-5
- **Parcel Number**: 210030270000
- **Parcel Map**: Show Parcel Map
- **Land Area**: 50.174 Acres

### Owner Address Information

- **Oliver, BC V0H 1TO**
- **Kahului HI 96732 2633**
- **Kula HI 96790**

### Exhibit B