

MASTER WATER AGREEMENT

BY AND BETWEEN

EAST MAUI IRRIGATION COMPANY, LIMITED

and

HAWAIIAN COMMERCIAL & SUGAR COMPANY, LIMITED

AND THE

BOARD OF WATER SUPPLY

of the

COUNTY OF MAUI

December 22, 1961

Liber 4197
Page 262.

THIS AGREEMENT made as of this 22nd day of December, 1961, by and between the EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation ("EMI"), whose post office address is Paia, Maui, and HAWAIIAN COMMERCIAL AND SUGAR COMPANY, LIMITED, a Hawaii corporation ("HC&S"), whose post office address is Puunene, Maui, hereinafter called "the Vendors", and the BOARD OF WATER SUPPLY of the County of Maui, a Board duly created and existing under the laws of the State of Hawaii, in the name of and on behalf of the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose post office address is Wailuku, Maui, Hawaii, which County of Maui is hereinafter called "the Vendee",

W I T N E S S E T H:

ARTICLE I

Water Rights

1. Sources of Water. The Vendors agree to deliver and the Vendee agrees to accept water at the following sources:

a. In the existing aqueduct system of the Vendee and from the flow in the natural channels (at points below the Haleakala Ranch Company pipeline and sources of supply therefor located at an elevation of approximately five thousand feet (5000')) within that portion of Haiku-Uka owned by the Vendors, the approximate boundaries of which are indicated in red on Exhibit A attached hereto; subject to prior existing rights of others, if any, to take such waters.

b. (1) In the eight inch (8") pipeline from the Awalau-Opana water development tunnels, ditches, springs and natural channels of the Vendors in the approximate

area indicated in green on said Exhibit A; and (2) In the four inch (4") pipeline from the Huluhulunui water development tunnel and springs in the approximate area indicated in yellow on said Exhibit A; subject to prior existing rights of others, if any, to take such waters.

c. From the Wailoa Ditch of EMI at the following points indicated in red on Exhibit B attached hereto: (1) In the six inch (6") pipeline connected in the cross cut in the Huluhulunui branch of the Kuiaha gulch; (2) In the eight inch (8") pipeline in Lilikoi gulch; and (3) In the four inch (4") pipeline connected to the pump sump drawing water in the Lilikoi gulch.

d. From the water systems of HC&S at the following points: (1) In the two inch (2") pipeline connected to the HC&S penstock and indicated in green on said Exhibit B; (2) In the two inch (2") pipeline connected to the HC&S Paia Village supply and indicated in yellow on said Exhibit B; (3) In the four inch (4") pipeline connected to the HC&S Paia Village and mill supply line and indicated in blue on said Exhibit B; (4) In the four inch (4") pipeline connected to the HC&S Hamakuapoko Village supply and indicated in orange on said Exhibit B; (5) In the pipeline connected to the HC&S Spreckelsville Village supply and indicated in brown on said Exhibit B; and (6) In the pipeline connected to the HC&S Puunene Village supply and not indicated on the Exhibits.

e. In the one inch (1") pipeline from the water development tunnel of EMI above the Koolau Ditch between Kuhiwa and Makapipi gulches not indicated on the Exhibits.

f. It is understood and agreed that when the

four inch (4") pipeline at source lc(3) is not in use by the Vendee, measurement may be by-passed and said line used by EMI to convey water from source lb(2) into the Wailoa Ditch of EMI.

g. Delivery of water will be made only at the above listed sources, and at such additional points as may be agreed upon in writing by the parties, and the Vendee agrees to not enlarge the pipelines or otherwise increase the quantities of water withdrawn from said sources without the consent in writing of the Vendors.

2. Easements. a. For source la above the Vendors hereby grant to the Vendee an easement (1) for the existing aqueduct system of the Vendee and to extend, construct, operate, maintain and repair ditches, flumes, pipelines, pumps, dams and reservoirs and to tunnel at any suitable points within the drainage area (excepting, however, that portion tributary to the aforementioned Haleakala Ranch Company pipeline) for the conveyance of water to the Vendee's Kula pipeline, and/or Waikamoi pumping station, and (2) to maintain, operate and repair said Kula pipeline.

b. For sources lb throughle above, the Vendors hereby grant to the Vendee easements ten feet (10') in width (five feet (5') to the left and five feet (5') to the right of the center lines of the existing pipelines) over, under and across the lands owned by the Vendors for the conveyance of water and for the maintenance, operation, construction and repair of the Vendee's aqueduct system.

c. The easements granted in subparagraphs a and b above will be used by the Vendee in such manner so as to not interfere with the activities of the Vendors. Any or all of said easements and the installations lying

therein shall be moved to an alternate location at the Vendee's expense when required by the Vendors and on provision by the Vendors of a reasonably adequate alternate easement. Relocation of said easements will not be arbitrarily or capriciously required, but only when in the opinion of the Vendors the existing location of an easement presents an impediment to the higher and better use of the land on which it is located.

d. The Vendee agrees that it will maintain in good order and condition the gate to the westerly boundary of the Makawao Forest Reserve and will keep the same at all times locked with a suitable lock, except when authorized traffic is passing through said gate, and will provide keys to same for use by the Vendors. Entrance to the area shall be authorized by the Vendee only for its employees and other parties occupied in the construction, operation, maintenance and repair of the Vendee's water facilities, and such authorization shall be issued in accordance with the rules and regulations of the Department of Health of the State of Hawaii.

3. Quantities of Water. a. The Vendee shall be entitled to take from the below listed sources up to but not in excess of the below listed quantities of water per day:

<u>SOURCE</u>	<u>QUANTITY IN GALLONS</u>
la	5,000,000
lb	1,500,000
lc - not used	800,000
ld	600,000
le	6,000

b. The Vendors do not guarantee the continuance or constancy of the water supply and shall not be liable in any manner for the failure of same or of any water

conveyance project which may be undertaken by the Vendee, and in case said supply shall prove or become inadequate, whether due to a diminution or failure either from natural causes or because of any taking of water therefrom by the Vendors or by any third parties, the Vendors shall not be required to acquire, develop, replace or otherwise provide or furnish any other or additional water on account thereof; provided, however, that neither the Vendors nor any other parties claiming by, through or under them, or either of them, shall utilize water for power development in such fashion or to such extent so as to prevent the Vendee from taking up to a maximum of five million (5,000,000) gallons per 24 hours by natural stream flow at the Waikamoi Main Line Intake and/or at the Pump Station Intake, or so as to make it necessary for the Vendee to pump water from the three thousand foot (3000') level when said water is otherwise available at the Waikamoi Main Line Intake level.

c. In the event the total supply of water from all sources now enjoyed by the Vendors shall be materially reduced, either temporarily or permanently, by the exhaustion or diminution of the water supply from any source because of the failure, for any reason, of the Vendors to secure the renewal of any water license, lease or other rights now contributing to said total supply, whether or not said license, lease or other rights shall be connected with or directly affect the sources which are the subject of this agreement, and in consequence thereof any material portion of the supply otherwise deliverable hereunder is deemed to be necessary by the Vendors for their own use, the Vendors shall have the right in any such event

to use for their own purposes such portion or all of said water as may be deemed necessary by them; provided, however, that the Vendors shall give the Vendee at least one (1) year's written notice of said intended use.

4. Storage Reservoirs. a. EMI, for the purpose of enabling the Vendee to provide storage facilities for additional water for its Kula pipeline, hereby grants to the Vendee the right to enter in and upon the area of source 1a, but below the Haleakala Ranch Company's aforementioned pipeline, and to construct, maintain, operate and repair such reservoirs, dams, pipelines, pumping plants, flumes, ditches and other facilities within said area as may be deemed necessary by the Vendee for the collection and storage of water and the conveyance and pumping thereof to and from such reservoirs to the Kula pipeline, upon the understanding and condition that all such storage reservoir construction shall be made as leak proof as reasonably possible and that EMI shall be notified in writing of the Vendee's intention to construct such reservoirs, dams and other installations, and plans showing proposed location and details of construction shall be submitted to EMI and its approval obtained in writing, before any construction is undertaken. Should any storage reservoir in this water supply system prove to be leaky and to show a loss of over twenty per cent (20%) per month of water stored therein, it shall be by-passed immediately by conveying the water through or around such leaky reservoir by pipeline until the leaky condition of the reservoir has been corrected and the reservoir put back in reasonably water tight condition.

b. In the installation, construction and maintenance of such reservoirs, dams, pipelines, pumping plants, flumes, ditches and other facilities, the Vendee agrees that it will not unnecessarily damage or destroy forest growth, ground cover, fences or other property and that when at any time the natural forest growth or ground cover is removed, or any excavation or landslide occurs along the roads, trails, flumes, pipelines, ditches, pumping plants, reservoir sites, or other facilities in the area of the Vendee's operations, the Vendee will make provisions, satisfactory to the Vendors, to contain the mud, debris, or other moveable excavated material within the site, by proper dams, dikes or revetments which will prevent such material from being washed down into the streams and facilities by the heavy rainfall common to the area. Furthermore, the Vendee agrees that it will use every available means to prevent contamination or pollution of the water and that in the installation, maintenance and construction of its facilities, and in the taking of water, it will in all cases comply with the rules and regulations of the Department of Agriculture and the Department of Health of the State of Hawaii concerning the prevention of contamination or pollution, and that the Vendee will replant the area with suitable forest growth and ground cover so as to prevent soil erosion.

5. Term. The term of this agreement, subject to the covenants and conditions hereinafter contained, shall be from the first day of January, 1962, for the period of twenty-four (24) years and six (6) months then next ensuing, to and including the thirtieth day of June, 1986; provided,

however, that all easements and rights granted to the Vendee hereunder shall be extinguished at the end of the term hereof, or at such time as any or all of the easements and rights granted to EMI are extinguished under that certain agreement dated March 18, 1938 by and between the Territory of Hawaii and EMI, recorded in the Bureau of Conveyances of the State of Hawaii in Book 1435, Pages 1-12, whichever is sooner; and provided further, that all of such facilities presently constructed and to be constructed by the Vendee on its aqueduct system shall revert to the Vendors at the end of the term hereof, or at such time as any or all of the facilities presently constructed and to be constructed by EMI on their aqueduct system shall revert to the State under said agreement of March 18, 1938, whichever is sooner; notwithstanding the foregoing, all said easements and rights of way of the Vendee shall be extinguished and all said water facilities of the Vendee shall revert to the Vendors on abandonment or nonuse of the same for a continuous period of two (2) years or more.

6. Use of Water. Water taken by the Vendee from source 1a shall be used only for the purpose of supplying the Vendee's Kula pipeline system and Olinda lateral above the Awalau-Makawao supply line, except in an emergency and under conditions agreed to in writing by EMI. Water taken by the Vendee from all sources is to be subject to regulations by the Vendee, which shall stipulate that when the Vendors shall notify the Vendee that the total flow from all their ditches, reservoirs, water development tunnels, and natural stream flows into their aqueduct system has been diminished by natural causes or disaster or other circumstances

so that the total flow in the aqueduct system available for delivery to HC&S has been reduced to fifteen per cent (15%) of the normal capacity of the Maliko water delivery siphons of EMI, which for the purposes of this agreement shall be designated as 370 million (370,000,000) gallons per day, the Vendee shall restrict the use of water from all sources to only essential uses as designated by the Vendee.

7. Quality of Water. The Vendors shall exercise reasonable care in the course of their normal operations to prevent pollution of the water delivered at the various sources listed above, but shall not otherwise be responsible for the quality or potability of the water. The Vendee will exercise reasonable care to prevent pollution of the water in the areas of its operations.

ARTICLE II

Water Rates

1. Rates. a. The Vendee shall pay to the Vendors, net over and above any other fees, assessments or charges hereby payable by the Vendee with respect thereto, the below listed rates per thousand gallons for water from the below listed sources during the first nine years and six months of the term hereof up to and including June 30, 1971:

<u>SOURCE</u>	<u>PRICE</u>
1a	1.0 cents
1b	6.0 "
1c	4.0 "
1d	6.0 "
1e	4.0 "

b. For and during each of the five (5) year periods from July 1, 1971 to and including June 30, 1976, from July 1, 1976 to and including June 30, 1981, and from

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July 1, 1981 to and including June 30, 1986, the water rates shall consist of such amounts per thousand gallons as shall be agreed to in writing by the Vendors and Vendee prior to the beginning of each of said periods, and if the Vendors and Vendee shall fail to reach such agreement prior to forty-five (45) days immediately preceding the commencement of each of said periods, then the water rates shall be such amounts per thousand gallons as shall be determined by appraisal, but in no event shall any of such water rates be less than the corresponding water rates in effect for the immediately preceding period.

2. Appraisal. Whenever this agreement provides that the water rates shall be determined by appraisal, the determination by appraisal for the purpose of setting the water rates shall be conclusive and such appraisal shall constitute the appraisal required hereby. Such appraisal shall be made by three (3) arbitrators appointed and constituted as provided hereafter in ARTICLE V hereof. The appraisal of water rates shall be based upon the then market value of the water for the uses authorized under the terms of this agreement.

3. Payment. The water rates herein reserved shall be paid by the Vendee, without any deduction, within ten (10) days of the presentation of bills to it to be rendered monthly by the Vendors.

4. Water Measurement. The Vendee shall install and maintain suitable meters or other measuring devices (hereinafter called "meters") satisfactory to the Vendors for the purpose of measuring the total amount of water delivered at all delivery points. The meters shall be

maintained within a two per cent (2%) accuracy and shall be tested every five years by the Vendee. Separate meters shall be installed by the Vendee to measure the water pumped into the Kula pipeline from each pump installed below said line and at all other points which may be required by the Vendors for a proper determination of the quantity of water being taken. Readings of the meters shall be taken and recorded by the Vendee at sufficient intervals so as to give a record in such form and degree of accuracy as is satisfactory to the Vendors. Reports of such readings shall be delivered by the Vendee to the Vendors at such intervals as shall be agreeable to the Vendors and the Vendors shall have the right at all times to inspect and make copies of the records of the Vendee and to make independent readings and verify all measurements taken by the Vendee. Where the Vendee operates a continuous water stage recorder or makes any other water measurements within any of the sources listed above, copies of all the flow charts and/or records of individual water measurements shall be furnished to the Vendors.

ARTICLE III

Covenants

The Vendee hereby covenants with the Vendors as follows:

1. Payment of Water Rates. The Vendee will pay all the water rates and other charges herein reserved in lawful currency of the United States of America at the times and in the manner aforesaid to the Vendors or to such other person or corporation as shall be designated by the Vendors in writing at least ten (10) days prior to the next

ensuing payment date.

2. Maintenance and Repair. The Vendee will, at its own expense from time to time and at all times during said term, well and substantially repair, maintain, amend and keep its water facilities, at any time during said term existing on the Vendors' land, with all necessary reparations and amendments whatsoever, in good order and condition and will not allow any unnecessary loss or waste of water. Ordinary wear and tear and unavoidable casualty are excluded from the provisions of this paragraph.

3. Observance of Laws. The Vendee will, during the whole of said term, observe and perform all laws, ordinances, rules and regulations whether now or hereafter made by any governmental authority for the time being applicable to said land or water or the use thereof, and will indemnify the Vendors against all actions, suits, claims and damages by whomsoever brought or made by reason of the nonobservance or nonperformance of said laws, ordinances, rules and regulations or of this covenant.

4. Waste and Unlawful Use. The Vendee will not make or suffer any strip or waste or unlawful, improper or offensive use of the Vendors' water or land or any part thereof.

5. Assignments. The Vendee will not, without the prior written consent of the Vendors, assign this agreement or any part thereof.

6. Costs and Expenses of Vendors. The Vendee will pay to the Vendors all costs and expenses, including reasonable attorneys' fees, incurred or paid by the Vendors in enforcing any of the covenants and conditions herein

contained, in collecting any delinquent water rates or other charges hereunder payable by the Vendee, or incurred by or imposed upon the Vendors by or in connection with any litigation commenced by or against the Vendee (other than condemnation proceedings) to which the Vendors shall, without fault, be made party.

7. Indemnity. The Vendee will indemnify and hold harmless the Vendors from and against all claims and demands for loss or damage, including claims for property damages, personal injury or wrongful death, arising out of or in connection with the use of the Vendors' land or water by the Vendee or any person claiming by, through or under it, or any failure of the Vendee to maintain its water facilities in a safe condition, and the Vendee will reimburse the Vendors for all costs and expenses, including reasonable attorneys' fees, paid or incurred by the Vendors in connection with the defense of any such claims. The provisions of this paragraph shall not be applicable to claims and demands caused by the wilful act or the negligence of the Vendors or the failure of the Vendors to comply with the provisions of this agreement.

8. Assumption of Risk by Vendee. The Vendee will and does hereby assume all risk of loss or damage to property of whatsoever kind or nature stored or placed by it or its agents on the Vendors' land and does hereby agree that the Vendors will not be responsible for loss or damage to any such property, and the Vendee hereby agrees to indemnify and save harmless the Vendors from and against any and all claims for such loss or damage, other than damage caused by the wilful act or negligence of the Vendors.

9. Extension of Agreement. Notwithstanding the provisions of paragraph 5 on page 7 of this agreement, this agreement shall be extended from time to time and shall remain in effect so long as EMI continues to enjoy the easements and rights granted to it by the then Territory of Hawaii under said agreement of March 18, 1938 and licenses issued thereunder; provided, however, that the rates to be paid by the Vendee to the Vendors for water taken during said extension or extensions shall be adjusted for each five (5) year period of such extended term in accordance with the provisions of ARTICLE II hereof; and provided further, that said extension or extensions shall not affect the reversionary rights of Vendors under said paragraph 5 but such adjusted rates shall not include compensation to the Vendors for the facilities of the Vendee which revert to Vendors under the provisions of said paragraph 5 unless and until the State of Hawaii shall include in the rates to be charged EMI for State water taken by EMI under licenses from the said State, compensation for facilities constructed by EMI under the provisions of the said agreement of March 18, 1938 and licenses issued thereunder, and which may revert to the State.

ARTICLE IV

Condemnation

1. Consequences of Condemnation. In the event at any time or times during said term the Vendors' land, or any part thereof or interest therein subject to this agreement, shall be taken or condemned by any authority having the power of eminent domain, then and in every such case all easements, rights and improvements of the Vendee in and upon any part of the Vendors' land so taken or condemned and all rights to

any water thereon shall at once be extinguished and/or revert to the Vendors.

2. Compensation and Damages. In every such case of taking or condemnation of the Vendors' land or any part thereof, all compensation and damages payable for or on account of said land shall be payable to and be the sole property of the Vendors, and the Vendee shall have no interest or claim to such compensation or damages or any part thereof whatsoever; and all compensation and damages payable for or on account of any buildings and other improvements on or erected on the demised land during said term and any plans and other preparations therefor shall be payable to the Vendors and the Vendee, as their respective interests shall appear, and said respective interests in such compensation and damages payable for or on account of any such building or other improvement shall be fixed and determined as of the date when the Vendee shall by reason of such taking or condemnation lose the right to possession of such part of the demised premises so taken or condemned as follows:

a. The interest of the Vendors therein shall be a proportionate amount of such compensation and damages in the ratio which the expired portion of the term of this agreement from the date hereof or the date of original completion of said building or improvement (herein called the "effective date"), whichever is later, to the date of such taking or condemnation, bears to the portion of said term from the said effective date to the date of expiration of said term;

b. The Vendee's interest therein shall be the balance of such compensation and damages after first deducting

therefrom the amount of the interest of the Vendors therein as hereinbefore defined;

Notwithstanding the provisions of this ARTICLE IV, the Vendee shall have the right to claim and recover from the condemning authority, but not from the Vendors, such compensation as may be separately awarded or recoverable by the Vendee with respect to all improvements upon the premises condemned which are removable and which would be classified as trade fixtures or other portable equipment and machinery used in connection with the rights granted to the Vendee herein.

ARTICLE V

Arbitration

If at any time during the term of this agreement or after the expiration or sooner determination thereof, any question, dispute, difference or disagreement shall arise between the parties hereto which cannot be adjusted or settled by them to their mutual satisfaction, then every such matter shall, at the desire of either party, be submitted to and be determined by three (3) arbitrators in the manner provided by Chapter 188 of the Revised Laws of Hawaii 1955, as the same now is or may from time to time be amended, in which case either party may give to the other party written notice of its desire to have an arbitration of the matter in question and appoint one of the arbitrators in said notice, whereupon the other party, within ten (10) days after the receipt of such notice, shall appoint a second arbitrator and, in case of failure so to do, the party who has already appointed an arbitrator may have the second arbitrator appointed by a judge of the Circuit Court of the Second Judicial Circuit of the State of Hawaii, and the two arbitrators so appointed, in either

manner, shall appoint the third arbitrator, and in the event that the two arbitrators so appointed shall, within ten (10) days after the appointment of the second arbitrator, fail to appoint the third arbitrator, either party may have the third arbitrator appointed by said judge, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question and the decision of any two of them shall be final, conclusive and binding upon the Vendors and the Vendee unless the same shall be vacated, modified or corrected as by said statute provided. The arbitrators shall have all the powers and duties prescribed by said statute and judgment may be entered upon such award by the said Circuit Court as provided by said statute and said judgment shall not be subject to appeal. Each of the parties shall pay its own expenses but the compensation and expenses of the arbitrators shall be borne equally by both parties.

ARTICLE VI

Default

1. Events and Consequences of Default. This agreement is upon the express condition that if any one or more of the following events of default shall occur, to wit:

a. The Vendee shall fail to pay the water rates herein reserved or any part thereof within thirty (30) days after the same become due, or

b. The Vendee shall fail to observe or perform any other of the covenants herein contained and on the part of the Vendee to be observed and performed, and such failure shall continue for a period of sixty (60) days after written notice thereof given by the Vendors to the Vendee, then and in case of any such default the Vendors may, upon the occurrence of such

event of default or at any time thereafter during the continuance of such default, at its option, terminate this agreement by giving ten (10) days' written notice thereof to the Vendee, without resort to any legal process, all without prejudice to any other remedy or right of action which the Vendors may have for such default.

2. Acceptance of Water Rates Not Waiver. The acceptance of payment of water rates by the Vendors or their agents shall not be deemed to be a waiver by them of any breach by the Vendee of any covenant herein contained. The waiver by the Vendors of any breach shall not operate to extinguish the covenant or condition, the breach whereof has been waived nor be deemed to be a waiver by the Vendors of their right to terminate this agreement for any breach thereof.

ARTICLE VII

Miscellaneous

1. Definitions. The terms "party" and "parties" as used herein mean and include the Vendors (collectively) and the Vendee.

2. Notices. Any notice or demand to be given to or served upon either the Vendors or the Vendee in connection with this agreement shall be deemed to have been sufficiently given or served for all purposes by being sent as registered mail, postage prepaid, addressed to such party at its post office address hereinbefore specified or at such other post office address as such party may from time to time designate in writing to the other party, or by being delivered personally to any officer of such party within the State of Hawaii, and any such notice or demand shall be deemed conclusively to have been given or served on the date of such registration or

personal delivery.

3. Article and Section Headings. The article and section headings herein are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of this agreement.

4. Successors and Assigns. All the terms, covenants, and conditions of this agreement shall inure to the benefit of and be binding upon the successors and assigns of the Vendors and the successors and permitted assigns of the Vendee to the same extent as said terms, covenants and conditions inure to the benefit of and are binding upon the Vendors and the Vendee respectively.

5. Cancellation of Prior Agreements. This agreement is intended to and shall cancel and terminate all previous water agreements in effect between the Vendors and the Vendee.

6. Private Contract. Nothing herein contained shall be construed as impressing this agreement with the character of a public service contract and no owner of any water privilege, domestic, commercial or otherwise, granted by the Vendee, shall have any right, title or interest in or to any of the water deliverable to the Vendee hereunder which shall be enforceable against or be binding upon the Vendors.

7. Rates Not Indicative. In the event of condemnation of any land or water rights in the areas covered by this agreement, the water rates contained in this agreement shall not be taken as indicative of the true value of the land or water rights, nor shall they be used for appraisal purposes on such taking.

8. Payment of Taxes and Other Governmental Charges. The Vendee will pay before the same respectively become

delinquent all taxes, rates, assessments, charges and other outgoings of every description which are now or may during said term be assessed (a) against source la or any part thereof or (b) on account of any rights granted hereunder to the Vendee, or to which source la (or any land or chattels of the Vendors on account of the granting of said rights) is now or may during said term become liable, whether assessed to or payable by the Vendors or Vendee. The Vendee will also pay the amount of the state general excise and/or sales taxes or other similar taxes levied or imposed upon the amount of the water rates payable hereunder; PROVIDED, HOWEVER, that nothing herein contained shall prevent the Vendee from contesting in good faith, by any appropriate proceedings commenced before the same becomes delinquent, the validity or amount of any such tax, rate, assessment or charge, nor require the payment thereof until the final determination of such contest adversely to the Vendee; PROVIDED, HOWEVER, that the Vendee will pay all such taxes, rates, assessments or charges, together with all interest, penalties, fines and costs accrued thereon or imposed in connection therewith, forthwith upon the commencement of proceedings to foreclose any lien on any land or chattels of the Vendors as security therefor or within such further time as may be duly allowed by any stay of such foreclosure proceedings; and PROVIDED, FURTHER, that if the Vendee shall fail to pay any such taxes, rates, assessments and charges as herein provided, the Vendors may at any time thereafter pay the same, together with any interest, penalties, fines and costs accrued thereon or imposed in connection therewith, and the Vendee will repay to the Vendors upon demand therefor the full amount so paid by the Vendors, together with

interest thereon at the rate of seven per cent (7%) per annum.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 22nd day of December, 1961.

EAST MAUI IRRIGATION COMPANY, LIMITED

[Handwritten signature and stamp area]

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU)

On this 22nd day of December, 1961, before me appeared J. T. WATERHOUSE and R. G. JAMIESON, to me personally known, who, being by me duly sworn, did say that they are the VICE-PRESIDENT and TREASURER, respectively, of HAWAIIAN COMMERCIAL AND SUGAR COMPANY, LIMITED, 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 J. T. WATERHOUSE and R. G. JAMIESON severally acknowledged said instrument to be the free act and deed of said corporation.
STATE OF HAWAII
CITY AND COUNTY OF HONOLULU)

On this 22nd day of December, 1961, before me appeared C. C. CADAGAN and W. E. SHEEHAN, to me personally known, who, being by me duly sworn, did say that they are the VICE-PRESIDENT and JUDICIAL SECRETARY, respectively, of EAST MAUI IRRIGATION COMPANY, LIMITED, 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 C. C. CADAGAN and W. E. SHEEHAN severally acknowledged said instrument to be the free act and deed of said corporation.

Ab. Kam Young
Notary Public, First Judicial
Circuit, State of Hawaii
My Commission expires: Oct. 16, 1965

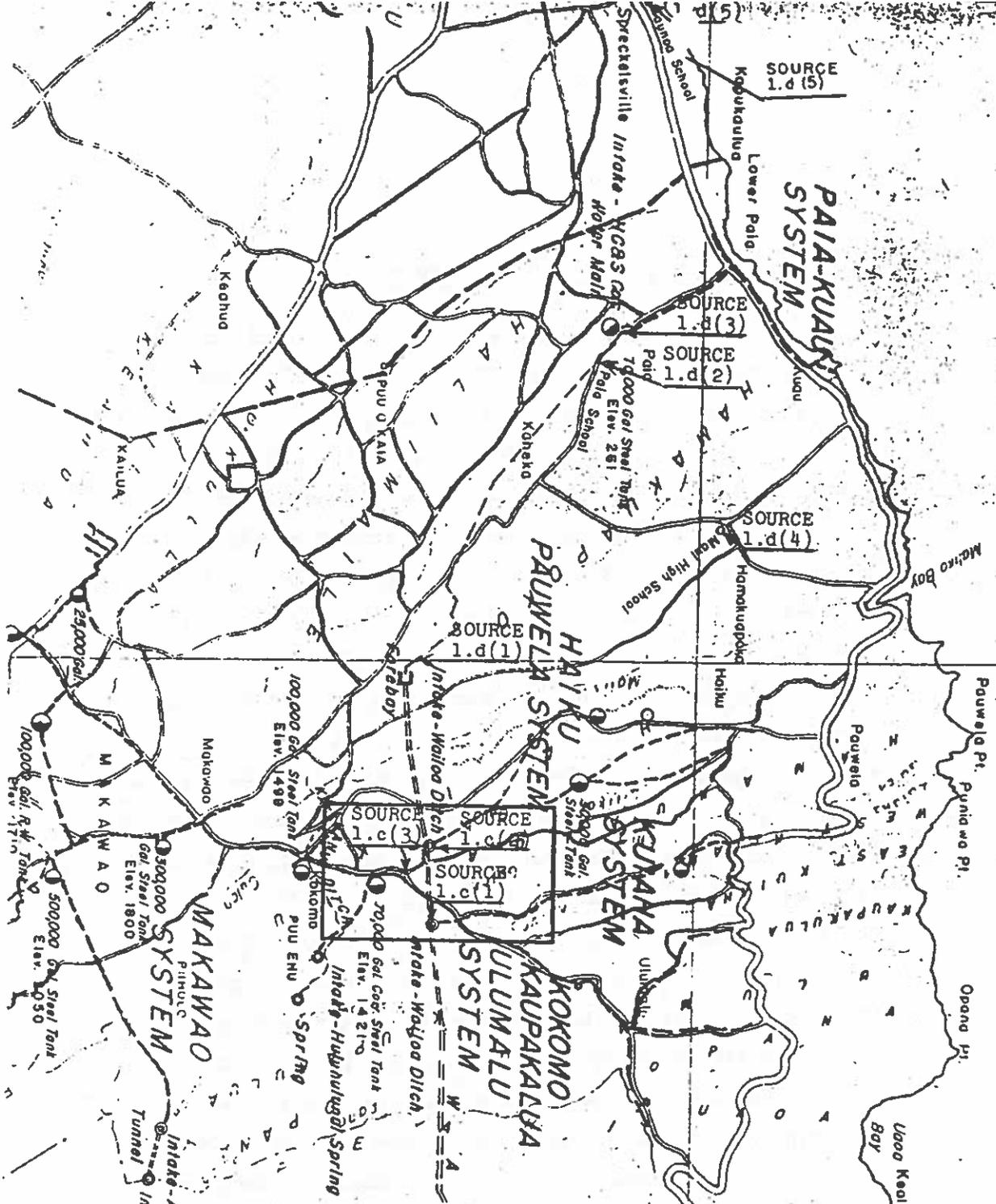
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STATE OF HAWAII)
) SS
COUNTY OF MAUI)

On this 12nd day of December, 1961, before me appeared FRANK MUNOZ, to me personally known, who, by me duly sworn did say that he is the Chairman of the Board of Water Supply of the County of Maui, a Board duly created and existing under the laws of the State of Hawaii, and that the foregoing instrument was signed on behalf of said Board of Water Supply of the County of Maui by authority of said Board, and the said FRANK MUNOZ acknowledged the said instrument to be the free act and deed of the said Board of Water Supply of the County of Maui.

Felimon Hoek
Notary Public, Second Judicial
Circuit, State of Hawaii.

My commission expires 2/9/63.



SOURCES 1.c. Waioa Ditch of EMI, indicated in red. (1): In the cross cut in the Huluhulunui branch of the Kuiaha gulch. (2): In Lilikoi gulch. (3): Pump sump drawing water in the Lilikoi gulch.

SOURCES 1.d. HC&S Domestic water systems. (1): Penstock indicated in green. (2): Paia Village supply indicated in yellow. (3): Paia Village and mill supply line indicated in blue. (4): Hamakuapoko Village supply indicated in orange. (5): Spreckelsville Village supply indicated in brown. (6): Puunene Village supply not indicated on the Exhibit.

SOURCE 1.e. EMI water development tunnel above the Koolau Ditch near Makapipi not indicated on Exhibit.

Approximate Scale 1" = 1 mile.

Print from map of Vendee dated 9/30/53.

EXHIBIT "B"

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM made as of the 31st day of December, 1973, by and between the BOARD OF WATER SUPPLY OF THE COUNTY OF MAUI, whose post office address is Kalana O Maui, Wailuku, Maui, Hawaii, hereinafter called BWS, and EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation, whose post office address is Paia, Maui, Hawaii, hereinafter called EMI, and HAWAIIAN COMMERCIAL AND SUGAR COMPANY, a division of Alexander & Baldwin, Inc., whose post office address is Puunene, Maui, Hawaii, hereinafter called HC&S.

Background. At the present time EMI is the holder of three general licenses from the State of Hawaii covering the following areas: License No. 3505 (Nahiku), which license expires on June 30, 1976, General License No. S-3695 (Honomanu), which license expires June 30, 1986, and General License No. 3578 (Huelo), which license expires June 30, 1981. EMI also has a revocable permit for the Keanae area with the State of Hawaii, pending an offering for a new license for public bid sometime in 1974. The approximate locations of the respective license areas are indicated in Exhibit A attached hereto. Further, EMI, HC&S and BWS have entered into an agreement (herein called the "1961 Agreement") whereby BWS has the right to collect water in areas owned or leased by EMI and HC&S in the Waiakamoi area and the Awalau Intake area, the approximate boundaries of which are indicated in black on Exhibit B.

In order to establish a constant and steady flow of water for the continued growth and progress of the Island of Maui, the parties have agreed to the following terms and

conditions concerning the collection and delivery of water by EMI in the east Maui area with respect to the properties under license by EMI with the State of Hawaii and also on properties owned by EMI to be used by BWS for public water purposes in the Kula and Makawao and Nahiku water systems of BWS.

1. Nahiku. EMI will continue to collect and deliver to BWS at the rates provided herein up to 6,000 gallons of water per twenty-four hour day to serve the Nahiku community. The delivery point shall be the same point as presently used by EMI and BWS.

2. Waiakamoi and Awalau Areas. As of January 1, 1974, EMI will be appointed the exclusive manager to collect and deliver water in the area presently under license to BWS from EMI and HC&S, the approximate area of which is indicated in red on Exhibit B. Within that area EMI shall be responsible, at its expense, for the operation, maintenance, repair of the water collection and conveying facilities and the operation of the water storage and pumping facilities and shall collect at the highest elevation possible the maximum quantity of water that is economically feasible. EMI agrees at its expense and at its sole discretion to replace existing collection facilities or install additional collection facilities, or both, in order to improve the collection of water in this area. Any replacements to the existing collection facilities or any additional collection facilities installed by EMI shall belong to BWS upon completion of construction of each item.

Title to the existing water collection facilities installed by BWS shall remain with BWS. BWS shall be responsible for the maintenance of the storage facilities in this area

except that EMI shall perform minor maintenance on Puohokamoa dam and the three Waiakamoi dams. The portion of the system under the operational jurisdiction of BWS is colored in blue and under the operational jurisdiction of EMI is colored in red on the sketch attached hereto as Exhibit C.

EMI will at its expense from time to time and at all times during the term of this agreement, repair, maintain, amend and keep water collection facilities at any time during the term of this agreement existing within the collection area in good operational order and condition and will not allow unnecessary loss or waste of water.

Extensive and substantial damages to the collection and conveying and storage facilities owned by BWS as provided herein due to acts of God or events beyond the control of EMI requiring restoration or replacement of the facilities shall be the responsibility of BWS. Actual restoration and replacement of the existing facilities shall be subject to budgetary limitations of BWS which agrees to exercise reasonable judgment and good faith to include the costs, or portions thereof, of restoration and replacement in the ensuing budget or budgets. Actual restoration and replacement of additional facilities constructed by EMI shall be made at the discretion of BWS which decision shall be final and shall not be subject to arbitration.

At the end of the term of this agreement or sooner termination as provided herein, EMI shall surrender the collection and conveying facilities presently existing on the property together with any and all improvements or additional

facilities EMI may have installed to BWS in good operational order and condition, ordinary wear and tear or damages due to acts of God or beyond the control of EMI being excepted.

To the extent inconsistent with the terms of this agreement, the provisions of the agreement dated January 22, 1961, ("1961" Agreement") by and between the parties herein shall be cancelled and terminated by mutual agreement.

All water collected by EMI in the Waiakamoi and Awalau Intake areas shall be discharged into the following points:

Waiakamoi and Olinda Reservoirs
Waiakamoi Pump
Awalau Intake
Piholo Reservoir

The parties shall, if necessary, execute a more definitive agreement outlining the duties and responsibilities of each party consistent with the terms of this agreement.

3. Wailoa Ditch. From the waters collected by EMI in the Wailoa Ditch System EMI will make available to BWS up to 12 million gallons of water per twenty-four hour period. An additional 4 million gallons of water per twenty-four hour period as needed by BWS will be made available by EMI to BWS upon one year's written notice to EMI.

Waters from the Wailoa Ditch shall be delivered to BWS at the following points presently used by EMI and BWS:
Huluhulunui, Lilikoi and Kamole Forebay.

4. Proportionate Reduction. If EMI is not successful in acquiring or holding the licenses mentioned hereinabove or in the event of a court ruling or the adoption of any governmental statute, ordinance, regulation or policy including but not limited to the withdrawal by the State of any lands under license or the condemnation of any lands under license, reducing the amount of water collected or

delivered by EMI or affecting the capability of EMI to collect or deliver water, then subject to and with the approval of the BWS by a vote of 2/3 of the members present, the amount of water to be delivered to BWS hereunder may be reduced proportionately; provided that in the event EMI is not successful in acquiring or holding the licenses mentioned hereinabove, then BWS will approve a proportionate reduction only (1) if the replacement State license included a provision wherein the licensee is required to make the proportionate amount of water available to BWS and (2) after a vote of 2/3 of the members present at a meeting duly called.

5. Due Diligence. EMI agrees to comply with the terms of the existing State licenses and to use due diligence to acquire replacement licenses as the present licenses, including the Keanae license, expire and replacement licenses for the same area containing substantially similar terms, other than the rent, are offered for bid by the State. BWS agrees to request the State Board of Land and Natural Resources to include a provision in any replacement license that the licensee make available to BWS amounts of water consistent with this agreement.

6. Additional Delivery Points. Additional delivery points may be added from time to time as mutually agreed between the parties. In the event the parties fail to agree and a party desires another delivery point to be added, then the same shall be determined by arbitration as provided herein.

7. Water Charges. BWS shall pay to EMI the sum of six cents per thousand gallons delivered by EMI to BWS from the Nahiku and Waiakamoi and Awalau Intake Systems and the Wailoa Ditch System. This rate shall remain fixed for the term of this agreement. After the lapse of fifteen (15) years of the term of this agreement, EMI may request for

an adjustment in the water charges due to increases in the cost to EMI of (1) payments to the State for water pursuant to the licenses mentioned herein; (2) fuel oil; (3) salaries and wages of EMI employees. BWS shall consider the request only after an affirmative vote of 2/3 of the members of the Board present at such meeting duly called agreeing to consider the request. In the event BWS should decide to consider the request by a vote of 2/3 of the members present, then BWS shall determine the request of EMI by a vote of 2/3 of the members present. The decision of BWS shall be final and shall not be subject to arbitration.

BWS shall install and maintain suitable meters or other measuring devices (hereinafter called meters) satisfactory to EMI for the purpose of measuring the total amount of water as provided herein. The meters shall be maintained within 2% accuracy and shall be tested every three years by BWS. Separate meters shall be installed by BWS to measure the water at any additional delivery point which may be required by EMI for a proper determination of the quantity of water being taken. Readings of the meters shall be taken and recorded by BWS at sufficient intervals so as to give a record in such form and degree of accuracy as shall be satisfactory to both parties. Reports of such readings shall be delivered by BWS to EMI at such intervals as shall be agreeable to the parties and EMI shall have the right at all times to inspect and make copies of the records of BWS and to make independent readings to verify all measurements taken by BWS. Where BWS operates a continuous water stage recorder which makes other water measurements within any of the sources listed above, copies of all the flow charts and/or records of individual water measurements shall be furnished to EMI.

BWS will pay the water charges herein mentioned in lawful currency of the United States at times and in the manner provided above to EMI or such other person or corporation as shall be designated by EMI in writing at least 10 days prior to the next ensuing payment.

8. Priority. BWS shall use insofar as practical all of the water collected in the Waiakamoi and Awalau Intake Systems prior to pumping water collected at Kamole Forebay. EMI shall give BWS priority in the use of water in fulfilling EMI's obligations set forth herein before any other private use.

9. Water Delivery. If the State of Hawaii requires in any replacement license to the licenses mentioned hereinabove that the licensee make available to BWS for public consumption and use certain portion of the water collected in the license area and the successful bidder is a person, partnership or corporation other than EMI or HC&S or any corporation affiliated with Alexander & Baldwin, Inc. and said licensee delivers said water to a convenient point of connection onto the Wailoa Ditch System, then EMI agrees to convey said water from the point of connection onto the Wailoa Ditch System to the points of delivery specified in this agreement to BWS free of any charge whatsoever.

10. Improvements to Wailoa Ditch System. EMI recognizes that improvements to the collection system for the Wailoa Ditch System may be necessary in order for EMI to provide the amount of water provided herein to BWS. EMI agrees that it shall at its expense make the necessary improvements as may be required. To the extent required by maintenance the parties recognize that portions of the Wailoa Ditch System may from time

to time be shut down for short periods of time. In such cases diversion of the water from one area to another may be necessary and each party shall cooperate with the other in order to permit the repair and maintenance of the Wailoa Ditch System.

11. Anti-Pollution. EMI agrees that it will use diligent efforts to prevent contamination or pollution of the water and that in the installation, maintenance and construction of collection facilities, and in the collection and delivery of water, it will in all cases comply with the rules and regulations of the Department of Land and Natural Resources, Department of Agriculture and the Department of Health of the State of Hawaii concerning the prevention of contamination or pollution. EMI shall not be otherwise responsible for the quality or potability of the water delivered to BWS according to the terms of this agreement.

12. Excuse of Performance. Anything in this agreement to the contrary notwithstanding, providing such cause is not due to the willful act or neglect of EMI, EMI shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this agreement if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material, service, or financing, through act of God or other cause beyond the control of EMI.

13. Term. The term of this agreement shall be for twenty (20) years commencing January 1, 1974, and termi-

nating on December 31, 1993; provided, however, that this agreement may be extended from time to time by mutual agreement; provided further, that if any party decides not to extend the term of this agreement beyond December 31, 1993, then such party must give written notice of its decision to the other party prior to December 31, 1991; failure to provide such notice by December 31, 1991 shall extend, with the consent of the other party, this agreement for a period of two years if no notice is given by December 31, 1993, or if notice is given after December 31, 1991 but before December 31, 1993, then this agreement shall be extended, with the consent of the other party, for a period of two years from the date such notice was given.

14. Arbitration. Except as provided in paragraphs 2 and 7, if at any time during the term of this agreement or after the expiration or sooner determination thereof, any question, dispute, difference or disagreement shall arise between the parties hereto which cannot be adjusted or settled by them to their mutual satisfaction, then every such matter shall, at the desire of either party, be submitted to and be determined by three (3) arbitrators in the manner provided by Chapter 658 of the Hawaii Revised Statutes, as the same now is or may from time to time be amended, in which case either party may give to the other party written notice of its desire to have an arbitration of the matter in question and appoint one of the arbitrators in said notice, whereupon the other party, within ten (10) days after the receipt of such notice, shall appoint a second arbitrator and, in case of failure so to do, the party who has already appointed an arbitrator may have the second arbitrator appointed by a judge of the Circuit Court of the Second Judicial Circuit of the State of Hawaii, and the two arbitrators so appointed, in either manner, shall appoint

the third arbitrator, and in the event that the two arbitrators so appointed shall, within ten (10) days after the appointment of the second arbitrator, fail to appoint the third arbitrator, either party may have the third arbitrator appointed by said judge, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question and the decision of any two of them shall be final, conclusive and binding upon the parties unless the same shall be vacated, modified or corrected as by said statute provided. The arbitrators shall have all the powers and duties prescribed by said statute and judgment may be entered upon such award by the said Circuit Court as provided by said statute and said judgment shall not be subject to appeal. Each of the parties shall pay its own expenses but the compensation and expenses of the arbitrators shall be borne equally by both parties.

15. Default. This agreement is upon the express condition that if any one or more of the following events of default shall occur, to wit:

a. BWS shall fail to pay the water rates herein reserved or any part thereof within thirty (30) days after the same become due, or

b. EMI shall fail to observe or perform any of the covenants herein contained and on the part of EMI to be observed and performed, and such failure shall continue for a period of sixty (60) days after written notice thereof given by BWS to EMI.

Then and in case of any such default EMI or BWS as the case may be, may, upon the occurrence of such event of default or at any time thereafter during the continuance

of such default, at its respective option, terminate this agreement by giving ten (10) days' written notice thereof to the defaulting party without resort to any legal process, all without prejudice to any other remedy or right of action which the other party may have for such default.

In addition the parties agree to enter into discussions for the purpose of entering into an alternate default provision in the event of default by EMI.

16. Acceptance of Water Rates Not Waiver. The acceptance of payment of water rates by EMI or its agents shall not be deemed to be a waiver by it of any breach by BWS of any covenant herein contained. The waiver by any party of any breach shall not operate to extinguish the covenant or condition, the breach whereof has been waived nor be deemed to be a waiver by such party of its right to terminate this agreement for any breach thereof.

17. Miscellaneous.

a. Definitions. The terms "party" and "parties" as used herein mean and include EMI, HC&S and the BWS.

b. Notices. Any notice or demand to be given to or served upon a party in connection with this agreement shall be deemed to have been sufficiently given or served for all purposes by being sent as registered mail, postage prepaid, addressed to such party at its post office address hereinbefore specified or at such other post office address as such party may from time to time designate in writing to the other party, or by being delivered personally to any officer of such party within the State of Hawaii, and any

such notice or demand shall be deemed conclusively to have been given or served on the date of such registration or personal delivery.

18. Successors and Assigns. All the terms, covenants, and conditions of this agreement shall inure to the benefit of and be binding upon the successors and assigns of all parties.

19. Private Contract. Nothing herein contained shall be construed as impressing this agreement with the character of a public service contract and no owner of any water privilege, domestic, commercial or otherwise, granted by BWS, shall have any right, title or interest in or to any of the water deliverable to BWS which shall be enforceable against or be binding upon EMI.

20. Rates Not Indicative. In the event of condemnation of any land or water rights in the areas covered by this agreement, the water rates contained in this agreement shall not be taken as indicative of the true value of the land or water rights, nor shall they be used for appraisal purposes on such taking.

21. Amendment. This agreement may be amended by mutual agreement in writing executed by both parties.

22. Consent. To the extent required by the above-mentioned State licenses the participation of EMI in this agreement is subject to the approval of the Board of Land and Natural Resources of the State of Hawaii.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed this 31st day of December, 1973, effective as of December 31, 1973.

BOARD OF WATER SUPPLY OF
THE COUNTY OF MAUI

By David Kamezō
Its

EAST MAUI IRRIGATION COMPANY,
LIMITED

By William S. Hain
Its VICE - PRESIDENT

By D. Paul Swift
Its Vice President

ALEXANDER & BALDWIN, INC.

By Michael W. Lyman
Its Executive Vice President

By Willis R. Deming
Its Secretary

STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

On this 31st day of DECEMBER, 1973,

before me appeared DAVID NOBRIGA, to me personally known, who, being by me duly sworn, did say that he is the Chairman of the BOARD OF WATER SUPPLY OF THE COUNTY OF MAUI, and that the seal affixed to the foregoing instrument is the seal of said Board of Water Supply and that the instrument was signed and sealed in behalf of said Board of Water Supply by authority of the said Board, and said DAVID NOBRIGA acknowledged the instrument to be the free act and deed of said Board of Water Supply.

Flame Ueha
NOTARY PUBLIC, Second Judicial
Circuit, State of Hawaii.

My commission expires: 2/9/75

STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

On this 31st day of December, 1973,

before me appeared William S. Haines and Phil Scott, to me personally known, who, being by me duly sworn, did say that they are the Vice President and Vice President respectively, of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said Officers acknowledged said instrument to be the free act and deed of said corporation.

Kiyoshi Uehemoto
NOTARY PUBLIC, Second Judicial
Circuit, State of Hawaii.

My commission expires: 1/10/75

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

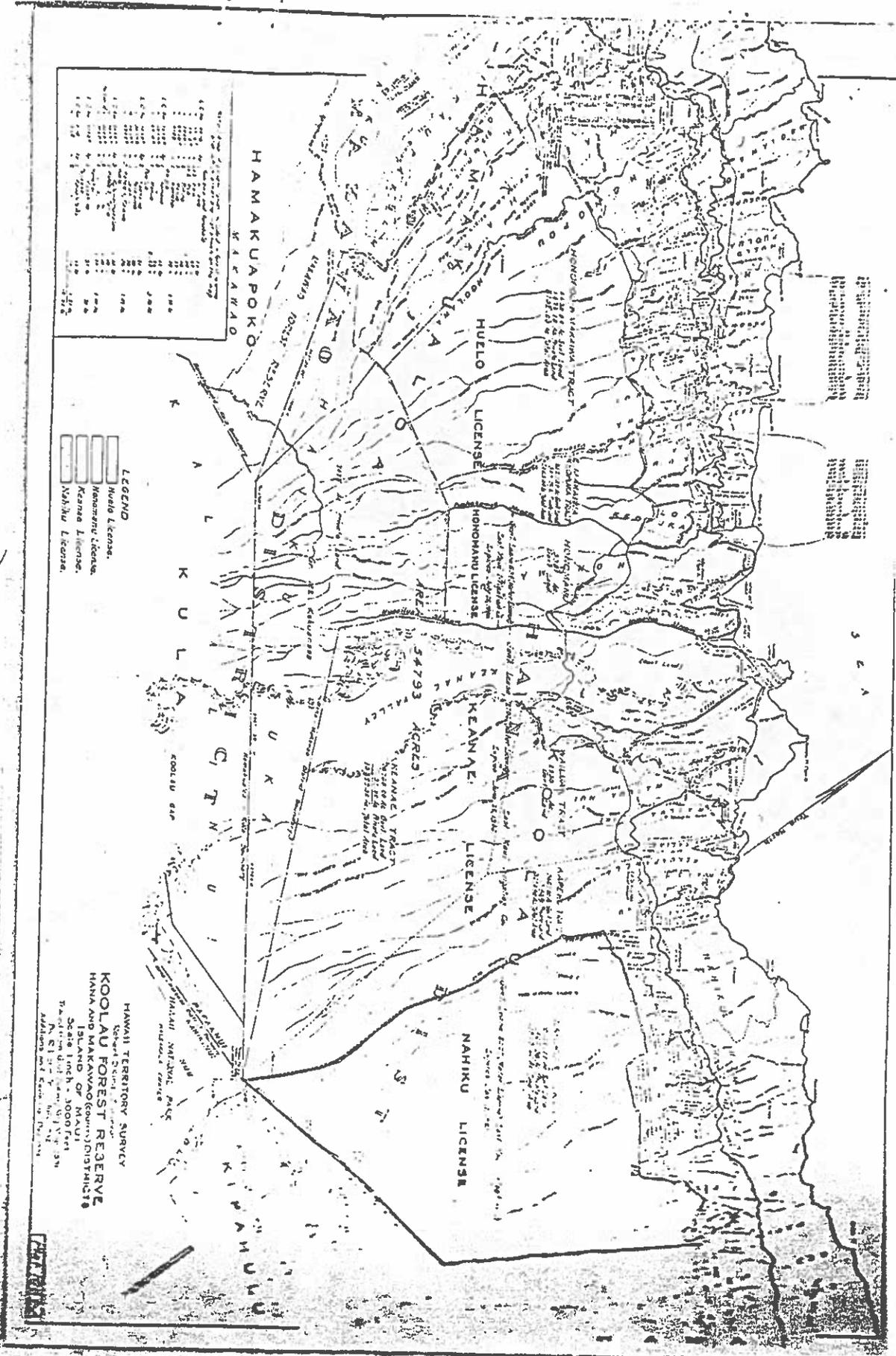
On this 31st day of December, 1973,
before me appeared Michael Ulysten and

Willis R Deming, to me personally known, who,
being by me duly sworn, did say that they are the

Executive Vice President and Vice President Secretary,
respectively, of ALEXANDER & BALDWIN, INC., a Hawaii cor-
poration; that the seal affixed to the foregoing instrument
is the corporate seal of said corporation; that said instru-
ment was signed and sealed in behalf of said corporation
by authority of its Board of Directors and said Officers
acknowledged said instrument to be the free act and deed
of said corporation.

Patricia M. Horro
NOTARY PUBLIC, First Judicial
Circuit, State of Hawaii.

My commission expires: 10/1/76



Scale	1:25,000	1:50,000	1:100,000	1:200,000	1:500,000	1:1,000,000
1 inch	2500 feet	5000 feet	10000 feet	20000 feet	50000 feet	100000 feet
1 centimeter	250 meters	500 meters	1000 meters	2000 meters	5000 meters	10000 meters

LEGEND

- Hule License.
- Keamane License.
- Honohano License.
- Nahiku License.

HAWAII TERRITORY SURVEY
 KOOLOAU FOREST RESERVE
 HAWAII AND MAKAHAKA
 DISTRICTS
 Scale of 1:25,000
 Hawaiian Islands
 N. S. 1896

EXHIBIT A

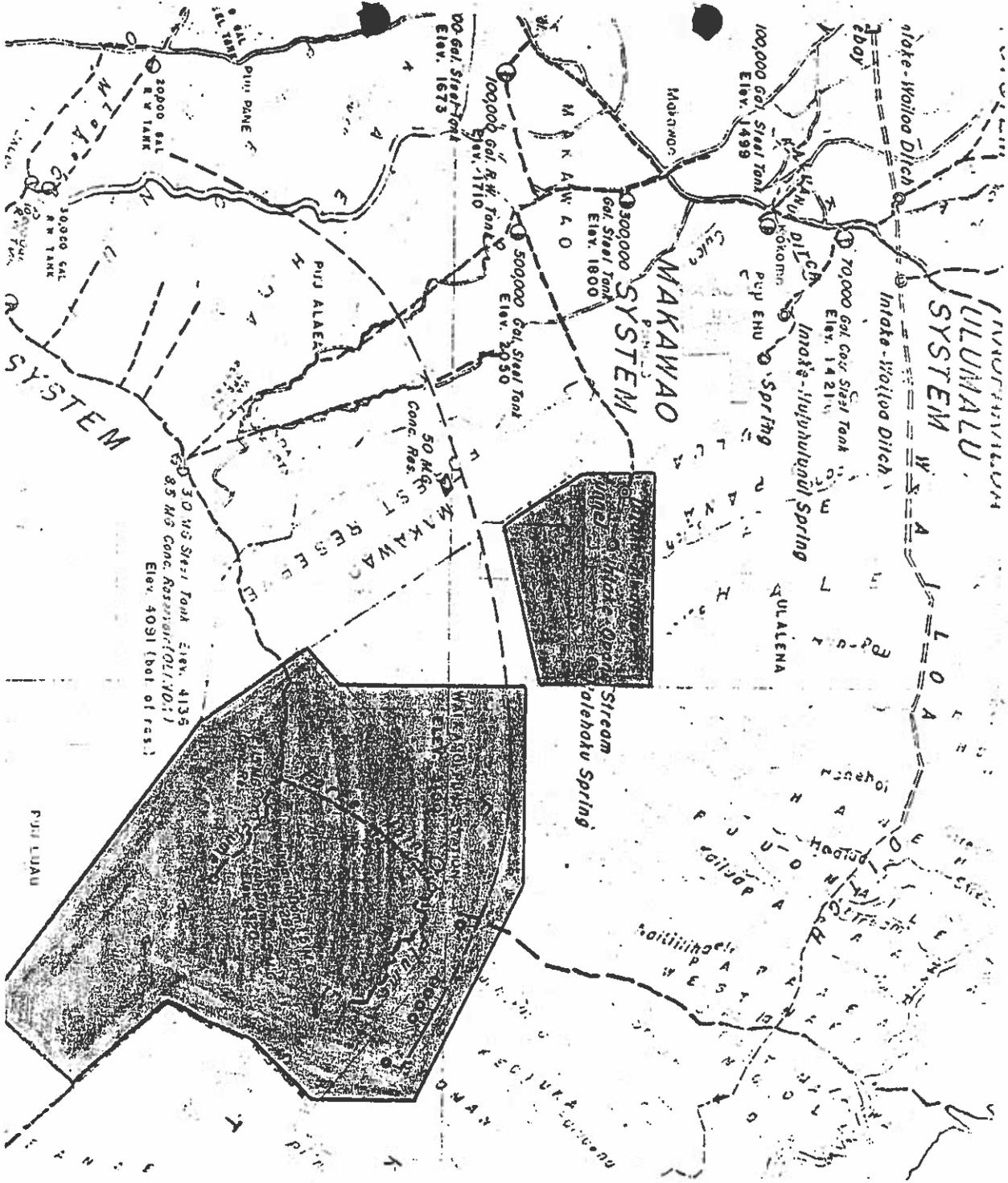


EXHIBIT B

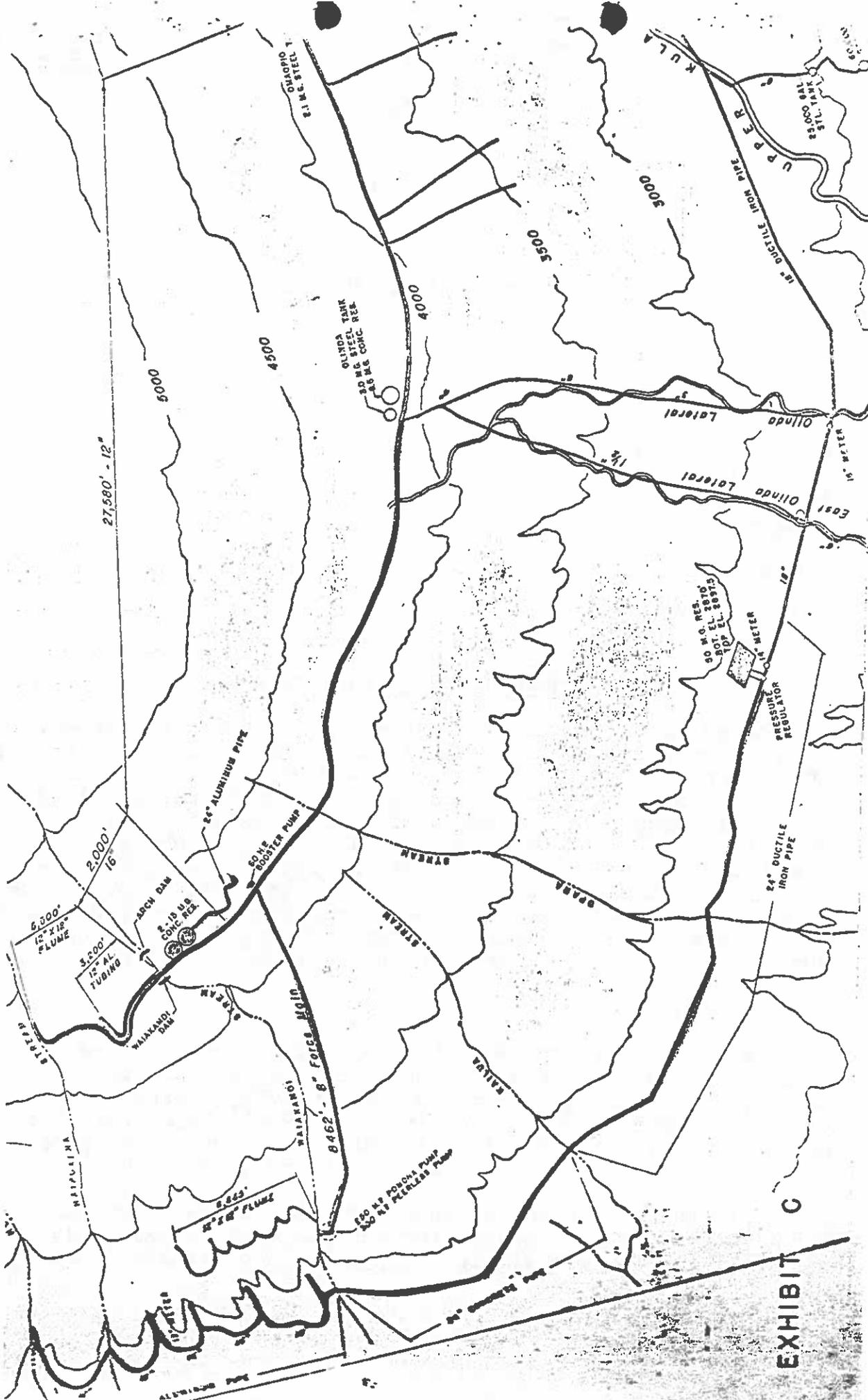
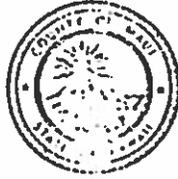


EXHIBIT C



OFFICE OF THE MAYOR
COUNTY OF MAUI
WAILUKU, MAUI, HAWAII 96793

January 22, 1979

Mr. Colin C. Cameron,
President
Maui Land & Pineapple
Company, Inc.
P. O. Box 137
Kahului, Hawaii 96732

Dear Mr. Cameron:

Re: Proposal and Offer to
Exchange Real Property

Based on discussions of our mutual interest in promoting diversified agriculture on the island of Maui, and specifically for the purpose of enabling the COUNTY OF MAUI (hereafter "County") to develop an agricultural park upon certain land presently owned by MAUI LAND & PINEAPPLE COMPANY, INC., (hereafter "MLP") at Omaopio, in Kula, Maui, I submit, on behalf of the County, for your consideration and acceptance by MLP, as authorized by Resolution of its Board of Directors, this proposal and offer to exchange certain County lands for such land of MLP, all with the understanding and upon the terms, covenants, conditions and provisions, as follows:

It is understood:

(a) That the County wishes to purchase and acquire from MLP, by way of land exchange, fee simple title to vacant, unimproved land owned by MLP in Kula, Island of Maui, identified by TMK (2nd Div.) 2-3-02:06 (hereafter "MLP land"), containing approximately 326 acres, for the purpose of developing said land as a County agricultural park;

(b) That, in exchange therefor, MLP wishes to purchase and acquire from the County, for the purposes respectively set forth herein, fee simple title in and to certain lands

located in Napili 2 and 3, District of Lahaina, Maui, which lands consist of the following roadways:

(i) For the purpose of discontinuing its roadway use and consolidating the right-of-way thereof with, and as part of, the adjoining Kapalua planned development project of MLP (hereafter "Kapalua Project"), in favor of safer vehicular access to and from a portion of said Project at another point of entry from Honoapiilani Highway: The road remnant hereinafter more particularly described (hereafter "Stub Road"), fee simple title to which is vested in the County by operation of law; and

(ii) For the purpose of preserving and continuing its existing roadway use as an interior access and circulation road, and for the landscape beautification thereof as a vital amenity to serve the residents, public facilities and property owners within and adjacent to the Kapalua Project: The section of Honoapiilani Highway intersecting the Kapalua Project (hereafter "Honoapiilani Road Section"), fee simple title to which is also vested in the County by operation of law. (The two roadways are hereinafter more particularly described and, for convenience, are sometimes collectively referred to herein as "County lands");

(c) That the State of Hawaii (hereafter "State"), by its Department of Land and Natural Resources, has already approved a quitclaim to the County of the State's interest in and to the Stub Road, and the County is now awaiting delivery to it of the quitclaim deed;

(d) That, presently, the Honoapiilani Highway from Honokowai to Kahana, including the Honoapiilani Road Section, is a State highway under the jurisdiction, control, and management of the State, by its Department of Transportation, but relinquishment of such jurisdiction by the State may be initiated by the County at any time, pursuant to the letter agreement attached hereto as EXHIBIT "E";

(e) That to provide irrigation waters to the proposed agricultural park the County will be developing a water distribution system consisting of water mains, laterals, pumps, reservoir and necessary appurtenances; which system,

if expanded, will have the capability of also delivering to the adjoining lands owned by MLP and identified by TMK (2nd Div.) 2-3-02:04, containing approximately 725 acres, waters sufficient to irrigate an approximately 326-acre portion thereof (hereafter "MLP Adjacent Land");

(f) That MLP and the County will take all steps necessary and authorized to accomplish the purposes of this Agreement.

1. CONSIDERATION FOR EXCHANGE.

(a) MLP LAND TO COUNTY. In exchange for the County lands hereinbelow described, MLP will sell, grant and convey to the County, in fee simple absolute, all of MLP's right, title and interest in and to the MLP land. At the County's cost, the precise boundaries of the MLP land shall be determined by a licensed surveyor prior to the exchange of deeds hereunder.

(b) COUNTY LANDS TO MLP. In exchange for the MLP land, the County will sell, grant and convey to MLP, in fee simple absolute, all of the County's right, title and interest in and to (i) the "Stub Road", being a road remnant, comprising 1.185 acres situate at Napili 2 and 3, District of Kaanapali, Maui, as described and shown in EXHIBITS "A" and "B", respectively, attached hereto and incorporated herein by reference, and (ii) the Honoapiilani Road Section, comprising 5.726 acres, as described and shown in EXHIBITS "C" and "D", respectively, attached hereto and incorporated herein by reference.

(c) VALUES IN EXCHANGE; APPRAISAL AND COST. For and in support of the exchange consideration, fee value for fee value, and within a reasonable time following the execution of this Agreement, the parties will, by mutual agreement and upon agreed appraisal instructions, cause an independent appraisal to be made of the MLP land, the Stub Road, and the Honoapiilani Road Section, in order to establish, at and as of an agreed date, the fair market value of the fee simple estate of the Stub Road, the Honoapiilani Road Section, and the MLP land. It is understood and agreed that the purchase price in exchange shall be equal to the values derived by such appraisal as to the fee simple estate of the MLP land, the Stub Road and the Honoapiilani Road Section, respectively.

It is further understood that the cost of appraisal shall be evenly shared by and between the parties hereto.

2. PAYMENT AND DONATION OF EXCESS VALUE.

(a) As to County lands. In the event the fee simple value of the County lands exceeds the fee simple value of the MLP land, payment in U.S. legal tender by MLP to the County, in an amount equal to such excess value, shall be made, in full and final consideration as to the County lands, at the closing date upon which fee simple title thereto shall be transferred to MLP;

(b) As to MLP land. If the fee simple value of the MLP land exceeds the fee simple value of the County lands, MLP will make a charitable contribution of such excess value to the County, in full and final consideration as to MLP land, at the closing date upon which fee simple title thereto shall be transferred to the County.

3. MLP LAND; LAND USE CLASSIFICATION, ETC.

The MLP land will be conveyed in an "as is" condition, subject to State land use classification and County general plan and zoning designations existing at the date hereof.

4. SALE OF WATER TO MLP.

Subject to Paragraph 5, the County, through its Department of Water Supply, will sell to MLP, at rates and upon terms and conditions applicable to tenants of the proposed agricultural park, water sufficient for the irrigation of agricultural crops on the MLP Adjacent Land, based on water requirements for the cultivation of pineapple crop; provided, that the water requirements for any crop other than pineapple shall not exceed the water requirement for pineapple.

5. CONSTRUCTION OF WATER SYSTEM; ALLOCATION OF COST, ETC.

(a) Job Documents. Subject to closing of the exchange transaction in the manner hereinafter provided, and subject also to Subparagraph (b) of this Paragraph, the County, through its Department of Water Supply, will prepare or cause to be prepared, in consultation with MLP, the plans, specifications, bid proposals, contract, cost estimates

(including estimates of incremental costs hereinafter referred to), and all other papers (herein collectively "Job Documents") necessary for the award of a public contract to install, construct and complete a water system, including water mains, valves, hydrants, laterals, pumps, storage tanks, reservoir, and all necessary components and appurtenances, capable of providing and delivering to the agricultural park and the MLP Adjacent Land water service sufficient to satisfy their respective water requirements, including the said water requirement of the MLP Adjacent Land. The County shall provide MLP with complete copies of the final Job Documents prior to the initial call for tenders.

(b) Incremental Costs. The incremental costs to be assumed and paid by MLP are defined as those necessary costs attributable to expansion of a water system from one whose capacity is limited to that necessary to provide the quantity of water required by the agricultural park only, to another whose capacity is limited to that necessary to provide the increased quantity of water required by both the agricultural park and the MLP Adjacent Land.

(c) Contract Award. Subject to the closing of the exchange transaction, to Subparagraph (d) of this Paragraph 5, and to the arbitration provisions hereinafter set forth in Paragraph 14, the County shall award and execute the contract for the water system described in Subparagraph (a), above, to the contractor it deems to be the lowest responsible bidder.

(d) Delineation of Incremental Costs and Payment.

(i) Delineation of Costs. Before any payment of incremental costs shall become due and payable, the County shall specifically delineate and identify said costs, as derived from the contractor's successful bid, and such information in writing, together with a copy of the bid, shall be submitted to MLP for its review, either prior to or at the time the County makes any written demand upon MLP for payment of said costs. Any disagreement by MLP with respect to said incremental costs shall not abate or suspend its obligation to pay the same, as and when so requested by the County, but such payment shall not be deemed a waiver of MLP's

right to submit the disagreement to arbitration, as provided herein.

(ii) Escrow and Payment. Prior to the award and execution of the contract for the water system, and unless MLP elects to pay the incremental costs in the manner provided in Subparagraph (iii) of this Subparagraph (d), MLP shall remit a lump-sum payment of said costs in U.S. legal tender to an interest-bearing and insured escrow account, which the parties shall direct escrow to establish at a responsible and financially sound bank or savings and loan company licensed to do business as such in the State of Hawaii. No disbursements of escrow funds for the payment of any incremental costs shall be made, except pursuant to agreed escrow instructions, provided, that as a condition to each such disbursement the County shall submit to escrow and MLP a payment authorization sheet, which shall specify as to each payment requested by the contractor and/or authorized by the County, the amount of the incremental cost so authorized for payment. A condition of escrow shall be that all interest earned from funds on deposit in said escrow account shall belong to and be the property of MLP.

(iii) Escrow and Alternate Payment. Prior to the award and execution of said contract, and in lieu of a lump-sum payment of incremental costs, as aforesaid, MLP may finance the payment of such costs by way of a construction loan or line of credit from a bank or other responsible and financially sound institutional lender licensed to do business as such in the State of Hawaii, which loan or line of credit shall be for a sum equal to the total incremental costs determined, as aforesaid. In such event, there shall be established with or by an escrow company or bank escrow authorized to do business as such in the State of Hawaii an escrow account into which MLP shall deposit, as security for the payment of all such incremental costs, marketable securities satisfactory to the County and having a market value at all times at least equal to such costs or the unpaid balance thereof, subject, however, to MLP's right to withdraw, at any time, any of the securities so deposited, to substitute therefor other marketable securities satisfactory to the County, to receive dividends and interest paid on such securities,

and to exercise any right arising out of its ownership of such securities, so long as there shall always be on deposit with escrow securities having a market value of not less than the unpaid balance of the incremental costs. It is understood that the loan or line of credit will be subject to such terms and conditions acceptable to MLP as the lender may impose, and that as a condition to each disbursement of loan funds for the payment of incremental costs the County shall submit to the lender and MLP a payment authorization sheet, which shall specify as to each periodic payment requested by the contractor and/or authorized by the County, the amount of the incremental cost so authorized for payment.

(e) Contract Change Orders and Additional Costs. The incremental costs, as derived from the contractor's successful bid, shall be the total costs to be assumed by or assessed against MLP, it being understood that no additional incremental costs shall be allocated or attributed to, or assessed against MLP by virtue of, any change order, extra work order, or any other similar order authorized, approved or initiated by the County, unless MLP shall be satisfied that any such order is essential to provide the increment of water capacity necessary to satisfy the water requirement of the MLP Adjacent Land; provided, however, that such decisions by MLP is subject to the County's right to submit such to arbitration as herein set forth.

(f) Contracting Parties; Liability and Payment. If for any reason the County and MLP mutually agree that the construction contract for the water system should be a three-party contract by and between the County, MLP, and the contractor, or a contract between the County and the contractor providing for MLP's payment of incremental costs in accordance with this agreement, then in either case the contract shall expressly provide:

(i) That MLP's obligation and liability thereunder shall be limited solely to the payment of incremental costs, as and to the extent provided herein;

(ii) That MLP shall not be responsible for any loss, liability, claim or demand, except those arising solely out of, or caused by, or resulting from its

failure to make such payment, and that it shall have no joint and several liability as to all other matters covered by said contract; and

(iii) That no disbursements of escrow or loan funds shall be made for any payment of incremental costs, except upon the County's submission of payment authorization sheets, as and in the manner set forth in Subparagraphs (d)(ii) and (d)(iii), respectively, of this Paragraph 5.

6. MLP LAND/COUNTY LANDS; TITLE REPORTS, LIENS AND ENCUMBRANCES, AND PRORATIONS.

At the appropriate time or times preceding the transfer of title to the lands herein, MLP, as to the MLP land, and the County, as to the County lands, and each at its own cost, shall secure from a responsible title company in the State of Hawaii reports of title covering their respective lands. It is intended that marketable title to the MLP land shall be conveyed to the County, free and clear of liens and encumbrances of record, except such as to which the parties agree may exist. The County lands shall be conveyed to MLP by deed or deeds in form satisfactory to MLP. Real property taxes and all other rates, charges and assessments, including improvement district assessments, if any, applicable to the MLP land and the County lands will be prorated between the parties as of the date title thereto shall be transferred to each other, as provided herein.

7. HONOAPIILANI ROAD SECTION; REQUEST FOR QUITCLAIM AND HIGHWAY JURISDICTION.

Upon the execution hereof, or within a reasonable time thereafter, the Mayor, on behalf of the County, will apply:

(a) to the Department of Land and Natural Resources, requesting a quitclaim and release to the County of any claim or interest which the State of Hawaii may have in and to the Honoapiilani Road Section; and

(b) to the Department of Transportation, requesting, pursuant to the letter agreement aforesaid, that the State of Hawaii tender to the County an offer to relinquish highway jurisdiction over the Honoapiilani Road Section as a State highway, and return such jurisdiction to the County.

8. COUNTY LANDS: REQUEST FOR ABANDONMENT.

Contemporaneously with the filing of the applications under Paragraph 7, the Mayor will submit to the County Council a request that the County lands, and the use thereof as County highways, be vacated, closed and abandoned in the manner provided by, and subject and pursuant to, H.R.S. §§264-1 and 264-3, and this Agreement; and, as to the Honoapiilani Road Section only, subject also to the County's acceptance of the State's offer described in Paragraph 7.(b).

9. STUB ROAD AND HONOAPIILANI ROAD SECTION; CONVEYANCE AND FORM.

Subject to H.R.S. §264-3 and the waiver or nonapplication to purchase by any other abutting owner, the County will convey to MLP fee simple title to the Stub Road and the Honoapiilani Road Section by a deed or deeds in form satisfactory to MLP.

10. CLOSING OF EXCHANGE TRANSACTION.

(a) The closing of the exchange of lands as provided herein, and of the easement grant or conveyance described in Paragraph 13 shall occur at an agreed date within a reasonable time hereafter upon the occurrence of the following events, or the last to occur of such events:

(i) Delivery to the County of the State's deed or deeds quitclaiming the State's interest in and to the Stub Road and the Honoapiilani Road Section;

(ii) Acceptance by the County of the State's offer to relinquish State highway jurisdiction over the Honoapiilani Road Section;

(iii) Adoption by the County Council of a resolution, vacating, closing and abandoning the Stub Road and the Honoapiilani Road Section; subject, however, to the waiver or nonapplication to purchase as provided in Paragraph 9; and

(iv) The award of bid and execution of contract

for the construction of the water system hereinbefore described in Paragraph 5.

(b) The exchange of lands shall be closed by the delivery and recordation of the exchange deeds.

11. HONOAPIILANI ROAD SECTION; COUNTY INABILITY TO CONVEY AND TERMINATION OF AGREEMENT.

In the event, for whatever reason, the County is unable to convey to MLP, or is otherwise rendered incapable of conveying to MLP, the fee simple title to the Honoapiilani Road Section, the County shall in such event give prompt written notice thereof to MLP, and this Agreement shall thereupon be deemed terminated; provided, that unless such notice shall first have been given, or unless the parties shall otherwise agree as to a date certain by which the County must remove the impediment to its ability to so convey, this Agreement shall be deemed automatically terminated upon failure of the parties to perform their respective obligations hereunder and to close the exchange transaction within nine months from the date the agreement is approved and accepted by MLP. Upon such termination, the parties shall each be responsible for the payment of their own respective costs, and, as between them, shall be forever released of and from any and all claims, demands, liabilities, promises or obligations which may have arisen by virtue of this Agreement.

12. HONOAPIILANI ROAD SECTION; PERMITTED PUBLIC AND OTHER USE.

MLP's fee ownership and control of the Honoapiilani Road Section as a part of the Kapalua Project will be subject to a continuing roadway use for connecting public and other access from a public highway to the Kapalua Project, D.T. Fleming Park, Easements E-1 and E-2 (public beach access of the Project), Easements E-3-A, E-3-B, E-3-C, E-3-D, and E-3-E (Coast Guard Access) and the Catholic Church property identified by TMK (2nd Div.) 4-2-01:04.

13. HONOAPIILANI ROAD SECTION; EASEMENT GRANT, ETC.

Upon the County's request, an easement grant or other appropriate conveyance less than an estate in fee simple to permit connecting access, as aforesaid, will be executed by

MLP in favor of the County. Such grant or conveyance, if requested by the County, will be subject to terms and conditions satisfactory to the parties hereto, and shall be made a part of the closing of the exchange transaction. Among such terms and conditions shall be MLP's obligation to keep and maintain the Honoapiilani Road Section in good and safe condition and repair, and without cost and risk of liability to the County.

14. ARBITRATION OF DISPUTES.

(a) Appointment of Arbitrators. All claims, disputes, differences, or disagreements arising out of, or relating to, this Agreement or the breach thereof, which the parties hereto are unable to resolve or settle to their mutual satisfaction, shall, upon the election of either of them, be submitted to and determined by a single arbitrator, mutually agreeable to them, whose decision and award shall be conclusive and binding upon them; provided, that upon failure to so appoint a single arbitrator, the claim or matter in dispute shall be submitted to and determined by three arbitrators to be selected as follows: each party may give to the other written notice of election to arbitrate the claim or matter in dispute and of the appointment of an arbitrator, whereupon, within ten days after receipt of such notice, the other party shall appoint a second arbitrator; but upon failure of such other party to so appoint a second arbitrator, the party who appointed the first arbitrator may have the second arbitrator appointed by any Justice of the Supreme Court of the State of Hawaii, and the two arbitrators so appointed shall appoint the third arbitrator; but if within ten days after appointment of the second arbitrator, the two arbitrators shall fail to appoint a third arbitrator, either party may have the third arbitrator appointed by any such Justice, and the three arbitrators so appointed shall thereupon proceed to arbitrate the claim or matter in dispute. The arbitrator or arbitrators so appointed shall have all of the powers and duties prescribed by H.R.S. Chapter 658, as the same now is or may from time to time be amended, and a decision by the single arbitrator, or by any two of the three arbitrators, as the case may be, shall be final, conclusive and binding upon the parties (except as the same may be vacated, modified or corrected pursuant to said Chapter 658), and judgment thereon may be entered by the

Mr. Colin C. Cameron

13

January 22, 1979

shall extend to, be binding upon, and inure to the benefit of MLP, the County, and their respective successors and assigns; and no amendments thereto are to be made except by a written instrument executed by both of the parties hereto.

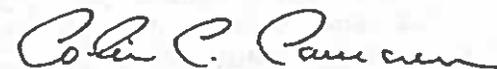
Should you be in agreement with the foregoing terms and conditions, please so indicate in MLP's behalf by your signature in the space provided hereinbelow. We will appreciate the return to our offices of a fully executed copy hereof. The effective date of this agreement will be the date of your signature.

Very truly yours,



ELMER F. CRAVALHO
Mayor, County of Maui

APPROVED AND ACCEPTED this 5th
day of March, 1979.



COLIN C. CAMERON, President
Maui Land & Pineapple Company,
Inc.



ALEXANDER & BALDWIN, INC.

822 BISHOP STREET • P.O. BOX 3440
HONOLULU, HAWAII 96801

July 27, 1982

Department of Water Supply
County of Maui
Wailuku, Maui, Hawaii 96793

Re: Water Agreement dated December 22, 1961, as amended by
Memorandum of Understanding dated December 31, 1973/KULA AGRICULTURAL PARK

Gentlemen:

The purpose of this letter is to set forth our understandings with respect to the withdrawal of water by the Department of Water Supply ("herein Department") from the Wailoa Ditch for the Kula Agricultural Park.

1. Additional delivery point. Department has designated, pursuant to paragraph 6 of the Memorandum of Understanding dated December 31, 1973, and HC&S and EMI concur, the Hamakua Ditch at a location just beyond Reservoir 40, as outlined in red on the map attached hereto as Exhibit A and incorporated herein by reference, (the "delivery point") as the delivery point from which water will be withdrawn to serve the needs of the Kula Agricultural Park.
2. Delivery System.
 - a. The Department will construct a delivery system, consisting of a pump structure, measuring devices, diversion channel and pipeline system from the delivery point to the Kula Agricultural Park at locations generally shown on the attached Exhibit A (herein "delivery system"). Detailed plans and grants of easements with metes and bounds descriptions of easement locations shall be prepared by the Department after approval of the landowner involved. The Department shall be responsible for acquiring any easements necessary to accomplish the delivery of water from the delivery point to Kula Agricultural Park. Construction plans and specifications for the pump structure, measuring devices and diversion channel and pipeline system shall be prepared by the Department subject to the prior approval of HC&S.
 - b. The Department will be responsible for the repair, maintenance and replacement of the entire delivery system, or portions thereof, from the delivery point to the Kula Agricultural Park. Neither HC&S nor EMI shall be required to perform any repair, maintenance services to the delivery system or replace any portion thereof.

Department of Water Supply
County of Maui
July 27, 1982
Page Two

- c. The Department shall install, as part of the delivery system, suitable meters or other measuring devices ("meters") having a two percent accuracy factor. Department agrees to repair, maintain and upkeep the meters within the tolerance factor and to test the meters at least once every three years so that the volume of water being withdrawn can be accurately measured.
3. Pumping Operations. In order to assure that water will be available at the delivery point, the Department shall, prior to the commencement of any pumping of water, provide HC&S with at least 24 hours' notice as to the (1) time for the commencement of pumping, (2) time for the cessation of pumping, and (3) the quantity of water to be pumped. If the commencement and cessation of pumping is done during HC&S's regular business hours, then HC&S will not charge for its employee's time and expenses to regulate the flow of water to the delivery point. If the commencement or cessation of pumping is done before or after HC&S's regular business hours, then HC&S's costs shall be paid by the Department.

We trust that the foregoing expresses our understandings regarding the delivery of water to the Kula Agricultural Park. We request that you sign in the spaces provided below and return the original to us. Your continued support and cooperation is deeply appreciated.

Very truly yours,

HAWAIIAN COMMERCIAL & SUGAR
COMPANY, a division of
Alexander & Baldwin, Inc.

By [Signature]
Its Executive Vice President - Agriculture

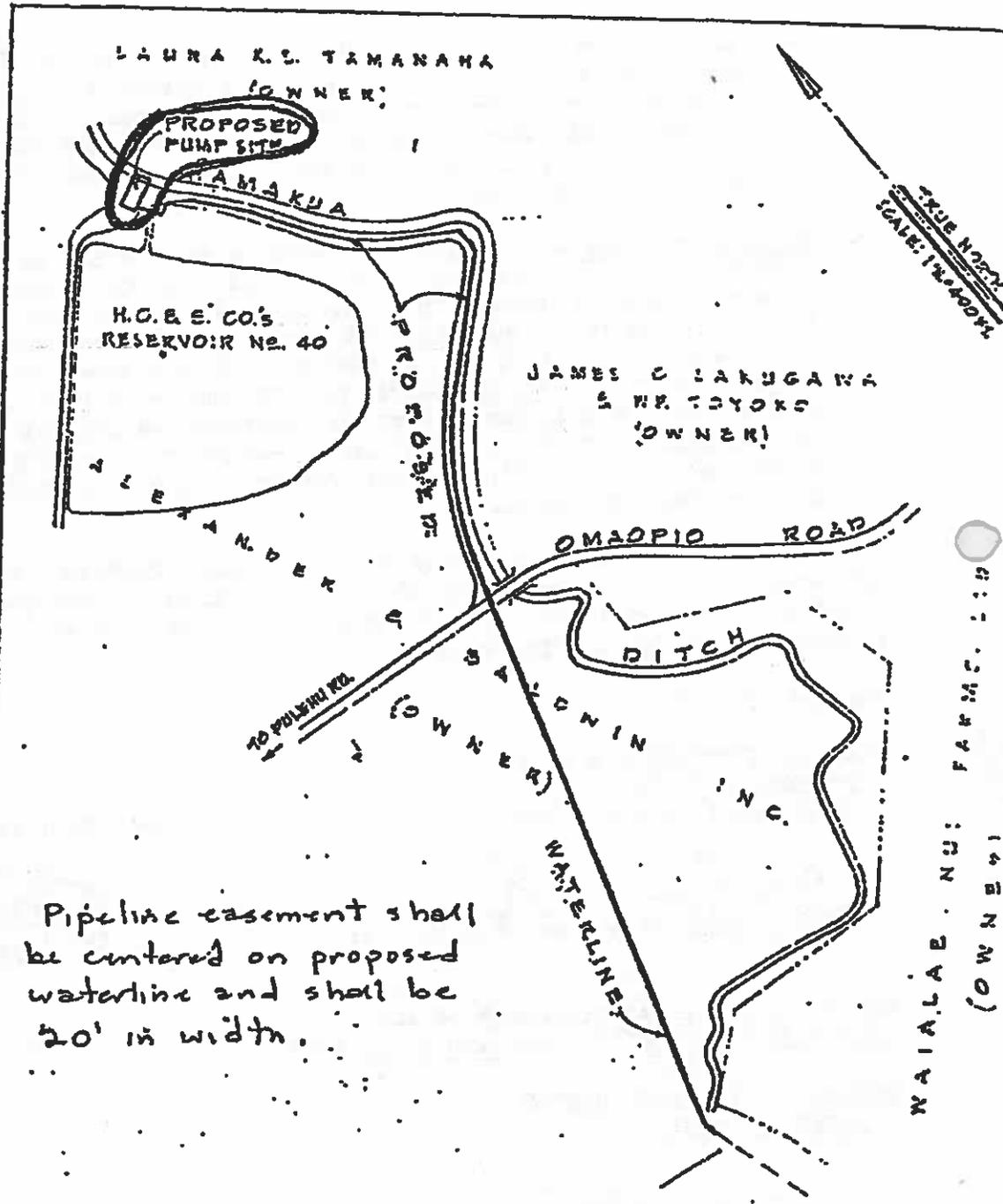
EAST MAUI IRRIGATION COMPANY

By [Signature]
Its Vice President

The foregoing terms are accepted and approved this 29th day of July, 1982.

DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI

By [Signature]
Its Director



Pipeline easement shall be centered on proposed waterline and shall be 20' in width.

DEPARTMENT OF WATER SUPPLY, COUNTY OF MAUI
 WAILUKU, MAUI, HAWAII
 LOCATION MAP FOR
 KULA AGRICULTURAL PARK
 WATERLINE & PUMP STATION SITE
 OMAOPIO, PULEHUNUI, KULA, MAUI, HAWAII

OWNER: ALEXANDER & BALDWIN INC.
 TM: 2-5-01: 2:20 AND 2-5-01:1

EXHIBIT A
 SCALE: 1 IN. = 400 FT.

HAWAIIAN COMMERCIAL & SUGAR COMPANY

P. O. BOX 266, PUUNENE, MAUI, HAWAII 96784

December 27, 1991

REGISTERED RETURN RECEIPT
REQUESTED

RECEIVED
1991 DEC 31 AM 11:13
DEPT. OF WATER SUPPLY
COUNTY OF MAUI

Mr. Larry Jeffs, Chairman
Board of Water Supply
County of Maui
P. O. Box 1109
Wailuku, HI 96793

Re: Memorandum of Understanding Dated December 31, 1973

Dear Mr. Jeffs:

The Memorandum of Understanding ("Agreement") made as of the 31st day of December, 1973, between the Board of Water Supply of the County of Maui, East Maui Irrigation Company, Limited ("EMI") and Hawaiian Commercial & Sugar Company ("HC&S"), a division of A&B-Hawaii, Inc. (successor in interest of Alexander & Baldwin, Inc.), terminates on December 31, 1993. Section 13 of the Agreement permits the parties to extend the Agreement from time to time by mutual agreement.

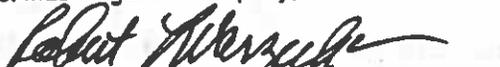
EMI and HC&S hereby request your agreement to extend the Agreement for a two - (2) year period under all existing terms and conditions. The new expiration date would be December 31, 1995.

Sincerely,

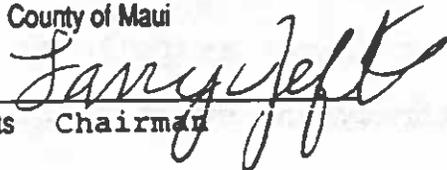
A&B-Hawaii, Inc., through its division
Hawaiian Commercial & Sugar Company

By 
Richard F. Cameron, Vice President

East Maui Irrigation Company, Limited

By 
Robert L. Warzecha, Vice President

AGREED TO:
Board of Water Supply
of the County of Maui

By 
its Chairman

cc: A. Doane
M. J. Ching
Francis Mukai
Rae Shikuma, Director Department of Water Supply

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**AMENDMENT TO
MEMORANDUM OF UNDERSTANDING**

THIS AMENDMENT, made and entered into this 1st day of May, 1992, by and amongst EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation, whose mailin address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "EMI", A&B-HAWAII, INC., HAWAIIAN COMMERCIAL AND SUGAR COMPANY, a division of Alexander & Baldwin, Inc., whose mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "HC&S", and the BOARD OF WATER SUPPLY of the County of Maui, whose principal place of business and mailing address is 250 S. High Street, Wailuku, Hawaii 96793, referred to as the "Board",

W I T N E S S E T H:

WHEREAS, on December 31, 1973, EMI, HC&S, and the Board entered into that certain Memorandum of Understanding relating, in part, to the collection and delivery of water by EMI, the maintenance of certain water collection facilities, and the furnishing of water to the Board; and

WHEREAS, the term of the Memorandum of Understanding is scheduled to terminate on December 31, 1993; and

WHEREAS, the parties hereto desire to extend the Memorandum of Understanding for a period of two years; now, therefore,

IN CONSIDERATION of the mutual promises and agreements hereinafter set forth, the parties hereto agree as follows:

1. Item 13 is deleted in its entirety and substituted with the following:

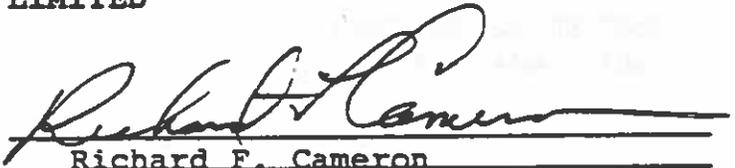
"13. Term. The term of this agreement shall be for twenty two (22) years commencing January 1, 1974, and terminating on December 31, 1995; provided, however, that this agreement may be extended from time to time by mutual agreement."

2. Save and except as amended herein, the Memorandum of Understanding shall remain in force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the date first above written.

EMI:

EAST MAUI IRRIGATION COMPANY,
LIMITED



Richard F. Cameron
(Please type or print name above)
Its Senior Vice President



Lyle A. Wilkinson
(Please type or print name above)
Its Assistant Secretary

HC&S:

HAWAIIAN COMMERCIAL AND SUGAR
COMPANY

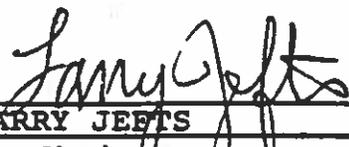


Richard F. Cameron
(Please type or print name above)
Its General Manager

(Please type or print name above)
Its _____

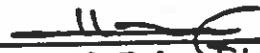
Board:

BOARD OF WATER SUPPLY,
COUNTY OF MAUI



LARRY JEETS
Its Chairperson

APPROVED AS TO FORM
AND LEGALITY:



Howard Fukushima
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 1st day of April, 1992, before me appeared Richard F. Cameron and Lyle A. Wilkinson, to me personally known, who, being by me duly sworn, did say that they are the Jr. Vice President and Asst. Secretary, respectively, of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officers acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Valerie L. Nakashima
Notary Public, State of Hawaii
My commission expires: 5/25/92

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 1st day of April, 1992, before me appeared Richard F. Cameron and _____, to me personally known, who, being by me duly sworn, did say that they are the General Manager and _____, respectively, of HAWAIIAN COMMERCIAL AND SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officers acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Valerie L. Nakashima
Notary Public, State of Hawaii
My commission expires: 5/25/92

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 15th day of May, 1992, before me appeared Larry Jeffs, to me personally known, who, being by me duly sworn, did say that he is the Chairperson of the BOARD OF WATER SUPPLY of the County of Maui, and that the seal affixed to the foregoing instrument is the lawful seal of the said BOARD OF WATER SUPPLY, and that the said instrument was signed and sealed on behalf of the said BOARD OF WATER SUPPLY, and the said Larry Jeffs acknowledged the said instrument to be the free act and deed of the said BOARD OF WATER SUPPLY.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

es

[Signature]
Notary Public, State of Hawaii
My commission expires: 4/19/94

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**SECOND AMENDMENT TO
MEMORANDUM OF UNDERSTANDING**

THIS AMENDMENT, made and entered into this 25th day of April, 1994, by and amongst EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation, whose mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "EMI", A & B HAWAII, INC., through its division, HAWAIIAN COMMERCIAL AND SUGAR COMPANY, a Hawaii corporation, whose mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "HC & S", and the BOARD OF WATER SUPPLY of the County of Maui, whose principal place of business and mailing address is 200 S. High Street, Wailuku, Hawaii 96793, referred to as "BWS",

W I T N E S S E T H:

WHEREAS, on December 31, 1973, EMI, HC&S and BWS entered into that certain Memorandum of Understanding, referred to as the "Memorandum", relating, in part, to the collection and delivery of water by EMI to, the maintenance of certain water collection facilities of, and the furnishing of water to BWS; and

WHEREAS, on May 1, 1992, EMI, HC&S and BWS entered into that certain Amendment to Memorandum of Understanding relating to the extension of the Memorandum from December 31, 1993 until December 31, 1995; and

WHEREAS, the Memorandum permits BWS to withdraw up to 6,000 gallons of water per twenty-four hour day to serve the Nahiku community; and

WHEREAS, the maximum daily usage of the Nahiku community is

currently 12,600 gallons per day; and

WHEREAS, BWS desires to increase the withdrawal rate for the Nahiku community; now, therefore,

IN CONSIDERATION of the mutual promises and agreements hereinafter set forth, the parties hereto agree as follows:

1. Item 1 of the Memorandum is deleted in its entirety and substituted with the following:

"1. Nahiku. EMI will continue to collect and deliver to BWS at the rates provided herein up to 20,000 gallons of water per twenty-four hour day to serve the Nahiku community. The delivery point shall be the same point as presently used by EMI and BWS."

2. Save and except as amended herein, the Memorandum, as amended on May 1, 1992, remains in force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the date first above written.

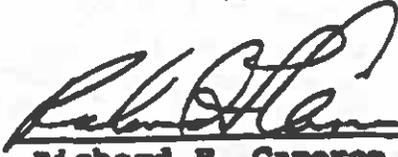
EMI:

EAST MAUI IRRIGATION COMPANY, LIMITED

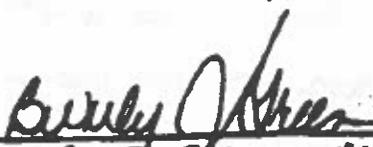

Richard F. Cameron
(Please type or print name above)
Its Executive Vice President


Beverly J. Green
(Please type or print name above)
Its Secretary

A & B HAWAII, INC.
through its division
HAWAIIAN COMMERCIAL AND SUGAR
COMPANY



Richard F. Cameron
(Please type or print name above)
Its Senior Vice President



Beverly J. Green
(Please type or print name above)
Its Secretary

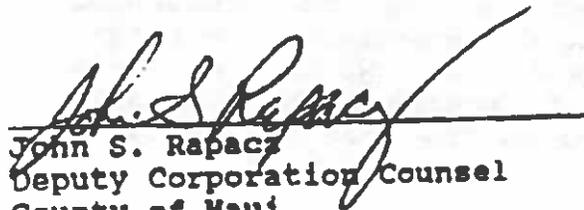
BWS:

BOARD OF WATER SUPPLY
COUNTY OF MAUI

Larry Jette / Byron Walters
Its Chairperson

APPROVED AS TO FORM
AND LEGALITY:



John S. Rapacz
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII

)
) SS.
)

CITY & COUNTY OF HONOLULU

On this 25th day of April, 1994, before me appeared Richard F. Cameron and Beverly J. Green, to me personally known, who, being by me duly sworn, did say that they are the Executive Vice President and Secretary, respectively, of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officers acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.


Notary Public, State of Hawaii

My commission expires: 7/15/94

STATE OF HAWAII

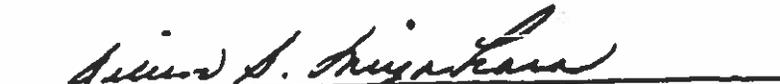
)
) SS.
)

CITY & COUNTY OF HONOLULU

On this 25th day of April, 1994, before me appeared Richard F. Cameron and Beverly J. Green, to me personally known, who, being by me duly sworn, did say that they are the Senior Vice President and Secretary, respectively, of A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officers acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.


Notary Public, State of Hawaii

My commission expires: 7/15/94

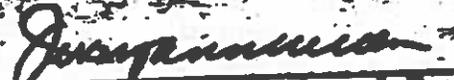
72

STATE OF HAWAII)
COUNTY OF MAUI)

SS.

On this 26th day of April, 1934, before me appeared Byron Walters, to me personally known, who, being by me duly sworn, did say that he is the Chairperson of the BOARD OF WATER SUPPLY of the County of Maui, and that the seal affixed to the foregoing instrument is the lawful seal of the said BOARD OF WATER SUPPLY, and that the said instrument was signed and sealed on behalf of the said BOARD OF WATER SUPPLY, and the said Byron Walters acknowledged the said instrument to be the free act and deed of said BOARD OF WATER SUPPLY.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public, State of Hawaii
My commission expires: 4/19/36

73

**THIRD AMENDMENT TO
MEMORANDUM OF UNDERSTANDING**

THIS AMENDMENT, made and entered into this 3rd day of January, 1996, by and among EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation, whose mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "EMI," A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation, whose mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "HC&S," and the BOARD OF WATER SUPPLY of the County of Maui, whose principal place of business and mailing address is 250 S. High Street, Wailuku, Hawaii 96793, referred to as "BWS,"

W I T N E S S E T H:

WHEREAS, the Memorandum of Understanding entered into on December 31, 1973 by and among EMI, HC&S and BWS, which subsequently was amended by an Amendment dated May 1, 1992 and Second Amendment dated April 25, 1994, permits BWS to withdraw up to 16 million gallons of water per twenty-four hour period from the Wailoa Ditch System; and

WHEREAS, the Wailoa Ditch System provides, on average, 55% of HC&S's water needs, is essential to HC&S's ability to pump the groundwater wells which provide the other 45% of HC&S's water needs, and is necessary to run HC&S's two mills and pumps for HC&S's 16 brackish water wells in the central isthmus; and

WHEREAS, on numerous occasions, BWS's right to withdraw water from the Wailoa Ditch System has, during times of extended drought, put HC&S under severe stress; and

WHEREAS, the term of the Memorandum of Understanding is scheduled to terminate on December 31, 1995; and

WHEREAS, the parties hereto desire to extend the Memorandum of Understanding for a period of one year; now, therefore,

IN CONSIDERATION of the mutual promises and agreements hereinafter set forth, the parties hereto agree as follows:

1. The following sentence is hereby added to the end of the first paragraph of Paragraph 3:

"BWS agrees to use its best efforts to minimize its intake of water from the Wailoa Ditch System whenever the total flow in the Wailoa Ditch System drops below 55 million gallons per twenty-four hour period, and to use its best efforts to move forward on a timely basis with necessary steps, including the installation and utilization of surface water storage of peak flows, so

that BWS will be able to reduce its dependency on the Wailoa Ditch System whenever the total flow is below 55 million gallons per twenty-four hour period."

2. Paragraph 13 is hereby deleted in its entirety and substituted with the following:

"13. Term. The term of this agreement shall be for twenty-three (23) years commencing January 1, 1974 and terminating on December 31, 1996; provided, however, that this agreement may be extended from time to time by mutual agreement."

3. Save and except as amended herein, the Memorandum of Understanding, as previously amended, shall remain in full force and effect.

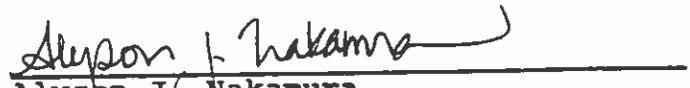
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the date first above written.

EMI:

EAST MAUI IRRIGATION COMPANY,
LIMITED



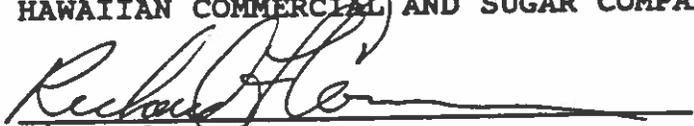
Richard F. Cameron
Its Executive Vice President



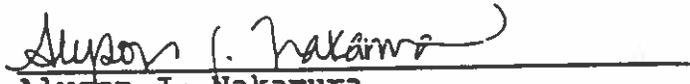
Alyson J. Nakamura
Its Secretary

HC&S:

A&B-HAWAII, INC., THROUGH ITS DIVISION
HAWAIIAN COMMERCIAL AND SUGAR COMPANY



Richard F. Cameron
Its Senior Vice President



Alyson J. Nakamura
Its Secretary

75

BWS:

BOARD OF WATER SUPPLY,
COUNTY OF MAUI

Marie Kimmey

Marie Kimmey

(Please type or print name above)

Its Chairperson

APPROVED AS TO FORM
AND LEGALITY:

Gary W. Zakian

GARY W. ZAKIAN

(Please type or print name above)

Its Deputy Corporation Counsel
County of Maui

76

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 9th day of January, 1996, before me appeared RICHARD F. CAMERON, to me personally known, who, being by me duly sworn, did say that he is the Executive Vice President of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Lorala L. Maua
Notary Public, State of Hawaii
My commission expires: 9/6/96

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

On this 3rd day of January, 1996, before me appeared ALYSON J. NAKAMURA, to me personally known, who, being by me duly sworn, did say that she is the Secretary of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Alyson J. Nakamura
Notary Public, State of Hawaii
My commission expires: 7/15/98

77

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 8th day of January, 1996, before me appeared RICHARD F. CAMERON, to me personally known, who, being by me duly sworn, did say that he is the Senior Vice President of A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Loralee H. Meuri
Notary Public, State of Hawaii
My commission expires: 1/16/96

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

On this 3rd day of January, 1996, before me appeared ALYSON J. NAKAMURA, to me personally known, who, being by me duly sworn, did say that she is the Secretary of A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Aileen S. Miyahara
Notary Public, State of Hawaii
My commission expires: 7/15/98

78

STATE OF HAWAII
COUNTY OF MAUI

)
) SS.
)

On this 7th day of ~~January~~ ^{February} 1996, before me appeared Marie Kimmey, to me personally known, who, being by me duly sworn, did say that she is the Chairperson of the BOARD OF WATER SUPPLY of the County of Maui, and that the seal affixed to the foregoing instrument is the lawful seal of the said BOARD OF WATER SUPPLY, and that the said instrument was signed and sealed on behalf of the said BOARD OF WATER SUPPLY, and the said Marie Kimmey acknowledged the said instrument to be the free act and deed of the said BOARD OF WATER SUPPLY.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public, State of Hawaii
My commission expires: 4/19/98

[Handwritten mark]

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FOURTH AMENDMENT TO
MEMORANDUM OF UNDERSTANDING

THIS AMENDMENT, made and entered into this 30th day of December, 1996, by and between EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation, whose business mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "EMI," A&B-HAWAII, INC., through its division, HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation, whose mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "HC&S," and the BOARD OF WATER SUPPLY of the County of Maui, whose principal place of business and mailing address is 200 S. High Street, Wailuku, Hawaii 96793, referred to as "BWS,"

W I T N E S S E T H:

WHEREAS, on December 31, 1973, EMI, HC&S and BWS entered into that certain Memorandum of Understanding, which subsequently was amended by an Amendment dated May 1, 1992, Second Amendment dated April 25, 1994, Third Amendment dated January 3, 1996 and Agreement Re 1973 Memorandum of Understanding, Repairs to Waikamoi Water System, Construction of Reservoir at Kamole Weir dated March 21, 1996 (the Memorandum of Understanding, as so amended, is hereinafter referred to as the "Memorandum"), relating in part to the operation, maintenance and repair of the Waikamoi water system; and

WHEREAS, the term of the Memorandum is scheduled to terminate on December 31, 1996; and

WHEREAS, the parties hereto desire to extend the Memorandum for a period of one year; and

WHEREAS, on March 21, 1996, EMI, HC&S, and BWS entered into that certain Agreement Re 1973 Memorandum of Understanding, Repairs to Waikamoi Water System, Construction of Reservoir at Kamole Weir, relating to BWS using its best efforts to fund as expeditiously as possible the repairs currently necessary, in the discretion of EMI, to the Waikamoi Upper Flume, referred to as the "Flume"; and

WHEREAS, the Flume is under the operational jurisdiction of EMI as provided in the Memorandum; and

WHEREAS, the redwood covers, trestles, footings, braces, etc. of the Flume, are in need of replacement to maintain proper water transmission for the Upper Kula Water System; and

WHEREAS, the Flume is now in a state of major disrepair and there is concern that it may fail; and

WHEREAS, extensive and substantial damages to the Waikamoi collection and conveying and storage facilities owned by BWS due

BC

to acts of God or events beyond the control of EMI requiring restoration or replacement of the facilities is the responsibility of BWS; and

WHEREAS, EMI represents that, due to the sensitive nature of the ecological resources of the area serving as a source of domestic water, and its inaccessibility and varied terrain, EMI must limit access to its Waikamoi lands; and

WHEREAS, EMI reconstructed the Flume back in 1974-75, and is very familiar with both the Waikamoi water system and the area; and

WHEREAS, BWS has budgeted \$60,000.00 for the necessary maintenance and repair of the Flume for fiscal year 1996-1997; and

WHEREAS, BWS had previously purchased redwood lumber for the repairs to the Flume, which lumber was determined to be inadequate for said repairs; now, therefore,

IN CONSIDERATION of the mutual promises and agreements hereinafter set forth, the parties hereto agree as follows:

1. The fourth paragraph of Paragraph 2 is deleted in its entirety and substituted with the following:

"Extensive and substantial damages to the collection and conveying and storage facilities owned by BWS as provided herein due to acts of God or events beyond the control of EMI requiring restoration or replacement of the facilities shall be the responsibility of BWS. Actual restoration and replacement of existing facilities shall be subject to budgetary limitations of BWS, which agrees to exercise reasonable judgment and good faith to include the costs, or portions thereof, of restoration and replacement in the ensuing budget or budgets. Actual restoration and replacement of additional facilities constructed by EMI shall be made at the discretion of BWS, which decision shall be final and shall not be subject to arbitration. With regard to restoration of the Waikamoi Upper Flume required by damages, existing as of December 17, 1996, to the facilities (herein called the "1996 Repairs"), BWS shall use its best efforts to fund as expeditiously as possible the repairs deemed necessary in the discretion of EMI. BWS and EMI agree to begin the 1996 Repairs as soon as practicable and to coordinate with each other to undertake such repairs. If the Waikamoi Upper Flume fails or suffers a major disruption due to the delay in funding these necessary repairs, BWS shall not be permitted to compensate for the reduction of Waikamoi system water by taking water from the Wailoa Ditch System. The exact nature, scope and total cost of the 1996 Repairs, including total reasonable reimbursement

for labor (including overhead), will not be known until EMI proceeds with the repairs, but the cost during the fiscal year ending June 30, 1997 shall not exceed \$60,000.00."

2. With regard to the 1996 Repairs referred to in the new fourth paragraph of Paragraph 2 described above:

- a. EMI shall be responsible for designating the materials needed for the repairs, but shall not be responsible for any problems arising out of or related to the condition of the materials.
- b. BWS shall be responsible for ordering and purchasing all materials, including replacement of any materials that do not meet full specifications (e.g., replacement of that portion of BWS's previously-purchased lumber that EMI determines cannot be salvaged), and for the condition of the materials and delivery of same to the jobsite location designated by EMI, referred to as the "Jobsite."
- c. EMI shall, to the extent feasible in its sole discretion, salvage as much of BWS's previously-purchased redwood lumber (119 pieces 2"x12"x18' dimension, con heart, RS, and 279 pieces 2"x12"x20' dimension, con heart, RS), referred to as "Salvaged Lumber," for the repairs to the Flume, said salvage to include milling the redwood to proper dimensions at cost to BWS not to exceed \$2,500.00 for labor.
- d. BWS shall provide delivery of the Salvaged Lumber to the milling site designated by EMI, and later to the Jobsite.
- e. BWS shall provide a container for weather and security protection of all redwood lumber and all other materials delivered to the Jobsite for the repairs.
- f. EMI shall apply the non-skid surface treatment in accordance to the manufacture's recommendations.
- g. EMI shall be responsible for any loss or damage to materials accepted at the Jobsite in the event such loss or damage arises directly and solely from EMI's negligence, but EMI shall not be deemed a bailor or warehouseman with respect to such materials.
- h. BWS shall make payment on said invoices within 30 days after receipt, and agrees that interest will accrue on late payments at the rate of 12% per annum.

3. Paragraph 3 is hereby replaced in its entirety with the following:

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"3. Wailoa Ditch. From the waters collected by EMI in the Wailoa Ditch System, EMI will make available to BWS up to 8-1/2 million gallons of water per twenty-four hour period, allocated as follows: up to 7 million gallons of water per twenty-four hour period from the Kamole Weir delivery point, and up to 1-1/2 million gallons of water per twenty-four hour period from the Hamakua Ditch delivery point to serve the needs of the Kula Agricultural Park (pursuant to the letter dated July 27, 1982 from HC&S and EMI to the Department of Water Supply of the County of Maui). The foregoing is subject to the limitations on withdrawal set forth in the Agreement Re 1973 Memorandum of Understanding, Repairs to Waikamoi Water System, Construction of Reservoir at Kamole Weir, dated March 21, 1996. BWS agrees to use its best efforts to minimize its intake of water from the Wailoa Ditch System whenever the total flow in the Wailoa Ditch System drops below 55 million gallons per twenty-four hour period, and to use its best efforts to move forward on a timely basis with necessary steps, including the installation and utilization of surface water storage of peak flows, so that BWS will be able to reduce its dependency on the Wailoa Ditch System whenever the total flow is below 55 million gallons per twenty-four hour period.

Waters from the Wailoa Ditch shall be delivered to BWS at the following points presently used by EMI/HC&S and BWS:

Kamole Forebay and Hamakua Ditch near Reservoir 40."

4. With regard to the construction of the proposed reservoir at Kamole Weir, BWS warrants that it will use its best efforts to meet, or cause to be met, the deadlines set forth in the engineering schedule attached hereto as Exhibit "A" and incorporated herein by reference. The parties agree to discuss modification of the '8-1/2 million gallons of water per twenty-four hour period' amount, referred to in Section 3 above, when the proposed reservoir comes on line.

5. Paragraph 13 is hereby deleted in its entirety and substituted with the following:

"13. Term. The term of this agreement shall be for twenty-four (24) years commencing January 1, 1974 and terminating on December 31, 1997; provided, however, that this agreement may be extended from time to time by mutual agreement."

6. Save and except as amended herein, the Memorandum, as previously amended, shall remain in full force and effect.

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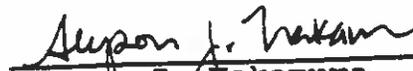
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the date first above written.

EMI:

EAST MAUI IRRIGATION COMPANY,
LIMITED



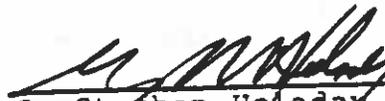
G. Stephen Holaday
Its Vice President



Alyson J. Nakamura
Its Secretary

HC&S:

A&B-HAWAII, INC., THROUGH ITS DIVISION
HAWAIIAN COMMERCIAL AND SUGAR COMPANY



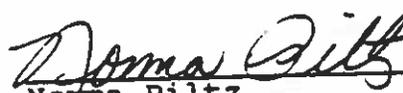
G. Stephen Holaday
Its Senior Vice President



Alyson J. Nakamura
Its Secretary

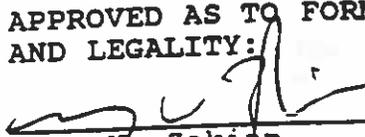
BWS:

BOARD OF WATER SUPPLY
COUNTY OF MAUI



Norma Piltz
Its Chairperson

APPROVED AS TO FORM
AND LEGALITY:



Gary W. Zakian
Deputy Corporation Counsel
County of Maui

84

STATE OF HAWAII)
City & County of Honolulu) SS.
~~COUNTY OF MAUI~~)

G. Stephen Holad:

On this 3rd day of ~~December, 1996~~, January, 1997, before me appeared [^]
~~RICHARD F. CAMERON~~, to me personally known, who, being by me duly
sworn, did say that he is the ~~Executive~~ Vice President of EAST
MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the
seal affixed to the foregoing instrument is the corporate seal of
said corporation; and that said instrument was signed and sealed
on behalf of said corporation by authority of its Board of
Directors, and the said officer acknowledged said instrument to
be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official
seal.

Stephen K. McQuinn
Notary Public, State of Hawaii

My commission expires: 2/18/97

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

On this 30th day of December, 1996, before me appeared
ALYSON J. NAKAMURA, to me personally known, who, being by me duly
sworn, did say that she is the Secretary of EAST MAUI IRRIGATION
COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to
the foregoing instrument is the corporate seal of said corpora-
tion; and that said instrument was signed and sealed on behalf of
said corporation by authority of its Board of Directors, and the
said officer acknowledged said instrument to be the free act and
deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official
seal.

Aileen S. Miyakura
Notary Public, State of Hawaii

My commission expires: 7/15/98

L.S.

85

STATE OF HAWAII)
City & County of Honolulu) SS.
~~COUNTY OF MAUI~~)

On this 3rd day of ~~December, 1996~~, January, 1997 before me appeared G. Stephen Holaday
~~RICHARD F. CAMERON~~, to me personally known, who, being by me duly sworn, did say that he is the Senior Vice President of A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Suparna K. McLaughlin
Notary Public, State of Hawaii

My commission expires: 2/18/97

49

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

On this 30th day of December, 1996, before me appeared ALYSON J. NAKAMURA, to me personally known, who, being by me duly sworn, did say that she is the Secretary of A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Alyson J. Nakamura
Notary Public, State of Hawaii

My commission expires: 7/15/98

86

STATE OF HAWAII
COUNTY OF MAUI

)
) SS.
)

On this 27th day of December, 1996, before me appeared Norma Piltz, to me personally known, who, being by me duly sworn, did say that she is the Chairperson of the BOARD OF WATER SUPPLY of the County of Maui, and that the seal affixed to the foregoing instrument is the lawful seal of the said BOARD OF WATER SUPPLY, and that the said instrument was signed and sealed on behalf of the said BOARD OF WATER SUPPLY, and the said Norma Piltz acknowledged the said instrument to be the free act and deed of the said BOARD OF WATER SUPPLY.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Joseph L. ...
Notary Public, State of Hawaii
My commission expires: 4/19/98

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ADDENDUM TO FOURTH AMENDMENT TO
MEMORANDUM OF UNDERSTANDING

THIS ADDENDUM, made and entered into this 6th day of May, 1997, by and between EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation, whose business mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "EMI," A&B-HAWAII, INC., through its division, HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation, whose mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "HC&S," and the BOARD OF WATER SUPPLY of the County of Maui, whose principal place of business and mailing address is 200 S. High Street, Wailuku, Hawaii 96793, referred to as "BWS,"

W I T N E S S E T H:

WHEREAS, on December 30, 1996, EMI, HC&S and BWS entered into that certain Fourth Amendment to Memorandum of Understanding (hereinafter referred to as the "Fourth Amendment"), relating in part to the repairs currently necessary to the Waikamoi Upper Flume, referred to in the Fourth Amendment as the "1996 Repairs"; and

WHEREAS, said Fourth Amendment contemplates, in accordance with the recommendation of EMI, the use of milled redwood lumber for the 1996 Repairs; and

WHEREAS, BWS now desires to use unmilled lumber for the 1996 Repairs; and

WHEREAS, EMI is willing to use unmilled redwood lumber for the 1996 Repairs only if it receives (i) specific authorization from BWS for such use and (ii) a complete release and indemnification from BWS from any claims or damages arising out of such use; now, therefore,

IN CONSIDERATION of the mutual promises and agreements hereinafter set forth, the parties hereto agree as follows:

1. Notwithstanding Paragraph 2 of the Fourth Amendment, BWS hereby requests and authorizes EMI to use unmilled redwood lumber for the 1996 Repairs. BWS hereby releases, indemnifies and holds harmless EMI and HC&S from any and all claims or damages (including reasonable attorney's fees) arising out of or otherwise related to the use of unmilled redwood lumber.

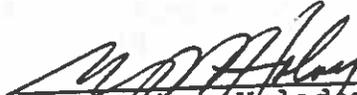
2. Save and except as amended herein, the Fourth Amendment shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the date first above written.

EMI:

EAST MAUI IRRIGATION COMPANY,
LIMITED



G. Stephen Holaday
Its Executive Vice President



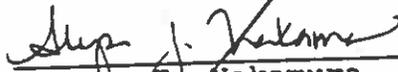
Alyson J. Nakamura
Its Secretary

HC&S:

A&B-HAWAII, INC., THROUGH ITS DIVISION
HAWAIIAN COMMERCIAL AND SUGAR COMPANY



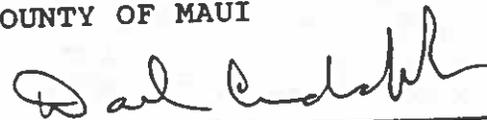
G. Stephen Holaday
Its Senior Vice President



Alyson J. Nakamura
Its Secretary

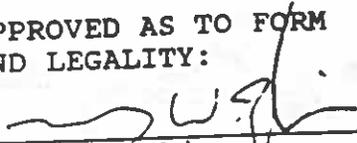
BWS:

BOARD OF WATER SUPPLY
COUNTY OF MAUI



~~Jawap~~ ~~Dervin Leis~~ ~~David Craddock~~
Its Chairperson Director

APPROVED AS TO FORM
AND LEGALITY:



Gary W. Zakian
Deputy Corporation Counsel
County of Maui

89

STATE OF HAWAII
COUNTY OF MAUI

)
) SS.
)

On this 14th day of May, 1997, before me appeared G. STEPHEN HOLADAY, to me personally known, who, being by me duly sworn, did say that he is the Executive Vice President of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Joseph R. Mawin
Notary Public, State of Hawaii
My commission expires: 9/10/2000

STATE OF HAWAII
CITY & COUNTY OF HONOLULU

)
) SS.
)

On this 6th day of May, 1997, before me appeared ALYSON J. NAKAMURA, to me personally known, who, being by me duly sworn, did say that she is the Secretary of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Alyson J. Nakamura
Notary Public, State of Hawaii
My commission expires: 7/15/98

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STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 14th day of May, 1997, before me appeared G. STEPHEN HOLADAY, to me personally known, who, being by me duly sworn, did say that he is the Senior Vice President of A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Loralee K. Inoué

Notary Public, State of Hawaii

My commission expires: 9/10/2000

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

On this 6th day of May, 1997, before me appeared ALYSON J. NAKAMURA, to me personally known, who, being by me duly sworn, did say that she is the Secretary of A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Alyson J. Nakamura

Notary Public, State of Hawaii

My commission expires: 7/15/98

91

STATE OF HAWAII
COUNTY OF MAUI

)
) SS.
)

David Leis
David Cradick On this 19th day of May, 1997, before me appeared ~~Derwin Leis~~ *David Cradick* to me personally known, who, being by me duly sworn, did say that he is the ~~Chairperson~~ *Director* of the BOARD OF WATER SUPPLY of the County of Maui, and that the seal affixed to the foregoing instrument is the lawful seal of the said BOARD OF WATER SUPPLY, and that the said instrument was signed and sealed ~~on behalf of~~ *David Cradick* the said BOARD OF WATER SUPPLY, and the said ~~Derwin Leis~~ *David Cradick* acknowledged the said instrument to be the free act and deed of the said BOARD OF WATER SUPPLY.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Joseph M. Wells

Notary Public, State of Hawaii
My commission expires: 4/19/98

6

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ORIGINAL

FIFTH AMENDMENT TO MEMORANDUM OF UNDERSTANDING

THIS AMENDMENT, made and entered into this 20th day of January, 1998, by and between EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation, whose business mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "EMI," A&B-HAWAII, INC., through its division, HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation, whose mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "HC&S," and the BOARD OF WATER SUPPLY of the County of Maui, whose principal place of business and mailing address is 200 S. High Street, Wailuku, Hawaii 96793, referred to as "BWS,"

W I T N E S S E T H:

WHEREAS, on December 31, 1973, EMI, HC&S and BWS entered into that certain Memorandum of Understanding, which subsequently was amended by an Amendment dated May 1, 1992, Second Amendment dated April 25, 1994, Third Amendment dated January 3, 1996, Fourth Amendment dated December 30, 1996, Agreement Re 1973 Memorandum of Understanding, Repairs to Waikamoi Water System, Construction of Reservoir at Kamole Weir dated March 21, 1996, and Addendum to Fourth Amendment dated May 6, 1997 (the Memorandum of Understanding, as so amended, is hereinafter referred to as the "Memorandum"), relating in part to the operation, maintenance and repair of the Waikamoi water system; and

WHEREAS, the term of the Memorandum is scheduled to terminate on December 31, 1997; and

WHEREAS, the parties hereto desire to extend the Memorandum for a period of one year; and

WHEREAS, on March 21, 1996, EMI, HC&S, and BWS entered into that certain Agreement Re 1973 Memorandum of Understanding, Repairs to Waikamoi Water System, Construction of Reservoir at Kamole Weir, relating to BWS using its best efforts to fund as expeditiously as possible the repairs currently necessary, in the discretion of EMI, to the Waikamoi Upper Flume, referred to as the "Flume"; and

WHEREAS, BWS budgeted \$60,000.00 for the necessary maintenance and repair of the Flume for fiscal year 1996-1997; and

WHEREAS, BWS has budgeted \$60,000.00 for the necessary maintenance and repair of the Flume for fiscal year 1997-1998; and

WHEREAS, EMI has agreed to provide BWS with an additional 175,000 gallons per day from the Wailoa Ditch System;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the parties agree as follows:

93

Amend

1. The fourth paragraph of Paragraph 2 is deleted in its entirety and substituted with the following:

"Extensive and substantial damages to the collection and conveying and storage facilities owned by BWS as provided herein due to acts of God or events beyond the control of EMI requiring restoration or replacement of the facilities shall be the responsibility of BWS. Actual restoration and replacement of existing facilities shall be subject to budgetary limitations of BWS, which agrees to exercise reasonable judgment and good faith to include the costs, or portions thereof, of restoration and replacement in the ensuing budget or budgets. Actual restoration and replacement of additional facilities constructed by EMI shall be made at the discretion of BWS, which decision shall be final and shall not be subject to arbitration. With regard to restoration of the Waikamoi Upper Flume required by damages, existing as of December 17, 1996, to the facilities (herein called the "1996 Repairs"), BWS shall use its best efforts to fund as expeditiously as possible the repairs deemed necessary in the discretion of EMI. BWS and EMI agree to begin the 1996 Repairs as soon as practicable and to coordinate with each other to undertake such repairs. If the Waikamoi Upper Flume fails or suffers a major disruption due to the delay in funding these necessary repairs, BWS shall not be permitted to compensate for the reduction of Waikamoi system water by taking water from the Wailoa Ditch System. The exact nature, scope and total cost of the 1996 Repairs, including total reasonable reimbursement for labor (including overhead), will not be known until EMI proceeds with the repairs, but the cost during the fiscal year ending June 30, 1998 shall not exceed the sum of \$60,000,00 and any additional funds appropriated by the BWS during such fiscal year pursuant to its best efforts obligations to expeditiously fund the 1996 Repairs."

2. The first sentence of Paragraph 3 is hereby replaced in its entirety with the following:

"From the waters collected by EMI in the Wailoa Ditch System, EMI will make available to BWS up to 8.675 million gallons of water per twenty-four-hour period, allocated as follows: up to 7.175 million gallons of water per twenty-four-hour period from the Kamole Weir delivery point, and up to 1-1/2 million gallons of water per twenty-four-hour period from the Hamakua Ditch delivery point to serve the needs of the Kula Agricultural Park (pursuant to the letter dated July 27, 1982 from HC&S and EMI to the Department of Water Supply of the County of Maui)."

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3. Paragraph 13 is hereby deleted in its entirety and substituted with the following:

"13. Term. The term of this agreement shall be for twenty-five (25) years commencing January 1, 1974 and terminating on December 31 1998; provided, however, that this agreement may be extended from time to time by mutual agreement."

4. Save and except as amended herein, the Memorandum, as previously amended, shall remain in full force and effect.

5. Facsimile signatures shall be deemed valid as original signatures. However, each party shall forward original signature pages to the other parties upon execution.

6. This Amendment may be executed in counterpart signature pages.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the date first above written.

EMI:

EAST MAUI IRRIGATION COMPANY,
LIMITED



G. Stephen Holaday
Its Vice President **EXEC. VICE PRESIDENT**



Alyson J. Nakamura
Its Secretary

HC&S:

A&B-HAWAII, INC., THROUGH ITS DIVISION
HAWAIIAN COMMERCIAL AND SUGAR COMPANY



G. Stephen Holaday
Its Senior Vice President

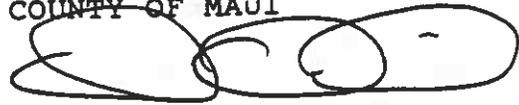


Alyson J. Nakamura
Its Secretary

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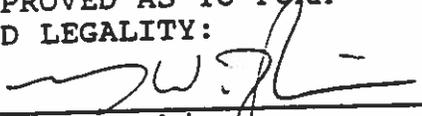
BWS: -

BOARD OF WATER SUPPLY
COUNTY OF MAUI



Dorvin D. Leis
Its Chairperson

APPROVED AS TO FORM
AND LEGALITY:



Gary W. Zakian
Deputy Corporation Counsel
County of Maui

96

STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

On this 23rd day of February 1998, before me appeared G. STEPHEN HOLADAY, to me personally known, who, being by me duly sworn or affirmed, did say that he is the Executive Vice President of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Allen S. Miyahara
Notary Public, State of Hawaii

My Commission Expires: 7/15/98

STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

On this 27th day of February 1998, before me appeared ALYSON J. NAKAMURA, to me personally known, who, being by me duly sworn or affirmed, did say that she is the Secretary of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Allen S. Miyahara
Notary Public, State of Hawaii

My Commission Expires: 7/15/98

97

STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

On this 23rd day of February 1998, before me appeared G. STEPHEN HOLADAY, to me personally known, who, being by me duly sworn or affirmed, did say that he is the Senior Vice President of A&B-HAWAII, INC., a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Queen S. Miyahara
Notary Public, State of Hawaii

My Commission Expires: 7/15/98

STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

On this 27th day of February 1998, before me appeared ALYSON J. NAKAMURA, to me personally known, who, being by me duly sworn or affirmed, did say that she is the Secretary of A&B-HAWAII, INC., a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Queen S. Miyahara
Notary Public, State of Hawaii

My Commission Expires: 7/15/98

98

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this ^{February} ~~January~~ 12th day of ^{Sworn} 1998, before me appeared Dorvin D. Leis, to me personally known, who, being by me duly sworn, did say that he is the Chairperson of the BOARD OF WATER SUPPLY of the County of Maui, and that the seal affixed to the foregoing instrument is the lawful seal of the said BOARD OF WATER SUPPLY, and that the said instrument was signed and sealed on behalf of the said BOARD OF WATER SUPPLY, and the said Dorvin D. Leis acknowledged the said instrument to be the free act and deed of the said BOARD OF WATER SUPPLY.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Jim Kanevick
Notary Public, State of Hawaii
My commission expires: 4/19/98

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SIXTH AMENDMENT TO
MEMORANDUM OF UNDERSTANDING

THIS AMENDMENT, made and entered into this 28th day of December, 1998, and effective as of December 31, 1998, by and between EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation, whose business mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "EMI," A&B-HAWAII, INC., through its division, HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation, whose mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "HC&S," and the BOARD OF WATER SUPPLY of the County of Maui, whose principal place of business and mailing address is 200 S. High Street, Wailuku, Hawaii 96793, referred to as "BWS,"

W I T N E S S E T H:

WHEREAS, on December 31, 1973, EMI, HC&S and BWS entered into that certain Memorandum of Understanding, which subsequently was amended by an Amendment dated May 1, 1992, Second Amendment dated April 25, 1994, Third Amendment dated January 3, 1996, Fourth Amendment dated December 30, 1996, Agreement Re 1973 Memorandum of Understanding, Repairs to Waikamoi Water System, Construction of Reservoir at Kamole Weir dated March 21, 1996, Addendum to Fourth Amendment dated May 6, 1997, and Fifth Amendment dated January 20, 1998 (the Memorandum of Understanding, as so amended, is hereinafter referred to as the "Memorandum"), relating in part to the operation, maintenance and repair of the Waikamoi water system; and

WHEREAS, the term of the Memorandum is scheduled to terminate on December 31, 1998; and

WHEREAS, the parties hereto desire to extend the Memorandum for a period of one year; and

WHEREAS, on March 21, 1996, EMI, HC&S, and BWS entered into that certain Agreement Re 1973 Memorandum of Understanding, Repairs to Waikamoi Water System, Construction of Reservoir at Kamole Weir, relating to BWS using its best efforts to fund as expeditiously as possible the repairs currently necessary, in the discretion of EMI, to the Waikamoi Upper Flume, referred to as the "Flume"; and

WHEREAS, BWS budgeted \$60,000.00 for the necessary maintenance and repair of the Flume for fiscal year 1997-1998; and

WHEREAS, BWS has budgeted \$60,000.00 for the necessary maintenance and repair of the Flume for fiscal year 1998-1999;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the parties agree as follows:

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1. BWS agrees to make available and to utilize the \$60,000.00, budgeted in the fiscal year 1998-1999 budget, for the necessary repair and maintenance of the Flume.

2. Paragraph 13 is hereby deleted in its entirety and substituted with the following:

"13. Term. The term of this agreement shall be for twenty-six (26) years commencing January 1, 1974 and terminating on December 31, 1999; provided, however, that this agreement may be extended from time to time by mutual agreement."

3. Save and except as amended herein, the Memorandum, as previously amended, shall remain in full force and effect.

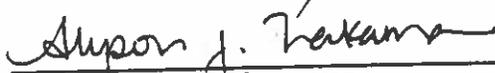
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the date first above written.

EMI:

EAST MAUI IRRIGATION COMPANY,
LIMITED



G. Stephen Holaday
Its Executive Vice President



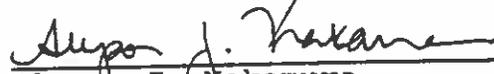
Alyson J. Nakamura
Its Secretary

HC&S:

A&B-HAWAII, INC., THROUGH ITS DIVISION
HAWAIIAN COMMERCIAL AND SUGAR COMPANY



G. Stephen Holaday
Its Senior Vice President

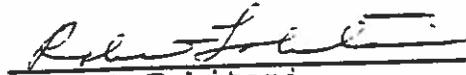


Alyson J. Nakamura
Its Secretary

101

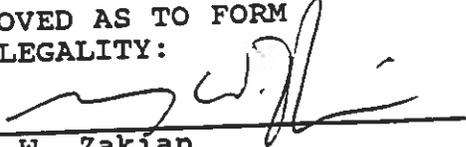
BWS:

BOARD OF WATER SUPPLY
COUNTY OF MAUI



Robert Takitani
Its Chairperson

APPROVED AS TO FORM
AND LEGALITY:



Gary W. Zakian
Deputy Corporation Counsel
County of Maui

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STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 29th day of December, 1998, before me appeared G. STEPHEN HOLADAY, to me personally known, who, being by me duly sworn, did say that he is the Executive Vice President of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Lorain K. Mauri
Notary Public, State of Hawaii
My commission expires: 9/10/2000

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

On this 28th day of December, 1998, before me appeared ALYSON J. NAKAMURA, to me personally known, who, being by me duly sworn, did say that she is the Secretary of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Aileen S. Miyahara
Notary Public, State of Hawaii
My commission expires: 7/15/02



STATE OF HAWAII)
)
COUNTY OF MAUI)

SS.

On this 29th day of December, 1998, before me appeared G. STEPHEN HOLADAY, to me personally known, who, being by me duly sworn, did say that he is the Senior Vice President of A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Loraine K. Mawri

Notary Public, State of Hawaii

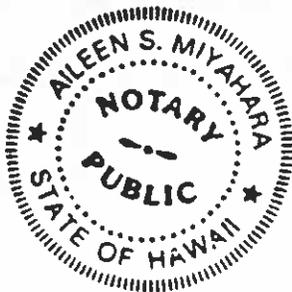
My commission expires: 9/10/2000

STATE OF HAWAII)
)
CITY & COUNTY OF HONOLULU)

SS.

On this 28th day of December, 1998, before me appeared ALYSON J. NAKAMURA, to me personally known, who, being by me duly sworn, did say that she is the Secretary of A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Aileen S. Miyahara

Notary Public, State of Hawaii

My commission expires: 7/15/02

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STATE OF HAWAII
COUNTY OF MAUI

)
)
)
SS.

January 1999

On this 26th day of ~~December~~ 1998, before me appeared Robert K. Takitani, to me personally known, who, being by me duly sworn, did say that he is the Chairperson of the BOARD OF WATER SUPPLY of the County of Maui, and that the seal affixed to the foregoing instrument is the lawful seal of the said BOARD OF WATER SUPPLY, and that the said instrument was signed and sealed on behalf of the said BOARD OF WATER SUPPLY, and the said Robert K. Takitani acknowledged the said instrument to be the free act and deed of the said BOARD OF WATER SUPPLY.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Jerry Ann Wells
Notary Public, State of Hawaii
My commission expires: 4/19/2002

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SEVENTH AMENDMENT TO
MEMORANDUM OF UNDERSTANDING

THIS AMENDMENT, made and entered into this 29 day of December, 1999, and effective as of December 31, 1999, by and between EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation, whose business mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "EMI," A&B-HAWAII, INC., through its division, HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation, whose mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "HC&S," and the BOARD OF WATER SUPPLY of the County of Maui, whose principal place of business and mailing address is 200 S. High Street, Wailuku, Hawaii 96793, referred to as "BWS,"

W I T N E S S E T H:

WHEREAS, on December 31, 1973, EMI, HC&S and BWS entered into that certain Memorandum of Understanding, which subsequently was amended by an Amendment dated May 1, 1992, Second Amendment dated April 25, 1994, Third Amendment dated January 3, 1996, Fourth Amendment dated December 30, 1996, Agreement Re 1973 Memorandum of Understanding, Repairs to Waikamoi Water System, Construction of Reservoir at Kamole Weir dated March 21, 1996 ("1996 Agreement"), Addendum to Fourth Amendment dated May 6, 1997, Fifth Amendment dated January 20, 1998, and Sixth Amendment dated December 28, 1998 (the Memorandum of Understanding, as so amended, is hereinafter referred to as the "Memorandum"), relating in part to the collection and delivery of water by EMI to BWS, and to the operation, maintenance and repair of the Waikamoi water system; and

WHEREAS, the term of the Memorandum is scheduled to terminate on December 31, 1999; and

WHEREAS, the parties hereto desire to extend the Memorandum for a period of two months;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the parties agree as follows:

1. Paragraph 13 of the Memorandum is hereby deleted in its entirety and substituted with the following:

"13. Term. The term of this agreement shall be for twenty-six (26) years and two (2) months commencing January 1, 1974 and terminating on February 29, 2000; provided, however, that this agreement may be extended from time to time by mutual agreement."

2. Save and except as amended herein, the Memorandum, as previously amended, shall remain in full force and effect.

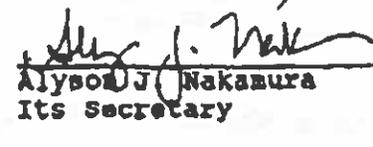
106

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the date first above written.

EMI:

EAST MAUI IRRIGATION COMPANY,
LIMITED

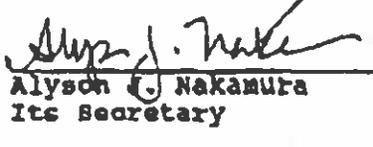

G. Stephen Holaday
Its President


Alyson J. Nakamura
Its Secretary

HC&S:

A&B-HAWAII, INC., THROUGH ITS DIVISION
HAWAIIAN COMMERCIAL AND SUGAR COMPANY


G. Stephen Holaday
Its Senior Vice President

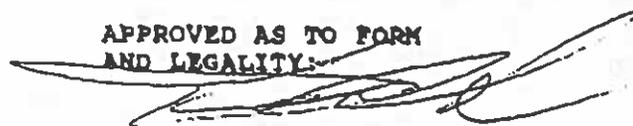

Alyson J. Nakamura
Its Secretary

BWS:

BOARD OF WATER SUPPLY
COUNTY OF MAUI


Robert Takitani
Its Chairperson

APPROVED AS TO FORM
AND LEGALITY:


~~Thomas P. Rack~~ Thomas P. Rack
Deputy Corporation Counsel
County of Maui

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

On this 29TH day of December, 1999, before me appeared G. STEPHEN HOLADAY, to me personally known, who, being by me duly sworn, did say that he is the President of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Aileen S. Miyahara AILEEN S. MIYAHARA
Notary Public, State of Hawaii

My commission expires: 7/15/02

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

On this 29TH day of December, 1999, before me appeared ALYSON J. NAKAMURA, to me personally known, who, being by me duly sworn, did say that she is the Secretary of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Aileen S. Miyahara AILEEN S. MIYAHARA
Notary Public, State of Hawaii

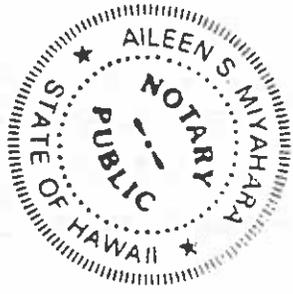
My commission expires: 7/15/02

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

On this 29TH day of December, 1999, before me appeared G. STEPHEN HOLADAY, to me personally known, who, being by me duly sworn, did say that he is the Senior Vice President of A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



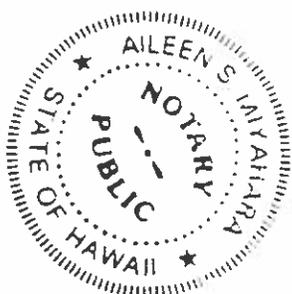
Aileen S. Miyahara AILEEN S. MIYAHARA
Notary Public, State of Hawaii

My commission expires: 7/15/02

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

On this 29TH day of December, 1999, before me appeared ALYSON J. NAKAMURA, to me personally known, who, being by me duly sworn, did say that she is the Secretary of A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Aileen S. Miyahara AILEEN S. MIYAHARA
Notary Public, State of Hawaii

My commission expires: 7/15/02

109

STATE OF HAWAII
COUNTY OF MAUI

)
) SS.
)

On this 30th day of December, 1999, before me appeared Robert Takitani, to me personally known, who, being by me duly sworn, did say that he is the Chairperson of the BOARD OF WATER SUPPLY of the County of Maui, and that the seal affixed to the foregoing instrument is the lawful seal of the said BOARD OF WATER SUPPLY, and that the said instrument was signed and sealed on behalf of the said BOARD OF WATER SUPPLY, and the said Robert Takitani acknowledged the said instrument to be the free act and deed of the said BOARD OF WATER SUPPLY.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Jerry Ann Wells
Notary Public, State of Hawaii
Jerry Ann Wells
My commission expires: 4/19/2002

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EIGHTH AMENDMENT TO
MEMORANDUM OF UNDERSTANDING

THIS AMENDMENT, made and entered into this 28th day of March, 2000, and effective as of February 29, 2000, by and between EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation, whose business mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "EMI," ALEXANDER & BALDWIN, INC., through its division, HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation, whose mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "HC&S," and the BOARD OF WATER SUPPLY of the County of Maui, whose principal place of business and mailing address is 200 S. High Street, Wailuku, Hawaii 96793, referred to as "BWS,"

W I T N E S S E T H:

WHEREAS, on December 31, 1973, EMI, HC&S and BWS entered into that certain Memorandum of Understanding, which subsequently was amended by an Amendment dated May 1, 1992, Second Amendment dated April 25, 1994, Third Amendment dated January 3, 1996, Fourth Amendment dated December 30, 1996, Agreement Re 1973 Memorandum of Understanding, Repairs to Waikamoi Water System, Construction of Reservoir at Kamole Weir dated March 21, 1996 ("1996 Agreement"), Addendum to Fourth Amendment dated May 6, 1997, Fifth Amendment dated January 20, 1998, Sixth Amendment dated December 28, 1998, and Seventh Amendment dated December 29, 1999 (the Memorandum of Understanding, as so amended, is hereinafter referred to as the "Memorandum"), relating in part to the collection and delivery of water by EMI to BWS, and to the operation, maintenance and repair of the Waikamoi water system; and

WHEREAS, the term of the Memorandum is scheduled to terminate on February 29, 2000; and

WHEREAS, the parties hereto desire to extend the Memorandum for a period of two months;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the parties agree as follows:

1. Paragraph 13 of the Memorandum is hereby deleted in its entirety and substituted with the following:

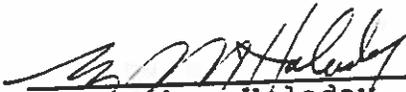
"13. Term. The term of this agreement shall be for twenty-six (26) years and four (4) months commencing January 1, 1974 and terminating on April 30, 2000; provided, however, that this agreement may be extended from time to time by mutual agreement."

2. Save and except as amended herein, the Memorandum, as previously amended, shall remain in full force and effect.

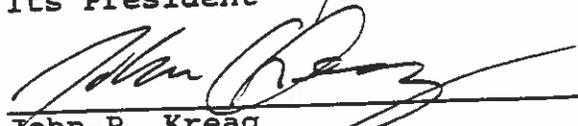
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the date first above written.

EMI:

EAST MAUI IRRIGATION COMPANY,
LIMITED



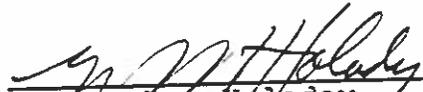
G. Stephen Holaday
Its President



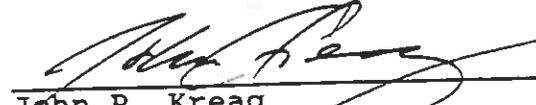
John P. Kreag
Its Assistant Secretary

HC&S:

ALEXANDER & BALDWIN, INC.,
THROUGH ITS DIVISION, HAWAIIAN
COMMERCIAL & SUGAR COMPANY



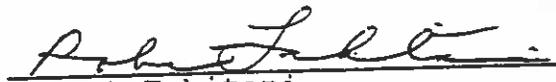
G. Stephen Holaday
Its Vice President



John P. Kreag
Its Assistant Treasurer

BWS:

BOARD OF WATER SUPPLY
COUNTY OF MAUI



Robert Takitani
Its Chairperson

APPROVED AS TO FORM
AND LEGALITY:



Howard M. Fukushima
Deputy Corporation Counsel
County of Maui

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STATE OF HAWAII
CITY & COUNTY OF HONOLULU
MAUI wh)
SS.)

On this 14th day of ~~March~~ ^{April wh}, 2000, before me appeared G. STEPHEN HOLADAY, to me personally known, who, being by me duly sworn, did say that he is the President of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Valerie J. Nakashima
Valerie L. Nakashima
Notary Public, State of Hawaii

My commission expires: 5/25/00

L.S.

STATE OF HAWAII
CITY & COUNTY OF HONOLULU
MAUI wh)
SS.)

On this 14th day of ~~March~~ ^{April}, 2000, before me appeared JOHN P. KREAG, to me personally known, who, being by me duly sworn, did say that he is the Assistant Secretary of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Valerie J. Nakashima
Valerie L. Nakashima
Notary Public, State of Hawaii

My commission expires: 5/25/00

L.S.

113

STATE OF HAWAII
Maui)
CITY & COUNTY OF HONOLULU) SS.

On this 14th day of ^{April} ~~March~~, 2000, before me appeared G. STEPHEN HOLADAY, to me personally known, who, being by me duly sworn, did say that he is the Vice President of ALEXANDER & BALDWIN, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Valerie L. Nakashima
Valerie L. Nakashima
Notary Public, State of Hawaii

L.S.

My commission expires: 5/25/00

STATE OF HAWAII
Maui)
CITY & COUNTY OF HONOLULU) SS.

On this 14th day of ^{April} ~~March~~, 2000, before me appeared JOHN P. KREAG, to me personally known, who, being by me duly sworn, did say that he is the Assistant Treasurer of ALEXANDER & BALDWIN, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Valerie L. Nakashima
Valerie L. Nakashima
Notary Public, State of Hawaii

L.S.
114

My commission expires: 5/25/00

STATE OF HAWAII
COUNTY OF MAUI

)
) SS.
)

On this 28th day of March, 2000, before me appeared Robert Takitani, to me personally known, who, being by me duly sworn, did say that he is the Chairperson of the BOARD OF WATER SUPPLY of the County of Maui, and that the seal affixed to the foregoing instrument is the lawful seal of the said BOARD OF WATER SUPPLY, and that the said instrument was signed and sealed on behalf of the said BOARD OF WATER SUPPLY, and the said Robert Takitani acknowledged the said instrument to be the free act and deed of the said BOARD OF WATER SUPPLY.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Jerry Ann Wells
Jerry Ann Wells
Notary Public, State of Hawaii

My commission expires: 4/19/2002

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MEMORANDUM OF UNDERSTANDING CONCERNING SETTLEMENT OF WATER AND RELATED ISSUES

Pursuant to this Memorandum of Understanding, the Board of Water Supply, County of Maui ("BWS") and Alexander & Baldwin, Inc. ("A&B") hereby agree to cooperate on certain matters being discussed by the parties relating to the following subjects:

1. Wailoa Ditch
2. Iao-Waikapu Ditch
3. H'poko Wells
4. Power
5. Central Maui Source Joint Venture ("JV")
6. East Maui Water Development Plan

The implementation of this Memorandum will be pursuant to one or more agreements to be negotiated and agreed upon as a package. The parties agree as follows:

1. Wailoa Ditch

The 1973 Memorandum of Understanding ("MOU") will be amended (the "Amendment") to accomplish the following:

- (a) Increase the BWS's allotment to 12 mgd with option for additional 4 mgd (per original agreement).
- (b) During periods of low flow, BWS to have minimum allotment of 8.2 mgd.
- (c) During periods of low flow, HC&S will have a minimum flow of 8.2 mgd (9.4 mgd should fire flow be required).
- (d) When the ditch flow drops below the combined minimum needs of BWS and HC&S (i.e., 16.4 mgd, or 17.6 mgd with fire flow), then BWS and HC&S each shall be entitled to receive: (a) its respective direct contribution to the ditch flow (i.e., BWS would be entitled to the portion of ditch flow attributable to ground water it pumps into the ditch, and HC&S would be entitled to the portion of the ditch flow attributable to its East Maui lands (30%); and (b) 50% of the amount of ditch flow remaining after deducting the parties' direct contributions from the total.
- (e) During periods of low flow, HC&S will not divert water to lower elevation ditch systems.

- (f) When the three-day average flow in the ditch falls below 55 mgd, BWS shall fully utilize all available ground water sources to supplement the Upcountry system and encourage conservation practices by domestic water users.
- (g) Extend the term of the MOU for 25 years.
- (h) The fee charged to BWS will remain unchanged (six cents per thousand gallons).
- (i) BWS to initiate and implement a long-term plan for permanent improvements to the Waikamoi flume system.
- (j) A&B to cooperate in the development of a dual system to serve Upcountry diversified agriculture.
- (k) BWS will develop and implement a stream flow monitoring program to provide current baseline data. — Ginny
- (l) As long-term agricultural water needs are reduced, a stream restoration program will be studied, developed, and initiated by BWS.
- (m) In return for increasing the allocation of ditch water to BWS, A&B may receive an appropriate allocation of domestic water (subject to normal system-wide limitations and conformity with general and community plans), to be mutually agreed upon in the Amendment.
- (n) BWS shall utilize its best efforts to maintain storage levels at 80% of maximum capacity of both Piiholo and Kahakapao reservoirs.
- (o) BWS shall pursue the implementation of additional raw water storage in the Lower Kula system. Ginny
- (p) BWS shall cooperate with A&B regarding appropriate permits or leases (short and long-term) for East Maui waters from the State of Hawaii.
- (q) BWS to pursue ground water development for Upcountry Maui to mitigate drought effects. For example, BWS shall pursue exploratory wells (i.e., Lower Kula and Pulehu) to supplement the domestic water sources for Upcountry. A&B may participate in such well development in exchange for an appropriate water allocation (subject to normal system-wide limitations and conformity with general and community plans).
- (r) BWS to pursue, with HC&S's cooperation, establishing supplemental water sources to maintain the viability of the Kula Ag Park.

2. Iao Waikapu Ditch

Subject to Wailuku Agribusiness's agreement, a new Agreement Concerning Temporary Withdrawal from the Iao Waikapu Ditch will be entered into and include the following terms:

- (a) BWS shall be entitled to withdraw up to 300,000 gallons per day from the Iao Waikapu Ditch, except when the flow in the Iao Stream falls below 11.5 mgd.
- (b) BWS shall pay a monthly charge of \$2,000 for this allocation.
- (c) BWS shall be entitled to take additional water (for a total withdrawal of up to 2 million gallons per day) whenever the flow in Iao Stream exceeds 55 mgd. For this additional water, BWS shall pay \$0.12 per thousand gallons (not including water used for back-washing filters).
- (d) The term of the agreement shall be two years and may be extended upon mutual agreement of the parties.

3. H'poko Wells

BWS and HC&S to pursue the following:

- (a) BWS to expedite completion of necessary engineering reports and will pursue approvals to utilize the wells for domestic purposes.
- (b) A&B will convey all necessary land and easements to BWS.
- (c) Subject to the completion and acceptance of the East Maui Development Plan EIS, A&B will consider participating in the construction of the transmission line from the well site to the BWS's Paia system in exchange for an appropriate allocation of water for its participation.
- (d) In consideration of providing such necessary land and easements, A&B may receive an appropriate allocation of domestic water (subject to normal system-wide limitations and conformity with general and community plans) to be mutually agreed to.

4. Power

BWS and HC&S intend to pursue the following:

- (a) HC&S will provide appropriate information on its transmission and distribution system to BWS or its consultants.
- (b) HC&S shall provide available power to BWS at mutually agreed upon locations, at a price not to exceed that paid by Maui Electric. BWS understands that the power being provided is not "firm", and that it shall be responsible for any necessary stand-by generators.
- (c) BWS shall, with HC&S's cooperation, explore the long-term feasibility of developing hydroelectric and other alternative energy sources.

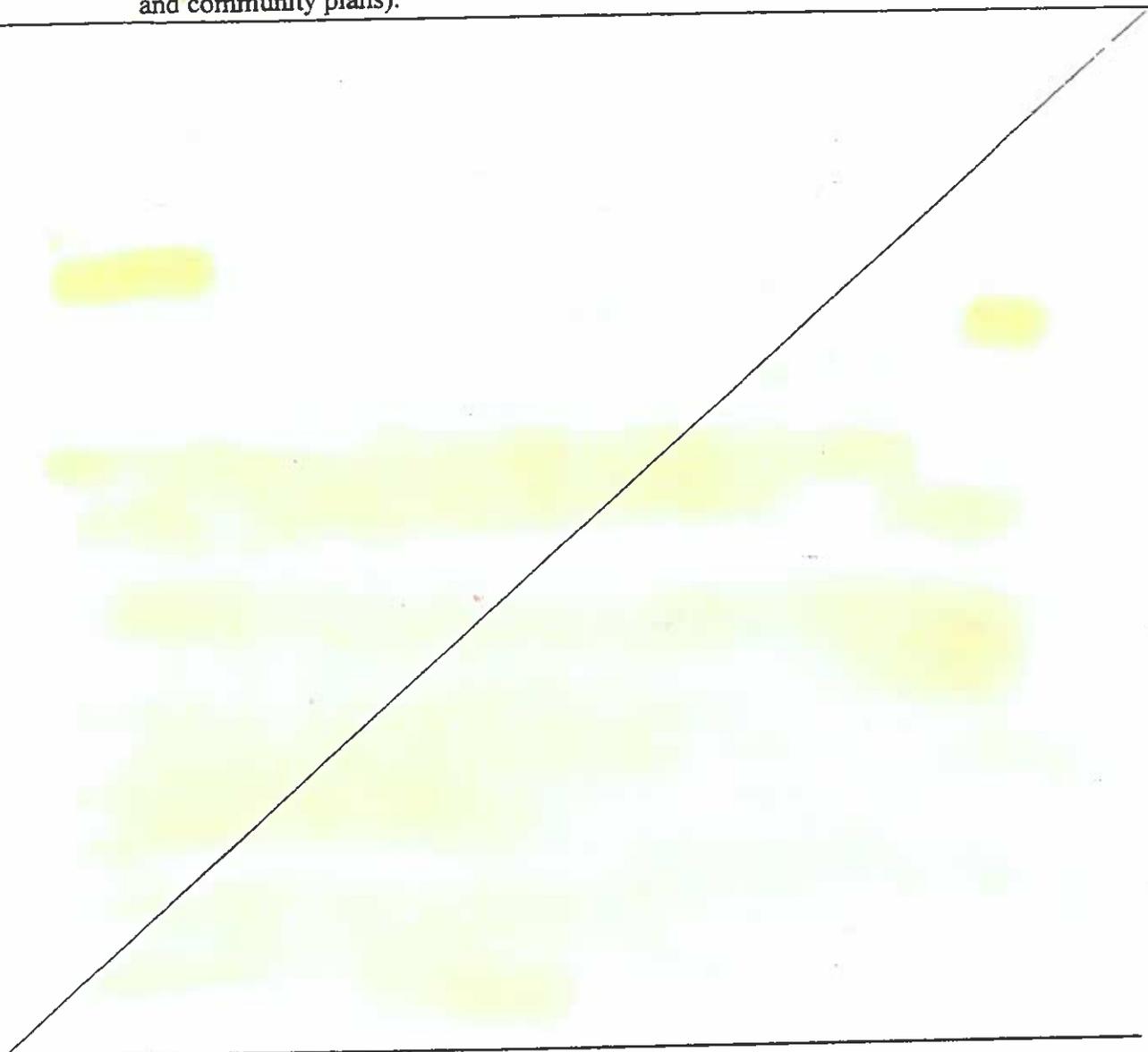
5. Central Maui Source Joint Venture

- (a) BWS acknowledges that there is an unmet obligation to the Central Maui Source Joint Venture arising out of the JV's prior development of three wells having an installed pumping capacity of 13.4 mgd.
- (b) Subject to the approval of the other parties to the JV, BWS and the JV shall enter into a mutually acceptable settlement agreement resolving all outstanding issues regarding the Central Maui Source Joint Venture.
- (c) Any entitlement arising out of this resolution shall be for properties the JV members own or subsequently acquire for development within the area served by the Central Maui system; rights may be transferred to a subsequent purchaser or developer, but may not otherwise be transferred.
- (d) Within 30 days of the Memorandum, the Chairman of BWS (and/or his designees) shall enter into negotiations with representatives of the JV on a settlement agreement to establish:
 - (1) Existing usage by members of the JV;
 - (2) Future usage standards to be applied;
 - (3) The remaining entitlement of the JV;
 - (4) The terms and conditions of providing and utilizing the entitlement.

6. East Maui Water Development Plan

BWS and HC&S intend to pursue the following:

- (a) BWS to proceed expeditiously with the supplemental EIS for the project as originally planned.
- (b) BWS will assure that stream flow monitoring is an integral part of the scope of work.
- (c) A&B may participate in the project in exchange for an appropriate water allocation (subject to normal system-wide limitations and conformity with general and community plans).



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IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Memorandum of Understanding as of this 13th day of ~~March~~ April, 2000.

ALEXANDER & BALDWIN, INC.

APPROVED AS TO FORM AND LEGALITY:

[Signature]

Its Vice President

[Signature]

Deputy Corporation Counsel

[Signature]

Its Vice President

Date: April 13, 2000

MAUI COUNTY BOARD OF WATER SUPPLY

[Signature]

Elmer F. Cravalho, Chairperson

[Signature]

Robert K. Takitani, Board Member and Past Chairperson

[Signature]

Orlando A. Tagorda, Vice Chairperson

[Signature]

Howard Nakamura, Board Member

[Signature]

Clark S. Hashimoto, Board Member

[Signature]

Peter Rice, Board Member

[Signature]

Adolph M. Helm, Board Member

[Signature]

Jonathan A. Starr, Board Member

[Signature]

Michael A. Nobriga, Board Member

KULA AGRICULTURAL PARK WATER RESERVOIR AGREEMENT

This AGREEMENT is entered into this ____ day of ~~DEC 30 2002~~, 20____, by and among the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 S. High Street, Wailuku, HI 96793 (hereinafter "County"), EAST MAUI IRRIGATION COMPANY, LIMITED, (hereinafter "EMI"), and ALEXANDER & BALDWIN, INC., through its division Hawaiian Commercial & Sugar Company (hereinafter "A&B"), collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the County, EMI, and A&B entered into that certain Memorandum of Understanding dated December 31, 1973, including all amendments thereof (hereinafter "EMI/A&B Agreement"); and

WHEREAS, one of the amendments to the EMI/A&B Agreement is that certain Kula Agricultural Park letter dated July 27, 1982; and

WHEREAS, the EMI/A&B Agreement currently gives the County, among other things, the right to withdraw from A&B's Hamakua Ditch up to 1.5 million gallons of water per twenty-four hour period to serve the needs of the Kula Agricultural Park Subdivision (the "Park"), subject to the limitations on the County's withdrawal of water set forth in the EMI/A&B Agreement (including the limitations in the Agreement Re 1973 Memorandum of Understanding, Repairs to Waikamoi Water System, Construction of Reservoir at Kamole Weir dated March 21, 1996) ; and

WHEREAS, the County wishes to have the right to use such water to serve, in addition to the needs of the Park, agricultural needs of that certain Haleakala Ranch Company property located adjacent to the Park, identified by TMK No. 2-3-02:07, to be used as an agricultural park (hereinafter "Ranch Property"); and

WHEREAS, EMI and A&B are willing to grant the County's request on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the Parties hereby agree as follows:

1. This Agreement shall take effect when the County completes the anticipated upgrade of the Park water pumps and relocation of same to a new delivery point at A&B's Reservoir 40 (the "Reservoir 40 delivery point") in order to promote a more reliable flow of water.

2. Subject to the limitations on the County's withdrawal of water set forth in the EMI/A&B Agreement (including the limitations in the Agreement Re 1973 Memorandum of Understanding, Repairs to Waikamoi Water System, Construction of Reservoir at Kamole Weir dated March 21, 1996), the County shall have the right to withdraw from the Reservoir 40 delivery point up to 1.5 million gallons of water per twenty-four hour period to serve the needs of the Park lessees and the agricultural needs of the Ranch Property. The County shall cease to provide such water to any user, other than a Park lessee, in the event an alternative source of water becomes available to such user.

3. The County shall require users of water withdrawn from the Reservoir 40 delivery point pursuant to this Agreement to use their best efforts to limit their use of such water during times of water shortage.

4. This Agreement may be terminated sooner by one or more Parties with 30 days written notice to all other Parties, and shall terminate upon termination of the EMI/A&B Agreement.

5. To the extent permitted by law, the County shall release, defend, indemnify, and hold harmless EMI, A&B, and their respective officers, employees, agents, successors and assigns from any and all damages, claims, proceedings, liabilities, judgments, awards, losses, costs or expenses (including reasonable legal fees) whatsoever resulting from the County's use of the water withdrawn from the Reservoir 40 delivery point. The provisions of this paragraph shall remain valid and binding upon the County notwithstanding the expiration or termination of this Agreement.

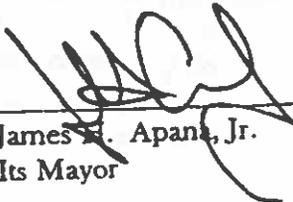
6. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

7. This Agreement represents the entire agreement among the Parties and shall supercede all prior or contemporaneous agreements in respect to the subject matter hereof. The Parties mutually agree that none of them has made any representation with respect to the subject matter of this Agreement, except such representations as are specifically set forth herein. This Agreement shall not be modified unless agreed to in writing by all Parties by written amendment thereto.

8. This Agreement represents the entire agreement among the Parties and shall supercede all prior or contemporaneous agreements in respect to the subject

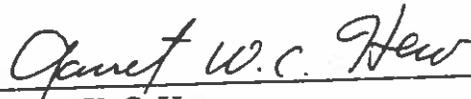
matter hereof, and is not intended to confer upon any person other than the Parties any rights or remedies hereunder.

County of Maui



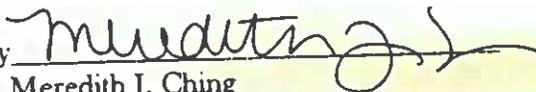
James H. Apana, Jr.
Its Mayor

East Maui Irrigation Company, Limited

By 

Gary W. C. Hew
Its Vice President

Alexander & Baldwin, Inc., through its division
Hawaiian Commercial & Sugar Company

By 

Meredith J. Ching
Its Vice President

Approved as to Form
and Legality:



TRACI FUJITA VILLAROSA
Deputy Corporation Counsel

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

DEC 30 2002

On this _____ day of _____, 20____, before me personally appeared JAMES H. APANA, JR., to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said JAMES H. APANA, JR. acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

LINDA K. TAMASHIRO
Linda K. Tamashiro

Notary Public, State of Hawaii
My commission expires: 10/19/06

vs

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 23rd day of December, 2002, before me appeared GARRET W. C. HEW, to me personally known, who, being by me duly sworn, did say that he is the Vice President of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Valerie L. Nakashima

(Signature)
Valerie L. Nakashima
Notary Public, State of Hawaii
My commission expires: 5/25/04

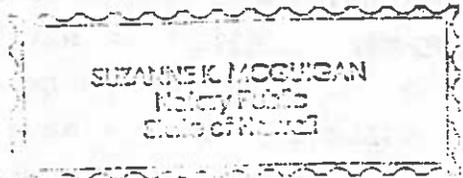
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STATE OF HAWAII)
City of Honolulu SS.
COUNTY OF MAUI)

dean
by

On this 20 day of December, 2009, before me
appeared MEREDITH J. CHING, to me personally known, who, being by me duly
sworn, did say that she is the Vice President of ALEXANDER & BALDWIN, INC., a
Hawaii corporation, and that said instrument was signed on behalf of said corporation by
authority of its Board of Directors, and said officer acknowledged said instrument to be
the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Suzanne K. McQuigari
(Signature)

Notary Public, State of Hawaii
My commission expires: 2/18/05

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**AGREEMENT RE 1973 MEMORANDUM OF UNDERSTANDING,
REPAIRS TO WAIKAMOI WATER SYSTEM,
CONSTRUCTION OF RESERVOIR AT KANOLE WEIR**

THIS AGREEMENT, made and entered into this 21st day of March, 1996, by and among A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL AND SUGAR COMPANY, a Hawaii corporation, whose mailing address is P. O. Box 266, Puunene, Maui, Hawaii 96784, referred to as "HC&S", the BOARD OF WATER SUPPLY of the County of Maui, whose principal place of business and mailing address is 250 S. High Street, Wailuku, Hawaii 96793, referred to as the "BWS," EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation, whose mailing address is P. O. Box 266, Puunene, Hawaii 96784, referred to as "EMI," and KULAMALU, INC., a Hawaii corporation, whose mailing address is P. O. Box 1417, Wailuku, Hawaii 96793, referred to as "KULAMALU,"

W I T N E S S E T H:

WHEREAS, this Agreement is being entered into in connection with the proposed Agreement Concerning the Construction of Storage Tank, Transmission Line and Appurtenances, and Improvement and Dedication of Existing Well, dated March 21, 1996, between BWS and Kulamalu, and the proposed Agreement Re Well Easement and Contribution to Design Work, dated March 21, 1996, between HC&S, EMI and Kulamanu, concerning the development of a well for BWS on land owned by HC&S ("Well Agreement"); and

WHEREAS, in connection with such Well Agreement, the parties have negotiated certain agreements relating to the following: (i) acceptance by BWS of certain terms and conditions relating to the use by BWS of water from the Wailoa Ditch System, (ii) funding by BWS of certain repairs to the Waikamoi water collection delivery

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SWS-211000

system, and (iii) design and construction of a reservoir to serve Kamole Weir;

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and agreements of the parties, the parties hereto agree as follows:

1. Amendment to 1973 Memorandum of Understanding. BWS, HC&S and EMI hereby amend the Memorandum of Understanding entered into on December 31, 1973 by and among EMI, HC&S and BWS ("1973 Memorandum of Understanding"), as follows:

(a) BWS shall not be permitted to withdraw more than 8 million gallons of water per twenty-four hour period from Wailoa Ditch under any circumstances. When the reservoir described in Section 3 below comes on line, the parties will discuss modification of the foregoing limitation in order to accommodate the reservoir.

(b) BWS shall not be permitted to withdraw water from Wailoa Ditch when the ditch flow drops below 11 million gallons of water per twenty-four hour period. This limitation is necessary in order to ensure sufficient water for the operation of HC&S' Puunene and Paia Mills, which provide 12% of the electricity consumed by the general public on Maui.

The limitations on withdrawal from Wailoa Ditch set forth above shall take effect at such time as Kulamanu (or its successors or assigns) begins to draw water from the BWS system for the parcels described in the Agreement Concerning the Construction of Storage Tank, Transmission Line and Appurtenances, and Improvement and Dedication of Existing Well, dated March 21, 1996, between BWS and Kulamalu.

2. Repairs to Waikamoi Water System. Notwithstanding any provision of the 1973 Memorandum of Understanding to the contrary, BWS hereby agrees to use its best efforts to fund as

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expeditiously as possible the repairs currently necessary, in the discretion of EMI, to the Waikamoi Upper Flume. Said repairs shall include but not be limited to: replacement of the top cover of the Upper Flume, installation of non-slip surface on the Upper Flume cover, and replacement of portions of the Upper Flume trestle (i.e., braces, legs, runners, footings, etc.) as deemed necessary by EMI. The BWS and EMI agree to begin repairs as soon as practicable and to coordinate with each other to undertake such repairs.

3. Reservoir at Kamole Weir. BWS agrees to use its best efforts to seek and secure on a timely basis appropriate funding sources for the construction of the reservoir, and HC&S, EMI, and KULAMALU agree to provide reasonable and necessary support to obtain such funding sources. KULAMALU agrees to fund the design work, up to \$125,000, for the reservoir in coordination with BWS. BWS also agrees to use its best efforts to proceed with and to complete the construction of said reservoir as soon as possible.

IN WITNESS WHEREOF, the parties hereto have caused this

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BWS-3/1/96

-3-

P. 04

FAX NO. 808 525 6878

A & B LAW DEPARTMENT

MAR-19-96 TUE 9:54

KULAMALU:

KULAMALU, INC.

Everett R. Dowling
EVERETT R. DOWLING
(Please type or print name above)

Its PRESIDENT

(Please type or print name above)

Its _____

BWS:

BOARD OF WATER SUPPLY,
COUNTY OF MAUI

Marie Timmey
Marie Timmey
(Please type or print name above)

Its Chairperson

APPROVED AS TO FORM
AND LEGALITY:

GARY W. ZAKIAN
GARY W. ZAKIAN
(Please type or print name above)

Its Deputy Corporation Counsel
County of Maui

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888112-8MS

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 3rd day of April, 1996, before me appeared Richard F. Cameron and Alyson J. Nakamura, to me personally known, who, being by me duly sworn, did say that they are the Ex. Vice Pres. and Secretary, respectively, of EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officers acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Lorelei H. Inoué
Notary Public, State of Hawaii
My commission expires: 9/6/96

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 3rd day of April, 1996, before me appeared Richard F. Cameron and Alyson J. Nakamura, to me personally known, who, being by me duly sworn, did say that they are the Sen. V.P. and Secretary, respectively, of A&B-HAWAII, INC., through its division HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officers acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Lorelei H. Inoué
Notary Public, State of Hawaii
My commission expires: 9/6/96

**AGREEMENT CONCERNING THE CONSTRUCTION OF STORAGE TANK,
TRANSMISSION LINE AND APPURTENANCES, AND DEVELOPMENT OF WELL**

This agreement is dated this 21st day of March, 1996 and is executed by and among the **BOARD OF WATER SUPPLY OF THE COUNTY OF MAUI**, a political subdivision of the State of Hawaii (the "Board"); and **KULAMALU, INC.**, a Hawaii corporation, the principal place and post office address is 1997 Main Street, P. O. Box 1417, Wailuku, Hawaii 96793 ("Kulamalu" or "Developer").

RECITALS:

A. Kulamalu and Sports Shinko (Pukalani) Co., Ltd. ("SSP") have applied for subdivision approval of a parcel of land located in Pukalani, Maui, Hawaii, identified by TMK (2) 2-3-8:5. The subdivision is called the "Kulamalu Subdivision", Maui County Department of Public Works and Waste Management LUCA No. 2.2338) (the "Pending Subdivision"), and proposes to subdivide the land into five parcels, designated as follows:

- (i) Lot 1, 9.862 acres
- (ii) Lot 2, 3.139 acres
- (iii) Lot 3, 29.300 acres
- (iv) Lot 4, 89.398 acres
- (v) Lot 5, 173.009 acres

Said five parcels are described on the plan attached to this agreement as Exhibit A.

B. When all governmental approvals are obtained for the subdivision, including final subdivision approval by Maui County Department of Public Works and Waste Management (collectively the "Approvals"), Parcels 2, 4 and 5 will be owned by Kulamalu (collectively the "Kulamalu Parcels"). In addition, SSP owns other land nearby, identified as TMK (2) 2-3-9:39, on which certain developments are planned, and which if acquired by Kulamalu shall be deemed to be included within the term "Kulamalu Parcels" for all purposes hereunder.

C. Kulamalu has separately entered into an agreement with Hawaiian Commercial and Sugar Company (a division of A&B-Hawaii, Inc.) and East Maui Irrigation Ltd. (collectively "HC&S") under which A&B-Hawaii, Inc. will provide the necessary right-of-entry and easement rights to permit Kulamalu to develop a new well on TMK (2) 2-7-15:34 in the area known as Huluhulunui Gulch at Kaupakalua Road in the general location described in Exhibit B hereto, and the dedication of the completed well facility to the Board. This project, together with the well, pump, tank (if needed), electrical power, pipes, pump control tank and other necessary appurtenances is collectively called the "Well". Hydrologist's reports indicate a probability that the Well will have a high-quality yield in excess of the water service needed for the long-term development of the Kulamalu

Parcels. Kulamalu is willing to accept certain risks inherent in committing to, and funding, a project of this kind for the benefit of both Kulamalu and the Board.

D. Kulamalu has plans for the development and resale of the Kulamalu Parcels for various uses, including school development, multi-family units, single-family units, commercial facilities and other uses, which will require estimated potable water service of 523,130 gallons per day in the aggregate, when the Kulamalu Parcels are fully developed (collectively called the "Required Kulamalu Capacity"). These estimated needs are based on (i) the projected development and use densities described in Exhibit C attached hereto (it being understood that such uses and densities may change as actual development proceeds); and (ii) the standards for water use applicable to various types of uses as set forth in the Board's current regulations and standards. Said developments are in accordance with the existing and/or proposed Community Plan for the Upcountry area.

E. The Board has indicated that the Board has insufficient source, transmission and storage capacity available in the upcountry area at this time to provide the Required Kulamalu Capacity and that additional water facilities must be established consistent with the Community Plan for the Upcountry area. Kulamalu is willing to participate with the Board in the design and construction of additional storage and transmission facilities and to provide to the Board additional source facilities at this time provided that it can be assured that certain allocations of water service will be available to Kulamalu for its projects on the Kulamalu Parcels.

F. The Board has determined that the public interest will be protected and that the needs of the Board for additional source, transmission and storage capacity for upcountry water needs will be served by the Board's accepting Kulamalu's participation in the development of a storage and transmission line project and Kulamalu's development of the Well. Said participation would be in the form of (a) either a lump-sum payment for the storage and transmission facilities (with a contingency to cover possible cost overruns) or construction by Kulamalu followed by dedication to the Board and the Board's reimbursing for its share, plus (b) Kulamalu's construction of the Well and dedication of the Well to the Board, all in accordance with the terms and conditions of this Agreement.

G. In light of the foregoing participation and Kulamalu's agreement to proceed immediately to develop the Well and in light of the extended period for future development of the Kulamalu Parcels and the SSP Parcels, the Board has determined that it is reasonable and in the public interest to establish certain agreed credits and allocated capacity for future use by SSP and Kulamalu and an extended period of reservation for those credits and capacities. The Board's finding is based in part on certain unique factors present in this situation, including the Board's need for additional upcountry source and storage facilities and Kulamalu's willingness to immediately fund the development of the Well, pay for it with cash at this time notwithstanding its extended development schedule and other factors deemed by the Board to be relevant and unique to this circumstance.

H. The parties desire to set forth all of the terms and conditions of the foregoing matters in this Agreement.

I. The term "Director" means the Director of Water Supply. The term "Board" may mean the Director if and to the extent the Director is authorized to act for the Board by rule or vote. The term "Department" means the Department of Water Supply. The Director, Board and Department are entities defined in Chapter 8 - 11 of the Maui County Charter.

Now therefore, in consideration of the mutual promises and benefits of the parties hereto it is hereby understood and agreed by and between the Board and Kulamalu as follows:

A. CONSTRUCTION OF STORAGE TANK AND TRANSMISSION LINE.

1. Construction Participation. The Developer and the Board will participate with each other in the construction of the following improvements: (a) a storage tank, the size of which will be determined by the Board, but which in all events will have a capacity of not less than 350,000 gallons, together with the tank site and appurtenances and land acquisition (collectively the "Storage Improvements"); and (b) a 12-inch transmission line (together with necessary easement rights) originating from said tank extending to Five Trees Intersection and running up the Lower Kula Road to the mauka boundary of Kulamalu's Property (collectively the "Transmission Improvements").

Within 20 days after this agreement is signed by both parties, the Board will notify Developer in writing (by certified mail, return receipt requested) as to whether the Board desires to increase the capacity of the Storage Improvements. Within 45 days after receiving said notice, Developer will notify the Board in writing (by certified mail, return receipt requested) if the Developer elects option B below (which election shall be irrevocable). If Developer shall have failed to elect option B by the end of said 45-day period (or such extended date as may be agreed on in writing by the Director and the Developer), option A shall automatically become effective. Then the parties will proceed under the applicable option in accordance with the provisions set forth below:

- (a) Option A: Within 30 days after option A shall become effective, Developer will pay to the Board, in cash, the sum of \$1,887,600. This amount is based on the list of improvements and facilities and estimated cost amounts listed in Exhibit D attached hereto together with a reasonable contingency for possible cost overruns (the "Contingency").

All direct costs of designing and constructing the Storage and Transmission Improvements under option A, including a 350,000 gallon tank, and including costs of acquiring the necessary land and easement rights are herein called the "Storage and Transmission Costs."

The Board will proceed promptly and with due diligence to acquire the land for and to construct the Storage and Transmission Improvements, and said improvements will be completed and operational by the end of 36 months from the date the funds are paid as provided above; provided, however, that said 36-month period shall be extended to accommodate delays beyond the Department's reasonable ability to foresee and control, including but not limited to Acts of God or administrative actions or litigation commenced by any person seeking to block or delay development of said improvements or pursuant to any administrative or judicial order relating to the development of the Developer's property.

Attached as Exhibit D is a list of all of the agreed items comprising the Storage and Transmission Improvements with the estimated Storage and Transmission Cost calculations on which Developer's cash payment is based. The actual costs of the Storage and Transmission Improvements, including land acquisition, design costs, construction costs and other costs will be shared by the parties in the following proportions: (a) the developer shall be responsible for all of the Transmission Costs; plus the cost of land required for a 350,000 gallon tank; plus a fraction of costs to design and construct the tank and appurtenances, the numerator of which shall be 350,000 and the denominator shall be the total expanded capacity of the storage tank (the "Developer's Share"); and (b) the Board shall be responsible for the cost of the increase in land area needed to accommodate the larger tank, plus a fraction of costs to design and construct the tank and appurtenances, the numerator of which shall be the total actual capacity of the storage tank in excess of 350,000, and the denominator shall be said total actual capacity (the Board's Share"). For purposes of the above formula, the "Transmission Costs" include all the costs of designing and constructing the 12-inch transmission line and the cost, if any, of acquiring necessary easement rights.

Notwithstanding the foregoing, if the Board shall not have elected to increase the size of the tank as provided above, the Board's Share shall be \$-0- (except as provided below).

If the Developer's Share after completion of the project exceeds the costs on Exhibit D, said excess will be paid out of the Contingency. If after completion of the project the total actual Developer's Share is less than the estimates set forth in Exhibit D in the aggregate, the Board shall not be obligated to refund said savings to Developer, except that the Board will refund to Developer the Contingency if and to the extent it shall not have been used to fund cost overruns as provided above. The Board will be responsible for the Board's Share plus any part of the Developer's Share in excess of the Contingency; provided, however, that if the Developer's Share shall exceed the Developer's lump sum payment as provided above plus the

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Contingency, the Director shall notify Developer in writing of said excess when it shall be known to the Board, and Developer will elect either (a) to pay said excess or (b) to accept a reduction in the amount of storage capacity, expressed in gallons, reserved for Developer under Section 2 below (the amount of said reduction being a fraction of 350,000, the numerator being that portion of the Developer's Share in excess of the Contingency and the denominator being the total actual amount of the Developer's Share including said excess. Any such payment, if elected under (a), shall be made within 60 days of Developer's receipt of said written notice from the Board. If payment is not made by 60 days, then Developer's credit will be reduced by the Board under clause (b) above.

- (b) Option B: Within 60 days of electing Option B, the Developer will provide a bond or letter of credit to the Board in the amount of the estimated Developer's Share (defined above) of Storage and Transmission Costs (the "Bond"), and the Board and Developer will execute an agreement substantially in the form attached as Exhibit E (the "Developer Construction Agreement"). The Developer Construction Agreement will provide that the Developer will construct the Storage and Transmission Improvements and that the Board will reimburse the Developer for the Board's Share. The parties will then proceed to perform their functions and obligations under the Developer Construction Agreement.

If the Board shall have elected to increase the size of the Storage tank to 500,000 gallons or greater, the parties agree that Section 7 of the Developer Construction Agreement will be changed to read in the form attached as Exhibit E-1, instead of the form of that section contained in the body of the Agreement in Exhibit E.

2. Allocation and Reservation of Storage Capacity. In consideration of the payment set forth in Section 1 above (or in consideration of the Developer providing the Bond and executing the Developer Construction Agreement), the Board will allocate and reserve storage capacity of 350,000 gallons (the "Storage Credits") for the exclusive use of Developer on the Kulamalu Parcels located above 1,320 feet of elevation, and its respective affiliates, assignees and future developments on the Kulamalu Parcels. The use by Kulamalu of the storage capacity allocated to it in the preceding sentence will not require the payment of any impact fee or assessment under Chapter 8 of the Board's rules and regulations or otherwise chargeable by the Board in the nature of a storage development fee, reimbursement or similar charge relating to the Board's development of storage facilities. The allocation and reservation of Storage Credits will not be construed to require the Board to provide actual water service until the Storage and Transmission Improvements are completed.

3. Allocation and Reservation of Transmission Capacity. In further consideration of the payments (or Developer Construction Agreement and Bond) as set

forth in Section 1 above, the Board will allocate and reserve for the use of Developer and its respective affiliates, assignees and future developments on the Kulamalu Parcels, a credit (the Transmission Credits") against future water service development fees based on the total cost paid by Developer to pay for the engineering, acquisition and construction of the Transmission Improvements. Said credit shall be the actual costs to Developer thereof, expressed in dollars. Said credit is presently estimated at \$814,000 and is computed as detailed in Section B of Exhibit D (but will be based on actual costs incurred). Said credit will be increased by any portion of the Contingency actually spent by the Board attributable to the Transmission Improvements. Developer shall apply said credit against its obligations to pay water system development fees attributable to the Board's (or Developer's) development of transmission facilities as and when water service is requested to provide the required Kulamalu Capacity. The water meters which may be obtained for said credit shall be based on the Board's fee schedule in effect at the time the service is requested as the development of the Kulamalu Parcels shall proceed. If at the time of any request for service the Board does not have a rule in effect which requires the payment of a specific water system development fee which is attributable to the Board's development of transmission facilities, Developer will be entitled to apply said credit against any other fees or exactions of the Board which are assessed as a condition of providing water service under its rules and regulations in effect at that time. Said credit shall continue in effect until it shall be fully applied by Developer.

4. Existing Credits for Existing Facilities. The Board acknowledges that existing water system development improvements and fee credits exist for the benefit of the Kulamalu Parcels which were included in the planned service area for storage and transmission improvements previously developed as part of the Pukalani development. Said existing credits consist of 91,000 gallons of storage in the existing on-site 850,000 gallon tank (remaining after allocating 1,000 gallons per lot to the 759 lots already developed) together with appurtenant transmission improvements. (The foregoing is subject to confirmation by the Director.)

B. DEVELOPMENT AND DEDICATION OF WELL

1. Within 60 days after the signing of this Agreement, the Developer will provide to the Board a bond or letter of credit issued by a surety or bank authorized to do business in the State of Hawaii and acceptable to the Director (the "Well Bond") in the amount of \$1,847,890 which is the estimated cost of engineering, drilling, developing and equipping the Well, including all pumps, pipes, electrical power, pump control tank and other appurtenances to make the Well operational to deliver water into the Board's system. The Well Bond will secure the Developer's obligation hereunder to construct, complete and equip the Well at no cost to the Board by the end of 36 months from the date of this agreement, or such later date as shall be agreed on by the Board and Kulamalu. The Well Bond will have an expiration date of one year plus two one-year automatic extensions shown on Exhibit D-2. Said estimated costs are shown on Exhibit D-1 and include a contingency; and the form of Well Bond is attached as Exhibit D-2 (with any changes as may be required or as shall be approved by the Director and Corporation

Counsel). The actual amount of all of said costs which shall be incurred through the end of construction and dedication of the Well to the Board, are herein collectively called the "Well Costs". The Director and the staff of the Board will, after execution of this Agreement, review the estimated Well Costs and will notify Developer if in their opinion, they are underestimated; and the amount of the Well Bond will include any increase so determined by the Director and the staff.

The Developer has engaged Austin, Tsutsumi & Associates, Inc., a registered Hawaii engineer, to perform all of the design and engineering work on the Well and to prepare the plans and specifications for the project. The plans and specifications shall be subject to the review and approval by the Director and shall comply with all applicable laws, rules, regulations and standards.

Upon approval by the Director of all plans and specifications, the Developer will proceed promptly and with due diligence to perform all necessary tasks to develop the Well, including but not limited to the following, all at no cost to the Board:

- (a) Obtain all design and construction engineering services.
- (b) Document and conclude all necessary arrangements concerning the land acquisition.
- (c) Obtain all necessary contracts with third parties for the development, construction and equipping of the Well.
- (d) The Developer will obtain the prior written approval of the Director of all material changes in or deviations from approved plans and specifications.
- (e) The Developer will be responsible for obtaining all necessary governmental approvals (and the Board and Director will provide reasonable cooperation as needed).
- (f) Developer will perform all trials and tests necessary to render the Well operational and to conform and document the quality and quantity of the Well water production and capacity.
- (g) Developer will obtain all Department of Health approvals to put water into the Board's system.

2. Inspections and Progress Meetings. The Director and his staff will make periodic inspections of the project as needed.

3. Dedication and Acceptance by the Board. Upon completion of construction of the Well and upon the Well becoming operational after all necessary trials and tests are completed, the project engineer will notify the Director; and the Director and staff will promptly inspect the completed Well and all test results. Within 30 days after receiving said notice, the Board will accept ownership and operation of the Well together with all appurtenant land rights. If upon its inspection the Director shall determine that the project is not completed as agreed, the Director will immediately notify the Developer of the reasons for said non-approval in sufficient detail to enable the project manager, the

general contractor and the parties to correct all material deficiencies. Upon the Director receiving notice that such deficiencies are corrected, the Director will promptly reinspect the Well with the objective of completing the process and the Board's acceptance efficiently and within the shortest reasonable time.

Upon the Board's acceptance, the Developer will provide a written warranty and bond against all defects in workmanship and materials which shall run in favor of and be enforceable by the Board from and after the Board's acceptance, for a period of one year from the date of the Board's acceptance of the general contractor's work.

From and after the Board's acceptance, the Board will own, operate and maintain the Well for its own use and at its own expense.

4. Form of Dedication: Title. The Board will accept the dedication of the Well Site in the form of an assignment of an easement granted by A&B-Hawaii, Inc., in the form attached as Exhibit F. Title to the easement and easement area shall be free and clear of liens and encumbrances (except the terms of the easement itself and any other matters which would not have any adverse effect on the Board's operation, use and enjoyment of the Well and its output).

5. Allocation and Reservation of Source Capacity. In consideration of the foregoing, the Developer will receive an allocation and reservation of source capacity from the Board's sources serving the Upcountry area (called the "Source Credit") for the exclusive use of Developer and its affiliates, assignees, and future developments on the Kulamalu Parcels or other land which may be acquired by the Developer which shall be served by the Board's Haiku or Upcountry water systems. The use by the Developer of the Source Credit to be allocated under this paragraph will not require the payment of any impact fee or assessment under Chapter 8 of the Board's Rules and Regulations or otherwise chargeable by the Board in the nature of a source development fee, reimbursement of similar charge (over and above payments and dedications required by this Agreement). The amount of Source Credit shall be determined and provided as set forth in the following subparagraphs:

- (a) The final amount of Source Credit will be determined when the Well is completed, fully tested and operational.
- (b) If the water is potable (according to State of Hawaii Department of Health standards), the Board will use the water for the Board's Haiku or upcountry water system; and the amount of Source Credit shall be the amount, expressed in gallons, equal to 0.45 times the installed pump capacity. This formula conforms to the Board's operational standard now in general use.
- (c) If the water is non-potable and may be pumped into the Wailoa Ditch system for use by the Board for customers of non-potable water or for the Kamole treatment plant, the amount of Source Credits will be determined by

computing the credit under (b) above and then reducing it (but not increasing it) to reflect the difference in capital cost between the non-potable water and the Board's potable water produced by the Kamole treatment plant. More specifically, the amount determined by the formula in (b) above will be multiplied by a fraction, the numerator of which will be the "per gallon non-potable cost" (defined below) of the water from the Well and the denominator will be 2.26 (which is the estimated capital cost per average daily gallon of production of the Kamole treatment plant including upgrades presently pending plus an allocated portion of the cost of increasing the Board's upcountry reservoir capacity). The "per gallon non-potable cost" shall be determined by dividing the total actual Well Costs by the estimated average daily production capacity of the Well (i.e., 0.45 times the installed pump capacity).

- (d) Notwithstanding the foregoing, the minimum Source Credit allocated to Developer shall be 290,000 gallons (average daily use); and said allocation shall become effective at the time the Developer provides to the Board the Well Bond. If the actual Source Credits determined under subparagraph (a) through (c) above shall exceed said 290,000 gallons, then the total allocation of Source Credits shall be increased accordingly, effective at the time of dedication. If, however, the actual credits computed under said subparagraphs (a) through (c) shall, for any reason, be less than said 290,000 gallons (if, for example, the tested chlorides in the water are too high to permit the reasonable use of the water in either the Board's Haiku domestic water system or the Wailoa Ditch or if other causes occur beyond Developer's control) the Source Credits will not be reduced, but the Developer will compensate the Board for the amount of shortfall in one or more of the following ways:
- (i) If the Developer has unused Source Credits (relating to sources in the upcountry or Haiku systems) from any other development or agreement with the Board which are not then designated for use, the Developer will apply those credits to the shortfall.
 - (ii) If the Developer has insufficient unused credits under (a), the Developer will make up the difference by a cash payment to the Board equal to the Board's normal water system development fee (source component) in effect at that time in an amount sufficient to make up the shortfall.
 - (iii) In the Board's discretion, the Board may accept compensation which the Developer may offer in some other form, consistent with the Board's rules and regulations, such as the Developer's acquisition or development of other source capacity for the Board's use in the Board's Haiku or Upcountry water systems.

- (iv) The Developer's Well Bond shall secure the Developer's obligations under this subparagraph (d) .
- (v) The choice of the above remedies shall be proposed by the Developer, but the Board will make the final decision as to how the Developer will resolve said shortfall under one or more of the above options.

C. GENERAL TERMS AND CONDITIONS

1. Allocation and Use of Credits. The Storage and Transmission Credits shall not be assignable in whole or in part by Kulamalu for use in connection with the development or use of any land other than Kulamalu Parcels. The Source Credits may be used for the development of the Kulamalu Parcel and any excess not needed therefor may be assigned for use by any property served by the Board's Haiku or Upcountry water systems below the elevation of 2,000 feet (i.e., the system served by the Maluhia tank and the Wailoa Ditch). Whenever Kulamalu desires to use any credits hereunder or allocate said credits specifically to a portion of, or development within a property, Kulamalu will notify the Board by means of a signed statement in substantially the form attached as Schedule G. The amount of Storage Credits and Source Credits which will be applicable to any proposed development will be determined upon consultation with, and will be approved by, the Director based on (a) the estimated average daily use of water by the development, in gallons, and (b) the Department's normal standards and practices for estimating and allocating water use.

Nothing in this Agreement shall be construed as obligating the Board to provide Storage, Transmission or Source Credits to Kulamalu or any other person in excess of the credit specifically provided for in this Agreement.

The Storage, Transmission and Source Credits provided for in this Agreement shall be used by Kulamalu, by the fifteenth anniversary of this Agreement. The term "used" shall mean in each case the submission to the Department of Water Supply of a request for installation of a water meter for water service. Said 15-year period is subject to extension by the Board upon good cause being shown to the Board.

2. Pending Subdivision Approval. Pursuant to Board Rule §2-12, the Board has determined the Pending Subdivision, as set forth in Recitals, section A., will properly serve the public with water and fire protection without full and strict compliance with the Board's rules and regulations, that the public interest will be adequately protected by approving the Pending Subdivision pursuant to the terms of this Agreement, and that the Pending Subdivision is not contrary to the intent and purpose of the Board's rules and regulations. Based on the foregoing the Board hereby approves the Pending Subdivision. The Director will promptly notify other appropriate county agencies of this determination.

3. Initial Water Service. The Water Director will, simultaneously with the Board's execution of this Agreement, execute and deliver to Developer the "will serve" letters in the forms attached hereto as Exhibit H. The capacity described in said letters if and to the extent actually used, shall be debited against the reserved allocations of storage transmission and source capacity under Sections A.2, A.3 and B.5 above, in accordance with the procedure outlined in Section C.1 above.

4. Assignability. Subject to Section C.1 above, the parties agree that all rights, interests and allocations of Kulamalu may be freely assignable, without the Board's consent to future purchasers, lessees, developers or other persons who may acquire any interest in the Kulamalu Parcels. Also, Source Credits may be freely assignable without the Board's consent to other developments served by the Board's Haiku or upcountry water systems ^{below the elevation of 2,000 feet (i.e., the system served by the Maluhia tank and the Waihoa ditch)}

5. Attorney's Fees. If any legal action shall be brought by a party to enforce or interpret any portion of this agreement or to redress any breach by the other party, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

6. Waiver of Main Line Extension Reimbursement. Kulamalu hereby acknowledges that it shall not be entitled to any reimbursement right for main line extension under Section 2-6(c) of the Board's rules and regulations by virtue of the Storage and Transmission Improvements.

7. Assignees and Successors. Except as otherwise specifically provided in this Agreement, this agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. The terms "Kulamalu" and "Board" herein shall include their respective successors and assigns.

8. Governing Law. This agreement shall be governed by the laws of the State of Hawaii.

9. No Waiver. No failure by any party to insist upon strict performance by the other party of any of the terms and provisions of this agreement shall be deemed to be a waiver of any such terms or provisions or of the other parties obligation to comply with such terms or provisions; and notwithstanding such failure, each party shall have the right thereafter to insist upon the other party's strict performance of such terms and provisions. Any waiver of the terms of this agreement shall not be effective unless given in writing.

10. Amendments. This agreement may not be amended unless mutually agreed to in writing and signed by the parties hereto.

11. Notices. All notices or other communications given by either party hereto shall be deemed to be duly given and received by the other party by the earlier to occur of (a) actual receipt by a duly elected or appointed officer, director or authorized employee of said other party, either by mail, courier, hand delivery or facsimile transmission, or (b) 3

business days after having been deposited in the United States mail postage prepaid sent by registered or certified mail (whether or not actually received by the other party), addressed to the other party at the address set forth at the top of this agreement, or to such other address as such other party may have given notice of to the sending party in accordance with the foregoing provision.

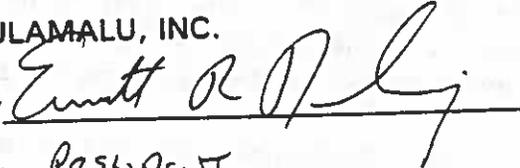
12. No Third-Party Beneficiary. No third-party beneficiaries are intended to be created by this Agreement or by any of the terms hereof. No person or entity other than Kulamalu or the Board, their successors or assigns, shall be entitled to claim any rights under, or to enforce any of the provisions hereof.

13. Counterparts. This agreement may be executed in counterparts, and said execution shall have the same effect as if all parties executed the same original copy hereof. Either party shall be authorized to combine all signed original pages and notary acknowledgments within a single copy of this document for purposes of recording in the State of Hawaii Bureau of Conveyances and submission to any tribunal in any proceeding.

14. Authority of the Director. The Director is authorized to execute any document relevant and necessary to carry out the terms of this Agreement in behalf of the Board. However, before any document resulting in the expenditure of funds contemplated pursuant to this Agreement is executed, the Board must first appropriate those funds, either in its annually adopted budget or an amendment thereto.

Executed as of the day and year first above written.

KULAMALU, INC.

By 

Its President

(Kulamalu)

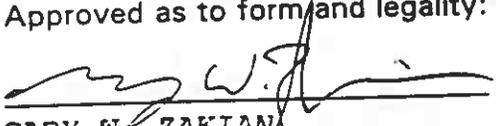
BOARD OF WATER SUPPLY

By 

MARIE KIMMEY

Its Chairperson

Approved as to form and legality:


GARY W. ZAKIAN
DEPUTY CORPORATION COUNSEL

County of Maui

TDW:cs/20574.1/031996

STATE OF HAWAII

)
) SS.

COUNTY OF MAUI

On this 21st day of March, 1996, before me personally appeared Everett R Dowling, to me known, who being by me duly sworn, did say that he is the President of KULAMALU, 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 Everett R Dowling acknowledged said instrument to be the free act and deed of said corporation.

Jerry Ann Miller

Notary Public, in and for said County and State

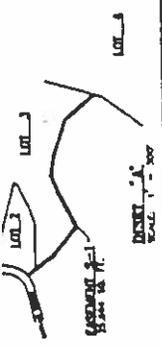
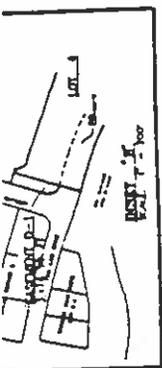
My commission expires: 4/19/98

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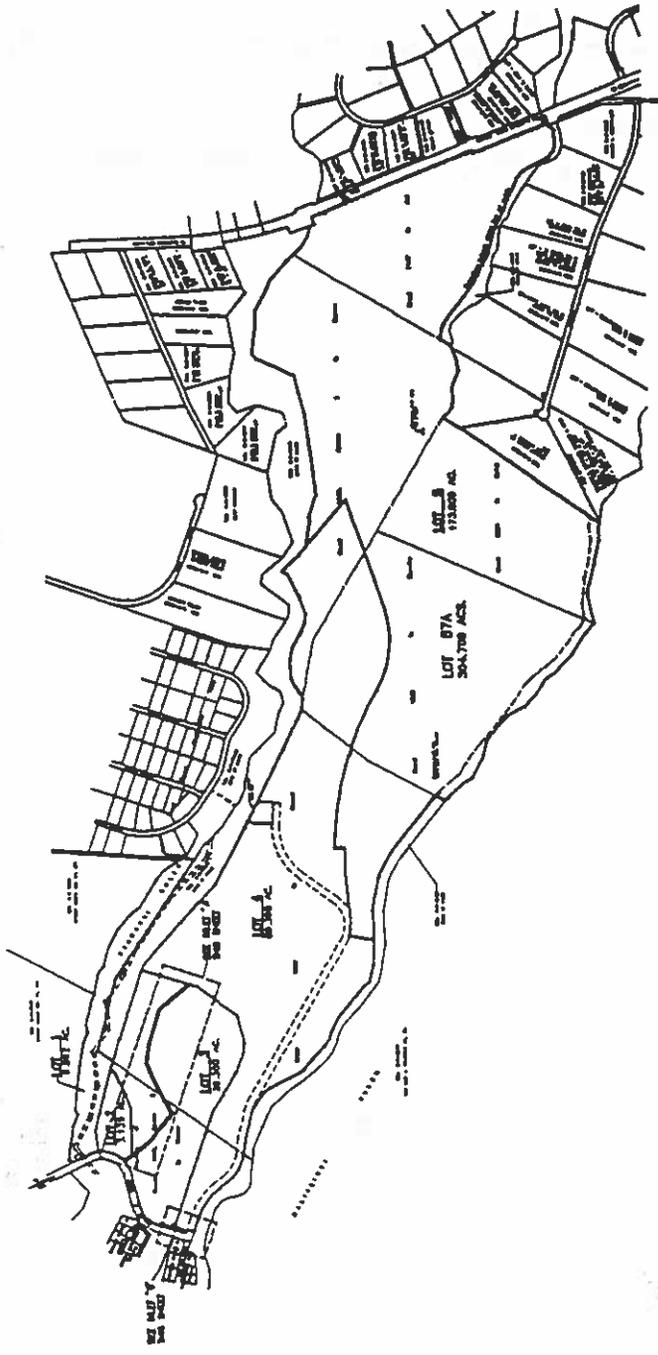
147

List of Exhibits

- A. Plan of Pending Subdivision
- B. Location of Well
- C. Statement of Projected Developments and Uses
- D. List and Costs of Storage and Transmission Improvements, with Contingency.
- D1. Estimated Well Costs
- D2. Well Bond and Form of Payment Demand
- E. Optional Agreement for Construction of Storage Tank and Transmission Line
- E-1. Optional Section 7 of Exhibit E
- F. Form of Grant of Easement
- G. Form for Exercising and Accounting for Credits
- H. "Will Serve" Letter



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DATE: 11/15/88

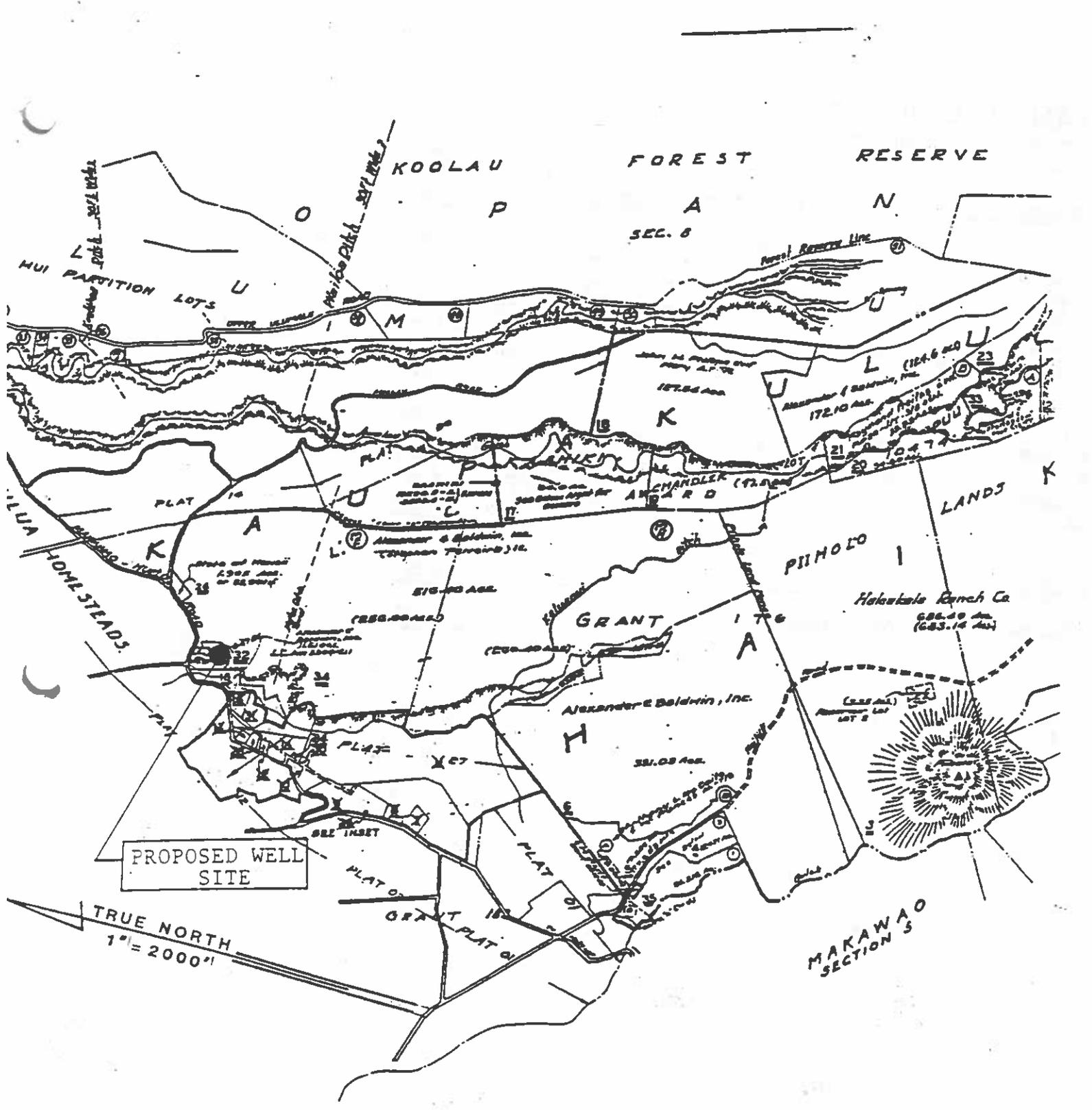
KULAMALI SUBDIVISION
 SUBDIVISION OF LOT 87-A
 COUNTY CLUB SUBDIVISION UNIT 1-9)
 (PUTALANI TERRACE AND LOTS 1 THROUGH 6
 AND DESIGNATION OF EASEMENTS S-1 AND D-1)

(TOTAL AREA = 304,708 ACRES)
 THESE ARE THE LOTS TO BE PLATED
 CHART 10879 AND CHART 10878, JULY 1, 1988
 THESE ALSO PORTIONS OF CHART 10878, JULY 1, 1988
 CHART 10879 AND CHART 10878, JULY 1, 1988
 TO AT APPROXIMATE BOUNDARIES 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

ATA AUSTIN, TSUTSUMI & ASSOCIATES, INC., CIVIL ENGINEERS & SURVEYORS
 1871 WILU PA LOOP SUITE A • WAILUKU, MAUI, HAWAII 96793



11/15/88



TMK: (2)2-7-15:34

EXHIBIT B

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LAMALU EXHIBIT "C"

Estimated Water Use by Land Division
 Year-96

Description	Lot	Area	Density	Units	Per Unit Water Use	Total Water Use
1-family	1	7.18	13	93	560	52,270
2-family	2	8.25	4.1	12	600	7,200
3-family	5	5.14	4.1	10	600	6,000
4-family	7	34	4.1	139	600	83,640
5-family	8	37	4.1	152	600	91,020
6-family	10	10	1	10	1,700	17,000
7-family				<u>416</u>		<u>257,130</u>
8-family	9A	5	13	65	560	36,400
9-family	9B	21.6		178,000	140	24,920
10-family	9C	15.7			1,700	26,690
11-family	9D	4.7			1,700	7,990
12-family	11	100		500	60	30,000
13-family						<u>126,000</u>
14-family						140,000
15-family						<u>523,130</u>

allocated

Total Estimated Kulamalu Water Requirement

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Exhibit D

Estimated Cost of Storage and Transmission Improvements

A. Costs to Construct a 350,000 Gallon Storage Tank		
1. Land Acquisition Cost - Tank Lot (24,000 sq. ft.):	\$ 50,000.00	
2. Land Acquisition Cost - Access Esmt. (23,250 sq. ft.):	\$ 25,000.00	
3. Cost of Engineering:	\$ 75,000.00	
4. Construction Costs:		
a. 350,000 gal. tank w/ appurtenances	\$680,000.00	
b. Site work:	<u>\$ 72,000.00</u>	
		\$ 902,000.00
B. Costs to construct a 12" transmission line		
1. Cost of Engineering	\$ 74,000.00	
2. Construction Cost:		
a. 8000 LF of 12" w/l:	<u>\$740,000.00</u>	
		\$ 814,000.00
C. Contingency (10%)		<u>\$ 171,600.00</u>
		\$1,887,600.00
	Grand Total:	

**WELL "D-1"
Estimated Well Costs**

Well Construction Including Drilling, Casing, and Testing	\$825,000
Compressor Installation	\$230,000
Control Tank	\$150,000
Master Pump and Piping	\$80,000
Site Electrical	\$175,000
Site Electrical	\$125,000
Engineering	\$94,900
Contingency (10%)	\$167,990
TOTAL	\$1,847,890

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Exhibit D-2

_____, 19__

Board of Water Supply
County of Maui ("Beneficiary")
200 South High Street
Wailuku, Maui, Hawaii 96793

Re: Kulamalu, Inc.: Security for Obligations to Develop a Well

Dear Board of Water Supply:

We hereby establish in your favor our irrevocable standby Letter of Credit No. 96-025 available by negotiation of beneficiary's drafts at sight drawn on us up to the Aggregate Amount of U.S. \$ _____ for the account of Kulamalu, Inc. ("the Developer"), accompanied by a signed statement executed by the Director of the Department of Water Supply, County of Maui, in the form and content of the unexecuted statement attached hereto as Schedule 1 and made a part hereof.

Partial drawings permitted.

It is a condition of this Letter of Credit that it shall terminate one year from the date of this letter; provided, however, that it shall be automatically extended without amendment for up to two additional periods of twelve (12) months each from _____, 19__, as the case may be, unless at least thirty (30) days prior to its expiration date we notify you in writing by certified mail to the above address that we elect not to extend its expiration date. Upon your receipt of such notice, you may draw hereunder, by means of your draft at sight drawn on us up to the aggregate amount of this Letter of Credit less previous drawings, if any, accompanied by this Letter of Credit and amendments thereto, if any.

Drafts drawn under this irrevocable standby letter of credit will be submitted by written demand for payment in the form attached as Exhibit 1.

The undersigned hereby engages with drawers and/or bonafide holders that drafts drawn and negotiated in conformity with the terms of this letter of credit will be duly honored if presented att our branch at _____, Wailuku, Hawaii on or before its expiration date, or future expiration date as herein before mentioned.

This letter of credit is subject to the "Uniform Customs and Practice for Documentary Credits" (1993 Revision) International Chamber of Commerce Publication No. 500.

Schedule 1

Written Demand for Payment

Drawn under _____ standby Letter of Credit No. _____ dated _____, 1996.

Kulamalu, Inc., of 1997 E. Main Street, Wailuku, Hawaii 96793, has failed to perform its obligations under Section C-1 of the Agreement Concerning the Construction of Storage Tank, Transmission Line and Appurtenances, and Development of Well dated March _____, 1996, between the Board of Water Supply of the County of Maui and Kulamalu, Inc. in that Kulamalu, Inc. has failed to complete construction and dedication of a well for the benefit of the Board by the time required in said agreement. The Board of Water Supply hereby draws on the Letter of Credit in the amount of \$ _____ which will be used to complete construction and dedication of said well or if well development has not commenced, to fund other source development as part of the Haiku and upcountry water systems of the Board of Water Supply.

Dated this ____ day of _____.

DIRECTOR OF WATER SUPPLY,
COUNTY OF MAUI

TDW:cs/21193.1/031896

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EXHIBIT "E"

Agreement Concerning the Construction of a
_____ Gallon Storage Tank, Transmission Line
and Appurtenances

This Agreement is made this ___ day of _____, 199__, by and among the BOARD OF WATER SUPPLY ("BWS") and KULAMALU, INC., a Hawaii corporation, (the "Developer").

RECITALS:

1. Developer is developing a project in Kula, Maui, which will require the construction of certain offsite water system facilities as part of BWS's public water system. BWS has a need for additional water system facilities in the Kula area. The Developer needs 350,000 gallons of storage capacity plus a 12-inch transmission line from the storage facilities to the boundary of developer's lands (the "Project"). The BWS has requested that the storage capacity be increased to _____ gallons.

2. Section 2-2 (Reservoirs) of the Rules and Regulations of BWS provides that when a subdivider is required to install a reservoir together with appurtenances, of greater capacity than is necessary to serve his subdivision, BWS shall share the cost with the Developer.

3. BWS and Developer desire to cooperate in the construction of the project.

4. The term "Director" means the Director of Water Supply, acting in accordance with the BWS's rules, regulations and authorizations. The term "BWS" may mean, in any particular instance, the Director if and when the Director is authorized by the BWS or its Rules to act in said instance.

AGREEMENT

NOW THEREFORE in consideration of the mutual promises and benefits of the parties hereto, it is hereby understood and agreed by and between BWS and the Developer as follows:

1. Design and Engineering. The Developer has engaged at Developer's expense Austin Tsutsumi & Associates, Inc., a registered Hawaii engineer, to perform all of the design and engineering work on the tank and inflow line and other

appurtenances under a separate contract (the "Tank Engineering Contract"). The plans and specifications for the project shall be subject to Director's approval and shall comply with all applicable laws, rules, regulations and standards. The costs of designing the 12" transmission line from the tank to Developer's land (the "Transmission Line") shall not be included in the Tank Engineering Contract, but shall be provided by a separate agreement between Developer and Engineer and all plans and specifications shall be subject to Director's approval.

2. Acquisition of Land. Developer will proceed to acquire all of the land and easement rights necessary for the Project. The parties agree that this will necessitate the acquisition of _____ additional square feet of land in the tank site to accommodate the _____ gallon storage tank over and above the size of the tank site which would be required for Developer's 350,000 gallons of storage. The Developer and BWS shall agree upon the increase in cost attributable to said increase in land area, based upon the per square foot cost of the land acquired. Said cost increase is called the "Land Differential". None of the costs of land or easement rights for the Transmission Line shall be included in the Land Differential.

3. Construction Cost. As soon as the final construction plans have been completed by the Developer and approved by BWS, Developer will obtain firm bids from one or more responsible contractors acceptable to BWS. The construction bid and said additional cost information will be provided in detail and format acceptable to Director and shall be subject to review and approval by BWS. The total construction cost of the tank and appurtenances as set forth in the bid (and as subsequently changed pursuant to change orders approved by the Director) shall be called the "Tank Construction Cost". The "Tank Construction Cost" shall include all related costs including contractor's bonds, the post construction bond provided under Section 6 below, builder's risk insurance, building permit fees, all of which shall be payable under the construction contract(s) and also any necessary construction supervision by the project engineer. All costs relating to the Transmission Line shall be excluded from the term "Tank Construction Cost."

4. Development Tasks. Upon approval by Director of all plans and specifications and the initial Tank Construction Cost and the Land Differential, Developer shall proceed to perform all necessary tasks in connection therewith such as the following:

- (a) Contract for the construction of the project.
- (b) Provide construction management services and engineering management services during the construction of the project.

(c) Obtain necessary land and easement rights for the tank site and the transmission lines.

(d) Apply for and process the subdivision to create a lot and the necessary easements upon which the project will be located.

(e) Submit to Director all construction drawings and construction contracts for BWS's review prior to award of the contracts. The Director and Developer shall each certify to the other that funds are available to pay each party's respective share in the costs of the project. Developer will execute construction contracts for the tank construction in reliance on the certification of funds by the Director.

(f) The Developer will not authorize any change order for the tank construction without prior written approval of the Director, and, if appropriate, an adjustment to the total construction costs.

5. Inspections and Monthly Progress Meetings. The Director will make periodic inspections of the project as needed. The Director and Developer shall meet at least once each month to review the progress of construction and to approve necessary change orders.

6. Dedication and Acceptance by the BWS: Upon receiving a notice from the Project engineer that the Project is complete in accordance with approved plans and specifications (except for punch list items which are the general contractor's responsibility to correct) (the "Completion Notice"), the Director shall promptly inspect the completed Project and within 20 days of receiving the Completion Notice, and the submission and approval of closing documents, the BWS will accept the ownership and operation of the tank, transmission lines, appurtenances, tank site and all easement rights. If on its inspection the Director shall determine that the project is not completed as stated in the Completion Notice, the Director will immediately notify the project manager of the reasons for said nonapproval in sufficient detail to enable the project manager, the general contractor and the parties to correct all material deficiencies. Upon the Director receiving notice that such deficiencies are correct, the Director will promptly reinspect the Project with the objective of completing the process and the BWS's acceptance efficiently and within the shortest reasonable time. At reasonable intervals during the course of construction, the Director will inspect the work-in-progress and will notify the parties of any noted deficiencies with the objective of facilitating the BWS's acceptance on completion.

Upon the BWS's acceptance, Developer will provide a written warranty and bond against all defects in workmanship and materials which shall run in favor of

and shall be enforceable by the BWS from and after the BWS's acceptance, for a period of one year from the date of the BWS's acceptance of the general contractor's work.

From and after acceptance the BWS will own, operate and maintain the Project at its own expense.

7. Payments by the BWS.

For purposes of this Section, the term "Project Costs" shall mean the costs of the Tank Engineering Contract and the Tank Construct Cost; and the term "BWS Share" shall mean a fraction, the numerator of which is the total storage capacity of the tank, in gallons, in excess of 350,000, and the denominator of which is aid total storage capacity.

The BWS will pay and reimburse to Developer an amount equal to the Land Differential plus the BWS Share of the Project Costs in accordance with this section. Payment by the BWS to Developer shall be made in two payments. The first payment shall be made after the Contractor's Notice of Substantial Completion. After such notice is issued to Developer and after it is accepted by the project engineer, Developer shall then calculate the total project cost actually paid up to that time and obtain a certification of the same from the Contractor and the project engineer. Developer shall then request partial payment from the BWS, representing all of the Land Differential and the BWS Share of the then total Project Costs. The BWS shall pay to Developer said partial payment within thirty (30) days after the written request from Developer. Said written request will be accompanied by Developer's certification of Project Costs and the certification of the Contractor (as to payment received) and the project engineer (verifying the then total Project Costs), together with any requested back-up information relating to the land acquisition.

The payment toward the total Project Costs will at that time not include the BWS's proportionate share of any retainage held back from the Contractor by Developer pursuant to contract documents and other costs relating to achieving final completion. After the Project has been accepted by the BWS, and consistently with contract documents, and after Developer has paid the contractor the remainder (retainage) of the contract price, Developer shall then request that the BWS pay to Developer the second and final payment, the BWS's unpaid BWS Share of all remaining total Project Costs. Said request will be accompanied by certifications from Developer, the contractor and the project engineer, as stated above under the first payment. The BWS shall pay Developer the remainder of the BWS Share within thirty (30) days of the written request by Developer.

The BWS shall not be obligated to pay any portion of the design, engineering, construction, land acquisition or other costs relating to the Transmission Line; and the Developer shall be solely responsible for said costs.

8. Conveyance. The tank site and all easements will be conveyed to BWS upon BWS's acceptance under Section 6 above by warranty deed, free and clear of all encumbrances which would impair the BWS's use and operation of the tank, transmission lines and appurtenances for their intended purposes.

9. Project Timetable. The parties shall proceed with good faith best efforts to design, obtain all permits for and construct the Project within the shortest reasonable time, having due regard for the timing of the needs of each party to provide water service for its land development.

10. Effective Date. The obligation of the parties hereunder shall become effective on the issuance of a notice to proceed to the contractor to construct the project.

11. Approvals. The Director will, to the extent practicable, expedite the review of all applications for necessary Director's approvals of the Project. Approval by any party shall not be arbitrarily or unreasonably withheld or delayed.

12. Prevailing Party. If any action or proceeding by one party against another is commenced relating to this Agreement, then the prevailing party shall be entitled to payment of its reasonable attorney's fees and expenses incurred in such action or proceeding.

13. No Third Party Beneficiary. No third party beneficiaries are intended to be created by this Agreement or by any of the terms hereof. No person or entity other than Developer or the BWS, their successors and assigns, shall be entitled to claim any rights under, or to enforce any of the provisions hereof.

14. Notices. All notices and communications to a party shall be deemed to have been duly given when committed to writing and sent by certified or registered mail, return receipt requested, postage prepaid to the following address, or transmitted by telecopier to the following fax number of the addressee (a confirmation copy of which shall have been promptly mailed to the addressee:

If to Developer:

Kulamalu, Inc.
1997 Main Street
Wailuku, Hawaii 96793

Fax No. (808) 242-2777
Attention: Everett R. Dowling

If to BWS: BWS of Maui
200 S. High Street
Wailuku, Hawaii 96793

Fax No. (808) 243-7951
Attn: Director

Any mailed notices or reports shall be deemed to be delivered two business days following the date of mailing. Any notices or reports sent by telecopier shall be deemed received at the close of the business day on which the telecopy transmission was made.

15. Time is of the Essence. The parties agree that time is of the essence of this Agreement.

16. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Hawaii.

17. Amendment. This Agreement shall not be modified except by an instrument in writing signed by all parties.

18. No Party Deemed Drafter. The parties agree that no party shall be deemed to be the drafter of this Agreement and this Agreement shall not be construed against any party by virtue of said party being the drafter of this Agreement.

19. Severability. In the event any clause or provision of this Agreement shall be held invalid the remaining clauses and provisions shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

BOARD OF WATER SUPPLY

By: _____

Its: _____

By: _____

Its: _____

APPROVED AS TO FORM
AND LEGALITY:

KULAMALU, INC.

Deputy Corporation Counsel
County of Maui

By _____
Its President

TDW:cs/21010-1/031696

Exhibit E-1

The following Section 7 shall be substituted in the Agreement Concerning the Construction of a _____ Gallon Storage Tank, Transmission Line and Appurtenances if the total size of the storage tank, including the expansion elected by the Board of Water Supply, is 500,000 gallons or more.

7. Payments by the BWS. For purposes of this Section, the term "Project Costs" shall mean the costs of the Tank Engineering Contract and the Tank Construction Costs; and the term "BWS Share" shall mean a fraction, the numerator of which is the total storage capacity of the tank, in gallons, in excess of 350,000, and the denominator of which is said total storage capacity.

The BWS will pay and reimburse to Developer the costs as follows:

- (a) Land Differential. The BWS will pay and reimburse to the Developer the Land Differential upon the Developer's closing of its acquisition of legal title, easement rights or other real property interests comprising the storage tank site which will enable the construction of the project on the site and the dedication of the completed project and the site to the BWS in accordance with BWS rules and regulations.
- (b) Project Costs. The BWS will pay the BWS Share of all Project Costs as and when those costs shall become due and payable under the Tank Engineering Contract and under the construction contract(s) for the storage tank and appurtenances. Each invoice received by the Developer from the engineer and the contractor shall be promptly provided to the BWS for review together with all certifications received from the contractor(s) and the project engineer. The BWS will promptly perform all inspections or verifications needed on its part and will either pay its share of said invoice within 20 days of its receipt of the invoice or, if the BWS determines that such payment as requested is not due and payable to the invoicer, or is otherwise improper, the BWS will not pay the BWS Share (or portion thereof) which is not due and will notify both the Developer and the invoicer of the reasons, in reasonable detail. The Director and the Developer agree to work together in a cooperative manner and in mutual good faith in all aspects of contract administration, with the mutual goal of pursuing the work, payment and completion in a mutually beneficial manner, in the shortest reasonable time and in accordance with all applicable BWS rules and regulations.

Exhibit "F"

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by Mail (xx) Pickup () To:

TDW:cs/26030-1/212081.1/3/19/96

TMK No. (2)

GRANT OF EASEMENT

This Indenture is made this ___ day of _____, 199__ by and between A&B-HAWAII, INC., a Hawaii corporation, through its division Hawaiian Commercial and Sugar Company, whose business and post office address is 822 Bishop Street, Honolulu, Hawaii 96813 ("Grantor") and the BOARD OF WATER SUPPLY of the County of Maui, a political subdivision of the State of Hawaii, whose principal office and post office address is 250 S. High Street, Wailuku, Maui, Hawaii 96793 ("Grantee").

BACKGROUND STATEMENT:

1. Grantor owns that certain parcel of land situated at Kaupakalua, Maui, Hawaii, described on Exhibit "A" attached hereto and made a part hereof (the "Grantor's land").
2. Pursuant to the Right-of-Entry Agreement dated March __, 1996, Kulamalu, Inc. developed a well on a portion of Grantor's land; and Kulamalu, Inc. has agreed to dedicate the well to the Grantee.

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3. The Grantee has agreed to accept said dedication.

4. The purpose of this indenture is to establish an easement for the foregoing purposes, subject to all of the following terms and conditions.

EASEMENT: For valuable consideration, Grantor hereby grants and conveys to the Grantee an "Easement" (defined below) over the "Easement Area" (defined below and located on the Grantor's Land described in Exhibit A), upon and in accordance with all of the following terms and conditions:

1. Easement Defined. This easement shall include the following rights:

(a) The right to construct, maintain, operate, repair and replace the following facilities:

one water well together with appurtenant pipelines, valves, tank, fences, security devices, electrical power lines, communication lines and other facilities associated with the use and operation of said well; and

(b) The right of pedestrian and vehicular ingress and egress and the right to construct, operate, repair, maintain and replace a road or driveway, as needed for the purpose of constructing, maintaining and operating the facilities described in subparagraph (a) above; and

(c) The right to discharge water from said well into the Wailoa Ditch in a location and manner as approved by Grantor's affiliate, East Maui Irrigation Company, Limited ("EMI"), subject to Section 8 below.

Grantee shall be solely responsible for all costs and expenses for the construction, maintenance, operation repair and replacement of all of the foregoing facilities.

2. Easement Area Defined. The Easement Area includes (a) the well site described and located as set forth in Exhibit B attached hereto and made a part hereof and (b) the area(s) for ingress, egress and pipelines described and located as set forth on Exhibit C attached hereto and made a part hereof.

3. Title. This Easement is granted subject to all liens and encumbrances (whether or not of record) affecting the Easement Area, none of which shall impair the Grantee's use of the Easement for said purposes.

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4. Responsibility. Grantee will at all times in connection with all uses or actions within the Easement Area by Grantee or its agents and licensees, (a) observe and perform all laws, ordinances, rules and regulations now or hereafter imposed by any governmental authority which are applicable to the Easement and the Easement Area; (b) not at any time make or suffer any strip or waste or unlawful, improper or offensive use of the Easement Area; (c) keep the Easement Area reasonably clear of litter and refuse; (d) keep and maintain the Easement Area in reasonably safe condition and in good repair; (e) not permit the Easement Area to be used for any purpose other than the purposes expressly permitted under paragraph 1 above; (f) complete the construction of all improvements, once begun, promptly and with due care and diligence and free and clear of all liens; (g) after completing any work within the Easement Area which shall disturb the surface of the ground, promptly restore the ground to clean condition and even grade (other than improvements constructed above the ground); and (h) indemnify, defend and hold harmless the Grantor and its lessees, licensees, agents, employees, officers and directors against all claims, losses, liabilities and expenses (including attorneys' fees) which may be asserted by any third party or suffered or incurred by Grantor (or its lessees, licensees, agents, employees, officers and directors) and which shall arise out of any personal injury, death or property damage occurring on Grantor's land and are the result of any acts or omissions of Grantee or its employees, agents or invitees. All work will be performed in accordance with plans and specifications approved by Grantor, which approval will not be unreasonably or arbitrarily withheld or delayed.

Nothing in this instrument shall be deemed to impose any duty or obligation on Grantor to determine the adequacy or sufficiency of any plans and specifications, or to ascertain whether Grantee's construction is in compliance with the plans and specifications approved by Grantor. Grantee will use due care and diligence in the installation, alteration, replacement, maintenance, repair, operation and removal of its said facilities and in the exercise of its rights hereunder; and it will at all times exercise its rights hereunder at such times and in such manner as will not occasion any interference with the business operations on, or cause any damage or injury to, the balance of the Grantee's land, or to any lessees, licensees, agents, servants or employees of Grantor.

5. Use of Easement Area by Grantor. This Easement shall be exclusive as to the well site described in Exhibit B, but shall be nonexclusive as to those areas provided for access and utility services between the well site and the public road. Grantee may at its own expense fence the well site and provide appropriate security.

6. Maintenance of Easement Area by Grantor. Grantor will not be obligated in any way to maintain or improve the Easement Area or to maintain, safeguard or repair Grantee's facilities within the Easement Area.

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7. Construction, Bonding and Insurance. All of Grantee's construction work shall be performed in accordance with all applicable governmental law, rules and regulations, including those of Grantee. This includes the performance of all construction work by appropriately qualified contractors, the provision of performance and payment bond(s), and the maintenance of all insurance coverage for the duration of any construction period. Grantor shall be named as an additional insured under all insurance policies and bonds, including comprehensive general liability insurance and such coverage shall be required in the bid specifications for the construction work.

8. Operation: Discharge of Water into Wailoa Ditch. The BWS will operate the Well on a full-time basis (consistent with the BWS's normal daily pumping management practices) to discharge water into the Wailoa Ditch or into the Haiku domestic water system.

Grantor hereby grants permission to Grantee to discharge water from the Well into Grantor's Wailoa Ditch (in a location and manner to be approved by EMI), subject to the following conditions:

- (a) Grantee hereby agrees to indemnify, defend and hold harmless Grantor, its affiliates, and their employees from any and all claims (and all costs and expenses resulting therefrom, including reasonable attorneys' fees), including without limitation claims by third parties for environmental or other liabilities and claims for injury, damage or loss to person or property of the Grantor's employees or agents, in any way arising out of or connected with such discharge of water from said Well into the Wailoa Ditch (including the entry of the Grantee's employees or agents onto Grantor's property to carry out such discharge). Grantee acknowledges that Grantor has made no representation or warranty regarding the flow in the Wailoa Ditch, and in particular regarding whether the flow is such as to dilute significantly the chloride level of the well water. The Grantee also hereby releases Grantor, its affiliates and their employees from any and all claims (and all costs and expenses resulting therefrom, including reasonable attorneys' fees) for injury, damage or loss to the Grantee's property, in any way arising out of or connected with such discharge.
- (b) Grantee shall provide Grantor with weekly written reports disclosing the daily amounts pumped from the Well, discharge amounts from the Well into Wailoa Ditch and the results of the water quality monitoring described below.
- (c) Grantee shall monitor on a monthly basis (or other periodic basis acceptable to Grantor) the quality (including the chloride level) of

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water from the Well and shall notify Grantor immediately if there is a material change in the chloride level or if it has any reason to believe the quality of the water is such that its use by Grantor may damage Grantor's sugar cane or other crops, its hydroelectric power plants or its mills. If Grantor has reason to believe, in its sole discretion, that the quality of the Well water may damage Grantor's sugar cane or other crops, its hydroelectric power plants or its mills, then upon notice from Grantor, Grantee shall cease (or cause to be ceased) the discharge of Well water into Wailoa Ditch immediately until Grantor is satisfied that the quality is safe.

9. Tank Site. Grantor recognizes the Grantee's potential need for a storage tank in this area, to operate in connection with the Well, together with appurtenant pipelines. At such time as Grantee desires to move forward with tank development, the Grantor agrees to make a suitable site available for it with a mutually acceptable size and location and on terms mutually acceptable to Grantee and Grantor. In this endeavor, the parties agree to cooperate with each other.

10. Taxes. The Grantee shall pay as and when due all real estate taxes and assessments which shall become due with respect to and are properly allocable to Grantee's facilities and those areas of Grantor's land encumbered by the Grantee's facilities.

11. Property "As Is". This Easement is granted subject to the encumbrances affecting Grantors' land as set forth in Section 3 above. Grantee accepts the physical condition of the land and all Easement Areas in "as is" condition. Grantor makes no representations or warranties whatsoever, as to the physical condition of the Easement Area, the suitability of the land for the Grantee's intended purposes, the availability, quantity or quality of any developed or undeveloped water resources, or the applicability of any laws, rules or regulations.

12. Attorney's Fees. If any legal action or arbitration shall be brought by a party to enforce or interpret any provision of this agreement or to redress any breach by the other party, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

13. Appurtenance and Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. The terms "Grantor" and "Grantee" herein shall include their respective successors.

14. Governing Law. This Agreement shall be governed by the laws of the State of Hawaii.

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15. No Waiver. No failure by any party to insist upon strict performance by the other party of any of the terms and provisions of this agreement shall be deemed to be a waiver of any such terms or provisions or of the other party's obligation to comply with such terms or provisions; and notwithstanding such failure, each party shall have the right thereafter to insist upon the other party's strict performance of such terms and provisions. Any waiver of the terms of this agreement shall not be effective unless given in writing.

16. Amendments. This agreement may not be amended unless mutually agreed to in writing and signed by the parties hereto.

17. Notices. All notices or other communications given by either party hereto shall be deemed to be duly given and received by the other party upon the earlier to occur of (a) actual receipt by a duly elected or appointed officer, director or authorized employee of said other party, either by mail, courier, hand delivery or facsimile transmission, or (b) three business days after having been deposited in the United States Mail, postage prepaid, sent by registered or certified mail (whether or not actually received by the other party), addressed to the other party at the address set forth at the top of this agreement, or to such other address as such other party may have given notice of to the sending party in accordance with the foregoing provision.

18. Counterparts. This Easement may be executed in counterparts, and said execution shall have the same effect as if all parties executed the same original copy hereof. Either party shall be authorized to combine all signed original pages and notary acknowledgments within a single copy of this document for purposes of recording in the State of Hawaii Bureau of Conveyances and submission to any tribunal in any proceeding.

19. Governmental Regulation. This Grant of Easement shall not be construed in any way to grant any ownership interest in, or any regulatory authority over, any portion of Grantor's or EMI's water transmission system. If at any time in the future the State of Hawaii Public Utilities Commission shall invoke or use this Grant of Easement as a basis for asserting such ownership interest or regulatory authority, HC&S may terminate this Grant of Easement and shall be entitled to enforce such termination through any and all legal means available.

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Executed as of the day and year first above written.

Grantor:

A&B-HAWAII, INC.

By _____

Its:

By _____

Its:

Grantee:

BOARD OF WATER SUPPLY

By _____

Its Chairperson

By _____

Its:

Approved as to form and legality:

Deputy Corporation Counsel
County of Maui

TDW:cs/21171.1/031996

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STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 1996, before me personally appeared _____ and _____, to me known, who being by me duly sworn, did say that they are the _____ and _____, respectively, of A&B-HAWAII, 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 _____ and _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public, State of Hawaii
My commission expires: _____

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STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this ____ day of _____, 1996, before me personally appeared MARIE KIMMEY, to me known, who being by me duly sworn, did say that she is the chairperson of the **BOARD OF WATER SUPPLY** of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument was signed and sealed in behalf of said **BOARD OF WATER SUPPLY**, and the said MARIE KIMMEY acknowledged said instrument to be the free act and deed of said **BOARD OF WATER SUPPLY**.

Notary Public, State of Hawaii

My commission expires: _____

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SCHEDULE G

Notice of Exercise of Credits

Pursuant to the Agreement between the BOARD OF WATER SUPPLY and KULAMALU, INC. dated March _____, 1996, the undersigned hereby requests water meters which will use the credits under said Agreement as set forth below:

	STORAGE	TRANSMISSION	SOURCE
1. Credits originally allocated to the undersigned:			
2. Adjustments to date by agreement:			
3. Credits exercised before the date of this exercise:			
4. Credits exercised by this notice:			
5. Credits remaining after this exercise and available for future exercise:			

Approved:

[Signature of Developer]

Director
Department of Water Supply

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Exhibit H

Board of Water Supply
County of Maui
200 South High Street
Wailuku, HI 96793

March __, 1996

Kulamalu, Inc.
c/o Dowling Company, Inc.
P. O. Box 1417
Wailuku, HI 96793

Gentlemen:

Please be advised that the Board of Water Supply will provide water service to the mauka property line of TMK (2) 2-3-8:45 at Kula Highway for total water use of 266,000 gallons per day for the use of Lot 5 of the Kulamalu Subdivision, 173.01 acres (Maui County Department of Public Works and Waste Management LUCA No. 2.2338) subject to the following:

- (a) Said service will commence within 36 months from the date of this letter;
- (b) You will not be required to pay any water system development fees under Chapter 8 of the Board's rules and regulations, pursuant to the Agreement dated March __, 1996 between the Board and you.
- (c) The Board acknowledges that you will be assigning your credits under this letter and said agreement to Kamehameha Schools/Bishop Estate, as developer of all or part of Lot 5. Upon such assignment becoming effective, you will notify the Board in writing that said assignment has occurred.

Very truly yours,

BOARD OF WATER SUPPLY
COUNTY OF MAUI

By _____

Its Chairperson

TDW:cs

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September 9, 1999

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is the mutual clarification of the undersigned concerning the March 21, 1996 agreement. It is intended to further the goals of the County general plan and the upcountry and Haiku community plans.

We agree that:

1. Kulamalu permanently withdraws its request for the use of the capacity from the Kapakalua well in excess of 738,000 g.p.d. The Water Board is free to use excess capacity above 738,000 g.p.d. for the public benefit to meet the needs of farmers and others, as well as drought management. The parties agree to negotiate in the future for appropriate compensation to Kulamalu.

2. Kulamalu may not assign unused source allocation and credits for any land use which is not permitted by the general plan or the upcountry and Haiku community plans, as amended from time to time.

3. The time limit on Kulamalu's right to exercise water allocations under the agreement is 25 years (ending March 31, 2021).

4. Kulamalu's deadline for completion of the well is extended to April 15, 2000.

5. If any part of the agreement is invalid, the rest of the agreement which can be separately performed as originally intended will not be invalid.

Board of Water Supply

KULAMALU LIMITED PARTNERSHIP

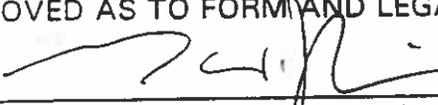
By: 

Robert Takitani
Its: Chairperson

By: 

Its authorized signature

APPROVED AS TO FORM AND LEGALITY:


Gary W. Zakian, Deputy Corporation Counsel
County of Maui

26030\1\45578.1\TDW

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STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 21st day of December, 1999, before me appeared ROBERT K. TAKITANI, to me personally known, who, being by me duly sworn, did say that he is the Chairperson of the BOARD OF WATER SUPPLY of the County of Maui, and that the seal affixed to the foregoing instrument is the lawful seal of the BOARD OF WATER SUPPLY, and that the said instrument was signed and sealed on behalf of the said BOARD OF WATER SUPPLY, and the said ROBERT K. TAKITANI acknowledged the said instrument to be the free act and deed of said BOARD OF WATER SUPPLY.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

me

Jerry Ann Wells
(Signature)
JERRY ANN WELLS
Notary Public, State of Hawaii

My commission expires: 4/19/2002.

AGREEMENT FOR PURCHASE AND SALE OF
WATER SOURCE CAPACITY AND CREDIT

This Agreement is dated this 4th day of December, 2001 and is executed by the COUNTY OF MAUI BOARD OF WATER SUPPLY ("BWS") and KULAMALU, LLC, successor by conversion to Kulamalu Limited Partnership ("Kulamalu").

RECITALS: Reference is made to the Agreement Concerning the Construction of Storage Tank, Transmission Line and Appurtenances and Development of Well, dated March 21, 1996, as amended by Memorandum of Agreement dated September 9, 1999, between BWS and Kulamalu (collectively the "Agreement"). BWS desires to purchase and Kulamalu desires to sell 100,000 gallons per day of source capacity from the Kaupakalua Well developed by Kulamalu pursuant to the Agreement. This transaction was approved by vote of BWS on October 25, 2001.

The term "Purchased Gallons" in this Agreement means the allocation of "Source Credits" as defined in the Agreement in the amount of 100,000 gallons per day. The Agreement defines "Source Credits" as "an allocation and reservation of source capacity from the Board's sources serving the Upcountry area... for the exclusive use of developer and its affiliates, assignees and future developments. ..."

AGREEMENT: For valuable consideration BWS agrees to purchase from Kulamalu and Kulamalu agrees to sell to BWS the Purchased Gallons on all of the following terms and conditions:

1. Purchase Price. The purchase price for the Purchased Gallons is \$8.00 per gallon, for a total purchase price of \$800,000.00.
2. Assignment and Closing. This Agreement shall become effective and the Purchased Gallons shall be transferred and assigned to BWS, at the time of, and conditional upon, Kulamalu's receipt of the Purchase Price set forth above, on or before December 1, 2001 (the "Closing"). Kulamalu has executed the Assignment in the form attached as Exhibit "A" and will deliver it to BWS at Closing.
3. Recap of Accounting of Source Credit Allocations. The following is a recap summary of the allocation of Source Credits before and after giving effect to the transfer of the Purchased Gallons to BWS under this Agreement:

	<u>Source Credit in Gallons Per Day</u>
(a) Source Credits originally allocated to Kulamalu	290,000
(b) Adjustments per the Memorandum of Agreement dated September 9, 1999, amending the Agreement	738,000
(c) Source Credits exercised by and allocated by Kulamalu to others before BWS' purchase of the Purchased Gallons	361,600
(d) Source Credits transferred to BWS by this Agreement	100,000
(e) Source Credits remaining after BWS' purchase of the Purchased Gallons, and available to Kulamalu for future exercise or assignment in accordance with the Agreement (collectively the "Remaining Credits")	276,400

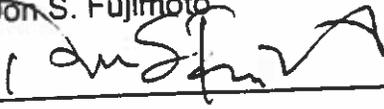
4. Release of Compensation Right. Reference is made to Paragraph 1 of the Memorandum of Agreement dated September 9, 1999 under which BWS received the right to use excess capacity of the Kaupakalua Well above 738,000 gallons per day for the public benefit to meet the needs of farmers and others, as well as drought management, subject to an agreement to "negotiate in the future for appropriate compensation to Kulamalu." In further consideration of BWS' purchase of the Purchased Gallons under this Agreement, Kulamalu hereby relinquishes to BWS all claims for compensation for, and releases BWS from all obligations to pay Kulamalu compensation for, BWS' use and ownership of such capacity of the Kaupakalua Well in excess of 738,000 gallons per day.

However nothing herein shall be construed as a release of or conveyance of the Remaining Credits defined in Section 3 above, it being understood that Kulamalu shall have all of the ownership, benefits and use of the Remaining Credits in accordance with and subject to all of the terms and conditions of the Agreement.

KULAMALU, LLC

By: Maui Quest LLC, its: Managing Member
By: Dowling Company, Inc., its: Member

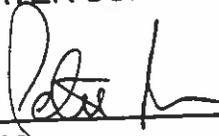
By: Don S. Fujimoto



Its: _____

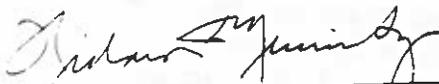
BOARD OF WATER SUPPLY

By:



Peter Rice
Its: Chairperson

APPROVED AS TO FORM AND LEGALITY



Richard K. Minatoya, Deputy Corporation
Counsel, County of Maui

EXHIBIT "A"

ASSIGNMENT OF SOURCE CREDITS

For value received Kulamalu, LLC hereby assigns and transfers to the County of Maui Board of Water Supply Source Credits, as defined in the Agreement Concerning Construction of Storage Tank, Transmission Line and Appurtenances and Development of Well, dated March 21, 1996, as amended by Memorandum of Agreement dated September 9, 1999 between said Board of Water Supply and Kulamalu, Limited Partnership (the predecessor of Kulamalu, LLC), in the amount of 100,000 gallons per day. This Assignment is executed pursuant to the Agreement for Purchase and Sale of Water Source Capacity and Credit between the parties dated December 4, 2001, 2001.

Kulamalu, LLC hereby acknowledges receipt of \$800,000.00 as payment in full for the foregoing assignment.

Dated this 4th day of December, 2001.

KULAMALU, LLC

By: Maui Quest LLC,
Its: Managing Member
By: Dowling Company, Inc.,
Its: Member

By: Don S. Fujimoto
Its: Vice President

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT, made this 8th day of December, 1997, between the STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOME LANDS, an agency of the Hawaiian Homes Commission, whose mailing address is 335 Merchant Street, Room 307, Honolulu, Hawaii 96813, hereinafter called "DHHL", the DEPARTMENT OF WATER SUPPLY OF THE COUNTY OF MAUI, a semi-autonomous department of the County of Maui, a political subdivision of the State of Hawaii, whose mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter called "DWS", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter called "COUNTY".

W I T N E S S E T H:

WHEREAS, the DHHL wishes to develop its homesites projects in Kula and Keokea, Maui, Hawaii, shown as (1) the "Kula Residence Lots - Unit 1" on Exhibit "1" attached hereto and made a part hereof, LUCA File No. 2.2305, TMK: (2) 2-2-02-56 (Portion), and (2) Keokea Farm Lots on Exhibit "7" attached hereto and made a part hereof, TMK: 2-2-02-55, both hereinafter called the "DHHL Homesites"; and

WHEREAS, the DHHL estimates that the DHHL Homesites at Kula will be ready to receive water in approximately December of 1999 and the DHHL Homesites at Keokea in 2000; and

WHEREAS, certain water improvements, as hereinafter set forth, are necessary to increase transmission and storage capacity

of the DWS's water system in Lower Kula to deliver water to the DHHL Homesites and other potential users in the Lower Kula area; and

WHEREAS, the DHHL and the DWS are willing to cooperate with each other to make the necessary water improvements; and

WHEREAS, the COUNTY is willing to financially assist the DHHL and the DWS by appropriating a certain amount of funds, as hereinafter set forth, for the DWS to construct the necessary water improvements, for which contribution the COUNTY shall receive water credits from the DWS as hereinafter set forth; now, therefore,

The undersigned parties agree as follows:

1. COUNTY APPROPRIATION. The Maui County Council has adopted those certain ordinances, collectively attached hereto as Exhibit "2", which amend the COUNTY's budget for the 1996-1997 fiscal year to appropriate and authorize the issuance of bonds for ONE MILLION FIVE HUNDRED AND 00/100 DOLLARS (\$1,500,000.00) for the DWS to use to construct the "Lower Kula Booster Pump Station and Storage Tank", and enable the Mayor to execute this intergovernmental agreement pursuant to Section 2.20.020, Maui County Code.

2. DWS IMPROVEMENTS. Pursuant to an executed contract for construction of the "Lower Kula Booster Pump Station and Storage Tank", the DWS shall construct the following improvements, hereinafter collectively called the "DWS Improvements":

a. New Pump Station and New Storage Tank. The DWS intends to construct, at its own expense including the aforesaid

appropriation of funds by the COUNTY, a new in-line pumping station and a new two (2) million gallon water storage tank on the Lower Kula transmission main. These DWS Improvements are intended to increase transmission capacity between the Lower Kula Water Treatment Plant and the Kula Kai Tank and increase storage capacity. The location of the proposed booster pump and tank site are shown on Exhibit "3" attached hereto and made a part hereof.

The DWS's contract documents for construction of the proposed booster pump station and tank are attached hereto as Exhibit "4" and made a part hereof. The DWS estimates that its project to construct the DWS Improvements will require approximately fourteen months for completion.

b. Land Rights. The proposed pump station and tank site are to be located on Lot 3-B, being a 5.6 acre portion of TMK: (2) 2-4-13-179. Lot 3-B is shown on Exhibit "5" attached hereto and made a part hereof. Lot 3-B is not currently owned by the DWS. The DWS shall secure all temporary and permanent land rights to Lot 3-B before the aforesaid appropriation of funds by the COUNTY is released, in whole or in part, to the DWS.

c. Construction Standards. The DWS shall construct the foregoing DWS Improvements in accordance with all laws, ordinances, codes, permits, guidelines, rules and regulations of the County, State and Federal governments.

3. DHHL IMPROVEMENTS. The DHHL shall construct, at its own expense, the following improvements, hereinafter collectively called the "DHHL Improvements":

a. New Transmission Main. The DHHL intends to construct a new eighteen (18) inch water transmission main, approximately 8,000 to 9,000 feet in length, from approximately Naalae Road to the DHHL Homesites. The location of the proposed transmission main is shown on Exhibit "6" attached hereto and made a part hereof.

b. New Booster Pumps. The DHHL intends to construct two (2) new booster pumps (rated at 4,200 gpm each pump) in the vicinity of the existing Kula Kai Tank. The location of the proposed reservoir sites and pump sites are shown on Exhibit "8".

c. New Reservoirs and Pumps. The DHHL intends to construct, within the DHHL Homesites, three (3) new reservoirs and two (2) new pumps (rated at 700 gpm each pump). The location of the proposed reservoir sites and pump sites are shown on Exhibit "1".

d. Subdivision Requirements. The DHHL intends to construct the drainage, roadway, on-site water, grading and all other subdivision improvements for the DHHL Homesites pursuant to construction plans approved by the Department of Public Works and Waste Management, County of Maui, for LUCA File No. 2.2305. The DHHL shall complete these subdivision improvements prior to final subdivision approval of the DHHL Homesites. Upon final subdivision approval of the DHHL Homesites, the DHHL shall make all of the

"Kula Residence Lots - Unit I", as shown on Exhibit "1", available to lessees of the DHHL to construct residences thereon.

e. Land Rights. The DHHL shall secure all necessary land rights for the DHHL Improvements to be constructed.

f. Construction Standards. The DHHL shall construct the DHHL Improvements in accordance with all laws, ordinances, codes, permits, guidelines, rules and regulations of the County, State and Federal governments. The DHHL shall also warrant and guarantee by way of assignment of Contractor's bond the improvements set forth in the construction plans and specifications, from any defects in materials and workmanship for a period of one year from the date of final approval of improvements.

4. WATER FOR DHHL HOMESITES. Upon completion of the DWS Improvements and the DHHL Improvements, the DWS shall maintain the improvements and deliver water to the DHHL up to an amount of 500,000 gallons per day, as needed by the DHHL Homesites, except during any drought affecting the Lower Kula area as declared by the DWS in accordance with its rules and regulations. The DWS will not impose any sort of time limitation on DHHL to draw or use such reservation of potable water from DWS system.

5. COUNTY WATER CREDITS. In consideration of its contribution of ONE MILLION FIVE HUNDRED AND 00/100 DOLLARS (\$1,500,000.00) to the DWS for the construction of the DWS

Improvements, the COUNTY shall receive from the DWS dollar-for-dollar credit for every dollar appropriated and disbursed to or for the DWS for the DWS Improvements, if paid for out of COUNTY general funds, or dollar-for-dollar credit on the principal amount for bonds issued by the COUNTY for the DWS Improvements.

The COUNTY may use its water credits, or transfer the same to other persons or entities, hereinafter called "transferee(s)", to obtain water from the DWS. The COUNTY or its transferee(s) may use the water credits to off-set, dollar for dollar, any fees or charges imposed by the DWS for water to be supplied by the DWS to the COUNTY or its transferee(s), including but not limited to using the water credits to off-set any Water System Development Fee. The COUNTY or its transferee(s) may use the water credits to obtain water from the DWS at any time, unless water is not available as mutually determined and agreed in writing by the COUNTY and the DWS. The COUNTY or its transferee(s) may use the water credits without the restriction stated in Section 16-8-11(c) of the Water System Development Fee.

6. DHHL WATER CREDITS. In consideration of its contribution for construction of the Booster Pump at Kula Kai Reservoir, construction of transmission water lines from Naalae Road to DHHL subdivision, and construction of on-site reservoirs and pumps, DHHL shall receive Water System Development Fee credits as agreed between DHHL and DWS by separate agreement.

a. Further, DHHL will pay the source portion of the Water System Development Fee when applicants request the installation of each water meter. No advance source development payments shall be required; and

b. This agreement shall not affect any previously accumulated hook-up credits, nor any reimbursements due DHHL by the DWS for past projects such as Waiehu Kou.

7. DISBURSEMENT OF COUNTY APPROPRIATION. The DWS shall submit to the COUNTY written Reimbursement Requests for the work performed pursuant to the executed contract for construction of the "Lower Kula Booster Pump Station and Storage Tank". Each Reimbursement Request shall be authenticated as to its accuracy by the DWS and verified by a designated official of the COUNTY. Each Reimbursement Request shall include a certification by the DWS that the work for which payment is requested was performed in accordance with the terms of this Memorandum of Understanding. The DWS shall maintain in its files, at all times, documentation certifying that the work described in any invoices, executed contracts or Reimbursement Requests sent to the COUNTY are complete, correct and in accordance with the terms of this Memorandum of Understanding.

8. GOVERNING LAW. This Memorandum of Understanding shall be construed and enforced in accordance with the laws of the State of Hawaii.

9. ASSIGNABILITY. This Memorandum of Understanding, and the rights and obligations hereunder, shall not be assigned, in whole or in part, by any of the parties hereto to any other persons

or entities without the prior written consent of all of the parties hereto, which consent may be withheld at the sole discretion of any of the parties hereto.

10. NO THIRD PARTY BENEFICIARIES. The execution and delivery of this Memorandum of Understanding shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity not a party to this Memorandum of Understanding.

11. FURTHER ASSURANCES. Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

12. AMENDMENTS. This Memorandum of Understanding may be amended in whole or in part only by further written agreement executed by all of the parties hereto.

13. INTEGRATION. This Memorandum of Understanding contains all of the agreements of the parties hereto with respect to the matters covered hereby, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless specifically incorporated in the provisions of this Memorandum of Understanding.

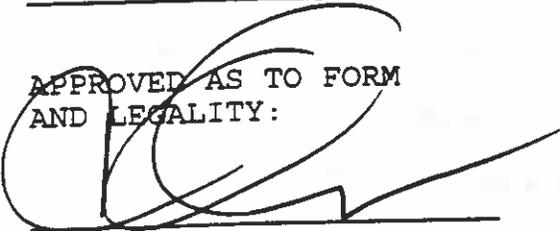
IN WITNESS WHEREOF, this Memorandum of Understanding has been executed on the day and year first above written.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

By 
KALI WATSON
Chairman
Hawaiian Homes Commission

Approved by the Chairman on

December 8, 1997 ~~xx1997k~~

APPROVED AS TO FORM
AND LEGALITY:


Deputy Attorney General
State of Hawaii

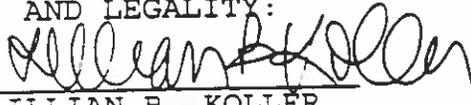
BOARD OF WATER SUPPLY
OF THE COUNTY OF MAUI

By 
DORVIN D. LEIS
Its Chair

COUNTY OF MAUI

By 
LINDA LINGLE
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:


LILLIAN B. KOLLER
Deputy Corporation Counsel
County of Maui

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STATE OF HAWAII

CITY & COUNTY OF HONOLULU

)
)
) SS.

On this 8th day of December, 1997, before me appeared KALI WATSON, to me personally known, who being by me duly sworn did say that he is the Chairman of the Hawaiian Homes Commission, and that he is authorized to sign the foregoing instrument on behalf of the State of Hawaii, Department of Hawaiian Home Lands, an agency of the Hawaiian Homes Commission, and the said KALI WATSON acknowledged that he executed the said instrument as the free act and deed of said State of Hawaii, Department of Hawaiian Home Lands.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Helen E. Luke
Notary Public, State of Hawaii

My commission expires: 2-20-2000

L.S.

STATE OF HAWAII

COUNTY OF MAUI

)
)
) SS.

On this 18th day of November, 1997, before me appeared DORVIN D. LEIS, to me personally known, who being by me duly sworn did say that ~~she~~ he is the Chairperson of the Board of Water Supply of the County of Maui, a semi-autonomous department of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said Board of Water Supply of the County of Maui, and that the said instrument was signed and sealed on behalf of said Board of Water Supply of the County of Maui, and the said DORVIN D. LEIS acknowledged the said instrument to be the free act and deed of said Board of Water Supply of the County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Joy Ann [Signature]
Notary Public, State of Hawaii

My commission expires: 4/19/98

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STATE OF HAWAII

)
) SS.
)

COUNTY OF MAUI

On this 26th day of November, 1997, before me appeared LINDA LINGLE, to me personally known, who, being by me duly sworn, did say that she is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed tot he foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter, and the said LINDA LINGLE acknowledged the said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

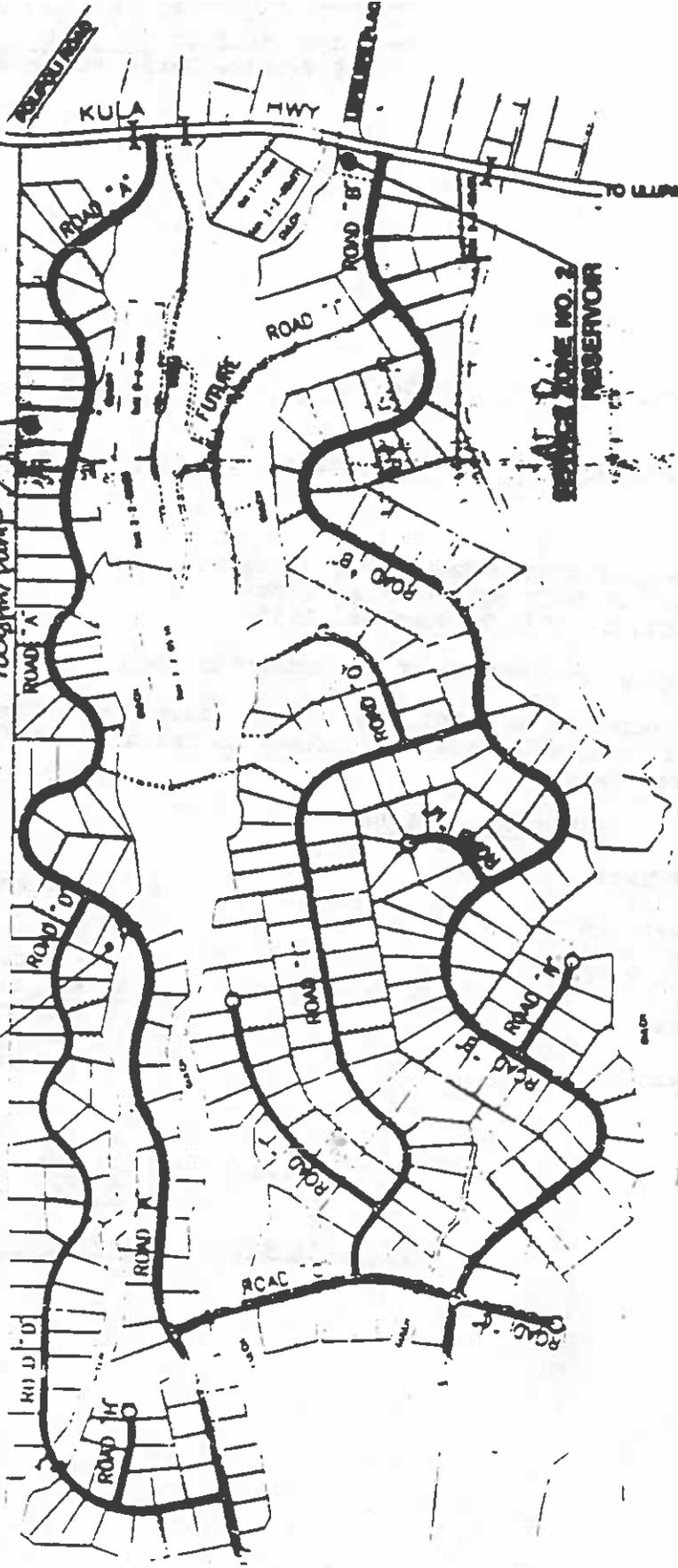
Marshall Leavitt
Notary Public, State of Hawaii *LS*
My commission expires: 12-7-99

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SERVICE ZONE NO. 4 RESERVOIR SITE

SERVICE ZONE NO. 3
RESERVOIR AND PUMP SITE
(2 pumps rated at
700 gpm/pump)

SERVICE ZONE NO. 2
RESERVOIR



VICINITY MAP
KULA RESIDENCE LOTS - UNIT I
 NOT TO SCALE

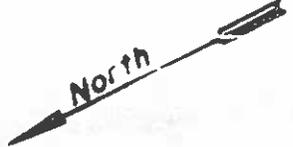


EXHIBIT " 1 "

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ORDINANCE NO. 2536

BILL NO. 3 (1997)

A BILL FOR AN ORDINANCE AMENDING THE BUDGET FOR THE
COUNTY OF MAUI FOR THE FISCAL YEAR
JULY 1, 1996 TO JUNE 30, 1997

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 2 of Ordinance No. 2502, Bill No. 32 (1996), the "Fiscal Year 1997 Budget" of the County of Maui, is hereby amended to reflect an increase of \$15,792,500 in excess of budget estimates, as follows:

"ESTIMATED REVENUES

FROM TAXES, FEES AND ASSESSMENTS:		\$ 72,954,874
Real Property Taxes		(1,000,000)
Circuit Breaker Adjustment		21,953,000
Charges for Current Services		19,680,000
Transient Accommodation Tax		<u>11,645,196</u>
Licenses/Permits/Others	[11,559,696]	9,742,000
Fuel and Franchise Taxes		2,710,240
Special Assessments		6,659,500
Other Intergovernmental		
 FROM OTHER SOURCES:		
Interfund Transfers		30,489,212
Bond/Lapsed Bond	[17,578,330]	<u>33,285,330</u>
Carryover/Savings		<u>20,962,627</u>
 TOTAL ESTIMATED REVENUES	[<u>\$213,289,479</u>]	<u>\$229,081,979</u>

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SECTION 2. Section 3.B.9.b. of Ordinance No. 2502, Bill No. 32 (1996), the "Fiscal Year: 1997 Budget" of the County of Maui, is hereby amended to appropriate \$85,500 as follows:

9. Department of Parks and Recreation

"b. Aquatics Program

- (1) Provided, that disbursement for salaries [\$ 1,948,281] \$ 2,033,781 and premium pay is limited to 50.5 equivalent personnel."

SECTION 3. Section 4.E. of Ordinance No. 2502, Bill No. 32 (1996), the "Fiscal Year: 1997 Budget" of the County of Maui, is hereby amended to appropriate \$15,707,000 as follows:

<u>PROJECT TITLE</u>	<u>APPROPRIATION</u>
"E. From the Bond Fund	
1. <u>Wailuku-Kahului Community Plan District</u>	<u>\$ 12,500,000</u>
a. <u>Park Improvements</u>	
(1) <u>Maui Central Park</u>	<u>\$ 137,000</u>
b. <u>Wastewater Improvements</u>	
(1) <u>Wailuku-Kahului WWRP Septage Receiving Station</u>	<u>\$ 3,700,000</u>
[a.] c. <u>Sanitation</u>	
(1) <u>Central Maui Landfill Expansion</u>	<u>\$ 5,950,000</u>
[b.] d. <u>Other Projects</u>	
(1) <u>Waiale Affordable Rental Project</u>	
2. <u>Makawao-Pukalani-Kula Community Plan District</u>	<u>\$ 1,500,000</u>
a. <u>Other Projects</u>	
(1) <u>Lower Kula Booster Pump Station and Storage Tank</u>	
3. <u>Kihei-Makena Community Plan District</u>	<u>\$ 400,000</u>
a. <u>Park Improvements</u>	
(1) <u>Kihei Community Center/Swimming Pool</u>	
[2.] 4. <u>Lahaina Community Plan District</u>	<u>\$ 600,000</u>
a. <u>Government Facilities</u>	
(1) <u>Grants and disbursements for Old Lahaina Courthouse Renovation</u>	<u>\$ 170,000</u>
b. <u>Park Improvements</u>	

	(1) <u>Lahaina Aquatic Center Improvements</u>	
		\$ 500,000
(b.)	<u>c. Other Projects</u>	
	(1) Grants and disbursements for Lahaina Visitor Center/Public Restrooms	
(3.)	<u>5. Molokai Community Plan District</u>	\$ 1,000,000
	<u>a. Park Improvements</u>	
	(1) <u>Kualapuu Community Center</u>	
		\$ 800,000
(a.)	<u>b. Drainage</u>	
	(1) Kaunakakai Drainage	
		\$ 150,000
(b.)	<u>c. Sanitation</u>	
	(1) Molokai Landfill Expansion	
(4.)	<u>6. Countywide</u>	\$ 1,500,000
	<u>a. Other Projects</u>	
	(1) Beach Access and Park Land Acquisition"	

SECTION 4. Section 16. of Ordinance No. 2502, Bill No. 32 (1996) is hereby amended to increase the aggregate amount of transfers and loans which shall be unreimbursed, as follows:

"SECTION 16. For the purpose of this section, "County fund" excludes pension or retirement funds, funds under the control of any independent board or commission, funds set aside for the redemption of bonds or the payment of interest thereon, park dedication funds, or special purpose funds. In the event there are monies in any County fund that, in the judgment of the Director of Finance, are in excess of the amounts necessary for the immediate requirements of the respective funds, and where, in the judgement of the Director of Finance, such action will not impede the necessary or desirable financial operations of the County, the Director of Finance may make temporary transfers or loans therefrom without interest to the Bond Fund or the Housing Development Revolving Fund. The amount of such temporary transfers or loans shall not exceed the amount of general obligation bonds or notes authorized but not issued. At any time the aggregate amount of such transfers and loans which shall be unreimbursed shall not exceed {\$20,000,000} \$30,000,000. Monies transferred or loaned shall be expended only for appropriations from the Bond Fund or the Housing Interim Financing and Buy-back Revolving Fund which are specified to be financed from the sale of general obligation bonds or notes. The fund from which transfers or loans are made shall be reimbursed by the Director of Finance from the proceeds of the sale of general obligation bonds or notes upon the eventual issuance and sale of such bonds or notes. Within 30 days after each transfer or loan, the Director of Finance shall report to the Council on: (1) the amount of transfer or loan requirement; (2) the reason or justification for the transfer or loan; (3) the source of funding to reimburse or repay the transfer or loan; and (4) the time schedule proposed for reimbursement or repayment of the transfer or loan. The transfer or loan shall be reimbursed or repaid within one year after it is made, subject to waiver by Council resolution.

At the close of each quarter, the Director of Finance shall submit to the Council a Combined Statement of Cash receipts and Disbursements showing for each month for each individual fund the cash balance at the start of the accounting period, the cash receipts and

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Disbursements during the period, and the cash balance at the end of the period. Within 30 days after the close of each quarter, the Director shall submit a separate report showing the accumulated balance of any fund or account which exceeds \$100,000, and which would be available for appropriation upon certification by the Mayor."

SECTION 5. Total operating appropriations is amended to reflect an increase of \$85,500 as follows:

"TOTAL OPERATING APPROPRIATIONS	[\$180,473,479]	<u>\$180,558,979"</u>
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SECTION 6. Total capital improvement projects appropriations is amended to reflect an increase of \$15,707,000 as follows:

"TOTAL CAPITAL IMPROVEMENT PROJECTS APPROPRIATIONS	[\$ 32,816,000]	<u>\$ 48,523,000"</u>
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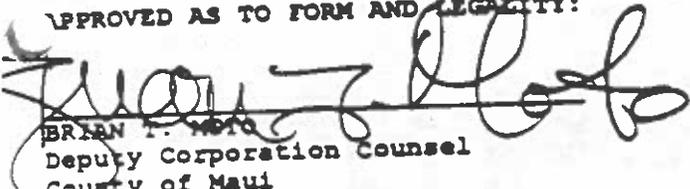
SECTION 7. Total appropriations (operating and capital improvement projects) is amended to reflect an increase of \$15,792,500 as follows:

"TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)	[\$213,289,479]	<u>\$229,081,979"</u>
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SECTION 8. Material to be repealed is bracketed. New material is underscored. In printing this ordinance, the County Clerk need not include the brackets, the bracketed material or the underscoring.

SECTION 9. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:


BRIAN T. MOTA
Deputy Corporation Counsel
County of Maui
gk:97rev7

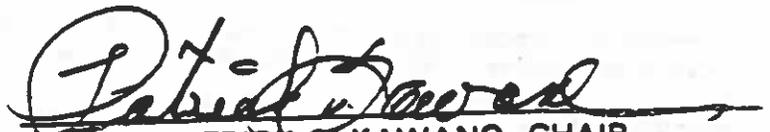
WE HEREBY CERTIFY that the foregoing BILL NO. 3 (1997)

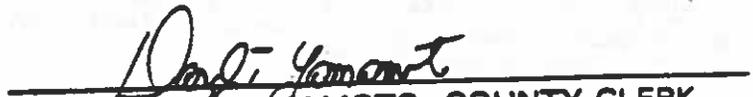
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 7th day of March, 1997, by the following votes:

Patrick S. KAWANO Chair	James "Kimo" APANA Vice-Chair	Alan ARAKAWA	J. Kalani ENGLISH	Sol P. KAHU'OHALAHALA	Alice L. LEE	Dennis Y. NAKAMURA	Wayne K. NISHIKI	Charmaine TAVARES
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

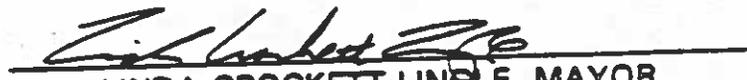
2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 7th day of March, 1997.

DATED AT WAILUKU, MAUI, HAWAII, this 7th day of March, 1997.


PATRICK S. KAWANO, CHAIR
Council of the County of Maui


DARYL T. YAMAMOTO, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 12th DAY OF MARCH, 1997.


LINDA CROCKETT LINGLE, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 2536 of the County of Maui, State of Hawaii.


DARYL T. YAMAMOTO, COUNTY CLERK
County of Maui

Passed First Reading on February 21, 1997.
Effective date of Ordinance March 12, 1997.

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2536, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

RECEIVED
MAR 12 1997

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ORDINANCE NO. 2537

BILL NO. 4 (1997)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2504, BILL NO. 34 (1996), AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE COUNTY OF MAUI

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. SECTION 1 of Ordinance No. 2504, Bill No. 34 (1996), is hereby amended to increase the aggregate principal amount of general obligation bonds of the County of Maui authorized to be issued by \$15,707,000, as follows:

"SECTION 1. Authorization of General Obligation Bonds. Pursuant to Chapter 47, Hawaii Revised Statutes, as amended, and particularly Part I thereof, there are hereby authorized to be issued and sold from time to time general obligation bonds of the County of Maui, State of Hawaii (the "County") in an aggregate principal amount not to exceed [\$13,200,000] \$28,907,000 (the "Bonds"), the proceeds derived from the sale of which shall be used to pay all or part of the cost of appropriations for the public improvements of the County described in Section 2 hereof."

SECTION 2. SECTION 2 of Ordinance No. 2504, Bill No. 34 (1996), is hereby amended to include the Maui Central Park, Wailuku-Kahului Wastewater Reclamation Facility Septage Receiving Station, Lower Kula Booster Pump Station and Storage Tank, Kihei Community Center/Swimming Pool, Lahaina Aquatic Center Improvements, and Kualapuu Community Center among the projects to be financed from the proceeds of general obligation bonds authorized to be issued thereunder, as follows:

"SECTION 2. Disposition of Bond Proceeds. All or any portion of the proceeds derived from the sale of the Bonds or any notes issued in anticipation of the Bonds shall be used to pay all or part of the cost of any of the public improvements listed below in accordance with appropriations contained in the Operating Budget and Capital Improvements Program Ordinance, including amendments and supplements thereto, duly adopted by the Council of the County for the fiscal year ending June 30, 1997; provided, however, that pursuant to Section 47-5, Hawaii Revised Statutes, the part of such proceeds which are in excess of the amounts required for the purposes for which the Bonds are initially issued from time to time, or which may not be applied to such purposes, or which this Council deems should not be applied to such purposes, may be applied to finance such other public improvements of the County as the Council of the County

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shall, by ordinance approved by an affirmative vote of two-thirds of all of its members, determine; and provided further that the actual use and application of the proceeds of Bonds issued pursuant to this ordinance shall not in any way affect the validity or legality of such Bonds. No proceeds of the Bonds shall be applied to any public improvement listed in this section unless and until there shall be a valid appropriation of general obligation bond proceeds in effect for such public improvement. The public improvements provided for or to be provided for in the Operating Budget and Capital Improvements Program Ordinance, to be financed with proceeds from the sale of the Bonds, are as follows:

Public Improvements:
Estimated Project Cost

- A. Wailuku-Kahului Community Plan District
 - (1) Park Improvements \$12,500,000
 - a. Maui Central Park
 - (2) Wastewater Improvements \$ 137,000
 - a. Wailuku-Kahului Wastewater Reclamation Facility Septage Receiving Station
 - [(1)](3) Sanitation \$ 3,700,000
 - a. Central Maui Landfill Expansion
 - [(2)](4) Other Projects \$ 5,950,000
 - a. Waiale Road Affordable Rental
- B. Makawao-Pukalani-Kula Community Plan District
 - (1) Other Projects \$ 1,500,000
 - a. Lower Kula Booster Pump Station and Storage Tank
- C. Kihai-Makena Community Plan District
 - (1) Park Improvements \$ 400,000
 - a. Kihai Community Center/Swimming Pool

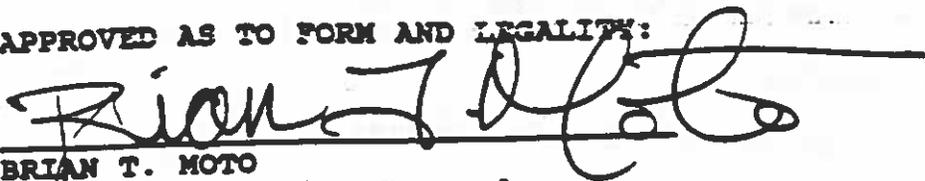
[B.] D.	<u>Lahaina Community Plan District</u>	
(1)	Government Facilities	\$ 600,000
	a. Old Lahaina Courthouse Renovation	
(2)	<u>Park Improvements</u>	<u>\$ 170,000</u>
	a. <u>Lahaina Aquatic Center Improvements</u>	
[(2)](3)	Other Projects	\$ 500,000
	a. Visitor Center/Public Restrooms	
[C.] E.	<u>Molokai Community Plan District</u>	
(1)	<u>Park Improvements</u>	<u>\$ 1,000,000</u>
	a. <u>Kualapuu Community Center</u>	
[(1)](2)	Drainage	\$ 800,000
	a. Kaunakakai Drainage Improvements	
[(2)](3)	Sanitation	\$ 150,000
	a. Molokai Landfill Expansion	
[C.] F.	<u>Countywide</u>	
(1)	Other Projects	\$ 1,500,000
	a. Beach Access and Park Land Acquisition	

The cost of issuance of the Bonds or any series thereof, including without limitation, the initial fee of paying agents and registrars, the fees of financial consultants and bond counsel, the cost of preparation of any Official Statement relating to the Bonds, any notices of sale and forms of bid and the definitive Bonds, and the costs of publication of any notices of sale, may be paid from the proceeds of the Bonds or any series thereof and such costs shall be allocated pro rata to each of the foregoing projects financed from such proceeds."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material or the underscoring.

SECTION 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, appearing to read "Brian T. Moto", written over a horizontal line.

BRIAN T. MOTO
Deputy Corporation Counsel
County of Maui
gk:97gorev2

I HEREBY CERTIFY that the foregoing BILL NO. 4 (1997)

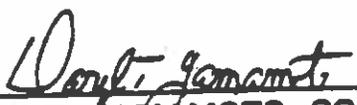
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 7th day of March, 1997, by the following votes:

Patrick S. KAWANO Chair	James "Kimo" APANA Vice-Chair	Alan ARAKAWA	J. Kalena ENGLISH	Sol P. KAHO'DHALAKALA	Alice L. LEE	Dennis Y. NAKAMURA	Wayne K. NISHIKI	Charmene TAVARES
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 7th day of March, 1997.

DATED AT WAILUKU, MAUI, HAWAII, this 7th day of March, 1997.

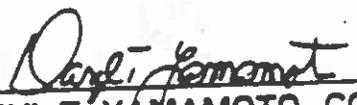

PATRICK S. KAWANO, CHAIR
Council of the County of Maui


DARYL T. YAMAMOTO, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 12th DAY OF MARCH, 1997.


LINDA CROCKETT LINGLE, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 2537 of the County of Maui, State of Hawaii.


DARYL T. YAMAMOTO, COUNTY CLERK
County of Maui

Passed First Reading on February 21, 1997.
Effective date of Ordinance March 12, 1997.

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2537, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

RECEIVED

FEB 13 1997

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LOWER KULA RESERVOIR
FLOOR ELEV. 2870.00'
TOP ELEV. 2898.00'

LOWER KULA WTP TREATED
WATER STORAGE TANK (1.5 MG)
FLOOR ELEV. 2836.75'
TOP ELEV. 2856.84'

RECOMMENDED BOOSTER
PUMP AND TANK SITE

WEST QUINDA TANK (0.05 MG)
FLOOR ELEV. 2461.50'
TOP ELEV. 2484.00'

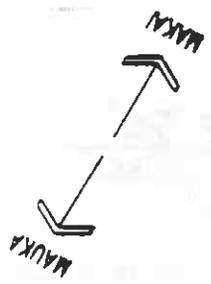
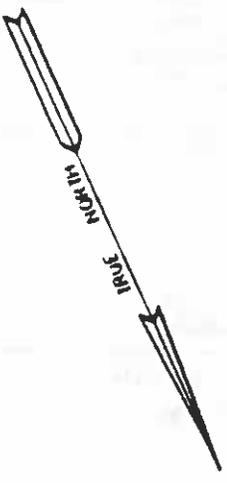
WALUBRA TANK (0.5 MG)
FLOOR ELEV. 2051.00'
TOP ELEV. 2071.00'

POOKOLA TANK (2.0 MG)
FLOOR ELEV. 1810.50'
TOP ELEV. 1831.40'

POOKOLA TANK (0.3 MG)
FLOOR ELEV. 1800.70'
TOP ELEV. 1823.00'

KULA KAI TANK (2.0 MG)
FLOOR ELEV. 2780.00'
TOP ELEV. 2800.50'

LOWER KULA WATER TRANSMISSION SYSTEM



204



DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI, HAWAII

CONTRACT DOCUMENTS FOR CONSTRUCTION OF

LOWER KULA
BOOSTER PUMP STATION AND TANK

EXHIBIT "

4

JOB NO. - DWS 94-13

APPROVED BY

DIRECTOR, DEPARTMENT OF WATER SUPPLY, COUNTY OF MAUI DATE



ECOM

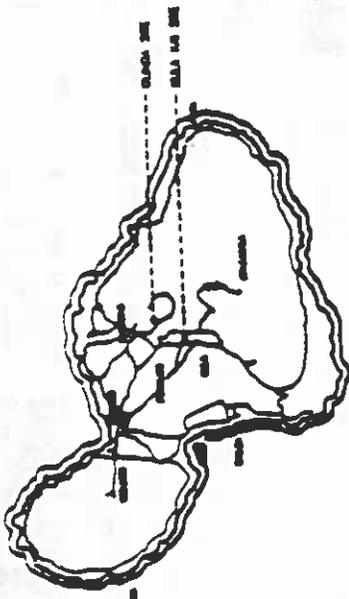
Engineering Consultants
400 Waialeale Drive
Waialeale, Maui HI 96753
Phone: (808) 255-0000
Fax: (808) 255-0000

BROWN AND CALDWELL

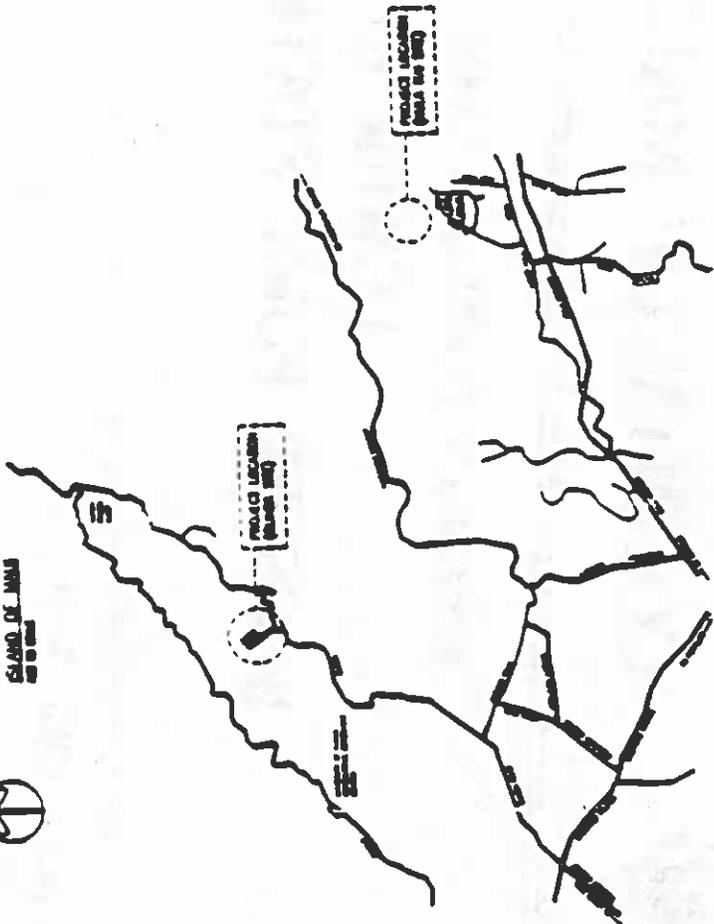
MARCH 1996

205

206



ISLAND OF MAUI
MAUI TANK SITE



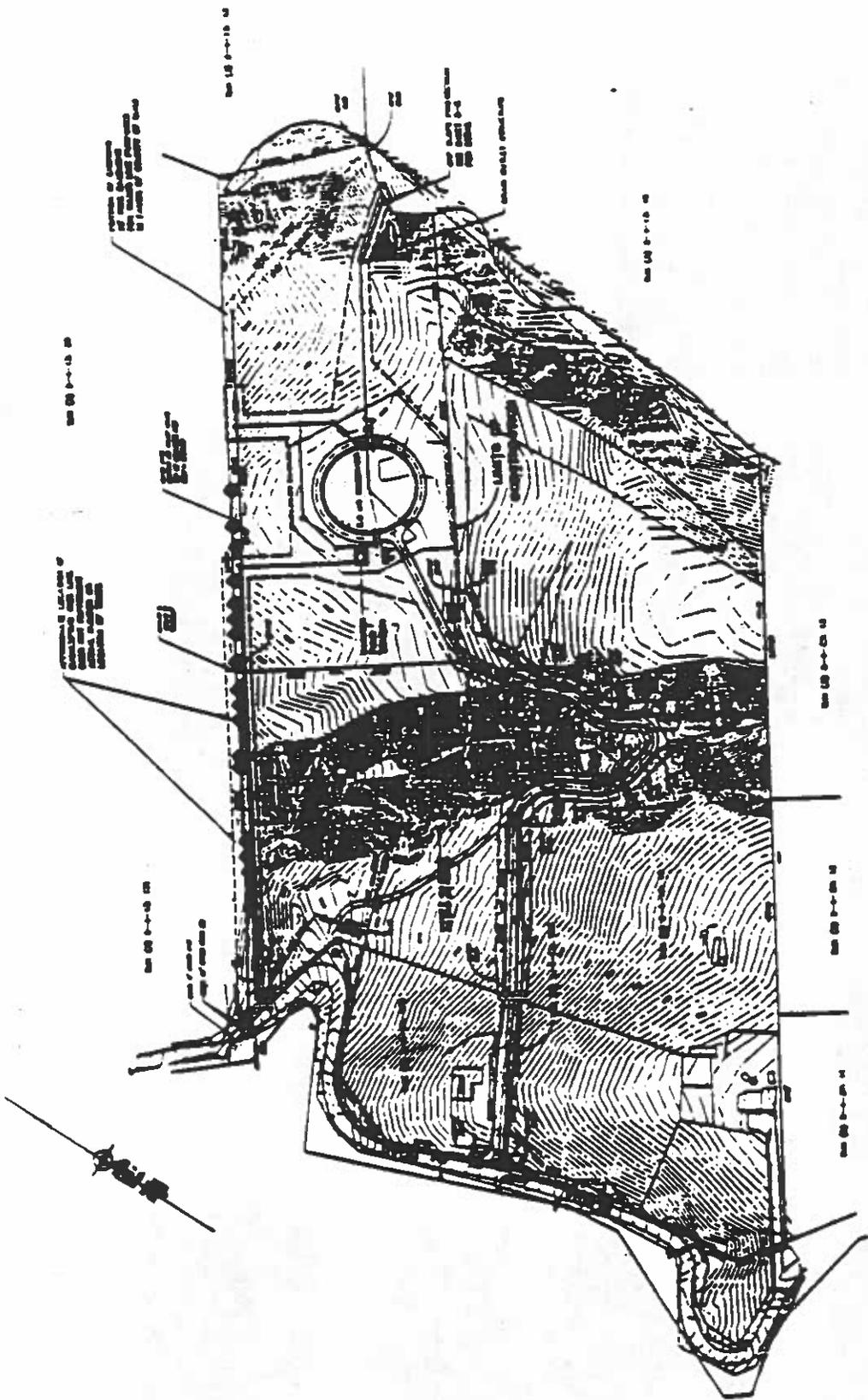
LOCATION PLAN
TANK SITE

INDEX TO DRAWINGS

- GENERAL**
- 1 D TITLE SHEET
 - 2 E-1 LOCATION PLAN/VELOCITY MAP AND INDEX TO DRAWINGS
 - 3 E-2 STANDARD CONNECTIONS
 - 4 E-3 STANDARD DETAILS
- CIVIL**
- 5 C-1 MOBILE SITE PLAN
 - 6 C-2 GENERAL SITE PLAN
 - 7 C-3 SITE GEOMETRIC PLAN
 - 8 C-4 SITE GRADING PLAN
 - 9 C-5 ACCESS ROAD PLAN & PROFILE
 - 10 C-6 40' WIDE PAVED ROAD
 - 11 C-7 10' WALKWAY/PAVEMENT USE
 - 12 C-8 SCOURED PUMP SECTION LINE
 - 13 C-9 ALTERNATE VALVE DETAILS
 - 14 C-10 GATE FLOW VALVE DETAILS
 - 15 C-11 MISCELLANEOUS DETAILS
 - 16 C-12 MISCELLANEOUS DETAILS
 - 17 C-13 MISCELLANEOUS DETAILS
 - 18 C-14 TIEC WALLS AND FLOOR PLAN/SECTION
- STRUCTURAL**
- 19 S1 GENERAL STRUCTURAL NOTES
 - 20 S2 TYPICAL CONCRETE DETAILS
 - 21 S3 TYPICAL METALWORK DETAILS
 - 22 S4 TYPICAL WOODWORK & LAMBER DETAILS
 - 23 S5 FLOOR AND ROOF PLANS
 - 24 S6 ROOF SHEET LAYOUT
 - 25 S7 FLOOR PLAN SIZES & COLUMN SECTION
 - 26 S8 SECTIONS AND DETAILS 1
 - 27 S9 SECTIONS AND DETAILS 2
 - 28 S10 SECTIONS AND DETAILS 3
 - 29 S11 SECTIONS AND DETAILS 4
- ELECTRICAL**
- 30 E100 STANDARD SYMBOLS
 - 31 E101 WIRING DIAGRAMS AND ELECTRICAL DETAILS
 - 32 E102 INSTRUMENTATION AND ELECTRICAL SYMBOLS
 - 33 E103 ELECTRICAL SITE PLAN (SCOURED PUMP SITE)
 - 34 E104 SACS SECTIONS
 - 35 E105 ONE LINE DIAGRAM AND TIEBOARD
 - 36 E106 ELECTRICAL SYMBOLS
 - 37 E107 DISCONNECT SWITCHING DEVICES 1, 2, 3
 - 38 E108 PROCESS BLOCKS SCOURED PUMP
 - 39 E109 PARTIAL WIRE FRAME USE DIAGRAM

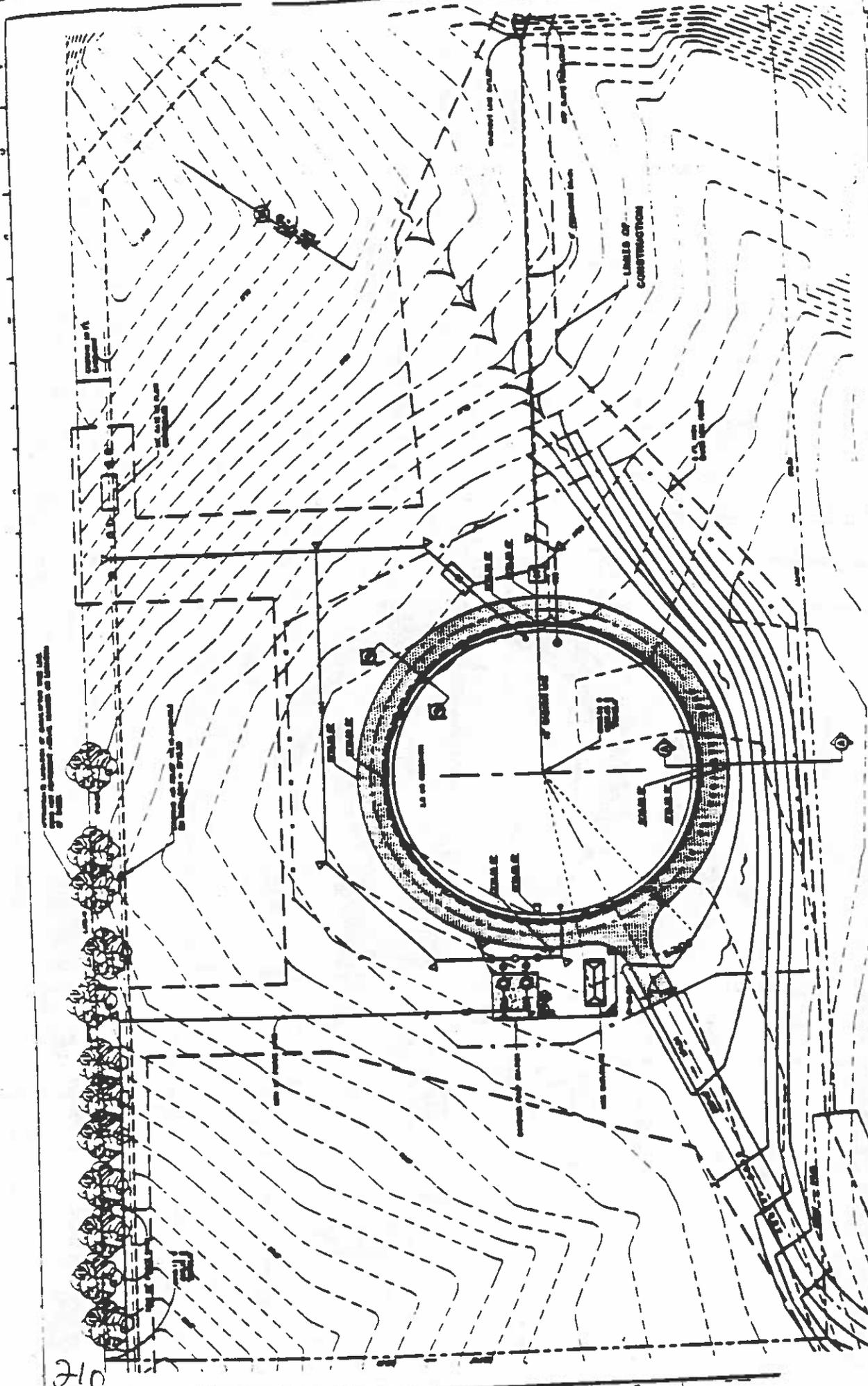
<p>BROWN AND CALDWELL</p> <p>ENGINEERS AND ARCHITECTS</p> <p>1000 KAHULUI AVENUE KAHULUI, HAWAII 96731</p>		<p>DEPARTMENT OF WATER SUPPLY COUNTY OF MAUI, HAWAII</p> <p>LOWER MAUI SCOURED PUMP STATION and TANK</p>		<p>LOCATION PLAN/VELOCITY MAP INDEX TO DRAWINGS</p>	
<p>DATE: _____</p> <p>SCALE: _____</p>	<p>PROJECT NO: _____</p> <p>SHEET NO: _____</p>	<p>DESIGNED BY: _____</p> <p>CHECKED BY: _____</p>	<p>APPROVED BY: _____</p> <p>TITLE: _____</p>	<p>DATE: _____</p> <p>SCALE: _____</p>	<p>PROJECT NO: _____</p> <p>SHEET NO: _____</p>

208



<p>Sheet No. C-2 Date 1952</p>	
<p>GENERAL SITE PLAN</p>	
<p>DEPARTMENT OF WATER SUPPLY COUNTY OF MAUI HAWAII</p>	
<p>LOWER ISLAND BOOSTER PUMP STATION and TANK</p>	
<p>Scale: _____</p>	
<p>Project No. _____</p>	
<p>Drawn by _____</p>	
<p>Checked by _____</p>	
<p>Approved by _____</p>	
<p>City of Maui</p>	
<p>Water Supply Department</p>	
<p>Lower Island</p>	
<p>Booster Pump Station and Tank</p>	

1952



SHEET NO. **C-4**
 DATE **1964**

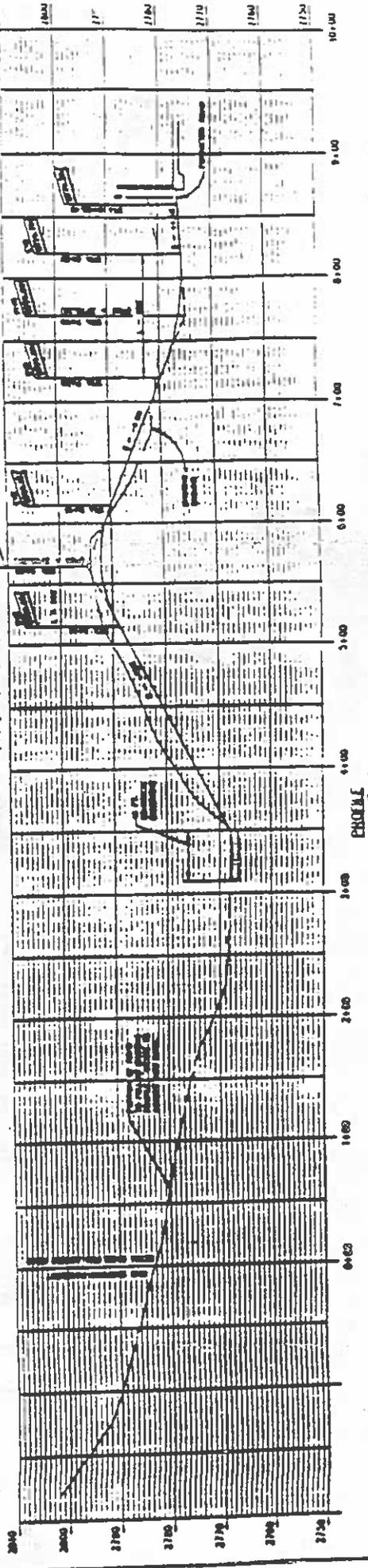
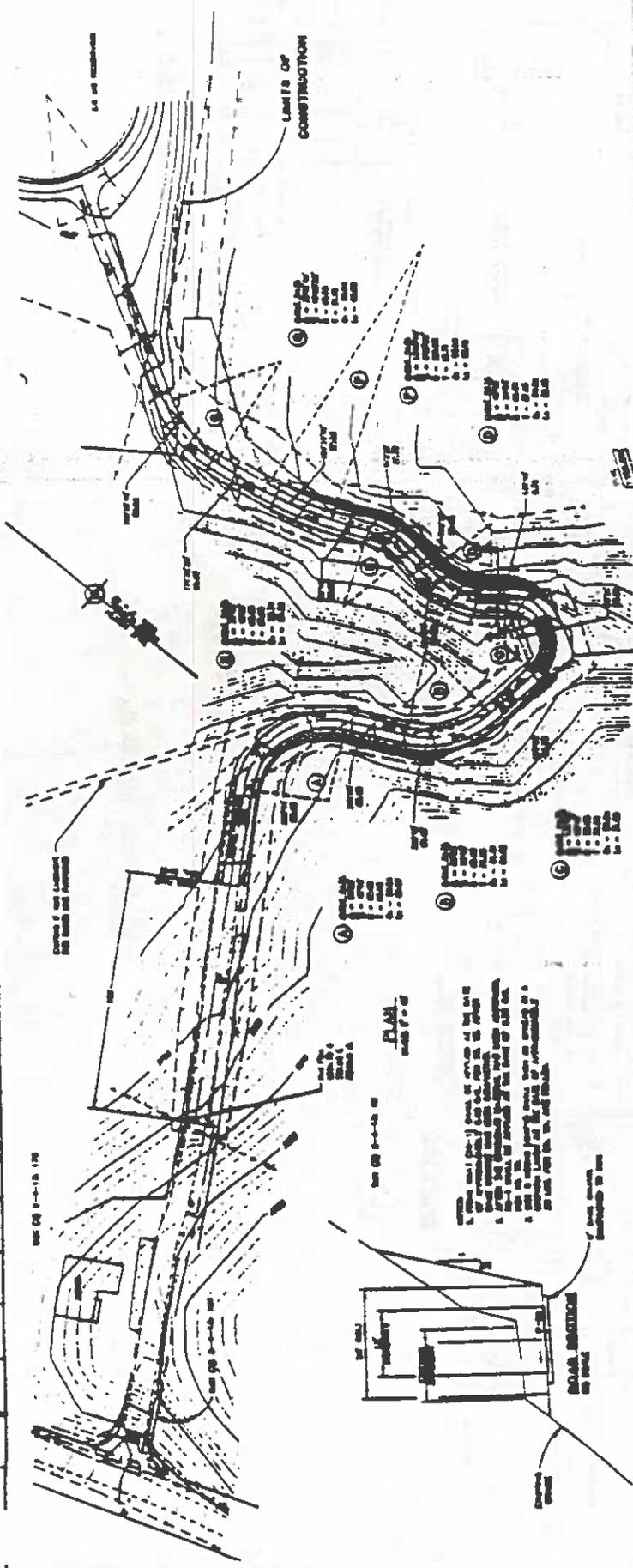
SITE GRADING PLAN

DEPARTMENT OF WATER SUPPLY
 COUNTY OF MAUI, HAWAII
 LOWER ILLA
 BOOSTER PUMP STATION and TANK

PROJECT NO. 12-1-63	DRAWN BY J. J. JONES	CHECKED BY J. J. JONES	DATE 12-1-63
SCALE AS SHOWN	PROJECT NO. 12-1-63	DRAWN BY J. J. JONES	DATE 12-1-63

BROWN AND CALDWELL

210



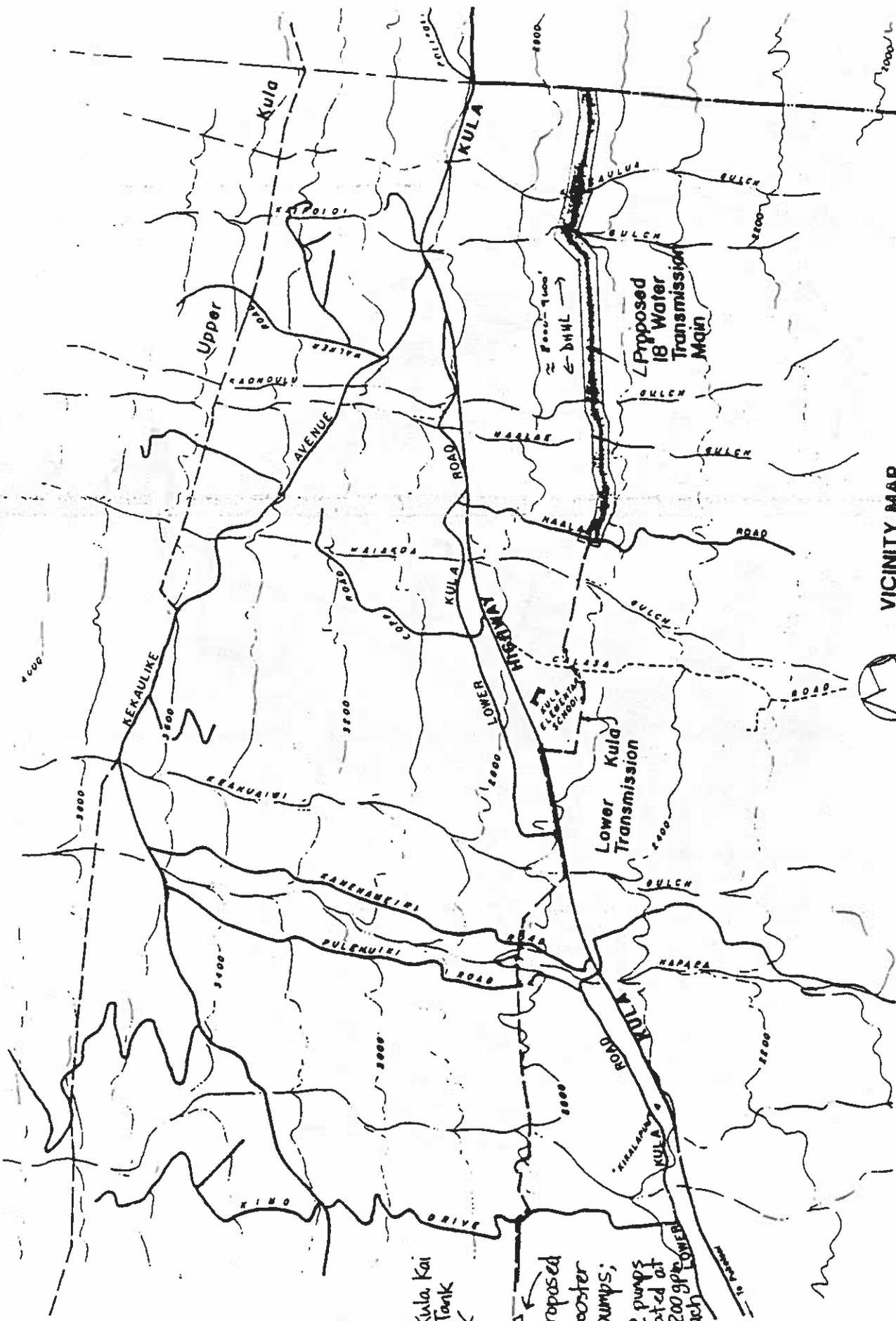
AS NOTED
 C-5
 11/24

**ACCESS ROAD
 PLAN and PROFILE**

DEPARTMENT OF WATER SUPPLY
 COUNTY OF MAUI, HAWAII
 LOWER KILA
 BOOSTER PUMP STATION and TANK

BROWN AND CALDWELL
 ENGINEERS

211



VICINITY MAP
Scale: 1" = 2,000'



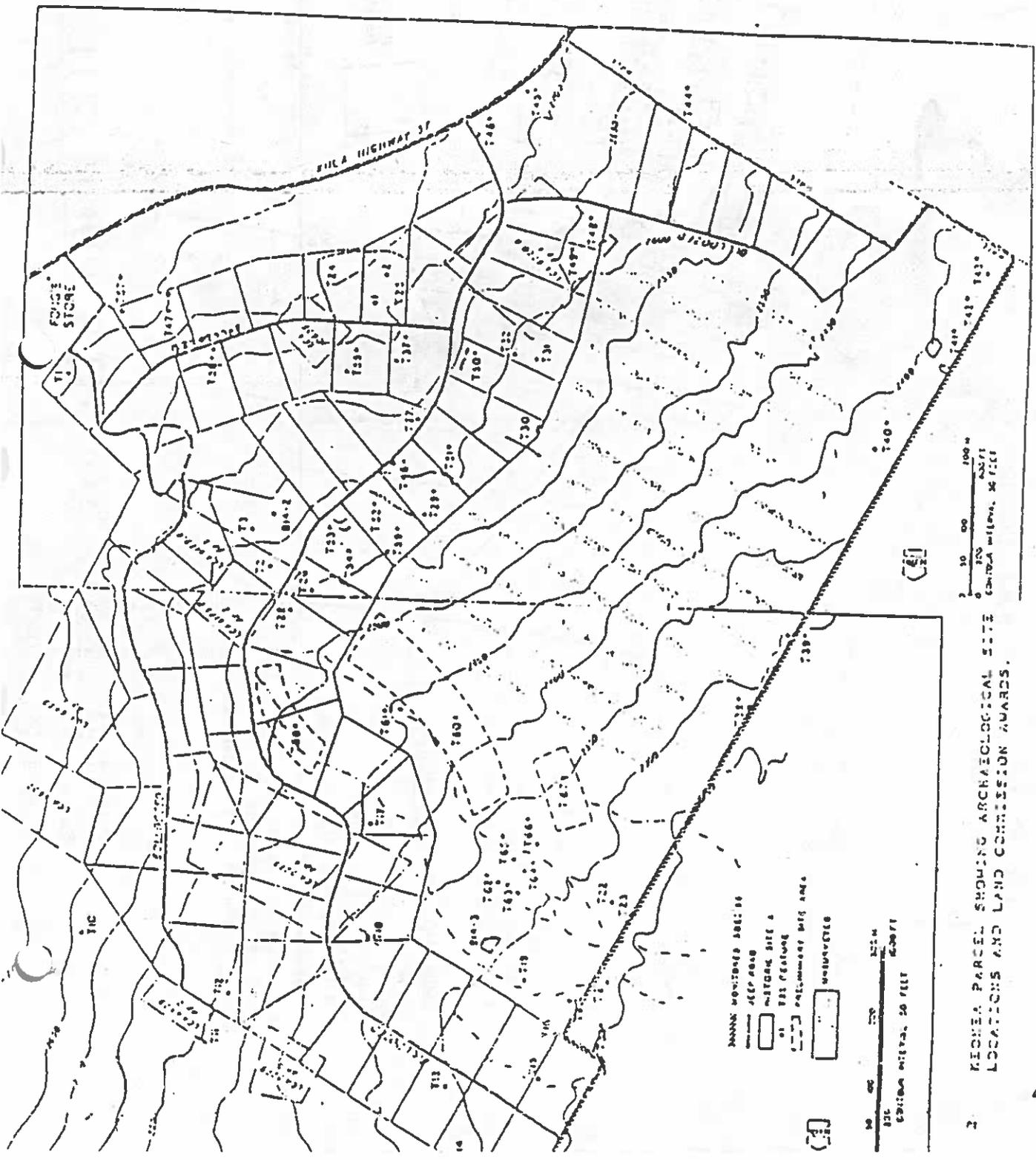
214

Kula Kai Tank
 already exists
 Proposed booster pumps;
 2 pumps rated at
 4200 gpm each
 Lower

EXHIBIT 6

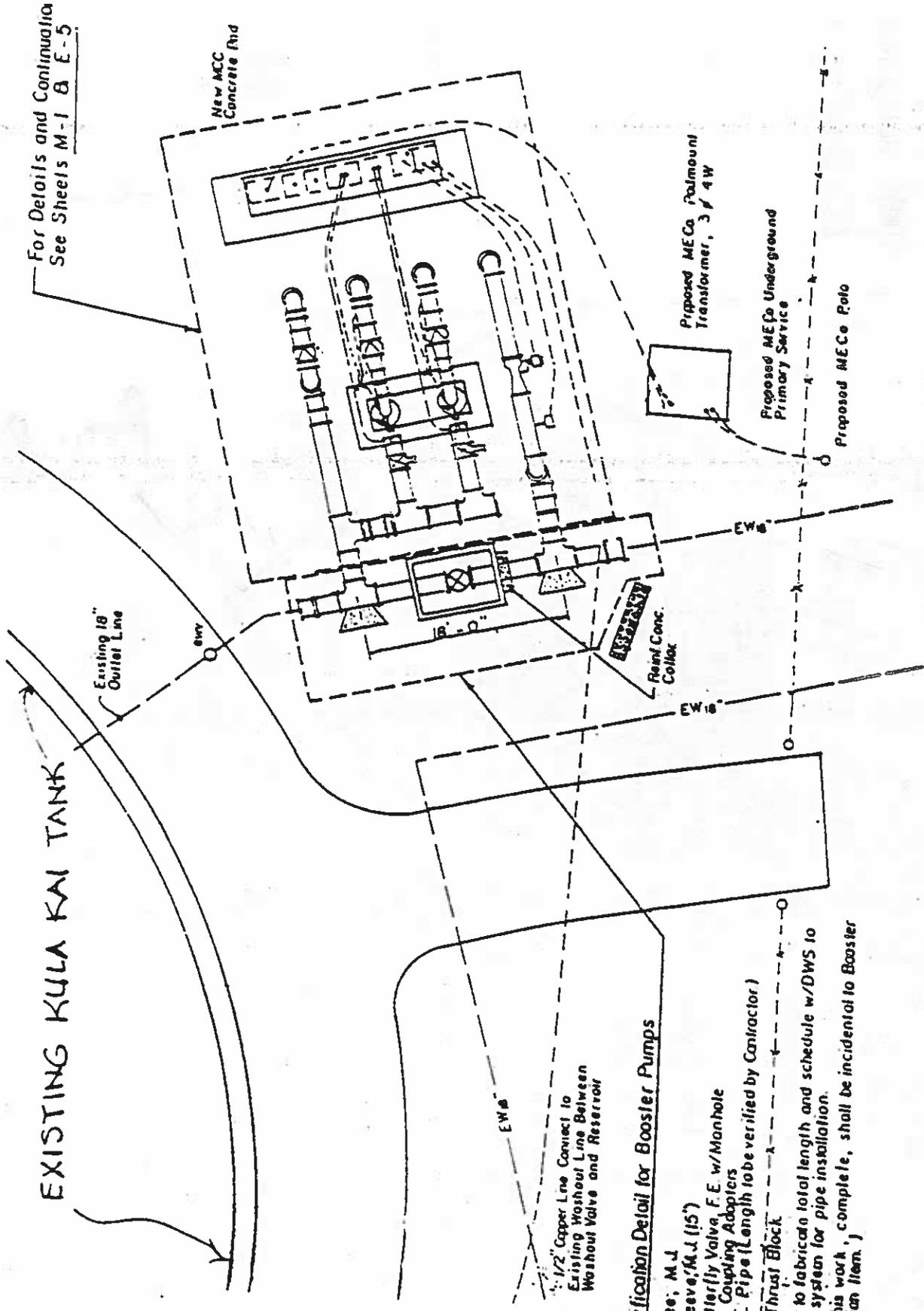
PR

KEOKEA AGRICULTURAL LOTS
EXHIBIT "7"



2 KEOKEA PARCEL SHOWING ARCHAEOLOGICAL SITE LOCATIONS AND LAND COMMISSION AWARDS.

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For Details and Continuation
See Sheets M-1 & E-5

EXISTING KULA KAI TANK

Existing 18" Outlet Line

New MCC Concrete Pad

CHECK VALVE
CHECK VALVE
CHECK VALVE

Proposed MECo Padmount Transformer, 3 φ 4W

Proposed MECo Underground Primary Service

Proposed MECo Pole

Reinf. Conc. Colloc

1/2" Copper Line Connect to Existing Washout Line Between Washout Valve and Reservoir

Location Detail for Booster Pumps

- 1. M.J
- 2. 1/2" Copper Line Connect to Existing Washout Line Between Washout Valve and Reservoir
- 3. Thrust Block
- 4. to fabricate total length and schedule w/DWS to system for pipe installation.
- 5. this work, complete, shall be incidental to Booster (man item.)

KULA KAI BOOSTER PUMP SITE PLAN

Scale: 1" = 10'

EXHIBIT "B"

DHHL credit calculation for offsite transmission improvements.

DHHL is providing two 4200 GPM booster pumps which must meet maximum day demand (1.5 times average day demand) with an operating time of 16 hours (2/3 of the day) simultaneously with maximum fire flow required 2000 GPM independent of the reservoir. (pump capacity standards) The excess capacity above "planned average day demand" (current demand plus estimated demand for meters currently unused) (3.0616 MGD), as agreed by DHHL, added to DHHL average day demand (0.5 MGD) is available for transmission credits.

$2 \text{ booster pumps} \times 4200 \text{ GPM} = 8400 \text{ GPM} - 2000 \text{ GPM fire flow} = 6400 \text{ GPM}$
 $6400 \text{ GPM} \times 0.45 \text{ (demand/ oper. factor)} = 2880 \text{ GPM}$

Converting GPM to MGD we have

$4.1472 \text{ MGD less current/DHHL demand (3.5616 MGD)} = 0.5856 \text{ MGD}$

$585600 \text{ GPD} / 600 \text{ GPD}/5/8" \text{ meter} = 976 \text{ } 5/8" \text{ meters}$

The transmission cost for 976 meters $\times \$1600 / 5/8" \text{ meter} = \$1,561600.00$

This is the amount allowed for credit on other systems with adequate capacity.

EXHIBIT 4

WATER CREDITS AGREEMENT

THIS WATER CREDITS AGREEMENT ("AGREEMENT"), made this 9th day of DECEMBER, 1997, by and between the STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOME LANDS, an agency of the Hawaiian Homes Commission, whose principal place of business is 335 Merchant Street, Honolulu, Hawaii 96813, and whose mailing address is P.O. Box 1879, Honolulu, Hawaii 96805, hereinafter referred to as the "DHHL", and the COUNTY OF MAUI DEPARTMENT OF WATER SUPPLY, a semi-autonomous department of the County of Maui, a political subdivision of the State of Hawaii, whose mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as the "DWS".

W I T N E S S E T H:

WHEREAS, the DHHL wishes to develop its homesites projects in Kula and Keokea, Maui, Hawaii, shown as (1) the "Kula Residence Lots - Unit 1" on Exhibit "1" attached hereto and made a part hereof, LUCA File No. 2.2305, TMK: (2) 2-2-02-56 (Portion), and (2) Keokea Farm Lots on Exhibit "2" attached hereto and made a part hereof, TMK: 2-2-02-55, both hereinafter called the "DHHL Homesites"; and

WHEREAS, the DHHL estimates that the DHHL Homesites at Kula will be ready to receive water in approximately December of 1999 and the DHHL Homesites at Keokea in 2000; and

WHEREAS, certain water improvements, as hereinafter set forth, are necessary to increase transmission and storage capacity of the DWS's water system in Lower Kula to deliver water to the DHHL Homesites and other potential users in the Lower Kula area; and

WHEREAS, the DHHL and the DWS are willing to cooperate with each other to make the necessary water improvements; and

WHEREAS, Pursuant to the Memorandum of Understanding between ⁶⁻²² ~~the~~ ^{the DWS} County of Maui, DWS and DHHL dated December 8, 1997, a copy of ⁶⁻²² which is attached hereto as Exhibit "3" and incorporated herein by this reference ("MOU"), the DWS committed to make the following improvements: (a) construct a new in-line pump station and, (b) a new two (2) million gallon water storage tank served by the Lower Kula transmission main. In the same MOU, DHHL committed to make the following off-site and on-site improvements: (a) a new off-site transmission main between Naalae Road and DHHL Homesites, (b) two (2) new off-site booster pumps in the vicinity of the existing Kula Kai reservoir, and (c) three (3) new on-site reservoirs and two (2) new on-site pumps, transmission, and distribution lines within the DHHL Homesites ("DHHL Improvements") (the details of these improvements are more fully set forth in the MOU); and

WHEREAS, the MOU contemplated that in consideration of its contribution for construction of the Booster Pump at Kula Kai

Reservoir, construction of transmission water main from Naalae Road to the DHHL subdivision, and construction of on-site reservoirs, pumps, transmission, and distribution lines, DHHL would receive Water System Development Fee ("WSDF") credits from the DWS by separate agreement; and

WHEREAS, the DHHL improvements will be licensed to the DWS in perpetuity (For purposes of this Agreement, and in consideration of Sections 204, 205, and 207 of the Hawaiian Homes Commission Act, DHHL and DWS agree that reference to "dedication" in the WSDF Rules is equivalent to a "license in perpetuity".); and

WHEREAS, no source credits will be granted to DHHL for the DHHL Homesites as DHHL is not developing source as defined in the WSDF Rules; and

WHEREAS, transmission and storage credits will be given to DHHL based on the DHHL improvements; and

WHEREAS, the DWS and DHHL intend this AGREEMENT to set forth the amount of credits DHHL shall receive from the DWS;

NOW, THEREFORE, in consideration of the mutual promises described herein, the undersigned parties hereby agree as follows:

1. WATER FOR DHHL HOMESITES. The DWS shall commit five hundred thousand (500,000) gallons of potable water per average day to DHHL for the DHHL Homesites. Upon completion of the DWS

Improvements and the DHHL Improvements, the DWS shall maintain the improvements and deliver potable water to the DHHL up to an amount of 500,000 gallons per average day, as needed by the DHHL Homesites, except during any drought affecting the Lower Kula area as declared by the DWS in accordance with its rules and regulations. The DWS shall not impose any sort of time limitation on DHHL to draw or use such reservation of potable water from the DWS system.

2. DHHL WATER CREDITS. In consideration of its contribution for construction of (1) the off-site Booster Pumping Station at Kula Kai Reservoir, and construction of transmission water main from Naalae Road to DHHL subdivision, and (2) construction of on-site reservoirs, booster pumps, and transmission lines, which shall be licensed to the DWS in perpetuity, DHHL shall receive from the DWS water credits as follows:

a. Source Credits - No source credit is given. DHHL, or the appropriate applicant, will pay the source component of the Water System Development Fee for the DHHL Homesites in Maui, Hawaii, when DHHL or applicants request the installation of each water meter. No source development payments shall be required by DWS in advance of applying for a water meter.

b. Transmission and Storage Credits - DHHL has satisfied the transmission and storage components of the DWS

Water System Development Fee for any 5/8" meter for the DHHL Homesites in Maui, Hawaii, up to the 500,000 gallons per average day of the water committed. No payment for transmission and storage components of the fees will be required of DHHL by DWS. For any meter over 5/8", the difference between the storage and transmission components for the larger meter and the 5/8" meter shall be deducted from the credits in 2.c below provided the system is adequate.

c. Additional Credits - DHHL shall receive from the DWS an additional \$1,561,600 credit as set forth in Exhibit "4" for increasing the transmission and storage capacity of the DWS water system beyond current and planned DWS and future DWS and DHHL needs. The \$1,561,600 credit may be used by DHHL to off-set the Water System Development Fee, on a dollar-for-dollar basis, for its other subdivision projects in the County of Maui where the DWS system is adequate and water is available.

3. OTHER DHHL CREDITS. This Agreement shall not affect any of the other DHHL credits the DHHL has with the DWS.

4. GOVERNING LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of Hawaii.

5. ASSIGNABILITY. This Agreement, and the rights and obligations hereunder, shall not be assigned, in whole or in part, by any of the parties hereto to any other persons or entities without the prior written consent of all of the parties

hereto, which consent may be withheld at the sole discretion of any of the parties hereto.

6. NO THIRD PARTY BENEFICIARIES. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity not a party to this Agreement.

7. FURTHER ASSURANCES. Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

8. AMENDMENTS. This Agreement may be amended in whole or in part only by further written agreement executed by all of the parties hereto.

9. INTEGRATION. This Agreement contains all of the agreements of the parties hereto with respect to the matters covered hereby, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless specifically incorporated in the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective on the day and year first above written.

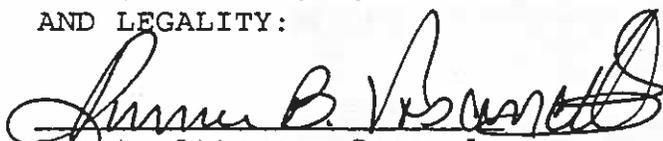
STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

BY 
KALI WATSON
Chairman
Hawaiian Homes Commission

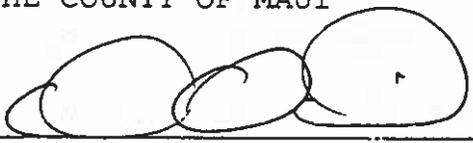
Approved by the Chairman on

DECEMBER 9, 1997

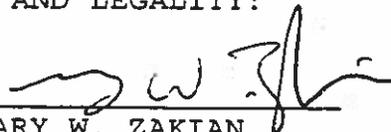
APPROVED AS TO FORM
AND LEGALITY:


Deputy Attorney General
State of Hawaii

BOARD OF WATER SUPPLY
OF THE COUNTY OF MAUI

BY 
DORVIN D. LEIS
Its Chair

APPROVED AS TO FORM
AND LEGALITY:


GARY W. ZAKIAN
Corporation Counsel
County of Maui

STATE OF HAWAII)
)
) *maui*) SS.
Jr/np ~~CITY & COUNTY OF HONOLULU~~)

On this *9th* day of *December*, 1997, before me appeared KALI WATSON, to me personally known, who being by me duly sworn did say that he is the Chairman of the Hawaiian Homes Commission, and that he is authorized to sign the foregoing instrument on behalf of the State of Hawaii, Department of Hawaiian Home Lands, an agency of the Hawaiian Homes Commission, and the said KALI WATSON acknowledged that he executed the said instrument as the free act and deed of said State of Hawaii, Department of Hawaiian Home Lands.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

John B. Jordan
Notary Public State of Hawaii
My commission expires: *1-13-99*

STATE OF HAWAII)
)
) SS.
COUNTY OF MAUI)

On this *9th* day of *December*, 1997, before me appeared DORVIN D. LEIS, to me personally known, who being by me duly sworn did say that she is the Chairperson of the Board of Water Supply of the County of Maui, a semi-autonomous department of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said Board of Water Supply of the County of Maui, and that the said instrument was signed and sealed on behalf of said Board of Water Supply of the County of Maui, and the said DORVIN D. LEIS acknowledged the said instrument to be the free act and deed of said Board of Water Supply of the County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

JK

Joy Kanevich
Notary Public, State of Hawaii
My commission expires: *4/19/98*

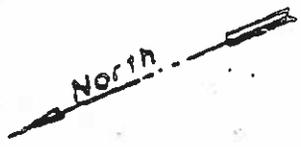
SERVICE ZONE NO. 4 RESERVOIR SITE

SERVICE ZONE NO. 3
RESERVOIR AND PUMP SITE
(2 pumps rated at
700 gpm pump)

SERVICE ZONE NO. 2
RESERVOIR

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EXHIBIT " 1 "

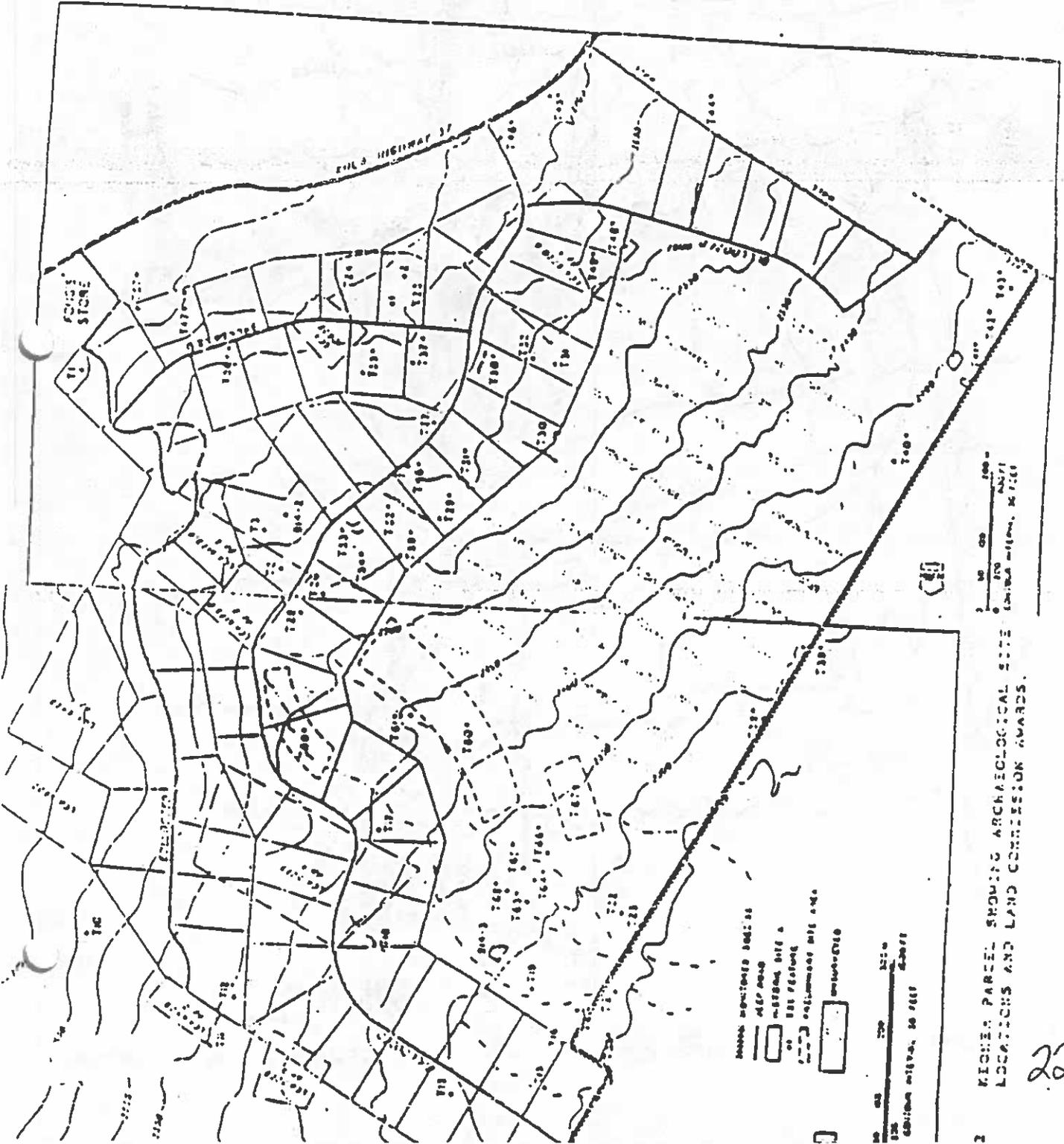


VICINITY MAP

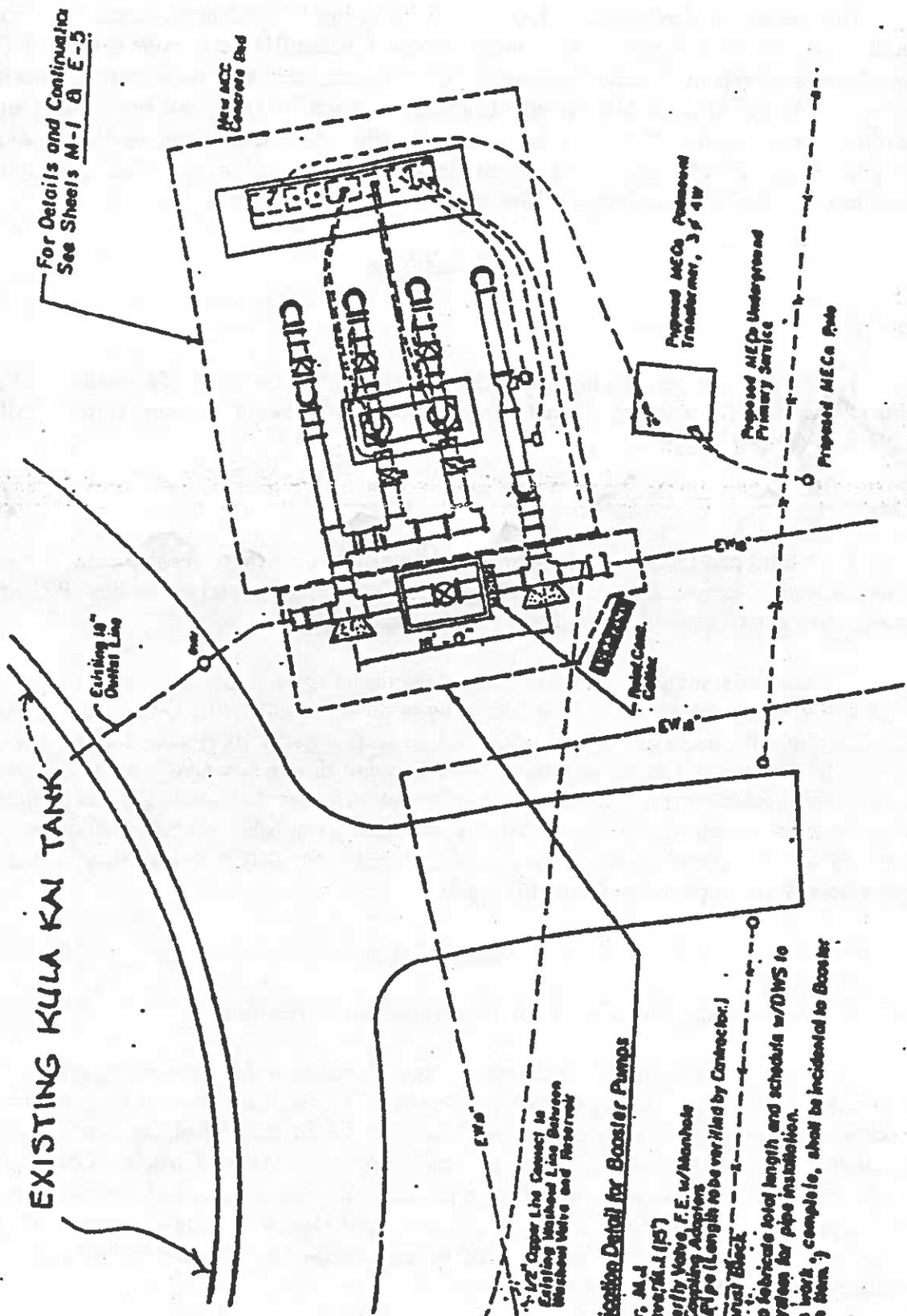
KULA RESIDENCE LOTS - UNIT 1

NOT TO SCALE

KEOKEA AGRICULTURAL LOTS
EXHIBIT "2"



2 KEOKEA PARCEL SHOWING ARCHAEOLOGICAL SITE LOCATIONS AND LAND COMMISSION AWARDS.



For Details and Continuation
See Sheets M-1 & E-5

New MCC
Concrete Bed

Proposed MECA Personnel
Transformer, 3 p 410

Proposed MECA Underground
Primary Service

Proposed MECA Pole

Installation Detail for Booster Pumps

- 1. 1/2" Copper Line Connect to Existing Washout Line Between Washout Valve and Reservoir
- 2. 1/2" Copper Line (5') Header; Valve, F.E. w/Manhole
- 3. Coupling Adapters
- 4. Pipe (Length to be verified by Contractor.)
- 5. Flange Block
- 6. To fabricate total length and schedule w/DWS to system for pipe installation.
- 7. This work complete, shall be incidental to Booster from item 3.

KULA KAI BOOSTER PUMP SITE PLAN
Scale: 1" = 10'
EXHIBIT "4"

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims ("Agreement") is entered into by Plaintiff Board of Water Supply of the County of Maui ("Plaintiff"), on the one hand, and The Dow Chemical Company, Occidental Chemical Corporation, successor-in-interest to Occidental Chemical Company, Occidental Petroleum Corporation, Shell Oil Company, individually and dba Shell Chemical Company, AMVAC Chemical Corporation, American Vanguard Corporation, Brewer Environmental Industries LLC, Maui Pineapple Company, Ltd. and Maui Land and Pineapple Company, Inc. (collectively "Defendants"), on the other hand.

RECITALS

Case Name:

1. There is now pending in the Second Circuit Court of the State of Hawaii a civil action entitled "*Board of Water Supply of the County of Maui v. Shell Oil Company, et al.*," Civil Case No. 96-0370(1) (the "Action").

Intent:

2. Plaintiff and Defendants have entered into this Agreement to resolve with finality the Action, as well as all past, pending, potential, continuing and future DBCP claims between them and to avoid the expense of further litigation.

3. In consideration for this Agreement, Defendants agree to pay as tort damages \$3,000,000 in settlement of the Action, consisting of the sums of \$1,791,231 for the capital cost of GAC facilities for the Napili A well, \$404,769 for certain past DBCP related costs, and \$804,000 for the cost of the Hamakuapoko 1999 Drought Emergency GAC facility. Defendants also agree (subject to certain limitations) to pay certain sums for the installation and operation of carbon filtration systems (hereinafter "GAC") or alternative remedies to assist Plaintiff in complying with the Maximum Contaminant Level ("MCL") for DBCP on the Island of Maui until September 1, 2039 (a period of forty (40) years).

DEFINITIONS

4. The following definitions apply throughout this Agreement:

a. "Defendants", as the term is used throughout this Agreement, refers collectively to defendants The Dow Chemical Company, Occidental Chemical Corporation, successor- in-interest to Occidental Chemical Company, Occidental Petroleum Corporation, Shell Oil Company, individually and dba Shell Chemical Company, AMVAC Chemical Corporation, American Vanguard Corporation, and Brewer Environmental Industries, LLC, and third-party defendants Maui Land and Pineapple Company, Inc., and Maui Pineapple Company, Ltd. and each of them, and all of their predecessors and successors, their current and former parent and subsidiary companies, divisions and affiliates.

b. "DBCP" refers to 1,2-dibromo-3-chloropropane, and all products containing said compound, including, without limitation, Dow "Fumazone," Occidental "BBC" and "DBCP," Nematocide Granules 50, Nematocide 12.1 EM, Nematocide 15.1 EM, Nematocide Solution 17.1 and Shell "Nemagon".

c. The term "Maximum Contaminant Level" or "MCL" refers to a limit concerning the concentration of DBCP in drinking water supplies enforced by a public agency which applies to Plaintiff. At present, the MCL for DBCP enforced by the Hawaii Department of Health ("DOH") is 40 parts per trillion (ppt), or 0.04 parts per billion (ppb). The parties anticipate that during the period covered by this Agreement the name of the governmental entity enforcing the MCL, the numerical limit, and/or the terminology used to describe the limit may change. This Agreement is intended to secure compliance with whatever MCL is applicable and enforceable at the relevant time during the term of this Agreement.

d. The terms "Exceeds the MCL" or "Exceeded the MCL" refer to a potential situation where either: (1) Plaintiff's well exceeds the MCL for DBCP when tested for the applicable regulatory period; (2) a regulatory authority directs Plaintiff to stop using a well or refrain from connecting a well to its water system unless Plaintiff remediates DBCP in the well; or (3) the well is tested quarterly and the total of such quarterly test results exceeds the applicable MCL when divided by four (4).

e. "CPI" refers to the Consumer Price Index, all urban consumers, water and sewerage maintenance, issued by the U.S. Bureau of Labor Statistics, or its successor, as adjusted for projects in Hawaii.

- f. (i) "Napili A" refers to Plaintiff's well, Hawaii State No. 5838-01.
- (ii) "Honokahua A" refers to Plaintiff's well, State No. 5838-03.
- (iii) "Hamakuapoko 1" refers to Plaintiff's well, State No. 5420-02.
- (iv) "Hamakuapoko 2" refers to Plaintiff's well, State No. 5320-01.
- (v) "Haiku well" refers to Plaintiff's well, State No. 5419-01.

g. "Existing Wells" refers to all wells on the Island of Maui which were drilled, owned, and/or operated by Plaintiff before the effective date of this Agreement.

h. "Hamakuapoko 1999 Drought Emergency GAC" refers to the temporary installation of GAC on Hamakuapoko Wells Nos. 1 and 2 during the 1999 Upcountry Drought Emergency.

i. "Future Wells" refers to drinking water wells on the Island of Maui, which are drilled and/or acquired by Plaintiff after the effective date of this Agreement.

j. The term "GAC" refers to granular activated carbon facilities for removal of DBCP from water.

k. The term "O&M" refers to the cost of operation and maintenance of GAC or other method used to remove DBCP from water, including, but not limited to, vessel replacement due to age and/or wear and tear.

l. "Regularly Scheduled Well Test" currently means a quarterly raw water analysis conducted by or on behalf of Plaintiff, or for such other period as may be required by any state or federal law or regulator.

m. The term "Regular Use" means a Plaintiff well that has a utilization rate of 10% or more, averaged over a year where water from the well is introduced into the water distribution system.

n. The term "In Operation" refers to that period of time (measured in days) when GAC is installed on an active Plaintiff well and: (1) it is actually removing DBCP from the water; (2) it is not removing DBCP because the well on which it is installed is not pumping due to regular water demand fluctuations; or (3) it is undergoing ordinary maintenance or carbon change-out.

o. "Defendants' Representative" refers to the law firm of Filice, Brown, Eassa & McLeod, LLP, 1999 Harrison Street, 18th Floor, Oakland, California 94612-3541, or such other successor, person or entity designated by Defendants in the future.

p. "Plaintiff's Representatives" refers to the Corporation Counsel, County of Maui, 200 South High Street, Wailuku, Maui, Hawaii, and Miller, Sher & Sawyer, A Professional Corporation, 7 Park Center, Suite 1, Sacramento, California 95825, or such other successor, person or entity designated by Plaintiff in the future.

q. The term "Notice to Proceed" refers to a notice from Plaintiff to a contractor to construct a GAC facility, or alternative technology facility.

r. "DOH" refers to the Hawaii Department of Health or any successor entity charged by the State of Hawaii with regulating water quality.

- s. "Event of Default" refers to any of the following events:
- (i) under the terms of paragraph 46, Defendants fail to pay Capital Costs within 30 days of receiving a Notice to Proceed;
 - (ii) under the terms of Paragraph 47, Defendants fail to make a timely payment for O&M Costs;
 - (iii) under the terms of Paragraph 48, Defendants fail to provide a replacement Letter of Credit.

GENERAL SUMMARY OF TERMS OF AGREEMENT

5. As more specifically described below, in consideration for this Agreement:

Past and Present Costs

6. On or before September 1, 1999, Defendants will make a cash payment as tort damages to Plaintiff and its attorneys of record, "Miller, Sher & Sawyer, a professional corporation," in the amount of Three Million Dollars (\$3,000,000), provided Plaintiff has executed this Agreement. This represents a total of \$1,791,231 for the capital cost of GAC facilities for the Napili A well, \$804,000 for the cost of the Hamakuapoko 1999 Drought Emergency GAC, and \$404,769 for other past DBCP-related costs.

7. Third-party defendant, Maui Land and Pineapple Company hereby releases any claim for past transfers of land to Plaintiff in West Maui. Plaintiff will participate in separate negotiations with Maui Land and Pineapple Company to install, operate and maintain a 2.5 inch high density polyethylene (HDPE) pipeline, or its equivalent, and appurtenances, across Maui Land and Pineapple Company land, to connect with the nearest connection to Plaintiff's water system in the Honokahou Valley.

Capital Costs of GAC Facilities For Certain Wells

8. It is anticipated that during the term of this Agreement the concentration of DBCP in the Hamakuapoko 1 and 2, Honokahua A and Haiku wells may Exceed the MCL. Defendants will reimburse Plaintiff during the term of this Agreement for 100% of the capital costs of GAC for each such Well that Exceeds the MCL. Defendants have agreed to make specified payments, as set forth in subparagraphs (i) through (iv), to defray the expense of installing GAC on these wells.

i. Defendants shall pay 100% of the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000) for wells that can be treated with two (2) GAC vessels (that is, a well with a yield of 750 gallons per minute ("gpm") or less);

ii. Defendants shall pay 100% of the sum of \$2,400,000 for well(s) which can be treated with three GAC vessels (that is, well(s) with a yield of more than 750 gpm and less than 1,500 gpm);

iii. Defendants shall pay 100% of the sum of \$ 600,000 for each additional 750 gpm of yield in a well at or above 1,500 gpm, in addition to the base amount of \$2.4 million;

iv. Defendants' obligations to pay capital costs under this paragraph shall be reduced by \$100,000 for wells with no pump or a non oil-lubed pump;

v. Capital costs to be paid under this Agreement after January 1, 2000 shall be adjusted by the CPI annually, pursuant to Paragraph No. 29 (CPI Adjustment).

Capital Costs of GAC Facilities For Other Wells

9. It is anticipated during the term of this Agreement that the concentration of DBCP in some other Existing and Future Wells may Exceed the MCL. Defendants will reimburse Plaintiff during the term of this Agreement for the capital costs of GAC for each other Existing and Future Well that Exceeds the MCL. Defendants have agreed to make specified payments, as set forth in subparagraphs (i) through (iv), to defray the expense of installing GAC on these wells.

i. Defendants shall pay 90% of the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000) for wells that can be treated with two (2) GAC vessels (that is, a well with a yield of 750 gallons per minute ("gpm") or less);

ii. Defendants shall pay 90% of the sum of \$2,400,000 for well(s) which can be treated with three GAC vessels (that is, well(s) with a yield of more than 750 gpm and less than 1,500 gpm);

iii. Defendants shall pay 90% of the sum of \$600,000 for each additional 750 gpm of well capacity at or above 1,500 gpm, in addition to the base amount of \$2.4 million;

iv. Defendants' obligations to pay capital costs under this paragraph shall be reduced by \$100,000 for all future wells and existing wells with no pump or a non oil-lubed pump;

v. Capital costs to be paid under this Agreement after January 1, 2000 shall be adjusted by the CPI annually, pursuant to Paragraph No. 29 (CPI Adjustment).

Reimbursement For Operations and Maintenance ("O&M") Of GAC

10. Defendants will reimburse Plaintiff during the term of this Agreement for O&M of GAC for each Plaintiff well that Exceeds the MCL as follows: Napili A, Honokahua A, Hamakuapoko 1 and 2, and the Haiku Wells shall each qualify for 100% of O&M at the annual rate of \$68,500 for a two-vessel facility, \$74,500 for a three-vessel facility, and an additional \$6,000 for O&M for each additional vessel, adjusted by the CPI as set forth in Paragraph No. 29. Existing and Future Wells which are treated with GAC under this Agreement shall qualify for O&M at 90% of the O&M per vessel rate set forth in this paragraph, adjusted by the CPI as set forth in Paragraph No. 29. The number of vessels for which Defendants will pay will be based on well yield and will be determined pursuant to Paragraph No. 20 (for the Honokahua A, Hamakuapoko 1 and 2, and Haiku wells) or Paragraph No. 23 (for other Existing or Future Wells).

i. The O&M payments specified above shall be made on or before January 10, 2000, and each successive year thereafter. The payments made shall be adjusted by the CPI annually pursuant to Paragraph No. 29.

ii. Defendants' obligation to pay annual O&M under this Agreement ends on September 1, 2039.

Limitation on Number of Wells

11. The number of wells for which Defendants will be obligated to pay for the capital and O&M costs for GAC is limited to fifty (50) wells.

Termination Of Obligations

12. Any obligation of Defendants to make any payment under this Agreement will end on September 1, 2039, provided that all payments due as of that date have been made.

TERMS OF AGREEMENT

Dismissal of Actions

13. Plaintiff agrees to dismiss with prejudice Defendants and the Action in its entirety, and Plaintiff further agrees to release and waive all rights to bring any future DBCP claims, lawsuits or actions arising in whole or in part from the past, present, continuing or future presence of DBCP in Plaintiff's wells on the Island of Maui, subject to the exceptions set forth in Paragraph

42 [indemnity] and Paragraph 43 [claims related to the Islands of Molokai and/or Lanai].

Denial of Liability

14. This Agreement is not an admission of liability, nor an admission that any of the facts alleged by Plaintiff are true, nor an admission that the Action or any portion thereof asserted by Plaintiff are well-founded, and Defendants deny that they, or any of them, are liable to Plaintiff for any of the claims asserted in the Action.

Joint Tortfeasor Release

15. It is understood, agreed, and intended as follows:

a. The release contained in Paragraph 57 of this Agreement (the "Release") is intended to be and shall be construed as a joint tortfeasor release, and any damages otherwise recoverable by the Board against any other persons (natural, corporate, or otherwise) in connection with events and transactions which are the subject of the release shall be and hereby are reduced to the extent of (1) the consideration paid for this Release, or (2) the pro rata share that Defendants would be responsible to pay to the Board if it were determined that Defendants were jointly liable to the Board, whichever is greater.

b. The Release is given and taken pursuant to the provisions of the Uniform Contribution Among Tortfeasors Act, sections 663-11 through 663-17, Hawaii Revised Statutes, as amended ("UCATA"), and shall operate to release Defendants from any and all liability to make contribution for the Covered Claims (as that term is defined in the statute) to any person found to be a joint tortfeasor with Defendants.

c. The parties hereto intend that the Release and provisions of UCATA shall be applicable to all Covered Claims, whether asserted under federal statutes or under Hawaii statutes or under common law, including claims to which UCATA may not otherwise (in the absence of this Release) apply.

Payment for Past and Present Costs

16. Plaintiff agrees to release Defendants from all claims for DBCP-related costs incurred to date by Plaintiff, including, but not limited to, the capital costs of GAC on the Napili A well, the costs of the 1999 Hamakuapoko Drought Emergency GAC, and certain other costs, for which Defendants agree to pay Plaintiff as tort damages the amount of Three Million Dollars (\$3,000,000), payable to "Board of Water Supply of the County of Maui and its attorneys of record, Miller, Sher & Sawyer, a professional corporation," on or before September 1, 1999, if Plaintiff has executed this Agreement.

Payment for O&M Costs

17. On or before January 10 of each year, Defendants will reimburse Plaintiff for O&M of GAC for the preceding year in conformity with this Agreement, if GAC was in place and In Operation during the preceding year. The first payment will be made on or before January 10, 2000, for the portion of 1999, if any, that such facilities were in operation. Defendants will reimburse Plaintiff for O&M on the Hamakuapoko 1999 Drought Emergency GAC for each

month GAC was in place and in operation at least 10% of the month at a monthly rate of \$5,708. Reimbursement for O&M costs will be requested and paid in accordance with the terms of paragraph 47.

18. The amounts payable for O&M for GAC will be adjusted by the CPI annually, pursuant to Paragraph No. 29.

CERTAIN WELLS THAT EXCEED THE MCL

19. If the concentration of DBCP in the Honokahua A, Hamakuapoko 1, Hamakuapoko 2, and/or the Haiku wells Exceeds the MCL, then upon issuance of a Notice to Proceed for installation of GAC facilities on any such well, Defendants will pay 100% of the capital costs and O&M for GAC on those wells.

Capital Costs

20. Capital costs associated with installation of GAC for the Honokahua A, Hamakuapoko 1, Hamakuapoko 2, and/or the Haiku wells are determined as follows:

a. Plaintiff will determine the number of GAC vessels to be installed for a well(s) that Exceeds the MCL based on actual peak well yield capacity as follows: Up to 750 gpm (two vessel), and 751-1,500 gpm (three vessels). One additional vessel will be installed for each additional 750 gpm increment, or fractions thereof, in actual peak well capacity. Plaintiff may locate vessels on a well site, a remote site or at a centralized site at its option.

b. The capital costs of which Defendants will pay 100% are as follows: two vessels -- \$1, 800,000, three vessels -- \$2, 400,000. Defendants will pay 100% of an additional \$600,000 for each additional vessel above three. Defendants' obligations to pay capital costs under this paragraph shall be reduced by \$100,000 for any of these wells with no pump or a non oil-lubed pump. The foregoing amounts are deemed to include, but are not limited to, the costs of land acquisition, design, and construction of GAC.

c. Subject to Defendants' obligation to reinstall GAC on previously treated wells from which GAC has been removed, capital costs of which Defendants will pay 100% do not include the costs of GAC vessel replacement, including due to age or wear and tear. (See Paragraph No. 4 k.) Such vessel replacement costs are included in, and/or to be paid by Plaintiff out of, O&M.

d. Reimbursement will be requested and paid in accordance with Paragraph No. 46.

O&M Costs

21. The O&M costs on the Honokahua A, Hamakuapoko 1, Hamakuapoko 2, and/or Haiku wells are determined as follows:

a. O&M costs will be based on well yield as follows: Up to 750 gpm (two vessels), \$68,500/year; 751-1,500 gpm (three vessels), \$74,500/year; and an additional \$6,000/year for each additional 750 gpm of well yield.

b. On or before January 10 of each year, for each such well, Defendants will reimburse Plaintiff for 100 percent of the O&M of GAC for the preceding year if GAC was In Operation on such well during the preceding year.

c. For any such well for which GAC has been In Operation for less than one year, Defendants' obligation to reimburse Plaintiff for O&M will be limited to 100% of the monthly per vessel rate set forth in Paragraph No. 21 e. for O&M of GAC for each month GAC was In Operation.

d. Defendants' obligation to pay annual O&M on any such well, as set forth above, will be conditioned on Plaintiff's Regular Use of such well. For any such well with an average annual utilization rate of less than 10%, Defendants will pay O&M of \$1,000 for such well for each month GAC was In Operation if GAC was not installed and In Operation for the entire year.

e. For any such well at which GAC was In Operation for less than one year, the payment will be a calculated amount for each month the GAC was In Operation for more than fifteen (15) days. The amount paid for each month under this paragraph will be calculated by dividing 12 into the annual rate for O&M payments set forth under subparagraph (a) above.

f. The amounts payable for capital costs for the Honokahua A, Hamakuapoko 1, Hamakuapoko 2, and/or Haiku wells under Paragraph 20 will be adjusted by the CPI annually, pursuant to Paragraph No. 29. The amounts payable for O&M for such wells under Paragraph No. 21 will be adjusted by the CPI annually, pursuant to Paragraph No. 29.

g. Reimbursement will be requested and paid in accordance with the terms of Paragraph No. 47.

OTHER WELLS THAT EXCEED THE MCL IN THE FUTURE

22. Where Existing or Future Wells Exceed the MCL, Defendants will pay 90% of the capital costs and O&M for GAC on those Wells, upon Plaintiff's issuance of a Notice to Proceed for installation of GAC facilities on any Existing or Future Wells.

Capital Costs

23. Capital costs associated with installation of GAC for Existing or Future Wells are determined as follows:

a. Plaintiff will determine the number of GAC vessels to be installed for a well(s) that Exceeds the MCL based on actual peak well yield capacity as follows: Up to 750 gpm (two vessel), and 751-1,500 gpm (three vessels). One additional vessel will be installed for each additional 750 gpm increment, or fractions thereof, in actual peak well capacity. Plaintiff may locate vessels on a well site, a remote site or at a centralized site at its option.

b. The capital costs of which Defendants will pay 90% are as follows: two vessels -- \$1, 800,000, three vessels -- \$2, 400,000. Defendants will pay 100% of an additional \$600,000 for each additional vessel above three. Defendants' obligations to pay capital costs under this paragraph shall be reduced by ninety percent (90%) of \$100,000 for all future wells and for existing wells with no pump or a non oil-lubed pump. The foregoing amounts are

deemed to include, but are not limited to, the costs of land acquisition, design, and construction of GAC.

c. Subject to Defendants' obligation to reinstall GAC on previously treated wells from which GAC has been removed, capital costs of which Defendants will pay 90% do not include the costs of GAC vessel replacement, including due to age or wear and tear. (See Paragraph No. 4 k.) Such vessel replacement costs are included in, and/or to be paid by Plaintiff out of, O&M.

d. Reimbursement will be requested and paid in accordance with Paragraph No. 46.

O&M Costs

24. The O&M costs on Existing and Future Wells are determined as follows:

a. O&M costs will be based on well yield as follows: Up to 750 gpm (two vessels), \$68,500/year, 751-1,500 gpm (three vessels), \$74,500/year, and an additional \$6,000/year for each additional 750 gpm of well yield.

b. On or before January 10 of each year, for each Existing and/or Future Well, Defendants will reimburse Plaintiff for 90 percent of the O&M of GAC for the preceding calendar year, if GAC was In Operation on such Existing or Future Well for the entire year.

c. For any Existing and/or Future Well for which GAC has been In Operation for less than one year, Defendants' obligation to reimburse Plaintiff for O&M will be limited to 90% of the monthly per vessel rate set forth in Paragraph No. 24 e. for O&M of GAC for each month GAC was In Operation.

d. Defendants' obligation to pay annual O&M on any Existing or Future Well, as set forth above, will be conditioned on Plaintiff's Regular Use of such Well. For any Existing or Future Well with an average annual utilization rate of less than 10%, Defendants will pay O&M of \$1,000 for such Well for each month GAC was in operation (if GAC was not installed and In Operation for the entire year).

e. For any Existing and/or Future Well at which GAC was In Operation for less than one year, the payment will be a calculated amount for each month the GAC was In Operation for more than fifteen (15) days. The amount paid for each month under this paragraph will be calculated by dividing 12 into the annual rate for O&M payments set forth under subparagraph (a) above.

f. Reimbursement will be requested and paid in accordance with the terms of Paragraph No. 47.

CPI

25. The amounts payable for capital costs for wells under Paragraphs 20 and 23 will be adjusted by the CPI annually, pursuant to Paragraph No. 29. The amounts payable for O&M for wells under Paragraphs 21 and 24 will also be adjusted by the CPI annually, pursuant to

Selection of Alternative Sites for Future Wells

26. Future Wells (other than wells under construction as of the date this Agreement is fully executed) constructed by Plaintiff or contractors retained by Plaintiff, must be in substantial compliance with the following procedures before Plaintiff may obtain reimbursement from Defendants for the cost of constructing, operating or maintaining GAC on such well.

a. Plaintiff shall select a proposed well site and notify Defendants' representative thereof, and provide Defendants with available relevant information concerning the presence of DBCP in groundwater underlying the site, including historic land use information, hydrogeologic characteristics and DBCP test results (if any).

b. Defendants shall have 21 days after receipt of said notice to notify Plaintiff that: (1) Defendants do not object to Plaintiff proceeding with the production well at that location, or (2) a pilot test well should be drilled and tested at that location (at defendants' sole expense), or (3) an alternative well site should be considered.

c. If Defendants request a pilot test well at the proposed well site, Defendants shall have 15 days after receipt of test results from that pilot test well to notify Plaintiff that Defendants do not object to Plaintiff proceeding with the production well at that location or that an alternative well site should be considered.

d. If Defendants notify Plaintiff to consider an alternative well site, Defendants' representative must meet and confer with Plaintiff's representative to select an alternative site at least one-half mile from any existing or planned Plaintiff well, and within one-half mile of the connection to Plaintiff's water system that would have been serviced by the original well site. After consideration of potential environmental issues, Plaintiff shall not unreasonably withhold consent for the selection of alternative well sites. If Plaintiff or a controlling regulatory entity determines that a proposed alternative well site is too environmentally sensitive to be used for a production well, Plaintiff shall promptly notify Defendants of that determination so that the parties may consider additional alternative well sites. Potential environmental issues may be identified through existing documents (if any) prepared pursuant to the Hawaii Environmental Policy Act, or otherwise, that assess the original well site and include the alternative well site as a project alternative. Nothing in this Agreement shall impose any additional environmental analysis obligations on Plaintiff under the Hawaii Environmental Policy Act or otherwise.

e. The parties shall also meet and confer regarding the estimated cost of constructing, operating, and maintaining the well at the alternative well site. The parties intend that should the construction of a well proceed at an alternative well site, any estimated increased costs (compared to the original well site) incurred in connection with constructing, connecting, operating and maintaining a well at the alternative site shall be borne exclusively by Defendants including, but not limited to:

- (i) the cost of acquiring at least 20,000 square feet of land for the well site and any treatment facilities which may be required;
- (ii) the cost of drilling, constructing, and connecting the well to Plaintiff's distribution system, all in conformance with Plaintiff's standard specifications and construction standards;

- (iii) the cost of any electrical costs (see attached formula, Exhibit A) and/or pressure reducing facilities associated with the alternative site;
- (iv) the cost of constructing and maintaining and/or obtaining easements for any access road to the replacement well;
- (v) the cost of obtaining all necessary permits and authorizations, including, but not limited to, those required by the Hawaii Environmental Policy Act and the Department of Land and Natural Resources and/or successor legislation;
- (vi) the amount of increased allowance for change orders, based on a 10 percent allowance for such change orders; and
- (vii) all other reasonably anticipated costs associated with the project.

In calculating any increased costs associated with the alternative well site, the parties will subtract the amount Plaintiff would have expended in constructing, connecting, operating and maintaining the well at the original well site from the costs of constructing, connecting, operating, and maintaining the well at the alternative site.

f. Upon completion of the meet and confer process, Plaintiff shall serve a written notice upon Defendants with Plaintiff's itemized comparison of the reasonably anticipated cost of constructing, connecting, operating, and maintaining a well at the original and alternative well sites. If the estimated costs at the alternative site are higher than those estimated at the original well site, Plaintiff may make a demand on Defendants for those increased costs ("Increased Cost Demand").

g. Within twenty-one (21) calendar days of receipt of said itemized comparison, Defendants shall: (1) inform Plaintiff that Defendants do not object to proceeding with construction of a well at the original well site; (2) inform Plaintiff that Defendants agree to pay the Increased Cost Demand; or (3) serve a written notice of specific objections to the Increased Cost Demand together with an estimate by a qualified contractor to perform the work at the alternative well site to Plaintiff's specifications for construction of a well.

h. If the parties are unable to agree on the selection and/or increased cost of the alternative well site, either party may elect to arbitrate the dispute as provided in Paragraph 54. In any such arbitration, Defendants shall bear the burden of proof.

i. In the event new or materially different environmental issues associated with the selection of the alternative well site ("New Issues") are a substantial factor leading to environmental litigation by a third party, then either: (1) Defendants shall assume the cost of defense of that litigation; or (2) if Defendants do not assume the cost of defense of that litigation, Plaintiff may proceed with construction at the original well site with reimbursement by Defendants if the well exceeds the MCL as specified in this Agreement.

j. If Defendants fail to serve Plaintiff with a timely objection to the Increased Cost Demand described above, Plaintiff may elect to proceed with construction at the original well site.

k. If the well constructed at an alternative site fails to yield water that meets all then applicable water quality standards, Defendants shall pay the full cost of installing treatment

facilities to correct any such deficiency and shall reimburse Plaintiff for the full cost of operating and maintaining any such equipment. Defendants' obligation to reimburse Plaintiff for such treatment facilities shall not apply to disinfection facilities or any treatment or other water quality technology which Plaintiff is required to install on all Plaintiff wells In Operation, other than wells treated with GAC.

l. Any well constructed at an alternative site must yield at least eighty percent (80%) as much water (gallons per minute ("gpm")) as the original site selected by Plaintiff.

m. If the well constructed at the alternative well site fails to operate as provided in the previous sub-paragraph, Defendants may elect to construct at their sole expense an additional well to Plaintiff's standards at another site approved by Plaintiff so that the combined flow from both wells equals or exceeds that anticipated at the original proposed site.

n. If Defendants pay the Increased Cost Demand or amount determined in Arbitration under this Agreement, then: (1) any increased capital costs will be paid within 30 days of Defendants' receipt of a notice to proceed to a contractor to construct a well at the alternative well site; and (2) any increased operations and maintenance costs will be adjusted by the CPI under Paragraph No. 29 and January 10 for each preceding year the well is operation during the term of this Agreement.

ADMINISTRATIVE APPEALS

27. If a regulatory authority incorrectly, mistakenly, or in excess of its authority directs Plaintiff to stop using a well or refrain from connecting a well to its water system unless Plaintiff remediates DBCP in the well, Plaintiff may, within 60 days of receipt of the directive, petition the regulatory authority for reconsideration of the directive. If Plaintiff chooses not to petition the regulatory authority for reconsideration of the directive, Plaintiff shall notify Defendants and Defendants, at their own expense, may choose to challenge the regulatory authority's decision. Plaintiff shall provide Defendants with information from its files concerning the status of the well in question.

CESSATION OF O&M

28. For any Plaintiff well on which GAC or other remediation equipment to remove DBCP is installed, Defendants' obligation to pay O&M shall cease upon the occurrence of the following:

a. If any Regularly Scheduled Well Test for DBCP results in a concentration below the MCL, a second confirming sample will be taken within ten (10) days. If the average of those two samples is below the applicable DBCP MCL, the well is to be tested for the time period specified by the then applicable drinking water regulation. If the average of those tests is below the applicable MCL, Plaintiff may within sixty (60) days of receipt of the laboratory result for the last sample petition DOH for a permit amendment allowing removal of GAC or other DBCP remediation equipment. If the amendment is granted, Defendants' responsibility to pay O&M on the well is terminated thirty (30) days after notification to Plaintiff by DOH of the amendment approval. If Plaintiff chooses not to petition DOH for a permit amendment, Defendants' obligation to pay O&M on the well is terminated on the thirtieth day after the events described in this paragraph.

b. Within 90 days, either DOH will grant Plaintiff's petition, or Plaintiff must make a good faith effort to obtain such relief from DOH. If the petition is denied, Plaintiff shall again petition DOH in a good faith effort to persuade DOH to grant the petition. If the second petition is denied, Plaintiff shall notify Defendants and the parties shall cooperate should Defendants, at their own expense, choose to challenge the DOH decision in Plaintiff's name. Defendants' responsibility to pay O&M on the site or well in question will cease 30 days after DOH grants the petition.

c. Plaintiff is entitled to leave the GAC or other DBCP remediation equipment in place and/or operate same at its own expense for at least twelve (12) months after Defendants' obligation to pay O&M on the well has ceased.

d. If GAC or other DBCP remediation equipment has been removed from a well which has previously been treated and which subsequently requires treatment, the cost of such treatment will be borne by Defendants to the same extent as it was when GAC or other DBCP remediation equipment was originally installed, and will not be counted twice against the well limits set forth in Paragraph No. 30.

CPI ADJUSTMENT

29. This Agreement contains provisions for: (a) Defendants' payment of specified sums for the installation of GAC, which are expressed in 1999 dollars, and O&M, which are expressed in 1999 dollars; and (b) credits and offsets to Defendants, which are expressed in 1999 dollars. All payments of capital costs and O&M made by Defendants to Plaintiff and all credits and offsets to which Defendants are entitled under this Agreement for the year beginning January 1, 2000, and each year thereafter will be adjusted according to the CPI. The CPI adjustment shall operate as follows: The payments made, and credits and offsets applied, for the year 2000 shall be adjusted to reflect inflation or deflation pursuant to the CPI, except as limited by this Paragraph, with each successive year's payments being similarly adjusted according to the prior year's inflation or deflation pursuant to the CPI.

a. For the purpose of calculating inflation or deflation for capital costs, 1999 expressed dollars (as established by the June 1999 figure for the CPI) are to be used in this Agreement and are to be modified annually using the June CPI for subsequent years.

b. For the purpose of calculating inflation or deflation for O & M, 1999 expressed dollars (as established by the June 1999 figure for the CPI) are to be used in this Agreement and are to be modified annually using the June CPI for subsequent years. The first CPI adjustment to O&M shall commence with the January 10, 2001 payment using the June 2000 CPI.

LIMIT ON NUMBER OF WELLS FOR WHICH DEFENDANTS MAY BE RESPONSIBLE

30. The number of wells for which Defendants will be obligated to pay for the capital and O&M costs for GAC is limited to fifty (50) wells.

TERMINATION OF OBLIGATIONS

31. All obligations on the part of Defendants under this Agreement, including but not

limited to payments of capital costs and O&M to Plaintiff, end on September 1, 2039, provided that all payments due as of that date have been paid.

RE-USE OF GAC VESSELS

32. As GAC vessels become available when they are taken out of service on wells that no longer require DBCP remediation, Defendants may choose to move those units to another well requiring DBCP remediation. If Defendants pay for the installation or reinstallation of surplus GAC vessels, Defendants will receive a credit of \$95,000 per vessel (adjusted by the CPI) to be applied to Defendants' portion of the capital cost of GAC on any well covered by this Agreement. Defendants will pay for the cost of moving, installing, inspecting, repairing and refilling these units, such activities to be performed by Plaintiff to Plaintiff's standards.

33. If a GAC vessel is moved to another site, and the well on which it had previously been installed once again Exceeds the MCL, then Defendants shall pay the appropriate portion of capital costs and O&M (either 90% or 100%) required to install or reinstall and operate GAC on that well.

ALTERNATIVE TECHNOLOGY AND/OR REMEDIES

34. Defendants may propose that Plaintiff utilize a less expensive wellhead treatment method approved by U.S. EPA or State of Hawaii for the remediation of DBCP. Defendants agree to pay the actual cost of designing, procuring, and installing all appropriate equipment and modifications to existing equipment, including capital and O&M costs under the conditions of this Agreement, on any well on which such equipment is installed. If any such less expensive wellhead treatment method is installed, then in lieu of O&M payments for GAC, Defendants will reimburse Plaintiff for the actual cost of O&M for the less expensive wellhead treatment method pursuant to Paragraph 47.

35. After meeting and conferring, Plaintiff's or Defendants' representatives may submit any disputed claim concerning the reliability, practicability, or efficacy, or actual cost, including capital and O&M costs, of employing any less expensive well-head treatment to binding arbitration pursuant to Paragraph 54 (Arbitration) of this Agreement. Notwithstanding any other provision of this Agreement, Plaintiff shall not be required to use any technology approved by the EPA, but disapproved by the DOH.

36. Plaintiff may elect to implement alternative remedies for DBCP. If Plaintiff elects to implement an alternative remedy, Defendants will only be obligated to pay the lesser of either: (a) 100% of the capital and O&M costs of the alternative remedy, or (b) 90% of the capital and O&M costs for the appropriately sized GAC facility, based on the capacity of the subject well(s), as appropriate. Plaintiff and Defendants shall submit any disputed claim concerning the actual cost, including capital and O&M costs, of any alternative remedy for DBCP to binding arbitration pursuant to Paragraph 54 (Arbitration) of this Agreement.

37. If EPA or DOH directs Plaintiff that modifications or additions to GAC (other than disinfection equipment) are required to continue use of GAC solely for the removal of DBCP, and Plaintiff and Defendants are unable to agree on the amount of the reasonably necessary expense of

such treatment that should be borne by Defendants, Plaintiff and Defendants will submit Plaintiff's claim for the reasonably necessary expense of such treatment to binding arbitration pursuant to Paragraph 54 (Arbitration) of this Agreement.

38. The activities set forth in Paragraph Nos. 34 through 37 are subject to approval by both Plaintiff and Defendants; said approval will not be unreasonably withheld.

LABORATORY ANALYSIS AND REPORTING

39. Plaintiff and Defendants each retain the right to challenge any reported laboratory test result for DBCP and may take the steps necessary, at their own cost, to verify the result, including such steps as obtaining a confirming sample for analysis or requesting that the laboratory confirm its calculations or reanalyze the initial sample.

40. Plaintiff will provide Defendants' Representative with a complete report of all DBCP test results from Plaintiff production wells every six months throughout the duration of this Agreement on the first business days of May and December of each year. The report need only contain the DBCP results for the year preceding the date of the report.

41. Defendants may, at their own expense, participate in Plaintiff's regularly scheduled sampling, take split samples, and make reasonable site inspections upon request; said requests will not be unreasonably made by Defendants.

INDEMNITY

42. Plaintiff will retain its right, if any, to seek indemnity from Defendants if it is sued by a third party for personal injuries or property damage allegedly attributable to DBCP. Plaintiff certifies that it is presently unaware of any such claims.

LANAI AND MOLOKAI

43. Notwithstanding any other provision of this Agreement, Plaintiff will retain its right, if any, to bring any future DBCP claims, lawsuits, or actions, including but not limited to, claims for compensatory and/or punitive damages, arising in whole or in part from the past, present, continuing, or future presence of DBCP on the Islands of Lanai and Molokai.

COSTS

44. All parties will bear their own costs and attorney's fees incurred in the Action.

45. As to Plaintiff, Defendants will waive costs and attorneys' fees for all dismissed Defendants.

PAYMENT OF ANY FUTURE OBLIGATIONS

Capital Costs

46. In addition to the conditions that must be met under this Agreement before

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Defendants' obligations to pay future capital costs arise under this Agreement, Plaintiff must submit to Defendants' Representative and representatives for defendants AMVAC, Occidental, and Maui Land and Pineapple Company (the names and addresses of which will be provided and updated by Defendants' Representatives) a copy of a Notice to Proceed to a contractor to construct a GAC or alternative technology facility to treat a well that Exceeds the MCL. Within 30 days of Defendants' receipt of the Notice to Proceed, Defendants must pay Plaintiff the amount owed under the terms of this Agreement. In the event that Defendants fail to make timely payment, payment will be made under Paragraph 48 of this Agreement (Letter of Credit). Any disputed claims shall be submitted to arbitration pursuant to Paragraph 54, provided that Plaintiff shall be entitled to immediate payment pursuant to Paragraph 48, regardless of whether the claim is disputed.

O&M

47. In addition to the conditions that must be met under this Agreement before Defendants' obligations to pay future O&M arise under this Agreement, Plaintiff must submit by December 1 of each year starting in 2000 a qualifying claim for O&M that provides sufficient information to evaluate whether and to what extent Plaintiff's well(s) qualify for O&M payment. This will include, but not be limited to, DBCP test results and information concerning whether the wells were In Operation and In Regular Use during the preceding twelve months. Provided Plaintiff's O&M claim is timely submitted, Defendants shall make payment in the amount claimed by the following January 10. In the event Defendants fail to make timely payment, payment will be made under Paragraph 48 of this Agreement (Letter of Credit). Any disputed claims shall be submitted to arbitration pursuant to Paragraph 54, provided that Plaintiff shall be entitled to immediate payment pursuant to Paragraph 48, regardless of whether the claim is disputed. If Plaintiff fails to submit a timely claim (i.e., by December 1), then Defendants' obligation to make a timely payment (i.e., by January 10) shall be extended one day for each day Plaintiff's claim is late.

LETTER OF CREDIT

48. To secure the obligations of Defendants under this Agreement, and as a condition precedent to the obligations of Plaintiff hereunder, Defendants shall, at their sole cost and expense, furnish to Plaintiff, on or prior to October 1, 1999, and thereafter maintain during the entire term of this Agreement, continuing to a date thirty (30) days after the later of (i) September 1, 2039 or (ii) satisfaction of all Defendants' obligations to Plaintiff under this Agreement, an irrevocable standby letter of credit ("Letter of Credit") in favor of Plaintiff in form and substance reasonably satisfactory to Plaintiff, issued or confirmed by a United States banking institution having capital and surplus of not less than One Billion United States Dollars (USD 1,000,000,000) and advised by a banking institution with a banking office in Honolulu, Hawaii,

a. The Letter of Credit shall have a principal amount of Twenty Million United States Dollars (USD 20,000,000), and shall provide for payment to Plaintiff under this Agreement by a draft at sight to which is attached Plaintiff's Signed Statement (as defined in the Letter of Credit). The draft at sight and the Signed Statement which shall be conclusive that there has occurred an event of default under this Agreement and any applicable cure period has lapsed. A draft at sight presented as the result of an Event of Default related to claims under either Paragraph 46 or 47 will be limited to the amount of the claim. A draft at sight presented as the

result of an Event of default based on the failure of the Defendants to renew the Letter of Credit may be presented for the full amount of the Letter of Credit.

b. Should any Letter of Credit furnished by Defendants hereunder expire prior to the term of this Agreement, Defendants shall automatically provide Plaintiff with a replacement, in the same tenor, no later than sixty (60) days prior to the expiration of the then-current Letter of Credit. Failure to provide a replacement for a Letter of Credit shall be an Event of Default under this Agreement, and shall permit Plaintiff to draw on the then-current Letter of Credit as provided above. Plaintiff's realization of the amount payable under the Letter of Credit shall not affect Plaintiff's right to elect any other remedy on default available to Plaintiff under this Agreement, or under applicable law.

c. Where Plaintiff draws on a Letter of Credit because of the occurrence of an Event of Default based on the failure of the Defendants to renew the Letter of Credit, the amount drawn on the Letter of Credit shall first be applied to any then existing claims for Capital Costs and/or O&M Costs under this Agreement and thereafter the balance of the amount drawn shall be applied as credit against future claims under the Agreement or reconveyed to the banking institution that issued the Letter of Credit upon Defendants obtaining a new Letter of Credit.

d. The principal amount of the Letter of Credit may be adjusted upon agreement of all the parties at the time of any renewal or replacement of the Letter of Credit. In the absence of such agreement, the principal amount of the Letter of Credit shall remain Twenty Million United States Dollars (USD 20,000,000) so long as Defendants are required to maintain a Letter of Credit under this Paragraph 48.

CREDITS

49. a. Upon Defendants' initial payment of \$3,000,000 pursuant to Paragraph 16 of this Agreement, Defendants shall be entitled to a one-time credit against the amount otherwise payable for installation of permanent GAC facilities on the Hamakuapoko Well Nos. 1 or 2 of \$804,000, less the amount described in Paragraph 32 (Re Use of GAC Vessels), if, at Defendants' option, the vessels are used to treat any other well.

b. If any disputed claims under this Agreement are resolved in favor of Defendants, any amount determined to have been paid by Defendants in excess of the amount found to be due shall be credited to Defendants to offset future obligations under this Agreement.

c. Any credit or offset to which Defendants become entitled shall be applied to reduce the next occurring obligation of Defendants related to capital cost, and Defendants shall owe no additional amounts for capital costs until all credits and offsets to which Defendants are entitled have been applied and exhausted. Except as provided in this paragraph, and notwithstanding any other provision of this Agreement, Plaintiff shall not be obligated to pay Defendants cash on any accumulated credits or offsets. Except as otherwise set forth in this paragraph, any credits remaining as of September 1, 2039, shall be extinguished. Credits remaining as of September 1, 2039 that are the result of a claim made by Plaintiff after September 1, 2038 and disputed by Defendants thereafter, where the dispute is subsequently resolved in favor of Defendants, will be reimbursed to Defendants within thirty (30) days of such resolution.

50. If Plaintiff receives a payment under this Agreement for a GAC project that is not constructed, Defendants shall receive a credit in the amount of such payment toward the capital cost of the next GAC project that would otherwise trigger a further payment by Defendants.

DESIGNATED CONTACTS

51. Defendants' Representative and Plaintiff's Representatives are the parties' respective designated contacts for all reports, correspondence, and notices concerning the subject matter of this Agreement. If another representative is substituted, Defendants or Plaintiff, as appropriate, must provide written notice of same within ten (10) days.

GOOD FAITH EFFORT

52. Consistent with this Agreement, the parties agree to make a good faith effort to mitigate both Defendants' obligations under this Agreement and any adverse impact on Plaintiff's water system.

ARBITRATION AGREEMENT

53. In the event of any dispute between Plaintiff and Defendants arising out of or relating to this Agreement, the parties agree to try in good faith to settle the dispute by negotiation and/or mediation.

54. If the dispute cannot be resolved to the parties' mutual satisfaction through negotiation and/or mediation within thirty (30) days, Plaintiff and/or Defendants' Representative may elect to seek arbitration, and the dispute shall be resolved through binding arbitration. It is the intent of the parties that the arbitration be structured in such a way as to minimize costs and delay. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules") with the following stipulations:

a. The arbitration hearing shall be held before Hon. Ret. Judge Weinstein at JAMS, San Francisco, or if he is not available or declines to serve, a single arbitrator if the parties agree upon a single arbitrator. If the parties cannot agree upon a single arbitrator, then each shall select an arbitrator, and those arbitrators shall select a third arbitrator. If they are unable to agree upon a third arbitrator within fifteen (15) days, the third arbitrator shall be selected as provided in the AAA Rules.

b. Unless otherwise ordered, each party's presentation at the arbitration hearing shall be limited to 14 hours, and the hearing shall be completed within ten (10) business days.

c. The arbitration decision shall be rendered not later than thirty (30) days after the final day of the hearing and shall be judicially enforceable, nonappealable and binding.

d. Summaries of any expert testimony, along with copies of all documents to be submitted as exhibits, shall be exchanged at least ten (10) business days before arbitration under procedures set up by the arbitrators.

e. Except as otherwise specified herein, there shall be no discovery or dispositive motion practice except as may be permitted by the arbitrators, who may authorize only such discovery as is shown to be necessary to ensure a fair hearing. No discovery or motions permitted by the arbitrators shall in any way alter the time limits specified herein.

f. Arbitration costs, arbitrators' fees, and attorneys' fees and costs shall be awarded to the prevailing party, if any, by the arbitrators.

g. The arbitration shall occur in San Francisco, California.

55. In the event of arbitration arising out of, or related to, this Agreement, the prevailing party shall be entitled to recover its costs, expenses, and reasonable attorneys' fees, in addition to any other relief to which it may be entitled.

RELEASE

NOW THEREFORE, in reliance on the recitals stated above and for consideration, Plaintiff agrees as follows:

56. The foregoing recitals are true and correct and by this reference incorporated herein.

57. Subject to the provisions of this Agreement, on behalf of itself, its assigns, Board representatives, and past, present or future agents, Plaintiff hereby releases Defendants, individually and collectively, and their respective predecessors, successors, assigns, present and potential indemnitees, insurers, subsidiaries, affiliates, attorneys, and past or present employees, directors, officers, agents, shareholders, and representatives from any and all DBCP claims, demands, Action, causes of action, obligations, liens, damages, and liabilities, of any nature whatsoever, whether or not known, suspected or claimed, present or future, relating to or arising out of any act, cause, matter or thing stated, claimed, or alleged, or that could have been stated, claimed, or alleged by Plaintiff in the Action. Plaintiff understands and acknowledges that it is releasing and waiving all past, present, continuing and future claims it has or may have against Defendants for the presence of DBCP, except as specifically set forth in this Agreement.

58. Plaintiff declares and warrants that no other person or entity has had nor now has any interest in the claims, demands, Action, causes of action, obligations, liens, damages, and liabilities released in Paragraph No. 57, above; and that it has not sold, assigned, transferred, conveyed, or otherwise disposed of any DBCP claim, demand, action, cause of action, obligation, lien, damage, or liability released in Paragraph No. 57, above.

59. Plaintiff declares that, prior to the execution of this Agreement, it has apprised itself of sufficient data, either through experts or other sources of its own selection, in order that it might intelligently exercise its judgment in deciding on the contents of this Agreement and in deciding whether to execute it. Plaintiff further declares that its decision to enter into this Agreement is not predicated on or influenced by any declarations or representations of Defendants, or any of them, or by Defendants' respective predecessors, successors, assigns, subsidiaries, affiliates, insurers or attorneys or past or present employees, officers, directors, agents, shareholders, or representatives. Plaintiff declares that this Agreement is executed voluntarily and with full knowledge of its significance.

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60. The parties acknowledge that they have an understanding of the facts underlying the Action and have negotiated in good faith and that this Agreement represents a good faith settlement with regard to the interests of all parties to the Agreement.

61. Plaintiff authorizes and directs its counsel to execute appropriate Requests for Dismissal, with prejudice, of the entire Action as to all Defendants, and to deliver the executed Requests for Dismissal to Defendants' Representative. All parties authorize and direct their respective counsel to execute whatever documents are necessary to implement this Agreement.

62. This Agreement shall bind the parties and each successor and assign of each party.

63. This document embodies the entire terms and conditions of the Agreement between the parties, and supersedes any prior documents signed by the parties in the course of resolving the Action. All words, phrases, sentences, and paragraphs, including the recitals hereto, are material to the execution of this Agreement.

64. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of Hawaii.

65. Upon the occurrence of an uncontrollable circumstance, the party affected shall be excused from any failure or delay in performance under this Agreement. For purposes of this Agreement, an "uncontrollable circumstance" includes, but is not limited to, acts of God, fire, flood, civil unrest, earthquake, declaration of a public emergency, injunction, and labor disputes. However, the parties recognize that delays in Defendants' performance under the terms of this Agreement could uniquely subject Plaintiff to third parties' disputes. Therefore, in the event Defendants' performance of any option or obligation described in Paragraph 26 and its subparts is delayed due to force majeure circumstances, Plaintiff may proceed with the construction of wells, notwithstanding any right of Defendants to construct replacement wells and select alternative well sites. Defendants shall promptly reimburse Plaintiff for the cost of well construction incurred under these circumstances.

66. In the event any of the terms, conditions or covenants contained in this Agreement are held to be invalid, then any such invalidity shall not affect any other terms, conditions or covenants contained herein which shall remain in full force and effect.

67. Plaintiff warrants that this Agreement has been approved by Plaintiff's Board of Water Supply, and each of the signatories to this Agreement warrants that he or she is fully authorized to enter into the terms and conditions stated herein and to execute this Agreement.

68. This Agreement will be effective whether or not executed in multiple counterparts.

Dated: 8/31/99

BOARD OF WATER SUPPLY
OF THE COUNTY OF MAUI

By: [Signature]

Its: Chairman

(signatures continued)

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Approved as to form:

MILLER, SHER & SAWYER
A Professional Corporation

Dated: Aug. 31, 1999

By 
DUANE C. MILLER
VICTOR M. SHER
Attorneys for Plaintiff, Board of
Water Supply of the County of Maui

*GARY W. ZAKIAN
Deputy Corporation
Counsel*

Dated: _____

THE DOW CHEMICAL COMPANY

By _____
Its: _____

Approved as to form:

FILICE, BROWN, EASSA & MCLEOD, LLP

Dated: _____

By _____

Attorneys for Defendant
The Dow Chemical Company

Dated: _____

OCCIDENTAL CHEMICAL COMPANY

By _____
Its: _____

Dated: _____

OCCIDENTAL PETROLEUM CORPORATION

By _____
Its: _____

Dated: _____

OCCIDENTAL CHEMICAL CORPORATION

By _____
Its: _____

(signatures continued)

Approved as to form:

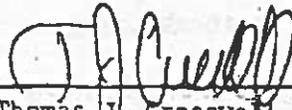
MILLER, SHER & SAWYER
A Professional Corporation

Dated: _____

By _____
DUANE C. MILLER
VICTOR M. SHER
Attorneys for Plaintiff, Board of
Water Supply of the County of Maui

Dated: August 31, 1999

THE DOW CHEMICAL COMPANY

By  _____ 555 P10/199
Its: Thomas J. Crosswell
Associate General Counsel

Approved as to form:

FILICE, BROWN, EASSA & MCLEOD, LLP

Dated: _____

By _____
Attorneys for Defendant
The Dow Chemical Company

Dated: _____

OCCIDENTAL CHEMICAL COMPANY

By _____
Its: _____

Dated: _____

OCCIDENTAL PETROLEUM CORPORATION

By _____
Its: _____

Dated: _____

OCCIDENTAL CHEMICAL CORPORATION

By _____
Its: _____

(signatures continued)

Approved as to form:

MILLER, SHER & SAWYER
A Professional Corporation

Date: _____

By _____
DUANE C. MILLER
VICTOR M. SHER
Attorneys for Plaintiff, Board of
Water Supply of the County of Mesa

Date: _____

THE DOW CHEMICAL COMPANY

By _____
By _____

Approved as to form:

RILEY BROWN, BASSA & MCLEOD, LLP

Date: _____

By _____
Attorneys for Defendant
The Dow Chemical Company

Date: 9/2/99

OCCIDENTAL CHEMICAL COMPANY

By [Signature]
Sr. Senior Vice President & General Counsel

Date: 9/1/99

OCCIDENTAL PETROLEUM CORPORATION

By [Signature]
Sr. Senior Vice President & General Counsel

Date: 9/2/99

OCCIDENTAL CHEMICAL CORPORATION

By [Signature]
Sr. Senior Vice President & General Counsel

(Signatures continued)

MAUI PINEAPPLE COMPANY, LTD.

By _____
Its: _____

Approved as to form:

TOM & PETRUS

Dated: _____

By _____
STEPHEN M. TESVES
Attorneys for Third-Party
Defendants, Maui Land &
Pineapple Co. and Maui Pineapple
Co., Ltd.

Dated: 30 Aug 1999

AMVAC CHEMICAL CORPORATION

By H. A. Kraft
Its: in charge

Dated: 30 Aug 1999

AMERICAN VANGUARD CORPORATION

By H. A. Kraft
Its: in charge

Approved as to form:

RUSH MOORE CRAVEN SUTTON MORRY & BEE

Dated: August 30, 1999

By Richard C. Sutton, Jr.
RICHARD C. SUTTON, JR.
Attorneys for Defendants
AMVAC CHEMICAL CORPORATION and
AMERICAN VANGUARD CORPORATION

Dated: 9/2/77

SHELL OIL COMPANY

By Burt Bollant
Its: Senior Litigation Counsel

Approved as to form:

KOBAYASHI, SUGITA & GODA

By _____
DALE W. LEE
Attorneys for Defendant
Shell Oil Company

Dated: _____

MAUI LAND & PINEAPPLE COMPANY AND
MAUI PINEAPPLE COMPANY, LTD.

By _____
Its: _____

Approved as to form:

TOM & PETRUS

Dated: _____

By _____
STEPHEN M. TBVES
Attorneys for Third-Party
Defendants, Maui Land &
Pineapple Co. and Maui Pineapple
Co., Ltd.

Dated _____

By _____

STEPHEN C. LEWIS
Attorneys for Defendants
Occidental Chemical Company,
Occidental Petroleum Corporation, and
Occidental Chemical Corporation

Dated _____

AMVAC CHEMICAL CORPORATION

By _____
Its: _____

Dated: _____

AMERICAN VANGUARD CORPORATION

By _____
Its: _____

Approved as to form:

RUSH, MOORE, CRAVEN,
SUTTON, MORRY & BEH

Dated: _____

By _____

RICHARD C. SUTTON, JR.
Attorneys for Defendant
AMVAC Chemical Corp. and
American Vanguard Corp.

Dated: Sept 1, 1999

BREWER ENVIRONMENTAL INDUSTRY, FKA
BREWER CHEMICAL COMPANY

By [Signature]
Its: Sec

Approved as to form:

Dated: September 1, 1999

MANCINI, ROWLAND & WELCH

By [Signature]

PAUL R. MANCINI
Attorneys for Defendant
Brewer Environmental Industry, fka
Brewer Chemical Company

(signatures continued)

Dated: _____

SHELL OIL COMPANY

By _____

Its: _____

Approved as to form:

KOBAYASHI, SUGITA & GODA

By _____

DALE W. LEE

Attorneys for Defendant
Shell Oil Company

Dated: _____

MAUI LAND & PINEAPPLE COMPANY AND
MAUI PINEAPPLE COMPANY, LTD.

By Carl J. Meyer
Its: Executive Vice President/Finance

Approved as to form:

TOM & PETRUS

Dated: _____

By _____

STEPHEN M. TEVES

Attorneys for Third-Party
Defendants, Maui Land &
Pineapple Co. and Maui Pineapple
Co., Ltd.

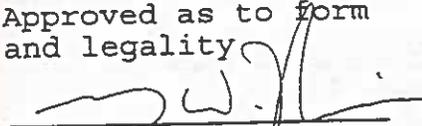
ADDENDUM TO SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This ADDENDUM TO SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS ("Addendum") is entered into by and between Plaintiff MAUI COUNTY BOARD OF WATER SUPPLY ("Board") and Third-party defendants MAUI LAND AND PINEAPPLE COMPANY, INC., AND MAUI PINEAPPLE COMPANY, LTD. ("Maui Pineapple") (collectively referred to as the "Parties"), and relates to the SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS pertaining to the case entitled "Maui County Board of Water Supply v. Shell Oil Company, et al.", Civil No. 96-0370(1).

The Parties hereby agree and supplement the SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS as follows:

1. Paragraph 7 of the SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS relates to the release of certain claims Maui Pineapple may have against the Board regarding rental amounts for property on which Napili Wells "A" and "B" are located. By this Addendum Maui Pineapple hereby releases the Board from any rental amounts owed to Maui Pineapple arising out of the transfer to the Board of the property on which Napili Wells "A" and "B" are located.
- 2... All other terms of the SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS remain unchanged and in full force and effect.

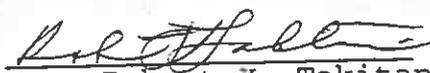
Approved as to form
and legality



Gary W. Zakian
Deputy Corporation Counsel

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Maui County Board
of Water Supply



By: Robert K. Takitani,
Its: Chair

Maui Land & Pineapple
Company, Inc.

Approved as to Form

Thomas R. Sylvester
Attorney for
Maui Pineapple

By:
Its:

Maui Pineapple
Company, Ltd.

By:
Its:

ADDENDUM TO SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

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2. All other terms of the SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS remain unchanged and in full force and effect.

Approved as to form
and legality

Gary W. Zakian
Deputy Corporation Counsel
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Approved as to Form

Thomas R. Sylvester
Attorney for
Maui Pineapple

Maui County Board
of Water Supply

By: Robert K. Takitani,
Its: Chair

Maui Land & Pineapple
Company, Inc.

Paul J. Meyer
By:
Its:

Maui Pineapple
Company, Ltd.

Paul J. Meyer
By:
Its:

TOTAL P.02