

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

January 8, 2021

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

PSF No.: 20MD-074

Maui

Consent to Assign and Amend Grant of Non-Exclusive Easement No. S-5647, Claire C. Sanford, Trustee of the Wallace G. Sanford Residuary Trust under Agreement dated October 3, 1988, also known as the Wallace G. Sanford Residuary Trust under Agreement dated October 3, 1998, and Claire C. Sanford, Trustee of the Wallace G. Sanford Marital Trust under Agreement dated October 3, 1988, also known as the Wallace G. Sanford Marital Trust under Agreement dated October 3, 1998, Assignor, to James R. Macpherson, Trustee of The James R. Macpherson Revocable Living Trust dated June 13, 2008, Assignee, Waiohuli-Keokea Homesteads, Kihei, Maui, Tax Map Key: (2)3-9-012: Seaward of 001.

Amend Grant of Non-Exclusive Easement No. S-5647 to allow the easement to "Run with the Land" and to be assignable without the prior written consent from the Board of Land and Natural Resources.

Amend Grant of Non-Exclusive Easement No. S-5647, paragraph 11, to increase the minimum liability insurance to \$1,000,000 for each occurrence and \$2,000,000 aggregate.

APPLICANT:

Claire C. Sanford, Trustee of the Wallace G. Sanford Residuary Trust under Agreement dated October 3, 1988, also known as the Wallace G. Sanford Residuary Trust under Agreement dated October 3, 1998, and Claire C. Sanford, Trustee of the Wallace G. Sanford Marital Trust under Agreement dated October 3, 1988, also known as the Wallace G. Sanford Marital Trust under Agreement dated October 3, 1998, as Assignor, to James R. Macpherson, Trustee of The James R. Macpherson Revocable Living Trust dated June 13, 2008, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of the State of Hawaii situated at Waiohuli-Keokea Homesteads, Kihei, Maui, identified by Tax Map Key: (2)3-9-012: Seaward of 001, as shown on the attached map labeled Exhibit A.

AREA:

344 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES \_\_\_\_\_ NO  X

CHARACTER OF USE:

Seawall purposes.

TERM OF EASEMENT:

Fifty-five (55) years, commencing on August 5, 1983 and expiring on August 4, 2038.

DCCA VERIFICATION:

Assignor and Assignee are both private individuals, and as such, are not required to register with the DCCA.

REMARKS -- BACKGROUND:

Grant of Non-Exclusive Easement S-5647 was issued after-the-fact to Claire C. Sanford, Trustee of the Wallace G. Sanford Residuary Trust under Agreement dated October 3, 1988, also known as the Wallace G. Sanford Residuary Trust under Agreement dated October 3, 1998, and Claire C. Sanford, Trustee of the Wallace G. Sanford Marital Trust under Agreement dated October 3, 1988, also known as the Wallace G. Sanford Marital Trust under Agreement dated October 3, 1998, ("Assignor") on July 3, 2003 for seawall purposes to benefit their private property identified as TMK: (2)3-9-012:001 ("parcel 001"). A one-time payment of \$4,740.00 was received by the Department of Land and Natural Resources Land Division on January 28, 2003. The lease term is August 5, 1983 through August 4, 2038. A copy of document S-5647 is attached as Exhibit B.

Assignor sold parcel 001 on December 23, 2016 to James R. Macpherson, Trustee of The James R. Macpherson Revocable Living Trust dated June 13, 2008 ("Assignee") but did not request a consent to assignment from the Board. This oversight was subsequently noticed by Assignor. Now the Assignor is requesting the Board's consent to assign the grant of easement to Assignee, the current owner of parcel 001.

On December 23, 2016, the date of the sale of parcel 001, the previously unrecorded Grant of Non-Exclusive Easement S-5647 was recorded with the Bureau of Conveyances (BOC) under the mistaken belief that this would transfer the easement from assignor to assignee. The County of Maui Real Property Assessments office, upon receiving a copy of the recorded grant of easement from the BOC, created TMK (2) 3-9-012:044 for tax assessment purposes and put it under the name of Assignor because Assignor is the grantee of the easement. However, Assignee has been paying the property tax bills for the easement.

As a side note, the first paragraph of the grant of easement document references the wrong year for the Sanford trusts, which should be 1988, not 1998.

REMARKS -- CURRENT REQUEST:

Assignor has provided an executed assignment document, attached as Exhibit C.

Staff reviewed the file for S-5647 and noted that Assignor's liability insurance expired on June 26, 2017. A notice of default was then mailed to Assignor. The Assignee subsequently added the State of Hawaii as an insured on his policy, in anticipation of the assignment of S-5647.

Assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Grant of Non-Exclusive Easement S-5647 provides at paragraph 5 as follows:

This easement or any rights granted herein shall not be sold, assigned, conveyed, granted, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the Grantor.

Staff recommends that the grant of easement be amended to replace paragraph 5 with "run with the land" language, so that in the

event parcel 001 is conveyed in the future the interest in Grant of Non-Exclusive Easement S-5647 will transfer automatically without need for further Board action.

Staff also recommends that the grant of easement be amended to increase the minimum liability insurance to \$1,000,000 for each occurrence and \$2,000,000 aggregate.

No comments were solicited as there will be no new disposition or change in land use.

RECOMMENDATION:

That the Board:

1. Consent to the assignment of Grant of Non-Exclusive Easement No. S-5647 from Claire C. Sanford, Trustee of the Wallace G. Sanford Residuary Trust under Agreement dated October 3, 1988, also known as the Wallace G. Sanford Residuary Trust under Agreement dated October 3, 1998, and Claire C. Sanford, Trustee of the Wallace G. Sanford Marital Trust under Agreement dated October 3, 1988, also known as the Wallace G. Sanford Marital Trust under Agreement dated October 3, 1998, as Assignor, to James R. Macpherson, Trustee of The James R. Macpherson Revocable Living Trust dated June 13, 2008, as Assignee, subject to the following:
  - a. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the Amendment of Grant of Non-Exclusive Easement No. S-5647, subject to the following:
  - a. The standard terms and conditions of the most current amendment of easement form, as may be amended from time to time. The amendments are as follows:
    - i. Delete paragraph 5 of the easement document in its entirety and replace it with the following:



"This easement shall run with the land and shall inure to the benefit of the real property described as tax map key no. (2) 3-9-012:001, providing that the Grantee shall be required to carry liability insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee's estate, shall notify the Grantor in writing when this easement is sold, assigned, conveyed, or otherwise transferred, and Grantee shall notify the Grantor of such transaction in writing, and shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document."

ii. Amend paragraph 11 to increase the minimum liability insurance to \$1,000,000 for each occurrence and \$2,000,000 aggregate.

b. Review and approval by the Department of the Attorney General; and

c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

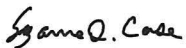
Respectfully Submitted,




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Seiko Machida  
Land Agent

APPROVED FOR SUBMITTAL:

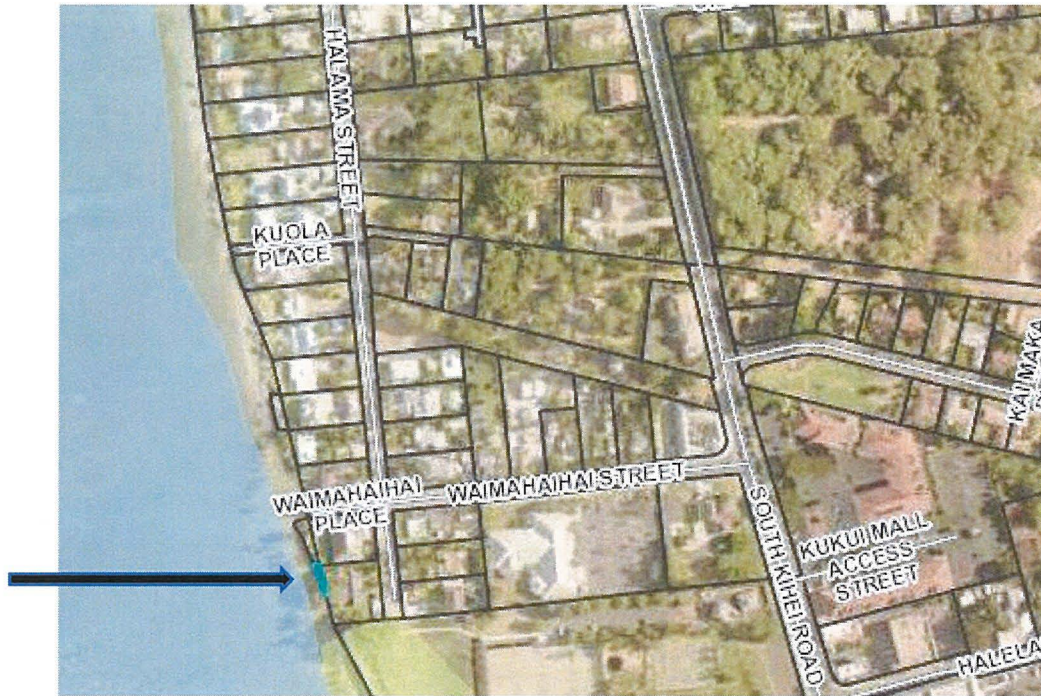


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Suzanne D. Case, Chairperson 







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STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

December 23, 2016 8:01 AM  
Doc No(s) A-62010078



1 1/2 ICL  
B-32920001

/s/ LESLIE T. KOBATA  
REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup ( )

RS James R MacPherson Trust  
[Redacted]  
Kihei HI 96753

To:  
[Redacted]  
6824010870-VS

Total Number of Pages:

Tax Map Key No. (2)3-9-12:seaward of 1

GRANT OF NON-EXCLUSIVE EASEMENT S-5647

THIS INDENTURE, made and entered into this 31st day of July, 2003, by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the "Grantor," and MARY C. SANFORD and CLAIRE C. SANFORD, Co-Trustees of the Wallace G. Sanford Residuary Trust under Agreement dated October 3, 1998, and MARY C. SANFORD and CLAIRE C. SANFORD, Co-Trustees of the Wallace G. Sanford Marital Trust dated October 3, 1998, MARY C. SANFORD's address is [Redacted] Honolulu, Hawaii 96822, and CLAIRE C. SANFORD's address is 6 [Redacted] Massachusetts 01930, hereinafter referred to as the "Grantee."

WITNESSETH THAT:

The Grantor, for and in consideration of the rent to be paid and of the terms, conditions, and covenants herein contained, all on the part of the Grantee to be kept, observed, and performed, does hereby grant unto the Grantee, the following non-exclusive and term easement rights:



**EXHIBIT B**



Right, privilege, and authority to construct,  
use, maintain, repair, replace and remove a seawall,

in, over, under and across that certain parcel of land ("area")  
situate at Kamaole, Kula, Maui, Hawaii, being identified as "Non-  
Exclusive Seawall Easement," containing an area of 344 square  
feet, more particularly described in Exhibit "A" and delineated  
on Exhibit "B," both of which are attached hereto and made parts  
hereof, said exhibits being respectively, a survey description  
and survey map prepared by the Survey Division, Department of  
Accounting and General Services, State of Hawaii, designated  
C.S.F. No. 23,395 and dated November 18, 2002, TOGETHER WITH the  
rights of ingress and egress to and from the easement area for  
all purposes in connection with the rights hereby granted.

TO HAVE AND TO HOLD the easement rights unto the  
Grantee, its successors and assigns, SUBJECT, HOWEVER, to the  
following terms, conditions and covenants:

The term of this easement shall be fifty-five (55)  
years, commencing on the 5th day of August, 1983, up to and  
including the 4th day of August, 2038, unless sooner terminated  
as hereinafter provided, the Grantor reserving and the Grantee  
yielding and paying to the Grantor at the Office of the  
Department of Land and Natural Resources, Honolulu, Oahu, State  
of Hawaii, a one time payment, payable in advance, without  
notice or demand of FOUR THOUSAND SEVEN HUNDRED FORTY AND NO/100  
DOLLARS (\$4,740.00).

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**EXHIBIT B**

THE GRANTEE COVENANTS AND AGREES WITH THE GRANTOR AS  
FOLLOWS:

1. The Grantee shall at all times with respect to the easement area use due care for public safety and agrees to indemnify, defend, and hold the Grantor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of the Grantee relating to the Grantee's use, occupancy, maintenance, or enjoyment of the easement area; 2) any failure on the part of the Grantee to maintain the easement area and sidewalks, roadways, and parking areas adjacent thereto in the Grantee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Grantee to maintain the easement area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Grantee's non-observance or non-performance of any of the terms, covenants, and conditions of this grant of non-exclusive easement or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

2. The Grantor reserves unto itself, its successors and assigns, the full use and enjoyment of the easement area and the right to grant to others rights and privileges for any and all purposes affecting the easement area, provided, however, that the rights herein reserved shall not be exercised by the Grantor and similar grantee(s) in any manner which interferes unreasonably with the Grantee in the use of the easement area for the purposes for which this easement is granted.

3. The placement of all improvements in or upon the easement area by the Grantee shall be done without cost or expense to the Grantor and shall remain the property of the Grantee and subject to the terms of paragraphs 10 and 14 may be removed or otherwise disposed of by the Grantee at any time; provided, that the removal shall be accomplished with minimum disturbance to the easement area which shall be restored to its original condition, or as close thereto as possible, within a reasonable time after removal.

4. Upon completion of any work performed in or upon the easement area, the Grantee shall remove therefrom all equipment and unused or surplus materials, if any, and shall leave the easement area in a clean and sanitary condition satisfactory to the Grantor.





5. This easement or any rights granted herein shall not be sold, assigned, conveyed, granted, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the Grantor.

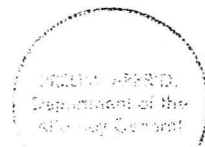
6. The Grantee shall keep the easement area and the improvements thereon in a safe, clean, sanitary, and orderly condition, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the easement area.

7. The Grantee covenants, for itself, its successors and assigns, that the use and enjoyment of the land herein granted shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

8. The Grantee, in the exercise of the rights granted herein, shall comply with all of the requirements of the federal, state, and county authorities and shall observe all county ordinances and state and federal laws, rules and regulations, now in force or which may hereinafter be in force.

9. These easement rights shall cease and terminate, and the easement area shall automatically be forfeited to the Grantor, without any action on the part of the Grantor, in the event of non-use or abandonment by the Grantee of the easement area, or any portion thereof, for a consecutive period of one (1) year.

10. The Grantee shall, at the end of the term or other sooner termination of this easement, peaceably deliver unto the Grantor possession of the premises, together with all improvements existing or constructed thereon or Grantee shall remove such improvements and shall restore the premises to their original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantee. If the Grantee does not remove the improvements or restore the premises to the satisfaction of the Grantor, the Grantor may effect such action and the Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the expiration, termination, or revocation of this easement, should the Grantee fail to remove any and all of Grantee's personal property from the premises, after notice thereof, the Grantor may remove any and all of Grantee's personal property from the premises, and either deem the property abandoned and dispose of the property or place



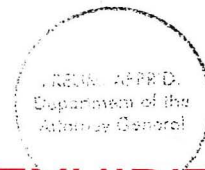
the property in storage at the cost and expense of Grantee and the Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the easement.

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

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

The Grantor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this easement. If, in the opinion of the Grantor, the insurance provisions in this easement do not provide adequate protection for the Grantor, the Grantor may require Grantee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Grantor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Grantor shall notify Grantee in writing of changes in the insurance requirements and Grantee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Grantor incorporating the changes within thirty (30) days after receipt of the notice.

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





loss caused by Grantee's negligence or neglect connected with this easement.

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

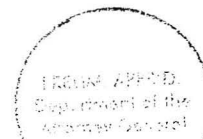
12. Grantor reserves the right to withdraw the easement for public use or purposes, at any time during the term of this easement upon the giving of reasonable notice to Grantee. Upon withdrawal of the easement, Grantor shall return to Grantee a portion of the one-time payment described in paragraph 1. For purposes of determining the amount to be returned to the Grantee, the term "net payment" shall mean the one-time payment described in paragraph 1 reduced by any non-refundable portion of the one-time payment, if any, that Grantor was required by statute to pay to any other entity or body. The amount returned to Grantee shall be the net payment prorated for the unused term of the easement.

13. The Grantee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this easement without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void.

14. Time is of the essence in this agreement and if the Grantee shall fail to pay the rent, or any part, at the times and in the manner provided within thirty (30) calendar days after delivery by the Grantor of a written notice of breach or default, or if the Grantee shall become bankrupt, or shall abandon the premises, or if this easement and premises shall be attached or taken by operation of law, or if any assignment is made of the Grantee's property for the benefit of creditors, or if Grantee shall fail to observe and perform any of the covenants, terms, and conditions contained in this easement and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) calendar days after delivery by the Grantor of a written notice of breach or default, by personal service, registered mail or certified mail to the Grantee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Grantor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this easement without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, all improvements shall at the option of the

Grantor remain and become the property of the Grantor at the option of the Grantor or shall be removed by Grantee; furthermore, the Grantor shall retain all rent paid in advance to be applied to any damages.

15. In the event the Grantor seeks to forfeit the privilege, interest, or estate created by this easement, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) calendar days or any other default or breach within sixty (60) calendar days, from the date of receipt of the Grantor's notice, or within an additional period allowed by Grantor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Grantor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Grantor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Grantor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any redistribution shall be applied, first, to reimburse the Grantor for costs and expenses in connection with the redistribution; second, to discharge in full any unpaid purchase price or other indebtedness owing the Grantor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redistribution which exceeds the fair market grant value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.



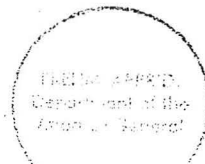


16. In case the Grantor shall, without any fault on its part, be made a party to any litigation commenced by or against the Grantee as a result of this grant of non-exclusive easement (other than condemnation proceedings), the Grantee shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the Grantor; furthermore, the Grantee shall pay all costs, including reasonable attorney's fees and expenses, which may be incurred by or paid by the Grantor in enforcing the covenants and conditions of this grant of non-exclusive easement, or in the collection of delinquent rental, fees, taxes, and any and all other applicable charges attributed to said easement area.

17. The Grantee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Grantee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the easement area any such materials except to use in the ordinary course of Grantee's business, and then only after written notice is given to Grantor of the identity of such materials and upon Grantor's consent which consent may be withheld at Grantor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantee, then the Grantee shall be responsible for the reasonable costs thereof. In addition, Grantee shall execute affidavits, representations and the like from time to time at Grantor's request concerning Grantee's best knowledge and belief regarding the presence of hazardous materials on the easement area placed or released by Grantee.

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

For the purpose of this easement "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation,



ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

18. No building, structure or improvements other than the existing seawall shall be placed or constructed within the easement area.

19. The Grantee acknowledges and agrees that the existing seawall described in Exhibit "A" and delineated on Exhibit "B" herein is nonconforming and, further, that the Grantee is prohibited from rebuilding said seawall or altering or extending the seawall seaward of its present location. Furthermore, the Grantee shall keep the seawall in good condition and repair; provided, however, if the seawall is substantially or completely destroyed as determined by this Grantor, this easement and all rights granted herein shall cease and terminate automatically without any further action on the part of the Grantor.

20. The public shall have access across the easement area at all times.

21. The Grantee recognizes and acknowledges that the seawall which is the subject of this easement exists for the sole purpose of benefiting the property upland of the seawall and that the benefits of the seawall are secured by interrupting and altering the normal accretion and erosion of the shoreline. Accordingly, the Grantee shall hold harmless, defend, and indemnify the State of Hawaii, its boards, departments, agencies, and public and appointed officials from any and all claims for harm, taking, damages, loss of land, or specific performance that may arise out of or result from the existence and effect of the seawall on the flow of ocean water that, in turn, may affect or cause lateral erosion of shoreline land in either direction along the shore from the seawall.

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

23. The Grantee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Grantee's, its invitee's, or its agent's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and



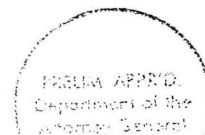


its surrounding waters of such pollutant or contaminant and restore to the Grantor's satisfaction the areas affected by such pollution or contamination, all at the Grantee's own cost and expense.

24. The Grantee shall maintain, repair and upkeep the existing seawall in a condition satisfactory to the Grantor, and in a manner that will enhance the public shoreline and access thereto. Any improvements to the existing seawall shall be subject to the prior written approval of the Board of Land and Natural Resources. Upon abandonment, expiration or termination of this easement, if desired by the Grantor, the Grantee, its successors and assigns, at its sole cost and expense, shall remove the seawall and restore the area to a condition satisfactory to the Grantor.

25. Should future development necessitate a relocation of the easement granted herein, or any portion thereof, the relocation shall be accomplished at the Grantee's own cost and expense.

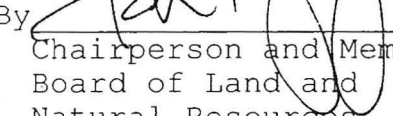
26. The Grantee shall, at its own cost and expense, within thirty (30) calendar days after the date of receipt of this easement document, procure and deposit with the Grantor and thereafter keep in full force and effect during the term of this easement a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Grantee of all the terms, conditions, and covenants of this easement, in an amount of FOUR HUNDRED EIGHTY TWO AND NO/100 DOLLARS (\$482.00). This bond shall provide that in case of a breach or default of any of the easement terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Grantor as liquidated and ascertained damages and not as a penalty.



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

Approved by the Board of Land and Natural Resources at its meeting held on February 22, 2002.

STATE OF HAWAII

By   
Chairperson and Member  
Board of Land and Natural Resources

GRANTOR

  
MARY C. SANFORD, Trustee  
aforesaid

  
CLAIRE C. SANFORD, Trustee  
aforesaid

GRANTEE

APPROVED AS TO FORM:

VK   
Deputy Attorney General

Dated: 3/6/03

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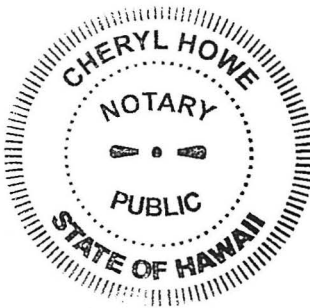
**EXHIBIT B**

STATE OF HAWAII

~~CITY AND COUNTY OF HONOLULU~~ <sup>MAUI ch</sup>

) SS.

On this 25<sup>th</sup> day of June, 20 03,  
before me personally appeared MARY C. SANFORD, to me personally  
known, who, being by me duly sworn or affirmed, did say that such  
person executed the foregoing instrument as the free act and deed  
of such person, and if applicable in the capacity shown, having  
been duly authorized to execute such instrument in such capacity.



Cheryl Howe  
Notary Public, State of Hawaii  
Cheryl Howe

My commission expires: 01.30.07

STATE OF Massachusetts

COUNTY OF Essex

)  
) SS.  
)

On this 13 day of May, 2003,  
before me personally appeared CLAIRE C. SANFORD, to me personally  
known, who, being by me duly sworn or affirmed, did say that such  
person executed the foregoing instrument as the free act and deed  
of such person, and if applicable in the capacity shown, having  
been duly authorized to execute such instrument in such capacity.

Teresa m Ferrara Massachusetts  
Notary Public, State of

My Commission Expires  
My commission expires: November 6, 2009





STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

November 18, 2002

C.S.F. No. 23,395

NON-EXCLUSIVE SEAWALL EASEMENT  
Fronting Grant 12,238 to Glenn Fredholm and Gladys F. Fredholm

Kamaole, Kula, Maui, Hawaii

Being portion of Government Beach Reserve.

Beginning at the northeast corner of this easement and at the northwest corner of Grant 12,238 to Glenn Fredholm and Gladys F. Fredholm, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU-O-KALI" being 1375.51 feet North and 23,677.48 feet West, thence running by azimuths measured clockwise from True South:-

1. 346° 56' 66.61 feet along Grant 12,238 to Glenn Fredholm and Gladys F. Fredholm;
2. 158° 17' 30" 68.68 feet along the seaward face of the CRM wall;

EXHIBIT "A"



EXHIBIT B



C.S.F. No. 23,395

November 18, 2002

3. 264° 04' 30"

10.40 feet along the remainder of the Government  
Beach Reserve to the point of beginning  
and containing an AREA OF 344  
SQUARE FEET.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

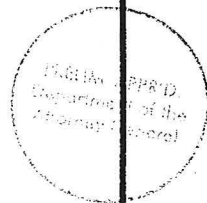
By: 

Thomas H. Oi  
Land Surveyor

gm

Compiled from map and description  
prepared by Sherman Dudley Deponte,  
Carton 10-B and other Govt. Survey  
Records.





# EXHIBIT B

LAND COURT

REGULAR SYSTEM

(AREA ABOVE RESERVED FOR RECORDING INFORMATION)

After Recordation, Return by ☐ Mail or ☐ Pick-up Phone#: \_\_\_\_\_

FILL IN NAME AND ADDRESS BELOW:

DOCUMENT CONTAINS 8 PAGES  
[including this coversheet]

AFFECTS: GRANT OF NON-EXCLUSIVE EASEMENT S-5647  
Document No. A62010078 recorded 12-23-2016

TMK NUMBERS: (2)3-9-012-001-0000 and (2)3-9-012-044-0000

DOCUMENT TITLE: ASSIGNMENT OF GRANT OF NON-EXCLUSIVE EASEMENT  
S-5647

PARTIES: CLAIRE C. SANFORD, Trustee of the Wallace G. Sanford  
Residuary Trust under Agreement dated October 3, 1988, and  
CLAIRE C. SANFORD, Trustee of the Wallace G. Sanford Marital  
Trust under Agreement dated October 3, 1988, as "Assignor."

JAMES R. MACPHERSON, Trustee of the JAMES R.  
MACPHERSON REVOCABLE LIVING TRUST dated June 13,  
2008, as "Assignee."

**EXHIBIT C**



**ASSIGNMENT OF GRANT OF NON-EXCLUSIVE EASEMENT S-5647**

THIS ASSIGNMENT OF GRANT OF NON-EXCLUSIVE EASEMENT S-5647 (the "Assignment") is entered into this 17th day of September, 2020, by and between:

(i) CLAIRE C. SANFORD, Trustee of the Wallace G. Sanford Residuary Trust under Agreement dated October 3, 1988, and CLAIRE C. SANFORD, Trustee of the Wallace G. Sanford Marital Trust under Agreement dated October 3, 1988, having all powers under said Trust Agreement, including full power to sell, convey, exchange, mortgage, lease, assign or otherwise deal with and dispose of all lands of the trust estate and interest therein, whose address is [REDACTED] Gloucester, Massachusetts 01930, hereinafter referred to as "Assignor."

(ii) JAMES R. MACPHERSON, Trustee of the JAMES R. MACPHERSON REVOCABLE LIVING TRUST dated June 13, 2008, having all powers under said Trust Agreement, including full power to sell, convey, exchange, mortgage, lease, assign or otherwise deal with and dispose of all lands of the trust estate and interest therein, whose address is [REDACTED] Kihei, Hawaii 96753, hereinafter referred to as "Assignee."

RECITALS

A. WHEREAS, the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as "Grantor," conveyed to MARY C. SANFORD and CLAIRE C. SANFORD, Co-Trustees of the Wallace G. Sanford Residuary Trust under Agreement dated October 3, 1988, and MARY C. SANFORD and CLAIRE C. SANFORD, Co-Trustees of the Wallace G. Sanford Marital Trust under Agreement dated October 3, 1988, Grantee, a Grant of Non-Exclusive Easement S-5647, recorded on December 23, 2016, in the Bureau of Conveyances of the State of Hawaii as Document Number A62010078 for a Non-Exclusive Seawall Easement containing an area of 344 square feet, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof (the "Easement");

B. WHEREAS, MARY C. SANFORD died on February 14, 2016, in the County of Honolulu, State of Hawaii;

C. WHEREAS, Assignor conveyed the real property situate at Waiohuli-Keokea in the District of Kula, Island and County of Maui, State of Hawaii more particularly described as Lot No. 58 of the "WAI OHULI-KEOKEA BEACH LOTS, 2<sup>ND</sup> SERIES," being a portion of the Government Land of Kamaole, [REDACTED] Kihei, Hawaii 96753, to Assignee by Warranty Deed recorded on December 13, 2016, in the Bureau of Conveyances of the State of Hawaii as Document No. A62010079;

D. WHEREAS, the seawall that is the subject of the Grant of Non-Exclusive Easement S-5647 is also located on the Assignee's aforesaid property;

E. WHEREAS, Paragraph 5 of the Grant of Non-Exclusive Easement S-5647 states that any assignment of said Grant requires the prior written consent of the Grantor; and

F. WHEREAS, Assignee desires to execute this Assignment as Assignee of the interest of Assignor under the Grant of Non-Exclusive Easement S-5647 and, by this Assignment, accepts the assignment of the interest of Assignor in said Grant of Non-Exclusive Easement S-5647.

WITNESSETH:

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, and of the covenants and agreements of the Assignee hereinafter contained and on Assignee's part to be faithfully kept and performed:

1. Assignment. Assignor hereby quitclaims and assigns without warranties all of its estate, right, title and interest as Grantee to the Easement, and all of its rights and obligations under the terms of the Grant of Non-Exclusive Easement S-5647, to Assignee, as permitted by said Grant.

2. Covenants by Assignor. Assignor covenants with Assignee that said Grant of Easement S-5647 is in full force and effect and is not in default, and that there are no outstanding violations of the Grant of Non-Exclusive Easement S-5647 as of the date of this Assignment.

3. Acceptance of Assignment. Assignee has inspected the Easement and is satisfied that the Assignor is in compliance with the terms of the Grant of Non-Exclusive Easement S-5647 and accepts the Easement in its current condition. Assignee hereby accepts the assignment of the rights and obligations of Assignor as Grantee under the Grant of Non-Exclusive Easement S-5647, and Assignee does hereby promise, covenant and agree to and with the Assignor and to and with the Grantor that the Assignee will effective as and from the date of execution of this instrument and during the residue of the term of said easement, faithfully observe and perform all of the covenants and conditions contained in said Grant of Non-Exclusive Easement S-5647 which are or ought to be performed by the Grantee therein named, and will at all times indemnify and save harmless the Assignor and Grantor from and against the non-observance or non-performance of said covenants and conditions.

4. Release of Assignee. Assignee is hereby released from any and all obligations and liability as Grantee under the terms of the Grant of Non-Exclusive Easement S-5647, for all events arising before or after this Assignment.

5. Successors and Assigns. The rights and obligations of the Assignor and Assignee shall be binding upon and inure to the benefit of their respective estates, heirs, personal representatives, successors, successors in trust and permitted assigns.

6. Counterparts. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

*[NOTHING OMITTED - SIGNATURES ON THE NEXT TWO PAGES]*



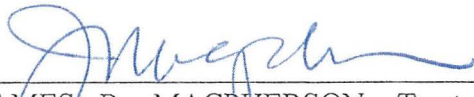
CLAIRE C. SANFORD, Trustee of the Wallace G. Sanford Residuary Trust under Agreement dated October 3, 1988, and CLAIRE C. SANFORD, Trustee of the Wallace G. Sanford Marital Trust under Agreement dated October 3, 1988

[illegible]

Print Name: Herimonta 16 and  
Notary Public  
State of Massachusetts  
My commission expires: 07/03/2026

## EXHIBIT C



  
JAMES R. MACPHERSON, Trustee of the  
JAMES R. MACPHERSON REVOCABLE  
LIVING TRUST dated June 13, 2008

“Assignee”


STATE OF HAWAII )

) SS:

COUNTY OF MAUI )

On this 22<sup>nd</sup> day of September, 2020, before me personally appeared JAMES R. MACPHERSON, Trustee of the JAMES R. MACPHERSON REVOCABLE LIVING TRUST dated June 13, 2008, who, being by me duly sworn or affirmed, did say that he is authorized to and signed this ASSIGNMENT OF GRANT OF NON-EXCLUSIVE EASEMENT S-5647 dated undated, 2020, consisting of 7 pages, in the Second Circuit of the State of Hawaii, on behalf of said Trust and acknowledged this instrument to be the free act and deed of the Trust.



  
Print Name: Quinn Brown  
Notary Public  
State of Hawaii, Second Circuit  
My commission expires: 12/06/2023



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 23,395

November 18, 2002

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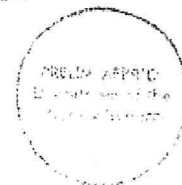


EXHIBIT C

November 18, 2002

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STATE OF HAWAII

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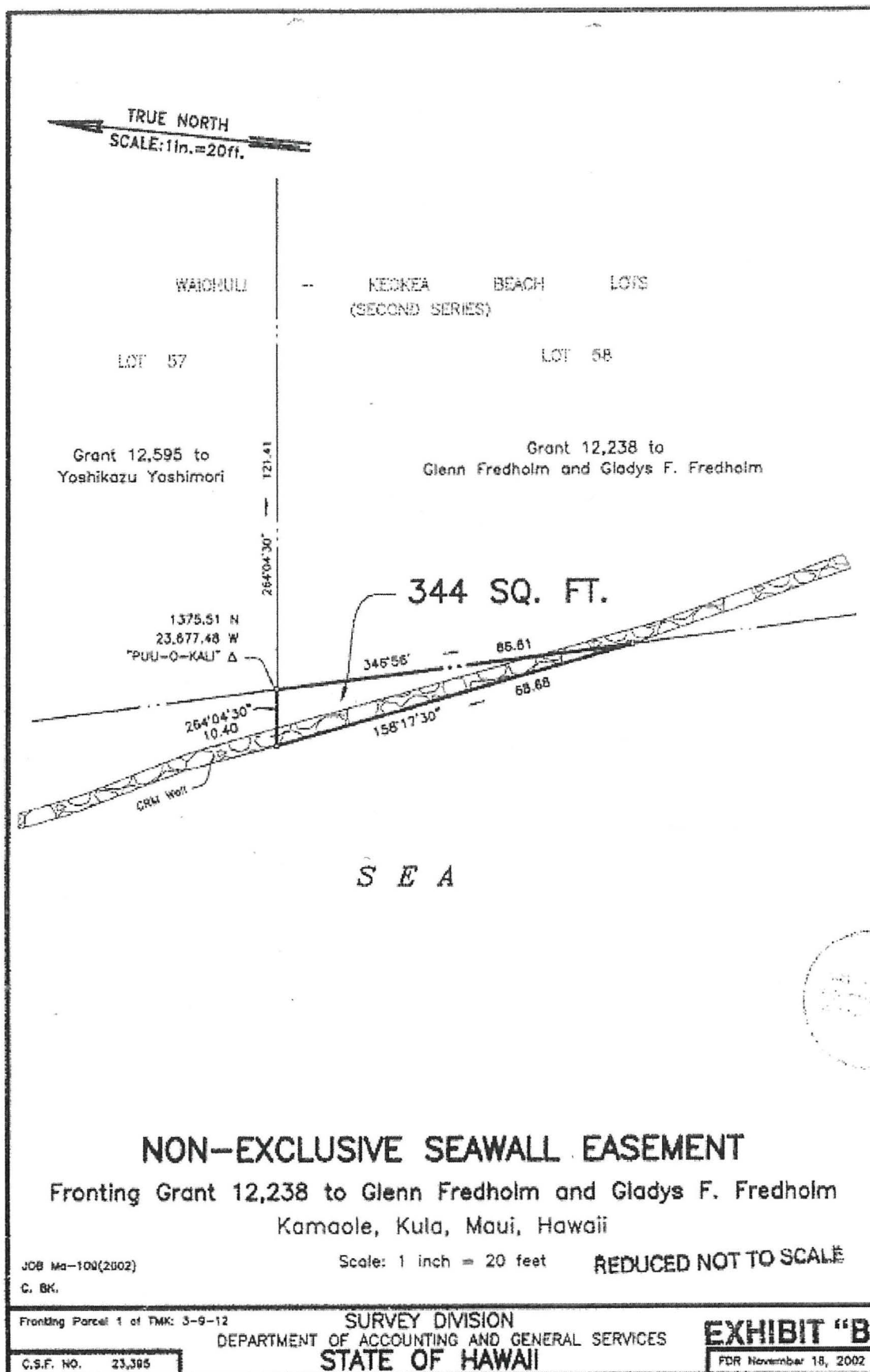
Thomas H. Oi  
Land Surveyor

gm

Compiled from map and description  
prepared by Sherman Dudley Deponte,  
Carton 10-B and other Govt. Survey  
Records.







**EXHIBIT C**