

LAND COURT SYSTEM

REGULAR SYSTEM

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

LEASE AGREEMENT NO. B-94-4

between

DON WILLIAMS,

LESSOR

and

STATE OF HAWAII,

LESSEE

covering vacant land situated at

MAALAEA, WAIKAPU, WAILUKU, ISLAND OF MAUI, STATE OF HAWAII

TAX MAP KEY: SECOND DIVISION, 3-8-14:27, 28, 30 AND 31

containing an area of 1.137 acres, more or less

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THIS INDENTURE OF LEASE made this 1st day of September, 1994, by and between DON WILLIAMS, whose principal business address is P.O. Box 595953, Dallas, Texas 75359, hereinafter called "Lessor", and the STATE OF HAWAII, hereinafter called "Lessee", by its Department of Land and Natural Resources, pursuant to Section 171-30, Hawaii Revised Statutes, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, for the use of the Division of Boating and Ocean Recreation, whose address is 333 Queen Street, Suite 300, Honolulu, Hawaii 96813.

WITNESSETH:

ARTICLE I

DEMISE

Section 1.1 Premises. The Lessor, in consideration of the rent and the terms, covenants, and conditions hereinafter reserved and contained and on the part of the Lessee to be paid, observed and performed, does hereby demise and lease unto the Lessee the Premises situated at Maalaea, Waikapu, Wailuku, Island of Maui, State of Hawaii, identified as Tax Map Key: Second Division, 3-8-14: 27, 28, 30 and 31, comprising of approximately 1.137 acres of vacant land, more particularly described in Exhibit "A" and shown on the map marked Exhibit "B" attached hereto and made parts hereof (the "Premises").

Section 1.2 Term. To have and to hold the leased Premises unto the Lessee for the term of thirty (30) years, commencing on September 1, 1994 (the "Commencement Date"), up to and including the Thirty-first day of August, 2024, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor without notice or demand in installments the amounts described in Article II below. Except as set forth in section 1.3, no options to renew or extend the lease term are provided herein.

Section 1.3 Option to Purchase.

(a) As long as Lessee is not in default under any provision of the lease, Lessor hereby grants to Lessee an option (the "Option") to purchase Lessor's fee simple interest in the Premises on the terms, covenants, and conditions hereinafter set forth. Lessee may exercise the Option, at any time on or after the one year anniversary date of the Commencement Date of the lease, by serving written notice of its exercise of the Option to Lessor at least ninety (90) days and not more than one hundred twenty (120) days prior to the date Lessee desires to close the purchase of said Premises. Said notice shall state the time, date and place where Lessee desires to close said purchase and include a \$1,000.00 escrow deposit. If the Lessee has not exercised the Option by the five-year anniversary date of the Commencement Date of the Lease, said option shall expire and all rights and privileges to purchase the Premises set forth herein shall be void.

(b) At the closing of said purchase (the "Closing"), Lessor shall convey and sell the Premises to Lessee and Lessee shall purchase the Premises from Lessor for a purchase price equal to the greater of: (i) the fair market value of the Premises established by an independent appraisal made within sixty (60) days of the Closing, or (ii) \$1,880,000.00 (the fair market value of the Premises determined by an independent appraisal prior to the commencement of this lease). Wherever in this Lease the "fair market value" of the Premises is to be determined, the fair market value of the Premises will be valued as a single integrated parcel of land, as if there were no buildings or other improvements or encumbrances of any kind on the Premises, but taking into consideration its highest and best use at the time the Premises' fair market value is to be determined.

In the event either Lessor or Lessee do not agree upon the fair market value established by the independent appraisal performed under paragraph (b)(i) above, or Lessor and Lessee cannot otherwise agree upon the fair market value of the Premises within fifteen (15) days after Lessee sends notice of its exercise of its Option, then each party shall appoint, by written notice to the other, a real estate appraiser with prior experience appraising comparable properties in Maui, Hawaii, who is not employed by either party and who is a member of either the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers. If either party fails to appoint such a real estate appraiser within ten (10) days after written demand by the other party, the party who has already named an appraiser shall have a second appraiser selected or appointed as provided in Chapter 658, Hawaii Revised Statutes, and the two appraisers appointed shall thereupon proceed to determine the value on the basis set forth above. If the two appraisers are unable to agree on a fair market value, but the appraisals are not more than ten percent (10%) apart, computed from a base of the higher appraisal, the two appraisals shall be averaged. If the two appraisals are more than ten percent (10%) apart, then a third appraiser will be selected or appointed as provided in said Chapter 658, and the three appraisers shall then determine the fair market value by a majority decision; and the decision and award of the appraisers shall be final, conclusive and binding upon all the parties. Each party shall have the responsibility for paying the appraiser which was, or which should have been, appointed by such party and each shall pay one-half (1/2) of the costs and expenses of the third appraiser if one is appointed.

(c) Lessee shall purchase the Premises in an "AS IS, WHERE IS" condition. Possession of the Premises shall be delivered by Lessor to Lessee at the Closing. This lease shall automatically terminate as of the Closing.

(d) Lessor, at Lessor's sole cost and expense, agrees to convey the Premises to Lessee by a general warranty deed, duly executed by Lessor, free and clear of all liens or encumbrances except those of public record and those which have previously been disclosed to, and

accepted by, the Lessee.

(e) If, after the exercise of the Option by Lessee, Lessor is unable to convey title to the Premises to Lessee in accordance with this lease, or if there has occurred any uncured breach of any of Lessor's representations, warranties or covenants, Lessee may, at Lessee's option, terminate its obligation to purchase the Premises by at least fifteen (15) days prior written notice to Lessor. If, after the exercise of the Option by Lessee, Lessor fails to consummate the sale contemplated herein for any reason other than Lessee's breach of this lease or Lessor's exercise of a right to terminate this lease pursuant to a right to do so expressly provided herein, Lessee may (i) enforce specific performance of this lease and the Option, or (ii) terminate its obligation to purchase the Premises and be refunded the escrow deposit.

(f) If, after the exercise of the Option by Lessee, Lessee fails to consummate the sale contemplated herein for any reason other than Lessor's breach of this lease, or Lessee's exercise of a right to terminate the Option pursuant to the right to do so expressly provided herein, Lessor may (i) enforce specific performance, or (ii) terminate the obligation to sell the Premises to Lessee and retain the escrow deposit as liquidated damages.

(g) Any terms or provisions regarding the sale of the Premises from the Lessor to the Lessee not specifically set forth herein shall be mutually agreed upon and negotiated in good faith by the Lessor and Lessee in a timely manner prior to the Closing.

(h) The parties hereto represent and warrant to each other that there are no claims for realtor commissions or finder's fees in connection with the execution and delivery of this lease, or the purchase and sale contemplated herein, which arise from or have been or will be occasioned by, any act or omission of either party, and Lessor and Lessee hereby agree to indemnify and hold each other harmless from all liabilities arising from any such claims, including, without limitation, reasonable costs of investigation, attorney's fees, and related court costs as provided herein.

Section 1.4 Quiet Enjoyment. Upon payment by Lessee of the rent hereinafter reserved and upon observance and performance of the terms, covenants, and conditions herein contained and to be observed and performed by Lessee, Lessee shall peaceably hold and enjoy the Premises for the lease term, without hindrance or interruption by Lessor or any other person lawfully or equitably claiming by, through or under the Lessor, except as herein otherwise expressly provided.

Section 1.5 Possession. In the event of Lessor's inability to deliver possession of the Premises at the commencement of the lease term, Lessor shall be liable for any reasonable damages caused thereby. In such event, no rental shall be payable by Lessee to

Lessor for any portion of the lease term prior to actual delivery to Lessee of possession of the Premises, and the Lessee, at its option, may cancel the lease or extend the date of termination of this lease by a period of time equal to the total number of days during which the Lessor was unable to deliver possession of the Premises to Lessee, and the parties shall enter into a supplemental agreement amending and extending the lease term as hereinabove provided. If Lessee, with Lessor's prior written permission, enters into possession of the Premises prior to commencement of the lease term, all of the terms, covenants and conditions of this lease shall apply during the prior period.

Section 1.6 Authorization. Pursuant to Section 171-30, Hawaii Revised Statutes, and by resolution approving the lease of the Premises adopted by the Department of Land and Natural Resources ("DLNR") on May 27, 1994 (Item J-1), Lessee hereby represents that it has full right, power, and authority to enter into this lease for the lease term and to abide by and perform all of the terms, provisions and conditions required of Lessee under the lease. The Chairman of the DLNR has been duly authorized by Lessee to execute this lease and to act on its behalf hereunder. Lessee further agrees to take any such action as is necessary to obtain any required approvals and to authorize such future actions under the lease, including, without limitation, any authorization (legislative or otherwise) required to construct improvements on the Premises or to exercise and close the Option hereunder.

ARTICLE II

RENT AND OTHER CHARGES

Section 2.1 Rent. In consideration of this lease and the use of the Premises, the Lessee agrees to pay to the Lessor, as rent for the Premises, an annual amount equal to the greater of:

(a) Eight percent (8%) (or the then prevailing rate of return of land similar in type and location to the Premises, whichever is greater), of the fair market value of the Premises as determined by an independent appraisal. (NOTE: The fair market value of the Premises shall be determined by appraisal prepared by an independent appraiser selected by and paid for by Lessor completed every two (2) years during the lease term.); or

(b) the annual rental amount in effect during each of the two (2) years immediately preceding the current two (2) year segment.

The fair market value of the Premises for the initial two (2) year segment of this lease has been determined to be \$1,880,000.00, and, therefore, the annual rent payment to be made by Lessee as provided herein for each of the first two years of this lease shall be ONE HUNDRED FIFTY THOUSAND FOUR HUNDRED AND NO/100 DOLLARS

(\$150,400.00) to be paid in quarterly payments of \$37,600.00 each. Said rent shall be paid in legal tender of the United States of America, payable in advance in quarterly installments; the first payment being due upon the effective date of the lease and all subsequent payments being due on the first day of January, April, July and October of each and every year during said lease term at Post Office Box 595953, Dallas, TX 75359, or at such other place as the Lessor may designate in writing, on the days and in the manner aforesaid, without any deduction, offset or abatement and without notice or demand. If any installment of rent shall not be promptly paid when due, or within thirty (30) days thereafter, rent shall bear simple interest at the rate of twelve percent (12%) per annum from the due date until paid in full. Any past-due payments shall be first applied to accrued interest and then to rents due under the lease. If either of the parties do not agree with the independent appraisal performed under Section 2.1(a) and the parties cannot otherwise agree on the applicable rate of return and/or the fair market value of the Premises, then the appraisal process described in section 1.3(b) shall be used for purposes of this section 2.1. In the event the foregoing appraisals are not completed by the end of the preceding two year segment of the lease term, the lease shall remain in full force and effect with Lessee paying the same rent until the applicable rate of return and/or the fair market value of the Premises is determined, at which time appropriate adjustments, relating back to the beginning of such two year segment of the lease term, shall be made between Lessor and Lessee. In the event Lessee is required to pay additional amounts as a result of an increase in the rent, the Lessee shall pay to Lessor all such additional amounts due by reason of such determination, together with interest accrued thereon at eight percent (8%) per annum from the date such additional rent would have been payable under the Lease had it been determined prior to the commencement of such two year segment of the lease term.

Section 2.2 Security Deposit. No security deposit of any kind shall be required to be paid by Lessee.

Section 2.3 Real Property Tax. The Lessee, as a sovereignty, is exempt from real property taxes under Hawaii Revised Statutes Section 246-36(2) and Lessee will submit application for exemption of the Lessor's real property tax assessment on the Premises. Accordingly, after the effective date of the Lessee's tax exemption, no real property taxes shall be assessed to or collected against the Lessee in any form; provided, however, Lessee shall pay all real property taxes from the Commencement Date until the tax exemption is granted.

Section 2.4 General Excise Taxes. The Lessee shall pay to the Lessor as additional rent, together with each payment of rent or any other payment required hereunder which is subject to the State of Hawaii general excise tax on gross income, as the same may be amended, and all other similar taxes imposed on the Lessor on the

rent or other payments in the nature of a gross receipts tax, sales tax, privilege tax or the like (excluding Federal or State of Hawaii net income taxes), whether imposed by the United States of America, the State of Hawaii, the County of Maui, or any other duly authorized taxing body, an amount which, when added to the rent or other payment, shall yield to the Lessor, after deduction of all taxes payable by the Lessor with respect to all payments, a net amount equal to that which the Lessor would have realized from the payments had no taxes been imposed.

Section 2.5 Taxes, Assessments, Etc. Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the Premises or any part, or any improvements, or the Lessor or Lessee, are now or may become liable by authority of law during the lease term; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which become due and payable during the lease term.

Section 2.6 Utility Services. The Lessee, at its sole cost and expense, shall provide and maintain conduits, mains and other facilities necessary to provide adequate water, sewer, electricity, gas, telephone and other utilities to the Premises. The Lessee shall pay when due all charges, duties and rates of every description, including water, sewer, electricity, gas, refuse collection, telephone, hook-in, tie-in, and any other charges, as to which the Premises or any part thereof, or any improvements, or the Lessor or Lessee, may become liable for during the lease term, whether assessed to or payable by the Lessor or Lessee.

Section 2.7 Conveyance Tax. If Lessee requires recordation of a short-form memorandum of this lease (setting forth the term hereof, the Option to purchase, and such other provisions hereof, as Lessor and Lessee shall reasonably deem to be pertinent), Lessee forthwith shall reimburse to Lessor, upon Lessee's receipt of actual billing from Lessor therefor, any State of Hawaii conveyance tax which shall be or become payable by Lessor or Lessee as a result of this lease.

Section 2.8 Net Lease. It is the intention of Lessor and Lessee that rental and any other amounts due under the lease shall be absolutely net to Lessor; that all costs, expenses, and obligations of every kind relating directly or indirectly in any way, foreseen and unforeseen, to Lessee's use, occupancy, and possession of the Premises, which may arise or become due during the lease term hereof shall be paid by Lessee; and that Lessor shall be indemnified by Lessee against all such costs, expenses, and obligations.

ARTICLE III

USE

Section 3.1 Use of Premises. The Premises will be occupied and used by the Division of Boating and Ocean Recreation for marine and ocean recreation purposes, including: a staging area during Maalaea Boat Harbor improvements, a maintenance baseyard, fish processing center, Marine Patrol operations, boat repair and dry storage of vessels and marine equipment. Lessee will not use or permit, or suffer the use of the Premises for any other business or purposes without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Lessor and Lessee agree that the use of the Premises by another state agency shall not be a change of use of the Premises under this section and shall not require Lessor's consent; provided that there is no significant change and/or increase in the use of Premises.

Section 3.2 Observance of Laws. Lessee will at all times during the lease term observe and comply with all laws, ordinances, and rules and regulations now or hereinafter made by any governmental authority and applicable to the occupancy or use of the Premises or the conduct of any business therein.

Section 3.3 Waste, Nuisance or Unlawful Activity. Lessee agrees that it will not commit or permit any waste on the Premises, or maintain or permit to be maintained a nuisance thereon, or use or permit the Premises to be used in an unlawful manner. Lessee will not permit any objectionable noises or odors to emanate from the Premises or take any action which might endanger occupants of neighboring properties or unreasonably interfere with the use and enjoyment of their respective properties.

Section 3.4 Acceptance of Premises. Lessor does not and shall not have, pursuant to this lease or otherwise, any obligation or liability to Lessee with respect to the construction of improvements in or upon the Premises or the conformation of any improvements in or upon the Premises with any plans, specifications, other design criteria, or applicable laws, governmental regulations, or private restrictions, or any defects in workmanship or materials incorporated into or employed in connection with the construction of improvements in or upon the Premises. LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO MERCHANTABILITY, CONDITION, QUALITY, DESIGN, USE, FITNESS, OPERATION, OR SUITABILITY OF THE PREMISES OR ANY COMPONENT THEREOF IN ANY RESPECT WHATSOEVER, OR IN CONNECTION WITH OR FOR THE PURPOSES OF LESSEE. Lessee hereby accepts the Premises and all components thereof "AS IS", and in their present state and condition.

Section 3.5 Subletting and Assignment. The Lessee agrees that

neither the Premises, nor any part thereof, shall be sublet or assigned, nor will the Lessee part with the possession of the whole or any part thereof, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld; provided, however, that any such subletting or assignment shall be subject to and upon all the terms and provisions of this lease. Lessee shall provide Lessor and any mortgagee with a copy of the proposed sublease or assignment of the Premises. Lessor and Lessee agree that the use of the Premises by another state agency shall not constitute an assignment or subletting of the Premises by Lessee to the other state agency and shall not require Lessor's consent and shall be upon the same terms and conditions contained in this lease; provided that there is no significant change and/or increase in the use of the Premises. No assignment or subletting shall in any way release Lessee from its obligation under the lease and Lessee shall continue to be liable under the lease for the balance of the lease term with the same force and effect as if no assignment or subletting had been made. Lessee may not, directly or indirectly, mortgage, pledge or otherwise encumber its interest in the lease or in the Premises.

ARTICLE IV

HAZARDOUS MATERIALS

Section 4.1 Lessee's Covenant. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials on or near the Premises, except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and Lessor approves such use in writing. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the reasonable costs thereof shall be reimbursed by Lessee to Lessor upon demand as additional charges if such requirement applies to the Premises. Lessee agrees, upon written request of Lessor, to perform and promptly complete, at its sole cost and expense, all clean-up work arising from or related to any hazardous materials located or released by Lessee or its authorized agents on or adjacent to the Premises during the lease term. In addition, Lessee shall execute affidavits, representations, warranties, and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Lessee or any sublessee or assignee.

Lessee agrees to indemnify and hold Lessor harmless, in the manner elsewhere provided in this lease, from any damages, losses,

expenses, and claims (including, without limitation, those from any environmental condition or violation of any environmental laws), resulting from the breach of Lessee's covenants hereunder or from the use, placement or release of hazardous materials on the Premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee including sublessees. These covenants shall survive the expiration or earlier termination of the lease and shall be in addition to Lessee's obligations for breach of the Lessee's covenants, representations and warranties set forth above.

Section 4.2 Lessor's Representations, Warranties and Obligations. To the best of Lessor's knowledge, Lessor represents and warrants to Lessee that Lessor has no liability under, has never violated, and is presently in compliance with all environmental laws regarding hazardous materials applicable to the Premises, and to the best of Lessor's knowledge, there does not now exist or ever existed any environmental condition relating to hazardous materials on the Premises.

Lessor agrees to indemnify and hold Lessee harmless from any damages or claims from any environmental condition or violation of any environmental laws resulting from the use or placement of hazardous materials on the Premises prior to the lease Commencement Date even if not discovered until after the lease has commenced. This indemnity shall survive the lease termination date and shall be in addition to Lessor's obligations for breach of the above representations and warranties.

Section 4.3 Definitions. For the purpose of this lease, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted. As used herein, the term "release" shall mean depositing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing in any way.

ARTICLE V

IMPROVEMENTS, MAINTENANCE, REPAIRS AND ALTERATIONS

Section 5.1 Improvements. The Lessee shall not at any time during the lease term construct, place, maintain or install on the Premises any building, structure or improvement of any kind or description except with the Lessor's prior written approval of the final plans and specifications and site plans prepared by Lessee.

Approval by the Lessor shall not be unreasonably withheld. Lessor, at its expense, shall promptly approve, or specify in detail any deficiencies in, the proposed plans and specifications and site plans. In the event of Lessor's disapproval, Lessee will in good faith attempt to remedy all deficiencies reasonably specified by Lessor. Any and all improvements and the personal property/fixtures located therein shall comply with all applicable laws, ordinances, and governmental rules, regulations and codes affecting the Premises. Any improvements to the Premises shall not contain any hazardous materials. The construction of any improvements on the Premises shall be at the sole cost and expense of Lessee, and Lessor shall not be responsible for any construction costs, license or permit fees, professional fees, or any other costs or expenses associated therewith. The selection of all architects, engineers, the general contractor and others to be employed in connection with such construction shall be within the sole discretion of Lessee; provided, however, (a) the general contractor shall have a reasonably acceptable financial condition and responsibility, and (b) Lessee must require that the general contractor waive and relinquish, in writing, any and all mechanics lien claims which it may have against the fee simple title and Lessor's interest in the Premises. Any major improvements put on the Premises by Lessee shall remain the property of the Lessee and, unless Lessee is in default under the lease, the Lessee shall have the right, prior to the termination of the lease (or within an additional period that the Lessor in its discretion may allow), to remove such improvements from the Premises as can reasonably be removed by the Lessee. Lessee shall be liable for, and shall promptly reimburse Lessor for, the cost of repairing all damage done to the Premises by such removal, including filling and sealing any holes or cavities caused or left by the removal of such improvement. In accordance with section 10.1, in the event the Lessee fails to remove the improvements within thirty (30) days after written notice to remove has been sent by Lessor, the Lessor may elect to retain the improvements or may remove the same and charge the cost of removal, disposal and storage, if any, to the Lessee. Lessee shall promptly pay Lessor any amounts required hereunder.

Section 5.2 Lessee's Maintenance and Repair of the Premises.
The Lessee will, at its sole cost and expense during the lease term, keep the Premises, including any buildings, sidewalks, parking lots, landscaping and other improvements thereon, in a good, attractive and safe repair and condition, reasonable use, wear and tear, and unavoidable casualty loss excepted. Lessee shall maintain and make repairs to any such buildings, sidewalks, parking lots, landscaping and other improvements at its sole cost and expense, including repairs to roof, foundation, driveway and parking areas, landscape and structure. Lessor shall not be called upon to make any improvements or repairs whatsoever to or on the Premises during the lease term. Lessee's obligations under this section do not include natural wear, decay, or damage by the elements, or other casualty (occurring without fault of the Lessee or other persons permitted by

the Lessee to occupy or enter the Premises or any part thereof).

Section 5.3 Lessor's Right of Entry. The Lessee will allow the Lessor, its agents, and authorized representatives, at reasonable times and upon prior notice, to enter upon the Premises and examine the condition thereof.

Section 5.4 Alterations. Lessee will not make any alterations or additions whatsoever to the Premises without first obtaining Lessor's written approval of the plans and specifications thereof, which shall not be unreasonably withheld. Any such alterations or additions will be at the sole cost and expense of Lessee and shall comply with the requirements set forth in section 5.1 above.

ARTICLE VI

LIABILITY, INDEMNITY AND INSURANCE

Section 6.1 Liability of the State. Lessee shall, subject to the applicable provisions of Chapter 661, Hawaii Revised Statutes (Suits by and Against the State) and Chapter 662, Hawaii Revised Statutes (State Tort Liability Act), be liable in the same manner and to the same extent as a private individual under like circumstances, for all claims and demands for property damage, loss, personal injury or death on the Premises caused by the negligent or wrongful act or omission of any officer and employee of the State while acting within the scope of that person's office or employment, or persons acting for a State agency in an official capacity, temporarily, whether with or without compensation. "State agency" includes the executive departments, boards and commissions of the State, but does not include any contractor with the State.

Section 6.2 Liability of Lessor. The Lessor shall not be liable to the Lessee for damage to person or property arising for any reason, except that the Lessor shall be liable to the Lessee for damage to the Lessee resulting from the negligent act or omission of the Lessor or its authorized representatives.

Section 6.3 Indemnity. The Lessee, subject to Chapters 661 and 662, Hawaii Revised Statutes, shall indemnify, defend and hold the Lessor harmless from and against all damages, claims, actions, liabilities, and expenses arising from or out of any injury and/or damage to any person or property occurring in, on, or about the Premises, except that the Lessor shall be liable to the Lessee for damage resulting from the negligent act or omission of the Lessor or its authorized representatives. To the extent allowed by statute, in case Lessor shall be made a party to any litigation commenced by or against Lessee for any such damage or injury, then Lessee shall protect and hold Lessor harmless and pay all costs, penalties, charges, damages, expenses and reasonable attorney's fees incurred or paid by Lessor, but in no event shall this provision serve to

indemnify Lessor if such damage or injury was the result of negligence of the Lessor or its authorized representatives. A party's obligation under this section to defend and to indemnify and hold the other party harmless shall be limited to the sum that exceeds the amount of insurance proceeds, if any, received by the party being indemnified.

Section 6.4 Insurance. Lessee, as a sovereignty is self-insured and therefore insurance, including, but not limited to, fire insurance, public liability and property damage, is not required. Notwithstanding the foregoing, any sublessee or assignee which is not a self-insured sovereignty shall be required to obtain and keep in force, at its sole cost and expense, all types and amounts of insurance as are: (a) required by applicable law, (b) ordinary and customary to the type of business that the sublessee or assignee is engaged in, and (c) reasonably requested by Lessor to be obtained by said sublessee or assignee.

ARTICLE VII

PROPERTY OF LESSEE

Section 7.1 Property of Lessee. All personal property of any kind or description whatsoever on the Premises shall be at the Lessee's sole risk, and the Lessor shall not be liable for any damage done to or loss of such personal property or damage or loss suffered by the business or occupation of the Lessee arising from any act or neglect of other persons, from bursting, overflowing, or leaking of water, gas, sewer, or steam pipes or from any fixtures, appliances or devices connected to same, or from electric conduit, wires, fixtures, appliances or devices, or from chemicals or bacteria or odors, or caused in any other manner whatsoever unless caused by the negligent act or omission of Lessor or its authorized representatives.

ARTICLE VIII

CONDEMNATION

Section 8.1 Condemnation. In the event during the term of this lease, the Premises or any part thereof shall be taken or condemned by any authority having the power of eminent domain, then and in such event, this lease shall cease and terminate as of the date Lessee is required to vacate the Premises, and any rent reserved shall be apportioned and paid up to that date. All compensation and damages payable for or on account of the Premises, except for improvements constructed or owned by the Lessee, shall be payable to and be the sole property of the Lessor. Lessee shall be reasonably compensated for all improvements constructed or owned by the Lessee. The Lessee shall not be entitled to any claim against the Lessor for condemnation of, or indemnity for, the leasehold interest of the

Lessee.

Section 8.2 Partial Taking. In case only part of the Premises shall be so taken or condemned, the rent thereafter payable for the unexpired remainder of the lease term shall be reduced in the same proportion that the area of the Premises so taken or condemned bears to the total area of the Premises hereby demised.

ARTICLE IX

DEFAULT

Section 9.1 Remedies on Lessee's Default. This lease is upon the express condition that, if Lessee shall fail to pay the rent herein reserved or any part thereof as the same becomes due, or shall fail to faithfully observe and perform any other term, covenant or condition of this lease, or shall abandon the Premises, or shall suffer this lease or any estate or interest hereunder to be taken on execution, or shall suffer any mechanic's or materialmen's lien to attach said Premises, and shall fail to secure the discharge or release thereof within a reasonable time after the entry of any judgment or order of a court of competent jurisdiction for the foreclosure or other endorsement of the lien and the breach or default shall continue uncured for a period of thirty (30) days after delivery of a written notice of any such breach or default by personal service, registered mail or certified mail, then in that event, Lessor may at once re-enter the Premises and, upon or without the entry, at its option, terminate this lease without any further service or notice or legal process, and may expel and remove from the Premises, Lessee and those claiming under it and its effects and Lessor may store, remove and dispose of any of Lessee's improvements or personal property at Lessee's expense, and may then or at any time before or thereafter bring an action for summary possession of said Premises, all without prejudice to any other remedy or right of action which Lessor may have for arrears of rent, other breach of contract, or any other remedy provided herein or at law or equity; provided however, that if the nature of the default, other than non-payment of rent is such that the same cannot be reasonably cured within a thirty-day period, Lessee shall not be deemed to be in default if Lessee shall, within the period, commence a cure and thereafter diligently prosecute the same to completion.

Section 9.2 Nonwaiver. The acceptance of rent by Lessor or its agent shall not be deemed to be a waiver by it of any breach by Lessee of any covenant contained herein or of Lessor's right to re-enter for breach of condition.

ARTICLE X

SURRENDER. HOLDING OVER

Section 10.1 Surrender of Premises. At the end of the lease term or other earlier termination of this lease, Lessee will peaceably deliver up to Lessor possession of the demised Premises together with all improvements thereon by whomsoever made, except those improvements put on the Premises by Lessee that can be reasonably removed by the Lessee, in good repair, order and condition, reasonable wear and tear and unavoidable casualty excepted.

If the Lessee fails to remove any and all of Lessee's improvements and/or personal property from the Premises, within thirty (30) days after written notice to remove has been sent by Lessor, the Lessor may remove any and all improvements and/or personal property from the Premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the improvements and/or personal property. As set forth in section 5.1, Lessee shall be liable for, and shall promptly reimburse Lessor for, the cost of repairing all damage done to the Premises caused by such removal.

Section 10.2 Holding Over. If the Lessee has not exercised its Option to purchase the Premises and Lessee remains in possession of the Premises, or any part thereof, after the termination of this lease (whether by expiration of the lease term or otherwise) without executing or intending to execute a new lease with Lessor, Lessee shall be deemed to occupy the Premises, or any part thereof, as a tenant from month to month at a rental rate equal to one hundred fifty percent (150%) of the rent in effect in the last full month of the lease prior to the termination of the lease, subject to all the other terms, covenants, obligations and conditions herein contained insofar as the same are applicable to a month-to-month tenancy.

ARTICLE XI

NOTICE

Section 11.1 Notice. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give the other party or any other person shall be in writing and either served personally or sent by prepaid, certified or registered mail, return receipt requested. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its

address by notifying the other party of the change of address. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing, whether actually received or not, if mailed as provided in this section.

To the Lessor at: Don Williams
Post Office Box 595953
Dallas, TX 75359

To the Lessee at: State of Hawaii
Department of Land and Natural Resources
Division of Boating & Ocean Recreation
333 Queen Street, Suite 300
Honolulu, HI 96813

ARTICLE XII

SUBORDINATION, ESTOPPEL, ATTORNMENT

Section 12.1 Lease Subordinate to Mortgages. This lease shall be subject and subordinate to the lien of any mortgage or deed of trust in any amount or amounts whatsoever now existing or hereafter placed on the Premises without the necessity of any other instrument or act on the part of the Lessee to effectuate the subordination, provided the mortgagee named in any mortgage shall agree that in the event of foreclosure it will not join the Lessee as a party defendant in the foreclosure action and will not take any action to terminate this lease so long as the Lessee is not in default hereunder. The Lessee covenants and agrees to execute and deliver upon demand a further instrument or instruments evidencing the subordination of this lease to the lien of any mortgage or deed of trust as may be required by the Lessor.

Section 12.2 Attornment. Lessee agrees to attorn to the assignee, transferee, or purchaser of Lessor's interest from and after the date of notice to Lessee of any assignment, transfer or sale, in the same manner and with the same force and effect as though this lease were made, in the first instance, by and between Lessee and the assignee, transferee or purchaser. At any time when there is an outstanding mortgage, deed of trust or similar security instrument covering Lessor's interest in the Premises of which Lessee has been given written notice, Lessee may not exercise any remedies of default by Lessor hereunder unless and until the holder of the indebtedness secured by such security instrument shall have received written notice of such default and a reasonable time to cure such default has elapsed. If any proceedings are instituted for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Lessor covering the Premises, Lessee shall, upon Lessor's request, attorn to the purchaser upon any foreclosure or sale and recognize the purchaser

as the Lessor under this lease.

Section 12.3 Transfer Documents. In the event of any such sale, assignment, mortgage, transfer or hypothecation, Lessee will promptly execute any and all documents, including, but not limited to, consents and true and accurate estoppel certificates, as may be deemed necessary to the transaction by the Lessor. Further, in the event that for any business purpose of Lessor it shall be necessary for Lessor that Lessee execute documents, including, but not limited to, consents and estoppel certificates, Lessee agrees to execute any and all of said documents, provided only that the documents accurately and truthfully reflect the matters contained therein.

The Lessee shall upon and after written notice, received as designated in section 11.1, act upon the requested document. The Lessee shall respond within the time period of ten (10) business days or such reasonable additional time period as the Lessee may request.

ARTICLE XIII

GENERAL

Section 13.1 Time is of the Essence. Time is of the essence in all provisions of this lease.

Section 13.2 Hawaii Law; Venue; Jurisdiction. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. The venue for any mediation, arbitration or judicial action with respect to this lease shall be in the county in which the Premises is situated. All parties to this agreement shall submit to the jurisdiction of the State and/or Federal Courts of the State of Hawaii for all purposes relating to this lease, subject to the terms of the mediation and arbitration clause in section 13.3 herein. All parties agree to subject themselves to the power and authority of such courts for the enforcement of any arbitration award hereunder and for all other matters relating to this lease and the Premises.

Section 13.3 Disputes Subject to Mediation and Arbitration. If a dispute arises out of or relates to this lease, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration, litigation, or some other dispute resolution procedure.

Thereafter, following such effort to settle the dispute by negotiation and mediation, any controversy or claim arising out of or relating to this lease or the breach thereof, shall be settled by arbitration in the county or city and county in which the Premises is situated, in accordance with the Commercial Arbitration rules

(and the Supplementary Procedures for International Commercial Arbitration of the American Arbitration Association, if the Lessor is not a resident of the United States of America) and in accordance with Chapter 658, Hawaii Revised Statutes; and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Any such arbitration shall be held and conducted in the county or city and county in which the Premises is situated.

Section 13.4 Attorney's Fees. In the event of any action or proceeding brought by either party against the other party based upon or arising out of any breach of the terms and conditions herein, the prevailing party shall be entitled to recover all costs, including reasonable attorney's fees, from the other party.

In the event that Lessor without any fault on its part, be made a party to any litigation commenced by or against Lessee, then Lessee shall pay to Lessor all costs, including reasonable attorney's fee, incurred by or imposed upon the Lessor by or in connection with the action or litigation. Conversely, in the event that Lessee, without fault on its part, be made a party to any litigation commenced by or against Lessor, then Lessor shall pay all costs, including reasonable attorney's fee, incurred by or imposed upon Lessee by or in connection with such action or litigation.

Section 13.5 Exhibits - Incorporation in Lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

Section 13.6 Singular and Plural. When required by the context of this lease, the singular shall include the plural, and the plural shall include the singular. Words of any gender shall include each other gender where appropriate.

Section 13.7 Headings. The article, section and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

Section 13.8 Successor and Assigns. The term "Lessor" as used herein shall include the Lessor and his heirs, devisees, administrators, personal representatives and assigns, and the term "Lessee" as used herein shall include the Lessee and its successors and assigns. All terms and conditions of this lease are binding upon, and shall inure to the benefit of the heirs, devisees, administrators, personal representatives and assigns of the Lessor and the successors and assigns of the Lessee.

Section 13.9 Partial Invalidity. If any term, provision, covenant or condition of this lease should be held by court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and

shall in no way be affected, impaired or invalidated thereby.

Section 13.10 Entire Agreement: Modification. This lease contains all the agreements of the parties, supersedes all prior understandings and agreements regarding the subject matter, and cannot be amended, supplemented or modified except by a written agreement.

Section 13.11 Counterparts. This lease may be executed in multiple counterparts. Each counterpart shall be deemed an original of this lease so that in making proof of this lease it shall be only necessary to produce or account for one such counterpart.

Section 13.12 Days. Days shall mean calendar days, unless otherwise specified.

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IN WITNESS WHEREOF, the Lessor has caused this instrument to be duly executed, and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Lessee, has caused this instrument to be duly executed, on the day, month, and year first above written.


LESSOR:



DON WILLIAMS

LESSEE:

STATE OF HAWAII

By 

KEITH W. AHUE
Duly Authorized Chairperson and Member
Board of Land and Natural Resources

Approved by the Board
of Land and Natural
Resources at its meeting
held on May 27, 1994.
(Item J-1)

APPROVED AS TO FORM:



Deputy Attorney General

Dated: August 11, 1994

STATE OF HAWAII)
) SS.
 COUNTY OF)

On this _____ day of _____, 19____,
 before me appeared _____ and
 _____, to me personally known, who,
 being by me duly sworn, did say that they are the
 _____ and _____,
 respectively, of _____,
 and 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 _____
 and _____ acknowledged
 that they executed said instrument as the free act and deed of
 said corporation.

 Notary Public, State of Hawaii

My commission expires: _____

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

On this 1st day of SEPTEMBER, 19 94,
 before me personally appeared DON WILLIAMS,
 _____, to me known to be the
 person(s) described in and who executed the foregoing instrument
 and acknowledged that HE executed the same as HIS
 free act and deed.



 Notary Public, State of Hawaii

My commission expires: 11/2/97

EXHIBIT "A"

All of that certain parcel of land (portion of the land described in and covered by Royal Patent Grant Number 3152 to Henry Cornwell) situate, lying and being at Waikapu, Wailuku, Island and County of Maui, State of Hawaii, being LOT 1 of the "MAALAEA BEACH LOTS", and thus bounded and described:

Beginning at a 3/4 inch pipe at the northeasterly corner of this lot, on the southeasterly boundary of 40 foot road right-of-way, the coordinates of which point of beginning being 6,976.31 feet south and 1,805.63 feet west referred to former U.S.C. & G.S Trig. Station "PUU HELE" and running by azimuths measured clockwise from true South:

- | | | | | | |
|----|------|-----|-------|--------|---|
| 1. | 15° | 11' | 10" | 190.46 | feet along Lot 2 of this subdivision to a 3/4 inch pipe; |
| 2. | 98° | 33' | | 131.18 | feet to a 3/4 inch pipe; |
| 3. | 184° | 35' | | 39.05 | feet along the easterly boundary of Old Wailuku-Lahaina Government Road to a 3/4 inch pipe; |
| 4. | 186° | 41' | | 64.00 | feet along the same to a 3/4 inch pipe; |
| 5. | 192° | 26' | | 48.90 | feet along the same to a 3/4 inch pipe; |
| 6. | 195° | 08' | | 43.80 | feet along the same to a 3/4 inch pipe; |
| 7. | 281° | 37' | | 100.29 | feet along the southeasterly boundary of said 40 feet road right-of-way to a 3/4 inch pipe; thence along the same, along the arc of a circular curve to the left with a radius of 620 feet, the direct azimuth and distance of the chord being: |
| 8. | 279° | 37' | 43.5" | 49.50 | feet to the point of beginning and containing an area of 0.574 acre, more or less. |

BEING A PORTION OF THE PREMISES DESCRIBED IN DEED

GRANTOR : OCEANFRONT ASSOCIATES, a Hawaii registered limited partnership

GRANTEE : FSO OKLAHOMA INVESTMENTS CORPORATION

DATED : February 16, 1989
RECORDED : Liber 22937 Page 505

EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 3152 to Henry Cornwell, and all of Royal Patent Number 3382, Land Commission Award Number 2959, Apana 3 to Hika) situate, lying and being at Maalaea, Waikapu, Wailuku, Island and County of Maui, State of Hawaii, being PARCEL 1, and thus bounded and described:

Beginning at a pipe at the northeasterly corner of this tract of land, on the southerly boundary of Lot 1, Maalaea Beach Lots, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HALE" and running thence by azimuths measured clockwise from true South:

- | | | | | | |
|----|--|-----|-----|--------|---|
| 1. | 0° | 48' | 30" | 130.84 | feet along the remaining portion of Grant 3152 to Henry Cornwell over a pipe at 104.71 feet to a pipe on the seashore at high water mark. Thence along the seashore at high water mark for the next two courses, the direct azimuths and distances being: |
| 2. | 56° | 43' | | 47.17 | feet to a pipe; |
| 3. | 68° | 29' | | 63.00 | feet to a pipe, thence leaving the seashore and running; |
| 4. | 158° | 27' | | 77.00 | feet along the northeasterly boundary of Maalaea Bay Front (C.S.F) 12758) to a spike on the easterly boundary of the old Wailuku-Lahaina Road; |
| 5. | Thence along the easterly boundary of said road on a curve to the left having a radius of 109.22 feet, the chord azimuth and distance being: | | | | |
| | 200° | 06' | 40" | 38.47 | feet to a spike; |
| 6. | 199° | 29' | | 90.00 | feet along same to a spike; thence leaving said road boundary and running; |

7. 278° 33'

85.88

feet along the southerly boundary of Lot 1, Maalaea Beach Lots to the point of beginning, and containing an area of 18,141 square feet, more or less.

Said above described parcel of land having conveyed by FSO OKLAHOMA INVESTMENTS CORPORATION, an Oklahoma corporation, by following Deeds:

1. By DEED of EMILY WILSON ENOS, also known as EMILY W. ENOS, dated February 6, 1989, recorded in Liber 22835 at Page 499; and
2. By COMMISSIONER'S DEED of ISAAC D. HALL, as Commissioner, dated July 17, 1992, recorded as Document No. 92-123694.

EXHIBIT "A"

All of that certain parcel of land (portion of the land described in and covered by Royal Patent Grant Number 3152 to Henry Cornwell) situate, lying and being at Waikapu, Wailuku, Island and County of Maui, State of Hawaii, being LOT 2 of the "MAALAEA BEACH LOTS", and thus bounded and described:

Beginning at a pipe at the northwesterly corner of this tract of land, on the southerly boundary of Lot 1, Maalaea Beach Lots the coordinates of said point of beginning being 7153.4 feet south and 1900.33 feet west referred to Government Survey Triangulation Station "PUU HELE" and running thence by azimuths measured clockwise from true South:

1. 278° 33' 45.30 feet along said southerly boundary of Lot 1 to a pipe;
2. 15° 11' 10" 121.67 feet along the westerly boundary of Lot 2, Maalaea Beach Lots, over Triangulation Station "MAALAEA" to 2' pipe in concrete at 106.67 feet, to a point on the seashore at high water mark. Thence along the seashore at high water mark, the direct azimuth and distance being:
3. 65° 42' 16.21 feet to a pipe. Thence leaving the seashore and running mauka:
4. 180° 48' 30" 130.84 feet along the remaining portion of Grant 3152 to Henry Cornwell over a pipe at 26.13 feet to the point of beginning, and containing an area of 3,698 square feet, more or less.

Excepting and reserving therefrom any portion of R. P. 3382, L. C. Aw. 2959, Apana 3 to Hika that may lie within the boundaries of the described parcel.

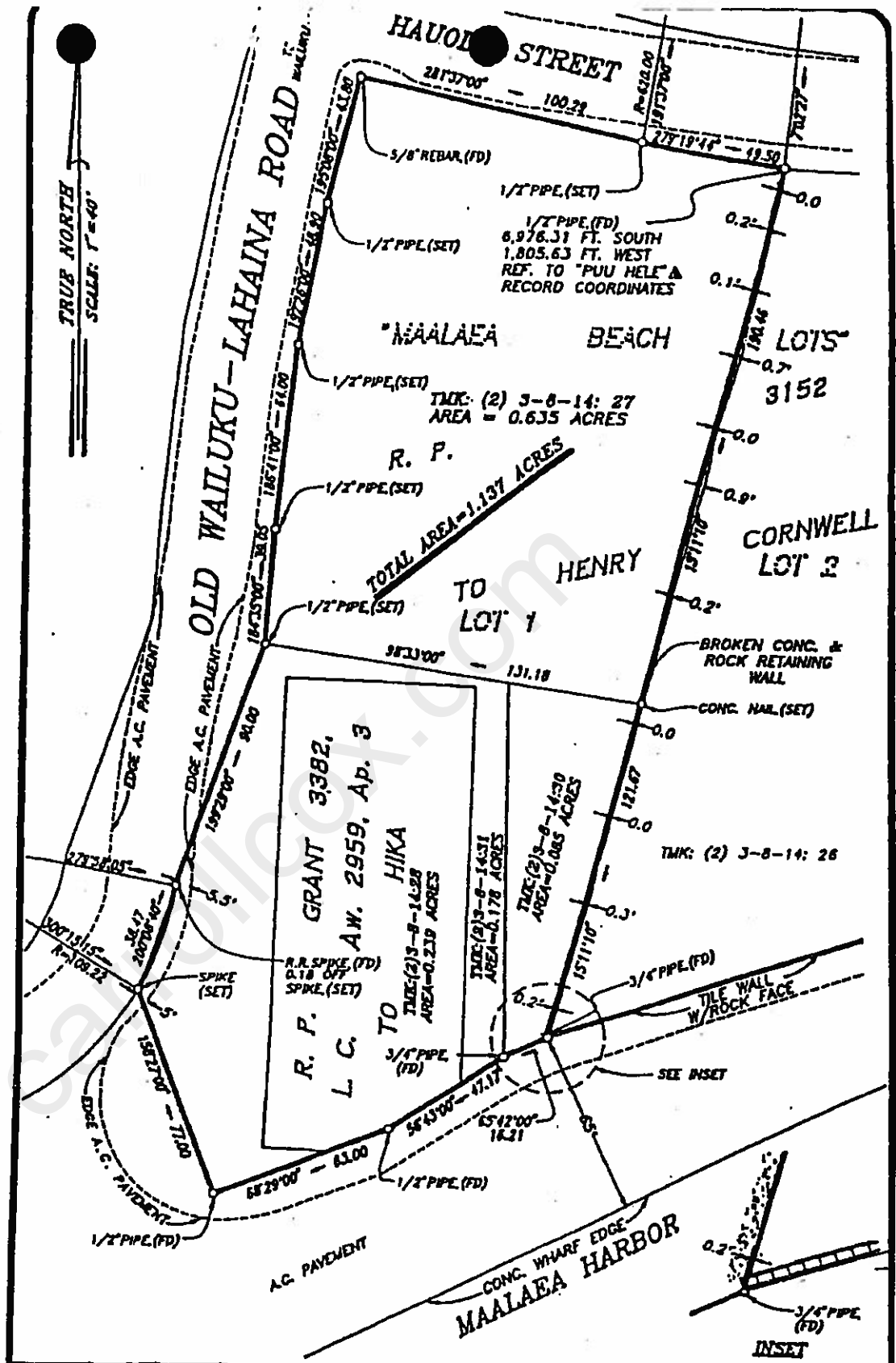
BEING A PORTION OF THE PREMISES DESCRIBED IN DEED

GRANTOR : OCEANFRONT ASSOCIATES, a Hawaii registered limited partnership

GRANTEE : FSO OKLAHOMA INVESTMENTS CORPORATION

DATED : February 16, 1989

RECORDED : Liber 22937 Page 505



SKETCH SHOWING EDGE PAVEMENT TO EXISTING BOUNDARY RELATIONSHIP AND WALL TO EXISTING BOUNDARY RELATIONSHIP FOR TMK: (2) 3-8-14: 27, 28, 30 & 31 AKAMAI LAND SURVEYING P.O. BOX 1748 KAKAWAO, MAUI, HAWAII 96788	JOB NO.: 03286
	SCALE: 1" = 40'
	T.M.K.: (2) 3-8-14: 27, 28, 30 & 31
	DATE: 9-13-03 SHEET 1 OF 1

EXHIBIT "A"

All of that certain parcel of land (portion of the land described in and covered by Royal Patent Grant Number 3152 to Henry Cornwell) situate, lying and being at Waikapu, Wailuku, Island and County of Maui, State of Hawaii, being LOT 1 of the "MAALAEA BEACH LOTS", and thus bounded and described:

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3. 184° 35' 39.05 feet along the easterly boundary of Old Wailuku-Lahaina Government Road to a 3/4 inch pipe;
4. 186° 41' 64.00 feet along the same to a 3/4 inch pipe;
5. 192° 26' 48.90 feet along the same to a 3/4 inch pipe;
6. 195° 08' 43.80 feet along the same to a 3/4 inch pipe;
7. 281° 37' 100.29 feet along the southeasterly boundary of said 40 feet road right-of-way to a 3/4 inch pipe; thence along the same, along the arc of a circular curve to the left with a radius of 620 feet, the direct azimuth and distance of the chord being:
8. 279° 37' 43.5" 49.50 feet to the point of beginning and containing an area of 0.574 acre, more or less.

BEING A PORTION OF THE PREMISES DESCRIBED IN DEED

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GRANTEE : FSO OKLAHOMA INVESTMENTS CORPORATION

DATED : February 16, 1989
RECORDED : Liber 22937 Page 505

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- | | | | |
|----|--|--------|---|
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BEING A PORTION OF THE PREMISES DESCRIBED IN DEED

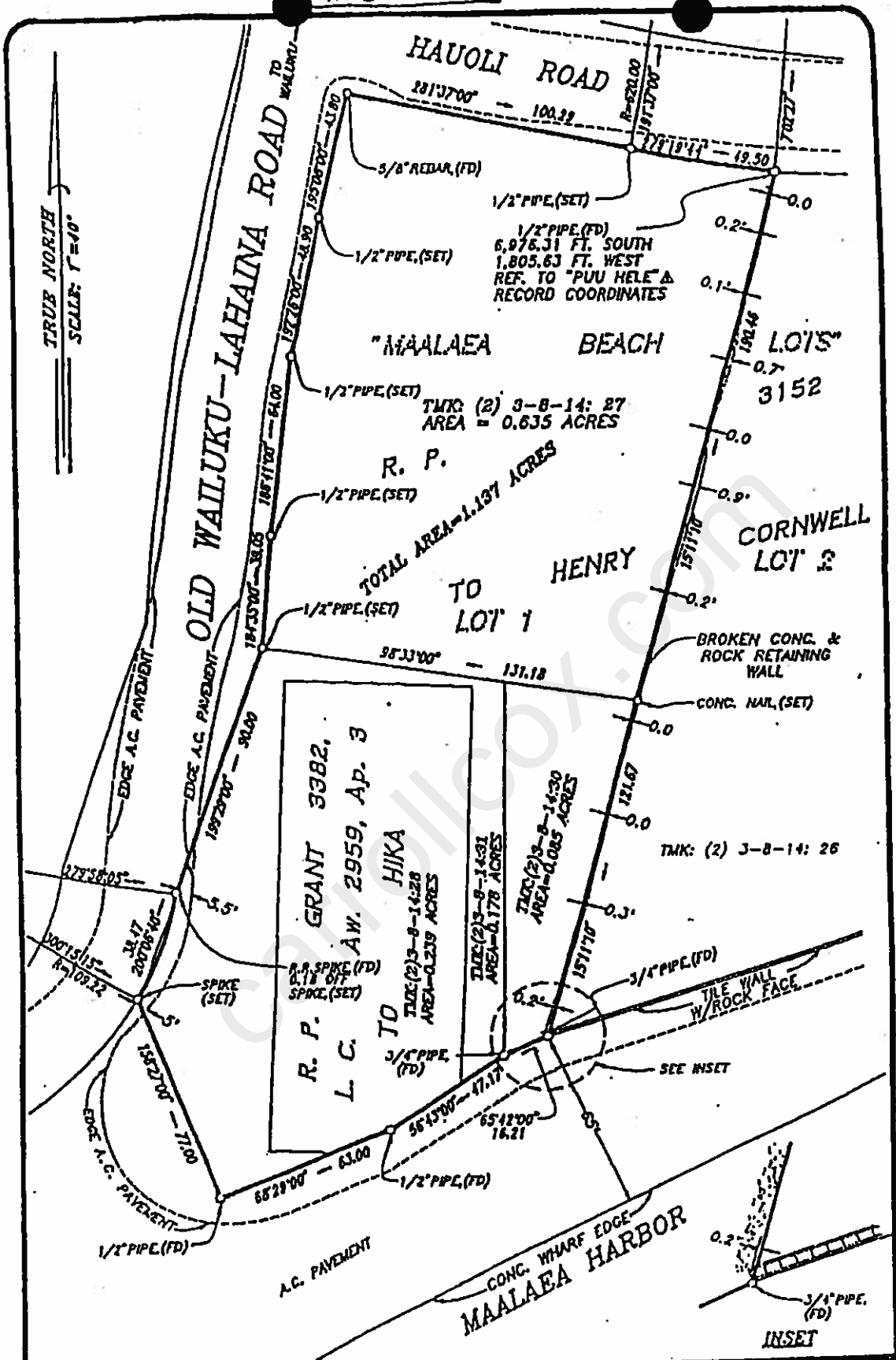
GRANTOR : OCEANFRONT ASSOCIATES, a Hawaii registered limited partnership

GRANTEE : FSO OKLAHOMA INVESTMENTS CORPORATION

DATED : February 16, 1989

RECORDED : Liber 22937 Page 505

EXHIBIT "B"



SKETCH SHOWING
EDGE PAVEMENT TO EXISTING BOUNDARY RELATIONSHIP
AND WALL TO EXISTING BOUNDARY RELATIONSHIP
FOR TMK: (2) 3-8-14: 27, 28, 30 & 31

AKAMAI LAND SURVEYING
P.O. BOX 1718
MAUNALO, MAUI, HAWAII 96788

JOB NO.: 93286

SCALE: 1" = 40'

T.M.K.: (2) 3-8-14: 27, 28, 30 & 31

DATE: 9-13-93 SHEET 1 OF 1