Appendix D. Grant of Non-exclusive Easement. (For utilities, via Kalapana Seaview Estates).#
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Appendix D

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LAND COURT SYSTEM REGULAR SYSTEM

Return by Mail ( ) Pickup (✗) To:
DEPT. OF LAND AND NATURAL RESOURCES
LAND DIVISION

Total Number of Pages: 13

Tax Map Key No. (3) 1-2-09 Por. 43

GRANT OF NON-EXCLUSIVE EASEMENT

THIS INDENTURE, made and entered into this 9th day of February, 1999, by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the "Grantor," and KALANI HONUA INC., a Hawaii non-profit corporation, whose address is RR2 Box 4500, Pahoa, Hawaii 96778, hereinafter referred to as the "Grantee."

WITNESSETH THAT:

The Grantor, pursuant to Section 171-13, Hawaii Revised Statutes, for and in consideration of the sum of FIVE HUNDRED SEVENTY-TWO AND NO/100 DOLLARS ($572.00), the receipt of which is hereby acknowledged, and of the terms, conditions, and covenants herein contained, and on the part of the Grantee to be observed and performed, does hereby grant unto the Grantee, the following non-exclusive and perpetual easement rights:

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

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Right, privilege, and authority to construct, use, install, maintain, repair, replace, and remove utility transmission poles, lines, and anchors,

in, over, under and across that certain parcel of land ("easement area") situate at Keekee, Puna, Island of Hawaii, Hawaii, being identified as "Perpetual Non-Exclusive Utility Transmission Easement," containing an area of 1.090 acres, 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. 22,778 and dated December 1, 1998, 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, in perpetuity, SUBJECT, HOWEVER, to the following terms, conditions and covenants:

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.

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2. The Grantor reserves unto itself, its successors and assigns, the full use and enjoyment of the easement area and 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 herein Grantee in the use of the easement area for the purposes for which this easement is granted.

3. All improvements placed 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 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, leased, 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. 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; provided, however, that if other lands of the Grantor are available, the Grantor will grant to the Grantee without payment of any monetary consideration, a substitute easement of similar width within the reasonable vicinity of the original

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alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law.

8. 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.

9. 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 statutes, rules and regulations, now in force or which may hereinafter be in force.

10. 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.

11. The Grantee shall, upon termination and/or revocation 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 its original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantee, at the option of the Grantor. Furthermore, upon the termination and/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 Board 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.



12. 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.

13. 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,

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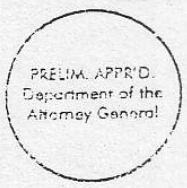
hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Time is of the essence in this agreement and if the Grantee 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 any preceding or other breach of contract; and in the event of termination, at the option of Grantor, all improvements shall remain and become the property of the Grantor or shall be removed by Grantee.

15. The Grantor reserves the right to withdraw the easement for public use or purposes, at any time during this grant of easement upon the giving of reasonable notice by the Grantor and without compensation.

16. 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.

17. 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 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 any preceding or other breach or default and use its best efforts to redispose 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 redisposition shall be applied, first, to reimburse the Grantor for costs and expenses in connection with the redisposition; 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 redisposition which exceeds the fair market value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

18. 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, in an

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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.

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

20. All improvements shall be done by the Grantee at no cost or expense to the State of Hawaii nor to the County of Hawaii.

21. Maintenance and repair of the easement area shall be performed by the Grantee, its successors, permitted assigns or permitted devisees, at no cost or expense to the State of Hawaii nor the County of Hawaii, including during periods of emergency.

22. The Grantee, its successors, permitted assigns or permitted devisees, shall include the above "maintenance and repair" provision as a covenant in all conveyance documents affecting its property as it exists now, or should it be eventually subdivided and sold. Said covenant shall be in recordable form and recorded with the State of Hawaii, Bureau of Conveyances. A recorded copy shall be submitted to the Hawaii District Land Office.

23. The Grantee and Koob Hawaii Enterprise, a Hawaii general partnership, shall grant, for a cost of $1.00 an irrevocable, perpetual utility easement to GTE Hawaiian Telephone Company Incorporated. Said easement shall be along the mauka boundaries of Tax Map Key:3rd/1-2-09:28 and 29, and along the Kapoho side boundary of Tax Map Key:3rd/1-2-09:28, extending to and terminating at the Kapoho-Kalapana Road, and shall be for the purpose of supplying telephone service to neighboring properties. The width of the easement shall be the equivalent width of the easement through the state land. A copy of the fully-executed document, recorded at the State of Hawaii, Bureau of Conveyances,

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shall be submitted to the Hawaii District Land Office prior to the execution of this easement document.

24. In the event any unanticipated sites or remains of historic or prehistoric interest (such as shell, bone or charcoal deposits, human burials, rock or coral alignments, paving or walls) are encountered during construction, the Grantee shall stop work immediately and contact the State Historic Preservation Division in Honolulu at 587-0047.

25. The Grantee, its successors, permitted assigns, or permitted devisees, shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state and County of Hawaii governments.

26. The Grantee, its successors, permitted assigns, or permitted devisees, shall submit construction plans for approval by the Chairperson of the Board of Land and Natural Resources prior to the commencement of any work activity.

27. Grantee shall not construct, place, or maintain any building or structure over and upon the easement area.

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Attorney General

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.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on September 24, 1993.

By _____
Chairperson and Member
Board of Land and
Natural Resources

GRANTOR

KALANI HONUA INC., a Hawaii non-profit corporation

By _____
Its PRESIDENT, DIRECTOR

And By _____
Its Vice President

GRANTEE

APPROVED AS TO FORM:

DNSC

Deputy Attorney General

Dated: 2/16/99

esmt\tmk(3)1-2-09:por43keekee\honua.dnc

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

STATE OF HAWAII)
) SS.
COUNTY OF Hawaii)

On this 9th day of February, 1999, before me appeared Richard Kodo and Antonette Thomson, to me personally known, who, being by me duly sworn, did say that they are the President - Director and Vice President, respectively of KALANI HONUA INC., a Hawaii non-profit corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said Richard Kodo and Antonette Thomson acknowledged said instrument to be the free act and deed of said corporation.

Nolan M. Remmers
Notary Public, State of Hawaii
Nolan M. Remmers

My commission expires: 1-13-03

L.S.

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Attorney General

STATE OF HAWAII
SURVEY DIVISION
DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 22,778

December 1, 1998

PERPETUAL NON-EXCLUSIVE
UTILITY TRANSMISSION EASEMENT

Keekee, Puna, Island of Hawaii, Hawaii

Being a portion of the Government Land of Keekee.

Beginning at the northeast corner of this easement and at the northwest corner of Grant 5241 to Oliver Kaihikapu Kaleopaa, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALIU" being 16,057.36 feet South and 78.97 feet East, thence running by azimuths measured clockwise from True South:-

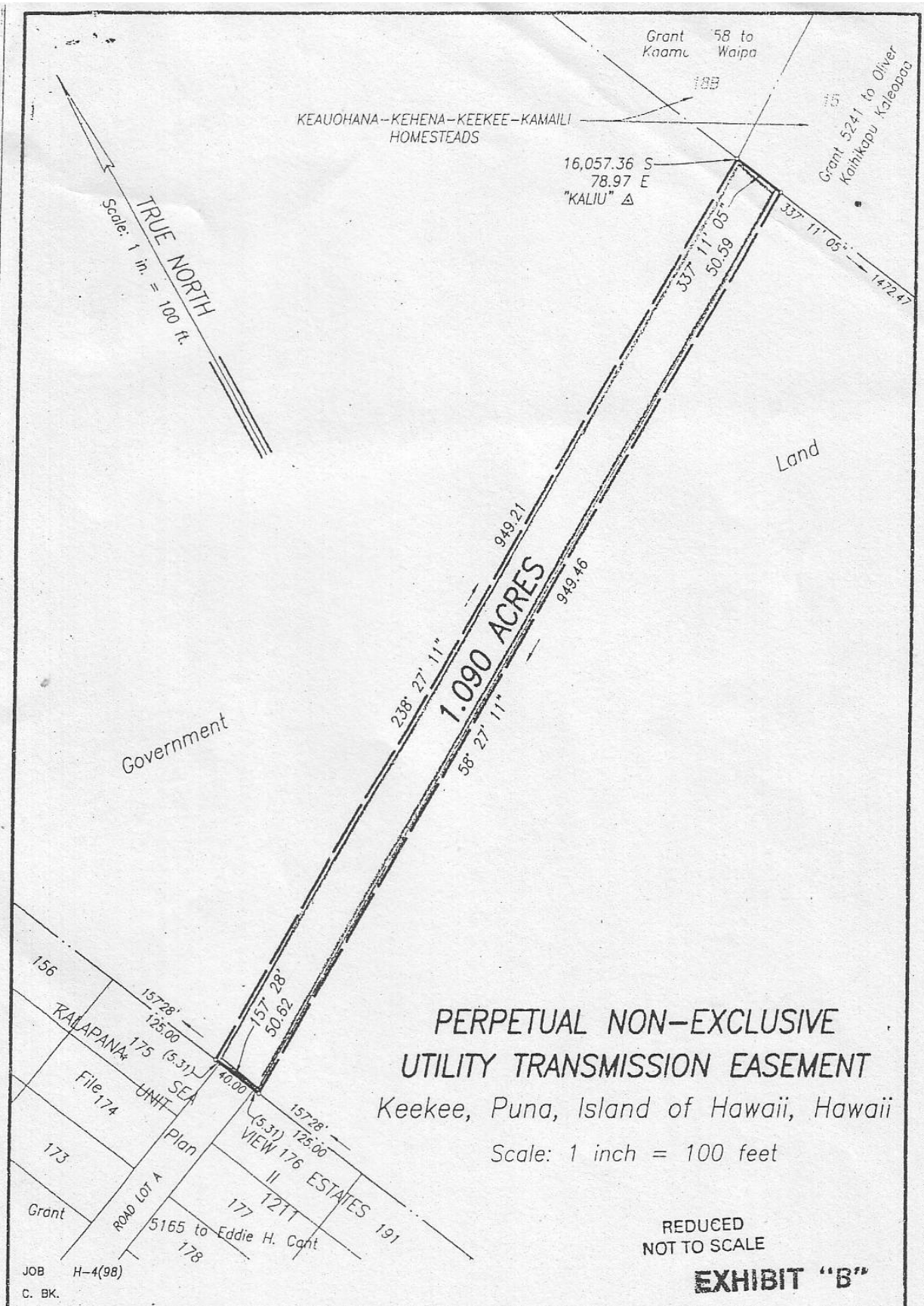
1.	337° 11' 05"	50.59 feet along Grant 5241 to Oliver Kaihikapu Kaleopaa;
2.	58° 27' 11"	949.46 feet along the remainder of the Government Land of Keekee;
3.	157° 28'	50.62 feet along Lot 176, the east end of Road Lot A and Lot 175 of Kalapana Sea View Estates, File Plan 1211;
4.	238° 27' 11"	949.21 feet along the remainder of the Government Land of Keekee to the point of beginning and containing an AREA OF 1.090 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Ronald S. K. Sumida
Ronald S. K. Sumida
Land Surveyor gm

Compiled from map prepared by The Independent Hawaii Surveyors, File Plan 1211, Reg. Map 2075 and other Govt. Survey Records.
TMK: 1-2-09:por. 43

EXHIBIT "A"
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Grant 58 to Kaamo Waipa
KEAUOHANA-KEHENA-KEEKEE-KAMAILI HOMESTEADS
16,057.36 S
78.97 E
"KALIU"
Grant 5241 to Oliver Kaihikapu Kaleopaa
TRUE NORTH
Scale: 1 in. = 100 ft.
337° 11' 05"
50.59
337° 11' 05"
1472.47
Land
949.21
1.090 ACRES
949.46
238° 27' 11"
58° 27' 11"
Government
157° 28'
50.62
40.00
157°28'
125.00
(5.31)
156
KALAPANA
175
SEA
UNIT
File 174
173
Grant
ROAD LOT A
Plan
5165 to Eddie H. Cant
178
177
1211
II
VIEW 176 ESTATES
191
PERPETUAL NON-EXCLUSIVE
UTILITY TRANSMISSION EASEMENT
Keekee, Puna, Island of Hawaii, Hawaii
Scale: 1 inch = 100 feet
REDUCED
NOT TO SCALE
EXHIBIT "B"
JOB H-4(98)
C. BK.
TAX MAP 1-2-09: Por. 43
C.S.F. NO. 22,778
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII
R.S. Dec. 1, 1998

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