

RECORDATION REQUESTED BY:

County of Maui

87- 342

AFTER RECORDATION, RETURN TO:

Department of Water Supply
County of Maui
Wailuku, Hawaii 96793

20250 172
REGISTRAR

RETURN BY MAIL

PRIVATE WATER SYSTEM
AND ELEVATION AGREEMENT

THIS AGREEMENT, made and entered into this 23rd day of December, 1986, by and amongst MAUI LAND AND PINEAPPLE COMPANY, INC., whose mailing address is Post Office Box 187, Kahului, Hawaii 96732, hereinafter referred to as "ML&P", HAWAIIAN AIRLINES, INC., whose mailing address is Post Office Box 30008, Honolulu, Hawaii 96820, hereinafter referred to as "HAL", and the COUNTY OF MAUI and its DEPARTMENT OF WATER SUPPLY, hereinafter referred to as the "County",

W I T N E S S E T H:

WHEREAS, ML&P is the fee simple owner of a parcel of real property situate at Alaeloa, Mailepai, Kahana, and Mahinahina 1, 2, 3 & 4, Lahaina, Maui, Hawaii, containing an area of 1,846.404 acres and identified as Tax Map Key 4-3-01:31, hereinafter referred to as the "Property"; and

WHEREAS, ML&P has submitted an application to subdivide the Property into two lots, with Lot 1 containing an area of 49.873 acres and Lot 2 containing an area of 1,796.421 acres, which subdivision is known as the KAPALUA-WEST MAUI AIRSTRIP SUBDIVISION, hereinafter referred to as the "Subdivision"; and

WHEREAS, ML&P and HAL represent that they intend to enter into a lease agreement upon the grant of final approval of the Subdivision, whereby HAL will lease Lot 1 from ML&P

for the development and operation of the Kapalua-West Maui Airstrip on Lot 1; and

WHEREAS, the Department of Water Supply, County of Maui, hereinafter referred to as the "Department", would ordinarily require ML&P to provide water service to each lot and fire protection for the Subdivision; and

WHEREAS, ML&P represents that Lot 2 is not intended to be developed at this time and does not require water service and fire protection, and HAL proposes to construct a private water system, with its connection to the Department's public water system, to provide water for domestic and fire protection purposes to and for Lot 1, and based upon ML&P's representation and HAL's proposal, the Department waives the requirement that water service to and fire protection for Lot 2 be provided as conditions for the final approval of the Subdivision; and

WHEREAS, the Department does not have a public water system in the vicinity of the Subdivision and Lot 1 is at such an elevation that it cannot be assured of a dependable water supply; and

WHEREAS, pursuant to subsection A of Section 14.06.100 of the Maui County Code, whenever a lot or lots within a subdivision are at such an elevation that they cannot be assured of a dependable water supply, the approval of construction drawings, which shall be understood to mean construction drawings of water system improvements which will be dedicated to the Department, shall be subject to each owner of such a lot or lots entering into an elevation agreement with the County, whereby such lot owners agree to accept such water service as the Department is able to render, and such lot owners agree to construct and maintain at their expense, a tank, a pump with a tank, or other appurtenances as may be in accordance with the standards and

requirements of the Department and which shall be of sufficient capacity to furnish a supply of water at such times as the pressure in the Department's public water system may be inadequate; and

WHEREAS, subsection B of Section 14.06.100 of the Maui County Code permits a subdivision, for which elevation agreements have been entered into, to connect to the Department's public water system, while at the same time, maintaining its own private subdivision water system pursuant to the requirements, conditions and specifications of the Department; and

WHEREAS, R. T. Tanaka Engineers, Inc., whose business and mailing address is 840 Alua Street, Suite 103, Wailuku, Hawaii 96793, has submitted an application for building permit (Application No. A 86 1955), hereinafter referred to as the "Foundation Application", for the construction of the foundation for a terminal building on Lot 1, and which Foundation Application was approved by the Department on August 18, 1986; and

WHEREAS, R. T. Tanaka Engineers, Inc. has submitted an application for building permit (Application No. 86/2212), hereinafter referred to as the "Application", for the construction of the terminal building on Lot 1; and

WHEREAS, ML&P desires to have the Department recommend final approval of the Subdivision and HAL desires to have the Department approve the Application; now, therefore,

IN CONSIDERATION of the mutual obligations and covenants of the parties as hereinafter set forth, it is hereby understood and agreed by ML&P, HAL, and the County that:

1. ML&P and HAL acknowledge that the Department does not have a public water system in the vicinity of the Subdivision and Lot 1 is at such an elevation that it cannot be assured of a dependable water supply, and agree to accept

such water service as the Department is able to render, and HAL further agrees to construct and maintain at HAL's expense, a tank, a pump with a tank, or other appurtenances, hereinafter referred to as the "Private Water System", as may be in accordance with the standards and requirements of the Department.

3. HAL agrees that the Private Water System, with its connection to the Department's public water system, will be designed to provide water, with adequate pressure and quantity, for domestic and fire protection purposes on Lot 1.

4. HAL shall submit to the Department for its approval, construction plans for the construction of water system improvements which will be dedicated to the Department. HAL is not required to submit construction plans for the construction of the Private Water System to the Department. HAL shall submit to the Department, a certification, in a form acceptable to the Department, from an engineer registered in the State of Hawaii, stating that the design and construction of the Private Water System complies with the standards of the Department and will adequately provide water for domestic and fire protection purposes on Lot 1.

5. ML&P and HAL agree that the Private Water System will be privately owned, operated, and maintained, and the Department is under no duty or obligation to operate, maintain, or improve the Private Water System.

6. ML&P and/or HAL shall not request or demand the Department to construct any water system improvements to the public water system to serve Lot 1. ML&P shall not request or demand the Department to construct any water system improvements to the public water system to serve Lot 2.

7. The Department will recommend final approval of the Subdivision and approve the Application upon ML&P and/or

HAL's compliance with the applicable requirements of the Department.

8. ML&P and HAL, their heirs, assigns, and successors in interest agree to defend, indemnify, and hold harmless the County, its employees and assigns, from and against all claims for property damage, personal injury, or wrongful death, arising out of or in connection with the Department's recommendation for final approval of the Subdivision, the Department's approval of the Foundation Application and Application, the Department's waiver of requirements for Lot 2, the limited water service that the Department is able to render to Lot 1, the design, operation, and maintenance of the Private Water System, and the provisions of this agreement, and will reimburse the County, its employees and assigns, for any judgments, costs, and expenses, including attorney's fees incurred in connection with the defense of any such claim.

9. ML&P and HAL expressly understand and agree that this agreement shall run with the Subdivision and shall bind and constitute notice to all subsequent grantees, mortgagees, lienors, and any other person or entity who claims an interest in the Property or portions thereof.

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

ML&P:

By Paul J. Meyer
Its Executive Vice President / Finance

By Richard H. Cannon
Its Asst. Secretary

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HAL:

By CK Lyman
Clarence K. Lyman
Its Vice President - Finance

By Allen I. Maeda
Allen I. Maeda
Its Vice President - Corporate Planning
& Assistant Treasurer

County:

By Hannibal Tavares
Hannibal Tavares
Its Mayor

By Vince G. Bagoro, Jr.
Vince G. Bagoro, Jr.
Its Director
Department of Water Supply

APPROVED AS TO FORM
AND LEGALITY:

Howard Fukushima
Howard Fukushima
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

20250 178

On this 5th day of November, 19 86

before me appeared Paul J. Meyer and

Richard H. Cameron, to me personally known

who, being by me duly sworn, did say that _____ is/are the
Executive Vice President / Finance and Asst. Secretary

respectively, of MAUI LAND AND PINEAPPLE COMPANY, INC., a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer(s) acknowledged said instrument to be the free act and deed of said corporation.

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

Stephanie J. Hall
Notary Public, State of Hawaii
My commission expires: 9-29-89

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

On this 4th day of November, 19 86

before me appeared Clarence K. Lyman and

Allen I. Maeda, to me personally known

who, being by me duly sworn, did say that they is/are the
Vice President - Finance and Vice President - Corporate

Planning & Assistant Treasurer
respectively, of HAWAIIAN AIRLINES, INC., a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer(s) acknowledged said instrument to be the free act and deed of said corporation.

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

Priscilla M. Metcalf
Notary Public, State of Hawaii
My commission expires: 12-1-88

STATE OF HAWAII)
)
COUNTY OF MAUI)

20250 179

On this 23rd day of December, 19 86,
before me appeared HANNIBAL TAVARES, to me personally known,
who, being by me duly sworn did say that he is the Mayor of
the COUNTY OF MAUI, a political subdivision of the State of
Hawaii, and that the seal affixed to the foregoing instrument
is the lawful seal of the said COUNTY OF MAUI, and that the
said instrument was signed and sealed on behalf of said COUNTY
OF MAUI by authority of its Council, and the said HANNIBAL
TAVARES acknowledged the said instrument to be the free act
and deed of said COUNTY OF MAUI.

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

Georgia K Kawamura
Notary Public, State of Hawaii

My commission expires: 11-15-89

L.S.

STATE OF HAWAII)
)
COUNTY OF MAUI)

On this 11th day of December, 19 86,
before me appeared VINCE G. BAGOYO, JR., to me personally known,
who, being by me duly sworn, did say that he is the Director of
the DEPARTMENT OF WATER SUPPLY OF THE COUNTY OF MAUI, a political
subdivision of the State of Hawaii, and that the seal affixed to
the foregoing was signed and sealed on behalf of said COUNTY OF
MAUI pursuant to rules and regulations of the DEPARTMENT OF WATER
SUPPLY, and the said VINCE G. BAGOYO, JR., acknowledged the said
instrument to be the free act and deed of the said COUNTY OF MAUI.

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

Jerry Ann Wells
Notary Public, State of Hawaii

My commission expires: 4/19/90