

**OFFICE OF THE
ASSISTANT REGISTRAR, LAND COURT
STATE OF HAWAII
(Bureau of Conveyances)**

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STATE OF HAWAII

BUREAU OF CONVEYANCES

DOCUMENT NO. Doc A-62641098
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LAND COURT

REGULAR SYSTEM

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101 Pauahi Street, Suite 325
Hilo, Hawai'i 96720

TOTAL NUMBER OF PAGES: 13

TITLE OF DOCUMENT:

GRANT OF PUBLIC ACCESS EASEMENT

PARTIES TO DOCUMENT:

GRANTOR: **SURETY KOHALA CORPORATION, a Hawaii corporation, whose
mailing address is Post Office Box 249, Hawi, Hawaii 96719**

GRANTEE: **COUNTY OF HAWAII, a political subdivision of the State of Hawaii,
whose principal place of business and mailing address is 25 Aupuni Street,
Hilo, Hawaii 96720**

TAX MAP KEY (3) 5-3-007:015 (portion)
(3) 5-3-007:016 (portion)
Affects TCT 1,039,191

4840-6755-4057/06-27-14

GRANT OF PUBLIC ACCESS EASEMENT

THIS GRANT OF PUBLIC ACCESS EASEMENT is made this 10 day of January, 20 17 by and between **SURETY KOHALA CORPORATION, a Hawaii corporation**, whose mailing address is Post Office Box 249, Hawi, Hawaii 96719, hereinafter called "**Grantor**", and the **COUNTY OF HAWAII, a political subdivision of the State of Hawaii**, whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawaii 96720, hereinafter called "**Grantee**".

W I T N E S S E T H:

WHEREAS, Grantor is the owner in fee simple of that certain real property situated at Halaula, Maulili, Pueke, Kukuiwaluhia, Apuakohau, Halelua and Napapaa, District of North Kohala, County, Island and State of Hawaii, being Lots 2 and 3, under Subdivision No. 07-000683, approved by the County of Hawaii Planning Department on May 4, 2009, also being Lots 2 and 3, shown on Map 1, Land Court Consolidation No. 222, duly noted on TCT 1,039,191 being further identified as Tax Map Key Nos.: (3) 5-3-007:015 and 016, respectively (collectively the "**Property**"); and

WHEREAS, pursuant to the provisions of Hawaii Revised Statutes Section 46-6.5 relating to Public Access, the County of Hawaii has adopted Hawaii County Code Chapter 34 (Public Access), which provides for implementation of public access over private property in appropriate locations to the ocean, shorelines and mountain areas as applicable, by requiring dedication of land for such public rights-of-way by fee or easement as a condition precedent to final subdivision approval or the issuance of a building permit for a multiple-family development where adequate public access is not already provided, including provisions requiring the County of Hawaii to be responsible for all improvement costs, liability and maintenance issues; and

WHEREAS, in order to assure that public access is provided within the Property to and along designated shoreline access areas, the Grantor and the Grantee hereby agree to be bound by, and to encumber the real property depicted on **Exhibit B** attached hereto and incorporated by reference herein, by filing this Grant of Public Access Easement with the Office of the Assistant Registrar of the Land Court of the State of Hawaii; and

WHEREAS, pursuant to Section A of the April 4, 2002 Settlement Agreement for Board of Appeals No. 01-28 and Subdivision Application No. 2000-056 (SUB-7776A) of

applicant Surety Kohala Corporation, entered into by and between Surety Kohala Corporation, a Hawaii corporation and Grantee, the filing of this Grant of Public Access Easement with the Bureau of Conveyances of the State of Hawaii and filing with the Office of the Assistant Registrar of the Land Court of the State of Hawaii shall constitute full and final compliance with all public access requirements for the lands of the Property of Section 46-6.5, Hawaii Revised Statutes ("HRS"), Chapter 205A, HRS, Chapters 23 (Subdivision) and 34 (Public Access), Hawaii County Code, and Planning Department Rule 21 relating to Public Access: Usage, provided however, that if any of the Property tax key parcels identified in **Exhibit B** attached hereto are proposed for subdivision or other uses and activities proposed in the Special Management Area, the County may require further public access over the Property tax key parcel proposing such uses and activities.

NOW, THEREFORE, Grantor and Grantee agree as follows:

THAT THE Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) paid by Grantee, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and conditions herein contained by Grantee to be observed and performed, does hereby bargain, sell, assign and grant unto the said Grantee, and its successors and assigns, a perpetual and nonexclusive right and easement in, upon, through, over, under and across the Grantor's Property for vehicular public access purposes as indicated thereon, including without limitation, the construction, reconstruction, installation, maintenance, operation, replacement and repair of improvements constructed for said purposes ("Vehicular Public Access Easement"), as follows:

Easement 10, containing an area of 1.735 acres, for vehicular public access purposes, as shown on Land Court Consolidation No. 216, Map 4, affecting Lots 2 and 3, as shown on Map 1, Land Court Consolidation No. 222, as more particularly described in **Exhibit A** and depicted on **Exhibit B**, attached hereto and incorporated by reference herein.

As used herein, the term "**vehicular public access**" shall mean and be limited to use by motorized vehicles as regulated under Planning Department Rule 21-8, together with pedestrian and any other modes of transport allowed by Planning Department Rule 21, Public Access: Usage.

Nothing in this Grant of Public Access Easement shall amend, qualify or otherwise limit the following: (1) the liability protections given to the Grantor pursuant to Chapter 520, HRS, including without limitation the protections afforded in Section 520-4(b), HRS relating to Landowners' Liability, and (2) liability protections given to the owners or operators of any business providing recreational activities to the public who obtain voluntary written release waivers for their patrons pursuant to the provisions of Section 663-1.54, HRS, relating to Recreational Activity Liability.

AND, Grantor and Grantee hereby covenant and agree as follows:

1. The Vehicular Public Access Easement shall not be officially open to the public until this Grant of Public Access Easement has been accepted by the County of Hawaii. Once opened for public use, the Vehicular Public Access Easement as described hereinabove may be used by any members of the public having the right to use such Vehicular Public Access Easement, subject to, and upon the following terms and conditions:

- (a) Restrictions on Use. The regulation on the use of the Vehicular Public Access Easement described above, including activities prohibited within the public access easement shall be pursuant to Planning Department Rule 21, Public Access: Usage. In addition, public access will be open generally from sunrise or 6:00 a.m., whichever is earlier, to one-half hour beyond sunset or 6:30 p.m., whichever is later. Access for night fishing past 6:30 p.m. shall be allowed for those individuals who are actively engaged in night fishing activities, and does not include the right to overnight camping.
- (b) Maintenance and Control of the Vehicular Public Access Easement. The Grantee shall be solely responsible for maintaining, controlling, insuring and repairing the Vehicular Public Access Easement and any and all improvements constructed upon and/or located within said Vehicular Public Access Easement, in a good and safe condition, ordinary wear and tear excepted. Any improvements constructed or installed upon the Vehicular Public Access Easement shall require the prior approval of the Planning Director. Any and all additional improvements made to the pedestrian public access or within the Vehicular Public Access Easement area shall be maintained by the party responsible for said improvements. The Grantor and Grantee agree that the execution and delivery to the County of Hawaii by Grantor of this Grant of Public Access Easement shall constitute full and final compliance with all public access requirements for the lands of the Property of Section 46-6.5, HRS, Chapter 205A, HRS, Chapters 23 (Subdivision) and 34 (Public Access), Hawaii

County Code, and Planning Department Rule 21 relating to Public Access: Usage.

2. The Grantor and Grantee further agree that the use of the Vehicular Public Access Easement by the general public for the purposes permitted hereunder constitutes use for "recreational purposes" within the meaning of the Hawaii Recreational Use Statute, Chapter 520, HRS.

3. That Grantee and the members of the general public shall not use the Vehicular Public Access Easement for any purpose not expressly permitted herein.

That if at any time the premises across which the rights and easements are hereby granted, or any part thereof, shall be condemned or taken by any governmental authority, Grantee shall have the right to claim and recover from the condemning authority, but not from Grantor, such compensation as is payable for the said rights and easements within the public access easement by Grantee, all of which shall be payable to Grantee.

5. The terms "Grantor" and "Grantee" wherever used herein shall include Grantor and Grantee and their respective heirs, devisees, personal representatives and assigns according to the context thereof.

6. All the terms, covenants and conditions of this Grant of Public Access Easement shall run with the land and shall inure to the benefit of and be binding upon the successors and assigns of Grantor and the successor and assigns of Grantee to the same extent as said terms, covenants and conditions inure to the benefit of and are binding upon Grantor and Grantee, respectively.

7. This writing contains the entire agreement of the parties hereto concerning the subject matter hereof, and this Grant of Public Access Easement supersedes all other agreements and understanding (whether oral or written) heretofore or contemporaneously herewith made by the parties.

8. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including without

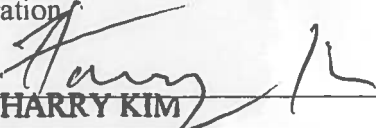
limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

The parties agree that the person or company recording or arranging for the recordation of this instrument is authorized to complete any blanks contained in this instrument with the applicable number of pages, dates, and recordation information, whether before or after this instrument has been notarized by a notary public, and in no event shall completion of any such blanks be deemed an alteration of this instrument by means of the insertion of new content.


[the remainder of this page is left intentionally blank; signature page follows]

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

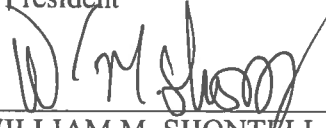
COUNTY OF HAWAII, a municipal corporation

By 
HARRY KIM
Its: Mayor

SURETY KOHALA CORPORATION, a Hawaii corporation

By 
MASAHIRO KUME
Its President

AGREED AND ACCEPTED:

By 
WILLIAM M. SHONTELL, III
Its Executive Vice-President

By _____
DUANE KANUHA
Its Planning Director

Date: _____

Approved as to Form and Legality

By 
Its Deputy Corporation Counsel

Date: 11-15-16

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

COUNTY OF HAWAII, a municipal corporation

By _____

Its: Mayor

SURETY KOHALA CORPORATION,
a Hawaii corporation

By _____
MASAHIRO KUME
Its President

AGREED AND ACCEPTED:

By _____
WILLIAM M. SHONTELL, III
Its Executive Vice-President

By Michael Kee
MICHAEL KEE
Its Planning Director

Date: 1/6/17

Approved as to Form and Legality

By _____

Its Deputy Corporation Counsel

Date: _____

STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

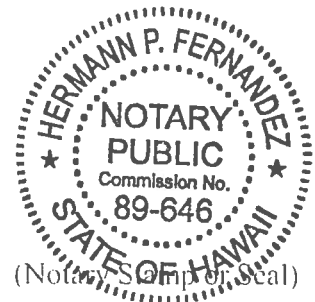
On this 28th day of OCTOBER, 2016, before me personally appeared **MASAHIRO KUME**, to me known, who, being by me duly sworn, did say that he is the **President of SURETY KOHALA CORPORATION, a Hawaii corporation**, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and said MASAHIRO KUME acknowledges said instrument to be the free act and deed of said corporation.



Hermann P. Fernandez
Name: HERMANN P. FERNANDEZ
Notary Public
State of Hawaii

My commission expires: NOV. 20, 2017

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description:	<u>Grant of Public Access Easement</u>
Document Date:	<u>UNDATED AT TIME OF SIGNING</u>
No. of Pages:	<u>12</u>
Jurisdiction (in which notarial act is performed):	Third Circuit
<u>Hermann P. Fernandez</u> Signature of Notary	<u>10/28/16</u> Date of Notarization and Certification Statement
<u>HERMANN P. FERNANDEZ</u> Printed Name of Notary	



STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

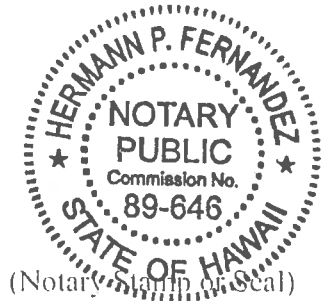
On this 28TH day of OCTOBER, 2016, before me personally appeared **WILLIAM M. SHONTELL, III**, to me known, who, being by me duly sworn, did say that he is the **Executive Vice-President of SURETY KOHALA CORPORATION, a Hawaii corporation**, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and said **WILLIAM M. SHONTELL, III**, acknowledges said instrument to be the free act and deed of said corporation.



Hermann P. Fernandez
Name: HERMANN P. FERNANDEZ
Notary Public
State of Hawaii

My commission expires: NOV. 20, 2017

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description:	<u>Grant of Public Access Easement</u>
Document Date:	<u>UNDATED AT TIME OF SIGNING</u>
No. of Pages:	<u>12</u>
Jurisdiction (in which notarial act is performed):	Third Circuit
<u>Hermann P. Fernandez</u> Signature of Notary	<u>10/28/16</u> Date of Notarization and Certification Statement
<u>HERMANN P. FERNANDEZ</u> Printed Name of Notary	



STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

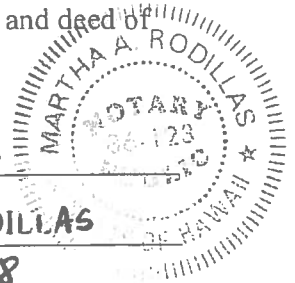
On January 9, 2017, before me personally appeared HARRY KIM, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Hawaii'i, a municipal corporation of the State of Hawaii'i; that the seal affixed to the foregoing instrument is the corporate seal of said County of Hawaii'i; the foregoing instrument was signed and sealed on behalf of the County of Hawaii'i by authority given to said Mayor of the County of Hawaii by Section 5-1.3 and 13-13 of the County Charter, County of Hawaii (2000), as amended; and said HARRY KIM acknowledged said instrument to be the free act and deed of said County of Hawaii'i.

Martha A. Rodillas

Notary Public, State of Hawaii'i

Printed Name: MARTHA A. RODILLAS

My commission expires: 3/26/18



NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Grant of Public Access Easement

Doc. Date: _____ or Undated at time of notarization

No. of Pages: 12 [including exhibits]

Jurisdiction: Third Circuit

Martha A. Rodillas

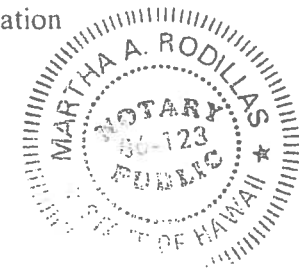
Signature of Notary

MARTHA A. RODILLAS

Jan. 9, 2017

Date of Notarization and
Certification Statement

Printed Name of Notary



(Notary Stamp or Seal)

EXHIBIT A

Easement 10, containing an area of 1.735 acres, as shown on Map 4, Land Court Consolidation No. 216, for vehicular access purposes, as set out in Land Court Order No. 180611.

END OF EXHIBIT A

LAND COURT
 STATE OF HAWAII
LAND COURT CONSOLIDATION 222
 OTHER SURETY KONAHA CORPORATION

LAND SITUATED ON THE NORTH SIDE OF
 HANALEIWA - PALU GOVERNMENT MAIN ROAD
 AT HALEKUA, MAEHALE, PUNAE KAUAI, HAWAII
 INDIVIDUAL HELELUA LAND MAPS
 AND THE KONAHA ROAD OF HAWAII MAPS

BEING A CONSOLIDATION OF THE FOLLOWING

LAND COURT CONSOLIDATION NO.	LOT NO.	ACRES	DATE	REMARKS
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100	100	1.12	11/11/11	1.12 ACRES

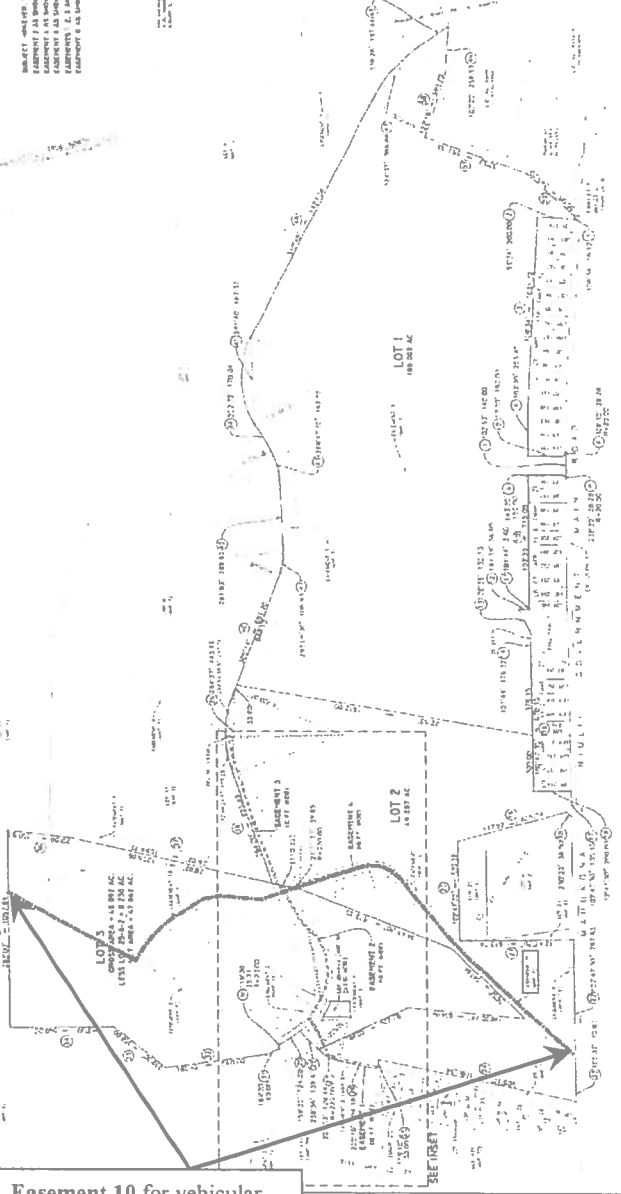
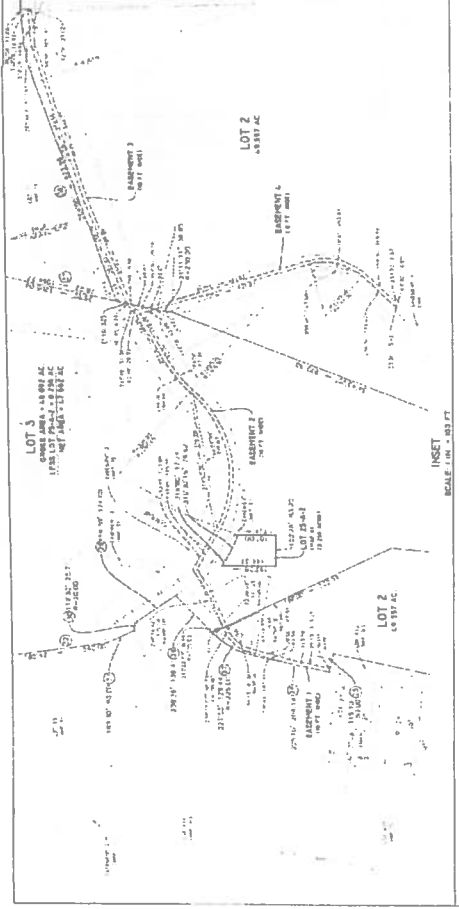
AND REDESIGNATION OF SAID CONSOLIDATION
 INTO LOT 1, LOT 2 AND LOT 3
 DELETION OF EASEMENT 3
 AS SHOWN ON MAP 8
 OF LAND COURT APPLICATION 118
 DESIGNATION OF EASEMENTS 1, 2, 3 AND 4

OBJECT - HEREIN IS THE FINAL PLAN FOR THE CONSOLIDATION OF THE LAND SITUATED ON THE NORTH SIDE OF HANALEIWA - PALU GOVERNMENT MAIN ROAD AT HALEKUA, MAEHALE, PUNAE KAUAI, HAWAII INDIVIDUAL HELELUA LAND MAPS AND THE KONAHA ROAD OF HAWAII MAPS INTO LOT 1, LOT 2 AND LOT 3 AS SHOWN ON MAP 8 OF LAND COURT APPLICATION 118 DELETION OF EASEMENT 3 AS SHOWN ON MAP 8 OF LAND COURT APPLICATION 118 AND DESIGNATION OF EASEMENTS 1, 2, 3 AND 4 AS SHOWN ON MAP 8 OF LAND COURT APPLICATION 118.



I, **John A. Smith**, a duly Licensed Professional Engineer in the State of Hawaii, do hereby certify that I am the author of the above described plan and that it is a true and correct copy of the original plan as shown to me by the applicant.

I, **John A. Smith**, a duly Licensed Professional Engineer in the State of Hawaii, do hereby certify that I am the author of the above described plan and that it is a true and correct copy of the original plan as shown to me by the applicant.



Easement 10 for vehicular public access purposes

NOTES:
 1. ALL DIMENSIONS ARE IN FEET AND INCHES.
 2. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
 3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
 4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
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