

perpetual easement rights:

Right, privilege and authority to construct, reconstruct, use, maintain and repair elevated rail transit lines, rail transit station, parking and other improvements ancillary to rail transit development,

in, over, under and across a portion of those certain parcels of land ("easement area") situate at Halawa, Oahu, Hawaii, being identified as Tax Map Key Nos. (1) 9-9-03:61, 70, & 71, also being a portion of the property known as the Aloha Stadium ("Property"), containing an area of _____, 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. _____ and dated _____, 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.

2. Conditions in Restrictive Deed. This easement and the obligations of the parties hereto are subject to the terms and conditions set forth in that quitclaim deed recorded on

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February 9, 1971, in the records of the State of Hawaii, Bureau of Conveyances, in Liber 7397, pages 424-441, as document number 71-6538 ("Restrictive Deed"). Grantee shall use the easement in strict accordance with all terms and conditions set forth in the Restrictive Deed. In the event of any conflict between the terms and conditions of the Restrictive Deed and any provision of this easement, the terms of the Restrictive Deed shall control.

Violations of the said terms and conditions of the Restrictive Deed may be grounds for reversion to the United States of America of the easement or Property, in the sole discretion of the United States of America and with no compensation to either the Grantee or the Grantor from the United States of America. The terms and conditions of the Restrictive Deed include without limitation that the Property is to be forever and continuously used and maintained for public recreational purposes. Consequently, Grantee shall not have the right to charge for parking nor to restrict the public from parking in the parking areas located in the easement in any way. In addition, Grantor will design its improvements so that the rail transit lines, rail transit station, and other ancillary improvements occupy the minimum footprint necessary.

3. 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.

4. [To be consistent with Paragraph 11, would the State want any option spelled out here for the improvements to become the property of the Grantor, in its sole discretion?] Prior to termination or revocation of this easement, 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. In the case of termination or revocation, the terms and provisions of Section 11 shall apply.

5. 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

Comment [ck1]: Para. 2 "Violations of the said terms ..." This penalizes both Grantor (State) and Grantee (City). Can this be limited to cancellation of the easement, in accordance with the conditions of para. 18, at the discretion of the Grantor and /or USA to rightfully penalize the violator, and to allow for amicable resolution of the violation such that the property may revert back to usage as existed prior to the grant of easement?

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Comment [ck2]: Para. 2 "Grantee shall not have the right to charge for parking nor to restrict the public from parking..." This statement will help define the potential mixed use of the parking lot when the rail is running during stadium events.

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Comment [ck3]: Para. 4 response to inserted query. This seems okay as is as long as Paragraph 11 is in place, and assuming that the State will not want to manage or maintain the improvements as long as the easement is in place.

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leave the easement area in a clean and sanitary condition satisfactory to 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 by Grantor 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 alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law, provided that prior written approval by the United States of America, in its sole discretion, is required.

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 laws, 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, except that Grantee shall have ___ years from the date of this Grant of Non-Exclusive Easement to commence construction.

11. The Grantee shall, upon termination or revocation of this easement peaceably deliver unto the Grantor possession of the premises, and at Grantor's sole option, after notice to Grantee, all improvements existing or constructed thereon shall

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either become the property of Grantor without compensation therefore, 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. If the Grantor requires the Grantee to remove the improvements and the Grantee does not remove the improvements or restore the premises to the satisfaction of the Grantor, the Grantor may effect such action and the Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the termination or revocation of this easement, should the Grantee fail to remove any and all of Grantee's personal property from the premises, after notice thereof, the Grantor may remove any and all of Grantee's personal property from the premises, and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Grantee and the Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the easement.

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

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Grantee's best knowledge and belief regarding the presence of hazardous materials on the easement area placed or released by Grantee.

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

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

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

15. The Grantee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Grantee's, its invitee's, or its agent's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and its surrounding waters of such pollutant or contaminant and restore to the Grantor's satisfaction the areas affected by such pollution or contamination, all at the Grantee's own cost and expense.

16. 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

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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.

17. 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.

18. All ~~of or~~ (?) any part of this easement may be terminated by Grantor for failure to comply with any or all of the terms and conditions of this easement. In the event of noncompliance, the Grantor will notify the Grantee in writing of the corrections needed, and the Grantee shall have a period of 60 days from the date of the notice, to complete corrective action. However, in the event of extenuating circumstances, such as adverse weather conditions or other compelling reasons, the Grantor may grant an extension of time in its sole discretion. Failure to take corrective action within the 60-day period (or such extension period if granted by the Grantor) may result in a determination by the Grantor to terminate the easement. In the event of termination of this easement for noncompliance, a written notice of termination will be furnished to the Grantee. No other notice or other proceedings shall be required where the easement is terminated under the provisions of this Paragraph.

19. The Grantee shall not mortgage or pledge the premises, any portion, or any interest in this easement.

20. The easement is granted to support the recreational use of properties identified as Tax Map Key Nos. (1) 9-9-03:55, 61, 69, 70, & 71, also known as the Aloha Stadium property, by, among other things, providing benefits that will enhance that property's ability to provide recreational opportunities to users, offering choice of transportation, greater transit capacity and improved service. The Grantee's use of the easement area shall not adversely change or interfere with the overall recreational use of the Aloha Stadium property.

20. The easement area is encumbered by Governor's Executive Order No. 3427 to the State of Hawaii, Department of

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Accounting and General Services, and therefore this easement is subject to the State of Hawaii Governor's approval. Said approval was obtained on _____.

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 and the CITY AND COUNTY OF HONOLULU, the Grantee herein, has caused these presents to be executed this _____ day of _____, 20____, both effective 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 _____.

By _____
Chairperson
Board of Land and
Natural Resources

GRANTOR

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APPROVED AS TO FORM:

Deputy Attorney General

CITY AND COUNTY OF HONOLULU

Dated: _____

By _____
Its Mayor

GRANTEE

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel

Dated: _____

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~~Easement for Rail DOI-NPS edits 3-10-10-ek revEasement for Rail DOI-NPS edits 3-10-10~~

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

On this _____ day of _____, 20_____,
before me appeared MUFI HANNEMANN, to me personally known, who,
being by me duly sworn, did say that he is the Mayor of the CITY
AND COUNTY OF HONOLULU, a municipal corporation, and that the
seal affixed to the foregoing instrument is the corporate seal of
said municipal corporation, and that the foregoing instrument was
signed and sealed in behalf of said municipal corporation by
authority of the City Council of said City and County of
Honolulu, and said MUFI HANNEMANN acknowledged said instrument to
be the free act and deed of said municipal corporation.

Notary Public, State of Hawaii

My commission expires: _____

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