

COUNCIL OF THE COUNTY OF MAUI
HOUSING, HUMAN SERVICES, AND
TRANSPORTATION COMMITTEE

November 4, 2016

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Housing, Human Services, and Transportation Committee, having met on October 25, 2016, makes reference to County Communication 16-235, from the Director of Housing and Human Concerns, transmitting a proposed resolution entitled "AUTHORIZING THE GRANT OF A NON-EXCLUSIVE EASEMENT TO OCEANIC TIME WARNER CABLE FOR THE KULAMALU AFFORDABLE HOUSING PROJECT."

The purpose of the proposed resolution is to authorize the grant of a non-exclusive easement to Oceanic Time Warner Cable LLC over 4.179 acres owned by the County to offer cable television and telecommunication services to the residents of the Kulamalu Affordable Housing Project at 65 Ohia Ku Street, Pukalani, Maui, Hawaii.

The Director of Housing and Human Concerns said the 56-unit Kulamalu Affordable Housing Project is one-third complete, as of September 30, 2016. The estimated completion date of the project is March 2017.

She stated provisions are being made for the infrastructure required to provide television, internet, and telephone connections for future residents. The County is partnering with Oceanic Time Warner Cable LLC to provide the cable connection from the street to each of the residential buildings and to the project's community center. The County will install all of the interior wiring and connections in each individual unit needed for the services. The Director said each resident will have the option of subscribing to television, internet, and telephone services from Oceanic.

COUNCIL OF THE COUNTY OF MAUI
HOUSING, HUMAN SERVICES, AND
TRANSPORTATION COMMITTEE

Page 2

Committee
Report No. _____

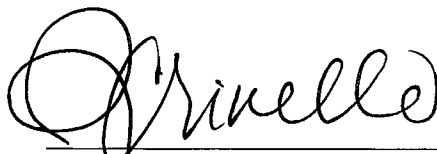
She explained to your Committee that after evaluating various service providers, Oceanic was the only company willing to provide cable infrastructure at no cost to the project. She said the project's construction team will work with Oceanic to utilize existing conduits to efficiently install the infrastructure.

Your Committee voted 5-0 to recommend adoption of the proposed resolution and filing of the communication. Committee Chair Crivello, Vice-Chair Baisa, and members Carroll, Couch, and Hokama voted "aye." Committee members Guzman and Victorino were excused.

Your Housing, Human Services, and Transportation Committee **RECOMMENDS** the following:

1. That Resolution _____, attached hereto, entitled "AUTHORIZING THE GRANT OF A NON-EXCLUSIVE EASEMENT TO OCEANIC TIME WARNER CABLE FOR THE KULAMALU AFFORDABLE HOUSING PROJECT," be ADOPTED; and
2. That County Communication 16-235 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



STACY CRIVELLO, Chair

Resolution

No. _____

AUTHORIZING THE GRANT OF A NON-EXCLUSIVE EASEMENT TO OCEANIC TIME WARNER CABLE FOR THE KULAMALU AFFORDABLE HOUSING PROJECT

WHEREAS, Oceanic Time Warner Cable desires to offer its cable television and telecommunication services to the residents of the Kulamalu Affordable Housing Project; and

WHEREAS, in order to adequately service the residents, Oceanic Time Warner Cable requires a non-exclusive easement; and

WHEREAS, the County of Maui desires to grant a non-exclusive easement under the terms set forth in the Non-Exclusive Easement Agreement, attached hereto and incorporated herein as Exhibit "1"; and

WHEREAS, Section 3.44.020, Maui County Code, authorizes the Council to dispose of County real property by easement; and

WHEREAS, the Council recognizes that it is in the public interest to dispose of this property in a manner other than public auction; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it authorizes the grant of a non-exclusive easement to Oceanic Time Warner Cable; and


2. That it finds it is in the public interest to dispose of this property in a manner other than public auction; and

3. That it hereby authorizes the Mayor, or the Mayor's duly authorized representative, to execute all necessary documents in connection with the grant of the non-exclusive easement; and

Resolution No. _____

4. That certified copies of this resolution be transmitted to the Mayor and the Director of the Department of Housing and Human Concerns.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui
2016-0851

NON-EXCLUSIVE EASEMENT AGREEMENT

THIS NON-EXCLUSIVE EASEMENT AGREEMENT ("Agreement") made this ____ day of _____, 2016, by and between the County of Maui (hereinafter referred to as the "Grantor") and OCEANIC TIME WARNER CABLE LLC, a Delaware-based limited liability company, dba OCEANIC TIME WARNER CABLE, whose mailing address is 200 Akamainui St., Mililani, Hawai'i 96789 (hereinafter referred to as "Oceanic").

WITNESSETH:

WHEREAS, Oceanic desires to offer its cable television and telecommunication services to the owners and/or tenants of the 56-unit Kulamalu Affordable Housing Project, consisting of six (6) two-story residential buildings and one (1) multi-purpose building, located at 65 'Ōhi'a Kū Street, Pukalani, Maui, Hawai'i located on the real property described in Exhibit A attached hereto (hereinafter referred to as the "Project") and the Grantor desires to make such services available to the owners and/or tenants;

WHEREAS, the Grantor has agreed to grant Oceanic a non-exclusive easement for the purposes described below;

NOW, THEREFORE, for good consideration had and received and the covenants contained herein, the parties agree as follows:

1. Grant. Grantor shall give, grant and convey unto Oceanic, its successors and permitted assigns, a non-exclusive easement for the installation, maintenance, repair, replacement and removal of all equipment and appurtenances for the provision of cable and telecommunication services (hereinafter referred to as the "Cable System") to the Project tenants, over, upon, through and under the land and improvements of the Project subject to the terms and conditions of this Agreement. This easement shall be irrevocable for as long as the Grantor shall utilize the land and improvement for residential purposes, subject to zoning laws.
2. Cable Television and Telecommunication Services. In consideration of said grant of easement, Oceanic hereby agrees that:
 - a. Oceanic shall contract contact directly with the Project tenants who desire cable television and telecommunication services;
 - b. Oceanic shall make arrangements for access to the unit directly with the Project tenant contracting for cable television and/or telecommunication services;
 - c. The Grantor shall not be liable or responsible for the collection of any payment for cable television and/or telecommunication services contracted for by the Project tenants.
 - d. The Grantor shall not be liable or responsible for the cable television and/or telecommunication services or its functioning;

- e. Oceanic shall utilize methods least invasive to the land, Project and tenants when installing, repairing and maintaining any wiring, conduits, raceways or equipment. Oceanic shall, to the greatest extent practicable, conceal new wiring in existing conduits or raceways. In the event existing conduits or raceways are not adequate, new conduits and raceways shall be concealed. In cases where new conduits or raceways cannot be concealed, Oceanic shall obtain the Grantor's written consent prior to proceeding with installation. Any new equipment shall be concealed in existing locations or Oceanic shall obtain the Grantor's prior written consent for installation in new locations;
- f. Oceanic shall indemnify and hold the Grantor harmless for any and all damages arising out of the installation, maintenance, operation, repair, replacement and removal of the Cable System, or failure to properly maintain and operate the cable system or other conduct whatsoever by Oceanic;
- g. Oceanic shall indemnify and hold the Grantor harmless from any claims, actions, and suits asserted by any person and arising from the Cable System or provision of cable television and/or telecommunication services by Oceanic;

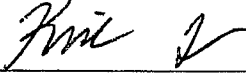
3. Maintenance and Grantorship of Equipment. The Grantor understands and agrees that:

- a. All portions of the Cable System installed by Oceanic shall remain the sole property of Oceanic and shall not constitute a fixture of any building(s) or improvement to the land. The Grantor shall have no right, title or interest and hereby waives and relinquishes any possible claims of right, title, or interest to any portion of the Cable System, including, but not limited to, any conduits or duct which Oceanic may have installed as part of the Cable System. The Grantor hereby agrees that Oceanic shall have the right to remove the Cable System in the event Oceanic agrees to relinquish its easement and Oceanic shall restore the common elements to its previous condition, reasonable wear and tear excepted;
- b. Oceanic shall be solely responsible for the maintenance, repair, replacement, improvement and removal of all or any portion of the Cable System installed by Oceanic;
- c. Oceanic, in its sole discretion, shall determine the type and grade of cable television and telecommunication system appropriate for the Project;
- d. Oceanic may demonstrate and sell cable television and telecommunication services to the tenants.

4. Non-Exclusiveness. Oceanic agrees and acknowledges that nothing in this Agreement shall prohibit or limit the Grantor from granting non-exclusive easements to other persons or entities in the easement area, whether or not for similar uses as contemplated under this Agreement.
5. Termination. Except as otherwise provided herein, this Agreement may be terminated, without any penalty or further liability upon thirty (30) days written notice by the Grantor for Oceanic's failure to cure or commence curing a material default under the terms of this Agreement.
6. Representation. The Grantor and Oceanic mutually represent that the undersigned(s) are duly authorized to enter into this Agreement on respective behalf of the Grantor and Oceanic and bind said Grantor and Oceanic to the terms contained herein.
7. Amendment; Modification. No amendment or modification of this Agreement or any Exhibit attached hereto shall be effective, unless incorporated in a written instrument executed by all parties.
8. Assignment of Non-Exclusive Agreement. Oceanic shall not assign any interest in this grant of easement to any person or firm without the prior written consent of the Grantor, and any assignment made without such prior written consent shall be null and void. No assignment shall, under any circumstances, relieve Oceanic of its obligations under this grant of easement.

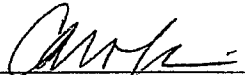
IN WITNESS WHEREOF, the parties hereto, have executed this instrument on the day and year first above written.

OCEANIC TIME WARNER CABLE LLC

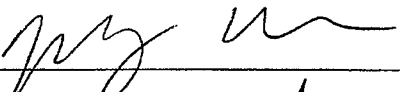
By: 
Name: Kirk Izawa
Its Vice President of Technical Operations

"Oceanic"

APPROVAL RECOMMENDED:

By: 
Carol Reimann, Director, Department of Housing and Human Concerns

APPROVED AS TO FORM AND LEGALITY:

By: 
Name: Jeffrey Neuber
Deputy Corporation Counsel, County of Maui

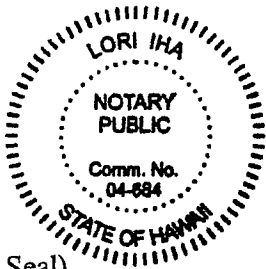
GRANTOR:

By: _____
Alan M. Arakawa, Mayor, County of Maui

By: _____
Danilo F. Agsalog,
Director, Department of Finance, County of Maui

STATE OF HAWAI'I)
) SS:
CITY AND COUNTY OF HONOLULU)

On this 28th day of July, 2016 personally appeared
Kirk Izawa, personally known, who, being by me duly sworn or affirmed did say
that such person(s) executed the foregoing instrument as the free act and deed of such person(s),
and if applicable, in the capacity shown, having been duly authorized to execute such instrument
in such capacity.



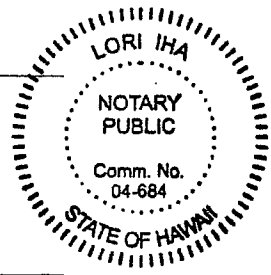
Lori Iha
Lori Iha

Notary Public, State of Hawai'i

My commission expires: 12/5/2016

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: <u>Non-Exclusive Easement Agreement</u>	
<input type="checkbox"/> Doc. Date: _____ or <input checked="" type="checkbox"/> Undated at time of notarization.	
No. of Pages: <u>7</u>	Jurisdiction: First Circuit (in which notarial act is performed) JUL 28 2016
<u>Lori Iha</u> Signature of Notary	Date of Notarization and Certification Statement
Lori Iha Printed Name of Notary	(Official Stamp or Seal)



STATE OF HAWAI'I)
) SS:
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 201_, personally appeared _____, to me personally known, who, being by me duly sworn or affirmed did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawai'i
My commission expires: _____

(Official Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: <u>Non-Exclusive Easement Agreement</u>	
<input type="checkbox"/> Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization.	
No. of Pages: _____	Jurisdiction: First Circuit (in which notarial act is performed)
Signature of Notary	Date of Notarization and Certification Statement
Printed Name of Notary	(Official Stamp or Seal)

STATE OF HAWAI'I)
) SS:
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 201_, personally appeared _____, to me personally known, who, being by me duly sworn or affirmed did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawai'i

My commission expires: _____

(Official Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: <u>Non-Exclusive Easement Agreement</u>	
<input type="checkbox"/> Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization.	
No. of Pages: _____	Jurisdiction: First Circuit (in which notarial act is performed)
Signature of Notary	Date of Notarization and Certification Statement
Printed Name of Notary	(Official Stamp or Seal)

EXHIBIT A

LOT 12-A

BEING A PORTIONS OF GRANT 1167 TO AUI AND GRANT 1829, APANA 1 TO KEAWE

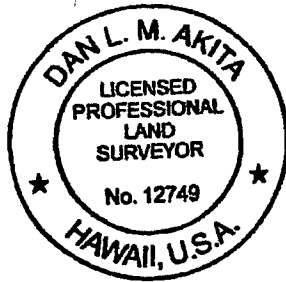
AT KOHOILO, KULA, MAUI, HAWAII

Beginning at the northwest corner of this parcel of land, being along the south side of A`apueo Parkway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU-O-KOHA" being 72.26 feet North and 12,245.57 feet East and thence running by azimuths measured clockwise from true South:

1. Along the south side of A`apueo Parkway, on a curve to the right with a radius of 2720.00 feet, the chord azimuth and distance being:
280° 51' 50.5" 60.38 feet;
2. 281° 30' 212.86 feet along the south side of A`apueo Parkway;
3. Thence along the south side of A`apueo Parkway, on a curve to the left with a radius of 1080.00 feet, the chord azimuth and distance being:
279° 49' 54" 62.89 feet;
4. 354° 54' 324.02 feet along Lots 5 and 6 of Kulamalu Commercial Subdivision, same being portions of Grant 1167 to Aui and Grant 1829, Ap. 1 to Keawe;
5. 37° 52' 30" 213.35 feet along Lot 7-A of Kulamalu Commercial Subdivision, same being a portion of Grant 1167 to Aui and Grant 1829, Ap. 1 to Keawe;
6. 113° 58' 185.35 feet along the north side of Ohi`a Ku Street;
7. Thence along the northeast side of Ohi`a Ku Street, on a curve to the right with a radius of 220.00 feet, the chord azimuth and distance being:
151° 27' 30" 267.80 feet;



8. 188° 57' 223.01 feet along the east side of Ohi`a Ku Street;
9. Thence along the east side of Ohi`a Ku Street, on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:
- 234° 35' 20.5' 42.90 feet
- to the point of beginning and containing an area of 4.179 Acres.



R.M. TOWILL CORPORATION

Description Prepared by:

Dan L. M. Akita 4/30/18
Dan L.M. Akita Expiration Date
Licensed Professional Land Surveyor
Certificate Number 12759

July 15, 2016

