

LAND COURT

REGULAR SYSTEM

Return By Mail Pick-Up To:

CARLSMITH BALL LLP
2200 ASB Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Steven S.C. Lim
Telephone: 808.523.2525

TITLE OF DOCUMENT:

**GRANT OF EASEMENT
(CONNECTOR ROAD – PUBLIC ACCESS)**

PARTIES TO DOCUMENT:

GRANTOR: **MICHAEL W. GIBSON, WARREN H. HARUKI, TIMOTHY E. JOHNS, DAVID H. McCOY and B. G. MOYNAHAN, the duly appointed, qualified and acting TRUSTEES UNDER THAT CERTAIN UNRECORDED LAND TRUST AGREEMENT FOR THE PARKER LAND TRUST DATED SEPTEMBER 13, 2002,** acting in their fiduciary and not in their individual capacities, whose address is 67-1435 Mamalahoa Highway, Kamuela, Hawaii 96743

PARKER RANCH INC., a Hawaii corporation, whose address is 67-1435 Mamalahoa Highway, Kamuela Hawaii 96743

THE ASSOCIATION OF RANCH HOME OWNERS OF HOLOHOLO KU AT PARKER RANCH, a Hawaii nonprofit corporation, whose address is 67-5000 Holoholo Ku Way, Kamuela, Hawaii, 96743

GRANTEE: **COUNTY OF HAWAII,** a municipal corporation of the State of Hawaii, whose address is 25 Aupuni Street, Hilo, Hawaii 96720

TAX MAP KEY(S): (3) 6-7-002: portion of 001, portion of 069, and (This document consists of ___ pages.)
portions of 070 (Lots R-1-A and R-3-A of
Subdivision No. 7368 - Revised)

**GRANT OF EASEMENT
(Connector Road - Public Access)**

This Grant of Easement (Connector Road – Public Access) ("**Grant of Easement**") is made by and between **MICHAEL W. GIBSON, WARREN H. HARUKI, TIMOTHY E. JOHNS, DAVID H. McCOY** and **B. G. MOYNAHAN**, the duly appointed, qualified and acting **TRUSTEES UNDER THAT CERTAIN UNRECORDED LAND TRUST AGREEMENT FOR THE PARKER LAND TRUST DATED SEPTEMBER 13, 2002**, acting in their fiduciary and not in their individual capacities, whose address is c/o Parker Ranch, Inc., 67-1435 Mamalahoa Highway, Kamuela, Hawaii 96743, **PARKER RANCH INC.**, a Hawaii corporation, whose address is 67-1435 Mamalahoa Highway, Kamuela Hawaii 96743, and **THE ASSOCIATION OF RANCH HOME OWNERS OF HOLOHOLO KU AT PARKER RANCH**, a Hawaii nonprofit corporation, whose address is 67-5000 Holoholo Ku Way, Kamuela, Hawaii 96743 (collectively, "**Grantor**"), and the **COUNTY OF HAWAII**, a municipal corporation of the State of Hawaii, whose address is 25 Aupuni Street, Hilo, Hawaii 96720 ("**Grantee**").

RECITALS:

WHEREAS, Parker Ranch, Inc. has completed construction of the following: (1) Connector Road - Phase 1 Roadway Improvements, consisting of the portion of the Connector Road between the Kaomoloa Road Extension to the Pukalani Road Extension, (2) Pukalani Road Extension from the end of the existing Pukalani Road to the Connector Road, and (3) Connector Road - Phase 3 Roadway Improvements consisting of roadways, grading, drainage, water and utilities from the Kaomoloa Road Extension, west to Mamalahoa Highway (collectively, the "**Connector Road Improvements**") over portions of the lands separately owned or operated and administered by each of the Grantors; and

WHEREAS, for the period before the Connector Road Improvements are accepted for dedication as a public road by the County of Hawaii, Grantor desires to grant to the Grantee a nonexclusive easement on and over the Connector Road Improvements for the purposes and upon the terms and conditions set forth herein and Grantee is willing to accept such easement upon such terms and conditions;

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) paid by the Grantee, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and conditions herein contained to be observed and performed by the Grantee, the Grantor does hereby grant, bargain, sell, assign, convey and transfer unto the said Grantee, for the purposes and upon the terms and conditions herein stated, a nonexclusive easement on and over the lands shown and shaded (the "**Easement Area**") on the map attached hereto as Exhibit A, which Exhibit is incorporated herein by this reference.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and permitted assigns.

This Grant of Easement is made upon and subject to the following terms and conditions:

1. The rights and easement herein granted are given solely for roadway and public access purposes as hereinbelow described, which grant shall run with and bind the properties of the Grantor constituting the Easement Area and be binding upon the Grantor and their respective successors and assigns as to such properties; provided, however, that it is the intent of the parties that the rights and easement herein granted shall be restricted to the use of the Easement Area by the Grantee and the public for public roadway purposes only and this Grant of Easement shall not be construed or interpreted as granting any rights or an easement to the Grantee or the public for general access purposes in, over, upon or within the properties of the Grantor that are not within the Easement Area.

2. The grant and rights herein stated shall be non-exclusive as to the Grantee, and the Grantee shall have no right to sell, assign, transfer or otherwise convey the easement or the rights herein granted except upon the prior express written consent of the Grantor. Grantor shall retain and have the right to create, relocate, realign, assign, grant and dedicate easements and rights of ways in, over, under, across and on the Easement Area to governmental authorities, public or private utilities, corporations or any other persons or entities, for access, utilities, drainage and/or roadway purposes, and/or the installation, operation, use and maintenance of utility facilities and services, upon or under such terms and conditions as the Grantor may, in the Grantor's sole discretion, determine or as may be specified by such governmental authority, public or private utility, or other person or entity, in connection with their acceptance of the same, and any such assignment, dedication or grant may be made without the joinder of or notice

to the Grantee or any other person; and the Grantee, by acceptance of the easement and rights herein granted, hereby covenants and agrees that the Grantee will, if, as and when requested by the Grantor, and at no cost or expense to the Grantor, join in such assignment, dedication or grant to such governmental authority, public or private utility or other person or entity.

3. In the exercise of the rights herein granted and given, the Grantee and the public may enter upon and temporarily occupy the Easement Area for the limited purpose of traveling through the Easement Area.

4. From and after the effective date of this Grant of Easement, Grantor shall not be liable for any costs and expenses with respect to the construction, reconstruction, repair and maintenance of the Easement Area or any of the improvements on, upon, under or within the Easement Area, including the Connector Road Improvements.

5. Grantee shall at all times during the term of this Grant of Easement, keep the Easement Area free and clear of any and all liens, encumbrances or other impositions; provided further that the Grantee shall not commit or suffer any act or neglect by which the Easement Area, or any of the improvements, facilities, equipment or other installations on, upon, under or within the Easement Area, or the estate of the Grantor or the Grantee therein, shall at any time become subject to any attachment, judgment, lien, charge or encumbrance.

6. Grantee shall at all times during the term of this Grant of Easement, keep the Easement Area in a strictly clean, orderly and sanitary condition, and shall not at any time make or suffer any strip or waste or unlawful, improper, or offensive use of the Easement Area.

7. Grantee shall comply with all applicable county, state or federal laws, ordinances, resolutions, codes, rules and/or regulations with respect to the use and maintenance of the Easement Area and any improvements including, without limitation, the public roadway, facilities, equipment or other installations constructed or placed on, upon, under or within the Easement Area by the Grantor or the Grantee for the purposes herein stated, and shall obtain and maintain any and all necessary governmental or other permits or approvals required for the use and/or maintenance of the Easement Area and said improvements, facilities, equipment and other installations for the purposes herein stated.

8. Grantee, with respect to the use and maintenance of the improvements, facilities, equipment and other installations on, upon, under or within the Easement Area as herein provided, shall indemnify and hold the Grantor, and the Grantor's officers, directors,

agents, representatives, Trustees, employees, members, owners, shareholders, successors and assigns (collectively, "**Grantor's Representatives**"), harmless from and against any and all claims, demands, causes of action, liabilities, damages, losses, fines, penalties, taxes, costs or expenses (including, without limitation, attorneys' fees and costs of court) which may be asserted against, reasonably incurred or paid by the Grantor or the Grantor's Representatives, which said claims, demands, causes of action, liabilities, damages, losses, fines, penalties, taxes, costs or expenses (including, without limitation, attorneys' fees and costs of court) shall arise out of or be caused by the public use of the Easement Area during the term of this Grant of Easement, whether or not caused by the acts, omissions, negligence or misconduct of Grantee, or any agent, employee, contractor, licensee or invitee of the Grantee, or the public within the Easement Area, and/or the use of any improvements, facilities, equipment or other installations, or the Connector Road Improvements, upon, under or within the Easement Area by the Grantee, or any agent, employee, contractor, licensee or invitee of the Grantee, or the public.

9. The grant, rights, duties, obligations, benefits and burdens herein set forth shall be for the benefit of and binding upon the Grantor and the Grantee, and their respective successors and assigns.

10. The parties hereto shall cooperate with each other in every way and will exercise their best efforts in carrying out the transactions contemplated herein, in obtaining all required approvals, authorizations, and clearances in connection therewith, and in executing and delivering, in recordable form when necessary, all documents, instruments, or copies thereof or other information deemed reasonably necessary or useful by the other party or parties in connection therewith.

11. The grant, rights, privileges, duties, obligations, benefits and burdens herein set forth shall commence and come into being upon final inspection and approval of the Connector Road Improvements by the Department of Public Works of the County of Hawaii and the recording of this Grant of Easement in the Bureau of Conveyances of the State of Hawaii and shall terminate, if not terminated earlier by the Grantor as hereinafter provided, and be of no further force or effect upon the dedication of the Easement Area and the Connector Road Improvements to the County of Hawaii as a public road; provided, however, that the Grantor and Grantee shall, in a timely manner, execute any and all documents and take all actions necessary to facilitate such dedication and/or release of this Grant of Easement.

12. If there shall be a breach of any of the terms and conditions of this Grant of Easement by the Grantee, or any agent, employee, contractor, licensee or invitee of the Grantee, and the Grantor shall give written notice of such breach to the Grantee, and within fourteen (14) days following the date of such notice or such other time as provided herein, the Grantee shall cure such breach or, if the nature of the breach is such that it cannot reasonably be cured within said fourteen (14) day period, the Grantee shall commence a cure of the breach within said fourteen (14) day period and diligently execute the cure to completion, then, in such case, the Grantee shall not be deemed to be in breach of any such term or condition; provided, however, that if the Grantee does not cure the breach within said fourteen (14) day period, or such other reasonable period required to cure said breach as provided herein, the Grantor shall be entitled to (a) terminate this Grant of Easement upon written notice to Grantee or (b), at Grantor's sole option, bring a legal action or other proceeding against the Grantee for the enforcement of this Grant of Easement, and in either case, the Grantee shall be liable to the Grantor for any damages the Grantor may have suffered or incurred as a result of said breach; and provided further, that in any such legal action or other proceeding, the Grantor shall be entitled to recover reasonable attorneys' fees, court costs and all expenses even if not taxable as court costs, incurred in the action or proceeding, in addition to any other relief to which Grantor may be entitled, including, without limitation, specific performance of this Grant of Easement.

13. Upon any termination of this Grant of Easement on account of a breach thereof by the Grantee, the Grantee will peaceably deliver possession of the Easement Area and the Connector Road Improvements to the Grantor in good condition and repair, ordinary wear and tear excepted.

14. Trustees Not Personally Liable; Trustees' Execution. It is expressly understood and agreed by and between the parties hereto and by all persons having notice hereof, that all of the obligations of the Seller hereunder shall be the obligations of the Seller, in their capacities as Trustees under unrecorded Land Trust Agreement for the Parker Land Trust dated September 13, 2002, and not the personal obligation of the Seller, or any of their officers, agents or employees, and no personal liability is assumed by or shall at any time be asserted or enforced against the Seller, their officers, agents, or employees on account of any obligations in this Agreement, or otherwise, either expressed or implied, all such personal liability, if any, being expressly waived and disclaimed; it being understood that the Buyer or anyone claiming by,

through or under the Buyer or claiming any rights under this Agreement shall look to the trust estate, but not to the Seller, their officers, agents or employees, for the enforcement or collection of any such liability.

15. This Grant of Easement may be amended only by written instrument executed and acknowledged by all of the parties hereto.

16. No party shall be deemed the drafter of this Grant of Easement. If this Grant of Easement is ever construed by a court of law, such court shall not construe this Grant of Easement or any provision hereof against any party as drafter.

17. Nothing contained in this Grant of Easement is intended to nor shall be construed to establish an agency relationship, a partnership or a joint' venture between the parties hereto.

18. If any provision of this Grant of Easement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Grant of Easement and the application of such provision to other persons or circumstances shall not be thereby affected.

19. This Grant of Easement embodies the entire agreement of the parties and supersedes any other agreements or understandings with respect to the subject matter hereof that may ever have existed between the parties.

20. This Grant of Easement shall be governed by the laws of the State of Hawaii both as to interpretation and performance.

21. It is expressly understood and agreed by and between the parties hereto and by all persons having notice hereof, that all of the obligations of the Grantor hereunder shall be the obligations of the Grantor, in their capacities as Trustees under unrecorded Land Trust Agreement for the Parker Land Trust dated September 13, 2002, and not the personal obligation of the Grantor, or any of their officers, agents or employees, and no personal liability is assumed by or shall at any time be asserted or enforced against the Grantor, their officers, or employees on account of any obligations in this Agreement, or otherwise, either expressed or implied, all such personal liability, if any, being expressly waived and disclaimed; it being understood that the Grantee or anyone claiming by, through or under the Grantee or claiming any rights under this Agreement shall look to the trust estate, but not to the Grantor, their officers, agents, or employees for the enforcement or collection of any such liability.

22. This document may be signed 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, even if all of the parties did not sign the original or the same counterparts. For all purposes, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

23. 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

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed and make effective this Grant of Easement on this _____ day of _____, 2010.

**TRUSTEES UNDER that CERTAIN
UNRECORDED LAND TRUST
AGREEMENT for the PARKER LAND
TRUST dated SEPTEMBER 13, 2002, as
AMENDED, acting in their fiduciary and not in
their individual capacities**

MICHAEL W. GIBSON

WARREN H. HARUKI

TIMOTHY E. JOHNS

DAVID H. McCOY

B. G. MOYNAHAN

PARKER RANCH, INC.

By _____

Name:

Its:

**THE ASSOCIATION OF RANCH HOME
OWNERS OF HOLOHOLO KU AT
PARKER RANCH, a Hawaii nonprofit
corporation**

By: Its Board of Directors,

By _____

Name:

Its:

GRANTOR

COUNTY OF HAWAII, a municipal
corporation of the State of Hawaii

By: _____

GRANTEE

APPROVED AS TO FORM AND CONTENT:

Deputy Corporation Counsel

Date: _____

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

On this _____ day of _____, 2010, before me personally appeared _____, Trustee under that certain unrecorded LAND TRUST AGREEMENT FOR THE PARKER LAND TRUST dated September 13, 2002 to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed as such Trustee.

Print Name: _____
Notary Public, State of Hawaii

My commission expires: _____

(Notary Stamp or Seal)

My commission expires: _____

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: <u>GRANT OF EASEMENT (Connector Road)</u>	
Document Date: _____	
No. of Pages: _____	
Jurisdiction (in which notarial act is performed): <u>FIRST JUDICIAL CIRCUIT</u>	
Signature of Notary	Date of Notarization and Certification Statement
(Notary Stamp or Seal)	
Printed Name of Notary	

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

On this _____ day of _____, 2010, before me personally appeared _____, Trustee under that certain unrecorded LAND TRUST AGREEMENT FOR THE PARKER LAND TRUST dated September 13, 2002 to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed as such Trustee.

Print Name: _____
Notary Public
State of Hawaii
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STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this _____ day of _____, 2010, before me personally appeared _____, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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Notary Public, State of Hawaii

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