

Educational Contribution Agreement for
WAIKAPU COUNTRY TOWN

THIS INDENTURE, made this 31 day of January, 2017, 2016, by and between WAIKAPU 905 PARTNERS, LLC, WAIKAPU PROPERTIES, LLC, MTP LAND PARTNERS, LLC and the WILLIAM FILIOS SEPARATE PROPERTY TRUST (collectively "WCT") whose principal place of business and mailing address is PO Box 1870, Manteca, CA 95336 and the State of Hawai'i DEPARTMENT OF EDUCATION ("DOE") whose mailing address is Department of Education, Facilities Development Branch, 3633 Waiālae Avenue, Honolulu, Hawai'i 96816.

Each entity comprising WCT and executing this Agreement on behalf of WCT shall be jointly and severally liable for all of the obligations contained herein. In addition, each entity comprising WCT hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon each entity comprising WCT, and shall be binding upon all such entities.

WHEREAS WCT is the developer and recorded fee simple owner of those certain parcels of land comprised of 1,576.17 acres and identified as Tax Map Key parcels 3-6-002:003, 3-6-002:001, 3-6-005:007, 3-6-004:003, 3-6-006:036 and 3-6-004:006, also known as "WAIKAPU COUNTRY TOWN";

WHEREAS the WAIKAPU COUNTRY TOWN is anticipated to contain a total of 1,433 residential units in the entire project;

WHEREAS, pursuant to Hawai'i Revised Statutes ("HRS") Chapter 302A-1601 to 1612, DOE is authorized to collect school impact fees from all new residential development in designated areas or enter into education contribution agreements to satisfy its requirements;

WHEREAS, pursuant to HRS chapter 302A-1601, said impact fee obligation is comprised of two components, land and construction cost;

WHEREAS, for the land component, pursuant to Hawai'i Revised Statutes Chapter 302A-1606 (c), DOE has exclusive authority to determine whether the obligation shall be satisfied by actual acreage or fees in lieu thereof;

WHEREAS, the amount for the construction cost component shall be determined pursuant to HRS Chapter 302A-1607;

WHEREAS WCT and DOE have mutually agreed that the educational contribution set forth in this Agreement will satisfy all DOE requirements for WAIKAPU COUNTRY TOWN, based on a maximum of 1,433 net residential units, less any units that prohibit school age children;

NOW THEREFORE, WCT and DOE agree as follows:

WCT's Cash Contribution. WCT shall contribute a total of Two Million Six Hundred Ten Thousand Three Hundred Twenty Nine Dollars (\$2,610,329) to DOE.

- a. The Cash Contribution shall be paid out of Escrow and made payable to the "State of Hawai'i, Department of Education" in accordance with the following schedule:
 - (1) Two Thousand One Hundred Fifty Three Dollars (\$2,153.00) payable upon the closing and recordation of each single family unit within the project.
 - (2) Nine Hundred Thirteen Dollars (\$913.00) payable upon the closing and recordation of each multi-family unit within the project.
- b. The amount of the cash contribution shall be adjusted from the effective date of this Agreement to the date it is paid, so that it is always equal to the Central Maui District Impact Fee that is in effect at the time of payment.

2. WCT's Land Contribution. WCT shall dedicate twelve (12) net usable acres on parcel 3-6-002:003 ("school site") to the State of Hawai'i. Usable is generally defined as land free of conditions determined to be restrictive by DOE. Characteristics of a usable site include, but are not limited to, slope of five percent or less, no ravines or stream beds, a distance from potential hazards such as chemical emissions, and setbacks of 100 to 350 feet from high voltage power lines (distance depending on voltage). DOE will make the final determination as to whether land is usable based on an evaluation of the specific property taken in the context of the development as a whole.

The presence of all public schools within WAIKAPU COUNTRY TOWN will be acknowledged and included in all plans and studies for the development, including environmental impact studies and zoning applications.

The location of the school site shall be as shown on the map attached hereto and incorporated herein as Exhibit "A". Additional school site characteristics shall include:

- a. Use of the school site shall be limited to public school and ancillary school uses.
- b. WCT shall grant all utility easements over lands owned by WCT that are required to provide utility service to the school site without charge to the State of Hawai'i.
- c. The school site shall have a minimum of two vehicular access points, along two different boundaries of the parcel, in locations approved in writing by DOE.
- d. WCT may be required to clear encumbrances or liens from title as required by DOE or the Department of Land and Natural Resources ("DLNR"), prior to conveyance and at no cost to the State of Hawai'i. In the event WCT cannot provide acceptable title to the State of Hawai'i, or

it is not economically feasible to do so, WCT shall propose a mutually agreeable alternative site(s). The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

- e. WCT shall provide a topographic map of the school site at 2-foot elevation prior to the signing of this agreement.
- f. WCT shall be responsible for rezoning the school site to a residential land use designation prior to conveyance to the State of Hawai'i.
- g. WCT shall conduct property appraisals at no cost to the State of Hawai'i and at times specified by DOE.
- h. WCT shall grant a right-of-entry to the State of Hawai'i and its consultants for preliminary data gathering (archaeological, soil testing, topographic surveys, etc.) and construction on the school site prior to conveyance to the State of Hawai'i and within 60 days of a written request by the DOE.
- i. WCT shall provide a soils report within ninety (90) days of the signing of this agreement and within ninety (90) days following the addition of any subsequent fill.

In the event the soils report and documentation indicate conditions unacceptable to DOE; WCT shall propose mutually agreeable alternative site(s) or remove the objectionable material and replace it with soil acceptable for construction, as determined by DOE. The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

In addition, a copy of any grading report that includes the school site shall be provided to DOE.

- j. WCT shall conduct a Phase I Environmental Site Assessment ("Phase I ESA") for the school site, at no cost to the State of Hawai'i. The State of Hawai'i shall be listed as an intended user of the Phase I ESA. The study shall satisfy the requirements of the State Department of Health ("DOH") and DLNR. Two copies of the report shall be provided to DOE within 60 days of a DOE request.

If necessary, the Phase I ESA or sections thereof may require updating, if some sections of the report are more than six (6) months old, prior to closing.

If the Phase I ESA identifies the potential for hazardous material release, the presence of naturally occurring hazardous materials, or if required by DOH or DLNR, WCT shall also conduct a Phase II Environmental Site Assessment and any and all abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal

Environmental Protection Agency and/or the DOH, all at no cost to the State of Hawai'i.

In the event WCT cannot conduct any and all abatement and disposal to the standards described above, or it is not economically feasible to do so, WCT shall propose a mutually agreeable alternative site(s). The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

- k. The school site shall not contain any known historical or archaeological sites. WCT shall be responsible for verifying such state with DLNR's State Historic Preservation Division (hereinafter referred to as "SHPD") and/or provide appropriate mitigation measures that are acceptable to SHPD and DOE. If requested by DOE, the WCT shall update the archaeological survey for the school site if there are unintentional/inadvertent discoveries of human remains within WAIKAPU COUNTRY TOWN.

In the event WCT cannot provide sufficient mitigation, or it is not economically feasible to do so, WCT shall propose a mutually agreeable alternative site. The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

- l. WCT shall be responsible for the subdivision of the school site at no cost to the State of Hawai'i, including Land Court recordation, if applicable.
- m. Upon formal subdivision approval of the school site, WCT shall provide a survey of the site stamped by a duly licensed surveyor. Said survey shall include metes and bounds description and map of the school site in accordance with the subdivision process. All survey maps and descriptions for the subject property must be in accordance with the State's Department of Accounting and General Services standards and at WCT's own cost.

If available, WCT shall also provide the latest ALTA survey prior to subdivision of the school.

- n. WCT shall commit to the completion of the following subdivision infrastructure systems, at no cost to DOE and up to the property line of the school site, twelve (12) months prior to the start of construction of the school:
 - (1) Potable water distribution systems for irrigation, domestic, and fire flow needs;
 - (2) Non-potable water distribution system, if required, for irrigation;
 - (3) Sewage collector, treatment and disposal systems;
 - (4) Drainage collector and disposal systems;

- (5) Access roadway systems sufficient for bus and vehicular traffic (minimum 60-foot right-of-way);
 - (6) Electrical, telephone, CATV and any other telecommunication distribution systems.
- o. WCT shall provide at no cost to the State of Hawai'i, adequate allocations for the above services prior to the start of construction of the school, such as:
 - (1) Subdivision water system allocations based on up to 60 gallons per 850 person per day for domestic use plus 4,000 gallons per day per acre for irrigation purposes at no cost to the State of Hawai'i.
 - (2) Subdivision water system capacity of 2,000 gallons per minute for a 2-hour duration (with residual critical pressure of 20 psi at the fire hydrants), as required for fire flow requirements, with related reservoir storage capacity.
 - (3) Average sewage flow allocations based on 25 gallons per person, per day, at approximately 850 people, plus 1,250 gallons per acre per day for wet weather infiltration/inflow or plus 2,750 gallons per acre per day for wet weather if the sewer line is laid below the normal ground water table.
 - (4) Actual allocations and size of utility lines at street for potable and non-potable water, sewer, drainage, power, telephone, CATV and any other telecommunication systems shall be reported with the conveyance documents.
- p. The school site shall be exempt from WAIKAPU COUNTRY TOWN community Declaration of Covenants, Conditions and Restrictions ("CC&R"), WAIKAPU COUNTRY TOWN association rules, WAIKAPU COUNTRY TOWN design committee rules, and subdivision design guidelines.
- q. The school site shall be conveyed to the State of Hawai'i at least ninety (90) days prior to the start of on-site construction.
- r. WCT shall conduct an initial title search of the school site at no cost to the State of Hawai'i at the time of the execution of this agreement. Updates to the title report (with hyperlinks) may be required by DOE during its due diligence process and following substantial changes to the property title.
- s. WCT shall be responsible for payment of all property taxes up to the effective date of the Warranty Deed.

- t. WCT shall provide title insurance for the school site when DOE's due diligence process is completed and conveyance is eminent.
- u. Conveyance of the school site shall be via Warranty Deed in a form approved by the Department of the Attorney General, Land/Transportation Division and DLNR. The standard boilerplate Warranty Deed form, as may be amended from time to time, has been provided to WCT
- v. WCT recognizes that the State of Hawaii's acquisition and disposition of private property is subject to approval by the Board of Land and Natural Resources.

3. This Agreement shall be binding upon WCT, or its successor in interest.

4. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

5. This Agreement may be executed in counterparts. Each counterpart shall be executed by one or more of the parties to this instrument and the several counterparts shall constitute one instrument to the same effect as though the signature of all the parties were upon the same instrument. 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 instrument.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement the day and year first above written.

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OWNER OF TMK'S 3-6-002:001 AND 3-6-002:003

WAIALE 905 PARTNERS, LLC

Larry W. Anderson, as Co-Trustee of the
Larry W. Anderson and Georgeann M. Anderson
Revocable Family Trust
Dated August 9, 2004

Georgeann M. Anderson, as Co-Trustee of the
Larry W. Anderson and Georgeann M. Anderson
Revocable Family Trust
Dated August 9, 2004

Lodi Development, Inc.

By: _____
Its: _____

Boyce Holdings, Inc.

By: Albert G. Boyce V 
Its: President

Boyce Resource Development Company

By: Albert G. Boyce Jr.
Its: President

Albert G. Boyce, Jr., as Trustee of Trust B
Created under the Last Will and Testament of
Albert G. Boyce Sr., dated November 2, 1978

William S. Filios as Trustee of The
William S. Filios Separate Property Trust
dated April 3, 2000

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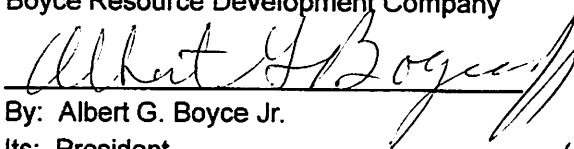
Lodi Development, Inc.

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Its: _____

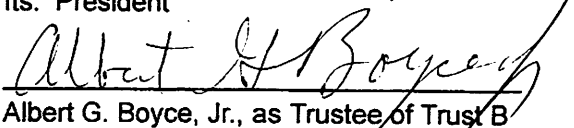
Boyce Holdings, Inc.

By: Albert G. Boyce V
Its: President

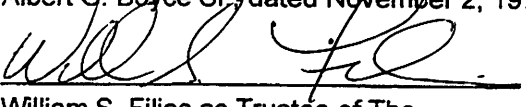
Boyce Resource Development Company



By: Albert G. Boyce Jr.
Its: President



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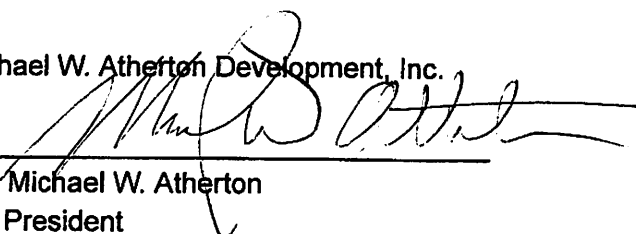
OWNER OF TMK'S 3-6-004:003, 3-6-004:006 AND 3-6-006:036

WAIKAPU PROPERTIES, LLC

Lodi Development, Inc.

By: Larry W. Anderson
Its: President

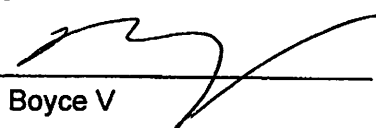
Michael W. Atherton Development, Inc.



By: Michael W. Atherton
Its: President

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Its: President

Boyce Resource Development Company

By: Albert G. Boyce Jr.
Its: President

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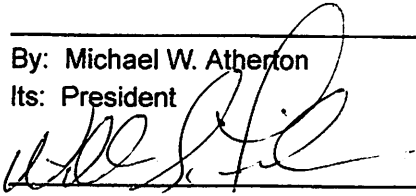
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Its: President

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By: Michael W. Atherton
Its: President

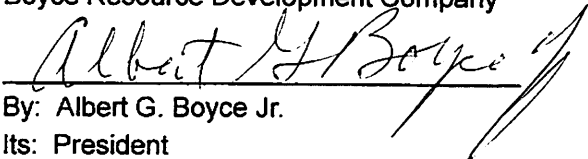


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Boyce Resource Development Company



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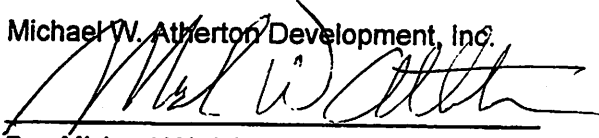
Boyce Resource Development Company

By: Albert G. Boyce Jr.
Its: President

OWNERS OF TMK 3-6-005:007

MTP LAND PARTNERS, LLC

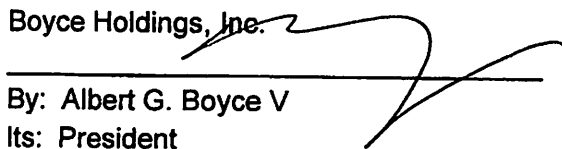
Michael W. Atherton Development, Inc.



By: Michael W. Atherton

Its: President

Boyce Holdings, Inc.



By: Albert G. Boyce V

Its: President

WILLIAM S. FILIOS

William S. Filios as Trustee of The
William S. Filios Separate Property Trust
dated April 3, 2000

OWNERS OF TMK 3-6-005:007

MTP LAND PARTNERS, LLC

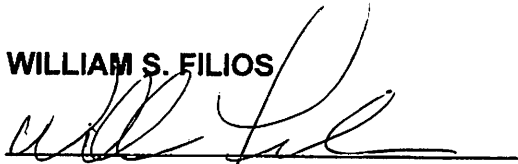
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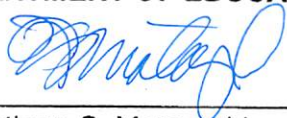
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WILLIAM S. FILIOS

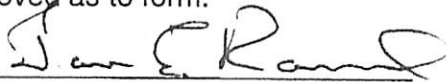
A handwritten signature in black ink, appearing to read 'William S. Filios', is written over a horizontal line.

William S. Filios as Trustee of The
William S. Filios Separate Property Trust
dated April 3, 2000

DEPARTMENT OF EDUCATION

By  JAN 31 2017
Kathryn S. Matayoshi
Superintendent

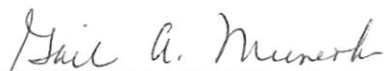
Approved as to form:

By 
Attorney General
State of Hawai'i

Date: 1-11-17

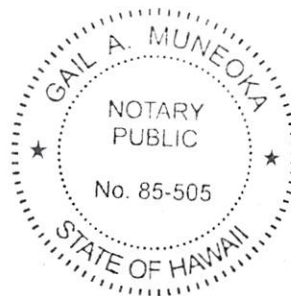
STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) ss.

The attached document: Educational Contribution Agreement for Waikapu Country Town, dated undated at time of notarization, which consist of 22 page(s), was subscribed and sworn to me by Kathryn S. Matayoshi on this 31st day of January, 2018, in the First Circuit of the State of Hawai'i by Gail A. Muneoka.


[Notary Signature]

Printed Name: Gail A. Muneoka

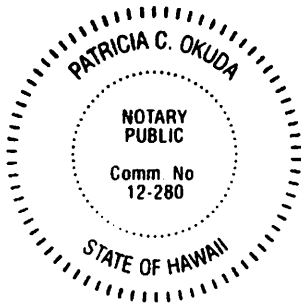
My commission expires: May 10, 2019



STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 13 day of JANUARY, 2017, before me personally appeared Michael W. Atherton, 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.

Witness my hand and seal.



Patricia C. Okuda

Notary Signature

Printed Name: Patricia C. Okuda

My Commission Expires: 8/26/20

Doc. Date: _____ # Pages: 10

Notary Name: Patricia C. Okuda Second Circuit

Doc. Description EDUCATIONAL CONTRIBUTION

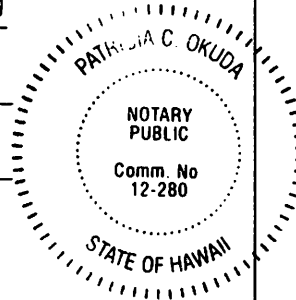
Agreement Waikapu Country Town

Patricia C. Okuda 1/13/17

Signature

Date

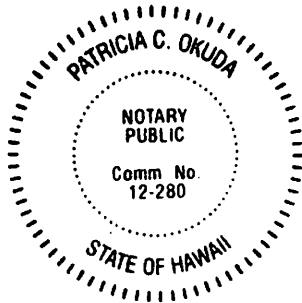
NOTARY CERTIFICATION



STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 13 day of JANUARY, 2017, before me personally appeared Albert G. Boyce, 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.

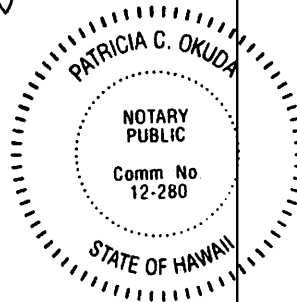
Witness my hand and seal.



Patricia C. Okuda
Notary Signature
Printed Name: Patricia C. Okuda

My Commission Expires: 8/26/20

Doc. Date: _____ # Pages: <u>10</u>	
Notary Name: <u>Patricia C. Okuda</u> Second Circuit	
Doc. Description <u>EDUCATIONAL CONTRIBUTION</u>	
<u>Agreement - Waikapu Country Town</u>	
<u>Patricia C. Okuda</u>	<u>1/13/17</u>
Signature	Date
NOTARY CERTIFICATION	



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

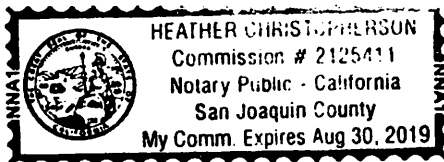
State of California)

County of San Joaquin)On January 13 2017 before me, Heather Christopherson,
Date Here Insert Name and Title of the Officerpersonally appeared Albert G. Boyce, Jr. President
Name(s) of Signer(s)of Boyce Resource Development Company

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached DocumentTitle or Type of Document: Educational Contribution Agreement Document Date: _____Number of Pages: 10 Signer(s) Other Than Named Above: _____**Capacity(ies) Claimed by Signer(s)**

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — Limited General☐ Individual Attorney in Fact☐ Trustee Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — Limited General☐ Individual Attorney in Fact☐ Trustee Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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State of California)
County of San Joaquin)

On January 13, 2017 before me, Heather Christopherson
Date Here Insert Name and Title of the Officer

personally appeared Albert G. Bayce, Jr. Trustee of
Name(s) of Signer(s)

Trust B created under last will and testament of Albert G Bayce Sr

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Educational Contribution Agreement Document Date: _____
Number of Pages: 10 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — Limited General
☐ Individual Attorney in Fact
☐ Trustee Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
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☐ Partner — Limited General
☐ Individual Attorney in Fact
☐ Trustee Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

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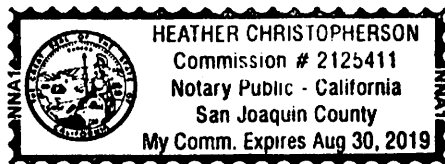
State of California)

County of San Joaquin)On January 19, 2017 before me, Heather Christopherson,
Date Here Insert Name and Title of the Officerpersonally appeared William S. Filios, Trustee of the
Name(s) of Signer(s)William S. Filios Separate Property Trust

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

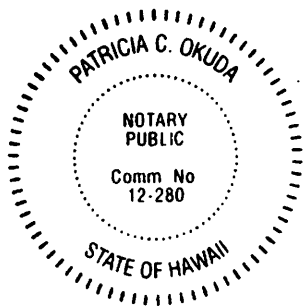
Other: _____

Signer Is Representing: _____

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 16 day of JANUARY, 2017, before me personally appeared Larry W. Anderson, 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.

Witness my hand and seal.



Patricia C. Okuda

Notary Signature

Printed Name: Patricia C. Okuda

My Commission Expires: 8/26/20

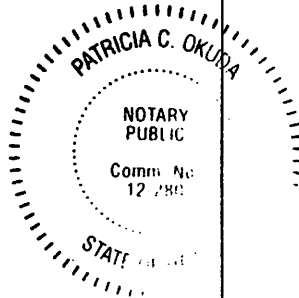
Doc. Date: # Pages: 10

Notary Name: Patricia C. Okuda Second Circuit

Doc. Description Educational Cont.
Agreement - Waikapu Country Town.

Patricia C. Okuda 1/16/17
Signature Date

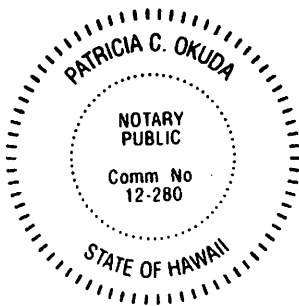
NOTARY CERTIFICATION



STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 16 day of JANUARY, 2017, before me personally appeared Georgeann M. Anderson 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.

Witness my hand and seal.



Patricia C. Okuda

Notary Signature

Printed Name: Patricia C. Okuda

My Commission Expires: 8/26/20

Doc. Date: _____ # Pages: 10

Notary Name: Patricia C. Okuda Second Circuit

Doc. Description EDUCATIONAL CONTRIB.
Agreement Waikapu Country Town

Patricia C. Okuda 1/16/17
Signature Date

NOTARY CERTIFICATION

