

WAIKIKI BEACH RECLAMATION

AGREEMENTS BETWEEN THE TERRITORY
OF HAWAII AND PROPERTY OWNERS,
AS FOLLOWS.

MAIN AGREEMENT, OCTOBER 19, 1928

SUPPLEMENTARY AGREEMENT, JULY 5, 1929

BISHOP ESTATE AGREEMENT, OCTOBER 19, 1928



Office of the
Commissioner of Public Lands

MAIN AGREEMENT

**BETWEEN THE TERRITORY OF HAWAII
AND PROPERTY OWNERS AT WAIKIKI FOR
THE RECLAMATION OF WAIKIKI BEACH,
DATED OCTOBER 19, 1928, RECORDED IN THE
BUREAU OF CONVEYANCES AT HONOLULU
IN BOOK 1047, PAGES 176-202.**

Agreement made as of this 19th day of October, 1928, by and between The Territory of Hawaii, party of the first part, and the undersigned (other than said Territory), parties of the second part.

Witnesseth: Whereas, Act 273 of the Session Laws of Hawaii, 1927, authorized the building of a beach at Waikiki, Oahu, by or under the authority of the Board of Harbor Commissioners; and

Whereas, said Act provided that said Board shall not begin any construction work unless and until legal arrangements are made whereby the general public shall be assured of the right to use such portion of any beach built as lies within seventy-five (75) feet shoreward of the mean highwater mark; and

Whereas, said project, if completed, will be a public benefit and of benefit to the property owners concerned.

Now, therefore, in consideration of the execution of this agreement by the parties of the second part, and of their covenants and agreements herein set forth, the party of the first part hereby covenants and agrees with the parties of the second part as follows:

1. That it will commence the work of building said proposed beach outward from the present line of mean highwater mark, as shown by the shoreward line of the area described in Exhibit A hereto attached and made a part hereof, not later than the first day of January, 1929, and will diligently prosecute said work so long as moneys therefor are available or until it shall have been demonstrated that the project is not practicable.

2. That it will not erect or place upon the beach any building, wharf, structure, machine or other obstruction of any kind, except such as may be necessary to be used in connection with such work of construction, and upon completion of the work, or on demonstration of the impracticability of the project it will remove all such obstructions, except such retaining walls, groins or other structures as may be necessary for the preservation of that part of the beach as may be deemed practicable within the meaning of

this agreement, and, in case the project shall have been a success, will, subject to the above exception, forever thereafter keep the beach free and clear of obstructions and open for the use of the public as a bathing beach and for passing over and along the same on foot.

3. That such beach, while in the process of construction, and after completion of construction, or in case the impracticability of the project shall be shown, shall become and be deemed to be natural accretion attached to the abutting property, and title thereto shall immediately vest in the owner or owners of the property abutting thereon, in proportion to their sea-frontage, subject only to the easement in favor of the public as above stated.

4. That in case such project shall prove to be impracticable it will, at the request of any party of the second part, recommend to the Legislature that the necessary legislation be enacted for the removal of any retaining wall, groin or other structure which shall have been placed in front of his property in the attempt to build such beach.

In consideration of the foregoing covenants and agreements of the party of the first part, the parties of the second part hereby covenant and agree with the party of the first part as follows:

(A) That they do, and each of them does, hereby approve and consent to the building of a beach at Waikiki aforesaid, as authorized by said Act 273 of the Session Laws of 1927, and in furtherance of such approval and consent do hereby promise and agree to abstain from raising and/or making any protest, objection and/or complaint, in court or otherwise, against the same, and do further subject all their property within the area described in said Exhibit A, and all their right, title and interest in the beach which shall be built pursuant to the authority of said Act within such area, to the uses and purposes provided in said Act and in this agreement.

(B) That they will not erect or place on any part of such beach so to be constructed as aforesaid within seventy-five (75) feet of mean highwater mark of such beach as it may exist from time to time, any building, fence, wall or other structure or obstruction of any kind unless such mean highwater mark shall be more than seventy-five (75) feet from the present line of mean highwater mark as shown by the shoreward boundary of the area described in said Exhibit A, and in any case will not erect or place on such beach any such structure or obstruction other than portable fences and/or hedges for the purpose of marking the boundaries of their respective abutting properties, and such structures as shall be removable in nature, providing, however, that

such fences, hedges and/or structures shall at no time be situated within the area reserved for the public as herein provided.

(C) That in the event that said project shall prove successful they will at no time prevent such beach in front of their respective premises from being kept open for the use of the public as a bathing beach and for passing over and along the same on foot, provided that such open and unobstructed beach adjoining their respective properties need not exceed seventy-five (75) feet in width from mean highwater mark.

And it is hereby mutually understood and agreed by the parties hereto as follows:

I. That this agreement shall not be construed to be a recognition by the party of the first part of any right, title or interest on the part of any party of the second part in any property abutting on the present highwater mark at Waikiki, nor shall it give the party of the first part any right whatsoever to molest or hinder any party of the second part in the possession of any such property now held by him; and provided that if deemed advisable and in furtherance of the purpose of the said project, and in the mutual interests of the public and of any party of the second part, and if mutually agreed by said Board of Harbor Commissioners and such party of the second part, the shore line along the property of such party as it is now or may hereafter be, may be moved seaward.

II. That said project shall be deemed to be practicable within the meaning of this agreement if a strip of beach shall have been built of an average width of ten (10) feet or more. If, however, after the expenditure of a substantial amount of money thereon, and after reasonable efforts shall have been made to build such beach, a strip of an average width of less than ten (10) feet shall have been constructed, as determined by the Board of Harbor Commissioners, within any one of the following described four natural sectors, then as to such sector the project shall be deemed to be impracticable:

1. Ala Wai to outer seaward boundary of Pierpoint Peninsula.
2. Thence to outer seaward boundary of that property known as the Young property.
3. Thence to the Ewa end of the Kalakaua Avenue Retaining Wall.
4. Thence to the Elks' Club.

III. That the failure on the part of the party of the first part to comply with and perform any covenant herein contained on its

part to be observed and performed shall render this agreement void and of no further force or effect as to any party of the second part at his election; provided, however, that title to so much beach as shall have been constructed shall remain vested in the owner of the abutting property adjoining which such beach shall have been constructed; and the failure of any party of the second part to comply with and perform any covenant herein contained and on his part to be observed and performed shall not avoid the same but the party of the first part may enforce the observance and performance of such covenant by any proper legal proceeding.

That this agreement shall be deemed a several and not joint agreement, and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, but the same shall not become effective for any purpose unless and until the United States of America by presidential proclamation or other lawful means, shall have transferred all its title in and to the area described in said Exhibit A to the party of the first part.

In witness whereof, the party of the first part has caused these presents to be executed on its behalf by C. T. Bailey, Commissioner of Public Lands of the Territory of Hawaii, and countersigned by W. R. Farrington, Governor of the Territory of Hawaii, and by Lyman H. Bigelow for and on behalf of the Board of Harbor Commissioners of the Territory of Hawaii, and the parties of the second part have caused these presents to be duly and properly executed as of this 19th day of October, 1928.

(Seal)

The Territory of Hawaii,

By C. T. Bailey,

Commissioner of Public Lands.

Countersigned:

W. R. Farrington
Governor.

Board of Harbor Commissioners
By Lyman H. Bigelow,
Chairman.

Emilie Macfarlane

(Corporate Seal)

Father H. Valentin
Hawaiian Trust Co., Ltd.

By E. W. Jamieson, Vice-President.
U. J. Rainalter, Secretary.

Trustees under the will of John Ena,
deceased.